



# THE NATIONAL LEGAL AID CONFERENCE EMERGING ISSUES AND THE WAY FORWARD

## Conference theme

Legal aid: A constitutional right

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### The objectives of the conference

1. To bring together key players and stakeholders in the legal aid field to share experiences, engage each other to form a common vision for the future of legal aid.
2. To bring legal aid to the forefront of pursuit of justice
3. To keep key players and stakeholders informed of developments in the field
4. To share emerging challenges and best practices

### The conference discussions were centred on topics and panel discussions including:

1. Legal aid - a constitutional right?
2. Implementing the Constitutional right to legal aid: The South African experience
3. Granting legal aid in criminal matters: The interest of justice test
4. Granting civil legal aid: Testing the means and merits of the case

### Emerging issues

1. Legal aid is a cornerstone of a just society where all people including the poor and vulnerable have equal access to legal and judicial services. The importance of legal aid in ensuring a level field for the accused against state machinery, or for the empowerment of parties in dispute resolution is critical.
2. More people in Uganda continue to receive legal aid through the existing mechanisms and beneficiaries have appreciated the interventions. Nevertheless, some challenges have been encountered that need to be addressed.
3. The state obligation to provide comprehensive, quality legal aid in Uganda is undeniable although the express constitutional provision is on the right to legal representation which is limited in scope.
4. Different legal aid models including the state briefs scheme, pro bono, legal aid services in prisons and in civil matters are currently being provided by various providers, both government and non-government. However, there is heavy reliance on donor funding for legal aid. The discussions need to focus on how to enhance the existing mechanisms of legal aid provision to make it affordable, available and accessible to those that need it most.

5. Issues of legal aid as a constitutional right go beyond the single constitutional provision on the right to legal representation in capital offences and those attracting life imprisonment. Legal aid requires looking at the bigger picture of access to justice and the realisation of the entire spectrum of human rights as provided for in the national constitution, regional and international human rights standards. In this regard, and cognisant of the causative linkages of civil matters and crime, legal aid is necessary not just in selected criminal matters or only for court appearances but for all legal matters including civil ones; at all stages, and for empowering beneficiaries in legal and human rights awareness. Consideration should be made beyond the question of indigence, for special circumstances like gender-based structural issues impacting on delivery and access to justice.
6. The current legal aid modalities in criminal matters are constrained due to the practical realities on the ground, notably, national ratio and national distribution/coverage of advocates, disparity in remuneration as well as institutional challenges faced by institutions in the administration of justice.
7. Gaining public confidence and trust in legal aid can be challenging especially where the right of the accused to choose a counsel has not been enforced; where public perception about free services is skewed; where public awareness about legal aid is limited; where legal aid beneficiaries prefer other unconventional (invisible) providers.
8. The enabling legislation on legal aid i.e. the Poor Persons Defence Act is apparently limiting, out dated, and inadequate in respect to the criteria of determining or defining indigence; in connecting the provision in the constitution on legal representation with legal aid provided for in the Act; and in reinforcing the constitutional compulsion of access to legal representation as a right.
9. The JLOS is currently engaged in consultations on the proposed national policy and legislation on legal aid. Many of the proposals are pertinent but there are still challenges that will require further consultations and discussions particularly regarding the limited legal aid providers, limited funding from government, clients trust and confidence, lack of awareness
10. There are serious challenges in respect of the quality of the legal aid currently provided, arising out of the inability to strictly enforce the obligations of advocates to offer pro bono services, the negative attitude of most advocates towards provision of legal aid, the limited facilitation and remuneration for advocates handling state briefs, the relegation of legal aid provision to students and inexperienced advocates, the inadequate capacity and competence of some of the private providers like paralegals and the consequent exposure of beneficiaries to masquerades and cons.
11. The economic situation has an impact on legal aid issues with regard to the levels of poverty that increase the need for legal aid, as well as the practical reality of progressive realisation of the right to legal aid. The need for strategic linkages of the Justice Law and Order Sector with other sectors addressing poverty issues was expressed.

12. Legal aid should be perceived broadly beyond court processes so that it can be used to enhance options likely to divert some matters from the already clogged court system through Alternative Dispute Resolution like arbitration and mediation as well as counselling and psycho-socio support.
13. Government should be urged to provide legal advice and legal representation to the people of Uganda in the same spirit in which it has extended agricultural extension services, health services, and education services among others to the sub county level. There is also need for proactive and creative strategies for reaching out to people in Uganda to access the legal aid. There is an opportunity is utilising the LC court system which is accessible and is the first court of call for most people.

## **Recommendations**

1. Government should prioritise legal aid provision as a right as well as a necessity for promotion of public order and rule of law by committing adequate resources to its realisation and taking up its obligation of the principal actor in legal aid provision.
2. Legal aid provision should emphasise civil matters to address the overwhelming need brought about by the increasing disputes related to land, family and contractual matters, among others.
3. The conference discussions should inform the on-going process of developing and reforming the policy and legislative framework, in particular, the National legal aid policy and the Legal aid Bill. The proposed policy and legislation should be comprehensive to cover all aspects of legal aid.
4. In the proposed law, the definition and scope of legal aid should be expanded beyond legal representation, to cover other criminal matters and civil matters; to be provided at the start of the administration of justice processes through to the enforcement of court judgements; to cover victims of crime; to incorporate other aspects like psycho-socio support and education, to contribute to expanding freedoms and empowerment of the people and communities. Other related concepts like legal representation, state briefs scheme, indigent people, and interest of justice test among others should be clearly defined.
5. The proposed legal aid scheme should be comprehensive and holistic to address equality and non-discrimination issues, vulnerability due to affordability challenges, legal representation and exclusion due to technicalities in the justice processes and the lack of awareness of human rights and the law which is an underlying cause of social and economic instability.
6. Government should establish and adequately resource an independent government agency/body to coordinate and enhance legal aid provision, drawing from best practices shared from the experience of Legal Aid South Africa including exploring new ideas, learning from mistakes and engaging all

stakeholders appropriately. The proposal for government to commit a specific percentage of the GDP to financing legal aid should be pursued.

7. Government should support and enhance the existing mechanisms of legal aid provision to reach the wider population.
8. The issue of quality of legal aid should be seriously and specifically addressed focussing on reforming attitudes of providers; law reforms to address the limitations in the existing law regarding motivation and remuneration; on enhancing human resource capacity and instituting an effective case management flow system to increase accountability, transparency and monitoring; as well as computerising data by government agencies among others.
9. Impact litigation should be explored as an option that can advance the interpretation of people's rights, maximise the benefits of a single case and compel government to fulfil its obligation to provide legal aid.
10. There should be comprehensive public awareness programmes on human rights awareness and legal education to sensitise people about legal aid as a right and how to access it.
11. The option of legal insurance should be explored to determine its viability.

#### **The way forward**

1. The Justice Law and Order Sector should follow up the recommendations and action points that emerged from the conference discussions.
2. The sector should hold further discussions and consultations on the proposed policy and legal framework on legal aid to address and/or incorporate the emerging issues discussed in the conference.
3. The Ministry of Justice and Constitutional Affairs should expedite the process of enactment of the national policy and legislation on legal aid with the aim of giving effect to state obligations provided for in the constitution, regional and international instruments ratified by Uganda.