

Uganda Legislative Benchmarking Visit on Legal Aid

REPORT SUMMARY

11-15 July 2022



PROGRAMME OVERVIEW

From 11 – 15 July 2022, CPA UK hosted a delegation from the Parliament of Uganda for a five day virtual programme. During a tumultuous week for UK politics, alongside a criminal barrister strike over legal aid fees, Ugandan members joined UK counterparts to explore a range of topics related to the legislative process and legal aid provision. Topics of discussion included the scrutiny role of parliamentarians and committees, the perspectives of legal aid practitioners and beneficiaries, and current debates around the future of legal aid services in the UK.

The delegation consisted of two legislative drafters and two sponsors of a National Legal Aid Bill due to be considered in the Parliament of Uganda. The private members' bill, which is awaiting its first reading, intends to bring providers of legal aid under one banner, providing a holistic service to those in need and replacing the current system which involves different pots of funding with varying levels of legal provision.

The format and contents of the programme emerged out of preliminary meetings with the group, responding to their request for a visit tailored around questions on the legal aid context in the UK. Alongside other visits the delegation has planned - to South Africa, for example - this programme intended to support further preparation of the bill as well as an informed scrutiny process. Structured over five days, the programme included nine online sessions with UK Members of Parliament, policy advisors from the Ministry of Justice, legal aid solicitors, and representatives from the Bar Council and Law Centres Network.

List of Delegates

Hon. Silas Aogon MP

Hon. Lilian Paparu MP

Ms Harriet Brenda Apiny
Assistant Director,
Legislative and Procedural
ServicesMr John Tamale Mirundi
Senior Legislative and
Procedural Counsel

Uganda Legislative Benchmarking Visit on Legal Aid

FULL REPORT

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IMPACT

To further strengthen parliamentary democracy in Uganda by supporting its Parliament to be effective, accountable, and transparent

OUTCOMES

Delegates have an enhanced understanding of legal aid provision, regulation, and related processes in the UK.

Delegates are familiarised with current challenges and debates around legal aid provision in the UK.

Delegates are well-informed and well-equipped to scrutinise, amend, and progress legislation related to legal aid provision as required.

The relationship between the UK and Ugandan Parliaments is further strengthened.

OUTPUTS

Four delegates including at least one parliamentarian participate in a 5-day programme.

Participants report an increased understanding of legal aid provision in the UK.

A report summarising the programme is produced and disseminated to all participants.



Legal Aid in the UK and Uganda

Legal aid generally refers to assistance provided to people who are unable to afford legal advice and representation and access to the court system. The sources of funding differ in the UK compared to Uganda: In the UK, legal aid is broadly a government-funded service with providers, such as law firms and civil society groups, operating under contracts from the Ministry of Justice. In Uganda, most legal aid services are provided directly by NGOs and charities, in addition to a minimum required number of pro bono hours provided by law firms. Government-funded legal aid is generally only available to those charged with capital offences.

The dominant role of NGOs presents some risk to sustainable and equitable service provision. As different providers adopt different eligibility criteria, some demographics may be underserved or excluded from access to services. NGOs are further unlikely to be able to provide legal aid services in the long term as project-based funding must be sourced or extended regularly.

Amongst other measures, the draft National Legal Aid Bill intends to reduce both risks by introducing consistent eligibility criteria and means testing, as well as consolidating financial support for legal aid provision from both government and NGOs into a single fund.

Programme Summary

Discussions between the Ugandan delegation and UK counterparts were extensive and wide ranging, yet produced three overarching and reoccurring themes: sustainability, simplicity, and education.

These themes hold the key takeaways from the discussions:

1. the importance of efficient use of legal aid funds in order to secure its long-term future;
2. the benefit of universal, cohesive legal aid criteria and structures;
3. the value of comprehensive public education regarding legal rights and entitlements.



Parliament of Uganda

The unicameral Parliament of Uganda is the country's legislative body. The parliament has a total of 529 seats, including 353 representatives elected using first-past-the-post voting in single winner constituencies.

In addition to Members directly elected to represent constituencies, the Constitution requires Parliament to include one woman representative for every district as well as representatives of the army, youth, workers, persons with disabilities and other groups as determined by Parliament.

CPA in the Region

CPA UK has worked with the Parliament of Uganda since 2016, with a particular focus on support for women parliamentarians as well as support for parliamentarians and legislative drafters working on legislation to curb human trafficking and other forms of exploitation. CPA UK facilitated a Modern Slavery Workshop in Entebbe in July 2017, and multiple workshops for women committee chairs and members in 2017 and 2018.

Sustainability

A key priority that emerged throughout the sessions was sustainability: to secure the long-term future of legal aid provision in Uganda, the National Legal Aid Bill would need to improve efficiency and cost-effectiveness in the system.

This is particularly important as the National Legal Aid Bill is a private members' bill. As Hon. Lilian Paparu MP explained, private members' bills that will not have financial implications for the public purse are more likely to pass. In other words, the National Legal Aid Bill must demonstrate the economic benefits, not just the social good, it can offer the government in order to become law. This resonated with some UK members who described their experience of what they viewed as justifying and defending the legal aid system in the face of government cuts at the turn of the decade.

For Yvonne Fovargue MP, who worked at a legal advice agency before joining Parliament, key to the argument is that spending on legal aid saves more government funds spent elsewhere: For every £1 spent on legal aid, the Treasury saves around £8.50 on other services. Similarly, the Justice Committee's inquiry into the future of legal aid stressed the importance of early intervention. Properly funded early legal advice – creating, for example, an opportunity to advise someone not to take a claim to court – prevents excess costs further down the line. As Maria Eagle MP, who also had experience in legal aid

centres before standing for election, explored, the inquiry showed that the sustainability of legal aid depends on proactive, rather than reactive support. Hon. Lilian Paparu MP agreed this could be explored through the introduction of mediation professionals in family courts.

Many participants had further ideas for ways in which the National Legal Aid Bill could reduce its financial burden. John Tamale Mirundi noted the importance of pro bono work in the current Ugandan legal context in keeping legal aid costs down. Amelia Rowswell and Georgia Lavin, Senior Policy Advisors from the Ministry of Justice's Criminal and Civil Legal Aid Teams, noted that the bill could direct damages won through legal aid back into the legal aid system. In the UK this is known as a 'statutory charge', which means that successful legal aid claimants contribute to legal fees through a share of their winnings, in principle converting legal aid from a grant into a loan. Similarly, Maria Eagle MP suggested adapting the present means testing involved in the National Legal Aid Bill to include reference to one's likelihood of winning a case. Legal aid should not be wasted on hopeless causes, she argued, with money going further when one's chance of success is built into the funding criteria.

Simplicity

Yet in relation to means testing, as the Assistant Counsel to the Justice Committee Jack Simon Caird explored, the main takeaway from of their legal aid inquiry was the importance of simplicity.

Under the current draft of the National Legal Aid Bill, the means testing criteria are based upon two categories; firstly, financial means; secondly, marginalisation according to age, gender, disability. Adding complex different qualifying criteria in an attempt to target those who need the support most can often end up excluding key beneficiaries. Bambos Charalambous MP, for example, described how much of his case work as a constituency MP involved supporting asylum seekers and immigration applicants who do not qualify for legal aid.

The UK has attempted to bring in some elements of universal coverage; all those facing housing repossession, for example, are automatically entitled to representation in court, a system that removes some complexity and barriers associated with means testing.

Legal aid practitioners similarly emphasised simplicity. Jenny Beck QC noted how the piecemeal system of the UK legal aid structure involves different pots of funding for different activities, meaning that cost recovery for legal aid solicitors can be an extremely lengthy process. “If you are starting from a blank canvas”, Jenny Beck QC told the delegation, “then keep simplicity at the heart of what you are doing”. Nimrod Ben-Cnaan, Head of Policy at the Law

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Centres Network, similarly described the UK legal aid system as vulnerable due to its inflexibility in responding to unexpected events such as the Covid-19 pandemic.

This echoed the practical message from Dame Elizabeth Gardiner DCB QC, First Parliamentary Counsel. She described how since the 1990s there has been an explicit aim from bill drafters to keep things simple, expanding the opportunities for backbench members to bring forward legislation. Rather than dressing bills in ‘legalese’, they should be understood by non-expert audiences. Harriet Brenda Apiny, Assistant Director for Legislative and Procedural Services, noted similar efforts at the Parliament of Uganda.

Education

A key point of discussion concerned the importance of education and learning. Martin South, CEO of Tower Hamlets Law Centre, noted that legal aid in the UK, whilst playing a vital role in the functioning of society, is not at the forefront of public consciousness compared to services like the NHS. Key to a successful legal aid system is educating the general public about their legal rights and entitlements, as well as the importance of these rights and entitlements. This was echoed by Hon. Lilian Paparu MP, who spoke about the difficulties of creating a legal system that reaches out to those most vulnerable, such as domestic violence victims. Without timely and proper commitment to legal aid, citizens might not consider society just, democratic and functioning. Julie Bishop, Director of Law Centres Networks, similarly discussed the idea that if legal aid falls off the list of voter priorities, then a lack of government support will follow.

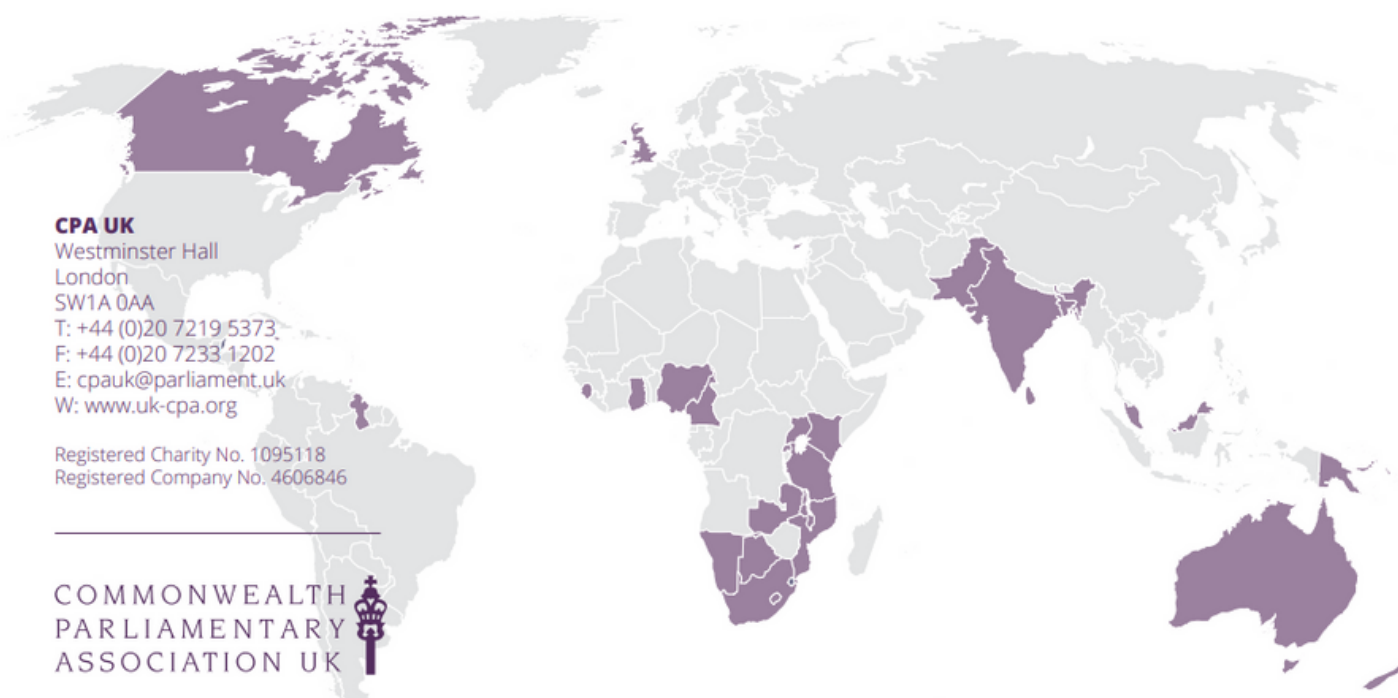
Data collection is key to this argument. Mark Fenhalls QC, Chair of the Bar Council, outlined a range of pilot programmes in order to collect the necessary data to persuade government to expand eligibility requirements, with a localised two-year pilot for early legal advice in relation to housing, debt, and welfare benefits. The Bar Council indicated they would be happy to share this data directly with the Ugandan delegation. Similarly, Rohini Teather from the All-Party Parliamentary Group on Legal Aid offered to share further data and insights with the delegation from their inquiry into the sustainability of legal aid.

Feedback and Next Steps

The delegation indicated they had a productive and fruitful week, and thanked all who gave their time to give insights into the successes and challenges of the UK's legal aid system. Hon. Silas Aogon MP found topics "useful, enriching, enlightening", generating insights that will feed into the National Legal Aid Bill. Similar positive feedback was heard from the UK members, with Rt. Hon. Dame Maria Miller DBE MP following up to share her experiences of a "great session".

The delegation will meet CPA UK staff for a follow-up meeting in August, and will provide updates on the progress of the National Legal Aid Bill. Once the Bill is referred to a committee, CPA UK can explore options to support the chair and members of the committee in their scrutiny work. Until then, CPA UK staff will facilitate further exchanges between UK-based programme participants and delegates to resolve any questions or provide additional information. Members of the delegation plan further benchmarking exercises to gain insights from legal aid systems in South Africa.

CPA UK looks forward to continuing its close collaboration with the Parliament of Uganda, including through engagements with the Uganda Women Parliamentary Association (UWOPA).



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