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LEGAL AID SERVICE PROVISION
A GUIDE ON PROGRAMMING IN AFRICA

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FOREWORD

There is a growing recognition within the development community that legal aid is increasingly playing a significant role in improving access to justice for impoverished, marginalized and excluded groups, and in providing them with access to legal entitlements, resolution of disputes, and justice processes. The Sustainable Development Goals includes under Goal 16 a very significant set of targets that will strengthen the work of all stakeholders who support legal aid: promoting the rule of law at the national and international levels and ensuring equal access to justice for all requires, so that no one is left behind, a strong investment in legal aid.

Legal aid support is central to UNDP's rule of law and access to justice programming, which in line with our 2014-2017 Strategic Plan aims to strengthen democratic governance, foster peace and achieve progress towards sustainable development. It is holistically incorporated within programmes that are designed to enhance the capacities of institutions to deliver justice and the capacities of people to seek remedies for injustices. Globally, UNDP contributes to strengthening legal aid in over 50 countries, of which 17 are in Africa, through both state-led legal aid systems as well as non-state and paralegal mechanisms. We work across different development settings and political contexts, in fragile, conflict-affected and post-conflict countries; and in partnership with governments, local and international civil society organizations, universities and law schools, regional organizations and the broader UN System.

Across Africa, UNDP has been expanding its work on strengthening rule of law and promoting access to justice. While the region has seen much economic growth and expansion of democracy over the past decade, many poor and vulnerable groups still face significant obstacles which prevent them from benefitting from the opportunities brought by these developments. Ensuring legal frameworks that facilitate access to opportunities for all, remedies when people's rights have been violated, and independent and fair justice systems, is at the heart of UNDP's efforts to promote resilient governance and human development. Our approach to rule of law in the African region seeks to strengthen the capacities of justice institutions, while also placing a strong emphasis on legally empowering marginalized groups. This includes support for rights awareness and legal aid provision, including through paralegals who play an important role in ensuring access to justice at the community level.

Legal aid has emerged as a critical tool to tackle key issues in the region, such as addressing women's inheritance rights, empowering local communities to promote the accountability of extractive industries, securing legal identity or ensuring equal access to health, education and other social and economic services. Women living in rural areas who are denied inheritance rights, subsistence labourers who are denied their wages, or people held in police custody without access to due process rights, face immense power imbalances in trying to resolve their grievances. Often, legal aid service providers, whether lawyers or paralegals, can help correct some of these imbalances by supporting people in navigating the justice system, as well as by advising and/or representing them to claim their rights and entitlements.

This Practitioners' Guide is the outcome of an extensive consultative process involving UNDP and UNICEF practitioners, 15 UNDP Country Offices from Africa, as well as other partners. Drawing on our rich experience in the region, this Guide brings a field-tested, evidence-based perspective to the wide range of technical guidance available on legal aid. It seeks to assist practitioners in strengthening the policy framework and state-led legal aid systems, as well as the capacity of non-state legal aid providers, including those at the grassroots. It also offers technical advice on key aspects of legal aid programming, including monitoring and evaluation, resource mobilization and capacity development.

We trust that you will find this publication a useful resource to inform ongoing and future efforts to strengthen and integrate legal aid support within rule of law and access to justice programming.

Magdy Martínez-Solimán
Assistant Secretary-General and Director
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ACRONYMS

ACHPR	African Commission on Human and People's Rights
ADR	Alternative Dispute Resolution
CEDAW	Convention for the Elimination of All Forms of Discrimination against Women
CFLA	Child Friendly Legal Aid
CSO	Civil Society Organization
CLE	Clinical Legal Education
CMC	Community Mediation Committee
CRC	Convention on the Rights of the Child
DRC	The Democratic Republic of the Congo
FSU	Family Support Unit
HRI	Human Rights Institution
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
LASA	Legal Aid South Africa
LASPs	Legal Aid Service Providers
MDGs	Millennium Development Goals
M&E	Monitoring and Evaluation
NGO	Non-Governmental Organization
OSJI	Open Society Justice Initiative
PASI	Paralegal Advisory Services Institute
PRS	Poverty Reduction Strategy
PTD	Pre Trial Detention
PTSD	Post Traumatic Stress Disorder
SLBA	Sierra Leone Bar Association
SGBV	Sexual and Gender-Based Violence
TDR	Traditional Dispute Resolution
UDHR	Universal Declaration of Human Rights
UNDG	United Nations Development Group
UNICEF	United Nations Children's Fund
UNDP	United Nations Development Programme
UNV	United Nations Volunteers

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This guide has benefited from the contributions of a number of UNDP and UNICEF practitioners and external experts supporting access to justice and rule of law in the African region and globally.

In June 2010, UNDP and UNICEF organized a Practitioners' Meeting on Legal Aid Programming in Africa in Dakar/Senegal, which provided an opportunity for practitioners who are—or are interested in—implementing legal aid programmes to share experiences and identify promising practices. A Community of Practice (CoP) on legal aid and access to justice in Africa was formed for this purpose and this guide is a result of that initiative which sought to draw on practitioners' experiences and responds to questions and challenges faced by practitioners as they develop programmes on legal aid. This guide presents the combined learning and experience of UNDP and UNICEF practitioners from the African context, for the benefit of their colleagues. The conference and Community of Practice was initiated and coordinated by Brigette De Lay, Helge Flard and Isabelle Tschan, in close collaboration with Evelyn Edroma, Sebastien Gouraud and Sarah Simoneau. Thanks go to active members of the Community of Practice on Access to Justice and Legal Aid in Africa: Allassoum Bedoum Aboubacar Koulibaly, Ana Graca, Hilda Mensah and Simona Pari. Lucy Turner drafted the resource package for the Practitioners' meeting and developed the initial draft of this Programming Guide. Case studies were supported by: Iddris Abdallah, Mamadou Bobo Sow, Elvis Enoh-Tanyi, Jean Lokenga, Bernard Mugisha, and Sheema Sengupta.

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INTRODUCTION

Over the last decades UNDP has supported rule of law, access to justice and security reforms globally through the provision of financial and technical support, and advisory services in a range of inter-related areas including: justice, prison and police reform; sexual and gender-based violence; public legal aid systems, legal awareness and legal counseling; informal justice systems; reform of family and inheritance law and women's land and property rights.[1] In 2008, UNDP supported the Commission on the Legal Empowerment of the Poor which highlighted that cycles of poverty and exclusion will not be broken unless the poor and marginalized groups are able, through their own voice and agency, to use the law, legal systems and legal services to protect and advance their rights and interests as citizens and economic actors.[2]

In 2012, Member States of the United Nations clearly recognized the importance of legal aid in the context of increasing access to justice. The *Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Level (A/RES/67/1)* emphasized "the right of equal access to justice for all, including members of vulnerable groups, and the importance of awareness-raising concerning legal rights, and in this regard we commit to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid."[3]

Rule of law and access to justice in Africa

In the African region, UNDP supports rule of law by balancing interventions strengthening the effectiveness, transparency and accountability of justice institutions (the so-called "supply-side") with interventions empowering people to know how to access these institutions and act on their rights (the "demand side"). In order to address the many barriers people face in the region in accessing justice, a holistic approach is necessary – one that goes beyond legal awareness and seeks to identify ways in which to facilitate peoples access to justice whether within formal, statutory systems or with customary, informal justice systems.

Key factors in Africa for this shift have included: the changing African governance architecture with a specific quest for shared African values as shown in the African Peer Review mechanism; the vision of building capable, democratic, developmental states in Africa focused on public service delivery, accountability, human rights protection and promotion; and increased focus on the relationship between justice and development with more emphasis on the MDGs, economic justice and inclusive growth.[4] Significant challenges that many people in the region continue to face in seeking justice include: chronic shortages of lawyers; discriminatory social norms; and huge physical distances between legal services and the communities that require them.

Experience from the region indicates that the provision of free legal aid is a key means to enhance access to opportunities and to justice. This is further reinforced by the international and regional normative framework where the right to legal aid is firmly situated within international and regional human rights instruments. From the Universal Declaration of Human Rights onwards, the principles of equality before the law and

1 UNDP (2013). *Rule of Law and Access to Justice in Eastern and Southern Africa. Showcasing Innovations and Good Practices*, p.6
2 Report of the Commission on Legal Empowerment of the Poor, Making the Law Work for Everyone, (CLEP / UNDP 2008) Vol. 1, 1.
3 Resolution 67/1 (2012).
4 Idem, p.8

assuring the rights to a due process are strongly emphasized.[5] Legal aid, often in the form of legal aid for criminal charges, is also clearly articulated, including in more recent documents like the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012). In many African countries, these rights are guaranteed by the Constitution[6] and have been translated into national legislation as guarantees for access to legal counsel primarily in cases where people accused of criminal offences face the death sentence. At a regional level, the right to legal aid has been affirmed in various regional human rights documents such as the Dakar Declaration and Recommendations (1999), the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2001), the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) and the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004).

Despite these norms, in criminal matters, the poor and marginalized often become victims of dysfunctional justice and law enforcement systems throughout the region.[7] Instances in which police hoping for a bribe arrest poor people on spurious grounds and take them directly from the street to a prison cell are not unheard of. Without legal aid poor, illiterate people accused of petty crime can be detained for months and even years without having been charged, tried, or convicted. Case management is often poor, dockets are lost, and cases languish—sometimes for decades—effectively lost in the system. Consequently, prisons in Africa are full of pre-trial detainees who do not pose a threat to society. Without legal aid, human rights abuses are committed against detainees confined in dangerously overcrowded cells without access to adequate food, water, and sanitation facilities. A 2011 joint publication by the Open Society Justice Initiative (OSJI) with UNDP found that the use of excessive pre-trial detention disproportionally affects poor and marginalized people, whose livelihoods suffer from the resulting socioeconomic impacts. The poor and marginalized can get trapped in inefficient and corrupt justice and penal systems, most often without the means to pay for bail where available, when they lack adequate legal aid during the initial stages of the judicial

" Case management is often poor, dockets are lost, and cases languish—sometimes for decades—effectively lost in the system. Consequently, prisons in Africa are full of pre-trial detainees who do not pose a threat to society. "

5 While international norms and standards including the ICCPR often refer to access to legal assistance and representation in the context of criminal cases, the broader principles of equality of arms and due process imply that legal aid is necessary in other cases as well to ensure that human rights are not violated. In practice governments have tended to prioritize the available resources for legal aid In assistance of criminal cases and in fact, subsequent regional (the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, 2004) and international (UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012) instruments have been confined to legal aid in criminal justice processes.

6 In many cases, with varying levels of specificity, constitutions in the region also include reference to legal aid e.g. South Africa, Malawi, Kenya, Uganda, etc.) See UNODC's Handbook on improving access to legal aid in Africa 2011.

7 See the report of the Special Rapporteur on Extreme Poverty and Human Rights (A/66/265) on the Penalization of Poverty. The report specifically notes in Articles 12 and 13 that "A significant obstacle in breaking this cycle of penalization and poverty is the inability of persons living in poverty to access legal assistance, as they are unable to afford private legal representation and legal aid is often unavailable or inadequate. Without access to competent, comprehensive legal assistance, the poorest and most excluded are further disadvantaged in their dealings with authorities, not only when they are facing criminal charges, but also with respect to administrative procedures such as child protection cases, benefit fraud matters or eviction and immigration proceedings. (....) When persons living in poverty do not have access to legal representation or advice, particularly in circumstances where they are unfamiliar with complex legal language, they are more likely to receive and accept unfair or unequal treatment. There is a higher likelihood that they will be detrimentally affected by corruption or asked to pay bribes, will be detained for longer periods of time and, if facing trial, will be convicted. Even when legal assistance is available, discrimination and linguistic barriers are powerful obstacles in the way of those seeking access to justice and redress.

process. Their extended absence from family and community life represents a loss in income and social status for the community, and in effect a loss of human potential for society as a whole.[8]

Moreover, youth, children, women and elderly people who come in contact with the law, as victims, witnesses and even suspects in Africa often need legal advice, information or other assistance to maneuver the administrative and legal requirements. In minor criminal cases, particularly relating to youth and children, support is needed to find remedy and redress outside of the formal justice system, through 'diversion' to community-based and locally administered justice mechanisms..

In most countries in the region legal aid service providers are responding to the high demand for legal aid services for both civil and criminal cases. However, due to the priority that access to legal aid for criminal cases takes in national legal frameworks, resources are oftentimes particularly limited for legal services for non-defendants and civil cases. These civil cases include disputes over title and ownership of land and property, legal identity, family matters (such as marriage, divorce, custody and guardianship) and inheritance, all of which are particularly significant for poor and marginalized groups. Most of the cases poor and marginalized groups face pertain to minor disputes and such civil cases for which they need legal advice, assistance, mediation, and information. Recent UNDP policy guidance[9] has focused on the relevance and effectiveness of legal empowerment strategies to strengthen livelihoods and better secure economic and social rights as well as property rights of poor and marginalized groups. In Africa, these strategies are being used to address some of the new challenges unfolding against dynamic development landscapes. Development practitioners increasingly have to navigate complex and intersecting issues around extractive industries, natural resource management, and the role of land and property, economic and business rights for sustainable livelihoods.

In addition to the high level of demand, supply is limited: lawyers are few in number, located in urban areas and command high fees, which the poorest and most marginalized in rural communities can neither physically access nor afford. From a human development perspective, legal empowerment approaches, including through legal aid, can help contribute to the development of legal avenues to claim basic human rights, to ensure liberty and due process, access to public services, legal identity, physical security, security of ownership of land and property, inheritance, and other matters. Without these securities, livelihoods can become unstable and uncertain, and poor and marginalized people might remain without the legal means to safeguard these basic rights and escape cycles of poverty and exclusion.

The landscape of justice service provision is varied across the region and includes statutory systems as well as non-state and community-based systems. For many people in the region, the types of cases they need to resolve are considered minor, their legal needs simple, and the preference is to resolve them locally: in an environment in which they feel comfortable, in a language that they understand, with the assistance of people with whom they can relate. A legal aid system that caters to these priorities is what is required, not only those that focus on indigent accused in criminal cases or on court houses and complex legal process. The experience from the region also calls for an understanding of legal aid actors that goes beyond highly

8 Country studies have been developed for Ghana, Guinea Conakry, and Sierra Leone. See http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/the-socioeconomic-impact-of-pretrial-detention

9 UNDP (2014). *Legal Empowerment Strategies at Work: Lessons in Inclusion from Country Experiences*. See http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/legal-empowerment-strategies-at-work/ and UNDP (2014). *Engendering Access to Justice. Grassroots Women's Approaches to Securing Land Rights*. See http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/Engendering-access-to-justice/

educated urban professional lawyers to one that incorporates alternative and community-based models of legal aid service provision, including paralegals.

Programmes that support legal aid in Africa and elsewhere have developed innovative approaches to enhancing access to justice over the last decade. With only limited funding, these programmes have been able to achieve impressive results. This in turn, has inspired UN agencies and development actors to prioritize legal aid programming, as part of wider justice sector reform efforts or specific programmes targeted at strengthening legal aid and legal empowerment of citizens particularly the marginalized and poor.

The cumulative impact of efforts to strengthen legal aid and enhance access to justice is to foster a culture of accountability in state institutions, which stimulates responsiveness and effectiveness in service delivery, and contributes to poverty reduction and peacebuilding. It is to change discriminatory norms, laws, policies, and institutions, which perpetuate exclusion and rights violations and instead promote equality and justice. It is to end impunity for those who deny rights, to change the risk calculation of those who would do so, and reduce the prevalence of violence against women, children, and other vulnerable people. It is to progressively build a bridge between disempowered communities and the institutions responsible for protecting their rights; fostering a connection to the state that enables them to use governance mechanisms. In crisis-affected settings, more fundamentally, it is to preserve the modicum of stability and harmony in social relationships that helps communal insurance networks to function, trust to be restored, and societies to begin to function.

Purpose of the guide

There has been growing attention to the issue of legal aid in recent years, which is reflected in the recent development of policy guidance on legal aid[10] and in the adoption of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, in December 2012 by the UN General Assembly. This guide aims to fill a gap in providing development practitioners specific guidance on how to design programmes to support national partners on strengthening legal aid provision that meets the needs of poor and marginalized communities, and how a focus on legal aid can be integrated into overall rule of law and access to justice programmes.

The guide seeks to support the implementation of UNDP's Strategic Plan (2014-2017) which commits the organization to assist countries to ensure that 'citizen expectations for voice, development, the rule of law and accountability are met by stronger systems of democratic governance'[11] and that 'countries have strengthened institutions to progressively deliver universal access to basic services.'[12] UNDP is also committed to achieving 'faster progress (…) in reducing gender inequality and promoting women's empowerment.'[13] Reaching these outcomes involves UNDP support to 'legal reform enabled to fight discrimination and address emerging issues (such as environmental and electoral justice)'[14] and to enable 'functions, financing and capacity of rule of law institutions (…) including to improve access to justice and redress.'[15] UNDP support also helps 'measures [to be

10 For an overview of existing resources on legal aid, see Annex I
11 Outcome 2, UNDP Strategic Plan 2014-2017, p.12. See http://www.undp.org/content/dam/undp/library/corporate/UNDP_strategic-plan_14-17_v9_web.pdf
12 Outcome 3, Ibidem
13 Outcome 4, Ibidem
14 UNDP Strategic Plan 2014-2017, Output 2.5
15 UNDP Strategic Plan 2014-2017, Output 3.4

put] in place and implemented across sectors to prevent and respond to Sexual and Gender Based Violence (SGBV).'[16] This guide illustrates how legal aid programming contributes to these outputs and ultimately to UNDP's delivery on its mandate.

This guide provides practical guidance on how to support legal aid service provision, based on the lessons from experiences on the ground of UNDP and other UN agencies' country offices working with statutory and customary justice institutions in Africa, and advice on how to overcome some of the common challenges faced when programming in this area. It draws on rich experience of country offices in the region, explores the different ways that UNDP can engage with the range of actors involved and offers tips on programmatic approaches that can be used to develop, implement and monitor programmes on legal aid service provision, including capacity development of national authorities and civil society actors to respond to the demand for legal aid services by poor and marginalized groups. Importantly the guide covers criminal and civil legal aid and recognizes the critical role that legal aid can play in promoting development, especially when legal aid services target poor and marginalized communities.

The wide-ranging impact of legal aid services on people's lives reminds us that access to justice and rule of law issues are not purely 'legal'. In fact, they are at once a legal, social, cultural, political, environmental and economic issue. For this reason, this guide is intended to be useful to a broad range of UNDP practitioners, working on rule of law and access to justice as well as broader governance, gender equality, poverty reduction and livelihoods programmes, and environmental sustainability. Legal aid is a means through which people are better able to achieve human development outcomes and which promotes overall sustainable development pathways.

How to use the guide

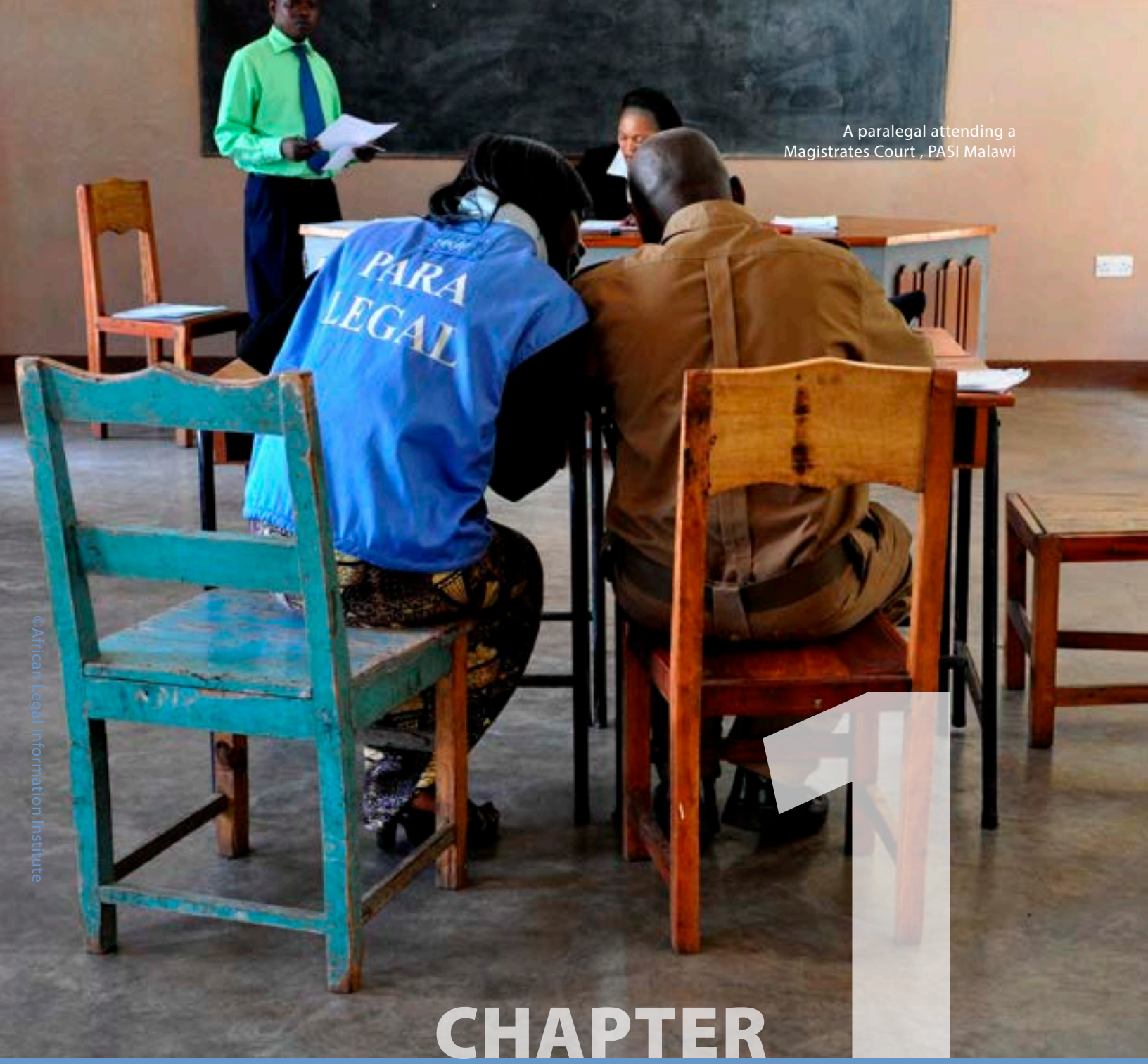
This guide contains four main sections. Chapter I outlines what legal aid is, the situation of legal aid in Africa and the legal aid service provision model, including the range of relevant actors involved, which is the focus of this guide. Chapter II defines the key entry points for programming to support quality small scale legal aid service providers within a national legal aid scheme. Chapter III focuses on legal aid service provision across informal justice systems, including with traditional or customary systems and alternative dispute resolution (ADR) mechanisms to provide appropriate services to and remedies for poor and marginalized groups. Chapter IV takes a special look at women and children, and how legal aid can be approached to increase access to justice for these key groups.

Chapters II-IV contain Tables which provide detailed guidance on the ways to overcome challenges involved in legal aid programming by utilizing good practices from experience. Specifically, the Tables are organized by 1) 'programme elements' (i.e. areas of programming in legal aid service provision); 2) identification of 'challenges' encountered in regard to these areas; and 3) a brief description of 'promising practices' that have proven useful to overcome these. The format of the Tables is intended to support the users in navigating the contents easily in order to find relevant guidance to their specific needs. As these Tables provide quick summaries of the 'how to' guidance contained in this knowledge product, they can be read and used independently.

16 UNDP Strategic Plan 2014-2017 Output 4.2

In addition, good practice examples of legal aid programmes in Africa that support the guidance contained in this product are provided in Boxes in each Chapter. The Annexes to this guide provide a list of useful resources in legal aid and legal empowerment, and address considerations for monitoring and evaluation for legal aid programming, resource mobilization and building partnerships, and capacity development.

The value of this tool also lies in how it was developed, with the engagement of practitioners across the region contributing to the development of the guide since 2010. This tool has been updated and revised in response to an extensive peer review process as well as the global normative developments concerning legal aid. This guide complements other UNDP policy and knowledge resources in access to justice and legal aid, such as the Early Access to Legal Aid in Criminal Justice Processes: a Handbook for policymakers and practitioners (2014), developed jointly by UNODC and UNDP. It also builds further on UNODCs (2011), Handbook on Improving Access to Legal Aid in Africa and other relevant resources on legal aid and legal empowerment.



A paralegal attending a Magistrates Court , PASI Malawi

CHAPTER 1

UNDP'S APPROACH TO LEGAL AID SERVICE PROVISION

CHAPTER 1

1.1 What is legal aid?

Recently there has been growing attention to legal aid and a particular focus on ensuring access to legal aid. Legal aid is featured in various international and regional norms and standards. Although legal aid spans both civil and criminal matters, the attention (also from the perspective of policy development) has been mostly on the right to legal aid regarding criminal matters.

The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems define legal aid as including:

"(…) legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, "legal aid" is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes." (Paragraph 8 of the Introduction)

While limited to access to legal aid in criminal justice systems, the UN Principles and Guidelines also highlight many of the key issues that are relevant for legal aid in all cases including for civil matters. Legal aid was introduced as part of UNDP's approach to access to justice in 2004, where it gained a particular focus as a means for people to claim their rights within the justice system when seeking remedies for their grievances in relation to both criminal and civil legal issues.[17] Drawing on the definition outlined by the UN Principles and Guidelines, a broader definition for legal aid, including for the purposes of this publication therefore, could include, for example, "legal advice, assistance and representation" in statutory justice systems, as well as "concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes" at no cost or reduced cost for people without sufficient means.

As noted by the UN Principles and Guidelines, 'legal aid' is firmly set within the international human rights framework.[18] The UN Principles and Guidelines recognize that legal aid safeguards the rights of victims, witnesses and accused, and can contribute to increased effectiveness and efficiency in the administration of justice. The guidelines specify that "without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to victims and witnesses of crime." They also recognize that legal aid can be provided in a variety of ways and by a diversity of models and actors, both state and non-state including paralegals.

17 UNDP (2014). *Access to Justice Practice Note*.

18 'Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in article 11, paragraph 1, of the Universal Declaration of Human Rights, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process (Paragraph 1 of the Introduction). Furthermore, article 14, paragraph 3(d) of the International Covenant on Civil and Political Rights states that everyone should be entitled, among other rights, "to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this rights; and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it." (Paragraph 2 of the Introduction)

Before the adoption of the UN Principles and Guidelines, Africa has had its own regional legal aid instrument in the form of the Lilongwe Declaration, adopted by the African Commission on Human and Peoples' Rights (ACHPR) through resolution 100 during 2006. ECOSOC adopted the Lilongwe Declaration through resolution 2007/24.

1.2 Legal aid in Africa

Throughout Africa, only a tiny proportion of those who need legal aid have access to it. Lawyers oftentimes are neither available nor affordable.[19] Cash-strapped governments severely ration lawyers' expensive services, normally only providing them to detainees accused of capital offences. The challenges in the provision of legal aid are interconnected with the overall barriers to access to justice on the continent. These are not just financial, because the poorest communities are not just economically poor. They are also often unable to exercise their rights as they are not connected to the state institutions responsible for protecting their rights. Their 'exclusion' is both cause and consequence of a number of factors:

- **Geographic:** The poorest communities live in rural areas far from the urban centres in which most lawyers work, and a long and expensive journey along bad roads from the nearest police post, court house or administrative office.
- **Educational:** Excluded populations often do not know what their legal obligations and rights are, or how to assert them.
- **Linguistic:** Marginalized groups often do not speak the language(s) in which laws are written and legal and bureaucratic processes conducted. They cannot understand or meaningfully participate in those processes.
- **Social:** Lack of capacity in statutory institutions is a key access challenge. Marginalized communities do not trust statutory institutions to deliver services, so they do not even try to access them.
- **Cultural:** Marginalized and excluded communities meet their own needs, locally, with a vast majority of cases that are resolved in communities, through mediation or arbitration conducted by a relative, respected local person, religious leader, Chief, Tribal Headman or Elder.[20] These local and 'traditional dispute resolution' mechanisms or informal justice systems are valued as means of settling disputes quickly and cheaply, unlike statutory institutions. In this context, it is important to note that such informal justice systems can also be regarded as relevant alternatives to formal justice mechanisms. While they do not always function in line with human rights standards and respect the rights of vulnerable groups such as women and children, communities value their participatory, non-adversarial, and 'restorative' logic. Settlements are usually limited to apologies or in-kind payments, which help to 'restore' the perpetrator to a healthy relationship

19 The Lilongwe declaration in Article 7 states that: "it has all too often been observed that there are not enough lawyers in African countries to provide the legal aid services required by the hundreds of thousands of persons who are affected by criminal justice systems. It is also widely recognized that the only feasible way of delivering effective legal aid to the maximum number of persons is to rely on non-lawyers, including law students, paralegals, and legal assistants. These paralegals and legal assistants can provide access to the justice system for persons subjected to it, assist criminal defendants, and provide knowledge and training to those affected by the system that will enable rights to be effectively asserted. An effective legal aid system should employ complementary legal and law-related services by paralegals and legal assistants."

20 For country-specific contexts, more precise data is available. For example, in Malawi, between 80 and 90% of all disputes are processed through customary justice forums. In Sierra Leone, approximately 85% of the population falls under the jurisdiction of customary law, defined under the Constitution as "the rules of law, which, by custom, are applicable to particular communities in Sierra Leone." Customary tenure covers 75% of land in most African countries, affecting 90% of land transactions in countries like Mozambique and Ghana. There are estimates claiming that up to 80% of Burundians take their cases to the Bashingantahe institution as a first or sometimes only instance. UNDP (2006). Doing Justice: How Informal Justice Systems can contribute, p.12. Please see http://www.unrol.org/files/UNDP%20DoingJusticeEwaWojkowska130307.pdf

with the community and—most importantly—*compensate* the victim. By contrast, statutory institutions frequently lack legitimacy, even when they work well. Imprisonment is often resented for depriving the detainee's innocent family of the support of his labour, and doing nothing to practically assist the victim.

- **Conflict:** Conflict affected communities, particularly the poorest and most marginalized, often fear statutory authorities, and lack confidence in their capacity. Complicated, costly, and ultimately futile efforts to obtain services lead marginalized communities to become disillusioned with state institutions. They decide that it is simply not worth expending so much time, money, and energy for the vast majority of their legal needs, because the needs are simple: a debt is outstanding; a cow is stolen; a health worker requests payment for a mosquito net that should be provided free of change under national policy. Where informal justice systems have been rendered less effective by crisis—and they almost always have been—these 'minor' cases can become the subject of a vicious dispute, or spark a more deadly conflict over deeper issues, such as ethnicity or political affiliation.

The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004) proposes that governments take poor people's legal needs—not what the legal establishment can provide—as the starting point when considering the establishment of a legal aid system. (See Box 1). Finding that they are often minor, simple, and do not require the expertise of a lawyer, 'Lilongwe' places lawyers at the 'tip of the iceberg' of necessary legal services, reserving their expertise for representation at trial.

The Lilongwe Declaration makes a specific case for the use of 'paralegals' - lay persons trained in the law, workings of government, and practical dispute resolution skills[21] - in legal aid service provision. It envisions that the vast majority of legal aid needs are to be met by an array of civil society organisations (CSOs) which is a feasible approach in the context of limited resources. CSOs provide services free of charge, in local languages, in locations where people's rights are frequently unfulfilled: villages, prisons, courts, and police stations.

Lilongwe is limited however, in its relevance to the poorest and most vulnerable communities, especially women and children, because it focuses on the criminal justice system, and the needs of people in conflict with the law. It also does not address informal justice systems.

Most women, children, and other especially vulnerable people in Africa have legal needs that do not relate to criminal cases and they require a comprehensive approach that addresses the complex web of social, economic and cultural factors with which their 'legal' needs are woven. Legal aid provision must address the discriminatory social norms which underpin abuse, as well as the multiple capacity deficits and discriminatory laws, policies, and institutions which prevent people from achieving justice. A comprehensive approach, therefore, entails working with an even broader array of actors than envisaged by 'Lilongwe': social welfare agencies, psycho-medical professionals, counselors, victim support workers, community prevention and response committees whose joint support overlaps psychological, social and legal issues. This is particularly the case for women and children, who appear more often as victims and witnesses in criminal cases. In SGBV cases a focus on legal aid for the accused only is particularly troublesome, as it effectively denies abused women equitable justice.[22]

21 See, for example, the Open Society Justice Initiative's Practitioner's Guide on Community-Based Paralegals - http://www.opensocietyfoundations.org/publications/community-based-paralegals-practitioners-guide

22 The UN Principles and Guidelines account for victims and witnesses (Principles 4 and 5 and Guideline 7 and 8). See also Chapter II of the Early Access Handbook on "Improving the treatment and experiences of victims and witnesses".

Box 1: The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa

The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004) has been adopted by both the African Commission on Human and People's Rights and the UN Economic and Social Council. It constitutes a regional and international standard on legal aid. The UN Principles and Guidelines (2012) draws on many of the approaches and issues included in Lilongwe Declaration and was developed once ECOSOC, after recognizing Lilongwe, mandated the UN to develop international principles and guidelines on legal aid for criminal justice systems.

It presents a new approach to legal aid which:

- *prevents* minor cases from entering the court system
- *protects* the rights of those caught up in the system
- *supports* their release, or diversion to community-based, restorative, justice processes (e.g. mediation committee or child panel).

It calls upon governments to:

- **Define legal aid as broadly as possible** to include: legal advice, assistance, representation, education and alternative dispute resolution (ADR) mechanisms.
- **Diversify legal aid providers:** Include law students, paralegals, and legal assistants, NGOs, professional bodies and associations, and academic institutions.
- **Incorporate community-based ADR mechanisms:** Court processes are often profoundly damaging (especially for women and children), slow, and inefficient. Civil and minor cases can be diverted to ADR mechanisms.
- **Special role for lawyers:** Lawyers have a duty to promote access to justice. Lawyers should provide legal aid on a pro-bono basis. The organised bar should co-operate with governments and CSOs to ensure effective and equal access to legal services. The Judiciary should more pro-actively ensure that defendants have legal aid and un-represented indigent accused are able to put their case.
- **Establish a coordination institution:** Enact legislation to establish an independent national legal aid institution to manage delivery of services.

In East and Southern Africa, South Africa has guaranteed funding for legal aid through Legal Aid South Africa (LASA)[23] and a number of countries, including Malawi and Uganda, have embarked on legal aid reforms to put in place national legal aid policies and laws, institutional frameworks and funding. Overall, however, legal aid remains the purview of CSOs which have developed a number of innovations to legally empower vulnerable and marginalized communities.[24]

23 Legal Aid South Africa provide legal aid on civil and criminal cases based on a means test and notes in its website that "We provide professional legal advice and representation to those who can't afford it."

24 Cited from UNDP (2012). *Rule of Law and Access to Justice in South and Eastern Africa. Showcasing Innovations and Good Practices*, p.34-5

Legal aid can also play a potential role in upcoming developmental and governance challenges in Africa, such as those presented by the extractive sector. UNDP, through its various initiatives at the global, regional and country level,[25] has sought to strengthen environmental governance mechanisms, engage communities and institutions for biodiversity conservation, natural resource management, and protect environmental rights through legislative and policy frameworks. In the African region for example, UNDP supported Niger in developing a framework for governing mineral resources, which since 2010 has been anchored in the Constitution through specific provisions. In Sao Tomé and Principe, UNDP supported the development of one of the most progressive oil law in the world, ensuring that oil revenues become a source of prosperity and stability. In Liberia, Sierra Leone and Tanzania, UNDP provided technical support in the negotiation phase and capacity development for monitoring big mining and oil contract implementation. In Nigeria and Mauritania, UNDP supported strengthening national capacities for managing and safeguarding biodiversity in the mining sector. UNDP has supported the countries of the Benguela Current Large Marine Ecosystem (Namibia, South Africa, and Angola) in developing and implementing policy and regulatory reforms to reduce the environmental impact of offshore diamond mining on vital marine resources.[26] These governance mechanisms will allow affected groups to access information, become informed about their rights, and participate in decision-making processes.

Legal aid service providers, including paralegals, will have a pivotal role to play in this. In Cameroon, for example, paralegals supported forest-dwellers in the eastern and southern regions of the country's tropical forest zone to secure rights to land and forest resources. This has resulted in lowering poverty levels in some communities because of higher incomes generated from carbon credit trading and the sale of renewable non-timber forest products. Paralegals also supported the forest dwellers in securing legal identity.[27]

1.3 The legal aid service provision model

As recognized by regional and international standards, there is no one single model for the provision of legal aid. Expanding the scope of 'Lilongwe' and building on the UN Principles and Guidelines, this guide presents a legal aid model based on African experience that comprises the mixture of services that the poor and marginalized communities need in order to be able to achieve justice. It focuses predominantly on CSOs acting as legal aid service providers – LASPs – since there is strong experience of the engagement of these organizations with the justice system – formal and informal – and marginalized communities and groups in Africa. LASPs are providing such services free of charge, in local languages, in the places in which rights are frequently not respected: villages, government offices, prisons, courts, and police stations. These are low-cost, high-impact assistance providers predominantly from small organizations operated by supervised law students and paralegals. Most live in the communities in which they work, and resolve the majority of disputes directly, at local level. Where this is not possible, LASPs support marginalized people to access state

25 See for example the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN REDD), the UNDP/GEF Small Grants Programme (SGP), the United Nations Indigenous People's Partnership (UNIPP), the Community Management of Protected Areas Conservation Programme (COMPACT), and Indigenous Peoples' and Community Conserved Territories and Areas (ICCA).

26 These country examples are cited in UNDP (2012). Strategy for Supporting Sustainable and Equitable Management of the Extractive Sector for Human Development, p.9-12. See http://www.undp.org/content/undp/en/home/librarypage/poverty-reduction/inclusive_development/strategy-note--undps-strategy-for-supporting-sustainable-and-equ/

27 For the full case study, see UNDP (2014). Legal Empowerment Strategies at Work: Lessons in Inclusion from Country Experiences, p.81-86. See http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/legal-empowerment-strategies-at-work/

Box 2: Examples of impact of legal aid support in Africa

The PASI-Malawi model—using trained 'paralegals' to work in law enforcement institutions—has been successfully adapted, including by UNICEF Benin and UNDP Niger:

- UNDP Niger: 657% in number of persons released on bail (1313 in 2006-2009 compared to 200 persons in 2004-2006).
- Malawi: 77% of juveniles diverted. 25% reduction in remand population. It doesn't state for which period.
- Kenya: 40% reduction in female remand population in main prison in 6 weeks. It doesn't state for which period.
- Uganda: 5% reduction in inmate population in just 5 months. It doesn't state for which period.

Seminal community-based mediation programme by the Madaripur Legal Aid Association (MLAA-Bangladesh) conducted 11,040 mediations in 2010, with a 79% success rate.

The MLAA experience from Bangladesh inspired other alternative dispute resolution (ADR) initiatives such as the 'Village Mediation Programme' (currently conducted in Malawi and Sierra Leone), which have resolved 1,470 cases during its 18-month pilot. MLAA also inspired UNDP Ghana and UNDP Gambia to support the establishment of national ADR networks:

- The Gambia's ADR network supported the magistrates' courts to clear 1420 backlogged cases in just 6 months.
- Ghana's community mediation committees (CMCs) handle 80 -90% of all cases in the country, and enjoy a success rate of over 60%.

Community-based paralegal NGO TIMAP-Sierra Leone received 1387 cases Jun-Nov 2009. It successfully resolved 1287 of them: a success rate of 93%. A similar project by UNDP-Sierra Leone supported 45 convictions for SGBV in 2010, a 165% increase on 2009.

UNDP DRC's legal aid services project in Eastern DRC represented 24 SGBV survivors in the first quarter of 2010, leading to 10 convictions: no SGBV cases were heard, and no convictions achieved in the first half of 2009.

institutions, stand by them as they struggle to obtain services from them, and doggedly persist to overcome challenges – the challenges that normally lead poor people to give up their pursuit of justice. They provide legal, social, and concrete support services that vulnerable people need to access and achieve justice: from legal advice and empathy to shelter and transport to court. Paralegals and law students working 'on the front line' refer more serious or complex cases to lawyers by whom they are supervised, or with whom they are connected through legal aid referral networks. Accordingly, lawyers' expensive expertise is reserved for representation at trial and supervising other providers.

Most LASPs resolve cases with, and not for, clients: educating clients about their rights and the legal and bureaucratic processes for asserting them; connecting them with institutions responsible for protecting those rights; assisting them to follow every step of unfamiliar, confusing, even frightening processes; and empowering them to address their own legal needs in future. Understanding LASPs in this way as they move between communities, community-based justice systems and other informal justice systems, and the formal justice system, they are important partners in legal empowerment initiatives, through which the poor become protected and are enabled to use the law to advance their rights and their interests.[28] For examples of the diverse support LASPs provide and their impact, see Box 2.

UNDP South Sudan

LASPs support implementation of all civil (including administrative and family) and criminal laws and policies, and hence also the delivery of services to which they create an entitlement: a vote, land title deeds, livelihoods' start-up kits for former combatants, immunizations for children, national identity documents, participation in local government budgeting processes, resettlement packages, and convictions for those guilty of SGBV. The scope of LASPs impact is wide. They help neighbors in a refugee camp to clarify a misunderstanding. They help a widow to inherit the home from which her late husband's family had rejected her. They help a girl child to report SGBV to the police, and support the police to investigate her case. They invite government officials to their coordination meetings to explain a regressive tax policy and demand action on mining companies who have not delivered promised welfare services to the affected communities.

1.3.1 What do Legal Aid Service Providers (LASPs) do?

LASPs respond to the challenges of access to justice at every level of the justice 'chain'—from the village to the Office of the President. Legal aid service provision strengthens each of the following programme elements:

- Awareness of laws, rights, and how to assert them.
- Access to justice institutions: both community-based (informal) and statutory (formal).
- Administration of justice.
- Advocacy for inclusive laws, policies and institutions.

Awareness of laws, rights, and how to assert them

Legal awareness is the gateway to accessing justice. LASPs use creative methods to raise illiterate communities' awareness of the rights and duties imposed by the law, how to enforce them, and what support is available to assist them to do so. Paralegals in particular are well placed to provide this assistance to communities: they have sound knowledge of both customary and statutory law and governance, and most often speak the local language.

28 Commission on Legal Empowerment of the Poor (2008). Making the Law Work for Everyone, p.26

They use these attributes and community presence to support the design and implementation of community-wide legal literacy campaigns. Individual clients also receive their own legal or civic 'education': the paralegal explains the client's rights and entitlements, the legal principles relevant to the dispute, and all the options available to address it. Such advice resolves approximately 30% of cases directly.

Where paralegals support a client to navigate statutory legal and bureaucratic processes, they accompany them every step of the way, explaining what steps to take and why; how to respond to any challenges; where authorities have derogated from due process and what to say, do, or request in response.

Careful to resolve cases *with*, not *for*, clients, paralegals aim to demystify the law and familiarise marginalized people with the legal and bureaucratic processes through which they can assert their rights. The effect is to equip clients with the knowledge, skills and confidence to address their own legal needs in the future. This can help empower people and strengthen their agency not only in terms of accessing justice services, but also other public services to which they are entitled.

Access to justice institutions

LASPs respond to marginalized communities' preference for community-based justice for simple disputes and minor criminal and civil cases. Paralegals and law students play a *bridging role* to connect disenfranchised people with institutions which can protect their rights. Dynamic, flexible, and familiar with all justice options, paralegals try to find 'whatever works' in challenging contexts. They present clients with a creative 'menu' of possibilities, and respond to a preference for community-based justice. Paralegals resolve the majority of—simple, minor criminal and civil—disputes directly, by providing advice on legal principles and conducting mediations. Where these fail, paralegals facilitate access to statutory institutions and community-based mechanisms:

- ***Access at the level of statutory institutions:***
  LASPs provide *concrete support services* and *accompaniment* to give marginalized people the confidence and capacity to access statutory institutions. Relevant services often include: transport to a police station, court, or local government office; food and lodgings during court hearings; translating legal proceedings; legal representation; assistance to fill forms and follow up with relevant personnel; shelter; counselling; and encouragement when harassed or afraid. LASPs coordinate through referral networks to connect clients to the services each needs.

- ***Access at the level of community-based institutions:***
  - *Basic legal advice:* Providing simple information about legal entitlements, duties, and principles which enables people to resolve disputes themselves.
  - *Engaging with Informal Justice Systems (IJS):* LASPs support people to access informal justice, particularly traditional dispute resolution (TDR) mechanisms, such as by advocating for a Chief to suspend normal fees or fining practices. Additionally, LASPs can also play a role in supporting people to access alternative dispute resolution (ADR). Usually a form of mediation, ADR is culturally proximate to TDR, inexpensive, and easy to understand. Acting as an intermediary between police, courts, accused and alleged victim, paralegals ascertain whether victim and accused would accept ADR, whether such diversion would be acceptable to the police or magistrate, as well as following up to ensure that the settlement is observed.

Administration of justice

LASPs foster a collegial, collaborative relationship with both community and statutory authorities and personnel to help them to administer justice more effectively. They do so by developing capacity, enhancing accountability, and reducing backlogs of minor cases, which hamper the administration of justice. Paralegals' regular engagement with Chiefs and Elders has resulted in progressive harmonisation of customary practice with the requirements of national law and human rights standards.

- ***At the level of statutory institutions:***
  - *Training* law enforcement personnel and informing the development of practice guidelines and standard operating procedures.
  - *Filling* institutional capacity gaps such as: record keeping and case management, tracing sureties and parents of juveniles in contact with the law, investigation, and even the apprehension of suspects.
  - *Fostering communication, cooperation and coordination:* paralegals enable the various 'links' of legal and bureaucratic processes to work together to deliver justice and other services by *facilitating interactions:* following up with personnel; obtaining information; making calls; obtaining documents and bringing them to the attention of relevant authorities for signature, stamp and processing; and tracking cases to ensure that each is satisfactorily concluded.
  - *Facilitating 'diversion' to community-based justice mechanisms and decongesting prisons* to enable effective administration of more serious cases, reducing case backlog. They also decongest prisons by liaising with police, prison service and courts to secure the release of detained persons who have overstayed on remand, are eligible for bail, or who have no paperwork and are effectively lost in the system.
  - *Enhancing accountability:* As LASPs' accompany clients through legal and bureaucratic processes; they remind authorities of their obligations and ensure that due process is followed. Some LASPs also conduct formal monitoring and reporting.

- ***At the level of community-based institutions:***
  - *Dialogues* to support customary authorities to harmonise IJS with human rights principles and national laws.
  - *Training, mentoring and advising* IJS – TDR as well as ADR mechanisms - on how to align procedures with national laws and human rights standards.
  - *Monitoring:* Often in partnership with media, some LASPs conduct monitoring, bring violations to the attention of relevant authorities, and compile reports for the attention of relevant national institutions, including in relation to their treaty obligations.

Advocacy for inclusive laws, policies and institutions

Discriminatory norms, laws, policies and institutions perpetuate exclusion, impunity, and injustice. Those who muster the courage, time and energy to pursue justice for crimes, disputes or abuses defined in more recent protective legislation, are often ultimately denied justice because of discriminatory provisions in older laws. Paralegals see poor and marginalized communities not as victims of circumstance but agents of social change. They mobilise communities in support of *legislative and institutional reform* to address the root cause of community-wide violations—such as domestic violence—as well as discriminatory laws, policies, and institutions.

LASPs use social mobilisation tools to advocate for reform, and call for the domestication of protective international and regional laws: community dialogues, media campaigns, coordinated advocacy with

community and statutory authorities (including police, MPs, Ministers) and strategic ('public interest') litigation, which involves individual cases aiming to change national laws and policies to benefit groups affected by similar issues. LASPs then advocate for adequate budgetary allocations for the effective implementation of protective frameworks. They also inform the development of protective legal aid systems by feeding insights from their work at the grassroots level into policy development and legislative review processes.

1.3.2 Who are the actors involved in legal aid service?

There are a wide range of actors involved in legal aid provision, from state to non-state actors, which include public defenders, private and contract lawyers, pro bono schemes, bar associations, paralegals, university legal aid clinics, and others. Not all LASPs provide the same services and there are a range of actors and providers involved in every system. Each has different capacities and works in a slightly different context. LASPs collaborating within referral networks connect clients to the range of services each needs. For example, paralegals refer more serious or complex cases to lawyers, whose expensive expertise is reserved for representation at trial and supervising other providers. International and regional standards, such as 'Lilongwe' and the UN Principles and Guidelines urge governments to establish a co-ordination institution to structure legal aid service provision (See Guideline 11 on nationwide legal aid system).

Paralegal Advisory Service Institute, Malawi

Legal Aid Boards

Legal aid boards or 'legal services commissions' operate national systems, which administer national legal aid efforts on the basis of assessments of legal aid needs and stakeholder mappings. Legal aid boards should be established by law, accountable to parliament, and funded —at least partially— by government. However, legal aid boards should be operationally independent of government.[29] As prosecutors sit in government, it is ideal that the Legal Aid Board, as an independent authority, does not.

Legal aid boards maximise the value of each of the LASPs through the following functions:

- **Coordination:** Coordinate LASPs by matching their competencies to legal aid needs, ensuring that all elements of the legal process—and the communities that need to access them—receive adequate, balanced support.
- **Quality assurance:** Set minimum quality standards; elaborate code(s) of conduct; establish training, supervision, monitoring and oversight arrangements; establish complaints mechanisms and disciplinary protocols.
- **Defining responsibilities:** Clarify paralegals', law students', and lawyers' roles.
- **Promoting 'joined up' service provision:** Establish referral mechanisms to lawyers for all service providers. Establish referral mechanisms between LASPs and other services providing complementary services (e.g. shelter, child-protection counselling and medical services).

29 As the UN Principles and Guidelines note (paragraph 59), legal aid bodies must be independent, have the necessary powers to provide legal aid, develop a strategies for the sustainability of legal aid and need to report regularly on their activities.

- **Fine-tune national systems:** LASPs on the front line are valuable sources of information. They know the challenges to accessing and achieving justice, because they confront them every day. Boards engage with them to obtain this information and update assessments on the basis of which systems are designed. By so doing, they continually 'fine tune' approaches to remain responsive to legal aid needs.

Boards enjoy authority amongst statutory institutions. They encourage them to act on the basis of LASPs' recommendations on how their processes might be refined in order to strengthen the administration of justice and reduce the need for legal aid. Relevant initiatives include:

- Reducing case backlogs and prison overcrowding by encouraging bail, relaxing conditions for bail according to the means of the defendant, and releasing those who cannot afford their bail terms; taking account of time spent in custody on remand when sentencing; conducting regular case reviews to clear petty cases and discharge cases that have taken too long to investigate or come to trial.
- Promoting judicial activism: encourage magistrates and judges to intervene on behalf of unrepresented parties and take a more pro-active role in ensuring that parties are provided with legal aid.
- Promoting diversion and alternative sentencing, especially for women and children.
- Convening regular meetings of justice and social welfare organisations for these purposes.

Bar Associations

Bar associations have authority among lawyers—whose membership of the Bar enables them to practice—and are respected by national justice and security institutions. They are repositories of legal expertise, which understand challenges to the effective administration of justice. They are able to advice and programme through the justice chain, train legal aid actors, regulate their activities, and encourage their members to undertake pro-bono work.

Bar associations' expertise and engagement is indispensable for all aspects of legal aid system design, development and implementation. Bar associations typically take the lead in national legal aid provision; frequently maintaining legal aid projects independently, or in cooperation with other actors.

Lawyers

Lawyers have a professional responsibility to lead in the provision of legal aid. Regulatory frameworks might require them to provide their services free of charge ('pro bono') for indigent clients. They recommend that lawyers 'back up' the 'front line' provided by paralegals and law students: training, supervising, mentoring and advising on how to support more complex or unusual cases, and representing more serious cases in court. Their relationship with paralegals and law students can be articulated in various ways:

- LASPs often comprise paralegals and lawyers working in concert. Some lawyers work in the same offices as 'supervisor' of paralegals. Others offer their time to paralegal aid on a part-time or pro bono basis, and conduct 'roving' monitoring visits from their urban bases at regular intervals.
- Smaller LASPs offering basic services connect with lawyer-operated LASPs through referral networks.
- Law students are normally supervised by lawyer members of their Law Faculty, sometimes at a specific ratio; e.g. max. 10 students to 1 experienced lawyer.

Law students

Law students are a valuable—and under-utilised—resource in Africa. Legal aid clinics attached to university law faculties harness their potential by enabling students to provide legal services to indigent clients.

Legal aid clinics are a particularly valuable resource where funding is limited: students accept to work without pay because exposure to legal practice is a valuable educational experience which can help them to obtain employment after graduating.

Clinical legal education (CLE) programmes provide law students with legal instruction in the law and the skills necessary to provide competent, effective, ethical, and professionally responsible legal services. Its aims are:

- **Education:** CLE provides law students with a practical adjunct to their theoretical education. Students acquire practical legal skills, experience, and confidence by providing legal services to indigent clients.
- **Service:** Law school associated legal clinics expand availability of legal aid through law students and lawyer supervisors.

Supervised law students provide a diverse range of services: support awareness raising campaigns; train and support paralegals; train legal professionals including judges; education; access to justice in minor cases; and assisting lawyers to prepare cases.

Legal aid boards can employ recently graduated law students as low-cost paralegal supervisors and public defenders. By so doing, they can enhance access to the legal profession, increasing the supply of lawyers' services, and reducing their cost. Legal aid placements provide law graduates with an opportunity to complete the practical training necessary to be admitted to the Bar. It is an opportunity they might not otherwise have: competition for trainee positions at law firms is fierce and reduces the number of lawyers in Sub-Saharan Africa.

Paralegals

A paralegal is a trained layperson with the relevant skills, training and linguistic abilities to provide legal advice and assistance applicable to the people s/he is serving, who is engaged and active in the communities and institutions in which s/he lives and works. Paralegals provide services in the locations in which rights are frequently not fulfilled:

Box 3: Paralegal support through TIMAP for Justice in Sierra Leone

Access to justice challenges addressed

In Sierra Leone, there is a lack of access to justice amongst disenfranchised communities, as well as a lack of resources to provide (lawyer based) legal aid.

Approach taken

TIMAP-Sierra Leone delivers basic justice services in rural areas, through a frontline of community-based paralegals providing information and assistance to access government services, navigate administrative processes, and hold authorities to account.

Minor criminal, civil, and customary law cases, domestic violence, economic exploitation, and wrongful detention cases are commonly brought to paralegals. TIMAP paralegals inform clients of their rights and the full range of options available to seek redress, drawing on both statutory and customary systems. After clients have chosen an option, paralegals assist clients to pursue it. Many clients invite paralegals to mediate disputes directly. Paralegals assist clients to pursue administrative and legal processes—including access to customary chiefs or lawyers where necessary. They can also work with (statutory) 'customary law officers' to check abuse in customary processes.

Where problems are community-wide—such as domestic violence—paralegals engage in community education and dialogue, advocate for change with customary and statutory authorities, and organise community members to undertake collective action. In a small number of cases (2.5% of total)—where injustice is particularly severe or where other efforts have failed – TIMAP's (lawyer) directors provide direct legal representation.

Lessons Learned

Cultivate positive relationships with customary authorities. TIMAP's regular, collegial interactions with customary authorities influenced chiefs over time, such that the latter are now more positively disposed to protect human rights and inclined to change customary practices to abide by them.

Recommendations

Foster community ownership: When TIMAP enters a community, it approaches customary and state authorities, which then themselves, form Community Oversight Boards (COBs). COB candidates (eminent local persons including: head of the community women's committee or youth committee) are selected by community members and paramount chiefs then approved by programme directors. Every COB has at least one woman and one youth representative. COBs then recruit paralegals and orient activities in each community by monitoring the paralegals' work and ensuring that the programme serves the needs of the chiefdom. COB members meet directly with TIMAP's directors to provide feedback on paralegals' performance.

- **Communities:** Paralegals live and work in communities where people often have difficulty in obtaining remedies for their grievances. They are recruited from the communities which they serve—sometimes as un-paid volunteers—and their activities are oriented by that community. Their activities can range from awareness-raising on specific issues, to informing communities of their rights, to supporting people in navigating justice processes. (See Box 3)

- **Justice and law enforcement institutions:** Paralegals help to protect the rights of those who come into contact with police, courts, and prisons by providing information, advice, accompaniment at interview, support to complete bail applications and translate legal proceedings, and to represent themselves in court (see Box 4).

The Kampala Declaration on Community Paralegals (2012) called for further formal recognition for the role played by paralegals through policy and legislation; scaling-up of community paralegal efforts; and state support to their activities and in full respect of the independence of community paralegals.[30]

Box 4: Paralegal Advisory Services Institute (PASI) - Malawi

Access to justice problem addressed
Prison over-crowding, huge pre-trial detention populations, illegal detention and case backlogs due to lack of legal aid. Lack of resources to provide (lawyer) legal aid.

Approach taken
In prisons: PASI decongests prisons by identifying cases where: (a) the court has granted bail, but the defendant cannot afford the surety; (b) the individual has overstayed on remand without coming to trial and has served longer or as long on remand as s/he would have served if convicted; (c) children not recognized as such and detained illegally.

Paralegals then: work with police, courts, prisons and prisoners to push individual cases through the system; conduct engaging legal clinics using forum theatre techniques to enable large numbers of prisoners to understand the legal process and confidently defend their own rights within it; and invite magistrates into prisons to conduct back-log clearing 'camp courts'.

In police stations: Working like doctors 'on call', paralegals operate a roster system, so that whenever a child is brought into custody—any time of day or night—a paralegal can be called to attend police interview, assist in tracing parents, and conduct 'screening' interviews with child suspects to identify whether the child satisfies the criteria for diversion (first offender, minor offence, admits fault).

Challenges experienced
PASI initially struggled to gain access to law enforcement institutions. Persistence paid off: police eventually accepted PASI's offers to assist police to process juvenile cases.

Lessons learned
High levels of scrutiny demand strong professional credentials: PASI provides supervision and standardized training accredited by the Malawi Council for Legal Education.

Recommendations
Foster coordination: PASI attributes its success to its ability to marshal goodwill and resources already present in the system by promoting communication, coordination and collaboration between 'links' in the justice 'chain'. PASI revived a 'Court Users' Committee': a forum under the chairmanship of the Chief Magistrate, at which police, courts, prisons, social welfare and Chiefs come together each month to discuss the justice situation in the district.

30 See http://www.namati.org/news/newsfeed/kampala-declaration

1.4 Legal aid service provision as part of a comprehensive approach to access to justice

For UNDP, the model provided in this guide is part of a comprehensive approach to legal aid that includes state and non-state provision of legal aid for criminal civil and administrative matters, and that deals with the wide nature of grievances and legal issues affecting poor and marginalized people and their livelihoods. This comprehensive support is also a key component of an overall effort to ensure access to justice and strengthen the rule of law.

Access to justice is more than improving an individual's acccess to courts or guaranteeing legal representation. It involves interventions along the whole justice-chain with the main objective to ensure that legal and judicial outcomes are just and equitable, and that people have effective protectrion of the rule of law. This approach is human rights-based in that it begins with the person/people and the identification of their grievances that call for an adequate remedy or redress. A grievance is defined as a gross injury or loss that constitutes a violation of a country's law, or international human rights standards.[31] Grievances can be addressed by justice systems – formal and informal – and by other state mechanisms including the public administration and services. Legal aid support can provide solutions, where issues are solved with advice, awareness raising or mediation. In addition, many legal issues of the poor and marginalized can be solved through basic legal support to register identity or births, property, or businesses, and to navigate bureaucracies and access basic services, such as health, education, social welfare from the state administration. It is thus is not confined to support to engage the justice system to receive remedies for grievances or due process.

Country Offices supporting legal aid service provision find that the approach supports programme objectives in a range of thematic areas in addition to rule of law and governance, such as gender, child protection, conflict prevention, poverty reduction, environmental justice, natural resource management and more. Many development partners have amplified the impact of diverse socioeconomic development projects by adding legal aid service components.[32] How? The legal aid component gives beneficiaries the knowledge, confidence and competence to use legal and administrative processes to claim their entitlements related to these projects. For example, legal aid services to indigenous and forest dweller communities in Cameroon helped these communities to claim their share of annual forest royalties, which is a forest tax earmarked for local development financing.

Even the best legal aid systems, however, cannot in most instances deliver justice: they only help people to claim their rights and obtain remedies within justice systems and public administration. Since capacity deficits in any one of the institutions, processes, and interfaces of which the public administration and justice system is comprised can diminish access to justice, legal aid support should be part of comprehensive programming which provides support throughout the justice and governance system: from village to parliament. However

31 UNDP (2014). Access to Justice. Practice Note, p. 7

32 The relevance of legal empowerment for sustainable development has been analyzed in UNDPs Legal Empowerment Strategies at Work: Lessons in Inclusion from Country Experiences (2014), which analyzes legal empowerment strategies used across seven countries in Africa, Asia and Central Asia and focuses on concrete initiatives at grass roots level that aim to overcome or reduce the obstacles the poor face in setting up and running their businesses and protecting their property rights, access to land and forests. The linkages between legal empowerment and the management of natural resources and land are being addressed in UNDPs Environmental Justice: Comparative Experiences (2014). NAMATI, a network of grass-roots organizations using the legal empowerment approach, has produced various resources on legal empowerment, see http://www.namati.org/research-publications/.

capable, coordinated, collaborative and accountable they may be, LAPSs do not control many of the variables that determine success. Justice is the result of a complex system composed of multiple actors, processes and interfaces. Where any of these do not work well, justice can fail.

Designed and implemented in coordination with partners, legal aid programmes should be holistic: addressing the multiple legal and non-legal challenges that create vulnerability to abuse and hinder the effective administration of justice. Perhaps most importantly, they should also be balanced: strengthening both statutory and community-based justice. Programmes of this kind have the potential to bridge the divide between the formal and traditional or informal justice systems.

Community Policing: UNDP South Sudan

Without parallel efforts to reform discriminatory laws and policies, highly capable, coordinated and accountable LASPs may simply increase access to an abusive system. Without efforts to support the prosecutorial function, legal aid services may introduce an 'inequality of arms' where accused are represented by a lawyer, whereas victims are supported by public prosecutors who lack capacity to prepare a strong case. Without investment in court capacity, legal literacy efforts encouraging people to assert their rights in court result in heavy case backlogs, delayed hearings, and dropped cases. Underinvestment in correctional facilities and alternatives to imprisonment may mean that even where cases conclude with sentencing, convicted persons may go free. This can lead to communities who had been inspired to turn legal awareness into action to ultimately revert back to their previous belief: that the formal justice system is not capable of providing adequate remedies.

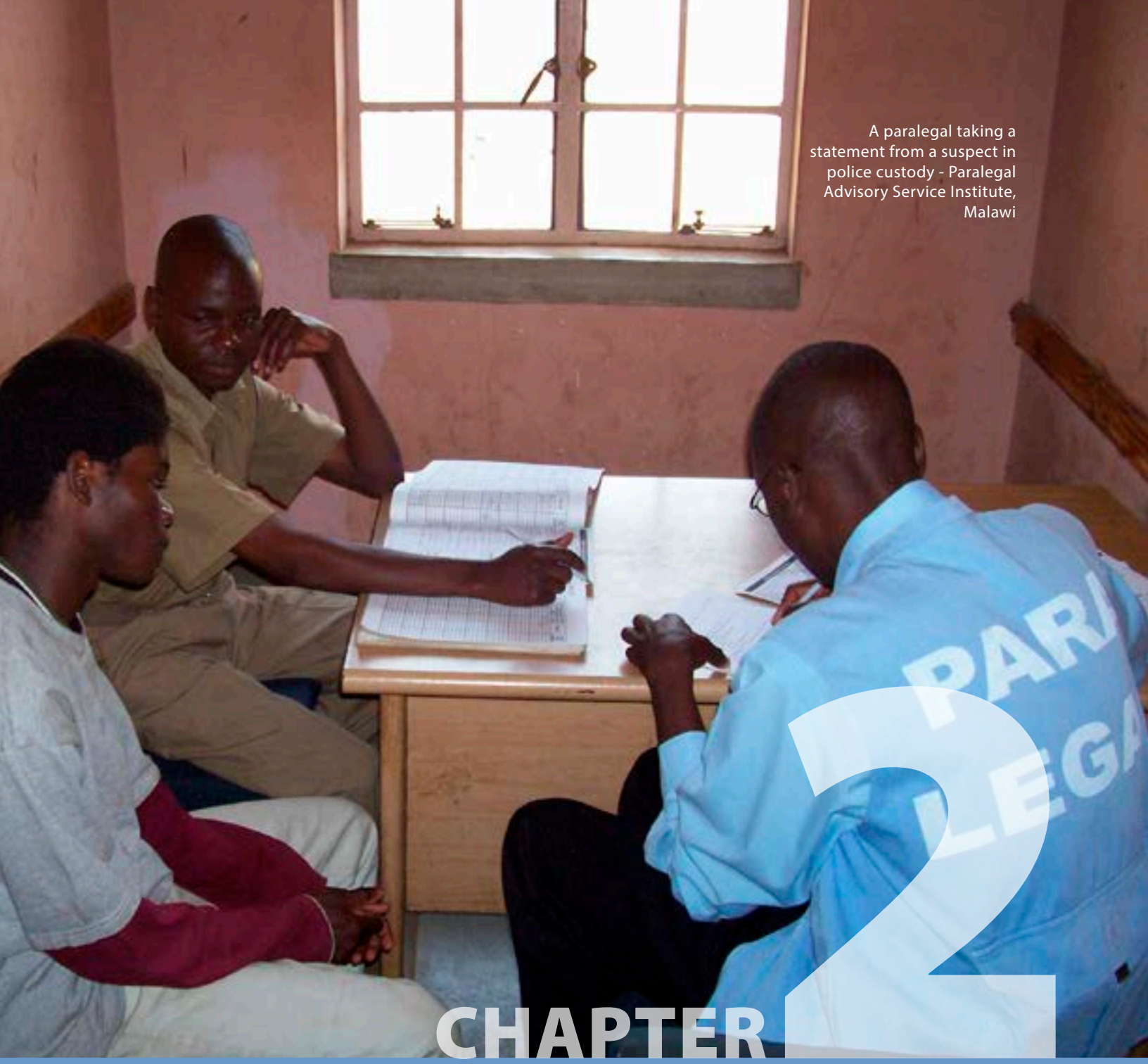
Structural transformation of the justice system is likely to be a mid to long-term objective. Short-term needs can be met through balanced programming where long-term support to the statutory justice system can be balanced with support to community-based dispute resolution mechanisms, which supply justice services while the capacity and credibility of statutory institutions are developed. Support to the statutory justice system must also be comprehensive. In many countries including some post-conflict countries, investments in access to justice not matched with efforts to strengthen coordination between police, courts, and prisons can actually undermine the rule of law: prisons can become crowded with detainees whose sentences have expired.

A comprehensive, inclusive approach entails coordination, both between development partners, and amongst justice sector actors: statutory justice institutions community-based justice, civil society, and other national institutions from the executive to the legislature.

Country Offices should not attempt to 'do it all' and neither should they conduct activities without being aware of what other actors are doing in terms of justice reform. Their role could include:

- Support and inform the development of a comprehensive, inclusive strategy or programme, within which legal aid is integrated as a cross-cutting programmatic approach within all result areas.
- Coordinate with development partners to implement aspects of the comprehensive intervention.
- Support coordination amongst justice sector actors at all levels from the grassroots to the national.

A comprehensive, coordinated approach is particularly relevant in crisis-affected contexts where the challenges to accessing justice in systems damaged by crisis are enormous, and require the concerted efforts of all justice sector actors and development actors. Legitimate dispute resolution mechanisms can help prevent destabilizing means of resolving disputes through extra-judicial measures, such as vigilantism and mob justice.



A paralegal taking a statement from a suspect in police custody - Paralegal Advisory Service Institute, Malawi

CHAPTER 2

KEY PROGRAMMATIC ENTRY POINTS FOR LEGAL AID SERVICE PROVISION

CHAPTER 2

2.1 Introduction

This guide presents a comprehensive approach to legal aid service provision which involves 1) establishing and broadening the legal and policy framework for legal aid, while ensuring quality criminal, civil and administrative legal aid services for the poor and marginalized groups (Chapter 2); 2) widening the range of programming across the whole justice chain – both formal and informal (Chapter 3); and 3) meeting the specific needs of women, children and other vulnerable groups (Chapter 4).

This chapter outlines two major entry points to strengthening legal aid provision in Africa, using the top down and bottom up approach. This is premised on the relevance of building up and strengthening state supported national legal aid systems which should eventually carry the responsibility for coordinating and providing the vast share of legal aid services in close coordination with all LASPs. It is also informed by the importance of making legal aid services available immediately to poor and marginalized groups and communities by engaging with CSOs providing legal aid services.

The two entry points of (1) establishing national legal aid systems and (2) supporting quality small scale LASPs are not sequential and should ideally be supported as mutually reinforcing, depending on the national context and the conditions to pursue both these aims. This approach is human rights-based in that it supports institutional capacity strengthening initiatives that enhance the obligations of duty bearers, along with initiatives that strengthen poor and marginalized people's capacities to act on their rights, as rights holders and which legally empower them.

The chapter begins with guidance on how best to get started to develop robust and impactful LASPs programmatic support which can be effectively measured. It then provides step by step guidance to address each of the two entry points of programmatic support in detail.

2.2 How to get started to strengthen legal aid service provision

High quality legal aid programming starts with conducting analysis and embedding measurement in programme design, which will ensure that a programme is based on an objective assessment of the development challenges at hand and full knowledge of what is required to overcome obstacles and meet implementation goals. This begins with an assessment, moves to mid-term evaluation(s) and ends with a final evaluation which can help to guarantee the effectiveness of a project and help ensure transparency and accountability. Building in measurement from the onset of legal aid programming will assist in: improving data collection capacity; building partner and stakeholder support and ownership; informing project design; gauging project effectiveness and informing practice; increasing transparency and accountability; and including the perspective of vulnerable and marginalized groups. It is essential to UNDP's reporting the impact of its programmes under the Strategic Plan (2014-2017).[33] Another key step in the early phase is to establish the right partnerships for programme success.

33 The impact of UNDPs support to legal aid service provision will be measured under the Strategic Plan's output indicator 3.4.1 "Number of people who have access to justice in post-crisis settings, disaggregated by sex" and output indicator 3.4.2 "Proportion of victim's grievances cases which are addressed within transitional justice processes, disaggregated by sex." See https://intranet.undp.org/unit/office/exo/IRRF/SitePages/Indicator%203.4.1.aspx (indicator 3.4.1) and https://intranet.undp.org/unit/office/exo/IRRF/SitePages/Indicator%203.4.2.aspx (indicator 3.4.2) for the methodological notes on the indicators.

Use evidence to design, monitor and evaluate programming

Constructing an evidence-base and demonstrating impact involves conducting assessments and institutionalizing monitoring and evaluation (M&E). (See Annex II for key excerpts from UNDP's corporate guidance on M&E). It is a resource intensive exercise, but the effort of collecting and analyzing the data as part of conducting assessments and monitoring encourages a commitment to ensuring the quality of programming from the actors involved, particularly UNDP Country Offices, government institutions, LASPs, international partner organizations, and others.

" Research, assessments and stakeholder mapping exercises provide a better understanding of the environment necessary to support the development of an overall legal aid strategy "

Research, assessments and stakeholder 'mapping' exercises are essential for ensuring that resources being invested in the programme are not wasted. These exercises facilitate the elaboration of outcomes and targets, and allocation of resources to priority locations and issues, and the most effective LASPs. They reveal the nature and distribution of legal aid needs, the services and competencies needed to meet them, which organisations are providing such services, and their capacity to do so effectively. They support the development of an overall strategy through a better understanding of the environment, and the types of interventions that are needed and that will be effective in this context. When these assessments are conducted by the institutions and organizations which are themselves responsible for implementation of the programme, with UNDP support, this will strengthen the ownership, success and sustainability of the outcome.

The information collected through research, assessments and stakeholder mapping exercises enables programme staff to inform project design and to provide quality technical support to the establishment of

Box 5: Role of assessments in programme design

Assessments are critically important at the programme development stage to *design a relevant programme* by understanding legal aid needs, identifying gaps, issues and opportunities. They are also important at the beginning of a programme to:

- **Measure results** by obtaining baseline data and setting specific targets and indicators.
- **Generate ownership** by engaging communities from a programme's inception.
- **Build relationships** with legal aid service providers.

M&E is predicated on a proper assessment which established baselines. Failure to invest in proper assessment means that impact cannot be shown, a good programme is not recognized as such, and the accountability of the programme may be questioned.

See also Why, What and How to Measure? A User's Guide to Measuring Rule of Law, Justice and Security Programmes (UNDP 2014).

a relevant, responsive, effective legal aid programme. It also enables programme staff to identify the most productive partnerships for promoting programme outcomes, and to observe their duty to *do no harm*.
The information also enables project effectiveness to be measured. Assessments generate baseline information against which progress can be determined. Without baselines, proper tracking of actual programme results against those that are planned or expected is impossible. Continuous monitoring and evaluations are both essential to determine the results-orientation and effectiveness of development initiatives and to inform practice on how to adjust project implementation. When results cannot be shown, LASPs programmes can struggle to attract funding. They are therefore an essential investment in programme impact. Finally, measurement will enhance UNDPs own transparency and accountability for donor funding and also assist in communicating clear results and achievements to project beneficiaries to whom the programme is also accountable. The important role of assessment in programme design is summarized in Box 5.

Paralegal attending a police interview of a child offender at a police station from Paralegal Advisory Service Institute, Malawi

Assessment and context analysis is particularly critical when considering strengthening legal aid support on sensitive issues, or issues that might be considered taboo within customary norms. For example, legal aid programmes to raise awareness on issues such as SGBV or indigenous or tribal customary property rights that affect the distribution of wealth and power may provoke violent resistance. Legal aid programmes that do not appreciate the institutional, social and other context can change the way customary systems function. Consequently, this can threaten the stability in some rural African settings and a fragile peace in post-conflict settings.

As such, programme staff should incorporate political economy factors, using the institutional and context analysis to understand the constellation of cultural, economic and political factors that sustain the status quo, and facilitate the identification of politically astute, conflict-sensitive interventions. Understanding the different interests and incentives of actors and the power dynamics at play that can lead to the success or failure of different interventions can help to mitigate risks of programming on sensitive issues. Assessments in these contexts can also play an important role if incorporating the perspective of vulnerable and marginalized groups, and making the design of programmes and projects that target these groups more sensitive to their priorities, views and concerns. For more on institutional and context analysis, UNDP Country Offices should consult UNDP's *Guidance Note on Assessing Rule of Law using Institutional and Context Analysis (2014)*.[34]

Collect and analyze data

LASP programming demands understanding the particular use of both quantitative and qualitative data. Both types of data have strengths and weaknesses, and their use often depends on the purpose of measurement and the feasibility to gather these data:

34 See http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/guidance-note-on-assessing-the-rule-of-law-using-institutional-a/

- Where quantitative data is readily available and considered reliable, they can serve as baselines to measure change over time and determine the impact of a project. Such data is often, and should be generated by LASPs. When interpreting such data, there should be an understanding of the context in which it is collected, otherwise it can produce unreliable results without capturing the full picture of people's needs, experiences and perceptions.
- Qualitative data, on the other hand, can provide this contextual description by giving the opportunity for the public to define their needs, experiences, beliefs and attitudes. This "narrative" can be more easily understood and resonates with wider audiences. However, it is also highly dependent on who has been questioned and their credibility. Therefore these views and perceptions cannot be generalized to a larger number of cases and places.[35]

Where possible, a mix of quantitative and qualitative data should be used in LASP programming. Combining these two approaches will be able to produce more complete and accurate findings. The use of stories of beneficiaries who can provide a voice to demonstrate how legal aid is impacting livelihoods, communities or families from a development perspective, will be able to complement strongly and illustrate quantitative data on increased numbers of legal aid services provided to users.

There are various modes of data collection and analysis, and the use of each (or a combination of these) will depend again on the context of measurement and the feasibility to collect this data. The various modes are: administrative data; public surveys; expert surveys; focus groups; document reviews; and observation. For further exploration of these methods, Country Offices should review UNDP's *Why, What and How to Measure. A User's Guide to Measuring Rule of Law, Justice and Security Programmes.*[36]

Prioritize partnerships, as key to resource mobilization and sustainability

Partnerships and coalitions of actors coordinating their activities in support of a common strategy or programme are key to achieving critical mass. Such a critical mass is especially important to LASPs programmatic success in contexts where discriminatory laws, norms and practices are entrenched. A critical mass is also important to programmatic success in terms of sustainability and impact of legal aid service provision overall. Sustainability is also closely linked to resource mobilization, particularly over the long-term, which is a particularly important issue to address in the context of legal aid programming.

Accordingly, successful legal aid service programmes are often those conducted jointly, with a number of development actors coordinating activities to support a wide range of justice-sector actors: statutory and informal justice systems, law enforcement, government, media, civil society and others. Though frequently frustrating, efforts invested in partnerships and coordination pay off in terms of results. (See Annex III for excerpts of UNDP's corporate guidance on resource mobilization and partnerships, including joint programmes and funding modalities).

35 UNDP (2014), Why, What and How to Measure. A User's Guide to Measuring Rule of Law, Justice and Security Programmes,, p.37-38

36 For a full explanation of their use, see table 10 and 11 in UNDP (2014), Why, What and How to Measure. A User's Guide to Measuring Rule of Law, Justice and Security Programmes, p.38

2.3 Entry Point 1: Support establishment of national legal aid systems

Experiences throughout Africa highlight the importance of accompanying micro-level projects and programmes with state led policy initiatives. For legal aid service provision, this should ideally be in the form of a national legal aid system, with state ownership. The UNDP/UNODC publication *Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners* (2014) discusses a range of models for the delivery of legal aid services and identifies five, not mutually exclusive, models of legal aid provision: public defender schemes, private lawyer schemes, paralegal schemes, legal aid centres, and specialist schemes and university law clinics. It notes that the type of schemes established for the delivery of legal aid in any country needs to be tailored to the national context guided by UN Principles and Guidelines. Although the UN Principles and Guidelines do not promote one particular model for the provision of legal aid, embedding the services provided by a multiplicity of actors within a national coordination system has clear advantages for assuring sustainability of service provision. The establishment of a national legal aid system involving one or more of the above schemes should be supported, ideally as part of a comprehensive justice sector reform programme or strategy.

Legal aid systems coordinate legal aid service provision, ensuring that high quality and relevant services are provided to all communities, sustainably, at all stages of the justice process: arrest, detention, trial and enforcement of sentence. In civil cases as well, support is needed throughout the justice process, from legal advice to access entitlements, to take cases to court regarding disputes, and to enforce settlements. The system should ideally be administered by an independent legal aid board accountable to parliament. Any national legal aid system should be clearly defined in law, detailing its functions, governance structure and budget.

A national legal aid system promotes:

- **Clarity on legal aid:** Systems define legal aid, establishing, in law, where a right to legal aid exists, and how it will be met.
- **Coordination:** Systems match legal aid needs to LASPs with the relevant skills and providers on the basis of assessments, ensuring that all elements of the legal process—and the communities that need to access them—receive adequate, balanced support.
- **Collaboration:** Encourage 'joined up' service provision by requiring and enabling LASPs to operate within referral networks.
- **Quality assurance:** Define minimum quality standards, implement capacity development strategies, conduct M&E and administer oversight arrangements.
- **Clarity on roles and responsibilities:** Define criteria for LASPs (e.g. minimum qualifications for paralegals) and the scope of their activities.
- **Comprehensive approach:** Legal Aid Boards support a comprehensive approach to strengthening justice by channelling information between LASPs exposed to justice challenges on a daily basis, and heads of law enforcement agencies. Dialogue promotes a common understanding of dysfunctions in the legal system, and action to address them.
- **Sustainability:** LASPs are mostly CSOs (non-governmental and community-based organizations) that do not usually receive stable funding for their activities. Particularly in crisis-affected settings, governments presiding over insolvent economies and multiple competing priorities are often unable or unwilling to pay for legal aid services. Where government funding does not suffice to sustain all activities, additional

funding from external sources (donor funding) should be considered. However, these should constitute temporary measures and the potential for government funding should be continuously addressed.

Sustainability is often a significant challenge for legal aid initiatives and national legal aid systems play a significant role in ensuring continued support for legal aid provision through:

- **Political will:** Establishing a legal aid system requires significant and sustained government support. Government engagement in system development processes supports financial sustainability by demonstrating the political will on which donor funding is often predicated.
- **Institutional footprint:** Where LASPs feature only in project documents, they carry a very light footprint, which is erased when a funding cycle ends. The policy, legislative, and institutional frameworks of a national legal aid system are more long-lived. LASPs anchored within such frameworks may be said to have 'institutional sustainability', a stronger claim to resources, and greater financial security.
- **Value for money:** A legal aid system based on partnerships with LASPs and informal justice mechanisms is cost-effective: critical for sustainability in contexts of resource scarcity.
- **Sustainability of impact:** Many LASPs achieve remarkable results with small amounts of money, and their impact is amplified by 'enabling' national legal aid frameworks.

Notably, the creation of and support to national legal aid systems are not likely to be feasible in humanitarian and early-recovery contexts where access to basic services are more pressing concerns; nor anywhere legislators do not regard legal aid as a priority, where resources are very scarce or where political actors are distracted by other issues such as elections. And advocacy efforts alone often do not generate the depth of commitment needed to sustain the complex legislative, policy, institutional and budget reform processes to their conclusion.

Although there are challenges, it is recommended that Country Offices retain establishing a national legal aid system as an objective in post-conflict/early recovery contexts as well, and in the short-term lay the groundwork with small-scale legal aid service projects as outlined in the next section (Section 2.4).

Supporting the provision of legal aid services at this stage can produce the following gains in the short run:

- Resolving disputes in early recovery or fragile contexts where formal dispute resolution mechanisms have been severely weakened or have been displaced, and where unresolved disputes can ignite new outbursts of conflict.
- Supporting access to justice at the grassroots until legislative, policy and institutional frameworks have been established.
- Generating promising practices to inform the establishment of viable, effective, sustainable, national frameworks.
- Providing results which generate momentum to establish the system.

If national legal aid systems are not feasible, UNDP should support improved coordination amongst justice sector actors including LASPs. Simply inviting LASPs and law enforcement personnel to sit in the same room and share information and ideas has generated synergies, momentum, and concrete reforms. Most importantly, it has generated the human connections, which are the substance of referral, diversion, and internal communication processes in a context of institutional weakness.

Box 6: An UNDP country example from the Democratic Republic of Congo (DRC)

Access to justice problem addressed
Uncoordinated provision of legal aid services of varying quality and impact.

Background
UNDP's Rule of Law Programme includes a project to address particular challenges in the conflict-affected Eastern DRC, where SGBV is shockingly common and extremely violent. The project supported the establishment of 12 legal clinics in Eastern DRC and South Kivu.

In order to provide both legal and socio-economic support to SGBV survivors, UNDP originally planned to 'attach' the legal clinics to community centres built by another project to host income generating activities for women in particular.

Though UNDP coordinated its activities within a coordination forum for support to justice in South Kivu, as well as other meetings linked to the National SGBV Strategy, the legal aid landscape in the Kivus and Ituri became chaotic.

Many donors and international organisations supported the construction of legal aid clinics housing various types of services, of variable quality, and variable impact. Questions abounded: who is providing what services, where, and how? Do they have the capacity to provide those services well? Would it be advantageous to attempt to harmonise legal aid and assure quality by developing criteria permitting recognition of an agreed standard of service?

Approach taken
UNDP convened donors, development organisations, and LASPs to initiate a process to:

- Establish *which* organisations are providing *what* services, *where, and how.*
- Identify features of LASPs associated with high impact:
  - How many people work in the organization?
  - What type of expertise does it comprise: lawyers, psycho-medical professionals, social workers, paralegals with high levels of education and significant professional training, and the attention of vigilant and accessible supervisors? Or only uneducated paralegals with limited training and access to support?
  - On what basis are staff employed: salaried or voluntary?
- Establish whether to professionalise paralegals: should the name 'paralegal' be made conditional on undertaking an accredited, examined course?
- Identify means of strengthening coordination between legal aid clinics and their interaction with the Bar and law enforcement personnel.
- Identify means of strengthening coordination between development organisations supporting legal aid clinics.
- Plan towards the establishment to a unitary coordination mechanism, such as a legal aid board.

- Define minimum standards for the provision of legal aid, encompassing *what* services are provided, *how*, and by *whom*, e.g.:
  - At least one qualified lawyer in each clinic.
  - At least one service provider the same sex as the client.
  - Procedures to ensure confidentiality, non-discrimination, dignity, empathy, respect and security.
  - Conducting needs assessment, providing information on SGBV-related laws and processes, advice, accompaniment and assistance to report cases and throughout legal process (including payment of associated costs for victims and witnesses).

Challenges encountered

There is a slight risk that gains in the quality of services fostered by the standards and criteria will be offset by reductions in supply, as fewer organisations will be eligible for support – including highly committed organisations.

The intention to combine livelihoods-enhancing community centres with legal aid clinics did not work out. The outcome might have been different had greater efforts gone into the planning stage: specifically, harmonising implementation calendars for the two projects, and clarifying how the relationship between the two projects would work in practice, such as an MOU defining the terms of engagement.

The initial funding contract established between UNDP and LASPs in charge of running the legal aid clinics was 12 months. These 12 months included the building of the office and the implementation of the activities. When UNDP stopped funding, the LASPs either stopped running—or struggled to run—the clinics. In the volatile conflict-affected Kivus, a longer time period would have been helpful, as well as a strategy to sustain the LASPs' capacity beyond the funding period.

Finally, M&E was mainly based on reports issued by the LASPs: additional processes would have been helpful.

The information drawn from UNDP's initial support to legal aid services informed the process described above. This process will support the invigoration and sustainability of all legal aid clinics in DRC. It will also develop the legal assistance concept as a whole; defining and creating a meaningful legal aid concept and structure for the people of DRC.

Developing the evidence base for programmatic design and measurement, and establishing a National Legal Aid System require substantial and long-term commitment. **Table 1 outlines in detail the challenges and promising practices that can assist Country Offices along this path.**

Table 1: How to support the establishment of a national legal aid system? Common challenges and promising practices to address these

Programme element	Challenges	Promising practices
Conduct research and assessments Both qualitative and quantitative research methods establish an evidence base for legal aid programme and support M&E. **Quantitative** information gathered supports the establishment of baselines and indicators, facilitating M&E. This enables programmes to provide statistical results: e.g. changes in numbers of convictions for SGBV; changes in pre-trial detention populations; changes in the number of children diverted to child panels. **Qualitative** research methods to capture both statistical data and nuances in perceptions which a quantitative study alone may not provide. Legal aid programmes attempt to dislodge discriminatory attitudes, norms and practices that have endured for generations. It can be difficult to demonstrate progress on such issues over the course of a programme cycle. Statistically significant changes in convictions for SGBV, for example, will take some time to manifest. Qualitative information can record	**How to construct an evidence base? What types of assessments to undertake?**	▸ **Context analysis**[37] reveals the legal and non-legal factors and underlying causes affecting vulnerability and ability to access and achieve justice. ▸ **Service recipient 'mapping'** reveals *who* has what needs, *where*? Ensuring a full understanding of what the legal aid needs are, who is able to access legal aid, who is excluded, what type of issues require legal aid support, what type of support is mostly in demand can help inform the project and tailor the objectives and delivery of legal aid through the project to better respond to the needs and priorities of the users of the system. ▸ **Service provider 'mapping'** and capacity assessment explores *which* organizations are providing *what* services to meet which needs, *where*, and what are their *resource* and *staffing structures*: *who* do they employ and on *what basis*: *salaried or voluntary*? LASPs are immensely diverse. Some do not have filing systems or a working computer and rely on inadequately supported or incentivized volunteers. Others have welcoming facilities, forensic testing equipment, vehicles, and employ staff which can include supervising lawyers, doctors, nurses, counselors, paralegals, law students, researchers, drivers and security personnel with a combination of salaried staff and volunteers. The capacity assessment also examines to what extent are providers meeting needs? What are their strengths and limitations? The assessment should look at both substantive and operational capacities: knowledge of national and international law, legal and bureaucratic processes, 'soft' capacities (e.g. empathy skills, coalition building skills, dialogue and mediation skills), capacity to draft proposals, manage funds, keep case records, advocate, monitor, report, cooperate with other organizations. LASPs are extremely diverse, and so are their capacities. LASPs capacity development is essential—and hard to achieve without an independent assessment of their capacity. Simply asking LASPs what they need is not sufficient: most are not aware of their weaknesses, or will not admit to them for fear of losing funding. ▸ **Conflict analysis:** In crisis-contexts—in which the need to design approaches that 'do no harm' is most urgent—conflict analysis supports conflict-sensitive development planning.[38] Conflict analyses help to ensure that programming decisions do not unwittingly fuel conflict dynamics, or attempt to achieve objectives that are not feasible in the context. ▸ **Institutional and Context Analysis (ICA):** Justice sector dysfunctions often cause conflict. Programming in conflict-affected contexts will therefore not aim to *restore* the functioning of damaged systems, but to transform it. Structural transformations are needed to address the root cause of conflict, and support peacebuilding over the long term. However, these often threaten entrenched interests, and will be resisted by those well served by an elitist status quo. ICA focuses on how power, wealth, and influence are distributed in society, and the factors that create, sustain and transform them. It can be used to identity where resistance is likely to come from, and how to effectively counter it. Major donors are increasingly asking to see evidence that projects have incorporated political economy considerations before funding. The use of this type of analysis has received recent prominence within UNDP, and practice on this is supported by the development of specific guidance.[39] It may not be necessary to commission a study: missions and donors normally have up-to-date reports on these issues, and will share these in the interests of promoting development effectiveness and avoiding harm. Try asking a governance colleague or political affairs advisor to access these.

37 This also includes political economy analysis and Institutional Context Analysis (ICA), see reference.

38 UNDP (2003). Conflict related Development Analysis (CDA). Please see http://www.undp.org/content/dam/undp/documents/cpr/documents/prevention/CDA_complete.pdf

39 In 2012, UNDP published the Institutional and Context Analysis Guidance Note, and in 2014, the Guidance Note on Assessing Rule of Law using Institutional and Context Analysis. UNDP supported 8 Country offices from the Europe & CIS region (Armenia, Belarus, Georgia, Kyrgyzstan, Serbia, Tajikistan, Ukraine, and Uzbekistan) to apply the ICA-ROL tool on country programmes.

changes in perceptions and anecdotes that demonstrate programme impact on attitudes and norms; the precursors to qualitative data such as conviction rates.	**What tools are available to support assessment?**	▸ **UNDP has produced various useful assessment tools (such as Governance[40] and Capacity Assessments[41]), each of which might be more appropriate for the purpose of the particular assessment, and for the sector in which the assessment has to be conducted.** Regarding legal aid in the context of access to justice, consider using the UNDP *Access to Justice Assessments in the Asia Pacific: a Review of Experiences and Tools from the Region*, which provides a range of examples, lessons learned and tools for conducting assessment.[42] ▸ **For an assessment tool specifically tailored to criminal legal aid provision, consider using UNODC's 5-step process for conducting a legal aid assessment[43]:** 1. **Review the national legal framework:** determine when, where, and under what conditions, by law, a person is entitled to legal aid. 2. **Review the institutional framework:** ascertain how legal aid is currently administered by the state, and how much state funding is available. 3. **Ascertain who is doing what:** map all actors providing legal aid within both formal and informal justice sectors to see who is available, where and what services they offer, and where there are gaps in service delivery. 4. **Assess attitudes in the justice sector (i.e. analyse the political economy of the criminal justice system):** identify barriers (economic and other factors) to smooth case flow in the criminal justice system. 5. **Conduct a user survey:** discover legal needs of a community, the nature of common disputes and who is affected by them, how they are dealt with, what level of legal awareness and availability of legal assistance, and effectiveness of existing methods of handling disputes. **Method:** Information should be obtained through inclusive consultations held at strategic locations around the country. This information should then be presented for discussion at a national conference. The national consultation should agree a strategy to address the problems identified and an action plan that targets short-term gains identifies a lead agency, and the composition of a national 'steering' committee or advisory council.
	Assessments are expensive. How to reduce their cost?	▸ Emphasize to donors and other key stakeholders that assessment is a key part of measurement which provides the only way to ensure that LASPs projects achieve their intended results. Measurement can also help to improve the overall quality and efficiency of a project by targeting those who will benefit the most and ensuring accountability for the money invested in programming.[44]
	Partners might be reluctant to conduct assessment because of a lack of familiarity with measurement methods:	▸ Including national stakeholders in measurement steps is often the best way to avoid accusations that programming is donor-driven, Western or otherwise imposed and to build capacity of partners in measurement. Therefore, engage government officials early on in an assessment process to ensure that they understand the process and can trust the motivations behind it. In addition to engaging partners in the assessment exercise by training and capacity development on research methodologies, the following four steps can help to generate local support: 1. Include partners in initial discussions as a way of incorporating their interests and concerns into the design of measurement activities. 2. Brief senior officials and development partners about data collection plans and how the findings will be used. 3. Brief national stakeholders privately with any preliminary findings to encourage their ownership of the results. 4. Distribute findings and recommendations among all stakeholders in advance of their general release and provide an opportunity for the airing of comments and concerns.[45]

40 See: http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/oslo_governance_centre/governance_assessments/
41 See http://www.undp.org/content/undp/en/home/librarypage/capacity-building/capacity-assessment-practice-note/
42 See http://www.snap-undp.org/eLibrary/Publications/A2J_Assessments.pdf
43 UNODC (2006). Criminal Justice Assessment Toolkit. Access to Justice: Legal Defense and Legal Aid. See http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/4_Legal_Defence_and_Legal_%20Aid.pdf
44 UNDP (2014). Why, What and How to Measure? A User's Guide to Measuring Rule of Law, Justice and Security Programmes, p.15.
45 Ibidem.

	Conducting assessments might receive resistance from partners because of a concern that the results will upset entrenched interests, disrupt established practices, and affect good relationships with partners.	▸ Structure the assessment and measurement exercise in a way that introduces incentives for positive change. For instance, draw attention to improved indicators such as a reduction in the number of police complaints. In some cases, however, it may be necessary to confront entrenched interests and seek support from other sources such as the media or civil society organizations. Also, involve local partners in every step of a project's implementation and measurement process so that they are apprised of preliminary findings and may offer their input. Try to avoid unnecessarily criticizing local partners and instead discuss findings in terms of what can proactively be done to achieve desired outcomes.[46] ▸ **See next table 2 on 'conducting research' for additional promising practices.**
Identify key stakeholders for programming. Those whose engagement is necessary for the development and implementation of the system could include: law enforcement institutions, social welfare agencies, traditional leaders and representatives of any traditional councils, representatives of national SGBV committees, Bar Association, LASPs and representatives from any civil society networks, Human Rights Commissioners, relevant development organisations (including donors), UN agencies, (including senior UN officials) and journalists.	**Who should participate?**	▸ **Cast a wide net:** A legal aid system requires a system-wide approach, not an institutional lens, so do not be put off by numbers. Broad engagement can ultimately save time by minimizing the risk of actors who were not consulted trying to re-shape the process later. More inputs—especially from LASPs working on the ground—result in a better-designed, more effective system that requires less 'fine tuning' later. Finally, bear in mind that not everyone will be involved in all decisions—a small leadership group will direct thematic clusters working on issues. ▸ **Secure participation of senior officials:** Involvement of senior level officials can signal high-level political commitment in taking forward the legal aid agenda in the country. In Sierra Leone, the Vice President chaired the process to develop a national legal aid system. His engagement encouraged 'reluctant' partners to engage, and attracted funding. ▸ **Invite Members of Parliament:** A national legal aid system entails legislative, policy and institutional changes. MPs' engagement will facilitate enactment of legislative reforms, and encourage a generous budget allocation for the system.
Conduct advocacy to generate support and momentum A national legal aid system requires significant legislative, policy, institutional and budgetary changes. These require the broad and sustained support of government, civil society and development partners. Yet legal aid is rarely a priority: advocacy can generate willingness to engage.	**Partners believe the proposed system is an agenda driven by headquarters' policies, rather than actual need on the ground.**	▸ **Conduct 'exploratory' advocacy:** Bringing a legal aid system to fruition requires broad national ownership. This is unlikely to materialize if a partner is perceived to have a 'pre-cooked' agenda. 'Exploratory' advocacy simply allows potential partners be aware of an idea, seek and incorporate partner feedback. Listen carefully for criticisms, and use these to 'fine tune' proposals to strengthen their appeal. ▸ **Focus advocacy on government:** When governments are interested, other partners will follow. Introduce the idea to government partners and ascertain their interest in leading a process to develop a strategy towards the development of a national legal aid system. Where there is interest, the partner can work with them to draft and circulate a concept note, along with an invitation to attend a first meeting. The generated evidence-base on the legal needs and requirements provide a strong basis to conduct advocacy activities. ▸ **Conduct joint advocacy with interested partners to convince governments why legal aid matters:** Uncoordinated advocacy can send mixed messages and lose traction on the issue.

46 Ibid, p. 16

	Generating political will: Anything that is new, or that challenges entrenched power relations, normally meets with some initial resistance. A legal aid programme that combines 'unconventional' legal service providers, justice fora, sentences, or that informs disempowered communities of their rights may be resisted.	▸ **Appeal to authoritative legal documents** providing the right to legal aid, as defined in the International Covenant on Civil and Political Rights, the Lilongwe Declaration and the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. The Lilongwe Declaration has been endorsed by the African Commission on Human and Peoples' Rights and UN ECOSOC and therefore constitutes an international and regional standard on legal aid. The UN Principles and Guidelines has been adopted by the UN General Assembly to provide global standards and guidance on legal aid. ▸ **Draw an analogy with health,** where people are familiar with multiple providers. Just as a person who has sustained a minor injury needs a nurse, not a surgeon, to apply a dressing, so a trained non-lawyer can meet many legal needs. Legal aid service provision does not diminish the role of lawyers; it simply thinks about how their expertise can be allocated most efficiently. Lawyers' expensive and specialized skills can be reserved for serious and complex cases, and for supervising the activities of groups of trained persons who can provide the simple advice and assistance that most cases require. ▸ **Counter pre-conceived ideas about the expense of legal aid:** Many governments are prejudiced against legal aid because they believe it to be an expensive luxury that ought not to be prioritized in a context of multiple basic needs. Partners can explain that while 'conventional' legal aid models such as judicare and public defender systems are costly (e.g. approx. USD 38 per capita in UK), 'Lilongwe models' which involve a range of legal service providers are not (e.g. approx. US 1.5 cents per capita in Malawi). ▸ **Work with media:** One UNDP Country Office partnered with the media to support 'drivers of change' within government who were concerned with improving the administration of justice. The media drew public attention to the consequences of lack of access to justice to that country, resulting in massive public interest, which put pressure on the government to engage. ▸ **Watch the electoral cycle:** If the government remains intransigent, do not abandon programmatic ambitions. Engage with political parties to place legal aid on their agendas regarding strengthening the justice sector over the long-term and with a view to establishing sustainable champions that might withstand electorally driven changes in political leadership. ▸ **Work with regional organizations** to, for example, make adequate provision of legal aid a criterion for membership, or a requirement for obtaining some of the benefits of membership.
Establish a coordination forum/mechanism The coordination forum would envisage establishing a national legal aid system, because experience suggests that this is by far the most effective way to make legal aid available and accessible to poor communities in Africa. However, this may not be feasible or the most effective way to enhance access to justice in some countries. A consultative process conducted within a coordination forum will aim to establish how to enhance legal aid service provision, and should not pre-judge the outcome by stating how the process will end.	**There is a sense of fatigue and reluctance to add another lawyer to existing justice reform processes, security sector reform agendas, gender and juvenile justice related strategies.**	▸ Establish legal aid as a Poverty Reduction Strategy (PRS) objective: UNDP in Liberia found that the government's PRS has automatically minimized duplication and promoted coordination by uniting partners around a common vision. Organizations both within and outside the UN have adapted their programming to implement the government's strategic plans, allocating resources *around* PRS objectives. ▸ Consider integrating legal aid into other processes and strategies: In Sierra Leone, a national legal aid system—complete with national legal aid bill—emerged from a broader process to support the justice sector. In Uganda, promoting legal aid through the existing justice sector strategy enabled legal aid to be part of a bigger agenda. Legal aid was recognized as a vital component of access to justice, leading to recognition of legal aid in policy, planning and resource allocation fora. ▸ Ensure that legal aid does not lose visibility within broader processes: Try advocating for a distinct outcome on legal aid within sector strategies, and for progress on legal aid-related issues as an agenda item in every sector strategy meeting. ▸ Try an informal route: Coordination fora do not have to be formal to be effective; and informal mechanisms often evolve into more permanent coordination fora. Try organizing an informal lunch meeting, simply to discuss progress on justice sector development objectives. In Ghana, UNDP organized a meeting of this type which partners found so useful that they signed an MOU agreeing to work together in a 'High Level Council' meeting regularly to address challenges to accessing justice. The meetings have become a regular coordination forum – to which partners now invite UNDP—which revitalized a defunct national legal system, established a 'Prison Decongestion Taskforce', 'Saturday Courts' to sit on remand cases, and other initiatives which have strengthened the administration of justice in Ghana. In several African countries, simply supporting justice sector actors to get together and share ideas has consistently proved to be one of the cheapest and most effective means of strengthening the administration of justice.

The strategy should include: **Action plan:** defining steps towards the realisation of each of the elements, allocating responsibilities to specific institutions or individuals; and a time line for progress towards the attainment of each. **Organisational structure** for implementation of action plan: A 'leadership group' under the Chairmanship of the most senior government official could drive strategy implementation; monitoring and supervising technical clusters responsible for working on specific strategy elements.	**The forum feels like a free for all!**	▸ **Support government to lead the forum:** Government leadership is a common ingredient of successful coordination fora. Individual agencies—even those with a mandate to coordinate, may lack the authority to direct the activities of a range of other actors. Efforts to do so may become a tiring exercise in ineffective convening which ultimately falls apart without achieving its objectives. ▸ **Be patient:** The forum may initially struggle to generate momentum. A UNDP Country Office participated in a rule of law working group, which included several ministries, law enforcement agencies, UN agencies, development partners and CSOs. In the first year, the process was erratic and confusing. By the fourth year, the government was managing streamlined, effective processes. ▸ **Keep coordination arrangements simple and focused on aims:** Structure every aspect of joint engagement around the purpose of the partnership and keep arrangements as simple as possible. Question any processes which add complexity to partnership arrangements—or make participating in them burdensome—to see if they are strictly necessary. Cumbersome co-ordination arrangements make governments' work more difficult and lead partners to fall away. ▸ **Look at partners' mandates:** Competition and disagreement among actors on how to allocate responsibility and resources for addressing legal aid needs sometimes results from confusion over mandates. Look at partners' mandates to resolve disagreements over authority and capacity.
	Relationships between authorities are weak.	▸ **Expect mistrust and resentment to divert initial discussion, and allow participants to vent frustrations as a 'preparatory' phase for more substantive discussions:** Initial discussions may deal with emotions, not the substance of a legal aid strategy. Allowing space for these to be voiced and acknowledged creates a 'space' for trusting, productive working relationships to emerge. ▸ **Support the development of 'soft' capacities for dialogue and consensus building:** Hiring a facilitator can encourage positive, productive discussion, develop 'soft capacities' for dialogue and consensus building, and generate momentum around the strategy.
	Stakeholders are not familiar with legal aid issues and discussions lack substance.	▸ **Provide technical support:** In addition to conducting a legal aid assessment to create an evidence-base for the system, UNDP can provide technical support to the incipient legal aid system on critical areas for its management, such as in its coordination, management, monitoring and oversight functions. In Sierra Leone, for example, UNDP channeled this support firstly through the Bar Association (See Box 6). Also, UNDP can strengthen LASPs knowledge management and learning by stimulating substantive discussion by inviting experts to share experiences of legal aid strategy development and implementation. Compile hand-outs distilling international experiences of how relevant legal aid challenges have been addressed though national legal aid initiatives, and the factors which favored their success.
Support strategy implementation. This involves providing on-going logistical, technical and resource mobilization support, as requested by the leadership group.	**Progress is delayed, momentum is lost, and timelines slip.**	▸ **Allocate staff time to support the leadership group:** Partners can support the leadership group to monitor progress, soliciting updates, connecting cluster members, sharing information and obtaining 'early warning' of potential delays. ▸ **Support establishment of LASPs coordination:** Since LASPs often compete with one another for funding—and their livelihoods may depend on the strategy—support coordination fora for LASPs to activate 'peer pressure' to observe commitments under the action plan. Coordination mechanisms between LASPs can ensure that the coverage is optimal for legal aid service delivery and that clear referral mechanisms are in place (See Box 7). Partners can also invite legal aid strategy leadership group members to attend the forum. LASPs can apply pressure to stay on track, question missed deadlines, and demand accountability for failures to observe commitments laid out in the strategy. ▸ **Activate media accountability:** Inform media houses of the strategy, action plans, and time lines, circulate regular press releases to stimulate coverage – and popular awareness – of legal aid issues and progress towards action plan milestones. ▸ **Consider including enhanced access to legal aid services—including any intended legal aid bill or board—as a measurable indicator in national development plans:** Instituting legal aid system milestones (e.g. legal aid bill) as indicators of justice sector performance in removing barriers to accessing justice.

	Legislative and institutional reform processes lose momentum.	▸ **Build confidence by supporting a pilot of proposed models:** In Kenya, a model of legal aid offering only legal advice in a small area was piloted. Lessons learned informed the development of a national system offering advice, representation and other services. In Sierra Leone, before the Government of Sierra Leone designed a new, national legal aid system and law, it drew the lessons from a legal aid system run by the Sierra Leone Bar Association. ▸ **Organize study tours:** African governments have implemented legal aid initiatives following study tours to other countries in Africa and Asia. ▸ **Change existing laws and policies, which constrain legal aid:** It may be easier to modify existing laws and policies, which constrain legal aid, rather than enact a new Legal Aid Bill. Existing laws which are unclear or which limit the right to legal aid could be amended to establish a 'right to consult with a legal practitioner and to be informed of this right'.
Support development of legal aid legislation. The content of the legal aid bill has a key role in determining who is entitled to legal aid, and how it is delivered.	**Significant gaps exist in legal aid legislation or no legal aid legislation is in place.**	▸ **Use convening power to support consultations:** Consider supporting the development of a draft law by convening a consultative group comprised of a range of judicial institutions, Bar association, and CSOs. Follow with public consultations of the draft law: national awareness and information campaigns and public consultations held around the country, recorded for TV and radio. ▸ **The devil is in the detail:** Legal aid systems do not just need a law; they need a very specific one which defines where a right to legal aid exists, and how it should be met, who provides legal aid, funds, coordinates and assures the quality of services, etc. The law may also need to grant immunity to commissioners or grant them some sort of political protection through the tenure/appointments system so they can exercise their functions independently from executive pressures and hold government officials to account on their commitments. These provisions feature in the Legal Aid Bills of Sierra Leone and South Africa. Key areas for specific provisions include: • Establish an independent national Legal Aid Board funded by parliament. • Establish a public defender system and allow cooperation agreements with accredited LASPs. • Mandate pro-bono service provision (e.g. 24 hours per lawyer per year). • Recognise the complementary roles of paralegals, CSOs, legal professionals, development partners and regulatory institutions and clarify their responsibilities. • Define a regulatory framework: elaborate standards for legal aid service delivery, and arrangements for ensuring compliance. • Require front line criminal justice institutions (police, courts, and prisons) to put suspects in contact with LASPs. • Require detainees to be given reasonable opportunity to obtain legal aid services, e.g. by allowing detainees to contact a relative, or legal aid board. • Require automatic review by the High Court of any sentence in excess of 3 months' imprisonment where the defendant is unrepresented. • Establish a process to explore the intersection between customary and statutory justice. • Define arrangements for protection of witnesses, victims and suspects. ▸ **Use a simple text** which can be easily read and understood by poorly literate communities. ▸ **Enable non-citizens to apply:** Especially in crisis-affected regions in which regions host many refugees and stateless peoples, it is important that the legal aid law applies not only to citizens, but also to those who reside in the country. ▸ **Think twice about eligibility criteria:** Eligibility requirements determine who has the right to legal aid and are designed to prevent those who can afford to pay from 'free riding' on free legal aid services. In Sub-Saharan Africa, those who seek legal aid are all poor. It is likely that eligibility requirements will serve only to multiply the administrative costs of providing legal aid, and prevent thousands of deserving people from accessing legal aid. Obtaining certificates of indigence may require multiple trips to administrative offices, and lead clients with grievances to give up their claims.

Develop mechanisms for financing legal aid	**Questions arise on how to secure funding and ensure sustainability of the national legal aid system.**	▸ **Explain the socio-economic costs of inadequate legal aid:** A 2010 UNDP study developed with the Open Society Justice Initiative (OSJI) found that the use of excessive pre-trial detention disproportionally affects poor and marginalized people, whose livelihoods suffer from the resulting socioeconomic impacts. The poor and marginalized can get trapped in inefficient and corrupt justice and penal systems when they lack adequate legal representation and aid during the initial stages of the judicial process, and also most often do not have the means to pay bail. Their extended absence from family and community life represents a loss in income and social status for the community, and in effect a loss of human potential for society as a whole.[47] Country studies on socio-economic impact have been conducted in Ghana, Guinea Conakry, and Sierra Leone in West Africa and additional country studies are being undertaken in South and East Africa.[48] For example, the expense of accommodating and feeding huge numbers of pre-trial detainees held illegally or unnecessarily in prison, and the court costs entailed by repeated delays are a drain on public sector resources. Riots in Liberia's prisons have caused approximately $2.2 millon worth of damage to infrastructure, facilities and equipment. The majority of detainees are young, strong men: the most economically productive members of society. They often lose their job along with their liberty. As imprisonment leads to the loss of working habits, skills, self-esteem and trust, they often struggle to regain employment following their release. Excessive use of detention in inefficient justice systems therefore deprives the economy the contribution of their labor, denies the state the contribution of their taxes, and deprives the population of the services that those taxes—as well as the resources spent on detention—could fund. Disease (including HIV and tuberculosis) spreads rapidly in crowded and unsanitary conditions, and is brought back to communities along with released detainees, hindering progress towards health targets. Time spent in prison hardens detainees and is associated with recidivism and violent tendencies. Desperate to avoid the horror associated with imprisonment, detained persons and their families often pay bribes along the justice chain to secure release, food and family visits. Governments eager to prove their anti-corruption credentials to both internal and donor audiences may wish to avail themselves of the opportunity to fund legal aid as a means of minimizing corruption in the judicial system. ▸ **Present legal aid financing as an investment,** which is recouped by reduced costs associated with insecurity, poorer health, lower workforce productivity and lower economic growth. Partners can tailor their advocacy: identify which issues top donors' and governments' list of priorities and present information and statistics to show how supporting legal aid could support their attainment. ▸ **Research donor priorities:** Understanding donors' agendas will improve resource mobilization efforts by making it easier to draft proposals that appeal to them. ▸ **Dedicate resources to M&E:** Programmes that show impact get funded.[49]

47 See http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/the-socioeconomic-impact-of-pretrial-detention/.

48 See http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/the-socioeconomic-impact-of-pretrial-detention/.

49 See UNDP (2014). Why, What and How to Measure? A User's Guide to Measuring Rule of Law, Justice and Security Programmes.

2.4 Entry Point 2: Support quality small scale Legal Aid Service Providers (LASPs)

CSOs, including non-governmental, faith and community-based organizations working as legal aid service providers have an important role to play where state capacity is low to provide this service. Even though in many cases these providers themselves might face capacity deficits, their proven significant role in legal aid provision for the poor and marginalized in Africa demands that UNDP include support for these LASPs as part of its access to justice project implementation.

LASPs are often small organizations whose strongest assets are their knowledge of legal needs, familiarity with both statutory and community-based mechanisms, and desire to help people. Exposed to the reality of rights abuses in communities, many go above and beyond the call of duty, achieving spectacular results with small budgets. Their financial and data management systems are often weak, and their knowledge of certain technical areas of the law is sometimes poor. Some achieve astounding successes but lack capacity to write reports which reflect those successes. In certain cases, some may even unwittingly provide bad legal advice that can do harm.

The services, staff structure, capacities and interests of LASPs are immensely diverse. Many rely on project funding and can be highly vulnerable to changing situations of availability of funding, leading to weak conditions of sustainability for these organizations' activities. In conflict-affected settings, in which civil society is often divided due to ethnic or political allegiances, LASPs can be found to compete rather than cooperate. The effect is duplication, refusal to collaborate and refer cases, and hence failure to meet clients' need for a range of services. Wherever LASPs have been left to their own devices and their funders have not coordinated, LASPs can end up providing overlapping services, resulting in loss in efficiency of use of funds, and leaving areas and communities out of reach of legal aid service provision. The costs are high of not achieving 'joined-up' support between LASPs.

Finally, legal service provision of this kind tends to be unsustainable; rising and falling along with donor priorities, and often disappearing shortly after funding cycles end. The bottom line is that LASPs cannot shoulder the burden for providing legal aid alone. Support for legal aid service provision cannot be equated with funding; it requires a much greater level of commitment. UNDP addresses these challenges by promoting capacity development of CSOs receiving UNDP support and by supporting coordination mechanisms between CSOs and national institutions to provide governance and oversights. (For excerpts from UNDP corporate guidance eon capacity development, see Annex IV).

Specifically, UNDP can support LASPs by:

- **Research and assessments:** to ascertain legal aid needs and providers able to meet them.
- **Capacity development:** including components to support donor coordination, and LASPs collaboration within referral networks.
- **Monitoring and evaluation (M&E):** to monitor impact and help illustrate the importance of LASPs work to sustainable development of the country.
- **Enabling legislative, policy, institutional, and budgetary framework:** providing the space for LASPs to engage with national authorities to work towards a national legal aid system administered by a legal aid board accountable to parliament.

Box 7: An UNDP country example from Sierra Leone

Access to justice problem addressed
Inadequate support to the demand-side of justice. Though considerable efforts have been invested in strengthening the capacity of the statutory justice system, access to justice, particularly for women and children, remains weak.

Background
Lack of access to justice was identified as a key cause of Sierra Leone's 11-year civil war. In the aftermath of conflict, lack of infrastructure hampered the administration of justice; threatening the consolidation of peace. In the recovery phase, donors provided logistical support to restore degraded justice sector institutions – much of which was implemented in an *ad hoc* fashion.

Seeking to increase the impact of their combined resources on significant justice sector challenges, a Justice Sector Reform Strategy and Investment Plan (JSRSIP) was developed, and monthly meetings convened to coordinate its implementation.

Though the JSRSIP provided for support to all statutory justice institutions, it did not encompass significant support to civil society or community-based justice mechanisms. UNDP sought to strengthen the demand side of justice by enhancing access to legal aid.

Approach taken
UNDP supported the Sierra Leone Bar Association (SLBA) to establish a national legal aid system for representing accused in the criminal justice system, and supported LASPs to assist victims of SGBV and support awareness, access, administration, and advocacy. *In addition to providing funding*, UNDP:

- Recruited a CSO Adviser UNV to organise regular capacity development activities on legal and management issues, monthly co-ordination meetings—to which authorities are often invited—and be available to the LASPs to mentor them on any aspect of their work. His office became akin to a 'CSO drop-in centre'—with a computer and printer available to LASPs in an adjoining room—and his phone rang constantly.
- Recruited a Monitoring Officer to conduct regular field visits to 'cross-check' LASPs' reported results against field realities, speak to beneficiaries, and compile reports.
- Requested a finance associate to train and guide LASPs through the report writing process on a one-to-one basis. Face-to-face meetings and follow-up dramatically improved the quality of reports.
- Organised these trainings following a 'knowledge, aptitude and practice' assessment:
    - Human rights law and the African human rights system.
    - Advocacy, communications, management and finance.
    - Court monitoring and reporting.

Challenges encountered

Initially, legal aid service provision was uneven: services were not provided in all locations due to failure of some LASPs to honour agreements, and not all support was high quality. UNDP responded by encouraging LASPs to specialize, and encouraged collaboration by organizing CSO coordination fora. The effect has been to increase LASPs' *individual and collective impact*.

Lessons learned

Be patient: It took a few M&E cycles to distinguish high performing LASPs from more mediocre organisations, and allocate resources accordingly. Impact increases quickly.

Start small: UNDP initially had to lobby government to support the Bar Association Scheme. Shortly thereafter, government actively engaged in a process to draft a legal aid bill establishing a national legal aid system. The system is informed by lessons learned by the Bar Association Scheme. Complementing the national system, successful community-based paralegal organization TIMAP-Sierra Leone is setting national standards for LASPs through development of a standardized national training programme that will move towards accreditation and setting up a paralegal trust fund to ensure sustainability.

Develop LASPs' financial management capacities: Where LASPs lack capacity to provide proper financial reports and do not understand UNDP requirements disbursement of funds is slowed and project implementation falls behind schedule.

Coordination with development partners: Developing a platform for information sharing is necessary to avoid duplication, and 'double funding': unscrupulous organisations receiving funding from more than one source to implement the same project in the same location, and providing the same report to all donors.

Recommendations

Support community-based LASPs: In its first year, the Sierra Leone Bar Association Legal Aid scheme represented 661 indigent persons. In the same time period, 17 LASPs raised awareness amongst tens of thousands of persons, supported hundreds to pursue justice, and held the court records for 45 convictions for SGBV: a 165% increase on the previous year. They also secured customary authorities' agreement to end under-age female circumcision in two Chiefdoms (with authorities signing MoUs and communities agreeing to hold them accountable for observing its terms); notable improvements in the administration of justice in both Chiefs' and Local Courts; changes to the national NGO bill, maternal health policy, and public dialogue on an unpopular and poorly understood new tax regime.

UNDP South Sudan

In most country programme settings, when working with CSOs as legal aid service providers this will most often be done through micro-capital grants as part of project implementation.[50] When selecting CSOs, the following steps are observed in practice: 1) Issue Call for Proposals; 2) Select satisfactory proposals; 3) Disburse funds; and 4) Receive reports.

Even where conducted 'outside' the framework of a national system, support to legal aid service provision need not be 'ad hoc'. By first creating an evidence base on legal needs and LASPs' capacities, a project can be designed matching providers to specific needs, incorporating capacity development, coordination and M&E components.

When working with micro-capital grants for CSOs bear in mind the following good practices:

- **Give LASPs funds that are manageable:** The majority of LASPs are small organizations, which enable clients to achieve justice by virtue of dedication, and persistence on behalf of their staff; many of whom are volunteers. Their expenses are often small, and few have the fiscal capacity to handle disbursements of more than USD 5,000 to 20,000 at a time. Though the transaction cost of processing such small disbursements within stringent financial management systems of donors is high, it is outweighed by impact achieved.
- **Support LASPs in implementing their programmes:** To mitigate possible deficiencies in administrative capacity, Country Offices could provide support to LASPs in administrative and financial management of the funds, as part of a larger initiative for their capacity development, to ensure effectiveness and efficiency of the use of funds by the CSO. In particular, this should help develop LASPs' capacity to coordinate their activities and collaborate within referral networks to ensure that clients receive the array of complementary support services they need.
- **Hold them accountable for results of their programmes:** In addition to strengthening LASPs M&E capacities to plan and follow-up on their results, providing oversight on LASPs' performance through

50 This section will draw on various contents from UNDP's Policy and Operations Principles and Procedures (POPP) that are of particular use to defining the modalities of engagement with LASPs, such as Capacity Development and Guidance of micro-capitol grants when working with CSOs.
UNDP can engage with CSO in implementing its projects in three different ways:
- CSO as implementing partner of a UNDP project. Under this arrangement the overall management of an entire project is given to a CSO which is responsible for achieving the project outputs.
- CSO as a contractor. This arrangement will apply to get specific inputs (consultancy services, training, or equipment) required from CSO as service provider for implementing project activities.
- CSO as recipient of grants. Under this arrangement UNDP provides funds to finance a small grant proposal submitted by CSO in line with the project requirements. As recipient of grants, CSO is accountable for achieving the grant objective on non-profit basis. The CSO here is acting as responsible party for the implementation of particular activities within the project, and is accountable to the implementing partner of the project.
- When working with a CSO as implementing partner, the CSO should already be identified as potential implementing partner within the Country Programme Action Plan (CPAP). Otherwise, government approval should be sought when signing the project document. When working with a CSO as responsible party - either through the Direct Implementation (DIM) of National Implementation (NIM) modalities – specific rules and regulations apply in terms of amounts of funds to be disbursed to the CSO and regulations on the administrative and financial management of the funds. When working with CSOs either as implementing partner or as responsible partner a capacity assessment should be conducted to determine the capacities of the CSO to receive the funds, to manage them effectively and use them in line with the proposed activities and defined budget.

UNDP M&E frameworks demonstrate overall programme impact, ensure that rule of law programming is evidence-based, and stimulates performance through accountability.

- **Facilitate and promote coordination with partners:** Share information with partners about *who* you are supporting, to provide *what* services, and *where*.

The key message is that providing funding is not enough. The capacity of LASPs needs to be developed —including their capacity to collaborate within referral networks and to support an 'enabling' legislative, institutional and budgetary environment. This is usually not a smooth and easy process. **Table 2 provides detailed guidance on how to overcome the challenges and utilize promising practices from experience for UNDP to support quality small scale LASPs.**

Table 2: How to support small scale Legal Aid Service Providers (LASPs)? Common challenges and promising practices to address these

Programme element	Challenges	Promising practices
Conduct research to construct evidence base and facilitate M&E	**There are literally hundreds of assessment, analysis, and research types. How to choose amongst them? Which are most relevant for constructing an evidence base for a legal aid programme?**	▸ **An assessment tool will provide a specific approach, but you should consider the following questions and indicative steps.** • What are the needs the project should address? Context analysis: Research the legal and non-legal factors and underlying causes affecting vulnerability and ability to access and achieve justice. • Who has these needs, and who is meeting them? Stakeholder 'mapping': Identify service recipients and providers. • What are service providers' capacities? Service provider capacity assessment: Identify providers' substantive and operational capacities and limitations. • What factors influence how legal needs can be met and change happens in this context: what challenges and opportunities should project design reflect? Institutional and context analysis[51] and conflict analysis[52]: missions and donors normally have up-to-date on these issues: ask a governance colleague or political affairs advisor to help.
	Research is costly, leads to 'assessment fatigue' amongst beneficiaries for the sake of ticking a project management cycle box, and will not tell teams anything they do not already know: managements are experts in the area, and national staff know the context well.	▸ **Think about why the project management cycle tick-box exists.** In reality, needs, opportunities and challenges are often radically different from how they appear from behind a computer. Especially in rapidly fluctuating crisis-affected contexts, they change frequently, and previous assessments quickly become obsolete. Though national staff are often teams' strongest asset, they are rarely immersed in marginalized communities, and cannot substitute for an assessment enabling members of those communities to speak and be heard, itself an important aspect of justice. ▸ **Think: 'investment in programme success', not 'expenditure'.** Participatory assessments establish relationships with stakeholders which make it easier to conduct programme activities later on. Exploratory discussions on legal aid needs conducted as part of participatory consultative processes can foster critical thinking on issues such as women and children's rights. Subsequent activities to sensitize stakeholders to such issues may therefore push on a partly opened door, moving onto facilitating discussions to identify ways in which communities take action to end discriminatory practices. Involving LASPs in conducting the assessments helps them in getting a more clear understanding of the needs and challenges within the territories they work; and will build up their capacity to plan and prepare their intervention. As LASPs themselves will need to collect much of the primary data on service provision (number of cases, types of cases, outcomes), engaging them from the start in assessment will also assist them in embedding M&E in their service provision from the start. ▸ **Recall the phrase 'you have to spend a dollar to make a dollar'.** If programmes do not invest in assessments, they cannot create baselines, or show the results on which donor funding is contingent.

51 See UNDP's Guidance Note on Assessing the Rule of Law using Institutional and Context Analysis (2014)

52 See UNDP's Conflict-related Development Analysis (2004), http://www.undp.org/content/dam/undp/documents/cpr/documents/prevention/CDA_complete.pdf

		▸ **Share costs: do joint assessments.** Joint assessments will reduce their cost and provide a first step to a joint programme: a common understanding of the nature of legal needs, challenges, and opportunities. ▸ **Ask donors to fund assessments.** Donors fund initiatives of which they feel ownership: asking them to support assessments is likely to support funding of the project. ▸ **Compare the following experiences in other regions:** UNDP Indonesia's research, assessment, and stakeholder mapping processes took eighteen months to complete. First; the skills, knowledge and experience gained by CSOs trained to conduct the assessment meant that the programme could claim capacity development achievements before programme design had even been completed. Second, the assessment supplied government counterparts with information they did not have about a range of pressing legal, economic, and political issues throughout the country. This information was drawn into national development plans to facilitate the development of legal aid policy. Third, UNDP Indonesia's assessment generated good baseline information and facilitated the development of smart indicators, which enabled programme impact to be demonstrated. Fourth, the assessment changed initial ideas the Country Office had about what needed to be done to improve access to justice and the rule of law in Indonesia. It led to a report, which illuminated the economic aspects of justice, and the social aspects of justice provision. It showed that governance, land, employment and labour rights, property rights, criminality and post-conflict security are extremely relevant to access to justice. This additional information informed Country Office programming in these areas as well.[53]
Issue call for proposals	**How to ensure transparency in the process and attract proposals from quality legal aid service providers?**	▸ **Consider issuing a call for proposals at a public meeting/training.** LASPs' proposal writing skills might not be very strong, and even effective, committed organizations can thus fail to attract funds. A proposal writing session following a call for proposals "Q and A" would generate early capacity development outcomes for the project, and facilitate the proposal selection process. ▸ **Consider providing a proposal template.** Templates help LASPs to understand what information proposals should provide. A standard template also facilitates comparison, making proposal selection easier and quicker. ▸ **Make provisions for LASPs' administrative costs to avoid financial mismanagement.** Funders often refuse to pay for staffing and overhead costs; requiring budgets to specify project expenditures only. Consequently, LASPs often have emaciated, fluctuating staffing structures, which limits their capacity and makes it difficult for them to provide accurate financial reports. LASPs have diverted some funds to cover operational costs, for which they simply have no regular income to be able to pay. How much overhead-cost should be allowed in the project budget depends in each context. In one UNDP country office, it was considered that this should not exceed 10% of the total project budget. ▸ **Consider making coordination a selection criterion.** It is important that LASPs coordinate their activities in order to ensure coverage of legal aid needs and facilitate referrals. The need for coordination might become even more vital in conflict-affected contexts in which ethnicity and political affiliation divide civil society, and where LASPs can be disinclined to work together, leading to competitiveness and mutual suspicion. ▸ **Consider only accepting proposals in hard copy, delivered by hand.** Requiring organizations to print and submit proposals can weed out less committed organizations who apply for any funding opportunity, regardless of their capacity. It also avoids providing contact details where organizations can contact staff directly and reduces the risk of being perceived as favoring or bending to the persistence of certain organizations.

53 See UNDP's Access to Justice Assessments in the Asia Pacific: A Review of Experiences and Tools from the Region (2012). Accessible at: http://asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/Democratic%20Governance/APRC-DG-2012-A2J_Assessments.pdf

Design project Design project matching legal aid needs to relevant providers: choose a mix of LASPs which can work together to provide comprehensive support.	**How to select proposals? How to create a project from these?**	▸ Adopt a functional approach. Use research findings to draft a list of legal needs and services needed to meet them. Determine the skills and competencies needed to provide those services effectively. Cross-check putatively strong proposals against the stakeholder mapping to ascertain whether LASPs can credibly claim to have the capacity to provide them effectively. ▸ Encourage specialization according to comparative advantage. LASPs sometimes try to obtain funding by promising to 'do everything'. Consider using capacity assessments and mapping to help to 'interpret' proposals, identifying where LASPs' comparative advantage lies, and encourage them to specialize: providing the one or two services that they are best placed to offer. ▸ Present selections at public meetings and in media. Publicly announce results and reasons why proposals were selected. This feedback is valuable for strengthening LASPs' proposal writing skills. Transparency also reduces risk of accusations of having fabricated a competitive process in order to support particular organizations. Especially in crisis-affected contexts in which civil society is often divided, levels of mistrust are high, poverty is extreme and competition for funding intense, resulting in additional pressures to demonstrate strict equality of opportunity. ▸ Support consultative stakeholder meetings prior to the implementation of the project. This is necessary to encourage local participation in all stages of the project, and ensure that communities understand which organizations have resources to support them to access justice.
Include a capacity development component	**How to ensure that small scale LASPs are able to scale up and provide quality legal aid services?**	▸ **Train LASPs on both substantive and organizational issues.** LASPs supported by UNDP-Sierra Leone benefited from a regular schedule of trainings, covering aspects of national and international human rights law, advocacy and communications skills, management and financial control systems, court monitoring and reporting, and how to engage with national and regional human rights commissions with capacity to strike out discriminatory legislation. ▸ **Dialogue with LASPs: obtain information to inform capacity development components for customary and statutory authorities.** Partners can learn from LASPs, who are the best source of real-time information about the pattern of legal needs on the ground and the challenges to achieving justice. LASPs can inform the development and 'fine tuning' of comprehensive programmes, providing up-to-date information about challenges and opportunities for addressing them. ▸ **Place UNVs with legal expertise in CSOs.** UNDP Niger found that placing UNVs with legal expertise in CSOs improves their performance.
Include coordination and collaboration component	**Getting LASPs used to competing for funding to see one another as partners, not adversaries, and work together.**	▸ **Make coordination an evaluation criterion.** Incentivize LASPs by monitoring and evaluating their coordination and collaboration patterns. ▸ **Design referral network.** Use research findings to organize a referral network for each area. Depending on the legal needs in each area, referral networks should include organizations providing: awareness raising, legal advice on relevant issues (e.g. fishing rights in coastal areas; contract rights in areas with seasonal employment; legal identity and resettlement in refugee camps), shelter, transport, medical and counseling services, representation at court, advocacy, etc. Consider developing Standard Operating Procedures for referral mechanisms. ▸ **Circulate referral lists.** A referral network can take shape around a simple list, comprising information about the names and contact details of LASPs, where they operate, and the services they provide. ▸ **Organize regular coordination workshops.** UNDP-Sierra Leone's LASPs meet quarterly to share information on progress with implementing work plans, and discuss challenges. The workshops have strengthened referral networks: LASPs are more inclined to contact a person with whom they have shared a conversation over coffee than a faceless name on a referral list. Ensure that LASPs located in very rural areas can attend meetings conducted centrally—e.g. by providing a transport stipend—or organize separate provincial workshops for each referral network.

		▸ **Organize brainstorming sessions with LASPs and law enforcement authorities.** In Malawi, paralegals, customary authorities, social welfare and law enforcement personnel participate in a monthly 'Court Users' Committee'. For the cost of some refreshments, the Committee has fostered stronger relationships, coordination and collaboration amongst these actors, as well as concrete initiatives that helped to transform access to justice in the country.
Include rigorous M&E framework.	**Verifying reported results where communications are poor, national data management systems are weak, and LASPs are operated hundreds of miles away, at the end of a poor road network.** Where LASPs are not held accountable for the funds they receive, there is an increased risk for corruption and mismanagement of funds. Some actually provide little or no legal aid. These unscrupulous organizations may be more common—and dangerous—in conflict-affected contexts, where they are often established by political-criminal groups to fund violence.	▸ **Conduct 'surprise' monitoring visits.** Efforts to physically travel cross-country to visit LASPs, speak to reported beneficiaries and see activities (e.g. legal awareness billboards or posters) have been well worth the effort: helping to identify reliable LASPs, and strengthen the performance of all by stimulating accountability. ▸ **Publish selected LASPs and grant amounts in media.** This simple measure has stimulated demand and accountability for legal aid service provision: communities knew which organizations had the resources to support them, and those organizations which were not funded knew where to refer clients. ▸ **Organize regular consultative meetings.** UNDP Sierra Leone established a 'Civil Society Consultative Forum' which meets monthly to discuss rule of law issues. Funded LASPs are required to report to the Forum on their activities, activating a 'peer review' mechanism which has turned competition amongst civil society from a vice to a virtue. In the Forum, LASPs probe any discrepancy between actual and reported conduct. Other members operating in the same community can—and have—publicly exposed CSOs which have not implemented activities specified in their proposals in the Forum. This 'peer review mechanism' provides an extremely effective additional extra check and balance. UNDP has found that, increasingly, LASPs are effectively 'self-policing'. ▸ **Provide one-to-one reporting support.** Grants should be delivered in installments, conditional upon receipt of satisfactory financial reports. Partner financial management processes are often difficult for LASPs to understand, and obtaining a satisfactory report can be immensely time-consuming and frustrating for all concerned. In addition to reporting workshops, physically sitting with LASPs' finance assistants during the first reporting cycle to show them how to complete the reports can be the easiest way to familiarize LASPs with relevant processes, and facilitate future payments processing.
Coordinate with partners.	**There are many different actors providing legal aid services.**	▸ **Consider inviting partners to coordination meetings.** Besides avoiding service duplication and gaps, their attendance can become a form of advocacy: explaining what legal aid service provision entails, persuading of its value, and convincing partners to support the establishment of a national legal aid system. UNDP Sierra Leone's coordination meetings are regularly attended by other UN agencies and partners, who appreciate the opportunity to learn, first hand, up-to-date information about legal challenges and opportunities from the people who experience them on a daily basis. This has strengthened information sharing and relationships between UNDP and these partners. Impressed with their commitment and passion, one agency sought UNDP's advice on how to implement an elections-related peace building project through LASPs.

Paralegal orienting witness and sureties at Court - Paralegal Advisory Service Institute, Malawi

CHAPTER 3

LEGAL AID SERVICE PROVISION AND INFORMAL JUSTICE SYSTEMS

CHAPTER 3

3.1 Introduction

This guide takes a comprehensive approach to legal aid service provision involving all dimensions of access to justice for the poor and for populations vulnerable to rights violations (including deprivation of economic and social rights and access to basic, poverty-reducing services), such as marginalized and excluded communities, women, children, those in conflict with the law, and those in crisis-affected contexts.

Rights violations are especially common amongst these groups because they cannot access formal justice institutions, which hold perpetrators accountable for their crimes and which can settle their disputes and help them claim their rights. Especially in crisis-affected settings, this is partly because those institutions either do not exist, or lack capacity. In all developing contexts, it is also because they cannot access them.

They cannot access them precisely because they are marginalized. They often do not know that they have rights, and cannot afford long journeys from their rural villages to the urban centres where the lawyers and state authorities that enforce them are located. They cannot afford the fees often charged for legal services or administrative costs, do not speak the languages in which the processes are administered, or understand the logic behind complex, legalistic, and delayed processes. In many cases, even people who might be able to muster sufficient money, time, and energy simply do not want to access them. They choose to meet their needs—legal and otherwise—in their own communities. The majority of marginalized communities' legal needs pertain to civil and minor criminal cases which can be resolved—and which people want to resolve—at the local level through various informal justice processes – including community-based and traditional systems.[54]

Community Dialogue: UNDP South Sudan

This chapter explores engagement with informal justice systems (IJS) in the context of legal aid service provision in Africa. UNDP employs a relatively broad understanding of 'informal justice systems' encompassing the resolution of disputes and the regulation of conduct by adjudication or the assistance of a neutral third party that is not a part of the judiciary as established by law and/or whose substantive, procedural or structural foundation is not primarily based on statutory law. In some settings, the word 'informal' may carry value-laden assessments, according to which a system may be held in lower esteem because of the 'informal' label. No such value judgments are intended. It is used rather than the term 'non-state' justice system, as there are many forms of IJS that are tolerated, partially state-linked or recognized along the formal-informal continuum. For example, customary courts or local courts are categorized as IJS, but are

54 Until recently, informal justice systems (IJS) were relatively invisible in development partner-assisted justice interventions. Yet, IJS form a key part of individuals' and communities' experience of justice and the rule of law, with over 80 percent of disputes resolved through informal justice mechanisms in some countries. IJS may be more accessible than formal mechanisms and may have the potential to provide quick, relatively inexpensive and culturally relevant remedies.

sometimes regulated under specific legislation, have a state-determined procedure for appointments, and may be attached to the judiciary.[55]

IJS can be anchored in different structures, such as: i) tribal/clan social structures, ii) religious authorities, iii) local administrative authorities, iv) specially constituted state customary courts, and v) community forums specially trained in conflict resolution, particularly in mediation. IJS also encompass systems that might have formal state recognition, such as alternative dispute resolution (ADR) that operate at the community level, either facilitated by traditional mechanisms or facilitated by CSOs. Informal systems operate at the community and sub-regional or district level. In any given context, there are always a number of different linkages, of varying strengths and effectives, between and amongst various formal and informal systems and their constituent actors (police, judges, Chiefs, lawyers etc.).

To assist people in accessing justice at the community level, LASPs in the context of Africa engage with and are an integral part of the following informal justice mechanisms, which are the focus of this chapter:

- 'Traditional dispute resolution' (TDR): typically operated by Chieftaincy systems of authority applying customary law with roots in pre-colonial history.
- 'Alternative dispute resolution' (ADR): typically a form of mediation or arbitration conducted by LASPs.

3.2 Understanding traditional dispute resolution

The Chieftaincy system is the most legitimate system of authority in Africa's rural areas. For most marginalized communities in Africa, TDR is not an alternative system or an option; it is *the* justice system, and the *only* option. 'TDR' is a commonly used, but unsatisfactory term. 'Traditional' can be interpreted as implying that customary practice is 'stuck in time' and impervious to change. Yet these systems have survived the test of time and are valued today as accessible, effective, and fundamentally just means of resolving disputes—precisely because they do adapt to changing social conditions.[56] Customary authorities, customary law and practices are also terms used throughout this guide. TDR mechanisms are relevant for people's pursuit of justice because of their cultural proximity, but also for the role they play in maintaining harmony and stability within the community. This can be of particular importance for fragile and conflict-affected settings, where statutory justice institutions may be weakened (see Box 8).

55 See UNDP, UNICEF, UN Women's Informal Justice Systems: Charting a Course for Human Rights-based Engagement (2012). Accessible at: http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf

56 'Customary law' would seem to be more acceptable, but has a quite specific meaning in the context of international law, which might lead observers to suppose that all African communities have identical jurisdiction, and adjudicate cases according to the same rules. They do not.

Box 8: Importance of traditional dispute resolution mechanisms in conflict-affected and fragile settings

Traditional dispute resolution (TDR) and other forms of informal justice can have a particular important role to play in conflict or post-conflict contexts, where capacity of statutory justice institutions may be severely weakened, and where lingering disputes might ignite new outbursts of violence or disputes in fragile situations. Informal justice provides an alternative to violence as a means of settling disputes until efforts to strengthen the capacity and credibility of statutory justice bear fruit. Diversion is particularly relevant in conflict-affected contexts. ADR and TDR can also support transitional justice without aggravating peace building processes. They satisfy victims' need to express their grievance and have their suffering acknowledged, and enable perpetrators to understand how they have harmed others, and to receive forgiveness for wrongdoing. This process can promote peace by healing the sense of 'unworthiness' and ostracism that perpetuates socially destructive behavior. The importance of the role traditional dispute resolution mechanisms play is predicated on the position of traditional leaders and the authority they represent, and how local justice systems reflect on commonly shared norms, values and practices within the community. A conflict can affect the position of customary authorities, and therefore the potential reconciliatory and stabilizing role played by traditional dispute resolution. Chiefs and Elders flee or are killed in conflict. Belief in such power is often a key source of reverence for their authority, respect for customary law, and adherence to TDR settlements. Common crimes in conflict-affected contexts—such as rape and murder—are often predicated on the breakdown of customary norms and social order.

In the post-conflict setting of Burundi, for example, the Bashingantahe, an institution of local leaders comprising both men and women, has been instrumental in preventing and resolving conflict peacefully by handling disputes, such as land issues, instead of resorting to formal justice. Numerous cases have been handled and thus channeled away from a clogged formal justice system. According to the National Council of the Bashingantahe, at least 70% of all decisions are upheld.

TDR varies widely between African countries and within each country, and sometimes even within communities of a shared sub-region or locality. There are various factors that influence the preference of people for use of informal justice systems, particularly TDR, which are explored here at a generalized level:

- **Local:** Disputes are resolved in the community: under a specific tree, in a Chief's home, or hut reserved for dispute resolution. Communities might have a habit of relying on IJS, and these also might be the most obvious dispute resolution mechanisms since they are bound to local power structures/relations based on affinity.
- **Relatively inexpensive:** Chiefs normally charge a fee for their services (which may be paid in kind). Though far cheaper than the list of charges, fees and bribes often entailed by pursuing statutory justice, many cannot afford to pay. Additionally, as they are located close to the community, the costs of travel and accommodation involved in going to urban centres to seek out formal justice processes will not be incurred. However, TDRs are not cost-free. Women are especially reluctant to borrow money in the expectation that they will be awarded compensation: in a dispute between a man and a woman, it is uncommon for a Chief to find in favour of a woman. Secondly, Chiefs often levy relatively significant fines.

- **Non-confrontational:** The process does not 'pit' disputants against one another in a verbal 'fight' to establish who is right or wrong. It is pragmatic, aiming to establish how matters can be settled.
- **Participatory:** Disputants give their perspective on the nature of the dispute, in their own language and in their own time. Issues are discussed at length, and other community members may contribute. This helps to establish the root cause of disputes, and engenders social pressure to 'enforce' what is essentially a voluntary agreement.
- **Arbitration:** After calling upon disputants to give their version of events, and inviting third parties to give additional perspectives, Chiefs reach a decision, which the parties must then accept. However, since there is no enforcement mechanism other than the parties' commitment to implement the settlement— coupled with social pressure and respect for Chiefs' authority— its terms tend to reflect a compromise of interests that both parties find fair and acceptable. These outcomes of arbitration can have a high degree of legitimacy since they are usually in accordance to local community-held values.
- **Restorative:** Disputes generate animosity, which threatens to disrupt the communal 'insurance network' that supports lives and livelihoods in poor communities. TDR aims to dissipate this animosity in order to restore harmony. It places an emphasis on restoration and reconciliation, in contrast to a more punitive logic within the formal justice system.
- **Flexible:** TDR aims above all to restore the perpetrator to a productive, peaceful relationship to society. For this purpose, it is flexible to circumstance: dialogue aims to establish the nuances of each case, identify the reason for the infraction, and a feasible, fair settlement which is responsive to the circumstances of both disputants. Flexibility is necessary to avoid generating 'secondary' grievances over the insensitivity or unfairness of remedies. For example, a person who steals a plantain may be deemed culpable for theft, but if s/he was hungry due to poverty, then the incident is not considered to be theft.
- **Awards compensation:** Punishment risks generating resentment, which perpetuates animosity between disputants. TDR favours non-punitive settlements limited to acknowledgement of wrongdoing, apology and compensation (which may be in-kind). These help the victim without placing an unreasonable burden on the offender and his innocent family. Compensation is often regarded as essential to restoring social harmony.
- **Legitimate:** TDR settlements are often regarded as more satisfactory than those imposed by courts. Apology is valued as a means of restoring lost dignity, while compensation helps to cover loss of earnings, medical or other services required as a result of the crime. By contrast, statutory imprisonment in over-crowded, unsanitary conditions can be regarded as too harsh a punishment for the perpetrator; a form of 'collective punishment' for the family and community deprived of the support of his labour; and simply unhelpful. Norms, rules and procedures are usually in accordance with cultural, religious, customary beliefs and practices.

IJS including TDR, also share similar persistent limitations and challenges which are outlined in general here:

- **Limited jurisdiction:** Those African constitutions which recognise customary law, limit its jurisdiction to civil, family and petty criminal cases. Customary authorities regularly over-reach these limits, handling rape and other serious crimes, which should be processed in the formal justice system. This is sometimes because they are unaware of these limits, other times because they see customary practices as more appropriate for restoring family and community harmony, especially in cases relating to women and children, or because statutory institutions are simply unavailable, and disputants request the Chief to intervene.

- **Tension between customary norms and practice on the one hand, and national and international law, on the other:** TDR does not always respect parties' procedural and substantive rights as defined by international and, in many cases also national law— especially those of women, children, persons living with disabilities, and members of ethnic/tribal minorities. TDR processes sometimes deny women the right to speak during proceedings and use 'harmful traditional practices' such as 'trial by ordeal' (including some forms of torture) and female genital mutilation/cutting. Outcomes are sometimes arbitrary and violate human rights. Regardless of the facts of the matter, chiefs will often refuse to find in favour of a woman or child, or take their best interests into account. Chiefs sometimes find in favour of disputants to whom they are related, or who are connected to powerful local personalities. Consequently, the 'harmony' preserved by TDR is often based on an unjust social order. Disputants are sometimes pressured into accepting an outcome which violates their rights in order to preserve a discriminatory status quo. For a more thorough review of the human rights challenges concerning informal justice systems, Country Offices should consult UNDP, UN Women and UNICEF, Informal Justice Systems: Charting a Course For Human Rights-Based Engagement.[57]

Box 9: An UNDP country example from Guinea Bissau

Access to justice problem addressed

A large part of Guinea Bissau's legal landscape is neither well understood nor recognized by the state: the majority of disputes are resolved according to custom, yet the legal status of custom and TDR is not clear. The Constitution does not recognize custom as a source of law, but the law of Sector Courts—courts of first instance for minor cases—provides that customary law should be used for mediating cases.

Background

Guinea Bissau's justice reform and constitutional revision processes provide an opportunity to foster the emergence of a unitary national justice system. UNDP's Rule of Law and Security Sector Programme aimed to strengthen the relationship between the two systems. UNDP first conducted an assessment aiming to *ascertain*:

- Substantive and procedural customary law in both civil and criminal cases.
- Whether there exists any practices used so regularly as to be considered customary norms, and what these are (to identify possible compatibilities with statutory law).
- Strengths and weaknesses of civil and criminal practices in customary systems.
- The reasons for lack of trust and mutual perceptions of illegitimacy between customary and statutory systems.
- The status of women in customary processes, using the following measures:
  - Access to, performance and succession in traditional power structures.
  - Access, use and participation in conflict resolution mechanisms.
  - Treatment of major crimes whose victims are women (e.g. domestic violence, rape, or female genital circumcision).

57 See p. 90-97. See http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf

Approach taken

1. Establish project coordination team: Study developed in partnership with a law faculty and respected think tank linked to the university.
2. Establish data collection teams: Researchers and law students selected and trained. The research teams were interdisciplinary, as the research was both anthropological and legal: it aimed to understand the *social* norms which communities use to *resolve disputes*.
3. Develop surveys: 11 different types of survey targeting six main ethnic groups in 50 different regions of the country. The surveys were comprehensive and relate to customary practices on criminal, family, inheritance, land and property issues, and the status of women in relation to different types of offences.
4. Devise data collection plan: Select data collection locations and prepare logistics plan.
5. Collect, analyze and validate data.
6. Development of comparative matrix of customary law and national law: The research yielded a clear set of customary norms, presented in a matrix alongside equivalent or similar national laws. The comparison table between customary and statutory norms supports evidence on legislative reforms to harmonize laws, and to clarify what is legal under customary law.
7. Disseminate results and conduct public debates: A considerable length of time has been allocated to public debate, given the sensitivity of interventions in customary law.
8. Support legislative revision: It is expected that the public debates will support constitutional revision to recognize custom, followed by efforts to incorporate customary norms in civil and criminal codes.
9. Support institutional interface mechanisms: Evidence-based legislative reform may enable institutional interface mechanisms such as:
    - Appeals procedures: from customary to statutory mechanisms.
    - Diversion procedures: from statutory to customary mechanisms.
    - Efforts to integrate national and international laws into customary practice, building on existing, protective customary norms.
    - Sensitisation and training of Sector Courts judges (some are laypeople) to understand and properly apply customary law.
    - Efforts to provide a voice for women in customary proceedings.
      stablish mechanisms to monitor customary practice.

Challenges experienced

Under-estimating time, cost, and logistical challenges: Identifying and training enough researchers with the relevant language skills and legal background, who were willing to go to the field for a prolonged period of time was time-consuming, and difficulties related to travelling to the field during the rainy season were not foreseen. Translating data from thousands of questionnaires into a legal perspective was far more onerous and complex than anticipated.

Recommendations

Be patient, persistent and flexible: Do not underestimate the complexity of quality TDR assessments. Challenges are inevitable, the work does not yield quick results, and impact is visible only in the long-term. This study lasted more than 18 months; exceptional in an institutional environment which emphasizes quick wins and immediate results.

Build community trust: Especially in remote areas in which difficult histories have led to distrust of outsiders, successful assessments are a function of community trust.

Consider partnering with a law faculty and research institute. In Guinea Bissau, this partnership brought complementary legal and anthropological expertise to the work.

Involve government to foster ownership and evidence-based legislative changes, as well as to ascertain state perspectives of customary practice.

3.3 Engagement with traditional dispute resolution mechanisms

UNDP aims to promote systemic changes in the human rights and gender equality landscape in Africa and engaging with TDR and other IJS can also pose a challenge in this regard. Compliance with human rights standards, especially where the existence of discriminatory social norms might exacerbate exclusion and marginalization of vulnerable groups, such as women, minorities and children is a concern with many TDR. Apart from substantive concerns (the existence of normative rules that protect the vulnerable), working with TDR also poses structural (participation of vulnerable groups in informal justice mechanisms) and procedural (equality and fairness of TDR rules and procedures) challenges. Even so, TDR and other informal systems may still be best placed to achieve the principles of impartiality, accountability, participation and protection of substantive human rights for many groups and communities. In addition, formal justice systems in many contexts also have substantial challenges with human rights compliance.

It is critical to note that although providing accessible justice is a state obligation under international human rights standards, this obligation does not require that all justice be provided through formal justice systems. If done in ways that respect and uphold human rights, the provision of justice through TDR can enhance the fulfilment of human rights obligations by delivering accessible justice to individuals and communities where the formal justice system does not have the capacity or geographical reach.[58]

Accordingly, a need exists for UNDP in many African contexts to support comprehensive programmes addressing the capacity deficits and discriminatory social norms, which underpin injustice and abuse in both formal and informal justice systems.

Before attempting to engage with TDRs, UNDP and its partners should commit to the following principles in particular:

- **Do no harm:** Beware of the sensitivity of TDR engagement. Customary practice is nuanced and complex. It varies in important ways from place to place – both between countries and within them. Influencing it is a delicate undertaking, which should be made on the basis of a thorough assessment.
  Programming without this assessment is reckless, and carries a substantial risk of doing harm. Some attempts to harmonise customary and statutory practices have undermined the positive attributes of

58 UNDP- UNICEF-UNWomen- (2012). Informal Justice Systems. Charting a Course for Human Rights-Based Engagement, p. 9.

TDR, resulting in their being 'abandoned' by communities who used to value them as voluntary, participatory and consensus-oriented dispute resolution forums. In crisis-affected contexts—in which customary authorities often play a key role in calming tensions—under-informed TDR interventions risk threatening stability.

> *"Influencing customary practice should be made on the basis of a thorough assessment to avoid the risk of doing harm, and requires a commitment over the long term."*

- **Be patient:** Commit over the long-term. Customary practice is complex and intricately woven with political and religious authority, and patterns of social and family life. Efforts to harmonise customary and statutory justice entail fundamental changes in the way that authority is exercised in a country. 'Key hole' interventions aiming simply to harmonise TDR with human rights standards will not be possible. It is almost inevitable that such interventions will provoke unintended consequences. Partners need to be committed over the long-term to respond to such consequences, which may not manifest within a programme cycle.

In terms of programmatic engagement, there are a range of programming interventions that have proven to assist in increasing access to justice through informal justice systems.[59] They include:

- State law reform processes to enhance compliance with international human rights guarantees
- Selection of adjudicators
- Education of adjudicators
- Education of users – e.g., legal awareness-raising
- Procedural regulation and self-regulation
- Accountability mechanisms: transparency, monitoring and oversight
- Linkages among primary justice providers
- Linkages to paralegals and legal aid service providers
- Linkages to wider development initiatives

Key practices and major challenges with engagement with TDR mechanisms in the context of LASPs programming are further outlined in Table 3. For a fuller exploration of these programming areas, Country Offices should also consult the UNDP, UNICEF, UNWomen (2012). *Informal Justice Systems. Charting a Course for Human Rights-Based Engagement.*

59 For a more extensive elaboration on these programming interventions, please see: http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Informal-Justice-Systems-Charting-a-Course-for-Human-Rights-Based-Engagement.pdf

Table 3: How to engage with TDR mechanisms in the context of legal aid programming? Common challenges and promising practices to address these

Programme element	Challenges	Promising practices
Conduct assessments Detailed assessments facilitate design of relevant and effective interventions which avoid doing harm. Assessments can furthermore serve the purpose of deepening the understanding of customary practices. Legal aid service providers, who are present in communities throughout the country, can play a key role in conducting the assessment.	**Some assessments have resulted in customary justice systems being abandoned by communities. How to avoid inadvertently 'doing harm' to TDR mechanisms by assessing them?**	▸ **Consider ascertaining, not codifying, customary practice.** Some assessments have done harm by attempting to 'codify' customary law. Codification is the process of turning something into codified law (i.e. customary laws become legislated as statutes). Codification results in a uniform set of standards and sanctions. It appears to be a good way to reduce arbitrariness, but beware: it risks distorting aspects of TDR which communities value. These include using dialogue to establish the nuances of each case, identifying the reason for the infraction, and determining a feasible and fair settlement responsive to the circumstances of both disputants. TDR aims above all to restore the perpetrator to a productive, peaceful relationship to society, and its *flexibility* to circumstance if necessary avoids generating 'secondary' grievances over the insensitivity or unfairness of the remedy. TDR practices are also constantly evolving and this flexibility of the system is often jeopardized through codification efforts, which curtail the process through which cultural practices and norms are adapted and changed over time. An alternative is 'ascertainment', which seeks to find out, in a spirit of inquiry, what TDR mechanisms do, and how they work (e.g. what is the jurisdiction of TDR mechanisms? how do they handle cases: what are the customary procedures? how these have changed over time—particularly after conflict—and what is the current status of the law).
	Detailed assessments take a very long time and are expensive.	▸ **Do joint assessments.** Assessments conducted jointly with other partners will reduce costs and provide a first step to a joint programme. Being prepared to commit over the long-term applies to the assessment stage too: TDR assessments of the quality and detail needed are simply not going to be quick – but they are worth it. UNDP Guinea Bissau's TDR assessment took more than 18 months to complete, but did not just inform programme design. It generated the interest and commitment of traditional authorities, government, and the donor community to engage in a process to foster the emergence of a more coherent national justice system, and it also provided substantive content for that process. In other words, the assessment did not just precede the programme, it *became* the programme. Realizing its value, other donors were keen to support the latter stages of the assessment, the process, and the programme. ▸ **Ask local governance programmes to partner and contribute funds.** Objectives under the rubric of 'local governance' or local development—such as state building, promoting state legitimacy and responsiveness at the local levels—are major international policy agendas, which command large donor budgets. Legal aid service provision supports such objectives by bridging the divide that often exist between 'state' and 'society', the government and its people in Africa. Engaging local governance programmes will share the cost of the assessment, and promote progress towards their programmatic objectives, and promote more integrated Country Office programming. UNDP Guinea Bissau's assessment resulted in a process to enshrine customary principles in national laws. In other words, the UNDP Guinea Bissau justice assessment promoted the overarching democratic governance objective of the major donors: a legitimate state which embodies indigenous values and responds to popular expectations. (See Box 9). ▸ **Ask Regional Programmes to promote sub-regional assessments.** There are often similarities between many of the customary systems operating within sub-regions of Africa. Such sub-regions also face similar access to justice and rule of law challenges. There is scope for UNDP Regional Programmes and Regional Organizations to support the organization of joint assessments involving several Country Offices, significantly reducing costs for each.
	How to design an assessment that yields practical information to inform programming?	▸ **Keep the objective in mind.** If the assessment is intended as a tool to support interface mechanisms between state law and customary law, tailoring the process tightly around that will ensure that data obtained is strictly relevant.

		▸ **Look for customary norms that correspond with human rights standards.** Introducing unfamiliar laws, concepts and norms rarely succeeds in getting people to change their behavior. Experience shows that more successful approaches identify customary norms that correspond with human rights standards, and conduct dialogues exploring how to build on them. Communities' social, tribal, or religious codes often comprise norms that protect rights and promote harmony based on mutual respect. Identifying them facilitates initiatives that promote social harmony and can support dialogues and other initiatives, which do not attempt the notoriously difficult task of getting people to adopt new social codes, but to remember old, familiar habits and values. ▸ **Look for existing connections between customary and statutory institutions.** The easiest way to support a unitary justice system is to build on existing linkages. An assessment, which reveals these linkages, provides the concrete 'starting blocks' for programming. Customary and statutory systems of authority are often connected in a mixture of formal and informal ways. A number of African jurisdictions acknowledge the authority of TDR mechanisms to handle certain types of cases (usually family and civil); some even institute courts applying customary law as courts of first instance. Links can also be informal: for example, police sometimes refer cases to Chiefs, or ask them to assist with apprehending suspects and obtaining evidence.
Support legislation Where the statutory justice system does not recognize customary practice, establishing institutional links between the two systems is very challenging.	**There is no recognition in laws or policies of customary or alternative practices for dispute resolution.**	▸ **Advocate for, and provide technical inputs to legislative drafting process.** Supportive legislation could: • Grant TDR jurisdiction to handle those cases it handles well—often, civil, family, and petty criminal cases. • Require TDR to comply with national law, non-discrimination principles, and setting limits on *how* cases are adjudicated (e.g. ban corporal punishment, trying a person under duress). • Incorporate customary TDR norms in civil and penal codes. For example, in Eritrea, magistrates in local courts (which are ordinary courts of first instance in the statutory system) are trained to resolve cases using participatory, consensus-oriented techniques similar to those used by elders. Where they feel that it is possible to reach a settlement, they suspend normal court procedures. ▸ **Support legal aid service providers to conduct advocacy.** Legal aid service providers in Africa both provide services to individuals, and support large-scale legal reform through advocacy, including social mobilization and policy dialogue.
Conduct capacity development Familiarizing customary authorities with national laws, international standards, and human rights principles can strengthen customary practices. LASPs, who speak local languages, understand and respect the role of TDR, are well placed to lead such processes. Where traditional leaders are uncomfortable with legal professionals, or feel that their authority is threatened, LASPs can ensure that information is not rejected as the imposition of 'outsiders'.	**Lack of awareness among customary authorities of national and international standards.**	▸ **Conduct dialogues, not trainings.** Prescriptive trainings telling Chiefs what to do have backfired. Exploratory dialogues aiming to identify common ground between statutory and customary law and ascertain how Chiefs are willing to build on them have been effective. Such dialogues were supported by UNDP in Liberia; where relations between customary and statutory authorities have been described as 'acrimonious'. They resulted in the National Traditional Council accepting the recent law allowing women in traditional marriages to claim property rights. Recognizing that the divisions between the two systems reflect an urban-rural divide that goes back to the country's founding, UNDP held the first dialogue in Bong County – a rural Liberian district. Notwithstanding its distance across poor roads from the capital Monrovia, this 'consultative forum' was attended by the H.E President Ellen Johnson-Sirleaf, the Ministers of Justice and Internal Affairs, dignitaries from the Supreme Court and Senate, as well as the head and members of the National Traditional Council. The dialogue was accompanied by a legal review process conducted by a 'Legal Working Group' to explore means of 'harmonizing' the two systems legally. In northern Uganda, UNDP supported the Association of Women Lawyers in Uganda (FIDA-U) in enhancing access to justice for women in a post-conflict setting through community dialogues with local cultural leaders. Even though sexual and gender-based violence (SGBV) is a criminal offence to be dealt with by the criminal justice system, most cases were handled in community structures. The traditional chiefs often apply cultural norms, which do not always measure up to international human rights standards on the rights of women. For example, perpetrators of crimes may be made to pay small reparations and no criminal prosecution pursued. To this end, at the invitation of the cultural leaders of the *Ker Kwaro Acholi*, FIDA-U initiated a series of community dialogues to explore ways of addressing the increased incidence of violence against women in the region.

		These community dialogues were based on documenting and examining existing practices of SGBV, and juxtaposing the cultural approaches taken in addressing these cases to international standards in CEDAW, the national constitution and the recently enacted Domestic Violence Act. A set of guidelines were developed on accepted cultural norms based on internationally accepted standards of women's rights. The *Ker Kwaro Acholi* is using these guidelines to resolve domestic disputes and there have already been some positive outcomes. For instance, recently, there have been cases of widows' land rights being protected, while some widows have been given access to customary land.[60] ▸ **Combine bi-lateral dialogues with multi-lateral processes involving community members.** Community participation in some dialogues can help to put pressure on customary authorities to end abusive practices, and to hold them accountable for any commitments they make. In Sierra Leone, dialogues resulted in the signing of MoUs ending under-aged circumcision in two districts. ▸ **Set aside a big window of time for dialogue meetings.** UNICEF Sierra Leone supported a dialogue between customary chiefs and the police Family Support Unit to improve the adjudication of rape cases. The first hour of the meeting was quite acrimonious: both parties needed time to vent their frustrations. After that, they were able to strategize, reached an understanding about how better to process rape cases, and developed an MOU. ▸ **Consider supporting record keeping and case management:** Training community members to take notes and keep records of TDR processes could improve the predictability and accountability of TDR and would assist with appeals in the statutory system (where relevant mechanisms exist).
Support referral mechanisms Referral mechanisms enable customary authorities to refer cases to statutory courts, and empower police and magistrates to divert relevant cases to TDR mechanisms.	**Institutional links are weak: referral mechanisms exist, but institutional links are so weak that they do not work in practice.**	▸ **Support legal aid boards to institute referral mechanisms.** Legal aid boards can advocate for and support the establishment of formal referral mechanisms, with enabling legislation, policies and directives. ▸ **Establish legal clinics in which both chiefs and lawyers have offices or desks.** In Eastern Chad, the relationship between customary and statutory systems was characterized by competition: each wanted space to exercise its power and was mistrustful of the other. To promote collaboration, UNDP established legal aid clinics, which provide a link between chiefs and lawyers. The clinics acknowledge TDR as the 'first port of call' for all but the most serious cases. If cases are not resolved here, chiefs pass the case to lawyers at the legal aid clinic. ▸ **Involve LASPs in referrals.** Trained in aspects of the statutory justice system but coming from the communities in which they serve, paralegals are familiar with customary and statutory justice systems. They can act as 'human bridge' connecting each, helping them to function as unitary system by physically referring cases between them: facilitating access to the statutory system by referring cases to a lawyer, and working with police and courts to divert minor cases to TDR/ADR mechanisms. By making referral happen where institutional connections are weak, LASPs are the referral mechanism.
Strengthen monitoring and accountability mechanisms Monitoring and accountability mechanisms could check abuse in TDR mechanisms. Legal aid service provision plays a key role in this process.	**Oversight mechanisms are not in place to ensure accountability of customary systems.**	▸ **Support customary authorities to form internal systems of governance.** National Traditional Councils or similar mechanisms—of which all Chiefs are member—can decide whether to change customary practice or how to align it with human rights standards; refine a code of ethics; elaborate fee and fine guidelines or tariffs; provide training on mediation techniques, referral skills, human rights, gender awareness, and statutory limitations. Such Councils can also establish mechanisms wherein Chiefs who violate the code are held accountable to their peers; potentially by operating a Customary Law Commission or Ombudsman's Office that receives complaints, investigates alleged misconduct, and monitors compliance with any agreed standards. Additionally, governance structures of TDRs could be encouraged to be more inclusive and representative of the communities including encouraging increased participation of women in their structures.

60 UNDP (2013). Rule of law and access to justice in Eastern and Southern Africa. Showcasing innovations and good practices, p. 102-103.

		‣ **Support Law Commissions, Ombudspersons, or other institutions, which support accountability in the ordinary courts to revise their mandate and procedures in order to process complaints and monitor violations in TDR fora.** Under the African Charter on Human and People's' Rights (1987), customary authorities are also bound to respect the right to a fair trial. The legal authority of human rights instruments, as well as new constitutions on the continent could be used to advocate for statutory oversight mechanisms to expand their remit to cover TDR mechanisms. In Sierra Leone, Customary Law Officers check corrupt practices or malpractice in these courts. Although over-stretched (3 Officers monitor 28 courts, and they double as state prosecutors), LASPs have been able to invoke their authority to overturn unjustifiably heavy fines that customary courts often levy on indigent persons. ‣ **Support LASPs to conduct independent monitoring.** LASPs' independent monitoring of customary (and statutory authorities) has incentivized Chiefs to observe human rights. Some have reported that the presence of LASPs and their demands that unjust decisions are reversed or threating of litigation has been an incentive for fairer decision-making. Paralegals can compile monitoring reports listing derogations for the attention of Ombudspersons, Law Commissioners, legal aid boards and treaty bodies. Reports compiling individual derogations from due process reveal patterns of violations, which can support capacity development initiatives.

3.4 Legal Aid Service Providers (LASPs) and alternative dispute resolution

In addition to legal aid services for formal justice processes, LASPs often are involved in Alternative Dispute Resolution (ADR) process – either as mediators themselves or in supporting their clients in formal ADR mechanisms. ADR refers to processes that are available for the resolution of disputes outside the formal courts of justice. ADR typically employs mediation or arbitration, but also includes other forms such as conciliation and restorative justice measures. Mediation involves a third-party intervention (the mediator or a panel of mediators) in which the disputing parties meet and negotiate face-to-face and where the mediator may advise on, or determine the process of, mediation. In most cases, mediation is based on consent of the parties to the process by the parties and agreement on the settlement. Arbitration is a simplified version of a trial involving less strict rules of evidence. Decisions made in arbitration hearings are usually binding, even if the disputing parties don't agree with them.[61]

Most LASPs mediate disputes, usually through paralegals or mediation committees composed of trained, supervised, monitored and supported mediators; many of whom are women, most of whom are volunteers. Mediation is primarily used to resolve minor civil, family, and criminal cases. 'Child panels' that mediate conflicts involving children are composed of teachers, traditional leaders, and other authority figures concerned with children's welfare.

Mediation is usually free of charge, local, and voluntary. Both parties have to agree to the mediation, and both parties have to agree to a settlement. It is often available immediately, conducted in a familiar environment, and is confidential. Disputants also often talk to the mediator alone, in confidence, outside the mediation sessions. Mediators usually cannot be called as witnesses by courts, and though the outcome of the mediation may be shared with third parties, details of the process are not.

61 UNDP (2005). Programming for Justice: Access for All, p. 108. See http://www.unrol.org/files/Justice_Guides_ProgrammingForJustice-AccessForAll.pdf

Box 10: Village Mediation Project – Malawi and Sierra Leone

Access to justice problem addressed
Lack of capacity to make use of national legislation which allows for diversion to community-based mediation committees.

Background
The Village Mediation Programme (VMP) is a village-based diversion and mediation scheme currently implemented by PASI in Malawi and TIMAP in Sierra Leone. VMP's *diversion focus* is highly innovative.

Approach taken
Paralegals supervise, train and mentor village mediators, and act as the principal link between the statutory justice system, making each of these linkages work in practice:

Referral from mediation committees to Chiefs and Courts:

- Mediators advise parties if their dispute is suitable for resolution through mediation. If not—or if the mediation fails—VMP advises and supports parties to take the matter to Chiefs or courts.
- The Mediation Settlement—in which the terms of the settlement are written down and signed by the disputant and mediator—is a legally binding contract. If a signatory reneges on agreements made in the Settlement, VMP supports the aggrieved party to take the matter to court to enforce its terms.

Diversion from courts to mediation committees:

- Court procedure in Malawi encourages dispute resolution outside the court through mediation: Magistrates' Courts often request VMP to support diversion.
- Police refer cases to the VMP.
- Prisons refer cases to VMP: subject to the agreement of parties to an offence, remand prisoners may be granted bail to attend a mediation.
- Outcomes of diverted cases are reported to the police or court: this removes risk of impunity for diverted cases not successfully resolved in VMP.

Lessons learned
The success of the model turns on paralegals' support. Paralegals supervise, train and mentor village mediators, and act as the principal link between the statutory justice system: building police and courts' confidence in diversion as a credible alternative to court proceedings, and supervising the diversion process.

Mediation is dialogue-based and non-confrontational. The process is highly participatory, and usually empowering. High quality mediators strive for all parties—men, women, and children— to have an equal opportunity to speak freely, in their own languages, and to be heard. The ideal outcome is a settlement, which respects the rights of all parties, and is limited to apology and compensation (which may be in kind).

Disputants reach a mutual agreement of their own accord: since they are responsible for observing its terms, they must freely accept it. Good mediators are neutral: they do not judge what is said, influence adversaries to

Box 11: An UNDP country example from Ghana –Community Mediation Committees

Access to justice problem addressed
Ghana's statutory legal system is often inaccessible, and TDR mechanisms do not always respect rights. A community-based alternative combining respect for human rights as well as participatory, restorative justice principles is needed.

Background
Ghana's Legal Aid Scheme was established in 1997, but barely functioned. UNDP supported the government to identify affordable means of revitalizing the Scheme.

Approach taken
UNDP supported the establishment of a national network of 29 community mediation committees (CMCs), managed by an ADR Secretariat as part of Ghana's Legal Aid Scheme.

The CMCs broker agreements in civil and minor criminal cases. As a de jure justice forum of first instance for such cases, they handle 80-90% of all cases in the country. CMC mediations enjoy a success rate of over 60%.

The CMCs are run by national service personnel- recent graduates required to provide voluntary service for one year. The 'volunteers' receive small stipends to return to their communities following graduation. Though young, they are respected because of their education. UNDP also works with customary leaders to explain what ADR is, how CMCs work, and to solicit their support. Their endorsement creates a platform for community members to use their services. The Secretariat also trains judges and prosecutors on the role and value of alternative sentencing, and how they can divert sentences to CMCs.

UNDP trains new recruits in accordance with standard guidelines codified in a national practice manual. Throughout their tenure, the mediators are supported by the Legal Aid Scheme, which places lawyers or experienced mediators at their disposal to provide advice, direction, and to take up more complex cases. The Legal Aid Scheme Head Office conducts monitoring visits at each CMC twice a year. Monitors solicit feedback from mediators, and meet 'mediatees' to find out whether they have benefited from CMC services.

Recommendations
Encourage government ownership of consultative processes. The CMCs were established as part of an inclusive, consultative process. While UNDP established this process, national counterparts took ownership of it, absorbing the scheme completely, and institutionalising it through an ADR Bill, and a Court Act, which makes mediation a mandatory 'first step' for civil and minor criminal cases.

Support development of a professional framework. Ghana sought to prevent mediation from being regarded as 'poor man's justice' by establishing an ADR Secretariat to train, register, monitor and evaluate mediators, to ensure that their conduct conforms to guidelines.

accept a settlement, or impose one. Their role is to help disputants to reach an agreement which is acceptable to each of them, reflects a compromise of interests, and respects their rights.

ADR is often connected to both statutory and customary justice through formal referral mechanisms supported by legislation and policy, or simply the human links created by paralegals that refer cases. Mediators actively promote such linkages. Their work is often contingent upon positive relationships with traditional authorities, and they work hard to foster these. They also work with police and courts: referring cases that mediation cannot resolve, and receiving cases diverted from them. Diversion and referral mechanisms are the cornerstone of the most effective ADR mechanisms. They are also the means by which ADR 'connects the dots'.

UNDP and partners' most successful ADR initiatives have supported legislative, policy and institutional change to scale up local-level ADR initiatives to a national ADR network, preferably as a component of a legal aid system. National ADR networks enable ADR to realise the following potential benefits, each of which promotes access to justice programmatic objectives in the context of LASPs:

- **Respects local principles, human rights principles and protective national laws.** ADR is welcomed in Africa as complementary to formal systems and culturally proximate to 'restorative' TDR processes, and accessible, yet based on human rights principles and respectful of protective national laws.
- **Promotes coherent, accessible, human rights-based national justice system.** When supported by referral and diversion mechanisms, ADR connects community-based and formal justice mechanisms. This objective is also promoted by ADR's example. By demonstrating human rights-based dispute resolution in action—and providing an alternative which reduces scope for Chiefs to conduct discriminatory processes and levy arbitrary fines—ADR is promoting human rights in traditional practice.
- **Relevant to vulnerable groups:** ADR provides an opportunity for women mediators to gain social (and self) esteem by providing a valued service. It provides an alternative to formal justice. The majority of mediations are requested by women; they report that they appreciate the fact that mediation is confidential, because they are able to discuss taboo private issues, and their husbands are willing to participate because they do not risk 'losing face' in a public forum.
- **Conflict prevention and recovery:** ADR favours 'healing' by enabling traumatised people to talk about their experiences and have their suffering acknowledged. It can support peace building as part of reconciliation efforts.

Up scaling ADR reforms to a network requires the following: 1) institutional arrangements for diversion; 2) referral protocols; 3) laws to institute mediators and mediation committees as the court of first instance for civil and minor criminal cases; and 4) an ADR Secretariat to administer a national network of ADR mechanisms.

Such reforms demand a lot of time, resources and energy, and will not materialise in the absence of sustained commitment. Such commitment is rarely forthcoming where authorities have been exposed only to concept notes and presentations on the potential value of ADR in their country.

Table 4 provides detailed guidance in *scaling up* ADR to a national level network in the context of LASPs programming which can help gain the required commitment from authorities and in turn increase access to justice.

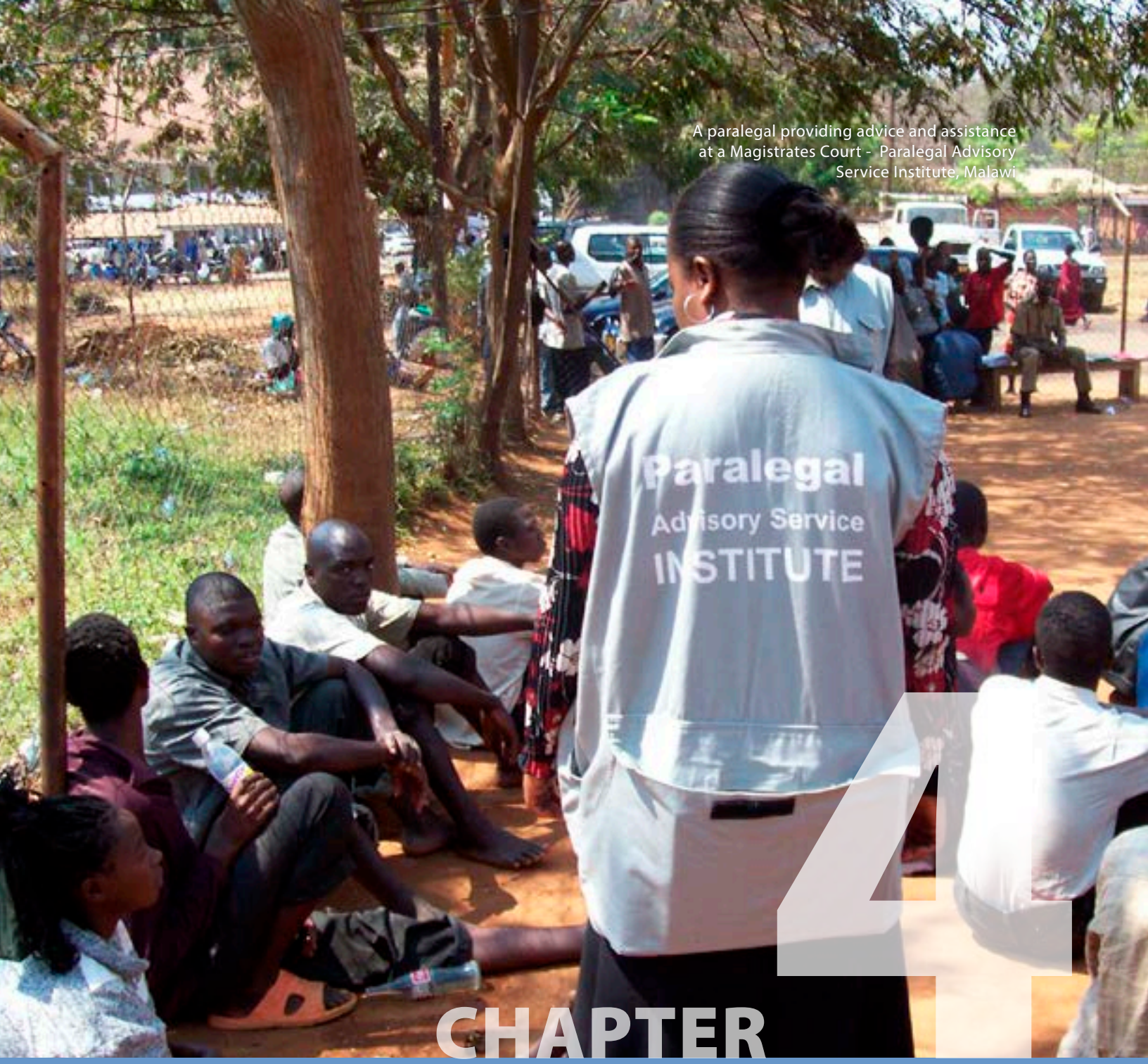
Table 4: How to establish a national ADR network? Common challenges and promising practices to address these

Programme element	Challenges	Promising practices
Conduct advocacy to promote ADR Advocacy efforts will aim to: *Inform* partners of the role of ADR; *persuade* them of the value of a network for enhancing the impact of ADR; and *convince* them to take action to support the establishment of a national ADR network. During the preparatory, small-scale phase, advocacy will begin at community level, seeking customary authorities' approval of ADR. Chiefs' consent is logistically necessary to establish ADR committees, and generate demand for ADR services. And their endorsement creates a platform for community members to use ADR. Yet such approval is often not forthcoming: Chiefs often see ADR as a threat to their authority.	**Lack of awareness of ADR processes and mechanisms.**	▸ **Consider conducting a five-stage communications strategy to build support for establishing an ADR network.** The following strategy builds on one successfully used by African ADR NGO the 'Village Mediation Project' (VMP) to convince authorities to support national ADR networks in Malawi and Sierra Leone (where it is called the 'Community Mediation Project') (See for further information Box 10). 1. **At village level: Bilateral meetings with customary authorities** on ADR concept, seeking approval to pilot ADR committees in their area. 2. **At village level: Public meetings staging sensitisation 'role plays' and Q&A sessions with communities** on the ADR concept, its availability in the community, and how to access it. 3. **At district level: Small workshops with government and justice officials at district level** on the ADR concept and its impact in their districts, seeking their support for its expansion by supporting stronger institutional engagement between statutory and ADR personnel, including diversion and referral protocols. 4. **At national level: Bilateral meetings with government and justice officials at national level** on the ADR concept and its impact in the country, seeking their support for the development of a national ADR network. 5. **At national level: Public meetings developing capacity to build coalitions and conduct coordinated advocacy with LASPs at national level** on the ADR concept and its impact in the country, seeking their support to work in coalition to conduct joint advocacy to lobby government and justice officials to support a national ADR network. ▸ **Emphasize that mediation committees complement—not replace or undermine—TDR.** VMP struggled to gain Chiefs' consent to establish mediation committees. The Chiefs saw the committees as a threat to their authority. VMP's mandate excludes attempts to influence Chiefs' conduct. While their example may strengthen their compliance with national and international laws, VMP mediators adhere to a Code of Conduct, which excludes interference in TDR. Chiefs assist in training mediators. The approach works: 24% of cases brought to VMP within its 18 month pilot were referred by Chiefs, and authorities elsewhere —impressed with its impact in neighboring villages—invited VMP to assist them to promote harmony in their own communities. ▸ **Foster community ownership of 'their' ADR mechanisms.** Actively engaging communities creates demand for ADR, and safeguards its quality. Well-informed community members can hold mediators to account for delivering ADR services in accordance with agreed standards and any Code of Conduct. VMP involves communities in the selection of mediators. Recruits represent a cross-section of the population: literate and poorly literate, men and women, elderly and young, able and disabled. 50% of the Village Mediators are women and illiteracy is not a bar to participation. People who have a low status in the community often value the opportunity mediation gives them to acquire social status and self-esteem by providing a valued service.

Support the development of enabling legislation Support relevant coordination mechanisms to convene a policy development process—and provide technical inputs to those processes—to develop 'enabling' legislation. Relevant laws would: • Establish an ADR network as part of a national legal aid system. • Enact ADR into law as the justice forum of first instance for civil and petty criminal cases. • Enable referral: ADR mechanisms to refer cases which it cannot satisfactorily address: serious crimes such as murder, or cases in which mediation has not reached a durable settlement). • Enable diversion: Diversion allows for reparation and restitution, promotes reconciliation, and, in turn, relieves pressure on statutory institutions, complements them and thus bridges the divide between villages and statutory justice institutions. Cases may be diverted: • from police to mediation committees • from courts to mediation committees • from prisons to mediation committees: subject to the agreement of the parties, remand prisoners may be granted bail to attend a mediation.	**Legislative drafting, review, and enactment processes are very slow.**	▸ **Make use of space created by existing legislation.** Specific legislation, policy and guidelines are not necessarily prerequisites for action. Community-based ADR can be instigated without legal reform in most cases. In line with international and regional regulatory frameworks, existing laws often provide for the introduction of restorative justice practices at community level – at the very least with respect to juveniles in conflict with the law. These constitute sufficient authority for cases to be diverted, grant discretion to judges, police and welfare officers and give credence, strength and legitimacy to linkages between community-based ADR and statutory institutions. Malawi, for example, used the space created by existing, non-specific legislation to enable diversion to mediation committees. In Sierra Leone, VMP made use of Constitutional provision promising access to justice, and a Truth and Reconciliation Commission report identifying lack of justice at community level as a major cause of civil war. In some countries, the state court delegates cases to 'customary courts' despite the fact that these 'courts' have no legal foundation. The practice is sufficient to endorse the process. ▸ **Focus on diversion of children.** The legal framework with respect to children is strongest, both in international, regional, and national laws. Should diversion begin with children, diversion of adults can commence as the programme takes root, diversion processes are established, and partners are convinced of their benefits (this will be further elaborated in Chapter 4: Legal Aid Service Provision For Women and Children). ▸ **Support development of informal diversion guidelines through informal coordination fora.** If developing a more formal national framework is not feasible, try an informal route. In many jurisdictions, the force behind diversion is the discretionary power of judges, police and welfare officers. Scope for discretion varies across jurisdictions, and depends both on laws and the attitudes of government and justice actors. Informal justice sector coordination meetings supported by UNDP have generated momentum on the part of law enforcement partners to support diversion within the discretionary constraints imposed by existing frameworks, as well as action to change those frameworks. ▸ **Beware of enabling police to mediate cases.** In Malawi, police in a Victim Support Unit attached to every District police station attempted to resolve all matters, which came to them through what they described as mediation. However, the police's rudimentary training did not result in proper mediations, but ADR in which unsatisfactory 'solutions' were often imposed on the parties and enforced internally. PASI paralegals working in police stations now assist police to identify cases suitable for diversion, and oversee their referral to mediation committees in which quality assurance frameworks are robust.
	Institutional connections are weak: cases suitable for diversion are processed in the statutory system anyway, because links supposedly established between police, courts and mediation committees do not work in practice.	▸ Support LASPs to 'supervise' diversion. Paralegals' support provides a human link where institutional links are weak, enabling legal processes to work effectively in their absence. In Malawi and Sierra Leone, paralegals constitute the vital link between the village mediation committees, police, courts and prisons. PASI paralegals working in police stations assist to identify cases suitable for referral to the PASI VMP. The paralegals then: assist litigants to access mediation; contact victims to ask if they would accept some form of reparation; and locate sureties for remand prisoners to apply for bail while they attempt to mediate a solution. Paralegals then oversee the diversion. A report stating the terms of the settlement—though never sharing details of the mediation—is given to the police when the matter is settled. If the matter is not resolved through mediation, it is returned to the police. Paralegals' monitoring of diverted cases is necessary to remove any risk of impunity. The converse also applies: when the VMP refers cases to the statutory justice system (e.g. rape, murder, serious assaults, or minor cases which do not result in a durable settlement), it is able to ensure—through links with PASI paralegals—that these are processed properly, *procedures are followed correctly*, and legal representation is provided if necessary.

Ensure quality assurance Without on-going training, constant support and feedback, monitoring and evaluation, mediation strays into the realms of arbitration. Even where the process results in a settlement, settlements often do not stick. The success rate of mediation therefore—measured in terms of settlements which endure over time—is quite low. For ADR to achieve its projected benefits, quality assurance frameworks must be rigorous.	**Inadequate monitoring and support mechanisms.** The quality of training and supervision can make or break an ADR programme. A worrying number of LASPs operate under the misapprehension that because training has taken place, the impact is always positive and lasting. Partners should make funding conditional upon a systematic quality assurance framework, and support its establishment from the inception of programming. Promising practices detailed below have proved successful in Africa.	▸ **Provide mediators a professional status, contingent upon conduct established on human rights principles.** Recruitment qualifications (e.g. school leaving certificate, college qualifications), standardized training and support mechanisms ensuring compliance to a Code of Conduct and official identity cards, are a few options to develop communities' respect for mediators, and build law enforcement personnel's confidence in diversion as a viable alternative to statutory justice. However, setting too stringent criterion for paralegals can also be counter-productive as it may exclude many members of the community who would otherwise have the skills and respect from the community to be mediators. ▸ **Consider requiring mediators to adhere to a code of conduct.** The Village Mediation Programme (VMP-Malawi and Sierra Leone) requires mediators to sign (or thumb-print) the following Code of Conduct before they are given a VMP ID card and permitted to work as VMP Village Mediators: • Co-mediation: never mediating alone; always working with at least one other mediator. • Neutrality: not acting if they have a direct personal, professional or financial interest in the settlement. • Voluntarism: parties cannot be forced to attend mediation or to sign a settlement. • Confidentiality: parties and mediators must not tell anyone outside the mediation about the dispute, relate what is said, or testify in court of law on anything relating to the dispute. • Boundaries: Mediators can only work in the specific area where the VMP is established, and have a duty to know what kind of disputes they are permitted to manage. • Do no harm: Mediators may not do anything which harms the participants or makes the dispute worse. • Disputants are empowered: Disputants have control of the process and the settlement. A Village Mediator will not impose an opinion on the disputants. • Duty to other (outside) parties: Mediators must ask disputants if their settlement will impact on other people who are not at the mediation. This is particularly important if the settlement affects children. • Honesty: Mediators must: disclose their background, training and experience of mediation; any personal or professional interest they may have in any of the disputants; repeat the fact that they are volunteers; and never abuse the trust placed by the disputants. • Never give advice: Mediators may not offer any advice to any of the disputants, as this would compromise their neutrality. ▸ **Ensure that mediators are well trained.** Promising practices for training include: • **Use training materials with graphics and symbols.** The VMP provides trainings in local dialects, using participatory learning methods. These are supported by graphics and symbols to illustrate the mediation process, concepts and skills. Training materials should include details of mediation, as well as M&E frameworks and materials, since the mediators will have to use these in their daily work. • **On-going training:** Inundating people with information through an initial training can get ADR started, but do not expect mediators to develop relevant skills and knowledge all at once. Much of what is shared in an initial training will not be retained. A 'drip drip' approach is better: continuous learning progressively builds on previous knowledge. Research shows that in conflict-affected contexts, a significant proportion of the population suffers from post-traumatic stress disorder (PTSD). PTSD affects ability to learn, and demands a tailored approach to training and mentoring. • **Professional development options responding to needs.** A core-training schedule should be accompanied with additional training options, responding to individual mediators' needs.

		▸ **Provide on-going supervision, mentoring, and support:** All mediators need close supervision and monitoring. VMP teachers and paralegals provide support; conduct monitoring to ensure maintenance of standards, as well as human rights principles and the law. They provide initial training as well as refresher trainings, and provide support wherever needed. The teachers are assessed for their knowledge and ability to impart information concerning concepts and techniques. The paralegals: closely supervise the mediators; maintain case records; provide training and mentoring which builds mediators' capacity at a pace that they can manage; obtain feedback from 'users' and fine-tune approaches to ensure that the programme is responsive to community needs. In Ghana, mediation is coordinated through an ADR unit part of the national legal aid system. The mediators – who themselves are recent law graduates – are supported by professional lawyers assigned by the national legal aid system, who furthermore provide oversight and quality assurance (see Box 11). ▸ **Connect mediation committees with an administration 'unit':** VMP mediators are supported by 'mediation groups' which receive applications for mediation, coordinate mediation sessions, help the mediators to complete case records, follow-up and monitor settlements. The mediation groups are also on hand to ensure that mediations meet prescribed human rights standards. For example, mediators consult the mediation group if a child is involved, to ensure that a parent or guardian is present at the mediation, as well as an independent human rights observer. ▸ **Connect mediators with paralegals/LASPs referral and diversion supervision 'unit'.** Paralegals connect mediation committees and the statutory system. VMP considers that the success of the model turns on the involvement of paralegals that supervise cases to and from the courts and police (as well as support supervision and mentoring, as above). ▸ **Devise standard M&E documentation.** On a weekly basis, VMP collects statistical and qualitative information including the number and type of cases referred and the source of referral; the time between referral and resolution; how cases not settled in mediation are dealt with; socio-economic data on gender, income, ethnicity, religion of the parties – all measured against a Baseline Survey carried out on project start-up. Qualitative data is collected through random observation of mediations as well as independent User Survey.



A paralegal providing advice and assistance at a Magistrates Court - Paralegal Advisory Service Institute, Malawi

CHAPTER 4

LEGAL AID SERVICE PROVISION FOR WOMEN AND CHILDREN

4.1 Introduction

This guide presents a comprehensive approach to legal service provision that seeks to ensure access to justice for poor and marginalized communities, as critical to achieving UNDP's mandate of the simultaneous eradication of poverty and significant reduction of inequalities and exclusion. Poverty, vulnerability and marginalization are highly interlinked in Africa. Almost half (48.5%) of sub-Saharan Africa's population live under $1.25 per day with an estimated 239 million people who are malnourished.[62] Out of a workforce of 382 million, only 107 million people were engaged in formal employment in 2010, with two thirds vulnerable to informal jobs.[63] More than 31 million African children, mostly girls, do not attend school.[64] Only 66% of the population has access to safe drinking water, only 40% has proper sanitation facilities, and only 30% has access to electricity.[65] Sub-Saharan Africa has the highest number of IDPs worldwide with an estimated10.4 million in 2012.[66] More than 70 per cent of the people living in poverty in Sub-Saharan Africa live in rural areas.[67] 85 million children lack birth registration (only 44% of children have their births registered).[68] According to the WHO, 1 in every 20 adults is living with HIV in Sub-Saharan Africa accounting for 71% of the people living with HIV worldwide.[69]

Women in Shelter, UNDP DRC

Thus many groups, such as migrants, ethnic and religious minorities, refugees and internally displaced persons, tribal and indigenous peoples, persons living with HIV/AIDs[70] and persons with disabilities require specific and targeted focus for legal aid service provision. This chapter focuses on the particular challenges women (section 4.1) and children (section 4.2) face in accessing justice, and how LASPs can support strategies to enhance access and better justice outcomes for these groups.

4.2 Legal aid for women

Within the international human rights framework the rights of men and women are both equally recognized including the right to receive legal aid. This does not negate the need to look closer at gender inequality underlying the social, political, economic relations between women and men which affect whether men and women are able to equally access justice services, including legal aid. Where gender inequality *de facto* may exist in practice and relations, this is oftentimes also *de jure* enshrined in the legal

62 See UNDP's *Realizing Africa's Wealth: Building Inclusive Businesses for Shared Prosperity* (2013). See http://www.undp.org/content/dam/undp/library/corporate/Partnerships/Private%20Sector/UNDP%20AFIM%20Realizing%20Africas%20Wealth.pdf
63 Ibid
64 Ibid
65 Ibid
66 UNHCR, 2012. See http://www.unhcr.org/pages/49c3646c23.html
67 IFAD, Rural Poverty Portal. See http://www.ruralpovertyportal.org/region/home/tags/africa
68 See Every Child's Birth Right: Inequities and trends in birth registration, UNICEF 2013. See http://www.childinfo.org/files/Birth_Registration_lowres.pdf
69 WHO. Global Health Observatory. See http://www.who.int/gho/hiv/en/
70 See IDLO/UNAIDS/UNDP (2010). *Toolkit: Scaling-Up HIV-Related Legal Services*. See http://www.undp.org/content/dam/aplaws/publication/en/publications/hiv-aids/toolkit-for-scaling-up-hiv-related-legal-services-programmes/100309%20HIVtoolkit%20web%20version%20color%20logos.pdf

systems.[71] In other cases, despite progressive legislation recognizing gender equality and women's rights, in practice it may not always mean that women's rights are respected and protected.

The principal international human rights instrument to promote gender equality is the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), [72] which sets out a comprehensive agenda for achieving gender equality, and pursues this through three key objectives: 1) ending explicit legal discrimination against women, 2) extending the protection of the rule of law, and 3) ensuring governmental responsibility for the impact of the law.[73] CEDAW is built on the concept of substantive equality, 'which requires governments to review new and existing legislation to assess its actual impact on women and put in place laws that produce equal outcomes.'[74] Various regional human rights instruments provide further guidance and support to governments to further incorporate human rights standards into national legislation. These include the *Maputo* Protocol[75] for the African region, and the *Belem do Para* Convention[76] for the Latin American region.

Though many African states have signed these instruments, they have often not taken the critical next steps: ratify the main text and additional protocols, and *domesticate* relevant provisions into national law. Even where such steps have been followed, magistrates and others may be unaware of this fact, or the body of legislation may contain numerous contradictory laws and ambiguous provisions which are used to negate the protections of newer, human rights-friendly instruments.

International standards on legal aid refer to legal aid for criminal cases, for accused, as well as for victims and witnesses. This can leave many complainants with grievances related to civil cases in a potentially disadvantageous position without any legal aid support. Many grievances women suffer in Africa relate to civil and family cases for example, where legal aid is oftentimes not available or provided.

Women can suffer a wide array of grievances throughout their lives. Grievances such as Sexual and Gender-Based Violence (SGBV), which includes rape and domestic violence, are often the focus of many access to justice interventions. As per the 1993 UN General Assembly Declaration on Violence Against Women, the UN defines "violence against women" as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." This encompasses psychosocial or emotional violence—i.e. non-physical methods of controlling another person such as humiliation or threats of violence—and economic violence, such as depriving resources or controlling career choices.[77]

71 This can be particularly the case for issues regarding inheritance and property rights, which affect women adversely.

72 See http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm

73 According to the UN Women 2011-2012 Progress of the World's Women: In Pursuit of Justice report, since the adoption of the CEDAW in 1981, there has been important progress in legal reform to safeguard gender equality and promote women's rights. Globally, 139 constitutions now include guarantees of gender equality, 125 countries have law that protect women from domestic violence, 117 countries now have equal pay laws and 173 paid maternity leave, 117 countries outlaw sexual harassment in the workplace. In 115 countries women have equal rights to own property and in 93 countries women now have equal inheritance rights.

74 UN Women (2011) *Progress of the World's Women. In Pursuit of Justice*, p.24.

75 The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. See http://www.achpr.org/files/instruments/women-protocol/achpr_instr_proto_women_eng.pdf

76 The Inter-American Convention on the Prevention, Punishment and Erradication of Violence against Women. See http://www.oas.org/juridico/english/treaties/a-61.html

77 A/RES/48/104 - Declaration on the Elimination of Violence against Women. See http://www.un.org/documents/ga/res/48/a48r104.htm

Especially in conflict-affected contexts, women are often subject to horrific violence. Rape, sexual slavery, mutilation of genital organs, forced prostitution, forced sterilization, and trafficking are common weapons of war. They are often used systematically as a tactic to humiliate, terrorize, shatter resistance, subdue or control. Or they are simply associated with the breakdown of rules and social order; perpetrated opportunistically by soldiers, militias, and persons affected by post-traumatic stress. They are commonly also symptomatic of general discrimination against women. Increasingly, young women and girls are victims of these crimes. While boys and men are sometimes victims of sexual abuse, the overwhelming majority are women and girls. Such crimes often remain as a legacy of conflict: in many post-conflict settings, rape and domestic violence are so common that they are considered normal. In significant part, this is because there is impunity for such crimes.

" The negative effects of women's inability to access justice adversely affects the well being and development indicators of their families and entire communities, and has wide-reaching impacts on society as a whole "

A majority of the grievances that women face in Africa, however, fall within the domain of civil cases, including family matters such as marriage, divorce and custody issues, and administrative matters, such as inheritance, property, housing and land. These issues can have far-reaching consequences on women's lives and livelihoods: they can be denied their rights to access public services such as education and health, to own and leverage property, and to obtain other livelihoods assets such as credit or child maintenance. Inability to enforce such rights and entitlements creates and compounds poverty and discrimination.

Women's livelihoods become further jeopardized where they are not allowed to inherit their husbands' or parents' property. Even distant relations of deceased husbands emerge shortly after his passing to claim homes and land that women have spent many years tending and farming. Families are left destitute, and women may be forced into transactional sex to survive, or to become dependent upon the relatives of her deceased husband, sometimes as a servant or 'inherited wife' of a male relative. This is a critical issue in sub-Saharan Africa, which has a widowhood rate of 25%. Inheritance and land titling disputes, custody, guardianship, and legal identity are amongst the most common types of legal need in crisis-affected contexts, and have particular implications for children. Without legal assistance to assist their mothers to register births, children born in refugee camps, for example, are essentially outside the protection of the law. They may be unable to benefit from essential services such as education and immunisation campaigns.

The negative effects of women's inability to access justice for such cases adversely affect the wellbeing and development indicators of their families and entire communities, and further have wide-reaching impacts on society as a whole. Women spend more of their incomes on the health and nutrition of their family and schooling of children than men do. Consequently, where their personal resources—and ability to inherit property or access income-enhancing credit—are limited by discriminatory norms and lack of access to justice for civil issues, their families and entire communities suffer from poorer health, lower education, and fewer opportunities.

Discrimination and all forms of violence against women limit their potential to support positive social change. The UN system recognizes that where empowered to do so, women can promote and protect peace and

development.[78] The UN Security Council has adopted various resolutions that reaffirm the central role women play in fostering peace and security.[79]

4.2.1 Barriers to women's equal access to justice

Women face many challenges and obstacles when accessing justice: their rights are often not respected and protected, and where rights violations occur, to obtain remedies and redress for their grievances.[80] As the 2012 UN Women Progress of the World's Women notes, while more progressive legal frameworks may be in place to protect women's rights, in practice "…for most of the world's women the laws that exist on paper do not always translate into equality and justice. In many contexts, in rich and poor countries alike, the infrastructure of justice – the police, the courts and the judiciary – is failing women, which manifests itself in poor services and hostile attitudes from the very people whose duty it is to fulfil women's rights."[81]

Women and girls' vulnerability to violations and inability to achieve justice result from a complex web of factors. These factors have already been generally described in Chapter 1, and include geographical, educational, linguistic, social and cultural barriers. These factors are however compounded for the situation of poor and rural women in Africa: they may lack knowledge of the law and of their rights; they are commonly more confined in terms of their time and mobility to the community and to family life, and if required to travel, may be dependent on male relatives to do so. They often have less access and control of financial resources and costs of travel and court fees would be even larger obstacles for them. Finally, when addressing serious grievances within the justice system (such as SGBV) –whether through formal or informal systems- there is often a high risk of sanctions, ostracization and/or stigma.

Apart from the barriers mentioned above, women may also face cultural bias that may be deeply rooted in cultural belief systems, values and practice: discriminatory social norms place women in an unequal position when seeking justice, and will likely affect women in their possibilities to participate in judicial processes as well as affect judicial outcomes regarding women. The social norms that increase women's vulnerability to violations in communities are systemic: they underpin discrimination in legal codes and practices in both customary and statutory justice systems, making it difficult for women to access justice. Statutory institutions often do not adequately respond to women's legal needs. Government personnel may be negligent or unwilling to respond to women's legitimate demands. Often, police do not take action to investigate crimes against women, thinking that these are family matters with which the state should not concern itself. Others are simply unaware of their duties and unfamiliar with more recent laws, which criminalize violence against women. Customary authorities often refuse to recognize concepts such as marital rape or to find in favor of a woman in a male-female dispute, and in some cases, seek to 'resolve' SGBV cases by compelling SGBV survivors to marry the perpetrator.

78 See also the World Bank's publication (2014) on *Voice and Agency. Empowering Women and Girls for Shared Prosperity*. See http://www.worldbank.org/content/dam/Worldbank/document/Gender/Voice_and_agency_LOWRES.pdf

79 Security Council Resolutions 1325 (2000), 1820 (2008), 1888 (2009), 1889 (2009), 1960 (2010), 2106 (2013), 2122 (2013). Please also see http://www.un.org/en/peacekeeping/issues/women/wps.shtml

80 In a recent study UNDP conducted among countries from Europe and the Commonwealth of Independent States (Bosnia I Herzegovina, Kazakhstan, Kosovo, Kyrgyzstan, and Serbia), it found that minorities, women and persons with disabilities face comparatively to other people more obstacles in accessing justice, including prejudice and discrimination towards their groups. This increases the distance between the problems and violations faced by these groups and the justice system, and alienates these groups further from fulfilling the rights to which they are entitled. See UNDP (2013). *Strengthening Judicial Integrity through Enhanced Access to Justice* conducted, http://www.undp.org/content/dam/rbec/docs/Access%20to%20justice.pdf

81 UN Women 2011-2012 Progress of the World's Women Report, In Pursuit of Justice. http://progress.unwomen.org/pdfs/EN-Report-Progress.pdf

Capacity deficits in statutory institutions continue to play a critical role in constraining access to justice. This situation can often place women in a more marginalized position because of cultural bias among security and justice providers. Where serious crimes such as SGBV are reported but do not lead to investigation, persecution and sentencing, women are left defenceless and exposed by the justice system. Where these crimes are reported and cases are initiated, capacity deficits in the justice system might lead to high levels of attrition.[82] Enforcement is weak due to lack of political will to tackle impunity, lack of judicial independence and political protection for perpetrators, fear of stigma and reprisals, and a dearth of protection mechanisms for victims and witnesses. Victims are often stigmatized, put under great pressure not to shame themselves or their families by seeking justice, and to observe social taboos that demand silence on sexual issues. The family of the perpetrator may try to secure victims' silence by making threats or payments. Witnesses are frequently put under great pressure to desist from giving evidence, and to retract statements already made. Those who are courageous enough to resist this pressure and wish to pursue justice may find law enforcement personnel unwilling or unable to support them.

Capacity deficits include police lacking stationery to take down statements, knowledge of how to conduct proper investigations, or forensic equipment. This means that they are often therefore unable to collect sufficient evidence to meet the standard of proof for criminal cases: beyond all reasonable doubt. Police often do not know how to file charges that match the evidence available. Proving guilt beyond all reasonable doubt—the standard of proof in a criminal cases—is extremely difficult where capacity to gather forensic evidence is very limited and witnesses are almost never available. When cases fail, the idea of a woman as a subject of enforceable rights is diminished, and the deterrent value of conviction for their violation is not achieved.

A significant number of otherwise meritorious cases are thrown out of court because the wrong charge is filed. For example, a perpetrator may walk free of a charge of rape because the evidence is insufficient to prove this beyond all reasonable doubt. Had police filed a charge of knowingly having sex with a minor, that person may have been convicted. Consequently, even those cases that overcome significant initial challenges are often thrown out of court on grounds of insufficient evidence.

Many others cases are dropped. Very high fees are charged for medical examinations, and the costs of attending frequently adjourned court hearings, are prohibitively expensive for impoverished victims and witnesses. Add to this the tiresome, uncomfortable process of recounting the same information time and time again to different actors who do not know how to handle such cases in a sensitive manner, and it is not difficult to see why many victims become dispirited and drop their charges.

Since judicial institutions often fail to enforce laws that protect their rights, women can be unconvinced of the value of pursuing justice remedies. The effect is to fuel a culture of silence and a cycle of violence against women: perpetrators are not held accountable for their crimes, would-be perpetrators are not deterred, and violence against women proliferates in an atmosphere of impunity.

Ultimately, the existence of discriminatory social norms deny women the services that would enhance their socio-economic status, reduce their dependency on others, and vulnerability to abuse. Consequently, even the justice mechanisms which should protect their rights are often threatening to women and girls (See Box 12).

82 In DRC rates of attrition are extremely high, for instance in the first quarter of 2008, out of 2,288 cases reported in North Kivu, only 152 (7%) were referred to the police or a judicial structure. See UNDP (2013). *Rule of Law and Access to Justice in Eastern and Southern Africa. Showcasing Innovations and Good Practices*, p. 26.

Box 12: "Tell God tenki fo sake of UNDP": a beneficiary recounts legal aid service provision in practice

In Mamie Yarbu Dumbuya's village in Northern Sierra Leone, UNDP funded LASPs to help raise awareness of new laws which criminalize SGBV, and explain how survivors can access justice.

When her 11-year old granddaughter was raped, Mamie's distress became greater than her fear of the police, and she reported the case. The police connected Mamie and her grand-daughter with 'Health Unlimited': a UNDP-funded LASP which helps victims to pursue justice, and supports police to implement Sierra Leone's new 'gender laws'.

Asked how Health Unlimited supported her, Mamie emphasizes the encouragement of Isha, Health Unlimited's SGBV Field Officer, who gave Mamie confidence when she was frightened of the legal process. Health Unlimited also provided transport for Mamie and her granddaughter to go to court, took them to the hospital and paid for medical care, and provided food and lodgings during hearings at court in provincial capital Makeni. Health Unlimited also supported the police's Family Support Unit to undertake forensic testing and gather evidence.

While Judges in Sierra Leone are not yet clear how to implement the new 'gender laws, these efforts paid off: the perpetrator was convicted.' The perpetrator was sentenced to two years' imprisonment. Mamie still does not know how the court works, and does not understand the significance of a sentence, but is very happy that the man is no longer terrorizing her granddaughter or other girls in the community. She notes with satisfaction that she has not seen him since she came back from Makeni. UNDP's CSO Monitoring Officer asks her: "So, how does Mamie feel today?" She pauses. "Now I will praise God. Thanks be to God for UNDP and Isha."

You can see Mamie's interview here: http://www.youtube.com/watch?v=x8vzHr_pUys.

4.2.2 How LASPs can support women's equal access to justice

LASPs can be a key lynchpin in comprehensive efforts to improve access to justice for women. In addressing violence against women in Africa, the objective is to move away from conducting stand-alone activities, towards contributing to integrated, multi-sectoral, multi-annual programmes that achieve critical mass on combatting violence against women in all its forms (Box 13). It is critically important that such programmes are holistic: not equating SGBV with rape and domestic violence. Preventing and responding to serious criminal cases is a legitimate focus. However, it is important to remember that, under international standards, violence against women includes denial of rights in civil, family, and administrative cases, as well as insulting and aggressive behaviour which does not break any laws. These more 'benign' forms of violence are intertwined with serious criminal violations, and addressing them is critical to preventing and ending impunity for rape and domestic violence.

Box 13: Addressing Sexual and Gender-Based Violence (SGBV) in Guinea

Access to justice problem addressed

In Guinea, SGBV was perpetrated as a tactic of repression by Guinean security forces, and as part of a broader pattern of violence against women and girls in society. Studies show that 50% of women have been victims of SGBV.

Background

As part of a broader programme on justice and security in Guinea, UNDP conducted pilot activities to support:

- Demand side of justice: Strengthen capacity of LASPs to support legal literacy and access to justice.
- Supply side of justice: Strengthen the capacity to prosecute sexual violence.

Pilot activities provided the basis for the elaboration of a more holistic interagency programme to prevent and address SGBV incorporating immediate assistance to victims, as well as addressing structural issues.

Approach taken

UNDP Guinea's programme addresses multiple challenges to accessing and achieving justice for SGBV throughout the justice chain—from the village to police to courts.

- **Awareness:** UNDP supported LASPs to train paralegals, as well as 'women community leaders', who then advise women on their rights and how to access legal, medical and social services. UNDP also established five regional 'Centres d'Information de Proximite' (CIPs) at which students, volunteers, NGO staff and other trained persons provide advice, counseling, and mediation services. They conducted research to improve the knowledge base on access to justice issues. UNDP Guinea also partnered with a national media network to print articles and broadcast television advertisements on SGBV and conflict-related issues. These aim to improve legal awareness, instill a culture of conflict resolution, and improve access to justice by providing information on the CIPs and how they support redress on issues covered by media programming.
- **Access:** UNDP supports LASPs to accompany and provide free transport for women to obtain specialist services: e.g. to clinics to receive a medical certificate; to the police to file a complaint; to court to attend hearings. UNDP also supports an NGO providing free legal representation in court. In coordination with other development partners, UNDP builds LASPs' capacity to collaborate within a referral mechanism.
- **Administration:** UNDP strengthens the administration of justice by: training justice and security personnel on SGBV survivors' rights, their role in promoting and protecting them, and how they can observe their responsibilities—including stand-alone trainings on how to investigate and prepare SGBV cases. Training is supported by guidelines on how to process sexual violence cases. UNDP is developing modules on SGBV prevention for inclusion in military training curricula. UNDP also strengthens the administration of justice in rural areas by supporting mobile courts. A study is planned to better understand the role of customary authorities and how to involve them in strengthening SGBV survivors' access to justice.

Challenges experienced

Reporting still low. Communities fail to report cases due to lack of confidence in the statutory system, and fear of its public aspect. A Ministry of Social Welfare (2009) study indicates that 80% of victims do not report cases to anybody—even friends or family—because it is deemed to be a 'personal problem' and because of fear of stigma. Many survivors who have received legal advice decide not to proceed with reporting cases due to family pressure. UNDP Guinea plans to address this by conducting more activities to reduce stigma and sensitize communities and opinion leaders.

Lessons learned

The significance of reparations. Survivors do not perceive any incentive to pursue justice because even when they receive a judgment in their favor, they rarely receive any financial support to rebuild their lives. In line with international instruments providing a right to remedy and reparation for victims of gross rights violations, UNDP will establish reintegration programmes for survivors.

Recommendations

Prioritize referral mechanisms. It is important to support broad referral systems to ensure that survivors can access legal as well as medical and psychosocial support. When UNDP started its legal aid pilot project, no such referral system was in place and support was uneven: access to medical services was limited, and popular awareness of women's rights and the consequences of sexual violence was very low. In parallel to the launch of the interagency programme, UNDP coordinated with other agencies to develop Standard Operating Procedures for a referral system.

Support integration of protection elements. UNDP should support LASPs and law enforcement institutions to integrate protection elements into their programming. For example, a victim should be encouraged to file a complaint, but her security should also be assessed and protection measures put in place to address risks identified.

New approaches and justice innovations are on the rise to provide more integrated and specialized services to women and in doing so effectively make the justice chain more gender-responsive. Amongst these innovations are one-stop-shops, which integrate various services (including legal aid) and so reduce the number of steps women have to take to access justice, making the process less daunting and reducing attrition.[83] Another innovation has been the creation of specialized courts, such as domestic violence courts[84] and Femicide courts.[85] These specialized courts enhance women's access to justice in that they provide victim support, adequate facilities (for example for closed session hearings) and possess expert judges and personnel that are sensitive to the particular characteristics of the cases and the grievances. Another institutional measure has been to increase the presence of women as police and justice providers, which can positively influence women's confidence in the judicial process and outcome.

83 Mobile courts and one-stop-shops are supported by UNDP in countries such as Cambodia, Chad, Colombia, DRC, Haiti, Mozambique, Somallia and Timor Leste,

84 For example in Brazil, Nepal, Spain, the United Kingdom, Uruguay and Venezuela.

85 For example, in Guatemala

As described through the legal aid service provision model in Chapter 1, LASPs can support access to justice for women through a multi-pronged approach consisting of the following programmatic elements:

- Raising awareness of laws, rights, and how to assert them.
- Facilitating access to justice institutions: both community-based and statutory.
- Strengthening the administration of justice.
- Conducting advocacy for inclusive laws, policies and institutions.

In the context of improving women's access to justice, it is important to fully recognize the critical role LASPs can play beyond the more direct support to justice providers to enhance access to and the administration of justice. CSOs and grassroots movements play a central role in legal empowerment approaches and LASPs can make a critical contribution to awareness raising and advocacy.[86] Socially discriminatory norms can exist in the minds of men, women and children, and be replicated - intentionally or unintentionally - in homes, schools, universities, private and public sector institutions at all levels of society. Changing them requires massive, sustained awareness raising campaigns on gender norms, human rights principles, and national laws that protect women's rights. These should be conducted at all levels of society: from community-based legal literacy activities supporting local prevention and response committees to national campaigns. This support to awareness raising and advocacy is critical to address the impunity around the violation of women's rights: a person who has never heard of anyone being held accountable for violating women's rights may think he has nothing to lose by so doing. Conversely, hearing about a man who was forced to pay maintenance, to vacate his late brother's home to return it to his niece, to apologize for calling his wife insulting names, or to walk the children to school twice a week helps to dislodge the norms that make women and girls vulnerable to abuse, and builds confidence in the capacity of justice systems to protect their rights. Successfully asserting rights in such cases, or achieving recognition of unacceptable behavior, which does not break any laws (e.g. through mediation) is the 'low hanging fruit' in the struggle to end violence against women.

LASPs are well placed to engage with both statutory and customary institutions in support of women (see Chapter 3). Their ability to do so, including diverting minor and civil cases to community-based, ADR is central to make justice available where it is most needed and where remedies are most meaningful and appropriate: most women prefer to seek speedy resolution to their cases, and a 'restorative' approach through which they receive compensation. Many women across Africa appreciate mediation-based ADR mechanisms as confidential fora in which they are able to discuss 'taboo' private matters, express their grievances, have their suffering acknowledged, and receive compensation.

86 For example, a recent study undertaken by UNDP and the Hauirou Commission, a global grassroots network, entitled Engendering Access to Justice: Grassroots Women's Approaches to Securing Land Rights (2014) evidence the approaches taken by over 70 grassroots organizations from 7 countries (Cameroon, Ghana, Kenya, Tanzania, Uganda, Zambia and Zimbabwe) to secure remedies for land and inheritance claims mainly through informal and customary justice systems. See http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Engendering%20Access%20to%20Justice.pdf

Table 5 provides detailed guidance on overcoming challenges and using good practices to support LASPs in engaging effectively in each of these programmatic elements to improve access to justice for women.

Programme element	Challenges	Promising practices
Coordinate and integrate legal aid for women into wider programming UNDP can support development and implementation of a coordinated, holistic, multi-annual, multi-sectoral programme or strategy, *within which legal aid is integrated* as a cross-cutting programmatic approach in the programme/strategy result areas.	**How to construct an evidence base? What types of assessments to undertake?**	▸ **All the factors that make women and girls vulnerable to exploitation and violence and unable to access justice.** An assessment will assist the formulation of concrete objectives. Strategies are likely to address issues related to the themes listed below. Legal aid could be integrated as a 'cross cutting' programmatic approach to address all of them. • Inequitable gender norms and power disparities that make women and girls vulnerable to violence. • Prevention and response to *all forms of violence against women and girls.* • Support for addressing consistent and systemic challenges that undermine women's access to their rights and entitlements, including, for example, inheritance and property rights • Weak institutional capacities at local and national levels to prevent and respond to *all forms of violence against women*.
	Who should be involved in strategy development and implementation?	▸ **All actors with the relevant mandate and capacity.** Government partners, civil society, UN agencies, and the development community should work together to generate synergies, avoid duplication, and fill gaps. Trying to address the multiple, entrenched causes and consequences of violence against women alone—vaguely aware that other actors are contributing to the agenda somehow—will not enable programming to achieve impact. Uncoordinated approaches are unlikely even to be funded: donors and trust funds are aware of international experiences affirming that the scale of the task demands an inclusive approach, and do not fund stand-alone initiatives.
	How to keep a process involving so many actors from degenerating into chaos?	▸ **Place the process under government leadership.** Support the establishment of a national coordination mechanism under the Chairmanship of the most senior government official who can be engaged. Heads of state, their deputies and ministers often want to promote—and be seen to promote—progress on gender issues. Their engagement reduces the risk of programmes losing momentum and focus and helps to attract donor funding. ▸ **Profit from existing initiatives.** Multi-sectoral, multi-annual programmes, strategies and action plans have been successfully implemented as part of National Committees on SGBV, under ministerial leadership. Internationally, coordinated action under such an 'umbrella' has proved more effective at dislodging the social norms at the root of women's injustice. ▸ **Be patient: allocate sufficient staff time to the process.** Participating in multi-stakeholder processes is often unexpectedly time consuming – and hence frustrating. Consider this when allocating staff time. The time and effort that is invested in designing and implementing a comprehensive programme/strategy with so many actors pays off in terms of programme impact. It is also likely to pay off in literal terms: funding sources recognise that holistic approaches to gender justice are an international best practice, and favour proposals that reference them.
	Is there an interim alternative to a lengthy strategy development process?	▸ **Apply to the UN Trust Fund to End Violence Against Women.** This Fund offers up to USD 1 million for programming to end violence against women. The Fund only accepts UN Country Team proposals (involving at least two agencies) which are supported by the Resident Coordinator, Government, and civil society, and aim towards national level changes through comprehensive programmes. The process of getting together with other UN agencies to prepare a proposal can foster joint planning and coordination.

		▸ **Conduct research to ascertain the complex economic, political and cultural issues that increase women's vulnerability to rights violations, and adversely affect their ability to access justice.** Particularly in conflict-affected contexts, SGBV may be so common that women do not fully understand the concept of rape; they do not know that they have the right to refuse sex. Research conducted by UNDP DRC revealed that the roots of the banality of SGBV are many, deep, and intertwined. In particular, it revealed that vulnerability to SGBV—and victims' inability to access justice—result from factors, such as social, economic and cultural which go beyond the usual concerns of justice sector programmes. Assessment findings generated momentum towards a multi-sectoral, multi-annual programme addressing the legal and 'non legal' issues that adversely affect women's access to justice. ▸ **Integrate internally: involve colleagues.** UNDP can integrate 'internally' by linking justice sector programmes with others that address the 'non-legal' issues that promote vulnerability and impunity. Governance, livelihoods, and gender programmes have a bearing on issues that affect women's vulnerability to abuse and inability to access justice. These other programmes stand to gain too. Experience shows that 'legal' components enhance the impact of diverse socioeconomic projects by empowering beneficiaries to claim their benefits under them, and more assertively voice their expectations vis-à-vis state institutions.
Support awareness raising: Strengthen awareness of laws, rights, and obligations under the law.	**Who to target and how to develop programming to increase awareness of women's rights?**	▸ **Support strategic ('public interest') litigation.** Besides numerous other benefits, public interest litigation is among the most effective means of improving legal awareness. See 'Advocacy' section of this table below for more information. ▸ **Use 'edutainment' techniques:** Artistic, engaging approaches using song, drama, billboards—with images, not words—and radio 'jingles' are effective means of communicating with illiterate audiences. ▸ **'Legal literacy plus': Combine legal literacy with efforts to support communities to organize preventive action.** UNDP Sierra Leone supported LASPs to conduct awareness raising activities aiming to inspire community members to form committees—composed of women, youth, and customary leaders—to prevent and respond to violations. The activities of some have been linked to prosecutions for rape. Community members decided for themselves how they wished to support SGBV prevention and response, resulting in a diverse range of activities: • Preventive action committees which connect victims or those at risk of abuse with relevant support services. • Monitoring statutory and customary courts, and agreeing to hold Chiefs accountable for observing their commitments to harmonise TDR with human rights standards. • Savings groups enabling women to save small sums, and periodically borrow larger sums to invest in livelihoods opportunities which reduce their dependency on others. Experience suggests that *such committees need on-going support to retain momentum over time.* ▸ **Focus on men and boys.** Especially in conflict-affected contexts, unemployment rates are especially high. Men have few opportunities to manifest 'positive' masculine characteristics linked to providing for a family, and often prove their masculinity through 'negative' male characteristics, such as aggression and violence against women. Legal literacy campaigns targeted at these groups can reduce incidence of SGBV.[87] ▸ **Engage 'at risk' youth.** UNDP Sierra Leone supported groups of young men vulnerable to falling into patterns of criminality and violence to become SGBV monitors who connect victims or at-risk women and girls with relevant support services. In return, the youth are mentored and provided with educational and livelihoods opportunities, linked to their support to prevention of abuse against women in communities. This has had the effect of turning young men into gender justice advocates. The men have relished the opportunity to contribute to their communities, and their voices are heard amongst younger boys who aspire to be like them.

87 See also 2013 UN report from Asia Pacific on Why Do Some Men Use Violence Against Women and How Can We Prevent It? Quantitative Findings from the UN Multi-country Study on Men and Violence in Asia and the Pacific

		▸ **Focus on schools and universities.** Throughout Africa, discriminatory norms and violence against women are perpetuated in schools. Awareness and preventive action activities are needed in this key 'site' of violence against women and girls. In addition, focusing on this entry point can assist with influencing home environments where gendered norms are often most prevalent. Well-informed pupils can take messages into the homes that education campaigns often do not reach due to illiteracy and other barriers. ▸ **Engage the media.** UNDP Guinea partnered with media to strengthen legal literacy in rural areas through TV, radio and print. UNDP Sierra Leone has supported journalists to report on SGBV cases in court. Such reports have an educational and deterrent value. They inform people about legal issues and where to access support (e.g. through a simple paragraph with LASPs' contact details at the end of each report). Each conviction for SGBV has a deterrent value. By bringing them to the attention of a wide audience, media reports enhance the deterrent effect of each conviction. Well informed journalists can also point out cases in which due process has not been followed, supporting accountability. Engaging the media is especially important in crisis-affected contexts, where perceptions that the justice system is unjust and ineffective are a key access to justice challenge. Supporting the media to report on SGBV cases in court helps to ensure that perceptions of the justice system keep pace with reality. ▸ **Consider introducing a SGBV reporting media award.** UNDP Sierra Leone supported the Independent Media Commission to establish a national media award on SGBV reporting. The award aimed to encourage media houses to cover SGBV, and to reward high quality reports. The impact of the prize—under which three young journalist 'fellows' were awarded a monthly stipend, camera, dictaphone, and supervision to produce high quality reports on SGBV each month—was to make SGBV a key media issue. Other journalists regularly produced SGBV-related reports. The award also strengthened justice-related reporting more generally. It seems that while reporting on SGBV cases in court, journalists came across and reported on other cases. ▸ **Engage musicians and athletes.** Especially in crisis-affected contexts—in which fathers and respected community members are often killed, flee, or leave communities in search of livelihoods opportunities—young men often lack positive male role models. Musicians and football stars are treated as heroes, and what they say is heard. UNDP has successfully supported musicians to carry anti-violence against women messages as part of 'Artists for Peace' programmes wherein music and concerts are used to engage youth on peacebuilding issues. Select ambassadors carefully: some musicians are politically affiliated or celebrate violence. UN agencies, funds and programmes can also engage their Good Will Ambassador to make themed visits. ▸ **Support groups of 'women leaders', 'chatty' (e.g. hairdressers) or prominent members of the community to provide on-going awareness raising.** UNDP Guinea supported the development of groups of 'women leaders' who advise women on their rights, and how to access legal, medical and social services. Women's grassroots groups and leaders are an increasingly important driving force for change at the community level in Africa, and UNDP should work to help empower these groups by providing them spaces to organize and engage with decision-makers.
Enable access to all justice mechanisms: Strengthen access to justice institutions (both customary-based and statutory).	**Formal justice systems may be too difficult to approach and what alternatives exist for increasing awareness and access to quality community-based justice mechanisms?**	

		▸ **Support ADR as a primary means of increasing access to justice for women.** ADR provides an alternative to statutory justice, and the harm that these frequently cause women and children in particular. ADR enables them to avoid traumatic statutory encounters, as well as the loss of livelihood that frequently results when husbands and fathers are detained. Women bring the majority of ADR cases. They report that do not feel comfortable in more formal settings such as a police stations, lawyer's offices, court houses and customary justice fora. They also report that they like the confidentiality of ADR processes because it enables them to discuss socially taboo sexual and domestic issues (NB: ADR cannot resolve serious sexual crimes). Women account for at least 50% of mediators. They report that they appreciate the status attached to providing a socially valued service. In contexts in which women's rights are violated with impunity, there is value in a process where women can speak and be heard, and in which women can gain status and esteem by providing a socially valued service. Detailed tips on how to support ADR are provided in Chapter 3 (Section 3.2). ▸ **Support access to TDR.** 70-90% of Sub-Saharan African communities choose to resolve cases in customary justice fora. Women often cannot afford the fees Chiefs frequently charge to hear cases, and their rights are often disrespected in TDR processes. LASPs can support women to receive customary justice—such as by advocating with Chiefs to waive their fees, and supporting them to align TDR with national laws and human rights standards. More information on how to support TDR is provided in Chapter 3 (Section 3.1). ▸ **Support LASPs to co-ordinate within referral networks** so that those offering complementary services are able to refer clients, ensuring that women and girls receive all the support services that they need, at each stage of the justice process. More information on how to support the development of referral networks is provided in Chapter 2 (section2.3). In DRC, UNDP created a network of paralegals and lawyers specialized in legal assistance, linking barristers from North and South Kivu with CSOs of provincial commissions combating sexual violence.[88] ▸ **Make it easier for SGBV victims to access a range of services: support establishment of 'one stop shops'.** The support women need to access justice goes beyond 'legal' assistance, as that term is normally construed. Services provided by social workers, psycho-social counsellors, and medical professionals are as important as those provided by lawyers and paralegals. Women often struggle to access such services—because it involves contacting numerous different organisations—and give up after a short time. UNDP Cote d'Ivoire is supporting 'one stop shops' which place a range of services—lawyers, mediators, paralegals, medical and social services—under one roof. In Eastern Cote d'Ivoire, the centres were so welcomed that they grew into so-called "maisons des femmes" in which women participate in revenue generating activities, and engage with local police, chiefs, and other authorities in an environment in which they feel safe and confident. UNDP in DRC supported a national NGO 'Heal Africa' to extend integrated medical and psychosocial support to victims and survivors of SGBV in eastern Congo, notably in Goma and Kivu. In alliance with the American Bar Association (ABA), legal support was provided as required. Heal Africa personnel provide medical evidence in court. In addition to medical, psychosocial and legal services, the facility also trains women in new skills such as baking and sewing, and extends loans to women to help improve their financial status. Furthermore, it operates 28 Wamama Simameni (safe houses) in North Kivu and Maniema villages. However, it is important to make sure to design legal aid initiatives on the basis of local research findings; 'one stop centres' may not be effective everywhere. For example, where women are stigmatised for accessing justice, they may be too afraid of being seen walking into the centre to benefit from services. Also, building brand-new bricks-and-mortar centres with power and water amongst huts and run-down buildings may exacerbate a sense that statutory justice is an 'alien' concept implanted by foreigners. ▸ **Consider 'concealing' legal aid services within established, uncontentious community initiatives.** In contexts in which it is not advisable to convene groups to raise legal awareness on SGBV or other sensitive rights issues overtly, LASPs have successfully linked up with well-established uncontentious CSOs providing livelihoods, credit and family planning services. Where a stand-alone legal aid service provision would have prompted opposition, existing legitimate fora have provided an entry point for legal aid services.

88 UNDP (2013). *Rule of Law and Access to Justice in South and Eastern Africa. Showcasing Innovations and Good Practices*, p.79

		▸ **Support 'mobile courts'** circuits to bring Magistrates and Judges to rural areas. ▸ **Remove the need for formal legal assistance where possible by removing barriers to access and simplifying the legal system.** By reducing the need for formal legal assistance, justice systems would automatically become more accessible to vulnerable populations. Consider supporting the following means of reducing barriers: • Empower women to access the statutory system themselves, such as by enabling women to represent themselves in applications for maintenance or protection orders. • Simplify court procedures, or make them more flexible and responsive to individual circumstances, such as by encouraging magistrates to take a more inquisitorial role where the defendant's representation is stronger than that of the victim, or intervening on behalf of women who are not represented, to ensure greater fairness. Provide assistance to overcome language or cultural barriers. UNDP Niger supported volunteers to work in courts to explain decisions and ensure that parties understand the process.
Facilitate gender sensitive administration of justice: Strengthen both statutory and customary institutions in their administration of justice.	**The types of challenges to accessing justice for SGBV described are many and varied. How to target interventions at specific administration of justice needs?**	▸ **Engage with justice sector and civil society partners.** Law enforcement personnel and the LASPs which accompany women through legal processes are the best sources of information about the challenges to the effective administration of justice. Use the guidance in Chapter 2 to ascertain exactly where challenges lie, and design interventions to address them. ▸ **Develop a combination of 'hard' and 'soft' capacities.** Strengthening the administration of justice for women requires physical capacities—such as separate facilities for interviewing SGBV victims and forensic testing equipment—as well as 'soft', human capacities such as training in how to handle cases involving women sensitively. Partners have supported the following activities, with the support of LASPs: • Support to develop a training curriculum to address gaps in crime prevention and prosecution skills. Linked to this, training programmes—with calendars—could be designed and implemented in coordination with other development partners. • Support CSOs to conduct Training of Trainers (ToT) workshops to build the capacity of police, social services, and justice personnel to undertake practical tasks such as gathering forensic evidence, providing psychosocial counselling, etc. • Support authorities to develop 'Standard Operating Procedures' or 'Case Management Guidelines' detailing how to implement laws which criminalise violence against women. • Conduct training based on any guidelines and handbooks (to be used as reference material 'on the job'). Produce posters detailing steps to follow to observe due process: these can be displayed in police stations for easy reference. (See for example – PASI poster on *10 Steps for your arrest and appeal*[89] and *What is bail?*[90]) • Support authorities to coordinate training schedules and dissemination of learning materials (e.g. guidelines, handbooks). • Support lawyers, judges and magistrates to develop 'Practice Directions' detailing how new laws can be implemented. • Coordinate with other development agencies and the police to develop a training centre – potentially located within university campuses. Hiring hotels and other venues for trainings throughout the year drains resources, which might be better invested in a training centre. This empowers the police with a venue in which to conduct their own trainings and strategising. • Support where necessary with the purchase of basic furniture, equipment, and stationery for police and courts. • Support development of case and data management systems. • Support establishment of 'Saturday Courts' exclusively for clearing SGBV case backlogs. ▸ **Support monitoring and reporting.** UNDP-Sierra Leone supported LASPs and recruited field staff to monitor and report on the performance of both statutory and customary institutions. The effect has been to increase accountability, incentivise institutions to deliver justice, reduce discriminatory practices, and increase the number of SGBV convictions. Some Chiefs and police reported that it is no longer worth compromising cases following pressure or bribes because "human rights people" would emerge to pressure them to observe due process.

89 See http://pasimalawi.org/downloads/ten_steps.pdf
90 See http://pasimalawi.org/downloads/what_is_bail.pdf

Support Advocacy on women's access to justice: Strengthen advocacy for inclusive laws, policies and institutions.	**Which reforms to advocate for?**	▸ **Support development of inclusive laws, policies, and institutions.** LASPs conduct advocacy—through community mobilisation, media engagement, civil society statements and petitions for the attention of governments, direct engagement with individual law enforcement institutions, and public awareness campaigns—and provide technical inputs to support the following efforts: • Drafting new laws which criminalise violence against women and girls. • Revising existing laws containing discriminatory legislation which frustrates their application. • Better implementation of existing, satisfactory laws which promote and protect the rights of women and girls. • Securing strategic policy commitments and budgets for implementation or protective laws. • Ensuring that ending violence against women and girls is incorporated into leading national development and funding frameworks, such as Poverty Reduction Strategies, National Development Plans, National HIV and AIDS Plans, Sector-Wide Approaches, post-conflict peace-building and reconstruction. • Domesticating, international and regional instruments which enhance access to justice in civil cases, such as: - CEDAW commits signatories to 'take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: the same rights of ownership of both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.' - Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa ('Maputo Protocol'). The Protocol states that that 'a widow shall have the right to an equitable share in the inheritance of the property of her husband', including the right to continue to live in the matrimonial home, and that 'women and men shall have the right to inherit, in equitable shares, their parents' properties'. ▸ **Create a space for LASPs to engage with decision-makers.** UNDP Sierra Leone supports a 'Civil Society Consultative Forum' in which LASPs from across the country meet once a month to strategize, coordinate their activities, and hold one another accountable for implementing the activities specified in UNDP-funded proposals. Periodically, UNDP leverages its relationship with government to invite officials to attend the forum. They respond to LASPs' questions, explain laws, policies and practices, and receive information from LASPs about how these affect disenfranchised communities. LASPs then carry this information to their communities, informing communities about the content and rationale of regulatory frameworks. LASPs are becoming a channel through which disenfranchised communities can influence those frameworks, and hold those who govern them accountable for responding to their needs and expectations. Within the Forum, LASPs are conducting coordinated advocacy with great success: their efforts have resulted in changes to the national NGO policy, health policy, and state-society discussion on a resented, popularly misunderstood new tax regime. ▸ **Develop LASPs' capacity to conduct strategic or 'public interest' litigation:** this involves supporting individual cases aiming to change national laws and policies to benefit groups affected by similar issues. In Africa, CSOs have successfully conducted strategic litigation to change national laws and policies which conflict with international standards. Public interest litigation is among the cost-effective means influencing legal and policy reform – as well as mobilizing social consciousness of key justice issues, and civil rights and mechanisms for promoting change. In Botswana, for example, strategic litigation by Unity Dow challenged the constitutionality of the 1984 Botswana Citizenship Act, which prevented women from passing down citizenship to her children as she was married to a foreigner. The High Court eventually decided in her favor and the gender discriminatory section of the Act was amended. In some Zimbabwean communities, custom is used to deny women the right to inherit land. The Constitution does not allow for discrimination, except if it is based on custom. One woman was supported to take her case to the Supreme Court. While the case was unsuccessful, it raised the profile of the issue significantly. It is now one of the most topical issues under discussion now, and a constitutional review may soon change this custom.

		Whilst UNDP does not have a mandate to pursue litigation directly, it may be appropriate in some contexts to support Government Public Solicitors/Legal Aid Agencies directly, or LASPs to conduct such litigation. The benefits of strategic litigation include: • Does not require significant human resources. • Has dual benefit: helps the individual litigant, and can have far reaching benefits for others affected by similar issues. • Is a way of helping legal assistance to reach communities where there are no other legal assistance resources, as precedents can empower NGOs and communities to advocate on behalf of children, eliminating the need for legal action. • Catalytic impact on legal reform • Even when unsuccessful, can be a key advocacy tool – it forces the legal system to consider an issue, document the analysis and decisions and identify the legal barriers that need to be removed. ▸ **Develop LASPs' capacity to engage with national and regional human rights' institutions.** Human Rights Institutions (HRIs) often enjoy a very broad mandate, which includes the right to make recommendations concerning national legislation and any government policy which is incompatible with national or international law. Some also have a quasi-judicial function and procedures that are simpler than those of courts. The ACHPR also has significant powers to influence national regulatory frameworks. UNDP can explore the mandates of HRIs, and train LASPs on how to engage with them—including through strategic litigation at the ACHPR. ▸ **Develop LASPs' capacity to draft and submit 'shadow reports' for the attention of international and regional treaty bodies.** UNDP can support LASPs to influence treaty body and other human rights review processes—such as the Universal Periodic Review of the Human Rights Council—which define what states must do to strengthen implementation of international law at national level. LASPs are repositories of expertise on the pattern of rights violations and needs in vulnerable communities, but frequently lack capacity to conduct additional research, draft, and submit 'shadow' reports for the attention of relevant regional and international treaty and other bodies.
Ensure additional considerations for addressing sexual violence particularly in crisis settings: UNDP programming on sexual violence should consider a number of additional factors	**How to ensure a holistic approach to addressing SGBV, especially in crisis situations?**	▸ **Access to security:** Often victims and their communities, partners such as human rights defenders, lawyers and judges and UN System personnel are targeted for supporting justice. When LASPs assess an individual case, security risks should be carefully considered and addressed, such as: • Victims should be informed of the benefits and the consequences of reporting. • Special protection measures for victims, their families, and witnesses should be put in place in coordination with protection mandated agencies, such as OHCHR. • LASPs or social welfare agencies offering shelter facilities should be included in referral networks. • Confidentiality is standard practice for legal and paralegal assistance: especially in IDP camps, where victims are at greater risk of reprisals from perpetrators who share the same physical space, additional confidentiality measures are likely to be necessary. ▸ **Additional confidentiality measures:** LASPs should always take steps to assure confidentiality, in order to protect clients' privacy, and reduce risk of reprisals and stigma. The following measures have been necessary in some cases: • Significant investment in training, close supervision and mentoring of LASPs. • Careful selection of LASPs, including the personnel and volunteers who will be directly in contact with victims or handling sensitive information: in crisis-affected settings, political agendas can prevail over humanitarian considerations and some individuals and organisations might not act in the best interest of the victim. • Information collection and storage should be closely supervised and specific measures should be put in place to prevent information being stolen or lost—and putting victims and project personnel at risk. ▸ **Support to military jurisdictions:** Sexual violence perpetrated by military personnel is often tried by military courts. Consequently, strengthening access to justice implies support to military jurisdictions. The modalities of this support should be assessed case by case.

		▸ **Mass violations:** Legal aid programming in crisis contexts often presents cases involving multiple violations and abuses. Normally, these would be addressed in coordination with protection mandated agencies such as OHCHR. UNDP can provide support by strengthening LASPs' capacities to undertake timely reporting of cases, collection of evidence, and the provision of victim support, advice, and representation. UNDP programming can also address strengthening the capacity of judiciary institutions to conduct preliminary investigations of crimes of sexual violence through trainings on the international and national legal framework and investigation techniques. UNDP may also support advocacy efforts to ensure that sexual violence is addressed. ▸ **Engage on complementarity:** The International Criminal Court (ICC) operates on the principle of complementarity as articulated in Article 17 of the Rome Statute: it will neither act nor consider a case admissible if the crimes are genuinely investigated and prosecuted by domestic authorities. As such, the ICC may also contribute to the development of national capacities to bring alleged perpetrators of serious international crimes to account. In the area of prosecutions, UN programmes seek to reinforce or develop national capacities to ensure that investigations and prosecutions of serious violations of human rights and international humanitarian law are undertaken impartially, objectively and in a timely manner in accordance to international standards.[91] UNDP legal aid programmes could support national justice institutions by building capacity to investigate and prosecute serious human rights violations, such as SGBV, within national jurisdictions, while also cooperating with international and regional human rights mechanisms. The UNDP Goma office partnered with the Office of the Prosecutor at the ICC in a training of prosecutors and investigators.[92] ▸ **Reparations:** Victims normally do not receive reparations, even after a judgment in their favor. This is a critical access to justice problem: survivors often consider they have no incentive to pursue justice. Pursuant to the *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (General Assembly resolution 60/147, 16 December 2005), legal assistance should go beyond case adjudication to support victims to obtain reparations.[93] • UNDP legal aid service programmes should include a component on victims' redress. • UNDP might offer technical support for the establishment of national victim's reparations mechanisms, and assist governments with administration of relevant funds. • State recognition of harms to victims and of its obligations should be ensured in reparation processes distinguishes reparations from regular development programmes. Reparations programs might be integrated within broader national strategic frameworks for development assistance.[94] ▸ **Supporting data collection:** Legal aid programmes in countries on the Security Council agenda might consider including a data collection component aiming to support United Nations efforts to collect reliable data on sexual violence, as requested specifically in UNSC Resolution 1888. Data collection should be conducted in coordination with the UN system and should be based on ethical and safety considerations. ▸ **Partnerships:** UNDP supports cooperatively with the OHCHR and DPKO "the Rule of Law Team of Experts" whose deployment is mandated pursuant to Security Council Resolution 1888 to provide assistance to national authorities in the investigation and prosecution of those allegedly responsible of sexual violence crimes.

91 UNDP (2012). Discussion Paper. Complementarity and Transitional Justice: Synthesis of Key Emerging Issues for Development. See http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Discussion%20Paper%20%E2%80%93%20Complementarity%20and%20Transitional%20Justice%20%E2%80%93%202012%20_%20EN.pdf

92 Idem, p.81

93 See also UNDP and UN Women (2012), Reparations, Development and Gender and the UN Women 2011-2012 Progress of the World's Women: In Pursuit of Justice, p 97-100.

94 See 2007 Nairobi Declaration on Women's and Girls' Right to a Remedy and Reparation

4.3. Legal Aid for Children

When children and youth come in contact with the justice system, they often are first time offenders involved in minor offenses or they are innocent parties to family and other disputes among adults. The experience of facing the justice system however can have a great impact on the child. In extreme cases, children and youth can languish in pre-trial detention, which in addition to having significant detrimental impact on the child/youth psychologically and on their health, also has a great socioeconomic impact, including loss of opportunities such as education and future employment, on them, their families and community.[95] The international human rights standards on the rights of the child regarding justice therefore seek to protect the rights and best interests of the child within a justice for children framework, where deprivation of liberty should be seen only as a last resort.

The Convention on the Rights of the Child (1989) sets forth a series of rights to which all children should be entitled, including as part of justice processes. Underlying the rights of children are four key principles that orient the interpretation of all other articles. These principles include: the protection of the best interests of the child; the prohibition of discrimination; the survival and development of the child; and the right of the child to be heard. The barriers facing children when accessing justice usually stem from violation of one or more of these principles.

The interpretation of who is considered a child affects how they are treated within the justice system. In the formal justice system for children in conflict with the law, the minimum age of criminal responsibility usually defines if a child will be subjected to juvenile or criminal justice proceedings. In informal justice systems, cultural perceptions of childhood strongly influence how a child will be treated regarding offenses committed or cases impacting the child. It is important to understand that the best interest of the child may be compromised if, for example, the child is considered by the law or by the community to be an adult capable of carrying responsibilities for his actions, or if the child is seen as a 'non-person' where the child's interest may go unrepresented or be represented by another person, possibly a relative of the child who may have different interests in the case (in these cases the child's interests is often treated as an extension of the relative's).[96] Discriminatory social norms may also be detrimental to the best interests of the child: regarding child custody disputes, custody might be determined in some cases solely on the basis of the child's gender or age, without taking into consideration the views of the child or their best interests.[97] In other cases, regarding inheritance and property rights, children born outside of marriage (and considered "illegitimate children"), orphans or whose father has died, do not have any rights to inherit land or property. In some traditional settings, women and girls cannot inherit their husbands or father's land and property. This makes women and children in these cases particularly vulnerable to property and land-grabbing.[98] In others, citizenship rights and legal identity are not accessible if fathers are not able to pass it down to them.

95 UNDP/OSJI (2011). The Socioeconomic Impact of Pretrial Detention. See http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Socieoeconomic%20Impact%20of%20Pretrial%20Detention1.pdf

96 UNDP/UNICEF/UNWomen (2012). *Informal Justice Systems: Charting a Course for Human Rights-based Engagement*, p.129, 135.

97 Idem, p. 125

98 Idem, p. 126

Children are subjects of robust international[99] and regional[100] juvenile justice frameworks, which focus on keeping them out of the statutory justice system. The vast majority of cases involving children—civil and minor criminal cases—oftentimes can and therefore should be diverted to community-based, restorative justice mechanisms such as child panels (see Chapter 3). Deprivation of liberty and pre-trial detention should only be used as a measure of last resort, and for the least possible period of time.

4.3.1 Barriers to children's equal access to justice

Important legal instruments require governments to make special efforts to protect children's rights and dignity throughout the justice process – whether they experience it as a suspect, witness or victim.[101] Such provisions however are rarely adequately implemented: the special needs of children in contact with justice systems are rarely acknowledged, their rights are frequently ignored, and explicit juvenile justice guidelines are rarely followed.

Consequently, cases involving children are processed in systems that are set up for adults: the children concerned often do not benefit from important juvenile justice principles which encourage diversion of minor criminal cases (or in case of first-time offenders) to alternative measures, which can include for example community-based justice systems and alternatives to custody. Juvenile delinquency is often answered by aggressive law enforcement responses rather than by involving social welfare agencies to address vulnerabilities in children (i.e. education, health, adequate standard of living, protection from all forms of abuse and violence). Court convictions with a punitive approach are often favored over restorative measures, including reconciliation, restitution and compensation, focusing on the rehabilitation of child offenders.

Children often do not even benefit from the protections that justice systems should afford to adults, further compounding the situation of vulnerability of children. Police are often negligent or unwilling to respond to reports of crimes against children, and do not take action to investigate these crimes, thinking that these are private, family matters. Children often suffer harassment, physical and sexual assault at all stages in the justice chain, from interviews at the police station to confinement in facilities which do not have separate accommodation. These situations and their contact with the justice system can be extremely traumatic for children and can lead to them becoming hardened, victimized and more alienated from society. Even where justice is relatively well administered, it can intimidate and bewilder children. Many rights laid down in the framework of justice for children mirror the general rights contained in international human rights instruments

99 Convention on the Rights of the Child (1989), Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000), Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, (2000). Furthermore, relevant guidance regarding juvenile justice is provided by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) (1985), , United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) (1990), United Nations Minimum Rules for Non-Custodial Measures (the Tokyo Rules) (1990), United Nations Rules for the Protection of Juveniles Deprived of their Liberty (JDLs) (1990), Guidelines for Action on Children in the Criminal Justice System, ECOSOC Resolution 1997/30 (1997), Basic principles on the use of restorative justice programmes in criminal matters (ECOSOC resolution 2002/12, annex) (2002), UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution2005/20 (2005), General Comment of the Committee on the Rights of the Child on children's rights in juvenile justice. This document outlines the core elements of a comprehensive juvenile justice policy (2007) and UN Common Approach to Justice for Children (2008),

100 See, for example, the African Union's African Charter on the Rights and Welfare of the Child (1990) and the Council of Europe's Guidelines on Child Friendly Justice (2010).

101 The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC Resolution2005/20 (2005) lays down specific right that apply to children who act as victim or witness in judicial processes: the right to be treated with dignity and compassion; to be protected from discrimination; to be informed; to be heard and to express views and concerns; to effective assistance; to privacy; to be protected from hardship during the justice process; to safety; to reparation; and to special prevention measures.

regarding justice (e.g. not to be found guilty of a crime that did not constitute a crime at the time it was committed; presumption of innocence; free legal assistance; undue delay in the justice process), others are related specifically to child justice such as the principle of the child's right to be heard and to have a voice during the process to express views and concerns regarding charges and cases, process and measures; to comprehend the charges, possible consequences and penalties; and the freedom from compulsory self-incrimination.

UNDP South Sudan

The establishment of a child justice system would require the establishment of laws, procedures, authorities and institutions specifically applicable to children who come in contact with the law, including specialized units within the police, the judiciary, the court system, the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child.[102] The challenges to the establishment of such a system can be found in a lack of capacity and awareness: law enforcement and justice personnel are often unaware of children's rights, juvenile justice laws, and what they must do to implement them. Those who have the awareness frequently lack the skills. A policeman may know *that* he should interview children sensitively, divert their cases, and connect them with relevant legal and social services, but not *how* to do so. What questions to ask a child? What diversion options are available and what are the procedures? Which organizations provide relevant support, and what are their phone numbers? A judge may realize that his decision can change the future course of a child's life and must be based on his or her best interest, but not how to establish what that is. What information should he solicit? What are 'best interest factors', and what do they entail? Finally, those who have both the awareness and skills frequently lack the material capacity: a phone or vehicle to locate parents; a private space in which to conduct a confidential interview, or witness protection systems to invoke - for children – who are often the only witnesses in cases such as domestic violence, but often place themselves at risk by giving evidence.

Children who cannot access support to protect their rights throughout legal processes are often tremendously damaged. Recognizing this, the UN system has committed to address these issues as noted in the UN Common Approach to Justice for Children (2008) and specified in the UN Secretary-General's Guidance Note (2008).[103] The Approach acknowledges that legal aid can be a powerful tool to ensure children's access to justice. The Approach recognizes that police, courts and prisons are not always the key sites of justice for children and that informal justice mechanisms are less intimidating to children, closer to them physically and more relevant to their needs. They tend to address issues that are most relevant to marginalized children: civil and family matters such as right to inheritance, guardianship, custody, national identification and citizenship. The Common Approach stipulates that justice for children must not be regarded as a separate issue: children's legal needs must be integrated in the justice sector investments made by all UN agencies. Specifically, the Approach calls

102 Committee on the Rights of the Child (2007). *General comment No. 10. Children's rights in juvenile justice*, p.24. (CRC/C/GC/10)

103 UN (2008). *UN Common Approach to Justice for Children. See http://www.unrol.org/doc.aspx?n=uncommonapproachjfcfinal.doc and Guidance Note of the Secretary-General - UN Approach to Justice for Children.* See - http://www.unicef.org/protection/RoL_Guidance_Note_UN_Approach_Justice_for_Children_FINAL.pdf and

for: mainstreaming justice for children in existing UN rule of law initiatives, adding components to strengthen their impact on children, and greater coordination between UN agencies for this purpose.

The Approach calls for efforts to strengthen the justice system and ensure full respect for children's rights, focusing on the following areas:

- Build the knowledge base on children in justice systems;
- Raising awareness on the rights of children going through justice systems;
- Promoting restorative justice, diversion and alternatives to deprivation of liberty;
- Promoting non-state/informal justice mechanisms in line with child rights;
- Enabling the full involvement of the social sector;
- Assisting governments' ability to prevent crimes against children and to detect, investigate and prosecute offenders.

4.3.2 How LASPs can support children's equal access to justice

The justice for children framework establishes children's entitlement to legal aid services free of charge and calls upon governments to adopt measures and allocate funding for this purpose. It acknowledges that provision of legal services to children is different because of children's special developmental status, including physical differences between child and adult brains. This has implications for how legal aid is made available to children.

Yet where legal aid is made available to children, it is rarely accessible to them—precisely because provision is not predicated on an understanding of children's developmental status. Consequently, children rarely have access to the support they need. Child-friendly legal aid (CFLA) is defined as "the provision of legal assistance to children that is accessible, age-appropriate, multidisciplinary, effective, and that is responsive to the range of legal and social needs faced by children and youth. Child friendly legal aid is delivered by lawyers and non-lawyers who are trained in children's law and child and adolescent development, and who are able to communicate effectively with children and their caretakers."[104]

Understanding how to provide CFLA begins with an understanding of child and adolescent development. Juveniles' ability to understand what is at stake and interact with those who assist them all turn upon their physical, cognitive and emotional development, and professionals' ability to communicate with children in an age appropriate manner. The last part of the brain to fully mature is the prefrontal cortex; the area of the brain responsible for planning, reasoning, and self-control. Consequently, juvenile conduct that is perceived as calculated—and culpable—criminal behavior is likely to be a spur-of-the-moment manifestation of poor judgment based on immature thinking.[105] Understanding brain development—as well as the range of societal factors that influence child development—empowers legal practitioners to design child-friendly legal aid initiatives.

In addition to the range of programmatic elements that LASPs use to contribute to justice for children (outlined in Chapter 1 and above in relation to access to women), LASPs engagement in the provision of CFLA in Africa should involve:

104 UNDP/UNICEF/UNODC (2011). Child-Friendly Legal Aid in Africa. See http://www.unicef.org/wcaro/english/7.11.11-Joint_UN_Pub_CF_Legal_Aid_EN_version.pdf
105 Idem, p.6

Improving accessibility: Accessible legal aid responds to each of the factors which hinders children's access to legal services: educational; geographic; financial; allocation decisions that prioritize criminal cases over the civil cases which are most relevant to children's legal needs; legal systems which do not recognize children's rights to appear in legal proceedings as independent parties; providers who do not adopt developmentally appropriate means of communicating with children; and programmes designed without consulting intended beneficiaries—and the organizations that serve them—to ensure that legal aid is responsive to their needs.

A 'sliding scale' approach: [106] Children's rights to participate in legal processes evolve along with their cognitive and emotional development. A 'sliding scale' approach balances a child's right to participate in his legal proceedings with his/her developmental ability to do so.

Careful rationing where resources are limited: Where resources are insufficient to fund the 'ideal' forms espoused by legal instruments, CFLA systems must retain the aspirational objectives of such instruments, and may adapt them by adopting a 'functional approach' and a 'hierarchy of access'.

- **A 'functional' approach** examines the task at hand to see if it can be competently performed by a non-lawyer. While a child facing serious charges in statutory institutions needs the services of a lawyer or a well-trained paralegal, a trafficked or abused child may be best served by a non-legally trained service provider or community representative who can assess a child's and family's needs and link them with relevant social services.

  In the many jurisdictions in which child protection is an administrative function, the majority of assistance to children involves advocacy outside formal proceedings. Trained LASPs such as paralegals can conduct tasks such as initial interviews and investigations, counselling, link a client and to family or social services effectively and at low cost.

  Perhaps only at critical stages such as the decision-making phase of a statutory legal proceeding should a lawyer's expertise in courtroom advocacy and the content of the law be considered essential. Given that the number of lawyers who are willing and able to represent child clients in most African countries is small—and their fees are high—consideration should be given to enabling law students and paralegals to provide assistance, *including representation*. Where lawyers are unavailable or unwilling to provide assistance to children in formal proceedings, the assistance of a trained non-lawyer is preferable to no assistance at all.

- **A hierarchy of access** prioritizes certain categories of legal interest. For example, the UN system and its partners may determine that providing legal aid to children in conflict with the law who are in danger of losing their liberty is more urgent than to a child who needs to obtain identity documents. Note however that a truly child-friendly legal aid system provides free legal assistance to children in all criminal and civil (including administrative) proceedings where the outcome has the potential to meaningfully impact a child's rights.

106 This "sliding scale" approach recognizes that children develop cognitively and emotionally over the course of childhood and that the full expression of their rights evolves along a similar spectrum. For very young children, this means that adults charged with protecting children's rights are permitted to make judgments on the child's behalf about what decisions are in their best interest. As the child develops, this decision-making responsibility shifts incrementally, consistent with the abilities of the individual child and the nature of the issue at hand. In the case of child-friendly legal aid this means that a child's right to participate in the proceedings and to direct the objectives of legal assistance or representation should be given greater and greater deference as his or her developmental capacity evolves over time. See UNDP-UNICEF-UNODC (2011). *Child-Friendly Legal Aid*, p. 8.

Ensuring high professional standards: Service providers should be skilled at communicating with children, interviewing them, and understanding their cultural, community and family dynamics. Professional codes of conduct, training, and quality assurance methods should be established.

Establish professional standards for lawyers and non-lawyers: Most African countries have professional codes of conduct for lawyers. However, these do not contain specific guidance regarding the representation of children. They should be amended to give specific standards for providing CFLA services. Useful additional provisions would:

- Acknowledge the special duties involved in representing children.
- Describe situations in which it may be necessary to resolve questions concerning allocation of authority between parent and child, or to make decisions regarding representation. Standards could also provide guidance on how to resolve any conflicts.
- Authorise the delivery of legal services to children by non-lawyers working with agencies, NGOs, and other organisations.
- Authorise law students to practice law on behalf of children in supervised law school legal clinics.

Develop model rules: These rules should govern the conduct of lawyer and non-lawyer child advocates and set out the duties of such advocates and applicable professional standards (e.g. thoroughness, record-keeping, ongoing training).

Provide training: Children's legal aid providers—whether or not formally trained in the law—should receive on-going training in areas relevant to the representation of child clients. Training should be both theoretical and practical: it should include training in substantive legal concepts and applicable laws, regulations and laws, as well as problem-based, interactive, skills training in advocacy, negotiation, and mediation. Training materials must convey information in ways that are meaningful to those who are working on the ground on behalf of children. A problem-solving approach which conveys substantive information as well as instruction in how to use that information in practice may be most effective. Law schools should consider developing curricula in children's law and developmentally-appropriate legal assistance for undergraduate and post-graduate degree and non-degree courses. (See Box 14)

A needs-based approach: The competencies that child-friendly LASPs require go beyond mastery of the law. LASPs must be skilled at assessing children's needs, obtaining relevant information, and provided needing assistance, as well as strong advocacy skills to represent children.

Developmentally appropriate communication: Child-friendly LASPs must adopt developmentally appropriate communication. This enables them to develop a trusting relationship with the child client and to obtain full information relevant to the case. In addition to understanding how children record, recall and relay information, a legal aid provider must understand—and make efforts to discover—the social, cultural and religious factors that impact the actions and decision-making processes of children and their families. Child-friendly interview techniques in particular must take into account a child's evolving capacities, given the significance of information obtained at interview in the preservation and protection of a child's legal rights. All LASPs require training for this purpose.

Counselling and negotiation: LASPs require counselling and negotiation skills to be able to understand a child client's objectives, and to agree on the most appropriate method of pursuing these. Counselling and negotiation skills enable children to understand the risks and benefits associated with each of the options available to him/her, and to reconcile differing perspectives on the most appropriate way forward that may emerge between legal aid provider and child client.

Effective advocacy: Advocacy skills include the art of making persuasive arguments based on facts and legal and cultural norms in a range of settings: at court, during bilateral meetings with justice and government personnel, and with community leaders.

Assessment and measuring quality: Measuring the quality of legal aid programmes requires the establishment of process and impact outcomes, quantitative and qualitative indicators and evaluation methodologies. (See also Chapter 2 and Annex II). As LASPs do not control many of the variables which impact success, it may be useful to measure quality of services rendered by ascertaining to what extent individuals and agencies meet criteria for quality CFLA.

Box 14: Integrating child-friendly legal aid into national legal aid service provision in Sierra Leone

Access to justice challenge addressed

Significant investments in Sierra Leone's justice sector have not integrated a justice for children perspective. Accordingly, compliance with the Child Rights Act and Convention of the Rights of the Child remains weak. Increasing availability of legal aid services could potentially change this, but few providers offer child-friendly services.

Background

In order to promote child-friendly legal aid, UNICEF sought to scale up existing good practices across the country by:

Supporting coordination and collaboration: UNICEF supported the Government to strengthen district-level referral networks for children in contact with the justice system; ensuring that LASPs work closely with the Ministry of Social Welfare, Gender and Children's Affairs to provide a legal and social response with a strong protection focus.

Supporting development of a child-friendly national paralegal network: UNICEF partnered with organizations establishing a nationwide paralegal network: the Open Society Justice Initiative (OSJI) and TIMAP for Justice. Seeking to ensure that all communities benefit from high quality services, OSJI is helping to scale up the proven TIMAP model. Their efforts include setting national standards for paralegal organizations, including a standardized national training programme that will move towards accreditation and the establishment of a paralegal trust fund to support sustainability. UNICEF has seized this opportunity to expand availability of child-friendly legal aid by integrating juvenile justice components in paralegals' training curricula.

Approach taken

UNICEF revised and/or added the following elements to TIMAP's legal service manual:

- **Chapter on working with children:** including principles of child and adolescent development, international & regional norms and standards governing the provision of legal aid to children, best practice & skills for providers.
- **Chapter on Social Welfare Policy including Child Welfare Policy:** including review and analysis of relevant laws, rules and regulations relating to children and family in Sierra Leone; description of roles and responsibilities of government entities charged with supporting the interests of children including the Ministry of Social Welfare, Gender and Children's Affairs, as well as the Family Support Unit of Sierra Leone Police and Local Councils; and description of Child Welfare Policies.
- **Chapter on Education Policy:** especially on sections of student exploitation, corporal punishment, child employment.
- **Subsection on Juvenile Jurisdiction and Legal Framework for Children's Rights** within existing Chapter on Laws in Sierra Leone.
- **3-day training module on working with children** incorporated in paralegal training curriculum programme.

Challenges

Since child justice components have not been integrated into justice sector investments, justice sector personnel lack awareness of the special skills and knowledge needed to promote children's access to justice. Ongoing advocacy is needed to ensure that children are 'mainstreamed' in broader rule of law initiatives, as well as greater coordination to amplify the impact of these initiatives.

Lessons learned

Balance training, including both technical knowledge and soft skills. Plan sufficient time for training practitioners on international children's rights and softer skills, such as how to communicate with children.

Recommendations

Enhance impact and save money by mainstreaming justice for children in existing initiatives, rather than setting up or strengthening services for children in isolation. Efforts to standardize the practice of legal aid to children, such as by integrating CFLA into a national legal service scheme, are particularly valuable.

Focus on building child protection systems, not activities. Specific initiatives should be 'backed up' by other activities aiming to build a child protection system linking community-based and statutory mechanisms.

Engage colleagues outside the Child Protection section. Justice for children is usually the responsibility of the Child Protection section (for UNICEF). However, since legal aid services encompass access to a wide range of services (for example, social protection and welfare), legal aid manuals could touch on a wide range of issues. It would therefore be useful to engage and receive inputs from other sections.
You can see Mamie's interview here: http://www.youtube.com/watch?v=x8vzHr_pUys.

For individuals, criteria might include:

- Demonstrable theoretical knowledge and practical skills relevant to CFLA.
- Acknowledgement of the evolving capacity of the child and the exercise of professional judgement on the part of LASPs regarding their role in the legal process.
- Ability to conduct effective advocacy on behalf of the child and to select the most appropriate advocacy models.
- Skill in understanding the cultural and community contexts in which legal aid is provided.
- Ability to link children with other service providers to ensure that children's needs are addressed in a comprehensive manner.
- Ability to conduct thorough investigations to discover all facts relevant to the provision of CFLA.
- Ability to navigate multiple systems to achieve desired outcome.

For organizations, criteria may include:

- Evidence-based identification of target areas for the provision of CFLA.
- Coordination with other agencies and groups providing legal aid.
- Creation of minimum standards for providers of CFLA.
- Advocacy for adequate (governmental and non-governmental) support for comprehensive CFLA programmes.
- Staffing and resourcing of legal aid delivery programmes which includes lawyers and paralegals.
- Provision of continuing education and support to staff service providers.

Research on how to promote child-friendly legal aid in customary justice systems: Traditional justice systems routinely consider child custody, inheritance, marriage and petty criminal offenses involving children. Their rights are vulnerable to abuse in these fora, as they do not typically have access to advocates, and customary laws and practices often discriminate against minors, especially girls. In each country, research is needed to establish how to protect the rights of children within these systems. For a general overview of the children's rights issues in the context of informal justice systems, Country Offices should consult, *UNDP, UNICEF and UN Women, Informal Justice Systems: Charting a Course for Human Rights-Based Engagement* (2012).

Box 15: Strengthening capacity for child-friendly legal aid in Benin

Access to justice challenge addressed

Children in conflict with the law in Benin do not benefit from legal protections. They spend longer in pre-trial detention that adults, and have little or no access to legal representation or psycho-medical support. Every year, approximately 300 children are detained, spending up to 48 months in prisons—normally for very minor, first offences—before being released on the grounds that they have already served longer than the sentence they would be given if convicted.

Lack of capacity in the justice system is a key cause of this injustice: between 2006 and 2010, the number of children's judges in Benin shrank to just one in Cotonou Court. This Court did not hold sessions between 2006 and 2010 due to technical and financial difficulties, meaning that children involved in criminal cases during these years languished in prisons without judgment. When the Cotonou Court eventually opened its children's session, many cases still were not heard due to a case backlog, and the erosion of procedures for transferring cases to Cotonou; over time, personnel had forgotten how to transfer cases.

Approach taken

Increasing number of child judges: Through formal and informal advocacy meetings with law enforcement and judiciary personnel at all levels, UNICEF Benin succeeded in convincing the Minister of Justice to increase the number of child judges from one to ten: at least one in every children's court in the country. This action alone reduced the child detention rate by at least 40%, and increased the percentage of children benefiting from alternatives to imprisonment from 4% to 41% between June 2010 and July 2011.

Sustainable capacity development of law enforcement and juvenile justice professionals. UNICEF Benin supported 'sustainable capacity development' by incorporating relevant modules into existing capacity development mechanisms, thereby ensuring that knowledge on child rights and protection is refreshed with each training cycle, and instilled in each cadre of new recruits:

- Training modules developed and incorporated into existing curricula of police, magistrates', administrators' and social assistants' national schools.
- National schools' trainers and lecturers trained to teach these modules.

Child-friendly legal assistance to detained children. UNICEF supported the government to establish 'youth education spaces' within each detention centre. In addition to receiving various trainings, youth are 'coached' on their rights by social and legal assistants.

Child-friendly legal representation. UNICEF supported the Ministry of Justice to collaborate with the Beninese Association of Women Lawyers to provide basic mediation and advisory services to help detained children access justice. The Association's work as 'intermediaries': attempting to connect children to their parents as well as to judges, with a view to restoring parental supports and accelerating processing of their cases.

Challenges

Benin's outdated juvenile justice law does not afford much space for diversion, restorative justice and alternative sentencing. Scope for diversion is further limited by lack of effective of alternative measures. The government provides just one centre for the rehabilitation of children in conflict with the law, which lacks resources and capacity to rehabilitate children. More cost-effective, community based solutions are needed. Lack of adequately qualified practitioners (police, paralegals, lawyers, judges and other professionals) constrains the establishment of a child-friendly justice system.

Lessons learned

Prioritize legal reform. Where the legal framework does not provide for legal protection and assistance to children, efforts in this area remain unsustainable activities: there is little scope for them to become institutionalized practice.

Incorporate prevention components in CFLA programmes. Prevention is essential for reducing violence against and by children. It demands that the UN System works closely with CSOs to encourage community action to prevent and respond to child abuse and exploitation and juvenile delinquency.

Recommendations

Focus on developing a legal and institutional framework. Such a framework 'enables' activities to support legal assistance for children, enhances their impact, and sustainability. It can also provide more options, such as by enabling diversion to ADR processes and alternative sentencing mechanisms.

Support ownership. Child Protection Officers should regard promoting ownership as a principal objective of their work, and actively engage and promote relationships between all stakeholders. Time invested in this process pays off in terms of programme impact.

Table 6 provides detailed guidance on overcoming challenges and using good practices to support LASPs in engaging effectively in each of the programmatic elements towards CFLA.

Table 6: How to support LASPs for enhancing children's access to justice? Common challenges and promising practices to address these

Programme element	Challenges	Promising practices
Coordinate and integrate legal aid for children into wider programming: The UN system should integrate Child Friendly Legal Aid into legal aid service provision, and coordinate implementation with other agencies.	**Lack of coordination among different actors working on access to legal aid for children.**	▸ **Remind UN agencies of their commitment to the UN Common Approach to Justice for Children (2008)**[107] to leverage commitment to integrate CFLA into their justice-sector initiatives, and coordinate its provision with other actors. ▸ **Present support to CFLA as an instrument for achieving broader access to justice objectives.** Governments' active support of rule of law initiatives is critical to their success. For UNICEF Country Offices, this is rarely a challenge: *governments are often well disposed towards justice for children*. Other development partners and donors can be encouraged to support CFLA as a means of more easily achieving their own programmatic objectives. Many of the reforms that the UN Common Approach calls for—such as strengthening community-based justice mechanisms—also feature amongst the objectives of other agencies concerned with strengthening access to justice. Partners can present support to justice for children as an entry point for strengthening the administration of justice as a whole by showing sister agencies and donors how they could achieve their programme objectives by supporting CFLA. ▸ **See also Table 5 on 'Coordination and Integration' for guidance which is also applicable here.**
Support awareness raising: Strengthen administration of laws, rights and how to assert them.	**Who to target and how to develop programming to increase awareness of children's rights?**	▸ **Design communications materials and formats with the target audience in mind.** Support development and dissemination of age- and gender-sensitive communications materials, tailored to populations with little or no formal education, who do not speak national languages. 'Edutainment' programmes using folk songs and drama are often more engaging and hence more effective amongst illiterate communities. Billboards, and posters that use images, not words, have also worked well. Community radio is an effective means of reaching rural audiences, and their programmers often have good ideas concerning effective means of communicating with their listeners. ▸ **Display communications materials in law enforcement institutions.** Ask schools, police stations, courthouses, local council offices and care takers of community meeting spaces to display awareness raising materials. International law requires not just that legal aid services be made available, but that those who come into contact with the law are informed of their availability, and their right to access them. ▸ **Focus on schools, colleges and universities.** Girls in particular are regularly subjected to corporal punishment, harassment and sexual abuse in schools. Discriminatory social norms are perpetuated by teachers, who can give children unequal treatment. Focusing awareness-raising campaigns on educational institutions has three advantages. First, it can help to end violations of children's rights. Second, it can help to prevent children from 'learning' abusive behaviour and carrying it into the next generation. Third, raising awareness amongst school children can provide a 'lever' to bring messages to those illiterate households that other awareness raising campaigns struggle to reach. ▸ **Support students to form prevention and response after-school clubs.** LASPs have successfully supported 'after hours' awareness raising clubs in which students coordinate prevention and response activities. Participants are initially attracted by a small meal and soft drinks provided at the clubs, and then by the responsibilities entailed by committee membership. In many African contexts in which age and seniority are valued, children appreciate the opportunity to acquire status by performing a valued role, and the committees have been active. Club members have shared information about children's rights with their peers, brought at-risk pupils to the attention of teachers, defused stigma (e.g. when girls who have been raped or become pregnant wish to return to school). Observing that girls are frequently abused when they go to the toilet in bushes, club members supported by one UNDP country office successfully advocated for the construction of latrines.

107 See http://www.unicef.org/mongolia/UN_Common_Approach_to_Justice_for_Children.pdf

Enable access to all justice mechanisms: Strengthen access to justice institutions, both community-based and statutory.	**The backlogged, dilapidated state of most statutory justice systems in Africa shapes the way children experience justice: as a harrowing, damaging process. Efforts are needed to prevent children entering statutory justice systems in the first place, and to get them out as soon as possible.**	▸ Support child panels (a form of ADR). LASPs support 'child panels' to enable children to avoid harrowing statutory legal processes, as well as abuse in TDR processes. Child panels are composed of teachers, traditional leaders, and other authority figures concerned with children's welfare, and resolve cases through a form of dialogue or mediation. See Chapter 3 for a full exploration of ADR and LASPs. UNICEF Malawi supports Community Crime Prevention Committees based on traditional approaches to juvenile justice. The Committees are composed of distinguished locals including the Headmaster of the local school, teachers, traditional leaders and some parents and youth. Whenever a child from the community comes in conflict with the law, or is reported to be 'unruly', the Committee tries to solve the matter within the community, without resorting to police or prison officials. Most petty crimes are now addressed within the community and there has been a noticeable decrease in court caseloads, children's conflict with the law and recidivism. It was reported that 90% of children in custody come from areas outside the districts where crime prevention committees have been established. ▸ **Support 'peer educator' initiatives.** Some child panels support prevention of juvenile offending, diversion and reintegration by connecting children with 'peer educators': young people who were themselves previously in conflict with the law but have since adopted a positive lifestyle and attitude. One project has been so successful that local police have stopped handcuffing children: they simply explain why they are apprehending them and take them to the child centre - ***not*** the police station.
	Children often need a mix of support services to be able to access justice: legal, social, and psycho-medical services, accompaniment at police interview, to shelter and support to address violence in their homes. Children, and their guardians, often lack the resources to research, locate and obtain these services.	▸ **Support establishment of 'one stop centres'.** Placing a range of services under one roof increases access to the multiple social and legal institutions charged with protecting rights. ▸ **Support mobile clinics.** Paralegals, lawyers, and social welfare officers can travel together in regular 'mobile clinic' circuits to very rural communities. The clinics support access in rural areas where the establishment of 'one stop centres' is not feasible. Staff from one-stop centres can participate in the mobile clinic circuits on a roster basis. ▸ **Support the development of referral networks.** LASPs need support to function optimally as individual organizations, and to coordinate service provision as a network. They need to be able to refer cases, so that all clients access the range of services to meet their needs. Joint trainings have helped LASPs to establish connections with organizations providing complementary services. Other promising practices for creating referral networks are, for example, compiling and distributing a list of the contact details of LASPs, and convening monthly or quarterly meetings which all LASPs are supported to attend and report on their work. More information on how to support referral networks is provided in Table 3, under programme element "referral networks." ▸ **Support communities to form community prevention and response committees.** LASPs have successfully combined awareness raising initiatives with efforts to support beneficiaries to organize in 'vigilance' committees, which identify vulnerable children, provide them and their guardians with information about their rights and available support, and connect them with relevant services. Follow-up is key however: some LASPs have supported the establishment of these committees and then 'abandoned' them, providing no further support to their consolidation. Such committees have become defunct. Without access to training or advice from lawyers, they may provide incorrect advice or insensitive interventions, which may be damaging for children.
Facilitate administration of justice sensitive to the needs of the child: Strengthen the administration of justice, in both statutory and customary institutions.	**Limited capacity of justice service providers of the specific needs of children.**	▸ **Encourage judicial activism.** Reduce the need for 'formal' legal aid where funding is limited by encouraging magistrates to address any 'inequality of arms' by intervening on behalf of children who are not represented, to ensure greater fairness. Magistrates could also be encouraged to use simple language and explain legal proceedings where children are involved, to reduce the stress associated with a process that is not understood.

		▸ **Improve training for all service providers (CSO and statutory) who serve children by adding components that develop empathy.** Legal knowledge and skills are necessary, but not sufficient, for the effective provision of child-friendly legal aid. All professionals who work with children must be able to place themselves in the shoes of children. Empathy is critical for the provision of child-friendly legal aid services because it encourages professionals to consider children's best interests. Consider a magistrate hearing a theft case involving a seven-year-old child. If s/he is able to place her/himself in the shoes of a starving seven year old, s/he is much less likely to enforce a custodial sentence for stealing some food. A prosecutor who can place her/himself in the shoes of a girl survivor of rape is unlikely to force her to give evidence in front of the alleged offender. Instead, s/he is more likely to explore child-sensitive options. Where these are not available, s/he may speak out and join those demanding change. In Benin, UNICEF accompanied justice providers (e.g. police and magistrates) through training and assistance to make them aware of how to apply child-friendly legal aid within justice processes involving children. (See Box 15). 'Technical' training in legal processes and the content of the law is unlikely to develop such empathy. Including components that encourage empathy could strengthen existing trainings: trainees could be provided with materials such as DVDs of children sharing their stories, or welfare placements which enable legal service providers to talk to children. ▸ **Conduct dialogues to harmonize TDR processes with child rights and juvenile justice laws.** More promising practices on strengthen TDR mechanisms' compliance with human rights standards are discussed in Chapter 3. ▸ **Support monitoring and reporting.** LASPs which accompany individual clients through the legal system have been able to secure children's release from prison. The activities of LASPs supported to track SGBV cases have been associated with prosecutions for rape, and have also provided information about structural and practice flaws in the system, informing evidence-based programming to address it. Accordingly, LASPs monitoring individual cases can promote justice for entire groups of children.
Support advocacy on children's access to justice: Advocacy for inclusive norms, policies, and institutions.	**Lack of awareness as well as limited frameworks and mechanisms in place to enable children's access to justice.**	▸ **Support law reform efforts to change child un-friendly laws.** Child-unfriendly laws make children vulnerable, even when adequately represented by child-friendly advocates. In most African countries the age of criminal responsibility is extremely low. This is a critical challenge to child-friendly justice on the continent. Law reform efforts that aim to encourage ratification and/or 'domestication' of international legal instruments such as the Convention on the Rights of the Child may be helpful adjuncts to legal aid efforts. Strategic 'public interest' litigation is a particularly effective means of promoting legal reform. See also the relevant challenges and lessons learned from Table 5, under programme element 'Advocacy.' ▸ **Use juvenile justice as an entry point to advocate for broader reform**. In their daily work assisting child clients, LASPs acquire valuable information about structural and practice flaws in the legal system. Made available to government and judicial authorities and their partners, this information can focus attention on the realities of how children are treated by the juvenile/criminal justice system and the need for reform. Individual support to child clients can thereby catalyze changes in laws, policies and practices that promote the procedural and substantive rights of every child, and justice for all. Governments are often well disposed towards juvenile justice. Efforts to develop a child protection system can be used as an entry point for broader reform that affects society as a whole.
		▸ **Support establishment of diversion procedures**. Diversion is a sustainable, inexpensive and just alternative to lengthy and damaging court cases and prison sentences. Diversion mechanisms make it possible for children to avoid entering the statutory justice system in the first place, or to exit from the process early on, avoiding damaging imprisonment.[108] Yet, very few diversion and alternative sentencing mechanisms exist in Africa. Those that do, often lack an 'enabling' legislative framework that would enable them to achieve the potential described. LASPs can advocate for legislative, policy and institutional reform to institute ADR as an 'auxiliary' to statutory justice for the civil and minor cases to which juveniles' cases most often pertain. They can also advocate for the establishment of laws and policies to facilitate diversion to ADR structures, and provide the human capacity to make diversion work well in contexts of institutional weakness. Note, though, that absence of explicit laws and policies providing for diversion is not a barrier to diversion. Most national legal frameworks make some provision for measures to enhancing access to justice, and the desirability of restorative alternatives to statutory processes, especially for children. These have provided space for diversion in African countries, which did not have the explicit framework, and have enabled hundreds of juvenile cases to be taken out of the criminal justice system in the time it takes for the wheels of legal reform to turn. See also Chapter 3, Table 4, under programme element 'Enabling Legislation.'

108 The socioeconomic impact of pretrial detainment has been extensively assessed by UNDP/OSJI, including in three country cases. See http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/the-socioeconomic-impact-of-pretrial-detention/

Livelihoods South Sudan

ANNEXES

ANNEX I

LEGAL AID & LEGAL EMPOWERMENT RESOURCES

Normative framework:

- UN General Assembly, International Covenant on Civil and Political Rights, 1966. https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&lang=en
- United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012. http://daccess-dds-ny.un.org/doc/UNDOC/LTD/V12/528/23/PDF/V1252823.pdf?OpenElement
- African Commission on Human and People's Rights, Lilongwe Declaration, 2004. http://www.achpr.org/sessions/40th/resolutions/100/
- NAMATI, Kampala Declaration on Community Paralegals, 2012. http://www.achpr.org/sessions/40th/resolutions/100/
- Report of the Special Rapporteur on the independence of judges and lawyers (A/HRC/23/43), 2013. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/119/35/PDF/G1311935.pdf?OpenElement

Policy and programme guidance:

- UNDP (2014). Legal Empowerment Strategies at Work: Lessons in Inclusion from Country Experience. http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Legal-Empowerment-Strategies.pdf
- UNDP-UNODC (2014). Handbook on Early Access to Legal Aid in Criminal Investigations and Proceedings. http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/13-89016_eBook.pdf
- UNODC (2011). Handbook on Improving Access to Legal Aid in Africa. http://www.unodc.org/pdf/criminal_justice/Handbook_on_improving_access_to_legal_aid_in_Africa.pdf
- UNDP (2005). Programming for Justice: Access for All. http://asia-pacific.undp.org/content/dam/rbap/docs/Research%20&%20Publications/democratic_governance/RBAP-DG-2005-Programming-for-Justice.pdf
- UNDP (2004). Access to justice practice note. http://www.undp.org/content/dam/aplaws/publication/en/publications/democratic-governance/dg-publications-for-website/access-to-justice-practice-note/Justice_PN_En.pdf/

Mapping, Assessment and Measurement Tools:

- UNDP (2014). Guidance Note on Assessing the Rule of Law Using Institutional and Context Analysis. http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/guidance-note-on-assessing-the-rule-of-law-using-institutional-a/
- UNDP (2014). Why, What and How to Measure. A User's Guide to Measuring Rule of Law, Justice and Security Programmes.http://www.undp.org/content/undp/en/home/librarypage/crisis-prevention-and-recovery/why--what-and-how-to-measure--a-users-guide-to-measuring-rule-of/
- UNDP (2013). Rule of Law and Access to Justice in Eastern and Southern Africa. http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/rule-of-law-and-access-to-justice-in-eastern-and-southern-africa/
- UNDP (2012). Access to Justice Assessments in the Asia Pacific: A Review of Experiences and Tools from the Region. http://www.snap-undp.org/eLibrary/Publications/A2J_Assessments.pdf

Additional resources:

- Huairou Commission – UNDP (2014). Engendering Access to Justice. Grassroots Women's Approaches to Securing Land Rights. http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/Engendering-access-to-justice/
- UNDP (2013). Widening Access to Justice: Quality of Legal Aid and New UN Principles and Guidelines on Access to Legal Aid. http://www.eurasia.undp.org/content/dam/rbec/docs/Legal%20Aid%20Workshop.pdf
- UNDP (2013). Accessing Justice: Legal Aid in Central Asia and the Southern Caucasus. http://www.eurasia.undp.org/content/dam/rbec/docs/LegalAid_SouthCaucasus&CentralAsia.pdf
- UNDP/OSJI (2013). Socioeconomic Impact of Pretrial Detention. Country studies of Ghana, Guinea Conakry and Sierra Leone. http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/the-socioeconomic-impact-of-pretrial-detention/
- UNDP/OSJI (2012). Socioeconomic Impact of Pre-trial Detention. http://www.undp.org/content/dam/undp/library/Democratic%20Governance/Access%20to%20Justice%20and%20Rule%20of%20Law/Socioeconomic%20Impact%20of%20Pretrial%20Detention1.pdf
- UNDP (2012). Report from a UNDP Conference on Legal Aid and Legal Empowerment in India. http://www.in.undp.org/content/india/en/home/library/democratic_governance/conference-report--international-conference-on-equitable-access-/
- Open Society Justice Initiative (2012). Improving Pretrial Justice: The Roles of Lawyers and Paralegals. http://www.opensocietyfoundations.org/sites/default/files/improving-pretrial-justice-20120416.pdf
- Open Society Foundation (2010). Community-Based Paralegals: A Practitioner's Guide. http://www.opensocietyfoundations.org/publications/community-based-paralegals-practitioners-guide
- Namati, coordinator of a network on NGOs and supported by OSJI and DFID, had developed significant amount of tools in areas of legal empowerment, legal aid, and community paralegals which are available on http://www.namati.org/research-publications/
- The International Legal Aid Group is a network of legal aid specialist which maintains a database on relevant papers and reports to inform policy making and research on legal aid http://old.internationallegalaidgroup.org/index.php

ANNEX II

MONITORING AND EVALUATION

The information contained in this section is excerpted from UNDPs global policy documents on Planning, Monitoring and Evaluation (M&E) for development results.[109] For particular guidance on performing measurement within a Rule of Law context, refer to the Why, What and How to Measure? A User's Guide to Measuring Rule of Law, Justice and Security Programmes.

The purpose of this section is to reiterate the main concepts, elements and responsibilities related to monitoring and evaluation, rather than providing specific guidance on how M&E should be adopted to particular programme and project setting related to legal aid or support to legal aid service providers. These settings are not uniform, and specific guidance therefore hard to predict. However, the following elements should invariably help UNDP staff in building a M&E framework firmly based on these corporate principles. This section will focus moreover on monitoring rather than evaluation, due to the relevance and continuity of monitoring responsibilities and tasks throughout the phase programme and project implementation.

Relevance and role of M&E within UNDP programming

M&E is a core responsibility and task within UNDPs programme and project management. UNDP is accountable to how donor funds are being used and that programme and project results are being delivered according to planning and the agreements signed with donors. The role that M&E plays in this is tightly linked to the role of project and programme assurance.

Within the UNDP Strategic Plan 2014-2017, Country offices should also report progress from UNDPs support to strengthening access to justice (e.g. through legal aid service provision) against the relevant Outcomes and Outputs of the Strategic Plan. UNDPs support to legal aid provision should be reported against Outcome 3, and in particular Output 3.4 and Output indicators 3.4.1 and 3.4.2,[110] also taking into account that UNDPs support to legal aid might also contribute to Outcome 4, and in particular to Output 4.2 and the related Output indicators 4.2.1 and 4.2.2.[111]

Monitoring and evaluation are different tasks, but intimately interlinked. Monitoring can be defined as the ongoing process by which stakeholders obtain regular feedback on the progress being made towards achieving their goals and objectives. When monitoring, we ask the questions "Are we taking the actions we said we would take?" and "Are we making progress on achieving the results that we said we wanted to achieve?"

109 Particularly, this section is built on Chapter 4 Monitoring for results, of UNDPs Handbook on Planning, Monitoring and Evaluating for Development Results, 2009.

110 Outcome 3: "Countries have strengthened institutions to progressively deliver universal access to basic services." Output 3.4: "Functions, financing and capacity of rule of law institutions enabled, including to improve access to justice and redress." Indicator 3.4.1: "Number of people who have access to justice in post-crisis settings, disaggregated by sex." Indicator 3.4.2: "Proportion of victim's grievances cases which are addressed within transitional justice processes, disaggregated by sex." All indicators related to Outcome 3, including the related methodological notes (particularly for indicators 3.4.1 and 3.4.2) can be accessed at https://intranet.undp.org/unit/office/exo/IRRF/SitePages/Outcome%203.aspx

111 Outcome 4: "Faster progress is achieved in reducing gender inequality and promoting women's empowerment." Output 4.2: "Measures in place and implemented across sectors to prevent and respond to Sexual and Gender Based Violence (SGBV)." Indicator 4.2.1: "Number of countries that have a legal and/or policy framework in place to prevent and address sexual and gender based violence." Indicator 4.2.2: "Number of countries with services in place (including justice and security services) to prevent and address SGBV." " All indicators related to Outcome 4, including the related methodological notes (particularly for indicators 4.2.1 and 4.2.2) can be accessed at https://intranet.undp.org/unit/office/exo/IRRF/SitePages/Outcome%204.aspx

Evaluation is a rigorous and independent assessment of either completed or ongoing activities to determine the extent to which they are achieving stated objectives and contributing to decision-making. Evaluations, like monitoring, can apply to many things, including an activity, project, programme, strategy, policy, topic, theme, sector or organization.

The key distinction between the two is that evaluations are done independently to provide managers and staff with an objective assessment of whether or not they are on track. They are also more rigorous in their procedures, design and methodology, and generally involve more extensive analysis. However, the aims of both monitoring and evaluation are very similar: to provide information that can help inform decisions, improve performance and achieve planned results.

Any organization that strives for results requires a robust, continuous and effective monitoring system. This requirement becomes even more relevant for UNDP, as the organization is aiming for results that are nationally owned and form part of the multi-stakeholder framework, such as the UNDAF or national development plan; cover global, regional and country levels; are defined and achieved through the engagement of a broad range of stakeholders; and have to be accounted for.

To this end, UNDP works towards a robust monitoring system through effective policies, tools, processes and systems so that it can meet the multiple monitoring challenges it faces. The list of resources at the end of this annex provides useful guidance for setting-up and strengthening monitoring systems in country-settings.

The monitoring policy of UNDP is stated in the POPP and notes that all results—outcomes and outputs[112]—to which UNDP is contributing must be monitored, regardless of budget and duration. Each programme supported by UNDP must be monitored to ensure that:

- The outcomes agreed in each programme (country, regional and global) and their constituent projects are being achieved. This is a collective responsibility among UNDP and its partners. However, UNDP is responsible for monitoring its contribution towards the outcome by ensuring that the outputs being generated with UNDP assistance are contributing towards the outcome.
- Each constituent project of the respective programme produces the envisaged outputs in an efficient manner as per the overall development plan and the corresponding annual workplan. This is a specific UNDP responsibility.
- Decisions of programmes and projects are based on facts and evidence.
- Lessons learned are systematically captured for knowledge and improving future programmes and projects.

While the prime objective of monitoring in UNDP is achievement of results, it is also necessary to monitor the appropriate use of resources at all levels.

The key reference for monitoring is the M&E framework associated with each programme.[113] Within this, the results frameworks (sometimes referred to as 'results and resources frameworks') of the corresponding

112 Outcomes can be defined as "actual or intended changes in development conditions that interventions are seeking to support"; Outputs can be defined as "the products, capital goods and services that result from development interventions."

113 The results frameworks state: the selected national, regional and global development results towards which UNDP contributes, including UN level outcomes as applicable (based on the UNDAF); outcomes more specifically addressed by UNDP support at the country level (in CPDs), regionally (in regional programme documents) and globally (in global programme documents); and outputs associated with each outcome. The results frameworks also give indicators, baseline and targets for each outcome and output as applicable.

planning documents—such as the UNDAF, Global Programme Document, Regional Programme Document, CPD and constituent project documents—further indicate what is to be monitored, and will define baselines, targets, indicators and sources of verification to do so.

Roles and responsibilities for monitoring within UNDP

Monitoring of development results takes place at different levels—typically the national, programme, outcome and project output. There are specific individual and collective monitoring responsibilities at each level for partner organizations. While some monitoring functions can be assigned to specific entities or functionaries, such as project managers at the project or output level, monitoring responsibilities at outcome and higher result levels are collective efforts. Successful monitoring and achievement of results depends on each partner being clear on their individual and shared roles and responsibilities. The respective roles and responsibilities associated at each point at which monitoring takes place and how they apply to UNDP programmes and projects are indicated in table 7.

Table 7: Roles and responsibilities for monitoring

Who: Actors and Accountability	What: Roles and Responsibilities	How: Timing and Methodology
National authorities Main responsibilities: • Lead and oversee national programmes to determine progress towards intended results • Identify and manage partnerships	Monitoring for programme level results • To ensure nationally owned results-based monitoring and evaluation • To provide clear basis for decision-making and guide development initiatives • To use partner monitoring systems based on their comparative advantages • To link results with resources and ensure accountability in the use of resources • To ensure quality and the appropriate use of monitoring evidence and lessons learned • To resolve key bottlenecks to implementation in order to improve the chances of achieving results (outcomes)	1. At initial planning stages • Through active participation in development and approval of M&E frameworks for national programmes and UNDAF. 2. Annual reviews (of progress towards results) by • Reviewing progress, issues, and trends in the achievement of results given in documents for the annual review • Making decisions on changes as needed • Approving future work including M&E tasks 3. Participating in joint monitoring (selectively as decided by prior agreement with partners)
Senior managers of UNDP programmes Main responsibilities: • Lead, implement and monitor the progress of country programmes, together with governments, UN organizations and other partners • Collaborate with national partners to determine the focus and intended results of UNDP assistance to the country • Identify and manage partnerships • Assess the overall performance of UNDP assistance to the country (progress towards and achievement of results) • Ensure the strategic and cost-effective use of UNDP resources	Monitoring for programme level results • To forge strong coalitions for results • To provide clear basis for decision-making and guide development initiatives • To ensure active and results-based monitoring • To ensure quality and the appropriate use of monitoring evidence and lessons learned • To resolve key bottlenecks to implementation in order to improve the chances of achieving results (outcomes) • To link results with resources and ensure accountability in the use of resources • To adjust UNDP assistance in view of emerging changes as if required • To position UNDP strategically within the framework of development cooperation with the country • To approve M&E framework for the programme (for UNDP CPAP M&E Plan) in line with UNDAF and national M&E plans as applicable • To use project and outcome level monitoring data and feed it into programme discussions	1. At initial planning stages • Through active participation in the development and approval of M&E framework 2. Participate in joint monitoring (see above) 3. Prior to annual reviews by • Determining strategic contribution being made by programme towards results through review of outcome group reviews and Annual Project Reports • Deciding on strategic changes needed in programme results and resources, if needed • Finalizing evidence-based contribution of programme as a whole to annual review 4. Participate in annual reviews

UNDP portfolio managers Main responsibilities: • Contribute to sectoral/outcome level coordination mechanisms • Manage UNDP portfolio of programmes and projects in a thematic area such as governance or poverty, in other words, UNDP contribution to outcomes	At outcome level • To analyse progress towards achievement of outcomes • To assess the efficacy of partnership strategies and take related actions (e.g., better coordination with partners) • To monitor the effectiveness of implementation strategies in tackling the constraints to the achievement of results (outcomes) and take related actions • To ensure effective use of resources, deploying them to maximize the possibility of achieving results (outcomes) • To discern and promote capacity development in monitoring and evaluation • To use project-level monitoring data and feed it into outcome level discussions	1. At initial planning stages • Through active participation in development and approval of M&E framework for respective outcomes 2. Throughout programme cycle by carrying out monitoring activities and joint monitoring 3. Prior to annual reviews by determining: • Progress towards the achievement of outcomes • Progress of the partnership strategies for achieving outcomes • Rate and efficiency of resource use • Issues that require decisions at the annual reviews • Inputs to programme reviews and annual reviews 4. Participate in annual reviews at the outcome level
Project managers and staff Main responsibilities: • Manage UNDP- assisted projects to help produce outputs • Contribute to project management and project performance	At the project level, monitoring outputs • To ground the project in the larger context • To take steps towards achieving output targets • To ensure effective collaboration with partners • To interface with beneficiaries • To ensure efficient use of resources • To feed information of project data to higher level monitoring (outcome and programme-level monitoring)	1. At initial planning stages • Development of and agreement on M&E framework for project through an inclusive process 2. Throughout programme cycle by carrying out monitoring activities connected with the project 3. Prior to annual reviews by determining: • Progress towards the achievement of outputs and contribution related outcomes • Rate and efficiency of resource use • Issues that require decisions at the annual reviews • Inputs to programme reviews and annual reviews in the Annual Project Reports 4. Ensure holding annual reviews of the project

UNDP has introduced the concept of programme and project assurance, which, inter alia, enhances the quality of monitoring. Managers of projects and programmes have the primary responsibility for ensuring that the monitoring data is accurate and of high quality. It is normally delegated to a UNDP staff member who is not directly involved in the management of the project or programme. Typically, the programme assurance role is assigned to the M&E Focal Point in the office, and the project assurance role is assigned to a Programme Officer. The assurance function is operational during all stages of formulation, implementation and closure of projects and programmes. With regard to monitoring, the assurance role plays the following functions:

- Adherence to monitoring and reporting requirements and standards
- Ensure that project results elements are clear and captured in management information systems to facilitate monitoring and reporting
- Ensure that high-quality periodic progress reports are prepared and submitted
- Perform oversight activities, such as periodic monitoring visits and 'spot checks'
- Ensure that decisions of the project and programme board and steering committee are followed and changes are managed in line with the required procedures

Monitoring mechanisms

There is a range of approaches and tools that may be applied to monitoring projects, programmes, outcomes and any other programmatic activity. Those who manage programmes and projects must determine the correct mix of monitoring tools and approaches for each project, programme or outcome, ensuring that the monitoring contains an appropriate balance between:

- Data and analysis: This entails obtaining and analyzing documentation from projects that provides information on progress.
- Validation: This entails checking or verifying whether or not the reported progress is accurate.
- Participation: This entails obtaining feedback from partners and beneficiaries on progress and proposed actions.

Table 8 lists a variety of common monitoring tools and mechanisms, divided into three categories according to their predominant characteristic:

Table 8: Monitoring tools and mechanisms

Data and Analysis	Validation	Participation
• M&E framework • AWPs • Progress and quarterly reports on achievement of outputs • Annual Project Report • Project delivery reports and combined delivery reports • Substantive or technical documents: MDG Reports, National Human Development Reports, Human Development Reports • Progress towards achieving outcomes and Standard Progress Reports on outcomes	• Field visits • Spot-checks • Reviews and assessments by other partners • Client surveys • Evaluations • Reviews and studies	• Sectoral and outcome groups and mechanisms • Steering committees and mechanisms • Stakeholder meetings • Focus group meetings • Annual review

Scope of monitoring

Monitoring aims to identify progress towards results, precipitate decisions that would increase the likelihood of achieving results, enhance accountability and learning. All monitoring efforts should, at a minimum, address the following:

- **Progress towards outcomes:** This entails periodically analyzing the extent to which intended outcomes have actually been achieved or are being achieved.
- **Factors contributing to or impeding achievement of the outcomes:** This necessitates monitoring the country context and the economic, sociological, political and other developments simultaneously taking place and is closely linked to risk management.
- **Individual partner contributions to the outcomes through outputs:** These outputs may be generated by programmes, projects, policy advice, advocacy and other activities. Their monitoring and evaluation entails analysing whether or not outputs are in the process of being delivered as planned and whether or not the outputs are contributing to the outcome.
- **Partnership strategy:** This requires the review of current partnership strategies and their functioning as well as formation of new partnerships as needed. This helps to ensure that partners who are concerned with an outcome have a common appreciation of problems and needs, and that they share a synchronized strategy.
- **Lessons being learned** and creation of knowledge products for wider sharing.

Partners may add additional elements where needed for management or analysis, while keeping a realistic scope in view of available capacities. Monitoring usually provides raw data that requires further analysis and synthesis prior to reporting for decision-making. Using information gained through monitoring, programme managers must analyze and take action on the programme and project activities to ensure that the intended results—results that are in the agreed results and resources frameworks—are being achieved. Managers of programmes also monitor and document the contributions of soft development initiatives and strategic partnerships.

Primary monitoring tools used at the outcome level by UNDP are: the corporate results management system (RBM Platform); field visits, consultations and reviews with stakeholders; findings from project and programme monitoring; Annual Reports; and the Annual Programme and UNDAF Review Process. For outcome monitoring, UNDP systems should be augmented by links to national systems and those of other development partners. UNDP should always seek to engage existing national processes in this regard.

Primary monitoring tools used at the project level by UNDP are: the corporate project management system (Atlas); field visits, consultations and reviews with stakeholders; Annual (and quarterly) Project Reports; and the Annual Project Review Process.

Relevant policies and resources

- Why, What and How to Measure? A User's Guide to Measuring Rule of Law, Justice and Security Programmes, 2014. http://www.undp.org/content/undp/en/home/librarypage/crisis-prevention-and-recovery/why--what-and-how-to-measure--a-users-guide-to-measuring-rule-of/
- Evaluation Policy of UNDP (revised), 2011. http://web.undp.org/evaluation/documents/evaluation-policy.pdf
- Handbook on Planning, Monitoring and Evaluating for Development Results, 2009. http://web.undp.org/evaluation/guidance.shtml#handbook

RESOURCE MOBILIZATION AND PARTNERSHIPS

Mobilizing resources and building partnerships are two activities that are intrinsically interlinked. However, for the clarity of purpose of each, they will be separately described in different sections.

A. Resource mobilization

The information contained in this section are excerpts taken from UNDPs Resource Mobilization toolkit (x). For a full and complete explanation of UNDP policy and guidelines regarding resource mobilization, please refer to the resources listed at the end of this section.

Resource mobilization is a central feature of programming. However, resource mobilization goes beyond ensuring funds for our programmes and projects but also includes our ability to assess, position, mobilize, and deliver development results. It is about positioning UNDP at the crossroads of development dialogue in a country context, investing in building and nurturing strategic partnerships, and delivering effectively on our engagements. Whereas, in the past, great emphasis was placed on accessing resources, today we must invest similar if not more effort to ensure that we deliver and report effectively on the resources we have mobilized. Successful resource mobilization depends first and foremost upon our ability to show results.

The Resource Mobilization toolkit identifies four steps that will provide UNDP Country offices with ideas and instruments for honing your approach to partnership building and resource mobilization in a way that will help you – together with your partners – to mobilize those resources for your programme country and add maximum value to the development agenda.

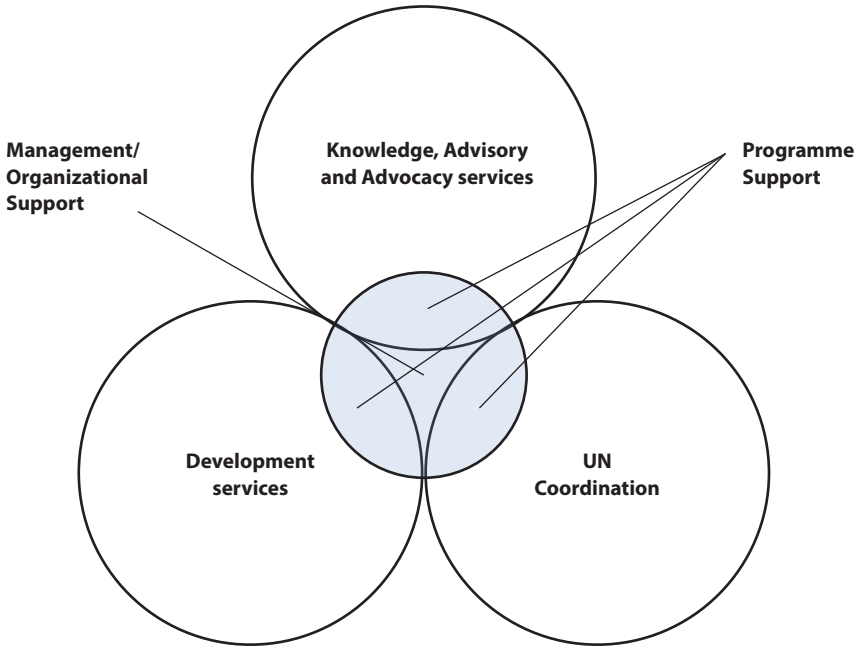
Step 1: Assessing

Assessing the capacities of the Country Office is the first step to map out where the CO competency strengths overlap with partner/client needs, which provides the analytical foundation to position the CO to successfully deliver development results. The CO should use both external and internal analysis in order to:

- Maintain an updated understanding of the demand for UNDP CO services;
- Regularly assess the CO capacity to deliver high-demand services;
- Develop greater awareness of the activities of other organizations in the country context; and
- Define a value proposition for your CO.

Based on experience to date, partners come to UNDP for a variety of reasons, including its capacity to provide a wide range of services, from substantive and technical support for programme design to recruitment and procurement for successful project implementation. It is therefore essential for any resource mobilization strategy to know what areas of your CO business model are particularly strong (See figure 2 for UNDP business model).

Figure 1: UNDP business model



Step 2: Positioning

Positioning helps COs translate their external and internal assessments into a value proposition, or a statement declaring UNDP's unique value in the country context. The value statement expresses the office's niche, or the area in which UNDP is best positioned to meet partner/client needs and deliver high-impact services, and this should take account of the in-house expertise and talent of your CO staff as important internal dimensions. In essence, positioning makes it clear to external partners what the brand of the CO is. Effective communications is key to successful resource mobilization and partnership building[114], so how you position your CO must convey to your partners that UNDP:

- Creates value by responding to partners' needs
- Mobilizes resources for the benefit of the country, not for UNDP
- Demonstrates a clear breakdown of tailored UNDP services
- Has comparative advantages relative to other development organizations

When working in post-crisis and transition environments COs have to take other concerns into consideration: UNDP and UN neutrality, technical expertise, trustworthiness and capacity to deliver are key assets to develop new partnerships in those situations. This also applies to changes in administrations in the host governments: they can be key windows of opportunity for expanding partnerships (particularly after elections and before inaugurations).

114 The UNDP Communications Toolkit, Communicating for Results is a practical guide on why and how to do communications. See http://web.undp.org/comtoolkit/

Step 3: Mobilizing

Mobilizing focuses on the important challenge of building and maintaining partnerships, and delivering on your Partnership and Resource Mobilization Plan (developed during the previous step). In this step, it might be necessary to strengthen specific skills in the team to ensure that once the CO has positioned itself well, experienced resource mobilizers are prepared to present a professional image, negotiate mutually beneficial agreements, comply with partner requirements, and report in a timely and accurate manner.

Step 4: Delivering

Delivery addresses the need to have the adequate programming arrangements in place, together with an effective and efficient operational structure, and monitoring framework to produce timely reports. Having all of these in line will help the CO to meet requirements and expectations of donors and to mobilize future resource in the long run.

In case the CO is providing support to the national government towards the implementation of development projects in the context of Government Cost-Sharing and Support to Loan Implementation, it is important to keep in mind that UNDP's unique contribution, in addition to providing accumulated experience in managing development projects, lies in the following two points:

- UNDP offers transitional operational arrangements to ensure efficient project implementation based on internationally acceptable standards (UNDPs operational framework) through UNDP projects which are governed by the Standard Basic Assistance Agreement (SBAA). The SBAA is an international treaty that is part of the national legislation but prevails over national laws;
- UNDP undertakes capacity development activities in order to solve obstacles in the long run while ensuring that development is not delayed in the short run.

Relevant policy and resources (accessible through POPP):

- UNDP Resource mobilization toolkit
- UNDG Guidance Note: Joint Resource Mobilization (2008)

B. Partnerships

The information contained in this section are excerpts taken from UNDPs Programme and Operations Policies and Procedures (POPP) chapter on Partnerships and on Financial Resources (regarding Joint Programming). For a full and complete explanation of UNDP policy and guidelines regarding partnerships, please refer to the resources listed at the end of this section.

A UNDP partnership is a voluntary and collaborative commitment between UNDP and one or more parties to achieve common objectives in line with the overall development goals supported by UNDP. UNDP and its partners agree to respect the values and policies that are central to their respective mandates and maximize the effective use of their resources while assessing risks, responsibilities, competencies, and benefits.

All partnerships UNDP engages in should be based on the following partnership principles: integrity; dedication to agreed outcomes; realistic expectations; shared responsibility; a medium to long term perspective; underlying institutional interests and organizational values; positioning at the center of

UNDP's priorities and processes; non-exclusivity; non-endorsement; accountability; risk management; and partnership benefit.

Assessing Partnerships

Given the inevitable transaction and management costs involved in partnerships, all UNDP partnerships must aspire to achieve clear benefits for UNDP and its constituents. While negotiating the prospective agreement, it is essential that UNDP and its partners clearly articulate the benefits they expect as a result of the partnership. All partnerships should be assessed against their potential for these benefits and reviewed regularly to ensure expected benefits are being achieved. In the nature of partnership reciprocity, UNDP accepts that its partners will also seek measureable benefits.

Formalizing partnerships

When partnerships comply with the points raised above, and risks and benefits have been assessed by UNDP staff, they still do not need to be formalized through a partnership instrument when there are no programmatic, operational/ service, or financial deliverables. UNDP collaborates and works directly with many of its partners, which requires no formal corporate clearance or agreement instrument. In these situations, it is expected that UNDP staff will abide by the above stated partnership considerations and act with integrity with all of its partners, and explore potential areas for further and more substantive partnership deliverables.

Should UNDP and its potential partner identify substantive deliverables and they wish to establish a framework by which the deliverables will be achieved, then a formal partnership instrument should be co-created ensuring compliance with UNDP regulations, rules, policies and procedures. UNDP staff must determine the appropriate instrument to use when a partnership agreement with another entity is being formalized. Such collaboration can be programmatic or operational (financial or provision of services/ operational focus) and each requires an appropriate instrument. Below is a non-exhaustive list of standard instruments utilized by UNDP, which are fully described in respective sections of the POPP where the relevant processes are described. Note that partnership agreements are not to be used for procurement purposes. Partnership instruments are:

A) Corporate (global or regional) Memorandum of Understanding (MoU)
B) Programming Instruments[115]
C) Financing Instruments[116]
D) Administrative or other Support Services to UN entities[117]

Monitoring partnerships

The purpose of monitoring partnerships is to learn how its implementation is enhancing each partner's performance. Since corporate partnerships are aspirational in nature, innovative initiatives, types of coverage,

115 Such as Letters of Agreements with UN funds, programmes and Specialized Agencies when contracting as a "responsible party" for a UNDP financed project; Project Cooperation Agreement (PCA) when contacting an NGO as "Implementing Partner"/"Executing Agency" for a UNDP financed project; and Grant Agreements for (i) Credit and (ii) Non Credit Related Activities - when providing grant funds to NGOs

116 Such as Cost Sharing Agreements (CSAs) - financing instrument from a donor partner which stipulates the conditions for receipt, administration, utilization and reporting of resources for specific UNDP activities; and Trust Fund Agreements (TFs) - establishes a separate accounting entity under which UNDP receives contributions to finance programme activities

117 Such as Service level agreement (SLA) - used to state the conditions for the provision of a specific and limited set of business operations/ services from UNDP to the UN entity

and products or services must be noted and their added value assessed. The true test of a successful partnership is improved results for UNDP clients.

Joint Programming

Joint programming is the collective effort through which the UN organizations and national partners work together to prepare, implement, monitor and evaluate the activities aimed at effectively and efficiently achieving the Millennium Development Goals (MDGs) and other international commitments arising from UN conferences, summits, conventions and human rights instruments. Through joint programming, common results and the modalities for supporting programme implementation are identified. A joint programme (JP) is a set of activities contained in a common work plan and related budget, involving two or more UN organizations and (sub-) national partners. The work plan and budget forms part of a joint programme document, which also detail roles and responsibilities of partners in coordinating and managing the joint activities. The joint programme document is signed by all participating organizations and (sub-)national partners.

Joint programming contributes to making the UN support to reaching the national goals more coherent, effective, and efficient. It is meant to avoid duplication, reduce transaction costs and maximize synergies among the national partners and the differing contributions of UN system organizations – be it in terms of the normative framework and technical expertise, or of expertise in programme areas and strategies.

There are three fund management options for joint programming:

- Parallel fund management: This fund management option is likely to be the most effective and efficient when the interventions of participating UN organizations are aimed at common results, but with different national, sub-national and/or international partners. Under this option, each organization manages its own activities within the common work plan and the related budget, whether from Regular or Other Resources.
- Pooled fund management: This fund management option is likely to be the most effective and efficient when participating UN organizations work for common results with a common national or sub-national partner (e.g. Department, provincial office, NGO) and/or in a common geographical area. Under this option, participating UN organizations pool funds together to one UN organization, called the Managing Agent, chosen jointly by the participating UN organizations in consultation with the (sub-) national partner.
- Pass Through fund management: Under this option, two or more organizations develop a joint programme, identify funding gaps and submit a joint programme document to donor(s). If the donor(s) and participating UN organizations agree to channel the funds through one participating UN organization, then the pass-through modality applies. The UN organization channelling resources, hereinafter called the Administrative Agent (AA) will be selected jointly by all participating UN organizations in consultation with Government. The common work plan would clearly indicate the activities to be supported by each of the participating UN organizations. The indirect costs to be charged by each organization would be reflected in the respective budgets. The programmatic and financial accountability will rest with the participating UN organizations and (sub-)national partners that would be managing their respective components of the joint programme.

Multi Partner Trust Funds (MPTFs, previously Multi-Donor Trust Funds or MDTFs), One UN Funds and joint programmes using the pass-through fund management modality are multi-agency funding mechanisms designed to receive contributions from more than one contributor that are held in trust by the appointed Administrative Agent. Partner resources are co-mingled to fund programmes/projects implemented by Participating UN Organizations in support of the achievement of nationally owned and determined priorities. MPTFs exist in humanitarian, transition as well as reconstruction and development contexts.

While MPTFs respond to a particular country specific situation, they are governed by common governance arrangements that ensure the participation of UN Organizations and governments, in the identification, design, development, approval, implementation and monitoring of activities with involvement of other stakeholders, such as donors. An MPTF consists of the following key stakeholders:

- a Governance/Decision-Making Body
- an Administrative Agent (AA)
- UN Participating Organizations
- Donors
- Implementing Partners, including Governments and NGOs

On country level, where UNDP is the only agency responsible for management of the programme or project, a basket fund can be created to pool resources from different donors.

Relevant policy and resources:

Corporate guidance regarding resource mobilization:

- Resource Mobilization toolkit (accessible through POPP)

Policy regarding building partnerships:

- Partnerships (POPP) (accessible on UNDP Intranet)

Policy regarding Joint Programming:

- UNDG (2003). Guidance Note on Joint Programming. http://www.undg.org/content/programming_reference_guide_(undaf)/common_country_programming_processes_-_undaf/joint_programmes/policy_and_guidance
- The operational details of the different funding mechanisms, as well as templates for the Standard Joint Programme Document, Standard Memorandum of Understanding (MOU) and Standard Administrative Arrangements for Joint Programmes, can be found at http://www.undg.org/index.cfm?P=240

Policy regarding engagement with civil society:

- UNDP Strategy on Civil Society and Civic Engagement, 2012. http://www.undp.org/content/undp/en/home/librarypage/civil_society/UNDP-Strategy-on-Civil-Society-and-Civic-Engagement-2012/
- Voice and Accountability for Human Development: A UNDP Global Strategy to Strengthen Civil Society and Civic Engagement, 2009. http://www.undp.org/content/undp/en/home/librarypage/civil_society/voice_and_accountabilityforhumandevelopment/

- UNDP Guidance Note on Partnership Grants to Civil Society Organizations, 2008. https://intranet.undp.org/global/documents/partnerships/2008_Guidance_Note_on_Partnership_Grants_to_Civil_Society_Organizations.pdf
- UNDG Guidelines on Indigenous Peoples' Issues, 2008. http://www.undg.org/content/programming_reference_guide_(undaf)/thematic_policies_and_guidelines/indigenous_peoples
- UNDP and Civil Society Organizations: A Policy of Engagement, 2001. http://www.undp.org/content/undp/en/home/librarypage/civil_society/undp_and_civil_societyorganizationsapolicyofengagement/
- UNDP and Indigenous Peoples: A Policy of Engagement, 2001. http://www.undp.org/content/undp/en/home/librarypage/environment-energy/local_development/undp-and-indigenous-peoples-a-policy-of-engagement/

Knowledge, Advisory and Advocacy Services relate to UNDP's substantive contribution to the development dialogue at large and UNDP's conceptual and intellectual leadership in particular areas such as the work on the National, Regional and Global Human Development Reports. These services have long tended to be provided free of charge by UNDP. Current debates emphasize that these services are a crucial component of UNDP's added value that should be costed.

Development Services relate to UNDP's traditional development projects aimed at building national capacities.

UN Coordination is linked to UNDP's stewardship of the Resident Coordinator function and leadership of the UN Country Team. UNDP's role within the UN Development Group is also important to be mentioned here.

Programme Support encompasses the support towards the delivery of the above services. Support services to project execution (Procurement of goods and services, and contract management) have been a particular selling point to UNDP partners (particularly the World Bank). However, Programme support services also include assistance in project identification and formulation, and project monitoring and evaluation. These services seem to become increasingly important particularly in partnerships with Host Governments.

Management/Organizational Support refers to the administrative and management support internal to UNDP.

CAPACITY DEVELOPMENT

The information contained in this section is excerpted from UNDPs global policy documents on capacity development.

Capacity development: an UNDP core issue

Capacity development is central to UNDPs work and is at the core of its mandate. UNDP defines capacity development as the process through which individuals, organizations and societies obtain, strengthen and maintain the capabilities to set and achieve their own development objectives over time. It is the 'how' of making development work better. Thus, capacity development should to integral to UNDPs approach, and underlying its support to national institutions. UNDP supports capacity development particularly at the institutional level because we believe that institutions are at the heart of human development, and that when they are able to perform better, sustain that performance over time, and manage 'shocks' to the system, they can contribute more meaningfully to the achievement of national human development goals.

Customizing its advice and support based on the priorities of and requests from partner countries, UNDP works through a systematic capacity development process to help analyze what capacity exists, pin-point what can be strengthened, and advice on policy and investment choices that protect, retain and grow national capacity. A capacity building strategy sustained by UNDP will commonly address the following general questions: To what end do we need to develop this capacity? What will be its purpose? Whose capacities need to be developed? Which groups or individuals need to be empowered? What kind of capacities need to be developed to achieve the broader development objectives?

Points of entry and core issues for capacity development

UNDP has developed a substantive body of policy on capacity development[118], including specific guidance related to conducting assessments for capacity development[119], and on measuring capacity development results[120]. The full range of resources is listed at the end of this annex.

UNDP identifies three points where capacity is grown and nurtured: in an enabling environment, in organizations and within individuals. On every level, there are four core issues that seem to have the greatest influence on capacity development at the different levels described above: institutional arrangements, knowledge, leadership, accountability. These core issues represent the domains where the bulk of changes in capacity take place most frequently. A capacity development response will likely contain a mix of interventions addressing several of these core issues (see Table 9). The action areas under each core issue symbolize programme outputs, with indicative activities that can be supported. They provide a comprehensive set of issues from which a capacity assessment team can choose as it defines the scope of an assessment and against which to check the issues already identified. They can also drive the formulation of a capacity development response. Not all four issues or action areas will necessarily need to be analyzed in any given assessment but the assessment team should at least consider all of them as it defines the scope of the assessment.

118 See Practice Note on Capacity Development (2008) and Capacity Development: A UNDP Primer (2009).
119 See Practice note on capacity assessments (2008) and the Capacity Assessments Methodology and User's Guide (2008).
120 See Measuring capacity (2010).

Table 9: Capacity development core issues and action areas

Core Issue	Programming Outputs	Indicative Activities
A. Institutional Arrangements	1. Functional Clarity	a. Mandate and role clarifications b. Streamlined business processes c. Enforcement and compliance mechanisms
	2. Effective Human Resources Management	a. Knowledge access and skills development b. Predictability and types of monetary and non-monetary incentives c. Ethics and values interventions, attitudinal change interventions
	3. Robust Coordination Mechanisms	a. Horizontal/peer coordination convened by an apex agency b. Vertical coordination between central and local state bodies c. Convening authority and capacity of coordination bodies
	4. Monitoring and Evaluation systems	a. Integrated M&E framework b. Independent and peer review mechanisms c. Feedback loops and feedback mechanisms
	5. Partnerships for services delivery	a. Public-Private Partnerships for service delivery b. National Implementation and procurement capacity c. Public interface for services delivery
B. Leadership	1. Clarity of vision	a. Joint visioning exercises –systems thinking b. Setting priorities; sequencing & strategic planning techniques c. Advocacy & communications
	2. Coalitions management Services	a. Process facilitation b. Identification & support to champions and change agents c. Negotiations techniques d. Cross-cultural and gender modules; confidence building modules
	3. Transformation and risk management skills and services	a. Decision-making skills b. Risk assessment & analysis c. Ethics and values d. Executive/technocratic management skills
	4. Leadership attraction and retention systems and mechanisms	a. Coaching & mentoring b. Experimental learning c. Incentives d. Succession planning e. Brain gain strategies
C. Knowledge	1. Education reform strategy	a. Linking issues of learning and knowledge needs to access and into educational reform b. Advocacy, voice and support to coalitions that look at increased investments in, and improving quality of, education c. Mapping of human skills, institutions and investments that support CD d. PPPs in education sector
	2. Methodologies for continued learning	a. Expertise on training and learning methodologies b. Bringing the CD approach into in-service civil service training and incentives
	3. South-South learning solutions	a. Linking to regional education networks and institutions - facilitation and supporting to learning networks b. Brain gain and retention strategies c. Institutional twining arrangements
	4. Domestic knowledge services, knowledge management mechanism and knowledge networks	a. Seeding a pool of local talent/national expertise; local consulting market b. Supporting local knowledge capture mechanisms in a more robust, systematic and concerted manner c. Local Community of Practice and local networks

D. Accountability	1. Clarity of accountability Systems	a. Checks and balances: Result-based management b. Horizontal accountability c. Regulatory and oversight capacity of public institutions
	2. Stakeholder feedback mechanisms and systems (also mentioned under institutional arrangements)	a. Developing monitoring capacities of both for state and non-state b. Independent partner review mechanisms c. Identifying and strengthening feedback loops, to enhance institutional responsiveness and enforcement mechanisms
	3. Voice mechanisms	a. Promoting participatory monitoring processes and instruments b. Institutionalizing participation frameworks, methods and tools c. Advocacy on literacy and civic education d. Language reforms and access to information

Supporting functional capacities through a capacity development response

Apart from addressing these core issues, a capacity development response can and most likely will also focus on building up specific technical (specific expertise in technical focus areas) and functional capacities. The UNDP capacity development approach defines these functional capacities as:

1. Capacity to engage stakeholders
2. Capacity to assess a situation and define a vision
3. Capacity to formulate strategies and policies
4. Capacity to budget, manage and implement
5. Capacity to evaluate

These functional capacities run parallel to a five-step cycle to organize programming work. The specific circumstances of a given situation determine the prominence of each step in the process. The five steps of the capacity development cycle, each with its supporting activities, are:

1. Engage stakeholders:
    - Identify, motivate and mobilize stakeholders
    - Create partnerships and networks
    - Promote engagement of civil society and the private sector
    - Manage large group processes and open dialogue
    - Mediate divergent interests
    - Establish collaborative mechanisms
2. Assess capacity assets and needs:
    - Mobilize and design
    - Conducting the process
    - Summarizing and assessing the results
3. Formulate a capacity development response:
    - Explore different perspectives
    - Set objectives
    - Elaborate sectorial and cross-sectorial policies
    - Manage mechanisms for prioritization

4. Implement a capacity development response:
    - Formulate, plan and manage projects and programs, including the capacity to prepare a Budget and to cost capacity development
    - Set indicators for monitoring and monitor progress
    - Manage human and financial resources and procurement
5. Evaluate capacity development:
    - Measure results and collect feedback to adjust policies
    - Codify lessons and promote learning
    - Ensure accountability to all relevant stakeholders

Relevant policy and resources:
There are various resources that provide specific guidance on capacity development, and tools to support the formulation, implementation and evaluation of a capacity development response. Please consider the following list of useful resources:

Capacity development approach:
- Practice Note on Capacity Development, 2008. http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/capacity-development-practice-note/PN_Capacity_Development.pdf
- Capacity Development: A UNDP Primer, 2009. http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/capacity-development-a-undp-primer/CDG_PrimerReport_final_web.pdf

Capacity assessments:
- Practice Note on Capacity Assessments, 2008. http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/capacity-assessment-practice-note/Capacity%20Assessment%20Practice%20Note.pdf
- Capacity Assessment Methodology and User's Guide, 2009. http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/undp-capacity-assessment-methodology/UNDP%20Capacity%20Assessment%20Users%20Guide.pdf

Measuring capacity development:
- Measuring Capacity, 2010. http://www.undp.org/content/dam/aplaws/publication/en/publications/capacity-development/undp-paper-on-measuring-capacity/UNDP_Measuring_Capacity_July_2010.pdf

Related policies to supporting capacity development for civil society
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