

Child-Friendly Legal Aid in Africa



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Executive Summary

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

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

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

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

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

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

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

CHILD-FRIENDLY LEGAL AID IN AFRICA

Thomas F. Geraghty¹ and Diane Geraghty²

I. INTRODUCTION

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

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

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

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

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

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

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