

PARALEGALISM IN KENYA **IN** **A NEW CONSTITUTIONAL DISPENSATION**

A Survey on Paralegalism in Makueni



International Center for
Policy and Conflict

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Acronyms

4Cs	Citizens Coalition for Constitutional Culture
CDF	Constituency Development Fund
CLARC	Community Legal Resource and Advice Centre
CLARION	Centre for Law and Research International
COVAW	Coalition on Violence against Women
FGD	Focus Group Discussion
FIDA	Federation of Women Lawyers
ICJ	International Commission of Jurists
ICPC	International Center for Policy and Conflict
KII	Key Informant Interview
LHRC	Legal and Human Rights Centre
LRF	Legal Resources Foundation
MAPACA	Mobilisation Agency for Paralegal Communities in Africa
PASUNE	Paralegal Support Network
WLAC	Women's Legal Aid Centre
ZLSC	Zanzibar Legal Services Centre

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Part 1:

UNDERSTANDING PARALEGALISM

1.0 AN INTRODUCTION

(i) The context

The promulgation of a new Constitution for Kenya on August 27th 2010 was a key milestone for the country which was in dire need of reconstruction – both socially and mentally.

The mental construct of the country, and especially in regard to the rule of law, had been eroded since the 1960s with the concentration of power and authority in the presidency and public service and a pervading sense of helplessness for the majority poor and marginalized was rampant. Marginalisation here is not a precept for minorities or the uneducated but for the ruled by the rulers. As a people we had been socialized to know that the glamour of the rulers is the only thing to aspire to and therefore socially, we had become debased. The rulers had themselves taken it as a given that they held power when in office and therefore had used it for self aggrandizement.

The coming to force of the Constitution of Kenya, and especially the expanded Bill of rights and the paradigm shift for the application of the law was critical to the anticipation of a new Kenya. The meaning and impact of Articles 22, 23 and 48 is revolutionary and likely to change the perception and practice of dispensation of justice.

The things that matter to the community, the individual person unlearned in respect to the letter of the law have been given constitutional significance. Access to information, socio-economic rights, the rights of the accused person, rights of children and other group and individual rights have meant that the scope and application of the law is no longer a preserve of lawyers and legislators.

As much as we are aware that paralegalism has been practices in Kenya for over two decades, the enactment of the Constitution of Kenya presented to us a reality that we need to interrogate its role, function and practice.

This survey therefore is premised on the implications of the new state of affairs. We sought to find out what the practitioners see as the emerging issues in their practice.

(ii) The process

The survey included three key methodologies. The first is self-administered questionnaires. There were a total number of 25 questionnaires distributed, out of which 23 were returned. These were administered to the paralegal team at Makueni County to review their own work to assist with the review of paralegalism in Kenya.

No. of participants	23
No. of males	20
No of females	3
Average Age:	41
Years of Paralegal practice	10+

The consultant also carried out key informant interviews. These were carried out through online administration of the KII questionnaire and also face to face interviews.

Thirdly, the consultant held a focus group discussion with the paralegals.

(iii) Limitations to the study

The study is limited to the practice of paralegals in Makueni. It is also limited to community paralegalism.

2.0 PARALEGALISM IN PERSPECTIVE

2.1 Who is a paralegal?

A paralegal is defined as “community based individual who is not a lawyer but who has basic legal knowledge and skills.”¹ We also have paralegals that are part of the judiciary and these include court clerks, probation officers and prosecutors among others. In this report, we shall largely focus on community paralegals who offer their services to the community mainly on voluntary basis.

The role of a community paralegal in the community is that of a provider of basic legal services to the community; a bridge between the community and the practice of law. A paralegal works with institutions or persons in their respective communities who promote development. S/he mobilizes and advocate for law reforms for the improvement of the community’s welfare. The role of a paralegal in Zanzibar is summarized as ‘one who is entrusted to stir the community to understand the basics of law and the role law plays in the community. This awareness of the law is depended upon to build confidence among community members and to enable the people demand for their rights after understanding them.’² [Translation from *Kiwahili mine*]

2.2 When did community paralegalism in Kenya begin?

Community paralegal education and training in Kenya gained momentum in the early 1990s with workshops and training activities spreading across the nation. One of the key initial workshops was conducted in March 1993 by the Legal Education and Aid Programme of the Kenya Adult Education Association (LEAP KAEA) dubbed *Paralegal Training and Practice in Kenya*.³ Some of the general objectives of this paralegal programme included:

- To train people with basic knowledge of law and procedure by equipping non-lawyers with legal knowledge to give them a capacity which enables them to enlighten the community on their rights;
- To establish a body of paralegal workers with a view to making available paralegal services and creating a network of paralegal workers within the community;
- To promote the democratic process at grassroots level – that is, to socialize the law;
- Contribute to the generation of community action and community suggestions for law reform.⁴

1 PASUNE, 2005, Handbook for Paralegals, Nairobi, PASUNE, pp4

2 Bisimba, Helen Kijo, 2011, Kiongozi cha Wasaidizi wa Sheria Zanzibar, Zanzibar, Togo Systematic Investment, pp4

3 Kibwana, Kivutha, (Ed.), 1997, A Handbook on Paralegal Training and Paralegal Work, Nairobi, Claripress Ltd, pp2

4 Ibid, pp3

The role therefore envisioned for paralegals is one of closing the gap between the people and the legal profession – the creation of a legally empowered citizenry able to interact with and promote rule of law at the local level.

2.3 Why Paralegalism?

As indicated above, the need for paralegals arose as a result of the gap that existed between the people and the practice of the law. With the rekindling of community development programmes, access to law and justice became an increasingly essential need for community development to be realized. The obstacles related to access to law and justice such as ignorance of the law and its procedures, insufficiency of advocates, proximity of legal experts at community level, among other factors, necessitated the establishment of paralegal education and training in various parts of the country.

2.4 Paralegal Models.

There are four paralegal models in Kenya which we shall briefly describe.

a) Community Paralegals

This is by and large the main model practiced in Kenya⁵. As mentioned earlier, these are individuals resident in a community who are non-lawyers who are given training to enable them empower members of their community access justice and have an awareness of their human rights and be vigilant about issues on law and justice. They mostly work on voluntary basis.

b) Judiciary Paralegals

These are individuals who work within the court system such as court clerks, prosecutors and probation officers who are employed to assist in the court processes though they are not trained lawyers. These normally deal with providing advisory on cases brought forward in the various stations they work.

c) Prison Paralegals

These are based in prison facilities and they help remanded people with their cases especially on court procedures and their rights as accused and confined persons. They also help convicted people with the process of seeking appeals for their cases in higher courts and jurisdictions⁶.

⁵ In Kenya paralegal training and programming is carried out by civil society organisations such as ICJ-Kenya, CLARION, CRADLE, COVAW, 4Cs, CICS, MAPACA, CLAN, ANPPCA, CLEAN, ECWD, KAC, KNEAD, LKWV, PAT, PEDS, SNV, LRF, FIDA, Kituo Cha Sheria, and ECJP among others in the PASUNE framework. Most of these organisations practice diverse models of Paralegalism but the most prominent one is the community model.

⁶ The Legal Resource Foundation, a leading civil Society Organisation in Kenya, have this component in their paralegal programme.

3.0 A BRIEF LOOK AT PARALEGAL WORK IN THE REGION

Paralegalism is a universal concept. In this section, we briefly look at the practice in the region – Eastern and Southern Africa. Though not exhaustive, our aim here is to highlight some of the prominent parallels to the Kenyan situation. Countries reviewed are Uganda, Zambia, Malawi, South Africa and Tanzania and this is limited to one or two examples per country.

In Uganda, the Foundation for Human Rights Initiative funded by WFD started a decade ago and carries out “various paralegal trainings to empower grassroots groups to self advocate; demand their rights and participate in local governance issues within their communities.”⁷ They have promoted organizational capacities to enable community members ‘engage public officials on pertinent issues that affect them and demand accountability especially from their local council representatives and other decision makers within their communities.’⁸

In Zambia, Legal Resources Foundation not only offers legal aid to disadvantaged people but also runs a community paralegal programme ‘essentially to empower lay people to work directly with the poor, marginalized, vulnerable and excluded people to address social justice and human rights.’⁹ LRF in Zambia has been one of the key players in the paralegal sector which provides services beyond judicial ones to the community.

In Malawi, the Paralegal Advisory Services (PAS) has been providing aid in criminal matters at a quite successful rate. They cover 84% of the prison population and prisoners have been reported to have become ‘more sophisticated in their understanding of the law and court procedure’. Just like in Kenya under the work of PASUNE, the Malawi Law Society ‘is considering including paralegals in a review of the Legal Education and Legal Practitioners Act 1965 and the draft Legal Aid Act 2005 formally recognizes the role of paralegals as competent providers of basic legal advice, legal assistance and civic education and information about the law.’¹⁰ The issue of recognizing paralegals seems to be coming to fruition and it is only a matter of time before it is fully realized.

In Tanzania, several NGOs including Women’s Legal Aid Centre (WLAC), Legal and Human Rights Centre (LHRC), Zanzibar Legal Services Centre (ZLSC) and several others have been involved in the training and deployment of paralegals all over the country. The need for paralegals in Tanzania is best captured below:

7 www.wfd.org/case-studies/paralegal-training-in-uganda.aspx, 10th March 2012

8 Ibid

9 <http://www.lrf.org.zm/aboutus.php>, 8th March 2012

10 <http://www.carl-sl.org/home/articles/402-empowering-the-poor-through-community-based-paralegals>, 8th March 2012

Paralegal system in Tanzania started in the early 1990's after the failure of the State to provide legal aid service to all citizens who are in need of it. The failure of the State to guarantee its people different developmental programs such as health and education lead to immense poverty. Citizens cannot make ends meet and their very existence as human beings is totally threatened, hence many of them frustrated and disappointed with unchanging daily life turn to conduct petty and serious crimes. Frustrations become the source of violence including gender violence and other types of human rights abuses. Therefore many poor and ignorant people are caught by the law while they cannot afford to hire legal counsel to represent them in Court and hence they turn up to the State which is obliged under the Constitution to provide these poor people with legal assistance.¹¹

Other reasons identified for the establishment of paralegal networks is the fact of having few lawyers to serve the needs of the community and lack of adequate resourcing by government for support to people seeking justice. The work done by paralegals in Tanzania is extensive and the paralegals have formed organisations and even a network – Tanzania Paralegal Network (TAPANET)

In South Africa, great strides have made in the practice of paralegalism. Paralegals play a key role in provision of legal services to the marginalized and there are currently 260 paralegal advice offices across the country. The paralegals run educational programmes on human rights and they also promote access to justice through negotiation and mediation to avoid taking matters to courts where necessary. The paralegal advice offices also train and accredit paralegals and the training culminates in the awarding of a diploma from the University of Kwazulu Natal. Further, Lawyers for Human Rights in collaboration with a consortium for NGOs in five countries have formed the Southern African Legal Cluster Assistance Project and are pushing for legal recognition of paralegals in the region.

11 <http://www.google.co.ke/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=3&ved=0CEAQFjAC&url=http%3A%2F%2Fwww.wlac.or.tz%2Fintro.php&ei=twd7T7ilNMfQ4QTm4eCHBA&usg=AFQjCNHYWi9DoMn11JpuX5LScx9sP7qWcA>, Accessed 3/4/2012

Part 2:

Survey Findings

4.0 GENERAL FINDINGS

4.1 Selection

Different organizations have designed different criteria for the selection of paralegals in their communities. There are however basic guidelines that are common to all. These include literacy in their own languages as well as Kiswahili and English in the case of Kenya. Other qualities/skills essential in the selection of a paralegal across the board are:

- Effective communication skills
- Facilitation and counseling skills
- Mobilization and organizational skills.
- Knowledge of the local culture and religious practices
- Being an individual of integrity and being dedicated to community service.

Normally, community members are responsible for identifying trainees within their societies. Other models however have also been used such as:

- Being seconded by an organization/CBO
- Applying and being accepted
- Applying and going through an interview.

Communities and local organizations are responsible for the selection of paralegal trainees in their respective areas except in cases where the paralegals have to apply and get admitted through an interview process or without one.

4.2 Training

Another crucial stage in the development of paralegalism is the question of training. In Kenya, several publications have been published on the subject of paralegal practice and training. These include a *Paralegal Handbook 1: Handbook on Paralegal Training and Paralegal Work*, *Paralegal Handbook 2: The Paralegal Worker and Community Development* both published in 1997 as well as *A Curriculum for Community Paralegal Workers*, and *Handbook for Paralegals published in 2005*. The question of training of paralegals in Kenya is covered extensively especially in the PASUNE curriculum and handbook. A similar manual has also been developed by FIDA South Africa in collaboration with Community Legal Resource and Advise Centre (CLRAC) in the year 2000. Training is normally structured and is conducted over a particular period of time with a graduation or a ceremony at the very least that marks the end of the training period.

Paralegal training has areas covered that are common and are of fundamental importance. These include:

- Community development
- Communication skills
- Introduction to Law and Legal System
- Criminal and Civil Law Procedures
- Labour Law
- Property Law
- Family, Personal and Succession Law
- Law of Contract and Business Organizations

Other areas covered include Procedural Law and the Constitutional System. The training manuals may differ slightly in areas covered but they more or less agree on the fundamental areas to be covered in the training of paralegals. Other areas addressed in one manual published in Kenya include theatre for participatory development. The writers explain how one can package information using theatre as a method for communication and participation in the community expressing the idea ‘that in life we are constantly playing roles as a character in a written and acted play does.’¹²

Community paralegal training is normally done by trained lawyers or qualified instructors who work for or are commissioned by NGOs to conduct these training courses. Organizations in Kenya conducting paralegal training include but are not limited to ICJ, LRF, Kituo Cha Sheria, CLEAN, 4C’s, FIDA, RECAP-CLARION among others. In Kenya, there seems to be little or no affiliation of paralegalism to institutions of learning in Kenya. In South Africa a number of NGOs in the justice sector have a direct affiliation with University of Kwazulu Natal and offer both training and accreditation for paralegals. The Community Law and Rural Development Centre for example provides training and support for a network of 56 Paralegal Advice Offices in rural areas. At the end of the training, paralegals receive a diploma from the University of Natal. Lawyers for Human Rights have also formed the South African Legal Cluster Assistance Project ‘to lobby and advocate for the legal recognition of paralegals in southern Africa. A baseline survey called *‘Making Human Rights Real for All’* conducted by Mary Ndlovu in the Southern African states (SA, Angola, Namibia, Zimbabwe, Mozambique, Zambia, Tanzania and Malawi) reveals further that in countries like Malawi and Namibia, a significant proportion of paralegals have received formal training at a university or technikon (polytechnic). In South Africa and Malawi 1-10% of paralegals have been involved at this level, with training lasting between one and three years.’¹³

12 Kibwana, Kivutha (Ed.), 1997, Handbook on Paralegal Training and Paralegal Work, Nairobi, Claripress Ltd, pp 56
 13 <http://www.lhr.org.za/sites/lhr.org.za/files/Mary%20Ndlovu%20Paralegal%20Survey.pdf>, pp 19

4.3 Engagement/Deployment/work

Community paralegals are usually deployed to their home areas after completing their training. It is only in rare cases when they get deployed to work stations outside their home areas.

4.5 Support Systems

Paralegals are supported by their mother organizations and CBOs especially where training, deployment and evaluation is concerned. The paralegals are given re-training materials and other useful publications for their work.

In Kenya, there is a general feeling that that more support, especially from the government is required. The absence of a policy framework on paralegalism seems to be one of the greatest obstacles hindering support from government. Some effort has been made though to surmount this obstacle. The Ministry of Justice and Constitutional Affairs 'is coordinating a sector-wide programme titled Governance, Justice, Law and Order Sector (GJLOS) Reform Programme. The programme aims at improving people's access to justice.'¹⁴ The bulk of the work on support for paralegals is however still in the hands of civil society and CBOs and these organizations have formed PASUNE 'to coordinate the activities of training and supporting paralegalism and paralegals'¹⁵ The network is currently advocating for the enactment of legislation that would recognize and institutionalize paralegals within the justice sector. The realization of this will give paralegalism the much needed boost especially in terms of recognition by both the government and the respective communities that paralegals work in.

Largely, community paralegals do not get paid for their services and therefore operate on voluntary basis. It is therefore difficult for them since they operate without financial support as the people 'who benefit from the services of paralegals are largely the poor in society, and cannot be expected to shoulder the running costs of these services.' We shall look at the question of financial support in the recommendations section.

Support also takes other forms such as supervision. The Southern Africa scenario reveals that 'there is a fairly high degree of contact [with trained legal experts] in some countries. Generally, those [paralegals] supervised on a daily basis are those located in urban areas.'¹⁶ Those in the rural areas are usually supervised by telephone by their supervising lawyers.

14 PASUNE, 2005, Handbook for Paralegals, Nairobi, PASUNE, pp6

15 Ibid

16 Ibid, pp 23

4.6 Information/Documentation/Reporting/Evaluation

Documentation of activities of community paralegals is wanting. Most activities do not seem to be well documented or documented at all. Similarly, a number of paralegals interviewed said they would want to be trained in report writing and evaluation skills to be able to assess the programmes they run more independently and efficiently without having to rely on the mother organization.

Organizations in Kenya that are involved in paralegalism are involved in various other activities that support the cause such as publications that are distributed to paralegals, use of radio, television and print media to discuss issues on constitution, the law and human rights as well as writing reports on activities undertaken.

In Zambia, a similar scenario is at play. LRF is involved in the broadcasting of Community Radio programmes, publishing of a newsletter that is distributed internationally as well as publishing booklets on various human rights issues that are sold at a minimal price. We shall look in depth at evaluation of paralegal work with specific reference to a case study of paralegal work in Makueni.

5.0 THE CASE STUDY OF MAKUENI

Makueni County, formally Makueni district, is one of the 47 counties under the new constitutional dispensation and has five constituencies i.e. Kaiti, Kilome, Kibwezi, Mbooni and Makueni. It's proposed administrative headquarters are in Wote where the MAPACA paralegals have an office from which they operate. We shall briefly look at various aspects of the county in order to give a picture of the area that this research is exploring.

5.1 Population Profile

Makueni County has a population of 884,527 people as of the 2009 census. 49% of the population is male while 51% is female. There are 110.4 people for every two Kilometers.¹⁷The county is sparsely populated except for Kilungu and Mbooni areas. The highest concentration of the population is in hilly areas which have natural resource potential. Most of the people are in settlement schemes. In addition there is higher concentration in upcoming urban centers and towns.¹⁸ Half of the population is composed of youth below the age of 18 years. 'This age group, together with those above 64 years, constitutes over 55% of the total population bringing the dependency ratio to approximately 100:109'.¹⁹

¹⁷ <http://www.makuenicounty.net/pages.php?theid=9>, March 11 2012

¹⁸ Ibid

¹⁹ Ibid

5.2 Infrastructure

The road infrastructure is assessed as poor and especially during the rainy season when roads get washed away. Three roads however boast of being tarmacked and these are Salama-Mukaa-Nunguni, Salama-Emali-Makindu, and Katumani-Wote-Makindu. The Nairobi-Mombasa highway runs through the county and it serves as a link to Nairobi and Coast Counties. The Mombasa-Kampala railway runs through the county as well.

5.3 Education

There are about 850 primary schools in the County and some of them are the best performing primary schools in the county. These are mainly run by religious institutions and they include ACK Wote Township Boarding Primary School, HGM Vitale Boarding Primary, and AIC Malivani among other schools. There about 140,000 boys in primary school and 120,000 girls. The secondary schools have a population of 120,000 students; a number which has risen over the years owing to the introduction of free tuition and deployment of CDF funds into schools. Some of the best Secondary' schools include Precious Blood Kilungu and Makueni Boys' High School. Though the county is said to look outside of itself for tertiary education especially university education, there are a number of technical institutions and youth polytechnics that offer vocational training.

5.4 Agriculture and Natural Resources

Makueni County's economic backbone is agriculture. The County practices both subsistence farming on a large scale and commercial farming on a smaller scale. Maize, beans, millet and peas form the bulk of crops grown under subsistence farming while fruit, cotton and maize are grown under commercial farming. Arrow roots and sugarcane are also grown for the local market. People also keep cows, sheep, donkeys and goats. The land is however said not to be fully utilized and lots of potential exists. This is summed up in a comment on Makueni County's website that says: 'It is about time for Makuenians to also have flour millers in the County for our excess produce in maize, sorghum, millet, etc...'²⁰

The Chyulu Game Reserve and Tsavo West National Park collectively occupying an area of 1198.4 square kilometers are to be found in Makueni County; both resources bringing in tourists hence foreign exchange. Other natural resources include building sand, water, pasture land, forests and minerals.²¹ In spite of these resources, the poverty index is high with the rural areas indicating that 67% of the people live under the poverty line and 34% of the population in urban centres living under these conditions.

20 <http://www.makuenicounty.net/pages.php?theid=9>, March 11 2012

21 <http://softkenya.com/makueni-county/> March 11 2012

5.5 Court Infrastructure

There are Magistrate courts in Makindu (2), Kilungu (1) and Makueni (Wote) (1). The county does not have a high court.

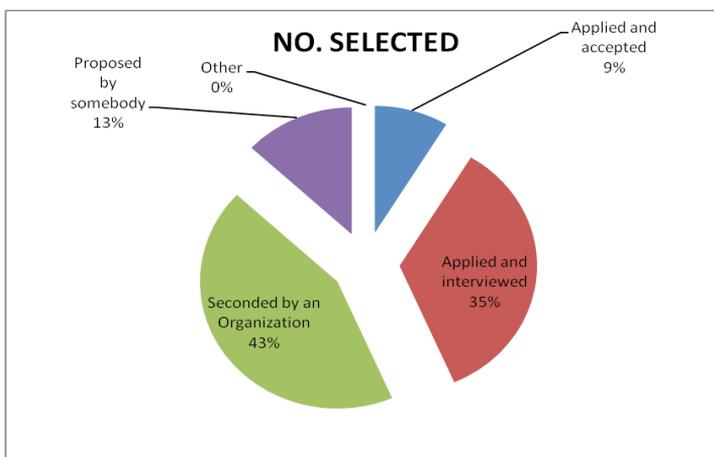
6.0 PARALEGALISM IN MAKUENI

The first training on paralegalism was conducted by CLARION in 1998. Again in 2001, 48 people were selected for the training. 35 of them went through the full course. The paralegals who benefitted from these two trainings formed Makueni Paralegal Community Association, and later transformed the organisation to Mobilisation Agency for Paralegal Communities in Africa - MAPACA

6.1 Criteria for Selection of Paralegals

In the general findings section, we looked at selection of paralegals and found out that most organizations agree on the basic criteria to use in the selection of paralegals. We looked at some of the criteria that are used in Makueni. The highest number of participants was seconded by an organization/CBO followed by those who applied and went through an interview process. The third category was those who were proposed by somebody followed by those who applied and were accepted. The participants did not go through any other form of selection

METHOD OF SELECTION	NO. SELECTED	PERCENTAGE
Applied and accepted	2	9%
Applied and interviewed	8	35%
Seconded by an Organization	10	43%
Proposed by somebody	3	13%
Other	0	0%



6.2 Training of Paralegals

All the respondents were trained in the year 2001-2002 save for one respondent who was trained in 1998. Several topics were covered during the training as shown in the table below.

AREAS OF TRAINING	NO. TRAINED	PERCENTAGE
Constitution of Kenya	23	100%
Court Systems and Procedures	23	100%
Land	23	100%
Good Governance	23	100%
Child Rights	21	91%
Voter Issues	16	70%
Rights of minorities	12	52%
Gender Based Violence	18	78%
Facilitation Skills	23	100%
Community Mobilization Skills	23	100%
Others	18	78%

The results show a large number of the paralegals were trained in key areas of the law. The least area in which they were trained is rights of minorities. Those who responded to being trained in other areas pointed out to the following areas:

- Criminal law and procedure
- Administrative Law
- Alternative dispute resolution mechanisms
- Family, Personal and Succession Law
- Conflict Management
- Law of Tort
- Leadership and Leadership skills
- Role of Parliament, Judiciary and Executive
- Research and Writing skills
- Arbitration skills
- Sustainable Development
- Human Rights
- Preservation of Evidence

This provides evidence that 78% of the paralegals have undergone some other training either as part of a group or individuals.

All the respondents said there were training needs to be addressed in light of the Constitution of Kenya 2010. They enumerated them as follows:

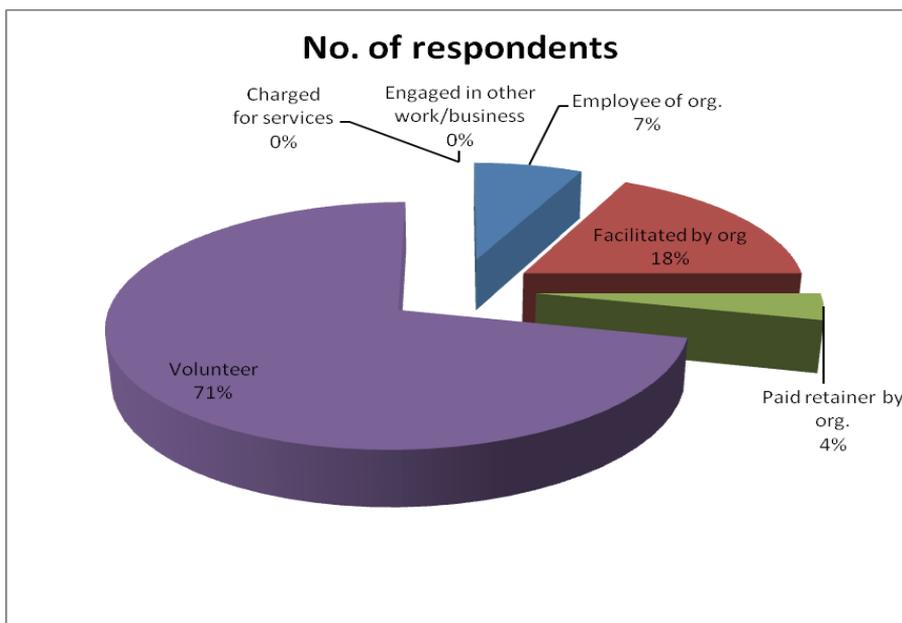
- Devolution of power
- Bill of Rights
- New land bills
- Current court systems and procedures
- Knowledge on laws already passed
- Leadership and Integrity
- Roles of senators, governors and women
- Legislature
- Relationship between county governments and provincial administration
- How to read the language used in the constitution
- Electoral laws
- Constitutional interpretation skills

This is an indicator that the paralegals are aware of the training needs they require in light of the new constitutional dispensation. Most of the respondents indicated that though they had generally promoted and championed the adoption of a new constitution for Kenya, they are not well versed with the application and implication of the various provisions.

6.3 Status of the Paralegals and Deployment

We also examined the status of each paralegal in Makueni. In this section, the survey tool sought to find out the status each of the paralegals was working under in the community with regard to their practice.

Status	No. of respondents	Percentage
Employee of org.	2	9%
Facilitated by org	5	28%
Paid retainer by org.	1	4%
Volunteer	20	87%
Charged for services	0	0%
Engaged in other work/ business	0	0%



71% of the paralegals work as volunteers. 18% have been facilitated by an organization while 7% work or have worked as employees of an organization. In the area of work, the participants were to state whether they were working in the home area or elsewhere. 87% work in their home area while only 13% work elsewhere. 4% of the respondents said they work both at home and elsewhere.

There are therefore a large number of volunteer paralegals in Makueni who work in their home area.

No. of years practiced	No. of respondents
10 years	9
Less than 10 years	5
More than 10 years	3
No Response	6

The number of years that each paralegal had practiced was sought:

The results indicate the majority of the group was trained in the year 2001-2002 period hence the high number of paralegals who have practiced for 10 years to date. 100% of the respondents became members of MAPACA after completion of their training. None responded to the negative.

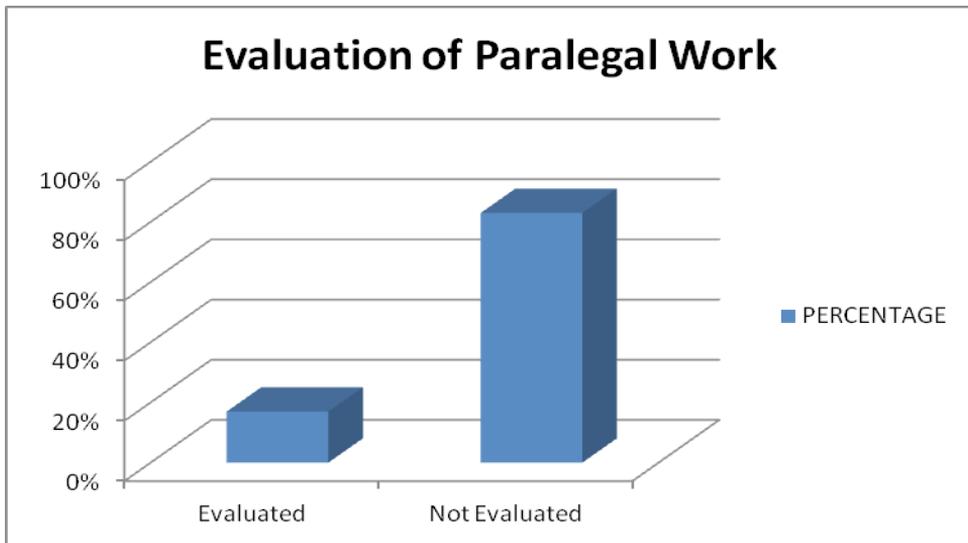
6.4 Documentation and Evaluation

On the question of compiling reports, the results were as follows:

Response	No. of respondents	Percentage
Yes	17	74%
No	4	17%
No Response	2	9%

The survey thus reveals that 74% of the paralegals in Makueni do write reports on the work they have undertaken. This indicates that documentation is fairly well done. A follow up question during the focus group meeting to establish where the reports are filed and how they are used was asked. There was established that the responses to writing reports could not be substantiated. It was also not clear what function the reports serve in terms of development of the paralegal programme. It was not possible to gauge how the reports are written and how they are used to further their work in the community. It was clear that there was no central processing unit or documentation.

EVALUATION	PERCENTAGE
Evaluated	17%
Not Evaluated	83%



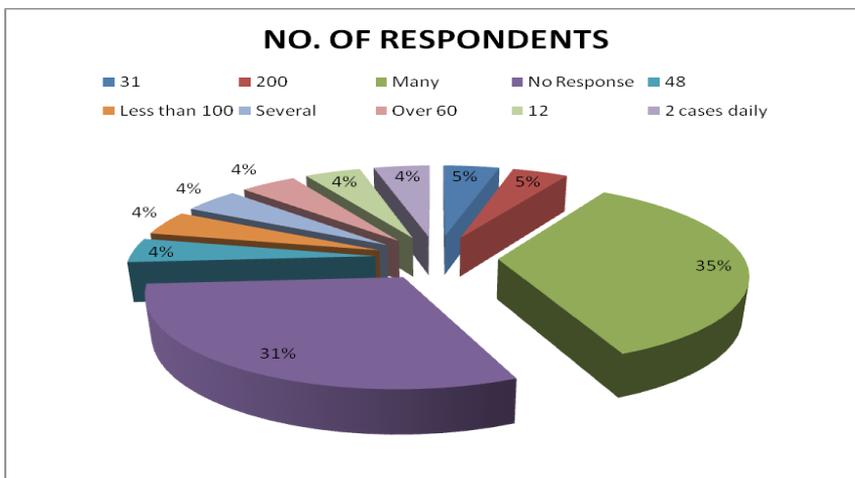
On the question as to whether their work has ever been evaluated, only 4 participants answered to the affirmative while the rest answered to the negative. This obviously shows that evaluation of the paralegal work in Makueni County has not been pursued diligently. This seems to have resulted from the fact that after the training, CLARION did not seek to continue a structured engagement with MAPACA or with the trainees. It is an area that requires more attention as the Makueni paralegals have been practicing for the past 10 years.

6.5 Cases Handled by Respondents

6.5.1 Number of Cases

On the question of the total number of cases handled, most respondents did not give a definite figure and an almost equal number gave no response. The table below shows this.

NO. OF CASES HANDLED	NO. OF RESPONDENTS	PERCENTAGE
31	1	4%
200	1	4%
Many	8	34%
No Response	7	30%
48	1	4%
Less than 100	1	4%
Several	1	4%
Over 60	1	4%
12	1	4%
2 cases daily	1	4%

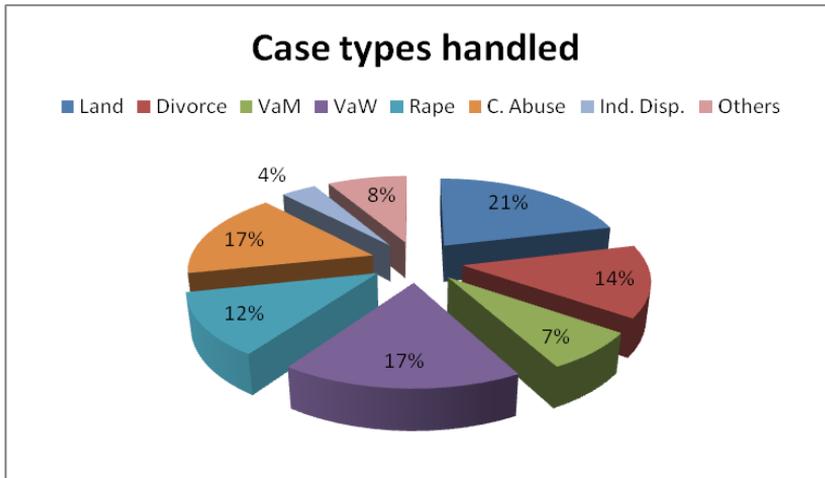


The number of non-respondents indicates that one thirds of the group does not keep records on the number of cases handled, either because there is no way of doing this (for lack of tools or skills) or because the need to do this does not arise. This is a yawning gap in the practice. What this practically means is that the paralegal story – the narratives of success, impact or failure have not been captured. Learning therefore is difficult to gauge and or document. During the FGD, most of the paralegals expressed the fact that they have done significant work in the communities but that since it was not documented; there is no way of attribution and or reconstruction.

The data further shows that each of the paralegals has handled more than 10 cases during their practice.

6.5.2 Case Types Handled

In terms of the cases the paralegals handled, the following results reveal that land cases are very prevalent in the area while industrial disputes are the least common cases owing to the fact that Makueni County is not very industrialized as say Nairobi or Thika. There are many cases on violence against women, child abuse and rape with more than 50% of the respondents claiming to have handled one of all these cases in the time they have practiced as paralegals.



Other cases handled included:

- Assault
- Inheritance and property ownership
- Juvenile delinquency
- Marriage separations
- Mediation in individual and group conflicts
- Succession
- Corruption cases
- Human Rights abuses
- Devolved funds issues
- Educational matters
- Child maintenance and custody

6.5.3 Success/Failure of Cases Handled

Regarding handling cases in court that either went well or failed, the following results were gathered.

Type of case	Number of responses
Cases that went well	20
Cases that failed	23
Non Responses	3

Nearly all the participants handled cases that went well for the complainant and nearly all of them handled cases that failed or did not go well for the complainant. We looked at reasons for success and reasons for failure.

REASONS FOR SUCCESS	REASONS FOR FAILURE
<ul style="list-style-type: none"> • Complaint to Attorney General • Village elders/paralegals/police// government officials’ intervention and arbitration. • Mediation • Financial intervention by paralegal using own funds • Agitation by the public 	<ul style="list-style-type: none"> • Negative cultural practices (witch craft) • Police not cooperative • Corruption by provincial administrators and police • Interference with evidence • Lack of documentation • Lack of legal fees for an advocate • Complainants abandoned case • Witnesses’ failure to make an appearance. • Illiteracy • Abuse of office • Lack of access to information • Slow court process

Success relied mainly on proactive approaches by the paralegals and the community leaders and institutions as well as the public. Failure is blamed on the community, the courts, the police and other government officials. It would seem then that the paralegals have had no hand directly in the failure of the cases and failure thus emanates from without rather than what they did or did not do. All respondents said that since the promulgation of the Constitution they have continued to practice but all admit to facing challenges as they have to familiarize themselves with the new constitution in order to serve the community more effectively.

6.6 Method of Intervention

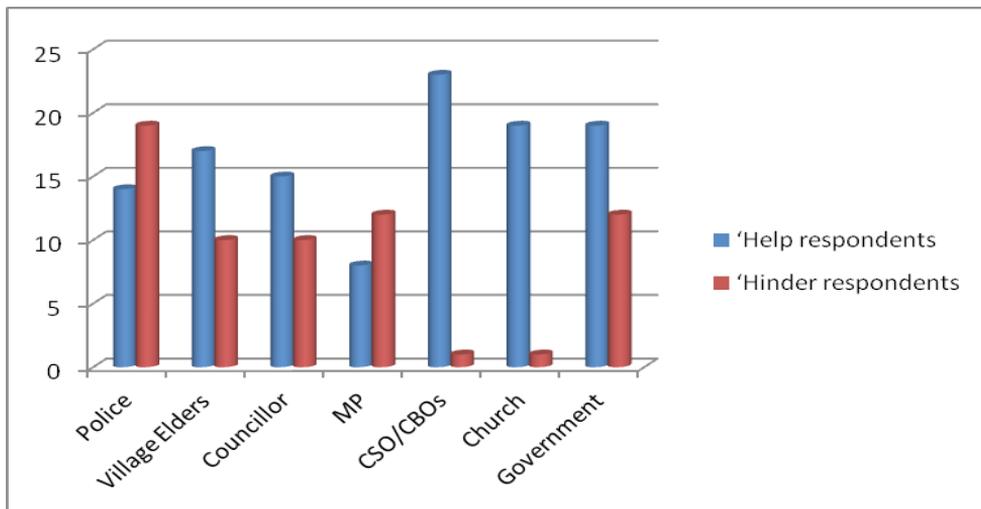
The consultant sought to establish the methods the paralegals applied to intervene in the various cases they had handled and the following were the responses gathered;

METHOD USED	NO. OF RESPONSES	PERCENTAGE
Advise	23	100%
Arbitration	18	78%
Write Affidavits	4	17%
Reported/recorded police statements	20	87%
Sought release of wrongfully arrested	20	87%
Sought arrest of wrong doers.	20	87%

Advice was therefore the most frequently used tool for intervention. Writing affidavits was the least used tool as affidavits are only written and signed by qualified advocates. The other intervention methods were also highly employed by the paralegals in their work.

6.7 Role played by Local Leaders and Organizations

The consultant also sought to find out what role the local leaders and organizations played in terms of being of help or a hindrance to the process. The following data was gathered;



NB: Most participants ticked into both boxes. This means they have received help from the leaders or organizations but at times they were hindered in their work by the same leaders and organizations perhaps depending on various reasons given.²² Below is a

22 See questionnaire pp3, number 16 and 17

summary of how community leaders and organizations helped or hindered the work of paralegals in Makueni.

6.7.1 Persons

LEADERS	HOW THEY HELPED	HOW THEY HINDERED WORK
Village Elders	<ul style="list-style-type: none"> • Mobilization • Advisors on land issues • Arbitration • Give information on perpetrators • Failure to act 	<ul style="list-style-type: none"> • Cover ups • Intimidation • Cover ups • Resistance to change
Councilor	<ul style="list-style-type: none"> • Advocacy, awareness and networking • Mobilization and agitation 	<ul style="list-style-type: none"> • Failure to act
Member of parliament	<ul style="list-style-type: none"> • Gave personal vehicle to take suspect to police station • Advocacy and agitation • Failure to act 	<ul style="list-style-type: none"> • Anti-reform activities • Corruption • Colluding with senior officers to conceal the truth • Shielding wrong-doers.

6.7.2 Institutions

Type of ORG.	HOW THEY HELPED	HOW THEY HINDERED
CSOs/CBOs	<ul style="list-style-type: none"> • Facilitation and networking • Advocacy and awareness • Legal Support • Follow up work • Financial support 	
Church	<ul style="list-style-type: none"> • Arbitration • Advocacy and awareness • Preached peace and unity in marriage • Mediation • Condemns incidences of injustice and reports perpetrators • Mobilizing • Counseling 	<ul style="list-style-type: none"> • Advocated gender inequality
Government	<ul style="list-style-type: none"> • Collaboration • Arbitration • Intervened in case of child abuse • Gave technical support 	<ul style="list-style-type: none"> • Bureaucracy • Inactive departments • Corruption • Hostile officials due to • insecurity* • Withholding information.



Part 3:

The Future of Paralegalism

7.0 RECOMMENDATIONS

The future of paralegalism has indeed been given a great boost and a reorientation by the Constitution of Kenya. Notwithstanding other issues, the *locus standi* given to citizens by Art 22 and the fact of burden of prove being borne by the state (Art 20 (5)) is significant in the anticipated role of paralegals. The realization of the significant jurisprudence anticipated by Article 159 (2) (c) and (d) is predicated on their being a community support mechanism for the judiciary. In our view, this mechanism needs to be anchored on the function and practice of paralegalism.

This section will address the key issues that have emerged in the survey on the practice of paralegalism in Kenya. We shall describe the findings, comment on them and give recommendations based on what the respondents said and what the literature we have reviewed on the subject provides as a basis for the practice of paralegalism in Kenya under the new constitutional dispensation.

7.1 Paralegal representing complainants in Court

Our findings from the self-administered questionnaires reveal that 100% of the paralegals have not represented a complainant in court. This of course lies in the fact that community paralegals under discussion here have no mandate by law to represent someone in court. As much as one would like to be represented by an advocate in court, the fees charged by both the advocate and the courts for the determination of a case are limiting.

The reality on the ground is that poor people who are struggling with basic needs feel frustrated by the sheer costs and complexities of the justice system and end up giving up on pursuing a matter through the courts simply due to their economic status as stated by all respondents in the focus group discussion whilst discussing challenges paralegals face.

Similarly, access to an advocate, particularly in the rural areas is still an impediment. One only needs to make an observation of how many law firms exist or have branches in the local rural towns. Some have none whilst others have one or two and their availability is not guaranteed when a complainant or defendant needs one. This is where paralegals would begin to play a key role as argued in a baseline survey in Zanzibar on the matter and it is clearly stated that;

“Advocates should not be the only ones who allowed [*sic*] appearing and representing parties in litigations especially in the lower courts. Paraprofessionals should be recognized and given rights of audience, hence there should be strict regulations governing practice and only those with recognized qualifications and experience should be admitted, and rules of conduct and ethics should be promulgated”²³

23

Uki, Ali et al, 2011, Baseline Survey for Monitoring of the Paralegals Project, Zanzibar, Zanzibar Legal Services

The extent to which a paraprofessional or paralegal can represent a complainant or a defendant in court needs deeper debate as the need is clearly there as strongly pointed out by the respondents. In our case, the realisation of justice for all as anticipated in the constitution can only be achieved if the rules of procedure anticipated in Art 22 (3) are facilitative of entrenching paralegal practice in the formal judiciary.

7.2 Selection and Training of Paralegals

This was another emerging issue in the survey. 43% of the respondents said they had been seconded by an organization or CBO into paralegal practice while 35% said they applied for it and went through a formal interview. 13% said they had been proposed by someone while 9% said they applied and were accepted.

During the focus group discussions some of the respondents voiced concern over the qualifications of paralegals in the community and especially with regard to academic qualifications. Some of the guidelines for selection of paralegals include ‘basic literacy (in English/Kiswahili/local language), ability to communicate, potential or existing organizational and mobilization skills;’²⁴ among others. Some of these guidelines have now been overtaken by time in light of technological advancement, a new constitutional dispensation and a rising demand for more accurate advice/information on various issues such as land, deployment, good governance and citizen’s rights.

Legal issues are complex and Helen Kijo-Bisimba and Chris Maina Peter point out that, ‘Even the most intelligent members of our societies always find themselves out of place in the courts of law. This is because they are not trained in the discipline. It is worse for the illiterate...’²⁵

Training paralegals on issues of law, the Constitution of Kenya, the attendant legislation and the envisaged organisation of government and governance is important. Training also in communication methodologies that make them more effective in getting across to the communities they work in is key. This will go a long way in building confidence, not only among the paralegals but in their communities as well. Having the training formalized to an academically recognised certification is desirable both a motivation factor as well as a functional and official qualification.

Centre, pp21

²⁴ Kibwana, Kivutha (Ed.), 1997, A Handbook on Paralegal Training and Paralegal Work, Nairobi, Claripress Ltd, pp5

²⁵ Bisimba, Helen Kijo, Peter, Chris Maina, 2005, Justice and Rule of Law in Tanzania, Dar-es-Salaam, pp468

7.3 Information, Documentation and Evaluation

74% of the respondents said they do write reports from the questionnaires. In the focus group discussion, the participants strongly expressed the need to be trained in documentation as well as evaluation skills so that they are more independent and can document and evaluate their own programmes more confidently. It was not clear how the reports were used or if any follow up work came up as a follow up to these reports. Further, only 17% of the respondents claim to have had their work ‘professionally evaluated’ by two organizations (CRECO and CLARION) for the past 10 years

More conscious effort needs to be made to document work done and debates and actions taken need to be well documented to guide future practice. There is need for all the programmes to be designed in such a way that the evaluation component is a regular feature with a defined time frame and objectives.

7.4 Remuneration, Recognition and Sustainability

The results indicate that 87% of the paralegals work as volunteers. During the focus group discussion, the participants voiced the challenges they face working as volunteers and expressed concern about the sustainability of working in this status as financial needs to cater for their personal day to day expenses such as travel, food and court fees for the complainants have to come from their pockets. They are also not allowed to receive any fee for their services from their community members. On the issue of recognition, all respondents in the focus group discussion lamented their lack of the community as well as institutions. The key issue here was certifications that go with their training. The certificates do not count for much outside of their practice and therefore this issue needs to be addressed.

It is refreshing to note that the issue of recognition of community paralegals is on the agenda of organizations such as LRF as well as ICJ. All The interviewee of the Key Informant Interviews pointed to the fact that they would want to see more recognition of paralegals and aim to train more paralegals in order to popularize the practice at the grassroots level.

The Southern Africa experience where degrees are awarded from a recognized university is a model to emulate. In light of this, a reasonable well managed fund can be established and fundraising activities conducted to feed this fund. This fund should be able to take care of the recurrent costs of community paralegals such as travel fees and subsistence while on duty. In the mid-term, the paralegals should be able to draw a sustainable stipend that motivates them in their work

7.5 Role of Community Leaders and Organizations

From the questionnaires responses, community leaders and organizations help in the work of the paralegals. Interventions by community leaders and officials in various organizations have had a positive result on some of the cases handled by paralegals. This is indicative of the fact that paralegal work is gaining support in the grassroots as well as being recognized as a useful service in the community by the authorities that be. There also instances unfortunately where paralegals face obstacles from these same institutions and individuals in their work.

To surmount these barriers such as corruption and interference with evidence, the paralegals need to be more vigilant. For example in one case the paralegals wrote to the Attorney General and got a positive response and in some cases agitation by the public also bore fruits. Corruption cases in particular need more whistle blowing especially in light of chapter six of the Constitution of Kenya on Leadership and Integrity. Article 73 ‘vests in the State officer the responsibility to serve the people, rather than the power to rule them.’²⁶ The conduct of state officers is also addressed in the new constitution where they are urged to avoid ‘any conflict between personal interest and public or official duties; compromising any public or official interest; or demeaning the office one holds.’²⁷ The paralegals need to fully understand this chapter and sensitize the community around issues arising from it to help curb cases on corruption.

Obstacles emanating from the community such as illiteracy, lack of awareness, witnesses’ failure to appear in court and abandonment of cases also require the paralegals to work harder towards sensitizing the community about their rights and importance of pursuing them to their logical conclusion either in court or in mediation outside court. There is also a need for more intersectoral collaboration between the paralegals, CBOs, the government (education sector) and the church to alleviate issues of illiteracy and lack of information.

It is recommended that the national network of paralegals does more to fundraise for community education by paralegals and networks effectively at the national level with other stakeholders, carries out advocacy on behalf of paralegals, organises sharing meeting for learning and ensures that information developed nationally is shared with and understood by paralegals

7.6 Addressing priority issues within the Community

Land issues, domestic violence and child abuse are the three prevalent issues in Makueni County. These are very sensitive issues as they touch on livelihood and well

²⁶ Constitution of Kenya, 2010, Nairobi, Government Printers Art.73(b)

²⁷ Constitution of Kenya, 2010, Nairobi, Government Printer Art. 75 (a), (b) (c)

being of the people. In the light of the Constitution of Kenya, legislation on land has seen major changes happening and (and bills pending enactment may bring to bear new consequences) as such one needs to keep oneself abreast with the new legislation. The constitution clearly states that land ‘shall be held, used and managed in a manner that is equitable, efficient, productive and sustainable...’ and the principles are clearly laid down.²⁸ It is possible that in other Counties, issues arising from paralegal practice may vary.

The continued engagement and training of paralegals is necessary. The curriculum to be developed needs to be comprehensive and enabling for community paralegal practitioners.

7.7 Gender imbalance in Paralegal Practice in Makueni

The population statistics show that men form 49% of the population while women form 51% of the population. It is therefore alarming to find only 3 females out of the 23 respondents. There is an urgent need to address this issue urgently among the paralegals and into the wider community. As paralegal work is voluntary, women encounter unique barriers in their practice. Moreover, quite a number of cases involve land, child abuse and violence against women. These are sensitive cases within the community and handling them requires utmost caution as they could end up inciting fresh fronts for conflict.

It is imperative that the issue of women joining paralegal practice in the community be addressed with these considerations in mind.

7.8 Safety while serving

During the Focus Group Discussion, the participants also pointed to issues of security while serving as paralegals. No doubt quite a number of the cases they handle are sensitive and since they are community members themselves and therefore involved in one way or another, the matters are complicated. An advocate is more removed from ongoing court disputes compared to a paralegal. It is not surprising that they face and may in the future face real danger.

This is therefore an issue that needs addressing especially with the community, local authorities and security agents such as the police in order to avoid any unfortunate incidences that may arise due to the nature of the work of the paralegals.

²⁸ Ibid., Art.60 (1) (a-g)

Generally, we recommend that paralegals, whether community or otherwise, be retrained especially since the basis of law (the Constitution) has radically been changed. The issues that paralegals handle have also been greatly expanded by the bill of rights and the methodologies for engagement must be recast.

More sensitization and awareness on paralegal work and how it functions within the community will help alleviate any emerging conflicts. Legal protection for paralegals is therefore key among the issues that need to be advocated for at the national level.

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Annex 1

LIST OF INFORMANTS

1. Key informants

- a. Prof Chris Maina Peter – Faculty of law, University of Daresalaam
- b. Dr Helen Kijo-Bisimba – Legal and Human Rights Centre (LHRC)
- c. Janet Munywoki - LRF
- d. Sarah Muthiga – ICJ- Kenya
- e. Priscilla Nyokabi – Kituo Cha Sheria

Annex 2: Raw Responses from the FGD

FOCUS GROUP DISCUSSION.

The focus group discussion was the second tool used in the survey of Paralegalism in Kenya in a New Constitutional Dispensation. The discussion was conducted on 29th of February 2012 at the MAPACA offices. There were 20 participants in total and two researchers. There were 3 females and 17 males.

The discussion opened with an overview of how they view their role as paralegals in the community. The first question does not appear on the FGD tool and was asked as an ice-breaker to set the ball rolling as it were. The participants were able to describe their roles and why they stand out in the community as people who possess unique knowledge.

QUESTION (INTRODUCTION)

What is unique about being a paralegal?

Responses

1. Being a paralegal gives one basic knowledge of the law that is not possessed by many in the community
2. The community views you as the legal aid provider
3. A paralegal is the bridge between people and the courts
4. You carry the responsibility of enlightening others in legal matters
5. You get to participate in meetings that set agenda in the community

6. The information is useful as self defense since one is enlightened enough to know their rights and so one can agitate for themselves when their rights are breached or in danger of being violated.

QUESTION 1.

Identify 5 key strengths of paralegal programme in Makueni County. How can they be enhanced?

RESPONSES

1. The paralegal programme has enabled paralegals to expose the ills of land grabbing in the community.
2. The KANU regime had 'stupefied' people to an extent where they did not question or dare go against authority or even question it particularly when it was very oppressive. Paralegals have been able to help communities 'wake up' from this state and actively participate in democracy, rights and justice issues.
3. Paralegals are used as referrals for all manner of injustices that occur or recur in the society and problems have been addressed and solved through their intervention.
4. Provincial administration officials and specifically the chief has referred some cases from his office to the paralegals to be addressed by them.
5. Paralegals have brought out the resource components of people to leadership. The leadership in areas where paralegals exist is of a higher quality and more responsive to the needs of the citizens.
6. Paralegalism was important in defining and developing new leadership.
7. Mistreatment of people by authorities that has been dramatically reduced due to the intervening actions of the paralegals.

QUESTION 2

What have been the key successes of the paralegal programme since its inception? State the main reasons behind its success.

RESPONSES

1. Enlightened people on matters of the law

2. People were afraid of courts but are now less intimidated by the court process.
3. Paralegals helped people file cases against lawyers
4. Courts are more careful and vigilant today in conducting their business as they know there is a watch brief out there observing them.
5. Paralegals have challenged leaders to sharpen up their leadership skills especially in governance. In the areas where paralegals do not exist, leadership is not as vibrant.
6. Police brutality is now milder. The police still use physical violence on people but they are more cautious not to inflict serious or visible injuries on their victims.
7. Paralegals act as agents of community development.
8. There has been a spillover of skills to community members particularly in Kibwezi where a chief was recently arrested [by citizens? for]

QUESTION 3

What are the main challenges facing paralegals in their work?

RESPONSES

1. There is a gap between community paralegals and pro bono lawyers
2. Paralegals cannot go to court on behalf of people and most of the people cannot afford fees for lawyers
3. Paralegal training does not focus on life skills such as self defense and empowerment and this is an area that needs looking into.
4. There lacks a proper system of referrals making further action complicated
5. Certification from the training is 'not recognized officially' as it simply reads 'certificate of participation'.
6. There is no remuneration for paralegals and as such paralegals continually find their work unsustainable. They feel marginalized. (One participant here made an observation that being a paralegal elevates one to a status of role model. He wondered how people can continue viewing you as such if you wear torn shirts out of poverty!)
7. The umbrella body does not exercise control of who becomes a paralegal and who does not qualify. There should be a minimum qualification
8. There has been no training on reporting, recording and documentation and no networking or coordination

9. There exists different training methods and practices and so no confluence point for all paralegals nationally.
10. Coordinating especially on reporting is poor and not sourced systematically
11. Other organizations have not taken into consideration the existing skills of the paralegals thus making their interaction limited.
12. Paralegals have by and large been isolated and lack support in terms of finance, material among other necessities for success in their work.
13. The new constitution has many acts which have proven a challenge for the paralegals to keep up with.
14. Paralegals cannot arbitrate on issues touching on new constitution because they are not aware of all the requisite provisions touching on cases. There are also a number of new laws coming up
15. Courts have become activist and therefore paralegals do not know what to do/how to interact with them
16. Paralegals are not considered in employment as you do not even see any organization on newspaper advertisements for jobs listing a vacant position for paralegals.
17. Gender emasculation (men) men are feeling threatened by the perceived powers of women as captured in the Constitution of Kenya.
18. Some issues are abandoned owing to poverty as people do not have enough resources to pursue them or their logical conclusion
19. There lacks initiative for self organization among paralegals and reliance on parent organization slows down progress.
20. Challenges of mobility vehicles such as bicycles, motorcycles and cars render movement very difficult.
21. The personal security of paralegals in the community is at risk especially in sensitive or serious cases as nobody guarantees their safety.
22. When some paralegals conduct themselves dishonorably in the community, committed paralegals also get branded together with the 'crooks' making their work difficult.
23. In the case of a citizen's arrest, the community members leave the paralegal alone to pursue the case thus jeopardizing its outcome in court.

QUESTION 4

Are there any steps that have been taken to overcome the challenges? What success levels?

RESPONSES

1. MAPACA joined CRECO in order to enable it to network with other organizations. This has not alleviated the situation and fund raising has still not happened to support the paralegals.
2. A code of conduct for the paralegals [explain more here]
3. PASUNE was formed but it does not seem to reach the people.
4. There was training done by CIC under the auspices of CLARION in 1998 that proved useful to those who were trained.

QUESTION 5

What issues were paralegals dealing with in the communities? List five (5) in order of importance

RESPONSES

1. Land
2. Domestic Violence
3. Child abuse (including defilement)
4. Sexual Offences
5. Corruption

QUESTION 6

How were paralegals dealing with issues identified above?

RESPONSES

1. Land – Advocacy, court process, arbitration and networking
2. Domestic Violence – Arbitration, mediation, advocacy, referrals to the police, legal organizations and others.
3. Child Abuse – Court, referrals, arbitration Sexual Offences – Court, referrals, education, counseling, police process
4. Sexual offences – Court, referrals, education, counseling, preserving evidence, police process and advocacy
5. Corruption – Citizens arrest, advocacy, court process

QUESTION 7

Has the paralegal programme utilized information/new knowledge to advance its purposes?

RESPONSES

1. Lessons learnt from the court process and proceedings
2. The new constitution
3. Skills on community mobilization and organization
4. Advocacy and score card
5. A plethora of others such as basic rights and gender equality.

QUESTION 8

Are paralegals familiar with the provisions of the Constitution of Kenya and attended legislation that relates to their work? Give examples

RESPONSES

1. There are new issues in the constitution that have brought new provisions in the Constitution of Kenya such as Land, Devolution, and Bill of Rights, Representation, Leadership and Integrity.

QUESTION 9

Should paralegals continue to exist?

RESPONSES

Yes

QUESTION 10

What can be done to make paralegalism more relevant to communities In light of the Constitution of Kenya?

RESPONSE

The spirit of the paralegals must be upheld. Paralegals must continue to sacrifice and help the community.

QUESTION 11

What in your opinion needs to be done differently?

RESPONSES

1. Strengthen the programmes

2. 70% of the people should be able to demonstrate commitment and staying power within the paralegal programmes for continuity.
3. Formalize the training and upgrade certification to streamline the practice of paralegals.
4. Government needs to support community paralegalism to give the practice due recognition in the communities and nationally.
5. Research, reporting and documentation skills are necessary considerations for the future of paralegalism.

Annex 3:

Tools

I. Paralegalism in Kenya in a New Constitutional Dispensation

You have been a paralegal in what is now referred to as Makueni County, and have been selected for a review of Paralegalism in Kenya, a study by the International Centre for Policy and Conflict (ICPC). The report of this study will be used to inform paralegal programme design and implementation in the face of the Constitution of Kenya. Please fill this tool as factually as possible. Kindly respond to all questions.

1. Name.....
2. Year of Birth.....
3. Sex M F
4. How were you selected to join the paralegal programme?
 - (a). Applied and was accepted
 - (b). Applied and went through an open interview
 - (c). Seconded by organisation/CBO
 - (d). Proposed by somebody
 - (e). Other
5. Year Trained as ParalegalYear Deployed/started work

6. Topics covered in training

- Constitution of Kenya
- Court systems and procedures
- Legislations relating to:
 - Land
 - Good Governance
 - Child rights
 - Voter issues
 - Rights of Minorities
- Gender Based violence
- Facilitation skills
- Community mobilisation skills
- Others (*state*)

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7. Status during paralegal practice (**choose one**):

- Employee of organisation
- Facilitated by organisation
- Paid a retainer by an organisation
- Volunteer
- Charged people for services
- Was engaged in other work/business

8. Area of work:

9. Years of practice.....

10. Did/do you compile reports?..... For whom?.....

11. After training, did you become a member of an organisation?If YES, which one?.....

12. Total number of cases handled.....

13. Type of cases you attended to:

- Land
- Divorce
- Violence against men
- Violence against women
- Rape
- Child abuse
- Industrial/Work disputes
- Others (*state and indicate numbers*)

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14. What exactly did you do?(*tick as appropriate*)

- Advise
- Arbitration
- Write affidavits
- Report/Record statements with the police
- Seek release of people wrongly arrested
- Seek arrest of wrong doers

15. What role did the following play in the cases?

Help

Hinder

- Police
- Village Elders
- Councilor

- Member of Parliament
- CSOs/CBOs
- Church
- Government Departments/Officers

16. For each ticked on no 15 as *Help*, state the what they did to help in the case.

17. For each ticked on No. 15 as *Hinder*, state what they did to make the case unresolvable.

18. Have you ever represented anybody in court YES NO

19. Did you ever handle a case that went well for the complainant? If Yes, describe it in detail.

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20. Did you handle a case that failed? If Yes, describe it in detail giving reasons as to why it failed.

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21. Since the Constitution of Kenya was promulgated, have continued to practice?

(a). If Yes, what challenges have you faced (if any)?

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(b). If No, explain why.

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22. Are there any training needs for paralegals in light of the Constitution of Kenya 2010? Enumerate them and explain.

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23. Has your work ever been professionally evaluated?..... If Yes, by whom?.....

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Thank you for your time. The final report will be shared with you.

4. What period have you participated in the management of/design of a paralegal programme; from..... to.....

5. What was/is your mandate(s)? State period per mandate.

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6. State the area of operation of the paralegals

- a. Communities
- b. Prisons
- c. Police

7. How were the paralegals identified?

- a. Public interviews
- b. Identification by community members

8. What was the process of induction:
- a. Structured training (over a period of time with a graduation or equivalent)
 - b. Sensitisation and deployment

9. What were the topics covered in paralegal training?

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.

10. Where were the paralegals deployed?

- a. Home areas
- b. Work stations

11. What was the brief of the paralegals (*tick as appropriate*)

- a. Community education
- b. Community mobilisation (for action on a governance issue)

- c. Legal aid/advise
- d. Representation of people in courts of law
- e. Advocacy
- f. All the above

12. Enumerate the achievements of paralegals

- a.
- b.
- c.
- d.
- e.
- f.
- g.
- h.

13. What have been the success levels of the programme? Explain.

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Part B: Kenya Specific

14. What is your comment on the state of Paralegalism in Kenya in the years 1992 – 2010?

15. What would you change/propose to be changed (if at all) in the design of the programme in light of the Constitution of Kenya (2010)?

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16. What would you change/propose to change (if at all) in the implementation (training, deployment, tasking, review) of the programme in light of the Constitution of Kenya (2010)

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III. Paralegalism in Kenya in a New Constitutional Dispensation

Focus Group Discussions tool

Date: _____

Group: _____

People present (Description)

Nos. Gender Desegregated: Male _____ Female _____

- 1. Identify 5 key strengths of paralegal programme in Makueni County. How can they be enhanced?

2. What have been the key successes of the paralegal programme since its inception? State the main reasons behind the success.

3. What are the main challenges facing paralegals in their work?

4. Are there any steps that have been taken to overcome the challenges? What success levels?

5. What issues were paralegals dealing with in the communities? List five (5) in order of importance.

6. How were paralegals dealing with the issues identified above?

7. Has the paralegal programme utilized information/new knowledge to advance its purposes? Give examples.

8. Are paralegals familiar with the provisions of the Constitution of Kenya and attendant legislation that relates to their work? Give examples

9. Should paralegals continue to exist?.....Whether *Yes* or *No*, give reasons

10. What can be done to make Paralegalism more relevant to communities in light of the Constitution of Kenya

11. What in your opinion needs to be done differently? Why?



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