

A POWERFUL TOOL OF JUSTICE

Paralegals and the provision of affordable and accessible legal services

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In many parts of Africa, a quiet revolution is transforming the delivery of legal assistance to pre-trial detainees and accused persons. Too poor to afford the services of a lawyer, and unable to rely on inadequate – or nonexistent – state-funded legal aid systems, many Africans are at the mercy of often oppressive and corrupt criminal justice systems. This is beginning to change as paralegals – who are less expensive and more accessible than lawyers – are empowering the poor and marginalised in their interactions with police, prosecutors, and the courts. In almost two dozen countries across Africa, paralegals are providing a critical service, particularly in the early stages of the criminal justice process. They provide primary legal aid services that often no one else is providing, which in turn results in the elimination of unnecessary pre-trial detention, the speedy processing of cases, diversion of young offenders, and reduction of case backlogs. Some paralegal services also provide food and medical supplies to people in detention. They may also be present at police stations in order to deter ill-treatment and forced confessions. Paralegals play a valuable role in reducing prison overcrowding by locating the family members of pre-trial detainees and facilitating bail hearings. This article gives an overview of paralegal services in a number of African countries, and shows how these services are assisting thousands of pre-trial detainees and accused persons to access justice in environments where legal services are scarce or non-existent.

SCARCITY OF LAWYERS

Throughout much of Africa, persons accused of crime do not have access to a private lawyer. In places where a rudimentary legal aid system operates, such as Kenya, Malawi or Nigeria, a lawyer is often provided only at the trial stage of legal proceedings.¹ Yet, access to a lawyer at the early stages of the criminal justice process can be crucial to limit abuse and torture at the hands of the authorities – often leading to forced

confessions – and significantly enhancing accused persons' chances of awaiting trial at liberty.

A survey on access to justice in Africa found that while national laws – often entrenched as constitutional provisions – respect a right to state-funded legal aid, access to such aid is limited.² Such aid is particularly rare at police stations (where many suspects and accused persons are detained) and only sometimes available in prisons and the lower courts.³ In numerous African countries legal aid at public expense is restricted to capital cases, given the scarcity of public defenders, as borne out by the following examples:⁴

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- Liberia, with a population of 3,8 million has 21 public defenders, most of whom are recent law graduates with limited practical experience.
- In 2012 Malawi, a country of 15,5 million, had 18 legal aid lawyers, of whom 16 are junior or have fewer than five years' experience.
- In 2011 Sierra Leone, with a population of 6,4 million, had three legal aid lawyers who exclusively provide services in the capital city, Freetown, through a pilot national legal aid scheme.
- In Zambia, the Legal Aid Board has 21 lawyers on its staff to provide services to a population of 13 million people.⁵

In many poorer African countries there is a general shortage of professional legal personnel. Lawyers are in such short supply that they charge a premium for their services, putting them out of the reach of all but the wealthy. In Malawi, for example, some 250 registered lawyers are servicing a population of some 15,5 million people.⁶ With an average of one lawyer for every 70 000 inhabitants, only Malawians with considerable means can hope to obtain the services of a lawyer. Sierra Leone and Rwanda have about 300 lawyers each for, respectively, six and ten million inhabitants.⁷ Moreover, most lawyers are typically concentrated in their country's largest urban centres, so that rural populations have virtually no access to lawyers.

While some African countries have an abundance of lawyers, their fees remain too high for the average accused. For example, Nigeria has more than 50 000 lawyers, the highest number of any country in Africa.⁸ Yet it is estimated that some three-quarters of pre-trial detainees in Nigeria are too poor to afford a private lawyer.⁹

DEMAND FOR PARALEGALS

An innovative and cost-effective way to compensate for the dearth of affordable and accessible lawyers on the continent is through the use of paralegals. Typically paralegals receive relatively basic instructions in the law and criminal procedure, buttressed by practical experience working at the coalface of the criminal

justice system. Paralegals are closely supervised through on-the-job training, often working under the supervision of lawyers, and where necessary, refer cases to lawyers for further assistance. That is, lawyers ensure that the paralegals under their care operate within the ambit of the law. Such lawyers also provide legal advice to paralegals in respect of individual cases, and help draft memoranda and formal letters directed at criminal justice officials.

While paralegals cannot represent someone at trial, they provide significant legal and practical assistance to arrestees and accused persons before the commencement of their trials, especially for awaiting trial detainees.

Providing assistance during the pre-trial stage of the criminal justice process is important for a variety of reasons. Many African prison systems are disproportionately filled with pre-trial detainees. In a number of countries, including Angola, Benin, Cameroon, Liberia, Nigeria, and Uganda, prisons contain more pre-trial detainees than convicted and sentenced prisoners. In South Africa a third of all prisoners are pre-trial detainees.

In many African countries the duration of pre-trial detention is measured in months and years. In Nigeria, the average length of pre-trial detention nationally has been reported at 3,7 years.¹⁰ In 2010, half of Nigeria's pre-trial detainees had been detained for between five and 17 years, according to the country's National Prison Service.¹¹ Prisoners who had been in pre-trial detention for between seven and 17 years have been documented in Benin.¹² Even in South Africa, with its relatively well-resourced criminal justice system, the average length of pre-trial detention is six months.¹³

Persons in pre-trial detention have not been convicted of a crime. Yet pre-trial detainees' conditions of confinement and treatment by criminal justice personnel can amount to severe punishment. Poorer detainees often languish under the worst conditions in places of detention, compared to those who have access to some, albeit limited, financial resources. In many places detainees without money to bribe a guard or pay

off a cell leader are denied access to medication, adequate food, a bed, and other amenities. Such detainees are at heightened risk of assault as corrupt guards and cell leaders seek to compel them to pay up. Pre-trial detainees are also at risk of being tortured by police officers seeking to extract confessions that can be used in court to secure a conviction.¹⁴

In short, the decision to detain someone before they are found guilty of a crime can have a severe, lasting, and adverse impact on detainees and those who love and depend on them. Pre-trial detainees lose their freedom, and can also lose their families, health, homes, jobs, and community ties.¹⁵

The availability of legal and practical assistance – especially at the very early stages of the criminal justice process – can thus make a significant difference to arrestees’ likelihood of being remanded into pre-trial detention and, in cases where they are detained, the duration thereof.

As a World Bank report concludes, not all interventions during the pre-trial phase of the criminal justice process require the intervention of lawyers. Rather, paralegals can – and do – provide ‘first aid’ in access to justice in many African countries:

...properly construed, paralegal services should be viewed as especially necessary in sub-Saharan Africa because of the poor extent of access to justice available to most Africans. In systems suffering from high prisoner remand populations and extensive court delays, there can be little or no case for bolstering the private legal profession or even the government public defender offices while the more urgent need for paralegal services is neglected. Paralegals should be viewed as a priority in building credible systems of justice in Africa.¹⁶

POINTS OF INTERVENTION

Most paralegals in Africa are employed by non-governmental organisations (NGOs), although some are also employed by universities (as part of law clinic programmes, for example) and by

governments who seek a cost-effective solution to the dearth of legal aid lawyers in their jurisdictions.

Paralegals provide assistance to arrestees and accused persons at various points in the criminal justice process. It is helpful to summarise each of these in turn, to better understand the work paralegals perform at the police station, at court, and within the prison.

At the police station

Using their knowledge of the law and the circumstances of their client, paralegals can identify individuals who are eligible and suitable for release from the police station, and assist them accordingly. In doing so they gather and provide information to the police about whether arrestees fulfil legal criteria for pre-trial release.¹⁷

Paralegals who attend a police station can assist in verifying the identities and locations of relatives and others who might assist the arrestee. The presence of a paralegal in a police station, particularly one who attends the station regularly, is also likely to moderate any tendency of police officers to mistreat arrestees or to demand a bribe. Police stations are also the most effective points for identifying and diverting juvenile suspects who might otherwise be classified and processed as adults.

At court

A trained paralegal who has interviewed an unrepresented detainee before a court hearing is able to advise the detainee about the right to apply for bail (if applicable in the legal system) and to gather facts that are relevant to such an application, such as the names of relatives who may be able to raise bail deposits or act as sureties. Even in systems that do not generally permit non-lawyers to speak for litigants at a pre-trial hearing, pragmatic judicial officers may often allow a paralegal to speak for an indigent defendant on matters of bail.¹⁸

Paralegals can improve the quality of self-representation among defendants, especially during

the pre-trial phase of the criminal justice process. This is done through awareness raising and education on self-representation, demystifying the court process through role playing on what to expect in court, and providing guidance on the bail process and the grounds on which judicial officers typically base their pre-trial release/detention decisions. As a result, accused persons become more active players and partners in the administration of justice, typically resulting in more successful bail applications at court.¹⁹

At prison

Where accused persons have not been given or offered bail and are in pre-trial detention awaiting the next court hearing, paralegals can assist them in preparing and lodging bail applications. Paralegals who work in prisons can either train prisoners individually in preparing bail applications, or offer group workshops to inform remand prisoners about court procedures in general, court etiquette, and their options for gaining representation by a lawyer or acting for themselves. In addition to advisory assistance offered in the prison, paralegals can also search for relatives of detainees to inform them of the whereabouts of the detainee and to ascertain who may assist the detainee to obtain release on bail.

As part of their prison-based work, paralegals typically seek to identify 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. The paralegals then bring such detainees to the attention of the relevant investigating officers, prosecutors, and magistrates.

In a number of African countries, paralegals conduct regular prison-based Paralegal Aid Clinics (PLCs).²⁰ The clinics aim to empower detainees to apply the law in their own cases. The paralegals use a range of participatory learning techniques, including role plays, games and songs, that enable detainees to, for instance, apply for bail, make a plea in mitigation (should they wish to plead guilty), and cross-examine

witnesses and police officers.²¹ In jurisdictions where resource constraints are acute, paralegals seek to reach as many detainees as possible, addressing groups rather than individuals – group PLCs accommodating 50-150 detainees per clinic are not uncommon.²²

IMPACT

Paralegal schemes have had a significant, measurable impact on pre-trial detention populations in a range of countries.

In Malawi, the Paralegal Advisory Service Institute (PASI), an NGO, contributed to a fall in the proportion of prisoners held in pre-trial detention from 35% in 2000 to below 15% today – one of the lowest proportions in southern Africa and half the global average. Between 2007 and late 2011, PASI paralegals facilitated 91 camp courts (i.e. court hearings in prisons or remand centres), resulting in 1 490 successful bail applications, and 603 cases where charges against the accused were withdrawn.²³ PASI's paralegals conducted 3 504 PLCs between 2002 and 2007, attended by 104 700 prisoners, mostly pre-trial detainees.²⁴

In Sierra Leone, Timap for Justice, a Freetown-based NGO, employs ten paralegals to work at police stations in three districts, where it is able to reach and assist over half of all arrestees who come through the police stations. Over a one year period in 2011-2012, the paralegals provided assistance to 5 781 arrestees. They secured police bail for those people in half of the cases. In addition, they succeeded in getting the charges dropped entirely in 28% of the cases, usually due to mistakes of identity, misunderstandings of facts, or lack of evidence.²⁵ Timap is thus successful in securing release – either without charge or on bail – for approximately 80% of the people its paralegals assist in police stations.

Working in five prisons in Rwanda, ten paralegals conducted awareness raising sessions for 3 000 pre-trial detainees over a one year period, preparing detainees 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). Within a one year period in 2009-2010, the paralegals assisted with the pre-trial release of almost 200 detainees, and the permanent release (through a dismissal of charges) of 625 pre-trial detainees.²⁶

Since 2007, Uganda's Paralegal Advisory Services (PAS) has deployed 38 paralegals, working in 38 prisons covering 57% of Uganda's prison population. An evaluation of PAS's work over an 11-month period in 2009-2010 revealed that its paralegals contributed to the release of almost 24 000 pre-trial detainees.²⁷ Between 2005 and 2010, the number of pre-trial detainees as a proportion of all prisoners in Uganda declined from 63% to 55%. At prisons where PAS operated, the proportion of pre-trial detainees declined to 25%, compared to 75% in prisons where PAS was not active.²⁸

EVOLVING RECOGNITION FOR PARALEGALS

Since 2004, international legal and regulatory frameworks have supported the existence of paralegals as service providers in the criminal justice process. The *Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa* provides that the delivery of effective legal aid to the maximum number of persons is to rely on non-lawyers, including paralegals.²⁹ The *Lilongwe Declaration* and its associated *Plan of Action* were adopted by the African Commission on Human and Peoples' Rights in 2006, and by the UN Economic and Social Council (ECOSOC) in 2007.

The United Nations *Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* urge states to recognise the role played by paralegals or similar service providers in providing legal aid services where access to lawyers is limited.³⁰ According to this document, states should, in consultation with civil society and justice agencies and professional associations, introduce measures to:

- develop, where appropriate, a nationwide scheme of paralegal services with standardised training curricula and accreditation schemes
- ensure that quality standards for paralegal services are set and that paralegals receive adequate training and operate under the supervision of qualified lawyers
- ensure access for accredited paralegals who are assigned to provide legal aid to police stations, facilities of detention, pre-trial detention centres and prisons; and
- allow court-accredited and duly trained paralegals to participate in court proceedings and advise defendants when there are no lawyers available to do so

At the national level, some countries have started adopting policies and passing legislation to promote paralegals within their criminal justice systems. For example, legislation in Malawi and South Africa recognises paralegals as legal service providers. In Sierra Leone, a new legal aid law (passed by the legislature in 2012 but not promulgated by the executive at the time of writing) provides for a legal framework for institutionalising and scaling-up of community based paralegal programs throughout the country.³¹

CONCLUSION

Paralegals are playing an increasingly important role in enhancing access to justice for accused persons and criminal suspects. A 2012 audit by Penal Reform International (PRI) identified dozens of paralegal organisations working in the criminal justice sector in 21 African countries.³²

In many places paralegals who deliver justice services are adding to their repertoire of tools, including mediation, advocacy, and public education.³³ In both Malawi and Sierra Leone, for example, paralegals handle a substantial number of cases through some form of alternative dispute resolution – thereby avoiding people becoming ensnared with the formal criminal justice system in the first place. Moreover, in both countries paralegal organisations have engaged in advocacy, lobbying policy makers to promulgate laws that

formalise the role paralegals play in the criminal justice process.

Paralegals typically come from the communities they serve.³⁴ They are thus finely attuned to local contexts and needs, such as speaking local languages, knowledge of local forms of justice, and community acceptance. Paralegals are consequently well suited to ameliorating community disputes which, if left unaddressed, may lead to criminal conduct (e.g. violence over a land dispute). They also play a constructive role as intermediaries between the formal criminal justice system and local communities who are often suspicious of the rules and processes governing the justice system. In a number of places paralegals are directly involved in community education, explaining the purpose of bail and the importance of the 'presumption of innocence' to an often sceptical public.

Paralegals have an important role to play in criminal justice systems throughout Africa. In many countries the effective use of paralegals is inhibited by a lack of legal recognition, often exacerbated by the attitude of professional bar associations that resist the use of paralegals because of concerns over lost status or income. Where paralegals are not recognised, changes in the law may be necessary so that paralegals are officially allowed access to people in police or prison custody.



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NOTES

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