

PARALEGAL ADVISORY SERVICES

**Team Report on Study Visit to South Africa to Understudy Models
for Legal Aid Service Provision**

5th - 11th October 2008



Table of Contents	Page
List of acronyms	3
Executive Summary	4
1.0 Study Visit Background.....	8
1.1 Overall Objectives	8
1.2 Specific Objectives	8
2.0 Introduction	10
2.1 International Human Rights Standards on Legal Aid.....	10
2.2 Meaning and Scope of Legal Aid in Uganda	11
3.0 Legal Aid Service Provision in Uganda	12
4.0 Legal Aid Service Provision in South Africa	17
4.1 Matters for Consideration.....	25
5.0 Lessons learnt	28
5.2 Practical Steps towards a national Legal Aid Policy and Legal Framework For Uganda	28
Appendix I	31
Appendix II	36

List of Acronyms/ Abbreviations:

Acronym	Long Form
ADR	Alternative Dispute Resolution
ANPPCAN	The African Network for the Prevention and Protection Against Child Abuse and Neglect
CA	Candidate Attorney
CBOs	Community Based Organizations
CLRDC	Community Law and Rural Development Centre
CSO (S)	Civil Society Organization (s)
CJ	Criminal Justice
DANIDA	Danish International Development Agency
FHRI	Foundation for Human Rights Initiative
EU	European Union
FIDA	Federation of Uganda Women Lawyers
HUGGO	Human Rights and Good Governance Office, Danida
JC	Justice Center
JLOS	Justice Law and Order Sector
LAB	Legal Aid Board
LABF	Legal Aid Basket Fund
LAC	Legal Aid Clinic of the Law Development Center
LAAG	Legal Aid Advisory Group
LAP	Legal Aid Project of the Uganda Law Society
LASPNET	Legal Aid Services Providers Network
LDC	Law Development Center
MoFPED	Ministry of Finance Planning and Economic Development
NGOs	Non Government Organizations
PAS	Paralegal Advisory Services
PLA	Platform for Labour Action
PDAU	Public Defenders' Association of Uganda
SA	South Africa
UGANET	Uganda Network on Law, Ethics and HIV/Aids
ULC	Uganda Law Council
ULS	Uganda Law Society

Executive Summary

Access to justice is a fundamental human right that is guaranteed by several international treaties to which the Government of Uganda is signatory.¹ In observance of its international obligations, Uganda provides guarantees for access to justice in its 1995 Constitution. Legal aid has been identified as an important aspect for the enhancement of access to justice for all, particularly for the marginalized and poor persons in society.

The State is legally obliged as the key duty bearer to respect, protect, promote and fulfill basic rights including the provision of legal aid to those who are unable to afford paid services of a lawyer (as provided under the law) so as to seek legal redress. This obligation calls for a number of strategies including the establishment of functioning institutions and systems and enhancing access to legal aid. However, in Uganda, the State has to date not effectively fulfilled its obligations.

In Uganda, state funded legal aid is currently limited to criminal justice for prisoners charged with capital offences that warrant a maximum punishment of death or life imprisonment. This is channeled through the State Brief Scheme managed by the Judiciary. Basic legal aid in civil justice including family, land and commercial justice is provided largely through Justice institutions like the Police- Community Liaison Office and Child and Family Protection Units; the Administrator General, and through the Ministry of Gender- Probation and Welfare Officers and Community Development Officers. These institutions have made a relative contribution by enhancing legal awareness and providing basic dispute resolution services (Joint LCC and Legal Aid Survey, NCG 2006). However, these institutions are grossly underfunded impacting on the quality of services, prioritization of legal aid and impact of interventions countrywide.

The bulk of legal aid is currently provided by non state actors. These include CSOs, CBOs, faith based organizations, International NGOs, UN and humanitarian agencies who have intervened in an attempt to fill the gap in the provision of legal aid through a multitude of approaches. Interventions have centered on creation of legal aid clinics, training of Paralegals, public awareness sessions through radio and print, court representation and more regularly test cases on a number of issues including the right to bail, the validity of some laws e.g. the law on Adultery and succession. There are approximately 20 organizations (NGOs) that are directly or indirectly providing legal aid at the national level while there are tens of CBOs providing legal aid among a host of other activities.

In all, even in matters where the right to legal assistance is guaranteed by the Constitution, the legal aid system itself is largely inefficient and underfunded. The

¹ Universal Declaration of Human Rights, International Covenant on Civil and Political Rights (1996), The African Charter on Human and Peoples' Rights

absence of a National Legal Aid Policy in Uganda has been cited as one of the challenges to effective legal aid service provision by both the state and civil society. The development of a legal framework and policy is therefore seen as a pre-requisite for improving access to justice through legal aid provision.

In a bid to borrow from South Africa's advanced legal aid service provision, a study visit with the principle objective of understudying models for Legal Aid Service provision was organized. It was to enable policymakers in Uganda to draw on lessons from South Africa in their efforts to make contributions to the establishment of an effective and sustainable legal aid system for Uganda. Specifically, the stakeholders from the criminal justice institutions, JLOS, ULC, civil society and Development partners sought to draw lessons;

- a) For the development of an effective legal aid management and delivery structure in Uganda. In addition, to familiarize key stakeholders with the concept of justice centers which are due to be piloted in Uganda;
- b) To enrich the PAS programme in Uganda;
- c) To inform the process of developing a national legal aid policy as a means of improving legal aid service provision in Uganda.

Summary of findings on best practices for legal aid service provision in South Africa.

1. Access to Justice and the right to legal representation are guaranteed under International, Regional and National laws;
2. Constitutional provisions creating the right to legal representation at state expense and Constitutional Court ruling placed primary responsibility for provision of legal aid on the Government;
3. It is beneficial to mandate a public body to manage the legal aid system, as it acts in public interest; it is important to have strong safeguards to ensure the body's independence;
4. Government commitment to providing legal aid is evidenced by sufficient funding to the Legal Aid Board;
5. The existence of concrete laws, policies, structures and systems is crucial for the effective provision of Legal Aid;
6. There are numerous benefits to having different legal aid service models. They include: higher quality service by providers specialized in certain areas(such as lawyers and NGOs that have expertise in strategic litigation, welfare rights etc), a cost effective system based on matching demands with specific providers, quality assurance etc;
7. Existence of a human rights culture is essential towards the realization of an effective legal aid system;
8. CSOs provide a support system to the Legal Aid Board;

Justice Centres and Paralegal Services

9. Paralegals play a pivotal role in the provision of legal aid; Paralegals are involved in the provision of

- | | |
|---|---|
| <p>legal aid in the formal justice and traditional justice systems;</p> <p>10. Paralegals at the Justice Centres are monitored through the Legal Aid Board;</p> <p>11. The success under the framework of the Legal Aid Board is inseparably linked to the fact that it is state-funded. Adequate resources coupled with good</p> | <p>corporate governance systems ensure the realization of the goals of the LAB. This is hinged on a legal framework obliging the state to provide legal aid for the indigent;</p> <p>12. Monitoring for performance and effectiveness is a key consideration in effectively running a nationwide legal aid structure.</p> |
|---|---|

Recommendations and Proposed Way Forward

The following recommendations are made towards the formulation of a **National Legal Aid Policy and Legal Framework**:

1. The Government of Uganda should enact legislation on legal aid that provides for criteria for eligibility, creates institutional framework and provides for implementation of the policy. This framework should illustrate Governments' intention and strategy to provide legal aid with complementing roles for civil society and other legal aid service providers.
2. It is pertinent that an independent, semi autonomous National Council be set in place to coordinate legal aid service provision. The composition of the council is to be multidisciplinary to cover all aspects of legal aid.
3. JLOS should develop and implement a comprehensive national policy and guidelines on legal aid service provision.
4. Lessons should be drawn from other jurisdictions that are currently under reform e.g. the draft Legal Aid Bill from Malawi, the Lilongwe Declaration and the Kyiv Declaration.
5. JLOS should take advantage of new opportunities for constitutional reforms and ensure that specific constitutional obligations for providing legal aid services especially for the poor are unequivocally articulated in the constitution. E.g. the scope of criminal offences for which legal aid services may be offered could be widened to include non capital cases as well as deserving civil cases.
6. JLOS should ensure that appropriate guarantees are embedded in the constitution to provide a basis for adequate and sustainable funding for legal aid services. This requires advocacy for law reform.

7. Steps by ULC in strengthening (standardizing and streamlining) Paralegal training through the development of regulations should be supported through the JLOS and LABF. Other aspects to address include certification, quality control and monitoring.
8. Cooperation Agreements should be explored and entered into with Universities and other institutions of higher learning to enhance the provision of legal aid services to the poor.

Recommendations towards the enrichment of the PAS Programme in Uganda:

1. Enhance stakeholder awareness on the role of PAS.²
2. The Paralegal Advisory Services Programme needs to be extended to cover all chief magisterial areas throughout the country.
3. There is need to create networks for referral with JLOS institutions and CSOs in regard to matters not handled by the PAS paralegals.
4. Stakeholder discussions of the future of PAS should be prioritized.

Recommendations towards the development and adoption of Justice Centres in Uganda:

1. The Justice Centres project document should be revised to incorporate the new lessons learnt from South Africa and should also reflect new developments within the JLOS in Uganda
2. Consultations and buy in by the Government of Uganda should be furthered with the objective of ensuring that the pilot is carried out and managed within the government structures.
3. Uganda could pilot JCs using students who have completed the Bar Course at the Law Development Centre for a specified period of time as a first employment offer. This will however require funding initially by development partners before the scheme is taken over by the government.

² PAS paralegals and social workers primarily provide basic legal aid. PAS also aims at linking the demand and supply sides of the Criminal Justice system.

1.0 STUDY VISIT BACKGROUND

In recognition of the need to improve legal aid service provision by both the state and civil society without having to re-invent the wheel, South Africa was identified as having one of the most advanced legal aid service provision systems on the African continent . The principle objective of the study visit was to ascertain the best practices established in South Africa in order for the stakeholders in Uganda's legal aid system to draw on them in their effort to establish an effective and sustainable legal aid system.

1.1 Overall Objectives

The study visit had a two-fold overall objective;

- A. To draw lessons of legal aid service provision from the South African experience;
 - For the development of an effective legal aid management and delivery structure in Uganda.
 - To enrich the PAS programme in Uganda.
 - To familiarize Uganda's key stakeholders such as JLOS, and the Judiciary with the concept of Justice Centres which are due to be piloted in Uganda.
- B. To draw lessons from the South African Legal Aid service provision to inform the process of developing a National Legal Aid policy as a means of improving legal aid service provision in Uganda.

1.2 Specific Objectives

1. To understand the evolution of legal aid service provision in South Africa. Particularly;
 - Forms of legal aid services especially in criminal matters.
 - Different models of legal aid service delivery in South Africa.
 - Factors that led to the paradigm shifts in legal aid service provision in South Africa.
 - Characteristics of a sound legal aid service provision framework.
 - Prerequisites and practical considerations in the Criminal Justice System for effective and efficient legal aid service provision by both government and civil society organizations.
2. To learn from the South African experience of partnership between Civil Society Organizations and Government for legal aid service provision. Specifically on;
 - The role of Paralegals and how they complement the services of other legal aid service providers.
 - Nature of work and services offered by Paralegals.
 - Quality assurance of the legal aid service delivery by Paralegals and government employees.
 - Accountability mechanisms of legal aid service providers.

3. To understand the training and accreditation for Paralegals
 - Training curriculum
 - Duration and mode of training
 - Code of conduct for Paralegals in legal aid service provision

4. To Visit and learn from the operations of the South African;
 - Judicare system
 - Legal Aid Board Law Clinics
 - Paralegal Advice Centres in the rural and urban settings
 - Justice Centres
 - Public Defenders
 - Subvented Candidate Attorneys in private practice
 - Legal Resources Centre

5. To share Uganda's experience of legal aid service provision with a specific focus on the Paralegal Advisory Services programme.

The Steering Committee of the Paralegal Advisory Services which draws representatives at senior policy making level in the criminal justice institutions, JLOS, civil society and Development partners was joined by Law Council to undertake the study visit to South Africa.

The team visited the LAB Head Office in Johannesburg, Justice Centres(Johannesburg, Durban and Verulam), Legal Aid Clinic (Howard College Campus, UKZN), Community Law and Rural Development Centre, Black Sash Advice Office and Legal Resources Centre.

This is a report on findings, lessons learnt and recommendations for legal aid service provision in Uganda.

2.0 INTRODUCTION

The rule of law requires that there should be equality before the law. Equality before the law is meaningless without access to the law which translates into both access to and availability of means for formal access to the legal system. It also relates to knowledge of legal rights and obligations on the one hand and the ability to claim these rights and represent one's interests effectively on the other. Without effective provision of legal aid services, financially disadvantaged or vulnerable persons are unable to enforce their rights in Uganda's current legal system.

2.1 International Human Rights Standards on Legal Aid:

The right to legal aid is provided for in several international and regional instruments, namely: - The International Covenant on Civil and Political Rights (**ICCPR**), The African Charter on Human and Peoples' Rights [Article 7(1) (c)], The Kyiv Declaration on the Right to Legal Aid, 2007, The Kampala Declaration on Prison Conditions and The Dakar Declaration of 1999.

The **ICCPR** in Article 14.3 (b) and (d) stipulates that,

"In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: ...

(b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing.

...

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him, in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it".

The interests of justice are determined by considering:

1. In criminal matters:

- i) the seriousness of the offense;
- ii) the severity of the sentence.

2. In civil cases:

- i) the complexity of the case and the ability of the party to adequately represent himself or herself;
- ii) the rights that are affected;
- iii) the likely impact of the outcome of the case on the wider community.

The interests of justice always require legal assistance for an accused in any capital case.³

2.2 The Meaning and Scope of Legal Aid in Uganda

In Uganda, the term “Legal aid” is defined in the Advocates (Legal Aid to Indigent Persons) Regulations, 2007⁴ as the provision of legal advice or representation by a lawyer, an advocate or a paralegal, as the case may be, to a client at no cost or at a very minimal cost.

The regulations further provide that legal aid shall include; a) Legal advice; b) Representation in court or tribunal in civil, constitutional or criminal matters; mediation, negotiation or arbitration; legal education or awareness.⁵

The nature of legal aid provided to a person in any particular case shall be at the discretion of the legal aid provider, taking into account the needs of the person concerned and the resources available to the legal aid provider.⁶

The Regulations also set out criteria for eligibility for legal aid which include an assessment of financial means.⁷

Legal aid therefore seeks to create better access to justice for persons who would not otherwise be able to afford legal services. Access to justice is an absolute requirement under the principles of equality before the law and due process under the rule of law.

Policy and Legal framework for the provision of Legal Aid

The State has a constitutional obligation to provide legal aid only for criminal matters of a capital nature. The 1995 Constitution of Uganda in **Article 28(3) (e)** states that,

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

Uganda’s laws are therefore silent on a state obligation to provide legal aid in civil and non-capital criminal matters. Legal aid at the expense of the State is available in the High Court (which has the jurisdiction to try crimes punishable by a sentence of death or life imprisonment) and in a few crimes, in the Chief Magistrates’ Courts.

³ Draft Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, adopted by the Heads of State at the second summit of the African Union held in Maputo in July 2003.

⁴ Statutory Instrument No.12 of 2007

⁵ Regulation 21

⁶ Regulation 21(3)

⁷ Regulations 23 and 24

Where the state is not directly providing legal aid, it has the duty to regulate legal aid provided by any other provider. The ULC has the mandate of supervision and control over the provision of legal aid and advice in Uganda.⁸

The Poor Persons Defense Act sets the criteria for the provision of legal aid for poor people by specifying the procedure for identifying poor persons and the fees to be paid to advocates for their legal aid services to the poor. The Advocates' Act provides for mandatory pro bono by all advocates of at least 40 hours per year. In practice however, the mandatory service can be substituted by payment of money (Ugs 400,000) in lieu of actual legal aid.

3.0 LEGAL AID SERVICE PROVISION IN UGANDA

Legal Aid in Uganda is provided by both the State and civil society organizations. With funding from development partners, there are new initiatives that have been or are due to be piloted as a means of widening the scope, improving coverage and efficiency of legal aid services in Uganda.

3.1 Uganda's Experience of Legal Aid Service Provision.

a) The Role of Government and Law Council in Legal Aid Service Provision

Article 21 of the Constitution of the Republic of Uganda guarantees equality before the law to all citizens. However, due to high levels of poverty, illiteracy and prohibitive costs of legal services, the majority of people in Uganda are prevented from enjoying this right. In recognition of this constraint, Article 28 (3) (e) of the Constitution of Uganda imposes an obligation on the state to provide legal aid to all persons charged with serious criminal offences if they cannot afford an advocate.

The state funded legal aid is delivered through a state brief system which relies exclusively on private lawyers. This is limited to the High Court circuits (11) although there is some extension of the state brief to Chief Magistrates Courts . The amendment of the law on defilement created a re-classification of simple and aggravated defilement; simple defilement cases are now handled by the Chief Magistrates' court. The State Brief system also covers these cases but on session basis.

The state brief system is un-regulated and is generally available to anyone charged with a capital offence regardless of financial means. In practice, the state brief is an ad hoc system where choice of advocates is largely a matter of judicial discretion. In many instances, a Judge or Chief Magistrate presiding over a session will pick on any advocate to represent a client on state brief. Factors considered in appointing an advocate include

⁸ Section 2 of the Advocates Act; Regulation 5 of SI 12, 2007.

the complexity of a case and duration of the trial. State brief fees in the High Court are assessed by a Judge.

Other than Article 28 there are no clear provisions in Uganda's Constitution creating a right to legal aid services.

Although the Government of the Republic of Uganda recognizes access to justice as an important aspect of poverty eradication strategy and central to all processes in the Justice, Law and Order Sector, it has not been actively involved in funding and regulating legal aid service provision. There is neither a national policy on legal aid nor a comprehensive legal framework to guide legal aid service provision in Uganda.

The Advocates Act provides for mandatory pro bono legal services to indigent persons in Uganda by all advocates. It also mandates the Law Council to supervise and control the provision of legal aid services to indigent persons in Uganda.

b) The Role of civil Society Organizations in Legal Aid Service Provision

The absence of state legal aid services covering non capital offences has created a lacuna which civil society is making an effort to fill though with many challenges.

The CSOs recognize that indigent persons are greatly disadvantaged in accessing justice because of their low literacy levels. Therefore they choose to engage in interventions ranging from human rights education, legal rights awareness and legal aid to improve access to justice for the indigent.

The Legal Aid Service Providers' Network (LASPNET) was conceived in early 2001 as a means of jointly responding to the legal needs of the society and sharing of experiences within the sector for effective and efficient delivery of legal aid services. Currently the membership comprises of twelve members in various areas of legal aid provision.

Mission: Enhancing access to justice for the poor

Objectives

1. Mobilize various resources to facilitate common objectives of the legal aid service provision.
2. Build and strengthen institutional and human resource capacity of legal aid providers.
3. Improve on the cost effectiveness and geographical scope of legal aid service provision.
4. Facilitate the development, use and monitoring of common standards to eliminate overlaps.
5. Lobby and advocate for issues that are relevant and appropriate to the promotion of access to justice for all.

6. Research, document and disseminate information on best practices in enforcement of human rights.
7. Research, document and disseminate on information on best practices in the provision of legal aid.

c) New Developments in Legal Aid Service Provision

1) Paralegal Advisory Services

The Paralegal Advisory Services (PAS) is a national legal aid service programme which aims at creating *voice* and *space* for Criminal Justice System users to access quality justice. The PAS Programme responds to three identified problems within the CJ system namely; Congestion in detention facilities – police cells and prisons, delays in the administration of justice resulting from failure to adhere to practice guidelines of the CJ institutions and the lack of visibility and effective demand for justice by users of the CJ system.

PAS is funded by the LABF and managed by FHRI. It started as a pilot on 1st October 2005 to 31st December 2006 in the magisterial areas of; Gulu, Fort Portal, Kampala and Mbale. The project has since been rolled out to Arua, Mbarara, Lira and Jinja magisterial areas. The current programme has funding for up to 2010.

PAS Objectives

- a) **To contribute to the process of physical and case file decongestion in the CJ system through**
 - Reducing pre-trial period for committals who have overstayed
 - Fast tracking plea of guilty cases
 - Stemming the flow of non founded cases into the criminal justice system
 - Reducing the proportion of petty offenders on remand
 - Diverting petty cases from the criminal justice system to ADR/traditional systems
- b) **To change practices within the Criminal Justice chain through advocacy and civic engagement.**
- c) **To link the demand and supply sides of the Criminal Justice System through**
 - Training in self representation
 - Facilitation of quality sureties
 - Linking suspects to communities
 - Facilitating access to community service sentences
 - Linking partners to provide legal representation for capital offenders

The PAS programme aims at enhancing access to justice through use of non- lawyers i.e. Paralegals and Social Workers to provide basic legal aid services to poor persons in conflict with the law. Paralegals and Social Workers help to expedite access to justice for

suspects and inmates in police and prisons respectively through linking the police, prisons and courts as well as liaising with the Directorate of Public Prosecutions on a daily basis. They provide basic legal advice; follow up cases in the criminal justice institutions and link the suspects and remand prisoners to their families and community members for the required assistance. A small component of the programme facilitates the process for accused persons detained in police cells to identify means of addressing key issues at the entrance to the criminal justice system with the possibility of diverting cases of petty offenders from the criminal justice system through alternative dispute resolution.

2) Justice Centre Model for Legal Aid Service Provision

The concept of Justice Centers aims at creating a one-stop-shop for a broad range of legal aid services. It was initially tested in South Africa and found to be a viable tool for increasing access to justice for vulnerable populations. A study on possible options for implementation of this concept in Uganda was completed in May 2007 and, subsequently, a program document was developed.⁹ The pilot project envisages testing two models: The *fully fledged model* will be a solid legal aid clinic, appropriately staffed to deal with the whole range of potential legal problems. The *outreach model* will be a small scale clinic which will mainly focus on outreach activities in the communities. The Legal Aid Basket Fund has held several consultative meetings with key stakeholders including the Legal Aid Advisory Group (LAAG), the Uganda Law Council, and the Chief Justice to identify the most appropriate and willing host of Justice Centers within the JLOS framework. Although no decision with regard to the host has been made so far, it is hoped that the Judiciary could find a way to pilot Justice Centers while also reforming and integrating the State Brief Scheme, which is currently the only form of legal aid that the State provides.¹⁰

Strategies for the adoption of Justice Centres

- a) LABF shall produce a paper which clearly presents the hosting options available and outlines respective advantages and disadvantages.
- b) Key-stakeholders and members of parliament have to receive knowledge about the State's role in legal aid service provision and the standards adhered to by the national community via workshops and brochures summarizing the intentions of the upcoming pilot.
- c) The JCs' budget has to be kept as low and as reasonable as possible so as to demonstrate that the State budget would not be largely infringed upon in case the State takes over at the end of the pilot (or in case of gradually increasing counterpart-funding.)

⁹ Excerpts in Appendix I

¹⁰ Art. 28 (3) e states that 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. It is envisaged that in the near future this State Brief scheme will be evaluated and reformed accordingly.

- d) While running the pilot key-stakeholders have to be informed regularly about challenges faced so as to increase their knowledge about the pilot and their capacity to take over and optimize the model based on lessons learned after the pilot.

4.0 LEGAL AID SERVICE PROVISION IN SOUTH AFRICA

Highlights of study visit activities and outcomes

<i>Meeting</i>	<i>Outcome</i>
<i>Constitutional Court</i>	<ul style="list-style-type: none"> • Detailed overview of the jurisdiction of the court in matters of constitutional interpretation. Ruling of the Court on the right to legal aid being inclusive of the right to access to justice was the basis for the evolution of the current legal aid delivery system. In <i>State vs. Khanyili</i>¹¹, the Court guaranteed a right to legal aid even in civil matters.
<i>Legal Aid Board, Johannesburg</i>	<ul style="list-style-type: none"> • The LAB is constitutionally mandated to render legal aid to indigent persons at state expense. • Lessons on the transformation of the LAB from a legal aid system solely based on the <i>judicare</i> model to a mixed delivery model. i.e. introduction of in-house salaried lawyers. • Good corporate governance is essential for effective legal aid delivery. • A relevant legal frame work (laws and policy) is critical for a sustainable legal aid system. • Lessons from the Legal Aid Guide, 2002. Guide clearly provides for the matters handled, criteria for qualification for legal aid, tariffs payable by <i>judicare</i> practitioners and procedures for administering legal aid.
<i>Justice Centres in Johannesburg, Durban and Verulam</i>	<ul style="list-style-type: none"> • Status of staff (Paralegals, Candidate Attorneys, Advocates), cases handled (criminal and civil); case management; mechanisms of quality control (including electronic reporting systems). • An elucidation on the system of referral, cooperation between the JC's and <i>judicare</i> lawyers, including financial control mechanisms used to monitor the work of <i>judicare</i> lawyers. • An in-sight into the systems of corporate governance employed in the management of JC's.
<i>Campus Law Clinic/Legal Aid Clinic, University of Kwazulu- Natal</i>	<ul style="list-style-type: none"> • Gained in-sight on program i.e that legal aid is one of the courses that students can opt for at the University. • The legal aid clinic is a certified law firm. This means that candidate attorneys can intern at the clinic in fulfilment of their law degree. This ensures that the clinic is always staffed.

¹¹ 1998 Vol 3 SA 795(N)

<i>Community Law and Rural Development Centre(CLRDC)</i>	<ul style="list-style-type: none"> • CLRDC is a community owned development programme through which basic legal aid is provided through community paralegals. • Clarification on the nature of work done by community paralegals - which is primarily to offer advice.
<i>Black Sash, Durban</i>	<ul style="list-style-type: none"> • Gained in-sight on paralegal training. • The issue of a standardised Paralegal Training manual was discussed.
<i>Legal Resources Centre</i>	<ul style="list-style-type: none"> • Discussion and elucidation on the role of the law firm in public interest litigation.

a. The Role of Government

Unlike in Uganda, the Constitution of the Republic of South Africa guarantees the right to legal representation at state expense in criminal matters and a right to a fair public hearing in civil matters. Courts in South Africa have also played a key role in deciding that a fair public hearing is not possible for an indigent person unless provided with state funded legal assistance, where the case has merit.

On the basis of the above constitutional provision, the Legal Aid Act which makes provision for the publication of the Legal Aid Guide¹² was enacted. The Legal Aid Guide stipulates policy and procedures for delivery of legal aid services.

Legal Aid Board

An independent body called the Legal Aid Board was established by statute to ensure provision of legal aid in South Africa. The Legal Aid Board provides legal aid in accordance with the Legal Aid Guide which stipulates the policy and procedures for delivery of legal aid services. The LAB is a semi-autonomous agency whose annual budget is fully funded from the consolidated fund. The Board receives ring-fenced (protected) funding from the government to provide legal aid service to the deserving indigent persons.

Legal aid service provision in South Africa targets the poor people who make up a big proportion of the entire country's population. Legal aid is provided to:

- All accused persons who face prison sentences and cannot afford a lawyer
- Children and women
- Landless people
- Groups of people or class action cases

Legal aid in South Africa is a constitutional right and the State has the obligation to provide and fulfill the right to legal aid. Section 35 of the Constitution of South Africa, Act 108 of 1996 provides *inter alia*, that "every person who is detained, including every

¹² Act No.22 of 1969

sentenced prisoner, has the right to ----**have a legal practitioner assigned to the detained by the state and at state expenses, if substantial injustice would otherwise result, and to be informed of this right promptly.**"

Substantial Injustice": means without legal representation or consultation:¹³

- a) in relation to an accused person that he/ she is unable to afford the cost of his/ her own legal representation and is likely if convicted to be sentenced, with or without the option of a fine, to a period of imprisonment if three months or more and if granted the option of a fine that he/ she will be unable to pay the said fine within two weeks of having been sentenced;
- b) in relation to a sentenced person, that he/ she is unable to afford the cost of his/ her own legal representation and has been sentenced either with or without the option of a fine, to a period of imprisonment of three months or more and if granted the option of a fine that he/ she is unable to pay such within two weeks of sentence;
- c) in relation to a detained person that he/she is unable to afford the cost of consulting with a legal practitioner and reasonably needs to do so in relation to his/ her continued detention;
- d) in relation to a child that he/ she is unable to afford the cost of his/ her own legal representation in civil proceedings affecting the child.

Legal aid in **civil matters** is also permitted as long as it falls within the above definition and the discretion of the LAB will be utilized. A *Means Test* has been developed by the Legal Aid Board under the Provisions of the Legal Aid Act (1969 as amended) and Guidelines 2002 to establish criteria for access to legal aid. The major features are that:

- a) a person has to be declared indigent (as under the Means Test) and unable to afford legal representation
- b) the seriousness of the crime/ complexity of the case and anticipated duration will also be taken into consideration

Under the **Means Test**, applicants are required to provide proof of income and to sign affidavits with the police (in some instances). To establish a net position and eligibility, a number of deductions are made from the net income e.g. payments for bonds, liabilities e.g. mortgages and rebates (given at different levels to single persons- 1750 rand, married persons 2,500 rand, and those with dependants). For one to qualify for legal aid salary must be zero or negative to the amount arrived at.

b. Justice Centres

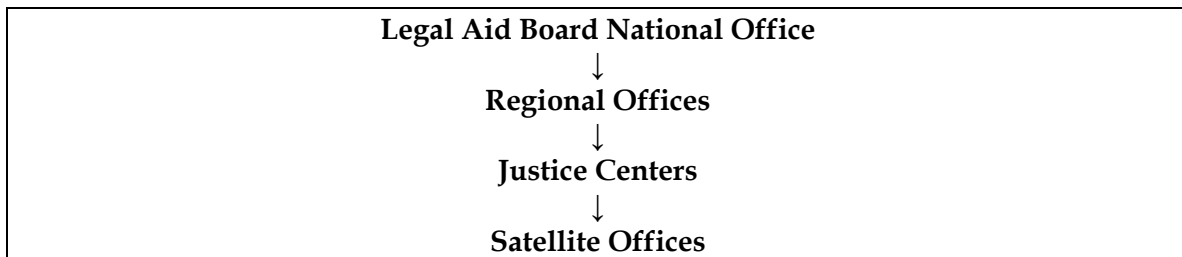
The objective of the LAB is to render or make available legal representation to indigent persons at state expense as stated in the Constitution of the Republic of South Africa.

¹³ Legal Aid Board: Legal Aid Guidelines 2002 at p. 4

LAB has 111 delivery points nationwide. It has 62 Justice Centers and 49 satellite offices located throughout South Africa. Each court is linked to a Legal Aid Justice Center. Every year around 1,600 lawyers provide legal aid to more than 400,000 South Africans.

To qualify for legal aid, clients have to pass a means test. The income of the client is put into relation with his family circumstances and monthly expenditures as well as his assets.

Justice Centers in South Africa are organized in the following way:



Justice Centers of the South Africa Legal Aid Board (LAB) operate as a one-stop centre for legal aid and have a standardized case handling system. As stated above, the LAB has satellite offices that are intended to handle clients that come from distant places. The systems, resources, linkages to the national computer grid system and corporate branding at the satellite offices are the very same as in the main JCs.

Nature of Cases Handled

The JCs handle both civil and criminal cases received from the indigent clientele. The bulk of the cases handled are criminal cases that are largely received at the courts of law. As part of the JC system of operation, Candidate Attorneys (CAs) are placed at all magisterial courts to receive and handle cases that deserve representation. The CAs are in position to run a means and merits test in order to ascertain whether the client is an indigent.

Case Handling

The practice at the JC is that a client walks in and is first handled by the receptionist who assesses whether it is a matter within the mandate of the JC or not and if it's a case of the latter, the receptionist will refer the matter elsewhere- in writing. For example, labour matters are referred to the Department of Labour. Where clients disclose issues that can be handled by the JC, the client is referred to a specific Paralegal within the clinic, who spends approximately 10 minutes to deal with the case or pass it over to an Attorney. The essence of the 10 minutes rule is to limit the client and the Paralegal from delving

into non relevant details in face of a high turn over of clients received. In practice, however, this rule does not apply strictly.¹⁴

The role of the Paralegal is to synthesize the client's problem and to quickly determine whether it is of a litigious nature or not. Where it requires advice, the Paralegal records the relevant facts about the client and the case, and provides the necessary advisory opinion. Where it is of a litigious nature, a reference is made to a CA who extracts further particulars and institutes court processes if the matter so merits. The CAs may have several meetings and correspondences with the client before filing the matter in court.

Clients are usually served between 7.30 am and 1.30 pm. The afternoon is used to capture data in the computer system and to prepare court files. Alternatively, they visit prisons to inquire if any inmate requires legal aid.¹⁵

This time allocation is, however, not applied to the satellite offices since there is not as much work and not as many clients as at the fully fledged JCs.

Legal Aid at the Court

The court composition includes: Reception Courts, Magistrate Courts, Small Claims Courts and a Regional Court. The JC handles matters at all these courts except the Small claims courts where the presence of an Advocate is not required.

Table showing South Africa Court Structure as compared to Uganda

	South Africa	Uganda
I	Criminal courts (court of first instance) At District level: handles minor cases like shop lifting, maximum of 3years	Magistrate Grade II Magistrate Grade I
II	Regional courts More serious cases not requiring life but up to 15 years imprisonment	Chief Magistrate
III	High Court (cases disposed by Judges e.g. life, murder, rape, robbery)	High Court.
IV	Supreme Court (Appeals are made to this court which is situated in Bloemfontein)	Court of Appeal (also seats as the Constitutional Court)
V	Constitutional Court (Highest court in the land for handling matters of constitutional interpretation)	Supreme Court

¹⁴ In former days paralegals would also be in a position to hold files themselves, e.g. pension claims. Nowadays they are not allowed to deal with any files.

¹⁵ The question on interpreters was asked only in Durban and the response was that in Durban Justice Centers interpreters are not needed since they have advocates who speak English and Zulu.

CAs are placed at the different Magistrate and Reception courts by the JCs to take on matters of indigent clients who deserve and need legal assistance. As part of the actualization of the constitutional right to legal aid, the Courts have embraced the JCs and where possible provided office space for CAs to operate at the Courts. For quick matters such as applications for remedies like bail, bond and plea taking that are handled by the reception courts, the CAs are able to proceed immediately to the determination of an application or institution of proceedings.

Justice Center lawyers do “chain-link” with other justice sector stakeholders, such as the prosecutors every week in a so-called “litigation meetings”. Besides that, Advocates also link up internally within the Justice Center and meet every week so as to discuss decisions, judgments and developments in law.

c. The role of Civil Society Organizations in Legal Aid Service Provision

The civil society movement during the apartheid regime grew as a support system to the liberation movement. The CSOs tried to use the law and consequently the courts to expand and protect the legal space, to challenge unjust practices such as detention without trial, unlawful arrest, assault and, illegal evictions and mass movements of people because of the color of their skin. The law clinics emerged to teach students the law as an instrument of social change. The civil society organizations worked closely together in order to look for weaknesses to dismantle the apartheid system. The civil society movement redefined its position after the fall of apartheid as monitors of state and aides to the implementation of transformation strategies designed to redress wrongs of the past

d. The Role of University Law Aid Clinics

University law clinics are manned by law students under the supervision of qualified lawyers and the clinics provide free legal services to indigent members of the community.

The law clinics in South Africa take the same form as legal aid clinics and deal predominately with issues of poverty, law matters and provide students with insight into the real plight of the under privileged members of society. This exposes students to both the theory and practice of social justice

Purposes

1. Using the clinical legal methodology to equip law students with effective lawyering skills
2. Increasing access to justice through legal services

Types of services

1. Legal aid services
2. Outreach community programmes

3. Referrals to paralegal advice centers

Challenges

1. Sustainability and resource mobilization since most programs are supported through donor resources.
2. Tensions sometimes between the goals of service delivery and teaching.

The use of Candidate Attorneys

CA's join the world of work after completing their university education and gaining practice at the school of legal practice. They are attached to a legal aid clinic in order to gain practical experience under the supervision of a principal attorney with sufficient practice. The CA's appear in district courts for criminal applications and the interns who stay for over one year are allowed to appear in regional courts.

Advantages of using Candidate Attorneys

1. They are able to handle the simple applications
2. They are attached to courts so they are able to respond quickly to the needs of the indigent
3. They are able to acquire a lot of court experience and confidence before enrollment
4. They receive sufficient mentoring by courts officials

e. The role of Paralegals

Paralegals are embedded within the legal aid structures in South Africa. Services offered by Paralegals vary depending on the legal aid organisations they are working in.

Paralegals at the Justice Centres

Paralegals are an integral part of the Justice Centres. In many Justice Centres, Paralegals are salaried support staff. They are required to have at least a diploma in paralegal studies.

Paralegals are the first point of contact for clients visiting the Justice Centres. They sieve between matters handled by the Justice Centres and those that are not. In regard to the latter, they will refer the matters to any other appropriate department/office. They mostly handle both civil matters and the bulk of civil matters handled are family matters

Their activities include:

- Screening clients,
- Capturing data and creating files,
- Providing legal advisory opinions in simple matters,
- Writing referrals,
- Carrying out of administrative work assigned,
- Conducting prison visits, and
- Investigating case delays within the court system.

Community Paralegals

Community Paralegals include those that work at the Community Law and Rural Development Centres or at the traditional Chief's offices. They are members of the community who are nominated by the community to handle legal related complaints. These paralegals have less formal training than the Paralegals at the Justice Centres. Their primary task is to give advice. Where in their opinion a case warrants legal aid, the paralegals will refer the client to other legal aid providers such as the Justice Centres, Black Sash Offices, University Law Clinics and Private lawyers (who take on cases on a *pro bono* basis). Paralegals also conduct or coordinate training on issues of human rights and rights awareness.

Community Paralegals are often supervised by the Paralegal Advisory Committees (where they exist).

Outside of the Legal Aid Board structure, Paralegals are not regulated by an independent body nor are there any requirements as to their accreditation. There is a National Alliance for Paralegals, which is an association but not a regulatory body.

Resource allocation for Legal Aid Service Provision

The South African state provides 600 million Rands (approximately 120 billion UGX) per annum to the LAB; these funds are channelled through the Ministry of Justice.

In addition, JCs benefit from the unwritten practice that cases handled by them are waived from court filing fees.

In terms of accountability and good governance LAB has, particularly in the previous years, demonstrated an outstanding performance which increases the parliament's and government's trust in the institution and triggers further budget allocation.

4.1 Matters for consideration by the Government of Uganda for Legal Aid Service Reforms

In light of the large proportion of the population living under poverty, and for JLOS to achieve the ideals outlined in the Poverty Eradication Action Plan (2004), it's crucial to expand the current scope of the legal aid services beyond the traditional state brief systems implicit in **Article 28(3)(e)**. It is important to recognize that many cases of deprivation sometimes leading to the clogging of the judicial system arise from domestic violence, child abuse and neglect, petty theft for survival, etc. Expanding legal aid to cover such cases would therefore engineer a significant transformation on the lives of many poor people while reducing the pressure on the country's police cells, prisons and court system.

The current state brief system is limited to the High Court Circuits and where funds permit, capital matters handled by Chief Magistrate Courts. Due to the limited number of advocates and poor remuneration, some up country regions/areas are not represented and advocates have to travel from Kampala or the nearest urban centre to handle matters (e.g in Kabale, advocates have to travel from Mbarara to handle criminal matters under the state brief scheme).

Action points for consideration on the way forward

1. The absence of a policy and an explicit legal framework on legal aid service provision.
2. The absence of state legal aid provision for non capital cases.
3. Improvements of the State Brief System to make it more cost effective, efficient and practical while responding to the needs of those being represented.
4. The absence of a central coordination body for legal aid service provision to improve geographical coverage to avoid imbalance with some areas not covered by legal aid service providers.
5. The role of paralegals and their scope of interventions in improving access to justice.
6. The interface of traditional justice systems with the formal justice system including the use of Paralegals in the traditional justice systems.

Matters for Consideration by Civil Society Organizations in Uganda in Legal Aid Service Provision

Most CSOs which have stepped in to fill the gap and provide legal aid services are mainly based in Kampala with a few having satellite offices in the other districts. The Joint Survey on Local Council Courts and Legal Aid Services in Uganda of 2006 found

that this has largely contributed to ineffective service provision due to limited geographical coverage. The survey concluded that the majority of Ugandans have limited or no access to legal aid services.

The management of legal aid service provision has been left to the individual organizations that are providing the service. Most organizations deal with thematic issues for example; FIDA offers legal aid for matrimonial and domestic relations related cases; Platform for Labour Action addresses labour related complaints; UGANET handles gender and HIV related cases; ANPPCAN addresses child rights related cases; Foundation for Human Rights Initiative handles human rights related cases, LAC addresses juvenile justice cases, and PDAU handling criminal justice cases. Very few organizations like the LAP of the Uganda Law Society offers legal aid services across the board irrespective of the nature of legal claim.

Civil society organizations also face unique challenges such as the restrictive NGO legal and policy regime, which is threatening to saddle NGOs with undue operational and technical requirements.

High costs of litigation, coupled with the reluctance of most clients and criminal justice institutions to use Alternative Dispute Resolution (ADR) keep the demand for primary legal aid high and affects the case disposal rate in the criminal justice system.

Conflict and civil insurgency mainly in northern Uganda have hampered the effective spread out of Legal Aid service providers as well as the state judicial and law enforcement agencies. This is made worse by the limited judicial and law enforcement resources and infrastructure, such as courts, prisons and child detention or rehabilitation centres.

The Legal Aid Baseline Survey, 2006 also recommended that CSOs need to define their strategic vision of working with government in the provision of legal services, and then be pro-active to advocate for Government's adoption of a National Policy on Legal Aid Service Provision.

Matters to consider for continuation of the Paralegal Advisory Services Programme

1. The PAS programme is funded by development partners in its entirety and this raises questions of sustainability after 2010.
2. There are no quality control systems set by the government in as far as the services of Paralegals are concerned.
3. There are no clear plans as to the future of PAS after 2010 i.e. there is no commitment from the government concerning the hosting/management of PAS.
4. The role of Paralegals needs to be streamlined into the structure of not just legal aid but the entire justice system. It should be clearly defined.

5. In regard to the matters which PAS is not mandated to handle, there is a need to create and solidify networks for referrals with other JLOS institutions and CSO's which handle these matters. This can be done through co-operation agreements.
6. For continuity, strategies for the smooth and uninterrupted transition of PAS to the government should be set in place as a matter of urgency.

Prerequisite considerations for the establishment of Justice Centres

1. Clear options for hosting of JCs have to be put on the table so as to prevent confusion.
2. Lobbying of state-partners through JLOS, DPG, LASPNET and LABF has to be enhanced and they have to be consulted and entrusted with the decision on which hosting option should be taken so as to ensure maximum ownership.
3. While piloting JCs, advocacy activities have to be implemented so as to guide the State and demonstrate the need for legal aid provisions and accordingly, budgeting. Ultimately, legal aid has to be made a national priority.
4. The Justice Centres program document has to be revised based on extensive consultation with key government stakeholders so as to incorporate the latest decisions made (and to be made, such as the hosting question) and the need for the pilot and its benefits – such as the generation of lessons learned – have to be publicized and widely disseminated.

5.0 Lessons Learnt

5.1 Lessons Learnt for the Formulation of a National Legal Aid Policy and Legal Framework and functioning of a National Legal Aid Scheme

- The legal aid policy of South Africa is based on an explicit constitutional provision for legal aid to indigent persons. Constitutional provisions are therefore a critical platform for a sustainable legal aid system.
- The Legal Aid Act of South Africa makes provision for the publication of the Legal Aid Guide which stipulates policy and procedures for delivery of legal aid services. This allows for standardized services across the country.
- In South Africa there is an independent statutory body called the Legal Aid Board which ensures provision of legal aid. Its independence is demonstrated by its having a protected budget. The perception of independence is essential to ensuring a credible legal aid system.
- There is guaranteed funding for legal aid services in South Africa by the government.
- In South Africa there is a strong human rights culture which has made it possible for the government to recognize the rights of poor people and provide them with legal representation at state expense.
- The Legal Aid Board of South Africa has demonstrated good corporate governance in managing public funds and that is why it has had unqualified audit for the last 5 years.
- The Legal Aid Board of South Africa has nurtured co-operative relationships with civil society and legal professionals to complement and enhance legal aid service delivery.

5.2 Practical Steps towards a National Legal Aid Policy and Legal Framework for Uganda

- I. LABF should facilitate discussions with government, civil society and other stakeholders on legal aid legislation and policy to create a basis for state legal aid provision with complementary roles for civil society and other stakeholders.
- II. Government of Uganda should enact legislation on legal aid that provides for criteria for eligibility, creates institutional framework and provides for implementation of the policy. This framework should illustrate Governments' intention and strategy to provide legal aid with complementing roles for civil society and other legal aid service providers.

- III. An independent, semi autonomous National Council should be set in place to coordinate legal aid service provision. The composition of the council is to be multidisciplinary to cover all aspects of legal aid.
- IV. JLOS should develop and implement a comprehensive national policy and guidelines on legal aid service provision.
- V. Lessons should be drawn from other jurisdictions that are currently under reform e.g. the draft Legal Aid Bill from Malawi, the Lilongwe Declaration and the Kyiv Declaration.
- VI. A clear means test for the identification of persons requiring legal aid should be developed and implemented. The means test developed by the Uganda Law Council could provide a starting point. The proposed Legal Aid guidelines (and later Act) should provide detailed criteria, formats and guidelines for undertaking Means Test and process for appeals.
- VII. JLOS should take advantage of new opportunities for constitutional reforms and ensure that specific constitutional obligations for providing legal aid services especially for the poor is unequivocally articulated in the constitution. E.g. the scope of criminal offences for which legal aid services may be offered could be widened to include non capital cases as well as deserving civil cases.
- VIII. JLOS should ensure appropriate guarantees are embedded in the constitution to provide a basis for adequate and sustainable funding for legal aid services.
- IX. Steps by ULC in strengthening (standardizing and streamlining) Paralegal training through the development of regulations should be supported through the JLOS and LABF. Other aspects to address include certification, quality control and monitoring.
- X. Cooperation Agreements should be explored and entered into with Universities and other institutions of higher learning to enhance the provision of legal aid services to the poor.

5.3 The key lessons learned from the Justice Centers visited are as follows:

- Paralegals play a pivotal role in the provision of legal aid, but need to be given particular limits that fit within their training capacity. Their utility can be enhanced with regulation mechanisms in place and ensuring that there is a standard training curriculum.
- The success of the Justice Centers under the framework of the Legal Aid Board is inseparably linked to the fact that it is state-funded. Adequate resources coupled

with good corporate governance systems ensure the realization of the goals of the LAB. This is hinged on a legal framework obliging the state to provide legal aid for the indigent.

- The availability of cheap labor force in form of candidate attorneys who have attended Law schools avails the Justice Centers with a constant supply of legal resource persons. This is realized against the fact that the retention of experienced professional lawyers would be too costly to sustain a national legal aid structure.
- Quality assurance mechanisms have been developed over time and institutionalized across all JCs. A hierarchical structure at each JC, with overlapping supervisory powers, is in place. This invariably reduces the cost of losing cases in court, provision of unsatisfactory legal aid and negligence.
- Monitoring for performance and effectiveness is a key consideration in effectively running a nationwide legal aid structure. The LAB has put in place a national grid computer system that monitors the work and effectiveness of all the JCs and staff retreat. In effect, the LAB is able to know the trend of work at a local JC by checking on-line.

5.4 Recommendations and Proposed Way Forward towards the development and adoption of Justice Centres in Uganda

- I. A national policy and legal framework needs to be developed to guide the different legal aid interventions. This would also form the basis for demanding adequate resource allocation from government in realizing its responsibility of providing legal aid.
- II. The proposed pilot of Justice Centers needs to be run within one of the government agencies. This buy-in at the start will enable a steady growth and easier ownership by the government. For example, the state brief mechanism in the Judiciary is an avenue that Justice Centers could build on, or in the alternative, the JLOS or Ministry of Justice and Constitutional Affairs could set up an independent body/commission to run the Justice Centers.
- III. The Paralegal Advisory Services programme needs to be extended to cover more magisterial areas throughout the country.
- IV. Uganda could pilot JCs using students who have completed the Bar Course at the Law Development Centre for a specified period of time as a first employment offer. This will however require funding initially by development partners before the scheme is taken over by government.

Way forward

- I. Consultations and buy-in by the Government of Uganda should be furthered with the objective of ensuring that the pilot is carried out and managed within the government structures.

- II. A baseline survey has to be undertaken in order to clearly determine how many people and in which parts of the country, are in need of legal aid.
- III. The Justice Centers project document for Uganda should be revised to incorporate the new lessons learned from South Africa and should also reflect new developments within the JLOS in Uganda.
- IV. The State brief review needs to be expedited with a view of expanding the provision of State brief beyond capital offenses so as to facilitate a potential incorporation of the State brief into Justice Centers at the earliest possible stage.

Appendix I: Excerpts from “LABF: Development and Contextualizing Justice Centres”

- i. The LABF seeks to take reforms further by developing and testing model legal aid clinics referred to as **Justice Centres** (JCs) for the delivery of **human rights based legal aid**. While the JCs are funded by the LABF, programmes will be implemented with all key stakeholders including Justice Institutions and other sectors. Focus will be on testing new approaches over a period of 3 years (2007- 2010) and lessons learnt from the model will be shared with all stakeholders and should inform the direction of legal aid reforms in the medium to long term. The JCs will also form an avenue for lobbying the State to develop a legal aid policy and legal framework and structures and to channel appropriate resources to legal aid in Uganda. The JCs will be a precursor to a framework that could be used by the State to deliver legal aid in Uganda.
- ii. As a start, six pilot Justice Centres will be established in six geographical areas (North East, North West, South West and Western Uganda) which previous studies have shown are highly lacking basic legal aid services and there are no established legal aid providers. Linkages will be established with existing Justice Institutions in those areas including Courts, DPP, Police and Prisons; practicing advocates and NGOs or CBOs that are already operating in those areas.
- iii. Structures have been strengthened and/ or established to steer the JCs at Policy, Technical and operational level and these build upon existing structures. A National Coordination Unit will be set up working closely with the Legal Aid Service Providers Network and the JLOS Secretariat in coordinating the JCs while at the steering level, the Legal Aid Advisory Group will be responsible for policy and strategic matters.
- iv. JCs seek to bridge the gap between supply and demand of justice and promote human rights by providing legal aid to poor and vulnerable populations of Uganda while empowering individuals and communities to claim their rights and demand for policy and social change at local and national levels.
- v. Learning from existing service providers, JCs seek to achieve this objective by utilising innovative approaches with a focus on effectiveness, outreach, quality and cost efficiency. These Justice Centre models have been designed taking into account best practices adapted from existing legal aid service providers and NGOs in Uganda and abroad (including South Africa, Canada, Rwanda and the UK) and lessons learnt from other pilots within the Justice system (e.g. the National Community Service Programme and the Chain Linked Initiative).

- vi. Two models have been developed, one a Clinic Based Model adopting best practices from other providers and staffed with qualified legal practitioners, (up to 5) social workers and paralegals (6) and the other model- an Outreach Model with fewer legal staff (1-2) and more emphasis on utilising paralegals (6) and Community Based Volunteers (at village, parish and sub county levels).
- vii. JCs will seek to build upon existing initiatives and will work with established CSOs, NGOs, CBOs in the regions in which they will be set up. In some cases, JCs will be hosted by CSOs that may not traditionally be undertaking legal aid work.
- viii. JCs are not theme based and will work in all areas of civil and criminal justice; they seek to provide legal aid to all categories of vulnerable people in the community who cannot access justice by virtue of their vulnerability. A Means and Merit test will be developed to identify those individuals and communities that must be supported within available limited resources without discriminating sections of the community.
- ix. While JCs will continue to provide legal aid to individuals on a one on one basis, a perceptible shift will be made in approach to **focus on structural and systemic** issues that seek to prevent individuals and communities from enjoying and claiming their rights. This calls for root cause analyses to be undertaken in all areas where JCs will operate to provide evidence for planning and strategising.
- x. The approach taken is different from the traditional way of delivering legal aid in Uganda where individuals and communities have to go to the legal aid clinic. JCs will employ a **strong community outreach** aimed at systematically raising legal and human rights awareness among communities. Focus is on developing strategies and tools to enhance community participation, ownership and empowerment in identifying and solving disputes, monitoring and promoting human rights and preventing human rights violations.
- xi. The lynchpin for the JCs is through the use of well trained legal staff in the within the Justice Centres and supervised Paralegals and **Community Based Volunteers** who will be selected from within the communities (at village, parish and sub-county level) to identify issues, mediate disputes and refer matters. This is a best practice that is being adopted to enhance access to justice in the communities. Through outreach and provision of Legal and human rights education for target groups such as the CBVs, youth leaders, LCCs, elders and Community leaders, the JCs will strengthen community

leadership, enhance community participation, demystify the law and create a critical mass of citizens who can take the lead in advocacy.

- xii. Unlike current practice where advocacy is limited and often focused at the national level, the JCs will utilise a **strong advocacy approach** at the community level within the areas they work. It is anticipated that sustainable impact and change can be evidenced in individuals and communities if JCs lobby local leaders e.g. the Sub County Chiefs, LCs and district leaders to pass by-laws and develop social programmes that address root causes of disputes, conflicts and rights violations.
- xiii. The JCs will also adopt a strategic approach of utilising **Alternative Dispute Mechanisms**- particularly mediation, reconciliation and diversion in resolving disputes and diverting some cases from the already clogged justice system. Staff will be trained in these modalities. However, to seek effective remedies for clients, JCs will follow up violations by referring matters to relevant organisations e.g. the UHRC, JLOS institutions to target perpetrators, deter impunity and enhance accountability.
- xiv. At the same time, the National Coordination Unit will explore use of interventions which have maximum impact on promoting rights within existing resources for instance through the use of Test cases in conjunction with other actors at the National level that have specialised in this approach e.g. LAWU and FHRI.
- xv. Taking into account the **indivisibility and interdependency** of rights, the JCs will take a holistic approach internally (e.g. by having on board legal staff, Psychosocial workers, counsellors and investigators) and externally by partnering with others. Where possible, JCs will work within existing structures (e.g. the Chain Linked) but also develop effective fora for forging relationships and partnerships with other service providers in the legal and social services sectors, community, traditional and local leaders. To this end, JCs will develop a strong Referral system and database for coordinating with stakeholders.
- xvi. The National Coordination Unit will **monitor and document knowledge outcomes** from programmes legal education and awareness sessions and will undertake research to inform decision making. The NCU will also devise platforms for disseminating and sharing information within communities and with other stakeholders.
- xvii. Working within existing laws and policies, the LABF will adopt measures to promote various programmes aimed at enhancing access to Justice through the JCs. In particular, the LABF will partner with the ULS/ LAP to implement the Pro Bono Programme through use of Advocates to provide

legal aid in the District JCs. The LABF will also develop an internship Programme to utilize Students in the JCs under the Advocates (Student Practice) Regulations, 2004.

- xviii. The National Coordination Unit will continuously seek to enhance sustainability and foster the move towards State funded legal aid through sharing of lessons learned; coordination with other actors and continued advocacy.

Paralegal Advisory Services
Report of findings, lessons learnt and recommendations from the study visit to
Understudy South Africa's Legal Aid service provision October 2008

Appendix II: List of Study Tour Ugandan Delegation.

S/N	NAME	ORGANIZATION
1	Justice Lawrence Gidudu	High Court and Chairperson PAS Steering Committee
2	Justice JWN Tsekooko	Supreme Court and Chairman, ULC
3	His Worship Henry Adonyo	Justice Law & Order Sector (JLOS) and member PAS Steering Committee
4	Ms. Damalie Lwanga	Directorate of Public Prosecution and member PAS Steering Committee
5	Mr. Wcycliffe Jack Kururagire	Uganda Prison Service and member PAS Steering Committee
6	Mr. Musoke Stephen	Uganda Police Force and member PAS Steering Committee
7	Mrs. Theodora Webale	Legal Aid Service Providers' Network and PAS Steering Committee
8	Mr. Livingstone Sewanyana	Foundation for Human Rights Initiative
9	Mr. Musa Mudoj	Danida /HUGGO - Legal Aid Basket Fund
10	Dr. Katja Kerschbaumer	Danida - HUGGO
11	Ms. Hellen Obura	Law Council
12	Robert Okoth Omita	Uganda Prisons Service
13	Mrs. Elinor Wanyama Chemonges	FHRI - Paralegal Advisory Services
14	Ms. Sophie Dhatemwa	FHRI - Paralegal Advisory Services

