ACCESS TO JUSTICE FOR ALL

REPORT OF THE BASELINE AND NEEDS ANALYSIS SURVEY ON LEGAL AID PROVISION IN UGANDA

BY
LEGAL AID SERVICE PROVIDER'S NETWORK (LASP-NET UGANDA)

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ABBREVIATIONS

ADA	-	Austrian Development Association
AHURICA	-	Action for Human Rights and Civic Awareness
AHURIO	-	Association for Human Rights Organisations
ARLI	-	Acholi Religious Leaders' Initiative
ARRO	-	Association for Research and Rehabilitation of Offenders
BUCINET	-	Bugisu Civil Society Network
CAO	-	Chief Administrative Officer
CBA	-	Canadian Bar Association
CBO	-	Community Based Organisation
CDA	-	Community Development Assistant
CDO	-	Community Development Officer
CECORE	-	Centre for Conflict Resolution
CFPU	-	Child and Family Protection Unit
CLE	-	Clinical Legal Education
CLO	-	Community Liaison Officer
CRS	-	Catholic Relief Services
CSO	-	Civil Society Organisation
CSP	-	Capacity Strengthening Programme
DANIDA	-	Danish International Development Agency
DFID	-	Department for International Development
EALRAC	-	East African Legal Research and Awareness
EU	-	European Union
FGD	-	Focus Group Discussion
FHRI	-	Foundation for Human Rights Initiative
FIDA	-	Association of Women Lawyers
FORD	-	Ford Foundation
HIVOS	-	Organisation in Netherlands
HURIFO	-	Human Rights Focus
HURINET	-	Human Rights Network
IDP	-	Internally Displaced Persons
JLOS	-	Justice, Law and Order Sector of the Government of Uganda
KABINETO	-	Kabale Networking Organsation
LAC	-	Legal Aid Clinic
LAP	-	Legal Aid Project
LASP	-	Legal Aid Service Providers Network
LaWePa	-	Women for Peace and Justice, Gulu
LC.I, II, III, V	-	Local Council
LDC	-	Law Development Centre
LRA	-	Lords Resistance Army
LSEW	-	Law Society of England and Wales
MIFUMI	-	Project in Tororo
NAWOU	-	National Association of Women Organisation in Uganda
NED	-	National Endowment for Democracy
NGO	-	Non-Governmental Organisation
NORAD	-	Norwegian Agency for Development
NOVIB/CORDAID		- Development Organisation from the Netherlands.
OCP	-	Officer in Charge Prisons / Police
PDAU	-	Public Defender Association of Uganda
PFLA/ILO	-	International Labour Organisation
PPDA	-	Poor Persons Defence Act
PWD	-	Persons with Disabilities
RDC	-	Residential District Commissioner

SIDA	-	Swedish International Development Agency
SNV	-	Development Organisation form the Netherlands.
SPSS		Statistical Package for Social Scientists
STOP	-	Code of Criminal Procedure
Survey	-	Legal Aid Baseline Survey and Needs Analysis
UCLF	-	Uganda Christian Lawyers Fraternity
UGRC	-	Uganda Gender Resource Centre
UHRC	-	Uganda Human Rights Commission
UK	-	United Kingdom
ULS	-	Uganda Law Society
ULS	-	Uganda Law Society
UNDP	-	United Nations Development Programme
UNIFEM	-	United Nation Program for Female Rights
UPDF	-	Uganda People's Defence Forces
USAID	-	United States Agency for International Development
UWESO	-	Uganda Women's Effort to Save Orphans
VSO	-	Voluntary Service Overseas
WFD	-	West Minister Foundation for Democracy
ZPO	-	Code of Civil Procedure

EXECUTIVE SUMMARY

INTRODUCTION

This study was conceived against the background that access to justice is an important right, which should be enjoyed by all people in the world irrespective of their socio-economic and political differences.

On the whole, there are critical gaps in the existing efforts by government to enhance access to justice through the provision of legal aid services to the poor. 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.

It is not clear how many other legal aid providers exist in the country, where they operate and how. Recent policy shifts in Uganda have tended to emphasize, among others, a decentralized system of service delivery. However, whereas this system has worked relatively well in a number of social service sectors (such as health and education) in reaching the rural poor, it is not known how effective this can be in the provision of legal aid services. It is against this background that this study was carried out.

This study was conceived under the broad goal of establishing mechanisms for the enhancement of fundamental human rights and freedoms and, more particularly, the need for improved access to justice by indigent categories of the Ugandan population. The ultimate objective of the study was to establish the nature and character of legal aid service provision in Uganda, the findings of which were hoped to inform processes for improving legal aid service provision in the country.

METHODOLOGY

A cross–sectional and descriptive research design was used adopting both a qualitative and quantitative approach to data collection and analysis. Well known legal aid providers and other Civil Society Organizations (CSOs) that provide a range of services**,** some of them legal aid in nature, were considered as the main study group. The Survey was nationwide, covering four major regions of the country: Central, Northern, Southwestern and Eastern. From these regions, a total of fifteen districts were selected purposively, mainly based on: (i) the size of the region, (ii) the then available knowledge on the coverage of legal aid service provision and (iii) possession of unique characteristics in the surrounding region that could not be captured elsewhere.

The main respondents in this survey were legal aid providers, clients and potential clients of legal aid services, advocates, relevant district leaders and heads of departments, members of the judiciary, court officials and senior officials from the Uganda Law Society and the Uganda Human Rights Commission.

The main methods of data collection were Structured Interviews, Focus Group Discussions (FGDs), Key Informant Interviews and Documentary Reviews. The use of an Open House workshop was also helpful in the data collection exercise. Qualitative data were primarily collected through Key Informant Interviews and documentation, and analyzed using a thematic approach. Themes were developed in accordance with the objectives of the study, research questions and expected outcomes. Data were then grouped according to these themes, as a first step for subsequent interpretations. The analysis of quantitative data was performed using the Statistical Package for Social Scientists (SPSS). Such data were mainly

obtained from the identified legal aid service providers by using a semi-structured questionnaire.

MAJOR FINDINGS

Definition of Legal Aid

A general definition of legal aid can be formed and stated as follows:

> *Legal services provided to disadvantaged persons and people who cannot afford such services so that justice is ensured through access. These services are to be provided for free or at a minimal cost.*

In all the sampled areas it was found out that legal aid services mainly target disadvantaged groups including the elderly, women, children, prisoners and persons with disabilities and persons affected by HIV/AIDS. Of these, widows, children and prisoners held on remand were seen to be more deserving.

The areas of law in which legal aid services are most needed relate to land issues, inheritance and succession, criminal matters, family and domestic relations, human rights, court and tribunal procedure. Legal aid in the area of family and domestic relations requires focus on issues of child and family maintenance, child custody, marriage reconciliation and divorce.

Two broad categories of legal aid services can be discerned: primary and secondary services.

Primary Services: Services provided by advocates, including; representation at Court and tribunals, legal advice, counseling on legal solutions, negotiation, mediation and arbitration

Secondary Services: Services that do not require advocate personnel, including: general advice to the community, counseling on attitude and social solutions, sensitization, education and rights awareness campaigning and training of government officials

Coverage

There are 47 districts that do not have any primary legal aid services Most NGOs that have a core mission of providing legal aid services are based in Kampala, whereby three of them of them have established also upcountry branches. Five legal aid providers are based outside Kampala, meaning that their head office is also outside the capital. Many other NGOs and CBOs provide some secondary legal aid services, but these services are largely ancillary to the organizations' core missions and objectives. These other NGOs and CBOs provide legal aid services because there are often no legal aid providers in their area of operation or the services are necessary components of their core missions and objectives.

Apart from the larger, Kampala-based legal aid providers, few organizations maintain any reliable records as to the number of clients serviced. This is often due to the fact that there is no requirement for adequate record-keeping. It was not an objective of the survey to measure the quality of the services provided by legal aid providers. In any event, such a measurement would not be possible as there are no established benchmarks by which to compare. The above findings denote a need for the establishment of standardization of record keeping and quality of legal aid.

In all regions, paralegals have been trained and provide some legal aid services. These services are hampered by the fact that paralegals are often not facilitated (for transport or supplies) nor is their training regularly kept up to date.

Government Activities
The Survey found that the activities carried out by the government, at different levels are essentially similar throughout the country. The departments that provide legal aid service are the Probation and Welfare Office, the Judiciary (through the State Brief system), the Community Liaison Office and the Child and Family Protection Unit of the Police, and the Local Council I executives. All government activities, with the exception of the State Brief system are secondary in nature.

Service Delivery
Apart from the larger legal aid providers, most organizations do not maintain specific frameworks for legal aid services and thus do not have strategies and effective work-plans to further and broaden the development of legal aid services.

Decentralization
The existing specific legal aid service providers have not utilized the existing decentralization framework in the provision of their services. Contacts between providers and district are not formalized. An established consultation body, for information sharing, exchange of ideas and cooperation, between providers and specific district departments does not exist. Districts should get formally involved in the provision of legal aid services.

Regulatory Framework

The Survey found that there was no comprehensive legal, institutional and policy framework at the national level to guide the provision and regulation of legal aid services. Consequently, government funding and provision is limited to state briefs while the mandate of the Law Council as a regulator is largely dysfunctional. To date there has not been any deliberate effort to regulate legal aid services.

The Courts, the Law Council, students and advocates all have a prescribed role with respect to legal aid. The role that is accorded to the Courts and other actors in the legal system can be best described as complementary. As such, the Courts and other actors would not be well placed to regulate the provision of legal aid at large. In terms of regulating the provision of legal aid, however, Law Council is very clearly granted that role by statute, and would appear best placed to do so. To fulfill such a role, the Law Council would face serious challenges in terms of human, financial and technical resources. Given the potential for the Law Council to regulate, there should be a focus on what regulations would be needed. As a recommendation for the long-term, it might also be worthwhile to consider the need or advantages of trying to get a legal aid statute passed in parliament, with regulations through Law Council serving as interim provisions. A legal aid statute would provide for the entrant of the national government in supporting legal aid provision in the country and thus, ensure some measure of sustainability for legal aid in the long-run.

NEEDS ANALYSIS

The following is a summary of the needs found by the Survey:

Client Care
- Create standardized client care operations, quality of services and work procedures;
- Inform clients of all charges, explicitly, prior to engaging the legal aid provider;

Coverage
- Extend primary services to the poor, elderly, women, children, prisoners and persons with disabilities, especially to widows, orphans and prisoners held on remand;
- Extend primary services to internally displaced persons and refugees as these groups are severely disadvantaged;

- Provide counseling and advice services to complainants and victims of crimes (such as victims of defilement);
- Provide secondary legal services and education in relevant areas of law;
- Provide secondary services at the grassroots level;
- Provide primary services to prisoners held on remand.

Staffing/Resources

- Station paralegals at the sub-county level;
- All primary legal aid offices should have trained and qualified advocates and paralegals at every district;
- Have at least one advocate dedicated to providing primary legal aid services at the district level;
- Train and continually update the law and legal skills and client service skills of legal aid officers;
- Ensure sufficient funding and resources to provide legal aid services and create modalities for accountability.

Structure

- Create district networks of legal aid providers, district departments, advocates and NGOs/CBOs;
- Link legal aid with district officials, local government leaders, Courts, tribunals, district departments, etc.;
- Create a monitoring body to supervise legal aid service provisions

Law Reform

- A study should be conducted to establish which laws and regulations are hindering the implementation of legal aid services, as well as hindering equal access justice for all citizens of Uganda.

RECOMMENDATIONS

The recommendations are based upon the foregoing findings, needs analysis and current regulatory framework.

National Policy and Legislative Framework

It is recommended that Government should, without delay, initiate the process of enacting legal aid legislation and develop a comprehensive national policy and institutional framework that will guide the planning, provision and regulation of legal aid services at national, district and lower levels.

Law Council

First, the Law Council should adopt regulations to ensure quality control. In essence, a minimum package provided for client care, paralegal training and outreach would be developed. The minimum package should divide roles of legal aid providers into those who provide primary services and those who provide secondary services. In addition, a curriculum guideline for training paralegals would be developed in tandem. To encourage feedback, regional seminars should take place and comments could then be incorporated into the final regulations. This method of regulatory development is necessary so that ownership of the regulations occurs among the key stakeholders.

Second, the Law Council would need to create a Monitoring Section to monitor these regulations. The purpose of the Monitoring Section is to ensure adherence to minimum package regulations and paralegal training regulations. Further, the Monitoring Section could also provide recommendations for new program opportunities and reporting of best practices that could be incorporated in other districts.

District Networks and Coordination Units

There is a need for creating networks among legal aid providers and linkages with governmental departments that provide forms of legal aid at the district level. The members of networks would include; legal aid providers, independent (volunteer) paralegals, advocates involved in providing *pro bono* services, probation and welfare offices, community liaison officers and family protection units of police, and possibly representatives of LC I Courts. Initial activities of district networks may include the following:

- Share best practices and experiences
- Create/facilitate referral systems
- Develop partnerships with the local governments.

Once a district network has developed, other initiative could take place. These initiatives could include:

- Explore and design new services, education/awareness programs and training as needed
- Implement new services, education/awareness programs and training either collectively or individually
- Create partnerships for effective resource management (i.e. sharing office space, internet connections, etc.)

The Coordination Unit would coordinate the network. The design of the coordination unit is flexible and could be based from an existing legal aid provider, district offices or a new office. The purpose of the coordination unit is to provide professional support to legal aid providers and network partners. The professional support would be dependant upon the specific needs of the area. Also, the Coordination Unit could act as a clearinghouse for matching clients with *pro bono* advocates.

Funding

It is recommended that an Independent Legal Aid Fund (the "Fund") is setup. The advantages of an independent Legal Aid Fund include but are not limited to the following:

1. Standardizing financial accountability and reporting;
2. Ensure that funding criteria includes compliance to legal aid regulations;
3. Avoids duplication of services;
4. Creates a national strategy to meet legal aid needs throughout the country; and
5. Facilitates the future determination of average costs for delivering legal aid services across the country.

The Fund's governing body would be a National Steering Committee and the operational body would be a Programme Management Unit. The National Steering Committee (the "NSC") will be the highest policy making organ of the Legal Aid Fund. It will constitute membership from the Government line Ministries, the Law Council (regulation), donor agencies and civil society. Its main responsibility will be providing strategic decision making of the Fund. Its initial task will be setting up the Programme Management Unit, the Basket Fund and strengthening the Law Council to perform its regulatory responsibilities. The Programme Management Unit will be responsible for the day-to-day technical coordination of the Fund including developing implementation strategies and developing guidelines and monitoring the implementation of the programme activities. It will solicit and shortlist grant applicants and recommends to the NSC for approval. In addition, the Programme Management Unit will have the responsibility for financial management of the Fund.

Programming/Staffing/Resource Management

Based upon the Needs Analysis, the Survey recommends that every district have a legal aid office that employees at least one advocate. This would allow for advocate services to reach every indigent person at the district level. All districts should have advocate services available within a five-year time period and the accomplishment of this objective should be the priority of the Fund.

It is recommended that any legal aid provider who is licensed as a primary services provider would be able to established a district level office, however, the provider would need to ensure that it create a strategy to ensure that primary services are available to all indigent persons irrespective of gender and other socioeconomic factors.

The Survey recommends that continual education of legal aid providers (including advocates, lawyers and paralegals) take place. Such training should occur every 3 to 6 months.

1 INTRODUCTION

1.1 BACKGROUND TO THE SURVEY

This study was conceived against the background that access to justice is an important right, which should be enjoyed by all people in the world irrespective of their socio-economic and political differences. This right is founded within international law and justice systems. Specific international instruments that guarantee this right include**:** The 1948 Universal Declaration of Human Rights; The Convention on the Economic, Social and Cultural Rights; and The Convention on the Civil and Political Rights and The United Nation's Charter.

As observed by Kasirye, Legal Aid as an institution is one of the gateways into the justice system, which opens the door to justice for those whose socio-economic status would otherwise bar entry.[1] Melina Buckley, as cited by Kasirye, also observes that Legal aid is a fundamental aspect of our justice system and democracy.[2]

In Uganda, Article 21 of the Constitution of Uganda, 1995 guarantees equality before the law to all citizens. However, most Ugandans find it extremely hard to realize this right. This is partially due to the fact that the country experiences high levels of poverty and illiteracy. In addition, there is still a high level of *urban bias* in the geographical distribution of most essential services including legal aid.

In cognizance of the above constraints, the Ugandan Constitution, under Article 28(e) imposes an obligation on the State to provide legal aid to all people charged with serious criminal offences and cannot afford an advocate. In addition, there are laws, policies, and reform initiatives in the Justice Law and Order Sector, which are designed to support the implementation of these constitutional mandates. Specific laws on pro bono legal services have also been developed. They include: *The Advocates Act 1970 as amended by the Advocates (Amendment) Act, 2002*, which imposes an obligation on every advocate to provide pro bono services when required by the Law Council or to pay a fee prescribed by the Law Council in lieu of such services; *The Poor Persons Defence Act, 199*8, which sets the criteria for the provision of legal aid for poor people charged with serious criminal offences, and the procedure for determining the fees to be paid to advocates handling their cases;[3] *The Advocate's Remuneration and Certification of Costs Rules, which* recognise the obligation of an advocate to handle cases on a pro bono basis and set the minimum remuneration to be paid to an advocate by parliament (determined by the Judge), for expenses incurred in the process.[4]

On the whole, there are critical gaps in the existing efforts by government to enhance access to justice through the provision of legal aid services to the poor. As observed by Kasirye, access to legal information, legal literacy and legal services**,** the basic requirements to harness legal and judicial systems, have been "abandoned" to civil society organizations by government.[5]

Recently, efforts to increase access to justice for vulnerable groups have seen Civil Society Organizations (CSOs) constituting themselves into the Civil Society organisation sector. With the support of the Justice, Law and Order Sector Program of the Government of Uganda, [JLOS] a CSO Partnership was formed by the following organisations:

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[1] Kasirye A (2003) *Establishing Legal Aid Services in Uganda:* Paper presented in a regional Seminar for Legal Aid Practitioners June 9th – 13th 2003 Entebbe Uganda
[2] *ibid*
[3] Up to a maximum of 50 currency points or 1,000,000/= one million Uganda Shillings. One currency point is equivalent to 20,000/= Uganda Shillings.
[4] Up to a maximum of 5 currency points or 100,000/= Uganda Shillings.
[5] Kasirye A (2003) *Establishing Legal Aid Services in Uganda:* Paper presented in a regional Seminar for Legal Aid Practitioners June 9th – 13th 2003 Entebbe Uganda

(i) The Legal Aid Project of the Uganda Law Society;
(ii) The Legal Aid Clinic of the Law Development Centre;
(iii) Uganda Association of Women Lawyers FIDA (U);
(iv) Public Defenders Association of Uganda;
(v) The Uganda Gender Resource Centre; and
(vi) Foundation for Human Rights Initiative.

Apart from the above six main legal aid service providers and the Refuge Law Project of Law Faculty of Makerere University, it is not clear how many other legal aid providers exist in the country, where they operate and how. Recent policy shifts in Uganda have tended to emphasize, among others, a decentralized system of service delivery. However, whereas this system has worked relatively well in a number of social service sectors (such as health and education) in reaching the rural poor, it is not known how effective this can be in the provision of legal aid services. It is against this background that this study was carried out.

1.2 MAJOR GOAL OF THE SURVEY

This study was conceived under the broad goal of establishing mechanisms for the enhancement of fundamental human rights and freedoms and, more particularly, the need for improved access to justice by indigent categories of the Ugandan population.

1.3 ULTIMATE OBJECTIVE

The ultimate objective of the study was to establish the nature and character of legal aid service provision in Uganda, the findings of which were hoped to inform processes for improving legal aid service provision in the country.

1.3.1 Specific Objectives

(i) To establish the number of organizations involved in providing legal aid services in Uganda, their target audience and reach;
(ii) To identify the nature of legal aid services (activities) provided;
(iii) To determine the areas (districts) being reached and by whom;
(iv) To establish when and how often a particular audience is served;
(v) To determine how legal aid services are being provided (e.g. through the use of volunteers, paralegals and/or qualified lawyers);
(vi) To determine how legal aid services are being funded;
(vii) To determine the possibility of linking legal aid provision with decentralisation;
(viii) To identify the specific legal aid needs around the country.

1.3.2 Expected Outcomes

(i) A list of legal aid providers across the country;
(ii) An account of the geographical coverage of legal aid services;
(iii) A description of how legal aid is rendered (by whom, where, how etc.);
(iv) A breakdown of the legal aid needs by geographical area and broken down into areas of the law.
(v) A guide on the level of activities funding required meeting legal aid needs identified in the survey.
(vi) A clear definition and scope of legal aid services in Uganda;
(vii) Suggested structure that provides an opportunity for new entrants & linkage with decentralization;
(viii) Guide for regulatory framework & legal aid provision financing mechanism;

1.3.3 Research Questions

The survey was guided by the following research Questions

- Which organizations provide legal aid services?
- What is the nature of the services they provide and which ones of these are legal aid in nature?
- What are the targeted groups?
- What specific activities are undertaken in the regions/districts covered?
- In what regions/districts do legal aid providers render their services?
- On what bases are these areas and their corresponding activities decided?
- Who is being reached by the services of legal aid providers?
- What criteria and procedures are used to determine who qualifies or should benefit from legal aid services?
- How best can legal aid services be integrated into the current decentralized system of governance and service delivery?
- What are the challenges faced by legal aid service providers in attempting to meet their service objectives?

1.4 JUSTIFICATION FOR THE SURVEY

The current survey is an attempt to make a significant improvement on available evidence on the present legal aid needs in the country, as well as inform efforts to improve legal aid service coverage (both geographical and content coverage). This information will ideally be of great use in understanding the current status and quality of access to justice in Uganda. In addition to this, the information obtained could enhance the link between human rights monitoring bodies and legal aid providers, and result in joint efforts to help enforce legal rights and address injustices where they occur. Finally, the results of the survey are hoped to guide the planning and designing of the DANIDA Access to Justice programme.

1.5 STUDY MANAGEMENT

The Programme to Strengthen the Capacity of the Legal Aid Project (CSP) of the Legal Aid Project of the Uganda Law Society – which was coordinating the process to establish the Legal Aid Service Providers' Network in partnership with the Law Society of England and Wales (LSEW) – and the Uganda Law Society (ULS), took the lead in carrying out the baseline survey and legal aid needs assessment. The Uganda Law Society committed two Resident Advisors seconded by the Canadian Bar Association and Voluntary Service Overseas respectively.

In addition, each of the six organizations currently under the network sent a representative to participate in the data collection. The hope was also that the research activities would enhance the institutional knowledge base of the Legal Aid Provider's Network, by helping staff to develop new skills and by exposing them to the existing legal aid needs and practices throughout the country. Further, in view of the amount of work involved in the survey, three more survey assistants were recruited to assist in the data collection and analysis exercises.

Two teams were formed, each constituting a technical advisor, survey coordinator, representatives from the current Legal Aid Service Providers Network and at least one of the survey assistants, which made it possible to perform survey activities simultaneously in two different regions. This allowed for coverage of the study areas in a shorter period of time.

2 METHODOLOGY

2.1 STUDY DESIGN

A cross–sectional and descriptive research design was used adopting both a qualitative and quantitative approach to data collection and analysis. Well known legal aid providers and other Civil Society Organizations (CSOs) that provide a range of services**,** some of them legal aid in nature, were considered as the main study group.

2.2 STUDY AREAS

This was a nationwide survey, covering four major regions of the country: Central, Northern, Southwestern and Eastern. From these regions, a total of fifteen districts were selected purposively, mainly based on: (i) the sizes of the regions, (ii) the then available knowledge on the coverage of legal aid service provision and (iii) possession of unique characteristics in the surrounding region that could not be captured elsewhere. The following table summarizes information on the regions covered and the districts that were selected.

Table 2.1. Regions and districts covered

Region	**Districts Covered**
Central	Luwero, Kampala,
Eastern	Jinja, Mbale, Soroti, Kumi
Northern	Arua, Gulu, Masindi
South Western	Kabarole, Kasese, Kabale, Rukungiri, Mbarara, Ntungamo, Kanungu

* Note: More districts were covered, although not all survey activities took place there. These districts were Ntungamo, Kapchorwa, Kayunga and Bushenyi. It was not possible for the survey team to cover the northeast because of insecurity.

2.3 SAMPLING CRITERIA

The main respondents in this survey were legal aid providers, clients and potential clients of legal aid services, advocates, relevant district leaders and heads of departments, members of the judiciary, court officials and senior officials from the Uganda Law Society and the Uganda Human Rights Commission.

To increase the validity and reliability of information obtained from the baseline and needs assessment survey, the selection of sampling units was carried out purposively. In this case, it was decided that the best information would be obtained from clearly identified respondents, who were deemed to be familiar with legal aid service provision, policy and coverage.

Thus the selection of sampling units was based on the following criteria:

b. The perceived coverage of legal aid services
c. Geographical and Administrative divisions (District/local governments)
d. Locality of respondents. This was mainly in respect to clients and potential users of legal aid services. Urban and Rural communities were considered.
e. Ownership and authenticity
    - Community– clients/potential clients
    - NGOs and Civil Society Organizations (CSOs)
    - Private sector (advocates in private practice)
    - Public sector (Magistrates and Resident Judges, State Attorneys, Registrars of the High Court, and District Chairpersons of The Land Tribunal)

2.4 PREPARATION FOR FIELDWORK

A number of activities were carried out in preparation for fieldwork. These included, among others, training of survey team members, development and pre-testing of research instruments, and establishing contacts with relevant persons in the selected districts for the survey activities.

2.4.1 Training of survey team members

A training-of-trainers workshop was held for members of the survey team at the Kampala Regency Hotel from 16th–20th February 2004. The Law Society of England and Wales sent two experts to design and facilitate the workshop. The ultimate objective of the workshop was to help the survey team to acquire a shared knowledge base for legal aid, and appreciate the importance of a regulatory framework for legal aid service provision.

The more immediate aim of the workshop was to equip the survey team members with the necessary skills for the survey activities, namely, data collection, processing, analysis and reporting. The workshop was also designed so that the survey members could later apply the skills acquired in any eventual monitoring functions of legal aid service provision. Finally, as a training-of-trainers workshop, the survey team members were equipped with the skills and materials to perform the same training for others in the future.

2.4.2 Development and Pre-testing of Research Instruments

Drafts of the necessary research instruments were developed before the training workshop for the survey team members. The instruments were later pre-tested during the training workshop week. Recommended changes were integrated to ensure that the instruments were effective and suitable for the range of issues that were to be investigated.

2.5 METHODS OF DATA COLLECTION

The main methods of data collection were Structured Interviews, Focus Group Discussions (FGDs), Key Informant Interviews, and Documentary Reviews. The use of an open house workshop was also helpful in the data collection exercise.

2.5.1 The Open House Workshop

The first activity during each survey visit was to hold an open house workshop with relevant stakeholders. The workshops were organized prior to a team's arriving in the districts visited. Mobilizers were used to help initiate contact and invite participants of the open house workshops. Mobilization of the participants was made possible either by Probation and Social Welfare Officers or, in those districts where a well-known legal aid provider existed, staff members from their offices. The mobilization exercise was further enhanced by radio announcements, advertisements in the national and local language newspapers and, in Arua and Mbale districts, radio talk shows with the participation of survey team members. In Arua and Jinja, team members were also able to sit in on meetings of the *Chain Linked Initiative*.

Invited participants of the FGDs were representatives of stakeholders, such as Chief Administration Office, Magistrates and Prosecuters Probation and Social Welfare Officers, Prison Staff, Police, NGO's and CBO's, paralegals, LC's and client/users. It was hoped that all of them could inform the survey in detail about the current situation in the legal aid provision within the area.

The purpose of the open house workshop was twofold. The first was to introduce the survey and its team members to the relevant stakeholders and district leaders, and the general public. This served to gain their support. The other purpose was to create an opportunity for locating relevant respondents, particularly civil society organizations and NGOs whose services related to legal aid. Indeed, the open house workshops greatly facilitated the location of respondents. In many cases, the workshops

also served as a platform to perform interviews and focus groups discussions, especially with respondents coming from neighbouring districts.

2.5.2 Structured Interviews

These were mainly administered to legal aid providers who had already been identified by the research team or those identified during the open house workshop in the districts visited. This method was very helpful, particularly, in facilitating the analysis of the nature of services provided, the target groups, staffing arrangements, etc.

2.5.3 Focus Group Discussions (FGDs)

FGDs that were carried out, were particularly helpful in providing information on legal aid needs and gaps. Those with clients and potential users of legal aid services were very instrumental in providing useful information on existing gaps and needs. FGDs with LC's gave a clear picture of the existing problems that need to be addressed Attempts were made to separate men and women during FGDs, thus facilitating the acquisition of information that would allow for the analysis of gender variations in legal aid needs. The presence of representatives of Magistrates and Prosecution, CAO's Office, Probation Office, Police, CLO's ,CDO's, NGO's and CBO's gave the survey the opportunity to arrange individual interviews with them.

2.5.4 Key Informant Interviews

Key informant interviews targeted relevant district leadership structures, heads of departments and policymakers. These included: Chief Administrative Officers, Probation and Social Welfare Officers, Resident Judges, Magistrates, State Attorneys, the Police, Prisons, LC5 Chairpersons, and heads of other relevant institutions and organizations (legal, advocacy, human rights etc.).

2.5.5 Documentary Reviews

The review of documents was one of the approaches to data collection that started even before fieldwork exercises began and continued up to the analysis and report writing stage. This process enabled the research team to obtain pertinent information on a wide-range of current legal aid practices in Uganda. Existing legislation and regulatory instruments dealing with legal aid were also examined, with a view to evaluating their gaps and potential uses. The documents reviewed included Annual Reports and work-plans of some of the organizations providing legal aid services, their policy documents and operational budgets, district development plans, and papers presented on legal aid service provision covering a range of topics and issues.

2.6 DATA PROCESSING AND ANALYSIS

2.6.1 Qualitative Data

Qualitative data were primarily collected through Key Informant Interviews and documentation, and analyzed using a thematic approach. Themes were developed in accordance with the objectives of the study, research questions and expected outcomes. Data were then grouped according to these themes, as a first step for subsequent interpretations.

2.6.2 Quantitative Data

The analysis of quantitative data was performed using the Statistical Package for Social Scientists (SPSS). Such data were mainly obtained from the identified legal aid service providers using a semi-structured questionnaire.

2.7 STAKEHOLDERS' WORKSHOP

A stakeholders' workshop was held on May 5, 2004 at Hotel Equatoria in Kampala, Uganda. The purpose of the workshop was to present the draft report and receive feedback to improve upon the contents and recommendations of the Survey report. Workshop attendees included representatives from all districts that the Survey was conducted. Invitees included those listed in Appendix 'D' and other key informants including, but not limited to; members of the Law Council, members of the judiciary, representatives from Uganda Human Rights Commission, program staff of the National Civic Education Program, representatives from line Ministries, representatives of the J/LOS donor group and executive council members of the Uganda Law Society. The attendees were divided into groups and were asked to strengthen the recommendations found within the draft report. The conclusions are included within this report.

2.8 LIMITATIONS OF THE SURVEY

One of the major limitations of the survey arose in assessing needs. Collection of data relied heavily on key informants and legal aid service providers, as compared to the users and potential users of legal aid services (i.e. more from the supply side than the demand side). Although efforts were made through FGDs to integrate the views of communities (clients and potential clients of legal aid services) into the analysis, the use of personal or household interviews would have perhaps yielded more reliable results.

Further, the Survey was unable to measure the quality of the legal aid service delivery. It was not an objective of the Survey to measure quality. In any event, a measurement of the quality of services rendered by he various organizations and government departments is difficult given the fact that currently, no standards with respect to client care, reporting and accountability exist. Also, service providers are not standardized in their activities or facilities and as such, an adequate benchmark cannot be established and thus comparisons cannot be made.

3 FINDINGS AND INTERPRETATIONS

3.1 PERCEIVED MEANING OF "LEGAL AID" AND SCOPE

One of the objectives of the survey was to have a clear definition of legal aid and what constitutes legal aid in Uganda. Based upon responses by informants, a general definition of legal aid can be formed and stated as follows:

> *Legal services provided to disadvantaged persons and people who cannot afford such services so that justice is ensured through access. These services are to be provided for free or at a minimal cost.*

The following table presents quantitative data on the meaning of legal aid from the perspective of legal aid service providers that were interviewed.

Table 3.1: Perceived meaning of legal aid (among organizations providing legal aid services

Perceived meaning of legal aid	Frequency	Percentage
Provision of free legal services to those who cannot afford	45	96
Assistance given to victims of human rights violations	1	2
Enabling people to understand their human rights	1	2
Total	47	100

From the above table, two broad categories of legal aid services can be discerned: primary and secondary services. Primary services direct legal assistance to clients such as legal advice, representation and mediation. While secondary services include legal education, awareness and general advise to the community.

In all regions visited, respondents informed that legal aid services are provided at the grassroots level and identified disadvantaged groups as the poor, elderly, women, children, prisoners and persons with disabilities. Special emphases of the above groups include widows, orphans, prisoners held on remand and people affected by HIV/AIDS. Respondents informed that legal aid services must be extended to internally displaced persons and refugees as these groups are severely disadvantaged. Respondents stated that counseling and advice services be extended to complainants and victims of crimes (such as victims of defilement) so that they would have a fuller understanding of the process and their rights.

The areas of law that legal aid services are most needed relate to land issues, inheritance and succession, criminal matters, family and domestic situations, court and tribunal procedure, and human rights. Services related to land issues include landlord and tenant situations. Family and domestic situations include issues of child and family maintenance, child custody and marriage reconciliation and divorce.

3.1.1 Primary Services

- Services provided by advocates, including; representation at Court and tribunals, legal advice, counseling on legal solutions, negotiation, mediation and arbitration

When probed, respondents in all regions stated that the types of legal aid services include: counseling and advice giving, referral to appropriate organizations and bodies, negotiation, mediation and arbitration, representation in courts and tribunals. To ensure that legal aid services are accessible and of benefit, some respondents suggested that the facilitation of court fees, disbursements and transport costs for legal aid clients are an important component of legal aid. Apart from these office tasks, an overwhelming number of respondents stated that legal aid included outreach at the grassroots level (secondary services).

3.1.2 Secondary Services

- Services that do not require advocate personnel, including: general advice to the community, counseling on attitude and social solutions, sensitization, education and rights awareness campaigning

Respondents stated that to ensure the effectiveness of legal aid, campaigns occur that raise awareness of available services and educate the public, special interest groups and service providers of relevant laws, court and tribunal procedures and human rights. To supplement the above, legal aid includes literature publication. Apart from the above, respondents concluded that training of district officials on rights, the law and procedures is also legal aid. Such district officials include; the police, probation officers and LC officials (LC I, II and III). Finally, legal aid services involve the training, supporting and facilitating paralegals.

3.2 GEOGRAPHICAL AND CONTENT COVERAGE BY NGOS AND CSOS

3.2.1 Introduction

Drawing from the survey findings, it is observed that most of the legal aid providers (both primary and secondary service providers) are concentrated in urban areas, with Kampala City being a home of not only the majority, but also better-established legal aid service providers. All legal aid network members have their main offices in Kampala. Some have established offices in the countryside (but also in urban centers) while others have not yet done so (details can be seen below and in Appendix 'C'). However, despite the fact that offices have mainly been established in Kampala City or major towns in the countryside, most legal aid providers serve the rural populations as well, although the outreach to them is quite limited. It may also be fascinating to note that not all potential clients among urban dwellers have used the services of these providers. Focus group discussions with both urban and rural clients and potential users of legal aid services revealed more gaps in coverage. In all the FGDs carried out, there were potential clients who had never utilized the services of legal aid providers, either because they did not know about the services and who the providers were, or they knew but had not known how to access the services and the nature of the problems handled.

Interviews with legal aid providers revealed that the main services believed to constitute legal aid are counseling and advice giving, referrals to appropriate service providers, negotiation, mediation and arbitration, court representation, and tribunals. Table 3.1 presents a summary of the legal aid services and their respective ranking (in terms of emphasis).

Table 3.1 Summary of the legal aid services provided and their ranks in terms of emphasis

	Nature of Legal Aid Services						
Ranking	**Advice**	**Representation**	**Negotiation**	**Mediation**	**Advocacy**	**Rights awareness**	**Counseling**
1.00	22	7	17	19	16	22	21
	57.9%	46.7%	65.4%	67.9%	59.3%	57.9%	58.3%
2.00	9	3	6	4	3	9	12
	23.7%	20.0%	23.1%	14.3%	11.1%	23.7%	33.3%
3.00	4	3	1	4	7	6	2
	10.5%	20.0%	3.8%	14.3%	25.9%	15.8%	5.6%
4.00	3	1	2			1	
	7.9%	6.7%	7.7%			2.6%	
5.00		1		1	1		1
		6.7%		3.6%	3.7%		2.8%
Total	38	15	26	28	27	38	36
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

N=47 (surveyed legal aid service providers)

- *Percentages are calculated out of the total responses. Not every legal aid service provider offered all the services indicated in the table above. NB: Also here the total of 47 respondents are indicated many times, depending on the ranking of their services, either the question if they are delivering types of services. .*
- *38 organisations that are giving legal advice, for 22 it is a main activity, 9 rank it second, 4 see it on the third position and 3 put it on the fourth position.*
- *Out of 15 organisations that offer representation as a legal service,7 consider representation as their main legal service (see: table 3.3 for details of these organizations); the remainder of organizations provide representation services by hiring private practitioners and relying upon volunteer advocates.*

From the table above, it is apparent that advice and rights awareness are more emphasized and thus provided. For both services, 38 out of the 47 legal aid service providers identified during the survey do provide advice and are involved in rights awareness. Counseling follows these. In addition, the majority of those who provide these services rank them number one. It was found that advice is given to almost every client who visits the respective service providers.

Very few legal aid service providers are able to represent clients in court, due to the lack of advocates or the delivery of legal aid services is not their core activity. If possible, legal aid providers of secondary services refer to advocates. Most of the other cases are also resolved through ADR methods such as mediation and negotiation.

3.2.2 Primary Services

The Survey found that there are no primary services in forty-seven districts across the country. There is limited coverage in terms of advocate services, such as court representation and legal advice in districts outside Kampala. The Survey found only nine advocates dedicated to legal aid service delivery outside of Kampala (see: table 3.5, section 3.5.3.1).

Although a number of organizations were found to be implementing a wide range of legal aid related activities, very few had a core mission to provide legal aid services in Uganda. Table 3.2 shows the number of organizations that provide primary legal aid services. All organizations that have a core mission to provide legal aid services are based in Kampala, with only three of them having upcountry branches/clinics.

Table 3.2: *Primary services by district*

No	Organisation	District covered	Districts Not Covered
1	Legal Aid Project of the Uganda Law Society	Kampala Gulu Jinja Kabarole	Adjumani Apac Bugiri Bundibugyo Bushenyi Busia Hoima Iganga Kabale Kaberamaido Kalangala Kamuli Kamwengye Kanungu Kapcworwa Kasese Katakwi Kayunga Kibaale Kiboga Kisoro Kitgum Kotido Kumi Kyenjojo Lira Masaka Masindi Mayuge Moroto Moyo Mpigi Mubende Mukono Nakapiripirit Nakasongola Nebbi Ntungamo Pader Pallisa Rakai Rukungiri Sembabule Sironko Soroti Wakiso Yumbe
2	Legal Aid Clinic of the Law Development Centre	Kampala	
3	Public Defenders Association of Uganda PDAU	Kampala Jinja	
4	Refugee Law Project	Kampala	
5	FIDA	Kampala Mbarara Mbale Luwero Arua Tororo	
6	Platform for Labour Action	Kampala	
7	Foundation for Human Rights Initiative (public interest litigation)	Kampala	

** note: the providers in the districts that are said to be covered do still have a limited outreach, due to many constraints.*

Table 3.3 presents the number of clients handled by identified key legal aid providers and selected areas of law using 2002* as a base year.

* Except for PLA (Platform for Labour Action). The figure quoted is for 2003.

Table 3.3: Areas of Law and number of clients handled by primary service providers

TYPE OF PROBLEM	NUMBER OF CLIENTS HANDLED							
	LAP	FIDA	LAC	FHRI	PDAU	RLP	PLA	Total
Land & property	2806	1162	-	-	-	N/A	-	3968
Succession	383	1473	-	-	-	N/A	-	1856
Family	737	5961	63	-	-	N/A	-	6761
Criminal/capital	253	91	133	-	423	N/A	-	900
Civil	1210	950	-	-	-	N/A	-	2160
Labour	-	-	-	-	-	N/A	145	145
Referred	N/A	N/A	21	-	-	N/A	-	21
Total	**5389**	**9637**	**217**	**-**	**423**	**186**	**145**	**15811**

The table above also demonstrates gaps in legal aid service delivery and coverage. It shows that on average, the core legal aid service providers handle around fifteen thousand clients with different legal problems annually. In addition, LAP and FIDA are more involved in the delivery of primary services relative to other providers. While analyzing the above gaps in the number of clients handled, it is also important to keep in mind the fact that the services of the identified core legal aid service providers are mainly concentrated in Kampala district, leaving the rest of the country with very limited or no coverage at all.

3.2.3 Secondary Services

The remainder of the NGOs and CBOs (listed in Appendix 'C') provide some legal aid services, but these services are largely ancillary to the organizations' core missions and objectives. Such organizations provide legal aid services in an ancillary manner either because there are often no legal aid providers in their area or because legal aid services are necessary components of their core missions and objectives.

In all regions, paralegals have been trained and provide legal aid services. Legal aid services provided by paralegals can be seen as secondary services as they are not qualified to represent clients at Court. The service delivery of paralegals is hampered by the fact that paralegals are often not facilitated (for transport or supplies) nor is their training regularly kept up to date. The survey found instances where paralegals had not received training since 1995. The Association of Women Lawyers (FIDA) and member organisations of Network of Human Rights Organizations (HURINET) train paralegals. In the South-West, paralegals have been trained by Kabale Networking Organization (KABNETO) and the National Association of Women in Uganda (NAWOU). The Catholic Relief Service (CRS) is funding a program that trains paralegals in the Gulu and Kitgum areas. Also in Gulu HURIFO, member of HURINET, trains paralegals. Paralegals under the CRS program are given updated training on a quarterly basis. When necessary, these paralegals refer clients to the Legal Aid Project, Gulu clinic.

Respondents also felt that in order to ensure effectiveness of legal aid, secondary services, such as, campaigns that raise awareness of available services need to be integrated with primary services. Special interest groups and service providers of relevant laws, court and tribunal procedures and human rights all have to be brought on board. In addition, there should be a wide publication and circulation of legal aid literature. Some district officials who were interviewed noted that training of district officials on rights, the law and procedures is also a form of legal aid. Such district officials

officials (I, II and III) as well

In addition, of those legal aid
number one priority. This is
organizations with one out of
with what was found in FGDs
common cases handled at the
are employment and labour

Employment/ Labour laws	Landlord And Tenant	Refugee Law	Statutory instruments
2	3	1	8
14.3%	25.0%	16.7%	44.4%
5	3	2	7
35.7%	25.0%	33.3%	38.9%
6	4	2	2
42.9%	33.3%	33.3%	11.1%
1	1		1
7.1%	8.3%		5.6%
	1	1	
	8.3%	16.7%	

4 NEEDS ANALYSIS AND CONCLUSIONS

4.1 INTRODUCTION

The Survey revealed that, throughout the country, the need for legal aid provision is very high. All respondents considered legal aid to be an important service. Further, not any one respondent regarded the current coverage quantity of legal aid services as adequate. This section highlights the specific legal aid needs in the various regions as well as the basic conditions necessary for streamlining legal aid service provision. It also points out areas of law in which legal aid service provisioning is most needed.

An important distinction must first be made between the different types of needs that were assessed with respect to legal aid provision in Uganda. First, it was important to look at the basic conditions that are required for the provision of legal aid. Second, the quality of provision regarding the content and character of what is provided as legal aid and finally, the types of legal aid services that should be provided.

Most of the key informants expressed the need for a structure or an office in the district that would facilitate effective primary legal aid services. The need to use the existing local government structures such as the parishes and sub-counties was seen to be instrumental in this. These structures should also include mechanisms for proper supervision, monitoring and quality control. Respondents perceive certain loopholes and weaknesses in the existing provision of legal aid. The many present weaknesses were even mentioned as a kind of warning as one of the respondents is quoted thus:

> "*these issues have to be addressed; otherwise the system will stay frail"*.

Most respondents proposed the establishment and development of a district network of providers to allow cooperation and a smooth coordination of legal aid activities. In this vein, the exchange of ideas and experiences were seen to be very important.

4.2 FROM THE FIELD

A host of issues were brought forward during the focus group discussions and the individual interviews. The following are illustrative quotes:

Implementation of legal aid services are highly needed, not only to assist the ones who are left behind without justice, but it will also absorb partly the terrific increase of legal problems. – LC 1 executive member

We need to get rid of rigid laws that are hindering development of human resources. – LC V chairperson

Legal aid can also be a form of prevention. – LC II chairperson

Incorporation within the existing cultural structures is needed, as we have to face the social cultural values versus the institutional aid provisions. Strengthening traditional institutions and empowering the elder's councils and chiefs empowering through legal education and skill training could be the key solution for ensuring legal aid provisions … We also need law reform, since still many laws are in fact favoring the powerful ones. – Chief Administrative Officer

Strengthen the LC I and LC II structures. The system itself is good and very functional. Training is needed, but a lot of potential is already there. – Grade I Magistrate

There is a lot of mistrust towards the existing providers; their image is not so strong, also due to the fact that many clients do have fear, are unaware of possible benefits and do not know exactly how to express their problems. Improvement on client care is highly needed. – Representative of an NGO

We don't have [legal aid] here, while it is obvious that these services are highly needed. – Resident District Commissioner

Although [legal aid providers] do good work, in fact it is a joke to say that we have legal aid services in our district, due to the very limited coverage. – Resident District Commissioner

4.3 CLIENT/USER IMPRESSIONS

> *Legal professional privilege is a privilege of the client. Confidential communications applies only between the exchange of client and the legal advisor, not to other clients and other legal providers.*[7]

In communities where legal aid services were either not known or did not exist within reach of the community, help (in terms of advice and reconciliation) is sought from family or clan members, elders, LC 1 executive members or reliable friends. In some instances, some people consult friends within police or other government departments.

In general, based on the Survey findings from FGDs with clients and potential users of legal aid services, in places where legal aid services are provided either through established legal aid offices or where paralegals exist, there is a high degree of satisfaction. However, improvements were also said to be necessary. In particular, the following were pointed out:

- Some providers charge some fees. Yet, the clients know that these were totally free.
- Services take long to be offered; Letters take long to type.
- There is lack of sufficient privacy in some of the legal aid offices. An issue that compromises the principle of confidentiality.
- Clients prefer to know every step that is taken while they are being helped but the advocates or staff usually keeps this information it to themselves.

Some of the above issues arise from the fact that many legal aid providers are understaffed. In addition, they show a need for creating standards for client care, quality of services and work procedures. Such standards should address client contribution policy (and communication of the policy), confidentiality, and timely responses on files, and clients' requests for information. Further, these standards should stress the value of informed decisions and instructions. Some legal aid providers, as a policy, charge clients for a variety of services. Some of these charges are small in value and can be waived in certain circumstances. In some instances, disturbing reports were recounted of clients being required to pay for services that are the responsibility of support staff (e.g. typing and transport). A need therefore exists to inform clients explicitly and prior to engaging the legal aid provider of what charges are legitimate and to be expected. All charges should then be receipted.

4.4 COVERAGE

In all the study areas, it was observed that legal aid services need to be provided to the poor, the elderly, women, children, prisoners, persons with disabilities and persons affected by HIV/AIDS. Special emphasis within the above groups was placed on widows, orphans and prisoners held on remand. In North and Northwest, internally displaced persons and refugees were seen as persons with a greater need for legal aid services as these groups are severely disadvantaged.

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[7] Department for Constitutional Affairs (2003) *Competition and regulation in the legal services market:* A report following the constitution "In the public interest?" Department for Constitutional Affairs, Kampala

The lack of sufficient funds was seen to heavily limit the work of legal aid providers such as the CLO and CFPU police. The need for a legal aid desk at police stations was also expressed by most of the police officials interviewed.

It was expressed by informants that primary services be available at every district. A clear distinction between primary and secondary services would create better awareness, knowledge and understanding for the general public, and potential users; specialization in delivery of these types of services would further increase the view and understanding of the legal aid provision, so as to improve access. To deliver secondary services, more paralegals should be trained.

4.5 AREAS OF LAW: NEEDS AND PRIORITIES

Problems requiring legal aid services are similar throughout the country. In northern Uganda, the insecurity and the legal issues and consequences that arise from living in IDP camps exacerbate these problems. Although the types of legal problems are generally the same, in some instances, they are caused for different reasons. For instance, many respondents mentioned that land disputes mostly affect widows and that serious problems arise when a husband dies and his relatives then try to grab his land from his wife. People in IDP camps also face the same problem of land grabbing. For IDPs in contrast, third parties often take their land because the IDP is unable to care for it.

The following is a list of priority areas of law for legal aid.

- Child abuse, neglect and abandonment;
- Debt repayment and settlement of other civil disputes;
- Defilement, rape, child prostitution and child labour;
- Domestic problems, related to marital law, ownership of property and maintenance and custody of children. Here women and children, especially, need legal assistance;
- Early (forced) marriages issues;
- Inheritance and succession;
- Juvenile justice;
- Labour rights;
- Land issues;
- Landlord and Tenant; and
- Petty and capital crimes (especially assault and gender violence);

4.6 LEGAL AID SERVICES

It was found, countrywide, that the following services are needed for effective legal aid provisioning:

Primary Services

- Advice in social cultural problems as a preventive measure;
- Advice in legal issues;
- Counseling in domestic problems;
- Counseling in other disputes and conflicts;
- Arbitration/mediation between conflicting parties;
- Negotiations between parties in disputes;
- Assistance in filling documents;
- Representation in Court, tribunals or elsewhere; and
- Referring to other institutions, departments or organizations.

Secondary Services

- Education on legal issues in school, to the general public, key stakeholders and leaders;
- Sensitization on the benefits of legal solutions and legal procedures;
- Training in technical skills for key stakeholders; and

- Information dissemination on conflict solutions by providers;
- Advocacy and campaigning on human rights, civil rights and children's right.

In the case of advice giving, counseling, mediation and referral many respondents consider it important that follow-up visits or checks are carried out by the provider.

Respondents noted a need for legal aid provisions to refugees, IDP's and prisoners. A legal aid desk should be established for them 'on the spot'. Once primary legal aid services are available 'on the spot' awareness and access shall improve automatically.

4.7 EDUCATION/AWARENESS

Respondents noted that district leaders and LC Courts lack substantive knowledge of the law and legal procedures. Key informants pointed out the need for education and training of LC's, district officials and key stakeholders (i.e. police, and NGO and CBO officials). Many key informants stated that legal aid education should extend to the school level, where lectures could be based upon law and legal rights. Training areas suggested are:

- Basic law and responsibilities;
- Human rights;
- Jurisdiction;
- Land issues;
- Landlord and tenancy;
- Child labour;
- Inheritance and succession;
- Women and family issues, such as child and family maintenance and child custody;
- Court and tribunal procedure;
- Technical legal skills; and
- Client care.

Through the FGDs and individual interviews, it became clear that many people did not know of any legal aid providers in their areas, even where some legal aid providers existed. Therefore, there is a need for awareness of such services to potential clients and the aforementioned stakeholders. Such awareness campaigns should make use of the radio for informative programs and written materials disseminated in local languages.

4.8 SPECIFIC PROBLEM – PRISONS (REMAND)

An officer in charge of prisons stated that the legal aid needs of prisoners and people on remand are often forgotten. From the areas visited and a review of pre-existing research of prisons, one thing was made clear: legal aid services for inmates are still insufficient and prisons are heavily overcrowded as a result. An OC Prison in a northern Uganda for instance remarked:

> *Prisons are always at the end of the tail, when the attention and the money have already run-out.*

Although article 28 of the Ugandan Constitution recognizes the right to a fair trial, the reality of the matter is that prisoners do not enjoy the rights contemplated under either the universal or regional instruments.[8] Factors contributing to delayed trials for many prisoners include: missing files, part heard cases, ignorance, and lack of legal advice, representation and poor communication. Prisoner's

[8] Kasirye A (2003) *Establishing Legal Aid Services in Uganda:* Paper presented in a regional Seminar for Legal Aid Practitioners June 9th – 13th 2003 Entebbe Uganda

said they did not know that the right to appeal is automatic for all persons convicted of a capital offence. The ones convicted of minor offences did not know how to exercise the right of appeal.[9]

Prison Officials in all areas mentioned the following needs:

- Training of prison staff on human rights, legal procedures and responsibilities towards prisoners.
- Legal aid desk within prison or specialized legal aid service for the needs of the prison population.
- Support of government for legal problems of prisoners.
- Prison visits by legal aid providers and lawyers.
- More commitment of lawyers in state brief-cases
- Sensitization and education of prisoners on their legal rights.
- Incorporation within a developed legal aid service system.
- Acceptance as a serious partner in the *Chain Linked Initiative* and other bodies of coordination and cooperation in legal aid service provisions.
- Political and social recognition of basic human rights of prisoners.

4.9 STAFFING/RESOURCES

4.9.1 Staff

> *In a developing country where the number of lawyers is not adequate, there is a need to conserve the time and resources of lawyers for truly legal matters. Accordingly paralegals or lay judicial officers need to be trained to carry out various tasks. Except for Kampala, Jinja and in smaller numbers in Masaka, Mbale and Mbarara, there is no significant presence of advocates in urban areas, not to mention rural areas.*[10]

Respondents pointed out the need for legal aid offices to have qualified advocates and paralegals. Many respondents also suggested that legal aid providers should attempt to ensure that their offices maintain gender balance. As earlier highlighted, the need for locating service providers such as paralegals at sub-county and parish levels is an important step towards the direction of accessible legal aid service delivery.

4.9.2 Training

> *The need of continuing legal education at all levels is compelling: judiciary, state attorney and advocates, trainers at the law faculty and law development center, police, local government and at LC level*[11]

In a recent staff survey at a legal aid provider, the staff listed the following knowledge and technical gaps:

Law and Legal Skills

- Lack of knowledge about specific regulations & laws
- Problems with updating knowledge.
- Lack effective skills in counseling and mediation
- Lack of full understanding of concepts of advocacy and mediation.

[9] Public Defender Association of Uganda (2003) *Report of the Baseline survey on Prisons* March 2003
[10] The Honourable Chief Justice B.J. Odoki: The Final Report of the Committee on Legal Education, Training and Accreditation (1995)
[11] *ibid.*

Client handling skills

- Inadequate conceptual understanding of nature of clients.
- Inadequate client handling skills.
- Poor interviewing skills.
- Problems in identifying the needs of client.
- Non-effective communication skills to client and other parties.
- Lack of techniques in handling traumatized parties.

Other skills

- Lack of public relation skills
- Inadequate administration skills.
- No adequate record keeping
- Lack of computer skills.
- Problems in writing reports and work plans.

Although this is a survey conducted at just one legal aid provider, it is indicative of the areas of training required for advocates, paralegals and staff of all legal aid providers. Key informants suggested that there is a need for such training to be ongoing and updates should occur regularly.

4.9.3 Resource Management

According to some respondents, an important component in ensuring that that legal aid services are accessible and effective would be the facilitation of court fees, disbursements and transport costs for clients.

Respondents, particularly legal aid providers, stated the need for facilitation of transport, office space and equipment. Further, adequate funding for materials and transport for publicity, outreach campaigns and legal literacy campaigns have to be provided. Finally, respondents stated that there is a need for moneys for district network facilitation.

Some respondents felt that some of the existing legal aid providers to be wasteful with their resources. They pointed out the need to have control on the use of funds, to ensure that it is done efficiently and with proper accountability.

4.10 STRUCTURE

4.10.1 Networks

Key informants suggested that there is a need for legal aid providers to network among themselves and other key stakeholders (such as district departments providing secondary services) at the district level. The network should include local advocates involved with *pro bono* activities should be included. The reasons expressed in support for a network include:

- The need for trust and commitment among the key stakeholders;
- Information sharing;
- Exchange of ideas;
- Coordination of services so as to avoid duplication;
- Improved publicity through outreach;
- To create a stronger voice to negotiate with government;
- Decentralization process will be ‘followed’.

In the Eastern region, a legal aid providers’ network exists. The coordination unit is the FIDA, Mbale office. The member of the network expressed the need for a dedicated and fully facilitated coordination office to achieve the above outcomes.

4.10.2 Linkages

As noted in section 3.3, many district officials and departments perform secondary legal aid service. As a result, key informants stated that there is a need for legal aid to supplement and strengthen these services with a view to improving relations between departments, levels of government and legal aid providers; and to incorporate existing structures into new forms of legal aid. There is a need for legal aid providers to include programs that will help strengthen both the institutions required for effective legal aid (i.e. High Courts, Chief Magistrates' Courts, Land Tribunals and LC 1 Courts) and those institutions carrying out legal aid services (i.e. probation office, police and prisons).

Specific linking needs are as follows:

- Involvement of existing structures within legal aid provision system;
- Help to improve the relationship between LC's and police;
- Facilitate the creation and maintenance of a legal aid desk within the police;
- Functional linkage between legal aid providers and probation office, police and Community Development Workers;
- Strengthen functions of the LC court.
- Strengthen the capacity of police and courts and improving the quality of their respective services, to help avoid delayed justice and delayed access to justice;
- Local governments also need to provide funds for legal aid since they are implementing a decentralized system of service delivery and are therefore accountable to the people.

Further, key informants stated that there is a need for legal, political and financial support by local and national governments. Some informants stated that local governments should support legal aid through specific budget allocations.

A number of respondents expressed their concern about the incorporation of legal aid provisions within the decentralization system. Respondents noted that the district was not in a position to provide for all aspects of legal aid service provision. It was therefore recommended that districts should cooperate and support legal aid providers by encouraging linkages and contributing facilities where possible. Such facilities could include: office space and equipment, non-legal staff and transport facilities.

4.10.3 Coordination, Monitoring and Supervision

Respondents stated that there is a need for a monitoring body to supervise legal aid service provision. Further, district networks are required to ensure cooperation with stakeholders and district officials.

4.11 CONCLUSIONS

The following is a summary of the needs found by the Survey:

Client Care

- Create standardized client care operations, quality of services and work procedures;
- Inform clients of all charges, explicitly, prior to engaging the legal aid provider;

Coverage

- Extend primary services to the poor, elderly, women, children, prisoners and persons with disabilities, especially to widows, orphans and prisoners held on remand;
- Extend primary services to internally displaced persons and refugees as these groups are severely disadvantaged;
- Provide counseling and advice services to complainants and victims of crimes (such as victims of defilement);
- Provide secondary legal services and education in relevant areas of law;

- Provide secondary services at the grassroots level;
- Provide primary services to prisoners held on remand.

Staffing/Resources

- Station paralegals at the sub-county level;
- All primary legal aid offices should have trained and qualified advocates and paralegals at every district;
- Have at least one advocate dedicated to providing primary legal aid services at the district level;
- Train and continually update the law and legal skills and client service skills of legal aid officers;
- Ensure sufficient funding and resources to provide legal aid services and create modalities for accountability.

Structure

- Create district networks of legal aid providers, district departments, advocates and NGOs/CBOs;
- Link legal aid with district officials, local government leaders, Courts, tribunals, district departments, etc.;
- Create a monitoring body to supervise legal aid service provisions

Law Reform

- A study should be conducted to establish which laws and regulations are hindering the implementation of legal aid services, as well as hindering equal access justice for all citizens of Uganda.

5 REGULATORY FRAMEWORK FOR LEGAL AID PROVISION IN UGANDA

5.1 EXISTING INSTRUMENTS IN UGANDA

The Survey found out that there was no comprehensive legal, institutional and policy framework at the national level to guide the provision and regulation of legal aid services. Consequently, government funding and provision is limited to state briefs while the mandate of the Law Council as a regulator is largely dysfunctional. To date there has not been any deliberate effort to regulate legal aid services.

5.1.1 Law Council

5.1.1.1 Advocates Act

There is no statute in Uganda devoted strictly to the provision of legal aid. Certain statutes do however address the issue of legal aid, most notably, the *Advocates Act 1970*, Cap. 267, as amended by the *Advocates (Amendment) Act, 2002*. By virtue of s. 3(3) of that *Act*, the mandate to regulate the provision of legal aid in Uganda is clearly granted to the Law Council. Law Council is the main body entrusted with regulating the legal profession in Uganda. Section 2 of the *Advocates Act* provides for the creation of the Law Council and lists its members. Section 3 of the *Act* defines the functions of the Law Council:

> **3. Functions of the Law Council.**
>
> The functions of the Law Council shall be—
>
> (a) To exercise through the medium of the Committee on Legal Education and Training, general supervision and control over professional legal education in Uganda including continuing legal education for persons qualified to practise law in Uganda;
>
> (b) To advise and make recommendations to the Government on matters relating to the profession of advocates;
>
> (c) To exercise, through the medium of the Disciplinary Committee, disciplinary control over advocates and their clerks;
>
> (d) **To exercise general supervision and control over the provision of legal aid and advise to indigent persons**; and
>
> (e) To exercise any power or perform any duty authorized or required by this or any other written law.
>
> (Emphasis added)

The power to supervise and control the provision of legal aid thus lies clearly in the hands of the Law Council. This power is bolstered by s. 77(1)(g), which empowers the Law Council to make regulations with respect to legal aid:

> **77. Power to make regulations**
>
> (1) Without prejudice to any other provision of this Act, the Law Council may make regulations with regard to
>
> **(g) The provision of legal aid and advice to indigent persons;**
>
> (Emphasis added)

There have yet to be any regulations formed under s. 77(1)(g), however. There are no other provisions under Ugandan law providing for the regulation of legal aid.[12] In this sense, even though the power for a regulatory framework exists in law, no such framework exists actually.

5.1.1.2 Current Challenges for Implementation

The biggest challenges facing Law Council in regulating legal aid are a lack of manpower and under-funding. As it stands, the Secretariat of Law Council does not have enough staff or funding to implement and oversee all of the Council's activities: the disciplinary committee, legal education and training, inspection of chambers, and current efforts to implement the new requirements under the *Advocates Amendment Act* for pro bono service and continuing legal education.

5.1.1.2.1 Manpower

On the issue of manpower, the Secretariat of Law Council currently has two professional staff: the Secretary and an assistant – the latter has only been in place since September 2003. The main role of the Secretary is to oversee the administration and implementation of Law Council's activities. The Secretary has also been playing the role of prosecutor before the Council's disciplinary committee and has been entrusted with preparing policy and strategy documents for the Council. The Assistant Secretary assists the Secretary in running various programmes. The Secretariat also has a secretary (office assistant), a clerk and a driver. Otherwise there are no other staff members.

The Public Services Commission approved the proposal whereby the Secretariat would have 7 lawyers to help administer all of Law Council's functions. The Ministry of Finance has yet to issue a certificate required to finance the approved structure. In particular, it is envisaged that under this structure there would be an Assistant Commissioner to deal with the Inspection of Legal Aid and Disciplinary Prosecutions. Under the Assistant Commissioner would be a Principal State Attorney, a Senior State Attorney and a Prosecutor. Law Council is still waiting for a response to its proposal. This staff will be needed however if Law Council is to implement both its pro bono and legal education and training mandates.

The general view from key informants, however, was that if the new structure were implemented Law Council would be able to fulfill a monitoring role of legal aid. If this new structure were put in place, and Law Council is able to monitor the pro bono requirement under the *Advocates Amendment Act*, Law Council would then also have the opportunity to get in touch with other legal aid providers, to see what they are doing and assess possible improvements. That is, both the monitoring of pro bono and assessing legal aid could be done at the same time, according to respondents. This would again all be contingent on the Secretariat being able to improve its structure, as discussed above.

What should be noted is that Law Council has already had some experience in monitoring lawyer activities, most notably, with its yearly inspection of advocates' chambers. In the past, the Council relied on magistrates and chief magistrates up-country to perform inspections of chambers. This practice was changed in 2003, however, because it was felt that the magistrates were not strict enough in their inspections and were essentially allowing everyone to pass. There was, in other words, a problem with supervising up-country inspections. Last year, Law Council members performed all of the inspections themselves and have been carrying out inspections for 2004. This year, they will thus be able to assess whether there have been any improvements from last year in the

[12] Note, in the paper "Delivery of Efficient Legal Services" presented by Theodora Bitature Webale, on June 12, 2003, which is found in *Access to Justice for All*, the proceedings of a seminar for legal aid practitioners at Entebbe on June 9-12, 2003, reference is made, at p. 143, to "Uganda Law Council Practice Direction No. 1 of 1989 containing Guidelines on the Establishment and Operation of Legal Aid programmes in accordance with the powers conferred upon the Council by the Advocates Act 1970." Efforts to track down that document proved fruitless which leads to the conclusion that either (1) the reference is erroneous and the document does not exist or (2) the document may exist but given the complete lack of knowledge of it, it is essentially a dead letter instrument and of no real effect.

chambers that were inspected up-country. At the very least, it can be said that, in this context, the previously decentralized model of inspection and monitoring proved to be ineffective.

A problem remains, nevertheless, that Law Council does not have a proper Inspectorate, and does not have the ability to monitor adequately the Disciplinary Committee's rulings or chambers after inspection. To put this in context, it should be noted that even to perform its up-country inspections in 2003, Law Council was faced with serious funding issues. The inspections were possible because they were done concurrently with Law Council's workshop programme to sensitize advocates on the *Advocates (Amendment) Act* – which was funded by DANIDA's Programme to Strengthen the Judiciary. Over and above manpower and funding constraints, Law Council does not have the proper equipment for inspections, especially for data storage. Currently information is largely stored manually.

5.1.1.2.2 Funding

The Law Council is a Department of the Ministry of Justice and Constitutional Affairs. It has not been given priority, according to key informants, and most of its activities either receive no funding or are not properly funded. (The Ministry of Justice receives a lump sum from the Ministry of Finance, which then caters for all of the departments. The ultimate problem is that the funds from the Ministry of Finance are insufficient to go around.) The Ministry of Justice does not fund all of Law Council's activities at once, but tends to provide partial funding, one bit at a time. As a related matter, in its *Progress Report, for April – October 2003*, the Secretariat indicated that it had both inadequate transport and office equipment for its needs. Most notably, the Secretariat identified the need for a bigger vehicle for up-country inspection of chambers, and for additional computers (they only have one computer now).

The main source of funds, as discussed above, is the Ministry of Justice. For the period from April to October 2003, the Secretariat received Ug. Shs. 1,000,000, over and above its monthly allocation of Ug. Shs. 100,000 (which all departments receive at the Ministry of Justice). These levels of funding are consistent with those reflected in the Annual Report for 2002. From August to December 2002, for instance, the Council received Ug. Shs. 750,000 from the Ministry. These funds have been used to cater for items such as "refreshment, postage, transport, commissioning documents."[13]

5.1.1.3 The Larger Context

The challenges faced by Law Council with respect to manpower, technical resources and funding are far from new. In 1995, *The Final Report of the Committee on Legal Education, Training and Accreditation in Uganda*, (the "*Odoki Report*")[14] underlined the serious lack of resources – human and financial – faced by Law Council. The main focus in the *Odoki Report,* with respect to Law Council, was the role that the Council should play in overseeing the regulation of legal education in Uganda. In fact, the recommendations of this *Report* can be seen as the impetus for the creation of both the Legal Education and Training Committee under the *Advocates (Amendment) Act*, and the Continuing Legal Education programme for all practicing advocates. Despite the difference in focus, the observations of the *Report* still ring true almost ten years later:

> We would stress that the effectiveness of the Law Council as the overall regulatory authority can only be assured by providing it with adequate human and material resources. The Secretary to the Law Council is not

[13] *Annual Report 2002*, at p. 8

[14] The task of the Committee was to perform a major review of legal training and education in Uganda. Many of its recommendations have since been implemented, for instance, extending the LLB course, amending the *Advocates Act* to provide for a Legal Education and Training Committee under Law Council, to liberalize admission to the bar course for students from other universities in Uganda and those trained abroad. One recommendation, however, has yet to be implemented, which is for government to fund a nation wide legal aid system with assistance from donors.

> backed by a meaningful secretariat. There is an urgent need to re-enforce the secretariat with a full staff complement in view of the numerous responsibilities of the Council.[15]

What is clear from that passage is that the Law Council's challenges are far from being recent. The lack of action to address the weakness of the Secretariat, moreover, might be a cause for doubt as to whether funds from government to reinforce the Secretariat and its manpower are forthcoming. At the very least, it can be said that the government has not been proactive in this area. To illustrate, a Committee under Law Council has been created by legislation to oversee Legal Education and Training; regulations are being drafted with respect to continuing legal education; yet a doubt still remains as to whether sufficient funding will be made available to provide for the staffing needed to implement these initiatives.

At the time, the *Odoki Report* recommended that Law Council be reconstituted with a "staff complement of six lawyers, administrative staff, books, equipment and furnishing a new office. Approximately US$400,000."[16] What was proposed in the Report, in other words, is similar to the 7-lawyer structure that the Public Services Commission has approved.

5.1.1.4 Regulation

In contrast to enacting legislation, passing regulations is not a major challenge for Law Council. In this sense, although there are currently no regulations put in place to govern legal aid provision, Law Council is clearly in the position to develop them. Currently, the Council is drafting regulations to implement the continuing legal education and pro bono requirements under the *Advocates Amendment Act*, and to cover student law practice, made possible under that *Act*. One major advantage is that the First Parliamentary Secretary for drafting legislation is in the same building as the Law Council Secretariat. The only difficulty with trying to pass regulations is that the Parliamentary Secretary's office is also understaffed and sometimes busy with other work from Parliament.

5.1.2 The Courts

Although the power to regulate legal aid is found only in the *Advocates Act*, the provision of legal services to the indigent, and similar topics are addressed by other statutes. The Courts are the predominant focus of these provisions.

5.1.2.1 State Briefs and Poor Persons Defense Act

5.1.2.1.1 Constitution of Uganda.

Under the *Constitution of the Republic of Uganda, 1995*, a person accused of a capital offence – i.e. an offence carrying a sentence of life imprisonment or the death penalty – has the right to a lawyer at trial. Section 28(3)(e) of the *Constitution* addresses these types of offences and guarantees legal representation at trial:[17]

> (3) Every person who is charged with a criminal offence shall—
>
> (e) in the case of any offense which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the state.

[15] At p. 80 of the *Odoki Report*. See also, p. 5, para. 17 and p. 97, where one of the main action points for implementation was to reconstitute Law Council and provide it "with adequate human and material resources, which would include, in particular, the establishment of a strong secretariat."
[16] Ibid. at 103.
[17] The guarantees under Section 28 have characterized as being part of the more general guarantees to equality before the law under s. 21(1) of the *Constitution*. See e.g. Webale

To give effect to this section of the *Constitution*, money is allocated through the High Court, to provide for representation in capital offence cases. The Court receives moneys from the government as part of its normal budget. According to one key informant, no one part of the budget is allocated specifically to funding state briefs. Rather, the Court administers disbursements for state briefs as part of its general expenses for a court session. That is, there is no separate accountability or line item for state briefs sessions, and these expenses are not tracked separately. Expenses for sessions include per diems for the judges, their drivers and bodyguards, payments to witnesses, fuel for the judge, payments for lawyers for state briefs, and so on. Money is allocated to the Deputy Registrars to conduct the criminal session, in each of the circuits across the country, and the Registrar simply demands accountability for spending at the end of the session. Research revealed that, under this accounting set-up, it is not possible to get a print-out or exact determination of the amount spent on state briefs.

In any event, these funds represent the "only financial resources designated to legal aid in the National Budget."[18] Moreover, as one key informant noted, the state brief system is not a system as such. Before a session opens, the High Court invites a certain number of lawyers to take on a certain number of cases. Each lawyer is given summaries of the cases, and the lawyer in turn is supposed to visit the accused in prison. According to informants the lawyers who are chosen in Kampala are ones who over the years the Court has identified as being more diligent counsel. When a lawyer visits the suspect in prison, he learns whether or not the prisoner already has a lawyer, and needs representation. In Court, on the opening day of the session, the lawyers appear to reconfirm the allocation, e.g. the lawyer may have been given 5 cases to take on, and discovered that two of them already had representation. It is only at this 'mentioning' stage that the court is able to determine how many state briefs there will be during the session. There is no other centralized system tracking state briefs. The information is only contained on individual files.

5.1.2.1.2 Poor Persons Defence Act.

The *Poor Persons Defence Act*, Cap 20, (PPDA) circumscribes certain parameters for state briefs. The *PPDA* is only a few sections long but is nevertheless notable because it deals specifically with the provision of "legal aid" in certain cases:

> **2. Provision of legal aid.**
>
> Where it appears for any reason that it is desirable, in the interests of justice, that a prisoner should have legal aid in the preparation and conduct of his or her defence at his or her trial and that the means of the prisoner are insufficient to enable him or her to obtain such aid—
>
> (a) a certifying officer, upon the committal of the prisoner for trial;
> or
> (b) a certifying officer at any time after reading the summary the case submitted at the committal proceedings,
>
> may certify that the prisoner ought to have the legal aid, and if an indictment is filed against the prisoner and it is possible to procure an advocate, the prisoner shall be entitled to have an advocate assigned to him or her.

Interestingly enough, "legal aid" is nowhere defined within the *Act*. The term "prisoner" is, however, and means "a poor person committed for trial" (s. 1(a)). This means that, following s. 2, the *Act* can apply to any poor person facing trial under indictment. A "certifying officer" is, *inter alia*, the magistrate who refers the trial to the High Court or the High Court judge presiding over the specific proceedings, at the committal stage or thereafter.

[18] Kasirye A (2003) *Establishing Legal Aid Services in Uganda:* Paper presented in a regional Seminar for Legal Aid Practitioners June 9th – 13th 2003 Entebbe Uganda at p. 40

Section 3 of the *Act* discusses the remuneration of any advocate assigned under section 2. Briefly, Parliament is to pay the amount, which is determined by the trial judge (s. 3(1)). As a guide, the trial judge shall have regard to the complexity of the case and duration of the trial (s. 3(2)), but the amount shall not exceed 50 currency points (s. 3(3)) or 1 million shillings,[19] unless the Minister varies that amount, in consultation with the Chief Justice (s. 3(4)). Finally, section 4 gives the Chief Justice the power to make rules concerning the payment of and terms and conditions for any disbursements incurred by an advocate (s. 4(a)), or "generally for better carrying out the purposes and provisions of [the] Act" (s. 4(b)).

At first glance, then, the *PPDA* appears to allow for a broader application than the obligation for representation under the *Constitution*. Moreover, the language in the *PPDA* is permissive (s. 2: the officer "may" certify). In reality, however, the *PPDA* and constitutional obligation are treated as interchangeable.[20] The main reason is that the *PPDA* only applies to proceedings at the High Court. This is clear from the definition of "certifying officer" and from s. 2, by virtue of which the *Act* applies only to cases where "an indictment is filed against [a] prisoner" (s. 2). To understand what is meant by an "indictment," reference must be made to the *Magistrates Courts* Act, Cap. 16. In particular, s. 168 of the *Magistrates Courts Act*, provides that an indictment shall be filed in a magistrates court, for offences that are to be tried at the High Court.

As to which offences are heard by the High Court, further reference has to be made to s. 161 and s. 169 of the *Magistrates Courts Act*. The former section limits the jurisdiction of magistrates to all cases not carrying a maximum penalty of death. Moreover, only the chief magistrate can hear cases carrying a maximum penalty of imprisonment for life. By implication, the High Court will necessarily hear capital offence cases (viz. those carrying the death penalty). Now, s. 169 gives the Director of Public Prosecutions the discretion to determine which offences are to be committed for trial at the High Court, including those cases where the magistrate's court has jurisdiction. Conceivably then an indictment could be filed in a non-capital offence case, and the case could then go before the High Court. As a matter of practice, however, this does not happen, except in rare cases. As a result, the *PPDA* would in practice only apply to capital offences, and no real difference exists therefore between the application of the *Act* and the constitutional right to representation.

5.1.2.1.3 Definition of "Legal Aid"

As mentioned above, the *PPDA* does not provide a definition of "legal aid." By reading certain sections together, one can see that the Act contains a fairly clear definition of "legal aid," though not stated explicitly. "Legal aid" in this case refers to the provision of the services of an advocate, payable by Parliament, where the presiding judge or magistrate views that it is desirable, in the interests of justice, and where the defendant has insufficient means to provide for such services.

5.1.2.1.4 State Briefs in Practice

According to key informants, about 75% of capital offences are state briefs. The amount of disbursements given per case varies depending on the length and complexity of the case and on the industry of the lawyer providing the service. The maximum amount is 1,000,000 shs., but even the most general amounts generally do not reach that high. The 1 million shillings limit is set under the *PPDA*, the statute which operationalises the right to representation at trial. Whereas amounts paid under to state briefs can reach as high as 600,000 or 800,000 shs., the amount disbursed generally

[19] The Schedule to the Act provides that a currency point shall be equivalent to twenty thousand Ushs.

[20] One key informant, for instance, did not draw a distinction between the two. As Mr. Justice J.H. Ntabgoba notes in "Legal Aid Service Delivery in Uganda and its Impact on Litigation," presented at the Foundation for Human Rights Initiative Workshop, JUSTICE IN UGANDA – CHALLENGES AND PROSPECTS, there is an implicit injustice in pratice, with the mandatory language of the *Constitution* and the language of poor prisoners in the PPDA, on the other. What happens in practice is that all defendants of capital offences, rich or poor are provided with a lawyer, whereas, indigent persons accused of less serious crimes are not provided with any representation (p. 4).

hovers around 50,000 – 200,000 shs. The presiding trial judge determines the amount paid to lawyers. In general, once the case is completed, the judge determines the amount, based on the complexity of the case and the industry of the lawyer. That amount is then entered into the case file, and the clerk then sends the claim for payment to the Registrar. Some judges up-country, however, will determine a fixed amount for all the state briefs cases at the starting of session, regardless of how complex the case is or how long it is liable to last. One judge even waits until the end of the session, until all the cases are complete, before determining the amount to be disbursed to lawyers. For fairly obvious reasons, the latter two methods are not popular among lawyers.

5.1.2.1.5 Limitations.

The perceived shortcomings of the state brief system are already mentioned in paragraph 3.1.2.2 . The weaknesses in the system are only intensified by the fact, even as it currently operates, there are not enough funds available to meet needs. That is, even with counsel meeting their clients at trial, there are not enough funds to provide for representation in all capital offences, or for the full trial of defendants: "the funds allocated are usually incommensurate with the number of cases to be tried by the Judge and the number of accused persons who request legal aid with the result that the session experiences a financial drought before the cases are completed."[21]

5.1.2.1.6 Poor Persons Defence Act and Regulation

The idea of having the Minister raise the ceiling for disbursements touches on a more general question of the role of Courts in overseeing the state briefs system. Under s. 4 of the *PPDA*, the Chief Justice is empowered to make rules concerning (a) the payment of expenses, such as travel and hotel, and (b) "generally for better carrying out the purposes and provisions of this Act." At present, no rules have been formed under the *PPDA*. There could be some potential, however, for the Chief Justice to devise some rules to help regulate or coordinate the allocation of representation to the indigent. That is, the *PPDA* might create a mechanism to help in the regulation of legal aid for cases at the High Court. The Court, however, would likely resist any such rules.

This is confirmed by the view of one well-placed key informant. When asked about the possibility of formulating certain rules, the informant was quite clear in stating that the Court does not want to be pre-occupied with the representation of the poor or indigent. This, rather, is a role best left to NGOs and the Ministry of Justice. On this informant's view, the Court's role is to run trials, and the Court is not comfortable with being pre-occupied with the defense of poor people. Such a role would be better left to some agency, which could receive the Court's cause list and take up cases. All that the Court wants is that an accused, once at trial, has a lawyer – regardless of where that lawyer may have come from. Taking this view into consideration, the *PPDA* may be neither the most effective nor appropriate instrument for trying to oversee the provision of legal aid, even in the case of capital offences. This role may be best left to agencies such as Law Council, to which the role of regulating legal aid is designated much more explicitly.

5.1.2.2 Civil Procedure Rules

The *Civil Procedure Rules*, Statutory Instrument 65-3, as amended by Statutory Instrument 26, 1998, (the "*Rules*") do not deal with the provision of legal services. They do, however, make some accommodation for the indigent within the civil litigation setting. In particular, Order XXX of the *Rules* makes it possible for plaintiffs in civil suits to apply for permission to bring any suit as a "pauper." "Pauper" is defined at Rule 1, as "a person… not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit." The effect of being granted permission to sue as a pauper is that the court fees in the action are deferred, pending the resolution of the case (Rule 8). Rules 2-9 outline the procedure for the application and then determination of

[21] Kasirye A (2003) *Establishing Legal Aid Services in Uganda:* Paper presented in a regional Seminar for Legal Aid Practitioners June 9th – 13th 2003 Entebbe Uganda at p. 40, see all tibabure at 142.

pauper status. Rule 5 specifies certain conditions for rejecting such an application, while Rule 9 lists conditions for 'dispaupering,' viz. revocation of pauper status.

What is important to note is that the plaintiff ultimately has to pay the court fees, regardless of the outcome of the case. Where the plaintiff-pauper succeeds in the suit, the court makes an order for the amount of fees that would have otherwise been paid, and that order then becomes "a first charge on the subject matter of the suit" (Rule 10). In all other cases, where the pauper fails, the court will also make orders for court fees, pursuant to Rule 11:

> **11. Procedure where pauper fails.**
>
> Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed because the plaintiff does not appear when the suit is called on for hearing, the court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court fees which have been paid by the plaintiff if he had not been permitted to sue as a pauper.

The procedure concerning paupers, in this sense, only helps during the civil case, but ultimately does not provide any further assistance. The procedure could nevertheless be helpful in the context of legal aid, because it could help the providers to defray any costs for bringing an action, pending its resolution.

5.1.3 Students

5.1.3.1 Clinical Legal Education

By virtue of the *Law Development Centre Act*, Cap. 132 a role is also granted to post-graduate students of law. The Law Development Centre's (LDC) main role is to prepare law graduates for practice as an advocate.[22] To that end, LDC offers a one-year course that is required in order to be admitted to the rolls as a practicing advocate in Uganda. LDC also offers a two-year diploma course to train paralegals. LDC's functions with respect to legal aid arise at s. 3(1)(l):

> **3. Functions of the centre.**
>
> The centre shall have the functions of— …
>
> (l) assisting in the provision of legal aid and advice to indigent litigants and accused persons in accordance with any law for the time being in force;

LDC has given expression to its legal aid mandate by introducing a clinical legal education programme, which is run through the Legal Aid Centre (see: section 3.4). Even prior to the amendments to the *Advocates Act*, which have granted greater standing to students, LDC students were playing a role by interviewing inmates at Luzira prison and Naguru remand homes. There is no reason, according to one key informant, that students cannot carry out most of cases. They learn the practical aspects of law as opposed to the traditional moot court exercises.

5.1.3.2 Clerkship System

Apart from clinical legal education, LDC students are required to do a 3-month clerkship, usually from March to June. This holds true for both the Bar and the Diploma courses. Students are attached to firms, the Attorney General's, courts, the Human Rights Commission, Parliament and so on. The idea behind the clerkship is to provide exposure to other parts of legal system, under the supervision of a lawyer. The types of placements for law students are much more flexible than in the past, when placements were primarily restricted to law firms. The increased flexibility is due in part to the higher number of students enrolled at LDC, and in part to the view that students could get exposed to

[22] See: section 3(1) of the *Law Development Centre Act* generally, in particular s. 3(1)(a).

the practice of law in other contexts than just court. LDC was able to find enough placements for this year's class and should be able to absorb the greater number of students in need of clerkships.

The clerkship could be one possible way of giving support to whatever legal aid system is implemented. Legal aid providers already benefit from the assistance of students performing their clerkships. A more coordinated recruitment of students, however, could be put in place. An idea could be to use the clerkship system to support any national legal aid system, by sending students up-country to assist legal offices. A well-placed informant stated that this is something that LDC could encourage.

There are certain limitations to the clerkship system that must be taken into consideration. First, some claim that the 3-month period is too short. Also, with the larger number of students, there are not enough law chambers to go around. Some advocates decline the chance to supervise a student for clerkships, because they may not have enough office space at their chambers and they may not be able to provide adequate supervision. Only the biggest law firms in Kampala will take as many 4 students.

Over 90 % of students perform their clerkships in Kampala, for several reasons. First, there is the attitude of students: they want to be in the big city. Second, most of the law firms are in Kampala and there are much fewer up-country – clerkships in more rural areas tend to be at courts. Finally, it is more difficult to provide for accommodation and subsistence in other areas. Students are not paid during the clerkship period. Some are given a token amount for tea, lunch or transport. At larger firms a bonus may be given at the end, in recognition of a job well done. LDC sends a lecturer to perform site-inspections at the mid-point of the clerkships. The lecturer, student and clerkship supervisor each write a report.

5.1.3.3 Analysis

There would be definite potential to approach LDC, to encourage sending students up-country to district legal aid centers. To that end, it appears that eliciting student help would have to be done within the constraints of the present clerkship system. It would not appear to be realistic, for instance, to try to change the length of the clerkship to get greater assistance. Given the number of students currently enrolled, however, there should be potential for a good number of students (e.g. one or two per office). Since they need supervision – a challenge for many chambers even in Kampala, not too many students could be dispatched. There may be some way to devise an incentive system to get students to go up-country, for instance, by providing a small stipend to cover costs – comparable to what legal volunteers currently get.

5.1.4 Lawyers and Legal Aid Service Providers:

5.1.4.1 Pro Bono Service

The Law Council noted that demand by indigent persons for legal aid and pro-bono services and activities was overwhelming and that there were not enough legal aid providers to meet this demand. As a result, large sections of the Uganda population did not have access to legal representation, education or advise, thus weakening Uganda's legal and social structures. Given the above, the Law Council, through the Minister of Justice and Constitutional Affairs, lobbied for the enactment of the *Advocates Amendment Act 27 of 2002* (hereinafter referred to as the "Amendment Act"). The enactment of Amendment Act provides a pro-bono element to which all licensed advocates in Uganda must adhere. The relevant section is reproduced below:

15A.
(1) Every advocate shall provide pro bono services when required by the Law Council or pay a fee prescribed by the Law Council in lieu of such services.

(2) Where any advocate does not comply with subsection (1), the Law Council shall refuse to issue or renew a practicing certificate to that advocate under subsection (1) of section 11 of this Act.

(3) In this section, "pro bono services" means professional services of an advocate given for the public good to indigent persons without charge

Currently, advocates who are in private practice are required to become members of ULS in order to obtain a practice certificate. A practice certificate is required in order to appear before a Court in Uganda. It is generally understood that a number of advocates practice without such certificates. Further, government advocates are exempt from procuring a certificate. Finally, corporate lawyers and other lawyers not appearing in Court do not generally acquire one. Advocates, legal aid providers and academics have raised various concerns about the implementation of a pro-bono scheme, in a variety of forums. Many instructive critiques and concerns are raised by Mr. J. M. M. Mugisha in his paper, "Pro-Bono Legal Services" and by Mr. A. Kasirye in his paper, "Establishing Effective Legal Aid Services in Uganda." Further critique and concern were captured both in the reports from the Regional Sensitization Workshops held by the Law Council in 2003 and through interviews with legal-aid providers and advocates during the Survey.

It would be of benefit to the Law Council, Uganda Law Society and the legal practice to have a membership available for those lawyers who are not in private practice or not appearing in Court. Creating a new category of membership could help promote the standardization of the conduct and duties of all lawyers. This however, would require and amendment to the current *Uganda Law Society Act* Cap 259 and the *Advocates Act* Cap 267, among others. The Uganda Law Society is assisting the Law Council in the drafting of regulations to bring effect the Amendment Act. Further, as it is the members of the Uganda Law Society who will be providing the service, it is attempting to design programs that will implement *Pro bono* service. The design of these programs is attempting to address the concerns found in the above documents.

5.1.4.2 Analysis

The Law Council is currently in the process of finalizing regulations to implement the *pro bono* provision. The regulations address many of the criticisms that were earlier raised about the perceived deficiencies of the pro bono. The regulations, in order words, provide a definition and delineate the scope of the envisaged pro-bono legal services. A mechanism is also created to identify who constitutes an "indigent person." Further, the regulations establish a pro-bono fund and the requisite modalities of disbursing these moneys. The regulations give the Law Council a certain amount of flexibility in their efforts to ensure that. Finally, the regulations provide for a mechanism for supervising the provision of *pro bono* services.

Certain questions remain outstanding however. They relate to:

(1) The possible relationship between a pro bono scheme and a system to coordinate and regulate the provision of legal aid in Uganda;
(2) Whether Law Council will be in a position to regulate both legal aid and pro bono; and
(3) What will become of the funds raised by advocates who choose to pay money in lieu of providing services?

5.1.4.3 Uganda Law Society

One of the objects for which the Uganda Law Society has been established is:

> to protect and assist the public in Uganda in all matters touching, ancillary or incidental to the law;[23]

[23] *The Uganda Law Society Act,* Cap. 259, s. 4(d).

The Law Society has translated this object into various legal aid initiatives. Most notably, there is the Legal Aid Project. Also, the Law Society is currently working with the Law Council to help develop programs to implement the mandatory pro bono requirement for lawyers. These two projects are discussed elsewhere. In general, it can be said that the Law Society has and should continue to play a role in legal aid and access to justice. Moreover, this role could be expanded in the future, considering the Law Society's status as a representative of practicing lawyers.

5.1.4.4 Legal Aid Providers

The NGO Board already regulates individual NGOs to some extent. Most notably, the service providers are required to provide periodic reports to the Board. Still other legal aid providers have registered as Chambers under the Law Council and their clinics must therefore conform to the minimum standards in place for operating Chambers.

5.1.5 Case law:

To date, there has been no landmark case in Uganda on the issue of right to legal representation, unlike in Tanzania or Namibia, for instance.[24]

5.2 OVERVIEW OF OTHER MODELS IN OTHER COUNTRIES

5.2.1 Introduction

The aim of this review is to provide useful insights that can help inform the process of formulating a legal and regulatory framework for legal aid provision in Uganda. Based on the available information, the review took into consideration the following key issues: who should provide legal aid? How should these services be delivered? Who should benefit from the services and how should they be sustained in view of the high demand for them? Examples are drawn from a few countries in both the developed and developing world.

5.2.2 Service Delivery Mechanisms and Strategies

5.2.2.1 Rules and procedures on who should provide legal aid?

In most African countries, the question of who should provide legal aid frequently arises. Whether or not non-lawyers should be included in the category of legal aid providers has not been fully accepted. In addition, the view that civil society or non-governmental organizations should supplement the services provided by state-funded bodies and Law Societies has not been recognised. However, a study on access to justice for the poor in Malawi revealed that Court Clerks are the first points of contact between litigants and formal legal systems[25]. Owing to the fact that litigants are always unrepresented, quite often their only source of legal advice is from these ill-trained or unqualified "service providers".

In Malawi and Zimbabwe, only lawyers are allowed to provide legal aid services.[26] In Namibia and South Africa, legal aid statutes allow non-lawyers, particularly law students and paralegals to provide limited legal aid. Although the involvement of non-lawyers in the provision of legal aid services is seemingly a new phenomenon to the Southern African region, its benefits and strengths are worth exploring. In particular, it is worth bearing in mind that this approach of involving non-lawyers

[24] Respectively, see *Khasim Hamisi Manywele* v. *Republic of Tanzania*, (Criminal Appeal No. 39 of 1990) (Unreported) (H.C.) and *Mwilima and others vs The Government of the Republic of Namibia and others* (generally referred to as the Caprivi treason accused legal aid challenge), delivered on the 7th June 2002
[25] Banda, J.L, DFID, 2002, 2003
[26] *Ibid*

increases opportunities for expanding legal aid services to rural areas, where most potential clients live, whereas lawyers by contrast, usually prefer to stay in towns and cities where there is potential for lucrative business.

In western jurisdictions such as Australia, the debate to address the question of "who should provide legal aid" goes beyond just the issue of "who", to concerns such as the expertise and competence of the eligible providers and their suitability in providing legal aid.[27]

5.2.2.2 Alternative structures for legal aid service delivery?

There are two basic ways by which state-sponsored legal aid can be delivered. In Malawi and Namibia, delivery is through a department in the Ministry of Justice. In South Africa and Zimbabwe it is through a state-funded independent institution. It is argued that a department within a Ministry is not ideal, as it may cripple the effectiveness of the service through interference, under-funding and an inability to attract lawyers because of the miserable terms and conditions of service (of government workers). Further the Department may not be able to boost its operating funds by retaining moneys collected through costs orders and client contributions since the money would most likely have to go straight to the treasury.[28]

The option of a state-funded and independent institution is rather attractive because such an institution can be semi-autonomous and is only prone to minimal interference. Creating such bodies usually requires additional sources of funding to ensure financial sustainability. Such sources may for instance be raised from a levy on legal practitioners, donations, costs orders and client contributions.[29]

5.2.2.3 Pro-bono

An option outside the state machinery for providing legal aid is the Law Societies. In some countries such as the UK, the US, South Africa and Malawi, the Bar Associations and Law Societies are debating whether to make pro-bono a requirement for all lawyers before their practice certificates are renewed. This is the already the case in some US states. The challenge is to establish an administrative mechanism to ensure compliance. In other countries however, there is an option of a financial contribution by the lawyer instead of the pro-bono service. The question of whether pro-bono service should be mandatory or not is still an issue for debate. Pro-bono services of lawyers should go beyond the traditional legal services that are offered by a legal aid department for a small fee. In countries such Malawi and Lesotho, legal aid services are essentially provided by members of Law Societies, without the involvement of state-funded institutions, and without a legislative basis or support.

5.2.3 Legal aid targeting mechanisms

In some jurisdictions, the status of the individual determines eligibility for legal aid. In Malawi and Lesotho, for example a beneficiary has to be a "poor person". In Zimbabwe and South Africa, legal aid is available to "indigent persons"

In Denmark, Legal Aid is available to those who satisfy a means test. In civil cases, the State pays a larger portion of the fees to the lawyer. In criminal defence cases, the entire cost is deemed to be the responsibility of the State. In addition to this, there is universal insurance for legal expenses. Under this set-up, an insurance policy covers the initial legal expenses, while the State pays the balance, which is covered by the National Legal Aid Authority.

[27] *Ibid*
[28] *Ibid*
[29] *Ibid*

In Canada each province has a separate legal aid system. In the province of Ontario, the legal aid program is administered by an independent legal aid agency, which offers services to low-income individuals, who meet specific criteria based on their needs and the merits of their cases. Government fulfills its obligation for legal aid by working closely with the legal aid agency and lawyers' groups, in order to ensure access to high quality legal representation.

In Austria, legal aid is offered in both civil and criminal cases under the Code of Civil Procedure and the Code of Criminal Procedure, respectively, to persons and their dependent families who are deemed to fall below the minimum level and are not in a position to afford a simple modest standard of life.

In England, Legal Aid is governed by the Access to Justice Act 1988. Under this act, there is a Legal Service Commission. The Commission runs two schemes, namely, the Civil Scheme for funding cases as part of the Community Legal Service and the Criminal Defence Service Scheme (which funds criminal cases). The Commission also administers legal advice, assistance, and representation on the basis of public funds. These services are aimed at helping persons who might otherwise be unable to obtain them.

In the United States of America, the Constitution guarantees an accused a right to representation by an attorney in criminal prosecutions.Different groups offer legal aid services in the area of criminal law alone. These are the lawyers from the Federal Defenders Organization and the Community Defenders Organization. The Federal Public Defenders are full-time federal employees appointed by courts on a renewal basis. Community Public Defenders serve in particular judicial districts. They too are salaried employees.

In all the countries mentioned above, the state plays a central role in funding legal aid services in both civil and criminal matters.

5.2.4 Funding

The usual sources of supplementary legal aid funding in most jurisdictions include "costs orders", "client contributions" and funding from legal professional bodies such as Law Societies. In countries such as Malawi where the law specifically provides for some of these additional sources of funding, there is no motivation to pursue them, because the funds collected go straight to Treasury and, as a result, do not benefit the Legal Aid Department itself. Most private lawyers in Malawi do not feel obliged to assist in the provision of legal aid.

An interesting developing trend aimed at boosting legal aid funding is through what is known as the "Legal Aid Fund". A few examples of the sources of income that make up such these Funds are: moneys retained from costs orders, client contributions, a levy on legal practitioners, deductions from awards and payments pursuant to court settlements. In Australia, contingency fee agreements with clients, and the funding of private practitioners to act for clients in return for a conditional fee are some of the innovations adopted to boost legal aid funds.

There is also a need to explore ways of extending government funding to civil society organizations, which provide legal aid, in order to facilitate access to justice for the majority poor in rural areas. This could be done through direct disbursements from central government, via a public institution. This was the experience, for instance, in Western Australia where the Commonwealth Community Legal Services Programme was initiated for that purpose. The alternative is for government to institute a legal framework, which enables local authorities to fund community-based legal aid centers; as is the case in England and Wales.

5.3 ANALYSIS AND CONCLUSIONS

A state funded legal aid scheme is unlikely, given the Government of Uganda's financial situation.

Reference is made to legal aid in a number of statutes. As such, the Courts, Law Council, students and advocates all have a prescribed role with respect to legal aid. In terms of regulating the provision of legal aid, however, Law Council is very clearly granted that role by statute, and would appear best placed to do so. To fulfill such a role, however, Law Council still faces serious challenges in terms of human, financial and technical resources. This despite the approval for a fortified structure for the Law Council to administer its mandate. Given the potential for the Law Council to regulate, there should be focus on what regulations would be needed. As a recommendation for the long-term, it might also be worthwhile to consider the need or advantages of trying to get a legal aid statute passed in parliament, with regulations through Law Council serving as interim provisions.

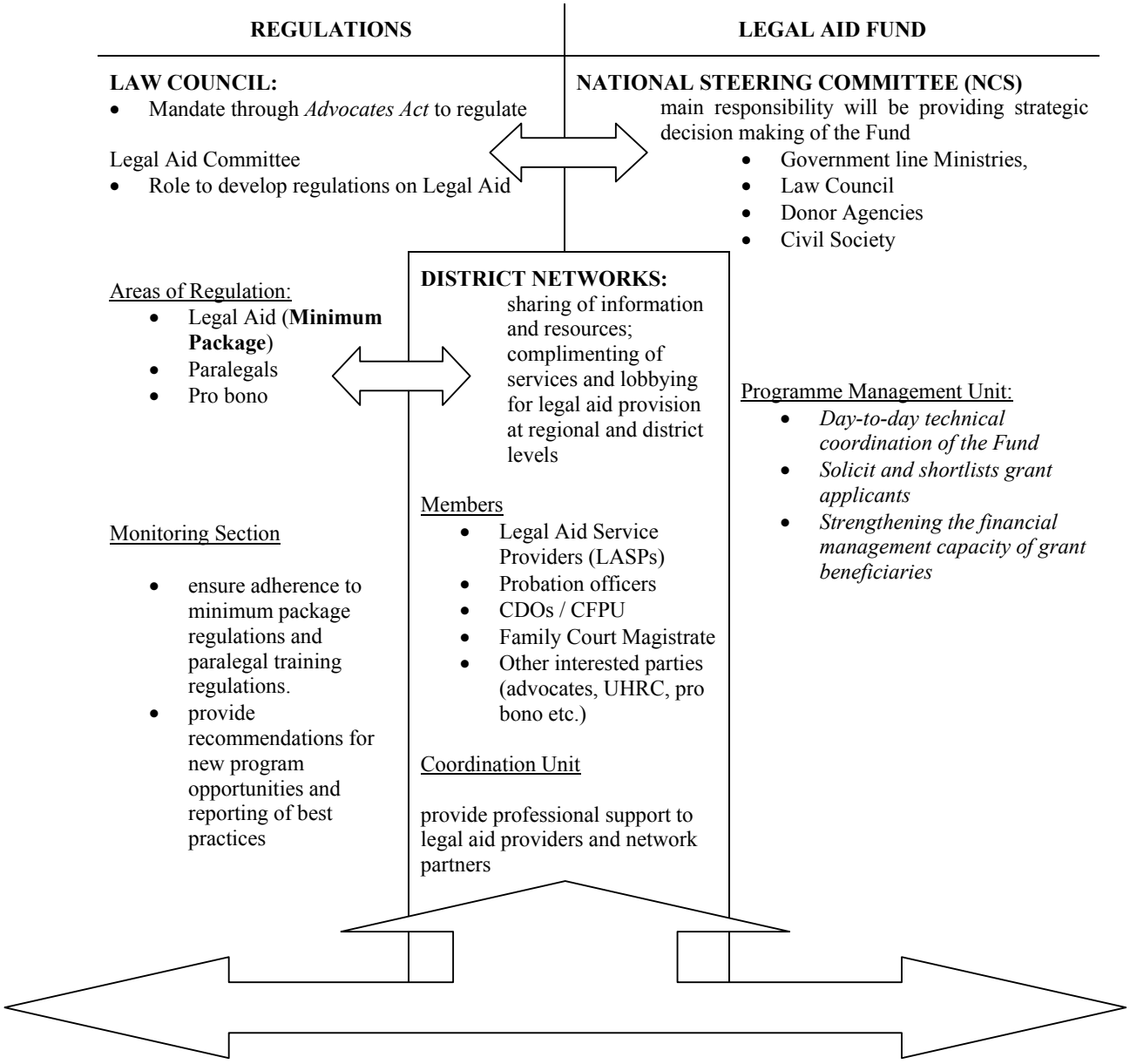
In the case of the most serious offences, there could be some leeway for the High Court to oversee the provision of legal representation. Finally, the role that is accorded to the Courts and other actors in the legal system can be best described as complementary. As such, the Courts and other actors would not be well placed to regulate the provision of legal aid at large.

6 RECOMMENDATIONS

6.1 INTRODUCTION

The recommendations of this Survey are based upon the needs analysis found in section four. Further, these recommendations are cognizant of the existing regulatory framework for legal aid provision in Uganda (section five). The recommendations are designed as a guideline for the development and regulation of legal aid provisions in Uganda It is hoped that this guideline will stimulate dialogue between legal aid providers, NGOs and CBOs, government and funding partners to create modalities to design an implementation agenda so as to promote access to justice for all.

The recommendations can be pictorially depicted in the following chart.



6.2 REGULATORY FRAMEWORK

6.2.1 National Policy and Institutional Framework

It is recommended that Government should, without delay, initiate the process of enacting a legal aid legislation and develop a comprehensive national policy and institutional framework that will guide the planning, provision and regulation of legal aid services at national, district and lower levels. Such an initiative will ensure long-term sustainability if legal aid provision in the country.

6.2.2 Law Council

As mentioned in section 5.1.1.1, the Law Council maintains the mandate of supervising and controlling the provision of legal aid and the training and supervising paralegals. Further, the Law Council has the ability to make regulations with regard to the provision of legal aid and paralegal training. In light of these provisions, the Law Council is the logical starting point with respect to developing a monitoring body, paralegal training curriculum and minimum standards for the provision of legal aid.

Should the Secretariat of Law Council execute its newly approved structure, it would have enough staff to implement and oversee all of the Council's activities: the disciplinary committee, legal education and training, inspection of chambers, as well as current efforts to implement the new requirements under the *Advocates Amendment Act* for pro bono service and continuing legal education. In any event, the challenges facing Law Council in regulating legal aid would continue to be a lack of manpower and under-funding.

Given the Law Council's mandate to regulate, the following are recommendations of regulations that would be needed and methodology to monitoring the regulations.

6.2.2.1 Legal Aid Committee at the Law Council

The Committee would be formed to guide the activities of the Law Council in the field of legal aid. They would be assisted by the technical advisors and Monitoring Section proposed below. The Committee would include Executive Council members, a representative of probation officers, a representative of the judiciary and representatives of legal aid providers and NGOs/CBOs. The ultimate purpose of the Committee, in time, is to review the legal aid situation in the country and make recommendations of revisions to all regulations that effect legal aid provision. Most of the information reviewed by the Committee would be than gathered by the Monitoring Section, though the Committee should have the ability to embark upon its own studies. The Legal Aid Committee should be established by July 1, 2004.

6.2.2.2 Quality Control/Minimum Package

Regulation that the Law Council should pass would be to ensure quality control. In essence, a minimum package provided for client care, outreach and training should be developed. A technical advisor would need to be employed at the Law Council to draft the recommended minimum package and accompanying regulations, which is then disseminated to key stakeholders, such as, those found in Appendix 'D' for comments and discussion. To encourage feedback, regional seminars should take place and comments could then be incorporated into the final regulations. This method of regulatory development is necessary so that ownership of the regulations occurs among the key stakeholders. The regulations are more likely to be followed if key stakeholder shave been consulted. The regulations should include basic modalities of operation of the Legal Aid Fund (see section: 6.7). Further, the regulations should create categories of legal aid providers, defining the services that a legal aid provider is allowed to provide. Legal aid providers should be licensed along the following categories:

Category A
Licensing at this category would allow a legal aid provider to provide all primary (services provided by advocates, including; representation at Court and tribunals, legal advice, counseling on legal solutions, negotiation, mediation and arbitration) and all secondary services (services that do not require advocate personnel, including: general advice to the community, counseling on attitude and social solutions, sensitization, education and rights awareness campaigning) except paralegal training (see section 6.2.2.3). A Category A provider would require at least one advocate on staff.

Category B
Licensing at this category would allow a legal aid provider to provide only secondary services except paralegal training. The senior member of a Category B provider would be either a Grade 1 paralegal or lawyer (or advocate).

These regulations should include basic conditions for each of the above categories and minimum requirements of the following:

- Business Planning;
- Service Promotion criteria;
- Assurance of Equality to Access (among the target group);
- Encouragement of Referrals;
- Staff and Management Structures;
- Financial control policies;
- Internal and external complaint procedure;
- Human resource management and training;
- File and client management
- Procedures to ensure that clients are informed of all charges, explicitly, prior to engaging the legal aid provider;
- Procedures to ensure that clients can make informed decisions at the outset and during the progress of the case;
- Client confidentiality; and
- Education program design.

Further, once licensing takes place, the Law Council should develop a directory of all legal aid providers operating in the country (including contact inform and types of services offered), which would then be disseminated among all legal aid providers, NGOs/CBOs and key stakeholders. The directory could be updated on a yearly basis.

The technical advisor would report to the newly formed Legal Aid Committee. Once the Law Council passes the legal aid regulations, yearly regional seminars should occur to incorporate experiences into any required revisions. The first draft of legal aid regulations should be available within two months of acquiring the technical advisor, with regional discussion and feedback seminars occurring during the two months after. The regulations should be effective within six months of acquiring the technical advisor. It is recommended that follow-up seminars take place once a year for two years.

6.2.2.3 Paralegal

Respondents have noted a need to professionalize paralegals. The Law Development Centre (LDC) provides a one-year paralegal diploma course. Currently, the course is geared towards public servants, and as a result, few independent students enroll in the course. It is possible to have paralegals trained at LDC who will eventually attempt to address the wider needs of the community. The course may need some revisions; however, the employment of paralegals within legal aid with professional education should be encouraged. Utilizing graduates of the LDC course would raise the quality of services provided among legal aid providers. Of course training of paralegals is occurring throughout the country by various legal aid providers and NGOs. This should continue to occur,

because, if done effectively, larger portions of the population could receive some legal aid services. In effect, there should be two grades of paralegals with specific functions. Grade 1 paralegals would be graduates of the LDC course while Grade 2 paralegals are those with specific education. Each of these grades of paralegals should be issued practice licenses. The specific functions would need to be spelled out precisely in regulations. Grade 1 paralegals would have the ability of operating Category B providers, for which a license would need to be obtained on application of the paralegal.

A Technical Advisor would need to be employed at the Law Council to draft regulations and training curriculum. Training curriculum should be in modules and based upon specific areas of law and subject matters, including:

- basic law and responsibilities;
- human rights;
- jurisdiction;
- land issues;
- landlord and tenancy;
- child labour;
- inheritance and succession;
- women and family issues, such as child and family maintenance and child custody;
- court and tribunal procedure;
- technical legal skills; and
- client care, including counseling traumatized clients.

These modules should cater for needs of certain areas and target groups and focus upon women/children issues, refugee issues and IDP issues. After completing a certain number of modules a person may then apply for a Grade 2 paralegal license. In this way, paralegals will be trained in areas of law and issues that are required and specific to the areas that they will be employed in. In designing the modules, the technical advisor should consider and incorporate the curriculums already in use by a variety of legal aid providers and NGOs. Consultation should occur throughout the curriculum design process with those NGOs currently training paralegals, such as FIDA, Catholic Relief Services, HURINET members and KABNETO. The training and updating of paralegals should be conducted by NGOs/CBOs and legal aid providers operating at the local level, as they have a better understanding of the needs and requirements of that area. As such, the curriculum would have areas that are required and areas that are guidelines. Any agency carrying out initial and update training of paralegals would need to be licensed as such through the Law Council.

To maintain a license, every paralegal would need to attend updates every quarter. Currently, the Law Council is drafting regulations to implement continuing legal education for advocates. This could form as the basis for continuing legal education for paralegals.

As with legal aid regulations, draft regulations and curriculum pertaining to paralegals should be disseminated to key stakeholders (see: listing at Appendix 'D') for comments and discussion. Feedback could occur when the regional seminars proposed in section 6.2.2.2 take place. The comments could then be incorporated into the final regulations and curriculum.

The technical advisor would report a newly formed Legal Aid Committee. As above, the paralegal regulations and training curriculum should not be static. Yearly regional seminars should occur to incorporate experiences into any required revisions. The first draft of paralegal regulations and training curriculum should be available within two months of acquiring the technical advisor, with regional discussion and feedback seminars occurring during the two months after. The paralegal regulations and training curriculum should be effective within six months of acquiring the technical advisor. Again, it is recommended that follow-up seminars take place once a year for two years. It is possible that these follow-up seminars occur every two years after on an on-going basis.

6.2.2.4 Monitoring

Once the above regulations are in effect, the Law Council would need to monitor for adherence to same. The Law Council would need to create a Monitoring Section or Inspectorate. The Monitoring Section would visit each district once a year and would conduct itself in a similar manner as the Survey. For example, the Monitoring Section would conduct structured interviews with key informants, conduct focus group discussions with LC I executive members and potential and actual clients and conduct document reviews. The purpose of the Monitoring Section is to ensure adherence to minimum package regulations and paralegal training regulations. Further, the Monitoring Section could also provide recommendations for new program opportunities and reporting of best practices that could be incorporated in other districts. The Monitoring Section would report to the Legal Aid Committee and (if needed) to the Disciplinary Committee. The Monitoring Section could grade each legal aid provider so that improvements could be made in specific areas.

There are two issues that would need to be addressed when implementing the Monitoring Section. Firstly, reporting of serious violators to the Disciplinary Committee would increase the Committee's workload, which already has a heavy case load and back log. As such, the Disciplinary Committee would need strengthening and support. According to the Law Council's Strategic Plan: four principle state attorneys and three support staff. Presumably partial functions of these staff members would be to support the Disciplinary Committee. The requirements to strengthen the Law Council in other areas apart from legal aid are outside of the scope of this report, however, with its limited staff, it is currently not in a position to monitor legal aid provisions. Having said that, the Monitoring Section could assist the Law Council in chambers inspections.

Second, although the *Amended Advocates Act* does give a wide ambit to the Law Council in disciplining persons practicing law without a practicing certificate, nonetheless, it would be useful to issue practicing certificates for paralegals. The Law Council, through the proposed technical advisor, could explore the opportunity of issuing licenses to legal aid providers. Aspects with respect to licensing should be contained within the regulations.

The Monitoring Section of the Law Council would need to operate immediately after the regulations are passed. The eventual staffing requirements of the Monitoring Section are 12 persons, including; one coordinator, two assistant coordinators, six monitoring officers, two drivers, and a secretary. Having a structure as this would allow for the Monitoring Section to be divided into two teams (one assistant coordinator and three monitoring officer), thus allowing for greater coverage in limited time periods. Further, this section would need office space and equipment and facilitation for travel and transport.

6.3 PROGRAMMING

The types of programming that should be initiated are based upon the definition of legal aid and Needs Analysis (section four). In line with the needs expressed, the following programs are necessary.

6.3.1 Primary Services

It is recommended that every district have a legal aid office that employs at least one advocate. Each district office should have supporting staff, including, paralegals, secretary, clerk and driver. This would allow for advocate services to reach every indigent person at the district level. Currently, 47 districts do not have advocate services available (see: table 3.2, section 3.2). All districts should have advocate services available within a five-year time period and the accomplishment of this objective should be the priority of the Legal Aid Fund (see: section 6.7). It is recommended that these offices will focus upon the following activities:

- Advice in legal issues.
- Representation in Court, tribunals or elsewhere.

- Counseling in domestic problems.
- Counseling in other disputes and conflicts.
- Arbitration/mediation between conflicting parties.
- Negotiations between parties in disputes.
- Assistance in filling documents.
- Referring to other institution, departments or organisations

Different work activities do request specific qualifications for the delivery of related services. Representation in court requires a licensed advocate. Arbitration or counseling in disputes, filling documents or referring to other institutions or departments may be done by other personnel. Staff members at the office of a legal aid provider or future legal aid providers should reflect on each other qualities and qualifications therefore and develop strategies and mechanisms to fill gaps. The above recommendation for staffing of these offices is seen as a minimum.

It is recommended that any Category A legal aid provider would be able to establish a district level office, however, the provider would need to ensure that it create a strategy to ensure that primary services are available to all indigent persons irrespective of gender and other socioeconomic factor.

6.3.2 Secondary Services

Programs on civic education on legal issues in schools and sensitization on the benefits of legal solutions and procedures to the general public and programs on training in technical skills for key stakeholders and information dissemination on conflict solutions should occur. Specifically, these programs should focus upon on the following areas of law and skills:

- Basic Human Rights and the Constitution
- Child abuse, neglect and abandonment
- Debt repayment and settlement of other civil disputes
- Defilement, rape, child prostitution and child labour
- Domestic problems related to marital law, ownership of property and maintenance and custody of children.
- Early (forced) marriages issues
- Inheritance and succession
- Juvenile justice
- Labour rights
- Land issues
- Landlord and Tenant
- Petty and capital crimes (especially assault and gender violence).

On training of key stakeholders, reference must be made to the Odoki report [30]. The report suggests that there is a need for an induction course for LC Officials, in which these officials are brought to know their statutory jurisdiction, substantive law, principles of natural justice, and determination of administrative rights. It is recommended that such courses be conducted on a district level. The remarks made in the Odoki report on this topic correspond with issues that are raised by LCs, which cause constraints in their effective performance as legal aid providers on grass root level.

Specific sensitizations and training programs are urgently needed to assist remand prisoners. Beneficiaries of these programs are prison workers, legal aid providers for prisoners and the prisoners themselves.

It is recommended that initially the funding of secondary services should not be a priority of the Legal Aid Fund. A variety of other initiatives, including the National Civic Education Program

[30] Odoki B.J. *et al*: *The Final Report of the Committee on Legal Education, Training and Accreditation* (1995)

should be utilized to reach the aims of secondary service providers. The Legal Aid Fund should only be used for secondary services when other avenues of funding are exhausted.

6.4 STAFFING/RESOURCE MANAGEMENT

6.4.1 Staff

As mentioned in section four, respondents expressed their support for the implementation of quality of legal aid provisions, countrywide delivered by qualified personnel in an effort to reach vast populations who do not have access to justice. Expanding upon the above recommendations, the Survey notes the following staff requirements at district level;

1. A legal aid office should exist and be staffed by at least one qualified advocate, and preferably two advocates (one male and one female). Their main tasks would be representation and legal advice. They would need training in office management, human resources, financial planning and project management. There would need to be provisions for incentives for advocates to live and work in more rural areas (i.e. higher salaries).

2. Every legal aid office should have a secretary. One staff member should be experienced or trained in client care and related office tasks.

3. Legal officers or paralegals should be employed who is responsible for executing the training of technical skill development as well as training in specific client-care skills towards team members. These staff members would also assist the advocates in providing services.

6.4.2 Training

Providers should know which areas of law are relevant. In Uganda, with the view on specific cultural aspects and the practice of customary law and regulations besides national law, it might be even more relevant to have understanding of various areas of law, as well to have knowledge about the relation between customary solutions and lawful procedures according to the national laws.

For an efficient delivery of services towards clients, with a view on good client-care, it is advisable that legal aid service providers have up-to-date knowledge and understanding of laws and regulations related to the various programs. Legal aid service clinics should possess information related to the variety of laws. It is not expected that providers have ready knowledge about all the laws and regulations; however, providers must have sufficient training in obtaining knowledge of all areas of law.

It might be advisable, depending on the situation and availability of staff, that clinic staff is specializing on certain programs, in order to be able to provide qualified services. Here paralegals could be useful in maintaining specialized knowledge.

The following is a synthesis of the responses of paralegals and legal aid providers when asked about training requirements:

- paralegals, country-wide, expressed the urgent need for refresher courses, training on legal issues and various areas of law. Such courses would update knowledge and information about new regulations;

- paralegals and present staff members of legal aid providers stated that a better understanding of counseling and mediation skills, concepts of advocacy and mediation is needed;

- All respondents stated that education in better client handling skills, such as interviewing clients, identifying the needs, communication skills to clients, techniques in handling traumatized clients and the conceptual understanding of the nature of being a client, should occur.

As a result, the Survey recommends that continual education of legal aid providers (including advocates, lawyers and paralegals) take place. Such training should occur every 3 to 6 months. Such training should include the following components:

Law and legal skills
- Knowledge about specific regulations & laws
- Effective skills in counseling and mediation
- Understanding of concepts of advocacy and mediation.

Client handling skills
- Conceptual understanding of nature of clients (i.e. women, children, refugees, prisoners, disabled persons, IDPs).
- Interviewing skills.
- Identifying the needs of client.
- Communication skills to client and other parties.
- Techniques in handling traumatized parties.

Other skills
- Public relation skills
- Administration skills.
- Record keeping skills
- Computer skills.
- Writing reports and work plans design skills.
- Presentation and training skills

6.5 RESOURCE MANAGEMENT

6.5.1.1 District Government Partnership

It is recommended that linkages between legal aid providers and district governments should be created. 40% of respondents, when asked stated that the district should budget for legal aid provisions.

District representative respondents proposed that every district should support the implementation of legal aid services in their respective areas. A district should provide office space, resources (office equipment and furniture, transport facilities) and non-legal professional staff (secretaries, clerks). It is also suggested that existing legal aid providers and new entrants in an area should partner with the district.

Legal aid providers need to be responsible and accountable for keeping contact with the district, discussing issues and important related topics, and feeding back to the own staff members. Several districts have strongly recommended that the iron should be bend when the fire has made it hot, meaning that the Survey has created awareness of legal aid at the district level. Implementation of basic provisions should start within a short-time frame, as it may be easier to create partnerships with districts now.

6.5.1.2 Office Structure

A minimum standard for facilities of legal aid providers, dependent upon their Category licence, must be adhered to. This requirement is not only to fulfill their specific office tasks, but also to build up the highly needed goodwill towards the general public, other key stakeholders, the private sector,

clients and potential users, cultural institutions and their representatives and towards local and national government. Further, standardizing minimum standards for facilitation carries the advantage of equal approach and handling this kind of legal aid service provisions, nation wide.

When creating standards, the following should be considered:

- the type of office space, taking the need for improvement of client care in consideration. (state of building, situated where in town, accessibility, low access barrier, reception desk , waiting room, privacy in office for clients);
- criteria for working conditions of equipment (i.e. computer with printer, telephone);
- criteria for office furniture and administration facilities. (quality, number, type of furniture and types and quality of cabinets, provisions for clients);
- provision of basic information materials for staff and clients that are continually updated. For staff, these would include: texts, legal references, statutes and legal and administrative documents. For clients these could include: booklets, leaflets, background information about legal issues, continually updating information, subscription on monthly magazines, for example the magazine published by UHRC, newspaper articles;
- the planning and budgeting by every legal aid provider's office, for maintenance and replacement of equipment and materials;
- work plan designs and report presentations, in quality of information as well in quality of presentation & design; and
- involvement of the district.

The standards mentioned above, particularly with respect to maintenance and replacements of equipments, should be guidelines as each region and provider will have different needs, based upon services offered, and restrictions (i.e. electricity reliability). Local governments should be formally requested to allocate funds to the establishment of legal aid provision in their area. Criteria for budgeting should be equal country- wide, but with a view on the local situation.

6.5.1.3 Financial Accountability

Legal Aid providers need to be accountable for their resources. An effective and control-efficient accounting system needs to be standardized and implemented in all the districts. Here the Program Management Unit of the Legal Aid Fund (see: section 6.7) will assist in determining efficiency of organization and areas for improvement. All moneys coming from the basket should be distributed utilizing a basic criterion and all programs should be audited. The Legal Aid Fund (the "Fund") should standardize accounting and reporting standards by imposing an umbrella/legal aid provider system. Characteristics of this arrangement include:

1. The provider receives activity related funds, and often funding for core/office costs that are included as fixed costs in the proposal. This funding is provided on quarterly basis. To receive funding, the legal aid provider must maintain a bank account with two signatories.
2. All the activities and related costs are systematically divided through budget lines.
3. Funding for the legal aid provider for following quarter activities are received via the Fund. These funds are released only upon the receipt of a financial and narrative report from the legal aid provider to the Fund.
4. The format for the narrative report is standardized and must include information about the content of the project and the delivery of services, related to the expenditures made. Unexpected expenditures must be declared and explained. Should unexpected costs reach a certain level, the legal aid provider must submit further funding proposal..
5. Receipts for all expenditures are required of the legal aid provider.
6. The exception to the above is expenditures through petty cash given the fact that in some areas receipting of very small amounts is not customary. Petty cash expenditures are limited to certain amount.

7. The legal aid provider must agree that a representative of the Fund is able to visit the office anytime, oversee the program and to check the financial management during the execution of the project.
8. The legal aid provider must have a person (coordinator/director/chairman) who is responsible for the quarterly reports as well for the implementing orders of the financial decisions made during spot visits. This person must approve all expenditures and oversee petty cash expenditures. A voucher system is used for the petty cash.
9. The numbers of the vouchers and bank check numbers must be listed upon the quarterly financial statements.
10. Monthly bank statements must be attached to the quarterly financial report (unless a bank provides these statements only quarterly, which is sometimes the case upcountry).
11. The legal aid provider has to employ a qualified accountant or a person trained to in the accounting system
12. A file system must be put in place, to collect the receipts and vouchers of various types of expenditures.
13. Bookkeeping must be done using a bank and cashbook. Record keeping must show the relationship between expenditures and programmed activities.

Benefits of this type of system, include:

1. Creation awareness of the expenditures and the need to monitor them
2. Legal aid providers are supported and guided.
3. Legal aid providers and employees discover the relationship between the outputs and their responsibilities towards the outputs.
4. Requires information exchange and cooperation
5. Legal aid providers learnt how to deal with money in the long term.
6. A learning of the importance of fiscal policy development
7. Simplicity in monitoring projects.
8. Applicants are required to provide detail proposals. Given this criteria, and the length of time required for the approval process, *ad hoc* proposal are not usually submitted.

6.6 NETWORKING

As mentioned in sections 4.9.1 and 4.9.2, there is a need for creating district networks among legal aid providers and linkages with governmental departments that provide forms of legal aid. In the eastern and central regions, there are networks that exist, however, these are in their infancy. These networks need to be strengthened and a fully facilitated coordination unit needs to be developed.

Networks would allow for sharing of information, sharing of resources, complimenting of services and lobbying for legal aid provision at district levels. The networks would be district based and the nexus of the network would be the Category A legal aid provider. The members of networks would include; legal aid providers (both categories), independent (volunteer) paralegals, advocates involved in providing *pro bono* services, probation and welfare offices, community liaison officers and family protection units of police, and possibly representatives of LC I Courts. Membership to a network is optional and dependent upon the network criteria and individual requirements. Initial activities of district networks may include the following:

- Share best practices and experiences
- Create/facilitate referral systems
- Develop partnerships with the local governments.

Once a district network has developed, other initiative could take place. These initiatives could include:

- Explore and design new services, education/awareness programs and training as needed

- Implement new services, education/awareness programs and training either collectively or individually
- Create partnerships for effective resource management (i.e. sharing office space, internet connections, etc.)

The Coordination Unit would coordinate the network. The design of the coordination unit is flexible and could be based from an existing legal aid provider, district offices or a new office. The purpose of the coordination unit is to provide professional support to legal aid providers and network partners. The professional support would be dependant upon the specific needs of the area. For example, there could be advisors for women and children issues, refugee issues, IDP issues, land issues, education and training curriculum design, etc. Further, these coordination units would facilitate the network activities by conducting meetings, disseminating information and acting as a lobby unit. These units could also carry out programs on behalf of the network, should the network members approve such activities. Such activities could include; prison visits, training of paralegals, creating resource centers, etc. Finally, the unit could act as a clearinghouse for matching clients with *pro bono* advocates. These clients would be referred from the legal aid providers in the district

Initially, the coordination unit would be a small office consisting of a coordinator and an assistant. As services expand, more staff with specialized education and experience could be added. The addition of specific staff members would dependent on the needs of the area, who could support the programs of the network members.

6.7 LEGAL AID FINANCING AND MANAGEMENT FRAMEWORK

Arising from the analysis of the current financing structures in legal aid and basket fund arrangements in other sector, it is recommended that an **Independent Legal Aid Fund** is setup taking into account the positive attributes of the two Basket Funds described above. The advantages of an Independent Legal Aid Fund include but are not limited to the following:

1. Standardizing financial accountability and reporting;
2. Ensure that funding criteria includes compliance to legal aid regulations;
3. Avoids duplication of services;
4. Creates a national strategy to meet legal aid needs throughout the country; and
5. Facilitates the future determination of average costs for delivering legal aid services across the country.

The Independent Legal Aid Fund would have the following organs.

The National Steering Committee (NSC) will be the highest policy making organ of the Legal Aid Fund. It will constitute membership from the Ministry of Justice, the Law Council (regulation), Uganda Law Society and donor agencies. These members will then decide upon representatives for the NSC from the civil society and legal aid providers. Its main responsibility will be providing strategic decision making of the Fund. Its initial task will be setting up the Programme Management Unit, the Basket Fund and strengthening the Law Council to perform better its regulatory responsibilities.

The specific tasks of the steering committee will include, but not limited to, the following:

- Overall programme design and strategic input in the establishment and operationalisation of the fund
- Ongoing stakeholder consultations and ensuring buy-in from all stakeholders
- Agree criteria for programme management decisions
- Macro-level decision making relating to programme priorities, geographical coverage and individual project recommendation for approval
- Macro-budget management including fundraising and levels of commitment

- Key strategic considerations including the linkages to national policy objectives
- Setting policy objectives
- Approving project proposals
- Receiving macro-progress reporting and ongoing process and progress review
- On-going analysis of monitoring data and evaluation findings, and assessment of progress against benchmarks, some of these reports will be generated by the Monitoring Section of the Law Council
- Commissioning an external evaluation (mid term and summative) as well as periodic reviews

The Programme Management Unit will be responsible for the day-to-day technical coordination of the Programme including developing implementation strategies and developing guidelines and monitoring the implementation of the programme activities. It will solicit and shortlists grant applicants and recommends to the NSC for approval. In addition, the Programme Management Unit will have the responsibility for the financial management. As such, it will conduct financial risk assessment of grant applicants, strengthening the financial management capacity of grant beneficiaries and monitor the financial aspects of the fund. One benefit of operating a Programme Management Unit is that a standardization of financial reporting among legal aid providers will exist. Something that is not occurring currently (see: section 3.7). It will work with the Law Council to expedite the development, dissemination and use of common standards across all legal aid providers as one of the initial stages of improving the quality of legal aid service delivery. It is difficult to envision the staffing structure of this unit and the types of staff needed, as any amounts that could be deposited into the basket fund has yet to be determined.

The proposed approach will bring technical and financial coordination of the Legal Aid Fund under one roof, hence promoting synergies and effectiveness in the implementation of the Programme.

The administrative costs will be lower than if an independent financial manager were to be hired In addition, it will not be necessary for a group of applicants to establish a substructure to administer the fund at the implementation level.

The legal aid service providers will be at liberty to apply for funding of their activities either through a network arrangement or as individual organisation. Hence one will not be advantaged or otherwise disadvantaged for being a member of a particular network. This will also allow providers in varying settings such as civil society, local governments to respond to the peculiar needs of their target audience.

The suggested model will enable each of the key players, providers and the regulator to ably identify and have their needs addressed through an independent entity. In particular, the capacity of the Law Council to regulate legal aid provision will be enhanced while the providers will focus on legal aid provision.

6.8 TIMELINE

Activity		Objectives	Timeline
Regulatory Framework Law Council	1. Study Survey Report and undertake preparatory steps	• Develop an action plan to implement recommendations of the Survey	May 2004 to June 2004
	2. Establishment of Legal Aid Committee	• guide the activities of the Law Council in the field of legal aid. • guide the technical advisors and Monitoring Section	July 1, 2004
	3. Drafting regulatory framework	• Draft regulations for paralegal training and legal aid • Prepare paralegal training curriculum	July to December 2004

Activity		Objectives	Timeline
	4. First draft of regulations (paralegal training regulations and curriculum and legal aid)		September 1, 2004
	5. Regional Workshops	• Provide feedback by stakeholders • Create ownership of regulations	September to October 2004
	6. Passing of Regulations by Law Council		December 31, 2004
	7. Establishment of the Monitoring Section	• Ensure adherence to minimum package regulations and paralegal training regulations • provide recommendations for new program opportunities • reporting of best practices that could be incorporated in other districts	Established January 2005
Financing	1. Initial Activities	• Develop MOU and a framework for provision of legal aid	December 31, 2004
	2. National Steering Committee	• responsibility to provide strategic decision making of the Fund. • initial task will be setting up the Programme Management Unit, the Basket Fund • strengthening the Law Council to perform better its regulatory responsibilities	Established January 2005
	3. Program Management Unit	• responsible for the day-to-day technical coordination • developing implementation strategies, • developing guidelines • monitoring the implementation of the programme activities. • solicit and shortlists grant applicants and recommends to the NSC for approval. • will have the responsibility for the financial management. • conduct financial risk assessment of grant applicants, • strengthening the financial management capacity of grant beneficiaries • monitor the financial aspects of the fund. • work with the Law Council to expedite the development, dissemination and use of common standards across all legal aid providers	Established March 2005
Service Provisions	1. Establishment of one primary services legal aid office in every district	• allow for advocate services to reach every indigent person at the district level	Beginning July 2005 with 12 district offices opened on a yearly basis. All districts will have at least one primary services legal aid office by December 2009

Activity	Objectives	Timeline
District Networks	• Share best practices and experiences • Create/facilitate referral systems • Develop partnerships with the local governments	To be developed when a primary service legal aid provider is established within a district.

APPENDICES

A. RESEARCH INSTRUMENTS

i. A guide to key information interviews with CAO's offices, LCV chairpersons, RDC

1. What in your view should constitute legal aid services?
2. How important do you think they are?
3. What kind of legal services are provided in your district/ area and by whom?
4. What is the current linkage (if any) between legal aid services and decentralisation in your district? (Probe on the possible linkage in future and / or strengthening existing linkage)
5. What are the key gaps/challenges in the provision of legal aid services in your district/region? (Probe on non-served/underserved groups of people, content, coverage, un-met legal aid needs)
6. Suggestions to improve the delivery of legal Aid services at district, regional and national levels.
7. What district services in your view constitute legal aid.
8. What is the district budget for legal aid.
9. Please give any other comment(s) that you think will contribute to the attainment of this study's objectives.

ii. Questionnaire for users /clients of Legal Aid Providers and LC 1 focus group discussions

1) Have you ever had a legal problem?

2) What kind of problem was it?

3) Did you receive help from anyone?

4) If not, why not?

5) If yes, from whom did you get help and what was your experience?

6) What did they do for you? (Guidance, advice, paperwork, representing in court, paying money, education, referral, talk with police, paying bribe…)

7) If you have a problem, who do you approach first?

8) What is your opinion/feeling about how legal cases are solved here in this area

9) What are the most common legal problems people face in this area?

10) Who are the people that have difficulty in accessing legal aid services in this area and what happens to them / where do they go ?

11) How many Legal Aid Providers do you know in this area?

iii. Questionnaire for Legal Aid Providers

A: Legal Aid

1. What in your view is Legal Aid?

……

B: Agency services and approach.

2. What are the main activities/ services provided by your agency?

Service	Please tick	Rank (1,2,3…)	Services sought (please rank)
Advice giving and assistance			
Representation			
Negotiation			
Mediation			
Advocacy and campaigning			
Rights awareness Legal literacy and Education			
Counseling			
Other (specify)			

3. What services / activities are not covered within the district?

……

4. What areas of law do you focus on?

Area of law	P'se tick	Rank (in terms of emphasis (1,2,3...)	What is the target group?
Land issues			
Family - Divorce & marriage			
- Domestic violence			
Custody			
Maintenance			
Inheritance / succession			
Criminal - Capital cases			
- Minor cases			
Juvenile justice			
Employment and labour relations			
Landlord and tenant			
Refuge law			
Access to statutory services e.g. mental health, child care, education, disability, rights			
Others (specify)			

5. What areas of law are not covered within the district?

……

6. How do clients get to know about your services?

Source	Please tick	Rank (1,2,3…)
Referrals		
State briefs		
Walk in		
Radio		

Newspapers		
Brochures		
Television		
Leaflets		
Others (specify)		

C: Office

7 Explain who provides the various services in your agency and which services they provide?

Position	**Full-time** *(Number)*	**Part-time** *(Number)*	**Duties & responsibilities**
Lawyer			
Volunteers Lawyers			
Advocates			
Paralegals			
Others (specify)			

8. How do you update your staff on new law and procedures?

D. Service Coverage and Timing

9 When did you start service activities in this area?
……

10 Why did you establish this agency/Organization?
……

11. Is the number of clients/users of your services growing up/down? Please explain your answer
……

12. Is the type of clients changing? If yes, how and why?
How?……

Why?....……

13. What are the criteria for selecting your clients / users?

……

14. What is your client-catchment area?
……

15 In what regions/district does your agency provide outreach/field visits/follow-ups?
……

16. When (in terms of time) are those activities undertaken? (Insert name of activities)

Name of activity	Daily	Weekly	Monthly	Annually	Others (specify)	Reason

17. What do you think are the barriers of access to legal services *(interviewer to request for any information? documentation about this)*
……

E. Funding

18 What is / are your sources of funding?
……

19. Is any of your funding restricted to particular activities? If yes, which ones are these?
……

20. What do your clients contribute to the cost of a service and why do they have to contribute? (*if in affirmative, skip 21)*
……

21. If they do not contribute, why not?
……

22. What has not been done by your organization because of budget constraints *(probe for constraints in terms of geographical coverage and service content)*
……

F. Linkage with decentralization

23. How do you relate / interact with district officials?.
……

24. How best can legal aid services be incorporated in the decentralization framework in your area?
……

G. General

25 Do you know other legal aid providers in the area?
……

26. How do you relate with these?

Agency / organisation	**Nature of relationship**

27. Can you please give us information about the development of Legal Aid Provisioning within the area in the last five years *(probe for challenges and opportunities)*
……

28. What in your opinion is the future of legal aid provisioning in this area?
……

29. Do you have any further comments / advice that could be useful for the survey?
……

iv. A Guide to Key Informant Interview with the Police and Prison Officials

1. What is your understanding of legal Aid services?
2. How are they important?
3. In your experience, which groups of people need Legal aid services most and why?
4. What kind of legal services are provided in your district/area and by whom?
5. How does the Police/Prison relate with legal Aid providers in your district/region? *(Probe on referral cases, consulted, involved in training and legal education)*
6. What do you think is missing in the currently existing legal aid services in your district/region? *(Probe on non-served/underserved groups of people, content, coverage, unmet legal Aid needs (etc.)*
7. Suggestions to improve the delivery of legal Aid services at district, regional and national levels.
8. Please give any other comment(s) that you think will contribute to the attainment of this study's objectives.

v. A Guide to Key Information Interviews with the Probation and Social Welfare Officers, NGOs and CBO representatives, religious organizations

1. What are the main activities/services of the Probation and Welfare department in your district?
2. Which ones of these do you think constitute legal aid?
3. What are the targeted groups for both legal aid and non legal aid services?
4. What kinds of clients are often served by your agency? *(Probe for the common cases handled by the office and for the reasons why)*
5. Are the services differentiated /do you have different services for different categories of clients?
6. If yes, what criteria are used to differentiate services among clients?
7. What challenges do you often encounter in the providing legal aid services?
8. Within your area of operation (community, district, nation), and based on your experience in this area, who (individual, organisations and institutions) in your opinion would constitute your collaborative partner? *(Probe for the circumstances and nature of referrals)*
9. Who are your key partners. (individuals, organisations or institutions).
10. Which agencies provide legal aid services in your district? *(Probe on nature of legal Aid services, target groups and coverage)*
11. What in your opinion are the key gaps in the provision of legal services in your district/region? *(Probe on non-served/underserved groups of people, content or quality, coverage, unmet legal aid needs etc)*
12. Do you have suggestions to improve the delivery of legal Aid services at district, regional and national levels.
13. Comment on the potential for linking legal aid services to the decentralised system of government.
14. Please give any other comment(s) that you wish to make.

vi. Questionnaire for Private Legal Practitioners

A: Legal Aid

1. What in your view is Legal Aid?

……

2. Do you provide pro-bono services? Why/why not?

……

(If no and you are convinced, go to the next respondent)

B: Agency services and approach.

3. What are the main activities/ services provided by you when providing pro-bono?

Service	**Please tick**	**Rank (1,2,3…)**	**Services sought (please rank)**
Advice giving and assistance			
Representation			
Negotiation			
Mediation			
Advocacy and campaigning			
Rights awareness Legal literacy and Education			
Counseling			
Other (specify)			

4. What areas of law do you focus on when providing pro-bono services?

Area of law	**P'se tick**	**Rank (in terms of emphasis (1,2,3...)**	**What is the target group?**
Land issues			
Family - Divorce & marriage			
- Domestic violence			
Custody			
Maintenance			
Inheritance / succession			
Criminal - Capital cases			
- Minor cases			
Juvenile justice			
Employment and labour relations			
Landlord and tenant			
Refuge law			
Access to statutory services e.g. mental health, child care, education, disability, rights			
Others (specify)			

5. What areas of law are not covered within the district?

……

6. How do clients get to know about your pro-bono services?

Source	**Please tick**	**Rank (1,2,3…)**
Referrals		
State briefs		
Walk in		

Radio		
Newspapers		
Brochures		
Television		
Leaflets		
Others (specify)		

C: Office

7 Explain who provides the various pro-bono services in your agency and which services they provide?

Position	**Full-time** *(Number)*	**Part-time** *(Number)*	**Duties & responsibilities**
Lawyer			
Volunteers Lawyers			
Advocates			
Paralegals			
Others (specify)			

D. Service Coverage and Timing

8 When did you start pro-bono service activities in this area?

……

9. Is the number of pro-bono clients/users of your services growing up/down? Please explain your answer
……

10. Is the type of pro-bono clients changing? If yes, how and why?
How?……

Why?....……

11. What are your criteria for taking on pro-bono clients?
……

12. What is your pro-bono client-catchment area?
……

13 In what regions/district do you provide field visits/follow-ups?
……

14. When (in terms of time) are those pro-bono activities undertaken? (Insert name of activities)

Name of activity	Daily	Weekly	Monthly	Annually	Others (specify)	Reason

15. What do you think are the barriers of access to legal services *(interviewer to request for any information? documentation about this)*
……

F. Linkage with decentralization

16. How best can legal aid services be incorporated in the decentralization framework in your area?
……

G. General

17 Do you know other probono / legal aid providers in the area?

……

18. How do you relate with these?

Individual / organisation	Nature of relationship

19. Can you please give us information about the development of probono / Legal Aid Provisioning within the area in the last five years *(probe for challenges and opportunities)*

20. What in your opinion is the future of legal aid provisioning in this area?

……

21. Do you have any further comments / advice that could be useful for the survey?

……

vii. A Guide to Key Informant Interviews with Magistrates/State Attorneys/Judges

1) What in your view should constitute legal aid services?

2) How important do you think they are?

3) What kind of legal aid services are provided in your district/area and by whom?

4) What is your own assessment of the existing legal aid services (probe on coverage, target group, content and targeting processes/mechanisms)

5) What is the current linkage (if any) between legal aid services and local government in your district? (Probe on possible linkage in future and/ or strengthening existing linkage.)

6) What are the key gaps/challenges in the provision of legal aid services in your district/region? (Probe on non-served/underserved groups of people, content, coverage, un-met legal aid needs).

7) Please give your suggestions to improve the delivery of legal aid services at district, regional and national levels.

8) Please give any other comment(s) that you think will contribute to the attainment of this study.

Judges and Registrars

9) What is the criterion for the selection of lawyers to represent defenders in state briefs?

10) How do you allocate funds to a state brief?

B. LIST OF DISTRICTS VISITED

Region	Districts Covered
Central	Luwero, Kampala,
Eastern	Jinja, Mbale, Soroti, Kumi
Northern	Arua, Gulu, Masindi
South Western	Kabarole, Kasese, Kabale, Rukungiri, Mbarara, Ntungamo, Kanungu

C. LIST OF LEGAL AID PROVIDERS RENDERING SECONDARY SERVICES

(including referrals to primary service providers

District	Organisation
Kampala	Action for Human Rights and Civic Awareness
	Africa Centre for Treatment and rehabilitation of Torture victims
	Association for Research and Rehabilitation of Offenders ARRO
	Centre for Conflict Resolution
	Foundation for Human Rights Initiative FHRI
	Rule of Law Association/Amnesty Commission
	Uganda Gender Resource Centre UGRC
	Uganda Moslem Lawyers Association
	Pan African Development, Education and Advocacy Program
	Uganda Christian Lawyers Association UCLF
Gulu	ICLA
	Justice and Peace Commission
	Paralegals
	Catholic Relief Services CRS
	Human Rights Focus HURIFO
Arua	African Centre for Treatment and Rehabilitation of Torture Victims
	African Network for Protection and Prevention of Child abuse and neglect ANPPCAN
Mbale	Human Rights Activists
	Muslim Supreme Council
	Paralegals
Soroti	None
Kumi	None
Jinja	UMLAS- Moslem Lawyers Association
Mbarara	Paralegals
Kabale	Kabale Network Organisation KABNETO
	Kabale Guidance and Counseling Services
Kabarole	None
Rukungiri	Rukungiri Gender and Development Association RUGDA
Kasese	None
Kanungu	None
Masindi	None
Luwero	None

D. CATEGORIES OF RESPONDENTS

District Officials
6. LC V Chairperson
7. Resident District Commissioner
8. Chief Administrative Officer's office
9. Probation and Welfare Office
10. Community Development Office
11. Officer in Charge – Police
12. Community Liaison Office – Police
13. Family Protection Unit – Police
14. Officer in Charge – Prisons
15. LC III Chairperson and Council members
16. LC II Chairperson and Council members
17. LC I Chairperson and Council members

Court Officials
18. Resident Judge
19. Chief Magistrate
20. Grade I Magistrates
21. Grade II Magistrates
22. Court Registrars
23. State Attorney/Public Prosecutors

NGOs/CBOs
24. Legal Aid Providers
25. Paralegals
26. Representatives of human rights, education, service provision and grassroots NGOs and CBOs
27. Representatives of faith based organizations
28. Representatives of membership organizations
29. Representatives of UHRC
30. Representatives of donor partner organizations

Other
31. Potential/actual users and clients of legal aid providers
32. Private practitioner advocates
33. Other interested parties

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F. TERMS OF REFERENCES/WORK PLAN

Introduction
Currently there are seven main organisations providing legal aid in Uganda. However, their attempts to address this need are hampered by scarcity of resources, thereby leaving out certain areas and groups of people. A consultancy commissioned by the Government of Uganda, Justice Law and Order Sector revealed that the existing legal aid providers cover approximately 46.4% of Uganda, which is 26 of the 56 districts. This does not mean however, that there is 100% coverage by the seven member Non Governmental Organizations in the 26 districts. In more than half of Uganda's districts there is no legal aid provision at all yet some of these are the most inaccessible and heavily disadvantaged in several respects, for instance, by war (such as in North and North Eastern Uganda) and poor transport facilities (such as Kalangala). It is no wonder that there is increased cases of mob justice reported in the media in most of these districts.

Apart from the seven main legal aid providers it is not clear how many other providers there are, where they operate and how. The recent developments in the social service delivery system have presented a number of challenges and opportunities to reaching the rural poor. Whereas this has worked very well in the health and education sectors it is not known how effective this can be in respect to the provision of legal services. Different approaches have been used in the delivery of legal aid services to the poor. However, it is not known which is the most effective way of providing legal aid services. Against this background it is now proposed to carry out a comprehensive national survey and needs assessment.

Objectives of the survey
1. To establish the number of organisations involved in providing legal aid services in Uganda, their target audience and reach;
2. To identify the nature of legal aid services (activities) provided;
3. To determine the areas (districts) being reached and by whom;
4. To establish when and how often is a particular audience served;
5. To determine how legal aid services are being provided (e.g. through the use of volunteers, paralegals and/or qualified lawyers);
6. To determine how legal aid services are being funded;
7. To determine the possibility of linking legal aid provision with decentralisation;
8. To identify the specific legal aid needs around the country.

Outcomes
- A list of legal aid providers across the country;
- An account of the geographical coverage of legal aid services;
- A description of how legal aid is rendered (by whom, where, how etc.);
- A breakdown of the legal aid needs by geographical area and broken down into areas of the law;
- A guide on the level of activities funding required to meet legal aid needs identified in the survey.
- A clear definition and scope of legal aid services in Uganda;
- Suggested structure that provides an opportunity for new entrants & linkage with decentralization;
- Guide for regulatory framework & legal aid provision financing mechanism;

Management of the Baseline and Needs assessment
The Programme to Strengthen the Capacity of the Legal Aid Project (CSP) – which is coordinating the Legal Aid Service Providers' Network will coordinate the survey. It will be assisted in this role by the Law Society of England and Wales (LSEW) and the Uganda Law Society (ULS). The ULS has committed two staff for this purpose while the LSEW will be providing support through an already existing framework of the CSP. Besides the coordination role, the LSEW is committing two specialists to the survey. The survey team will, in consultation with the stakeholders, develop and administer the instruments, analyse findings and write a report with recommendations. They will also assist with the development and implementation of projects arising from this process.

To assist in the survey will be two specialists and three assistants who will be hired locally. The three local assistants will be familiar in local languages of the areas to be covered by the survey and will be trained as the survey proceeds, so that they can acquire skills for future use. In addition, each of the six organisations currently under the network will assign a member of staff for four weeks each, to assist in data collection. The hope is also to build the institutional knowledge of the Legal Aid Provider's Network, by passing on skills to the staff and exposing them to legal aid needs outside Kampala during the exercise.

Two teams of six would be formed from the specialists, assistants and legal aid representatives, so that the proposed visits could be performed simultaneously in two different regions.

Workplan

Approach:

The general approach of the Survey will be first to examine what services are currently being provided under the auspices of "legal aid." Next, the Survey will analyse what services are actually needed, and in turn, what gaps might exist between current services and needs. In other words, the ultimate goal of the Survey would be to analyse any gaps between the "legal aid" services currently being provided and any outstanding needs. There may be over-representation of service in some regions, or types of activities, for instance, in contrast to a complete absence in others. Further, there may be certain strengths or inadequacies in the services currently provided.

At the same time, the baseline survey will be performed with a view to developing a standard definition of what should be considered "legal aid." It will only be possible to arrive at such a definition, once there is a clearer picture of what the current legal needs in Uganda are. In the same vein, the survey will also serve as a starting point for identifying various areas and methods for standardising the provision of legal aid service in Uganda.

Methodology:

1) Legal Aid Coverage Survey

The main focus of this part of the Survey will be to investigate and evaluate the services that organizations currently provide in the name of "legal aid." A large part of this Survey will be done through on-site visits of organizations and in-person interviews with officials. To that end, it is proposed that as much background research as possible be done beforehand. It most likely will not be possible to visit all of the organizations claiming to provide "legal aid." The goal rather is to get as wide and representative a cross-section as possible. Initial research will thus help to identify best which organizations and regions to visit. It should also help to prepare better for any eventual visits.

To gather the relevant information about the "legal aid" providers, a "who, what, where, why, when and how" approach is proposed. These are not rigid distinctions, and there would likely be some overlap between them. This approach, however, should help to guide and standardise the information-gathering activities. The information gathered would then form the basis for the Baseline Survey's analysis. Moreover, the questions proposed immediately below would also serve to develop a standard questionnaire that would be used when performing in-person interviews.

(1) *Who & What?*
- What organizations or individuals claim to be providing legal services?
- What are the main activities provided by those groups?
- Who are the targeted groups of those activities?
- Who is being reached by those activities?
- What criteria and procedures are used to determine who qualifies or should benefit from legal aid?
- Who administers the activities? Who performs them?
- What are the identifiable results of the activities? How are those results determined/measured?
- What follow-up is done on activities? (e.g. what happens after a workshop or similar activity?)

(2) Where?
- In what regions, districts does the organization provide it services?
- What specific activities are undertaken in the various regions stated?
- On what basis are these areas and their corresponding activities decided?

(3) When?
- How often are the stated activities undertaken?
- How is the allocation of time determined?
- In other words, how are activities planned? On what basis is it decided that a given activity should be undertaken at given time or frequency?

(4) Why & How?
- What are the stated objectives of the organization – i.e. why does it exist, why did the organization choose to provide legal aid in the first place?
- How do the organization's stated activities, and the groups targeted thereby, meet those objectives?
- What successes has the organization had in fulfilling those objectives?
- What are some of the challenges or shortcomings that the organization has faced in striving to meet its objectives?
- How does the organization plan to continue to meet its objectives in the future?
- How does the organization plan to overcome any gaps between what it is currently accomplishing and any needs that have yet to be addressed?

One idea that has been identified for helping to implement legal aid is through the use of paralegals. Mindful of this, the survey will also investigate how and where "legal aid" providers make use of paralegals. The focus would be on, for instance, the structures and training mechanisms for paralegals, what activities they carry out and so on, all with a view to assessing the effectiveness of their use.

a) Preliminary Background Research

- This part of the workplan has already been begun. The aim here is to try and identify, as much as possible, the various organizations providing some form of "legal aid" in Uganda. This will be done, for instance, by reviewing previous consultancy reports, using pre-existing knowledge of organizations and contacting other institutions with contacts in the CSO community (such as the Uganda Human Rights Commission or probation officers etc.).

- A review of earlier consultancy reports on legal aid, both within Uganda and outside, is being undertaken to help shape the methods and steps proposed herein.

- For the sake of being comprehensive, an appeal may also be made in the local media – newspapers and radio – to inform groups providing "legal aid" about the survey and to call on them to identify themselves. Again, the idea is to reach out to as many groups as possible, in the beginning, to gain as broad a picture as possible of which groups claim to be providing "legal aid," and where. Both English language and local language newspapers would be used to advertise the activities of the survey.

b) Mapping out and Planning of Survey

- One of the main purposes of the initial background research will be to map out, generally, in what areas legal aid is being provided. From there, it will be possible to identify which regions and organizations to target with on-site visits. The plan would be to visit 8 regions to get a global view of the provision of legal aid. Thus, 2 larger areas such as Kampala and Jinja would be targeted, as well as two medium areas, two smaller areas and two areas providing more unique circumstances. Tentative regions for visits have so far been identified as: Kampala, Gulu, Soroti/Mbale, West Nile, Jinja, Kabale/ Rukungiri, Fort Portal/Kasese and Mbarara.

- It should be noted that the focus of the on-site visits would be primarily on regions where there is some form of "legal aid" being provided. As part of these visits, however, the plan would also be to visit a limited number of regions where there are little to no active "legal aid" providers. The visits would thus focus more on assessing the legal aid needs of those areas (see Section 2 below).

i) Literature Review

- As part of the initial survey, groups will be asked to provide as much literature as possible: e.g., brochures, budgets, reports on activities, strategic plans, and so on. This will form the basis for a "Literature Review."

- Part of the purpose of the Literature Review will be to develop an "official" picture of "legal aid" provision. That is, it will be to examine what the stated activities and goals of the legal aid providers are, and how those organizations present themselves and their activities to the public. This information, in turn, will provide a backdrop for the next stage of the survey, namely, a more in depth review of the organizations' activities. The information will also serve to help evaluate the effectiveness of the various legal aid providers. In other words, it will provide one method for evaluating whether there are any gaps between what the groups claim to be doing and what they actually accomplish. It will further help to identify 'best practices' for legal aid, for instance, the most effective methods for deploying representation or legal awareness activities.

- As a practical consideration, it may not be possible to gain access to the desired documentation until an on-site visit is performed. The goal, however, will be to access as much information beforehand, so that any visit to the organizations can be better prepared and more in depth. To overcome this potential obstacle, the plan would be to first visit organizations within Kampala.

- The reasons for beginning in Kampala are as follows: First, there are several well-known legal aid providers in Kampala that would doubtlessly be part of the survey. Second, it would be much easier to collect information from these organizations before any on-site or in-depth visit. Finally, having had the initial experience of meeting with the Kampala legal aid providers, it would be much easier, when visiting other communities, to do both the literature review and on-site visits at the same time. That is, the Kampala visits would better equip the researchers, for instance, to know what to look for or what questions to ask when visiting the organizations. The initial visits would also serve to give an initial 'on the spot' training to the survey assistants.

ii) Budget Review

- The purpose of the Budget Review will be largely the same as the Literature Review. That is, it will provide an initial picture of the legal aid providers' budgets and serve as a basis for more in-depth, on-site visits.

- Another primary goal of the Budget Review will also be to assess in what areas, if any, additional funding would be needed, to make the provision of "legal aid" more effective. The budgetary information would also be used to evaluate the cost-effectiveness of current legal aid services and, in turn, how much and how best to allocate resources in the future. This assessment of budgetary needs would probably take place at a later stage in the Baseline Survey, as part of the analysis of the various legal aid needs in Uganda.

- The specific focus of the Budget Review would be to evaluate the following factors:

  (i) What is the source of funding, and how much has been provided by a given donor?

  (ii) For how long is funding currently guaranteed?

  (iii) What are the gaps between current funding and planned or proposed activities?

  (iv) How are resources allocated? For instance, what is the ratio of resources devoted to administration, and capital expenditures, versus programme delivery?

c) Site Visits & Interviews

i) Initial Steps

- As has been stated already, a first step prior to performing the site visits, would be to identify which regions or districts to target. It is not yet clear how many organizations are providing "legal aid," in various capacities across Uganda. The *Prime Solutions* consultancy report refers to some 97 organizations. Assuming there are this many organisations, it will not be possible to visit each and every one. The visits will thus aim for covering as large and representative a cross-section as possible.

- Different questionnaires for interviews will have to be developed. The purpose of these questionnaires would be to ensure standardization in the information solicited during the interviews. This would make it possible to divide the task of interviewing across several individuals. Prior to the first visits in the field, these questionnaires would have to be pre-tested, to ensure their efficacy and to avoid any unforeseen complications during the visits. It is envisaged that, in the week before site visits start, a one day visit would be undertaken to a community close to Kampala to pre-test the instruments.

- As for specific instruments, most obviously, there would be a need for a questionnaire for interviewing the representatives of the organizations. There would also need to be a questionnaire for local governmental officials, donor representatives and the clients of the legal aid providers, and so on. In the latter case of legal aid clients, for instance, questionnaires used for similar purposes by the Program to Strengthen the Capacity of the Legal Aid Project could be used as templates.

- To assist in the interviewing and collection of data, there would be a need to recruit assistants. The assistants could play a role soliciting basic data, and also in helping with translation – particularly with clients who may only speak a local language. In the case of translation, it may be necessary to find assistants in a particular survey region. Any assistants would also have to be trained in interviewing skills, as much as possible before activities are undertaken. This, again, would help to ensure standardization in the information solicited. As mentioned above, a lot of the training may have to be done on the job. Further, employing assistants would be a means of passing on the skills necessary for doing this type of Baseline Survey. If and when a regulatory framework for legal aid is implemented, there would most likely be an on-going need for monitoring and evaluating legal aid activities across the country – which, in turn, would mirror the types of activities and skills proposed for this Survey.

- Prior to a visit, local officials, such as the LCs, would be contacted to inform them of the Survey and to help publicise the visit, as well as to provide information for the needs assessment. Among others, the local officials targeted would be LC3 chairs, LC1 court chairs, local government prisons, probation officers, family and child protection unit officials, community liaison officers, LC5 secretaries for social services, local social service CSOs, and so on.

- It is at this stage that it might be possible to do a radio show to be broadcast in the given region before the visit. The contacts at the various radio stations are already available, and the shows could be taped from Kampala. The potential benefit of such radio shows is that they could raise general awareness, not

only about the Survey, but also about the goal of providing more effective and coordinated legal aid services across the country.

ii) Course of Action for the Visits

- The purpose of the visits will be two-fold: (i) to perform the survey of legal aid providers as described in this section; (ii) to assess the needs for legal aid in Uganda, as discussed in the next section. There may be certain districts that are lacking in the presence of "legal aid" provision, and in those cases, the focus of the visit will be more on assessing the needs of the district.

- The visits would likely take 4 to 6 days depending on the size of the region visited. This does not include Kampala, because these interviews can be done on an on-going basis and do not require the same amount of mobilization.

- Having coordinated with local leaders prior to arrival, on the first morning, a short public information session (of about 1 to 2 hours) would be held for the various stakeholders, to outline goal of the Baseline Survey and how they can contribute. The help of community mobilisers would be solicited beforehand to help advertise the arrival of the survey team, and to ensure strong attendance to the workshops.

- Following the information session, more in-depth interviews would be performed with local officials, CSOs, and so on. As much as possible, these interviews would be scheduled at fixed times beforehand, to ensure some predictability in the management of time during the visits.

- At the organizations providing legal aid, interviews would ideally take place with the director and one or more legal officers and, where possible, with clients.

- Meetings with local officials (such as those listed above) would primarily be to help assess what are legal needs in the area. Meetings with CSOs that do not have a legal focus, but which work in social service areas, would also help to assess the legal aid needs of a given district.

iii) Follow-up from the Visits

- The main activity following the visit will be information analysis. That is, summaries of the interviews would have to be compiled. This information would then have to be compared with previous information gathered about organizations (viz. the literature and budget review). Certain conclusions could then be made, about the scope of purported "legal aid" activities, their geographical coverage, and their effectiveness.

- Follow-up meetings are also planned with the members of the Legal Aid Service Providers Network. About two meetings are envisaged. The purpose of these meetings would be to update the members of the Network on the progress of the visits. The meetings would also serve as a forum to try to improve on the visits and survey methodology to that point. Thus, for instance, the meetings would be an appropriate forum to discuss any unforeseen complications during the visits, and to raise any concerns, for instance, about the performance of members or perceived problems in methodology, etc.

- Meetings with Donor organizations would also be scheduled to get their experiences and opinions about the organizations and their "legal aid" activities.

- At the same time, certain conclusions could be developed about the needs for legal aid in Uganda. This would be as a result of consultation with other officials during the visits. See the next section immediately below for more information.

2) Legal Aid Needs Assessment

The purpose of the Legal Aid Needs Assessment is to identify in what areas there is the greatest need for legal aid. "What areas" has a dual meaning here. On the one hand, it refers to the geographical locations that may not be adequately covered by various legal aid activities. On the other hand, "what areas" refers to the different areas of law or groups that may be in need of greater coverage. The geographical component of the Legal Aid Needs Assessment will be accomplished in large part by reviewing the activities of the legal aid providers, during the Legal Aid Coverage Survey. An analysis of the geographical coverage would also help to determine what specific regions are receiving what specific services. A possible conclusion, for instance, might be that in a given region there is too much emphasis on workshops or legal awareness, and not enough efforts devoted to legal representation. The reverse may also prove to be true.

Whatever the conclusion, it would be fairly safe to assume that where a geographical area is not being covered by any legal activities, that region would be in need of such services. The crucial element in the Legal Aid Needs Assessment will thus be to determine which groups, and what legal issues, need most to be targeted by legal aid and, more specifically, by what type of activities. Moreover, this part of the survey would look at various areas of law, among others, civil, criminal, family, land, public law, and so on, and assess the needs in each, as well as the

possible means of addressing them. At that point it would also be possible to rank which ones constitute a higher priority than others.

Given the diversity of people targeted in this part of the Survey, it is unlikely that the questions used in the information gathering will be standardised, to the same extent as those for the legal aid providers survey. That said, once prospective officials have been identified for interviews, it will be possible to map out and plan interviews in greater detail. In general, the focus of these interviews will be to enquire into (i) what the official sees as the most pressing needs in the particular geographical area, and or area of expertise; (ii) what ideas or solutions the official would have for addressing those needs.

a) Preliminary Background Research

- This part of the survey would mirror and be done in combination with the initial efforts of the Legal Aid Coverage Survey. Namely, the relevant stakeholders would first have to be identified and contacted. As with the first part of the Survey these efforts have already begun.

- Two general target groups are proposed for the survey. First, there would be those officials or groups playing a more centralized or coordinating role. For instance, various representatives from the Justice Law and Order Sector (High Court, Internal Affairs, Police, Prisons, Social Services, Gender and Youth Development, Local Government, etc.) could be consulted. Organizations such the Uganda Human Rights Commission, the Case Backlog Programme, Chain Linked Initiative, and so on, could provide invaluable insight into the areas in need of legal assistance.

- The second general group targeted in this part of the survey would be local officials and groups. These would be individuals, in other words, who have a greater exposure to the needs of communities on a daily basis. (Again: LC3 chairs, LC1 court chairs, probation officers, family and child protection unit officials, community liaison officers, LC5 secretaries for social services, local social service CSOs, and so on.)

b) Course of Action for Interviews and Survey

- Once the relevant stakeholders have been identified, similar steps would be undertaken as with the Legal Aid Provider Survey, namely, literature review (where applicable), in person interviews and follow-up. Many of the interviews would take place in Kampala, thus not necessitating travel and allowing for some flexibility in scheduling. These would be mostly with members of the first general target group, i.e., those stakeholders having a more centralized or coordinating role. In the case of the second target group (i.e. community-level focus), an attempt would be as made, as much as possible, to coordinate the interviews with the activities of the Legal Aid Coverage Survey. This would avoid any duplication or addition of travel outside of Kampala. That said, some visits may be to districts where there is little or no legal aid coverage, precisely to assess what kind of coverage would be needed.

- As the interviews progress, and once they have been completed, the information will be compiled and analyzed. From there it will be possible to draw conclusions of what areas are most in need of legal aid coverage. The idea here would also be to try and prioritize different regions, areas of law, and types of activities. The final analysis would thus incorporate the findings from the legal aid coverage survey.

3) Review of Definitions, Experiences and Regulatory Frameworks in other Jurisdictions

With the conclusions in mind from the earlier parts of the survey, it would be possible to make some initial proposals or suggestions for developing the "legal aid" sector further. The first and perhaps most important step would be to formulate a definition of "legal aid." The definition would be formulated in light of the findings of the survey. That is, based on the current coverage, and the gaps and needs in service, it will be possible to answer more definitely: what *should* a legal aid sector be trying to accomplish in Uganda? What *should* the focus of such a sector be? The answer could involve any number of activities, target groups, areas of law, and so on. With an initial definition of legal aid, it would then be possible to start outlining the next steps in the development of a legal aid sector. In other words, it would be possible to compare and recommend various models or frameworks for addressing and regulating Uganda's legal aid needs.

Any analysis of possible regulatory frameworks would begin by examining what structures and laws exist presently for regulating legal aid (e.g. under the *Advocates Act*). Much of this research would likely be completed during the first parts of the survey, when meeting with relevant stakeholders. The purpose here of examining what structures are already in place would be to determine, for instance, whether there are any bodies currently with the jurisdiction and/or capacity to regulate legal aid, and in turn, what might be some of the possible advantages or disadvantages in facilitating a greater regulatory role for such bodies.

At that stage, it would also be possible to evaluate, for instance, decentralisation, as a possible model for implementation. The recommendations would then serve as a guide for any future financing of legal aid. Namely, if there is to be a "basket fund," how big should it be and how should it be distributed? Other questions that may be raised include: What would be the role of the current legal aid providers? How would the provisions of the *Advocates Amendment Act* 2002 – the pro bono requirement in particular – be incorporated into the provision of legal aid?

- To assist in developing of a definition and possible regulatory framework for legal aid, a review would be undertaken of the systems and experiences in providing legal aid in other countries. It will be important to look at countries with similar socio-economic circumstances in Africa and Asia that are ahead on these issues, as well as some models from the rest of the world. Some of this research has already been initiated on an informal basis.

- The bulk of the research on other jurisdictions would be done as a "paper" or "desk" review, that is, by reviewing documentation. Where needed, however, e-mail contact could be made with officials in other jurisdictions, to get more in-depth insight on issues. Some contact information is already available, in case it is needed.

- It should be noted that some ideas for a regulatory framework would come out of the interviews earlier on in the Survey. In fact, this would be a question built into the various surveys with officials, namely, what would they see as a possible method for ensuring a more coordinated provision of service in the country.