

The High Price of Justice: A Menu for Low Cost Options

By: **Martha Nanjobe, Pro Bono Legal Services, Legal Aid Project, Uganda**

A paper presented on 10th May 2004 at the Seventh Biennial Conference of the International Women Judges in Entebbe, Uganda, on a panel entitled “Making Justice More Accessible—Low Cost Options.”

1) Introduction

I am honored to be invited to speak at this special forum, which has been convened to discuss the theme of “Access to Justice,” and I am pleased to be at this forum to share the work of the Legal Aid Project (LAP) of the Uganda Law Society in promoting Access to Justice.

Legal Aid is a necessary element of the justice system. Legal aid enables the justice system to maintain the concept of “a fair go for all.” All people are entitled to be treated equally before the law notwithstanding their sexual, religious, ethnic, cultural, social and any other background. This is a fundamental principle and a fundamental foundation for fairness. Access to Justice means that in order for people to have “a fair go,” the justice system must be accessible to all, and it must lead to results that are individually and socially just.

Promoting Access to Justice is fundamental to the Rule of Law, good governance, democracy and observance of human rights. Educating people about their legal and human rights is also fundamental in promoting access to justice. If people do not know about their rights and cannot exercise them, the fact that the Constitution and other laws have enshrined them is of very little practical impact. Rights as enunciated in the law books and in the court cases should be real in the lives of all Ugandans.

2) Background of Legal Aid Project (LAP)

LAP was set up in 1992 by the Uganda Law Society with assistance from the Norwegian Bar Association and the Norwegian Agency for Development (NORAD) on the premise that equal access to justice is an inalienable right for all. The LAP was conceived out of concern for the large numbers of people incapable of accessing and using the law to enforce and protect their rights because of socio-economic status, gender and geographical location.

LAP’s Vision:

A Ugandan Society where justice is accessible to all irrespective of their gender, social or economic status and where people understand, promote, respect and participate in the protection of their rights.

LAP’s Mission:

Promote access to justice for the socially and economically disadvantaged men, women and children in the Ugandan society through providing legal aid services.

LAP Objectives:

- ◆ Effective legal aid services to indigent men, women and children delivered.
- ◆ Increased awareness of the community, law enforcement officers, policy makers and indigent women, men and children on human rights, laws and legal rules and procedures.

- ◆ Promote access to justice for vulnerable men, women, and children in prisons.
- ◆ Improved efficient and effective implementation of planned activities.
- ◆ Networks with legal aid providers in Uganda and the region established.

LAP has offices in Kampala, Jinja, Gulu and Fort Portal, and fully qualified advocates, legal assistants and volunteers are employed to provide legal aid services to clients.

3. LAP Clients

LAP's primary beneficiaries are indigent men, women and children in Uganda who cannot afford to hire the services of private practitioners. For a person to be eligible to receive legal aid, s/he must undergo a MEANS AND MERITS test whose functions are:

1. To establish that the person really cannot afford the services of a private lawyer: LAP looks at the assets, financial responsibilities, housing arrangements and the income of the client. For instance, a client who lives in an urban housing area in his or her own home is not considered to be indigent. Also, a person who rents a house of approx. USD 200 per month is not considered to be indigent by Ugandan standards.
 - However, LAP draws a line between "financial means" in legal aid cases generally, and in "financial means" relating to women's cases. In the experience of LAP and FIDA, it has been noted that most of the cases brought by women are related to matrimonial issues, child maintenance, custody, succession and/or inheritance disputes. In many cases one may find that a woman lives an affluent life whilst she is married, which status ceases when the relationship ends. On her own, she is indigent and vulnerable. FIDA and LAP have therefore included the aspect of "*vulnerability*" in the definition of "Who can get legal aid".
2. To determine the merits of a client's case: Before a client can receive legal aid, LAP must consider the merits of the case presented by a client. The rationale is that:
 - LAP is donor funded, and operates on limited budgets. On the other hand, the demand for legal aid services is very high given the fact that most of the Ugandans are too poor to afford legal services. LAP thereby has to be sure that a particular case warrants expenditure of the limited aid funds.
 - Where a case cannot be resolved amicably and has to be taken to Court, LAP requires clients to contribute to filing fees and fuel expenses. Due to the fact that we do not know how long the case will take in Court, the client will continue to incur these costs for as long as the case is still in court. Many clients cannot afford these expenditures! Furthermore, if the legal aid client loses the case, s/he may be required to pay the costs of the case to the winning litigant and to his/her lawyer (if s/he has one). This considerably increases the difficulty of the client who has lost the case, spent money on the case, and now has to pay the costs of the case. Many clients definitely cannot pay these costs and end up in civil prisons, or have to dispose of their personal belongings to settle these debts.

LAP handles a wide range of cases. These include land and property disputes (which made up 40% of the cases handled by LAP in 2003), Succession and Administration of Estate claims,

Accident claims, Divorce and separation, Custody claims, Maintenance claims, Marital disputes, Illegal arrest and detention, Criminal cases generally, Civil cases generally including debt claims, Employment claims.

LAP provides legal aid to indigent **men, women and children**. However, there are a number of cases that are characteristically brought by men and women to legal aid providers. These are:

- Maintenance of children
- Custody of children
- Domestic/Marital disputes
- Land and property disputes (mainly arising out of succession and inheritance claims)
- Divorce and separation

Domestic Violence is a common case perpetrated against women, but has not been listed among the cases above. This is because at present there is no law against domestic violence in Uganda. Clients are normally advised to refer the matter to police as a criminal offence of ASSAULT.

The majority of the women's cases are in relation to child maintenance. However, the sums involved are usually very little, as low as UGX 10,000 or USD 6 per month. It is in very rare cases that a female client will get UGX 200,000 or USD 110 per month in respect of child maintenance.

The nature of cases brought by women, and the remedies sought to have raised the perception that there is more to these cases than meets the eyes. Our experiences on many occasions was of women who claimed maintenance or custody, while the real problem was desire to reconcile with their spouse, or anger in case she has heard that the man got himself another woman.

Furthermore, many of the LAP female clients are unemployed, and even the monies they receive as maintenance cannot enable them to look after their children.

There is a need to consider a holistic approach to legal aid service delivery, and look at durable options of empowering women to be in charge of their own lives, especially economically, and also to provide counseling services for them. Presently, legal aid service providers are providing legal aid only. However, this may not be a durable solution to the women's problems.

There is also a need to enhance the mediation skills of the advocates of the legal aid service providers so as to enable them to get to the root of the issues presented to them.

4. LAP SERVICES

LAP offers a variety of services for its clients. These are:

A. Legal Aid Clinics

The legal aid clinics are LAP's core activities. Activities of the legal aid clinics comprise of the provision of legal advice, mediation and/or negotiation, locus visits and advocacy services. The emphasis of the legal aid clinics is on solving of matters using alternative dispute resolution through mediation, negotiation and counseling. LAP does this by inviting the parties to the dispute to LAP offices to settle the matter amicably. If the respondent comes on the appointed date and time, a meeting is held wherein the LAP advocate/legal

assistance plays the role of moderator for the case. The mediation meeting also acts as fact-finding mission—for the advocate to hear the respondent’s side of the story, and thereafter resolve the matter amicably. If the respondent agrees to an amicable settlement, the terms are then agreed upon, and an agreement is executed, witnessed by the LAP Project Advocate.

The LAP procedure is that at least three letters should be written to the respondent inviting him/her to settle the matters amicably before taking the matter to court. The letters are carefully worded so as to gain the cooperation of the respondent and his/her willingness to settle the matter.

Where a case cannot be solved amicably, LAP represents the indigent men, women and children in court.

It is important to note that in most cases the poor seek legal services as a last resort. This means that they need quick and effective remedies to alleviate their suffering, deprivation and denial of their rights. The alternative Dispute resolution methods of conflict resolution adopted by legal aid providers have proved very effective especially in handling family matters and children rights issues.

Successes of the legal aid clinics.

ADR has not been fully embraced by the wider legal profession, who consider it as A Drop in Revenue. They often advise their clients against amicable settlement because they may not get money from the transaction.

The high demand for legal aid services compared to the staffing of the clinics. Up country branched have one Project Advocate and one volunteer, who are supposed to serve a region of about 10 geographical districts.

Many clients are ignorant of the law and legal procedures. Too often, clients come with cases that are time barred. Many clients have good cases, but do not know the evidence requirements for a case to success.

Ascertaining the merits of a client’s cases can be difficult in situations where testimonies of witnesses are required in order for the advocate to determine the merits of a case. In this case the client had to sell his bicycle in order to bring witnesses to LAP! This aspect is related to the geographical accessibility of the offices. A menu for low cost options must consider the capacity of the clients to access the legal aid offices.

B. Legal and Human Rights Awareness and training

“Empowering communities, accessibility to justice, rule of law and good governance”

LAP undertakes legal and human rights awareness programs as part of its access to justice initiative. We believe that if all people are to have access to the justice system and to protect their rights they must have knowledge of these rights. LAP has developed public awareness and sensitization programs and more structural legal and human rights education programs after realizing that legal literacy creates a conducive environment for respect of human rights

and the rule of law. The public awareness and legal and human rights education programs are developed to meet different objectives including the following among others:

- Building consciousness about gender issues and the law
- Sensitizing communities about women and children's rights
- Sensitizing communities on their land rights, succession and inheritance laws, Domestic violence, marriage and divorce laws
- Increasing public awareness about the rights of Internally Displaced Persons.
- Building capacities of the target groups to defend and enforce their rights; and
- Increasing understanding on how the legal system functions at all levels.

Before undertaking legal awareness sessions, LAP undertakes a Needs Analysis of the target population to establish the common legal problems facing communities. The legal awareness courses are then specifically designed to respond to the legal awareness needs of the particular community. Simplified legal awareness booklets are designed and distributed to participants.

C. Legal Aid to indigent prisoners.

LAP provides legal aid to indigent prisoners through legal and human rights awareness, and court representation. Presently, LAP's efforts on prisoners are concentrated in Kigo prison where LAP has trained prison warders on the Human Rights of prisoners and criminal procedures. LAP also carries out outreach activities in the Prisons, and provides legal representation to prisoners in deserving cases.

Women Prisoners in Kigo.

The outreach activities undertaken at the prison reveal that the needs of female prisoners' go way beyond legal aid needs. They require basic items like soap and sanitary towels, which are not provided to them. They depend on well-wishers to assist them with these requirements.

Women with children in Kigo Prison:

There are prisoners who are imprisoned while pregnant and give birth in the prisons. They stay with their children in the prisons. While the Law allows a breastfeeding mother to stay with her baby until she attains 18 months, there are no provisions to cater for these children and to ensure that their needs are met. For example, Nabakooza was accused of treason and arrested and imprisoned while pregnant. She gave birth in prison. She has been living with her daughter since then, and she does not foresee any possibility of leaving prison in the near future.

5. IMPACT OF SERVICES

LAP has various methods of evaluating the impact of service delivery. These include:

- Monthly reports by staff of activities undertaken;
- Monitoring visits and on the spot supervision of branch offices
- Feedback letters from the general public;
- Evaluation of workshops and training activities by participants and trainers or facilitators.

6. CHALLENGES

Legal aid providers face a number of challenges in legal aid service delivery. These include:

Accessibility and Quality of services

There is an overwhelming demand for legal aid services because majority of Ugandans are poor, and cannot afford the services of private legal practitioners. Unfortunately, legal aid in Uganda is not provided as a right for anyone in need. Due to the scarcity of resources, legal aid is given through prioritizing categories and regions of operation. However, even in these cases, the demand for legal aid is overwhelming compared to the number of providers available. For instance, the LAP office in Gulu is in charge of the whole of the northern region, which comprises of ten districts.

In many cases, one finds clients who travel as far as Mbarara or Kabale to obtain legal aid in Kampala. Due to the overwhelming demand for legal aid, one finds the quality of legal aid services is far from adequate.

A consultancy commissioned by the Justice Law and Order Sector revealed that the existing legal aid providers cover approx 46.4% of Uganda, which is 26 of the 56 districts. This statistic does not mean, however, that there is 100% coverage by the seven member NGOs in these districts. In many of these districts, the legal aid NGOs provide mobile clinic facilities to the people.

Funding for legal aid provision.

Presently, the government of Uganda is committed to promoting access to justice for the poor people as one of the means of eradicating poverty and legal aid is one of the components to the access to justice. However, government does not fund legal aid at present, except for state briefs.

Role of Government

It is the contention of legal aid providers that government, having all the power to levy taxes, also has to corresponding duty of promoting equality of all its citizens before the law and for ensuring that there is consistent national access to essential social and public services and responsibility for ensuring compliance with key international treaties governing human rights.

Other challenges include:

- Limitations resulting from absence of a comprehensive legal and policy framework supporting legal aid provision

- Limited capacity to follow up cases in timely and efficient manner;

- Limited human resources to meet the expectations of the clients;

- Limited capacity to monitor performance and evaluate impact of the services on the status of the poor and disadvantaged.

7. CONCLUSION

In considering low cost options relating to Access to Justice, legal aid providers need to look at the way in which the process of service delivery is designed. There is need to ensure

accessibility of services to those that need them, and to ensure that the service provided to the client provides a durable outcome in relation to the problem that the client is facing.