



UNODC

United Nations Office on Drugs and Crime



**Access to Legal Aid in
Criminal Justice
Systems in Africa**
Survey Report

UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Access to Legal Aid in Criminal Justice Systems in Africa

Survey Report



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Preface

The present report was prepared by the Paralegal Advisory Service Institute (PASI), based in Malawi. It presents the results of a survey carried out under United Nations Democracy Fund project UDF-RAF-07-134 (Access to Legal Aid in Africa).

The project aims at assisting African countries in enhancing their capacity to provide access to legal aid in the criminal justice system, in accordance with Economic and Social Council resolution 2007/24 and the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (www.penalreform.org/files/rep-2004-lilongwe-declaration-en.pdf). The survey is the first outcome of the project and it will be followed by a handbook on good practices in providing legal aid in criminal cases.

The preparation of the survey would not have been possible without the contributions of the Governance and Justice Group, the Bluhm Legal Clinic at Northwestern University School of Law, and Yale Law School. In particular, thanks go to Erin Conway, Kathryn English, Carolyn Frazier, Marguerite Garling, Tom Geraghty, Heather Goldsmith, Peter Liem, Rifaat Makkawi, Vanessa Ortblad, Adam Stapleton and Graça Martins Varela.

Further thanks go to the Open Society Justice Initiative for sharing the early results of its survey on the legal framework governing legal aid in Africa, on which this survey has sought to build; as well as the Legal Resources Foundation (Zimbabwe), which shared its draft survey of paralegal assistance in Southern Africa.

Finally, thanks to all those in Governments and other organizations that contributed to this survey, as well as to the United Nations Office on Drugs and Crime (UNODC) staff members, at UNODC headquarters and in field offices in Africa, who provided comments and contributions.

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Summary

Survey aim

The aim of this survey is to provide a snapshot of access to legal aid in Africa. The purpose is to provide practitioners and policymakers with accurate and contemporary data to inform the development of legal aid strategies. The survey was conducted as part of the implementation of Economic and Social Council resolution 2007/24, entitled “International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa”.

Definition of legal aid in the criminal justice system

The starting point for this survey on legal aid in Africa was the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa. The survey took its definition of legal aid from the Declaration, which is as follows:

“legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution; and to include a wide range of stakeholders, such as non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academic institutions.”

Survey findings

The laws governing legal aid recognize a lawyer-centred model. However, the numbers of practising lawyers in African countries are low in proportion to the overall population. Further, the large majority of these lawyers reside in urban areas, whereas the majority of the population live in rural or peri-urban areas. Thus, most people live outside of the reach of lawyers who can provide them with legal aid services.

While the laws respect a right to legal aid, State budget allocations to legal aid are minimal in many countries.

Access to legal aid is not available at all stages of the criminal justice process. It is particularly rare at police stations and is only sometimes available in prisons and in the lower courts.

There is an absence of any national strategy to provide people with “primary justice” services in the same way as there is, for instance, to provide primary health-care services. A “patchwork” of non-State actors operating individually, or in some cases in networks, provides supplementary services.

The consequences of this situation are several. On the “supply” side, the absence of a mechanism to push cases through the criminal justice system contributes to delays in the process and increasing case backlogs in the courts, as well as to high remand populations in prison. This contributes significantly to prison overcrowding, which is a problem in many African countries.

On the “demand” side, the absence of affordable legal aid services increases poor people’s sense of social exclusion and powerlessness. Traditional dispute resolution mechanisms become, by default, the only option for most people, in particular in rural areas.

Conclusions

The findings outlined above suggest that, with criminal justice systems operating in their current form, the “essential elements of a fair hearing”¹ cannot be met and the poor are priced out of the system.

The situation is characterized by the following challenges:

- Coverage by the State legal aid system is patchy at best.
- Access to legal aid at all stages of the criminal justice system is generally unavailable.
- Budgetary allocation for legal aid is minimal.
- Persons accused of a crime cannot expect legal advice for mounting a defence or informing a plea to a serious charge, nor for representation in cases where conviction could lead to a prison sentence.
- Lawyers are few in number and generally unavailable in rural areas; law students are under used.
- Community legal services are not available in every district and are not accessible by every person in need of such services.
- Most Governments do not have an overarching legal aid strategy to maximize the use of the resources available.

¹African Commission on Human and Peoples’ Rights, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, document DOC/OS(XXX)247.

Recommendations

In light of the survey's findings, it is recommended that the following steps would contribute to improving the current situation:

1. A review of legal aid systems by African Governments in line with the resolutions adopted by the African Commission on Human and Peoples' Rights, with particular reference to the Lilongwe Declaration and Plan of Action, leading to the adoption of national strategies for the provision of legal aid.
2. A move towards a functional approach to legal aid by building on partnerships or agreements with a range of legal service providers that meets the needs of poor people and is affordable in the long term to Governments. In this regard, the survey recommends:
 - Providing legal aid at all stages of the criminal justice process (especially in police stations on arrest, in prisons and in the lower courts)
 - Creating incentives to increase the number of lawyers offering legal aid services
 - Developing a cadre of paralegals to support the work of lawyers, assist at police stations, in prison and at court, and provide a range of primary justice services in the community
 - Supporting and encouraging law clinics in universities and promoting public-interest law among law students
 - Empowering victims of crime to access justice through the courts or, in appropriate cases, to apply to alternative dispute resolution mechanisms at any stage of the criminal justice process
 - Working with traditional authorities and the general public to improve and expand legal awareness

Such measures will reduce pressure on the criminal justice system and free up time, space and funds for the police, courts, lawyers and prisons. It will enable them to focus scarce resources on serious and complex criminal cases, and empower ordinary people to manage and settle their disputes or minor criminal matters within the community.

I.



Introduction

Between June and September 2009, a team of researchers comprising Arabic, English, French and Portuguese speakers collected data from various institutions in Africa, including ministries of justice, prisons, legal aid offices and service providers, law schools, law societies and other organizations involved in the promotion of legal aid in Africa.

A. Scope of the survey

The total population of the 54 African countries is estimated at 976 million. Questionnaires were sent to 42 countries and responses were received from 30 countries. Thus, information relating to a population of approximately 670 million people, or just over two-thirds of the African population, was obtained. In sending out the survey, the team prioritized countries recovering from conflict.

The team also consulted various secondary sources providing relevant information on the state of legal aid in Africa, including websites, research papers, academic papers and donor projects.

The time frame was short (four months) and a degree of urgency propelled the survey so that the information gathered could be made available (at least in draft form) in time for the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, held in Salvador de Bahia, Brazil, in April 2010.

B. Approach of the survey

The research team first compiled a directory of key actors within each country. They then drew up a number of tables (rather than questionnaires) in order to simplify the process of obtaining data from people who were already overworked. The team wrote to the minister of justice in each country, introducing the survey and attaching

the tables to be used. They then approached each institution or organization (both within and outside Government) with the tables relevant to the particular organization.

Emphasis was placed on the collection of hard data, rather than narrative responses, because it is more objective and less time consuming for the responder. When questions arose about the data returned, it was immediately checked with the provider of the information.

Following the initial round of contacts, the team followed up with telephone calls to the persons identified within each country, in order to ensure a high degree of participation in the survey. In early August, the collected data were then organized and sent to all those in the databank to allow them to verify and comment upon the data and encourage those who had yet to respond. The aim of the project was to be consultative and inclusive and to ensure the accuracy of the data to the greatest degree possible.

C. Constraints

The survey team worked under a number of constraints which, despite best efforts, have had a bearing on the quality, accessibility and quantity of information available. Those constraints are described below.

Communication

E-mail connections for those in official positions were inconsistent from region to region. Many officials appeared to rely on their personal e-mail addresses rather than their institutional addresses (the addresses to which the survey team had access). West Africa in particular had poor or intermittent Internet connectivity (the fibre-optic cable serving this region was cut during the period of the survey).

Access to data

In many countries, there was no central source for official information, nor was there any kind of system for storing or retrieving such information. Data did not appear to be widely shared between government departments or among different organizations. There was difficulty in obtaining empirical information from the field and participants' early expressions of enthusiasm were not followed up when the difficulties in obtaining the data required became apparent, although reminders prompted renewed expressions of diligence. Several official responses voiced suspicion concerning the purpose of the survey; others indicated the need for clearance from a higher official.

II.

Legal framework

The majority of the States surveyed have ratified relevant international treaties, namely the International Covenant on Civil and Political Rights,² the Convention on the Rights of the Child,³ the Convention on the Elimination of All Forms of Discrimination against Women⁴ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.⁵

The legal instruments, which are clearly worded and binding on the States that have ratified them, establish a criminal defendant's right to legal aid. For example, article 14, paragraph 3 (d), of the International Covenant on Civil and Political Rights states the right of a person "to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it." Article 37, paragraph (d), of the Convention on the Rights of the Child requires Governments to provide a person under 18 "deprived of his or her liberty" with "prompt access to legal and other appropriate assistance."⁶

At the regional level, the African Commission on Human and Peoples' Rights, of which all African States, with the exception of Morocco, are members, has adopted a series of principles and guidelines governing legal aid and penal reform. They include:

²General Assembly resolution 2200 A (XXI), annex. Guinea-Bissau and Sao Tome and Principe have signed but not ratified it.

³United Nations, *Treaty Series*, vol. 1577, No. 27531.

⁴United Nations, *Treaty Series*, vol. 1249, No. 20378. Somalia and the Sudan have not signed it.

⁵United Nations, *Treaty Series*, vol. 1465, No. 24841. Sao Tome and Principe and the Sudan have signed but not ratified it. Angola, Eritrea, the United Republic of Tanzania and Zimbabwe have not signed it.

⁶Additional instruments to guide States in the provision of legal assistance can be found in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Standard Minimum Rules for the Treatment of Prisoners and the Basic Principles on the Role of Lawyers. As concerns young persons (under 18) in conflict with the law, further guidance is to be found in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Guidance on working with victims of crime can be found in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. These instruments are not legally binding, but set out principles and rules which have been accepted by member States of the United Nations and are highly persuasive.

- The Kampala Declaration on Prison Conditions in Africa and Plan of Action⁷
- The Kadoma Declaration on Community Service and Plan of Action⁸
- The Resolution on the Right to a Fair Trial and Legal Assistance in Africa (the Dakar Declaration and Recommendations)
- The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa
- The Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa and Plan of Action
- The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa and Plan of Action

Legal aid in context

The African Commission has passed a series of resolutions that place legal aid in context in Africa. The Dakar Declaration notes that “Most accused and aggrieved persons are unable to afford legal services due to the high cost of court and professional fees. It is the duty of governments to provide legal assistance to indigent persons in order to make the right to a fair trial more effective. The contribution of the judiciary, human rights NGOs and professional associations should be encouraged.”

Section A, part 2, of the African Commission’s Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa review the “essential elements of a fair hearing”, which include:

- Equality of arms between the parties to proceedings
- Equality of access by women and men to judicial bodies and equality before the law in any legal proceedings
- Adequate opportunity to prepare a case and to challenge or respond to opposing arguments or evidence
- Entitlement to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings
- Entitlement to a determination of rights and obligations without undue delay

Section M, part 2, of the Principles and Guidelines enumerates a set of rights and procedures upon arrest and detention, including:

- The right to legal representation upon arrest
- The necessary facilities to communicate, as appropriate, with a lawyer, a doctor, family or friends, an embassy or consular post, or an international organization

⁷Economic and Social Council resolution 1997/36, annex.

⁸Economic and Social Council resolution 1998/23, annex I.

- Prompt access to a lawyer and, unless the person has waived this right in writing, to be under no obligation to answer any questions or participate in any interrogation without a lawyer being present

The right to counsel is emphasized in section N of the Principles and Guidelines at “all stages” of any criminal prosecution and when the accused is “first detained or charged”. In addition, an accused has the right to:

- Adequate time and facilities for the preparation of a defence
- An interpreter
- A trial without undue delay

The Principles and Guidelines contain extensive provisions on protecting rights during trial; children; victims of crime and abuse of power; and traditional courts.

In its section H, Legal Aid and Assistance, the Principles and Guidelines note that “in many States the number of qualified lawyers is low”; accordingly, “States should recognize the role that para-legals could play in the provision of legal assistance and establish the legal framework to enable them to provide basic legal assistance” and “grant appropriate recognition to para-legals.”

Article 8 of the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa provides for “effective access by women to judicial and legal services, including legal aid” and “support to local, national, regional and continental initiatives directed at providing women access to legal services, including legal aid”.

Regional instruments on penal reform in Africa adopted by the African Commission and the Economic and Social Council have noted that:

- Conditions in prison in Africa are “inhuman”.⁹
- The remand population in prisons is high in many countries and a “system for regular review of the time detainees spend on remand”¹⁰ is recommended.
- There are “growing partnerships” between Governments and civil society to implement international standards and there is a need for a “concerted strategy” to reduce overcrowding in prisons.¹¹

The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa and its Plan of Action constitute the latest statement on criminal legal aid in Africa.

In brief, the Lilongwe Declaration:

⁹Kampala Declaration on Prison Conditions in Africa.

¹⁰Ibid.

¹¹Ouagadougou Declaration on Accelerating Prison and Penal Reform in Africa.

- Recognizes the right to legal aid in criminal justice and broadens legal aid to include: legal advice, assistance, representation, education and mechanisms for alternative dispute resolution; and to include a wide range of stakeholders, such as non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations, and academic institutions
- Highlights the need to sensitize all criminal justice stakeholders to the crucial role that legal aid plays in the development and maintenance of a just and fair criminal justice system and in police stations, pretrial detention facilities, courts and prisons; and it points to the “societal benefits” of providing effective legal aid and the use of alternatives to imprisonment, which contribute to the elimination of unnecessary detention, speedy processing of cases, fair and impartial trials and the reduction of prison populations

The Declaration requires legal aid at all stages of the criminal justice process and recognizes the right to redress for violations of human rights, the role of non-formal means of conflict resolution (and their potential to resolve disputes without acrimony and to restore social cohesion within the community) and the significance of diversionary measures for the administration of a community-based, victim-orientated criminal justice system.

The Declaration recommends a diverse legal aid delivery system that employs a variety of available options (including salaried and contractual models) provided by a range of actors (lawyers, law students, paralegals and non-lawyers) to spread legal literacy among the population.

The survey reviewed how legal aid is approached in the constitutions of African countries (see annex I).

The table in annex I contains a list of African countries with constitutions that recognize the right to legal aid or a defence. It analyses the degree of difference in the level of protection afforded to citizens by their constitutions.

While all but two of the constitutions consulted make some reference to the right to legal aid, the content of the right is not always clear. For example, the Constitution of Ghana states that “A person charged with a criminal offence shall be permitted to defend himself before the court in person by a lawyer of his choice.”

The Constitution of the Niger states “Everyone charged with a crime is presumed innocent until proved guilty according to law in a public trial during which all the guarantees necessary for their defence have been assured.”

While some constitutions provide a general right to legal aid or legal defence, they do not indicate at which stage of the process a person can gain access to legal aid, nor who shall shoulder the cost.¹² This is in marked contrast to the Lilongwe Declaration, which sets out plain guidelines.

¹²National legislation was seldom cited in the responses received. The team was greatly assisted by an early view of the forthcoming Open Society Justice Initiative’s survey on the legal framework governing legal aid in selected countries.

Additionally, almost one-third of the countries in Africa still retain the death penalty for certain offences. Although legal representation is guaranteed by law in capital cases, such representation is not always effective and does not always provide the required level of expertise. The consequences of a lack of or ineffective legal representation in capital cases are irreversible.

III.

How States currently administer legal aid in Africa

A. Legal aid models

There are broadly five types of legal aid models in operation in Africa:¹³

- *Public defenders.* The State employs and pays lawyers to provide legal aid services.
- *Judicare.* Private lawyers make an agreement with the Government to represent accused persons for a set fee.
- *Contracting.* The Government contracts a lawyer, a group of lawyers or a non-governmental organization to provide legal services for a set fee.
- *Mixed delivery.* The State employs a mixture of various service delivery models, for example, public defenders supplemented by private contracts with lawyers and/or non-governmental organizations.
- *Community legal services.* A range of private service providers offer legal advice and assistance to poor people.¹⁴

Most countries surveyed do not appear to pursue any one exclusive model, but “mix and match” from the list above.

Public defenders, in the main, are employed by and operate from the ministry of justice (or its equivalent). However, the responses indicated that they operate under severe constraints:

- Ethiopia reports “minimal legal aid service in many criminal cases” and “understaffing” in the office of the defence counsel.
- Liberia has 21 public defenders (all but two of whom have recently graduated from law school).

¹³For a clear discussion of the strengths and weaknesses in each, see Penal Reform International and Bluhm Legal Clinic of the Northwestern University School of Law, *Access to Justice in Africa and Beyond: Making the Rule of Law a Reality* (Louisville, Colorado, National Institute for Trial Advocacy, 2007).

¹⁴See *ibid.*, p. 113.

- Malawi has 18 legal aid lawyers (out of 30 positions)—of whom 16 are junior or have fewer than five years’ experience—and an average turnover of nine months.
- Mozambique has 16 paralegals and 17 legal assistants.
- In Nigeria, “legal aid lawyers simply cannot deal with the large number of suspects in the country who need assistance. ... Consequently, only one in seven inmates awaiting trial and one in five convicted inmates in Nigeria have legal representation. Of those awaiting trial, 25 per cent have legal representation from the Legal Aid Council and other non-governmental bodies offering pro bono services.”¹⁵
- Sierra Leone has three lawyers to provide legal aid in Freetown through a pilot national legal aid scheme.
- The Sudan has 10 legal aid lawyers to service Khartoum. There are no dedicated legal aid lawyers in the south.
- In Zambia in 2007, 39 per cent of legal aid positions were vacant.¹⁶

The Legal Aid Board in South Africa is the sole national scheme to operate independently (it is chaired by a judge of the Supreme Court) and is funded directly by Parliament, to whom it sends reports, through the Ministry of Justice.

The Legal Aid Board has pioneered “one-stop justice shops”, known as justice centres, throughout South Africa, with satellite offices in rural areas to increase outreach to the poor in remote areas. Lawyers working in the justice centres appear to be paid competitive salaries; employment in the public sector is viewed as an attractive option by lawyers, both in terms of remuneration and in terms of social prestige. However, South Africa appears to be the exception.

Judicare and contracting models operate in most countries. They rely on the goodwill of national law societies and bar associations, as well as individual lawyers. Emphasis is placed on the provision of free (or pro bono) services.

The responses suggest wide dissatisfaction with the operation of these schemes because rates of remuneration are low and payment takes a long time to arrive:

- In the Sudan, reliance is placed on a pool of private legal practitioners, administered by the bar association, to provide legal aid services at the State level in Darfur. Lawyers were paid 200 Sudanese pounds (about 100 United States dollars) for each capital case they appeared in, but this budget is no longer available.
- In the Niger it was reported that, although lawyers complied with Government requests to provide counsel, the Government generally did not remunerate them.¹⁷

¹⁵Amnesty International, *Nigeria: Prisoners’ rights systematically flouted* (London, 2008).

¹⁶German Agency for Technical Cooperation, *Mapping of Legal Aid Service Providers in Zambia* (2008).

¹⁷United States of America, Department of State, *2008 Human Rights Report: Niger* (Washington, D.C., 2009).

- In Sierra Leone, private lawyers are paid US\$ 150 by the State to represent the accused in capital cases. The United Nations Development Programme (UNDP) has provided a “top-up” scheme for 15 private lawyers to represent the indigent accused (12 in the capital and one in each of the three regional capitals).
- In Lesotho, lawyers complain they are only paid for one appearance or that they are not paid at all.

The practice common in western countries of mixed delivery systems appears to be in its infancy in Africa. The Legal Aid Board in South Africa has entered into agreements with a range of private legal aid providers to supplement national legal aid services. In Malawi, the Ministry of Justice has a cooperation agreement with paralegals to provide legal aid services in police stations, prisons and courts.

The provision of community legal services is discussed in the next section.

B. Human resources

The data in table 1 set out the number of lawyers compared to the population in 46 African countries. It indicates that a principle challenge to the provision of legal aid is the low ratio of lawyers to population.

Table 1. Lawyers to population

<i>Country</i>	<i>Population (millions)</i>	<i>Population living in rural areas (percentage)</i>	<i>Number of lawyers</i>
Algeria	34	35	..
Angola	18	43	570
Benin	9	59	..
Botswana	2	40	465
Burkina Faso	15	80	131
Burundi	8	90	106
Cameroon	19	43	..
Central Africa Republic	4	61	38
Chad	11	73	..
Congo	4	39	..
Côte d’Ivoire	21	51	420
Dem. Rep. of the Congo	64	66	6 000
Djibouti	0.8	13	20
Egypt	82	57	40 000
Eritrea	5	79	..

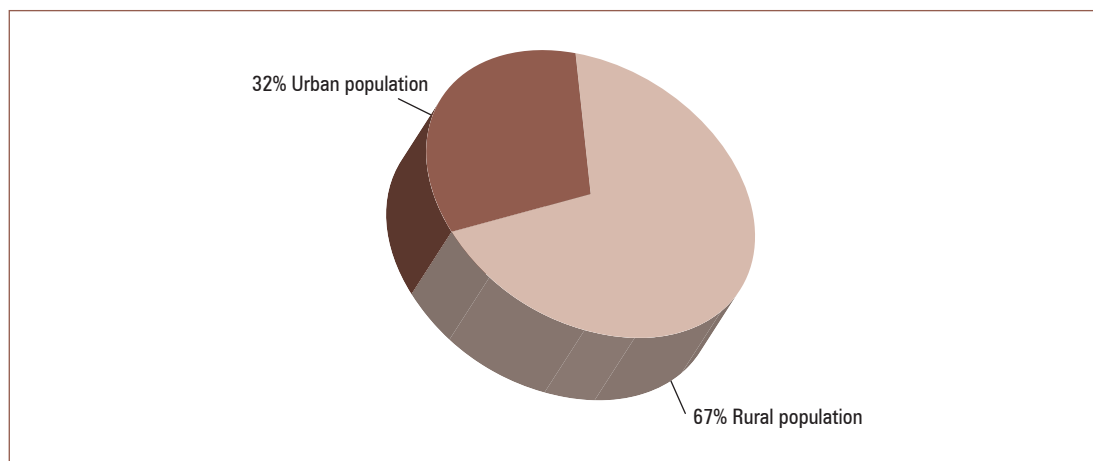
Table 1. (continued)

<i>Country</i>	<i>Population (millions)</i>	<i>Population living in rural areas (percentage)</i>	<i>Number of lawyers</i>
Ethiopia	81	83	4 000
Gambia	2	44	90
Ghana	23	50	5 000
Guinea	10	66	..
Guinea-Bissau	1.5	70	45
Kenya	39	78	3 817
Lesotho	2	75	506
Liberia	4	40	250
Libyan Arab Jamahiriya	6	23	..
Madagascar	20	71	..
Malawi	15	81	300
Mali	13	68	265
Mauritania	3	59	..
Morocco	32	44	..
Mozambique	22	63	779
Namibia	2	63	400
Niger	15	84	112
Nigeria	151	52	50 000
Rwanda	10	82	316
Senegal	12	58	..
Sierra Leone	6	62	298
Somalia	9	64	..
South Africa	49	39	20 059
Sudan	41	57	3 000 (in the north) <50 (in the south)
Swaziland	1	75	400
Togo	6	58	..
Tunisia	10	34	..
Uganda	32	87	2 000
United Rep. of Tanzania	42	75	1 135
Zambia	13	65	650
Zimbabwe	12	63	1 200

Source: World Bank and law societies.

In addition, responses indicate that the overwhelming majority of lawyers are concentrated in urban centres, while the majority of people live in rural areas (see figure I).

Figure I. Proportion of rural and urban populations in Africa



Source: Agence française de développement.

This gives rise to a number of pressures, both on the quality of justice on offer and the efficiency of the process. The following are just a few of the examples that illustrate this point:

“Amongst the challenges the Legal Aid Department encounters are insufficient human resources and erratic funding. These have greatly affected the performance of the organisation. Legal Aid Counsels are compelled to handle huge numbers of cases, thereby compromising quality. Even worse, the myriad of administrative and logistical problems the Board is facing has resulted in denying legal aid to many indigent persons especially in rural areas. ... Many cases are repeatedly adjourned in court, and magistrates respond by trying to avoid delays by trying criminal cases without legal representation of the defendants.”¹⁸

“[I]ndividual judges reported pending caseloads of up to 1,000 each, and it was routinely reported that both civil and criminal cases can take up to a decade to resolve. Meanwhile, large percentages of pretrial detainees remain in custody for decades without having been formally charged or even having seen a judge.”¹⁹

“Less than 25% of cases assigned to lawyers are successfully completed every year. It is estimated that the percentage for 2006 of legal aid cases completed in 2006 is about 18%.”²⁰

¹⁸ *Mapping of Legal Aid Service Providers in Zambia*.

¹⁹ Christie S. Warren, “Country Report: Nigeria”, in Jan Stromsem, *Africa Regional Rule of Law Status Review*, prepared for the United States Agency for International Development (Washington, D.C., Management Systems International, 2009).

²⁰ National Development Planning Commission, Government of Ghana, “Poverty Reduction Strategy Paper — 2006 Annual Progress Report”, IMF Country Report No. 09/237 (Washington, D.C., International Monetary Fund, 2009). Available from www.imf.org/external/pubs/ft/scr/2009/cr09237.pdf.

“The practice, however, is that persons who are charged with murder and treason are provided with advocates where they cannot afford them. However, the same is not available for robbery with violence, which is also a capital offence. The quality of the legal aid is also responsible for the huge backlog of cases, as people wait years to be assigned counsel.”²¹

The Tanzanian Women Lawyers Association estimates that 13 regions (out of 21) in the United Republic of Tanzania have no lawyers.

Ethiopia reports “few advocates, especially in rural areas”.²²

In Uganda, legal representation is “only present in 16% (9) of Uganda’s 56 districts.”²³

Universities and legal associations

It is not necessarily the case that universities and law schools train and produce lawyers and national or State law societies and bar associations regulate their conduct.

“Legal education institutions are in many countries insufficient to meet expanding needs and have been slow to adopt educational models that stress practical as well as theoretical methods of instruction. ... Bar associations and other professional legal associations exist in a number of countries and are emerging throughout the region, but as yet do not generally exert strong influence or presence. ... Strong and effective regional organizations, capable of addressing the range of social issues and challenges inherent in Africa, are still in very short supply.”²⁴

There are well over 100 law faculties and many other law schools in operation in sub-Saharan Africa. Their geographic distribution is highly skewed, however, with 21 law faculties in South Africa, 23 in Nigeria and two in Ghana. Some countries, such as Cape Verde, Comoros, Djibouti, Equatorial Guinea and Sao Tome and Principe, have none.

Legal education

The duration of law studies in the different African law faculties varies from three or four years to as long as five years in Angola and six years in Guinea-Bissau.

Ghana provides a “post-call” law course lasting three months that is designed for qualified lawyers of other common-law countries. It covers two main subjects: the constitutional law and the customary law of Ghana. Candidates who successfully pass the requisite final examinations are enrolled as lawyers to practise in Ghana.

²¹ Access to Legal Aid in Africa survey response, Kenya.

²² World Bank, “Demand Side of Justice in East Africa Workshop”, proceedings of workshop, Dar es Salaam, United Republic of Tanzania, 4-5 February 2009.

²³ *Access to Justice in Africa and Beyond*, p. 14.

²⁴ Stromsem. *Africa Rule of Law Status Review*.

In other countries, the national law societies appear less accommodating and require foreign lawyers—even if they were trained in similar legal systems—to pass local bar exams before they can practise. In some countries, this may take as long as two years. Other countries ban foreign lawyers altogether; in Liberia, for example, any lawyer who is not a Liberian national is prohibited from practising in the courts.

A recent study²⁵ charts the historical development of legal education in Africa and how the emphasis on the inherited colonial system not only “facilitated the profession’s loss of touch with local realities and with the needs and aspirations of the poor majority” but also revealed “grave inadequacies in the ... legal training that prepared these lawyers for practice in Africa.” It goes on to note that legal training “paid no attention to the problems of practising in an underdeveloped country with multiple systems of law” and that there was too much emphasis on litigation and too little emphasis on other means of resolving disputes.

Law societies and bar associations

Aside from local, national and subregional associations, there are no established organizational structures in Africa to compare, for instance, with the Association of American Law Schools in the United States or the European Law Faculties Association in Europe.

The Lilongwe Declaration calls on Governments to involve “a broad spectrum of the private bar in the provision of legal aid.” It goes on to encourage the bar to “provide substantial moral, professional and logistical support to those providing legal aid.”

Groups of (mainly women) lawyers providing such support were identified in many countries. Those providing community legal services all had links to individual lawyers or associations of lawyers who provided supervision, advice or pro bono support.

More than one commentator has observed that “pro bono legal aid work may be used as a supplement to State-funded legal aid services, but should not be regarded as a substitute.”²⁶

While Africa needs well-trained lawyers, “African legal education should produce the different types of lawyers Africa needs[:] experts in mediation, arbitration, health, environment, natural resources, joint ventures and project finance. African law schools need rich curricula for students to sample a wide array of course and clinic options. Students can then design a program of study that fits their individual interests, expertise, or career plans.”²⁷

²⁵ Samuel Manteaw, “Legal Education in Africa: What Type of Lawyer Does Africa Need?”, *McGeorge Law Review*, vol. 39, No. 4 (September 2008).

²⁶ *Access to Justice in Africa and Beyond*, p. 101.

²⁷ Manteaw, “Legal Education in Africa”.

A step in this direction is being taken in South Africa by the University of KwaZulu-Natal, which has developed a two-year paralegal diploma course that is recognized by the university and the South African Qualifications Authority. This course will provide paralegals operating in the criminal justice system with a practical and theoretical grounding. The intention is that, equipped with this diploma, those paralegals who make the grade can pursue further legal studies and become lawyers. Table 2 shows the role that different African universities play in legal aid provision.

Table 2. Universities as legal aid providers

<i>Country</i>	<i>Legal aid stage required?</i>	<i>Clinical law programme?</i>	<i>Public outreach?</i>	<i>Public-interest litigation?</i>	<i>Campus legal aid?</i>
Botswana	Yes	Yes	No	No	Yes
Democratic Republic of the Congo	No	..	No	No	No
Ethiopia	Yes	Yes	No	No	Yes
Liberia	No	Yes	Irregular	No	Yes
Mali	No	Yes	Yes	..	No
Mozambique	No	Yes	Yes	No	Yes
Niger	No	No	No	..	No
Nigeria	Yes	Yes	Yes	Yes	Yes
Rwanda	No	Yes	No	..	Yes
Sierra Leone	No	No	No	No	No
South Africa	Yes	Yes	Yes	Yes	Yes
Sudan	No	No	No	No	No
United Republic of Tanzania	No	No	No	No	Yes
Uganda	Yes	Yes	Yes	No	Yes

As can be seen in table 2, in 5 out of 14 countries, law students are required to provide some form of public-interest legal service; and in over half of the countries, law students engage in some form of practical legal training and provide some form of legal aid service on campus. However, few engage in any form of public outreach (or “street law” programme) or public-interest litigation.

The introduction of the United States model of clinical law training programmes has been a relatively new development. Individual universities in the United States are linking with law students on clinical activities in Africa²⁸ and, with the help of

²⁸The Bluhm Legal Clinic of Northwestern University is working in Malawi to tackle case backlogs, while the School of Law at Washington and Lee University is supporting community legal advisers and work in prisons in Liberia.

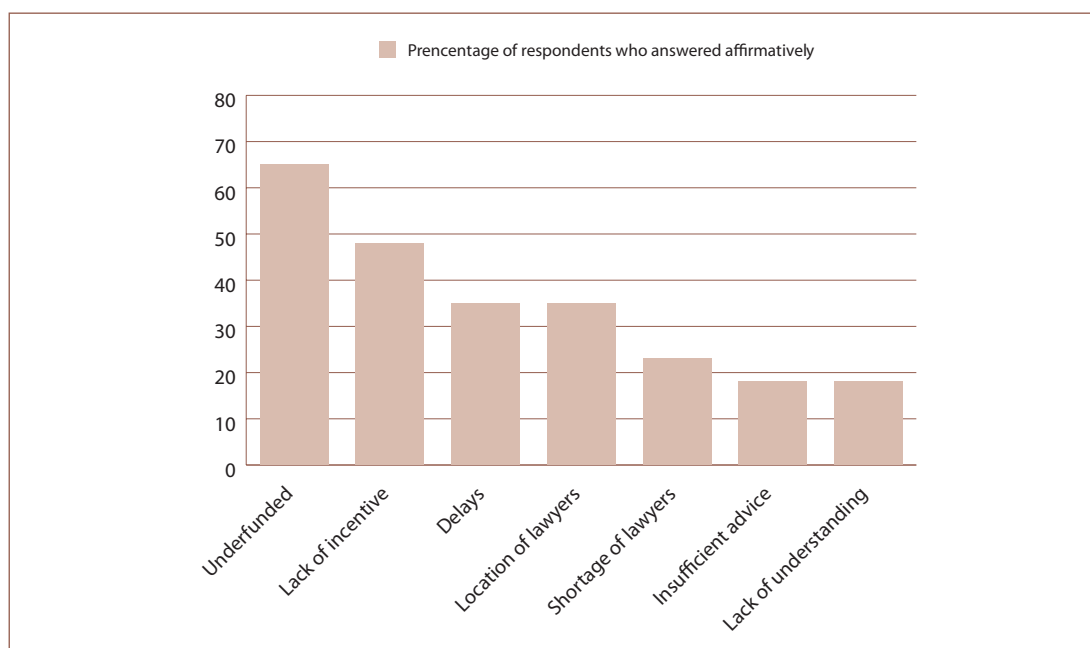
international assistance, such as the Open Society Justice Initiative's Legal Aid and Community Empowerment Clinics programme and the Ford Foundation, clinical law programmes have started in Botswana, Ethiopia, Ghana, Kenya, Lesotho, Malawi, Mozambique, Namibia, Nigeria, Sierra Leone, Uganda, the United Republic of Tanzania and Zimbabwe. In Kenya, students may volunteer legal services in slum areas of the major cities. In Nigeria, under the National Youth Service, the Government provides stipends for recently graduated law students to work for a year outside their home state. At Witwatersrand School of Law in South Africa, graduates are required to render free service in the Wits Law Clinic in the final year of study of their law degrees. Other examples of universities providing legal aid (provided by the Open Society Justice Initiative) include:

- In 2003, Eduardo Mondlane University in Maputo opened the first university legal clinic programme in Mozambique. It enrolls 24 law students to provide a range of legal aid services, including community education and legal literacy courses, to prisoners in Maputo Prison. Recently, the clinic partnered with the Liga dos Direitos Humanos to train rural community paralegals in law and human rights.
- Fourah Bay College in Freetown enrolls 20 students to provide legal assistance and legal literacy courses on human-rights-related issues relevant to Sierra Leone. These vary from individual case work to human rights awareness and public education work and campaigns. The college has been engaged in a joint project with the Open Society Justice Initiative on creating and supporting paralegals in rural communities.
- In Ethiopia, Mekelle University Faculty of Law has provided about 300 students with practice-orientated legal education since 2004. It provides training to judges in the region and conducts advocacy workshops for vulnerable groups. In 2007, it was contacted by other two universities in Ethiopia to share its experiences in community legal education and providing legal aid to vulnerable populations. A national legal education reform effort is under way to incorporate community legal education as one of the mandatory components for legal education curricula.
- In Nigeria, four universities are piloting legal aid clinics: the University of Maiduguri, Abia State University, the University of Uyo and Adekunle Ajasin University. They provide legal aid and empowerment to various vulnerable groups and individuals. In 2006, the first street law training workshop was organized for teachers in Nigeria. More than 500 teachers participated in the two-week course. A new clinical curriculum has been finalized and approved by member universities of the Network of University Legal Aid Institutions.

The main challenge faced by such initiatives appears to be a lack of funds. A university outreach programme was reported to have collapsed in Kenya, owing to a lack of funds. Among the seven law faculties in the Sudan, only one has a law clinic (the University of Khartoum) and this has had to discontinue its services as the external donor has scaled back its funding.

The survey canvassed the views of practitioners to identify the greatest challenges in providing legal aid in their countries. Based on this information, figure II demonstrates that a lack of resources, human and capital, emerges as the principal challenge to legal aid delivery.

Figure II. Summary of problems with legal aid in Africa



C. Financial resources

Ministries and heads of national legal aid schemes were invited to provide figures for how much they spent on legal aid, prosecution and the justice sector (not including police and prisons). Several countries were unable to specify an amount for legal aid. Most had no figures to offer at all.

Table 3 shows the responses regarding budget allocations.

**Table 3. Budget allocations in respondent countries
(Millions of United States dollars)**

Country	Legal aid	Prosecution	Justice sector (including the judiciary and courts)
Ghana	0.36	3	35
Liberia	0.2	3	5
Malawi	0.2	0.5	..
Nigeria	1.3
South Africa	100	300	1 400

In Sierra Leone, legal aid at public expense is restricted (as in many countries) to capital cases. Parliament budgets 25 million leones for this (7,500 United States dollars).

Rwanda reportedly set aside 500,000 United States dollars for a legal aid fund, but this fund has yet to become operational.

Table 4 compares the costs of legal aid (civil and criminal) measured per capita in the countries that responded with those costs in other countries.

**Table 4. Costs of legal aid, African and non-African countries
(United States dollars)**

<i>African country</i>	<i>Cost</i>	<i>Non-African country</i>	<i>Cost</i>
Ghana	0.03	Canada	9
Kenya	0.03	Netherlands	12
Malawi	0.015	United Kingdom	38
Nigeria	0.01	United States	2
Rwanda	0.05 ^a		
South Africa	2		

Source: Penal Reform International and Bluhm Legal Clinic of the Northwestern University School of Law, *Access to Justice in Africa and Beyond: Making the Rule of Law a Reality* (Louisville, Colorado, National Institute for Trial Advocacy, 2007).

^aThe Government of Rwanda has reportedly set aside US\$ 500,000 for a legal aid fund, but this fund has yet to become operational.

Most countries surveyed have a policy statement, framed as a national development plan (or a poverty reduction strategy paper). These documents are important as they set out the Government's priorities, usually over a five-year time frame.

The survey found that 17 of the 52 countries reviewed had a poverty reduction strategy paper that made direct reference to the provision of legal aid. However, the budget attached to legal aid was not available.

D. Assessing poverty

The means test is commonly used in countries to determine eligibility for legal aid. The purpose of the means test is to ensure that those who cannot afford legal services are provided with them when the interests of justice so require and that those who have the means should contribute towards their legal costs in whole or in part.

In Zimbabwe, legal aid applicants are asked to fill in declaration forms that show, among other things, employment history, banking accounts, assets held and ownership of immovable and movable assets. The declaration is done under oath. Those who are deemed eligible for legal aid are then referred to a lawyer for assistance.

Once a lawyer is appointed by the registrar, he or she cannot withdraw his or her services for any reason without the permission of the judge.

In Angola, while the law provides for legal assistance, there is no State-funded legal aid department; applicants must make a statement of poverty. “There are two problems with this procedure: first, it is so difficult to apply that no one does; second, lawyers are unwilling to take on cases because payments are slow and the rate is low.”²⁹

“Arguably, it would make little sense to apply means testing in a country like Zambia, where the large majority of the population is without means to pay for any type of legal services. Introducing any kind of means testing would create further obstacles for people to have access to justice and legal services.”³⁰

In Cameroon, the legal aid commission that sits to determine a legal aid application “scarcely” sits because of a lack of a quorum and the remuneration is “quite low and discouraging” for lawyers.³¹

The financial limitation for qualification for legal aid is set at US\$ 50 per month in Ghana and at 5,000 naira per month (or US\$ 43) in Nigeria, which still leaves quite a sizeable proportion of the population who earn more than 5,000 naira but are still unable to pay for private counsel uncovered.³²

In South Africa, contributions are levied where the applicant exceeds the means test, but the Legal Aid Board notes that the income derived from this source is “not significant”.

Where the majority of the population falls below the poverty line, it is questionable what purpose a means test can serve to assist those who need it to access legal aid.

E. Summary

The findings outlined above suggest that, with criminal justice systems operating in their current form, the indigent accused cannot obtain legal representation. One of the consequences is that, in most jurisdictions, the essential elements of a fair hearing, as established by the African Commission on Human and Peoples’ Rights, are rarely met.³³

²⁹ *Access to Justice in Africa and Beyond*, p. 11.

³⁰ *Mapping of Legal Aid Service Providers in Zambia*.

³¹ *Access to Justice in Africa and Beyond*, p. 159.

³² *Ibid.*, p. 122.

³³ This is especially so when account is taken of the powers of sentencing in subordinate courts in a number of countries—14 years by a first-grade magistrate in Malawi; up to seven years in Kenya; and two years by a district court and up to 25 years by a circuit court in Ghana.

The situation is characterized by the following challenges:

- Access to legal aid at all stages of the criminal justice system is generally unavailable (the responses all suggested it was rarely available in police stations and only sometimes available in the lower courts and in prisons).
- Even when a formal legal aid scheme is available, its coverage is inadequate.
- Indigent defendants/victims/complainants are unable to prepare and argue their defence, seek assistance, or solicit advice on filing a claim.
- The poor are “priced out” of the criminal justice system.

IV.

Community legal services



In rural areas, most people turn to local tradition and custom to resolve their disputes and differences and consequent offences. A traditional court is defined by the African Commission on Human and Peoples' Rights as "a body which, in a particular locality, is recognised as having the power to resolve disputes in accordance with local customs, cultural or ethnic values, religious norms or tradition."³⁴

There is substantial evidence from the general literature available that traditional dispute resolution is used by people, especially in rural areas, because it is proximate, intelligible, quick and inexpensive. A commonly cited figure is that 80 per cent of matters are dealt with through traditional dispute resolution mechanisms.³⁵

There is substantial evidence, too, that traditional dispute resolution can be biased in its outcomes and susceptible to social, political and economic pressures; in particular, the protection of women's rights can be compromised.³⁶

While the role of traditional and customary actors does not form part of this survey,³⁷ the Lilongwe Declaration recognizes that "[t]raditional and community-based alternatives to formal criminal processes have the potential to resolve disputes without acrimony and to restore social cohesion within the community."

This survey illustrates a growing recognition of the application of alternative dispute resolution mechanisms to, in the words of the Lilongwe Declaration, "reduce reliance upon the police to enforce the law, to reduce congestion in the courts, and to reduce the reliance upon incarceration as a means of resolving conflict based upon alleged criminal activity." There is also a momentum behind the development of paralegals moving from offering primary justice services in the community (akin to "barefoot

³⁴ Principles and Guidelines on the Right to a Fair Trial and Legal Assistance.

³⁵ See United Kingdom, Department for International Development, *Safety, Security and Accessible Justice: Putting Policy into Practice* (London, July 2002), p. 58 and Organisation for Economic Cooperation and Development, *Enhancing the Delivery of Justice and Security in Fragile States* (Paris, 2006), p. 6.

³⁶ The Dakar Declaration warns against "serious shortcomings" in these traditional courts.

³⁷ For further information on this topic, see International Council on Human Rights Policy: *When Legal Worlds Overlap: Human Rights, State and Non-State Law* (Geneva, 2009). For a recent review of five African case studies from Burundi, Mozambique, Rwanda, Sierra Leone and Uganda, see Luc Huyse and Mark Salter, eds., *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm, International Institute for Democracy and Electoral Assistance, 2008).

doctors” in the health sector) to the formal justice system. In the present chapter, the range of community legal services available are discussed.

A. Solutions mediated by non-governmental organizations as an alternative to traditional dispute resolution

Responses to the survey suggested a degree of confusion in the application of alternative dispute resolution. As one respondent put it:

“Alternative dispute resolution is not widely understood, nor the difference between mediation and arbitration; nor the prevalence of informal arbitration practised by communities through their elders, chiefs etc. On the whole, arbitration is regarded as something that the commercial sector uses and mediation is everything else that isn’t court based.”

Alternative dispute resolution administered by non-governmental organizations has emerged in South Asia (notably in Bangladesh) as an option for poor people, in place of more traditional practices.

As an example of South-South exchange and the adaptation of good practices developed elsewhere, a creative and low-cost mediation model is being piloted in rural Malawi and Sierra Leone.³⁸ The object is to empower people to choose the right forum for resolving their disputes. It may be that land disputes require a ruling by a traditional authority. However, family disputes and minor criminal offences may be more satisfactorily dealt with through a mediated agreement between the parties concerned.

During 2008 and 2009, the “Village Mediation Project” in Malawi trained 450 village mediators in three pilot districts. The mediators are respected members of the local community and they volunteer their mediation services. They are supervised by paralegals from the Paralegal Advisory Service Institute. Paralegals working in prisons, police and courts are able to refer cases to these mediators for the purpose of diverting offenders away from the criminal justice system.

The potential of this scheme for application in countries where formal justice services are limited in rural areas is apparent, especially in those countries recovering from conflict.

³⁸The Paralegal Advisory Service Institute in Malawi has teamed up with the Madaripur Legal Aid Association, the Danish Institute for Human Rights and the Dispute Resolution Centre in Kenya to pilot the “Madaripur Mediation Model” (developed in that district of southern Bangladesh and widely applied throughout the country). Assistance from Irish Aid (Malawi) has been provided to introduce the scheme in rural Malawi, where it is known as the “Village Mediation Programme”. It is being piloted in Sierra Leone with Timap for Justice under the Justice Sector Development Programme, assisted by the United Kingdom Department for International Development.

“The type of justice offered by the formal court system in Sierra Leone — and in other African countries — tends to be inappropriate for resolving disputes between people living in rural villages or urban settlements where the stress on relationships can lead to greater conflict within the community. This in turn can impact adversely on the economy and productivity of the community as a whole. Furthermore, State justice systems in most African countries, including Sierra Leone, have limited infrastructure, lacking in resources to deal with minor disputes in the villages and urban settlements. ... It is logical and in context to promote the formal adoption of mechanisms that exist already within Sierra Leone’s traditional systems, namely the settlement of problems amicably where possible, redress for victims of crime and, where appropriate, the restoration of the offender to the full life of the community.”³⁹

Given the recent introduction of these schemes, no evaluation of them has yet been carried out.

B. Paralegal services in the community

The responses to the survey highlighted the growing recognition of the role of paralegals in the community (where paralegals have long played an important role) and, more recently, in providing legal advice and assistance in the criminal justice system.

Paralegals working in the criminal justice system were first introduced in Malawi with the Paralegal Advisory Service, which started in 2000 to provide basic and appropriate legal advice and assistance to remand prisoners in the country’s four main prisons. By 2003, the service had established itself as an independent legal aid service provider, working with prison and police officers and in the courts throughout the country.⁴⁰

Similar schemes based on the Paralegal Advisory Service model have been launched in West Africa,⁴¹ East Africa⁴² and, on a pilot basis, in South Asia.⁴³ Requests for the introduction of the scheme have been received from Lesotho, Liberia, the United Republic of Tanzania and Zambia.

In prisons in Kenya, Malawi and Uganda, paralegals conduct paralegal aid clinics on a daily basis in the main prisons. These clinics are aimed primarily at prisoners awaiting trial. They aim to empower prisoners to apply the law in their own cases.

³⁹ Project document piloting the VMP, internal document of the Justice Sector Development Programme funded by the United Kingdom Department for International Development, Sierra Leone, 2009.

⁴⁰ For further information, see Adam Stapleton, “Empowering the poor to access criminal justice—a grass roots perspective”, Legal Empowerment Working Papers, No. 2 (Rome, International Development Law Organization, 2010). Available from www.idlo.int/publications/LEWP/LEWP_Stapleton.pdf.

⁴¹ In Benin under the *Projet d’assistance judiciaire aux détenus* in 2002; and Niger under the *Association nigérienne pour la défense des droits de l’homme* in 2006.

⁴² In Kenya under the Kenya Prisons Paralegal Project 2004 and Uganda as the Paralegal Advisory Service (Uganda) in 2005.

⁴³ As the Paralegal Advisory Service (Bangladesh), with funding from the German development agency as a joint project with the Ministry of Home Affairs and Bangladesh Prison Service.

The paralegals work with prison officers to screen and filter prisoners whose cases require attention. In the majority of cases, referrals are made to the court of cases where custody time limits have been exceeded or where bail is appropriate (but the terms set by the court are excessive). They target specific groups of prisoners whose cases remain unresolved for a long time (such as prisoners charged with homicide) or where they appear to have been forgotten (for example, foreign nationals).

The Lilongwe Declaration notes:

“It has all too often been observed that there are not enough lawyers in African countries to provide the legal aid services required by the hundreds of thousands of persons who are affected by criminal justice systems. It is also widely recognised that the only feasible way of delivering effective legal aid to the maximum number of persons is to rely on non-lawyers, including law students, para-legals, and legal assistants. These para-legals and legal assistants can provide access to the justice system for persons subjected to it, assist criminal defendants, and provide knowledge and training to those affected by the system that will enable rights to be effectively asserted. An effective legal aid system should employ complementary legal and law-related services by para-legals and legal assistants.”

Paralegals provide basic legal services appropriate to the needs of the community and may be volunteers who have received a short training.⁴⁴ They operate out of community-based organizations from fixed community advice centres in Southern Africa, justice and confidence centres in the Sudan, and mobile clinics, including legal aid camel trains in Mauritania. In Malawi, paralegals are centrally coordinated by the Paralegal Advisory Service Institute and work for four separate non-governmental organizations. In Kenya, the Legal Resources Foundation coordinates paralegal work with a network of 18 non-governmental organizations.

A survey recently conducted by the Legal Resources Foundation of Zimbabwe sets out the broad range of work and services currently performed by paralegals in Southern Africa.⁴⁵

Table 5 expands on this survey to include examples from other countries, following responses received.

⁴⁴See *Access to Justice in Africa and Beyond*, p. 291.

⁴⁵Mary Ndlovu, *Survey of Paralegal Development in Anglophone Southern Africa* (Zimbabwe, Legal Resources Foundation, 2009).

Paralegals operate in all Southern African countries, according to the Legal Resources Foundation, though in varying numbers. Table 6 shows how many paralegals work in the countries of this region.

Table 6. Paralegals working in Southern African countries

<i>Country</i>	<i>Number of paralegals</i>
Lesotho	32
Malawi	75
Mozambique	75
Namibia	200
South Africa	3 500
United Republic of Tanzania	2 500
Zambia	1 000
Zimbabwe	100

Source: Mary Ndlovu, Survey of Paralegal Development in Anglophone Southern Africa (Zimbabwe, Legal Resources Foundation, 2009).

Reports from several countries indicate that support for the role of paralegals is gathering some momentum.

In Sierra Leone, the Government “recognizes that the vast majority of the population do not have access to satisfactory legal services. It recognizes the valuable role that civil society is fulfilling in this respect, particularly through the provision of community-based paralegal services (for example, Timap for Justice). The Government wishes to explore the potential for scaling up the provision of such services, for example through contracting out or public-private partnerships. It is recognized that extended paralegal service provision has the potential to provide a step change in access to legal services in an extremely cost-effective manner.”⁴⁶

In Malawi, the Law Commission recommended formal recognition of paralegals in a new Legal Aid Bill. The Paralegal Advisory Service Institute has memorandums of understanding with prisons, police and the Legal Aid Department. In 2007, it entered into a “co-operation agreement” with the Ministry of Justice, who pay for its operational costs, in line with an agreed set of targets.

In Zimbabwe, Government policy appears to be moving towards acceptance of paralegals as the Labour Court allows paralegals right of appearance and the Council of Legal Education has agreed a paralegal training certificate.

In South Africa, the Government has developed a policy paper towards recognition of paralegals in providing access to justice which supports:

⁴⁶Sierra Leone, Ministry of Justice, *Justice Sector Reform Strategy and Investment Plan 2008-2010* (Freetown, 2007), p. 52.

- A protocol for the recognition of the services of advice offices and paralegals into the integrated justice system
- The participation of advice offices and paralegals in the integrated justice system, in a way that allows them to retain their independence
- Strengthening and developing the skills and capacity of advice offices and paralegals
- Independent networks of advice offices, community-based organizations and professional bodies working in the integrated justice sector⁴⁷

This builds on a Legal Services Sector Charter,⁴⁸ adopted by all stakeholders in South Africa, which aims to, among other things, devise and implement “measures to address the provision and availability of pro bono services and community-based paralegal services, thus ensuring access to affordable legal services for all people in South Africa, particularly marginalised, poor and rural communities”. Under the Charter, the Government undertakes to “provide for the regulation of non-commercial, community-based, paralegal practitioners so as to provide access to primary legal services in rural, poor and marginalized communities.”

The survey questionnaire asked why people use the services offered by non-State providers and the responses were uniform: they are accessible, free and effective.

The plethora of services available is shown in table 5 above. One concern is that, notwithstanding these efforts, the services offered constitute a drop in the ocean of legal needs and are largely unmonitored. Data measuring impact or the outcome of these activities are not often produced—save for the paralegals operating in the criminal justice systems in Kenya, Malawi and Uganda.

⁴⁷ See Mary Ndlovu, *Survey of Paralegal Development in Anglophone Southern Africa* (Zimbabwe, Legal Resources Foundation, 2009).

⁴⁸ Available from www.issa.org.za/Uploads/files/LSC.pdf.

V.

Legal aid in action

A. Legal advice and assistance at police stations

All the responses to the survey suggest that legal assistance is rarely provided at police stations. This appears to be not because the law does not allow for such assistance to be provided at police stations, but because it is not an established practice. Lawyers may attend at police stations but, as a rule, they do not. Legal aid is a matter for the court to consider (after applications have been lodged and means tests conducted) further along the procedural chain.

The Lilongwe Declaration highlights the importance of “providing legal aid at all stages of the criminal justice process”. This includes investigation, arrest, pretrial detention and bail hearings, in addition to trial and appeal processes.

The Lilongwe Declaration states:

“Suspects, accused persons, and detainees should have access to legal assistance immediately upon arrest and/or detention wherever such arrest and/or detention occurs. A person subject to criminal proceedings should never be prevented from securing legal aid and should always be granted the right to see and consult with a lawyer, accredited para-legal, or legal assistant.”

The survey found a number of legal aid inroads being made into areas of policing. Entry points appear to centre on juveniles, women, refugees (through protection officers from the Office of the United Nations High Commissioner for Refugees) and victims of crime, with specific programmes focusing on their needs:

- In Angola, the United Nations Observer Mission in Angola (MONUA) established a system of estagiarios (newly graduated lawyers) to attend suspects in police stations in the Luanda area. This appears to have stopped with the expiration of the mandate of MONUA.
- In Kenya, it was observed that, although it happened rarely, some Rift Valley Law Society members took turns at police stations attending to minors.
- In Malawi, paralegals from the Paralegal Advisory Service worked with the police by offering to assist police officers in tracing the parents or guardians

of young persons in conflict with the law. This then led to other activities (such as screening young persons for a diversion mechanism) and to attending formal police interviews of adult suspects. Since 2004, paralegals in Malawi have diverted away from the criminal justice system 77 per cent of juveniles in conflict with the law.

- In Nigeria, the Nigerian Police Service and Legal Aid Council started a duty solicitor scheme involving 16 young lawyers from the National Youth Service Corps in designated police stations in four states. The scheme facilitated the release of 2,645 detainees in 2008 and 1,779 detainees between January and June 2009.
- In Sierra Leone, 40 family support units have been established at police stations. In 11 of the units, the police work with and through social welfare officers.
- In the Sudan, the Family and Child Protection Unit set up by the police in Khartoum in 2007, with the support of the United Nations Children’s Fund (UNICEF), was extended to other areas, including El Geneina, in 2008, and is reported to be successful at changing the attitude of the police towards vulnerable groups.
- In Uganda, paralegals from the Paralegal Advisory Service assisted 5,751 accused obtain bail at police stations in 2008 and 2009. The child and family protection units in police stations appear to have gained local trust and support: “A number of ... police stations had men, women, and children from the community queuing for assistance in big numbers. ... The kind of work done and role played by the [Child and Family Protection Unit] is more like that of legal aid clinics. [It is] a community-focused and problem-solving establishment in the police force.”⁴⁹
- In Zambia, paralegals work through units in the police, such as victim support units.

B. Legal advice and assistance in prisons

While prisoners should be able to see a lawyer in prison, the survey responses suggest that this occurs only sometimes. This can and does lead to defendants languishing for long periods in a legal vacuum. The provision of independent legal aid services in prison enables prisoners to understand their position, reduces tensions and helps push through the system cases that have become stuck or overlooked.

The Lilongwe Declaration recognizes the “societal benefits” that result from the “elimination of unnecessary detention, speedy processing of cases, fair and impartial trials, and the reduction of prison populations.” An analysis of the prison population provides insight into the workings of the criminal justice system in a given country and the “blockages” in the system.

⁴⁹Legal Aid Service Providers’ Network, *Mapping Report: Legal Aid Service Provision in Uganda* (Kampala, 2009) p. 35.

The figures in table 7 (compiled from the responses from the national prison administrations of the countries concerned) show prison systems in Africa to be under considerable pressure.

Prisons are crowded in many countries, not only in Africa.⁵⁰ The situation in individual African prisons reveals occupancy rates at 400-700 per cent over capacity. For example, the figures for Zimbabwe in table 7 suggest occupancy does not exceed capacity. However, reports on Chikurubi Maximum Security Prison outside Harare describe cells measuring 9 metres by 4 metres containing 25 men each. Zimbabwe is not unique.

Table 7. Prison figures, selected African countries

<i>Country</i>	<i>Total prison population</i>	<i>Official prison capacity</i>
Burkina Faso	4 207	2 660
Burundi	10 700	4 050
Cameroon	22 181	16 142
Djibouti	525	550
Kenya	47 771	14 000
Malawi	11 632	5 000
Mali	6 700	3 000
Sierra Leone	2 328	981
South Africa	164 596	114 822
Sudan	19 144	7 500
Swaziland	2 713	2 838
Uganda	29 826	13 373
United Republic of Tanzania	39 000	27 653
Zambia	15 544	7 500
Zimbabwe	13 110	17 000

- In 2009, it was reported that Nsawam Prison in Ghana (which has a capacity of 717) held 2,950 prisoners. One remand prisoner claimed he had been awaiting trial for 11 years.
- Pademba Road Prison in Sierra Leone reportedly held 1,229 prisoners when it only has a capacity of 324. In some cases, cells measuring 6 feet by 9 feet housed nine prisoners.⁵¹
- Lusaka Central Prison in Zambia, which has a capacity of 200, held more than 1,500 prisoners in 2008.⁵²

⁵⁰ See King's College London, International Centre for Prison Studies, World Prison Brief. Available from www.kcl.ac.uk/icps.

⁵¹ United States of America, Department of State, *2008 Human Rights Report: Sierra Leone* (Washington, D.C., 2009).

⁵² United States of America, Department of State, *2008 Human Rights Report: Zambia* (Washington, D.C., 2009).

- Niuro Prison in Senegal has been described as resembling a “chicken coop” more than a prison.⁵³
- In July 2008, it was reported that Port Harcourt Prison in Nigeria (capacity 808) held approximately 2,800 inmates, of whom 2,000 were awaiting trial.⁵⁴
- In 2008 in Mozambique, Maputo Central Prison, which has a capacity of 800, held 2,538 prisoners and Inhambane Provincial Prison, designed to hold 75 prisoners, held 339.⁵⁵
- Meru Prison in Kenya held three times more inmates than its intended capacity in 2008 and had only nine toilets between 1,405 prisoners, forcing many to use as toilets the same buckets they used for bathing. In Kamiti Maximum Security Prison, approximately 700 inmates shared a cell block designed for 300.⁵⁶
- Goma Prison in the Democratic Republic of the Congo, which is designed to hold 150 prisoners, held 850 in July 2009, of which 650 were in pretrial detention and had not yet been before a judge.⁵⁷
- Guinea-Bissau has no central prison administration as prisons were destroyed in the civil war in the late 1990s. Currently, use is made of police lock-ups, where sentenced and non-sentenced people are held (a report for PROJUST in December 2009 found that one sentenced prisoner had been held in a police lock-up for four years).

The data gathered in the survey from the prisons department in each country that responded mix verifiable facts (numbers) with the perceptions of prison officers on issues such as access to legal aid and percentage of dangerous offenders in their care. The survey sought to identify the broad character of those in prison, in an effort to gauge the threat they posed to society. Prison administrations were asked to estimate the percentage of prisoners serving sentences or charged with “minor offences”. The survey questionnaire defined “minor” as an offence punishable by up to three years in prison (i.e. offences at the lower end of the criminal scale). From the commentary to the responses received, however, it appears that many prison officers applied more stringent standards for what constituted a minor offence. Therefore, the figures here may be underrepresentative. Table 8 shows estimated figures for prisoners who have been charged with or sentenced for committing “minor” offences.

⁵³United States of America, Department of State, *2008 Human Rights Report: Senegal* (Washington, D.C., 2009).

⁵⁴United States of America, Department of State, *2008 Human Rights Report: Nigeria* (Washington, D.C., 2009).

⁵⁵United States of America, Department of State, *2008 Human Rights Report: Mozambique* (Washington, D.C., 2009).

⁵⁶United States of America, Department of State, *2008 Human Rights Report: Kenya* (Washington, D.C., 2009).

⁵⁷United Nations News Centre, “‘Inhumane’ Congolese prisons need urgent overhaul, UN official says”, 27 July 2009. Available from www.un.org/apps/news/story.asp?NewsID=31603&Cr=DRC&Cr1=kivu.

Table 8. People in prison for “minor” offences

<i>Country</i>	<i>Estimate of the prisoners charged with/sentenced for a minor offence (percentage)</i>	<i>Estimate of the number of prisoners charged with/sentenced for a minor offence</i>
Burkina Faso	67	2 800
Burundi	60	6 400
Cameroon	60	13 300
Djibouti	75	400
Ghana	90	12 500
Lesotho	30	800
Liberia	45	600
Malawi	85	10 000
Mali	60	10 000
Nigeria	57	23 400
Sierra Leone	45	1 000
South Africa	32	52 000
Sudan North	85	16 000
South	80	3 600
Swaziland	85	2 300
Uganda	49	14 600
Zambia	79	12 300

The commentary to the response from the Sudan appears to summarize the situation in many other countries:

“Wau prison is relatively small, with a capacity of 300, and was holding 473 at the end of July 2009. The average time spent awaiting trial was given as 12 months and 80 per cent of the occupants were in prison either sentenced for or awaiting trial on ‘minor’ offences.”

In 11 of the 16 countries that responded to this question, the proportion of “minor” cases exceeded the more serious. The exceptions included countries recovering from conflict, with high numbers of young, demobbed soldiers in the prisons.

It appears on the face of these, albeit anecdotal, responses that prison populations are overrepresented by people who:

- Have committed offences at the lower end of the criminal scale, rather than organized criminals and violent offenders from whom society needs to be protected

- Are awaiting trial (and therefore presumed innocent), many of whom cannot afford the terms of bail set by the court

Anecdote gives way to more serious enquiry, however, with the results of the survey figures governing the remand populations, which are set down in table 9.

Perhaps unsurprisingly, the figures are particularly high in countries recovering from conflict (such as the Democratic Republic of the Congo and Liberia) although Sierra Leone and the south of the Sudan record the numbers of prisoners on remand as representing less than 50 per cent of their prison populations as a whole.

Out of the 40 countries listed in table 9, 16 show remand populations at 50 per cent or higher. Out of 10 of the countries that responded, 2 stated that legal aid was rarely available in prison and 6 said that it was available “sometimes”.

Table 9. Proportion of prison population on remand or awaiting trial

<i>Country</i>	<i>Prison population on remand or awaiting trial (percentage)</i>	<i>Country</i>	<i>Prison population on remand or awaiting trial (percentage)</i>
Algeria	11	Madagascar	65
Angola	58.9	Malawi	18
Benin	79.6	Mali	67
Botswana	17	Mauritania	13
Burkina Faso	46	Mozambique	37
Burundi	63	Namibia	7.9
Cameroon	58	Niger	40
Cape Verde	36	Nigeria	71
Chad	58	Rwanda	27
Congo	70	Senegal	37
Côte d’Ivoire	28	Seychelles	63
Democratic Republic of the Congo	80	Sierra Leone	49
Djibouti	48	South Africa	30
Gabon	40	Sudan (north)	17
Ghana	26	Swaziland	25
Guinea	51	Togo	55
Guinea-Bissau	No prison service	Uganda	56
Kenya	42	United Republic of Tanzania	50
Lesotho	19	Zambia	27
Liberia	86	Zimbabwe	22

Source: Roy Walmsley, *World Pre-trial/Remand Imprisonment List*, 7th ed. (London, International Centre for Prison Studies, 2008).

The time prisoners spend in pretrial detention remains a serious problem throughout Africa. Contributing factors were given as:

- Case backlogs at court, with lawyers failing to appear, judges failing to sit and witnesses not warned to attend
- Multiple adjournments of cases
- Systemic corruption
- Slow police investigation and the loss of case files/dossiers
- Lack of fuel/transport to bring prisoners from prison to court
- Prisoners too poor to be able to afford the terms of bail set by the court
- Prisoners being “forgotten” by the justice system

In Lesotho, remand figures are low (19 per cent) and the average length of pretrial detention is 60 days, after which defendants must be released on bail. In 2002, Lesotho passed a “speedy trial” act, which prohibits holding a suspect in custody for more than 90 days without trial, except in exceptional circumstances.

In Zimbabwe, prisoners in the Harare Remand Prison are reported to have gone months without attending court for bail hearings because the prison service lacks fuel to provide transport. Others, who have been granted bail but cannot afford the terms set by the court, are kept in custody.⁵⁸

In South Africa, it was reported that 11,941 prisoners remained in detention as of 31 March 2008 because they were unable to post bail. It has also been reported that schoolchildren spent more than a year in detention because their families could not post bail.

In other countries, reports from the media of the time spent by prisoners awaiting trial include 10 years (in Nigeria and the United Republic of Tanzania) and 15 years (in Cameroon and the Sudan).

In Kenya, the prisons conducted an audit (census) of the prison population in three prisons in 2003. Prison officers found that 86 per cent of remand prisoners who had committed “bailable offences” had been granted bail but could not meet the conditions set by the court; only 6 per cent of all remand prisoners had hired a lawyer to represent them. They also identified a prisoner in Nakuru Prison who had been awaiting trial for over 18 years, and another in Langata who had been awaiting trial for over 17 years.

A similar exercise conducted by the Ugandan Prison Service found that over 460 prisoners had exceeded their constitutional remand period and were due for unconditional bail.

Recent mass breakouts in Liberia have been attributed to prisoners’ frustration with the lack of progress in their cases and the failure to send them to court.

⁵⁸United States of America, Department of State, *2008 Human Rights Report: Zimbabwe* (Washington, D.C., 2009).

By way of response, prison administrations in some countries are opening up to paralegal-type interventions from outside.

The Legal Aid Board in South Africa currently employs paralegals to screen the remand population in 20 of the most congested prisons, based on the work of the Paralegal Advisory Service Institute.

Sierra Leone has 10 paralegals working in the criminal justice system; and Kenya has over 20 paralegals working in its prisons, while Malawi has than 30 and Uganda has more than 70. In all four countries, the work of paralegals is seen by the authorities to have:

- Significantly helped decongest prisons by speeding up the conclusion of long-pending cases in courts
- Helped remove bottlenecks curtailing access to justice for the poor by facilitating meetings between key criminal justice agencies
- Improved prison conditions

The responses received (and supported by independent evaluations) show the following impact of paralegal services in prison:

In 2006, paralegals in Kenya empowered more than 30,000 prisoners to apply criminal law and represent themselves in court (in applications for bail, entering a plea, defending themselves at trial or entering a plea in mitigation). In Langata prison, paralegals reduced the remand population in a six-week period by 80 per cent.

In Malawi, between May 2000 and February 2009, paralegals empowered more than 150,000 prisoners to apply criminal law, contributing to an overall reduction in the remand population in Malawi prisons from 40 per cent in 2000 (when the scheme began) to 18 per cent in 2009.

Since 2005, paralegals in Uganda have empowered more than 165,000 prisoners to apply criminal law. The Commissioner General of Prisons in Uganda attributes the reduction of the remand population (from 63 per cent to 56 per cent currently) to the work of the paralegals.

In Sierra Leone, paralegals working with lawyers under the pilot national legal aid scheme opened 405 cases and secured the discharge of 112 cases for lack of prosecution and the release of 27 juveniles in a six-week period, while paralegals and lawyers working with Timap for Justice facilitated the reduction of the remand population in Bo prison by 50 per cent over four months in 2009.

C. Legal advice and assistance at court

Representation of the accused during their trials is minimal. Paralegals have expanded their work to courts where they can make contact with the accused and their family

members, witnesses and members of the public to reassure and assist. They explain the court procedure and the stage of the proceedings the case has reached. They link serious cases with lawyers and follow up on matters pertaining to bail and the tracing of sureties, or reductions in the amount set by the court.

- In Kenya, paralegals reduced bail/bond for 917 persons in 2006.
- In Malawi, more than 25,000 accused persons have been assisted since 2000. Magistrates regularly refer the unrepresented accused to paralegals to explain the procedure.
- In Uganda, paralegals facilitated court bond/bail for 3,660 persons during 2008 and 2009 and traced 16,928 sureties.

In the criminal justice system as a whole, one of the key features that appears from the literature on paralegals is the diplomatic way in which they “navigate” their way among the various criminal justice agencies.

Access to justice committees in Kenya and court user committees in Malawi and Uganda, which are serviced by paralegals, aim to link up the criminal justice agencies and civil society actors to come up with local solutions to local problems. The committees meet at fairly regular intervals at the district level under the chairmanship of the presiding magistrate. Paralegals act as the secretariat to these meetings and distribute the minutes and agenda prior to each meeting. The committees are reported to have improved communication and coordination between the criminal justice agencies, and facilitated case flow.

Since prisons lack the transport to bring prisoners to court, paralegals in Malawi bring the court to the prison in the form of “camp courts”.⁵⁹ The paralegals list the cases deserving of attention and forward them to the prosecution and court for appropriate action to be taken when they visit the prison on the day of the camp court.

In Malawi, camp courts are reported to have reduced tensions in prisons and to have reduced the numbers of those held in prison unnecessarily or illegally.

In another innovation, paralegals in Kenya convene “legal aid days” in prison, during which lawyers provide pro bono assistance to groups of remand prisoners identified by paralegals.

D. Community outreach

The aim of the line of enquiry in the survey regarding community outreach was to establish the ways in which legal aid service providers are able to reach out to communities in terms of services and information. In general, the responses received concerning community outreach produced little by way of materials or strategy. Those

⁵⁹A practice borrowed from Bihar state in India.

who did respond voiced concern about the lack of understanding among poor people: “They don’t understand anything that the lawyers say, or the laws.”

In a response from Rwanda, it was observed that “a study on the local situation demonstrated that 98 per cent of the population was not aware of legal aid.”

In another response, it was noted that “the high poverty rate, with low concomitant knowledge of the law, resulted in the inability of parties to resolve simple legal issues.”

While paralegals in Kenya, Malawi and Uganda spread information about the criminal justice process (producing visual aids on bail and criminal procedure in vernacular languages), Legal Aid South Africa appears to stand alone in apportioning a department and budget to community awareness-raising.

The communications department takes advantage of public platforms such as community media and commercial and national radio stations to raise public awareness about legal aid services in the country in the form of drama series and popular soap operas and outdoor media, such as billboards and taxi branding. They work in the schools on street law programmes, including “fair play” tournaments in local primary schools to educate young people about the rule of law.

VI.

Conclusion and recommendations

This survey seeks to present a snapshot of the current situation of legal aid across Africa. It suggests that countries are struggling to maintain legal systems which rely upon expensive institutions and personnel and which themselves are under intolerable pressure to deliver the essential elements of a fair hearing, as set down by the African Charter on Human and Peoples' Rights in the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

While the legal framework may appear to be adequate in terms of the written law, specific legislation, adequate policies and the resources to implement them are still missing in many countries and the poor are simply "priced out" of the criminal justice system.

The results of the survey show:

- The constitutions of only four countries (Cape Verde, Egypt, Ethiopia and Mozambique) provide a right to legal aid at public expense without restrictions (see annex I).
- The constitutions of 11 countries provide a right to legal aid but fail to specify who should ensure that such aid is provided.
- The constitutions of 20 countries provide for the right to a defence.
- Lawyers are few in number in most countries (except possibly in Botswana, Egypt, Ghana, Kenya, Nigeria and South Africa).
- Law students pursue long courses based on classical law curricula that do not refer to the context in Africa. Law students and graduates are required to perform public-interest legal services in only five out of 14 countries that responded to the survey.
- Paralegal schemes are being developed to complement the services of lawyers, especially in eastern, central and southern Africa, but remain few in number and incomplete in terms of national coverage.
- In 37 of the 47 countries surveyed, the majority of the population lives in rural areas.

- In 17 poverty reduction strategy papers reviewed, reference is made to legal aid. However, from the few returns received on budget allocations, State allocations appear inadequate (except in South Africa).
- Prisons, in general, exceed their capacity. In 12 of the 17 prison services, the proportion of “minor” cases exceeds that of more serious matters. In 16 of the 40 prison services surveyed, the population awaiting trial is higher than the convicted population. People can wait for years to be tried.

The following conclusions can be drawn:

- Coverage by the State legal aid system is patchy at best.
- Access to legal aid at all stages of the criminal justice system is generally unavailable.
- Budgetary allocation for legal aid is not meaningful.
- Persons accused of crime cannot expect legal advice in mounting a defence or forming a plea to a serious charge, or representation in cases involving a prison sentence.
- Lawyers are few in number and generally unavailable in rural areas; law students are under used.
- Community legal services are not available in every district or accessible by every person in need of such services.
- Most Governments do not have an overarching legal aid strategy to maximize the use of the resources available.

Evidently, the State delivery systems, as currently established, cannot fulfil their legal obligations without a vast investment in human and material resources.

Given the focus on achieving the Millennium Development Goals and the competing claims of related sectors on the national budget (i.e. health, education and food security), legal aid—as a component of the justice sector (further competing with the police, the prisons and the judiciary)—is unlikely to be a high priority. Consequently, the level of investment required is unattainable.

Recommendations

The following are recommended:

- A review of legal aid systems by African Governments in line with the resolutions adopted by the African Commission, with particular reference to the Lilongwe Declaration and Plan of Action, leading to the adoption of national strategies for the provision of legal aid
- A move towards a functional approach to legal aid that builds on partnerships or agreements with a range of legal service providers, meets the needs of poor people and is affordable in the long term to Governments

In this regard, Governments and relevant organizations should take the following measures:

- Provide legal aid at all stages of the criminal justice process (in particular in police stations on arrest, in prisons and in the lower courts)
- Create incentives to increase the number of lawyers offering legal aid services
- Develop a cadre of paralegals to support the work of lawyers, assist at police stations, in prison and at court and provide a range of primary justice services in the community
- Support and encourage law clinics in universities and promote public-interest law among law students
- Empower victims of crime to access justice through the courts or, in appropriate cases, to apply to alternative dispute resolution mechanisms at any stage of the criminal justice process
- Work with traditional authorities and the general public to improve and expand legal awareness

Such measures will reduce pressure on criminal justice systems and free up time, space and funds for the police, courts, lawyers and prisons. It will enable them to focus scarce resources on serious and complex criminal cases, and empower ordinary people to manage and settle their disputes and minor criminal matters within the community, to the advantage of all concerned.

Annex I. The right to legal aid in the constitutions of African countries

Country	(a) General right to legal aid at public expense	(b) Qualified right to legal aid at public expense when justice requires	(c) Right to legal aid at own expense	(d) Right to legal aid, unclear who is responsible for expense	(e) Recognition of the right to a defence	(f) Right to a fair trial	(g) Arrests to be made in accordance with national laws	Relevant text / notes
Algeria					Article 151			Article 151(1): The right to defence is recognized. (2) In penal matters, it is guaranteed.
Angola				Article 36 (1)				Article 36 (1): No citizen may be arrested or put on trial except in accordance with the law, and all accused shall be guaranteed the right to defence and the right to legal aid and counsel.
Benin					Article 17			Article 17: Everyone charged with a crime is presumed innocent until proved guilty according to law in a public trial during which all the guarantees necessary for their defence have been assured.

Botswana			Chapter II, 10(2)(d)				Chapter II, 10(2)(d): Every person who is charged with a criminal offence shall be permitted to defend himself before the court in person or, at his own expense, by a legal representative of his own choice.
Burkina Faso				Article 4			Article 4: ... The right to defence, including the right to freely choose counsel, is guaranteed in all courts.
Burundi					Article 39		Article 39: ... The right to defence is guaranteed in all courts.
Cameroon					Preamble		Preamble: [E]very accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defence.
Cape Verde	Article 33(3)						Article 33(3): The indicted persons who, for economic reasons, are unable to hire defence counsel, shall have adequate judicial assistance to be provided for by relevant institutes.

Country	<i>(a) General right to legal aid at public expense</i>	<i>(b) Qualified right to legal aid at public expense when justice requires</i>	<i>(c) Right to legal aid at own expense</i>	<i>(d) Right to legal aid, unclear who is responsible for expense</i>	<i>(e) Recognition of the right to a defence</i>	<i>(f) Right to a fair trial</i>	<i>(g) Arrests to be made in accordance with national laws</i>	<i>Relevant text / notes</i>
Central African Republic					Article 3			Article 3: ... Every accused person is presumed innocent until his culpability is established at the end of a procedure which offers him the indispensable guarantees of his defence. ... The rights of the defence shall be freely exercised themselves before all the jurisdictions of the Republic.
Chad					Article 24			Article 24: Any accused is presumed innocent until the establishment of his or her culpability following a regular process offering indispensable guarantees for his or her defence.

Congo			Article 9		Article 9: The liberty of the human person is inviolable. One shall be accused, arrested, or detained only in the cases determined by law and according to the forms which it prescribes. Every accused shall be presumed innocent until his guilt shall be established at the end of a procedure offering him the guarantees of a defence.
Côte d'Ivoire			Article 22		Article 22: No one may be arbitrarily detained. Any accused person shall be presumed innocent until his or her culpability has been established following a procedure offering him or her guarantees indispensable to his or her defence.
Democratic Republic of the Congo			Article 19		Article 19: ... The right of defence is organized and guaranteed. Everyone has the right to defend himself or to legal counsel of his choice, at all levels of criminal procedure, including the police investigation and pre-court briefing. ...

Country	(a) General right to legal aid at public expense	(b) Qualified right to legal aid at public expense when justice requires	(c) Right to legal aid at own expense	(d) Right to legal aid, unclear who is responsible for expense	(e) Recognition of the right to a defence	(f) Right to a fair trial	(g) Arrests to be made in accordance with national laws	Relevant text / notes
Djibouti				Article 10				Article 10: ... The right to defence, including the right to legal assistance of one's own choosing, shall be guaranteed at all stages of proceedings. Anyone who is deprived of his liberty shall have the right to be examined by a doctor of his own choosing. ...
Egypt	Article 67							Article 67: Any defendant is innocent until he is proved guilty before a legal court, in which he is granted the right to defend himself. Every person accused of a crime must be provided with counsel for his defence.
Equatorial Guinea					Item 13 (r)			Item 13 (r): [Every citizen shall enjoy the following rights and freedoms:] Shall not be condemned without proof, nor deprived of the right to defence.

Eritrea				Article 17 (6)	Article 17 (6): Every person charged with an offence shall be entitled to a fair and public hearing by a court of law; provided, however, that such a court may exclude the press and/or the public from all or any part of the trial for reasons of morals, the public order or national security, as is necessary in a just and democratic society.
Ethiopia	Article 52				Article 52: In all criminal prosecutions the accused, duly submitting to the court, shall have the right to a speedy trial and to be confronted with the witnesses against him, to have compulsory process in accordance with the law, for obtaining witnesses in his favour at the expense of the Government and to have the assistance of a counsel for his defence, who, if the accused is unable to obtain the same by his own funds, shall be assigned and provided to the accused by the court.

<i>Country</i>	<i>(a) General right to legal aid at public expense</i>	<i>(b) Qualified right to legal aid at public expense when justice requires</i>	<i>(c) Right to legal aid at own expense</i>	<i>(d) Right to legal aid, unclear who is responsible for expense</i>	<i>(e) Recognition of the right to a defence</i>	<i>(f) Right to a fair trial</i>	<i>(g) Arrests to be made in accordance with national laws</i>	<i>Relevant text / notes</i>
Gabon					Article 1(4)			Article 1(4): The right to a defence, in the judicial process, shall be guaranteed to all; preventive detention shall not exceed the time contemplated by the law.
Gambia		Chapter IV, 24(3)(d)						Chapter IV, 24(3)(d): [Every person who is charged with a criminal offence] shall be permitted to defend himself or herself before the court in person or, at his or her own expense, by a legal representative of his or her own choice; provided that where a person is charged with an offence which carries a punishment of death or imprisonment for life, that person shall be entitled to legal aid at the expense of the State.

Ghana			19(2)(f)			19(2)(f): [A person charged with a criminal offence shall] be permitted to defend himself before the court in person by a lawyer of his choice.
Guinea				Article 9		Article 9: No one shall be arrested, detained or condemned except under conditions and methods specified by law. Everyone shall have the indefeasible right to present himself before a judge to assert his rights before the State and its agents. All citizens shall have the right to a just and equitable trial, in which the right to present a defence is guaranteed. The law shall establish penalties necessary and proportionate to the crimes for which they are justified.
Guinea-Bissau				Article 35(5)		Article 35(5): Every accused person shall have the right to his defence, being assured all necessary legal guarantees and considered innocent until declared guilty by a court sentence.

Country	<i>(a) General right to legal aid at public expense</i>	<i>(b) Qualified right to legal aid at public expense when justice requires</i>	<i>(c) Right to legal aid at own expense</i>	<i>(d) Right to legal aid, unclear who is responsible for expense</i>	<i>(e) Recognition of the right to a defence</i>	<i>(f) Right to a fair trial</i>	<i>(g) Arrests to be made in accordance with national laws</i>	<i>Relevant text / notes</i>
Kenya			Article 77(2)					Article 77(2): Every person who is charged with a criminal offence: (d) shall be permitted to defend himself before the court in person or by a legal representative of his own choice. (14) Nothing contained in subsection (2)(d) shall be construed as entitling a person to legal representation at public expense.
Lesotho				Chapter II, 12(2)(d)				Chapter II, 12(2)(d): [Every person who is charged with a criminal offence] shall be permitted to defend himself before the court in person or by a legal representative of his own choice.

Liberia		Article 21(d) (ii)(e)				Article 21(d)(ii)(e): The right to counsel and the rights of counsel shall be inviolable. There shall be no interference with the lawyer-client relationship. In all trials, hearings, interrogatories and other proceedings where a person is accused of a criminal offence, the accused shall have the right to counsel of his choice; and where the accused is unable to secure such representation, the Republic shall make available legal aid services to ensure the protection of his rights.
Libyan Arab Jamahiriya				Article 31		Article 31(c): The defendant shall be presumed innocent until proven guilty. All necessary guarantees for the exercise of his defence shall be provided. ...
Madagascar				Article 13		Article 13: ... The State shall guarantee full, inviolable rights of defence in all jurisdictions and all stages of procedure, including the preliminary investigation, at the level of the judicial police or the public prosecutor's office.

Country	(a) General right to legal aid at public expense	(b) Qualified right to legal aid at public expense when justice requires	(c) Right to legal aid at own expense	(d) Right to legal aid, unclear who is responsible for expense	(e) Recognition of the right to a defence	(f) Right to a fair trial	(g) Arrests to be made in accordance with national laws	Relevant text / notes
Malawi		Chapter IV, 42(1)						Chapter IV, 42(1): Every person who is detained, including every sentenced prisoner, shall have the right ... (c) to consult confidentially with a legal practitioner of his or her choice, to be informed of this right promptly and, where the interests of justice so require, to be provided with the services of a legal practitioner by the State.
Mali				Article 9				Article 9: ... The right to a defence, which includes assistance by a lawyer of choice, is guaranteed from the outset of interrogation.
Mauritania							Article 13	Article 13: ... No one may be prosecuted, arrested, detained or punished except in cases determined by the law and according to the formalities which it prescribes.

Mauritius		Chapter II, 10(2)(d)					Chapter II, 10(2)(d):[Every person who is charged with a criminal offence] shall be permitted to defend himself in person or, at his own expense, by a legal representative of his own choice or, where so prescribed, by a legal representative provided at the public expense.
Morocco						Article 10	Article 10: No one shall be arrested, put into custody or penalized except under the circumstances and procedures prescribed by law. The home shall be inviolable. Search warrants shall be issued and investigations ordered under the conditions and procedures prescribed by law.
Mozambique	Article 62(2)						Article 62(2): The accused shall have the right freely to choose a defence counsel to assist in all acts of the proceedings. It shall be ensured that adequate legal assistance and aid is given to accused persons who, for economic reasons, are unable to engage their own attorney.

Country	(a) General right to legal aid at public expense	(b) Qualified right to legal aid at public expense when justice requires	(c) Right to legal aid at own expense	(d) Right to legal aid, unclear who is responsible for expense	(e) Recognition of the right to a defence	(f) Right to a fair trial	(g) Arrests to be made in accordance with national laws	Relevant text / notes
Namibia				Article 12(1)(e)				Article 12(1)(e): All persons shall be afforded adequate time and facilities for the preparation and presentation of their defence, before the commencement of and during their trial, and shall be entitled to be defended by a legal practitioner of their choice.
Niger					Article 17			Article 17: Everyone charged with a crime is presumed innocent until proved guilty according to law in a public trial during which all the guarantees necessary for their defence have been assured.
Nigeria				Chapter IV, 36(6)				Chapter IV, 36(6): Every person who is charged with a criminal offence shall be entitled to ... (c) defend himself in person or by legal practitioners of his own choice.

Rwanda			Article 18		Article 18: The right to be informed of the nature and cause of charges and the right to defence are absolute at all levels and degrees of proceedings before administrative, judicial and all other decision-making organs.
Sao Tome and Principe			Article 40(1) and (3)		Article 40(1): The prosecution will ensure all the guarantees of defence. ... (3) The accused has the right to choose and be represented by counsel at all stages of the proceedings, the law specifying the cases and the phases in which such assistance is required.
Senegal			Article 9		Article 9: Any infringement of these freedoms and any restriction of the exercise of a freedom shall be punishable by law. No one may be convicted other than by virtue of a law which became effective before the act was committed. Defence is an absolute right in states and at all stages of the proceedings.

Country	(a) General right to legal aid at public expense	(b) Qualified right to legal aid at public expense when justice requires	(c) Right to legal aid at own expense	(d) Right to legal aid, unclear who is responsible for expense	(e) Recognition of the right to a defence	(f) Right to a fair trial	(g) Arrests to be made in accordance with national laws	Relevant text / notes
Seychelles		Article 19(2)(d)						Article 19(2)(d): [Every person who is charged with an offence] has a right to be defended before the court in person, or, at the person's own expense, by a legal practitioner of the person's own choice, or, where a law so provides, by a legal practitioner provided at public expense.
Sierra Leone				23(5)(c)				(23)(5)(c): [Every person who is charged with a criminal offence] shall be permitted to defend himself in person or by a legal practitioner of his own choice. (23)(11): In paragraphs (c) and (d) of subsection (5), the expression "legal practitioner" means a person entitled to practise as a barrister and solicitor of the High Court.

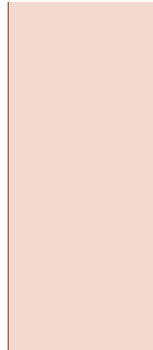
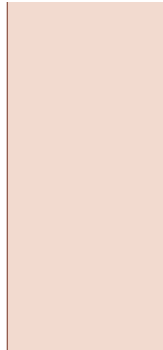
Country	<i>(a) General right to legal aid at public expense</i>	<i>(b) Qualified right to legal aid at public expense when justice requires</i>	<i>(c) Right to legal aid at own expense</i>	<i>(d) Right to legal aid, unclear who is responsible for expense</i>	<i>(e) Recognition of the right to a defence</i>	<i>(f) Right to a fair trial</i>	<i>(g) Arrests to be made in accordance with national laws</i>	<i>Relevant text / notes</i>
South Africa		Section 35(2)(c)						Section 35(2)(b): [Everyone who is detained, including every sentenced prisoner, has the right] to choose, and to consult with, a legal practitioner, and to be informed of this right promptly; (c) to have a legal practitioner assigned to the detained person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly.
Sudan		34(6) (Interim Constitution of the Republic of the Sudan) and 23 (6) (Interim Constitution of Southern Sudan)						Any accused person has the right to defend himself/herself in person or through a lawyer of his/her own choice and to have legal aid assigned to him/her by the State where he/she is unable to defend himself/herself in serious offences.

<i>Country</i>	<i>(a) General right to legal aid at public expense</i>	<i>(b) Qualified right to legal aid at public expense when justice requires</i>	<i>(c) Right to legal aid at own expense</i>	<i>(d) Right to legal aid, unclear who is responsible for expense</i>	<i>(e) Recognition of the right to a defence</i>	<i>(f) Right to a fair trial</i>	<i>(g) Arrests to be made in accordance with national laws</i>	<i>Relevant text / notes</i>
Swaziland		Articles 16(2) and 21(2)(c)						<p>Article 16(2): A person who is arrested or detained shall be informed as soon as reasonably practicable, in a language which that person understands, of the reasons for the arrest or detention and of the right of that person to a legal representative chosen by that person.</p> <p>Article 21(2)(c): [A person who is charged with a criminal offence shall be] entitled to legal representation at the expense of the Government in the case of any offence which carries a sentence of death or imprisonment for life ... (e) permitted to present a defence before the court either directly or through a legal representative chosen by that person.</p>

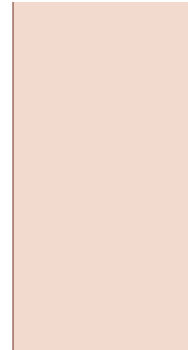
Togo			Article 18		Article 18: Any suspect or accused is presumed innocent until his guilt has been established following a trial that offers the guarantees necessary for his defence.
Tunisia			Article 12		Article 12: Every accused person is presumed innocent until his guilt is established in accordance with a procedure offering him guarantees indispensable for his defence.
Uganda	Article 28(3) (d)				Article 28(3)(c) [Every person who is charged with a criminal offence shall] be permitted to appear before the court in person or, at that person's own expense, by a lawyer of his or her choice; (d) in the case of any offence which carries a sentence of death or imprisonment for life, be entitled to legal representation at the expense of the State.

Country	<i>(a) General right to legal aid at public expense</i>	<i>(b) Qualified right to legal aid at public expense when justice requires</i>	<i>(c) Right to legal aid at own expense</i>	<i>(d) Right to legal aid, unclear who is responsible for expense</i>	<i>(e) Recognition of the right to a defence</i>	<i>(f) Right to a fair trial</i>	<i>(g) Arrests to be made in accordance with national laws</i>	<i>Relevant text / notes</i>
United Republic of Tanzania						13(6)(a)		13(6)(a): When the rights and duties of any person are being determined by the court or any other agency, that person shall be entitled to a fair hearing and to the right of appeal or other legal remedy against the decision of the court or of the other agency concerned.
Zambia		Article 18(2)(d)						Part III, Article 18(2)(d): [Every person who is charged with a criminal offence] shall, unless legal aid is granted him in accordance with the law enacted by Parliament for such purpose, be permitted to defend himself before the court in person, or at his own expense, by a legal representative of his own choice.

Zimbabwe



18(3)



18(3)(d) [Every person who is charged with a criminal offence] shall be permitted to defend himself in person or, save in proceedings before a local court, at his own expense by a legal representative of his own choice. ... “legal representative” means a legal practitioner who is lawfully in Zimbabwe.

Source: Constitution Finder, available at <http://confinder.richmond.edu>, the African Human Rights Law Document Database, available from www.chr.up.ac.za, and the Max Planck Institute for Comparative Public Law and International Law (www.mpil.de).

Note: Column (a) includes the countries whose constitution guarantees the right to legal aid at public expense without any restrictions. The constitutions of four countries guarantee their citizens this right.

Column (b) includes the countries where the constitution provides legal aid at public expense only when the interest of justice requires. It should be noted that the phrase “when the interest of justice requires” is often not defined, and in practice can be limited to capital cases. Ten countries provide this qualified right in their constitution.

Column (c) includes countries whose constitution contains a right to legal aid, but specify that it is not guaranteed at public expense. Only two countries constitutionally guarantee legal aid to those who can afford to pay for it.

Column (d) includes countries whose constitution indicates that a person has the right to legal aid, but does not specify whether the State would provide said legal aid. The constitutions of 11 countries fall into this category.

Column (e) includes those countries where there is a recognized right to a defence, but the constitutional provision does not mention whether the right includes access to legal aid. Twenty countries fall under this category.

Column (f) indicates those countries whose constitution recognizes that a person should have the right to a fair trial, but does not specify whether this includes the right to legal aid or to present a defence. Two countries fall under this category.

Column (g) is for those countries whose constitution does not indicate that its citizens have a right to legal aid, a defence or a fair trial, but states that individuals should only be arrested in accordance with the national laws. Two countries fall in this category.

Annex II. Status of the death penalty in African countries

<i>Country</i>	<i>Abolitionist for all crimes^a</i>	<i>Abolitionist for ordinary crimes only^b</i>	<i>Abolitionist in practice^c</i>	<i>Retentionist^d</i>	<i>Notes</i>
Algeria			X		Last execution in 1993
Angola	X				Abolished for all crimes in 1992
Benin			X		Last execution in 1987
Botswana				X	
Burkina Faso			X		Last execution in 1989
Burundi	X				Abolished for all crimes in 2009
Cameroon			X		Last execution in 1997
Cape Verde	X				Abolished for all crimes in 1981; last execution in 1935
Central African Republic			X		Last execution in 1981
Chad				X	
Congo			X		Last execution in 1982
Côte d'Ivoire	X				Abolished for all crimes in 2000
Democratic Republic of the Congo				X	
Djibouti	X				Abolished for all crimes in 1995; no executions since independence
Egypt				X	

Equatorial Guinea				X	
Eritrea			X		Last execution in 1989
Ethiopia				X	
Gabon			X		Last execution in 1981
Gambia			X		Last execution in 1981
Ghana			X		Last execution in 1993
Guinea				X	
Guinea-Bissau	X				Abolished for all crimes in 1993; last known execution in 1986
Kenya			X		Last execution in 1987
Lesotho			X		Last execution in 1995
Liberia ^e					Last execution in 2000
Libyan Arab Jamahiriya				X	
Madagascar			X		Last known execution in 1958
Malawi			X		Last execution in 1992
Mali			X		Last execution in 1980
Mauritania			X		Last execution in 1987
Mauritius	X				Abolished for all crimes in 1995; last known execution in 1987
Morocco			X		Last execution in 1993
Mozambique	X				Abolished for all crimes in 1990; last execution in 1986

<i>Country</i>	<i>Abolitionist for all crimes^a</i>	<i>Abolitionist for ordinary crimes only^b</i>	<i>Abolitionist in practice^c</i>	<i>Retentionist^d</i>	<i>Notes</i>
Namibia	X				Abolished for all crimes in 1990; last known execution in 1988
Niger			X		Last known execution in 1976
Nigeria				X	
Rwanda	X				Abolished for all crimes in 2007; last execution in 1998
Sao Tome and Principe	X				Abolished for all crimes in 1990; no executions since independence
Senegal	X				Abolished for all crimes in 2004; last execution in 1967
Seychelles	X				Abolished for all crimes in 1993; no executions since independence
Sierra Leone			X		Last execution in 1998
Somalia				X	
South Africa	X				Abolished for all crimes in 1997; abolished for ordinary crimes in 1995; last execution in 1991
Sudan				X	
Swaziland			X		Last execution in 1983
Togo			X		Last execution in 1978

<i>Country</i>	<i>Abolitionist for all crimes^a</i>	<i>Abolitionist for ordinary crimes only^b</i>	<i>Abolitionist in practice^c</i>	<i>Retentionist^d</i>	<i>Notes</i>
Tunisia			X		Last execution in 1991
Uganda				X	
United Republic of Tanzania			X		Last execution in 1995
Zambia			X		Last execution in 1997
Zimbabwe				X	

Sources: “Capital punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty: report of the Secretary-General” (E/2010/10) and Amnesty International, Abolitionist and retentionist countries. Available from www.amnesty.org/en/death-penalty/abolitionist-and-retentionist-countries.

^aCountries and territories are categorized as “abolitionist for all crimes” if laws do not provide for the death penalty for any crime.

^bCountries and territories are categorized as “abolitionist for ordinary crimes only” if laws provide for the death penalty only for exceptional crimes such as crimes under military law or crimes committed in exceptional circumstances.

^cCountries and territories are categorized as “abolitionist in practice” if the death penalty is retained for ordinary crimes such as murder but in practice they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions. The list also includes countries which have made an international commitment not to use the death penalty.

^dCountries and territories are categorized as “retentionist” if the death penalty is retained for ordinary crimes.

^eLiberia is currently in an uncertain position. In September 2005, Liberian law was amended to remove capital punishment and the country acceded to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Some months after abolition, legislation was enacted imposing capital punishment for gang rape, although the penalty was subsequently changed to life imprisonment. Then, Liberia’s Parliament introduced the death penalty for armed robbery, terrorism and hijacking. The legislation was approved by the President in July 2008.



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