Can paralegals enhance access to justice? The example of Morogoro Paralegal Centre in Tanzania

By *Eva Diehl*, Berlin*

> *"Paralegals have been instrumental in the realization of women and children rights and … curbing violence against the vulnerable social group, especially in rural areas"*[1]

> *"Ignorance bars poor women and men in Tanzania from accessing their basic rights as enshrined in the constitution. Costs involved in the running of cases have been cited as major obstacles towards the poor' access to justice. Magistrates in rural primary courts have turned themselves into semi God, as they could dismiss a case or deny people their due rights, capitalizing on their levels of poverty and ignorance."*[2]

1. Introduction

In Tanzania, a major reform of the justice sector is currently under way, with the aim of establishing "a system of accessible and timely justice [for] all"[3]. One of the particular aims of this reform is "enhancing access to justice for the poor and the disadvantaged groups".[4] While the main focus of the justice reform is on the availability and quality of state justice institutions, so-called "paralegals" are active in conflict resolution not only within, but also outside the courts. These paralegals are usually lay legal advisors with some training in

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1 *Francis Katemi*, in: Judica Tarimo, Ignorance causes poor Tanzanian women to be deprived of their rights, Sunday Observer, Sept. 11, 2005.

2 *Judica Tarimo*, Ignorance causes poor Tanzanian women to be deprived of their rights, Sunday Observer, Sept. 11, 2005.

3 Chief Justice *Barnabas A. Samatta*, in: United Republic of Tanzania, Legal Sector Reform Programme Medium Term Strategy Fys 2005/06-2007/08, 2004, v., cf. also 7. According to the progress evaluation of 2008, the present reform is "the culmination of multiple efforts to reform the legal sector in Tanzania since independence." *Chris Maina Peter, Wachira Maina et al.*, Unblocking the road to timely justice for all: First annual review of the Legal Sector Reform Programme (LSRP) of the United Republic of Tanzania, Dar es Salaam, 2008, vii.

4 United Republic of Tanzania, Legal Sector Reform Programme Medium Term Strategy Fys 2005/06-2007/08, 2004, 23ff. This is in line with the national poverty reduction strategy, cf. United Republic of Tanzania, National Strategy for Growth and Reduction of Poverty, Dar es Salaam, 2005, 50, 35 and 53: "Rights of the poor and vulnerable groups are protected and promoted in the justice system – Ensure timely and appropriate justice for all especially the poor and vulnerable groups."

legal issues who offer free counselling services and engage in legal education. Proponents of paralegal activities in Tanzania underline the need for paralegals by referring to a number of problems and deficiencies in the state justice system which are said to inhibit access to justice, particularly for the poor and rural population: They argue that the courts are difficult to reach for most people living in the rural areas, that there is a lack of magistrates and advocates in the country, particularly in rural regions, and that court fees and fees for advocates are too high. For many people, these paralegal proponents say, access to justice is further inhibited by a lack of knowledge of their legal rights and the legal language, by the complicated and bureaucratic requirements of the courts, and by "cultural barriers". Courts in general and the kind of justice practiced there are regarded as alien by these people, it is argued, with long durations of legal processes and widespread corruption among the police and the judiciary constituting additional barriers on the way to justice.[5] Indeed, according to numbers given by the Tanganyika Law Society, in 2003 there were only 735 registered lawyers in mainland Tanzania for a total population of around 34,6 million, of whom eighty percent were working in Dar es Salaam.[6] While the national language spoken by the majority of the population is Kiswahili, the language used in all courts higher than the Primary Courts is English, and some legislation is only available in English, as well. The justice sector is considered to be one of the most corrupt sections of the state

5 Cf. *Jodie Hierlmeier*, Legal aid provision in Tanzania: Improving access to justice, Dar es Salaam, 2004, 26; *Chris Maina Peter,* Access to justice – Creating a role for paralegals in the administration of justice in Africa, Recht in Afrika 1 (2008), 101f.

6 Cf. *Jodie Hierlmeier*, Legal aid provision in Tanzania: Improving access to justice, Dar es Salaam, 2004, 11. Numbers vary slightly and are given for different years: According to *The Law Reform Commission of Tanzania (ed.)*, Discussion paper on the scheme for provision of legal services by paralegal. Paper to be discussed on the stakeholders' workshop on the 21st May 2004 at Dar es Salaam, Dar es Salaam, 2004, there were 668 advocates in 2003, the number given by *Mathew Mwaimu*, Legal Sector Reform Program and the position of paralegals in the judicial system. A paper presented in the National Paralegal Symposium at Movenpick Royal Palm Hotel, Ministry of Justice and Constitutional Affairs, Dar es Salaam, 2005, is 793. *Helen Kijo-Bisimba*, Civil society experience: A justification for recognition of paralegal scheme in Tanzania. A paper presented to the Paralegal Symposium organized by the Women's Legal Aid Centre (WLAC) on 23rd August, 2005, Dar es Salaam, 2005, 2, has 730 in December 2004 of whom 641 are actively practising advocates. This is already a fourfold increase in comparison to 1994 with 153 practising lawyers out of 224 recorded as members of the Tanganyika Law Society (TLS), according to *Fauz Twaib*, Lawyers and the availability of legal services in Tanzania Mainland, Recht in Afrika 1 (1998), 66. Twaib explains that all advocates are obliged to enrol with the TLS, but deducts state attorneys and others not practising as private advocates from those registered with the TLC in order to get a more realistic number. According to The Tanganyika Law Society, Annual Report 2007, iv, the number of advocates enrolled with TLS reached more than 1000 in 2007, probably including state attorneys and non-practising members. – The population was 34,6 million according to the 2002 census and is currently estimated to be 38,43 million. Cf. *United Republic of Tanzania*, 2002 Population and Housing Census, http://www.tanzania.go.tz/census/, and The Tanzanian Population and Development Website, http://www.tanzania.go.tz/population, both accessed March 9, 2009.

administration.[7] Another point of interest is who would consider taking a dispute to court at all, irrespective of financial resources and the availability of lawyers and legal support. Socio-legal research has drawn attention to the fact that considerably fewer cases are brought into the state courts in Tanzania than are settled outside the courts.[8]

Paralegals are said to improve access to justice not only due to their geographic accessibility and their free or inexpensive services, but also because of their "embeddedness", i.e., their knowledge of the local language and the cultural context. "They talk the talk and walk the walk of the community", the Tanzanian law professor Chris Maina Peter remarked during the National Paralegal Symposium which took place in Dar es Salaam on the 23rd and 24th of August 2005.[9] Their conciliatory justice is said to be more readily acceptable than a court judgement dividing the disputants into winning and losing parties. In particular, this may apply in civil law cases involving people who are related to each other or otherwise closely linked by social bonds. Thus at the same symposium, several speakers observed that people in Tanzania were not normally comfortable to take matrimonial cases to court because they feared a disruption of family values. In contrast, paralegals would consider family values and human rights.[10] Paralegals are thus also regarded as facilitators of alternative dispute resolution (ADR), a type of dispute settlement often favoured by development planners as a means to improve access to justice while taking the local culture of dispute settlement into account. Some paralegal centres are sponsored by non-governmental organisations which are in turn supported by international development agencies, and which are often well connected to other organisations in regional and international networks. These organisations create important linkages between the global and the local

7 Cf. *United Republic of Tanzania*, Legal Sector Reform Programme Medium Term Strategy Fys 2005/06-2007/08, 2004, 4f., which names corruption, low integrity within the legal system and inordinate delays as major challenges. Cf. also *Community Information, Empowerment and Transparency (CIET) International,* Service delivery survey, Corruption in the police, judiciary, revenue and land services, Summary Report SR-TZ-sds-96 (1996), 3; *United Republic of Tanzania Prevention of Corruption Bureau*, Petty Corruption, v; *Global Advice Network, Tanzania Country Profile,* 2006, 2; and *Research on Poverty Alleviation (REPOA),* Combating Corruption in Tanzania: Perception and Experience, Afrobarometer Briefing Paper 33 (2006), 4, for public perception of corruption: in a 2005 survey in Tanzania, 61 percent of the people questioned believed judges and magistrates to be corrupt, 72 percent thought the same of the police.

8 Cf. *Ulrike Wanitzek*, Legally unrepresented women petitioners in the lower courts of Tanzania: A case of justice denied? Journal of Legal Pluralism No. 30/31, 1990-1991, 263, and *Harald Sippel / Ulrike Wanitzek,* Local Land Law and Globalization. A comparative study of peri-urban areas in Benin, Ghana and Tanzania, 2004, 240.

9 Cf. also *Chris Maina Peter,* Access to justice – Creating a role for paralegals in the administration of justice in Africa, Recht in Afrika 1 (2008), 128.

10 *Peter Chisi,* National Paralegal Symposium, August 23-24, 2005, Dar es Salaam. Cf. *Ulrike Wanitzek*, Legally unrepresented women petitioners in the lower courts of Tanzania: A case of justice denied? Journal of Legal Pluralism No. 30/31 (1990-1991), 263, who similarly observes a "general reluctance of women to make a claim against their husbands in court" in Tanzania.

and national arenas. Paralegals are thus also brokers who provide knowledge and interpretation of human rights norms as well as corresponding national legal changes to the local population with a view to creating legal awareness and behavioural change.

This paper examines paralegal activities in Tanzania and their potential role in improving access to justice, focusing on the example of Morogoro Paralegal Centre. The analysis is based on information gathered during a four months research stay in Tanzania from mid-July to mid-November 2005 and a short visit of the paralegal centre in October 2008. The 2005 research consisted of a three months stay in Dar es Salaam including interviews with legal experts and civil society activists and participation in different workshops involving paralegals, and a subsequent stay at Morogoro Paralegal Centre involving interviews and informal conversation with the paralegals and their legal aid clients, as well as a review of their case books and participant observation of their everyday counselling practices. The centre is engaged in three main activities: it facilitates mediated settlements, it supports clients in court cases, and it operates as a referral centre. These activities are discussed in the sections following the subsequent introduction to the legally plural context in Tanzania.

2. Access to justice in a legally plural system

The legal system in Tanzania, which is based on English common law, is characterised by a situation of legal pluralism in terms of norms, institutions and procedures.[11] Legal pluralism is understood here to refer to pluralism within the formal legal system as well as to the pluralism constituted by the multiplicity of informal legal repertoires which do not form part of state law and legal institutions. In any case, it is not possible to differentiate strictly between the formal and informal legal spheres in this respect. For instance, Tanzanian state law includes the "customary law" of the different ethnic groups within the country. This customary law is understood to comprise codified norms[12] as well as non-codified "living law", which refers to the vital and changing norms of the different customary communities.[13]

[11] On the concept of legal pluralism, cf. among many others *John Griffiths,* What is legal pluralism?, Journal of Legal Pluralism 24 (1986), 1-55, *Franz von Benda-Beckmann,* Who's afraid of legal pluralism?, Journal of Legal Pluralism 47 (2002), 37-82, and *Sally Falk Moore*, Certainties undone: Fifty turbulent years of legal anthropology, 1949-1999, The Journal of the Royal Anthropological Institute 7 (2001), 95-116 with further references.

[12] For the patrilineal Bantu groups in Tanzania, the customary law has been codified in the 1963 Local Customary Law Declarations. Cf. *Ulrike Wanitzek*, The situation of unmarried mothers and their children in Tanzania – protective legislation and social reality, in: Franz von Benda-Beckmann (ed.), Between kinship and the state: social security and law in developing countries, Dordrecht, 1988, 321, and *Ulrike Wanitzek, Kindschaftsrecht in Tansania unter besonderer Berücksichtigung des Rechts der Sukuma*, 1986, 54 ff.

[13] Cf. *Gordon Woodman,Ulrike Wanitzek and Harald Sippel*, Local land law and globalization. A comparative study of peri-urban areas in Benin, Ghana and Tanzania, Münster, 2004, 37ff, and *Harald Sippel* and *Ulrike Wanitzek*, The vitality of local land law – a "fatal vitality?" A case study

Tanzanian law displays a plurality of norms especially in civil law matters like marriage, inheritance and land ownership.[14] Apart from the ordinary courts and a parallel hierarchy of forums for land matters, the forums that people approach for dispute resolution include village elders, religious authorities, local government authorities, marriage reconciliation boards, and paralegals. While some of these forums have overlapping jurisdiction and not all of them are in a clear hierarchy, they differ in terms of the law they apply, in their procedures, their degree of formal recognition, and the type of justice they practise – for instance, mediation, arbitration or adjudication.[15]

The problems which are claimed to inhibit access to justice in Tanzania belong to different categories: some are predominantly formal obstacles, like infrastructure, the geographical accessibility of courts and court equipment, while others are substantial matters, like a lack of legal knowledge, the appropriateness of the justice spoken, and the population's understandable distrust in corrupt state institutions. Consequently, in the debate about legal reforms in Tanzania, it is not always quite clear if "access to justice" stands for "access to the justice system" in the sense of access to state courts and legal services, if it is more about "just procedures" in conflict settlement – within as well as outside the courts – or if, in addition to that, the "justice quality" of norms and legal decisions is also under discussion. Some of the legal and human rights organisations in Tanzania which are in favour of legal aid schemes criticise the focus on formal and procedural aspects of access to justice, rather than on "substantive access, which focuses on producing social outcomes that are more fair and equitable."[16]

In a legally plural system, the question of access to justice also implies asking which kind of justice is meant. Correspondingly, this paper shall employ a wide understanding of access to justice like Galanter has formulated: "Just as health is not primarily to be found in hospitals or knowledge in schools, so justice is not primarily to be found in official justice-dispensing institutions. Ultimately, access to justice is not just a matter of bringing cases to a font of official justice, but of enhancing the justice quality of the relations and trans-

of peri-urban Dar es Salaam, Tanzania, in: Peter Probst and Gerd Spittler (eds.), Between resistance and expansion – explorations of local vitality in Africa, 2004, 231ff. The term "living law" is derived from *Eugen Ehrlich*, Grundlegung der Soziologie des Rechts, first published in 1913. Cf. *John Griffiths,* What is legal pluralism?, Journal of Legal Pluralism 24 (1986), 23f.

14 For instance, the Law recognises three types of marriage, namely marriages contracted in terms of custom, religious (Christian, Hindu and Islamic) and civil marriage. Cf. Law of Marriage Act 1971 Part II 10-11and *Fareda Banda*, Women, law and human rights. An African perspective, Oxford, 2005, 101f. Tanzanian land legislation recognises a granted right of occupancy as well as a certified customary right of occupancy, cf. The Land Act, 1999, and The Village Land Act, 1999.

15 Cf. *Yusufu Lawi*, Justice administration outside the ordinary courts of law in mainland Tanzania: The Case of Ward Tribunals in Babati District, African Studies Quarterly Vol. 1 No. 2 (1997), 8.

16 *Jodie Hierlmeier,* Legal aid provision in Tanzania: Improving access to justice, Dar es Salaam, 2004, 24.

actions in which people are engaged."[17] While part of the paralegals' activities consists in practical legal aid, they do not usually see their task in simply delegating disputes to the courts; rather, their legal aid and awareness raising are aimed more generally at creating changes of situations perceived as injust.

3. Morogoro Paralegal Centre

In Tanzania, the term "paralegals" comprises quite a heterogeneous group of people with different educational and professional backgrounds[18], among whom the Law Reform Commission (LRC) of Tanzania distinguishes two groups: paralegals educated by non-governmental organisations (NGOs), and those who have acquired legal knowledge in their profession.[19] The Kiswahili name that is used for paralegals is "wanaharakati", which could be translated as "activists", or "wasaidizi wa sheria", which refers to the provision of legal aid.[20] Their mandate is not clearly defined: one aim of the symposium mentioned above was to discuss legislation on paralegals as well as unified training curricula. This paper focuses only on the NGO-educated paralegals, lay legal advisors who have participated in trainings of several days to several weeks in different legal fields. These trainings cover, for instance, Tanzanian marriage law, inheritance law or the new land legislation which became valid in 2001.[21] They often have a human rights focus or more specifically a focus on women's rights, emphasising women's equal rights in marriage and to property in land.

17 *Marc Galanter*, Justice in many rooms, in: Mauro Cappelletti (ed.), Access to justice and the welfare state, Stuttgart, 1981, 161.

18 Different labels like "bush lawyer", "public writer", "legal assistant", "barefoot lawyers", "community justice facilitator", "peer educator", "legal animator" or "community based human rights and gender committee" reflect the differences in the focus of different organisations and possibly also differing opinions regarding the legitimacy and acceptance of a paralegal scheme. Cf. The Law Reform Commission of Tanzania (ed.), Discussion paper on the scheme for provision of legal services by paralegal. Paper to be discussed on the stakeholders' workshop on the 21st May 2004 at Dar es Salaam, Dar es Salaam, 2004, 10; Jane Magigita and Jane Salomo (eds.), Tanzania Paralegal Profile, Dar es Salaam, 2005, 1.

19 These may be former police officers, labour officers, court clerks and magistrates. Cf. The Law Reform Commission of Tanzania (ed.), Discussion paper on the scheme for provision of legal services by paralegal. Paper to be discussed on the stakeholders' workshop on the 21st May 2004 at Dar es Salaam, Dar es Salaam, 2004, 10. Magistrates are the primary court judges. They can take a course e.g. at the Institute of Judicial Administration in Lushoto, but do not normally have a university degree in law. Cf. *Fauz Twaib*, Lawyers and the availability of legal services in Tanzania Mainland, Recht in Afrika 1 (1998), 81, United Republic of Tanzania, Legal Sector Reform Programme Medium Term Strategy Fys 2005/06-2007/08, 2004, 41f., 44, 91f.

20 Literally "legal helpers" or "helpers of the law".

21 The Land Act, 1999, and The Village Land Act,1999. Cf. *Harald Sippel / Ulrike Wanitzek*, The vitality of local land law – a "fatal vitality?" A case study of peri-urban Dar es Salaam, Tanzania, in: Peter Probst and Gerd Spittler (eds.), Between resistance and expansion – explorations of local vitality in Africa, Münster, 2004.

Although some paralegal units were initiated by women's organisations, their activities are not exclusively focused on women.

Morogoro Paralegal Centre (MPLC) was founded in 1993 and is one of 16 paralegal centres which have been created by the Women's Legal Aid Centre (WLAC) in Dar es Salaam since the beginning of the 1990s.[22] It is registered as an NGO and functions as a coordinating unit for a number of smaller centres, so-called subunits, in different wards.[23] The centre consists of two small office rooms in Morogoro, a university town with approximately 230 000 inhabitants[24] located at some 200 kilometres south-west of Dar es Salaam. In 2005, there were four women offering pro-bono legal advice here on an everyday basis. Bibi Katungwe, a pensioner, and Mama Balaigwa, a widow and mother of adult children, usually arrive in the centre in the mornings to wait for clients. Flora Masoy, who has been the coordinator of the centre since its foundation in 1993, and Bertha, are both teachers and join the centre in the afternoons when their work at school was done. Masawe, another teacher, who also conducts legal trainings at the MPLC, sometimes joins the four women for counselling sessions. Although there are no fixed opening times, on weekdays there is usually someone in or near the office between 10 a.m. and 5 p.m, such that the centre offers full-time daily counselling. Three times a week Hakimu, a lawyer from Dar es Salaam, visited the centre for a couple of hours in order to confer with the paralegals and advise them and their clients in difficult cases. Like the paralegals, she worked on a voluntary basis. Furthermore, the centre has created a theatre group producing and performing

22 According to Helen Kijo-Bisimba, director of the Legal and Human Rights Centre, the need for paralegal services was first discovered during legal awareness raising in several districts in 1990 and 1991. *Helen Kijo-Bisimba,* Civil society experience: A justification for recognition of paralegal scheme in Tanzania. A paper presented to the Paralegal Symposium organized by the Women's Legal Aid Centre (WLAC) on 23rd August, 2005, Dar es Salaam, 2005, 6. WLAC had evolved out of a legal aid initiative by the women's economic corporation SUWATA (Shirika la Uchumi la Wanawake Tanzania), which, in turn, had been founded, among others, by Sophia Kawawa, the then chair of the UWT, "Umoja wa Wanawake Tanzania" or "Unity of women Tanzania", one of the mass organisations affiliated with the Tanzanian ruling party and, until 1992, only party in the one-party-system, the Chama Cha Mapinduzi (CCM) or "Party of the Revolution". The SUWATA legal aid scheme offered free legal aid for women in Dar es Salaam since 1989. WLAC was one of the first organisations to start opening paralegal centres in the early 1990s. Cf. *Nakazael Tenga / Chris Maina Peter*, The right to organise as mother of all rights: the experience of women in Tanzania, Journal of Modern African Studies, No. 34 Vol. 1 (1996), 149; *Chris Maina Peter,* Human Rights in Tanzania: selected cases and materials, Köln, 1997, 345.

23 Personal conversation with Flora Masoy and leaflet "Morogoro Paralegal Centre". A ward is a local administrative unit comprising several villages; several wards form a district. In 2005, there were seventeen subunits; the long term goal according to Mama Masoy is to establish one subunit in each ward of the region.

24 Cf. 2002 census information, http://www.tanzania.go.tz/2002census.PDF, retrieved March 15, 2005.

plays for legal awareness raising. Most of the actors live in the rural areas of Morogoro region and only visit the centre occasionally for rehearsals.[25]

The paralegal casebook

"Anna, 22, Christian, Masaai, living in Sokoine. Marriage problems: She has come to ask for advice, her husband chased her away three years ago, her siblings are forcing her to go back to him. Advice: The siblings shall be written a letter and be asked to come to the office on Monday. There is also their father's brother who is required to come, too, he will also be written a letter. ... Anna came with her mother and her older brother. After long discussions it was decided that they should go back and perform a customary procedure in order to separate them. They shall inform us."[26]

The paralegals document each client's visit in a casebook, where they note the date of the visit, the client's name, age, place of residence, sometimes also level of education, religion and ethnic affiliation, a short summary of the problem, the advice given, and other relevant information, e.g. who has directed the client to the MPLC, or the date of a case hearing in court. During the research period in 2005, an average of three clients visited the centre every day.[27] The actual number of cases can be estimated to be slightly lower because many clients visit the centre several times. They return in order to talk to the lawyer, to give notice of a court hearing scheduled for their case, for mediation with the other parties of the conflict, or simply to report on the progress of events. Thus in the August to October 2005 period, between one third and one fifth of the cases were marked as "returns".

The casebook reveals that a broad spectrum of people come to the centre – people from different ethnic groups, Muslims as well as Christians, men as well as women, although women constitute the greater number of clients. In this context, it is important to note that the paralegals are usually not members of the particular cultural group to which their individual clients belong. Morogoro today is a multi-ethnic region which has long attracted migrants from different parts of the country. Of the four women, only one originally comes from the Morogoro area, but of of course this also does not make her a cultural expert for all the groups present in the region. Accordingly, the feature often praised in the talk about

25 In 2008, Mama Balaigwa retired from the centre because of duties within her family. Hakimu had moved to Dar es Salaam and therefore was not visiting the centre anymore on such a regular basis. The other three women and Masawe kept up their counselling services. The centre is also supported since 2005 by a Danish development worker of DANIDA.

26 MPLC casebook entries of October 14, 17 and 21, 2005. Kiswahili "ndugu"could signify both "brothers" and "sisters" and is therefore translated as "siblings" in this sentence. However, it is likely that "brothers" are really meant here; the assumption would be supported by the fact that Anna's elder brother was one of the three persons finally taking part in the discussion.

27 During the author's stay at the centre, between one and four clients frequented the centre per day. The average of three clients per weekday is derived from the numbers in the casebook, which has 63 entries for August 2005, 69 for September, and 59 for October 2005.

the "cultural embeddedness" of paralegals is true for them only to a degree: they may know particular customs by virtue of experience and information gained from former clients, or they may have in common with their clients some more widely shared cultural norms that are valid across different regions in Tanzania. Thus in the case presented at the beginning of this section, they probably would not have been familiar with traditional Masaai ways of dissolving a marriage if not from their counselling experience. All four women are Christian, which means that in religious matters e.g. of Islamic law of divorce and inheritance, they can similarly only rely on acquired knowledge and experience, which does not always reflect their own values and beliefs. Yet Islamic as well as Christian men and women frequent the centre for counsel. Their position as semi-outsiders distinguishes the paralegals in MPLC from the paralegals in the subunits who are trained to offer legal advice within their village communities as members of those same communities.

Most cases in the period of August to October 2005 were classified as matrimonial problems. Conflicts over inheritance and land ranked second and third respectively. Pro-bono lawyers working in the head organisations as well as WLAC statistics confirm that these are the most frequent problems of clients seeking counsel in legal aid centres.[28] In some paralegal units, the number of child custody and maintenance cases is yet higher than that of land conflicts. Other problems of clients attending the centre included a whole range of issues reaching from personal debts or a damaged harvest to physical violence.[29] The table below includes most of the case descriptions noted for August through October 2005 in order to give an overview of the range of problems of legal aid clients consulting the MPLC.

Problem	**August**	**September**	**October**
matrimonial	31	17	15
inheritance	12	21	9
land	1	8	6
debt	1	7	9
child maintenance	1	1	3
problems with the child		1	1
damage of property	1		
to be driven out of the house	1		
parents prohibiting child to go to school	1		
problem with sibling	1		
rape			1

[28] Personal conversations with lawyesr from the Women's Legal Aid Centre and the Tanzania Women Lawyers Association, Women's Legal Aid Centre, 2001 Annual Report, Dar es Salaam, 2001, 4, Women's Legal Aid Centre, 2003 Annual report, Dar es Salaam, 2003: 11.

[29] It is likely that a considerable number of matrimonial cases include domestic violence as well.

The paralegals use a range of different strategies in order to deal with these diverse problems. One of their standard methods is to invite the people involved in a dispute, as well as others who could aid a settlement, in order to discuss the matter in the centre. They use semi-official looking pre-printed letter templates that are stamped and titled "Barua ya mwito"[30] in order to invite the required persons to come to the centre on a certain day at a certain time. If an issue is already in court or if a client wants to file a law suit, they offer to accompany the clients, explain them procedural requirements and give them mainly what they call "moral support", or they refer them to the professional lawyer to be counselled. In some cases, they can try to provide professional legal aid by finding a voluntary lawyer through one of the human rights NGOs in Dar es Salaam; however, in the primary courts, i.e. the first instance in the formal legal system and the institution relevant for most court cases that reach the MPLC, no lawyers are admitted. Finally, there are cases which the paralegals refer to other institutions directly. The description and discussion of paralegal activities in the following sections is structured according to these different ways of dealing with cases.

3.1 Paralegals as an alternative dispute settlement institution

One opinion put forward by various informants in Tanzania was that many people in the country regarded the courts as a place of punishment, not as a location of justice. Apart from being intimidated by the black suit of the lawyer, the unknown procedures and the alien environment of the courts, people did not accept a court judgement as a final settlement, they said. This uneasiness towards the courts also contains a criticism of the principles of adversary justice which have been taken over from the English common law system.[31] In contrast, alternative dispute resolution is depicted perhaps a little idealistically as a consensual form of dispute resolution in which different sets of values can be reconciled.[32] The argument that the formality of courts and their adherence to an adversary model are inappropriate for many kinds of interpersonal quarrels arising in ongoing social relationships has often been raised in the past in favour of mediation and other types of informal dispute settlement. In a cross-cultural ethnographic study, Merry characterises mediation as a "phenomenon of communities", with ethnographic village studies from

30 "Letter of call": "Barua": letter; "mwito": call.

31 These principles are "based on the assumption that truth will emerge from the confrontation of opposing versions by the parties", and legal representation by an advocate is a central element of the adversary system. *Ulrike Wanitzek*, Legally unrepresented women petitioners in the lower courts of Tanzania: A case of justice denied? Journal of Legal Pluralism No. 30/31 (1990-1991), 256.

32 Cf. Chisi above at FN 10, National Paralegal Symposium, Dar es Salaam, August 23-24, 2005. Chris Maina Peter said that the acronym ADR for alternative dispute resolution was sometimes translated as "Actual Dispute Resolution". University of Dar es Salaam, Interview on Sept. 19, 2005.

different parts of the world showing that members of a village community are reluctant to sue each other in court in order not to jeopardise important bonds. She points out, however, that the process of mediation may have been misunderstood by focusing on its consensual and conciliatory qualities while ignoring the very important role that power and coercion play in mediated settlements.[33] In this section, two cases are contrasted in order to illustrate the activities as well as the limitations of paralegals as facilitators of alternative dispute settlement, and the contrast between the MPLC and paralegals acting in village subunits.

The "lost" son

This case involved a woman asking the paralegals for advice because she had not seen her son for nine years, and was not able to get in touch with him nor talk to the father. According to her story, years ago it had been agreed that the son should stay with his grandmother, the father's mother, in Mombasa and go to school there. However, now she did not have any news of him and did not even know if he was still alive or still living in Mombasa. She did not want to take the boy out of school, but simply be able to see him and keep in touch with him.

The paralegals expressed their sympathy to the lady and tried to find out from her how contact could be established. When she told them that both the son's father and his grandfather – the father's father – lived close by, they agreed with her to invite the two men to the MPLC for the day after the next. Both men were sent an invitation letter. On the scheduled day, only the grandfather and the lady herself with her own mother showed up. After polite and elaborate greetings to the grandfather, the paralegals explained why they had invited him, recounting the lady's story. In the conversation, they stressed that the MPLC was not the police, nor the court, but that they were there simply to give advice, and to give advice to everybody. They repeatedly explained to the grandfather that they hoped he could help them to facilitate the contact, since the lady herself and her son's father were not able to talk to each other. The grandfather, who initially denied that he could be of any help and seemed irritated about the requests, after some time revealed that his grandson had visited Morogoro only two days ago and agreed to give the paralegals his son's telephone number as well as talk to him if they called him. When the paralegals tried to call him there and then, they were told that the man had travelled out of town. They then suggested to the grandfather that they should invite him again together with his son as soon as the latter returned from this travels. Thanking him for his coming, they emphasised once more how important they considered his assistance to be.

[33] Cf. *Sally Engle Merry*, The social organisation of mediation in nonindustrial societies: Implications of informal community justice in America, in: Richard Abel (ed.), The politics of informal justice, London/ New York, 1982, 17, 31 and 20, with further references.

The forced marriage

On the first of November, 2005, a paralegal from Mvomero, one of the districts in Morogoro region, asked the MPLC for advice because in his community, a 14-year-old girl had been married against her will and all her protests to a rich 50-year-old man who had arranged this marriage with the girl's parents and promised them bridewealth of eight cattle. The paralegal said that he had not been able to help the girl and asked the MPLC if they or the local government authorities could send a letter asking that the girl should return to her parents. When asked if he thought the girl's parents would consent to have the girl return home, he replied, "they will consent, because they fear the government."[34] In the first example, the paralegals of the MPLC fulfilled the typical function of a mediator by facilitating a conversation as noninvolved third party between two parties who apparently were not able to communicate otherwise. A similar procedure is reflected in the quote from their casebook at the beginning of this section. By inviting relatives of their clients – not only those family members immediately involved in the conflict, but also others who could help to enable a solution or whose agreement might be needed in order for the settlement to be realised – they also follow a custom of many people in Tanzania to debate family conflicts first of all in the extended family and/or within the clan.[35] Since age hierarchies play an important role in Tanzania, elders are often accorded a special role in conflict settlement. In the first example, it is feasible that by their repeated requests for help the paralegals were appealing to a social norm according to which the grandfather's authority was needed and whereby it was his duty to assist in a matter regarding his son and grandson. The "barua mwito"-strategy of the paralegals can thus be understood as a kind of alternative dispute settlement which relies on certain strategies common for resolving conflicts in different ethnic groups of Tanzania. The frequency with which the MPLC is approached for such settlements as well as its clients' statements suggest that the centre has acquired somewhat of a reputation for handling certain types of disputes well. For instance, two clients who were involved in a property conflict with a relative reported that when they had already reached the court, in front of the court door someone had advised them to go to the MPLC, telling them that there they would receive better help.

In contrast, in the example of the forced marriage, the respective paralegal was not able to capitalise on his local standing or act as mediator. Notably, it also was precisely not this paralegal's cultural embeddedness which seemed to be able to contribute to a solution of the conflict, but a threat with the official authorities and the enforcement of the law. As became clear in the course of the conversation, this paralegal was obviously not a respected authority in his community who could have exerted influence because of his high status. On the contrary, he explained that he was criticised for lack of respect, and that it was not easy

34 Nov. 1st, 2005, my fieldnotes.

35 As a participant commented in a discussion about matrimonial conflicts in one of the paralegal seminars in Morogoro, "the first judges are absolutely the parents": "Mahakimu wa kwanza kabisa ni wazazi wawili", October 25, 2005, author's fieldnotes.

to be a paralegal and an activist – this was only possible, he said, if you had stripped yourself of the customs. Pointing out that he had "stripped himself of the bad customs" completely, he said that he was now reproached in Mvomero for not respecting his community's culture. The example illustrates that paralegals are not generally neutral mediators, but that they try to strengthen a certain set of norms which is not necessarily reconcilable with other norms. The case constitutes a conflict of norms between human rights law and Maasai customary law: the forced marriage stands in clear contradiction to the human right to freely choose a spouse[36], while the normative system of the dominant Maasai culture is characterised by age-sets and gendered hierarchies which include the prerogative of parents to decide whom their children will marry.[37] The conflict is characteristic of a situation of social change where a choice of different norms and life scripts becomes available and where people may start to use courts when the cohesion of village communities breaks down and reduces the felt need of maintaining amicable relationships.[38] It also illustrates what socio-legal research has pointed out earlier on: the fact that mediation between unequals can easily be to the disadvantage of the weaker party of a dispute since it is characterised by the differences in bargaining power of the persons involved and tends to perpetuate status differences. Therefore, the weaker party may need courts or another type of coercion in order to assert its rights.[39]

36 This has been incorporated into Tanzanian national law. Cf. UDHR Art. 16 II; CEDAW Art. 16 I (b) on the "right freely to choose a spouse and to enter into marriage only with ... free and full consent" and Art. 16 II stating that "the betrothal and marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage"; the Tanzanian Law of Marriage Act No 5, 1971 defines the minimum age for marriage as 15 for girls or 14 with the consent of the court but also states that in any case marriage must be a "voluntary union", cf. sections 13 I-II and 16 I.

37 Cf. *Dorothy Hodgson,* My daughter … belongs to the government now: Marriage, Maasai, and the Tanzanian state, Canadian Journal of African Studies No. 30 Vol. 1 (1996), 106-123, for a similar case, and more generally *Dorothy Hodgson*, "Once intrepid warriors": Modernity and the production of Maasai masculinities, in: Dorothy Hodgson (ed.), Gendered modernities. Ethnographic perspectives, New York, 2001, 105-145.

38 Cf. *Sally Engle Merry*, The social organisation I'm out of office till Monday, 27 April 2009. E-Mails won't be forwarded. of mediation in nonindustrial societies: Implications of informal community justice in America, in: Richard Abel (above Fn. 33), 31.

39 Cf. *Sally Engle Merry*, The social organisation of mediation in nonindustrial societies: Implications of informal community justice in America, in: Richard Abel (above Fn. 33), 39, 32f.; also *Ulrike Wanitzek*, Legally unrepresented women petitioners in the lower courts of Tanzania: A case of justice denied? Journal of Legal Pluralism No. 30/31 (1990-1991) 263, who notes that the higher percentage of female litigants in the lower courts of Tanzania should not be attributed to a higher litigiousness of women (often, these women had tried a multiplicity of other options before without success), but that rather it can be explained by the fact that women need the courts more to assert their rights. Correspondingly, the Tanzanian Legal and Human Rights Centre states that "specifically ADR does not usually work in situations where women are suppressed or subject to domestic violence". *Jodie Hierlmeier,* Legal aid provision in Tanzania: Improving access to justice, Dar es Salaam, 2004, 26.

It is instructive in this respect to consider the differences between village paralegals and the position of the MPLC paralegals as semi-outsiders. Mediators are often respected and influential members of their community who attain their positions by virtue of expertise in moral issues. They are usually of higher status than the disputants and can exert social pressure on disputants to accept a settlement, often their own favoured solution. However, where disputes involve members of higher social strata, outsiders are often needed.[40] The MPLC in some cases seems to take on a controlling function by having clients report about the realisation of an agreed settlement, the progress of things or, as in the case of the "lost son", by affirming to continue attempting to solve the issue themselves.[41] At the same time, their relation to the institutions of the state is ambivalent. On the one hand, the MPLC paralegals distance themselves from state organs in a confidence-creating way by stressing – as in their introduction to the grandfather – that they are neither the court, nor the police, on the other hand, there is lively cooperation with state institutions.[42] Its official-looking letters and the fact that counselling takes place in an actual office room which displays linkages to Dar es Salaam-based organisations, e.g. through posters and leaflets, may serve to enhance the impression of power which clients may perceive. The importance of the letter became evident one time when a paralegal from one of the villages of the region came to the MPLC asking for a letter for the client accompanying him. He commented his plea saying "What she [the person in trouble] gets is some paper from an office."[43] His comment seemed to suggest that any somewhat official looking paper would be able to alarm its recipients enough to create a change of conduct. While it is not implausible that a letter from an unknown institution would be able to impress people who are little familiar with state institutions and might have had bad experiences with corrupt officials, such strategies could only work with people who do not know enough about the MPLC to be able to judge its outreach and jurisdiction. The paralegals' ability to facilitate mutually agreed settlements and to act as agents of social change is contingent upon their status and their relation to the

40 Cf. *Sally Engle Merry*, The social organisation of mediation in nonindustrial societies: Implications of informal community justice in America, in: Richard Abel (above Fn. 33), 30, 31f.

41 This control function can also be recognised when part of an agreed compensation is paid in the centre itself after settlement. A corresponding case can be found in the casebook in October 2005. A Maasai had herded another's cattle for nine years, the latter having promised that the former would be able to marry one of his daughters. Now he refused to give him this particular daughter and agreed to pay him four cattle in exchange for the work instead, as well as 15 000 TSh for travel expenses to the MPLC. The sum of 15 000 TSh was paid straight away in the centre. The fact that part of the agreed settlement was implemented in the paralegals' presence would indicate that the disputants accepted these outsiders' authority. MPLC casebook Sept. 29, Oct. 10 and 21, 2005, author's fieldnotes. Admittedly though, 15 000 TSh (approximately 13 US$ at the time) are a negligible sum compared to the worth of four heads of cattle. According to the estimations of a Maasai informant, one head of cattle could be worth up to 300 000 TSh (equivalent to approx. 263 US$ in October 2005).

42 Cf. section 3.3 below.

43 "Njia anayopata ni karatasi chochote ofisini." Author's fieldnotes, October 27, 2005.

disputing parties. However, the "awareness" of the law that they are trying to promote also needs to be accompanied by the experience that such law can be claimed and enforced if informal settlement should fail. The role that paralegals play in court cases and the problems which their clients face there are the subject of the next section.

3.2 Paralegals in court

The housegirl

On October 25, 2005, a 17-year old girl came to the paralegal centre to seek help in a case pending in court. She reported that she had worked as a housemaid for a married couple in Morogoro town and lived in their house, and that one night when she had been alone with her employer, the man had beaten and raped her despite all her efforts to fight him back. The next day, his wife had accused her under some false pretences, dismissed her and thrown her out of the house. A woman she knew had taken her to the hospital and later helped her to file charges. Since then, the date for the trial had been postponed several times. She explained that the police officer in charge of investigation had suggested to her to drop the case. He had told her that the accused had offered to give the police officer 300 000 Tsh[44] which he could share half and half with the girl if she agreed not to pursue the case further. She had not accepted the money, but did not know what to do now. A radio journalist had advised her to go to the MPLC.

The paralegals expressed outrage and sympathy listening to this story and advised the girl to discuss this case with the lawyer Hakimu. The girl came back the next day to relate her story to the lawyer, who praised her for not having accepted the bribe and talked to her emphatically, encouraging her not to loose courage and to maintain the charges at any rate, promising that if necessary, they would go to a higher court in Dar es Salaam. Hakimu and Mama Masoy decided that they would try to find an advocate for the girl, and Hakimu said that she herself would defend the girl if necessary. She then requested her to enquire what the number of her case file and the date of the court hearing were, and to come back to the MPLC the next day to report this information. She also gave her some additional instructions, telling her that it was very important for her to say that she had been born in 1988, because this meant that she had been only 17 at the time of the offence. Under these circumstances, the offence was punishable in any case, no matter if the girl had acquiesced or not.[45] After the girl had left, the paralegals commented on how much time had passed

44 Around 264 US$ or 218 Euro at the time.

45 Although the girl had said during the first conversation with the paralegals that she was 17, she had declared later on that she had been born in 1986, which would have meant that she was already 19. In that case, the lawyer explained, the accused could argue more easily that the girl had agreed to have intercourse with him and that he was innocent. According to the relevant Tanzanian criminal law, a man commits rape if he has sexual intercourse with a woman under the age of 18 – with or without her consent – except if the woman is his wife, over 15 years old, and

since the charges had been filed, and Mama Masoy observed that she knew the magistrate of the court in question, saying that this magistrate had not impressed the MPLC so far. She prognosed that the magistrate's strategy probably was just to wait until three months, the designated time for investigations, had passed, and then to simply file the case with a note that no proof had been found. The paralegals' casebook entry reflected this interpretation. It read "She came to ask for help because they are just pushing her around, the case is being announced every day."[46]

3.2.1 "Moral support" and legal representation

The paralegals' reactions to Malika's story and especially Hakimu's recommendations concerning her age illustrate how the case touched their feelings of justice and how, consequently, they not only thought about possibilities to facilitate a fair trial, but gave substantial advice which might increase the likelihood of the accused being convicted. Access to justice here does not only refer to "access to court" or fair procedures, but also to a "just result" including notions of substantial justice. Interestingly, Mama Masoy explained that the MPLC normally did not take any action once a case was in court, but that in this case, the MPLC would try to help the girl since nobody else was helping her.[47] It seemed rather exceptional for somebody to be provided with a professional lawyer in a court case through the help of the MPLC. However, the centre is regularly frequented by people wanting to know how they should proceed in court or who want to ask a paralegal to accompany them. The paralegals describe their help in such cases as mainly "moral support". They explained that a paralegal could give a client courage if he or she were afraid to file a case in court or speak during the hearing; a paralegal could give clients explanations how to proceed, but paralegals themselves were not allowed to speak in court.[48]

The emphasis that the MPLC paralegals placed on the fact that paralegals could not speak in court is interesting in the light of reports about other paralegals who seem to take a more active role, to the point of being perceived as a nuisance and an interference with due process by professional jurists. In a 2004 study of paralegal activities, the Tanzanian Law Reform Commission on the one hand criticises the misconduct of some paralegals who

not living in separation from him. Cf. Sexual Offences Special Provisions Act, 1998, Part II, 5, 130 (2)e.

46 "Amekuja kuomba msaada maana anazungushwa tu kesi kila siku inatajwa." MPLC casebook 2005. Author's translation.

47 Personal conversation, 25. 10. 2005.

48 This role of the paralegals in court cases is also reflected in official descriptions of their work, with a particular focus on support for women: "The paralegals support fellow women who have cases in court by escorting them to court and giving them moral support since many women despair mid way. Having a group of women by your side raises your morale and courage." *Helen Kijo-Bisimba*, Civil society experience: A justification for recognition of paralegal scheme in Tanzania. A paper presented to the Paralegal Symposium organized by the Women's Legal Aid Centre (WLAC) on 23rd August, 2005, Dar es Salaam, 2005, 11.

allegedly "mislead the public and disrupt the proceedings of the court" or even "tell litigants that they are friends to the Magistrates and pretentiously pose as middlemen in transactions involving corruption", on the other hand, the Commission acknowledges that there are "conscientious and efficient persons serving as paralegals, who provide needed services to the public in various areas."[49] The Law Reform Commission observes that some paralegals draw pleadings or even represent their clients in Court by way of power of attorney, and describes this as a transgression of their competences and as violation of the *Advocates Ordinance 1954*.[50] Nevertheless, it also diagnoses a need for legal aid, stating that "it is evident ... that there is a vacuum to be filled in the Primary Courts, as the above legislation [the *Magistrates' Court Act 1984*] reveals that there is no representation [by advocates] there."[51] In Tanzania, there is no specific legislation on paralegals[52], and in particular, their legal status in court is not clearly regulated. Although no advocates are allowed to appear in primary courts, according to Section 33 (2) of the *Magistrates' Court Act 1984*, "a primary court may permit any relative or any member of the household of any party to any proceeding of a civil nature, upon the request of such a party, to appear and act for such party."[53] Yet even in a very broad definition of "relatives" and "members of household" most paralegals probably do not fall under this provision. However, Chris Maina Peter discusses the disputed right of lay persons to represent clients in court by virtue of power of attorney with reference to several Tanzanian High Court judgements and in conclusion confirms that lay people must be allowed to represent clients, arguing that otherwise the intention of the provision would not be fulfilled.[54]

49 The Law Reform Commission of Tanzania, Discussion paper on the scheme for provision of legal services by paralegal. Paper to be discussed on the stakeholders' workshop on the 21st May 2004, Dar es Salaam, 2004, 5, 33.

50 The Law Reform Commission of Tanzania, Discussion paper on the scheme for provision of legal services by paralegal. Paper to be discussed on the stakeholders' workshop on the 21st May 2004, Dar es Salaam, 2004, 10 and 6. The Tanzanian Legal and Human Rights Centre confirms that "some paralegals have gone as far as being given powers of attorney to stand on behalf of those who cannot stand in court for various reasons." *Helen Kijo-Bisimba*, Civil society experience: A justification for recognition of paralegal scheme in Tanzania. A paper presented to the Paralegal Symposium organized by the Women's Legal Aid Centre (WLAC) on 23rd August, 2005, Dar es Salaam, 2005, 11.

51 The Law Reform Commission of Tanzania, Discussion paper on the scheme for provision of legal services by paralegal. Paper to be discussed on the stakeholders' workshop on the 21st May 2004, Dar es Salaam, 2004, 6.

52 Paralegal units can register under the Companies Ordinance. One of the aims of the Paralegal Symposium mentioned before was to lobby for legal acceptance of paralegals and to discuss drafts and exchange experiences about curricula prescribing the training paralegals have to undergo.

53 Cf. also Magistrates Court Act 1984 33 (1) and The Law Reform Commission of Tanzania, Discussion paper on the scheme for provision of legal services by paralegal. Paper to be discussed on the stakeholders' workshop on the 21st May 2004, Dar es Salaam, 2004, 6.

54 *Chris Maina Peter,* Human Rights in Tanzania: selected cases and materials, Köln, 1997, 340ff.

Primary courts have a special position in the Tanzanian court system as less professional institutions. Because of their simplified procedural roles and the court language Kiswahili, the primary courts are in fact intended to be easily accessible to the parties and legal representation should be superfluous. Ulrike Wanitzek elaborates that the primary court magistrates are required to assist the parties to accomplish certain functions which in higher courts would be performed by advocates. It is their responsibility to assist parties during the proceedings, they make inquiries to the parties in order to establish the evidence, and can even take direct action to investigate the matter of the dispute further, for instance, by visiting the site of a disputed piece of land.[55] However, Wanitzek concludes from studying the reality of primary court disputes that the courts often fail to fulfil their task to translate the petitioners simple language into legal terminology, and that they act instead in a manner which presupposes that parties are assisted by legal counsel by assuming the passive role of a judge in the adversary system or insisting on formal procedural requirements. "It is argued", she concludes, "that by trying to behave like superior courts, Primary Courts actually perpetrate a certain injustice in the name of the law."[56] The need for legal counsel diagnosed by the Law Reform Commission as well as the MPLC can, therefore, also be explained by a failure of primary courts to conform to the role provided for them by the legislation, according to which neither procedural requirements nor specialised legal language should constitute any obstacle for the litigants.

Even if paralegals are not allowed to act as advocates before the courts, what they call "moral support" certainly seems to be an important factor affecting access to justice. This became clear in the paralegals' conversations with the girl who had been raped. The paralegals were careful to consider not only legal details, but also social and financial aspects, asking the girl about her family and housing situation, and giving her some money for her bus ride home. From a psychological point of view, this kind of support – a conversation with trusted persons who listen, express their sympathy, encourage her, support her case and give her clear instructions what to do – was perhaps just as important for the girl as the actual legal support that she can get from the centre.

3.2.2 The customary laws of corruption

Through their clients' stories, the paralegals get a vivid picture of the proceedings in court and the well-known problems in the justice sector. Casebook entries like the following mirror these problems:

"Shukura K. Marriage problems over a long period of time. – Now the case is in court. – But the court does not deal with this issue adequately. – It can be seen that her husband has brotherly relations with

55 *Ulrike Wanitzek*, Legally unrepresented women petitioners in the lower courts of Tanzania: A case of justice denied? Journal of Legal Pluralism No. 30/31 (1990-1991), 256, 262; Primary Courts Manual of 1964, Section 3 (3): "Direct action by court."

56 *Ulrike Wanitzek*, Legally unrepresented women petitioners in the lower courts of Tanzania: A case of justice denied? Journal of Legal Pluralism No. 30/31 (1990-1991), 264, 256.

the judge. – The husband has a second wife, he has moved all things from their place and brought them to that woman. – She asks for advice."

Or, in another case:

"1.8. Yusufu S. (repeated counsel): Child being beaten. – Came to inform us that the court does not believe the child's testimony. He was told to bring witnesses. The advice is when he comes out of the court he should come back again to tell us about the proceedings."

Already on July 22, there had been an entry regarding the same issue, saying "The hearing was postponed to July 27. The judge is out of town.", and later, on August 15, "The case will be heard again on August 26, when both witnesses will be present."[57]

The problem of corruption is openly debated in the MPLC, including the courts' procrastination strategies and their "bureaucracy" – for example, if a person had no money, the paralegals said, the court personnel could always claim that this person's file or case record were not there. By way of explaining different aspects of paralegal support, one of the paralegals working at the centre also mentioned that they had sometimes helped their clients with small sums of money for court fees; and that she had sometimes even accommodated clients at her place who had come from far away to go to court. Reading these pieces of information together reveals another aspect of the paralegals' "embeddedness": their knowledge of what could be called the "customary laws of corruption". They are able to comment on and explain to their clients the corrupt strategies of the courts which are partly subsumed under "bureaucracy". However, they are able to influence this only on a very limited scale. Asked if she thought that the mere fact that paralegals were observing and accompanying a case could sometimes deter the judiciary and the involved state officials from accepting briberies and influence them to handle cases differently, Bibi of the MPLC laughed and said, that no, for corruption it did not make a difference if paralegals were monitoring the case, this was not something that she as a paralegal could influence. The social field of the people involved in primary courts jurisdiction – including paralegals where they interact with it – has its own unwritten laws concerning the requirements to be fulfilled in order to speed up a process. Rather than being able to counter this, the statements and observations from the paralegals suggest that they are able to help their clients by explaining them how the courts' "bureaucracy" works, including the occasional extra fee for its officials that their clients may have to pay. In another region, paralegals were reported to perhaps have influenced a decision by visiting a magistrate at home in order to convince her not to accept a bribe but to "do justice and justice only" – a story which surprised even the head organisation which had not expected nor perhaps intended this kind of interference.[58] Although the paralegal protagonists in the story perceived their action as

57 MPLC casebook 2005, entries on the respective dates. Translation from Kiswahili by the author.

58 *Helen Kijo-Bisimba*, Civil society experience: A justification for recognition of paralegal scheme in Tanzania. A paper presented to the Paralegal Symposium organized by the Women's Legal Aid Centre (WLAC) on 23rd August, 2005, Dar es Salaam, 2005, 13.

having prevented an unfair, bribed judgement, such reports also make understandable the allegations of the Law Reform Commission's research that paralegals are sometimes involved in corrupt transactions.

In Morogoro, the impression was that paralegals at the MPLC knew the limits of their scope of action and influence quite well. Precisely in order not to jeopardise the cooperation of the centre with other institutions or the state authorities' tolerance of their activities, the coordinator seemed to take great care that the MPLC's actions would be regarded as correct and within the official – and unofficial – boundaries ceded to them by the authorities. Therefore, they would most probably not try to influence the decision of a particular magistrate through private interlocutions. This, however, also means that the influence paralegals can have on the greater structural problems within the justice sector should not be overestimated and that in certain categories of cases they have no power whatsoever to interfere, as the next case shall demonstrate.

3.2.3 Claiming land from a "big man"

On the 1st of November, 2005, a client asked the MPLC for advice in a land law case. She has had a plot of land since 1993, she says, but an important government official from the criminal investigation department claimed ownership of this same plot. She had been told that the plot had not been surveyed yet, but then the official's acquisition of the plot had apparently been dated back to 1992, and he now disposed of the land as his. The ward tribunal[59] had ordered him to compensate the woman with TSh 200 000 for the loss of the land, but she had not seen any of the money yet. The municipal officer had already told the woman privately that she would not have a chance against this official to get the plot back, since the official who wanted this plot was an "important man."[60]

The example makes very obvious that there is a big discrepancy between the ideals of equality and the rule of law which the paralegals are trying to promote, and the social reality of a law for sale ruling in accordance with the power hierarchies of the state bureaucracy. As Mama Masoy explained later, the woman had asked for a letter from the MPLC, but the MPLC could not do anything if the municipal officer had already told her that she had no chance to get the plot. Moreover, she explained that they generally tried not to interfere in such cases involving high officials: "We don't like usually to take cases dealing with the government. Like this one, it is a bit delicate, and if the manispaa officer already told her he can't do anything ... what can we do. They will say who are we ... We won't send a letter. They will say what authority do we have. We cannot really help her."[61] Asked if government officials sometimes regarded the MPLC as a rival, the coordinator explained

59 After the village land committee, the ward tribunal is the second lowest forum in the hierarchy of forums dealing with land conflicts.

60 November 1st, 2005, author's fieldnotes. "Mtu mkubwa" literally means "big man".

61 Mama Masoy, personal conversation, November 1st, 2005. Author's fieldnotes.

that no, they did not, and emphasised again her caution in cases involving officials. The MPLC's possibilities to do anything at all seemed to be circumscribed by a sensitive line keeping them within their realms of power without seriously affecting the interests of higher-ranking levels of the state administration. The fact that the MPLC paralegals refrain from getting involved into "delicate cases" would explain why they are not perceived so much as trouble-makers as the Law Reform Commission's report seemed to suggest for paralegals in other regions.[62]

3.3 The MPLC in a network of dispute resolution forums

Interestingly however, there is also a lot of cooperation between the MPLC and different state institutions. In many cases, the MPLC simply functions as a point of coordination delegating its clients to other institutions and forums where they can receive help. This category of cases includes a whole range of disputes – from damage of property over matrimonial conflicts to the case of a school-girl who had been thrown out of the house by her elder sister and was accompanied to the Social Welfare Office by the paralegals in order to be permitted to stay temporarily with the family of a friend from school.[63] Examining the paralegal casebook entries in turn for information on how the clients found the MPLC, one can read, for instance, that one was sent by the court clerks of the Regional Court, another by the Social Welfare Office, a third by the District Office, and a fourth by a "balozi"[64]. Remarkably, the police, the social welfare, court clerks and legal personnel also refer clients to the MPLC, not just the other way round.[65] The cases show that there is a multi-directional flow of persons between several institutions of social service and dispute resolution in Morogoro. This could mean on the one hand that the state institutions are not fulfilling or not able to fulfil their obligations in a satisfactory way, as has been suggested

62 Another indication of potential conflicts with local government authorities are the difficulties reported by the Women's Legal Aid Centre and the Legal and Human Rights Centre of some of their paralegal units to get registered – a process which could take years in some cases. Personal conversation with lawyers at the Legal and Human Rights Centre; cf. also Women's Legal Aid Centre, Report on evaluation of WLAC supported paralegal activities, Dar es Salaam, 2005, 14.

63 While the paralegals offered to invite the elder sister to the MPLC, too, they asked the girl to consult the Social Welfare Office since they themselves had no authority to decide questions of custody. Author's fieldnotes, Oct. 28, 2005.

64 On the lowest level of local government, the "balozi wa nyumba kumi", i.e. "ten-cell leader", is responsible for 10 households.

65 That even the police refer cases to the MPLC was affirmed by the centre's coordinator. Personal conversation with Mama Masoy, Nov. 1st, 2005. Kijo-Bisimba, too, stated that "Some [paralegals] ... have also been able to get recognition at their level to the extent that the government authorities refer people with needs to the paralegals. This is the case of the Tanga paralegal unit, Morogoro paralegal unit, Mwanza paralegal unit, Shinyanga, Dodoma, Kigoma, Kilimanjaro, Arusha, Iringa to name a few." *Helen Kijo-Bisimba*, Civil society experience: A justification for recognition of paralegal scheme in Tanzania. A paper presented to the Paralegal Symposium organized by the Women's Legal Aid Centre (WLAC) on 23rd August, 2005, Dar es Salaam, 2005, 10f.

above for the primary courts. On the other hand, the responsibilities of different institutions also overlap. For instance, the paralegals explained that the Social Welfare Office was responsible for family issues like marriage, childcare and custody. Yet these kinds of problems are also among the most frequent to be brought to the MPLC, and women with marriage problems are in fact also referred to the MPLC by the Social Welfare Office. The casebook entries and individual case histories reveal that clients of the MPLC have often tried to solve their problems by approaching other forums before they come to the paralegal centre, and often, in turn, the MPLC is not the last place they go to. In the plural legal setting, these disputants approach different institutions to the best of their knowledge by a trial and error procedure, until they find a solution that suits them – or get frustrated and do not continue the dispute – or resort to other means of solving their problems. Their behaviour reflects what Keebet von Benda-Beckmann has described as "forum shopping" for Minangkabau in West Sumatra: disputants have a choice between several institutions with overlapping fields of jurisdiction and "base their choice on what they hope the outcome of the dispute will be, however vague or ill-founded their expectations may be."[66] Benda-Beckmann moves on to explain that generally, the jurisdiction is determined by the kind of dispute in question, but since disputes usually have several aspects, jurisdiction can be established through the way the dispute is defined. Different people and institutions also follow their own interests by attempting to acquire jurisdiction over certain disputes. She calls these "shopping forums".[67] Although the MPLC does not deliberately try to acquire jurisdiction over certain cases, the paralegals also pursue the aim of creating awareness on certain norms and legal concepts that they and their supporting organisations wish to strengthen, e.g. gender equality and the right to property according to the Tanzanian marriage law and the land acts of 1999. By pursuing such aims that go beyond their clients demands and are partly external to their disputes, paralegals also behave like a "shopping forum". Their actions are informed by their own feelings of justice as well as the legal norms and values conveyed in paralegal seminars. Thus in some cases their outlook immediately affects where they direct their clients – for instance, they would rather refer a woman suffering from domestic violence and wishing to be separated to the Social Welfare Office than to a Christian marriage conciliation board.[68] On the one hand, therefore, the

66 *Keebet von Benda-Beckmann*, Forum shopping and shopping forums: Dispute processing in a Minangkabau Village in West Sumatra, Journal of Legal Pluralism No. 19 (1981), 117.

67 Ibid. 117f.

68 One example case involved a Christian woman who had been mistreated by her husband for several years and had been told again and again by the priest to forgive her husband. When she approached the MPLC, she was considering to get separated. However, the Christian marriage conciliation boards, which, like the Social Welfare Offices, are entitled to issue the "letter of divorce" needed in court, tend to discourage couples from divorcing. Author's fieldnotes, Oct. 27, 2005; cf. *Bart Rwezaura*, Gender justice and children's rights: A banner for family law reform in Tanzania, in: Andrew Bainham (ed.), The International Survey of Family Law, The Hague, 1997, 422.

MPLC is one forum in a whole range of institutions to which clients may bring their disputes. Where the paralegals take cases and attempt to settle them themselves in the centre, the MPLC operates parallely to other forums like the Social Welfare Office, elected representatives in political institutions, religious authorities, or village and clan elders. On the other hand, the MPLC also functions as a point of coordination which, based on its knowledge of different forums, is able to direct clients to other institutions where they can be helped. Noticeable in all these cases are the paralegals' repeated offers to clients to come back to the centre if the respective other institution proved not to be helpful, and to counsel them again in that case. The fact that they can make their clients understand that they need not depend on the decision of a single institution as a final judgement, together with the reassurance through an offer of continued counselling, may be understood as part of what the paralegals call moral support. In many cases, it is questionable how far their help can go and if the dispute can be solved in the end. However, their ability to explain different options in combination with the information where a problem may be solved in a quick – and possibly: in the desired – way is an important aspect of access to justice.

4. Conclusion

The guiding question of this report has been if, and how, paralegals can improve access to justice, understood as a broad concept comprising substantial aspects beyond merely formal access to court. Case stories from the MPLC have illustrated some forms of assistance which paralegals can give, but also the limitations to their influence. On the one hand, paralegals at the MPLC seem to meet a need for legal counselling in cases pending in the lower courts, a need which appears to be partly caused by the primary courts' failure to apply the simplified procedures they are intended to use. Hence paralegals improve access to state legal institutions to some extent by providing assistance with formalities, a limited range of legal services including free counsel by a legal professional, and emotional support by offering the clients a place to voice their grievances and accompanying them to court. For the paralegals, this “moral support” is an important aspect of their work which is immediately linked to their aim of creating awareness for certain rights. Their support may also consist in counselling clients to bring a case to court in the first place, or to appeal against a first instance decision. However, although they may be able to help their clients in family conflicts and land- or inheritance cases of small value, cases involving the interests of powerful individuals and government officials emerge as a distinct boundary. On the other hand, paralegals also act as mediators in a form of conflict settlement involving negotiations on a set date after written invitations to the parties involved in a dispute. Under certain circumstances, this may be a more easily accessible as well as a more culturally accepted type of dispute resolution than the one practised in courts. It is plausible that conflicts can be solved through this method when the involved parties have an interest in amicable settlement and accept the authority of paralegals as mediators. In contrast to the common assumptions among ADR proponents that such mediators need to be members of

the disputants' community, the MPLC paralegals' position as semi-outsiders appears to be no less conducive to settlements. On the contrary, it may be necessary in order to provide a counterweight to the different bargaining powers of highly unequal parties. Finally, an important aspect of the MPLC's work is their ability to direct their clients to certain institutions out of a range of forums that are not in a strict hierarchy and with whose particular jurisdiction the clients might be only partly familiar. The MPLC acts as a switch point of coordination, while at the same time, it is itself one of the newer forums of dispute resolution available to people in Morogoro. In the pluralistic range of shopping forums, it also functions as a low-threshold social service institution providing first advice or legal first aid.

Legally, the paralegals' own mandate is not clearly defined. Rather, they operate complementarily and sometimes in competition with other institutions within distinct acquired and carefully balanced boundaries which are likely to differ from centre to centre. In any case, it cannot be assumed that the scope of the activities in the MPLC is representative of an average paralegal unit, or that it can be compared in any way to the rural subunits. The MPLC is one of the best established and active centres among the ones founded by WLAC. Moreover, this kind of urban based centre differs fundamentally from the subunits in villages which in 2005 generally could not be expected to have office rooms, often did not have fixed counselling times, and whose actual activities were frequently somewhat unclear even to the central, coordinating unit.

It is also worth noting that the paralegal activities sponsored with external funds at the time of the research were almost exclusively activities related to the field of legal education – development organisations financed workshops, contributed daily allowances and travel expenses for seminars and theatre plays, and assisted the publication of legal brochures. Yet the far greater part of the paralegals' work at the MPLC consists in the daily counselling sessions. The manifest reason for their motivation to engage in such time-consuming voluntary work was real commitment. The fact that the MPLC has turned into a meeting place for the women where they like to spend time, especially taking into account that with an average three clients per day there are long shared waiting times, might also play a role. That Bibi and Mama Balaigwa, who are not in paid employment and have adult children, could allow to spend so much time at the centre seemed more immediately plausible than for Bertha and Mama Masoy, both of whom have full-time jobs working as teachers, in addition to their family obligations. One cannot actually expect anyone to be so active as a paralegal without payment on a permanent basis. Correspondingly, high drop-out rates were mentioned as a problem by several organisations who train paralegals and are confirmed by evaluations.[69] It remains to be seen which future role paralegals will play in light

69 Cf. Women's Legal Aid Centre, Report on evaluation of WLAC supported paralegal activities, Dar es Salaam, 2005, 29f., 39. The estimation of the MPLC, too, was that the motivation of paralegals in many of the subunits was not very high because of the voluntary basis of the work. Personal conversation with Bibi and Mama Masoy, October 26, 2005, author's fieldnotes. – This lack of

of the ongoing reforms. Paralegal activities have been ongoing for more than fifteen years in Tanzania, but there are considerable disjunctions between their "grassroots" activities and the national level of legal reform. In 2008, no legislation on paralegals had been passed as yet; however, the Legal Sector Reform Strategy proposes to establish a fund to provide grants for legal aid and literacy activities implemented by NGOs or voluntary associations.[70] Alternative dispute resolution and legal aid by non-state actors sometimes coexist in an uneasy tension with the rule of law ideal pursued by the protagonists of international development support as well as the Tanzanian state. In some parts of the legal reform documents it is described as the main task of NGOs in general, including those who support paralegal services, to service poor and disadvantaged parts of the population and ensure that their interests are protected.[71] Nevertheless, the present contribution has suggested that the influence of paralegals against major problems within the justice sector, such as abounding corruption or the appropriation of land by powerful officials, is very low, and in most cases would necessitate links to the more powerful organisations in the centre who are able to provide professional lawyers or pursue public interest litigation. Considering that "the poor" who are potential clients of paralegals constitute the majority of the Tanzanian population, it would therefore appear that no large-scale improvements in access to justice can be made if the responsibility to support these people's rights is left to NGOs alone.

motivation could, of course, also be caused by other factors like a lack of social standing within the respective community or uncertainties about what their actual role as paralegals should be.

70 United Republic of Tanzania, Legal Sector Reform Programme Medium Term Strategy Fys 2005/06-2007/08, 2004, 24.

71 Cf. United Republic of Tanzania, Legal Sector Reform Programme Medium Term Strategy Fys 2005/06-2007/08, 2004, 24, 107, and *Chris Maina Peter, Wachira Maina et al.*, Unblocking the road to timely justice for all: First annual review of the Legal Sector Reform Programme (LSRP) of the United Republic of Tanzania, Dar es Salaam, 2008, xiii, on expanding the role of non-state actors in the legal reform programme.

The Southern African Development Community (SADC) and its Tribunal: Reflexions on a Regional Economic Communities' Potential Impact on Human Rights Protection?

By *Oliver C. Ruppel*, Windhoek

Human-rights-related matters play a vital role within Regional Economic Communities. The Southern African Development Community (SADC) is such a Regional Economic Community counting a total population of more than 245 million with 15 states among its members, namely Angola, Botswana, the DRC, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. At first glance it might appear that the promotion and protection of human rights are not SADC top priority as an organisation that furthers socio-economic cooperation and integration as well as political and security cooperation. However, the protection of human rights is essential for economic development as it has an impact on the investment climate, which in turn contributes to growth, productivity and employment creation, all being essential for sustainable reductions in poverty. A wide range of provisions and objectives within the SADC legal system offer human rights protection *inter alia* in the SADC Treaty and the various SADC Protocols. The SADC Tribunal is the regional judicial institution within SADC. It was established to protect the interests and rights of SADC member states and their citizens, and to develop community jurisprudence, also with regard to applicable treaties, general principles, and rules of public international law. Although the primary aim of the Tribunal was to resolve disputes arising from closer economic and political union, rather than human rights, a recent judgement by the Tribunal and some of the pending cases demonstrate that the Tribunal can also be called upon to consider human rights implications of economic policies and programmes.

Can paralegals enhance access to justice? The example of Morogoro Paralegal Centre in Tanzania

By *Eva Diehl*, Berlin

This contribution analyses paralegal activities in Tanzania in the context of ongoing legal reforms aimed at improving access to justice. Paralegals are lay legal advisors trained by non-governmental organisations to engage in legal aid and legal education activities, with the aim of raising awareness about certain national laws as well as international human rights. Proponents of paralegals argue that their voluntary services do not only have advantages in terms of financial and geographical accessibility, but that paralegals can also practise forms of alternative dispute resolution which are culturally more accepted by the population than the procedures in court. Paralegals in Tanzania operate in a legally plural context where different conceptions of justice are at play. The present analysis is focused on a paralegal centre in Morogoro, which is shown to fulfil various functions: it facilitates

mediated settlements outside the courts, it accompanies and counsels clients in court cases, and it acts as a switch-point delegating clients to other institutions in a network of forums with partly overlapping jurisdictions. It is concluded that while paralegals are able to make some contributions towards improved access to justice in small cases and family disputes within and outside the courts, they are little powerful in the face of abounding corruption or cases involving powerful officials.

Under Reconstruction: Ethnicity, Ethnic Nationalism, and the Future of the Nigerian State

By *Isiaka Alani Badmus*, Lagos

This article, using a diachronic approach, advances the argument that a genuine national cohesion and the future of the Nigerian state cannot be fully guaranteed in the clear absence of addressing the inherent structural defects of the country's malfunctioning federalism. The Nigerian post-colony is, presently, confronted by the challenges pose by ethnicity/ ethnic nationalism with negative consequences of political ethnicity, ethnic conflicts, etc. It is argued that the entrenchment of plural democracy has the capacity to address the lopsided policies of the central state that are at the peril of the weak federating states and most importantly, the oil-bearing ethnic minorities of Nigeria's Niger Delta. In *addendum,* the article argues and demonstrates that democracy in the real sense of has the potency of democratising the Nigerian nation-state; strengthening of mediatory and regulatory institutions; promoting intra-and inter- ethnic relations; etc. The agitations and activities of the oil-bearing ethnicities and various ethnic social movements of the Nigeria's Fourth Republic for autonomy and social justice were used to buttress this article's basic augments and concludes with the government's efforts in addressing Africa's most popular country's multilayered ethnic problems.

Transition to democracy and party bans, or: Why is there no party ban provision in the South African constitution?

By *Jörg Kemmerzell*, Darmstadt

The introduction or re-introduction of multi party systems in Sub-Saharan Africa between 1989 and 1994 has been widely accompanied by the fear, that the new institutional order might promote or award the politicisation of particularistic identities. This might be one reason for the heavy de jure and de facto restrictions of the activities of political parties in many African countries. At least 40 of 48 states in the region provide for the legal possibility of party bans. South Africa remains one of the few African countries that abstained from the adoption of party ban provisions. This seems remarkable not only because of the countries history of violent ethnic conflict, but also of the Apartheid system representing a