

# FACT SHEET ON LEGAL AID IN UGANDA

**“LEGAL AID AS A RIGHT TO FACILITATING ACCESS  
TO JUSTICE AND ENABLING SOCIAL JUSTICE AND  
ECONOMIC TRANSFORMATION FOR THE LIVES OF  
THE POOR, VULNERABLE AND MARGINALISED”**



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## ABOUT LASPNET

The Legal Aid Service Provider's Network (LASPNET) is a National Member based non-governmental organization established in 2004 to provide strategic linkages and a collaborative framework for the various non-state Legal Aid Service Providers (LASPs) in Uganda, as well as maintain a common front to interface with the Justice Law and Order Sector (JLOS) on issues of access to justice and rule of law. LASPNET currently has 52 members across 70 districts in the country. The Network champions' three critical aspects of networking and coordination; lobby and advocacy, research and knowledge management to inform advocacy for system and policy reform.

### Executive summary

One of the salient features of the adversarial justice system is premised on the theory that the advocates in representing clients utilize all the available legal tools in favour of the client. As a result, approximate justice is achieved. Thus, where the poor and vulnerable people are unrepresented in court or in instances that would require the services of an advocate, the basic principles upon which the theory is based are negated.<sup>1</sup>

The right to legal aid is entrenched in the International and Regional human rights treaty framework most of which Uganda is a state party. The provision of legal aid to the indigent has emerged as a dominant intervention in enhancing access to justice for the poor by focusing on challenges arising from: affordability of user costs, lack of legal representation, and alienation due to technicalities, language and ignorance of legal rights.

Legal aid has the potential not only to enable these vulnerable groups resolve their disputes at the family and community level, but to also enhance awareness of legal and human rights, empower them to claim their rights and advocate for social, policy and legal change at community and national level.

Currently, legal aid service save for the state brief has been majorly provided by non-state actors who are pre-dominantly donor funded. This leaves many poor and vulnerable persons without the ability to engage a lawyer to pursue their legal remedies especially in formal courts of law.

This fact sheet serves as a quick reference to the policy makers and the public about the existing mechanisms of legal aid service provision, gaps and challenges as well as justification for the need of the NLAP and Bill.

## FACTS AND LAW ABOUT LEGAL AID SERVICE PROVISION IN UGANDA

*"Just as one cannot let people suffer from hunger or thirst, one cannot let them suffer from injustice or arbitrary power just because legal aid might prove costly. People's aspirations for democracy and development require a 'true' rule of law, which is impossible if justice is not accessible to all [...] [A]s another saying puts it so well, "in these conditions, it is often better to be rich and guilty than poor and innocent", and lose all your rights [...] You are poor not only*

<sup>1</sup> Joe Margulies, -"Resource Deprivation And The Right To Counsel"

means to get lawyers.

- Discrimination especially for the vulnerable like women who are often, marginalized in society.
- Miscarriage of justice which may lead to re-victimization of those affected.
- Increased poverty undermining the achievement of the SDGs and middle income status envisaged in 2020.

### What will be the Cost of setting up a national legal aid scheme:

- According to the LASPNET 2016 Cost Benefit Analysis of the Uganda National Legal Aid Policy, the Set up of a legal aid scheme will cost only **Ugx 17.8 Billion in the first year.**
- Proposal to initially roll out using the High court Circuits leveraging on the Justice Centres Model.

### Any Model countries with the legal aid Law

Yes, Uganda can learn from the following countries laws.

- Sierra Leone: Legal Aid Act, 2012, commenced on 19<sup>th</sup> July 2012.
- Kenya: Legal Aid Act, No. 6 of 2016, commenced on 10<sup>th</sup> May 2016.
- Tanzania: Legal Aid Act, No.1 of 2017 commenced on 21<sup>st</sup> February 2017.
- Rwanda: Rwanda has no Act but has a National Legal Aid Policy as of September 2014.
- South Africa: Legal Aid South Africa Act, No.39 of 2014 which commenced on 9<sup>th</sup> December 2014.

### Conclusion

It is time we all stood in unison to say, this is a very important legal and policy framework that will foster Uganda to its 2040 vision of "A Transformed Ugandan Society from a Peasant to a Modern and Prosperous Country within 30 years."

*"Open your mouth for the mute, for the rights of all who are destitute. Open your mouth judge righteously, defend the rights of the poor and needy"* Proverbs: 31: 8-9.



**Help us take action to bring back legal aid for early advice**

is majorly a donor effort as well as reduce on long distances travelled to get justice, language and technical barriers to do with legal terminologies.

- Provision of legal aid will ensure protection of all persons and property especially the poor and vulnerable who will be enabled to easily access justice.
- Legal aid will improve access to Justice and contribute to poverty reduction as property rights will be protected, children neglected afforded education and health, the youth who over stay on remand released and enabled to start a new life among others.



- The ability to access Justice for all will strengthen the rule of law since there will be respect for rights of others and where there is a violation, effective remedies will be enabled.

- Legal aid will facilitate quick justice and enhance efficiency of courts through resolving disputes in a timely manner both at formal and informal levels, this will also reduce expenses spent on prisoners who over stay on remand because they don't have legal representation.
- To have a harmonized legislation providing for regulation, resourcing and setting standards to ensure quality service provision led by the state.

### What we lose as a country due lack of an effective legal aid mechanisms?



Without legal aid we don't have effective access to Justice which leads to loss of confidence in the justice system. 88% of Ugandans have experienced a legal problem with no hope of effective remedies to resolve them.

- Failure to get effective justice causes anxiety, and can easily lead to insecurity & conflict with many people taking justice into their own hands.
- The underprivileged are deprived of their livelihood for instance in situations where Land is grabbed by those who are powerful and rich.
- Frustration especially those who are denied justice because they have no

*because you don't have money, but also because you cannot read the civil procedure code, or the penal code, or you don't know what action to take in the face of injustice.*

*You are poor when, instead of seeing the judge as someone who is going to protect you, you fear him and dread his judgment. Yes, when you are poor, you are also afraid. Poverty has many faces, and legal aid can help address many of them."*

**Marou Amadou, Minister of Justice, Republic of Niger**

- **Legal aid** is the provision of legal assistance to the poor, vulnerable and marginalized in society. Legal aid is given in form of court representation, legal counseling and advice and sensitization on the laws and rights which is done through simplification of laws, radio programmes and community outreach programmes.

### Who can benefit from Legal aid?

The indigent (poor person), vulnerable and marginalized persons who include men, women children, refugees, persons with disability.

### What does the law say about legal aid and equality of all persons?

- **Legal Aid as a right recognized under international law and Policy Sustainable Development Goal 16.3** obligates state parties to promote the rule of law at the national and international levels and ensure equal access to justice for all.
- The International Covenant on Civil and Political Rights (ICCPR) Article 14(1) of the ICCPR guarantees equal rights for all before all courts and tribunals while also emphasizing every person's right to a fair hearing.
- Article 14(3)(d) of the ICCPR guarantees free legal representation of all persons who cannot afford legal services.
- Article 2(c) of the Covenant on the Elimination of All forms of Discrimination. (CEDAW) places an obligation on states to establish legal protection of the rights of women on equal basis with men.
- Article 40 of the Convention on the Rights of the Child (CRC) states that children deprived of liberty have the right to prompt access to legal and other appropriate assistance before court or other competent, independent and impartial authority and to a prompt decision on any such action.
- Article 12&13 of the Convention on the Rights of Persons with Disabilities (CRPWD) obliges the state to provide the support they require to exercise their legal capacity under the necessary and appropriate safe guards.

## The Regional legal Framework

### The Lilongwe declaration<sup>2</sup>

The 2004 Lilongwe Declaration on Accessing Legal Aid in Criminal Justice Systems in Africa states that “ a legal aid programme should include legal assistance at all stages of the criminal process, including investigation, arrest, pre-trial detention, bail hearings, trials, appeals, and other proceedings to ensure that human rights are protected.”

### Legal aid in our National law

- **Article 21** of the 1995 Constitution of the Republic of Uganda guarantees equality and freedoms of all persons before the law and it includes even the most vulnerable groups in society.
- **Article 28 (3) (e)** of the Constitution provides for the right to legal representation for an offence which carries a sentence of death or imprisonment for life, a suspect is entitled to legal representation at the expense of the State.
- **Article 28 (3) (e)** provides for the right to fair hearing. A person cannot have a fair hearing without a right to legal representation.
- **The Poor Persons Defense Act Cap 20** provides for a framework for an indigent person to apply for a pauper suit, where they can be exempted from payment of court fees and other costs related.
- **The Advocates Act Cap 267** as amended by Act 2010 and the pro-bono regulation defines Pro-bono services as service given for public good. The lawyers are required to provide 40 hours of their services annually or payment in lieu of the service towards providing legal services to the indigent.
- **The Advocates (Legal Aid to Indigent) Regulations 2007**, provides for standards which include : focus on the quality of service delivery and client care; effectiveness, facilities and qualifications of personnel( advocates and Paralegals ); criteria for selection of clients & geographical coverage.
- **The Advocates (Student Practice) regulations 2004**, provides for students to be issued with a practicing certificate and to provide legal aid services under supervision of an advocate. The Law Development Centre implements this initiative on behalf of Law Council.

States have a duty to respect, protect, and fulfill human rights of citizens through the provision of legal aid to those who cannot afford it, however we only have the state brief system only catering for those charged with criminal offences where the sentences is likely to be life imprisonment or death, leaving majority without assured representation save for those who

## Why advocate for the Legal aid Policy and Law

The importance of the right to counsel, providing legal aid or pro-bono services or lawyers is giving back to society was also emphasized in the case of **Powell v Alabama** by Justice Sutherland as follows:

*“... The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him.”*

Therefore represented litigant relieves the trial judge of the burden to explain and enforce basic rules of courtroom protocol and to assist him in overcoming routine and regular legal obstacles which he may encounter if he represents himself. Such litigant would also feel confident and not victimized before court.

- Legal aid is a pre-requisite to safeguarding and actualizing the safe guards in the Constitution, Article 21 and 28 which provides for equality before the law and fair and speedy hearing.
- Legal aid is a cornerstone to promoting social justice to those who are most disadvantaged and contributes to good governance and rule of law.<sup>4</sup>
- There is need for sufficient resources and increased service providers of legal aid both state and non-state actors.
- More underprivileged persons will receive legal aid to facilitate access justice at a state cost.
- A streamlined and well regulated system of quality legal aid services.
- The law will formalize legal aid service provision and streamline public / private relationships in the provision of legal aid.
- The legal aid law will promote early access to dispute resolution mechanisms through use of community paralegals and expand on labour resource to address challenges of urban based lawyers. The law will ensure that legal aid is extended to all communities and persons in Uganda and increase people's confidence in the justice system.
- Establishment of a state funded legal aid scheme will enable the state to fulfill its legal and human rights protection mandate.
- The legal aid scheme will address barriers encountered by the underprivileged in accessing justice. This will ensure sustainable funding for legal aid which

Alliance, Refugee Law Project, NUDIPU and many more.<sup>3</sup> These non-state actors have thematic interventions related say to land, women and children, labour, HIV AIDS, persons with disability, refugees, juvenile justice and have bridged the existing state gap by ensuring they provide the services to the vulnerable persons. These are not geographically well spread, found in only 70 out of 121 districts, they are majorly donor funded and therefore not sustainable.

### The service delivery models

The state and non state actors apply various service delivery models which include:

- Use of staff advocates, these are lawyers employed and paid a salary.
- Staff paralegals, these are normally holders of Diploma in law who are employed by Non state actors providing legal aid, they help with prison decongestion.
- Use community paralegals, these are opinion leaders, trusted community leaders who are trained by non-state actors on different aspects of the law and they help to advise and refer their community members with legal problems.
- Outreach through IEC, radio Programmes and mobile clinics.
- Self-help representation, many legal aid service providers equip their clients and suspects to know what to say when they appear before court. African Prisons Project model is one such example.
- Use of ADR mechanisms and involving informal justice systems for quick resolution of disputes. This is the most preferred form of dispute resolution by communities facilitated by traditional and or religious leaders.
- Use of strategic interest litigation in cases of communal violations.
- Models seeking to empower like FIDA –U SAME.
- Provision of holistic approach to legal aid including psycho –social which is being done by Justice Centres, FIDA - U.
- Use of students in legal aid being done by PILAC, LDC.
- Provision of services to special interest groups especially PWDs- e.g. NUDIPU interpretation service.
- Pro-bono and use of duty counsel who station in courts of law and provide on spot advice and counselling, including designating an annual pro-bono day spearheaded by Uganda Law Society.

3. Visit [www.laspnet.org](http://www.laspnet.org) for the membership directory and what they exactly do

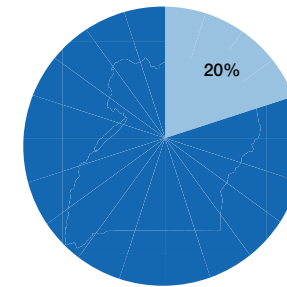
can afford it.

- Regulations for Paralegals are under way awaiting for approval by the Uganda Law Council.
- The Uganda Law Council established by Section 2 of the Advocates Act Chapter 267(as amended by Act 27 of 2002) is a body empowered to inspect, approve and regulate service providers of legal aid in Uganda.

### Justice in Uganda!! Quick facts you need to know

**19.7% of Ugandans are below the poverty line(live on less than \$1 a day) with 30.7 million people being chronically poor, of these 55% are between 18-30years; are youth and with 64 % unemployment rate, many youth are victims and many are involved in criminal related activities.**

- According to the Hiil Report 2016, 80% of Ugandans cannot afford services of lawyers, only 20% are able to engage a lawyer.



**Only 20% of Ugandans can access a lawyer**

- Inequality due to poverty, discrimination and exclusion remain severe obstacles which affect universal human development for the poor and vulnerable especially women who are mainly affected by patriarchal norms and traditions.
- Justice services remain urban based, we don't have consistent early justice initiatives such as community paralegals where the poor and vulnerable can easily be advised on their justice needs.
- About 2600 lawyers are serving 34.6 million people with their offices located in urban areas.



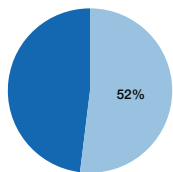
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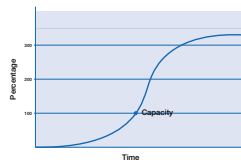
- We currently have only 52 Non government organizations registered under Legal Aid Service Providers Network (LASPNET) involved in legal aid

service provision and only cover 70 districts in Uganda out of 121 districts in establishment.

- Informal justice systems such as traditional, religious institutions, are not well streamlined and linked to the formal justice system, this limits the effectiveness and acceptability of alternative forms of dispute resolution.
- Offences against children, sexual and gender based violence remain rampant. According to the Uganda Police Annual crime Report 2017, child neglect, defilement and domestic violence remain high. For example domestic violence increased from 13,132 to 15,325 while child neglect increased to 10,021 from 9,114 cases.
- Many criminal cases like murder, mob justice, criminal trespass, arson are perpetrated by unresolved disputes in land where majority are the poor and vulnerable.
- The prison population stands at about 54,322 with a daily cost of maintaining a prisoner at about Ugx 3,000 and 162,000,000 million per day. Therefore, government loses 26.8 billion annually in feeding these prisoners. We only need about 17.8 Billion annually to start a state funded legal aid scheme with salaried attorneys paid by government of Uganda.
- Also to note is the fact that 52% of the people in Prison are pretrial detainees with an occupancy rate of Prisons at 326% beyond capacity.



**52% of prisoner are pretrial detainees**



**Occupancy rate in Uganda prisons is 326% beyond capacity**

- The average stay on remand for minor cases before trial is 3 months to 1 year depending on the offence.
- The average stay on remand for capital offences before committal is 180 days, however in practice it goes beyond the 180 days. Committal to High Court takes about an average for 3 years for a suspect to appear for trial.
- The majority of persons on remand and those convicted fall under the youth bracket, they therefore spend much of their productive life under incarceration.

**Legal aid Models in place for improvement and support:**

- **The State brief scheme** as provided for under article 28 of the constitution. In this case lawyers are retained by government/ judiciary to defend suspects with capital offences. This scheme is challenged by poor remuneration of advocates, inadequate preparation of some of the lawyers and lack of client lawyer confidence. A lawyer is given between 150,000 to 250,000 UGSH to provide legal services. This is in essence a pro-bono service and quality services are not assured.
- **The legal aid clinic of Law Development Centre**, this operates the student advocate model utilizing the Law development bar students. It is majorly donor funded and this is not sustainable.
- The Public Interest Law Clinic of Makerere University is also picking on the student model by using university students to provide legal advice and sensitization of public on legal related issues.
- **The pilot legal aid programs such as Justice Centres**. This model employs staff advocates, paralegals and psycho-social support officers. The clients are provided with one stop centre services including psychosocial support services, toll free services and outreaches. It is also 90% donor funded and hence not sustainable under the current arrangement.
- **The Paralegal Advisory Services managed by Foundation for Human Rights Initiative**. This initiative employs paralegals who traverse the justice system supporting suspects to know their rights, link them up with relatives and justice system actors. This intervention has contributed to prison decongestion and safeguarded rights of suspects through empowerment.
- **The Pro-Bono Service of Uganda Law Society**, this involves lawyers giving back to society through legal aid services. Currently Uganda Law Society has over 1633 lawyers who voluntarily enrolled for Probono services that have been significant in providing legal aid services across the civil and criminal areas of justice. This model is based on mercy and willingness of an advocate, quality of services is not assured.
- **The Non-state Actors models**: The Legal Aid Service Providers Network coordinates over 52 members organization that provide legal aid in form of legal assistance, representation, advice and counselling as well as empowerment through information and sensitization. Some of the legal aid service providers have provided the service for over 40 years for example FIDA-U, others for over 25 years like The Legal Aid Project of Uganda Law Society, Foundation for Human Rights Initiative (FHRI), and many more for over 10 years such as Platform for Labour Action, UCLF, Uganda Land