

# EXCLUSION IN PRACTICE:

**A Human Rights Analysis on the  
Legal Barriers to Advancing  
Community Justice**



# Acknowledgments

## The Bernstein Institute for Human Rights

This report is a product of the Bernstein Institute for Human Rights (“Bernstein Institute”), housed at New York University School of Law. The Bernstein Institute is committed to challenging legal systems that exclude, marginalize, and oppress. It partners with community justice workers and lawyers in the United States and abroad to advance its mission for humane and just legal systems. The Bernstein Institute believes that the practice of law can and should be rooted in dignity and care. As the leading U.S. academic institute on legal empowerment, it supports and trains community justice workers, lawyers, and law students to use legal empowerment methods to actively challenge inequities worldwide.

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## List of Acronyms

ACHR	American Convention on Human Rights	DHS	(U.S.) Department of Homeland Security
ACHPR	African Charter on Human and Peoples' Rights	ECHR	European Commission on Human Rights
ADRDM	American Declaration on the Rights and Duties of Man	EOIR	(U.S.) Executive Office for Immigration Review
ASHPR	African System on Human and Peoples' Rights	FIDA-Uganda	Uganda Association of Women Lawyers
BPHN	(Indonesian) National Legal Development Agency of the Ministry of Justice and Human Rights	HRD	Human Rights Defender
CIJ	Customary and Informal Justice	IASHR	Inter-American System on Human Rights
CJW	Community Justice Worker	IBA	International Bar Association
CLC	(Ontario) Community Legal Clinic	ICCPR	International Covenant on Civil and Political Rights
CLEO	Community Legal Education Ontario	LSO	Law Society of Ontario
CLW	(Ontario) Community Legal Worker	NGO	Non-governmental organization
CPRA	(Philippine) Code of Professional Responsibility and Accountability of 2023	PSK	Paralegal Society of Kenya
CSO	Civil Society Organization	SDG 16	Sustainable Development Goal 16
		SSA	(U.S.) Social Security Administration
		UDHR	Universal Declaration of Human Rights
		WHRD	Woman Human Rights Defender

# Definitions

## Access to Justice:

The right “to seek and obtain a remedy through formal or informal institutions of justice and in conformity with human rights standards.” Some requirements for this right “include [a] legal framework, legal protection, legal awareness and knowledge, legal aid and representation, access to justice institutions, fair procedure and adjudication, enforceable solutions and civil society and parliamentary oversight.” Access to justice is usually understood and intertwined with other human rights principles like the right to equality.<sup>1</sup>

## Community Justice Worker (CJW):

A term used to describe people worldwide who do not have professional law degrees or bar membership, but have legal skill building, including, for example, negotiation, community organizing, and advocacy. They are often members of the communities they serve, raise awareness of rights and laws, help people navigate legal and administrative processes in pursuit of remedies, build community power, and support policy reform, amongst other things.<sup>2</sup>

## Court:

The judiciary body set up by the government to resolve issues between parties through a formal legal process. A judge or a panel of judges decides on civil, criminal, and administrative matters.<sup>3</sup>

## Customary and Informal Justice:

A term that describes “justice and conflict resolution mechanisms that operate outside the formal system of state-based laws and courts,” like traditional and Indigenous systems or local alternative dispute resolutions.<sup>4</sup>

## De facto:

A Latin phrase that describes “an action taken without strict legal authority,” but may acquire validity because it exists.<sup>5</sup>

## De jure:

A Latin phrase that means “by law” or “by right,” and describes a practice that exists according to law.<sup>6</sup>

## Human Rights:

The inherent rights everyone has “regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status.” Human rights include the rights to education, food, health, liberty, life, and work.<sup>7</sup>

## Human Rights Defender (HRD):

Any person who promotes or protects civil, cultural, economic, political, and social rights—that is, human rights. Human rights concerns can range from “arbitrary arrest and detention, [education issues,] discrimination, employment issues, forced evictions, access to health care, and toxic waste and its impact on the environment.” Human rights defenders also address the rights of groups of people, such as “women’s rights, children’s rights, the rights of [I]ndigenous persons, the rights of refugees and internally displaced persons, the rights of lesbian, gay, bisexual, transgender and intersex people, [and] the rights of persons with disabilities.”<sup>8</sup>

## Laws that regulate legal practice:

An umbrella term used in this report to describe the laws that govern what legal practice is, who is permitted to engage in legal practice, and who cannot. Legal practice means the provision of legal advice, legal aid, legal assistance, legal awareness, legal education, legal information, legal representation, legal services, etc. In this way, such laws include the laws that regulate the discipline, conduct, functions, and qualifications of lawyers, legal aid providers, paralegals, community justice workers, non-lawyers, etc.

## Legal aid:

Legal advice, legal assistance, or legal representation “at little or no cost to the person designated as entitled to it” because they may be low-income, isolated,<sup>9</sup> “or otherwise in need of special legal protection.” In criminal, civil, and administrative matters, “lawyers and paralegals” provide legal aid to such a person “to enable them to exercise their rights.”<sup>10</sup>

### Legal empowerment:

An approach that empowers underserved communities to know, use, and shape the law.<sup>11</sup> It democratizes the law and “puts the power of the law back into people’s hands.” Legal empowerment is a “people-centered strategy to meet community needs and drive long-lasting social justice” with communities impacted by inequality.<sup>12</sup> Community justice workers are one powerful example of the legal empowerment approach.

### Non-state regulatory bodies:

An umbrella term used to describe bodies such as bar associations and other legally independent bodies that promulgate or enforce the laws that regulate legal practice.

### Pro bono:

A Latin phrase that describes lawyers’ work without asking for compensation.<sup>13</sup>

### Pro se:

A Latin phrase that means “for oneself” and describes when a litigant chooses to represent themselves in a court or tribunal.<sup>14</sup>

### State regulatory bodies:

An umbrella term used to describe agencies such as the legislature, courts, and government-run legal aid and public defender systems that promulgate or enforce the laws that regulate legal practice.

### Tribunal:

A quasi-judicial institution that may not always fall under a government’s judiciary that resolves specific administrative disputes, such as immigration, labor, or agrarian matters.<sup>15</sup>

1 [Alan S. Gutterman, \*What is Access to Justice?\*, ACCESS TO JUST. FOR OLDER PERSONS 1, 1 \(2022\).](#)

2 [Margaret Satterthwaite \(Special Rapporteur on the independence of judges and lawyers\), \*The promise of legal empowerment in advancing access to justice for all\*, ¶ 29 U.N. Doc. A/78/171 \(July 13, 2023\).](#)

3 [Difference Between Tribunal and Court, KEYDIFFERENCES.COM.](#)

4 “The term embraces traditional and community-based justice systems, faith-based and informal dispute resolution practices, and mediation and arbitration activities, among many others. It is important to note that many CIJ systems, such as indigenous legal orders, have distinctive international and national normative and legal bases, and that many countries have integrated formal and customary justice systems into hybrid systems, including through legislation. Given the vast array of systems, actors and practices, the term itself is necessarily inadequate and reductive....” [DIVERSE PATHWAYS TO PEOPLE-CENTRED JUSTICE: REPORT OF THE WORKING GROUP ON CUSTOMARY AND INFORMAL JUSTICE AND SDG16+, INT’L DEV. L. ORG. 2 \(2023\)](#). Indigenous Peoples have the specific right under international law to maintain their distinctive juridical systems. [U.N. Declaration on the Rights of Indigenous Peoples, art. 38 A/RES/61/295 \(Oct. 2, 2007\).](#)

5 [De facto, CORNELL LAW SCH. LEGAL INFO. INST. \(updated Jan. 2022\).](#)

6 [De jure, CORNELL LAW SCH. LEGAL INFO. INST. \(updated June 2021\).](#)

7 [What are Human Rights?, UN OHCHR.](#)

8 [About Human Rights Defenders, UN OHCHR.](#)

9 The term “isolated” is borrowed from [OPEN SOC. FOUNDS., COMMUNITY-BASED PARALEGALS: A PRACTITIONER’S GUIDE II \(2010\)](#), to show that these communities are denied access to services.

10 [UNODC & UNDP, GLOBAL STUDY ON LEGAL AID GLOBAL REPORT 8–9 \(2016\).](#)

11 [justicepower.org](#)

12 [Aimee Seligstein, \*Fund 101: What is Legal Empowerment?\*, FUND FOR GLOB. HUM. RTS. \(Sept. 25, 2021\).](#)

13 [Pro bono, CAMBRIDGE.](#)

14 [Pro se, CORNELL LAW SCH. LEGAL INFO. INST. \(updated Mar. 2024\).](#)

15 [Difference Between Tribunal and Court.](#)

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# Executive Summary

This report is about community justice workers—their power, their promise, and the struggles they face in advancing justice for and protecting the rights of their communities. The report is intended to be used as an advocacy tool by community justice workers, lawyers, and researchers, who want to ensure that laws that regulate legal practice align with human rights principles and advance access to justice for all.

There are 5.1 billion people worldwide who lack meaningful access to justice. Democratic backsliding, climate emergencies, and income inequality exacerbate this justice crisis. For those living on the margins, a medical emergency, an eviction notice, an arrest, or a change in immigration status can hurl them deeper into poverty, putting individuals at risk of incarceration, family separation, or death. And yet, when injustice arises, most people are denied access to meaningful legal support. They are typically left to navigate a highly technical labyrinth of laws, regulations, and court systems alone.

This is where community justice workers (“CJWs”) step in. Worldwide, CJWs understand the needs of their communities and bridge gaps between people and justice systems. They often partner with lawyers and play a vital role in the legal ecosystem. CJWs help raise awareness of rights, document rights violations, support community members to navigate and address justice problems, and support policy reform—actions that breach the deep and costly justice gap. CJWs do not have professional law degrees or bar membership but have legal skills that—when coupled with organizing—build community power and advance justice.

However, real barriers exist that restrict the ability of CJWs to fully participate in justice efforts. This report sheds light on one of those barriers: vague, restrictive, and overly burdensome requirements that regulate legal practice. Such laws regulate the conduct, discipline, functions, and qualifications of those allowed to exercise the legal profession. When prohibitive, these laws can penalize CJWs for their justice work and brand them as unethical, effectively barring their participation in the legal system, and denying them the opportunity to serve the communities most in need of their support. In so doing, these laws violate the human rights of underserved communities and CJWs alike, harming

communities’ right of access to justice, the rights to equality, expression, and a fair trial, and the rights of human rights defenders. This report makes the case that CJWs must be recognized, supported, and protected as human rights defenders, alongside lawyers.

The difficulties that laws that regulate legal practice can pose for communities and CJWs are often overlooked. This invisibility motivated this report. The report highlights eight countries that illustrate the varying contexts in which CJWs work: the United States, Canada (Ontario), Colombia, Indonesia, the Philippines, Kenya, Sierra Leone, and Uganda. The case studies bring visibility to the laws that affect CJWs in these countries and demonstrate the range of regulatory approaches and their effects on access to justice, including laws that harm communities and violate human rights.

For example:

- States in the United States criminalize CJWs in a complex, patchwork system;
- Ontario, Canada, recognizes some CJWs, requiring them to work at community legal clinics;
- Colombia recognizes CJWs but does not remunerate their work;
- Indonesia recognizes CJWs as long as they meet difficult recruitment and accreditation requirements;
- The Philippines regulates paralegals, but it is unclear if CJWs are included;
- Kenya regulates paralegals but lacks clarity on whether CJWs are included; if so, they must fulfill onerous accreditation and reporting criteria;
- Sierra Leone recognizes CJWs, but funding and accreditation are inadequate; and
- Uganda does not recognize CJWs at all.

This report calls on two principal regulatory bodies to strengthen access to justice in line with human rights principles, uplift the work of CJWs, and build community power and participation. These two bodies are:

- State regulatory bodies such as legislature, courts, and government-run legal aid and systems
- Non-state regulatory bodies such as bar associations and other legally independent bodies

In collaboration with experts who were interviewed and consulted, the report lays out key recommendations to state and non-state regulators to maintain the autonomy of the legal profession while encouraging a partnership with experienced CJWs at every stage:

1. **Reform:** State regulatory bodies must reform existing laws that regulate legal practice when they contravene human rights law. In particular, laws that are ambiguous, restrictive, or overly burdensome. State bodies must also remove legal barriers that impede or criminalize the work of community justice workers.

Non-state regulatory bodies should reform existing rules, regulations, or laws that pose barriers to CJWs and their work and contravene human rights principles as set out in international human rights law, the U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, and other relevant standards.

2. **Recognition:** Both State and non-state regulatory bodies should recognize the role and impact of community justice workers as essential legal actors who vitally assist the most marginalized communities, distinct from other legal service providers, by accounting for them in the regulatory framework governing the practice of law.
3. **Protection:** State regulatory bodies that recognize human rights defenders must designate community justice workers as human rights defenders, granting them the rights afforded to human rights defenders and providing them assistance on how to face and mitigate risks.

Non-state regulatory bodies should recognize experienced community justice workers as human rights defenders who confront powerful actors and put their lives at risk to realize the human rights of the communities they serve.

4. **Regulation:** State and non-state regulatory bodies that regulate community justice workers should allow for remuneration and not impose burdensome requirements that limit their work.
5. **Composition:** State and non-state regulatory bodies should include community justice workers in their leadership and composition to ensure participation and fairness in process.
6. **Capacitation and funding:** State regulatory bodies should provide funding and resources, such as free legal support, for community justice workers to work effectively and autonomously, successfully support the communities they assist, and earn a livable wage.
7. **Legal education and services:** State regulatory bodies must make the law more accessible to communities, simplify the language of the law, make legal education and certification cost-effective, and expand free legal assistance.

To fulfill these recommendations, State and non-state regulatory bodies are encouraged to work with experienced community justice workers to document and evaluate their role and impact in society. Participatory action research can be a useful research modality.



# Methodology



## Interviews<sup>16</sup>

The Bernstein Institute relied on its extensive global network to convene and interview lawyers, community justice workers, and legal empowerment experts in different countries. The Bernstein Institute concentrated on countries in the Global Majority<sup>17</sup> where community paralegal programs are more robust. Specifically, the author spoke to practitioners in Argentina, Canada, China, Colombia, the Dominican Republic, Guatemala, India, Indonesia, Kenya, Nigeria, Panamá, Perú, the Philippines, Rwanda, Sierra Leone, South Africa, the United States, and Uganda.

These discussions were crucial because research on this issue is largely unavailable. These conversations supplied nuance and context. They provided information on how laws that regulate legal practice are locally operationalized and how they impact—positively and negatively—community justice workers. Contributors also suggested recommendations on how such laws can be transformed to better serve excluded communities and facilitate the work of community justice workers. The conversations helped to identify focus countries for the global case studies and guided the desk research.

## Desk research<sup>18</sup>

This report relies upon desk research to elucidate the harms that certain laws that regulate legal practice can cause and to analyze these harms when they amount to human rights violations. The content is derived from primary and secondary sources. The author examined regulations, legislation, laws, policies, human rights instruments, websites, reports, and articles. Evidence of

how laws that regulate legal practice can harm people and community justice workers is not well-documented. Desk-based research proved challenging. As a result, the list of global cases included in this report is not exhaustive but is meant to: (1) raise awareness of the issue and call for increased study on the harm caused; (2) contribute to efforts to reform laws that regulate legal practice to be more inclusive and participatory; and (3) highlight progressive changes to existing laws.

## Participatory co-creation of recommendations

Recognizing that those closest to the problem are closest to the solution, the Bernstein Institute co-created the recommendations with the experts it interviewed and consulted. The recommendations are compliant with human rights law.

At 23 years old, Jhody Polk, was sentenced to eight years in prison and assigned to work as a law clerk in a prison law library in Florida. She later founded the Jailhouse Lawyers Initiative in the United States. Through her work in the law library, Jhody became a jailhouse lawyer, a type of CJW who is incarcerated and generally has no formal legal training but teaches herself the law to advocate for themselves and their peers. Jhody assisted women with criminal, family, constitutional, and immigration law matters. She had one goal after coming home: getting her law license to practice and give back to her community. But when Jhody attempted to take her skills to a professional legal setting, she was turned away—rejected from every attorney’s office to which she applied even after obtaining her degree in paralegal studies. Left with no option, Jhody worked as a housekeeper to care for her family. There she used her legal skills to help the women with whom she worked to understand the law and seek support for the legal challenges they faced as employees, mothers, and tenants. But even this critical free advice put Jhody at risk of running afoul of restrictive laws that regulate legal practice.<sup>4</sup>

16 The interviews were not without limits. They were conducted mostly with people the Bernstein Institute already knows. The interviews were all online and in English and Spanish. They yielded mostly resources in English, primarily U.S.-based, on which the desk research was built.

17 Global Majority was coined as a result of Rosemary Campbell-Stephens’ work. [ROSEMARY CAMPBELL-STEPHENS, GLOBAL MAJORITY: DECOLONISING THE LANGUAGE AND REFRAMING THE CONVERSATION ABOUT RACE 1\(2020\)](#) (“Global Majority is a collective term that first and foremost speaks to and encourages those so-called to think of themselves as belonging to the global majority. It refers to people who are Black, Asian, Brown, dual-heritage, [I]ndigenous to the global south, and or have been racialised as ‘ethnic minorities’. Globally, these groups currently represent approximately eighty per cent (80%) of the world’s population making them the global majority now, and with current growth rates, notwithstanding Covid-19 and its emerging variants, the global majority is set to remain so for the foreseeable future.”).

18 The citations loosely follow the Bluebook style guide to ensure accessibility.

19 Testimony of Jhody Polk. Inter-American Commission on Human Rights, Civil Society Hearing on “The Situation of Human Rights in the United States.” March 10, 2023.



# Introduction

There are 5.1 billion people worldwide who lack meaningful access to justice.<sup>20</sup> Around two-thirds of the world's population cannot resolve their justice issues,<sup>21</sup> like ensuring they can remain in their homes and on their land without being displaced or abused; remain with their families in their chosen country without getting deported; remain steadily employed in a safe working environment without losing their jobs; or remain in their communities without being incarcerated. These justice issues are typically framed as legal issues, even if most people do not view their issues as such. Frequently the only avenue to redress these legal issues is through lawyers.<sup>22</sup>

But lawyers are often inaccessible—contributing to the access to justice gap. Legal services are typically not affordable.<sup>23</sup> There are usually not enough pro bono or legal aid lawyers to meet people's needs.<sup>24</sup> Lawyers are generally concentrated in cities making them difficult to reach for people who live in rural areas.<sup>25</sup> Lawyers are frequently trained to pursue corporate law or other highly remunerative endeavors, leaving them ill-equipped to assist people with everyday problems.<sup>26</sup> Lawyers might lack the cultural competency required when working on cases that can transform people's lives; they may not look like or understand the clients they represent.<sup>27</sup> Without lawyers, it can be difficult to win self-represented cases.<sup>28</sup> Litigation is also costly and can last years.<sup>29</sup>

Because of these obstacles, experienced community justice workers (“CJWs”) often act as a supplement to lawyers in bridging the access gap for their communities. Worldwide, CJWs are people who do not have professional law degrees or bar membership but have widely varying legal skills and engage with legal issues or matters. They are often members of the communities they serve, raise awareness of rights, help people navigate legal processes, build community power, and support policy reform.<sup>30</sup> Felipe Mesel, an Argentine lawyer and the Global Program Manager at Movement Law Lab explains that CJWs often do not have access to formal legal education as they are typically racially minoritized<sup>31</sup> and working-class individuals. Mesel notes that “CJWs are usually members of the communities they support, meaning that they have a special relationship of trust with the people with whom they work and a special interest in the legal discussions

in which they are involved.” Due to having “a privileged voice and position,”<sup>32</sup> CJWs perform complementary roles to lawyers who frequently lack such proximity.<sup>33</sup>

In this report, “CJWs” will be interchangeably used with “non-lawyer advocates” especially when analyzing legislation. Because CJWs try to bridge the justice gap by dealing with law-related issues and promoting human rights for their peers, they are also human rights defenders (“HRDs”). HRDs are “people who, individually or with others, act to promote or protect human rights in a peaceful manner.”<sup>34</sup>

CJWs can provide law-related resources<sup>35</sup> and information. CJWs advise their neighbor on when to go to a housing tribunal, guide their friend on the appropriate asylum application, offer support to their partner on what evidence should be presented to the labor tribunal, and support their relative on when to file their conviction appeal. They give guidance on justice issues and defend human rights. While none of these appear wrong or illegal, when CJWs help others with their justice problems in these ways, they sometimes run the risk of violating laws that regulate the legal profession and getting penalized with criminal or civil sanctions.<sup>36</sup>

Laws that regulate legal practice are meant to regulate the provision of legal services and information<sup>37</sup> (who can provide what kind of legal information). Here, “laws that regulate legal practice” means laws that determine the conduct, discipline, and functions, including the provision of legal aid, and qualifications of the legal profession. All countries have such laws.<sup>38</sup> In theory, these laws protect community members from being misinformed or defrauded and prohibit lawyers from taking advantage of their clients.<sup>39</sup> Their stated intention is often to give people access to quality legal representation. In practice, such laws also widen the justice gap.<sup>40</sup>

When laws that regulate legal practice are vague, overly restrictive, nonexistent, or penalize CJWs for providing legal support, they harm underserved communities. These communities are left to navigate a maze of legal systems alone, contravening established human rights principles. If underserved communities cannot afford or access lawyers and CJWs cannot aid them for fear of breaking the law, what recourse exists to resolve justice issues?

Part One of this report defines CJWs, explaining their work, why they are essential for underserved communities, and how they can partner with lawyers to close the justice gap. Part Two explores the harms that overly burdensome and confusing legal regulations can have on underserved communities and CJWs as human rights defenders (“HRDs”). Part Three examines how discriminatory regulatory laws contravene human rights principles like access to justice, and the rights to a fair trial, equality, expression, and information when they prevent CJWs from doing such crucial work for communities and in cooperation with lawyers. Part Four presents eight global case studies to examine how discriminatory laws that regulate legal practice can exacerbate the justice crisis, how they can impart promising avenues for increased access to justice, and how they can serve as a caution for reform. Part Five proposes that CJWs and lawyers must collaborate to improve laws that regulate legal practice and increase access to justice for communities. Finally, Part Six advocates that State and non-state regulatory bodies reform these laws and draft laws that strengthen access to justice, protect and promote community justice worker actions, and build community power and participation.

- 20 [THE TASK FORCE ON JUSTICE, CTR. INT’L COOPERATION, JUSTICE FOR ALL – FINAL REPORT 18 \(2019\).](#)
- 21 [WORLD JUST. PROJECT, GLOBAL INSIGHTS ON ACCESS TO JUSTICE: FINDINGS FROM THE WORLD JUSTICE PROJECT GENERAL POPULATION POLL IN 101 COUNTRIES 4 \(2019\).](#)
- 22 [Rebecca L. Sandefur, \*Access to What?\*, 148 DÆDALUS 49, 50 \(2019\).](#)
- 23 [See \*Civil Justice\*, WORLD JUST. PROJECT; COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE 5 \(Vivek Maru & Varun Gauri, eds., 2018\).](#)
- 24 [See e.g., the 2022 TrustLaw Index of Pro Bono: it received 245 responses from law firms in 124 countries representing 107,563 lawyers who “provided more than 3.6 million hours of pro bono support to non-profits, social enterprises and individuals, with lawyers dedicating an average of 33 hours to pro bono work over the year.” Of this pro bono work, 59% went to the area of access to justice. THOMSON REUTERS FOUNDATION, 2022 TRUSTLAW INDEX OF PRO BONO 6 \(2022\).](#) And the 2016 Global Study on Legal Aid Global Report: “based on survey responses from UN Member States and independent national experts in 106 countries—representing more than half (53%) of the world’s countries—across all the regions of the world and development contexts” [. . . found that] [r]oughly a third of responding countries have not yet enacted specific legislation on legal aid.” [GLOBAL STUDY ON LEGAL AID GLOBAL REPORT, AT 2.](#)
- 25 [The promise of legal empowerment in advancing access to justice for all, at ¶¶ 14–15; COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE, AT 5; LINETTE DU TOIT, SANTANA SIMIYU, & AIMEE ONGESO, FIDA-UGANDA, ICJ-KENYA, LEGAL EMPOWERMENT NETWORK, THE ROLE OF LEGAL EMPOWERMENT GROUPS IN ADDRESSING GENDER-BASED VIOLENCE ON SUB-SAHARAN AFRICA DURING THE PANDEMIC 9 \(2022\).](#)
- 26 [See Purvi Shah, \*Rebuilding the Ethical Compass of Law\*, 47 HOFSTRA L. REV. 11, 12–13 \(2019\); Cayley Balsler, Erin Weaver, Stacy Rupprecht Jane, Gabriela Elizondo-Craig, Tate Richardson, & Antonio Coronado, \*Leveraging Unauthorized Practice of Law Reform to Advance Access to Justice\*, 18 L.J. Soc. Just. 66, 80 \(2024\)](#) (“Regulatory reform is being considered by courts across the U.S. because of the staggering failure of current legal service offerings to meet the needs of consumers. ‘BigLaw’ is rising, and the People’s Lawyer is disappearing. The ‘PeopleLaw’ sector of the legal profession has been declining since the mid-1970s; this sector shrank by nearly \$7 billion between 2007 and 2012. In fact, nearly 70% of the legal industry in 2017 served businesses while only 25% of the industry served people. The inadequacy and unavailability of legal services for low income Americans has been well-documented. However, the lack of legal services also affects middle-class Americans: between 40 and 60% of middle class legal needs are not being met by currently existing legal services.”).
- 27 [See, e.g., \*Leveraging Unauthorized Practice of Law Reform to Advance Access to Justice\*, at 88, 97](#) (“In i4J’s [Innovation for Justice] experience, consumers trust an individual who has legal training but not a formal law degree more than they trust a lawyer as their legal advocate. Consumers see finding a lawyer as a waste of time and money, and lawyers are viewed as being out of touch with the communities they serve. Second, consumers are more likely to try to solve their problems independently rather than seeking assistance from a lawyer. Third, consumers want legal advice from a social worker. In fact, when consumers are experiencing housing instability they trust social workers almost as much as they trust their friends and family when they are experiencing certain legal problems. Fourth, consumers are comfortable speaking with advocates about many justice needs. Fifth, consumers want the same person to help them throughout the problem-solving process. Such a model is not available in the current market-driven legal ecosystem. Sixth, consumers want easily-digestible information specific to their situation. Finally, consumers want upstream intervention rather than waiting until the problems become court-involved.”); [Joseph Houston, \*The Top 25 Richest Lawyers in the World\*, US LAWYER NOW \(updated Sept. 7, 2023\)](#) (most successful lawyers worldwide are male, white, and from Global North countries).
- 28 [See e.g., Joanna Schwartz, ‘Well, Is There Blood on the Street?’, ATLANTIC \(Apr. 2, 2023\); Ingrid Eagly & Steven Shafer, \*Access to Counsel in Immigration Court\*, AM. IMMIGRATION COUNCIL \(Sept. 28, 2016\).](#)
- 29 [See, e.g., Marta Conde et al., \*Slow Justice and Other Unexpected Consequences of Litigation in Environmental Conflicts\*, 83 GLOB. ENVTL. CHANGE 1 \(2023\).](#)
- 30 [The promise of legal empowerment in advancing access to justice for all, at ¶ 29.](#)
- 31 “The use of the term minoritized is increasingly favored over the term minority, which can be experienced as demeaning given that individuals likely do not incorporate this status in their identity. Rather, their status as a minority is a systemic function within a racialized hierarchy that advantages and disadvantages groups differently. Thus, the term minoritized uses active voice to reveal the system of social oppression that is often rendered unseen through the use of passive voice within the term minority.” [Our Social Justice Definitions](#), BRANDEIS UNIV.
- 32 Feedback from Felipe Mesel.
- 33 [See COMMUNITY-BASED PARALEGALS: A PRACTITIONER’S GUIDE, at 18.](#)
- 34 [About Human Rights Defenders.](#)
- 35 Borrowing from Mathews and Wiseman who preference “‘law-related problems (or needs),’ as opposed to ‘legal problems,’ to avoid the assumption that these problems are exclusively or predominately [sic] legal in nature and can only be resolved with the assistance of lawyers or paralegals.” [Julie Mathews & David Wiseman, COMMUNITY JUSTICE HELP: ADVANCING COMMUNITY-BASED ACCESS TO JUSTICE 7 \(2020\).](#)
- 36 [See Karen Cohl et al., LAW FOUND. ONTARIO, TRUSTED HELP: THE ROLE OF COMMUNITY WORKERS AS TRUSTED INTERMEDIARIES WHO HELP PEOPLE WITH LEGAL PROBLEMS, PART I 4–5 \(2018\).](#)
- 37 [JAILHOUSE LAWYERS INITIATIVE, REQUEST FOR A THEMATIC HEARING OF THE IACHR ON THE IMPACT OF OVERLY-BROAD UNAUTHORIZED PRACTICE OF LAW RESTRICTIONS ON HUMAN RIGHTS 5 \(2023\).](#)
- 38 [See INTERNATIONAL BAR ASSOCIATION, DIRECTORY OF REGULATORS OF THE LEGAL PROFESSION \(2016\).](#)
- 39 [See e.g., \*Legal ethics\*, CORNELL LAW SCH. LEGAL INFO. INST. \(updated Mar. 2023\).](#)
- 40 [See e.g., REQUEST FOR A THEMATIC HEARING OF THE IACHR ON THE IMPACT OF OVERLY-BROAD UNAUTHORIZED PRACTICE OF LAW RESTRICTIONS ON HUMAN RIGHTS, at 5; Deborah L. Rhode & Alice Woolley, \*Comparative Perspectives on Lawyer Regulation: An Agenda for Reform in the United States and Canada\*, 80 Fordham L. Rev. 2761, 2762 \(2012\)](#) (“The profession in both the United States and Canada determines the focus of regulatory activities, and too often the emphasis is on protecting its own economic and reputational interests. Frequently, the result is inadequate responsiveness to consumer concerns and unduly punitive sanctions for misconduct that occurs outside professional contexts but that threatens lawyers’ public image.”).

# Part One: Community Justice Workers

This section of the report (1) defines CJWs, (2) provides examples of the critical work they do to make access to justice attainable for communities, and (3) explains how CJWs perform complementary roles to lawyers.

Antony Njenga is a 15-year experienced Volunteer Community Paralegal, Civic Educator, and Anti-corruption Advocate in Kenya. He is a team leader of Kibra Community Justice Centre, a justice advisory center affiliated to Kituo cha Sheria-Legal Advice Centre, in Nairobi, Kenya, and a member of the Paralegal Society of Kenya. When Antony Njenga saw Rukia (pseudonym) with a heavily bruised and bandaged face, he concernedly approached her to ask what had happened. After hesitating, she finally revealed that she had been assaulted by a male friend. Antony encouraged her to report the incident to the police, but she was reluctant because she knew the assailant was well-connected. Despite her initial hesitation, she allowed Antony to escort her to the police station. The process was challenging, but with his support, she persisted. Eventually, the accused was arrested. During the court appearance, Rukia struggled to testify. As a community paralegal, Antony couldn't directly advocate for her, but he stood by her throughout the ordeal. Later the accused approached her, urging her to drop the case. Fearing the courtroom, she was willing to comply. However, when she sought Antony's guidance, he tactfully encouraged her to continue and exercise her rights.<sup>41</sup>

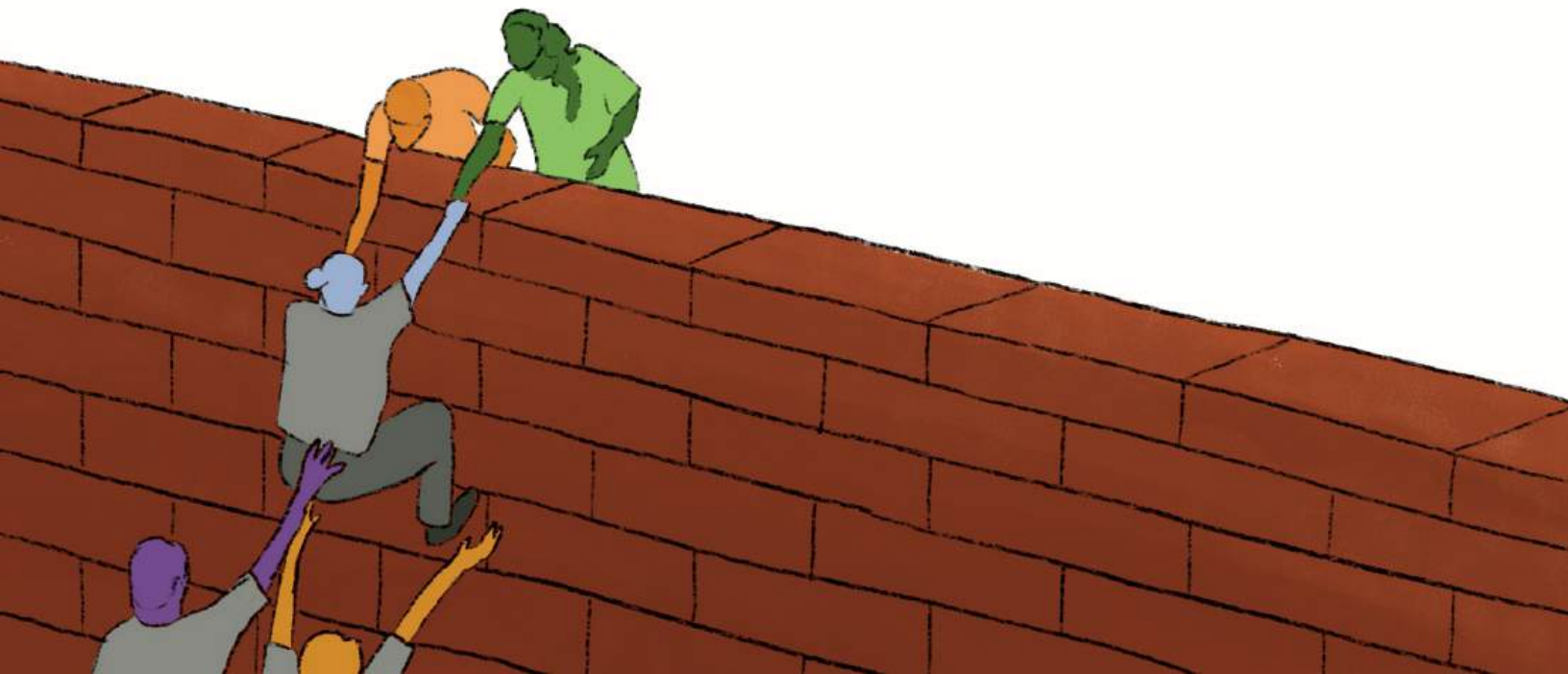


## Who are community justice workers and what do they do?

Borrowing terminology from Margaret Satterthwaite, the United Nations Special Rapporteur on the independence of judges and lawyers (“Special Rapporteur”), CJWs are justice operators who are usually not graduates with professional law degrees or accredited bar members. CJWs are trained in specific areas of law as well as negotiation, community organizing, and advocacy skills, and then “raise awareness of rights, laws and policies; help

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41 Testimony of Antony Njenga.



people navigate legal and administrative processes in pursuit of remedies; and support communities' engagement in law and policy reform."<sup>42</sup> Globally, CJWs are known as allied legal professionals, coordinators, community paralegals, jailhouse lawyers, law clerks, McKenzie friends, navigators, conciliadoras en equidad, defensores legales, facilitadoras judiciales, orientadoras judiciales, or promotoras judiciales. CJWs can also interview people and mediate disputes; do legal research and draft documents; offer court and tribunal preparation like documentation; collect data on human rights violations occurring in their community; lobby and petition authorities and companies; organize collective actions; accompany community members to government and corporate offices; and help with legal education and community empowerment.<sup>43</sup> Some are generalists, and some are specialists. CJWs work on varied human rights issues: criminal justice; civil and political rights, education, environmental justice, family law, health, housing, labor and employment, land and natural resources, migrants, refugees, and citizenship peace-building, transparency, water and sanitation and Indigenous rights. In some countries, CJWs may provide legal counseling and representation in non-criminal proceedings. In other countries, CJWs may also support customary and informal justice (CIJ), acting as court monitors to oversee CIJ proceedings or they "may assist CIJ providers in facilitating proceedings (for instance by advising on formal laws, collecting witness testimonies, etc)."<sup>44</sup>

In addition to furnishing legal support, they also proffer social, emotional, and logistical services and accompaniment.<sup>45</sup> For example, in England, Australia, and Canada, McKenzie Friends accompany self-represented people to a court or tribunal and take notes, pass documents, observe proceedings, and help calm the person.<sup>46</sup> Indeed, CJWs can advance the health and health-related rights of the people with whom they work, when they work to prevent torture in detention centers, provide food to those with ongoing legal cases, or help people access social safety nets. Authors of a report that evaluates the work of paralegals recruited by Lembaga Bantuan Hukum Masyarakat, an Indonesian human rights organization, note that "paralegals are not merely replacements for lawyers; in many cases, they move beyond what lawyers can do in providing more assistance related to health."<sup>47</sup> CJWs are often members of the communities they support or have experienced injustice themselves.<sup>48</sup> That they support underserved communities means that they are also frequently minoritized as women, low-income, or people of

42 [The promise of legal empowerment in advancing access to justice for all](#), at ¶ 29; [COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE](#), at 11; see also [Kampala Declaration on Community Paralegals Preamble](#), 26 July 2012; CJWs in Argentina can do administrative work before government agencies. Interview with Felipe Mesel.

43 See [What is Community Paralegal](#); [ORGANIZACIÓN DE LOS ESTADOS AMERICANOS, PROGRAMA INTERAMERICANO DE FACILITADORES JUDICIALES 3 \(2023\)](#).

44 CJWs in [China](#), [Indonesia](#), [Kenya](#), [Malawi](#), [Moldova](#), [New Zealand](#), [Nigeria](#), [Ontario, Canada](#), [the Philippines](#), [Sierra Leone](#), [Argentina](#), [Colombia](#), [Costa Rica](#), [El Salvador](#), [Guatemala](#), [Honduras](#), [Nicaragua](#), [Panamá](#), and [Paraguay](#) work on these issues. And CJWs in some U.S. states, like Arizona and Utah, also work on these issues. See Innovation for Justice's [draft database](#) that inventories all of the U.S. states that allow non-lawyer advocates to assist in domestic violence cases and an [interactive map](#) with a built-in filter for domestic violence exceptions; See also [DIVERSE PATHWAYS TO PEOPLE-CENTERED JUSTICE](#), at 29.

45 [LEGAL LINK, COMMUNITY NAVIGATORS: THE ROLE OF COMMUNITY NAVIGATORS TO REDUCE POVERTY AND EXPAND ACCESS TO JUSTICE 9-10 \(2022\)](#); CJWs in [Argentina](#), [Colombia](#), [Costa Rica](#), [El Salvador](#), [Guatemala](#), [Honduras](#), [Nicaragua](#), [Panama](#), and [Paraguay](#) provide accompaniment; María Luz Barretta & Zulma Piedad Rivera Ordoñez, Latin American Roundtable Discussion.

46 [JUDITH M. DASILVA & JULIE MACFARLANE, NATIONAL SELF-REPRESENTED LITIGANTS PROJECT, THE MCKENZIE FRIEND: CHOOSING AND PRESENTING A COURTROOM COMPANION 4-6 \(2016\)](#).

47 "For examples [sic] significant health benefits have been found from paralegals' work to prevent torture in detention in Ukraine and advocating for pre-trial release of their clients in Malawi. Paralegals can also give additional support specifically to the benefit of their clients' health during the legal process. Paralegals have become the providers of food or clean needles in detention facilities; and, for example, in Kyrgyztan [sic] they persuaded law enforcement agencies to understand and address detainees' health problems. Paralegals can also have impacts outside the criminal justice system that support the health of their clients. Among marginalized Roma communities, paralegals have helped clients to face the refusal of care, extortion, and other abuses from health care workers. In South Africa, paralegals have assisted their clients in accessing government programs that are associated with health care access, such as disability funds and other social safety nets." [Albert Wirya et al., Expanding the Role of Paralegals: Supporting Realization of the Right to Health for Vulnerable Communities, 20 BMC INT'L HEALTH & HUM. RTS. 1, 2 \(2020\)](#).

48 [The promise of legal empowerment in advancing access to justice for all](#), at ¶ 29; [ORGANIZACIÓN DE ESTADOS AMERICANOS, PROGRAMA INTERAMERICANO DE FACILITADORES JUDICIALES \(PIF\) 2 \(2021\)](#); [Beenish Riaz, Envisioning Community Paralegals in the United States: Beginning to Fix the Broken Immigration System, 45 N.Y.U. REV. L. & SOC. CHANGE 82, 89 \(2021\)](#).

color.<sup>49</sup> However, their positionality makes CJWs more attuned to community needs and able to build stronger relationships of trust.<sup>50</sup>

## CJWs perform complementary work to lawyers



In partnership with Indigenous and Dalit women, lawyers at Nazdeek, a legal empowerment organization in India, helped build collectives of community justice workers. Nazdeek taught basic laws, rights, and skills like data collection, advocacy, and complaint drafting, to Indigenous women in the tea gardens of Assam and Dalit women in the informal settlements of Delhi. Over time, they became community justice workers who collected data on human rights violations, filed cases, organized protests, and accompanied community members through their justice journeys. The lawyers at Nazdeek worked in partnership with these community justice workers on collaborative advocacy, litigation, and organizing, to obtain higher wages, better hospitals, and a moratorium on forced evictions.<sup>27</sup>

Because CJWs are trained to “work directly with people affected by injustice,”<sup>52</sup> they establish a continuum of services by helping communities access complex legal systems and essential resources, thereby meaningfully achieving access to justice.<sup>53</sup> CJWs have been observed to perform comparably to (i.e., at least as well, as well, or even better than) attorneys across several common justice problems like evictions, child custody, and community land rights.<sup>54</sup> They do not pretend to be lawyers.<sup>55</sup> The primary role of CJWs is not to assist lawyers but to work directly with the communities they serve, through a human rights-based approach.<sup>56</sup> In this way, CJWs “perform complementary roles” to lawyers that make legal ecosystems stronger, better coordinated, and more efficient and unified.<sup>57</sup> Lawyers and CJWs can thus collaborate to maximize assistance to communities. Lawyers can assist in training CJWs on the law and legal skills, and CJWs can assist in training lawyers on people-centered approaches to lawyering.

Authors of the 2022 report, “The Role of Legal Empowerment Groups on Addressing Gender-Based Violence in Sub-Saharan Africa During the Pandemic” write that:

Community paralegals offer a service that is complementary to the work of lawyers and advocates. Community paralegals address justice gaps in rural areas where lawyers may not be able to set up a profitable practice. They reach out to rural communities through mobile legal aid camps, and legal

49 See generally [WORLD JUST. PROJECT, DISPARITIES, VULNERABILITY, AND HARNESSING DATA FOR PEOPLE-CENTERED JUSTICE: WJP JUSTICE DATA GRAPHICAL REPORT II 5–7 \(2023\)](#).

50 See [TRUSTED HELP: THE ROLE OF COMMUNITY WORKERS AS TRUSTED INTERMEDIARIES WHO HELP PEOPLE WITH LEGAL PROBLEMS](#), at 4.

51 [Sukti Dhital, Lam Nguyen Ho & Margaret Satterthwaite, 97 N.Y.U. L. Rev. 1547, 1555–56 \(2022\); www.nazdeek.org](#).

52 [COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE](#), at 2; see [ORGANIZACIÓN DE LOS ESTADOS AMERICANOS, MANUAL DE BUENAS PRÁCTICAS DEL SNFJ EN CENTROAMÉRICA 43 \(2021\)](#).

53 [COMMUNITY NAVIGATORS](#), at 12; see [PROGRAMA INTERAMERICANO DE FACILITADORES JUDICIALES \(PIFJ\)](#), at 2; [www.innovation4justice.org/research/impact](#).

54 [Access to What?](#), at 52; [COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE](#), at 7.

55 Interview with Dr. Annette Mbogoh; Informants to a survey about 23 court-based navigator programs in 15 U.S. states found “no official charges or complaints of unauthorized practice of law (UPL) filed with relevant disciplinary bodies concerning” these types of navigators. [MARY E. McCLYMONT, JUSTICE LAB, NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS 17 \(2019\)](#).

56 [Envisioning Community Paralegals in the United States: Beginning to Fix the Broken Immigration System](#), at 106–07 (citation omitted); [PROGRAMA INTERAMERICANO DE FACILITADORES JUDICIALES](#), at 3–4 (OAS judicial facilitators in Latin America promote dialogue, peace, inclusion, and rights in their communities, and help to resolve social conflicts of “lesser intensity”).

57 [COMMUNITY NAVIGATORS](#), at 12; Interview with Dr. Annette Mbogoh.



education sessions and door-to-door campaigns. They are also key in infusing alternative dispute resolution processes with the tenets of human rights, particularly in GBV cases where cultural practices and power imbalance could easily stand in the way of justice. Paralegals also refer cases that need court representation to lawyers. However, the work of community paralegals is not always appreciated by lawyers who sometimes view them as a threat or refuse to treat them as partners in the promotion of access to justice.<sup>58</sup>

Despite their qualifications and critical positionality in legal ecosystems, CJWs face barriers to engaging in legal advocacy due to overly restrictive, broad, and vague laws that regulate legal practice.

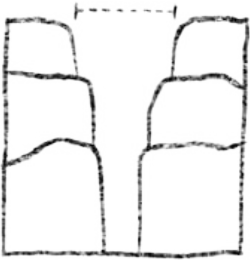
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58 [THE ROLE OF LEGAL EMPOWERMENT GROUPS IN ADDRESSING GENDER-BASED VIOLENCE ON SUB-SAHARAN AFRICA DURING THE PAN-DEMIC](#), at 9–10.

## Part Two: The Harm

This section describes the harm—the deep and costly justice gap and shrinking civic space—that communities experience. It then describes the challenges that CJWs face in fully participating in the legal ecosystem and supporting themselves and their communities.





## Communities face a deep and costly justice gap

Communities already isolated from lawyers, courts, and tribunals face additional injustice when laws that regulate legal practice are weaponized against CJWs. Inequalities and law-related issues are intertwined as people who experience discrimination and exclusion are often more likely to experience justice needs that lawyers and judges fail to meet.<sup>59</sup> The Special Rapporteur states that “of 5.1 billion people who have justice problems, 1.5 billion people cannot find solutions to everyday issues like reporting a crime or obtaining wrongfully withheld wages, 4.5 billion people do not have basic legal tools, like a birth certificate or land title, necessary to protect their rights, and 253 million people experience extreme injustices like modern slavery, statelessness or armed conflict.” And in lower-income countries, less than 10 percent of legal needs are met, meaning that these needs could be resolved by the law if legal support were available.<sup>60</sup>

In the World Justice Project’s 2019 report on Measuring the Justice Gap: A People-Centered Assessment of Unmet Justice Needs Around the World, the authors collated data that reveal a staggering justice gap.<sup>61</sup> This justice gap is “deep and costly.”<sup>62</sup> Consequently, low trust in the legal system prohibits everyday people from “understanding their legal rights and accessing the legal protections to which they are entitled.”<sup>63</sup> In the United States alone, for example, it would cost about \$46 billion annually to yield just one hour of legal help to every household currently experiencing legal issues; and every attorney would have to contribute 180 hours of free service every year.<sup>64</sup>

**Table 2. Summary of Estimates by Measurement Question**

Measurement Question	Data Source	Estimate
<b>Number of people who cannot obtain justice for civil, administrative, or criminal justice problems</b>		
How many people have unmet civil or administrative justice needs?	WJP, <i>Global Insights on Access to Justice: Hill, Justice Needs and Satisfaction</i>	1.4 billion people
How many victims of non-violent crime have not reported their victimization to a competent authority?	NSO crime victimization survey data available on UNODC-INEGI’s <i>Atlas on Victimization Surveys</i> and in UNICRI’s <i>Criminal Victimization in International Perspective</i> ; UNODC crime data	1.1 billion people
How many victims of violence have not reported their victimization to a competent authority?	NSO crime victimization survey data available on UNODC-INEGI’s <i>Atlas on Victimization Surveys</i> and in UNICRI’s <i>Criminal Victimization in International Perspective</i> ; UNODC crime data	235 million people
How many people are victims of lethal violence?	Small Arms Survey, <i>Global Violent Deaths 2017</i>	560 thousand people
<b>Number of people who are excluded from the opportunities the law provides</b>		
How many people lack legal identity?	World Bank, <i>Identification for Development (ID4D)</i>	1.1 billion people
How many people are employed in the informal economy?	ILO, <i>Women and Men in the Informal Economy: A Statistical Picture 2018</i>	2.1 billion people
How many people lack proof of housing or land tenure?	WJP, <i>General Population Poll 2018</i>	2.3 billion people
<b>Number of people who live in extreme conditions of injustice</b>		
How many people are stateless?	UNHCR Population Statistics	12 million people
How many people are living in modern slavery?	Walk Free Foundation, <i>Global Slavery Index 2018</i>	40 million people
How many people live in countries with high levels of insecurity and no rule of law?	OECD, <i>States of Fragility 2018</i>	203 million people

Furthermore, unequal legal systems and legal aid regimes often fail to meet the justice needs of underserved communities. This failure is amplified by economic, geographic, cultural, and gendered differences.<sup>65</sup> People in rural areas frequently do not have access to courts, tribunals, or lawyers.<sup>66</sup> Legal aid offices are often understaffed and

59 [The promise of legal empowerment in advancing access to justice for all](#), at ¶ 11 (citation omitted); see, e.g., [NAMATI, CHINA RESEARCH BRIEF 9 \(2019\)](#) (China created a legal aid system in 1994 to help address income inequalities and assist “the disadvantaged who were unable to afford legal services or keep pace with China’s rapid economic development”).

60 [The promise of legal empowerment in advancing access to justice for all](#), at ¶ 8 (citations omitted).

61 These figures amount to 8.5 billion people but the authors “account for double counting within the justice gap framework and to produce an adjusted aggregate figure of 5.1 billion people and estimates by category of unmet justice need.” [WORLD JUST. PROJECT, MEASURING THE JUSTICE GAP: A PEOPLE-CENTERED ASSESSMENT OF UNMET JUSTICE NEEDS AROUND THE WORLD 22 \(2019\)](#).

62 [DAVID FREEMAN ET AL., DEBORA L. RHODE CTR. LEGAL PROFESSION, LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE 8 \(2022\)](#).

63 [COMMUNITY NAVIGATORS](#), at 1.

64 [NAT’L CTR. ACCESS JUST., “WORKING WITH YOUR HANDS TIED BEHIND YOUR BACK:” NON-LAWYER PERSPECTIVES ON LEGAL EMPOWERMENT 7 \(2021\)](#).

65 [PROGRAMA INTERAMERICANO DE FACILITADORES JUDICIALES \(PIF\)](#), at 6.

66 See, e.g., [CHINA RESEARCH BRIEF](#), at 10 (China’s legal aid system has an “[i]mbalanced development of legal aid infrastructure in urban and rural areas”); [NAMATI, NIGERIA RESEARCH BRIEF 5 \(2019\)](#) (“[Nigerian c]ommunity paralegals come from in or around their own communities and primarily provide grassroots legal aid to persons in rural areas or urban slum communities, who are unable to afford or reach lawyers.”); [Envisioning Community Paralegals in the United States: Beginning to Fix the Broken Immigration System](#), at 99 (“The

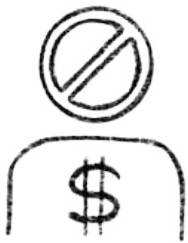
underfunded.<sup>67</sup> Lawyers and legal aid bureaus do not adequately reach isolated communities such as Indigenous communities.<sup>68</sup> Immaculata Casimero, a Wapichan Indigenous woman (in modern-day Guyana), co-founder of the Wapichan Wiizi Women’s Movement of the South Rupununi District Council, and CJW, shares that “even though laws exist, some Indigenous people have never heard of them until an issue arises, and that is when they try to understand what the law says and why it exists,” which can be overwhelming to do without adequate resources.<sup>69</sup> Racially minoritized people have less access to legal resources. In the United States, for example, Black people, on average, experience more serious legal problems than other racial groups.<sup>70</sup> Yet Black lawyers only make up 5% of U.S. lawyers.<sup>71</sup> Worldwide, legal systems also fall short in responding to the needs of women and disabled people.<sup>72</sup>



## Communities face a shrinking civic space

As more countries, regardless of their income levels, experience shrinking civic spaces, more people face serious barriers to justice.<sup>73</sup> Currently, 5.7 billion people live in countries where the fundamental factors required for democratic governance are absent, and in 2022, the level of democratic freedoms enjoyed by the average global citizen was down to the 1986 level.<sup>74</sup>

Trust in legal systems is often low in underserved communities, but research shows that these communities need trusted people, such as CJWs, who can help them navigate rules and procedures.<sup>75</sup> Around the world, CJWs increasingly step in to fill these gaping justice chasms when lawyers cannot, but in many countries, they are penalized and persecuted.<sup>76</sup>



## Restrictive laws that regulate legal practice help maintain a monopoly of law-related services

Studies conducted in the United States and Canada, for example,<sup>77</sup> have indicated that regulations on the ethics of the legal profession are more about protecting lawyers from harm than preventing consumer harm. Upholding ethical conduct in the legal profession is crucial and validates the regulation of legal services; nevertheless, “ethics” can also be weaponized to exclude people from the provision of legal services, at the cost of limiting access to justice. Empirical research reveals that the majority of complaints of ethics violations relate to CJW conduct rather than disbarred or out-of-state attorneys, and most complaints come from attorneys rather than from clients. Respondents to a 2014 U.S. survey viewed ethics violations as a threat to the public and lawyers. Despite the former, 69 percent of respondents

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government puts many immigrants in detention in remote areas, far from any access to legal services, where lawyers are reluctant to trek to visit a client.”)

67 See e.g., [CHINA RESEARCH BRIEF, at 10](#) (stating that in China, most township legal aid stations are understaffed and there is inadequate government funding for its legal aid system).

68 In New Zealand, for example, “community law centres are not currently reaching the Māori clients in proportion to the needs they have.” [NAMATI, NEW ZEALAND RESEARCH BRIEF 8 \(2019\)](#).

69 Feedback from Immaculata Casimero.

70 [HILL & IAALS, JUSTICE NEEDS AND SATISFACTION IN THE UNITED STATES OF AMERICA 29 \(2021\)](#).

71 [ABA, PROFILE OF THE LEGAL PROFESSION 24 \(2023\)](#).

72 See, e.g., [UN WOMEN, WOMEN’S ACCESS TO JUSTICE \(2015\)](#); [U.S. DOJ OFF. ACCESS JUST., ACCESS TO JUSTICE IS DISABILITY ACCESS \(2023\)](#).

73 Shrinking civic spaces are tied to democratic backsliding, violations of international law, and persecution of human rights defenders. See Margaret Satterthwaite (Special Rapporteur on the independence of judges and lawyers), *Safeguarding the independence of judicial systems in the face of contemporary challenges to democracy*, A/HRC/56/62 (Apr. 9, 2024); see also in India for example, the current political situation impedes human rights-based work such as that carried out by potential CJWs. Interview with Krithika Dinesh, a legal empowerment lawyer in India; [Rights Expert finds ‘Reasonable Grounds’ Genocide is Being Committed in Gaza, UN News \(Mar. 26, 2024\)](#).

74 [V-DEM INST., DEMOCRACY REPORT 2023; DEFIANCE IN THE FACE OF AUTOCRATIZATION \(2023\)](#); [WORLD JUST. PROJECT, WORLD JUSTICE PROJECT RULE OF LAW INDEX \(2023\)](#); [FREEDOM HOUSE, FREEDOM IN THE WORLD \(2023\)](#); [INT’L IDEA, THE GLOBAL STATE OF DEMOCRACY \(2023\)](#).

75 [COMMUNITY NAVIGATORS, at 1](#).

76 Arguing that CJWs are HRDs. See [FRONTLINE DEFENDERS, GLOBAL ANALYSIS 8–16 \(2023/24\)](#).

77 [Lisa Trabucco, What Are We Waiting For? It’s Time to Regulate Paralegals in Canada, 35 WINDSOR Y.B. ACCESS JUST. 149, 155–56 \(2018\)](#).

could not remember an example of serious public injury in the preceding year. The survey authors concluded that the lack of focus on the public interest suggests it is “likely that bar self-interest continues to influence enforcement practices.” Research suggests that the public is dubious about lawyers’ motivation for such restrictive ethics laws.<sup>78</sup>

That public interest is not the driving force behind ethics regulatory enforcement seems glaringly true to practitioners. In Uganda, Timothy Kakuru, a Ugandan lawyer and the Former Programs and Impact Director at Barefoot Law, shares that “almost all bar association presidential candidates’ campaigns share the same goal of protecting the legal profession from derogation.”<sup>79</sup> In the United States, the legal profession is self-regulating which has allowed for gate-keeping and protectionism.<sup>80</sup> For example, a study in California similarly reported that complaints of non-lawyer ethics violations were mostly brought by lawyers, and not clients, to the California State Bar, leading to what some characterized as “unfair competition” and protection of the lawyers’ “club.”<sup>81</sup> In 2019, hundreds of California lawyers publicly opposed the notion of limited legal services work for trained and credentialed CJWs.<sup>82</sup> But in 2022 the California state “bar prematurely closed some cases [against lawyers accused of misconduct] that may have warranted further discipline, failed to adequately investigate some lawyers with ‘lengthy patterns of complaints’ and did not seek out information about attorneys disciplined in other jurisdictions.”<sup>83</sup> It is hypocritical that the California State Bar does not investigate unscrupulous lawyers who monopolize the legal profession while preventing experienced, ethical CJWs from participating. In a 2021 report, the National Center for Access to Justice, a U.S. organization, noted that one California attorney questioned if non-doctors would perform surgery, expressing that such a “straw-man argument exemplifies what is wrong with many lawyers’ perspective on these issues—it combines an exaggerated faith in a lawyer’s own credentials, with an indefensible contempt for everyone else’s competence.”<sup>84</sup>

The monopoly lawyers hold over law-related assistance often hurts those who urgently need support but lack the resources to pay for support.<sup>85</sup> Protectionism within the legal field and hostility to outsiders create a monopoly on legal services that “drives up prices, reduces competition, and creates a one-size-fits-all approach to serving the public’s legal needs.”<sup>86</sup> For instance, Dr. Annette Mbogoh, a Kenyan lawyer and the Executive Director of Kituo cha Sheria-Legal Advice Centre, shares that “in Kenya, lawyers push back against CJWs, not because of ethics but because of commercial impacts, given that CJWs do not charge fees, and are more accessible and responsive.”<sup>87</sup> This self-preservation of Kenyan lawyers stands in the way of securing state financing for CJWs to do their work.<sup>88</sup> In South Africa, where CJWs “play an integral role in the national system of access to justice,”<sup>89</sup> Olerato Morekhure, the Paralegal Support Administrator at the Community Advice Offices South Africa National office, explains “some lawyers oppose CJWs who work at the grassroots level in communities, in particular those practicing family and customary law.”<sup>90</sup>

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78 [Deborah L. Rhode & Lucy Buford Ricca, \*Protecting the Profession or the Public? Rethinking Unauthorized Practice Enforcement\*, 82 FORDHAM L. REV. 2587, 2593, 2598–99, 2605 \(2014\).](#)

79 Interview with Timothy Kakuru.

80 See *infra* United States case study; Consider how “[t]he legal market of England and Wales has always been less monolithic and restricted than in the U.S., incorporating not only multiple types of legal professionals (for instance, barristers and solicitors), but also a robust unregulated legal services market, comprised of professionals who have long been allowed to perform tasks that, in the U.S., must be provided by lawyers under UPL rules (e.g., providing legal advice or writing wills and trusts). Some estimate this large unregulated sector at 130,000 providers, meaning there are at least as many unregulated individuals operating in the legal market as there are solicitors.” [LEGAL INNOVATION AFTER REFORM: EVIDENCE FROM REGULATORY CHANGE](#), at 21.

81 [NAT’L CTR. ACCESS JUST., “UNAUTHORIZED PRACTICE OF LAW” ENFORCEMENT IN CALIFORNIA: PROTECTION OR PROTECTIONISM? 11 \(2022\).](#)

82 [“WORKING WITH YOUR HANDS TIED BEHIND YOUR BACK,”](#) at 9.

83 [Debra Cassens Weiss, \*California Bar Overlooks Patterns of Ethical Wrongdoing, Report says: one Lawyer had 165 Complaints\*, ABA J. \(Apr. 18, 2022, 10:00 AM CDT\).](#)

84 [“WORKING WITH YOUR HANDS TIED BEHIND YOUR BACK,”](#) at 9.

85 [Bruce A. Green & David Udell, \*What’s Wrong With Getting a Little Free Legal Advice?\*, N.Y. TIMES \(Mar. 17, 2023\).](#)

86 [Lauren Sudeall, \*The Overreach of Limits on “Legal Advice.”\* YALE L. J. \(Jan. 3, 2022\) \(citation omitted\).](#)

87 Interview with Dr. Annette Mbogoh.

88 Aimee Ongeso, African Roundtable Discussion.

89 [COMMUNITY-BASED PARALEGALS: A PRACTITIONER’S GUIDE](#), at 5.

90 Olerato Morekhure, African Roundtable Discussion.

## Vague definitions of the “practice of law” exacerbate access to justice and harm CJWs



Broad or nonexistent definitions of “legal advice” or “practice of law” create confusion and raise due process concerns to the detriment of underserved communities and the CJWs who assist them.<sup>91</sup> Take the U.S. American Bar Association’s model definition: “The ‘practice of law’ is the application of legal principles and judgment with regard to the circumstances or objectives of a person that require the knowledge and skill of a person trained in the law.”<sup>92</sup> Definitions of “practice of law” are often tautological and circular which makes it difficult to assess what triggers violations.<sup>93</sup> In Ontario, for example, neither the Law Society Act nor the Law Society of Ontario’s By-Laws expressly define what constitutes the “practice of law,” instead, reference is just made to practicing law as a “barrister and solicitor.”<sup>94</sup> CJWs are left without clear guidance or boundaries and worse still, institutions do not know how to train CJWs on the services they are allowed to perform,<sup>95</sup> at the expense of underserved communities.<sup>96</sup>

In some countries, the practice of CJWs is not contemplated (as different from paralegals), resulting in strict distinctions between lawyers and unethical non-lawyers. When CJWs are lumped into the latter category, underserved communities are denied crucial support and CJWs risk facing strict penalties for violating the law.<sup>97</sup> In countries that do regulate paralegals, regulatory bodies do not always have clear definitions of the different types of paralegals, including CJWs. Lack of clarity makes it difficult to understand how CJWs fit into the paradigm of law-related services. Indeed, as Sheila Formento, a Philippine lawyer and the National Coordinator of The Alternative Law Groups explains, “law firm paralegals are very different from CJWs.”<sup>98</sup>

U.S. Law Professor Lauren Sudeall powerfully stated: “The hazards of unauthorized practice are clear in the case of someone who misrepresents themselves as a lawyer or who recommends a specific course of action when they have not had the necessary professional training. Construing the prohibition on legal advice to prevent relaying basic information about the law, however, fails to protect litigants and instead thwarts their attempts to effectively educate and represent themselves.”<sup>99</sup> Put another way, when laws that regulate legal practice prevent experienced CJWs from sharing basic information about the law, they deny communities the ability to learn about their rights and represent themselves.

91 [The Overreach of Limits on “Legal Advice”](#).

92 [Task Force on the Model Definition of the Practice Of Law, ABA](#).

93 [“UNAUTHORIZED PRACTICE OF LAW” ENFORCEMENT IN CALIFORNIA: PROTECTION OR PROTECTIONISM?, at 5](#).

94 [COMMUNITY JUSTICE HELP: ADVANCING COMMUNITY-BASED ACCESS TO JUSTICE, at 43–45](#).

95 [“UNAUTHORIZED PRACTICE OF LAW” ENFORCEMENT IN CALIFORNIA: PROTECTION OR PROTECTIONISM?, at 5](#).

96 *See, e.g.*, Innovation for Justice’s forthcoming research on the chilling effect of UPL on domestic violence advocacy. [THE POTENTIAL OF UNAUTHORIZED PRACTICE OF LAW REFORM TO ADVANCE DOMESTIC VIOLENCE ADVOCACY \(forthcoming summer 2024\)](#).

97 *See* [REQUEST FOR A THEMATIC HEARING OF THE IACHR ON THE IMPACT OF OVERLY-BROAD UNAUTHORIZED PRACTICE OF LAW RESTRICTIONS ON HUMAN RIGHTS, at 5](#).

98 Interview with Sheila Formento.

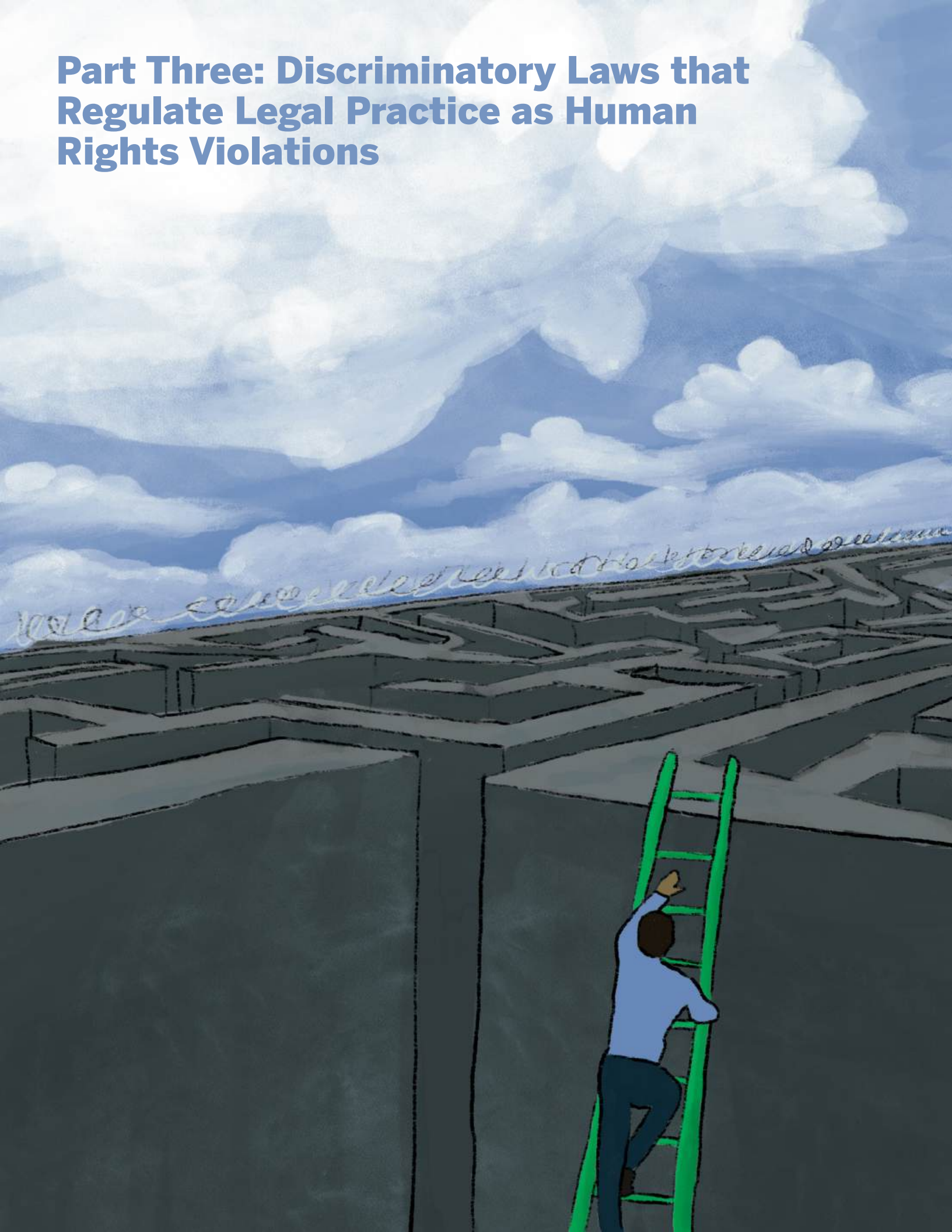
99 [The Overreach of Limits on “Legal Advice”](#).

Returning to Jhody Polk's case, the law regulating legal practice in Florida, United States, illustrates how vague laws that regulate legal practice are harmful. Chapter 10 of the Rules Regulating the Florida Bar defines the "unlicensed practice of law" (UPL) as "the practice of law, as prohibited by statute, court rule, and case law of the state of Florida." It states that a non-lawyer engaging in limited oral communication to assist a self-represented person to complete blanks of a Supreme Court form or performing secretarial services are not instances of UPL. But it is UPL if a non-lawyer gives legal advice or advice on remedies or courses of action, drafts a legal document for a self-represented person, or offers to provide legal services to the public. "[I]ndirect criminal contempt" under Chapter 10 is a fine of up to \$2,500, imprisonment of up to 5 months, or both.<sup>100</sup> **Thus, Chapter 10 carries criminal charges but neither defines legal advice nor provides clear guidance on what constitutes UPL.** Such vague language makes it possible for Florida's UPL law to be weaponized against CJWs who engage in law-related services for their communities.

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<sup>100</sup> [Rules Regulating the Florida Bar ch. 10-2.1\(l\), 10.2.2\(a\)–\(b\)\(1\), 10-7.2\(f\) \(2024\)](#).

# Part Three: Discriminatory Laws that Regulate Legal Practice as Human Rights Violations





The report now analyzes how unclear, restrictive, and overly burdensome laws that regulate legal practice can violate human rights principles such as the rights to equality, expression, information, a fair trial, and access to justice. Such laws contravene the rights of underserved communities who face barriers to accessing justice and CJWs as HRDs who are prohibited from assisting them. This report will now turn to a human rights analysis of how these laws are used to target HRDs—the CJWs who engage with legal issues to close the justice gap in their communities.



## Access to justice

The right to access to justice means:

being treated fairly by the police and courts, securing the ownership of traditional lands, benefiting properly from government services, protecting people who live on the margins, protecting the property rights of women and children, preventing illegal police detentions, [securing] equal treatment for people living with HIV/AIDS, securing legal identity documents for all, helping minorities to secure health services, strengthening the policing of polluting factories, and ending discrimination.<sup>101</sup>

Access to justice cannot be narrowly viewed as simply a procedural right in or to a courtroom and tribunal—it recognizes that the system used to secure justice and address injustice and the stakeholders that make up that system must be accessible to people with justice needs.<sup>102</sup>

The right to access to justice is understood as a necessary and overarching right that is derived from other core interconnected human rights. According to the Special Rapporteur, the right to access to justice is rooted in the rights to an effective remedy and a fair hearing before an independent and impartial tribunal found in the Universal Declaration of Human Rights (“UDHR”); and the rights to equality and fair hearing before a competent, independent and impartial tribunal, to legal assistance, and to equality before the law and equal protection of the law found in the International Covenant on Civil and Political Rights (“ICCPR”).<sup>103</sup>

Due process is also an element of access to justice. Due process similarly relies on the guarantee of a hearing, which includes the rights to legal assistance, to exercise the right of defense, and to a reasonable time to prepare arguments and compile evidence. The rights to a fair trial and due process also apply to non-criminal proceedings.<sup>104</sup> The inability of people to go to a court or tribunal or have the resources necessary to carry out their cases without lawyers due to the denial of support from CJWs is a significant due process violation.<sup>105</sup>

Access to justice inherently protects and uplifts other essential human rights. Other U.N. Special Rapporteurs, such as those on racial discrimination, migrants’ rights, and freedom of association, have likewise emphasized the value of legal aid and access to counsel to protect rights under their specific mandates.<sup>106</sup> Further, Sustainable Development Goal 16 (“SDG 16”), which is about “providing access to justice for all and building effective, accountable and inclusive institutions at all levels . . . aligns with the broader human rights framework [including] the right to privacy, freedom of expression and access to information.”<sup>107</sup> The *Diverse Pathways to People-Centred Justice: Report of the Working Group on Customary and Informal Justice and SDG16+* acknowledges that “formal justice systems and institutions are essential for justice delivery [but] evidence shows that most people do not resort to courts to solve their justice problems but instead rely on diverse providers frequently referred to as customary and informal justice (CIJ).” The right to access to justice thus encompasses the right to access CIJ. CIJ includes “chiefs, elders,

101 [OPEN SOC. FOUND., WHAT DOES ACCESS TO JUSTICE MEAN? \(2016\)](#) (a report on the work of CJWs around the globe who provide grassroots legal advice to their communities).

102 See [What is Access to Justice?](#), at 1.

103 [The promise of legal empowerment in advancing access to justice for all](#), at ¶ 20; UDHR, arts. 2, 8, 10 (1948); ICCPR, arts. 14, 26 (1966).

104 [IACHR, Access to Justice as a Guarantee of Economic, Social, and Cultural Rights. A Review of the Standards Adopted by the Inter-American System of Human Rights](#) ¶ 14, 95, 181 OEA/Ser.L/V/II.129 Doc. 4 (Sept. 7, 2007).

105 See [Envisioning Community Paralegals in the United States: Beginning to Fix the Broken Immigration System](#), at 91–94.

106 [The promise of legal empowerment in advancing access to justice for all](#), at ¶ 23; UDHR, arts. 2, 8, 10.

107 [Goal 16: Promote just, peaceful and inclusive societies](#), UN.

clan leaders, religious leaders or institutions, paralegals, mediators, [I]ndigenous peoples' groups, community volunteers, workplace associations, youth associations and local leaders providing dispute resolution services to people in their communities." CJWs support justice users to know their rights under formal justice and CIJ, and are especially important when justice seekers cannot access either or when typical providers like lawyers are seriously limited (e.g., in cases of authoritarian regimes).<sup>108</sup>

States must guarantee access to justice, without discrimination, to everyone within their jurisdiction,<sup>109</sup> meaning they must remove any "regulatory, social, or economic obstacles [that] hinder access to justice."<sup>110</sup> Removal of these obstacles makes judicial systems more efficient when litigants, especially self-represented litigants, understand the processes through which they are going, and the burden does not fall on judicial officers who face backlogs and budget constraints.<sup>111</sup> In Uganda, according to Timothy Kakuru, BarefootLaw's "surveys at magistrate courts have shown that case backlog can be correlated with the number of people in the court who are self-representing. The judicial officers are forced to explain to them all the legal processes they are going through, guide them, and many times correct them where they make mistakes. This is frustrating both for court users and the judicial officers who have to serve them."<sup>112</sup> In Perú, Carmen Nelly Salazar Cortegana, the Human Rights and Legal Defense Coordinator of the feminist organization TARINAKUY (Indigenous Quechua word for "women"), and promotora legal, shares that "promotores legales in Trujillo, La Libertad, have registered with La Libertad's Superior Court of Justice to assist in conciliation centers as a way to overcome the courts' overload of cases."<sup>113</sup> In a survey about court-based navigator programs across the United States, court staff and legal aid providers overwhelmingly affirmed the positive impacts of these CJWs who make courts more effective and facilitate access to justice for self-represented litigants.<sup>114</sup>

However, the Inter-American System on Human Rights ("IASHR") recognizes that there are several obstacles to the fulfillment of this guarantee. Financial obstacles in accessing courts and tribunals, procedural costs, and locations of courts and tribunals, make access to justice impossible. For example, the dearth of justice institutions in rural, low-income, and marginalized areas, the absence of court-appointed attorneys or public defenders available for indigent victims of violence, and the economic cost of judicial proceedings constrain access to justice.<sup>115</sup>



## Right to equality

CJWs play a special role in protecting an individual's fundamental right to equality. Indeed, Article 7 of the UDHR, Article 26 of the ICCPR, Article 24 of the American Convention on Human Rights ("ACHR"), Article 2 of the American Declaration on the Rights and Duties of Man ("ADRDM"), and Article 3 of the African Charter on Human and Peoples' Rights ("ACHPR") enshrine equality before the law and equal protection of the law.<sup>116</sup>

The ICCPR expands that the law must guarantee everyone "equal and effective protection against discrimination."<sup>117</sup> Underserved communities are often underserved because of systemic discrimination. Discrimination against minoritized identities exacerbates the justice gap. For example, economic discrimination impacts people's awareness of their legal rights, physical access to courts, and financial access to judicial services and legal representation. Discrimination based on race, gender, immigration, and caste status impacts people's awareness and understanding of their legal rights, access to legal counsel and dispute resolution mechanisms, and achievement of fair, impartial, and enforceable outcomes. In particular, migrants, ethnically and racially minoritized peoples, and

108 [DIVERSE PATHWAYS TO PEOPLE-CENTRED JUSTICE](#), at 8, 10, 25.

109 [The promise of legal empowerment in advancing access to justice for all](#), at ¶ 22.

110 [IACHR, Access to Justice as a Guarantee of Economic, Social, and Cultural Rights](#), at ¶ 1.

111 See [PROGRAMA INTERAMERICANO DE FACILITADORES JUDICIALES \(PIFJ\)](#), at 7. *But see* [CHINA RESEARCH BRIEF](#), at 10 (sharing that a challenge to China's legal aid system is poor public legal literacy).

112 Interview with Timothy Kakuru.

113 Carmen Nelly Salazar Cortegana, Latin American Roundtable Discussion.

114 [JUSTICE LAB, NONLAWYER NAVIGATORS IN STATE COURTS: AN EMERGING CONSENSUS](#), at 32–38.

115 See [IACHR, Access to Justice as a Guarantee of Economic, Social, and Cultural Rights](#), at ¶¶ 5, 8, 80.

116 [UDHR, art. 7](#); [ICCPR, art. 26](#); [ACHR, art. 24 \(1969\)](#); [ADRDM, art. 2 \(1948\)](#); [ACHPR, art.3 \(1981\)](#).

117 [ICCPR, art. 26](#).

Indigenous peoples, “often face additional obstacles in claiming and enforcing their rights because of both formal legal discrimination and informal discrimination or stigmatisation in practice.”<sup>118</sup>

Discrimination makes trust in the legal system low. When lawyers lack cultural competence because it is not a part of legal education or they do not reflect their clients, trust is further reduced. Kate Crowley Richardson, a U.S. lawyer and the Co-Executive Director of Legal Link explains that the answer to realizing justice is “multi-pronged: the legal profession must be diversified by educating more Black, Indigenous, and people of color as lawyers, and the legal ecosystem must be expanded to include CJWs who are trusted by and reflect the communities they serve, and have the cultural competence to provide meaningful justice support.”<sup>119</sup> Indeed, the cultural competence and trauma-informed approach that CJWs have as peers can be essential for ensuring equal access to the law and providing effective protection against further discrimination. CJWs also protect the right to equality before the law of rural and low-income people by bridging the justice gap and filling a “legal vacuum.”<sup>120</sup>

When laws that regulate legal practice limit the ability of CJWs to support underserved communities with their justice problems, they violate the right to equality. Indeed, when communities living on the margins are unable to secure legal support due to systemic discrimination, and then denied access to justice through the support of CJWs, their rights to equality are infringed. Relatedly, when CJWs are excluded from and penalized for participating in legal ecosystems, they are denied equal protection as their lawyer counterparts. Equality does not mean that CJWs replace lawyers but that CJWs are treated fairly and without discrimination, and allowed to serve their communities alongside lawyers. And if community members choose to have the assistance of CJWs rather than private attorneys, their choice should not encounter unwieldy legal barriers.

As a corollary, community members who become CJWs must also be treated and protected equally before and by the law. Many laws that regulate legal practice treat CJWs as a threat to lawyers either through non-recognition or overregulation, rather than as “force multipliers where lawyers are scarce or overburdened,”<sup>121</sup> filling their necessary role within legal ecosystems. Under a fair regulatory regime, CJWs would not be penalized by the law, and their professions as non-lawyer advocates would be protected; CJWs would be valued as collaborative partners to lawyers in closing the justice gap.



## Human rights defenders

International law recognizes and protects human rights defenders (“HRDs”). The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (“Declaration on Human Rights Defenders”) is critical.<sup>122</sup> The Declaration on Human Rights Defenders affirms that everyone has the right to promote the protection and realization of human rights, and everyone has the right to lawfully exercise their occupation. Everyone has the right to form and join non-governmental organizations (“NGOs”) to promote and protect human rights.<sup>123</sup>

The IASHR defines HRDs as justice operators who defend the access to justice of those whose rights have been

118 [JULINDA BEQIRAJ & LAWRENCE MCNAMARA, IBA, INTERNATIONAL ACCESS TO JUSTICE: BARRIERS AND SOLUTIONS \(BINGHAM CENTRE FOR THE RULE OF LAW REPORT 14, 16 \(2014\).](#)

119 Feedback from Kate Crowley Richardson.

120 [EKSAMINASI PUTUSAN MAHKAMAH AGUNG NO. 22 P/HUM/2018 ATAS HAK UJI MATERIL PERATURAN MENTERI HUKUM DAN HAK ASASI MANUSIA REPUBLIK INDONESIA NO. 01 TAHUN 2018 TENTANG PARALEGAL DALAM PEMBERIAN BANTUAN HUKUM 2–3, 12, 14, 18 \(2019\).](#)

121 [The promise of legal empowerment in advancing access to justice for all](#), at ¶ 24 (citation omitted).

122 The state’s duty to protect the rights of HRDs is supported by the Universal Declaration of Human Rights (Article 2), the International Covenant on Civil and Political Rights (Article 2), the European Convention on Human Rights (Article 1), the African Charter on Human and Peoples’ Rights (Article 1), and the American Convention on Human Rights (Article 1). [UN Special Rapporteur on the Situation of Human Rights Defenders, Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom 8 \(2011\).](#)

123 [Declaration on Human Rights Defenders](#), arts. 1, 5, 11 (1998); see [Declaration on the Promotion of the Role of Human Rights Defenders and Their Protection in Africa](#), arts. 3.2.

violated.<sup>124</sup> The African System on Human and Peoples' Rights ("ASHPR") defines HRDs as those who "act[] or seek[] to promote, protect or strive for the protection and realization of human rights and fundamental freedoms, at the local, national, regional and international levels."<sup>125</sup> HRDs necessarily oversee public officials and democratic institutions.<sup>126</sup> When CJWs help community members avoid eviction, they protect their human right to housing. When CJWs help community members seek safety from persecution, they defend their human right to asylum. When CJWs help community members lodge a labor grievance, they promote their human right to just working conditions. When CJWs help community members fight wrongful convictions, they realize their human right to liberty.<sup>127</sup> In these ways, CJWs are HRDs because they try to bridge the justice gap for underserved people.

CJWs might hold Know Your Rights presentations for their communities, assist a self-represented applicant with a court or tribunal filing, and strategize with a community member on a legal advocacy campaign. When they raise awareness of laws, help people navigate legal processes, and support community engagement in policy reform, CJWs defend human rights.<sup>128</sup> In furtherance of human rights, the Declaration on Human Rights Defenders states that everyone has the right to "know, seek, obtain, receive and hold information about all human rights," including having access to information on how those rights are effectuated in legal systems, and freely impart that information and knowledge to others; and to advocate for new human rights ideas. Moreover, everyone has the right to access funding, and "solicit, receive and utilize resources" to promote and protect human rights expressly and peacefully.<sup>129</sup> The right to receive and distribute information is crucial to the "monitoring and advocacy functions of defenders." So, not only do CJWs have the right to openly share information with communities and uphold human rights, but communities are also entitled to that information and do not have to depend on lawyers as arbiters of human rights knowledge. However, numerous laws that regulate legal practice violate the right to information inherent in the protection of human rights and HRDs when they are unclear or establish onerous criteria for recognition.

Access to justice, and particularly the right to an effective remedy, is guaranteed to HRDs as well. The Commentary to the Declaration on Human Rights Defenders states as much: "the right to an effective remedy also implies an effective access to justice."<sup>130</sup> Article 9 of the Declaration on Human Rights Defenders dictates the right to an effective remedy. For example, everyone has the right to complain of a violation and have their complaint reviewed by an independent, impartial, and competent court or other authority; to complain via petition about the policies of government officials and bodies; and "*to offer and provide professionally qualified legal assistance or other relevant advice and assistance in defending human rights and fundamental freedoms.*"<sup>131</sup>

Article 9 is valuable for three reasons. First, it affirms people's right to complain about violations of their human rights and pursue relevant remedies. Second, it affirms CJWs' right to complain about legal regulatory policies and bodies that violate their rights as justice providers. They can proactively challenge laws that will impact their work before they are accused of violating those laws.<sup>132</sup> Third, Article 9 confirms that CJWs can offer professionally

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124 Europe also recognizes the right to defend rights. [IACHR, CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS](#), ¶¶ 19, 24 [OEA/SER.L/V/II. Doc. 49/15 \(2015\)](#).

125 [Declaration on the Promotion of the Role of Human Rights Defenders and Their Protection in Africa](#), art. 1.

126 [IACHR, CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS](#), at ¶ 22; [Declaration on the Promotion of the Role of Human Rights Defenders and Their Protection in Africa](#), art. 2.

127 [UDHR](#), art. 3, 14, 23, 25.

128 *See, e.g.*, the motivation behind creating Moldova's first community paralegal program in 2009: the need to educate communities about their rights and the means of vindicating those rights, the imperative of training persons who could provide basic legal advice, and a desire to involve community members in local decision-making processes. [NAMATI, MOLDOVA RESEARCH BRIEF 5 \(2019\)](#).

129 [Declaration on Human Rights Defenders](#), arts. 6–7, 13; *see* [Declaration on the Promotion of the Role of Human Rights Defenders and Their Protection in Africa](#), arts. 3.3–6, 3.8, 3.17.

130 [Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom](#), at 58, 90 (emphasis added); *see* [Declaration on the Promotion of the Role of Human Rights Defenders and Their Protection in Africa](#), arts. 3.28, 4.12.

131 [Declaration on Human Rights Defenders](#), art. 19(2)–(3); *see* [Declaration on the Promotion of the Role of Human Rights Defenders and Their Protection in Africa](#), arts. 3.20, 3.22, 3.29.

132 *See, e.g.*, Sara Merken, [South Carolina Court says NAACP Program Doesn't Violate Legal Practice Curbs](#), [REUTERS](#) (Feb. 14, 2024, 5:48 AM EST) ("The South Carolina Supreme Court has ruled that the state's NAACP branch can train volunteers who are not lawyers to give

qualified legal assistance—qualifications that can be determined in various ways that do not involve a graduate degree or a draconian regulatory regime—or other relevant advice as a way to defend human rights. Laws that regulate legal practice that inhibit HRDs from giving human rights legal advice and assistance based on not being lawyers directly contravene the Declaration on Human Rights Defenders.

States must protect human rights, including defenders of human rights. Importantly, all states must protect and implement all human rights through legal guarantees that ensure that such rights can be enjoyed.<sup>133</sup> When there is a reasonable belief that a human rights violation has occurred, states must conduct “a prompt and impartial investigation” or inquiry. And states must ensure that people under their jurisdictions understand their civil, political, economic, social, and cultural rights.<sup>134</sup> This means that community members must understand their rights and justice problems. Rather than penalize CJWs through ambiguous laws that regulate legal practice, Timothy Kakuru stresses that “states must recognize how CJWs can support the state in filling in legal knowledge gaps because it is clear that the formal legal structures cannot solve all legal issues and are not equipped to handle all justice issues.”<sup>135</sup> States must also take necessary measures to protect HRDs against “violence, threats, retaliation, [and] de facto or de jure adverse discrimination.”<sup>136</sup> Indeed, states should publicly accept the legitimacy of defenders’ work to avoid violations against them.<sup>137</sup> The existence and enforcement of stringent laws that regulate legal practice against CJWs do the opposite—acting as de jure discrimination, delegitimizing their work, and putting a target on their backs from self-serving legal actors.

Both the IASHR and ASHPR explain the various dangers that HRDs face, and it is difficult not to ascribe those dangers to vague and prohibitive regulations of legal practice. States are increasingly using the courts and restrictive legislation to prevent and sanction the work of HRDs, prosecuting and criminalizing their activities.<sup>138</sup> In Africa, women HRDs (“WHRDs”) who “challenge anti-democratic and discriminatory practices” and poor legal governance that worsens the lives of isolated groups face criminalization. Their rights to integrity and expression can be violated, they can be physically and psychologically deprived of their liberty, their character can be assassinated, they can encounter gender-based restrictions on their freedom of movement, they can be restrained by restrictive laws that reduce their activism, and violations against WHRDs can simply not be recognized.<sup>139</sup> In America, a criminalization process can begin with a questionable—in terms of punishment or legality—allegation or complaint, and be accompanied by public officials’ “stigmatizing statements,” indefinitely long proceedings, and “the use of preventive measures with no procedural purposes, solely adopted to affect the defenders in crucial moments for the causes they advance.”<sup>140</sup> Similarly, in Asia, HRDs are criminalized and “targeted through the misuse of the legal system,” the willful misinterpretation of laws, and the enactment of new draconian laws.<sup>141</sup> Laws that regulate legal practice can operate as restrictive legislation aimed at stifling—sometimes violently—the work of CJWs.

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limited legal advice to tenants facing eviction,” after that NAACP branch “had sued the state’s attorney general in a related federal lawsuit in March 2023, seeking to bar the state from enforcing unauthorized practice of law rules against its planned efforts” in violation of their freedom of speech.).

133 [Declaration on Human Rights Defenders, art. 2](#); see [Declaration on the Promotion of the Role of Human Rights Defenders and Their Protection in Africa, art. 4.1](#).

134 [Declaration on Human Rights Defenders, arts. 9\(5\), 14](#); see [Declaration on the Promotion of the Role of Human Rights Defenders and Their Protection in Africa, arts. 4.7, 4.14](#).

135 For example, the Ugandan Constitution protects the right of citizens to know the law, but the law means nothing if the population does not understand it. Interview with Timothy Kakuru.

136 [Declaration on Human Rights Defenders, art. 12\(2\)](#); see [Declaration on the Promotion of the Role of Human Rights Defenders and Their Protection in Africa, arts. 4.4, 4.10–13](#).

137 [Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom](#), at 86; see [Declaration on the Promotion of the Role of Human Rights Defenders and Their Protection in Africa, arts. 4.6.9](#).

138 [Commentary to the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedom](#), at 16, 61.

139 [ACHPR, REPORT OF THE STUDY ON THE SITUATION OF WOMEN HUMAN RIGHTS DEFENDERS IN AFRICA ¶¶ 68, 111–132 \(2012\)](#).

140 [IACHR, CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS](#), at ¶ 43.

141 [ASIAN HUM. RTS. CMM’N, ASIA: HUMAN RIGHTS DEFENDERS AND THEIR PROTECTION 2–5 \(2019\)](#).

The misuse of criminal law undermines the credibility of the work of HRDs, and menaces “their central role in consolidating the rule of law and strengthening democracy.”<sup>142</sup> Criminalization thus affects the free exercise of human rights defense.<sup>143</sup> Actual or possible criminal proceedings have a chilling effect on HRDs, leading them to abstain from their work.<sup>144</sup> Being targeted can instill anguish, insecurity, financial burdens, reputational damage, and even deprivation of liberty for HRDs.<sup>145</sup> In supporting underserved people as they maneuver through complex legal systems, CJWs challenge those legal systems to live up to their ideals. But vague laws that carry criminal penalties have individual and collective consequences—they act as a justice barrier to communities, put the personal safety of CJWs at risk, and hold back greater social progress. As such, the IASHR recommends that these criminal offenses, including those whose wording is ambiguous or vague, or are unclear and unspecific in what constitutes unlawfulness, be abolished.<sup>146</sup> Ambiguous, vague, unclear, and unspecific laws that regulate legal practice should therefore be abolished and replaced with laws that comport with human rights principles and strengthen legal ecosystems.

In March 2024, the Inter-American Court of Human Rights rendered a historic decision defending HRDs. The Court found the Colombian State responsible for violating “the rights to life, personal integrity, privacy, freedom of thought and expression, freedom of information, self-determination, truth, honor, judicial guarantees, judicial protection, freedom of association, movement and residence, protection of the family, children’s rights, and the right to defend human rights” of members of the Colectivo de Abogados y Abogadas “José Alvear Restrepo” (CAJAR - “José Alvear Restrepo” Lawyers Collective). In finding that the Colombian state “conducted arbitrary and illegal intelligence activities against human rights defenders . . . the verdict underscored the violation of the autonomy inherent in the right to defend human rights.” Among the six remedies, the Court ordered the Colombian state to create “a data collection system on violence against human rights defenders” and to reform intelligence laws to align with international human rights.<sup>47</sup>



## Right to expression and information

The right to freedom of expression and information protects the right of underserved people to seek out CJWs to resolve their justice issues and for CJWs to share those solutions. Article 19 of the UDHR, Article 19 of the ICCPR, Article 13 of the ACHR, and Article 9 of the ACHPR grant everyone the right to freedom of expression, which includes the right to “seek, receive, and impart information.”<sup>148</sup> The ADRDM similarly protects the freedom of expression.<sup>149</sup>

The IASHR’s Declaration of Principles on Freedom of Expression and the ASHPR’s Declaration of Principles on Freedom of Expression and Access to Information in Africa go further. In America, not only does everyone have the right to seek, receive, and impart information, but they “should be afforded equal opportunities” to do so without discrimination. Prior censorship and interference in any expression are likewise prohibited.<sup>150</sup> In Africa, the right

<sup>142</sup> [IACHR, CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS](#), at ¶ 30.

<sup>143</sup> [IACHR, SECOND REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN THE AMERICAS](#), ¶ 80 OEA/Ser.L/V/II Doc 66 (2011).

<sup>144</sup> [IACHR, CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS](#), at ¶ 213.

<sup>145</sup> [IACHR, SECOND REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS IN THE AMERICAS](#), at ¶ 79.

<sup>146</sup> [IACHR, CRIMINALIZATION OF HUMAN RIGHTS DEFENDERS](#), at ¶ 76.

<sup>147</sup> [The Inter-American Court holds Colombia Accountable for Violating the Right to Defend Human Rights](#), CEJIL.

<sup>148</sup> [UDHR, art. 19](#); [ICCPR, art. 19\(2\)](#); [ACHR, art. 13](#); [ACHPR, art. 9](#); see also [European Commission on Human Rights \(“ECHR”\), art. 10 \(amended as of 2021\)](#).

<sup>149</sup> [ADRDM, art. 4](#).

<sup>150</sup> [IACHR, Declaration of Principles on Freedom of Expression](#), arts. 2, 5 (2000).

to expression and information is linked to the protection of the rights of human rights defenders. Further, “States may only limit the exercise of the rights to freedom of expression and access to information if the limitation: a. is prescribed by law; b. serves a legitimate aim; and c. is a necessary and proportionate means to achieve the stated aim in a democratic society.” African states also must ensure that any criminal restrictions on content comply with international human rights standards.<sup>151</sup>

Although community members and CJWs have the power to express what justice looks like and to independently and collectively strategize how to achieve justice, punitive laws that regulate legal practice censor and interfere with the work of CJWs, especially as HRDs. Just as laws that silence CJWs by failing to recognize their role in legal ecosystems violate their right to freedom of expression and information, paternalistic laws that make it impossible for CJWs to be accredited violate their right to freedom of expression and information.



## Right to a fair trial

The right to a fair trial is a core human right—one that is especially implicated when community members face the criminal legal system and seek the assistance of CJWs. Article 14 of the ICCPR holds that anyone facing criminal charges must have adequate time and facilities to prepare their defense and to communicate with the counsel they choose.<sup>152</sup> They are entitled to defend themselves in person or through legal assistance that they choose; and if they do not have legal assistance, “to have legal assistance assigned to [them], in any case where the interests of justice so require.”<sup>153</sup> General Comment 32 on Article 14 explains that the operative “or” means that individuals have the right to reject being assisted by any counsel, though this right is not absolute.<sup>154</sup> Article 8 of the ACHR similarly states that every person is entitled to adequate time and means to prepare their defense, to defend themselves personally or be assisted by legal counsel they chose, and “to communicate freely and privately with their counsel.”<sup>155</sup> The UDHR upholds the right to a fair trial.<sup>156</sup> The ADRDM also expresses that “every person may resort to the courts to ensure respect for [their] legal rights.”<sup>157</sup>

The U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (“Guidelines on Access to Legal Aid in Criminal Systems”) are also instrumental, in defining legal aid and recognizing the role of CJWs in the provision of legal aid at the pretrial stage, during court proceedings, and at the post-trial stage. The Guidelines on Access to Legal Aid in Criminal Systems clearly state that “[w]here there is a shortage of qualified lawyers, the provision of legal aid services may also include non-lawyers or paralegals [and] States should promote the growth of the legal profession and remove financial barriers to legal education.” CJWs are thus members of the legal ecosystem who do not usurp the power of lawyers but rather step in when there is a dearth of legal aid available. Legal aid not only includes legal advice but also legal education, legal information, “and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.” However, when laws regulating legal practice fail to define legal advice or construe it too narrowly, they exclude CJWs from fulfilling a necessary role for people who interact with the criminal system. Lawyers are the primary providers of legal aid to people who engage with the criminal system, but states should involve various stakeholders as legal aid providers, including CJWs. The Guidelines on Access to Legal Aid in Criminal Systems mention that states should not interfere with the independence of a person’s legal aid provider, and they should enhance people’s knowledge about their rights. When states allow CJWs to operate independently, CJWs can teach people about their rights, helping states fulfill their

151 [ACHPR, Declaration of Principles on Freedom of Expression and Access to Information in Africa, principle 6, 9, 22 \(2019\).](#)

152 Facilities include access to documents. [Hum. Rts. Comm., General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, ¶ 33 CCPR/C/GC/32 \(Aug. 23, 2007\); ICCPR, art. 14\(3\)\(b\); see also \*Envisioning Community Paralegals in the United States: Beginning to Fix the Broken Immigration System\*, at 91–95 for more analysis on Article 14.](#)

153 [ICCPR, art. 14\(3\)\(d\).](#)

154 [General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial](#), at ¶ 37, 58, 62. It further shares that Article 14 is connected to Article 2 on effective remedy and Article 13 on due process.

155 [ACHR, art. 8\(2\)\(c\)–\(d\); see also ECHR, art. 6.](#)

156 [UDHR, art. 10.](#)

157 [ADRDM, art. 18.](#)

duties. States should enable paralegals to provide legal aid to people who encounter the criminal system as a way to also have a functioning nationwide legal aid system. These Guidelines encourage states to create a legal aid fund to finance different legal aid schemes such as paralegal organizations. Importantly, when states enact legal aid acts with funds, they must follow through with funding—insufficient funds can restrict CJWs.

The Guidelines on Access to Legal Aid in Criminal Systems dedicate an entire guideline to paralegals so that states recognize their role “in providing legal aid services where access to lawyers is limited.” Guideline 14 notes that states with civil society organizations (“CSOs”), justice agencies, and bar associations, should: (a) develop a system “of paralegal services with standardized training curricula and accreditation schemes;” (b) ensure that “paralegals receive adequate training and operate under the supervision of qualified lawyers;” (c) make available monitoring and evaluation mechanisms; (d) promote a binding code of conduct for all criminal paralegals; (e) “specify the types of legal services that can be provided by paralegals and the types of services that must be provided exclusively by lawyers;” (f) ensure access for accredited paralegals assigned to provide legal aid to police stations, prisons, and detention centers; and (g) allow “court-accredited and duly trained paralegals to participate in court proceedings and advise the accused when there are no lawyers available to do so.”<sup>158</sup> Guideline 14 is crucial because it calls for fair and clear regulations that envision roles for and support CJWs, who are separate from lawyers, but work in partnership with them to meet the high demands of need. However, limiting the provision of legal aid to lawyers, especially when lawyers are insufficient to meet law-related needs, violates the right to legal aid.

African regional law also recognizes the role of CJWs. Article 7 of the ACHPR also enshrines the right to defense which includes the right to be defended by counsel of one’s choice.<sup>159</sup> Importantly, the Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa note that because many states have low numbers of qualified lawyers, states “should recognize the role that paralegals could play in the provision of legal assistance and establish the legal framework to enable them to provide basic legal assistance.” Accordingly, states must “adopt legislation to grant appropriate recognition” of CJWs that grants them “similar rights and facilities afforded to lawyers, to the extent necessary to enable them to carry out their functions with independence,” like providing “essential legal assistance to indigent persons, especially in rural communities [to] be the link with the legal profession.”<sup>160</sup>

International law enshrines the freedom of choice in the right to a fair trial (amongst other rights). That people can choose what legal assistance they receive can and must be interpreted broadly. As human rights defenders, CJWs offer essential legal assistance, information, and support to prevent the deprivation of their liberty, a fundamental freedom. Underserved people can choose and are already choosing CJWs as their non-lawyer advocates. Such is the case of incarcerated people in the United States who choose jailhouse lawyers to file briefs on their behalf and represent them in court.<sup>161</sup> Arguably, the right for community members to choose CJWs as their legal advocates and for CJWs to function as non-lawyer advocates, in addition to lawyers, is recognized by the right to a fair trial. Prohibitive laws that regulate legal practice and fail to appropriately recognize or accredit CJWs, nevertheless, do not comply with the right to a fair trial and deny thousands of people worldwide the ability to defend themselves before a court or tribunal in the ways they desire. These laws must therefore follow suit and reflect the parameters of the right to a fair trial in their formulation.

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158 [UNODC, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Systems ¶¶ 8, 9–10, 16–17, 44\(f\), 45\(e\)-\(f\), 47\(b\), 55\(e\), 61\(a\), 65, 67–68 \(2013\)](#) (emphasis added).

159 [ACHPR, art. 7\(1\)](#).

160 [ACHPR, Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa G \(2003\)](#).

161 [REQUEST FOR A THEMATIC HEARING OF THE IACHR ON THE IMPACT OF OVERLY-BROAD UNAUTHORIZED PRACTICE OF LAW RESTRICTIONS ON HUMAN RIGHTS; \*The promise of legal empowerment in advancing access to justice for all\*, at ¶¶ 31, 54; see also EKSAMINASI PUTUSAN MAHKAMAH AGUNG NO. 22 P/HUM/2018, at 27](#) (arguing that CJWs fill an important gap by offering education, counseling, and legal empowerment for poor communities so that they can defend their life, property, honor, and dignity, thereby fulfilling constitutional rights.).



Returning to Antony Njenga's story, while he could stand by Rukia, he could not advocate for her when she fearfully struggled to testify in court. Before Kenya's Legal Aid of 2016, Antony, like many experienced CJWs, could advocate for their community members in a court of law. As of a 2022 regulation, however, CJWs have been severely limited in what they can do because of the accreditation requirement. Today, they must: (1) complete a Council of Legal Education-approved training course; (2) be employed or supervised by a lawyer; and (3) become members of a paralegal association. To make matters worse, the Kenyan National Legal Aid Service has not commenced the accreditation of legal aid providers as per the 2022 regulations. Despite Antony's extensive experience and membership in the Paralegal Society of Kenya, out of fear that he would violate the law, Antony could not do more to support Rukia in such a crucial moment.<sup>62</sup>

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162 [Legal Aid \(General\) Regulations § 29\(1\) \(2022\)](#); Testimony of Antony Njenga.

# Part Four: Global Case Studies

In 2012, signatories to the Kampala Declaration on Community Paralegals called on governments to recognize the role of community paralegals but respect their independence, and “invest in the scale-up of community paralegal efforts.”<sup>163</sup> Several governments recognize that CJWs play an important role alongside lawyers in legal ecosystems. For example, legislation in Afghanistan, Malawi, Moldova, Mongolia, New Zealand, Nigeria, England and Wales, and British Columbia in Canada recognize CJWs.<sup>164</sup> Other countries like Romania and Poland have introduced new “‘stepping stone’ professions.”<sup>165</sup>

Legislative recognition, however, does not always guarantee state funding to train, employ, and remunerate CJWs, which is a burden that largely falls on CSOs.<sup>166</sup> However, studies show that it is cost-effective to fund access to justice initiatives, such as CJW interventions.<sup>167</sup> Aimee Ongeso, a Kenyan lawyer and the Global Network Manager at Namati confides that “in Kenya, some assumed that state recognition would come with financing and ease the burden on CSOs, but financing is also a condition that many CJWs cannot meet.”<sup>168</sup> Caution should also be exercised when governments regulate CJWs via the legal aid system by identifying (and supporting) them as legal aid providers. Such political oversight may create an opportunity for governments to control the legal market and the outcomes of cases brought against them when they dictate which legal aid service provider is assigned to whom in what case.<sup>169</sup>

And yet, there remain numerous countries that do not recognize CJWs at all; outright penalize their work; or recognize CJWs in very limiting ways such that they are effectively not recognized.<sup>170</sup>

The following eight case studies illustrate some of the difficulties that laws that regulate legal practice can pose for communities and CJWs or how they can offer opportunities for progress. These issues are often overlooked—their full breadth requires more awareness and data. However, these case studies demonstrate the range of regulatory approaches and their effects on access to justice. The examples are brief and offer snapshots of the complexity and diversity of regulatory regimes. Indeed, as of 2016, the International Bar Association (IBA) found that 42 countries use the courts to regulate lawyers, 114 use the national bar, 17 use local bars, 14 rely on the government, 24 use an independent or delegated regulatory authority, and 8 have a mixed or shared responsibility model. As for disciplining

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163 “The Kampala Declaration on Community Paralegals urges governments to strengthen access to justice and accountability across the continent by embracing the potential of community paralegals. From July 9-11, 2012, more than fifty organizations from twenty African countries met in Kampala, Uganda, where they debated and adopted the declaration.” [Kampala Declaration Calls on African Governments to Support Community Paralegals](#), GRASSROOTS JUST NETWORK; [Kampala Declaration on Community Paralegals](#), at ¶¶ 2–4.

164 [COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE](#), at 4; as of 2024, British Columbia has taken further steps. The proposed Legal Professions Act will enhance Indigenous peoples as legal professionals and create regulated paralegals, a new category of legal service providers, who will independently handle certain legal matters. [More Options Coming for People Needing Legal Help](#), BRITISH COLUMBIA GOVT. NEWS (Apr. 10, 2024, 2:10 PM).

165 [DIRECTORY OF REGULATORS OF THE LEGAL PROFESSION](#), at 16. There are also CJW programs in Cambodia and Hungary. [COMMUNITY-BASED PARALEGALS: A PRACTITIONER’S GUIDE](#), at 8.

166 Latin American and African Roundtable Discussions; [THE ROLE OF LEGAL EMPOWERMENT GROUPS IN ADDRESSING GENDER-BASED VIOLENCE ON SUB-SAHARAN AFRICA DURING THE PANDEMIC](#), at 49, 52. See also WIEGO, [PARALEGAL PROJECT FIELD VISIT TO DAR ES SALAAM](#) March 4-11 12-13 (2022) (Activists encouraged the passage of Tanzania’s Legal Aid Act of 2017 to secure government funding which remains an unfulfilled promise, and the Act similarly places registration, qualification, remuneration, and function restrictions with possible criminal penalties on CJWs) (on file with author).

167 [DIVERSE PATHWAYS TO PEOPLE-CENTRED JUSTICE: REPORT OF THE WORKING GROUP ON CUSTOMARY AND INFORMAL JUSTICE AND SDG16+](#), INT’L DEV. L. ORG., at 45.

168 African Roundtable Discussion.

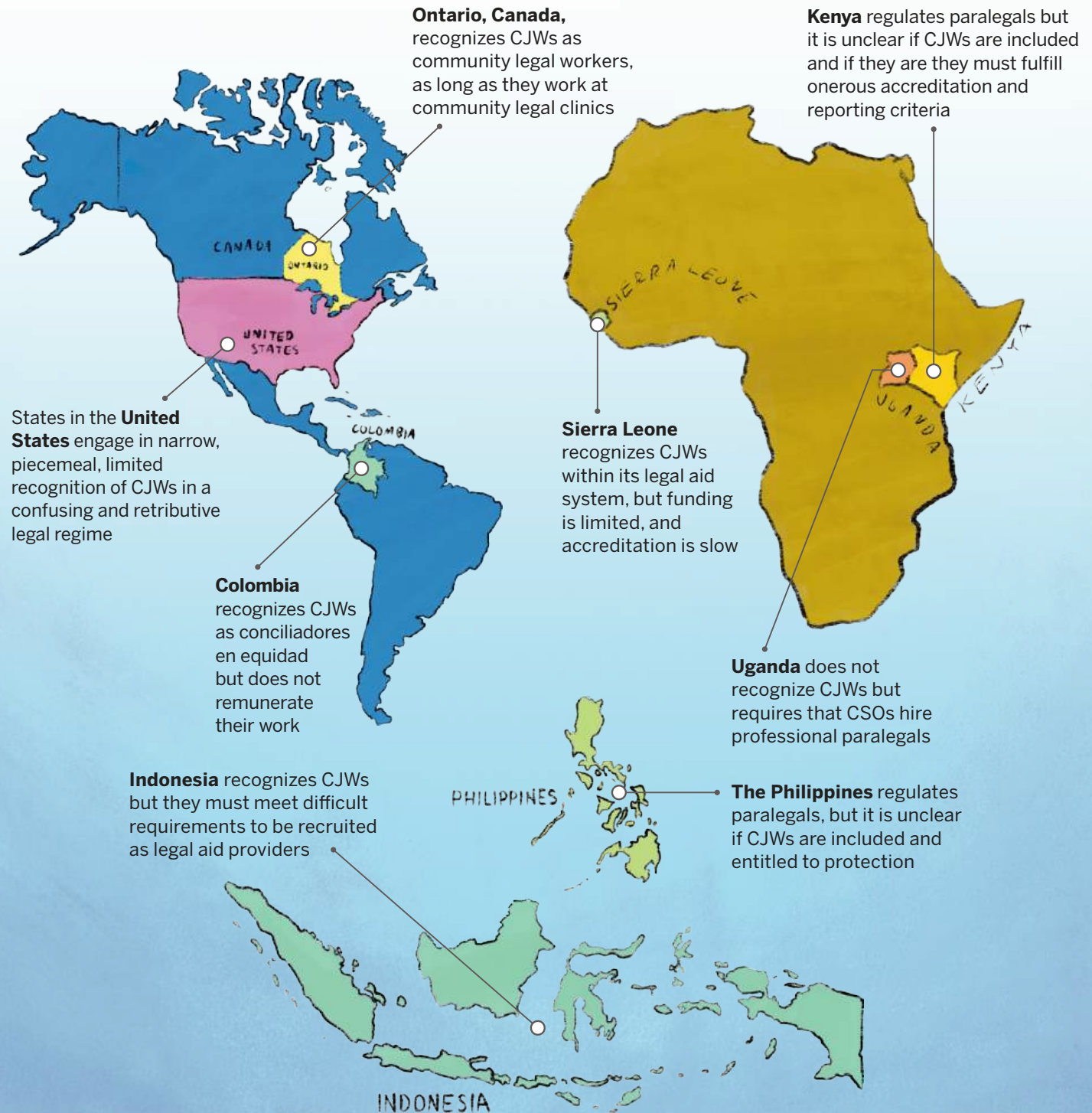
169 Interview with Mia Lam, a human rights lawyer.

170 See [THE ROLE OF LEGAL EMPOWERMENT GROUPS IN ADDRESSING GENDER-BASED VIOLENCE ON SUB-SAHARAN AFRICA DURING THE PANDEMIC](#), at 49–50 (“Some Legal Empowerment Groups find that the community paralegals they work with are limited in their reach and impact due to the fact that they are not formally recognized by the legal fraternity in their respective countries . . . . Even where the law does provide a measure of recognition to community paralegals, there remains a challenge in ensuring that the community, law enforcement actors and the legal fraternity recognize and respect community paralegals for the role that they play.”).

lawyers, 27 countries use the courts, 100 use the national bar, 16 use local bars, 13 rely on the government, 51 use an independent or delegated regulatory authority, and 9 have a mixed or shared responsibility. The IBA disclaims that “what is actually implied by the same regulatory model could vary significantly in practice from one jurisdiction to another [and t]his is partly due to the regulatory activities undertaken by any individual regulator but is also related to the extent of any lawyer monopoly, which in turn determines whether ‘lawyer regulation’ and ‘legal services regulation’ are synonymous.”<sup>171</sup>

These case studies are thus not meant to be uniform—each country’s regulatory framework is different, and this report highlights distinct and unique aspects.

That is:



171 [DIRECTORY OF REGULATORS OF THE LEGAL PROFESSION](#), at 13–14.



**America: United States, (Ontario) Canada, and Colombia**

## United States

A growing body of research has examined how the United States stands out as the country with the most harmful unauthorized practice of law regulations, or UPL regulations, which often carry criminal penalties.<sup>172</sup> The federal government and some states have created carve-outs for CJWs to do their work without risk of criminalization, but the carve-outs are insufficient to resolve the harms of the UPL regulations.

The ABA Model Rules of Professional Conduct (“ABA Model Rules”) and state regulations pose disparate, vague, and unhelpful definitions. The ABA Model Rules contain a UPL provision, Rule 5.5, but fails to define the “unauthorized practice law.” The Commentary to Rule 5.5. states that:



The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work.<sup>173</sup>

Consider New York’s confusing UPL regime as a state example. The UPL rule is based on the ABA Model Rules<sup>174</sup> and expanded upon by various New York Judiciary Laws. N.Y. Judiciary Law § 478 states that it is unlawful for any natural person to pretend to be an attorney or hold themselves out publicly “as being entitled to practice law.”<sup>175</sup> N.Y. Judiciary Law § 484 makes it unlawful for a “natural person” to get compensation for “appearing for a person other than [them]self as attorney in any court or before any magistrate, or for preparing deeds, mortgages, assignments, discharges, leases,” or pleadings before a court.<sup>176</sup> Despite not defining the practice of law, New York’s UPL regime carries criminal penalties. Violations are generally a misdemeanor, unless a person has falsely presented themselves as an attorney or person permitted to practice law, and causes someone else “to suffer monetary loss or damages exceeding one thousand dollars or other material damages.”<sup>177</sup> In the latter case, violations are a Class E felony, a serious charge that can lead to prison or jail time, probation, or a fine.<sup>178</sup> The New York State Bar Association acknowledges in a

172 Two scholars, [Deborah L. Rhode](#) and [Rebecca Sandefur](#) in particular, have focused their research on evaluating the efficacy of CJWs as advocates and the dangers of U.S. legal ethics.

173 [Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law](#), ABA (Apr. 17, 2019); [Comment on Rule 5.5: Unauthorized Practice of Law; Multijurisdictional Practice of Law](#), ABA; [The Application of Unauthorized Practice of Law Regulations to Attorneys Working in Corporate Law Departments](#), ABA. But see the Comment on Rule 5.3: Responsibilities Regarding Nonlawyer Assistance which states that “[t]he measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.” Arguably, the ABA Model Rules do not contemplate CJWs as non-lawyer advocates who have some training in the law, nor do they consider how CJWs are subject to discipline when they are erroneously accused of violating UPL regulations for doing justice work. [Rule 5.3 Responsibilities Regarding Nonlawyer Assistance – Comment](#), ABA.

174 [Rule 5.5 Unauthorized Practice of Law \[New York version\]](#).

175 “It shall be unlawful for any natural person to practice or appear as an attorney-at-law or as an attorney and counselor-at-law for a person other than himself or herself in a court of record in this state, or to furnish attorneys or counsel or an attorney and counsel to render legal services, or to hold himself or herself out to the public as being entitled to practice law as aforesaid, or in any other manner, or to assume to be an attorney or counselor-at-law, or to assume, use, or advertise the title of lawyer, or attorney and counselor-at-law, or attorney-at-law or counselor-at-law, or attorney, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he or she is a legal practitioner of law or in any manner to advertise that he or she either alone or together with any other persons or person has, owns, conducts or maintains a law office or law and collection office, or office of any kind for the practice of law, without having first been duly and regularly licensed and admitted to practice law in the courts of record of this state, and without having taken the constitutional oath.” [N.Y. Jud. L. § 478 \(2021\)](#).

176 [N.Y. Jud. L. § 484 \(2022\)](#).

177 N.Y. Judiciary Law §§ [485](#), [485-a](#) (2022).

178 [Class E Felony](#), N.Y. CRIMINAL L.

2015 guide for new lawyers “that there is ‘no single place to turn in New York for a definition of the practice of law and what may constitute the unauthorized practice of law in New York State.’”<sup>179</sup>

Powerful actors like state bar associations also prevent the expansion of the legal profession by limiting credentialing and certification and establishing the monopolistic and overly broad UPL laws that impose criminal sanctions, thereby exacerbating the access to justice crisis in the United States. Indeed, changes in state UPL statutes—such as adding harsher penalties for violations—have resulted at the urging of bar associations that wield enormous power and make decisions that have profound implications for CJWs.

The real or perceived threat of criminalization stops CJWs from doing their critical work, such as in the case of former jailhouse lawyers, incarcerated individuals who teach themselves the law to advocate for themselves and the rights of their peers. While incarcerated, they gain deep experience and refined skills, and when they reenter society, they are threatened with reincarceration by ethics bodies if they choose to continue sharing their knowledge and assisting incarcerated people and other community members.<sup>180</sup> In California, for example, CJWs might receive vague cease-and-desist letters and have their names publicly displayed as UPL violators without any explanation of how they were violators.<sup>181</sup> This lack of transparency makes it difficult to distinguish between non-lawyers who deliberately target people to defraud them, lawyers who engage in misconduct, and CJWs engaged in essential justice work.

UPL regulations and the ABA itself have racist roots. As Jewish, Native, Black, other people of color, and immigrants, entered the legal profession throughout the 1800s, “the White, male, Protestant legal class created stricter standards for anyone to become a sanctioned member of the legal profession, such as law school, Bar exams, and the C&F” (character and fitness examination).<sup>182</sup> The ABA was founded in 1878 to promulgate laws and court rules, ethics and conduct rules for lawyers and judges, and to establish the “eventual monopoly over legal practice” held by lawyers who were duly licensed members of a bar association.<sup>183</sup> It “fiercely opposed the admission of Black people, women of all races, immigrants, Catholics, Jews, and other ‘displeasing’ applicants (like those with subversive politics) from practice.”<sup>184</sup>

The ABA started investigating what it termed the “unauthorized practice of law” in 1931 when organizations whose staff were not formally legally trained began helping people navigate forms in “an increasingly law-thick environment.” The ABA determined that only bar-licensed lawyers practicing at law firms or as solo practitioners could engage in the practice of law. The ABA litigated the issue, relying on judges—its own members—to declare that courts have the power to inform what is the practice of law and thus what is the unauthorized practice of law. However, “[b]y vesting in lawyers and judges alone the power to regulate the legal sectors of the economy, and planting that power on constitutional grounds, the American legal profession achieved an unheard-of level of private regulatory control over an increasingly critical part of the economy.”<sup>185</sup> The U.S. legal profession’s exclusionary history and self-regulation have resounding impacts. As of 2023, 79% of lawyers are white, 6% are Latine, 6% are Asian, 5% are Black, and 0.5% are Native; and 61% of lawyers are men while 39% are women.<sup>186</sup>

179 [N.Y. STATE BAR ASS’N, THE PRACTICE OF LAW IN NEW YORK STATE: AN INTRODUCTION FOR NEWLY-ADMITTED ATTORNEYS 33 \(2015\)](#).

180 [REQUEST FOR A THEMATIC HEARING OF THE IACHR ON THE IMPACT OF OVERLY-BROAD UNAUTHORIZED PRACTICE OF LAW RESTRICTIONS ON HUMAN RIGHTS](#), at 5–8.

181 [“UNAUTHORIZED PRACTICE OF LAW” ENFORCEMENT IN CALIFORNIA: PROTECTION OR PROTECTIONISM?](#), at 9–11.

182 The first Jewish person admitted to practice law in the United States was in 1778, the first Native person in 1820, the first Black man in 1844, the first Black woman in 1872, and the first Chinese-American person in 1888. “The C&F is the ethics inquiry that an applicant to the state Bar must undergo in order to receive licensure. Its stated purpose is to determine an applicant’s ‘character’ before entry into the profession. The established legal test for C&F inquiries is that the measures used to evaluate this must bear a ‘rational connection’ to the applicant’s ability to practice law. Yet the concepts of morality and ethics are ill-defined and decided by those asking the questions, thus highly subject to abuse.” [UNLOCK THE BAR, THE CASE FOR ABOLISHING THE CHARACTER AND FITNESS PROCESS 3, 8–10 \(2022\)](#).

183 GILLIAN K. HADFIELD, [RULES FOR A FLAT WORLD](#) 115 (2016).

184 [THE CASE FOR ABOLISHING THE CHARACTER AND FITNESS PROCESS](#), at 10; [RULES FOR A FLAT WORLD](#), at 115.

185 [RULES FOR A FLAT WORLD](#), at 117–20.

186 [PROFILE OF THE LEGAL PROFESSION 22–24, 28–29](#). There are no reliable statistics, however, available on the total number of lawyers who identify as part of the LGBTQ+ or disabled community.

With this history in mind, it is equally noteworthy that the federal government has made carve-outs for CJWs to handle law-related work without the threat of reprisal. The Department of Veterans Affairs, the Department of Justice Executive Office for Immigration Review (“EOIR”), the Department of Treasury Internal Revenue Service, the Department of the Interior Bureau of Indian Affairs, and the U.S. Patent and Trademark Office, have formal accreditation programs in which non-lawyers can apply (after paying for training) to represent people in the agency’s proceedings. Some of these programs, like the EOIR, require that accredited representatives work in agency-accredited organizations; and some, like the Social Security Administration (“SSA”), permit qualified representatives who are chosen by litigants to represent them, but are non-lawyers and non-accredited and must follow the SSA’s code of conduct.<sup>187</sup> Some immigrant-serving organizations are accredited and have EOIR-accredited representatives. A fully accredited person can represent clients before immigration tribunals, the Board of Immigrant Appeals, and the Department of Homeland Security (“DHS”); a partially accredited person can only represent clients before DHS. But to become accredited, the person must have the right “character and fitness,” which includes an examination of: “criminal background; prior acts involving dishonesty, fraud, deceit, or misrepresentation; past history of neglecting professional, financial, or legal obligations; and current immigration status that presents an actual or perceived conflict of interest”—mirroring that of a lawyer. They must also have knowledge and experience in immigration law and procedure.<sup>188</sup> Nevertheless, as of December 2023, there were less than 2,300 accredited representatives, and only about 300 were fully accredited.<sup>189</sup>

Some states have also achieved regulatory reform. These fall into four general categories: a regulatory sandbox (“a policy tool through which new models or services can be offered and tested to assess marketability and impact and inform future policymaking while maintaining consumer protection”); alternative business structures (“a business entity that includes people who aren’t lawyers who have an economic interest or decision-making authority in a firm and provides legal services in accordance with local Supreme Court and ethics rules”); allied legal professionals (“a tier of providers who are trained and certified to offer legal advice and services for certain case types”); and community-based models (“involve training and certifying individuals working at community-based organizations to offer legal advice and services in certain case type”). The following states have adopted one or more of these types of reform: Alaska, Arizona, Colorado, Delaware, Hawaii, Illinois, Michigan, Montana, New Hampshire, Oregon, Utah, and Washington.<sup>190</sup>

These reform models are important and yet, efforts for reform do not directly engage with CJWs to get their input. With CJW input, UPL regulations might better align with human rights principles.

Until then, the United States’ UPL regime—its history, objectives, and impact—violates the human rights principles herein analyzed. The harsh criminal penalties for CJWs who are accused of engaging in the ill-defined “practice of law” run counter to increasing access to justice for isolated communities and instead, serve to safeguard the monopoly of lawyers over the “practice of law.” They do the opposite of building effective, accountable, and inclusive institutions because they effectively silence CJWs who can assist people with their justice problems. UPL statutes and their racist history contravene the state’s obligation to remove regulatory and discriminatory obstacles that obstruct access to justice. If the vague and overly broad UPL regime operates to silence CJWs by criminalizing their work, then it violates CJWs’ rights to equality and expression, as well as impedes people’s rights to equality before the law, a fair trial, and information.

CJWs are HRDs when they work to promote and realize the human rights of people. When bar associations determine the “practice of law” and who violates it with overly broad language, HRDs are restricted in their ability to advance access to justice rights of the communities they serve. Finally, the misuse of criminal law and vague laws

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187 [LEGAL AID INTERAGENCY ROUNDTABLE, ACCESS TO JUSTICE IN FEDERAL ADMINISTRATIVE PROCEEDINGS: NONLAWYER ASSISTANCE AND OTHER STRATEGIES 26–30 \(2023\)](#).

188 [8 CFR § 1292.12\(a\), \(a\)\(1\), \(a\)\(6\)](#).

189 [Michele R. Pistone, \*The Crisis of Unrepresented Immigrants: Vastly Increasing the Number of Accredited Representatives Offers the Best Hope for Resolving It\*, 92 FORDHAM L. REV. 893, 913 \(2023\)](#).

190 [Regulatory Models, IAALS](#).

undermines the credibility of CJWs and endangers their reputations as well as their financial and personal security.

The developments in federal agency regulations and state regulatory reforms are certainly progress but exist within a chaotic legal environment. What might be true in a Utah family court might be different than what is true in an Alabama criminal court, which is different from what is true in a New York immigration court. Until there are clear laws, the landscape will remain confusing for CJWs who must be constantly up-to-date on what they can and cannot do, and even more confusing for underserved people.

The disjointed UPL regime in the United States targets CJWs with criminal penalties, deepening the access to justice crisis and violating the rights to equality, a fair trial, and information of people who rely on CJWs. The targeting of CJWs violates their rights as HRDs, equality, and expression, and impedes their role as justice providers. While some federal and state regulations recognize CJWs, in limited ways, these piecemeal changes add confusion to an already fragmented legal landscape.

## Canada (Ontario)

Ontario's recognized version of CJWs are community legal workers ("CLWs").<sup>191</sup> CLWs have existed since the 1970s and have worked at Community Legal Clinics ("CLCs").<sup>192</sup> In 2007, when the Law Society of Ontario ("LSO") began regulating paralegals, CLWs were exempt from the paralegal license and regulation requirement.<sup>193</sup> CLWs at CLCs have typically helped low-income people with "legal matters related to housing and shelter, income maintenance, social assistance and other similar government programs, as well as human rights, health, employment, and education."<sup>194</sup>



Ontario's Ministry of the Attorney General funds Legal Aid Ontario, to inter alia, provide "poverty law"<sup>195</sup> services by 76 community-based, independent, non-profit CLCs.<sup>196</sup> CLWs at CLCs are committed to social justice and historically came from anti-poverty groups, bringing critical analysis to appreciate and challenge systemic issues, and "expertise in public legal education, lobbying, and community organizing," thereby increasing "access to justice for people with minimal incomes." As such, they mostly cover casework, community development, legal education, and law reform.<sup>197</sup>

CLWs are trained by and subject to the quality assurance and internal ethical guidelines of CLCs which are entirely separate from the LSO's parameters for paralegals. At CLCs, CLWs are trained in cultural competence and trauma-informed, anti-oppressive, and feminist approaches; substantive and procedural law, and ethics.<sup>198</sup> In fact, according

191 Although the Law Society of Ontario clearly regulates and licenses paralegals—some of whom work at CSOs—this report will only focus on CLWs at CLCs. But see *What Are We Waiting For? It's Time to Regulate Paralegals in Canada*, at 150 ("But despite, or because of, regulation by the Law Society of Ontario (LSO), there is evidence that paralegal regulation has fulfilled the government's promise of increased access to justice.").

192 [NAMATI, ONTARIO, CANADA RESEARCH BRIEF 5 \(2019\)](#).

193 [PARALEGAL REGULATION RESOURCES, L. SOC'Y ONTARIO](#); Interview with Dr. Michele Leering.

194 [ONTARIO, CANADA RESEARCH BRIEF](#), at 7.

195 "Poverty law" is essentially human rights law, because CLWs at CLCs help communities with issues like housing, social assistance, workers' compensation, sexual harassment, consumer protections, etc. Feedback from Dr. Michele Leering.

196 [MICHELE M. LEERING & PETER CHAPMAN, DELIVERING COMMUNITY JUSTICE SERVICES AT SCALE: ONTARIO, CANADA 1 \(2015\)](#); [By-Law 4 of 2007 § 30\(2\) \(2022\)](#); [Legal Aid Services Act of 2020 § 4 \(2022\)](#).

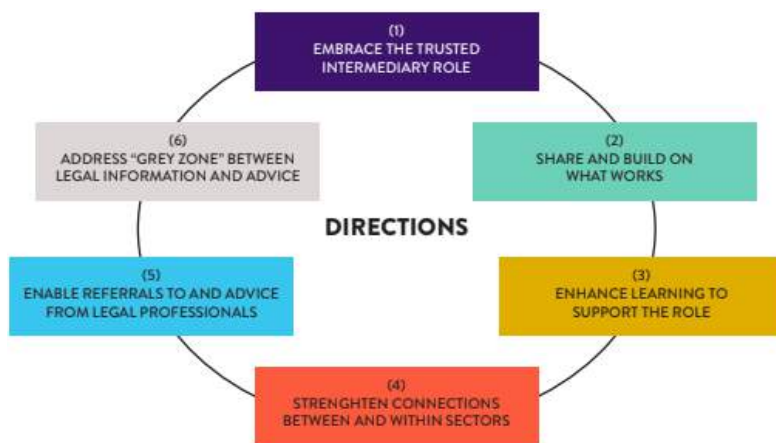
197 GERTA KAIGI & TRUDY MCCORMACK, [ASSOCIATION OF COMMUNITY LEGAL CLINICS OF ONTARIO PARALEGAL EXEMPTION SUBMISSION TO THE LAW SOCIETY OF UPPER CANADA 2–3 \(2013\)](#).

198 Feedback from Dr. Michele Leering; [ASSOCIATION OF COMMUNITY LEGAL CLINICS OF ONTARIO PARALEGAL EXEMPTION SUBMISSION TO](#)



to Dr. Michele Leering, an Ontario lawyer and former Executive Director of the Community Advocacy & Legal Centre, and Peter Chapman, Former Senior Policy Officer working on legal empowerment at the Open Society Justice Initiative, CLC training requirements far exceed LSO training for lawyers and paralegals. Furthermore, Community Legal Education Ontario (CLEO) offers public legal education resources for all CLCs which “helps CLCs to work more strategically with ‘trusted intermediaries,’ community partners of all kinds to whom people with legal difficulties often go for help when they don’t know where else to turn.”<sup>199</sup>

Thus, CJWs in Ontario can be employed, supervised (and disciplined), and insured at a CLC and do not need a license.<sup>200</sup> Indeed, when CLWs work at a CLC and as long as the lawyer assumes full professional responsibility, they can perform tasks reserved for lawyers.<sup>201</sup> Recently, some CLCs have made paralegal licenses a precondition for CJW employment. Historically, some “CLWs did not want to be licensees of the Law Society because they felt it restricted their community development activities, and subjected them to a narrowly circumscribed code of professional conduct that would compromise their grassroots work.”<sup>202</sup> Dr. Leering expresses that overall “the Ontario model of trained CJWs who are supervised by lawyers at community legal clinics might be a helpful model.”<sup>203</sup>



Trusted intermediaries, however, are another type of CJW who require recognition and support. In “Trusted Help: The Role of Community Workers as Trusted Intermediaries who Help People with Legal Problems,” the authors propose directions for moving forward. Their vision is for CJWs—whether at CLCs—to be recognized, supported, given clarity on the difference between “legal information and advice,” and work in partnership with the legal sector, which includes CLCs.<sup>204</sup>

In “Community Justice Help: Advancing Community-based Access to Justice,” Julie Mathews, the Executive Director of CLEO, and Canadian Law Professor David Wiseman encourage broader recognition and support for access to justice work, beyond CLCs. Noting that the LSO “occasionally pursue investigations and take action short of formal prosecution in the courts”<sup>205</sup> related to charges of the unauthorized practice of law, they make three recommendations to the LSO:

- (1) Issue an explicit endorsement of the view that the current regulatory framework permits community justice help;<sup>206</sup>
- (2) adopt and communicate a protocol of regulatory restraint to remove the chilling effect that potential prosecution has on community justice help; and
- (3) at a minimum, or in addition to acting on one of the recommendations above, support initiatives by community workers to build their knowledge and skills to provide community justice help, and collaborate with other bodies to strengthen community justice help.<sup>207</sup>

CJWs at CLCs can do an impressive amount of law-related and justice work. However, Ontarians’ right to access to

THE LAW SOCIETY OF UPPER CANADA, at 7.

199 [DELIVERING COMMUNITY JUSTICE SERVICES AT SCALE: ONTARIO, CANADA](#), at 3–4; [www.cleo.on.ca/en](http://www.cleo.on.ca/en).

200 [Paralegal Regulation Resources](#).

201 [Commentary to Rules of Professional Conduct ch. 6.1 \[1.1\], Complete Rules of Professional Conduct, L. SOC’Y ONTARIO](#).

202 [ONTARIO, CANADA RESEARCH BRIEF](#), at 6, 10.

203 Interview with Dr. Michele Leering.

204 [TRUSTED HELP: THE ROLE OF COMMUNITY WORKERS AS TRUSTED INTERMEDIARIES WHO HELP PEOPLE WITH LEGAL PROBLEMS](#), at 9–10.

205 [COMMUNITY JUSTICE HELP: ADVANCING COMMUNITY-BASED ACCESS TO JUSTICE](#), at 18, 35.

206 [Law Society Act of 1990 § 1\(8\) \(2022\)](#) and [By-Law 4 § 28\(2\)](#) exempt non-licensees from engaging in activities under their occupations that would otherwise be considered the unauthorized practice of law.

207 [COMMUNITY JUSTICE HELP: ADVANCING COMMUNITY-BASED ACCESS TO JUSTICE](#), at 52–53. They also make recommendations for funders, not-for-profit, community-based organizations, lawyers, and paralegals.

justice would be further strengthened when the LSO recognizes CJWs at non-profit civil society organizations, in addition to Ontario's CLCs, as important legal actors.

Ontario's CLC model with CLWs is critical for underserved communities. For Ontario's legal aid system to properly fulfill its access to justice goals, the LSO may need to start considering trusted community worker intermediaries as well.

## Colombia

Conciliadores en equidad ("conciliators in equity") in Colombia are CJWs who are community leaders, and work on various issues but are not compensated for their work. They were established by law in 1991 to "unclog" judicial offices and provide free alternative dispute resolution.<sup>208</sup> Conciliadores not only help the parties in conflict but also the larger community, crystallizing "constitutional principles like easy access to justice, effective judicial protection, and the consolidation of peace."<sup>209</sup> They work on issues related to agrarian, commercial, family, housing, property, transit, and labor disputes.<sup>210</sup> Indeed, they fill "institutional gaps" in areas without a "formal presence of justice."<sup>211</sup>



Conciliadores uphold community justice. The principles of conciliation are equity, responsibility, respect, agility, informality, orality, gratitude, and autonomy. As such, its goals are peaceful coexistence, reconstruction of the social fabric, easy access to justice, respect for legality, a restorative approach, and consolidation of peace.<sup>212</sup>

These CJWs provide services directly in communities in specific community-facing spaces. According to the Ministry of Justice, conciliadores are people who are:

assertive, prudent, tolerant, thoughtful, and possess techniques and skills fit for conflict resolution, as well as a high ethical quality, who benefit from credibility, confidence, good credit, and leadership in their community, carry a clear vocation for service, with reading and writing skills specific for the role, and who in virtue of their commitment to this role offer their services free of charge.<sup>213</sup>

Those who become conciliadores are already leaders in their own right. Communities and CSOs nominate Colombian citizens 18 years or older, who can read and write, and are demonstrated community leaders before the Ministry of Justice to be trained and certified as conciliadores en equidad.<sup>214</sup> The government offers trainings that include psychological and knowledge tests, workshops, and courses on equity and community justice. After

208 [Ley 23 de 1991](#).

209 [Luis Edison Bertín R, La "Conciliación en Equidad" en Colombia, 8 ESTUDIOS 139, 140 \(2020\)](#).

210 [Conciliación en Equidad, MINJUSTICIA](#).

211 [Conciliadores en Equidad: Una Alternativa Fácil y sin Costo para Solucionar Conflictos de Arriendo, Deudas y Líos Entre Vecinos, SECRETARÍA SEGURIDAD, CONVIVENCIA Y JUSTICIA](#).

212 [La "Conciliación en Equidad" en Colombia](#), at 146–50.

213 [Conciliación en Equidad](#).

214 [Los Conciliadores en Equidad: Cómo Resolver Conflictos sin que Lleguen a Jueces, ESPECTADOR \(May 202, 6:00 p.m.\)](#); [Conciliadores en Equidad: Una Alternativa Fácil y sin Costo para Solucionar Conflictos de Arriendo, Deudas y Líos Entre Vecinos](#).

they complete these requirements, the Ministry of Justice endorses them, and the first judicial authority of their municipality elects them.<sup>215</sup>

These CJWs are then able to resolve common issues through the provision of mediation services to reach amicable agreements.<sup>216</sup> The Rodrigo Lara Bonilla Judicial School also provides technical and operational support to conciliadores but can cease doing so if they are found unethical.<sup>217</sup> The Ministry of Justice identifies four elements to determine the ethics of conciliadores. They must have technical abilities, honesty, diligence, and “justice as a precondition for moral verticality.” Their ethics are also tied to pride in being part of access to justice.<sup>218</sup>

Article 83 of Law 23 of 1991 clearly states that conciliadores are citizens with outstanding qualities and volunteers.<sup>219</sup> Charging for their work is unethical and they would be subject to criminal and financial disciplinary action.<sup>220</sup> According to Colombian community lawyer Adriana Martínez, the fact that the work of conciliadores is unpaid creates an explicitly gendered aspect.<sup>221</sup> Women are more likely to be conciliadoras than men because they are proximate to “less complex cases” in the home and at school. As a corollary, most conciliadoras are women because men are less likely to work for free.<sup>222</sup>

Conciliadores en equidad are codified as important institutional actors, empowered to handle a range of issues, and are already respected by their communities—embodying the essence of CJWs. The guarantee of compensation is not secure for CJWs, whereas judges who do conciliation work get compensated for other justice work. The right to equality of conciliadoras is thus in question, especially if they are mostly women. Women conciliadoras who deal with domestic conflicts are HRDs and should be protected. To protect human rights, they must have the right to access funding and receive resources.

The legal recognition of conciliadores en equidad is important. Nonetheless, the legal prohibition against remuneration for their work, particularly given their positionality as women and community leaders, violates their right to equality and funding as HRDs.

215 [Conciliadores en Equidad: Una Alternativa Fácil y sin Costo para Solucionar Conflictos de Arriendo, Deudas y Líos Entre Vecinos.](#)

216 [Los Conciliadores en Equidad: Cómo Resolver Conflictos sin que Lleguen a Jueces.](#)

217 [Ley 23 de 1991 art. 84.](#)

218 [Conciliación en Equidad.](#)

219 [Ley 23 de 1991 art. 83.](#) Meanwhile, CJWs in India get very little honorarium. Interview with Krithika Dinesh.

220 [Conciliación en Equidad.](#)

221 Latin American Roundtable Discussion.

222 Adriana Martínez, Latin American Roundtable Discussion.



**Southeast Asia:  
Indonesia and  
the Philippines**

## Indonesia

While CJWs in Indonesia have been well-established since the 1970s, they have faced an ever-changing regulatory environment over the past decade. The state recognizes them, but they must meet various criteria to be recruited as valid legal aid providers. The regulatory history of the legal profession and CJWs is convoluted which can create compliance issues.



Since Indonesia's first legal aid organization, Lembaga Bantuan Hukum, CJWs have helped communities with issues of land and natural resources. Over time other "groups – ranging from environmental organizations, trade unions, universities, and even political parties – have started to adopt paralegal programs with the aim of helping citizens deal with a still remote and alien legal system."<sup>223</sup> Indonesian CJWs have provided help on diverse cases that involve labor, natural resources, robbery, and sexual assault.<sup>224</sup>

Regulation of CJWs in Indonesia began in 2003, with the passage of the Advocates Law, which regulates lawyers. This law explains that lawyers provide legal services: legal consultations, assistance, and defense, the exercise of the power of attorney, representation, and accompaniment. Notably, the Advocates Law grants bar associations the power to create the code of ethics that governs lawyers.<sup>225</sup> Article 31 previously criminalized anyone who intentionally performed the professional work of a lawyer or acted as if they were one. But in 2004, after university legal clinics argued that the provision hindered their work as non-lawyer advocates, the Constitutional Court revoked Article 31.

Nearly a decade later, the Legal Aid Law of 2011 became the first law to recognize and regulate paralegals in Indonesia, by acknowledging their assistance in law-related matters.<sup>226</sup> Under the law, legal aid providers offer legal assistance that covers civil, criminal, and administrative litigation and non-litigation issues. Importantly, legal aid providers can recruit lawyers, paralegals, lecturers, and law students. Legal aid providers must also organize legal aid educational training for the staff they recruit.<sup>227</sup> As of 2024, there are 619 legal aid providers accredited by the National Legal Development Agency of the Ministry of Justice and Human Rights ("BPHN" in its Indonesia initials); and as of 2020, 3,957 paralegals joined the accredited legal aid providers.<sup>228</sup>

The year 2018 marked a sea change in Indonesia's regulatory regime. Enacted in 2018, the Paralegals Providing Legal Aid Regulation of 2018 permitted legal aid providers to recruit paralegals when they had insufficient staff to handle their cases, or if there was no other legal aid mechanism in their operating region.<sup>229</sup> In response to this law which allowed paralegals to provide legal assistance in litigation and non-litigation matters, a group of lawyers petitioned the Supreme Court to revoke the 2018 regulation.<sup>230</sup> With Decision MA 22P/HUM 2018, the Supreme Court did just that, holding that the articles contravened the Advocates Law. In a scathing report that examined the Court's decision, allies of paralegals argued that the repeal of such vital provisions "evaporated the legal guarantee" of the existence and contributions of paralegals. Specifically, they asserted that the Court's decision violated the right to

223 [Ward Berenschot & Taufik Rinaldi, \*Paralegalism in Indonesia\*, in \*COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE\* 139 \(Vivek Maru & Varun Gauri, eds., 2018\).](#)

224 [NAMATI, \*INDONESIA RESEARCH BRIEF 6\* \(2019\).](#)

225 Law No. 18, Advocates arts. 1(2), 26 (2003).

226 Interview with Febi Yonesta.

227 Law No. 16, Legal Aid arts. 1(1), 4(2), 9(a), 10(c) (2011).

228 Minister of Law Decree Number M.HH-02.HN.03.03 (2021); [YULIYANTO ET AL., \*FORMASI PERSEBARAN ORGANISASI PEMBERI BANTUAN HUKUM DI SETIAP KABUPATEN/KOTA\* 47 \(2023\).](#)

229 [INDONESIA RESEARCH BRIEF, at 6.](#)

230 Interview with Febi Yonesta.

equality before the law of rural and low-income people because paralegals at CSOs bridge the justice gap and fill a “legal vacuum.” The report recommended that the government must provide a clear definition of CJWs, including their roles, functions, and scope of work.<sup>231</sup>

In 2021, the Ministry of Law and Human Rights responded to the Supreme Court’s decision and revised the previous paralegal regulation. CSOs had demanded the revision.<sup>232</sup> The Preamble of the Paralegals Providing Legal Aid Regulation of 2021 notes that paralegals are needed to increase the reach of legal aid. The 2021 regulation defines paralegals as those who come from communities or legal aid providers, have gone through paralegal training, are not lawyers, and are not independently assisting legal aid clients in court. When paralegals provide legal assistance, they have the right to legal protection, security, and capacity-building. Legal aid providers supervise and evaluate paralegals in providing legal services such as policy advocacy and program assistance. The legal aid providers must submit evaluation reports to the BPHN.

Paralegals in Indonesia must fulfill numerous requirements to be recruited as legal aid providers. They must, *inter alia*, be: Indonesian citizens, 18 years or older, able to read and write, understand basic laws, and able to engage in community advocacy. The legal aid provider first trains—in collaboration with universities, government agencies, or NGOs, and with BPHN approval—the paralegal before applying to the BPHN for the paralegal’s certificate after they pass the training. Paralegals must have a valid identification for a maximum of 3 years and can be renewed. Paralegals who are registered in the legal aid database, but have not been trained, or are not yet in the database but have received education at a BPHN-approved training, get a 6-month BPHN certificate of internal recognition.<sup>233</sup>

The 2021 paralegal regulation has made advances, especially after Indonesia’s tumultuous regulatory history, and enshrines legal protection and security. Febi Yonesta, an Indonesian lawyer and the Head of the Pro Bono Department of the Indonesian Bar Association (PERADI in its Indonesian initials) explains that although CSOs petitioned for a change in the regulatory regime, some do not support parts of the 2021 regulation that make it difficult for CJWs, especially those who work in remote areas, to participate in formal paralegal training, or to meet all enumerated criteria, thereby excluding experienced CJWs who have significantly contributed to their communities. Other CSOs accept the 2021 regulation despite its imperfections because it “somehow gives recognition to non-lawyers who provide legal aid.”

Crucially, the 2021 regulation’s focus on ensuring CJWs’ security and protection, does not reflect the reality of CJWs on the ground. CJWs are frequently judicially harassed and criminalized and are waiting to benefit from the regulation’s protection. The criminalization of CJWs restricts underserved people’s right to access to justice, and accompanying rights to equality, a fair trial, and information. The 2021 regulation indeed notes that paralegals come from communities or legal aid providers, but all the requirements suggest that the regulation is mostly geared toward law firm paralegals. Yonesta laments that “it is difficult for CJWs to fulfill the enumerated criteria and find legal aid organizations that can host them.” The requirements are not only burdensome to CJWs but also to legal aid providers who must frequently interact with the BPHN to get CJWs certified. If legal aid providers are not able to certify CJWs and CJWs are unable to maintain their identifications up-to-date, then communities bear the brunt of the restrictions when they cannot receive effective legal aid.

According to Yonesta, “Indonesia’s Ministry is quite progressive and willing to co-create regulations with civil society that best suit the reality of CJWs, but Indonesia’s legal aid scheme is not unified.”<sup>234</sup>

Indonesia has other laws that allow for non-lawyer advocates to participate in court hearings: the settlement of industrial relations disputes law permits trade unions to act as legal representatives for their members in industrial relations court; environmental laws protect environmental activists against criminal or civil suits for defending the

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231 [EKSAMINASI PUTUSAN MAHKAMAH AGUNG NO. 22 P/HUM/2018](#), at 2–3, 12, 14, 18, 29 (2019).

232 Interview with Febi Yonesta.

233 Regulation No. 3, Paralegals in the Provision of Legal Aid, preamble, arts. 1(5), 1(7), 3(1), 3(2), 4, 5(1)–(3), 6, 9, 10–11, 12(1)–(2), 13 (2021).

234 Interview with Febi Yonesta.

environment, which can involve legal advice to their community; and some laws recognize the assistance of non-lawyer advocates who can represent children in the juvenile criminal system.<sup>235</sup>

The 2021 paralegal regulation responds to severe limitations on the work of CJWs, recognizing their value to legal aid provision and granting them protection. However, the regulation's criteria for certification and validation are demanding for legal aid providers and CJWs, casting doubt on its ability to provide access to justice and ensure the rights to equality, information, and a fair trial for underserved communities.

## The Philippines

CJWs have been active in the Philippines since the 1930s with a long-established history of powerful justice work,<sup>236</sup> but it is unclear whether they now fall under 2023 state regulation. They have worked on issues relating to agrarian and labor unrest, human rights abuses and martial law, social and political rights, and environmental protection and natural resource use.<sup>237</sup> Sheila

Formento shares that “CJWs often come from farming, fishing, and Indigenous communities and grassroots organizations; they are first responders to and documenters of human rights violations, and are trained in specific laws relevant to their communities.”<sup>238</sup>



In 2023, the Philippine Supreme Court issued the Code of Professional Responsibility and Accountability of 2023 (“CPRA”) officially naming “paralegals” for the first time. Despite nearly 100 years of CJW-led justice work,<sup>239</sup> the references to paralegals in the CPRA are brief. The CPRA states that paralegals are familiar with legal concepts, and employed and supervised by a “lawyer, law office, corporation, governmental agency, or other entity” to do non-advisory work. Paralegals are not permitted to: (1) accept cases on behalf of lawyers; (2) give legal advice or opinions; (3) act independently without lawyer supervision; (4) hold themselves out as lawyers; (5) appear in court or actively participate in formal legal proceedings on behalf of clients; (6) conduct third party negotiations; (7) sign correspondence that has legal opinions; or (8) perform duties that only lawyers can. Lawyers are therefore responsible for the negligence of paralegals and can disclose clients’ legal matters to paralegals.<sup>240</sup>

Some experts consider the codification of paralegals as valuable actors in the legal profession as significant progress, and others caution that while the crucial role of CJWs should be recognized and protected, recognition should not lead to restrictive regulation.<sup>241</sup> The CPRA has some deficiencies that make it difficult to protect communities’ right to access to justice (and to equality, a fair trial, and information) and the rights granted to HRDs. The CPRA

235 Law No. 2, Industrial Relations Dispute Settlement art. 87 (2004); Law No. 32, Environmental Protection and Management art. 66 (2009); Law No. 11, Juvenile Criminal Justice System art. 23 (2012) (stating that on every level of the criminal process, every child victim or child witness must be provided with legal aid and accompanied by a community counselor or other companion, parents and/or any person whom the child trusts).

236 [NAMATI, PHILIPPINES RESEARCH BRIEF 5 \(2019\)](#); [COMMUNITY-BASED PARALEGALS: A PRACTITIONER’S GUIDE](#), at 7.

237 [Jennifer Franco et al., Community-Based Paralegalism in the Philippines](#), in [COMMUNITY PARALEGALS AND THE PURSUIT OF JUSTICE 101–03 \(Vivek Maru & Varun Gauri, eds., 2018\)](#).

238 Interview with Sheila Formento.

239 [COMMUNITY-BASED PARALEGALS: A PRACTITIONER’S GUIDE](#), at 7.

240 [Code of Professional Responsibility and Accountability 2023 Canon II §§ 34, 35, Canon III §§ 10, 30](#).

241 Interview with Sheila Formento; Feedback from Marlon Manuel.

does not define who a paralegal is and what their qualifications are, if any. Rather, they are placed under lawyer supervision and defined by what they cannot do. As such, it is unclear whether CJWs are included in the CPRA's limited provision on paralegal responsibilities. Even if they are included, they have little guidance on what they can do without running afoul of the law. Such vagueness can hamper the work of CJWs who do not work with farmers, unions, or Indigenous peoples, leaving other isolated communities unsupported. However, Marlon Manuel, a Philippine lawyer and Senior Advisor at the Grassroots Justice Network in the Philippines notes that, because the "regulation of legal practice is under the authority of the Supreme Court, it may be easier to change the CPRA" (as compared to legislation having promulgated the CPRA).<sup>242</sup>

Without proper recognition of or specific protection for CJWs, as HRDs, they are especially jeopardized as is their right to express themselves as HRDs. The Philippines' landscape means that the burden to train, fund, and protect CJWs falls on civil society organizations and lawyers,<sup>243</sup> threatening the independence and safety of CJWs. In the Philippines, for example, women environmental defenders are the target of red tagging or labeled as terrorists under ambiguous laws; intimidation, death threats, and even assassinations.<sup>244</sup> They should be able to lawfully exercise their occupation, hold and give information about human rights, and challenge powerful actors like the government and corporations without peril. The ambiguity of the CPRA exposes CJWs to violence and de jure discrimination. Any law that recognizes and protects CJWs should be careful not to pose security issues for CJWs who will have to publicly declare themselves to benefit from the law or worse, be subject to its harmful regulations.

Notwithstanding the 2023 Code's restrictions on CJWs, CJWs are legislatively entitled to appear before quasi-judicial tribunals (under the executive branch); and represent (1) their farmer's organization or members at the Department of Agrarian Reform Adjudication Board; (2) their union's members at the National Labor Relations Commission; and (3) a party to a dispute per customary practices at the National Commission for Indigenous People.<sup>245</sup> Formento underscores that CJWs' "historic role in these spaces is respected."<sup>246</sup>

The CPRA names paralegals for the first time which is progressive, but it is unclear whether CJWs are considered paralegals. This definitional ambiguity implicates the right to access to justice and rights of HRDs insofar as CJWs might be paradoxically restrained from doing their work and denied any protections granted from being bound by the CPRA.

<sup>242</sup> Feedback from Marlon Manuel.

<sup>243</sup> Interview with Sheila Formento.

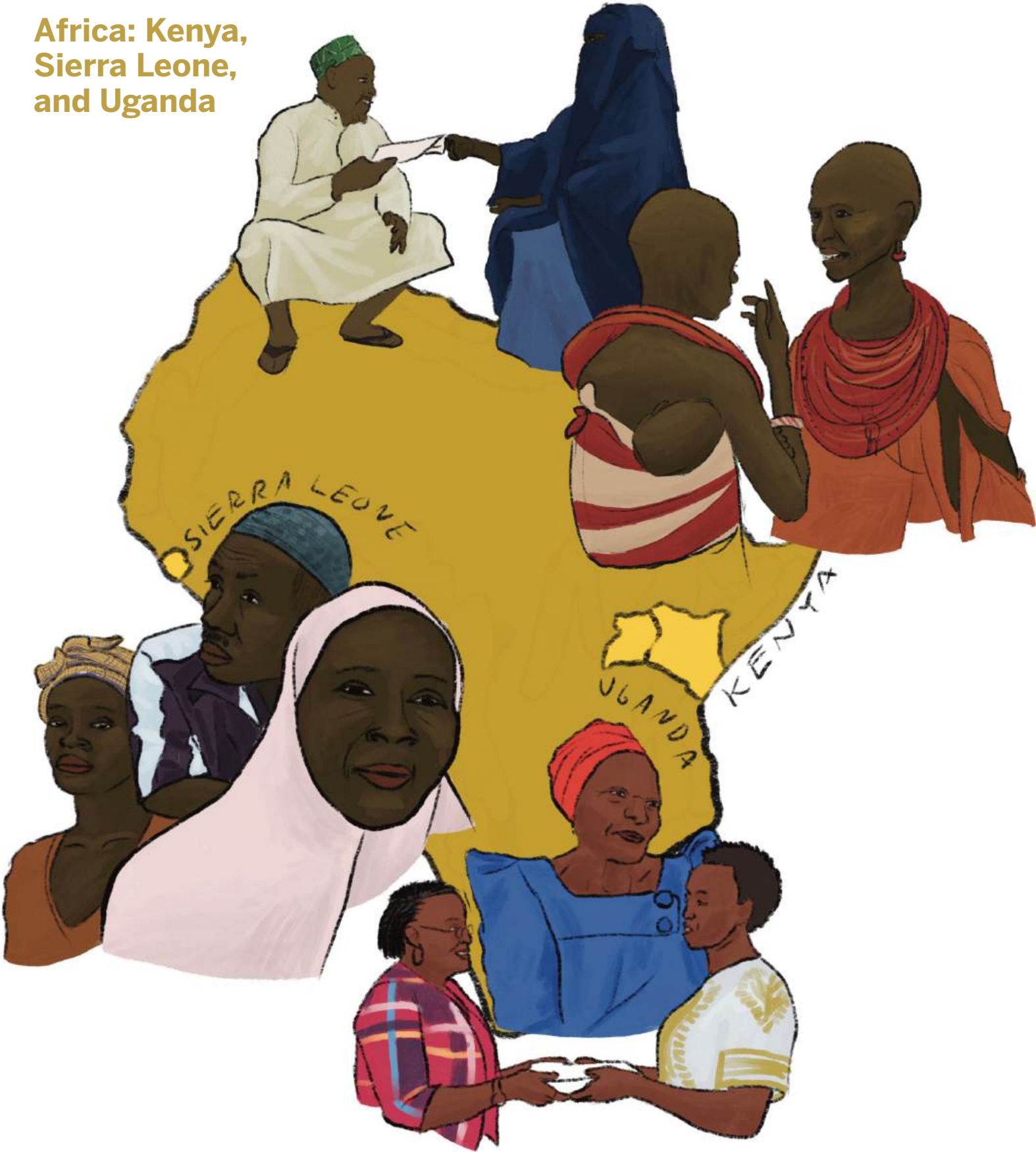
<sup>244</sup> STRENGTHENING WEDEFENDERS TOWARDS A RESILIENT AND INCLUSIVE NATURAL RESOURCE GOVERNANCE, WOMEN ENVIRONMENTAL DEFENDERS AND MINING POLICY BRIEF 5 (2021).

<sup>245</sup> [PHILIPPINES RESEARCH BRIEF](#), at 5; [Department of Agrarian Reform Adjudication Board Revised Rules of Procedure § 44\(6\) \(2021\)](#); [2011 National Labor Relations Commission Rules of Procedure § 6\(b\)\(3\) \(2011\)](#); [National Commission of Indigenous Peoples Rules of Procedure § 12 \(2018\)](#).

<sup>246</sup> Interview with Sheila Formento.



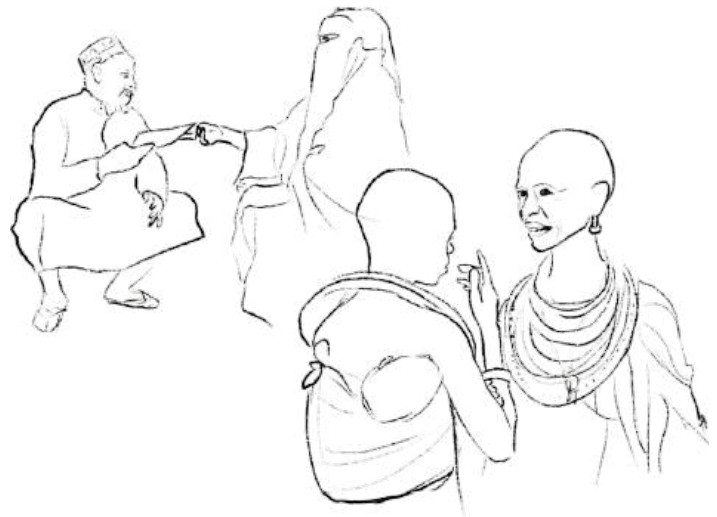
Africa: Kenya,  
Sierra Leone,  
and Uganda



## Kenya

Since the 1970s, CJWs have played a historic role in the provision of law-related services in Kenya;<sup>247</sup> nonetheless, it is not entirely clear if CJWs fall under the Legal Aid Act of 2016 but if they do, they must navigate overly burdensome accreditation and reporting requirements.

CJWs have mostly focused on supporting specific marginalized communities like sex workers or stateless people.<sup>248</sup> During the COVID-19 pandemic lockdown (“COVID lockdown”), lawyers could not travel outside of Nairobi because of inter-county movement restrictions, so the International Commission of Jurists-Kenya depended on their CJWs to individually support women in collecting evidence for their cases.<sup>249</sup>



Despite the strong grassroots movement of trained and supported CJWs, they were not legally recognized as legal aid service providers. As a result, they were frequently “accused of masquerading as advocates” under the Advocates Act that prohibited people not admitted as advocates of Kenya’s High Court from giving legal advice and representation. Dr. Mbogoh writes that such “legal challenges of paralegalism limited its effectiveness in enhancing access to justice.”<sup>250</sup>

Before exploring the regulation of paralegals in Kenya, it is worth briefly mentioning that the history of the legal profession is marred by colonial racism. During British colonization, lawyers were mostly European and responded to white settlers and government interests. The landscape changed when the “Black Bar” was created, though not without resistance from the “White Bar,” which opposed the provision of legal education and favored increasing qualifications for joining the legal profession.<sup>251</sup> In 1949, the Law Society of Kenya gained statutory authority and Kenya’s legal profession began “attain[ing] a measure of self regulation because its membership consisted largely of white and Asian lawyers who were in a strong political position [sic] to manipulate and negotiate for concessions with the administration.” It was in 1949 that the Advocates Act was introduced,<sup>252</sup> which limited who could provide legal advice and representation.<sup>253</sup>

Decades later, in 2016, the government passed a Legal Aid Act which formalized Kenya’s legal aid system and for the first time recognized paralegals. The Act of 2016 purports to “promote access to justice by providing affordable, accessible, sustainable, credible and accountable legal aid services to indigent persons in Kenya,” promote legal awareness, and support community legal services. The Act defines “accredited paralegals” as “legal aid providers” who are accredited by the Nairobi-based National Legal Aid Service (“Service”) to provide paralegal services under the supervision of a lawyer or accredited legal aid provider. Meanwhile “paralegals” are “legal aid providers” who have finished Legal Education-approved training and are employed by the Service or an accredited legal aid

247 See, e.g., [kituochasheria.or.ke/about-us](http://kituochasheria.or.ke/about-us).

248 NAMATI, KENYA RESEARCH BRIEF 6 (2019).

249 [THE ROLE OF LEGAL EMPOWERMENT GROUPS IN ADDRESSING GENDER-BASED VIOLENCE ON SUB-SAHARAN AFRICA DURING THE PANDEMIC](#), at 25.

250 Annette Mbogoh, *Pouring New Wines in Old Wineskins: State Capture, Contestations and Conflicting Understanding of the Paralegalism in Kenya with the Advent of the Legal Aid Act 2016*, 1 EGERTON L.J. 161, 161, 172 (2021).

251 [THE LEGAL PROFESSION AND THE NEW CONSTITUTIONAL ORDER IN KENYA 12](#) (Yash Pal Ghai & Jill Cottrell Ghai, eds.) (2014).

252 George Kegoro et al., *Professional Integrity and Disciplining of Advocates: Room for Improvement*, in [THE LEGAL PROFESSION AND THE NEW CONSTITUTIONAL ORDER IN KENYA 103](#) (Yash Pal Ghai & Jill Cottrell Ghai, eds.) (adding that “this pattern for demand for negotiation of political concessions was not unique to Kenya but was also applied in other British colonies including Rhodesia” (modern-day Zimbabwe)).

253 *Pouring New Wines in Old Wineskins: State Capture, Contestations and Conflicting Understanding of the Paralegalism in Kenya with the Advent of the Legal Aid Act 2016*, at 172.

provider. Legal aid means: giving legal advice and representation, engaging in alternative dispute resolution, drafting documents, reaching out-of-court settlements, providing legal education, and undertaking advocacy. Section 68 states that “[a]n accredited paralegal employed by the Service or supervised by an accredited body may provide legal advice and assistance.” The Service provides legal aid services in civil, criminal, children, and public interest matters. The Legal Aid Fund, which consists of money from, inter alia, Parliament and grants, pays legal aid providers for the services they provide and the expenses they incur.

The functions of the Service are, inter alia, to “coordinate, monitor and evaluate paralegals.” The Service must consult with the Law Society of Kenya, the Attorney-General, the Director of Public Prosecutions, and public benefit organizations to develop and adopt accreditation criteria through regulation. The Act prohibits any person attempting to provide legal aid services as an accredited legal aid provider without accreditation. The Service also must maintain a public register of and develop a code of conduct for accredited legal aid providers; and evaluate the records of activities that the legal aid provider undertakes. The Service can temporarily suspend an accredited legal aid provider if they breach the code of conduct, are convicted of an offense, are subject to disciplinary procedures, or fail to keep records of their activities. The Service can cancel a legal aid provider’s accreditation if they, inter alia: do not meet the accreditation criteria whether that criterion was adopted before or after the accreditation was awarded; have gone bankrupt; have failed to meet one or more of the criteria; or is convicted of an integrity-related offense. An accredited paralegal demanding payment constitutes an offense. Finally, the Service is governed by an independent Board, yet must submit to the Cabinet Secretary an annual report.<sup>254</sup>

The Service’s draft regulations were not widely shared with stakeholders and the general public.<sup>255</sup> Rule 29 of the Legal Aid (General) Regulations, 2022 states that someone is eligible for paralegal accreditation if they:

- “(a) ha[ve] completed a training course for paralegals that is approved by the Council of Legal Education;
- (b) [are] employed or supervised by an advocate or accredited legal aid provider; and
- (c) [are] a member of a duly registered association of paralegals.”<sup>256</sup>

Consequently, most existing CJWs are excluded from accreditation because the operative “and” suggests that all three conditions must be met for paralegal accreditation. CSOs are thus fighting the “and” that requires that all three aspects be met, including that all CJWs will have to be registered with the Paralegal Society of Kenya (PSK).<sup>257</sup> Aimee Ongeso believes that “one umbrella body for paralegals is positive for building alliances and a unified voice but PSK is severely underfunded.”<sup>258</sup>

Kenya’s legal aid scheme, despite attempting to promote access to justice, calls into question its compliance with human rights principles. While the Legal Aid Act is thorough, it falls short of expressly stating whether CJWs count as accredited paralegals or paralegals. Further, its regulatory criteria (including what demands suspension and cancellation of accreditation) are onerous for a country in which CJWs have long supported underserved communities. For access to justice to be achieved, Kenya must remove regulatory obstacles that not only impede access to the legal support communities can seek, but also thwart the work of CJWs. There is no clarity on whether

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254 The Board is composed of: a person appointed by the President from among people qualified to be appointed as a High Court judge; a High Court judge nominated by the Chief Justice; the Principal Secretaries in the Ministry responsible for matters relating to justice, finance, and the coordination of National Government; the Director or representative of Public Prosecutions; one person nominated by the Law Society; one person nominated by the Kenya National Commission on Human Rights; one person nominated by the Council for Legal Education; one person elected by a joint forum of Public Benefit Organizations; one person nominated by the National Council of Persons with Disabilities; and the Director. [Legal Aid Act §§ 2–3, 7, 9\(1\), 23, 29–30, 35, 57\(1\)–\(2\), 58\(2\)\(b\), 60–61\(2\)–\(3\), 65–67, 68\(1\)–\(3\), 83 \(2016\).](#)

255 [Pouring New Wines in Old Wineskins: State Capture, Contestations and Conflicting Understanding of the Paralegalism in Kenya with the Advent of the Legal Aid Act 2016](#), at 174.

256 [Legal Aid \(General\) Regulations § 29\(1\).](#)

257 [Pouring New Wines in Old Wineskins: State Capture, Contestations and Conflicting Understanding of the Paralegalism in Kenya with the Advent of the Legal Aid Act 2016](#), at 174–75.

258 Feedback from Aimee Ongeso.

CJWs are subject to the Act, as paralegals who nonetheless must have approved training, or as accredited paralegals who must work under a lawyer and travel to Nairobi to be accredited. This confusion dissuades CJWs from continuing their work lest they risk a criminal penalty. Avoiding such a risk is deleterious to communities who choose CJWs—often located in rural areas—to resolve their justice issues. Further, CJWs as HRDs have the right to exercise their occupation, such as providing professionally qualified legal assistance, and to be free from persecution under unclear and undisclosed laws that carry criminal offenses.

The obstacles that limit the ability of underserved people to obtain support from CJWs restrain their right to equality before the law, right to a fair trial for those involved in criminal proceedings, and right to information. Similarly, even if CJWs are incorporated into the Act, the inability of accredited paralegals to be compensated for their work violates their right to equality, especially when lawyers are remunerated for similar legal work. CJWs as HRDs moreover have the right to access funding, a right that is not respected by their inability to receive payment and by the legal aid scheme's severe underfunding. As stressed by Antony Njenga, "accredited paralegals being tethered to the supervision of lawyers means that they are not allowed to talk in court on behalf of a client," which not only restricts their right to equality but also their right to expression.<sup>259</sup>

Despite the goal of Kenya's Legal Aid Act of 2016 to promote access to justice, the Act contravenes key human rights principles. It is not clear whether CJWs are subject to the Act's rigorous regulations, such that they are exposed to criminal penalties or altogether precluded from engaging in justice work, impacting communities' rights to access to justice, equality, information, and a fair trial if they can no longer rely on CJWs. The legal aid scheme's limited funding, remuneration, and paternalism also interfere with CJWs' rights as HRDs and rights to equality and expression.

## Sierra Leone

Sierra Leone's Legal Aid Act recognizes accredited CJWs who provide advice, legal assistance, and education to each Chiefdom,<sup>260</sup> but the legal aid system is underfunded, and the accreditation process has been delayed.

CJWs have a long history in Sierra Leone, and the relevant regulation is the Legal Aid Act of 2012. They have assisted communities on issues relating to "child support, child custody, marital problems, gender-based violence, land/property disputes, criminal justice, grievances related to public services and infrastructure (e.g. health, education, roads, water and sanitation), and grievances related to livelihood development or the private sector (e.g. labor and employment, agriculture, mining, employment, market development)."<sup>261</sup> For instance, during the COVID lockdown, CJWs associated with the Informal Workers'



<sup>259</sup> Antony Njenga, African Roundtable Discussion.

<sup>260</sup> "The chieftaincy in Sierra Leone was established in 1896, when [British] Governor Cardew transformed society by empowering a set of Paramount Chiefs as the sole authority of local government in the newly created Sierra Leone Protectorate. The chiefs remained effectively the only institution of local government until the World Bank sponsored creation of a system of local councils in 2004. Under the system, chiefs are elected for life by a Tribal Authority made up of local notables. Only individuals from the designated "ruling families" of a chieftaincy, the aristocracy created and given exclusive right to rule by the British at the initiation of the system in 1896, are eligible to become Paramount Chiefs." [TRISTAN REED & JAMES A. ROBINSON, THE CHIEFDOMS OF SIERRA LEONE 2 \(2013\)](#).

<sup>261</sup> [NAMATI, SIERRA LEONE RESEARCH BRIEF 5, 8 \(2019\)](#).

Organization visited gender-based violence clients, made referrals, and engaged in mediation.<sup>262</sup>

The Legal Aid Act defines “accredited paralegals” as “legal aid providers” who are employed by the Legal Aid Board (“Board”), a government agency, or an accredited CSO or NGO, and who have completed training at the Judicial and Legal Training Institute or other Board-approved educational institutions. They are distinct from legal (aid) practitioners admitted to the bar. The Act also clearly defines “legal advice and assistance” as supplying law-related information in criminal and civil cases, helping with alternative dispute resolution, advising on legal issues, supporting with document drafting, referring cases to legal practitioners, “and doing other things that do not constitute legal representation” in court. And “legal aid” covers “the provision of legal advice, assistance or representation to indigent persons.” The Board—whose independence is granted but must submit annual reports to the Attorney General and Minister of Justice—is charged with accrediting people to provide legal aid. Specifically, the Board accredits CJWs only if they are certified as having taken the appropriate courses. CJWs must submit quarterly reports of their activities to the Board.

Importantly, the Board is tasked with sending at least one paralegal “to provide advice, legal assistance and legal education” to each Chiefdom and “where appropriate to assist in diverting certain cases to the formal justice system.” Section 15 states that the Board should be financed by a fund that consists of, inter alia, money from Parliament and donations. Under the Legal Aid Act, “where the interest of justice so requires,” an indigent person who is involved in a criminal or civil matter, has access to “legal advice and assistance.” When a legal aid provider is found guilty of unprofessional conduct, the Board refers them to the General Legal Council for disciplinary action. And if a legal aid provider charges for their work or if a person provides legal aid without being accredited, they are subject to a fine or imprisonment.<sup>263</sup>

Any failures to meet human rights protections by Sierra Leone’s succinct but comprehensive Legal Aid Act are due not to its structure but to challenges in its implementation. Eleanor Thompson, U.S. and Sierra Leonean lawyer and founder of the social justice organization Citizens’ Barray, explains that “while the Judicial and Legal Training Institute has a solid curriculum with uniform training that is useful for scaling up across the country, in practice, Board accreditation is slow, especially for individual CJWs.” She adds that the Judicial and Legal Training Institute held its first training that would lead to accreditation for CJWs in January 2023—over a decade after the Act’s passage. Until then, “Namati, which is accredited under the Act, had worked with key justice sector stakeholders to hold trainings for CJWs so that they could work professionally and competently, filling a necessary practical gap.”<sup>264</sup> Slow accreditation necessarily undermines the Act’s access to justice goals and the rights to equality, information, and a fair trial of communities that must wait for CJWs to be accredited before seeking their assistance. In the interim, the right to choose of underserved communities is severely limited, especially if CJWs will not risk imprisonment for furnishing information as HRDs.

Sonkita Conteh, a Sierra Leonean lawyer and the Co-Founder of Namati, explains that “the lack of Parliament funding to the Board limits people’s right to access to justice.”<sup>265</sup> For example, he notes that “the Board has only deployed CJWs in districts and is nowhere near fulfilling its mandate to deploy CJWs to the current 190 chiefdoms.”<sup>266</sup> That the Act criminalizes CSOs from raising funds leaves them in a vulnerable position, and violates the rights of CJWs as HRDs to access funds and resources. CSOs that were a part of the Act’s drafting process furthermore had to make compromises for the sake of CJW legitimacy. For instance, Conteh states that “they had to accept that CJWs work for free to appease legal practitioners’ fear of competition,” which glaringly violates their right to equality. He further laments that “the Act also prevents CJWs from working by themselves because some

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262 [THE ROLE OF LEGAL EMPOWERMENT GROUPS IN ADDRESSING GENDER-BASED VIOLENCE ON SUB-SAHARAN AFRICA DURING THE PAN-DEMIC](#), at 24.

263 The Board should have “one representative each from civil society and non-governmental organizations having experience, knowledge and expertise on issues relating to legal aid.” [Legal Aid Act §§ 1, 4\(g\), 9, 11, 14\(2\)\(a\)–\(b\), 15\(1\)\(a\), \(c\), 19, 20 30\(2\)\(b\), 31, 32\(2\), 37\(1\)–\(2\)\(a\) \(2016\)](#).

264 Eleanor Thompson, African Roundtable Discussion.

265 Sonkita Conteh, African Roundtable Discussion.

266 In 2012, there were 149 chiefdoms. Sonkita Conteh, African Roundtable Discussion.

stakeholders feared that some CJWs would hold themselves as lawyers despite their historic role,<sup>267</sup> which can likewise curb access to justice and their right to offer professionally qualified legal assistance.

Other, much more recent legislation codifies the role of CJWs in safeguarding communities' land rights. For example, the government can support communities with community paralegals who provide legal assistance during land negotiations under the Customary Land Rights Act of 2022; and the National Land Commission Act of 2022 references paralegals who assist communities in undertaking land registration.<sup>268</sup>

Sierra Leone's Legal Aid Act stands out in that it recognizes CJWs should be deployed to all Chiefdoms but faces major challenges around accreditation and funding. These challenges obstruct the right to access to justice of communities who must wait for CJWs to be accredited, inhibiting their work as HRDs.

## Uganda

In Uganda, CSOs train, support, and employ CJWs who operate without any formal recognition.<sup>269</sup> To illustrate, the Uganda Network on Law, Ethics, and HIV and AIDS heavily relied on its CJWs during the COVID lockdown, who reached out and supported community members by doing mediations. Moreover, FIDA-Uganda (Uganda Association of Women Lawyers), relied on its CJWs called "Community Legal Volunteers" who intervened in cases at the community level, with FIDA-Uganda lawyers providing some guidance over the phone.<sup>270</sup>



Uganda's Advocates Act notes that Uganda's "Law Council may make regulations with regard to the training, qualifications, registration, conduct and discipline of legal assistants."<sup>271</sup> The Act does not make clear if CJWs are considered legal assistants. The Law Council, nonetheless, does recognize professional paralegals with diplomas who provide legal aid under a lawyer's supervision and requires that legal aid service providers employ at least one professional paralegal. Linette Lubuulwa, a lawyer and the Research and Fundraising Manager at FIDA-Uganda, finds this requirement to be a financial barrier for organizations that exacerbates the justice crisis. For an organization like FIDA-Uganda that attempts to reach as many districts as possible with legal aid services tailored to women and children, the requirement extends to every district where they operate an office. Failing to employ a professional paralegal at a specific district office means that the office cannot be approved to operate by the Uganda Law Council. She observes that the requirement is "needlessly burdensome and a misplacement of obligations on non-state actors when CSOs are unable to hire professional paralegals and cannot obtain operating licenses." The right to access to justice calls on states to remove economic obstacles that prevent communities from seeking help and prevent institutions from being effective and inclusive.

267 Sonkita Conteh, African Roundtable Discussion; *see, e.g.*, [Timap for Justice](#), established in 2003.

268 [Customary Land Rights Act § 30 \(2022\)](#); [National Land Commission Act § 34\(2\)\(d\)–\(e\) \(2022\)](#).

269 Linette Lubuulwa, African Roundtable Discussion; [Statutory Instruments No. 12, The Advocates \(Legal Aid to Indigent Persons\) Regulations §§ 4, 7\(b\)\(iii\), 15\(1\) \(2007\)](#).

270 [THE ROLE OF LEGAL EMPOWERMENT GROUPS IN ADDRESSING GENDER-BASED VIOLENCE ON SUB-SAHARAN AFRICA DURING THE PANDEMIC](#), at 25, 29.

271 [Advocates Act of 1970 § 77\(4\) \(2002\)](#).

Lubuulwa notes that “a legal aid law does not yet exist in part because Uganda lacks the funding to implement it.” Therefore, she shares that CSOs are advocating for the government to properly recognize CJWs—distinct from paralegals—and finance their work so that it fulfills its obligation to access to justice. She outlines that “Uganda has an exciting opportunity to recognize CJWs and to do so in a way that is not restrictive, includes some state financing, and maintains the autonomy of CJWs.”<sup>272</sup> Crucially, it can ensure that any laws that govern CJWs uphold human rights principles.

Uganda’s expensive requirement that legal aid service providers employ professional paralegals inhibits access to justice for people who depend on CSOs. However, Uganda has the opportunity to develop a legal aid act that protects the autonomy and funding of CJWs who are clearly defined and distinct from paralegals.

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272 Linette Lubuulwa, African Roundtable Discussion.

## Part Five: CJWs and Lawyers Must be Collaborative Partners

An Indigenous community member approached Immaculata Casimero, an indigenous CJW living and working with the Wapichan community Guyana, for her help. Immaculata felt that all she could do was write a letter to another women’s organization in the city for help. From her grassroots experience, Immaculata knows that networking with other organizations, including with lawyers in the city is important.

Immaculata Casimero’s experience underscores the need for collaborative partnership. CJWs do not replace lawyers but rather serve complementary roles to lawyers—where lawyers are scarce, expensive, under-resourced, or lack cultural competence. Felipe Mesel explains that both “lawyers and CJWs have specific contributions to make in





working with communities, and in the dialogue between committed lawyers and CJWs a mutual pedagogical process can be created in which the legal system and legal operators start to value community voices more and CJWs start to incorporate more the language and technologies from the legal world.”<sup>273</sup>

However, justice issues are regularly framed only as legal issues. U.S. sociologist, Rebecca Sandefur, explains that distinguishing between justice problems and law-related needs reveals entirely different understandings of the problem and its solution. So, “rather than taking the position that unmet legal need is the crux of the issue,” the access-to-justice crisis can be formulated “as being about, well, access to justice.” While people might not turn to lawyers because of cost, they might also not conceive of the law as an answer to their justice problems because they do not think of their everyday problems as “legal” ones. They are just problems: “problems in relationships, problems at work, or problems with neighbors.”<sup>274</sup> And the logic is not flawed. Society views the legal system as the place to resolve conflict, yet it can be inadequate in redressing “life-affecting problems.”<sup>275</sup>

Combatting the justice crisis requires more creativity and efficiency. While lawyers can take care of highly complex matters and handle tasks for which legal expertise is crucial,<sup>276</sup> CJWs can help remedy common justice problems—which form the crux of the justice crisis; thereby making legal and judicial systems less overburdened and protracted.<sup>277</sup> Kate Crowley Richardson stresses: “When lawyers and CJWs work together, they expand the ecosystem which allows communities to get the right-sized help that they need and allows lawyers and CJWs to operate at the top of their license and skillset.”<sup>278</sup> Working together makes legal systems more efficient and responsive and justice more accessible for communities.<sup>279</sup>

In part one of a 2018 two-part report, “Trusted Help: The Role of Community Workers as Trusted Intermediaries who Help People with Legal Problems,” the Ontario researchers heard about “committed legal practitioners outside of the clinic system who have formed strong relationships with community organizations [with CJWs] to meet the legal needs of clients.” The report emphasizes: “Partnerships are important both for the training of trusted intermediaries and for program delivery. Community workers do best when they have links and regular access to legal service providers. Outreach and a range of good relationships, inside and outside sectors, promote effective service delivery and knowledge transfer.”<sup>280</sup>

These eight case studies underline the need for lawyer and CJW cooperation. However, for CJWs and lawyers to be in true partnership, laws that regulate legal practice must be precise and straightforward, clearly delineate the functions of and protections for experienced CJWs and lawyers, and plainly define impermissible conduct without confusing CJWs with unscrupulous non-lawyers. This report calls on State and non-state regulatory bodies to repeal, reform, and ratify regulations with these parameters. Lawyers and CJWs can and must collaborate to advocate for these changes and close the justice gap.

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273 Feedback from Felipe Mesel; see [TRUSTED HELP: THE ROLE OF COMMUNITY WORKERS AS TRUSTED INTERMEDIARIES WHO HELP PEOPLE WITH LEGAL PROBLEMS](#), at 6.

274 [Access to What?](#), at 49, 50–51; see also [Ericka Rickard, Many U.S. Families Faced Civil Legal Issues in 2018, PEW TRUSTS](#) (Nov. 19, 2019).

275 Mathews and Wiseman write that they “prefer to say ‘life-affecting problems,’ as opposed to ‘everyday legal problems,’ to signify that these problems are often critical and related to basic needs. For example, they may be related to maintaining adequate housing, as opposed to starting a small business.” [COMMUNITY JUSTICE HELP: ADVANCING COMMUNITY-BASED ACCESS TO JUSTICE](#), at 7.

276 [COMMUNITY NAVIGATORS](#), at 12.

277 Interview with Timothy Kakuru; Carmen Nelly Salazar Cortegana, Latin American Roundtable Discussion.

278 Feedback from Kate Crowley Richardson.

279 See [INT’L DEV. L. ORG., NAVIGATING COMPLEX PATHWAYS TO JUSTICE: COMMUNITY PARALEGALS AND CUSTOMARY AND INFORMAL JUSTICE](#) 6, 9–10 (2021).

280 [TRUSTED HELP: THE ROLE OF COMMUNITY WORKERS AS TRUSTED INTERMEDIARIES WHO HELP PEOPLE WITH LEGAL PROBLEMS](#), at 5–6.

## Part Six: Conclusion and Recommendations



This report explores how ambiguous and limiting laws that regulate legal practice can make it more challenging for underserved communities to resolve their justice problems. Experienced CJWs are vital actors in the legal ecosystem who understand the justice needs of their communities, breach the deep and costly justice gap, disrupt the monopoly of law-related services, and demand coherent definitions. Yet because laws that regulate legal practice can be restrictive, vague, and vary in definition, CJWs are frequently denied the opportunity to serve the communities most in need of their support. In this way, these laws violate the human rights of underserved communities and CJWs, including access to justice, the rights to equality, expression, and a fair trial, and the rights of human rights defenders. CJWs must be recognized, supported, and protected alongside lawyers. The report examines how some countries have shown progress, and still, CJWs worldwide are overwhelmingly vulnerable to repression.

This report calls on two principal regulatory bodies to strengthen access to justice in line with human rights principles, uplift the work of CJWs, and build community power and participation. They are:

- State regulatory bodies such as legislature, courts, and government-run legal aid and systems
- Non-state regulatory bodies such as bar associations and other legally independent bodies

In collaboration with experts who were interviewed and consulted, the report lays out key recommendations to state and non-state regulators to maintain the autonomy of the legal profession while encouraging a partnership with experienced CJWs at every stage:

### Reform:

State regulatory bodies must reform existing rules, regulations, or laws that contravene human rights law and pose legal barriers to CJWs and their work. Specifically, they must:

- Repeal any regulations, statutes, or provisions that are ambiguous and can unjustly target CJWs for their actions in pursuit of justice.<sup>281</sup>
- Repeal any regulations, statutes, or provisions that are overly burdensome or prevent CJWs from functioning independently.<sup>282</sup>
- Repeal any regulations, statutes, or provisions that criminalize CJWs.<sup>283</sup>

Non-state regulatory bodies should reform existing rules, regulations, or laws that pose barriers to CJWs and their work and contravene human rights principles as set out in international human rights law, the U.N. Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, and other relevant standards. Specifically, they should:

- Repeal any regulations, statutes, or provisions that are ambiguous and can unjustly target CJWs for their

281 See, e.g., *supra* the Philippines case study.

282 See, e.g., *supra* the Indonesia case study.

283 See, e.g., *supra* the United States case study.

actions in pursuit of justice.<sup>284</sup>

- Repeal any regulations, statutes, or provisions that are overly burdensome or prevent CJWs from functioning independently.<sup>285</sup>
- Repeal any regulations, statutes, or provisions that criminalize CJWs.<sup>286</sup>

### Recognition:

In the interest of advancing justice for all, both state and non-state regulatory bodies should recognize the existence and impact of CJWs and provide vital assistance to the most marginalized communities.

Specifically, they should:

Recognize CJWs as a separate category of vital actors in legal ecosystems,<sup>287</sup> by accounting for CJWs in the regulatory framework governing the practice of law.

### Protection:

State regulatory bodies must protect experienced CJWs as HRDs. In particular:

State regulatory bodies that recognize HRDs must designate CJWs as HRDs, and grant them the protective framework to which HRDs are entitled under international law.

The rights of CJWs to defend human rights and to access lawyers when necessary must be protected. State regulatory bodies must provide real protection to CJWs, such as:

- Assistance with risk assessment;
- Mitigation of the likelihood or impact of potential risks like harassment or death;
- Provision of security against attacks and harassment from non-state actors;
- Prevention of criminal charges solely for carrying out vital justice work levied against them; and
- Prohibition of judicial harassment against them.

Non-state regulatory bodies should recognize experienced CJWs as HRDs who confront powerful actors and put their lives at risk to realize the human rights of the communities they serve.

### Regulation:

State and non-state regulators that draft new regulations on who qualifies as CJWs, what they do, and how they do it, should not impose overly burdensome requirements. In so doing, they should:

- Value and recognize the experience of CJWs before enacting any regulation.
- Include reasonable training and reporting requirements that allow them to do their work uninhibited while meeting the high levels of demand.<sup>288</sup>
- Offer CJWs the option of remuneration to legitimize their roles and obtain financial support in any regulation.<sup>289</sup>

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284 See, e.g., *supra* the Philippines case study.

285 See, e.g., *supra* the Indonesia case study.

286 See, e.g., *supra* the United States case study.

287 See, e.g., *supra* the Ontario, Canada case study.

288 See, e.g., *supra* the Kenya case study.

289 See, e.g., *supra* the Colombia case study.

## Composition:

State and non-state regulatory bodies that regulate CJWs should include CJWs in their leadership and composition to ensure fairness and responsiveness to the reality on the ground. In this way:

- CJWs can participate in decision-making that impacts their work;
- CJWs can voice their needs; and
- CJWs can raise their concerns.
- CJWs can partner with regulators to develop clear codes of conduct for CJWs.

## Capacitation and funding:

State regulatory bodies should provide funding and resources for CJWs to work effectively and in partnership with lawyers, and earn a livable wage. In particular, they should:

- Provide financing to CJWs in a manner that does not restrict their ability to exercise independent judgment and provide services to underserved communities.<sup>290</sup>
- Provide the option of free trainings and workshops to CJWs to support them—not as a bar to their operation.

## Legal education and services:

States regulatory bodies must create an enabling environment to support the work of CJWs in increasing access to justice for all. In particular:

- Legal education and certification should be cost-effective to help increase the number of individuals trained in law-related matters to meet community needs.
  - This measure should be especially geared towards historically marginalized communities like racially minoritized people and people from lower socioeconomic strata.
- Free legal assistance, including from CJWs in the legal ecosystem, should be expanded to meet community needs.
- Constitutional reform that enshrines the people's right to knowledge of the law can embolden communities to demand the assistance and protection of CJWs.
- The language of the law should be simplified to increase accessibility.
- The law should be available in the languages spoken in a particular jurisdiction to expand language justice.

To help realize these recommendations, states and non-state regulatory bodies should collect data with experienced CJWs (and if relevant, NGOs, CSOs, researchers, academics, etc.) that will uplift the role of CJWs in society.

- Empirical research should be conducted to evaluate the role of CJWs.
- Participatory action research should be conducted with CJWs to assess and realize their needs.
- Evaluation of how CJWs complement lawyers and the creation of mutual training processes on how to increase access to justice should be assessed.
  - Evidence should be collected that demonstrates how an expanded legal ecosystem helps underserved communities and can help lawyers and judges.
  - Evidence should be collected that demonstrates how CJWs reduce costs for CSOs, NGOs, courts, and tribunals.

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<sup>290</sup> See, e.g., *supra* the Sierra Leone case study.

# Appendix

See [Grassroots Justice Network, Summary Comparative Analysis of Recognition and Financing of Community Paralegals](#) (2<sup>nd</sup> ed. 2019) for a helpful, though older visual of information on CJW recognition and financing across various countries.

[Karen Cohl et al., LAW FOUND. ONTARIO, TRUSTED HELP: THE ROLE OF COMMUNITY WORKERS AS TRUSTED INTERMEDIARIES WHO HELP PEOPLE WITH LEGAL PROBLEMS, PART I 8-12 \(2018\).](#)

*Illustrations and Layout by [Ambrose Reed](#)*

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