

## Kenya's Community-Based Paralegals

### *A Tradition of Grassroots Legal Activism*

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#### I. INTRODUCTION

*Last month, around the 26th of September, a big fight broke out among boys living in the dam site, who collect wares and sell them. The police came. Three people were killed by police officers – one child was shot in the neck.*

*Our office is within the community, in the center of the slum. As a paralegal, I am a trained human rights activist. Earlier, we had raised awareness about what paralegals do in the community. So everyone knows that there is a center where you can run and report your problems. People don't distinguish between criminal and civil problems. Whenever there is any problem, they rush to the center.*

*They began calling me at midnight. I woke up to ten text messages: "People are being killed, people will be lynched, you are a leader, come and speak to us, give us direction on what we can do."*

*First thing, I rushed to the center. I found seven people waiting by the office. Each and every one had a problem to tell. Some were robbed at night, during the fight. Some women were raped, some were beaten. Some of them just ran away from the scene because they feared for their lives.*

*A Catholic priest called me and told me about the child who was shot. "The child is still lying outside, with parents beside him," he said. "The police shot the child in the crossfire, but they will not come to collect the body."*

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*They told me that when they called the police, the police told them, “we cannot go to the slums because you people are fighting us back.” Really, the police don’t want to come between the people and the boys. They actually protect the boys because they give them money.*

*So I started reacting. I started trying to reach people. That whole day I was trying to organize assistance. I called Kituo Cha Sheria. I took cases: there was an old woman of sixty-five years, I documented evidence of her rape. Another woman of fifty years was shot in the arm, another boy was shot in the cheek. I called referral systems to get them help – they know me because I have been working with them. I’d say, “I have someone here, can you come?” I sent the lady to MSF [Medicins sans Frontieres]. They brought a vehicle and picked her up. I put the boy on a motorbike; he was rushed to the hospital.*

*Then I called the OCS [Officer Commanding Police Station]. I told him to send officers to retrieve the body of the boy. Leaving him on the street was a violation of the rights of the child. The OCS was not ready to accept. He told me, “you never went to training, why are you telling me what to do?” But I kept trying.*

*The police finally came the following day. I was with the parents, on the side of the community. But I was not inciting – I was there to bring peace. I talked to the parents and said this is a legal issue, and law must take due course. When the people of the community realized that I was there, they silenced to listen to what I was trying to advise them. I was trying to tell them to stop fighting. The police officers took the child at last, because I was there. Even the police agreed that I played a part in this.*

*I went with the police and personally saw the case recorded in the Occurrence Book. The child was taken to the mortuary. We talked to the OCS. He was very hostile; he was opposed to starting an investigation. But I myself will push. I intend to go farther than that because it’s the truth.*

*The role of the paralegal is not only to see that people whose rights are violated get some reprieve, but also to ensure that there is peace and tranquility where we stay. Most of these informal settlements are very sensitive and emotive. A small thing can erupt into a very big conflict. We are not only paralegals, but also peace ambassadors. Our main issue in terms of peace is mitigation of conflict.*

– As told by Michael, a community paralegal in Korogocho, Nairobi

For most Kenyans, the formal justice system is an inhospitable place for resolving conflicts or seeking remedies. The national police force is understaffed and ill-equipped;<sup>1</sup> lawyers are scarce and costly;<sup>2</sup> the courts are backlogged and often

<sup>1</sup> Patricia K. Mbote and Migai Akech, *Kenya Justice Sector and the Rule of Law: A Review by AfriMAP and the Open Society Initiative for Eastern Africa* (Nairobi: Open Society Foundation, 2011), 11; Human Rights Watch, *High Stakes: Political Violence and the 2013 Elections in Kenya* (Nairobi: Human Rights Watch, 2013).

<sup>2</sup> Currently fewer than 8,000 advocates serve Kenya’s population of nearly 40 million. A majority of these lawyers are based in major cities, despite the fact that 78 percent of the population lives in rural areas. Although typical legal fees are beyond the ability of the average Kenyan to afford, most advocates outside of NGOs do not feel compelled to engage in pro bono work or reduce fees for the indigent. Human Rights Watch, *High Stakes*, 114, 158–59 (see n. 1); UN Office on Drugs and Crime (UNODC), *Access to Legal Aid in Criminal Justice Systems in Africa: Survey Report* (Vienna: United Nations, 2011), 12.

geographically inaccessible;<sup>3</sup> procedures are inefficient and complicated; and corruption famously plagues the judiciary.<sup>4</sup> Consequently, formal courts handle only 4 percent of disputes in Kenya, according to a household survey undertaken by the Governance, Justice, Law and Order Sector (GJLOS) Reform Programme.<sup>5</sup> Meanwhile, 67 percent of disputes are handled by chiefs and traditional elders<sup>6</sup> – members of their respective communities who in turn rely on local justice systems to maintain order.<sup>7</sup>

In many ways, customary local systems are more accessible, affordable, and attuned to cultural expectations of fairness than their formal counterparts.<sup>8</sup> However, even they are not immune to abuse or manipulation by local elites, whose influence perpetuates social dynamics that consistently disempower the poor and marginalized.<sup>9</sup>

Community paralegals bridge the gap between these two worlds. Kenya's Paralegal Support Network (PASUNE) defines a paralegal as “a community based individual, who is not a lawyer but who has basic legal knowledge and skills. Paralegals are therefore development workers and community members who educate people about the law or offer basic legal services.”<sup>10</sup>

Paralegals in Kenya are familiar with local power dynamics and customs, on the one hand, and aware of modern law and formal institutions, on the other. They are able to devise flexible, innovative solutions to justice problems for their communities. Their ability to translate complex legal concepts into more accessible local languages has made paralegals particularly effective in raising awareness of rights and laws. Because paralegals are often trained by, and connected to, pro bono lawyers and other referral services, they can pursue cases further than clients may be able to on their own. Paralegals' training and connections also enable them to more readily challenge adverse local practices or powerful elites.

<sup>3</sup> For citizens in Lodwar County, for example, the nearest court is 400 km away. Shermit Lamba, *A Topographical Analysis of the Law Courts of Kenya* (Nairobi: Mazingira Institute, 2011), 8.

<sup>4</sup> Mbote and Akech, *Kenya Justice Sector*, 7 (see n. 1) (citing Republic of Kenya, *Final Report of the Task Force on Judicial Reforms* (Nairobi: Government Printer, 2010), 20); Makau W. Mutua, “Justice under Siege: The Rule of Law and Judicial Subsistence in Kenya,” *Human Rights Quarterly* 23, no. 1 (2001).

<sup>5</sup> Republic of Kenya, Governance, Justice, Law and Order Sector (GJLOS) Reform Programme, *National Integrated Household Baseline Survey Report* (Nairobi: World Bank, 2006), 33.

<sup>6</sup> *Ibid.*

<sup>7</sup> Tanja Chopra, *Reconciling Society and the Judiciary in Northern Kenya* (Nairobi: Legal Resources Foundation Trust, 2008).

<sup>8</sup> *Balancing the Scales: A Report on Seeking Access to Justice in Kenya* (Nairobi: Legal Resource Foundation Trust, 2004), 17, cited in Connie Ngondi-Houghton, *Access to Justice and Rule of Law in Kenya* (UN Development Programme Initiative on Legal Empowerment for the Poor, 2006), 43.

<sup>9</sup> Andrew Harrington and Tanja Chopra, “Arguing Traditions: Denying Kenya's Women Access to Land Rights,” *Justice for the Poor Research Report* 2, no. 52674 (2010), 1–2.

<sup>10</sup> Paralegal Support Network (PASUNE), *Handbook for Paralegals* (Kenya: PASUNE, 2005), 4.

The paralegal movement is growing rapidly across Kenya. Today, more than thirty organizations are deploying paralegals across all seven provinces. Yet little research exists into the impact, methods, and historical role of paralegals in the Kenyan context. To learn more about the impact of community paralegals and the circumstances that influence their effectiveness, we undertook a mapping and assessment of sixteen major paralegal organizations, in-depth interviews with experts and paralegal program staff, a review of literature and program documentation, and extensive case tracking.<sup>11</sup>

The case tracking involved a series of semi-structured interviews with paralegals, local chiefs, clients, respondents, and third parties involved in 120 randomly selected cases.<sup>12</sup> We sampled the cases from twelve sites across six of Kenya's eight provinces: Nairobi, Coast, Eastern, Western, Central, and Rift Valley Provinces. For every province, we investigated ten cases in each of two separate communities: one with an active paralegal presence and another with no access to paralegals. In the "paralegal sites," we tracked cases from paralegals' files.<sup>13</sup> In the "non-paralegal sites," we asked local and assistant chiefs to recall cases they had handled and we selected randomly from that list. Community opinion leaders at paralegal sites were also interviewed to ascertain the effect of paralegal programs on local dispute resolution processes and governance.<sup>14</sup> Paralegals who participated in our study had been trained by six different organizations: International Commission of Jurists–Kenya Chapter (ICJ), Kituo Cha Sheria, International Federation of Women Lawyers–Kenya Chapter (FIDA), Legal Resources Foundation Trust (LRF), Muslims for Human Rights (MUHURI), and Plan International.<sup>15</sup>

Drawing from all of these, this chapter strives to accomplish the following: (1) describe the history of the community paralegal movement; (2) provide an overview of the paralegal sector as it exists today; and (3) analyze the institutional, organizational, and cultural determinants that facilitate or hinder paralegal effectiveness.

<sup>11</sup> We undertook this research in two stages. In the first, the African Institute for Health and Development (AIHD) conducted the case tracking, institutional mapping, and initial literature review. In the second stage, I analyzed the data for gaps and supplemented it with interviews with experts, program staff, and paralegals, as well as with a more in-depth review of documents and literature.

<sup>12</sup> At a minimum, the complainant, the respondent, and the paralegal or dispute resolver were interviewed for each case. Depending on availability, witnesses and third parties were also interviewed.

<sup>13</sup> Researchers reviewed case files at paralegal offices and assigned each case a number. They wrote the numbers on slips of paper and blindly selected cases from the pile of slips. Parties were tracked down using contact information contained in case files. Case files missing contact information were excluded from the pool. Some offices had to be replaced in the study because of the poor condition of case files.

<sup>14</sup> Opinion leaders included local chiefs, market chairladies, youth leaders, clan elders, imams, pastors, district officers, and local magistrates, among others.

<sup>15</sup> A representative from each of these organizations worked with an independent AIHD researcher to contact paralegals and community leaders, gather and identify a random selection of case files, and conduct interviews.

## II. HISTORICAL OVERVIEW

The community paralegal approach in Kenya grows out of a long tradition of legal activism, galvanized into action during the presidency of Daniel Arap Moi. Prior to Moi's regime, Kenya's underdeveloped legal profession served principally as an administrative apparatus in service to the colonial state.

### A. Colonial Kenya

Through a series of regulations passed from 1897 to 1930, the British established a dual legal system that applied different rules to British colonial settlers and indigenous Kenyans.<sup>16</sup> The former enjoyed access to a formal legal system based on judicial principles, protections, and due process. The latter were subject to an informal legal system based on administrative, rather than judicial, principles.<sup>17</sup> In accordance with the philosophy of "indirect rule," the resolution of matters between African Kenyans was left to "native courts": local tribunals overseen by the state but operating under customary or religious laws.<sup>18</sup>

For years, the British excluded indigenous Kenyans from the legal profession.<sup>19</sup> In native courts, though, judicial officers could license Africans to deliver limited legal services. These individuals were known as *vakeels*, or "local persons knowledgeable in basic court procedures, although possessed of no legal qualifications."<sup>20</sup> However, the Legal Practitioners Act of 1906 barred *vakeels* and clerks from the formal practice of law.<sup>21</sup>

Even after the legal profession formally opened up to non-Europeans in 1949, not a single African lawyer joined its ranks until the late 1960s.<sup>22</sup> This was due to hostility from the profession, combined with a long-standing colonial policy that denied government bursaries to African students aspiring to study law. At the time, the cost

<sup>16</sup> Maureen Catherine Feeley, "Transnational Movements, Human Rights and Democracy: Legal Mobilization Strategies and Majoritarian Constraints in Kenya 1982–2002" (PhD diss., University of California, San Diego, 2006), 234, eScholarship (b6635496).

<sup>17</sup> *Ibid.*

<sup>18</sup> Jackton Boma Ojwang and D. R. Salter, "The Legal Profession in Kenya," *Journal of African Law* 34, no. 1 (1990), 11, doi: 128.112.200.107.

<sup>19</sup> Yash P. Ghai, "Legal Profession: Themes and Issues," in *The Legal Profession and the New Constitutional Order in Kenya*, ed. Yash P. Ghai and Jill C. Ghai (Nairobi: Strathmore University Press, 2014), 13.

<sup>20</sup> East Africa Protectorate High Court, "East Africa Legal Practitioners' Rules 1901," in *East Africa Protectorate: Law Reports Containing Cases Determined by the High Court of Mombasa, and by the Appeal Court at Zanzibar, and by the Judicial Committee of the Privy Council, on Appeal from that Court*, ed. Robert W. Hamilton (London: Stevens and Sons, Ltd., 1906), 121–25.

<sup>21</sup> Amos O. Odenyo, "Professionalization amidst Change: The Case of the Emerging Legal Profession in Kenya," *African Studies Review* 22, no. 3 (1979), 34, doi: 128.112.200.107.

<sup>22</sup> Kivutha Kibwana, ed., *International Commission of Jurists, Law and the Administration of Justice in Kenya* (Nairobi: International Commission of Jurists, Kenya Section, 1992), 3.

of a legal education was otherwise beyond the means of most African families. As Yash Ghai explains:

The [British colonial government] was obsessed with fear that lawyers would promote political difficulties for it. Indigenous lawyers were regarded with extreme distrust. This attitude stemmed in part from British experience in India, where lawyers like Gandhi and the Nehrus led the struggle for independence, and partly from West Africa, where African lawyers were already agitating for the safeguarding of the rights of Africans.<sup>23</sup>

As a result of Kenya's dual legal structure and the exclusion of African lawyers, the Law Society of Kenya (LSK) – the nation's premier bar association, with compulsory membership for all Kenyan lawyers – rarely came into contact or concerned itself with the problems of ordinary African Kenyans.<sup>24</sup> This remained the case through the early years of independence.<sup>25</sup>

Instead, African Kenyans primarily interacted with the colonial state through public assemblies or outdoor meetings known as *barazas*, which continue to be held to this day. Administrative officials, often chiefs, typically convened *barazas* to inform the public about government programs and policies. *Barazas* ranged in size from smaller gatherings of 50 to 100 individuals to rallies of several thousand. At times, *barazas* provided African Kenyans with a forum to debate social issues, resolve disputes, or raise concerns and complaints. People known as opinion leaders often had a voice in these proceedings. By and large, however, *barazas*, like the courts, served as an instrument of the state to disseminate and enforce colonial policies.

### B. Early Independence

These exclusionary dynamics began to shift, although marginally, during the regime of Kenya's first president, Jomo Kenyatta (1963–78), and the early years of the Moi regime (1978–82).

Around this time, the first trickle of African lawyers began joining the LSK. In 1960, on a recommendation made at Kenya's first constitutional conference, a committee formed to investigate and improve legal education in Africa. Its recommendations led to the founding of the first legal education programs for African students, and the establishment of the Faculty of Law at the University of

<sup>23</sup> Yash P. Ghai, "Law and Lawyers in Kenya and Tanzania: Some Political Economy Considerations," in *Lawyers in the Third World: Comparative and Developmental Perspectives*, ed. Clarence J. Dias, R. Luckham, D. O. Lynch, and J. Paul (New York: International Center for Law in Development, 1981), 148–49, quoted in Feeley, *Transnational Movements*, 232 (see n. 16).

<sup>24</sup> Feeley, *Transnational Movements*, 235 (see n. 16).

<sup>25</sup> African Institute for Health and Development (AIHD), "Kenya Draft Report: Multi-country Study on the Impact of Paralegals" (draft report, African Institute for Health and Development, May 10, 2012), 4.

Nairobi. The Nairobi Law Faculty accepted its first class of students in 1970, and graduated its first class in 1972.<sup>26</sup>

In 1973, a small group of young African lecturers and students from the university founded Kenya's first nongovernmental legal aid organization.<sup>27</sup> They named it Kituo Cha Mashauri, literally "assistance with law" in Kiswahili (later changed to Kituo Cha Sheria, or "Legal Advice Center" in 1989).<sup>28</sup> The founders, many of whom are now notable figures in the Kenyan judiciary, came together because they recognized a dire need among the Kenyan poor for legal aid services that they could not afford.<sup>29</sup> In its early days, Kituo largely dealt with the legal problems of slum dwellers, manual laborers, and domestic workers, who were vulnerable to forced evictions, poor or abusive working conditions, or exorbitant rent increases.<sup>30</sup>

Over the next decade, as the number of African lawyers in Kenya grew, so too did the number of lawyers and law students who volunteered through Kituo to supply pro bono legal aid. Yet their numbers remained far too few when faced with the scale of the demand. To keep pace, Kituo began training opinion leaders and community members in basic law so that they could assist with cases. These people came to be known as Kenya's first paralegals.<sup>31</sup>

By the mid-1980s, African Kenyans would finally constitute the majority of the legal profession. But even as the LSK's constituency grew more progressive in nature, it kept relatively silent in the face of systematic human rights violations and repression under Kenyatta and Moi. The LSK maintained a low profile "out of necessity, for any public comment critical of government action would be quickly seized upon as evidence that the Bar was not loyal to the new state of Kenya, since similar comment had not been forthcoming in the colonial era."<sup>32</sup>

<sup>26</sup> "Brief History: Introduction," Patricia Kameri-Mbote, University of Nairobi-School of Law. <http://law-school.uonbi.ac.ke/node/1569>; University of Nairobi, *The 3rd Congregation for the Conferment and Presentation of Degrees and Diplomas at the Great Court* (Nairobi: University of Nairobi, 1972).

<sup>27</sup> Charles Olungah, "The Role of Academia in Democratization in Kenya," in *Discourses on Civil Society in Kenya*, ed. P. Wanyande and M. A. Okebe (Nairobi: African Research and Resource Forum, 2009), 34; Caroline Amondi, "Legal Aid in Kenya: Building a Fort for Wanjiku," in *The Legal Profession and the New Constitutional Order in Kenya*, ed. Yash P. Ghai and Jill C. Ghai (Nairobi: Strathmore University Press, 2014), 205.

<sup>28</sup> Gertrude Angote, interview by Abigail Moy (Namati), November 2013.

<sup>29</sup> These included Justice Vitalis Juma, Chief Justice Willy Mutunga, Justice Mary Ang'awa, and respected legal figures Murtaza Jaffer, Stehen Andere, and Pheroze Nowrojee. Kituo Cha Sheria, *Annual Report 2010* (Nairobi: Kituo Cha Sheria, 2010).

<sup>30</sup> Kituo Cha Sheria, *Kituo Cha Sheria Strategic Plan 2009–2013* (Nairobi: Kituo Cha Sheria, 2008); Ripoca Project, *Organizational Study: Kituo Cha Sheria*.

<sup>31</sup> Angote, interview (see n. 28); AIHD, "Kenya Draft Report," 4 (see n. 25).

<sup>32</sup> Yash P. Ghai and J. P. W. B. McAuslan, *Public Law and Political Change in Kenya: A Study of the Legal Framework of Government from Colonial Times to the Present* (New York: Oxford Press, 1970), 138, quoted in Feeley, *Transnational Movements*, 235 (see n. 16).

### C. The Moi Regime

The silence broke in 1982. In June, the Moi government, having already banned groups potentially harboring opposition viewpoints, declared Kenya a *de jure* one-party state. The National Assembly, under strict control, amended the constitution accordingly.<sup>33</sup> Two months later, the Moi government undertook massive arrests and detentions in response to an attempted coup. Thousands of military personnel, followed soon after by university professors and student leaders, were detained.<sup>34</sup>

A group of African LSK members spoke up in criticism of these acts, framing them as violations of domestic and international law.<sup>35</sup> As repression intensified over the ensuing years, a pattern of open solidarity began to emerge among activist lawyers and sympathetic LSK members.<sup>36</sup> Members of the legal profession began founding or allying with various human rights organizations. Their efforts ultimately fed into a broader popular movement for democracy.<sup>37</sup> Without formal political organizations to counterbalance the Moi Regime, the resulting web of non-state actors served as some of the few opposition voices during the 1980s<sup>38</sup> – and they drew heavily on legal tactics to achieve their aims. In addition to providing legal representation to victims of unlawful detention and torture and challenging laws they deemed unconstitutional, they mobilized citizens around laws and constitutional principles.<sup>39</sup>

During this time, Kituo began to transform from a purely charitable legal aid organization into an agent for social change. The organization started its “Taking the Law to the People” program at the University of Nairobi’s law school, which encouraged young lawyers to apply their skills toward empowering and promoting the rights of the poor. The program sought to change the perception of lawyers as elitist and make their work relevant to the everyday lives of Kenyans. As it grew, Kituo teamed up with the LSK and strengthened its relationship with dominant church organizations, including the National Council of Churches of Kenya (NCCCK). The latter affiliation improved Kituo’s populist appeal and legitimacy, particularly in rural areas. This enabled Kituo to engage and empower community members on a larger scale.

<sup>33</sup> “Kenya Profile: Timeline,” BBC, July 30, 2015.

<sup>34</sup> Feeley, *Transnational Movements*, 186 (see n. 16).

<sup>35</sup> Martha Karau, interview by Robert M. Press, August 15, 2002.

<sup>36</sup> Robert M. Press, *Peaceful Resistance: Advancing Human Rights and Democratic Freedoms* (Aldershot: Ashgate, 2006), 112.

<sup>37</sup> Feeley, *Transnational Movements*, 336–49 (see n. 16).

<sup>38</sup> Frank K. Matanga, “Civil Society and Politics in Africa: The Case of Kenya,” in *The Third Sector: For What and for Whom?* (paper presented at the Fourth International Conference of ISTR, Dublin, Ireland, July 5–8, 2000), 12–14.

<sup>39</sup> Jennifer Widner, *The Rise of a Party-State in Kenya: From “Harambee!” to “Nyayoi!”* (Berkeley: University of California, 1992), 188–90; Feeley, *Transnational Movements*, 239–42 (see n. 16); Pheroze Nowrojee, “The Legal Profession 1963–2013: All This Can Happen Again – Soon,” in *The Legal Profession and the New Constitutional Order in Kenya*, ed. Yash P. Ghai and Jill C. Ghai (Nairobi: Strathmore University Press, 2014), 35.



In 1983, the NCKK worked with the LSK to launch the Public Law Institute (PLI).<sup>40</sup> PLI primarily focused on public interest litigation and policy issues, but it also established legal aid clinics staffed by volunteer advocates, law students, and community paralegals. These centers fielded legal aid requests touching on labor rights, the role of the police, women's rights, landlord–tenant issues, consumer protection, and the relationship between customary and state laws.<sup>41</sup> Meanwhile, ICJ began exploring how to expand legal services in rural areas, in relation to family matters, child support, labor issues, pensions, rents, and consumer exploitation.<sup>42</sup> ICJ programming, which spanned multiple African countries, drew from experiments in the use of community paralegals and “barefoot lawyers” throughout Asia and Latin America.<sup>43</sup>

Resistance efforts against the Moi administration came to a head in the early 1990s. The increasingly politicized LSK ended its long-standing internal debate over its neutrality with the election of activist Paul Muite as chair, alongside a council that included former detainees, human rights advocates, and other activists.<sup>44</sup> With a number of leaders in the legal community in exile, Kenya's human rights situation caught the attention of the global community. The Catholic Church and international press vocally criticized the regime. Kenya's major donors condemned the regime's arrests and violence and refused to renew Kenya's aid allocations without evidence of democratic reform. The combination of international and domestic pressure ultimately forced Moi to relent and permit multiparty elections in December 1992.

#### D. Multiparty Elections

The return of multiparty politics “created an atmosphere in which human rights monitoring groups could safely operate.”<sup>45</sup> During and after the 1992 elections, a handful of civil society and religious organizations – many of whom would become key actors in the modern paralegal movement – rose to prominence. In addition to those already mentioned – Kituo, PLI, ICJ, and the NCKK – these groups included the Kenya Human Rights Commission (KHRC), FIDA, the Legal Education Aid Programme (LEAP), and the Catholic Justice and Peace

<sup>40</sup> Oki Ooko-Ombaka, “Education for Alternative Development: The Role of the Public Law Institute, Kenya,” *Third World Legal Studies* 4, art. 11 (1985): 171, <http://scholar.valpo.edu/twls/vol4/iss1/11>.

<sup>41</sup> *Ibid.* At this time, representatives from PLI, the LSK, and the Legal Advisory Committee participated in an international seminar on training paralegals, based on experiences across Asia, Africa, and Latin America. International Commission of Jurists, African Bar Association, and All-Africa Conference of Churches, *Legal Services in Rural Africa: Report of a Seminar Held at Limuru, Near Nairobi, 1 to 4 October 1984* (Geneva: International Commission of Jurists, 1985).

<sup>42</sup> Amy S. Tsanga and Olatokunbo Ige, *A Paralegal Trainer's Manual for Africa* (Geneva: International Commission of Jurists, 1994), 15.

<sup>43</sup> *Ibid.*, 9–10. <sup>44</sup> Press, *Peaceful Resistance*, 113 (see n. 36).

<sup>45</sup> Willy Mutunga, interview by Maureen C. Feeley, Nairobi, May 15, 1998, quoted by Feeley, *Transnational Movements*, 344 (see n. 16).

Commission (CJPC).<sup>46</sup> LSK members led the majority of these organizations. They existed in leaner form for some time, but flourished after Kenya's political opening, in large part due to increasing support from international donors.<sup>47</sup>

In the lead-up to the elections, many organizations conducted civic education outreach programs on voting rights. Kituo, for instance, launched an extensive information campaign, issuing booklets, posters, and video- and audiocassettes that played on *matatus* (popular public transport) throughout the country.<sup>48</sup> LEAP organized legal education and training programs for the Kenyan poor in Rift Valley Province.<sup>49</sup>

ICJ and FIDA, both volunteer organizations for lawyers, were particularly active in promoting free and fair elections. The two formed an "Election Monitoring Unit," in which election monitors publicized human rights violations and educated Kenyans on how to recognize and report them. As with Kituo's early alliances, FIDA and ICJ joined forces with the respected rural leadership of the Catholic Church, a move that granted them access to extensive grassroots organizational networks.<sup>50</sup>

### E. The 1990s: The Rise of the Paralegal

After the elections, organizations that had rallied around voting rights began applying their expertise in grassroots legal mobilization to a broader spectrum of social issues.<sup>51</sup> Their principal causes included: advancing the agenda for constitutional reform, addressing critically neglected women's and children's rights, securing land rights of poor urban and rural communities, and demanding greater accountability of local government, among others.<sup>52</sup> Over the ensuing decade, newcomers to the legal empowerment arena emerged, including LRF, Center for Legal Education and Aid Networks (CLEAN),<sup>53</sup> Widows' and Orphans' Welfare Society of Kenya (WOWESOK),<sup>54</sup> and

<sup>46</sup> Feeley, *Transnational Movements*, 486–87 (see n. 16); Amondi, "Legal Aid in Kenya," 205 (see n. 27).

<sup>47</sup> Jereon de Zeeuw, *Project Report Assessing Democracy Assistance: Kenya* (United Kingdom: FRIDE, 2010), 2; Feeley, *Transnational Movements*, 427 (see n. 16).

<sup>48</sup> Feeley, *Transnational Movements*, 359 (see n. 16). <sup>49</sup> *Ibid.*, 360. <sup>50</sup> *Ibid.*, 349–52.

<sup>51</sup> But they would continue to fulfill their historical roles, as well. During the presidential and parliamentary elections of 2007, paralegals were called upon to observe the electioneering process. African Institute of Health and Development, "Kenya Paralegal Study: Literature Review on Paralegalism in Kenya" (draft for discussion, February 2012), 16 (citing Legal Resource Foundation Trust, *Opinion Brief on Paralegal Support Network* [May 11, 2011], 2).

<sup>52</sup> Particularly with regard to specific problematic legislation, for example: (1) the Societies Act; (2) the Public Order Act; (3) the Chiefs' Authority Act; (4) the Outlying Districts Act and the Special Districts (Administration) Act; (5) the Preservation of Public Security Act; and (6) the Public Collections Act. Angote, interview (see n. 28).

<sup>53</sup> Godwin R. Murunga and Shadrack W. Nasong'o, *Kenya: The Struggle for Democracy* (London: Zed Books, 2007), 36.

<sup>54</sup> Marjolein Benschop, *Rights and Reality: Are Women's Equal Rights to Land, Housing and Property Implemented in East Africa?* (Nairobi: UN Human Settlements Programme, 2002), 176.

later, CRADLE (The Children's Foundation)<sup>55</sup> and the Education Centre for Women in Democracy (ECWD).<sup>56</sup>

Each of these organizations began strategically deploying paralegals in programs promoting legal awareness, rights promotion, and conflict resolution.<sup>57</sup> For some, paralegals took on the form of "human rights defenders" or "monitors."<sup>58</sup> KHRC widely deployed monitors for its programs against torture and police brutality, for example, and FIDA trained "community-based monitors," who collected data on gender-based violence cases and reported them back to FIDA headquarters.<sup>59</sup> For both organizations, public interest lawyers would take up serious cases reported by monitors. In general, case intake and referral to lawyers for pro bono assistance was the most basic of paralegal functions.

Paralegals were also responsible for enhancing legal literacy and awareness. Groups like LRF, ICJ, FIDA, and Kituo worked through community church organizations to identify "opinion leaders" or individuals who were respected within their communities.<sup>60</sup> These people were then trained to facilitate rights awareness, to promote basic legal education in their communities, and to advise community members on remedies if rights were violated.<sup>61</sup> Similarly, ECWD's paralegals conducted regular civic workshops for citizens on their legal and political rights, with a focus on women's and widows' property and inheritance rights.<sup>62</sup>

The most skilled paralegals took on the challenge of solving justice problems themselves. They mediated interpersonal conflicts or interceded on behalf of clients, often by challenging authorities or assisting with customary or formal legal

<sup>55</sup> Mbote and Akech, *Kenya Justice Sector*, 162–63 (see n. 1).

<sup>56</sup> Other organizations offering a range of legal aid services included: Children Legal Action Network, Christian Legal Education and Research, Independent Medico-Legal Unit, Coalition on Violence against Women, Center for Human Rights and Awareness. Amond, "Legal Aid in Kenya," 205 (see n. 27).

<sup>57</sup> During this era, practitioners of legal aid and community development began convening internationally to discuss and refine paralegal methodologies. International Commission of Jurists, *Legal Services for Rural and Urban Poor and the Legal Status of Rural Women in Anglophone West Africa, Report of a Seminar, 19–23 July 1993, Accra, Ghana* (Geneva: International Commission of Jurists, 1995).

<sup>58</sup> Jedidah W. Waruhiu and John J. O. Otieno, "Access to Justice: The Paralegal Approach," in *The Legal Profession and the New Constitutional Order in Kenya*, ed. Yash P. Ghai and Jill C. Ghai (Nairobi: Strathmore University Press, 2014), 190.

<sup>59</sup> See results of the reports in FIDA's annual report, e.g., Federation of Women Lawyers Kenya (FIDA Kenya), *So Far, How Far?: 2007 Annual Report* (Kenya: Federation of Women Lawyers Kenya, 2008), 43–51.

<sup>60</sup> Kituo initiated paralegal training in the slum communities of Nairobi such as Korogocho, Kibera, and Mathare. It worked closely with Catholic churches based in the slums to identify trainees. AIHD, "Kenya Draft Report," 4–5 (see n. 25).

<sup>61</sup> Feeley, *Transnational Movements*, 315–16, 20 (see n. 16).

<sup>62</sup> Amanda Ellis, Jozefina Cutura, Nouma Dione, Ian Gillson, Clare Manuel, and Judy Thongori, *Gender and Economic Growth in Kenya: Unleashing the Power of Women* (Washington, DC: World Bank, 2007), 70.

proceedings. Indeed, while paralegals took on many roles, Stephen Orvis observes that “[t]he greatest political effect of paralegals’ work might well come from cases that directly involved assisting citizens facing harassment from local authorities.”<sup>63</sup> In rural Kenya in particular, where local accountability is weak, “confronting the state at the local level and forcing it to fulfill its legal obligations is an important form of civic education, both asserting citizens’ rights and teaching them how to do the same in the future.”<sup>64</sup> In Orvis’ study of four organizations conducting civic education and paralegal programs in rural Kenya, 50 percent of paralegals reported having taken on at least one case requiring engagement with local authorities. Eighty-four percent of paralegals reported resolving such cases successfully in favor of their clients.<sup>65</sup>

### F. Consolidation of the Paralegal Movement

In 2000, twenty-six paralegal organizations came together to form the Paralegal Support Network (PASUNE). They aimed to create a forum for paralegal programs to share their experiences and discuss possibilities of working together to advance the paralegal movement in Kenya. Members also expressed interest in coordinating geographically to avoid duplication and to maximize the coverage of paralegals across the country.<sup>66</sup>

After a number of meetings, PASUNE members undertook three primary initiatives: (1) identifying commonalities in curricula and training methodologies among paralegal programs; (2) developing and adopting a common minimum standard in the training of paralegals; and (3) advocating for the formal recognition of paralegals within the justice system.<sup>67</sup>

In 2002, PASUNE harmonized paralegal training materials into a single curriculum, complemented in 2006 by a handbook, training guide, user-friendly brochures, posters, and other training materials for use by all members.<sup>68</sup> These materials were disseminated to nonmembers as well, including the Kenya School of Law (KSL), where they supported the development of a draft curriculum for paralegal training to be introduced at a diploma level. On the advocacy front, PASUNE actively campaigned around a legal aid bill that formally recognizes paralegals as justice service providers. PASUNE also worked closely with the Kenya Law Reform Commission (KLRC) on the establishment of small claims courts, in hopes that they would provide another avenue for paralegal services.

<sup>63</sup> Stephen Orvis, “Kenyan Civil Society. Bridging the Urban–Rural Divide?” *Journal of Modern African Studies* 41, no. 2 (2003), 261.

<sup>64</sup> *Ibid.*

<sup>65</sup> Interestingly, paralegals who were opposition activists or campaigners were almost twice as likely as paralegals with no political experience to take on cases directly challenging local authorities. *Ibid.*

<sup>66</sup> AIHD, “Kenya Draft Report,” 2 (see n. 25). <sup>67</sup> *Ibid.* <sup>68</sup> PASUNE, *Handbook*, 4 (see n. 10).

### G. A Shift in Government: From Opponent to Ally

In 2005, the Kenyan government launched the Government Justice Law and Governance Programme (GJLOS) in a bid to more holistically address problems spanning three target sectors: “governance,” “justice,” and “law and order.”<sup>69</sup> In total, more than thirty government institutions and ministries were involved in this ambitious program.<sup>70</sup> The program created a basket fund for international donors, which has presented additional opportunities for financing the paralegal sector.<sup>71</sup>

In 2007, drawing on allocations from the basket fund, the Department of Justice in the Office of the Attorney General (at the time known as the Ministry of Justice, National Cohesion and Constitutional Affairs), established the National Legal Aid and Awareness Programme (NALEAP) and its National Steering Committee.<sup>72</sup> The Committee’s primary functions were to advise on national legal aid policy and to oversee pilot projects testing various methods of enhancing justice for all.<sup>73</sup>

After the first national coordinator of the program came on board in 2008, the Committee set up six pilots across six thematic areas. One of these projects, based in Kisumu, explored the use of paralegals in the provision of basic justice services. Based on positive experiences with the Kisumu pilot and extensive consultation with civil society, NALEAP became a strong proponent of establishing a national system for recognizing and accrediting paralegals. It adopted as one of its key goals the passage of a legal aid policy and legal aid law that accounts for the role of paralegals in enhancing access to justice.<sup>74</sup>

<sup>69</sup> GJLOS, *Survey Report*, 2 (see n. 5). The vision of GJLOS aligned with the Kenyan government’s growing acknowledgment of access to justice as critical to economic development and poverty reduction. This recognition was articulated in the National Poverty Eradication Plan 1999–2015, Poverty Reduction Strategy Paper (PRSP) of 2001–04, and the Investment Programme for Economic Recovery Strategy for Wealth and Employment Creation (ERS) 2003–07. Amondi, “Legal Aid in Kenya,” 206 (see n. 27).

<sup>70</sup> GJLOS, *Survey Report*, 2 (see n. 5).

<sup>71</sup> For instance, when GJLOS identified prison congestion as one of the major challenges facing prisons in Kenya, Kituo began training prisoners on law to build their capacity for self-representation. To date, paralegals have helped prisoners in Shimo La Tewa prison to draft 400 applications and letters to the Chief Magistrates’ Courts; 80 applications, 260 appeals, and 150 letters to the High Court in Malindi; and 125 applications, 400 appeals, and 200 letters to the High Court in Mombasa. Mary Amuyunzo-Nyamongo, “Kenya Paralegal Study Preliminary Report” (preliminary report, AIHD, submitted to World Bank Justice for the Poor, Nairobi, September 2011), 7.

<sup>72</sup> *Kenya Gazette* Notice No. 11598.

<sup>73</sup> The pilots had initially been proposed in a 2001 report commissioned by the Legal Aid Steering Committee, a body set up by the attorney general in 1998 that sought to explore suitable models for a national legal aid scheme. However, the government did not act upon the proposals until many years later, after a change in administration. Amondi, “Legal Aid in Kenya,” 207 (see n. 27).

<sup>74</sup> Caroline Amondi (national coordinator for NALEAP), interview by Abigail Moy (Namati), November 2013.

In August 2010, Kenya adopted a new constitution, Article 48 of which states: “The State shall ensure access to justice for all persons and if any fee is required, it shall be reasonable and shall not impede access to justice.”<sup>75</sup> That year, KSL underwent a restructuring based on the recommendations of the Ministerial Task Force on the Development of Policy Legal Framework and Education in Kenya. KSL established a two-year paralegal training program, drawing heavily from PASUNE’s curriculum, with a Diploma of Law (Paralegal Studies) awarded upon completion. KSL would become the first public institution in Kenya to offer paralegal training.

In the ensuing years, due in part to NALEAP’s and PASUNE’s advocacy, government support for a cohesive national approach to enhancing access to justice mounted. A taskforce on judicial reforms recommended that the Kenyan government establish a national legal aid system and adopt a corresponding policy and legislative framework.<sup>76</sup> Reports commissioned by the Ministry of Justice urged the enactment of a legal aid scheme that promoted paralegals, greater public education, and legal literacy campaigns to address the needs of vulnerable citizens.<sup>77</sup> The Truth and Reconciliation Commission, noting a concentration of paralegals in Nairobi, recommended expanding the presence of community paralegals in rural, arid, or semiarid regions of the country.<sup>78</sup> Vision 2030, Kenya’s national development plan, endorsed the policy, legal, and institutional reforms necessary to achieve access to justice.<sup>79</sup>

These contributions laid the groundwork for the ultimate passage of Kenya’s 2016 Legal Aid Law. The events that led to the law’s adoption, and its many implications, are described in greater detail later in this chapter (*see* Institutional Factors).

### III. CONTEMPORARY PARALEGALS IN KENYA: A SNAPSHOT

#### A. Placement and Specialization

The vast majority of paralegals in Kenya today are recruited, trained, and deployed by civil society, which in turn relies heavily on international donors for support.<sup>80</sup>

<sup>75</sup> The Constitution of Kenya (2010), art. 48. Other relevant constitutional articles include: art. 49(1)(c) (an arrested person has the right “to communicate with an advocate, and *other persons whose assistance is necessary*”) and art. 50(7) (“in the interest of justice, a court may *allow an intermediary to assist a complainant or an accused person to communicate with the court*”).

<sup>76</sup> Amondi, “Legal Aid in Kenya,” 207 (see n. 27). <sup>77</sup> *Ibid.*, 207–8. <sup>78</sup> *Ibid.*, 208. <sup>79</sup> *Ibid.*

<sup>80</sup> Key donors supporting the promotion of access to justice in Kenya include the European Union, the Open Society Initiative of Eastern Africa (OSIEA), The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ), UN Women, UNICEF, Department for International Development (DfID) UK, Canadian International Development Agency (CIDA), and others. *Ibid.*, 206.

Paralegals operate in a wide variety of informal and institutional settings, on a diversity of issues.

Many paralegals work out of their homes or are based in modest local offices maintained by civil society or community-based organizations. Of these community-based paralegals, some are trained to take a generalist approach; they aim to respond to any problem that affects a given community. Paralegal programs that adopt this approach rely on petitions or walk-ins to learn about grievances, or they may send staff on fact-finding missions to investigate major needs. They then train their paralegals in the thematic areas identified.

Most paralegal programs, however, focus on specific thematic areas or marginalized groups. For example, Bar Hostess trains paralegals from within the sex worker community; they address security issues, police abuse, and access to HIV/AIDS treatment. Nubian Rights Forum, Haki Centre, and Wajir Human Rights Network help minority communities overcome discriminatory practices and obtain legal identity documents or proof of citizenship. Muslims for Human Rights (MUHURI) aids remandees and accused persons who encounter problems with the criminal justice system. Frontier Indigenous Network trains paralegals in northern Kenya to restore women's right to inheritance and to fight genital mutilation. Paralegals working with KELIN and Nyeri Hospice help patients with terminal illnesses to make end-of-life legal arrangements, including the drafting of wills and the assignment of power of attorney. Kenya Land Alliance, Ogiek People's Development Program, and Kivulini Trust support communities in leveraging national land laws to protect customary land claims. Their paralegals, often called community mobilizers, spearhead processes for documenting and registering lands, while strengthening mechanisms for accountable and participatory management of land and natural resources.

While the majority of paralegals in Kenya are community based, a fair number of paralegals are based within state institutions and integrated into state services. Paralegals in this category include those stationed in prisons and remand homes. LRF paralegals, for instance, visit prisons every weekday to offer legal advice to inmates, hold educational legal clinics, train prison liaison officers on human rights standards, and monitor prison conditions.<sup>81</sup> They participate in the Parole Board of the Kenya Prisons Service and serve on the Case Management and Anti-Corruption Committees of the Probation and Aftercare Department.<sup>82</sup> Meanwhile, Kituo trains

<sup>81</sup> Mbote and Akech, *Kenya Justice Sector*, 152 (see n. 1).

<sup>82</sup> Waruhiu and Otieno, "Access to Justice," 185 (see n. 58); UN Office on Drugs and Crime (UNODC), *Handbook on Improving Access to Legal Aid in Africa*, Criminal Justice Handbook Series (Vienna: United Nations, 2011), 25.

prisoners as paralegals who can represent themselves and other detainees in appeals and bail proceedings.

Paralegals who focus on monitoring courts also fall into this category. They take part in Court Users Committees and can be found staffing judicial-paralegal customer care desks, where they advise the general public on court procedure.<sup>83</sup> State agencies have also identified paralegals as volunteer child officers, who monitor and assist with child protection cases. PLAN International's paralegals, for example, work with the Children's Department, police, and the provincial administration to address cases of violence against children.

### B. Skill Level

In addition to operating in a variety of settings, paralegals demonstrate differing levels of skill depending on need and context. Contemporary paralegals now specialize in any combination of the following tasks:

#### 1. Basic Skills

- **Improving Rights Consciousness.** Educating others in basic law and rights; conveying complex legal-judicial processes in a language that the community can understand; disseminating educational materials and content such as handbooks and brochures to the general public.
  - This includes efforts targeting specific populations or clients, e.g., explaining criminal procedure to suspects, or describing the process of lodging reports with the police to victims of crime.
- **Making Referrals.** Referring clients to others, including pro bono lawyers, police, local administrative agencies, and other authorities, depending on the nature of the case. Prior to doing so, paralegals will investigate the facts of a case as necessary.
- **Monitoring.** Monitoring government performance in the management of public affairs and resources; documenting cases of abuse and human rights violations; reporting to civil society organizations who in turn publicize or act on the data.

#### 2. Intermediate Skills

- **Offering Legal Advice.** Offering basic legal advice on seeking remedies or resolving disputes in specific cases. Prior to doing so, paralegals will investigate the facts of a case and apply the law as necessary.

<sup>83</sup> The judiciary has sought the assistance of paralegals in reaching the general public during marches and open days. Paralegals work through Court User Committees to share public feedback, offer their own observations on bottlenecks in the administration of justice, and report abuses. Paralegal contributions at customer care desks has improved judiciary–public relations, reduced registry bureaucracy, the number of “lost” users, and the effect of comen posing as judicial officers who prey on court users. Waruhiu and Otieno, “Access to Justice,” 194–95 (see n. 58).



- **Dispute Resolution/Reconciliation.** Mediating conflicts, usually with regard to land boundary matters, contract and labor relations, or family disputes. Prior to doing so, paralegals will investigate the facts of a case and help parties reach a satisfactory outcome.
- **Accompaniment.** Accompanying the clients in accessing justice, e.g., at a court, administrative office, or service provider.
- **Document Support.** Drafting simple legal documents, e.g., applications for bail.

### 3. Advanced Skills

- **Advocacy.** Lobbying government (local or otherwise) and public officials for action on reforms to policy or practice; persuading local authorities to act to address a client's case, or challenging them to cease illicit practices; participating in stakeholder meetings relating to the betterment of the community.
- **Community Mobilization.** Organizing the community around common issues of concern; sensitizing the community about the need for positive change.

Kenya's paralegal movement is still young. It is constantly diversifying and honing its methodologies. But even at this early stage, we have been able to identify institutional, organizational, and cultural factors that influence paralegal success across a range of operating environments.

## IV. DETERMINANTS OF EFFECTIVENESS

We interviewed parties involved in 120 randomly selected cases to learn more about the impact of community paralegals and the circumstances that influence their effectiveness. Our researchers sampled cases from paralegals working in six of Kenya's eight provinces: Nairobi, Coast, Eastern, Western, Central, and Rift Valley Provinces. Community opinion leaders were also interviewed to ascertain the effect of paralegal programs on local dispute resolution processes and governance.

Overall, we were struck by the variance in the case types handled by paralegals, and the differing degrees to which they affected outcomes of disputes in their communities. The most accomplished paralegals could resolve justice challenges requiring management of emotionally tense situations, engagement with a range of authorities and institutions, and mastery of skills in mediation, mobilization, and advocacy, as in the case examined next.

## CASE 1: "NOW, THERE IS ENOUGH WATER"

**Location:** Eastern Province

**Type of Dispute:** State and Corporate Accountability

**Issue:** Natural Resource Rights

**Tools Used:** Advocacy, Organizing, Information Provision

**Other Institutions Used:** Before Paralegal Involved: Chief, Police, District Officer; After Paralegal Involved: Chief, Assistant Chief, District Officer, National Environmental Management Authority, Parent Organization, Provincial Administration

The clients were leaders of a community that relied on natural sources of water. All water catchment areas for the local river fell within private land. One landowner was harvesting sand heavily from the catchment area, which dried up the only source of water in the community. The community leaders asked the landowner to stop, to no avail. They approached the police, district officer, and chief, all of whom claimed they could not stop the company, as it was beyond their mandate. The community leaders suspected that the chief and assistant chief received money from the sand sales.

The community leaders approached two paralegals who worked together in an office. The paralegals called two community meetings, which were attended by 400 people, and educated the community on natural and community resource management. Because a mob had previously arisen, resulting in the burning of a lorry and the arrest of two community members, the paralegals sought to keep the meetings calm and convinced the community to take legal action instead. The chief and assistant chief expressed unhappiness with the paralegals mobilizing the community, but the paralegals urged the community not to be afraid and to fight for their rights.

On the advice of the paralegals, the community held two demonstrations and chased away lorries arriving to collect sand. The paralegal and the community also wrote a petition describing the community's grievances and proposing solutions. It was sent to the District Office, National Environmental Management Authority (NEMA), LRF (the parent organization for the paralegals), and the police.

NEMA responded by outlawing sand harvesting in the area – confirming that it was the only catchment area for the river in the region. The provincial administration was copied and ordered to enforce sanctions. The sand harvesting has since ceased. The company owner issued a public apology, as he did not want to be shunned by the community. However, he maintains that the sand harvesting was good for the

## CASE 1: (Cont.)

community because it provided a source of employment for youth. Community members say that people are now afraid to harvest sand because they are “wary the paralegals will stop them.” One client emphasized, “The paralegal cooled tempers, educated us and even told the accused the legal provisions on sand harvesting . . . The law says water catchment areas belong to the community and there is need to conserve the environment for future generations.”

Indeed, many interviewees were quick to cite positive impacts arising from the presence of effective paralegals. Clients reported that, through paralegals, they were able to access remedies denied to them in other venues. Community leaders credited paralegals for reducing disputes and incidents of violence, as well as raising rights awareness among the public.

*The paralegals have helped here so much. This is because the paralegals help parties to a suit, not only to solve their disputes but also to ensure that the parties can still relate with each other without any hard feelings held against each other. – Community Leader, Rift Valley Province*

*Now, we have very few cases of family violence, child abuse and neglect as more people have been educated on their rights and they understand consequences for crimes committed and this has given me room to do other things. More people understand their rights in marriage, issues of succession and how to take care of children. Referral cases to the District Children's Offices have really decreased. – Community Leader, Western Province*

*Before paralegals were trained here, it was really bad, especially in Soweto. But now at least there is security. Instead of people taking up matters in their own hands, they now report to paralegals who then try to resolve disputes or refer. – Community Leader, Nairobi Province*

*They help a lot to reduce the bulk log of cases in the judicial system; this is because the cases that can be handled by the paralegals are handled with them without necessarily going to court. Hence this saves the time of the parties involved in the case and this also helps the government to save the resources and time [for cases] that would have been easily solved by the paralegals. – Community Leader, Central Province*

At the same time, other interviewees voiced concerns about inconsistencies in the quality of paralegal services. They challenged paralegals' capacity to tackle complex issues or to take on the volume of cases in need of resolution. They expressed concern over a lack of clarity regarding the role of paralegals.

*Paralegals are limited in their knowledge of the law and at times when acting in good faith, they end up misleading their clients. This is a very serious challenge. – Resident Magistrate, Central Province*

*Not everyone accepts what a paralegal does. This is because their interactions with people are misinterpreted, thus risking their lives. All trained paralegals should be introduced to all communities, in churches and chiefs' barazas and even in schools, where they clearly state their role in the community. – Community Leader, Eastern Province*

*[Paralegals] have to deal with the challenge of giving legal advice in a small way yet the issues they deal with are very complex. Thus there's need for upgrading on their capacity building. The training they receive is far too little for the complex matters they do handle. – Community Leader, Western Province*

*Paralegals should be increased in number. The few paralegals we have here cannot manage to cover each village. They ought to be going to churches, chiefs' barazas, and all other public events. – Community Leader, Eastern Province*

Our research reveals that the effectiveness of paralegals, as perceived by themselves, their clients, and their communities, hinged on a handful of institutional, organizational, and cultural factors. We analyze these determinants of success in turn.

### A. Institutional Factors

#### 1. Relationships with Local Authorities

The success of paralegals' efforts often depended on the quality of their relationships with principal institutional actors and local leaders, including police, local administrative and other government officials, prison authorities, councilors, and chiefs.

*The fact that the [paralegal] office is next to mine should tell you more about our relationship. Us delegating peace and reconciliation to them speaks volumes. It is the biggest resource center in the district . . . They have the legal knowledge while we have the administrative capability. We even seek advice there. We cannot give them minor cases, we give them cases of weight. – Community Leader, Eastern Province*

Where relationships were collaborative, paralegals enjoyed greater recognition and respect in their communities. In Rift Valley Province, for example, paralegal offices that worked closely with authorities transformed their communities and contributed extensively to resolving disputes. Community members and leaders alike would seek out paralegals, whose services were integrated into customary and formal dispute resolution processes. Paralegals' ability to traverse both customary and formal institutions empowered them to take on more complex, multidimensional cases.

## CASE 2: WORKING TOGETHER

**Location:** Rift Valley Province

**Type of Dispute:** State Accountability

**Issue:** Water

**Tools Used:** Advocacy, Organization

**Other Institutions Used:** After Paralegal Involved: Elders, Church, Ministry of Water, CDTF (Community Development Trust Fund)

A lack of water in a community was causing tension between farmers – who comprised the majority of the community and needed the water for irrigation – and herders, who needed water for livestock. A severe shortage of water from 2009 to 2010 “was so bad that it almost started tribal clashes.”

Community leaders worked together with a paralegal to devise a solution. The paralegal was consulted because he had a good reputation for settling problems within the community and he was known for teaching people at *barazas* about human rights issues. The paralegal met with community leaders and elders. Together, they decided to request funds to drill a bore hole from the Ministry of Water and the Community Development Trust Fund (CDTF).

The paralegal wrote a proposal to the two offices. The Ministry of Water responded that it had some funds earmarked for drilling bore holes in the community's district. It agreed to do water prospecting in their division. A month later, paralegal and community members showed prospecting officials around the area. A suitable place in the water table was found underneath a nursery school and church compound. The Ministry of Water asked the delegation to speak with the landowners about drilling a bore hole on their plot.

The paralegal “took the challenge” and went to meet the *wazees* (elders) and representatives from the church and nursery. They worked out an agreement permitting a bore hole on the land. The paralegal recorded minutes to the meeting, which he delivered alongside the agreement to the Ministry of Water. A 700 meter-deep water bore was constructed a few months later.

## CASE 3: “WE KNEW HIM AS A DISPUTE RESOLVER”

**Location:** Rift Valley Province

**Type of Dispute:** State Accountability, Private Dispute

**Issue:** Property

**Tools Used:** Advocacy, Organizing

**Other Institutions Used:** Before Paralegal Involved: Chief, Police, Community Leaders; After Paralegal Involved: Ministry of Lands

## CASE 3: (Cont.)

During the 1980s, land where water collected during the rains was designated “public utility land” for use by the community. The community had plans to build a dam on the site. In 2010, a person came forward with a title deed and fenced off the land, claiming it for himself. This upset the community. The youth in the community threatened to take action and destroy the fence as men were putting it up. The police were called in to defuse a confrontation.

The community leaders, including the chief, met to decide a course of action. After meeting, they approached a paralegal, “who we knew as a dispute resolver.” The paralegal went with the chief to speak with the youths, asking them to be tolerant as they sorted out the problem.

The paralegal arranged to speak to representatives from district headquarters and the Ministry of Lands. He made the trip together with the chief and the chairman of the *wazee*. Initially, the district lands officer confirmed that his records indicated that the land belonged to the individual. Dissatisfied, the group went to the district commissioner, who agreed to look into the issue. The paralegal followed up with the commissioner a number of times. During the course of the case, the community pooled money to pay for the paralegal’s travel expenses.

After an investigation and several meetings, the district commissioner determined that someone had forged the land deed. The fence was taken down and the property was restored to the community.

In contrast, where relationships between paralegals and institutions were contentious, the reputation and effectiveness of paralegals appeared to suffer. In one Coast Province site, for example, paralegals reported that the area councilor and area chief were “not on good terms with paralegals,” and therefore did not cooperate on land issues. This led to stalled cases. Paralegals confronting such constraints were still able to prevail, but at times met with mixed results.

*The police are complaining about paralegals educating the masses on their rights. It is bringing friction between them.* – Community Leader, Coast Province

*The police frustrate the complainant and use delaying tactics, which leads to spending a lot of money and delay in justice delivery . . . What police embrace is what we hate . . . They are trained that the first enemy is “mwananchi,” meaning the first enemy is the citizen. There is no good relationship between us and the police.* – Paralegal, Coast Province

## CASE 4: THE DAM COMMITTEE

**Location:** Eastern Province

**Type of Dispute:** State Accountability

**Issue:** Water

**Tools Used:** Advocacy, Organizing, Information Provision

**Other Institutions Used:** Before Paralegal Involved: Chief; After Paralegal Involved: District Officer

A community elected a dam committee to oversee the provision of water. After some time, the committee stopped providing monthly statements on how it was spending money to operate the water kiosks and resisted efforts to hold it accountable. Two community members went to a paralegal for help.

The dam stopped working two weeks later, after which the community did not want to pay the committee for the water. The paralegal asked the assistant chief, who was also the chair of the dam committee, to call a public *baraza* (meeting) on the issue. The chief refused. The paralegal called a community meeting anyway, at the chief's office. Around 200 people attended. The chief came with men and threatened to have the paralegal arrested for inciting the public and calling an illegal meeting. The chief felt that the issue should only be addressed in the Water Appeals Court.

The paralegal then worked with community members to find a way for people to draw water directly from the dam without having to pay the committee, since the dam still didn't work. The dam committee was dissolved. The district officer has begun educating the community how to create a new one. Clients felt that the paralegal helped the situation, but they wanted more; they wanted help to get the dam running again and wanted the committee members to be held publicly accountable for mismanaging funds.

The assistant chief felt that the case was handled poorly, warning: "If the paralegals are not checked, they will soon start mobilizing people for regime change. Even community workers operate under guidelines, not just haphazardly. I tell you they will cause problems in the country. The chief and district officer were with us but changed their tune after something happened. They might have been silenced by the NGO supporting the paralegals." The paralegal recounts, "People have a colonial legacy of not questioning the chief . . . Initially I was alone with a handful of people, but now the whole community has audacity to question without fear."

In areas where paralegals had not forged open relationships with institutional actors, our interviews recorded fewer instances of paralegals undertaking significant roles in resolving complex cases. Instead, paralegals more often relied on referrals to police, chiefs, or government authorities.

## CASE 5: NEW ELECTIONS

**Location:** *Coast Province*

**Type of Dispute:** *State Accountability*

**Issue:** *Police*

**Tools Used:** *Organizing, Information Provision*

**Other Institutions Used:** *Before Paralegal Involved: District Office, Police, Chief; After Paralegal Involved: District Government, Police*

A community donated money to build an office for community policing. The chairman, who was elected to the Community Policing Office, became corrupt. Several community members approached the paralegal for help after they failed to get any results through the chief. The paralegal guided members in writing district government officials about the situation. Once informed, the district government banned the Office and held new elections. The clients were satisfied with the fact that new elections were called, but the community continues to disagree on aspects of community policing.

Where local institutions were corrupt, dysfunctional, discriminatory, or otherwise an unsuitable destination for referrals, paralegals could often only prevail when they bypassed local authorities. In these cases, paralegals typically engaged higher levels of government or relied on sheer adversarial persistence.

## CASE 6: GOING HIGHER

**Location:** *Central Province*

**Type of Dispute:** *Private*

**Issue:** *Family/Property, Gender-based Violence*

**Tools Used:** *Information Provision, Referral*

**Institutions Involved:** *Before Paralegal Involved: Police; After Paralegal Involved: Hospital, District Officer*

The client and her husband bought a parcel of land together. The husband wanted to sell the land, but she refused and the husband beat her. The paralegal, having been sought out by the wife, was unable to raise the police and suspected that the husband had bribed them.

After lending the client money to visit the hospital, the paralegal sent the client to the district officer (DO) to lodge a complaint. The DO warned the husband against further violence and issued an injunction that prevented him from selling the land. The couple separated and the client found another place to live with her daughters.



## CASE 7: PUSHING THE POLICE

**Location:** Nairobi Province

**Type of Dispute:** Private, State Accountability

**Issue:** Theft

**Tools Used:** Advocacy

**Other Institutions Used:** Before and after Paralegal Involved: Police

A reverend reported the theft of his church's medical equipment. When the police were slow to investigate the robbery, the reverend enlisted the help of a paralegal. Police response picked up after the paralegal intervened. Due to pressure applied by the paralegal, the police arrested three church staff members and retrieved the medical equipment. The paralegal also worked to secure the release of the accused after they cooperated with the investigation. The police admitted that the paralegal's presence "simplified" their investigation, but also expressed that they were annoyed by how "pushy" the paralegal was in urging them to move more quickly.

Regardless of the talent or craftiness of a given paralegal, there are limits to what one can achieve when institutions simply do not perform their core functions well. While paralegals can, on occasion, overcome failed institutions to achieve satisfactory remedies, partial victories are sometimes the best they can accomplish.

## CASE 8: "I NO LONGER TRUST AUTHORITIES"

**Location:** Central Province

**Type of Dispute:** Private

**Issue:** Gender-based Violence

**Tools Used:** Information Provision, Advocacy

**Other Institutions Used:** Before Paralegal Involved: Police, Hospital; After Paralegal Involved: NGO, Counselor

The client, a young woman, tried to bring rape charges against her neighbor. The police refused to help her. After being examined at the hospital, she was told to go home. After her mother was told about a paralegal's office, she approached a paralegal, who took the young woman to the Nairobi office of CLAN, an organization that works on children's cases. The paralegal noted, "We went there but nothing seemed to be coming out of our visits so while we were still waiting for CLAN, I advised her to seek counseling."

## CASE 8: (Cont.)

The paralegal tried to follow up with the police, but they insisted that they would not interfere in a disagreement between neighbors. The paralegal believed that the police had been bribed, as the client's written statement had mysteriously disappeared from the station. Ultimately, the only reprieve the paralegal could obtain was arranging for a counselor for the client, for which the young woman was grateful. However, the client stated that she did not feel empowered to take on injustices in the future because she "no longer trusts authorities."

Clearly, the ideal operating environment for a paralegal is one in which institutional actors are functional and cooperative, or at least permissive, of legal empowerment efforts. This tends to happen where local authorities view paralegals as supportive, rather than threatening, to their work. Chiefs in particular resolve many of the kinds of disputes that paralegals do – and derive income or prestige from doing so. Often, clients approach chiefs and other local authorities first, turning to paralegals only when they are dissatisfied with the results or treatment they receive. As such, paralegals offer an additional layer of accountability for local leaders.

Where paralegals are perceived as a force for facilitating or enhancing the work of institutional actors, amity and even collaboration have ensued. In some communities, chiefs have invited paralegals to participate in the dispute resolution activities of their council of elders, for instance. But where paralegals are seen to infringe on the domain of local authorities, relations suffer.<sup>84</sup>

How, then, have some paralegals forged strong relationships with authorities? Local institutions tend to be friendlier to paralegals' efforts when they are proactively informed about what paralegals are doing, routinely consulted on important issues, involved in relevant activities, and in regular contact with paralegals.<sup>85</sup> This helps authorities to feel like they have input and insight into how paralegals operate. It casts paralegals as colleagues, as opposed to competitors.

*At their inception, I had a very rough time with [paralegals] since I felt they were overstepping their mandate. We had to agree on some fundamentals of law – where my powers end and how they can enter into the system. Right away, I can tell you that there are some cases I refer back to them and they forward cases to my office. So we help each other and my work now is very easy. – Community Elder, Rift Valley Province*

<sup>84</sup> Waruhiu and Otieno, "Access to Justice," 192 (see n. 58).

<sup>85</sup> Aimee Ongeso, interview by Abigail Moy (Namati), February 2016. Kituo Cha Sheria finds it helpful to formally introduce local authorities to paralegals prior to setting up an office; involve authorities in training, community outreach, and awareness sessions; develop joint actions wherever possible; and hold periodic briefing meetings with chiefs and police every few months to allow for complaints and encouragement, or to identify issue areas that need addressing.

Moreover, the paralegal movement has long argued that local, ad hoc arrangements would be significantly bolstered by nationwide laws or policies that recognize the role and authority of community paralegals.

## 2. Formal Recognition: Kenya's 2016 Legal Aid Law

Nearly every paralegal and community leader we interviewed identified the lack of formal recognition as one of the most serious challenges facing paralegals. Paralegals frequently referred to instances when authorities rebuffed them for lack of legitimacy. Meanwhile, community leaders wanted a clearer sense of what defines a paralegal, the type of training required, and what paralegals are authorized to do and not do.

*It would be a good idea if we can be recognized by the Kenyan government. For example, when a young man lost his phone and we took him to the police station, the officers told him to forget about us [female paralegals]. They despised us. But when I produced my identification the police started to cooperate and talked nicely. It shows how the work of paralegals is breaking ground and shaking barriers of impunity. – Paralegal, Coast Province*

For years, the laws of Kenya prohibited anyone who was not an admitted lawyer (or working under the supervision of an attorney) from providing legal advice. This has complicated paralegals' efforts to advise clients on specific cases. Paralegals reported instances when judicial personnel prevented them from supporting their clients in court because they lacked credentials. But paralegals require access to courts to accompany clients at hearings, investigate and pursue "forgotten" cases, and monitor court proceedings to correct errors in the administration of a case.

Formal recognition, paralegals argued, would help them to more effectively challenge local authorities – particularly in cases of corruption and abuse – and to more effectively interact with the court systems. Community leaders agreed that recognition might also alleviate general public confusion around the role and capacities of paralegals. Interviewees speculated that a system of accreditation might further clarify matters by standardizing training for paralegals, at a time when the length, recurrence, and quality of paralegal training varies widely across the country.

In 2016, after a broad stakeholder consultative process and many years of advocacy by members of PASUNE, the Kenyan government adopted the Legal Aid Act, which recognizes paralegals so long as they are supervised by an accredited legal aid organization or advocate.<sup>86</sup> The move followed a flurry of activity arising out of an unprecedented multi-stakeholder meeting in April 2015. The meeting convened civil society, the LSK, the Kenyan Parliamentary Human Rights Association, the attorney general, the chief justice, and the Human Rights Commission. Their purpose: to discuss how to address Kenya's critical justice issues in light of the pending UN Agenda 2030 for Sustainable Development – which featured access

<sup>86</sup> The Legal Aid Act No. 6 (2016), *Kenya Gazette Supplement* No. 56 § 68(1).

to justice in Goal 16 – as well as Kenya’s constitution and the national development plan, Vision 2030, which also prioritized justice.<sup>87</sup>

The meeting participants agreed upon a strategy to advance legislation key to enhancing access to justice across Kenya, including the then languishing 2013 Legal Aid Bill, 2013 Access to Information Bill, 2014 Community Land Bill, and Kenya’s National Human Rights Policy and Action Plan. Immediately after the close of the meeting, members of the Kenyan Parliamentary Human Rights Association introduced the Legal Aid Bill afresh to Parliament. The bill was passed into law by the end of the session.<sup>88</sup>

The Legal Aid Law embodies a number of victories for Kenya’s paralegal movement. First, it grants “accredited paralegals” the authority to provide legal advice and assistance; previously, only licensed attorneys could do so.<sup>89</sup> Under the law, paralegals can be accredited by the National Legal Aid Service (the successor to NALEAP) or by association with a civil society organization accredited as a legal aid provider.<sup>90</sup> While paralegals are prohibited from requesting or receiving payments from clients who qualify for legal aid,<sup>91</sup> the law establishes the Legal Aid Fund, which leaves the door open for public financing for paralegals.<sup>92</sup> The law does not proscribe remuneration of paralegals by training or parent organizations.

Second, the law defines legal aid as including the larger scope of activities typically undertaken by community paralegals: raising awareness of laws, out-of-court alternative dispute resolution, and advocacy on behalf of the community.<sup>93</sup> This broader scope empowers paralegals in all aspects of their work, rather than merely those that relate to courts and forums more traditionally associated with legal aid.

Third, the law tasks the National Legal Aid Service with developing “programs for legal aid education and the training and certification of paralegals.”<sup>94</sup> This mandate could contribute to the development of more comprehensive and accessible learning infrastructure for paralegals seeking to advance their skills. Stakeholders from both civil society and government, including the National Land Commission, also see this as an opportunity to develop curricula for paralegals specializing in priority issue areas.

Finally, the National Legal Aid Service will be governed by a board upon which a civil society representative will serve, to represent “Public Benefit Organizations offering legal aid to the public, including women, youth and children.”<sup>95</sup> Preserving a role for civil society in the governance and accreditation of paralegals is appropriate and necessary, given the history and nature of the paralegal movement in Kenya.

A number of outstanding issues need resolution before moving ahead, however. The division of labor and the allocation of responsibility among the many stakeholders across government, the private sector, and civil society remain unclear. How

<sup>87</sup> Jedidah Waruhiu, interview by Abigail Moy (Namati), November 2013.

<sup>88</sup> While the session should have ended in 2015, it was extended into 2016. Oliver Mathenge, “Kenya: MPs to Miss August Deadline for Bills,” *The Star*, August 5, 2015, <http://allafrica.com/stories/201508050140.html>.

<sup>89</sup> The Legal Aid Act No. 6 (2016), *Kenya Gazette Supplement* No. 56 § 68(1). <sup>90</sup> *Ibid.*, § 59.

<sup>91</sup> *Ibid.*, § 68(2). <sup>92</sup> *Ibid.*, §§ 29, 30. <sup>93</sup> *Ibid.*, § 2. <sup>94</sup> *Ibid.*, § 7(1)(h). <sup>95</sup> *Ibid.*, § 9(1)(j).

the new law interacts with or supersedes existing legal aid programming is yet to be determined. Mechanisms for coordination among all actors have not been established.

Financing presents another critical challenge. The Legal Aid Act establishes the Legal Aid Fund to “defray the expenses incurred by the representation of persons,” “pay remuneration of legal aid providers,”<sup>96</sup> or “meet the expenses incurred by legal aid providers.”<sup>97</sup> However, details on how the fund will work in practice are still being negotiated. To ensure adequate financial support for community paralegals throughout the country, civil society has submitted recommendations to the Kenyan government suggesting avenues for interagency coordination around legal aid implementation and financing. These recommendations emphasize sustainable measures, as well as systems for assessing community needs and monitoring progress toward the Act’s goals. Planning is underway for multi-stakeholder meetings on these issues, bringing together civil society, multiple government agencies, members of Parliament, the Human Rights Commission, the private sector, and international and donor agencies.

Meanwhile, civil society continues to advocate for paralegal recognition in other areas. The draft National Human Rights Policy and Action Plan, which has been revised to integrate justice components into its objectives, is presently on the agenda for consideration before Parliament. In the new draft, paralegal presence and impact is being tracked in three outcome indicators relating to access to justice goals. The Kenyan government’s statistical division is incorporating a legal needs survey into its household survey. Civil society is also working to include references to the role of paralegals and other intermediaries in the draft of the Access to Information Bill.

For now, the 2016 Legal Aid Act opens up a number of potential opportunities for Kenya’s paralegal movement. Community paralegals finally won formal acknowledgment for their services enhancing public participation and providing legal information, awareness, and assistance. Adoption of the law may accelerate the presence and establishment of paralegals in communities, courts, and police stations. These measures may ultimately lead to new synergies between paralegals and other justice service providers across the sector.

### *B. Organizational Factors*

Organizational factors – different ways in which civil society organizations train, manage, monitor, and support paralegals – also influence the effectiveness of community paralegals.

#### 1. Support Structures

Paralegal networks relate to their parent civil society organizations in diverse ways. Their relationships can be roughly classified according to levels of support that

<sup>96</sup> *Ibid.*, § 30(a). <sup>97</sup> *Ibid.*, § 30(c).

paralegals receive from an NGO: (a) training and access to pro bono referral contacts only; (b) training, referral contacts, and ongoing logistical support/guidance; and (c) training, referral contacts, ongoing logistical support/guidance, and monetary support. While an exceptional, deeply motivated paralegal can succeed without an extensive support structure, we have found that greater levels of support will on the whole strengthen the long-term morale, commitment, and performance of paralegals.

## 2. Training Only

Community paralegals in the first category typically receive an initial training,<sup>98</sup> and occasionally a refresher training, by a given NGO.<sup>99</sup> Training may combine legal instruction with coaching in practical skills and site visits to communities, courts, prisons, police stations, or legal aid clinics. A graduation ceremony is commonly held within the communities to build awareness of the paralegals' services.<sup>100</sup> New paralegals are equipped with basic resources, including a book of basic statutes, a t-shirt, a paralegal identification badge and jacket, a journal for documentation, and a carrier bag.<sup>101</sup> They are then encouraged to voluntarily support their communities with their newly gained knowledge. From then on, these paralegals operate more or less independently. When they cannot resolve a case alone, they refer clients to the parent NGO or other authorities.

Enhanced legal knowledge and established connections to attorneys are powerful tools. Indeed, due in large part to their training, some paralegals have gone on to earn places on chiefs' councils of elders or have even served as chiefs.<sup>102</sup> After witnessing the accomplishments of paralegals in their communities, public administrators have sought out paralegal training themselves.

Still, lack of coordination, oversight, and systems for accountability for paralegals can lead to problems. While paralegals are preselected on the basis of their reputation for integrity, this is not a guarantee against unethical or self-interested behavior. NGOs recount instances of paralegals charging for legal advice when the policy of the parent NGO is to provide free services. In other instances, a paralegal may charge for services on behalf of the parent NGO, but pocket the money rather than forwarding it to the organization as represented. Communities can fall victim to such misrepresentation because of uncertainty as to the precise duties and qualifications of community paralegals.

<sup>98</sup> LAN is one organization that provides training to paralegals without follow-up logistical support. AIHD, "Kenya Draft Report," 9 n. 24 (see n. 25).

<sup>99</sup> As of 2011, FIDA Kenya trained for two weeks, LRF for one year, Kituo Cha Sheria for two weeks with refresher courses conducted on a quarterly basis, and some organizations held one-day trainings for paralegals. Mary Amuyunzu-Nyamongo, "Kenya Paralegal Study," 19–20 (see n. 71). Other training programs may last up to six to seven weeks. Waruhiu and Otieno, "Access to Justice," 187 (see n. 58).

<sup>100</sup> Waruhiu and Otieno, "Access to Justice," 187 (see n. 58).

<sup>101</sup> A practice taken up by ICJ, LRF, Kituo, CJPC, and the Anglican Church. *Ibid.*, 187, n. 14.

<sup>102</sup> *Ibid.*, 185.

## CASE 9: THE ROGUE PARALEGAL

**Location:** Eastern Province

**Type of Dispute:** Private

**Issue:** Theft

**Tools Used:** Mediation

**Other Institutions Used:** After Paralegal Involved: Chiefs, Police, Parent Organization

The client came to a paralegal office during a “Legal Aid Day” to speak to an attorney about a land dispute. The paralegal acted as translator during the meeting. The paralegal later approached the client, bearing a number of forms that he falsely claimed had been sent to him by the attorney. The paralegal convinced the client to give him money, which he would hold on the client’s behalf to pay for the case.

The client raised and delivered the money, then requested to meet with the attorney. The paralegal began to make excuses and the client went to another paralegal office to complain. The other paralegal uncovered the deception and tried to get the accused paralegal to refund client’s money, without success. The second paralegal recounted, “we called our mother organization and they said that these are our issues and as an organization they could not interfere.”

The case was taken to a series of chiefs and finally, the police. The accused paralegal was arrested and summoned to appear before court the next day. However, the next morning, the accused paralegal returned all of the client’s money and ultimately did not have to go to court.

Despite this setback, the client’s original land case prevailed under the management of the second paralegal and the pro bono attorney. The satisfied client stated that others in the community are increasingly using paralegals because they “refuse to be misused after they saw me succeed. You know I am a person of no status in the community. People are wondering how I won the case against the rich man [with whom I had the land dispute].”

The accused man is no longer able to practice as a paralegal, having been stripped of his title by the parent organization.

Another drawback of the “training only” model is unpredictable length of service. Paralegals serve clients for as long as they wish, but for many, pressing livelihood needs impede their ability to remain active over a long stretch of time. A significant number of these paralegals eventually fall dormant and do not take up paralegal duties again.

*This is purely volunteer work and it becomes hard . . . our [geographic] area is very expansive. I serve two villages, yet I am only given a T-shirt and IEC [information, education, and communication] materials. How do I reach out to the communities?" – Paralegal, Eastern Province*

*Most of our paralegals come from afar. Z----- [a fellow paralegal] uses a motorcycle, [for] which she pays 400 Kenyan shillings and also uses a boat to cross to the other side. Some have to sacrifice and there is nothing they get for resolving cases. When victims have to be taken to hospital, it becomes hard, especially sourcing for means of transport. We have to sacrifice because we have families that depend on us. – Paralegal, Coast Province*

Some organizations have countered this problem by training paralegals who already have access to funding from other sources. Typically, NGOs will consult with community leaders, chiefs, and other provincial administration officers in order to identify individuals respected by their community. But some NGOs target officials, such as chiefs and assistant chiefs, as well as religious leaders, police officers, and others for paralegal training. Not only do individuals in power positions have the capacity to effect change, but they also can use the resources or prestige of their office for paralegal activities that align with their existing duties. This approach carries risks, however. Since paralegals serve as a backstop for ensuring the accountability of other authorities, combining these roles may present fundamental conflicts of interest. As such, local authorities with paralegal training should be considered a supplement to community paralegals who are capable of operating independently of government influence.

#### CASE 10: A PASTOR'S INFLUENCE

**Location:** Rift Valley Province

**Type of Dispute:** Private

**Issue:** Theft

**Tools Used:** Information Provision, Mediation

**Other Institutions Used:** After Paralegal Involved: Phone Company, Police, Formal Court

After noticing several thousand Kenyan shillings missing from his Mpesa (mobile banking) account, the client sought help from a paralegal, who was also his pastor. The paralegal advised him to call the phone company to ascertain precisely what happened. The phone company confirmed that a transfer had been made from the client's Mpesa account to the account of a friend. Three days earlier, the client had lent his phone to the same friend,



## CASE 10: (Cont.)

who secretly accessed his Mpesa account and made the transfer. The client reported the theft to the police and the friend was detained.

After the paralegal ascertained that the client wanted nothing more than the return of the money, he worked with the accused man's mother to explore ways of meeting the payment. The paralegal discovered that the accused man was recently married and possessed only two sheep, and that his grandfather was ill. Rather than deprive the young family of its sole property in a time of need, the paralegal attempted to negotiate a better solution for the parties. The client, who wanted to avoid hefty court fees, assented to mediation and agreed to give the accused man's family time to raise and repay the money in full after seeing to the grandfather's health.

When the parties went to inform the police that they had settled the matter outside of court, the police refused to release the accused without a court order. The parties were unable to proceed until the paralegal intervened again by approaching the court. The court staff, upon recognizing him as both a pastor and a paralegal, "softened their stance." The court permitted the client to drop the case, upon swearing to the court clerk that the case would not be brought to court again. The accused man was set free. The stolen amount was repaid and both parties expressed satisfaction with the outcome of the case.

In cases involving institutions, a paralegal's political background may factor into his or her ultimate success. Orvis' research found that paralegals who were opposition activists or campaigners were almost twice as likely as paralegals with no political experience to take on cases directly challenging local authorities.<sup>103</sup> Yet recruitment of politically active paralegals has its risks. In one area of Kenya covered by Orvis' study, all paralegals were supporters of a specific member of Parliament and used their services as a platform to support him.

In other cases, national NGOs will identify an existing community-based organization (CBO) or help an individual to establish a CBO or network that can serve as a local framework for the activities of paralegals in the absence of the NGO.<sup>104</sup> The national NGO thereafter connects the CBO to pro bono lawyers and advises them on matters of law or organizational development, but encourages the CBO to raise its own funds. However, this is no easy task; the majority of the CBOs approached during this study struggled to access financing.

<sup>103</sup> Stephen Orvis, "Kenyan Civil Society," 247–68 (see n. 63).

<sup>104</sup> Examples of CBOs include LLF, KICODI, BUDAPAN. Mary Amuyunzu-Nyamongo, "Kenya Paralegal Study," 19 (see n. 71).

### 3. Training and Logistical Support

Paralegals in the second category receive ongoing logistical support from their parent organizations, in addition to training and referral contacts. NGOs may secure paralegals an office that serves as their base of operations, and may donate books, materials, computers, and other resources to the office. ICJ, for instance, provides motorcycles to paralegal office station coordinators, which are used for travel during the discharging of their duties.<sup>105</sup> In-kind benefits make it easier for paralegals to stay active, although challenges remain without additional financing.

NGOs may also provide support through regular supervisory visits, oversight and guidance over case management systems, and the provision of legal advice. Interviewees observed that close mentorship and supervision increase paralegals' effectiveness and empowers them to take on tougher cases. Paralegals especially find it helpful when they can call lawyers or experts at their parent NGO with day-to-day questions, or ask for assistance in formulating strategy or editing demand letters. For their part, NGOs have found that maintaining a supervisory relationship allows them to better monitor the quality of services provided by their paralegal corps.<sup>106</sup>

When support from a parent organization is consistent and dependable, its presence can help not only in the resolution of cases but also in the enforcement of agreements afterward.

*For example if a man impregnates a schoolgirl, like the one we had some time back, the Laikipia Legal Forum (LLF) helps the mother of the child to pressure the husband/father of the child for upkeep and maintenance. – Community Leader, Rift Valley Province*

However, when contact with NGOs is irregular or unreliable, this can prove a source of frustration for paralegals.

*Documentation and reporting on what we do is very weak partly because what we report to our parent organizations is not properly acted upon. – Paralegal, Eastern Province*

NGOs currently do not provide substantial assistance with security, although the issue arose in many conversations with paralegals. Interviewees described paralegal work as dangerous and life-threatening. Community leaders speculated that paralegal turnover rates could be attributed to the risks they take on. Paralegals surmised that stronger security measures would help them feel less vulnerable, thus enabling them to be more productive and bold.

<sup>105</sup> Organizations such as LRF and FIDA also provide this kind of support to their paralegals. AIHD, "Kenya Draft Report," 9 (see n. 25).

<sup>106</sup> Ongeso, interview (see n. 85).

*Security is the main challenge. Most of the paralegals receive deadly threats during the course of their work. If the accused is confronted, sometimes he can physically harm the paralegal. One paralegal in the Soweto area, when pursuing a rape case, was told, "Leave that case or you will find your head in Ruai" (a nearby area known for crimes). Insecurity makes paralegals fear to operate at night. Threatening messages and phone calls make them immediately refer cases to the police instead of trying to deal with disputes. – Community Leader, Nairobi Province*

*As a paralegal, when I find something touching on the provincial administration, I will conflict with them. When I interfere with matters that touch on the government, I risk my life. – Paralegal, Eastern Province*

#### 4. Training, Logistical Support, Funding

The third category of paralegals is the least common. These paralegals receive direct monetary support from their parent NGOs, usually by way of allowances to meet day-to-day expenses.<sup>107</sup> The issue of paralegal salaries in Kenya is hotly debated within the movement. Some argue that paralegalism was founded on the spirit of volunteerism, altruism, and service to the community; to remunerate paralegals would warp their motives and lead to the commercialization of their services. Others see remuneration as a solution to the common problem of paralegals abandoning their posts for livelihood reasons.

*I paid money at the police and courts for photocopies. The paralegal never asked for money but I would have given it to him. He really helped in seeing that [the accused] paid me back for the damage. – Client, Eastern Province*

Paralegals interviewed for this study consistently cited lack of funds as one of the main impediments to improving the effectiveness of their work. Most indicated that small allowances would be sufficient to cover costs. Several referred to instances when they could not afford to transport themselves or their clients to courts, hospitals, or other sites as needed to resolve or follow up on cases. Others cited an inability to afford basic office supplies. Given the many burdens shouldered by paralegals, most interviewees felt that truly effective and sustainable paralegal work requires financial support in some form.<sup>108</sup>

<sup>107</sup> CARE International is one such organization that at one point paid its paralegals as employees. AIHD, "Kenya Draft Report," 9, n. 23 (see n. 25). Other civil society organizations issue allowances that range from KES 4,000 and 30,000 per month. Waruhiu and Otieno, "Access to Justice," 192 (see n. 58).

<sup>108</sup> The sentiment is shared by other researchers, as well. "The inadequate pay or voluntary services have had negative impact in the quality and consistency of paralegal services in the community." Waruhiu and Otieno, "Access to Justice," 192 (see n. 58).

### C. Cultural Factors

Finally, our research revealed a few cultural factors that shaped the nature of the roles in which paralegals proved most effective.

#### 1. Clans and Tribes

Interviewees identified clan and tribal loyalties as a source of potential tension and conflict of interest for paralegals. Where a paralegal office did not reflect the ethnic composition of a diverse area, the public easily mistook it for serving only one tribe. Other paralegal offices offered themselves up as neutral ground for disputes between people hailing from different ethnic groups. This proved appealing for clients who remained uncertain as to the proper forum for their grievances.

#### CASE 11: MEDIATING BETWEEN MEMBERS OF DIFFERENT TRIBES

**Location:** Nairobi Province

**Type of Dispute:** Private

**Issue:** Property

**Tools Used:** Mediation

**Other Institutions Used:** Before and after Paralegal Involved: Police

A driver and a customer were involved in a dispute about the car fare the driver was charging. After the customer left, the window of the car shattered. Both parties were aware that customary law wouldn't apply to their case; a chief could not preside over it since the driver and customer were from different tribes.

The driver reported the damage to the police and named the customer as the cause. The police locked the customer in a cell; the customer's cousin asked the paralegal to assist. The paralegal mediated a deal between the two parties to split the cost of the broken window and free the customer. Though both parties wished they could have received more from the settlement, both felt it was fair and were satisfied they didn't have to go to court.

#### 2. Power Dynamics

*Women now know their rights and understand that they can contribute to the community's well-being by educating themselves on economic as well as cultural and political rights. The paralegals have encouraged them to embrace and live these rights. There are harsh cultural practices which are a giant against the advancement of women's rights. The paralegals are trying to break these barriers: women's inheritance, polygamy, girl child disadvantages in education. All this dispute resolution has a great impact on the community's way of life.*

– Community Leader, Western Province

Paralegals often find themselves challenging entrenched power dynamics within their communities. They commonly represent women attempting to assert their rights in marriage, childcare, inheritance, or property ownership, as well as poor clients in grievances against the wealthy. Their ability to do so makes them an appealing alternative to, or source of pressure on, established authorities.

#### CASE 12: INHERITANCE

**Location:** Nairobi Province

**Type of Dispute:** Private

**Issue:** Theft

**Tools Used:** Information Provision

**Other Institutions Used:** After Paralegal Involved: Lawyers, Paralegals, Police

The client was a recent widow and the other party was her brother-in-law. After the death of the client's husband, the brother-in-law was tasked with collecting money for the burial. When the client asked for the money, the brother-in-law wouldn't release it. He said that unless "she decided to be inherited by him nothing will take place, the deceased will stay in the mortuary, dependents of the deceased will suffer." The client involved a paralegal, who requested the help of other paralegals and lawyers. As a group, they visited the brother-in-law at the police post (he was a police officer). With the help of other police in the office, they forced him to hand over the client's money.

#### CASE 13: SAYING "NO" TO DISCRIMINATION

**Location:** Eastern Province

**Type of Dispute:** Private

**Issue:** Business

**Tools Used:** Information Provision, Organizing

**Other Institutions Used:** Before Paralegal Involved: Assistant Chief; After Paralegal Involved: Community Development Assistant (CDA)

The client was a member of a welfare committee organized by the community to help each other pay for funeral expenses. Each member paid monthly contributions of 200 shillings per household. The client approached the paralegal because the committee had come under the influence of wealthy administrators who overlooked the needs of the poor.

## CASE 13: (Cont.)

When the client lost his son, the committee refused to help. Only after three days did the committee reluctantly facilitate some burial expenses. Soon after, the committee shouldered all funeral expenses for a wealthy community member. When questioned about this, the committee said that the poor were not prompt with their payments, which excused the committee from helping. The client said that sometimes the poor have troubles for two to three months, but when they recover, they always pay the full amount in arrears, so that should not stop them from being helped. Moreover, the welfare committee discriminated against girls, youth, and unmarried women – girls under the age of twenty-five, for example, were not permitted to join.

After the paralegal helped raised money to bury the client's son, he told mourners "it was time they said no to discrimination by the rich." He advised people to stop making monthly contributions to the committee. After organizing a meeting and hearing everyone's views, they informed the paralegal that they wanted to start their own committee. The paralegal registered a new committee, open to all. The new committee now has more members than the old committee, as a number of people defected from the old committee to join the new one. The contribution is a more affordable 50 shillings. The client is content with this, although he wished the paralegal had helped him get their money back from the old committee.

## CASE 14: CHILDCARE

**Location:** Rift Valley Province

**Type of Dispute:** Private

**Issue:** Family

**Tools Used:** Information Provision, Mediation

**Other Institutions Used:** After Paralegal Involved: NGO

The client became pregnant by a friend, who married her neighbor two months before the baby was due and refused to provide child support. The client approached a paralegal who, after hearing her case, took her to a legal NGO that issued a summons to the father. The father brought relatives and friends to the first meeting but relaxed after realizing the paralegal was a neutral party. The paralegal made sure the father read the national law on children himself and impressed on the man that the matter could be referred to the Children's Court. After two meetings, the respondent agreed to pay a monthly sum, which the complainant would collect from the office.

Because of a strong cultural preference for keeping marriages intact, gender-based violence presents a special challenge for paralegals. In such cases, paralegals tend to focus on the resolution of visible conflict and reconciliation between the couple, even when the long-term safety of the woman might be in question. It is difficult to alter the course of abusive relationships caught in a pattern of violence with a single intervention. Where reconciliation is appropriate, paralegals must tread carefully; mediation works best when the power dynamics between the participants are not vastly unbalanced, as they tend to be in cases involving domestic violence. Mediating under these circumstances requires tailored considerations and a plan for continued monitoring of the situation. In cases unfit for mediation, a willingness to consider alternatives, such as separation of the couple, could bear longer-term effects on the health and safety of the woman.

CASE 15: "WHERE THERE IS LIGHT"

**Location:** Coast Province

**Type of Dispute:** Private

**Issue:** Family, Gender-based Violence

**Tools Used:** Mediation, Information Provision

**Other Institutions Used:** Before Paralegal Involved: Village Elder; After Paralegal Involved: Community Police

The parties to the dispute were a married couple and the complainant alleged that her husband had assaulted her and threatened to take their money and leave. The complainant originally brought the case to the village elder, who referred it to the paralegal. The village elder and paralegal discussed whether to report the case to the police or to mediate; the chief favored the former option. The paralegal opted to mediate the dispute with a community policing member present. Before the mediation, the husband wanted to divorce his wife, but afterward, he agreed to return the money and stay. When interviewed a year after the incident, the wife reported, "for now, everything is all right. But if it happens again I will go back to the paralegal office where there is light." Meanwhile, the husband stated, "the paralegal acted fairly, because the village elders had called the paralegal to take me to Nyai police station, but the paralegal refused and requested the village elder to let the case be resolved by the paralegal."

## CASE 16: "PARALEGALS ARE EVERYWHERE"

**Location:** Nairobi Province

**Type of Dispute:** Private

**Issue:** Family, Gender-based Violence

**Tools Used:** Mediation, Information Provision

**Other Institutions Used:** N/A

After a year of marriage, the husband began beating his wife daily. At first, he would beat her for the way she opened the door: a second too early and he would beat her for opening the door for an "expected lover," a second too late and he would beat her for taking her time. Then he would beat her for any number of reasons. The husband stepped on her stomach, chest, and legs, and ignored her pleas for mercy. One day the husband slapped his wife across the face, leaving her with a swollen left eye. "It got to the point where I did not want anyone who knew me to meet me or even greet me. I lived in isolation."

A neighbor observed what was happening and advised the wife to seek help from a paralegal. The wife met with the paralegal and felt "relieved I have a fellow woman who has a lot of strength and advice for me. I learnt about violence against women, and its implications, both social and legal."

The paralegal summoned the husband to the office. The paralegal did not want to separate the couple "because it will be unfair for young couples who are starting marriage life." But the paralegal recognized that the husband had to answer for his actions, so she "made him aware."

The husband stated, "I can't really understand why and how I used to beat my wife. The day I received a phone call from [the paralegal] is the day I felt something was not right with me . . . Now I was being searched by the police. To tell the truth, I had lost a job and wanted my wife to go. After talking to both my wife and [the paralegal], I realized I was wrong." The husband apologized to his wife, who accepted. For six months at least, there has been no further violence.

The wife was satisfied with the outcome, although she said "the paralegal could have cautioned the man and brought more witnesses." The neighbor wanted the paralegal to go further: "Her approach was good but at least a court warning would have been better. What if the couple moves to another place where no one can help [the wife]? You see a court warning and follow-ups from time to time will be much better." For his part, the husband observed, "I know men beat their wives, but not to a bigger magnitude anymore. Paralegals are everywhere."



### 3. Reconciliation

In general, community leaders from every region considered paralegals' reconciliation and peacemaking activities among their most valuable contributions to society. They praised paralegals' ability to reach an outcome in which both parties bore no ill will toward each other far more than they noted paralegals' ability to achieve remedies or resolve injustices for clients. This may reflect a cultural preference for reconciliation over redress, or at least an overriding concern for peace.

*Most of the impact is felt on the issue of reconciliation. The paralegals have help[ed] here so much. The paralegals help the parties to a suit let go [of] the bitterness they had against each other. – Magistrate, Central Province*

*Yes, I think the outcome was fair, as I said there is now peace between the two families, they have gone back to being very good friends. – Community Leader, Rift Valley Province*

#### CASE 17: SCHOOL UNIFORMS

**Location:** Nairobi Province

**Type of Dispute:** Private

**Issue:** State Services, Education

**Tools Used:** Mediation, Arbitration, Information Provision

**Other Institutions Used:** N/A

The client was an internally displaced person and father of three children who brought a case against the headmaster of a primary school. The client sought the paralegal's help after the headmaster refused to let the children attend school because they didn't have uniforms. The paralegal mediated a compromise that enabled the children to attend school on the client's promise that he would buy school uniforms within two months. Both parties felt the resolution was fair. The client reiterated throughout this interview that he was most happy about the fact that, after reaching the compromise, he is now friends with the headmaster. Months later, the paralegal confirmed that "the children are now attending school."

## CASE 18: MIDDLE GROUND

**Location:** *Central Province*

**Type of Dispute:** *Private*

**Issue:** *Business*

**Tools Used:** *Mediation*

**Other Institutions Used:** *N/A*

The client bought a phone from his neighbor. Two weeks later, the client tried to return the phone because it was defective and the neighbor refused to take it back. The client asked the paralegal to resolve the dispute. The paralegal listened to both parties and advised the client to take the phone to a repair shop. The parties were reported to be on good terms. Though the complainant did not get what he wanted (he wanted the neighbor to fix the phone), both parties thought the paralegal acted fairly in this case and would seek out the paralegal again if another similar dispute occurred.

## V. CONCLUSION

In a few short decades, Kenyan paralegalism has grown from modest roots into a vibrant nationwide movement, with institutional, legislative, and policy backing. Today, paralegals are expanding in number, diversifying their skill sets and methodologies, developing specializations in priority issues, and strengthening collaborative and innovative relationships with state and customary authorities.

The movement nevertheless faces many challenges. Paralegal programs continue to seek a sustainable model that can provide paralegals with the logistical, financial, and capacity-building support they need to take on ever more complex cases. The solution must satisfy the need for scale, given the gaps in justice services that persist throughout the country. Dysfunction in formal and customary institutions responsible for the administration and enforcement of justice must be rooted out. Working relationships between these institutions and paralegals must be defined, acknowledged, and respected.

With the adoption of the 2016 Legal Aid Act, all involved in the effort to achieve universal access to justice in Kenya – civil society, the legal community, government, communities, and citizens – now have a platform to make progress on these fronts. Given the success paralegals have experienced in helping people to understand, use, and shape the law throughout Kenyan history, they will undoubtedly play a critical role in continuing efforts to deepen democracy and empower citizens across the nation.

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