



PMRC ANALYSIS OF THE NATIONAL LEGAL AID POLICY OF 2018

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ABBREVIATIONS

CSO	Civil Society Organisation
EU	European Union
GBV	Gender Based Violence
ICCPR	International Covenant on Civil and Political Rights
LAF	Legal Aid Forum
LASP	Legal Aid Service Provider
LAZ	Law Association of Zambia
NGO	Non-Governmental Organisation
NLAS	National Legal Aid Service
PAN	Paralegal Alliance Network
PLEAD	Programme for Legal Aid and Delivery
PLEED	Programme for Legal Empowerment and Enhanced Justice Delivery
TEVETA	Technical Education Vocational Training and Entrepreneurship Training Authority
UDHR	Universal Declaration of Human Rights
UNCRC	United Nations Convention on the Rights of the Child
UNDP	United Nations Development Programme
UNODC	United Nations Office on Drugs and Crime





WHAT IS LEGAL AID?

Legal aid consists of the following:

- a) Legal education
- b) Legal information
- c) Legal advice
- d) Legal assistance, or
- e) Legal representation¹

THE IMPORTANCE OF LEGAL AID

It is common cause that legal representation in Zambia is costly and not all litigants can afford the fees charged by legal practitioners. That notwithstanding, **legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that is the foundation for the enjoyment of other rights.** The Seventh National Development Plan Mid-Term Review (7NDP-MTR) recognised the need to strengthen the Government's commitment to upholding democratic principles, respect for human and the provision of access to justice as part of its development agenda. **This was founded on a belief that sustainable development relies on peace, stability, human rights and effective governance, all based on the rule of law.** National Vision 2030 acknowledges access to justice as a fundamental human right essential for protection and promotion of rights. **To this end, accessibility to justice agencies and institutions, especially by the poor and vulnerable, women and children is important for a well-functioning legislative process and policy framework driving administration of justice.** This is reinforced by Sustainable Development Goal (SDG) 16 – Peace, Justice and Strong Institutions.

¹ Legal Aid Act No.1 of 2021, Section 6

BACKGROUND TO THE POLICY FORMULATION PROCESS

The development of the National Legal Aid Policy (2018) was informed by findings of a study supported by the Dutch Institute for Human Rights² which raised a number of key issues. These were principally the following:

- a) *Forms of official recognition of different kinds of legal services, including **legal information and education, legal advice and assistance; and legal representation before courts and tribunals;***
- b) *A proposed policy to address roles and responsibilities of different legal service providers, including ethical and conduct issues;*
- c) *Different kinds of paralegals would be recognised – **qualifications, regulation, recognition and services provided would be expressly indicated; and***
- d) *Cooperation.*

The study made recommendations which were submitted to the Ministry of Justice, which resulted into the **Government of the Republic of Zambia committing itself to enhancing equal access to justice, particularly for the poor and for vulnerable people. This is the basis of the policy and its supporting framework.**

LEGAL AND POLICY FRAMEWORK FOR LEGAL AID IN ZAMBIA

The framework for legal aid in Zambia is made up of the **Constitution**,³ the **National Legal Aid Policy** which is the subject of this analysis, the **Legal Aid Act**,⁴ the **Legal Practitioner's Act**,⁵ as well as international treaties and conventions to which Zambia is State party, namely the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).



² Kerrigan, Fergus et al, Access to Justice in the Republic of Zambia; A Situation Analysis carried out on behalf of the Governance Secretariat, 2012.

³ Amendment Act No.2 of 2016

⁴ No.1 of 2021

⁵ Chapter 30 of the Laws of Zambia

SCOPE OF THE POLICY

It was recognised that a comprehensive policy is important for the guidance of service providers, including non-state actors, hence its development was motivated by the need to establish a regulatory and implementation system which covers provision, administration, coordination, regulation and monitoring of legal aid in Zambia.

The general objective of the policy is to ensure efficient and effective delivery of legal aid services to poor and vulnerable people in Zambia.

Specific Objectives

The policy sets out six specific objectives in support of the general objective of ensuring efficient and effective delivery of legal aid to poor and vulnerable people. These are:

- i) **To widen the scope of legal aid services** so that the full range of services includes **education, information, advice, assistance and representation**. This will enable the relevant justice sector players to render services through accommodating models in order to fill the gaps in service delivery that have been cited as a challenge for indigent litigants.
- ii) **To enhance awareness of the law and legal aid services amongst the population** to enable them make informed decisions to claim rights and obtain remedies effectively. This objective stems from the recognition that awareness levels on the law and available remedies are low. **Mechanisms such as the Legal Services Units at Police Stations, Subordinate Court and at correctional facilities are aimed at meeting this need.** With developments under the policy, the role of Legal Aid Service Providers (LASPs) is key. They have a better presence in the communities in which most of the legal issues activating the need for legal aid occur. Community level interventions are important for this reason – Gender Based Violence GBV), land and property disputes, among others are common and legal advice from practitioners is usually out of the question due to the issue of cost.
- iii) **To increase geographical coverage of the legal aid system by involving civil society organisations (CSOs) and university law clinics as legal aid service providers.** It is common cause that the Legal Aid Board faces serious constraints; therefore, once established, this coverage will call for coordination among the LASPs. Mechanisms for coordination will follow the fact as anticipated by the policy.
- iv) **To strengthen the complementary role of legal practitioners in the delivery of legal aid services through pro bono legal aid.** Whereas the legal profession is strictly regulated by legislation⁶ and unqualified persons have hitherto been prohibited from providing legal services, the policy seeks to relax this by allowing non-holders of practising certificates issued by the Law Association of Zambia to provide legal aid services, provided they comply with requirements set out under the enabling law. This notwithstanding, legal practitioners will sit at the apex on this model wherein legal practitioners will participate through an improved pro bono framework which, it is anticipated, will attract more legal practitioners.

⁶ Legal Practitioners Act, Chapter 30 of the Laws of Zambia

- v) To enhance competence and **accountability of paralegals, legal assistants (law degree holders) and legal aid assistants ensuring quality in the legal aid services offered.** This entails that professional ethics, uniform training and registration requirements will be the yardsticks by which the competence will be measured.
- vi) **To strengthen institutional capacity in order to adequately manage a comprehensive legal aid system in Zambia.** This will be done by widening the scope of functions of the Legal Aid Board.

The policy is founded on a set of guiding principles which feeds into the specific objectives. The guiding principles are derived from the Republican Constitution,⁷ namely:



⁷ (Amendment) Act No.2 of 2016, Article 8. Note that the guiding principles in the policy have added to those espoused by the Constitution.



INTERNATIONAL TREATIES AND GUIDELINES

Zambia's legal aid system is governed by a number of international commitments in its efforts to ensure a framework that is responsive to the needs of poor and vulnerable people.

The Universal Declaration of Human Rights enshrines key principles of equality before the law and the presumption of innocence, along with guarantees necessary for the defence of anyone charged with a penal offence.⁸

The International Covenant on Civil and Political Rights (ICCPR) states that everyone charged with a criminal offence shall be entitled to be tried in his or her presence and to defend himself or herself in person or through legal assistance assigned to him or her where the interests of justice so require.⁹

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems recognises **legal aid as an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that is the foundation for the enjoyment of other rights.**¹⁰ The guidelines aim to provide guidance to States for the fundamental principles on which a legal aid system in criminal justice should be based and outline the specific elements required for an effective and sustainable national legal aid system in order to strengthen access. The guidelines are drawn from international standards as well as recognised good practice.

⁸ Article 11

⁹ Article 14

¹⁰ United Nations Office on Drugs and Crime (UNODC), 2013. The Guidelines were adopted by the United Nations General Assembly in December 2012.

LEGAL AID ACT

In accordance with the implementation plan for the policy, the Government was to facilitate the review of pertinent legislation relating to the provision of legal aid. To this end, the National Legal Aid policy informed the enactment of the Legal Aid Act No.1 of 2021.¹¹ **This is an Act to provide for granting of legal aid in civil and criminal cases to persons whose means are insufficient to enable them pay for legal services; to provide for the regulation of law clinics in the provision of legal aid; continue the existence of the Legal Aid Board and provide its functions; reconstitute the Board and redefine its functions; provide for the regulation of practitioners, legal assistants, paralegals and legal service providers; continue the existence of the Legal Aid Fund and provide for its administration and management; repeal and replace the Legal Aid Act 1967.**¹²

The Act provides for the continuation of the Legal Aid Board as an autonomous body and stipulates its functions.¹³ This autonomy is a major shift in ensuring that the mandate and operations align with the policy objectives. It was one of the shortcomings identified by the policy and has since been cured by the legislation. The Act further clarifies the scope of legal aid to include education, information, advice, assistance and representation.¹⁴

The Board composition is as follows:

- Ministry of Justice
- Ministry of Home Affairs
- Ministry of Community Development and Social Services
- Ministry of Labour and Social Security
- Ministry of Gender
- Law Association of Zambia
- Civil Society Organisations
- Representatives of Schools of Law

The **Board** advises the **Minister** on **policies** relating to **legal aid; formulates policies, programmes and strategies of the Legal Aid Board.**¹⁵

The Act defines Judicare, which is the provision of legal aid, free of charge or at a fee, by a practitioner, registered under the Act.¹⁶ In specific cases, the Legal Aid Board engages legal practitioners in private practice to take up cases at prescribed fees.

The Act provides for the **Legal Aid Fund** for purposes of providing legal aid in accordance with the law.¹⁷ Legal practitioners are remunerated from this Fund and it is supposed to

¹¹ This Act replaces the Legal Aid (Amendment) Act No. 19 of 2005

¹² The Act shall come into operation when the commencement order is passed via statutory instrument by the Minister of Justice

¹³ Section 5

¹⁴ Section 6

¹⁵ Section 9(1)

¹⁶ Section 12

¹⁷ Section 40

cover payments of other expenses incurred by a practitioner providing legal aid under the Legal Practitioners Act.¹⁸

Part III of the Act governs the categories of legal professionals who may provide legal services and specifically mentions practitioners, legal assistants, paralegals and legal aid service providers. Each category is required to apply for registration with the Legal Aid Board.¹⁹ Qualifications are also expressly stipulated, as well as the scope of practice (except for practitioners). In this regard, there is a caveat on the services that these categories may provide. It is prohibited to provide legal aid without registration.²⁰ Thus, the Act requires that the Legal Aid Board maintains a Register of practitioners, legal assistants, paralegals and legal aid service providers.²¹

It is clear from reading of the foregoing that the amended Act augments the policy in furtherance of the specific objectives.

FURTHER REFORMS TO THE LEGAL AID SYSTEM

A number of interventions have been rolled out to ensure successful implementation of the policy goals and objectives into a robust legal aid system.

Prior to the adoption of the policy, the Legal Aid Board was unable to effectively and efficiently impact its targeted clients due to a lack of strategic direction and to organisational limitations. Since the adoption of the National Legal Aid Policy (2018), a major shift has occurred as follows:

- i) The policy has shaped and defined the kind of legal services that are to be provided;
- ii) Identities of providers of those services, for regulation and monitoring purposes are enshrined in the framework;
- iii) Particular beneficiaries and groups have been stipulated;
- iv) Legal domains to be covered, whether civil or criminal are clearly defined;
- v) Legal fora – this relates to which level of the Judiciary the services would be most appropriately offered.

The constitutional and justice reforms undertaken in recent years have encouraged CSOs and independent institutions to provide legal services (to a limited extent), to provide policy input and to analyse functioning of the system with increased participation of stakeholders. This approach was enabled by a process of reform to the Zambian legal system that resulted in an improved framework for justice agencies to participate in improvement of the system for the benefit of the indigent as well as those with qualifications to provide much needed services. Thus, the policy facilitates a platform where more role players have been formally included in the provision of legal aid services according to categories indicated. As such, it compels the Legal Aid Board to engage with other legal aid providers, with the Law Association of Zambia and the Paralegal Alliance Network (PAN). This innovative approach was born out of a realisation that communities required an array of legal services but that

¹⁸ Chapter 30 of the Laws of Zambia

¹⁹ Section 25

²⁰ Section 24

²¹ Section 56

the prohibitive cost of legal representation made them turn to members of the community who had a measure of legal knowledge. **Therefore, rather than abrogate the rules of natural justice and the Bill of Rights by prohibiting unqualified persons from offering legal services Government partnered with cooperating partners to train paralegals to provide community-level legal services, advice and assistance.**

Under the Access to Justice Programme, the curriculum for paralegals was approved by the Technical Education, Vocational and Entrepreneurship Training Authority (TEVETA) and currently training modules are offered at 3 levels, in line with the policy, as follows:

- i) Level 1 – Law Degree holders
- ii) Level 2 – Law Diploma holders
- iii) Level 3 – any member of the community with other qualifications but who is conversant enough with issues in their community to provide the service.

This training is provided by a number of tertiary institutions, including the private universities and so far, the Ministry of Justice has facilitated the formal training of about 200 paralegals. This was conducted under the auspices of the European Union and GIZ through the Programme for Legal Empowerment and Enhanced Justice Delivery (PLEED).²² This support was aimed at improving institutional and organisational capacity of the Legal Aid Board in delivery of legal aid. It is anticipated that a second phase of the programme will be rolled out. The main issue here is to ensure a quality assurance framework that will ensure that paralegals, legal assistants and legal aid assistants offer quality service that does not compromise the interests and welfare of litigants. This will ultimately minimise the risks of unsubstantiated advice being given which could lead to unpleasant outcomes for the system. The training will ensure that standards are upheld and professional ethics maintained.

Establishment of Legal Services Units (LSU) at Subordinate Court, correctional facilities and police stations is another important milestone for access to justice.²³ This is an innovative scheme to expand delivery of legal aid at Subordinate Court level. It is a permanent unit with daily outreach to *remandees* appearing in court as well as other parties in criminal and civil cases, providing them with a whole range of legal aid services.²⁴ It is run jointly by paralegals affiliated to CSOs and legal aid assistants attached to the Legal Aid Board. They are supervised by Legal Aid Board legal practitioners. Kerrigan et al (2012) stated in their study that many Zambian justice sector actors were familiar with the work done by paralegals in other countries (an example is given of Malawi) and the Zambia Correctional Service expressed willingness to having paralegals render a similar service to incarcerated Zambians. This gave establishment of the LSUs the necessary impetus and support.

In terms of resource mobilisation and financing, **a finance manual has been prepared which will coordinate mechanisms for a funding basket where resources for continuation of the services can be tapped.** Consultations have been undertaken with stakeholders and it is anticipated that this will be expedited. This fund will alleviate some of the challenges relating to continued training. While it is the responsibility of the State to allocate the necessary financial resources, basket funding from other sources can also be considered for supplementary funding.

²² PLEED (2015-2019) was a programme under GIZ which supported the Governance Department of the Ministry of Justice, and is credited with supporting the establishment of the LSUs as well as the policy formulation process with support from the Danish Institute for Human Rights.

²³ These were established in 2013

²⁴ Dinda, Charles, ILAG Conference National Report – Zambia (2017) www.internationallegalaiddgroup.org



ROLE OF KEY STAKEHOLDERS

The implementation framework under the policy sets out the roles of various legal aid service providers.

i) LAW ASSOCIATION OF ZAMBIA



The Law Association of Zambia (LAZ) has a pro bono programme led by the Legal Aid Committee. When it was established in mid-2010, LAZ members were required to handle criminal sessions on behalf of the Legal Aid Board to clear the backlog of cases. This is now guided by the policy and provided for in the Legal Aid Act.²⁵ Noting bottlenecks such as legal representation being costly and concentrated mainly in Lusaka and the Copperbelt, the Act provides for Judicare which entails the provision of legal aid, free of charge or at a fee, by practitioners registered by the Legal Aid Board.²⁶ Where circumstances dictate, practitioners are remunerated from the Legal Aid Fund for expenses incurred while representing a legally aided person under the Act, except for a person providing legal aid under the Legal Practitioners Act.²⁷

ii) CIVIL SOCIETY ORGANISATIONS



There are currently over 30 CSOs and between 750 and 900 trained paralegals currently registered under the Legal Aid Board.²⁸ The role of paralegals is important as they assist indigent and vulnerable people to engage with and navigate the legal environment and the justice system, empowering them to understand and claim their rights. Some of the most common cases occur around social causes such as family and property matters, land matters, GBV as well as the rights of women and children. Theirs is a bridging role - they live and work in the community and have the necessary legal education; they are conversant with the problems and challenges in the communities, have links to CSOs, legal practitioners and institutions; they speak the language of the community and provide solutions that the communities can relate to. Viewed against

²⁵ No.1 of 2021. The commencement order for this Act is yet to be issued by the Ministry of Justice.

²⁶ Section 12

²⁷ Section 41

²⁸ These are the figures as at 2015 before the training conducted by TEVETA.

this background, formal recognition and capacity building governed by the law is a major move, especially for purposes of regulation. The policy provides a standardised framework to ensure competence and accountability.

iii) JUDICIARY



Under the Legal Aid Act, the Court can direct the grant of legal aid in criminal and civil cases.²⁹ The Director of the Legal Aid Board is notified by the Court and accordingly assigns the case.

iv) UNIVERSITY LAW CLINICS



Ordinarily, the framework should include university law clinics but these are yet to be established. The University of Zambia, School of Law has been engaged in discussions around the same but this has not been finalised. The model would be based on law clinics in Uganda, Rwanda and Kenya.

CHALLENGES AND GAPS

The policy highlights several challenges in the legal aid system that require attention.

The Legal Services Units at Police, Subordinate Court and correctional facility level are primarily supported by CSOs but the ideal situation would be their formal inclusion into the internal organisational structure with supporting budgets so that sustainability ceases to be a matter of concern. However, as the situation stands, there is no mechanism within the Legal Aid Board to coordinate CSOs and paralegals providing legal aid services.

It is further stated that the **Access to Justice programme is mainly skewed towards coordination, communication and cooperation to improve service delivery; while the mandate of the Legal Aid Board does not extend to coordination, regulation and monitoring of the legal aid system.** This and other discrepancy factors in the institutional structure as well as the internal organisation is being addressed through Cabinet Office.

Sustainability of the training programme for paralegals is uncertain with the ending of the first phase of Programme for Legal Empowerment and Enhanced Justice Delivery (PLEED). It has, however, been indicated that a second phase is being considered.

LESSONS LEARNED FROM OTHER JURISDICTIONS

In 2012, several countries in Africa started the process of developing national policies on legal aid citing the following factors:

- i) Recognition of diverse needs for legal services;
- ii) Justice institutions have a role to play in making legal information available to the public as appropriate;
- iii) The State has an obligation to facilitate provision of these services by creating an enabling environment for policy.³⁰

²⁹ Sections 43 and 45

³⁰ Kerrigan, Fergus et al page 102

For purposes of this analysis, Rwanda, Uganda and Kenya present best practices that can be applied as we refine implementation of the Zambia's policy.

RWANDA



In addition to services offered by the Legal Aid Department, Rwanda has a robust membership-based network of non-governmental organisations (NGOs), CSOs, trade unions, professional bodies and international NGOs all falling under the Legal Aid Forum (LAF). It is an independent network of legal aid service providers and legal organisations which support legal aid services. At the heart of its functions, the LAF advocates for access to justice for vulnerable and poor people. It also provides free legal representation. Rwanda also has a network of university legal aid clinics.

UGANDA



The national legal aid system in Uganda is mainly based on Justice Centres. This is a one-stop-shop legal aid delivery model that seeks to bridge the gaps between the supply and demand sides of justice. **It does this by providing legal aid services across civil and criminal areas of justice to indigent, marginalised and vulnerable people while at the same time empowering individuals and communities to claim their rights and demand for policy and social change.** Justice Centres are guided by the following objectives:

- a) To entrench awareness of human rights and empowerment of communities to claim their rights;
- b) To enable the vulnerable to effectively resolve disputes using both litigation and alternative dispute resolution;
- c) To undertake human rights centred and evidence based advocacy for reforming of laws, policies and practices;
- d) To pilot justice centres as a model for delivery of legal aid services in Uganda.

KENYA



Kenya is a signatory to several treaties that guarantee legal aid to Kenyans namely the International Covenant on Civil and Political Rights (ICCPR), Universal Declaration of Human Rights (UDHR) and the United Nations Convention on the Rights of the Child (UNCRC). **The Kenyan Constitution recognises their importance in trying to achieve universal standards in access to justice.** Kenya has the National Legal Aid Service (NLAS), established under the Legal Aid Act 2016. The mandate of the NLAS is as follows:

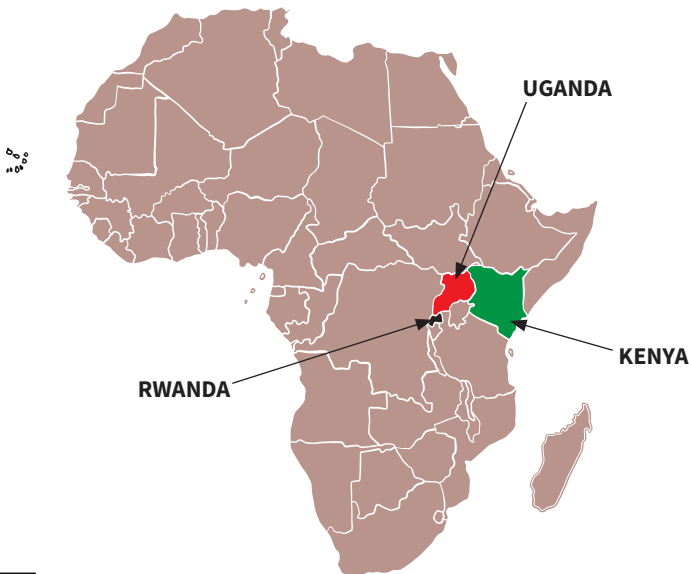
- i) Provide for legal aid services to indigent, marginalised and vulnerable persons;
- ii) Establish a legal aid scheme to assist the indigent access legal aid;
- iii) Promote legal literacy and legal awareness;
- iv) Support community legal services by funding justice advisory centres, education and research;
- v) Promote use of alternative dispute resolution to enhance access to justice.

The Legal Aid Action Plan (2017-2022) was launched in 2017 which outlines a broad policy, legal and institutional framework to ensure sustainable and quality legal aid, and operationalises recent legislation including the National Legal Aid and Awareness Policy 2015 and the Legal Aid Act aforementioned.³¹ It provides a roadmap for collaboration and cooperative efforts in legal aid service provision.

In terms of cooperation and strategic partnerships, the European Union (EU), the Government of Kenya and the United Nations Development Programme (UNDP) launched the Programme for Legal Aid and Delivery (PLEAD) in 2018.³² This is a five programme aimed at supporting Government reforms to transform the justice sector. At the centre of the reforms is the implementation of the new legal and regulatory framework on legal aid. It seeks to engage civil society organisations to provide complementary legal aid services including raising awareness of the Legal Aid Act 2016, training legal aid providers, public legal education and establishing legal aid information centres. This is on all fours with the cooperation framework that Zambia used to arrive at the point of rolling out the policy and training of paralegals.

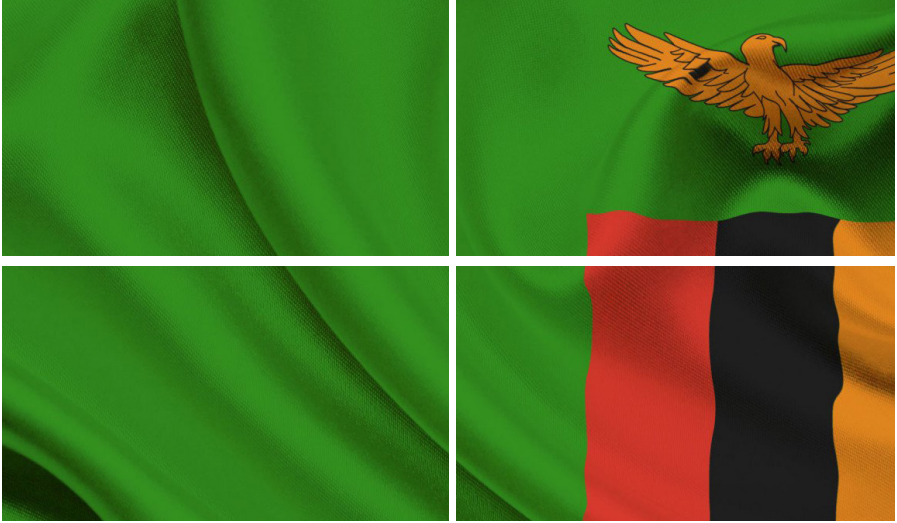
The key lesson here is that strong partnerships and coordination between formal and informal justice institutions is essential to realisation of justice for all. Under the Kenyan system, UNDP, the Government of Kenya, the EU, United Nations Office on Drugs and Crime (UNODC), civil society organisations and all legal institutions committed to strengthening institutional and organisational capacities that will in turn safeguard efficiency and effectiveness of the justice system in Kenya.

In terms of approach, sustained focus on specific interest groups through annual grants to selected CSOs to promote awareness and advocacy towards provision of legal aid, capacity building of CSOs in legal aid assistance, monitoring and evaluation; financial management and communication for development are key interventions.



³¹ www.idlo.news retrieved 22/06/2021

³² www.ke.undp.org retrieved 22/06/2021



CONCLUSION

The National Legal Aid Policy is undoubtedly a major leap in reforming the legal aid system in Zambia and has the necessary support to develop into a robust system. Regrettably, many countries still lack the necessary resources and capacity to provide legal aid for suspects, those charged with criminal offenses, witnesses and prisoners among others. Zambia inclusive. It is however commendable that the policy is in place, supported by legislation. This will go a long way in delivering on the objectives therein contained and to provide legal aid to the maximum extent possible.

PMRC RECOMMENDATIONS

Against the analysis of the salient features of the legal aid system as it currently stands, the following recommendations are hereby presented for consideration:

It is recommended that efforts to address issues relating to the organisational structure of the Legal Aid Board be expedited with Cabinet Office so that funding for continued operations can be accessed. This is key to successful implementation of the policy.

It is also recommended that the Legal Aid Board partners with university law clinics. The University of Zambia School of Law was in the process of setting up a law clinic in conjunction with the Human Rights Development Initiative of South Africa. The policy gives this undertaking the necessary impetus for the project to be implemented fully. The School offers a course in clinical legal education and students are trained to offer practical advice to members of the community.

The UN Guidelines encourage member States to draw upon the principles and guidelines, as appropriate and in accordance with national law, in undertaking national efforts and measures to strengthen access to legal aid in criminal justice systems. To this end States may request extra budgetary resources through United Nations Office on Drugs and Crime (UNODC) (subject to availability of such resources) to provide technical assistance in the area of criminal justice reform for the provision of legal aid. It is therefore recommended that this alternative be explored to sustain training programmes.

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Unlocking Zambia's Potential

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