

Legal Aid

Overview

Legal aid is a critical component to ensuring access to justice. Indeed, it is a human right in criminal cases and a component of the fundamental right to a fair trial as recognized in the International Covenant on Civil and Political Rights. Whether in criminal or civil matters, access to legal aid for individuals with limited means or who are in situations of vulnerability is critical to achieving fair and just outcomes. The provision of legal aid services reinforces the accountability of the justice system and safeguards the rights of individuals.

The provision and scope of legal aid services differs across countries. In some countries, legal aid is a public service provided by government-funded lawyers or private lawyers who are contracted with or appointed by a public authority to provide their services. In other instances, legal aid is provided by civil society organizations – sometimes funded by the government and sometimes by nongovernmental sources. Law school clinics, community paralegals, and community leaders might also provide services, as might private sector lawyers offering legal help *pro bono*. While all of these actors play important roles and can provide crucial services in their communities, this section will focus on legal aid providers in the context of the formal legal system.

The transparent and accountable administration of legal aid can help strengthen these services and ensure that they are accessible to all who need them. For example, transparency around the criteria that legal aid providers' use to determine who is eligible for their services (also called a means test) allows individual beneficiaries, civil society groups, and the government to monitor and ensure equity in the provision of these services and see whether sufficient resources have been allocated to them.

Likewise, as with other justice system stakeholders, legal aid providers should be independent and subject to rigorous standards of professional conduct. If they fail to meet such standards, disciplinary complaints should be promptly investigated and adjudicated in accordance with professional codes of ethics before an impartial body and subject to judicial review (see Principles 12 and 13 of the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, which also appear later in this chapter). Grievances or complaints related to a legal aid provider's conduct and any disciplinary proceedings that might ensue should be handled in a fair and transparent process.

Recommendations and Sample Reforms

The following list includes measures countries can take to improve access to and the quality of legal aid.

- **Establish or strengthen the legal aid authority.**¹ Create an independent legal aid authority that can establish, fund, staff, regulate, and evaluate the legal aid scheme. Consider a multistakeholder approach, bringing in legal professionals, civil society, and representatives from underserved communities. The authority should establish a body that can impartially investigate complaints against legal aid providers and put in place a suitable mechanism for evaluating and improving the quality of services.
- **Establish training for legal aid providers.**² Fund and launch training programs for legal aid lawyers, paralegals, and pro bono volunteers to improve their legal skills and knowledge to better understand the needs of low-income and underserved individuals. Providers should be trained on their professional obligations and relevant codes of conduct.
- **Establish minimum practice standards for legal aid providers.**³ Establish and publicly disclose minimum requirements for training and practical experience that legal aid service providers must meet. Establish clear disciplinary procedures for violations of these codes. All procedures should be developed in consultation with legal aid providers and made public in advance of their use.
- **Establish a fair means test for services.**⁴ When a country uses a means test to determine eligibility for legal aid, the criteria should be widely publicized and consistently followed. Persons who are denied services should have the right to appeal the decision. According to the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, people in urgent circumstances, such as police stations and detention centers, or in courts should be provided legal help even when their eligibility is being determined. Importantly, children should always be exempt from a means test.
- **Expand provision of quality legal aid.** Expand access to quality civil and criminal legal aid to hold the state accountable to respect citizens' rights by giving citizens' access to legal help and information. This may include identifying communities or areas with disproportionate legal needs or that traditionally lack access to legal aid, expanding the provision of legal aid for problems that might not have adequate funding, and developing partnerships with civil society organizations offering legal assistance. Empower legal aid organizations to address the consequences of coming into conflict with the law, such as job loss and homelessness. Increase

Namati works with inspiring groups in many countries, including Sierra Leone, to deploy front line legal advocates. Photo by: Aubrey Wade/Namati

funding to existing legal aid services, and establish new offices and services to reach isolated or underserved communities.

- **Publicly report on legal aid access.**⁵ Countries that track how many people go unrepresented each year at all levels, along with how many people qualify for legal aid and what percentage actually receive these services, will be able to better target legal aid expansion and show progress.
- **Conduct client satisfaction surveys.** The satisfaction of beneficiaries should be a factor in assessing the overall quality of legal aid schemes.

- **Deepen cooperation to address legal needs.**⁶ Launch working groups composed of government and civil society members to identify legal reforms needed to improve justice delivery systems through legal assistance and the courts. Strengthen and institutionalize partnerships, for example between the judicial system, legal aid providers, CSOs, academia, social services, the health-care system, and law enforcement, when appropriate, to better serve underserved communities.
- **Make funding and budgets transparent.** Budgets should be made publicly available down to the individual program level. Expand and diversify financing for legal assistance at national and subnational levels, including public sector partnerships.

LESSONS FROM REFORMERS

Indonesia's effort to increase the availability and quality of legal aid

[The Indonesian Legal Aid Foundation](#) ("ILAF") has been providing legal aid in Jakarta since the 1970s. Their services increased dramatically in the 1980s with assisting clients who were not only poor but also marginalized and oppressed.⁷ The ILAF's services include litigation, education and empowerment of community members, research, and policy advocacy. In recent years, ILAF has received support from the Open Society Foundations to enhance its provision of legal aid. In 2018, Indonesia committed to creating regulations that guarantee funding for legal aid organizations, allowing them to expand their reach to more remote and impoverished communities while simultaneously strengthening the awareness and legal capacity of individuals who are poor and marginalized.

LESSONS FROM REFORMERS

United States' efforts to develop national-level indicators on Sustainable Development Goal 16.3

In June 2016, the United States committed to developing national-level indicators on Sustainable Development Goal (SDG) 16.3 (the call to ensure equal access to justice) through a working group connected to the White House Legal Aid Interagency Roundtable (which was a separate OGP [access to justice commitment](#)⁸) to discuss data collection on access to justice and legal aid, including its impact on federal programs that advance efforts to promote access to health and housing, education and employment, family stability, and public safety. The working group was tasked with assisting the US government in identifying and developing national-level indicators to track achieving Goal 16, SDG to promote the rule of law and ensure equal access to justice for all. The activities of the working group are summarized in this [factsheet](#).⁹

Other OGP Commitments

Burkina Faso: Increase the availability of legal aid for vulnerable community members ([2017–2019](#)).

Colombia: Launch a web portal and mobile application called LegalApp to facilitate public access to information on justice services ([2015–2017](#)).

North Macedonia: Establish four access-to-justice centers to provide free legal aid to marginalized communities ([2018–2020](#)).

Sierra Leone: Expand community-based justice services and increase transparency in local-level structures ([2019–2021](#)).

South Africa: Integrate and strengthen Community Advice Offices as a grassroots and permanent part of the wider justice system ([2016–2018](#)).

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

The *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*,¹⁰ adopted in December 2012 by the United Nations General Assembly, is a nonbinding legal document that can guide countries on how to build, fund, and structure legal aid systems, primarily in the criminal justice context. The *UN Principles and Guidelines* is the first tool dedicated exclusively to legal aid and based on international human rights law, as well as good practices in strengthening access to legal aid in criminal justice from all over the world. While they recognize that “states employ different models for the provision of legal aid,” they can be effective tools in strengthening and growing fairness and access to services in existing criminal legal aid systems throughout the world. Since their adoption, the UN Commission on Crime Prevention and Criminal Justice has continued to encourage governments to strengthen the provision of legal aid through peer-to-peer exchange and collaboration.

The 14 principles include the following:

- Principle 12. – Independence and protection of legal aid providers: *States should ensure that legal aid providers are able to carry out their work effectively, freely and independently. In particular, States should ensure that legal aid providers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel, to consult and meet with their clients freely and in full confidentiality both within their own country and abroad, and to freely access prosecution and other relevant files; and do not suffer, and are not threatened with,*

prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

- Principle 13. – Competence and accountability of legal aid providers: *States should put in place mechanisms to ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work, including the gravity of the offences dealt with, and the rights and needs of women, children and groups with special needs. Disciplinary complaints against legal aid providers should be promptly investigated and adjudicated in accordance with professional codes of ethics before an impartial body and subject to judicial review.*

The 18 guidelines provide more practical guidance and detail on the principles, such as how to determine eligibility for legal aid and how countries can establish, fund, staff, and regulate legal aid schemes, including the following:

- Guideline 1. Provision of legal aid: Recommends that States make their eligibility means tests widely publicized and offer an opportunity to appeal ineligibility. In addition, the guideline encourages that persons whose means exceed the limits but who otherwise cannot afford assistance be given assistance. Persons who require legal help urgently – such as at police stations, detention centers, or courts should be provided preliminary legal aid while their eligibility is being determined. Children are always exempted from the means test.

- Guideline 11. Nationwide legal aid system: Recommends that states establish a legal aid body or authority to provide, administer, coordinate, and monitor legal aid services. That institution should be independent and have the necessary powers to establish and oversee legal aid services, including the handling of complaints. The development of a long-term strategy on legal aid in collaboration with justice sector stakeholders and civil society organizations is recommended.
- Guideline 15. Regulation and oversight of legal aid providers: Recommends that states, in cooperation with professional associations, set criteria for accreditation of legal aid providers; ensure that providers

are subject to professional codes of conduct with appropriate sanctions when infractions occur; establish rules prohibiting legal providers from requesting payment from beneficiaries of legal aid, except when authorized to do so; ensure disciplinary complaints against providers are reviewed by impartial bodies; and establish oversight of providers to prevent corruption.

For further guidance and details on tools and approaches, see the UNODC/UNDP [handbook on Early Access to Legal Aid in Criminal Justice Processes](#)¹¹ and the [UNODC Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes](#).¹²

Endnotes

¹ *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (New York: United Nations, 2013), https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf. Principle 13 and Guideline 15.

² Ibid. Principle 13 and Guidelines 11 and 13.

³ Ibid. Principle 13; Guidelines 11, 15, and 16.

⁴ Ibid. Guideline 1.

⁵ Ibid. Guideline 17.

⁶ Ibid. Guideline 16.

⁷ The Indonesian Legal Aid Foundation, Namati, accessed September 1, 2020, <https://namati.org/network/organization/indonesian-legal-aid-foundation/>.

⁸ “Expand Access to Justice to Promote Federal Programs (US0087),” (OGP, 2015), <https://www.opengovpartnership.org/members/united-states/commitments/US0087/>.

⁹ White House Legal Aid Interagency Roundtable, “Efforts to Identify National Indicators on Access to Justice,” January 2017, <https://www.justice.gov/ati/file/926686/download>.

¹⁰ *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (New York: United Nations, 2013), https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

¹¹ United Nations Office on Drugs and Crime (UNODC), *Early Access to Legal Aid in Criminal Justice Processes: a Handbook for Policymakers and Practitioners* (New York: United Nations, 2014), https://www.unodc.org/documents/justice-and-prison-reform/eBook-early_access_to_legal_aid.pdf.

¹² United Nations Office on Drugs and Crime (UNODC), *Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes* (Vienna: United Nations, 2019), https://www.unodc.org/documents/justice-and-prison-reform/HB_Ensuring_Quality_Legal_Aid_Services.pdf.

Resources and Partners

Resources

- Open Government Partnership Justice Policy Series, [Part 1: Access to Justice](#) (Sept. 2019)
- The International Legal Foundation's 2016 Report [Measuring Justice](#) provides recommendations for defining and evaluating criminal legal aid programs.
- [Justice for All: Report of the Task Force on Justice](#) (2019)
- World Justice Project's 2019 [Global Insights on Access to Justice](#) report and interactive portal
- United Nations' [Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#) and the UN Office on Drugs and Crime 2016 [Global Study on Legal Aid](#)

Organizations

- [Namati](#)
- [National Legal Aid and Defender Association](#) (United States)
- [Open Society Justice Initiative](#)
- [Pathfinders for Peaceful, Just and Inclusive Societies](#)
- [Penal Reform International](#)
- [The International Legal Foundation](#)
- [United Nations Development Programme](#) (UNDP)
- [United Nations Office on Drugs and Crime](#) (UNODC)
- [World Justice Project](#)

This module is part of the Justice Policy Series Part II, Open Justice paper which can be found [here](#).

