

Forum: Human Rights Commission 1

Issue: The Question of Legal Aid in Promoting Access to Justice

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Introduction

In 1948, the Universal Declaration of Human Rights (UDHR) established the claim that all global civilians were to be equally protected by international and national law, including given the right to a fair trial. The necessity of being able to defend oneself as a victim of injustice or against a convicted crime is considered a right so crucial that it's explicitly outlined as such in the United Nations Declaration of Human Rights (UNDHR) alongside 29 other inalienable, inherent rights every person is expected to have and freely entertain. However, the harsh reality is that a very limited portion of the population have proper access to quality legal aid. For a majority of people, it is either not an option due to them being a part of a minority population through factors such as gender, race, or age; or they simply don't know how to access local counsel services. The issues mentioned are what UN member states are basing their solutions on, yet many more factors play a role which makes justice a privilege that is hard to obtain.

In the Global Study on Legal Aid report published by the UNODC (United Nations Office on Drugs and Crime) in October 2016, it is stated that over one-third of member states haven't prioritized legal aid to its own specific legislation, resulting in a majority of their populations being unaware of the establishment of legal aid services. Public awareness, which will be further elaborated on, lacks on reaching out to civilians to inform them of the availability of counsel services. Furthermore, certain cases aren't deemed necessary for legal aid support, such as domestic disputes. Even though people have the right to ask for state support on such issues, many don't feel the need to be provided for trials as trivial as these or simply can't afford it. Poverty rates have a correlation to rates of legal aid being provided: people who simply cannot afford legal aid are denied justice due to their financial stability, which greatly affects those in rural areas who can barely afford basic necessities but face high trafficking and crime rates.

Fortunately, almost all member states have shown incentive to ensure that access to these services is met. Since the mid-twentieth century, individual nations have published guidelines outlining how to reach out to paralegals and state departments. Awareness on these services is being spread

through classrooms and various other government provided efforts so that members of all nations receive a standardized education on their legal rights. Efforts to combat this issue have prominently improved legal aid access in the past nearly 80 years, and with continuous progression, soon every individual will have access to quality legal aid and receive the justice and protection they deserve.

Definition of Key Terms

Legal Aid

This refers to the provision of legal services to those who cannot afford an attorney or don't know how. In some cases, legal aid organizations that have no affiliation to the government (NGOs) assist with providing lawyers and judicial knowledge, but recent efforts have been implemented by over half of the UN member nations for state provided legal aid, meaning that all support is nationally funded.

Paralegal

A person with adequate education on legal systems and has a background in working with legal framework or has received training to do so, but isn't a qualified lawyer. Paralegals usually work within law departments and are useful resources for people who want to file for legal aid or prepare for a trial but don't know enough about how law systems work in the given region.

Civil Society Providers

As a form of legal aid, Civil Society Organizations (CSOs) provide directly to the society as a non-governmental group or organization (NGO). An example includes the American Bar Association, which isn't representative of an United States jurisdiction but still provides to the public through a group of volunteered law students and practicing lawyers.

Legal Framework

A set of guidelines or system of rules and laws outlining how a certain procedure should be carried out or decision should be made. Legal frameworks are important to consult when just starting the legal aid process, and most nations release all their information on provided legal services in the form of legal frameworks (ie. Ontario Legal Aid Plan)

Legislation

Established laws on a certain subject which are written and published by members of Parliament or Congress. Most nations precede passing on legal frameworks with official legislations stating the legal right to justice that those residing in the given nation possesses.

Background Information

Causes for Limited Access to Legal Aid

Lack of access to legal aid is a prominent issue, however, the reasons as to why differs for every demographic and region. Factors taken into consideration include the public who will be receiving the legal aid, the lawyers and paralegals who provide the support, and the government that plays a role in ensuring the quality of aid is adequate.

A study conducted by the American Bar Association aimed to determine reasons a person or population wouldn't want to seek legal aid. Commonplace, civil issues relating to finances (taxes, debt, etc.), employment, and domestic matters were presented as problems one would encounter. Results found that over 80% of the participants were willing to handle the issue themselves without questioning whether or not it requires legal assistance. Of those who reached out for help, only 40% contacted a lawyer; the rest either contacted a social worker or went directly to their state government agencies. When the people who didn't get help were asked why, a majority of them stated that they either didn't have time or couldn't afford legal aid for issues they didn't think required it.

Financial Instability of Victims and Defendants

The IAALS (Institute for the Advancement of the American Legal System) found that for family court cases in the United States, 90% of self represented people stated that they would like to have legal representation with them but simply couldn't afford it. Although divorce rates have seen a decrease in recent years, over a third of the North American population faced a divorce and many of them without legal assistance. This opened up the scope of the problem within the region, but in other areas of the world lack of legal aid due to cost has grown into a greater issue.

Domestic violence, trafficking, and child marriage are dwelling issues in certain regions, but the victims of these acts cannot afford legal aid when they are dependent on the attacker. However, the cost of legal aid is not unique to only impoverished areas; first world countries face this as well, making access to a lawyer perceived as a luxury when it's in fact a right.

Education and Public Awareness

Further globalized studies reported that there's a perceived chance the group of people who choose to contact their local social worker or a state representative weren't aware of how to contact a lawyer. For those who didn't contact anyone due to underestimating the severity of the issues at hand, they weren't informed of the reasons to contact a lawyer. Knowledge on the subject of legal cases is commonly restricted to thinking that a person has to reach out to emergency services first, like the police department, in order for a situation to be deemed necessary for legal aid.

The way legal aid has been advertised is stereotypically severe compared to everyday events that could actually require law support. Provided with properly standardized education on legal aid and its benefits, the public would have more trust on the justice system. In addition, it's vital that there is increased legislation on legal aid in nations where it has not been prioritized.

Training for Lawyers and Paralegals

The UNODC (United Nations Office on Drugs and Crime) 2016 Global Score Report on Legal Aid Access showed that 67% of participants believed that lawyers are getting paid too little for their work, and in a majority of every region internationally doesn't trust that legal aid will bring justice to their issue as a result of lack of training. Many lawyers and legal service providers prepare for issues at a greater scale than the civil ones that most people need legal aid for, and in Southern regions of the world lawyers aren't provided with the necessary skills to handle life-threatening issues, causing communities to lose faith in the effectiveness of local legal service providers.

For example, the Criminal Justice Systems in Africa UNODC Report published in 2011 stated that in 2003, the first university legal clinic programme in Africa was opened in Mozambique by Eduardo Mondlane University and provided 24 fully trained legal aid service providers to prison inmates. Since 2004, Ethiopia has provided over 400 students with practice oriented legal education, and in recent years universities in Nigeria have implemented two-week courses to provide basic training for law students to provide legal aid even in school. Due to these initiatives, 5/14 of the Sub-Saharan African Countries researched found that universities provided the greatest source of legal aid. However, of the people who participated in a survey inquiring why legal aid was still sparse, over 70% of responders stated that the greatest problem is funding, followed by lack of resources.

Major Countries and Organizations

UNODC (United Nations Office on Drugs and Crime)

The UNODC published a Global Study on Legal Aid on November 14 2016 that is comprised of the following: data gathered from different regions worldwide on either the access to or provision of legal aid, case studies that outline and examine the ways that legal aid is delivered in 8 different nations, and country profiles that analyzes the legal aid access and quality in 50 countries. Since the release of this study, the United Nations has taken initiative towards establishing a greater government-community relation in marginalized regions where justice is lacking by improving the systems of response to conflict and crises.

ABA (American Bar Association)

The ABA approaches legal aid access with a perspective focused on equality in services provided. Over the past century, the American Bar Association has worked to limit bias, especially in minority populations, children, and immigrants to the United States. Their work with children and the law is centered on getting the same standard of support as adults, with a focus on trauma experiences and ensuring a close relationship between the attorney and child/family. The ABA also has a number of projects in place regarding domestic or sexual violence, as this continues to be a prominent issue. Their work with lawyers includes an abundance of training for any situation that legal aid can potentially be called for.

Legal Aid Society

The Legal Aid Society specializes in three main practices: juvenile rights practice to ensure the protection of children under law, criminal defense practice that combats discrimination, and civil practice. Of all the children that require legal aid services annually in New York, the Legal Aid Society represents 90% of them pro-bono (services are free of charge). In ensuring the safety of children's right and welfare, they also provide educational and psychological aid. Their extensive criminal defense sector has a number of ongoing projects, including the Decarceration Project; an initiative targeted towards vulnerable or minority populations and specifically illegal incarceration activity. In July of 2018 alone, they saved 8 civilians over 700 days of imprisonment and over \$500,000 in imprisonment costs. The civil practice sector simply helps people who don't know where else to turn; an initiative that helps 135,000 New Yorkers annually, advocates for protection against harassment, and secures costs for disabled students. Although there are regions where legal aid access seems more crucial, the Legal Aid society addresses a large majority of the needs of one U.S. state alone with methods targeted specifically for the region.

LSC (Legal Services Corporation)

Established by the American Congress in 1974, the Legal Services Corporation works to promote support for financially unstable or low-income families and individuals. To ensure a standardized allocation of legal aid, LSC has established 133 non-profit programmes providing legal aid per state. Their relief efforts include helping families post-disaster with finding shelter and securing resources, protection of individuals against violence under law, and aid for the homeless and people with an income below 125% of federal government guidelines. Annually, LSC provides \$4 million in technology grants across the country to ease the process of reaching out for legal support.

Tanzanian Women Lawyers Association (TAWLA)

Established in 1989, the Tanzanian Women Lawyers Association is composed of female lawyers that believe there should be greater representation of those who get legal aid, targeting especially marginalized populations such as women and children. The efforts of TAWLA include advocating for land rights, child labour and treatment of juvenile detainees, and pushing for legislative action to ensure the protection of women and children. With a network of over 570 female lawyers, TAWLA provides direct legal aid to over 2,000 women and children annually. In addition, they've successfully established multiple legal aid clinics to mobilize their impact.

Timeline of Events

Date	Description of event
May 3, 1947	Constitution of Japan grants defendants justice services (ie. attorneys and paralegals) provided at the government's expenses.
January 15, 1963	Gideon v. Wainwright landmark case that concluded with the unanimous Supreme Court decision that, under the Sixth Amendment, states are required to provide an attorney for criminal defendants who cannot afford one themselves.
March 29, 1967	Release of the Ontario Legal Aid Plan to help low-income defendants and victims receive the same counsel support as those who can afford a lawyer, which initiated the spread of justice equality throughout Canada.
1994	Establishment of the Argentina Federal Public Defender Office as a state agency, which furthered the promotion of Latin American legal aid efforts.
August 23, 2012	Legal Aid Act of Sierra Leone released; increases national awareness of legal aid systems and the effect of paralegal action when providing legal justice services.

2003 Eduardo Mondlane University in Mozambique implements Africa's first Legal Clinic Programme, which initiated Universities providing the majority of legal aid training across subsaharan nations.

Relevant UN Treaties and Events

The United Nations has been and continues to be heavily involved with the issue of legal aid, specifically regarding populations having access to aid from the justice system both internationally and nationally and the insurance of their rights. In 1966 the release of the ICCPR (International Covenant on Civil and Political Rights) served as a general guideline expanding upon the UDHR (Universal Declaration of Human Rights) statement that all persons' rights are protected under law. Since then, a multitude of resolutions, treaties, and guidelines have been released that focus on the protection and enhancement of the rights of minorities. Multiple documents have been published focusing specifically on children's' rights to ensure that the juvenile justice system is taken just as seriously as adults, and lower crime rates of adolescents below the age of 18.

- International Covenant on Civil and Political Rights, 19 December 1966 ([A/RES/2200](#))
- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 14 December 1990 ([A/RES/45/113](#))
- Convention on the Elimination of all forms of Discrimination Against Women, 8 December 1979
- Guidelines on Justice Matters Involving Child Victims and Witnesses, 22 July 2005 ([A/RES/45/25](#))
- United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, 25 September 2014 ([A/RES/54/263](#))
- United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 20 December 2012 ([A/RES/67/458](#))
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders, 16 March 2011 ([A/RES/65/457](#))
- United Nations Standard Minimum Rules for the Treatment of Prisoners, 17 Dec 2015 ([A/RES/70/175](#))

Previous Attempts to solve the Issue

The establishment of legal aid has increased greatly in awareness and use throughout the twentieth century, however it's done so in different ways for each country since the limit of legal

protection only spans to a national level. Trends have been observed through UNODC and UNDP research and studies leading up to 2016 that examine each growth pattern.

In the EU (European Union), much of the action taken is legislative, meaning that it is government binding. The basis of legal aid is centered on the European Convention of Human Rights and the European Court of Human Rights, both of which have urged and implemented state funded justice support. Moldova, for example, established a National Legal Aid Council that oversees five districts across the nation. Georgia and Lithuania created state-funded legal aid service groups that decreased bar associations' responsibility of assigning lawyers to clients, which overall increased the general public awareness of the legal aid systems in place.

North American approaches vary depending on whether the aid is American or Canadian. The United States was the first country to propose the right to counsel through the Constitution, and in 1963 it was unanimously voted that defendants who cannot afford an attorney will be provided with one by the state, and this later applied to juvenile cases. In Canada, each province has an established legal aid plan that aims to provide the same services. However what catalyzed the spread of awareness were organizations that either worked alongside the government or independently, and focused on specific regions within each country to fit the solution to the people. For example, in New York the greatest issue was cost-effective legal aid, which the Legal Aid Society provided after research was done.

Sub-Saharan Africa approached the issue with community based solutions. One advancement included enhancing law schools in the mid-twentieth century to provide training necessary for serious crime and conflict situations, and clinical education that involves the public community in order to help them gain more knowledge on how legal aid works, how they can have access to it, and what issues would qualify as required for legal aid. The role of paralegals within each community also became more appreciated by the public and government due to the limited number of lawyers.

In the Middle East, governments have recognized legal aid as applicable even in less extreme situations and since the early 21st century have been reflecting that onto the public. One example is Tunisia, which has adopted a sector based strategy of justice reform in cooperation with three organizations: the National Association of Lawyers, Tunisian League of Human Rights, and Avocats Sans Frontières. Together, these associations created a Justice Monitoring Network (ROJ) that collected research through field studies in 2012. The curation of data led to the implementation of training networks for lawyers, and reaching out to communities to provide state sponsored legal aid.

A project that has been implemented in Pacific Asia is the 'Beijing Zhicheng Migrant Workers Access to Justice Project'. The commercial growth that China has seen over the 21st century has led to a population of over 268 million migrant workers as of 2013. Labor laws and regulations have been created to protect their rights but haven't been strongly enforced. In the span of a year since the

establishment of this project, with the help of the UNDP, over 20 legal aid stations were set up in the region to provide free access to justice for migrant workers. This justice project also lobbied for legislation to protect migrant workers under law and passed it successfully.

Possible Solutions

One of the most prominent reasons that individuals don't request legal aid to the extent that they should is due to lack of awareness. However, different audiences require different modes of awareness. It's vital that children are informed of their legal aid options, and so a method of ensuring that they all receive a standardized education on legal aid systems is through the classroom. Primary and early secondary education systems should be implemented in each country so that children not only understand their right to legal aid and how to entertain it, but also know about it for future use. With a more informed younger generation, future access to legal aid will be more understood.

Advertising of legal aid systems should also be implemented in workplaces and public facilities for the general public to have access to. In addition to visual advertising that should be implemented by the state or country government to ensure reliability, clinical sessions should be open to public communities free of charge multiple times a year to inform individuals about what civil conflicts would require legal aid, how to obtain legal aid access on both a local and national level, and provide education on how justice systems work. Through doing so, legal aid awareness would increase in a cost effective method.

Similarly, lawyers, paralegals, and any other legal aid providers should receive training multiple times a year given by governmental court representatives. For impoverished areas, the assistance of independent organizations should help with acquiring the resources to provide lawyers with the highest quality of training, therefore providing the public with the highest quality of legal aid. This solution combats one of the major reasons legal aid rights aren't exercised in certain societies-- that lawyers and service providers aren't given the proper resources to ensure the highest standards of legal aid. Although this is a prominent issue, effort to resolve it haven't been as heavily implemented internationally.

Finally, it should be made clear that all legal aid for both defendants and victims is provided by the state. For countries that haven't prioritized legislations towards ensuring that legal aid is provided by the state, a UN treaty should not only ensure that this is done but also reach out to specific communities where legal aid services have the highest rates of requirement but lowest rates of income. This data, as all other data collected for legal aid has been done so far, should be curated through field studies that analyze multiple populations and communities per region.

Bibliography

- “Access to Justice Assessment Tool.” *American Bar Association*, 2012,
www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_access_to_justice_assessment_manual_2012.authcheckdam.pdf.
- “And the #1 Reason People Don't Have a Lawyer When They Need One Is...” *The Chicago Bar Foundation*, chicagobarfoundation.org/news_item/1-reason-people-dont-lawyer-need-one/.
https://chicagobarfoundation.org/news_item/1-reason-people-dont-lawyer-need-one/
- “Civil Practice.” *The Legal Aid Society*, www.legalaidnyc.org/civil.
- “The Commission on Domestic & Sexual Violence.” *Domestic & Sexual Violence*,
www.americanbar.org/groups/domestic_violence/.
- “The Constitution of Japan.” *Prime Minister of Japan and His Cabinet*, 3 May 1947,
japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html.
http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html
- “Facts and Case Summary - Gideon v. Wainwright.” *United States Courts*,
www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-gideon-v-wainwright.
- “Global Study on Legal Aid Global Report.” *United Nations Office on Drugs and Crime*, Oct. 2016,
www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid_Report01.pdf.
- “Global Study on Legal Aid.” *UNDP*, Oct. 2016,
www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/global-study-on-legal-aid.html.
- “History of Legal Aid 1945-2010.” *Fabians*, Sept. 2017,
www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission-Appendix-6-F-1.pdf.
- “History of Legal Aid.” *Cowlitz Wahkiakum Legal Aid*, Cowlitz-Wahkiakum Legal Aid Program, 11 June 2017, cwlap.org/history-of-legal-aid/.
- “Improving Access to Justice: Scope of the Regulatory Objective.” *Stephen Mayson Files*, Dec. 2012,
stephenmayson.files.wordpress.com/2013/08/mayson-marley-dunn-2012-access-to-justice.pdf.
- “International Covenant on Civil and Political Rights .” *OHCHR*, 23 Mar. 1976,
www.ohchr.org/en/professionalinterest/pages/ccpr.aspx.
- “Legal Aid Act of Sierra Leone.” *Sierra Leone*, 23 Aug. 2012, www.sierra-leone.org/Laws/2012-06.pdf.
- “Legal Aid Ontario.” *Fifty Years of Legal Aid in Ontario | Legal Aid Ontario*,
www.legalaid.on.ca/en/news/newsarchive/2017-03-29_50-years-of-legal-aid.asp.
- “The Ontario Legal Aid Plan.” *McGill University Law Journal*,
www.lawjournal.mcgill.ca/userfiles/other/98835-honsberger.pdf.

“Rule of Law, Justice, Security and Human Rights.” *UNDP*,

www.undp.org/content/undp/en/home/ourwork/democratic-governance-and-peacebuilding/rule-of-law--justice-and-security/.

“Text of the Convention on the Elimination of All Forms of Discrimination against Women.” *United Nations*, United Nations, 3 Sept. 1981, www.un.org/womenwatch/daw/cedaw/cedaw.htm.

“United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice.” *United Nations Office on Drugs and Crime*, 25 Sept. 2014,

www.unodc.org/pdf/criminal_justice/Model_Strategies_violence_children.pdf.

“United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.” *United Nations Office on Drugs and Crime*, July 2013,

www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf.

“The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty.” *OHCHR | Rules for the Protection of Juveniles Deprived of Their Liberty*, 1990,

www.ohchr.org/en/professionalinterest/pages/juvenilesdeprivedofliberty.aspx.

“United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders with Their Commentary.” *United Nations Office on Drugs and Crime*, 16 Mar. 2011,

www.unodc.org/documents/justice-and-prison-reform/Bangkok_Rules_ENG_22032015.pdf.

“United Nations Standard Minimum Rules for the Treatment of Prisoners .” *United Nations Office on Drugs and Crime*, 13 May 1977,

www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.

“Access to Legal Aid in Criminal Justice Systems in Africa.” *United Nations Office on Drugs and Crime*, Apr. 2011,

www.unodc.org/pdf/criminal_justice/Survey_Report_on_Access_to_Legal_Aid_in_Africa.pdf.

User, Super. *About Us*, www.tawla.or.tz/index.php?option=com_content&view=article&id=1&Itemid=105.

Appendix

1. <https://www.tandfonline.com/doi/full/10.1080/20517483.2017.1330820> (Empirical Observation Study Conducted in China Regarding Legal Aid Distribution)

This resource is a case study that analyzes the public's use of legal aid within China, law support providers' compensation, and solutions that have been implemented to resolve these nation-specific issues. When drafting a resolution, delegates can refer to this source to see how

the statistics gathered about a nation's legal aid can be used to come up with solutions that fit the demand for legal aid.

2. www.fabians.org.uk/wp-content/uploads/2017/09/Bach-Commission-Appendix-6-F-1.pdf (History of Legal Aid in Western Europe)

For delegates whose countries are located in the EU or have affiliation to European justice systems, this report breaks down the six periods of legal aid access and shows you what treaties and solutions have already been implemented, as well as ones currently ongoing.

3. https://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_i_access_to_justice_assessment_manual_2012.authcheckdam.pdf (American Bar Association Access to Justice Assessment Tool)

This report is a research based assessment of how the public perceives legal aid. It discusses whether or not they consider it to be vital and how they deal with civil issues without legal aid. When coming up with solutions, this report will be important to see what areas need the most aid.

4. https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf (United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems)

The UN Principles and Guidelines on Access to Legal Aid is written in the format of a resolution, making it easy to follow and understand. It looks at how legal aid correlates to the Universal Declaration of Human Rights and how it's used in judicial situations, making it useful when writing a resolution on this topic.

5. https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid_Report01.pdf (United Nations Office on Drugs and Crime Global Study on Legal Aid)

This report analyzes the stances of 49 countries and how they deliver legal aid, as well as case studies regarding specific projects that helped progress this issue.