

Committee: Social Humanitarian and Cultural GA3

Topic: The question of legal aid in promoting access to justice

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Position: Co-Chair

Personal Introduction

Dear delegates,

My name is Ines Saltiel, and I will be serving as a Co-chair of GA3. I would like to welcome you to this year's CS MUN conference. I hope to inspire you, like I was inspired by my chairs in past conferences. I am passionate about helping others, making my voice heard and making a difference, which is why I am interested in global affairs and human rights. Through MUN conferences, I have met such inspiring and driven teenagers. For this reason, I am dedicated to making youth voices heard, as I believe we should have an opinion on the future that we will live in.

In this study guide, you will find all the necessary information concerning the question of legal aid in promoting justice. Nevertheless, I encourage you to research, engage yourself and understand your country's stance so as to make this experience as interesting as possible. If you need any clarification about the content of the study guide or have any questions you want to ask prior to the conference, feel free to contact me. I cannot wait to meet all of you!

Yours truly,

Ines Saltiel

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Topic Introduction

Equality in law through equal treatment is a fundamental human right. A prerequisite for the upholding of this right in our justice system is access to legal aid. However, legal aid is not always accessible to those who need it. Through the examination of legal cases in history, it becomes obvious that lack of access to adequate legal aid has severe impacts on the livelihoods of those affected. Examples such as those of women unable to gain custody in cases of domestic abuse highlight the importance of the issue.¹

Such a lack of availability gives way to more long-term issues and a vicious cycle of poverty, especially for underprivileged groups such as racial & ethnic minorities. People belonging to these populations are the first recipients of prejudices and racism; due to systemic issues, they largely lack sufficient legal representation, which can deprive them of their right to a fair trial. Consequences of this phenomenon include a perpetuation of imprisonment and in turn poverty. Thus, global focus on the issue is absolutely necessary; according to the World Justice Project, an estimated 5 billion people have unmet justice needs, including daily injustices, and injustices in front of the law.²

Persida Acosta Chief Public Attorney's Office, in the Philippines states, "Legal aid is a fundamental human right. Whenever someone is deprived of his right to counsel and he feels that he is a victim of injustice, that person may run away to the mountains or turn into a rebel."³ We have to help everyone who seeks justice through means such as legal.

¹ "I Couldn't Fight to Get My Children Back': the Impact of Legal Aid Cuts." *The Guardian*, Guardian News and Media, 27 Dec. 2018, www.theguardian.com/law/2018/dec/27/i-couldnt-fight-to-get-my-children-back-the-impact-of-legal-aid-cuts.

² "Measuring the Justice Gap." *WORLD JUSTICE PROJECT*, 6 Feb. 2019.

³ UNODC. "Global Study On Legal Aid." Oct. 2016.



Lack of proper legal aid is synonymous with people's inability to navigate the justice system, make informed decisions and understand & defend rights. The notion of legal aid is linked to the key UN Principles and Guidelines, guidelines on access to legal aid and criminal justice; although those are mainly viewed in the context of criminal justice. Ensuring fundamental fairness and ensuring trust in justice should apply across all spheres of justice.

Definition of key terms

Access to justice

The ability of individuals to acquire a fair trial, abiding by human rights standards. Access to justice can no longer be considered as access when citizens fear the system, when the justice system is financially unapproachable; when individuals have no legal representation; when they are not aware of their rights.⁴

Legal Aid

“Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system.”⁵ Legal aid is important in promoting justice by ensuring equality before the law, the right to counsel and the right to a fair trial, utilizing duty lawyers, community legal clinics and the payment of lawyers to deal with cases for individuals who are entitled to legal aid. “Legal aid is essential to guaranteeing equal access to justice for all”⁶ expressed by article 6.3 of the European

⁴ “Necessary Condition: Access to Justice.” *United States Institute of Peace*, 4 Jan. 2010, www.usip.org/guiding-principles-stabilization-and-reconstruction-the-web-version/rule-law/access-justice#:~:text=283%20Access%20to%20justice%20is,compliance%20with%20human%20rights%20standards.

⁵ “Definitions for LEGAL AID LEGAL AID.” *What Does LEGAL AID Mean?*, www.definitions.net/definition/LEGAL%20AID.

⁶ “Definitions for LEGAL AID LEGAL AID.” *What Does LEGAL AID Mean?*, www.definitions.net/definition/LEGAL%20AID.



Convention on Human Rights regarding criminal law cases, especially for those who cannot afford it.

Justice Gap

“The justice gap is the number of people who have justice needs and who are not able to obtain justice.”⁷

Justice

“The UN views justice as ‘an ideal of accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs.’ As a concept, justice is rooted in all national cultures and traditions, and its administration extends to both formal judicial mechanisms and informal dispute resolution mechanisms.”⁸ The purpose of the legal system is made to protect the people and keep order across the country and world. Nonetheless, the legal system is plagued with issues, including legal aid cuts, and inaccessibility to marginalized groups and people living in poverty.⁹

Rule of Law

“At its most basic level the rule of law is the concept that both the government and citizens know the law and obey it. However, the rule of law is also much larger than this.”¹⁰ Originating from the magna carta, the rule of law still does not have a specific definition, however there is a core definition followed universally. The definition is

⁷ “Measuring the Justice Gap.” *World Justice Project*, 6 Feb. 2019, worldjusticeproject.org/sites/default/files/documents/Measuring%20the%20Justice%20Gap_WJP%20Update_Feb2019_Final-updated_0.pdf.

⁸ UN, UN WOMEN. *Fact Sheet on the Importance of Women’s Access to Justice and Family Law*.

⁹ Goodwin University Goodwin University is a nonprofit institution of higher education and is accredited by the New England Commission of Higher Education (NECHE). “The Importance of the Criminal Justice System.” *Goodwin University*, 28 Dec. 2020, www.goodwin.edu/enews/importance-of-the-criminal-justice-system/.

¹⁰ “What Is the Rule of Law?” *Rule of Law Education Centre*, www.ruleoflaw.org.au/what-is-the-rule-of-law/.



usually “The rule of law is a durable system of laws, institution, norms, and community commitment that delivers: Accountability.”¹¹



Fig.1 shows the “Wheel of Law”¹²

Equal Before Law

“All persons shall be equal before the courts and tribunals. (...) everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”¹³

Legal Aid

“Legal aid” is defined as “legal advice, assistance and/or representation at little or no cost to the person designated as entitled to it,” as per the more detailed definition used in the UN Principles and Guidelines. However, in this study guide we view legal aid also beyond criminal matters, to include services provided by lawyers and paralegals

¹¹ “What Is the Rule of Law?” *World Justice Project*, worldjusticeproject.org/about-us/overview/what-rule-law.

¹² Principles.” *Rule of Law Education Centre*, www.ruleoflaw.org.au/principles/.

¹³ “Claiming Human Rights.” *Equality before the Law - Definition*, www.claiminghumanrights.org/equality_before_law_definition.html.

as well as in civil and administrative matters to individuals who are poor and in need of legal services.

Pro Bono

Pro Bono comes from the word pro bono publico, for the public good. It is used to refer to services that are rendered by a professional for free or at a lower cost. Pro Bono is often offered to hospitals, universities, charities and foundations, but also from lawyers to clients who cannot afford to pay. ¹⁴

Background Information

The vitality of legal aid

The 2030 Agenda for the United Nations aims to “leave no one behind.”¹⁵ Legal aid is an important component of gaining access to the legal system. As previously stated, all humans require fair access to justice, and it is a fundamental human right, however it is infringed upon. In modern society, justice is how one obtains a voice, the ability to defend oneself and what one believes to be correct. Access to justice is not only a fundamental human right, but also a means of ensuring and exercising such rights. It is further critical for the development and implementation of the Sustainable Development Goals (SDGs), which are especially important in post-conflict nations. All people must have access to justice and representation in order for a government to be effective in promoting sustainable development. From an early age we familiarize ourselves with the scope of justice. Justice is what keeps people safe, drives society, and instills confidence and faith in people.

¹⁴ Tardi, Carla. “What Does pro Bono Really Mean?” *Investopedia*, Investopedia, 19 May 2021, www.investopedia.com/ask/answers/08/pro-bono.asp.

¹⁵ “UNSDG | Leave No One Behind.” *United Nations*, United Nations, unsdg.un.org/2030-agenda/universal-values/leave-no-one-behind.



Factors related to legal aid preventing access to justice

Socioeconomic barriers

Socioeconomic backgrounds influence one's awareness of their legal rights and processes, as well as how to obtain legal help. Socioeconomic barriers to justice include: unemployment, low wages, little entrepreneurial activity, and insufficient participation in the process of social and economic growth.¹⁶

Limited Access to education

People requiring legal aid could be originating from LEDCs, or have not experienced quality education. Limited education leads to a lack of knowledge of one's rights, particularly their right to justice. Subsequently, the justice system remains an unknown system to them. Furthermore, people who have grown up without education are less likely to demand and advocate for their rights-justice, as it has been shown that they are less likely to participate in society.¹⁷

Weak enforcement

Reforming the pillars of the legal system is difficult, and often remains theoretical, as enforcing measures to ensure legal aid is not easy in practice. However, with sufficient effective programming and political will, it is possible for such enforcement mechanisms to become a reality. There is unwillingness to reform the questionable parts of the legal system, as it has existed for hundreds of years ; authorities further tend to overlook the cardinal issues plaguing this system

¹⁶ "What Is Socio-Economic Barriers." *IGI Global*, www.igi-global.com/dictionary/socioeconomic-barriers/37293.

¹⁷ "MISSED OPPORTUNITIES: THE HIGH COST OF NOT EDUCATING GIRLS." CHIEF, GLOBAL PARTNERSHIP FOR EDUCATION, MALALA FUND, WORLD BANK GROUP. July 2018, pp. 1–64., doi:<https://www.refworld.org/docid/3ae6b3712c.html>.



Historical Background

Early Years

In the second half of the 1900s, legal aid was expanding, and mechanisms to support legal aid were developing. This was especially visible predominantly in the Western world's industrialized democracies, post-World War Two.¹⁸ For example, the Legal Aid and Advice Act of 1949 established the first state-funded legal aid system in the UK. While the 1949 Act's primary goal was to make divorce more accessible, it had unlimited purposes.¹⁹ Practical and intellectual developments of legal aid became worldwide. In the 1970s, nations from every continent were making advancements on how to give legal aid to the poor. Another example in 1970 is that the California Rural Legal Assistance controversy begins. Meanwhile, there was an increase in global acknowledgment that the lower class was being denied access to justice.

Increased Legal Aid

In 1975, a study was published to document and explain the rapid growth of legal aid and explain how it became a global phenomenon. Legal aid was increasing. As access to justice grew, the availability of legal assistance grew at equal rates. Following a post 1973 scheme, where lawyers began giving legally-assisted counsel to low-income persons, dispensation similarly rose. Eligibility remained essentially constant throughout these changes. However, in the 80s political concern rose regarding legal aid.²⁰

Legal Aid Cuts Increasing

In the 1980s, the increased budget of legal aid became a political issue, in multiple countries. By 1986 payments in the UK rose to £419 million. Legal cuts began

¹⁸ "Historical Background." *Global Access to Justice Project*, globalaccesstojustice.com/historical-background/.

¹⁹ "A Brief History of Legal Aid." *Legal Cheek*, 19 Jan. 2021, www.legalcheek.com/lc-journal-posts/a-brief-history-of-legal-aid/.

²⁰ "Legal Aid: How Has It Changed in 70 Years?" *The Guardian*, Guardian News and Media, 26 Dec. 2018, www.theguardian.com/law/2018/dec/26/legal-aid-how-has-it-changed-in-70-years.



to be introduced and expenditure continued to grow throughout the 1990s. The yearly expenditure had risen to £1.4 billion by 1995. Eligibility criteria were gradually tightened. Thus, eligibility began to drop in many countries.

Millennium Cuts

In 2007, just 27% of the population was qualified for legal assistance. As a result, the majority of private firms have stopped conducting legally aided labor. Local governments were not funding legal counseling facilities; a study was issued in 2006 on how to provide legal aid in a sustainable manner in an attempt to address the situation. It proposed in 2007 that all criminal and civil action be subject to set costs. As the decade came to an end, the current coalition government took steps to save £350 million in legal aid. In 2010 Labour went into the 2010 election promising to cut legal aid and protect other services. Legal aid was facing a crisis worldwide.

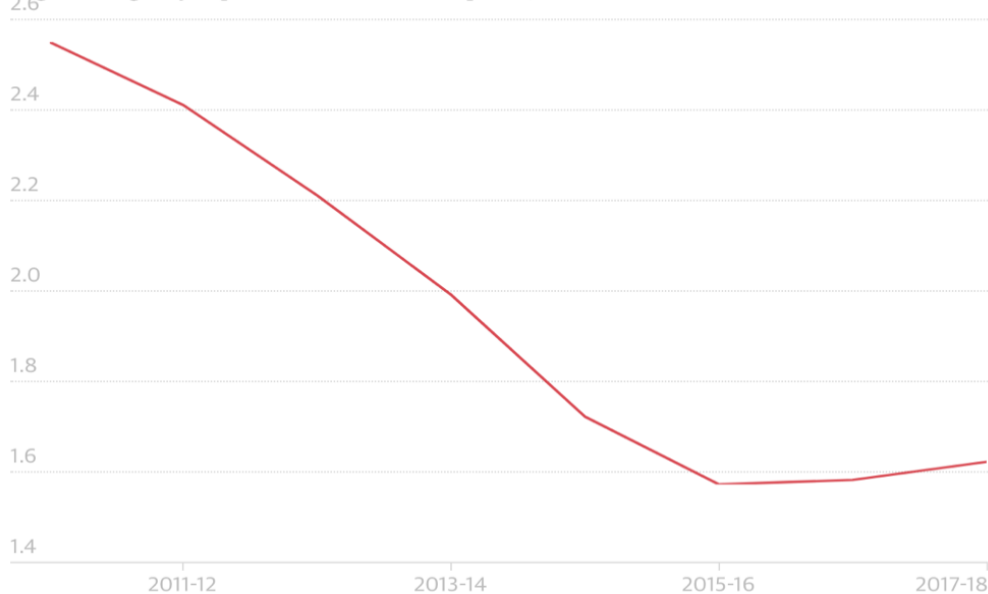
Darkest Time Period for Legal Aid

The Legal Aid, Sentencing, and Punishment of Offenders Act of 2012 (LASPO), limited the scope of legal assistance, as well as its eligibility and payment. To qualify for legal aid, one must now be virtually impoverished. There are two criteria to consider. Firstly, anyone who applied for legal aid has to have capital assets less than £8,000, monthly income must be less than £2,657, and disposable monthly income must be less than £733. Furthermore, a case must have a greater than 50% likelihood of victory, and the financial advantages of getting legal assistance must balance the costs.



Spending on legal aid fell by 37% between 2010-11 and 2017-18

Legal Aid Agency expenditure 2017-18 real prices, £bn



Guardian Graphic | Source: House of Commons Library.

*Fig.2 shows decrease in spending on legal aid*²¹

Major Countries and Organizations Involved

Canada

Canada uses a counsel model (a legal system) similar to that used in Europe. The first regulation providing for government funding of attorneys in both civil and criminal proceedings was developed in 1967 with the Ontario Legal Aid Plan. Currently, there are hybrid systems of state-funded private practitioners and public defender organizations, with funding coming from the federal, state, and municipal governments.

²¹ “Spending on legal aid fell 37% between 2010-11 and 2017-18”
<https://www.theguardian.com/law/2018/dec/26/legal-aid-how-has-it-changed-in-70-years>



China

The establishment of a nationwide Chinese legal aid system has occurred in recent years. This approach has substantially improved Chinese citizens' capacity to rely on the legal system and has generally aided the growth of China's rule of law. However, a system-wide flaw is the absence of funds for legal assistance. Furthermore, eligibility limitations hinder the ability of migrant workers, who are a particularly vulnerable population, to get legal assistance. The Beijing municipal legal aid centers handled 3,218 cases in 2003, and over 120,000 people received advice. Eligibility for legal assistance is decided by financial need, according to national rules. Specific criteria differ depending on where you live. This eligibility applies to anybody who is blind, deaf, mute, or on death row, regardless of their financial position, in criminal proceedings. Individuals have the right to seek legal aid in civil matters involving government compensation, social security and minimum wage, disability pensions, alimony for parents and children, and child support payments.

Costa Rica

Until the early 20th century, legal assistance for the poor in Costa Rica was offered in the form of pro bono services by private companies. The social and political movements in the 1930s, followed by the political upheavals of the 1950s (such as the revolutions in Cuba) and 1960s led governments across Latin America to take the responsibility of providing legal services for the poor and further supported innovations in the provision of such services. The Pro Bono Declaration for the Americas is a fundamental document that aids in the institutionalization of Costa Rican attorneys' humanitarian and other pro bono efforts. By the 1980s, the vast majority of Latin America guaranteed legal defence at the expense of the State. While most countries of Latin America and the Caribbean provide legal aid for indigent populations in criminal cases, Costa Rica offers legal services for the poor in civil and administrative cases (case between a state authority and a person). In the region, legal aid is offered to any applicant regardless of their financial circumstances only in Costa Rica. San



José, the capital's decision makers are becoming more aware of the value of a pro bono culture and the beneficial impact pro bono work can have on democracy and justice.

Egypt

In Egypt, the Advocates Law requires that the bar associations create local committees to provide legal aid services on a pro bono basis, but in practice, these services are not readily available. The Arab Spring in 2011, which refers to a series of anti-government protests and armed rebellions that brought about many changes in the political landscape of the region, including reviews and reforms of legal systems. With an increasing number of Civil Society Organizations (CSOs) providing legal aid services, one challenge faced by many countries in the region is the tension that exists between the bar association and NGOs in the delivery of legal aid services, and how to transform this competition into cooperation. The UNHCR Egypt assists refugees and asylum seekers in acquiring legal papers pertaining to their civil status. Refugees then get advice on civil status registration, divorce, custody, and obtaining Egyptian citizenship. Furthermore, the UN assists refugees and asylum seekers in obtaining birth certificates, particularly in situations of incorrectly recorded marriage, inter-marriage, and children born outside of marriage.

Jordan

The constitution of Jordan declares that “The courts should be open to all,” upholding the widely recognized human rights concept of access to justice. Despite this acknowledgment at the highest legislative level, Jordan has faced several challenges in establishing equal access to justice in practice.

For the overwhelming majority of legal cases, Jordanian statutes do not guarantee a proper legal counsel or representation. The government does not provide legal help to anyone who cannot afford to rent a non-public counsel, except in criminal situations where the crime is punishable by death or incarceration. The facility of the President of the Jordanian Bar Association to assign a professional bono case to a



least one of its members is restricted; thus it is rarely exercised. As a result, specific non-governmental legal aid organizations like the Jordan Center for Legal Help (JCLA) offer the bulk of legal aid in Jordan.²²

Nigeria

Nigeria follows similar policies to other Sub-Saharan African countries. Legal systems in Sub-Saharan Africa have emerged out of a mix of community-based dispute resolution systems drawn from traditional, religious and customary practices, colonial influences and post-independence reformation. Nigeria has an early post-independence constitution, similarly to Uganda and Kenya, therefore the legal system is relatively 'new' and still forming. Access to legal aid for accused persons who are unable to afford lawyers is often overlooked, while the right to access a lawyer is mostly recognized. Today, a great number of constitutions in the region stipulate the right to legal representation at the expense of the State, although they do not, as a rule, guarantee lawyers to all defendants. The Federal Ministry of Justice oversees the Nigerian Legal Aid Council. It was founded in 1976 to give free legal assistance to Nigerians who could not afford private legal counsel. Legal aid eligibility, on the other hand, is contingent on a number of factors, including unemployment or a lack of income. The Legal Assistance Act defines a person eligible to legal aid as someone whose annual income does not exceed N5,000 or those who have been given such treatment by the president. The Legal Aid Council in Nigeria pays a modest fee to private legal practitioners who are enrolled on panels.

Tunisia

The transformation from dictatorship to democracy in Tunisia has offered up novel opportunities for criminal justice reform. Despite the fact that Tunisia's new Constitution, which was approved in 2014, protects essential rights, implementation problems continue. The ILF's Tunisia initiative, which began in 2015, is working to

²² Jcla. "Legal Aid in Jordan." *Justice Center for Legal Aid*, www.jcla-org.com/en/legal-aid-jordan.



close the gap between law and practice in order to enhance the criminal justice system's impartiality. "One of our biggest successes in Tunisia has been our implementation of Law 5, which guarantees access to counsel during police interrogations."²³ Legal assistance and representation are governed by a set of laws within the Criminal Procedure Code (1968), the Child Protection Code (1995), and specific laws on legal aid services (2002), legal assistance in administrative matters (2011) and the organisation of the legal profession (2011).

United Kingdom

In the UK legal aid depends on the type of case and financial circumstances. However, financial circumstances are not taken into account in cases of mental health tribunals, child in care and child abduction or if you are under 16. In 2019/20 the UK spend 1.7 billion pounds in the criminal legal aid budget. LASPO is the polar opposite of what the Legal Aid Advice act of 1949 envisioned. Legal assistance has become nearly inaccessible to societies most disadvantaged due to its restrictions. Even if you are eligible, most of the time any lawyer assigned will be overworked and underfunded.

24

USA

The United States of America was among the first countries to guarantee a right to counsel (meaning that a defendant has the right to an attorney) in its Constitution. It was not until 1963 that the US Supreme Court ruled that the Constitution forces states to give criminal defendants, defense attorneys if they cannot afford a lawyer. A ruling that was later expanded to the right to appoint counsel to misdemeanour and juvenile proceedings. The implementation of such rulings throughout the years up until now has resulted in several flaws being recognized, such as people belonging to a minority group being unable to find sufficient legal aid. Today, the federal government,

²³ "Tunisia." *The ILF*, www.theilf.org/tunisia.

²⁴ "The Unmet Need for Legal Aid." *LSC*, www.lsc.gov/about-lsc/what-legal-aid/unmet-need-legal-aid



states and localities make use of a variety of systems to provide legal aid in criminal cases, from public defenders, to appointment systems that reimburse private attorneys. According to LSC’s 2017 report, 1.7 million civil cases for which Americans seek LSC legal aid for 62-72% receive inadequate or no legal aid.²⁵ 44% of the Hispanic community has low confidence in the legal aid service in the USA. ²⁶

Institutional limitations including cut off quotas prevent Hispanics in obtaining legal aid in some cases. ²⁷ The lack of racial consciousness prevents lawyers from providing adequate services to Latino/a and Hispanic clients, which is extremely important to prevent. ²⁸

The International Legal Foundation (ILF)

The ILF believes access to a quality lawyer is a basic human right, and that it is cardinal in promoting justice. Their action is focused on expanding access to justice by advocating for the provision of legal aid services. They advise leaders around the world on the creation, expansion and enforcement of legal aid, provide criminal defense training worldwide, and have established a system to measure the efficiency of legal aid.²⁹

²⁵ “The Unmet Need for Legal Aid.” LSC, www.lsc.gov/about-lsc/what-legal-aid/unmet-need-legal-aid

²⁶ Lopez, Mark Hugo and Gretchen Livingston. “Hispanics and the Criminal Justice System: Low Confidence, High Exposure.” Pew Hispanic Center, Washington, D.C. (April 7, 2009).

²⁷ Graciela M. Castex; Providing Services to Hispanic/Latino Populations: Profiles in Diversity, *Social Work*, Volume 39, Issue 3, 1 May 1994, Pages 288–296, <https://doi.org/10.1093/sw/39.3.288>

²⁸ Alfieri, Anthony V. “Color/Identity/Justice: Chicano Trials.” *Duke Law Journal*, vol. 53, no. 5, 2004, pp. 1569–1617. *JSTOR*, www.jstor.org/stable/40040447.

²⁹ “Legal Aid: How Has It Changed in 70 Years?” *The Guardian*, Guardian News and Media, 26 Dec. 2018, www.theguardian.com/law/2018/dec/26/legal-aid-how-has-it-changed-in-70-years.



Timeline of Events

<u>December 10, 1948</u>	The Universal Declaration of Human Rights
<u>March 18, 1963</u>	The US Supreme Court rules that the Constitution obliges states to provide defense attorneys for the accused who cannot afford lawyers.
<u>17 July, 1970</u>	First Law Centre opened in North Kensington, UK.
<u>March 23, 1976</u>	The International Covenant on Civil and Political Rights was adopted and opened for signature
<u>1976</u>	The Federal Ministry of Justice oversees the Nigerian Legal Aid Council
<u>1984</u>	Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty
<u>1986</u>	Eligibility for legal aid decreased to 63%, in the UK
<u>December 9, 1988</u>	The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
<u>1995</u>	Eligibility for legal aid fell to 53%, in the UK
<u>1997</u>	Lord Irvine proposed that most civil cases be entirely removed from the scope of legal aid
<u>2004</u>	The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa
<u>December 4, 2011</u>	Bamako Declaration on Impunity, Justice and Human Rights
<u>2012</u>	Legal Aid, Sentencing and Punishment of Offenders Act
<u>December 12, 2012</u>	The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems
<u>2019/20</u>	UK spend 1.7 billion pounds in the criminal legal aid budget



Previous attempts to solve the issue

The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)

This recognizes the right to legal aid for persons deprived of liberty. In particular, Principle 17 provides that “detained persons shall be entitled to have the assistance of a legal counsel”³⁰ and that if they do not have an attorney they will be assigned one. If they cannot pay it will be paid.³¹

Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty (1984)

This recognizes “the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”⁵⁷ The Basic Principles on the Role of Lawyers (1990) provides guidance to States in “their task of promoting and ensuring the proper role of lawyers”, including their obligations to inform the public of “their right to be assisted by a lawyer of their choice upon arrest or detention or when charged with a criminal offence” and to provide prompt access to lawyers possessing “experience and competence commensurate with the nature of the offense”, whose services must be free of charge when the interests of justice so require.³²

A further major development is a requirement under the Basic Principles for lawyers to undergo periodic training, understand the principle of non-discrimination and ensure that they appropriately respect their client’s interest. It simultaneously

³⁰ “Protection of All Persons under Any Form of Detention or Imprisonment.” *OHCHR*, www.ohchr.org/en/professionalinterest/pages/detentionorimprisonment.aspx.

³¹ Adopted by General Assembly resolution 43/173 of 9 December 1988. *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*. Scope of the Body of Principles, www.ohchr.org/Documents/ProfessionalInterest/bodyprinciples.pdf.

³² Approved by Economic and Social Council resolution 1984/50 of 25 May 1984. *Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty*. www.unodc.org/pdf/criminal_justice/Safeguards_Guaranteeing_Protection_of_the_Rights_of_those_Facing_the_Death_Penalty.pdf.



notes the responsibility of the State to ensure that lawyers are free from intimidation and improper interference.

Developments in Africa regarding legal aid

The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa (2004)

The Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa has been adopted by both governmental and NGO participants at a conference in Malawi. It was a pivotal step for the adoption of the UN Principles and Guidelines by the UN General Assembly in 2012, the guidelines on access to legal justice in criminal systems.³³

The Bamako Declaration on Impunity, Justice and Human Rights (2011)

This declaration emerged from a regional conference on the fight against impunity (exemption from punishment) and respect for human rights in West Africa. It further contributed to the recognition of legal aid as a necessity for facilitating access to justice.³⁴

Kampala Declaration on Community Paralegals (2012)

The Kampala Declaration on Community Paralegals on July 9-11 2012, recognized that promises of law and government are not always met in African countries. It shed light on the importance of community paralegals as legal aid providers. Through systems for training, supervision, assessment, and community monitoring, they pledge to improve the quality and consistency of community paralegal activities. Governments must acknowledge the importance of community paralegals,

³³ *Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa.* www.penalreform.org/resource/lilongwe-declaration-accessing-legal-aid-criminal-justice-system/.

³⁴ "Bamako Declaration on Impunity, Justice and Human Rights." *UNOWA*, 9 June 2016, unowa.unmissions.org/bamako-declaration-impunity-justice-and-human-rights.



following the example of legal aid laws in Sierra Leone, Nigeria, and Malawi, as well as ongoing initiatives in Uganda, Tanzania, Kenya, and other countries.³⁵

Developments of legal aid in Europe

European Convention on Human Rights & European Court of Human Rights

Both bodies provide guidance on the provision of State-funded legal aid to the region's populations. These standards emphasize the role of legal aid in ensuring fundamental fairness (particularly in criminal cases), stress the importance of delivering legal assistance to suspects due to "the particular vulnerability of an accused at the early stages of the proceedings."

Relevant UN Resolutions, Events, Treaties and Legislations

The Universal Declaration of Human Rights (1948, UDHR)

The UDHR was the first international instrument to proclaim that all persons were entitled to "equal protection of the law," as well as the right to a fair trial. By providing the right to be free from discrimination, the "right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him [or her] by the constitution or the law," and the right "in full equality to a fair and public hearing by an independent and impartial tribunal...", the declaration called upon countries to strengthen their justice systems in order to make such promises a reality for every human being. Following the UDHR, additional international instruments were developed to further elaborate on and refine concepts related to equal access to justice for all, especially for marginalized and vulnerable groups.³⁶

³⁵ Kampala, Uganda. *Kampala Declaration on Community Paralegals*. 26 July 2012.

https://namati.org/wp-content/uploads/2015/02/Kampala_Declaration_on_Community_Paralegals.pdf

³⁶ "Universal Declaration of Human Rights." *United Nations*, United Nations, www.un.org/en/about-us/universal-declaration-of-human-rights.



The International Covenant on Civil and Political Rights 17 (1966, ICCPR)

The ICCPR stresses States' obligation to ensure that effective remedies are provided when rights are violated, in particular, through "competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State."³⁷ The ICCPR emphasizes that "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law."³⁸ The Human Rights Committee further elaborated on the right to legal assistance in its General Recommendation noting that the "availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way."³⁹

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012, UN Principles and Guidelines)

This is the first international instrument dedicated to the right to legal aid; through this, it is highlighted and reaffirmed that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. A foundation for the enjoyment of other rights, including the right to a fair trial; and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process and enables access to justice. The UN Principles and Guidelines provide States with 14 principles and 18 guidelines on the establishment, reform or administration of national legal aid systems in the context of criminal justice, and on ways to ensure that legal aid is accessible, effective, sustainable and credible. Collectively, they offer detailed guidance on the provision of legal aid at various stages of criminal justice proceedings and for various types of beneficiaries. When adopting

³⁷ "International Covenant on Civil and Political Rights." *OHCHR*, www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

³⁸ "International Covenant on Civil and Political Rights." *OHCHR*, www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.

³⁹ "International Covenant on Civil and Political Rights." *OHCHR*, www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.



the UN Principles and Guidelines, the General Assembly urged States to establish, strengthen and expand legal aid.⁴⁰

Possible Solutions

Establishment of a Legal Aid Body

The responsibility of such a body would be to carry out tasks of legal service provision, particularly legal aid, as well as implementing an effective framework. Further duties could include the appointment of trained personnel, as well as the establishment of accreditation criteria and a system for legal aid provider accreditation, including training requirements. Moreover, the body could manage the oversight of legal aid providers and establish independent bodies to handle complaints against them. A report to the responsible authority would be conducted on a regular basis.

Pressure

Changes in policies as well as the restoration of the legal system & the enforcement are unlikely to occur without the application of pressure on all relevant governing bodies. Several methods may be utilized in order to do this, including social media and direct communication with members of parliament to raise awareness on the significance of access to justice. Such action is likely to instigate more individuals to spread further awareness & information on the importance of legal assistance and infringement of legal rights.

Support towards people in need of legal aid

In an ideal world, a new system, free of prejudice and discrimination would develop. Change is unlikely to happen due to the status quo trap, which prevents us from creating change. Therefore, people will continue viewing the legal system as

⁴⁰ "United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems." UNODC, UN, www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.



functional. Despite the fact that similar concepts have been presented, they have not yet been applied in all necessary aspects. People who require legal help should have access to a protective system and quick reporting procedures. Furthermore, the government should assist individuals in familiarizing themselves with their legal rights. These policies, however, must be enacted and implemented by member states.

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