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I. OVERVIEW OF THE LEGAL AID SYSTEM IN THE UNITED REPUBLIC OF TANZANIA

The United Republic of Tanzania presents a complex picture in regards to the provision of legal aid. It shares many of the common challenges faced by its East African neighbours, while simultaneously embodying unique circumstances derived from its distinctive political and cultural makeup. This report will begin by attempting to outline this complex picture by providing a broad overview of the governmental structure, criminal justice system, and current state of legal aid in Tanzania. Furthermore, this report will focus primarily on mainland Tanzania (excluding Zanzibar) in accordance with the data and research limitations of this study.

A. COUNTRY BACKGROUND

The United Republic of Tanzania is a unitary republic made up of mainland Tanzania (Tanganyika) and the semi-autonomous archipelago, Zanzibar. The mainland Union Government and the Revolutionary Government of National Unity of Zanzibar constitute the governing structures of the United Republic of Tanzania; each is divided into a system with its own executive, legislative, and judicial branches. Tanzania adopted a common law system derived from its history under British colonial rule. The foundational law of mainland Tanzania is the Constitution of the United Republic of Tanzania of 1977, which will be discussed in more detail in the sections on the right to legal aid set out below (see sections II.A.1 and II.B.1).

The judiciary of Tanzania is a hierarchical system with four main tiers: the Court of Appeals, the High Court, Magistrate Courts (Resident Magistrate Courts and District Courts) and...
Primary Courts. The Court of Appeals sits as the highest court in the United Republic of Tanzania, and includes jurisdiction over the High Court of Zanzibar. Below the Court of Appeals is the High Court, which consists of thirteen zones and three specialized divisions: the Commercial Division, the Land Division, and the Labour Division. The High Court has jurisdiction to hear all civil and criminal matters, and it has appellate jurisdiction over all courts below it. Adjudicators presiding at the Court of Appeals and High Court are referred to as “judges,” while those presiding at lower-level courts are termed “magistrates.” The courts sitting below the High Court, referred to as “subordinate courts,” include Resident Magistrate Courts and District Courts. The subordinate courts have concurrent jurisdiction and receive appeals from the lower-level Primary Courts. The 22 Resident Magistrate Courts sit at regional headquarter locations, but there are District Courts in all 109 districts of Tanzania. Primary Courts make up the fourth and lowest level of the judiciary. The Primary Courts have jurisdiction over non-capital criminal and civil matters and are authorized to apply customary and Islamic law in family and property cases. It is important to note that, for purposes of legal aid, lawyers are not allowed to represent clients in Primary Court proceedings. The lack of counsel in Primary Courts is a statutory requirement that, many posit, impedes access to

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5 Id. at 9.
7 Id.; see also INTERNATIONAL RECORDS MANAGEMENT TRUST, MANAGING RECORDS AS RELIABLE EVIDENCE FOR ICT/ E-GOVERNMENT AND FREEDOM OF INFORMATION: TANZANIA COURT CASE STUDY 3 (2011).
8 INTERNATIONAL RECORDS MANAGEMENT TRUST, supra note 7, at 3.
9 LEGAL HUMAN RIGHTS CENTRE, supra note 3, at 9.
10 INTERNATIONAL RECORDS MANAGEMENT TRUST, supra note 7, at 4.
11 Id.
12 Id.
13 Id.
14 Id.
In addition to these four primary levels of the Tanzanian court system, there are a number of specialized tribunals, as well as arbitration mechanisms, that deal with legal disputes in a less formalized manner.\textsuperscript{16}

The criminal justice system in Tanzania, similar to those in other East African nations, is characterized by high pre-trial detention rates, overcrowded and dilapidated prison conditions, and lack of access to affordable legal representation for defendants.\textsuperscript{17} As of January 2013, the total prison population in mainland Tanzania was 36,552, with approximately 3,500 additional persons detained within Zanzibar.\textsuperscript{18} This is despite an official capacity limit of 29,400, which creates an overage of more than 24%.\textsuperscript{19} Approximately 53% of the prison population within Tanzania is made up of pre-trial detainees, who wait an average of three to four years before

\textsuperscript{15} The Magistrates’ Courts Act, 1984, Act No 2 of 1984, s 33(1) (Tanz.) (providing that: “No advocate or public prosecutor as such may appear or act for any party in a Primary Court”); see also LAW REFORM COMMISSION OF TANZANIA, THE FLOW OF JUSTICE IN TANZANIA 73 (2004) (noting the difficulty faced by appellate courts given the lack of lawyers to assert adequate legal claims in Primary Court cases); LAW REFORM COMMISSION OF TANZANIA, REPORT ON THE SCHEME FOR PROVISION OF LEGAL SERVICES BY PARALEGALS 6 (2004);

\textsuperscript{16} DANISH INSTITUTE, supra note 6, at 35.


\textsuperscript{19} Id.
being brought to trial. The number of lawyers available to represent criminal defendants is extremely low; there are approximately 1,188 lawyers available to represent Tanzania’s population of nearly 44 million—a ratio of one lawyer for 36,834 people. According to a 2012 report by the U.S. Department of Justice, lack of access to justice is one of the top three human rights problems in Tanzania.

B. THE LEGAL AID SYSTEM IN TANZANIA

The legal aid system in Tanzania is a compilation of several different service models and funding schemes, varying in methodological form, specialization, and geographic accessibility. This section will offer a brief snapshot of these legal aid mechanisms by outlining the types of legal aid provided, the accessibility of each model, quality management schemes, and coordination efforts among legal aid providers.

1. TYPES OF LEGAL AID

There are numerous models of legal aid in Tanzania, most of which fit into one of the following three categories: (1) the state brief system, (2) the community legal aid clinic model, and (3) the legal profession.

a. STATE BRIEF SYSTEM

The state brief system, sometimes referred to as “judicare,” can be defined broadly as the government contracting with private lawyers on a case-by-case basis to provide legal representation to individuals who meet certain eligibility requirements (for instance, being...

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20 Id.; see also UNITED STATES DEPARTMENT OF STATE, supra note 17, at 5–8 (noting that among the population of child detainees approximately 85% were pre-trial detainees, and children are often housed with adult detainees); FLOW OF JUSTICE, supra note 15, at 82 (noting that remandees often spend more time in pre-trial detention than they would receive in prison had they been convicted).

21 DANISH INSTITUTE, supra note 6, at 56; see also REPORT ON THE SCHEME, supra note 15, at 6, 48 (noting that the low number of lawyers “indicates that even in those courts where advocates are allowed to appear, representation cannot be adequate” and that the difficulty of admission into the “Roll” leads to the exclusion of many law student graduates from actually becoming legally recognized practicing lawyers).

22 UNITED STATES DEPARTMENT OF STATE, supra note 17, at 3.

23 DANISH INSTITUTE, supra note 6, at 48.
accused of a certain crime or earning under a set income level). This system is established through Tanzania’s Legal Aid Act, which will be discussed in more detail below. The Act provides that a criminal defendant shall be assigned an attorney when it appears to the judge that it is “in the interests of justice” for the defendant to have legal representation, and the defendant is unable to afford such representation. It further provides that the assigned attorney shall be remunerated for the work he or she undertakes. There is no state brief system in place for civil cases. At best, low-income civil litigants may be able to obtain waivers for standard court fees.

Although the Legal Aid Act has great potential to ensure legal representation for indigent criminal defendants, it is plagued with problems. Most notably, in practice, the provision is only applied to defendants who are accused of capital crimes, such as treason and murder. In addition, the state-brief system pays assigned advocates poorly, and the quality of representation

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25 The Legal Aid (Criminal Proceeding) Act, 2002, Act No 21 of 1969, s 3 (Tanz.).

26 [W]here in any proceeding it appears to the certifying authority that it is desirable, in the interests of justice, that an accused should have legal aid in the preparation and conduct of his defence or appeal, as the case may be, and that his means are insufficient to enable him to obtain such aid, the certifying authority may certify that the accused ought to have such legal aid and upon such certificate being issued the Registrar shall, where it is practicable so to do, assign to the accused an advocate for the purpose of the preparation and conduct of his defence. Id.

27 Id. s 4.

1) The remuneration of any advocate assigned to an accused under the provisions of section 3 shall be determined by the certifying authority and shall be payable from the general revenue of the United Republic. (2) Remuneration payable under this section shall not be less than forty thousand shillings nor more than sixty thousand shillings in respect of each proceeding, or in respect of each accused where the certifying authority certifies that accused persons jointly tried should be separately represented: Provided that in the case of a proceeding before the High Court the Judge hearing the proceeding and, in the case of a proceeding before any other court, the Chief Justice, may, for special reasons, regard being had to the complexity of the proceeding or the duration thereof, authorize the payment of a higher remuneration not exceeding one hundred thousand shillings in respect of each proceeding, or in respect of each accused person, as the case may be. Id.

28 Id. s 56.

LEGAL AND HUMAN RIGHTS CENTRE, supra note 3, at 45.
suffers as a result. Furthermore, it has been reported that government-appointed advocates are
not given enough time to prepare an adequate defence for their clients.

b. COMMUNITY LEGAL AID CLINIC MODEL

The community legal aid clinic model refers to civil society and non-governmental
organisations that are not formally affiliated with the state, which provide legal assistance and
representation to persons who meet certain eligibility requirements (generally persons under a
certain income level). The majority of legal aid in Tanzania is delivered via this model. These
organisations vary significantly in substantive focus, organisational make-up, and geographical
presence. They provide their legal services through both paid and unpaid paralegals and
lawyers, and they are predominantly funded by local and international donor organisations.
Overall, paralegals play a more prominent role than practicing lawyers, largely due to the fact
that lawyers are highly concentrated in urban areas and often focus their work on more lucrative
areas of the law. According to a 2010 survey, there are approximately 850 active paralegals
providing legal aid throughout mainland Tanzania. Among other tasks, paralegals engage in
casework, community education, mobilization, advocacy, conflict resolution, and monitoring
rights abuses. Although this is a fairly wide list, it is not as encompassing as a number of other
African countries, which allow paralegals additionally to prosecute, appear in court, and engage

29 DANISH INSTITUTE, supra note 6, at 55.
30 Id.
31 Id.
32 Id. at 72.
33 Id.
34 Id. at 50. One recently established funding source is the Legal Services Facility (LSF), funded by the
Government of Denmark, which is a basket funding scheme tailored to support community legal aid providers
throughout Tanzania. See LEGAL SERVICES FACILITY, http://www.lsftz.org/about_us.php (last visited Dec. 18,
2013).
35 DANISH INSTITUTE, supra note 6, at 55.
36 LEGAL SERVICES FACILITY, LEGAL AID IN PROGRESS: AN ENHANCEMENT OF LEGAL AID IN TANZANIA 16
(2012).
in police, court, and prison work.\textsuperscript{37} Depending on the legal aid provider, services may be open
to the public at large or tailored to more vulnerable members of society, such as women and
children.\textsuperscript{38} Most of these legal aid providers only assist in civil cases,\textsuperscript{39} and frequently deal with
issues pertaining to land law, family law, and inheritance law.\textsuperscript{40} One way that these
organisations make their services more accessible is through mobile legal aid clinics, in which
members of the organisation travel to more remote areas in order to offer legal advice, dispute
resolution services, and legal rights education.\textsuperscript{41} Community legal aid providers utilize various
forms of media to increase public knowledge of available legal aid services and legal rights
awareness. Radio advertisement is utilized for these purposes more often than television ads due
to the lower cost of radio spots and the fact that radios are more prevalent in rural areas.\textsuperscript{42}

\textbf{c. Note Regarding Non-Formalized “Paralegal” Practice}

In addition to non-profit community organisations providing legal aid, there is an
informal group of non-lawyers who offer legal services for an affordable fee, known as “bush
lawyers.”\textsuperscript{43} A 2004 report by the Law Reform Commission of Tanzania discusses the presence
of bush lawyers in detail, stating that these individuals, despite not being recognized by the
Tanzanian legal system, use power of attorney to appear in court and draft legal documents for
clients.\textsuperscript{44} The Commission states that these individuals include “serving and retired Court clerks,
ex-Magistrates, ex-police officers, labour officers, university graduates who are not enrolled as
advocates, and holders of Diplomas and Certificates in Law.”\textsuperscript{45} Thus, bush lawyers may have

\textsuperscript{37} See U.N. Office on Drugs & Crime, \textit{supra} note 24, 27 tbl. 5.
\textsuperscript{38} \textit{DANISH INSTITUTE}, \textit{supra} note 6, at 72.
\textsuperscript{39} \textit{Id.} at 71 (noting that paralegals within Tanzania only rarely are involved in criminal cases).
\textsuperscript{40} \textit{Id.} at 102.
\textsuperscript{41} \textit{Id.} at 93.
\textsuperscript{42} \textit{LEGAL SERVICES FACILITY}, \textit{supra} note 36, at 20.
\textsuperscript{43} \textit{REPORT ON THE SCHEME}, \textit{supra} note 15, at 7.
\textsuperscript{44} \textit{Id.}
\textsuperscript{45} \textit{Id.} at 24.
acquired knowledge or experience with the legal system.\textsuperscript{46} The Commission advocates for their legal recognition and regulation in order to ensure that individuals who do not have qualifications or adequate experience, and who, therefore, present a risk of harm to unwitting clients, are not permitted to continue to practice.\textsuperscript{47}

d. LEGAL PROFESSION

The legal profession provides legal aid through pro bono legal service requirements\textsuperscript{48} and law school legal aid clinics.\textsuperscript{49}

The legal profession offers legal aid predominantly through the pro bono, ad hoc work of attorneys.\textsuperscript{50} All attorneys are governed by the Tanganyika Law Society (TLS), which acts as the equivalent of a national bar association.\textsuperscript{51} TLS regulations require lawyers to provide pro bono legal aid services to members of society who are otherwise unable to afford representation.\textsuperscript{52} However, these regulations are rarely followed, and relatively few lawyers actually offer pro bono services.\textsuperscript{53} Additionally, the TLS pro bono scheme only provides legal aid in civil cases, which excludes criminal defence assistance.\textsuperscript{54} The most common subjects of civil cases tend to be probate and estate matters, land law, family law, and labour disputes.\textsuperscript{55}
Law school legal aid clinics are a second source of legal aid. Faculty members oversee all student work in these clinics, in order to ensure the quality of the service. The three schools that have such clinics are the University of Dar es Salaam, the Open University of Tanzania, and Moshi University College. At the Faculty of Law Legal Aid Clinic for the University of Dar es Salaam, law students assist clients with various legal issues and help litigate civil cases. The clinic also participates in legal rights awareness campaigns and legal reform initiatives. Similarly, the Open University of Tanzania’s Legal Aid Clinic (OUTLAC) allows law students to provide legal advice, direct litigation representation, community outreach and education, and law reform advocacy.

2. ACCESSIBILITY

The accessibility to each form of legal aid is impacted by eligibility criteria, costs to clients, and the geographic reach or presence of the various legal aid models. Each of these issues presents unique difficulties for legal aid providers and is discussed individually below.

1. ELIGIBILITY CRITERIA

The eligibility criteria for legal aid vary between the three legal aid models, and each will be discussed in turn.

In the state brief system, free representation is typically only available to criminal defendants facing capital charges. This occurs despite the broader statutory direction to

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56 Id. at 54.
57 DANISH INSTITUTE, supra note 6, at 62.
58 Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).
60 DANISH INSTITUTE, supra note 6, at 62.
61 Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).
62 Id.
63 OUTLAC and its Establishment, supra note 59.
64 LEGAL AND HUMAN RIGHTS CENTRE, supra note 3, at 45.
appoint a lawyer whenever it is “in the interests of justice” to do so.\textsuperscript{65} As a result, a majority of criminal defendants are not eligible to have an attorney appointed under the state-brief system.\textsuperscript{66}

In the community legal aid clinic model, there is no single set of eligibility requirements unifying the melange of organisations.\textsuperscript{67} A means test, which focuses on income level, is one common way to determine eligibility.\textsuperscript{68} Depending on the strictness of the test, it can exclude individuals from receiving aid who would find it difficult to pay an attorney. It does, however, help ensure services for those who need them the most. Additionally, the fact that some organisations focus on particular populations\textsuperscript{69} means the automatic exclusion of other strata of society. Again, however, the advantage of this restriction is that it helps ensure services for the more vulnerable members of society.

In the legal profession, TLS has established detailed eligibility criteria for clients under its pro bono programme.\textsuperscript{70} Through an oral interview with the potential client,\textsuperscript{71} the TLS’s Legal Assistance Committee determines the individual’s employment status, income level, and number

\begin{footnotesize}
\begin{enumerate}
\item The Legal Aid (Criminal Proceeding) Act, 2002, Act No 21 of 1969, s 3 (Tanz.).
\item LEGAL AND HUMAN RIGHTS CENTRE, supra note 3, at 45.
\item DANISH INSTITUTE, supra note 6, at 87.
\item Id.
\item Id. at 86.
\item Id. TLS’s pro bono eligibility determination includes the following criteria:

1. Applicants must be natural persons and residents of Tanzania; 2. Each applicant shall undergo an oral interview to determine his status and eligibility; 3. Applicants from outside Dar es Salaam shall submit their applications to a representative of TLS’ Legal Assistance Committee; 4. The relevant representatives shall in turn forward their recommendations to the Legal Assistance Committee after interviewing the applicants; 5. The financial ability of an applicants will be primary factor; 6. An applicant of limited financial ability with a plausible legal problem will be considered; 7. For the avoidance of doubt, limited financial ability means those whose average monthly income is below the minimum wage (as set out by the Government, currently 120,000 TSH - approximately 82 USD); whether formally employed or not; and 8. The status of applicants will be determined on the basis of the facts as revealed during the interview and/or from any other source. Id.

The interview, mentioned in criteria two, examines the following: “1. Employment status; 2. Income status; 3. Whether any property is owned by the applicant; 4. If the applicant pays taxes, and if so how much; 5. Marital status; 6. Number of dependants or person (s) who support the applicant; 7. Age; and 8. Education status.” Id.
\end{enumerate}
\end{footnotesize}
of dependents, along with other considerations.\textsuperscript{72} The primary focus, however, is on whether the individual is able to afford legal assistance.\textsuperscript{73} Much like the community legal aid model, this system helps ensure free legal services for those who need it most. However, it does so to the detriment of individuals who are excluded by the criteria and, thus, find it difficult to pay an attorney.

2. \textbf{Cost}

Most legal aid providers offer free services to eligible clients.\textsuperscript{74} They may, however, require the client to pay for incidental costs, such as court fees, copy costs, and transportation expenses.\textsuperscript{75} Incidental and administrative costs are free under both the state brief and TLS pro bono systems.\textsuperscript{76} According to the Legal Services Facility (LSF), a recently established basket-fund, in the long run, it may be advantageous to charge clients a minimal fee, so as to ensure the continued functioning of these organisations.\textsuperscript{77} As it stands now, incidental fees may discourage some individuals from seeking legal aid, but they may nevertheless be unavoidable.

3. \textbf{Geographical Reach}

Approximately 80\% of Tanzania’s population resides in rural regions that are difficult to reach from regional hub cities.\textsuperscript{78} Conversely, legal aid providers are concentrated in urban centres.\textsuperscript{79} The geographical reach of legal aid providers is, therefore, perhaps the biggest obstacle to accessibility. Different types of legal aid providers vary in their geographic reach, and it is informative to discuss each one in turn.

\textsuperscript{72} Id.
\textsuperscript{73} Id.
\textsuperscript{74} Id. at 48.
\textsuperscript{75} Id. at 83.
\textsuperscript{76} Id. at 48.
\textsuperscript{77} \textsc{Legal Services Facility}, supra note 36, at 23.
\textsuperscript{78} Id. at 11.
\textsuperscript{79} \textsc{Danish Institute}, supra note 6, at 89.
The state brief system appoints attorneys for defendants charged with capital crimes at the High Court and Magistrate Courts, which are dispersed throughout the country. Therefore, the geographic reach of such legal aid is broader than other forms of legal aid.

Many community legal aid organisations have paralegals in rural regions, thereby giving these organisations a wide geographic reach. Be that as it may, there remains a shortage of legal aid professionals in certain regions, and individuals in a large portion of the nation must travel in order to obtain legal aid. Mobile legal aid clinics help alleviate this problem by bringing legal services to rural areas, but there remains much to be done before access to these organisations is widespread.

In terms of the legal profession, the fact that most lawyers live and practice in large cities means that there are many regions of Tanzania in which no lawyers currently practice. The TLS provides pro bono services from offices in eight cities. Despite this geographic dispersion of offices, 95% of TLS’s pro bono services are instituted in Dar es Salaam. The low number of practicing lawyers in rural regions causes both a shortage of legal aid available to rural clients and inadequate supervision of the paralegals operating in those areas.

The main element unifying all three systems is that services are centred in urban areas, making it difficult for individuals in rural areas to access the legal services they need.

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80 Id. at 88.
81 Id.
82 Id. at 90.
83 Id.
84 Id. (noting that paralegal centres “tend to be based in the main regional town, which may in some cases result that the rural population needs to travel several hundred kilometres to reach a paralegal”).
85 LEGAL SERVICES FACILITY, supra note 36, at 10 (estimating that only about one third of the districts throughout Tanzania had access to any form of legal aid).
86 Id.
87 DANISH INSTITUTE, supra note 6, at 89.
3. **COOPERATION AND COORDINATION BETWEEN LEGAL AID PROVIDERS**

There have been recent efforts to coordinate Tanzania’s legal aid providers,\(^88\) although, currently, there remains no national legal aid scheme.\(^89\)

The most notable coordination programmes established by non-governmental organisations are the Tanzania Network of Legal Aid Providers (TANLAP) and the Tanzania Paralegals Network (TAPANET). TANLAP is a network of seven legal aid organisations: the Comprehensive Community Based Rehabilitation in Tanzania (CCBRT), the Disabled Organisation for Legal Affairs and Social Economic Development (DOLASED), the Legal and Human Rights Centre (LHRC), the Tanzania Women Lawyers’ Association (TAWLA), the Women in Law and Development in Africa (WILDAF), the Women’s Legal Aid Centre (WLAC), and the National Organisation for Legal Assistance (NOLA).\(^90\) TAPANET is a network of legal aid providers that employs paralegals.\(^91\) Currently housed at WLAC, TAPANET is involved in developing uniform training curricula and a code of ethics for the paralegal practice in Tanzania.\(^92\) More recently, LSF, discussed above (see I.B.2.b), has begun efforts to create a more comprehensive national network of legal aid providers, and has funded the creation of a national paralegal training programme.\(^93\)

It seems likely that these efforts to coordinate will see more success in the future, so long as the organisations continue to collaborate effectively and there remains sufficient funding.

**C. PROPOSED LEGAL AID BILL**

Lawyers and paralegals in Tanzania are currently working on a new Legal Aid Bill,

\(^88\) Id. at 118.
\(^89\) But see discussion infra Part V of the pending Legal Aid Bill, which would establish a national legal aid policy.
\(^90\) DANISH INSTITUTE, supra note 6, at 75.
\(^91\) Id.
\(^92\) Id.
which will organise the identification, provision, coordination, and regulation of legal aid services in Tanzania. In this way, it will advance the current efforts of TLS and LSF to create a regulated system of trained paralegals. Overall, if enacted as currently drafted, this Bill will implement meaningful reform and will help Tanzania progress toward effective access to justice for all persons.

The proposed Bill will provide paralegals with a legal framework for participation in legal aid and will help prevent paralegals from violating article 41 of the Advocates Act. This article prohibits unqualified persons from acting as advocates “in any cause or matter, civil or criminal,” and makes such actions an offence punishable by “a fine not exceeding two thousand shillings.”

The proposed Bill was presented in August for the first reading and in December for the final reading. If passed by Parliament, it may be enacted by the end of the year.

II. RIGHTS AND FINDINGS

A. RIGHT TO FREE LEGAL AID

1. INTERNATIONAL AND DOMESTIC LAW REQUIRE FREE LEGAL AID WHEN IN THE “INTERESTS OF JUSTICE”

Numerous sources of international law address the right to free legal aid. The International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR), and the Principles and Guidelines on the Right to a Fair Trial and Legal
Assistance in Africa all provide for the assignment of legal counsel in criminal cases where “the interest of justice so requires.”  

Tanzania’s Legal Aid (Criminal Proceedings) Act of 1967 addresses the right to free legal aid provided by the government. According to the Act, an advocate should be assigned to a criminal defendant, if he or she cannot afford legal representation, and the judge believes that it is “in the interests of justice.” The advocate should subsequently be remunerated for his or her services by the government. The Act, in full, states:

Where in any proceeding it appears to the certifying authority that it is desirable in the interests of justice, that an accused should have legal aid in the preparation and conduct of his defence or appeal, as the case may be, and that his means are insufficient to enable him to obtain such aid, the certifying authority may certify that the accused ought to have such legal aid and upon such certificate being issued the Registrar shall, where it is practicable to do so, assign to the accused an advocate for the purpose of the preparation and conduct of his defence or appeal, as the case may be.

Despite the potential breadth of this provision, in practice, advocates are only appointed for defendants who have been accused of capital crimes, such as treason and murder. This narrow

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102 International Covenant on Civil and Political Rights art. 14, para. 3, Dec. 16, 1966, 999 U.N.T.S. 171 [hereinafter ICCPR]; European Convention on Human Rights art. 6(3)(c), Nov. 4, 1950, C.E.T.S. 005 [hereinafter ECHR]; AFRICAN COMM’N ON HUMAN & PEOPLE’S RIGHTS [ACHPR], PRINCIPLES AND GUIDELINES ON THE RIGHT TO A FAIR TRIAL AND LEGAL ASSISTANCE IN AFRICA § H(a) (2001) [hereinafter ACHPR PRINCIPLES AND GUIDELINES]. These principles, unlike the ICCPR, elaborate on the circumstances in which the interests of justice would require the assignment of counsel in civil and criminal cases. The guidelines specifically note that the interests of justice will always require counsel in capital cases:

The interests of justice should be determined by considering:

1. in criminal matters:
   i) the seriousness of the offence;
   ii) the severity of the sentence.

2. in civil cases:
   i) the complexity of the case and the ability of the party to adequately represent himself or herself;
   ii) the rights that are affected;
   iii) the likely impact of the outcome of the case on the wider community. Id.

103 The Legal Aid (Criminal Proceeding) Act, 2002, Act No 21 of 1969 (Tanz.).

104 Id. s 3.

105 Id.

106 Id.

107 LEGAL AND HUMAN RIGHTS CENTRE, supra note 3, at 45.
application results from the qualifying language, “where it is practicable to do so.” By providing a scapegoat, the government does not have to prioritize legal aid in its distribution of funding.

The Constitution of Tanzania also provides for free legal aid. Under Article 13(6)(a) of the Constitution, “[w]hen the rights and duties of any person are being determined by the court or other agency, that person shall be entitled to a fair hearing.”\(^{108}\) As a high-ranking judge discussed, access to an advocate is important in order to reach a fair and accurate judgment.\(^{109}\) Because a fair hearing is only possible if all parties have access to representation, indigent parties must be assigned free representation, and the Constitution intends for free representation to be available to any criminal defendant who cannot afford it.

2. **FINDINGS: FREE LEGAL AID IS LIMITED TO CAPITAL CASES**

Despite the wealth of domestic and international law requiring free legal aid for any indigent criminal defendant, judges have consistently held that only defendants in capital cases are entitled to free advocates.\(^{110}\) Many interviewees expressed dissatisfaction with this narrow application. Yet, as a high-ranking judge acknowledged, competing demands on the budget make difficult for the government to require representation for all criminal defendants.\(^{111}\) The judge did, however, believe that broadening the programme to include cases with sentences of seven years or more would be both feasible and a step in the right direction.\(^{112}\)

3. **INTERNATIONAL AND DOMESTIC LAW MANDATE A RIGHT TO LEGAL AID FOR ANYONE FACING POSSIBLE IMPRISONMENT**

In international law, the right of criminal defendants to have legal aid counsel is well established. As stated in the ICCPR:

\(^{108}\) CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA, art. 13(6)(a).
\(^{109}\) Interview with Judge, in Dar es Salaam, Tanz. (Oct. 17, 2013).
\(^{110}\) Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).
\(^{111}\) *Id.*
\(^{112}\) *Id.*
In the determination of any criminal charge against him, everyone shall be entitled… to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.\textsuperscript{113}

The United Nations Principles and Guidelines on Access to Legal Aid in the Criminal Justice System (U.N. Principles and Guidelines) mandate that states:

\begin{quote}
[E]nsure that anyone who is arrested, detained, suspected of or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process. Legal aid should also be provided, regardless of the person’s means, if the interests of justice so require.\textsuperscript{114}
\end{quote}

This right is also acknowledged by a variety of regional instruments. The African Charter on Human and People’s Rights (commonly known as the “Banjul Charter”) states that the accused has “the right to defence, including the right to be defended by counsel of his choice.”\textsuperscript{115} The African Commission on Human and People’s Rights’ Resolution on the Right to a Fair Trial and Legal Aid in Africa (commonly known as the “Dakar Declaration”) echoes this right, asserting that “[a]ccess to justice is a paramount element of the right to a fair trial...[and] [i]t is the duty of the governments to provide legal assistance to indigent persons in order to make the right to a fair trial more effective.”\textsuperscript{116} The African Commission also adopted the Lilongwe Declaration

\begin{itemize}
\item \textsuperscript{116} African Comm’n on Human and Peoples’ Rights, \textit{Resolution on the Right to Fair Trial and Legal Aid in Africa}, ACHPR Res. 41 (XXVI) 99 (Nov. 15, 1999) [hereinafter Dakar Declaration] (adopting the Dakar Declaration and Recommendations on the Right to a Fair Trial in Africa created by the Assembly of the Inter-African Committee (IAC) in Dakar, Senegal, on November 21, 1997).
\end{itemize}
and the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, which reiterate the right to legal counsel for indigent criminal defendants.117

Although the U.N. Principles and Guidelines is the only source which explicitly defines the offenses which trigger the right to legal aid for the criminally accused—those “charged with a criminal offence punishable by a term of imprisonment or the death penalty”—examination of international case law interpreting the right to counsel demonstrates that, at a minimum, free counsel must be provided for all persons facing possible imprisonment.118 The interpretation of the “interests of justice” is important, given that this outlines how the domestic law of Tanzania defines which defendants have the right to appointed counsel.

Most sources of domestic Tanzanian law that provide for free legal aid for criminal defendants require that it be available for anyone facing possible imprisonment. In the Constitution, the clause of Article 13(6)(a) that provides for free legal aid makes it available to all criminal defendants, not just capital criminal defendants.119 The Legal Aid (Criminal

117 See Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers in Africa, Nov. 22–24, 2004, Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, ¶ 1 (2004) [hereinafter Lilongwe Declaration] (“All governments have the primary responsibility to recognise and support basic human rights, including the provision of and access to legal aid for persons in the criminal justice system.”); Dakar Declaration, supra note 116 (“The accused…has a right to have legal assistance assigned to him or her in any case where the interest of justice so require, and without payment by the accused…if he or she does not have sufficient means to pay for it.”); see also Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, art. 8(a), Sept. 13, 2000, CAB/LEG/66.6 [hereinafter Maputo Protocol] (noting access to legal aid for women); Conference on the Protection and Promotion of Human Rights through Provision of Legal Services Best Practices from Africa, Asia and Eastern Europe, Mar. 27–30, 2007, The Kyiv Declaration on the Right to Legal Aid (2007) [hereinafter Kyiv Declaration].

118 See Hooper v. the United Kingdom, App. No. 42317/98, Eur. Ct. H.R. at ¶ 20 (2004) (holding that “where deprivation of liberty is at stake, the interests of justice in principle call for legal representation”); ACHPR PRINCIPLES AND GUIDELINES, supra note 102, at G(b) (stating that criminally accused should have the right to free legal counsel where the interests of justice so require and that “[t]he interests of justice should be determined by considering: i) the seriousness of the offence; ii) the severity of the sentence”); P. Taylor v. Jamaica, Human Rights Comm., No. 707/1996, at 241, U.N. Doc. GAOR, A/52/40 (vol. II) (1997) (holding that “where a convicted person seeking constitutional review of irregularities in a criminal trial has insufficient means to meet the costs of legal assistance in order to pursue his constitutional remedy and where the interests of justice so [require], legal assistance should be provided by the State”).

119 CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA, art. 13(6)(a).
Proceedings) Act does not limit legal aid to capital cases.\textsuperscript{120} Considering that any criminal defendant faces possible deprivation of liberty—arbitrary deprivation of liberty is unjust—it follows that the Legal Aid Act requires that all criminal defendants should be provided with legal aid.

Furthermore, under the Tanzanian Criminal Procedure Act, “any person accused before any criminal court, other than a Primary Court, may as of right be defended by an advocate of the high court.”\textsuperscript{121} Tanzanian courts have interpreted this right to cover accused persons who are unable to afford to hire an advocate.\textsuperscript{122}

4. FINDINGS: ONCE AGAIN, LEGAL AID IS ONLY PROVIDED IN CAPITAL CASES

In practice, legal aid for criminal defendants is extremely limited.\textsuperscript{123} Despite the broad applicability of the law on legal aid,\textsuperscript{124} as previously stated, judges have only appointed counsel for defendants in capital cases, such as murder and treason.\textsuperscript{125}

Unfortunately, civil society has not filled the gap in legal aid for criminal defendants.\textsuperscript{126} Very few organisations in Tanzania provide legal assistance in criminal cases.\textsuperscript{127} One interviewee had “never heard of” free legal representation for criminal defendants.\textsuperscript{128} Of those organisations currently providing legal aid to the criminally accused, most focus on civil

\textsuperscript{120} The Legal Aid (Criminal Proceeding) Act, 2002, Act No 21 of 1969 (Tanz.).
\textsuperscript{121} Criminal Procedure Act, Cap. 20, s 310 (Tanz.).
\textsuperscript{122} \textit{Khasim Hamisi Maywele v. Republic}, Criminal Appeal No 39 of 1990 (HC) (unreported).
\textsuperscript{123} \textsc{DANISH INSTITUTE}, \textit{supra} note 6.
\textsuperscript{124} The Legal Aid (Criminal Proceeding) Act, 2002, Act No 21 of 1969 (Tanz.).
\textsuperscript{125} Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with Judge, in Dar es Salaam, Tanz. (Oct. 17, 2013); Interview with Prison Official, in Dar es Salaam, Tanz. (Oct. 17, 2013).
\textsuperscript{126} Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013) (noting that there are very few civil society organizations providing legal aid to criminal defendants); Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013) (stating that there are only 3 organizations providing legal aid to criminal defendants within Tanzania).
\textsuperscript{127} \textit{Supra} note 126 and accompanying text; see also \textsc{DANISH INSTITUTE}, \textit{supra} note 123, at 64 (noting that pro bono programmes of the legal profession in Tanzania do not work on criminal cases) and at 71 (noting that “paralegals in Tanzania . . . only rarely deal with criminal cases”).
\textsuperscript{128} Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013).
cases. One explanation for this is the societal stigma against criminal defendants and their advocates, which is discussed in more detail below in section II.C.5.b.

In addition to the low number of governmental or civil society advocates available to assist non-capital criminal defendants, Tanzanian law prohibits advocates from representing defendants in Primary Courts altogether, which further limits a defendant’s ability to obtain legal representation. Although many of the crimes tried in Primary Court are petty offenses with relatively minor sentences, these courts also have jurisdiction over crimes punishable by imprisonment. One interviewee reported that approximately 90% of crimes committed are petty offenses, many of which may be tried in Primary Courts. It is also important to note that women, who are reportedly charged more often with minor-level offenses than men, are more likely to be tried in Primary Courts than higher courts. As such, female criminal defendants are less likely to be represented by an advocate. One source estimated that only 5% of women have the benefit of an advocate (free or paid) for any stage of criminal proceedings. The lack of legal aid at the lowest level of the court system extends also to the highest court in Tanzania—the Court of Appeals. A judge of that court stated that there are many cases in which criminally accused persons are not represented because they cannot afford to hire a private advocate.

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129 Interview with Legal Aid Providers, Dar es Salaam, Tanz. (Oct. 15–18, 2013). For example, the Women’s Legal Aid Centre (WLAC) has expanded into criminal defence work only within the past year, and its criminal work is limited to assistance for juvenile defendants. Id.
130 The Magistrates’ Court Act, Cap. 14, s 33 (Tanz.) (“No advocate or public prosecutor as such may appear or act on behalf of for any party in a Primary Court.”).
131 See Primary Courts Criminal Procedure Code, Cap. 18, s 2 (Tanz.) (granting jurisdiction to impose sentences of up to 12 months imprisonment); Criminal Procedure Act, Cap. 20, s 170 (Tanz.) (granting jurisdiction of crimes carrying potential imprisonment of up to five years to “subordinate courts”).
132 Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013).
133 Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013) (noting that “most women [defendants] are charged with abusive language, insults, or harassment which go to Primary Court” and that therefore they won’t have advocates); Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013) (noting that women often avoid Primary Courts when they have civil cases because the use of customary law often leads to poor results for women because of its patriarchal nature). This issue is examined in more detail in section V.B.1.c of this report.
135 Interview with Judge, in Dar es Salaam, Tanz. (Oct. 17, 2013).
5. **RECOMMENDATIONS**

The government should expand the state brief system to mandate appointment of counsel for all individuals facing imprisonment, not just those accused of capital offenses. Furthermore, appointed counsel should have sufficient notice, so as to prepare an adequate defence. The government should also amend its statutory code to allow paralegals and advocates to attend Primary Courts for all offenses with the possibility of imprisonment. Civil society organisations should expand their services to include representation of the criminally accused. If possible, Tanzania should begin to take steps to change the societal bias against criminal defence work, perhaps by starting with law students.

**B. THE RIGHT TO LEGAL AID AT ALL STAGES**

1. **INTERNATIONAL AND DOMESTIC LAW MANDATE THAT THE RIGHT TO LEGAL AID APPLIES AT ALL STAGES OF THE CRIMINAL PROCESS**

International law establishes a right to legal aid “at all stages” of the criminal process.136

The Lilongwe Declaration elaborates on this principle, stating:

A legal aid programme should include legal assistance at all stages of the criminal process including investigation, arrest, pre-trial detention, bail hearings, trials, appeals, and other proceedings brought to ensure that human rights are protected. Suspects, accused persons, and detainees should have access to legal assistance immediately upon arrest and/or detention wherever such arrest and/or detention occurs. A person subject to criminal proceedings should never be prevented from securing legal aid and should always be granted the right to see and consult with a lawyer, accredited para-legal, or legal assistant. Governments should ensure that legal aid programmes provide special attention to persons who are detained without charge, or beyond the expiration of their sentences, or who have been held in detention or in prison without access to the courts. Special attention should be given to women and other vulnerable groups, such

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136 See, e.g., U.N. Principles and Guidelines on Access to Legal Aid in Criminal Proceedings, supra note 114 (providing for the right to representation at “all stages of the criminal justice process”); ACHPR PRINCIPLES AND GUIDELINES, supra note 102 (noting the “entitlement to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings”); Kyiv Declaration, supra note 117, at § 2 (stating that “[a] legal aid programme must include legal advice and assistance at all stages of the criminal, civil and administrative process”); U.N. Basic Principles on the Role of Lawyers, supra note 113 (“All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.”).
The U.N. Principles and Guidelines also provide expansive guidance on when the criminally accused have the right to legal aid, noting that:

States should take measures: (a) To ensure that police and judicial authorities do not arbitrarily restrict the right or access to legal aid for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular in police stations; (b) To facilitate access for legal aid providers assigned to provide assistance to detained persons in police stations and other places of detention for the purpose of providing that assistance; (c) To ensure legal representation at all pretrial proceedings and hearings.

[And] States should introduce measures: (a) To provide all persons, on admission to the place of imprisonment and during their detention, with information on the rules of the place of imprisonment and their rights under the law, including the right to confidential legal aid, advice and assistance...[and] to ensure that prisoners have access to legal aid for the purpose of submitting appeals and filing requests related to their treatment and the conditions of their imprisonment, including when facing serious disciplinary charges, and for requests for pardon, in particular for those prisoners facing the death penalty, as well as for applications for parole and representation at parole hearings.

Thus, international instruments suggest that the provision of legal aid occur at all stages of the criminal justice process.

In domestic law, the Criminal Procedure Act attempts to fill some of the gaps left by the Legal Aid (Criminal Proceedings) Act. The Legal Aid (Criminal Proceedings) Act fails to specify at what stage legal aid should be provided. Article 2 prohibits advocates from appearing before the Primary Courts, but no other clarity is provided regarding legal aid.

Contrastingly, Tanzania’s Criminal Procedure Act provides that the accused must be informed of his or her rights when “restrain[ed]” by the police. Those rights include the right to refuse to answer any questions and the right to “communicate with a lawyer, relative or

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137  Lilongwe Declaration, supra note 117.
138  U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, supra note 114, at ¶¶ 21, 44, 47.
140  Legal Aid (Criminal Proceedings) Act, Cap. 21, s 2 (Tanz.).
141  Criminal Procedure Act, Cap. 21, s 53 (Tanz.).
friend” prior to interrogation or investigation. The Criminal Procedure Act further mandates that the “police officer shall, upon request by a person who is under restraint, cause reasonable facilities to be provided to enable the person to communicate with a lawyer, a relative or friend of his choice.” Thus, the Criminal Procedure Act indicates that the right to legal aid applies at all stages of the criminal process, with the exception of the Primary Court limitations set forth in the Legal Aid (Criminal Procedure) Act.

2. **FINDINGS: THE RIGHT TO LEGAL AID IS BEING DENIED IN MANY STAGES OF THE CRIMINAL JUSTICE PROCESS**

Criminal defendants in Tanzania are denied access to legal aid throughout the criminal justice process. For example, legal aid is overwhelming denied during the pre-trial process. Sources differed on whether persons accused of crimes are being informed of their right to legal aid upon arrest or before interrogation by law enforcement. Legal aid providers and prison officials stated that many clients report that they were not given a cautionary statement informing them of their rights, and some say their explicit request for counsel was denied by police interrogators. On the other hand, police officers stated that they always notify suspects of their right to counsel prior to any interrogation. Whether or not the cautionary statements are being expressed to suspects, the meaning of the right to counsel, the availability of free legal

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142 *Id.* (“(i) that he is not obliged to answer any question asked of him by a police officer, other than a question seeking particulars of his name and address; and (ii) that, subject to this Act, he may communicate with a lawyer, relative or friend.”).

143 *Id.*

144 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with Police Official 2, in Dar es Salaam, Tanz. (Oct. 18, 2013).

145 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013) (noting that clients have reported being denied access to a lawyer when arrested despite requesting one); Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013) (noting that the clinic has seen many cases in which the client was not advised of her rights prior to having a statement taken); Interview with Judge, in Dar es Salaam, Tanz. (Oct. 17, 2013) (discussing the fact that the Court of Appeals often hears cases centering on whether the accused received the cautionary statements or not).

146 Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013); Interview with Police Official 2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
assistance, and the practical means to take advantage of the right (for example, to use a telephone to call a lawyer) are often not conveyed. One high-ranking judge stated that “99% of the time, I believe, the cautionary statement either isn’t given or isn’t understood and explained to the suspect.” Another source stated:

Maybe half of the people [in the criminal justice system] ask for a lawyer, but not all [accused] people even know they have the right to ask for a lawyer. Even if they know they have the right to a lawyer, they may not know that there are organisations that can help them [for free].

When asked if they inform the accused about the availability of free legal assistance from civil society organisations, police responded in the negative, saying that they only tell people about free legal aid if they are specifically asked about that option. One police officer stated, “[i]t is the duty of the person that has been apprehended to find help or ask for more information; we don’t inform them automatically.”

Unfortunately and according to legal aid providers and prison officials, the lack of counsel at the interrogation stage resulted in a higher incidence of sexual abuse of female suspects, police brutality, and coerced confessions. One official estimated that the actual

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147 Interview with Judge, in Dar es Salaam, Tanz. (Oct. 17, 2013); Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with NGO 1.2, in Dar es Salaam, Tanz. (Oct. 17, 2013).

148 Interview with Judge, in Dar es Salaam, Tanz. (Oct. 17, 2013).

149 Interview with NGO 1.2, in Dar es Salaam, Tanz. (Oct. 17, 2013); see also Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).

150 Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013); Interview with Police Official 2, in Dar es Salaam, Tanz. (Oct. 18, 2013).

151 Interview with Police Official 2, in Dar es Salaam, Tanz. (Oct. 18, 2013). There are, however, sometimes posters or fliers distributed by legal aid providers within police stations which include contact information for accused to call.

152 Interview with NGO 1.2, in Dar es Salaam, Tanz. (Oct. 17, 2013) (noting that sometimes criminal suspects are forced through coercion or brutality to confess); Interview with Prison Official, in Dar es Salaam, Tanz. (Oct. 17,
number of accused persons who obtain counsel is between 5% (for women) and 25% (for men). According to multiple sources, the main factor in whether defendants have access to counsel is the financial ability to hire a private lawyer. Formal mechanisms exist to challenge the admissibility of statements given without being informed of the right to counsel, but one source stated, “it is very rare for the bad practices to be brought up in court.”

Persons detained prior to trial often face substantial obstacles obtaining legal aid, an issue that is discussed in more detail below in section IV.B.2. Even those accused of capital offenses and assigned a state-brief attorney face difficulty obtaining pre-trial assistance. It was reported that assigned attorneys are often not notified of the case until shortly before trial (in some cases only days prior to trial) and sometimes do not meet with their clients until the day of trial. This late participation of assigned counsel impacts the attorney-client relationship, causing many defendants to be sceptical or lack trust in their attorney. The difficulty gaining access to clients in prison also negatively impacts the availability of legal aid on appeal.

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2013) (noting that sexual abuse of female suspects sometimes occurs in the absence of lawyers or advocates, especially at rural police outposts).

154 Id.; Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013); Interview with Prosecutor, in Dar es Salaam, Tanz. (Oct. 18, 2013).
155 Interview with NGO 1.2, in Dar es Salaam, Tanz. (Oct. 17, 2013) (“If the accused is not told of his rights, his confession can be challenged in court.”); Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013) (“Defendants have a right to [an] attorney before having their statement taken. If the defendant is not told of this right, it can be used as a defence later in court.”).
156 Interview with NGO 1.2, in Dar es Salaam, Tanz. (Oct. 17, 2013)
157 See infra discussion of problems of access to detainees in section IV.B.2.
158 Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013) (noting that state brief attorneys are often not given enough time to prepare a defence); Interview with Prison Official, in Dar es Salaam, Tanz. (Oct. 17, 2013) (noting that sometimes attorneys are called the day before a trial and assigned to represent a capital defendant the next day).
159 Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).
160 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013) (noting that there is a lack of trust built between client and attorney when the attorney does not become involved until late in a case—for example after the client has been detained for years); Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013) (noting that clients often lack trust in their attorneys and are angry about pre-trial delays).
161 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013) (noting that a request to assist death row inmates was submitted more than one year ago and the bureaucratic obstacles faced thus far in gaining access to prisoners).
3. **Recommendations**

The government needs to address prison overcrowding, the high number of remand cases, and trial delays by ensuring that criminal defendants have access to legal advocates at all stages of the criminal justice process. Emphasis ought to be placed on the pre-trial stage, and the government needs to ensure that police and prosecutors are sufficiently informed of and adequately facilitating access to legal aid. There should be regular monitoring of law enforcement and prosecutors’ compliance with cautionary statement requirements, and sanctions should be imposed on those officials who are not complying. Statutory guidelines regarding cautionary statements could be amended to explicitly require that police inform individuals of their rights to *free* legal aid and *practical access* to the same. Paralegals and advocates should be encouraged to establish a permanent presence within police stations to ensure legal aid for indigent criminal suspects during the investigatory period. Furthermore, the government should ensure that advocates and paralegals are given access to clients within prisons, and prison officials should facilitate access to advocates for detainees. Bureaucratic policies regarding advocate and paralegal entrance into prisons should be streamlined to avoid hindering communication between detainees and legal representatives.

**C. The Right to Effective Legal Aid**

1. **Introduction: Impediments to Effective Legal Aid**

According to sources, corruption, a shortage of lawyers, inadequate funding, a lack of incentives for lawyers to participate in legal aid, inadequate time to prepare for trial, unequal access to the detained, lack of access to evidence, and delays were among the most notable impediments to effective legal aid.
2. CORRUPTION UNDERMINES ACCESS TO LEGAL AID AND JUSTICE

a. INTERNATIONAL LAW

In recognition of universal effects of corruption on criminal justice systems, international law has placed a duty on governments to ensure that their criminal justice systems are free of corruption. The U.N. Convention on Corruption, which Tanzania has ratified, prohibits corruption within the criminal justice system, and it notes the “seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law.” In addition to detailing other measures for combatting corruption in criminal justice systems, the Convention requires state parties to “adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.” The African Union Convention on Preventing and Combatting Corruption, to which Tanzania is a party, likewise calls on African nations to criminalize corruption, including in the criminal justice system. Moreover, the U.N. Principles and Guidelines on Access to Legal Aid in the Criminal Justice System notes that state parties should “[e]stablish appropriate oversight mechanisms for legal aid providers, in particular with a view to preventing corruption.”

b. FINDINGS

One recurring theme among sources was the problem of corruption within the Tanzanian legal system. This corruption is not isolated to one level or phase of the process, but is a systemic problem.

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163 Id. art. 26.
165 U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, supra note 114, at art. 15.
Corruption takes many forms. As previously mentioned, one source explained that police and prosecutors commonly choose to keep defendants in jail for longer than necessary “to make sure that person suffers.”\textsuperscript{166} Corruption is particularly prevalent in rape cases, because, according to one source, the penalties for rape are so severe.\textsuperscript{167} In Primary Courts, where police can serve as prosecutors, the police fail to utilize safeguards to protect the identity of rape victims and witnesses.\textsuperscript{168} Moreover, after a crime is reported, the police may fail to write up reports, without which the case cannot be prosecuted.\textsuperscript{169} Finally, police sometimes act as prosecutors in lower courts.\textsuperscript{170} Judicial experts criticize this practice because it creates a risk that the police might manipulate the evidence; currently, this practice is being phased out.\textsuperscript{171}

Corruption can also occur at the state’s attorney level. Once the police have finished investigating a crime, the evidence is brought to the state’s attorney for a decision on whether there is enough evidence to proceed with the charges.\textsuperscript{172} Prosecutors can be bribed to proceed or drop a case, despite overwhelming evidence to the contrary.\textsuperscript{173} Police officers can report misconduct of state’s attorneys to the Director of Public Prosecutions (DPP), but this does not happen frequently.\textsuperscript{174} Corruption is not always the cause of this conduct. Many state’s attorneys are young and inexperienced, and, as a result, they may choose not to proceed with a case because they do not know how much evidence is necessary in order to convict.\textsuperscript{175}

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\textsuperscript{166} Interview with Prison Official, in Dar es Salaam, Tanz. (Oct. 17, 2013).
\textsuperscript{167} Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
\textsuperscript{168} Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013) (noting that police serving as prosecutors may even tell the accused rapist where they got the information against the defendant, which puts the victim and any witnesses in danger of retaliation).
\textsuperscript{169} Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
\textsuperscript{170} \textsc{United States Department of State, supra} note 17.
\textsuperscript{171} \textit{Id.}
\textsuperscript{172} Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013).
\textsuperscript{173} \textit{Id.}
\textsuperscript{174} \textit{Id.}
\textsuperscript{175} Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
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Corruption within the judiciary is well known. Over the last five years, a string of arrests were made when evidence surfaced that Magistrate Court and District Court judges were being bribed to influence the outcome of cases.\textsuperscript{176} These judges saw the bribes as a way to supplement their income.\textsuperscript{177} The experience of a high level public prosecutor is illustrative of this trend.\textsuperscript{178} The prosecutor explained that, in one case he tried, all of the prosecution’s witnesses had been bribed to change their testimony.\textsuperscript{179} Although he was able to rehabilitate them, this influenced his decision to finish trying the case quickly, so as to leave less opportunity for the judge to be bribed as well.\textsuperscript{180}

Corruption is reportedly also common within the investigation phase conducted by police officers. One interviewee explained that it is possible to bribe a detective to delay or produce a bad report, leading the state’s attorney not to move forward with a case.\textsuperscript{181} Another interviewee explained that bribery can be used to have charges dropped, giving the example of a rape case, in which two young girls were raped and tortured by their landlord.\textsuperscript{182} Neighbours called the police, but when the police arrived, the landlord accused the two girls of stealing from him.\textsuperscript{183} Although both the girls and the landlord were arrested, only the case against the girls proceeded because the police were bribed to drop the rape and torture charges.\textsuperscript{184}

c. Recommendations

Stricter domestic laws should be implemented to prohibit corruption at all levels of the criminal justice system. Enforcement of these laws is critical, and serious sanctions or dismissal


\textsuperscript{177} Makoye, supra note 7. One magistrate judge in Dar es Salaam reportedly wanted $1,849 USD to write a judgment in favour of a defendant facing criminal charges. \textit{Id.}

\textsuperscript{178} Interview with Prosecutor, in Dar es Salaam, Tanz. (Oct. 18, 2013).

\textsuperscript{179} \textit{Id.}

\textsuperscript{180} \textit{Id.}

\textsuperscript{181} Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).

\textsuperscript{182} Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).

\textsuperscript{183} \textit{Id.}

\textsuperscript{184} \textit{Id.}
should face any police officer, investigator, prosecutor, judge, or other actor in the justice system who takes or gives bribes. News organisations and corruption watchdogs should be encouraged to monitor, investigate, and publicize corruption in the system to create a public perception that corruption is unacceptable.

3. The Shortage of Lawyers Severely Limits Access to Legal Aid

For a population of 42 million, Tanzania has only 1,188 legal professionals.185 Of these, only 897 hold a practicing degree.186 According to an advocate at an NGO, these numbers result from a combination of factors.187 First, people are “less interested [in being an advocate] because of the corruption” that is prevalent in the entire system.188 Second, the delays in the court system frustrate practicing advocates.189 Another NGO advocate affirmed this view, saying that the courts do not run on a consistent schedule and often the cases are delayed several times before being heard.190 This interviewee described the case of an advocate from Dar es Salaam who had a case in Dodoma. The advocate called the clerk of court in Dodoma to see if the judge would be present to hear cases on a particular day.191 The clerk assured him that the magistrate judge would be there, yet, when the advocate arrived, the judge remained in his office.
and refused to hear the case.192 Another interviewee confirmed that cases are often rescheduled as many as four times before they are finally heard.193

4. FUNDING FOR LEGAL AID IS INADEQUATE

a. INTERNATIONAL LAW

Multiple sources of international law address legal aid funding. The U.N. Principles and Guidelines provide that “[s]tates should, where appropriate, make adequate and specific budget provisions for legal aid services that are commensurate with their needs, including by providing dedicated and sustainable funding mechanisms for the national legal aid system.”194 More specifically, it states that governments should establish funding for public defender schemes, legal aid, university law clinics, and NGOs (including paralegal organisations), particularly in rural and disadvantaged areas.195 Furthermore, the funding for legal aid agencies should be proportional to that of the prosecution.196 The Lilongwe Declaration provides, similarly, that governments have primary responsibility to support and provide for the basic human right of “access to legal aid for persons in the criminal justice system.”197

192 Id.
194 U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, supra note 114, § 60.
195 Id. § 61(a) (“States could take measures to establish a legal aid fund to finance public defender schemes, support legal aid provision, support university law clinics, sponsor NGOs (including paralegal organizations), especially in rural areas and disadvantaged areas.”).
196 Id. § 61(c).
197 Lilongwe Declaration, supra note 117, art. 1 (“All governments have the primary responsibility to recognize and support basic human rights, including the provision of and access to legal aid for persons in the criminal justice system.”).
b. FINDINGS

Lack of funding is a serious impediment to legal aid. The lack of resources dedicated to legal aid has two major consequences: Legal aid is provided to a fewer individuals than the law allows, and advocates are disincentivized and discouraged from working on criminal cases.

Several interviewees posited that the government only provides legal aid in capital cases because of a lack of funding.198 As previously mentioned, the law provides for legal aid when it is “in the interests of justice” that the indigent defendant has legal representation.199 When asked why this has been interpreted to only apply to capital cases, one interviewee stated that it was likely due to a lack of resources.200 A representative of an NGO opined that the problem is not purely a lack of funding, but improper allocation of resources within the judiciary.201 According to this source, the government allocates resources for specific purposes, like legal aid, but sometimes the Ministry of Justice later reallocates the resources for other spending priorities.202 Thus, the budget factors into why such a small number of criminal defendants qualify for government-provided legal aid.

This lack of funding diminishes the quality of representation that advocates are willing or able to provide criminal defendants. The government reimburses advocates with 100,000 Tanzanian shillings, or approximately 60 U.S. dollars, for representing a defendant in a capital

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198 Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with Advocate, in Dar es Salaam, Tanz. (Oct. 18, 2013).
199 The Legal Aid (Criminal Proceeding) Act, Cap. 21, s 3 (Tanz.).
200 Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013) (“The law provides for legal aid only in capital cases and not more criminal cases likely because of a lack of resources.”).
201 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
202 Id.
By comparison, one interviewee estimates that the same case at a private law firm generates roughly 10,000 USD. This stark contrast illustrates that time away from a lawyer’s private practice means lost profits. The government set the 100,000 TZS reimbursement sum in 1967 and has not readjusted it with regard to inflation. Because this sum is so low, many lawyers do not take the time to collect it. Still others may never get reimbursed for their services due to the government’s failure to pay. As a result, the quality of representation suffers as many advocates rush through capital cases in order to return to their more lucrative private practices.

It is worth noting that, in addition to investing their time in these cases, advocates are often required to travel without reimbursement. Travel may be necessary either to meet with a client or represent a case before a court located outside of Dar es Salaam. Such travel is a significant hardship, due to the cost of fuel and the amount of time involved. The Legal Aid Clinic of the University of Dar es Salaam School of Law, for instance, will not take cases more than 150 kilometres outside of Dar es Salaam, due to the expense of travel. Once an advocate travels to a rural court, the hearing or trial may be delayed, resulting in repeated trips that double or triple the cost. TAWLA recognizes the burden of these travel costs, and,

203 Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with Advocate, in Dar es Salaam, Tanz. (Oct. 18, 2013)
204 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
205 Id.; Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).
206 Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).
207 Id.
209 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013); Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
210 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
211 One interviewee expressed while we were at a filling station that he did not trust most of the stations in Dar es Salaam because he thought they did not give people all the fuel they pay for. Comment from NGO 1.1, in Dar es Salaam, Tanz. (Oct. 16, 2013).
212 Id.
213 Id.
214 Id.
consequently, encourages advocates to provide free legal work with a token of their appreciation. Advocates assigned to capital criminal cases, unlike legal aid organisations, do not have the luxury of choosing how far they are willing to travel for a client. These advocates are deterred from visiting clients in prison because of the travel costs. Consequently, it is not uncommon for advocates in capital cases to meet their clients as they walk into court the day of trial. Thus, the lack of funding available to reimburse advocates directly impacts the quality of representation that criminal defendants receive.

c. RECOMMENDATIONS

The proposed Legal Aid Bill attempts to establish a Legal Aid Fund to finance legal aid activities. The government should approve this provision and take all appropriate measures to ensure its effective implementation.

Furthermore, the government should allocate more funds to legal aid. Ideally, this would allow more non-capital criminal defendants to access legal aid. Providing more criminal defendants with legal aid will alleviate the burden on prisons. One source noted that defendants with representation move through the legal system faster, thereby saving the state significant judicial resources as well.

5. INCENTIVES FOR LAWYERS TO PROVIDE LEGAL AID SHOULD BE INCREASED

a. INTERNATIONAL LAW

Numerous sources of international law encourage that states offer incentives for lawyers to provide legal aid. The U.N. principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provide that states should take measures “to identify incentives for lawyers to

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218 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
work in economically and socially disadvantaged areas,” as well as “rural areas and economically and socially disadvantaged areas” through tax exemption, fellowships, student loan payment reductions, and travel subsistence allowances.\(^{219}\) The U.N. Principles and Guidelines also dictate that states should encourage and incentivize law students to participate in legal aid clinics and legal aid community schemes.\(^{220}\) The Lilongwe Declaration provides even stronger language. In relevant part, section 8 states that “[t]he organised bar should provide substantial moral, professional and logistical support to those providing legal aid . . . In countries in which a mandatory pro-bono requirement cannot be imposed, members of the legal profession should be strongly encouraged to provide pro-bono legal aid services.”\(^{221}\)

b. FINDINGS

Sources indicated two core reasons for advocates’ lack of interest in providing legal aid: money and stigma.

As described in section II.C.4.b above, there is very little money available for legal aid services, and, thus, little reimbursement for assigned criminal cases. This directly impacts the quality of representation provided to capital criminal defendants. In non-capital cases, these expenses discourage advocates from taking rural cases free of charge.

In addition to these financial disincentives, there is a prominent stigma in Tanzanian society against representing criminals. As one interviewee explained, “[i]f you represent a person who is accused of murder, you are seen as one of the murderers.”\(^{222}\) According to the same interviewee, the media perpetuates these views.\(^{223}\) The concepts of zealous advocacy and

\(^{219}\) U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, supra note 114, ¶¶ 56(b), 61(c).

\(^{220}\) Id. ¶ 72(b).

\(^{221}\) Lilongwe Declaration, supra note 117, § 8.

\(^{222}\) Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).

\(^{223}\) Id.
the presumption of innocence are taught in law schools, but this is not sufficient to combat the stigma in society at large.\textsuperscript{224}

Advocates who participate in legal aid do so out of a sense of austerity. As one advocate stated, “I value assisting society, [but] by assisting society I lose money sometimes.”\textsuperscript{225} He felt it important that lawyers do legal aid because it assists society. Another interviewee, working at a legal aid organisation, became interested in such work after taking an elective course in human rights law.\textsuperscript{226} He explained that his commitment came from a desire to “help my people.”\textsuperscript{227} Thus, an important incentive appears to be individual values.

c. RECOMMENDATIONS

One interviewee recommended that advocates be exempt from paying court fees in legal aid cases.\textsuperscript{228} Other incentives could mirror the U.N. principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, such as tax breaks and exemptions, fellowships, student loan payment reductions, and improved travel subsistence allowances. Notably, as will be explored further in section VII.A.2, the proposed Legal Aid Bill could be the solution to travel subsidies and reimbursements, by allowing advocates to submit claims for reimbursement.\textsuperscript{229} Establishing public defenders offices in rural areas, as suggested by a high-ranking judge, would help improve access to legal aid outside of cities.\textsuperscript{230} Finally, representing criminal defendants needs to be de-stigmatized. Such a movement would involve all tiers of society, from government to media to individuals.

\textsuperscript{224} Id. (noting that law students are not groomed to know the needs of indigent clients and are instead groomed to work with corporate clients). This source also commented that current generation of lawyers does not understand the importance of legal aid and fails to grasp the expectation of indigents. Id.

\textsuperscript{225} Interview with Advocate, in Dar es Salaam, Tanz. (Oct. 18, 2013).

\textsuperscript{226} Interview with NGO 1.2, in Dar es Salaam, Tanz. (Oct. 17, 2013).

\textsuperscript{227} Id.

\textsuperscript{228} Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).

\textsuperscript{229} Draft Legal Aid Bill, supra note 217, § 36(3).

\textsuperscript{230} Interview with Judge, in Dar es Salaam, Tanz. (Oct. 17, 2013).
6. **TIME TO PREPARE FOR TRIAL IS INADEQUATE**

   a. **INTERNATIONAL AND DOMESTIC LAW**

   Adequate time to prepare a defence is a right codified in numerous international law sources, including the U.N. Principles and Guidelines,231 the ICCPR,232 the ECHR,233 and the U.N. Basic Principles on the Role of Lawyers.234 The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa also provides for adequate time to prepare for trial.235

   As previously mentioned, Article 13(6)(a) of the Constitution of Tanzania provides that “the state authority shall make procedures which are appropriate or which take into account . . . a fair hearing.”236 Although adequate time for the preparation of the defence is intuitively part and parcel to a fair hearing, no domestic law explicitly provides for adequate time to prepare for trial.

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231 U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, supra note 114, art. 7, para. 28 (“Effective legal aid includes...adequate time and facilities to prepare their defence.”).
232 ICCPR, supra note 102, art. 14, para. 3 (“In the determination of any criminal charge against him, everyone shall be entitled . . . to have adequate time and facilities for the preparation of is defence and to communicate with counsel of his own choosing.”).
233 ECHR, supra note 102, art. 6(3)(b) (“Everyone charged with a criminal offence” shall have the right to “adequate time and facilities for the preparation of his defence.”).
234 U.N. Basic Principles on the Role of Lawyers, supra note 113, para. 8 (“All arrested, detained, or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within hearing of law enforcement officials.”); see also id. para. 21 (“It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.”).
235 ACHPR PRINCIPLES AND GUIDELINES, supra note 102, § A(2)(e) (“The essential elements of a fair hearing include . . . adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence.”); see also id. § I(d) (“It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.”); id. § N(3)(d) (noting that how much time is adequate depends on factors such as “the complexity of the case, the defendant’s access to evidence, the length of time provided by the rules of procedure prior to particular proceedings, and prejudice to the defence”).
236 CONSTITUTION OF THE UNITED REPUBLIC OF TANZANIA, art. 6.
b. FINDINGS

Adequate time to prepare for trial was a common issue among interviewees when discussing representation of the defendant in capital criminal cases.237 According to these interviewees, legal aid advocates are not always given sufficient time to prepare a defence. An advocate may get a call from the court one week or even one day before a capital case trial, assigning them the defendant as a client.238 This lack of time between summons and trial, combined with lawyer disinterest, result in situations in which advocates arrived at court without previously meeting their clients.239 Another factor influential factor is availability of evidence, witness lists, and statements from the prosecutor’s office. Several interviewees indicated that there is an unwillingness to help defence attorneys gain access to case files and information.240 One interviewee noted that it is common for the defence to only have fourteen days to prepare their case and talk to witnesses after the prosecution has closed its case; this is the typically the only time the defence has access to important information about the case.241

c. RECOMMENDATIONS

Courts should take more care to assign capital cases far enough in advance of trial to allow advocates to fully prepare a defence. The rules regarding disclosure of evidence, witness lists, and statements should also be enforced, so that prosecutorial delaying tactics do not impede a defence lawyer’s ability to prepare for trial. Furthermore, legislatures should review prosecutorial evidentiary requirements to determine what information should be shared with the defence.

238 Interview with NGO 1.2, in Dar es Salaam, Tanz. (Oct. 17, 2013); Interview with Advocate, in Dar es Salaam, Tanz. (Oct. 18, 2013).
239 Interview with NGO 2.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
240 Interview with NGO 1.3, in Dar es Salaam, Tanz. (Oct. 17, 2013); Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
7. **The Right to Equal Access to the Detained: NGOs Should Be Given Greater Access to Prisoners**

   a. **International Law**

   International law mandates that lawyers have access to their detained clients through several broader rights: the right to legal assistance shortly after arrest or detention, the right to adequate defence preparation, and the right to counsel of one’s choice. If some lawyers are unable to access prisons, it impedes the accused person’s right to legal assistance shortly after detention, hurts the ability of the accused to prepare a defence, and it impacts the ability of the accused to choose his counsel.

   The right to legal assistance shortly after arrest or detention is detailed in the U.N. Principles on the Role of Lawyers,242 the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,243 and the Lilongwe Declaration.244 The right to adequate defence preparation is provided in the ICCPR245 and the U.N. Basic Principles on the Role of Lawyers.246 Finally, the right to the counsel of one’s choice is provided in the ICCPR,247 the

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242 U.N. Basic Principles on the Role of Lawyers, supra note 113, para. 1 (noting that lawyers shall be present at “all stages of criminal proceedings”).
243 ACHPR PRINCIPLES AND GUIDELINES, supra note 102, § A(2)(f) (“The essential elements of a fair hearing include . . . an entitlement to consult and be represented by a legal representative or other qualified person chosen by the party at all stages of the proceedings.”).
244 Lilongwe Declaration, supra note 117, art. 3 (“A legal aid programme should include legal assistance at all stages of the criminal process.”).
245 ICCPR, supra note 102, art. 14, para. 3 (noting that the accused shall “have adequate time and facilities for the preparation of his defence and to communicate with the counsel of his choosing”).
246 U.N. Basic Principles on the Role of Lawyers, supra note 113, para. 8 (“All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.”).
247 ICCPR, supra note 102, art. 14, para. 3 (“In the determination of any criminal charge against him, everyone shall be entitled to . . . have adequate time and facilities for the preparation of his defence and to communicate with the counsel of his choosing.”).
Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa,\textsuperscript{248} and the African Charter.\textsuperscript{249}

b. FINDINGS

Sources revealed that it is difficult for NGOs to obtain access to defendants in prison, but advocates representing individual clients typically do not encounter such obstacles.

According to interviewees, all advocates who have been assigned a capital criminal case can visit their clients in prison.\textsuperscript{250} First, they must obtain a certificate from the Commission of Prisons, which is good for one year and can be used for all clients in that prison, including future defendants.\textsuperscript{251} Advocates visiting their clients are provided a private room in which to talk with their client.\textsuperscript{252} Advocates are not typically denied access to clients in prison; when they do not visit, it is likely due to lack of funds for transportation, lack of interest on the advocate’s part, or inadequate time before trial.\textsuperscript{253}

NGOs, including legal aid clinics, are not given the same privileges. One legal aid organisation said that it had been trying to get permission to visit death row inmates for over a year but had little success.\textsuperscript{254} A second legal aid organisation gave conflicting views. While one interviewee stated that the organisation, partnering with UNICEF, could go to prisons, a second interviewee said that it was difficult for both UNICEF and the organisation to get access.\textsuperscript{255} Specifically, the second interviewee stated that only one person from their organisation had

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\textsuperscript{248} ACHPR PRINCIPLES AND GUIDELINES, supra note 102, §§ G(b), H(d), N(2)(c), N(2)(a) (noting that the accused has a right to “representation by a lawyer of his or her choice” in criminal and civil proceedings).
\textsuperscript{249} African Charter, art. 7 (“Every individual shall have the right to have his cause heard. This comprises . . . (c) the right to defence, including the right to be defended by counsel of his choice.”).
\textsuperscript{250} Interview with NGO 1.2, in Dar es Salaam, Tanz. (Oct. 17, 2013).
\textsuperscript{251} Id.
\textsuperscript{252} Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).
\textsuperscript{253} Interview with Prison Official, in Dar es Salaam, Tanz. (Oct. 17, 2013).
\textsuperscript{254} Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
\textsuperscript{255} Interview with NGO 1.2, in Dar es Salaam, Tanz. (Oct. 17, 2013); Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
\end{flushright}
access, and it took two years to get it. The interviewee posited that the government resisted granting legal aid organisations access because the prisons are in such poor conditions. This further existed in a rural police station, in which the conditions were poor—small, dark cells filled with beyond capacity.

c. RECOMMENDATIONS

The government should ensure that legal aid organisations can visit prisoners in a similar capacity to private advocates. To facilitate this, there could be a formal complaint process, whereby NGOs could notify the government when unlawfully denied access to detainees.

8. DEFENCE MUST BE GIVEN GREATER ACCESS TO EVIDENCE IN ORDER TO ACHIEVE EQUALITY OF ARMS

a. INTERNATIONAL AND DOMESTIC LAW

The U.N. Basic Principles on the Role of Lawyers provides that “competent authorities” should recognize the duty of public officials to allow attorneys access to “information, files and documents” needed to prepare “effective legal assistance.” Furthermore, a principle of “equality of arms” can be found couched in the ICCPR’s article 14 fair trial requirements, and explicitly provided for in the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.

256 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
257 Id.
258 Delegation visit to Police Station, in Morogoro, Tanz. (Oct. 16, 2013).
259 U.N. Basic Principles on the Role of Lawyers, supra note 113, para. 21 (“It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.”).
261 ACHPR PRINCIPLES AND GUIDELINES, supra note 102, § A(2)(a) (“The essential elements of a fair hearing include . . . equality of arms between the parties to a proceedings, whether they be administrative, civil, criminal, or military.”).
Tanzanian law provides that defendants or their lawyers have access to the evidence held by the government, the right to question witnesses, and the right to present evidence on the defendant’s behalf.262

b. FINDINGS

According to the interviewees, there is currently no law requiring that the prosecution give the defence an exhaustive list or the names of witnesses.263 Nor does the law require that the prosecution give the defence exculpatory evidence.264 As one interviewee put it, “there are surprises.”265

Furthermore, advocates are sometimes denied evidence to which they have a legal right. For example, one interviewee recounted the story of an advocate who was not permitted to see the charge sheet.266 When the advocate eventually received the charge sheet, it did not include statements the accused had made to the police.267 According to the interviewee, “there is no equality of arms” in the criminal justice system; this directly contradicts international law.268 Another interviewee, however, said that advocates can easily gain access to the court file, including all of the defendant’s information.269

c. RECOMMENDATIONS

The government should adjust the law to mandate that the defence be provided with equality of arms, including the prosecution’s witness list, exculpatory evidence, and the defendant’s police statements. The prosecution should be sanctioned for withholding evidence.

262 UNITED STATES DEPARTMENT OF STATE, supra note 17.
263 Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).
265 Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).
266 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
267 Id.
268 Id.
The government should undertake a thorough review of the rules dictating which types of evidence must be available to the defence.

III. RIGHT TO ACCESS FREE FROM DELAYS

A. INTRODUCTION

Delays are a significant problem in Tanzania’s criminal justice system. The various types of delays will be discussed below.

B. INTERNATIONAL LAW MANDATES THE RIGHT TO TRIAL WITHOUT UNDUE DELAY

The right to a speedy trial, without undue delay, is well founded within international law. The International Covenant on Civil and Political Rights states that the right to “be tried without undue delay” is a minimum guarantee to which everyone is entitled. The U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems similarly assert the “entitlement to be tried without undue delay.” The African Charter on Human and Peoples’ Rights asserts a right to be “tried within a reasonable time by an impartial court or tribunal.”

C. DOMESTIC LAW

Under domestic law, police investigations cannot take more than 60 days. If, according to the judge, there is not enough evidence against the accused after 60 days, the case should be dismissed and the defendant should be acquitted; in practice this seldom happens. However, there is no similar time limit imposed for murder cases. Additionally, for unbailable offenses, the police only have two weeks to investigate. According to the law, the

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270 Interview with Gov’t Org., in Dar es Salaam, Tanz. (Oct. 18, 2013).
271 ICCPR, supra note 102, art. 14(3)(c) (ratified by Tanzania on June 11, 1976).
273 African Charter on Human and Peoples’ Rights, art. 7.
274 Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013); Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
275 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
276 Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013).
277 Id.
police should appear in court every two weeks for cases where the defendant is held in detention, but this also rarely happens in practice.\textsuperscript{278}

D. SOURCES OF DELAYS

There are many sources of delays in Tanzania’s criminal justice system. Each will be addressed in turn.

1. INVESTIGATION

According to one interviewee, the most common delays occur due to police investigations.\textsuperscript{279} Depending on whether the crime is a bailable offence and whether the defendant is able to pay the bail, it is common for criminal defendants to stay in pre-trial detention during police investigations.\textsuperscript{280} This means that, if the police investigation is slow, defendants must stay in pre-trial detention for a long duration.\textsuperscript{281} As an NGO worker stated, in many cases, the investigation is unnecessarily long.\textsuperscript{282} The different reasons and justifications for delays in the investigation stage will be discussed from the perspective of both the investigators and the defence representation.

Both investigators (police and prosecutors) and those representing the accused (advocates and NGO lawyers) agree that a major cause of delays is the unavailability of investigative technology. As one police officer explained, investigations take longer in cases involving expert proof.\textsuperscript{283} This includes cases where evidence is sent to a lab or where DNA or autopsies are required.\textsuperscript{284} Because there is only one DNA lab for the entire country, located in
Dar es Salaam, the turnaround for lab results can be slow. For example, it takes nearly three months to receive DNA results for a murder case. Such tests are expensive and require government funding. As a government representative noted, “the infrastructures are not very conducive to speeding up the process.” Additionally, doctors can be slow to send the reports. The same government representative recounted an example where the doctor failed to produce a report before leaving on a school trip.

Other reasons for investigative delay differ among sources. Interviewees on the defence side blame investigative delay on the poor quality of police work. One interviewee with this view was an NGO advocate who had previously worked as a prosecutor. According to this interviewee, the investigations sometimes yielded irrelevant evidence or were generally unhelpful, and the defence counsel consequently had to conduct his or her own investigation, gather witnesses, and collect evidence. The interviewee explained that this is also problematic for prosecutors because they lack transportation and facilities to be able to investigate crimes themselves. In addition to poor-quality police work, corruption can lead to longer delays in investigations. As previously stated, “it is common” for police and prosecution to prolong an investigation “to make sure that the accused person suffers.”

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285 Id.
286 Id.
287 Id.
288 Interview with Gov’t Org., in Dar es Salaam, Tanz. (Oct. 18, 2013).
289 Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013).
290 Id.
291 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with Judge, in Dar es Salaam, Tanz. (Oct. 17, 2013) (who laughed at the question of “do you think that the police are good at investigation” and answered “no, I don’t think so”); Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013) (“Police [are] not that much competent.”).
292 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
293 Id.
294 Id.
296 Id.
Police and current prosecutors claimed that most delays are due to the forensic infrastructure and witness who fail to appear (which will be discussed in more detail below).\textsuperscript{297} As discussed above, individuals in remand prisons are supposed to be brought to court every two weeks.\textsuperscript{298} The purpose of this practice is to ensure that individuals are not kept in remand prison longer than they need to be, thereby reducing delays.\textsuperscript{299} According to a police officer, this law is very strict and rigorously followed.\textsuperscript{300}

Murder investigations are particularly prone to delays. One interviewee mentioned that it usually takes five years for a murder trial to start because of unnecessarily prolonged investigations.\textsuperscript{301} According to a police officer, one reason this is true is because there is no time limit on investigations in murder cases, unlike most other types of cases.\textsuperscript{302}

2. UNNECESSARY ADJOURNMENT

Another cause of delays is unnecessary adjournment. The more adjournments there are, the longer it takes to get a judgment. Typically, each adjournment postpones the case for an additional month, and cases can be adjourned up to four times, according to one interviewee.\textsuperscript{303}

One cause of adjournment is the absence of a magistrate, witness, or advocate, or the tardiness of the accused.\textsuperscript{304} Magistrates and judges cause unnecessary adjournments, largely due to disinterest.\textsuperscript{305} For example, as mentioned previously, an advocate interviewee recounted how he once travelled to a distant court for a trial only to have the judge, who was present, refuse to

\textsuperscript{297} Interview with Prosecutor, in Dar es Salaam, Tanz. (Oct. 18, 2013); Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013).
\textsuperscript{298} Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013).
\textsuperscript{299} Id.
\textsuperscript{300} Id.
\textsuperscript{301} Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
\textsuperscript{302} Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013).
\textsuperscript{303} Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).
\textsuperscript{304} Interview with NGO 1.3, in Dar es Salaam, Tanz. (Oct. 17, 2013).
\textsuperscript{305} Id.
hear the case. The same interviewee believed such behaviour occurs because judges and magistrates regard themselves as “demigods” and “untouchables.” Advocates do not complain about such behaviour for fear that speaking out against judges will lead to prejudice against their case.

Witnesses can also cause case delays. This can occur if the witness fails to appear, cannot afford transportation costs to get to the court, is difficult to contact, or is difficult to schedule due to work conflicts. Stories of witnesses failing to appear were common among sources. In order to minimize such behaviour, the court can charge an absent witness with disobedience to the court, but this usually only occurs if a witness fails to attend three or four times without good reason. Another problem is that courts are required to fund witnesses’ transportation to court. Because courts often do not have sufficient funds, they sometimes must adjourn while determining a way to get the witness to court. Adjournments also stem from the difficulty of contacting witnesses. As a representative from the DPP discussed, it is difficult to contact witnesses because they may not have phones or may live in remote parts of the country. Additionally, witnesses’ work schedules can conflict with court appearances, causing and compounding delays.

306 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
307 Id.
308 Id.
309 For purposes of this section the term witness includes complainants as well.
310 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
311 Id.
312 Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013).
313 Id.
314 Id.
315 Id.
316 Id.
Hired advocates can cause unnecessary adjournments as well. This may be because they fail to appear at trial, adjourn one case to attend another, have scheduling conflicts, or disagree with the other advocates on the case. Disagreements alone can cause a case to be adjourned for up to four months, although it is more common for cases to be adjourned for just two or three weeks at a time. Additionally, paid advocates may decide to prioritize their higher-earning cases, resulting in delays to any capital criminal case or pro bono case they have.

One final source of unnecessary adjournment is the accused himself. If the accused is tardy, as an NGO worker explained, the magistrate will adjourn the case before the accused arrives. If the accused is in pre-trial detention, the prison officer is the true cause of this tardiness. These are not purposeful delays, but result from insufficient transportation for the number of accused persons with court dates. That same interviewee mentioned that one case was delayed three times because of the accused’s tardiness.

3. PROCEDURE

Finally, procedural issues can cause delays. One cause of procedural delays is the shortage of juvenile courts. There is only one juvenile court in Tanzania, located in Dar es Salaam. Transferring a case from District Court to juvenile court may take two weeks.

317 Interview with Gov’t Org., in Dar es Salaam, Tanz. (Oct. 18, 2013).
318 Id.
319 Id.
321 Id.
322 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
324 Id.
325 Id.
326 Id.
327 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
329 Id.
330 Id.
Because the juvenile court system is under-resourced for the number of cases it must deal with, delays are more likely to occur in the juvenile court system as a whole than occur in the District Court.\footnote{Id.}

Another procedural delay occurs when an accused person attempts to obtain an advocate after he or she has been taken to prison. All contact between persons in prison and the outside world must occur via letters, typewritten by a prison official.\footnote{Interview with Prison Official, in Dar es Salaam, Tanz. (Oct. 17, 2013).} According to one interviewee, the waiting period to have a letter typed is long, and nothing can be done to accelerate the process.\footnote{Id.}

Finally, if a case makes it to the Court of Appeals, it will experience further delays. To get to the Court of Appeals, the case must be filed with the Court and then listed for hearing. Once a case is listed for hearing, it takes one to two weeks to be heard.\footnote{Interview with Judge, in Dar es Salaam, Tanz. (Oct. 17, 2013).} According to one interviewee, the time between filing and listing can be quite long.\footnote{Id.} One case, for example, was filed with the Court of Appeals in 2007 but not listed for hearing until 2013.\footnote{Id.} The interviewee did not know what caused such delays and stated that this was not the normal waiting period.\footnote{Id.} The interviewee speculated that the delay may have been caused by slow preparation of the record.\footnote{Id.}

It is important to note that all of these procedural delays have a dampening effect on the willingness of the accused to confess.\footnote{Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).} Even with a confession, procedural delays make
sentencing a prolonged process. Thus, procedural delays have the undesired effect of encouraging individuals to try their luck in a full-blown trial, causing resources to be wasted and further congesting an overburdened system.

E. DELAYS WITHIN THE CRIMINAL JUSTICE SYSTEM LEAD TO EXTENDED PRE-TRIAL DETENTION AND LOWER RATES OF PRO BONO REPRESENTATION

Delays lead to negative consequences for defendants, lawyers, and other actors within the system. The main result is unnecessarily long prison stays for accused individuals who are awaiting trial. The severity of these delays is perhaps best illustrated through interviewee anecdotes.

In an interview with a legal aid worker, the interviewee recounted a case where the accused remained in pre-trial detention for a longer than he would have had he received the maximum sentence for the crime itself. No bail had been set at the time of the interview, and the court had still not reached a verdict.

Another side effect of delays is that lawyers are less likely to take on pro bono cases because of the extensive time commitment. One interviewee complained that delays caused him to lose “so many hours waiting for nothing,” referring to waiting at courthouses for cases which would eventually be adjourned for any number of reasons. Without these unnecessary delays, lawyers would likely take on more pro bono cases because they would not face such unforeseeable obstacles and wasted time.

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340 Id.
341 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
342 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
343 Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).
344 Id.
345 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
346 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
F. RECOMMENDATIONS

Delays were mentioned by nearly all sources, and it is clear that pre-trial detention commonly exceeds permissible time periods under international law. Furthermore, the current regulations and laws in place regarding pre-trial detention time limits must be strictly enforced in order to avoid pre-trial detention delays. Additionally, the government should pass legislation allowing paralegals and other legal aid providers to access pre-trial detainees in prison, which would assist in moving cases forward. Greater emphasis should be placed on the current laws that allow for bail, and the judiciary should be encouraged to utilize this option. Moreover, the government should review current bail rates to ensure that bail is set at levels that the average citizen can pay. The judiciary should adopt firm self-regulation policies and professional rules of conduct that discourage unnecessary adjournment.

IV. RIGHT TO ACCESS TO LEGAL AID

A. INTERNATIONAL LAW PLACES THE RESPONSIBILITY ON STATE GOVERNMENTS TO ENSURE ACCESS TO LEGAL AID

The U.N. Principles and Guidelines urge that “[s]tates should consider the provision of legal aid their duty and responsibility.”\textsuperscript{347} The ICCPR requires that defendants “have legal assistance assigned…in any case where the interests of justice so require,” but it does not specify who is responsible for assigning counsel.\textsuperscript{348} The Dakar Declaration notes that “access to justice” is a paramount element of the right to a fair trial, but it does not elaborate on which actor within the government is responsible for ensuring this access.\textsuperscript{349} Interestingly, the Lilongwe Declaration places primary responsibility for ensuring access to legal aid on governments, but

\textsuperscript{347} U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, supra note 114, para. 15.

\textsuperscript{348} ICCPR, supra note 102, art. 14(3)(b).

\textsuperscript{349} Dakar Declaration, supra note 116, art. C(b)(1) (taken from the Access to Legal Aid Comparative Report).
also recognizes the responsibility born by the legal profession as a whole.350 Similarly, the Kyiv Declaration puts the responsibility for creating a legal aid scheme on the government but recognizes the role of the legal profession as well.351

The 2012 Country Report on Human Rights Practices identifies lack of access to justice as one of the three most widespread and systematic human rights problems in Tanzania.352 Although the law gives all accused persons the right to contact a lawyer or family members, they are often denied this right in practice.353

B. FINDINGS

1. THE RESPONSIBILITY FOR ENSURING ACCESS TO LEGAL AID IS NOT CLEARLY DELINEATED, SO ACCESS IS PIECEMEAL

The Tanzanian government plays a limited role in facilitating access to legal aid.354 The judiciary runs the state brief system and ensures that advocates are appointed to represent defendants charged with capital offenses.355 However, as noted elsewhere in this report, several sources indicated that these appointments sometimes occurred shortly before hearing or trial.356 Some magistrate judges contact NGOs or paralegals directly if they encounter parties in need of legal aid; however, this was only reported in civil cases.357 Police officers are required by law to inform persons accused of a crime that they have the right to an attorney.358 As discussed above,

350 Lilongwe Declaration, supra note 117, art. 8 (“It is universally recognized that lawyers are officers of the court and have a duty to see that justice systems operate fairly and equitably.”).
351 Kyiv Declaration, supra note 117, at 1, 10.
352 UNITED STATES DEPARTMENT OF STATE, supra note 17.
353 Id.
354 DANISH INSTITUTE, supra note 6, at 48.
355 Id. Each law firm is required to take at least two capital cases per year, but our source indicated that firms only take the cases because they are required to, not because they want to. Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
357 Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).
358 Criminal Procedure Act, Cap. 21, s 53 (Tanz.).
it remains uncertain just how often accused persons are informed of this right.359 One source within the prison system suggested that police do not give defendants a chance to contact legal representation,360 but a police officer maintained that suspects are regularly informed.361

NGOs play a large role in facilitating access to legal aid in several ways. Through educating the general population about the legal process and their rights under the law, they help empower individuals to protect their own rights.362 NGOs also provide low-cost access to legal aid, albeit infrequently in the criminal context.363 This aid is often in the form of counselling or advice, but may also include representation in court.364 Some NGOs have staff attorneys that handle court representation, but other organisations have to locate advocates willing to take cases that need litigation in courts.365 One source noted that it can take up to two weeks just to find a lawyer willing to represent an indigent client.366

Additionally, NGOs increase public access to legal aid by training and dispersing paralegals into small communities that are underserved by advocates.367 Most attorneys in Tanzania are located in the large cities;368 thus, having readily accessible paralegals in rural areas greatly increases the likelihood of affordable and immediate legal aid. These paralegals work as

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359 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013); Interview with Police Official 1, in Morogoro, Tanz. (Oct. 16, 2013).
363 There seems to be a stigma attached to lawyers representing criminal clients. According to an NGO advocate, the media and the population attribute a client’s criminal behaviour to his attorney. Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
364 Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013); Interview with NGO 2.1, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
368 DANISH INSTITUTE, supra note 6, at 89 (“95 percent of the legal aid cases dealt with in 2007 originated in Dar es Salaam.”).
unpaid volunteers, and they are trained on legal issues that typically arise in rural populations, such as matrimonial, land, maintenance, and labour disputes.\textsuperscript{369}

The proposed Legal Aid Bill currently has a provision making police officers responsible for facilitating access to legal aid for criminal defendants.\textsuperscript{370} Paralegals would be impacted by the proposed Bill, which would give them formal recognition within the legal system and provide a framework for their licensing and certification.\textsuperscript{371} The details of the proposed Bill and its potential for increasing public access to legal aid are discussed in detail in Part VII below.\textsuperscript{372}

2. **Defendants Cannot Practically Gain Access to Legal Representation While Incarcerated**

It is difficult for incarcerated defendants to gain access to legal aid from prison. Detainees’ ability to obtain an advocate is largely dependent on the willingness of prison guards to assist inmates.\textsuperscript{373} As mentioned above regarding procedural delays (see section III.D.3), if an incarcerated defendant wants an advocate, he or she must contact the advocate via a letter, type-written by a prison official.\textsuperscript{374} This creates a significant obstacle to gaining representation, as there are long lines to have letters type-written and prison guards sometimes forget to mail the letters.\textsuperscript{375} Rarely, access to legal aid may be available outside of this official framework.\textsuperscript{376} A prison employee noted that he covertly (“through the back door”) helps the relatives of defendants move cases forward by writing letters to remind judicial officials of cases that may have been overlooked or delayed.\textsuperscript{377}

\textsuperscript{369} Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).
\textsuperscript{370} See Part VII infra.
\textsuperscript{371} See id.
\textsuperscript{372} See id.
\textsuperscript{373} Interview with Prison Official, in Dar es Salaam, Tanz. (Oct. 17, 2013).
\textsuperscript{374} Id.
\textsuperscript{375} Id.
\textsuperscript{376} Id.
\textsuperscript{377} Id.
C. RECOMMENDATIONS

To avoid shifting and avoidance of responsibility within the government, Tanzania should establish one agency or commission to bear the ultimate responsibility for ensuring adequate access to legal aid in Tanzania. This body would monitor actors in the justice system to verify efficiency and effectiveness. For example, this group would make sure that police are informing suspects of their right to counsel, make sure law firms and attorneys are taking their share of pro bono cases, determine if NGOs are being allowed access to indigent defendants, and monitor the progress of and identify existing bottlenecks or problems in the criminal justice system. There should also be anti-corruption safeguards within this legal aid body, so as to avoid the pitfalls which have plagued prior criminal justice reform efforts.

V. RIGHT TO EQUALITY OF ACCESS

A. INTERNATIONAL LAW REQUIRES ALL DEFENDANTS TO HAVE EQUAL ACCESS TO JUSTICE

The U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems note that special measures should be taken to ensure “meaningful access to legal aid” for “groups with special needs.”378 These guidelines specifically preclude discrimination based on “age, race, colour, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status.”379 The Maputo Protocol requires that women have “effective access . . . to judicial and legal services, including legal aid.”380 The Committee on the Elimination of Discrimination Against Women (CEDAW) notes that “State Parties . . . agree to pursue all appropriate means and

378 U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, supra note 114, para. 32.
379 Id. para. 26.
380 Maputo Protocol, supra note 117, art. 8(a).
without delay a policy of eliminating discrimination against women.”\textsuperscript{381} The Lilongwe Declaration likewise instructs states to “adopt measures and allocate funding sufficient to ensure an effective and transparent method of delivering legal aid to the poor and vulnerable, especially women and children, and in so doing empower them to access justice.”\textsuperscript{382}

B. FINDINGS

1. WOMEN FACE PARTICULAR CHALLENGES THAT IMPEDE THEIR ACCESS TO LEGAL AID

Women in Tanzania face a number of challenges in accessing legal aid. The most prominent obstacles that women encounter include the following: lack of financial resources, lack of social autonomy and familial status to independently obtain legal assistance, and prohibition of advocates in Primary Courts. Each of these challenges is addressed below.

a. WOMEN LACK THE FINANCIAL RESOURCES TO ACQUIRE LEGAL REPRESENTATION

The biggest impediment preventing women from gaining access to legal aid is their lack of financial resources. One paralegal associated with an NGO works primarily with women at a free legal aid clinic.\textsuperscript{383} According to her, women have no financial resources to hire legal representation.\textsuperscript{384} The most recent World Economic Forum Global Gender Gap Report indicates that women’s economic participation in Tanzania has declined drastically in the past seven years.\textsuperscript{385} One possible cause of this financial inequality is the low education achievement rates indicated by the report, particularly in tertiary education.\textsuperscript{386} Perhaps the largest reason

\begin{footnotesize}
\begin{enumerate}
\item Convention to Eliminate All Forms of Discrimination Against Women art. 2(a), Dec. 18, 1979, 1249 U.N.T.S. 13, [hereinafter CEDAW].
\item Lilongwe Declaration, supra note 117, art. 1 (emphasis added).
\item Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).
\item Id.
\item World Economic Forum, Gender Gap Report 2013, at 355 (2013). According to the report, Tanzania ranked 1\textsuperscript{st} in economic participation gender gap index in 2006. In 2009, that ranking had dropped to 52\textsuperscript{nd}. This year, the country ranks 70\textsuperscript{th} out of 136 countries.
\item Id. at 334. Tanzania ranked 119\textsuperscript{th} out of 136 countries for women in tertiary education. The report is missing secondary education information, but the primary education ranking is 74\textsuperscript{th}. The overall education ranking is 118. The literacy ranking is 112\textsuperscript{th}.
\end{enumerate}
\end{footnotesize}
Tanzanian women lack financial resources for legal assistance is that monetary control within families is generally relegated to the males.\textsuperscript{387} Although Tanzanian women often work more days and longer hours than men, they work in unpaid, informal employment or, if paid, earn half of what a man would earn.\textsuperscript{388} Women in Tanzania, particularly in rural areas, are thus dependent upon the men of the family to provide money for legal expenses.

b. FAMILY ROLES AND DYNAMICS IMPEDE ACCESS TO LEGAL AID FOR WOMEN

In addition to financial barriers, cultural gender roles and family dynamics may serve to suppress women’s independence and empowerment, which, in turn, hinders access to legal aid. One interviewee noted that women in Tanzania are not encouraged to express themselves assertively and may be discouraged from seeking legal representation.\textsuperscript{389} According to this source, families often advise women to “bear with the man” if they find themselves in an unhappy marriage.\textsuperscript{390} The decision-making authority rests with the male members of a family, and women often feel powerless to make their own choices.\textsuperscript{391} One interviewee told a story about an educated woman whose brothers were forcing her to marry a much older man who with three other wives.\textsuperscript{392} Despite the fact that it is a crime to force a woman into an arranged marriage, it is a prevalent problem in Tanzania and is rarely reported.\textsuperscript{393} Thus, the cultural suppression of women’s ability to make independent decisions is often severe, a factor which


\textsuperscript{388} Id.

\textsuperscript{389} Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).

\textsuperscript{390} Id.

\textsuperscript{391} Id.; Mark J. Calaguas et. al, Legal Pluralism and Women’s Rights: A Study in Postcolonial Tanzania, 16 COLUM. J. OF GENDER & L. 471, 543–44 (2007). ("Tanzanian women are traditionally socialized from early on to believe that the man is head of the household, [and] that women are less intelligent and more emotionally unstable than men.").

\textsuperscript{392} Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).

\textsuperscript{393} Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013); Tanzania: Girls War on Early Marriages, MAKE EVERY WOMAN COUNT (Oct. 19, 2012), available at http://www.makeeverywomancount.org/index.php?option=com_content&view=article&id=4403:tanzania-girls-war-on-early-marriages&catid=42:general&Itemid=135 (noting that data on forced marriages is hard to find because the marriages are often conducted in secret and the women are unwilling to make their ordeals public).
hinders access to legal aid. Furthermore, women in Tanzania frequently work twelve to fourteen hours a day, even on weekends and public holidays, in agriculture and sustenance roles, which makes it difficult to take the time to seek representation.

c. PROHIBITION OF ADVOCATES IN PRIMARY COURTS IMPEDES ACCESS TO LEGAL AID FOR WOMEN

The crimes most commonly committed by women in Tanzania are low-level offences, such as theft, insult, and assault, which are typically tried in Primary Court. Primary Court proceedings pose particular problems for women because these courts may apply customary law, and lawyers are not allowed to appear. This leads to family dynamics and customary law influencing women’s legal proceedings. As one interviewee noted, customary law is patriarchal in concept and execution, so, if possible, women in Tanzania try to avoid Primary Courts when filing civil suits. Instead of prosecutors and advocates, community court assessors advise the magistrate judge on whether customary law should govern the case and how the matter would be resolved. Customary law can be highly discriminatory against women, and is, therefore, not the ideal choice for increasing female access to justice. Although it is possible to remove a case from Primary Court to District Court, most people are unaware of this option and lack information on the procedural steps to affect such a transfer.

394 Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).
396 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
397 Id.; Telephone interview with NGO 1.1, in Lexington, Va. (Dec. 12, 2013); The Magistrates’ Courts Act, 1984, Act No 2 of 1984, s 33(1) (Tanz.).
398 Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013).
399 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
400 AGINATHA RUTAZAA, TANZANIAN WOMEN AND ACCESS TO LAW: THE CASE OF KILIMANJARO 14 (2005), available at http://civil.sanford.duke.edu/papers/rutazaa.pdf (“The main arguments were that the customary practices are highly discriminatory and also lack logical ideas. The customary practices are contradicting with most of the Government laws and policy.”).
401 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013). Apparently the procedure for transferring a case out of Primary Court is quite simple, however, most criminal defendants are unaware of this option. One must write a letter to the District Court asking that the case be transferred. The request is always
2. NEW PROGRAMMES HAVE INCREASED ACCESS TO LEGAL AID FOR CHILDREN

UNICEF has recently begun a pilot programme with WLAC to provide free legal aid to juvenile criminal defendants. The programme puts “child supporters” in the juvenile courts, prisons, and police stations. These child supporters are adult volunteers who maintain a permanent presence within these locations and contact WLAC when a child is accused of a crime. The programme helps only those children who cannot afford, or whose relatives cannot afford, legal representation. The programme represents children accused of all types of crimes, and it is not limited to capital offenses as in the state brief system. Although still in its infancy, this programme has shown considerable progress. In one case, a child had been in pre-trial detention for three months, and his case had not made any progress towards trial. WLAC was able to intervene on the boy’s behalf, and the case soon resulted in a non-custody sentence of six months.

3. THE URBAN CONCENTRATION OF ADVOCATES AND PREVALENCE OF RURAL POVERTY DECREASE ACCESS TO LEGAL AID FOR RURAL RESIDENTS

Rural residents face particular challenges in accessing legal aid and the judicial system in general. Many districts are large and lack serviceable roads, requiring residents to walk long distances to reach legal aid providers and courthouses. Furthermore, attorneys are located

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402 Id.
403 Id.
404 Id.
405 Id.
406 Id.
407 Id.
408 Id.
409 Id.
410 Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013).
411 Id.
predominantly in the large, urban centres of the country. One source estimated that 98% of all practicing advocates are located in Dar es Salaam, the country’s most populous city. This lack of access poses a considerable problem, considering that an estimated 75% of Tanzania’s population lives in rural areas. One paralegal discussed the success that her NGO has had using paralegals in rural areas. Through this programme, individuals are selected from each ward, given paralegal training by the NGO, and returned to their rural districts to provide legal aid services. These paralegals work for free and primarily offer advice and counselling to those who visit them. Occasionally, if a paralegal encounters a very serious matter, he or she can refer it to the NGO’s staff attorney.

4. **THE ROLE OF PARALEGALS IN ENSURING EQUALITY OF ACCESS TO LEGAL AID**

a. “**ADVOCATES ARE NOT ENOUGH. WE NEED PARALEGALS**”

Paralegals currently play a significant role in the legal aid system and have significant potential to increase equality of access. The Lilongwe Declaration recognizes the role that paralegals must play to ensure access to legal aid in Africa, stating the following:

[It has all too often been observed that there are not enough lawyers in African countries to provide the legal aid services required by the hundreds of thousands of persons who are affected by criminal justice systems. It is also widely recognized that the only feasible way of delivering effective legal aid to the maximum number of persons is to rely on non-lawyers, including law students, paralegals, and legal assistants.]

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412 **DANISH INSTITUTE**, *supra* note 6, at 89.
414 UNODC, **ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS IN AFRICA: SURVEY REPORT 12** (2011).
415 Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).
416 Interview with NGO 2.1, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).
417 Interview with NGO 2.1, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).
418 Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013). Most legal aid NGOs have at least one staff attorney who can represent particularly troublesome cases, or who can at least refer the case to an advocate who will hear it. *Id.*
420 Lilongwe Declaration, *supra* note 117, art. 7.
The paralegal legal aid system in Tanzania is still in its development stage, but, despite initial resistance, it is now met with a high degree of support.\(^{421}\) One interviewee noted that, although his legal aid organisation was hesitant to utilize paralegals, “\[o\]ver the years, the organisation came to accept that paralegals are necessary in order to reach the needy.”\(^{422}\) In other words, using paralegals allows more individuals to get the basic legal advice they need, both in cities and rural areas.

Using paralegals to increase access to legal aid has many advantages. First, paralegals provide services at a much lower cost than lawyers.\(^{423}\) Second, it is possible to train numerous paralegals to provide legal aid over a wide geographic area. Lawyers, by contrast, are mostly limited to cities, where they have a profitable and steady client base.\(^{424}\) Third, paralegals are often closer to the communities they serve than the lawyers.\(^{425}\) This may be particularly useful in understanding the subtleties of community issues and customary law, as well as forming workable solutions during mediation.\(^{426}\) Fourth, paralegals utilize a wider set of legal forums to provide legal aid, such as mediation or community-level organisation; lawyer-centred legal aid programmes are less likely to pursue these options.\(^{427}\) Fifth, paralegals have been particularly useful for women. Women’s legal issues are commonly related to family and property law, and

\(^{421}\) Interview with Gov’t Org., in Dar es Salaam, Tanz. (Oct. 18, 2013) (“Using paralegals to provide legal aid is really the best idea and we are pushing for it in the new law.”).

\(^{422}\) Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013) (noting that initially the legal aid organization was worried about using paralegals because of concerns that “it would compromise the quality of legal services and legal advice”).


\(^{424}\) Id.

\(^{425}\) Id.

\(^{426}\) Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013) (noting that mediation can be a particularly effective medium for paralegals to work in because they can help the parties understand the legal issues and work collaboratively to form a solution that is practical for all parties).

\(^{427}\) Id.; Maru, supra note 423, at 428. (“\[P\]aralegals offer a promising methodology of legal empowerment that fits between legal education and legal representation, one that maintains a focus on achieving concrete solutions to people’s justice problems but which employs, in addition to litigation, the more flexible, creative tools of social movements.”).
women generally have less money than men to seek legal help.\textsuperscript{428} Consequently, paralegals provide the legal expertise women need without the fees that would otherwise make legal counsel prohibitive expensive.

b. **CURRENT WEAKNESSES UNDERMINE THE POTENTIAL OF PARALEGALS TO EXPAND ACCESS TO QUALITY LEGAL AID**

Despite the enormous potential of paralegals for expanding access to legal aid, the Tanzanian paralegal system faces a number of issues that undermine their efficacy. One major weakness of the current paralegal system is that paralegals’ work is largely unmonitored. Where there is monitoring, it “is a consequence of policies adopted by individual organisations, not the result of general regulations or external involvement.”\textsuperscript{429} The proposed Legal Aid Bill hopes to address this concern by providing for a national body tasked with monitoring legal aid providers, including paralegal services.\textsuperscript{430}

A second weakness is the inconsistent level and frequency of paralegal training. There is no uniform paralegal training curriculum or manual, and, as a result, some paralegals may have received cursory and insufficient training.\textsuperscript{431} Fortunately, many civil society legal aid organisations have addressed this issue, and most have adopted rules or guidelines on paralegal training. They have also collaborated, creating a relatively high level of coherence across training programmes despite the lack of national-level guidance.\textsuperscript{432}

\begin{footnotesize}
\begin{enumerate}
\item Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013).
\item See DANISH INSTITUTE, \textit{supra} note 6, at 107–108.
\item Draft Legal Aid Bill, \textit{supra} note 217, § 42.
\item See PENAL REFORM INT’L & BLUHM LEGAL CLINIC OF NORTHWESTERN UNIV. SCHOOL OF LAW, ACCESS TO JUSTICE IN AFRICA AND BEYOND 291 (2007) [hereinafter ACCESS TO JUSTICE IN AFRICA AND BEYOND].
\item See DANISH INSTITUTE, \textit{supra} note 6, at 102(noting that initial paralegal training generally lasts from one to four weeks after which paralegals are supervised by advocates at the partner NGO; training is given in areas such as land law, labour law, inheritance law, women’s and children’s rights, legislation relevant for sexual offenses, legal drafting, public interest litigation, paralegalism and access to justice, strategic management, office management, proposal and report writing, monitoring and evaluation); Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013).
\end{enumerate}
\end{footnotesize}
current efforts to establish a uniform paralegal training programme to ensure consistent, high-quality legal aid services by paralegals.433

c. Challenges Paralegals Face in Providing Legal Aid

Paralegals in Tanzania currently face many challenges limiting their ability to expand access to legal aid. Specifically, it is difficult for paralegals to do the following: (1) access the detained early on and in police stations; (2) balance their paralegal work with their paid careers; (3) cover travel and certification costs; and (4) work independently from advocates.

First, it is difficult for paralegals to access the detained early on and in police stations. Such access is important because “paralegals can better explain to the arrestee why he [or she] is there, what the accusation is, and what the possible sentences could be.”434 Currently, paralegal access to the accused depends on the discretion of the police officer in charge.435 In general, police officers are more likely to allow paralegals to access victims rather than the criminally accused, which leads to unbalanced access to legal aid and undermines justice.436 Training on the benefits and qualifications of paralegals may encourage police officers to allow paralegals greater access to detainees. One interviewee spoke to this point, stating that officers who received training were more open to allowing paralegals to offer assistance early on, “but others see it as a bad thing because it makes their job harder and more difficult to get information.”437 Training on the role of paralegals could help police officers identify the benefits of collaboration

433 Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013) (noting that TLS is working to assist legal aid organizations to implement a national training programme and to conduct periodic monitoring of various legal aid organizations to ensure quality service).
434 Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).
435 Id.
436 Id.
437 Id.
with paralegals, as well as understand that paralegals can help develop cases and further train officers on the law.  

Second, because most paralegals are volunteers, they are often challenged with balancing their paralegal work with their paid careers. There is inevitably a conflict between these schedules, which can undermine effective, consistent legal aid services by paralegals.

Third, related to the lack of payment for paralegal services, paralegals often incur prohibitive travel and certification costs. Paralegals sometimes travel 20-30 kilometres in order to provide services to more rural villages, all without reimbursement for fuel or bus fare. Similarly, the proposed Legal Aid Bill states that paralegals must be certified, but it does not specify how such certification will be financed. If paralegals cover their own certification costs, as feared by one interviewee, it will add a significant financial barrier to becoming a paralegal. The same interviewee predicted that paralegals might have to start charging fees in order to cover these costs. Ideally, the government would provide funding for travel and certification, but, as stated by one interviewee, it has not yet prioritized the legal aid funding that would cover these costs.

Fourth, the strict limitations on services paralegals can provide, and their consequent dependence on advocates, undermines the potential expansion of legal aid services through paralegal work. Currently, paralegals are tethered to advocates, who must sign off on what paralegals prepare before their work can be used. The rationale is that paralegals are not

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440 Id.
441 Draft Legal Aid Bill, supra note 217, § 31.
442 Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013).
443 Id.
444 Id.
445 Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).
uniformly trained or regulated and, therefore, need supervision.\textsuperscript{446} For competent paralegals, this requirement can impede their ability to work effectively and efficiently. One interviewee advocated recognizing paralegals as qualified individuals, and allowing them to prepare documents and appear before the court independently.\textsuperscript{447} The proposed Legal Aid Bill does not significantly alter this system. To allow paralegals greater independence, two things are needed: (1) a unified system of certification that ensures paralegal competence, and (2) revision of the law to expand the legal services paralegals may engage in independently.

C. RECOMMENDATIONS

There are a number of steps that the government, civil society, and the legal profession in Tanzania should take to ensure equality of access to legal aid for women, children, and rural residents. The UNICEF pilot programme, increasing access to legal aid for children, should be replicated in the adult criminal law system. Paralegals, like child supporters, should become the first point of contact for someone charged with a crime. Several sources indicated that defendants would fare better in the criminal justice system if they had representation early in the proceedings.\textsuperscript{448} Allowing paralegals to be present during the police investigation and interrogation phases would facilitate access to legal aid, as these paralegals could contact advocates for indigent defendants in need of legal representation. As another way to further paralegal access, the government should train law enforcement on the role of paralegals. Further, as previously stated, Tanzanian law should be amended to allow for paralegal or advocate representation in Primary Courts. This representation could help ensure that customary law is not being applied discriminatorily against women. The government and civil society

\textsuperscript{446} Id.
\textsuperscript{447} Id.
\textsuperscript{448} Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013); Interview with NGO 4, in Dar es Salaam, Tanz. (Oct. 17, 2013).
should consider adopting programmes to increase the autonomy of women in the family structure; this would ensure that women are given the educational and societal opportunity to manage finances independently. The legal profession should incentivise more lawyers to practice in rural regions of Tanzania—perhaps utilizing law school loan repayment as one possible tool. The proposed Legal Aid Bill should be adapted to offset funding for the costs paralegals incur in providing legal aid.

d. LACK OF ADEQUATE PROTECTION FOR VICTIMS UNDERMINES ACCESS TO JUSTICE

The right to counsel for victims of crime is well established under international law and of the utmost importance in access to justice. The U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems speaks to the right to counsel for victims, stating that “[w]ithout prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to victims of crime.” The guidelines also set forth a variety of assurances that must be made to ensure that the victim has access to legal aid.

450 Id. at guideline 7, para. 48.

Without prejudice to or inconsistency with the rights of the accused and consistent with the relevant national legislation, States should take adequate measures, where appropriate, to ensure that: (a) Appropriate advice, assistance, care, facilities and support are provided to victims of crime, throughout the criminal justice process, in a manner that prevents repeat victimization and secondary victimization; (b) Child victims receive legal assistance as required, in line with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime; (c) Victims receive legal advice on any aspect of their involvement in the criminal justice process, including the possibility of taking civil action or making a claim for compensation in separate legal proceedings, whichever is consistent with the relevant national legislation; (d) Victims are promptly informed by the police and other front-line responders (i.e., health, social and child welfare providers) of their right to information and their entitlement to legal aid, assistance and protection and of how to access such rights; (e) The views and concerns of victims are presented and considered at appropriate stages of the criminal justice process where their personal interests are affected or where the interests of justice so require; (f) Victim services agencies and non-governmental organizations can provide legal aid to victims; (g) Mechanisms and procedures are established to ensure close cooperation and appropriate referral systems between legal aid providers and other professionals (i.e., health, social and child welfare providers) to obtain a comprehensive understanding of the victim, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs. Id.
Although involvement of legal aid providers and NGOs in criminal justice tends to be limited to representation of victims, there is no explicit protection for victims under Tanzanian law. This has resulted in essentially no protection for victims of crime. One source stated, “[v]ictims are protected in theory, but there is no protection in practice for victims who choose to testify because the police don’t actually do much to protect them.”451 Another source expounded on this, saying that “rural areas can be a [particular] challenge for women victims,”452 while another posited that “[v]ictims of sexual harassment need…consultation.”453

Civil society legal aid providers, as noted above, do occasionally offer legal aid to victims of crime. An employee of one paralegal centre said that “[w]hen it comes to criminal issues, [we] work predominantly with victims.”454 Another legal aid provider noted that the majority of criminal cases are based on physical violence, like rape or assault.455 Given the cultural stigma against representation of criminal defendants, most legal aid providers would rather work with victims than those accused of committing crimes.456 Very few legal aid providers actually work in the criminal sector, so the number of legal aid providers assisting victims remains low.

e. **RIGHT TO COMMUNITY LEGAL EDUCATION**

1. **INTERNATIONAL LAW ESTABLISHES A RIGHT TO LEGAL EDUCATION AND TO BE INFORMED OF ONE’S RIGHTS UNDER THE LAW**

   International law has defined the right to legal aid broadly; this right includes the subsidiary right to community legal education. The U.N. Principles and Guidelines on Access to

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452 Interview with Gov’t Org., in Dar es Salaam, Tanz. (Oct. 18, 2013).
453 Interview with Prosecutor, in Dar es Salaam, Tanz. (Oct. 18, 2013).
454 Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013).
456 Id.
Legal Aid in Criminal Justice Systems state that “[l]egal aid is intended to include the concepts of legal education [and access to legal information].” The U.N. Principles and Guidelines go on to require that states inform the general public of the right to legal aid, explain what it entails, and ensure that the public knows how to access it. Furthermore, the U.N. Principles and Guidelines require that special attention be given to raising awareness of the availability of legal aid among marginalized populations and suggests that various media, including local newspapers and radio, be utilized for this purpose.

The Lilongwe Declaration’s Tenth principle discusses the rationale underlying the right to legal education, stating that

[i]gnorance about the law, human rights, and the criminal justice system is a major problem in many African countries. People who do not know their legal rights are unable to enforce them and are subject to abuse in the criminal justice system.” The Declaration echoes the U.N. Principles in mandating that governments provide legal education to its citizens, with a particular focus on vulnerable populations.

Promoting legal literacy through legal education and advocacy. Governments should ensure that human rights education and legal literacy programmes are conducted in educational institutions and in non-formal sectors of society, particularly for vulnerable groups such as children, young people, and the urban and rural poor. Governments are encouraged to ensure that human rights and legal documents are translated and made widely available. International and regional bodies are encouraged to make available human rights documentation in relevant languages. Id.
2. FINDINGS: DESPITE COMMUNITY EDUCATION EFFORTS BY CIVIL SOCIETY, MOST TANZANIANS ARE UNINFORMED OF THEIR LEGAL RIGHTS

Fortunately, many of the legal aid service organisations within Tanzania have adopted the broad definition of legal aid described above and are involved in community education initiatives. Civil society and governmental organisations utilize various media outlets to increase public awareness of legal rights and the availability of legal aid services. The Legal and Human Rights Centre, for example, has a live television programme, during which they answer legal rights questions supplied by the general public.462 The Centre also has three other television programmes, which offer information on a different legal topic each month.463 Similarly, the Legal Aid Clinic at the Law School of the University of Dar es Salaam provides legal education through periodic radio and newspaper commentaries.464 It has also used television programmes in the past to disseminate knowledge on various legal rights.465 Some legal aid organisations have developed pamphlets and “self-help” booklets to assist pro-se clients, although most of these materials have focused on civil matters as opposed to criminal defence.466 WLAC has developed booklets and distributed posters advertising their services in strategic locations, such as police stations.467 TLS has established a National Legal Aid Day, which provides on-site legal education and advice throughout the country.468 Other organisations have offered “mobile” or “pop-up” clinics that travel to rural villages to spread awareness of legal aid assistance and

463 Id.
464 Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).
465 Id. (noting that these community education efforts have led to widespread awareness within Dar es Salaam of the existence of the Legal Aid Clinic and that many of the Clinic’s clients initially learn of the Clinic through these programmes).
466 Interview with Prison Official, in Dar es Salaam, Tanz. (Oct. 17, 2013) (noting that TANLAP has developed pamphlets recently on criminal law topics).
467 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
468 DANISH INSTITUTE, supra note 123, at 79.
legal rights generally.469 The Legal Services Facility, a basket fund supporting the development of the legal aid system in Tanzania, is working on pilot projects for raising awareness of legal rights, including one project whereby paralegals use SMS text messages to send legal rights “tips” to people in rural areas (where, despite the lack of electricity, approximately 50% of persons still have access to a cell phone).470

Although the current legal aid community in Tanzania is actively promoting education, there are still reports of widespread ignorance about legal rights and the availability of free legal assistance.471 One interviewee stated that most people do not know what paralegals are, despite their recent geographic and numerical expansion.472 Other sources noted that most people do not know that they have a right to free legal aid or about other rights that are granted to the criminally accused.473

3. RECOMMENDATIONS

While civil society has been successful in raising awareness regarding the existence of legal aid providers in major cities, more effort must be made to inform the public of such services in rural areas of Tanzania. Additionally, more emphasis should be placed on expanding public knowledge of the rights of the criminally accused, as well as other basic information about the criminal justice system as a whole. The Tanzanian government should establish an institutional body specifically charged with informing the public of legal aid issues. This body should ensure that community education efforts are conducted throughout the country, especially in rural areas. Furthermore, civil society organisations should explain the roles of various legal

469 Id. at 93.
470 Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013).
472 Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013).
473 Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013) (noting, for example, that most people are not aware that they are able to move a criminal case from Primary Court to District Court for the purpose of the availability of legal representation).
aid providers, including the role of paralegals. Finally, legal aid providers should raise awareness regarding the dangers of bush lawyers and ensure that the public knows how to make complaints about poor quality legal providers.

VI. REMEDIES AND SAFEGUARDS

A. GOVERNMENT RESPONSIBILITY FOR HUMAN RIGHTS MONITORING

According to international law, states are obligated to promote and protect human rights at the national level. The National Human Rights Protection System (NHRPS) is composed of laws, policies, and institutions that promote and protect human rights at the national level. The NHRPS is a system of checks and balances, put in place to ensure that state institutions “fulfil their duty to respect, protect and uphold human rights.” In order to do so, states should incorporate international human rights standards into national laws and policies. The NHRPS is comprised of national institutions including remedial bodies that have the “statutory power to protect and promote human rights” within Tanzania. These institutions include the following: the Police Force, Prison Force, Judiciary, Commission for Human Rights and Good Governance (CHRAGG), Tanzania Law Reform Commission, and the Prevention and Combating of Corruption Bureau (PCCB).

The Commission for Human Rights and Good Governance (CHRAGG) plays a particularly important role in the promotion of human rights in Tanzania. As an officially designated National Human Rights Institution, its roles are well defined in international

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474 LEGAL HUMAN RIGHTS CENTRE, supra note 3, at 214.
475 Id.
476 Id. (emphasis omitted).
478 LEGAL HUMAN RIGHTS CENTRE, supra note 3, at 214.
479 Id.
treaties. Some of the basic duties of an NHRI include the following: submitting reports on human rights issues to the government; monitoring and reporting human rights violations; encouraging ratification of international human rights standards; training, raising awareness, and educating people about human rights; investigating violations and handling complaints; contributing to legal, military, and law enforcement reform; advising the government; cooperating with international human rights bodies; and following up on all recommendations they make. Actual performance by these organisations, however, is inhibited. In Tanzania the Commission is not free from political control, and statutory provisions limit its independence. For example, Article 130(3) of the Constitution gives the President significant power to act against the Commission’s interests.

The NHRPS is also composed of state organisations, which are responsible for the security of persons and their property. The main role of the Tanzania Police Force (TPF) is protecting people’s rights. The TPF is required, by the Police Force and Auxiliary Services Act 524, to oversee the preservation of peace, maintenance of law and order, prevention and detection of crime, apprehension and guarding of offenders, and protection of property. Police officers are obligated to know and apply international human rights standards in their operations. In theory, the police must respect and protect human dignity while maintaining and upholding human rights for everyone.
B. SANCTIONS FOR ATTORNEYS

1. POWER OF TLS TO REPRIMAND OR SANCTION ATTORNEYS

The Tanganyika Law Society (TLS) is a semi-autonomous government entity with the ability to receive complaints about advocates. They receive so many complaints, however, that TLS dismisses many of them on technical grounds, such as failure to sign the complaint, missing dates, and other non-substantive details. According to one source, this grievance system is inefficient and leaves the merits of the complaints unconsidered.

2. POWER OF COURTS TO SANCTION ATTORNEYS

A court has the power to sanction an attorney, but the complaint must come from the client. Judges do not have the ability to sanction an attorney sua sponte unless the attorney fails to show up to court altogether. This procedure is uncommon, however, and one interviewee explained the rationale as follows: “[i]f the case involves a monkey who ate maize, you cannot go to court and ask a baboon to help you.” Furthermore, many people just want to get out of court as soon as possible, so they will not bother to file a complaint against their advocates because they do not want to delay justice further.

C. SANCTIONS FOR PARALEGALS

Under the current system, paralegals are not formally certified or monitored. Presumably, the NGOs that train paralegals monitor their success and are responsible for their continued education and training. One NGO employee mentioned that his organisation has a
yearly paralegal conference, during which new paralegals are trained and existing paralegals are recognized and given updated information.\textsuperscript{498} Although this source did not think it was necessary to monitor paralegals, because “it is their own life,” he did stress that it is important to “empower” paralegals.\textsuperscript{499} This conference, he felt, was a way to empower them by making them feel important and like part of a unified group.\textsuperscript{500} The proposed Legal Aid Bill provides a way to formally sanction a paralegal by taking away his or her certificate to practice.\textsuperscript{501}

D. CONSEQUENCES OF INEFFECTIVE ASSISTANCE OF COUNSEL IN STATE BRIEF CASES

Judges “presume that the attorney is not smart,” so they will not sanction an attorney for being ineffective during state brief cases.\textsuperscript{502} One interviewee noted that, since there is no law that requires firms to take pro bono state brief cases, there should be no sanctions if firms do a poor job representing pro bono clients.\textsuperscript{503}

VII. POSITIVE OUTLOOK: THE PROPOSED LEGAL AID BILL

A. AN OVERVIEW OF THE PROPOSED LEGAL AID BILL

The government of Tanzania is currently in the process of passing a comprehensive Legal Aid Bill.\textsuperscript{504} A preliminary version of the proposed Bill was used to write the following sections, which examine the language and potential impact of the proposed Bill. Although the proposed Bill’s provisions and implications for the legal aid system in Tanzania are explored in depth here, one interviewee cautioned that bills often change during the legislative review

\textsuperscript{498} Interview with NGO 2.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
\textsuperscript{499} Id.
\textsuperscript{500} Id.
\textsuperscript{501} Draft Legal Aid Bill, supra note 217, §§ 24, 44.
\textsuperscript{502} Interview with NGO 2.1, in Dar es Salaam, Tanz. (Oct. 15, 2013).
\textsuperscript{503} Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013).
\textsuperscript{504} Draft Legal Aid Bill, supra note 217 (providing for the establishment of the Legal Aid Regulatory Authority, to ensure the provision of accessible, affordable, credible and sustainable legal aid services to indigent persons, to recognize and regulate paralegal works, and for other related matters).
process. Therefore, the draft that is referred to here as the “Legal Aid Bill” may or may not be implemented as represented here. However, its provisions may be useful in analysing the potential changes and the resulting implications.

The Legal Aid Bill, if enacted, would provide an excellent foundation for building the necessary legal framework for efficient and effective provision of legal aid in Tanzania. If enacted into law, the Bill will identify, offer resources to, coordinate the efforts of, and regulate providers of legal aid services. The Bill will establish an institution named the Authority, which will be charged with coordinating legal aid in Tanzania. The Authority will also be required to provide formal recognition of paralegals and establish the duties paralegals will be permitted to perform. Moreover, the Authority will set out a quality assurance framework, to which all legal aid providers in Tanzania would adhere. The Bill will also establish a Board of the Authority, and give it broad powers to do “all things necessary to regulate provision of legal aid in accordance with the provisions of this Act.”

To prepare for drafting the proposed Legal Aid Bill, the government appointed a task force to study how to best accommodate paralegals and organise legal aid within Tanzania. This taskforce was comprised of government stakeholders and existing legal aid providers.

505 Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013).
506 Draft Legal Aid Bill, supra note 217.
507 Id. § 4.
508 Id. § 5.
509 Id. § 31.
510 Id. § 5.
511 Id. § 6.
512 Id. § 12 (providing a list of functions included within the Board’s power).
514 Id.
conducted an in-depth study of national, regional, and international legal aid and regulatory frameworks and practices in Uganda, Malawi, Kenya, Zambia, and South Africa.\textsuperscript{515}

As previously noted, only defendants charged with capital offenses currently receive legal aid through the state brief system in Tanzania.\textsuperscript{516} If enacted, the proposed Bill would attempt to expand the provision of legal aid to both civil and criminal cases.\textsuperscript{517} Under the Bill, “an indigent who is arrested, detained or accused of a crime or wants to institute or defend a civil matter shall have access to legal advice, assistance and/or legal representation.”\textsuperscript{518} The Authority is charged with prescribing the level of income and other factors which qualify a person as indigent.\textsuperscript{519}

1. **The Proposed Bill Fails to Adequately Provide for Legal Aid in Criminal Cases.**

Although the proposed Bill explicitly states that legal aid should be provided in all criminal cases, as drafted, its language fails to ensure that this practice will result. Unfortunately, the Bill’s language that establishes legal aid in criminal proceedings does not explicitly expand the provision of legal aid in criminal cases beyond capital cases. In fact, the language remains essentially the same as that in the current Legal Aid Criminal Proceedings Act.\textsuperscript{520} The Bill provides that:

Where in any criminal proceeding it appears to the judge presiding over the proceedings that it is desirable, \textit{in the interests of justice}, that an accused should have legal aid in the preparation and conduct of his defence or appeal, as the case may be, and that his means are insufficient to enable him to obtain such aid, the judge may certify that the accused ought to have such legal aid and upon such certificate being issued the Registrar shall, \textit{where it is practicable so to do}, assign to the

\textsuperscript{515} Id.
\textsuperscript{516} Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013).
\textsuperscript{517} Draft Legal Aid Bill, \textit{supra} note 217, §§ 20 & 21.
\textsuperscript{518} Id. § 20.
\textsuperscript{519} Id. § 21.
\textsuperscript{520} The Legal Aid (Criminal Proceeding) Act, 2002, Act No 21 of 1969 (Tanz.).
accused an advocate for the purpose of the preparation and conduct of his defence or appeal, as the case may be.\footnote{Draft Legal Aid Bill, \textit{supra} note 217, § 36(1) (emphasis added).}

As drafted, this provision leaves the decision of whether a criminal defendant should be appointed an advocate at the discretion of the presiding judge. Previously, “in the interest of justice” was interpreted to apply legal aid in capital criminal cases.\footnote{Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with Legal Aid Clinic, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with NGO 1.1, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with Judge, in Dar es Salaam, Tanz. (Oct. 17, 2013); Interview with Prison Official, in Dar es Salaam, Tanz. (Oct. 17, 2013).} Furthermore, the language “where it is practicable so to do” both qualifies when legal aid must be provided and lends the government a loophole to deny legal aid to criminal defendants. In a country where the government is facing significant funding issues and courts are backlogged, qualifying language such as “in the interest of justice” and “where it is practical so to do” strips the provision of any real force.

The proposed Bill seeks to facilitate access to legal aid in criminal proceedings by establishing certain duties that police officers, magistrates, and prison officers must undertake.\footnote{Draft Legal Aid Bill, \textit{supra} note 217, § 37(b).}

This provision states the following:

1. If a police officer arrests and \textit{before any interrogation commences} a child or a person who claims or \textit{appears to be indigent} he shall direct that child or advise the person to contact the relevant legal aid provider or the Authority for legal aid.
2. A magistrate who is faced with an unrepresented child or a person who appears to him to be an indigent shall advise or direct the person or the child respectively to seek legal aid by contacting relevant legal aid provider or the Authority for legal aid.
3. Any prison officer who has been charged with keeping custody of unrepresented child or indigent \textit{persons pending trial}, or convicted but not sentenced, shall notify, advise and assist the person to contact the Authority or the legal aid provider…\footnote{Id. § 37(b) (emphasis added).}

This provision would expand access to legal aid by placing the affirmative duty to inform upon the police, magistrates, and prison officials who most often come into contact with the criminally accused. As discussed previously, access to legal aid in Tanzania is greatly hindered by the lack
of knowledge among criminal defendants regarding their right and ability to obtain legal aid. This provision, although a step in the right direction, could be improved by adapting the language to require that officials notify all accused persons of their right to legal aid, as opposed to doing so only for those who “appear to be indigent.”

2. THE BILL AIMS TO IMPROVE THE QUALITY AND REGULATION OF LEGAL AID PROVIDERS.

The proposed Bill seeks to improve the quality and regulation of legal aid providers by establishing the following: (1) a uniform licensing and certification system; (2) a certification system for those seeking legal aid; (3) a code of conduct for all legal aid providers; (4) confidentiality requirements between advocate and client; (5) a system for monitoring and evaluating legal aid providers; (6) sanctions for those who violate the mandate of the bill; and (7) a Legal Aid Fund.

The proposed Bill would establish a licensing and certification system for legal aid providers within Tanzania. According to the proposed bill, this system would require legal aid providers to meet certain educational and experiential requirements in order to qualify for certification and licensing. In contrast to the current system, this certification and licensing would be a pre-requisite for legal aid providers and paralegals to offer legal aid to those in need. Under the proposed bill, any person who provides legal aid without a valid certificate will be

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525 Id. § 30.
526 Id. § 30(2). The draft Bill provides that:

For the purposes of application for the certificate the Legal Aid Providers shall satisfy the following minimum requirements: a. Be an institution registered under the laws of Tanzania; b. Must be providing legal aid as one of the core objectives of that institution; c. It should have office premises, office facilities, basic legal materials and library; d. Key staff members must be legal literate and at least one of them should have an LL.B. except for the paralegal organizations; e. Have in possession Client-Service Charter, or Constitution and documents on internal administrative systems and organizational structure. f. Information relating past activities of the organization if applicable, if any. g. Financial Audit Reports of the past two years, if any. h. Any other information which may be required by the Board. Id.
committing an offense subject to severe fines.\textsuperscript{527} In order to renew their certificates and receive further disbursements from the Authority, legal aid providers will be required to submit annual reports.\textsuperscript{528}

Additionally, the Bill provides a uniform system in which indigent individuals may apply for legal aid. To apply, individuals must fill out a form and submit it to the Authority for approval or rejection.\textsuperscript{529} If approved, the Authority will grant a certificate that qualifying individuals may then present to legal aid providers to verify that they qualify for aid.\textsuperscript{530} If the individual subsequently fails to meet the criteria for legal aid assistance, the Authority can cancel the certificate.\textsuperscript{531} It is worth noting that, under the Bill, legal aid providers are prohibited from charging a service fee for the provision of legal aid to any qualified indigent.\textsuperscript{532}

The Bill is expected to establish a Code of Conduct, which would govern all legal aid providers, including paralegals.\textsuperscript{533} Legal aid providers who breach the Code of Conduct will be subject to sanctions.\textsuperscript{534} The current draft of the Bill does not detail what the Code of Conduct will include; it does, however, state that the Authority will have the power to amend, vary, or replace it.\textsuperscript{535} Furthermore, the Bill states that the Authority will “monitor and evaluate the quality of legal representation” but it does not specify what would occur if a legal aid practitioner does not meet the set standards.\textsuperscript{536} The expansion of legal aid within Tanzania must be accompanied by strict quality controls. Thus, it is important that the Code provide minimum

\textsuperscript{527} Id. § 38(3) (stating that any person who provides legal aid without a valid certificate within twelve months after of this Act’s effectiveness is liable for a fine between TZS 500,000 and TZS 2,000,000 and upon failure to pay the fine, is committed to the community services under the Community Services Act).
\textsuperscript{528} Id. § 43.
\textsuperscript{529} Id. § 22.
\textsuperscript{530} Id. § 23.
\textsuperscript{531} Id. § 24.
\textsuperscript{532} Id. § 23(2).
\textsuperscript{533} Id. § 39.
\textsuperscript{534} Id. § 39.
\textsuperscript{535} Id. § 29.
\textsuperscript{536} Id. § 44.
quality standards for legal aid services, establish professional standards that all legal aid providers must follow, encourage advocates to carefully and effectively work on the cases that are assigned to them, and specify the procedures for sanctioning breaches of professional conduct.

Notably, the Bill includes a confidentiality provision. If this is successfully implemented, it could strengthen the trust relationship between the legal aid provider and client, thereby solving one of the barriers to successful legal representation mentioned by interviewees.

The Bill establishes a Legal Aid Fund to finance the Authority and activities of legal aid providers. It will be composed of monies appropriated by Parliament, generated by the Authority itself through fees and investments, and loans, grants, and donations made to the Authority by international donors or private actors. One interviewee posited that the government may dedicate more funds towards legal aid once the utility and importance of legal aid is demonstrated through the first phase of the Bill’s implementation. As noted previously, the lack of financial resources available to the government, as well as the government’s prioritization of other public goods, is a large barrier to the establishment of broad availability of legal aid in Tanzania. Thus, the Legal Aid Fund must be adequately funded and prioritized, in order for the Legal Aid Bill to have a real impact. One interviewee expanded on the issue of funding, explaining that, while everyone has the right to legal aid, the government does not have the ability to pay for these services. This same interviewee posited that priority issues such as

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537 Id. § 40.
538 Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013).
539 Draft Legal Aid Bill, supra note 217, § 15.
540 Id.
541 Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013) (noting, in addition, that the Minister of Constitutional Legal Affairs appears supportive of legal aid efforts).
542 Interview with Gov’t Org., in Dar es Salaam, Tanz. (Oct. 18, 2013).
roads, hospitals, and food are most important, and the government has to compromise: “The issue here in Tanzania is the mobilization of the resources.”

The proposed Bill provides for remuneration to advocates assigned capital criminal cases. The Authority will determine the appropriate amount, which will be paid from the Legal Aid Fund. Furthermore, advocates may seek reimbursement for special expenditures arising out of their representation by submitting a claim to the Director General. It is worth noting that the Bill does not establish a specific amount that advocates should be reimbursed. Likewise, it does not provide any remuneration to advocates who take on civil cases. Therefore, it is unclear whether the Bill will be sufficient to encourage and incentivize advocates to take on both criminal and civil legal aid cases.

3. THE BILL PROVIDES FOR THE LEGAL RECOGNITION OF PARALEGALS AND PARALEGAL ORGANISATIONS.

Under the proposed Bill, “the Authority shall license paralegals that have been certified as having gone through the appropriate course approved by the Authority and being of good conduct and integrity.” The Bill further requires that paralegals meet certain education and/or experience thresholds. Under the Bill, a paralegal with a bachelor’s degree in law (LL.B.) is eligible to appear in the Primary Courts, before a resident magistrate, to assist an accused or civil case.

543 Id.
544 Id.
545 Draft Legal Aid Bill, supra note 217, § 36.
546 Id.
547 Id. § 31.
548 Id. § 31(2). The Bill requires that an applicant must have either a bachelor’s degree in law (LL.B.) or Bachelor of Arts in Law Enforcement (B.A.L.E.); a bachelor’s degree in paralegal studies from an approved paralegal programme plus a minimum of one year of paralegal work experience in Tanzania; a bachelor’s degree from an institution accredited by a nationally recognized accrediting agency plus a minimum of three years of paralegal work experience; a diploma in law or paralegal studies from an approved paralegal programme plus a minimum of two years of paralegal work experience; a certificate in law plus a minimum of four years of paralegal work experience; or at least a certificate of ordinary secondary school and has completed necessary training in the relevant field of study approved or recognized by the Authority.
claimant. This provision, if implemented, would mark a drastic change because, as has been previously discussed, advocates and paralegals are currently not allowed in Primary Courts. One interviewee believes that this would help indigent rural citizens who cannot afford advocates. The Bill fails to address the question of how someone attempting to become a paralegal can acquire the necessary experience without a certificate. This is an area of the Bill that needs further clarification.

Although the proposed Bill would provide legal recognition for the role of paralegals in Tanzania, the Bill strictly confines this role; under the Bill, paralegals would be allowed to provide only general legal advice and assistance. The Bill explicitly notes that paralegals must avoid the unauthorized practice of law. Paralegals will also have an affirmative duty during any professional contact to clarify that he or she is not an advocate. Paralegals are currently unable to provide legal services, except under the direct supervision of an advocate. When attending to a case, paralegals are required to present and submit to the court a copy of his or her certificate and a letter from his or her organisation authorizing that particular paralegal to attend to the case at issue.

549 Id. § 31(6). But note that as of the time of the publication of this report, sources state that this provision has been extracted from the proposed bill, leaving defendants in Primary Courts without the right to legal representation. The authors’ copy of the draft contains a provision allowing paralegals in Primary Courts under certain circumstances there was some disconnect between interviewees and the draft whether this will actually take place. One interviewee hoped that, with the new bill, the paralegals will be allowed to assist clients in Primary Court, but this is not currently in the draft. Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013). In terms of the provision allowing paralegals to appear in Primary Courts, one interviewee noted that this provision “caused a lot of problems because the lawyers and judiciary did not agree that paralegals should be allowed to do this….the lawyers were protecting their market…you have to be extremely cautious to sell the idea of paralegals to lawyers—they think that the paralegals will take away their clients.” Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013).

551 Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013); see also Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013) (noting that Primary Courts are important, because, without them, District Courts would be clogged with petty crimes).

552 Draft Legal Aid Bill, supra note 217, § 31(3).

553 Id. § 31(3)(a).

554 Id. § 31(3)(b).

555 Id. § 31 (3)–(4)

556 Id. § 31(5).
Given civil society’s currently low level of involvement in criminal legal aid, it is imperative that paralegals be trained to actively engage in criminal defence assistance. One interviewee discussed a new paralegal training manual, which would contribute to this process.\textsuperscript{557} The manual is a compilation of best practices from several of the larger legal aid providers.\textsuperscript{558} It is hoped that the Authority established under the proposed Bill will implement this new manual to ensure adequate paralegal participation in criminal legal aid.\textsuperscript{559} The first edition of the manual excluded criminal law sections, but the second edition includes them, creating an expectation that paralegals will begin working in the criminal sector.\textsuperscript{560} A comprehensive and unified training system for paralegals will help improve the overall quality of paralegals and the services they provide, by ensuring proper training for all paralegals in all regions of the country.

4. RECOMMENDATIONS: IMPROVING THE LEGAL AID BILL FOR MAXIMUM IMPACT

In sum, the proposed Bill has both strengths and weaknesses. By establishing a Legal Aid Fund, allowing certain paralegals in the courtroom, establishing a sanctions system for misconduct, applying confidentiality to advocate-client communications, and providing a new remuneration scheme for advocates, the Bill addresses some of the most prevalent problems in the current criminal justice system. It may not, however, go far enough. It is important that the Bill strive to provide a meaningful criminal legal aid provision—one that does not contain qualifying language such as “in the interest of justice” or “where practicable so to do.” The drafters should consider adopting further language within the Bill to emphasize the duty and desire of the Tanzanian government to ensure legal aid for criminal defendants and underline the

\textsuperscript{557} Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
\textsuperscript{558} \textit{Id.}
\textsuperscript{559} Interview with NGO 5, in Dar es Salaam, Tanz. (Oct. 18, 2013).
\textsuperscript{560} Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013).
foundational interest of justice in doing so. The current version of the Bill does not adequately promote the notion that legal aid for criminal defendants is at the core of justice, a value statement that must be promoted to combat the anti-criminal defence stigma that is apparent in Tanzania. Additionally, the current draft does not explicitly set the level of pay-per-case pro bono advocates will receive, which raises the question of whether it adequately incentivizes advocates to take on more cases and invest necessary time in them. Furthermore the sufficiency of the Code of Conduct remains unclear because the proposed Bill does not specify what sanctions will be available for disciplining legal aid providers who breach its provisions. Moreover, several interviewees voiced concern over whether the Bill will actually be implemented. Implementation requires both funding and political will. One interviewee commented that, while the Bill would be useful, it would be difficult to implement. The interviewee feared that the Bill would fail, as other laws have, to be sufficiently funded and executed, and that its potential would remain unrealized.

B. ROOM FOR OTHER ACTORS IN THE LEGAL AID SYSTEM

1. LAW SCHOOL LEGAL AID CLINICS

Despite the relative dearth of legal aid providers in Tanzania, the University of Dar es Salaam School of Law Legal Aid Clinic has been working to meet unmet legal aid needs both in civil and criminal cases since 1967. This clinic, the first university-based legal aid clinic in Africa, describes its mission as “increasing access to justice,” and strives to do this through

561 Interview with Prison Official, in Dar es Salaam, Tanz. (Oct. 17, 2013) (“The laws exists but they are toothless, there is nobody to enforce them.”).
562 Id.
564 Id. (noting that the Law of the Child has suffered from inadequate implementation).
565 Id. (noting that the Law of the Child has suffered from inadequate implementation).
566 Id.
four primary activities. First, the clinic strives to educate the public about their legal rights through community outreach programmes. The clinic has used TV programmes, radio programmes, and newspaper advice columns to distribute information on basic legal issues, such as marriage and inheritance rights. Second, the Clinic provides legal assistance to low-income Tanzanians. This includes drafting legal documents (such as contracts and wills), and preparing individuals to represent themselves in litigation. Third, Clinic advocates occasionally represent individuals in court litigation. Due to limited time and resources, however, the Clinic rarely provides in-court representation. Finally, the Clinic facilitates mediation. Its mediation efforts are frequently used in family, labour, and land disputes. As noted above, the clinic works on civil and criminal cases alike. By providing diverse forms of legal aid, the Clinic is able to address a wide range of legal aid needs. The Clinic plays an important role in sensitizing participating law students to the needs and realities of indigent Tanzanian citizens, and it helps to mitigate the impact of the anti-criminal defence stigma that exists within Tanzanian society.

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567 Id.
568 Id.
569 Id.
570 Id.
571 Id.
572 Id.
573 Id.
574 Id.
575 Id.
576 Id.
577 Id.
578 Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013) (noting an attitude within Tanzanian society of “if you represent a person who is accused of murder, you are seen as one of the murderers,” and stating that most law students are currently groomed to work with corporate clients as opposed to the average Tanzanian person.)
2. NGOS: STANDARDIZING AND IMPROVING THE QUALITY OF LEGAL AID SERVICES

The quality of legal aid in Tanzania has been consistently improving due to the efforts of non-profit legal aid centres to develop the training of their paralegals.579 WLAC, for example, has improved the quality of its paralegals by creating training manuals and periodically monitoring paralegals.580 Additionally, WLAC ensures the quality of paralegal services by setting a base level of education that people must attain before becoming a WLAC paralegal. Specifically, WLAC paralegals must have at least a fourth-class secondary education.581 LSF has likewise developed training manuals, as well as a five-week training programme that includes instruction on topics such as basic substantive law training, drafting techniques, and office management.582 The Tanzania Network of Legal Aid Providers (TANLAP) encourages cooperation and has attempted to create a degree of uniformity in paralegal training.583 TLS, the government organisation officially responsible for overseeing the quality of legal aid nationwide, plans to work with non-profit legal aid organisations to recommend trainers and monitor training, and began visiting legal aid organisations for these purposes in 2012.584 Because paralegal training varies a great deal from one legal aid provider to the next, the proposed Legal Aid Bill would be an even greater leap towards uniform, high-quality paralegal training.

C. OTHER LEGAL AID INITIATIVES WITHIN TANZANIA

In addition to the successes of law school legal aid clinics and civil society legal aid organisations, there are several successful programmes that merit note for their contribution to the legal aid system in Tanzania. Legal Aid Day, for example, is a programme that has been

579 See, e.g., Interview with NGO 2.1, in Dar es Salaam, Tanz. (Oct. 15, 2013); Interview with Paralegal, in Morogoro, Tanz. (Oct. 16, 2013); Interview with NGO 2.2, in Dar es Salaam, Tanz. (Oct. 18, 2013).
580 See DANISH INSTITUTE, supra note 6, at 108.
581 Id.
582 Id.
583 Id. at 102.
584 Interview with NGO 3, in Dar es Salaam, Tanz. (Oct. 15, 2013) (noting that while some legal aid organizations are “performing well,” a “few” are “compromising the quality of legal services” within Tanzania).
providing on-the-spot legal aid to the poor and vulnerable one day a year since 2007. It is organised by TLS, but a variety of civil society organisations and paralegals have participated over the past four years.\textsuperscript{585} The Pro Bono Advocate Project, a related programme, acts as a mechanism to follow up with detainees who were granted legal aid during Legal Aid Day, but who remain in custody.\textsuperscript{586} The Legal Aid Advocacy Centre (LAAC) is another notable legal aid initiative currently in development, which will provide legal aid services, legal education, and a legal rights library for Tanzanians to educate themselves as to the law.\textsuperscript{587} LAAC will also provide continuing legal education (CLE) programmes to legal practitioners.\textsuperscript{588} Finally, the Legal Sector Reform Programme (LSRP) is an international partnership\textsuperscript{589} that provides donations to the Tanzanian government and works collaboratively to establish greater access to justice through a variety of means.\textsuperscript{590}

\textsuperscript{585} See DANISH INSTITUTE, \textit{supra} note 6, at 79.
\textsuperscript{586} Probono Advocate Project Dar es Salaam Prison Visit, LEGAL AID SECRETARIAT (Sept. 30, 2013), http://legalaidsecretariat.or.tz/probono-advocate-project-dar-es-salaam-prison-visit/.
\textsuperscript{587} The Legal Aid and Advocacy Centre (LAAC) Project, TANGANYIKA LAW SOCIETY (last visited Dec. 18, 2013), http://www.tls.or.tz/?services/laac-project.html.
\textsuperscript{588} Id.
\textsuperscript{590} Id.