



THE REPUBLIC OF UGANDA

A REVIEW OF THE UGANDAN STATE BRIEF SCHEME



COURTS OF JUDICATURE

FINAL REPORT



THE REPUBLIC OF UGANDA

JUDICIARY



**REVIEW OF THE STATE BRIEF SCHEME IN
UGANDA**

FEBRUARY 2013

BY

**MR. GEORGE BAMUGEMEREIRE (LEAD CONSULTANT)
MR. JULIUS C. SSEREMBA (ASSOCIATE CONSULTANT)**

CONTENTS

1.0 Legal Context and Description of the State Brief Scheme (SBS) Review 2

1.1 Terms of Reference (TORs) for the assignment	4
1.2 Methodology of execution of the Assignment.....	5
2.0 Findings from the Review.....	9
2.1 Conceptual findings and attendant analyses.....	11
2.2 Operational findings and attendant analyses.....	18
2.3 Insight into and Comparative Analysis with other Legal Aid Jurisdictions.....	21
3. Implications of the Review findings.....	25
3.1 Limitations of the current model of the SBS and other Observations.....	25
3.1.1 Common Abuses of the SBS process.....	29
4.1 Innovations.....	30
4.2 Best Practices.....	31
4.3 Recommendations.....	33
5.0 Conclusions.....	43
6.0 Annex.....	45
6.1 Legal Provisions about State Briefs.....	45
6.2 State Brief Review Interview Questionnaires.....	47
6.3 List of Interviewees.....	51

1.0 Legal Context and Description of the State Brief Scheme (SBS) Review

Uganda is a signatory to major international and regional conventions, like the International Convention on Civil and Political Rights, the Convention on Economic, Social and Cultural Rights and the African Charter on Human Rights, which provide for the right to Legal Aid. Legal Aid is an integral component of the obligation, by the State, to provide access to justice, equality before the law, the right to counsel and the right to a fair trial. The right to a fair hearing is a key ingredient of Article 14 of the International Convention on Civil and Political Rights. The State has a duty to respect, protect, promote and fulfill human rights of citizens, through provision of Legal Aid (including legal advice and representation) to those who are unable to afford paid legal services.

Numerous **models of Legal Aid** have been adopted world –wide. These encompass set-ups such as: full-time, stand-by, state-paid lawyers in an independent legal aid institution, legal clinics (full-time and occasional) and state-paid, private lawyers who deal with criminal cases, as and when they arise, provided they meet set eligibility criteria for Legal Aid. Uganda’s current model of state-sponsored Legal Aid is commonly referred to as the State Brief Scheme (SBS). Specifically, the SBS derives its mandate from Article 28 of the Ugandan Constitution which underpins the right to a fair hearing stating, “Every person who is charged with a criminal offence shall in the case of any offence which carries a sentence of death or imprisonment for life be entitled to legal representation at the expense of the State.” The concept of “the state brief” is articulated, further, by a number of other laws namely: the 1995 Constitution of Uganda; the Trial on Indictment

Act; the Poor Persons Defense Act; the Magistrates' Court Act; and the Advocates Act (See Annex Section 6.1).

State Briefs take **place in the High Court and Chief Magistrate Courts** (in respect of criminal cases that attract a death sentence or imprisonment for life) and in the Court of Appeal and the Supreme Court in respect of appeals resulting from these cases.

In practice, State Briefs constitute the co-option of the services of an advocate, in private practice, to offer legal services to accused persons who cannot afford to pay for them. Under this arrangement the Government of Uganda identifies legal service providers and pays for their services on behalf of accused persons charged with offences which meet the eligibility criteria referred to above.

The SBS review was a **multi-stakeholder assignment**, undertaken by the Consultant (**HIM CONSULT**), designed to offer understanding and insight into the operation of this form of Legal Aid with a view to identifying “knotty” areas in its implementation about which the consultant would make recommendations for improvement.

The overall objective of the review was to offer “incentivizing” information and insights towards improved access to, and quality of, justice to all person entitled to the SBS services.

Specifically, the SBS review sought answers to the following lines of inquiry:

- ❖ What does the SBS encompass?
- ❖ What is the current SBS process like?
- ❖ What are the current challenges and opportunities in SBS implementation?
- ❖ What practices and approaches work well in the current SBS set-up?
- ❖ How can the current SBS set-up engage stakeholders to improve service delivery (better efficiency at lower cost in SBS operation)?
- ❖ Is the remuneration to private advocates commensurate with the size and complexity of the work-load undertaken by private advocates under SBS?
- ❖ What are the quality assurance controls in SBS?
- ❖ Who has the oversight roles over the SBS? (A closer scrutiny of the role of the Law Council and the Uganda Law Society)

1.1 Terms of Reference (TORs) for the assignment

The consultant's approach and undertakings in the review of the SBS were guided by the specifications outlined in the TORs for the assignment.

It was indicated, in the TORs, that the review of the **SBS would involve a “stock-taking” of relationships, views, experiences and observations of its operations** in areas it is implemented in.

As such, this would require the recording of what is being done, how it is being done, when it is being done, who is doing it as well as the analysis of the literature available on the SBS.

The main interest of the review was to offer a “**diagnostic**” **assessment** of the regulatory system as well as the day-to-day practice of the SBS with a view to identifying root causes of shortcomings in its operations as well as the drawing of lessons and key recommendations for its improvement. All of this was to be analyzed within the larger context of SBS set-ups (Public Defender Systems) in other African jurisdictions as well as similar local, Legal Aid initiatives.

The consultant was, also, to draw **key “guiding marks”** from the existent, albeit yet-to-be-instituted, National Legal Aid Policy (2012) in addition to considering the “practicality” of some of its recommendations and suggestions.

1.2 Methodology of execution of the Assignment

The consultant used both qualitative and quantitative techniques in order to gather information about the SBS.

These comprised:

- A **literature and desk review of documents** available on the SBS and Public Defender systems in general;
- **Key informant interviews (KIIs)** with SBS beneficiaries (accused persons), Judges, advocates on the programme, court registrars and some magistrates;
- **Quantitative Assessment** of a selected sample of areas where SBS is implemented (using the Lot Quality Assurance Sampling Technique [LQAS] 19 interviews from

the National sample area) using interviewer-administered questionnaires designed to estimate the relevance, deficiency, effectiveness, efficiency, impact and sustainability of SBS interventions). 19 inmates who had gone through the full, SBS process were interviewed in each of the Government prisons in Mbale, Fort Portal and Gulu;

- The same model for sampling in the above-mentioned localities could not be applied, to **Court and Advocate clusters**, involved in SBS there. This is because the courts designated for the SBS process are usually only two in a given area (that is the Chief Magistrate's Court and the High Court) and the advocates who participate in SBS are equally few. Therefore, the consultant held Focus Group Discussions with advocates recommended by court officials in the respective areas as well as Key Informant Interviews with randomly chosen court officials and prosecutors involved in the SBS process.
- In lieu of the initially-planned, “**cross-cutting**” **Focus Group Discussions (FGDs)** involving all the stakeholders of the SBS process, the consultant, having failed to get all of these parties in one location since many of them were out of station owing to the imminent festive season (Christmas), opted for small sub-group and, or, individual one-on-one deliberations. These involved mainly advocates involved in the SBS process and leaders of non-state Legal Aid set-ups. The consultant, also, took advantage of the regional, planning workshops convened for magistrates and chief magistrates in Gulu and Mbale to gather feedback, through self-administered questionnaires, from the attendees.

The consultant, on the whole, **interviewed 101 respondents** (2 Judges , the Inspector of Courts [High Court, Kampala], 2 Registrars [the Registrar of the Criminal Division, Kampala High Court and the Registrar, Court of Appeal], 10 Chief Magistrates, 6 Grade One Magistrates [from circuits where they play the role of a registrar during Sessions], 12 advocates, 3 Prisons Officials [at Deputy Officer In-Charge and Officer In-Charge ranks], 1 Criminal Investigations Directorate officer [Officer In-Charge CID], a Resident State Attorney, 1 Court Clerk, the National Coordinator of the Justice Centres Programme, the Executive Director of Foundation for Human Rights Initiative, the National Coordinator of Para Legal Advisory Services, the FIDA Legal Aid Clinic Manager as well as 57 inmates in the three regional circuits sampled by the Consultant).

The sum-total of the undertaking was intended to yield understanding of the SBS in the manner depicted hereunder:

FOCUS OF INQUIRY	LINE OF INQUIRY
BEST PRACTICES	<ul style="list-style-type: none"> ❖ In SBS stakeholder engagements ❖ In supporting advocates to offer quality legal services to SBS beneficiaries

<p>LESSONS LEARNT</p>	<ul style="list-style-type: none"> ❖ Comparison via desk review of other African/Global State Brief Schemes or Public Defender jurisdictions similar to Uganda's SBS ❖ Specific, recent, Ugandan case studies where SBS has had a significant impact on the administration of justice ❖ Existence of guidelines that inform the quality and scope (within prevailing budget constraints) of SBS implementation ❖ A holistic presentation of outlooks and views from key actors on this subject matter
<p>CHALLENGES</p>	
<p>ASSESSMENT OF SBS IMPLEMENTATION</p>	
<p>RECOMMENDATI ONS</p>	

2.0 Findings from the Review

There are 13 High Court Circuits and 37 Magisterial areas in Uganda. The majority of these cover more than one district implying that a number of SBS-related cases can only be heard in one court in an entire region. 20,000 to 30,000 cases are “processed” through the SBS system annually (the vast majority of these are cases of defilement).

The review established that apart from Article 28:3(c) of the Constitution of Uganda —inspired by Section 14:3(d) of the International Covenant of Civil Rights of 1966 to which Uganda is a signatory— no other form of guiding document or policy exists from which a common set of instructions and procedures may be drawn in the day-to-day operation of the SBS. As such, whereas the spirit and letter of the SBS are appreciated among the greater majority of stakeholders in the scheme, inherent ambiguity of the SBS process fuels various omissions and “excesses” which in turn undermine the quality of justice delivered to accused persons under the SBS.

The extent of the difficulties in the implementation of the SBS is spawned by a cocktail of factors some of which are financial, systemic (organizational structures and frameworks) while others take on logistical dimensions (planning and delivery).

The net effect of the interaction between these difficulties is to create an SBS mechanism that merely delivers the bare minimum measures of justice demanded but leaves all the stakeholders dissatisfied and “stuck” with an otherwise vital, well-intentioned but dysfunctional legal process.

The Consultant gathered that most respondents, in the Court System, agree that justice should not only be done but be seen to be done. Nonetheless, the said justice must also be adequate and effective ♦ in order to offer the best possible outcomes for accused persons and create a motivating and conducive environment for all the other stakeholders.

The net effect of an SBS set-up where all players have a positive predisposition towards their role demands that:

- a. Advocates are availed all the **logistical support** in their work and are **remunerated commensurately** in a **timely** manner;
- b. Judicial officers as well as all other Government stakeholders do not feel **encumbered** by any **financial** or **logistical inhibitions** in the execution of their duties; and
- c. A **service** mechanism is created that is both **sustainable** and **adaptive** in nature.

The SBS set-up as it stands is not sustainable and, like a very sick person, merely survives and barely functions. The set-up can hardly deliver the results that were anticipated when it was mooted. To a great extent SBS has been reduced to a "box-ticking exercise" in the long checklist of setting up a Chief Magistrate or High Court Criminal Session.

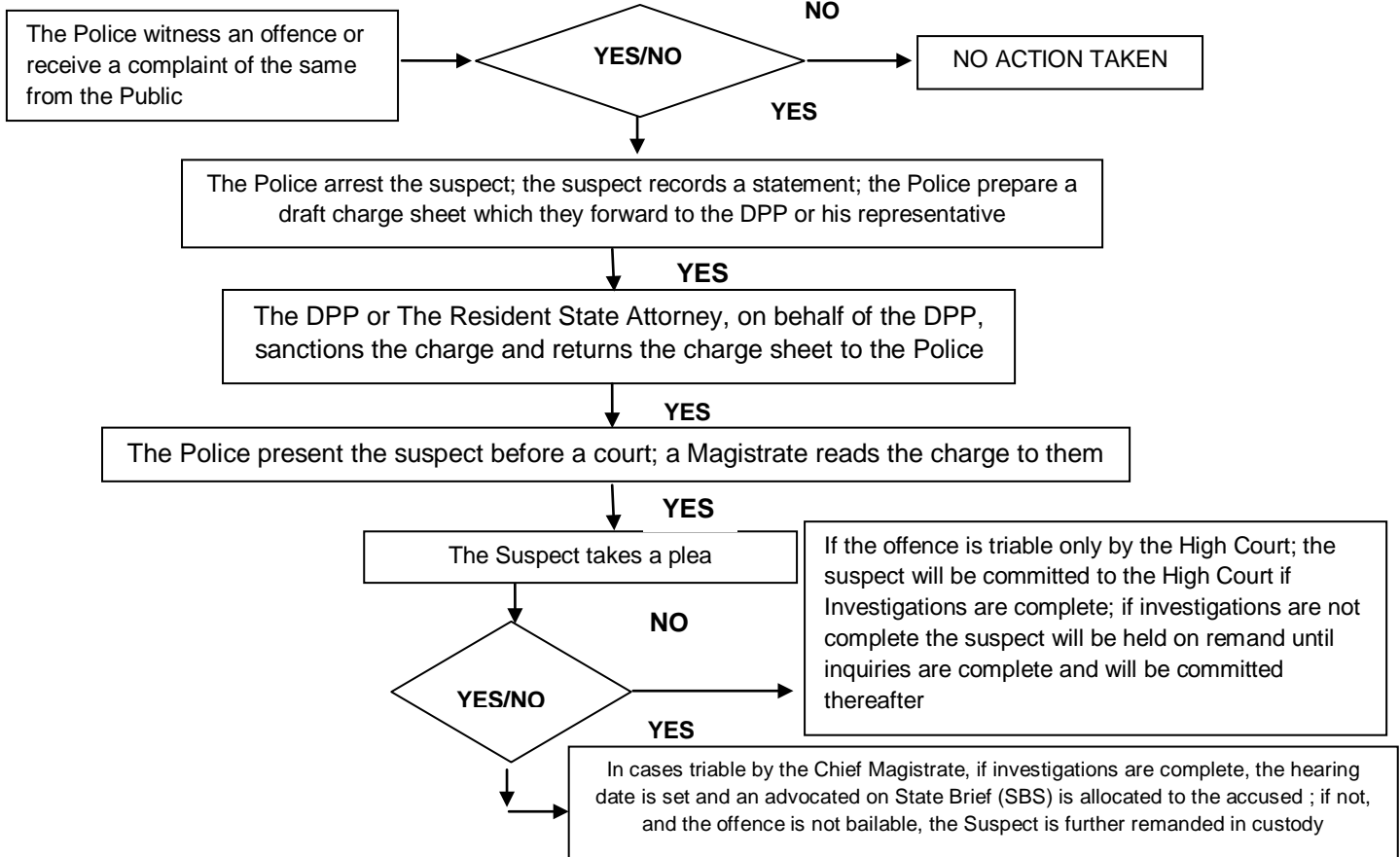
♦ *"The task of determining the correct legal out-come is rendered almost impossible without effective counsel through the courts. Equally, the absence of adequate counsel renders the promise of justice and a just out-come, a far cry."* (Yale Law and Policy Review, 1998)

2.1 Conceptual findings and attendant analyses

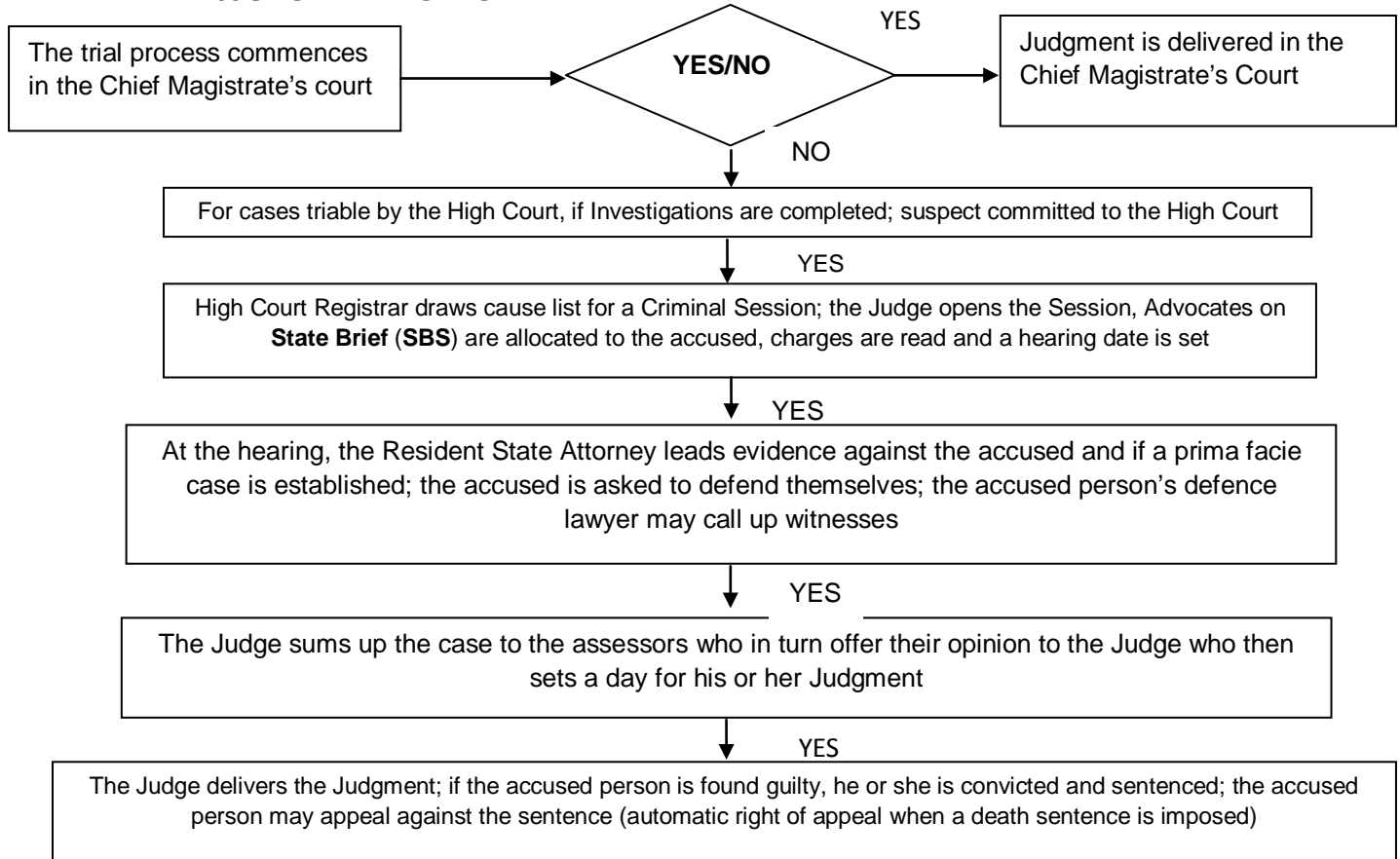
The conceptual framework for the operation of the SBS defines the instructive legal as well as the “boots-on-the-ground” implementation criteria of the SBS which denote the underlying ethos for its existence. All the Government officials (from the DPP’s office, Police, Prisons and the Court System) interviewed as well as the advocates involved in SBS understood and mentioned the constitutional prerogative from which the scheme derives its mandate describing clearly the jurisdictions (Chief Magistrate, High Courts, the court of Appeal and the Supreme Court) where the SBS is meant to take place.

Portrayed, hereunder, is the nominal process followed in prosecuting an offence.

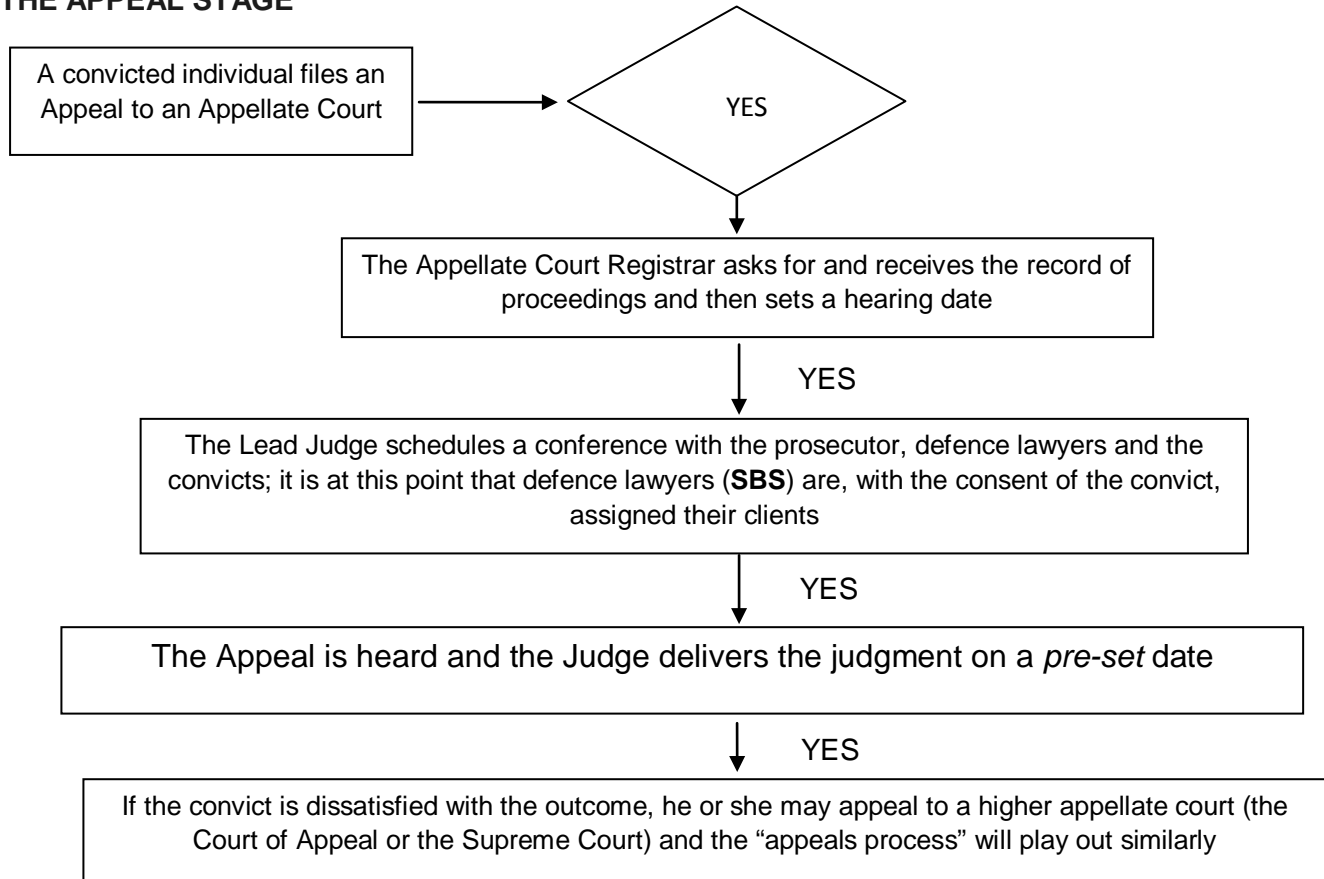
THE ARREST/CHARGING STAGE



THE TRIAL/JUDGEMENT STAGE



THE APPEAL STAGE



Presently, the general practice is for SBS to “take off” at the setting of the date of hearing (which is usually at the beginning of a Criminal Session or arraignment in lower courts).

Nonetheless, different interpretations abound on the **ideal point in the Criminal Justice System when SBS should commence**. Since, the management of the SBS initiative is squarely under the docket of the courts, a survey of Grade One Magistrates and Chief Magistrates was undertaken to establish their position on the matter. 53 percent of the respondents offered that the SBS process should ideally kick in at the setting of the hearing date; 41 percent said it should start at arraignment while 6 percent said it should start at some point in between (such as the application for bail for an accused person).

In practice, this means that in lower (magisterial) courts, each court implements the SBS according to its own perception of the ideal point for provision of mandatory legal representation.

The consultant, in light of all the challenges in enabling SBS stakeholders to deliver justice competently, submits that the **SBS process should commence at the very onset of preference of charges against the accused person**. Some advocates submitted this ought to take place at the point where the accused person records a police statement so as to protect suspects from unnecessarily implicating themselves. However, in light of practical realities and limitations associated with the cohesion between the Police, the Prosecution, the Judiciary and Prisons (preparation of charge sheets, case files, et cetera and sharing this among the stakeholders), the consultant observes, SBS commencement at the reading of the charge is the earliest, most tenable point to avail the accused person legal representation. In Fort Portal and Mbale, the arrangement of a “full-time, standby” advocate to enter the SBS

process as early as possible (at plea-taking) is being successful modeled although inadequate remuneration, to the advocates, threatens its continuation.

The Consultant also stratified a **simplified process model of the Ugandan criminal trial process** in the following manner:

Arraignment or the reading of the charge
Interim applications including the possibility of applying for bail
Committal proceedings
Setting of the hearing date
Commencement of the hearing
Judgment and sentencing

It was established that the point at which the **SBS commences carries far-reaching ramifications**. Most importantly, it determines the point at which an advocate is co-opted to defend an accused person under the SBS. The level of preparation (legal research, interviews with the accused person, summoning of witnesses, et cetera) by an advocate is seriously impeded when his services are co-opted “late” in the court process. The Consultant believes there is a case for closer scrutiny of the point at which an SBS lawyer is co-opted in order to ensure better outcomes for the accused person by predisposing the lawyer towards better preparation and acquisition of all information relevant to the case.

Further, all the respondents (including accused persons) were unanimous that SBS-setup, as it stands, does not meet the criteria for **its original institution entirely both in spirit and letter**.

The standards of procedure, presently, are minimalistic and preclude advocates from performing to the best of their ability. This is exemplified in delays in the preparation and presentation of case files meaning that advocates have limited knowledge of the substance of the charges levied against accused persons for a greater part of the time. Even after receiving these, the possibility of summoning requisite witnesses is impeded by the passage of time which makes location of these witnesses difficult in addition to triggering financial obligations on the SBS system to foster efforts to locate them. These obligations are barely met and mostly never met at all. To that extent, advocates in **the SBS find themselves appearing in court “for the sake of it” and to merely to ‘tick the boxes’**.

The consultant established that the organization of the SBS occurs on fundamentally two layers of activity namely; the **Trial Courts and the Appellate Courts**.

The **Trial Courts** include the Chief Magistrates Courts and the High Court while the appellate courts include the High Court, the Court of Appeal and the Supreme Court.

Naturally, trial courts handle a larger volume of cases than the appellate courts. Moreover, the appellate courts carry a certain “aura of prestige and authority” that is attractive to advocates of more senior calibre. Therefore, the SBS legal representation, for accused persons in the appellate courts, tends to be of a higher quality irrespective of monetary incentives.

The Consultant notes that a debate needs to arise, in the Judiciary, about how to raise the stature of Chief Magistrate Courts so that SBS lawyers can regard them with the same level of “respect” as

the High Court, the Court of Appeal and the Supreme Court. This would considerably alter, for the better, their standards of performance during SBS engagements there.

2.2 Operational findings and attendant analyses

The proportion of **young people (generally in their 20s or 30s) constitutes up to 75 percent of** the SBS beneficiaries surveyed. These people were described by advocates and prison officials as poor, illiterate and largely ignorant of the trial process in courts. They are desperately dependent on the SBS in order to access justice and their large numbers create a compelling impetus for the expansion of the SBS programme.

A number of them could be in their predicament after being framed. Despite the limitations of their personal circumstances referred to above, accused persons **are able to tell when the advocate paid to represent them through SBS does not defend them adequately**. This is especially clear to them when their witnesses are not summoned as the case should be and they do not get to meet their advocate as it ought to happen (Data from files of the Registrar Criminal Division, Kampala High Court indicate that up to 90 percent of accused persons meet their advocates for the first time in court) and when they do only for a brief period (about 20 minutes before the commencement of court proceedings in the most extreme of scenarios (as one SBS advocate explained).

Consequently, a deeply **entrenched mistrust** of the SBS process and of the advocates nominated to defend them has developed. Convicts who do not see the significance of the SBS process share this information with newly “remanded” accused persons. As such, the advocates hardly receive any cooperation from the accused persons who treat them with suspicion and decline to confide in

them and even lie to them in some instances about the facts of the case. This is compounded by the perception that accused persons generally play no role in choosing the advocate to represent them. SBS advocates selected and paid by the State are bound to be viewed as a mere extension of the machinery that created the suspect's predicament. SBS advocates, therefore, do not receive adequate and, or, full disclosure from accused persons regarding their alleged crimes.

The Consultant identified Judges, Registrars, Chief Magistrates, Advocates, Prosecutors and accused persons as the **key players in the implementation of the SBS**. The performance of each of the stakeholders listed above plays a key role in shaping perception about the relevance of the SBS.

Generally, there are **no set criteria for the selection of advocates to take** part in SBS. Seniority, years in practice, level of specialization, among others, are not considered. Courts, presently, consider any advocate who agrees to participate when called upon. However, the High Court, in Kampala, requires advocates to write to the Registrar, Criminal Division expressing interest in taking up SBS cases. The Registrar will then contact them to determine if they are willing to take on particular cases at a given time. This practice is more of an exception than the norm in SBS operations in the courts.

The amount of money to be paid to an advocate for their service and time, under SBS, is determined **subjectively by each Magistrate or Judge who** presides over a Court Session.

The Consultant found that, presently, a fixed amount of money is allocated for SBS cases. In stations out of Kampala, about UGX 200,000 per month is designated for all the SBS cases that are

brought before Chief Magistrate Courts. The amount is evidently too meager to cause any meaningful impact. For example, the Chief Magistrate's Station in Pallisa handles, on average, 90 SBS cases per month. This means that with a monthly allotment of UGX 200,000, this station has only UGX 2,200 available per case (less than USD 1). It is inevitable that all the 90 cases cannot be heard as and when they arise.

In Kampala the allotted sum, in the Chief Magistrate Courts, is UGX 800,000. The overall budget for any High Court Session of 40 cases was determined to have been UGX 40 million. In Kampala, it **was reported, up to UGX 14 million could be designated towards the SBS. However, in Fort Portal only UGX 5 million was reported** as the designated SBS amount. The SBS budgets, clearly, are not harmonized between the different High Court circuits. The High Court, in Kampala, reported paying up to UGX 600,000, per case, to a SBS advocate for a full-trial. This is substantially more generous than amounts reported for upcountry stations which average at UGX 200,000 per case which goes on full trial.

By and large, the session budget caters for payment of transport refund for witnesses (defence and prosecution), per diem for Judges, body guards, Judge's driver, the Judge's fuel costs, allowances of court assessors, interpreters and orderlies and caters to the advocates' token SBS fees. The advocate's fee is the last payment to be made at the very end of the entire High Court session, usually. Advocates interviewed, in Fort Portal, Mbale and Gulu said they receive anywhere between UGX 100,000 and UGX 200,000 per case which in most cases falls far below their operation costs (research, printing and stationery, communication, personal transport expenses, among others) let alone travel costs to meet their clients in prison (which they end up not being able to

afford) and reward for their labour. This has caused a dire loss in morale and most lawyers are not interested in SBS cases anymore. In fact, the advocate who has been handling SBS cases in Fort Portal intimated he will not do so anymore starting January 2013. Because of this disgruntlement, only junior, often less experienced lawyers will take up most SBS cases in the Magisterial and High Courts as senior lawyers do not consider it a fruitful usage of their time and skill. Up to 90 percent of the advocates, involved with SBS, interviewed are under 40. All of them have been practicing law for less than seven years.

Also, the Consultant determined a correlation between the large geographical area (constituting numerous districts) covered by some Magisterial/High Court jurisdictions and legal representation under SBS. For example, in Mbale, where a sole SBS advocate has been contracted on a “full-time” basis, this advocate has to attend to cases in courts in Mbale, Pallisa, Budaka and Kibuku (all of them are hundreds of miles apart). The meager SBS financial allotments can barely cover the advocate’s expenses.

Again, the need for greater financial provisions to the SBS initiative emerges emphatically.

2.3 Insight into and Comparative Analysis with other Legal Aid Jurisdictions

Local Legal Aid constitutes a number of undertakings, in the form of Legal Aid clinics, by FIDA, Foundation for Human Rights Initiative (FHRI) and the Justice Centres Project. All of them lack national coverage and have either a gender or social spectrum bias. In the latter case, these undertakings are directed at indigent persons. In the case of FIDA, their services are offered primarily to

women and, occasionally, to men. Most of the Legal Aid initiatives seek to offer holistic services (legal advice, legal counseling, legal representation and Alternative Dispute Resolution) but none of them, apart from the Justice Centres Project, has sought to offer an end-to-end, full-process demonstration of Legal Aid. The Consultant ascertained that the Justice Centres Project offered Legal Aid, to clients, on the basis of Means and Merit Tests (MMTs) and handles both criminal and civil cases. Compared to SBS, the Justice Centres Project offers more meaningful legal support to accused persons over the entire trial process chain. However, the Consultant was unable to obtain the cost/benefit analysis computation from the project and cannot therefore assess the financial implications of the Justice Centres Project model on a cost per case basis.

In other countries, the notion of a Public Defender has been institutionalized. The public defender model provides legal representation through the establishment of a government agency staffed by full-time lawyers*. The efficacy of the public defender model is premised on the theory that *a staff of full-time public defenders working exclusively on criminal matters should be able to provide higher quality defense services for the poor than would private, court-appointed attorneys who do not necessarily specialize in criminal law.*[∞]

Israel and South Africa, among others, have registered great success **in providing legal aid to their indigent nationals by ring-fencing their budgets for legal aid provision.** In 1990, after widespread discussions with lawyers' associations, the South African

* Public Interest Law Initiative, *Access to Justice: Legal Aid for the Underrepresented* 232, <http://www.conectasur.org/files/pili6.pdf>

[∞] Jo Anna Chancellor Parker, *What a Poor Defense! Exploring the Ineffectiveness of Counsel for the Poor and Searching for a Solution*, T.E. JONES L. REV. 63, 78 (2003).

Legal Aid Board persuaded the Minister of Justice to authorize a state-funded Public Defender System and to appropriate R2.5 million (about USD 625,000) for this purpose. This enabled the Board to employ legally qualified persons to represent the disadvantaged accused. Initially, a pilot state-funded public defender office in Johannesburg was approved for two years.[⊕] The Board's estimates that each public defender would be able to deal with approximately 200 district court criminal cases a year proved to be correct.[⊗]

Traditionally, South Africa, like many African nations, relied on the Judi care model (a replica of Uganda's SBS) for provision of legal aid. However, because of increased demand for legal aid (following the promulgation of a new Constitution and a democratic system of government) South Africa's Judi care model no longer proved economically viable.^f

Public defenders are full-time salaried lawyers employed by the Legal Aid Board and on its conditions of service— not those of the Public Service Commission. Although public defenders are full-time, salaried lawyers, they are not public servants. They consist of legal interns in the district courts and qualified lawyers in the Regional and High courts, and are attached to the justice centres[⊖] throughout South Africa. The public defenders deal primarily with criminal cases where accused persons have a constitutional right to legal representation in trials and

[⊕] Legal Aid Board, Annual Report 1991/92 32–3 (1993)

[⊗] David McQuoid-Mason, *Public Defenders and Alternative Service*, 4 S. AFR. CRIM. J. 267, 270 (1991)

^f David McQuoid-Mason, *The Supply Side: The Role of Private Lawyers and Salaried Lawyers in the Provision of Legal Aid—Some Lessons from South Africa*, in *ACCESS TO JUSTICE IN AFRICA AND BEYOND: MAKING THE RULE OF LAW A REALITY* 97 (2007).

[⊖] A Justice Centre works like a law firm, where legal aid applicants can go for legal assistance. Each Justice Centre has a principal attorney, who is the head of the Justice Centre, professional assistants, candidate attorneys, and paralegals. A Justice Centre offers legal assistance for defined criminal and civil matters. Services offered by Justice Centres include advice, referrals and litigation (Retrieved January 25, 2013, from <http://www.legal-aid.co.za>).

appeals. Such instances occur where, irrespective of the crime, “a substantial injustice would . . . result”^o if the accused person were not provided with a lawyer. **Almost 88 percent of the work of the public defenders consists of criminal work.**

Equally, because **public defenders are primarily employed by the Legal Aid Board, an independent statutory body with its own board of independent, non-executive members** guarantees the independence of public defenders. However, public defenders remain members of their bar council or law society, and the Legal Aid Board has only recently taken steps to ensure proper quality control of public defenders instead of simply referring dishonest lawyers to the appropriate bar council or law society for discipline.

Besides South Africa and Nigeria, there are probably **very few public defenders or state-funded salaried lawyer programs in African countries.**

During an extension of the public defender pilot project in 1995, **the estimated average cost of a Judi care criminal case was R822 (about USD 103^v); the average cost of a public defender criminal case was R555 (about USD 69)[^]; and the average cost of a state-funded law clinic case was even less.**

The Legal Aid Board considered the pilot public defender project a success and established **a permanent, Public Defender Office.^z** Since then, the Board’s justice centres have included public defenders, together with law intern public defenders, as an integral component of its work

^o Constitution of the Republic of South Africa, 1996. Section 35 (2) (c).

^v The value of the South African Rand has stayed more or less the same in the intervening period and these values can be compared to current day Uganda market conditions because of that

[^] Legal Aid Board, Annual Report 1991/92 32–3 (1993)

^z Legal Aid Board, Annual Report 1996/97 at 23 (1999)

Israel uses a slightly different model. Like South Africa, Israel once relied primarily on the *Judi care* model. In 1995 however, Israel established the **Public Defenders Office (PDO)**^ϕ implemented as a mixed model with “internal defenders,” who are full-time public defenders, and “external defenders,” who are part-time private attorneys “who work from their private offices under the supervision of internal defenders and are obligated to maintain close and constant contact with the PDO.”^ε These “external defenders handle approximately 90% of criminal cases.”^χ Both the “internal defenders” and “external defenders” receive training “to ensure high quality representation.”^θ

3. Implications of the Review findings

3.1 Limitations of the current model of the SBS and other Observations

The current implementation of the SBS has inherent limitations that forestall equitable access to justice for accused persons. The lack of a **regulatory policy or framework** implies that each court is bound to “make it up as it goes along” during the trial of accused persons. The consultant was able to determine the existence of a Court Fees Rule Book which stipulates that no more than UGX 1,000,000 maybe paid for a state brief although even this was not followed at all times since some cases in the High Court in

^ϕ Charles J. Ogletree, Jr. & Yoav Sapir, *Keeping Gideon’s Promise: A Comparison of the American and Israeli Public Defender Experiences*, 29 N.Y.U. REV. L. & SOC. CHANGE 203 (2004).

^ε *Ibid*

^χ *Ibid*

^θ *Ibid*

Kampala (especially those with a public interest dimension, complexity and high number of witnesses e.g. the *Kayunga riots case*) were remunerated at rates between UGX 1,200,000 and UGX 1,400,000.

Disbursement of **monthly funds** to trial courts is meant to facilitate the timely dispensing of justice. However, the amount of money released is little compared to the number of cases designated to be handled. When this happens, cases are carried over to the next month. Inevitably back-log comes about. In some jurisdictions, a Chief Magistrate's Court has oversight over large geographical areas (two, three or more districts). The limited funding released to the court every month cannot possibly cater to the SBS needs of all accused persons in these areas. Again, case back-log becomes inevitable. The consultant ascertained that Fort Portal High Court alone has a back-log of 231 cases. Other data reviewed by the Consultant showed Capital Offenders constituting up to 40 percent of remand prisoners in Gulu Prison as of May 2012. Up to 85 percent of these prisoners were committed for trial but had not appeared in court for extended periods. Consequently, back-log not only creates pressure for SBS advocates (due to the large amount of cases that must be handled all at once during Sessions) but generates additional, "knock-on" prison congestion complications for the Prisons Service.

The **Session model** (in which a specific number of cases must be disposed of in a given time-frame) was contrived as a remedial redress to the problem of backlog. Unfortunately, the model has not achieved the most optimal, qualitative results for SBS-related cases. The deadline-driven approach of the session model means that all stakeholders in the justice process have to dispense off all cases in the time given because failure to do so carries serious

financial repercussions. This encourages a “bare minimum” approach to task execution by all stakeholders in the Session given that the Session budget is “tight to the wire” and cannot cater to any other costs beyond the time for which a Session has been designated.

In terms of service delivery, the session-driven urgencies and similar practices in Chief Magistrate courts tend to limit SBS to only legal representation as contrasted with a situation where in addition to representation, legal advice and legal counseling would be offered. As a form of Legal Aid, the SBS could only offer highest impact when holistically delivered*.

The Consultant ascertained that neither the Session Calendar nor the details of the cases to be handled are revealed to the SBS advocates in a timely manner. On average, the longest time SBS advocates will know about the date of the session is a month in advance. However, they may not receive the details of the case files they are to handle until up to a few days (about three to five) before the session commences. It is natural that their level of preparation and the facts at hand will not be in the best interests of the accused persons they represent.

It follows, in a bid to satisfy the **supreme goal of stemming backlog**, cases may, for example, be dismissed by the presiding session Judge due to lack of evidence (when prosecution witnesses are not located or do not come in time, for example).

* *The Lilongwe Declaration on Accessing Legal Aid in Criminal Justice Systems in Africa of 2004 broadened the meaning of Legal Aid to include legal advice, assistance, representation, education, and mechanisms for alternative dispute resolution (Draft National Legal Aid Policy, 2012)*

Also, the unusually long periods spent, **by SBS accused persons, on remand generate** a number of eventualities that affect the trial process later. These may include death of witnesses, loss of details on where witnesses reside and at best, when they can be found, the witnesses may have forgotten the facts of the case (accused persons may walk free still due to lack of sufficient evidence to sustain charges against them).

In instances where the prosecution has not diligently prepared the case, files may not be brought before court. Some accused persons are simply released (after their SBS lawyer requests for the case dismissal) because they have stayed on remand beyond the mandatory period.

Moreover, having been handed a predicament where they are not very certain of the facts of the case which is compounded by the tentative and even non-cooperative and suspicious responses from clients, SBS advocates advise the accused persons to **plead guilty** (in the hope of receiving a mitigated sentence even when the person could be innocent) in order to “quicken” the justice process.

The sum total of all the above-mentioned SBS pitfalls is to give an impression where justice is not seen to be done as the guilty walk free and the innocent are incarcerated. In this sense, the SBS becomes a meaningless charade.

The quality of justice, furthermore, is affected by common SBS “shortcuts” in the trial courts. For example, in cases where more than one accused person are charged with an offence, a **single advocate** is usually chosen to defend all of them in order to minimize expenditure. The level of culpability may not be equal in such cases. When one accused person opts to testify against their co-accused, the SBS advocate is trapped in a “conflict of interest

scenario” the complexity of which has not been sufficiently addressed in the current SBS set-up.

Also, the fee paid to the SBS advocate does not cater for costs related to **appeals** made by their clients. As such, they do not give support to their appeals. This affects the quality of assistance they render to their clients in “post-sentence” scenarios.

3.1.1 Common Abuses of the SBS process

As earlier mentioned, some SBS advocates coerce accused persons to plea-bargain. This, given the little pay, saves the advocate much effort but is not in the best interest of the accused person as they could be innocent.

SBS advocates complained, during interviews, of the lack of transparency by registrars, and other judicial officials, charged with paying them. Some of the advocates claimed that these officials had not paid them their dues long after the SBS cases were dispensed with. The officials keep citing various grounds by reason of which the payments are yet to be made.

SBS advocates looking to supplement the meager fees, they are paid by the State, ask for additional funds from relatives of accused persons. SBS advocates, in some instances, have undertaken industrial action by going on strike mid-way the session, in order to force their way into receiving higher payments.

4. Innovations, Best Practices and Recommendations

4.1 Innovations

Some jurisdictions have come up with original solutions to the challenges in the implementation of the SBS as explained below.

- ❖ The High Court in Kampala, to resolve the matter of finding advocates available to conduct state briefs, requires lawyers willing to do **so to express an interest in doing** so via a formal written request. This has created a “pool” of lawyers who may be called upon from time to time.

- ❖ In order to address some of the complications (as previously explained) of the **session model, the Judiciary has come up with the mini-session model.** The latter is a monthly arrangement in which a resident Judge handles 10 cases. Over this four-week period, two to three cases are disposed of each week. Because the cases are fewer, the prosecution and SBS advocates are far better prepared to handle them. As such, this model perpetuates the quest for equitable justice, relieves the “pressure” on all stakeholders in the justice process and could lead to better quality of service and effective access to justice for accused persons in totality, eventually. However, these should be time-restricted and all stakeholders should be convened with the same work ethos and demands of the nominal, Session model. The mini-session model is especially advantageous for numerous accused persons who plead guilty (cheaper since no witnesses are summoned). This may form a basis for these mini-sessions by clustering or “plead-guilty” cases for resolution together at once.

4.2 Best Practices

- The Consultant established that the archetypal/ideal SBS process is best exemplified in the Supreme Court of Uganda[↔]. There, *every convict has their own advocate*. Before a Court Session is convened, the Judge, the convicts and selected lawyers meet for a discussion of the proceedings. The *convicts are free to refuse any of the advocates and ask for another to take their place*. The *advocate so chosen is granted sufficient time to prepare for the case and given an allowance to enable them visit the convict in prison* (these practices were originated by a former Registrar at the Supreme Court, Her Worship Henrietta Wolayo).
- The Judges also demand a very high quality of delivery from the advocates given that it is an appellate Court. The advocates who appear before the court must, evidently, offer good representation of their clients in order to be allowed to re-appear before the Supreme Court in future. It can be considered that the prestige associated with doing so is also a fitting motivation.
- *The advocates are paid immediately after the conclusion of the case.*

[↔] When an SBS matter is resolved in a Trial Court in such a manner as to leave the defendant dissatisfied, they are entitled to a state-sponsored appeal process in an Appellate Court.

In the Supreme Court:

Every convict has their own advocate

The advocate is granted sufficient time to prepare for the case and given an allowance to enable them visit the convict in prison

The advocates are paid immediately after the conclusion of the case

- The practice of **hiring an advocate to offer “full-time”** services to accused persons “as and when” they come into the SBS pipe-line is pivotal to dispensing timely SBS service. The Consultant determined that magisterial courts in Fort Portal, Mbale and Buganda Road Courts set aside a day in a given week where all SBS cases are heard and accused persons are defended by a “full-time” advocate paid by the Court. Not only is this a fitting intervention but it also offers “boots-on-the-ground” insights into the practice of an ideal SBS process. However issues to do with the number of cases in relation to the advocate’s remuneration affect the quality of service.
- The **Justice Centres Programme has** developed some practices that would add value to the SBS initiative especially if the coverage of these cases were expanded to include civil matters as well. The usage of a Means and Merit Test (MMT) to assess accused persons and the offer of holistic legal services spanning, legal advice, representation and counseling are critical elements of the legal aid process.

4.3 Recommendations

The Consultant also gathered recommendations from the various respondents of the qualitative surveys on the SBS as follows:

- The advocates suggested a **comprehensive overhaul** of the payment structure of the SBS. They suggested a differentiation of amounts to be paid for their labour and those associated with nominal expenses (such as stationery, transport, research, witness-related expenditure, among others). They also suggested that this payment should be made in advance. For control purposes it is proposed that a 50% down-payment of the agreed fees be paid to the Advocates at the commencement of the criminal session.
- On the whole most advocates were content with a payment of UGX 300,000 per case in Magistrate Courts and UGX 500,000 – 1,000,000 per case in the higher courts (that is the High Court and the appellate courts) for their labour. The courts should meet the nominal expenses, it was suggested. However huge SBS fee increases would increase cost of criminal justice and reduce the rate of case disposal.
- The Consultant recommends the following rates in higher Courts based on a balance of submissions from both judicial officers and advocates interviewed.

EXTENT OF TRIAL PROCESS	PAYMENT
Full trial and No Case to answer	UGX 500,000
Plea of Guilty	UGX 250,000
Nolle Prosequi	UGX 250,000
Mention	UGX 100,000

***These fees should form the bench mark against which other actors (like assessors, clerks, et cetera) would be paid as a percentage of the total sum paid to lawyers whenever the trial comes to a close.*

A minimum total of UGX 2,000,000 should be given to the Chief Magistrate Court every month to allow some flexibility as to the number of advocates chosen to handle cases in his or her court. A flat monthly rate of UGX 1,000,000 is recommended for fees payable to a stand-by advocate on state brief in Chief Magistrate courts (this rate is similar to a State Attorney’s monthly salary). This emolument should be paid after offering the services but a “man in the loop” counter-signatory should be introduced in the entire value chain in order to ensure advocates are paid.

The Uganda Law Society would work with the Chief Magistrate Courts to make sure advocates are held to account regarding their delivery in SBS cases. The Law Council would also be engaged as a valued partner in keeping “errant” advocates in check.

- Raise the profile, prioritization and importance of legal representation to the status of transport refund for witnesses or per diem for court officials involved in criminal Court Sessions. In some circuits, advocates complained that payments to advocates are routinely relegated to the tail end of the High Court sessions at which time session funds have invariably run out. This has tended not only to

demoralize the advocates but also diminished confidence in the court-session management.

- In order to improve the quality and effectiveness of representation, it was suggested that a 360 degrees feedback mechanism be put in place for many of the stakeholders in the SBS. For example, in the case of advocates, paralegals can interview prisoners about how their SBS advocate performed. To that extent, a system of checks and balances to stem the abuses listed before can be instituted. The Registrar in the local Circuit of the Judiciary would be in charge of this feedback process and uses this to offer redress (referrals to the Law Council in adverse cases could be undertaken).

- Within the current set of circumstances, it was explained, several “**small, incremental**” changes can be undertaken to improve the quality of service delivery under the SBS. For example, it was noted, cause-listing cases for trial as early as possible (one to two months before the hearing) and scheduling witnesses accordingly can enable the SBS advocates and prosecutors prepare much better and as a result facilitate the delivery of adequate and effective justice to accused persons. Bringing about early interaction between SBS advocates and accused persons could also be a mitigating factor in reducing the prevailing level of mistrust between them during the trial process. Possible points at which SBS could be introduced into the current prosecution and judicial practice include: a) at the first point of contact with law enforcement while making statements at the police; and b) during the remand period before trial has begun.

- It was also suggested that SBS participation by advocates could be introduced as one of the ways for them to earn **Pro Bono (PB)** points for renewal of their annual Practicing Certificate (PC). In this way, a larger pool of SBS advocates could be made available for courts to co-opt in the SBS scheme and it would in turn spread out expertise to a larger pool of lawyers. This can be used, to great advantage, in rural/upcountry settings where advocates may earn PC points for representing a number of indigent persons in lieu of workshop-seminar-related points they would normally accrue from attendance of training in Kampala. They should not earn professional fees but their costs should be met whenever they handle SBS cases.

- **A radical departure** from any minimalist redresses was also presented. Some respondents suggested the establishment of an independent, state-funded entity, similar to the DPP, to run the SBS scheme. Since SBS is a component of Legal Aid, it was suggested, Justice Centres which have already successfully piloted provision of legal aid to indigent persons in various districts, would be a good model to adopt for delivery of the SBS scheme. This would work “in tandem” with the Para-legal services currently offered to prisoners countrywide. For purposes of *resourcing*, the new institution could adopt elements of the *resourcing strategies* of the Legal Aid Project of the Uganda Law Society by co-opting lawyers across the country in SBS on a pro-bono basis. It was suggested that the pilot programme areas could be expanded to extend nation-wide coverage. However for this proposal to succeed, the capacity of the existing Justice Centre outfit would need to be greatly enhanced through recruitment of staff exclusively

dedicated to the defence of eligible accused persons and to ensure national coverage of the SBS.

The consultant's submits that short-term, mid-term and long-term remedies are necessarily to "heal" the troubles of the SBS initiative. The consultant suggests the following:

REMEDY TIME- FRAME	RECOMMENDATION	ACTION REQUIRED
SHORT- TERM	<p>1. Every accused person charged with a criminal offence, which attracts a maximum penalty of death or imprisonment for life, shall be provided with legal counsel paid for by the state at first contact with the judicial system (<i>first mention</i>) stage right up to the end of the of the trial (closer collaboration with Para-legal services may be necessary); The scope of activities for SBS lawyers should be increased to include legal advice and counselling not just court representation.</p>	<p>His Lordship The Hon Chief Justice will issue a Practice Direction to give effect to these short- term recommendations.</p>

	<p>2. The Chief Magistrate will hold primary responsibility for ensuring that the SBS arrangement is in place when an eligible Accused Person comes into contact with judicial system</p> <p>3. In order to smoothly operationalize the above, the Registrar High Court will implement a sensitization program of all JLOS stakeholders through the District Chain-linked Committees (DCCs).</p> <table border="1" data-bbox="288 831 733 1230"> <thead> <tr> <th data-bbox="288 831 538 935">EXTENT OF TRIAL PROCESS**</th> <th data-bbox="538 831 733 935">PAYMENT</th> </tr> </thead> <tbody> <tr> <td data-bbox="288 967 538 1031">Full trial and/or No Case to answer</td> <td data-bbox="538 967 733 1031">UGX 500,000</td> </tr> <tr> <td data-bbox="288 1062 538 1094">Plea of Guilty</td> <td data-bbox="538 1062 733 1094">UGX 250,000</td> </tr> <tr> <td data-bbox="288 1126 538 1158">Nolle Prosequi</td> <td data-bbox="538 1126 733 1158">UGX 250,000</td> </tr> <tr> <td data-bbox="288 1190 538 1222">Mention</td> <td data-bbox="538 1190 733 1222">UGX 100,000</td> </tr> </tbody> </table> <p data-bbox="288 1254 733 1382"><i>** At his or her discretion, the Judge may prescribe an amount higher than UGX 500,000 to the advocate in light of extenuating developments during the trial</i></p>	EXTENT OF TRIAL PROCESS**	PAYMENT	Full trial and/or No Case to answer	UGX 500,000	Plea of Guilty	UGX 250,000	Nolle Prosequi	UGX 250,000	Mention	UGX 100,000	<p>The Chief Registrar will inform the Chief Magistrates accordingly</p> <p>The JLOS Senior Technical Advisor will notify JLOS Institutions about the proposed changes.</p>
EXTENT OF TRIAL PROCESS**	PAYMENT											
Full trial and/or No Case to answer	UGX 500,000											
Plea of Guilty	UGX 250,000											
Nolle Prosequi	UGX 250,000											
Mention	UGX 100,000											

	<p>4. Standardized, annually-reviewable, legal fees will be payable to SBS Advocates who are engaged to provide legal services, in High Courts Circuits across the country. The following payments are deemed commensurate and fitting under the prevailing conditions:</p> <p>5. Advocates on state brief should meet the client at least 7 working days before commencement of the trial. The Uganda Law Society should monitor adherence to this practice by advocates. The pre-hearing conference should happen at least 30 days to the commencement of the Session (the Chief Magistrate and the Registrar should ensure this happens).</p>	<p>The Registrar, High Court will inform all Registrars in the High Court Circuits accordingly</p> <p>The President Uganda Law Society will inform Advocates accordingly</p> <p>The Registrar High Court will inform Registrars in the High Court</p>
--	--	--

	<p>6. Clients will provide feedback on the performance of SBS Advocates immediately, but not later than 14 days, after the completion of a criminal case. This is to be facilitated by Para Legal and Prison Officers and the responses submitted to the Registrar. The Registrar will avail feedback forms at the end of the trial.</p> <p>7. Magistrate Courts will ensure that when the accused person is produced for the first time in cases eligible for SBS services the scheduling of plea taking, hearing dates or other preliminary applications is in such a way that both the interests of the accused person are safeguarded and the advocates time and resources are optimally utilized.</p> <p>8. Registrars will constitute a</p>	<p>Circuits accordingly</p> <p>The Chief Registrar will inform Chief Magistrates accordingly</p> <p>The Chief Registrar will inform all Registrars accordingly</p>
--	--	--

	<p>team to build synergies during Session Conferencing. Advocates and all other session stakeholders should be represented on the team which should meet up to 30 days before the commencement of the Session.</p> <p>9. As far practicable as it is, SBS Advocates should be drawn from as close to the geographical location of the Criminal Session as possible so as to minimize the <i>costs of access to justice</i>.</p> <p>10. Payment of Advocates' fees will be prioritised to the same degree as allowances for court officials (where possible, a payment for prison visits should be made to SBS Advocates 30 days to the commencement of the session; the fees should be paid after delivery of the service). However, payment of fees should be done not</p>	<p>The Registrar High Court will inform Registrars accordingly</p> <p>The Registrar High Court will inform Registrars accordingly</p>
--	--	---

	later than seven days after conclusion of the case.	
MID-TERM	<ul style="list-style-type: none"> i. Entrench the practice of conducting mini Criminal Sessions on a monthly basis for both the High Court and Chief Magistrates Courts. ii. Means and Merit Test (MMT) in other serious criminal cases when, and if, coverage of SBS is expanded. iii. Incorporation of the Justice Centres Project as part of a mixed-model Legal Aid initiative (evolution of the SBS) or a full-bred, regionally-restricted, full-time Public Defender initiative. 	<p>The Registrar High Court will implement this.</p> <p>Both these (ii and iii) are subject to adoption of the Legal Aid Policy</p>
LONG-TERM	1. Establish an independent organization to coordinate provision of legal	JLOS Decision

	<p>representation to eligible accused persons. The organization should develop national coverage with heavy local content so as to cut down costs associated with moving advocates around as well as interpretation.</p>	
--	--	--

5.0 Conclusions

The Judiciary Strategic Implementation Plan III of 2012 (SIP III, 2012) has defined its vision as *Justice for All* and states, “On the whole, Justice, Law and Order Sector (JLOS) successes of the past decade are constituted in law reform and institutional efficiency leading to increased responsiveness to user needs; continued progress in sector development; and the implementation of innovations to expand JLOS services to reach out to specific groups with limited access to justice.” Shortcomings as a result of inadequate funding of the SBS initiative highlight the need to bolster JLOS objectives and outcomes for accused persons in the SBS to, more effectively, support the Judiciary’s vision enunciated in its SIP III policy document.

As in South Africa’s case, the Consultant submits, Public defender

models are considerably cheaper than the Judi care system (SBS replicas) by up to 40 percent.

Uganda, as one of the countries that rely almost *exclusively* on the Judi care model should seriously consider introducing partial public defender schemes, in light of budget constraints, in areas where the courts process substantial numbers of criminal cases.

A full-fledged network of public defender offices is likely to be too expensive for small and developing countries, but the South African experience has shown that justice centres that combine public defenders with intern public defenders can be established for a modest *per capita* expenditure on legal aid by the state. Some African countries could probably establish justice centres incorporating public defenders or intern public defenders in the larger cities and towns, supplementing them with Judi care in other areas.

At the moment, the cost per case (based on the entire Budget of the Criminal Session) during a Session is USD 384 (using an exchange rate of UGX 2,600 for each USD). The South African case of USD 68 in the PDO system suggests that a comprehensive overhaul of the current SBS initiative into a Public Defender model may not attract a forbidding cost penalty. In fact, it is a cheaper model by a cost factor of more than 100 percent.

The SBS, presently, does not truly reflect what it was intended to do and robs many of the people it should help of justice. An overhaul of its operation is long overdue though step-wise changes will be more practicable given prevailing budgetary constraints.

6.0 Annex

6.1 Legal Provisions about State Briefs

Section 55 The Trial on Indictment Act, Cap. 23 states: “a person accused of an offence before the High Court should be defended by an advocate, at his or her own expense as of right. Nonetheless, because the majority of the cases tried in High Court are of a capital nature, and more than likely lead to life imprisonment or the death penalty, this means that all accused persons appearing in the High Court must be defended by an advocate either of their choice at their own expense or by one assigned to them by the state at the expense of the state, as provided for under Article 28 (3) e of the 1995 Constitution of Uganda. Registrars of Courts must confirm that accused persons who cannot afford counsel expenses obtain such assistance at the expense of the state especially for cases in the High Court, Appeal Court and the Supreme Court and those that call for life imprisonment in Magistrates' Courts which extends through all the stages of post-conviction like appeal, revision, and review of decisions court decisions.”

Section 2 of The Poor Persons Defence Act, Cap 20 provides: “where it appears for any reason that it is desirable in the interests of justice, that a prisoner should have legal assistance in the preparation and conduct of his or her defense, at his or her trial and that the means of the prisoner are insufficient to enable him or her to obtain such aid. Upon committal of the prisoner for trial, or at any time after reading the summary of the case submitted at the committal proceedings, a certifying officer may certify that the prisoner ought to have the legal help, and if an indictment is filed against the prisoner and it is possible to procure an advocate the prisoner is entitled to have an advocate assigned to him or her.”

Section 7 of this same Act provides that the remuneration of any advocate assigned is payable from the monies provided by Parliament and is determined by the trial Judge. In determining the amount of remuneration the trial Judge is guided by the complexity of the case and the duration of the trial proceedings.

However, these sections only apply to criminal proceedings and do not apply to proceedings including civil and family cases and the provision of legal support under this Act is dependent on the availability of the Advocate. In the event that the court is not able to procure one, the accused is not able to proceed with his or her case on the grounds that there is no advocate to represent him or her.

Section 158 of the Magistrates' Court Act, Cap 16 provides for any person accused of an offence before a Magistrates' Court to be defended by an advocate as of right and for those cases which attract life imprisonment the state ought to provide an advocate at its cost under the state brief system.

Under the Advocates Act, Cap. 267 as amended by Act. No. 27 of 2002 and its Regulations, the Uganda Law Council is mandated to exercise general supervision and control over the provision of legal assistance and advice to needy persons. To this end, the Law Council developed **The Advocates (Legal Relief Services to Indigent Persons) Regulations, No. 12 of 2007** to provide for rules governing the provision of legal assistance this is an endorsement of state briefs. In 2002, the Advocates Act was amended to provide for mandatory pro bono legal services to indigent persons by all advocates in Uganda. In order to put the above provision into effect, the Law Council developed **The Advocates (Pro bono Services to Indigent Persons) Regulations No. 39 of 2009**. The Regulations provide for the

requirement of all advocates in Uganda to give pro bono services for at least 40 hours in a year or pay money in lieu thereof. It specifies the nature of pro bono services and the area of law in relation to which professional services can be rendered. It empowers the Law Council to establish a pro bono scheme and sets up a Board of Trustee to manage the same. Where the board determines that an advocate has neither offered professional services for the required hours nor paid money in lieu thereof, the practising certificate of that advocate would not be renewed.

The amendment of the Advocates Act in 2002 also introduced a new provision to allow any person undergoing instructions for the acquisition of professional skill or experience for the purpose of enrollment to have a right of audience in court provided he/she appears with an advocate possessing a valid practicing certificate. **The Advocates (Student Practice) Rules, 2004** was developed by the Law Council to put into effect this provision. Under these Regulations, Post Graduate Bar students are allowed, as part of their training, to provide legal aid by representing juvenile clients in Magistrates' Courts under guidance of a senior, practising lawyer.

6.2 State Brief Review Interview Questionnaires

ACCUSED PERSONS

NAME:

AGE:

CHARGE:

SENTENCE:

- Did the government lawyer come and see you in prison before the day of the hearing or at any other time?
- Did the government lawyer speak your language?
- Did the government lawyer explain what you are accused of and what will happen at court?
- During the hearing, did the government lawyer explain to you what is going on?
- Did you give the government lawyer any money?

ADVOCATES

- What is your opinion of the State Brief Scheme (SBS)?
- Do you feel you are able to offer good services under the current SBS arrangement?
- What would you need in order to offer better services under SBS?
- What are the characteristics of the people you have helped under SBS?

- What are your recommendations on pay (amount and style, etc) and workload?
- Did you see your client before the day of the hearing or at any other time (apart from the time you appeared in court)? If so, how many times?
- How much time did you spend in preparing for the case?
- How do you ensure that your client understands the legal procedures (“what is happening”) at court?

KEY INFORMANT INTERVIEWS

BACKGROUND INFORMATION

What is your job title?

Where is your station?

For how long have you been in this role?

THE STATE BRIEF SCHEME PROCESS

- ✓ Please offer some explanation on the legal rationale for the State Brief Scheme (SBS)?
- ✓ What are your criteria for selecting a defense lawyer for an accused person on SBS?
- ✓ When is SBS considered to have commenced?

At the reading of the charge: YES NO

Applying for bail: YES NO

At committal proceedings: YES NO

At setting of the hearing date: YES NO

At the commencement of the hearing: YES NO

At commencement of defence: YES NO

At judgment: YES NO

At sentencing: YES NO

- ✓ Who are the various parties involved in a typical SBS process?
- ✓ What is the role of each party above?
- ✓ What are the time-lines for results delivery under SBS, if any?

THE OPERATION OF THE STATE BRIEF SCHEME (SBS) PROCESS

- ✓ What are the expectations of an ideal SBS process?
- ✓ What are the fail-safes if procedures in SBS are not followed?
- ✓ What are the observed challenges in the operation of the SBS?

THE FUTURE OF STATE BRIEF SCHEME (SBS) OPERATION

- ✓ What are the current challenges in the SBS process?
- ✓ How can the current challenges in the SBS be addressed?
- ✓ What are the missed opportunities in the operation of the SBS?
- ✓ Which other Public Defenders Systems can be learned from?

6.3 List of Interviewees

Advocates
<ul style="list-style-type: none">• Uganda Law Society (Executive Director and others)• Selected private practitioners• CSOs with legal causes
The Government
<ul style="list-style-type: none">• Judiciary officials (High Court Judges, Registrars and Chief Magistrates)• Other types of state-run Legal Aid schemes (Justice Centres et cetera)• Director of Public Prosecutions (Resident State Attorneys in selected field sites)• Uganda Police Force (District CID Officers)• Uganda Prisons Service (District Prison Officers, Para Legals and Accused Persons)
Donors and Others
<ul style="list-style-type: none">• DANIDA (Senior Advisor on Good Governance)• JLOS Development Partners' Group• The General Public and others (Court Assessors, Randomly chosen individuals and District Leaders)

DANIDA

**Registry of Planning and Development/
DANIDA Judiciary Support Programme,
Old Traffic Court Building, Plot 6 George Street,
P.O.Box 7645, KAMPALA
Tel: 0414 259 511
Email: rpd@judicature.go.ug**