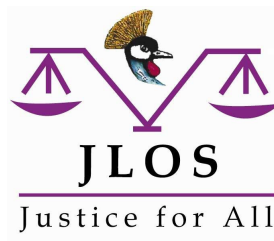


# THE REPUBLIC OF UGANDA



## JUSTICE LAW AND ORDER SECTOR



# DRAFT NATIONAL LEGAL AID POLICY

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## Executive Summary

1. Legal aid involves the provision of free legal services for the poor and vulnerable. Legal aid extends beyond representation by a lawyer in a court to include legal advice and assistance on both civil and criminal matters. Legal aid is a right of every Ugandan citizen.
2. Currently legal aid in Uganda amounts to a patchwork of services provided by state and non-state actors. In summary:
  - There is a legal aid policy vacuum.
  - There is no national legal aid body to manage legal aid service provision.
  - The scope of state-provided legal aid services is limited and excludes the majority of persons in Uganda and the type of legal aid services of which they are most in need.
  - Access to justice for the rural and urban poor as well as vulnerable persons is restricted due to poverty; access to lawyers is limited, especially in rural areas; and the basic lack of knowledge on procedures of access to justice and available providers of support services is a major complaint.
3. This policy recognizes the urgent need to introduce legislation and to establish a body that can devote itself in a full-time capacity to the provision of access to justice and legal aid to all indigent persons in Uganda – particularly those in peri-urban and rural areas.

**Recommendation 1:** The policy recommends a national legal aid scheme that is: accessible to all persons in Uganda who qualify for legal aid; affordable to the state; sustainable in the medium to long term; credible to all.

4. The current legal framework limits the scope of state-funded legal aid service provision and makes no formal provision for coordinating with and regulating the services of other legal aid providers.

**Recommendation 2:** The policy recommends consolidating the legal framework on legal aid in one comprehensive Act and that the Law Council should continue to be responsible for regulation of legal aid until the Legal Aid Act comes into effect.

5. Following an analysis of the problems with legal aid provision both by state-funded and non-state actors, the picture emerges of a ‘patchwork’ of services operating in an ad hoc fashion outside any integrated national strategic framework. The policy argues that ‘doing nothing’ is not an option, nor can the state ‘go it alone’.

**Recommendation 3:** The policy recommends a mixed model of legal aid delivery based on private-public partnerships between the state and non-state actors and consisting of State-employed legal aid providers and accredited non-state legal aid providers.

6. The policy takes account of practical economic realities and argues that *because* resources are finite, legal services must be both effective and affordable. Emphasis is placed on providing a broad range of (low cost) advisory and assistance services to divert the simple and minor matter away from the courts and allocate sufficient resources to provide (high cost) free legal representation where the interests of justice require.

**Recommendation 4:** The policy recommends legal advice and assistance is made available to all poor and vulnerable persons and that legal representation is restricted to those who qualify through a means and merits test and in addition where the interest of justice requires.

7. Following a consideration of the advantages and disadvantages of the different management models, and taking account of international best practice, the policy argues that the most efficient and credible management model for a national legal aid scheme is one managed through an independent legal aid body.

**Recommendation 5:** The policy recommends the establishment of an independent legal aid body to provide a comprehensive framework for legal aid service provision nationally, whether through designated structures or co-operation agreements, that is answerable to Parliament through the Minister of Justice.

8. In establishing the independent legal aid body, the policy makes a number of recommendations:

**Recommendation 6:** The legal framework should provide for the independent legal aid body to administer, implement, coordinate, monitor and evaluate the national legal aid scheme in accordance with Uganda's national and international obligations to provide legal aid services by the state to indigent persons.

**Recommendation 7:** The Poor Persons Defence Act that limits legal aid services to High Court matters should be repealed because it is not consistent with Uganda's international obligations. Any other legislation affecting the provision of legal aid services should be amended where appropriate to ensure that the provisions of the Act can be implemented.

**Recommendation 8:** The members of the governing board of the national legal aid body should not be full-time appointments and may only be paid an honorarium.

**Recommendation 9:** The legal framework should provide that the governing board of the national body has representation from the following:

(a) the Judiciary; (b) the Law Council; (c) non-governmental legal aid service providers; (d) the Uganda Law Society; (e) the Ministry of Justice and Constitutional Affairs; (f) the Uganda Human Rights Commission; (g) the Ministry of Gender, Labour and Social Development; and (h) Ministry of Finance Planning and Economic Development.

**Recommendation 10:** The national legal aid body should be accountable to Parliament through the Ministry responsible for Justice and make an annual report to Parliament through the Minister responsible for Justice.

**Recommendation 11:** The governing board of the national legal aid body should appoint a Chief Executive Officer to implement the decisions of the governing body and to employ the necessary staff to provide the body with a secretariat and implement the body's decisions and policies effectively and economically.

**Recommendation 12:** The Chief Executive Officer should be the accounting officer for the national legal aid body, be accountable to the governing body, and responsible for ensuring the proper management and functioning of the national legal aid scheme.

**Recommendation 13:** The national legal aid body should develop a means and merits test to ensure that poor and vulnerable people throughout Uganda qualify for legal aid.

**Recommendation 14:** The national legal aid body should ensure that legal aid offices and cooperation partners are accessible to all persons eligible for their services and that appropriate legal aid service providers are appointed at strategic sites around the country and extend down to sub-county levels.

**Recommendation 15:** The national legal aid body should be independent of, but maintain close links with, the regulatory authority for legal practitioners and paralegals and should cooperate with the authority to establish criteria for the accreditation of legal aid providers.

**Recommendation 16:** At any court where there is no accredited legal aid service provider, the judicial officer should be responsible for referring a person in need of legal aid to the nearest appropriate legal aid service provider.

**Recommendation 17:** The national legal aid regulator should require accredited legal aid service providers to subscribe to a Code of Conduct and ensure that all accredited legal aid service providers in the country have the basic facilities and qualified personnel required to provide such services in a professional and ethical manner.

**Recommendation 18:** The national legal aid body should engage in facilitating capacity-building and other training for accredited legal aid service providers.

**Recommendation 19:** The national legal aid regulator should monitor the provision of legal aid services, conduct investigations into their efficiency and make recommendations for their improvement.

**Recommendation 21:** The national legal aid body should initiate and implement sensitization and awareness programmes designed to promote an understanding by the general public and public officials, (e.g. the police, prosecutors, judicial officers, prison officials and probation and social development officers), involved in the administration of justice of their rights and duties in terms of the Legal Aid Act.

**Recommendation 22:** The national legal aid body should be empowered to make its own rules and regulations regarding the administration and delivery of legal aid services to be presented by the Minister responsible for Justice for approval by Parliament.

9. The national legal aid body should be financed from a separate Legal Aid Fund. In this regard, the policy makes a number of recommendations, namely:

**Recommendation 23:** The national legal aid body should be funded by monies specifically allocated by Parliament for legal aid from the Consolidated Fund and may also receive and raise funding from external donors, and contributions towards costs made by successful litigants in civil legal aid cases.

**Recommendation 24:** A Legal Aid Fund should be established, to which all monies allocated to or received by the Legal Aid body should be paid.

**Recommendation 25:** The national legal aid body should ensure that most of the funding paid into the Legal Aid Fund is allocated to the actual delivery of legal aid services, and not to governing bodies, in line with best international practice.

**Recommendation 26:** The national legal aid body should ensure that the Legal Aid Fund is used in the most effective, efficient and economical manner and the national legal aid body should be accountable through the Auditor-General for any funding provided by Parliament and to donors in accordance with the funding agreements.

10. In overseeing the delivery of legal aid services, the policy recommends that:

**Recommendation 27:** The national legal aid body should ensure that every arrested and detained person in Uganda is provided with legal advice and assistance from the moment of their arrest or detention; and where it is ‘in the interest of justice’ every indigent accused person is provided with legal representation at all stages (pre-trial, trial and post-trial) and in all categories of courts in urban, peri-urban and rural areas;

**Recommendation 28:** The national legal aid body should ensure that maximum use is made of all potential legal aid service providers in Uganda by using advocates, bar course students, law graduates awaiting their enrolment, law clinic students, and paralegals.

**Recommendation 29:** The national legal aid body should ensure that legal aid offices and offices of cooperation partners, in appropriate cases, refer applicants to relevant psycho-social agencies and/or social welfare and other legal service programmes;

**Recommendation 30:** The national legal aid body should ensure that where appropriate, legal aid offices and cooperation partners divert minor criminal, small claims and civil cases from the formal justice system to Local Council Courts and other subordinate Courts and traditional mechanisms or other, dispute resolution bodies in line with international standards and best practice;

**Recommendation 31:** Accredited legal aid service providers should be required to make available appropriate data, records and reports to the national legal aid regulator to enable it to properly monitor the delivery of legal aid in the country.

**Recommendation 32:** The national legal aid body should ensure that all cooperation partners keep and submit appropriate data, records, reports and statistics to the national legal aid body regarding their delivery of legal aid services funded by the national body so that the latter can monitor the functioning of the national legal aid services scheme;



11. Since cooperation agreements with non-state actors involve the disbursement of public funds, those entering such agreements must be held strictly to account.

**Recommendation 33:** The national legal aid body should ensure that cooperation agreements between the national legal aid body and legal aid providers clearly state their targets and mandate regarding funding, quality of service, regulation, reporting obligations including rendering of accounts for services disbursed and how they relate to the national legal aid body.

**Recommendation 34:** The national legal aid body should ensure that all professional staff in the employment of accredited non-state legal aid service providers are properly trained and engage in continuing legal educational development.

12. In order for the legal aid scheme to be credible to ordinary people, those responsible for the administration of justice must act impartially and ensure that those in need of legal aid services are referred to the nearest provider.

**Recommendation 35:** The policy recommends that the legislation imposes a duty on *all* justice actors (judicial officers, prosecutors, police, probation officers, social welfare and prisons officers) to promptly inform the poor and vulnerable about their right to legal aid and to direct them to a legal aid service provider.

13. The Policy recognizes that sanctions are needed to deter abuse of the scheme.

**Recommendation 36:** The policy recommends that applicants who misrepresent their economic status will have their certificate of legal aid revoked.

**Recommendation 37:** The policy recommends that accredited legal aid providers who breach the legal aid code of ethics or the provisions of co-operation agreements will have their accreditation revoked and, where appropriate be disciplined by their employers or professional bodies.

**Recommendation 38:** in addition to any criminal penalties that may be imposed.

## Introduction

### What is Legal Aid?

14. 'Legal aid' is the provision of free legal services the scope of which varies from country to country. In Uganda, legal aid is directed to free legal representation for indigent accused persons in capital cases. Article 28 (3) (e) of the Constitution of the Republic of Uganda makes provision for legal representation at the expense of the State in the case of any offence which carries a sentence of death or imprisonment for life.

Article 28(3) (e) provides that

“ Every person who is charged with a criminal offence shall in the case of any offence which carries a sentence of death or imprisonment for life be entitled to legal representation at the expense of the State;...”

15. However practice has demonstrated that legal aid has gone beyond legal representation in court especially by Non-State actors. The Lilongwe Declaration on Accessing Legal Aid in Criminal Justice Systems in Africa, 2004<sup>1</sup> broadens the meaning of Legal Aid 'to include legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution.

16. Access to justice needs of the people are often simple and basic and involve both civil and criminal matters. They need legal representation, information about laws and procedures, advice and assistance on how to apply them or where to go, counselling as to their available choices and access to alternative dispute resolution mechanisms. Article 21 (4) of the Constitution provides that,

“Nothing in this article shall prevent Parliament from enacting laws that are necessary for –

- (a) implementing policies and programmes aimed at redressing social, economic, educational or other imbalance in society; ...”.

17. This Policy advances a broader range of services which people are presently unable to access. It enhances access to justice for all, particularly those who are most vulnerable as advocated under the National Development Plan. This is in consonance with article 45 of the Constitution which provides that:

“The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.”

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14. <sup>1</sup> The declaration was adopted by the African Commission on Human and Peoples' Rights (Res.100/XXX/06) and by the United Nations Economic and Social Council, ECOSOC Res. 2007/24). The Lilongwe Declaration forms the basis of new draft UN Principles and Guidelines on Legal Aid in Criminal Justice Systems currently pending an inter-governmental meeting of experts in Vienna in November 2011.

18. The definition of ‘legal aid’ has moved beyond mere representation by a lawyer in a court. The Lilongwe Declaration on Accessing Legal Aid in Criminal Justice Systems in Africa, 2004<sup>2</sup> broadened the meaning ‘to include legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution’ (Lilongwe 1). Furthermore, legal aid extends equally to civil as well as criminal matters. In Uganda the principal areas of dispute centre on land, inheritance and family matters which if unresolved often end up in the criminal courts.<sup>3</sup>
19. As in health matters and the provision of primary health care, the needs of people as concerns justice are also simple and basic. They do not distinguish between whether a matter is criminal or civil in nature. They want harmony restored within the community so that they can proceed with other aspects of their lives. They need information about laws and procedures, advice and assistance on how to apply them or where to go, counselling as to their available choices, access to alternative dispute resolution instead of the courts, referral to other appropriate service providers.
20. The scope of legal aid in this Policy emphasises this broader range of services which people are presently unable to access, unless they have the means to do so. It positively discriminates in favour of those who most need these services, namely the poor and those in vulnerable circumstances in pursuance of the National Development Plan.

## The Need for a Legal Aid Policy

21. In addition to the rights provided for under article 28 of the Constitution, it will provide the framework for the provision of legal aid and legal assistance to all persons in Uganda who qualify in line with regional and international agreements to which Uganda is a signatory. This is in consonance with Article 45 of the Constitution that provides:

**“Human Rights and freedoms additional to other rights.**

The rights, duties, declarations and guarantees relating to fundamental and other rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.”

22. Those in need of free legal aid services are the poor and people in vulnerable circumstances. In a country where over seven million people are estimated to live below the poverty line<sup>4</sup> and 56% are under 18 years of age<sup>5</sup>, the constituency for

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<sup>2</sup> The declaration was later adopted by the African Commission on Human and Peoples’ Rights (Res.100/XXXX/06) and by the United Nations Economic and Social Council, ECOSOC Res. 2007/24). The Lilongwe Declaration forms the basis of the UN Principles and Guidelines on Legal Aid in Criminal Justice Systems which was adopted on the 27<sup>th</sup> April, 2012 at the 21<sup>st</sup> Session of the Commission for crime Prevention and Criminal Justice.

<sup>3</sup> Legal Aid Basket Fund Review, 2010, The Law and Development Partnership

15. <sup>4</sup> UBOS 2010

16. <sup>5</sup> Id.

these services is large. Where the majority of people live in rural areas and legal services are concentrated in the urban centres, the challenges are great.

23. The provision of legal aid in Uganda currently operates in a policy vacuum. The result is a patchwork of services, many of which provide excellent value for money, but which lack an overarching strategy and standardized set of services that would provide for the legal needs of all persons in Uganda.
24. Those in need of free legal aid services are the poor and people in vulnerable circumstances. In a country where over seven million people are estimated to live below the poverty line (UBOS: 2010) and 56% are under the age of 18 years (id), the constituency for these services is large. Where the majority of people live in rural areas and legal services are concentrated in the urban centres, the challenges are great.
25. Uganda has approximately 1,700 advocates registered with the Uganda Law Society, however the number in actual practice is much lower. There is an acute shortage of legal practitioners in rural areas of the country, with the vast majority of lawyers (estimated 85%) being concentrated in Kampala, and most of the others serving the other main towns. It is estimated that about 16% of the entire country has access to full-time legal representation by lawyers. This means that about 84% of the population in Uganda (over 24 million people) do not have adequate access to lawyers and have to rely on other forms of assistance, such as that provided by the Local Council Courts.
26. Alternative dispute resolution can resolve many of these matters and remove the need for them to be settled in the courts. Legal aid services, if they are to be relevant to the needs of the poor, must provide assistance in such matters, especially those involving land, inheritance or family disputes which, if unattended, often end up in the criminal courts (when one disputant in exasperation attacks the other).
27. Legal aid helps people understand and access the laws of Uganda so that they can have recourse to lawful means of settling their disputes and conflicts without taking the law into their own hands. It redresses the balance of power (or 'equality of arms') when the state musters its expertise to prosecute someone by supplying the person with a lawyer who can test the evidence brought against that person. It offers a first line of protection to those in conflict with the law in police stations to ensure that constitutional guarantees are followed. It helps poor people feel less unsafe and insecure (when they know what services are available and to whom to go for assistance).
28. Furthermore, the benefits of effective legal aid services extend beyond the individual to include such 'societal benefits' as the: 'elimination of unnecessary detention, speedy processing of cases, fair and impartial trials, and the reduction of prison populations.' (*Lilongwe 2*) In civil matters, legal aid services enable people to require an employer to pay for work done, to appeal an unfair dismissal, to access health and

education services and a range of matters that empower people to take control of their lives.

29. Those living in, or on the edge of poverty, have the fewest resources to manage the socio-economic shocks of an injustice, such as: land encroachment/grabbing, stolen/disputed inheritance, family conflict/break-up, or an order of the court which places them in custody because they do not know how to access bail or lack the means to afford a cash bail. All of which have negative cost implications for people least able to afford them. Such 'shocks' affect not only the individual concerned but also his/her family and they are more easily plunged into, or further into, destitution, including hunger and homelessness.
30. The Policy directly empowers poor people in Uganda better to withstand these shocks whether by equipping them with the means to represent themselves in court, or enlist the services of a qualified legal representative; mediate their own disputes and by owning the problem, so own the solution to the problem; gain access to or referral to basic services that enable them to navigate other state services; and, ultimately, have recourse to lawful means of settling their conflicts and disputes without recourse to violence and so be able to attend to their own prosperity in the environment of a more 'positive peace'.
31. The absence of a national legal aid body to provide free legal advice and assistance to indigent and vulnerable people in Uganda, and representation where the interests of justice require is a gaping omission. If Government's rights-based approach to justice is to be realized, the present lacuna in legal aid services needs to be filled.
32. The approach in this Policy falls four-square within the policy priorities of the National Development Plan as concerns access to justice: it recognises that individuals are entitled to assistance and lays emphasis on solving the structural causes of problems and their manifestations so that the impact achieved is sustained.
33. In this way, rights and good practice are aligned. Thus, where the National Development Plan (2010) promotes greater use of alternative dispute resolution, this enables people to solve their own problems rather than reporting to the formal justice system *and* reduces the flow of cases into an already overloaded system and relieves pressure on the police, courts and prisons. In the same way, by improving the quality of justice delivery, people's confidence and trust in the justice system is enhanced *and* the case backlog reduced<sup>6</sup>. Again where the National Development Plan sets down the priority of minimizing the technicalities that hamper access to justice and the barriers that many people confront, this enables people to access justice services to meet their own personal needs *and* reduces the opportunity for conflict.
34. In summary:
  - Uganda has a legal aid policy vacuum;

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<sup>6</sup> Case backlog in the Judiciary currently stands at about 25,000 cases.

- There is no national legal aid body to manage legal aid service provision;
- The scope of state-provided legal aid services is limited and excludes the majority of people in Uganda and the types of legal aid services of which they are most in need;
- Access to justice for the rural and urban poor as well as vulnerable persons is restricted due to poverty; access to lawyers is limited, especially in rural areas; and the basic lack of knowledge on procedures of access to justice and available providers of support services is a major complaint.
- Due to the lack of a policy and regulatory framework for legal aid service provision and a designated authority to oversee legal aid service provision, there is no set standard for service delivery and no clear mechanism to manage or control services provided.

35. **Conclusion:** Despite the good work done by public and private legal aid providers there is an urgent need to introduce legislation and to establish a body that can devote itself full-time to the provision of access to justice and legal aid to all indigent people in Uganda – particularly those in peri-urban and rural areas. The proposed policy addresses the above mentioned gaps and recommends legislation for improved legal aid service provision for both criminal and civil matters by lawyers and non lawyers. The operational words guiding this policy are contained in the first recommendation:

**Recommendation 1:**

**The policy recommends a national legal aid scheme that is: accessible to all persons in Uganda who qualify for legal aid; affordable to the state; sustainable in the medium to long term; credible to all; and accountable to Parliament.**

## Background

### Current Legal framework of Legal Aid in Uganda

#### National Framework

36. The laws of Uganda provide an enabling framework for the provision of legal aid. The *Constitution of the Republic of Uganda, 1995* notwithstanding Art 28(3) (e) already cited which provides for legal aid at public expense where an offence attracts the death penalty or life imprisonment, also provides by Art. 21(1) that ‘all persons are equal before and under the law... and shall enjoy equal protection of the law’; and in (2) a person ‘shall not be discriminated against on the grounds of ... social-economic standing.’
37. Furthermore, the *Poor Persons Defence Act, 2000* makes a provision for legal aid (section 2) where it appears for any reason that this is desirable, in the interests of justice, that a prisoner should have legal aid in the preparation and conduct of his defence at trial, and that the means of the prisoner are insufficient to enable him to obtain such aid, a certifying officer, upon the committal of the prisoner for trial, may certify that the prisoner is entitled to have an advocate assigned to him or her.
38. In addition, the *Advocates (Amendment) Act 27 of 2002* makes it mandatory for lawyers to provide legal services *pro bono* to indigent persons in Uganda (section 15A) and the *Advocates (Pro Bono Services to Indigent Persons) Regulations, 2009* sets a minimum of 40 hours free services in each year.
39. Legal aid is defined under the *Advocates (Legal Aid to Indigent Persons) Regulations, 2007* as the provision of legal advice or representation by a lawyer, an advocate or a paralegal, as the case may be, to a client at no cost or at a very minimal cost. The regulations further provide that legal aid shall include; a) legal advice; b) representation in court or tribunal in civil, constitutional or criminal matters; mediation, negotiation or arbitration; legal education or awareness (Regulation 21). Regulations 23 and 24 also set out criteria for eligibility for legal aid which include an assessment of financial means.
40. Law students at the Law Development Centre may also provide unpaid representation to indigent persons in the Magistrates Courts under supervision of a lawyer under the *Advocates (Student Practice) Regulations, 2004*.
41. The Law Council (LC) is mandated by law to exercise general supervision and control over professional legal education in Uganda; to approve courses of study and to provide for the conduct of qualifying examinations for any of the purposes of the Act. The LC also advises and makes recommendations to the government on matters relating to the profession of Advocates and exercises disciplinary control over them and their clerks. In addition, LC has general supervision and control over the provision of legal aid and advice to indigent persons.

42. Studies carried out on the need for legal aid and access to justice in Uganda include but are not limited to the following:
- Refugee Law Project study on Formal and Informal Justice Mechanisms in Post Conflict West Nile (2007) and the Study on the options for Enhancing Access to Justice and Improving Administration of Law and Order in Karamoja found that there are still critical gaps in the existing efforts by stakeholders to enhance access to justice through the provision of legal aid to the poor.
  - The Baseline and Needs Analysis Survey Report on Legal Aid in Uganda (2004) noted that key legal aid provisions such as access to legal information, legal literacy and legal services, the basic requirements to harness legal and judicial systems are largely provided by civil society organizations instead of Government.
  - The Joint Survey on Local Council Courts and Legal Aid Service Providers in Uganda (2006) recommended that Legal Aid providers should engage JLOS at a strategic level by translating achievements and challenges registered in service provision at community level into policy advocacy issues. The findings also demonstrated a need for an appreciation of the opportunities available for CSO's to create linkages with LC Courts.
  - Poverty participatory Assessment on Safety, Security and Access to Justice – Voices of the Poor 2002 (Windsor Consult)

### Regional Framework

43. At the Regional level, the members of the African Union are all unanimous on the question of the importance of effective legal aid in promoting the rule of law. Article 26 of the African Charter of Human and Peoples' Rights obliges States Parties to promote institutional protection of human rights. The AU Guidelines proclaim the inalienability of the right to a fair trial. The Guidelines make plain that the essential elements of a fair trial include equality of access to courts, equality of arms, the right to defend one's self and the right to consult a lawyer of one's choice. They however provide that the State must supply legal representation where the interests of justice so require by reason of the seriousness or complexity of the case or the severity of the likely penalty.
44. The Dakar Declaration emphasizes the necessity of fully accountable institutions for a fair trial, especially an independent Bar, which honours the cab-stand principle<sup>7</sup> and is protected from harassment and intimidation. It also recognizes that most of those who need legal representation cannot afford it which creates a duty on governments, judiciaries, professional associations and human rights NGOs to assist in providing such representation.
45. The Lilongwe Declaration and Plan of Action provides authoritative guidance for enhancing access to justice for ordinary people and entrenching the Rule of Law in

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<sup>7</sup> Cab Stand principle refers to the principle of First Come, First Served.



society. The Lilongwe Declaration was adopted by the African Commission on Human and Peoples' Rights at its 40<sup>th</sup> Ordinary Session in Banjul, The Gambia.

## International Legal Framework

46. There exists a range of international norms and standards that address the provision of legal aid. These standards are contained in various different treaties, which are binding amongst the States that have ratified them, as well as instruments designed to provide guidance, such as Declarations, Principles, Rules, Recommendations and Guidelines. For international law to become part and parcel of national law, incorporation or domestication is required through either new legislation or the amendment of existing legislation. In that regard, the proposed policy and legislation is consistent with the following:
47. **Article 14 of the International Covenant on Civil and Political Rights (ICCPR)** which sets out specific obligations of States to provide state-funded counsel for indigent persons. The ICCPR in article 14 (3) (d) requires that an accused offender be entitled to have legal aid assigned to him or her in any case if he or she does not have sufficient means to pay for it.
48. **The Convention on the Rights of the Child** requires States to ensure that every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance in the preparation and presentation of his or her defence.
49. **United Nations Convention on the Status of Refugees** provides in Article 16 (2) that a refugee shall enjoy in the Contracting State in which he has his habitual residence, the same treatment as nationals in matters pertaining to access to the Courts including legal assistance and exemption from *Cautio judicatum solvi*<sup>8</sup>.
50. **The United Nations Basic Principles on the Role of Lawyers** stipulates that governments shall ensure the provision of sufficient funding and other resources for legal aid to the poor and, as necessary to other disadvantaged persons. The principles urge professional associations of lawyers to cooperate in the organization and provision of legal aid, facilities and other resources.
51. **The United Nations Body of Principles for the protection of all people under any form of detention or imprisonment** provides for the entitlement of a detained person to be assigned legal counsel by a judicial or other authority in all cases where the interests of justice so require and without payment if he or she does not have sufficient funds to pay.
52. **The United Nations Standard Minimum Rules for the treatment of prisoners** provides for untried prisoners to apply for legal aid where such aid is available.

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<sup>8</sup> Legal principle that one is absolutely bound to pay the sum of money adjudged by the Court.

53. **The United Nations Standard Minimum Rules on the Administration of Juvenile Justice** provides for the right of juveniles to be represented by a legal advisor or to apply for free legal aid throughout the proceedings where there is provision of such aid in the country.
54. The United Nations Principles and Guidelines on Access to legal Aid Services, 2012 was adopted as a useful framework to guide Member States on the principles on which a legal aid system in criminal justice should be based. They emphasise that legal aid is the foundation for the enjoyment of other rights, including the right to a fair trial, a pre-condition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process. It emphasises a functional legal aid system as part of a functioning criminal justice system. It may also protect and safeguard the rights of victims and witnesses in the criminal justice process.
55. **The United Nations Rules for the Protection of Juveniles Deprived of their Liberty** provides a right to legal counsel for juveniles detained under arrest or awaiting trial to apply for free legal aid where such aid is available.

## State Provision of Legal Aid Services: Function and Challenges

### Judiciary – State Briefs scheme

56. The State Briefs Scheme operationalises the Constitutional provision for legal aid and is operated by the Judiciary. The Judiciary receives funds for State Briefs as part of its budget in a given financial year. There is currently not separate allocation for State Briefs. The Judiciary disburses the funds as the part of the general disbursement for Court Sessions. Prior to each session, the Registrar in charge of the session invites Advocates to take on cases as State Briefs. The Advocate will confirm whether or not the client has engaged a private Advocate and at the start of the session will confirm the clients that are to be represented in the session. It is at this mentioning stage that the Court is able to determine the number of State Briefs that are allocated in the session.
57. The remuneration for Advocates on State Briefs is determined by the Judge. In determining the amount of remuneration the Judge will consider the complexity of the case and the duration of the trial proceedings. The amount of remuneration however does not exceed Shs.1,000,000/=.
58. There are a number of *problems* associated with this system as follows:
- a. the lawyer appointed may not have the skills commensurate with the seriousness of the offence (s/he is often junior and inexperienced seeking exposure);

- b. the lawyer is appointed at court just before the trial allowing no time for adequate consultation with the client or preparation of the case;
- c. the lawyer's fee is low and there are no incentives built into the scheme to encourage take up of such cases;
- d. the state brief scheme only covers the trial proceedings and does not extend to advice or representation on appeal; and
- e. the state brief scheme excludes those charged with serious (non-capital) offences in the lower courts who nevertheless face long prison terms.
- f. The current arrangement gives rise to two main challenges:
  - the judges and magistrates have sole discretion for the selection of lawyers and the amount to disburse by way of fee (depending on the complexity and length of the case); and
  - judges and magistrates are diverted from administering justice to, in addition, administering finances.

### Justice Centres Uganda

59. The Justice Centres Uganda were established as a pilot project of the Justice Law and Order Sector to provide the Government with lessons to be taken into account for the provision of quality state funded legal aid and to inform the ongoing process of development of the National Legal aid policy. It is an initiative that is intended to inform policy, planning and programming in as far as quality legal aid service provision is concerned<sup>9</sup>.
60. The Justice Centres Uganda is hosted by the judiciary and began operations in two sites (Lira and Tororo) midway through 2010. The aim is to offer a 'one-stop' legal aid service based on a model developed in South Africa and customised to Uganda to provide legal aid services across civil and criminal areas of justice to indigent and vulnerable persons, while at the same time empowering individuals and communities to claim their rights and demand for policy and social change.
61. Justice Centres are staffed by lawyers, paralegals and personnel trained in the provision of psycho-social services with three complementary approaches: delivery of legal aid through the legal aid clinics; the community outreach model; and human rights advocacy. Key activities of the three components include legal advice and representation; alternative dispute resolution (ADR); counselling, referral, legal awareness creation and advocacy.
62. The Justice Centres have broken the ground for government to discharge its duty of providing wholesome legal aid services to the poor, they are pioneering and innovative, and offer a promising model for delivering legal aid throughout Uganda. The challenges with JCs *include* the following:

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<sup>9</sup> Mid Term Review of the Justice Centres Pilot Project, April 2012

- a. The Pilot was three years and only two years have gone, There is still a full year left to fully test their viability through an evaluation;
  - b. Currently one Justice Centre is situated in one district and conducts awareness and mobile clinic sessions in the other districts. The Centre covers, up to 10 districts which may be too wide to cover effectively. The midterm review has proposed to limit coverage per centre to three districts.
63. The Justice Centres have diversified the state provided services and have provided a holistic (criminal and civil and additional support services such as counselling) approach to legal aid service provision.

### **Uganda Human Rights Commission**

64. The Uganda Human Rights Commission (UHRC) provides legal advice, mediation and investigation and adjudication of human rights violations. Several matters are considered and addressed using mediation at the various UHRC offices around the country. Those matters that warrant further action are handled by the UHRC Tribunal and the decisions are enforceable as is the case for Court decision. The UHRC still faces challenges in terms of its limited geographical coverage. Although there are now 9 UHRC regional offices, each office still has to cover a wide area and the resources are therefore constrained. The UHRC still faces challenges with enforcement of decisions, particularly the payment of compensations.
65. The UHRC's mandate is limited to Human Rights disputes, despite this however they still noted that they continue to receive numerous complaints of a purely civil or criminal nature outside of their mandate<sup>10</sup>. This is attributed to the limited alternatives in legal aid service providers and the high cost of legal services. They recommended the development of a Legal Aid Policy to address this.

### **Community Based legal aid – Local Council Courts**

66. The Local Council Courts (LCCs) are crucial for the improvement of access to justice particularly for women and children in areas where other formal JLOS institutions lack a definite presence. Due to their smaller geographical jurisdictions, LCCs are acquainted with communities, their behaviour and facts about emerging problems within their jurisdiction<sup>11</sup>. The LCCs are also attractive to many people because they use less formal procedures than the formal courts and are at times therefore, more user friendly. LCCs are familiar, convenient, prompt, and affordable and help to maintain social harmony and fulfil local social development initiatives<sup>12</sup>.

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<sup>10</sup> Uganda Human Rights Commission – 14<sup>th</sup> Annual Report 2011. Page 14.

<sup>11</sup> Baseline Survey on the LCC System - 1999

<sup>12</sup> Joint Survey of Local Council Courts - 2006

It is reported that Local Council Courts are the most utilised dispute resolution fora, particularly in the rural communities where the majority of Uganda's population resides. Over the years, the practice of going to Local Council Officials/Courts as the first point of reference has evolved into a norm.

The Local Council Courts however do face challenges that include:-

- Poor adherence to principles of human rights, ethical conduct, natural justice and gender sensitivity;
- Appreciation of the need for record keeping and accountability is also low and requires considerable capacity building;
- The requirement of fees for services also appears to have negated the volunteer spirit.

### Uganda Law Council – Pro Bono Scheme

67. The Uganda Law Council is the regulatory body for Advocates and legal aid service providers. It derives its mandate from the Advocates Act, which empowers it, under Section 3 (v), to exercise general supervision and control over the provision of legal aid and advice to indigent persons. The Advocates (Legal Aid to Indigent Persons) Regulations No.12 of 2007 elaborates further on the regulatory powers of the LC with regard to Legal Aid.
68. The Advocates Act<sup>13</sup> provides for the provision of *pro bono* legal aid services by Advocates. *Pro Bono* services are defined under the Act to mean 'professional services of an Advocate given for the public good to indigent persons without charge.' The provision of *Pro Bono* services or payment in lieu is a condition for the renewal of a Practicing Certificate by the Law Council. *The Law Society membership is mandatorily required to offer Pro Bono services under the Advocates Act and it uses a means and merits test to determine eligibility of clients.* Every Advocate is required to provide 40 hours free legal services under the scheme or face a fine of UGX 400,000; or withdrawal of their practicing certificate.
69. There are a number of challenges with the provision of 'pro bono' services:
- a. there is uncertainty as to who bears the costs arising from a case (ie filing charges and court fees);
  - b. lawyers provide their professional services without charging a fee, but they need to recover the payment of their costs, accommodation and other out of pocket expenses;
  - c. the services provided by a number of lawyers' groups and associations are limited in geographical scope to their membership;
  - d. while these groups provide free legal services, their capacity to deliver remains a drop in the ocean of needs of ordinary people in Uganda;
  - e. experience from the region suggests that while the pro bono services of lawyers can supplement legal aid services, it cannot be a substitute for a national, government-led, scheme;
  - f. The mandatory nature of the scheme has also faced challenge by Advocates.

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<sup>13</sup> As amended in 2002.

## Non-State Provision of Legal Aid Services: Functions and Challenges

### Uganda Law Society – Legal Aid Project

70. The Legal Aid Project of the Uganda Law Society provides free legal services to poor, vulnerable and indigent persons. The services provided include legal representation in Courts of law, legal advisory support to clients, mediation and counselling, enriching the populace with legal knowledge through legal and human rights awareness campaigns and prison outreach and visits. The Uganda Law Society also assists the Law Council by coordinating its membership to implement the Advocates *Pro Bono* Scheme. As at 2011, 637 advocates were handling cases pro bono.

### Law Clinics

71. *Law clinics*: are established in many universities around the world to provide student lawyers with the opportunity of practicing in the lower courts under supervision the legal theory they have been learning. The Law Development Clinic provides a law school clinic model of service delivery where post-graduate Bar students provide legal aid to indigent juvenile offenders by representing them in Magistrates Courts under guidance and supervision of a senior practising lawyer. In the 12 months (Jul 2010-Jun 2011), the Centre registered over 2,000 cases, resolved over 1600 and referred just under 400. It had only 16 cases pending at the end of the year (Law Development Centre/Legal Aid Clinic annual report 2011).

72. The potential role for law students is, generally, not exploited as it might be nor used effectively to provide supporting legal aid services. The *challenges include*:

- a) a lack of funding;
- b) the large number of students which provides organizational challenges (case allocation and supervision); and
- c) the absence of any ‘tradition’ of law clinics in universities with law schools as practiced in universities in other countries.

### Paralegals

73. *Paralegals* provide a range of services in Uganda from basic education to referral to counselling and advice. The *Paralegal Advisory Services (PAS)* has been working since 2005 in the criminal justice system to educate persons in conflict with the law, as well as communities on the criminal justice system, procedures, basic law relating to common offences, suspects’/ prisoners’ rights and obligations; follow up cases through the criminal justice agencies to increase case disposal; and link suspects and prisoners to their relatives and friends for purposes of facilitating quick access to justice.

74. An independent evaluation in 2010 found that the PAS had been ‘highly cost effective’ (PAS Evaluation 2007-2010) in reducing congestion in the criminal justice

system (facilitating the early release of 27,000 persons in 2010) and contributing to the reduction in pre-trial detention (UPS statistics show that the percentage of remand prisoners in facilities where PAS operates stands at under 25% compared with over 75% in prisons where PAS does not operate). It is described as a ‘major access to justice success story’ (Evaluation:2010) and has established itself as a tried and tested partner of the courts, police and prisons.

75. Notwithstanding this apparent success, the PAS has a number of *challenges*:
1. it is dependent on donor assistance;
  2. it is limited in scope and outreach; and
  3. it sits outside a government institutional framework and is dependent on the good will of individual justice actors for access.

### **Independent Legal Aid Service Providers (LASPNET)**

76. Since the late 1970’s civil society organisations have been at the forefront in the provision of legal aid services to the indigent. In order to promote access to justice in close working relationship with justice delivery institutions under JLOS, CSO’s formalised a coordination mechanism by forming the Legal Aid Service providers Network (LASPNET) in 2004, to ensure a standardised, effective and professional legal aid system. Currently LASPNET provides a coordinating role in over 40 districts, for a total of 37 non-governmental organisations, 12 of which have been certified by the Law Council.

77. *LASPNET has established itself as an effective and trusted co-ordination mechanism and central repository of accurate information on legal aid in Uganda. The problems with LASPNET are that:*

1. it is dependent on donor funding;
2. it has neither the authority nor funding sources to direct legal aid service providers where to focus their efforts; and
3. it does not have the capacity to coordinate legal aid services on a national scale.

78. In summary, while non-state legal aid providers have ‘creatively enhanced access to justice’ for some, there has been ‘no standardized method of practice’ resulting in an ad hoc approach<sup>14</sup>. Furthermore the extent of coverage is ‘still’ limited within the country (id). The Survey of Legal Aid in Africa supports these observations characterising the provision of legal aid services by non-state actors as a ‘patchwork’.<sup>15</sup>

### **Problem Statement**

79. The problem lies not with the laws themselves, so much as with the application of the laws:

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<sup>14</sup> Africa Centre for Research and Legal Studies December 2010

<sup>15</sup> UNODC:2011.



- i) equality before the law is denied to poor people in Uganda because of poverty. A poor villager in a remote corner of the country without the means to retain a lawyer has little prospect of being represented in a non-capital trial before the court;
- ii) the court may appoint a lawyer in a case where the interests of justice require, but in rural areas a lawyer is rarely available;
- iii) the provision of pro bono services may supplement other services but with the requirement of only 40 hours a year (less than one hour a week) is not adequate to service the needs of millions of people;
- iv) law students are under-utilised in Uganda and few universities provide for law clinics that would serve to expand the services currently supplied by the LDC;
- v) the Law Council sits in the Ministry of Justice and Constitutional Affairs. It is mandated both to regulate and provide for legal aid as well as set standards for and police the profession. Lessons learned from elsewhere strongly suggest that, to be effective, legal aid must be administered by an independent body and regulated separately. If the Law Council is to continue to be responsible for legal aid it will need to be restructured drastically with a separate Directorate that focuses exclusively on legal aid. The resulting costs would be similar to those of establishing an independent administrative body.

80. The current national legal aid framework does not take account of the range of international and regional sets of Principles and Guidelines that are designed to empower the poor to access national laws whether as suspects in criminal proceedings;<sup>16</sup> or to assist those who are especially vulnerable, such as women,<sup>17</sup> children,<sup>18</sup> or victims of crime;<sup>19</sup> or to divert appropriate matters away from the formal justice system.<sup>20</sup>

81. **Conclusion:** The current legal framework limits the scope of state-funded legal aid service provision and makes no formal provision for coordinating with and regulating the services of other legal aid providers.

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<sup>16</sup> See: UN Basic Principles on the Role of Lawyers, UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, UN Guidelines on the Role of Prosecutors, Kampala Declaration on Prison Conditions in Africa, ACHPR Principles and Guidelines on the Right to a Fair Trial and Access to Justice in Africa, Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa.

<sup>17</sup> See: Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the 'Maputo Protocol').

<sup>18</sup> See: UN Convention on the Rights of the Child, UN Standard Minimum Rules for the Administration of Juvenile Justice (the 'Beijing Rules'), UN Rules for the Protection of Juveniles Deprived of their Liberty.

<sup>19</sup> See: UN Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power, UN Guidelines for Justice in Matters involving Child Victims and Witnesses of Crime.

<sup>20</sup> See : UN Standard Minimum Rules for Non-Custodial Measures (the 'Tokyo Rules'), UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, ACHPR Principles on Fair Trial *supra*, Lilongwe Declaration *supra*.



**Recommendation 2:**

**The policy recommends consolidating the legal framework on legal aid in one comprehensive Act and that the Law Council should continue to be responsible for regulation of legal aid until the Legal Aid Act comes into effect.**

## Options

82. It is clear from the above that the framework for the provision of legal aid is currently inadequate to meet Uganda's legal obligations and to address the needs of the people of Uganda. It is therefore not advisable to maintain the current status quo as this would perpetuate the vulnerability of a large proportion of the society as far as access to justice is concerned. Government has several options before it in considering legal aid service provision. Briefly summarized, Government can: a) establish a legal aid system provided by the state; or c) establish a mixed legal aid system with provision by the state supported by non-state partnerships to complement government provision.

### State legal aid alone

83. The provision of legal aid is an obligation of the state. Nevertheless, governments all over the world (however wealthy) contract for services from private providers to fill the gaps or provide specialist support in the provision of legal aid. In addition to the state-funded 'state brief' system donors have, since 2004, supported an array of legal aid services whether bilaterally (as in the case of Norwegian assistance for the Law Society Legal Aid Project) or through the Legal Aid Basket Fund and tried and tested often innovative solutions to the problem of legal aid provision at a cost that is affordable to the state. An independent review of the LABF (2010) was highly positive of the contribution made by these legal aid service providers. 'Going it alone' is an option that is neither practicable nor desirable.

### Mixed legal aid system

84. A 'mixed' system based on private-public partnerships is often used. On the one hand, the provision of legal aid services by non-state actors has served to plug gaps in the provision of legal aid in the areas where the various providers live and work. On the other, these services remain ad hoc. Furthermore, they lack penetration into rural areas and are overly focused on criminal justice matters. Non-state actors alone cannot provide the services poor people need.

85. State and non-state actors need one another: Government can provide a core set of services in strategic locations around the country while drawing on the rich array of services that are already being supplied by non-state actors. In parts of the country where the volume of cases justifies the provision of legal aid services paid for by the state (through for example a Justice Centre) this can be done; where the volume is low, the state can contract for services (through for example a cooperation agreement) with a private legal aid service provider.

86. The provision of legal aid services is a cost to the state. The African Commission on Human and Peoples' Rights has stated: 'It is the duty of governments to provide legal assistance to indigent persons in order to make the right to a fair trial more effective.' (Recommendation 9, Dakar Declaration 1999) While the Lilongwe Declaration has emphasized the need for 'appropriate' government funding to 'ensure sustainability of legal aid in every country'.
87. However, UNODC has noted in many countries legal aid services suffer from 'chronic under-funding' which makes any system susceptible to corrupt practices, and has the effect of producing a high turnover of lawyers by failing to offer attractive terms and conditions of service (Access to Justice: Legal Defence and Legal Aid, UNODC, 2006).
88. The policy also recognises that the costs are recoverable in a number of ways. First there are the 'societal benefits' already mentioned (see para 23). The provision of legal aid services serves to reduce poverty/hardship for both the individual and his/her dependants. The greater use of ADR not only saves court time and cost, it also results in measurable benefits for the party concerned and restores harmony in the community and prevents local disputes growing into larger conflicts.
89. The effective partnership forged paralegals can contribute greatly to addressing several challenges facing the justice sector. This has been demonstrated in the role that paralegals have played in the reduction of the remand population in prison and the attendant savings to the budget and community by enabling released inmates to return and resume their roles as productive members of the society.
90. The absence of accessible and effective legal aid services has contributed to misunderstanding of the legal system which in turn contributes to distrust and apprehension resulting in increase in vigilantism particularly through acts such as mob justice.
91. The JLOS Strategic Investment Plan (SIP III (draft)) draws from international research in stating the 'consensus' view that the rule of law should be put first 'for everything else depends on it'. This view is emphasized in the World Bank's most recent World Development Report (2011).
92. **Conclusion:** In light of the above, it is clear retaining the status quo is not desirable as the present system is not serving all persons in Uganda (especially the poor and vulnerable) and does not conform to Uganda's development plans and international obligations. Providing only state-funded legal aid has the major disadvantage of weak credibility and lack of resources. A mixed system provides the best of both worlds as it draws on all providers of legal aid – public and private – not only on those employed by the national legal aid body. The role of the State as the primary duty bearer is clearly articulated above and it is clear that the legal framework in its current form does not demonstrate or support this role. It is however acknowledge that non-state actors have and continue to play an important supporting role in the

delivery of legal aid services and in view of the practical challenges that accompany such services it is important to build on the existing relationships and synergies to establish a robust and effective legal aid system. In this regard, a model that supports the primary duty of the State to provide legal aid but also draws on the strengths and advantages of existing synergies is recommended.

**Recommendation 3:**

**The policy recommends a ‘mixed’ model of legal aid delivery, consisting of employed legal aid providers and accredited non-state legal aid providers.**

## Policy options

### Methodological Framework

93. Consultations began on the elaboration of this Policy in 2008. In 2010, field studies were conducted. Draft documents resulting from these consultations were produced and went through several iterations. This documentation was considered in drafting this Policy, together with a wealth of literature generated by the Legal Aid Basket Fund (LABF) and other sources (practitioners, academics and web-based).
94. The Policy notes comparative and best practices in Africa and new developments in legal aid service provision in Africa recently published by the UN Office on Drugs and Crime.<sup>21</sup>
95. Those directly engaged in service delivery have been consulted both individually and collectively, along with justice practitioners, responsible state actors and donor agencies in the formulation of these options set down below.

## Principles

96. The Policy is built on four cornerstones drawn from the Constitution and the Government’s obligations under international human rights law and reflected in the National Development Plan: i) non-discrimination, ii) equality before the law, iii) empowerment of the poor; and iv) the rule of law. The Policy notes that these cornerstones are enshrined in the draft UN Principles and Guidelines on Legal Aid in Criminal Justice Systems mentioned above that should be included in the legislative framework.
97. Since 56% of Ugandans are children and over half of the population are female, the Policy mainstreams gender (by ensuring the services provided take the particular needs of women into account) and actively promotes the best interests of the child (by providing special attention to young persons in conflict with the law in police

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<sup>21</sup> Survey of Legal Aid in Africa, UNODC, 2011 ; Handbook on improving access to legal aid in Africa, UNODC, 2011.

stations, courts and places of detention in ways that are age-appropriate and responsive to their specific legal and social needs (draft UN Principles and Guidelines on Legal Aid in Criminal Justice Systems at Principle 10).

98. The Policy recognises that Uganda is a developing country and finances are limited. Accordingly the objectives of this Policy are subject to the tests of: accessibility, affordability, sustainability, credibility and accountability.

### Scope and Eligibility

99. The Policy starts with the premise that legal advice and assistance shall be available to *all* persons in Uganda on arrest and detention in the police station. Since it is at this first stage of the criminal process that every person is most at risk. Thereafter, legal aid is restricted to the indigent and persons in vulnerable circumstances. The definitions of these two categories are to be provided in the regulations.
100. The determination of indigence should be approached in a way that avoids erecting a barrier to legal aid by imposing onerous conditions on the poor to establish their poverty (UNODC Survey on Legal Aid cites examples of means tests creating ‘further obstacles’ for people to access legal services).

### Interests of Justice

101. Where the interests of justice require, an accused must be represented by a lawyer with skills and experience commensurate with the nature of the offence (UN Basic Principles on the Role of Lawyers, Principle 6). The interests of justice test is restricted to capital cases and case attracting life sentences in the courts of Uganda. However this is unduly restrictive.
102. The context in Uganda requires a realistic balance between what the state can provide and what it must provide. Where, for instance, the indigent person cannot understand the court proceedings or present their case and is a child in need of protection, woman in vulnerable circumstances, immigrant, refugee, asylum-seeker, internally displaced person, suspect in criminal proceedings, prisoner, aged, person with a serious health condition (including HIV AIDS), or who is mentally fragile, or physically disabled or an unskilled labourer, the interests of justice are satisfied.
103. Furthermore, where the indigent person –
- a. likely to lose their liberty or their livelihood; or
  - b. is a victim of a crime; or
  - c. is a party to a case involving a substantial question of law; or
  - d. is a party to proceedings which may involve the tracing, interviewing or expert cross-examination of witnesses; or
  - e. is a party to a case in which the court is of the opinion that the person before it cannot have a fair trial unless the person receives legal representation; –

then again, this policy argues, the interests of justice require the person be represented.

104. In summary, the criteria for who qualifies for such services must be determined by the national legal aid body and cooperation partners, and everyone who so qualifies should have access to legal advice and assistance as well as legal representation when this is required. Any test should avoid complex procedures and the need to furnish proof so as to ensure that the poor and people in vulnerable circumstances are able to access free legal aid services promptly.

**Recommendation 4:**

**The policy recommends legal advice and assistance is made available to all poor and vulnerable persons and that legal representation is restricted to those who qualify through a means and merits test and in addition where the interest of justice requires.**

## Models of delivery: Advantages and Disadvantages

105. There are a number of legal aid delivery models, some of which are operating in Uganda:

- i) Public defenders
- ii) Judicare
- iii) Pro bono
- iv) Law Clinics
- v) Justice Centres
- vi) Paralegals
- vii) Services provided by civil society organisations
- viii) Cooperation agreements
- ix) Mixed delivery

106. **Public Defenders:** these are salaried lawyers employed by the state to provide legal aid services. They are not yet operating in Uganda. In the main, they are employed by and operate from the Justice Ministry (or its equivalent).

*Advantages include:*

- the lawyers build up expertise in criminal matters;
- they are easy to budget for (fixed salaries and identifiable administrative costs);
- they can process a high caseload;
- their services are cheaper than the private bar where the caseload is high.

*Disadvantages include:*

- high start-up costs;
- a perception that they are agents of the state where they are not independently established;
- sustained funding levels (to function effectively)

107. **Judicare:** these are lawyers in private practice who agree with government to represent accused at a set fee rate. The state brief scheme applies to this model.

*Advantages include:*

- it is independent and can be set up without a legal aid body.

*Disadvantages include:*

- it is difficult to control and monitor;
- the budget is difficult to predict and plan for;
- services tend to concentrate around urban centres and become more fragmented in rural areas;
- it breaks down as caseloads increase; and
- it is more expensive than public defenders when operating on a large scale.

14. **Pro bono services:** these are legal aid services provided by individual lawyers for free. Several lawyers' groups apply this model in Uganda.

*Advantages include:*

- low cost.

*Disadvantages include:*

- they are urban-centred where most people live in rural areas;
- there are no incentives to encourage lawyers to take on more cases; and
- the output is low.

The main drawback to pro bono cases is that they are only useful by way of *supplement* to the mainstream legal aid system and not as a principal means of delivering of legal aid.

108. **Justice Centres:** this is a JLOS project which provides a 'one-stop' legal aid 'shops' to provide indigent clients with all the services they need to meet their legal needs.. The midterm review carried out in April 2012 shows that the JCs have given a human face to the access to Justice system. The Pilot is funded by government and substantially by the Democratic governance Facility (DGF) comprising of 8 donor countries.

*Advantages include:*

- a comprehensive holistic service package to clients; and
- they are cheaper to run once they have started.
- Employ in house lawyers who can process high case loads
- They have been tested and found to have great potential to revolutionise legal aid delivery in Uganda
- They have three mutually reinforcing factors; location and delivery of legal aid by the state, referrals and empowerment of the community.

*Disdvantages include:*

- they have high start up costs; and
- They are currently majorly donor funded
- they are only sustainable if they are able to process a high volume of cases.

109. **Law Clinics:** provide law students to provide legal aid services to the indigent under the supervision of a lawyer. The LDC operates such a clinic in Uganda.

*Advantages include:*

- most of the work is civil law;
- they provide valuable support to the legal aid body;
- they provide useful training to law students; and
- encourage a public interest approach in young lawyers to their work.

*Disadvantages include:*

- there is no tradition of law clinics in universities in Uganda; and
- clinics are dependent on external funding.

110. **Paralegals:** currently offer a range of services appropriate to the needs of poor people in conflict with the criminal law and operate at different levels. Some are community-based, others work within the criminal justice institutions. They are operational both as paid professionals with extensive training and volunteers with minimum preparation.

*Advantages include:*

- they offer a basic set of ‘first legal aid’ to communities they work in;
- they educate people on the laws; and
- act as a referral point to other services.
- *proven* impact in service delivery to the poor; at a cost affordable to the state;
- *proven* impact in reducing pressure on the criminal justice system; and earning a high degree of trust from state actors (police, prisons as well as courts).

*Disadvantages include:*

- the quality of services is variable; and
- they are difficult to monitor.
- reliance on external funds;
- they are exclusive to criminal justice;
- they are limited in numbers; and
- geographically limited in scope.

111. **Services provided by civil society organizations:** various organizations play an important role in supplementing the legal services people need and target a range of

different groups from refugees, the landless, workers - to children, those affected by acid attacks and other vulnerable categories of person in need of protection and support.

*Advantages include:*

- they are usually demand driven (ie: they respond to an identified need that people have expressed);
- they fill a gap that otherwise would be left unfilled; and
- they are usually known to the local community they serve.

*Disadvantages include:*

- they are usually reliant on external sources of funding and do not achieve self-reliance (since they offer their services for free);
- they are limited to their geographical area (and so when combined, produce a 'patchwork' of services rather than blanket coverage); and
- they can only supplement state provision as individually they lack the resources to provide national coverage.

112. ***Cooperation agreements:*** these involve contracts between a central state provider of legal aid and public interest non-state legal aid providers, law clinics and/or private law firms, usually for civil work. They are not yet operating in Uganda.

*Advantages include:*

- they are cheaper to administer than individual referrals to private lawyers;
- the state funded legal aid body can contract with specialist lawyers or non-governmental actors where a matter falls outside the mainstream line of work;
- they can provide access to legal aid services where there is no state-funded legal aid service provider; and
- the budget is easy to control.

*Disadvantages include:*

- the cooperation partner may have insufficient work, or
- too much work; and
- it may fail to meet the targets agreed and account for funds received.

113. ***Mixed delivery:*** where the state employs a mix of various service delivery models, for instance: public defender supplemented by private contracts with lawyers and or NGOs. This is not yet operating in Uganda.

*Advantages include:*



- the state is able to budget for a range of services in various strategic locations and fill the gaps through supplementary agreements with non-state actors.

*Disadvantages include:*

- the baseline data is not yet available that provides an evidence base to guide planners where to site these services; and
- such an approach is new to Uganda and will require a transition phase to work through any early challenges.

114. **Conclusion:** A consideration of the advantages and disadvantages of the different models indicates that a combination of service delivery models (ie: a ‘mixed’ model) is the most suitable choice for Uganda because it enables a national legal aid scheme to grow from and build on the range of services currently in operation. In so doing, it harnesses the work of accredited non-state service providers through cooperation agreements and by coordinating these services with those provided by state-funded legal aid offices (or Justice Centres) offer a national service.

## Models for management: advantages and disadvantages

### Profession-led legal aid

115. **Profession-led legal aid:** This is managed by delegated members of the Law Society and the cases are distributed by members of the Law Society in terms of the legislation and Ministry of Justice (MoJ) guidelines. Intake of cases is regulated by the categories of cases prescribed by legislation and the MoJ and eligibility is determined in terms of merits and means by delegated members of the Law Society and standards or quality control is regulated by the regulatory authority. Fee rates are set by the Law Society in consultation with the MoJ. The Law Society reports to the MoJ at the end of each financial year.

*Advantages include:*

- the independence of the body is ensured because the Law Society is independent;
- the Law Society is able to establish a roster to ensure cost-effective volumes of cases are dealt with without compromising standards of service; and
- the Law Society can use its network of lawyers to ensure national coverage.

*Disadvantages include:*

- the need for sufficient numbers of lawyers, offering national coverage. This is problematic in servicing rural areas as lawyers tend to be urban-based and
- issues of sustainability are also raised because lawyers are often busy with other work and so targets will be missed.

## State-run legal aid

116. **State-run legal aid:** managed by a director of department in the MoJ. Cases are distributed, the intake of cases is regulated and eligibility determined by legislation and the MoJ guidelines. The MoJ sets quality standards and methods of monitoring and evaluating performance. Payment levels are set by the MoJ. The director is accountable to the MoJ.

### *Advantages include:*

- a network of offices already in place from which to work;
- clear costs and identification of budget lines; and
- audit and performance management systems in place.

### *Disadvantages include:*

- a perception that the state defence lawyers' independence is compromised because they are employed by the executive;
- the caseload does not justify the expense of establishing an office in a given district; or
- the caseload exceeds the capacity of the state to respond compromising standards of service; and
- the questionable ability of the state to provide a comprehensive legal aid service to meet the legal needs of poor and vulnerable people.

## Independent-led legal aid schemes

117. **Independent-led legal aid schemes:** managed by a director, cases are distributed by administrative officials in terms of the legislation and the legal aid body's own guidelines. The intake of cases is regulated by the categories of cases prescribed by legislation and the legal aid body. Eligibility is determined in terms of merit and means tests by the body's officials. Standards of quality and methods of monitoring quality are set by the body. Payment standards are also set by the body after consultation with the profession. The legal aid body reports directly to Parliament through the MoJ.

### *Advantages include:*

- the independence of salaried and contracted lawyers from interference is secured because the legal aid body is independent;
- the body can set its own policy to secure the most cost efficient form of delivery within its budget;
- it can set attainable targets to ensure effective volumes of cases are dealt with without compromising standards of service;
- it can set in place mechanisms to monitor the quality of the services being provided;

- it can set up professional learning and training programmes;
- it can set up offices, or networks of paralegals and private lawyers, to cover urban and rural areas.

*Disadvantages include:*

- relatively high initial start-up costs.

118. **Conclusion:** A consideration of the advantages and disadvantages of the different management models, and best international practice, indicates that the most efficient and credible management model for a national legal aid scheme is one managed through an independent-led legal aid body.

**Recommendation 5:**

**The policy recommends the establishment of an independent legal aid body to provide a comprehensive framework for legal aid service provision nationally, whether through designated structures or co-operation agreements, that is answerable to Parliament through the Minister of Justice.**

## Implementation and Institutional Framework

### Vision Statement

119. The Policy's vision is that of a Uganda where the poor and vulnerable have access to justice through the provision of free legal aid services. It echoes a policy priority in the National Development Plan (2010-2015) to provide access to justice for all persons in Uganda.

### Objectives

120. This Policy defines *legal aid* as: legal advice and assistance; and legal representation in serious or complex cases where the interests of justice require, in both criminal and civil cases.

121. This Policy promotes the provision of *legal advice and assistance* in both criminal and civil cases by advocates, non-lawyers (ie bar training course students under the supervision of an advocate, law graduates awaiting enrolment), law clinic students and accredited paralegals - and which includes:

- receiving information about the relevant laws in Uganda, the rights and duties of persons under the law and the different methods of enforcing and exercising rights under the law;
- assistance with alternative dispute resolution of disputes such as: negotiation, mediation, conciliation and arbitration;
- advice on legal issues;
- assistance with drafting petitions and other documents;
- referring people to lawyers qualified to provide legal representation;
- in appropriate cases, referring people to relevant state and private organizations and institutions for assistance;
- in appropriate cases, diverting people from the formal justice system to traditional, faith-based and other dispute resolution mechanisms;
- conducting research, advocacy, lobbying, legal awareness and training in order to empower indigent persons in Uganda to access justice and legal services; and
- doing such other things that do not constitute legal representation or are not in conflict with the provisions of the Advocates Act.

122. This Policy defines *legal representation* to mean representation where the interests of justice require, by an advocate, or bar course students or law graduates awaiting their enrolment under the supervision of an advocate, and includes:

- counselling clients;
- representing or defending clients in criminal cases during pre-trial, trial and post-trial proceedings;
- representing or defending clients in civil cases and public administrative bodies; and

- doing all such things that advocates are entitled to do in terms of the Legal Aid Act.
123. The Policy includes in the term *legal aid provider* advocates, bar course students under the supervision of an advocate, law graduates awaiting enrolment, law clinic students and paralegals employed by governmental or non-governmental organisations who have been accredited as legal aid providers by the independent legal aid body.
124. The Policy advances the need to establish an independent legal aid body and a Legal Aid Fund.

## Meeting the Objectives

### Designation of a National Legal Aid Regulator

125. The Law Council is currently the regulator for Legal Aid Service provision by advocates, paralegals and non-state actors, by virtue of the Advocates Act and the Advocates (Legal Aid to Indigent Persons) Regulations S.I 12 of 2007. It is therefore mandated to oversee the provision of legal aid services and regulate and monitor the quality of legal aid delivery and ensure that legal aid and advice are provided in a most effective and efficient manner. It is also empowered to establish clear and objective criteria to be followed by Legal Aid providers when reviewing applications for legal aid.
126. Consultations indicated that the majority of persons (61.2%)<sup>22</sup> recommended that the Ministry of Justice be the regulator of legal aid service provision. They noted that Law Council can continue as the regulator but in that case it should not be the provider of legal aid services. They emphasised that there should be an independent service provider.

### Establishment of an independent legal aid body

127. **Recommendation 6:**  
**The legal framework should provide for an independent legal aid body to administer, implement, coordinate, monitor and evaluate the national legal aid scheme in accordance with Uganda's national and international obligations to provide legal aid services by the state to indigent persons.**
128. **Recommendation 7:**  
**The Poor Persons Defence Act that limits legal aid services to High Court matters should be repealed because it is not consistent with Uganda's international obligations. Any other legislation affecting the provision of legal aid**

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<sup>22</sup> Ensuring Justice for all: Voices of the People – Consultancy for the developing a National Legal Aid Policy – 22<sup>nd</sup> October 2010

services should be amended where appropriate to ensure that the provisions of the Act can be implemented.

129. **Recommendation 8:**

The members of the governing board of the national legal aid body should not be full-time appointments and may only be paid an honorarium.

130. **Recommendation 9:**

The legal framework should provide that the governing board of the national body has representation from the following: (a) the Judiciary; (b) the Law Council; (c) non-governmental service providers; (d) the Uganda Law Society; (e) the Ministry of Justice and Constitutional Affairs; (f) the Human Rights Commission; (g) the Ministry of Gender Labour and Social Development; and (h) Ministry of Finance, Planning and Economic Development.

131. **Recommendation 10:**

The national legal aid body should be accountable to Parliament through the Ministry responsible for Justice and make an annual report to Parliament through the Minister.

132. **Recommendation 11:**

The governing board of the national legal aid body should appoint a Chief Executive Officer to implement the decisions of the governing body and to employ the necessary staff to provide the body with a secretariat and implement the body's decisions and policies effectively and economically.

133. **Recommendation 12:**

The Chief Executive Officer should be the accounting officer for the national legal aid body, be accountable to the governing body, and is responsible for ensuring the proper management and functioning of the national legal aid scheme.

134. **Recommendation 13:**

The national legal aid body should develop a means and merits test to ensure that poor and vulnerable people throughout Uganda qualify for legal aid.

135. **Recommendation 14:**

The national legal aid body should ensure that legal aid offices and cooperation partners are accessible to all persons eligible for their services and that appropriate legal aid service providers are appointed at strategic sites around the country and extend down to sub-county levels.

136. **Recommendation 15:**

The national legal aid body should be independent of, but maintain close links with, the regulatory authority for legal practitioners and paralegals and should

**cooperate with the authority to establish criteria for the accreditation of legal aid providers.**

**137. Recommendation 16:**

**At any court where there is no accredited legal aid service provider, the judicial officer shall be responsible for referring accused and other persons to the nearest legal aid service provider.**

**138. Recommendation 17:**

**The national legal aid regulator should require accredited legal aid service providers to subscribe to a Code of Conduct and ensure that all accredited legal aid service providers in the country have the basic facilities and qualified personnel required to provide such services in a professional and ethical manner.**

**139. Recommendation 18:**

**The national legal aid body should engage in facilitating capacity-building and other training for accredited legal aid service providers.**

**140. Recommendation 19:**

**The national legal aid regulator should monitor the provision of legal aid services, conduct investigations into their efficiency and make recommendations for their improvement.**

**141. Recommendation 20:**

**The national legal aid body should initiate and implement sensitization and awareness programmes designed to promote an understanding by the general public and public officials, (e.g. the police, prosecutors, judicial officers and prison officials), involved in the administration of justice of their rights and duties in terms of the Legal Aid Act.**

**142. Recommendation 21:**

**The national legal aid body should be empowered to make its own rules and regulations regarding the administration and delivery of legal aid services to be presented by the Minister responsible for Justice for approval by Parliament.**

### **Establishment of a Legal Aid Fund**

**143. Recommendation 22:**

**The national legal aid body should be funded by monies specifically allocated by parliament for legal aid from the Consolidated Fund and may also receive and raise funding from external donors and contributions towards costs made by successful litigants in civil legal aid cases.**

144. **Recommendation 23:**  
A Legal Aid Fund should be established, to which all monies allocated to or received by the Legal Aid body should be paid.
145. **Recommendation 24:**  
The national legal aid body should be funded by monies specifically allocated by Parliament for legal aid from the Consolidated Fund and may also receive and raise funding from external donors, and contributions towards costs made by successful litigants in civil legal aid cases.
146. **Recommendation 25:**  
The national legal aid body should ensure that most of the funding paid into the Legal Aid Fund is allocated to the actual delivery of legal aid services, and not to governing bodies, in line with best international practice.
147. **Recommendation 26:**  
The national legal aid body should ensure that the Legal Aid Fund is used in the most effective, efficient and economical manner and the national legal aid body should be accountable through the Auditor-General for any funding provided by Parliament or from external donors in accordance with the funding agreements.

#### **Legal Aid offices and Cooperation Partners**

148. **Recommendation 27:**  
The national legal aid body should ensure that every arrested and detained person in Uganda is provided with legal advice and assistance from the moment of their arrest or detention; and where it is ‘in the interest of justice’ every indigent accused person should be provided with legal representation at all stages (pre-trial, trial and post-trial) and in all categories of courts in urban, peri-urban and rural areas.
149. **Recommendation 28:**  
The national legal aid body should ensure the maximum use is made of all potential legal aid service providers in Uganda by using advocates, bar course students, law graduates awaiting their enrolment, law clinic students, and paralegals.
150. **Recommendation 29:**  
The national legal aid body should ensure that legal aid offices and offices of cooperation partners, in appropriate cases, refer applicants to relevant psycho-social agencies, social welfare and other legal service programmes.
151. **Recommendation 30:**  
The national legal aid body should ensure that where appropriate, legal aid offices and cooperation partners divert minor criminal, small claims and civil cases from the formal justice system to Local Council and other subordinate



courts and traditional, or other, dispute resolution bodies in line with international standards and best practice.

152. **Recommendation 31:**

Accredited legal aid service providers should be required to make available appropriate data, records, reports and statistics to the national legal aid regulator to enable it to properly monitor the delivery of legal aid in the country.

153. **Recommendation 32:**

The national legal aid body should ensure that all cooperation partners keep and submit appropriate data, records reports and statistics to the national legal aid body regarding their delivery of legal aid services funded by the national body so that the latter can monitor the functioning of the national legal aid scheme.

154. **Recommendation 33:**

The national legal aid body should ensure that cooperation agreements between the national legal aid body and legal aid providers clearly state their targets and mandate regarding funding, quality of service, regulation, reporting obligations including rendering of accounts for services disbursed and how they relate to the national legal aid body.

155. **Recommendation 34:**

The national legal aid body should ensure that all professional staff in the employment of accredited non-state legal aid service providers are properly trained and engage in continuing legal educational development.

## **Duties**

156. **Recommendation 35:**

The policy recommends that legislation imposes a duty on *all* justice actors (judicial officers, prosecutors, police, probation officers, social welfare and prisons officers) promptly to inform the poor and vulnerable about their right to legal aid and to direct them to a legal aid service provider.

## **Penalties**

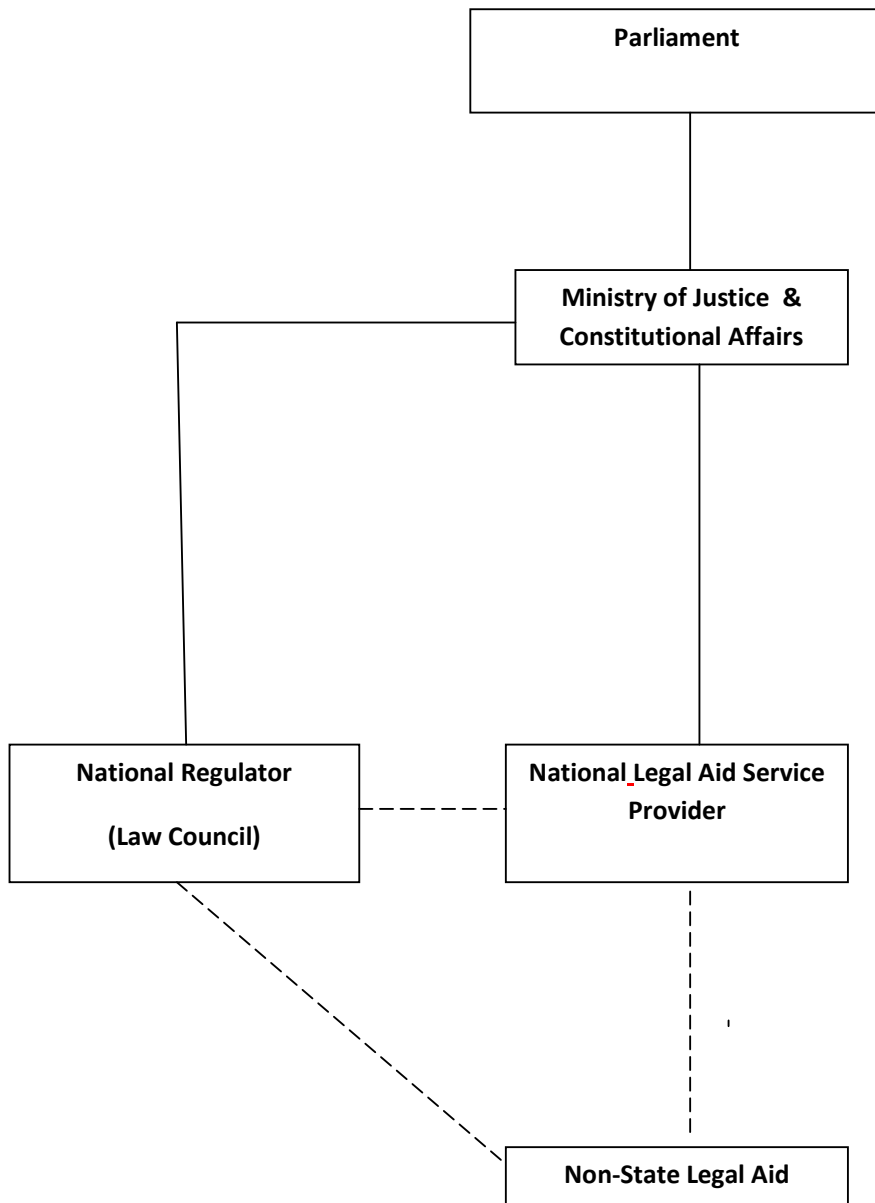
157. **Recommendation 36:**

The policy recommends that applicants who misrepresent their economic status will have their certificate of legal aid revoked.

158. **Recommendation 37:**

The policy recommends that accredited legal aid providers who breach the legal aid code of ethics or the provisions of co-operation agreement will have their accreditation revoked and, where appropriate be disciplined by their employers or professional bodies in addition to any criminal sanctions that may be imposed.

## Organogram for Legal Aid Service Provision in Uganda



N.B The solid line denotes a direct reporting relationship. Whereas the broken lines denote a regulatory or collaborating relationship.