



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

Volume 2 (of 2): Annexes

IDRC, LEF and OSF

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Annex A: Terms of Reference

A study to develop a portfolio of financially sustainable, scalable basic legal services models

Terms of Reference

20 August 2015

About the consultant

The Law & Development Partnership Limited (LDP) provides high-level strategic advice, research, technical assistance and monitoring and evaluation support to development partners and developing country governments. LDP offers market-leading expertise in programme design, management and evaluation.

The LDP core team consists of experienced lawyers and accountants who are also governance and international development specialists. They offer a successful combination of commercial professionalism, practical developing country work experience and academic rigour. Their team has excellent academic records; from leading academic institutions including Oxford, Cambridge and the London School of Economics.

LDP brings a unique combination of research skills and practical experience in the field. They have 15 years' experience of designing and implementing donor supported national justice programmes including in Burundi, Guyana, Kenya, Rwanda and Sierra Leone. This practical experience gives them a unique insight into justice sector issues.

They have a deep understanding of financing in the justice sector. They adopt a holistic approach to justice sector development and reform, and have pioneered a highly participatory approach to planning and prioritisation of budgetary spend in the justice sector.

Combined with their strong track record in research, they are extremely well placed to carry out this assignment. Recent publications include 'Investment climate reform: doing it differently: why, what and how'; 'Levelling the legal playing field: what the law can and can't do to improve women's access to secured finance' and 'Politically Smart and Locally Led Justice Programming: Learning from Other Sectors.'

To undertake this assignment LDP will deploy a high calibre team of researchers who will bring unique insights from applied work in security and justice combined with exceptionally strong research skills.



Context

DFID's 2009 White Paper identified justice as a basic service, on a par with health or education. The Voices of the Poor Survey of 2000 highlighted the importance of justice for poor people (more important than health or education). While deep seated problems remain particularly in terms of service quality, service delivery particularly in health and education has been successfully scaled up around the world.

Despite these successes, only a relatively small proportion of programmes for service delivery to the poor are able successfully to reach scale and sustainability – indeed scalable service provision solutions in developing countries (in all sectors) are considered the exception rather than the rule. With some exceptions, successful examples of scaled and sustainable programmes have tended to be narrowly targeted solutions to specific challenges – for example oral rehydration therapy, vaccines, and water sanitation to reduce childhood mortality, micronutrient supplements and breastfeeding advocacy to reduce malnutrition, and conditional cash transfers to encourage school attendance.

Key lessons for achieving scale and scope have been summarised as follows:

- Failure of scale up is not attributable to a single binding constraint such as a lack of technology or an absence of key evidence, but is better characterised as a process challenge.
- Business model design is key to addressing the process challenge of scaling up; in particular, goals for scaling up must be built into business model design from day one.
- Scale up can however be difficult to plan given the transformative nature of change involved – scaling up is a process involving an alteration of cost structures, beneficiary behaviour and policy environments.
- Scaling up is an inherently risky process, with failure more likely than success.

Tom Carothers' 2003 assessment of donor engagement in the justice sector/rule of law, that "*examples of significant, positive sustained impacts are few*" remains true today.¹ This is in part due to the fact that over the past fifteen years or so, there has overall been limited donor engagement with and less investment in the justice sector than in other sectors. For example over the period 2004-2009, DFID provided £161m in support to security and justice programmes, accounting for 6% of DFID's expenditure. In addition, there was no justice Millennium Development Goal to drive donor and developing country partner engagement with the justice sector.

The 2011 New Deal for donor engagement in fragile states highlighted anew the importance of justice to some of the poorest communities in the world – those living in fragile states - with justice identified as one of the five peace and state building goals. The post 2015 Sustainable Development Goals also

¹ Carothers, T. (2003). 'Promoting the Rule of Law Abroad: the Problem of Knowledge'. Working Paper 34. Carnegie Endowment for International Peace.



offer an opportunity for a fresh approach to justice reform, with the proposed goal 16 being 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.’

New thinking on institutional reform and service delivery 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. Indeed recent thinking has highlighted the inherently political nature of access to justice and legal empowerment issues, and its indivisibility from the wider political context which shapes the viability and impact of legal service provision.

The justice sector has particular complexities which arguably together create a uniquely hostile environment for service delivery improvements:

- Institutional complexity – service delivery is highly fragmented across a range of institutions. A particular problem is often lack of clarity about the institutional home for justice sector policy and planning, with Ministries of Justice typically having a narrow remit to act as legal advisers to government.
- Plural systems – formal legal systems co-exist with non-state, traditional or religious systems which frequently have greater legitimacy with communities than state providers. This is similar to the health sector where formal health care exists alongside traditional methods of healing.
- Highly politicised – justice lies at the heart of the relationship between the state and the people. Formal and informal justice structures are part of the local political and governance structures, with the key function of holding the state to account on the one hand, or protecting the ruling elite on the other. Politicians may resist a move to improve citizens’ ability to access basic legal services enabling them to challenge the ruling elite.
- Functional complexity – with different views about what the justice system is there to deliver.

In addition to these justice sector complexities, legal services are by their nature particularly challenging to provide at scale. As noted by one commentator, “justice is delivered piecemeal, case by case and person by person.” While there are some similarities in other sectors such as the provision of clinical health care, many of the challenges are unique to the justice sector. As a result, sustainable and scalable legal services programmes must adequately address the challenges outlined below:

- Identification of demand - the extent to which an individual or community can or cannot access justice can be difficult to ascertain; 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. As such, it is difficult to design a scalable programme providing basic legal services for access to



justice when we know little about the extent to which the demand for justice in a particular community is actually being fulfilled.

- **Heterogeneity of need:** Unlike other successfully scaled services such as water sanitation, vaccination or oral rehydration therapy, the nature of legal services required to address a person's needs are highly context-specific and variable, according to the particular characteristics of legal problem and the person. This diversity of need represents a critical barrier to scale in the context of basic legal services.
- **Complexity of services:** 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 generally very simple, but to maximise the benefits services need to be targeted. For the reasons described above, even basic legal services are by their nature somewhat complex, and are very likely to require a certain breadth in order to be effective at achieving transformative change.
- **Market and government failure:** The supply of justice via legal services is not a pure market transaction, but involves substantial public good elements, which entails likelihood of market failure. In addition, access to justice requires a neutral legal infrastructure, making it vulnerable to government failure, particularly in poorly governed developing countries.¹⁵ An awareness of the propensity for market and government failures in the provision of basic legal services for access to justice should inform the business model adopted and the role of the state and private sector in provision.

Attempts to develop and then take to scale models for delivery of basic legal services must be grounded in the reality of this context. As the Terms of Reference put it, greater understanding is needed on what the conditions are for achieving greater scale for interventions.

Research Focus

LDP's research will focus on the delivery of basic services to enable effective dispute resolution. They consider these services to include both dispute resolution mechanisms (traditional leaders, courts, alternative dispute resolution providers) as well as legal advice and assistance services.

Rather than classifying disputes as 'civil' or 'criminal' matters, their user-based approach will start with the legal problems that people face on the ground. Their research will look at particular aspects of the below questions:

- **Unit costs of legal service provision:** they propose to review the evidence on the unit costs of legal service provision. This will focus on evidence from Low Income Countries (LICs), and will include a review of basic service delivery mechanisms where unit costs have been calculated and are available – either in academic literature, or know-how from development practitioners'



reports. They will review the methodology used to calculate unit costs, and assess its appropriateness, robustness and potential to apply unit cost methodologies across jurisdictions. They will also look at approaches to determining unit costs for legal services in developed countries (including the UK) and consider whether there are any lessons to apply in LICs.

- **Financing models for scaled up sustainable legal service provision:** they will map existing and potential models for scaled up service provision, looking first at what has worked in the justice system to fund dispute resolution mechanisms at scale, as well as legal advice and assistance. They will also consider lessons from other sectors - including the health sector - on what has worked and could potentially be applied to legal services.
- **Political conditions that enable justice models to be taken to scale:** recognising that success or failure of legal service programmes is often determined by factors outside the justice sector itself, they will investigate the different contexts in which the political economy was most conducive to enable justice models and legal service provision to be taken to scale. They will consider how political and economic conditions influence which justice problems can be addressed and solved; which mechanisms for service delivery can gain the most traction; and which models can be taken to scale within different political economy contexts.

LDP will use this research to propose a conceptual framework for analysing the conditions for achieving scale, and to assist in understanding what type of approach is most likely to achieve success in different contexts.

Deliverables

The consultant will develop a briefing note by 21 September 2015 and an inception report by 30 September 2015. A draft report that addresses all of the three, interlinked issues outlined above will be produced by 31 October 2015. The research will undertake a literature review – encompassing both academic papers, and reports and know-how from practitioners, as well as drawing on LDP's own practical experience.

The below LDP staff members will contribute to carrying out the assignment:

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Term

[redacted]

Budget

[redacted]



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Annex C: Semi-Structured Questionnaire

SEMI-STRUCTURED QUESTIONNAIRE

Project Name:

Country:

Interviewee (Name and Role):

Background Questions

1. What are the basic legal needs in the country where the project works?
2. What services have been provided to meet those needs?
3. Can you tell us a little about how those services are provided?
4. Can you tell us about how the services began?
5. Can you tell us how they were taken to scale?

Research Question 1: What do we know about the unit costs of basic legal services and how can we calculate them?

6. Do you know what the unit cost was of those services?
7. If so, how do you know? Can you provide us with literature that demonstrates this?
8. If not, do you have data on the input costs of service provision that you could share with us to enable us to calculate the unit costs?
9. What about non-monetary costs?
10. Have any particular cost savings mechanisms been used e.g. technology?
11. Do you have a sense of how the unit costs of basic legal service delivery compared to what people are prepared to pay for those services? Do you have data on this you could share? How would you work it out?



12. Do you have a sense of how the unit costs of basic legal service delivery might compare to the unit cost of basic education or healthcare delivery in your country? If so, how and what is that sense?

Research Question 2: How can scaled up legal services be financed sustainably?

13. How was the project originally financed?

- a. Government-funding
- b. User funding
- c. Lawyer (pro bono)/volunteer funding
- d. Community/side business funding
- e. Insurance funding
- f. Social/commercial entrepreneurs invest?
- g. Hybrid funding

14. How the scaling of the services was financed?

- a. Government-funding
- b. User funding
- c. Lawyer (pro bono)/volunteer funding
- d. Community/side business funding
- e. Insurance funding
- f. Social/commercial entrepreneurs invest?
- g. Hybrid funding

15. Did this financing put the scaled up services on a sustainable ie, non-donor reliant footing? If so, why?

16. If not, why not and what other options do you think should have been tried?

17. Do you think there are any options that are used in education or health care sectors that should have been tried?



18. Do you think that technology can be used to assist with sustainable financing? If so, how?

Research Question 3: What are the political considerations that enable justice models to be taken to scale?

19. What basic conditions were in place to facilitate going to scale

20. What were the political economy considerations in scaling the services and financing them sustainably?

- a. Government-funding (why did the government fund? how?)
- b. User funding
- c. Lawyer (pro bono)/volunteer funding (how was the culture encouraged?)
- d. Community/side business funding (how were community services linked to a national system?)
- e. Insurance funding (what made this possible?)
- f. Social/commercial entrepreneurs invest? (what returns made this possible?)
- g. Hybrid funding (what mix?)

21. Were these considerations managed/responded to successfully? If so, how?

22. Were these considerations managed/responded to unsuccessfully? If so, why?

23. What role did technology play? Was there data on what percentage of people have access to internet/facebook/twitter/mobile phones or how useful people find these methods of accessing information compared to face-to-face?

Round-Up Questions

24. Based on your own personal experience and expertise, what are your own beliefs about why scale up often fails?

25. Based on your own personal experience and expertise, what are your own beliefs about why scale ups succeed?

26. Do you think we can learn anything useful from other sectors like education and health? If so, what?



27. Do you think there is a particular role for technology to play? If so what?
28. What do you think are the key models to explain successful scale-up?
29. Is there any key literature that you think helps to inform scale up? Can you share these with us?
30. What are the big gaps —what are some of the research questions that need to be addressed to help fill the gaps in the knowledge base on scale up?



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Annex E: Case study countries by income classification²

	Low income	Lower Middle income	Upper Middle Income	High income	OECD
Argentina				✓	
Australia				✓	✓
Bangladesh		✓			
Bolivia		✓			
Canada				✓	✓
China			✓		
Kenya		✓			
Liberia	✓				
Myanmar		✓			
Netherlands				✓	✓
Peru			✓		
Rwanda	✓				
Sierra Leone	✓				
South Africa			✓		
Uganda	✓				
Ukraine		✓			
UK				✓	✓

² <http://data.worldbank.org/about/country-and-lending-groups>



Annex F: Country Case Studies

1. Community-Based Paralegals

Case Study 1: Community Justice Advisers in Liberia

1. Overview

Community Justice Advisers (CJAs) are paralegals who provide free legal information, referrals, direct mediation services and civic education to historically marginalised communities across seven of Liberia's fifteen counties (Montserrado, Lofa, Grand Bassa, Bong, Nimba, Grand Gedeh and Maryland). The programme is funded by The Carter Center and has been operational since 2007.

CJAs staff the offices of implementation partner the Catholic Church Justice and Peace Commission (JPC) in larger towns where they provide case support, as well as travelling regularly (by motorbike) to remote communities where they conduct structured mobile clinics.³ Each individual CJA works in ten communities. Paralegals follow a strict protocol during their visits, first greeting local leaders and then following up ongoing cases. This often involves assisting clients to navigate the various legal fora and pathways (state, non-state, hybrid) available to them and/or meeting with parties to a dispute. Workload permitting, CJAs may also conduct information sessions in the form of a community meeting, addressing issues such as land, labour and women's rights.⁴

The Carter Center supports JPC by providing programme staff, including lawyers, from three offices across the country. Carter Center lawyers mentor CJAs through regular trainings which cover basic legal knowledge, mediation and organisational skills. They also assist with work plan preparation, conduct regular monitoring visits, and review select cases.⁵

2. Background

Background to the CJA Programme

Historically, Liberian citizens have viewed the formal justice system with mistrust, as an instrument that responds to and perpetuates elite interests. The national Poverty Reduction Strategy adopted in 2008 suggested that it was, in part, failures of governance and inadequate opportunities for citizen participation that caused the country's civil wars of 1989-96 and 1999-2003.⁶ In the period that followed the signing of the 2003 Accra Peace Accords, donors and government envisaged reforming the Liberian justice sector as

³ Chapman, P. & Payne, C. (2013). 'You Place the Old Mat with the New Mat: Legal Empowerment, Equitable Dispute Resolution, and Social Cohesion in Post-Conflict Liberia'. Justice Initiatives.

⁴ Sandefur, J. & Siddiqui, B. (2013). 'Delivering Justice to the Poor: Theory and Experimental Evidence from Liberia'. World Bank Workshop on African Political Economy, Washington, DC, May 20 2013.

⁵ Chapman, P. & Payne, C. (2013). 'You Place the Old Mat with the New Mat: Legal Empowerment, Equitable Dispute Resolution, and Social Cohesion in Post-Conflict Liberia'. Justice Initiatives.

⁶ Republic of Liberia (2009). 'Truth and Reconciliation Commission, Final Consolidated Report'.



a centralised, top down initiative. For this reason the United Nations Mission focused on infrastructure improvements such as county level circuit courts and the training of court lawyers, directing the majority of justice sector investment to state institutions.

However, a 2009 study by the United States Institute for Peace identified a mismatch between the norms and values embodied by the formal system and those espoused by rural Liberians.⁷ The principles of individual, adversarialism and formal sanctions embodied by the formal system conflict with the commonly held cultural assumption that injurious behaviour tends to be rooted in acrimonious social relations. Justice is perceived to be inadequate when it fails to address these social causes, leading to a preference for restorative justice and an emphasis on truth-finding and reconciliation. Customary justice delivers in accordance with these norms, but – operating according to communal interests – may fail to fulfil the needs of the most vulnerable.⁸ It was during the delivery of civic education on the rule of law, that the Carter Center and its partners identified a demand for impartial community legal services, drawing on the work of TIMAP for Justice in Sierra Leone.

Background to Beneficiaries

A legal needs survey for Liberia has not been identified; however, a paper prepared for the World Bank's Justice for Poor programme found that 98% of a sample of 2081 households reported at least one dispute (although it is not clear over what timeframe).⁹ The Carter Center's own analysis of beneficiaries indicates that most clients learn about CJA services from JPC community awareness-raising activities. Radio and signboard advertising are also common sources of information for potential clients.¹⁰

3. Cost Data

Cost of Basic Legal Services

The average yearly budget between 2010 and 2014 was USD 447,095, and the average yearly case intake was 1,272 during that time, equivalent to a (crude) cost of USD 351 per case.¹¹ Each CJA serves ten communities, and the estimated population of these communities is 575,329 people,¹² resulting in a unit cost of USD 0.78 per capita.

The average yearly budget between 2010 and 2014 was USD 447,095, and the average yearly case intake was 1,272 during that time, equivalent to a (crude) cost of USD 351 per case.¹³ Attributing programme cost to both cases handled and the 54600 people sensitised or trained provides a unit cost of USD 1.85

⁷ Isser, D., Lubkemann, S. and N'Tow, S. (2009). 'Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options'. United States Institute of Peace.

⁸ Ibid.

⁹ Sandefur, J. and Siddiqi, B. (2013). Delivering Justice to the Poor: Theory and Experimental Evidence from Liberia.

¹⁰ Information provided by the Carter Center, 2015.

¹¹ Email from Tom Crick at Carter Center, 18 December 2015.

¹² Email from Tom Crick at Carter Center, 18 December 2015.

¹³ Email from Tom Crick at Carter Center, 18 December 2015.



per person directly interacted with.¹⁴ 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 of 575,329 people at a unit cost of USD 0.78 per capita.¹⁵

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

Liberia has a GDP per capita of USD 370¹⁶ and spends USD 4 per capita of the national budget on the judiciary,¹⁷ compared to USD 13 per capita and USD 10 per capita on the health and education sectors respectively.¹⁸

Benefit of Basic Legal Services

62% of CJA clients travel less than one kilometre to reach the CJA, with distance thus not a barrier for the majority. However, the longer the distance the lower the percentage of women making the journey, pointing to distance as a barrier to access for women (possibly owing to domestic work burdens and/or social norms that restrict mobility). Nevertheless, in 2014 women made up 51% of programme clients. Indeed, for the most common client age group of 19 to 30, almost double the number of cases are brought by female compared to male clients.¹⁹ 44% of cases resolved by the CJA are settled through mediation – both the most common and most cost effective method of resolution.²⁰ One study found that paralegal clients were happier with case outcomes by 26.7%.²¹

4. Financing Options

The CJA program is financed by a yearly sub-grant made from The Carter Center to the JPC. The annual volume of funding has increased from USD 325,800 in 2009 to USD 525,500 in 2015, although it should be noted this general upward trend does not reflect incremental year on year increases.²²

5. Political Economy Considerations

¹⁴ Email from Tom Crick at Carter Center, 18 December 2015.

¹⁵ Ibid, pp.2-3.

¹⁶ World Bank (2015). World Development Indicators: GNI per capita, Atlas Method (current US\$) available at <http://data.worldbank.org>

¹⁷ Government of Liberia (2015). National Budget: Government of the Republic of Liberia 2015-2016. Ministry of Finance and Development Planning, Department of Budget and Development Planning, Monrovia.

¹⁸ World Bank (2015) World Development Indicators.

¹⁹ Ibid.

²⁰ Information provided by the Carter Center, 2015.

²¹ Sandefur, J. and Siddiqi, B. (2013). Delivering Justice to the Poor: Theory and Experimental Evidence from Liberia.

²² Ibid.



- As a partnership with the Ministry of Justice (MOJ) and the Ministry of Internal Affairs (MIA), implemented in collaboration with the National Council of Chief and Elders, the CJA programme benefits from political support from both formal and traditional leadership.
- By assisting citizens to navigate the various legal pathways available to them, the programme is helping to enhance interactions and rebuild the social contract between citizens and justice providers.²³
- National laws affording protection to vulnerable groups tend to have only limited effect at the local level. The programme can give effect to these laws – for example, the 2003 law extending inheritance rights to women – by empowering these citizens to enforce their rights and entitlements; between 2008 and 2011, female clients brought 84% of disputes relating to inheritance rights.²⁴
- The fact that most clients learn about CJA services from JPC community education and awareness-raising activities suggests that improved understanding of legal rights stimulates demand.²⁵ Preliminary results of an impact assessment published in 2012 found evidence that paralegals have an impact on improving community relations and social cohesion: clients reported that their relationship with the other disputant had improved in 70% of cases and described the relationship with other members of the community as “better off” in 77% of cases.²⁶
- The legal profession has yet to embrace any formal role in service provision for non-lawyers, although a draft legal aid policy is under consideration. Previously, the professional interests of lawyers have been opposed to institutionalising such a role.

²³ Ibid.

²⁴ Chapman, P. & Payne, C. (2013). ‘You Place the Old Mat with the New Mat: Legal Empowerment, Equitable Dispute Resolution, and Social Cohesion in Post-Conflict Liberia’. Justice Initiatives.

²⁵ Information provided by the Carter Center, 2015.

²⁶ Chapman, P. & Payne, C. (2013). ‘You Place the Old Mat with the New Mat: Legal Empowerment, Equitable Dispute Resolution, and Social Cohesion in Post-Conflict Liberia’. Justice Initiatives.



Case Study 2: Namati Sector-Specific Paralegals in Myanmar

1. Overview

Since 2013, Namati has partnered with the Myanmar-based Civil and Political Rights Campaign Group (CPRCG) to deploy 30 grassroots paralegals to 150 village tracts in seven states to help farmers protect their land rights under new Burmese law.²⁷ CPRCG is a Burmese NGO in which lawyers and social activists work together to build strong and effective rule of law and environmental protection in Myanmar, their experience with land and the Myanmar courts complementing Namati's experience with paralegal methods.²⁸ As a result, hundreds of farmers have received land use certificates, vacant land has been converted into farmland and grabbed land has been returned to small-hold farmers.

2. Background

Background to Paralegal Work

In 2012, the Myanmar Government passed the Farmland Law and the Vacant, Fallow and Virgin Lands Management Law which, together with their related regulations, set out a new process through which individuals can register and receive a land use certificate for their farmland. The Government has also established a Farmlands Investigation Committee to receive complaints and conduct investigations around incidents of land grabbing. However, many farmers remain unaware of the process for registration and sometimes meet with resistance from the authorities leaving them unclear as to how to resolve disputes. Similarly, those that refer their cases to the Committee struggle to follow up on the status of their cases or ensure the implementation of any decision.²⁹

Land-focused paralegals conduct community education outreach, assist farmers with application forms and complaint letters, accompany clients to government offices and conduct follow-up as needed.³⁰ Paralegals encourage farmers to complete as much of the process on their own but for those who need extra assistance or who have complex cases, paralegals provide accessible legal services at the community level. When cases that require court action arise, CPRCG staff lawyers provide legal representation for clients.³¹

Paralegals also track every case rigorously, including aspects of the process such as the time the government takes to issue a land use certificate, the documents farmers were required to produce, instances of corruption and the level of government at which a decision was reached.³² This data enables

²⁷ Namati. (2015). 'Protecting land rights through paralegal services in Myanmar'.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

³² Ibid.



paralegal effectiveness to be continuously improved but it also provides data on how the land registration system and other land laws are working in practice which can be used to advocate for improvements to law and policy.³³ Now is a critical time for such advocacy as the Myanmar government is working to adopt a national land use law and policy.³⁴ Working with Landesa, a global leader in advising governments on land laws and policies and an organisation with direct links to the office of Daw Aung San Suu Kyi, Namati intends to prepare three briefing notes on land registration, the conversion of vacant land and the return of grabbed land and issues such as inheritance and debt.³⁵ These recommendations will be shared with government counterparts including the Land Use Allocation and Scrutinising Committee that is working on the draft law and policy and the Rule of Law Tranquility Committee of which Daw Aung San Suu Kyi is the Chair as well as the USAID team working with the Ministry of Agriculture.³⁶

Namati is also an active member of the Land Core Group (LCG), a network of civil society organisations and others who work on land-related issues in Myanmar. LCG has over 100 members, including both international and local NGOs. Namati's Myanmar-based team members attend monthly LCG meetings, share information with LCG members and distribute educational materials. Namati also has a wide-ranging network of land organisations and contacts outside of LCG with which it collaborates around program implementation, advocacy and sharing of best practices and lessons learned.³⁷

Background to Beneficiaries

67% of Burma's population or 40 million farmers depend on agriculture for their livelihood and a recent assessment by UNDP found that Myanmar farmers ranked land security first amongst the justice problems which they face.³⁸

3. Cost-Benefit Analysis

Cost of Basic Legal Services

Namati considers that the paralegal system could grow to serve one third of the rural population over the next five years at a cost of USD 3.75 million per year to cover 30 organisations with an annual operating budget of USD 125,000 each.³⁹ 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.⁴⁰

The cost of scaling up current provision to the entire population of 53m would be USD 15.5m.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid

⁴⁰ Ibid.



Myanmar has a GDP per capita of USD 1,270 and the government spends USD 23 and USD 10 per capita on the health and education sectors respectively.⁴¹ Data on government expenditure on the judiciary was not available for this analysis.

Benefit of Basic Legal Services

Paralegals do not aim to serve as clients all the people in their coverage area but focus efforts on the toughest problems people face. However, Namati believes that their presence improves rights protection for the catchment population as a whole.⁴² In the first 16 months of the programme, paralegals served 2390 clients on cases affecting 7992 people and produced a resolution rate of 85.7% for cases in the first six months and 41.3% for all cases, including recently opened ones.⁴³ We understand that early efforts have had substantial impact in securing land use certificates for famers, converting vacant land into farmland, and returning land to small-hold farmers.

4. Financing Options

OSJI, in partnership with the Omidyar Network, is financing a scale up through a further 15 paralegals to engagement in 225 village tracts across seven states, or 2% of the rural population, as well as supporting three additional organisations to adopt a paralegal approach with 45 paralegals in an additional 225 village tracts, or a further 2% of the rural population, and aggregating data across cases worked on to use in advocacy for policy change for many more small-scale farmers.⁴⁴ In the coming years, Namati will explore models for how to finance a further scaled up network.

5. Political Economy Considerations

- Namati and CPRCG offer intensive training for paralegals, with CPRCG covering legal knowledge on training on land-related laws and regulations and Namati covering paralegal skill building such as community education and interfacing with government – both teams then offer phone and in-person supervision visits on an ongoing basis in relation to case handling strategies⁴⁵
- Paralegals work with village heads to introduce services to local communities and Namati works to frame its work as supporting the implementation of the government's own policies, while building coalitions with other community-based organisations and local and national allies – this mitigates security risks from government officials, crony companies and others who may be threatened by the work.⁴⁶

⁴¹ World Bank (2015). World Development Indicators.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.



- In advocating for policy changes, Namati will engage with multiple government actors including Members of Parliament, the Land Use Allocation and Scrutinising Committee, the Ministry of Agriculture and the Ministry of Environmental Conservation and Forestry, as well as state and local-level administrators to maximise the chances of obtaining traction and limit the risk of resistance.⁴⁷

⁴⁷ Ibid.



Case Study 3: TIMAP for Justice and Others in Sierra Leone

1. Overview

In June 2012, Sierra Leone was home to 76 TIMAP paralegals providing basic legal services in 33 locations across 8 districts, covering an estimated 38% of the country's population of roughly 6 million.⁴⁸ The services provided include legal education, mediation, community organising and advocacy before traditional and government authorities – as well as referral to a small pool of supervising lawyers who are able to litigate before the formal courts in cases where the injustice is particularly severe or there is a possibility of legal impact.⁴⁹ Paralegals are each attached to a local office but are not restricted to those offices or indeed to any other specific locations but can reach out to communities and individuals through mobile clinics and in practice spend a lot of time in the field.⁵⁰

2. Background

Background to TIMAP for Justice and Scale-Up

TIMAP for Justice, which means 'stand up' for justice in Krio, responded to two distinct challenges of Sierra Leone's legal system. The first was the shortage of practising lawyers following the brutal decade long civil war (1991-2002) and the second was the country's dualist legal system which grants authority to local courts applying customary law.⁵¹

TIMAP commenced in 2003, post-war, as a joint initiative of the Sierra Leonean National Forum for Human Rights⁵² and the Open Society Justice Initiative to provide basic justice services at the chiefdom level. By 2009, TIMAP served roughly 16% of the population from 13 offices.⁵³ Since then, OSJI has worked with the Government of Sierra Leone, TIMAP, the World Bank and four civil society organisations (BRAC, Access to Justice Law Centre, Methodist Church Sierra Leone (MCSL) and the Justice and Peace Commission (JPC)) to develop a national approach to basic legal services that includes a frontline of community-based paralegals and a small corps of public interest lawyers.⁵⁴ 45 new paralegals were recruited and trained and 19 new offices were established; work was also done to promote the adoption of a legislative framework recognising paralegals, to institutionalise training and standards in the form of a code of

⁴⁸ Open Society Justice Initiative (2012). 'A National Approach to Justice Services'. Legal Empowerment Project.

⁴⁹ 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. Vol 31:427.

⁵⁰ Open Society Foundations (2015). 'Delivering Community Justice Services at Scale: Sierra Leone: A National Approach to Justice Services'.

⁵¹ Timap for justice. 'Our Model'. Available at <http://www.timapforjustice.org/our-work/our-model> last accessed 13 November 2015.

⁵² The National Forum for Human Rights is a coalition of forty-one Sierra Leonean human rights organisations.

⁵³ Open Society Justice Initiative (2010). 'Preliminary Findings on Participatory Baseline KAP Survey from the Scale-up of Justice Services programme, Sierra Leone'.

⁵⁴ Open Society Justice Initiative (2012). 'A National Approach to Justice Services'. Legal Empowerment Project.



conduct and to create oversight mechanisms, to develop monitoring and evaluation and to diversify the funding base.⁵⁵ Since 2012, Namati has been taking forward OSJI's work with the consortium (which includes Development Alternatives Incorporated, LDP and Social Development Direct) who are implementing the DFID Access to Justice and Security Programme in Sierra Leone.⁵⁶ Namati has begun to focus the work of paralegals around specific areas such as land and environmental justice.

Background to Beneficiaries

A survey was conducted in 2010 with the four civil society organisations participating in the scale up of paralegal services in Sierra Leone to inform the training of paralegals and act as a baseline for future research. 669 interviews were conducted across 11 different sites out of which 80% said they were aware of domestic violence in their community and 19% of respondents (29% of female respondents) recorded having a justice problem involving domestic violence in the last three years.⁵⁷

The same survey found that 81% of respondents had had some sort of legal problem in the preceding three years and 32% of respondents had an ongoing problem for which they would like advice and assistance from paralegals. Theft was the most frequently recorded justice problem with 31% of respondents having suffered from it, followed by debts, contracts and loans at 19% along with domestic violence.⁵⁸

It is possible that the difference is explained by the fact that, at least in 2009, family cases were the greatest proportion of cases that are taken to TIMAP offices.⁵⁹

3. Cost-Benefit Analysis

Cost of Basic Legal Services

By 2005, each of TIMAP's eight offices were handling an approximate average of 20 new cases per month,⁶⁰ and 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 10 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.⁶¹ Similarly, TIMAP estimated that the ten chiefdoms covered an area of

⁵⁵ Open Society Justice Initiative (2010). 'Preliminary Findings on Participatory Baseline KAP Survey from the Scale-up of Justice Services programme, Sierra Leone'.

⁵⁶ Open Society Justice Initiative (2012). 'A National Approach to Justice Services'. Legal Empowerment Project.

⁵⁷ Open Society Justice Initiative. (2010) 'Preliminary Findings on Participatory Baseline KAP Survey from the Scale-up of Justice Services programme, Sierra Leone'.

⁵⁸ Ibid.

⁵⁹ 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.

⁶⁰ 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. Vol 31:427.

⁶¹ Ibid.



approximately 736,000 people excluding Freetown, producing a programme cost of USD 0.34 per person after a USD 10,000 discount for Freetown operations.⁶² By 2012, coverage of some 40% of the population of approximately 5 million was being achieved on a budget of USD 1 million.⁶³

More recently, Namati has estimated that it would cost USD 2 million per year or USD 0.36 per person to provide paralegal services throughout the country, based on an office in most chiefdoms combined with a small corps of supervising lawyers.⁶⁴ Our estimate is very similar. Namati calculates this figure to be 0.3% of the total 2013 budget of the Government of Sierra Leone and 3% of what it currently allocates to healthcare.⁶⁵

On our calculations, Sierra Leone's GDP per capita is USD 710⁶⁶ while its annual government expenditure on the judiciary is approximately USD 1.3 million or USD 0.6 per capita.⁶⁷ National scale-up would therefore cost half the government's current expenditure on the judiciary. By comparison, government expenditure on the health and education sector amounts to USD 12 per capita and USD 20 per capita respectively, which is within the expected relative proportions.⁶⁸

Benefit of Basic Legal Services

In a recent World Bank evaluation of TIMAP, researchers selected 42 cases handled by the programme and interviewed all parties involved.⁶⁹ The evaluation found that respondents were 'overwhelmingly positive' about their experiences, the programme's effectiveness in resolving difficult disputes and empowering its clients.

4. Financing Options

Initial financing for the scale up was provided by OSJI and others (including GIZ, Trocaire and Enciss), capitalising on existing infrastructure by partnering with other organisations already offering paralegal services which kept costs low but no long-term investment strategy was devised at this time.

As a result of persistent advocacy, the Legal Aid Act 2012 was passed to constitute a Legal Aid Board for Sierra Leone to authorise legal aid providers, including paralegals.⁷⁰ The Board includes two seats for civil society with TIMAP and a second NGO representing civil society. This year the first allocation was made

⁶² 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. Vol 31:427.

⁶³ Internal Namati note (2012).

⁶⁴ Maru, V. & Gauri, V. (draft). 'Bringing Law to Life: Community Paralegals and the Pursuit of Justice'.

⁶⁵ Ibid.

⁶⁶ World Bank (2015) World Development Indicators.

⁶⁷ Government of Sierra Leone (2015). Government Budget (with gap) 2015-2016.

⁶⁸ World Bank (2015) World Development Indicators.

⁶⁹ 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.

⁷⁰ Maru, V. & Gauri, V. (draft). 'Bringing Law to Life: Community Paralegals and the Pursuit of Justice'.



of some USD 40,000 to the Legal Aid Board but it is hoped that more will come in time.⁷¹ The Act also provides that the Government of Sierra Leone must fund at least 1 paralegal per chiefdom but to date this commitment has not been realised in practice; it is hoped that as funds to the Legal Aid Board increase, it will be realised, but there are issues of institutional competition for the funds.⁷² In the meantime, work has had to scale down to some extent with each organisation individually seeking additional funding to keep services running and some paralegals continuing their work voluntarily.

In addition, Namati is looking at other funding sources. These include community contributions in the form of land for permanent offices,⁷³ an amendment to the Act to permit the charging of low-level user fees⁷⁴ and a user fee for a legal advice phone line (provided by Airtel free of charge) used by the public to seek legal advice, information and referrals from paralegals and lawyers.

5. Political Economy Considerations

- Paralegals were more widely available and more easily recruited and trained than lawyers, typically being lay people with a minimum of secondary school education, chosen for their ability to bridge law and society, and engage in internal justice development within their communities.
- The dualist legal system was such that lawyers were barred from practicing in the customary courts and yet these were the institutions of most practical relevance to the majority of Sierra Leoneans.⁷⁵
- Key to scaling up the programme and ensuring its sustainability was developing new legislation to recognise and paralegals in the form of the Legal Aid Act 2012, for which a network of organisations was important to counter opposition from the Bar.⁷⁶
- It was perhaps not a coincidence that the legislation passed just before a general election; MPs thought that it would be a vote winner with their constituents.⁷⁷
- So was engaging paramount chiefs and elders by meeting with key local stakeholders and appointing local community oversight boards to oversee paralegals as well as holding community discussions to identify key justice concerns in the community before each field office was opened.⁷⁸

⁷¹ Open Society Foundations (2015). 'Delivering Community Justice Services at Scale: Sierra Leone: A National Approach to Justice Services'.

⁷² Ibid.

⁷³ Maru, V. & Gauri, V. (draft). 'Bringing Law to Life: Community Paralegals and the Pursuit of Justice'.

⁷⁴ Internal Namati note (2012).

⁷⁵ 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*. Vol 31:427.

⁷⁶ Maru, V. & Gauri, V. (draft). 'Bringing Law to Life: Community Paralegals and the Pursuit of Justice'.

⁷⁷ Interview with Lotta Teale, 7 December 2015.

⁷⁸ Ibid.



- Scale up was also preceded by a four-week intensive training for 41 paralegals where prominent experts in government and the legal field worked with the group on essential paralegal skills, working with government and the basics of law subjects including family law, contract law and customary law. Paralegals then continued to benefit from periodic classroom discussion and on-field mentoring from more experienced paralegals through a curriculum of 12 modules.⁷⁹

⁷⁹ Open Society Foundations (2015). 'Delivering Community Justice Services at Scale: Sierra Leone: A National Approach to Justice Services'.



2. Microfinancing Justice

Case Study 4: Microjusticia Argentina

1. Overview

Microjusticia Argentina offers marginalised citizens access to basic rights by providing them with free legal support, and education to raise awareness of their rights and responsibilities as citizens. The initiative also lobbies for the improvement and simplification of laws, regulations and procedures.⁸⁰

The standardised free legal services offered by the programme cover the following areas: civil documentation, including birth registration and obtaining ID; women and children's rights, including rights to food and education; disability and health-related rights, including administrative processes relating to benefits and pensions; immigration, including status documentation; and labour, including tax registration.⁸¹ Legal services are offered free of charge to end users and provided by approximately five lawyers and 15 law students, who are supervised by three trained part-time lawyers, and supported by one full-time coordinator and a part-time administrator (five staff members are remunerated).⁸²

Microjusticia operates across the city of Buenos Aires and in the city of Salta. In the city of Buenos Aires they operate from three branch offices loaned by microfinance institution FIE Gran Poder and in Salta in an office loaned by Proyecto Alumbra. Once weekly a group of volunteers coordinated by two staff members work alongside NGOs, on the outskirts of the city, to improve outreach to vulnerable groups. A working partnership with the National Immigration Authority and the Federal Prosecutor's office⁸³ enables the programme to address legal problems encountered by immigrants and slum dwellers.⁸⁴

2. Background

Background to Microjusticia

Argentina's 2001 economic crisis pushed more than half of its population into poverty. Rapid economic growth in subsequent years means that Argentina is now considered a middle- to high-income country. However, the average income and GDP masks a wide disparity in the distribution of wealth, with inhabitants of the larger metropolitan areas marginalised, both socio-economically and in terms of access to basic rights. Around 1,275,000 people born in the country, as well as two million Bolivian immigrants, lack the official documentation necessary to participate fully in society as democratic citizens.

⁸⁰ Microjusticia Argentina (2013). 'Overview and Objectives 2013-2016'.

⁸¹ Ibid.

⁸² Ibid.

⁸³ <https://www.mpf.gob.ar/atajo/>

⁸⁴ http://www.migraciones.gov.ar/accesible/indexN.php?mostrar_novedad=2948



Microjusticia Argentina was founded in 2010, inspired by the Microjustice4All model and with the aim of ensuring the inclusion and empowerment of these groups.⁸⁵

Background to Beneficiaries

In Argentina, a 2013 study of unmet legal needs found that 55% of respondents had experienced a legal or rights abuse problem during the preceding three years. The most prominent legal problems identified related to public services (61%), followed by health services (41%), crime (37%), the workplace (27%) and social security (24%). Public services were the most important issue across all age and social groups.⁸⁶

55% of those with a legal problem had not looked for any kind of help to resolve the problem, 48% because they did not know what to do (notably, 41% of men versus 54% of women), 23% didn't need information because they knew how to deal with the problem already, and 18% because they believed that someone else would solve their problem. For those who sought to find information to help themselves, the ease with which they could do this varied by problem, with those problems involving government services proving particularly difficult to find information about.⁸⁷

3. Cost Data

Cost of Basic Legal Services

By relying primarily on volunteers and operating out of branches of microfinance institutions such as FIE Gran Poder or Proyecto Alumbra, Fundacion Microjusticia Argentina is able to keep operating costs to a minimum. In 2014, the programme had an annual operating budget of USD 28,054 and handled a total of 441 cases. This provides a crude unit cost estimate of USD 64 per case handled.⁸⁸ Microjusticia are currently considering stipend and salary options in order to build a cadre of legal advisers. Although legal advisers currently operate on a voluntary basis, it is thought that this is likely to change to a salary-basis in the near future.

However, this is a substantial overestimate of the true cost per case since the entire operating budget is apportioned to cases handled and the wider scope of the programme not accounted for. Microjusticia's operating budget increased substantially over the past three years (from USD 15,000 in 2013 to USD 48,000 in 2015) while the case load remained roughly stable, which provides some indication of expansion in other areas of service provision.⁸⁹ To refine the unit cost an approximation would have to be made on the proportion of resources (e.g. staff time and running costs) spent on directly handling cases. On the

⁸⁵ Ibid.

⁸⁶ Bercovich, L et al. (2013). 'Disadvantaged Communities, Rights and Access to Justice a Study of Unmet Legal Necessities'.

⁸⁷ Ibid.

⁸⁸ Information provided by Microjusticia Argentina, 2015.

⁸⁹ Ibid.



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.

Using a legal needs approach, the cost of scaling up current provision to a population of 43m is USD 54.7m.

Argentina has a GDP per capita of USD 10,724⁹⁰ and a government budget of USD 130.5 billion, of which three per cent is spent on the judiciary (or USD 55 per capita).⁹¹ By comparison, government expenditure on health and education amount to USD 697 and USD 722 respectively.⁹² The public sector in Argentina was largely decentralised from the federal level to provinces and municipalities and further analysis of budgets at this level would be required for a full picture of the relative size of these sectors.

Benefit of Basic Legal Services

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.⁹³ 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 birth certificates and identity documentation for undocumented beneficiaries, 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.

4. Financing Options

The cost of service delivery is cross-subsidised by charging fees to (a) microfinance institutions and NGOs interested in having Microjusticia's lawyers serving their clients and communities; and (b) law firms, law schools and in-house legal teams interested in training their lawyers or offering CSR/pro bono opportunities. Funding is also provided by "micro-donors" cultivated online and through social media and annual gifts by private donors.

5. Political Economy Considerations

- The programme's links with select government agencies and NGOs demonstrates the potential benefits of public-private partnerships in terms of outreach and providing targeted support to the most vulnerable

⁹⁰ World Bank (2015) World Development Indicators.

⁹¹ Government of Argentina (2015). Administracion Nacional: Composicion del gesto por finalidad – function y por jurisdiccion.

⁹² World Bank (2015) World Development Indicators.

⁹³ ACIJ (2013). 'Disadvantaged Communities, Rights and Access to Justice: A Study of Unmet Access to Justice'.



- In recent years the government has realised the value of Microjusticia's service provision, particularly amongst the urban poor. Recognising the need for basic legal service provision, the Argentine judiciary has begun to second legal advisers from the judiciary to marginalised communities to offer direct legal advice and administrative referral services, in a manner that appears to be inspired by Microjusticia's model. The Minister of Justice and the Federal Prosecutor have both met recently with Microjusticia to discuss how the two can either work together, or in parallel, to best address the legal needs of poor and marginalised communities.
- The programme relies primarily on contractual fees from a relatively wide range of organisations to cross-subsidise its provision of basic legal services. Microjusticia has positioned itself as the go-to organisation on the legal issues of disenfranchised slum dwellers. It is cheaper and more straightforward for NGOs, microfinance institutions and law firms to work through the organisation than to offer legal advice direct. This, combined with, the delivery of these services via a number of private and third sector partners would seem to make the model sustainable.
- The fact that volunteers may soon be remunerated on a salary-basis may indicate the challenges of relying on pro bono support in the long-term and may endanger the sustainability of the model.



Case Study 5: Legal Aid Clinics in Bangladesh

1. Overview

BRAC's Human Rights and Legal Aid Services (HRLS) programme operates 512 legal aid clinics in 61 of Bangladesh's 64 districts – the largest NGO-led legal aid programme in the world. Its comprehensive legal aid services include information and advice, alternative dispute resolution, referrals, counselling and court representation.⁹⁴

Legal awareness is provided primarily by volunteer "Barefoot Lawyers" – often self-taught legal activists – who work in collaboration with existing community leaders and networks. Community leaders are trained and paid a small fee to help citizens with, for example, birth, death, marriage and divorce registration, and land measurement and survey.⁹⁵

HRLS barefoot lawyers also deliver a twelve day legal education course covering laws on marriage (including child marriage), dowry, divorce, land and inheritance. Three graduates from each course are selected to act as community observers – helping to raise awareness of legal resources, inform village courts about formal laws and mediate conflicts – with the aim of achieving a multiplier effect.⁹⁶

2. Background

Background to HRLS

BRAC began operations as a small relief organisation in northern Bangladesh in 1972 in the immediate aftermath of independence. Today the organisation the largest NGO in the world, with programmes serving an estimated 110 million people, in areas spanning, health and social development.⁹⁷ The HRLS programme has been operational for 29 years and forms a core part of BRAC's development programming.⁹⁸

Background to Beneficiaries

A legal needs study published in 2010 found that one in three respondents had experienced two legal problems during the preceding three years, and at least one in four had experienced more than two. Problems relating to personal security were the most prevalent (29.4%), followed by problems related to family relationships (17.6%). These two areas are closely interconnected, with most of the violence experienced by those interviewed as part of the qualitative component of the research originating within

⁹⁴ Information provided by BRAC, 2015.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Ahmed, S. and French, M. (2006). 'Scaling Up: the BRAC Experience'. BRAC University Journal, 3(2).

⁹⁸ BRAC, Human Rights and Legal Aid Services Programme. Available at <http://hrls.brac.net/>, last accessed 12 November 2015



the family. These concerns were followed by problems with neighbours (17.6%) and employment (11.8%).⁹⁹

Respondents were more likely to source help for their issues – particularly those related to family relationships – from social networks. Long and ineffective judicial processes, as well as a perception of partiality and unfairness, lay behind respondents' general distrust of the formal court system.¹⁰⁰

Where a problem remained unresolved, the majority explained this by reporting either that it was difficult to find out what to do (44.83%) or that they believed that the other party to have more power (41.38%). These issues were considered significantly more important than either time or money (both 6.9%).¹⁰¹

3. Cost Data

Cost of Basic Legal Services

In 2014 HRLS handled 6,161 court cases.¹⁰² A cap on the total number of cases will be set at 5,000 per annum from 2016, costing a total of USD 0.3 million.¹⁰³ On the basis that the clinics are almost district-wide, this is essentially a scale up cost albeit not one based on legal needs.

As there is limited data available on costs and catchment size, the assumption was made that funding for court cases reached a community 50 times the size of clients directly represented, providing a crude unit cost estimate of USD 1.1. Since this cost estimate is based purely on the unit cost of representation at court, it is likely to be a substantial overestimate of the cost of basic legal service provision (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).

Using a legal needs approach, the cost of scaling up current provision to a population of 159m is USD 181.8m.

Bangladesh's GDP per capita is USD 1,080.¹⁰⁴ One USD per capita out of the national budget is spent on the judiciary, while USD 14 and USD 23 are spent on the health and education sectors respectively.¹⁰⁵

Benefit of Basic Legal Services

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

⁹⁹ Gramatikov, M., & Verdonchot, J. (2010). 'Legal needs of vulnerable people: A study in Azerbaijan, Mali, Rwanda, Egypt and Bangladesh'. Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems.

¹⁰⁰ Ibid.

¹⁰¹ Ibid

¹⁰² Information provided by BRAC, 2015.

¹⁰³ Ibid.

¹⁰⁴ World Bank (2015) 'World Development Indicators'.

¹⁰⁵ Ibid.



clients and 2,301 were not.¹⁰⁶ A total of over USD 9 million had also been secured by way of monetary compensation.¹⁰⁷ Over 3.8 million women had been reached with legal education and 6000 shebikas (barefoot lawyers) and 8,300 odhikar shebis (community leaders) trained.¹⁰⁸ Usage of the formal justice system is already low due to cost and complexity.¹⁰⁹

4. Financing Options

The BRAC model is to cross-subsidise 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 the HRLS budget is financed through a USD 0.13 client fee to help secure buy in and improve the model's sustainability.¹¹⁰

However, the HRLS programme has, for the past five years, relied primarily on core donor funding that is due to come to an end in 2015. The programme is thus seeking to secure more sustainable sources of funding – possibly in the form of cross-subsidies from either its umbrella organisation and/or the introduction of services in slightly wealthier, urban areas where higher client fees could be charged.¹¹¹

5. Political Economy Considerations

- Human rights activities tend to be politically and financially sensitive, and particularly affected by changeable donor priorities. The HRLS were integrated into BRAC's broader development programming from the outset, partly as a means of mitigating these risks.¹¹²
- Working with and through community partners and networks has been critical to scaling up the programme's services in terms of geographical reach and ability to target vulnerable groups.
- The government is currently building a state legal aid service based on the HRLS model. There is clear political will on the part of the state to engage in legal service provision. However, perceiving BRAC as a competitor, the government has not engaged programme staff in direct discussions. Tensions have been heightened by the tendency of foreign observers to refer to BRAC as a parallel quasi-public provider.

¹⁰⁶ 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.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² Ibid.



- BRAC would prefer to position these two operations – their own and that of the state – as complementary services, and has attempted to move towards greater cooperation by building relationships with some of the smaller government agencies.¹¹³
- The cessation of core donor funding means that the programme must look elsewhere for sustainable sources of financing. However, the possibility of developing a more sustainable model by introducing services for a better off clientele contains the inherent risk of “mission drift” as the programme seeks to balance financial imperatives with serving the poorest and most vulnerable.

¹¹³ Ibid.



Case Study 6: Microjustice4All

1. Overview

Microjustice4All (MJ4All) is a network of programmes that provide standardised basic legal services to marginalised groups so that they can access their rights, whilst engaging, in parallel, in evidence-based advocacy to improve institutional frameworks. The network aims to deliver these services on a cost-efficient and sustainable financial basis, achieving economies of scale and effective outreach by co-locating with existing private or voluntary sector organisations engaged in some form of service delivery.¹¹⁴

The umbrella initiative based in The Hague sets up and supports independent Microjustice Country Organisations, who are then hosted by a wide range of organisations and individuals, from microfinance institutions (Bolivia) to churches and community chiefs (Kenya).¹¹⁵ Services are provided by paralegals and law students under the supervision of experienced lawyers and in exchange for an affordable fee. A case manager based in each lead country office is responsible for coordinating consultations and overseeing the progression of cases.¹¹⁶

Whilst exact services offered vary by country, MJ4All's core services focus on five areas of legal documentation: (i) civil, including birth certificates and other identity documents enabling access to education, healthcare, social benefits, microfinance and voting rights; (ii) property, such as housing and land registration for personal security and access to collateral; (iii) income-generation, including labor contracts and setting up businesses, cooperatives and other legal entities; (iv) family law and inheritance matters; and (v) documentation related to specific contexts such as the aftermath of conflict or natural disaster.¹¹⁷

2. Background

Background to MJ4All

MJ4All was founded in 1996 in the former Yugoslavia to contribute to peace-building efforts by helping refugees and IDPs to obtain legal documentation. Between 1996 and 2008, MJ4All helped more than 30,000 refugees in the former Yugoslavia to obtain important legal documents such as birth certificates, citizenship papers, marriage certificates and property titles. Based on this experience, a pilot Microjustice programme was initiated in Bolivia in 2007. MJ4All has since supported the development of MJ4All

¹¹⁴ MJ4All (2015a). 'The MJ4All model'.

¹¹⁵ Ibid.

¹¹⁶ Information provided by MJ4All, 2015b.

¹¹⁷ Ibid.



Country Organizations in Peru (2008), Argentina (2009), Uganda (2010), Kenya (2011), and Rwanda (2012).

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Background to Beneficiaries

MJ4All's documentation services are intended to afford clients legal protection, social inclusion and opportunities for economic development at a micro-level, as well as address a gap in legal service provision, with traditional legal aid relating primarily to court representation and to paralegal services in conflict resolution or mediation. Legal needs assessments are conducted at the country level.¹¹⁹

3. Cost Data

Cost of Basic Legal Services

MJ4All indicates that its programmes depend on low operational costs, achieved through the use of existing infrastructure, economies of scale and high levels of efficiency (standardised procedures, handbooks). It was not possible to obtain cost data in time to include it in this study.

Benefit of Basic Legal Services

An impact assessment conducted in Bolivia and Peru cited cost as the most important reason for which they had chosen to address their problem through MJ4All rather than the formal system. In Peru this was overwhelmingly the case. In Bolivia a number of other reasons featured, namely the quality, speed and accessibility of services.¹²⁰

4. Financing Options

According to MJ4All's model, the development phase (start up, product development) of a country programme is funded externally. External funds should then be used on a declining basis as a client base is built over the course of three subsequent stages. Eventually, service provision should be funded either entirely by users or a third party interested in the rights of a specific group. However, legal education and capacity building activities continue to rely on external funding. In this sense, MJ4All can be considered a hybrid social enterprise.¹²¹

¹¹⁸ Ouillette, K. (2015). 'An Impact Assessment of Microjustice4All's Legal Service Provision in Peru and Bolivia'.

¹¹⁹ MJ4All. (2015a). 'The MJ4All model'.

¹²⁰ Ouillette, K. (2015). 'An Impact Assessment of Microjustice4All's Legal Service Provision in Peru and Bolivia'.

¹²¹ Information provided by MJ4All, 2015b.



5. Political Economy Considerations

- Reliance primarily on private and voluntary sector hosts rather than government support may present challenges for sustainability in the long term.
- Despite working alongside existing service providers, MJ4All has had to invest considerable effort in generating demand with country organisations promoting their services at e.g. markets and queues at government buildings, and through radio campaigns, flyers, workshops and training sessions.¹²²
- Set up problems may be encountered where governments rule that NGO services should be free – as in Uganda – which requires the establishment of parallel businesses.¹²³
- In Uganda, extensive corruption amongst civil society actors and the public sector made the MJ4All model untenable, leading them to cease operations.

¹²² MJ4All. (2015a). 'The MJ4All model'.

¹²³ Information provided by MJ4All, 2015b.



3. National Community Law Centres Case Study

Case Study 7: Maisons d'Accès à la Justice in Rwanda

1. Overview

Rwanda's Maisons d'Accès à la Justice (MAJ) are district legal centres that serve as the first point of contact for citizens in need of legal aid. There are 30 centres – one for each of the country's districts – each of which is staffed by three lawyers (one coordinator and two assistants) who are responsible for providing legal information/education, advice and representation, as well as training mediators.¹²⁴ 90% of the cases dealt with by MAJ between July 2013 and June 2014 related to civil matters.¹²⁵

MAJs act as a link between the Ministry of Justice (MINIJUST), local government, mediation committees (*abunzi*) and citizens – for example, by disseminating national law to communities and increasing the efficiency of the formal system by identifying pending cases across justice fora.¹²⁶ MAJ also supported the functioning of the *gacaca* until they ceased operations in 2012.

The centres are coordinated by the Access to Justice Department of MINIJUST and funded primarily by the government with technical and financial support from UNDP and UNICEF. MAJ lawyers are paid and their performance monitored through rigorous targets that ensure high standards of delivery for citizens.¹²⁷ They are also supported by various local NGOs/CSOs who provide training, as well as complementary legal services.

2. Background

Background to MAJ

(Re)constructing Rwanda's justice system has formed an integral part of state-building efforts over the past 20 years. In the aftermath of the 1994 genocide, Rwanda's highly centralised formal system found itself with a dramatically diminished number of qualified staff and an overwhelming number of pending cases.

The government's 2008-12 Economic Development and Poverty Reduction Strategy identified access to justice as one of the major challenges still facing the country.¹²⁸ A MINIJUST assessment of public legal aid

¹²⁴ Government of Rwanda (2014). 'National Legal Aid Policy'. Ministry of Justice.

¹²⁵ Government of Rwanda (2014). 'Ministry of Justice Annual Report 2013-2014'. Ministry of Justice.

¹²⁶ Government of Rwanda (2014). 'National Legal Aid Policy'. Ministry of Justice.

¹²⁷ Mbonyinshuti, J. (2014, September). 'Government lawyers urged to fight impunity in communities'. New Times. Available at <http://www.newtimes.co.rw/section/article/2014-09-12/180840/> last accessed 1 November 2015

¹²⁸ Government of Rwanda (2008). 'Economic Development and Poverty Reduction Strategy'.



concluded that existing services were limited to scattered NGO initiatives and assistance from individual lawyers, with little international support.¹²⁹

The government responded by piloting MAJ in Nyanza District. MINIJUST staffed centres in 10 districts by 2009 and in all 30 by 2011. In the same year a third legal professional was recruited for each MAJ, with particular responsibility for handling cases involving women and children. In 2014 all 90+ MAJ lawyers became permanent civil servants, having previously been employed on a contract basis.¹³⁰

Background to Beneficiaries

A user perception survey conducted in 2012 found that 30% of 2400 respondents from across the country had asked for legal advice during the previous three years. Community satisfaction with the quality of legal advice available to them was high (71% for men, 65% for women).¹³¹

However, the majority of respondents lacked awareness of the institutions mandated to give them legal advice and representation. Whilst the majority believed that they could seek legal advice and representation from courts, mediation committees, friends and relatives, fewer than 3 out of 10 were aware of MAJ as an institution mandated to provide free advice. Of those who had sought assistance during the preceding three years, only 12.6% of them had sought it from lawyers and 7% from MAJ. The majority relied on advice from friends or relatives, many of whom had no legal background.¹³²

3. Cost Data

Cost of Basic Legal Services

MAJ has three lawyers per district, totalling 90 members of staff with an annual cost of USD 800,000.¹³³ 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.

In 2013-14, MAJ received and provided legal aid to 22,168 cases, 90% of which were of a civil nature.¹³⁴ The unit cost per case handled is therefore USD 36. However, to reflect the fact that MAJ reaches a wider community through advocacy and civic education, a multiplier of 20 has been assumed to estimate the size of the community served from the number of cases handled, providing a unit cost of USD 1.8 per capita.

¹²⁹ UNDP (2008). 'Democratic Governance Thematic Trust Fund: Annual Report'.

¹³⁰ Information provided by MINIJUST, 2015.

¹³¹ Government of Rwanda (2012). 'Justice Sector User Perception and Victimization Study'. Ministry of Justice.

¹³² Ibid.

¹³³ Government of Rwanda (2014). National Legal Aid Policy. Ministry of Justice, Kigali.

¹³⁴ Government of Rwanda (2014). Ministry of Justice Annual Report 2013-2014. Ministry of Justice, Kigali.



Using a legal needs approach, the cost of scaling up current provision to a population of 11.3m is USD 8.1m.

Rwanda's GDP per capita is USD 700.¹³⁵ Government expenditure on the judiciary amounts to USD 2 per person, while Rwanda's legal aid policy indicates an annual budget of USD 3.44 million for legal aid services at the national level, servicing a population of 12 million at a unit cost of USD 0.29 per capita.¹³⁶ This contrasts with USD 46 and USD 35 are spent on health and education respectively.¹³⁷

Cost of Basic Legal Services

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).¹³⁸

4. Financing Options

The first year of the pilot was financed by the UNDP Democratic Governance Thematic Trust Fund, with a commitment from UNDP and UNICEF to provide funds for specific activities for scale up during the subsequent four years. All but five MAJs are now funded by the central government (and the remainder by UNDP).

5. Political Economy Considerations

- The MAJ have been a consistent government priority, with the “move towards a national system of accessible legal advice and representation through the establishment of MAJ offices in all districts” positioned amongst the most important achievements of MINIJUST between 2009 and 2013.¹³⁹
- Donor support may play a catalytic role as demonstrated by UNDP and UNICEF funding. UNDP support accelerated the elaboration of a new national law on Legal Aid and extended the programme's reach by funding complementary CSO-operated services, whilst UNICEF enabled the programme to assist vulnerable groups by financing additional posts for cases relating to women and children.¹⁴⁰

¹³⁵ World Bank (2015) World Development Indicators.

¹³⁶ Government of Rwanda (2012). National budget 2011-2012. Ministry of Finance and Economic Planning, Kigali. Also Government of Rwanda (2014). National Legal Aid Policy. Ministry of Justice, Kigali.

¹³⁷ World Bank (2015) World Development Indicators.

¹³⁸ Rwanda Governance Board (2014). Rwanda Governance Scorecard.

¹³⁹ Government of Rwanda. (2013). 'Reconciliation, Law and Order Sector Strategic Plan, July 2013 to June 2018'.

¹⁴⁰ UNDP (2008). 'Democratic Governance Thematic Trust Fund: Annual Report'.



- The programme operated a newsletter and radio campaign during the pilot stage to sensitise communities to the services to be provided by MAJ. The findings of MINIJUST's user perception survey (above), however, suggest the importance of stimulating demand on an ongoing basis.
- MINIJUST's Legal Aid Forum, which brings together and coordinates the activities of 37 organisations involved in the provision of legal aid (mainly NGOs), demonstrates the viability of public-private partnerships in the provision of basic legal services.¹⁴¹
- However, problems of supply persist: the Rwandan legal profession is heavily concentrated in towns (over 85% are located in Kigali alone) rather than rural areas where most potential legal aid recipients are located, whilst lawyers continue to prioritise paying clients with limited funding available to support pro bono work.¹⁴²

¹⁴¹ Government of Rwanda (2014). 'National Legal Aid Policy'.

¹⁴² Ibid.



Case Study 8: Legal Aid in China

1. Overview

The People's Republic of China operates a well-established nationwide network of 3500 legal aid centres, offering a full array of legal aid services – from advice to representation – on a wide range on civil matters. The work of the legal aid centres is complemented by more than 50,000 legal aid working stations at township and city street level as well as information points at village level – that provide primary advice and referrals services. In addition, a 24 hour national telephone hotline enables citizens to obtain free legal advice, anywhere and at any time.¹⁴³

Legal aid services are managed at the provincial and county level. Centres are staffed primarily by lawyers seconded in from private practice, as well as paralegals and a few centrally-funded administrative staff. Working stations and information points are manned by local officials and volunteers respectively, and the hotline by qualified lawyers. Services may also be provided by representatives of social organisations (mass organisations, trade unions, NGOs providing legal aid or acting as clearing houses and others).¹⁴⁴

2. Background

Background to Legal Aid

Since first proposing the establishment of a legal aid system in 1994, the Chinese government has invested considerable time and resources in building a national system on an impressive scale.

In 2003 a State Council Regulation set out a series of general principles for the legal aid system – most notably: that legal aid is a governmental responsibility with institutions above the county level responsible for providing fiscal support; that the administrative department of justice of the State Council is responsible for overseeing and regulating legal aid; and that services may be delivered by various social and private organisations to avoid any monopoly on provision.¹⁴⁵

Over the past few years the Government has been making considerable efforts to improve the quality and consistency of legal services.¹⁴⁶ A *Directive on Improving Legal Aid System* issued by the Central Committee of the Communist Party of China in June 2015 sets out the Government's commitment to: expand geographical coverage in civil cases; provide professional services for priority groups including minors, the

¹⁴³ Information provided by the British Council, 2015.

¹⁴⁴ Ibid.

¹⁴⁵ State Council of the People's Republic of China (2003). 'Order of the State Council of the People's Republic of China, No. 385'.

¹⁴⁶ Information provided by the British Council, 2015.



disabled and migrant workers; build a diversified service platform; and clarify institutional responsibility at different levels of government.¹⁴⁷

Background to Beneficiaries

A legal needs assessment for China has not been identified.

3. Cost Data

Cost of Basic Legal Services

It was not possible to obtain cost data to include in this study.

Benefit of Basic Legal Services

It was not possible to obtain benefit data to include in this study.

4. Financing Options

There are two principal sources of legal aid funding: the majority of funding for legal aid centres and working stations is provided by provincial and county-level Government; grant funding for centre and social organisations providing legal aid services is also distributed by the Legal Aid Foundation, a body established pursuant to the State Council Legal Aid Regulation which receives contributions from lottery funding and from the private sector.¹⁴⁸

5. Political Economy Considerations

- Eligibility for legal aid is primarily regulated by the 2003 State Council Regulation which sets out six categories of entitlement in civil matters. Potential legal aid recipients must also satisfy a means test which is set by the provincial Government and varies from province to province (in general, this financial threshold is higher in the eastern seaboard provinces and lower in central and western China).¹⁴⁹
- Although managed by the provinces, China's legal aid programme is endorsed at the highest level, with the promotion of social harmony the primary motivation for central government. For this reason, the vast majority (up to 90%) of legal aid services deal with civil matters.¹⁵⁰

¹⁴⁷ Central Committee of the Communist Party of China (2015). 'Directive on Improving Legal Aid System'.

¹⁴⁸ Information provided by the British Council, 2015.

¹⁴⁹ State Council of the People's Republic of China (2003). 'Order of the State Council of the People's Republic of China, No. 385'.

¹⁵⁰ Delegation of the European Union to China and Mongolia (2015). 'China-EU Access to Justice Programme'.



- At the provincial level certain centres funded by central government are likely to encourage mediation more than litigation, in line with the central government's strategy of promoting social harmony. Other provincial centres funded by provincial government are able to operate with (slightly) more freedom.
- The system is reliant on individual lawyers and private firms providing services on a pro bono or heavily subsidised basis. There is a strong pro bono tradition within the Chinese legal profession, with practicing lawyers subject to an administrative obligation to take on a small number of legal aid cases each year.¹⁵¹
- Village level information points are operated by local volunteers, who are not legally qualified but likely to bear responsibility for a number of other public functions and enjoy local trust. By contrast, the national telephone hotline is staffed solely by qualified lawyers, raising questions around the relative cost effectiveness and sustainability of these models.
- The Government is now seeking to encourage civil society (social organisations, private firms) to take on more responsibility for the day-to-day delivery of legal and other welfare services, whilst retaining oversight of related policy and the legal framework i.e. the ability to intervene should civil society actors create social tension or disruption as perceived by the state.¹⁵²
- With legal services being delivered to such a large population, the Government has begun to put regulations in place to assure the quality of provision. For example, during the past year the Ministry of Justice has developed criteria for quality assessment (peer review) of legal aid case files in civil matters, drawing on criteria originally developed in England and Scotland.¹⁵³ The Government is also exploring the possibility of contracting to the private sector as a means of driving up quality (also drawing on the English model).¹⁵⁴

¹⁵¹ Information provided by the British Council, 2015..

¹⁵² State Council of the People's Republic of China (2003). 'Order of the State Council of the People's Republic of China, No. 385'.

¹⁵³ Ping, B. (n.d.). 'Practice on Legal Aid Quality Assurance in China'.

¹⁵⁴ Ibid.



4. National Hybrid Models Case Study

Case Study 9: Community Advice Offices in South Africa

1. Overview

Community Advice Offices (CAOs) are small non-profit organisations that provide free basic legal and human rights information, advice and services to people who are marginalised through poverty, social circumstances and geographical location.¹⁵⁵ There are approximately 320 CAOs across all 9 provinces in South Africa. CAOs typically consist of one or two paralegals plus volunteers with some legal knowledge, who assist with legal advice and also in community conflict resolution, labour disputes, job-counselling, filling out forms and even aiding in the process of documentation and providing transport to access government services.¹⁵⁶

Paralegals are not legally qualified and cannot appear in Court in South Africa.¹⁵⁷ However, CAOs sit within a two-tier structure in South Africa whereby they mostly intervene in civil matters and refer criminal matters to Legal Aid South Africa.¹⁵⁸ For a more detailed overview of how they fit into the legal aid landscape in South Africa, see David McQuoid Mason (2003), *South African Models of Legal Aid Delivery in Non-Criminal Cases*.

CAOs currently operate with limited funding, where necessary by pooling community resources which are themselves often in short supply, as well as staff labour and time capacity which leads to high rates of self-exploitation and volunteerism and problems with staff retention.¹⁵⁹

2. Background

Background to CAOs

CAOs and paralegal services in South Africa date back to the 1930s and the establishment of the legal aid bureau in Johannesburg but witnessed an unprecedented growth during the repression and violence that took place during the battle over apartheid in the 1980s, given the links of many with the United Democratic Front and the African National Congress.¹⁶⁰

The National Alliance for the Development of Community Advice Offices (NADCAO), formed in 2005 and established as a legal entity in 2012, has since rebuilt the sector's relations with the Department of Justice and Constitutional Development and Legal Aid South Africa, facilitating reengagement with the legislative

¹⁵⁵ NADCAO (2014). 'Towards a Sustainable and Effective CAO Sector in South Africa: A Cost Benefit and Qualitative Analysis'.

¹⁵⁶ Ibid.

¹⁵⁷ Buckenham, K. (2014). 'The Profile and Positioning of the Community Advice Office Sector in South Africa'.

¹⁵⁸ Open Society Foundations (2015). 'Delivering Community Justice Services at Scale: Community Advice Offices in South Africa'.

¹⁵⁹ NADCAO (2014).

¹⁶⁰ Ibid.



process as well as becoming a valuable partner between donors and NGOs.¹⁶¹ In 2014, NADCAO launched the Association of Community Advice Officers of South Africa, the national representative body which is intended to institutionalise CAOs and replace NADCAO.¹⁶² However, NADCAO has worked with the Foundation for Human Rights to forge links with the Department of Justice.¹⁶³

Background to Beneficiaries

Many communities do not have access to legal advice as a result of cost, ignorance of state equivalent centres, a fear of engaging the legal system and the distances they have to travel to get to such centres.¹⁶⁴

A service beneficiary survey of 186 individual interviews in five provinces and at 19 CAOs assessed who, why and how the users used the CAOs.¹⁶⁵ 40% of those who use Community Advice Offices highlighted assistance with legal cases or labour disputes as the main reason for their visit, where issues included divorce, harassment, payment of damages, widow inheritance, workers' compensation claims, and getting affidavits and various dispute resolutions.¹⁶⁶ A smaller proportion, around one in ten, required assistance with IDs, birth certificates or marriage certificates.¹⁶⁷ In rural areas there are a high number of issues related to African culture and tradition such as land and inheritance issues, witchcraft and circumcision which CAO officers can mediate.¹⁶⁸ Most users utilised the CAO services frequently, often visiting multiple times for the same issue.¹⁶⁹ Satisfaction levels were at 96%.¹⁷⁰

3. Cost Data

There are approximately 367 CAOs nationally,¹⁷¹ likely spread out with some 22-65 CAOs per province and serving on average some 10 beneficiaries per day.¹⁷²

Cost and Benefit of Basic Legal Services

A detailed cost-benefit analysis has been completed to produce a figure for the annual funding required to enable CAOs to continue to offer their services for free.¹⁷³

¹⁶¹ NADCAO. (2014).

¹⁶² Ibid.

¹⁶³ Open Society Foundations (2015). 'Delivering Community Justice Services at Scale: Community Advice Offices in South Africa'.

¹⁶⁴ NADCAO (2014).

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

¹⁶⁸ Buckenham, K. (2014). 'The Profile and Positioning of the Community Advice Office Sector in South Africa'.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Ibid.

¹⁷³ Ibid.



Costs of two idealised CAOs were estimated at South African Rand 500,000 and South African Rand 250,000 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.)

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).¹⁷⁴ 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.¹⁷⁵ 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.¹⁷⁶

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 to ensure the sustainability of the sector.¹⁷⁷ 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 0.1.¹⁷⁸ 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.¹⁷⁹

Contextualising these numbers, the per capita cost of national provision would amount to 0.004 of total allocated expenditure in 2014-2015.¹⁸⁰ Of this expenditure, USD 54 per capita is currently spent on the judiciary,¹⁸¹ suggesting that the estimated per capita cost of basic legal service provision is entirely manageable. This compares to USD 294 per capital on the health sector, and USD 408 per capita on the education sector.¹⁸²

4. Financing Options

NADCAO considers that the main viable revenue sources for CAO funding are state or altruistic funding. However, altruistic funding is not considered sufficient, reliable, or necessarily geared towards the key

¹⁷⁴ NADCO (2014). 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.

¹⁷⁵ NADCO (2014).

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

¹⁷⁹ Ibid.

¹⁸⁰ Government of South Africa (2015), Budget Review 2015, National Treasury, Pretoria.

¹⁸¹ Ibid.

¹⁸² World Bank (2015) World Development Indicators.



functions of the organisation. State funding of 200,000 per CAO for 236 CAOs would total 44,200,000 annually. In 2014/15 this would be 0.004 of the total allocated expenditure of coordinated government.¹⁸³

5. Political Economy Considerations

- The South African Constitution does not make specific provision for legal aid in non-criminal matters other than for children under the age of 18 years where substantial injustice would otherwise result (section 28(1)(h)).¹⁸⁴
- CAOs currently run without formal regulation and there are no minimum standards of operation or regulatory authority to ensure compliance. However, the 2014 Legal Practice Act now includes a clause that would ensure the regulation of paralegals within two years of the establishment of the Legal Practice Council.¹⁸⁵ A code of ethics (which could make provision for pro bono work) and training for paralegals would also be welcome.¹⁸⁶
- CAOs face a funding challenge due to the unpredictability of government and donor financing (eg. there is often more for specific programmes such as women's rights and less for basic operations).¹⁸⁷
- In part because of the funding challenges, CAOs also face human resource challenges relating to staff retention and skills.¹⁸⁸
- Many CAOs have adversarial relations with sub-national government, being viewed by municipalities as 'watch-dog' institutions and regarded with suspicion or as a potential threat and a lack of recognition of the role CAO staff can play.¹⁸⁹ Others have cooperative relations and are used by government to conduct outreach programmes.¹⁹⁰
- The value of CAOs is in part their independence, difference and flexibility so scale-up needs to take care not to drown them in oversight or standardise them.¹⁹¹

¹⁸³ NADCAO (2014).

¹⁸⁴ McQuoid Mason, D. (2010). 'South African Models of Legal Aid Delivery in Non-Criminal Cases'. This compares with section 35 of the Constitution and the duty to provide the services of a legal practitioner to those arrested, detained and accused.

¹⁸⁵ Open Society Foundations (2015). 'Delivering Community Justice Services at Scale: Community Advice Offices in South Africa'.

¹⁸⁶ NADCAO (2014).

¹⁸⁷ NADCAO. (2014); Buckenham, K. (2014).

¹⁸⁸ NADCAO. (2014).

¹⁸⁹ Ibid.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.



Case Study 10: Community Legal Centres in Ukraine

1. Overview

There are 32 Community Legal Centres (CLCs) in Ukraine which are funded by local municipalities and donors and run by NGOs to provide free legal consultations and information. CLCs operate in 20 regions of Ukraine and provide “primary legal aid” as defined by Ukraine’s law on legal aid. The objective of each CLC is to help increase active community participation in governance and legal dispute resolution. They do this by offering a range of legal services to the local population through a mixed model of lawyers, trained local paralegals and pro bono.

CLCs are independent and operate either as a separate entity or a division of a local NGO. CLCs all belong to a national-level network, coordinated by International Renaissance Foundation (IRF). In 2015 the network created a formalised union of centres with an expert board, executive director and quality standards. This union administers on-going network projects, provides training and capacity building activities to its members and aims to ensure ‘sustainable funding’ through searching for donor opportunities and advocating within local councils. CLCs are part of a larger system of legal aid provision in which there are also 125 regional secondary legal aid clinics which are funded by regional government. An ambitious project, launched by the Ukrainian Ministry of Justice in 2015, aims to create an efficient coordinating system between primary and secondary legal aid.¹⁹² All clinics will employ “integrators” from civil society who will help coordinate the two systems and advocate for CLCs in local councils while CLCs in turn will help with the increasing flow of clients to the “secondary” level and try to resolve legal issues on primary level through consultation, advice, alternative dispute resolution and so on.

2. Background

Background to CLCs

Ukraine has a large rural population with limited access to public services or information, and people have little knowledge of their rights.¹⁹³ A 2006 presidential decree approved the National Concept of Legal Aid Reform, laying the foundation for the creation of a system to provide basic legal information and advice for the poor. A law on free legal aid was approved by the Government and voted by Parliament in 2011.

The legal aid law takes a comprehensive and systemic approach to the provision of legal aid services to include both criminal and civil legal matters. It classifies legal aid to defendants as “secondary” legal aid; “primary” legal aid includes advice, consultations, legal information etc.

¹⁹² Open Society Justice Initiative. (2015). ‘Delivering Community Justice Services at Scale: Community Law Centres in Ukraine’.

¹⁹³ Open Society Justice Initiative & International Renaissance Foundation (2011). ‘Legal Empowerment of the Poor: Ukraine’.



Background to Beneficiaries

A legal needs assessment has been conducted by the IRF. It 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, each respondent had encountered 1.7 legal problems in the past three years or 8 legal problems per year.¹⁹⁴ However, only five per cent of incidents were resolved through intervention of a lawyer.¹⁹⁵ This would suggest that the intervention provided by CLCs in the Ukraine is barely touching the surface of basic legal needs in the Ukraine.

Respondents reported legal issues over violation of consumer rights (36.5%), work (22.2%), medicine (22.2%) and perceived unfairness by government employees (15.3%) to give the most prevalent examples.¹⁹⁶ The survey also found that 58% of those with legal needs took some action to resolve their issue while more than 42% of respondents chose to do nothing. The level of trust in the existing legal system is low.

More than half of petitions for assistance from CLCs in Ukraine have to do with access to state social welfare support.¹⁹⁷ There are an increasing number of cases concerning internally displaced people (IDP) rights and military mobilisation now being recorded by the network.

3. Cost Data

Cost of Basic Legal Services

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.¹⁹⁸ This provides a crude unit estimate of USD 8.3 to USD 12.5 per case handled or client seen. 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.

Technology is being used as a cost saving measure in a number of ways:

- Consultations sometimes take place on Skype;
- “Legal Space” informational platform, run by Kherson Community Law Center, is a tool used by the network to spread information and provide legal consultation online in chat and forum mode;
- A mobile application giving clients direct access to a lawyer will be available soon.

¹⁹⁴ Kobzin, D. et al. (2011). ‘The level of legal capacity of the Ukrainian population: accessibility and effectiveness of legal services.’ International Renaissance Foundation Kharkov Institute of Social Research.

¹⁹⁵ Ibid.

¹⁹⁶ Ibid.

¹⁹⁷ Open Society Justice Initiative & International Renaissance Foundation (2011). ‘Legal Empowerment of the Poor: Ukraine’.

¹⁹⁸ 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.



IRF's overall budget is 428 000 USD and it supports the work of the clinics via training and 'logistics'.

Using this legal needs approach, the cost of scaling up current provision to a population of 45m would be USD 9.4m.

Ukraine has a GDP per capita of USD 3,560¹⁹⁹ and government revenues of USD 1,317 per person. Government expenditure on the judiciary including courts and legal aid amounts to USD 10 per person (or threefold the per capita cost of community law centres),²⁰⁰ while USD 151 and USD 239 are spent on the health and education sectors respectively.²⁰¹

Benefit of Basic Legal Services

It has not been possible to identify benefit data for this study.

4. Financing Options

CLCs are presently funded by a mixture of local municipalities (about 2-4,000 USD per year), UNDP and new donors who include SIDA and the Canadian Embassy.²⁰² Secondary legal aid clinics are fully funded by regional government while the International Renaissance Foundation provides support via learning, training and logistics with funding from OSJI.²⁰³ Most CLC cases relate to social security, property rights, labour rights, public services, and other administrative matters. Those CLCs engaged in large numbers of cases concerning monetisable problems such as property rights are perhaps candidates for private sector financing.

5. Political Economy Considerations

- CLCs have benefitted from a favourable constitutional context where the government remains committed to access to justice (in some cases, despite major cuts to funding on legal aid or the courts) and, as in the Netherlands, there is an explicit government endorsement of the value to citizens of self-representation and self-generated solutions to legal issues which extends to facilitating digital development.
- Engaging local government from the outset has proved an extremely effective strategy as CLCs have only been successful in communities with the support of local councils, moreover this support has enabled them to strengthen their services over time.²⁰⁴

¹⁹⁹ World Bank (2014) World Development Indicators.

²⁰⁰ CEPEJ (2014). Report on European Judicial Systems: Efficiency and Quality of Justice.

²⁰¹ World Bank (2015) World Development Indicators.

²⁰² Open Society Justice Initiative (2015). 'Delivering Community Justice Services at Scale: Community Law Centres in Ukraine'.

²⁰³ Ibid.

²⁰⁴ Open Society Justice Initiative (2015). 'Delivering Community Justice Services at Scale: Community Law Centres in Ukraine'.



- Buy-in from government has in part been generated from advocacy around the reduction in the administrative burden on government which CLCs have engendered – as a result, 12 CLCs are part-funded by government.
- The decentralized nature of CLCs and their autonomy over service provision choices has demonstrated its strengths in recent months as the outreach of conflict in Eastern Ukraine has required CLCs to learn to adapt to new issues such as humanitarian relief and new categories of clients such as IDPs which local authorities are often too weak, unprepared or corrupt to address.²⁰⁵

²⁰⁵ For example, Dnipropetrovsk Community Law Centre is now actively working with IDPs by providing them with complex legal aid and support through different bureaucratic procedures in cooperation with the regional council and this model will be shared with other regions that have an increased number of IDPs. Five centres in Chernihiv, Bila Tserkva, Kovel, Kherson and Chuhuev joined their efforts to ensure legal aid to mobilized persons and participants of anti-terrorist operation with in-field visits to military bases and positions. Due to centres' autonomy, mobility, constant capacity-raising activities and multi-functionality, they were able to adjust to new fields of work and respond to communities' needs.



5. Justice Hubs

Case Study 11: Legal Aid Centres, Community Justice Centres and Mobile Law in Kenya

1. Overview

Kituo Cha Sheria is a human rights NGO that operates a legal aid centre based in Nairobi, as well as seven community justice centres. In theory, Kituo's legal aid centre deals with issues pertaining to land, labour, housing and inheritance but in practice they are now providing advice on a much wider range of problems. The centre uses paralegals for the provision of initial advice, as well as a volunteer advocate scheme (referrals). The community justice centres are run by community-based paralegals (c. 20 per centre) whom they train up.²⁰⁶

Kituo is also implementing M-sheria, a remote service, in cooperation with HiiL Innovating Justice and Space Kenya Networks Ltd. The service operates via SMS messages linked to the M-sheria website: clients text their question which is automatically uploaded to www.msheria.com; they first receive a confirmation message containing an initial piece of advice, delivered based on a system filtering the words used in the question; one of 500 pro bono lawyers answer the questions, which are communicated by text to the client, as well as published to the website.²⁰⁷

2. Background

Background to Kituo's services

Most of Kenya's population of over 40 million people live in rural areas. However, the majority of country's fewer than 5000 lawyers live in the larger cities.²⁰⁸

Background to Beneficiaries

No justice needs assessment has been identified for Kenya. About 46% of the population live under the poverty line and cannot afford a lawyer or legal services in case of need or dispute.²⁰⁹

3. Cost Data

²⁰⁶ Information provided by Kituo Cha Sheria, 2015.

²⁰⁷ HiiL. 'M-Sheria; Mobile law in Kenya'. Available at <http://www.hiil.org/project/M-Sheria-Mobile-law-in-Kenya> last accessed 16 November 2015.

²⁰⁸ Ibid.

²⁰⁹ Ibid.



Cost of Basic Legal Services

The annual operating costs of the M-Sheria project amount to USD 112,758. 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 multiplier of 50 has been applied to estimate the catchment size, providing a unit cost of USD 0.1 per capita.

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

Kenya has a GDP per capita of USD 1,290.²¹⁰ Government expenditure on the judiciary amounts to USD 2 per capita, or eight times the cost of basic legal service provision through the M-Sheria programme.²¹¹ By comparison, USD 24 and USD 86 are spent on the health and education sector respectively.²¹²

Benefit of Basic Legal Services

It has not been possible to identify benefit data in time to include in this study.

4. Financing Options

Kituo's legal aid centre and community justice centres are donor-funded, which has posed problems in terms of sustainability when particular baskets of donor funding have come to an end. For example, UNDP funding for the community centres have recently come to an end, with Kituo investing considerable resources in order to secure an alternate source from the Dutch Embassy.²¹³ The initial funding for M-sheria was provided by Dutch bank ING.²¹⁴

There is no state-funded legal aid system, whilst many of the NGOs who had been providing legal services have stopped doing so. Kituo advocates for a complementary approach between its own services and the government, which is yet to pass a legal aid bill.²¹⁵

Kituo believe that the community paralegal model has the potential to be the most sustainable owing to the lower costs involved.²¹⁶

²¹⁰ World Bank (2015) World Development Indicators.

²¹¹ Government of Kenya (2015). Recurrent Budget 2015-16.

²¹² World Bank (2015) World Development Indicators.

²¹³ Ibid.

²¹⁴ Hiil. 'M-Sheria; Mobile law in Kenya'. Available at <http://www.hiil.org/project/M-Sheria-Mobile-law-in-Kenya> last accessed 16 November 2015

²¹⁵ Information provided by Kituo Cha Sheria, 2015.

²¹⁶ Ibid.



5. Political Economy Considerations

- Kituo's client numbers are rising rapidly meaning that they are unable to meet demand (7000 individuals last year, compared to 3000 the year before). The community centres are not necessarily easily accessible for many in need as they serve large areas.²¹⁷ However, its legal aid centre has found it difficult to encourage the pro bono lawyers on their books to take up more cases owing to the weakness of incentives for them. Similarly, in practice, only four or five paralegals are very active in each community centre, with the coordinator – the only one to receive a stipend – invariably the most committed.²¹⁸
- There were delays in moving the M-sheria project beyond pilot stage as the result of difficulties associated with getting the necessary technology up and running. However, Kituo envisages potential supply side problems (i.e. inadequate incentives for pro bono lawyers, as above) and are likely to find it difficult to meet demand owing to this.²¹⁹
- Kituo also operates prison justice centres (services for those detained or serving prison sentences). Although beyond our scope, these provide some interesting points of comparison. These are seen by Kituo to be sustainable because they: i) are not resource intensive (particular inmates are trained to provide advice to others); ii) serve a targeted and limited population; and iii) are institutionalised, benefitting from the support of the government prison service.²²⁰
- Although parliament is expected to pass a legal aid bill soon, it is not clear that this will translate into budget allocations.²²¹
- The National Legal Aid and Education Programme, under the office of the Attorney General, regularly refers clients to Kituo's already overwhelmed service, without moving to take up legal aid cases itself. Kituo is advocating for a complementary approach, whereby the burden of legal aid would be shared between government and civil society (with the former contributing, at least, resources and networks).²²²
- Kituo plan to use Global Goal 16 as a domestic advocacy tool, by positioning legal empowerment as an enabler of economic growth.²²³

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

²²² Ibid.

²²³ Ibid.



Case Study 12: Online and Mobile Law in Uganda

1. Overview

BarefootLaw is a Ugandan social enterprise that provides access to legal information, guidance and support through the use of information technology. The service operates through a website and smartphone app, functioning across multiple communication platforms, and is delivered by a team of ten pro bono lawyers and a volunteer technology specialist. BarefootLaw currently assists 300,000 people per month,²²⁴ handling more than 70 inquiries each day.

The following services are provided free of charge: referring individuals or small organisations who cannot afford legal representation to reputable lawyers or firms offering pro bono services; providing templates for and/or preparing legal documentation including employment contracts and wills; virtual counsel via skype during select hours on a weekly basis; and legal education, consultation and alternative dispute resolution via SMS and social media.

2. Background

Background to BarefootLaw's services

Access to justice for Uganda's predominantly rural populations is low with 97% of lawyers based in Kampala – leaving 36 million people (94% of the population) to be served by the remaining 3%.²²⁵

Background to Beneficiaries

No legal needs assessment has been identified. However, the Peace, Recovery and Development Plan for Northern Uganda 2012 reported that 42% of communities indicated that access to the formal justice system is limited and only 16% that the formal system is fairer than the traditional justice system.²²⁶

3. Cost Data

Cost of Basic Legal Services

²²⁴ Amy Fallon (2015). *Law and Order in Uganda: How Volunteer Lawyers Are Ending 'Mob Justice'*. <http://www.takepart.com/article/2015/07/21/barefoot-law-uganda>

²²⁵ Heuler, H. (2014). *Barefoot Lawyers Teach Ugandans Their Rights*, Voice of America. Available at <http://www.voanews.com/content/barefoot-lawyers-teach-ugandans-their-rights/1926220.html>, Accessed on 30 September 2015.

²²⁶ Baseline survey conducted between 28 February and 2 March 2012. The survey was based on a weighted, random sample of 45 parishes in the PRDP region.



Uganda has a GDP per capita of USD 680.²²⁷ Government expenditure on the judiciary is unknown (USD 29 and USD 15 are spent on the health and education sector respectively.)²²⁸

Benefit of Basic Legal Services

It has not been possible to identify benefit data to include in this study.

4. Financing Options

The BarefootLaw team all work for free, with the enterprise's managing director citing the team's time and dedication as its most valuable resource and critical to the service's operation. Further, the service is majority self-funded, with volunteers working as consultants and lecturers and contributing a portion of their salary.²²⁹

This is supplemented by funding from prize winnings from awards and competitions, for example from the Uganda Communication Commission's ACIA awards, in the form of an award of USD 10,000 towards operating costs and for investment into community activities.²³⁰

The initiative recently placed second for East and West Africa in Hiil's SME Empowerment Innovation Challenge, winning seed investment of USD 20,000, as well as technical 'acceleration support' from Hiil. These resources are being used to develop a 'Barefoot Law mSME Garage', which provides legal information and support to Ugandan mobile SMEs, many of the challenges facing which success are associated with poor access to legal guidance (on, for example, business formation, management, documentation, enforcing company rights, taxation etc.)

A range of cost-saving measures are used including resources such as free office space and requesting expert advice from contacts.

5. Political Economy Considerations

- The dedication and cohesion of the team has allowed them to deliver a service with virtually no external funding. Strong leadership in retaining volunteer belief in the importance of their work is critical.²³¹ However, this culture of dedication and unwillingness to compromise the vision of providing access to the poorest and most vulnerable people could be perceived to have inhibited the programme from scaling up, with the potential profitability of certain services not fully considered.

²²⁷ World Bank (2015) World Development Indicators.

²²⁸ See Volume I, Annex 3.

²²⁹ Interview with Gerald Abila, Founder and Managing Director at Barefoot Law, 30 September 2015.

²³⁰ Namubiru, N. (2014). Barefoot lawyer to USA, *The Independent*. Available at <http://www.independent.co.ug/news/news-analysis/9323-barefoot-lawyer-to-usa#sthash.7Tnc9VaG.dpuf>. Accessed on 30 September 2015.

²³¹ Interview with Gerald Abila.



- The initiative works to leverage and relies heavily on in-kind contributions from a network of partners. For example, 'U-report', a recent collaboration with UNICEF launched in April 2015, has begun to award free SMS to a sign up network of around 300,000 service users, to provide a platform through which young people can raise legal issues experienced at the community level. Prior to this, the team had temporarily closed their SMS service owing to the costs of responding to text messages.²³²
- A second partnership is with the Bribespot app, developed to allow anonymous reporting of petty corruption and bribery, with the aim of highlighting patterns of corruption. Barefoot Law is moderating a dedicated channel of the app for Uganda and, in doing so, reducing the burden on their services resulting from demand for corruption-related assistance.²³³
- The Barefoot Law team are cognisant of the need to generate as well as to respond carefully to demand. Its services have been promoted by radio broadcast, but in practice growth in public awareness of the service has been mostly organic. When explaining Barefoot Law's growth in popularity, its founders cite the tailoring and user-focused nature of the service, which keeps responses clear and simple, and provides specific information based on demand.²³⁴

²³² Ibid.

²³³ Ibid.

²³⁴ Ibid.



6. OECD Countries

Case Study 13: Legal Aid and Justice Hubs in Australia

1. Overview

LawAccess New South Wales (NSW) is a free government service that provides people with information, referrals and, in some cases, advice via a dedicated telephone line and sister website (LawAssist). The service is available to anyone with a legal problem although priority is given to those with poorer access to community or government services, such as rural populations or those whose first language is not English. Information is provided accessibly with tools including, for example, an option to accessing all website information as audio content²³⁵

The information service is provided by trained information officers who: identify the customer's key issues, the urgency of the case, and whether the customer belongs to a priority group; provide sourced legal information over the phone to assist the customer with their enquiry, as well as information via email, letter or fax; and either refer the customer to a specialist face-to-face legal service for further assistance or to receive one off legal advice from LawAccess' in-house legal officers. This in-house service is provided by qualified legal officers who provide one-off legal advice, but not ongoing case management or advocacy.²³⁶ In 2012/13 LawAccess' telephone service assisted 195,000 people and provided advice to 19,500 customers, with a staff of twelve legal officers and 28 full-time customer service staff, as well as administrative support.²³⁷

2. Background

Background to LawAccess NSW

LawAccess NSW started operations in 2001, consolidating the Law Society of NSW Information Service and the Legal Aid NSW Helpline. The service is an initiative of the Department of Justice, Law Society of NSW, NSW Bar Association and Legal Aid NSW.²³⁸

Background to Beneficiaries

A legal needs survey for Australia has not been identified. LawAccess NSW reports a steady growth in unmet demand since its inception, both before and since expanding its services in 2008.²³⁹ The main areas

²³⁵ Information provided by LawAccess NSW, 2015.

²³⁶ Ibid.

²³⁷ Smith, R. & Paterson, A. (2013). 'Face to Face Legal Services and Their Alternatives: Global Lessons from the Digital Revolution'.

²³⁸ LawAccess NSW. Available at <http://www.lawaccess.nsw.gov.au/>

²³⁹ Ibid.



with which people sought help in 2013–2014 were debt, family law parenting arrangements, neighbours, wills, apprehended domestic violence orders and property settlement.²⁴⁰

3. Cost-Benefit Analysis

Cost and Benefit of Basic Legal Services

Cost data for LawAccess NSW specifically (within Legal Aid NSW) has not been made available.

However, a cost-benefit analysis carried out by Pricewaterhouse Coopers in Queensland has sought to assess efficiency, in terms of the avoidance of costs to legal aid, modelled against a counterfactual that assumes a world with no legal aid. The efficiency benefits (avoided costs) from some of the services that legal aid provides are calculated at USD 53.5 million, against funding of USD 23.8 million, with net benefits thus estimated at USD 29.69 million. 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.²⁴¹

Assuming the USD 23.8 million funding provided for the legal aid scheme in 2009 the legal aid adequately served the population of the state, this produces a cost of USD 5 per capita. To put this into context, Australia's GDP per capita is USD 65,000,²⁴² government expenditure on courts and legal services nationally is USD 41 per capita,²⁴³ while USD 4,065 and USD 3,169 per capita are being spent on health and education out of the government budget.²⁴⁴

4. Financing Options

LawAccess NSW receives annual funding from the Department of Justice, Legal Aid NSW and the Public Purpose Fund.²⁴⁵

LawAccess has a memorandum of understanding (MOU) with Legal Aid NSW that provides for annual funding. While the MOU previously placed a price per information session and advice session for Commonwealth legal matters this has been moved to an annual figure. The Department of Justice provides annual funding as well as in-kind support. The Public Purpose Fund is operated by a Board of trustees and provides funding for access to justice initiatives using the interest earned on money held in

²⁴⁰ Legal Aid Commission of NSW. 'Annual report 2012-2013'. Available at http://www.legalaid.nsw.gov.au/_data/assets/pdf_file/0019/20287/Legal-Aid-AR-2013-2014-sm.pdf last accessed 13 November 2015

²⁴¹ Pricewaterhouse Coopers. (2009). 'Economic value of legal aid: analysis in relation to Commonwealth-funded matters with a focus on family law'.

²⁴² World Bank (2015) World Development Indicators.

²⁴³ Government of Australia (2015). Budget available at http://www.budget.gov.au/2015-16/content/bp1/html/bp1_bs5-01.htm

²⁴⁴ World Bank (2015) World Development Indicators.

²⁴⁵ LawAccess NSW. Available at <http://www.lawaccess.nsw.gov.au/>



solicitors trust accounts. This funding is reviewed annually through an application for a grant from the fund.²⁴⁶

5. Political Economy Considerations

- LawAccess NSW is affected by many of the same political factors as a government department – most notably, changes of government and/or government priorities, reductions in government funding for public services, and consolidation of departments and services.²⁴⁷
- LawAccess NSW attributes its success, in part, to the fact that does not work in competition with face-to-face legal service provision, but instead as a preliminary or triage service that guides people through the wider legal aid system. In 2012-2013, LawAccess referred 63,119 cases to Legal Aid NSW.²⁴⁸
- Since 2008 LawAccess has seen a steady increase in demand yet its overall levels of funding has remained constant, resulting an increase in un-met demand amongst those seeking to use its telephone service. The establishment of the LawAccess website represents a response to these resource constraints, by providing a service channel for those who choose to self-assist and, in turn, ensuring that those that do not have the capacity to self-assist can access its telephone service.²⁴⁹
- However, with the Law Society a funder and sitting on the service's board, LawAccess remains conscious of the need to consider the role of members of the legal profession. For example, when setting out website information to assist self-represented litigants staff remain mindful of the services provided by private solicitors and continually remind users the important of getting legal advice.²⁵⁰ Callers to the telephone service may also be referred to the NSW Law Society's Solicitor Referral Service when they wish to engage a private solicitor to assist with their matter, or where a private solicitor is the best option for assistance with the person's legal issue, such as a conveyancing dispute.²⁵¹

²⁴⁶ Ibid.

²⁴⁷ Ibid.

²⁴⁸ Legal Aid Commission of NSW. 'Annual report 2012-2013'. Available at http://www.legalaid.nsw.gov.au/_data/assets/pdf_file/0019/20287/Legal-Aid-AR-2013-2014-sm.pdf last accessed 1 October 2015.

²⁴⁹ LawAccess NSW. Available at <http://www.lawaccess.nsw.gov.au/>

²⁵⁰ Ibid.

²⁵¹ Ibid.



Case Study 14: Legal aid and Community-based Legal Clinics in Canada

1. Overview

Legal Aid Ontario (LAO) funds a network of 76 community-based legal clinics (CLCs) across the province, mandated to offer a broad range of services – specifically, legal information, referrals, legal advice and actual representation.²⁵² They are part of a broader system of legal aid in which LAO also provides legal aid services in family and criminal law through a system of staff lawyers, per diem duty counsel (private bar lawyers paid per diem rates), private bar lawyers receiving legal aid certificates capping fees on matters, other fee-for-service arrangements and a toll-free advice line.²⁵³

Each clinic operates as an independent not-for-profit, with size ranging from four to nearly 30 staff. Executive directors are usually practicing lawyers and the majority of staff lawyers, intake workers and legal secretaries or assistants, and community legal workers (some of them licensed paralegals).²⁵⁴ Services are provided in person from many sites including CLC main or satellite offices (social service hubs, community partner agencies and other locations including food banks, churches and public libraries). Some CLCs respond to email inquiries, whilst a new online intake system is also being piloted for certain types of legal problems.²⁵⁵

The majority of clinics are geographically-based to ensure that poverty law services are provided to low income residents in every county jurisdiction in the province. In addition, seventeen specialty clinics provide legal services for specific client populations (First Nations, youth, seniors, people with disabilities, ethno-racial groups) or to address specific issues such as income security, housing and injuries at work.²⁵⁶

2. Background

Background to CLCs

Ontario is the most populated of Canada's ten provinces and three territories, and home to nearly 40% of its population. The province is a national leader in the provision of legal aid services that respond to the full range of traditional legal needs, as well as those experienced by those living in poverty. According to the country's federal system, each province is responsible for designing and implementing its own legal aid scheme.²⁵⁷

LAO, and its predecessor the Ontario Legal Aid Plan, have been in existence for almost 50 years. Initially legal aid, offered under the Legal Aid Act of 1966, consisted of only *judicare* services. It was civil society actors that began the first CLC, funded by the Ford Foundation, in an effort to meet unmet legal needs. In

²⁵² Information provided by LAO, 2015.

²⁵³ Open Society Foundations. (2015). 'Delivering Community justice Services at Scale: Ontario, Canada'.

²⁵⁴ Information provided by LAO, 2015.

²⁵⁵ Open Society Foundations (2015). 'Delivering Community justice Services at Scale: Ontario, Canada'.

²⁵⁶ Ibid.

²⁵⁷ Ibid.



the mid-1970s, a government task force reviewing the implementation of the legal aid act, recommended the establishment of a new independent legal aid corporation, leading to the institutionalisation and public funding of CLCs. In 1998 LAO was established as an independent but publicly-funded and -accountable non-profit corporation under the Legal Aid Services Act 1998.²⁵⁸

Background to Beneficiaries

A national legal needs study carried out in 2005 found that almost 48% (47.7 %) of the low to moderate income Canadian population experienced one or more law-related problems during the three-year reference period.²⁵⁹ Overall, economic problems are predominant, with three categories of economic problems standing out in terms of frequency of occurrence. More than one quarter of respondents reported money and debt problems, just under 20% having had a consumer problem and slightly fewer, 17.4%, having experienced at least one employment-related problem.²⁶⁰

3. Cost Data

Cost of Basic Legal Services

In 2013-2014, Legal Aid Ontario's 56 community-based legal clinics operated on an annual budget of USD 44 million and serve a catchment area with a population of 12.8 million people.²⁶¹ Funding per capita was therefore 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.²⁶²

Benchmarking these figures, Canada has a GDP per capita of USD 51,690²⁶³ and the government spends approximately USD 114 per capita on the judiciary (including federal and provincial expenditure on judges, prosecutors, legal aid, and youth justice) country-wide.²⁶⁴ Basic legal service provision through community legal clinics is, therefore, provided at a relatively low per capita expenditure in comparison to expenditure on the judiciary. Indeed, total legal aid expenditure for Ontario, including criminal, is provided at USD 26.5 per capita.²⁶⁵ This stands in contrast to government expenditure in the health and education sectors of USD 5,634 and USD 2,740 respectively for the country as a whole.²⁶⁶

²⁵⁸ Ibid.

²⁵⁹ Currie, A. et al. (2005). 'A National Survey of the Civil Justice Problems of Low and Moderate Income Canadians: Incidence and Patterns'.

²⁶⁰ Ibid.

²⁶¹ Legal Aid Ontario (2014). Statement of Operations.

²⁶² Ibid.

²⁶³ World Bank (2015) World Development Indicators.

²⁶⁴ Story, R. and Yalkin, T. (2013). Expenditure Analysis of Criminal Justice in Canada. Office of the Parliamentary Budget Officer.

²⁶⁵ Legal Aid Ontario (2014). Statement of Operations.

²⁶⁶ World Bank (2015) World Development Indicators.



Benefit of Basic Legal Services

Statistics from LAO indicate that in 2011-2012, clinics represented clients in 22,928 cases; provided 41,242 brief services; provided legal advice 110,281 times; provided 50,207 referrals and engaged in 4,999 outreach activities.²⁶⁷

The clinics are understood to have had a tremendous impact on advancing the legal rights of the low-income communities they serve, obtaining precedent-setting decisions at all levels of courts and tribunals in many areas of the law, providing a voice in government consultations and legislative reviews and participating in law reform campaigns to give a few examples.²⁶⁸

4. Financing Options

LAO is funded largely (80%) by the province of Ontario (Ministry of the Attorney General).²⁶⁹ LAO then enters into and maintains a Memorandum of Understanding with each CLC, requiring clinics to reapply for funding each year, with approved annual budgets encapsulated in a Funding Agreement.²⁷⁰ CLCs are subject to the Corporations Act and federal and provincial charity legislation if they are registered charitable organisations.²⁷¹

Supplementary sources of income include client contributions, cost recoveries, contributions from the legal profession and interest on trust accounts from the Law Foundation of Ontario.²⁷²

5. Political Economy Considerations

- The CLCs are considered part of a system and are all members of the Association of Community Legal Clinics Ontario which provides centralised program and administrative support to CLCs in addition to that from LAO. A CLC-wide intranet is being developed to support the network.
- The Open Society Justice Initiative has attributed the strength of Ontario's network of CLCs to their focus on community-based governance, responsiveness to local community needs, and independence from funders including the federal government.²⁷³
- LAO is the best-resourced legal aid service in the country in terms of funding. There is some limited fluctuation because funds which flow from regulators, rather than the provincial government, are contingent on real estate and interest rates. However, funding requirements for service provision

²⁶⁷ Open Society Foundations (2015). 'Delivering Community justice Services at Scale: Ontario, Canada'.

²⁶⁸ Ibid.

²⁶⁹ Information provided by Legal Aid Ontario, 2015.

²⁷⁰ Open Society Foundations (2015). 'Delivering Community justice Services at Scale: Ontario, Canada'.

²⁷¹ Ibid.

²⁷² Ibid.

²⁷³ Ibid.



are relatively stable, and thus predictable, owing to the long period of time during which the CLC network has been operating.²⁷⁴

- LAO has a Board of Members appointed by the Attorney General according to selection provisions set out in the Legal Aid Services Act 1998. Similarly, each CLC has a representative Board of Directors of ten or more people elected from the community.²⁷⁵
- The Law Society of Upper Canada (LSU) regulates both lawyers and paralegals (but not community legal workers) through a licensing system as part of which they must complete mandatory annual Continuing Professional Development. CLCs adopted a quality assurance framework in 1988, many years before it began to apply to other LAO-funded programs. An annual self-assessment is conducted by each CLC with its Board and there are quality assurance visits from specially trained staff who prepare detailed reports, provide accolades for strong performance and recommend improvements.²⁷⁶
- There is a strong emphasis on learning and knowledge sharing with Provincial Learning Action Committees composed of LAO and CLC staff and Board Members funding, overseeing and supporting a broad range of training programmes and communities of practice on specific issues.²⁷⁷
- The current (sympathetic) provincial government in Ontario has made significant changes to financial eligibility, which have expanded access to the province's legal aid services by 18%, and pledged an additional USD 150 million over the next four years. As a result, LAO has been able to expand its definition of legal eligibility.²⁷⁸ Nevertheless, officials note that the disenfranchised community they serve exercise little positive influence on government decision-making.²⁷⁹
- The situation in Ontario contrasts with that in British Columbia where, six years ago, a new provincial government slashed legal aid, forcing the Legal Services Society to develop more innovative ways of providing legal services – primarily telephone and online services. There is an ongoing debate as to whether this constitutes “cutting edge” service provision or risks reducing quality of implementation.²⁸⁰
- In 2013, the report of an independent national access to justice commission analysed gaps in legal service provision, and set out principles and a nine-point programme for change. The key recommendation made was to scale up the availability of legal aid, and to unbundle legal service provision so that everyone in Canada has access to legal services by 2018.²⁸¹

²⁷⁴ Ibid.

²⁷⁵ Ibid.

²⁷⁶ Ibid.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

²⁸⁰ Ibid.

²⁸¹ Action Committee on Access to Justice in Civil and Family Affairs (2013), *Access to Civil and Family Justice: A Roadmap for Change* (2013), drawing on the Canadian Bar Association's 2013 report, *Reaching Equal Justice: An Invitation to Envision and Act*. Pricewaterhouse Coopers



Case Study 15: Legal Aid, Counters and Online Resolution in the Netherlands

1. Overview

Legal Aid in the Netherlands is centralised and administered through either private lawyers registered with or Legal Services Counters overseen by the Legal Aid Board (LAB). Legal Services Counters (*Juridisch Lokaal*) provide on-the-spot, cost free, legal information and advice, one hour consultations and referral services (to lawyers), in person, by telephone and online from 30 offices in major Dutch cities. They cover the following areas of law: employment, family, social security, landlord and tenant, tax law, immigration, some consumer law, and some administrative law.²⁸²

The physical counters are intended mainly for clients with difficulty in phrasing questions by telephone or computer, with the telephone and virtual counters acting as an increasingly important gateway to legal services. For non-advice matters, clients are referred to private lawyers registered with the LAB who are paid a fixed fee per case, calculated according to an average number of hours against a base hourly rate of USD 115.²⁸³

Alongside Legal Service Counters, the LAB has launched an online dispute resolution (ODR) platform for out-of-court settlements, known as *Rechtwijzer 2.0* or “roadmap to justice”. Launched in October 2012, it was designed as a collaboration between the LAB, the University of Tilburg and HiiL Innovating Justice. The main motivation was to improve access to legal information, and justice mechanisms, en masse, and in doing so, to encourage self-reliance as regards dispute resolution processes.²⁸⁴

Visitors to the website are first prepared to reflect on their conflict, their goals and the goals of the other party, and are then directed to solve the conflict through a form of online mediation, with *Rechtwijzer* providing the information and tools to facilitate this. Information is tailored to the visitor’s needs based on a diagnostic question and an answer tree, which provides unbundled dispute resolution services. The platform deals with five types of matters, which they classify as: separation/divorce, consumer conflicts, government, rental housing, or termination of employment.²⁸⁵

The legal aid system is, therefore, a mixed model, consisting of a public preliminary provision (*Rechtwijzer*), public first-line (legal services counters) and private second-line (private lawyers) help.²⁸⁶

2. Background

Background to Legal Aid

²⁸² Van den Biggelaar, P. (2010). ‘The Legal Services Counter: Lessons Learned, The Netherlands’.

²⁸³ HiiL. (2014). ‘Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?’

²⁸⁴ HiiL. ‘Rechtwijzer 2.0: Technology that puts justice in your hands’. Available at <http://www.hiil.org/project/rechtwijzer> last accessed 13 November 2015

²⁸⁵ HiiL. ‘Rechtwijzer 2.0: Technology that puts justice in your hands’. Available at <http://www.hiil.org/project/rechtwijzer> last accessed 13 November 2015

²⁸⁶ Dutch Legal Aid Board (2015). ‘Legal Aid in the Netherlands a broad outline – 2015’.



Under the European Convention on Human Rights and the Constitution of the Netherlands, each citizen has the right to access courts, apply for legal advice and representation and, if means do not suffice, receive state-financed legal aid. The LAB is the independent governing body entrusted with overseeing and administering legal aid, and sits within the competence of the Ministry of Security & Justice.²⁸⁷

Background to Beneficiaries

A legal aid survey conducted amongst 3,500 Dutch citizens in 2003 found that 67.2% had confronted one or more legal problems during the five year reference period, with 20.1% experiencing two and 16.7% three problems.²⁸⁸ The most common justiciable problems related to property and accommodation (21.7% of problems), employment (21.5%), and goods and services (21.3%).²⁸⁹

3. Cost Data

Cost and Benefit of Basic Legal Services

In 2012 the state provided USD 525.5 million for legal aid, with a population of 16.8 million people, which equates crudely to a USD 31.3 per capita cost of providing legal aid, annually.²⁹⁰

This can be analysed against the potential premium income from voluntary legal expense insurance (see “financing options”). Legal expense insurance provides an alternative way to fund legal services for employment, personal injury, housing and other administrative matters. A recent study showed that premium income from legal expense insurance amounted to USD 865 million annually, which amounts to USD 51.5 per capita annually.²⁹¹ This indicator is the only available data on determining the market penetration of legal expenses insurance.

We do not have project data for legal service counters in the Netherlands, but by way of further OECD benchmarking, it is instructive to note that GDP per capita is USD 51,210²⁹² and government spending on the judiciary is USD 78 compared to USD 5483 on health and USD 2817 on education.²⁹³

It has not been possible to identify benefit data to include in this study.

4. Financing Options

²⁸⁷ Dutch Legal Aid Board (2015). ‘Legal Aid in the Netherlands a broad outline – 2015’.

²⁸⁸ Van Velthoven, B. & ter Voert, M. (2004). ‘Paths to Justice in the Netherlands Looking for signs of social exclusion’. Leiden University.

²⁸⁹ Van Velthoven, B. & ter Voert, M. (2004). ‘Paths to Justice in the Netherlands Looking for signs of social exclusion’. Leiden University.

²⁹⁰ Dutch Legal Aid Board (2015). ‘Legal Aid in the Netherlands a broad outline – 2015’.

²⁹¹ HiIL (2014). ‘Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?’

²⁹² World Bank (2015) World Development Indicators.

²⁹³ World Bank (2015) World Development Indicators.



The Dutch legal aid system does not provide full coverage of legal aid by the state, and all parties are required to contribute a sum, which is calculated based on type of matter, and the person's means. This sum varies from USD 82 to USD 888. There are some exceptions to this rule where no contribution is required. State funding for legal aid has also recently been subject to significant budget cuts. As a result, there is a growing trend towards preventative cost saving measures, through the use of before-the-event legal expense insurance, which shifts any incalculable risk of unforeseen legal cost onto the insurer.²⁹⁴

For *Rechtwijzer*, flat fees are charged at each new service point, beginning with the dialogue stage (access to tailored information is given free of charge), and for each professional service requested thereafter, such as mediation, adjudication or review. All the services are provided by mediators and lawyers, who are trained in online dispute resolution, and are available at much lower rates than a traditional service, given the low running costs of the online platform.²⁹⁵

User fees are paid through the online system. The intake stage fee pays for ongoing IT system maintenance and IT development upgrades. To ensure that services are available to low income clients, the LAB plans to subsidise user fees for financially-eligible clients, based its the means-testing criteria.²⁹⁶

5. Political Economy Considerations

- As Dutch service counters only offer a maximum one hour consultation, “Legal Aid for light Advice” was developed, centres where clients can receive extended legal aid for USD 14.50, for up to 3.5 hours of services. The Ministry of Justice and Ouwerkerk Committee (LAB) agreed that private lawyers could handle these cases as legal aid, although the extended service does not fall clearly under the conventional definition of the term. The lawyer can offer three hours of legal aid under this programme, for which they are compensated for two hours of time. This system aims to retain this form of prolonged consultation and to extend it to all lawyers (not only those regulated by the legal aid board).²⁹⁷
- The loose Dutch regulatory framework allows legal expense insurance to be used prolifically, and so, a viable financing model for legal service provision. Procedures and court costs are clear and transparent, which makes it easier for insurers to forecast costs. Moreover, the regulatory framework allows for diversity of providers – insurers can deliver legal services in-house and do not need to outsource to private lawyers, also allowing for better forecasting of costs.²⁹⁸
- However, the supply of legal insurance has not yet been centralised and so user costs remain determined by the market. If legal expense insurance could be centralised, and the premium

²⁹⁴ Hiil (2014). ‘Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?’

²⁹⁵ Hiil ‘Rechtwijzer 2.0: Technology that puts justice in your hands’. Available at <http://www.hiil.org/project/rechtwijzer> last accessed 13 November 2015

²⁹⁶ Van den Biggelaar, P. (2010). ‘The Legal Services Counter: Lessons Learned, The Netherlands’.

²⁹⁷ Van den Biggelaar, P. (2010). ‘The Legal Services Counter: Lessons Learned, The Netherlands’.

²⁹⁸ Hiil (2014). ‘Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?’



income channeled directly into a legal aid pot, this may be a way to popularise, regulate and nationalise legal expense insurance.²⁹⁹

- Anecdotally, many have observed that the prevalence of legal expense insurance has changed the landscape of legal aid in the Netherlands. Insurers favour lower-cost, problem-solving rather than adversarial approaches where there is a higher risk of cost escalation. As a result, mediation services have become a more prominent method of dealing with many types of disputes.
- Similarly, when the legal service counters were established, they were designed with the development of the role of mediation in mind. Staff are specifically trained to propose mediation as a problem-solving strategy. This should be understood in the broader context of cuts to the legal aid budget.

²⁹⁹ HiIL (2014). 'Legal Aid in Europe: Nine Different Ways to Guarantee Access to Justice?'



Case Study 16: Citizens Advice Bureaux in England and Wales

1. Overview

In England and Wales a bewildering range of agencies provide basic legal services which can make comparison with other country models challenging.

First, state-funded legal aid can help to meet the costs of legal advice, family mediation and court representation. These services are provided by private lawyers registered with the Law Society, with the latter operating a free online “Find a Solicitor” search engine.³⁰⁰ Pro bono brokerages such as LawWorks perform a similar role for those unable to pay but ineligible for legal aid. Alternatively or additionally, lawyers may provide services on an unbundled basis, in place of a traditional retainer, to improve affordability.

Volunteer-led advisory services are also common. The Citizens Advice Bureau (CAB) network delivers information and advice face-to-face – from 600 high street premises and over 2,000 community centres, doctor’s surgeries, courts, and prisons – as well as by telephone, email and online.³⁰¹ A network of law centres and a number of other charities provide similar advisory services, though tend to rely less on volunteers and more on full-time staff. Another volunteer-based charity, the Personal Support Unit does not provide advice but instead basic assistance – such as supporting clients to fill in paperwork or accompanying them to hearings – to people facing proceedings without legal representation in civil and family courts.³⁰²

A number of specialist organisations – many of them primarily orientated towards campaigning and advocacy in their field – have also established an information and advice presence, usually via dedicated telephone lines. For example, the Child Poverty Action Group, Shelter, Age UK and Refugee Action all have advice arms which give both specialist and general advice to people with problems that fall within their respective thematic remits.³⁰³

Since 2007, alternative business structures (ABS) have been able to combine the skills of a variety of professionals – including non-law businesses such as banking, insurance and financial services – in order to encourage competition through the development of “one stop shops”, which deliver packages of legal and other services that better meet user needs. The essential concept is that allowing non-lawyers to invest in the legal market introduces competition because it creates an incentive for non-lawyer owners to explore methods of maximizing profit other than increasing the number of hours that lawyers bill. In

³⁰⁰ HM Government. ‘Legal Aid’. Available at <https://www.gov.uk/legal-aid/overview> last accessed 13 November 2015

³⁰¹ Citizens Advice. (2013). ‘Introduction to the service 2012/13’.

³⁰² Personal Support Unit. Available at <https://www.thepsu.org/> last accessed 13 November 2015

³⁰³ Ibid.



March 2012, The Co-operative Legal Services became the first major consumer brand to receive approval to become an ABS and have since established five regional hubs across England.³⁰⁴

Other legal aid actors include trade unions and university law clinics.

2. Background

Background to Basic Legal Services

The diversity of agencies providing basic legal services in England and Wales is largely the result of its history. Lawyers have been involved in providing civil legal services since the beginning of the publicly funded legal aid scheme in the 1950s. However, they largely confined their work to matrimonial cases until the 1970s when they slowly expanded into areas of what we might call “social justice”.³⁰⁵

The CAB movement, the first and most widespread of England and Wales’ volunteer advisory services, had its origins in the provision of advice and information on wartime regulations by unpaid volunteers during the Second World War but slowly expanded its role, funding and services, particularly from the 1970s onwards. It was also in this decade that the law centre movement began to provide basic advice in various social justice fields such as employment, housing, immigration and asylum.³⁰⁶

Background to Beneficiaries

The second wave of a recent panel survey found that 32% of respondents had experienced one or more civil justice problems during the previous eighteen months.³⁰⁷ The most prevalent problems related to neighbours (8.4% of respondents), consumer (8.2%) and employment (6.4%).³⁰⁸

3. Cost Data

Cost and Benefit of Basic Legal Services

In the financial year 2014-15, Citizens Advice UK estimated that it helped 2.5 million people, handled 6.2 million issues directly, and 20.7 million people accessed information on its web page.³⁰⁹

Citizens Advice UK undertook a full project evaluation in the FY 2014-15, finding that for every £1 spent:³¹⁰

³⁰⁴ Law Society (2013). ‘Alternative Business Structures Practice Note’.

³⁰⁵ Information provided by Roger Smith, 2015.

³⁰⁶ Ibid.

³⁰⁷ Balmer, N. (2013). ‘English and Welsh Civil and Social Justice Panel Survey: Wave 2’. UK Legal Services Commission.

³⁰⁸ Ibid.

³⁰⁹ Citizens Advice (2015). ‘The value of the Citizens Advice service: Our impact in 2014-15’.

³¹⁰ 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.



- 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.
- Direct clients benefit by £10.94 through income gained in benefits, debts written off and consumer problems resolved.

The service operates on an annual budget of USD 361 million. Assuming national coverage, this provides a per capita cost estimate of USD 6.3.³¹¹

Putting these figures in context, the entire legal aid budget for England and Wales (not the entire UK) amounts to USD 2.7 billion³¹² and serves the entire population of 57 million, producing a per capita cost for legal aid of USD 48. By way of comparison, USD 31 per capita are spent on the judiciary in England and Wales,³¹³ and USD 3,885 and USD 2,476 on the health and education sectors respectively.³¹⁴

4. Financing Options

The free-to-user services of the Citizens Advice Bureaux are funded primarily by local government and the Legal Services Commission, as well as a number of trusts and foundations including the Big Lottery Fund.³¹⁵

Legal expenses insurance is available for some legal proceedings, often attached to motor and household contents insurance, but has not penetrated the market to the same extent as in Netherlands.

5. Political Economy Considerations

- Providers may have motivations for providing free or subsidised services that extend beyond moral reasons. For example, legal professionals may also work pro bono for career development purposes, whilst specialist organisations can use their advisory services to identify individual cases which would further their advocacy work.³¹⁶
- All service providers are currently subject to severe financial cuts in government aid. The scheme of subsidised legal advice from lawyers, in particular, has been significantly reduced and now covers only those areas of law which are deemed to be protected by the European Convention on Human Rights. Law centres have been particularly hard hit by these cuts and a number have now

³¹¹ Ibid.

³¹² Ministry of Justice (2015). Ministry of Justice Annual Report and Accounts 2014-2015.

³¹³ Her Majesty's Courts and Tribunals Service (2015). Annual Reports 2014-2015 spending.

³¹⁴ World Bank (2015) World Development Indicators.

³¹⁵ Citizens Advice (2013). 'Introduction to the service 2012/13'.

³¹⁶ Ibid.



closed. The lay agencies are, in consequence, under unprecedented pressure and themselves facing uncertain financial times.³¹⁷

- One response to this situation has been to develop websites that will provide members of the public with at least basic information on their problem. This is one way of protecting individual offices from being overwhelmed and, in the longer term, may lead to advice agencies leading with their web presence (although at present these are still seen as supplementary to the main activity providing face-to-face advice).³¹⁸
- Two national advice websites – adviceguide.org.uk (which is provided by the citizens advice movement) and advicenow.org.uk (a site provided by advisers outside citizens advice). Both are being significantly improved to increase accessibility. In addition, specialist agencies also have websites - of which Shelter's is an example (http://england.shelter.org.uk/get_advice) and which are often the best source of advice both general and specialist in their field.³¹⁹

³¹⁷ Ibid.

³¹⁸ Ibid.

³¹⁹ Ibid.



Annex G: Alternative Approach to Costing

1. There is an alternative approach to answering Research Question 1 which was set out in the Concept Note but which will not be explored in any detail in the report. This approach would involve calculating the price of inputs into a national justice system which provides basic legal services of an adequate quality to a population of a particular size and then computing the sum of those inputs into a per capita unit cost.
2. By way of example, we could start with the hypothesis that a national justice system requires the following inputs:
 - Judges
 - Prosecutors
 - Defence lawyers
 - Civil lawyers
 - Police
 - Prisons
 - Paralegals
 - Community leaders
3. It will be noted that these inputs reflect a national justice system capable of meeting all the basic justice service needs of its population – not just those of a civil and administrative nature. This reflects Goal 16 and Target 16.3 of the SDGs which refers to access to justice (not just legal services) and encapsulates problems of both kinds in its proposed indicators:



GOAL: Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.

TARGET: Promote the rule of law at the national and international levels, and ensure equal access for all

PROPOSED INDICATORS:

- (a) Percentage of people who have experienced a dispute, reporting access to an adequate dispute resolution mechanism*
- (b) Percentage of total detainees who have been held in detention for more than 12 months while awaiting sentencing or a final disposition of their case*

4. This approach also reflects the reality in many LICs and FCAS, whereby civil disputes are sometimes resolved with the assistance of the police and criminal matters are sometimes dealt with in similar fashion to civil matters, by payment of a fine rather than detention and imprisonment. For many people the first point of contact with the justice system is the police and not the courts (see typical example below).

Geoffrey is a farmer in central Uganda. Lack of justice is the key reason why he is trapped in poverty. The rich cattle men let their cattle wander freely and destroy his crops. When he goes to report it to the police they say they have to charge him USD 5 every day the cows are held in the police station. And if he wants to use the local courts just the initial application would cost him USD 15.³²⁰

5. Our assumption is that the minimum number of justice providers in a country is proportional to its population. We would look at these ratios in a range of specific countries (e.g. in low income countries where the justice system is working relatively well). We would supplement this with numbers ideally required: this would involve a high degree of judgment but would be based on work we have done to support the development of national justice strategies in a range of low income countries (including for example Sierra Leone and Uganda).
6. Once the relevant inputs have been identified, each input needs to be costed for a population of a particular size. The aggregate cost of the system can then be divided by that population to produce a per capita cost of meeting basic legal service needs. That per capita cost can then be benchmarked against both (a) justice spending as a % of GDP or government spend and (b) the per capita cost that has been identified for meeting primary service needs in other sectors. For

³²⁰ 'Manuel M., DFID unpublished, information gathered during village immersion visit, Uganda' (March 2010).



example UNESCO have costed the delivery of primary and secondary education at an average of USD 47 per person in LDCs and have urged countries to target total spending on education to be 6% of GDP and/or 20% of the government's budget. Similarly the cost of providing Universal Health Care have been estimated by Centre on Global Health at Chatham House to be USD 87 per person in Low Income Countries. They also recommend a target of 5% of GDP. Many African countries have subscribed to the Maputo target of 15% of government expenditure.³²¹

7. As far as we are aware this would be the first time that anyone has attempted to cost justice. The UN Sustainable Development Solutions Network project that is producing a compendium of the cost estimates for all the SDGs is not aware of any such study.
8. Such a costing would
 - Help to place justice on the same footing as other sectors such as education, health, water, agriculture, electricity in the global debate about development and the implementation of the SDGs. The focus after the SDG summit will be on implementation challenges and there will be considerable competition between the SDGs for attention.
 - Help to redress the balance between external support for justice and other sectors. Justice receives small amount of aid relative to other sectors and relative to govt spending – 1.5% of total donor spend if include Afghanistan; 0.2% if just look at Sub Saharan Africa³²². Yet donor governments typically spend around 4-5% of their own budgets on this sector in their own countries.
 - Enable donors to identify countries whose revenue capacity is so limited that they will need external support if they are to have basic justice system accessible to all. A recent study by ODI³²³ has identified those countries that cannot afford basic national healthcare or education systems – comparing estimate of revenue capacity against cost of service provision.
 - Provide a benchmark scaling up threshold for scaling up other interventions in the sector – if a NGO proposed solution for a particular justice activity is likely to cost in the long run 10 times the unit costs of the whole sector such an intervention is never likely to be affordable for the government to be able to fund at scale.
9. This approach to costing will be revisited in the spring, following agreement by the UN Assembly on the indicators for SDG 16.

³²¹ Cited in Manuel, M. et al (2015) ODI Working paper 416. Available at <http://www.odi.org/publications/9462-financing-future-international-public-finance-should-fund-global-social-compact-eradicate-poverty>

³²² Unpublished ODI study.

³²³ Manuel, M. et al (2015) ODI Working paper 416. Available at <http://www.odi.org/publications/9462-financing-future-international-public-finance-should-fund-global-social-compact-eradicate-poverty>