

NAVIGATING COMPLEX PATHWAYS TO JUSTICE

PARALEGALS AND CUSTOMARY AND
INFORMAL JUSTICE SYSTEMS



Background



Goal 16 of the United Nations 2030 Agenda for Sustainable Development recognizes the importance of access to justice in ensuring the protection of fundamental human rights and the development of peaceful and inclusive societies. There is increasing consensus on the importance of people-oriented approaches to realize the commitment to provide access to justice for all, including diverse forms of accessible, affordable and equitable justice mechanisms and systems to resolve disputes and claim and protect rights in a timely and fair manner. Within this broader framework, community paralegals working at the intersection of formal and customary and informal justice contribute substantially to access to justice and the development of just, peaceful and inclusive societies.

This Working Paper explores the role of paralegals in promoting access to justice, identifying challenges, entry points and good practices in paralegal services, with a focus on community paralegals and their interaction with customary and informal justice systems in the African continent.

Drawing from IDLO's programmatic experience and examples from other organizations, as well as from the findings of the East and Horn of Africa Paralegal Forum held in Nairobi in 2019,¹ the Paper also identifies roles for paralegals in customary and informal justice systems to:

(1) strengthen or support customary or traditional leaders in their roles as justice providers; (2) promote minimum standards in the operation of customary and informal justice mechanisms and enhance protection of human rights, especially for marginalized communities; and (3) enhance understanding of justice challenges at the community level and build an evidence base to inform policy and legal reform.



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- Refer cases to customary and informal justice actors.
- Provide legal advice on applicable laws, human rights standards and procedural safeguards.
- Support classification of cases, jurisdictional check and case handling.

- Conduct community awareness-raising and legal education.
- Provide tailored, accessible legal advice (to victims of gender-based violence, detainees, children, etc.).
- Perform alternative dispute resolution (for example, mediation) and represent or assist parties in customary and informal justice processes.
- Refer cases to competent authorities and essential services for victims and actively follow up on cases.



Provide technical support to customary and informal justice actors



Facilitate access to justice for women and vulnerable groups

How can paralegals engage with customary and informal justice systems to provide access to justice for all?



Coordinate with stakeholders and build strategic networks



Promote positive change at the community level



Support case recording and data collection

- Partner with government and civil society stakeholders to leverage resources to sustain paralegal activities.
- Build on complementarities and synergies with legal and justice actors to strengthen cooperation for effective service delivery.

- Support sensitization of justice providers and civic mobilization against discriminatory and harmful practices.
- Undertake advocacy and lobbying with local and central governments for policy influencing.
- Monitor or participate in customary and informal justice processes to increase diversity, including women's participation, and accountability.

- Record case file information and produce paper documentation to facilitate referrals and appeals.
- Identify and report trends, patterns and gaps in legal and justice services to guide reform and budgeting.
- Document human rights violations and report them to competent bodies.

Findings and recommendations

In the Global South, it is often estimated that informal actors, including customary leaders, resolve up to 90 percent of disputes. To increase access to and quality of justice in such contexts, it is important to harness the potential of customary and informal justice systems and, at the same time, consider the complexities and issues that can arise. Given their accessibility, familiarity with customary or traditional law and with community cultural and power dynamics, community paralegals are uniquely well placed to work in pluralist legal systems. Indeed, they often have important roles in providing legal aid services to marginalized groups and in bridging the gap between formal and customary and informal justice systems by undertaking several different activities at the local level.

However, community paralegals often face obstacles in their daily work, which can negatively impact their ability to deliver quality services and engage effectively with customary and informal justice actors. To address these obstacles, which are especially recurrent in conflict-affected and fragile contexts, efforts by development actors and national counterparts are needed to:

Fill gaps in legal and policy frameworks for legal aid and paralegals, including through establishing or strengthening national legal aid coordination bodies and accreditation systems.

Prevent and address tensions with other justice providers, particularly those operating in customary and informal justice systems and increasing paralegals' legitimacy and authority within communities.

Leverage sufficient resources and cooperate with other legal and justice actors to ensure the effectiveness and long-term sustainability of paralegal programs.

Provide comprehensive training for community paralegals and standardized tools to monitor their performance and enable data gathering on justice gaps and challenges at the community level.



The Working Paper identifies several recommendations for governments, development partners and donors to advance the participation of paralegals in customary and informal justice systems and provide access to justice for all:

1 **Develop comprehensive national legal and policy frameworks that recognize paralegals and their engagement with customary and informal justice systems.**

This includes clear policy and legislation defining the role that paralegals can play to support and provide legal aid services, especially in the context of customary and informal justice systems, thus generating community trust in paralegals. Additionally, establishing coordination bodies such as legal aid boards is crucial to ensure adequate training and official recognition or accreditation for paralegals as well as a framework to ensure coordination and safety of community paralegals operating at the intersection of formal and customary and informal justice systems.

2 **Foster a conducive environment for paralegal activities at the community level by ensuring legitimacy of paralegals, preventing tensions and identifying areas for cooperation.**

For paralegals to successfully perform their role, it is essential that they are aware of and able to address local power dynamics and structural discriminations affecting women and vulnerable groups. To this end, paralegals should acquire a certain level of authority and legitimacy within their communities through activities aimed at sensitizing and raising awareness of influential stakeholders at the local level, and in particular, identifying synergies and complementarities between the roles of paralegals and customary and informal justice actors.

3 **Build strategic partnerships with legal and justice sector actors to facilitate effective and sustainable paralegal services.**

Programs should identify community leaders, local legal aid organizations, pools of legal professionals, law schools, public service networks, bar associations and relevant support service providers in the social and health sectors and build cooperative relationships. This should be done through targeted training and information dissemination activities aimed at facilitating collaboration and identifying relevant referral pathways and focal points for effective support of justice seekers, particularly women and vulnerable groups. Establishing collaborative working relationships with other local organizations and partner stakeholders can also help leverage sustainable funding solutions through tailored, flexible cost-saving or financing models based on mutual benefits and collaboration on common goals by multiple local actors.

4 Place gender equality and women's meaningful participation at the center of community paralegal interventions.

As women seek paralegal services more than men in many contexts, programs should ensure that paralegal services are gender-sensitive and responsive to women's needs, and aimed at fostering women's meaningful participation in justice systems, paying specific attention to customary and informal justice. This means taking into account harmful practices and discrimination in customary and informal justice processes as well structural barriers at multiple levels, including formal justice institutions.

5 Provide adequate training and oversight to ensure comprehensive skill sets and minimum quality standards.

Paralegals must receive initial and continuous training to sharpen their skills, including on national law and international human rights standards, alternative dispute resolution methods, customary law and ways to engage with customary and informal justice actors, as well as on handling sensitive cases and cases involving vulnerable parties. Oversight mechanisms must be set up to monitor the quality of services delivered by paralegals, including through periodic satisfaction surveys and reviews of case files to track case progress and paralegals' performance and adherence to minimum legal aid standards.

6 Strengthen data collection and reporting capacity for enhanced accountability and evidence-based policy influencing.

Paralegals should be equipped with skills in context-appropriate data collection, case record-keeping and evidence-building, to compensate for the lack of paper documentation of customary and informal justice processes. This will enable paralegals to monitor the progress of cases through customary and informal justice and formal systems, track any rights violations and discriminatory practices, facilitate case referrals and appellate procedures, and identify key strengths, challenges and gaps in service delivery at the community level, ultimately informing regulatory and policy reform.



Notes

¹The Forum, organized by International Development Law Organization (IDLO; through its Africa Initiative Program) in collaboration with the Paralegal Support Network (PASUNE), was held in Nairobi, Kenya, from 22 to 25 July 2019. It brought together various thematic experts as well as paralegals and paralegal organization representatives, legal aid providers and Court User Committee members from Ghana, Kenya, Sierra Leone, Somalia, South Sudan, Tanzania and Uganda to discuss experiences and identify good practices in facilitating access to justice through paralegal programs in various formal and informal justice settings.



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