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## Developing a portfolio of financially sustainable, scalable basic legal service models

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Volume 1 (of 2): Final Report

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IDRC, LEF and OSF

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## Executive Summary

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### Introduction

1. This study develops a framework for thinking about how basic legal service interventions addressing problems of a civil and administrative nature can be taken to scale in a sustainable manner to enable improved access to justice for people living in the most vulnerable Low Income Countries (LICs) and/or Fragile and Conflict-affected States (FCAS).
2. The framework is built around three key questions:
  - What do we know about the **unit costs** of basic legal services and how can we calculate them;
  - How can scaled up legal services be **financed sustainably**; and
  - What are the **political conditions** that enable justice models to be taken to scale?
3. The study analyses these questions in the context of 17 basic legal service interventions, 12 in LIC and MIC countries and 5 in HIC country contexts, drawing also upon lessons from the supply of basic health and education services, but recognising that **the justice sector is unique** due to a multitude of factors. These factors include high politicisation (lying at the heart of the relationship between the state and the people); institutional complexity (fragmented across a range of institutions); plurality (state and non-state systems); opaqueness (demand not always visible); functional complexity (types of legal service provision) and heterogeneity of (user) need.

### The Cost of Basic Legal Services

4. The study draws on a range of country legal needs surveys to develop a new methodology for calculating the **unit costs** of basic legal services and applies it to 12 of our country case studies. This produces estimates of the costs for scaling up basic legal services to provide national coverage ranging from USD 0.1 to USD 1.3 per capita in non-OECD countries and USD 3 to USD 6 in three OECD countries, likely reflecting the higher cost of wages.
5. The study also develops a new methodology for assessing the **affordability** of basic legal services. This analysis demonstrates that while some countries could afford to scale up current programmes, for most of the poorest countries in our study the cost of basic legal services looks clearly unaffordable relative to both government revenues and spending on the judiciary.
6. The study also analyses spending on judiciary and finds that developing countries are already strongly **prioritising** funding the judiciary from their own budgets. In sharp contrast, our analysis of donor funding shows that while funding to the justice sector has increased, the current level is still



very low compared to funding for other sectors. This suggests there is a potential opportunity to press donors to increase their funding to bring it more in line with developing countries' own commitments and the spending patterns in donors' own countries.

7. The study considers the potential of **technology** to reduce the cost of basic legal service provision in developing countries but finds that it is no silver bullet. Technology is likely to be supplementary to rather than displacing of traditional forms of delivery, with mobile phone-based innovations offering better access to individuals than internet-based ones at the present time.

## Financing Basic Legal Services

8. The study considers a range of sustainable financing options from government, donors, philanthropy, the private sector, users and hybrid models. The analysis of these options concludes that key factors determining the appropriateness of a particular option are whether the relevant basic legal service intervention produces a monetisable outcome and/or an outcome which can be measured. **Unbundling basic legal services** may therefore be key to realising these characteristics and expanding the available financing options for a given intervention.

## The Political Economy of Basic Legal Services

9. The study finds that key political economy considerations in scaling include:
  - Whether there is **political support** for scale-up, both at the state level and the level of front-line delivery agencies, recognising that political will may not always reflect the motivations that we might like to see;
  - Whether there is **normative fit/sufficient demand** for the services, whether that be a tradition of mediation or a pro bono culture amongst lawyers;
  - Whether there is **resistance from elite/vested interests**, whether traditional leaders, lawyers or local and central government;
  - Whether there is **capacity** for scale-up both within government and within the organisations that plan to scale up; and
  - Whether there is sufficient **financing** for scale-up, depending on whether it is for short-to medium term advocacy or for the provision of services over the long-term.
10. There are a number of policy and programming responses to situational analysis which reveals that some or all of these factors are missing. These range from building demand/support for basic legal service provision to delivering basic legal services either through service delivery in other sectors such as health or outside of state structures altogether.



## Further Work

11. This study has only begun to make inroads into this important topic and there are a number of areas we identify on which further work would be valuable and could ultimately assist in placing the justice sector on the same footing as education and health in global financing discussions, debates on implementation of the Global Goals that have been agreed upon as part of the 2030 Agenda for Sustainable Development to build upon the Millennium Development Goals and value for money analysis undertaken by organisations such as the Copenhagen Consensus Center.



## Research Team Outline

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This study was commissioned and funded by the International Development Research Centre, the Legal Education Foundation and Open Society Foundations. It emerged from wider discussions which took place within the Donor Working Group of Legal Empowerment which includes the United Kingdom's Department for International Development and the Omidyar Network. These discussions assisted in conceptualising the terms of reference for the study. The study was research was undertaken by a team from the Law and Development Partnership. The lead author was Naina Patel, assisted by Clare Manuel, Georgia Plank, Amy Wordley, Marcus Manuel, Anne Brooks, Roger Smith, Peter Hinton, Erika Kirwen, Sangeetha Iengar and Laura McLean with support from Amelia Anderson. A draft of the study was peer reviewed by Ian Mills, Marcus Manuel and Roger Smith. Comments were also received from Adrian Di Giovanni at the International Development Research Centre and Lotta Teale at Open Society Foundations.

The research team would like to extend their sincere thanks to all who kindly provided their time for interview and assistance in sourcing information for this study.





## Abbreviations

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ABS	Alternative Business Structures
ACIJ	Arbitration Court of International Justice
ADR	Alternative Dispute Resolution
AULAI	Association of University Legal Aid Institutions Trust
BRAC HRLS	BRAC Human Rights and Legal Aid Services
CAB	Citizens Advice Bureau
CAOs	Community Advice Offices
CIFF	Children’s Investment Fund Foundation
CJAs	Community Justice Advisers
CLCs	Community Law Centres OR Community-based Legal Clinics
CLS	Co-operative Legal Services
CPRCG	Civil and Political Rights Campaign Group
CSO	Civil Society Organisation
CTC	Cycling Touring Campaign
DAI	Development Alternatives Incorporated
DFID	Department for International Development
DIBs	Development Impact Bonds
FCAS	Fragile and Conflict-affected States
GAVI	Global Alliance for Vaccines and Immunisation
GIZ	Gesellschaft für Internationale Zusammenarbeit
HICs	High Income Countries
HiIL	Hague Institute for the Internationalisation of Law
ICT	Information and Communication Technology
IDP	Internally Displaced Persons
IDRC	International Development Research Centre
IFFIm	International Finance Facility for Immunisation
IRF	International Renaissance Foundation
JPC	Justice and Peace Commission
LAB	Legal Aid Board
LAO	Legal Aid Ontario
LCG	Land Core Group
LDP	The Law & Development Partnership
LEF	Legal Education Foundation
LGBT	Lesbian, Gay, Bisexual and Transgender
LICs	Low Income Countries
MAJ	Maisons d’Accès à la Justice
MCF	The Medical Credit Fund
MCSL	Methodist Church Sierra Leone
MDG	Millennium Development Goal
MIA	Ministry of Internal Affairs
MICs	Middle Income Countries
MINIJUST	Ministry of Justice (Rwanda)
MJ4All	Microjustice4All
MOJ	Ministry of Justice
MOU	Memorandum of Understanding



NADCAO	National Alliance for the Development of Community Advice Offices
NGO	Non-governmental Organisation
NSNIR	Non-salary non-interest recurrent
NSW	New South Wales
ODI	Overseas Development Institute
ODR	Online Dispute Resolution
OECD	Organisation for Economic Cooperation and Development
OSF	Open Society Foundations
OSJI	Open Society Justice Initiative
PbR	Payment by Results
PEAS	Provision of Equitable Affordable Schools
PEF	Punjab Education Foundation
PwC	Pricewaterhouse Coopers LLP
ROLE UK	Rule of Law Expertise Programme UK
SIBs	Social Impact Bonds
SRSP	Sarhad Rural Support Programme
USD	United States Dollar
UMIC	Upper Middle Income Country



## Chapter 1: Introduction

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- 1.1 The Law & Development Partnership (LDP) has been engaged by the International Development Research Centre (IDRC) and Open Society Foundations (OSF) to research how basic legal service interventions can be taken to scale in a sustainable manner to enable improved access to justice for people living in the most vulnerable Low Income Countries (LICs) and/or Fragile and Conflict-affected States (FCAS).<sup>1</sup> This report suggests an outline framework for thinking about this question, drawing on concrete examples in a range of country contexts.
- 1.2 The research will be valuable for country programmes seeking guidance on taking basic legal service pilots to scale; donors, governments and private sector organisations wishing to assist with the scale up process and international organisations involved in the discussions around the implementation on Global Goal 16 of the 2030 Agenda for Sustainable Development to build upon the Millennium Development Goals on realising access to justice for people in countries around the world.
- 1.3 The study considers **12 basic legal service interventions in mostly LIC to Middle Income Countries (MICs)**<sup>2</sup> that it distils into 5 broad models of intervention: community-based paralegals, microfinancing justice, community law centres, hybrid models and justice hubs. The study also draws upon **lessons from basic legal service provision in five High Income Countries (HICs)**, without necessarily assuming that these are models to strive towards (indeed, recognising that scaled up legal provision may look different in LICs and MICs, whether because of the need to navigate different normative environments, for example by integrating customary justice systems or working around a limited pro bono culture).
- 1.4 The study also considers **lessons from the supply of basic health and education services**, while being cognisant of the similarities and differences between justice and these sectors. The differences that set justice apart include high politicisation (lying at the heart of the relationship between the state and the people); institutional complexity (fragmented across a range of institutions); plurality (state and non-state systems); opacity (demand not always visible); functional complexity (types of legal service provision) and heterogeneity of (user) need.
- 1.5 The study proceeds to answer three key questions:
  - **What do we know about the unit costs of basic legal services and how can we calculate them;**
  - **How can scaled up legal services be financed sustainably; and**

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<sup>1</sup> Throughout, we define FCAS based on the World Bank's Harmonised List of Fragile Situations for the Financial Year 2016, which includes our case study countries of Liberia, Myanmar and Sierra Leone.

<sup>2</sup> Several of the countries in the case studies had their income category reclassified by the World Bank in July 2015. This study uses these new categories, namely Low Income Countries (LIC) = Liberia, Sierra Leone & Rwanda; Lower Middle Income Countries (LMIC) = Bangladesh, Kenya, Myanmar and Ukraine; Upper Middle Income Countries (UMIC) = South Africa; High Income Countries (HIC) non-OECD = Argentina (previously upper middle income country); High income OECD = Australia, Canada and UK. Where the study refers to MIC it means LMIC and UMIC.



▪ **What are the political conditions that enable justice models to be taken to scale?**

These questions were distilled from a broader range of questions set out in the original Terms of Reference dated June 2015 and agreed in the revised Terms of Reference dated 20 August 2015, attached at Annex A of Volume 2.

- 1.6 This report was prepared following the submission of an initial Concept Note on 11 September 2015, a final Concept Note on 29 September 2015 and an Inception Report on 2 October 2015. Tentative conclusions were then submitted on 30 October 2015 and discussed and tested at the Open Society Foundation's Charette on a Proposed Shared Framework for Legal Empowerment held in Istanbul between 4 and 6 November 2015.

## Context

- 1.7 Only a relatively small proportion of programmes aimed at service delivery to the poor are able to successfully reach scale and sustainability – indeed scalable service provision solutions in developing countries (in all sectors) are considered the exception rather than the rule.<sup>3</sup>
- 1.8 Where they exist, successful examples of scaled and sustainable programmes have tended to focus on narrowly targeted solutions to specific challenges – for example oral rehydration therapy,<sup>4</sup> vaccines, and water sanitation to reduce childhood mortality,<sup>5</sup> micronutrient supplements and breastfeeding advocacy to reduce malnutrition, and conditional cash transfers to encourage school attendance.<sup>6</sup> Notably, all these examples are all drawn from the health and education sectors.
- 1.9 In contrast, Tom Carothers' 2003 assessment<sup>7</sup> of donor engagement in the justice sector/rule of law, that "*examples of significant, positive sustained impacts are few*" remains true today. This is in part due to the fact that over the past fifteen years or so, there has overall been limited strategic and financial donor engagement with and less investment in the justice sector than in other sectors. For example, from 2000 onwards there was no justice Millennium Development Goal to drive donor and developing country partner engagement with the sector. Over the period 2005-2013, only 1.8% of aid has gone to the justice sector compared to 7.5% for education and 11.7% for health.<sup>8</sup> The

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<sup>3</sup> Chandy, L., Hosono, A., Kharas, H.L., & Linn, J. F. (Eds.) (2013). 'Getting to Scale: How to Bring Development Solutions to Millions of Poor People', Brookings Institution Press, pp. 2-3.

<sup>4</sup> UNICEF, at [http://www.unicef.org/health/index\\_43834.html](http://www.unicef.org/health/index_43834.html) accessed 15 July 2015

<sup>5</sup> BRAC, at <http://www.brac.net/beyond-boundaries/content/mdg-4-reduce-child-mortality> accessed 15 July 2015.

<sup>6</sup> For example, Oportunidades in Mexico reaching around one quarter of the population, Bolsa Familia in Brazil reaching 12 million families, and the Kecamatan Development Programme in Indonesia providing grants for small infrastructure projects to half of all rural villages.

<sup>7</sup> Carothers, T. (2003). 'Promoting the Rule of Law Abroad: the Problem of Knowledge'. Working Paper 34. Washington, DC: Carnegie Endowment for International Peace

<sup>8</sup> LDP analysis using OECD DAC CRS database. <http://stats.oecd.org/>. Calculation based on constant USD. Health includes population and reproductive health. Legal and judicial development includes support to institutions, systems and procedures of the justice sector, both formal and informal; support to ministries of justice, the interior and home affairs; judges and courts; legal drafting services; bar and lawyers associations; professional legal education; maintenance of law and order and public safety; border management; law enforcement agencies, police, prisons and their supervision; ombudsmen; alternative dispute resolution, arbitration and mediation; legal aid and counsel; traditional, indigenous and paralegal practices that fall outside the



figures are even lower if you exclude Afghanistan and Iraq which alone account for 30% of the total: see Appendix 1. Indeed the ratio is just 0.2% if you just look at Sub Saharan Africa. Yet donor governments typically spend around 4-5% of their own budgets on the public law and order sector in their own countries compared to 12% on education and 15% on health.<sup>9</sup>

- 1.10 This disparity in levels of investment has existed notwithstanding the fact that the World Bank's Voices of the Poor Survey of 2000 highlighted that justice was in fact more important for poor people than health or education. DFID's 2009 White Paper<sup>10</sup> identified justice as a basic service, on a par with health or education. The 2011 New Deal for donor engagement in fragile states justice identified justice as one of the five peace and state building goals. The new Global Goal 16 to *"promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels"* offers an opportunity to raise investment in the justice sector.<sup>11</sup>
- 1.11 Although further evidence is required to demonstrate causal linkages between the MDGs and outcomes in health and education they are generally believed to influence domestic priorities,<sup>12</sup> leverage international transfers,<sup>13</sup> and increase domestic spending,<sup>14</sup> assisting in shifting focus in the case of health away from attention on single topics to a more systemic approach.<sup>15</sup> By way of comparison, there are a number of ways Global Goal 16 might impact the justice sector:
- Focusing donor attention and spending on the justice sector, some of which is already taking place as donor and development organisations plan research and events around how to implement and monitor progress against Global Goal 16.

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formal legal system. Category also includes measures that support the improvement of legal frameworks, constitutions, laws and regulations; legislative and constitutional drafting and review; legal reform; integration of formal and informal systems of law as well as public legal education; dissemination of information on entitlements and remedies for injustice; awareness campaigns. The category does not activities that are primarily aimed at supporting security system reform or undertaken in connection with post-conflict and peace building activities (such as support to police reform in context of UN peacekeeping mission).

<sup>9</sup> OECD budget at a glance, [http://www.oecd-ilibrary.org/governance/government-at-a-glance-2015/structure-of-general-government-expenditures-by-function-cofog\\_gov\\_glance-2015-17-en](http://www.oecd-ilibrary.org/governance/government-at-a-glance-2015/structure-of-general-government-expenditures-by-function-cofog_gov_glance-2015-17-en)

cited in Manuel et al ODI 2015 Working paper 416 <http://www.odi.org/publications/9462-financing-future-international-public-finance-should-fund-global-social-compact-eradicate-poverty>

<sup>10</sup> DFID (2009). Eliminating World Poverty: Building Our Common Future.

<sup>11</sup> UN, <https://sustainabledevelopment.un.org/focussdgs.html>

<sup>12</sup> Lucci, P., Khan, A. and Hoy, C. (2015). Piecing together the MDG puzzle: domestic policy, government spending and performance. ODI Working Paper 426.

<sup>13</sup> Lucci, P., Khan, A. and Hoy, C. (2015). Piecing together the MDG puzzle: domestic policy, government spending and performance. ODI Working Paper 426. Examples include a multitude of new institutions and partnerships including the Global Alliance for Vaccines and Immunization (GAVI), the Global Fund against AIDS, TB and Malaria (GFATM) and the Global Partnership for Education (GPE), and of a series of global commissions such as the Macroeconomic Commission on Health (2001) and UN Secretary General's Global Strategy on Women and Children's Health (2008) in addition to traditional ODA spending.

<sup>14</sup> Lucci, P., Khan, A. and Hoy, C. (2015). Piecing together the MDG puzzle: domestic policy, government spending and performance. ODI Working Paper 426; Burnett, N. and Felsman, C. (2012). 'Post-2015 Education MDGs'. Results for Development Institute; ODI.

<sup>15</sup> Schewitzer, J et al. (2012). 'Post-2015 Health MDGs'. Results for Development Institute; ODI.



- Focusing national government attention on access to justice, but given the history of the MDGs, this may not generate sufficient political will to improve justice service delivery or increase domestic spending.
- Providing an advocacy lever for communities to generate political action at the country level. Examples of this are the Alternative Law Group in the Philippines using Global Goal 16 to obtain a sectoral presence for justice in the Philippine Development Plan, Kenyan legal aid providers Kituo Cha Sheria working with the International Commission of Jurists Kenya and the Law Society of Kenya to integrate Global Goal 16 into the draft National Human Rights Policy and Action Plan to provide a framework for other legislation such as the Legal Aid Bill which has since moved to the next stage of law-making and Jordan using Global Goal 16 to begin a national dialogue on justice issues.<sup>16</sup>

1.12 The research opportunities presented by this study are particularly valuable given the possibility of contributing to the work around the implementation of Global Goal 16. For example, the Copenhagen Consensus Centre, which uses cost-benefit analysis to assess the targets under each of the Global Goals notes that the cost-benefit of the value of achieving the majority of the targets under Global Goal 16 (as opposed to measuring the achievement of the targets, on which considerable work has been done) is uncertain due to a lack of information on quantifiable costs and benefits.<sup>17</sup> Data collected as part of follow-on work to this study could contribute to changing this picture and the perception that access to justice is too difficult to measure.

## Definitional Issues

1.13 The research brief raises a number of definitional issues that have been central to identifying the scope of the project. These include definitions of each of the following concepts: legal services, basic legal services, scale and financially sustainable. In this section, we clarify the nature of the definitions we have used and the rationale behind our choices where applicable:

- **Legal services:** legal services are defined by reference to the types of legal problems they can assist to resolve. Here, the focus is on **legal services provided to solve legal problems of a civil and administrative nature** rather than a criminal nature. It is often in these areas where primary justice needs are found. So, across our case study countries, the most common legal problems of this kind which have been identified have included access to information and public services

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<sup>16</sup> Namati. (2015). 'Emerging Trends in National Implementation of SDG Goal 16 and Justice Targets: Three Case Studies from Kenya, the Philippines and Jordan'.

<sup>17</sup> Lomborg, B. (2014). 'Preliminary benefit-cost assessment of the final OWG outcome'. Copenhagen Consensus Centre. Note that Goal 16.9: By 2030 provide legal identification for all including birth registration and Goal 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements have been categorised as good.



(Argentina),<sup>18</sup> family relationships after personal security (Bangladesh),<sup>19</sup> money disputes about debts, contracts and loans after theft (Sierra Leone)<sup>20</sup> and violations of consumer rights and employment issues (Ukraine)<sup>21</sup>. This is not out of keeping with the OECD countries we have looked at where prominent problems include consumer issues (Australia)<sup>22</sup> and problems with the products of goods and services and employment (Netherlands).<sup>23</sup> Legal services provided to solve legal problems of this nature are therefore typically services provided in the areas of property rights, family law, labour law, access to services (including health and education) and legal identity.<sup>24</sup>

- **Basic legal services:** *“legal advice services, public legal education, legal awareness, mediation, ADR and/or paralegals backed up by litigation, policy advocacy and state actions which significantly increase the accessibility of dispute resolution so that people can access justice for their day to day legal problems”.*<sup>25</sup> These are key elements of a wider set of **primary justice services** as they provide a basic level of legal education, advice and assistance with **non-court-based** dispute resolution together with referral to providers of formal litigation services and court-based representation where appropriate.<sup>26</sup> Accordingly, the research has generally<sup>27</sup> not treated national models of legal aid for formal litigation services and court-based representation as models of basic legal service provision as we consider these services more analogous to secondary healthcare<sup>28</sup> and secondary education.<sup>29</sup> So, for example, TIMAP for Justice’s paralegals are supervised by lawyers to whom cases can exceptionally be referred for litigation but this is atypical service provision.<sup>30</sup>

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<sup>18</sup> Asociacion Civil por la Igualdad y la Justicia (2013). ‘Disadvantaged communities, rights and access to justice: a study of unmet legal necessities’. ACIJ.

<sup>19</sup> Tilburg University. (2010). ‘Legal needs of vulnerable people: A study in Azerbaijan, Mali, Rwanda, Egypt and Bangladesh’. TISCO Working Paper Series on Civil Law and Conflict Resolution Systems, 009/2010.

<sup>20</sup> Open Society Justice Initiative. (2010). ‘Preliminary Findings on Participatory Baseline KAP Survey from the Scale-up of Justice Services programme, Sierra Leone.

<sup>21</sup> Kobzin, D. et al. (2011). ‘Level of legal capacity of the Ukrainian population: accessibility and effectiveness of legal services’. International Renaissance Foundation Kharkov Institute of Social Research.

<sup>22</sup> Legal Aid Commission of NSW (2013). ‘Annual report 2012-2013’.

<sup>23</sup> Van Velthoven, B. & ter Voert, M. (2004). ‘Paths to Justice in the Netherlands Looking for signs of social exclusion’. Leiden University.

<sup>24</sup> Original Terms of Reference (June 2015).

<sup>25</sup> Original Terms of Reference (June 2015).

<sup>26</sup> This reflects the OED definition of “basic” as (1) “forming an essential foundation or starting point”; (2) “offering or constituting the minimum required without elaboration or luxury”; and (3) “common to or required by everyone; primary and ineradicable or inalienable”.

<sup>27</sup> BRAC’s HRLS and China’s Legal Aid Centres are perhaps the exception to this; the hybrid models in South Africa and the Ukraine also provide legal representation but as part of the tier of secondary service provision.

<sup>28</sup> Merriam-Webster (2015) defines secondary healthcare as “medical care provided by a specialist or facility upon referral by a primary care physician that requires more specialized knowledge, skill, or equipment than the primary care physician has”; Mosby’s Medical Dictionary (2009) suggests “an intermediate level of health care that includes diagnosis and treatment, performed in a hospital having specialized equipment and laboratory facilities.”

<sup>29</sup> Merriam-Webster (2015) defines secondary education as “a school intermediate between elementary school and college and usually offering general, technical, vocational, or college-preparatory courses.”

<sup>30</sup> See Annex F: Community-based Paralegals Case Study; TIMAP for Justice and Others in Sierra Leone.



- **Scale:** “*servicing and effectively benefiting a significant proportion of people living across a country, region or population*”.<sup>31</sup> This recognises that there are different ways of defining scale, including **increasing the geographic coverage** of a basic legal service, **increasing access** to existing basic legal services for example by **increasing the capacity or density** of existing provision, or **increasing the impact** of basic legal service provision.<sup>32</sup> It also recognises that there are trade-offs and tensions inherent in going to scale; for example, those with the most acute legal needs may be a significant proportion of people but a minority of the population as well as potentially concentrated in hard to reach areas or dispersed widely across the country as a whole. As a corollary, going to scale may involve increasing inputs, increasing services, expanding the client base for delivery, using inputs more efficiently or improving outcomes. The appropriate approach to scale in a particular country will depend on what is needed and what has proven to be effective in meeting those needs in that country context. This requires an assessment of country-specific basic legal needs as they pertain to basic legal services and an approach which is politically smart and iterative rather than technocratic and linear. In Myanmar, for example, Namati seek to scale up community paralegals to cover a third of the country to generate a sufficient evidence base for robust advocacy around land issues.<sup>33</sup> Ultimate scale-up is arguably taking basic legal service provision to scale in a way that is capable of meeting all the basic legal needs in a given country.
- **Financially sustainable:** “*cost-effective models, which do not rely on donor funds and instead earn income from their services from other stakeholders (government, citizens, for-profit investors, etc.)*”. Central to this concept are therefore two notions: (1) the notion of **cost-effectiveness** i.e. that the aggregate **net benefit** or benefit (social and individual) minus cost (again, social and individual) of a particular intervention is positive and (2) the notion that the cost of an intervention should be financed using a **diverse and ideally self-generating funding base**. Of course, these two notions are linked in that key to the ability of a particular intervention to attract finance from a broad funding base will be its ability to demonstrate its cost-effectiveness. We note, however, that both notions as they relate to questions of sustainability must be considered against a backdrop of what the ultimate objectives of basic legal service provision are, recognising that sometimes this may be a short to medium-term objective of focusing attention around a particular issue to catalyse policy change such as land reform in Myanmar<sup>34</sup> and sometimes it may be a longer-term objective of providing a level of basic legal service provision on a permanent basis. The **time horizon** on which sustainability falls to be assessed may have important implications for financing options.

## Approach and methodology

1.14 A three-pronged approach to the research has been adopted as follows:

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<sup>31</sup> Original Terms of Reference (June 2015).

<sup>32</sup> Original Terms of Reference (June 2015).

<sup>33</sup> See Annex F: Community-based Paralegals Case Study; Namati Sector-Specific Paralegals in Myanmar.

<sup>34</sup> Ibid.





- Research on the supply of legal advice and assistance as a basic service in a limited number of agreed LICs and MICs, namely:
  - o Community-based Paralegals (Liberia, Myanmar, Sierra Leone);
  - o Microfinancing Justice (Bangladesh, Microjustice4All and Microjusticia Argentina<sup>35</sup>);
  - o Community law centres (China and Rwanda);
  - o Hybrid models (South Africa and Ukraine); and
  - o Justice hubs (Kenya and Uganda).
- Research on successful scale ups of the supply of basic health and education in LICs and MICs.
- Research into the use of technology as a cost saving measure in the supply of basic legal services in OECD HICs, namely Australia (New South Wales), Canada (Ontario), the Netherlands and the UK (principally England and Wales), recognising that these jurisdictions have not necessarily 'solved the problem of basic legal service provision'.

Each of these prongs of research has yielded lessons for each of the three research questions.

1.15 Evidence used to answer the research questions has included material drawn from the following sources:

- Programme data on unit costs;
- Macro-level data from the World Development Indicators and national budget publications;
- Interviews with stakeholders including donors to and implementers of programmes delivering basic legal services (a list of stakeholders is available at Annex B of Volume 2 and a semi-structured questionnaire is available at Annex C of Volume 2); and
- A literature review (a list of documents considered is available at Annex D of Volume 2).

1.16 This evidence has been analysed and fed into an outline framework for thinking about how you take basic legal services to scale in a financially sustainable way which includes a typology of basic legal service models, a range of unit costs for the provision of service through those models, a typology of financing options and their likely suitability for different contexts and a checklist of political economy considerations for implementing a scale-up.

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<sup>35</sup> Note, however, that Argentina is an HIC, as is Peru where Microjustice4All operates: see Annex F of Volume 2.



## Chapter 2: Models of Service Provision

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### Key Characteristics of Basic Legal Services

2.1 Basic legal service interventions in LICs and MICs can display a range of key differentiating characteristics, for example:

- **Types of legal problems addressed:** interventions may address the full range of problems of a civil and administrative nature such as BRAC's Human Rights and Legal Aid Services (HRLS) programme<sup>36</sup> or only a single type of problem, such as community-based paralegals in Myanmar who assist only with problems relating to land.<sup>37</sup>
- **Geography of service provision:** interventions may provide basic legal services on a peripatetic basis, like community-based paralegals in Sierra Leone who are based in offices in local communities and travel further afield by motorbike,<sup>38</sup> or remotely, like the lawyers providing advice through M-Sheria's text messaging service in Kenya.<sup>39</sup>
- **Identity of service providers:** interventions may see basic legal services provided mostly by non-lawyers, like Community Justice Advisers in Liberia,<sup>40</sup> or mostly by lawyers, such as Community Law Centres in China.<sup>41</sup>
- **Nature of funding sources:** interventions may be funded (all or in part) by donors, such as community-based paralegals in Myanmar,<sup>42</sup> by the private sector, such as Microjusticia Argentina,<sup>43</sup> or by national or regional government, such as Maisons d'Accès à la Justice in Rwanda.<sup>44</sup>
- **Characteristics of broader context:** interventions may be isolated occurrences, such as the work of Microjustice4All, or part of a wider network of service provision, whether in the private sector like BRAC's HRLS programme<sup>45</sup> or government, like South Africa's Community Advice Offices<sup>46</sup> and Ukraine's Community Legal Centres.<sup>47</sup>

These characteristics can also vary over time, as interventions develop from isolated non-state-funded programmes to state-funded mechanisms of service delivery to aspects of a much broader system of state-funded service delivery. So, for example, Sierra Leone's paralegals began as part of the donor-funded TIMAP for Justice Programme but are now positioned to transition into part

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<sup>36</sup> See Annex F: Microfinancing Justice Case Study; Legal Aid Clinics in Bangladesh.

<sup>37</sup> See Annex F: Community-based Paralegals Case Study; Namati Sector-Specific Paralegals in Myanmar.

<sup>38</sup> See Annex F: Community-based Paralegals Case Study; TIMAP for Justice and Others in Sierra Leone.

<sup>39</sup> See Annex F: Justice Hubs and Hybrids Case Study; Legal Aid Centres, Community Justice Centres and Mobile Law in Kenya.

<sup>40</sup> See Annex F: Community-based Paralegals Case Study; Community Justice Advisers in Liberia.

<sup>41</sup> See Annex F: National Community Law Centres Case Study; Legal Aid in China.

<sup>42</sup> See Annex F: Community-based Paralegals Case Study; Namati Sector-Specific Paralegals in Myanmar.

<sup>43</sup> See Annex F: Microfinancing Justice Case Study; Microjusticia Argentina.

<sup>44</sup> See Annex F: National Community Law Centres Case Study; Maisons d'Accès à la Justice in Rwanda.

<sup>45</sup> See Annex F: Microfinancing Justice Case Study; Microjustice4All.

<sup>46</sup> See Annex F: National Hybrid Models Case Study; Community Advice Offices in South Africa.

<sup>47</sup> See Annex F: National Hybrid Models Case Study; Community Legal Centres in Ukraine.



of a hybrid model of service delivery that will include Sierra Leone's new Legal Aid Board delivering more traditional forms of legal representation.

## A Typology of Basic Legal Services

2.2 We consider it helpful for the purposes of this report to categorise the agreed interventions into a simple typology, recognising that although it does not capture the full nuances of the reality, it does provide a useful tool of analysis, demonstrating that interventions can sit along a spectrum which can involve greater and lesser degrees of state-ownership, funding and sustainability. The typology, which covers a range of countries in LIC and MIC income brackets (see Annex E of Volume 2 for categorisation) and includes a short summary of each intervention (longer descriptions being available in the form of country case studies at Annex F of Volume 2), comprises five categories as follows:

### 1. Community-based paralegals

2.3 The growing use in recent years of paralegals that work closely with communities parallels the greater emphasis on community health workers in the health sector in that it offers the potential of low cost and high return together with the opportunity to link up the informal and formal sectors. However, models of paralegalism can face challenges in relation to service quality and sustainability when taken to scale as investment can be delivered by donors outside of government, without sufficient training and oversight and for a limited period. LIC/MIC examples of this model, which include pilots that have sought to develop systems for training and oversight and sources of government funding to put themselves on a long-term footing, are:

- **Liberia's Community Justice Advisors:**<sup>48</sup> Community Justice Advisors provide free legal information, civic education, mediation services and referrals across 7 of Liberia's fifteen counties. They are based in the offices of the Catholic Church Justice and Peace Commission in larger towns and travel regularly by motorbike to remote communities where they conduct mobile clinics. Three offices across the country staffed by lawyers support the paralegals.
- **Myanmar's Land Paralegals:**<sup>49</sup> Namati works with the Myanmar-based Civil and Political Rights Campaign Group to fund 30 paralegals that work with individuals to resolve land problems across 150 village tracts in seven states. Data is also collected to inform advocacy strategies in the area of land reform. Funding is presently provided by DFID, Omidyar and OSF and the project plans to scale up to 90 paralegals working across a total of 500 village tracts.
- **Sierra Leone's Community-based Paralegals:**<sup>50</sup> TIMAP for Justice's community-based paralegal scheme began in 2003 as a joint initiative of Open Society Justice Initiative and the

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<sup>48</sup> See Annex F: Microfinancing Justice Case Study; Legal Aid Clinics in Bangladesh.

<sup>49</sup> See Annex F: Community-based Paralegals Case Study; Namati Sector-Specific Paralegals in Myanmar.

<sup>50</sup> See Annex F: Community-based Paralegals Case Study; TIMAP for Justice and Others in Sierra Leone.



Sierra Leonean National Forum for Human Rights as a response to the chronic shortage of lawyers following the conflict. Between 2009 and 2011, OSJI worked with TIMAP, the Government of Sierra Leone, the World Bank, BRAC, Access to Justice Law Centre, MCSL and JPC to develop a national approach to community-based paralegalism, working through local partners to expand 13 offices serving 16% of the population to 19 offices serving 38% of the population. Namati has since been continuing the scale up, reaching a total of 29 offices, but the project has recently come to an end with Namati now focusing on land and environmental problems.

## 2. Microfinancing Justice

2.4 In recent years, models of basic legal service provision have begun to explore the possibilities of cross-subsidisation from private sector activities. This may come in the form of achieving cost savings by co-locating service provision with a private sector entity or it may come in the form of generating new revenue streams by providing legal services to private sector entities or indeed by providing them with other services such as microfinance. While these models appear scalable, their reliance on private sector rather than government support may present challenges for sustainability in the long-term. Examples of these models include:

- **Bangladesh’s BRAC-run Human Rights and Legal Aid Services (HRLS) programme:**<sup>51</sup> The programme operates 512 legal clinics in 61 of 64 districts across Bangladesh and is the largest NGO-led legal aid programme in the world. The work of the clinics takes place at three levels – district, *upazilla* and union – and includes legal education, community mobilisation with village leaders and legal advice, ADR and court representation. At each level, activities are carried out by a range of staff and volunteers who are a mixture of lawyers and non-lawyers. Although donors still provide a significant amount of funding to HRLS, there is an element of cross-subsidy with funds from BRAC’s social enterprise work with microfinance, dairy, poultry, fisheries, arts and crafts and partly funded by a USD 0.13 client fee which aims to ensure buy-in and fund the volunteer lawyers.
- **Bolivia, Peru, Kenya and Croatia/Serbia’s Microjustice4All network:**<sup>52</sup> Microjustice4All is a Dutch organisation that helps to set up and coordinate a network of programmes that provide basic legal services out of private or voluntary sector locations that pre-exist for the provision of other services, e.g. in Kenya out of church organisations and community chiefs’ compounds and in Bolivia out of microfinance offices, which produces rapid economies of scale. Services are typically provided by paralegals and law students under the supervision of experienced lawyers in return for affordable fees which provide an element of cost recovery. Most services focus on legal documentation in relation to identity documents,

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<sup>51</sup> See Annex F: Microfinancing Justice Case Study; Legal Aid Clinics in Bangladesh.

<sup>52</sup> See Annex F: Microfinancing Justice Case Study; Microjustice4All.



property, income generation, family law and inheritance issues and specific contexts like natural disasters.

- **Argentina's Microjusticia:**<sup>53</sup> Fundacion Microjusticia Argentina provides documentation services in particular, operating out of branches of either microfinance institutions, such as FIE Gran Poder or Alumbra (Banco Macro), or NGOs which keeps costs at a minimum. Legal services are provided by volunteer lawyers and law students supervised by full-time trained tutors and are provided free of charge to end users. Microjusticia charges a fee to microfinance institutions, NGOs, law firms, law schools and not-for-profits interested in CSR opportunities for their lawyers or offering Microjusticia's legal services to their beneficiaries as an additional service.

### 3. National Community Law Centres

2.5 National community law centres provide the full range of basic legal services in every geographic sub-division of a country of an appropriate size. They can differ from community-based paralegals in offering less in the way of mobile service delivery and in being more integrated into state infrastructure (although they may or may not be fully-funded by government) – although some centres of this kind can offer community-based paralegals as one of their services. The Citizens Advice Bureaus of the UK are an example.<sup>54</sup> LIC/MIC examples of these models include:

- **China's Legal Aid Centres:**<sup>55</sup> the People's Republic of China runs over 3,500 legal aid centres nationwide down to county level. These offer a full range of legal aid services from advice-giving to legal representation. In addition there are over 50,000 legal aid 'information points' at village level. This is further supported by a national legal aid hotline which enables people to obtain free legal advice anywhere at any time. Funding is provided from the Government (central, provincial and county-level) and the national Legal Aid Foundation, a body established by the 2003 State Council Legal Aid Regulation which disburses lottery funds and contributions received from the private sector. Some provinces have also established their own Legal Aid Foundations which perform a similar function. Legal aid services are provided by lawyers in private practice, legal workers (paralegals), and representatives of social organisations or NGOs providing legal aid.
- **Rwanda's Maisons d'Accès à la Justice:**<sup>56</sup> there are 30 Maisons d'Accès à la Justice across Rwanda – one in each of the country's 30 districts. Each centre is staffed by three lawyers that provide legal information and education, advice and representation, train mediators, disseminate laws and act as a link with government by identifying and seeking to resolve pending legal cases. The centres deal primarily with civil matters and are coordinated by the

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<sup>53</sup> See Annex F: Microfinancing Justice Case Study; Microjusticia Argentina.

<sup>54</sup> See Annex F: OECD Case Study; Basic Legal Service Provision in England and Wales.

<sup>55</sup> See Annex F: National Community Law Centres Case Study; Legal Aid in China.

<sup>56</sup> See Annex F: National Community Law Centres Case Study; Maisons d'Accès à la Justice in Rwanda.



Access to Justice Department in the Ministry of Justice and funded by the Government of Rwanda with UNDP support.

#### 4. National Hybrid Models

2.6 Other models of basic legal service provision involve service provision of this kind, very often overseen and/or part-funded by the state, as part of a much wider system of legal service delivery by the state. The dual-functionality of the Legal Aid Ontario<sup>57</sup> (which provides both traditional legal representation and basic legal services) and the two-tier approach of the Legal Aid Board and Legal Service Counters in the Netherlands<sup>58</sup> (which provide these two types of service delivery respectively) are OECD examples. LIC/MIC examples of these models include:

- **South Africa's Community Advice Offices:**<sup>59</sup> the Government of South Africa funds Legal Aid South Africa which is an independent statutory body that runs 32 Justice Centres, which provide advice, referrals and litigation on civil and criminal matters throughout the country, and Community Advice Offices which are not-for-profit centres that offer basic legal advice and information. Each Justice Centre is home to a number of attorneys and paralegals. CAOs typically consist of one or two paralegals plus volunteers with some legal knowledge.
- **Ukraine's Community Legal Centres:**<sup>60</sup> the Ukrainian Government funds 125 regional centres which provide secondary legal aid in the form of direct representation and other legal services. Primary legal aid in the form of advice and information is provided by more than 30 Community Law Centres that are run by NGOs and funded by local municipalities and donors, operating in 20 regions. Some Centres operate mobile clinics and use Skype to reach geographically isolated citizens. Services offered vary with the needs of the local community.

#### 5. Justice Hubs

2.7 Advances in technology have enabled basic legal services to be provided remotely, reducing the need for a physical presence in different geographic regions of a country. Examples in OECD countries include LawAccess in New South Wales, Australia<sup>61</sup> and Rechtwijzer in the Netherlands, suggesting that countries that have well-developed national hybrid models of legal service delivery, of which basic legal services are a part, are now exploring models of this kind.<sup>62</sup> Questions, however, remain about the efficacy of such remote legal service provision in contrast to more traditional forms of face-to-face service provision but these fail to be balanced against the potential for cost savings. LIC/MIC examples of these models include:

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<sup>57</sup> See Annex F: OECD Case Study; Legal Aid and Community-based Legal Clinics in Canada.

<sup>58</sup> See Annex F: OECD Case Study; Legal Aid Counters and Online Dispute Resolution in the Netherlands.

<sup>59</sup> See Annex F: National Hybrid Models Case Study; Community Advice Offices in South Africa.

<sup>60</sup> See Annex F: National Hybrid Models Case Study; Community Legal Centres in Ukraine.

<sup>61</sup> See Annex F: OECD Case Study; Legal Aid and Justice Hubs in Australia.

<sup>62</sup> See Annex F: OECD Case Study; Legal Aid, Counters and Online Dispute Resolution in the Netherlands. See Annex F: Justice Hubs and Hybrids Case Study; Legal Aid Centres, Community Justice Centres and Mobile Law in Kenya.



- **Kenya’s M-Sheria Project:**<sup>63</sup> M-Sheria is run by Kituo Cha Sheria, a human rights NGO that operates a legal aid centre based in Nairobi and seven community justice centres run by community-based paralegals. Initial advice and referrals to volunteer advocates are provided on issues relating to land, labour, housing and inheritance. M-Sheria allows users to text a legal question to the M-Sheria website which is maintained by a group of about 500 pro bono lawyers who answer the questions through the provision of initial advice on the website and more detailed advice which is texted back to the person as well.
- **Uganda’s Barefoot Law:**<sup>64</sup> Barefoot Law provide access to legal information, guidance and support through multiple platforms, including web based and mobile phone technology, as well as more traditional face-to-face and telephone interaction. Mobile phones cost USD 7-8 (USD 30-40 for smartphones) and ownership is approximately 70% of the population (8% for smartphones). Services include referral to pro bono legal service providers, Virtual Counsel via Skype, the provision of template legal documents and legal consultations, education and ADR via social media. Some 300,000 people are reached per month by a team of 10 legal volunteers and a technical specialist. The project hopes to go to scale and has recently obtained seed funding to invest in a platform to provide a suite of user-funded services specific to SMEs.

2.8 Table 1 illustrates this simplified typography of basic legal services, comparing and contrasting key characteristics of basic legal service intervention.

**Table 1: Key Characteristics and Typography of Basic Legal Service Intervention Case Studies**

Typography	Intervention	Type of Legal Problem	Geography of Service Provision	Identity of Service Provider	Nature of Funding Source	Characteristics of Broader Context
<b>Community-based paralegals</b>	Liberia’s Community Justice Advisors	Wide range including land, labour and gender-related issues	Community level and rural – 520 communities across seven of fifteen counties	Peripatetic paralegals, based out of town offices and supervised by lawyers	Annual grant funding from the Carter Center	Widespread mistrust of and high levels of elite capture in formal system
	Myanmar’s Land Paralegals	Land rights	Community level and rural – 150 village tracts	Peripatetic paralegals	Grant funding from OSJI and Namati	Enabling legislation but poor public understanding and resistance from authorities

<sup>63</sup> See Annex F: Justice Hubs and Hybrids Case Study; Legal Aid Centres, Community Justice Centres and Mobile Law in Kenya.

<sup>64</sup> See Annex F: Justice Hubs and Hybrids Case Study; Online and Mobile Law in Uganda.



Typography	Intervention	Type of Legal Problem	Geography of Service Provision	Identity of Service Provider	Nature of Funding Source	Characteristics of Broader Context
	Sierra Leone's Community-Based Paralegals	Range of issues, with recent focus on land and environmental justice	Community level and rural – 33 offices across eight districts	Peripatetic paralegals	Initial grant-funding from donors (inc. OSJI and GIZ); state funding enshrined in law but not realised	Post-civil war
<b>Micro-financing Justice</b>	Bangladesh's BRAC-run HRLS	Wide ranges of issues	Community level and rural – 517 clinics in 61 of 54 districts	Lawyers and caseworkers	Grant-funding from DFID; small client fee; model of cross-subsidisation	BRAC is the largest NGO in the world; leading service provider
	Bolivia, Peru, Kenya and Uganda's Microjustice4 All	Documentation relating to identity, property, income generation and family issues	Community level and urban via private and third sector hosts – exact geography of provision varies by country	Paralegals and law students, operating from host premises and supervised by lawyers	Donor funding for start-up, and ongoing legal education and capacity building; in-kind contributions from host organisation; user fees	N/A
	Argentina's Microjusticia	Documentation, women and children's rights, disability and health-related rights, immigration and labour	Urban and hosted by the city branch offices of microfinance institution, as well as outreach work on city outskirts alongside NGOs	Law students, supervised by tutors	Cross-subsidisation from legal services to the private sector; in-kind contributions from hosts; some funding from individual private philanthropists	Post-2001 economic crisis, widespread inequality including as regards access to basic rights





Typography	Intervention	Type of Legal Problem	Geography of Service Provision	Identity of Service Provider	Nature of Funding Source	Characteristics of Broader Context
<b>National community law centres</b>	China's Legal Aid Centres	Wide range of issues	National network of 3500 legal aid centres, 50,000 legal aid working stations and info points at town and village level	Lawyers seconded from private practice and paralegals	Core funding from provincial and county-level government; grant funding from the Legal Aid Foundation	Central government interest in promoting social harmony
	Rwanda's Maison d'Accès à la Justice	Wide range of issues	District level – one legal centre per each of the country's 30 districts	Qualified lawyers, one with a focus on women's and children's rights	State-funded with technical and financial support from UNDP and UNICEF	Part of broader state-building efforts
<b>National hybrid models</b>	South Africa's Community Advice Offices	Wide range of issues including community conflict dispute resolution, alongside broader services e.g. job counselling, facilitating access to services	Community level and mixed	Paralegals and volunteers	Limited funding, pooling community resources and volunteerism	Growth of CAOs in context of Apartheid in 1980s. Now part of broader system that includes Legal Aid South Africa
	Ukraine's Community Legal Centres	Social security, property rights, labour rights, public services and other administrative matters	Community level and mixed – 32 legal centres across 20 regions	Lawyers, local paralegals and pro bono	Local municipalities and donors	Large rural population with limited access to public services or information. Part of broader system that includes government funded regional centres that provide secondary legal aid



Typography	Intervention	Type of Legal Problem	Geography of Service Provision	Identity of Service Provider	Nature of Funding Source	Characteristics of Broader Context
<b>Justice hubs</b>	Kenya's M-Sheria Project	Wide range of issues	Remote – SMS service	Pro bono lawyers	Donor funding from HiiL and Dutch bank, ING	Large rural population; small legal profession based primarily in cities

## Models from Other Sectors Delivering Basic Services

2.9 We have also considered models from the health and education sectors which loosely lend themselves to a similar typology:

- **Community-based health workers and teachers:**

- o In Pakistan, some 90,000 female community-health workers deliver cost-effective interventions in maternal and child health and refer patients to the nearest basic health clinic. Health workers are elected by the community and are provided with 15 months training from the local government health facility before being paid USD 345 per year to operate out of their homes to cover 200 households with monthly visits. Funding and supervision is provided by the Ministry of Health.<sup>65</sup>
- o El Salvador's EDUCO programme involves parents and teachers in the governance of each school through a community association whose members are elected every three years by the community. Associations are responsible for hiring and firing teachers, managing funds and monitoring teacher performance. EDUCO schools have worse infrastructure and less experienced teachers than traditional schools but more educated teachers and more textbooks per child. The per capita cost is about USD 85 per child compared with USD 73 per child in a traditional primary school. Funding comes from the World Bank and the Ministry of Education.<sup>66</sup>

- **Microfinancing health and education:**

- o In Bolivia, Microfinance Institution CRECER provides loans of on average USD 150 to 15-20 members which are repaid over 16 or 24 weeks. All banks meet on a weekly or biweekly basis where members make repayments, deposit loans and receive training on financial and business management as well as child and reproductive health. There is a community-based distribution system for contraceptives, referrals are offered to rural clinics and health

<sup>65</sup> Zhu, N. et al. (2014). 'Lady Health Workers in Pakistan'. Harvard School of Public Health.

<sup>66</sup> Birdsall, N., Levine, R. & Ibrahim, A. (2005). 'Towards Universal Primary Education: Investments, Incentives and Institutions'. UN Millennium Project Task Force on Education and Gender Equality.



campaigns promote vaccinations and PAP smear campaigns.<sup>67</sup> Funding is mainly provided by a mixture of donors and investment funds.

- o BRAC runs an education programme in Bangladesh for children that are not reached by the formal education system, delivering literacy and numeracy in 3-4 years with flexible hours that allow children to help their parents on the fields or at home. There are no school fees and schools provide all supplies (which makes the cost to parents less than government schools despite the unit costs of education being similar) but at least 70% of students must be girls. In 1996, there were some 35,000 schools across the country. Funding is provided by donors and BRAC's own funds from income-generating activities.

- **National health clinics and primary schools:**

- o Kenya: LifeNet International is a not-for-profit which partners with church-based community health centres and franchises them to build their medical and administrative capacity and connect them with pharmaceuticals and equipment with lending where necessary. The average LifeNet clinic currently services 1200 patients a month and the organisation plans to operate 1000 centres in ten East African countries by 2025.<sup>68</sup> Funding is largely provided by private philanthropists.
- o Omega Schools in Ghana is a for-profit entity that presently runs 38 schools educating 20,000 students. A daily (rather than yearly) fee of USD 0.65 includes tuition, hot lunch, books, two sets of uniforms, mid and end of term assessment, health insurance etc. The fee structure caters for the income volatility of its target client base while the fee level matches the out-of-pocket cost of attending a free government school with the result that there is no cost differential for parents who purchase the same extras at a government school. The associated Omega Foundation runs not-for-profit research and development on low cost business models and learning methods. The most recent investment is a £10m grant from Pearson.<sup>69</sup>

- **Hybrid health and education models:**

- o India's Karuna Trust runs a public private partnership managing 68 state-owned primary health centres in eight states, seven mobile health centres and three citizens help desks. The Trust resources government clinics with human resources and logistics to deliver better primary health services and enable each clinic to innovate in one area. The Trust has also offered community-based health insurance since 2002.<sup>70</sup> It is primarily funded by the Government of India with some additional funds provided by UNDP and other donors.

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<sup>67</sup> UNFPA (2012) From Microfinance to Macro Change: Integrating Health Education and Microfinance to Empower Women and Reduce Poverty.

<sup>68</sup> <http://www.lninternational.org/>

<sup>69</sup> <http://www.omega-schools.com>

<sup>70</sup> <http://healthmarketinnovations.org/program/karuna-trust>



- o In Niger, local school councils or COGES are monitored at two levels: federations which principally monitor COGES and forums above them at which multiple stakeholders from different federations can come together to discuss issues of common interest. This ensures monitoring and oversight places as little burden as possible on COGES officers who can focus on educational administration.<sup>71</sup> Funding is provided principally by the Government of Niger.
- **Health and education hubs:**
  - o India offers Mera Doctor, a health hotline which reaches 19 states and 40,000 clients and addresses 400 ailments, and ReMeDi which offers remote diagnostic capability to 40 countries of which India is only one.<sup>72</sup> The former has raised funds from angel investors such as Accion International to combine with some donor investment; the latter is funded primarily by revenue from users.
  - o BRIDGE Academies in Kenya is a for-profit entity which runs 300 low-cost private schools serving over 100,000 students using 'Academy in a Box' which involves a cookie-cutter approach to infrastructure and scripted lessons disseminated from handheld computers linked to a central system. This enables each Academy to be managed by a single employee. In 2014, the cost of schooling was USD 6 per month, 70% lower than other private schools and affordable to 85-95% of families.<sup>73</sup> Investors include Pearson Affordable Learning Fund, CDC, IFC, Bill Gates and Mark Zuckerberg.

## Cross-Sector Observations

- 2.10 In seeking to distil lessons from the scaling up of basic health and education services, it is important to consider the similarities and differences between these service sectors as they affect the applicability of those lessons to the justice sector.
- 2.11 The similarities between basic legal services and basic healthcare and education services which reinforce the value of looking at these other sectors as a source of lessons include:
- **Supply and demand constraints** in the form of a lack of skilled service providers on the supply side and a lack of understanding of the service on the demand side due to information asymmetries which can be particularly acute among certain segments of the population.<sup>74</sup>

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<sup>71</sup> Honda, S. and Kato, H. 'Scaling Up in Education: School-Based Management in Niger' in Chandy et al. (2013). 'Getting to Scale: How to Bring Development Solutions to Millions of Poor People'.

<sup>72</sup> ISCF and University of Toronto. (2015). 'Rapid Routes to Scale, Scaling up Primary Care to Improve Health in Low and Middle Income Countries'.

<sup>73</sup> BRIDGE International Academies at <http://www.bridgeinternationalacademies.com>

<sup>74</sup> ISCF and University of Toronto. (2015). 'Rapid Routes to Scale, Scaling up Primary Care to Improve Health in Low and Middle Income Countries'.



- **Market and government failure** in the sense of reflecting both a public and a private good element which means the market incentive to deliver the goods is distorted.<sup>75</sup>
- **Potential to confront entrenched social norms** where dealing, for example, with girl's education, reproductive health issues or with gender-based violence can create a disincentive to provide services.
- **Highly discretionary and transaction-intensive services** are difficult to standardise and therefore to deliver at scale, particularly given the variation in needs of particular groups, as well as being difficult to monitor results.
- **Strong bargaining power** from well-organised professional groups with a high degree of autonomy deriving from their monopoly over complex technical skills.
- **Financing dilemmas** - scale up at the primary service level involves potentially nationwide provision which can most obviously be provided by government, but given the funding constraints faced by governments in developing countries, this is not always possible.
- **Tertiary focus** - in justice, just as in education and health, there is a tendency for donor resources to be captured by the tertiary sector, for example, through the training of the judiciary and the provision of law libraries when the most cost effective interventions may be at the primary level i.e. at the entry points for the poor to the justice system.

2.12 However, there are also differences between basic legal services and health and education which are relevant to the government institutionalisation and financing of these services and which limit the utility of lessons from these other sectors. These differences include:

- **Constraints on state power** which can result from the provision of basic legal services where users direct those services against the state – the fact that basic legal services create avenues for citizens to hold states to account can create a disincentive for elites to provide those services.
- **Coordination failures** arising from the delivery of justice being the product of a number of ministries in a government with overlapping/unclear mandates (for example, the Supreme Court, the Ministry of Justice and the Attorney General's Office or Prosecution Service) which can lead to an inability to access central government funds for budget allocations to basic legal service provision as well as inter-ministerial competition for those resources.
- **Overlapping, plural systems** with traditional or religious systems, some of which may be formally recognised by the state and may have greater legitimacy with communities and easier access than the state providers which exist alongside. There are some similarities to the health sector where formal health care providers exist alongside traditional methods of healing.

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<sup>75</sup> Commission on Legal Empowerment of the Poor. (2008). 'Making the Law Work for Everyone', Working Group Reports (Vol. 2).



- **Identification of demand** can be difficult as unlike, for example, access to water or education, an individual may not be able to state ex ante whether or not they have access to justice services or which kind.<sup>76</sup>
- **Functional complexity** of basic legal services compared with primary schooling or healthcare can make it difficult to achieve transformative change as scaling up often requires a trade-off or balance between reach and breadth; i.e. the number of people reached by a narrow service, or the transformational impact achieved by a broader range of services. The easiest things to transform to a large scale are therefore generally very simple, like school meals or vaccinations for particular diseases, but to maximise the benefits, services need to be targeted.
- **Heterogeneity of need** means that basic legal services need to be highly context-specific and variable, according to the particular characteristics of legal problem and the person, unlike other successfully scaled services such as water sanitation, vaccination or oral rehydration therapy. This presents challenges for scaling up.

2.13 There are also differences between basic legal services and health and education which are relevant to the alternative (non-government) financing of these services. These differences include:

- The relative **certainty of cost and outcome** of basic education services.
- The extreme **urgency** of some basic health services.
- The relative **frequency and predictability** of basic education and health needs.
- The **identity of the end user** is perhaps more frequently juvenile in the context of education and health needs compared with basic legal needs.

2.14 But perhaps the most significant difference is the lack of **heterogeneity of need and service provision** in the context of basic legal services, the result of which is that **unbundling services** is most likely to enable particular service categories to be identified which are similar to education and/or health and to which lessons from those sectors can be applied, for example:

- Birth registration: this could be said to share the certainty of cost and outcome which education demonstrates.
- Domestic violence: this could be said to share the urgency of need which health demonstrates.

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<sup>76</sup> Ibid.



## Chapter 3: What do we know about the unit costs of basic legal services and how we can calculate them?

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### Methodology

- 3.1 Quantifying the unit costs of specific interventions providing basic legal services is central to understanding the cost of scaling up service provision, whether to the entire population of a country or some smaller sub-category of individuals. However, in order to properly understand the effectiveness of interventions and their value for money so as to make a case for financing that cost, costs need to be considered alongside benefits to develop a picture of net benefit.
- 3.2 There are at least two distinct approaches to determining the unit cost of legal service provision:
  - Costing a national justice system from the top down; or
  - Costing a particular aspect of legal service delivery from the bottom up.
- 3.3 The first approach (as to which see the description set out at Annex G of Volume 2) is more holistic, but inevitably encompasses criminal justice as a large proportion of the workload of the national justice system. For the purposes of this research, in order to keep the focus on basic legal service provision in the context of legal problems of a civil and administrative nature, we adopt the second costing approach.
- 3.4 A key benefit of the bottom up approach is that it allows us to identify the variety and scale of legal needs in a country – including whether any particular groups have particular needs – together with a pilot intervention that is seeking to meet those needs and to cost upwards the cost of scaling up that intervention to meet those needs nationally.
- 3.5 In contrast, one of the values of the top down approach to costing is that it has the potential to help the justice sector to establish a much stronger case for funding from both governments and donors for interventions such as the scale up of basic legal services. This is the approach increasingly adopted by other sectors. Other sectors have developed models that identify costs in terms of (a) % of GDP or government spend and (b) the per capita cost. For example:
  - As part of the Global Monitoring Report on education that has been running for some years UNESCO have costed the delivery of primary and secondary education. In their latest report (2015) this was costed at an average of USD 47 per capita in LDCs. They also urged countries to target total spending on education at 6% of GDP and/or 20% of the government's budget.<sup>77</sup>

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<sup>77</sup> Manuel et al ODI Working paper 416 <http://www.odi.org/publications/9462-financing-future-international-public-finance-should-fund-global-social-compact-eradicate-poverty>



- The first global costing for essential health care services was prepared in 2003 by the Global Commission. The most recent update was undertaken by the Centre on Global Health at Chatham House which costed the delivery of universal health care at USD 87 per capita in LICs and they recommend a target of spending on health of 5% of GDP. Many African countries have subscribed to the Maputo target of 15% of government expenditure.<sup>78</sup>

Such benchmarking facilitates an assessment of spending on justice relative to other services such as health and education which can tell a valuable story about the prioritisation of justice relative to those other services domestically. When considered in the context of figures on GDP and government expenditure more generally, such benchmarking also provides valuable information about government resources in general. This information can assist in identifying countries with limited revenue capacity which may not be able to finance basic legal service provision in the short-term,<sup>79</sup> and countries where the constraint is prioritisation rather than affordability.

- 3.6 In recognition of the complementarity of the bottom-up and the top-down approaches to costing, we have adopted a simple bottom up approach in combination with some very initial benchmarking using the scaled up unit costs of a limited number of country examples. Comparing these costs to government revenue and spending on the judiciary allows us to develop a picture of the affordability of government financing scale-up.
- 3.7 There are four steps to the costing methodology we have devised. In our application of this methodology to case study countries, we have not always been able to apply all four steps due to lack of data. However, we set out the methodology here in full to inform the discussion on how to cost the scale up of basic legal services and future data collection.

### Step 1: Determining Input Costs

- 3.8 When considering the costs of delivering a model of basic legal service provision, there are at least three categories of costs to consider:<sup>80</sup>
- **Monetary costs** which on a micro-level may include lawyers' or paralegals' fees, experts' and expert witness fees, filing fees, translator fees, bailiff's fees, notary fees, services for summons, discovery related costs, travel expenses, costs for communication, and copying and other overheads and on a macro-level may include the cost of regulating the legal profession.<sup>81</sup>

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<sup>78</sup> Ibid

<sup>79</sup> See, by analogy, the recent ODI study which has identified those countries that cannot afford basic national healthcare or education systems by comparing estimate of revenue capacity against cost of service provision: *ibid*.

<sup>80</sup> Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems (2009). *Handbook for Measuring the Costs and Quality of Access to Justice*, p.29.

<sup>81</sup> *Ibid*, pp.30-31.





- **Opportunity costs** which are on a micro-level the resources users of justice spend on their paths to justice, such as missed opportunities, time and foregone earnings, and on a macro-level the resources spent on basic legal services that could be spent on other services or projects.<sup>82</sup>
- **Intangible costs** which are on a micro-level the amount of stress, emotion and damage to relationships associated with a given path to justice, including from perceived unfair results, and on a macro-level the delays in case resolution through the formal system and perceptions of its transparency.<sup>83</sup>

3.9 Since the monetary costs to users are often free in donor-funded basic legal service interventions and since there is a paucity of data available in relation to opportunity and intangible costs, the costs of basic legal service provision discussed in the case studies are mostly approximated using the input costs e.g. the annual operating budget of a community legal centre or number of paralegals.

## Step 2: Determining Size of Community Served

3.10 There are a number of tools and methods for estimating the reach of service provision or the size of the community served, none of which are a perfect science:

- **Legal needs surveys:** data from these surveys can be used to identify the proportion of the population with a basic legal service problem across a particular geographic area or across the population as a whole. If there is no current provision of basic legal services then this can be used to inform the level of provision needed; if there is existing provision, it can be used to identify the 'justice gap'.<sup>84</sup>
- **Case capacity:** data on the number of cases handled by a community justice adviser or centre can be used to understand how many cases can be handed over a particular time period. This can then be combined with legal needs data to identify the number of service providers needed to service the relevant legal needs. The challenge of this approach is that case handling is only one aspect of basic legal service provision, which often includes legal awareness and education, the reach of which goes well beyond an individual client such that focusing solely on cases is likely to overestimate cost and underestimate benefit.
- **Geographic reach:** data on the number of people that can walk to a community justice adviser or centre is a non-case-based way of assessing reach. However, this approach fails to reflect the capacity of service providers who may have no ability to serve additional members of the community, despite being within a certain geographic area.

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<sup>82</sup> Ibid, pp.31-33.

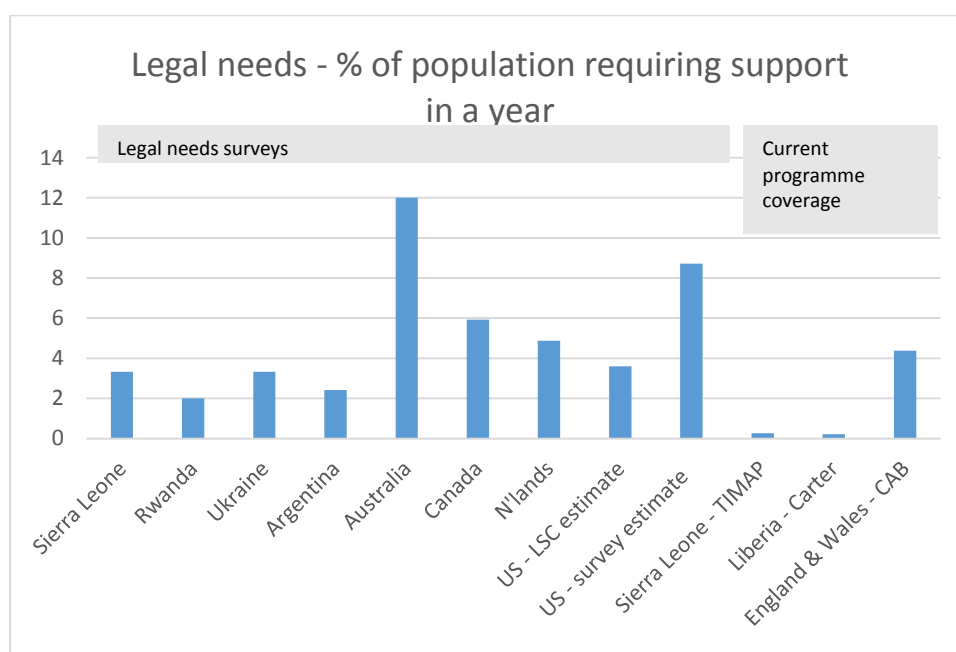
<sup>83</sup> Ibid, pp.33-34.

<sup>84</sup> Legal Service Corporation (2009). Documenting the Justice Gap in America: The current unmet civil legal needs of law-income Americans.



3.11 The most robust approach to determining catchment area in the context of basic legal service provision is likely to be a combination of the above approaches. For example, in many of the case studies we have considered, data is only available on a per case basis. The key analytical challenge is then how to estimate the number of cases that need to be handled at a national level each year. Fortunately an increasing number of countries have undertaken an assessment of legal needs. The results of these surveys are summarised in Figure 1 below and Appendix 2. The surveys for the three low income and lower middle income countries (Sierra Leone, Rwanda and Ukraine) suggest 2-3% of the population have a “*very important*” legal need each year. The estimates for High Income/OECD countries are slightly higher at 3-12%. As the only countries in this study that are lacking legal needs surveys are low/lower middle income countries their unit cost analysis is based on the conservative assumption of annual demand being 2% of the population, implying each case is covering the legal needs of 50 people. It remains the case that this figure is likely to be an underestimate, given the focus on cases as a method of meeting legal needs to the exclusion of other activities by paralegals and other service providers.

**Figure 1: Legal needs -- percentage of population requiring support in a year**



3.12 Once the input costs for a model of service provision have been determined, together with the size of the community to be served the unit or per capita cost of service provision can be estimated. The advantage of this approach is that in focusing on the unit as each individual served, rather than a community justice adviser, community legal clinic or other unit, cross-country comparisons can easily be made.



### Step 3: Determining Benefits

- 3.13 Just as with costs, there are a variety of different categories of benefit to consider in the context of basic legal service provision:<sup>85</sup>
- **Quality of procedure** which on a micro-level may involve assessing people's perceptions regarding the fairness, accuracy and consistency of the procedure and the ability of individuals to participate within it<sup>86</sup> and may have societal benefits at the macro-level also such as greater adherence to the law.
  - **Quality of outcomes** which on a micro-level may involve assessing people's perceptions regarding the distribution of compensation or other monetary outcomes, the repair of emotional harm through the use of victim statements and apologies, punishment of offenders through various types of sentences and opportunities for reconciliation<sup>87</sup> but again may have societal benefits at the macro-level such as a sense of security, empowerment and social cohesion.
- 3.14 Survey data is key to capturing micro-level benefits. One type of survey that might be employed is a willingness to pay (WTP)/willingness to accept (WTA) survey. Such an approach asks service users what they would be willing to pay to have the service provided and how much they would be willing to accept in compensation for not having the service provided. The WTP and WTA approach has been widely used to cost intangible benefits of interventions, including in evaluations of environmental, health, and safety practices (as an alternative to the quality adjusted life years measure). However, the relationship between income levels or purchasing power and WTP or WTA can be problematic, particularly if cross-country comparisons are to be drawn. In the context of basic legal service provision, service users would likely be asked how much they would be willing to pay by way of annual fee to maintain a particular level of service provision e.g. a community legal centre staffed by two paralegals offering the full range of basic legal services within 5km.
- 3.15 At the macro-level, arguably existing quantitative datasets could be analysed as a proxy for macro-level benefits. For example, trends in the caseload handled by the formal justice system could be considered a proxy for the societal benefits brought about by the early prevention qualities of basic legal service provision – although it is also possible that 'legal sensitisation' might contribute to increased use of formal legal channels by individuals to solve disputes. However, trends reflecting a reduction in caseload in the formal justice system do not obviously capture outcomes among traditional justice providers and on their own are unlikely to tell a story about causality, thus they

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<sup>85</sup> Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems (2009). Handbook for Measuring the Costs and Quality of Access to Justice, p.29.

<sup>86</sup> Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems (2009). Handbook for Measuring the Costs and Quality of Access to Justice, pp.34-36

<sup>87</sup> Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems (2009). Handbook for Measuring the Costs and Quality of Access to Justice, pp.36-39



are best analysed in the context of a treatment and non-treatment group or at least alongside qualitative data which ideally considers the informal sector as well.

- 3.16 Due to a lack of data availability, it has not been possible to incorporate benefit data into our analysis of unit costs. However, two of our case studies (South Africa and Queensland, Australia) discuss studies where this type of data has been incorporated.

#### **Step 4: Scaling up and Benchmarking**

- 3.17 Once the input costs, size of the community served and benefits of a model of basic legal service provision have been estimated to produce a unit cost per capita, it is relatively straight forward to scale this up by population size to estimate the costs and benefits of service provision to the entire population, but the linearity of such an approach masks the nuances and complexity of real world situations. Capacity issues and potential economies of scale should be considered to scale up more realistically, as should the notion that extending coverage to the hardest to reach populations may actually involve diseconomies of scale and therefore higher unit costs of service provision.

- 3.18 The scale up cost gives the size of the funding required for national provision of basic legal services. However, it is by benchmarking the unit cost per capita against measures of the economy, government resource and spending prioritisation that it is possible to determine the government's prioritisation of justice relative to other sectors and the affordability of funding basic legal services to them. For example:

- **GDP per capita** contextualises scale up costs relative to the size of the economy;
- **Total government revenues per capita** situates the cost of scale up within the resources available to government;
- **Spending on justice/judiciary per capita** contextualises basic legal services as part of overall spending on justice as a % GDP spent on health and education; and
- **Share of the budget spent on justice/judiciary**<sup>88</sup> compared to share allocated to other sectors such as health and education assess the prioritisation of justice and spend on non-basic civil and administrative legal services and criminal legal services generally.

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<sup>88</sup> Note that there are a spectrum of budget lines which may be included under the umbrella of the justice sector including from funding to Ministries of Justice, Supreme Courts or courts and tribunal services, Attorney General's offices and Home Departments where they have responsibility for police and prisons. While only a proportion of the overall funding to the justice sector will target legal problems of a civil and administrative nature, and therefore be directly relevant to the provision of basic legal services, the functioning of the entire legal system, including spend on enforcement mechanisms such as the police, is essential for effective legal service provision at all levels. However, for the purposes of simplicity, in this report, we have focused on funding to the judiciary only.



## Applying the Methodology to the Typology: Unit Costs of Basic Legal Service Models

3.19 In order to demonstrate the methodology discussed above and capture what we know about unit costs, in what follows, we have applied the methodology discussed to a selection of country case studies below.<sup>89</sup> Where possible, we have also calculated scale-up costs and benchmarked these against country-level data.<sup>90</sup> Further details from the findings are at Appendices 2 and 3.

### 1. Community-based paralegals

#### Liberia: A Range of Approaches to Cost

3.20 The average yearly Carter Center operating budget between 2010 and 2014 was USD 447,095, and The Carter Center had an average annual case intake of 1272 cases in that time period. This produces a crude unit cost of USD 351 per case handled using a case capacity approach.<sup>91</sup> Attributing programme cost to both cases handled and the estimated 241,638 people sensitised or trained provides a unit cost of USD 1.85 per person directly interacted with.<sup>92</sup> Using a geographic reach approach produces numbers that are different again, 52 community justice advisers having worked for the Carter Center in 2014 serving ten communities each, with an average population reached an estimated 575,329 people at a unit cost of USD 0.78 per capita.<sup>93</sup> The differences in these figures demonstrate the impact of different approaches to catchment size.<sup>94</sup>

3.21 As to benefits, just over 60% of clients travel less than one kilometre to obtain the service sought and the majority of clients learned about services through awareness campaigns and word of mouth, both of which are potentially proxy measures of service quality.<sup>95</sup> There is also more direct data on outcomes: over 70% of cases were resolved with the help of a community justice adviser, 15% were not resolved, three per cent were resolved without the help of an adviser and 10% had unknown outcomes. Successful mediation also resolved 44% of cases handled.<sup>96</sup>

3.22 The estimated cost of scaling up current provision to a population of 4.4m is USD 3.4m.

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<sup>89</sup> While the majority of cost estimates in the case studies are based on primary data collected specifically for this study, some summarise secondary data and published studies.

<sup>90</sup> Data on government expenditure on the health and education sector is sourced from the World Development Indicators and data on expenditure on the judiciary is based on national budget publications.

<sup>91</sup> Email from Tom Crick at the Carter Center, 18 December 2015.

<sup>92</sup> Ibid..

<sup>93</sup> Ibid..

<sup>94</sup> We note that these figures also suggest that Liberia has legal need in the region of a tenth of its level in Rwanda and Sierra Leone: see Appendix 2.

<sup>95</sup> Ibid, pp.5-7.

<sup>96</sup> Ibid, p.10.



### **Myanmar: Namati Sector Specific Scale Up Estimate**

- 3.23 In the first 16 months of implementation, Namati's 30 paralegals working across 150 village tracts served 2,390 clients on cases affecting 7,992 people.<sup>97</sup> While paralegals do not aim to serve their entire coverage area, but rather focus on critical cases, their presence improves rights protection for the catchment population as a whole through the provision of civic education and advocacy.
- 3.24 While benefits have not been fully assessed or quantified, indicative information is that the resolution rate for cases in the first six months was 86%, while the resolution rate for all cases, including recently opened cases, was 41%.<sup>98</sup> We understand that early efforts have had substantial impact in securing land use certificates for farmers, converting vacant land into farmland, and returning land to small-hold farmers.
- 3.25 In its medium term plan, Namati estimates that the land-focused paralegal service could be scaled up to serve one third of the rural population over the next five years. The total cost at that scale has been estimated at USD 3.75 million to cover 30 organisations with an annual operating budget of USD 125,000 each.<sup>99</sup> The catchment size has been set at just over 13 million farmers, i.e. the targeted population, which provides a unit cost estimate of USD 0.28 per capita.<sup>100</sup> We estimate that the cost of scaling up current provision to the entire population of 53m would be USD 15.5m.

### **Sierra Leone: Namati National Scale Up Estimate**

- 3.26 In 2005, each of TIMAP's eight offices were handling an approximate average of 20 new cases per month,<sup>101</sup> and the programme planned to expand its operations from five chiefdoms to ten with an annual budget of USD 260,000 to include salaries for two lawyers, 23 paralegals, vehicle costs and overheads. TIMAP estimated that 80% of cases were resolved successfully so of ten new cases per paralegal (two paralegals per office) per month, it was estimated that 2208 cases would be successfully resolved per year, producing a cost of USD 117.75 per resolution.<sup>102</sup> Similarly, TIMAP estimated that the ten chiefdoms covered an area of approximately 736,000 people excluding Freetown, producing a programme cost of USD 0.34 per capita after a USD 10,000 discount for Freetown operations.<sup>103</sup> By 2012, coverage of some 40% of the population of approximately five million was being achieved on a budget of USD 1million.<sup>104</sup>

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<sup>97</sup> Namati (draft), 'Protecting Land Rights through Paralegal Services in Myanmar'.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Maru V. (2006). 'Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide', The Yale Journal of International Law.

<sup>102</sup> Ibid (2006).

<sup>103</sup> Ibid (2006).

<sup>104</sup> Internal Namati note (2012).



- 3.27 As to benefits, in a World Bank evaluation of TIMAP, researchers selected 42 cases handled by the programme and interviewed all parties involved.<sup>105</sup> The evaluation found that respondents were ‘overwhelmingly positive’ about their experiences, the programme’s effectiveness in resolving difficult disputes and empowering its clients.
- 3.28 Namati has estimated that to provide paralegal services throughout the country it would cost USD 2 million per year or USD 0.36 per capita, based on an office in most chiefdoms combined with a small corps of supervising lawyers.<sup>106</sup> Our estimate is very similar.

## 2. Microfinancing Justice

### Argentina: Using A Case Multiplier

- 3.29 In 2014, Microjusticia Argentina had an annual operating budget of USD 28,054 and handled a total of 441 cases.<sup>107</sup> This provides a crude unit cost estimate of USD 64 per case handled which is a substantial overestimate of the true cost per case as it does not account for the wider scope of the programme which has been expanding. This is evident from the fact that the operating budget of the programme substantially increased over the past three years (from USD 15,000 in 2013 to USD 48,000 in 2015) while the case load remained roughly stable. On the basis of the standard assumption that the reach of a programme is approximately 50 times wider than the number of cases handled, the per capita cost would be approximately USD 1.3.
- 3.30 We have not seen data on the benefits of the Microjusticia Argentina programme but would expect these to include a reduction in case load in the formal justice system. This is particularly so given the references in the legal needs survey to the slow resolution of cases and 80% of respondents indicating that outcomes are determined by wealth and power.<sup>108</sup> We would also expect to see a wide range of socio-economic benefits to the people directly served as well as the wider community. For example, the programme carries out substantial work in the area of obtaining formal documentation for clients, which enables them to seek formal employment and increase their income, receive social benefits, gain access to finance by opening bank accounts, receive student grants and complete their education, and participate in the democratic process.
- 3.31 Using a legal needs approach, the cost of scaling up current provision to a population of 43m is USD 54.7m.

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<sup>105</sup> Dale, P. (2009). ‘Delivering Justice to Sierra Leone’s Poor: An Analysis of the Work of TIMAP for Justice’. Justice for the Poor, World Bank.

<sup>106</sup> Maru V. and Gauri, V. (draft). ‘Bringing Law to Life: Community Paralegals and the Pursuit of Justice’.

<sup>107</sup> Email from Juan Bellocq at Microjusticia Argentina dated 14 October 2015 providing data in pesos and converted using an average exchange rate for 2014 of 0.105509.

<sup>108</sup> ACIJ (2013). ‘Disadvantaged Communities, Rights and Access to Justice: A Study of Unmet Access to Justice’.



### **Bangladesh: Using a Case Multiplier**

- 3.32 BRAC's Human Rights and Legal Aid Services (HRLS) programme operates 512 legal aid clinics in 61 of 64 districts across Bangladesh.<sup>109</sup> In 2014 HRLS handled 6,161 court cases but from 2016 a cap on the total number of cases will be set at 5,000 per annum costing a total of USD 0.3 million to handle.<sup>110</sup> On the basis that the clinics are almost district-wide, this is essentially a scale up cost albeit not one based on legal needs.
- 3.33 Nonetheless, to calculate the unit cost, limited data was available on costs and catchment size, the standard 50 people per case assumption was used, providing a crude unit cost estimate of USD 1.1. Since the cost estimate is based purely on the unit cost of representation at court, this is likely to be a substantial overestimate of the cost of basic legal service provisions (arguably representation at court does not even fall under the definition of basic and is the very high end of costs incurred in providing basic legal services).
- 3.34 As for benefits, as of April 2012, HRLS had received 175,205 complaints and resolved 94,804 through ADR; 30,601 had been filed in court and 20,798 judgments received; and of these 15,734 were in favour of BRAC clients and 2,301 were not.<sup>111</sup> A total of over USD 9 million had also been secured by way of monetary compensation.<sup>112</sup> Over 3.8 million women had been reached with legal education and 6000 shebikas (barefoot lawyers) and 8,300 odhikar shebis (community leaders) trained.<sup>113</sup> Usage of the formal justice system is already low due to cost and complexity.<sup>114</sup>
- 3.35 Using a legal needs approach, the cost of scaling up current provision to a population of 159m is USD 181.8m

## **3. National Community Law Centres**

### **Rwanda: Using a Case Multiplier**

- 3.36 MAJ has three lawyers per district, totalling 90 members of staff with an annual cost of USD 800,000.<sup>115</sup> Since the project is already present in each of the 30 districts, this is already the scale-up cost albeit not one based on legal needs. However, the figure only includes the cost of staff salaries and does not cover additional administrative costs or overheads.
- 3.37 In 2013-14, MAJ received and provided legal aid to 22,168 cases, 90% of which were of a civil nature.<sup>116</sup> The unit cost per case handled is therefore USD 36. However, to reflect the fact that

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<sup>109</sup> BRAC (2015). Human Rights and Legal Aid Services Programme available at <http://hrls.brac.net/>.

<sup>110</sup> Email from Sajeda Kabir, Programme Head of HRLS dated 26 October 2015.

<sup>111</sup> Kolisetty, A. (2014). 'Examining the Effectiveness of Legal Empowerment as a Pathway out of Poverty: A Case Study of BRAC, Legal Vice Presidency', World Bank.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid.

<sup>115</sup> Government of Rwanda (2014). National Legal Aid Policy. Ministry of Justice.

<sup>116</sup> Government of Rwanda (2014). Ministry of Justice Annual Report 2013-2014. Ministry of Justice.





MAJ reaches a wider community through advocacy and civic education, the standard multiplier of 50 has been assumed to estimate the size of the community served from the number of cases handled, providing a unit cost of USD 0.7 per capita.

- 3.38 Survey data provides some indication of benefits: 30% of people sought legal advice on a matter in the last three years but only 7% of these from MAJs and indeed fewer than 4% of the population sampled know they can get legal advice from MAJ (though 27% know about them) but satisfaction levels are high (79% in 2014).<sup>117</sup>
- 3.39 Using a legal needs approach, the cost of scaling up current provision to a population of 11.3m is USD 8.1m

#### 4. National Hybrid Models

##### South Africa: Cost-Benefit Analysis in Action

- 3.40 The National Alliance for the Development of Community Advice Offices (NADCAO) has carried out a cost-benefit analysis of community advice offices.<sup>118</sup> Costs of two idealised CAOs were estimated at R 500,000 and R 250, 000 or USD 46,000 and USD 23,000 based on the total project operating cost and the catchment size per office extrapolated from the number of users in the office on a sample of day (i.e. estimating the number of cases handled).
- 3.41 Costs were analysed against benefits which are quantified using a contingent willingness to pay approach asking what annual contribution users would make for the CAO (looking, for example, at the value accorded to a particular service received and the number of visits per year or asking what annual fee would be reasonable).<sup>119</sup> The willingness to pay approach does not necessarily fully capture the benefits to the state of not having to provide similar services through state entities and preventing adverse consequences.<sup>120</sup> So additionally, benefits were quantified in terms of a reduction in caseload for the national legal aid service. The potential additional caseload for the legal aid service was based on community advice centre users who indicated that they would have taken their problem to another government department or service if the office did not exist.<sup>121</sup>
- 3.42 The study finds that annual funding of USD 15,000 to 236 community advice offices would be strongly defensible from a value for money perspective as a core funding amount from the state

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<sup>117</sup> Rwanda Governance Board (2014). Rwanda Governance Scorecard.

<sup>118</sup> National Alliance for the Development of Community Advice Offices (2014). Towards a Sustainable and Effective Community Advice Office Sector in South Africa: A Cost-Benefit and Qualitative Analysis.

<sup>119</sup> NADCAO, pp.102-115. Ideally, willingness to pay (WTP) estimates should be analysed together with willingness to accept (WTA) estimates derived from the same sample of service users to obtain the most balanced results (i.e. because it has been widely shown that the WTP generally underestimates the true cost and WTA generally overestimates the true cost). However, the study did not evaluate the WTA responses since the question was not phrased clearly enough and seemed to have led to confusion based on responses given.

<sup>120</sup> NADCAO, p.116.

<sup>121</sup> Ibid, p.164.



to ensure the sustainability of the sector.<sup>122</sup> This provides a cost estimate of USD 3.5 million for a national scale up, serving a population of 54 million, at a per capita cost of USD 0.1.<sup>123</sup> The study's model estimates vary widely based on assumptions made, but suggest that funding at this levels could result in an overall project net value of USD 3.4million to USD 6.4million.<sup>124</sup>

### **Ukraine: Using a Case Multiplier**

- 3.43 The Open Society Justice Initiative estimated that in 2014, a community law centre cost approximately USD 8,000 to USD 12,000 per year to operate and directly provided an average of 961 services.<sup>125</sup> This provides a crude unit estimate of USD 8.3 to USD 12.5 per case handled or client seen.
- 3.44 A legal needs assessment has been conducted by the International Renaissance Foundation carried out an assessment of the accessibility and effectiveness of legal services in Ukraine which found that of the 2,500 people surveyed, on average, 54% had encountered at least one legal problems in the past three years of which 55% described the problem as “very important”. However, lawyers only played a decisive role in resolving 5 per cent of incidents, the majority of other being resolved by individuals themselves, some with the assistance of relatives, government institutions, NGOs and trade unions and in other cases the problems resolved themselves.<sup>126</sup> This would suggest that the intervention provided by community law centres in the Ukraine is barely touching the surface of basic legal needs in the Ukraine.
- 3.45 Assuming a multiplier of 50 to scale up from cases handled to the community served, the per capita cost of this programme would be USD 0.2.
- 3.46 Using this legal needs approach, the cost of scaling up current provision to a population of 45m would be USD 9.4m.

## **5. Justice Hubs**

### **Kenya: Using a Case Multiplier**

- 3.47 The annual operating costs of HiIL's M-Sheria project amount to USD 112,758.<sup>127</sup> The project directly reaches 20,000 people, providing a unit cost of USD 5.6 per client served. Assuming that the project serves a wider community than the number of people directly reached, i.e. cases handled, a

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<sup>122</sup> NADCAO, p. 11.

<sup>123</sup> Ibid, p.12.

<sup>124</sup> Ibid, p.12.

<sup>125</sup> Open Society Foundations (2015). 'Delivering Community Justice Services at Scale: Community Law Centres in Ukraine'. Also email from Olga Halchenko, Coordinator of Programme Initiatives 'Human Rights and Justice', International Renaissance Fund, dated 19 October 2015.

<sup>126</sup> International Renaissance Foundation (2011): Level of Legal Capacity of the Ukrainian Population: Accessibility and Effectiveness of Legal Services.

<sup>127</sup> Email from Aimee Ongeso, Programme Coordinator Kituo Cha Sheria, dated 11<sup>th</sup> November 2015.



multiplier of 50 has been applied to estimate the catchment size, providing a unit cost of USD 0.1 per capita.

- 3.48 Using this legal needs approach, the cost of scaling up current provision to a population of 45m is USD 5.1m.

### **OECD Comparisons**

- 3.49 In order to develop a comparative picture of unit costs as well as to underpin a benchmarking analysis in OECD countries, we next consider three interventions in HICs where there is cost data available: legal aid in Queensland, Australia; Community Legal Centers in Ontario, Canada; and Citizens Advice Bureau in the UK. Since each of these interventions is already scaled up to some extent to provide national or provincial-wide coverage, for the purposes of this analysis we assume that current provision adequately meets legal needs – although we recognise that in reality this is not the case.<sup>128</sup>

### **Australia (Queensland): Cost-Benefit Analysis of Legal Aid**

- 3.50 By way of comparison with NADCOs South Africa study, Pricewaterhouse Coopers (PwC) have conducted a cost-benefit analysis of legal aid assistance to the community in Queensland, Australia.<sup>129</sup> A cost-benefit analysis was undertaken to assess increased efficiency, in terms of the avoidance of costs to the justice system, of services which included the provision of duty lawyers, dispute resolution services, and legal representation, modelled against a counterfactual that assumes a world with no legal aid. The study did not quantify the benefits associated with educational services and legal advice services but it did recognise the relevance of educational and information services as well as those provided to clients directly: see Figure 2 below.

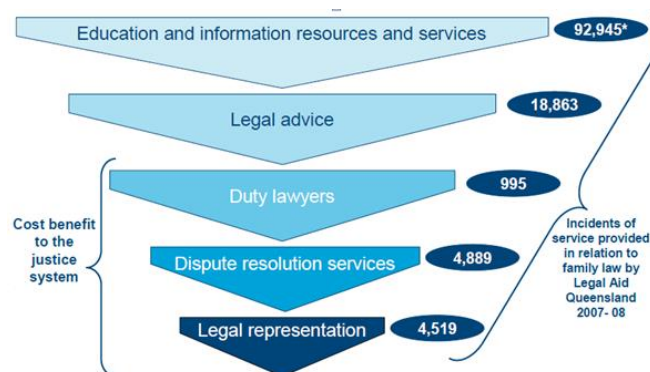
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<sup>128</sup> So, for example, the Canadian Bar Association recently analysed gaps in legal service provision in its report (2013), *Reaching Equal Justice: An Invitation to Envision and Act* which has fed into the nine point programme for change of the independent national Action Committee on Access to Justice in Civil and Family Affairs (2013), *Access to Civil and Family Justice: A Roadmap for Change* (2013). Similar studies have taken place in England and Wales, for example, the Law Society's *Unintended Consequences: the cost of the Government's Legal Aid Reforms* (2011) and the Public Law Project's *The Value and Effects of Judicial Review* (2015).

<sup>129</sup> Pricewaterhouse Coopers. (2009). 'Economic value of legal aid: analysis in relation to Commonwealth-funded matters with a focus on family law'.



**Figure 2: Catchment size - legal aid services (Queensland, Australia)**



\* Total incidents of information provided in relation to Commonwealth civil, criminal and family law

3.51 The cost-benefit analysis is summarised in Table 2 below and Table 3 then explores several models of monetised benefits. The study concludes that there is a strong economic case for appropriately and adequately funding legal aid services, based on the magnitude of the quantitative benefits as well as the potential qualitative benefits that have not been quantified.

**Table 2: PwC cost benefit analysis of legal aid in Queensland<sup>130</sup>**

Benefits – avoided costs (million USD)	Funding legal aid (million USD)	Net benefits (million USD)	Benefit – cost ratio
53.50	23.81	29.69	2.25

**Table 3: PwC cost benefit analysis - monetised benefits**

Case study	Potential outcome without legal aid	Avoided cost type	Avoided cost
1	Underlying issues contributing to family violence not identified and addressed	Continuation of domestic violence over the life of the victim	USD 93,449
2	Child taken out of grandmother's care	Child living in out of home care from 1 to 18 years	USD 31,759 to USD 527,921
3	Family loses home	Housing related costs and children living in poverty for one year	USD 57,210

3.52 Assuming the USD 23.8 million funding provided for the legal aid scheme in 2009 adequately served the population of the state, this produces a cost of USD 5 per capita.

<sup>130</sup> The study made assumptions about case outcomes in order to model avoided costs since data on outcomes of legally aided matters commended in the court were not available. Results are presented for the scenario in which 50 % of legal aid matters result in mediated agreements and 50% result in final orders. Weight is given to final order outcomes, which is supported by findings of Dewar et al (2000) that self-representing litigants are less likely to settle.



### Canada (Ontario): Community Legal Centre Provision

3.53 In 2013-2014, Legal Aid Ontario's 56 community-based legal clinics operated on an annual budget of USD 44 million and served a catchment area with a population of 12.8 million people.<sup>131</sup> Assuming this funding was sufficient, the cost per capita was approximately USD 3.4, or USD 15.4 per low-income person in the catchment area. Additionally, data is available on the LAOs duty counsel programme, which costs USD 13 per civil case to run.<sup>132</sup>

### UK: Value for Money of CABs

3.54 In 2014-15, the Citizens Advice UK network in 600 local Citizens Advice premises and over 2,000 community centres, doctors' surgeries, courts, and prisons across England and Wales estimated that it helped 2.5 million people, handled 6.2 million issues directly and provided information to the 20.7 million people that accessed its web page.<sup>133</sup> With an annual budget of USD 361 million,<sup>134</sup> then assuming national and sufficient coverage, this produces a cost estimate of USD 6.3 per capita.

3.55 Looking at benefits, a project evaluation in 2014-15 found that the project helps two in three people resolve the problem they came to address, and that for every £1 spent:<sup>135</sup>

- The government saves £1.51 through reductions in health service demand, local authority homelessness services and out of work benefits;
- £8.74 of wider economic and social benefits are achieved such as improved health, wellbeing, participation and productivity; and
- Direct clients benefit by £10.94 through income gained in benefits, debts written off, and consumer problems resolved.

### Findings on the Costs of Scale-Up

3.56 In the majority of case studies presented in this report, data availability has limited the assessment to the monetary costs of basic legal service provision in the form of operating budgets for community legal clinics or paralegals to calculate the unit costs of current provision. In some cases it was indicated that coverage was sufficient for a given geographic community, allowing a straightforward per capita cost estimate for scaled up provision. In other cases data was only available on the number of cases handled, which required an extrapolation to estimate the size of the community served. At this point in the research the standard assumption was made that the coverage is fifty times the number of cases.

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<sup>131</sup> Legal Aid Ontario (2014). 'Statement of Operations'.

<sup>132</sup> Ibid.

<sup>133</sup> Citizens Advice. (2015). 'The value of the Citizens Advice service: Our impact in 2014-15'.

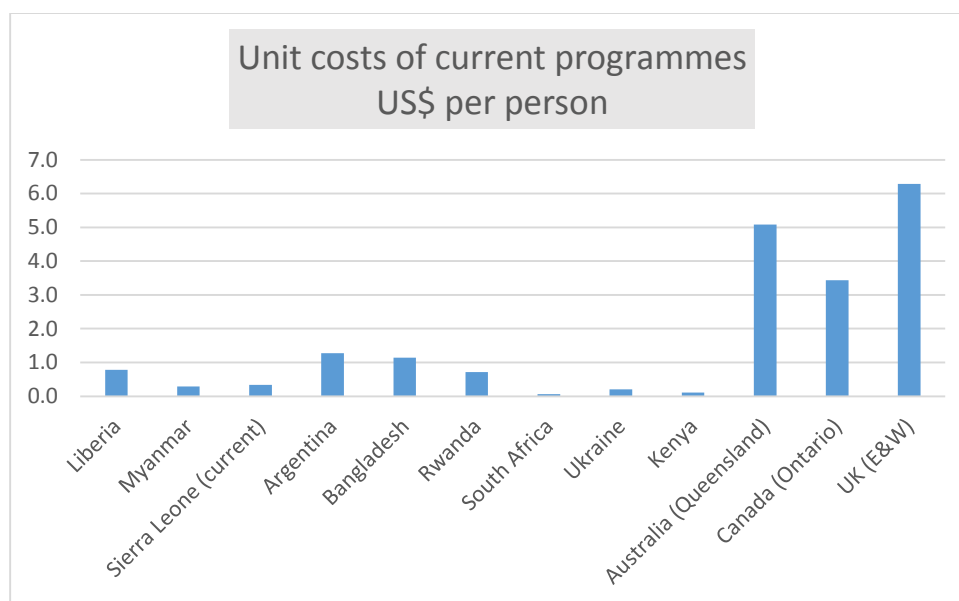
<sup>134</sup> Ibid.

<sup>135</sup> Please note: Details on the benefit-cost analysis are not provided in the evaluation report. The headline figures have been added for illustrative purposes, but this is in no way an endorsement of the methodology used or accuracy of the figures.



3.57 Based on these assumptions, Figure 3 and Appendix 3 show that **the range of per capita costs of scaling up basic legal service provision for the cases studies in non-OECD countries covered is USD 0.1 to USD 1.3 per capita.**<sup>136</sup> In four cases where separate detailed analysis (Myanmar, Sierra Leone, Rwanda and South Africa) has been carried out on the costs of nationwide coverage based on scaling up current provision the costs are much lower and range from USD 0.1 – 0.3.<sup>137</sup> In OECD countries, it is between USD 3 and USD 6, likely reflecting the higher cost of wages.

Figure 3: Unit costs of current programmes (USD per person)



3.58 Appendix 4 benchmarks these unit costs against five key indicators: GDP; government revenue and spending on judiciary, health and education. This data merits further analysis but three points stand out already:

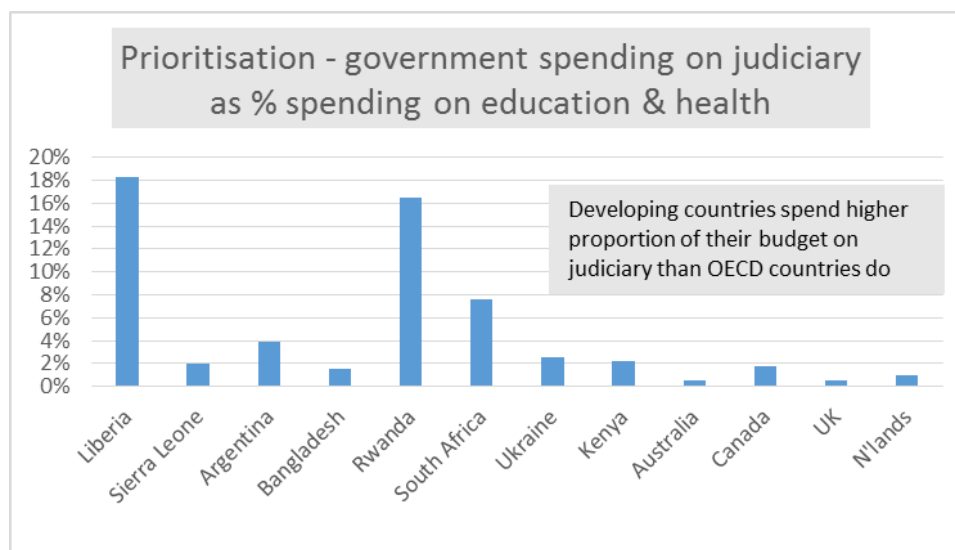
- **Developing countries are already strongly prioritising spending on judiciary.** Figure 4 shows that in all the developing country case studies, spending on judiciary as % of total spent on health and education is at least as high as the OECD average of 1%. In contrast, in most countries spending is 2-8 times higher than in the OECD and in Rwanda and Liberia the spending ratio is 15 times higher.

<sup>136</sup> This seeks to provide an overview without endorsing the drawing of like for like comparisons; since the methodologies behind the cost and benefits vary widely and the programmes operate in hugely distinct contexts, such comparisons should not be drawn haphazardly.

<sup>137</sup> Myanmar, Sierra Leone, South Africa and Rwanda.

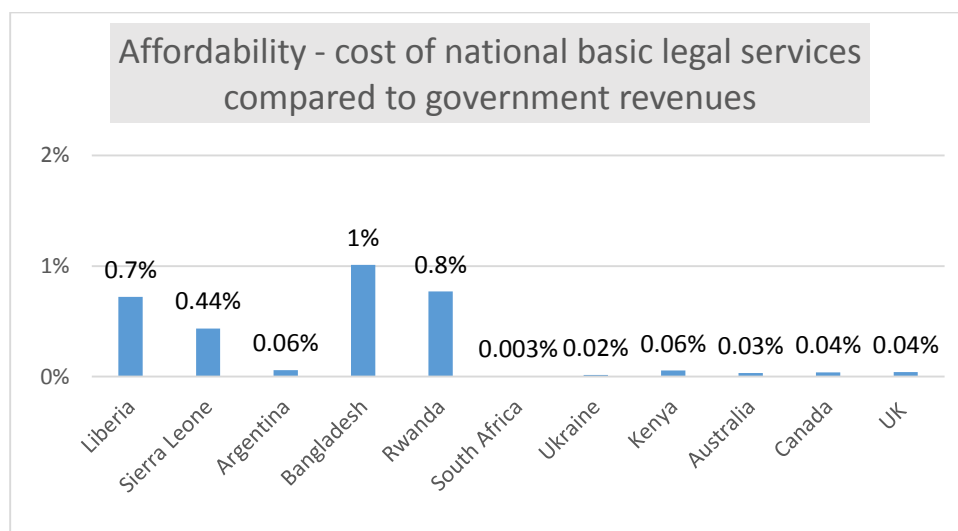


Figure 4: Prioritisation – government spending on judiciary as a percentage of spending on education and health



- **In three low/lower middle income countries the cost of basic legal services looks very high – and potentially unaffordable - relative to government revenues.** Figure 5 shows in the OECD countries there is a striking similarity in the ratio of basic legal services to revenue – the range is just 0.03-0.04%. By contrast the ratio in Sierra Leone is ten times larger, Liberia seventeen times and Bangladesh twenty five times. South Africa by contrast seems very affordable - just one tenth of the OECD level.

Figure 5: Affordability – cost of national basic legal services compared to government revenues

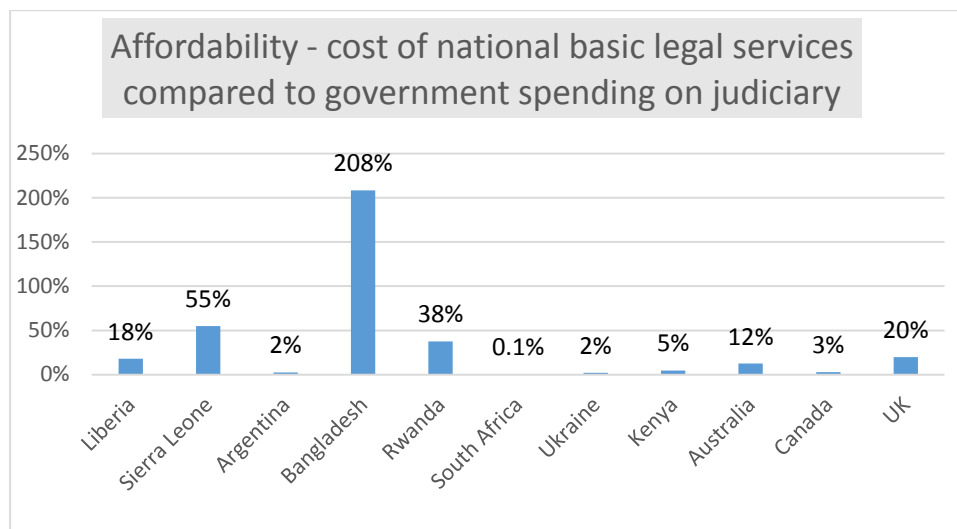


- **Two of these three countries also appear to be spending a disproportionately high amount on basic legal services relative to their spending on judiciary,** although note that this includes government tax revenues as well as on-budget support from donors. Figure 6 shows that in OECD countries the ratio ranges from 3-20%. By contrast the ratio in Sierra Leone is over



50% and Bangladesh over 200%. Again South Africa appears very affordable – its costs are just 0.1% of spend on the judiciary.

**Figure 6: Affordability – cost of national basic legal services compared to government spending on judiciary**



3.59 The above analysis suggests a number of avenues for further work:

- **Wider collection and deeper analysis of legal needs surveys** to better understand the scale and type of demand for basic legal services (including demand on criminal justice system and traditional justice systems), what demand is being met by existing legal service provision and what is not and why (for example because existing provision is unaffordable for the majority of people);
- **Wider collection of a broader range of cost and benefit data** (in particular, non-monetary costs and monetary and non-monetary benefits) for use in cost-benefit analyses of basic legal service provision;
- **More widespread use of macro-level data to benchmark costs** including possible development of three affordability benchmarks<sup>138</sup> relative to revenue, spending on judiciary and spending on health and education, to ensure country programmes are based on sustainable level of unit costs and to support bids for donor funding at an individual country level; and
- **Development of an agreed definition of basic and primary justice concepts** to enable the justice sector to be on the same footing as education and health in global financing discussions,

<sup>138</sup> These benchmarks might be expressed in the form of ranges – clearly affordable; affordable; possibly unaffordable; definitely unaffordable (e.g. when ratios are more than three times that of OECD countries).





debates on implementation of Global Goals and value for money analysis such as the Copenhagen Consensus.<sup>139</sup>

## Cost Saving and the Use of Technology

3.60 While the per capita cost of basic legal service in low/lower middle income countries is much lower than in OECD countries (typically 5-10% of OECD), the unit costs are a much higher proportion of total tax revenues (typically ten times higher). There is therefore an even greater incentive in the poorer countries to consider ways in which that cost can be further reduced to make the services more affordable and sustainable. Here we consider specifically the prospects of technology having real, game-changing potential to bring the costs of service provision down. The value of technology is likely to be less in poorer countries. While the costs of computers and mobile phones are the same the value of time saved is likely to be much lower as wages are much lower. However the introduction of technology enables poorer countries to overcome the otherwise binding constraint of a very limited number of trained legal experts.

### Access to Technology

3.61 At the outset, it is important to recognise that effective use of the technology is more complicated than simple physical access;<sup>140</sup> skills and motivation to use the technology must be considered as well.<sup>141</sup> Accordingly, those excluded from the use of technology are likely to be disproportionately poorer, less well-educated and older. This has important implications for the use of technology in LICs.

3.62 The Pew Centre has studied the use of mobile technology in 32 emerging or developing countries and concluded that countries fall into at least three bands (% of the population with access):

- Well-connected (over 60%): this includes China and Argentina alongside Chile, Russia, Poland, Venezuela and the United States (87%);
- Moderately connected (40-60%): this includes South Africa and the Ukraine alongside Brazil, Egypt, Mexico, Malaysia, Thailand, Vietnam; and
- Poorly connected (below 40%): this includes Bangladesh (11%), Kenya (29%) and Pakistan (8%) alongside Ghana, India and Tanzania.

3.63 In contrast, a World Bank Review focuses on 'ICT (information and communications technology) readiness' that is seen as dependent on factors including existing use of technology, capacity in

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<sup>139</sup> Lomborg, B. (2014). 'Preliminary benefit-cost assessment of the final OWG outcome'. Copenhagen Consensus Centre.

<sup>140</sup> Smith, R. (2015). 'Digital Delivery of Legal Services to People on Low Incomes'. Available at <http://www.thelegaleducationfoundation.org/digital-report> last accessed 12 November 2015.

<sup>141</sup> Hesper, E. et al. (2015). 'From digital skills to tangible outcomes: Improving measures and models of internet use'. Oxford Internet Institute, LSE, University of Twente. Available at [www.oii.ox.ac.uk/research/projects/?id=112](http://www.oii.ox.ac.uk/research/projects/?id=112) last accessed 12 November 2015.



relation to literacy on the one hand and available bandwidth on the other and financial capability.<sup>142</sup>  
On this basis, states in Africa are divided into three categories:

- ICT ready states: South Africa, Egypt, Morocco and Tunisia;
- ICT progressing states: Nigeria, Cameroon, Tanzania, Algeria, Seychelles and Ghana; and
- ICT potentially progressing states: Botswana, Malawi, Central Africa, Chad, Guinea, Somalia, Ethiopia, Burkina Faso, Sierra Leone, Ivory Coast and Rwanda.<sup>143</sup>

3.64 Whichever approach is taken, mobile phone ownership in LICs is far higher than internet access but typically in relation to conventional phones rather than smartphones.<sup>144</sup> There is, however, high usage of text facilities and moderate use of video and photograph functionality, particularly among younger age groups.<sup>145</sup> Internet usage is further constrained by the fact that the dominant language on it is English (26% of users), followed by Chinese (21.5%) and then Spanish and Arabic. This suggests that internet-based provision of basic legal services in LICs is likely to be less useful than mobile-phone based access for some time.

3.65 However, it is important to remember that access to technology is not a static picture. One estimate of credible annual growth of access to the internet specifically is 7.9%<sup>146</sup> and this is like to be disproportionately outside OECD countries where access is already relatively high and given the presence of internet access in Global Goal 9. Access to the internet is therefore likely to improve in LICs and probably quite quickly but cannot be counted on yet.

### Use of Technology in HICs

3.66 Technology can be used in support of basic legal services by assisting:

- Paralegals or lawyers i.e. providing some form of backup for front line deliverers of service e.g. information, management and other services;
- Members of the public directly; and
- Members of the public but accessed via a lawyer, paralegal or other intermediary.

In HICs, for the most part, basic legal services are still delivered in fairly traditional ways. However, things are slowly beginning to change, with innovations in the second and third categories over and above the use of technology that has existed in the first category for some time.

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<sup>142</sup> Benyekhlef, K. et al. (2015). 'ICT-Driven Strategies for Reforming Access to Justice Mechanisms in Developing Countries'. World Bank Legal Review Volume 6.

<sup>143</sup> Abdel Wahab, M. et al (2012). 'Online Dispute Resolution: theory and practice - A Treatise on Technology and Dispute Resolution'.

<sup>144</sup> Ibid.

<sup>145</sup> Schmidt, E. & Cohen, J. (2013). 'The New Digital Age: Reshaping the Future of People, Nations and Business', p. 20.

<sup>146</sup> Internet live stats. Available at <http://www.internetlivestats.com/internet-users/> last accessed 12 November 2015.



3.67 Technology is being used to produce **variations in service packages**:

- **Divorce Online** offers a basic divorce assistance package at £69 and offers three other packages with escalating levels of management and advice up to £399.<sup>147</sup>
- UK-based **Co-operative Legal Services** offers a fixed fee basic family law service for £99 + VAT.
- In New South Wales, Australia, **LawAccess NSW** offers a package of services based around a core website, including a telephone-call centre and a sister website that assists with self-representation.<sup>148</sup>
- Epoch sells document assembly programmes such as **Rapidocs** which assist with the drafting of documents such as wills backed-up by employed lawyers who communicate through skype-style phone or video with clients and sign off on the completed package.
- **Hotdocs** is a leading US supplier of programmes 'to generate everything from simple, single-page letters and NDAs to complex contracts and estate planning documents, all in a fraction of the time it would take to do it the old, cut-and-paste way and with much greater accuracy.'<sup>149</sup>

3.68 Technology is also being used to produce **mobile-phone based services**:

- Australian firm **Slater and Gordon** and the Cycling Touring Campaign (CTC) have developed a smartphone app for recording information relating to a road traffic accident involving a car to send to the firm to begin a claim: witness contact details; third party contact and vehicle details; weather conditions; photos of the scene; equipment damage; any injuries; and the time, date and location via GPS.<sup>150</sup>

3.69 Finally, technology is being used to deliver **internet-based services**:

- **Rechtwijzer 2.0** (translated as 'signpost to justice') is an online dispute resolution platform which launched in the Netherlands in October 2012. It was developed by the Hague Institute for the Internationalisation of Law (HiiL) and is funded by the Dutch Legal Aid Board. The platform uses a diagnostic question and answer tree which leads into a selection of unbundled dispute resolution services. Flat fees are charged at each new service point beginning with the dialogue stage and then for each professional service requested thereafter.

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<sup>147</sup> Divorce Online. Available at [www.divorce-online.co.uk](http://www.divorce-online.co.uk) last accessed 12 November 2015.

<sup>148</sup> Smith, R., and Paterson, A., (2013). 'Face to Face Legal Services and their Alternatives: Global Lessons from the Digital Revolution'.

<sup>149</sup> Hotdocs. Available at <http://www.hotdocs.com> last accessed 12 November 2015.

<sup>150</sup> National Cycling Charity, (2013, December 19). 'CTC launch iPhone 'Crash Kit' app'. Available at <http://www.ctc.org.uk/news/ctc-launch-iphone-crash-kit-app> last accessed 12 November 2015.



- British Columbia is planning a **Civil Resolution Tribunal** providing an integrated approach which takes the user through from initial information and advice to resolution of a small claims dispute (and a form of housing dispute).
- UK-based sites like [roadtrafficrepresentation.com](http://roadtrafficrepresentation.com) produce automated advice depending on information which the user inputs to advise on likely sentence of a road traffic prosecution and print out a brief to Counsel.
- **Adviceguide.org.uk** (which is provided by the citizens advice movement) and **advicenow.org.uk** (a site provided by advisers outside citizens advice) both offer internet-based advice on basic legal problems. In Canada, [clicklaw.bc.ca](http://clicklaw.bc.ca), [educaloi.qc.ca](http://educaloi.qc.ca) and [yourlegalrights.on.ca](http://yourlegalrights.on.ca) perform similar functions.

### Use of Technology of in LICs

3.70 Innovative uses of technology in LICs display a similar pattern:

- In **India**, Law Farm offers a fixed fee for an initial 15 minute telephone consultation for a fixed fee of Rs299 (about USD 5) while Law Service India offers an online legal forum, online chat facility every afternoon from 2-9pm and a fixed fee email advice service for Rs1200 (about USD 18). However, none of the state's legal aid bodies uses much technology beyond 24 hour telephone helplines, of which Kerala opened the first in 2006 and the 133,847 ICT-enabled village level Common Service Centres around the country to access government, financial, social and private sector services do not yet offer legal services.
- The M-Sheria project in **Kenya** operated by HiiL and Kituo Cha Sheria from 2012 has experienced delays in moving beyond the initial pilot stages owing to the difficulties associated with setting up the necessary technology. The last questions posted on the central website date from May 2015 and the last answers date from 2013.
- **Legal Aid South Africa** operates a toll-free legal advice line that serviced 42,866 consultations in 2013-14, a relatively small but significant percentage of all consultations - around 12%. The Board plans to add a document assembly facility through Hotdocs that will allow users to complete of pleadings, documents and forms that can then be signed off by Board. It is hoped that a 'justice system navigator' will be added to help users through court processes.<sup>151</sup>

In the **Ukraine**, the CLC network is developing online 'chat' with lawyers, as well as an android application for smart phones. Skype-consultations are practiced in different centres, often in cooperation with local libraries that have computer rooms. However, a study by the International Renaissance Foundation suggests that the use of telephone and email

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<sup>151</sup> Email from Patrick Hundermark, Chief Legal Executive of Legal Aid South Africa to Roger Smith dated 19 October 2015.



consultations in CLCs carries risks in terms of the quality of instructions that can be taken while web consultations are more valuable for CLCs than for clients.<sup>152</sup>

### Findings on Technology as a Cost Saving Measure

- 3.71 Notwithstanding the developments in HICs, it is premature to see technology as a replacement for individualised assistance rather than as **a supplement to more traditional forms of delivery**. So, Epoch's Rapidocs is backed up by legal assistance provided through phone and video, Rechtwijzer 2.0 is backed up by a system of legal counters and sites like Adviceguide.org.uk are part of a national network of CABs. Time is needed to see whether private provision using low cost unbundling, document assembly and online assistance can adequately substitute for conventional personal legal services so at this moment, it would not be safe to cut those traditional services.
- 3.72 In most LICs, such low sums are being spent on justice provision that it is difficult to see that technology will allow reduction of the budget. This is particularly the case because most countries prioritise the provision of legal aid in criminal cases in order to meet their obligations under the international human rights obligations where they are generally clearer than for civil cases.<sup>153</sup> Going forward, the best use of ICT is **modular, collaborative, uses technology which is widely available, and is adapted to the level of access available in the country concerned**. To this end, the potential of older forms of technology should not be forgotten: 'radio has so far had the biggest impact in development of all technologies but because it is low-tech is often overlooked'.<sup>154</sup> The most fruitful approach apart from infrastructure support may be that demonstrated in the projects that focus on paralegals or advice agencies rather than individual users.
- 3.73 Further work to evaluate the use of technology would be valuable. Such work would look in particular at whether those on low incomes are able to use the services provided and whether the quality of assistance is as good as that provided by traditional means as well as flagging those cases that require such assistance.

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<sup>152</sup> International Renaissance Foundation, Open Society Foundations & UNDP. (2013). 'Legal aid in Community: manual on creation and administration of community law centres'.

<sup>153</sup> e.g. under Article 14 of the International Covenant for Civil and Political Rights and the various regional equivalents, such as Article 6 European Convention on Human Rights.

International Covenant for Civil and Political Rights. Available at <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> last accessed 12 November 2015.

European Convention on Human Rights. Available at [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) last accessed 12 November 2015.

<sup>154</sup> Young, H. (2015, June 3). '2015 challenges: how can technology and innovation be a force for good?' Available at <http://www.theguardian.com/global-development-professionals-network/2015/jun/03/2015-challenges-how-can-technology-and-innovation-be-a-force-for-good> last accessed 12 November 2015



## Chapter 4: How can scaled up legal services be financed sustainably?

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4.1 Basic legal services can be financed sustainably through: governments, donors, philanthropists, the private sector, users and hybrid models.<sup>155</sup> In what follows, we develop a typology of models in each of these categories, drawing on examples from the health and education sectors where appropriate, and consider which of these models are likely to be more or less suited to the financing of basic legal services.

### Government and Government-Marshalled Financing

4.2 One clear conclusion from the analysis above is the extent to which low and lower middle income countries are already prioritising spending on the judiciary. This would suggest there are resources potentially available for countries to fund at least some of the cost of basic legal services. However there are two important caveats.<sup>156</sup> First the costs of these programmes would need to be clearly affordable – in proportion to spend on the judiciary and relative to government revenues. Second the political incentives around funding state-provided justice and non-state provided justice e.g. paralegals, may be very different. While governments may be able to contribute they may choose not to do so. The political economy issues around this decision are considered in detail in Chapter 5.

### National and Sectoral Strategies

4.3 Governments can ensure alignment between national development goals and line agencies through overall national strategies that are reinforced by budget allocations as incentive and accountability mechanisms.<sup>157</sup> In some cases (for example Uganda, Rwanda and Sierra Leone) justice sector strategies linked to national resource allocation processes ‘nest’ under such national strategies, and provide more specificity about government strategies and plans for the justice sector, which in each of these three cases include enhancing access to justice at community level.

### Priority Sector Funding

4.4 In order to encourage certain sectors of the economy to grow, certain LICs have created priority sectors into which they channel private finance. The Nigerian and Indian governments, for example, have identified priority areas for finance – most commonly, education, agriculture and SMEs – and have required financial institutions and other private sector players to allocate a percentage of their profits or assets into those sectors. In South Africa the government passed Black Economic

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<sup>155</sup> OSJI. (2015). ‘Legal Empowerment Charette: Innovative Financing Models for Funding Basic Legal Services’.

<sup>156</sup> Another issue is likely to be the relationship with traditional justice and its funding needs and modalities.

<sup>157</sup> Linn, J. Incentives and Accountability for Scaling Up in Chandy et al. (2013). ‘Getting to Scale: How to Bring Development Solutions to Millions of Poor People’, p.147.



Empowerment (BEE) legislation in the late 1990s, post-Apartheid, requiring companies to set aside a percentage of profits to fund BEE.

- 4.5 A pool of funding to fund basic legal service provision could be created in a LIC if the government decided that basic legal service provision was a priority area. Governments could impose special levies or taxes on the private sector to fund this new priority sector. So, in Sierra Leone, Namati has advocated for a provision, now included in the draft Bioenergy and Food Security Guidelines, which requires firms interested in large-scale land acquisitions to contribute to a basket fund which will in turn support legal representation via paralegals for land-owning communities.<sup>158</sup> However, this requires a sufficiently attractive sector to sustain such investment notwithstanding such measures as well as generating political will in support of them.

### **Cross-Sector Programming**

- 4.6 Providing basic legal services in the context of other primary service delivery such as education or healthcare can provide opportunities to access sector-specific government financing. So, for example, in Mozambique, Namati works with community-based paralegals focused on ensuring the effectiveness and accountability of health services. Government spending on healthcare is USD 1 billion annually while spending on legal aid is a tiny fraction of that sum.<sup>159</sup> Namati estimate that 0.5% of healthcare spending could pay for health-focused paralegals throughout much of the country.<sup>160</sup>

### **Social impact bonds**

- 4.7 Social impact bonds (SIBs) combine public investment with private finance to enable delivery organisations to provide services on a Payment By Results (PBR) basis. Under a PBR contract, a government pays service providers on the achievement of certain pre-agreed results. This means that the service provider must cover the upfront costs of delivery, which is often difficult for social enterprises and charities that may not have access to sufficient working capital. SIBs offer a means of bridging this gap, by enabling socially-minded investors to fund the provision of a specific service on the basis that they will receive a return on their investment if the agreements set out in the PBR contract are met. Generally speaking, the more successful the programme, the greater the return to investors, usually up to a pre-agreed cap. At the centre of these arrangements is usually an intermediary organisation, responsible for coordinating between investors, service providers and outcome funder, and putting together an agreement that fits all of their needs.
- 4.8 The first SIB was launched by Social Finance UK at Peterborough Prison in 2010 with the intention of reducing reoffending rates and outcome payments were based on a reduced number of reconvictions amongst the cohort group compared to a non-cohort group. It is worth noting the measurement challenges which the project faced and the difficulties these raised for sustaining

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<sup>158</sup> Namati (draft). 'Building a Movement of Grassroots Legal Advocates: Strategic Plan 2016-2018'.

<sup>159</sup> Ibid.

<sup>160</sup> Ibid.



private finance: the introduction of probationary services for all offenders left the programme without an “unserved” population or control group to measure results and therefore success against. Nevertheless, an increasing number of SIBs have been introduced in the UK, US and other developed contexts during the past five years as means of facilitating social investment, primarily in the fields of criminal justice and social care but also in health and education (see Box 1).

**Box 1: The Punjab Education Foundation (PEF)<sup>161</sup>**

PEF is an autonomous statutory body established in 1991 which receives money from the Punjab Government, the World Bank and DFID for its education programmes. The Fund currently assists more than 1,300 schools, reaching around 600,000 students.

Through its Foundation Assisted Schools programme, primary and secondary schools are given per student subsidies on the condition that they offer free education to all students and achieve a minimum student pass rate of 67% on the Quality Assurance Tests (QAT). Bonuses are awarded to the teachers and schools with the highest pass rates.<sup>162</sup>

The Pakistani government is both willing to invest in improving the quality of service delivery in the education sector and able to engage effectively with private sector partners. It has also developed clear methods for measuring educational outcomes. PEF therefore represents a prime developing country opportunity for SIB investment.

- 4.9 The suitability of SIB funding for basic legal service provision rests on such **services generating a proven social benefit**, that benefit being susceptible to **clear and quantitative measurement** and the **ability of government to ultimately pay providers for that benefit**. This is perhaps more likely to be the case with basic legal problems that address subsistence needs and less likely with those that assist with problems relating to goods and services. An alternative that might be more suitable to problems relating to goods and services might be cash transfers, which have been used in the context of school attendance and vaccination, for example through the Brazilian Bolsa Familia programme, and might potentially be used in conjunction with birth registration as the focus here is more on outputs than outcomes.

## Donor financing

- 4.10 As noted earlier, donors have funded justice relatively sparsely in comparison with education and health. As Figure 7 shows, there has been an increase in spending on justice and its share has increased three fold in the last nine years from 0.7% in 2005 to 2.0% in 2013.<sup>163</sup> However, as Figure 8 shows, this increase has been focused in a handful of countries – Afghanistan, Mexico and West Bank/Gaza. Moreover, as Figure 9 shows, the increase has overwhelmingly been funded by the US whose spending has increased six fold over this period and who now accounts for 59% of all aid to

<sup>161</sup> <http://www.pef.edu.pk/>

<sup>162</sup> A World Bank impact assessment found the PEF to be one of the cheapest programmes for increasing enrolment in the developing world. Through its Education Voucher Scheme, children aged 4 - 17 from poorest families receive free education in the nearest (PEF EVS) private schools of their own choice. PEF-supported schools have seen significant increases in the number of students and schooling inputs, improved gender ratios and low dropout rates.

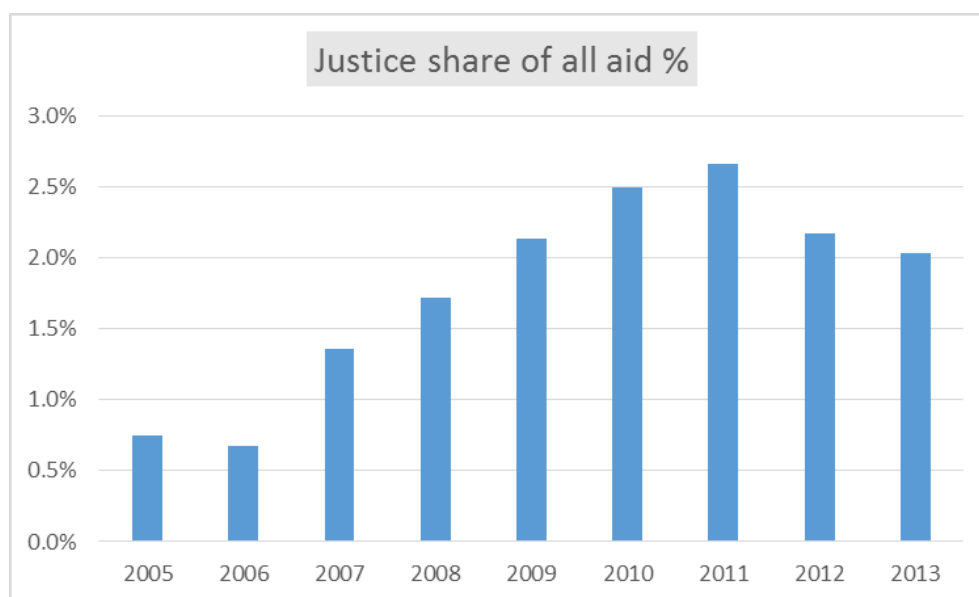
<sup>163</sup> LDP analysis of OECD DAC CRS database, ibid





the justice sector. The EU is the next largest donor but its share of the total has fallen from 21% to 15%. Japan has rapidly grown its programme from almost zero in 2005 and is now the third largest donor, providing 7% of the total. While the UK and UNDP are traditionally linked to justice sector each only accounts for 1% of total aid. Australia, Germany and Netherlands all provide more aid.<sup>164</sup> The current low levels of aid are both a challenge and an opportunity to press for additional funding e.g. linked to the new Global Goal 16 on justice. DFID has recently launched a new Policy Approach to the Rule of Law and is currently reviewing all its programmes. It is worth considering how this mood of the moment might be capitalised on, while recognising that such funding streams are dependent on international and domestic politics and policy trends in aid and security.

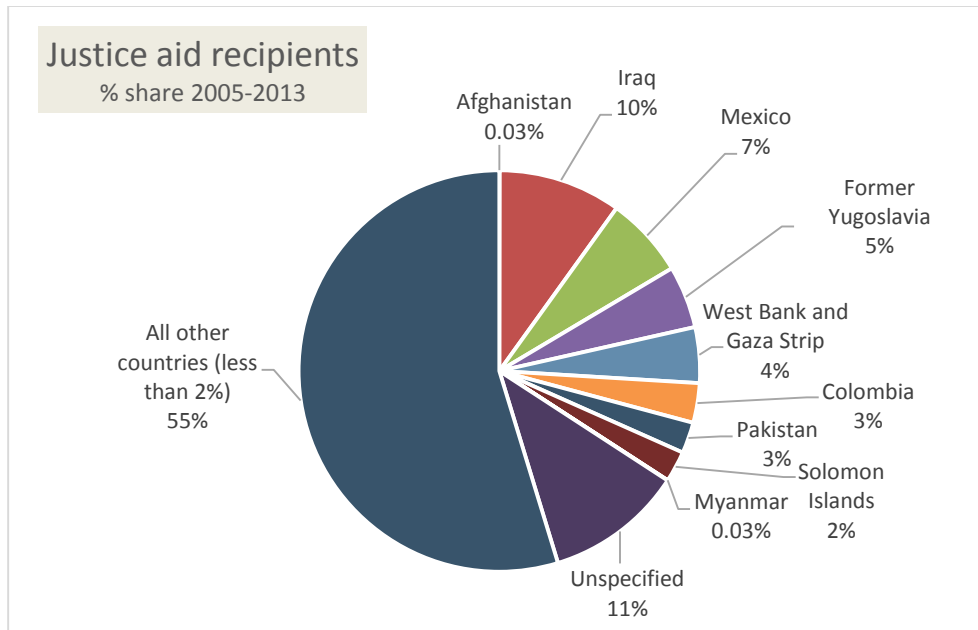
Figure 7: Justice share (%) of all aid



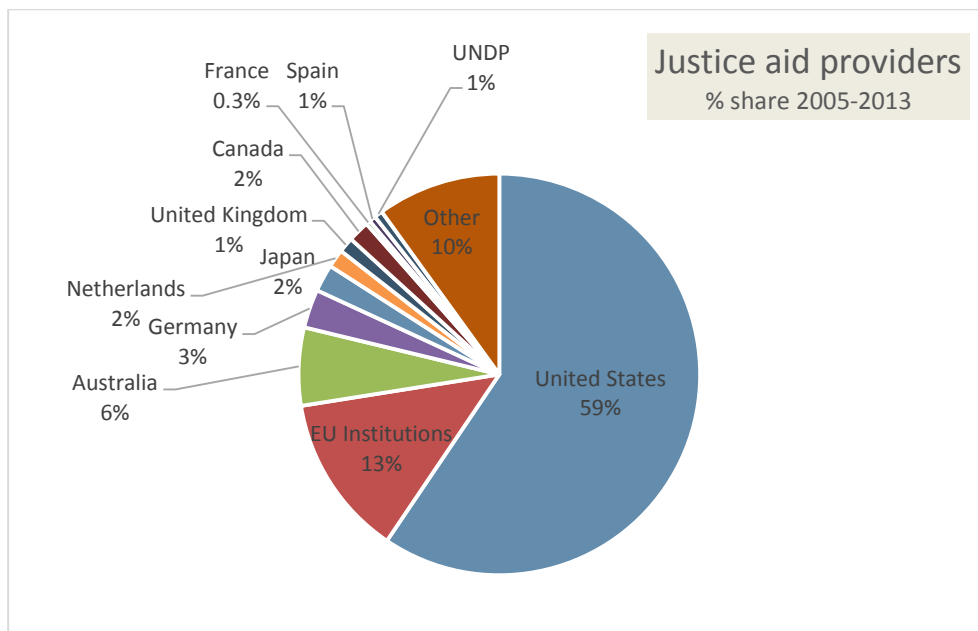
<sup>164</sup> Aid figures do not include support from non-concessional sources such as the World Bank's International Bank for Reconstruction and Development (IBRD). It has provided significant loans between 2005-2009 and in terms of combined aid and non-concessional finance was the fourth largest provider. But funding was fallen sharply since 2010. The Asian Development is another source of non-concessional finance but between 2005-2013 only made one large commitment (to the Philippines).



**Figure 8: Justice Aid recipients – percentage share, 2005-2013**



**Figure 9: Justice Aid providers – percentage share, 2005-2013**



## Vertical Funds

4.11 Vertical funds are global programmes for allocating aid that focus on a particular issue or theme and offer implementation through a new agency that works transparency towards clear goals. They became the vehicle of choice when donors looked for mechanisms to implement the MDGs as they



offered a focal point for plans and resources needed to achieve targets. Examples include the Global Fund for AIDS, Tuberculosis and Malaria, the Global Partnership for Education, the International Fund for Agricultural Development and the Global Agriculture and Food Security Program of which the latter has probably been the most successful.<sup>165</sup> A variation on this theme was the UK's 2003 proposal for an International Finance Facility to provide significant additional funds for immediate development assistance which was also inspired by the MDGs.<sup>166</sup>

#### Box 2: International Finance Facility for Immunisation (IFFIm)

IFFIm<sup>167</sup> was set up in 2006 to rapidly accelerate the availability and predictability of funds for the programme run by the Global Alliance for Vaccines and Immunisation (Gavi). Gavi was itself established by Bill & Melinda Gates Foundation as a public private partnership. IFFIm uses long-term pledges from donor governments to sell 'vaccine bonds' in the capital markets, making large volumes of funds immediately available for Gavi programmes. Vaccine bonds have been issued in various markets – from London in 2006 to Tokyo in 2010 – and proved popular with institutional and individual investors who are drawn to the security of a government-backed return and an ethical investment opportunity.

IFFIm was the first aid-financing entity in history to attract legally-binding commitments of up to 20 years from donors and offers the 'predictability' that developing countries need to make long-term budget and planning decisions about immunisation programmes. IFFIm has nearly doubled Gavi's funding for immunisation programmes, benefiting from USD 6.5 billion in donor contributions over 23 years from the governments of the United Kingdom, France, Italy, Norway, Australia, Spain, The Netherlands, Sweden and South Africa. With the World Bank as its treasury manager, IFFIm has raised more than USD 5 billion to date - three times the donor funds received into the IFFIm account over the same period, demonstrating the power of frontloading the availability of the committed funds.

## Challenge Funds

4.12 Challenge funds are a species of competitive grant often used to finance innovative ideas in a way that reduces their risks. They were used widely by DFID in the 2000s to promote innovative business activities in developing countries, assisting them in overcoming the initial hurdles of starting up rather than taking their products to scale. However, there is no obvious reason why they couldn't also be used to take basic legal services to scale.

## Payment by Results

4.13 Where donor financing is chosen, thought should be given to innovative aid instruments that incentivise governments to invest in scaling up. An example of this is PBR. DFID-Uganda is currently

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<sup>165</sup> Garner, D. and Kharas, H. 'Scaling Up Impact: Vertical Funds and Innovative Governance' in Chandy et al. (2013). 'Getting to Scale: How to Bring Development Solutions to Millions of Poor People'.

<sup>166</sup> IFFIm. 'Origins of IFFIm'. Available at <http://www.iffim.org/about/origins-of-iffim/> last accessed 12 November 2015

<sup>167</sup> IFFIm. Available at <http://www.iffim.org/> last accessed 12 November 2015



trialling such an approach in the health sector, examining the relative effects of financing one set of health clinics through a PBR approach versus another set of clinics financed on the basis of payment for inputs. The key challenges of PBR in the health sector would also be faced in the context of basic legal service provision. These include:

- The need to reveal the incentive structure for behavioural changes among service providers;
- Specifying results so they align with the incentives being sought;
- Ensuring specified results are not easily manipulated or ‘gamed’, through suppliers manipulating either indicators and targets or data so as to minimise payment risk;
- Ensuring capacity exists to undertake the data collection and data management required to monitor the results; and
- Ensuring specified results can be independently verified.

## Philanthropy

### Grant-making

4.14 A number of philanthropic organisations engage in grant-making activities to fund initiatives in LICs in areas that overlap with the provision of basic legal services but few actually fund the provision of those services as Table 4 shows.

**Table 4: Sources of philanthropic grant funding**

Organisation	Activities in legal service provision	Funding
<b>Ford Foundation</b> <sup>168</sup>	Supports broad range of development initiatives (democratic governance, economic reform, education, gender). Grantees include, in China, Beijing Normal University, PILnet and the Beijing Child Legal Aid and Research Centre, and, in the US, the Juvenile Law Center of Philadelphia and the Partnership for Safety and Justice.	Grants for the Foundation’s work on reforming civil and criminal justice totalled £8m in 2014 and ranged from USD 70,000 to USD 1.05m.
<b>Joffe Charitable Trust</b> <sup>169</sup>	Funds development projects in Anglophone Africa, usually on human rights, corruption and economic reform. In 2014 no grants were made to legal service providers.	In 2013/14 the Trust disbursed grants totalling £1.1m.
<b>MacArthur Foundation</b> <sup>170</sup>	Broad range of interests (human rights, conservation, city planning, technology). MacArthur supports juvenile justice reform in 40 US states, primarily through its Models for Change Initiative, which aims to accelerate a national juvenile justice reform movement to improve the lives of young people in trouble with the law. This programme will close in 2017 after 20 years. The initiative has supported states’ efforts to bring about changes to law, policy and	In 2014 the Foundation disbursed USD 231.4m in grants. Grant-making not disaggregated in publicly available data.

<sup>168</sup>Ford Foundation. Available at <http://www.fordfoundation.org/> last accessed 12 November 2015

<sup>169</sup>Joffe Charitable Trust. Available at <http://joffecharitabletrust.org/> last accessed 12 November 2015

<sup>170</sup>MacArthur Foundation. Available at <https://www.macfound.org/> last accessed 12 November 2015



	practice, and sought to provide models for juvenile justice reform.	
<b>Oak Foundation</b> <sup>171</sup>	The Foundation’s international human rights programme: preserves public memory of human rights violations; works to prevent arbitrary detention and torture; protects and strengthens the capacity of human rights; and supports advocacy work, with a focus on amplifying voices from the Global South.	In 2014 the Foundation disbursed grants totalling USD 22.18m under its international human rights programme.
<b>Open Society Justice Initiative</b> <sup>172</sup>	Uses law to protect and empower people around the world. Seek to secure legal remedies for HR abuses and promote effective enforcement of the rule of law through litigation, advocacy, research and technical assistance. Focus on protecting minority rights and developing effective and accountable justice systems (support and train lawyers and community paralegals).	N/A
<b>Sigrid Rausing Trust</b> <sup>173</sup>	Nine programmes altogether, of which: one deals with advocacy, research and litigation -- funding grantees (e.g. HRW, Liberty, PILnet) who research and document human rights abuses, campaign for human rights, and bring test cases in order to strengthen the global human rights infrastructure. A second focuses on women’s rights, including grassroots campaign groups, but also legal advisory services (Federation of Women Lawyers – Kenya, Women’s Legal Aid Centre Tanzania, Women’s Legal Centre South Africa, Women’s Resource Centre Armenia); and a third on LGBTI rights, again primarily advocacy and campaign-based but also some provision for legal services ( <a href="#">LGBT Support Centre Of The Macedonian Helsinki Committee</a> , Transgender Legal Defence Project)	Founded in 1995, since when the Foundation has awarded grants totalling £230m. In 2014 the Trust disbursed: approx. £4m to grantees working in advocacy, research and litigation; £3.3m on women’s rights; and £0.8m on LGBTI rights. No financial data available on legal services specifically.
<b>The David &amp; Elaine Potter Foundation</b> <sup>174</sup>	Supports three main areas of education, civil society and research. Legal assistance sits under the second of these. The only relevant grantee identified is Reprieve, which provides legal support to prisoners who would otherwise be denied access to justice (incl. death penalty cases, Guantanamo prisoners).	Founded in 1999, since when the Foundation has awarded grants totalling over £15m. Reprieve was awarded £60,000 in 2014.

4.15 This demonstrates the risks of philanthropic funding as, while not dependent on political cycles and policy fashion in the same way as donor financing, it is only sustainable for as long as the philanthropist or philanthropic body continues to prioritise provision. Certain areas of basic legal service provision, for example, women’s rights, may stand a better chance of continued funding than others, in part because they share characteristics with health and education such as focusing attention on the human condition, inviting empathy and triggering a sense of urgency. Certain constituencies of philanthropists may also offer better prospects of continued funding than others,

<sup>171</sup> Oak Foundation. Available at <http://www.oakfnd.org/> last accessed 12 November 2015

<sup>172</sup> Open Society Foundations. <https://www.opensocietyfoundations.org/about/programs/open-society-justice-initiative> last accessed 12 November 2015

<sup>173</sup> Sigrid Rausing Trust. Available at <https://www.sigrid-rausing-trust.org/> last accessed 12 November 2015

<sup>174</sup> Potter Foundation. Available at <http://www.potterfoundation.com/> last accessed 12 November 2015



for example, local philanthropists who have a long-standing connection to the constituency of beneficiaries or who stand to benefit from improvements to the locality.

### Pro Bono

- 4.16 Pro bono legal assistance is a response by the legal profession in a country to provide free or low cost legal services to individuals that would otherwise not be able to afford legal advice. Various initiatives have sought to encourage the use of pro bono legal work provided by local and/or internationally-based lawyers.
- 4.17 Local pro bono service provision may be coordinated by professional associations and/or legal aid associations such as South Africa's Association of University Legal Aid Institutions Trust (AULAI), a voluntary association of all South African university law clinics offering legal advice and education provided by volunteer law students.<sup>175</sup> Funding for the operating costs of coordinating the clinics is provided by outside donors, including the Ford Foundation and Attorneys Fidelity Fund, with, for example, the latter providing funding to enable clinics to employ a legal professional to oversee activity.<sup>176</sup> This demonstrates that delivering services at scale is unlikely to be viable on an entirely pro bono basis as attendant administration and support costs – let alone a consistent stream of professionals offering time pro bono – may not be reliably available on a pro bono basis. However, there may be a role for donor financing of these operational costs in conjunction with pro bono services (see Box 3).

#### Box 3: Rule of Law Expertise Programme (ROLE UK)

ROLE UK<sup>177</sup> is a DFID-funded initiative, established in 2013, which aims to improve rule of law environments in DFID priority countries by facilitating access to specialist UK expertise and funding the operating costs of doing so. Experts from across HMG, as well as the legal and judicial sectors (judges, magistrates, solicitors, barristers, legislative draftsmen) will provide specialist advice, mentoring, training and other assistance to improve the policies, organisations and practices of legal and judicial systems.

The programme depends upon the contributions of deployed experts who provide their services on a pro bono basis (with government departments reimbursed to backfill positions as needed). The programme is managed by an independent unit established by DFID, and staffed by three salaried development practitioners and a DFID secondee, all funded by DFID.

- 4.18 As for the supply of pro bono legal services themselves, domestically these are likely to be most viable when lawyers in LICs and MICs are able to cross-subsidise those services with other more lucrative work streams. Internationally, and most commonly in HICs where salaries are higher and subsidy may be more readily available, lawyers are most likely to engage in pro bono provision in

<sup>175</sup> Atlantic Philanthropies. Available at <http://www.atlanticphilanthropies.org/grantee/association-university-legal-aid-institutions-trust> last accessed 12 November 2015

<sup>176</sup> So too, the sizeable UK-based Advocates for International Development (A4ID) who provide a brokerage service connecting development organisations with legal experts and the International Senior Lawyers Project which provides experienced lawyers to promote human rights and equitable, sustainable development both have on-going operational costs.

<sup>177</sup> ROLE UK. Available at <http://www.roleuk.org.uk/> last accessed 12 November 2015



support of causes perceived to be most worthwhile or interesting to the providers. So, organisations such as Equality Now's Adolescent Girls' Legal Defense Fund<sup>178</sup> and the Human Dignity Trust<sup>179</sup> seek to engage international pro bono lawyers to redress violations suffered by girls and homosexuals across the developing world through strategic public interest litigation. The irregularity of demand for such skills (being limited to individual test cases) is a good match with the irregularity of supply given the constraints on lawyers' time.

### **Endowment/Guarantee models**

- 4.19 Endowment funds – such as major private universities in the USA and UK, and large foundations such as the Wellcome Trust – can be created for investment purposes to generate income from the capital invested to fund activities that address social needs. The providers of finance for such entities usually create them for philanthropic reasons, but do so in such a way as to enable grant making to be carried out in perpetuity. An endowment fund is sustainable as long as it maintains its income generating assets.
- 4.20 Similarly, individuals, family offices and endowment funds can use their financial resources to back guarantees to other entities who can use them to raise finance to fund activities. If the guarantee is called then the funding is in place to honour that call. An example of such a model is Social Capital,<sup>180</sup> a USA based provider of finance to SMEs in emerging markets, which finances its activities, in the first instance, by obtaining guarantees from foundations and family offices. On the back of such guarantees it raises commercial lines of credit to on-lend to SMEs. Assuming that the underlying loans perform well, lines of credit are serviced and capital repaid, operating costs are covered and the guarantee providers receive both a financial and social return on their risk.
- 4.21 Both endowment and guarantee models could be used to finance basic legal service provision. The former option depends on having sufficient capital and a hospital financial market to generate the necessary income from investment but is likely to be more widely available than the latter option which requires the user of the basic legal services to be able to pay for that service so that the entity can service the loan obtained by virtue of the guarantee (see paragraphs 4.33-4.34 below).

### **Development Impact Bonds<sup>181</sup>**

- 4.22 Recent Development Impact Bonds (DIBs) are a variation on SIBs (above) that bring together private investors, non-profit and private sector service delivery organisations, governments and donors to deliver social outcomes. As with SIBs, private investors provide upfront funding for development programmes and earn a return if evaluation demonstrates that the programme in question has achieved a set of pre-agreed outcomes. This generates incentives for investors to put in place the

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<sup>178</sup> Equality Now. Available at <http://www.equalitynow.org/AGLDF> last accessed 12 November 2015.

<sup>179</sup> Human Dignity Trust. Available at <http://www.humandignitytrust.org> last accessed 12 November 2015.

<sup>180</sup> Social Capital. Available at <http://socialcapital.com/> last accessed 12 November 2015.

<sup>181</sup> Center for Global Development. (2013). 'Investing in Social Outcomes: Development Impact Bonds'. Available at <http://international.cgdev.org/sites/default/files/investing-in-social-outcomes-development-impact-bonds.pdf> last accessed 12 November 2015.



necessary feedback loops, data collection and performance management systems required to achieve desired outcomes, facilitating a more effective, approach to service delivery. In the case of DIBs, however, investors are remunerated by an external funder (e.g. a donor or charitable foundation) rather than by host-country governments. Given the revenue constraints faced by many LIC governments, DIBs can overcome a core obstacle to sourcing financing for service provision.

- 4.23 The first DIB was launched by the Children’s Investment Fund Foundation in June 2015 (see Box 4). Presently, DFID and the Inter-American Development Bank are exploring the possibility of using DIBS to tackle sleeping sickness in Uganda and in Latin America respectively.

#### Box 4: Educate Girls, Rajasthan

In June 2015 the UBS Optimus Foundation, Children’s Investment Fund Foundation (“CIFF”), Educate Girls and Instiglio launched the world’s first Development Impact Bond (DIB) to i) improve educational outcomes in Rajasthan, India and ii) to create a “proof of concept”, showing potential donors and investors how DIBs can contribute to societal gains and offer financial returns.<sup>182</sup>

The DIB is a three-year pilot aimed at addressing the challenges of high dropout rates and poor education quality in Rajasthan. An upfront investment, USD 267,000 was raised by UBS Optimus Foundation from UBS clients who want to make investments that have a social impact. This sum has been invested in Educate Girls, an NGO that works in public schools to implement a range of programmes designed to retain students and improve learning outcomes. Under the DIB, Educate Girls aims to improve education for 18,000 children – 9000 of them girls – in 166 schools.

If Educate Girls is successful in improving outcomes, CIFF, the outcome payer, will pay investors back with returns set at a maximum of 15% for three years depending on the rate of success. A single payment will be made to the UBS Optimus Foundation in accordance with gains made in enrolment (measured by the percentage of out of school girls who are enrolled on school rosters) and learning (progress in literacy in Hindi, English and numeracy, with causal impact measured through the difference in learning gains for students in grades 3-5 between the treatment group and a control group) after the programmes conclusion in 2018. UBS will share a portion of this outcome payment with Educate Girls, providing Educate Girls with a financial incentive to achieve planned outcomes.

- 4.24 The suitability of the DIB financing model for basic legal service provision rests on such **services generating a proven social benefit**, that **benefit being identifiable** in the form of clear and measurable results and the **ability of an individual donor to ultimately pay providers for those results**. As with SIBs, services addressing subsistence needs are more likely to demonstrate those features than services relating to goods and services.

## Commercial and Semi-commercial models

- 4.25 Commercial models are viable financing solutions where there is a commercial logic to investment. This is likely to depend on whether the provision of basic legal services can be monetised or where

<sup>182</sup> Instiglio. (2015). ‘Educate Girls Development Impact Bond – Improving education for 18,000 children in Rajasthan’.





there is some other financial incentive for investment. So, land issues may lend themselves more readily to commercial financing than family problems.

## Impact Investing

- 4.26 Impact investing is the term used to describe provision of finance to generate financial and social returns. It typically is carried out by entrepreneurial wealth creators, directly or through foundations or funds, where these investors draw on their commercial backgrounds and invest in enterprises to achieve this double or even triple bottom line return (people, profit and environment).
- 4.27 Although still a relatively new practice (the term “impact investing” was coined by the Rockefeller Foundation in 2007),<sup>183</sup> impact investing has attracted private funds into areas such as education and health and may have some relevance for basic legal services. Examples include Omega Schools in Ghana, Bridge Academies and the Aureos Health Fund which invests capital from Bill Gates and others with USD 70m private equity in affordable health provision in Asia and Africa.<sup>184</sup>
- 4.28 The viability of impact investment to finance basic legal service provision ultimately depends on **end users who are willing to pay for those services**. While the experience in the education sector in particular suggests that there is a large market for low-income families who are willing to pay a modest sum for private education given the financial benefits it can bring, it is less clear that there is such a market for paying for general basic legal service provision. Specific elements of such provision, such as solving land disputes, may offer more potential as they offer the possibility of title which can then be used to obtain credit.

## User Funding

- 4.29 The challenge with user funding is to make user fees affordable for those at the bottom of the pyramid. A number of models offer potential, including:
- A combination of unbundling basic legal service provision and fixing fees for service bundles is being explored by organisations like Cooperative Legal Services and Divorce Online in the UK. Similarly, Hotdocs and Rapidocs seek to drive down the cost of service packages through the use of standardised templates.
  - Legal insurance is prevalent in the Netherlands and is taking off in Namibia. Trustco<sup>185</sup> is an IFC investee diversified financial services company which provides insurance, banking and finance services. Amongst these services is free life and funeral cover to subscribers of partner mobile

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<sup>183</sup> Rockefeller Foundation. ‘Impact Investing and Innovative Finance’. Available at <https://www.rockefellerfoundation.org/our-work/topics/impact-investing-and-innovative-finance/> last accessed 12 November 2015.

<sup>184</sup> Financial Times. (2011, December 11). ‘Aureos health fund highlights Africa focus’. Available at <http://www.ft.com/cms/s/0/f4683bd0-2296-11e1-8404-00144feabdc0.html> last accessed 12 November 2015; Norfund. ‘Africa Health Fund’. Available at <http://www.norfund.no/eastern-africa/africa-health-fund-article307-319.html> last accessed 12 November 2015.

<sup>185</sup> Trustco. ‘Vision’. Available at <http://www.tgh.na/> last accessed 12 November 2015.



operators, to which it has recently added a short-term legal insurance policy an affordable premium that covers individuals and families on legal fees relating to criminal, civil, labour, matrimonial and administrative issues. The partnership expands Trustco's customer base, allowing it to spread risk more widely.

- 4.30 Both of these options have their limitations. For example, **unbundling carries the risk that services provided will suffer from a reduction in quality** by the adviser not having a complete picture of the legal problem. The provision of affordable legal insurance depends on the existence of **a sufficiently mature financial services market**, as well as the ability of the service being delivered to provide a return – for example, through the payment of damages – and so is likely to be a viable option for relatively few unbundled legal services.

## Hybrid models

- 4.31 Hybrids typically involve collaboration between different entities such as donors, LIC governments, private sector investors and NGOs and LIC government or donors. Their prevalence reflects the fact that a case-by-case, country by country approach is typically needed to create a solution and funding model that can work.

### Hybrid Investment Funds

- 4.32 M-Pesa is an example of a project financed by a **DFID challenge fund that matched an initial investment** from Vodafone of £1 million.<sup>186</sup> It is a mobile phone-based money transfer and microfinancing service launched in 2007 by Vodafone for Safaricom and Vodacom, the largest mobile network operators in Kenya and Tanzania. It works by allowing users to deposit money into an account stored on their cell phones, to send balances using PIN-secured SMS text messages to other users, including sellers of goods and services, and to redeem deposits for regular money. Users are charged a small fee for sending and withdrawing money which depend on the amount of money being transferred and whether the payee is a registered user of the service. The DFID challenge fund helped the private sector to overcome the initial risk of projects via its provision of cost-sharing grants. Vodafone obtained a return in the form of service fees from main partner Safaricom, who in turn obtained both revenue under a revenue-sharing agreement with Vodafone and increased customer loyalty. By 2010 M-Pesa had become the most successful mobile phone based financial service in the developing world and has since expanded to South Africa, Afghanistan, India, Romania and Albania.
- 4.33 Sarhad Rural Support Programme (SRSP) Pakistan is an example of an **endowment model being used in combination with grant-making**.<sup>187</sup> SRSP works in Khyber Pakhtunkhwa and parts of FATA to advance community empowerment and economic and livelihood development. Its access to justice programming focuses on legal empowerment primarily via legal aid clinics, grassroots legal

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<sup>186</sup> Vodafone. Available at [http://www.vodafone.com/content/index/about/about-us/money\\_transfer.html](http://www.vodafone.com/content/index/about/about-us/money_transfer.html) last accessed 12 November 2015.

<sup>187</sup> SRSP. Available at <http://www.srsp.org.pk/srsp-main/> last accessed 12 November 2015.



services delivered by paralegals, awareness-raising sessions, strengthening state-society relations, jirga (traditional leadership assembly) formation and alternative dispute resolution. SRSP is financed by grants and donations including a USD 5 million endowment from the Pakistani government together with 10% interest from banks, all of which is exempt from income tax (SRSP is classed as a “charitable non-profit making institution” for tax purposes).<sup>188</sup>

- 4.34 The Medical Credit Fund is an example of a **guarantee model being used in the healthcare context using a combination of public and private capital** (see Box 5).

#### Box 5: The Medical Credit Fund

The Medical Credit Fund (MCF)<sup>189</sup>, created in 2011, is a hybrid investment fund, attracting public and private grants and capital. Private investors and grant makers include private donor organisations, social impact investment funds, private individuals and corporations. Public investors and grant makers are mostly development banks and governmental donor agencies.

The MCF’s primary objective is to increase the delivery of affordable quality healthcare services by reducing investment risk. To achieve this objective, it provides performance-based financing – 3500 loans over seven years to around 2500 primary health care providers – in combination with technical support. Grants are used to finance technical assistance programme and capital to finance loans and guarantees, as well as to maintain modest default and currency risk facilities. In addition, the selected health facilities participate in a medical and business quality improvement programme to strengthen their business case and debt servicing capacity, and reduce credit and medical risk.

The hybrid status of the MCF makes it a public-private partnership. In the MCF approach public and private donors can contribute to finance healthcare assets (including working capital and skills) for the lower-end of the healthcare market by mitigating credit risks for investors and supporting the program costs. As a result the risk of financing these assets is reduced, which subsequently will trigger and leverage both international and local private investments. This way the total amount of capital is multiplied and the lower-end of the market becomes financeable and scalable enabling more consumers to pay for quality health care outcomes.

#### Subsidy and Cross-Subsidy

- 4.35 Where there is a **market that can sustain some user funding but not sufficient to cover the cost of basic legal service provision**, there is the possibility of a partial subsidy. The Provision of Equitable Affordable Schools (PEAS) is a UK based charity that operates low fee private secondary schools in Uganda.<sup>190</sup> The Government pays an amount per pupil to the school representing a third of the full fee, with the balance borne by the parents. Enrolment and attainment is measured to provide comfort that quality of provision is sufficient to justify the state funding provided. This type of PPP allows PEAS to run the schools autonomously, whilst being held accountable for enrolment and outcomes.

<sup>188</sup> OSJI (2015). ‘Legal Empowerment Charette: Innovative Financing Models for Funding Basic Legal Services’.

<sup>189</sup> Medical Credit Fund. Available at <http://www.medicalcreditfund.org/> last accessed 12 November 2015.

<sup>190</sup> PEAS. ‘Our values’. Available at <http://www.peas.org.uk/about-us/our-values> last accessed 12 November



4.36 Similarly, where providers of **basic legal services are of sufficient size and operate portfolios of a diverse range of services**, there are possibilities for cross-subsidising the delivery of the less profitable ones with the more profitable ones. So, BRAC's HRLS programme cross-subsidises its social development and legal services programmes with income generated by its microfinance and social enterprises (dairy and poultry farming, fisheries, arts and crafts); a small proportion of HRLS is also financed through a USD 0.13 client fee, aiming to ensure buy-in and help fund volunteer 'barefoot lawyers'.<sup>191</sup> Similarly, Microjustice4All charges a fee for its documentation services<sup>192</sup> while Microjusticia Argentina cross-subsidises its services to individuals through service provision to fee-paying corporations.<sup>193</sup>

## Findings on Sustainable Financing Options for Basic Legal Services

4.37 It is clear from the above analysis that there is a wide range of financing options available in general terms. However, the characteristics of interventions that lend themselves to private sector funding are likely to be very different to those that are suitable for philanthropic funding. There are a number of considerations which are relevant to identifying a suitable financing option for basic legal services specifically, including:

- **Is there a measurable financial outcome?** This may include considering short-term gains in the form of consumers willing to pay a small amount for a service as well as longer-term gains such as investors benefiting from consumers receiving payouts or being able to realise asset value.
- **Can the revenue from recipients of basic legal service cover costs** or is there need for some subsidy, pro bono service, foundation grant etc.?
- **Is there a measureable social outcome?** This may include considering the extent to which a particular model is likely to assist particular sections of society as well as to reduce the incidence of particular types of legal problem.
- **Is there an LIC national/civil interest in ensuring certain basic legal services are provided and can the government fund the provision?**

4.38 Central to the existence of a financial outcome is **the monetisability of basic legal service provision**. Certain types of basic legal service provision may be more readily monetisable than others, for example:

- Debt issues may be more likely to produce a monetary outcome that can deliver a financial return.

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<sup>191</sup> See Annex F: Microfinancing Justice Case Study; Legal Aid Clinics in Bangladesh.

<sup>192</sup> See Annex F: Microfinancing Justice Case Study; Microjustice4All.

<sup>193</sup> See Annex F: Microfinancing Justice Case Study; Microjusticia Argentina.



- Child custody disputes may be less likely to produce a monetary outcome that can deliver a financial return.
- 4.39 Similarly, the outcomes of certain types of basic legal service provision, whether financial or social, may be **more easily measured** than others:
- Urban land titling or business registration may be more suitable for quantitative measurement e.g. the value of loans secured against titled land or credit a business is able to access.
  - In cases relating to gender-based violence quantitative measurement is less likely to be feasible or appropriate (see, for example, Table 4).
- 4.40 **Unbundling basic legal service provision may therefore be key to both monetising and measuring basic legal services to unlock non-government marshalled financing options.** Appendix 5 seeks to unbundle types of legal problem addressed by basic legal services and to map them against their suitability for different sources of finance. The legal problems covered broadly map onto property law, family law, contract and commercial law. The monetisability of land, debt and business issues lends them to impact investment while the measurability of documentation issues performs a similar function.
- 4.41 The exercise of unbundling basic legal service provision also assists in the identification of commonalities between legal problems which are suitable for particular financing options and those which are less so. For example, the analysis suggests that those legal problems most likely to attract grants may be those that appeal to empathy for vulnerable groups such as women and children and on emotive issues such as subsistence needs. The education and health sectors demonstrate the power of simplicity of messaging when seeking to raise finance, suggesting that basic legal services will stand a better chance of doing so if they are able to unbundle services and simplify their product and story.
- 4.42 Overall, the analysis suggests that hybrid models are most likely to cater for the broadest range of legal problems. Since it is also likely to be the case that the more diverse the funding base for any type of service provision, the more sustainable it will be, innovation and collaboration between donors, governments, private sector players and NGOs all the more important in this context.



## Chapter 5: What are the political conditions that enable justice models to be taken to scale?

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### The Relevance of Political Economy Analysis

- 5.1 Basic legal services models operate **within countries' policy and regulatory frameworks**. These can range from hostile (for example government policy to restrict access to legal services such as judicial review) - to enabling (for example removing qualified lawyers' monopoly on the supply of legal advice and assistance). Indeed, in HICs, legal service delivery is increasingly seen as a commodity, with non-traditional providers (even supermarkets) providing increasingly unbundled legal services. But taking legal service models to scale in this way, requires an appropriate policy, legal and regulatory framework – both to enable it to happen (for example removing restrictive practices) and to regulate it appropriately.
- 5.2 Underpinning the policy and regulatory context for scaling up basic legal services models is the political economy - **the interests and incentives of groups in society, especially the elite**, and how these generate particular policy outcomes that may support or undermine development. This includes the role that both formal institutions and informal structures - such as **social, political and cultural norms; political ideologies; values and ideas; religion and cultural beliefs** - play in shaping political and economic competition, political behaviour and public policy.<sup>194</sup> If basic legal service provision is going to be taken to scale, success will depend on a range of issues some of which may be operating outside the sector all together.
- 5.3 The underlying political conditions are particularly important in **fragile and conflict-affected states**, where basic service delivery has ceased, and the state needs to quickly build trust by reasserting its role and its value to its citizens. **One method that states have to prove their legitimacy is through providing services**, and in conflict-affected states, justice and security services are paramount. While the state does not necessarily have to provide these services itself in the short- or long- term, it does need to ensure that they are being provided, and equitably.
- 5.4 New thinking on institutional reform and service delivery<sup>195</sup> has thrown light on some of the reasons why change in the justice sector has proved so difficult to achieve – including the tendency to focus on technocratic, 'best practice' approaches. Preferred approaches to institutional reform are now politically smart, and problem (rather than institution) driven.<sup>196</sup> Indeed recent thinking has

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<sup>194</sup> DFID, (2009). 'Political economy analysis How –To Note'. DFID practice paper.

<sup>195</sup> Andrews, M. (2013). 'The Limits of Institutional Reform in Development: Changing Rules for Realistic Solutions'; Booth, D. and Unsworth, S. (2014). 'Politically smart, locally led development'. ODI.

Denney, L. and Kirwen, E. (2014). 'Politically Smart and Locally Led Justice Programming: Learning from Other Sectors'. World Bank Just Development, issue 7.

<sup>196</sup> See for example: North D., et al (2007). 'Limited Access Orders in the Developing World: A New Approach to the Problem of Development'; Kelsall T. (2013). 'Business Politics, and the State in Africa'; Khan, M. (2002). 'State Failure in Developing Countries and Strategies of Institutional Reform'; Acemoglu, D & Robinson, JA. (2012). 'Why Nations Fail: The Origins of Power, Prosperity



highlighted the inherently political nature of access to justice and legal empowerment issues, and its indivisibility from the wider political context that shapes the viability and impact of legal service provision.<sup>197</sup> We seek to apply this thinking to creating a checklist of political economy issues to consider when scaling up basic legal service provision.

## Political economy issues to consider in scaling up basic legal service provision: a checklist

5.5 In researching the case studies discussed in this report, we have identified common themes – political economy issues that have had an impact time and time again. We have taken these themes and have consolidated them into five main questions that should be considered before embarking on a scale up of basic legal services. For each question set out below we:

- Outline the issue itself and describe its various dimensions;
- Provide examples to illustrate why it is important and the impact it can have on basic legal service provision as well as scale up; and
- Propose policy and programme responses to address each question.

### Question 1: Is there Political Support for Basic Legal Service Provision?

5.6 This is one of the most important factors to consider, especially if the ultimate goal is partial or complete government financing of basic legal service provision. **Political will may be difficult to generate around basic legal service provision because it may not be seen as a quick political win** like infrastructure which is more visible and education or healthcare provision which may also be seen as more tangible. Evidence of political will at the macro level can be best observed through: the passage of supportive legislation and through budget allocation either to justice sector ministries or through other programmes/entities to provide these services.<sup>198</sup> It is very difficult to gauge how such political will can be generated, and each context will reflect a unique combination of some of the key factors. Political will can come from many areas – national crisis, grass roots advocacy campaigns/citizen collective action; constitutional mandates; political party platforms and ideology; norms and shared societal values.

5.7 Examples of the existence of political will at the state level include:

- Citizens Advice Bureau in **England and Wales**, which are substantially but not fully funded by local and national government and had their origins in the provision of advice and information

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and Poverty'; Asia Foundation & ODI (2014-2015), Working Politically In Practice Series; Kleinfield, R. (2015). 'Improving Development Aid Design and Evaluation: Plan for Sailboats, Not Trains'.

<sup>197</sup> Domingo, P., & O'Neil, T. (2014). 'The politics of legal empowerment: Legal mobilisation strategies and implications for development'. ODI.

<sup>198</sup> HiiL. (2012). 'Towards Basic Justice Care for Everyone. Challenges and Promising Approaches'. Trend Report, Part 1.



on wartime regulations by unpaid volunteers during the Second World War, but slowly expanded its role from the 1970s onwards.

- **Ontario's** legal aid provision which began over fifty years ago, with legislation, civil society organising, initial funding from Ford Foundation, and government task forces created to assess impact over time. More recently, a new law was passed in the late 1990s, accompanied by government funding to provide legal aid services.
- **South Africa's** Community Advice Offices which date back to the 1930s but were the subject of unprecedented growth during the repression and violence that took place during the apartheid struggle in the 1980s and have since built a National Alliance and strong relations with the Department of Justice and Constitutional Development and Legal Aid South Africa.
- In **Rwanda**, rebuilding the justice sector has formed an integral part of the government's post-genocide state-building efforts. One-stop district legal centres (Maisons d'Accès à la Justice) were piloted by the national government in response to a strategic assessment of poverty reduction needs.
- In **the Ukraine**, the government has been committed to improving access to justice even during major political upheavals. This comes from explicit government endorsement of the value to citizens of self-representation and self-generated solutions to legal issues, as evidenced by their establishment of Community Legal Centres.

5.8 **Political will at the state level may or may reflect the motivations** that donors would like to see. **China**, for example, has established a rule of law programme in which legal aid is central. Whilst everything is controlled by the state, there has been central level endorsement of rule of law reform, with the motivating rationale being control and order - and to quell any potential risk of social unrest. Legal aid is considered critical to promoting social harmony; if the state responds to basic grievances, then the population is less likely to revolt. The China case is an interesting example of how to generate political will within a state. If the state believes that solving local level disputes and grievances in a transparent, consistent manner is a way to prevent conflict and maintain stability, then that could be an entry point and an opportunity for generating political will for basic legal service provision in states where there is none.

5.9 Political will should be assessed not only at the macro/state level, but also **at the level of front line service delivery agencies**. If local government and traditional, customary leaders are providing or will be expected to provide basic legal services, then those groups will need to be included and supportive of the process for scale up to succeed. It is often public bureaucracies that prevent change from happening due to inadequate skills, capacity, and inertia. These actors need to be incentivised.<sup>199</sup> For example:

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<sup>199</sup> Lin, J. & Arntraud, H. (2008). 'Scaling up, a framework and lessons for development effectiveness from literature and practice'. Wolfensohn Center for Development, working paper 5.





- In **the Ukraine**, CLCs have been successful in communities only with the support of the local councils. Also, given the CLCs' proximity to and knowledge of the local population, they have been able to be responsive to new local problems brought out by conflict and issues posed by movements of internally displaced persons in the country. *'Due to centers' autonomy, mobility, constant capacity-raising activities and multi-functionality, they were able to adjust to new fields of work and respond to communities' needs.'*<sup>200</sup>
- In **Sierra Leone**, TIMAP for Justice's direct engagement with customary leaders to get their buy in and support for paralegals overcame the natural hurdle of scepticism of a new model of justice service delivery. Before each TIMAP field office was opened, paralegals met with paramount chiefs, session chiefs, and village chiefs, and appointed local community oversight boards that would oversee the paralegals. These community discussions succeeded in getting buy in from traditional leaders, but also identified key justice concerns within communities.

5.10 If political will does not exist, a number of **policy/programme responses** are available:

- **Use advocacy and collective action campaigns** to ensure that the need for basic legal service provision is embedded within society and that there is a political constituency for providing these services.<sup>201</sup> This is how civil society and human rights organisations in South Africa working together with key government counterparts, pushed for gradual movement towards government recognition of community based paralegals.<sup>202</sup> Legal needs surveys can be a valuable tool for raising awareness, as they have been in both Moldova and Ontario.<sup>203</sup>
- **Engage national governments** on basic legal services and government planning, whether in support of already approved national strategies, through leveraging an external instrument of accountability such as the Global Goals and specially Goal 16, or through other policy/political evidence of support to basic legal service provision more generally.
- **Provide basic legal services through NGOs**, or other organisations, outside of state structures, to build momentum and government buy-in along the way. This is how OSJI worked with TIMAP for Justice and other partners in its first couple of years in Sierra Leone, and it was ultimately successful in advocating for the passing of the Legal Aid Act, which they see as one of their key results.
- **Cross state inspiration** can also be used to generate political will to provide basic legal services. So, Canada and Australia have looked towards the UK, which began investigating and providing legal aid in the 1950s, in keeping with the domestic movement towards a welfare state at that time. The USA went through a similar process in the 1960s, and other states subsequently

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<sup>200</sup> Open Society Justice Initiative. (2015). 'Delivering Community Justice Services at Scale: Community Law Centres in Ukraine' (in draft).

<sup>201</sup> Lin, J. & Arntraud, H. (2008). 'Scaling up, a framework and lessons for development effectiveness from literature and practice'. Wolfensohn Center for Development, working paper 5.

<sup>202</sup> Open Society Foundations. (2015). 'Delivering Community Justice Services at Scale: Community Advice Offices in South Africa'.

<sup>203</sup> Open Society Foundations (2015). 'Legal Needs Studies: A Brief Overview from the Field'.



followed them as well.<sup>204</sup> More recently, the work of paralegals in Liberia has been influenced by the model of TIMAP for Justice in Sierra Leone,<sup>205</sup> while the Ukraine has been influenced by collaboration and exchange with Ontario, in particular in relation to the value of networks and associations of CLCs.<sup>206</sup>

5.11 If front line service delivery agencies are blocking / unsure of the changes, they can be brought along through a range of ways such as:

- **Understanding of and engagement with interests and concerns** to bring agents into the process, for example, addressing Government concerns about service quality and oversight or addressing lawyers concerns about competition;
- **Creating competitions** among jurisdictions and organisations with similar mandates and functions, for example, different providers of basic legal services, to help align incentives;<sup>207</sup> and
- **Offering incentives**, whether monetary or social, for achieving success as well as penalties for failure, starting with short term results first, and moving on from there.<sup>208</sup>

5.12 If generating political will is less likely, then another option is to go outside the political system or outside the justice sector itself to provide basic legal services. For example:

- Investigating ways to **embed legal service provision within other sectors**. For example. the Open Society Foundations' Law and Health Initiative has piloted the integration of legal services in a variety of health settings including HIV prevention services for drug users in Russia<sup>209</sup> and palliative care centres in Kenya, where the law is being used in an empowering way through provision of trained paralegals who handle legal components of care and work with families on common legal issues such as property and wills.<sup>210</sup>
- Considering whether to **focus on single issues** where the messaging may be simpler and it may be easier to build a coalition of interests. Examples are the work that Namati paralegals are doing around land in Myanmar<sup>211</sup> and Sierra Leone<sup>212</sup> as well as in Liberia, Uganda and

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<sup>204</sup> Interview with Roger Smith, 27 October 2015.

<sup>205</sup> Interview with Lotta Teale, 7 December 2015.

<sup>206</sup> Interview with Zaza Namoradze, 13 October 2015.

<sup>207</sup> Lin, J. & Arntraud, H. (2008). 'Scaling up, a framework and lessons for development effectiveness from literature and practice'. Wolfensohn Center for Development, working paper 5.

<sup>208</sup> Lin, J. & Arntraud, H. (2008). 'Scaling up, a framework and lessons for development effectiveness from literature and practice'. Wolfensohn Center for Development, working paper 5.

<sup>209</sup> Margolin, M. (2014). Fighting an Epidemic in Russia from 3,000 Miles Away. Available at <https://www.opensocietyfoundations.org/voices/fighting-epidemic-russia-3000-miles-away> last accessed 12 November 2015

<sup>210</sup> Hepford, K. and Ali, Z. (2014). When Relieving Suffering Means Removing Legal Burdens. Available at <https://www.opensocietyfoundations.org/voices/when-relieving-suffering-means-removing-legal-burdens> last accessed 12 November

<sup>211</sup> See Annex F: Community-based Paralegals Case Study; Namati Sector-Specific Paralegals in Myanmar.

<sup>212</sup> See Annex F: Community-based Paralegals Case Study; TIMAP for Justice and Others in Sierra Leone.



Mozambique.<sup>213</sup> This may involve trading off breadth of service provision against depth; but against this, it may enable particularly marginalised groups to be better targeted.

- **Exploring private adjudication mechanisms** to stand in for state-provided service provision if states are not willing to provide services which are affordable and timely.<sup>214</sup>

## Question 2: Is there a Normative Fit/Sufficient Demand for Basic Legal Services?

- 5.13 When considering introducing basic legal service provision into a particular context, or when trying to scale up provision, it is important to assess whether the right normative environment exists to support that service provision, and whether there is sufficient demand for the services to make the overall effort worthwhile. After all, law is a normative system that exists in the minds of people in a particular society.<sup>215</sup> It goes beyond the institutions with direct connections with the law themselves, and involves intangibles related to how citizens ‘understand, use, and value’ the law.<sup>216</sup> This understanding, use, and value of the law held among citizens in a particular context will impact whether or not basic legal service provision or scale up will succeed and should impact how programmes / policies will need to be tailored to maximise potential for positive impact.
- 5.14 In addition, **basic cultural and social issues** such as power inequalities, community cohesion and conflict, gender roles all shape basic legal service provision as the demand for services comes directly out of those social realities. Often, societal fault lines can be easily observed in the types of cases and disputes that arise.<sup>217</sup> In **Ukraine** for example, Community Law Centres in Roma settlements have focused on Roma specific issues such as anti-discrimination, restoration of ID documents, humanitarian assistance, land and property, etc.<sup>218</sup>
- 5.15 Lessons from other sectors on insufficient demand are useful to examine here. For example, there have been difficulties in gauging demand in particular contexts for preventative health and family planning services, as well as for education programmes. Insufficient demand can come from a range of factors such as distrust of the state, a lack of understanding of basic rights, cultural or religious beliefs, norms around adversarial dispute resolution approaches verses more restorative, reconciliatory approaches, etc.
- 5.16 Examples of how the normative environment, social and cultural issues, and insufficient demand have impacted the provision of legal and justice services include the following:

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<sup>213</sup> Maru, V. (undated). ‘Legal Empowerment and the Land Rush: Three Struggles’.

<sup>214</sup> HiiL. (2012). ‘Towards Basic Justice Care for Everyone. Challenges and Promising Approaches’. Trend Report, Part 1.

<sup>215</sup> Carothers, T. (2003). ‘Promoting the Rule of Law Abroad: the Problem of Knowledge’. Working Paper 34. Carnegie Endowment for International Peace.

<sup>216</sup> Carothers, T. (2003). ‘Promoting the Rule of Law Abroad: the Problem of Knowledge’. Working Paper 34. Carnegie Endowment for International Peace.

<sup>217</sup> Maru, V. & Gauri, V. (draft). ‘Bringing Law to Life: Community Paralegals and the Pursuit of Justice’.

<sup>218</sup> Open Society Foundations. (2015). ‘Delivering Community Justice Services at Scale: Community Law Centers in Ukraine’.



- In **Liberia**, there is an almost unanimous distrust of courts, **formal procedures are little known** and there is a widely held view that formal structures are dominated by vested interests. This context has created a demand for non-state basic legal service provision through paralegals and Community Justice Advisers. Such programming demonstrates that Liberians are receptive to non-binding mediation and engaging dialogue without the threat of formal legal sanction.
- Many paralegal movements around the world developed as **social movements**—for example, in **South Africa and the Philippines**.<sup>219</sup> These movements were more focused on activism: people power in the Philippines, and the anti-apartheid movement in South Africa, to address immediate crises born out of power imbalances between citizens and a range of actors such as private firms, the state, and regressive cultural norms. The ability of paralegals to succeed came from the unique institutional and social context in which they originated.
- **Existence of a pro bono culture** is a normative, social value that can have significant impact on the ability to scale up basic legal service provision. For example, Kituo Cha Sheria in **Kenya**—user demand at their legal aid centre has gone from 3000 to 7000 customers in one year, but they cannot respond to the demand due to a lack of incentives for lawyers to work pro bono on cases that are referred to them.<sup>220</sup> Similar problems suggest themselves from Microjusticia **Argentina's** decision to remunerate its volunteers in the near future.<sup>221</sup> This contrasts with the strong tradition of a pro bono culture in **China's** legal aid clinics.<sup>222</sup> Similarly important is the size of the pool of legal professionals in a given context; although the lack of incentives for pro bono work may pose challenges for Microjusticia Argentina, the initiative is able to draw on a large pool of expertise owing to free and unrestricted access to education.
- Evidence of **current community based legal service schemes**, however formal or informal, is another way to gauge the normative environment for expanded basic legal service provision. If this exists in a society or community already, this is a foundation that can be built upon.<sup>223</sup>
- One of the reasons for the success of the M-Pesa scale up in **Kenya** was the existence of a *hawala* culture, an East African money transfer network operated by members of the Somali community, itself made possible by the absence of government impositions such as taxes and fixed exchange rates, and the sole requirement of trust in the sender rather than formal banking credentials.<sup>224</sup>

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<sup>219</sup> Maru, V. & Gauri, V. (draft). 'Bringing Law to Life: Community Paralegals and the Pursuit of Justice'.

<sup>220</sup> Telephone interview, 30 October 2015, with Aimee Ongeso, Programme Coordinator, Advocacy, Governance and Community Partnerships, Kituo Cha Sheria – Kenya.

<sup>221</sup> See Annex F: Microfinancing Justice: Microjusticia Argentina.

<sup>222</sup> See Annex F: National Community Law Centres Case Study; Legal Aid in China

<sup>223</sup> Open Society Foundations. (2015). 'Open Society Legal Empowerment Charette, Country Selection Criteria'.

<sup>224</sup> Berman, M. (2011). 'The Development, Use and Cultural Context of M-PESA in Coastal Kenya. SIT Graduate Institute/SIT Study Abroad'.



5.17 If there is insufficient normative fit, there are a number of potential **policy/programme responses** including:

- **Integrating sensitivity to culture, and the social and normative environment into policy/programme design** and staying flexible enough to respond to changes in it, for example, by not neglecting traditional justice systems and by genuinely listening to what people need and how they need it. Absent such sensitivity, scale up could fail. The best-known example of failure in programme scale up has been seen in the cultural obstacles to expanded girls' education.<sup>225</sup> Many of these obstacles have come from cultural constraints including deep seated gender stereotypes, social norms, and customs linked to perceptions of women's roles in society such as their roles as caretakers, mothers, brides, and household labourers. These perceptions, as well as scarce household resources, all influence the social and economic value placed on sending girls to school.
- **A realistic assessment of demand** is key as well as the factors to increase that demand (if needed) during scale up.<sup>226</sup> Programmes tailored to this demand will more likely succeed, and programmes that **start with those specific services where demand is already high**, and then move slowly forward from there into less demanded areas of service provision, will also have a better change to achieve impact and scale. Here, it is important to recognise the trade-offs revealed by work in the sectors of health and education where it has been suggested that work towards reducing the mortality of children aged under 5 benefitted the poor relative to the poorest due to challenges raising demand amongst and then reaching the latter group<sup>227</sup> while that directed at achieving universal primary education sought, in contrast, to target the most disadvantaged through policies such as abolishing fees in countries like Tanzania.<sup>228</sup> Both potentially present challenges regarding the equal treatment of beneficiary groups.
- A lack of sufficient demand and a lack of a supportive normative environment can also be addressed by proactively engaging to either **generate demand or attempt to alter societal norms**, through a range of techniques including collective action, advocacy, legal empowerment campaigns, etc.

### Question 3: Is there Resistance from Elite or Vested interests?

5.18 Proposing basic legal service delivery improvements or scale up can threaten a range of elite and vested interests. These include agencies within government that view programmes as competition; professionals such as lawyers who view these efforts as a threat to their livelihoods; and elites worried that through legitimate legal service delivery to the poor, they could lose control over

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<sup>225</sup> Lin, J. & Arntraud, H. (2008). 'Scaling up, a framework and lessons for development effectiveness from literature and practice'. Wolfensohn Center for Development, working paper 5.

<sup>226</sup> Lin, J. & Arntraud, H. (2008). 'Scaling up, a framework and lessons for development effectiveness from literature and practice'. Wolfensohn Center for Development, working paper 5.

<sup>227</sup> UN Committee for Development Policy (2008). Implementing the Millennium Development Goals: Health Inequality and the Role of Global Health Partnerships.

<sup>228</sup> UNESCO (2008). Education for all Global Monitoring Report.



valuable assets such as land and natural resources. Public bureaucracies can also stall reform efforts due to lack of capacity, resources, or simply inertia.

- 5.19 Resistance from elites and vested interests is especially common among grassroots movements that grow too quickly and threaten established political interests. The result is a loss in political support for the movement/reform agenda. When there is a loss in political support, it makes it even harder for donors to continue to support the agenda – this becomes a political capital issue for donors with host country governments. The issue is not unique to legal service provision: education reform in many countries has been met with resistance from teachers and teachers’ unions, both in developing and developed countries; time required to address their concerns has set reform movements back considerably.
- 5.20 Specific examples of resistance from elite, vested interests include:
- Traditional leaders in **Sierra Leone** who historically provided most of the dispute resolution services at the local level, and who saw paralegals as an economic threat;
  - Lawyers<sup>229</sup> opposed to legal aid reform in the **UK and Liberia**, where they have thus far resisted any formal role of non-lawyers in the provision of basic legal services; and
  - Central government in **Bangladesh** who have viewed organisations like BRAC with suspicion, treating them as competitors.
- 5.21 Resistance from elite and vested interests, like many political economy issues, is not necessarily clear-cut. The evidence from local governments on this is mixed. For example, in **South Africa** where paralegals engaged with police and local representatives of national government departments, some local officials welcomed their efforts, even when it led to reversal of decisions or payments of benefits that had been denied.<sup>230</sup> However, other local South African officials, particularly from local municipalities who are to be providing similar services, are not supportive and see paralegals as competition.<sup>231</sup>
- 5.22 It is important to note that lawyers who are resistant to changes in basic legal service provision may be suspicious not simply out of a concern for their livelihoods, but out of fear of an over-reaching state; this has been a common experience in many countries in central and eastern Europe.<sup>232</sup>
- 5.23 There are various **policy/programme responses** to the problem of political opposition including:

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<sup>229</sup> Maru, V. & Gauri, V. (draft). ‘Bringing Law to Life: Community Paralegals and the Pursuit of Justice’.

<sup>230</sup> Maru, V. & Gauri, V. (draft). ‘Bringing Law to Life: Community Paralegals and the Pursuit of Justice’.

<sup>231</sup> NADCAO. (2014). ‘Towards a Sustainable and Effective CAO Sector in South Africa: A Cost Benefit and Qualitative Analysis’. National Alliance for the Development of Community Advice Offices (NADCAO) and Human Sciences Research Council.

<sup>232</sup> Interview with Roger Smith, 27 October 2015.



- **Promote ‘second best’ solutions** (ones that are more politically feasible) first, to get buy-in, and then subsequently to move forward with original plans.<sup>233</sup> In the **Philippines**, paralegals were in direct competition with the bar. The solution was to have paralegals specialise in sectoral issues, where they were recognised by four central government agencies to work on disputes related to those specific departments: for example, agrarian reform (department of agrarian reform’s adjudication board), labour tribunals (national labour relations commission), community based coast guards (local governments), forest guards (department of environment & natural resources).<sup>234</sup> This specialisation reflected recognition from administrative agencies of citizens’ needs to hold state institutions accountable, without directly antagonising the Bar.
- **Build coalitions.** In **Sierra Leone**, OSJI and Namati, working with TIMAP for Justice and other partners, undertook a sustained campaign of awareness raising which involved targeted meetings with important justice sector actors to gain support for legal aid reform. One main sceptic was the Bar Association, which thought that paralegals would tarnish the reputation of the legal profession. These actions were ultimately successful, as both the bar and the original sceptics within government supported the inclusion of paralegal services into law.<sup>235</sup>
- **Embed basic legal service delivery into other types of programmes.** Examples of this come mainly from the health sector: a health and Roma programme in **Macedonia**<sup>236</sup> and a cadre of frontline advocates in **Mozambique**,<sup>237</sup> both of which are institutionalising legal services in healthcare provision, whilst GFATM has funded paralegals within broader support services to sex workers in **South Africa**.<sup>238</sup>
- **Focus on building a long-term partnership**, particularly between external actors, civil society and governments. The move from NGO led service provision to public sector led service provision is a cultural shift that can be very difficult; it requires not only an understanding of the incentives of the various groups involved, but also time and energy.<sup>239</sup> In **South Africa**, a long term process involving civil society and government working together resulted in changes in legislation for legal recognition.<sup>240</sup>

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<sup>233</sup> Lin, J. & Arntraud, H. (2008). ‘Scaling up, a framework and lessons for development effectiveness from literature and practice’. Wolfensohn Center for Development, working paper 5.

<sup>234</sup> Maru, V. & Gauri, V. (draft). ‘Bringing Law to Life: Community Paralegals and the Pursuit of Justice’.

<sup>235</sup> Open Society Foundations. (2015). ‘Delivering Community Justice Services at Scale: Sierra Leone: A National Approach to Justice Services’.

<sup>236</sup> Kohn, S. (2013) For Roma, Justice is Sometimes the Best Medicine. Available at <https://www.opensocietyfoundations.org/voices/roma-justice-sometimes-best-medicine> last accessed 12 November 2015

<sup>237</sup> Feinglass, E., Gomes, N. and Maru, V. (undated). Defensores de Saude: Placing the Power of Health Policy in the Hands of Patients.

<sup>238</sup> Open Society Foundations. (2015). ‘Delivering Community Justice Services at Scale: Community Advice Offices in South Africa’.

<sup>239</sup> Lin, J. & Arntraud, H. (2008). ‘Scaling up, a framework and lessons for development effectiveness from literature and practice’. Wolfensohn Center for Development, working paper 5.

<sup>240</sup> Open Society Foundations. (2015). ‘Delivering Community Justice Services at Scale: Community Advice Offices in South Africa’.



## Question 4: Is there Capacity for Scale Up?

- 5.24 Capacity for scaling up is critical for success: this includes government capacity, capacity within the organisation that is attempting to go to scale, as well as leadership capacity to inspire, lead, and manage the process.
- 5.25 The **capacity of core justice ministries** should be assessed internally but so should their ability to work across government. One common area of challenge for justice sector ministries is their ability to advocate for financing from their own ministries of finance, and then to track and present results back on what the financing was able to achieve. At LDP, we have supported a range of justice sector ministries, departments, and agencies in many countries to address this issue through strengthen their planning and budgeting systems. For example, our work in **Sierra Leone** in this area contributed to a 57% increase from 2013 to 2014 in non-salary non-interest recurrent (NSNIR) budget allocation to sector ministries, departments, and agencies that received support with planning and budgeting, compared with a 38% budget increase overall across the whole of government.<sup>241</sup>
- 5.26 Understanding **budgeting and resource allocation processes of government** counterparts is also essential so that if there is a legitimate procedural delay in government resource allocation that delay does not get misconstrued as a lack of political will to move forward. For example, in **Sierra Leone**, after the passage of the Legal Aid bill, there was significant delay in resources being allocated to implement the bill. In recent discussions in Freetown, it became clear that the delay has been mainly due to the fact that there is no system for costing budgeting of legislation. So the process of linking new legislation to resources took time within government. The first allocation has since come through at USD 40,000, along with government commitment to pay salaries for 8 staff on the new legal aid board.<sup>242</sup>
- 5.27 Organisations that plan to scale up need **systems, support, leadership, capacity, training, quality assurance and sufficient time as well as funding**.<sup>243</sup> One reason why BRAC has been successful in **Bangladesh** has been in its community-based education as well as other work streams is due to its strong internal systems.<sup>244</sup> Lessons from **Ontario's** scaling up of basic legal services include: developing strong quality assurance systems and standards, articulating clear accountability structures among the various institutions involved, and choosing staff who were committed to social justice and access to justice.<sup>245</sup> Similar quality assurance steps are being taken in **China**.<sup>246</sup> The extensive training delivered to new paralegals as part of TIMAP for Justice's scaling up work in

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<sup>241</sup> DFID. (2014). 'Sierra Leone Access to Security and Justice Programme, Value for Money programme report'.

<sup>242</sup> Interview with Sonkita Conteh, Namati, Freetown, during the week of 26-30 October, 2015.

<sup>243</sup> Lin, J. & Arnttraud, H. (2008). 'Scaling up, a framework and lessons for development effectiveness from literature and practice'. Wolfensohn Center for Development, working paper 5.

<sup>244</sup> Ahmed, S. and French, M. (2006). 'Scaling Up: the BRAC Experience'. BRAC University Journal, 3(2) and Maru, V. & Gauri, V. (draft). 'Bringing Law to Life: Community Paralegals and the Pursuit of Justice'.

<sup>245</sup> Open Society Foundations. (2015). 'Delivering Community Justice Services at Scale: Ontario, Canada'.

<sup>246</sup> See Annex F: National Community Law Centres Case Study; Legal Aid in China.





**Sierra Leone** also demonstrates the value of investing in capacity.<sup>247</sup> A ‘learning by doing’ culture that values adaptation and iteration and is open to change is also vital to the success of scaling up.

- 5.28 At times, for a scale up to be successful, the organisation may need to split into two entities: the originating organisation that develops and pilots the model; and the adopting organisation that takes the model to scale.<sup>248</sup> It may also be the case that taking the model to scale involves not simply expanding the scale of a pilot, but thinking holistically about the justice system and how scaling up a pilot may influence and/or call for development of other aspects of the system. So, in the context of legal services, scaling up a model of basic legal provision may require thinking about **the level and quality of secondary and tertiary provision and how a model of national provision might evolve into a model of hybrid provision**. At this point, it may also be important to separate the entity that funds and **regulates the service provision** from the entity that delivers it in order to preserve the **independence** of the latter. Legal Aid South Africa demonstrates the value of such an approach, being located outside government and therefore being able to litigate against it.<sup>249</sup>
- 5.29 Scale ups need **strong leaders and champions** – outstanding personalities who can generate commitment through shared values; who can identify key challenges; who have technical and management skills; and who have the capacity and motivation to train others.<sup>250</sup> The Doing Development Differently agenda within the international development practice makes this point very clearly: it is ‘aid entrepreneurs’ –people who can operate within complexity, who are politically attuned, and who have the right soft skills— who will have the most chance of delivering success,<sup>251</sup> particularly in fragile contexts.<sup>252</sup> Leaders within the political sphere are also needed for scale up to be successful. At times, they will need to be reminded that it is in their interest to support the scale up of service delivery and improved service provision.<sup>253</sup> The Attorney General and Minister of Justice in **Sierra Leone** are an example of this, having agreed to support a shared framework on basic legal service provision in Sierra Leone;<sup>254</sup> so too is the Deputy Minister of Justice in **South Africa**.<sup>255</sup>
- 5.30 Where capacity is lacking, there are a variety of **policy/programme responses** including:
- Traditional development and donor mechanisms such as trainings, joint strategy planning, working groups, awareness raising, etc. But in terms of scaling up service delivery, lack of

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<sup>247</sup> See Annex F: Community-based Paralegals Case Study; TIMAP for Justice and Others in Sierra Leone.

<sup>248</sup> Lin, J. & Arntraud, H. (2008). ‘Scaling up, a framework and lessons for development effectiveness from literature and practice’. Wolfensohn Center for Development, working paper 5.

<sup>249</sup> See Annex F: National Hybrid Models Case Study; Community Advice Offices in South Africa.

<sup>250</sup> Ibid.

<sup>251</sup> Ramalingam, B. (2013). ‘Aid on the Edge of Chaos: Rethinking International Cooperation in a Complex World’.

<sup>252</sup> Manuel, C. (2015). LASER First Synthesis Paper. See section on *How should development practitioners operate differently on the ground?*

<sup>253</sup> Lin, J. & Arntraud, H. (2008). ‘Scaling up, a framework and lessons for development effectiveness from literature and practice’. Wolfensohn Center for Development, working paper 5.

<sup>254</sup> Open Society Foundations (2015). ‘Country Rationale for Inclusion: Sierra Leone’.

<sup>255</sup> Open Society Foundations (2015). ‘Country Rationale for Inclusion: South Africa’.



capacity should be reflected into programme timings and budget allocations – to ensure that these issues are addressed proactively throughout the process.

- Building a network of service providers across an area or country to maximise reach and impact for end users if no single provider has sufficient capacity to scale. This has proven successful in the efforts to scaling up basic legal service provision in South Africa, Sierra Leone, and Ontario.<sup>256</sup>
- Recruiting the right people having clearly articulated the types of skills that are needed, especially the non-technical ‘soft’ skills that will be essential to success as well as developing strategies for retaining staff, such as investing in training and accreditation mechanisms, which can also assist with maintaining links with staff and quality individuals.

## Is there sufficient financing for scale up?

5.31 Financing for scale up of basic legal services can come from a number of sources: donors, governments, philanthropic sources, the private sectors and combinations of these, as explored under Research Question 2. This involves considering whether governments have sufficient resources and political will to either set aside central level funding for basic legal services, as in Rwanda, or to investigate other ways to fund it, such as in **Ontario** and **Ukraine**. If the government does not have sufficient resources, donor and philanthropic funding, at least to achieve shorter-term results, and to create momentum for broader service provision, is an alternative and private sector options can be explored alongside. Important to philanthropy are changes in priorities and the sustainability of such funding streams, as we have seen. Important to private provision is the political economy of the regulatory landscape and whether or not approval is needed for such options.

5.32 Where financing options are limited, there are a range of **policy/programme responses** including:

- Exploring **private sector provision** rather than merely financing. Supplying third party adjudication is a task that some governments have already outsourced to independent courts, but they could explore how those mechanisms could be expanded to other areas in order to achieve effectiveness, fairness, and justice. The neutrality of these mechanisms can be achieved through appropriate supervision, legal information sharing, standard protocols and justice surveys.<sup>257</sup>
- Exploring **combinations of mechanisms or models** simultaneously, while some of the specific financial, political, and social dimensions of sustainability are explored. Over time, these efforts could be converted to more and more self-sustaining models – either through government budgeting or alternative mechanisms.

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<sup>256</sup> Open Society Foundations. (2015). ‘Delivering Community Justice Services at Scale’ Country Case Studies.

<sup>257</sup> HiiL. (2012). ‘Towards Basic Justice Care for Everyone. Challenges and Promising Approaches’. Trend Report, Part 1.



- Considering whether **technology** can play to support programme/policy objectives of scaling up of basic legal services. A note of caution, however: as we have seen in the discussion in Chapter 3, technology is not a complete answer. Technology can be supportive of overall strategic efforts and can supplement some aspects of service provision for some users but it is not the panacea for lack of financing. In fact, introducing technology may even lead to less access, if the technology is not matched to the specific legal needs of those users and to the level of pre-existing access of and use of that technology.
- Considering **the purpose of scale up** in a particular context: is it simply to provide access to more/all possible users or is it linked to advocacy for broader political, social, or normative change? If broader political, social, or normative change is the ultimate goal, then financial sustainability might not necessarily be required to achieve that outcome, especially if there is a specific timeframe already in place for achieving the desired result. An example of this is Namati's paralegals in **Myanmar** who seek to provide services that empower farmers to protect their land and also to undertake evidence-based advocacy efforts to try to shift the government policies in favour of smallholder farmers at a particularly important juncture in time.<sup>258</sup>

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<sup>258</sup> UNDP Myanmar. (2014). 'Summary Report of Rule of Law and Access to Justice Mapping'.



## Chapter 6: Conclusions and Recommendations

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*There are a number of promising basic legal service interventions in countries around the world which have begun the process of thinking about sustainable scale-up. Those countries could give valuable thought to data collection can help them build a case for financing. The unit cost analysis presented in this study suggests that costs are relatively modest, but still unaffordable for governments in the poorest countries. Alternative options for sustainable financing should therefore be explored together with policy and programme responses to any political economy factors which may hinder successful scale up. Global Goal 16 offers a valuable opportunity to coalesce data gathering activities as well as advocacy for basic legal service provision on a national scale that may be transformative of both the political economy of the issue and the available financing options.*

### Conclusions

6.1 This study has provided a framework for thinking about how to take basic legal services to scale in a sustainable manner. Research in this area is very under-developed relative to other sectors and this study has only been able to begin to provide answers to the identified questions. However, these initial conclusions are of real value in guiding thinking on this issue, and most importantly, they provide a clear guide to the areas in which further work would be valuable.

#### The Cost of Basic Legal Services

6.2 The **unit costs** of basic legal service provision in 12 of our country case studies are USD 0.1 to USD 1.3 per capita in non-OECD countries and USD 3 to USD 6 in 3 OECD countries, likely reflecting the higher cost of wages. Using legal needs surveys to assess the scale up costs of national provision and the per capita cost of that provision in 4 countries (Myanmar, Sierra Leone, Rwanda and South Africa) produces a cost per person of USD 0.1 to USD 0.36.

6.3 However, benchmarking scale up costs against macro-level data such as government revenue per capita and government spending on the judiciary per capita demonstrates that while some countries could afford to scale up current programmes, for most of the poorest countries in our study the cost of basic legal services looks clearly **unaffordable** relative to both government revenues and spending on the judiciary.

6.4 Analysis of spending on judiciary also demonstrates that developing countries are already strongly **prioritising** funding the judiciary from their own budgets. In sharp contrast, analysis of donor funding shows that while funding to the justice sector has increased, the current level is still very low compared to funding for other sectors. This suggests there is a potential opportunity to press donors to increase their funding to bring it more in line with developing countries' own commitments and the spending patterns in donors' own countries.

6.5 **Technology** is no silver bullet for reducing the cost of basic legal service provision in developing countries. Technology is likely to be supplementary to rather than displacing of traditional forms



of delivery, with mobile-phone based innovations offering better access to individuals than internet-based ones at the present time.

### Financing Basic Legal Services

6.6 There are a range of options for financing basic legal services sustainably, including government, donors, philanthropy, the private sector, users and hybrid models. The key factors determining the appropriateness of a particular option are whether the relevant basic legal service intervention produces a monetisable outcome and/or an outcome which can be measured. **Unbundling basic legal services** may therefore be key to realising these characteristics and expanding the available financing options for a given intervention.

### The Political Economy of Basic Legal Services

6.7 Political economy considerations in scaling include:

- Whether there is **political support** for scale-up, both at the state level and the level of front-line delivery agencies, recognising that political will may not always reflect the motivations that we might like to see;
- Whether there is **normative fit/sufficient demand** for the services, whether that be a tradition of mediation or a pro bono culture amongst lawyers;
- Whether there is **resistance from elite/vested interests**, whether traditional leaders, lawyers or local and central government;
- Whether there is **capacity** for scale-up both within government and within the organisations that plan to scale up; and
- Whether there is financing for sufficient **financing** for scale-up, depending on whether it is for short-to medium term advocacy or for the provision of services over the long-term.

6.8 There are a number of policy and programming responses to situational analysis that reveals that some or all of these factors are missing. These range from building demand/support for basic legal service provision to delivering basic legal services either through service delivery in other sectors such as health or outside of state structures altogether.

### Recommendations

6.9 We would make the following recommendations by way of future work:

- **Presentation of final report** to meeting of selected stakeholders at a date to be confirmed.
- **Wider collection and deeper analysis of legal needs surveys** to better understand the scale and type of demand for basic legal services (including demand on criminal justice system and traditional justice systems), what demand is being met by existing legal service provision and



what is not and why (for example because existing provision is unaffordable for the majority of people).

- **Wider collection of a broader range of cost and benefit data** (in particular, non-monetary costs and monetary and non-monetary benefits) for use in cost-benefit analyses of basic legal service provision.
- **More widespread use of macro-level data to benchmark costs** including possible development of three affordability benchmarks<sup>259</sup> relative to revenue, spending on judiciary and spending on health and education, to ensure country programmes are based on sustainable level of unit costs and to support bids for donor funding at an individual country level.
- **Development of an agreed definition of basic and primary justice concepts** to enable the justice sector to be on the same footing as education and health in global financing discussions, debates on implementation of Global Goals and value for money analysis such as the Copenhagen Consensus.<sup>260</sup>
- **Evaluation of the use of technology** looking in particular at whether those on low incomes are able to use the services provided and whether the quality of assistance is as good as that provided by traditional means as well as flagging those cases that require such assistance.

6.10 We hope full opportunity will be taken of the momentum and discussions around Global Goal 16 to coalesce data gathering activities as well as advocacy for basic legal service provision on a national scale that may be transformative of both the political economy of the issue and the available financing options.

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<sup>259</sup> These benchmarks might be expressed in the form of ranges – clearly affordable; affordable; possibly unaffordable; definitely unaffordable (e.g. when ratios are more than three times that of OECD countries)

<sup>260</sup> Lomborg, B. (2014). *Preliminary benefit-cost assessment of the final OWG outcome*. Copenhagen Consensus Centre.



## Appendix 1: Summary of Aid to Justice Sector (2005-2013)

Aid to legal and judicial development	2005	2006	2007	2008	2009	2010	2011	2012	2013	Total	% total
Constant US\$ million 2013											
<b>Total aid all sectors</b>	145,583	151,892	139,742	161,339	167,998	167,460	160,700	170,610	187,142	<b>1,452,466</b>	
<b>Total aid to legal and judicial development (definition below)</b>	1,085	1,028	1,896	2,769	3,589	4,183	4,277	3,713	3,799	<b>26,339</b>	
Aid to legal and judicial development as % of total aid	0.7%	0.7%	1.4%	1.7%	2.1%	2.5%	2.7%	2.2%	2.0%	<b>1.8%</b>	
<b>Bilateral donors - total</b>	796	693	1,617	2,233	3,260	3,715	3,810	2,699	3,145	<b>21,968</b>	83%
United States	329	201	1,002	1,682	2,511	3,002	2,877	1,973	2,084	<b>15,661</b>	59%
Australia	105	151	249	103	119	199	271	238	218	<b>1,654</b>	6%
Germany	25	27	55	53	70	144	137	137	172	<b>818</b>	3%
Japan	1	0	1	7	23	14	220	35	278	<b>579</b>	2%
Netherlands	27	62	40	47	40	41	17	47	66	<b>387</b>	1%
United Kingdom	30	21	29	45	81	22	25	28	41	<b>322</b>	1%
<b>Multilateral donors - total</b>	289	336	278	536	329	468	467	1,013	653	<b>4,369</b>	17%
EU Institutions	230	235	188	509	240	374	342	757	558	<b>3,433</b>	13%
UNDP	10	12	13	10	27	26	20	28	31	<b>177</b>	1%
<b>Recipients</b>											
Afghanistan	58	22	188	425	717	1,034	796	719	799	<b>4,758</b>	18%
Iraq	190	62	172	85	722	173	732	275	197	<b>2,609</b>	10%
Mexico	0	0	44	15	401	591	280	39	348	<b>1,719</b>	7%
West Bank and Gaza Strip	16	4	4	103	139	191	154	200	371	<b>1,182</b>	4%
Colombia	29	23	19	60	39	243	64	214	150	<b>840</b>	3%
Pakistan	2	1	32	32	79	231	116	126	41	<b>660</b>	3%
Solomon Islands	38	1	189	26	34	35	135	112	89	<b>658</b>	2%
Kosovo	..	..	..	..	86	55	38	172	181	<b>532</b>	2%
Serbia	66	46	57	110	15	26	44	41	35	<b>438</b>	2%
Haiti	8	41	8	36	22	30	114	95	17	<b>371</b>	1%
Bosnia and Herzegovina	42	44	21	18	21	51	72	49	37	<b>354</b>	1%
Indonesia	34	7	46	36	18	80	30	30	47	<b>327</b>	1%
Turkey	47	15	34	80	11	34	8	63	31	<b>323</b>	1%
Papua New Guinea	32	78	16	6	56	13	37	33	47	<b>319</b>	1%
Ukraine	12	10	15	10	21	122	16	60	20	<b>285</b>	1%
Guatemala	7	4	14	29	42	79	31	30	28	<b>264</b>	1%
Democratic Republic of the Congo	24	25	13	14	59	21	38	45	18	<b>258</b>	1%
Kenya	46	25	0	1	4	13	8	112	4	<b>212</b>	1%
Developing Countries unspecified	8	15	486	818	207	297	538	250	306	<b>2,924</b>	11%
Sub Saharan Africa	238	274	182	337	455	268	348	367	425	<b>2,894</b>	11%



## Appendix 2: Needs-based Assessment of Case Capacity

Country programme/study	% with legal needs/Number of cases	Key assumptions/ Target population	Implied % of population with legal need each year
<b>Low income/Lower middle income countries - legal needs surveys</b>			
Sierra Leone	81% encountered legal issue in last 3 years; 50% excluding crime - implies 17% encountered civil issue a year	Assume 5 people in household <sup>261</sup>	3%
Rwanda	30% asked for legal advice in last 3 years - implies 10% a year	Assume 5 people in household	2%
Ukraine: level of legal capacity of Ukrainian population 2011	30% encountered "very important" legal problem in last 3 years – implies 10% each year	Assume 3 people in household	3%
<b>High income/OECD - legal needs surveys</b>			
Argentina	55% preceding three years; one third crime, implies 36% excluding crime - implies 13% a year	Assume 5 in household	2%
Australia	50% in last year, excluding crime 36% - implies 36% a year	Average 3.0 people in household	12%
Canada	48% low/moderate income in last three years - 16% a year	Average 2.7 people in household	6%
England and Wales	32% in last 18 months	Average 2.5 people in household	8.5%
Netherlands	61% in last five years - 12% a year	Average 2.5 people in household	5%
US Legal Service Corporation - current cases plus estimated unserved need	1,833,376 cases	51 million (population living in poverty)	4%

<sup>261</sup> Household size from unstat.un.org. Where figures not available assumption is based on average for comparable countries in region/income group. Figures are often out of date so are likely to overstate household size and hence understate % of population with legal need.





US Legal Service Corporation – survey estimates that only 20% of needs are currently met	4,445,000 cases	51 million	9%
<b>Memorandum items - Coverage of existing schemes</b>			
Sierra Leone – Timap – 2005/2006 data	1,920 cases	736,000	0.3%
Liberia – Carter Center – current coverage	1,272 cases	575,329	0.2%
UK – Citizens advice Bureau England & Wales – current coverage	2,500,000 cases	57 million	4%



## Appendix 3: Summary of Unit and Scale Up Cost Analysis

Country	Programme				National Scale Up		
	Annual cost (USD m)	Cases handled	Community served	Unit cost of serving community (USD per capita)	Population (m)	Cost (USD m)	Notes
<b>Liberia</b>	0.45	1,272	575,329	<b>0.78</b>	4.4	3.4	
<b>Myanmar</b>	3.8		Assume whole farmer population 13m	<b>0.3</b>	53.0	15.5	Namati estimate for reaching all farmers, not entire population (53m).
<b>Sierra Leone</b>	0.25		736,000	<b>0.34</b>	6.3	2.1	Timap current programme less USD 10k Freetown; Namati estimate for national programme
	2.0		Assume whole population 6.3m	<b>0.36</b>	6.3	2.0	
<b>Argentina</b>	0.028	441	22,050 (estimate)	<b>1.3</b>	43.0	54.7	Multiplier of 50 assumed (cases-community).
<b>Bangladesh</b>	0.3	5,000	250,000 (estimate)	<b>1.1</b>	159.1	181.8	Multiplier of 50 assumed (cases-community).
<b>Rwanda</b>	0.8	22,168	1,108,400 (estimate)	<b>0.7</b>	11.3	8.1	Multiplier of 50 assumed (cases-community). National scale up total legal aid, not MAJ prog
<b>South Africa</b>	3.5		Assume whole population 54m	<b>0.1</b>	54.0	3.5	Estimated cost of Citizen Advice Offices
<b>Ukraine</b>	0.44	42,284	2,114,200 (estimate)	<b>0.2</b>	45.4	9.4	Multiplier of 50 assumed (cases-community).
<b>Kenya</b>	0.1	20,000	1,000,000 (estimate)	<b>0.1</b>	44.9	5.1	Multiplier of 50 assumed (cases-community).
<b>Australia</b>	23.8	29,266	Assume whole state population 4.7m	<b>5.1</b>	23.5	119.3	Legal aid in Queensland
<b>Canada</b>	44.0		Assume state whole population 12.8m	<b>3.4</b>	35.5	122.2	Citizen advice bureau in Ontario
<b>UK</b>	361	2.5 million	Assume whole population 57.4m	<b>6.3</b>	64.5	405.7	Citizen Advice Bureau in England and Wales



## Appendix 4: Summary of Benchmarking Analysis

Programme	Basic Legal Service Unit Cost		GDP data	Revenue data	Spend (%GDP)			Spend per capita			Prioritisation of judiciary	Affordability Basic Legal services	
	Current Programme	National Programme			GDP per capita	Revenue per capita	Judiciary	Health	Education	Judiciary		Health	Education
	USD per capita	USD per capita	USD per capita	USD per capita	% GDP	% GDP	% GDP	Per capita	Per capita	Per capita	%	%	%
Liberia	0.78		370	108	1.2	3.6	2.8	4	13	10	18	0.72	18
Myanmar		0.3	1,270	126	Na	0.5	0.8		6	10			
Sierra Leone	0.34	0.36	710	78	0.1	1.7	2.8	0.6	12	20	2	0.40	51
Argentina	1.3		14,160	2,124	0.4	4.9	5.1	55	697	722	4	0.06	2
Bangladesh	1.1		1,080	113	0.05	1.3	2.1	1	14	23	1	1.01	208
Rwanda	0.7	0.3	700	93	1.9	7	5	2	46	35	16	0.31	15
South Africa		0.1	6,800	2,114	0.8	4.3	6.0	54	294	408	8	0.003	0.1
Ukraine	0.2		3,560	1,317	0.3	4.2	6.7	10	151	239	3	0.02	2
Kenya	0.1		1,290	205	0.2	2	6.7	2	24	86	2	0.06	5
Uganda			680	67		4	2		29	15			
Australia	5.1		64,680	15,523	0.06	6.3	4.9	41	4,065	3,169	1	0.03	12
Canada	3.4		51,690	8,787	0.22	7.6	5.3	114	3,918	2,740	2	0.04	3
Netherlands			51,210	19,921	0.15	10.7	5.5	78	5,483	2,817	1		
UK	6.3		42,690	15,368	0.07	7.6	5.8	31	3,252	2,476	0.5	0.04	20



## Appendix 5: Summary of Financing Models and Suitability

### POTENTIAL FUNDING SOURCE

		Donor	LIC government	Grant-making	Pro bono	SIBs / DIBs	Impact investing	Hybrid
LEGAL PROBLEM OR ISSUE	Subsistence needs e.g. water, shelter	H	H	H	H	H	L	H
	Identity and document issues	H	M	H	H	M	M	H
	Land issues	H	M	M	M	M	H	H
	Employment issues	L	L	L	M	L	M	M
	Family and gender-related issues	H	M	H	H	M	L	H
	Goods and services issues	L	L	L	M	L	M	M
	Community issues	M	L	M	M	L	L	M
	Business issues inc. investment climate	M	M	L	L	M	H	H
	Debt issues	L	L	L	M	M	M	H
	Financial services issues e.g. fraud	L	L	L	L	M	M	H