

FEATURE

Plugging the Legal Aid Gap in Africa: Paralegals to the Rescue?

Stanley Ibe

Introduction

Although they bear the brunt of some perverse justice systems in Africa, many poor people on the continent lack access to legal aid or assistance. Regrettably, the conversation about legal aid often begins and ends with lawyers, who are in short supply and therefore out of the reach of the poor.

Paralegals offer an opportunity to mitigate the crisis of legal aid, one which will probably get worse unless the responsible authorities act fast. In doing so, they do not have to undermine the authority of lawyers or others in the legal aid spectrum. As a matter of fact, this article suggests they will complement the role of lawyers.

There is an urgent need to recognise the role of paralegals across the continent as an additional tier of professionals to support the already existing tiers – law clinics and lawyers – in advancing access to justice for the poor and powerless across the continent. This has become imperative in view of the dwindling ratio of lawyers to populations in many countries in Africa, coupled with an exploding population growth rate unmatched by economic opportunities.

Paralegalism proceeds on the assumption that not every ‘legal’ problem automatically requires the services of a lawyer. Recognising this, and focusing attention on the broad goal of access to justice, creates the incentive for the different tiers of professionals involved in this field to work collaboratively.

Background context

In its report Access to Legal Aid in Criminal Justice Systems in Africa, the United Nations Office on Drugs and Crime (UNODC) (2011) acknowledged that ‘laws governing legal aid recognize a lawyer centered model’. This was back in 2011. Unfortunately, not much has changed today. What is even worse is that lawyer-to-population ratios are abysmal. A few examples help illustrate the situation.

According to estimates by the United Nations Population Fund (UNFPA World Population Dashboard 2019), Nigeria has a population of 201 million and a lawyer population of 105,000 – a ratio of one lawyer to 1,914 people. This statistic does not take into account

that a sizeable number of lawyers are working outside mainstream legal practice and therefore may be unavailable to provide legal aid. It also does not reflect the fact that most lawyers operate from urban areas rather than rural ones, where the majority of the poor reside.

The website of the Law Society of Kenya puts the number of ‘practicing advocates’ at 17,000. For a country of 53.7 million people, that is a lawyer–population ratio of 1: 3,158. It is disturbing, particularly in view of the fact that – as in Nigeria – most of these lawyers operate out of urban areas. Indeed, 63 per cent of Africa’s population lives in rural areas (United

Nations Population Division's World Urbanization Prospects: 2018).

For its part, the Law Society of South Africa (2019) lists the total number of 'attorneys' at 27,200 and 'candidate attorneys' at 7,000 – a total of 34,200 for a population of 59.3 million. Although better than the ratio in Kenya and Nigeria, one lawyer to 1,733 individuals is quite appalling.



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Fixing the problem

To begin a reflection on fixing the problem, it might help to find answers to a rather difficult question: How do you fix the problem of inadequate lawyers in contexts where states are not producing enough lawyers and the lawyers often feel that non-legal professionals have little or no role to play?

The easy answer could be: Get the states to train more lawyers. However, that is pretty complicated, because the infrastructure to do that is not necessarily available, and many states will not prioritise legal aid. Even if states were to overcome this hurdle, there is no guarantee that newly trained lawyers will turn to legal aid as a matter of practice.

The figures from three of Africa's highly populated countries suggest that there are not enough lawyers to confront the continent's growing legal aid challenges. Although these countries have official legal aid institutions designed to provide free legal services to the majority poor, these institutions are often under-resourced and thus barely able to make a significant difference. Besides, they often rely on lawyers in their employment to provide the service.

While it is useful to train more lawyers and help propel them to practise in the public interest, the population growth rate of many countries in Africa makes it fairly difficult for the lawyer-to-population ratio to shift significantly over the short to medium term. Therefore, we probably need to think a bit more strategically about making more personnel available to support legal aid. Given the scenario described above, it is clear that we need to think beyond the legal profession. That takes us back to the question of changing perceptions about non-legal professionals and the value they can bring to the subject of legal aid. Like the medical profession, the legal profession has to recognise that it operates within a universe of challenges that require skill-sets beyond the law and therefore that opening the space for a few more non-legal professionals will be necessary.

In the context of legal aid, I advocate for a tiered system, with lawyers occupying the highest level and non-lawyers – law students and paralegals – the lower tiers. This is necessary primarily because we do not have the numbers but also fundamentally because not every seeming legal problem requires the services of a lawyer. Given the penchant for law enforcement to mass-arrest putative criminal suspects and the requirement in most legal systems for access to legal aid for individuals in this situation, it is critical to recognise, train and deploy paralegals to offer support to individuals who might not be reached in the current legal aid universe.

The idea of a tiered system is one in which paralegals and law clinics serve as primary contacts for clients who have 'legal' challenges in the rural areas. After reviewing the cases, they can decide – on the basis of information and evidence available to them – to take

on the problem to the highest possible extent allowed by law and then pass it on to lawyers where it becomes necessary, for instance where the case cannot be handled otherwise than by a judicial process. What this approach offers is an opportunity to groom a generation of paralegals and law clinics to fill the yawning gap already identified without compromising quality.

To be clear, legal aid goes beyond legal representation. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013) define legal aid to include ‘legal advice, assistance and representation’, as well as the provision of legal education, access to legal information and other services such as alternative dispute resolution and restorative justice.

Reflections on existing paralegal models

The section below is an examination of two highly successful paralegal models in Africa, the PASI model in southern Africa and the TIMAP model in west Africa.

PASI Malawi

Fortunately, paralegals are not necessarily new to the legal profession in some parts of Africa. The Paralegal Advisory Service Institute (PASI) pioneered a paralegal programme in Malawi in 2000 which has been so successful that it has exported the model to Bangladesh, Uganda and Enugu State, Southeast Nigeria, among other places.

Malawi is distinctive in that it has about 500 lawyers to a population of 17 million – a ratio of one lawyer to 34,000 people (Malawi Law Society 2019). This obviously means that the lawyer-centred approach to legal aid has little to no chance of succeeding, particularly in a context where more than 70 per cent of the lawyers are based in the two main cities of Lilongwe and Blantyre. The PASI model was therefore a child of necessity, but it offers some insights about what to expect elsewhere. The PASI model trains and deploys paralegals to police stations and prisons to assist ‘criminal detainees and prisoners’ (Open Society Justice

Similarly, The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2014) defines legal aid as ‘legal advice, assistance, representation, education and mechanisms of alternative dispute resolution’, and indicates that stakeholders in service provision could include ‘non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academic institutions’.

These definitions clearly extend the frontiers of legal aid beyond lawyers. Fundamentally, legal aid is central to the attainment of the UN Sustainable Development Goals (SDGs) (2015) in particular, goal 16, dealing with peace, justice and strong institutions, prioritises the promotion of the rule of law and human rights.



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Initiative 2010: 4). The paralegals run human rights clinics and educational programmes within the prisons and throughout the criminal justice system. Significantly, the model was designed to complement and facilitate the work of lawyers – indeed, the organisation is led by a lawyer.

Nonetheless, the model confronts fairly significant challenges from lawyers and the bar association. The main challenge relates to the perception that paralegals could impersonate lawyers and potentially steal their clients. This is a problem that could be solved with more pragmatic communication and a clear delineation of roles.

Another fairly significant but non-fatal challenge relates to the question of legal recognition: paralegals are not legally recognised yet in any law in Malawi. This does not necessarily hamper their work, but creating a legal basis would enhance it.

Finally, there is the perennial question of (in)competence of paralegals with respect to specific issues. This challenge could be addressed with a combination of capacity-building, clarity of purpose and effective oversight.

TIMAP Sierra Leone

The Sierra Leone Bar Association lists 399 lawyers on its website, while World Population Review estimates a population of 7.81 million – this translates to a ratio of one lawyer to 19,573 people. As in Malawi, most of the lawyers are based in the main city, Freetown.

Founded in 2009, TIMAP for Justice provides ‘frontline legal assistance to pretrial detainees, using local community members who have received basic legal training as paralegals’ (Open Society Justice Initiative 2015: 2). An external evaluation of the TIMAP paralegal model found that

in comparison to control sites where paralegals did not work, TIMAP’s paralegals reduced the number of new arrivals in prisons and increased the share of detainees accessing bail. In addition, the share of detainees being held without trial or conviction was reduced by 20% (ibid: 6).

In recognition of its outstanding work, TIMAP for Justice received a grant of USD 1 million from the World Bank to extend its paralegal model to further parts of Sierra Leone. Nonetheless, the model has to contend with a number of challenges, including sustainability and independence.

The question of sustainability is critical to keeping the programme afloat. TIMAP for Justice relies almost exclusively on donor funds for its paralegal project. This means the project is susceptible to shocks that occur when donors decide to shift focus. It is not clear how this challenge can be addressed, but it is critical to think carefully about it. The other equally significant challenge is the question of independence. Paralegals perform a state function. Therefore, they require the support of state institutions to make any progress. Unfortunately, getting and sustaining that support could impact on the independence of paralegals.

Luckily, paralegals are recognised under Sierra Leone’s Legal Aid Act. An ‘accredited paralegal’ is defined under the Act as

[a] person employed by the Legal Aid (Board), a government department, an accredited civil Society organization or a non-governmental organization and who has completed a training Course in the relevant field of study at the Judicial and Legal Training Institute or an Educational institution approved by the board.

Although this definition limits the training of paralegals to an educational institution and the Judicial and Legal Training Institute, it nonetheless appears to set minimum standards for becoming paralegals. This standard could be limiting in a context where most people are poor and can little afford the luxury of paid education. Additionally, the location of the referenced institutions might also be challenging for people in the remotest areas – assuming that they are able to overcome the challenge of funding.

Given this background, countries looking to adopt a paralegal programme must endeavour to have the bar association and other relevant institutions, such as the courts, law enforcement and ministries of justice, on their side early on. This provides an opportunity for concerns to be voiced and addressed in a collegial fashion. In addition, states can benefit from learning exchanges with existing paralegal programmes.



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Law clinics as complementary service providers

Law clinics are becoming increasingly popular in many parts of Africa as legal aid centres for the poor and powerless. In Nigeria, the Network of University Legal Aid Institutions (NULAI) has affiliate law clinics providing criminal-justice-focused assistance in about 20 universities. The Association of University Legal Aid Institutions (AULAI), which inspired the establishment of NULAI, also has a network of law clinics offering this service.

Inculcating a culture of social justice in law students increases the chances that they will commit to offering pro bono service when they become lawyers. The only problem is that not enough lawyers are being produced to make a significant difference in the short to medium term.

NULAI and its affiliate law clinics have been active in providing legal aid and assistance to indigent persons mostly in rural communities. The clinics focus on criminal justice, access to information and alternative dispute resolution. They have also taken bold steps to monitor the implementation of administration of criminal justice laws in four states of Nigeria.

What is more, some law clinics have intervened directly in making freedom-of-information requests on behalf of under-served communities.

Despite these strides, the law clinic movement still grapples with the challenge of sustainability (Lagi 2017: 24), particularly in terms gaining full recognition of the clinical legal education (CLE) programme in law faculties and overcoming over-reliance on donor funding. Fortunately, the Nigerian Law School has made CLE compulsory, thereby paving the way for law faculties to follow; with respect to funding, NULAI has taken steps to diversify its funding base by introducing of membership dues.

Conclusion

The number of lawyers available to provide legal aid and assistance to indigent people in Africa is grossly inadequate; at the same time, significantly increasing the number of lawyers may not be feasible for a variety of reasons, including resource constraints. Therefore, involving other professionals is the way to plug the continent's ever-expanding legal aid gap. There are clear lessons to be learnt from states that have already deployed paralegal models, and prospective states would do well to look to them to avoid repeating the same mistakes.

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