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United Nations Office on Drugs and Crime

Ensuring Access to Justice for All: Effective Legal Aid in Criminal Cases

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International Developments since 2015

- April 2015:
13th United Nations Congress on Crime Prevention and Criminal Justice in Qatar – *Doha Declaration*
Member States reaffirmed commitment to and strong political will in support of effective, fair, humane and accountable criminal justice systems and the institutions comprising them, and encourage the effective participation and inclusion of all sectors of society
> Policy reform, capacity building, implement UNPG



International Developments since 2015

Doha Declaration

- To intensify our efforts to address the challenge of prison overcrowding through appropriate criminal justice reforms, which should include, where appropriate, a review of penal policies and practical measures to reduce pretrial detention, to enhance the use of non-custodial sanctions and to improve access to legal aid to the extent possible.
- Strengthen regional and international cooperation



International Developments since 2015

- Autumn 2015:

United Nations Standard Minimum Rules for the Treatment of Prisoners revised and adopted as the *Nelson Mandela Rules*, which now include several provisions addressing prisoners' access to effective legal representation and legal aid

(General Assembly Res. 70/175)



International Developments since 2015

- Autumn 2015:

2030 Agenda for Sustainable Development adopted by Member States

- Goal 16: ‘Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.’
- Target 16.3, ‘Promote the rule of law at the national and international levels, and ensure equal access to justice for all.’



International Developments since 2015

- April 2016:

Outcome document of the Special Session of the United Nations General Assembly on the World Drug Problem

- May 2016: CCPCJ Res. 25/2 – invites Member States to ‘adopt or strengthen legislative or other measures to ensure effective legal aid, including for victims of crime, consistent with their domestic legislation’ in line with the UNPG, to continue to build networks at the global, regional and national level, and to participate in the Second International Conference in Argentina



The Buenos Aires Declaration

- Unremitting importance of implementation of the UNPG and the need for technical assistance, exchange of information and best practices among legal aid service providers (int., regional, national);
- Ensuring meaningful access for groups with special needs, as well as sharing of expertise on efforts made towards achieving Target 16.3, in particular in reducing excessive, arbitrary and unlawful pre-trial detention;
- International network for legal aid service providers.



The UNDP/UNODC Global Study on Legal Aid

- Contains information provided by Member States and individual, independent experts from **106 countries**
- Qualitative and quantitative data provided through surveys (fact- and perception-based), plus desk research
- Global Report, Country Profiles (49 countries) and Case Studies (8 countries)



Clear Overarching Findings

- Data on access to legal aid can be gathered as a means of measuring progress towards achieving peaceful, just and inclusive societies as part of the 2030 Agenda for Sustainable Development.
- However: the data currently available is not sufficient; investment on collecting and analyzing the data to measure access to justice for all is necessary to inform evidence based policy making.



Clear Overarching Findings

- States, across all regions and different development settings, face **common challenges** in their efforts to promote access to and provide quality legal aid services.
- **Civil society networks** promoting legal aid on national and regional levels (such as on pro bono lawyering, clinical legal education and legal empowerment) have contributed significantly to advocating on the right to legal aid and help in meeting the demand for legal aid services (69% in the LDCs)



Key Findings

- Nearly every responding country recognizes the right to legal aid (incl. right to a fair trial), but 1/3 had not yet enacted specialized legislation in 2015
- Dedicated legislation ideally covers all critical aspects of access and delivery of legal aid, such as eligibility, regulation of providers, procedures for requests and provision, and additional safeguards for groups with special needs
- New tool: *UNODC Model Law on Legal Aid in Criminal Justice Systems with Commentaries*



Key Findings

- Even where sound legal frameworks exist - substantial gap between this guarantee and actual practice
- In LDCs: shortage of lawyers outside of urban areas is the biggest impediment to ensuring universal access to legal aid
- Essential that States allocate adequate and sustainable budget – not only to meet demand, but also to enhance and improve provision of services. Need can be identified through assessments to inform evidence-based policymaking and other government action



Key Findings

- Monitoring/quality assurance – State legal aid authority is mostly responsible for monitoring quality of services delivered
- P: Monitoring equalled reviewing of complaints lodged by legal aid recipients – not effective (only egregious cases tend to be reported; poor clients may not be inclined to file complaint or know they are entitled to)
- Good review mechanism: develop and apply performance/qualifications standards, supplemented by peer reviews, random case file reviews, court observations.



Key Findings

- Importance of independence of providers vis-à-vis State agencies
- This needs to be reflected in payment mechanisms to ensure independence in performance of duties
- While safeguards do exist, these are sometimes not effective or evenly applied



Key Findings

Impediments to accessing legal aid

- National experts in Middle East & North Africa and Sub-Saharan Africa most frequently cite people's **lack of awareness of the availability** of legal aid services at little or no cost as a main challenge
- 80% of experts in the Middle East & North Africa region assert that especially women often do not know where to find legal assistance



Key Findings

Administration of Legal Aid

- Nearly half of responding MS have a ‘mixed model’, under which both public and private entities provide legal aid with supervision and management by a single legal aid authority
- The provision of legal aid exclusively through public defender institutions and other public institutions, such as legal aid boards, is more frequent in criminal cases (26%) than in civil cases (16%)
- Nearly all MS (90%) have established a centralized administration with varying levels of independence



Key Findings

Administration of Legal Aid

- Only 30% of Member States with a legal aid board have reported that providers are represented on the board, which may raise questions about extent to which boards are able to keep abreast of challenges faced by practitioners
- CSOs and universities with law clinics are rarely represented (22%) in legal aid boards
- Paralegal associations and informal justice actors are not represented in the board of any responding Member State



Key Findings

Technical Assistance Priorities

- Overall: MS selected less priority areas from the list of options than the responding national experts
- MS (44%) and national experts (82%) unanimously selected the “development of quality criteria for legal aid providers” as most pressing request



Strengthening the Evidence-Base

2030 Agenda – rule of law key to sustainable development

Targets and indicators

- Collect/analyse data, compare across regions/globe

But also highlight importance of evidence-based policy development and implementation and related capacity

- Current indicators of 16.3 have value to inform on progress and setbacks in access to justice (victims' crime reporting, number of unsentenced detainees): early access, gender-sensitive measures, trust in the CJ system, success of applying models of delivery (paralegals working to reduce pre-trial detention)



Strengthening the Evidence-Base

- Global measures should be based on agreed global standards, and built around the highest levels of adherence with the rule of law and human rights
- Monitoring access to legal services has proven to be difficult - it is a complex undertaking to identify an indicator that can be universally applicable, yet is easy to interpret; attempts to introduce access to free legal aid in CJ systems into the UN-CTS have been challenging
- Perception? Important, but not sufficient for sound judgement on how people are treated and what affects their treatment



Strengthening the Evidence-Base

- How to strengthen existing efforts at the national level?
 - 62% of responding MS never conducted needs assessment
 - Comprehensive and standardized national framework to monitor functioning of system
 - Combination of administrative data, surveys, updated court, prosecution and police records
 - Systematically collect data on legal aid (number of cases divided by type, provider,...)



Strengthening the Evidence-Base

- UNODC: Expand data collection and analysis on 16.3 and prison settings in general – trends and issues related to implementation of the Nelson Mandela Rules
- UNODC Global Prison Challenges Programme

Three strategic objectives:

- (i) reducing the scope of imprisonment;
- (ii) strengthening prison management and improving prison conditions; and
- (iii) supporting the social reintegration of offenders.



Cooperation and Experience Exchange

- Form strong partnerships at national level – work in concerted, inclusive approach in developing policies and other reform activities and implementation
- Constant and detailed exchange of lessons learned and good practice – closer cooperation within country, and at bilateral, regional, global level to minimize risks and avoid mistakes and setbacks, to save resources and make informed choices on activities and approaches
- Existing examples to learn from: AIDEF, ILAG, ...



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Maintaining the Momentum

