



United Nations Development Programme  
Oslo Governance Centre



Comparative experiences:  
**SUPPORT TO LEGAL AID**  
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## UNDP SUPPORT TO NATIONAL BAR ASSOCIATIONS AND LEGAL AID

**UNDP Country Offices are increasingly involved in supporting National Bar Associations and legal aid, as an immediate area of assistance identified through the legal sector evaluations/ consultations carried out in many countries. The information provided below is a response to a query on UNDPs Democratic Governance Practice Network, in which information is sought on resources that may guide the UNDP Country Office in assisting the Bar Association in becoming more independent, and cooperation on a project to strengthen the Bar Association through linkages with young lawyers. This paper aims to outline selected UNDP experiences with support to legal aid, pose some key questions when addressing the issue of legal aid in a given country, outline different national models used to provide legal aid and legal services funding, selected cases of alternative approaches to legal aid, and outline some key resources and their links (including indigent defence system standards).**

### INTRODUCTION

To support the expansion of legal aid services to the poorest areas is one of UNDPs three strategic action points within Access to Justice for the poor.<sup>1</sup> An overview of UNDPs standpoint regarding Access to Justice in general can be found in R. Sudarshan's paper presented to the Conference on Rule of Law arranged by the EC in July 2003.<sup>2</sup> Furthermore, in the UNDP Workshop on Access to Justice in Oslo in March 2002, one of the sessions included a session on "legal aid for the poor". Legal aid for the Poor, a power-point presentation by Rajesh Choudree outlines a comparative study of the models adopted in South Africa, Australia and India.<sup>3</sup>

UNDPs draft Access to Justice Practice Note, contains the following points in relation to Assessing Performance Indicators on Access to Justice: identification of the obstacles and barriers that users generally face in obtaining services, access for all (market for legal services, lawyers, class actions) and access to justice by the poor (costs of the system, how much money is allocated to public defence services, scope of coverage of free legal assistance, legal empowerment of the poor).

### 1. SELECTED UNDP EXPERIENCES WITH SUPPORT TO LEGAL AID

#### 1.1 UNDP China: Strengthening legal aid and management in China

In order to ensure equal access to justice for the poor and disadvantaged groups in society, the Chinese Government began to develop its legal aid system in 1994. After several years' pilot

1 The other two points are support pro-poor legislation, participation and inclusion in the legislative process, and support strengthening of alternative dispute resolution mechanisms.

2 <http://www.undp.org/oslocentre/access.htm>

3 <http://www.undp.org/governance/cd/documents/211.ppt>

experience, legal aid centres grew nationwide. In support of the government's efforts to improve legal aid services, UNDP launched its cooperation with the Ministry of Justice Legal Aid Centre on Strengthening Legal Aid Regulation and Management in China project under the Governance Umbrella project, with funding from the Government of the Netherlands. The project assists China to establish a comprehensive set of standard and unified rules for the provision of legal assistance and promote their standardized implementation, to set up a concrete and reliable legal aid quality guaranty system, and to promote and strengthen the research of the legal aid quality guaranty system and procedure theories. The project improves the competence, professional and management skills of the legal aid personnel in the Western regions. Also, China's legal aid personnel will learn more about the successful experience and practices of the legal aid systems of selected developing countries.<sup>4</sup>

4 <http://www.unchina.org/undp/modules.php?op=modload&name=News&file=article&sid=152&mode=thread&order=0&thold=0>

### 1.2 UNDP Latvia support to the judiciary and legal aid

Under the project Lat/01/004 Support to the Judiciary, local and international experts are working on a policy framework for strengthening access to justice in Latvia and developing a "Concept on Legal Aid in Latvia".<sup>5</sup> The specifics of the component on legal aid do not appear on the website, but the programme manager Inga Brieze ([inga.brieze@undp.org](mailto:inga.brieze@undp.org)) may be contacted.

5 More information about the programme in general can be found on <http://www.undp.lv/detailed.php?which=121>.

### 1.3 UNDP Bangladesh: UNDP report addressing legal aid

*Human Security in Bangladesh: In Search of Justice and Dignity* builds on research conducted over several years and examines the nation's legislation, law enforcement apparatus, court system and prisons. It aims to help the Government, law enforcement agencies, judiciary and civil society in identifying and implementing urgently needed reforms. The report found that many laws and practices discriminate against the country's poor - a large majority of the population - and do not protect women against violence. It also found that the cost of going to court, added to frequent delays and lack of access to legal aid, means that many people are «priced out of the justice system». The report was initially produced in 1998-99 as an in-house document to guide UNDP's future involvement in the area of democratic governance in Bangladesh. It was updated and expanded in 2002 so that the findings and recommendations could be shared publicly. Chapter 2 deals with Awareness of Rights and Legal Aid Facilities.<sup>6</sup>

6 Can be downloaded from <http://www.un-bd.org/undp/info/hsr/index.html>

### 1.4 UNDP Brazil – Promoting juridical assistance through Citizenship and Human Rights - Ministry of Justice Project BRA/96/013

The «National Programme of Human Rights» aims to establish priorities and presenting concrete administrative, legislative and political-cultural proposals in order to determine the problems that

obstacle the full protection of human rights in Brazil, such as racial prejudices and social and economic inequalities. Within this framework, the strengthening of the Ministry of Justice in its capacity to defend Human Rights plays a crucial role. This project aims to support the Ministry of Justice's capacity to implement the Brazilian Programme on Human Rights in association with NGOs. In order to attain this goal, the project presents two immediate objectives:

1. To provide the population with universal awareness of Human Rights through publications, researches, studies, seminars, training of State agents in Human Rights and formation of Civil society operators;
2. To promote juridical assistance, access to justice and legal protection to the poorest layer of population, taking into account the fact that 72% of the population does not have access to justice to solve its disputes.<sup>7</sup>

7 <http://www.br.undp.org/governance/BRA96013a%20.html>

## 2 A STARTING POINT ON QUESTIONS ON LEGAL AID, AND HOW TO BENEFIT FROM IT

### 2.1 Council of Europe legal assistance systems overview

The member States of the Council of Europe have finalized an Action Plan on legal assistance systems, which aims at setting up, developing or strengthening legal assistance systems in Council of Europe member and candidate States, to promote the practical organization, administration and dispensation of legal assistance systems and to provide information on legal aid. The European Commission and the Council of Europe are jointly producing «legal aid information sheets» for each Member State of the Council of Europe.<sup>8</sup> These information sheets are destined to provide the general public with useful easy to understand information on the legal aid system in their country. They are based on a series of concrete and practical questions sent out to member States of the Council of Europe in the form of a questionnaire. These information sheets include the structural set-up of legal aid in countries with a UNDP presence such as Azerbaijan, Bulgaria, Estonia, Georges, Hungary, Latvia, Lithuania, Macedonia and Turkey.

8 [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_co-operation/Operation\\_of\\_justice/Access\\_to\\_justice\\_and\\_legal\\_aid/](http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Operation_of_justice/Access_to_justice_and_legal_aid/)

The questions used in this [Questionnaire](#) may be a helpful starting point as pointers on what kind of information may be useful when planning a project to strengthen systems of legal aid in any country:

### QUESTIONNAIRE: LEGAL AID – AND HOW TO BENEFIT FROM IT

1. What are the costs of a trial and who should normally pay them?
2. What is legal aid?
3. Who can benefit from legal aid?
4. Can legal aid be obtained for all disputes?
5. Where can I obtain an application form for legal aid?
6. Which documents should I attach to my request for legal aid?
7. Where should I register my request for legal aid?
8. How will I be informed of whether or not I am eligible for legal aid?
9. If I qualify for legal aid, what should I do?
10. If I qualify for legal aid, who will choose my lawyer?
11. If I qualify for legal aid, will this cover all the costs of my trial?
12. If I qualify for partial legal aid, how will the other costs be paid?
13. If I qualify for legal aid, will it cover any review I might make following the trial?
14. If I qualify for legal aid, can it be withdrawn before the end of the trial?
15. If I do not qualify for legal aid, can I appeal against this decision?

9 The Public Interest Law initiative, [www.pili.org](http://www.pili.org) The Columbia Law School established the Public Interest Law Initiative (PILI) in 1997 with the support of the Ford Foundation, to advance human rights principles through assisting the development of a public interest law infrastructure in Central and Eastern Europe, Russia and Central Asia. As of last year, the PILI headquarters is established in Budapest, Hungary, under the auspices of the Columbia University - Budapest Law Centre. PILI promotes the development of new institutions, primarily in the area of clinical legal education and access to justice.

10 The country reports and the guidelines establishing the style and content of the country reports may be accessed at [http://www.pili.org/library/access/country\\_reports.html](http://www.pili.org/library/access/country_reports.html)

11 The full report of this discussion can be found here: <http://www.pili.org/library/access/ForumReport/Part4.html>

### 2.2 Country Reports assessing legal aid (PILI)

Interestingly, similar information was also collected within the framework of PILI's project on Promoting Access to Justice in Central and Eastern Europe, presented at a regional forum on access to justice in Hungary in December 2002<sup>9</sup>. The objectives for these country reports "are intended to assess the state of provision of legal aid in each of the following countries..." . The guidelines annexed contain a detailed methodology for the research and writing of these reports, and as such make a good baseline from which to start work. The goal of the project as a whole is to define the real dimension of the problem with respect to the widespread lack of effective access to legal aid, to draw the attention of the stakeholders in the countries in the region to this issue, and to promote law reform initiatives in this field. <sup>10</sup>

## 3. DIFFERENT COMPARATIVE MODELS AND APPROACHES OF LEGAL AID SYSTEMS<sup>11</sup>

The information contained in this chapter is a summary of a Forum hosted by the PILI and the Open Society Justice Initiative. Roger Smith, Director, JUSTICE, UK introduced the theme, and discussants were Peter van den Biggelaar, Executive Director, the Legal Aid Board, the Netherlands, Moshe Hacoheh, District Public Defender of

Jerusalem, Ministry of Justice, Office of the Public Defender, Israel, Daniel Greenberg, Executive Director, the New York Legal Aid Society, USA, David McQuoid-Mason, Professor of Law, University of Natal, Durban, South Africa, and Rodney Warren, Chair, Access to Justice Committee, Law Society, UK.

How do common issues emerge from diverse experiences? The notion of legal aid varies depending upon the legal system, and the approaches at the level of detail are different. However, experience has shown that there are several features in common and lessons that can be distilled from the different models that are used. The models introduced can be categorized along the following lines:

- Private Advocate Programs / Judicare Systems
- The Public Defender System
- The Legal Aid Contracting System
- The Hybrid System

### 3.1 The Private Advocate Programs / Judicare Systems

These systems uses private law services to render legal aid services (example of system used in the UK):

Pros	Cons
<ul style="list-style-type: none"> <li>• access to skilled, experienced private advocate</li> <li>• encouragement of support by the legal community for legal services for the poor</li> <li>• more choices for clients in obtaining representation</li> </ul>	<ul style="list-style-type: none"> <li>• potential to be very costly</li> <li>• difficulty of ensuring quality of services</li> <li>• traditionally does not allow for community feedback</li> </ul>

### 3.2 The Public Defender System

This system is usually operated as a “mixed system”: a combination of public defenders who are full-time state employees and private attorneys contracted by the OPD to represent indigent defendants.

Pros	Cons
<ul style="list-style-type: none"> <li>• legal assistance provided by well-qualified lawyers</li> <li>• good potential for quality control</li> <li>• possibility of training and professional development</li> <li>• greater ease in planning future budgets and tracking expenses</li> </ul>	<ul style="list-style-type: none"> <li>• greater likelihood of keeping statistics and ensuring accountability</li> <li>• heavy caseload for staff attorneys</li> <li>• risk of taking a routine approach in dealing with similar cases</li> <li>• perception of public defenders as part of the state's legal apparatus</li> </ul>

### 3.3 The legal aid contracting system:

The legal aid system is a mixed model where legal aid is provided by private lawyers and salaried lawyers employed by the Legal Aid and Advice Centres, such as in the Netherlands.

Pros	Cons
<ul style="list-style-type: none"> <li>• degree of control over appointments</li> <li>• some influence on quality of legal services and accountability</li> <li>• feasibility of advance planning for future budgets and expenses</li> </ul>	<ul style="list-style-type: none"> <li>• greater expense than public defender system</li> <li>• risk of compromise to vigorous client representation due to dependence on government contracts</li> </ul>

### 3.4 The Hybrid System:

Legal Aid Centres supplemented by contracts with private attorneys overseen by Legal Aid Board:

#### Advantages:

- efficiency of a centrally managed system
- leverage of existing resources within private bar
- capacity for statistical analysis, transparency, and budgetary planning
- means for training and quality control
- promotion of the engagement of stakeholders in the legal aid system

## 4 LEGAL SERVICES FUNDING

### 4.1 A comprehensive overview of different funding approaches

The article *Improving Access to Justice, legal Services Funding and Private Bar Involvement in Public Interest Lawyers Around the World*<sup>12</sup> is a good starting point to get a quick overview of the different models of funding used where, as it outlines on a global basis a quite comprehensive list of approaches used in a variety of different countries. The main message of the article is that effective legal service organizations are critical to lay a foundation for justice and enact social change, and improved access to legal counsel is the primary mission of most public interest law group. Access to lawyers can be promoted both through increased pro bono practice by private attorneys and better funding of public interest law programs. A message is also that nowhere has access to justice completely been secured for the poor through these different kinds/ approaches of legal aid programmes.

### 4.2 The lack of financial sustainability

The lack of financial sustainability is a point underscored by a World Bank case study Ecuador Judicial Reform Project: Legal Aid for Poor Women,<sup>13</sup> in which five legal aid clinics were created to help poor women and their children exercise their legal rights and improve their socio-economic condition. In their lessons learned it is stated "the project demonstrates that legal aid clinics are an important complement to the formal court system that help underserved populations obtain fair access to justice. By providing legal, psychological and medical assistance, the clinics demonstrate the importance of using an integrated approach to help poor women find lasting solutions to their problems. The sustainability of providing legal aid services to poor populations remain a challenge. In this instance, there is no long-term financing mechanism for Ecuador legal aid clinics for women despite their undeniable success. Because poor women do not have the resources to pay for transportation or court fees even when legal services are free, alternative financing mechanisms must be identified. As the project

12 [http://www.pili.org/library/access/improving\\_access\\_to\\_justice.htm](http://www.pili.org/library/access/improving_access_to_justice.htm)

13 The Tools and Practices 14 in which this case-study appeared can be downloaded as a PDF through one of these two links:

<http://www.worldbank.org/poverty/empowerment/principles/accjust/> or

<http://lnweb18.worldbank.org/ESSD/sdvext.nsf/68ByDocName/EmpowermentResourcesToolsandPracticesLegalandJudicialReform>

comes to a close (June 2002), project staff are seeking a private partner to help finance the clinics and are considering the possibility of providing services on a sliding payment scale.”

## 5 ALTERNATIVE APPROACHES TO LEGAL AID – SELECTED CASES

### 5.1 Legal aid and resources by professional organizations

#### 5.1.1 The Legal Resources Centre, South Africa<sup>14</sup>

The Legal Resources Centre is a South African independent, client-based, non-profit public interest law centre dedicated to serving the interests of the poor, and which uses law as an instrument of justice. To achieve its aims, the Legal Resources Centre seeks creative and effective solutions by using a range of strategies, including impact litigation, law reform, participation in partnerships and development processes, education and networking within and outside South Africa. The LRC has a community-centred focus through its “advice office” programme that seeks to extend legal expertise and resources to as many people in the community as possible. In their clinical legal education programmes also paralegals are used to staff offices in outlying areas.<sup>15</sup>

#### 5.1.2 The Lawyer’s Collective, India<sup>16</sup>

The Lawyer’s Collective is a legal services organization staffed by lawyers located in New Delhi. They provide court legal representation and support to a number of community-based programmes. The Lawyer’s Collective has a “test case” orientation. The Lawyer’s Collective funds its public interest programs through an in-house private practice. In addition to advocating for law reform and conducting workshops for lawyers and judges, the Lawyer’s Collective conducts workshops that aim to provide legal education to local communities. They have three special projects: a Domestic Violence project, a HIV/AIDS project and the publication of “The Lawyers”, a public interest law magazine.

#### 5.1.3 The Indonesian Legal Aid Foundation

Through UNDPs TCDC website, the example of the Legal Aid Foundation in Indonesia is given convincingly<sup>17</sup>

### 5.2 Selected legal aid examples and resources for and by law students

#### 5.2.1 Legal Clinics: Judicial Reform Initiative for Bulgaria

The Judicial Reform Initiative for Bulgaria (JRI) is a coalition of leading not-for-profit organisations, representatives of government institutions and experts for developing a program for assistance and

14 <http://www.lrc.org.za/home/default.asp>

15 A report that in a comprehensive manner addressed some of the issues in relation to paralegals “Access to Justice in South Africa: legal aid transformation and paralegal movement – a full report” that can be accessed here: <http://www.case.org.za/htm/legal3.htm>.

Although the report is an evaluation report assessing Swedish funding, it gives a good overview of the use of and challenges arising in relation to using paralegals in a developing country

16 <http://www.lawyerscollective.org/index1.htm>

17 <http://tcdc.undp.org/tcdcweb/experiences/vol6/indonesian%20legal.pdf>

18 Report on legal aid, with concrete suggestions for work can be found on: [http://www.csd.bg/jri/report/4\\_aid.htm](http://www.csd.bg/jri/report/4_aid.htm).

successful implementation of the judicial reform in Bulgaria, implemented with the support of the European Commission.<sup>18</sup> From the report it is stated that: «The Open Society Institute, together with the Constitutional & Legal Policy Institute (COLPI) started, in co-operation with the law faculty of the University of Plovdiv a legal clinic. The idea behind these legal clinics is to create a place where people can go to ask for information on legal matters. The legal clinics are run by law students, under the guidance of professional lawyers and supported by the university under which they are brought. The work at a legal clinic is considered as part of the basic legal education of the participating student and is included in the university curriculum. The students receive credits for his work. The effect of the legal clinics is twofold: the clinic provides free legal aid for persons that are unable to pay a lawyer and at the same time will help the practical training of the students. Furthermore, the legal clinics will help to diminish the workload of the courts, because they function as a sort of filter on the amount of cases that will be brought to court.»

### 5.2.2 Manual on Street Law-Type Teaching Clinics at Law Faculties

A number of publications produced by the Constitutional and Legal Policy Institute (COLPI), predecessor to the Open Society Justice Initiative, are available. Quite interesting is their Manual on Street Law-Type Teaching Clinics at Law Faculties: COLPI paper no 3 (2001). Street law-type teaching clinics are currently spreading in law schools especially in the Eastern Europe and Central Asia region, and are designed to give students the opportunity to develop and practice key skills related to being a lawyer. This manual was developed to assist the initiation of street law type clinics, however important to note is that such clinics are highly attentive to the preparation and supervision of law student work. It is important to note that it is a teaching programme, and not a way for the country to provide free legal aid to its citizens.<sup>19</sup>

19 The manual can be downloaded at: <http://www.osi.hu/colpi/research/Jlpapers.htm>

## 6 KEY RESOURCES

### 6.1 ABA-UNDP International Legal Resource Centre

The ABA-UNDP International Legal Resource Centre “ILRC”, formerly the “Legal Resource Unit” was established in December 1999, based upon the common commitment of the American Bar Association “ABA” and the UNDP to support and promote good governance and the rule of law around the world. Its mission is to provide legal resource capability to service UNDP global governance programs and projects supporting legal reforms and democratic institution building.<sup>20</sup> The ILRC provide pro-bono services to UNDP Country Offices within their fields.

20 The ILRC website can be accessed at: [www.abanet.org/intlaw/ilrc](http://www.abanet.org/intlaw/ilrc).

21 <http://www.ilacinternational.org/>

## 6.2 The International Legal Assistance Consortium (ILAC) <sup>21</sup>

The International Legal Assistance Consortium (ILAC) is a consortium of organizations and individuals worldwide with experience in assisting with the rebuilding of justice systems following armed conflict, which has come together to fill a gap in current international capability. ILAC provides an expert team to make an initial assessment of what is needed to begin rebuilding a workable justice system. ILAC's reports are provided to the UN, other inter-government organizations, the national government (where one exists), donor governments and NGOs as a basis for further action. ILAC actively promotes and assists with the coordination of the implementation of its report. ILAC has provided support in interventions in countries as diverse as East Timor, Kosovo, Bosnia, Cambodia, Afghanistan, Rwanda and Haiti

ILAC is organized as a non-profit organization headquartered in Sweden, supported by funding from the Swedish Ministry of Foreign Affairs, the International Bar Association and the International Foundation for the Rule of Law and the Independence of Lawyers and Judges. ILAC (USA) has been formed as a supporting organization based in Washington DC.

## 6.2 "Taking Law to the People" – legal aid, education and literacy

In her book "Taking Law to the People: Gender, law reform and community legal education"<sup>22</sup>, Dr. Amy Shupikai Tsanga, a Zimbabwean scholar argues that in taking law to the people through legal education projects and similar aid initiatives, an approach which merely seeks to disseminate the content of rights without appreciating the dynamics that may prevent the exercise of those rights is unlikely to be effective in bringing about change in the lives of those targeted by the message. Two major issues which have significant implications for organizations engaged in legal literacy arise. The first touches on the significance of participatory research or an in-depth preliminary survey of the development of community legal education programmes. Such surveys ensure that programmes are responsive to people's concerns and lived realities in terms of the message being disseminated and that the communication approaches adopted are relevant to the target group. The second issue is that of programme design emanating from an in-depth survey from a long-term perspective of change. Organizations engaged in legal services have the potential to play an effective role in opening up channels of communication and participation between lawmaker and the people. The challenge is to reform the predominantly expert/ receiver type of programme designs in legal information dissemination and to embrace more participatory and social change oriented models.

22 Weaver Press, ISBN 1 77922 013 8, pp 177

23 [http://www.nlada.org/Defender/Defender\\_Standards/Defender\\_Standards\\_ABA](http://www.nlada.org/Defender/Defender_Standards/Defender_Standards_ABA)

24 [http://www.nlada.org/Civil/Civil\\_SPAN/SPAN\\_Library](http://www.nlada.org/Civil/Civil_SPAN/SPAN_Library). The US Basic standards can be accessed directly here: [http://www.nlada.org/Defender/Defender\\_Standards/Standards\\_Attach6](http://www.nlada.org/Defender/Defender_Standards/Standards_Attach6)

25 <http://www.ojp.usdoj.gov/indigentdefense/compendium/welcome.html>

26 <http://www.ptla.org/cliented/international.htm>

### 6.3 Legal aid standards (USA)

The National Legal Aid and Defender Association, an association of legal aid providers in the USA formulated in 2002 *Ten Principles of a Public Defence Delivery System*. The Principles distil thousands of pages of national standards regarding indigent defence systems down to their essence - ten simple requirements.<sup>23</sup> This web-page is also the entry-point to other standards written, and periodically updated, by the Standards Committee of the ABA Criminal Justice Section, and approved by the ABA House of Delegates as the formal position of the Association<sup>24</sup>

A full Compendium of standards for indigent defence systems can be accessed here.<sup>25</sup>

### 6.4 Legal Aid Directories

Pine Tree Legal Assistance is a directory that has extensive links to all the main actors around the world offering legal aid.<sup>26</sup>