

The Delivery of Civil Legal Aid in Nepal: An Assessment of the System and Recommendations on the Way Forward

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Abstract

Legal aid is crucial in order to protect and implement human rights and Constitutional rights and is essential to ensure that poor and marginalized individuals have access to a fair trial, equal access to court and legal services. Free legal aid can help prevent violence and discrimination against marginalized groups. In Nepal, the Constitution (2015) has enshrined access to legal aid as a fundamental right. The Legal Aid Act (1997) needs to be amended in line with the Constitutional provision. Before amending the Legal Aid Act, the government has introduced a Legal Aid Policy in January 2020. The Constitutional provision on legal aid, the Legal Aid Policy and the Legal Aid Act together open up an opportunity to scale up and strengthen legal aid services and its mechanisms in Nepal. However, in practice, the current system of civil legal aid services suffers from a number of gaps and is insufficient to meet the needs of the populace, particularly the legal needs of marginalized groups. Despite the government's existing laws, policies and structures in providing legal aid services, marginalized groups such as women, people with disabilities, children, sexual minorities, Dalits and others have been facing various difficulties and hurdles in accessing free and quality legal aid. The problems are linked to a range of issues, including resources, process, capacity, institutional arrangement, sensitivity, and outreach. This paper aims to explore the challenges of the legal aid system in Nepal with a specific reference to the civil legal aid. The paper further will explore the need to strengthen the legal aid system in Nepal and provide recommendations to develop a vision for how legal aid can be made more accessible to the poorest and most marginalized in the country.

Introduction

Civil legal aid is crucial in order to ensure that people's human and Constitutional rights are protected and implemented, and that poor and marginalized individuals have access to a fair trial and equal access to the courts. Free legal aid can be crucial to

preventing violence and discrimination against marginalized groups such as women, and ethnic, caste or religious minorities. It can help to reduce poverty, ensure people are able to access government entitlements, and hold government actors accountable for the delivery of public services. In certain contexts, cost-benefit analysis has also shown that providing legal aid “allows for early intervention and prevents the escalation of conflict and costly appeals.”¹ By reducing the costs of litigation and helping to pull people out of poverty, legal aid can be shown to actually save the government money in the long-run.²

Recognizing how crucial civil legal aid is, the Constitution of Nepal has enshrined access to legal aid as a fundamental right. Now, in January 2020, the government of Nepal introduced the Legal Aid Policy, before amending the legal aid law/act 2054. The Constitutional provision on legal aid, the existing Legal Aid Act, and now the Legal Aid Policy together open up an opportunity to re-examine the system of legal aid delivery in Nepal and develop a vision for how legal aid can be made more accessible to the poorest and most marginalized in the country. The Legal Aid Policy, which was long awaited by legal service providers, represents significant progress in addressing marginalized peoples’ access to free legal aid in comparison with the Legal Aid Act (1997). The positive aspects of the Legal Aid Policy are that it covers legal aid services in both civil and criminal cases for marginalized and poor people, including women, Dalit, people with disabilities, sexual minorities, indigenous people, Madeshi people, and Tharu people, among others. The policy also incorporates the need for structural reform for the provision of legal aid services across the country. For instance, it provisions that a legal aid council will be formed at the federal level and legal aid committees will be formed in the provincial and district levels. It also envisions to integrate the services of the Local Judicial Committee (LJC). LJC is the local justice institution established in all local constituencies as per the provisions of the 2015 Constitution, which is mandated to deliver justice primarily in civil cases. However, there are a number of gaps that the new Legal Aid Policy does not address. These gaps are related to the structure, definition of legal aid providers, role of civil society organizations and NGOs providing legal aid, resources, sustainability and so on. Amending the Legal Aid Law (1997) will help to address those gaps and implement the Legal Aid Policy effectively.

In practice, the current system of civil legal services suffers from a number of gaps and is insufficient to meet the needs of the populace. The main providers of civil legal services are the District Legal Aid Committees (DLACs) and civil society organizations, with additional support from the court stipendiary lawyer system and

1 The Bach Commission on Access to Justice, *The Crisis in the Justice System in England & Wales, Interim Report* (2016), p. 9.

2 *Ibid.*

the bar association. DLACs are the only government-funded civil legal aid providers, and while a range of CSOs exist at the grassroots level, they can be unstable due to heavy dependence on donor funding. However, the DLACs are not operational in all districts, and even where they do exist, provide legal aid that is largely limited to cases before courts and in the district headquarters. As a result, most people living in rural and remote regions of the country effectively lack access to legal aid. Legal awareness is also low, resulting in few poor people knowing how and where to access free legal aid.

Based on the research through desk review, and interviews in Makwanpur and Kaski districts, this paper provides a brief overview of the right to legal aid in Nepal, the current system of civil legal aid and challenges, models for legal aid delivery, and recommendations on the way forward for reform on legal aid system in Nepal. The paper will focus on legal aid reform issues at the practical level, with reference to information gathered through field research before the introduction of the Legal Aid Policy in January 2020. The issues and information presented in this paper are still relevant since the Legal Aid Policy has not been implemented at all, and is currently limited to the government's file. The COVID-19 pandemic and ongoing lockdown in Nepal has further deepened the vulnerability of marginalized people and increased their legal aid and justice needs. We argue that strengthening the legal aid system is all the more crucial given the current situation of Nepal. The paper put less focus on the analysis of Nepal's new Legal Aid Policy, but rather, emphasizes the need for implementation and systemic reform.

The Right to Legal Aid in Nepal

Legal aid is the provision of legal advice and representation to indigent and marginalized people who cannot afford such services. It is a mechanism to enable people to access justice, allowing individuals to resolve disputes and access a remedy when their rights have been violated. Access to legal aid is not necessarily an end in itself, but a means to an end; it enables implementation of people's Constitutional and fundamental human rights. Publicly funded legal services is thus a necessity if human and Constitutional rights are to be realized in practice, rather than remaining empty words on paper.

Nepal is party to international treaties and Conventions that support the idea of legal aid as a fundamental right.³ While access to legal representation in criminal cases is strongly developed as a right, the basis for a right to civil legal services is less explicit, but still has strong support under international human rights law. The Universal Declaration of Human Rights states, in Art. 8, that “everyone has the right to an effective remedy by the competent national tribunals for acts violating

³ Nepal has ratified the ICCPR, ICERD, and CEDAW, and is thus bound by these human rights instruments.

the fundamental rights granted him by the Constitution or by law.”⁴ Art. 14 of the ICCPR provides that “[a]ll persons shall be equal before the courts and tribunals,” and “in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.” The Convention on the Elimination of All Forms of Racial Discrimination provides, in Art. 6, that states parties “shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination...” Free legal services for those who cannot afford it is necessary for an individual to have a fair hearing and to be able to properly access a remedy for a rights violation; without legal assistance, it can be impossible for an indigent or vulnerable person to successfully obtain a remedy.

Indeed, various international bodies have emphasized the importance of access to legal services in protecting a range of human rights. For example, in General Recommendation No. 29, the Committee on the Elimination of All Forms of Racial Discrimination (CERD) recommended that States parties adopt measures including taking “the necessary steps to secure equal access to the justice system for all members of descent-based communities, including by providing legal aid...”⁵ In General Recommendation No. 31, the CERD Committee recommended steps to prevent racial discrimination, asking States parties to “promote, in the areas where such persons live, institutions such as free legal help and advice centers, legal information centers and centers for conciliation and mediation.”⁶ The Committee on the Elimination of Discrimination against Women, in its 2011 Concluding Observations on Nepal, urged the country to “ensure women’s access to justice and make legal aid available and accessible to all women affected by the conflict,”⁷ to “ensure women’s effective access to courts for the crime of rape and other sexual offences,”⁸ and finally, to “facilitate access to justice for victims of sexual harassment.”⁹ Similarly, the Committee in its 2018 Concluding Observation recommends that the State party on women’s access to justice: (a) reinforce targeted outreach activities to disseminate information on the legal framework and the available mechanisms for gaining access to justice and legal aid schemes and promote a culture and a social environment in which justice-

4 Universal Declaration of Human Rights, Art. 8.

5 CERD General Recommendation No. 29, Art. 1, Par. 1.

6 CERD General Recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 7 August 2005, Sec. II, Par. 8.

7 Concluding observations of the Committee on the Elimination of Discrimination against Women, Nepal, Forty-Ninth Session, 11-29 July 2011, CEDAW/C/NPL/CO/4-5, 36(d)

8 Concluding observations of the Committee on the Elimination of Discrimination against Women, Nepal, Forty-Ninth Session, 11-29 July 2011, CEDAW/C/NPL/CO/4-5, 19(d)

9 Concluding observations of the Committee on the Elimination of Discrimination against Women, Nepal, Forty-Ninth Session, 11-29 July 2011, CEDAW/C/NPL/CO/4-5, 29(d)

seeking by women is viewed as both legitimate and acceptable, rather than as a cause for additional discrimination or stigmatization; (b) provide targeted financial support and legal aid in commonly spoken languages for women facing intersecting and multiple forms of discrimination, such as Dalit women, indigenous women, including Madhesi and Tharu women, women belonging to religious minority groups, women with disabilities, women living in remote areas, lesbian, bisexual and transgender women, intersex persons and displaced and migrant women.¹⁰

Recognizing the necessity of legal services for the poor, Nepal has recognized civil legal aid as a fundamental right for almost thirty years. Nepal's 1990 Constitution, Art. 26(14) provided that "[t]he State shall, in order to secure justice for all, pursue a policy of providing free legal aid to indigent persons for their legal representation in keeping with the principle of the Rule of Law." Similarly, Nepal's 2007 Interim Constitution, Art. 24 (10) provided that "any incapable party shall have the right to free legal aid, as provided in law." Finally, the new Nepalese Constitution has enshrined legal aid as a fundamental right. In Nepal's 2015 Constitution, Art. 20(10) provides that "an indigent person shall have the right to free legal aid as provided for by law." Thus, civil legal aid is a longstanding right in Nepal, though it has not been effectively implemented in practice. Furthermore, under the current Legal Aid Act (1997), legal aid means provision of "legal aid to the indigent person under this Act" and "also includes counseling and other legal services such as correspondence pleadings, preparation of legal documents and proceedings in the courts or offices on behalf of indigent person."¹¹ The Legal Aid Act governs the provision of legal aid through the Central and District Legal Aid Committees, which will be detailed further in the next section. With the promulgation of the new Constitution, the state will need to amend or pass a new Legal Aid Act and Legal Aid Policy to ensure access to free legal aid as a fundamental right.

The Landscape of Access to Justice in Nepal

Despite Nepal's obligations under its Constitution and international human rights law, the majority of the Nepalese population lacks meaningful access to legal services or the formal justice system due to poverty, isolation, and marginalization. Interestingly, Nepal has about 18,361 lawyers including senior advocates, advocates, and pleaders.¹² This is a large number of lawyers and theoretically should suffice in ensuring access to justice for people. Yet, most of these lawyers do not provide legal aid free of cost, and are clustered in the district headquarters.

¹⁰ Committee on the Elimination of Discrimination against Women Concluding observations on the sixth periodic report of Nepal 2018, page 3.

¹¹ Legal Aid Act (1997), Sec. 2(a).

¹² Nepal Bar Council "Information Sheet" (2020),

<https://nepalbarcouncil.org.np/%E0%A4%85%E0%A4%A7%E0%A4%BF%E0%A4%B5%E0%A4%95%E0%A5%8D%E0%A4%A4%E0%A4%BE>

Approximately 75% of Nepal's population lives in rural areas,¹³ and it can take hours or even days to reach the closest court or legal services provider, which are often located at the district headquarters.¹⁴ Thus, the necessary travel involves a sacrifice of time and working hours, and can be unaffordable for the rural poor. In addition to geography, communities lack awareness about their rights and the availability of legal services to vindicate them; may not be able to afford a lawyer even if they can reach one; and face language barriers, complex bureaucratic procedures, long delays of cases before courts and administrative bodies, and lack of cultural familiarity and comfort with the court system – which can seem an alien institution for many. Lawyers that do exist may not be well-trained, may be new to the profession, or may lack the understanding needed to work with survivors of severe trauma such as gender-based violence. Adding to this, certain marginalized groups, such as women, Dalit or Madhesi communities, face additional barriers, discrimination, and deeply-entrenched caste-based structures and patriarchal values both at the community level and in the formal justice system. And even when a judgment is reached, the implementation might be poor or delayed.¹⁵

As a result, most communities first try to resolve their disputes locally, often through Informal Justice Mechanisms (IJMs). These can include traditional and internationally-supported dispute resolution mechanisms.¹⁶ In many communities, traditional dispute resolution mechanisms – forms of IJMs “that have their roots in the histories and cultures of the Nepali people” – have existed for centuries and continue to exist.¹⁷ These vary across religious, caste, and ethnic communities, including, for example, the *anjuman* in the Muslim community; *tamudhi* in the Gurung community; or *maijan dewam* in the Madhesi community.¹⁸ These mechanisms often apply customary laws, which are enforced through punishments such as social censure, expulsion, or fines, though not formally recognized by law.¹⁹ These mechanisms usually resolve disputes related to matters such as land, property, or family through mediations or decision-making presided over by community elders or local political leaders who, historically, have been male.²⁰

13 Government of Nepal, Central Bureau of Statistics, Population Monograph of Nepal, Vol. II (Social Demography), (2014), p. 2, <http://cbs.gov.np/image/data/Population/Population%20Monograph%20of%20Nepal%202014/Population%20Monograph%20V02.pdf>.

14 Saferworld, Snapshots of informal justice provision in Kaski, Panchthar and Dhanusha Districts, Nepal (2011), p. 1.

15 DFID, DanidaHUGOU and UN Resident and Humanitarian Coordination Office, Access to Security, Justice & Rule of Law in Nepal: An Assessment Report, http://un.org.np/sites/default/files/2012-10-5-Access%20to%20Security_Justice_RoL_Nepal.pdf (2011), p. 66.

16 Saferworld, *supra* note 13, at iv.

17 Katrina Aitken, Saferworld, Justice should be blind, but is the international community's support to informal justice mechanisms in Nepal given blindly? <http://issat.dcaf.ch/Learn/Resource-Library/Policy-and-Research-Papers/Justice-should-be-blind-but-is-the-international-community-s-support-to-informal-justice-mechanisms-in-Nepal-given-blindly> (2010), p. 3.

18 Saferworld, *supra* note 13, at iv-v. See also DFID, et al, *supra* note 10, at 69.

19 Tazreena Sajjad, Transitional Justice in South Asia: A Study of Afghanistan and Nepal, Routledge (2013), p. 64-66.

20 *Id.* at 65-66.

There are certain benefits to traditional justice mechanisms: they are quick to provide a resolution; physically and linguistically accessible; affordable; culturally familiar; easier to understand procedurally; and allow for the resolution of disputes amicably, thus maintaining social harmony.²¹ As a result, they are often the first source that many Nepalis turn to.²² Yet, they can produce results biased towards the rich, or more powerful ethnic, caste, or political groups. Rather than subverting social norms and power differentials in the community, traditional justice mechanisms often replicate them within the dispute resolution process. Consequently, these mechanisms may also result in punishments that violate human rights norms and dignity, particularly in the case of gender-based or domestic violence. Complainants can be coerced or intimidated into an agreement, such as being provided compensation to prevent a victim from reporting to the police.²³ Because their goal is social cohesion, they emphasize reconciliation, which can lead to victims continuing to be victimized.²⁴ As a result, donors have begun to support NGO-led informal justice mechanisms and community paralegals that attempt to operate differently and empower marginalized groups based on human rights norms and principles.²⁵

Despite this complicated patchwork of formal and informal justice mechanisms in Nepal, they are operating in parallel without proper coordination,²⁶ and ultimately, people still lack access to effective legal aid and justice. Promoting access to free legal aid will be key to ensuring that individuals get a fair hearing and can access a real remedy when their rights have been violated. At the same time, recognizing that most of the population lives in rural areas and prefers to resolve disputes locally at first should shape legal aid law and policy in the country through an effective integration of community paralegals/justice mechanisms with the free legal aid system. This will create a more effective, tailored legal aid system that reaches people where they are, and takes into account Nepal's context.

Civil Legal Aid Providers in Nepal

In Nepal, free legal aid is provided by a combination of governmental and non-governmental institutions. Currently, there are two primary sources of civil legal aid supported by the Government of Nepal: the stipendiary lawyer in courts (*Baitanik Wakil*) and the Central and District Legal Aid committees. Outside this, civil society organizations and the bar association provide legal aid, largely supported by foreign donors. Finally, pro bono lawyers take on cases at times.

21 DFID, et al, *supra* note 10, at 54. See also Saferworld, USAID, and CWIN, Justice Mechanisms and Conflict Dynamics in Nepal (2016), p. i.

22 Saferworld, *supra* note 20, at i.

23 DFID, et al, *supra* note 10, at 70.

24 Saferworld, *supra* note 20, at 24.

25 Aitken, *supra* note 12, at 6.

26 Saferworld, *supra* note 13, at 1.

a. Stipendiary Court Lawyer (*Baitanik Wakil*)

The first source of legal aid is a stipendiary (court) lawyer, known as the *Baitanik Wakil*, dating back to 1958. The stipendiary lawyer system was established by and is governed by the rules/regulations of the different courts, for instance, through the Supreme Court Rules 1992, Appellate Court Rules, 1991, and the District Court Rules, 1995. These lawyers are appointed by the court and currently exist in the Supreme Court and each of the 16 appellate and 75 district courts. Most courts have one lawyer, while the Supreme Court has two. The court pays the *Baitanik Wakil* lawyer a monthly salary, which in 2013 was increased from only NRs 7,000 per month to NRs 24,900 at the district and high court levels. The Supreme Court has two *Baitanik Wakils* who are each paid NRs 27,610 per month, generally on the scale of other government employees, including prosecutors.²⁷ These lawyers have a short term and are appointed only for a short period of time, previously limited to one year, but which has recently been extended to two years.²⁸ The *Baitanik Wakil* is based in court and counsels clients there.

The court has the right to appoint the lawyer to any case at any time, and normally appoints the *Baitanik* to represent individuals who appear in court without a lawyer in criminal cases. The lawyers may represent any party in need, either the plaintiff or defendant. The majority of their cases, however, are criminal cases, with common cases including rape, use or distribution of drugs, murder, trafficking, or vehicle accidents. Among civil cases, family law and property law matters tend to be common. Some of the *Baitanik Wakils* make regular jail visits to counsel detainees who do not have access to a lawyer. Some make visits twice a month, while others visit the jail as frequently as once a week. From the experience of a District Court *Baitanik Wakil* in Makwanpur, he dealt with approximately 13–20 cases per month, or 150–240 cases per year, and was not able to provide representation to all those who sought services. A High Court *Baitanik Wakil* provided representation in 7–8 cases per month in court, though he regularly counseled clients through frequent jail visits. In Pokhara, a *Baitanik Wakil* provided representation in more than 150 cases in court over a year, providing counseling to many more in jail. In general, it seems that *Baitanik Wakils* are unable to meet the need; the demand outstrips the supply, making the legal aid provided by NGOs particularly crucial.

Provision of resources for *Baitanik Wakils* is a major problem with disparities in practice. The District Court lawyer in Makwanpur, for instance, had almost no resources, lacking a budget for stationary, paper, photocopies of documents, communications, a computer or printer, or legal resources (e.g. court precedents or

²⁷ International Legal Foundation, *Nepal's Criminal Legal Aid System: An Overview of Delivery Systems and Recommendations for Reform*, p. 12.

²⁸ Nepal Bar Association, *supra* note 9.

amended laws). He was unable to even get copies of key documents, such as a charge sheet. As a result, he often asked clients to pay for costs of typing and stationary in order for him to represent them.

b. District Legal Aid Committees

The Central and District Legal Aid Committees were established by the Legal Aid Act (1997). The Central Legal Aid Committee is responsible for the management of the system, supervision of District Legal Aid Committees (DLACs), and making funding arrangements for the DLACs. It is composed of five members: the Minister of Law and Justice, Chairperson of the Nepal Bar Council, President of the Nepal Bar Association, a legal expert nominated by the Central Committee and the Secretary of the Bar Association.²⁹

The DLAC also has a five-member committee responsible for managing the system and developing lists of panel lawyers at the district level. The DLAC includes a Government Attorney, President of the District's Bar Unit, Secretary of the District's Bar Unit, and two lawyers from the district nominated by the committee.³⁰ In some districts, the DLAC does not meet regularly and lacks accountability. In general, DLACs can provide legal aid to indigent people in two ways: through a panel of lawyers from the Nepal Bar Association who are remunerated on a case by case basis,³¹ or through a staff lawyer who is hired to provide legal aid to the poor on a full-time basis and is paid by the Ministry of Law. A secretary can also be appointed to help coordinate legal services and assign cases to panel lawyers.³² This is supported by a Legal Aid Fund.³³ In 2011-2012, the Government of Nepal had reportedly allocated NRs 8.5 million for the provision of legal aid.³⁴

The DLACs are not operational in all 75 districts.³⁵ In several districts, the paid staff lawyer model is used, and in others, the panel system is in place. In Pokhara, for example, the DLAC staff lawyer was selected by the bar association over 15 years ago and still retains that position. In Makwanpur, the DLAC switched from the panel lawyer model to the staff lawyer model only two years ago. Thus, there is variation on a district-by-district basis. For both paid staff lawyers and panel lawyers, the remuneration is low.³⁶ In some districts, the DLAC lawyer tends to be located at the high court, though the majority of their work (up to 95% in some cases) is usually at the district court level. In Makwanpur district, the DLAC lawyer noted that most

²⁹ Legal Aid Act (1997), Art. 6(1).

³⁰ Legal Aid Act (1997), Art. 7(1).

³¹ Legal Aid Act (1997), Art. 5, 7.

³² Legal Aid Act (1997), Art. 10.

³³ Legal Aid Act (1997), Art. 8.

³⁴ Nepal Bar Association, *supra* note 9, at 7.

³⁵ *Id.* at 5.

³⁶ *Id.*

cases come to her through referrals from paralegals or CSOs, and very few clients apply directly, illustrating the prevalent lack of awareness among litigants about free legal aid services. Clients must be making an income of under NRs. 40,000 per year in order to access the DLAC, and they must obtain a recommendation letter from the VDC verifying their income and present this to the DLAC to get free legal aid. However, there is a new amendment to provide free legal aid to *any* victims of domestic violence regardless of income.

The DLAC lawyers either take on solely or a majority of civil cases. Common cases include divorce, alimony, and partition of property, particularly in cases of domestic violence or polygamy. In addition, the DLACs at times support victims in filing FIRs with the police in criminal cases or applying for citizenship and legal identity documents. The number of cases varies, but from the experience of one DLAC lawyer, she had a caseload of 60-70 cases per year in court, but provided counseling and legal advice for a larger number of clients. On average, each DLAC handles approximately 25 cases per year, meaning 800-1000 people annually are able to access free legal aid through the DLACs in Nepal.³⁷ Though DLACs vary, it appears that some do not have to turn away clients and are actually able to meet the full demand, meaning that not many clients are aware of or able to access their services.

The staff lawyer often has a one-room office, either independent or in some cases, shared with the Bar Association. In the latter cases, the DLAC attorney have insufficient privacy to conduct interviews and meetings with clients, many of whom are victims of trauma and gender-based violence. In some cases, the Bar Association is supporting the DLAC lawyer by providing him or her with an office space. With respect to resources, one lawyer in Makwanpur noted that the Ministry of Law has provided her with furniture and some legal documents when she first began two years ago, but since then, has not received any updated legal materials with amendments. Lawyers receive a salary from the Ministry of Law, but often do not receive additional funding or resources for travel, stationary or other necessary expenses, which limits their ability to conduct investigations or provide effective legal representation to clients.

c. Nepal Bar Association

The Nepal Bar Association was established in 1956, and operates through Bar Units in the Supreme Court, Appellate Courts, and most District Courts.³⁸ There are currently 84 units across the country.³⁹ The Nepal Bar Association plays a role through membership in the Central and District Legal Aid Committees, and its

³⁷ *Id.* at 8.

³⁸ *Id.* at 1.

³⁹ *Id.* at 5.

members are eligible to be appointed as panel lawyers who provide free legal aid pursuant to the Legal Aid Act.

Historically, the Bar Association has acted much like civil society in providing legal aid to the poor in Nepal, largely utilizing donor funding, given that it does not have its own secure or sustainable funding source. For fiscal year 2011-2012, the Bar Association had a budget of NRs. 15 million.⁴⁰ In particular, the Bar Association has been supported by the Norwegian Bar Association to launch the Access to Justice project, which operated until at least 2014.⁴¹ As part of this project, the Bar Association has operated 29 women lawyers centers (WLCs) to provide legal aid, dispute resolution, mobile legal clinics, and legal awareness to indigent people, particularly women, female prisoners, Dalits and marginalized ethnic groups. The project has also tried to provide financial help to these groups for expenses such as court fees and transportation costs, and has trained community paralegals.⁴² In 2010, the Access to Justice project's central office provided legal aid in 36 cases over the course of the year (12 civil, 17 criminals, and 7 writ petitions). Across the 29 WLCs, the lawyers provided representation in 28 cases (17 civil and 11 criminal) in the year 2010.⁴³

Some of the Bar Units employ innovative methods of financing. In Pokhara, the Bar Association has a "Legal Aid Subcommittee" which collects membership dues and uses this funding to hold legal literacy campaigns. However, private practice lawyers very infrequently provide pro bono legal services, as this is not yet a common practice in Nepal. In general, the Bar Association faces the same funding limitations and challenges as do CSOs, given that the projects can be project-based, short term, and unsustainable, and are highly dependent on foreign aid to operate.⁴⁴

Civil Society Organizations

A range of civil society organizations provide free legal aid and community justice services to clients throughout Nepal. On the criminal defense side, the International Legal Foundation (ILF) provides free legal aid to indigent criminal defendants, and has 17 staff lawyers in five offices across Nepal. The organization represents its clients before judicial and quasi-judicial proceedings. To date, it has represented over 2,500 clients in Nepal.⁴⁵ Advocacy Forum seeks to promote the rule of law, and also provides representation to indigent accused people.

On the civil side, Legal Aid and Consultancy Center (LACC) provides legal aid

⁴⁰ *Id.* at 7.

⁴¹ *Id.* at 5.

⁴² *Id.* at 6.

⁴³ *Id.* at 8.

⁴⁴ DFID, et al, *supra* note 10, at 47.

⁴⁵ International Legal Foundation (ILF), "ILF Nepal," <http://theilf.org/our-programs/ilf-nepal/>.

services to women and children, particularly victims of domestic and gender-based violence. In two districts, they have trained community paralegals to support poor individuals in accessing legal identity documents. Forum for Protection of People's Rights, Nepal (PPR) provides free legal aid to victims, particularly in trafficking and gender-based violence cases, and also supports mediation efforts. In one district, Makwanpur, the organization provided support in approximately 17 trafficking cases and 50 civil cases over the course of three years. The THRD Alliance works to promote the voice and human rights of people in the Terai, and provides legal aid for victims of human rights violations (e.g. excessive use of force, illegal detention, torture).⁴⁶

Finally, some organizations provide a mix of criminal defense and civil legal aid services. The Center for Legal Research and Resource Development (CeLLRD) provides legal support mainly to victims in civil cases, sexual/gender-based violence cases, and children who are victims of sexual exploitation, but also provides support to criminal defendants.⁴⁷ They support victims in drafting FIRs, and provide mediation support in a range of cases. Where possible, they support the very poor through funding for transportation costs, court fees, and other costs incurred in the court process. In Makwanpur district, they support 12-15 cases per month, or approximately 150 cases per year. The Centre for Victims of Torture (CVICT) mainly provides legal support to victims of torture and other serious human rights violations, such as sexual assault and witchcraft. They also help pay bail fees for defendants who cannot afford it, and sometimes coordinate to support ILF's clients who are in need.⁴⁸

Furthermore, there are a range of mediation services funded by international donors to enable people to resolve disputes such as those relating to land, property, or family law. For example, the Asia Foundation supports Community Mediation Centres (CMCs) in a number of VDCs.⁴⁹

In all, legal aid provided by private CSOs is viewed as relatively high quality and effective. Since CSOs often cover a small, targeted area and have long-standing experience working with marginalized groups, they are often more sensitive to the needs of victims of trauma and have the training and experience needed to address such cases. Furthermore, many CSOs utilize local committees, networks, women's groups, human rights defenders, and community paralegals to reach out to communities at the grassroots level, provide them with advice and information on their rights, and connect them to legal and other necessary services. Thus, they often have a wider reach throughout more rural and remote areas, in comparison with

46 THRD Alliance, Programs, <http://thrda.org/programs/>.

47 CeLRRD, "Ongoing Programs/Projects," <http://celrrd.org/ongoing-programs-projects/>.

48 CVICT, "Ongoing Program," <http://www.cvict.org.np/index.php?page=program&id=2>.

49 Saferworld, *supra* note 13, at 7-8.

government legal aid services. As we will explore further in the following section, however, many NGOs find their work to be limited due to project-based funding, which is often time-limited and donor-driven, lacking sustainability.⁵⁰

Gaps, Challenges and Limitations in Civil Legal Services

a. Insufficient legal aid lawyers to meet needs

Each district of Nepal has one to a maximum of three government-funded positions, which normally includes one lawyer in the DLAC (providing mostly civil legal aid); one *Baitanik Wakil* in the district court; and one in the high court (providing mostly criminal legal aid). Both *Baitanik* lawyers focus heavily on criminal cases, meaning that only the DLAC lawyer – along with CSO lawyers and paralegals, where available – exist for litigants in civil cases. If each lawyer is able to provide representation to up to 100 litigants per year, this is still far less than the demand for civil legal services in a district. The situation is exacerbated in a number of districts, where there is no DLAC lawyer or the DLAC is not active, leading to a severe dearth of legal assistance.

Furthermore, the free legal services are largely confined to the court and the district headquarters. DLAC lawyers do not spend much time, if any, outside the district headquarters, which means that litigants must generally travel to the city and to their offices in order to secure their legal representation. This can make access to legal aid incredibly difficult, if not impossible, for indigent litigants living in rural or remote communities; even those who may be aware of their right to free legal aid might find the costs and time of traveling to the district headquarters to access those legal services prohibitive. Traveling to the district headquarters can require traveling for hours (or even days), an overnight stay of 2-3 days for each visit, and similar costs in terms of time and money for witnesses.

Ultimately, one lawyer in a district dedicated to civil legal aid is simply not sufficient to meet the legal needs of all indigent people in that city, let alone the entire district. Serious and real barriers are most likely preventing the poorest and most indigent people in a district from being able to afford the attendant costs necessary to access the help of a legal aid lawyer. As a result, it is likely that free legal aid is not being accessed by the intended audience – the most marginalized and indigent individuals.

d. Additional barriers to accessing civil legal aid services

As per the Legal Aid Act, to access free legal aid, a client must first obtain a recommendation letter from the VDC that certifies that his or her income is under NRs. 40,000. As a positive reform, the Legal Aid Policy (2020) has removed this

⁵⁰ DFID, et al, *supra* note 10, at 47.

income ceiling as a criterion to accessing legal aid. However, it has added additional burdens for indigent clients and created further procedural hurdles. The Legal Aid Policy has categorized the criteria of providing free legal aid service at three levels. First, clients need to provide a recommendation letter from the concerned local government authorities or they must provide their identity card required by law. Secondly, the government can provide free legal aid to certain group of people on the basis of their application only, i.e. senior citizens, children, domestic violence affected persons, victims of conflict or victims of caste-based discrimination. Thirdly, it provisions to provide free legal aid to 14 other groups of people who represent marginalized populations based on their economic, social and educational status. To access free legal aid, these 14 groups of people must submit an application letter detailing their inability or status, the legal aid committee must identify their status, and then the government can provide legal aid services on the basis of its identification. These latest criteria might slow down and complicate the process of accessing legal aid. If the cases of violence and discrimination affected people are not considered seriously, it might further worsen the burdens to these groups and create added hurdles limiting their access to justice.

In addition, some DLAC lawyers are based in the High Court, despite the fact that most of their clients have ongoing cases in the District Court. This creates yet another barrier to accessing civil legal aid which is easily surmountable by simply locating his or her office at the District Court level, to ensure that legal aid is easily available to those who need it the most.

e. Limited scope of free legal aid in civil cases

As noted, the *Baitanik Wakil* and DLAC for the most part provides counseling and legal aid that is limited to court. The Legal Aid Act defines legal aid as including “counseling and other legal services such as correspondence pleadings, preparation of legal documents and proceedings in the courts or offices on behalf of indigent person.”⁵¹ It also defines courts as “court or offices where the party in litigation requiring legal aid is in proceedings and the term also includes authority or office empowered in litigation or other proceeding.”⁵² This definition does not have enough specificity and is too vague to be helpful.

The DLAC is not able to resolve cases through mediations or settlement agreements. However, there are numerous types of disputes – whether in land and property rights, employment law, consumer rights, or family law – that could be settled more quickly and efficiently through application of mediation and alternate dispute resolution methods. Furthermore, legal aid should include advocacy before administrative bodies

⁵¹ Legal Aid Act (1997), Art. 2(a).

⁵² Legal Aid Act (1997), Art. 2(d).

(such as the VDC or new local units), quasi-judicial bodies, and local institutions such as the police. It is unclear whether the definition of legal aid includes these bodies or not. The attorneys should also be able to provide legal aid in cases that do not reach or go to court.

Finally, this definition does not include other activities that might be crucial to supporting the demand side and ensuring access to justice – particularly legal awareness and public education. Legal awareness is crucial in civil legal aid because people are less likely to be aware of their rights in the first place, and may never seek legal assistance (in comparison to criminal cases, where an individual is brought into contact with the criminal justice system and the state is able to assess his or her need for legal aid).⁵³ Lawyers should also be able to provide free legal awareness to clients, and public awareness should be part of the definition of civil legal aid.

f. Lack of awareness of law and rights

Building on the previous point, there is inconsistent awareness of legal rights and the possibility of resolving certain disputes via legal aid. Both DLACs and civil society legal aid providers seem to focus heavily on family law issues, particularly in working with survivors of domestic or gender-based violence and on cases involving polygamy. In these cases, the lawyer will often support victims in filing FIR with the police. The lawyer will also support the victim in her family law case, frequently involving issues of partition of property or divorce. In some cases, lawyers reported supporting clients to access proof of legal identity or citizenship as well. However, there seems to be a disproportionate focus on a few limited areas of law. Rarely do cases involving other potentially common daily legal issues such as housing rights and conditions; land disputes; consumer rights/defective goods; corruption; money, debt or contract disputes; employment law/discrimination; health care or medical services; education; corruption; accessing government benefits and entitlements; torts or personal injury come to the attention of the DLAC lawyers.

This skewing of cases in the direction of family law/domestic and gender-based violence and to a lesser extent, legal identity, indicates that indigent people in Nepal are much more likely to be aware of their rights in cases of domestic violence, gender-based violence, family law, and access to legal identity, but far less aware of and able to identify a range of other common issues and disputes as “legal” issues for which they could use the assistance of an attorney. Even though disputes involving debt or money, for example, might be common, people may not consider visiting an attorney in order to resolve this dispute because they lack awareness that these are legal disputes and that they can access legal aid to resolve them.

⁵³ Roger Smith, *Legal Aid: Models of Organization*, European Forum on Access to Justice Conference (2002), p. 11.

Furthermore, few individuals apply directly for legal services through the DLAC, and instead, most cases come from referrals from CSOs or community justice facilitators/paralegals. This points to low awareness of the fact that free civil legal services are available for indigent litigants and that there is a right to free legal aid. Most poor, marginalized clients – particularly women, Dalits, disabled people and those living far from district headquarters – simply are not aware of free legal aid and how to access it.⁵⁴ Increased awareness of rights and the availability of civil legal services could substantially strengthen the demand side.

g. Lack of resources compromises quality and cost of “free” legal aid

While *Baitanik Wakils* provide their services for free, some lack even basic resources – such as stationary, paper, or computers on which to type up court pleadings. *Baitanik Wakils* are not provided any funding to cover the cost of expenses such as making photocopies, printing, communication, or transportation costs that are necessary in the course of representing clients. As a result, they either have to pay for these expenses out of pocket or pass them on to their clients. For example, the district court *Baitanik Wakil* in Makwanpur district lacked these basic resources, and noted that he could only provide legal aid to clients who could afford additional costs to have their legal documents typed up and printed. This meant that the poorest, and most marginalized, could not access his services.

The DLAC lawyer in Makwanpur noted that there was no specific budget or guidelines on how much stationary she could use, and that she was told that if she uses “too much” stationary the amount may be taken out of her salary. Such inconsistencies, lack of policies, and lack of even the most basic resources disincentivizes attorneys from doing their job thoroughly or taking on more clients if they will end up bearing the expenses. Furthermore, it prevents them from doing their job well, as conducting interviews; finding witnesses; gathering police reports; or seeking out evidence all require resources. Because of the costs involved, many lawyers do only a rudimentary investigation, thus compromising the quality of their representation. In addition, many DLAC and *Baitanik Wakil* lawyers lack updated legal precedents and amended laws, once again affecting the quality of their legal representation and arguments in court.

In addition to typing and communication fees, clients still normally have to pay court fees to register his or her case, given that there is no exemption for the indigent and the legal aid lawyers do not cover filing fees themselves. They also have to pay for transportation, food, and overnight housing costs for themselves and any

⁵⁴ Tularam Pandey, “Free Legal Aid Service Eludes Poor and Needy,” THE KATHMANDU POST (Nov. 13, 2014), <http://kathmandupost.ekantipur.com/printedition/news/2014-11-13/free-legal-aid-service-eludes-poor-and-needy.html>. See also DFID, et al, *supra* note 10, at 48.

witnesses who testify in their case. Most poor individuals simply cannot afford such additional expenses, even if the actual provision of legal aid is free of cost. Thus, lack of resources prevents indigent clients from being able to access free legal aid.

h. No standards and guidelines for selection, training, and performance

There are currently no clear standards or guidelines for the selection or recruitment of DLAC lawyers (or *Baitanik Wakils*) to provide civil legal services. There are no guidelines on how many years of experience an advocate hired to work with DLAC should have in providing civil legal services; training or experience in working with indigent or marginalized communities, particularly survivors of trauma and violence; skills in counseling, mediation, negotiation, trial work; or evidence collection; knowledge of multiple languages; or knowledge of the law. Similarly, there are no such guidelines for lawyers from the Bar Association who might be retained on a contract basis to represent clients.

In addition, there are no training or performance standards to guide the training of DLAC staff or contract lawyers after they are hired or appointed. How much training should they receive when they join and each year on specific relevant areas of the law; relevant legal skills; and skills needed to work sensitively with survivors of trauma? There are no guidelines on such continuing legal education. This could lead to lawyers with limited experience taking on cases, and thus not providing proper representation, particularly to vulnerable litigants such as victims of rape, assault or domestic violence. Many lawyers are not provided with the training needed to effectively represent such clients without replicating their trauma, and this can ultimately be detrimental to the well-being of such clients. The lack of training and opportunities for growth, learning, and advancement also reduce the energy, interest, and motivation of DLAC lawyers to represent their clients zealously and effectively.

i. Limited monitoring and supervision

DLAC lawyers (both staff and contract) should theoretically be supervised by the District Legal Aid Committee. However, in many cases, there is very limited monitoring or supervision of their work in practice. In such cases, the lawyers do not have anyone to turn to for questions regarding the law or how best to approach a case or deal with a client; they do not receive any advice or feedback to help them strengthen their work; nor do they report to anyone that could hold them accountable. As for the *Baitanik Wakil*, they are not truly supervised by anyone, but some have stated that they provide a report to the Nepal Supreme Court on the number of cases dealt with per month. Outside this limited monitoring, there seems to be no supervision system in place. Some type of supervision structure is badly needed to ensure accountability, quality, and incentivize continuous learning and improvement.

j. Lack of proper MIS, case management, or data collection

In both DLACs and the *Baitanik Wakil* system, there is a noticeable lack of proper MIS or case management systems to manage cases and collect data. A number of offices do not have computers in order to maintain electronic databases, and even those who do have computers do not have a practice of using the technology to store data on their cases in any systematic fashion. DLAC and *Baitanik Wakil* lawyers rely on the court system to maintain records. At best, they keep on hand case files and information on the number of cases they have represented on paper in their offices. A number of lawyers, however, do not even keep proper case files or records of their cases with them due to lack of resources such as stationery and printing. Such a lack of MIS or case management systems results in a missed opportunity to capture useful information about the types of clients and cases these lawyers are providing services to; ensuring quality control; allowing one to track the most common and least common cases and outcomes; and allowing for identification of systemic issues and barriers that clients face. It might also limit the quality of their representation, if lawyers cannot properly gather and store key evidentiary information.

k. Poor integration and coordination

As we see, Nepal's legal aid system is composed of a patchwork of different actors, but lacks proper coordination and integration. Although they often work in the same court in the same district, the key government legal aid providers – the *Baitanik Wakil* and the DLACs – largely operate independently of each other. They are managed by the Supreme Court and the Central Legal Aid Committee, respectively, two separate institutions that do not work together. At most, they may refer clients to one another. However, they do not normally share resources or information, nor do they usually coordinate the delivery of services together, even when holistic representation might benefit a client or his/her family. Rarely do these government attorneys coordinate with the numerous civil society lawyers and paralegals who might also be representing clients in similar cases. In a number of cases, community paralegals or CSOs do refer clients to the DLAC or *Baitanik Wakil*, but this is largely done in an ad hoc manner with no systematized method or mechanism to coordinate referrals.

Furthermore, donors fund a range of civil society organizations and legal aid provided by lawyers and paralegals in a piecemeal fashion, often without coordinating with one another or the government. This leads to overlapping projects that are not sustainable in the long-run. Rather than working together, sharing resources or information, civil society groups often compete with one another instead given the limited pool of funding available.⁵⁵

⁵⁵ DFID, et al, *supra* note 10, at 48.

There is, ultimately, no central coordinating body that manages, supervises, or monitors the variety of legal aid providers in Nepal, or coordinates referrals among these different entities. This also means that there is no central body that indigent people can approach for help to understand their rights or be referred to the right place. Because of this lack of centralization and the resultant patchwork of service providers, it also becomes difficult to inform poor and marginalized communities – with clear and simple instructions – of where to go to access legal services. Instead, communities have to be aware of the complexities inherent in accessing several different service providers, and then often must clear different and confusing administrative hurdles (e.g. getting a recommendation from the VDC) in order to access one service provider or the other.

l. Lack of sustainability for civil society legal aid providers

Most civil society organizations that provide legal aid are highly dependent on funding from international donors, many of whom provide support on a project-by-project basis and in specific regions of the country. Thus, their work in provision of legal aid often is limited to short-term, donor-driven projects and lacks long-term sustainability and continuity, which is very important when dealing with ongoing cases affecting clients' lives. While they may provide good legal assistance at the local level, they often cannot be guaranteed to stay on as a provider in the community.⁵⁶

In addition, due to lack of resources, NGO lawyers and paralegals often tend to lack sufficient training or supervision in order to ensure that the representation provided to clients is of the highest quality. Community paralegals, who work with the community, are often providing services free of charge – which can be a good thing – but this also makes it difficult to manage, monitor, and supervise their work or ensure their support to communities meets certain standards.

m. Civil society legal aid providers not fully recognized as a key part of the system

Despite providing legal aid – and sometimes providing *more* legal aid when measuring by number of cases in comparison to the government lawyers – civil society legal aid providers are not fully recognized as a key part of the legal aid system. The Legal Aid Act (1997) does recognize the role of CSOs in government's legal aid system. The newly introduced Legal Aid Policy does recognize the role of CSOs but in a limited way, in that their roles are defined as drafting legal documents, providing legal counselling and legal education. Local government institutions and bodies, particularly VDCs and police, frequently refer clients to private civil society organization lawyers or community paralegals for support in resolving disputes and

⁵⁶ DFID, et al, *supra* note 10, at 5, 18.

accessing justice. Despite such frequent referrals, CSOs generally do not receive government funding nor are they fully recognized by the government as legal aid service providers. Even in the new Legal Aid Policy, community paralegal and dispute resolution organizations are not formally recognized.

Lack of Data on Justice Needs of Communities

Due to a lack of information on the most common justice needs of communities, and how communities currently understand and resolve justice problems, it is difficult to understand the breadth of needs in Nepal and to quantify the gap in service delivery. Gathering more data on the justice needs of communities will be vital in determining how best to create a legal aid system that will respond accordingly and meet the needs of communities most effectively. Quantifying the need when it comes to communities' civil legal services will be key in identifying how many legal aid lawyers and/or community paralegals will need to be funded in order to properly meet the needs of indigent and marginalized people in Nepal.

Models for Providing Civil Legal Aid

a. Management of legal aid by a central body or commission

In most cases, governments allocate management of legal aid to a body – such as a board, or commission – that is “closely linked but formally independent of government.”⁵⁷ Such a system allows there to be government support, while preserving independent decision-making on matters linked to the management of legal aid. For instance, in Ontario, legal aid is managed by Legal Aid Ontario. In the U.S., civil legal aid is supported by the Legal Services Corporation, and in South Africa, it is by Legal Aid South Africa (LASA).⁵⁸ There may also be benefits to engaging the legal profession itself in management of legal aid, though many jurisdictions have been moving away from this in recent years.⁵⁹

n. Staff attorney and private attorney models

Two predominant models for providing civil legal aid exist. One is the staff attorney model and the second is the private attorney model. With the staff attorney model, attorneys work full-time to provide civil legal aid to the poor. Within this model, staff attorneys can be employed by civil society organizations that are supported with funding from the government, or directly by the government itself. With the second model, private attorneys agree to take on cases, and are reimbursed by the government. This is known in some contexts as the “judicare” model.⁶⁰

⁵⁷ Smith, *supra* note 52, at 4.

⁵⁸ Legal Aid South Africa, “Legal Aid SA Handbook,” <http://www.legal-aid.co.za/?p=14>.

⁵⁹ Smith, *supra* note 52, at 6.

⁶⁰ David McQuoid-Mason, “South African Legal Aid in Noncriminal Cases,” p. 17, in Public Interest Law Institute, *Making Legal Aid a Reality: A Resource Book for Policy Makers and Civil Society* (2009).

There are certain benefits and challenges with both models. The staff attorney model is beneficial to “combat social exclusion,” because staff attorney work full time with poor and marginalized communities and thus have a deep understanding, knowledge, and the skill set needed to better understand their experiences and effectively advocate for them. The staff attorney model might also result in higher quality of representation precisely because these attorneys have more relevant experience working with the poor, spend time understanding the community and building relationships with key government actors, and also because they are better set up as part of an organization to have in place systems of monitoring, supervision, and evaluation. On the contrary, private attorneys usually work independently and might not have in place any systems of supervision and monitoring of quality of representation. Private attorneys have limited training and experience in working with the poor and victims of severe violence and trauma, which could be problematic. Staff attorneys, by virtue of working closely with communities full time, can also better identify needs and strategic cases or interventions that have a broader impact beyond individuals.⁶¹ Furthermore, a staff attorney can function more independently in a private CSO, while a staff attorney employed directly by the government might have to face more bureaucracy and have less independence.

On the other hand, the private contracted attorney model might be more efficient and be able to manage a larger volume of cases, though this is no guarantee. Furthermore, from a financial standpoint, the private attorney model could be cheaper because of lower overhead costs. Private attorneys might be willing to take on cases for a lower fee if they are persuaded to view it as providing a service to society.⁶² Geographic reach could be another benefit of the private attorney model, as it might be easier to find and contract private attorneys who already live and work in more rural or remote parts of a country. In some cases, however, civil society organizations might also have a very broad geographic reach.

In the United States, the first staff attorney model is the primary mechanism for delivery of civil legal services. Each year, Congress provides a certain budget to the Legal Services Corporation (LSC), which then provides funding to a range of legal aid non-profit organizations throughout the country. There are certain restrictions on the funding, but as long as these are followed, NGOs have considerable freedom to run their operations.⁶³ Some jurisdictions, however, have a mixed model that combines elements of both.

61 Daniel S. Manning, “Development of a Civil Legal Aid System: Issues for Consideration,” p. 66–67, *in* Public Interest Law Institute, *Making Legal Aid a Reality: A Resource Book for Policy Makers and Civil Society* (2009).

62 *Id.*

63 *Id.* at 68.

o. Role of community paralegals

In addition to these traditional models, a number of countries have developed models of “primary” and “secondary” civil legal aid, incorporating community paralegals or advocates into the system to effectively promote access to justice. In such contexts, “primary” legal aid includes legal information, awareness, advice, and counseling (provided by paralegals), while “secondary” legal aid normally refers to legal aid in court for civil and criminal matters (provided by lawyers). Again, the system can make use of either staff or contract / private lawyers or paralegals. In many of these contexts, legal aid might be funded by a combination of government and international donor financing.

In Moldova, for instance, primary legal services are provided by a network of community paralegals and CSOs specialized in providing legal assistance, with secondary / “qualified” legal aid provided by public defenders or private contracted lawyers in civil and criminal cases. Community paralegals in Moldova receive specialized training, and the network is supported by the Government. Ukraine’s legal system includes provision of primary legal aid through Community Law Centers (CLCs) and secondary legal aid through model public defender programs. Secondary legal aid, institutionalized in the government, includes free legal aid in criminal, civil and administrative cases for certain populations (e.g. low-income), through 125 regional centers across Ukraine. Primary legal aid is provided by NGOs, mainly including legal information and counseling, through more than 30 CLCs across the country. The CLCs are staffed by community organizers, including community paralegals, and are part of a national network. In Ukraine, the government funds secondary legal aid, while primary legal aid is supported through a combination of donors and governments, including local municipalities.

South Africa also heavily involves paralegals in their model, but does not use the primary/secondary structure. Legal Aid South Africa (LASA) is the independent, state-funded institution responsible for managing the provision of legal aid. The organization has 64 justice centers, and has over 2,000 staff including lawyers and paralegals, who staff every office. In addition to this, Community Advice Offices (CAOs) provide legal awareness, advice and assistance and are mainly staffed by community paralegals. There are approximately 350 CAOs in the country, and they are led by NADCAO, an alliance organization and funded largely by donors. LASA focuses on criminal legal aid, while CAOs focus on civil matters and refer criminal matters to LASA.

There is no one-size-fits all model for provision of civil legal aid, and a variety of structures can work well, so long as it takes into account culture and national

and local context of a country. A legal aid system has to be tailored to the context and to most effectively reach poor people where they are. Ultimately, however, an effective legal aid model is also highly dependent on having sufficient levels of public funding.⁶⁴ The reality is that the more funding available, whether through government, donors, or innovative financial models, the more people will be able to access legal aid.

Recommendations: The Way Forward for Civil Legal Aid in Nepal

a. An integrated institution overseeing both civil and criminal legal aid

A single institution – a commission or board – should be dedicated to overseeing a holistic, coordinated and integrated legal aid system, covering both civil and criminal legal aid. Such an institution should ideally be closely linked to but independent from the government, and would have a central oversight committee and secretariat to oversee the legal aid system. This institution would have several responsibilities:

- A central oversight committee to develop, maintain and monitor standards, trainings, and guidelines for legal aid. This committee should develop the following: requirements and standard qualifications for recruitment/hiring of civil and criminal legal aid lawyers; training standards and guidelines for new and continuing government legal aid lawyers; performance standards for government legal aid lawyers; and a central MIS system and training for all government and affiliated civil society groups.
- The central oversight committee should also propose, receive, maintain and allocate the budget appropriately between government hired lawyers and private/contract civil society legal aid providers.
- Funding would ideally come from a mix of government and international donors, with donors being encouraged to pool their money and support this body. The government should encourage donors to pool their funds and support this central mechanism, knowing that their funds will be going to set up the system and procedures, as well as to fund direct legal aid in communities through CSO partnerships. Funds could also come from a mix of taxes, paid court fees, bail fees, and lawyers' licensing fees.
- A secretariat with administrative staff to serve a central “intake” function. The secretariat should have a dedicated intake number / hotline that is open 24 hours a day and that poor/indigent people can call to be referred to the appropriate legal aid lawyer / organization closest to them. There should be a similar secretariat

⁶⁴ Smith, *supra* note 52, at 3.

in each district to conduct intake and referrals, and serve as a resource for people seeking help.

- This body should also help implement the eligibility screening of clients. It could also be responsible for making assessments on eligibility for free legal aid based on means (income, or marginalization) and merit (type of case). Procedurally, the process should be made as simple as possible with some central body or commission responsibility for eligibility determinations.
- p. Ensure that a team of dedicated civil legal aid lawyers is funded in each of the 75 districts of all 7 provinces.**

Currently, there is only one government lawyer (at most) dedicated solely to civil legal aid in each district. This needs to be increased to a team of at least three – five lawyers supervised by a District Supervising Attorney, and the team should be active in each of the 75 districts. The supervising attorney must be well trained and have experience in supervision. He or she must provide advice, feedback, and monitor and supervise the work of the attorneys in his or her district.

- q. Primary and secondary legal aid, through partnerships with and funding for civil society organizations, accredited as civil legal aid providers**

Ultimately, more lawyers are needed to provide free legal aid. Many of the most effective legal aid providers are civil society groups who have the expertise and understanding of issues faced by marginalized communities. The central committee / body coordinating legal aid should develop a set of guidelines by which to select a diverse set of CSOs in each district with whom to develop partnerships. CSOs should be selected for their subject matter expertise (e.g. women’s rights, Dalits rights, land rights, migrants’ rights) and their geographic reach / spread. Furthermore, two types of CSOs should be selected: CSOs who have legal aid lawyers who can be contracted to take cases and CSOs that have community paralegals who can work at the community level in rural areas and who can serve as the entry point to the legal aid system. After curating a list of eligible organizations and forming these partnerships or accrediting the organizations in some form, the central committee should develop contracts to fund CSOs on an ongoing basis and on a contract basis. In doing so, the committee should ensure distribution of legal services across the country to reach poor and especially vulnerable communities in rural and remote areas of Nepal.

The government should develop a system of primary legal aid, funding a selected range of organizations to provide legal awareness, advice, referrals

and minor dispute resolution/mediation through community paralegals. Then, it should develop a system of secondary legal aid, which can be composed of civil society legal aid lawyers and government funded lawyers to provide legal aid in more serious matters that cannot be resolved outside of court. Primary legal aid providers should be able to connect clients who need further assistance to secondary legal aid providers within their district. Funding must be provided to CSO partner organizations providing both primary and secondary legal aid.

r. Increased resources for expenses

In addition to salaries for government and accredited CSO legal aid providers, a fund needs to be set aside to reimburse reasonable expenses incurred in the representation of clients, such as printing; photocopying; stationary; basic technology (a computer and phone) for the office; updated legal materials; transportation and communication expenses. Such funding is vital to ensure that attorneys are able to provide high quality legal representation to clients.

s. Incentives for legal aid lawyers to resolve more cases

Incentives should be provided for legal aid lawyers to resolve more cases, such as the opportunity for promotion to supervisor or a bonus for the top few lawyers who did exceptional work over the course of a year, taking into account both quantity and quality (outcomes) of cases.

t. Awareness campaigns on how to access legal aid

After the new structure for legal aid is put in place, public awareness campaigns must be launched throughout the country informing people of their right to legal aid; for which matters people can access free legal aid; who is eligible to access free legal aid; and how they can apply for and access free legal aid. The campaigns should be launched through a mix of television and radio public ads, news stories, and informational sheets / posters in the local village unit headquarters, district courts, high courts, bar associations, and prisons/jails. In addition, informational sheets / posters should include the phone number of a hotline that clients can call to find out where and how they can apply for legal assistance. This should enable individuals to become more aware of the availability of legal aid.

u. Case management system

As noted above, the central committee / institution should develop guidelines for a case management / MIS system to be used by all government legal aid lawyers as well as by pro bono and CSO lawyers to the extent possible. Government legal aid lawyers and partner CSOs should receive training on how to document

cases accurately and how to utilize the case management system, as well as the value and importance of data.

v. Incentives for pro bono work by private lawyers and law students

The government should consider requiring individuals who seek to be licensed as advocates after law school to certify that they have completed a certain number of pro bono hours (for example, a reasonable number such as 50 hours) providing legal representation to indigent or vulnerable clients. In some contexts, pro bono work is required; in South Africa, Cape Law Society requires its members to contribute a certain number of pro bono hours each year.⁶⁵ Other incentives could include annual awards or other forms of recognition (e.g. publishing a profile in a newspaper or magazine) given to private lawyers who perform the most pro bono hours in a year's time.

Clinical programs in law schools should be supported and encouraged to train young attorneys in effective legal representation while also expanding access to justice to the poor. If legal rules allow students to practice in court under the proper supervision of a licensed lawyer, students can also be encouraged (or required as a condition to graduate) to complete an internship with a legal services organization, either public or private. The legal aid institution could employ law students as interns throughout the year and throughout the country.

w. Alternative legal mechanisms to increase access to justice

In some jurisdictions, contingency fees are allowed. These arrangements allow a lawyer to take a fee from a client only if she/he wins the case. If the client wins, the lawyer will get a percentage fee from the settlement or compensation awarded to the client. If the client loses, he or she will owe no fee to the lawyer.⁶⁶

Some jurisdictions also have “fee shifting” statutes or arrangements for certain types of cases in which the loser has to pay the winner's legal fees and cost of litigation. This has been used, for example, in the United States to encourage litigation in civil rights cases, and in England as well.

Finally, another innovation has been the use of ‘prepaid’ legal service insurance schemes, which provide legal coverage for low and middle income families in South Africa. After paying a monthly premium, families can be covered in cases of legal expenses, subject to certain limitations.⁶⁷

Such legal and social innovations in civil procedure could open the door to better access to civil legal aid for poor litigants in Nepal and provide alternatives to

⁶⁵ McQuoid-Mason, *supra* note 59, at 20.

⁶⁶ *Id.* at 16.

⁶⁷ *Id.* at 17.

government funded legal aid alone. In a country like Nepal, where civil legal aid might always be a lower priority compared to pressing issues such as health care and education, and where the government is also highly reliant on foreign aid, such innovations could prove hugely fruitful and make a real impact.

Conclusion

The Nepalese government has an obligation to implement its Constitutional obligation to provide legal aid as a fundamental right to its citizens, including in civil cases. However, the current model of legal aid service delivery depends too heavily on an institution – the District Legal Aid Committees – that are not fully functional nor effective throughout the country. These committees currently provide very limited legal aid, insufficient to meet the needs of most of the populace who face geographic, linguistic and cultural barriers in accessing civil legal aid, and who lack legal awareness of their rights.

To strengthen its civil legal aid system, Nepal must develop an integrated and holistic independent institution to manage legal services delivery. It needs to develop and implement consistent means and merits test; manage intake centrally; provide legal aid hotlines for easy access; institute standards to govern the selection, training and professional conduct of lawyers and paralegals; and institute a systematized case management / MIS system and train lawyers and paralegals to use it effectively. This legal aid institution should work closely with a range of civil society organizations to contract with them, both with lawyers and paralegals, in a systematic manner ensuring broad geographic reach and subject matter expertise. Furthermore, expenses incurred by lawyers in provision of legal aid should be covered. The government should work closely with donors to pool their funds and direct them towards this legal aid institution. Incentives for lawyers to work pro bono and alternate legal mechanisms (e.g. insurance schemes and contingency fees) will go a long way to expanding access to justice in civil legal aid. Finally, the government should increase its financing for legal aid and work for the sustainability of legal aid services, including quick, fair, and quality legal services for marginalized people who need free legal aid. This would help to substantially reform the legal aid system in Nepal⁶⁸.

⁶⁸ We would like to thank to our colleague Som Niroula for assisting us on this research.