

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

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I. Introduction

1. Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. It is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in article 11, paragraph 1, of the Universal Declaration of Human Rights,¹ and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.
2. Furthermore, article 14, paragraph 3 (d), of the International Covenant on Civil and Political Rights² states that everyone should be entitled, among other rights, “to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”.
3. A functioning legal aid system, as part of a functioning criminal justice system, may reduce the length of time suspects are held in police stations and detention centres, in addition to reducing the prison population, prison overcrowding and congestion in the courts, and reducing reoffending and revictimization. It may also protect and safeguard the rights of victims and witnesses in the criminal justice process.
4. Legal aid plays an important role in facilitating diversion and the use of community-based sanctions and measures, including non-custodial measures; promoting greater community involvement in the management of criminal justice; reducing the unnecessary use of detention and imprisonment; rationalizing criminal justice policies; and ensuring efficient use of State resources.
5. Regrettably, many countries still lack the necessary resources and capacity to provide legal assistance for suspects, those accused of a criminal offence, prisoners, victims and witnesses.
6. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which are drawn from international standards and recognized good practice, aim to provide guidance to countries on the fundamental principles on which a legal aid system in criminal justice should be based and to outline the specific elements required for an effective and sustainable national legal aid system, in order to strengthen access to legal aid pursuant to Economic and Social Council resolution 2007/24, entitled “International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa”.

¹ “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence” (General Assembly resolution 217 A (III), article 11, paragraph 1).

² General Assembly resolution 2200 A (XXI), annex.

7. In line with the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa and the Lilongwe Plan of Action³ for the implementation of the Declaration, the Principles and Guidelines follow a broad concept of legal aid.
8. For the purpose of the Principles and Guidelines, the term “legal aid” includes legal advice, assistance and representation for victims and for arrested, prosecuted and detained persons in the criminal justice process, provided free of charge for those without means. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.
9. The first providers of legal aid are lawyers, but the Principles and Guidelines also suggest that States involve a wide range of stakeholders, such as non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations, and academia.
10. It should be noted that States employ different models for the provision of legal aid. These may involve public defenders, private lawyers, contract lawyers, pro-bono schemes, bar associations, paralegals and others. The Principles and Guidelines do not endorse any specific model but encourage States to guarantee the basic right to legal aid of suspects and the accused, while expanding it to include others who come into contact with the criminal justice system and diversifying its delivery schemes.
11. The Principles and Guidelines are based on the recognition that States should undertake a series of measures that, even if not strictly related to legal aid, can maximize the positive impact that the establishment and/or reinforcement of a properly working legal aid system may have on the proper functioning of the criminal justice system and on access to justice.
12. Recognizing that certain groups are entitled to additional protection or are more vulnerable when involved with the criminal justice system, the Principles and Guidelines also provide specific provisions for women, children and groups with special needs.

³ *Official Records of the Economic and Social Council, 2007, Supplement No 10* (E/2007/30/Rev.1), chap. I, sect. B, draft resolution VI, annexes I and II.

II. United Nations Principles on Access to Legal Aid in Criminal Justice Systems

Principle 1. Right to legal aid

13. Recognizing that legal aid is an essential element of a functioning 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,⁴ States should guarantee the right to legal aid in their national legal systems at the highest possible level, including in the constitution.

Principle 2. Responsibilities of the State

14. States should consider the provision of legal aid as their duty and responsibility. To that end, they should enact specific legislation and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system.

15. The provision of legal aid should not interfere with the organization of the defence of the beneficiary or with the independence of his or her legal counsel.

Principle 3. Legal aid for persons suspected or accused of a crime

16. States should ensure that anyone who is arrested, detained⁵ or prosecuted for a crime punishable by a term of imprisonment or the death penalty⁶ receives legal assistance and that the legal assistance is free of charge, if the person cannot afford it, at all stages of the criminal justice process, including post-trial proceedings.

17. Free legal assistance should also be provided, regardless of the income of the person, if the interest of justice so requires, for example in the case of urgency, complexity or the severity of the potential penalty.

18. Children should have access to free legal aid under the same or more lenient conditions as adults.⁷

19. Finally, it is the responsibility of prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are properly assisted.

⁴ For the definition of “justice process”, see paragraph 9 (c) of the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex).

⁵ For the definition of “arrest” and “detained person”, see the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex).

⁶ See paragraph 5 of the safeguards guaranteeing protection of the rights of those facing the death penalty (Economic and Social Council resolution 1984/50, annex).

⁷ See page 9 of the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice and their explanatory memorandum, adopted on 17 November 2010.

Principle 4. Legal aid for victims of crime

20. States should provide legal aid to victims of crime, especially victims of serious crime and vulnerable victims, in the form of legal information on their rights and of legal representation.

Principle 5. Non-discrimination

21. States should ensure the provision of legal aid to all persons regardless of age; race; colour; sex; sexual orientation; language; religion or belief; political or other opinion; national or social origin; or property, birth or other status.

Principle 6. Prompt provision of legal aid

22. States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process.

Principle 7. The right to be informed

23. States should ensure that, at the time of deprivation of liberty and prior to any questioning, persons are informed of their right to legal aid and other procedural safeguards and of the consequences of voluntarily waiving those rights.

24. States should ensure that information on rights during the criminal justice process and on legal aid services is made freely available and accessible to the public.

Principle 8. Remedies and safeguards

25. States should establish effective remedies and safeguards that apply if access to legal aid has been delayed or denied or if persons have not been adequately informed of their right to legal assistance.

Principle 9. Equity in access to legal aid

26. Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs such as the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV/AIDS, indigenous people, stateless persons, asylum-seekers, foreign citizens, refugees and internally displaced persons. Such measures should address the special needs of those groups, including by being gender-sensitive and age-appropriate.

27. States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and persons who are members of economically and socially disadvantaged groups.

Principle 10. Legal aid in the best interests of the child

28. In all legal aid decisions affecting children, the best interests of the child should be the primary consideration.

29. Legal aid provided to children should be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.

Principle 11. Independence and protection of legal aid providers

30. 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 and to consult with their clients freely both within their own country and abroad; and should not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.⁸

Principle 12. Competence and accountability of legal aid providers

31. States should ensure that all legal aid providers possess education, training, skills and experience commensurate with the nature of their work, including the gravity of the offences, and the rights and needs of women, children and groups with special needs.

32. 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.⁹

Principle 13. Partnerships

33. States should recognize and encourage the contribution of lawyers' associations, universities, civil society and other groups and institutions to providing legal aid.

34. Where appropriate, public-private and other forms of partnerships should be established to extend the reach of legal aid.

⁸ See paragraph 16 of the Basic Principles on the Role of Lawyers (*Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex).

⁹ See paragraph 28 of the Basic Principles on the Role of Lawyers.

III. United Nations Guidelines on Access to Legal Aid in Criminal Justice Systems

Guideline 1. Provision of legal aid free of charge

35. Whenever States apply a means test to determine eligibility for legal aid that is free of charge, they should ensure that:

(a) Persons whose means exceed the limits of the means test but who cannot afford, or do not have access to, a lawyer in situations where legal aid would have otherwise been granted or where it is in the interest of justice to provide such aid, are not excluded from receiving assistance;

(b) Persons urgently requiring legal aid at police stations, detention centres or courts are exempted from the test;

(c) The criteria for applying the means test are widely publicized;

(d) Persons who are denied legal aid on the basis of the means test have the right to appeal that decision;

(e) If the means test is calculated on the basis of the household income of families but individual family members are in conflict with each other or do not have equal access to the family income, only the income of the person applying for legal aid is used for the purpose of the means test.

Guideline 2. The right to be informed

36. In order to guarantee the right of persons to be informed of their right to legal aid, States should ensure that:

(a) Information on the right to legal aid and what such aid consists of and on the availability of legal aid services and how to access such services, as well as other relevant information, is available in the community and to the general public in local government offices and educational and religious institutions and through the media or other appropriate means;

(b) Information is available to isolated groups and marginalized groups. Use should be made of radio and television programmes, of regional and local newspapers and, in particular following changes to the law or specific issues affecting a community, of targeted community meetings;

(c) Police officers, law enforcement officers, prosecutors, judicial officers and officials in any facility where persons are imprisoned or detained inform unrepresented persons of their right to legal aid and of other procedural safeguards;

(d) Information on the rights of a person arrested or charged with a crime and on the availability of legal aid services is provided in police stations, detention centres, courts and prisons; such information is provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children; and such information is in a language that those persons understand. Information provided to children must be provided in a manner appropriate to their age and maturity;

(e) Remedies are available to persons who have not been adequately informed of their right to legal assistance; such remedies may include a prohibition on conducting procedural actions, exclusion of evidence, judicial review and compensation.

Guideline 3. Other rights of persons arrested, detained or accused of a crime

37. States should introduce measures:

(a) To inform every person arrested or charged with a crime of his or her right to remain silent, his or her right to consult with a legal aid provider before being interviewed by the authorities and his or her right to be accompanied by an independent legal aid provider while being interviewed;

(b) To prohibit any interviewing of a person by the police in the absence of a lawyer, unless the person gives his or her informed and voluntary consent to waive the lawyer's presence; and to establish mechanisms for verifying the voluntary nature of the person's consent;

(c) To inform all foreign prisoners of their right to request contact with their consular authorities without delay;¹⁰

(d) To ensure that persons have the opportunity to meet with a legal aid provider promptly after their arrest;

(e) To enable every person who has been detained for any reason to imminently notify a member of his or her family, or any other appropriate person of his or her choosing, of his or her detention and location and of any imminent change of location; the competent authority may, however, delay a notification if absolutely necessary, if provided for by law and if the transmission of the information would hinder a criminal investigation;¹¹

(f) To provide the services of an interpreter who has no conflict of interest, whenever necessary;

(g) To assign a guardian, whenever necessary;

(h) To make available in police stations and places of detention the means to contact legal aid providers;

(i) To ensure that suspects understand their rights;

(j) To ensure that a mechanism for complaining against torture or ill treatment is available.

¹⁰ See paragraph 6 of the recommendations on the treatment of foreign prisoners (*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.1, annex II).

¹¹ See principle 16 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; and article 20, paragraph 1, of the International Convention for the Protection of All Persons from Enforced Disappearance (General Assembly resolution 61/177, annex).

Guideline 4. Legal aid at the pretrial stage

38. To ensure that detained persons have prompt access to legal aid in conformity with the law, States should take measures:

(a) To ensure that police do not arbitrarily¹² restrict the right to legal aid, and access to it, of persons arrested, detained, suspected of or charged with a crime, in particular in police stations;

(b) To facilitate access by legal aid providers to detained persons in police stations and other places of detention;

(c) To ensure legal representation at pretrial release or detention or bail hearings;

(d) To monitor and enforce custody time limits in police holding cells or other detention centres, for example by requesting that magistrates and judges screen the remand caseload in detention centres on a regular basis to make sure that people are remanded lawfully, that their cases are dealt with in a timely manner and that the conditions in which they are held meet the relevant legal standards, including international ones;

(e) To provide every person, on admission to a place of detention, with information on their rights in law, the rules of the place of detention and the initial stages of the pretrial process. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, and persons with disabilities and children and in a language they understand. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in each detention centre;

(f) To request bar or legal associations and other legal aid providers to establish a roster of lawyers [and paralegals] to provide legal aid to persons arrested, detained, suspected of or charged with a crime, in particular at police stations;

Guideline 5. Legal aid during court proceedings

39. States should ensure that every person charged with a crime for which deprivation of liberty or capital punishment may be imposed by a court of law has access to legal aid in all proceedings at court, including on appeal. States should introduce measures:

(a) To ensure that the accused understands the case against him or her and the possible consequences of the trial;

(b) To ensure that every person accused of a crime has adequate time, facilities and financial support, in case he or she does not have sufficient means, to prepare his or her defence and to be able to consult with his or her lawyer;

¹² The term is used here in the same sense as in the International Covenant on Civil and Political Rights.

(c) To provide representation in any court proceedings by a lawyer of choice or by a competent lawyer assigned by the court or other legal aid authority free of charge when the person does not have sufficient means to pay and/or where the interest of justice so requires;

(d) To enable, in accordance with national law, paralegals and law students to provide [appropriate types of] assistance to the accused in court;

(e) To ensure that unrepresented suspects and the accused understand their rights. This may include, but is not limited to, requiring judges and prosecutors to explain their rights to them in clear and plain language.

Guideline 6. Legal aid at the post-trial stage

40. States should ensure that imprisoned persons¹³ and children deprived of their liberty have access to legal aid and that they are held in prison in conformity with the law.

41. For this purpose, States should introduce measures:

(a) To provide all persons, on admission to the place of imprisonment and during their detention, with information on the rules of the place of imprisonment and their rights in law, including the right to confidential legal aid, advice and assistance; the possibilities for further review of their case; their rights during disciplinary proceedings; and procedures for complaint, appeal, early release, pardon or clemency. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and should be in a language they understand. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in those parts of the facilities to which prisoners have regular access;

(b) To encourage bar and legal associations and other legal aid providers to draw up rosters of lawyers [and paralegals] to visit prisons to provide legal advice and assistance [free of charge] to prisoners;

(c) To ensure that prisoners have access to legal aid for the purpose of submitting appeals and filing requests related to their treatment and the conditions of their imprisonment when facing serious disciplinary charges,¹⁴ and for requests for pardon, in particular for those prisoners facing the death penalty.

¹³ Any person deprived of personal liberty as a result of conviction for an offence (as defined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment).

¹⁴ See European Court of Human Rights, case of *Ezeh and Connor v. the United Kingdom of Great Britain and Northern Ireland*, Nos. 39665/98 and 40086/98, and Council of Europe, *European Prison Rules* (Strasbourg, 2006).

(d) To inform foreign prisoners of the possibility, where available, of seeking transfer to serve their sentence in their country of nationality, subject to the consent of the State.¹⁵

Guideline 7. Legal aid for victims

42. States should take appropriate measures to ensure that:

(a) Appropriate advice, assistance, care, facilities and support are provided to every victim of crime, in particular women and children, throughout the criminal justice process in a manner that prevents revictimization and secondary victimization;

(b) Child victims receive legal assistance as required, in line with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;

(c) Victims receive legal advice on any aspect of their involvement in the criminal justice process, including the possibility of taking civil action or making a claim for compensation in separate legal proceedings, whichever is consistent with the relevant national legislation;

(d) Victims are promptly informed by the police and other frontline responders (i.e. health, social and child welfare sectors) of their right to information, legal advice and representation, assistance and protection, and of how to access such rights;

(e) The views and concerns of victims are presented and considered at appropriate stages of the criminal justice process where their personal interests are affected or where the interest of justice so requires, without prejudice to or inconsistency with the rights of the accused to a fair and impartial trial, and consistent with the relevant national legislation;

(f) Victim services agencies and non-governmental organizations provide basic advice and assistance, including legal aid;

(g) Mechanisms and procedures are established to ensure close cooperation (and appropriate referral systems) between legal aid providers and other professionals (e.g. social workers and health providers) to obtain a comprehensive understanding of the victim, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

¹⁵ See the Model Agreement on the Transfer of Foreign Prisoners (*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.1, annex I).

Guideline 8. Implementation of the right of women to access legal aid

43. States should take appropriate measures to ensure the right of women to access legal aid, including:

(a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice, including by taking active steps to ensure that female lawyers are available to represent offenders and victims;

(b) Providing free legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization. This may include translation of legal documents, where requested or required.¹⁶

Guideline 9. Child-friendly legal aid systems

44. States should ensure that legal aid systems are designed to take into account children's evolving capacities and that they strike an appropriate balance between considerations of children's best interests and children's right to be heard in judicial proceedings.

45. States should take appropriate measures to establish child-friendly and child-sensitive legal aid systems, including:

(a) Providing information on legal rights, in a manner appropriate for the child's age and maturity, in a language that the child can understand and that is gender- and culture-sensitive. Provision of information to parents and guardians or caregivers should be in addition, and not an alternative, to communicating information to the child;

(b) Adopting legal aid legislation, policies and regulations that explicitly take into account the child's rights and special developmental needs, including the right to have legal or other appropriate assistance in the preparation and presentation of his or her defence; the right to be heard in all judicial proceedings affecting him or her; standard procedures for determining best interest; privacy and protection of personal data; and the right to be considered for diversion;

(c) Establishing child-friendly legal aid service standards and professional codes of conduct. Legal aid providers working with and for children should, where necessary, be subject to regular vetting, according to national law and without prejudice to the independence of the judiciary, to ensure their suitability for working with children;

(d) Promoting standard legal aid training programmes. Legal aid providers representing children should be trained in and knowledgeable about children's rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding. All legal aid providers

¹⁶ See *Handbook for Legislation on Violence against Women* (United Nations publications, Sales No. E.10.IV.2).

working with and for children should receive basic interdisciplinary training on the rights and needs of children of different age groups, as well as on proceedings that are adapted to them; and training on psychological and other aspects of the development of children, with special attention to girls and children who are members of minority groups or indigenous people, as well as on available measures for promoting the defence of children in conflict with the law;

(e) Establishing mechanisms and procedures to ensure close cooperation and appropriate referral systems between legal aid providers and different professionals to obtain a comprehensive understanding of the child, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

46. The privacy and personal data of a child who is or who has been involved in judicial or non-judicial proceedings and other interventions should be protected at all stages, and such protection should be guaranteed by law. This generally implies that no information or personal data may be made available or published, particularly in the media, which could reveal or indirectly enable the disclosure of the child's identity, including images of the child, detailed descriptions of the child or the child's family, names or addresses, and audio and video records.¹⁷

Guideline 10. Special measures for children

47. States and legal aid providers should ensure special measures for children to prevent stigmatization and other adverse effects as a result of being involved in the criminal justice system, including:

(a) Ensuring the right of the child to have the matter determined in the presence of the child's parents or legal guardian, unless it is not considered to be in the best interest of the child, and by adequately trained legal professionals, such as expert lawyers or paralegal professionals, and according priority access to legal aid for children deprived of their liberty;

(b) Establishing, where possible, dedicated mechanisms to support specialized legal aid for children;

(c) Promoting, where appropriate, diversion or other alternative measures to the formal criminal justice system and providing children with legal aid at every stage of the process where diversion and other alternative measures are applied;

(d) Encouraging, where appropriate, the use of alternative measures and sanctions to deprivation of liberty, and providing children with legal aid to ensure that deprivation of liberty is a measure of last resort and for the shortest appropriate period of time;

(e) Establishing measures to ensure that court proceedings are conducted in an atmosphere and manner that allow children to participate therein and to express themselves freely;

¹⁷ See page 6 of the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice and their explanatory memorandum, adopted on 17 November 2010.

- (f) Ensuring that children may consult freely with parents and/or guardians, and legal representatives;
- (g) Enabling children who are arrested, detained, suspected of or charged with a crime to contact their parents or guardians at once and prohibiting any interviewing of a child in the absence of his or her parent or guardian and lawyer or other legal aid provider.

Guideline 11. Nationwide legal aid system

48. In order to ensure the functioning of a nationwide legal aid system, States should undertake measures:

- (a) To ensure and promote the provision of effective legal aid at all stages of the criminal justice process for persons accused of a crime and for victims of crime;
- (b) To provide legal aid to persons who have been unlawfully arrested or detained or who have received a final judgment of the court as a result of a miscarriage of justice, in order to enforce their right to reparation, including compensation, rehabilitation and guarantees of non-repetition;
- (c) To ensure coordination between justice agencies and other professionals such as health, social services and victim support workers in order to maximize effectiveness of the legal aid system;
- (d) To establish partnerships with bar or legal associations to ensure the provision of legal aid at all stages of the criminal justice process;
- (e) To enable paralegals to provide those forms of legal aid allowed by national law or practice to persons arrested, detained, suspected of or charged with a crime, in particular in police stations or other detention centres.

49. States should also take measures:

- (a) To encourage bar or legal associations to draw up rosters of lawyers volunteering to provide legal assistance to persons arrested or charged with a crime before the courts on fixed days and provide services free of charge for those without sufficient means;
- (b) To encourage legal and bar associations to support the provision of legal aid by offering a range of services, including those that are free (pro bono), in line with their professional calling and ethical duty;
- (c) To identify incentives for lawyers to work in economically and socially disadvantaged areas (e.g. tax exemption, fellowships and travel and subsistence allowances);
- (d) To encourage lawyers and bar associations to organize regular circuits of lawyers around the country to provide free legal aid to those in need.

50. In the design of their nationwide legal aid schemes, States should take into account the needs of specific groups such as the elderly, minorities, persons with disabilities, the mentally ill, persons living with HIV/AIDS, indigenous people, stateless persons, asylum-seekers, foreign citizens, refugees and internally displaced persons, in line with guidelines 8 to 10.

51. To ensure the effective implementation of their nationwide legal aid schemes, States may consider establishing a legal aid body or authority [legal aid board] to provide, administer, coordinate and monitor legal aid services. Such a body should:

(a) Be independent of the Government and should not be subject to the direction or control of any person or authority in the performance of its functions;

(b) Have the necessary powers to provide legal aid, including but not limited to the appointment of personnel, the designation of legal aid services to individuals, the setting of criteria and accreditation of legal aid providers, including training requirements, the oversight of legal aid providers and the establishment of independent bodies to handle complaints against them;

(c) Develop, in consultation with key justice sector stakeholders and civil society organizations, a long-term strategy guiding the evolution and sustainability of legal aid;

(d) Report annually to the responsible minister and to Parliament.

Guideline 12. Funding the national legal aid system

52. States should make adequate and specific budget provisions for legal aid services [commensurate with their needs], including by providing dedicated and sustainable funding mechanisms for the national legal aid system.

53. To this end, States could take measures:

(a) To establish a legal aid fund to finance legal aid schemes, including public defender schemes, to support legal aid provision by legal or bar associations; support university law clinics; and sponsor non-governmental organizations and other organizations, including paralegal organizations, in providing legal aid services throughout the country, especially in rural and economically and socially disadvantaged areas;

(b) To identify fiscal mechanisms for channelling funds to legal aid, such as:

(i) Allocating a percentage of the State's criminal justice budget to legal aid services, commensurate with the needs of effective legal aid provision;

(ii) Using funds recovered from criminal activities by seizures or fines to cover legal aid for victims;

(c) To identify and put in place incentives for lawyers to work in rural areas and economically and socially disadvantaged areas (for example, tax exemptions or reductions, student loan payment reductions).

54. The budget for legal aid should cover the full range of services to be provided to suspects, accused, detained and imprisoned persons, and victims.

Guideline 13. Human resources

55. States should make adequate and specific provision for staffing the national legal aid system [body], commensurate with their needs. States should ensure that

professionals working for the national legal aid system possess the qualifications and training appropriate for the services they provide.

56. When there is a shortage of qualified lawyers, the provision of legal aid may also include non-lawyers or paralegals, who should receive adequate training and must operate under the supervision of qualified lawyers.

Guideline 14. Paralegals

57. States should recognize the role played by paralegals in providing legal aid services, especially in countries where access to lawyers is limited.

58. For this purpose, States should, in consultation with civil society and justice agencies and professional associations, introduce measures:

(a) To develop a national scheme of paralegal services with standardized training curricula and accreditation schemes, including appropriate screening and vetting;

(b) To set quality standards for paralegal services;

(c) To establish monitoring and evaluation mechanisms to ensure the quality of the services provided by paralegals;

(d) To promote, in consultation with civil society and justice agencies, the development of a code of conduct that is binding for all paralegals working in the criminal justice system;

(e) To specify the types of legal work that can be performed by paralegals and the types of work that must be performed exclusively by lawyers, unless such determination is within the competence of the courts or bar associations. In which case, it should be done by them;

(f) To ensure access by accredited paralegals to police stations and prisons, facilities of detention, pretrial detention centres etc. (making sure that this is consistent);

(g) To allow paralegals to participate in court proceedings and advise the accused, when there are no lawyers available to do so.¹⁸

Guideline 15. Oversight of legal aid providers

59. States, in cooperation with professional associations should:

(a) Establish criteria for the accreditation of legal aid providers;

(b) Ensure the adoption of professional codes of ethics for legal aid providers, with appropriate sanctions for infractions;

¹⁸ In some countries, the law recognizes the institution of a “friend” (for example, in French law, a friend or relative can represent the accused in court, on the condition that the judge authorizes it). Such laws could be revived, allowing for the use of paralegals.

(c) Establish rules to ensure that legal aid providers are not allowed to request any payment from the beneficiaries of legal aid, except when authorized to do so;

(d) Establish impartial bodies to review disciplinary complaints against legal aid providers;

(e) Establish appropriate oversight mechanisms for legal aid providers, with a view to preventing corruption.

Guideline 16. Partnerships with non-State legal aid providers

60. States should, where appropriate, engage in partnerships with non-State legal service providers, including non-governmental organizations and other service providers.

61. To this end, States should take measures, in consultation with civil society and justice agencies and professional associations:

(a) To recognize in their legal systems the role to be played by non-State actors in providing legal aid services to meet the needs of the population;

(b) To set quality standards for legal aid services and support the development of standardized training programmes for non-State legal aid providers;

(c) To establish monitoring and evaluation mechanisms to ensure the quality of legal aid services, in particular those provided free of charge;

(d) To work with all legal aid providers to increase outreach, quality and impact and facilitate access to legal aid in all parts of the country and in all communities, especially in rural and economically and socially disadvantaged areas and groups;

(e) To diversify legal aid service providers by adopting a comprehensive approach, for example by encouraging the establishment of centres to provide legal aid services that are staffed by lawyers and paralegals, and by entering into agreements with law societies and bar associations, university law clinics, and non-governmental and other organizations to provide legal aid services.

62. States should also take measures:

(a) To encourage and support the establishment of legal aid clinics in law departments within universities to promote clinical and public interest law programmes among faculty members and the student body;

(b) To encourage and provide incentives to law students to participate, under proper supervision and in accordance with national law or practice, in a legal aid clinic or other legal aid community scheme as part of their academic curriculum or professional development;

(c) To develop, where they do not already exist, student practice rules that allow students to practise in the courts under the supervision of qualified lawyers or faculty staff, provided such rules are developed in consultation with and accepted by the competent courts or bodies that regulate the practice of law before the courts;

(d) In jurisdictions requiring law students to undertake legal internships, develop rules for them to be allowed to practise in the courts under the supervision of qualified lawyers;

(e) To promote the growth of the legal profession (increased numbers of lawyers) and remove financial barriers to legal education;

(f) To encourage wide access to the legal profession, including affirmative action measures to ensure the access of women, minorities, and economically disadvantaged groups.

Guideline 17. Research and data

63. States or legal aid boards should establish and support mechanisms to track, monitor and evaluate legal aid and should continually strive to improve the provision of legal aid.

64. For this purpose, States should introduce measures:

(a) To conduct regular research and data collection disaggregated by gender, age, socio-economic status and geographical distribution and to publish the findings of such research;

(b) To share good practices in the provision of legal aid;

(c) To monitor conduct by law enforcement officers, prosecutors, judges and lawyers, including at police stations, courts, juvenile justice institutions, detention centres and prisons, in order to ensure the efficient and effective delivery of legal aid and ensure they adhere to human rights standards;

(d) To provide cross-cultural, culturally appropriate, gender-sensitive and age-appropriate training to legal aid providers;

(e) To improve communication, coordination and cooperation between all justice agencies, especially at the local level, to identify local problems and agree on solutions to improve the provision of legal aid.

Guideline 18. Technical assistance

65. When providing assistance on rule of law, criminal justice reform and governance issues, relevant intergovernmental organizations, such as the United Nations, bilateral donors and non-governmental organizations, should provide States, upon request, with coordinated assistance and support in the development and implementation of legal aid systems.

Guideline 19. Saving clause

66. Nothing in these principles and guidelines should be interpreted as providing a lesser degree of protection than that provided by international and regional human rights conventions or covenants applicable to the administration of justice including, but not limited to, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All

Forms of Discrimination against Women and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.
