

# CHALLENGES AND OPPORTUNITIES FOR COMMUNITY PARALEGALS:

**An Analysis of Legal Recognition, State Regulation and Financing in Kenya and Zambia**

**Challenges and Opportunities  
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***Full Report***

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*A study commissioned by Kituo cha Sheria - Legal Advice Centre  
in partnership with the African Centre of Excellence for Access  
to Justice, Paralegal Alliance Network Zambia and Grassroots  
Justice Network with the generous support of the International  
Development Research Centre*

## Acknowledgements

With over fifty years of experience in working with community-based paralegals, Kituo cha Sheria - Legal Advice Centre commissioned this research to address challenges related to the legal recognition, regulation, and financing of paralegals. This study, developed in collaboration with the African Centre of Excellence for Access to Justice and the Grassroots Justice Network, adopted a participatory approach to research design and implementation. We extend our heartfelt gratitude to the following organizations and individuals for their invaluable contributions to this report.

Firstly, we sincerely thank the International Development Research Centre (IDRC) for funding this participatory research, enabling regional research cohorts and convenings that were crucial to developing this report. Special thanks to Dr. Martha Mutisi and Dr. Adrian di Giovanni at IDRC for their steadfast support since the project's inception.

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We express our heartfelt thanks to all research respondents, key informants, and data clerks, especially community-based paralegals who shared their insights openly and honestly, significantly enriching this report. We hope the recommendations will support them as frontline responders to justice challenges.

Finally, special thanks to the staff of Kituo Cha Sheria - Legal Advice Centre, including Dr. Annette Mbogoh, Tobias Mwadime, Felix Kipkoech, James Adala, Glory Kairi, Oluwatosin Adegun, and the consultancy team led by Mr. Joseph Muthama, along with external editor Abdul Tejan-Cole, all of whom dedicated their time and expertise to producing this high-quality report to advance knowledge for the paralegal movement in Africa.

Thank you all.

The Task Force on Justice Report (2019) noted that more than 5.1 billion people worldwide lacked meaningful access to justice. Legal practitioners alone cannot meet the high demand for justice services. Community paralegals continue to play a critical role in narrowing the justice gap for communities in Africa. Community paralegals are closer to the people. They serve the community that they live in. They are first responders to justice challenges affecting the most vulnerable and indigent communities at grassroots levels. As such, community-based paralegals are essential within the access to justice chain working closely with lawyers, legal empowerment organizations, associations, police, local administration, courts and other actors within the justice system.

The term “community paralegal” refers to a person who has basic legal knowledge which is applied to provide justice support services, monitor human rights violations, organize and mobilize for social change and law reform for and within local communities. In different contexts, community-based paralegals are referred to as “*parajuristes communautaire*”, human rights defenders, village mediators, community-based paralegals, frontline defenders, grassroots justice advocates, barefoot lawyers, community advocates among other terminologies.

The present research was commissioned by Kituo cha Sheria - Legal Advice Centre to address the emerging concerns facing the paralegal movement in Africa including legal recognition which leads to state regulation of paralegal practice, financial sustainability of paralegalism and learning and capacity building of the movement. As a Founding member of the African Centre of Excellence for Access to Justice and Regional Anchor for East and Horn of Africa for the Grassroots Justice Network, we heard and shared experiences and lessons with colleagues and community paralegals in Africa on systemic barriers that limited the impact, legitimacy and sustainability of paralegal programmes in Africa. While these emerging challenges were well known, the solutions remained unclear. Also, the journey towards reaching a shared understanding on key fundamentals such as the model of financing of paralegal programmes was long and winding. For instance, on sustainability we still have unanswered questions as to whether community paralegals should receive state financing, or whether local communities had agency and power to mobilise their own resources for legal empowerment and finally if financing models should include stipends for individual paralegals or grants for paralegal organisations.

Due to the nature of these emerging concerns, a participatory action research methodology was adopted that involved practitioners, community paralegals, respondents and key informants in the design, development of the research tools, data collection and analysis, validation of findings and finally report writing. Community paralegals were involved at all stages of the research project in both Kenya and Zambia. The lead consultant was himself a community paralegal actively involved in grassroots advocacy. The study aimed at collating the views of community paralegals themselves on these pertinent issues. These two countries were selected due to the steps they have taken to establish legal and policy frameworks and programmes governing paralegal practice and legal empowerment programmes. Further, both countries have rich empirical data on the impact of the interaction between these legal and policy frameworks and the paralegal practice that has had both positive and negative effects on community paralegals. We believe the findings, best practices and recommendations arising from the experiences of Zambia and Kenya, documented in this report, will inform other contexts within Africa for a stronger, sustainable and more impactful grassroots justice movement.

**Dr. Annette Mbogoh**  
**Executive Director**  
**Kituo cha Sheria - Legal Advice Centre**  
**Kenya**

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### **International Instruments**

Universal Declaration on Human Rights, 1948  
International Covenant on Civil and Political Rights, 1966  
International Covenant on Economic, Social Cultural rights, 1966  
Convention on the Rights of Persons with Disabilities (CRPPD), 2006  
United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2012  
United Nations Sustainable Development Goals, 2015

### **Regional Instruments**

African Charter on Human and Peoples Rights, 1981  
African Union Agenda 2063, 2015  
The Lilongwe (Malawi) Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, 2004  
The Resolution on the Right to a Fair Trial and Legal Assistance in Africa (the Dakar Declaration and Recommendations), 1999  
The Right to a Fair Trial and Legal Assistance in Africa, 2003

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## Abbreviations and Acronyms

<b>ACC</b>	Assistant County Commissioner
<b>ACHPR</b>	African Charter on Human and People’s Rights.
<b>ADR</b>	Alternative Dispute Resolution
<b>AJS</b>	Alternative Justice Systems
<b>AJSFP</b>	Alternative Justice Systems Framework Policy 2020
<b>CEDAW</b>	Convention on the Elimination of All Forms of Discrimination Against Women
<b>COVAW</b>	Coalition on Violence against Women
<b>CLAN</b>	Children’s Legal Action Network.
<b>CLE</b>	Council for Legal Education
<b>CLEAR</b>	Christian Legal Education Aid and Research
<b>CJPC</b>	Catholic Justice and Peace Commission
<b>CREAW</b>	Centre for Rights Education and Awareness
<b>CSOs</b>	Civil Society Organizations
<b>DCC</b>	Deputy County Commissioner
<b>DNLAAP</b>	Draft National Legal Aid and Awareness Policy-2015
<b>ERS</b>	Economic Recovery Strategy for Wealth and Employment Creation
<b>FGD</b>	Focus Group Discussion
<b>FIDA-(K)</b>	Federation of Women Lawyers-Kenya
<b>GJLOS</b>	Government Justice Law and Order Sector
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>ICESCR</b>	International Covenant on Economic, Social and Cultural Rights
<b>ICJ-K</b>	International Commission of Jurists -Kenya Chapter
<b>IDLO</b>	International Development Law Organization
<b>IFWL</b>	International Federation of Women Lawyers
<b>IDRC</b>	International Development Research Centre
<b>JLAC</b>	Justice and Legal Affairs Committee
<b>KCPA</b>	Kenya Community of Paralegal Association
<b>KITUO</b>	Kituo cha Sheria – Legal Advice Centre
<b>KHRC</b>	Kenya Human Rights Commission
<b>KNCHR</b>	Kenya National Commission on Human Rights
<b>LAB</b>	Legal Aid Board

<b>LASP</b>	Legal Aid Service Provider
<b>LAZ</b>	Law Association of Zambia
<b>LRF</b>	Legal Resources Foundation
<b>LSK</b>	Law Society of Kenya
<b>MOCS</b>	Mainstream Options Consulting Synergies
<b>MOJNCCA</b>	Ministry of Justice, National Cohesion and Constitutional Affairs
<b>NALEAP</b>	National Legal Aid and Awareness Programme
<b>NAP</b>	National Action Plan
<b>NLAAP</b>	National Legal Aid and Awareness Policy
<b>NLAS</b>	National Legal Aid Service
<b>NASCI-AJS</b>	National Steering Committee on Implementation of the Alternative Justice System Policy
<b>ODPP</b>	Office of the Director of Public Prosecutions
<b>PAN</b>	Paralegal Alliance Network
<b>PSK</b>	Paralegal Society of Kenya (Formerly PASUNE)
<b>PRSP</b>	Poverty Reduction Strategy Paper
<b>PLEAD</b>	Programme for Legal Empowerment and Aid Delivery
<b>PLEED</b>	Programme for Legal Empowerment and Enhanced Justice Delivery
<b>SDG</b>	Sustainable Development Goal
<b>TEVETA</b>	Technical Education, Vocational and Entrepreneurship Training Authority
<b>ToR</b>	Terms of Reference
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations

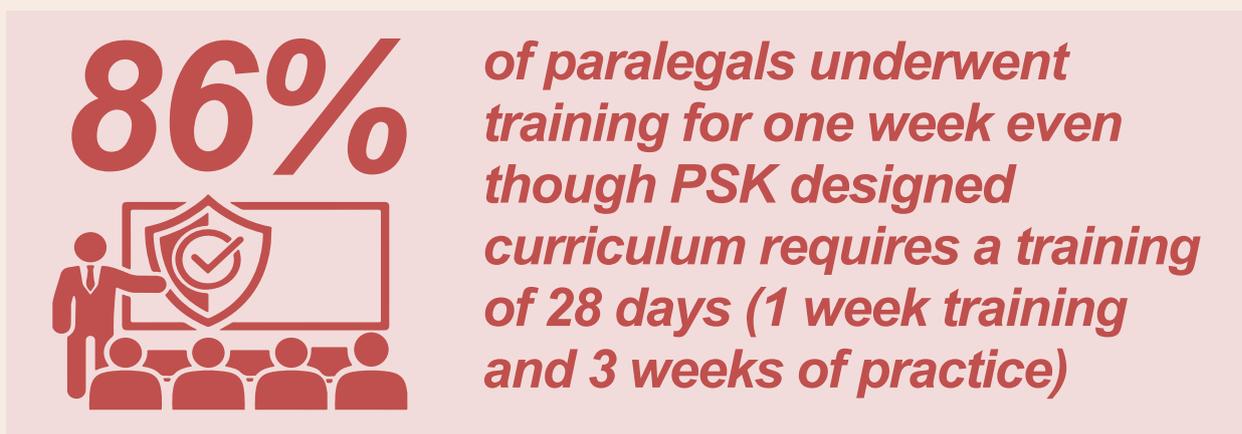
## Executive Summary

Kenya and Zambia have enacted the Legal Aid Act to enhance provision of legal aid by the state to the vulnerable groups in the country. There are various levels of implementation of the Acts which practitioners in Africa and the world can learn from. However, the role of paralegals in provision of legal aid remains a challenge not only in the two countries but in Africa at large. The level of training, formalization, recognition and financing remains a grey area as captured in emerging issues section. This comparative study on paralegalism was done concurrently in Kenya and Zambia to critically assess and evaluate the training, formalization, recognition and financing of paralegals in Kenya and comparatively document for disseminating best practices on legal recognition of paralegals in Kenya and Zambia.

The demand for legal aid and awareness services is overwhelming and has stretched the capacities of these NGOs to their limits. Although these legal aid initiatives have achieved a measure of success, the efforts of these organizations are largely uncoordinated, and their quantitative reach is insignificant in terms of addressing the problem at the macro policy level. Coupled with lack of standardization, supervision, regulation and spatial limitation, the quality and frequency of legal aid and legal awareness provided by these players has been compromised.

The study seeks to enhance learning on legal empowerment; aid in development of policy briefs and outcome documents that will be used by not only by KITUO and regional partners such as the African Centre for Excellence for Access to Justice, IDRC and the Grassroots Justice Network but also policy and decision makers for advocacy work around legal empowerment in the Africa region. It will as well increase learning and sharing of experiences of state and non-state actors that use the paralegal approach to legal empowerment in East and Southern Africa. This is aimed at shaping paralegal movement in Kenya, Zambia and Africa for purposes of more structured change. The key research findings are:

- i. In Kenya and Zambia, the community-based paralegals are either normalized (mainstreamed) or combined/blended (integrated) as part of the community level organizing in managing relations and or organizational or institutional-based operations.



- ii. In Kenya, the ideal training duration was found to be 6 months with 24 modules as prescribed by CLE. However, 86% of paralegals underwent training for one week even though PSK designed curriculum requires a training of 28 days (1 week training and 3 weeks of practice). Training for the Paralegals is important thus the needs to have a structured and regulated mode of delivery of these trainings in a decentralized system to ensure more paralegals in the grassroots are trained. In Zambia Technical Education Vocational and Entrepreneurial Training Authority (TEVETA) approves curriculum but lacks capacity to assure quality.

- iii. There was apprehension from the paralegals that formalization comes with limitation for paralegals that have been practicing for long because only academic qualifications have a higher premium. There was also anxiety among paralegals that formalization would diminish community trust as they will be profiled as government employees or lawyers' assistants. Even though regulating the paralegals is important, the same should not be a hindrance to access to justice for the vulnerable hence mechanisms need to be out in place to curb unnecessary bureaucracies and costs.
- iv. Paralegalism and paralegals are adequately recognized by various laws and statutes both in Kenya and Zambia and it was further established that paralegals are recognized by most communities as evidenced by number of cases they handle on weekly basis.
- v. The study established that paralegals have no clear specific and reliable source of funding regarding the services they offer to the community as legal aid advisers. The study further found that paralegals as freelancers, serve clients for as long as they wish, but for many, pressing livelihood needs impede their ability to remain active over a long stretch of time. To enhance sustainability of legal aid proviso through the paralegals, there is need to develop financing schemes with various partners including the government through the implementation of the Legal Aid Funds as provided in the respective Legal Aid Acts.

**The report is structured as follows:**

**Chapter 1** introduces the concept of access to justice and discusses how paralegalism serves as a means to facilitate access to justice for consumers. Paralegals are highlighted as key agents in this process.

**Chapter 2** delves into the research methodology employed in the study, with a specific focus on the case studies of Kenya and Zambia.

**Chapter 3** analyzes the relevant literature, laws, and policy frameworks pertaining to community-based paralegals at the national level.

**Chapter 4** presents and examines the research findings from both Kenya and Zambia, providing insights into the current landscape of paralegalism in these countries.

**Chapter 5** concludes the report by summarizing key findings and presenting recommendations based on the research findings.

## INTRODUCTION AND BACKGROUND

### 1.1 Introduction

Access to justice is a basic principle of the rule of law. It is a fundamental human right in itself and essential for the protection and promotion of all other civil, cultural, economic, political and social rights. Without effective and affordable access to justice, people are denied the opportunity to claim their rights or challenge crimes, abuses or human rights violations committed against them. They are unable to have their voice heard, exercise their rights, challenge discrimination, or hold decision-makers accountable as espoused in various international instruments.

Access to justice is generally understood as the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards. Access to justice goes beyond mere access to institutions but covers the whole process from grievance to remedy. At its core, UN Sustainable Development Goal (SDG) 16 seeks to promote peaceful and inclusive societies for sustainable development, providing a blueprint for combating violence, reducing crime, and ensuring access to justice for all. By addressing the root causes of conflict and insecurity, SDG 16 lays the groundwork for fostering social cohesion, promoting human rights, and upholding the principles of democracy and good governance. SDG 16 Target 16.3 works towards a world where the law applies fairly to everyone, and everyone can receive assistance with their legal problems by 2030. This goal is reiterated in Aspiration 3 of African Union Agenda 2063 which focuses on building a strong foundation for a society that upholds justice, fairness, and the rights of its citizens, respect for human rights and the rule of law and accessible justice system.

<p>UN Sustainable Development Goal (SDG) 16 aims to promote peaceful and inclusive societies, combat violence, reduce crime, and ensure access to justice for all.</p>	<p>By addressing the root causes of conflict and insecurity, SDG 16 fosters social cohesion, human rights, and the principles of democracy and good governance</p>
<p>SDG 16 Target 16.3 aspires to a world where the law applies fairly to everyone and everyone has access to legal assistance by 2030</p>	<p>This goal is reiterated in Aspiration 3 of the African Union Agenda 2063, which focuses on building a society that upholds justice, fairness, human rights, and the rule of law</p>

Access to justice especially by the indigent, the poor, vulnerable and the marginalized, not only measures the level of civilization of a nation but also improves manifestation of fair administration of justice notwithstanding diminished opportunities due to legal discrimination and inequality that presently seems skewed against the needy. Thus, access to justice is a broad concept that defies easy definition. It includes the enshrinement of rights in the law, awareness of and understanding of the law, easy availability of information pertinent to one's rights, equal right to the protection of those rights by the law enforcement agencies, easy access to the justice system particularly the formal adjudicatory processes, availability of physical legal infrastructure; affordability of legal services, provision of a conducive environment within the judicial system, expeditious disposal of cases and enforcement of judicial decisions without delay.

Legal aid is a key element of access to justice. It is understood as encompassing the provision to a person, group or community, by or at the instigation of state or non-state actors, of legal education, information, advice, assistance, representation and mechanisms for alternative dispute resolution. It covers the whole process leading from grievance to remedy as articulated in the Zambian Legal Aid Policy. It includes legal advice and awareness, legal representation and assistance, provision of legal information and law-related education and undertaking law-reform and advocacy work on behalf of the community.

This definition is broadened by the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa which defines legal aid as: “legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution; and to include a wide range of stakeholders, such as non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academic institutions.”

In acknowledging the importance of providing legal aid at all stages of the criminal process, the Declaration provides that -

“Suspects, accused persons, and detainees should have access to legal assistance immediately upon arrest and/or detention wherever such arrest and/or detention occurs. A person subject to criminal proceedings should never be prevented from securing legal aid and should always be granted the right to see and consult with a lawyer, accredited paralegal, or legal assistant. Thus, the efficient and effective delivery of legal aid services will in turn enhance equal access to justice for the poor and vulnerable people at all stages.”

International standards recognize access to justice as both a basic human right and a means to protect other universally recognized human rights. Article 7 of the Universal Declaration of Human Rights provides –

“All are equal before the law and are entitled without any discrimination to equal protection of the law.”

This is a fundamental provision regarding access to justice and the right to legal representation. The International Covenant on Civil and Political Rights (ICCPR) underscores this right in Article 14(3) (b), (c), and (d). These provisions guarantee an accused person the right to: (b) prepare their defense with adequate time and resources, including the ability to communicate with a chosen lawyer; (c) a speedy trial, avoiding unnecessary delays; and (d) be present during the trial and defend themselves personally or through a chosen lawyer. If legal representation is not secured, they must be informed of this right and, if necessary for a fair trial, have a lawyer appointed at no cost.

At the regional level, Articles 3(1) (of the African Charter on Human and People’s Rights (ACHPR) provides that “Every individual shall be equal before the law.” Articles 3(2) states that “every individual shall be entitled to equal protection of the law.” Article 7 (1) (c) provides that every individual shall have the right to have his/her cause heard which comprises the right to defence, including the right to be defended by counsel of his/her choice respectively.

In Kenya, Article 48 of the Kenya Constitution (2010) require the state to ensure access to justice for all and enact legislation to fulfill its international obligations, respect for human rights and fundamental freedoms respectively. It provides –

***“The State shall ensure access to justice for all persons and, if any fee is required, it shall be reasonable and shall not impede access to justice.”***

While all Kenyans are entitled to the right of access to justice, the Constitution primarily tasks the state with ensuring access to justice for all persons. In other words, one interpretation of Article 48 is that it is the responsibility of the state to take all measures to ensure that all Kenyans are able to access justice. It is also arguable that Article 48 takes cognizance of the fact that there exists a relationship between the cost of legal services and access to justice. Thus, the basis for the establishment of the legal aid and awareness programmes is for the state to fulfill its national, regional and international obligations.<sup>10</sup> Similarly, in Zambia, the Legal Aid Policy seeks to enhance equal access to justice particularly for the poor and vulnerable people, as part of its efforts to observe the rule of law and adhere to human rights, in line with the Seventh National Development Plan 2017-2021 and the National Vision 2030 of the Republic of Zambia. Zambia’s Minister of Justice in his foreword to the National Legal Aid Policy says -

“While legal aid interventions do not in principle transform the poverty situation of the recipients of the services, the interventions, coupled with governance and astute poverty reduction strategies, undoubtedly foster the social and economic development process of the country. To this effect government is committed to ensuring that the efficient and effective access to justice serves as a catalyst in enhancing legal empowerment of the poor and vulnerable groups.

This policy, therefore, is conceived out of an anti-poverty agenda aimed at the poor and vulnerable groups in society. It targets the impediments that poverty and its attendant challenges pose to access to justice and remedially sets out mechanisms whose cumulative objectives shall be to effectively integrate the poor and vulnerable groups in our society into the systems of rights and obligations that foster prosperity.”

While access to justice is fundamental for the enjoyment and fulfilment of all human rights, many barriers prevent accused persons from accessing justice the same. These include but not limited to - restrictions on the exercise of legal capacity, obstacles in accessing legal assistance and representation, lack of information in accessible formats.

To guarantee that every individual has meaningful access to justice, mechanisms and systems need to be available for fair resolution of disputes, redress for human rights violations and accountability for wrongdoings. One of these mechanisms is the use of paralegals who are defined as any person with basic legal knowledge either by practice or training and may be registered or accredited to provide some or all of the following legal aid services - legal advice, legal assistance, legal education, legal information, legal representation, conflict resolution, basic legal drafting and advocacy. There are individuals who do not have a law degree but have skills and knowledge of the law that allow them to provide some form of legal aid and assistance to those in need, in particular members of a community they are part of or know well, and typically under the supervision of a legal practitioner.

The Lilongwe Declaration on Accessing Legal Aid in Criminal Justice System in Africa recognizes the right to legal aid in criminal justice and broadens legal aid beyond the notion of legal advice and representation. The service should include legal advice, assistance, representation, education and mechanisms for alternative dispute resolution and the services may be provided by a wide range of stakeholders, such as non-governmental organizations (NGOs), community-based organizations, religious and non-religious charitable organizations, professional bodies and associations, and academic institutions.

The Declaration emphasizes the need to sensitize all criminal justice stakeholders to the crucial role of legal aid. It fosters development and maintenance of a just and fair criminal justice system. The societal benefits that result from the elimination of unnecessary detention, the speedy processing of cases, fair and impartial trials and the reduction of prison populations are enormous for a State. The Declaration requires access to legal aid at all stages of the criminal justice system, including investigation, arrest, pre-trial detention and bail hearings, in addition to trial and appeal processes. It recommends a diverse legal aid delivery system, employing a variety of available options and provided by a range of actors to spread legal literacy among the population.

Thus, the role of the paralegal is not only to ensure that people whose rights are violated get some re-prieve, but also to ensure that there is peace and tranquility where they stay. They aim at achieving practical remedies to facilitate access to justice for the poor by resorting to education, mediation, organization, advocacy, monitoring and, with the assistance of lawyers, litigation.

However, paralegals are not immune to abuse or manipulation by local elites, whose influence perpetuates social dynamics that consistently disempower the poor and marginalized. Moreover, the lack of coordination, oversight, and systems for accountability for paralegals can lead to problems even though paralegals

are preselected based on their reputation for integrity; it is not a guarantee against unethical behaviour. A working relationship between these institutions and paralegals must be defined, acknowledged, and respected to minimize apparent rivalry between the advocates and the paralegals since both are agents of access to Justice.

The efficient and effective delivery of legal aid services will in turn enhance equal access to justice for the poor and vulnerable people not only in Kenya and Zambia but also in the whole of Africa. Societal benefits of a broad-based legal aid system will include the elimination of unnecessary detention, speedy processing of cases, fair and impartial trials and dispute resolution, the reduction of correctional facility populations, the lowering of appeal rates, decreased reliance on a range of social services, the advancement of social and economic rights, and greater social harmony, as outlined in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. The Legal Aid Policy lays the foundation for the continued and sustained delivery of legal aid services to the poor and vulnerable people in Zambia, enabling them to claim their rights and seek remedies, and supporting the long-term social and economic development of the country. This should apply in Kenya in equal measure.

It is against this backdrop that Kituo Cha Sheria in partnership with International Development Research Centre (IDRC) has commissioned this study to comparatively assess and evaluate training, recognition, formalization, and financing of paralegals in Kenya and Zambia in order to enhance learning in the East Africa region on legal empowerment, aid in development of policy briefs and outcome documents that will be used by KITUO and regional partners such as the African Centre for Excellence on Access to Justice and Grassroots Justice Network for advocacy around legal empowerment in the Africa region.

## 1.2 Background of the Study

Legal aid enhances access to justice. According to the State of Legal Aid Report 2020, justice gap undermines human development, worsens conflicts, reinforces inequality and poverty traps and in some instances, allows impunity to thrive. The burden of the justice gap falls disproportionately on the most vulnerable, including women, children, persons with disability, minorities and those disadvantaged because of their age and ethnicity. Thus, lack of access to justice may be understood in three broad ways. *First, people who are excluded from opportunities the law provides; second, people who live in extreme conditions of injustice, and three, people who cannot obtain justice for everyday civil, administrative, or criminal justice problems.*

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***Second, people who live in extreme conditions of injustice,  
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administrative, or criminal justice problems.***

Therefore, the importance of legal representation cannot be underestimated because it is an essential component of a right to a fair trial. Unlike in developed countries where legal aid services are provided predominantly by advocates. In Kenya, Zambia and the rest of the developing countries, these services are generally provided solely by paralegals and other intermediaries as provided under article 50 (7) of the Kenya Constitution 2010 or to some small extent by advocates based on the “availability, affordability, and adequacy.” Therefore, paralegal training, formalization, recognition and financing is of critical importance if the State is to fulfill its constitutional obligation to ensure access to justice for all persons and eliminate any obstacle that may impede fair administration of justice.

The contribution of paralegals towards access to justice is huge especially in helping to decongest the prisons. For instance, to date, paralegals have helped prisoners in Shimo La Tewa prison to draft 400 applications and letters to the Chief Magistrates' Courts; 80 applications, 260 appeals, and 150 letters to the High Court in Malindi; and 125 applications; 400 appeals, and 200 letters to the High Court in Mombasa. Among the catalysts for this milestone is Kituo Cha Sheria which began training prisoners in law to build their capacity for self-representation.

*“Most of the impact is felt on the issue of reconciliation. The paralegals have help(ed) here so much. The paralegals help the parties to a suit let go [of] the bitterness they had against each other” – Magistrate, Central Province.*

Although the responsibility of legal aid rests with the State, the Draft National Legal Aid and Awareness Policy 2015, recognizes the role of non-state actors in the provision of legal services.

**WITH NOT MORE THAN  
20,000**

**advocates serving nearly 50 million Kenyans, and most of these lawyers based in major cities, the majority of Kenyans, especially those in rural areas, find the formal justice system inaccessible and costly**

Currently fewer than 8,000 advocates serve Kenya's population of nearly 40 million. A majority of these lawyers are based in major cities, despite the fact that 78 percent of the population lives in rural areas. Although typical legal fees are beyond the ability of the average Kenyan to afford, most advocates outside of NGOs do not feel compelled to engage in pro bono work or reduce fees for the indigent. Despite that, for most Kenyans, the formal justice system is an inhospitable place for resolving conflicts or seeking remedies.

The National Police Service is understaffed and ill-equipped, advocates are scarce and costly while the courts are backlogged and often geographically inaccessible; procedures are inefficient and complicated; and corruption famously plagues the Judiciary. For instance, citizens in Lodwar County, must travel 400 km away to the nearest court. The Truth and Reconciliation Commission, noting a concentration of paralegals in Nairobi, recommended expanding the presence of community paralegals in rural, arid, or semiarid regions of the country. Vision 2030, Kenya's national development plan, endorsed the policy, legal, and institutional reforms necessary to achieve access to justice.

The above scenario creates a “justice gap” which allows impunity to thrive as it undermines human development, worsens conflicts, and reinforces inequality and poverty traps. Two-third of the world's population an estimated 5.1 billion lack meaningful access to justice.

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Two-third of the world's population an estimated 5.1 billion lack meaningful access to justice

In line with this, Article 22 (1) and (2) (a-d) of the Kenya Constitution 2010 on enforcement of Bill of Rights states:

1. *“Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.*
2. *In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by--*
  - (a) *a person acting on behalf of another person who cannot act in their own name*
  - (b) *a person acting as a member of, or in the interest of, a group or class of persons;*
  - (c) *a person acting in the public interest; or*
  - (d) *an association acting in the interest of one or more of its members.”*

Thus, paralegalism becomes more or less a calling but their formalization, recognition and financing is of critical importance if the indigents, the marginalized and the vulnerable are to access justice. To play this role, the paralegal approach ought to be promoted and institutionalized to protect the poor, marginalized and vulnerable in society while administering justice as envisioned in the draft National Legal Aid and Awareness Policy. This promotion entails a standardized training with bias to local needs as an aspect of formalization, recognition and financing for the interests of attaining access to justice through the reduction of the systemic and procedural complexities especially for the poor, vulnerable and marginalized like women, children, elderly, and persons living with disability.

Before the colonial occupation, communities in Kenya and Zambia, just like any other African country had their own systems of justice. Colonialism, however, imposed a dual system of justice. One system, Native Courts, applied customary law to indigenous communities (“Natives”) and primarily addressed family law, land tenure, and succession issues. The second system, Colonial State Courts, applied law adopted from England and other colonial systems to the settlers. Although the central colonial State intended to merge the two legal systems, they limited the application of customary law via the “repugnancy clause” which stated that customary law would be applicable provided it was not repugnant to justice and morality.

Justice and morality, in turn, were interpreted from the perspective of English Common Law and the English people but not according to the so-called natives. Like most other countries formerly tied to England, both Kenya and Zambia are recognized as a common law jurisdiction. The description is supported by the history of the country as well as by current statutory guidelines and judicial declarations.

The first recognized effort at providing systematic legal aid was in 1973 when a clinic was set up at Shauri Moyo in Nairobi under the aegis of the Faculty of Law, University of Nairobi and the Law Society of Kenya. Throughout the 1980s, the clinic operated as the Legal Advice Centre and was later renamed Kituo Cha Sheria and exists to date.

In the 1980s, Kituo began to transform from a purely charitable legal aid organization into an agent for social change. The Organization started its “*Taking the Law to the People*” program at the University of Nairobi’s Law School, which encouraged young lawyers to apply their skills toward empowering and promoting the rights of the poor. The program sought to change the perception of lawyers as elitist and make their work relevant to the everyday lives of Kenyans.

Despite the increase in number of African lawyers in Kenya, the lawyers remained far too few when faced with the scale of the demand. To keep pace, Kituo began training opinion leaders and community members in basic law so that they could assist with cases. These people came to be known as Kenya’s first paralegals.<sup>32</sup> Kituo largely dealt with the legal problems of slum dwellers, manual laborers, and domestic workers, who were vulnerable to forced evictions, poor or abusive working conditions, or exorbitant rent increases.<sup>33</sup>

As it grew, Kituo teamed up with the LSK and strengthened its relationship with dominant church organizations, including the National Council of Churches of Kenya (NCCCK). The latter affiliation improved Kituo’s populist appeal and legitimacy, particularly in rural areas. This enabled Kituo to engage and empower community members on a larger scale. Steps to establish a national legal aid scheme in Kenya date back to the 1980s. However, it was only in the 1990s that meaningful efforts towards its realization began. The first concrete step towards establishing a national legal aid scheme in Kenya was in May 1998 when the Attorney General set up the Legal Aid Steering Committee and the Committee reiterated the urgent need for a national legal aid scheme and proceeded to identify a possible model for Kenya.

However, when dictatorship started taking shape, the right to legal representation was further informally curtailed by the government. In cases where the accused persons were considered anti-government, lawyers who dared provide them with legal representation in court were mistreated.

Some would be falsely accused of crimes in a bid to pressurize them to drop the cases. Later, it was made a policy that in murder cases before the High Court only; the accused would be provided legal representation by the State.<sup>38</sup> In the clamour for a new Constitution the right to legal representation for the poor and indigent persons was vigorously advocated for by the civil society groups.<sup>39</sup> The fruits can be read under Article 48, 49 and 50 of the Constitution of Kenya.

In 2000, twenty-six paralegal organizations came together to form the Paralegal Support Network (PASUNE) now the Paralegal Society of Kenya.<sup>40</sup> They aimed at creating a forum for paralegal programs to share their experiences and discuss possibilities of working together to advance the paralegal movement as a cog in the wheel to enhance access to justice in Kenya. Members also expressed interest in coordinating geographically to avoid duplication, and to maximize the coverage of paralegals across the country which resulted in three primary initiatives: “Identifying commonalities in curricula and training methodologies among paralegal programs; Developing and adopting a common minimum standard in the training of paralegals; and Advocating for the formal recognition of paralegals within the justice system.”

In 2002, PASUNE harmonized paralegal training materials into a single curriculum, complemented in 2006 by a handbook, training guide, user-friendly brochures, posters, and other training materials for use by all members. These materials were disseminated to nonmembers as well, including the Kenya School of Law (KSL), where they supported the development of a draft curriculum for paralegal training to be introduced at a diploma level. On the advocacy front, PASUNE actively campaigned around a legal aid bill that formally recognized paralegals as justice service providers. PASUNE also worked closely with the Kenya Law Reform Commission (KLRC) on the establishment of small claims courts, in the hope that they would provide another avenue for paralegal services.<sup>42</sup>

In 2007, the Government established the National Steering Committee for the National Legal Aid and Awareness Programme (NLAAP) through a Gazette Notice No.11598 of 30th November 2007 with the mandate to inter alia oversee, coordinate and monitor the overall implementation of a National Legal Aid and Awareness Programme. In November 2007, the National Legal Aid and Awareness Steering Committee, was appointed through the Kenya Gazette, Legal notice 11598/ 2007. Its functions were to monitor, coordinate and provide policy guidelines on the National Legal Aid and Awareness Programme. Although the Programme was not to result to representation in court, its impact cannot be underrated. The government had shown its commitment in ensuring that the poor and the marginalized had access to justice.

It is not until 2008 when the Government sought to provide legal aid services through National Legal Aid and Awareness Programme (NALEAP) but a concrete answer came with the 2010 Constitution and the Legal Aid Act 2016 that the legal framework came to force to facilitate national legal aid scheme although murder cases were benefiting from legal representation as was provided for by the Government under the Pauper Brief system administered by the Judiciary.

NALEAP facilitated the provision of legal aid, advice, awareness and representation in collaboration and consultation with stakeholders in civil society and other Government departments. It launched six pilot projects areas that covered - the Nairobi Children's Court Pilot Project facilitated by LSK and CLAN; the Mombasa Capital Offences Pilot Project facilitated by CLEAR, LSK Coast Branch and the High Court; the Kisumu- Paralegal Services and Support Pilot Project facilitated by the Kenya Community of Paralegal Association (KCPA) and LSK West Kenya Branch; the Nakuru Children Justice Pilot Project facilitated by the LSK Rift Valley Branch; the Moi University Law Clinic (Eldoret) Pilot Project; and the Nairobi High Court Family Division Pilot Project facilitated by LSK and FIDA Kenya.<sup>46</sup>

In 2009, a Task Force was appointed to investigate and make recommendations on possible judicial reforms to reinstate confidence in members of the public in the judicial system<sup>47</sup> and in 2010, a final Report of the Task Force on Judicial Reforms in Kenya, 2010 proposed a policy that there be established a legislation on Legal Aid on cases that amounted to public interest litigation.<sup>48</sup> In August 2010, Kenya adopted a new constitution with Article 48 stating:

“The State shall ensure access to justice for all persons and if any fee is required, it shall be reasonable and shall not impede access to justice.” read together with Article 49 (1) (c) (an arrested person has the right “to communicate with an advocate, and other persons whose assistance is necessary”) and Article 50(7) (“in the interest of justice, a court may allow an intermediary to assist a complainant or an accused person to communicate with the court”).”

According to Glinz (2014), the promulgation of the Constitution of Kenya in August 2010 breathed life in many sectors of governance.<sup>1</sup> It overhauled every sector of governance for it contains one of the most progressive Bills of Rights in Africa. Kenya has also ratified several treaties that provide the right to legal representation, and which form part of the laws of Kenya courtesy of Article 2(5) and 2(6) of the Constitution of Kenya 2010.<sup>2</sup> They include among others the International Convention on

<sup>1</sup> Glinz, C, 'Kenya's New Constitution: A Transforming Document or Less Than Meets the Eye?' (Konrad-Adenauer-Stiftung, 2014) [online] Available at: [https://www.kas.de/documents/252038/253252/7\\_dokument\\_dok\\_pdf\\_22103\\_2.pdf/42902489-845a-75b0-8431-67cffb1b6a22?version=1.0&t=1539667239838](https://www.kas.de/documents/252038/253252/7_dokument_dok_pdf_22103_2.pdf/42902489-845a-75b0-8431-67cffb1b6a22?version=1.0&t=1539667239838) (accessed on May 22, 2024).

<sup>2</sup> Constitution of Kenya, section 2. Supremacy of this Constitution, Chapter One – ‘[Sovereignty of the People and Supremacy of this Constitution](https://www.klrc.go.ke/index.php/constitution-of-kenya/112-chapter-four-the-bill-of-rights/part-2-rights-and-fundamental-freedoms/216-50-fair-hearing)’ (2010) <https://www.klrc.go.ke/index.php/constitution-of-kenya/112-chapter-four-the-bill-of-rights/part-2-rights-and-fundamental-freedoms/216-50-fair-hearing> accessed 22 May 2024.

Civil and Political Rights, United Nations Declaration for Human Rights and African Charter on Human and Peoples Rights.

According to a baseline survey on status of Legal aid in Kenya carried out in 2011, one of the major impediments to access justice and legal aid services was the issue of poverty. Many respondents believed that the majority of Kenyans were poor and could afford neither the lawyers' fees nor court filing fees. In addition to that, high illiteracy rate in Kenya was also noted as a contributing factor. Many people were found to be ignorant of their rights and generally lacked information about the service providers and were therefore unable to claim their rights when violated. The survey identified the complicated justice system as a hindrance to accessing justice. Some believed that the judicial system was rigorous, intimidating and shrouded in mystery.

Moreover, the experiences of women and girls in accessing justice have been marginal and traumatic due to high levels of illiteracy, patriarchy and systemic discrimination in their engagement with traditional dispute mechanisms. This is made worse by the unjust legal architecture on matters of succession and family disputes, and the far distances they have to traverse from various justice points such as the courts or police stations to manage their claims or disputes. In matters of "access to justice" attention should be paid to women by creating new avenues of access.

There is considerable overlap in the personal, social and legal aspects of the legal problems that women face. Legal aid programmers should assess the legal needs of women who are more vulnerable to poverty related legal problems such as landlord and tenant matters, family-law, domestic violence cases, spousal or child support to protect the safety of a spouse or child, custody cases, and maintenance. The national legal aid scheme should take cognizance of the fact that their experiences would necessitate a holistic approach to the delivery of legal aid services. Enhancement of access to justice necessitates effective provision of legal aid and without effective and affordable access to justice, people are more likely to be denied the opportunity to claim their rights or challenge crimes, abuses or human rights violations committed against them.<sup>3</sup> Hence the Legal Aid Policy lays the foundation for the establishment of a comprehensive legal aid system in Zambia that is accessible, effective, credible and sustainable.

In Zambia, as in many other places, women encounter significant obstacles when seeking access to justice. At the community level, women, along with other vulnerable groups such as children, frequently endure violations of their rights across various aspects of the justice system, particularly in matters concerning family dynamics and property ownership. One of the root causes of this predicament lies in the inconsistent provision of legal education and information regarding available legal remedies and protections to the general population. Consequently, numerous cases of women's rights violations and gender-based violence remain unreported to the formal justice system. In reality, the majority of disputes are resolved locally, often following customary law practices. However, customary law systems frequently exhibit discriminatory tendencies against women and children, exacerbating the challenges they face in seeking justice. This perpetuates a cycle of injustice and marginalisation, further hindering the realisation of gender equality and the protection of women's and children's rights.

Statistics indicate that advocates are overly concentrated in the major urban areas to the neglect of rural areas and smaller urban centres. For instance, out of 9,253 advocates operating in Kenya, 5826 practice in Nairobi, while just over a thousand practice in the other large towns, such Kisumu, Eldoret and Mombasa combined, leaving the rest of the country severely underserved. At the same time, the reach of legal aid NGOs is limited, and large sections of the country are completely devoid of any legal aid initiatives.<sup>4</sup>

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<sup>3</sup> Republic of Zambia, Ministry of Justice, Zambia National Legal Aid Policy (2018) [https://www.humanrights.dk/sites/human-rights.dk/files/media/migrated/national\\_legal\\_aid\\_policy\\_zambia\\_adopted.pdf](https://www.humanrights.dk/sites/human-rights.dk/files/media/migrated/national_legal_aid_policy_zambia_adopted.pdf) accessed 22 May 2024.

<sup>4</sup> Attorney General (DNLAAP 2015)16

This is where the community paralegals come handy to fill the void but without adequate training, formalization, recognition and financing then access to justice by the majority of the rural communities becomes a mirage and elusive yet according to a 2021 World Bank report 71.51% of the Kenya population lives in the rural areas.<sup>5</sup> The civil society and faith-based organizations have been at the forefront in the provision of legal aid services in Kenya despite the lack of a policy and institutional framework. Key among them are Kituo Cha Sheria, the Law Society of Kenya, Federation of Women Lawyers Kenya<sup>6</sup> (FIDA Kenya), Kenya Section of the International Commission of Jurists<sup>7</sup> (ICJ Kenya), Children’s Legal Action Network (CLAN), Christian Legal Education Aid and Research (CLEAR), Legal Resources Foundation Trust (LRFT), Coalition on Violence Against Women – Kenya<sup>8</sup> (COVAW-K), CREAM, The Child Rights Advisory Documentation and Legal Centre<sup>9</sup> (The CRADLE) and Catholic Justice and Peace Commission (CJPC).

As a result of the limited number of lawyers relative to the population, paralegals play an important role in helping citizens to navigate the legal system. The Government should encourage the participation of paralegals in the dissemination of legal knowledge and in the provision of legal assistance to members of the public.

In Zambia, the paralegal movement became visible in the mid-1990s after the change of governance system from one party state to multi-partyism. Civil Society human rights organizations at that time realized that most Zambians did not understand what it meant to be a democratic system and so there was too much ignorance including on human rights. Reaching out to these communities was difficult as Zambia only had very few legal aid lawyers. The movement realized that it would be cheaper to mobilize communities using paralegals and so informal trainings began. Since then, paralegal services reached all the 10 provinces of Zambia and many poor communities benefited. From mid-2000s, paralegals began to receive recognition even by the government and formal legal recognition came in 2018 and 2021 when the National Legal Aid Policy and Legal Aid Act stipulating the roles of paralegals were put in place. However, there is still a need to do more.

There is need to delimit the role of paralegals vis-à-vis lawyers and clarify the linkages with the legal profession. The Government should undertake measures to streamline the training, certification, accreditation, remuneration and establish a code of conduct for paralegals. Paralegals can be based in different kinds of organizations depending on the nature and scope of the work they undertake. They may be placed in “advice offices” service organizations run by paralegals exclusively for the purpose of offering basic counsel, community education, and referrals. They can also work in community-based or multi-service organizations where paralegal services are one of a series of services available to clients. They can also be based in law firms and legal resource centres.

There are defenceless groups of people who may find it hard to access justice and the Constitution of Kenya defines some of these groups and provides a basis for their identification to ensure that they are not discriminated as itemized in Article 21(3) states that –

“All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities.”<sup>6</sup>

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<sup>6</sup> Kenya Law Reform Commission, ‘Chapter Four - The Bill of Rights, Part 1 General Provisions Relating to the Bill of Rights, Article 21: Implementation of Rights and Fundamental Freedoms’ <https://www.klrc.go.ke/index.php/constitution-of-kenya/111-chapter-four-the-bill-of-rights/part-1-general-provisions-relating-to-the-bill-of-rights/187-21-implementation-of-rights-and-fundamental-freedoms> accessed 22 May 2024.

These categories of persons are central to ensuring that the legal aid and awareness scheme is both accessible and responsive to their needs and special contexts.

Unfortunately, the provision of legal aid is often viewed from the perspective of those who face the criminal justice system only. Civil cases too for the poor, illiterate or persons with limited legal knowledge are confronted by a legal system that is essentially complex in its rules and procedures that may result to them being dispossessed. Even though legal aid provided by civil society organizations has tended to focus on this group. Moreover, consideration should be given to the needs of the indigent in the criminal justice system, either as accused persons or as prisoners upon conviction.

The 2010 Constitution revived the prominent place of African customary law and traditional systems through Article 159 (2) (c) which gives the Judiciary the mandate to promote traditional methods of dispute resolution while at the same time subjecting these mechanisms to the human rights framework of the Bill of Rights.<sup>7</sup> Thus, the use of “traditional,” “customary” or “alternative” (“Alternative Justice Systems”) has continued to endure.<sup>8</sup>

### 1.3 Impact of paralegalism in Kenya

The tradition of training and equipping of non-lawyers with basic knowledge of law and legal procedures, to educate and inform members of their community about their legal rights has been the alternative option of enhancing access to justice. Kenya’s paralegal movement is still young, but it is constantly diversifying and honing its methodologies. Yet at this early stage, there are institutional, organizational, and cultural factors that influence paralegal success across a range of operating environments.

*The paralegals continue to help parties to a suit, to not only solve their disputes but also to ensure that the parties can still relate with each other without any hard feelings held against each other. – Community Leader, Rift Valley Province.<sup>9</sup>*

*“Now, we have very few cases of family violence, child abuse and neglect as more people have been educated on their rights and they understand consequences for crimes committed and this has given me room to do other things. More people understand their rights in marriage, issues of succession and how to take care of children. Referral cases to the District Children’s Offices have really decreased.<sup>64</sup> Before paralegals were trained here, it was really bad, especially in Soweto. But now at least there is security. Instead of people taking up matters in their own hands, they now report to paralegals who then try to resolve disputes or refer.”*

The Legal Aid Act embodies several victories for Kenya’s paralegal movement by granting “accredited paralegals” the authority to provide legal advice and assistance; previously, only licensed attorneys could do so. Secondly, the law establishes the Legal Aid Fund under Section 29 of the Act,<sup>10</sup> which leaves the door open for public financing for paralegals and the law does not forbid remuneration of paralegals by training or parent organizations.

Thirdly, the law defines legal aid as including the larger scope of activities typically undertaken by community paralegals: raising awareness of laws, out-of-court alternative dispute resolution, and advocacy on behalf of the community.

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<sup>7</sup> The Constitution of Kenya 2010, s 159(3) [https://www.kenyalaw.org/lex/actview.xql?actid=Const2010#chp\\_Four](https://www.kenyalaw.org/lex/actview.xql?actid=Const2010#chp_Four) accessed 22 May 2024.

<sup>8</sup> Judiciary (AJSFP 2020) 2

<sup>9</sup> Ibid fn.....

<sup>10</sup> Legal Aid Act (No. 6 of 2016) <http://kenyalaw.org:8181/exist/rest//db/kenyalaw/Kenya/Legislation/English/Acts%20and%20Regulations/L/Legal%20Aid%20Act%20-%20No.%206%20of%202016/docs/LegalAidAct6of2016.pdf> accessed 22 May 2024.

Fourthly, community paralegals finally won formal acknowledgment for their services enhancing public participation and providing legal information, awareness, and assistance.

Fifthly, the law tasks the National Legal Aid Service with developing “programs for legal aid education, training and certification of paralegals. This mandate could contribute to the development of more comprehensive and accessible learning infrastructure for paralegals seeking to advance their skills.

Sixthly, the National Legal Aid Service (NLAS) is governed by a Board upon which a civil society representative serves, to represent “Public Benefit Organizations” offering legal aid to the public, including women, youth and children though the Board is not fully constituted.

Seventhly, preserving a role for civil society in the governance and accreditation of paralegals is appropriate and necessary, given the history and nature of the paralegal movement in Kenya.<sup>66</sup> However, a number of outstanding issues are yet to be resolved to date such as the division of labour and the allocation of responsibility among the many stakeholders across government, the private sector, and civil society remain unclear and more so between paralegals and the advocates. In addition, there are no mechanisms that has been established for coordination among all actors in the justice sector.

#### 1.4 The Research Problem and Justification of the Study

##### **Contentions surrounding the formalization of the paralegal service in Kenya and Zambia**

Studies on legal empowerment from over the world have focused on initiatives which include paralegalism, legal assistance, including legal counsel and court representation, legal literacy, and improving access to formal adjudication processes as well as furthering provision of alternative methods of dispute resolution. Legal assistance and empowerment activism in East Africa dates back to a decade as witnessed by the number of non-governmental organizations (NGOs), foundations, policy centres, and foreign development agencies have increased their attention on legal empowerment. As more civil society organizations address legal empowerment in particular specialized areas, such as children’s rights, women’s rights, environmental justice, the movement has grown in leaps and bounds since the founding of the first organization focused on legal empowerment and paralegalism fifty years ago.

Over the years, the delivery of legal aid has notably transformed as the paralegals continue to evolve by providing the vulnerable, poor and marginalized in the society with legal support thus enhancing the right to access to justice for all citizens. In Kenya, access to lawyers has been largely difficult not only because of the prohibitive costs that such services represent but also due to the insufficient number of lawyers to address the needs of the people. Even though in five decades paralegalism service has impacted communities in many regions, there is still explicit existence of deficiency or nonexistence of formal legal systems in place. Extant research observes that a section of paralegals who work in prison facilities and in the communities are crucial to improving the indigent’s access to legal information and counsel. *However, the legal aid act passed in both Zambia and Kenya is viewed as both a blessing and a hindrance to paralegals’ work.*

***However, the legal aid act passed in both Zambia and Kenya is viewed as both a blessing and a hindrance to paralegals’ work.***

The Legal Aid Act of 2016 in Kenya establishes provisions for accrediting paralegals as legal aid providers. However, it is essential to recognize that formalizing the role of paralegals may present challenges to the legal empowerment movement. There is concern that extensive state regulation aimed at enhancing the quality of paralegal services could redefine the nature of paralegalism as traditionally understood. Ad-

ditionally, there is apprehension that state recognition and formalization may undermine the grassroots community-based approach to paralegalism, both in Kenya and the wider region. Moreover, practitioners fear that excessive regulation might impose overly stringent requirements and qualifications for paralegal status, potentially excluding marginalized communities from accessing these vital services.

In the East Africa region, all countries use paralegalism as a key strategy for legal empowerment work. However, different countries have had different experiences in formalization and recognition of paralegals. There is a need for comparative research and learning within the African continent so as to share best practices and models on training, accreditation and funding of paralegals. Countries like Zambia, Sierra Leone and Kenya provide good research sites for a comparative study.

It is against this background that the study seeks to critically assess and evaluate formalization, recognition, training and financing issues surrounding the implementation of the legal aid act as well as comparatively document for dissemination of best practices on legal recognition of paralegals in Kenya and Zambia.

### **1.5 Study Objectives**

- To analyze and evaluate the processes of formalization, recognition, financing, and training of paralegals in Kenya, with a focus on understanding the existing challenges and opportunities within the legal framework.
- To document and share comparative insights on the legal recognition of paralegals between Kenya and Zambia, whilst identifying best practices that have proven effective in both contexts.
- To contribute to the advancement of legal empowerment initiatives in these countries and beyond.
- To make recommendations on how to effectively address questions of training, formalization and financing of community paralegals in Kenya, Zambia and beyond.

### **1.6 Study Limitations and Mitigations**

While conducting the study commissioned by Kituo Cha Sheria, several challenges and limitations were encountered, which required careful consideration and mitigation strategies to ensure the validity and reliability of the research findings.

Firstly, one significant challenge arose from the absence of an initial meeting with the Zambian team to agree on the scope of the study. This was compounded by the fact that the Kenyan consultant joined the project after all the Zambian data had already been collected. As a result, there was limited access to primary data for a detailed qualitative and quantitative analysis, necessitating heavy reliance on secondary data sources. To address this limitation, the consultancy team exercised diligence in synthesizing and triangulating existing data to provide comprehensive insights into the comparative analysis between Kenya and Zambia.

Secondly, the study involved engaging with multiple actors and gathering responses from a diverse set of respondents across the targeted counties. However, this posed a challenge as some respondents were unavailable or hesitant to participate, despite efforts to communicate the purpose of the interviews through introductory letters. To mitigate this challenge, the consultancy team employed a proactive approach by seeking referrals from available respondents to reach the target sample size. By leveraging existing networks and building trust with respondents, the team was able to overcome barriers to participation and ensure representation from various perspectives.

Despite these limitations, the study team remained committed to maintaining the integrity and credibility of the research process. Through rigorous methodological approaches and thoughtful mitigation strategies, the study was able to generate valuable insights into the status of paralegalism in Kenya and Zambia. Moving forward, it is essential to reflect on these challenges and lessons learned to inform future research endeavours and ensure continuous improvement in the field of legal empowerment and access to justice.

### METHODOLOGY FOR THE STUDY

#### 2.1 Introduction

The methodology chapter of this comparative study employs a mixed-method approach, combining qualitative and quantitative inquiries with a descriptive objective viewpoint to provide a comprehensive understanding of the subject matter. Utilizing a cross-sectional design, this methodology aims to capture a holistic “picture” of the situation at the time of the study. A semi-structured approach guides the data collection process, ensuring flexibility while maintaining focus on key research objectives.

Key informants (KIIs), focus group discussions (FGDs), and case study research methods constitute the primary data collection tools employed in this study. By engaging with a diverse range of stakeholders, including paralegals, indigents, legal empowerment organizations, and expert key informants, the research endeavors to gather nuanced insights from various perspectives. Each of the 8 counties in Kenya and 10 provinces in Zambia was visited to conduct focus group discussions, facilitating comprehensive coverage of the study population.

***Focus group discussions were conducted in 8 counties in Kenya and 10 provinces in Zambia to ensure comprehensive coverage.***

In addition to primary data collection, a thorough desk review was conducted to identify best practices within the field of paralegalism. These practices were evaluated against predefined parameters and subsequently subjected to plenary reviews involving KITUO teams, stakeholders in Kenya and Zambia, and the research team. Through this collaborative approach, consensus was built, enriching the study with diverse viewpoints and ensuring the incorporation of relevant insights into the final analysis.

#### 2.2 Scope of the Study

In Kenya, the study purposefully selected the counties of Kwale, Mombasa, Kilifi, Kitui, Nairobi, Nakuru, Kisumu, and Uasin Gishu, guided by the extensive footprint of Kituo Cha Sheria in legal empowerment over the past fifty years. Similarly, in Zambia, the study intentionally sampled ten provinces: Lusaka, Eastern, Southern, Luapula, Central, Muchinga, Northern, Copperbelt, Western, and Northwestern, based on the presence of active paralegal programmes. The primary aim of the study was to investigate the activities of paralegals in these regions, as well as to assess the accessibility of legal services and education provided by community justice centres to the general public.

#### 2.3 Sampling Strategy

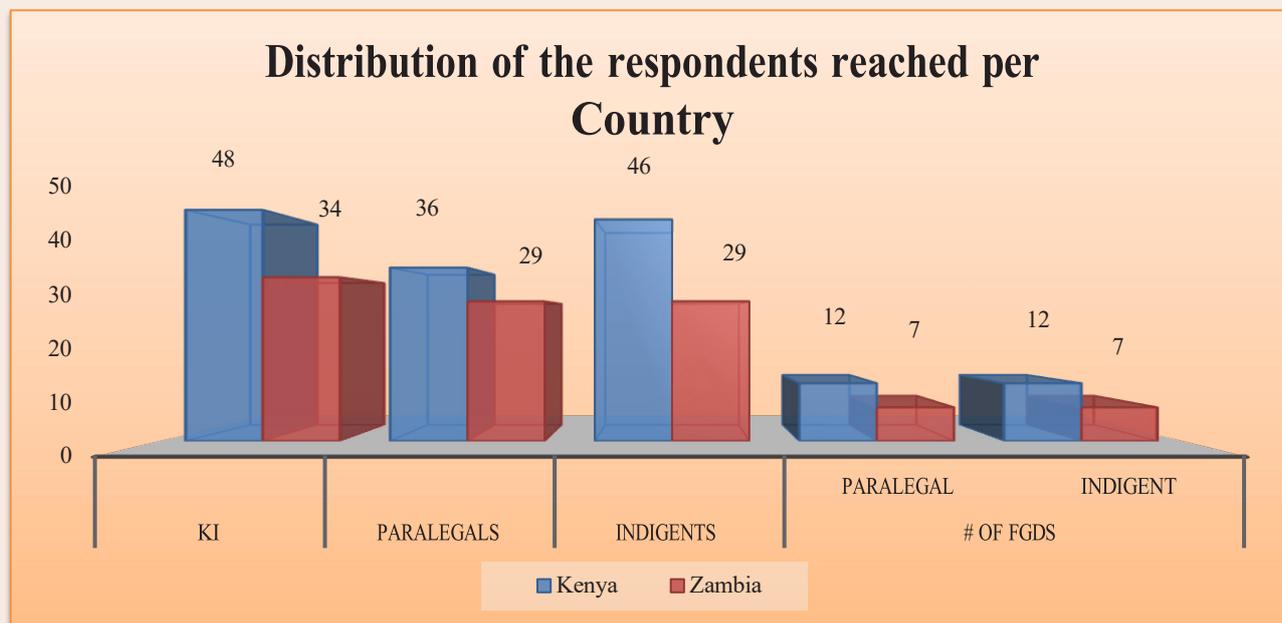
The study adopted mixed method qualitative and quantitative inquiry and descriptive objective viewpoint using cross-sectional techniques and semi-structured approach. To achieve this, the study employed key informant guide, focused group discussion and in-depth interviews.

#### Sample size

The determination of the sample size was guided by the rich legacy of Kituo Cha Sheria, which has been a pillar in legal empowerment for over fifty years. Collaborating closely with Kituo - supported Justice Centres in Kenya and PAN Coordinators in Zambia, the research team identified respondents for this study.

In total, the study engaged with 590 respondents across both countries, distributed as follows:

Figure 1 - Distribution of respondents reached by the study.



### 1.1 Data collection Approach and Techniques

To ensure a comprehensive and robust research process, the study employed a combination of primary (quantitative and qualitative) and secondary (desk/literature review) data collection methods. Four distinct sets of data collection tools were utilised to gather relevant information:

**Expert Key Informant Guide** - This tool was designed to elicit insights and perspectives from key experts in the field of legal empowerment, including policymakers, legal practitioners, and academics. These individuals provided valuable insights into the overarching landscape of paralegalism and access to justice.

**Focus Group Discussion (FGD) Guides for Paralegals and Indigents** - FGDs were conducted with both paralegals and indigent community members to explore their experiences, challenges, and perceptions related to accessing legal services. These discussions allowed for a deeper understanding of the effectiveness of paralegal interventions and the needs of the communities they serve.

**Individual In-depth Guides for Indigents and Paralegals** - Individual interviews were conducted with indigent community members and paralegals to gather detailed and personal accounts of their interactions with the legal system. These interviews provided rich qualitative data on the impact of paralegal services on individuals' lives and the specific challenges they face.

**Legal Empowerment Organization Guide** - This tool was used to gather information from legal empowerment organisations operating in the study areas. These organisations play a crucial role in supporting paralegal initiatives and providing additional legal services to underserved communities. Information obtained through this guide contributed to a comprehensive understanding of the broader legal empowerment ecosystem.

#### a) Desk Review

The desk review and literature review were instrumental in contextualising the study and anchoring existing findings by experts, scholars, and practitioners in understanding the training, regulation and legal recognition, and financing of paralegals in Kenya and Zambia. By examining a wide range of scholarly articles, reports, policy documents, and legal frameworks, the desk review provided valuable insights into

the historical evolution, current status, and key challenges facing paralegalism in both countries. Through this comprehensive review process, the study was able to build upon the existing body of knowledge and identify gaps in understanding, thereby guiding the formulation of research questions and the development of data collection tools. Additionally, the desk review facilitated a deeper understanding of the broader socio-political and legal contexts within which paralegalism operates, including the role of government policies, civil society initiatives, and international frameworks.

Furthermore, by synthesising and critically analysing existing literature, the desk review helped to establish a conceptual framework for the study, clarifying key concepts and theoretical perspectives relevant to paralegalism and access to justice. This served as a foundation for the subsequent data collection and analysis phases, ensuring a rigorous and evidence-based approach to the research.

### **b) Key informants (expert interviews and legal empowerment organizations)**

The team interviewed legal empowerment organizations and expert informants to interrogate and understand training, formalization, recognition and financing of paralegals in Kenya. These included PSK, NLAS, Judiciary, Correctional services (prisons and remands), National and County Government administrators, NGOs and other non-state actors. The mode of interviews was through face-to-face and online platforms, especially zoom meetings. A total of 48 key informants (16 legal empowerment organizations and 32 experts) were interviewed in Kenya.

*Table 1- List of key informants interviewed in Kenya*

Region(s)	County(ies)	No	Expert and Legal Empowerment Interview(s)	Number of interview(s)
<b>Nyanza</b>	Kisumu	1	Police officer Nyando	1
		2	*Social Justice Centre	1
		3	*COVAW	1
		4	*NLAS representative	1
		5	Ward Representative	1
		6	County Commissioner	1
		7	Prison officer	1
<b>Eastern</b>	Kitui	8	LSK	1
		9	*ICJ	1
		10	ACC	1
		11	*LRF	1
		12	*Legal Resource Foundation	1
		13	Prison officer	1
		14	Prison Manager	1
		15	OCPD	1
<b>Nairobi</b>	Nairobi	16	Senior Chief	1
		17	Senior Chief	1
		18	Assistant Chief	1
		19	Police Officer	1
		20	*PSK	1
		21	LSK	1
		22	*Legal Resource Foundation Trust	1
23	Heads of Paralegals	1		

		24	*NLAS	2
		25	Ombudsperson representative	1
		26	AJS-Vice Chair	1
		27	Registrar School of Law	1
		28	ACC	1
		29	*LRF	2
		30	KSL	1
		31	KNHCR	1
		32	*FIDA	1
<b>Rift Valley</b>	Nakuru	33	Senior Chief	1
	Uasin Gishu	34	LSK	1
		35	Assistant Chief	1
		36	Police commander	1
		37	Prison officer	1
<b>Coastal</b>	Mombasa	38	*Transparency International	1
		39	*ICJ	1
		41	Assistant County Commissioner	1
		42	Senior Chief	1
		43	*LRF	1
		44	Prison Officer	1
		45	Senior principal magistrate	1
		46	*FIDA	1
	Kwale	47	Assistant County Commission	1
Kilifi	48	Mwambani Kilio	1	
			<b>Total</b>	<b>48</b>

**\*Legal empowerment Organization**

*Table 2 - List of key informants interviewed in Zambia*

Province	District	No	Expert and Legal Empowerment Interview(s)	Number of interview(s)
<b>Lusaka</b>	Lusaka	1.	Legal Aid Board	1
		2.	Ministry of Justice	1
		3.	Law Association of Zambia	1
		4.	Communication, Coordination & Coordination Initiative (CCCI)	1
		5.	Danish Institution for Human Rights/GIZ	1
		6.	Prisons Care and Counselling Association	1

		7.	Young Women Christian Association	1
		8.	Advocates for Child Justice	1
		9.	Disability Rights Watch	1
		10.	Zambia Federation for Disability Organizations	1
		11.	Legal Resources Foundation	1
		12.	Women in Law and Development in Africa	1
		13.	Zambia Land Alliance	1
<b>Eastern</b>	Chipata	14.	Eastern Province Women Development Association	1
		15.	Caritas Chipata	1
	Petauke	16.	Young Women Christian Association	1
		17.	Chief Madzimawe	1
		18.	Worldwide Community Care and Development Association	1
		19.	Anglican Diocese	1
		20.	Citizen for Child Human Rights	1
		21.	Gender Integrated Programme	1
		22.	Eastern Province Land and Environmental Alliance Network	1
23.	Chief Nyamphande	1		
<b>Copperbelt</b>	Kitwe Ndola	24.	Land Alliance	1
		25.	Young Women Christian Association	1
		26.	Ndola Catholic Diocese	1
<b>Central</b>	Kabwe	27.	Prisoners Future Foundation	1
	Chisamba	28.	Chief Chamuka	1
<b>Northwestern</b>	Solwezi	29.	Young Women Christian Association	1
		30.	Youth Alive Zambia	1
		31.	One Stop Centre – Ministry of Health	1
<b>Luapula</b>	Mansa	32.	Mansa District Women Development Association	1
		33.	Caritas Mansa	1
		34.	Mansa Land Alliance	1
			<b>Total</b>	<b>34</b>

### c) Individual interviews with paralegals and indigents

In Kenya, individual interviews were conducted with both paralegals, who serve as frontline service providers, and indigents, who are beneficiaries of their services, aiming to gain deeper insights into the existence and impact of community-based paralegals at the grassroots level. A total of 36 paralegals and

46 indigent individuals were interviewed, allowing for a comprehensive understanding of the challenges, successes, and dynamics of paralegalism in the Kenyan context.

These interviews provided a platform for paralegals to articulate their experiences, strategies, and the services they offer to their communities. Additionally, indigent individuals shared their perspectives on the accessibility, effectiveness, and relevance of paralegal assistance in addressing their legal needs and challenges.

Similarly, in Zambia, the study reached out to 29 paralegals through individual interviews, providing valuable insights into the landscape of paralegalism in the country. These interviews offered a glimpse into the roles, experiences, and challenges faced by Zambian paralegals in their efforts to provide legal assistance and support to underserved communities.

*Figure 2 - Interview session with an indigent from Kitui County*



Table 3 - Number of paralegals interviews conducted in Zambia

Province	District	# Interviews	# of Paralegals
Central	Kapiri	1	1
	Mukushi	2	2
Lusaka	Lusaka	5	5
Copperbelt	Chingola	1	1
Southern	Gwembe	1	1
	Monze	1	1
	Choma	3	3
	Mazabuka	1	1
Muchinga	Kakonde	1	1
Northern	Kasama	1	1
Luapula	Mansa	3	3
Western	Kaoma	1	1
Eastern	Kasenengwa	4	4
	Chipangali	2	2
	Chipata	2	2
<b>Total</b>		<b>29</b>	<b>29</b>

Table 4 - Number of paralegals and indigents interviews conducted in Kenya

Region	County	KII paralegals	Indigent interviews
Nyanza	Kisumu	8	6
Eastern	Kitui	4	3
Nairobi	Nairobi	7	8
Rift Valley	Nakuru	1	2
	Uasin Gishu	4	2
Coastal	Mombasa	7	16
	Kilifi	1	6
	Kwale	4	3
	<b>Total</b>	<b>36</b>	<b>46</b>

#### d) Paralegals and Indigents focus group discussions.

In Kenya, the study organised two heterogeneous Focus Group Discussions (FGDs), one for paralegals and one for indigents, at each Justice Center visited in every sub-county. These FGDs provided a platform for in-depth discussions on the topics of training, state regulation, legal recognition, and financing of paralegals in Kenya. A total of 24 FGD sessions were convened, comprising twelve sessions with paralegals and twelve with indigents. Specifically, three sessions each were held in Nairobi and Mombasa counties.

During these FGDs, participants engaged in robust dialogues, sharing their perspectives, experiences, and insights on various aspects of paralegalism. Paralegals had the opportunity to discuss their training experiences, challenges faced in their work, and their views on the state regulation and recognition of their roles within the legal system. On the other hand, indigents provided valuable feedback on their interactions with paralegals, the effectiveness of the services received, and the impact on their access to justice.

The FGDs served as dynamic forums for exchange, allowing participants to articulate their concerns, offer suggestions for improvement, and collectively brainstorm solutions to common challenges. By convening these sessions across different counties and involving diverse stakeholders, the study captured a broad spectrum of perspectives, contributing to a more comprehensive understanding of the realities of paralegalism in Kenya.

Table 5 -Distribution of FGDs conducted in each County in Kenya

Region	County	Sub County	Justice Center	Individual Paralegal		Individual indigent		
				# FGD	Male	Female	Male	Female
<b>Coastal</b>	Mombasa	Likoni	Wema 1	1	4	4	3	7
		Kisauni	Wema 2	1	4	5	9	1
		Kisauni	Kicodi	1	4	3	6	4
	Kwale		Lamukani	1	4	3	3	5
	Kilifi		Marereni	1	3	4	4	4
<b>Nairobi</b>	Nairobi	Kasarani	Korogocho	1	4	3	5	3
		Kamukunji	Kamukunji	1	5	4	4	5
		Kibra	Kibra	1	3	4	6	3
<b>Nyanza</b>	Kisumu	Nyando	Awasi	1	5	3	3	5
<b>Rift Valley</b>	Uasin Gishu	Eldoret North	Eldoret	1	4	2	5	1
	Nakuru	Nakuru Town		1	3	4	4	2
<b>Eastern</b>	Kitui	Kitui Central	Kitui Town	1	4	2	2	4
<b>Total</b>				12	47	41	54	44

Figure 3 FGD session with paralegals from Kisumu County



In Zambia, 8 paralegals were interviewed in Petauke and 12 in Chipata district of Eastern province, 10 paralegals in Lusaka and 10 paralegals in Kitwe and Ndola districts of Copperbelt province. Furthermore, 9 paralegals were interviewed in Solwezi district in the Northwestern province. Thirty community members who benefited from paralegal services were interviewed. The number was divided as follows: 5 persons in Petauke and Chipata in Eastern province, 5 persons in Lusaka, 4 persons in Kitwe and 5 in Ndola in the Copperbelt province and 6 persons in Solwezi in the Northwestern province.

Figure 4 - FGD session with paralegals from Uasin Gishu County



Table 6 - Distribution of FGDs conducted in Zambia

Province	District	Community Members (Indigents)		Paralegals	
		# of FGDs	# of Participants	# of FGDs	# of Participants
Eastern	Petuaku	1	5	1	8
	Chipata	1	5	1	12
Lusaka	Lusaka	1	5	1	10
Copperbelt	Ndola	1	5	1	6
	Kitwe	1	4	1	7
Northwestern	Solwezi	1	6	1	9
<b>Total</b>		<b>7</b>	<b>30</b>	<b>7</b>	<b>52</b>

## 2.4 Data Entry and Analysis

The process of data entry and analysis began with contextualising secondary data in alignment with the research objectives, focusing on critically assessing and evaluating the training, state regulation, legal recognition, and financing of paralegals in both Kenya and Zambia. The review of secondary data also served to comparatively document and disseminate best practices regarding the legal recognition of paralegalism in the two countries.

For primary data analysis, qualitative data captured through recordings of expert interviews, Focus Group Discussions (FGDs), and in-depth interviews was transcribed. Protocols for data coding were established to ensure that each transcript was systematically categorised and the content was organised into themes aligned with the study objectives.

The analysis involved synthesising data from both desk reviews and inquiries with key study respondents to develop the study's findings. Computer-aided programmes such as MS Excel and SPSS 22.0 were utilised to facilitate the analysis process. These tools enabled the generation of frequency tables, bar graphs, and pie charts, providing visual representations of the data and aiding in the identification of patterns, trends, and relationships within the dataset.

## 2.5 Ethical Considerations

Throughout the data collection process, the study prioritised ethical considerations to safeguard the rights and confidentiality of study respondents. Before commencing interviews or recordings of discussions, respondents were fully informed about the purpose and objectives of the study. Informed consent was sought from each participant, ensuring their voluntary participation and understanding of the study's aims.

Recording of discussions was undertaken to capture all information shared by respondents accurately. This method facilitated the faithful transcription of audio recordings, ensuring the integrity and reliability of the data for subsequent analysis and report writing. Additionally, the use of recordings allowed for thorough documentation of the discussions, enabling the researcher to capture nuances and details that may have been missed during live interactions.

Confidentiality was paramount throughout the study. Measures were implemented to protect the identity and privacy of participants, ensuring that sensitive information shared during interviews and discussions remained confidential. Respondents were assured that their responses would be anonymised and used solely for research purposes, thereby fostering a safe and trusting environment for open dialogue.

## LITERATURE, LAW AND POLICY REVIEW

## 3.1 Literature Review

Legal aid provided by paralegals plays a crucial role in fulfilling international obligations regarding access to justice and upholding Article 48 of the Kenyan Constitution. Access to justice encompasses more than just the court process; it involves the entire justice cycle, including legal knowledge dissemination and support.

Critics like Yohana Ouma and Esther Chege<sup>11</sup> have highlighted shortcomings in Article 48 of the Constitution.<sup>12</sup> Unlike other articles, Article 48 does not mandate the enactment of any specific legislation by Parliament to give it effect. This lack of legislative framework undermines the effective implementation of Article 48, particularly concerning access to legal advice before and after court proceedings.

While Article 159 guarantees access to justice for all, there is a recognised need to address gaps in legal assistance beyond the courtroom. Paralegals, stationed at social justice centres or law clinics, fulfil this crucial role by providing essential legal advice and support to individuals navigating the justice system. Their involvement ensures that legal aid extends beyond the confines of formal court proceedings, promoting broader access to justice for all members of society.

The authors argue that the Legal Education Act primarily focuses on institutions rather than the substance of legal education.<sup>13</sup> While law schools in Kenya offer a wide range of core courses, such as legal research, law of torts, law of contract, and others, these courses tend to be theoretical in nature. Furthermore, there is no obligation for law schools to develop clinical legal education programmes, resulting in a limited relationship between legal education and legal aid.

In practice, many law students only engage in legal aid work as volunteers when called upon, often as part of corporate social responsibility initiatives. The authors contend that integrating legal aid education into the curriculum, possibly as a core unit, would be beneficial. This inclusion would lay the groundwork for providing legal aid within the community, enhancing the efficiency of legal aid services and ultimately promoting access to justice for all.

Establishing legal clinics within universities could significantly contribute to the promotion of access to justice. These clinics would institutionalize legal aid and provide students with practical experience in delivering legal assistance. By making legal aid education a fundamental component of legal training, universities can better prepare future legal professionals to serve their communities effectively, thus advancing the ideals of justice for all.

Establishment of legal clinics indeed implements the right to access to justice for various justice seekers. Such clinics are established in Zambia and in 2018, and through the Evaluation of the National Legal

<sup>11</sup> Ouma, Y & Chege, E, 'Law Clinics and Access to Justice in Kenya: Bridging the Legal Divide' (2016) 23 International Journal of Clinical Legal Education 107.

<sup>12</sup> The right to access to justice is guaranteed by the Constitution of Kenya 2010 Article 48. <https://www.klrc.go.ke/index.php/constitution-of-kenya/112-chapter-four-the-bill-of-rights/part-2-rights-and-fundamental-freedoms/214-48-access-to-justice> accessed 22 May 2024.

<sup>13</sup> Legal Education (Accreditation and Quality Assurance) Regulations, 2016 [L.N. 15/2016] ([https://www.kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2016/LN15\\_2016.pdf](https://www.kenyalaw.org/kl/fileadmin/pdfdownloads/LegalNotices/2016/LN15_2016.pdf) accessed on May 22, 2024).

Aid Clinic for Women's Access to Justice Programme in Zambia report,<sup>14</sup> an analysis was done and it was noted that a total of 6,523 new cases were recorded in the period 2013 to end July 2017 against a target of 1,440 cases per annum.<sup>15</sup> These are justice seekers who were able to get legal aid even before the formal court process. The clinic had conducted 54 community workshops;<sup>16</sup> 60 school outreach workshops and activities;<sup>17</sup> 107 radio programmes;<sup>18</sup> and 10 television programmes, all focused on GBV. This reinforces the importance of legal education to the community even before court process. Financing is one of the challenges that paralegals face and the report clearly depicts that even though the clinic had implemented its activities efficiently, funding remained a big challenge for the clinic to achieve the level of funding as planned which is one of the areas of this study.

The establishment of legal clinics holds the potential to significantly improve legal aid services, particularly in Kenya's devolved structure. This becomes even more pertinent considering the rising number of institutions offering legal education across various counties, extending beyond the traditional hub of Nairobi. With universities now offering legal education in counties such as Kisumu, Uasin Gishu, Nakuru, Mombasa, Kitui, Embu, and Nairobi City, the geographical reach of legal education is expanding.

By setting up legal clinics in these diverse locations, legal aid services can be decentralized and brought closer to communities in need. This not only addresses the logistical challenges of accessing legal assistance but also ensures that legal aid is tailored to the specific needs and contexts of different regions. Additionally, by integrating legal clinics into university campuses across the country, aspiring legal professionals can gain practical experience and contribute meaningfully to addressing legal challenges within their own communities.

According to the Handbook on Improving Access to Justice in Africa,<sup>19</sup> the right to legal aid in criminal cases is formally recognized in legal systems throughout the continent.

***Countries cite and draw upon regional and international human rights instruments to inform and incorporate that right in the national legislative framework.***

Countries cite and draw upon regional and international human rights instruments to inform and incorporate that right in the national legislative framework. National constitutions are in general unequivocal about the right to legal representation in specific criminal cases. Variance exists in the express and operational definitions, scope of coverage and delivery of legal aid services across the continent.

For instance, the Constitution of South Africa explicitly states that every detained individual, including sentenced prisoners, has the right to legal representation assigned by the State at State expense if substantial injustice would otherwise result.<sup>20</sup> Similarly, Article 42.2f(v) of the Constitution of Malawi ensures the

14 Swedish International Development Cooperation Agency (Sida). (2023). Evaluation of the National Legal Aid Clinic for Women's Access to Justice Programme in Zambia [PDF]. Retrieved October 21, 2023, from <https://cdn.sida.se/publications/files/sida62123en-evaluation-of-the-national-legal-aid-clinic-for-womens-access-to-justice-programme-in-zambia.pdf>

15 A total target of 7,200 cases over the five years of the strategic plan.

16 44 focused on GBV

17 44 focused on GBV

18 64 of which were focused on GBV.

19 United Nations Office on Drugs and Crime (UNODC). (2011). Handbook on Improving Access to Legal Aid in Africa [PDF]. Retrieved October 21, 2023, from <https://www.unodc.org/unodc/es/justice-and-prison-reform/legal-aid.html>.

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right to legal representation at the expense of the State, either by a chosen legal practitioner or as required in the interest of justice.<sup>21</sup>

In contrast, Article 28(3) of the Constitution of Uganda restricts the provision of State-aided counsel to criminal cases carrying a possible sentence of death or life imprisonment.<sup>22</sup> Zambia's Constitution mandates the delineation of scope and eligibility criteria in national legislation. Notably, countries like Kenya, Rwanda, and Sudan have adopted similar legal arrangements, reflecting a shared commitment to ensuring access to legal representation, particularly in criminal cases where significant penalties are at stake.

The Handbook acknowledges the commendable efforts of non-State actors in providing legal aid services across the continent. However, it highlights that these efforts have often been fragmented, lacking coordination, predominantly focused on urban areas, and subject to unpredictable donor financing. While these initiatives have been instrumental in delivering services, they have fallen short of achieving transformative impact.

Therefore, while this study aims to address the disparate efforts of various actors in paralegal work, it also underscores the need for a transformative approach to enhance legal aid provision through the utilization of paralegals. This involves effectively implementing the legal frameworks in Kenya and Zambia.

A key recommendation proposed in the handbook is the coordination of legal aid funds to create a legal aid basket alongside state funds. This fund, though not necessarily extensive, should be structured to attract increased national investment in legal aid services. By ensuring consistent coordination, these efforts can pave the way for financially sustainable provision of legal aid services. This approach can be adopted by both Kenya and Zambia as they implement the Legal Aid Fund outlined in their respective Legal Aid Act.

In Kenya, the Legal Resources Foundation conducted research on State of Legal Aid in Nairobi. In the report they recognize the fact that while it is clear that the State has an obligation to ensure access to justice, like many other countries, Kenya still has challenges, particularly about access to legal representation. The United Nations Office on Drugs and Crime (UNODC) conducted a global study on legal aid involving 49 countries and released the findings in 2016.

Among these were South Africa, China, Afghanistan, the Netherlands, New Zealand, Chile, Tunisia, etc. Each of these countries use different approaches to legal aid. Some of the approaches used by the countries in the study include - public defender systems, assigned counsel, contract service systems, civil society providers and/or hybrid systems. When asked to identify some of the main barriers to effective provision of legal aid in their countries, reasons cited include -

1. Lack of an organized legal aid system;
2. Low pay for legal aid work (hence lawyers are unwilling to take up legal aid matters);
3. Challenges in the legal infrastructure e.g. limited number of lawyers;
4. Lack of publicity around legal aid services – people generally don't know where to find legal aid; and poor quality of legal aid services.

Despite the cross-cutting nature of these challenges, some are more prevalent in certain areas than others.

According to the report, even though there are legal provisions on the right to legal representation and legal aid, the nature of the offence an accused person has been charged with is instrumental in deciding whether an accused person is qualified for state sponsored legal representation or not, there remains a big question whether substantial injustice can only occur in cases where a person is accused of capital

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<sup>21</sup> Constitution of the Republic of Malawi 1994 (rev 2017), art 42.2f(v) [https://www.constituteproject.org/constitution/Malawi\\_2017](https://www.constituteproject.org/constitution/Malawi_2017) accessed 22 May 2024.

offences and where children are in conflict with the law. Perhaps a better and well formulated criterion must be developed to also take into consideration the type of sanctions like life sentences, the complexity of the case and applicable law, public interest among many other variables.

The emerging jurisprudence from the Kenyan courts also seem to point at the reality that the state must provide legal representation for persons accused of capital offences and those whose sentences include loss of life or life imprisonment. his imperative is particularly crucial considering the provisions outlined in Article 2(5) and (6) of the Constitution of Kenya,<sup>23</sup> which mandate the direct application of normative international law principles within the country.

**Consequently, the state bears a clear obligation under international law to furnish legal representation at its own expense to its citizens whenever the need arises, extending beyond just a select few cases**

Consequently, the state bears a clear obligation under international law to furnish legal representation at its own expense to its citizens whenever the need arises, extending beyond just a select few cases. This obligation reflects the fundamental principle of ensuring fair and equitable access to justice for all individuals, irrespective of the gravity of the charges they face or the severity of potential penalties.

As highlighted above, the provision of legal aid has been limited to criminal cases and to the offenders. This does not implement the character of the Lilongwe Declaration which demands the provision of holistic legal aid to all in all spaces including civil, family, commercial and other disputes other than criminal disputes.<sup>24</sup>

Omedo (2021) provides a critique of the Legal Aid Act, 2016.<sup>25</sup> According to him, the act is progressive in various ways including the establishment of NLAS, the Legal Aid Fund and promotion of alternative dispute resolution mechanisms but needs a few tweaks to fully realize the potential of access to justice for all. Even though it outlines what legal aid entails which is instrumental in achieving the objectives of legal aid, the Act needs various amendments and reforms if the concept of access to justice for all is to be fully realized and integrated. For instance, the Act is characterized with occasional ambiguities and vagueness in its provisions. This, together with various conflicting provisions, might impede the principal object of the Act as such provisions are open to abuse. In addition, the Act aims to promote alternative dispute resolution mechanisms and out of court settlements, but there is still heavy involvement and intervention by the courts in decision making as will be examined later in detail. These and other weaknesses of the Act are some of the concerns this study will seek to address.

The Legal Aid Act 2016 defines an “accredited paralegal” as *a person authorized by the service to provide paralegal services under the supervision of an advocate or an accredited legal aid provider.*<sup>26</sup> However, this definition introduces unnecessary bureaucratic hurdles for the recognition or accreditation of paralegals. Moreover, requiring individuals residing in rural villages to undergo a formal accreditation process, especially when they lack easy access to advocates or accredited legal aid providers, imposes an unwarranted burden.

23 Constitution of Kenya 2010, art 2 <https://www.klrc.go.ke/index.php/constitution-of-kenya/106-chapter-one-sover-ignity-of-the-people-and-supremacy-of-this-constitution/167-article-2-supremacy-of-this-constitution> accessed 22 May 2024.

24 See the Lilongwe Declaration

25 Kihali Ronald Omedo, ‘The Efficacy of the Legal Aid Act 2016 in Enhancing Access to Justice’ (2021) 1 ELJ 180-192 <https://follap.egerton.ac.ke/images/follap/downloads/Egerton%20Law%20Journal%20Volume%201-2021.pdf> accessed 22 May 2024.

26 Legal Aid Act 2016, section 2 [http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/LegalAidAct\\_No.\\_6\\_of\\_2016.pdf](http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/LegalAidAct_No._6_of_2016.pdf) accessed 22 May 2024.

Therefore, an amendment to this Act is imperative to liberate paralegals as agents of access to justice at their respective levels. The absence of a national policy on training, recognition, and financing of paralegalism relegates it to the realm of informality, depriving it of structured support and oversight. This situation exacerbates the challenges in addressing Kenya's critical justice issues, hindering the effective deployment of paralegal services where they are most needed. This situation is particularly concerning in light of the pending UN Agenda 2030 on Sustainable Development Goal 16, which prioritises access to justice, as well as Article 48 of Kenya's Constitution and Vision 2030.<sup>73</sup>

The demand for legal aid and awareness services is overwhelming and has stretched the capacities of these NGOs to their limits. Although these legal aid initiatives have achieved a measure of success, the efforts of these organizations are largely uncoordinated, and their quantitative reach is insignificant in terms of addressing the problem at the macro policy level. On the other hand, paralegals work under their different mother agencies key among them Legal Resources Foundation, Kituo cha Sheria, ICJ-Kenya and Ecumenical Centre for Peace and Justice. And although an affiliate body, the Paralegal Society of Kenya (PSK), offers support in terms of code of conduct and modus operandi, a lot more needs to be done. With regulation, there could be structured and thematic directions to various actors based on their strengths, thus avoiding duplicity and unnecessary competition over the same or similar audiences.<sup>27</sup>

Coupled with lack of standardization, supervision, regulation and spatial limitation, the quality and frequency of legal aid and legal awareness provided by these players has been compromised.<sup>28</sup> This is where the Council for Legal Education that has the statutory mandate to approve curricula and devolve its services has really slowed the process.

The call for reform of the Legal Aid Act of Zambia is emphasized by Mumba Nkumbiza (2023) in his thesis, "Legal Aid in Zambia: Does it guarantee equality before the law?"<sup>29</sup> He highlights the importance of equality before the law and the need to ensure that all those who come before the law are accorded legal representation to help them prosecute or defend cases before courts of law. According to him, while the legislation for the provision of legal aid in the country is comprehensive and adequate, its provisions have been rendered ineffective because of several problems that the Department of Legal Aid is facing in its effort to provide legal services to the poor. This situation has not been helped much by the participation of non-governmental organizations and the Law Association of Zambia despite the important role that these organizations are playing. He calls for the need to reform the legal aid scheme to make it more effective and improve its ability to provide legal services to the poor which can equal the services provided by private legal practitioners. Thus, the current study is key in evaluating the implementation of the Legal Aid Acts in both Kenya and Zambia and the important role the paralegals play hence the need to empower them to play their critical role in enhancing access to justice.

In Kenya, one of the recommendations of the Ministerial Taskforce on the Development of a Policy and Legal Framework for Continuing Legal Education and Paralegalism was the entrenchment of paralegals in the justice sector.<sup>77</sup> This was formalized in the Legal Aid Act as one of the functions of the Kenya National Legal Aid Service (NLAS) under Section 7 (1) (o) which is to "coordinate, monitor and evaluate paralegals and other legal service providers and give general directions for the proper implementation of legal aid programs."<sup>30</sup> However, this is yet to be done.

27 Legal Resources Foundation Trust (LRF), The State of Legal Aid Nairobi County 2020 (2020) 28-29 <https://www.lrf-kenya.or.ke/wp-content/uploads/2021/07/State-of-Legal-Aid-Booklet.pdf> accessed 22 May 2024.

28 Attorney General (DNLAAP 2015)16

29 Mumba, Nkumbiza, Legal Aid in Zambia: Does it guarantee equality before the law? Unpublished thesis. <http://dspace.unza.zm/handle/123456789/2831>, accessed on 21<sup>st</sup> October, 2023.

30 Laws of Kenya, The Legal Aid Act, Chapter 16A, Revised Edition 2022 <http://kenyalaw.org:8181/exist/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/L/Legal%20Aid%20Act%20-%20No.%206%20of%202016/docs/LegalAidAct6of2016.pdf> accessed 22 May 2024.

At present, a few community justice centres run by trained community paralegals function as justice advisory centres offering legal assistance to indigent persons across the country. Many of these can be found in informal settlements of Nairobi, Mombasa, Kisumu, Kwale, Kilifi, Kitui, etc.<sup>31</sup> and although NLAS launched its curriculum in January 2021, it is still awaiting approval from the Council of Legal Education to date.

The Zambia Legal Aid Policy aims at establishing a quality assurance framework for paralegals and law degree holders providing legal aid services with standards on qualification, training and registration requirements, as well as a regulator providing professional ethics and supervisory and disciplinary processes.<sup>32</sup> This includes setting up standards for the registration, qualification, conduct and professional ethics, and disciplinary processes applicable to LAB legal practitioners, legal aid assistants, legal assistants and paralegals. This will enhance their competence and accountability when delivering legal aid services.<sup>80</sup>

Gargarella posits that the inability of the disadvantaged to access justice in courts is premised on several conundrums.<sup>33</sup> These include, inter alia, lack of information, which the author terms as “legal poverty,” excessive legal formalism, corruption, inordinate delays and geographical distance. He argues that the general problem of legal poverty comprises many subsidiary challenges, such as lack of basic knowledge on what rights one is constitutionally entitled to not knowing what to do to vindicate their rights, and the inability to understand the legal language and procedures. Concerning economic challenges, Gargarella argues that the disadvantaged are more likely to be unable to initiate a legal process, let alone carrying it through.



The High Court fees and the costs associated with hiring a competent lawyer pose a significant financial burden for many individuals. It's crucial to recognize that the absence of quality legal representation significantly diminishes the likelihood of success in legal proceedings. Moreover, navigating the formalistic and bureaucratic intricacies of the adversarial legal system can be daunting, and having a skilled advocate who understands these complexities can make a substantial difference in the outcome of a case. Unfortunately, these complexities often render justice inaccessible to those who cannot afford experienced legal representation, perpetuating existing inequalities and disadvantaging marginalized groups. As Gargarella argues, these challenges present formidable barriers for the disadvantaged, severely impeding their access to justice.

The ICJ-Kenya conducted and published a report, “(T)he Cost Benefit Analysis of Legal Aid in Kenya.”<sup>34</sup>

31 Legal Resources Foundation Trust (LRF), The State of Legal Aid Nairobi County 2020 (2020) 10 <https://www.lrf-kenya.or.ke/wp-content/uploads/2021/07/State-of-Legal-Aid-Booklet.pdf> accessed 22 May 2024.

32 Zambia, ‘Legal Aid Policy 2018’ (2021) 7 <https://zambialii.org/akn/zm/act/2021/1/eng@2021-03-24> accessed 22 May 2024.

33 Roberto Gargarella, ‘Too Far Removed from the People. Access to Justice for the Poor: The Case of Latin America’ 1 [http://www.ucl.ac.uk/dpuprojects/drivers\\_urb\\_change/urb\\_society/pdf\\_violence\\_rights/gargarella\\_removed\\_from\\_people.pdf](http://www.ucl.ac.uk/dpuprojects/drivers_urb_change/urb_society/pdf_violence_rights/gargarella_removed_from_people.pdf) accessed 6 December 2022

34 ICJ Kenya Section, A Cost Benefit Analysis of Legal Aid in Kenya <https://icj-kenya.org/wp-content/uploads/2022/05/A-Cost-Benefit-Analysis-of-Legal-Aid-in-Kenya.pdf> accessed 22 May 2024.

One of the benefits of legal aid especially that which is provided by the paralegals is increase accountability among citizens. According to the report, a study in Liberia showed that its mobile paralegal service reduced bribes paid to police officers or other public officials by 10 percentage point.<sup>35</sup> The Paralegal Advisory Services Institute (PASI) are able to catalyze changes within the criminal justice institutions, e.g., by ensuring that suspects are paraded at police stations and opening files immediately for them, has demonstrated that it is possible to provide legal advice and assistance to detainees in the criminal justice system, for individuals who would otherwise have had no such access, at a reasonable cost. As indicated in the study, there are calls for countries with very few lawyers to enact legislation to allow community paralegals to represent clients in court. This report acknowledges the important role the community paralegals play in the society thus the need to acknowledge their work through accreditation and provide them with finances to sustain their work at the grassroots level is urgent.

### 3.2 Services offered by Community Paralegals

Some of the services offered by community paralegals at basic skills' level are improving rights consciousness i.e. educating others in basic law and rights; conveying complex legal-judicial processes in a language that the community can understand etc., making referrals that is, directing or handing-over clients to other service providers, monitoring; this means watching government performance in the management of public affairs and resources; documenting cases of abuse and human rights violations.

At intermediate skills' level, offering legal advice which means that they give basic legal advice to those seeking remedies or resolving disputes in specific cases, dispute resolution/reconciliation by mediating conflicts, usually with regard to land boundary matters, contract and labor relations, or family disputes, drafting simple legal documents, e.g., applications for bail and accompaniment i.e. escorting the clients in accessing justice. At advanced skill level, doing advocacy which entails lobbying government (local or otherwise) and public officials for action on reforms to policy or practice; persuading local authorities to act to address a client's case, or challenging them to cease illicit practices and mobilizing community i.e. organizing the community around common issues of concern.<sup>83</sup>

However, interviewees have described paralegal work as perilous and life-threatening due to their status as whistle-blowers. Community leaders speculated that the turnover rates among paralegals could be attributed to the risks they undertake while providing their services. Paralegals themselves expressed the belief that implementing stronger security measures would alleviate their sense of vulnerability, thereby empowering them to be more productive and assertive in their roles.<sup>84</sup>

***“Security is the main challenge because most of the paralegals receive deadly threats during the course of their work. If the accused is confronted, sometimes he can physically harm the paralegal. One paralegal in the Soweto area, when pursuing a rape case, was told, “Leave that case or you will find your head in Ruai” (a nearby area known for crimes). Insecurity makes paralegals fear to operate at night. Threatening messages and phone calls make them immediately refer cases to the police instead of trying to deal with disputes.” – Community Leader, Nairobi Region.***

35 UNODC, Global Study on Legal Aid [https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid\\_Report01.pdf](https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid_Report01.pdf) accessed 21 October 2023.

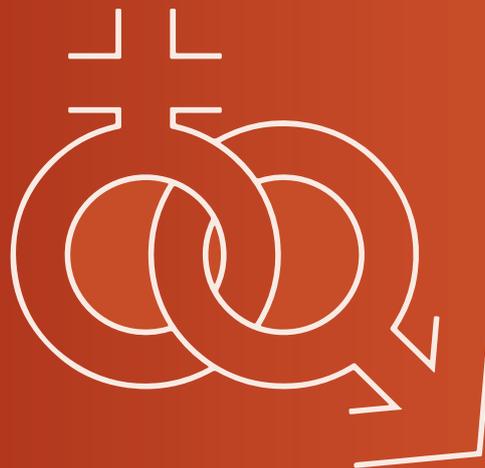
### 3.2.1 Embedded Cultural Gender Perspectives as an Impediment to Accessing Justice

Data consistently show that men and boys commit significantly more crime, both serious and not, than women and girls.<sup>36</sup> This implies that men and boys are defendants or the accused persons than women in terms of numbers. On the other hand, women are more likely to be victims of cultural injustices than men hence majority in civil cases because they have fewer resources, less power and less influence compared to men, and can experience further inequality because of their class, ethnicity and age, as well as religious and other fundamentals like intersectionality. Gender inequality is therefore a key driver of poverty and a fundamental denial of women's rights.<sup>37</sup> Truly there are harsh cultural practices which are against the advancement of women's rights to access justice.

*The paralegals are trying to break these barriers regarding women's inheritance, polygamy and girl child disadvantages in education in some cultures. All this dispute resolution has a great impact on the community's way of life – Community Leader, Western Region.<sup>38</sup>*

The paralegals commonly represent women attempting to assert their rights in marriage, childcare, inheritance, or property ownership, as well as poor clients in grievances against the wealthy. Their ability to do so makes them an appealing alternative to or source of pressure on established authorities.

**Because of a strong cultural preference for keeping marriages intact, gender-based violence presents a special challenge for paralegals.**



Because of a strong cultural preference for keeping marriages intact, gender-based violence presents a special challenge for paralegals. In such cases, paralegals tend to focus on the resolution of visible conflict and reconciliation between the couple, even when the underlying issues and the long-term safety of the woman might be in question. It is difficult to alter the course of abusive relationships caught in a pattern of violence with a single intervention. Where reconciliation is appropriate, community paralegals must tread carefully; mediation works best when the power dynamics between the participants are not vastly unbalanced, as they tend to be in cases involving domestic violence. Mediating under these circumstances requires tailored considerations and a plan for continued monitoring of the situation. In cases unfit for mediation, a willingness to consider alternatives, such as separation of the couple, could bear longer-term effects on the health and safety of the woman.<sup>89</sup>

<sup>36</sup> Roberts, D. E. (1994). The meaning of gender equality in criminal law. *Journal of Criminal Law and Criminology*, 85(1), 1

<sup>37</sup> Oxfam. (2023, October 23). Gender justice and women's rights [Website]. <https://www.oxfam.org/en/what-we-do/issues/gender-justice-and-womens-rights> accessed 21 October 2023.

<sup>38</sup> United Nations Office on Drugs and Crime. (2016). Global Study on Legal Aid - FINAL. [https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global\\_Study\\_on\\_Legal\\_Aid\\_-\\_FINAL.pdf](https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global_Study_on_Legal_Aid_-_FINAL.pdf) accessed 21 October 2023.

A number of community paralegals have majored on gender related injustices in their interventions case of the Frontier Indigenous Network trains paralegals in northern Kenya to restore women's right to inheritance and to fight genital mutilation.<sup>90</sup> It is worth noting that the National Policy on Alternative Justice System offers a dialogic space for both the Judiciary and Alternative Justice Systems to deliver on the transformative vision of the Kenya Constitution to reverse structures that lead to gender oppression; social injustice and stigma; cultural domination; distributive and social injustice and other forms of oppression.<sup>91</sup>

According to a US State Department Country Report on Human Rights Practices in 2006 the violation of women's and children's human rights is a commonplace occurrence in all parts of Zambia.<sup>39</sup> Lack of access to the legal system hinders redress for widespread abuse, and abuses such as domestic violence, rape, forced marriage of girls, property grabbing, child abuse and neglect often go unreported. Police themselves were not only complicit and supportive of the abusive practices but also reluctant to pursue reports of domestic violence in an environment of corruption and extortion widely spread. Therefore, it is not far-fetched in such cultural environment that promotes negative masculinity and male chauvinism to hardly find women paralegals.

### 3.2.2 Training of Paralegals in Kenya and Zambia

Since independence predominantly paralegals have been trained by civil society organizations according to their thematic needs or in response to the community concerns in a given area. Some of the community-based paralegals are trained to take a generalist approach with the aim of responding to any problem that affects a given community or whatever justice issues community members bring to them. Paralegal programs that adopt this approach rely on petitions or walk-ins to learn about grievances. Others specialize or may focus on supporting survivors of sexual violence, or protecting community land rights, or in addressing failures in the delivery of public services.

The community paralegals are trained in basic law, policy, and in skills like mediation, organizing, education, and advocacy. They help people to understand, use, and shape the law.

***These practitioners are called different names in different places including “community legal worker,” “barefoot lawyer,” “grassroots legal advocate,” or a host of other titles.***

These practitioners are called different names in different places including “community legal worker,” “barefoot lawyer,” “grassroots legal advocate,” or a host of other titles. These community paralegals work with clients to seek concrete solutions to instances of injustice, often at the community or administrative levels. They form a dynamic, creative frontline that can engage formal and traditional institutions alike.<sup>40</sup>

The initial training duration provided by CSOs to their affiliated paralegals range from less than a week to eighteen months, with the majority of CSOs providing not more than five to ten days initial training period. Refresher or in-service training is also not systematic because CSOs working with paralegals face

39 U.S. Department of State. (2006). Country Reports on Human Rights Practices for 2005, Volume I. [U.S. Department of State website]. <https://www.govinfo.gov/content/pkg/CPRT-109JPRT26464/pdf/CPRT-109JPRT26464-Volumel.pdf> accessed 21 October 2023.

40 NAMATI. (2019). Community Paralegals: Recognition & Financing. <https://namati.org/what-we-do/grassroots-legal-empowerment/paralegals/> accessed 21 October 2023.

additional challenges in terms of institutional funding and technical weaknesses that further affect their capacity to adequately supervise, monitor and support their paralegals.<sup>41</sup> The different ways in which civil society organizations formalize paralegals by training, recognition and financing, influence the effectiveness of community paralegals.<sup>42</sup> For instance, in 2011, FIDA Kenya trained paralegals for two weeks, Kituo cha Sheria in conjunction with UNHCR Kenya and the International Rescue Committee, offered training that focused on empowering community representatives to assist their community with access to justice issues for two weeks with refresher courses conducted on a quarterly basis and some organizations held one-day trainings for paralegals. However, the Legal Resources Foundation Trust (LRFT) conducts longer term one-year trainings.

***More broadly, PSK created a manual and curriculum to “harmonize and standardize paralegal training and coordination,” and LRFT sought to regulate and train paralegals. Paralegals are limited in their knowledge of the law and at times when acting in good faith, they end up misleading their clients. This is a very serious challenge. – Resident Magistrate, Central Region.***

At the same time, other interviewees voiced concerns about inconsistencies in the quality of paralegal services. They challenged paralegals “capacity to tackle complex issues or to take on the volume of cases in need of resolution and therefore, there’s need for upgrading on their capacity building. The training paralegals receive without expecting him/her to be an advocate is far too little for the complex matters they do handle.” – Community Leader, Western Region. They expressed concern over a lack of clarity regarding the role of paralegals.

Community paralegals receive initial training, and occasionally refresher training, by a given NGO. Training may combine legal instruction with coaching in practical skills and site visits to communities, courts, prisons, police stations, or legal aid clinics. A graduation ceremony is commonly held within the communities to build awareness of the paralegals’ services. New paralegals are equipped with basic resources, including a book of basic statutes, a t-shirt, a paralegal identification badge and jacket, a journal for documentation, and a carrier bag. They are then encouraged to voluntarily support their communities with their newly gained knowledge. From then on, these paralegals operate independently.

In Zambia, discussions to start paralegal programmes begun in the mid-1990s by civil society and human rights organizations to create awareness in communities on human rights. The first training was done in 1998 by Catholic Commission for Justice and Peace, Legal Resources Foundation, Young Women Christian Association (YWCA) and Zambia Civic Education Association. The training was held in collaboration with the University of Zambia School of Law. Another training was done by the Law and Development Association in 2000. In 2000, Catholic Commission for Justice and Peace (Caritas Zambia), Legal Resources Foundation, Young Women’s Christian Association and the Zambia Civic Education Association signed a Memorandum of Understanding (MOU) establishing the Paralegal Alliance Network (PAN). The four CSOs recognized the need to draw on the synergies that each individual organization had and to improve the focus and coverage of their outreach programmes to the poor and vulnerable members of society requiring legal aid services. The establishment of PAN was therefore intended to provide a framework for improved coordination, communication, collaboration and experience sharing amongst the four CSOs.

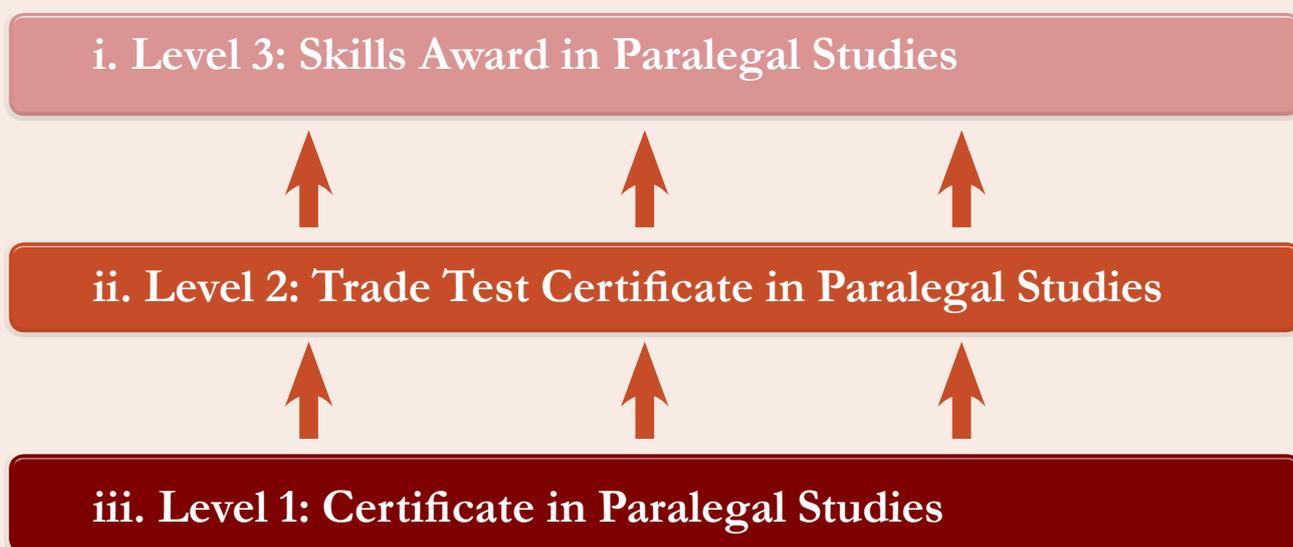
41 Zambia, ‘Legal Aid Policy 2018’ (2021) 7 <https://zambialii.org/akn/zm/act/2021/1/eng@2021-03-24> accessed 22 May 2024.

42 Moy, H A, ‘Kenya’s Community-Based Paralegals: A Tradition of Grassroots Legal Activism’ in Maru, V & Gauri, V (eds), *Community Paralegals and the Pursuit of Justice* (Cambridge University Press, 2018) 165-209 [Section III.B]. [online] Available at: <https://www.cambridge.org/core/books/community-paralegals-and-the-pursuit-of-justice/kenyas-community-based-paralegals/564986EF9694059DFB7C0C0DA7656A72/core-reader> accessed on May 22, 2024.

Later in 2007, PAN members realized that the coordination of their efforts needed to be extended to other legal aid service providers. This was done by the mapping exercise to identify and categorize all legal aid service providers operating in Zambia. This provided an overview of all relevant civil society actors in the field, their capacities, thematic areas and the geographical coverage of their services. From the mapping exercise, PAN membership has grown to over 25 CSOs as members.

Over the years, PAN also consistently worked on the harmonization and standardization of training programmes for paralegals in Zambia in a view to improve the quality and accessibility of legal aid services through delivery of standardized and more professional services by paralegals. It is estimated that over 1,000 paralegals have been trained by PAN and other paralegal organizations on that basis between 1998 and 2017.

Currently, Zambia has a training scheme in paralegals studies for three levels of qualification of paralegals under the auspices of Technical Education, Vocational and Entrepreneurship Training Authority (TEVETA) organized as follows:



The TEVETA training scheme in paralegal studies set exemptions based on past training received on paralegalism or other relevant qualification, and prior experience as a paralegal for each level of qualification of paralegals.<sup>43</sup> Close to 1,000 paralegals have been trained since 2019 when the National Legal Aid Policy was approved.

Section 2 of the Kenya Legal Aid Act 2016<sup>44</sup> on interpretation of the Act recognizes paralegals so long *they are accredited legal aid provider and having completed a training course in the relevant field of study in an institution approved by the Council of Legal Education*. The CLE so far has approved two curricula - one for the Kenya School of Law and Mount Kenya University in the last 10 years. The challenge is the access to the legal education in the Nairobi based training institutions by the paralegals in the far flanged areas such as Moyale, West Pokot, Kwale, Migori among others.

The draft National Legal Aid Policy 2015 purposes to ensure quality and consistency of delivery of legal services where the Government shall establish quality assurance and control measures for providers of legal aid services. This will include training, certification and accreditation of legal aid and awareness pro-

<sup>43</sup> Zambia, 'Legal Aid Policy 2018' (2021) 13 <https://zambialii.org/akn/zm/act/2021/1/eng@2021-03-24> accessed 22 May 2024.

<sup>44</sup> Laws of Kenya, The Legal Aid Act, Chapter 16A [Act No. 6 of 2016, Act No. 11 of 2017] <http://kenyalaw.org:8181/ex-ist/kenyalex/actview.xql?actid=CAP.%2016A> accessed 22 May 2024.

viders, setting of ethical standards and monitoring of service delivery.<sup>45</sup> The action point of strategic objective number 4 on training of paralegals gears itself to development of syllabi and curricula for trainers; accreditation of paralegals and putting in place delimit scope of operation and competence for paralegals in relation to advocates. While action point two of strategic objective number 5 on training of trainers, e.g. in mediation and other ADR mechanisms. Training of traditional justice leaders and development of syllabi and curricula for trainers and action point of strategic objective 6 is to establish training and accreditation system. On the other hand, one of the Alternative Justice System strategic interventions seeks to train and accredit paralegals as intermediaries and develop guidelines for ethical conduct by those with skills required to provide such professional services because the indigent, the poor, the marginalized and the vulnerable have the right to representation in light of article 50 (7) of Kenya Constitution 2010 on intermediaries.<sup>46</sup>

NLAS has been tasked with establishing a training system and criteria for admission into the paralegal training program and standards for paralegal operations.<sup>47</sup> But over five years later very little has been done if any towards this end. However, it would be unfair not to acknowledge NLAS preliminary efforts at implementing the accreditation system by circulating draft regulations on eligibility and accreditation of paralegals and a code of conduct.

### 3.2.3 Formalization of Paralegal Practice in Kenya

Formalization is about standardization, procedural, officialdom or regularization which comes with consistency, semblance of uniformity and predictability or reliability where ethics and morality is paramount. This includes setting up standards for the registration, qualification, conduct and professional ethics, and disciplinary processes applicable to legal practitioners, legal aid assistants, legal assistants and paralegals. This seeks to enhance their competence and accountability when delivering legal aid services.

***The Zambian Government has committed itself to establishing a comprehensive quality assurance framework and regulatory body for paralegals, legal assistants, and legal aid assistants through the Zambia Legal Aid Policy.***

The Zambian Government has committed itself to establishing a comprehensive quality assurance framework and regulatory body for paralegals, legal assistants, and legal aid assistants through the Zambia Legal Aid Policy. Under this policy, the Legal Aid Board assumes overarching responsibility and authority for various aspects of legal aid provision, administration, coordination, and regulation. Additionally, the board is tasked with the issuance of certificates, establishment and maintenance of legal aid services, and the development of sustainable long-term financial resource mobilization strategies. Moreover, the Legal Aid Board is entrusted with the crucial role of monitoring the entire legal aid system in Zambia to ensure its effectiveness and adherence to established standards.

Section 4 of the Zambian Legal Aid Act 2021 establishes the Legal Aid Board and mandates the formation of a multi-stakeholder Paralegal Standing Committee within the board. This committee is delegated several important functions by the Legal Aid Board, including the initiation of disciplinary proceedings against legal aid assistants, legal assistants, and paralegals who fail to meet the required standards of conduct and professionalism.

45 Attorney General (DNLAAP 2015) 29

46 Judiciary of Kenya. (2020). Alternative Justice Systems Baseline Policy. [Website of the United Nations Office on Drugs and Crime]. [https://www.unodc.org/documents/easternafrika//Criminal%20Justice/AJS\\_B](https://www.unodc.org/documents/easternafrika//Criminal%20Justice/AJS_B) accessed 22 May 2024.

47

As for Kenya, Section 7(1)(g), (h) and (n) of the Kenya Legal Aid Act 2016 itemizes functions of NLAS some of them relevant to formalization are -

- (g) “develop and issue guidelines and standards for the establishment of legal aid schemes by Non-Governmental Agencies;
- (h) in consultation with the Council of Legal Education, develop programs for legal aid education and the training and certification of paralegals;
- (n) establish, coordinate, monitor and evaluate justice advisory centers;”

Moreover, Section 10(e) and (f) of the Kenya Legal Aid Act 2016 lists the tasks of the Board some of them are -

- “(e) accredit and enter into cooperation agreements with legal aid providers;
- (f) Set and monitor standards for the establishment and operations of legal aid schemes.”

Section 56 of the Kenyan Act<sup>48</sup> states that “(A) person or organization shall not provide legal aid services under this Act unless that person or organization is accredited to provide those services.”

Section 57 of the Kenyan Legal Aid Act<sup>49</sup> outlines the accreditation criteria for individuals and institutions providing legal aid services. Specifically, it mandates the National Legal Aid Service (NLAS) to develop and adopt these criteria through regulations. Subsection (1) of Section 57 states that the NLAS is required to develop and adopt the criteria for accrediting persons and institutions that offer legal aid services. This provision emphasizes the importance of establishing clear and standardized guidelines to ensure the quality and consistency of legal aid provision across different entities.

Furthermore, subsection (2) of Section 57 outlines the consultation process that the NLAS must undertake in developing these accreditation criteria.<sup>50</sup> It requires the NLAS to consult with various stakeholders, including the Law Society of Kenya, the Attorney-General, the Director of Public Prosecutions, public benefit organizations, and any other relevant parties as determined by the NLAS. This consultative approach ensures that the accreditation criteria are informed by input from key legal and public service authorities, as well as community organizations and other stakeholders with expertise in legal aid provision.

Unfortunately, the Paralegal Society of Kenya is not explicitly mentioned as one of the stakeholders to be consulted. Interviewees speculated that implementing a system of accreditation could help clarify matters by standardizing the training of paralegals, especially considering the wide variation in the length, frequency, and quality of paralegal training across the country.

Section 58 of the Kenyan Act provides an opportunity for the application for accreditation. According to Section 58(1), “A person or organization wishing to provide legal aid services shall apply to the Service for accreditation in the prescribed manner.” Furthermore, Section 86(1) of the Kenyan Act empowers the Cabinet Secretary to make Regulations for the better implementation of the provisions of the Act. Subsection (2) specifies that these Regulations may include criteria for eligibility for legal aid, procedures for providing legal aid to detained individuals, and procedures and terms and conditions for the accreditation of service providers.

Strategic Objective No. 5 of the Kenya Draft Policy aims to promote the use of Alternative and Traditional Dispute Resolution, while Strategic Objective No. 6 seeks to establish an implementation, monitoring, regulatory, and support framework. Additionally, under the Draft policy, Alternative Justice System

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50 See section 57(2) of the Legal Aid Act

Policy Strategic Intervention No. 3 plans to develop procedures and Customary Law jurisprudence, and Strategic Intervention No. 9 aims to operationalize or formalize AJS or paralegalism through the development of Standard Operating Procedures Guidelines to enhance compliance with the Constitution and human rights principles.

### 3.2.4 Regulation

Proceeding from formalization is regulation which means managing, controlling, supervising and monitoring. Under Section 58(2) of the Kenya Legal Aid Act 2016, a person who or an organization which -

- (a) “gives false information in an application for accreditation;
- (b) purports to provide legal aid services under this Act as an accredited legal aid provider without accreditation, commits an offence.”

Section 61(2) of Kenya Legal Aid Act states that the Service shall develop a code of conduct to apply to accredited legal aid providers.

Section 61 (3) (a-f) of Kenya Legal Aid Act sets out obligations relating to professional conduct where the Service shall develop a code of conduct to apply to accredited legal aid providers granting for:

- (a) the protection of the rights and interests of an aided person;
- (b) duties to the aided person, the Service, court or tribunal;
- (c) conflict of interest;
- (d) observance of confidentiality;
- (e) in the case of professionals, the duty to observe prescribed ethical standards of their respective professional bodies; and
- (f) probity and ethical conduct.

Section 85 (2) of Kenya Act provides that -

***“Any person who commits an offence under this Act for which no penalty is provided is liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding one year or to both.”***

This study recommends establishment of a Complaints Commission and Disciplinary Tribunal for paralegals as agents of access to justice. The AJS Strategic Intervention No.7 commits to establish a quality assurance framework and a regulator for AJS practitioners or paralegals to enhance professionalism.

The Legal Aid Act explicitly prohibits the paralegals from requesting or receiving payments from persons who qualify for legal aid. In this connection, if

***“any person who demands, requests or receives the payment specified under subsection 62(1) commits an offence is liable on conviction to a fine not exceeding two hundred and fifty thousand shillings (250,000) or to imprisonment for a term not exceeding one year (12months) or to both under Section 85 (2) of the Legal Aid Act 2016.”***<sup>51</sup>

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51 NAMATI (2019) Community Paralegals: Recognition & Financing p. 9

### 3.2.5 Legal Recognition of Community Paralegals in Kenya

This encompasses ratification, acknowledging, acceptance, appreciation, sanctioned, endorsement, accreditation, approval, affirmation and so on primarily by State. For years, the laws of Kenya prohibited anyone who was not an admitted lawyer (or working under the supervision of an attorney) from providing legal advice. This has complicated paralegals' efforts to advise clients on specific cases and in the past paralegals reported instances when judicial personnel prevented them from supporting their clients in court because they lacked credentials.

The Zambian Government purposes to recognize the role of paralegals and legal assistants at various levels of qualification and the types of legal aid services they provide.<sup>117</sup> Nevertheless, it is worth noting that a broader, dynamic ecosystem of community paralegals operates effectively without state recognition in many countries NAMATI consider the following as sources of formal recognition - legislation, regulations, policies, court judgments, memorandums of understanding, etc.

A good example of recognition is the participation of LRF paralegals in the Parole Board of the Kenya Prisons Service and serves on the Case Management and Anti-Corruption Committees of the Probation and Aftercare Department. Paralegals that focus on monitoring courts also fall into this category. They take part in Court Users Committees and can be found staffing judicial-paralegal customer care desks, where they advise the general public on court procedure. State agencies have also identified paralegals as volunteer child officers, who monitor and assist with child protection cases. PLAN International's paralegals, for example, work with the Children's Department, police, and the provincial administration to address cases of violence against children.

Beneficiaries of paralegalism interviewed opine that -

***“...all trained paralegals should be introduced to all communities, in churches and chiefs' barazas and even in schools, where they clearly state their role in the community because not everyone accepts what a paralegal does.” – Community Leader, Eastern Region.***

A legislative and policy framework for the recognition of paralegals is the most powerful signal and assurance gesture from the State. The legal aid and awareness strategic objectives No. 4 focuses on promoting and institutionalizing the paralegal approach in the administration of justice as an effort of recognition. While under the AJS policy, strategic intervention no. 1, it commits to recognize Alternative Justice Mechanisms and identification of the nature of cases AJS/paralegals mechanisms can hear in addition to facilitating effective intermediary interventions under Strategic Intervention No.4 of AJS.

The National Action Plan published by NLAS in 2017 reinforces a strategic objective to develop an accreditation, certification and licensing system for paralegals. With the passing of the law and the consequent formal recognition of paralegals in the two countries, the various respondents acknowledged that this development is a milestone in terms of recognition. The Zambia Legal Aid Act formally recognize CSOs and university law clinics in the provision of legal aid, specify their roles and responsibilities, and require them to get accredited at the LAB. However, it is unlikely that advocates in law firms who have historically resisted formal recognition of paralegals, will be forthcoming in so far as accrediting community paralegals are concerned. Consequently, civil society organizations worry that the formal accreditation system may disincentivize people from becoming community paralegals or lead to an elite capture by paralegals whose motives are not driven by voluntarism or community interests.<sup>52</sup>

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52      Ibid

Generally, community paralegals have played a critical role for a long time in promoting access to justice for indigent communities in Kenya because they are recognized within the communities that they serve hence able to respond swiftly to injustices at grassroots levels despite not being legally recognized hitherto 2016.<sup>53</sup>

### 3.2.6 Financing of Community Paralegals in Kenya

Community paralegals in Kenya are typically not compensated monetarily and are often regarded as “volunteers.” However, a fortunate few receive essential support such as training, logistical assistance, and direct funding from their parent NGOs, usually in the form of allowances to cover daily expenses. Nevertheless, the issue of paralegal compensation in Kenya sparks intense debate within the movement.

Some argue that paralegalism is rooted in principles of volunteerism, altruism, and community service. They contend that offering monetary compensation to paralegals would distort their motivations and risk commercializing their services. Conversely, others view remuneration as a potential solution to the common problem of community paralegals abandoning their roles due to livelihood concerns.<sup>127</sup>

The significant advantage of community paralegals lies in their ability to operate independently of government influence, thereby ensuring accountability of authorities.<sup>128</sup> However, if state funding were to diminish, this independence could be compromised.

Section 68 (2) and (3) of the Kenya Legal Aid Act 2016 state that -

- “(2) An accredited paralegal shall not demand payment of a fee from a person who qualifies for legal aid under this Act.
- (3) An accredited paralegal who demands payment of a fee as specified under subsection (2) commits an offence.”<sup>54</sup>

Likewise, section 59 (1) and (2) of the Zambia Legal Aid Act 2021 states that

- “(1) A practitioner, legal assistant, paralegal or legal aid service provider shall not demand, request or receive legal fees from a legally aided person in relation to services rendered under this Act.
- (2) A practitioner, legal assistant, paralegal or legal aid service provider who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding ten thousand penalty units.”<sup>55</sup>

However, Section 85 (2) of the Kenya Legal Aid Act 2016 does not proscribe remuneration of paralegals by the training or parent organization.<sup>129</sup>

As freelancers, paralegals serve clients for as long as they wish, but for many, pressing livelihood needs impede their ability to remain active over a long stretch of time. A significant number of these paralegals eventually fall dormant and do not take up paralegal duties again.<sup>130</sup>

***“This is purely volunteer work and it becomes hard ... our [geographic] area is very expansive. I serve two villages, yet I am only given a T-shirt and IEC [information, education, and communication] materials. How do I reach out to the communities?”  
– Paralegal, Eastern Region.***

53 Mbogoh, A. (2021). Pouring new wines in old wineskins: State capture, contestations and conflicting understanding of the paralegalism in Kenya with the advent of the Legal Aid Act 2016. *Egerton Law Journal*, 1(1-192), 161-179.

54 Laws of Kenya, The Legal Aid Act, Chapter 16A [Act No. 6 of 2016, Act No. 11 of 2017] <http://kenyalaw.org:8181/ex-ist/kenyalex/actview.xql?actid=CAP.%2016A> accessed 22 May 2024.

55 Zambia, Legal Aid Act, Act 1 of 2021, published in Government Gazette on 24 March 2021, <https://zambialii.org/akn/zm/act/2021/1/eng@2021-03-24> accessed 22 May 2024.

“Most of our paralegals come from afar. “Z”, a fellow paralegal, uses a motorcycle, [for] which she pays 400 Kenyan shillings and also uses a boat to cross to the other side. Some have to sacrifice and there is nothing they get for resolving cases. When victims have to be taken to hospital, it becomes hard, especially sourcing for means of transport because we have families that depend on us”. – Paralegal<sup>131</sup>

One of the objectives of the draft National Legal Aid and Awareness Policy of Kenya is to ensure and promote adequate allocation of resources including fiscal, human and technical for legal aid and awareness services in Kenya.<sup>132</sup> Moreover, under Sections 29 and 40 of the Legal Aid Act of Kenya and Zambia respectively, they establish the Legal Aid Fund to “defray the expenses incurred by the representation of persons,” “pay remuneration of legal aid providers,” or “meet the expenses incurred by legal aid providers.” This opens the door for public financing of paralegals but details on how the Kenyan fund will work in practice are still being negotiated 7 years down the line.

Section 29(2) of the Kenya Legal Aid Act 2016 state that the Fund shall consist of:

(2) The Fund shall consist of—

- (a) moneys allocated by Parliament for the purposes of the Service;
- (b) any grants, gifts, donations, loans or other endowments given to the Service;
- (c) such funds as may vest in or accrue to the Service in the course of the exercise of its powers or the performance of its functions under this Act; and
- (d) moneys from any other lawful source accruing to the Fund.

Section 75(1) and (2) of Kenya of the Legal Aid Act states that

“(1) The Service shall, in consultation with relevant professional bodies, determine the scales of fees payable to legal aid providers contracted by the Service in the performance of its functions under this Act.

(2) In determining the scales of fees payable under this Act, the Service shall take into account

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- (a) sustainability of the legal aid scheme;
- (b) reasonableness;
- (c) accessibility of legal aid services; and
- (d) extending the Service to as many beneficiaries as possible.”<sup>56</sup>

The National Action Plan of the National Legal Aid Service pushes for genuine government commitment in the form of a specific vote by Treasury on legal aid. In light of article 48 of the Kenya Constitution on “*access to justice*,” the primary duty to fund legal aid rests with the Government. The provision of effective legal aid services depends on sustainable financing. This requires innovative sources of funding and creative solutions to finance legal aid initiatives. There is need to mobilize resources not only from Government allocations but also from the private sector, development partners, endowments and civil society to support legal aid and awareness. The draft policy supports the establishment of the above dedicated Legal Aid Fund funded by the Government among other sources of funding. Nonetheless, measures should be taken to promote volunteerism among members of the bar and provide incentives for pro bono services. Other measures such as tax rebates or tax breaks could be used to encourage corporations to contribute as part of their corporate social responsibility.<sup>57</sup>

56 Laws of Kenya, The Legal Aid Act, Chapter 16A [Act No. 6 of 2016] <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2016A> accessed 22 May 2024.

57 ..

The draft National Legal Aid and Awareness Policy 2015, proposes the following measures as a fundraising strategy -

- (a) Allocate a substantial portion of budget by both levels of Government to legal aid and awareness services in Kenya as captured in the strategy.
- (b) Give incentives to the private sector and other entities which shall include rebates, tax waivers or limited tariffs on communication products like telephony, internet and postage to encourage their contributions and support to the Legal Aid Fund and Service.
- (d) The Legal Aid Fund shall receive funds from development partners and private sector from Corporate Social Responsibility (CSR) to complement state funding.
- (e) The Law Society of Kenya shall establish a Legal Aid levy which shall be an annual contribution made by its members.<sup>135</sup>

Strategic objective no. 7 of the draft policy purposes to allocate fiscal, human and technical resources for legal aid and awareness services in Kenya and the action point for achieving this objective is by raising and mobilizing funds for legal aid and awareness programmes. In addition, recruit, train, build capacity and mobilize human resources for provision of legal aid and awareness services and finally mobilize technical resources to support implementation of legal aid and awareness programmes. On the other hand, NLAS strives to form partnerships with development agencies and other partners, including the private sector and endowments, to develop a sustainable funding base for legal aid and awareness programmes.

In the case of Zambia, the mandate of the Legal Aid Board (LAB) is limited to the provision of legal aid and the administration of the Legal Aid Fund as prescribed in Section 40 of the Legal Aid Act 2021. It does not include aspects of coordination, regulation and monitoring of the legal aid system, which are required to set up an efficient and effective delivery scheme of legal aid services in the country. The Zambia Legal Aid Policy recognizes the duty and responsibility of the State to provide for legal aid, which includes the enactment of specific legislation and regulations, ensuring that a comprehensive legal aid system is in place and that the State allocates the necessary human and financial resources to the legal aid system.

### **3.2.7 Sustainability of Legal Aid Financing**

The Government shall ensure adequate and sustainable funding of legal aid and awareness programmes. While the bulk of the funding will come from the State, there is need as stated above to diversify the source of funds and services, by drawing from the legal profession, the private sector, development partners and local sources. The Alternative Justice System (AJS) strategic intervention no. 5 aims at strengthening and sustainably allocating mobilized resources while strategic intervention no. 11 of AJS seeks to develop a targeted budget by the national and county governments for paralegals and establish a common fund where local and development partners can pool monetary resources to facilitate paralegal work as an effort to fulfill the obligation set out in article 48 of the Constitution on access to justice.

To ensure adequate financial support for community paralegals throughout the country, the civil society submitted recommendations to the Kenyan government suggesting avenues for inter-agency coordination around legal aid implementation and financing. These recommendations emphasize sustainable measures, as well as systems for assessing community needs and monitoring progress toward the Act's goals. Paralegals interviewed for this study consistently cited lack of funds as one of the main impediments to improving the effectiveness of their work.

Most indicated that small allowances would be sufficient to cover costs. Several referred to instances when they could not afford to transport themselves or their clients to courts, hospitals, or other service-demand sites as needed to resolve or follow up on cases. Others cited an inability to afford basic office

supplies. Given the many burdens shouldered by paralegals, most interviewees felt that truly effective and sustainable paralegal work requires financial support in some form.

### **3.3 Emerging Contentious Issues in Training, Formalization, Recognition, and Financing of Paralegalism in Kenya and Zambia**

Alternative dispute resolution has stood the test of time, and paralegals serves as the linchpin enabling and accelerating access to justice. This role becomes imperative because the formal judicial process struggles to address the multitude of issues requiring arbitration and resolution, which constitute nearly 90% of all cases. However, despite the strides made, various conflicting issues have emerged concerning the training, formalization, recognition, and financing of paralegals, necessitating open discourse among justice sector stakeholders. This section attempts to excavate them so that the new advancement in paralegalism does not turn out to be pouring new wines in old wineskins.

Paralegalism is a strategy whereby power is transferred to the people with the aim of building agency, capacity and legal empowerment to transform and shape lives using the law as a tool. In recent decades, Kenyan paralegalism, like elsewhere in Africa, has grown from modest roots into a vibrant nationwide movement, with institutional, legislative, and policy backing.



***Today, paralegals are expanding in number, diversifying their skillsets and methodologies, developing specializations in priority issues, and strengthening collaborative and innovative relationships with state and customary authorities***

Today, paralegals are expanding in number, diversifying their skillsets and methodologies, developing specializations in priority issues, and strengthening collaborative and innovative relationships with state and customary authorities. The movement nevertheless faces many challenges. Paralegal programs continue to seek a sustainable model that can provide paralegals with the logistical, financial, and capacity-strengthening support they need to take on ever more complex cases. The solution must satisfy the need for scale, given the gaps in justice services that persist throughout the two countries.

Dysfunctional informal and customary institutions responsible for the administration and enforcement of justice must be rooted out. Working relationships between these institutions and paralegals must be defined, acknowledged, and respected. With the adoption of the Kenya Legal Aid Act in 2016 and the Zambia Legal Aid Act in 2021, stakeholders—including civil society, the legal community, government, communities, and citizens—now have a solid framework to advance universal access to justice in both countries.

However, the Legal Aid Act passed in both Zambia and Kenya is viewed as both a blessing and a hindrance to paralegals' work. But given the success paralegals have experienced in helping people to understand, use, and shape the law throughout Kenyan and Zambian history, they will undoubtedly play a critical role in continuing efforts to deepen democracy and empower citizens across the nation. The process of formalization of paralegalism has inherent challenges and gaps that require stakeholders in the justice sector to come to a consensus lest they become areas of polarization between the paralegals, legal empowerment organizations and the State. In the area of training of paralegals, there are emerging

issues that seek answers from the stakeholders in the new dispensation that arises due to the already existing community paralegals that were “informally” trained.

The first significant issue is the training of paralegals. How can we harmonize or standardize training when paralegal training is predominantly thematic, tailored to address the specific priority concerns of individual communities? Even if this challenge is overcome, another question arises: who will finance the retraining of currently practicing paralegals?

It is worth noting that Section 18(5) and (6) of the Legal Education Act invalidates all certifications or documentation issued as evidence of an award of a degree, diploma, or certificate in law unless the Council has licensed the programme or training. This raises further questions: How long should the training of existing paralegals be, and should they be categorized based on their experience and academic qualifications?

Secondly, there are emerging issues that beckon for answers from the stakeholders brought about by the intended and unintended impact or collaterals of formalization touching on how paralegalism as it has been known or practiced before the Kenya Legal Aid Act 2016 and Zambia’s 2021.

In regard to formalization questions arise on how do we regulate paralegalism in other words should it be self-regulation or State-regulation? How can paralegals maintain consistence while they operate in unique, a dynamic and evolving environment? Yes, it can be easily agreed that they can adopt a standard operating procedures to enhance and maintain professionalism, establish a database, a code of conduct, disciplinary measures, predictability, reliability and measurability of the process to sustain ethics and morality but will too much officialdom and uniformity suffocate the gains already achieved or slow down the pace of accessing justice? How will paralegalism be managed, controlled, supervised and monitored? Therefore, midwifing between and among these conflicting variables requires a paralegal federation that is equal to the challenge or task.

The third emerging issues touches on State recognition of paralegalism seeks to prod stakeholders to devise ways and means on how to protect and preserve hitherto conducive paralegal environment without much overbearing State control. For instance, under the law, paralegals can be accredited as a form of recognition in Kenya by the National Legal Aid Service<sup>58</sup> or by an association or a civil society organization accredited as a legal aid provider.

In the case of Zambia, the legal elements of recognition revolve around training, standardization and qualification while Kenya’s, recognition revolve around supervision and accreditation. Recognition of paralegals principally by the State brings to fore a number of contentions which arise in accrediting and approving existent paralegals. What would be the criteria or are we going to start afresh in training paralegals?

In other words what would be the basis of accreditation? In the case of Kenya will it be only those that have been trained by the Kenya School of Law and the Mount Kenya University which are the only accredited institutions so far. As for Zambia, will it only be those trained by organizations approved by Technical Education, Vocational and Entrepreneurial Training Authority (TEVETA) or any other trained paralegal? Is there a need of a more elaborative legislation to fix these grey areas? Yet through the Act, the practice of paralegalism receives recognition and legitimization from state law which shifts the power balance.<sup>147</sup>

Moreover, the application of Rule 29 disqualifies a majority of existing Kenya community paralegals from accreditation. The use of the term “and” in the enumeration of the grounds for eligibility may be interpreted to mean that all the three conditions must be present for accreditation of a paralegal. Is there

a need to have a clear-cut boundaries between paralegals and advocates or should the role of paralegals be dictated by circumstances? Will recognition by the State mean they can now by law appear in court as intermediaries and will it boil down to being answerable and accountable to government officials?

It is also believed that legal recognition and formalization could potentially erode the progress achieved in nurturing the community paralegal movement in Kenya and the broader region. Concurrently, practitioners expressed concerns that excessive regulation might impose overly stringent requirements and qualifications for paralegals, rendering the profession elitist and inaccessible to marginalized communities. Consequently, several unanswered questions persist, giving rise to elements of anxiety and apprehension.

This final part of the section highlights the complexities surrounding the financing of paralegalism, exposing uncertainties and reservations associated with state funding. In Kenya, the issue of paying paralegals is highly contentious within the movement. Some argue that paralegalism is rooted in the principles of volunteerism, altruism, and community service. They fear that remunerating paralegals could distort these motives and lead to the commercialization of their services. Additionally, there is significant concern about potential state interference, which could undermine the independence of paralegals.

Financing paralegalism remains a fundamental issue, as the number of paralegals receiving training, logistical support, and direct funding from their parent NGOs or CSOs is limited. This study underscores the need for a sustainable financing model to ensure the effective and independent operation of paralegals, while addressing the inherent challenges and debates surrounding state involvement and compensation.

Paralegals currently lack a specific, sustainable source of funding for the legal aid services they provide to the community. Many stakeholders consider paralegalism to be a vocation, which is why paralegals are often regarded as volunteers. Their availability is largely dependent on their ability to secure a livelihood; without it, they cannot continue their work. This raises a critical question: how can we achieve sustainability for paralegals beyond reliance on donor funding?

If the State assumes the responsibility of funding paralegals—a move aligned with its obligation to facilitate access to justice—it introduces another concern. There is a risk that state funding could lead to interference in the practice of paralegals, particularly in cases where defendants are state agents or officials. The saying “whoever pays the piper calls the tune” aptly captures this dilemma, highlighting the potential for compromised independence and impartiality in paralegal services if state funding is introduced.

**It is worth noting that a majority 81% (n=36) of the respondents were of the view that the State should provide stipend for paralegals compared to 19% of the respondents who thought that CSOs should take up that responsibility.**



It is worth noting that a majority 81% (n=36) of the respondents were of the view that the State should provide stipend for paralegals compared to 19% of the respondents who thought that CSOs should take up that responsibility. In view of the foregoing, venturing into social enterprise is considered an ideal way to ensure the sustainability of the Justice Centres and other paralegal outfits.

The contribution of paralegals (paralegal approach) in search of justice has immensely enhanced access

to justice in the spirit of the 2004 Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, subsequently adopted by the African Commission on Human and Peoples' Rights, which provides that the delivery of effective legal aid must include paralegal services. This implies that the importance of access to justice through local and traditional means, especially for the majority of Africans in rural areas is critical.

The 2012 United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems urge states to recognize the role played by paralegals in providing legal aid services where access to lawyers is limited.<sup>59</sup>

Moreover, states should introduce measures to ensure access for accredited paralegals who are assigned to provide legal aid to police stations, facilities of detention, pre-trial and correction centres and allow court-accredited and duly trained paralegals to participate in court proceedings and provision of legal aid to defendants as part of auxiliary services in the administration of justice. This also fulfills the objects of article 48 of the Kenya Constitution on access to justice and the right to fair hearing as provided for in article 50 and 18 of the Kenyan and Zambia Constitution respectively.

### **3.4 Similarities in Legal Aid Frameworks in Kenya and Zambia**

#### **3.4.1 Kenya**

Under Sections 42 and 43 of the Legal Aid Act, the courts, police, and prison officers are required to inform unrepresented persons in court or custody of their right to legal representation. Any individual who willfully obstructs a person in lawful custody from applying for legal aid, or any member of the National Legal Aid Service (NLAS) Board or employee of the Service who knowingly subverts the process of providing legal aid, commits an offence under Sections 42(2) and 85(1)(a) of the Act, respectively.

The Act establishes a "Board of Service" under Section 9 and a Legal Aid Fund under Section 29. According to Section 2, "legal aid" encompasses: (a) Legal advice; (b) Legal representation; (c) Assistance in: (i) Resolving disputes through alternative dispute resolution; (ii) Drafting relevant documents and effecting service incidental to any legal proceedings; (iii) Reaching or giving effect to any out-of-court settlement; (d) Creating awareness through the provision of legal information and law-related education; and (e) Recommending law reform and undertaking advocacy work on behalf of the community.

Anyone wishing to provide legal aid services must apply for accreditation in the prescribed manner under Section 58(1) of the Act. The Service has the authority to terminate the provision of legal aid services if there is sufficient reason, as stipulated in Section 48(1)(a).

The Act also requires aided individuals to provide up-to-date financial information if needed for decision-making purposes, as stated in Section 47. If an aided person is compensated through an award of damages, they are entitled to the award, but the Service has the right to deduct its incurred costs from the award under Section 70(2).

Furthermore, Section 68(2) and (3) of the Kenya Legal Aid Act 2016 state that accredited paralegals shall not demand payment of a fee from individuals who qualify for legal aid under this Act. If a paralegal demands such a fee, they commit an offence and, upon conviction, are liable to a fine not exceeding two hundred and fifty thousand shillings or imprisonment for a term not exceeding one year, or both.

### 3.4.2 Zambia

Under Sections 58 of the Legal Aid Act, the courts, police, prison officers, and the Director of the Legal Aid Board are required to inform unrepresented persons in court or custody of their right to legal representation. Any person who willfully obstructs a detainee from accessing legal aid under this Act commits an offence, as specified in Section 59(3).

The Legal Aid Board is constituted under Section 8(1) of the Act. The Legal Aid Fund, established under the repealed Act, continues to exist and provides legal services to individuals granted legal aid, as outlined in Section 40(1).

According to Section 6, the scope of legal aid includes: (a) Legal education; (b) Legal information; (c) Legal advice; (d) Legal assistance; (e) Legal representation. Paralegals intending to provide legal aid must apply to the Director for a certificate of registration in the prescribed manner and form, as mandated by Section 18 of the Act. Section 20(2) stipulates that a registered paralegal must be supervised by a practitioner, legal assistant, or another person determined by the Board.

Individuals seeking legal aid must apply to the Director in the prescribed manner and form, and pay a prescribed fee under Section 34(1). If the Director refuses to grant legal aid, an appeal can be made under Section 38(1). The Director also has the authority to terminate legal aid at any time for sufficient reasons, as per Section 39(1).

When determining the financial means of any person for the purpose of this Act, the Director must take into account all relevant factors, as outlined in Section 52(1). If a court awards costs to a legally aided person in any proceedings, these costs should be paid to the Legal Aid Board, and only the Director can provide a valid discharge of these costs, as specified in Sections 53(1) and 54(1).

Section 59(1) and (2) of the Zambia Legal Aid Act 2021 states that no practitioner, legal assistant, paralegal, or legal aid service provider shall demand, request, or receive legal fees from a legally aided person for services rendered under this Act. Anyone who contravenes this provision commits an offence and, upon conviction, is liable to a fine not exceeding ten thousand penalty units.

## 3.5 Differences in Legal Framework

### 3.5.1 Kenya

Under Section 35(2) of the Legal Aid Act, the Service is mandated to provide legal aid services at the expense of the State to individuals who qualify for legal aid. These services cover a broad spectrum of cases, including:

- a) Civil matters
- b) Criminal matters
- c) Children's matters
- d) Constitutional matters
- e) Matters of public interest
- f) Any other type of case or law that the Service may approve

Additionally, section 55 of the Act allows any applicant, aided person, or legal aid provider who is aggrieved by a decision of the Service to appeal to the High Court within thirty days of the decision. This provision ensures a mechanism for review and accountability in the legal aid process.

### 3.5.2 Zambia

In contrast, the Zambian Legal Aid Act under Section 49 empowers the Minister, in consultation with the Legal Aid Board and the Chief Justice, to specify categories of civil cases that are not eligible for legal aid. This allows for a more controlled and selective provision of legal aid services.

Furthermore, Section 57(1) provides that an individual aggrieved by a decision of the Legal Aid Board may appeal to the Minister within thirty days of receiving the decision. This establishes a different appeal process compared to Kenya, where appeals are made to the High Court.

Additionally, Section 48(1) of the Zambian Act permits an individual to refuse the legal aid granted to them. This clause offers flexibility and respects the autonomy of the recipient in deciding whether to accept or decline legal aid.

These differences highlight the variations in how legal aid is structured, administered, and contested between Kenya and Zambia, reflecting each country's unique approach to ensuring access to justice. Kenya's framework emphasizes a broader scope of coverage and direct appeals to the judiciary, while Zambia's approach involves more ministerial oversight and selective criteria for legal aid eligibility.

## 3.6 Elements of Legal recognition of Paralegals in Kenya and Zambia

### 3.61. KENYA

In 2007, the Department of Justice in the Office of the Attorney General, formerly known as the Ministry of Justice, National Cohesion and Constitutional Affairs, utilized allocations from the basket fund to establish the National Legal Aid and Awareness Programme (NALEAP) and its National Steering Committee. Drawing from positive experiences with the Kisumu pilot project and extensive consultations with civil society, NALEAP became a strong advocate for establishing a national system to recognize and accredit paralegals. One of its primary goals was to pass a legal aid policy and law that acknowledged the role of paralegals in enhancing access to justice.

In August 2010, Kenya adopted a new Constitution, which included Article 50(7) stating: "In the interest of justice, the court may allow an intermediary to assist a complainant or an accused person to communicate with the court." This intermediary could be a paralegal or any justice actor or agent.

In 2016, after a broad stakeholder consultative process and many years of advocacy by members of the Paralegal Society of Kenya (PASUNE), the Kenyan government enacted the Legal Aid Act 2016. This Act recognizes paralegals, provided they are supervised by an accredited legal aid organization or advocate. Under this law, paralegals can be accredited by the National Legal Aid Service (the successor to NALEAP) or through association with a civil society organization accredited as a legal aid provider.

Additionally, the establishment of small claims courts aims to provide another avenue for paralegal services. The formal recognition of paralegals as justice service providers is further underscored by the Chief Justice emeritus, who noted in the foreword of the Alternative Justice System Framework Policy (AJSFP) 2020 document that about 90% of cases are handled outside the court system, highlighting the need to facilitate paralegalism.

### **3.6.2 ZAMBIA**

In Zambia, paralegals are organized into three categories: Level 3, Level 2, and Level 1 paralegals, with qualification requirements matching the various levels of specialization. The Technical Education, Vocation, and Entrepreneurship Training Authority (TEVETA) officially approved a newly established three-level training scheme for paralegals in Zambia, setting clear training standards, qualifications, and mandates for paralegals.

The formulation of the National Legal Aid Policy established clear training standards, qualifications, and mandates for paralegals. The enactment of the National Legal Aid Act 2021 formally recognizes paralegals under Sections 2, 18, and 19 of the Act.

TEVETA-approved documents include training charts, syllabi, and job profiles for all three levels of paralegals, in addition to reference paralegal training manuals developed for each level. These comprehensive training frameworks ensure standardized training and qualifications for paralegals in Zambia.

Furthermore, Article 18(2)(d) of the Zambian Constitution on the Provisions to Secure Protection of Law states: “Every person who is charged with a criminal offence shall, unless legal aid is granted to him in accordance with the law enacted by Parliament for such purpose, be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice.” This provision underscores the foundational idea of legal aid in Zambia, emphasizing the importance of accessible legal representation.

## **Sample Case Studies**

### **3.7.1 Financial Sustainability of Paralegalism: Case of Wema Justice Centre**

Wema Justice Centre was founded by ex-convicts from Shimo La Tewa Correctional Centre, including some who successfully appealed for a review of their convictions and regained their freedom. The Justice Centre operates from a building owned by the Shimo La Tewa Prison Probation Department, in collaboration with Kituo Cha Sheria.

Many ex-offenders have found a place at Wema Justice Centre to perform community service, utilizing technical skills they learned while incarcerated, such as plumbing, tailoring, masonry, and electrical wiring. These activities help them earn a living and reintegrate into society. To rebuild their reputations, the trained ex-convict paralegals offer legal aid services at Wema Justice Centre. These paralegals, all of whom are ex-convicts, assist the community with civil disputes and provide legal counsel on issues such as domestic disputes, labour and employment, child support, land, and succession.

During the COVID-19 pandemic, the paralegals played a crucial role in resolving disputes by working with the police and courts when many local children were detained for violating COVID-19 restrictions. Additionally, the Justice Centre generates income through tree planting, offering various tree seedlings to the community as part of their climate change advocacy efforts.

The paralegals also address drug addiction and substance abuse issues prevalent in Mombasa County. They organize educational forums and seminars on the negative impacts of drug abuse for the youth and support addicts through the rehabilitation process.

At the Wema Justice Centre, paralegals support peer learning at the Shimo La Tewa Justice Centre, sharing how they utilized their paralegal training to win appeals and help fellow inmates draft their appeals. Ex-convict paralegals create court documents and petitions for prisoners, collaborating with advocates from

Kituo Cha Sheria-Legal Advice Centre. This initiative has significantly improved access to justice in Mombasa County and aims to ensure the sustainability of paralegal services.

The Wema Justice Centre continues to serve the citizens of Mombasa CBD with great diligence, housed in a government office due to the essential nature of their work. They strive to ensure justice is served without restrictions and procedural technicalities, as envisaged in Article 22(3)(d)(e) of the Constitution, and other impediments like costs.

The Programme for Legal Empowerment and Aid Delivery (PLEAD), implemented by Kituo Cha Sheria and supported by the European Union, led to the release of 46 inmates through self-representation. Strengthening institutional capacity is a key strategy for addressing court backlogs. Continued capacity building of paralegals alleviates the pressure on pro bono lawyers and other support services. Legal empowerment organizations, in collaboration with the government, must train more paralegals to enhance access to justice. Social and financial sustainability are becoming more solid each day, a practice that should be emulated by other prisons in Kenya and across Africa.

Source: Compiled with Kituo Input

### **3.7.2 The Role of Community Paralegals in Addressing Gender-Based Violence: The Case of Chamuka-Led Village One Stop Centre**

To explore a model of a community-based justice system, the Paralegal Alliance Network of Zambia and its cooperating partner, Kituo Cha Sheria from Kenya, visited His Royal Highness Chief Chamuka at his palace in July 2023. The purpose of the visit was to gain insights on the recognition and regulation of paralegals and to become acquainted with the Chamuka Village-Led One Stop Justice Centre.

Chief Chamuka informed the visiting team about various developmental programmes in his Chiefdom aimed at promoting human rights, particularly for women and youth. He emphasized the Chiefdom's efforts to eradicate gender-based violence (GBV) through the provision of legal aid services. The Village-Led One Stop Centre, he explained, offers a cost-effective alternative for delivering anti-GBV services, including legal services, psychosocial support, chaplaincy, health services such as HIV testing, provision of post-exposure prophylaxis, linkages to HIV treatment for GBV survivors, and awareness creation on various legal issues. Chief Chamuka commended the government for formally recognizing paralegals, highlighting their critical role in combating GBV and promoting access to justice.



The Chiefdom, in collaboration with the government and other partners, has also been working on a Social Tenure Domain System to provide certificates of occupancy for customary land. This initiative aims to ensure land protection and equal access to land for all, particularly women and youth, enabling them

to use land as collateral for loans from financial institutions.

Chief Chamuka shared significant progress in reducing teenage pregnancies and child marriages within his Chiefdom. Upon his ascension, there were 209 teenage pregnancies and 45 child marriages. Through the services offered at the One Stop Centre, these numbers have drastically decreased to 7 teenage pregnancies and 1 child marriage at the time of the visit. The Chiefdom conducts awareness meetings at markets, churches, schools, clinics, and village gatherings, educating the community about the services provided by the One Stop Centre.

The Centre is fully operational with qualified staff, including three trained paralegals, two health personnel, two ICT personnel, a police officer from the Victim Support Unit, and numerous community volunteers. These individuals have been trained in community crime prevention, enhancing their ability to detect and prevent criminal activities. The team collaborates closely with police officers and other justice institutions. Chief Chamuka has signed memorandums of understanding with organizations such as the National Legal Aid Clinic for Women, UNDP, and Plan International-Zambia to support the One Stop Centre.

The Paralegal Alliance Network provides training, reference materials, and supervisory support to paralegals. Each of the 207 villages in the Chiefdom contributes 200 Kwachas (approximately 10 USD) annually to support paralegal operations, with paralegals receiving 100 Kwachas per week for their work at the Centre. To ensure sustainability, Chief Chamuka has established a Chiefdom Development Trust, using the funds raised to support activities at the One Stop Centre. The collaboration with police and other justice institutions has expedited the handling of GBV cases. Paralegals develop annual work plans to guide their activities, contributing to the Centre's success.

However, the Centre faces challenges, including inadequate funding to pay the paralegals, who currently work as volunteers. Additionally, the lack of transport hinders follow-up on GBV and other cases. There is a shortage of paralegals to serve the 207 villages, and a significant information gap among the population about their rights, leading to underreporting of human rights violations. Religious institutions sometimes slow the administration of justice, although a human face is necessary in justice administration.

*Compiled by PAN Zambia*

### **3.7.3 Kenya's Court Users Committees [CUCS]-Stake-holder's involvement in the Administration of Justice**

The draft Policy recognizes disparities in provision of legal aid and provides relevant policy direction ensuring multi-sectorial approach to addressing poor provision of legal aid in the Country however, this had to wait until 2011 when the Judicial Service Act was enacted which legally provides for involvement of other stakeholders in Section 35 of the Act.

Article 159 (1) of the Kenya Constitution expressly provides that:

***“Judicial authority is derived from the people and vests in, and shall be exercised by, the courts and tribunals established by or under this Constitution.”***

One of the functions of the National Council on the Administration of Justice under Section 35 (2) (c) of the Judicial Service Act No. 1 of 2011 as revised 2020 is to

***“...facilitate the establishment of court user committees at the county level to achieve the objectives set out under subsection 35 (1) of the Act in order to ensure a coordinated, efficient, effective and consultative approach in the administration of justice and reform of the justice system.***

Section 35 of the Judicial Service Act institutionalizes Court Users Committees under the aegis of the

National Council on Administration of Justice (NCAJ).

The Court users' committees are a platform that brings together actors and users in the justice sector in order to enhance public participation, stakeholder engagement, information sharing and practical interventions on delivery of justice. The forum also helps in developing a public understanding of the court operations and systems, so as to promote an effective justice sector partnership. As a result, this ensures a coordinated, efficient, effective, consultative and responsive approach in the administration justice.

Based on the objectives of National Council on Administration of Justice, the CUCs are established as a platform for actors in the justice sector at local or regional level, to consider improvements in the operations of the court system; to coordinate functions of all agencies within the justice system and improve the interaction of these stakeholders; and to make the justice system more participatory and inclusive reflected in diversity of their membership. The creation and actualization of the Court Users' Committee (CUC) under the Judicial Service Act has facilitated the administration of justice without undue regard to procedural technicalities courtesy of the paralegals and other primary stakeholders as envisioned in article 159 (2) (d) of the Kenya Constitution.

It is a fact that the CUC platform has really transformed relations between actors in the justice sector. Actors are now more accountable and able to take responsibility for the actions that inhibit on the enjoyment of human rights for peoples seeking redress in the administration of justice. Paralegals participation in the CUCs has brought in innovations and necessitated refresher trainings to improve their capacities for engagement. Thus, the number of paralegals getting admitted as members into the CUCs is on the increase to promote a transparent culture of policing institutions of justice. The CUCs though not in all sub-counties, they have created an enabling environment to discuss issues that affects communities on daily basis in regard to delivery of justice.

Prior to the creation of Court Users' Committees, there existed low public confidence in the judiciary. However, the involvement of paralegals in CUC has encountered challenges because sometimes members who are paralegals face unfair attacks from other member actors. These elements of intimidations are well executed by those who worry that paralegals may expose malpractices. As community paralegals they are instrumental reviewing strategies for the administration of justice plus acting as peer overseers of actors in the administration of justice which facilitate realization of the mandate of the National Council on the Administration of Justice. Hence Paralegal Society of Kenya [PSK] should be a member of the National Council on the Administration of Justice under Section 34 (2) of Judicial Service Act 2011.<sup>60</sup>

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60            Compiled courtesy of Bilasio Wandera

# CHAPTER FOUR

## FINDINGS

### 4.1 Introduction

The study sought to understand the distribution of paralegals in terms of gender, years in service and the age, whereby the study established that a majority 63.9% of paralegals interviewed were males while 36.10% of them were females. This may have been dictated by mobilization of respondents which was controlled purposive and use of A&P (Available and Practicing) yardstick. Most of the paralegals (36.10%) had been in paralegalism for 5- 6 years followed by 25% who have been in the services for more than 6 years. Critically looking at age group, a majority (61.10%) of the paralegals were above 40 years of age, while 16.70% were of ages between 25-29 years, then 5.60% range between 18-24 years and 30-35 years.

It can be inferred that the older the paralegal practitioner the more likely he/she is available to render legal aid services. It can further be deduced that senior members of the society have lesser financial obligations hence their commitment. It therefore affirms that occupations and livelihoods quests influence opportunity and time to serve as a paralegal.

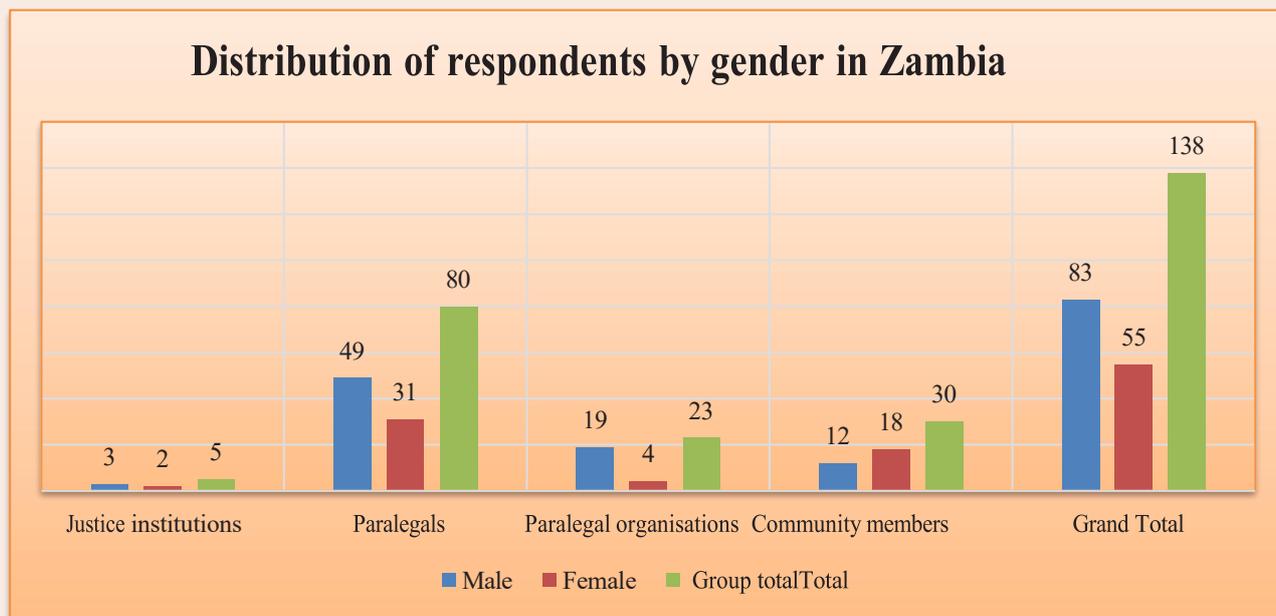
In many patriarchal societies like in the Kenyan context majority (63.9%) who are involved in alternative dispute resolution as arbiters are of the male gender. The cultural biases, prejudices and negative attitudes towards the female paralegals discourage a number from volunteering in offering legal aid services hence the lower percentage (36.10%). Therefore, it is not far-fetched in such cultural environment that promotes negative masculinity and male-chauvinism to hardly find women paralegals as captured on pages 47-48 of this Report.

**Table 7 - Distribution of Paralegal Demographics**

		Frequency(n=36)	Percent
<b>Gender</b>	Female	13	36.10%
	Male	23	63.90%
<b>Years in service</b>	1_2 years	5	13.90%
	3_4 years	9	22.20%
	5_6 years	13	36.10%
	Above 6 years	9	25%
<b>Age group</b>	18_24 years	2	5.60%
	25_29 years	6	16.70%
	30_35 years	2	5.60%
	36_40 years	3	11.20%
	Above 40 Years	22	61.10%

In Zambia, PAN was able to talk to 80 paralegals of which 31 were female and 49 were male, 30 community members who benefited from paralegal services of which 12 were male and 18 were female, 23 Legal Empowerment Organizations, 5 Justice Institutions represented by 7 officers of which 3 were female and 4 male, and 3 Chiefs (traditional leaders) who were 2 male and 1 female. A total of eighty-three (83) and fifty-five (55) males and females respectively were enrolled in the research distributed among justice institutions, paralegals, paralegal organizations and community members.

Figure 5 - Distribution of Respondents by Gender in Zambia



## 4.2 Critically assess and evaluate the training, formalization, recognition and financing of paralegals in Kenya

### 4.2.1 Training of Paralegals in Kenya

As previously discussed in the Chapter on literature, law and policy review, the study looked at various aspects of training which included curriculum, duration, training manual, trainers, and accreditation. This section discusses the training models of different legal empowerment organizations.

#### Training Model of the Paralegal Society of Kenya

Between 2002 and 2005, the Paralegal Society of Kenya trained 30 paralegals but only 25 (16.67%) were able to qualify. The rest did not complete the program. The trainees are informed that if they do not complete the training they won't be certified. The training goes between 3 months and 6 months 83, 33%. This implies that 16.67% of the trainee paralegals are dropouts while 83.33% complete the training programme. This could be attributed to several factors such as the challenge in comprehending the training modules as there is no minimum academic requirement for the volunteer trainee paralegals. Also, matters of livelihood could be a factor in determining the continuous availability of the trainee paralegal. An office from the PSK stated:

“We are a paralegal training organization and the pioneer in development of training curriculum in 2005. The training takes 6 months to cover 24 modules where theory is blended with practice. Six months of imparting 24 modules requires a level of literacy and commitment by the trainee paralegal because competence is of paramount importance for the success of paralegalism.”

The presence of the Council of Legal Education [CLE] and Technical Education, Vocational and Entrepreneurial Training Authority (TEVETA) in the case of Kenya and Zambia respectively must be at the forefront in ensuring quality training by approving and supervising curriculum training implementation.

Moreover and specifically, CLE ought to devolve its services to the counties in lined with article 174 (f): “to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya.”

So far only two Nairobi based institutions have had their curriculum accredited to offer paralegal training nationally. From the literature review it is established that the disproportionate low number of lawyers, affects mostly the vulnerable in remote areas, especially women and children in civil matters notwithstanding persons with disability as well as minorities but also indigent and poor men in criminal cases thus emphasizing the need to empower other legal actors, especially paralegals who have community trust in narrowing this gap. It is further affirmed that the Community Justice Centres are key components in providing support to community members in navigating the justice system.

The research team interviewed a legal empowerment organization in Nairobi that organized weekly training modules for community-based paralegals. The key informant stated:

*“... We do organize weekly training for community-based paralegals. These trainings vary from one organization to another. It also depends on the availability of funds and other resources needed for the training. We usually use curriculum developed by Paralegal Society of Kenya (PSK) formerly Paralegal Support Network (PASUNE) and other information materials sourced from other organizations and government institutions. We do organize weekly trainings for community volunteers and people who are willing and ready to undergo paralegal and or trained as community paralegals since the training is voluntary. In terms of gender, we do recruit the youth, women, people living with disability and people with special needs drawn from different wards within Kamukunji Sub-County...”*

*“..., my view is that I think, that the curriculum is not dynamic, is not being updated, because every day we have, for instant if you are going to teach people about family law, these days we have judgement law... Issues of gender the past curriculum does not look on gender issues but now but now they are having issues on gay...” KII with the legal empowerment: Kitui County.*

*“... I was trained on paralegalism in 2017 for one week by KITUO. Over the years I have also attended trainings by FIDA and Peace Tree Network on paralegalism. Topics how to report a GBV case, land disputes beyond mediation, and Alternative Dispute Resolution...” Interview with paralegal: Kwale County.*

*“... I was trained in 2021 and I was taught about; self-representation in court, land rights, defenses in a criminal matter, civil cases and several acts like penal code. The training was for one week. After training, we were given books, pens, constitutions and food. The trainers were from National Legal Aid Service...” Individual interview with paralegal: Mombasa County.*

*“... We got the initial training around 2010. Then we heard refresher courses again in 2014 and also sometimes in 2023. Last year, we had some refresher training by Kituo cha Sheria. Beyond the Kituo cha Sheria, we are also engaged with other institutions that do quasi-paralegal or do paralegal work, for example institutions like LRF and the Transparency International...” Individual interview with paralegal in Nairobi County.*

*“...The training programmes are short and they need longer time duration and frequent training. Training programmes should be undertaken between one and two months ...” Expert interview in Mombasa County.*

However, in the recent past, the Kenya School of Law (KSL) and Mount Kenya University initiated training programmes for Paralegals after each of their curricula was approved separately by the Council of Legal Education [CLE] to offer paralegal training.

*Our training of paralegals is a modular curriculum with intense course outline that goes for 2 years. We are accredited by Council for Legal Education (CLE). We are a government run institution and ISO certified. We have a rich institutional culture and we give exams. Senior Lecturer Kenya School of Law (KSL)*

*We are a University and accredited by Council for Legal Education (CLE). We train Paralegals, a course (Diploma in Law) that takes 2 years and regulated by CLE since 2015. For one to qualify for the course they must have an aggregates of C plain with a C+ score in English or Kiswahili. Registrar School of Law MKU*

Although manpower training is critical for the person of the paralegal but the accreditation of these two institutions brings a huge element of elitism which may render a number of community-based paralegal either redundant or shy away from offering their service to the community members for being perceived as quacks.

Table 8 - Training Duration of the Paralegals

	Frequency (number of respondents)	Percent
A month	1	3%
A week	30	86%
Three days	1	3%
Two weeks	3	9%
<b>Total</b>	<b>35</b>	<b>100%</b>

The study observed that a majority (86%) of paralegals underwent training for one week despite the fact that PSK designed curriculum requires a training of 28 days.<sup>61</sup> As Moy observes, community paralegals receive an initial training, and occasionally refresher training, by a given NGO.

*I have been trained 4 times by Kituo cha Sheria. 7 years ago before Kituo trained us; I was trained in family law, land laws and criminal laws. The trainings were one week -Paralegal Mombasa*

*Training may combine legal instruction with coaching in practical skills and site visits as canvassed on page 50 of this Report. The training paralegals receive without expecting him/her to be an advocate is far too little for the complex matters they do handle.*

*KII, Uasin Gishu.*

#### 4.2.2 Mode of Training

A majority (95%) of paralegals mentioned existence of training manual as a mode of training which contrasts KSL and MKU mode which is elaborate and replete with curriculum and training manual approved by CLE, class sessions, attachment and practice.

*“The mode of training involves lecture, brainstorming, assignments, quizzes, examinations, group work and further reinforced by a clear admission criterion such as an aggregate C plain with C+ in either English or Kiswahili.” Registrar School of Law Mount Kenya University (MKU)*

61 1 week training and 3 weeks of practice.

*I was trained by National Legal Aid Service in August 2021. The training covered children matters, land issues, self-representation and types of cases that need advocates. The duration was for one week and after training, I was given simplified book from Legal Aid Service and pens. I was trained by being given notes to write. I was not satisfied with the training since it was short. I would like the training to be conducted on monthly basis. - Paralegal Shimo la Tewa Prison*

It is true that a one week of training is most likely to be inadequate if stakeholders in the justice sector want to improve the quality of services rendered by the community-based paralegals.

Figure 6 - Mode of Training



On whether the training was satisfactory, the paralegals had divergent views.

*The five days provided for these trainings are normally very limited to learn enough on matters, injustice methods of accessing justice and the procedures to follow in order to get justice. The training should even be extended to 6 months of refresher courses be enrolled regularly. The trainings should also incorporate other justice centres in Kenya to share and learn from the paralegals in other regions of this country. Paralegal Uasin Gishu County*

*I am very satisfied because it has helped me acquire skills to resolve cases in the family  
Paralegal Kwale County*

*Paralegals are limited in their knowledge of the law and at times when acting in good faith, they end up misleading their clients. This is a very serious challenge.  
Magistrate, Ahero Law Court- Kisumu.*

Some interviewees voiced concerns about inconsistencies in the quality of paralegal services. They challenged paralegals' capacity to tackle complex issues or to take on the volume of cases in need of resolution and therefore, there's need for upgrading on their capacity building but generally they were satisfied.

Nonetheless, the indigents showed a sense of satisfaction with the services offered by the paralegals regardless of their training.

**R5** Paralegals do not ignore people; they are straightforward.

**R4** Paralegals do not ask for money, and if they see that you do not follow up, they call to enquire what has happened or if you got any assistance.

**R2** this office has helped the underprivileged because they do not ask for money, and they follow up the case to establish facts unlike the police and the chiefs who ask for money.

**R1** the office does not discriminate between the poor or the rich and their concern is just access to justice for all.

**R2** the office does not charge for their services and cases do not take long like in courts.

**R6** the office has helped people because they do not ask for money unlike the chiefs and they follow up court cases until the end.

**Indigent FGD Kitui**

#### 4.2.3 Formalization of Paralegalism in Kenya and Zambia

Formalization involves standardizing, regulating, and ensuring ethical conduct among paralegals. This includes determining whether paralegalism should be self-regulated or state-regulated. Too much regulation might stifle the flexibility and accessibility that paralegals provide and defining clear boundaries for paralegals' roles to avoid overlap with formal legal practitioners while maintaining their effectiveness in community justice.

Questions arise about whether paralegalism should be self-regulated or state-regulated. Over-regulation could stifle progress, while standard operating procedures can enhance professionalism. A paralegal federation could help navigate these challenges, ensuring consistency and reliability in service delivery.

The respondents interviewed in the course of the field work had varied views and reactions on the concept of formalization.

The State regulation means the government shall identify and accredit the paralegals who are qualified to handle legal matters based on education and set boundaries on what paralegals can offer.

**KII Kisumu**

The state regulation means that all paralegals are expected be accredited by the government. The government wants to identify and accredit only paralegals who are qualified and who can handle legal matters professionally based on education.

**KII Nakuru**

The state regulation means the government to put up limitations and boundaries for paralegals and accredit the paralegals who are qualified to handle legal matters based on education. And on recognition the Government to empower the work of paralegals.

**KII Kitui**

In summary, the aspects of formalization have come out as a limitation for paralegals that have been practicing for long because only academic qualification have a higher premium. As captured in the problem statement, it is perceived that the danger of substantial state formalization/regulation of paralegalism to enhance quality paralegal services has the potential of losing the gains made in building the community paralegal movement in Kenya and the African region.

#### 4.2.4 Recognition of Paralegals in Kenya and Zambia

The draft National Legal Aid and Awareness Policy (2015) proposed that a legislative framework for the recognition of paralegals, establishment of an oversight mechanism and standards for paralegals is crucial. In view of this, the Legal Aid Act 2016 in Section 7(1) (h) under functions of NLAS requires that the Service:

***“in consultation with the Council of Legal Education, develop programs for legal aid education and the training and certification of paralegals;”***

Under Section 7 (1)(o) the Service is mandated to

***“coordinate, monitor and evaluate paralegals and other legal service providers and give general directions for the proper implementation of legal aid programs;”***

Section 68 of the legal framework in Kenya grants significant powers to paralegals, affirming their role in providing legal advice and assistance.<sup>62</sup> This provision offers a level of recognition to paralegals within the legal system. Section 68 specifically addresses legal advice and assistance by paralegals, outlining their authorized activities and responsibilities.

According to Section 68(1), “An accredited paralegal employed by the Service or supervised by an accredited body may provide legal advice and assistance in accordance with this Act.” This acknowledgment empowers paralegals to engage in legal advisory roles under the supervision of accredited entities, thereby legitimizing their contributions to the legal landscape.

Moreover, Section 68(2) establishes a crucial aspect of paralegal services by stipulating that “An accredited paralegal shall not demand payment of a fee from a person who qualifies for legal aid under this Act.” This provision underscores the principle of accessibility to legal assistance, ensuring that those in need can obtain support without financial barriers.

Furthermore, Section 68(3) emphasizes the ethical standards expected of paralegals, stating that “An accredited paralegal who demands payment of a fee as specified under subsection (2) commits an offence.” This clause underscores the importance of maintaining integrity and adherence to legal aid principles among paralegals, highlighting their accountability within the legal framework.

Section 68 of the legal framework in Kenya not only recognizes the role of paralegals but also establishes guidelines and ethical standards for their practice. By delineating the scope of their activities and responsibilities, this provision contributes to enhancing access to justice and promoting legal empowerment within the community.

The admission of paralegals to take part in Court Users Committees, setting up judicial-paralegal customer care desks, where they advise the general public on court procedure is a case of recognition by one arm of Government- the Judiciary.

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62 Laws of Kenya, The Legal Aid Act, Chapter 16A [Act No. 6 of 2016] <http://kenyalaw.org:8181/exist/kenyalex/actview.xml?actid=CAP.%2016A> accessed 22 May 2024.

## **Kariobangi Paralegal Network-Coordinator**

When discussing recognition, particularly in the context of state recognition, I interpret it as the acknowledgment of the vital role paralegals play in the fabric of a nation's societal framework, and that is how I perceive it. It signifies the recognition of the invaluable contributions these individuals make to the lives of our citizens. Therefore, it is essential to recognize them as active participants in a sector integral to our community.

### **KII Kisumu**

A good example of recognition is the participation of Legal Resources Foundation Paralegals in the Parole Board of the Kenya Prisons Service and serve on the Case Management and Anti-Corruption Committees of the Probation and Aftercare Department. **Paralegal Nairobi County.**

They take part in Court Users Committees and can be found staffing judicial-paralegal customer care desks, where they advise the general public on court procedure. State agencies have also identified paralegals as volunteer child officers, who monitor and assist with child protection cases. **Court Administrator Kisumu County**

State recognition is where the state recognizes agents of change in the community through registration and approval to execute their duties under the umbrella of justice sector.

### **KII Nairobi**

*“... the community recognizes them because they get information, come to the paralegals offices to seek legal help and they receive assistance. They are the people who walk with us during court cases and also help us solve disputes without going to court....” In-depth interview with Indigent: Nakuru County.*

*“... the community recognizes our work very much because even right now almost every day, we have five days in a week we get a lot of people coming to the office, in a day we get up to two or three complainants and within two weeks we have handle all the cases, that has given us the opportunity to know that the community recognizes us...” Interview with paralegal: Kisumu County.*

*“...community recognizes paralegals because we receive many cases where the community is infringed of their rights... “. Interview with paralegal: Kitui County.*

*“... R1; I believe that they recognize paralegal because, if there is any case, they find it easier to look for us or come to the office that's when they feel safe. The second is that we are recognized because there are cases that go to the chief ACC or DCC when they are unable to solve them, they hand them over to us to solve them even we have done three ADR cases because the OCS handed them over to us. Therefore, people recognize us from both sides.*

*R10 - On my side I would say that the community recognizes us and quite well if I would say. Because if someone has a court case, the first person they think of is you the paralegal. When they get the report to you before they take any action it's you that they think of first...”*

### Focus group discussion with paralegals: Nairobi County

Through interview with the paralegals, the Study noted that most communities recognize their importance and role as evidenced by number of cases handled in a week by paralegal offices across all the Study sites.

*A week can hardly pass without receiving a number of indigents seeking for the legal aid advice; this implies that our work is well recognized by the community, and we offer essential services. Interview with Paralegal in Mombasa*

Even though paralegals are recognized, there is a need for the provision of uniforms and tags so that people in the community can easily identify and facilitate them in doing their legal aid services as in the case of the chiefs.

In summary, as observed by NAMATI, Moy and key informants, we indisputably agree that legislation, regulations, policies, court judgments, memoranda of understanding among others are the hallmark of recognition. The study established that, paralegals are recognized by government especially the judiciary and the prisons and by virtue of the 2016 Legal Aid Act, since the services offered by the paralegals help in reducing the backlog of cases. In addition to this, the government recognizes paralegals as witnessed when some forms of conflicts are referred to the paralegals by the government representative such as the police and chiefs. As captured by the study paralegals are relatively recognized by the legal framework and the communities they practice in. Despite minimal state recognition, community paralegals have continued playing a critical role in promoting access to justice for indigent communities in Kenya.

#### 4.2.5 Financing of Paralegals in Kenya and Zambia

Financing of paralegals has been explored under literature, law and policy review on pages 57-60 of this report and here the report lays out primary data on this aspect. The study observes that a majority (36.1%) of paralegals in table below have been in “practice” for between 5-6 years while another 25% have practiced above 6 years.

Figure 7 - Financing of Paralegals in Kenya and Zambia

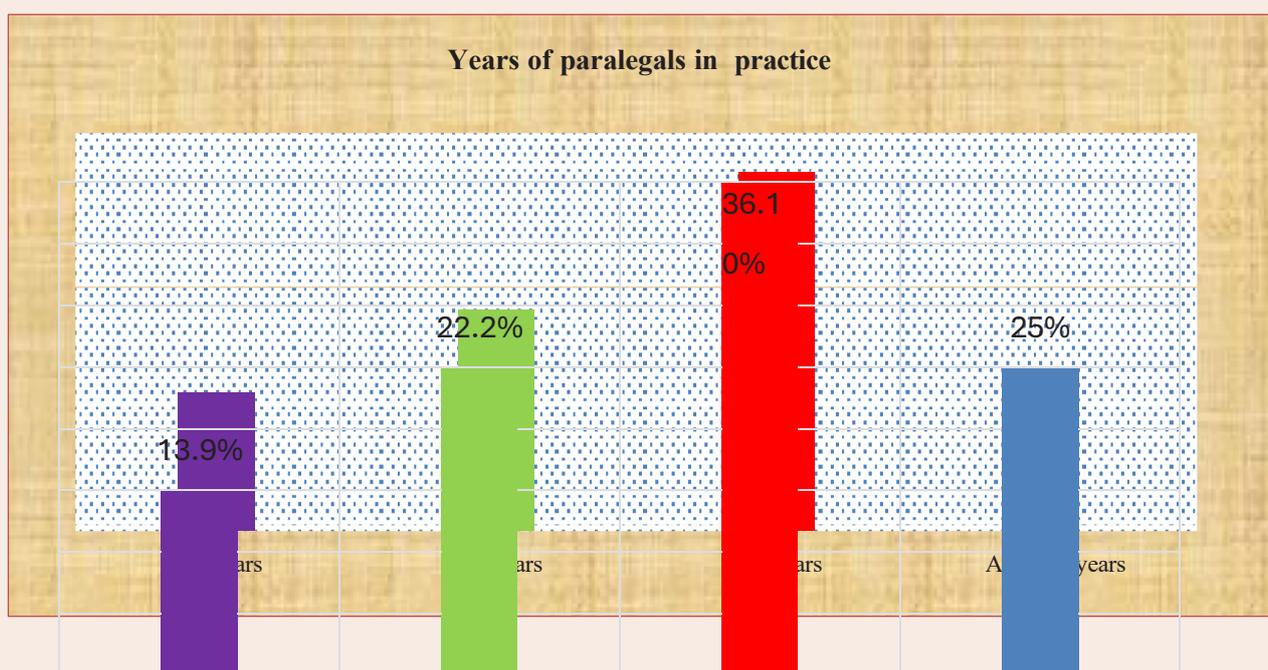
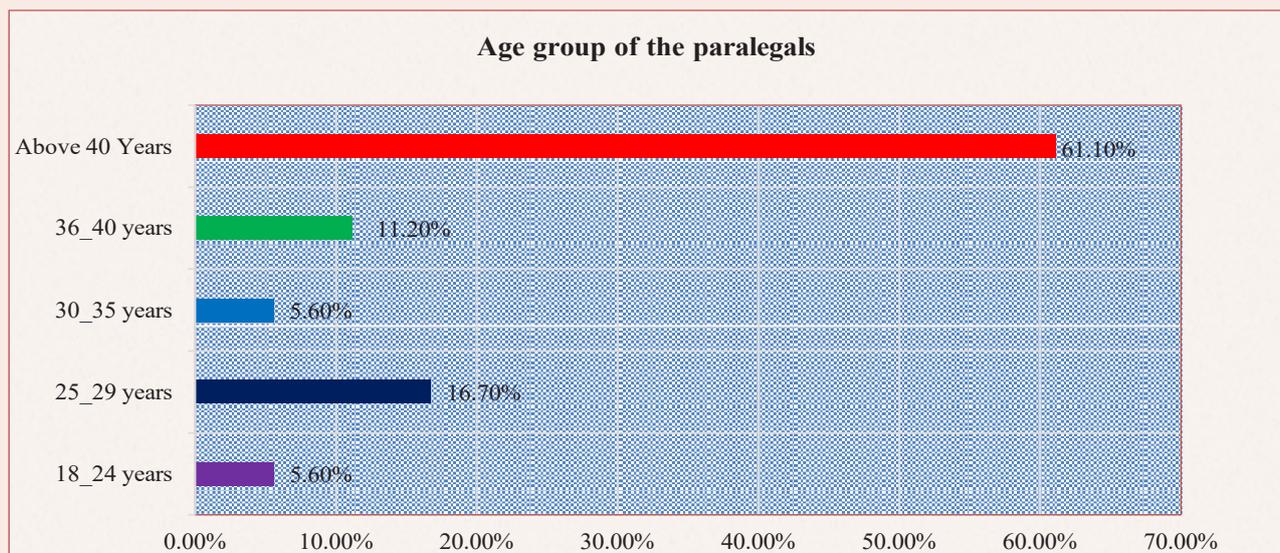


Figure 8 Distribution of paralegals' age Bracket



In the bar graphs above, 61.1% of the paralegals being over 40 years and another 16.7% in the age bracket 25-29 years points to the fact that these numbers have a co-relation with financing of paralegals bearing in mind that community paralegals in Kenya are usually not paid in practice and are treated as “volunteers” and it’s only the stable financially that are able and available to offer legal aid services.

Among the sources of livelihoods listed in the table below, 32% of paralegals are businesspeople followed by farming and small business at 11% each which may be construed to mean that paralegals are in self-employment which guarantees an element of independence. Moreover, self-employment avails the paralegal the latitude to attend to the demands of paralegals.

Table 9 - Distribution of Paralegal livelihoods

	Frequency ( number of respondents)	Percent
BOM member	1	3%
Casual worker	2	5%
A farmer	4	11%
A teacher	1	3%
Administrator	1	3%
Businessperson	12	32%
Community worker	3	8%
Electrician	1	3%
Journalist	1	3%
Poultry farming	3	8%
Self employed	2	5%
Small Business	4	11%
Supermarket attendance	1	3%
Tailoring	1	3%
<b>Total</b>	<b>37</b>	<b>100%</b>

Some paralegals receive training, logistical support, and direct funding support from their umbrella NGOs/CSOs including allowances to meet day-to-day expenses. A community paralegal in Kilifi County, Kenya mentioned:

*We got support from Kituo cha Sheria in 2016 of KES 10,000 for office operations per month.*

### **Paralegal Kilifi**

The Kenya Legal Aid Act 2016, section 68 (2) and (3) state that:

- “(2) An accredited paralegal shall not demand payment of a fee from a person who qualifies for legal aid under this Act.
- (3) An accredited paralegal who demands payment of a fee as specified under subsection (2) commits an offence.”<sup>63</sup>

Likewise, Section 59 (1) and (2) of the Zambia Legal Aid Act 2021 states that:

- (1) A practitioner, legal assistant, paralegal or legal aid service provider shall not demand, request or receive legal fees from a legally aided person in relation to services rendered under this Act.
- (2) A practitioner, legal assistant, paralegal or legal aid service provider who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding ten thousand penalty units.

However, Section 85 (2) of the Kenya Legal Aid Act 2016 does not proscribe remuneration of paralegals by the training or parent organization.<sup>151</sup> During field work in Kenya, the researchers documented the voices of community paralegals on sustainability challenges and financing models that were most preferred to them. The following are voices from the field.

R4: I finance myself whenever I am called upon; I always use my money because I know it is a calling and am always at peace when I do the work. We always use our money or even sell our items to finance the work.

R5: We always volunteer ourselves. In terms of finances, we do it from our sources only the trainings have been facilitated. We just help the society to solve disputes;

R3: We just volunteer. What we do is we just understand the problems of our community and choose to help them. We just heed their calls and sacrifice the little that we have to help them. We would request it if we can be facilitated;

R6: We finance ourselves from our pockets. Training has been facilitated by organizations. The office that we have was financed by Kituo cha Sheria, but we make monthly contributions to pay the rent whereas we talk now we have rent arrears of 2 months. Sometimes it is only one person who volunteers to pay for us. It is a very big challenge because like now we have two ladies who cannot be able to offer paralegal services because their husbands have declined to give them permissions due to the expenses involved. The work is so hard without resources but we have to do it because of finances. I have almost liked 13 cases pending because of finances. If well-wishers do not support us then the justice center will be grounded;

R3: We finance ourselves and sometimes we are not able to and our paralegal services are needed because we help so many people.

FGD with paralegals: Uasin Gishu County

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<sup>63</sup> Laws of Kenya, The Legal Aid Act, Chapter 16A [Act No. 6 of 2016] <http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2016A> accessed 22 May 2024. After the writing of the report, the NLAS developed the Legal Aid Fund Regulations 2024 which have gone through public participation and stakeholder validation. The Legal Aid Fund Regulations provide for a stipend of Kshs 20,000 (USD 157.5) for accredited paralegals who handle cases or other forms of legal empowerment work on behalf of the NLAS. This will be a very positive step towards state financing for justice services by community paralegals that choose to be accredited by the state. The Regulations still have a long way to go before they are approved and gazetted for implementation.

*“...I would like paralegals to be supported a lot. I would recommend the State to allocate money to the paralegal society of Kenya where all paralegals would be able to access the funds when they need them....” Individual interview with the paralegal: Mombasa County.*

*“... The Law society of Kenya or the courts should finance the paralegals because paralegals reduce the work of these people. Almost 87% of courts work is done by paralegals and what goes to court is just like a drop in an ocean. That is why CJ Mutunga came up with alternative justice systems to reduce congestion in the courts. The courts, which are the government, should look at these people...” Expert interview: Kitui County.*

R4: I finance myself whenever I am called; I always use my money because I know it is a calling and am always at peace when I do the work. We always use our money or even sell our items to finance the work. R5 We always volunteer ourselves. In terms of finances, we do it from our sources only the trainings have been facilitated. We just help the society to solve disputes; R3 We just volunteer. What we do is we just understand the problems of our community and choose to help them. We just heed their calls and sacrifice the little that we have to help them. We would request it if we can be facilitated. **FGD with paralegals: Uasin Gishu County**

R6: We finance ourselves from our pockets. Training has been facilitated by organizations. The office that we have was financed by Kituo Cha Sheria, but we make monthly contributions to pay the rent where as we talk now we have rent arrears of 2 months. Sometimes it is only one person who volunteers to pay for us. It is a very big challenge because like now we have two ladies who cannot be able to offer paralegal services because their husbands have declined to give them permissions due to the expenses involved. The work is so hard without resources but we have to do it because of finances. I have almost liked 13 cases pending because of finances. If well-wishers do not support us then the Justice Centre will be grounded;

R3 We finances ourselves and sometimes we are not able to and our paralegal services are needed because we help so many people.  
**FGD with paralegals: Uasin Gishu County**

The study notes that, paralegals have no clear specific and reliable source of funding regarding the services they offer to the community as legal aid advisers although a good number deem it as a vocation. However, as discussed in the literature, law and policy review chapter, paralegals serve clients for as long as they can sustain themselves with alternative means. However, for many, pressing livelihood needs impede their ability to remain active over a long stretch of time. Therefore, remuneration as an incentive and meeting the costs of logistics to minimize abandonment of the paralegal profession for livelihood reasons is a step in the right direction. The support some receive and the funds they get are not enough to meet their basic needs and therefore unlikely to be able to offer quality services.

#### 4.2.6 Sustainability of Legal Aid-Financing

Legal aid in the ancient times was viewed as a charity and the responsibility of providing legal assistance to the poor was left to private lawyers, religious and charity institutions when it did not involve judicial proceedings.<sup>64</sup> This is what is called the poor man’s lawyer doctrine<sup>153</sup> but shifted from sympathizers of

64 Kaguru Macharia, ‘Right to Legal Representation in Criminal Proceedings in Kenya: A Case for with Prejudice Appeals in the Court of Appeal’ (2017) SSRN <https://ssrn.com/abstract=3067885> or <http://dx.doi.org/10.2139/ssrn.3067885> accessed 22 May 2024.

the poor to state responsibility. The dictates of article 48 of the Kenya Constitution 2010<sup>65</sup> is that the State must ensure access to justice for all in line with the spirit of UDHR and ACHPR.

As captured previously in this report, the concept of volunteerism is abused because volunteerism predominantly means using one's expertise and time without facilitating and or providing disbursements costs required to render the service. Waruhiu and Otieno (2014) argue that inadequate pay or voluntary services have had a negative impact in the quality and consistency of paralegal services in the community.<sup>66</sup> The way volunteerism is done is not sustainable and paralegalism under this arrangement will only provide sporadic services which may cause more harm than good. The UN agencies and other international organizations fully finance their volunteers with stipends to enable them effectively discharge their mandates.

The researchers proceeded to collect the views of legal empowerment organizations in Kenya on the financing question. Interesting perspectives were shared. The voices of legal empowerment practitioners were as follows:

*“I have really asked the legal empowerment organizations to shape the theory of change on legal empowerment beyond bourgeoisie charity. You can do legal empowerment from a charity perspective but with the right perspective. The case of Brazil Movement towards right perspective otherwise there has been emergence of commercialization of paralegalism unlike Catechism who do a lot without pay hence sustainable.” A Member of AJS*

*The State should budget for paralegals as its obligation in facilitating access to justice. This will motivate them because some have families. We as CLEAR do provide stipend for those that are active. CLEAR-Mombasa Coordinator*

*Sustainability has to be looked from three perspectives namely, technical, financial and social sustainability. In technical sustainability we ensure proper training of paralegals and develop good ICT materials for use by the paralegals. On financial sustainability, we dedicate a budget towards facilitating our paralegals and have an online radio programme providing legal aid. Lastly, sustainability of our programmes is part of organizational agenda. However, we are advocating and pushing for state funding. Regarding social sustainability, we have established justice centres in several places in the Country and trained prison Officers so that in case we face financial short falls we can rely on them to continue providing legal aid. Legal Resources Representative*

#### 4.3 Comparatively document for dissemination of best practices on legal recognition of Paralegalism in Kenya and Zambia

##### 4.3.1 Similarities in Legal Frameworks Kenya and Zambia

Kenya and Zambia have robust and progressive legal frameworks espoused in the Legal Aid Act 2016 and 2021 respectively. In Kenya, section 68 (1) provides on how one should apply to practice paralegalism and the same applies to Zambia under Section 18 of the Act 2021. Under the same Act, the Kenyan law under Section 2 provides on how one acquires accreditation the same applies to Zambia under Section 20 (2) of the Act. However, even though Kenya and Zambia being replete with a robust Legal Aid Acts, the paralegals still have limitations when it comes to issues of representation in court and drafting pleadings in their name.

65 <http://www.kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=Const2010>

66 Waruhiu J and J Otieno (2014) 'Access to Justice: The Paralegal Approach' in The Legal Profession and the New Constitutional Order in Kenya (Nairobi: Strathmore University Press)

### **4.3.2 Contrasts in legal Frameworks in Kenya and Zambia**

Section 35(2) of the Kenya Legal Aid Act 2016 itemizes cases that can benefit from legal aid whereas in Zambia the Minister in charge in consultation with the Chief Justice may specify categories of cases to benefit from legal aid under Section 49 of the Legal Aid Act 2021. A critical look at the foresaid contrast, Zambia may need to relook at its legal framework with a view of discarding discretionary powers bestowed on the Minister in Charge and the Chief Justice in specifying categories of cases to benefit from legal aid.

In view of the above, despite Kenya coming late in the formal paralegalism space, it has an explicit legal framework as opposed to the Zambian legal framework which is clothed with a discretionary clause especially on cases that should benefit from legal aid.

### **4.3.3 Legal frameworks elements of recognition in Kenya and Zambia**

Formulation of the National Legal Aid Policy, clear training standards, qualifications, and mandates are established in Zambia for paralegals and the enactment of the National Legal Aid Act 2021. On the other hand, Kenya's stakeholders' advocacy and a consultative process, especially PASUNE, resulted in the Kenyan government enacting the Legal Aid Act 2016, which recognizes paralegals so long as they are supervised by an accredited legal aid organization or advocate of the High Court of Kenya.

Under the law, paralegals can be accredited by the National Legal Aid Service (the successor to NALEAP) or by association with a civil society organization accredited as a legal aid provider. While in Zambia, the legal elements of recognition revolve around training, standardization, and qualification, and in Kenya, recognition revolves around supervision and accreditation.

From the extensive reading, training is of critical importance to actualize recognition. Therefore, it is imperative for actors in the justice sector lobby for an expanded mandate of the National Legal Aid Service in Kenya.

### **4.3.4 Institutional frameworks in Kenya and Zambia**

In Zambia, paralegals are organized in three categories (level 3, level 2, and level 1) whereby qualification requirements match the various levels of specialization. The Technical Education, Vocation, and Entrepreneurship Training Authority (TEVETA) officially approved the establishment of the three-level training schemes for paralegals. The Technical Education, Vocation, and Entrepreneurship Training Authority (TEVETA) officially approved the newly established three-level training scheme for paralegals in Zambia, i.e. clear training standards, qualifications, and mandates are established for paralegals.

The TEVETA-approved documents include training charts, syllabus, and job profiles for all the three levels of paralegals in addition to training providers. TEVETA developed reference paralegal training manuals at all the three levels. Based on Kenya's positive experiences with the Kisumu pilot and extensive consultation with civil society, NALEAP became a strong proponent of establishing a national system for recognizing and accrediting paralegals. But looking at the TEVETA-approved three-level training schemes for paralegals in Zambia; it clearly brings out an element of specialization as opposed to generalities found in the Kenyan context.

Besides this, approval of training standards and qualifications with a clear mandate for paralegals is seen as a sure element in enhancing recognition. This is in contrast to Kenya where paralegals do not have a clear mandate. On this account, Kenya is lagging behind as compared to its counterpart Zambia.

## CONCLUSIONS AND RECOMMENDATIONS

### 5.1 Conclusion

#### 5.1.1 Training

The study posits that training is a key element in paralegalism. All the respondents (paralegals, legal empowerment organizations and expert informants) allude to this fact despite slight divergent opinions on duration and mode. Among paralegals interviewed, 86% attended one week training by NGOs/CSOs. All of the community paralegals interviewed in this study asserted that they needed continuous learning and capacity building as the law is dynamic and constantly shifting. The one-week training programmes, which were far spaced, only increased the appetite for more capacity building for the community paralegals.

These short paralegal training programmes mostly run by NGOs/CSOs are contrasted with the formal paralegal course offered by formal institutions such as Kenya School of Law and the Mount Kenya University (KSL and MKU). The formal paralegal course takes two years with an elaborate admission criterion an approved curriculum and accredited trainers. For the indigents the duration of training for the paralegals did not necessarily affect their perceptions as long as the paralegals were knowledgeable and experienced.

On the mode of training, KSL and MKU undertake coursework through lectures, moot courts, community outreach culminating into examination. On the other hand, PSK member organizations use a standardized training manual and curriculum that has been submitted to CLE waiting approval. Most paralegals (95%) (n=36) were trained by use of a training manual. In some instances, the training programme was modified to suit the needs of the paralegal organization which needs were based on the prevailing legal needs of the community.

The study observes that among the paralegals, a majority (23%) (n=36) underwent training on land laws and succession. This is followed by labour laws (10%), GBV cases and court representation at 8% (n=36) respectively. Children law and ADR at 7% (n=36) while Matrimonial properties and family issues at 6 % (n=36). This confirms that the training programmes of community paralegals run by legal empowerment organizations is theme based and need driven.

In conclusion, continuous training of paralegals is essential and crucial to keep paralegals updated with the evolving legal landscape and a sure way of sustaining the paralegal programs for their long-term effectiveness in promoting access to justice and training should continue being thematic to suit various contexts but with common units that cuts across legal literacy.

#### 5.1.2 Formalization

The formalization of paralegalism involves setting standards for registration, qualification, and conduct. Experts suggest that the government should identify and accredit qualified paralegals, setting clear boundaries on their roles. The study concludes that formalization should ensure that only qualified paralegals are accredited and their scope of work is clearly defined to enhance accountability and competence. At the same time, the study notes that formalization should not be used by the state as a tool to curtail and restrict paralegal practice to the detriment of communities. Community paralegals should have the

option to choose to formalize their practice through accreditation by the state or remain self-regulated by a paralegal body that sets standards of practice and conduct monitored by fellow paralegals.

The study also concludes that legal and policy frameworks are useful in recognizing the important roles and functions of community paralegals hence conferring them state legitimacy. However, practitioners should remain alive to the potential pitfalls of laws enforced by states that may have a tendency of over-regulating the movement hence diminishing the gains of grassroots access to justice through paralegalism.

### 5.1.3 State Recognition

As informed by extensive reading, recognition entailed ratification, acknowledgement, acceptance, appreciation, endorsement, accreditation, approval, affirmation primarily by the State. Examples of state recognition that the study has singled out are the case of LRF Paralegals participating in the Parole Board of the Kenya Prisons Service and serve on the Case Management and Anti-Corruption Committees of the Probation and Aftercare Department. This is buttressed by the involvement of paralegals in the Court Users Committees, manning of Judiciary customer desks to advise the general public on court procedures, paralegals serving as volunteer children's officers that monitor and assist with child protection cases.

Community recognition also plays a significant role, as evidenced by the active participation of paralegals in resolving numerous cases. Recognition entails not only state endorsement but also community acceptance and the acknowledgment of paralegals as essential contributors to the justice system.

### 5.1.4 Financing

The study observes that many paralegals operate without financial support, relying on personal resources or minimal allowances from CSOs. Most paralegals are volunteers, which impacts their availability and sustainability. The study suggests exploring social enterprise models and securing funding from national and county governments, as well as public-private partnerships, to ensure the long-term viability of paralegal services.

## Recommendations

### Training

**NLAS:** Strengthen NLAS's capacity to approve curricula and supervise paralegal training. Training should recognize practical experience and adapt to local contexts, ensuring a standardized yet flexible curriculum. Introduce multiple levels of paralegal certification based on education and experience, like the Zambian model.

**TEVETA:** Increase the number of active paralegals in Zambia and recognize the role of CSOs in providing legal aid.

**Civil Society:** Foster strategic collaborations with various stakeholders to mainstream paralegalism. Train community paralegals on e-filing systems to enhance their efficiency.

**Judiciary:** Establish ICT support centers in courts to reduce costs and save time.

**Prison Department:** Recruit and train more paralegals in prisons to support prisoners' rights.

**CLE:** Decentralize and revitalize the Council of Legal Education to approve more training institutions.

## Formalization

**NLAS:** Finalize the national policy and develop a monitoring strategy to ensure continuous assessment and implementation of the Legal Aid Policy. Integrate legal needs into national surveys and enact an Access to Justice Act.

**Judiciary:** Develop guidelines for implementing traditional justice mechanisms as platforms for paralegalism.

**PSK & PAN:** Develop a database of community paralegals and encourage more women to join the profession.

### Recognition

**NLAS:** Increase visibility through community outreach and include representatives from the Paralegal Society of Kenya on the NLAS Board.

**Civil Society:** Enhance paralegal recognition through benchmarking, exchange programs, and collaborations with advocates.

**Media:** Use mass media to raise awareness about paralegalism.

**Parliament:** Amend laws to recognize paralegals as intermediaries and ensure mandatory legal aid for defendants facing substantial injustice.

## Financing

**State/Government:** Provide stipends for paralegals and secure budget allocations for legal aid. Affiliation with bodies like the Ombudsman's office can facilitate funding while maintaining independence.

**NLAS:** Operationalize the Legal Aid Fund and consult with paralegals on funding models.

**Civil Society:** Ensure proper documentation and frequent, context-based training for paralegals. Promote social visibility and community-driven initiatives to support sustainable paralegal services.

In conclusion, the study underscores the importance of structured training, formalization, recognition, and sustainable financing to enhance the effectiveness and reach of paralegals in Kenya and Zambia. By addressing these areas, both countries can strengthen their justice systems and improve access to legal services for all citizens.

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## CHAPTER SEVEN: APPENDICES

### *Appendix 1: List of FGDs reached*

Region	County	Sub County	Justice Center	Individual Paralegal		Individual indigent	
				Male	Female	Male	Female
<b>Coastal</b>	Mombasa	Likoni	Wema 1	4	4	3	7
		Kisauni	Wema 2	4	5	9	1
		Kisauni	Kicodi	4	3	6	4
	Kwale		Lamukani	4	3	3	5
	Kilifi		Marereni	3	4	4	4
<b>Nairobi</b>	Nairobi	Kasarani	Korogocho	4	3	5	3
		Kamukunji	Kamukunji	5	4	4	5
		Kibra	Kibra	3	4	6	3
<b>Nyanza</b>	Kisumu	Nyando	Awasi	5	3	3	5
<b>Rift Valley</b>	Uasin Gishu	Eldoret North	Eldoret	4	2	5	1
	Nakuru	Nakuru Town		3	4	4	2
<b>Eastern</b>	Kitui	Kitui Central	Kitui Town	4	2	2	4
<b>Total</b>				<b>47</b>	<b>41</b>	<b>54</b>	<b>44</b>

Appendix 2: Combined list of respondents interviewed

Region(s)		Category of interview				
		Expert and Legal Empowerment Interviews	KII paralegals	FGD with Paralegals	Indigent interviews	FGD with Indigent
Nyanza	Kisumu	KII with police officer Nyando	KII with paralegal	FGD with paralegals	KII with indigent	FGD with indigents
		KII with Social Justice Centre	KII with paralegal		KII with indigent	
		KII with Legal Empowerment	KII with paralegal		KII with indigent	
		KII with NLAS representative	KII with paralegal		KII with indigent	
		KII with ward representative	KII with paralegal		KII with indigent	
		KII with County Commissioner	KII with paralegal		KII with indigent	
		KII with prison officer	KII with paralegal			
			KII with paralegal			
	<b>Total</b>	<b>7</b>	<b>8</b>	<b>1</b>	<b>6</b>	<b>1</b>
Easter n	Kitui	KII with LSK	KII with paralegal	FGD with paralegals	KII with indigent	FGD with indigent
		KII with ICJ	KII with paralegal		KII with indigent	
		KII with ACC	KII with paralegal		KII with indigent	
		KII with LRF	KII with paralegal			
		KII with legal Resource Foundation Representative				
		KII with prison officer				
		KII with prison manager				
		KII with OCPD				
		KII with senior Chief				
	<b>Total</b>	<b>9</b>	<b>4</b>	<b>1</b>	<b>3</b>	<b>1</b>

<b>Nairobi</b>	<b>Nairobi</b>	KII with chief	KII with paralegal	FGD with paralegals	KII with indigent	FGD with Indigent
		KII with Assistant Chief	KII with paralegal	FGD with paralegals	KII with indigent	FGD with Indigent
		KII Police	KII with paralegal	FGD with paralegals	KII with indigent	FGD with Indigent
		KII with PSK	KII with paralegal		KII with indigent	
		KII with LSK	KII with paralegal		KII with indigent	
		KII with Legal Resource Foundation Trust	KII with paralegal		KII with indigent	
		KII with Heads of Paralegals	KII with paralegal		KII with indigent	
		KII with NLAS acting director			KII with indigent	
		KIII with AJS vice chair				
		KII with Registrar School of Law				
		KII with LRF				
		KII with KNCHR				
		KII with ACC				
		KII with KSL				
		KII with LRF executive director				
		KII with FIDA				
		KII with AG office representative				
		KII with Ombudsman representative				
	<b>Total</b>	<b>18</b>	<b>7</b>	<b>3</b>	<b>8</b>	<b>3</b>
<b>Rift Valley</b>	<b>Nakuru</b>	KII with Chief	KII with paralegal	FGD with paralegals	KII with indigent	FGD with beneficiaries
<b>Rift Valley Coastal</b>	<b>Nakuru Total</b>				KII with Indigent	

<b>Rift Valley Coast al Coast al</b>	<b>Nakuru Total Uasin Gishu</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	
		KII with LSK	KII with paralegal	FGD with paralegals	KII with Indigent	FGD with Beneficiary	
	<b>Uasin Gishu Total</b>	KII with chief	KII with paralegal		KII with indigent		
	<b>Uasin Gishu Total Momba sa</b>	KII with police commander	KII with paralegal				
		KII with prison officer	KII with paralegal				
		<b>4</b>	<b>4</b>	<b>1</b>	<b>2</b>	<b>1</b>	
		KII with Transparency International	KII with paralegal	FGD with paralegals	KII with indigent	FGD with Beneficiary	
	<b>Momba sa</b>	KII with ICJ	KII with paralegal	FGD with paralegals	KII with indigent	FGD with Beneficiary	
<b>Coast al</b>	<b>Momba sa</b>						
			KII with Legal Empowerment	KII with paralegal	FGD with paralegals	KII with indigent	FGD with Beneficiary
			KII with Assistant County Commissioner	KII with paralegal		KII with indigent	
			KII with Chief	KII with paralegal		KII with indigent	



	<b>Grand Total</b>	<b>48</b>	<b>36</b>	<b>12</b>	<b>46</b>	<b>12</b>

*Appendix 2: List of Justice Centres reached*

Regional blocks	Community Justice Centres	Correctional Justice Centres
Coast Province with the following counties; Mombasa, Kwale and Kilifi	Kisauni Community Justice Centre Stretchers Community Justice Centre Wema Community Justice centre	Shimo La Tewa
Nairobi area	Kibera Community Justice Centre Kamukunji Community Justice Centre Korogocho Community Justice Centre	
Eastern Region- Kitui County	Kitui Community Justice Centre	Kitui prison
Rift valley Region Nakuru County Uasin Gishu County	Nakuru Community Justice Centre Uasin Gishu AJS centre	Kisumu Main Prison
Nyanza Region Kisumu County	Nyando Community Justice Centre	Eldoret Main prison

*Appendix 3: Interviewed Participants According to Province in Zambia*

Province	District	Number of Participants/District	Total Number of Participants / Province
Lusaka	Lusaka	35	35
Northern	Kasama	1	1
Luapula	Mansa	6	6
Muchinga	Nakonde	1	1
Copperbelt	1.Ndola 2.Kitwe 3.Luanshya 4.Chingola	8	21
		11	
		1	
		1	
Central	Kapiri Mposhi Mukushi	1	3
		2	
Western	Kaoma/Nkeyema	1	1
North-west-ern	Solwezi	15	15

Eastern	Chipata	16	36
	Petauke	13	
	Chipangali	2	
	Kasenengwa	5	
Southern	Monze	2	8
	Mazabuka	1	
	Choma	3	
	Namwala	1	
	Gwembe	1	

**Combined data collection tools for the Comparative Study on Paralegalism in Kenya & Zambia  
Community-based Paralegal/Correctional facility-based Paralegal**

- Researcher code:
- Name of Researcher:
- ID of the participant:
- GPRS coordinates:
- County/District:
- Location:
- City/Village:
- Date of Interview:
- Date of commencement of offering services:
- Gender:
- Date of Birth:
- Source of livelihood:

Who is a paralegal?

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What services do you offer as a paralegal?

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Are there any other services that you offer in the community?

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Where do you work?

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How do you sustain yourself?

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What kind of training on paralegalism have you undergone? Have you undergone any training on paralegalism? (The researcher should capture; the training body, dates of training, skills acquired, duration, accreditation, training materials given)

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How have you applied the knowledge you acquired in the training? (The researcher should request to see the training programme to understand the topics covered and probe accordingly)

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How satisfied are you with the training offered? Please explain.

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How was the training conducted? (The researcher should capture; content, methodology, philosophy, frequency)

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What internal challenges have you encountered in offering the services and how did you navigate them? (The researcher should capture; training adequacy, supervision and oversight within the justice centre, financial challenges, availability of materials, outreach, service delivery in terms of walk-in clients)

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What external challenges have you encountered in terms of access to institutions such as state and non-state, relationship with the community and financial support?

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What is your understanding of State regulation on paralegalism? (The researcher should have in mind that the definition of state regulation for this study is the situation the state put in place a policy framework to almost/control and regulate the work of paralegals i.e., their trainings, qualifications, nature of work, service delivery)

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What is your view on State regulation on paralegalism?

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Do you want your services as a paralegal to be regulated by a government body?

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If yes, what aspects of work do you want to be regulated and if no, why?

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How do paralegals work with the State and Non-State actors?

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What do you understand about State recognition of paralegals? (The researcher should have in mind that the definition of State recognition for this study is where the state acknowledges the role of paralegals in access to justice.)

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Is it necessary to get State recognition? If yes, how would you want the recognition to look like? If not, why?

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What is your view on community recognition of paralegals? Give examples.

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Who finances your services as paralegals?

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What would you recommend for the financial sustainability of paralegal services?

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What do you think about the paralegals independence should they be financed by the state?

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What is the proposed model of financing?

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Where will you like the resources to be allocated the most (The researcher should capture priorities of financial allocation either Stipend, Maintenance for the centres furniture at the justice centres)

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How do paralegals collaborate with lawyers?

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What is your perception on paralegals' misconduct like charging a fee for their services and impersonating lawyers? Do these fears exist? Give examples?

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What achievements have you had as a paralegal?

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What additional information would you like Kituo Cha Sheria and Paralegal Alliance Network (PAN) to know in regard to this research?

.....  
.....  
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**The indigent (A community member who is a beneficiary of the paralegal services)**

- Name of Researcher:
- Code of the participant:
- GPRS coordinates:
- County/District:
- Location:
- City/Village:
- Date of Interview:
- Date of receiving legal aid services from a paralegal:
- Gender:
- Date of Birth:
- Source of livelihood:

According to your understanding, who is a paralegal? (The researcher should capture the existence of paralegals in the community, justice centre, their roles, the community’s recognition of paralegals)

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.....

What is your experience in dealing with paralegals? (The researcher should allow the participant to explain himself/herself exhaustively and probe for clarity and closure. Capture the paralegal services received, when, where, the status and nature of the case etc.)

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Why did you go to a paralegal office?

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What advantages have you encountered in accessing justice through paralegalism?

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What disadvantages have you encountered in accessing justice through paralegalism and how did you navigate them?

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What do you understand by the term State recognition of paralegals?

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What is your view on State recognition on paralegalism?

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What is your view on community recognition of paralegals? Explain how? Give examples.

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Who do you think should finance the work of the community-based paralegals?

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What additional information would you like Kituo Cha Sheria and Paralegal Alliance Network (PAN) to know in regard to this research.

.....  
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## Legal Empowerment Organization/Paralegal Organization Representative

- Name of Researcher:
- Code of the participant:
- GPRS coordinates:
- County/District:
- Location:
- City/Village:
- Date of Interview:
- Date of commencement of offering services:
- Gender:
- Date of Birth:
- Source of livelihood:

As a legal empowerment organization, how do you define a paralegal?

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Do you train paralegals? (The researcher should capture training duration, curriculum, methodology, gender of trainees from attendance sheets, trainees' selection process, training materials, photos, course outline)

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What is your view on the curriculum developed by the State?

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What do you understand by the term state recognition of paralegals?

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What is your view on State regulation on paralegalism?

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What is your view on State recognition on paralegalism?

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What is your view on community recognition of paralegals? Explain how? Give examples.

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Who do you think should finance the work of community- based paralegals?

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How have you ensured sustainability of paralegal programs in your organization?

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What has been the impact in promoting LE through paralegalism?

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What are the advantages of using a paralegal approach in legal empowerment?

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What are the disadvantages of using a paralegal approach in legal empowerment?

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What additional information would you like Kituo Cha Sheria to know in regard to this research.

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**Office of the AG/ NLAS, Judiciary, PSK, County Attorneys, County/ District Administration, Local Government, County/District Government, Ass. County/District commissioner, Local chiefs, District**

- Commissioner
- Name of Researcher:
- Code of the participant:
- GPRS coordinates:
- County/District:
- Location:
- City/Village:
- Date of Interview:
- Date of commencement of offering services:
- Gender:
- Date of Birth:

Define a paralegal?

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Distinguish between a community-based paralegal and a paralegal?

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Where do paralegals offer their services?

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What do you understand by State regulation and recognition of paralegalism?

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What is your view on State regulation and recognition of paralegalism?

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What are the changes that come with statutory regulation of paralegals in your service delivery?

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How are paralegals adapting to the State regulation of paralegals in service delivery?

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How has the statutory regulation and recognition of paralegals affected your work in the community?

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What are the drawbacks of State regulation and recognition of paralegals?

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What is your view on community recognition of paralegals? Give examples.

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How do you collaborate with institutions like police and courts with the introduction of new reforms on regulations of paralegals?

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How do you work with legal empowerment organizations that support paralegalism work?

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How are the paralegals funded?

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Who do you think should finance the work of community-based paralegals?

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How have you ensured sustainability of paralegal programs in your organization?

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How do you collaborate with paralegals that work with legal empowerment organizations?

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What changes have you experienced with partner institutions such as the police and courts on matters regulations?

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What is your view on community recognition of paralegals? Give examples.

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What are your views on State recognition of paralegals?

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What defines this recognition?

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Which legal reforms are underway in line with access to justice? How will they influence paralegals?

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What is your view on the paralegal training programme? How should it be conducted? (The researcher should capture duration, Methodology, the trainers, and Philosophy of the training)

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What are the advantages and disadvantages of using a paralegal approach as strategy for legal empowerment?

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How should paralegals and lawyers collaborate?

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Who finances the services offered by the paralegals?

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What additional information would you like Kituo Cha Sheria and Paralegal Alliance Network (PAN) to know regarding this research.

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