

FACILITATING ACCESS TO JUSTICE THROUGH PARALEGALISM IN ZAMBIA

Policy Brief

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A. Background

In numerous parts of Africa, a significant transformation is underway in how legal assistance is delivered to individuals facing legal challenges. Many Africans, too poor to afford lawyers and lacking support from inadequate or non-existent state-funded legal aid systems, find themselves at the mercy of uncompromising criminal justice systems that is never lenient to the indigents and often times tented with allegations of corruption. However, there is now a shift occurring in the justice provision as paralegals, who are more affordable and accessible than lawyers. Paralegals are empowering the poor and marginalised communities in their interactions with law enforcement officers and the justice system as a whole. Across more than two dozen African countries, paralegals play a crucial role, especially in the initial stages of civil and criminal justice proceedings. Their efforts have led to a decrease in unnecessary pre-trial detention, expedited case processing, and reduced case backlogs, while at the same time, promoting alternative dispute resolution methods and mechanisms.

Community based paralegals work to provide practical solutions to enhance access to justice through various means, such as offering basic legal advice, legal information and legal education, facilitating mediation and alternative dispute resolution, advocating for legal rights, and conducting community mobilisation for public legal awareness campaigns in the communities they serve. Paralegals are deeply attuned to local contexts and needs, often speaking local languages, possessing knowledge of local justice systems, and have over the years gained community acceptance. As evidenced in the comparative study on paralegalism in Kenya and Zambia, paralegals in many African settings navigate between formal and informal justice systems, ensuring adherence to the rule of law and human rights standards.

This policy brief provides a thorough analysis of the current shortcomings or lack of institutional frameworks and procedures that facilitate paralegalism in Africa, focusing on the Zambian experience. It draws upon the extensive Study commissioned by Kituo Cha Sheria and the Paralegal Alliance Network of Zambia to gain valuable insights. The research undertook a comprehensive assessment of the capacity building and training, legal recognition, and financing of paralegals in Zambia, aiming to capture and distribute exemplary approaches throughout the continent.

This Policy Brief aims to stimulate debate and advocacy on paralegalism in Zambia by examining its complexities. This emphasises the immediate needs necessity to tackle the structural obstacles that impede the efficient operation of paralegals and emphasises the significance of creating strong policies and mechanisms to assist them in their crucial role of improving access to justice.

As society progresses towards a future characterised by universal access to justice, it becomes crucial for various stakeholders from all sectors to unite in advocating for the promotion and adherence to the principles of paralegalism. By adopting the proposals delineated in this brief, we can establish, where it does not exist, a legal framework characterised by fairness and inclusivity, thereby safeguarding the rights and dignity of all individuals in Africa and other regions.

1. Delivery of Legal Aid Services

The Zambian 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. The legislation for the provision of legal aid in the country is comprehensive considering the different models outlined in which legal aid should be provided. The scope to provide legal aid is wide and allows judicare system, paralegal service provision and others.

Policy Weaknesses

The Legal Aid Act defines legal information as information on legal rights, responsibilities, procedures, available remedies and how to exercise them. It is an offence for any other person other than paralegals, legal aid assistants, legal assistants and legal practitioners or any other such person registered by the Legal Aid Board to provide legal aid. This is a problem and can disadvantage front desk persons in legal aid institutions who also provide legal aid to clients when they visit.

Recommendations

Amend the provision in the Legal Aid Act to exempt front desk officers who also provide legal information.

2. Capacity building and Training

In Zambia, first training of paralegals was done in 1998 by the Catholic Commission for Justice and Peace, Legal Resources Foundation, Young Women Christian Association, and the Zambia Civic Education Association in collaboration with University of Zambia School of Law. In 2000, another training was done by the Law and Development Association (LADA), but however, this was targeting community based paralegals. In the same 2000, the Catholic Commission for Justice and Peace, Legal Resources Foundation, Young Women's Christian Association, the Zambia Civic Education Association signed a Memorandum of Understanding establishing the Paralegal Alliance Network (PAN) to provide a framework for improved coordination, communication, collaboration, and experience amongst the four CSOs. The main objective of the Alliance was to standardise the training of Paralegals in Zambia and collaborate to provide legal aid services to poor communities. Following a mapping exercise subsequently carried out in 2007 with support from GIZ and the Danish Institute of Human Rights, PAN membership was expanded and stands at 25 CSOs as at 2022. This expansion led to the revision of the training mechanism by bringing in the participation of TEVETA in the training of Paralegals. PAN has worked hard to harmonize and standardise training programmes for paralegals in Zambia, and over 1,000 paralegals were trained by PAN and other paralegal organisations between 1998 and 2017.

Currently, Zambia has a national training scheme in paralegal studies which cuts across three levels of qualification accredited by the Technical Education, Vocational and Entrepreneurship Training Authority (TEVETA). Level 3 is the Skills Award in Paralegal Studies where community based paralegals are trained, Level 2 is the Trade Test Certificate in Paralegal Studies, and Level 1 is the Certificate in Paralegal Studies. Close to 1,000 paralegals have been trained since 2018 when the National Legal Aid Policy was approved and 2019 when the training scheme was first used.

Policy Weaknesses

1. Trainings of paralegals following the approved new scheme, has become costly due to the fact that the training period for all the three levels has increased. This has a negative impact on grassroots CSOs that engage community based paralegals in their work and are not able to raise adequate funding for the trainings.
2. There is no established private sector involvement to sustain the training of paralegals.
3. Inadequate funding for trainings which is a result of non-involvement of the Legal Aid Board and central government in the training of paralegals.

Recommendations

1. There is need for local support on finances for training of paralegals. Government through Legal Aid Board and TEVETA should support trainings of paralegals. This can be done by tapping into skills development fund controlled by TEVETA
2. The Constituency Development Fund (CDF) should also expand the sponsorship of students to include paralegal training.

3. Financing

Section 40 of the Legal Aid Act No. 1 of 2021 established 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. 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.

Policy Weaknesses

1. 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 providers. The policy and the law do not provide for their funding.

Recommendations

1. The Act should provide that paralegal CSOs benefit from the Legal Aid Fund and not only Legal Aid Board and the Legal Practitioners.
2. There should be a policy on legal aid funding that prioritizes coordination of the legal aid fund to ensure contributions by donors and the private sector, in addition to state funds. The funds should be structured in such a way that it paves the way for increased national investment into legal aid services.

4. Legal Recognition

It is widely acknowledged that the recognition of paralegals is marked by various legal instruments, including legislation, regulations, policies, court judgments, and Memoranda of Understanding.

In Zambia, there exist the National Legal Aid Policy and Legal Aid Act stipulating the roles of paralegals. Paralegals are recognised under the Legal Aid Act and the National Legal Aid Policy, and there are clear training standards, qualifications, and mandates for paralegals.

B. Conclusion

This policy brief highlights the crucial role of paralegalism in improving access to justice in Zambia and, by extension, throughout Africa. As stated, community-based paralegals play an important role in bridging the gap between the legal system and marginalised communities by allowing individuals to understand complex legal processes so as to claim their rights.

Despite paralegals' significant services, funding remains a big challenge. However, the proposals presented in this brief provide a road map for correcting these weaknesses and strengthening the foundations of paralegalism in the countries studied.

Implementing these recommendations will improve paralegals' position and effectiveness while also contributing to a more equal and inclusive legal system for all. As we move forward, it is critical that policymakers, legal institutions, civil society organisations, and other stakeholders work together to achieve these objectives and advance justice and rights in our countries.

Let us embrace this moment to promote paralegalism and reaffirm our commitment to justice, equality, and the rule of law in Zambia, and elsewhere.