

Implications of Community-based Legal Aid Regulation on Women's Land Rights

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Improving women's ability to securely access land is recognized as an effective means to increase gender equality and advance other key social and economic development goals (FAO 2011; Peterman 2011). Despite progressive laws in many African countries, gender disparities commonly persist in women's access and ownership of land (Doss et al. 2013). Although legal empowerment of women can help to strengthen their claims to land, developing country governments commonly lack the capacity to offer legal services. Civil society is increasingly stepping in to fill the wide gap in legal service provision, with the aim of empowering marginalized groups and individuals to exercise their legal rights. Although legal aid has wide application, this brief focuses on the consequences of regulating services provided at the community level to support women's land rights.

LEGAL AID PROGRAMS

Legal aid program models have evolved to meet the widespread demand for legal services for women and other marginalized groups on a range of legal issues. In some cases, nongovernmental organizations have established legal clinics in regional centers. Community-based legal aid (CBLA) programs have emerged as a strategy for both improving access to legal services in remote rural areas and bridging the gap between formal law and customary justice mechanisms. In this model, community paralegals are generally provided with basic legal training, enabling them to offer free legal advice and education within their own communities on a voluntary basis. Lawyer referrals are given for irreconcilable cases. Legal aid programs vary in their focus. While some programs have an explicit focus on women's land rights, others have a broader, gender-equity or human-rights focus. Yet women's land rights issues are widely addressed due to the prevalence of gendered land disputes. To date, there is limited documentation of CBLA program effectiveness, and there are no published impact evaluations of this

model either generally or specifically in relation to women's land rights (Sandefur and Siddiqi 2013).

Given the ad hoc nature of legal aid programs, there is uneven geographic coverage and wide variation in the quality of legal service delivery (Behrman et al. 2013). With the expanding influence of legal aid, many stakeholders have advocated for policy that would formally recognize paralegals and regulate legal aid service provision. In several African countries, stakeholders argue that it is imperative to define a code of conduct for paralegals (Ishengoma 2011), minimize risk of losing important cases due to poor handling by undertrained service providers (Sendugwa and Havugiyaremye 2007), and construct the framework for a legal aid system that includes the deployment of paralegals nationwide and for the collaborative partnership between government, the private sector, and civil society in the provision of legal services (Robb-Jackson 2013). Without careful consideration, however, the introduction of legal aid regulation could have unintended consequences. Broadly applied standards that aim to professionalize paralegals could delegitimize community-based paralegals, thus reducing the potential reach of legal aid programs in remote areas.

The proposed Legal Aid Bill in Tanzania offers a case study to analyze the potential ramifications of legal aid regulation on women's land rights. This case is particularly timely as the proposed bill, anticipated to be passed by the Parliament in 2014, would introduce a legal framework for the establishment of a legal aid regulatory authority to promote, license, administer, coordinate, and monitor the provision of all legal aid in Tanzania. The regulatory authority would, among other duties, be charged with setting criteria for the recognition of paralegals. Preliminary analysis of evidence from existing legal aid programs in Tanzania suggests the need for careful consideration of regulatory measures, such as selection criteria and curriculum development, so as not to unintentionally degrade legal aid services at the grassroots level (Behrman et al. 2013).

Legal Aid Accessibility versus Quality Tradeoff

The Form IV leaving education criterion currently under consideration requires a paralegal to have reached, although not necessarily completed, Form IV or equivalent. The latter includes individuals with past paralegal experience, those who have followed a vocational educational track, and those educated under the colonial system who reached the Standard VIII level.¹ If adopted as a national regulation, this criterion would change the profile of community paralegals in Tanzania. Educational attainment is generally low in Tanzania. Only 2 percent of adults (age 18+) have completed Form IV and passed the secondary school exam, and 9 percent have completed Form III or the equivalent (Tanzania NBS 2012).² Figure 1 illustrates education disparities by gender and region. It appears that the educational requirement alone might significantly limit the pool of eligible candidates.

As part of a qualitative study on legal aid and women's land rights in Uganda and Tanzania, the International Food Policy Research Institute (IFPRI) interviewed 30 and 16 legal aid-implementing organizations in Uganda and Tanzania, respectively. The respondents identified key characteristics deemed important in the selection of community-based paralegals, such as including individuals who are well-respected, accepted by local leaders, and active in their communities (Behrman et al. 2013). With the adoption of the proposed educational criterion, more qualitative measures, such as community engagement and respect, will likely become secondary in the paralegal selection process. Another aspect implementers reported considering in the

paralegal selection process was gender balance; men are apparently more comfortable seeking counsel from a male paralegal and female paralegals are perceived to be more approachable to women, especially on sensitive issues such as land rights. Gender disparity in education will likely bias the pool of eligible paralegal candidates toward men, making it more difficult for implementers to achieve gender balance. Thus, it is possible that the community members who are well-poised to help women may not even be considered as candidates if they do not meet the educational benchmark.

IFPRI is currently evaluating a CBLA program in the Kagera region of northwestern Tanzania. As part of the process of selecting paralegals in 70 randomly selected villages across two districts, the program required candidates to have completed Form IV.³ During the selection process, village leaders were unable to identify a sufficient number of candidates that met the educational criterion. The final selection prioritized paralegals that met the educational requirement. Other criteria, such as gender balance, were not prioritized; there was no increase in the proportion of females between the candidate pool (28 percent) and the group of selected paralegals (27 percent).⁴

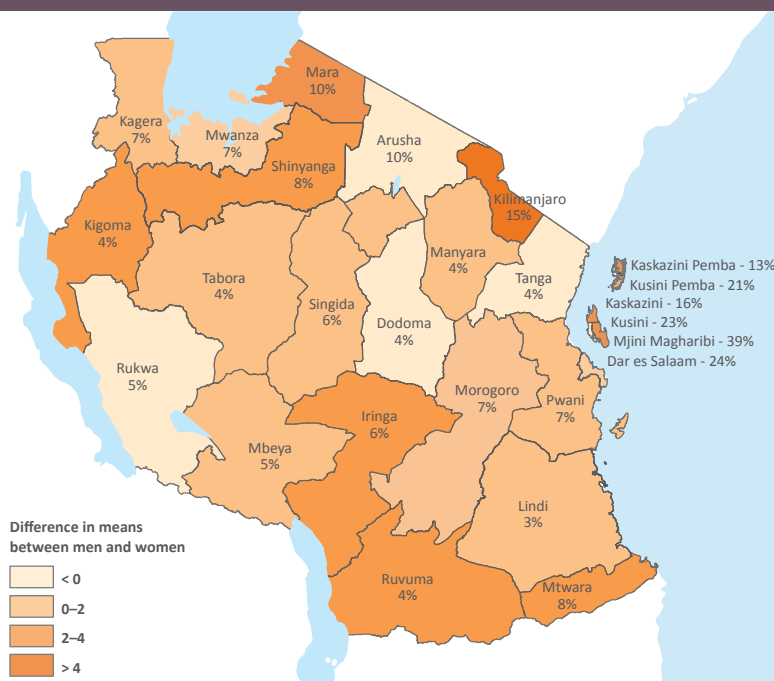
Breadth versus Relevance

If adopted as a national standard, the standardized training curriculum currently in use by several paralegal programs may have implications for legal aid program structure and sustainability. The four-week training curriculum was developed by the

Tanganyika Law Society, the association representing legal professionals in Tanzania, with input from prominent national-level legal aid service providers. Prior to the introduction of a standardized curriculum, the average length of community paralegal training reported by Tanzanian service providers in the IFPRI qualitative study was nine days with 75 percent of organizations offering periodic refresher trainings (Behrman et al. 2013). From the 20 organizations that were surveyed in another Tanzania study, only 86 percent of paralegal respondents reported receiving any training and training duration was 5–14 days (Legal Services Facility 2012).

The new training curriculum requires a significant up-front investment in selected community paralegals. In the new Kagera program referenced above, training costs were approximately US\$600 for each paralegal (totaling 36 percent of the project budget in the first year) to pay trainers and cover

Figure 1 Share of adults meeting Form IV leaving or equivalent requirement



transportation and accommodation costs for the paralegals. Anecdotal accounts from legal aid stakeholders in Tanzania suggest high attrition among community-based paralegals given that most programs expect paralegals to work on a voluntary basis (Behrman et al. 2013). If a paralegal quits providing services, the implementing organization must either invest in training a new paralegal or discontinue support for CBLA in that area.

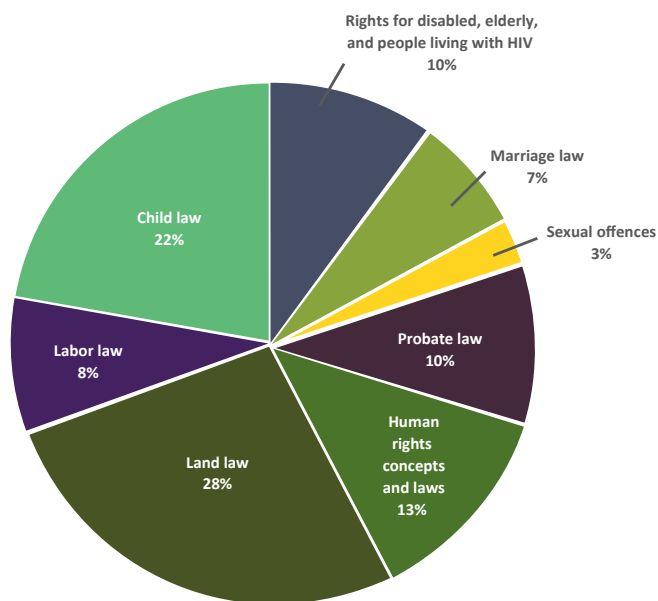
In the IFPRI qualitative study, there was wide variation in the types of assistance that the 16 Tanzanian respondent organizations offered. For example, some organizations reported dealing with issues related to domestic and marriage laws (53 percent) while others reported providing assistance with will writing (41 percent) and land titling (53 percent) (Behrman et al. 2013). Figure 2 represents the share of pages that the Tanzania paralegal curriculum devotes to different topics and laws. Many of the topics covered in the standardized curriculum have wide application to the types of services paralegals commonly provide, such as land, marriage, and probate law. Other topics, however, are likely to have more relevance to programs with a specific focus or geographic coverage. For example, labor law would likely have greater applicability in urban settings because the majority of people in rural areas are self-employed. While a basic standardized curriculum would help to improve consistent quality across programs, extensive training requirements limit program flexibility to focus on the issues of highest relevance.

Extensive curriculum content may not be fully relevant to programs with a specific focus, such as women’s land rights. Requiring full implementation of the curriculum could result in wasted program resources. The expected return of a longer training may decline with the probability of paralegal attrition. Furthermore, reducing the core curriculum could release additional resources for tailoring supplementary, follow-up training based on program focus or the specific legal issues of a region.

Recommendations for Policy Consideration and Future Analysis

To meet the widespread demand for legal services in countries with little to no publicly provided legal aid, policy is needed that will recognize the distinct roles of the different legal aid program models and the diversity of stakeholders involved in providing legal services. CBLA has a role to play in increasing access to services in rural areas. Other models, such as legal clinics operating in regional hubs, can serve as a point of referral for more complicated cases where professional legal staff can provide oversight and support for community-level paralegals. Legal aid regulations should be designed to improve the quality of legal services. Rigorous evaluation of legal aid programs is necessary to fully understand the impacts of improving access to

Figure 2 Share of pages devoted to topics covered in the standardized paralegal curriculum



Source: Tanganyika Law Society Training Curriculum (November 2012)

legal services and implications of legal aid regulations, especially for women’s claims to land.

Below, we recommend areas for further investigation to inform future legal aid policy and regulations in Tanzania and beyond:

- Evaluate the implications for geographic coverage and program quality by defining at least two distinct tiers of paralegals to provide legal services at different levels of decentralization (such as regional and community paralegals). The analysis should identify the services that could be provided by each paralegal tier in accordance with the eligibility criteria and training requirements.
- Identify the appropriate educational criterion for each tier of paralegal that will identify individuals with the facility to access training materials and complete reporting requirements, yet without unduly constricting the pool of eligible candidates. For community paralegals, probing the feasibility of replacing the educational requirement with a basic literacy test would sufficiently broaden the pool while maintaining program quality goals.
- Undertake additional research to establish distinct, paralegal training curricula that consider topic breadth versus relevance according to the services provided in each tier. Curricula for community paralegals should be based on analysis of the cost-effectiveness of initial training investments versus regular periodic training, with consideration given to attrition and the costs of retraining replacement paralegals.

- For additional insight on modalities to reduce paralegal attrition, conduct analysis on the cost effectiveness of paralegal compensation to assess the implications on program quality and sustainability. The analysis should identify appropriate compensation to defray the opportunity costs of offering these services, while accommodating transport costs to reach clients in remote areas.

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NOTES

- ¹ Form IV is the fourth year of secondary school, which can be equated to completion of high school in the American education system. Under the colonial education system Standard VIII was the final year of primary school. In 1965, shortly after independence, Standard VIII was phased out so that primary education could be completed in seven years.
- ² Form III is the third year of secondary school. We use completion of Form III as a slightly relaxed proxy to the Form IV leaving requirement since we do not have data on partially completed grades.
- ³ This program used a slightly stricter educational criterion than the one being considered for the national standard, which includes Form IV leavers and equivalent. The latter would likely broaden the pool of eligible candidates. Further, many implementers place paralegals at the ward level (a ward generally contains three to five villages), which would also expand the candidate pool. The question remains, however, whether the most suitable candidates in terms of respect and acceptance within the community will be passed over for consideration because they have not met the educational requirement.
- ⁴ The education requirement also tended to bias the candidate pool toward younger candidates, which could compromise the respect paralegals receive from village leaders and other community members.

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