

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



Creating a Culture
of Justice

International Development
Law Organization

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1. INTRODUCTION

MAKING JUSTICE MORE ACCESSIBLE: PARALEGALISM AND CUSTOMARY AND INFORMAL JUSTICE SYSTEMS

Goal 16 of the United Nations 2030 Agenda for Sustainable Development recognizes the importance of access to justice in the development of peaceful and inclusive societies. Indeed, access to justice is indispensable to ensuring the protection of fundamental human rights in any society. There is a growing consensus that realizing the 2030 Agenda's commitment to ensure access to justice for all will require more people-oriented approaches, grounded in an understanding of people's needs, interests and challenges faced when receiving different kinds of justice services.¹ Accordingly, IDLO's 2021–2024 Strategic Plan reinforces the importance of adopting a people-centered approach to justice programming which aims to empower justice seekers, putting their human rights at the center of justice systems, and fosters "reforms and innovations that will lead to greater access and inclusion, and produce fairer and more satisfactory outcomes for the rights-holder".²

Importantly, a wider conceptualization envisions diverse forms of accessible, affordable and equitable justice

mechanisms and systems to resolve disputes and protect and claim rights in a timely and fair manner. Accessibility also requires attention to procedural safeguards and accountability to ensure enjoyment of rights without discrimination, fear, corruption or other distorting practices. To ensure a comprehensive approach to strengthening access to justice, it is essential to work with both formal and customary and informal justice (CIJ) systems.

In the past two decades, development assistance in the justice sector has paid increasing attention to the contribution of CIJ systems in enabling access to justice while ensuring no one is left behind.³ While CIJ systems offer affordable, timely, flexible and culturally relevant means for resolving disputes and protecting legal rights, evidence shows that in some contexts, these systems perpetrate structural discrimination, unequal power relations or harmful practices. Engaging with CIJ is especially important in fragile and post-conflict contexts, where formal justice institutions often lack cultural relevancy and legitimacy, public trust,

geographic reach or capacity, and CIJ is often more accessible to large sections of the population, particularly women and vulnerable groups.⁴

Within this broader framework, access to legal aid services contributes substantially to access to justice through formal and informal avenues and thus to the development of just, peaceful and inclusive societies.⁵ Importantly, legal aid has been identified as "an essential component of a fair and efficient justice system founded on the rule of law", as well as "a right in itself and an essential precondition for the exercise and enjoyment of a number of human rights, including the right to a fair trial and the right to an effective remedy".⁶ Indeed, legal aid services increase people's knowledge of the extent of their rights, entitlements and obligations as well as of the existence and availability of services, irrespective of the social and economic means of justice seekers.⁷ Essentially, without legal aid, people become more at risk of human rights violations when they interact with justice institutions.⁸

KEY TERMS

The term **informal justice** in its broad conception refers to “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”.⁹ This definition encompasses a wide range of justice systems and actors that have given rise to multiple terms and definitions, including mechanisms rooted in customary law and traditional practices and social structures, religious norms, “specially constituted customary courts”, and community forums resolving disputes or conflicts through mediation or other alternative dispute resolution (ADR) methods.¹⁰ In fact, hybrid approaches are sometimes adopted, where elements rooted in both state or formal and informal justice systems are combined.

In general, **customary justice systems** “tend to draw their authority from cultural, social, customary or religious beliefs and ideas, rather than the political or legal authority of the state” and are often unwritten and based on flexible, non-confrontational approaches.¹¹ Although often associated with traditional norms and practices, customary justice mechanisms may adopt different forms; they can consist of “modern institutions [...] receptive to contemporary influences”,¹² and have different types of linkages with state justice systems and levels of formalization, including through codification of customary law.

Legal aid has been defined as “legal advice, assistance and/or representation at little or no cost to the person designated as entitled to it [...] provided by lawyers and paralegals in criminal as well as in civil and administrative matters to individuals who are poor, marginalized, or otherwise in need of special legal protection, to enable them to exercise their rights”.¹³ Importantly, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UN Principles and Guidelines) adopt a broad interpretation of the scope of legal aid encompassing the concepts of legal education, access to legal information, as well as “other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes”.¹⁴ In this regard, some authors distinguish “traditional legal aid” and “development legal aid”, where the former is understood as “the lawyer’s way of giving alms to the poor” by redressing “particular instances of injustice” but without “fundamentally [changing] the structures that generate and sustain injustice”.¹⁵ Conversely, development legal aid, while not replacing the traditional approach, complements it and shifts the focus from private issues to public matters, aiming to change existing laws, social structures and power dynamics.¹⁶

The notion of **paralegalism** can be ascribed to development legal aid as it incorporates “a community-driven and human rights-based approach, taking a more holistic view of access to justice”.¹⁷ Indeed, paralegal programs focus on educating and informing people about their rights, helping them to “develop the capacity for demanding such rights”, and aim to address systematic human rights violations “through long-term strategic solutions” rather than on an individual case basis.¹⁸ Paralegals usually serve specific geographical areas and may at times work under the guidance of lawyers, including pro bono lawyers. However, paralegals assume neither the status of a lawyer nor practice as one,¹⁹ and unlike lawyers, they often do not need specific academic qualifications, but may be required to meet minimum standards and have certain qualities.²⁰

The international community has repeatedly emphasized the challenge of providing legal aid and assistance to marginalized and special needs groups and the need to create and support innovative legal aid mechanisms to meet their needs, including paralegal schemes.²¹ In this regard, it has been reinforced that “[m]ost women, children and other especially vulnerable people in Africa have legal needs that [...] require a comprehensive approach”, beyond strictly criminal justice needs, but that addresses the “complex web of social, economic and cultural factors

with which their ‘legal’ needs are woven”.²² To this end, legal aid should help address structural discrimination, social norms, and capacity and resource gaps in formal and CIJ systems as well as discriminatory laws and policies.²³ A comprehensive approach should encompass social welfare, psycho-medical services, counseling and victim support, and community awareness.²⁴

Paralegals are key to implementing such an approach as they are “laypersons who have legal literacy skills, knowledge of substantive laws

and skills in how to negotiate the court system”. Their function is “to provide a bridge between the formal legal system and society, thus demystifying the law and making justice more accessible”.²⁵ Indeed, paralegals, while unqualified to provide the full range of legal services available to lawyers, draw on their unique understanding of community needs and dynamics and utilize legal empowerment strategies to uphold community interests and “advocate for reform of government policies, legislation, and public institutions”.²⁶

AIM OF THE STUDY AND RESEARCH METHODOLOGY

This Working Paper explores the role of community-based paralegals in promoting access to justice, and identifying challenges, entry points and good practices in paralegal services, with a focus on CIJ systems and in the context of sub-Saharan Africa. Drawing from IDLO's programmatic experience and practitioners' perspectives collected directly from paralegals operating in Eastern and Western sub-Saharan Africa, this Working Paper identifies roles for paralegals to: (1) strengthen or support customary or traditional leaders in their roles as justice providers; (2) promote minimum standards in the operation of CIJ mechanisms and enhance protection of human rights,

especially for marginalized communities; and (3) enhance understanding of justice challenges at the community level and build an evidence base to inform policy and legal reform.

Good practices and recommendations presented in this Working Paper draw substantially on proceedings of the East and Horn of Africa Paralegals Conference on 'The Role of Paralegal Support Networks in the Promotion of Access to Justice Through Judicial and Community Justice Systems'²⁷ held in Nairobi from 22 to 24 July 2019 by IDLO in collaboration with the Paralegal Support Network (PASUNE),²⁸ the

National Legal Aid Service of Kenya and the Ministry of Foreign Affairs of The Netherlands. The conference brought together paralegals, development practitioners, experts, legal aid organization representatives and members of court user committees from Ghana, Kenya, Sierra Leone, Somalia, South Sudan, Tanzania and Uganda. The goal of the conference was to provide a platform for peer-to-peer learning and exchange of knowledge, good practices and challenges for paralegals in providing legal aid services with a focus on CIJ systems. Discussions focused on the following key aspects:

- » Fostering collaboration and information-sharing among paralegal networks at the regional and international levels with a view to better promote access to justice at the community level.
- » Providing actors operating within CIJ systems with sufficient capacity to protect the rights and interests of poor and vulnerable groups and respond to their needs.
- » Promoting alignment of paralegal initiatives with international standards and legislation and identifying "practical approaches to the engagement of informal justice systems towards enhanced access to justice by the vulnerable and marginalized groups in local communities".²⁹

Findings from the conference were integrated with findings from parallel interviews and consultations with paralegals and representatives of legal aid organizations from Ghana, Kenya, Somalia, South Sudan and Tanzania, as well as extensive desk research, review of external practice and examples from IDLO's programming.



2. PARALEGALS AND PARALEGAL SERVICES IN CONTEXTS OF LEGAL PLURALISM

UNDERSTANDING COMPLEXITIES OF PLURAL LEGAL SYSTEMS

In the Global South, it is often estimated that informal actors, including customary leaders, resolve up to 90 percent of disputes.³⁰ In many national contexts, litigation and courts are only one option used by individuals and legal service organizations, and often constitute a course of last resort. IDLO's research shows that legal issues affecting marginalized populations are often handled not by judiciaries, but by administrative mechanisms, local government, ADR and informal processes. Even where formal courts are a viable option, justice seekers often prefer informal alternatives because they are more accessible (both geographically and financially), familiar, and they generally emphasize restorative rather than adversarial approaches to justice in alignment with local culture and customs.³¹



In **Sierra Leone**, for example, customary law is recognized by the constitution as part of the country's common law framework.³² Customary courts, known as "local courts", which had been operating throughout the country since precolonial times, have been recognized by the law and established in each Chiefdom, with jurisdiction over matters governed by customary law as well as low-value civil disputes and minor crimes.³³ Estimates indicate that 70 percent of Sierra Leoneans rely on local courts for the resolution of their justice problems "such as child and spousal support, property, tenancy and land disputes".³⁴

The 2011 Local Courts Act brought local courts under the supervision of the

judiciary with the aim to ensure their independence from local traditional authorities and respect of fair trial standards, while at the same time preserving their accessibility and alignment of the process with customary norms and practice.³⁵ Chairpersons and vice-chairpersons of local courts are appointed by the Chief Justice from among respectable and honest persons who reside in the Chiefdom, are fluent in the local ethnic language and are "knowledgeable and experienced in the customs and traditions of the Chiefdom".³⁶ Decisions of local courts can be appealed to the District Appeal Court "which shall consist of the Magistrate of the District sitting with two Assessors selected by him from a list of experts in customary

law drawn up by the District Officer".³⁷ Further, the Act establishes limits to the fine amounts imposable on litigants, and explicitly excludes representation by lawyers before local courts,³⁸ thus aiming to ensure their accessibility by the poor and most marginalized.³⁹

Similarly, in **Ghana**, customary justice institutions operate in parallel to formal ones through a hierarchical structure composed of village-level chiefs reporting to sub-divisional or divisional chiefs at the district or regional level, who in turn answer to paramount chiefs. Through this structure, all communities have had access to justice since precolonial times through the chief of their community, and disputes are resolved in accordance with local

customary law and through ADR methods comparable to modern arbitration.⁴⁰ In 1992, the institution of chieftaincy was guaranteed by the Constitution, which formally recognized the pre-existing system of customary government. Different levels of chieftaincy institutions exercise legislative, executive and judicial functions in their respective territorial jurisdictions.⁴¹ The Chieftaincy Act of 2008 details the relationship between customary justice and formal institutions. Within the customary order, disputes are resolved in accordance with local customary law, and following a hierarchical chain, may also be appealed to the Supreme Court.⁴² In practice, the authority and legitimacy of traditional chiefs are often stronger than those of the judiciary and the majority of people access justice through the traditional local council in their village. As explained by a paralegal from Ghana:

Traditional authorities are highly respected and feared. The cultural system imposes reverence of chiefs, and it is very hard [for paralegals] to confront them [for example] in relation to harmful practices. They can expel you from the community if you go against them. Chiefs sit as a court and resolve issues and most matters never reach formal courts. In order to appeal a decision, the traditional hierarchy path has to be followed. If you appeal to the formal court instead, the court refers back to the chieftaincy level that has jurisdiction over the case. Even the courts do not dare to solve a case that has been brought to the traditional justice path [first]. Moreover, people don't dare take cases to court if they are living [under the territorial control] of a powerful chieftaincy. Only if chiefs are not able to resolve a case might it go to court.⁴³

To increase access to and quality of justice in such contexts, it is important to harness the potential of CIJ systems and, at the same time, consider the complexities and issues that can arise.⁴⁴ IDLO's experience, as featured in this Working Paper, demonstrates that community-based paralegals often have important roles to play in providing legal aid services to marginalized groups and bridging the gap between formal and CIJ systems.

UNDERSTANDING PARALEGALS' ROLE

Generally, paralegals provide basic advice and assistance to individuals who cannot afford lawyers, or do not know how to access the justice system or protect their rights.⁴⁵ Their focus is often on empowering justice seekers to tackle problems.⁴⁶ In some contexts, they also provide quasi- or complementary legal services such as mediation, conduct community legal education, or undertake advocacy work. Skills for paralegals can include: "knowledge of relevant statutory law, customary law, and gender rights; mediation, negotiation and conciliation; case filing and investigation; advocacy; community education; and understanding of local government processes".⁴⁷

In the African context, paralegals are often persons who have undergone specialized training to carry out legal aid

functions, which could lead to accreditation depending on the jurisdiction and the legal and procedural framework in place. For example, the Sierra Leone Legal Aid Act of 2012 defines an accredited paralegal as "a person employed by the Board, a government department, an accredited Community Based Organization or a Non-Governmental Organization and who has completed a training course in the relevant field of study at the Judicial and Legal Training Institute or an educational institution approved by the Board".⁴⁸ According to the Kenyan Legal Aid Act of 2016, a paralegal is defined as "a person employed by the [National Legal Aid Service] or an accredited legal aid provider who has completed a training course in the relevant field of study in an institution approved by the Council of Legal Education".⁴⁹

Paralegals are sometimes categorized as either 'conventional' or 'community-based'. Conventional paralegals usually work in law firms, corporations or legal aid offices with a certain degree of structure, often with lawyer supervision, and mostly in urban areas.⁵⁰ While the role of conventional paralegals can be described as that of "back-office assistants to lawyers", community-based paralegals commonly receive specialized training in providing legal aid at the community level and "work directly with people affected by injustice" through a grassroots approach primarily based on legal empowerment.⁵¹

COMMUNITY-BASED PARALEGALS



Community-based paralegals, also known as ‘grassroots legal advocates’, are individuals who have “requisite expertise within communities, who are readily accessible to the community, and who are capable of providing guidance on how to access justice”.⁵² Their status may vary from paid, accredited paralegals working under state-funded schemes, to volunteers or trained community advocates contracted by non-governmental organizations or professional associations or other community-based organizations.⁵³

As stated in the Kampala Declaration on Community Paralegals, the legal aid services provided by paralegals at the community level are diverse and extend beyond the criminal justice system to cover a wide spectrum of functions, ranging from holistic services to specific issues.⁵⁴ In the African context, these may include empowering people “to equitably resolve conflicts; to seek protection from violence; to navigate the criminal justice system; to exercise

rights over land and natural resources; to access essential services like health care and education; to hold private firms accountable; and to participate in the economy on fair terms”.⁵⁵

One of the main advantages of community-based paralegals over lawyers is their ability to establish “relationships of trust” with the communities they serve, as they are generally drawn from those communities.⁵⁶ They “are familiar with community power holdings and dynamics, and may be more accessible and approachable” and better understand the background of disputes.⁵⁷ Such insights, combined with their flexibility and ability to navigate both formal and informal justice systems—often operating as linkages between these systems—⁵⁸ enable them to have a unique understanding of community issues and to craft workable, socially legitimate and enforceable solutions. Moreover, community paralegals are usually less expensive to

work with and train and are easier to reach than lawyers as they are closer to the community or village they serve (geographically, culturally and economically) and in which they often live and work.⁵⁹

Despite differences observable across countries in terms of training, recognition and integration within systems, both conventional and community-based paralegals play crucial roles in justice delivery and in promoting access to justice. In fact, as discussed below, programmatic evidence shows that community-based paralegals are often key to ensuring access to justice for vulnerable and marginalized populations as they are integrated within communities and provide advisory support as well as guidance, orientation and a link between communities and both formal and informal legal and justice actors.

3. WHAT ARE THE KEY FUNCTIONS OF COMMUNITY-BASED PARALEGALS IN PLURALIST LEGAL SYSTEMS?

COMMUNITY PARALEGALS' ACTIVITIES

In many countries, public legal aid systems are under-funded or absent, and lawyers are often limited in number. Civil society organizations, including national bar associations, women's groups and universities, assume a critical role in supporting governments in the area of legal aid through clinics and services at the community level.⁶⁰ Community-based legal aid programs substantially depend on the support of civil society organizations and international aid to address a variety of justice issues for both individuals and communities.⁶¹

Community paralegal programs are diverse and can adopt multiple strategies to advance justice. In addition to assisting individuals, paralegals sometimes focus on the justice needs of an entire community and can also be involved in community sensitization and training activities on human rights and the law to reach the most marginalized.⁶² Paralegals can operate from fixed community advice centers, mobile clinics,⁶³ prisons, and through media outlets, among others. Their roles may include:⁶⁴

- » **Para-professional legal advice and case handling:** Community paralegals provide guidance to other community members on how to access and navigate legal and administrative processes. Services that do not necessarily need to be provided by a lawyer may include: advice on whether a breach of rights has occurred; identification of an individual's legal rights in a particular situation; guidance on how to access legal assistance by government or civil society organizations, and on how to file a claim in court or at an administrative tribunal; and drafting basic legal documents for presentation in court.⁶⁵ Community-based paralegals also play a central role in referring justice seekers to service providers or authorities such as pro bono lawyers, police, local administrative agencies or authorities, depending on the nature or specifics of the case.
- » **Community education and mobilization:** Generally, community paralegals are trained to implement sensitization and education activities on procedural and substantial rights and can undertake community education programs. This improves rights awareness by educating individuals about basic laws and rights, demystifying and simplifying complex legal and judicial processes by presenting relevant information in plain language, and disseminating educational materials such as brochures and handbooks.⁶⁶ Additionally, paralegals play a central role in mobilizing communities to take action on issues of common concern by sensitizing their peers to the need for positive change through various types of awareness-raising activities.
- » **ADR:** Community paralegals use ADR methods such as negotiation, mediation or arbitration to facilitate settlement of disputes in their communities without resorting to litigation or bringing the matter to the formal justice system. Common cases and disputes resolved by paralegals in local communities may range from land and property claims to marital disputes and parental and other matters relating to family life such as divorce or child-rearing issues (see more details on paralegal ADR services in the box on the following page).
- » **Data collection, record-keeping and evidence-building:** Community paralegals may undertake research, interviewing, taking and recording statements, documentation for following up on cases in court, etc. The value of paralegal support to case investigation and record-keeping activities is twofold: on the one hand, community-based paralegals serve as a link between the community and lawyers working on a case; on the

other hand, case-related data collection and documentation activities by paralegals provide a valuable source of information that can contribute to evidence-based policy and programming, leading to systemic changes.⁶⁷ Indeed, case-related data gathered by paralegals can be analyzed to identify patterns and common experiences among justice seekers, allowing the identification of gaps in justice delivery as well as law and policy.⁶⁸

- » **Networking and coordinating with other stakeholders:** Community paralegals play a strategic role in linking communities, particularly marginalized groups, to other community-based organizations, associations and networks, and formal and CIJ justice actors. By working with these stakeholders, paralegals connect individuals with relevant services, including lawyers; gather support for effective advocacy at the community level; or connect with parliament members to leverage political pressure towards the resolution of a case or the reform of laws.⁶⁹

In countries where lawyers are few or mainly centered in urban areas, community-based paralegals can “bridge a massive service delivery gap and enable access to both formal and informal justice systems” and are “increasingly perceived as agents for social change and conduits for increasing citizens’ voices”.⁷⁰ Despite not having a codified or regulated mandate through law in many countries, paralegals are a first line of legal assistance in many local contexts, reaching disempowered communities to help address rights violations.⁷¹

PARALEGAL ALTERNATIVE DISPUTE RESOLUTION SERVICES

Community-based paralegals often work as negotiators and mediators for disputes. In particular, mediation is a commonly used ADR method among paralegals in traditional contexts because “it resonates with customary law’s emphasis on reconciliation and community cohesion rather than punishment” and is therefore a more accessible, culturally-sensitive alternative to formal justice in many communities.⁷² In fragile and conflict-affected settings, given the lack of infrastructure and resources to deal with minor disputes, amicable resolution of disputes, including in traditional systems, is often an efficient solution.⁷³ As stated in the Declaration on Collaboration Between the Judiciary and Indigenous/Home-Grown Community Justice Institutions in 2017, community-based paralegals “play a critical role as enablers of healing, reconciliation, peace-building and mediation at the community level”.⁷⁴

Paralegals may be involved in ADR processes either as mediators themselves or in support of individuals undertaking ADR. Mediation often takes place through committees composed of volunteer paralegals. Mediation panels may vary in composition and can be specialized, such as women hearing matters related to gender issues. For conflicts involving children, panels may be composed of teachers, traditional leaders or other authority figures knowledgeable on children’s rights and welfare.⁷⁵

In **Bangladesh**, for example, a legal aid association trains community members on the traditional dispute resolution method, known as ‘shalish’, to develop their skills as “village-based mediation workers”. The main goals are to provide poor and marginalized community sections with a free, culturally accessible and timely dispute resolution option, as well as to increase gender equality of the shalish process, traditionally dominated by men.⁷⁶

Some countries have begun to give formal recognition to the role of paralegals in providing ADR services at the community level in support of or in parallel with CIJ actors. In **Kenya**, in addition to mediation, other alternative means of dispute resolution are also recognized. The Alternative Justice Systems (AJS) Taskforce was established to encourage “alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution”.⁷⁷ The AJS Taskforce’s mandate focuses on the development of policies to ensure “a smooth, continuous and uniform” system of dispute settlement outside of formal courts.⁷⁸ This has resulted in the establishment of a structured model that enables systematic resolution of disputes through informal justice mechanisms, including traditional and religious institutions and ADR, leaving the courts as a last resort. The system reflects the realities at the community level by promoting “flexible, party-driven and cost-effective” ADR methods that are culturally sensitive, avoid retribution through heavy penalties and promote reconciliation and understanding of mutual interests and needs of all concerned.⁷⁹

PARALEGAL SUPPORT AND LEGAL ADVICE TO CUSTOMARY AND INFORMAL JUSTICE ACTORS

Experience from IDLO's programming and research shows that paralegals' success in resolving disputes is closely linked to the quality of relationships they have with local public authorities, including local government officials, formal justice actors, law enforcement officers and traditional chiefs.⁸⁰ A specific role for paralegals in providing technical support and advice to customary justice providers emerges clearly from practice, and in some instances, has been acknowledged by traditional justice actors themselves.

WORKING WITH PARALEGALS IN ALTERNATIVE DISPUTE RESOLUTION CENTERS

In **Somalia**, IDLO-supported ADR Centers provide an illustrative example of a cooperative relationship between traditional justice authorities and paralegals.⁸¹ ADR Centers are staffed with panels of traditional justice authorities, including clan elders and sheikhs and women adjudicators appointed to resolve civil disputes and minor crimes at the community level, as well as one clerk and one paralegal per center, some of them female. Paralegals were introduced in ADR Centers to support adjudicators who identified their own knowledge of formal national laws, international human rights standards and ADR methods as generally low. ADR Center paralegals were thus recruited from among community members with legal academic qualifications and tasked with multiple functions including: providing legal advice to ADR Center users, making referrals to support services for victims, supporting the correct classification and recording of cases and performing a jurisdiction check to refer cases to formal courts as appropriate.⁸²

In **Somalia**, IDLO conducted research to gather perspectives of adjudicators and clerks working in ADR Centers on the benefits of integrating paralegals into the centers to provide legal advice and technical support to ADR actors in accordance with the ADR Centers' standard operating procedures. Specifically, after ADR actors had received training on the procedures, findings showed that clan elders and sheikh adjudicators working in ADR Centers identified a role for paralegals in providing legal information to case parties on their rights, the legal provisions applicable to their case, and in conducting a jurisdictional check and referring serious crimes to formal courts and the police.⁸³ Additionally, adjudicators and users of the centers welcomed a role for paralegals in raising awareness about the ADR Centers at the community level, as instances were reported of people ignoring the existence of the centers in their community or being reluctant to bring their cases as they were unaware that the ADR Center services were free of charge.⁸⁴ Interestingly, adjudicators

and clerks also considered beneficial "a monitoring and oversight role for paralegals to increase accountability of the ADR process"⁸⁵ thus perceiving paralegals as potential contributors to upholding the legitimacy of the ADR Centers and the authority of adjudicators in the eyes of the community.

IDLO's programming in Somalia illustrates the benefits of paralegal support to ADR and the CIJ mechanism, including through the establishment of clear regulations defining the scope and focus of paralegal activities in these contexts. When asked their views on the integration of paralegals in ADR Centers, the majority of clan elders and sheikh adjudicators considered this as either useful or a priority, demonstrating "openness and interest in learning new human rights and mediation standards, skills and methods to improve the services they provide at the Centers, with direct support from paralegals".⁸⁶

Other successful examples of collaborative relationships and increased recognition of paralegals as

complementary to CIJ mechanisms can be found in other countries. In **Sierra Leone**, community-based paralegals work to improve both formal and customary institutions. Local court chairmen in Bumpeh, Gbonkolenken and Kholifa Rowalla chiefdoms regularly consult paralegals when dealing with complex cases. Because of their recognized effectiveness, courts and advocates refer matters to paralegals, who are viewed as counselors.⁸⁷ Similarly, an assessment of a paralegal program in **Zambia** demonstrates growing awareness by traditional community leaders of the importance of protecting human rights and eliminating harmful practices, particularly those affecting adolescent girls and young women, such as defilement. Accordingly, the function of trained paralegals is increasingly recognized as beneficial in support of dispute resolution at the community level and prevention of human rights violations, including through working in close collaboration with local authorities.⁸⁸

PARALEGAL SUPPORT FOR WOMEN AND MARGINALIZED POPULATIONS

Vulnerable and marginalized groups face unique challenges in accessing justice,⁸⁹ often as a result of discrimination based on their sex, gender, ethnicity and/or class, and where their legal problems are resolved by CIJ institutions, these groups can be at a great disadvantage if they lack appropriate legal assistance and advice during the process.⁹⁰ As stressed by General recommendation no. 33 on women's access to justice by the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), women's access to justice is essential to the realization of gender equality and "a fundamental element of the rule of law and good governance" and should be promoted through all justice avenues, including in plural justice systems.⁹¹ Further, the UN Principles and Guidelines, establish that "in the design of their nationwide legal aid schemes, States should take into account the needs of specific groups, including but not limited to the elderly, minorities, persons with disabilities, the mentally ill, persons living with HIV and other severe contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, refugees and internally displaced persons".⁹² Additionally, Guideline 11 specifically provides for "dedicated mechanisms to support



specialized legal aid for children and support the integration of child-friendly legal aid into general and non-specialized mechanisms".⁹³

Legal aid must therefore adopt holistic approaches that address inequality in all its aspects, including social, cultural and legal discrimination and capacity deficits, which prevent people from accessing justice. These may involve directly engaging community members in the provision of legal aid services for their peers, and often entails working with CIJ actors as well as a broad range of non-legal actors such as health professionals, psychologists,

counselors, social welfare agencies, victim support workers, etc. to jointly address legal, social and psychological issues that may affect vulnerable victims.⁹⁴ It is essential that paralegals collaborate with key actors at the community level, as well as social services and health care partners to provide more comprehensive "one-stop shop" services to specific victims.⁹⁵ Evidence from fieldwork indicates that support and guidance by adequately recruited and trained paralegals can help ensure equal consideration and rights recognition.⁹⁶

Community paralegal services for women

Well-trained paralegals can be catalysts for upholding human rights at the community level, and often have a central role in protecting the rights of women, who, in many contexts, seek paralegal services more than men. In fact, community paralegals must not only receive training on gender-based issues, but they must also act as community leaders that can effectively negotiate with the customary and traditional powers that may be barriers to justice for women and girls.⁹⁷ Importantly, CIJ systems often fail to uphold human rights standards and contribute to the perpetration of harmful practices entrenched in local customs. These consist of practices that "violate international human rights law and are unacceptable and harmful to the rights, health and dignity of human beings" and result in "cruel or inhuman treatment and subordination of particular groups, such as women, children, or minorities".⁹⁸ Harmful practices may range from different forms of forced marriage to female genital mutilation or "honor crimes".⁹⁹

UPHOLDING THE RIGHTS OF WOMEN AND VULNERABLE GROUPS THROUGH LEGAL LITERACY AND ALTERNATIVE DISPUTE RESOLUTION

Examples from research and practice show that paralegal activities such as awareness-raising and mediation of cases improve community members' legal literacy and agency and can help uphold the rights of women and vulnerable groups. In Southeast **Liberia**, for example, women and vulnerable groups, including "children, and those foreign to local communities (called "strangers" by Liberians), suffer through these systems", which are often "susceptible to elite capture".¹⁰⁰ Community-based paralegals use a range of tools to confront power abuse and corruption by formal and informal justice actors in an effort to address "power asymmetries and promote more just and equitable outcomes" while ensuring client ownership of the approaches adopted. These include legal education, advocacy and ADR aimed at resolving legal problems, educating individuals about applicable law and legal principles, and enhancing legal empowerment of marginalized people in particular.¹⁰¹

As a result, more than 40 percent of the successfully resolved cases handled by community-based paralegals in Southeast Liberia since 2007 were resolved through mediation, and approximately 50 percent of justice-seekers were women, bringing cases of child abandonment, domestic violence and sexual and gender-based violence.¹⁰² Further, there was an overall increase in cases reported to paralegals, which otherwise would not have found any justice avenue, given the lack of trust in and limited accessibility of other justice avenues. Research findings on the impact of paralegal activities also revealed an increase in the proportion of female clients receiving child support payments and consequently an increase in food security in households as well as in the population's knowledge of relevant legal issues including "women's rights to inheritance, domestic violence, and corruption".¹⁰³

As women are often disproportionately affected by harmful practices and discrimination, it is essential to take into account the "complex web of social, economic and cultural factors with which their 'legal' needs are woven".¹⁰⁴ In pluralistic legal systems, gender discrimination may be entrenched in both formal and customary law, thus creating barriers for women at multiple levels, limiting "their ability to participate in decision-making, inherit and use land and property, and access and control resources". Additionally, the low presence of women decision-makers in customary justice systems, still largely male-dominated in many developing countries, contributes to a widespread perception of gender bias in the resolution of disputes.¹⁰⁵

Structural reforms are often a necessary starting point to address the practical difficulties faced by vulnerable groups and provide legal aid services specifically tailored to their needs.¹⁰⁶ For instance, some countries have recently established units providing tailored services for women to respond to cases of gender-based violence. These cases are complex and require personnel specifically trained and experienced "in recognizing the gender aspects of the crime patterns, working with victims and their families, dealing with perpetrators and coordinating with multiple agencies".¹⁰⁷ As noted by a paralegal working with women in **Malawi**:

Since we started [providing legal aid services for women], there has been a significant change in our community. Whenever domestic disputes arise, we work together to ensure that they are resolved amicably before they escalate to more serious conflicts like gender-based violence. We also ensure that women do not feel ashamed to call for our support whenever they are facing problems.¹⁰⁸

Further, following the inclusion of women among mediators within the Village Mediation Programme in **Malawi**, “over two-thirds of cases brought to the Programme have been brought forward by women. By late 2010, Village Mediators helped to resolve 1,470 cases, 53% of which had been brought forward by women and 9.9% of which involve children”.¹⁰⁹

Paralegals working at the intersection of formal and CIJ systems also perform a crucial role in following up on sensitive cases involving victims of violence through referrals to formal justice actors and essential services. For instance, in **Uganda**, the Federation of Women Lawyers works with paralegals to provide essential legal and other support services for women and children¹¹⁰ when it comes to gender-based violence and rape. These services include:

- » **Supporting law enforcement and victims’ protection:** paralegals help report crimes such as cases of early marriage, female genital mutilation and sexual and gender-based violence and refer victims to support services such as shelters. They also assist in the collection of evidence that will be necessary to bring perpetrators to justice.
- » **Following up on cases in court:** as there are more paralegals than legal officers, paralegals follow up on matters that are in court proceedings.
- » **Legal advice and education:** paralegals work with the police and prisons in assisting prisoners and accused persons with legal issues, including bail.
- » **Mediating conflict and assisting in negotiations:** cases mediated by paralegals range from land and property disputes to commercial matters and maintenance issues.

Community paralegal services for children and other vulnerable groups: some examples

In cases of child neglect, abuse of minors, or juveniles in detention, sustainable solutions require multipronged approaches including social and health interventions as well as legal measures.¹¹¹ In **Sierra Leone**, for example, community paralegals engaged in sensitization and advocacy work to prevent child labor, as it was common practice for children to drop out of school to be hired as gold mine workers in the southern region of the country. Aiming to raise awareness of parents on children’s rights, paralegals held community dialogues during which “problems and dangers in the use of children in mining and the importance of keeping children in school” were addressed. Additionally, paralegals supported community elders in the drafting of a by-law aimed at preventing child labor practices and early withdrawal from mandatory education.¹¹²

Paralegal programs operating in plural legal systems and in contexts where violence against children is recurrent should ensure that children are provided with anonymous and confidential counseling and referral to adequate specialized social and health services. For instance, this kind of service has been sometimes implemented by setting up a child helpline, namely a communication line (through mobile phones or computer applications) designed to provide direct assistance to children and connect them with other relevant agencies and services.¹¹³

In **Kenya**, refugees have been trained as paralegals to provide legal empowerment and legal aid services for their peers in refugee camps. Activities they undertake include awareness-raising of refugee groups and government representatives on “refugee rights through forums, workshops,

training and conferences”. They provide individuals with legal advice and assistance with asylum applications or information on their refugee status, and refer them to justice and social service providers.¹¹⁴ Legal empowerment activities by paralegals encompass increasing refugees’ understanding of both their rights and obligations, and how to deal with recurrent challenging situations they might face, for example, “how to react when stopped, arrested or detained and how to approach authorities on matters of documentation”.¹¹⁵ Additionally, paralegals support the training of authorities on how to adequately handle cases involving migrants, including when to “stop, arrest and detain forced migrants and on how refugee documents should be issued and verified”, and advocate with police and prison officers for the release of detained migrants.¹¹⁶

Paralegals in plural legal systems can also provide legal aid services and assistance to individuals detained following case referral to formal justice authorities and at various stages of the criminal process. These may include: helping locate relatives of clients detained in police stations or in prison to facilitate release on bail; directly assisting indigent detainees with their bail applications; monitoring the behavior of police or prison officers to avoid mistreatment of detainees or bribery; ensuring the application of procedural safeguards for children and juveniles in pre-trial and trial phases and in detention; providing legal advice to detainees in prison on their rights and

on court procedures, individually or through group learning activities; and conducting awareness-raising on the criminal process through preparatory activities such as “role playing on what to expect in court”.¹¹⁷ Additionally, paralegals can support identification of “pre-trial detainees whose remand warrants have expired, who have been in pre-trial detention longer than the statutory maximum allows, who wish to plead guilty, and who are terminally ill” and inform relevant authorities for timely follow-up.¹¹⁸ In **Uganda**, between 2005 and 2010, in prisons where paralegals operated, the proportion of pre-trial detainees dropped to 25 percent compared to the rest of the

country’s detention centers where it decreased to 75 percent only.¹¹⁹ Similarly, evidence from a paralegal program in **Rwanda** shows that awareness-raising activities by paralegals in detention centers allowed to reach 3,000 pre-trial detainees in one year to prepare them “for their next court appearance by role playing bail applications, applications for release, pleas in mitigation, and cross-examination (for defendants who wished to plead guilty)”. Further, as a result of paralegals’ assistance, between 2009 and 2010, about 200 detainees and 625 pre-trial detainees were released from five prisons in the country.¹²⁰

UPHOLDING SOCIOECONOMIC RIGHTS OF THE POOR

Paralegals of the Black Sash in **South Africa** supported marginalized communities in the “progressive realization of the right to social security, and helped secure administrative justice for poor and vulnerable people without the means to access other legal help to uphold their rights”.¹²¹ This included facilitating the delivery of social assistance grants, such as child support, pensions, and disability grants to right holders by the Department of Social Development. Specifically, paralegals conducted continuous data collection through case file tracking and observations at service delivery points on the quality of social security services provided by different government departments. Through the evidence collected, paralegals were able to demonstrate that delays in grants approval by the Eastern Cape local government severely affected the lives of poor communities in the province. They thus filed a case against the National and Eastern Cape Province Departments of Social Development, aimed at repealing a regulation of the Social Assistance Act of 1992 which established a 90-days interval from application to delivery of back payments to right holders.

As a result, the regulation was found unconstitutional and a monetary compensation was awarded to applicants.¹²² Further, paralegals “lobbied for the Department of Social Development to create pamphlets informing people of the court order and how to access their back pay”, and engaged with the Department of Social Development to obtain a list of all entitled applicants to whom they reached out to help them gather the necessary documentation to seek back pay, and direct them to relevant pay points.¹²³ Black Sash paralegals filed another case against the Eastern Cape Department of Social Development, relative to delays in disability grants provision which affected approximately 65,000 South Africans. This resulted in a decision compelling local authorities to process the backlog and hear pending disability grant appeals.¹²⁴

As explained by a paralegal from Kenya, ensuring that paralegal services contribute to access to justice for all requires a careful assessment of the level of vulnerability of different groups and a prioritization of the most sensitive cases:

*[In recording] family disputes we divide cases by customary marriage, [civil] marriage, religious marriage, cohabitation and single to assess the level of need of support from us: we know that parties that are single or in cohabitation situation have lower protection by elders or formal courts so we prioritize these cases.*¹²⁵

A ROLE FOR COMMUNITY PARALEGALS IN PROMOTING POSITIVE CHANGE

In addition to providing legal aid services, paralegals can fill important advocacy roles, including promoting change in attitudes towards women or vulnerable groups, lobbying for reform in local justice systems, as well as channeling matters to appropriate decision-making forums.¹²⁶ Indeed, many paralegal programs have been actively engaged in awareness-raising and advocacy activities aimed at the elimination of harmful practices entrenched in customs that affect the most vulnerable groups of beneficiaries. These include paralegals' lobbying with local government authorities to amend several "repugnant customary laws in a bid to bring about equality of men and women and justice to all members of their community".¹²⁷

In **South Sudan**, a community-based paralegal program has focused on upholding women's rights by training

paralegals on lobbying and advocacy techniques so they can effectively promote women's legal and human rights, encourage a positive change in attitudes towards women, and lobby decision-makers within their communities to address gender-based discrimination. These activities resulted in the government's appointment of female chiefs at the level of Court A in two bomas in Kuajok in Gogrial State.¹²⁸

By using monitoring and community pressure strategies, paralegals can also help shape and cultivate positive norms within CIJ systems. In **Zambia**, for example, a training program for local court justices and community-based paralegals created important connections between the two groups.¹²⁹ As a result, community-based paralegals were able to observe proceedings and monitor how justice actors were treating women in courts,

for instance, whether intimidating language was used or if women were allowed to speak without a male relative.¹³⁰

In **Tanzania**, traditional authorities are engaged in activities with paralegals to build reciprocal trust and monitor customary dispute resolution to ensure the prevention of harmful practices. Meetings are organized involving community members, local government authorities and traditional elders in which paralegals conduct awareness-raising and sensitization activities on gender issues, coupled with periodic monitoring. As explained by a paralegal:

My view on the role of paralegals is that they have to cooperate with traditional leaders ('chiefs'). They need to work together in mediations. Paralegals need to empower traditional leaders, (because) there are negative customs that elders apply. For example, people believe that girls, when they mature, have to stay inside [the house] for one month, to learn how to become wives and then have a big ceremony when they are ready to be married, early marriage is a big issue. They drop out of schools. When we conduct meetings we invite elders and sensitize them about gender-based violence issues. We normally attend the ward meetings, in this context we raise awareness on the work of paralegals and do mediation of conflicts, chiefs are also present at the ward meetings. Moreover, we conduct periodic monitoring and evaluation, we go back after a few months to check the changes, interview chiefs, and conduct observations.¹³¹

Where participation of women as adjudicators of disputes might be politically sensitive or provoke backlashes, the inclusion of women as "paralegals who advise CIJ mechanisms on the content of formal laws" or in an advisory role in relation to cases involving female parties or as regular observers of CIJ processes have emerged as more viable approaches.¹³² In addition to contributing to increasing women's knowledge of customary law and justice processes, these strategies help shape the cultural acceptance of women's participation in CIJ systems, and a perception of women's capacity to fill positions within these systems. Women participating in customary decision-making act as "role models to other women and examples to men" and help "integrate a gender perspective in CIJ procedures that can better account for women's needs and interests".¹³³

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

FACILITATING PARALEGAL ACTIVITIES THROUGH ADEQUATE LEGAL AND INSTITUTIONAL FRAMEWORKS

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

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

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

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

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

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

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

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

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

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

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

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

CASE STUDY: THE SIERRA LEONE LEGAL AID BOARD

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

REGULATING PARALEGAL FUNCTIONS IN PLURAL LEGAL SYSTEMS

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



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

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

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

NAVIGATING JURISDICTIONAL ASPECTS

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

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

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

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

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

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

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

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

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

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

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

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

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

IDENTIFYING POTENTIAL TENSIONS AND UNDERSTANDING LOCAL POWER DYNAMICS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BUILDING ON COMPLEMENTARITY AND STRENGTHENING COOPERATION

Paralegals and customary and informal justice providers

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

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

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

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

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

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

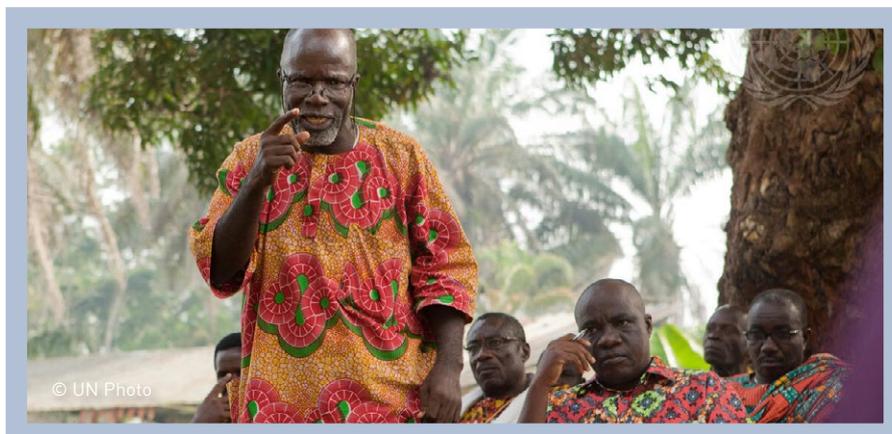
Importantly, 60 percent of village mediators are women, enabling increased accessibility by women complainants who feel more comfortable addressing their peers. Thereby, mediators complement the traditional dispute resolution role of chiefs by providing a quick, free of charge, alternative accessible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

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

Paralegals and other legal and justice actors

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

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



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

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

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

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

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

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

RESOURCES AND TRAINING

ENSURING ADEQUATE RESOURCES FOR SUSTAINING COMMUNITY PARALEGAL ACTIVITIES



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

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

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

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

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

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

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

BUILDING AN ADEQUATE SKILL SET FOR COMPREHENSIVE LEGAL AID SERVICE DELIVERY

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

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

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

BUILDING MEDIATION SKILLS FOR PARALEGALS

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

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

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

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

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

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

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

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

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

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

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

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

ENSURING ACCOUNTABILITY AND MINIMUM QUALITY STANDARDS OF PARALEGAL SERVICES

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

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

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

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

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

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

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

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

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

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

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

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



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

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

INFORMING DECISION-MAKING THROUGH CASE TRACKING

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

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

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

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

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

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

Summary of community paralegals' activities in plural legal systems



5. RECOMMENDATIONS

Strengthening engagement of community-based paralegals, particularly in CIJ systems, is an important component of efforts to achieve access to justice for all. Community paralegals provide an accessible, affordable and culturally sensitive alternative to lawyers, facilitating access to justice for the vulnerable and marginalized in particular. As they are issued from or embedded in communities, they have knowledge of local power dynamics and a better understanding of disputes. They are able to work efficiently by utilizing networks of local service

providers and authorities and can navigate both formal and CIJ systems. However, community paralegals face several challenges that need to be addressed in order to strengthen the quality of legal aid services they can provide and ensure the effectiveness and sustainability of paralegal programs. The following recommendations support advancing the participation of community-based paralegals in CIJ systems:



1. Develop comprehensive national legal and policy frameworks that recognize paralegals and their engagement with CIJ systems

The lack of a clear policy and legal framework for legal aid and paralegals results in a limited scope of operation. To ensure paralegals become better placed to generate trust, national legal and policy frameworks should designate clear requirements for accreditation, training, scope of operation, and the role that paralegals can play to support and provide legal aid services, including in

engaging with CIJ systems. Coordination bodies, such as legal aid boards, should facilitate effective service delivery by paralegals by providing them with official recognition or accreditation for their role; establishing a framework to regulate their activities, particularly in relation to CIJ actors; and undertaking adequate training and continuous learning for all paralegals. In this regard, it is essential

that coordinating bodies put in place adequate safety measures for community-based paralegals, taking into account the risks involved in their daily work, especially related to preventing and documenting harmful practices, for example by developing a safety protocol and ensuring structured local presence through accessible offices at the community level.

2. Foster a conducive environment for paralegal activities at the community level by ensuring legitimacy of paralegals, preventing tensions and identifying areas for cooperation

For paralegals to successfully perform their roles, community-based paralegals should acquire a certain level of authority and legitimacy within their communities. Importantly, paralegals should engage directly with key community figures such as CIJ actors, religious leaders, law enforcement officers and local government authorities to build relationships of trust and acquire an influential position at the community level. To this end, programs should ensure that paralegals selected

have the necessary knowledge of local needs and interests of different groups, customary norms and practices, and local power dynamics, as well as the necessary personal skills and qualifications to gain or maintain the trust of community members. Programs should also ensure that adequate sensitization and awareness-raising of key community actors such as CIJ providers, lawyers and local government authorities is supported in parallel with a view to minimizing resistance to

paralegals operating in the justice environment and preventing potential frictions between competing legal and justice actors. Training, awareness-raising, and monitoring activities can also be designed and conducted to jointly involve paralegals and key community stakeholders such as CIJ actors to emphasize complementarity of roles and increase community receptiveness of paralegals.

3. Build strategic partnerships with legal and justice sector actors to facilitate effective and sustainable paralegal services

It is important that local formal and informal justice actors such as traditional leaders, judges, police and lawyers know what a paralegal is and does, in order to strengthen collaboration and build networks to increase effectiveness and sustainability and expand the reach of paralegal services. Programs should identify community leaders, pools of legal professionals based within non-governmental organizations, law schools, public service networks, bar associations and relevant support service providers in the social and health sectors and build cooperative relationships through targeted training and information dissemination activities aimed at ensuring different actors are aware of respective roles and responsibilities and relevant referral pathways and focal points. This is especially important in relation to women, children and vulnerable groups who seek justice primarily through

informal avenues and in contexts where a comprehensive legal framework governing paralegal services is lacking. In particular, lawyers and law students can be involved in training and mentoring of community paralegals and can support referral of cases to formal justice actors. In turn, paralegals should become aware of existing services for beneficiaries at the community level, including both government and non-government service providers, with particular emphasis on support services for gender-based violence victims, children and vulnerable groups, as well as pathways to refer cases to lawyers or formal justice authorities.

Building partnerships with associations and groups of legal and justice professionals, providers of key government services to which justice seekers are entitled, as well as sectorial and local branches of government, academic institutions and private sector

actors is also key to facilitating diversification of sustainability strategies. Establishing collaborative working relationships with other local organizations and partner stakeholders can be an avenue to leverage sustainable funding solutions, helping paralegal programs avoid dependence on grant funding. This could be done through tailored, flexible cost-saving or financing models based on mutual benefits and collaboration on common goals by multiple local actors.

Finally, paralegal organizations also need to build strategic partnerships and networks regionally, nationally and internationally with other legal aid organizations to establish platforms for resource mobilization, information sharing and knowledge transfer relating to the best practices on the delivery of legal aid services.

4. Place gender equality and women's meaningful participation at the center of community paralegal interventions

As women seek paralegal services more often than men in many contexts, programs should ensure that paralegal services are gender-sensitive and responsive to women's needs, and aimed at fostering women's meaningful participation in justice systems, paying specific attention to CIJ. This means taking into account harmful practices and discrimination in CIJ processes as well structural barriers at multiple levels, including formal justice institutions. To this end, it is essential that community paralegals be trained on gender issues, women's rights and procedural safeguards and on strategies to negotiate local power dynamics that may constitute barriers to women's access to and participation in CIJ systems. In particular, capacity-building should focus on responding to specific cases involving

women, such as cases of gender-based violence, aspects related to evidence and documentation of cases, referrals to competent authorities and support services for victims. Paralegals should also be equipped with skills to monitor and report on gender aspects of CIJ processes, such as differential treatment in the process, intimidating or discriminatory language, gender bias in outcomes and lack of sufficient procedural safeguards for victims.

Due to their contextual knowledge, cultural understanding and familiarity with both formal and CIJ systems, community paralegals are also uniquely well-placed to conduct awareness-raising and sensitization among community members, local government authorities, justice providers and traditional leaders

on gender issues, and to support behavioral change strategies to eliminate harmful practices and barriers to women's access to justice. Importantly, programs should ensure a minimum female ratio among community paralegals and should work with female paralegals as leading civic mobilizers and in technical support or advisory roles in CIJ processes, particularly in relation to cases involving female parties, or as regular observer or mediators working in parallel or jointly with CIJ actors. Empowering female paralegals to acquire a lead role as legal and justice service providers in their communities is essential to integrate a gender perspective in CIJ systems, making them more responsive to women's needs, and to facilitate cultural acceptance of women's participation in justice systems.

5. Provide adequate training and oversight to ensure comprehensive skill sets and minimum quality standards

Community-based paralegals must receive continuous training to sharpen their skills. Training should focus on basic laws as well as relevant customary law, ADR methods and ways to achieve culturally sensitive and mutually satisfactory justice outcomes. Capacity development activities should also cover handling sensitive cases and cases involving vulnerable parties (such as children, detainees, refugees, etc.). Importantly, training should integrate referral protocols and pathways to competent formal justice authorities or support services for the vulnerable, with emphasis on understanding the jurisdiction of different justice actors over different types of cases, as well as knowledge of referral and appeal

processes and related documentation as required by applicable law. Programs should also ensure paralegals are aware of harmful practices, systematic discrimination and rights violations occurring in their communities, as well as of key drivers and ways to prevent and respond to the latter. Training should cover strategies to engage traditional or religious leaders in capacity-building and sensitization activities, and monitoring of law enforcement authorities, local government representatives, and formal and CIJ actors, including reporting of any rights violations or issues in the handling of cases to the competent oversight bodies.

Regular monitoring of paralegal activities is essential to ensure that legal aid services are in line with minimum quality standards and the specific needs of communities. Monitoring should be conducted periodically through communication, site visits as well as standardized tools for recording and reporting of case-related information. Key community members, including traditional authorities, lawyers and local government representatives, should be involved in oversight activities to strengthen awareness and coordination in legal aid and justice service delivery at the local level.

6. Strengthen data collection and reporting capacity for enhanced accountability and evidence-based policy influencing

Paralegals should be equipped with skills in context-appropriate data collection, case record-keeping and evidence-building to compensate for the lack of paper documentation of CIJ processes. This will enable paralegals to monitor the progress of cases through CIJ and formal systems, facilitate review and appellate procedures, and identify any strengths, challenges and gaps in service delivery at the community level. This should be supported by adequate resources and

tools, aimed at ensuring standardized gathering and reporting of information, including on cases handled by CIJ actors and paralegals themselves. For example, periodic satisfaction surveys can be valuable in identifying community justice needs and perspectives on strengths and limitations in the services and performance of paralegals and CIJ actors. It is likewise important to undertake a review of case files to identify recurrent legal problems, unmet legal needs and examine whether

paralegals and CIJ actors are handling cases with adherence to minimum standards of quality and applicable law. Ultimately, accurate and systematic data collection by paralegals can support evidence-based regulatory and policy reform, including upholding international human rights standards within CIJ systems and strengthening linkages with formal justice institutions and referral pathways for vulnerable individuals.

ACKNOWLEDGMENTS

This report is the work of a team of IDLO staff and consultants led by IDLO's Department of Research and Learning.

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NOTES

- ¹ See Declaration on Equal Access to Justice for All by 2030 (The Hague, 7 February 2019), available at: https://bf889554-6857-4cfe-8d55-8770007b8841.filesusr.com/ugd/6c192f_6dce6db9c17c472594eceaeb69f936cf5.pdf
- ² IDLO, "Strategic Plan 2021-2024" (2020), p. 25, available at: https://www.idlo.int/sites/default/files/documents/idlo_strategic-plan-2021-2024_english_web.pdf
- ³ Modern justice sector development has come to recognize that the relevance and prevalence of CJ systems require their inclusion in any discussion on access to justice, see IDLO, "Policy and Issue Brief. Navigating Complex Pathways to Justice: Engagement with Customary and Informal Justice Systems" (2019), p.5, available at: <https://www.idlo.int/publications/policy-and-issue-brief-engagement-customary-and-informal-justice-systems>
- ⁴ *Ibid.*, p. 6
- ⁵ United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC), "Global Study on Legal Aid", Global Report (October 2016), p. 6.
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See for instance, the Lilongwe Declaration stating that "Governments should ensure that legal aid programs provide special attention to persons who are detained without charge, or beyond the expiration of their sentences, or who have been held in detention or in prison without access to the courts. Special attention should be given to women and other vulnerable groups, such as children, young people, the elderly, persons with disabilities, persons living with HIV/AIDS, the mentally and seriously ill, refugees, internally displaced persons, and foreign nationals", The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers in Africa Lilongwe, Malawi, 22–24 November 2004, p.3, available at: <https://cdn.penalreform.org/wp-content/uploads/2013/06/rep-2004-lilongwe-declaration-en.pdf>

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³⁶ *Ibid.*, Section 5

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³⁸ *Ibid.*, Section 19

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- ¹³⁵ IDLO, PASUNE and Kenya National Legal Aid Service, "The role of paralegal support networks in the promotion of access to justice through judicial and community justice systems", Report of the 1st East and Horn of Africa Regional Paralegals Conference, Nairobi, July 2019 pp. 26-30.
- ¹³⁶ *Ibid.*, p. 30. A Kenyan paralegal reports widespread disrespect for paralegals by lawyers who regard them as "con men".
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- ¹⁴⁸ C. Robb-Jackson, "Part of the Justice Puzzle: Community-based Paralegal Programs and Sierra Leone's Legal Aid Act", 2:1 *Canadian Journal of Poverty Law* 42 (2013), p. 62, available at: <https://namati.org/resources/part-of-the-justice-puzzle-community-based-paralegal-programs-and-sierra-leones-legal-aid-act/>. See also Sierra Leone's Legal Aid Act (2012), available at: <http://www.sierra-leone.org/Laws/2012-06.pdf>
- ¹⁴⁹ *Ibid.* Sierra Leone's Legal Aid Act of 2012 refers to the relevant provisions of the Dakar Declaration (1999), the African Commission on Human and Peoples' Rights Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa (2001), and the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012).
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- ¹⁵⁸ Uganda Local Council Courts Act (2006). According to Section 10.2(a) "the jurisdiction of the local council court shall, in respect of causes and matters specified in the Second Schedule be restricted to causes and matters where the value of the subject matter in dispute does not exceed one hundred currency points". Further "where the court awards compensation exceeding twenty five currency points, the court shall refer the case to the Chief Magistrate of the area for the purposes of execution of the order and the Chief Magistrate may, if he or she finds that the judgment award is grossly excessive, reduce the amount of the award taking into account awards in similar cases", see Section 10.3).
- ¹⁵⁹ Uganda Local Council Courts Act (2006), Section 10.1).
- ¹⁶⁰ Uganda Local Council Courts Act (2006), Section 16.2).
- ¹⁶¹ Uganda, Local Council Courts Act (2006), Section 12.
- ¹⁶² *Ibid.*, Section 32.
- ¹⁶³ *Ibid.*
- ¹⁶⁴ *Ibid.*, Section 33.
- ¹⁶⁵ Specifically, the 2016 national policy on CIJ established that "[a]ny serious criminal actions undertaken within the context of the Xeer should be investigated and prosecuted in the formal courts, as would any other serious crime." See Federal Government of Somalia Ministry of Justice and Judicial Affairs, "Policy on the Xeer", Traditional Dispute Resolution Unit, paragraph 2.5 (unpublished, March 2016). Accordingly, standard operating procedures regulating the operation of ADR Centers explicitly exclude several disputes and crimes from the Centers' jurisdiction. Specifically: "ADR centers have no authority to hear and decide disputes involving damages resulting from any of the following acts: a) Murder; b) Rape, sexual violence and gender-based violence resulting in serious bodily harm; c) Trafficking and inhuman exploitation of persons; d) Child physical abuse; e) Terrorism; f) Corruption; g) Money Laundering; h) Organized Crime; i) Criminalize Theft" as well as robbery and disputes related to divorce. See Government of the Federal Republic of Somalia, "Alternative Dispute Resolution Standard Operational Procedures", Alternative Dispute Resolution Unit, Ministry of Justice and Judiciary Affairs, Section 7 (unpublished, September 2019).
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Published by: International Development Law Organization (IDLO)
Viale Vaticano, 106 00165 | Rome | Italy
Tel: +39 06 40403200 | Fax: +39 06 40403232 | Web: www.idlo.int | Email: idlo@idlo.int | Twitter: @IDLO

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ISBN 9788896155370