

Introduction

The right to criminal defence is an internationally recognized and fundamental right that entitles anyone who is charged with a criminal offence to legal advice, assistance and representation. As such, the right to criminal defence should be guaranteed without discrimination, particularly for those who are not able to access or afford criminal legal defence for reasons of vulnerability or lack of sufficient means.

State-funded legal aid is therefore essential in ensuring the right to defence as recognized in international legal instruments and national constitutions around the world. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems state that “legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law” and that “it is a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process”.

Furthermore, the provision of legal aid decreases the occurrence of due process violations, reduces the length of pretrial detention, shortens case resolution times, protects the rights of victims and witnesses of crimes and ultimately contributes to an increase in trust and confidence in, as well as cost savings for, the criminal justice system.

States should consider the provision of legal aid their responsibility. To that end, the United Nations Principles and Guidelines invite Member States, “consistent with their national legislation, to adopt and strengthen measures to ensure that effective legal aid is provided”, to “consider, where appropriate, enacting specific legislation and regulations” and to allocate the necessary financial resources for the establishment of a comprehensive legal aid system.

The Model Law on Legal Aid in Criminal Justice Systems was developed as a technical tool to assist States in their drafting of legal aid legislation. It proposes a model for establishing a comprehensive legal aid system without aiming to replace the national legislative drafting process, but rather to assist in it.

The Model Law is based on the United Nations Principles and Guidelines and is limited in scope to the provision of criminal legal aid. Civil legal aid is addressed in

the Model Law only in the context of support for victims of crime in claims for civil compensation. However, international best practices suggest that the establishment of a holistic legal aid system that provides both criminal and civil legal aid should be considered. Many of the provisions in this Model Law can be amended and applied to civil legal aid accordingly. On no account should the Model Law be interpreted as requiring countries to exclude legal aid in civil matters from their existing legal aid laws or to omit civil legal aid from their future legal aid laws.

The Model Law acknowledges that legal aid systems differ in terms of institutional arrangements, delivery schemes and general scope of application. Therefore, the Model Law should, as needed, be adjusted to the constitutional principles and particularities of each national legal system, including by taking into account the federal or centralized nature of the jurisdiction and the civil, common or mixed legal tradition of a given country. In addition, the purpose of the Model Law is to set minimum provisions. States may extend the rights provided for in the Model Law, or other provisions therein, in order to provide a wider scope of eligibility or to cover subject matter not explicitly covered in the Model Law. Finally, the Model Law recognizes that the enactment of legislation is only a first step in the setting up of a comprehensive legal aid system. The adoption of policies and strategic action plans is necessary for the effective implementation of the legal aid mandate. In this regard, the Doha Declaration, adopted by the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice on 12 April 2015, calls upon States “to review and reform legal aid policies for expansion of access to effective legal aid in criminal proceedings for those without sufficient means, or when the interests of justice so require, including, when necessary, through the development of national plans in this field”.

The Model Law is designed to address some of the challenges that lawmakers face in drafting legal aid legislation. In order to facilitate its adaptation to national legislation, the Model Law presents some of its provisions in the form of options. In addition, the Model Law is supplemented by the commentary, which serves to explain the legal basis for each provision and offers as much useful information as possible on each relevant issue. Similarly, each model provision is supplemented by comparative examples to present variants of legal aid legislation in different countries around the world (please note that the comparative examples are unofficial English translations).

The Model Law adopts a broad approach to legal aid, in line with the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. It is not limited to legal representation, but also includes the provision of legal advice, assistance and information by a wide variety of legal aid providers to the vulnerable members of society, who are the main legal aid beneficiaries.

The Model Law has eight chapters:

Chapter 1, “Purpose, definitions and scope of application”, sets the basis for the entire Model Law, as it states the purpose of the law, provides detailed definitions of key terms and determines the criteria for eligibility for legal aid.

Chapter 2, “Guiding principles”, highlights the fundamental human rights that the Model Law seeks to protect. The guiding principles also serve to inform the methods for the provision of legal aid.

Chapter 3, “Legal aid beneficiaries and legal aid providers”, indicates the types of services available to legal aid beneficiaries, provides a comprehensive set of rights to which legal aid beneficiaries are entitled and outlines the main categories of legal aid providers, as well as their rights, duties and responsibilities.

Chapter 4, “The Legal Aid Authority”, presents models for the management, coordination and monitoring of the provision of legal aid. In proposing the establishment of a dedicated authority for such purposes, it defines its main functions, including by explaining the process of accreditation of legal aid providers in detail.

Chapter 5, “Procedures”, describes the process for the request and provision of legal aid, from early access to legal aid to application for and granting of legal aid.

Chapter 6, “Financial provisions”, recommends the establishment of a Legal Aid Fund to implement the State’s duty to allocate the necessary financial resources for the provision of legal aid.

Chapter 7, “Rules and regulations”, vests the power to enact rules and regulations to define the framework for the delivery of legal aid in an appropriate authority.

Chapter 8, “Final provisions”, contains provisions on regulating the entry into force of the law, provisions on offences for violating the legal aid law and transitory provisions.