



LEGAL AID IN PROGRESS

An Approach towards Enhancement of Legal Aid in Tanzania

Dar Es Salaam, January 2012 until present and ongoing

Legal Services Facility

Overall Objective

Promoting and protecting human rights for all, particularly for poor women, children and men and the vulnerable, including people living with HIV/AIDS.

Specific Objective

To establish a funding vehicle to provide grants fairly and efficiently according transparent criteria for the promotion of legal aid and paralegal organisations according to their objectives and strategies.

Preface

If you have a genuine interest in legal aid and if you accept that this document is not a finished product, as it probably never may be, but **‘work in progress’**, then, dear reader, you are invited to continue reading.

Possibly you will get excited, angry, inspired, disappointed, interested, frustrated or feel sympathetic towards our, undoubtedly, incomplete perspective. Hopefully, however, you will recognise the genuine drive we in the Legal Services Facility feel towards making sufficient, good quality legal aid a reality for the population of Tanzania. And don't be mistaken. Despite what we state, sometimes boldly, bluntly, or provocatively, we are actually good **listeners**.

We listen to people who, until now, never needed legal aid and to previous or present legal aid clients and to legal aid providers at all levels and to government representatives and to many other people and organisations who, one way or another, hold a stake in matters pertaining to **‘access to justice’**.

We are also ready to listen to **you**, and invite you to our office in Mikocheni B or to visit our website (www.lsftz.org) and respond to us.

The above gives the reasons why we choose to express dynamics in our overall theme:

LEGAL AID in PROGRESS.

The following document investigates and considers ways in which, according to what we have learned until present, this progress can be substantiated. Together with all stakeholders in legal aid provisions we will continue learning and we will continue to offer our views for discussion and possibly amendment.

We hope this ‘approach’ will lead you to enter into this discussion with us.

Kees Groenendijk

Fund Manager



Towards an Integrated Approach for Enhancement of Legal Aid in Tanzania

Introduction

Legal aid is generally understood as free or subsidized legal services to eligible individuals or groups, mainly poor and vulnerable people, provided as a means to strengthen their access to justice.¹

Legal aid is more than just a form of social security, and it should certainly not be seen as a charity. Legal aid should be a means to help the population in general and clients in particular, to protect their dignity, increase their rights awareness, feel legally empowered, and increase their potential. Legal empowerment in this regard refers to the use of legal approaches, particularly building the capacity of the poor and vulnerable to protect their rights and interests nationally and within the market, and using the weapons of the law to help eliminate poverty and improve their quality of life.²

The LSF approach towards enhancement of legal aid in Tanzania takes the above into consideration and will as a consequence concentrate on solving legal problems or disputes at the lowest and simplest level possible. In addition to the law providing citizens with 'weapons', in the militant language of Wuhan University, LSF is of the view that there are also 'tools' that can help people to resolve disputes at or very near to the level where they developed and occur. One could consider a variety of alternatives in the Tanzanian context such as mediation provided by paralegals, Ward Tribunals, Ward Executive Offices, Village Governments, religious or other leaders etc.

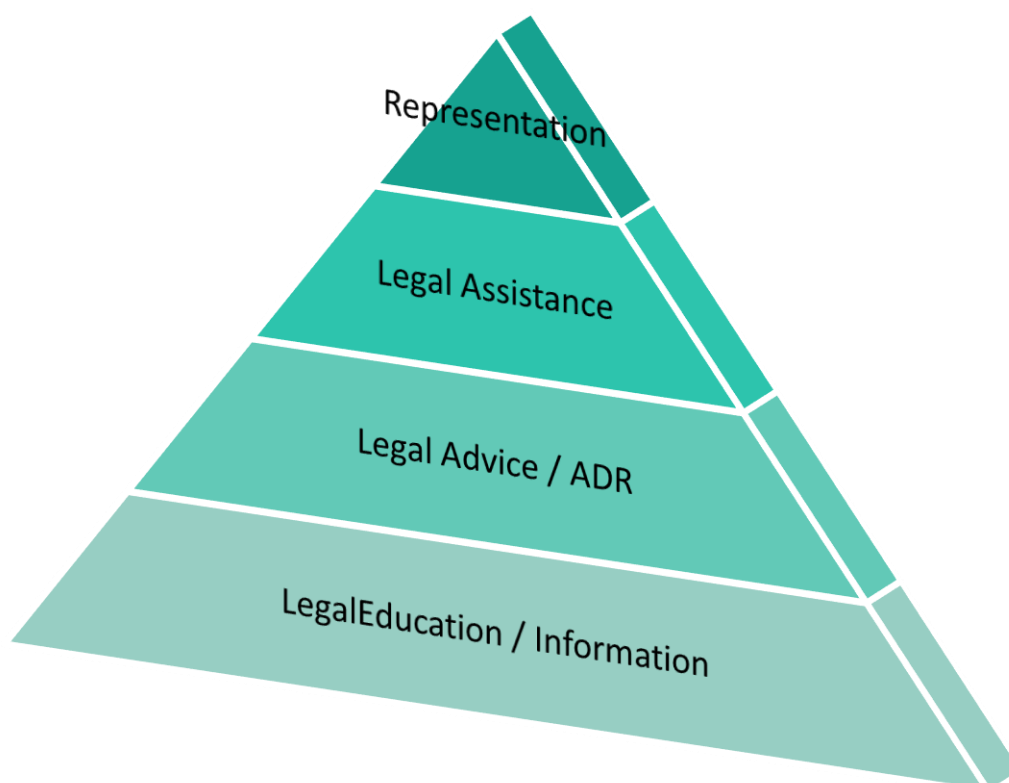
This does not take away, that in a number of cases the legal recourse through courts needs to be sought, because the problem or dispute is too complicated, or parties are not prepared to accept the outcome of a mediation process or forms of informal arbitration. The LSF recognizes this and will also make resources available to enable organizations to offer the kind of legal services necessary for these purposes. However, it needs to be taken into account that these 'higher' level services are likely to be rather expensive and will reach relatively few citizens of the country, reason for the LSF to allocate the major part of its resources to 'the lowest and simplest level possible'.

¹ The Danish Institute for Human Rights (DIHR), Access to Justice and Legal Aid in East Africa, December 2011, pg. 17.

² Public Interest and Development Law Institute, Wuhan University, China, The Problems and Possibilities of Legal Aid and Empowerment in Rural China, pg. 3.

The legal aid pyramid, as given in Figure 1, informed the LSF approach towards enhancing legal aid, with a particular view to the present status of legal aid in Tanzania.

Figure 1. The Legal Aid Pyramid



Legal services start with legal information and education. If people gain knowledge that they have rights under the law, they will be able to exercise them. This knowledge contributes to building confidence and can help in solving problems and disputes without recourse to courts. This is a cost-effective and empowering strategy and per head of population the cheapest form of legal aid.

Legal advice means that it is explained what the law means and how it can be exercised in relation to a concrete issue. In most cases this is cheaper than higher levels in the pyramid. Alternative Dispute Resolution (ADR) refers to solving legal problems and disputes making use of other means than the legal/court recourse. One could think of solving issues through Ward Tribunals, Village Executive Committees, with informal arbitration or through mediation between parties. It is at these two lower levels of the pyramid that paralegals function (educating, counseling, advising, mediating, referring), while sometimes they enter the realm of legal assistance, which means actually helping people to take legal steps to protect their rights.

Often, however, legal assistance which may include document preparation, issuing exemption certificates, pursuit of court remedies and the like, requires the inputs of legal personnel more thoroughly trained than paralegals, e.g. lawyers.

Legal representation in courts is the most expensive legal service, however, sometimes inevitable and necessary. Support to legal representation can be cost effective, however, for example in public interest litigation, which can be employed strategically to benefit larger populations.³

A legal aid strategy, with a view to cost effectiveness and creating the maximum impact for an as large as possible population, should in first instance focus on supporting the lower levels in the pyramid.

Additionally, for effective legal aid it is important that cooperative links exist between the persons and organisations providing legal services at the different levels of the pyramid as well as between persons and organisations working at the same level. In the LSF inception period it appeared that this is insufficiently the case in Tanzania. It is a cry of the heart of many legal aid providers the LSF interacted with, that they require better coordination.

It is interesting to note that relatively little investigation and research is done by legal aid providers in what their (potential) clients, people, at different levels of awareness of rights and of options for legal services actually do require in terms of services and assistance. It would be very helpful if data would be available, that would enable legal aid providers to make estimates what the legal aid requirements for, say a population of 1,000,000 persons, approximately are on an annual basis, allowing for variations per geographic area (including rural / urban) and cultural environment. This could inform strategic planning, give indications regarding the (human) resources required, define likely best approaches, suggest optimal legal aid distribution points and types of legal aid required, to just mention a few things.

It appears that legal aid in Tanzania (as in many other countries, including many so-called developed countries) still is in its relative infancy. There is not a well guided and structured national approach, no government policy, nor a legislative framework for legal aid.

In this challenging environment the LSF has to take decisions about the most optimal utilization of its basket fund resources. As described above, a principle choice already has been made:

The LSF will allocate a considerable part of its resources to the lowest and simplest levels of legal aid, which implies that it will primarily, although not solely, focus on supporting the two lower levels of the legal aid pyramid.

³ DIHR, op.cit. pg 17,18

The LSF Approach

General

The Legal Services Facility is a basket fund that is created to channel funding on an equal opportunity basis to organizations which are providing legal aid and paralegal services on Tanzania mainland and Zanzibar and which, through these services assist individuals to claim their rights, redress grievances, and which protect fundamental human rights of the individual.

As a basket fund it faces the challenge of achieving a number of long term outcomes as set by the contributors to the basket fund. Presently these outcomes are:

- Legal aid and paralegal services enhanced in quality and quantity, covering all districts of the country, improving access to justice for the poor and vulnerable;
- Government responsibility for legal aid provision, incl. paralegals, formalised through legislation and institutionalised;
- Innovative approaches to legal services provision supported;
- Advocacy and legal skills of legal aid and paralegal service providers improved;
- Enhanced awareness about the role and importance of legal aid and paralegal services amongst public and private legal sector stakeholders.

The expected outcomes obviously inform the approach the LSF has formulated.

A relevant question as regards legal aid is to which degree an approach towards providing people access to justice can be preventive, in the sense of preventing that conflicts or disputes between civilians or between civilians and the state arise. Although the discussion on this topic is interesting it is at risk of being held based on theoretical premises or on assumptions of regulatory systems being in place not sooner than several decades from now. We will use an example to illustrate our point of view.

Threats to interests in the category of property protection include prevention of crime related to property, disputes about property ownership, which may result from poor registration of property rights, and fair compensation in case of expropriation. Legal needs studies and literature on property rights protection indicate, as the baseline survey the LSF conducted confirms for Tanzania, that in developing countries property (land) disputes are very common. In developing countries possibilities for self-protection are limited and effective self-protection is likely to be very costly. Developing countries are still struggling with their registration systems and are confronted with complicating factors like massive migration from rural to urban areas. In developed countries with high-quality registration for immovable property conflicts and disputes

are less common and if they occur, then there are well-established procedures for compensation and expropriation.⁴

The conclusion of the above mentioned research is that in order to prevent conflicts on property, e.g. land, high-quality recognized property registration systems are at least instrumental and probably a pre-requisite. It is, however, beyond the immediate mandate, scope and means of the LSF to work towards bringing such registration in place. One might claim, therefore, that LSF through its support to legal aid for resolving land disputes is engaged in a reactive approach. In our view this is fully justifiable and even desirable, since the quality of life and the experience of justice for many people in Tanzania is negatively affected by them having to deal with unresolved land disputes. In the meantime, hopefully, work on better land registration is progressing.

LSF has, however, a number of important preventive elements incorporated in its approach. The first and foremost is the focus on increasing legal awareness of the population. People's awareness of their rights under the law, as well as of the limitations regarding those rights, may importantly contribute to the prevention of disputes as well as to the facilitation of resolutions.

Other components of the LSF approach, like involving and strengthening of local institutions for the settlement of disputes, involving others from outside the legal profession in legal education and legal aid, which will be elaborated in later sections of this document, will broaden the community base and thus may contribute to preventing disputes.

The overall approach of the LSF consists of **five focus attention areas**:

1. Increase people's awareness of their rights under the law;
2. Increase the coverage and quality of legal aid;
3. Change attitudes and approaches of legal aid providers;
4. Improve coordination and referral in legal aid;
5. Strengthen policy dialogue and advocacy pertaining to legal aid.

In order to do this the LSF will avail a number of tools and its resources, through which the major activity areas of the programme are defined:

1. Grant Making;
2. Capacity Building;
3. Facilitation of Coordination;
4. Promotion and facilitation of policy dialogue and advocacy.

⁴ Maurits Barendrecht, Peter Kamminga, Jin Ho Verdonchot, Priorities for the Justice System: Responding to the most urgent legal problems of individuals, Tilburg University, Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems (TISCO)

In this early phase of the basket fund becoming operational, the **priorities of the LSF for 2012/13** are:

1. Increase coverage of legal aid to all districts of the country;
2. Enhance the quality of legal aid;
3. Improve coordination pertaining to legal aid at all levels.

Focus Attention Areas

Each of the five focus attention areas, which constitute the elements of the approach of the LSF, will be briefly elaborated in this chapter.

1. Increase people's awareness of their rights under the law

As stated before, this is the most basic, most cost effective, and within the Tanzanian context one of the most important ways of helping people to find their 'path to justice'⁵. It is empowering by making the choices people have towards finding justice more visible and transparent. This may lead to an increased demand for legal services, however, not necessarily for the recourse through courts. Based on better knowledge and insight in the actual legal framework people will be more confident to exercise their rights and opt for alternative dispute resolution options. This may be either with, or without the assistance of legal aid providers. This all the more so since courts are overburdened, which leads to long delays and courts do not guarantee in the least that justice will actually be applied. And people know this.

For legal aid providers in order to be effective in legal education the following is recommended and promoted in LSF:

- Make more cost effective and better use of media;
- Investigate the feasibility of using modern information technology;
- Use existing social networks;
- Involve others, beyond legal service providers, in awareness building e.g. social workers, religious leaders and institutions, active members of local institutions;
- Make more use of paralegals for legal education to communities;
- Explore the effectiveness of new approaches like e.g. legal awareness competitions among communities, with media coverage as reward, or other stimulating approaches leading to increased community absorption.

In summary: legal aid providers are called upon to make use of and intelligently apply what is already there (e.g. social networks) and to be pro-active in investigating and at least experimenting new approaches and new technologies.

⁵ Gramatikov et al, Tilburg Institute for Interdisciplinary Studies of Civil Law and Conflict Resolution Systems (TISCO), A Handbook for Measuring the Costs and Quality of Access to Justice

2. Increase the coverage and quality of legal aid

The far majority of the population of Tanzania has insufficient access to ways to exercise their rights under the law. Legal aid may be available in some shape or form in around one third (30%) of the districts in the country, and then still mainly concentrated in the district headquarters.⁶

The most obvious way to look at coverage of legal services is from a geographic and demographic perspective. Without legal aid being available people are denied an option to access their path to justice.

LSF will actively and firmly stimulate legal aid providers, i.a. through its first call for proposals, to increase the geographic coverage of legal services. In Tanzania mainland this will mean that the larger legal aid providers in the country will be offered access to funding for this purpose. The intermediate goal is to cover all districts in the country with a legal aid facility by the end of 2015. The longer term goal, when in this way a district anchor and referral place for legal aid has been established, is to extend the services to the ward level (2020). In districts with already a legal aid facility established it may be possible to reach the wards already in the intermediate phase⁷.

There are of course other ways to increase the coverage of legal aid. For example in Zanzibar, where an approach has been developed by ZLSC which uses constituencies as referral units for the distribution of legal aid over the isles, it appeared that in a number of constituencies one paralegal is insufficient. So increase of coverage is not solely including more geographic areas, but can also be an increase in the same area of the number of legal aid facilities per population.

Other ways of increasing coverage in a cost effective manner could be through the systematic and high quality operation of so-called legal aid 'hotlines'. Free telephone consultation and advice. However these modalities may only function well, if proper referral options are available. Still other ways of increasing coverage of legal aid are realistically possible. In later sections of this paper we will refer to them.

What is particularly needed here is that legal aid providers will be pro-active and full heartedly embrace their shared responsibility to make legal aid services available to the whole population of Tanzania.

Additionally, the technical capability of legal aid providers to provide quality services that respond to the needs and demands of people varies widely and in many cases leaves room for improvement. For the purpose, the LSF will undertake with all of its grantees an in depth Organizational Capacity Assessment (OCA). The compiled results of the OCA will lead to a generic capacity building approach, while the individual results of an OCA may lead to an organization specific capacity building approach.

Already at the present stage, however, a number of areas that in any scenario will be covered in the capacity building approach are known.

⁶ LSF Baseline Survey, March 2012

⁷ In the LSF baseline survey it was emphasized by paralegal organizations and individuals working as paralegals that the presence of a support unit, backstopping facility at the district headquarter was a precondition for paralegals at ward level to be able to function and to keep on functioning.

Data from the LSF baseline survey do suggest that, in particular pertaining to the legal services provided at the two lowest levels of the legal aid pyramid, the service providers at those levels (paralegals and others) would benefit from capacity building dealing with the following:

- Improvement of legal skills;
- Improvement of counseling and mediation skills.

Serious difficulty to obtain data from legal aid providers at all levels appears to suggest rather convincingly, that capacity building in the following areas would be highly beneficial:

- Improvement of the record keeping skills and analytical capacity in order to be able to draw lessons from the own practice;
- Improve monitoring and evaluation and data collection skills.

3. *Change attitudes and approaches of legal aid providers*

Legal aid is set of services and as such only useful when it properly addresses the needs of people. There is no comprehensive research available for Tanzania, that establishes what in legal service delivery satisfies people. Is it the fact that someone pays time and attention for no or a nominal fee, or is it counseling, is it hard core legal advice, is it solutions through mediation? There is also hardly any data how many of the client-provider relations lead to a definitive resolution of the issue on which the client sought some form of assistance. And if issues are resolved it is not very clear what type of resolution was achieved. It is striking to see the majority of people who received legal aid being satisfied but it is largely unknown what actually makes them satisfied.⁸

International research appears to indicate that differences in culture do not necessarily lead to significant differences in legal needs of people. Stages of economic development, however, apparently do lead to changes in legal needs as was earlier in this document illustrated with examples of legal needs regarding land (immovable objects) in developed and developing countries.

The LSF baseline survey appears to indicate that whether one lives in rural or urban areas, in Tanzania mainland or Zanzibar the three clusters of legal needs that stand out are needs around land issues, probate issues and matrimonial issues. In urban environments labour issues also score fairly high, while in both urban and rural areas GBV, although likely underreported still scores strikingly high on the legal needs ladder.

It is probably still fairly safe to state that around 80% of the population in Tanzania is rural, or more than 36 million of an estimated 45 million persons.

Many of the legal aid providers in the country are lawyer driven, lawyer managed and lawyer staffed. Their understandable approach and attitude is informed by this 'lawyer,

⁸ LSF Baseline Survey, March 2012

law and legal orientation' which places a focus on legal assistance and representation. The LSF baseline survey confirms this since it demonstrates that according to reports of legal aid providers less than 25% of them are involved in activities dealing with legal education and awareness raising, while around 80% of them report to be involved with activities dealing with representation and legal assistance like exemptions for court fees, document preparation, case filings etc.

The already very limited resources, mainly external (donor) funding, are apparently in first instance allocated to high cost approaches that benefit only a fraction of the population, leaving the majority of the population underserved and their legal needs unaddressed.

The far majority of Tanzania's population is not in direct need of these higher level legal aid activities. They are looking for resolutions of disputes, preferably outside of courts, at the local level through either mediation or other types of alternative dispute resolution. It is probably recommendable that legal aid providers in their strategizing and approaches take this undeniable fact into consideration and start thinking from the perspective of legal needs and with a 'client centered orientation'. They should be sufficiently open minded to allow for a shift in their personal and organizational thinking away from 'we know what you need' towards asking the question 'what, actually, do you need?'

4. Improve coordination and referral in legal aid

Interconnected with what is stated under 3 above is the desirability to break through the relative professional isolation that to a degree characterizes the legal profession and the legal aid subsector.

Legal aid providers hardly coordinate or jointly strategize with peer organizations, let alone with other types of organizations, professions or fields of expertise.

It needs to be recognized here that legal aid providers, for a variety of reasons, have been lacking a focal point for coordinative initiatives. There have certainly been attempts to establish such focal points, like e.g. TANLAP, or the Legal Aid Secretariat hosted by the TLS. None of these attempts, however, came to blossom as fully functional coordination focal point for legal aid providers. It is beyond the scope of this document to enter into an analysis of the reasons for this relative failure. Fact of the matter is: there is a coordination void.

LSF will firmly promote institutional coordination among legal aid providers, among paralegals, among legal aid providers and paralegals and with both of them and the government from national to local levels. It will equally promote coordination and sharing of resources (like social networks) with other CSOs (e.g human rights organizations, HIV/AIDS organizations, development organizations etc.).

LSF will avail a part of its resources to facilitate the so much required coordination at all the different levels mentioned. Additionally it will use other tools it has available for the same purpose. In this regard one can think of the grant making process in which it will be made a requirement for any proposed action that it is demonstrated to have been

coordinated with other legal aid providers, the government and other stakeholders. In its capacity building approach targeting the higher managerial levels of the legal aid providers, the necessity and merits of coordinated approaches will be highlighted. The LSF will also organize forums where legal aid providers will participate in the discussion how their responsibility to jointly provide legal services to the Tanzanian population as a whole can be substantiated and be balanced with individual organizational interests.

Part of this process will be to develop approaches towards referral within legal aid, that work, are practical and responsive to the needs of clients.

Referral between and within different levels of legal services needs to be functional. A simple example: a paralegal who has given advice for follow up legal action to a client needs to be able to advise this client where to go, with a reference that will be recognized by that other person or organization so the client does not end up in a void. The same applies for referral to local dispute resolution options like e.g. the Ward Tribunal.

5. Strengthen policy dialogue and advocacy pertaining to legal aid

Like many people and organizations the LSF is of the view that it is timely that the government gets serious about policy formulation, legislation and regulation as regards legal aid, inclusive of the recognition of the paralegal function.

It is encouraging that from the side of the government statements of positive intentions are regularly shared with a larger public. It is less encouraging that these statements are not substantiated and followed up by hard core results such as a cabinet accepted policy and a concept bill presented to parliament and accepted.

The LSF is aware that work is in various stages of progress and is ready, within its mandate, to support wherever and whenever matters can be facilitated or accelerated. It will also support legal aid providers to play an important role in this process.

It will be conducive to the policy dialogue and advocacy when legal aid providers themselves are pro-active as regards for example the formulation of a widely shared and actually implemented code of conduct, or a harmonized approach towards formulating the mandate and executing the training of paralegals.

Equally helpful will be a solid evidence based approach towards private and public legal sector stakeholders aimed at increasing their awareness as regards the importance of legal aid services, including paralegal services.

This document does not address all important and required improvements in the operating environment for legal aid. It does for example hardly touch on contributions the private legal sector could make e.g. through pro bono services, it does not deal with the influence Development Partners could have on developments, or how funding modalities could be used to steer developments in legal aid. There are several other issues, relevant to legal aid that are not addressed in this paper.

It, however, does address those strategic service delivery issues the LSF would like to focus on and which can be summarized as **cost effective approaches from which as many people as**

possible can benefit, which offer decent options for sustainability and which are ‘user friendly’ for legal aid service providers and their clients alike.

A legal aid service delivery environment in which, according to the LSF baseline survey, less than 25% of the legal aid service providers report to address legal education in their programming and more than 75% report to be involved in court representation does have to respond to the question whether this is the most optimal utilization of available resources with a view to increasing access to justice for the population as a whole.

In Tanzania legal aid services to civil matters are the domain of civil society organisations. Legal aid providers in the country are too little engaged in creating awareness to the communities about their legal rights. Media are under-utilized for the purpose. Although legal aid providers sincerely try to render optimal legal aid services, their impact is often limited due to uncoordinated efforts, dispersion and unsustainable programming. Additionally, the services provided for are often not of sufficient quality due to limited numbers of personnel working with legal aid clinics, in paralegal services often due to lack in knowledge and skills. Limited funding caused quite a few legal aid providers not to invest in staff development while the law and lawyer orientation of quite a few legal aid providers contributed to mono-disciplinary organizations not optimally suitable for programming and strategizing for legal aid from a broader development, social and sustainability perspective.

Components of the Approach

The following sections will explore the merits, and possibly de-merits, of some of the principles and approaches towards legal aid service provision the LSF would like to promote.

1. A client centered approach to legal aid

Currently, legal aid clients and potential clients are hardly, if at all, involved in the design of legal aid programs and projects. The programming and planning is often done in the relative isolation of LAP head quarter offices by senior program personnel, often lawyers.

The solutions proposed to fulfill the demand, or need for legal aid services, are not guaranteed to be the most optimal for particular communities, wards, districts or regions. An important reason is that there is insufficient insight among legal aid providers what the legal aid needs are per number of population. As a consequence on Tanzania mainland there is no systematic or structured approach recognizable as regards e.g. the required geographic coverage, or the required paralegal density per numbers of population.

On Zanzibar at least an administrative unit, the constituency, has been initially adopted as the unit of operation for paralegals. Whatever the rationale, it provides at least a point of departure to assess over time what an optimal paralegal coverage per constituency could be. On the mainland a structured approach in any shape or form is absent. LSF has reports of organizations that worked with up to five paralegals per village in the very limited area of one district, to organizations who attempt to maintain one paralegal per ward, to organizations who establish paralegal organizations at regional or district urban centers and leave it to the paralegal organization whether and how they will cover the rural areas.

All this may lead to non optimal resource utilization, or even waste of resources for legal aid.

LSF will promote that clients, communities and local institutions are involved in program design and planning. Such approaches will be rewarded in the evaluation of proposals which, being a transparent process, will also be known to the organizations who present proposals.

Through the internal M&E and improved record keeping the legal aid service providers will be requested to make annual assessments whether they optimally serve the clients. Additionally in annual workshops the service provider will organize with clients, advocates, lawyers, community development workers, social workers and paralegals they will:

- Identify with clients whether legal aid services delivered need improvement and if so, how;
- Ensure that new initiatives address the legal needs of clients and incorporate client's views

Effective consultation between clients and legal aid providers' programme staff (advocates, lawyers, others) on programming can be beneficial to improve both quality and quantity of legal aid services.

2. Invest in extension of paralegal services to more districts and more people

In Public Health Sciences it is customary to assess the relevance to clients and thus the utilization of health services offered, by the four A's: Availability, Accessibility, Acceptability, Affordability.

These criteria, with their simplicity and straight forwardness, are equally applicable to legal aid services.

- **Availability**

The definition of availability for Zanzibar has been that it was sufficient to have one paralegal per constituency, for starters (presently it may be proposed this number is increased). For the mainland there is no standard. Since it will be useful to have at least something that can guide the estimates of the number of required paralegals it is proposed to accept as a working model that one paralegal per ward is a decent point of departure. In this model legal services may considered to be available when there is one paralegal per ward.

At present there may be around 800 to 900 paralegals on the mainland.⁹ The number of wards in the country is around 2,600. So a rough estimate is that around 2,000 additional paralegals may be required. This is a large number. One of the interesting pieces of information coming out of the LSF Baseline survey is that paralegals working at ward level plead for having a referral, support unit at district level. This is the reason that LSF aims in first instance for the establishment of units at district level.

This paralegal needs to be available to actually provide services for e.g. a minimum number of days per week. and needs a base to operate from, which could be the own residence, a small rented office, or office space made available by the community. It is recommendable the office space is in proximity of ward executive offices but separate from it.

- **Accessibility**

Legal services can considered to be accessible when the point of delivery in the ward is at such location that people will not have to travel (walk, motorbike, bus) more than 2 hours in order to reach them, so that availing the services will not take them more than half a day maximally.

- **Acceptability**

This refers to the social and cultural context in which the services are provided. For obvious reasons it is recommendable that in e.g. a muslim community the legal services are provided by a muslim, who is familiar with the prevalent religious customs and rulings. The same applies for other communities. In mixed communities this may represent a challenge.

⁹ Paralegal Baseline Survey, TLS

A caution in this regard is, however, that paralegals are not in first instance there to apply customary law, since these might be discriminating towards women for example. The principle of equity for the law needs to be abided to.

- **Affordability**

Since legal aid in Tanzania presently is mainly offered for free, the cost of the services proper will not be a prohibitive factor for their utilization. However, LSF would, however, like to see some experiments and pilots where services are offered for a fixed price, flat fee in order to establish how this affects utilization.

Costs for the services offered, however, are only one of the cost elements that clients may have to deal with. There may be transport cost to reach the services. It is therefore recommendable to establish the services at a place where other services are available, or where an important local market is held etc. so that there may be the option for clients to combine things.

Opportunity costs are the costs a client incurs by not being able to work on his or her produce, or not being able to open the shop etc. for the period of time spend in obtaining the services.

It is clear that there is a direct relation between the accessibility of the services and their affordability.

The above criteria can be applied for example to take decisions on where and how to establish paralegal services at the level of the Ward.

Paralegals played on occasion an important role in mobilizing the communities to take action when their rights were violated. They also have been instrumental in dealing with individual cases.

The existing paralegals have been trained by different organizations, utilizing different curricula and training manuals. For the purpose of having equal quality paralegals and thus equity in service delivery, a uniform training curriculum needs to be developed and accepted by all legal aid providers and paralegal organizations in the country. The LSF is a strong promoter of this and already started to work in this direction together with legal aid providers, paralegals and the TLS which has developed a manual that certainly for starters, could serve the purpose.

A well trained paralegal can conduct client's interviews, locate witnesses, conduct mini research on client's problems, prepare documents, attend court trials. More importantly, a well trained paralegal can properly counsel clients, provide legal advice, find ways of reconciliation between parties, can mediate, provide informal arbitration so that the generally rather frustrating, and costly recourse to court can be avoided. In this way the paralegal can offer to clients a contribution to the resolution of disputes (ADR), which is probably much faster and will offer to the client the chance to influence matters to a much larger degree than when the case will be dealt with in court. Additionally this will contribute to releasing the pressure of caseload for courts and thus may positively impact on the reduction of the backlog in courts. The judiciary,

being prone to corruption, particularly at its lower levels, may often better be avoided by the poor, since they will have little or no resources to 'procure their justice'.

For the above to function properly a transparent and functional grass roots referral system between paralegals and other legal aid providers (i.a. lawyers) needs to be established to deal with complicated cases referred by paralegals.

It will need serious consideration to include in the paralegal training elements of both civil and criminal procedures as well as constitutional law and human rights.

Specialized paralegals with more extended criminal law knowledge could work with the criminal justice system and assist indigent prisoners and accused persons (suspects) to access legal aid services. Paralegals who will work with criminal justice system could inform suspected criminals of the legal process and their rights under the law, what the law means and how it works. Paralegals could also attend trials and monitor cases to protect prisoners' rights and safeguarding their human rights. Paralegals if well trained and utilized can help in reducing the number of remand prisoners and court backlog of criminal cases. In other countries, like Uganda and Malawi, it has been demonstrated that remand cases can be considerably reduced (between 10 to 20%) in a relatively short time span (2 to 3 years). This importantly reduces costs for the state (housing, food, other care of remand cases, court costs etc), suffering of the person in remand, make a potentially productive persons again available for the community. A win-win situation from all perspectives.

Paralegals can also play a role in mediating and dealing with small conflicts by diverting cases from the state criminal justice system to the ward tribunals and to the village government officials (ADR). They can also have a role in building the capacity of the ward tribunals in dealing with various legal issues.

The paralegal function, as is probably fair to state, has been considerably underestimated in Tanzania.

In first instance by legal aid providers themselves who have provided limited training approaches and packages for this in principle quite demanding job. Also the importance of backstopping the paralegals has been underestimated. It is not easy to find solutions for often complicated disputes when you are on your own, in the middle of rural nowhere and insufficiently trained. But then, LAPs with their lawyer oriented culture, have taken paralegals insufficiently seriously and perceived them as a sort of inferior lawyer. LSF perceives it as part of its mission to make a difference in this regard. It is not unlikely that lawyers will be able to contribute to some increased access to justice for the population of Tanzania, but paralegals can significantly increase access to justice.

Secondly the state has to be convinced that paralegals provide a realistic option for improving access to justice for its population, and on a more practical note, when properly coordinated and regulated by the state itself, are highly likely to reduce state costs for criminal (remand) cases, contribute to reducing the backlog in both the criminal and civil justice system, which also has positive cost implications for the state. Paralegals can importantly contribute to a more positive

perception of the justice, law and order system in the country by its citizens, reason why the state should perceive it as serving its interests to create a policy and legal framework that will protect and facilitate the paralegal function. The state should do so taking the interests of other groups, like advocates, into serious consideration, but should not let itself be guided by this professional group's lobby and economical concerns, aiming to protect the market of advocates. Paralegals operate in a different segment of the market that is of no threat to advocates, on the contrary, with good referral systems in place, paralegals could extend the market for advocates.

3. Utilize new information and communication technology

A number of LAPs started to use information and communication technology (ICT) to provide legal aid services to the country as a whole, including rural communities, but only on small scale. For example telephone legal advice (hotline services) services already exist in Tanzania, but they are not provided in a systematic way, well coordinated between legal aid providers. A system of legal advice by telephone proved provides immediate access to information, service delivery of advice and where appropriate immediate referral to counseling services. Hotline services can be expanded and coordinated within and between LAPs to cover a wider range of services like legal advice, counseling, drafting and follow up of court cases. The services need to be systematically coordinated and manned with experienced lawyers/volunteers who are aware of different legislations governing particular legal problems. Legal aid providers need more specific training on telephone counseling and remote control case management. A necessary condition for this remote control modality to function properly is that a functional referral system is in place.

It also may have some merit to investigate whether a specialization of hotlines can be beneficial. There may be separate hotlines for cases dealing with property (land) laws, or family law, or labour law etc. This offers the option of distributing the overall workload over different service providers and to really specialize and increase the quality of the services on offer. Coordination between LAPs is again the keyword.

To minimize running costs, LAPs can apply to the Tanzania Communication Regulatory Authority (TCRA) to have specially designated lines that could be used for the purpose, while also the commercial providers within their corporate responsibility approach, might be found prepared to offer low cost or free facilities in return for some profile.

It needs further to be investigated how the SMS facility (large scale) can be utilized for community mobilization and legal education.

The role of the social media and the world wide web for legal aid is largely unexplored in Tanzania. The LSF has linked up to TANZICT, another programme in which NIRAS is involved for technical advise on these matters.

Easily accessible data bases with frequently asked questions (FAQs) and solutions to common problems that paralegals may face could be important backstopping assistance for paralegals. LSF will be very prepared to consider support to any legal aid service provider that e.g. would like to pilot and investigate the impact that such data base can have on the quality of paralegal services e.g. if paralegals are provided with smart phones that can give them access to the data bases.

The recording with LAPs, including paralegal organizations is insufficient, as is their capacity to set up, manage and use sophisticated analytical tools (Access, SPSS etc.) for data bases for cases dealt with by paralegals. Evidence from such databases could be very powerful to help increase coverage and quality of legal services and could also serve as a strong argument to make the case for institutional recognition of the paralegal function.

Websites that give access to legal aid services and offer referral options have been found useful in many (more developed) countries. But they may, sooner than many may think, fulfill the same purpose in Tanzania, which is all the more reason to start piloting them and built up experience. There may be many other ways in which ICT can be applied in legal aid service provision. Fact of the matter is, that the subsector is as yet hardly thinking about it and lacks capacity in this regard. LSF will strongly promote that considerable progress is made in this regard.

LAPs can use documentaries, video etc. for legal education, however in not yet electrified rural areas other methods need to be applied as well. More traditional ways of raising legal awareness, like traditional dancing and drama shows tend to attract and create better awareness to more people as compared to training workshops and seminars. Different approaches to building legal awareness, like awareness competitions between communities can be experimented. The wide spread of mobile phones may be used to mobilize communities through SMS.

Expanded legal aid services infrastructure will have to incorporate state of the art communication technology in order to efficiently deliver high quality services to large parts of the population. Urban centers are already surprisingly well connected. TANZICT found that a majority of students of a secondary school in Morogoro were intensively socializing on Facebook. Even rural Tanzania is almost entering, and partly already has, through widespread mobile phone distribution the communication opportunities that are presently available.

It is prudent to still recognize the role that the more traditional media can play in legal aid.

Technology sometimes may have rather steep initial costs, both to build the infrastructure and to educate the user. But once a good system is functioning, the marginal costs are low and the benefits large for all sections of the population.¹⁰

4. Explore and extend the role of the traditional media

In Tanzania the access of the population to media like radio, television¹¹, newspapers and other printed media, common mobile phones, including internet is annually increasing considerably. LAPs have amply used media in promoting human rights and legal aid in particular¹². Mainly to make people aware of their legal rights, direct people in need of legal aid where to turn to for

¹⁰ . Tanzania Youth Association invested in ICT and they used almost 200,000,000Tsh for communication infrastructure.

¹¹ . Most LAPs used radio programmes as it is very expensive to run televised sessions

¹² . LAPs run variety of media programmes. For example Mulika, Mwangaza and Kioo all are radio programmes run by LAPs.

help, and for publicity to individual organizations engaging in the provision of legal aid. Media was also used by LAPs to inform and educate the public on human rights issues and suggest ways and means which can be used to resolve their (minor) conflicts.

Enhancing the reporting capacities of media on legal and human rights issues is important in improving quality and quantity of legal aid services. For the purpose LSF will investigate whether it is possible to forge a working relationship with the, also Danida supported, Tanzania Media Fund.

Media are often carriers of information generated by LAPs. They are powerful gatekeepers between LAPs and the wider public. However, sometimes media confuse issues because of the inadequate understanding of the subjects they are covering¹³. Therefore LAPs need to intensify their contacts with media and invite them on a regular basis, not only to events but to sessions and e.g. study tours to paralegal operations, that increase the knowledge and insight of key media personnel as regards legal and legal aid issues. LAPs need to build the legal capacity of media personnel if they want their issues to be covered properly. Development of communication strategies for the purpose is still in its infancy with many LAPs.

In the same sense it is important for LAPs to have a at least minimum common agenda to provide to the media. LSF will promote through its granting process that these matters are addressed by legal aid providers and will facilitate options (workshops, forums etc.) for legal aid providers where e.g. such minimum agenda can be formulated.

5. Extend the utilization of existing social networks

Social networks have proven to be a cost effective way of mobilizing community members around access to legal education.¹⁴ Social networks like Village Community Banking (VICوبا) and SACCOS already have existing forums for its members. The same forums could be used by LAPs in providing information on legal aid and human rights issues. Churches and Mosques, if well utilized, can play an important role in increasing legal rights awareness of the general public.

It is important for LAPs to work in collaboration with the existing social networks in raising awareness to the general public. It is equally important to explore, as indicated earlier, the options that modern technology offer. Many aspects of life in a society like Tanzania are in a process of transition. Legal aid and its providers need to take a pro-active and anticipatory approach towards their future service provision that will allow them to find the optimal mix between more traditional and new approaches to legal aid service provision. The purpose remains to be to give more people access to quality legal services and thus increase access to justice for the population at large.

¹³ . International Council on Human Rights: Report on Journalism, Media and Challenges on Human Rights at 17

¹⁴ . Most successful paralegals are the ones which were formed by the existed forms like vicoba.

6. Increasingly involve actors beyond the circle of the legal profession

Involvement of a wider section of society, beyond the legal profession in programming and planning increases the likelihood of sustainability of programmes. Teachers, social workers (and at LAP head quarter level, social scientists), CSOs working in other fields, community organizers, religious leaders and others with different than legal skills, can make substantial contributions to building awareness about human rights, the law and legal aid with the general public. Collaboration between LAPs and other professionals and other CSOs will strengthen legal aid service provision and contribute to effectiveness and sustenance of legal aid programmes.

7. Improve communication and coordination among LAPs

It cannot be emphasized enough: there is a substantial communication and coordination gap among and between LAPs and other key stakeholders in the field of legal aid. This is partly caused by the lack of well thought through and balanced communication strategies with LAPs, partly by funding provided through individual donors with their own agenda and therefore not facilitation coordination (LSF is therefore an important initiative that offers an opportunity to work on well coordinated and more uniform approaches), partly by organizational strive and politics and partly by insufficient recognition by LAPs that they have a joint and common responsibility towards increasing access to justice for the people of Tanzania.

Another very important issue is that LAPs lack a focal point for communication and coordination. Existing networks (TANLAP) for a variety of reasons do not fulfill this role and whether a possibly to be created Legal Aid Secretariat will, remains to be seen.

The LSF has already stepped into to addressing these coordination and communication issues. It facilitates the establishment of forums for the purpose, between LAPs themselves, between LAPs and the Government.

For the time to come promotion and improvement of communication among LAPs and between LAPs and the Government will remain to be a cornerstone of the LSF approach for which resources of the basket fund will be directly applied by the LSF Secretariat. It is too important to leave this to fund applications through grants to individual organizations. A generally recognized neutral or non-biased body like the LSF (not being a provider themselves) can have an important role to accelerate the progress towards improved coordination. The LSF does not perceive itself in the long run in a role to promote coordination. But in the present context, with little or no coordination ongoing the LSF may usefully contribute to getting a coordination process started, until a more feasible, long term sustainable solution is available.

The situation is comparable when it comes to sharing information, let alone coordination, between LAPs and paralegals. There is an urgent need to bridge the existing communication and coordination gap between LAPs and paralegals. As a first step the coordination among LAPs themselves and paralegals themselves will be approached. Following this a forum will be created where LAPs and paralegals can discuss and work out issues together and strategize.

In the same way as LAPs¹⁵ and government coordination needs to be improved, the coordination of paralegal organizations and individuals with their respective local governments needs full attention.

8. Ensure financial sustainability of legal aid services

Non-financial sustainability issues are directly or indirectly addressed in several sections of this approach paper.

Running legal aid schemes costs money, both for legal aid providers and for the government. LAPs depend to a large degree on external resources provided through donor funding to implement their activities. Donor funding is volatile at best due to changes in donor focus, policies and world economic developments.

Even when services are offered for free there is always somebody, somewhere who pays the bill.

LAPs organizational sustainability is at risk in such operational environment. It is, therefore, timely for LAPs to devise means for independently sustaining their organizations and activities. As far as is known all active LAPs are non-profit entities who are strategically geared up to rely on and request external funding. These organizations will have to start thinking and strategizing towards setting themselves up as e.g. social enterprises or in such way that part of the organizations concentrates on commercial legal services the profit of which is used to finance or subsidise legal aid. It is not a crime for LAPs to engage in business as long as the profit gained is used to support the other activities of the organization.

Within this context LAPs may have to start thinking about charging fees to clients, or put in place a mechanism that will enable clients to contribute a certain amount of money for the services received.¹⁶ Clients are willing to contribute to quality services they receive and this can be evidenced by the way they contribute to other social services. Vulnerable people and those who cannot afford to pay for any services are usually known and could simply be identified by the proper authorities. Safety net constructions are feasible and possible.

A bonus to paying for services is that it empowers clients to request quality services. It may lead to a situation that LAPs will be competing for clients in such scenarios. What's new! They are now competing for fund of donors and thus for clients. And quality of services may be an important competitive tool. So the client may benefit! Again, the keyword and key approach towards these issues is coordination among LAPs.

The LSF is aware that this is a 'hot' subject for discussion, both with and among legal aid providers and even with the government. There appears to be a contradiction at work. Legal aid is for people with little or no means. That is why it is offered at no or a nominal fee. But if this is the case, how is legal aid to be financed in the long run?

¹⁵ . LAPs also need to strengthen internal information sharing within their individual organizations. Feedback mechanisms need to be stressed within the organization and at networking levels.

¹⁶ . Though this will create problem with the bar, consensus can be reached for LAPs to charge clients a minimal fee as compared to the advocate charge per market value.

It could be also good for LAPs to stress on quality control, monitoring and evaluation of legal aid services so that a compelling empirical case can be made that legal aid service is improving the lives of ordinary Tanzanians and thus deserves government/donor funding and (policy, legislative and regulative) support. The case can be made even more convincing when LAPs will develop a code of conduct for legal aid providers and the provision of legal services. This will be an important tool towards improved quality. LAPs might also consider whether such code of conduct could provide the benchmarks for sub-sector self-regulation through the establishment of a peer review mechanism.

It is also important to situate the role of legal aid in a broader social agenda for improving people's welfare, and their civic, social and economic growth.

9. Increase legal awareness of the people

In all the elements of this approach towards improving the provision of legal aid in Tanzania the importance of public legal awareness is stipulated and how it needs to be an integral part of all legal aid programming. In order to emphasize the importance LSF attaches to public legal awareness it is also mentioned here as a separate strategy component.

For marginalized and vulnerable people to have full access to legal aid, they must be aware of the services that are available. Many LAPs combined awareness-raising about legal aid services with legal rights education. People who attend legal rights awareness sessions tend to be those who are already in contact with LAPs or paralegals that help them access services. This may have the effect of hindering the diffusion of information about the availability of legal aid services. However, information about legal aid services must also trickle down to those who do not have access to LAPs or paralegal services, but are in need of legal aid services.

A variety of possible approaches have been highlighted earlier in this strategy document.

LAPs should continue with their awareness building programmes, but in more strategic ways. They should take advantage of all options (and possibly others) described in this note. Different methods should be carefully selected and balanced to accomplish the largest possible population coverage while relaying the necessary information and messages as optimally as possible in a cost effective manner.

10. Strengthen Ward tribunals and Village governments to resolve (minor) disputes

Ward tribunals and village governments already resolve disputes arising within their jurisdiction.

The tribunal and village leaders/committees need to be empowered with dispute resolution mechanisms to assist them resolve disputes amicably. Most minor conflicts or disputes resolved at village level apply the traditional or customary adjudication system¹⁷ suited for that particular village. In some societies, the disadvantaged and the vulnerable groups prefer the traditional

¹⁷ . Traditional justice systems are not always consistent with human rights norms, but there are some traditional dispute resolution mechanisms which are inconsistent with human rights norms.

justice system over the formal one. Traditional systems are preferred by rural communities because of their conciliatory approach and a perception that they preserve social cohesion and accommodate cultural freedom. In the LSF baseline survey it appeared that 70% of the people in rural areas seek advice and assistance in first instance with the village government and ward offices.

Formal institutions on the other hand, often are seen to be remote, alien and intimidating. Worse still, formal institutions may be viewed with distrust and fear. Therefore, there is a need to build a comparative advantage of traditional and formal adjudication. LAPs can play a role in strengthening community capacities to seek remedies to both formal and informal mechanisms. This could be effectively achieved if village and ward tribunals' capacities are enhanced.

Also with a view to sustainability of legal aid provision it is recommendable that these local institutions are actively engaged and enabled to play a more extended role in the resolution of local disputes.

11. Advocate for more governmental support to legal aid

The Government of Tanzania has in an international context, as well as in its expressions of intentions confirmed that it accepts its responsibility for legal aid. A sustained and well prioritized advocacy approach may stimulate the Government to substantiate these intentions into a policy, legal and regulatory framework that facilitates the provision of legal aid (this section needs further elaboration).

Approaches for discussion

Complex, mixed models of service delivery

These models involve an integrated set of service delivery mechanisms that are developed to deal with specific needs. Under the mixed model legal service delivery could one may involve a variety of service providers and organizational structures including staff lawyers, private advocates and other specialized legal aid clinics. This needs investment and specialization. This approach is costly. It is also hard to coordinate different organizations with different visions and missions. In this country legal aid is funded at many levels from many pockets thus each organization operates on the assumption of its own autonomy. This may represent a hurdle. Partnerships among key stakeholders may however lead to improved provision of legal aid services.

a. Multidisciplinary practices; one stop shopping

This approach involves the art of bringing together legal, social, and health services in the same building. Under this approach clients are provided with the options to access different types of services in one place, thus reducing referral fatigue or offering protection against cultural bias.

Being part of an integrated set of services means for example that lawyers can smoothly transfer clients needing counseling to other professionals and can focus on legal issues.

These other professionals may give legal staff a useful perspective on a client's circumstances, while the legal staff may offer their perspective to the other professionals, so that a comprehensive insight develops in the issues and circumstances the client is dealing with.

Well planned inter-professional collaboration can lead to a seamless set of client services, although it requires sensitivity to professional obligations such as the lawyer – client privilege¹⁸ or the required medical confidentiality.

Since this approach requires a large initial financial and human resources investment as well as strong coordination if implemented by different actors, the management structures, information sharing modalities, the different mandates and case handling procedures need to be established with utmost care.

These models may, within the context of developing countries, be applicable and feasible when the expected client base is sufficiently large, and when other ways of dealing with cases e.g. due to cultural taboos or otherwise have proven to be largely ineffective or damaging to clients. One could think of GBV, victims of rape and other forms of abuse that are characterized by cultural bias towards certain parties as regards their management.

¹⁸ . For example the Community Legal Advice Centres, piloted by the United Kingdom Legal Services Commission, are one-stop-shop services delivering combined social and welfare legal services, including community care, debt counseling, housing support, employment assistance, and welfare advice. The Centres are designed to serve clients from initial diagnosis and information provision to advice, support, and legal representation in court.

Due to the fact that these one stop shopping centers are often dealing with 'sensitive' cases a justifiable amount of effort needs to be put into creating and maintaining good relations with the communities they serve and their leadership. It is also highly recommendable to maintain an ongoing dialogue with law and order institutions e.g. the police gender desks.

b. Holistic approach to criminal legal aid services

Holistic approach means providing broad client-focused services that address underlying problems such as poverty, mental illness, alcoholism, substance abuse, post-traumatic stress disorder, and family dysfunction with a view to preventing future crimes.

The social service orientation is collaborative, intensive, and long-term. Social workers, criminal defense lawyers, civil lawyers specializing in child welfare, youth and community development workers working together out of the same building assist in making poor and vulnerable people access justice on time.

Inter-disciplinary working groups reflect the interconnectedness of the issues facing the poor and the vulnerable clients and deliberate how their overall needs can be met in the best way. Instead of solving a legal problem and often seeing the client continue in the situation that gave rise to the problem, a holistic approach holds the promise of a more fundamental and permanent change in circumstances.

All the above mentioned approaches are very costly, require high levels of intensive professional cooperation and very strong commitments of the service providers and need to have demonstrable advantages over the already available services.

In case no other support modality than external funding for a limited or pre-defined period of time can be established it is generally not recommended to embark on these approaches.

For LSF, as long as the basket fund has not firmly established itself and the foreseeable future cash flow appears to be guaranteed, they are not a priority.

In conclusion

Many of the before discussed approaches have been applied by different legal aid providers, though not in a systematic way. There appears to be a hap hazard and diverse legal aid service delivery system with a number of different funders and providers. The system's lack of coordination means that not the most effective use of resources is made. Each key player in the field has a role to play in promoting and improving legal aid services. Therefore, the LSF will promote better coordination among LAPs, more integration of services and stronger management and (public) accountability at all levels.