

THE SITUATION OF LEGAL AID SERVICES PROVISION IN TANZANIA FOR THE YEAR 2013/2014

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‘From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals (and courts) in which every party to the case stands equal before the law. This noble ideal cannot be realized if the poor person engaged in a case has to face his or her opponent without a lawyer to assist him or her.’

[Justice Hugo L. Black in *Gideon Vs. Wainright* (1963) US Supreme Court].

In a democratic society, Tanzania inclusive, all citizens have a right to access justice and get a fair trial. Indeed, Article 13 of the *Constitution of the United Republic of Tanzania of 1977* enshrines this right as one of the constitutional Bill of Rights and Duties.¹ As it is well known from everyone’s experience, many people, in particular the poor and lay persons, struggle to understand their legal rights and obligations. In most cases, they feel helpless when faced with problems. This is why ‘access to justice’ and ‘fair trial’ are essential legal or human rights issues which require through consideration as this article at hand envisages to do.

The international legal framework on the access to justice and fair trial had, for a long time, put an emphasis on that position indicated above. For instance, Article 14(3)(d) of the *International Covenant on Civil and Political Rights of 1966* (ICCPR) specifically states that a party is entitled to have legal assistance in any case where the interest of justice is required without payment by him/her if he/she does not have sufficient means to pay for it. Article 13 of the Constitution of Tanzania (cited above) seemed to draw its existence from this international standard; but, it is very unfortunate that the Tanzanian legal framework excludes the mandatory legal representation even if a person is unable to pay for the service due to his or her (income) economic or poverty status.

The State and individual economic and income statuses have a direct implication to the access to justice, and sometimes fair trial. According to the Tanzanian National Strategy for Growth and Reduction of Poverty (commonly known as ‘MKUKUTA II’ in its Swahili language acronym), there is an intrinsic links between income poverty and access to socio-economic services including the justice machineries. Therefore, economic growth and poverty reduction are regarded as paramount factors for social justice and wellbeing of individual persons and national development.²

¹ The Bill of Rights and Duties within Tanzanian Constitution (cited above) is covered under Articles 12 to 29. Other rights and duties include, the right to life, freedom of movement, freedom of speech, right to work/ fair remuneration and the freedom to association (which includes CSO’s Legal Aid Providers).

² Preamble notes of the URT, Tanzania Five Year Development Plan 2011-2016. President’s Office, Planning Commission.

But, despite of having so many plans³ to boost-up the socio-economic development, the poverty amongst majority Tanzanians is still a reality. According to the World Bank (WB) reports, at least 21% of people in developing world (Tanzania inclusive) are living below poverty line, which is USD 1.25 (Tshs 2,050) a day. Therefore, they are absolute poor.⁴ Moreover, the latest Tanzania Household Budgetary Survey Report of 2012, which was released in November 2013, shows that an average of 33% of Tanzanians is living in abject poverty – extremely below food and basic needs poverty lines. Such sad situation is notwithstanding the fact that there has been a slight increase of the gross domestic product (GDP) up to almost 7% in recent years. However, the main challenge remains to be how to translate such national figures into individual benefits in order to relieve majority Tanzanians from the abject poverty.

The increase in number of poor people could be interpreted as an increase of demand for the legal aid services in Tanzania due to the reasons stated above. Therefore, any argument on the status of the legal aid services provision in Tanzania cannot avoid touching a base on the effects of population growth and may be urbanization into the legal aid service delivery and other ‘access to justice’ and ‘fair trial’ issues.

This analysis has noted with concern that, the Tanzanian population growth is so huge to the extent that, the available justice machineries (including legal aid provision by the Legal Aid Providers (LAPs)) become overwhelmed. For instance, according to the 2012 Population and Housing Census Report, the population of Tanzania has grown from 12,313,496 (12.3 million) persons in 1967 when the first national census was carried out to 44,928,923 (44.9 million) persons counted in the latest census of 2012. The increase was by 5% between 1967 and 1978; again 5% between 1979 and 1988; but 10% between 1999 and 2002; and 2003 and 2012.⁵

According to LHRC⁶ and other sources,⁷ such growth rate of 32.6 million people just within a time span of 45 years has socio-economic and political implications as far as economic development, access to natural resources and justice issues are concerned. For instance, the population density of Tanzania stands at 49 persons for a KM² in 2012 from only 14 people

³ Such as: the National Development Plan 2012-2013 (NDP); Comprehensive Tanzania Long Term Perspective Plan 2011-2026 (CTLTPP); Tanzania Development Vision 2025; Big Results Now (BRN); etc.

⁴ Poverty Overview <http://www.worldbank.org/en/topic/poverty/overview> accessed on 6th July, 2014.

⁵ URT, Population Distribution by Administrative Units, 2012 Population and Housing Census, Volume I of 2013. Pages 2 and 3. This report further states that, the national annual population growth rate stands at 2.7%. However, some of the regions within the country have recorded more than that rate. For instance, Dar es Salaam has 5.6% annual growth rate. Other regions with high growth rates are Mjini Magharibi (4.2%); Rukwa, Katavi, Manyara, Kagera and Kaskazini Unguja both have 3.2% growth rate.

⁶ LHRC (2013) Human Rights and Business Report in Tanzania of 2013. Pages 2 and 3. Note, ‘LHRC’ is Legal and Human Rights Centre, one of the largest legal aid providers (LAPs) in Tanzania.

⁷ Including: Kombe, W. J and Volker Kreibich (2000) Informal Land Management in Tanzania. SPRING Centre, University of Dortmund: German; Kyessi, A. G (2002) Community Participation in Urban Infrastructure Provision: Servicing Informal Settlements in Dar es Salaam. SPRING Centre, University of Dortmund: German; Mfaume, R and Wilhelm Leonard ‘Small Business Entrepreneurship in Dar es Salaam – Tanzania: Exploring Problems and Prospects for Future Development.’ African Development and Poverty Reduction: The Macro-Micro Linkage. Forum Paper 2004 of October 2004; and Lupala, A (2002) Peri-Urban Land Management for Rapid Urbanization: Case of Dar es Salaam. SPRING Centre, University of Dortmund: German.

for a KM² in 1967. Dar es Salaam's density level stands at 3,133 people for a KM² in 2012. Some of the vivid adverse effects of such rapid expansion of population are; increased legal conflicts example land cases; increased demand of legal assistance (more people without adequate services means more problems); and increased in number of *pro bono* (free of charge) legal aid seekers due to the factors stated earlier on.

A good example of 'legal aid demand against the ability to supply' can be illustrated by zeroing down this discussion into the 'right to legal representation.' As it stated above, majority of Tanzanians are poor. Basing on the WB's statistics, it is obvious that more than 80% of ordinary citizens could not afford to hire private advocates to represent them in their case.⁸

On the other hand, a number of the advocates enrolled in Tanzania is very small. For instance, as of July 2013 there were around 3,000 enrolled advocates in Tanzania Mainland.⁹ Proportionally, one advocate serves around 15,000 Tanzanians. According to TANLAP's 2014 Report on Status of Legal Aid Service Provision in Tanzania,¹⁰ such a situation '*creates 'monopoly' of lawyering services in Tanzania to the detriment of the poor citizens who cannot afford to engage expensive advocates to represent their cases.*' But, the position in Kenya is radically different. A number of advocates there is in the region of 10,000.¹¹ In Uganda, the number of advocates on the Roll is in the region of 1,200. Nonetheless, like in Kenya, the ratio between an advocate to the population in Uganda is far much better than the case here in Tanzania.¹²

Such situation has instigated establishment of legal aid services, which are predominantly done by the civil society organizations (CSOs), majority of whom are current members of TANLAP. That means, Tanzanian government was still sidelining itself from this noble responsibility as of 2014. Indeed, the current legal framework is not comprehensive on the coverage of legal aid services for the poor. For instance, there was no specific law on the legal aid services provision as of July 2014. The proposed bill on this subject was still yet 'marooned' in the hands of the 'dreamers' (CSOs) without being accorded with a welcome nod with the responsible Ministry. There is no single moment when that bill was even mentioned by the government. That means everything regarding legal aid's framework was still on the scratching board – not known by the policy/ law makers.

That Tanzanian position (of its legal framework) seems to contradict with the history; or rather, not following it to the fullest. According to the sources,¹³ historically, legal aid was

⁸ LHRC (2009) Tanzania Human Rights Report of 2009. Pages 37 and 38.

⁹ An interview with Adv. Maria Matui, (former) Program Officer at the Tanganyika Law Society (TLS) on 10th August, 2013, Dar es Salaam (during another study done by author of this article Adv. Clarence KIPOBOTA). The actual number is yet to be ascertained because TLS is still on the process of updating the roll.

¹⁰ This article is, to a large extent, a summary of the stated report. Note, 'TANLAP' is the Tanzania Network of Legal Aid Providers. It has more than 40 members (July 2014 statistics). The author of this article (Adv. Clarence KIPOBOTA) was TANLAP's consultant commissioned to undertake the stated study.

¹¹ LHRC (2011) Tanzania Human Rights Report of 2011. Pages 44 and 45.

¹² Welcome Address by Felix G. Kibodya, President, Tanganyika Law Society at the Half Annual General Meeting Held at Chimwaga Hall, Dodoma, Tanzania on 13th August 2010. Accessed it online through <http://www.tls.or.tz/docs/headlinesdocs/president%20speech%20during%20HAGM.pdf> [revisited on 1st August, 2014].

¹³ Among them was the obligation on the state to extend legal services to citizens who would otherwise not be able to afford it. In the same vein, the state was expected to provide a broad range of services such as medical/health care, social security, education and housing among others.

grounded in the theory of a welfare state which created many binding obligations on the state towards its citizens (mainly citizens' rights). The legal aid therefore emerged as an individual enforcement tool for a broad range of rights mainly comprised of an economic, social and cultural nature.

Moreover, the concept of assisting the poor to access justice originated in England in the 1400s with the *Statute of Henry VII (1495)*. The statute waived all fees for indigent civil litigants in the common law Courts and empowered the Courts to appoint lawyers to provide free representation in court without compensation.¹⁴ Therefore, initially the duty to provide legal aid was on shoulders of the State.¹⁵

The only attempt on part of Tanzania to address a need for legal aid for the poor was in 1969. During that year, the *Legal Aid (Criminal Proceeding) Act, Cap. 21* was enacted. Its purposes were to, *inter alia*, manage the provision of legal aid for low-income litigants. However, according to Section 3 of this law, the free *pro bono* services are available to only; i) criminal cases; ii) which attracts capital punishment; and upon application and certification of the same by the authority. Moreover, Section 310 of the *Criminal Procedure Act, Cap. 20* provide the same.

From the discussion above, one would note that, there is nothing much to describe about the status of legal aid services provision by looking at what the Tanzanian government has done. This is due to the fact that such responsibility was overwhelmingly on the shoulders of the private LAPs and paralegals. As such, the remaining parts of this article, summarize the key findings of the status of the provision of that services by the LAPs and paralegals for the year 2013/2014.

Regarding the **availability** of the legal aid services provision (LASP), the TANLAP's 2014 study (cited above) revealed that, it is relatively improving. The study finds out that, there has been an increase of LAPs and paralegals over years. The majority (48.6%) of them (LAPs and paralegals) provide legal aid services at all levels, from village to national. Only few (5.7%) of the LAPs were specifically focusing on village level. At least 90% of the respondent LAPs and paralegals stated that, they offer services to all groups (no specialized services) and that, the main criterion was 'type of legal problem' (24.3%) and not gender aspect (1.4%) as it used to be in the past when LAPs were established in Tanzanian in 1990s.

Moreover, only 2.9% stated that, their legal aid clinics were exclusively for women and children and 1.4% for the elderly and persons living with HIV/AIDS. All 'giant' LAPs are based in Dar es Salaam, Mjini-Magharibi, Arusha and Kilimanjaro regions (major cities). The district and regional ones are also urban-based. Therefore, despite the fact that the 'availability' is improving, the spread of LAPs is not even. The rural legal aid seekers (more than 80% of Tanzanians) are still suffering from the same historical challenge of the access to justice.

As for **accessibility** of LASP, the study noted with concern that it is not improving at the expected pace. The accessibility was found to be very limited in Tanzania due to several

¹⁴ Skinnider, Eileen (1999) A Paper Prepared for Legal Aid Conference Beijing, China in March 1999. Page 3. This report has quoted it from LHRC (2011) Tanzania Human Rights Report of 2009. Page 45.

¹⁵ Regan, Francis (1999), *The Transformation of Legal Aid: Comparative and Historical Studies*. Oxford University Press. Pages 89–90.

factors, main ones being; i) lack of proximity of LAPs and paralegals as already argued above; ii) low capacity of the LAPs and paralegals; iii) limitation of services offered by the LAPs and paralegals; iv) limitations imposed by the laws and LAPs themselves; v) lack of justice machineries in particular police and the judiciary in rural areas; and vi) awareness of the availability services. Despite the fact that specialization in service delivery in terms of type of clients to serve is decreasing, still the majority of LAPs are ‘gender-group’ sensitive in their services. For instance, at least 75% (by a general trend) are targeting women and children as stated above. However, the study noted that, men are not generally turned away when they approach LAPs even for those which are purely for widow. For instance, the Musoma based CWCA had more men clients attended than women in 2013/2014 while its main targets are widow and children. The situation (non-availability of LAPs) necessitates such circumstance to happen.

The **accessibility** is also influenced by the presence of specialized staffing within the LAPs. It is quite obvious that legal aid needs presence of lawyers. On this, the study finds out that, around 20% of the LAPs had only 1 lawyer; while 14.3% had 2 lawyers; and 41.2% had more than two lawyers who were working with them on permanent or part time basis. The remaining percentage (24.3%) had no any lawyer at all. It was not easy to assess whether the trends goes up or down because previous similar studies contain scant information about LAPs’ staffing. Such minimal number of lawyers was attributed by an illusion that lawyers are ‘*always expensive professionals*’ to be engaged with ‘*trivial LAPs salaries or allowances*’ as some of the respondents stated during the study. Moreover, as stated above, most of the lawyers (80% of them) prefer to work in the main cities for obvious reason that there is more ‘business’ in towns than in rural settings.

The third main finding of the study was about the **efficiency** of LASP. The study finds out that, this one is seen as improving. The main assessment indicator considered for this aspect was the ‘level of satisfaction’ of the service provision by the clients, who are the members of the public. The report notes that, exactly 50% of the respondents said that they were satisfied with the presence and services of LAPs and paralegals in their respective areas. However, in some places, the opposite of that was true. For instance, out of at least 52.1% of the respondents in Dodoma urban who had experienced some forms of legal problems which needed LAPs’ attention, only 34.8% of them sought legal services; of which 70% said that they were not satisfied with the services offered to them by LAPs. Other main indicator used to measure the ‘efficiency’ was to assess the number (readiness) of clients seeking legal aid. Such ‘readiness’ is normally influenced by, *inter alia*; i) location/ proximity of the LAP; ii) nature of the services provided; iii) the staffing size of the LAP; and iv) level of satisfaction of services provided. All these sub-components are covered above.

The fourth main finding of the study leaned on the analysis of the **institutional capacity** of the LAPs. The ‘capacity’ was considered in terms of governance structures; programming, in particular presence and usefulness of the plans including the monitoring and evaluation (M&E) ones. On this, the study finds out that, it was progressing well. For instance, about 78% of the LAPs had Strategic Plans. However, it seems that such plans did not have sufficient M&E components. More than 95% mentioned ‘lack of funding’ as their main institutional challenge and that, at least 60% of them had only one donor, mainly the Legal Service Facility (LSF) and few of them the Foundation for Civil Society (FCS). Around 80% of the LAPs stated that they had more than 5 workers. However, only 1.4% had permanent ones. A total of 97.3% of the LAPs said do not have enough lawyers to manage ever increasing legal aid cases. If one considers this sub-issues, would come to a conclusion that, despite the fact that the capacity is ‘progressing well’, more is desired than what have been attained.

Moreover, a more specific study is recommended to assess other sub-components such as whether the board of directors and financial systems are functioning perfectly.

The last two findings were on the aspects of **sustainability** and LAPs' **intervention strategies**. The two aspects compliment to each other. That is to say, ways in which the LAPs and paralegals conduct their affairs, would determine their future existence and continuity of its initiatives to the targeted constituencies.

As for **sustainability**, the study noted that it is somehow in a good course and that, it varied from organization to organization. Some organizations had programs and strategies to sustain their existence and their programs. However, most of them (more than 70%) mentioned '*to fundraise more*' as their sustainability strategy – but had no any resource mobilization strategy or strategies. None of them (100%) consulted during this study had the sustainability strategy/ document.

Finally on **legal aid intervention strategies**, the study noted that, the most common one being trainings (91.4%), followed by conducting reconciliation with conflicting parties (77.1%) and giving legal advice including preparation of legal documents (67.1%). The court representation is the last on the list with only 45.7%. Only few LAPs (4.3%) preferred mobile legal aid clinics to reach out their clients. Majority of them (68.6%) used both methods; while 24.3% had stationed and static legal aid clinics. It seemed that, donors' interests, financial and human resource capacities are some of the main attributing factors to the choice of intervention strategies. Again, a thorough and specific study is recommended in order to ascertain the usefulness of all these strategies.

Due to those arguments and findings advanced above, it is recommended that, in order to improve legal aid services provision in Tanzania, the following should be observed:-

- a) The LAPs and paralegals should:
 - i) The LAPs and paralegals should seek and receive capacity building trainings on various areas including organizational development and management; case/ clients management skills; alternative resource mobilization skills; and other capacity gaps highlighted above.
 - ii) The LAPs and paralegals should link their activities with existing intra and inter networks in their areas in order to outsource some of the activities they wish to undertake but they are limited by time and resources.
 - iii) The LAPs and paralegals should enhance their advocacy strategies in order to have paralegalism formalized in Tanzania. Moreover, there is a need for them to have internal advocacy plans which could facilitate them to use their legal aid clinics as 'supporters' of clients' needs as well as 'generators' of the advocacy issues to be pursued. The main focus should be on grassroots advocacy, which is easy to achieve and implement the results.
- b) The partners, including the central and local governments; donors; media; and others should endeavor to ensure that, they:
 - iv) Facilitate formalization of paralegalism in Tanzania by, *inter alia*, hasten the enactment of the specific law on legal aid service provision.
 - v) Facilitate institutional, policy and legal reforms on legal aid service provisions in Tanzania in order to address the challenges highlighted in this and other reports on legal aid. That should go along with the completion of the ongoing national paralegal curriculum.

- vi) Extend more financial and technical support to LAPs and paralegals with minimum conditionality. Most of the LAPs and paralegals are headed by persons without sufficient experience to draft complicated funding proposals.
- vii) Strengthen institutional and operational linkages such as referral systems between LAPs, paralegals and other partners. Currently, such links are relatively weak as elucidated in the main parts of this report.
- viii) Mainstream legal aid services provisions within their structures in order to make the services sustainable as suggested in the main text of this report. This should go along with having a specific budget for legal aid at central or local government levels.

c) The community members are hereby urged to:

- ix) Offer their 'social capital' to the LAPs and paralegals in order to continue benefiting from them.
- x) Be part of legal aid services by, *inter alia*, sensitize others to protect and promote legal and human rights in their vicinities. That should go along with their willingness to eradicate all harmful traditional practices in their communities.
- xi) Endeavor to seek knowledge from various sources including LAPs and paralegals rather than wait for those service providers to approach them.

As it elucidated above, Tanzania does not have a comprehensive law on legal aid service provision. Such services are haphazardly and generously provided by private LAPs and paralegals without any support from the government. The 'blindness' of the current legal framework is in total disregard of the fact that, due to socio-economic reasons, the demand for legal aid services is steadily increasing, while the capacity to address them is relatively low. Moreover, the increased in number of LAPs is still not sufficient in many parts of the country because majority of LAPs lack capacity in terms of ability to reach out all places. An alternative approach would have been the use of paralegals. However, the process to formalize them is long overdue and was not yet completed as of 2013/ 2014.

As such, it is recommended that, a more support to legal aid services provision is needed from various supporter. They year 2013/2014 marked a commendable step ahead. But the challenges still outweigh the success. It is not yet time to claim 'victory.' Instead, there is a very pressing need to invigorate our velocity towards desired standards as far as access to justice; fair trial; and the provision of legal aid services in Tanzania are concerned.