

# Child-Friendly Legal Aid in Africa

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## TABLE OF CONTENTS

I. INTRODUCTION .....	1
II. INTERNATIONAL AND REGIONAL STANDARDS .....	3
III. DEVELOPMENTAL UNDERPINNINGS OF CHILD-FRIENDLY LEGAL AID .....	6
IV. CORE COMPONENTS OF CHILD-FRIENDLY LEGAL AID .....	9
A. Access to Legal Aid for Children.....	9
• Legal Awareness.....	9
• Geographic Access .....	10
• Program Access.....	10
• Financial Access.....	11
• Legal Access .....	11
• Developmental Access.....	11
• Participatory Access.....	12
• Establishing Priorities for Access to Legal Aid.....	12
B. Use and Delivery of Child-Friendly Legal Services .....	14
• Who Should Deliver Legal Services? .....	14
• What Services Should Be Delivered? .....	15
C. Quality of Legal Aid .....	16
• Establishing Professional Standards for Lawyers and Non-Lawyers.....	16
• Training .....	17
• Measuring Quality.....	18
V. CORE COMPETENCIES FOR THE PROVISION OF CHILD-FRIENDLY LEGAL AID .....	20
A. Interviewing Child Clients .....	21
B. Counseling and Negotiation.....	21
C. Effective Advocacy .....	22
VI. CHILD-FRIENDLY LEGAL AID IN INFORMAL JUSTICE SYSTEMS .....	23
VII. CONCLUSION.....	24
VIII. PROGRAM DESCRIPTIONS SOLICITED AND RECEIVED IN PREPARATION OF THIS PAPER.....	26
A. Comments on Materials Received .....	26
B. List of Materials Received .....	27
IX. APPENDIX.....	29

## Executive Summary

This paper explores the legal, policy, and practical issues involved in creating and maintaining “child-friendly” legal aid programs in Africa. It uses the following definition as the framework for this discussion:

Child-friendly legal aid is the provision of legal assistance to children in criminal, civil and administrative proceedings that is accessible, age appropriate, multi-disciplinary, effective, and that is responsive to the range of legal and social needs faced by children and youth. Child-friendly legal aid is delivered by lawyers and non-lawyers who are trained in children’s law and child and adolescent development, and who are able to communicate effectively with children and their caretakers.

International and regional conventions, declarations, and rules contain references to states’ obligations to provide legal assistance to children. These normative instruments, however, are written in general terms and generally do not discuss the unique attributes and needs of child clients, nor the skills that legal assistance providers must have in order to effectively deliver child-friendly legal aid. This paper focuses on the link between emerging research on child and adolescent development and the importance of structuring legal assistance schemes in ways that take into account children’s developmental immaturity and their evolving capacities over the span of childhood.

Core components of child-friendly legal aid include issues of access, service delivery and quality control. An important part of this discussion is how best to promote high quality, developmentally-appropriate and free legal assistance in the context of developing countries that face significant financial and logistical challenges. In response, the paper adopts a functional approach to the provision of legal assistance by identifying the range of legal tasks to be performed on behalf of children and exploring which of these tasks require the knowledge and skills of a lawyer and which can be competently provided by trained personnel such as paralegals, social workers, or community representatives.

After discussing the key components of child-friendly legal aid, the paper turns to an examination of the core competencies of individual service providers. These core competencies, grounded in the psychological, social and cultural dynamics affecting children, include effective interviewing, investigation, counseling, negotiation, and advocacy.

In addition to exploring the concept of child-friendly legal aid in the context of the formal justice system, the paper makes preliminary observations about the provision of child-friendly legal aid in traditional justice systems. The paper identifies, but does not attempt to resolve, questions regarding the interplay between a child-rights perspective on the delivery of legal aid and the operational and decision-making traditions in informal justice systems.

The paper concludes with a summary of information on national standards and child-friendly legal aid initiatives that was solicited from and provided by many UNICEF country offices across Africa. Summaries of this information and documentation are included in an annex.

# CHILD-FRIENDLY LEGAL AID IN AFRICA

Thomas F. Geraghty <sup>1</sup> and Diane Geraghty <sup>2</sup>

## I. INTRODUCTION

In Senegal, 16-year-old Jean Pierre is accused of stealing a cell phone. In Malawi, 6-year-old Fiona is the victim of sexual abuse. In Ethiopia, 11-year-old Redatu's parents are fighting over his custody. In South Africa, 15-year-old Maroba is an unaccompanied minor who was caught crossing the border from Zimbabwe. And in Uganda, Patricia and her brothers are being evicted from their home by relatives after the death of their parents from HIV/AIDS. Every day in Africa children such as these come in contact with the justice system, where formal and informal justice providers make decisions that have the potential to influence the future course of their lives. What rights do these children have when they come in contact with the law? Are they entitled to any type of legal assistance? If so, how might those services best be made available and actually reach children in crisis? How can legal aid be made "child-friendly" given logistical and financial limitations? And how does the concept of child-friendly justice play out in informal justice systems? The purpose of this paper is to suggest a conceptual and practical framework for addressing these questions, with an ultimate goal of contributing to the increasingly robust discussion on how best to provide children with meaningful, effective, affordable, and age-appropriate legal assistance "on the ground."

In its most distilled version, the term "child-friendly legal aid" refers to the right of a child under the age of 18 to receive competent, timely, and developmentally appropriate legal assistance in connection with a civil, criminal, or administrative proceeding in which the child's rights or interests are at stake. For purposes of this paper, a more comprehensive and functional definition is:

the provision of legal assistance to children that is accessible, age-appropriate, multidisciplinary, effective, and that is responsive to the range of legal and social needs faced by children and youth. Child-friendly legal aid is delivered by lawyers and non-lawyers who are trained in children's law and child and adolescent development, and who are able to communicate effectively with children and their caretakers.

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The term “age-appropriate” incorporates the key concept that the provision of legal assistance must be sufficiently flexible to take into account a child’s evolving capacity and right of participation over the course of childhood and adolescence.<sup>3</sup> The term “legal aid” is defined broadly to include “legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution.”<sup>4</sup> Under this expansive definition, legal aid is not dependent on a lawyer, includes community-level work, and incorporates traditional mechanisms for the provision of assistance.

The paper begins with a review of existing international and regional standards that refer to a child’s right to legal aid. It then provides an overview of emerging research on adolescent development and its role in devising a set of best practice standards for the legal assistance of children. Using this developmental framework, the paper then suggests core components of a child-friendly system of legal aid in the formal justice context before turning briefly to a discussion of legal assistance for children in informal justice systems. The paper then goes on to discuss key competencies for the provision of child-friendly legal aid. Next the paper discusses how the development and implementation of a child-rights approach to legal assistance contributes to the goal of advancing human rights for all children. The paper concludes with a description of several promising child-friendly legal aid initiatives in Africa.

This paper does not address the full range of issues that are important for understanding and constructing a child-friendly justice system. It does not, for example, discuss the role of prevention, the question of child-friendly courtroom procedures, or the role of legal assistance in special situations such as in post-conflict and divided societies or under anti-terrorism laws. Nor does the paper focus on uniquely vulnerable groups such as children with disabilities, minorities, and other children subject to social exclusion. Finally, the paper acknowledges but does not examine the broader context for responding to the needs of children and families who come in contact with the law. The provision of legal assistance is only a small part of the larger question of how best to conceptualize, build, and implement a comprehensive set of social and economic supports designed to protect children and promote their dignity and well-being. Although not addressed in this paper, each of these and similarly important issues deserves further study and elaboration.

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<sup>3</sup> See Gerison Lansdown, *THE EVOLVING CAPACITIES OF THE CHILD*, UNICEF Innocenti Research Centre (2005).

<sup>4</sup> This is the definition used in the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System, discussed below.



## II. INTERNATIONAL AND REGIONAL STANDARDS

A logical starting point for exploring the concept of child-friendly legal aid is to review the conventions, rules, declarations, comments, and reports that contain international and regional standards for providing legal aid to children. Over time, these normative frameworks have become increasingly specific regarding states' duties and include new strategies for delivering legal aid through the use of alternative mechanisms.<sup>5</sup>

- The UN Convention on the Rights of the Child (CRC) refers to a child's "representative," but does not define the concept beyond implying that a representative need not be formally trained in the law and that any system of assistance should take a child's evolving capacity into account. Article 12 gives the child a right to be heard in any judicial or administrative proceeding "either directly, or *through a representative* or an appropriate body" consistent with national law. Article 40 (2) (b) (ii) is somewhat more specific. It requires that a child in conflict with the law be "informed promptly and directly of the charges against him or her, and, if appropriate, through his parents or legal guardian, and *to have legal or other appropriate assistance* in the preparation and presentation of his or her defence." Article 40 (2) (b) (iii) further provides that a child in conflict with the law be given "a fair hearing, according to law, *in the presence of legal or other appropriate assistance...*"

- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules," 1985) call on states to ensure that "throughout the proceedings the juvenile *shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.*" (Rule 15.1). The Rules also provide that "in-service training, refresher courses and other appropriate modes of instruction shall be utilized to establish and maintain the necessary professional competence of all personnel dealing with juvenile cases." (Rule 22.1). Although the Beijing Rules are principally directed at juvenile justice proceedings, their principles can be extended to all matters in which a child's legal interests are at issue.<sup>6</sup>

- In 2007, the Committee on the Rights of the Child addressed children's rights in juvenile justice proceedings in General Comment No. 10. Paragraph 49 affirmatively declares that a child in conflict with the law "*must be guaranteed legal or other appropriate assistance* in the preparation and presentation of his/her defence," and that such assistance must be free. "Appropriate assistance" is not limited to legal professionals. The Comment specifies that legal aid can also be provided by social workers, paralegals or others, but cautions that anyone who provides legal aid to a child "must have sufficient knowledge and understanding of the various

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<sup>5</sup> UNODC, for example, has prepared draft guidelines on the provision of legal aid, including the obligations of governments to provide legal aid and to create alternative methods of making legal aid accessible to all in need, including children. *See also* PROGRAMMING FOR JUSTICE: ACCESS FOR ALL - A PRACTITIONER'S GUIDE TO A HUMAN RIGHTS-BASED APPROACH TO ACCESS TO JUSTICE, UNDP (2005).

<sup>6</sup> *See also* the U.N. Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules," 1990), U.N. Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines, 1990), and the U.N. Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (2005).

legal aspects of the process of juvenile justice and must be trained to work with children in conflict with the law.”

- The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004) focuses on the responsibilities of nations to provide legal aid to persons accused of violations of the penal law. Significantly, the Declaration, which has been adopted by the African Commission and Human and Peoples Rights and formally endorsed by the United Nations Economic and Social Council, characterizes the provision of and access to legal aid (at least in the criminal law context) as a human right, and calls on governments to adopt measures and allocate sufficient funding to “ensure an effective and transparent method of delivering legal aid to the to the poor and vulnerable, *especially women and children*, and in so doing empower them.”

- The United Nations’ Guidance Note of the Secretary General, U.N. Approach to Justice for Children (2008) refers to the desirability of “[p]romoting child-sensitive procedures and methods that ensure the child’s full-fledged participation in judicial, administrative and community-based processes.” The Note goes on to say that the effort to provide child-friendly mechanisms may require “changes in law, legal practice (such as interview techniques), capacities and physical environment and, more generally, attitudes towards child participation.”

- The United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, adopted by the Economic and Social Council in its resolution 2005/20 of 22 July 2005, in para. 22 establish that “[c]hild victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training... This may include assistance and support services such as financial, **legal**, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child’s reintegration.”

In addition to these international references to child-friendly procedures and the provision of legal aid, regional instruments also support the concept of a child’s right to legal assistance. As an early example, Article 17 (2) (iii) of the African Charter on the Rights and Welfare of the Child (1999) provides that a juvenile “*shall be afforded legal and other appropriate assistance in the preparation and presentation of his defense.*”

The most specific regional document articulating the meaning of child-friendly justice, including access to legal assistance, was recently released by the Council of Europe.<sup>7</sup> Although not focused on child-friendly legal aid in Africa, The Council of Europe Guidelines on Child-Friendly Justice (Nov. 2010) provides the most comprehensive and developmentally grounded definition of child-friendly justice to date.<sup>8</sup> The Guidelines include participation as a

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<sup>7</sup> As discussed below, although the Guidelines are useful, we do not believe that they articulate a model of representation that is workable for providing child-friendly legal assistance in the African context.

<sup>8</sup> Specifically, the Guidelines define child-friendly justice as “justice systems which guarantee the respect and the effective implementation of all children’s rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child’s level of maturity and understanding and the circumstances of the

fundamental principle (par. III (A) ((1) & (2)). Paragraph IV (D) (2) (par. 37) moves beyond other instruments by stating that children should have the right to their “*own legal counsel and representation*” (as opposed to more generally available representation or legal assistance.) during judicial proceedings. Although the Guidelines state that the best interests of children are a “primary consideration in all matters affecting them,” (par. III (B) (1) & 2(a-c)), the Guidelines also specify that “children should be considered as fully-fledged clients with their own rights and lawyers representing children should bring forward the opinion of the child.” (par. IV (D) (2) par. 40). The Guidelines also provide that children involved in judicial proceedings “should have access to free legal aid, under the same or more lenient conditions as adults,” (Par. IV (D) (2), par. 38), and that “[l]awyers representing children should be trained in and knowledgeable on children’s rights and related issues, receive ongoing and in-depth training and be capable of communicating with children and young people at their level of understanding.” (Par. IV (D) (2) par. 39).).

Collectively, these international instruments provide a consistent but still very general set of standards on child-friendly measures for the provision of legal assistance to children. With the exception of the Council of Europe Guidelines on Child-Friendly Justice, none gives specific guidance on how lawyers, paralegals, and others who provide legal assistance to children should interact with child clients and their families, with child and other victims, with the police and prosecuting agencies, or with courts or tribunals designated to adjudicate cases.<sup>9</sup> For example, how should the availability of legal services be made known to children and their families? How should the relationship between the child and lawyer/legal aid provider be structured in terms of communication, lines of authority, confidentiality, and participation of family members? How should the relationship between children and their lawyers/legal services providers take into consideration the developmental status of children? What is the relationship between a child’s best interest and a child client’s right to participation in the proceedings? How and to whom should the specific skills and knowledge necessary for the effective provision of legal aid to children be identified and imparted, and by whom should it be evaluated? What skills should be possessed by legal aid providers who interact with children in need of legal aid on the ground? The answers to these questions should be informed by the environmental, cultural, and psychological factors influencing child development.

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case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, and adapted to and focused on the needs and rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity.” (par. II (c)).

<sup>9</sup> To the extent that existing international norms and standards do provide guidance about a child’s right to legal assistance and the responsibilities of those who provide such assistance, this guidance is principally directed at children in conflict with the law. Going forward, these instruments should also address more specifically the issue of child-friendly legal assistance in civil and administrative matters.

### III. DEVELOPMENTAL UNDERPINNINGS OF CHILD-FRIENDLY LEGAL AID

Understanding child and adolescent development is fundamental to understanding children's behaviors and their capacity to participate in legal proceedings, including their ability to interact with those who assist them, understand what is at stake, and make informed choices about their legal situation. A comprehensive discussion of child development is beyond the scope of this paper. There are, however, key concepts that are important to consider when reflecting on what constitutes child-friendly legal aid. These concepts are principally derived from recent research on adolescent brain development.<sup>10</sup>

The evolution and changes from childhood to adulthood have a biological basis in brain development, and are relevant across all cultures and contexts.

Magnetic Resonance Imaging (MRI) now enables scientists to look inside the developing brain and chart its maturational process. At some level this research merely confirms what observers have long known – that the evolution from childhood to adulthood is marked by significant physical, cognitive, and emotional developmental changes. What is only now emerging, however, is an understanding that these changes have a biological basis in brain development and are therefore relevant across all cultures and contexts.

Two findings in particular are relevant to understanding children's behavior and their ability to participate in legal proceedings. The first is that the brain's gray matter (the thinking part of the brain) goes through three stages of development and subsequent pruning to promote organized growth. It has long been known that gray matter is overproduced and then pruned back prior to a child's birth and in the critical zero-to-three period of child development. In the 1990s, researchers discovered that a third burst of gray matter overproduction occurs in connection with the onset of puberty. This final growth and pruning process occurs roughly over the course of the teenage years. A related finding is that the developmental process takes place in different parts of the brain at different times. Significantly, the last part of the brain to fully mature is the prefrontal cortex. This is the area of the brain that is responsible for planning, reasoning, and self-control, and it does not fully develop until young adulthood. In the absence of frontal brain development, children rely heavily on those more fully developed parts of their brains that control emotions rather than thinking. As a result, children and adolescents may behave differently than adults in the areas of risk-taking, impulsivity, peer influence, long-range planning, and decision-making.

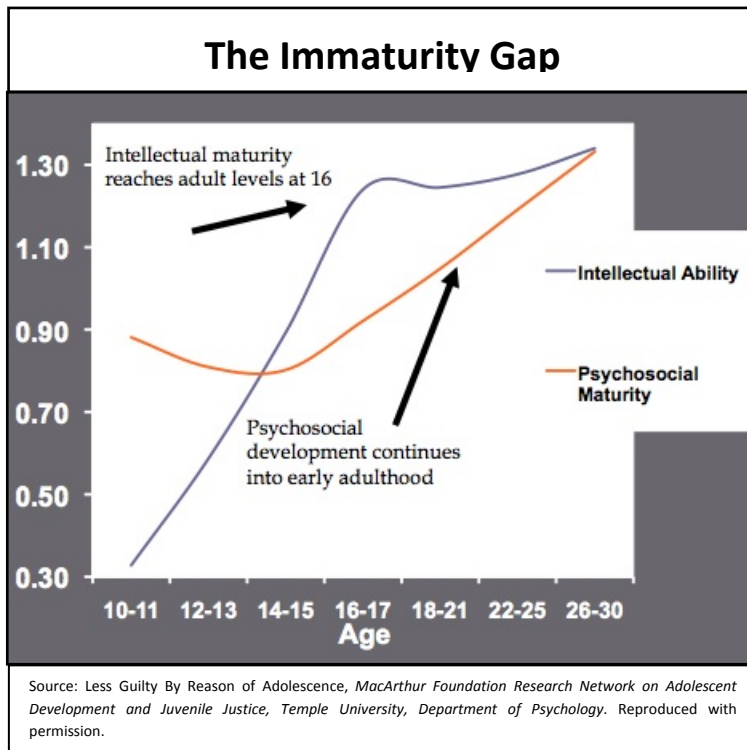
Brain development is not the only component of child and adolescent development. Other family and community factors, including family dynamics, poverty, past experiences, societal influences, and educational achievement, also affect a child's behavior and ability to

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<sup>10</sup> See E. Scott and L. Steinberg, *RE-THINKING JUVENILE JUSTICE* (Harvard University Press, 2008); T. Grisso, *FORENSIC EVALUATION OF JUVENILES* (Professional Resource Press, 1998); *TOWARD DEVELOPMENTALLY APPROPRIATE PRACTICE: A JUVENILE COURT TRAINING CURRICULUM* (MacArthur Foundation Models for Change Initiative, 2010). It should be noted that this research, which has principally been conducted in the United States, has not yet been validated for reliability or applicability to children in Africa.

participate in legal proceedings. These “external” non-biological and culture-specific influences impact the ways in which children conceptualize their surroundings, the nature of the dilemmas that they face, especially when they are in crisis, and their processes for decision-making about how to resolve the problems that cause them to need and to seek legal aid.

These recent research findings on child and adolescent development have profound implications for understanding children’s behavior, for fashioning child-centered legal systems, and for providing child-friendly legal aid. In cases involving children in conflict with the law, for example, the practical effect of the developmental differences between adults and children is that many children engage in conduct that is perceived and prosecuted as calculated criminal behavior, but which is in fact a spur-of-the-moment manifestation of poor judgment based on



immature thinking. A properly functioning juvenile justice system

should take into account this developmental reality when making decisions about a child’s culpability, competency to participate in legal proceedings, and capacity for rehabilitation.<sup>11</sup>

Developmental differences must also be considered when adopting and implementing laws, policies, and practices affecting children in other types of formal and informal proceedings, including child protection, family law, and educational matters. For example, when, if ever, is it developmentally appropriate to ask a child to express a preference in support of one

parent over the other in a child custody dispute? What is the developmental impact of psychological distress on children in post-conflict situations and how should it be accounted for when children come in contact with the justice system? What developmental factors should be taken into account when deciding whether a child victim of sexual violence should be required to give testimony and, if so, what protections should be put in place to minimize the psychological distress of the experience?

The developmental differences between children and adults must also be considered in the design and delivery of legal assistance to children. A child’s developmental status is relevant both in helping legal providers understand a child’s circumstances and perspectives,

<sup>11</sup> The CRC uses such a developmental lens when it calls on states to set a minimum level of criminal responsibility and prohibits the imposition of certain sentences, specifically capital punishment and life without the possibility of release.

and also in assisting them to adopt age-appropriate strategies for communication and representation/assistance. For example, it may be important for a child's legal aid provider to understand why a neglected or abused child may remain highly dependent on a parental abuser because of an overpowering desire to remain within his or her family, or why a street child may decide to live apart from his or her family because of peer pressure or an unrealistic understanding of the risks and realities of life on the street. In addition, providers of child-friendly legal aid must devise ways to communicate effectively with and understand the child, as well as foster a trusting relationship between the child client and legal services provider that strikes an appropriate balance between helping a child make sound judgments and preserving the child's sense of autonomy.

At first blush it may appear that a developmentally sensitive approach to child justice is at odds with the promotion of children's rights. If, for example, a legal doctrine takes into account the fact that a child lacks the developmental capacity to

Legal aid providers should use a 'sliding scale' that balances a child's right to participate in his legal proceedings with his/her developmental ability to do so.

fully understand the nature of the proceedings and to assist in the preparation of his or her case, does that undermine the concept of a child's right to participate in proceedings that affect his or her well-being? In fact, the CRC and other child rights instruments resolve this potential dilemma by couching the concept of rights in the developmental reality of a child's evolving capacity. This "sliding scale" approach recognizes that children develop cognitively and emotionally over the course of childhood and that the full expression of their rights evolves along a similar spectrum. For very young children, this means that adults charged with protecting children's rights are permitted to make judgments on the child's behalf about what decisions are in their best interest. As the child develops, this decision-making responsibility shifts incrementally, consistent with the abilities of the individual child and the nature of the issue at hand. In the case of child-friendly legal aid this means that a child's right to participate in the proceedings and to direct the objectives of legal assistance or representation should be given greater and greater deference as his or her developmental capacity evolves over time.

#### IV. CORE COMPONENTS OF CHILD-FRIENDLY LEGAL AID

This section of the paper identifies and discusses the three essential components of child-friendly legal aid: access to legal aid, the delivery and use of legal aid, and the quality of legal aid. It adopts a functional approach to describe what a timely, competent, and developmentally appropriate system of legal assistance realistically looks like in Africa, with its unique geographic, social, cultural, political, and economic circumstances. Although this discussion takes place primarily in the context of the formal justice system, a later section of the paper includes a preliminary examination of the meaning of child-friendly legal aid in informal justice systems.

##### Core Components of Access to Legal Aid

- Legal Awareness
- Geographic Access
- Program Access
- Financial Access
- Legal Access
- Developmental Access
- Participatory Access
- Establishing Priorities for Access to Legal Aid

##### A. Access to Legal Aid

- *Legal Awareness*

Legal awareness and empowerment is the gateway to justice for children and families. It is difficult to access the justice system without being aware of one's legally protected rights and knowledgeable about the mechanisms available to claim those rights. By virtue of immaturity, circumstances, and geography, African children in particular are unlikely to know about or

“Governments, NGOs and international agencies must collectively emphasize and support the need for justice education in communities, schools, health clinics, police stations, and court houses as a means of making legal services accessible to children.”

understand their legal rights, including their right to assistance. Even when rights education is available, it often is not presented in an age- and gender-sensitive manner or tailored for populations with little or no formal education. In light of these and other challenges to access, governments, NGOs and international agencies must collectively emphasize and support the need for justice education in communities, schools, health clinics, police stations, and court

houses as a means of making legal services accessible to children. This includes the development and dissemination of child-centered materials and other communication mechanisms (street plays, radio, the Internet, etc.). In Malawi, for example, the Paralegal Advisory Service (PAS) created a successful outreach campaign through the distribution of

posters using child-appropriate messaging. Other countries, such as Ghana, have established Child Panels in each district and community to enforce and monitor the rights of children. Child ombudsman programs also have an important role to play in creating enhanced awareness of legal rights and in linking youth with legal aid services. In addition to informing individual children about their right to legal assistance, it is also important to engage in outreach to communities and public and private agencies as a way of building support for legal empowerment and an effective working relationship with legal assistance providers. The TIMAP program in Sierra Leone has been particularly effective in establishing its credibility among grassroots communities.

- *Geographic Access*

The overwhelming majority of African children in need of legal aid live in impoverished areas of large urban areas or in remote rural communities. As a result, these children often find it impossible to physically access legal services where they live. To overcome this barrier, some legal aid providers have developed creative ways of taking legal assistance to their child clients. These initiatives include mobile clinics and “one stop center” programs that offer children a range of services at the same location, including legal aid. The Justice for Children Trust in Zimbabwe has successfully established such programs.

- *Program Access*

Although there are many sound programs that provide child-friendly legal aid in Africa, there are fewer than needed. Most of the programs that provide legal aid to children are funded and managed by international agencies and national NGOs. Few countries in Africa have national legal aid systems. Exceptions include Ghana<sup>12</sup>, Nigeria<sup>13</sup> South Africa<sup>14</sup>, and the Gambia<sup>15</sup> which have adopted legislative frameworks for the provision of legal aid. A national legal aid scheme is under consideration in Sierra Leone. Even where legal aid exists, however, it typically is limited in amount and duration. Recognizing the lack of available and sustained legal aid programs, advocates of comprehensive legal aid programs, including international aid agencies and NGOs, are working to secure long-term government funding. Securing adequate funding for legal aid when governments are stretched to provide resources for other basic services, especially in a time of global financial crisis, is a significant challenge. Establishing sustainable programs for the provision of legal aid services for children is a special challenge for multiple reasons, including the fact that many legal aid schemes prioritize criminal cases over civil and juvenile justice needs.

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<sup>12</sup> <http://www.lrcghana.org/>

<sup>13</sup> <http://www.legalaidcouncilofnigeria.org/>

<sup>14</sup> <http://www.legal-aid.co.za/>

<sup>15</sup> [http://www.moj.gov.gm/index.php?option=com\\_content&view=article&id=46&Itemid=45](http://www.moj.gov.gm/index.php?option=com_content&view=article&id=46&Itemid=45)



- *Financial Access*

The absence of financial resources represents a significant barrier to justice around the world. Even in developed countries litigants are effectively prevented from asserting viable legal claims because they cannot afford to pay a lawyer or a system-imposed fee. Although there is

“Children must have access to free legal assistance in criminal and civil proceedings and administrative fees must be waived.”

an honest debate among advocates about the use of means testing in the provision of legal services, there can be no dispute that the overwhelming number of African children who require legal assistance are

unable, by virtue of their age, dependent status, and economic circumstances, to pay for legal aid. Given this reality, children must have access to free legal assistance in criminal and civil proceedings and administrative fees must be waived.

- *Legal Access*

Some jurisdictions may not recognize the right of children to appear in legal proceedings as independent parties. This is especially true in civil cases where the law may assume that a child’s parent or guardian will represent the child’s best interest without the need for separate representation. A child-friendly system of justice acknowledges that children have their own legal rights and interests and recognizes the authority of the child’s representative in legal proceedings.

- *Developmental Access:*

In order to be effective, the concepts and potential of legal aid to serve children must be communicated effectively. This in turn imposes a duty on legal assistance providers to understand how children communicate cognitively, linguistically, and emotionally and how this capacity changes over the course of childhood. This means adopting developmentally appropriate methods of conveying concepts and concrete information that explain the nature of the legal proceedings and why legal aid might be useful. In order to achieve these objectives, providers—whether they are lawyers, paralegals, police, or judicial officers—require training in how to communicate with children. Child-sensitive interviewing techniques in particular must take into account a children’s evolving capacities, given the significance of information obtained in the interview in the preservation and protection of a child’s legal rights.<sup>16</sup>

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<sup>16</sup> The UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime define child-sensitive as “an approach that gives primary consideration to a child’s right to protection and that takes into account a child’s individual needs and views. *See also*, Clare Wilson and Martine Powell, *A GUIDE TO INTERVIEWING CHILDREN* (Rutledge 2001)(noting differences over time in a child’s ability to remember and recall events, a child’s sense of time, a child’s susceptibility to external influences, and a child’s evolving language and comprehension skills).

- *Participatory Access:*

The support and understanding of those to be served by legal aid is essential to the needed expansion of legal aid programs. To that end, children, families, and communities should be consulted to assist with prioritization of need and program design in order to ensure that legal aid is responsive and accessible. In addition, governments, agencies, and NGOs have a wealth of information about the needs of the children they serve. Their knowledge and support is important to the creation of systems designed to deliver legal aid to children. These entities must be convinced that age-appropriate legal aid is an important component in efforts to better the lives of children. It will be difficult, if not impossible, to design and to implement child-friendly legal services programs without their input and support, especially that of governments.

Which issues are best addressed by persons formally trained to deliver legal aid, and which issues can be addressed as or more effectively by individuals or communities who are better equipped to support a child's needs?

- *Establishing Priorities for Access to Legal Aid:*

There will always be limited resources to support the provision of legal aid to children. Although all legal systems suffer from lack of resources to support legal aid, such resources are in especially short supply in Africa where colonial legacies, ongoing conflicts, economic circumstances, and cultural traditions present special challenges. Also unique to Africa is the question of who sets priorities. Should principal responsibility be vested in national governments with complex and competing needs, or should external funders and child-rights organizations set the agenda for the provision of child-friendly legal aid? And how should legal aid be provided in informal justice systems? These are questions that we do not (and cannot) answer fully here, but they are questions that deserve collaborative discussion among all stakeholders. To frame the discussion, we offer the following preliminary observations.

First, at this point in time, it is highly unlikely and perhaps impossible for countries in Africa to adopt the model of child-friendly legal aid set forth in the Council of Europe Guidelines on Child-Friendly Justice (Nov., 2010) in Africa, or the more limited model for child victims and witnesses presented by the UN Guidelines.<sup>17</sup> The COE model envisions a system in which formally trained attorneys function as zealous advocates for a child's wishes in a legal

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<sup>17</sup> Although the Guidelines mention legal assistance only in general, the UNODC-UNICEF **Model Law and Related Commentary: Justice in Matters involving Child Victims and Witnesses of Crime (2009)** establishes a right for free legal aid:

*" Article 10. Legal assistance*

A child victim or witness shall be assigned a lawyer by the State free of charge throughout the justice process in the following instances:

(a) At his or her request;

(b) At the request of his or her parents or guardian;

(c) At the request of the support person, if one has been designated;

(d) Pursuant to an order of the court on its own motion, if the court considers the assignment of a lawyer to be in the best interests of the child.

proceeding. Setting aside the complex question of the relationship between acting in a child's best interests and allowing the child to direct the objectives of the representation, most, if not all, African countries lack the financial and human resources needed to implement the system aspired to in the Council of Europe Guidelines, since in general, there is a drastic shortage of lawyers in most African countries, and so their legal aid systems cannot rely solely on lawyers. Moreover, the Guidelines do not address the role of child-friendly legal aid in informal justice systems. The Guidelines do, however, provide a useful framework for consideration of concepts and principles that should be taken into consideration when implementing a child-friendly legal aid system. In any national action plan or strategy to provide legal aid, the need to address children through child-friendly legal aid should be taken into account.

A potentially useful approach to establishing priorities for the delivery of legal aid to children in Africa is to identify tasks that are best undertaken by persons formally trained to deliver legal aid and those that can be as or more effectively tackled by community members who do not have formal legal training. Intentionally addressing this question may help decision-makers determine which problems require legally trained personnel and which issues can be best addressed by personnel without formal legal training. All might agree that a child in conflict with the law facing serious charges and probable lengthy imprisonment in the formal justice system should have the services of a lawyer or of a well-trained paralegal. A trafficked or abused child, on the other hand, may possibly best be served by a non-legally trained service provider or community representative who can assess a child's and the family's needs and link them with available social services.

A second consideration when setting priorities for access to legal aid is to decide whether children should have the right to free legal assistance in all types of legal proceedings, or whether a hierarchy of access should be established depending on the nature of the legal interest at stake. For example, is the provision of legal aid to children in conflict with the law, who are in jeopardy of losing their liberty, a more critical need than the provision of legal aid to children who need birth registration, who are caught in the middle of domestic disputes, or who are homeless or trafficked? This and other similar dilemmas present difficult questions for cash-strapped nations with limited funds with which to support access to justice. One suggestion for an overall policy that might guide priority setting is that given the developmental differences between children and adults, a responsive and effective child-friendly legal aid scheme is one that provides free legal assistance to children in all criminal, civil, and administrative proceedings where the outcome has the potential to meaningfully affect a child's rights under national or international law.

The establishment of priorities for the delivery of child-friendly legal aid in the African context, if undertaken, will be a daunting task because of the extent and variety of need and because of the unique legal issues faced by children. These needs include advocating for the rights of children affected by HIV/AIDS, improving the system of justice available to children in post-conflict countries, and addressing the special problems faced by the girl child in many countries. Despite the aspirational objectives of international instruments calling for right of all children to receive legal assistance in legal proceedings, the realities on the ground and the

cultural context must at least be taken into account when establishing the priorities of a child-friendly system of legal aid.

## B. Delivery and Use of Child-Friendly Legal Services

- *Who Should Deliver Legal Services?*

There are a number of barriers to the delivery and use of legal services for children. As is true in most of the world, the children most in need of legal aid are the least likely to have the tools or resources to access it. This is especially true in most countries in Africa where the number of formally trained lawyers who are willing and capable of representing child clients is extremely small. As a result, there is a growing consensus that legal aid in Africa cannot depend on the participation of lawyers alone. Other actors, including trained paralegals, can and should provide effective and competent free legal aid. This paper advocates for a functional approach to ensuring child-friendly legal services for children as a tool in determining how legal aid for children can best be used and by whom it should be delivered.

A functional approach to service delivery focuses on the nature of the task to be performed and on the skills and competencies necessary to perform that task. Some duties may be best performed by formally trained lawyers; other tasks can be competently provided by non-lawyers. Lawyers are most needed at the decision-making phases of formal legal proceedings, where their training in courtroom advocacy and knowledge of the law may be essential to the success of the adversarial process. However, where lawyers are unavailable or unwilling to provide assistance to children in formal proceedings, the assistance of a trained non-lawyer is preferable to no assistance at all.

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Much, if not most, assistance to children involves advocacy outside of formal proceedings. In many legal systems child protection is an administrative and service-based function. In such systems, the core task of a child's advocate will be to obtain needed relief or assistance for the child from a government agency or from an NGO. A well-trained service provider such as a social worker, advocate, or a paralegal can provide these services effectively and at low to no cost. Even children in conflict with the law can benefit from the services of non-lawyers at certain stages of a proceeding. Paralegals, for example, can conduct initial interviews and investigations, provide counseling, and identify and link a client and his or her family to social services. Only when the matter reaches an adversarial posture in court should the lawyer's services be considered an essential element of a proceeding. Even then, because of the shortage of lawyers available to represent children in African courts, consideration should be given to allowing law students and trained lay advocates to provide assistance,

including representation. Utilizing a functional approach to the delivery of legal services—meaning examining the task at hand to see if it can competently be performed by a non-lawyer—could provide a means of expanding the availability of legal aid by utilizing a triage system to maximize client contact and to minimize cost.<sup>18</sup>

- *What Services Should Be Delivered?*

Providers of Child-friendly legal aid should have a systematic way for identifying child clients, for obtaining relevant information, for determining and assessing their clients' legal needs, and for developing and implementing a strategy for providing the necessary legal assistance. At a minimum, a legal aid provider should be able to answer the following questions:

1. How are the children to be served identified?
2. How are legal services made available to children?
3. What tasks are typically performed by legal aid service providers?
4. How and by whom are those tasks performed?
5. Are the methods utilized in performing those tasks state-of-the art as measured against professional standards?
6. Once contact between a child and a legal aid provider is established, how does the legal aid provider obtain information from the child and how often and under what circumstances is the child consulted and interviewed?
7. Is the child's legal representative familiar with alternative dispute resolution options that may provide a faster and more satisfactory outcome for the child client?
8. If the case is going to be tried in court, what is the extent of preparation for trial, including investigation, review of relevant documents, collaboration with experts in child development, development of a trial strategy including theory of the case, and planning for in-court advocacy?
9. Is the legal aid provider prepared to make a case for a disposition that best serves the interests of the child client, including familiarity with social support services for the child and his or her family?
10. Is there a plan for an appeal of an illegal or unjust result?

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<sup>18</sup> See ACCESS TO JUSTICE IN AFRICA AND BEYOND, Penal Reform International, Bluhm Legal Clinic of the Northwestern University School of Law and The National Institute for Trial Advocacy (2006) for a description and discussion of various methods employed throughout the world for the delivery of civil and criminal legal aid.

### C. Quality of Legal Aid

If legal aid is made available so that it can be used by children in need, the remaining challenge is to ensure that child-friendly legal aid is of high quality and that it is effective. By “effective” we mean that a child-friendly legal aid system delivers services that are competently performed, that are provided in accordance with high professional and ethical standards, and which positively impact the lives of individual and vulnerable groups of children. A high-quality system of legal aid for children requires the establishment of professional standards for legal assistance providers and training which focuses on the unique needs of child clients and on the development of children’s law as a recognized and respected area of legal specialization.

- *Establishing Professional Standards for Lawyers and Non-Lawyers:*

Most, if not all, African countries have rules of professional conduct for lawyers (see, e.g., the Ethiopian Advocates Act) promulgated by relevant ministries and courts. However, these standards do not contain specific guidance regarding the representation of children,

Model rules governing the conduct of lawyer and non-lawyer advocates for children should set forth the duties of such advocates, and applicable standards of professionalism including integrity, thoroughness, promptness, responsiveness, record keeping, and ongoing training.

including the nature of the relationship between advocate and child and the possible conflict between the duty of zealous representation and the duty to act in the child’s best interest. These codes of conduct should be amended to provide additional and more specific standards for providing child-friendly legal aid services. For example, codes of professional conduct could include provisions acknowledging and describing the special duties involved in the representation of children.. Such codes could also describe the situations in which it may be necessary to resolve questions of allocation

of authority between parent and child to make decisions regarding the representation and could provide guidance about how to resolve those conflicts in ways that protect the interests of parents and the child’s autonomy, while preserving the child’s best interests.

Professional codes of conduct could also include provisions expressly authorizing the delivery of legal services to children by non-lawyers working with agencies, NGOs, bar associations, and individual lawyers. Similarly, codes of professional conduct for lawyers could be amended to include authorization for law students to practice law on behalf of children in supervised law school legal clinics.

The suggestion that rules of professional conduct or other court or legislative rules should allow non-lawyers, including law students, to provide legal services has and will spark opposition from the practicing bar and from the courts. It is likely that incremental steps will have to be taken that will demonstrate that the involvement of non-lawyers in providing

services will pose no threat to the interests of the organized bar. Uganda recently adopted a student practice rule. There have been no reports of dissatisfaction with the substance or the implementation of this rule.

Finally, model rules governing the conduct of lawyer and non-lawyer advocates for children should also be developed. These rules would set forth the duties of such advocates, and applicable standards of professionalism including integrity, thoroughness, promptness, responsiveness, record keeping, and ongoing training. The United Nations Office on Drugs and Crime has developed a tool kit for assessing the implementation of international standards for the provision of legal aid which include sections on ethics and professional responsibility<sup>19</sup>. Standards of conduct specifically designed for attorneys who represent children have been developed by the National Association of Counsel for Children<sup>20</sup>.

- *Training:*

Children's legal aid providers, whether or not formally trained in the law, should receive ongoing training in areas of relevance to the representation of child clients. Training in laws and policies should be both theoretical and practical. To the extent possible, training in substantive legal concepts and applicable laws, regulations, and rules, as well as skills training in advocacy, negotiation, and mediation should be problem-based and interactive.

Children's law is comprised of national constitutional provisions and legislation, and international conventions, rules, and standards. The challenge is how to convey this information in meaningful ways to those who are working on the ground on behalf of children. Training materials reviewed for this background paper (i.e. Ghana, Niger) contain important information which is then utilized in a problem-solving approach to convey both substantive information as well as instruction in how to use that information in practice.

Since an important core group of leaders supporting the provision of child-friendly legal services are lawyers and judges, law schools should consider developing curricula in children's law for undergraduate and post-graduate degree and non-degree courses.<sup>21</sup> Law school clinics in Africa train students to provide legal aid to children, including clinics in Botswana, Ethiopia,

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<sup>19</sup> See: [http://www.unodc.org/documents/justice-and-prison-reform/cjat\\_eng/CJAT\\_Toolkit\\_full\\_version23Mar10all.pdf](http://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/CJAT_Toolkit_full_version23Mar10all.pdf)

<sup>20</sup> See: <http://www.naccchildlaw.org/?page=PracticeStandards>

<sup>21</sup> Models for such law school programs include the Loyola Civitas ChildLaw Center at Loyola University of Chicago School of Law ([www.luc.edu/law/academics/special/center/child/index.html](http://www.luc.edu/law/academics/special/center/child/index.html)), the Children & Family Justice Center of the Bluhm Legal Clinic of the Northwestern Law School ([www.law.northwestern.edu/cfjc/](http://www.law.northwestern.edu/cfjc/)), The University of Michigan Children's Law Program ([www.law.umich.edu/centersandprograms/ccl/Pages/default.aspx](http://www.law.umich.edu/centersandprograms/ccl/Pages/default.aspx)) and New York University's Children's Rights Clinic ([http://law.nyu.edu/academics/clinics/semester/childrights/ECM\\_PRO\\_064455](http://law.nyu.edu/academics/clinics/semester/childrights/ECM_PRO_064455)).

Kenya, Namibia, Nigeria, and South Africa.<sup>22</sup> Although we know that substantive and clinical law courses in African law schools teach the legal and procedural aspects of representing children, we do not know the extent to which legal instruction in Africa incorporates training in the developmental factors that influence children’s behavior, decision-making, responsiveness to legal services, and their understanding of both formal and informal proceedings in which they may become involved.

Post-graduate, continuing education, and non-degree programs can also play a significant role in the training of children’s advocates. Effective programs in this category exist throughout Africa, including in Ghana, Niger, and Senegal. The Paralegal Advisory Service in Malawi has created a curriculum and training program for paralegals in cooperation with the University of KwaZulu-Natal in South Africa.

The National Institute for Trial Advocacy ([www.nita.org](http://www.nita.org)) publishes child advocacy materials that are used in continuing education programs for lawyers and non-lawyers and conducts trial advocacy training programs for children’s advocates in the U.S. and in Africa. The National Juvenile Defender Center ([www.njdc.info/](http://www.njdc.info/)) holds yearly training conferences for lawyers who represent children in juvenile courts and publishes training materials (including the Models for Change training materials referenced earlier in this paper). These continuing education programs and materials raise the level of practice of children’s advocates through the provision of updated information about new and innovative approaches to service delivery. These programs also attract non-lawyers, including social workers, probation officers, and psychologists and psychiatrists.

Training in substantive legal concepts and applicable laws, regulations, and rules, as well as skills training in advocacy, negotiation, and mediation should be problem-based and interactive.

- *Measuring Quality:*

Measuring the quality of a legal aid program is a complicated undertaking that requires the establishment of process and impact outcomes and the use of quantitative and qualitative evaluation techniques to measure whether their outcomes have been met. Determining the number of children served and the quantity of work done is a comparatively straight-forward task assuming that the legal aid provider keeps good records and has systems in place for retrieving the relevant data. Assessing the quality of legal aid is a far more complex and nuanced undertaking that must take into account the nature of the problems presented, the

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<sup>22</sup> The Open Society Institute (OSI) has put published a list of law school clinics and programming in Africa. ([http://www.soros.org/initiatives/justice/focus/legal\\_capacity/articles\\_publications/publications/southafrica\\_20030628](http://www.soros.org/initiatives/justice/focus/legal_capacity/articles_publications/publications/southafrica_20030628)).



challenges presented by those problems, the goal of the services provided, and the success rate in meeting those goals. Because legal aid providers do not control many of variables that impact success or lack of success, it may be useful to measure quality of services by comparing practices of individuals and agencies to best practices.

We set forth below a list of best practices that could be utilized when attempting to assess the performance of providers of child-friendly legal aid.<sup>23</sup>

#### For Individual Providers of Legal Aid

1. Knowledge of laws, regulations, and practices relevant to the provision of child-friendly legal aid;
2. Knowledge and skills necessary to establish relationships with children, based on knowledge of developmental differences between adults and children, that foster complete and effective communication so that all relevant information is known and considered in decision-making;
3. Acknowledgment of the role of the child and his or her evolving capacity in making decisions about steps to be taken on his or her behalf and accommodation of the role of the child in decision-making in the exercise of professional judgment by the legal aid provider;
4. Exercise of effective advocacy on behalf of the child, including determining what model of advocacy will have the most positive short-term and long-term effects upon individual children and groups of vulnerable children;
5. Training and skill in understanding the cultural and community contexts in which legal aid is being provided;
6. Thoroughness in understanding the problems faced by individual children and vulnerable groups of children and in designing solutions to those problems;
7. Ability to conduct thorough investigations to discover all facts relevant to the provision of child-friendly legal aid;
8. Ability to navigate multiple systems effectively utilizing the skills of advocacy, negotiation, mediation, and in-court advocacy to achieve desired results.
9. Knowledge and ability to link children with other essential service providers to ensure that children's needs are addressed in a comprehensive manner.

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<sup>23</sup> The World Bank has also done important work in evaluating the effectiveness of legal aid programs. See, e.g., Walsh, "In Search of Success: Case Studies in Justice Sector Development in Sub-Saharan Africa, June 2010 (includes discussion of the use of paralegals to deliver legal services in Malawi and Sierra Leone), available at: [http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/10/22/000334955\\_20101022003638/Rendered/PDF/574450ESWOP1121n0Africa010June02010.pdf](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/10/22/000334955_20101022003638/Rendered/PDF/574450ESWOP1121n0Africa010June02010.pdf).

## For Organizations that Provide Legal Aid

1. Identification of target areas for the provision of child-friendly legal aid based upon evaluation of the needs for child-friendly legal aid;
2. Coordination with other agencies and groups providing legal aid in order to minimize duplication of effort, as well as coordination with other service providers to ensure that children are linked into essential services;
3. Creation of minimum standards for providers of child-friendly legal aid;
4. Advocacy for comprehensive supported child-friendly legal aid programs, including government and non-government actors;
5. Staffing and resourcing of legal aid delivery programs that include lawyers and non-lawyers;
6. Provision of continuing education to staff service providers;
7. Encouragement and support for those who provide direct services to children.

## **V. CORE COMPETENCIES FOR THE PROVISION OF CHILD-FRIENDLY LEGAL AID**

The conventions, declarations, and rules and reports referenced in this paper do not describe the mechanisms for delivering legal aid to children. This section of the paper identifies the basic skills that are required for lawyers and non-lawyers when providing legal assistance to clients in a variety of settings, including children in conflict with the law, children in contact with the law, children in post-conflict situations, and children in special circumstances. The focus is on the tasks to be provided on the ground in the African context.

The following hypothetical case can be used to illustrate these tasks: Assume that a child who is a victim of child trafficking is routinely severely beaten by members of the family with whom he is living. The child runs away and appears at a community legal aid office to complain about his treatment. When asked if he is willing to appear in court he declines, stating that he is afraid that should the court discover that he is not in the country legally, he will be deported to his home country from which he fled because he is a member of a persecuted minority group.

The following hypothetical case can be used to illustrate these tasks: Assume that a child who is a victim of child trafficking is routinely severely beaten by members of the family with whom he is living. The child runs away and appears at a community legal aid office to complain about his treatment. When asked if he is willing to appear in court he declines, stating that he is afraid that should the court discover that he is not in the country legally, he will be deported to his home country from which he fled because he is a member of a persecuted minority group.

This hypothetical case presents a number of issues requiring considerable skill for a legal aid provider to identify and to dissect. First, how can the legal aid provider be sure that she has gathered all relevant information from the child? Should the legal aid provider assume that all relevant information can be gathered during just one interview of the child? What should be the protocol for gathering additional information from the child? In addition to interviewing the child, what additional sources of information should be consulted? At what point, if ever, should the legal aid provider contact the family with whom the child is living? How do

### Core Competencies for the Provision of Child-Friendly Legal Aid:

- Interviewing Child Clients
- Counseling and Negotiation
- Effective Advocacy

confidentiality duties to the child constrain the legal aid provider's efforts to gather additional information regarding the child's situation and/or to contact social services providers and/or the courts regarding the child's situation? Is the legal aid provider able to formulate an interim or long-term solution to the child's problem that does not require expenditure of funds? What methods will be employed to make sure that there is follow-up and that the child will be monitored?

The tasks outlined above should be informed by the relevant legal frameworks, but the provision of effective legal aid requires a broader skill set than mastery of the law. The legal aid provider must be a person skilled at interviewing children. She must understand the cultural, community, and family dynamics that have led to this child's predicament. The advocate must be able to assimilate and organize information from a variety of sources, to synthesize that information, and be able to chart and complete a course of action that will call on attributes of persistence, advocacy, and judgment.

#### A. Interviewing Child Clients

Effective communication between provider and client is the cornerstone of effective legal assistance. A legal assistance provider's ability to interview and counsel children depends heavily on his or her ability to communicate in a developmentally appropriate way. This in turn contributes to the development of a trusting relationship between a legal services provider and child client, another cornerstone of effective legal aid. Without full disclosure of information from the "client," there is a risk that the legal aid services provided will be incomplete or will miss the mark entirely. To develop the skill of child interviewing, a legal provider must be attuned to a child's cognitive and emotional capacity to record and recall information accurately and to convey this information in an understandable way. In addition to assessing a child's communication ability, the legal assistance provider should endeavor to ascertain information about cultural, social, religious, and historical factors that may influence the legal aid provider's ability to communicate effectively with the child and his or her family. Without this knowledge, efforts to provide effective legal aid may be compromised because of lack of communication between the legal aid provider and the child and her family, and the setting of unrealistic, irrelevant, or impossible goals. Legal aid providers must understand how non-legal factors impact the actions and decision-making processes of children and their families.

#### B. Counseling and Negotiation

Negotiation is a skill that is employed by legal aid providers on a daily basis. It is a skill that some possess naturally, but is also a skill that can and should be taught and learned in order to improve levels of performance. In our hypothetical case, the legal aid provider is faced with a situation in which the child does not want to go back to his "family" but fears deportation. The first "negotiation" that might take place is the one with the client. What are the client's objectives and how can these objectives best be realized? The advocate may believe

that going to the immigration authorities with this sympathetic case may result in a successful asylum claim. But the client may be reluctant to pursue this avenue of redress because of the possibility of being deported. In fact, the client may prefer to become homeless rather than alert immigration authorities. The legal aid provider's response to the child's expressed preference to go "underground" may be that becoming a street child is extremely dangerous—definitely not in the best interest of the child. How should this difference of opinion be negotiated and resolved? What should be the process for resolving and reconciling the differing perspectives of legal aid provider and child?

This is the kind of day-to-day interaction between child and legal aid provider that calls for application of practical skills—here the skills of counseling and negotiation. These skills are, perhaps, more in demand and more relevant to the provision of child-friendly legal aid than to other vulnerable groups. Not only are they potentially crucial to the outcome of the case, but they are difficult to acquire and to employ because of the developmental differences between children and adults and the difficulties of communicating effectively with children in crisis. As this hypothetical case demonstrates, knowledge of the law applicable to this situation provides only a small part of the solution to the child's dilemma. Equally relevant is the legal aid provider's ability to communicate, to understand, to counsel, and to negotiate.

### C. Effective Advocacy

Advocacy is another important skill that is routinely employed by providers of child-friendly legal aid in formal and in informal justice systems. Advocacy, like the skills of interviewing, counseling and negotiation, is an element of almost every task undertaken by legal aid providers on behalf of children. Advocacy skills include the art of making persuasive arguments based on facts and legal and cultural norms in a range of settings, including one-on-one meetings with prosecutors, judges, and government officials; advocacy in court in hearings, trials, and appeals; and advocacy with community leaders. Advocacy also occurs in informal justice settings, but the place, nature, and extent of advocacy in informal justice proceedings is not fully understood by outsiders. This is an area that needs further study to inform decisions about how legal aid providers might best participate in informal proceedings.

Interviewing, counseling, negotiation and advocacy skills can be learned through a combination of closely supervised experience and instruction in a simulated setting using a "learning by doing" interactive method in which the trainee is asked to make an argument or examine a witness while being observed by experienced advocates who provide immediate feedback on the advocacy task and demonstrate more effective techniques for accomplishing the advocacy goal.

## VI. CHILD-FRIENDLY LEGAL AID IN INFORMAL JUSTICE SYSTEMS

There is overwhelming evidence that in societies in which traditional or informal justice systems are present and functioning, persons in need of legal assistance prefer these mechanisms to the formal justice system. There are many reasons for this, including compatibility with cultural norms and practices, accessibility, cost, timeliness, and community acceptance of dispositions. In many African countries legislation recognizes the authority of non-state and informal justice systems (including Islamic law and courts) to resolve disputes, especially those involving family and matrimonial matters, succession, and land disagreements.

Informal justice systems routinely consider matters affecting children, including child custody, inheritance, and marriage. Cases involving children in conflict with the law are also frequently decided in informal justice systems where a petty offense is involved or where it is not possible to access the formal justice system. Despite the relative frequency with which non-state and informal justice systems are used to resolve disputes involving children, typically the children who are at the center of these disputes do not have access to independent forms of legal assistance. The participation of lawyers or advocates is rare.

A close examination of the desirability, role, and elements of child-friendly legal aid in informal justice systems is beyond the scope of this paper and the qualifications and experience of its authors. However, the Danish Institute for Human Rights has been commissioned by UNICEF, UNDP and UNIFEM to conduct a study on informal justice systems with particular focus on how those systems contribute to access to justice generally, how those systems should be acknowledged and supported, and the extent to which human rights norms and practices are recognized within those systems. With respect to the rights of children, the study identifies issues that should be considered in addressing the question of how to provide child-friendly legal aid in the context of informal justice systems. Among those issues are: 1) how the imperative of protecting the best interest of the child can be carried out when, in informal justice systems, decision makers must take into account multiple community interests; 2) how to protect children from “harmful practices;” 3) how to promote children’s participation in informal justice systems; 4) how to ensure participation of vulnerable groups in informal justice systems; 5) whether the criminal jurisdiction of informal justice systems is limited to minor offenses; and 6) how the operation of

### Issues to be considered in informal systems of child-friendly justice

- How can decision makers protect a child’s best interest while also taking into account multiple community interests?
- How to protect children from “harmful practices?”
- How to promote children’s participation?
- How to ensure participation of vulnerable groups?
- Is criminal jurisdiction of IJS limited to minor offenses?
- How will performance of IJS be reported under the Human Rights Treaty Body System?

informal justice systems will be reported under the Human Rights Treaty Body system.<sup>24</sup> These issues suggest a list of basic concerns relevant to the provision of child-friendly legal aid that merit further study. These include:

- To what extent does/should the CRC's requirement that state actors promote "the best interest of the child" be enforced in the informal justice system?
- If the "best interest" requirement should be integrated into these informal justice systems, how can this be done and what role should legal aid providers have in addressing this difficult and delicate issue?
- If child-friendly legal aid is to be provided in informal justice systems, how can this be accomplished without interfering with the integrity, authenticity, and legitimacy of these informal justice systems?
- Should advocates of child-friendly legal aid focus primarily on training IJS decision-makers about children's rights, needs, and abilities or on service delivery in informal justice systems?

## VII. CONCLUSION

Child-friendly legal aid protects both procedural and substantive human rights. The provision of timely, competent, and developmentally appropriate legal assistance directly advances a child's right to a fair, just, and participatory legal process. Child-friendly legal aid

Effective legal advocacy can highlight structural and practical flaws in the legal system, and educate leaders and the public about the need for reform. Legal aid for children can serve as a catalyst for research and scholarship which results in new laws, policies, and practices that promote children's procedural and substantive human rights.

also has the potential to promote children's substantive rights. For example, if a trafficked child's legal assistance provider is effective in advocating for the release of the child from involuntary servitude or from oppressive labor conditions, the child should then be able to take advantage of other rights such as the right to be free from exploitation and the right to obtain an education.

Effective legal advocacy on behalf of individual children, if properly resourced, managed, and tracked, can also highlight

structural and practice flaws in the legal system that allow violations of human rights to continue and can educate leaders and the public about the need for reform.<sup>25</sup> A scenario

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<sup>24</sup> See, Danish Institute for Human Rights, "Study on Informal Justice Systems", 2010, (Draft, Not for Circulation). Note: May we cite the draft report? See also Ewa Wojkowska, *DOING JUSTICE: HOW INFORMAL JUSTICE SYSTEMS CAN CONTRIBUTE*, UNDP (2006).

played out across Africa and around the world illustrates this potential. A child's legal assistance provider for a child in conflict with the law visits his or her client in a police station or detention facility. As part of this process, the advocate observes that children are not held separately from adults, in contravention of human rights standards. At trial, the representative also challenges abusive interrogation practices and the reliability of confessions obtained under duress and promotes the client's right to impartial and accurate fact-finding and to child-friendly courtroom procedures. At disposition, the child's representative argues for an outcome based on restorative justice principles. Throughout the assistance process, the advocate acquires valuable information that can be used to convince courts, government agencies, and international agencies to focus attention on the realities of how children are treated by the juvenile/criminal justice system. Such advocacy can also serve as a catalyst for research and scholarship which results in new laws, policies, and practices that promote children's procedural and substantive human rights.

Child-friendly legal aid is a critical component of justice for children. This paper has identified special challenges of access, use, and quality in both formal and informal justice systems. While these challenges exist in every legal system, they are especially acute in Africa given its limited resources, competing priorities, and unique circumstances, including the existence of multi-tiered and overlapping systems of justice, the problems of post-conflict and divided societies, and the special needs of vulnerable children such as those affected by gender violence or HIV/AIDS.

The goal of this paper has been to begin a conversation about the meaning and scope of child-friendly legal aid. Next steps may include the development of model legislation and model training schemes.<sup>26</sup> By focusing on the question of how best to ensure that children whose lives intersect with the legal system are provided with timely, competent, and developmentally appropriate legal aid, it may be possible not only to protect the legal interests of children, but to advance the goal of justice for everyone.

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<sup>25</sup> Such reform can be guided by, in relation to child victims and witnesses, the UNODC-UNICEF Handbook for Professionals and Policymakers on **Justice in matters involving child victims and witnesses of crime (2009) and the Model Law**.

<sup>26</sup> As mentioned, in the area of justice for child victims and witnesses, a Model Law, a Handbook and on-line training modules were developed by UNICEF and UNODC. See all relevant tools at <http://www.unodc.org/unodc/en/justice-and-prison-reform/tools.html?ref=menuaside>

## **VIII. PROGRAM DESCRIPTIONS SOLICITED AND RECEIVED IN PREPARATION OF THIS PAPER**

### **A. Comments on Materials Received**

In preparing this paper, we asked legal aid providers in Africa to send information about their child-friendly legal aid efforts, including reports, evaluations, and descriptions of past, present, and planned programming. In particular we requested descriptions of programs that involved the actual delivery of legal aid to children. In response we received the materials listed in the attached bibliography. These materials fall into several broad categories: (1) studies regarding populations of children in need of legal services; (2) reports on the activities of organizations providing legal assistance to children; (3) handbooks or guides for providers of legal assistance to children in need of legal services; and (4) training materials for lawyers and non-lawyers for children. In preparing this paper, we also consulted the international legal frameworks, reports and studies cited in the text of this paper.

The materials submitted in response to our request for information concerning child-friendly legal aid prove the point that many thoughtful initiatives have been undertaken throughout Africa to make legal aid available to children. The material received also demonstrates that a great deal of attention in some countries has been focused on gathering information about the extent of the need for child-friendly legal aid, on program design in response to those needs, on describing the operation and results of programs, and on designing training materials and training programs.

There are, however, a number of issues that warrant further discussion and development in the materials we reviewed. The reports that document the number of children likely to be in need of legal services were not specific as to particular categories of need. Although it may be impossible to accurately gauge the overall extent of need, at a minimum efforts should be made to track the number of children who come into contact with police and with the courts. Having said this, lack of reliable statistics is a reality of the African context that must be taken into account when designing policies and approaches.

In the area of training, there are also issues that merit further consideration, including the dynamics of relationships between advocates and the children they serve, the perceived power imbalance between formally-trained lawyers and non-legal aid and social welfare providers, training in advocacy skills, and training in negotiation and mediation. More information should be gathered on the extent and nature of the training of legal services providers for children in Africa. This will necessarily involve a more thorough examination of formal university-based instruction as well as efforts to provide training in non-academic settings.

Also missing from the submitted materials are concrete descriptions of services actually provided to children in need of legal aid and an assessment of their outcomes. We include in this category both general descriptions of services as well as descriptions of how those services



are provided. Such descriptions (perhaps case studies) would provide individual service providers and legal services organizations with much-needed information about a range of topics, including program design and the effectiveness of various approaches to the provision of legal aid for children. In the future, it may be useful to develop case studies which detail the interactions between children and legal aid service providers. These case studies would shed light on what legal services providers on the ground actually do.

## **B. List of Materials Received**

### **Cote d'Ivoire**

- L'ASSOCIATION DES FEMMES JURISTES DE COTE D'IVOIRE, ACTES DE LA TABLE RONDE SUR L'ACCESS A LA JUSTICE EN COTE D'IVOIRE (2009).
- BUREAU INTERNATIONAL CATHOLIQUE DE L'ENFANCE (BICE), RAPPORT D'ACTIVITES: 2009 (2009).
- MINISTERE DE LA JUSTICE ET DES LIBERTES PUBLIQUES, PROJET DE DECRET COMPLETANT ET MODIFIANT LE DECRET No. 75-319.
- JUSTICE JUVENILE EN REPUBLIQUE DE COTE D'IVOIRE, EXTRAITS SITAN, RAPPORT FINAL DECEMBRE 2008 (2008).

### **Ghana**

- GAGNON & ATSUVIA, GHANA JUSTICE DEPARTMENT, REPORT ON ACCESS TO JUSTICE IN GHANA BY WOMEN AND CHILDREN (2005).
- GHANA MINISTRY FOR LOCAL GOVERNMENT, RURAL DEVELOPMENT, AND ENVIRONMENT, NATIONAL CHILD PANEL TRAINING MANUAL: GHANA (2008).

### **Kenya**

- KENYA STAKEHOLDERS COALITION FOR THE UNIVERSAL PERIODIC REVIEW, 2009 REPORT (2009). <http://www.khrc.or.ke/?e=51>
- CHILD PROTECTION SECTION, UNICEF KENYA, THE LEGAL AID SCHEME (2008).
- CHRISTINE BODEWES, CIVIL SOCIETY AND THE CONSOLIDATION OF DEMOCRACY IN KENYA.
- CHRISTINE BODEWES, NAIROBI'S URBAN SLUMS: THE ORIGIN, EVOLUTION AND IMPACT OF THE ILLEGAL CITY.
- CHRISTINE BODEWES, PROPOSAL FOR HUMAN RIGHTS TRAINING PROGRAM IN DANDORA IN NAIROBI, KENYA, WORKING PAPER.

### **Liberia**

- UNICEF, AN AIDE MEMOIRE: FRAMEWORK FOR INTRODUCTION OF PARALEGAL PROGRAMS IN LIBERIA (2008).
- PROPOSAL FOR FUNDING OF TWO CONSULTANTS TO DEVELOP POLICY FRAMEWORK FOR PARALEGAL PROGRAMME IN LIBERIA, UNITED NATIONAL MISSION IN LIBERIA (2009).

## Malawi

- JUSTICE FOR CHILDREN FACT SHEET, UNICEF AND MINISTRY OF WOMEN AND CHILD DEVELOPMENT

## Niger

- ATELIERS DE FORMATION DES DEFENSEURS COMMIS D'OFFICE - NIGER. UNICEF (2010).

## Senegal

- REPUBLIQUE AU SENEGAL, MINISTERE DE LA JUSTICE, CENTRE DE FORMATION JUDICIAIRE, PROJET
- RENFORCEMENT DE LA PROTECTION JURIDIQUE DES MINEURS AU SENEGAL, GUIDE A L'ATTENTION DES INTERVENANTS DANS LA PROBLEMATIQUE DES MINEURS (2005).
- L'ASSISTANCE LEGALE DES ENFANTS AU SENEGAL.
- REPUBLIQUE AU SENEGAL, MINISTERE DE LA JUSTICE, CENTRE DE FORMATION JUDICIAIRE, LES MINEURS EN CONFLIT AVEC LE LOI AU SENEGAL – UNE REALITE A REDECOUVRIR (2003).

## Uganda

- UGANDA COUNTRY PROGRAMME 2010-2014, UNICEF, SAFE CONCEPT NOTE: KEEP CHILDREN SAFE (2010).

## Zimbabwe

- AMY TSANGA, ET AL., UNICEF, CHILDREN AND WOMEN'S RIGHTS IN ZIMBABWE: THEORY AND PRACTICE (2005).
- HUMAN RIGHTS WATCH, "OUR HANDS ARE TIED" EROSION OF THE RULE OF LAW IN ZIMBABWE (2008).
- CONSTITUTION OF ZIMBABWE, TITLE 9, CRIMINAL PROCEDURE AND EVIDENCE ACT
- CONSTITUTION OF ZIMBABWE, LEGAL ASSISTANCE AND REPRESENTATION ACT
- HUMAN RIGHTS WATCH ET AL., ZIMBABWE: HUMAN RIGHTS IN CRISIS, SHADOW REPORT TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS (2007).
- JUSTICE FOR CHILDREN TRUST, MISSION STATEMENT (2002).

## General

- COUNCIL OF EUROPE , 4<sup>TH</sup> DRAFT OF COUNCIL OF EUROPE GUIDELINES ON CHILD-FRIENDLY JUSTICE (2010). [www.coe.int/childjustice](http://www.coe.int/childjustice)
- UNITED NATIONS, UNITED NATIONS PRINCIPLES AND GUIDELINES ON ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS (2009).
- GLOBAL THEMATIC PROGRAMME FOR ACCELERATING ACCESS TO JUSTICE FOR HUMAN DEVELOPMENT 2009 – 2013, UNDP (2009)
- UNDP BCPR RULE OF LAW- GLOBAL PROGRAMME
- EWA WOJKOWSKA, DOING JUSTICE: HOW INFORMAL JUSTICE SYSTEMS CAN CONTRIBUTE, UNDP (20026)

- PROGRAMMING FOR JUSTICE: ACCESS FOR ALL: A PRACTITIONER’S GUIDE TO A HUMAN RIGHTS-BASED APPROACH TO ACCESS TO JUSTICE, UNDP (2005)
- WORLD HEALTH ORGANIZATION, WORKING WITH STREET CHILDREN: MODULE 9: INVOLVING THE COMMUNITY.
- CONSORTIUM FOR STREET CHILDREN, ANNUAL REPORT JAN-DEC 2004 (2004).  
[www.streetchildren.org.uk](http://www.streetchildren.org.uk)

## IX. APPENDIX

### SUMMARIES OF MATERIALS SUBMITTED FOR THE UNICEF/UNODC CONFERENCE ON LEGAL AID, DAKAR, JUNE, 2010

Set forth below are short summaries of the materials regarding child-friendly legal aid submitted in response to UNICEF, Dakar’s request. The complete documents are contained on discs that were distributed for participants at the conference.

#### COTE D’IVOIRE

*Actes De La Table Ronde Sur L’Acces a La Justice en Cote D’Ivoire, Report of proceedings of a meeting of L’Association de Femmes Juriste de Cote d’Ivoire, 24 March 2009.*

There were several presentations made by participants in this program, including presentations regarding legal aid and access to justice in Cameroun, Cote d’Ivoire, Niger, and Nigeria. Samples of presentations made at that meeting are summarized below.

#### **Presentation by Me Koffi Marie Chantal, Vice-President de L’Association des Femmes Juriste de Cote d’Ivoire:**

Access to justice for women and children is limited in Cote d’Ivoire because of economic and structural factors. The population need of legal services is impoverished. Methods must be employed to reach these citizens and to let them know about their rights and about legal aid programs that can assist them. The judiciary should make justice accessible to citizens in remote areas by working with the government to locate legal aid offices in or near the courts, especially for women and children. The public should be made aware of the Office of Legal Aid. The Association will create a legal clinic to provide legal information and to assist with mediation. The Association will create a legal aid manual for women. The Association encourages paralegals to visit police stations and prisons. The Association will conduct radio broadcasts to provide information about women’s rights.

### **Presentation on the activities of Transparency Justice:**

Transparency Justice has various on-going projects designed to re-establish confidence in the legal system in Cote d' Ivoire and to communicate legal rights to those who do not have access to legal information. The purpose of these projects is to improve access to justice for the ordinary citizens of Cote d'Ivoire.

### **Presentation by Me Koffi Kouakou, President of Services of Des Droits De L' Enfant et de la Famille (SDEF- Afrique):**

The objective of this organization is to provide legal information to support the protection of the rights of children and families. The organization uses lawyers and "others". The organization provides mediation services for families. It also specializes in the marriage and family law. The organization promotes marriage.

### **Presentation by M. Ousseini Moussa, Coordinator of Legal Aid (PAJED), Niger:**

Access to justice in Niger is hampered by weaknesses in the administration of justice and the fact that 63% of the population lives in poverty and 34% live in extreme poverty. Justice is perceived to be repressive by most of the population. Free legal aid is provided by mobile justice centers (caravanes de la defense) and an office that provides legal aid for children. There is a program that promotes the rights of women and children in Niger. This program has provided legal information to citizens in outreach centers and in legal clinics. The program has also established a legal clinic at the Faculty of Economic Science and Law. The program also provides service to prisoners including information and representation. The prison program has been well-received by prison officials and by the courts.

### **Presentation by M. Kouassi, Assistant Director of Civil Affairs and Human Rights, Cote d' Ivoire:**

Cote d Ivoire has legislation that is relevant to the provision of legal aid. It also has a government bureau of legal aid that reviews applications for legal aid. This presentation contains a detailed description of the legislation and how applications for legal aid are processed and ruled upon.

### **Presentation by Me. Mentenon on the Role of Lawyers in Providing Legal Aid, Cote d' Ivoire:**

Lawyers have an obligation to provide legal aid. But the amount allocated by the State is less than .02% of the state's budget. Young lawyers do not wish to practice in remote areas. Some layers refuse appointments.

## **Presentation on the Experience in Cameroun for the Improvement of the Conditions of Confinement in Cameroun by Me. Tetchumanie Siakam Corbeil, (PACDET);**

Legal aid in criminal cases is insufficient. Judges have the discretion to approve, or not to approve THE appointment of lawyers. The Program for Betterment of Conditions of Confinement was conceived to improve the state of human rights in prisons and in courts. The project has been successful in promoting these ideals in prisons in Douala and Yaounde. Lawyers determine which prisoners will benefit from legal assistance.

### **Conference Report**

The Conference report contains a list of recommendations including:

- the State should provide legal representation for criminal defendants;
- there should be a budget in the ministry of justice for legal aid;
- citizens should be given education about their rights;
- legal aid programs should be available in the interior of the country;
- materials should be created that will explain the law to lay-persons;
- legal clinics should be located in the interior of the country;
- legal clinics should be established at universities.

### **Background Paper on Models for delivery of Legal Aid**

The conference materials also include a background paper on legal aid in Africa. The paper contains a table that sets forth the advantages and disadvantages of various models for the delivery of legal services including: pro-bono legal aid; government supported legal aid; bar association-sponsored legal aid programs. The background paper examines legal aid schemes in South Africa, Congo Brazzaville, Ghana, Kenya, Lesotho, Malawi, Mali, Niger, Nigeria, Congo, Republic, Rwanda, Sierra Leone, Somalia, and Tanzania. Contains tables regarding legal clinics in Africa.

### **Le Personnel Social du Ministere de la Justice et les Droits de L'Homme, Cote d'Ivoire**

This is an internal memorandum from the Ministry of Justice and Human Rights in Cote D'Ivoire that includes job descriptions for different categories of social workers who work with children. The memorandum describes various grades and functions of social workers and the educational requirements for each grade. Social workers must know about the population's basic needs and how the government attempts to meet those needs. The social workers must know the relevant law. They will work in schools and will observe how schools operate and will provide social services to children. They will also work with children on probation in cooperation with juvenile courts.

This document also describes the functions of juvenile court judges including their obligation to conduct thorough investigations of the family and social backgrounds of the children who come before them. Judges can appoint non-lawyers to represent children in parts of the country

where there are no lawyers available. The judge has the power to place children in observation centers where there is an issue of the child's physical or mental health.

The document describes juvenile courts, which are comprised of a judge and assessors. Proceedings are conducted in private. The minor can be removed from the courtroom by the judge. The identity of the minor may not be disclosed to non-interested parties. Dispositions that can be ordered including release to parents, placement in an institution, or placement in a medical facility. Children over the age of 13 may be placed in juvenile institutions or placed on probation. If children are incarcerated, they must be separated from adults. The juvenile court judge has a wide range of available dispositions. Social workers play a very significant role in assisting the judge to fashion appropriate dispositions.

### Justice Juvenile en RCI, Cote d'Ivoire, 2007

In 2007, there were 201 minors in prison in Cote d'Ivoire. This number has gone down since 2002 when there were 534 minors in prison. 20% of minors in prison in Cote d'Ivoire were foreign.

Prison conditions are poor. Children are subject to physical and sexual abuse in prison. There are few educational programs for children in prison. Children in prison are deprived of their rights. There are inadequate facilities for juveniles.

There are insufficient numbers of judges who specialized in dealing with children. There are insufficient numbers of social worker observers to report on the situation of minors in detention, in police stations and jails.

It is recommended that more use be made of alternatives to the formal justice system and of alternatives to incarceration. It is also recommended that more child specialists be employed to monitor and to serve children in custody.

## **GHANA**

### National Panel Training Manual

The goal of this Training Manual is to enhance skills of Child Panel members and to guarantee a child-centered approach to juvenile justice. It aims to ensure members of the panels put the best interest of the child at the forefront and to ensure uniformity and coherence in training across the country.

The Manual has seven sections and is designed to be used in a five-day training session. The sections are: Introduction to Child Rights; Introduction to the Concept of Child Development; Common Types of Child Abuse; Common Offences Committed by Juveniles and Types of Treatment; Skills in Communicating With/Interviewing Children; Purpose and Benefits of

Diversion and Restorative Justice in the Administration of Juvenile Justice in Ghana; and the Process of General Recording, Case Recording, and Case Management.

Introduction to Child Rights looks at the CRC, the African Charter on the Rights and Welfare of the Child and the Children's Act and establishes links between Human Rights and Child Rights principles. It classifies the needs of children (physical, social and cultural, and emotional/psychological) and who bears the responsibility for meeting children's needs (from the international community down to the child himself). It also notes that the African Charter looks at children's duties (to families, communities and states) as well as their rights.

Introduction to the Concept of Child Development discusses four areas of development (physical, cognitive, emotional, and moral). It explains that the age of criminal responsibility in Ghana is 12 years and that when a child over the age of 12 commits a crime, he should be seen before the Child Panel except in serious cases like murder, defilement. Notes that adolescence is a particularly tough time, and that children who experience hunger, poverty, neglect, etc. are more likely to commit crimes or be victims of further abuse/exploitation.

The section on Common types of Abuse looks at definitions of violence from U.N. Study on Violence against Children, World Report on Violence and Health, WHO/ISPCAN Expert Consultation on Child Abuse. It explains the major types of abuse as physical, emotional, sexual and neglect, and mentions child labor/exploitation. Effects of abuse include STDs/AIDS/HIV, drug use, childhood pregnancy, intellectual impairment, abusing own children/spouse in adult life.

The component on Common Offenses and Treatment looks at different treatment options, including caution and discharge, bonding (stricter restrictions), release on probation, fit persons order, institutionalization as last resort. It discusses the traditional Ghanaian perspective on handling juvenile delinquency (fit persons such as village headmaster, school teacher, and successful businessman/woman as examples) versus the formal approach of bringing in department of social welfare, juvenile courts, etc.

Skills in Communicating with Children discusses methods like appropriate introductions, encouragement, simple language, friendly/relaxed approach, adequate time for child to respond, and verbal and nonverbal communication.

The section on Purpose and Benefits of Diversion and Restorative Justice explains that diversion affords children opportunities to avoid the harmful effects of criminal justice system and disadvantage of having a criminal record, and that it benefits society by reducing court workloads, improves condition of children who are detained, etc. Restorative justice recognizes how crime affects the victim, community and offender – each must take an active role.

Process of Recording explains general recording, case recording, and case management, and when each is appropriate/necessary.

## Report on Access to Justice in Ghana by Women and Children

This report focuses on four main aspects of the law: children “in need of care and protection,” parentage, custody and maintenance matters, and child employment and child trafficking.

Although several thousand children fall into the “in need of care category,” very few are reported to Social Welfare and fewer still receive adequate care thereafter. This is because few Ghanaians know about the law, public intervention is an alien concept to the society – traditionally the extended family has been responsible for caring for children – and the agencies simply don’t have enough money to provide proper care.

Ghana should implement protocols at the national level that will help ensure implementation of well-thought-out strategies at the regional level. Quebec’s experience is given as an example, noting that it faced similar problems of inconsistent programs/enactment of programs within the province that were improved by an agreement calling for effective collaboration between many different government agencies.

Parentage, custody, access and maintenance matters are generally better handled, as the procedures for these seem to be more widely known. The report does note that filing fees often prevent women from applying for assistance, and should be eliminated because they are not a significant portion of Judiciary revenue.

Employment of children laws are often ignored/violations aren’t reported to the authorities, but this report found no official documentation as such. The same goes for child trafficking – reports say that some trafficking is evident in Ghana, but there are no laws specifically addressing the problem.

Juvenile Justice Act: Education about the Act is very necessary in Ghana, to create awareness of the laws among police, judges, magistrates, lawyers, and social workers.

Age determination fees should be eliminated as they make it hard for juveniles to benefit from the law.

Arrests must be made with due regard to the juvenile’s dignity, with minimal force, juvenile has the right to be informed of reason behind his arrest, his parents shall be informed, and he has a right to legal advice. However, juveniles can be detained for 48 hours before appearing in court – the Report recommends that the maximum should be 24 hours. It also notes that in some police stations children are held with adults.

Most juveniles are, in practice, denied access to free legal representation. Yemen has a system in which pro bono lawyers receive compensation to be on call 24 hours a day, and are in court every day to analyze evidence and provide legal assistance. This system could be replicated in Ghana.



Diversion is a positive option, and should be implemented by the Child Panels. The new law also takes many circumstances into account (such as age, crime, family environment, etc.) when determining sentencing and puts custody as a measure of last resort. As such, the provision allowing for extension of detention should be removed from an administrative agency and placed solely with the courts.

## **KENYA**

### *Proposal for Human Rights training program in Dandora in Nairobi, Kenya:*

The goal is to build grass roots capacity of Dandora residents to respond to the developments and human rights issues facing them. There is a dangerous garbage dump in this community. There are roving gangs that kill, injure, and intimidate residents.

### *Kenya stakeholders Coalition For the Universal Periodic Review (2009):*

Many children are remanded to adult institutions. There, they are often subject to physical and sexual assaults. There should be child protection units in all police stations. Children are imprisoned with convicted mothers, even in petty cases. There is high unemployment among youth. There are problems in accessing pre-natal care, health care, and education. There is inadequate provision for children with special needs. Children are not protected from child labor.

### *The Legal Aid Scheme, Birgithe Lund – Henriksen, Chief Child Protection Section, UNICEF Kenya.*

The Legal Aid Scheme serves 2500 children annually including children who are victims, witnesses, and alleged offenders during judicial proceedings. There is a network of volunteer lawyers who provide services. The Legal Aid Scheme provides legal and psychological services. Lawyers are provided with training. The Legal Aid Scheme is working with the Kenyan government to establish a government-funded national legal aid scheme.

The Kenyan system of justice is not child-friendly because children spend long periods of time in police stations and in remand homes. Very few police stations have child protection units. There are only three children's courts in the country. Where there are no children's courts, cases are heard by magistrates who are supposed to be trained in children's law. In areas where there are no children's magistrates, children must be transported long distances to courts that do have children's magistrates.

Lawyers who are involved in the Legal Aid Scheme receive a small stipend per case and free training in international justice standards. In 2008, the Kenyan government launched the Legal Aid Education Programme which will provide legal aid to children and adults in six districts on a pilot basis. CLAN and CRADLE support this project. There are 335 pro-bono lawyers in this

program. The pilot program has also resulted in empowering communities to understand their role in child protection. There is an increase in reporting child abuse.

## **NIGER**

### *Ateliers De Formation Des Defenseurs Commis D'office, DEO Niger, May, 2010:*

This is detailed description and material of a training program for child advocates planned for Niger in May, 2010.

The training materials note that there are 103 lawyers in Niger. Almost all of them (all except 2) are located in the capital. “[Défenseurs commis d’office” (DCO’S) are non-professionals who also provide Representation. There are 225 DCO’s in Niger.

The objectives of the training to:

1. Improve knowledge of the law, including criminal law and procedure;
2. Increase knowledge regarding social and psychological issues involved in representation of children in conflict with the law;
3. Help minors and victims;
4. Improve technique for defending minors.

Methodology of the training:

1. Use of simple language;
2. Participatory teaching methods

The training materials also describe the legal frameworks governing children’s rights, Niger’s court system, the basic rights of children in conflict with the law, the right to counsel, limits on time in detention, conditions of detention, juvenile court jurisdiction, possible dispositions and outcomes of juvenile court proceedings, and the right of appeal.

## **SENEGAL**

### *L’Assistance Legale des Enfants au Senegal;*

This document describes services available to children in Senegal. It notes that “in Senegal there are no lawyers trained specifically to defend the interests of children. It is assumed that the parents of a child over the age of 12 who have committed a crime will find an advocate to represent the child.”

### *Guide à l’attention des Intervenants dans la Problématique des Mineurs, Projet Renforcement de la Protection des Mineurs au Sénégal*

The Guide is addressed to those who serve children. It is designed to aid in the understanding of children and their development. Children are not just miniature adults.

In Senegal, 57% of the population is under 20 years old.

The professionals who intervene in the lives of children in crisis include police, social workers, magistrates, and prison officials.

The Guide describes the concepts of childhood and adolescent development--necessary knowledge for those who intervene on behalf of children. The Guide describes the influence of parents and community and the impact of modernization and urbanization on child development in Senegal. The Guide goes on to describe the legal framework for addressing the problems of children in conflict with the law and neglected and abused children. The Guide emphasizes the need for collaborative approaches between all service providers and includes a lengthy resource list of service providers.

*Les mineurs en conflit avec la loi au Sénégal (2003)*

This report contains statistics regarding children in conflict with the law in Senegal. The report is a cooperative venture between a social work school, the police academy, and child psychiatrists. The report notes that 1062 children (18 years or younger) appeared in Senegal's juvenile courts in 2003. Of these, 93% were boys. Half of these cases were heard in Dakar. This is a reflection of an urban crisis. Statistics on charges filed in 2003: 27.71% aggravated theft, 17% simple theft, 12% battery.

## **UGANDA**

*Concept Note: Keep Children Safe, Uganda, March 2010:*

This Concept Note states that there are 7.5 million children in Uganda who are:

- Orphaned;
- Living on IDP camps, elderly headed households, or institutions;
- Homeless;
- Disabled;
- Child laborers;
- Out of school;
- Child mothers.

There is an increase in children in conflict with the law in Uganda. Juvenile justice systems are among the least developed justice systems in the country. There is a lack of safe school environment that contributes to low levels of enrollment.

There is violence against children in the juvenile and criminal justice systems. In one study, 51% of children in contact with the law reported that they were subject to torture or other mistreatment in police stations.

There is a fragmentation of approaches to protecting the rights of orphans and vulnerable children, “children and their duty bearers lack awareness of the rights of children and how to address the violation of their rights.” (p.4). There is a need to coordinate efforts on behalf of these children. The report has a list of key areas to be addressed.

## **ZIMBABWE**

### *Justice for Children Trust.*

The Justice for Children Trust’s core mission is to provide free legal services to children in difficult circumstances. The Trust uses mobile legal aid clinics to provide these services. The Trust’s program also provides legal education to stakeholders. It provides education in children’s rights in schools. JCT also conducts research in children’s law in order to advocate for appropriate laws and policy reform. JCT has a birth registration project. It also works on inheritance issues.