

Part II

Commentaries to the Model Law on Legal Aid in Criminal Justice Systems

Preamble

The preamble is intended as a succinct introductory statement of a State's international law and constitutional obligations, as well as international standards and guidelines on legal aid, and serves as the factual basis for explaining the reasons for the enactment of this Law and the objectives it seeks to attain.

In some jurisdictions, laws are not accompanied by a preamble. If adopted, the text of the preamble, as well as its binding power, may vary according to a State's international law obligations, legal system and local context. Countries may opt to convert the preamble into a section on findings or reasoning.

Principle 1, paragraph 14, of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems¹ (hereinafter the United Nations Principles and Guidelines) provides that States should guarantee the right to legal aid at the highest possible level. Moreover, principle 2, paragraph 15, calls on States to consider enacting legislation and regulations to ensure that a comprehensive legal aid system is in place.

Principle 1. Right to legal aid

14. 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, States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.

Principle 2. Responsibilities of the State

15. States should consider the provision of legal aid their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations 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.

¹General Assembly resolution 67/187, annex.

When the constitution, or the equivalent basic law of a State, provides for the right to legal aid, the preamble should make reference to that right. Many national legal systems provide for a constitutional right to legal aid.

In some cases, the constitution recognizes access to legal aid as a right and makes reference to a means and merit test. For instance, the Kosovo² Constitution of 2008 provides, in article 6, that “free legal assistance shall be provided to those without sufficient financial means if such assistance is necessary to ensure effective access to justice”. Similarly, the Fiji Constitution of 2013 recognizes legal aid as a right and refers to the authority responsible for the establishment of a legal aid system. Article 13 provides that:

every person who is arrested or detained has the right ... to communicate with a legal practitioner of his or her choice in private in the place where he or she is detained, to be informed of that right promptly and, if he or she does not have sufficient means to engage a legal practitioner and the interests of justice so require, to be given the services of a legal practitioner under a scheme for legal aid by the Legal Aid Commission.

In other cases, the constitution calls upon the State to establish a legal aid system. For example, the Dominican Republic Constitution of 2010 provides in article 177:

The State will be responsible for organizing programmes and services of gratuitous legal assistance in favour of the people that lack the economic resources to obtain the judicial representation of their interests, particularly for the protection of the rights of the victim, without prejudice to the attributions that correspond to the Public Ministry within the scope of the penal process.

²Kosovo, Constitution (2008), art. 6.

Chapter 1. Purpose, definitions and scope of application

Article 1. Title

Article 1 of the Model Law would be redundant in those legal systems where a separate law promulgates the law on legal aid, as the title of the law is included in the promulgation law in such cases. However, adopting a title for a law on legal aid is of relevance, as a title facilitates reference to the law, contributes to the provision of immediate information and strengthens the establishment of a legal aid system. The title proposed in the Model Law is limited to criminal legal aid. However, when States choose to extend the law to civil legal aid, it is recommended that they adopt a title that reflects the inclusion of civil legal aid.

Comparative models

Countries around the world have adopted various titles, such as:

- Legal Aid Services Act (Bangladesh, 2000)
- Free Legal Aid Act (Croatia, 2008)
- State Legal Aid Act (Estonia, 2004)
- Legal Aid Scheme Act (Ghana, 1997; Guinea-Bissau, 2011)
- Legal Aid Act (Nepal, 1997)
- Law on Judicial Assistance (Mali, 2001).

Article 2. Purpose

Article 2 states the purposes of the Law in order to clarify the objectives it aims to achieve and assist in its interpretation by the courts. It highlights how a well-functioning legal aid system—a system in which the provision of legal aid is regulated so that it is provided in an accessible, affordable, equitable, effective, credible and

sustainable manner to those in need of it, including marginalized and vulnerable groups—facilitates access to justice and the enjoyment of the right to a fair trial, thereby serving the crucial purpose of contributing to a fair, efficient and accountable criminal justice system. As illustrated in paragraph 3 of the United Nations Principles and Guidelines:

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, wrongful convictions, 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. Legal aid can be utilized to contribute to the prevention of crime by increasing awareness of the law.

As guideline 17 of the United Nations Principles and Guidelines calls on States to establish mechanisms to track, monitor and evaluate legal aid, the Model Law proposes the promotion of education and research on legal aid.

As in the preamble, in those jurisdictions where the right to legal aid is recognized in the constitution, reference should be made in the text of the legal aid law to the relevant constitutional provision.

Article 2.1 provides two options: one for States introducing a State-funded legal aid system and another for States regulating or amending an existing system of legal aid provision. The use of the term “national” is optional for States with federal jurisdictions.

One of the purposes of the Model Law, as provided in article 2.3, is to ensure accessible, affordable, equitable, effective, credible and sustainable legal aid.

- A legal aid system being “accessible” means that legal aid is available to every person who is arrested, detained, suspected or accused of, charged with or sentenced for a crime and cannot afford a legal practitioner, and to every vulnerable person regardless of his or her financial status
- A legal aid system being “affordable” means that the necessary State funds are allocated to meet the legal needs of the society and that the means test is applied in a manner that is not prejudicial to those who cannot afford legal aid
- A legal aid system being “equitable” means that legal aid is delivered without discrimination, with a focus on the needs of vulnerable populations and children, and women’s enjoyment of equal access to justice is ensured
- A legal aid system being “effective” means that legal aid can reach all members of the society, especially the vulnerable populations, and protects their legal rights throughout all stages of the criminal justice process

- Finally, a legal aid system being “credible” and “sustainable” means that there is continuity in the provision of legal aid that is regularly monitored and supervised through State-allocated funds to ensure its quality, and that such funds are adequate to meet the needs of the community, especially those of vulnerable groups

States adopt different approaches with regard to the purpose of a legal aid law. As illustrated in the following comparative models, some laws may indicate the provision of services as their purpose, while others may indicate the establishment of a comprehensive legal aid system as such.

Comparative models

Section 2. Purpose of Act

The purpose of this Act is to ensure the timely and sufficient availability of competent and reliable legal services for all persons.

Estonia, State Legal Aid Act, 2004.

Article 3. Objects of Legal Aid South Africa

The objects of Legal Aid South Africa are to—

- (a) Render or make available legal aid and legal advice;
- (b) Provide legal representation to persons at state expense; and
- (b) Provide education and information concerning legal rights and obligations, as envisaged in the Constitution and this Act.

South Africa, Legal Aid South Africa Act, 2014.

Article 1. Purpose

The purpose of this law is to establish a functional system for free legal aid in civil, administrative, minor offences and criminal procedure by which it shall be ensured effective approach in justice for the citizens that have no sufficient financial means.

Article 2. Scope

This law determines the meaning, types, extension, users and providers of free legal aid, the establishment of the Council and Agency for free legal aid, competences, procedures and conditions for the realization of free legal aid, and the financing of free legal aid.

Kosovo, Law on Free Legal Aid, 2012.

Article 3. Definitions

The definitions suggested in article 3 are necessary for the implementation and interpretation of the Model Law. Many are based on the United Nations Principles and Guidelines and other international standards and norms in crime prevention and criminal justice.

3.9. The definition of “legal aid” is based on paragraph 8 of the Introduction to the United Nations Principles and Guidelines:

8. For the purposes of the Principles and Guidelines, the term “legal aid” includes legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. 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.

The definition provided in article 3 slightly modifies this definition by referring to the conditions and procedures set forth in the Model Law on the determination of financial or urgency eligibility criteria.

Many variations of the definition of legal aid exist, mostly pertaining to the types of services included in the term “legal aid”. In some definitions, legal aid explicitly includes assistance in the preparation of legal documents.

Comparative models

Chapter 1. Definitions

For the purposes of this act and any provisions based on it:

[...]

e. “Legal aid” means any legal assistance provided to a person seeking justice in respect of any legal interest which affects him directly and as an individual in so far as is provided for in this act and any provisions based on it[.]

The Netherlands, Legal Aid Act, 1993.

Article 4. Definitions

The following definitions apply in this regulation:

Legal aid: defending the rights of indigent suspect and accused persons or provision of legal advice in any stage of prosecution and defending the right of indigent children and women in civil cases on the basis of this regulation.

Afghanistan, Legal Aid Regulation, 2007.

Article 2. Definition of terms used in the Law

The terms used in this Law have the following meanings:

- (a) Legal aid: the making up of legal documents, representation in a court in connection with administrative and criminal cases and in an administrative institution as well as in a criminal proceeding at the expense of the State.

Georgia, Law on Legal Aid, 2014.

Section 2. Definitions

In this Act, unless the subject and context otherwise requires:

- (a) “Legal Aid” means Legal Aid to the indigent person under this Act and the term also includes counselling and other legal services such as correspondence pleadings, preparation of legal documents and proceedings in the courts or offices on behalf of indigent person.

Nepal, Legal Aid Act, 1997

3.1. In line with principle 10 of the United Nations Principles and Guidelines, States may wish to consider expanding the definition of “applicant” to include non-citizens in the country, such as stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons.

3.2. In line with the Convention on the Rights of the Child,³ a “child” is defined as any person under 18 years of age.

³ United Nations, *Treaty Series*, vol. 1577, No. 27531.

3.4. “Criminal justice process” is defined in accordance with the Principles and Guidelines and the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.⁴

3.16. “Paralegals” are defined as individuals who provide legal aid services, such as legal assistance and information, but are not licensed practitioners. Some laws define paralegals as persons who have knowledge of the law gained through education, training or practice and, in that capacity, can provide some legal aid services. In other cases, specialized training is required for paralegals to be accredited as legal aid providers.

Comparative models

Article 4. Powers, functions and duties of Board

(1) The Board may do all that is necessary or expedient to achieve the objects referred to in section 3, including the following:

(a) Provide legal services, representation and advice, by—

[...]

(ii) employing paralegals, who are persons that are not legal practitioners but have knowledge and understanding of the law, its procedures and its social context acquired through training, education, work experience or a national registered qualification in paralegal practice.

South Africa, Legal Aid South Africa Act, 2014.

Section 1. Interpretation

“Accredited paralegal” means a person employed by the Board, a government department, an accredited civil society organization or a non-governmental organization and who has completed a training course in the relevant field of study at the Judicial and Legal Training Institute or an educational institution approved by the Board.

Sierra Leone, Legal Aid Act, 2012.

3.17. The definition of “victims of a crime” is taken verbatim from the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.⁵

⁴ Economic and Social Council resolution 2005/20, annex.

⁵ General Assembly resolution 40/34, annex.

3.18. In defining the “vulnerable” population, the Model Law combines a conceptual definition, “a person who is in need of special protection”, with a definition by category. The list of vulnerable persons provided in article 3.18 is not exhaustive and may be modified and expanded on the basis of a country’s particular conditions.

Article 4. Scope of application

Article 4 sets out a wide scope of application for a State-funded national legal aid system by expanding the definition of legal aid found in the United Nations Principles and Guidelines, as well as principle 3 of the Principles and Guidelines, which provides:

20. States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.

21. Legal aid should also be provided, regardless of the person’s means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty.

Article 4 introduces a more liberal test than the two-condition test in article 14, paragraph 3(d), of the International Covenant on Civil and Political Rights,⁶ which recognizes the right to legal assistance when the interests of justice so require, and to free legal aid when the interests of justice so require and a person does not have sufficient means to pay for it. The “interests of justice” requirement is normally satisfied when the crime is serious and can trigger a severe penalty, when the case is complex or when the applicant is particularly vulnerable. In order to verify whether the interests of justice require the provision of free legal aid for indigent people, a number of national laws require a “merit test”, in addition to a “means test” that verifies financial eligibility for legal aid.

The broader scope of article 4 provides that, regardless of the beneficiary’s financial means, the right to legal aid applies throughout the criminal justice process, to all persons facing an offence that carries a sentence of imprisonment, as well as to all persons facing a non-imprisonable offence when it is justified by the urgency of the circumstances. The proposed broad scope of application is designed to respond to the purpose of ensuring an accessible, affordable and effective legal aid system. States in which the implementation of this approach might be onerous may consider the

⁶ General Assembly resolution 2200 A (XXI), annex.

option of providing legal aid without consideration of financial means at the early stages of the criminal justice process and set a point in time when financial eligibility for legal aid is to be determined. This could be prior to a determination of pretrial detention or at the first appearance before the court. In any case, such an approach should not impose an obligation to repay the costs of legal aid on the beneficiary if eligibility is subsequently denied.

The Model Law also expands the scope of legal aid provision by including victims of crime among the potential beneficiaries. Principle 4 of the United Nations Principles and Guidelines provides:

Without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to victims of crime.

In addition, as provided in guideline 7 of the United Nations Principles and Guidelines:

48. ... States should take adequate measures, where appropriate, to ensure that:

- (a) Appropriate advice, assistance, care, facilities and support are provided to victims of crime, throughout the criminal justice process, in a manner that prevents repeat victimization 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 providers) of their right to information and their entitlement to legal aid, 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 interests of justice so require;

(f) Victim services agencies and non-governmental organizations can provide legal aid to victims;

(g) Mechanisms and procedures are established to ensure close cooperation and appropriate referral systems between legal aid providers and other professionals (i.e., health, social and child welfare 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.

The Model Law also expands the scope of legal aid provision by including witnesses of crime among the potential beneficiaries. Principle 5 of the United Nations Principles and Guidelines provides:

Without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to witnesses of crime.

In this regard, guideline 8 of the United Nations Principles and Guidelines provides:

49. States should take adequate measures, where appropriate, to ensure that:

(a) Witnesses are promptly informed by the relevant authority of their right to information, their entitlement to assistance and protection and how to access such rights;

(b) Appropriate advice, assistance, care facilities and support are provided to witnesses of crime throughout the criminal justice process;

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

(d) All statements or testimony given by the witness at all stages of the criminal justice process are accurately interpreted and translated.

50. States should, where appropriate, provide legal aid to witnesses.

51. The circumstances in which it may be appropriate to provide legal aid to witnesses include, but are not limited to, situations in which:

(a) The witness is at risk of incriminating himself or herself;

(b) There is a risk to the safety and well-being of the witness resulting from his or her status as such;

- (c) The witness is particularly vulnerable, including as a result of having special needs.

Article 4.1.3. recognizes certain groups with special needs that, owing to young age, language barriers, lack of personal connections in the country or unfamiliarity with the judicial system, are particularly vulnerable when in contact with the criminal justice system. Compared with the general population, these groups' access to legal assistance is limited and they often lack the organizational resources to obtain it. The inclusion of children in this list reflects principle 3 of the United Nations Principles and Guidelines, which provides that "children should have access to legal aid under the same conditions as or more lenient conditions than adults". The list provided in article 4.1.3. is not to be considered exhaustive and can be modified and adapted to the particular conditions of a certain country. In line with principle 10 of the United Nations Principles and Guidelines, countries can include other categories of groups with special needs, such as the elderly, minorities, persons with living HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, migrants and migrant workers, and victims of gender-based or sexual violence. Special measures taken to ensure meaningful access to legal aid for these groups must be gender-sensitive and age-appropriate. Countries have the option of including other categories of vulnerable people, such as marginalized indigenous populations, female victims of gender-based or sexual violence, disabled people, the elderly, persons with HIV/AIDS and drug users. The following comparative models provide further examples.

Comparative models

Article 14. Persons that have the right to free secondary legal aid

1. In accordance with this Law and other laws of Ukraine, the following categories of persons have the right to free secondary legal aid:
 - 1) ... disabled persons who receive pension (or allowance) of less than two minimum subsistence levels ... ;
 - 2) Orphaned children, children whose parents have been stripped of their parental rights, and children that may become or have become victims of family violence [...];
 - [...]
 - 8) Persons covered by the Law of Ukraine On Refugees (2557-14) have the right to all types of legal services mentioned in the second part

of Article 13 of this Law, until the decision is made on granting them refugee status or if the person appeals against the decision on granting refugee status;

9) War veterans and persons indicated in the Law of Ukraine On the Status of War Veterans and Guarantees of their Social Protection (3551-12), persons with special merits, those who have rendered special labor services to the country, and victims of Nazi persecution have the right to legal services under paragraphs 1-3 of Article 13 of this Law, with regard to their social protection.

Ukraine, Law on Free Legal Aid, 2011.

Section 12. Criteria for giving legal services

Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is:

- (a) A member of a Scheduled Caste or Scheduled Tribe;
- (b) A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- (c) A woman or a child;
- (d) A mentally ill or otherwise disabled person;
- (e) A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) An industrial workman; or
- (g) In custody...or in a juvenile home ... or in a psychiatric hospital or psychiatric nursing home;
- (h) In receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government.

India, Legal Services Authorities Act, 1987.

Article 12

If the defendant is blind, deaf, mute or a minor and has not yet entrusted a defender, or the defendant may be sentenced to the death penalty and has not yet entrusted anyone to be his defender, the legal aid institution shall provide

legal aid without examining the economic status of the defendant when the people's court designates a defense for the defendant.

China, Regulations on Legal Aid, 2003.

Article 34

(1) Where a criminal suspect or defendant has not retained a defender due to financial hardship or other reasons, the criminal suspect or defendant or his or her close relative may file an application with a legal aid agency. If the legal aid conditions are met, the legal aid agency shall designate a lawyer to defend him or her.

(2) Where a criminal suspect or defendant suffers vision, hearing or speech impairment or is a mental patient who has not completely lost the ability to recognize or control his or her behavior, if he or she has not retained a defender, the people's court, people's prosecutor and public security authority shall notify a legal aid agency to designate a lawyer to defend him or her.

(3) Where a criminal suspect or defendant who may be sentenced to life imprisonment or death penalty has not retained a defender, the people's court, people's prosecutor and public security authority shall notify a legal aid agency to designate a lawyer to defend him or her.

China, Criminal Procedure Law, 2012.

(a) Choice of Plan

Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation in accordance with this section. Representation under each plan shall include counsel and investigative, expert, and other services necessary for adequate representation. Each plan shall provide the following:

- (1) Representation shall be provided for any financially eligible person who—
 - (A) Is charged with a felony or a Class A misdemeanor;
 - (B) Is a juvenile alleged to have committed an act of juvenile delinquency as defined in section 5031 of this title;

- (C) Is charged with a violation of probation;
 - (D) Is under arrest, when such representation is required by law;
 - (E) Is charged with a violation of supervised release or faces modification, reduction, or enlargement of a condition, or extension or revocation of a term of supervised release;
 - (F) Is subject to a mental condition hearing under chapter 313 of this title;
 - (G) Is in custody as a material witness;
 - (H) Is entitled to appointment of counsel under the sixth amendment to the Constitution;
 - (I) Faces loss of liberty in a case, and Federal law requires the appointment of counsel; or
 - (J) Is entitled to the appointment of counsel under section 4109 of this title.
- (2) Whenever the United States magistrate judge or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who—
- (A) Is charged with a Class B or C misdemeanor, or an infraction for which a sentence to confinement is authorized; or
 - (B) Is seeking relief under section 2241, 2254, or 2255 of title 28.
- (3) Private attorneys shall be appointed in a substantial proportion of the cases. Each plan may include, in addition to the provisions for private attorneys, either of the following or both:
- (A) Attorneys furnished by a bar association or a legal aid agency,
 - (B) Attorneys furnished by a defender organization established in accordance with the provisions of subsection (g).

*United States, United States Code,
Title 18, sect. 3006A—Adequate representation of defendants.*

Article 4.4 provides that legal aid is to be granted at all stages of the criminal justice process, including pretrial, trial and post-trial stages. Early access to legal aid, in particular, is essential in the fair administration of justice, as decisions that materially affect a person's ability to effectively defend him- or herself are made during the early stages of the criminal justice process. This is also the time when suspects and accused persons are at the greatest risk of torture or other forms of ill-treatment, such as coerced confessions and unlawful detention. The provision of legal aid is equally important at the post-trial stage, particularly in safeguarding the right to appeal and in ensuring that fundamental human rights are respected in custodial settings.

Comparative model

Article 3. The right of access to a lawyer in criminal proceedings

1. Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.
2. Suspects or accused persons shall have access to a lawyer without undue delay. In any event, suspects or accused persons shall have access to a lawyer from whichever of the following points in time is the earliest:
 - (a) Before they are questioned by the police or by another law enforcement or judicial authority;
 - (b) Upon the carrying out by investigating or other competent authorities of an investigative or other evidence-gathering act in accordance with point (c) of paragraph 3;
 - (c) Without undue delay after deprivation of liberty;
 - (d) Where they have been summoned to appear before a court having jurisdiction in criminal matters, in due time before they appear before that court.

Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

A common approach in setting the eligibility criteria for legal aid is to require both financial eligibility criteria and a consideration of the interests of justice. England and Wales employ this approach. However, a challenge that is commonly faced in many countries is that of determining the interests of justice, as it is a concept that may be subject to different interpretations. Principle 3 of the United Nations Principles and Guidelines suggests considering the urgency or complexity of the case or the severity of the potential penalty. In England and Wales, the law indicates the factors that must be taken into account when determining what the interests of justice consist of.

Comparative model

Section 17. Qualifying for representation

- (1) The relevant authority must determine whether an individual qualifies under this Part for representation for the purposes of criminal proceedings (whether provisionally or otherwise) in accordance with:
 - (a) Section 21 (financial resources) and regulations under that section, and
 - (b) The interests of justice.
- (2) In deciding what the interests of justice consist of for the purposes of such a determination, the following factors must be taken into account:
 - (a) Whether, if any matter arising in the proceedings is decided against the individual, the individual would be likely to lose his or her liberty or livelihood or to suffer serious damage to his or her reputation,
 - (b) Whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law,
 - (c) Whether the individual may be unable to understand the proceedings or to state his or her own case,
 - (d) Whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual, and
 - (e) Whether it is in the interests of another person that the individual be represented.

*England and Wales, Legal Aid,
Sentencing and Punishment of Offenders Act, 2012.*

Some countries distinguish between the right to legal assistance and State-funded legal aid. In Italy, for example, the Code of Criminal Procedure provides, in articles 96 and 97, that anyone who is charged with a crime has the right to appoint a lawyer of his or her choice, and, if he or she does not have one, he or she has the right to a court-appointed lawyer, to be paid by the individual. If the individual meets the financial eligibility criteria provided by law, he or she will then be granted State-funded legal aid, regardless of the type of crime or the severity of the potential penalty. Similarly, section 23 of the New Zealand Bill of Rights Act of 1990 provides that “everyone who is arrested or who is detained under any enactment ... shall have the right to consult and instruct a lawyer without delay and to be informed of that right”. Other States adopt the “mandatory defence” test and provide for legal aid in those cases where, based on domestic law, the assistance of a lawyer is mandatory.

Chapter 2. Guiding principles

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

Article 5. Non-discrimination

The first guiding principle, on non-discrimination, is based on principle 6 of the United Nations Principles and Guidelines, which provides:

26. States should ensure the provision of legal aid to all persons regardless of age, race, colour, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status.

The principle of non-discrimination is also present in principle 10 of the United Nations Principles and Guidelines, which calls on States to ensure that legal aid is provided without discrimination and is made available to everyone, including marginalized and vulnerable groups.

Article 5 acknowledges the difference between de jure and de facto equality, and recognizes that any special measures intended to accelerate de facto equality in access to legal aid for vulnerable groups or for women are not considered discriminatory.

Guideline 9 of the United Nations Principles and Guidelines provides measures that can be adopted to ensure women’s right to access to legal aid:

Implementation of the right of women to access legal aid

52. States should take applicable and appropriate measures to ensure the right of women to access to 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;

- (b) Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused and victims;
- (c) Providing 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 and other such services, which may include the translation of legal documents where requested or required.

In recognizing the principle of non-discrimination, reference can be made to relevant constitutional provisions, if applicable.

Comparative models

Section 4. Guiding principles

In the performance of the functions and the exercise of the powers conferred on the Service under this Act, the Service shall be guided by:

- (a) The national values and principles of governance set out in Article 10 of the Constitution;
- (b) The values and principles of the public service set out in article 232 of the Constitution;
- (c) The principles of impartiality, gender equality and gender equity;
- (d) The principles of inclusiveness, non-discrimination and
- (e) Protection of marginalized groups;
- (f) The rules of natural justice; and
- (g) The provisions of any treaty or convention ratified by Kenya, relating to the provision of legal aid.

Kenya, Legal Aid Act, 2016.

Another example of the principle of non-discrimination can be found in Ukrainian law:

Article 4. Guaranteed non-discrimination of access to legal aid

While exercising the right to free legal aid, it is not allowed to apply privileges or restrictions vis-à-vis persons based on race, skin colour, political, religious and other convictions, and gender, ethnical and social background, place of living, language and other factors.

Ukraine, Law on Free Legal Aid, 2011.

Article 6. Right to information

Article 6 is based on principle 8 of the United Nations Principles and Guidelines, which provides:

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

The right to information as provided by article 6 refers not only to information about the right to legal aid and how to obtain legal aid, but also to the right to be informed of procedural rights to due process that are essential for safeguarding the fairness of the proceedings and the effectiveness of the right to defence, in accordance with the applicable national law. These include the right to be informed about the criminal act one is suspected or accused of having committed, the right to remain silent and the right to interpretation and translation. In this regard, guideline 3 of the United Nations Principles and Guidelines provides:

43. States should introduce measures:

(a) To promptly inform every person detained, arrested, suspected or accused of, or charged with a criminal offence of his or her right to remain silent; his or her right to consult with counsel or, if eligible, with a legal aid provider at any stage of the proceedings, especially before being interviewed by the authorities; and his or her right to be assisted by an independent counsel or legal aid provider while being interviewed and during other procedural actions.

The right to information is of crucial importance, as the provision of legal aid would not be effective if the potential beneficiaries were not aware of the right to legal aid. It is also important to define the moment when such information has to be provided. This moment must correspond to the moment of deprivation of liberty and precede any questioning by any investigative or law enforcement authority. Therefore, it is the responsibility of the law enforcement or other criminal justice official who first comes into contact with a potential beneficiary to inform him or her of the right to legal aid, as provided in article 30 of the Model Law. In this regard, guideline 2 of the United Nations Principles and Guidelines provides that:

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

[...]

(c) Police 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 procedural safeguards.

Countries have the option of specifying the moment when a potential beneficiary must be informed about the right to legal aid in the legal aid law, codes of criminal procedure or laws and regulations on police operations, in accordance with their national legal system.

Principle 8, paragraph 30, of the United Nations Principles and Guidelines further provides:

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

In line with principle 8 of the United Nations Principles and Guidelines, the right to information is protected in the Model Law under article 26.4.1, which imposes on the Legal Aid Authority the additional duty of making information on the right to legal aid publicly available through appropriate channels, including distribution in police stations, detention centres, courts, educational and religious institutions, at community meetings, or via the media, including through the use of public service announcements and the Internet.

In both cases, public officials and the Legal Aid Authority are responsible for ensuring that such information is provided in a way that corresponds to the needs of vulnerable people, including children, illiterate persons and persons with mental illnesses or disabilities. The challenge faced by some countries, however, is that the provision of information is often a mere formality. For example, suspects or accused persons may simply be handed a document with the applicable articles of law, which can be difficult to understand for a potential beneficiary. The presence of legal aid providers, translators or other specialists in police stations and detention centres may help to guarantee the right to information.

The European Union directive on the right to information in criminal proceedings provides a list of procedural rights that suspects or accused persons are entitled to and should be informed of. It also calls upon member States to ensure that suspects or accused persons who are arrested or detained are provided with a letter of rights that is drafted in simple and accessible language.

Comparative model

Article 3. Right to information about rights

1. Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the following procedural rights, as they apply under national law, in order to allow for those rights to be exercised effectively:

- (a) The right of access to a lawyer;
- (b) Any entitlement to free legal advice and the conditions for obtaining such advice;
- (c) The right to be informed of the accusation, in accordance with Article 6;
- (d) The right to interpretation and translation;
- (e) The right to remain silent.

2. Member States shall ensure that the information provided for under paragraph 1 shall be given orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.

Article 4. Letter of Rights on arrest

1. Member States shall ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. They shall be given an opportunity to read the Letter of Rights and shall be allowed to keep it in their possession throughout the time that they are deprived of liberty.

2. In addition to the information set out in Article 3, the Letter of Rights referred to in paragraph 1 of this article shall contain information about the following rights as they apply under national law:

- (a) The right of access to the materials of the case;
- (b) The right to have consular authorities and one person informed;
- (c) The right of access to urgent medical assistance; and
- (d) The maximum number of hours or days suspects or accused persons may be deprived of liberty before being brought before a judicial authority.

3. The Letter of Rights shall also contain basic information about any possibility, under national law, of challenging the lawfulness of the arrest; obtaining a review of the detention; or making a request for provisional release.

4. The Letter of Rights shall be drafted in simple and accessible language. An indicative model Letter of Rights is set out in Annex I.

5. Member States shall ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand shall then be given to them without undue delay.

Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

The right to information includes the right to be informed of any consequences an individual may face when waiving his or her right to legal aid. A waiver should always be voluntary and with full knowledge of its potential consequences.

An appropriate remedy must be available in case of violation of the right to information. Principle 9 of the United Nations Principles and Guidelines provides that:

31. States should establish effective remedies and safeguards that apply if access to legal aid is undermined, delayed or denied or if persons have not been adequately informed of their right to legal aid.

Remedies for violation of the right to information may vary depending on the State's legal system and rules of criminal procedure. As suggested in guideline 2, paragraph 42(e), of the United Nations Principles and Guidelines, such remedies may include exclusion of evidence, prohibition of conducting procedural actions, release from detention, judicial review and compensation.

The following are examples of how the duty to inform is regulated in England and Wales and in Nigeria.

Comparative models

3. Initial action

(a) Detained persons - normal procedure

3.1 When a person is brought to a police station under arrest or arrested at the station having gone there voluntarily, the custody officer must make sure the person is told clearly about:

(a) The following continuing rights, which may be exercised at any stage during the period in custody:

- (i) Their right to consult privately with a solicitor and that free independent legal advice is available as in section 6;
- (ii) Their right to have someone informed of their arrest as in section 5;
- (iii) Their right to consult the Codes of Practice ...; and
- (iv) If applicable, their right to interpretation and translation ... and their right to communicate with their High Commission, Embassy or Consulate

(b) Their right to be informed about the offence and (as the case may be) any further offences for which they are arrested whilst in custody and why they have been arrested and detained in accordance with paragraphs 2.4, 3.4(a) and 11.1A of this Code and paragraph 3.3 of Code G.

3.2 The detainee must also be given a written notice, which contains information:

(a) Setting out:

- (i) Their rights under paragraph 3.1, paragraph 3.12 and 3.12A;
- (ii) The arrangements for obtaining legal advice, see section 6;
- (iii) Their right to a copy of the custody record as in paragraph 2.4A;
- (iv) Their right to remain silent as set out in the caution in the terms prescribed in section 10;

- (v) Their right to have access to materials and documents which are essential to effectively challenging the lawfulness of their arrest and detention for any offence and (as the case may be) any further offences for which they are arrested whilst in custody, in accordance with paragraphs 3.4(b), 15.0, 15.7A(c) and 16.7A of this Code.
 - (vi) The maximum period for which they may be kept in police detention without being charged, when detention must be reviewed and when release is required.
 - (vii) Their right to medical assistance in accordance with section 9 of this Code.
 - (viii) Their right, if they are prosecuted, to have access to the evidence in the case before their trial in accordance with the Criminal Procedure and Investigations Act 1996, the Attorney General's Guidelines on Disclosure, the common law and the Criminal Procedure Rules.
- (b) Briefly setting out their other entitlements while in custody, by:
- (i) Mentioning:
 - ~ the provisions relating to the conduct of interviews;
 - ~ the circumstances in which an appropriate adult should be available to assist the detainee and their statutory rights to make representations whenever the need for their detention is reviewed.
 - (ii) Listing the entitlements in this Code, concerning:
 - ~ reasonable standards of physical comfort;
 - ~ adequate food and drink;
 - ~ access to toilets and washing facilities, clothing, medical attention, and exercise when practicable.

3.2A The detainee must be given an opportunity to read the notice and shall be asked to sign the custody record to acknowledge receipt of the notice. Any refusal to sign must be recorded on the custody record.

*England and Wales, Police and Criminal Evidence Act, 1984,
Code of Practice C.*

Section 19. Prison monitor and review cases of awaiting trial inmates

(2) It shall be the duty of all police officers and courts to inform the suspected person of his entitlement to the services of a legal practitioner from the moment of arrest and if such suspect cannot afford the services of a legal practitioner to notify the Council to represent him if he so desires.

Nigeria, Legal Aid Act, 2011.

Article 7. Protection of vulnerable persons

The United Nations Principles and Guidelines recognize the special needs of vulnerable populations. According to principle 10:

32. Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures.

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

In addition, guideline 11 of the United Nations Principles and Guidelines calls on States to take into account the needs of specific groups when designing the nationwide legal aid schemes:

57. ... including, but not limited to the elderly, minorities, persons with disabilities, the mentally ill, persons living with HIV and other severe contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, refugees and internally displaced persons.

In recognition of the need to target vulnerable populations in the provision of legal aid, the Model Law prescribes the means of informing members belonging to vulnerable groups of their right to legal aid, as well as how such legal aid should be delivered to them while taking into account their special needs. For that purpose, article 7 imposes an obligation on the Legal Aid Authority to ensure, when necessary, the use of health or child welfare professionals or any other means deemed appropriate.

The United Nations Principles and Guidelines give special attention to women and children as recipients of legal aid. Principle 11 states:

34. In all legal aid decisions affecting children, the best interests of the child should be the primary consideration.
35. Legal aid provided to children should be prioritized, in the best interest of the child, and be accessible, age appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.

Special measures States may adopt to promote children's effective access to justice are listed in guideline 10 of the United Nations Principles and Guidelines as follows:

53. States should ensure special measures for children ... including:
 - (a) Ensuring the right of the child to have counsel assigned to represent the child in his or her own name in proceedings where there is or could be a conflict of interest between the child and his or her parents or other parties involved;
 - (b) Enabling children who are detained, arrested, suspected or accused of, or charged with a criminal offence to contact their parents or guardians at once and prohibiting any interviewing of a child in the absence of his or her lawyer or other legal aid provider, and parent or guardian when available, in the best interests of the child;
 - (c) 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 interests of the child;
 - (d) Ensuring that children may consult freely and in full confidentiality with parents and/or guardians and legal representatives;
 - (e) 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 in a manner that is gender- and culture-sensitive. Provision of information to parents, guardians or caregivers should be in addition, and not an alternative, to communicating information to the child;
 - (f) Promoting, where appropriate, diversion from the formal criminal justice system and ensuring that children have the right to legal aid at every stage of the process where diversion is applied;
 - (g) Encouraging, where appropriate, the use of alternative measures and sanctions to deprivation of liberty and ensuring that children have the right to legal aid so that deprivation of liberty is a measure of last resort and for the shortest appropriate period of time;

(h) Establishing measures to ensure that judicial and administrative proceedings are conducted in an atmosphere and manner that allow children to be heard either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law. Taking into account the child's age and maturity may also require modified judicial and administrative procedures and practices.

54. 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, that 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 of the child's family members and audio and video records.

Measures States may adopt to ensure women's access to legal aid are listed in Guideline 9 of the United Nations Principles and Guidelines as follows:

52. States should take applicable and 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;

(b) Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused and victims;

(c) Providing 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 and other such services, which may include the translation of legal documents where requested or required.

Comparative model

Article 11. The right of priority

Legal aid department and authorities stated in article 15 of this regulation are obliged to take into priority the children, guardianless women, deaf, blind, ... disabled persons, refugees and internally displaced people when legal aid is provided.

Afghanistan, Legal Aid Regulation, 2008.

Article 8. Right to early access to legal aid

Article 8 is aimed at highlighting the importance of guaranteeing legal aid in the early stages of the criminal justice process. Access to legal aid in the early stages of the criminal justice process is a right, as well as one of the guiding principles of the Model Law. The procedure for the provision of early access to legal aid for individuals in custody is the subject of article 30 of the Model Law.

Article 9. Equal right to defence for legal aid beneficiaries

The relationship between a legal aid provider and a legal aid beneficiary should not in any way be affected by the fact that the client is a recipient of legal aid. This article emphasizes the duty of a legal aid provider, especially a legal practitioner, to make his or her best effort in the provision of legal aid for the beneficiary.

Comparative models

Section 21. Legal aid not to affect legal practitioner and client relationship

- (1) The relationship between a legal practitioner and his client, any rights, privileges and obligations arising from that relationship, shall not be affected by the fact that the client is an aided person and the legal practitioner has been engaged to represent him [...].
- (2) A law officer who has been assigned to provide legal aid to an aided person shall be entitled to the same rights and privileges, and be subject to the same obligations, in relation to the aided person's affairs as a legal practitioner in relation to his client's affairs.

Zimbabwe, Legal Aid Act, 1996.

Section 81. Obligations relating to professional conduct

- (1) The fact that a provider provides legal aid services or specified legal services under this Act does not in any way affect that provider's obligations under any rules or codes of conduct of any professional body to which that provider belongs.
- (2) The fact that a lawyer provides legal aid services or specified legal services under this Act does not in any way affect:
 - (a) His or her rights, obligations, responsibilities, or duties as a lawyer; or

- (b) The relationship between, or the rights of, the lawyer and his or her client or any privilege arising out of that relationship.

New Zealand, Legal Services Act, 2011.

Section 27. General principles of legal aid

- (4) Except as is otherwise provided under this Act:
- (a) the assistance or representation by way of legal aid shall not affect the relationship between the rights of an advocate and a client or any privilege arising out of such relationship.

[...]

Section 61. Obligations relating to professional conduct

- (1) Except as may be expressly provided for by or under this Act, the fact that a legal aid provider provides services under this Act does not in any way affect that provider's obligations under any rules or codes of conduct of any professional or similar body to which that provider belongs, nor does it in any way affect their rights, obligations, responsibilities, or duties as a member of such body.

Kenya, Legal Aid Act, 2016.

Article 10. Principles of interpretation

Article 10 serves as the “supremacy clause” or “saving clause” in the interpretation of a legal aid law. In the absence of a specific provision in a legal aid law, the general principles of international human rights law shall apply, namely the Universal Declaration of Human Rights⁷ and article 14 of the International Covenant on Civil and Political Rights, provided that the enacting State has ratified or acceded to it. These international legal instruments may also be used in the interpretation of a legal aid law.

In addition, article 10 includes the United Nations Principles and Guidelines as an additional source for the interpretation of a legal aid law, regardless of their non-binding nature. Other soft international legal documents may be used as sources of interpretation, including:

⁷ General Assembly resolution 217 A (III).

- Basic Principles on the Role of Lawyers⁸
- United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)⁹
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment¹⁰
- Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice¹¹
- Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World¹²
- 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”

Relevant international jurisprudence may also be used as a source of interpretation.

Comparative model

Article 34. International Treaties of the Republic of Lithuania on Legal Aid

If an effective ratified international treaty of the Republic of Lithuania foresees other norms than those foreseen in the present Law, the provisions of the international treaty of the Republic of Lithuania shall be applied, except for the cases when the provisions of the present Law which implement the European Union legal acts are applied in relations with other European Union Member States.

Lithuania, Law Amending the Law on State-Guaranteed Legal Aid, 2005.

⁸ 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 General Assembly resolution 70/175, annex.

¹⁰ General Assembly resolution 43/173, annex.

¹¹ General Assembly resolution 60/177, annex.

¹² General Assembly resolution 65/230, annex.

Chapter 3. Legal aid beneficiaries and legal aid providers

Article 11. Types of legal aid

Article 11 lists the types of legal aid services provided under the Model Law, which include not only legal representation in court, but also legal advice, assistance and information, as well as legal education, drafting and advocacy.

The Model Law follows the definitions of “legal advice”, “assistance” and “representation” provided in the publication *Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners*.¹³ “Legal advice” refers to the provision of advice about the application of relevant law to the particular circumstances of the person involved and about what actions might be taken. “Assistance” refers to assistance in any appropriate action that the person might take, including by taking such action on his or her behalf, for example, by interacting with the police if the assisted person is in custody. “Legal information” refers to information about the offence, potential penalties and possible defence strategies. “Representation” refers to speaking or acting on behalf of the person involved before a prosecutor, court or tribunal, including national, regional or international courts and tribunals in formal, traditional or customary settings. In Argentina, Organic Law of the Federal Public Office (Ley Orgánica del Ministerio Público)¹⁴ allows the Federal Public Defender to represent beneficiaries of legal aid at international organizations and treaty bodies in case of violation of human rights conventions to which Argentina is a party.

Legal representation also extends to out-of-court settlements and civil actions for the purpose of making a claim for compensation, whether they are filed in separate legal proceedings or as a part of criminal proceedings.

The European Union directive on the right of access to a lawyer in criminal proceedings provides a detailed illustration of what the right of access to a lawyer entails.

¹³ United Nations Office on Drugs and Crime and United Nations Development Programme, *Early Access to Legal Aid in Criminal Justice Processes: A Handbook for Policymakers and Practitioners*, Criminal Justice Handbook Series (Vienna, 2014).

¹⁴ Argentina, Organic Law of the Federal Public Office No. 24.946 (1998), art. 51, sect. V.

Comparative model

Article 3. The right of access to a lawyer in criminal proceedings

3. The right of access to a lawyer shall entail the following:
 - (a) Member States shall ensure that suspects or accused persons have the right to meet in private and communicate with the lawyer representing them, including prior to questioning by the police or by another law enforcement or judicial authority;
 - (b) Member States shall ensure that suspects or accused persons have the right for their lawyer to be present and participate effectively when questioned. Such participation shall be in accordance with procedures under national law, provided that such procedures do not prejudice the effective exercise and essence of the right concerned. Where a lawyer participates during questioning, the fact that such participation has taken place shall be noted using the recording procedure in accordance with the law of the member State concerned;
 - (c) Member States shall ensure that suspects or accused persons shall have, as a minimum, the right for their lawyer to attend the following investigative or evidence-gathering acts where those acts are provided for under national law and if the suspect or accused person is required or permitted to attend the act concerned:
 - (i) Identity parades;
 - (ii) Confrontations;
 - (iii) Reconstructions of the scene of a crime.
4. Member States shall endeavour to make general information available to facilitate the obtaining of a lawyer by suspects or accused persons. Notwithstanding provisions of national law concerning the mandatory presence of a lawyer, member States shall make the necessary arrangements to ensure that suspects or accused persons who are deprived of liberty are in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with Article 9.
5. In exceptional circumstances and only at the pre-trial stage, member States may temporarily derogate from the application of point (c) of paragraph 2 where the geographical remoteness of a suspect or accused person makes it impossible to ensure the right of access to a lawyer without undue delay after deprivation of liberty.

6. In exceptional circumstances and only at the pre-trial stage, member States may temporarily derogate from the application of the rights provided for in paragraph 3 to the extent justified in the light of the particular circumstances of the case, on the basis of one of the following compelling reasons:

- (a) Where there is an urgent need to avert serious adverse consequences for the life, liberty or physical integrity of a person;
- (b) Where immediate action by the investigating authorities is imperative to prevent substantial jeopardy to criminal proceedings.

Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.

Legal aid services vary from country to country. Kenya, for example, has adopted a broad list of legal aid services, which includes law reform and advocacy for local communities.

Comparative model

Section 2. Interpretation

“Legal aid” includes:

- (a) Legal advice;
- (b) Legal representation;
- (c) Assistance in:
 - (i) Resolving disputes by alternative dispute resolution;
 - (ii) Drafting of relevant documents and effecting service incidental to any legal proceedings; and
 - (iii) Reaching or giving effect to any out-of-court settlement;
- (d) Creating awareness through the provision of legal information and law-related education; and
- (e) Recommending law reform and undertaking advocacy work on behalf of the community[.]

Kenya, Legal Aid Act, 2016.

In countries that provide civil legal aid, the drafting of legal documents is also recognized as a form of legal aid.

Comparative models

Article 21

The types of legal aid shall be:

1. Consultation in view of reaching an agreement out of the court room before the beginning of the judicial proceedings or before submitting a case to the court;
2. Drafting documents necessary for submitting a case;
3. Representation in court; or
4. Representation in cases of detention under art. 70 (1) of the Ministry of Internal Affairs Act.

Bulgaria, Legal Aid Act, 2005.

Article 13. Types of legal aid

Legal aid shall be delivered by means of the following methods:

1. Representing and defending the rights of suspects and accused persons before the police, prosecution offices or courts.
2. Providing legal advice to indigent suspects and accused persons.
3. Representing and defending the rights of indigent children and women in civil cases and presenting legal advice in accordance with the provision of this regulation.

Afghanistan, Legal Aid Regulation, 2008.

Article 3. Types of legal aid

For the purposes of this Law, the types of legal aid are as follows:

- a) Drafting of legal documents;
- b) The defense of the interests of an accused and convicted in a criminal proceeding;
- c) The defense of a victim in a criminal proceeding in the cases of conducting defense at the expense of the State as prescribed by the Criminal Procedure Code of Georgia;
- d) The representation in a court in administrative and civil cases.
- e) The representation in an administrative body.

Georgia, Law on Legal Aid, 2014.

While the Model Law does not distinguish between primary and secondary legal aid, there is such a distinction in some jurisdictions. Primary legal aid generally refers to information, advice and assistance, while secondary legal aid refers to legal representation in court. The distinction between primary and secondary legal aid is relevant to the question of what type of legal aid provider can be assigned to a specific case, as legal practitioners may provide both primary and secondary legal aid, but other types of legal aid providers (e.g., paralegals) can provide only primary legal aid. Some examples of the distinction can be found below.

Comparative models

Article 4. Forms of legal aid

- (1) Legal aid is received in the form of primary or secondary legal aid.
- (2) Primary legal aid comprises:
 - general legal information
 - legal advice
 - legal assistance in drawing up documents before administrative bodies and legal entities vested with public authority
 - representation in administrative matters
 - legal aid in peaceful out-of-court settlement of disputes
 - representation before the European Court of Human Rights and international organizations, if this is in accordance with international agreements and regulations on the work of those bodies
- (3) Secondary legal aid consists of:
 - representation before courts
 - legal aid in peaceful settlement of disputes before a court
 - drawing up documents in court proceedings

Croatia, Free Legal Aid Act, 2008.

Article 5. Authorized services

1. Authorized services of free legal aid shall be provided within primary and secondary legal aid.
2. Primary legal aid includes the following services:
 - 2.1. Information and legal advice regarding legal procedures;
 - 2.2. Drafting of paperwork and all other technical aid that has to do with completion of the case;

- 2.3. Representation in civil, administrative and minor offence procedure;
 - 2.4. Defense and representation in all phases of criminal procedure;
 - 2.5. Information and legal advice related to violation proceedings;
 - 2.6. Information, legal advice and aid in the mediating and arbitral procedures as foreseen by the law in force;
3. Secondary legal aid includes services which are foreseen in subparagraphs 2.2. and 2.3. of [...] this Article.

Kosovo, Law on Free Legal Aid, 2012.

Alternatively, the distinction between primary and secondary legal aid may be explained in the definition section of the law, as is the case in Lithuania. In countries where civil legal aid is provided, legal aid may include coverage of litigation costs.

Comparative model

Article 2. Definitions of the Law

2. The primary legal aid provision of legal information, legal consulting and drafting of documents intended for state and municipal institutions, excluding procedural documents, according to the procedure established in the Law. Besides, such legal aid shall also include advice on extrajudicial dispute settlement, actions on amicable settlement of dispute and drafting of agreement on amicable settlement.

3. Secondary legal aid means drafting of documents, defense and representation in cases, including the process of execution, representation in case of hearing precedent dispute out of court, if such hearing is obligatory according to the laws or court judgment. Besides, this legal aid shall also include coverage of the litigation costs in cases tried in line with the civil process procedure, costs related to case hearing according to the administrative process procedure and costs related to hearing of a civil lawsuit filed as part of a criminal case.

Lithuania, Law Amending the Law on State-Guaranteed Legal Aid, 2005.

Article 12. Rights of legal aid beneficiaries

As one of the purposes of the Model Law is to ensure the protection of human rights within the criminal justice system, article 12 provides an explicit list of the rights of legal aid beneficiaries. The United Nations Principles and Guidelines make a number of references to the protection of fundamental human rights and also state that the principles and guidelines contained therein should not be interpreted as providing a lesser degree of protection than under existing international and regional human rights conventions applicable to the administration of justice. In addition, guideline 17 of the United Nations Principles and Guidelines states that, in order to continually strive to improve the provision of legal aid, States could introduce measures “to monitor the efficient and effective delivery of legal aid in accordance with international human rights standards”.

Article 13. Legal aid providers

While the United Nations Principles and Guidelines call upon States to adopt or strengthen measures consistent with their national legislation to ensure that effective legal aid is provided, they also recognize that criminal justice systems around the world have different characteristics. Legal aid systems develop in the context of a State’s legal and criminal justice systems, as well as its available resources and needs. Indeed, the adoption of a certain legal aid model is dependent on a number of factors, including the number and availability of lawyers, demand for legal aid services, vulnerability of potential beneficiaries and available financial resources. No matter what system is adopted, however, the institutional arrangements and funding mechanisms should ensure the independence of legal aid providers in the performance of their functions.

The *Global Study on Legal Aid* provides a comprehensive overview of the common models of legal aid delivery found around the world.

Overview of approaches to legal aid organization and delivery

The mechanisms that are developed to respond to legal aid needs in a country are often a combination of different legal aid service delivery schemes and models. In general, legal aid mechanisms that States use to provide legal aid services fall into the following categories:

- *Public defender systems.* The public defender model involves government-salaried lawyers dedicated to providing legal aid services organized through the State or an independent authority.

- *Assigned counsel/panel lawyers or ex officio systems.* The assigned counsel model, also called the *judicare* model in some countries, involves the assignment of legal aid cases to private lawyers on either a systematic or an ad hoc basis.
- *Contract service systems.* The contract service model involves a contract with a lawyer, a group of lawyers, a bar association or a non-State-affiliated organization (such as a non-governmental organization, community-based paralegals, a university legal aid clinic, etc.) that provides legal aid services in particular jurisdictions and is funded by the State.

More often, countries establish systems that are a combination of the public defender system, assigned counsel system and contract service systems, resembling a mix of State, private and civil society providers, called “mixed-model” or “hybrid” systems. In addition, in many countries, civil society actors provide legal aid services directly to beneficiaries, which are funded independently from the State.

Below is a more detailed discussion of different approaches to organizing legal aid services.

Public defender systems

Public defender systems include governmental, quasi-governmental or sometimes non-governmental legal aid institutions that employ staff to provide legal aid services to qualified recipients, usually on a full-time basis. Public defender institutions can include: (a) State institutions or agencies that operate under the guidance of an appointed or elected State official in charge of coordinating public defence; or (b) independent or quasi-governmental institutions sometimes managed by a legal aid board. Often, public defender institutions operate with their own administrative and practice managers who handle logistical planning and coordination, sometimes including supervision of quality performance and continuous legal and advocacy skills training. Public defender offices may also employ investigators, social workers and forensic experts to assist in the lawyers’ work.

Appointment to cases in a public defender institution can be done through: (a) notification by justice sector actors that an individual requires legal aid; (b) the assignment of public defenders to justice agencies, with the requirement that they take up cases arising during their assignment; or (c) the assignment of a public defender to a particular procedural jurisdiction or stage of a case or for a particular specialization. In civil cases, appointment

may be based on notification or referral by State or other actors to the public defender institution.

Public defender systems ensure that the staff working in these institutions are trained specifically to provide legal aid services. Dedicated staff and budget also allow for the establishment of more robust data-collection systems to monitor the quality of services, and for more effective advocacy for systemic reform to improve access to justice. Public defender systems convene their staff regularly for systematic exchanges of knowledge, experience and perspective. This helps to foster shared adherence to standards of high-quality advocacy among practitioners at all experience levels, as well as strong mentoring and supervising systems. However, funding is often limited and demand for services can be high, thus leading to excessive caseloads and negatively affecting the quality of services delivered.

Assigned counsel/panel lawyers or ex officio system

The assigned counsel/panel lawyer or ex officio model is the most common way of delivering legal aid services worldwide. In this model, private lawyers provide legal aid services to clients either systematically or on an ad hoc basis and are compensated for their services by the State (lawyers may also be required or encouraged by their bar associations to provide their services pro bono in a certain number of cases per year). In an ad hoc assigned counsel system, the appointment of a counsel is generally made by the court, without benefit of a formal list or rotation method and without specific qualification criteria for lawyers. In some jurisdictions, lawyers may be appointed by the police or prosecution rather than the court. More coordinated *judicare* programmes have an administrative or oversight body. In such systems, lawyers are often assigned on rotation, must meet minimum qualification standards and are provided with a greater degree of supervision, training and support. Assigned counsel systems may pay lawyers either on an hourly basis or a flat rate per case or hearing. In some jurisdictions, lawyers may also be reimbursed for certain eligible costs incurred during the representation of their legal aid clients, such as costs for experts and investigation travel expenses.

In such systems, it is crucial to ensure that the legal aid services provided are consistently effective and of high quality, including access to support services, and that providers are able to practice independently without fear of intimidation by the State or other powerful actors. Assigned counsel systems are often criticized for fostering patronage and lacking control over the experience level and qualifications of the appointed lawyer. In many countries, it is common

for appointments to be taken by recent law school graduates looking for experience. Additionally, flat-fee arrangements can create a disincentive for lawyers to devote time to a particular case.

In others bar associations play an active role in overseeing legal aid more generally, interfacing with lawyers, establishing standards, qualifications and training requirements, encouraging mentoring and peer reviewing, and advocating on providers' behalf with State funding authorities for conditions providers need in order to adequately assist their clients in the exercise of their rights.

In some locations, legal aid providers under the assigned counsel system have formed associations to coordinate strategies for improving the quality of their services and are taking steps together to object to practices that do not correspond to national and international standards. In others, bar associations are playing an active role in overseeing legal aid more generally, interfacing with lawyers, establishing standards, qualifications and training requirements, encouraging mentoring and peer reviewing, and advocating on providers' behalf with State funding authorities for improved conditions so that providers can adequately assist their clients in the exercise of their rights.

In assigned counsel systems, it is useful to have mechanisms in place to maintain the integrity of legal aid services provided, including: (a) policies and practices to guarantee early access to legal aid; (b) systems to ensure that the roster order of on-call lawyers is respected; (c) mechanisms to monitor and uphold the quality of legal services provided, to avoid conflict of interest and to ensure adequate capacities (such as peer review); (d) adequate budget allocations to meet the demand for legal aid services; and (e) processes of payment for legal aid providers that are not overly burdensome.

Contract service systems

The contract service model involves a government contract with a lawyer, a group of lawyers, a bar association or a non-governmental organization that will provide representation in some or all of the criminal legal aid cases in a particular jurisdiction. Under this system, individuals or organizations enter into contracts with the government to provide legal services to a defined class of eligible clients in a given geographical region. Contract service systems can be an effective way for governments to effectively and efficiently deliver legal aid services through privatization or contracting with effective and well-established law firms or non-governmental organizations. It can also achieve many of the benefits of a public defender model, without burdening the State with the need to establish a government public defender agency.

One concern about many contract systems is that governments may be incentivized to offer the lowest possible bids and they may fail to provide appropriate budgets for necessary support staff (e.g. paralegals, investigators, experts), and often have unrealistic or non-existent caseload limits. Additionally, quality may suffer because once a firm has successfully obtained the contract for a bundle of cases, it has an incentive to treat every case as a simple one—the firm's income for that bundle of cases is now fixed, and it can only increase its own profit margin by reducing its own operational costs for each case, which may lead to rushing or cutting corners. However, there are factors that mitigate these risks and structures that may diminish negative impacts. For example, governments can create systems to recognize the best private legal aid providers and thus incentivize them to maintain their reputation within the justice community, or establish independent organizations, such as a board of trustees, to award and oversee contracts, ensure that calls for bids and contracts meet quality-assurance conditions and agree to reporting requirements to measure quality of service.

Civil society providers

An increasing number of civil society actors are providing legal aid services worldwide, including civil society providers who are funded by the State (see contract service systems above) or where non-governmental institutions provide full-time legal aid services and are privately funded through individual contributions or by national and international donors. While the gap in meeting the demand for legal aid services is particularly wide in developing country contexts, including in post-conflict and transitional settings, the demand often outstrips resources across all development contexts. In many cases, civil society actors have sought to fill this gap.

University-based clinical legal aid providers, for example, supplement services to people who may not have easy access to legal aid. In clinical education programmes, students work under the close supervision of faculty and practitioner mentors, learning the practice of law while putting their education to use to assist those who might otherwise be without recourse for the defence of their rights. Clinical legal education often provides services to underserved areas. In countries where civil legal aid is not provided or not sufficiently available, clinic students often assist with cases where vulnerable groups may be at risk of losing property, or in family disputes. In other cases, students may focus on certain geographical areas, such as urban slums or rural areas where there is a lack of awareness of the law and limited access to legal services. It is important to ensure, however, that the services provided by law students are being monitored for quality, and that when cases fall outside the purview of the legal aid clinics, they are referred to competent legal aid providers.

A number of civil society organizations are also using paralegals as a means to expand access to legal aid, especially for underserved areas and populations. Paralegals are non-lawyers who have training in dealing with certain legal matters, and are authorized to perform specific tasks that require some knowledge of the law and legal procedures, but do not require a law degree. They can provide legal information and advice, screen legal aid claimants in order to refer them to appropriate providers, or enable litigants to advocate for their own interests in a tribunal. In some countries, paralegals are graduates of law schools who have not yet acquired a practitioner's licence. In others, they have distinct training in providing legal aid at the community level. Increasingly, to address the limited availability of lawyers, community-based paralegals are drawn from the community itself to provide necessary legal assistance to help navigate the legal and administrative hurdles that many individuals face when encountering the justice system. Accountability needs to be ensured and the quality of paralegal services needs to be monitored.

Mixed-model/hybrid systems

Mixed-model, or hybrid, systems of legal aid delivery are becoming increasingly popular as a means of maximizing the strengths and minimizing the weaknesses of the traditional models. This approach draws on the range of different ways of organizing legal aid delivery discussed above and seeks to maximize the coverage of legal aid provision. Mixed models offer an optimum level of flexibility, allowing governments to choose how legal aid can best be delivered in different parts of the country from any combination of public defender staff attorneys, private lawyers individually assigned to cases, and blocks of cases contracted out to firms or non-governmental organizations, paralegals and law students. With this approach, legal aid service providers may be coordinated by a legal aid board or public defender institution, or may function more independently of each other. The lack of coordination is often a challenge in hybrid systems and requires strong oversight and quality-control mechanisms. In some instances, the provision of legal aid services by civil society or other actors is seen as direct competition with the bar association and may be perceived to be against its interest.

UNDP/UNODC, Global Study on Legal Aid, 2016.

The United Nations Principles and Guidelines do not prescribe or endorse any specific model of legal aid delivery; rather, they encourage diversifying legal aid delivery schemes. The Model Law builds on this concept to provide a model that may respond to different needs and be adapted to the situation of a particular State. The

model proposed in the Model Law reflects a diverse system of legal aid delivery. In that model, different types of providers are recognized, including legal practitioners, organizations, law clinics and paralegals. Many jurisdictions have adopted similar models of legal aid provision. For example, public defender schemes often use lawyers in private practice or cooperate with paralegals or law students working in clinics under the supervision of lawyers. Examples of diverse legal aid delivery systems can be found in, among other countries, Israel, the Republic of Moldova, Sierra Leone, South Africa and the United States of America.

In recognizing a diverse system of legal aid delivery, which includes different types of legal aid providers, the Model Law aims at addressing some of the challenges faced by many countries striving to balance, on the one hand, their constitutional obligation to provide defence lawyers with, on the other hand, resource limitations and lawyer shortages. For example, the recognition and promotion of the work of paralegals, organizations and clinics, in parallel with the work of legal practitioners as traditional providers of legal aid, is designed to respond to this challenge. At the same time, the Model Law encourages the growth of the legal profession, promotes legal education and provides for incentives for legal practitioners working in rural areas.

It should be noted that the United Nations Principles and Guidelines, in paragraph 9, distinguish between “legal aid providers” and “legal aid service providers”, referring, respectively, to individuals who provide legal aid and organizations that provide legal aid. While the United Nations Principles and Guidelines note that the first providers of legal aid are lawyers, they also recognize that States may involve a wider range of other actors as legal aid service providers, including non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional associations and academia. The Model Law does not distinguish between the terms “legal aid providers” and “legal aid service providers,” but a legal aid provider is defined to include natural and legal persons accredited to provide legal aid.

Comparative models

Article 3. The meaning of expressions used in the Act

12. Providers of legal aid are lawyers, associations, or institutions of higher education conducting university courses in the academic field of law, which provide legal aid through law clinics, and who pursuant to this Act provide individual forms of legal aid.

Croatia, Free Legal Aid Act, 2008.

Section 30. Accreditation of legal aid providers

- (1) The Board shall ... for the purpose of providing legal aid accredit:
 - (a) Legal practitioners;
 - (b) Civil society organizations;
 - (c) University law clinics;
 - (d) Paralegals; and
 - (e) Non-governmental organisations.

- (2) The Board shall accredit university law clinics or paralegals only if in the case of:
 - (a) University law clinics, that are affiliated with the Judicial and Legal Training Institute; or
 - (b) Paralegals, that have been certified as having gone through the appropriate courses at the Judicial and Legal Training Institute or any other appropriate institution approved by the Board.

Sierra Leone, Legal Aid Act, 2012.

Section 59. Accreditation of legal aid providers

The Service may accredit a person or an institution providing the services prescribed by the Service.

Kenya, Legal Aid Act, 2016.

7.3.1.4. Impact Legal Services ... could be rendered by:

- Salaried legal practitioners employed at Legal Aid SA's Justice Centres and Impact Litigation Unit, or
- Legal practitioners in private practice, or
- A Co-operation Partner of Legal Aid SA, or
- A law clinic, or
- Any combination of the above.

South Africa, Legal Aid Guide, 2014.

Article 14. Legal practitioners [*Attorneys and advocates*]

Article 14 recognizes two types of legal practitioners as legal aid providers: public defenders and private legal practitioners. Public defenders may be employed by the Legal Aid Authority, a public defender organization, an independent public defender's office or the Ministry of Justice, and compensated at a salary rate in accordance with a compensation and benefit plan established by the relevant authority. The provision of legal aid by public defenders is supplemented by the work of private legal practitioners, who work under a contract with the Legal Aid Authority.

This system is intended to combine the advantages of these two categories of providers. Public defenders have the institutional capacity to effectively provide legal aid. Public defenders are particularly effective in the provision of legal aid in the early stages of the criminal justice process, when demand for legal aid is unpredictable, and this model is particularly suited to implementation through a "duty lawyer" or "call-in" scheme, which places legal aid providers on duty at police stations or detention centres during office hours or calls them during non-office hours. For example, the Republic of Moldova has adopted a system in which public defenders are on duty in territorial offices of the Legal Aid Authority.

However, in many countries, public defender organizations suffer from a lack of financial resources. As a result, there is often a very small number of public defenders despite high caseload levels. Supplementing public defenders with private legal practitioners, paid a fee determined by the Legal Aid Authority that is commensurate with the time spent on a case, or paid per item of work, may enable better control over expenditure.

A number of jurisdictions have adopted a public defender scheme with offices throughout the country, including Argentina, Chile, Georgia, Mexico, Paraguay, Peru, the Philippines, the Republic of Moldova and South Africa.

Brazil, Hungary, Israel, Lithuania and South Africa are among the countries that supplement the public defender scheme with private lawyers.

States with a public defender scheme follow different models for its practical implementation. The organization and delivery of legal aid by public defenders require consideration of the following aspects:

- (1) *Institutional base*: Institutional arrangements are crucial for guaranteeing the independence of the public defender service. If legal aid paid for by the State is to be at the same level of assistance as that available to persons

who can afford to retain a legal counsel, the public defenders must be able to carry out their functions without undue interference from government or other external parties.

The institution of the public defender service may be established under different authorities. In some countries, the institution of the public defender is established as a part of the judicial branch (e.g., the supreme court or the office of the public prosecutor at the national or regional level), as in the case of Costa Rica, Italy, Uruguay or the federal system in the United States. In other countries, the institution of the public defender service is established as a part of the executive branch (e.g., attached to the ministry of justice or the office of the prime minister or president), as in the case of Bolivia (Plurinational State of), Israel or Peru. Yet in other countries, the public defender service is an institutionally independent autonomous organ, as in the case of Argentina. Alternatively, some defender programmes are set up as non-governmental organizations, receiving funds from the government under a contract or having no formal connection to the government.

The independence of public defenders has been recommended by the Human Rights Committee of the United Nations, which has urged States to “guarantee the budgetary and operational independence of the Office of the Public Defender”¹⁵ from other State actors; by the Special Rapporteur on the independence of judges and lawyers, who has observed that “in order to uphold the principle of equality of arms, offices of the public defender should be made independent of the executive branch;”¹⁶ and in several resolutions of the Organization of American States, including resolutions 2656/2011, “Guarantees for access to justice: the role of official public defenders”; 2714/2012, “Official public defenders as a guarantee for persons in situations of vulnerability”; 2801/2013, “Toward autonomy for official public defenders/criminal and civil legal aid providers as a guarantee of access to justice”; and 2821/2014, “Toward autonomy for and strengthening of official public defenders as a guarantee of access to justice”.

(2) *Appointment procedures*: Without prejudice to the diversity of legal systems around the world, the procedure for the selection and appointment of

¹⁵ Consideration of reports submitted by States parties under article 40 of the Covenant: concluding observations by the Human Rights Committee - Argentina, I (CCPR/C/ARG/CO/4), para. 20.

¹⁶ Report of the Special Rapporteur on the independence of judges and lawyers: mission to Mexico (A/HRC/17/30/Add.3), para. 73.

public defenders must be clear, transparent and designed to ensure their merit and professional qualifications. The adoption of basic standards is necessary for avoiding the risk of a highly politicized system of selection and appointment, which, in turn, jeopardizes the independence of public defenders. Such standards include:

- *Equality and non-discrimination in the selection process* in order to ensure equal access to the public defender service, diversity in the composition of public defender offices and proper representation of women and members of minority or underrepresented groups;
- *Merit and professional qualifications* informing any selection and appointment process. Qualifications-based selections or competitive examinations are a desirable way to ensure that public defenders have the appropriate experience and skills to provide legal aid. Such measures must be complemented by ensuring that appointed public defenders, like any other legal aid providers, are sufficiently trained and participate in any quality assurance programmes implemented by the Legal Aid Authority or body; and
- *Transparency in the selection and appointment process*, such as vacancy announcements, required qualifications and selection criteria must be made public, and, to ensure further independence, appointments can be open to public scrutiny.

(3) *Remuneration*: Adequate remuneration of public defenders is an essential element for ensuring the quality of legal aid. It allows public defenders to operate independently and makes them less vulnerable to corruption. Therefore, the establishment of a public defender service requires the allocation of sufficient resources and independent management of the budget so that the service does not need to rely on other organs or branches of government for funding. Depending on the legal system of each country, the public defender service, Legal Aid Authority or body employing public defenders must be entrusted with the administration of its funds. Often, when the public defender's office is not institutionally independent, it does not have budgetary autonomy and funds are managed by the entity of which it is a part. It is desirable that the Legal Aid Fund have a dedicated budget line for the remuneration of public defenders.

The following comparative models provide examples of a classic public defender scheme (the Philippines), a mixed scheme that combines public defenders and private lawyers (Finland and Israel), a scheme that allows the employment of apprentice attorneys (South Africa) and private-lawyer scheme (Croatia and Kosovo).

Comparative models

Section 2. Public Attorney's Office (PAO)

[The] Public Attorney's Office ... shall exercise the powers and functions as are now provided by law for the Citizen's Legal Assistance Office or may hereafter be provided by law.

The PAO shall be an independent and autonomous office attached to the Department of Justice ...

The PAO shall be the principal law office of the Government in extending free legal assistance to indigent persons in criminal, civil, labor, administrative and other quasi-judicial cases.

Philippines, Republic Act No. 9406, 2007.

(g) Defender Organization

(1) Qualifications. A district or a part of a district in which at least two hundred persons annually require the appointment of counsel may establish a defender organization as provided for either under subparagraphs (A) or (B) of paragraph (2) of this subsection or both. Two adjacent districts or parts of districts may aggregate the number of persons required to be represented to establish eligibility for a defender organization to serve both areas. In the event that adjacent districts or parts of districts are located in different circuits, the plan for furnishing representation shall be approved by the judicial council of each circuit.

(2) Types of Defender Organizations:

(A) Federal Public Defender Organization

A Federal Public Defender Organization shall consist of one or more full-time salaried attorneys. An organization for a district or part of a district or two adjacent districts or parts of districts shall be supervised by a Federal Public Defender appointed by the court of appeals of the circuit, without regard to the provisions of title 5 governing appointments in the competitive service, after considering recommendations from the district court or courts to be served. Nothing contained herein shall be deemed to authorize more than one Federal Public Defender within a single judicial district. The Federal Public Defender shall be appointed for a term of four years, unless sooner removed by the court of appeals of the circuit for

incompetency, misconduct in office, or neglect of duty. Upon the expiration of his term, a Federal Public Defender may, by a majority vote of the judges of the court of appeals, continue to perform the duties of his office until his successor is appointed, or until one year after the expiration of such Defender's term, whichever is earlier. The compensation of the Federal Public Defender shall be fixed by the court of appeals of the circuit at a rate not to exceed the compensation received by the United States attorney for the district where representation is furnished or, if two districts or parts of districts are involved, the compensation of the higher paid United States attorney of the districts. The Federal Public Defender may appoint, without regard to the provisions of title 5 governing appointments in the competitive service, full-time attorneys in such number as may be approved by the court of appeals of the circuit and other personnel in such number as may be approved by the Director of the Administrative Office of the United States Courts. Compensation paid to such attorneys and other personnel of the organization shall be fixed by the Federal Public Defender at a rate not to exceed that paid to attorneys and other personnel of similar qualifications and experience in the Office of the United States attorney in the district where representation is furnished or, if two districts or parts of districts are involved, the higher compensation paid to persons of similar qualifications and experience in the districts. Neither the Federal Public Defender nor any attorney so appointed by him may engage in the private practice of law. Each organization shall submit to the Director of the Administrative Office of the United States Courts, at the time and in the form prescribed by him, reports of its activities and financial position and its proposed budget. The Director of the Administrative Office shall submit, in accordance with section 605 of title 28, a budget for each organization for each fiscal year and shall out of the appropriations therefor make payments to and on behalf of each organization. Payments under this subparagraph to an organization shall be in lieu of payments under subsection (d) or (e).

(B) Community Defender Organization

A Community Defender Organization shall be a non-profit defense counsel service established and administered by any group authorized by the plan to provide representation. The organization shall be eligible to furnish attorneys and receive payments under this section if its bylaws are set forth in the plan of the district or districts in which it will serve. Each organization shall submit to the

Judicial Conference of the United States an annual report setting forth its activities and financial position and the anticipated case-load and expenses for the next fiscal year. Upon application an organization may, to the extent approved by the Judicial Conference of the United States:

- (i) Receive an initial grant for expenses necessary to establish the organization; and
- (ii) In lieu of payments under subsection (d) or (e), receive periodic sustaining grants to provide representation and other expenses pursuant to this section.

*United States, United States Code, Title 18, sect. 3006A—
Adequate representation of defendants.*

Article 1. Establishing the office of public defender

- (a) The Minister of Justice shall establish, within the Department of Justice, an office of public defender.
- (b) The office of public defender shall provide legal representation in criminal proceedings to those entitled thereto under this law.

[...]

Article 12. Appointment of a public defender who is not employed by the office of public defender

- (a) A lawyer who is not employed by the office of public defender, and wishes to serve as a public defender, shall submit to the district public defender a written application; the district public defender shall compose a list of lawyers qualified to serve as public defenders.
- (b) The district public defender shall appoint public defenders from the list, and he may also appoint a lawyer who is not included in said list, upon the consent of said lawyer [...].

Israel, Public Defender Law, 1995.

Section 8. Attorney

- (1) Legal aid shall be given by public legal aid attorneys. However, in matters to be heard by a court of law, also a private attorney who has consented to the task may be appointed as an attorney. In addition, a private attorney may be appointed in events referred to in section 10 of the Act on State Legal Aid Offices...

(2) An appointment as a private attorney may only be given to an advocate or to another person eligible to serve as an attorney under chapter 15, section 2(1), of the Code of Judicial Procedure ... Appointment as an attorney for a suspect in a criminal case may only be given to a public legal aid attorney or an advocate, or for a special reason also to another person who holds the degree of Master of Laws, if the suspect has been arrested or detained, if the suspect is charged with an offence with no statutory penalty less severe than imprisonment for four months or with an attempt of or participation in such an offence, or if the suspect is younger than 18 years of age.

(3) Where the person receiving legal aid has self-nominated an eligible person as his or her attorney, that person shall be appointed unless there are special reasons to the contrary.

(4) In his or her task, the attorney shall adhere to proper conduct as advocate.

Finland, Legal Aid Act, 2002.

Article 17(2). Employees and agents of Legal Aid South Africa

(a) Legal Aid South Africa has the right to operate its offices and justice centres without having to seek accreditation from any law society ... and is entitled to employ candidate attorneys, subject to the provisions of the Attorneys Act, 1979.

[...]

(b) Despite the provisions of paragraph (a), attorneys and candidate attorneys employed by Legal Aid South Africa must be members, in good standing, of the law society having jurisdiction and are subject to the disciplinary control of the law society in question.

South Africa, Legal Aid South Africa Act, 2014.

Article 10. Provision of legal aid by attorneys

(1) Primary and secondary legal aid, pursuant to the provisions of this Act, is offered by attorneys.

(2) Attorneys may not refuse to provide legal aid pursuant to the provisions of this Act, except in cases prescribed by the Attorneys Act for refusal to provide legal aid.

(3) The applicant for approval of legal aid ... may report refusal to provide legal aid to the minister responsible for justice affairs.

(4) Unfounded refusal to provide legal aid shall be deemed to be negligent provision of legal aid, in the sense of this Act.

Croatia, Free Legal Aid Act, 2008.

Article 29. Advocates

1. Advocates offer legal services authorized within primary and secondary legal aid.
2. Kosovo Chamber of Advocacy prepares and delivers at the Agency the list of lawyers who express readiness to offer free legal aid.
3. The agency concludes individual contracts with lawyers that express readiness to offer free legal aid.
4. Advocates provide authorized services of free legal aid under the tariff on compensation determined from the Agency by sub-legal act.
5. Regional Office for cases which should represent at courts and other bodies the beneficiaries of free legal aid, appoint lawyer from the updated list of Advocate chamber.
6. The procedure for engaging lawyers is regulated with sub-legal act.
7. Authorized services of representation and defense in court proceedings are offered only by lawyers.

Kosovo, Law on Free Legal Aid, 2012.

In some jurisdictions, lawyers are recommended or required by rules of the bar associations to contribute a minimum number of hours of pro bono services per year. The provision of pro bono services may even be a condition for admission to the bar. In the Philippines, the Supreme Court encourages lawyers to perform 60 hours of pro bono work per year. In Nigeria, provision of pro bono services is a requirement for the advancement of advocates to certain offices or ranks within the bar.

Comparative models

Section 18. Pro bono cases and enjoyment of privileges

(1) A legal practitioner who applies to be appointed to the rank of Senior Advocate of Nigeria shall be required to show evidence of diligent conduct of not less than three pro bono cases in the legal year immediately preceding his application.

Nigeria, Legal Aid Act, 2011.

Article 13. Duties of advocates

Advocates shall have the following duties:

[...]

(15) To defend at least three criminal cases in each year, free of charge, upon confirmation of the Ministry of Justice.

Afghanistan, Advocates' Law, 2007.

Article 15. Non-governmental organizations, community-based organizations and faith-based organizations

Various types of organizations, such as non-governmental organizations, legal aid centres, and community-based and faith-based organizations, can play a great role in the provision of legal aid, particularly in providing advice and assistance to vulnerable and marginalized groups in the community. Successful models include mobile legal aid centres that operate near police stations and offer legal aid services, particularly to women and children.

In many countries, only licensed lawyers can provide legal representation, while organizations are primarily involved in the provision of advice, information and assistance. Article 15 refers to all types of legal aid listed under article 12, as organizations may hire licensed lawyers to provide legal representation.

Legal aid centres and organizations are particularly effective in providing legal aid services to victims and witnesses, who may feel more comfortable opening up to social workers in a non-threatening environment. Other examples of successful legal aid programmes run by non-governmental organizations, include those that aim to deliver services to people living with HIV/AIDS in a number of countries, including Burkina Faso, India, Sierra Leone and South Africa.

Some organizations also provide mediation services in order to help resolve disputes without recourse to the formal criminal justice system.

Comparative models

Article 17. Delivery of primary legal aid by non-governmental organizations

- (1) Non-governmental organizations specialized in the field of the legal aid delivery are entitled to provide primary legal aid.
- (2) The National Council can conclude cooperation agreements with non-governmental organizations on primary legal aid delivery under the present law.
- (3) The state grants to non-governmental organizations the necessary support, under the Law on Public Associations.

Republic of Moldova, Law on State-Guaranteed Legal Aid, 2007.

Section 31. Support of activities of non-profit organisations

- (1) Within the limits of the funds prescribed in the state budget, the state shall support non-profit associations or foundations entered in the list of non-profit associations and foundations benefiting from income tax incentives or deemed to be equal thereto if their activities are important to improve the accessibility of general legal counselling and they can ensure the grant of quality legal aid to persons requiring the aid.
- (2) A non-profit association or foundation applying for support shall submit an application for the receipt of support to the Ministry of Justice. An overview of the activities of the non-profit association or foundation during the last two years and a detailed project regarding use of the support applied for shall be appended to the application. The specific conditions and procedure for application for the support may be established by a regulation of the Minister of Justice.

Estonia, State Legal Aid Act, 2004.

Article 16. Law clinics

The inclusion of law clinics among legal aid providers reflects a growing trend, observed in more and more countries, of using appropriately trained and supervised law students to provide legal aid services. Law clinics as providers of legal aid serve the dual purpose of enhancing the skills of law students through practical experience and expanding the provision of legal aid services to those in need. Law students are generally not authorized to legally represent a client; when they do, the legal representation is provided under the supervision of a licensed legal practitioner.

Countries with a shortage of lawyers can consider including the optional provisions in paragraphs 16.3-16.9.

Comparative models

Section 2. Interpretation

... “[L]egal aid provider” [includes] a university or other institution operating legal aid clinics.

Kenya, Legal Aid Act, 2016.

Article 14. Institutions of higher education

(1) Institutions of higher education offering university courses in the field of law may provide primary legal aid through law clinics in accordance with their own general acts, and as primary legal aid, give general legal information, legal advice and draw up documents.

(2) Law clinics have the right to decide to provide legal aid in line with the goal for which they were founded and the program by which they operate.

(3) Institutes of higher education may offer legal aid to persons who are not beneficiaries of legal aid according to the provisions of this Act, but outside the funds approved for the project and without the right of reimbursement.

Croatia, Free Legal Aid Act, 2008.

Section 19. Services of students-at-law

(1) A student-at-law may provide any legal services to a client that the student may be asked to provide by the solicitor appointed under this Act to provide those services to the client.

(2) Where a student-at-law is performing legal services pursuant to subsection (1), the solicitor appointed to provide those services shall supervise the services rendered by the student.

Canada, Legal Aid Act, Statutes of Saskatchewan, 2004.

Section 61. Law students

Where permitted by the Law Society Act, a student-at-law, under the supervision of a solicitor, may perform the duties that the solicitor may assign to him or her in respect of legal aid which the solicitor is providing.

Canada, Legal Aid Act, Statutes of Newfoundland and Labrador, 2012.

Article 17. Paralegals

In recent years, the role of paralegals, particularly community-based paralegals, in the provision of legal aid has been increasingly recognized. Their unique set of skills—such as knowledge of local forms of justice, familiarity with and acceptance by the community, as well as knowledge of local languages—is particularly well suited to address the legal needs of poor and marginalized communities, members of which are often the main beneficiaries of legal aid.

The United Nations Principles and Guidelines encourage this emerging trend and call upon States to recognize the role of paralegals whenever appropriate and in accordance with national laws. Guideline 14 provides:

67. States should, in accordance with their national law and where appropriate, recognize the role played by paralegals or similar service providers in providing legal aid services where access to lawyers is limited.

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

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

(b) To ensure that quality standards for paralegal services are set and that paralegals receive adequate training and operate under the supervision of qualified lawyers;

(c) To ensure the availability of monitoring and evaluation mechanisms to guarantee 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 services that can be provided by paralegals and the types of services that must be provided exclusively by lawyers, unless such determination is within the competence of the courts or bar associations;

(f) To ensure access for accredited paralegals who are assigned to provide legal aid to police stations and prisons, facilities of detention or pretrial detention centres, and so forth;

(g) To allow, in accordance with national law and regulations, court accredited and duly trained paralegals to participate in court proceedings and advise the accused when there are no lawyers available to do so.

In some legal systems, paralegal schemes are already in place and paralegals are essential actors within the justice system. In Australia, Canada, England, the Netherlands and the United States, paralegals often function as assistants to lawyers. In a growing number of countries, paralegal programmes have been established in order to meet the needs of rural or marginalized communities, where there is considerable difficulty in accessing the formal justice system owing to shortages of lawyers, as well as financial, geographical and cultural reasons. In Hungary, Malaysia, Sierra Leone and South Africa, community-based paralegals have been successfully using their knowledge of the formal legal system, alternative dispute resolution mechanisms and restorative justice processes to assist poor and marginalized populations in resolving their legal needs.

However, in systems without paralegals, their introduction and functions must be clearly defined and regulated. When developing a nationwide scheme of paralegal services, the Open Society Justice Initiative recommends consideration of the following steps:

(1) *Initial assessment*: An analysis of the country's legal and judicial environment is a critical first step in determining whether to establish a paralegal system and how beneficial it would be. Such an assessment should collect data on the incidence of crime, target populations, justice problems most frequently encountered, existing legal aid services, availability of lawyers providing legal aid services, existence and use of customary legal systems and restorative justice processes, and availability of potential candidates who could be employed as paralegals. The initial assessment assists in outlining the paralegal scheme, including its geographical scope and distribution, services provided in response to local needs, and type and content of training for paralegals.

(2) *Institutional arrangement*: A second step in the establishment of a paralegal programme consists of identifying its institutional base and arrangement. Paralegal programmes can be attached to bar associations or established as a part of an existing or newly established community-based organization, non-governmental organization or law clinic. Alternatively, a paralegal programme can be based at a governmental agency, such as a government-established legal aid centre, as part of the nationwide legal aid system, and funded by the State. In this case, a crucial step in the establishment of a paralegal programme is the setting up of a monitoring and oversight mechanism, to guarantee independence from government interference and ensure accountability. When establishing a nationwide legal aid system in countries where paralegals are not yet formalized, their recognition and accreditation as legitimate legal aid service providers, employed by a legal aid body or authority responsible for the administration of legal aid services,

should be considered. In any case, it is recommended that the geographical scope and distribution of paralegal programmes ensure that they are accessible to rural and marginalized populations.

(3) *Defining the role of paralegals:* Guideline 14, paragraph 68(e), of the United Nations Principles and Guidelines provides that States should adopt measures to determine the type of legal services that must be provided exclusively by lawyers and the type of services that can be provided by paralegals. The approach adopted to make that determination is dependent on a country's need for legal aid services, availability of lawyers and quality of paralegals in terms of knowledge and experience. On the basis of such considerations and a country's specific legal system, the role of paralegals can be restricted to the provision of advice and information, or expanded to the performance of other functions normally performed by lawyers, such as providing assistance to legal aid beneficiaries in police stations and detention centres, providing advice and assistance during court proceedings, collecting evidence, or assisting in the diversion of cases from the formal criminal justice system to traditional or customary law systems, alternative dispute resolution mechanisms and restorative processes. Expanding the role of paralegals is particularly desirable in areas where there is a shortage of qualified lawyers to serve as legal aid providers, especially because paralegals tend to live closer to the communities they serve, have knowledge of their language, customary practices and structures, and be seen as more easily accessible than lawyers.

(4) *Recruitment and accreditation process:* Paralegals should be recruited from among candidates who are literate and have basic knowledge of the law and the legal and judicial system. Additional desirable qualities include familiarity with the community they will serve, ability to interact with members of the formal criminal justice process, as well as community leaders, and, when applicable, knowledge of traditional or customary law systems. A good approach has been adopted by the Community Law and Rural Development Centre in South Africa, where an advisory committee of local residents selects paralegals. Both when hiring paralegals as a part of a non-governmental organization, a law clinic or a legal aid centre and when employing them as legal aid providers under the management of the Legal Aid Authority, the criteria for recruitment and selection of paralegals must be clear and easily available to potential candidates. The selection process must require paralegals to undergo a vetting process to be accredited as legal aid providers under the management of the Legal Aid Authority.

(5) *Training and quality assurance:* Guideline 14, paragraph 68(a), of the United Nations Principles and Guidelines provides that States should introduce measures to develop standardized training curricula for paralegals, as well as monitoring and evaluation mechanisms to ensure the quality of the

services they provide. The responsibility for the development of training programmes for paralegals should be vested in the institution where they are based—a legal aid body or authority, bar association, organization or law clinic. The content of the training should depend on the roles the paralegals will play, the types of legal aid services they will provide, the potential beneficiaries and the specific area of law they will work in. Training programmes must be designed with the purpose of further developing the paralegals' skills and knowledge necessary for effective legal aid provision. Skills that should be developed include: interviewing, collecting evidence, counselling, referrals, general administrative skills, advocacy, dealing with formal law enforcement authorities and local community leaders, mediation and conciliation, and documentation. Since paralegals are not trained to practice law but generally have a basic knowledge of the legal and judicial system, training programmes should enhance their knowledge of criminal law, criminal procedural law, laws pertaining to the functioning of law enforcement officials, mechanisms of alternative dispute resolution and restorative justice processes, and the rights of victims of crime. A legal aid body or authority, a bar association, or an organization or clinic to which paralegals are attached must develop effective arrangements to monitor and evaluate the work of paralegals. Formal, routine supervisor's assessments, in the form of visits, ongoing communication or evaluation courses and feedback from beneficiaries, are appropriate mechanisms for controlling and evaluating the work of paralegals.

In many post-colonial countries, traditional dispute resolution mechanisms based on restorative justice still exist in parallel to the formal criminal justice system. The report of the United Nations Commission on Legal Empowerment of the Poor (2008)¹⁷ encourages the use of traditional dispute resolution mechanisms. Following the United Nations Principles and Guidelines, the Model Law defines legal aid to include services provided through alternative dispute resolution and restorative justice processes. Therefore, countries with traditional or customary law systems have the option of including in article 17 the provisions in paragraphs 17.3-17.5.

¹⁷ Commission on Legal Empowerment of the Poor and United Nations Development Programme, *Making the Law Work for Everyone*, vol. I (New York, 2008).

Comparative models

Section 68. Legal advice and assistance by paralegals

- (1) An accredited paralegal employed by the Service or supervised by an accredited body may provide legal advice and assistance in accordance with this Act.
- (2) An accredited paralegal shall not demand payment of a fee from a person who qualifies for legal aid under this Act.
- (3) An accredited paralegal who demands payment of a fee as specified under subsection (2) commits an offence.

Kenya, Legal Aid Act, 2016.

Article 16. Paralegals

- (1) Paralegals work in conditions of the Rules approved by the National Council.
- (2) Paralegals may associate in consulting agencies.
- (3) The training of paralegals is carried out by the National Council from the budgetary funds as well as from other means provided by sources not prohibited by law, allocated for this purpose.
- (4) The remuneration for services delivered by paralegals is provided from the state budget as well as from other sources not prohibited by law, on the basis of the cooperation agreement concluded with the territorial office, which delivers these services within its scope of activity.
- (5) The local public administration authorities can provide paralegals with the necessary premises and material and technical supplies.

Republic of Moldova, Law on State-Guaranteed Legal Aid, 2007.

Section 14. Other staff of Board

- (2) The Board shall appoint at least one paralegal to each Chiefdom:
 - (a) To provide advice, legal assistance and legal education to the Paramount Chief and the inhabitants of the Chiefdom;
 - (b) Where appropriate to assist in diverting certain cases to the formal justice system.

Sierra Leone, Legal Aid Act, 2012.

Article 18. Intermediaries

Some countries have very few lawyers, which makes it difficult for them to provide legal representation in all cases where it is in the interests of justice to do so. The recognition of the role played by intermediaries and lay assistants facilitates access to justice and extends the reach of legal aid, in line with the principle 14 of the United Nations Principles and Guidelines:

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

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

The requirement of drawing a convicted person's attention to his or her right of review and the provision of legal aid for such a review can help to ensure that anyone sentenced to a period of imprisonment receives a fair trial. Whether the convicted person has received a fair trial would have to be certified by the reviewing judge who examines the court record.

Article 18.2.2 is applicable only to cases where the assistance of a lawyer is not mandatory.

Article 19. Obligations of the State to ensure effective provision of services by legal aid providers

Principle 2 of the United Nations Principles and Guidelines recognizes that, while it should be the State's responsibility to put in place a comprehensive legal aid system, States should not interfere with the provision of legal aid or with the independence of legal aid providers.

In addition, principle 12 provides:

36. 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, to consult and meet with their clients freely and in full confidentiality both within their own country and abroad, and to freely access prosecution and other relevant files; and do not suffer, and are not threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

States' obligation to facilitate legal aid providers' prompt access to police stations, places of detention and prisons is based on guideline 4, paragraph 44 (b), of the United Nations Principles and Guidelines. States' obligation to ensure that legal aid providers are present during questioning or interviewing is based on guideline 3, paragraph 43 (b), of the United Nations Principles and Guidelines, which provides that an interview should not start until the legal aid provider arrives. This obligation of the State can be subject to a few exceptions, which should be allowed only for practical reasons. In England and Wales, for example, provisions requiring the granting of prompt access for legal aid providers to police stations are subject to certain exceptions if there are reasonable grounds to believe that a lawyer's access will lead to unlawful activities, such as interference with or destruction of evidence. In such cases, a senior police officer may delay access to a lawyer for up to 36 hours.

Comparative model

Section 19. Prison monitoring and review cases of awaiting trial inmates

(3) The Council and the lawyers designated by it shall be entitled to have access to and interview suspects detained in prisons, police stations, or any other places of detention in Nigeria and such designated lawyers shall be entitled to be present during the interrogation of the suspects in accordance with the rights guaranteed to suspects under the Constitution.

Nigeria, Legal Aid Act, 2011.

The obligation of the State to ensure that legal aid beneficiaries have the right of access to information and to the materials of the case is recognized in the directive of the European Union on the right to information in criminal proceedings.

Comparative model

Article 6. Right to information about the accusation

1. Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence.
2. Member States shall ensure that suspects or accused persons who are arrested or detained are informed of the reasons for their arrest or detention, including the criminal act they are suspected or accused of having committed.

3. Member States shall ensure that, at the latest on submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.

4. Member States shall ensure that suspects or accused persons are informed promptly of any changes in the information given in accordance with this Article where this is necessary to safeguard the fairness of the proceedings.

Article 7. Right of access to the materials of the case

1. Where a person is arrested and detained at any stage of the criminal proceedings, member States shall ensure that documents related to the specific case in the possession of the competent authorities which are essential to challenging effectively, in accordance with national law, the lawfulness of the arrest or detention, are made available to arrested persons or to their lawyers.

2. Member States shall ensure that access is granted at least to all material evidence in the possession of the competent authorities, whether for or against suspects or accused persons, to those persons or their lawyers in order to safeguard the fairness of the proceedings and to prepare the defence.

3. Without prejudice to paragraph 1, access to the materials referred to in paragraph 2 shall be granted in due time to allow the effective exercise of the rights of the defence and at the latest upon submission of the merits of the accusation to the judgment of a court. Where further material evidence comes into the possession of the competent authorities, access shall be granted to it in due time to allow for it to be considered.

4. By way of derogation from paragraphs 2 and 3, provided that this does not prejudice the right to a fair trial, access to certain materials may be refused if such access may lead to a serious threat to the life or the fundamental rights of another person or if such refusal is strictly necessary to safeguard an important public interest, such as in cases where access could prejudice an ongoing investigation or seriously harm the national security of the member State in which the criminal proceedings are instituted. Member States shall ensure that, in accordance with procedures in national law, a decision to refuse access to certain materials in accordance with this paragraph is taken by a judicial authority or is at least subject to judicial review.

5. Access, as referred to in this Article, shall be provided free of charge.

Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings.

The State's obligation to ensure that legal aid providers are present at all critical stages of the proceedings is based on guideline 5, paragraph 45(d), of the United Nations Principles and Guidelines. "Critical stages" is defined as "all stages of a criminal proceeding at which the advice of a lawyer is necessary to ensure the right of the accused to a fair trial or at which the absence of counsel might impair the preparation or presentation of a defence". In Brazil, presence at all stages of the proceedings is an explicit duty of public defenders.

Article 20. Duties of legal aid providers

The duties of legal aid providers, as provided in article 20, are an extension of the accused person's right to defence. Article 20 imposes a series of obligations on the legal aid providers to ensure that this right is effectively implemented.

In imposing duties on legal aid providers, reference can be made to the *Basic Principles on the Role of Lawyers*, which provide the following:

12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.
13. The duties of lawyers towards their clients shall include:
 - (a) Advising clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the clients;
 - (b) Assisting clients in every appropriate way, and taking legal action to protect their interests;
 - (c) Assisting clients before courts, tribunals or administrative authorities, where appropriate.
14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

Comparative models

Article 15. Fiduciary duties to the client

(a) In the course of his duty, a public defender shall act the way a lawyer pursues the interest of his client, with dedication and in confidence, and he shall be subject to such rules of ethics as applicable to a lawyer representing a client.

(b) Whereupon conflict of interest arises between the duties of a public defender employed by the office of public defender to his client and his duties as a state worker, his duties to his client shall override his duties as a state worker.

Israel, Public Defender Law, 1995.

Section 39. Duties of legal practitioner

A legal practitioner shall, with respect to any application for legal aid, assigned matter or account, provide all information and give such assistance as the Agency may require, from time to time, including information required pursuant to the provisions of section 37.

Gambia, Legal Aid Act, 2008.

Article 22

Personnel handling a legal aid case shall abide by professional ethics and practise discipline, refraining from receiving any money or property for providing legal aid.

China, Regulations on Legal Aid, 2003.

Many States adopt performance standards and guidelines for lawyers on how to provide quality representation and effectively protect their clients' rights. These standards provide guidance with regard to the types of mandatory training programmes that lawyers should undergo and skills they should develop. Guidelines on how to deliver legal aid are equally important for improving the quality of legal aid. The American Bar Association's *Ten Principles of a Public Defense Delivery System* provide an effective example.

Comparative model

- (1) The public defense function, including the selection, funding, and payment of defense counsel, is independent.
- (2) Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.
- (3) Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.
- (4) Defense counsel is provided sufficient time and a confidential space within which to meet with the client.
- (5) Defense counsel's workload is controlled to permit the rendering of quality representation.
- (6) Defense counsel's ability, training, and experience match the complexity of the case.
- (7) The same attorney continuously represents the client until completion of the case.
- (8) There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.
- (9) Defense counsel is provided with and required to attend continuing legal education.
- (10) Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

*United States, American Bar Association,
Ten Principles of a Public Defense Delivery System, 2002.*

Article 21. Remuneration of legal aid providers

Article 21 regulates the remuneration of legal aid providers. There are different options for remuneration, depending on the institutional delivery of legal aid and on whether lawyers are contracted to work within an organization or on a case-by-case basis. Therefore, linking the selection of remuneration method with the selection of a delivery model would optimize the use of available funds.

Comparative models

Section 4. Remuneration of advocate assigned to accused

(1) The remuneration of any advocate assigned to an accused under the provisions of section 3 shall be determined by the certifying authority and shall be payable from the general revenue of the United Republic.

(2) Remuneration payable under this section shall not be less than forty thousand shillings nor more than sixty thousand shillings in respect of each proceeding, or in respect of each accused where the certifying authority certifies that accused persons jointly tried should be separately represented:

Provided that in the case of a proceeding before the High Court the Judge hearing the proceeding and, in the case of a proceeding before any other court, the Chief Justice, may, for special reasons, regard being had to the complexity of the proceeding or the duration thereof, authorize the payment of a higher remuneration not exceeding one hundred thousand shillings in respect of each proceeding, or in respect of each accused person, as the case may be.

Section 5. Expenses incurred by advocate

(1) Where an advocate who is assigned to an accused person under the provisions of this Act incurs any special expenditure arising out of the performance of his duties, he may, if he wishes to be reimbursed in respect of such expenditure, submit a claim to the Registrar.

(2) After considering the claim the Registrar may reject it or, if he is satisfied that the full claim or a portion thereof is reasonable, authorize payment to the advocate of such claim or such portion, as the case may be, out of the general revenue of the United Republic.

(3) Any dispute arising out of the decision of the Registrar under subsection (2) of this section may be referred to the Chief Justice, whose decision thereon shall be final.

*United Republic of Tanzania,
Legal Aid (Criminal Proceedings) Act, 1969.*

Section 58. Unauthorized payments

(1) No accredited legal aid provider, their agent or staff of the secretariat shall demand, request or receive payments from or in respect of a person to whom legal aid services are provided under this Act unless such payments are authorized under this Act.

(2) Any person who demands, requests or receives such payment commits an offence.

[...]

Section 75. Fees payable

(1) The Service shall, in consultation with relevant professional bodies, determine the scales of fees payable to legal aid providers contracted by the Service in the performance of its functions under this Act.

(2) In determining the scales of fees payable under this Act, the Service shall take into account:

- (a) Sustainability of the legal aid scheme;
- (b) Reasonableness;
- (c) Accessibility of legal aid services; and
- (d) Extending the Service to as many beneficiaries as possible.

(3) Notwithstanding the provisions of subsection (1), the Service may, in exceptional circumstances, enter into an agreement with a legal aid provider to provide services under this Act on such terms as may be agreed between the legal aid provider and the Service.

(4) The scale fees determined by the Service shall be less than the legal fee applicable to persons not aided by the Service.

Kenya, Legal Aid Act, 2016.

Article 37

(1) Legal aid shall be remunerated under a regulation adopted by the [National Legal Aid Bureau] and shall be contingent on the type and quantity of activities performed.

(2) Where an attorney has provided legal aid for a particular case incompetently or in bad faith, he/she shall not receive remuneration for this particular case regardless of other sanctions.

Article 38

- (1) The type and quantity of the legal aid provided shall be certified by a written report of the attorney in a form, approved by the National Legal Aid Bureau (NLAB).
- (2) The Bar Council shall examine and certify the attorney's report and propose an amount for his/her remuneration based on the type, quantity and quality of the legal aid provided within the amounts stipulated in the regulation pursuant to art. 37.
- (3) The appointed attorney shall be refunded for inherent expenses for visits in places of imprisonment or detention in another location.

Article 39.

The remuneration of the provided legal aid shall be made by the NLAB by a bank transfer on the grounds of the report under art. 38.

Article 40.

The attorney providing legal aid cannot receive remuneration or expense refunds from his/her client.

Bulgaria, Legal Aid Act, 2005.

Section 17. Fee and expenses of a private attorney

- (1) A reasonable fee for the necessary measures and for time spent shall be determined for a private attorney, as shall compensation for his or her expenses. The fee and the expenses shall be paid from state funds, less the deductible provided in section 20. For the fee to be determined, the attorney shall produce the legal aid decision and a detailed account of his or her measures in the matter and of his or her expenses. In criminal matters, the public prosecutor shall comment on the requested fee and expenses, if this is necessary in view of the amounts requested or for some other reason. If the appointment as attorney has been given to a person who does not normally pursue cases before the court in question, the extra travel expenses and time spent shall be compensated only if the use of such an attorney can be justified. More detailed provisions on the bases for the fees and expenses of attorneys shall be issued by a Decree of the Government.
- (2) In so far as legal aid is being given on the basis of this Act, the attorney shall not collect any fees or expenses, except for the deductible, from the recipient of legal aid. An agreement to the contrary shall be void.

(3) If the attorney has been permitted to be replaced by another person, the fee and expenses arising from the measures undertaken by the replacement may be separately determined as payable to the replacement.

(4) An appellate court may decide that the fee and expenses of the attorney are not to be paid from state funds, if the appeal is clearly ill-founded.

Section 18. Determination of fees and expenses

(1) In a case heard by a court, the court seized of the main matter shall determine the fees and expenses payable from state funds to a private attorney, a witness and an interpreter, as well as the compensation payable to a recipient of legal aid.

(2) The fee and expenses of an attorney shall be determined by the court when the tasks of the attorney before that court are concluded. If legal aid is granted retroactively to cover measures before a lower court only after the proceedings before that court have been concluded, the appellate court shall determine the fee and expenses of the attorney also for the measures undertaken before the lower court. However, if the appeal is not pursued to the end, the fee and the expenses shall be determined by the court last seized of the case. If the task is to continue for a longer period, the fee and the expenses may be determined on a semi-annual basis or, for a special reason, also on the basis of shorter periods. An attorney may be paid an advance for the considerable expenses foreseen in the performance of his or her task, if there is a special reason for the same.

(3) The provisions on the compensation payable to witnesses from state funds shall govern the determination of the compensation to a witness and a recipient of legal aid, the payment of such expenses and other costs of evidence, and appeals against an order on the amount of the compensation.

(4) In cases that he or she has prosecuted, the public prosecutor has standing to appeal against orders on the amount of the fee and expenses of an attorney.

(5) In cases not heard by a court, the legal aid office shall determine the fee and expenses of an attorney and an interpreter.

Finland, Legal Aid Act, 2002.

Article 24

Upon close of the case, the lawyer assigned to handle the legal aid case or personnel from a social organization arranged to handle the legal aid case shall submit to the legal aid institution such materials as copies or photocopies of the relevant legal documents and the final report of the case.

Upon receiving the materials of the case provided in the preceding paragraph, the legal aid institution shall pay allowances for providing legal aid to the lawyer assigned to handle the legal aid case or personnel from a social organization arranged to handle the legal aid case. Standards of the allowances for providing legal aid shall be determined by judicial administrative departments of people's governments of provinces, autonomous regions or municipalities directly under the Central Government jointly with finance departments at the same level by taking into account the local level of economic development and with reference to such factors as the average cost of legal aid institutions in handling different types of legal aid cases, and may be adjusted if necessary.

China, Regulations on Legal Aid, 2003.

Chapter 4. The Legal Aid Authority

Article 22. Establishment of the Legal Aid Authority

Experience from many countries around the world demonstrates that however accurately a constitution or specific law provides for the right to legal aid, in practice, the implementation of guaranteeing such a right is difficult without an appropriate funding structure for managing and coordinating the delivery of legal aid.

The United Nations Principles and Guidelines are not prescriptive about the institutional base and arrangement for managing and coordinating the provision of legal aid, but rather suggest that any entity or structure could have the autonomy to make decisions on the provision and administration of legal aid independently and without improper political or judicial interference.

Guideline 11, paragraph 59, of the United Nations Principles and Guidelines provides that:

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

- (a) Be free from undue political or judicial interference, be independent of the Government in decision-making related to legal aid and not be subject to the direction, control or financial intimidation of any person or authority in the performance of its functions, regardless of its administrative structure;
- (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; the assessment of legal aid needs nationwide; and the power to develop its own budget;
- (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 periodically to the responsible authority.

The Model Law follows the proposal in the United Nations Principles and Guidelines for the establishment of an independent authority that manages, coordinates and monitors the delivery of State-funded legal aid. However, when establishing a legal aid system, careful consideration must be given to what is most appropriate and effective in the particular context of a country's criminal justice system.

Different countries adopt different models and institutions for the management and coordination of legal aid provision, depending on various factors, such as the country's legal tradition, the criminal justice system and budget constraints. The models below may be considered when establishing a legal aid system.

(1) Governmental agency model

Some countries choose to keep the responsibility for the provision of legal aid within the relevant government ministry or agency. When the legal aid programme operates as a government agency, it typically falls under the umbrella of the Ministry of Justice. This model has been adopted, for example, in New Zealand and in England and Wales.

In New Zealand, the Secretary for Justice is responsible for establishing and maintaining legal aid services. The Legal Services Commissioner, who is an employee of the Ministry of Justice, is responsible for determining eligibility for legal aid and appointing legal aid providers. The Legal Services Act of 2011¹⁸ provides that the Legal Services Commissioner acts under the direction of the Ministry of Justice. However, the Commissioner must act independently when determining legal aid applications, assigning providers and managing salaried lawyers.

In England and Wales, the Legal Aid Agency, established by the Sentencing and Punishment of Offenders Act 2012, is an executive agency sponsored by the Ministry of Justice with local offices in towns and cities. The Act also requires the designation of a civil servant as the Director of Legal Aid Casework, who makes decisions on the funding for individual cases. The Legal Aid Agency commissions and procures legal aid services from solicitors, barristers and the not-for-profit sector and runs the Public Defender Service.

¹⁸ New Zealand, Legal Services Act 2011, No. 4, sects. 70 (3) and 71 (2).

Comparative models

Article 4

The judicial administrative department of the State Council shall supervise and administer the nationwide legal aid work. Judicial administrative departments of local people's governments at or above the county level shall supervise and administer the legal aid work within their respective administrative areas.

The All-China Lawyers Association and local lawyers associations shall assist the legal aid work conducted on the basis of these Regulations in accordance with their articles of association.

Article 5

Judicial administrative departments of people's governments of municipalities directly under the Central Government, of people's governments of cities divided into districts or of people's governments at the county level determine if necessary legal aid institutions within their respective administrative areas.

Legal aid institutions shall be responsible for accepting and examining applications for legal aid, and assigning or arranging personnel to provide legal aid to citizens meeting the conditions in these Regulations.

China, Regulations on Legal Aid, 2003.

Section 68. Functions of Secretary for Justice

- (1) The functions of the Secretary under this Act are:
 - (a) To establish, maintain, and purchase high-quality legal services in accordance with this Act;
 - (b) To perform any functions that are conferred or imposed on the Secretary by or under this Act;
 - (c) To perform any other functions relating to legal services that are conferred or imposed on the Secretary by or under any other Act.
- (2) For the purposes of performing his or her functions, the Secretary may:
 - (a) Assess and determine the need for legal services by people with insufficient means; and

- (b) Specify legal services to which subpart 2 applies; and
- (c) Determine the method or methods for the delivery of legal services; and
- (d) Determine the allocation of legal services:
 - (i) On the basis of the method or methods of delivery that the Secretary considers appropriate for the type of legal service to be provided; or
 - (ii) In any other manner that the Secretary considers appropriate; and
- (e) Subject to this Act, disestablish any legal services established under this Act; and
- (f) Deliver any legal services established under this Act; and
- (g) Undertake or fund law-related research and education; and
- (h) Exercise any other power conferred on the Secretary by this Act or any other enactment.

[...]

Section 70. Legal Services Commissioner

- (1) A person must be appointed under the State Sector Act 1988 to hold office as Legal Services Commissioner.
- (2) The person to be appointed Commissioner must be an existing employee of the Ministry or be appointed an employee of the Ministry when appointed Commissioner.
- (3) The Commissioner must, except to the extent that section 71(2) applies, act under the direction of the Minister and the Secretary.

Section 71. Functions of Commissioner

- (1) The Commissioner has the following functions:
 - (a) To grant legal aid in accordance with this Act and the regulations;
 - (b) To determine legal aid repayments where legal aid is granted;
 - (c) To assign a provider of legal aid services or specified legal services to an aided person;

- (d) In relation to salaried lawyers:
 - (i) To decide the allocation of cases among salaried lawyers;
 - (ii) To oversee the conduct of legal proceedings conducted by salaried lawyers;
 - (iii) To manage the performance of salaried lawyers;
 - (e) To carry out any other function conferred on the Commissioner by the Minister, by the Secretary, or by or under this Act or any other enactment.
- (2) The Commissioner must act independently when performing any function stated in subsection (1)(a) to (d).

New Zealand, Legal Services Act, 2011.

(2) Legal aid body model

Other countries have established a specialized body, independent or semi-independent from the government, with predefined membership and functions, as well as the necessary financial resources, human resources and operational autonomy, to manage the entire legal aid system. This model has been adopted in Georgia, Sierra Leone and South Africa, among others.

In South Africa, Legal Aid South Africa is an autonomous statutory body, established by the Legal Aid Act of 1969, with the power to set out the conditions for providing legal aid and managing the delivery of legal aid services. Legal Aid South Africa delivers legal aid through: (a) Justice Centres that are located throughout the country and staffed by a principal attorney, professional assistants, candidate attorneys and paralegals; (b) cooperation agreements with university law clinics; and (c) contracts with private attorneys in special cases. Legal Aid South Africa is governed by a Board of non-executive members.

In Sierra Leone, the Legal Aid Board was established under the Legal Aid Act of 2012, with the overall function of providing, administering, coordinating and monitoring legal aid. The Legal Aid Board makes arrangements and contracts with legal practitioners, university law departments and non-governmental organizations to provide legal aid and has the power to determine eligibility for legal aid in individual cases. The Legal Aid Board is not subject to the direction or control of any person in the performance of its functions.

In Georgia, the Legal Aid Service is an independent legal entity that was initially established under the Ministry of Justice and subsequently moved to the Ministry of Correction and Legal Assistance. The Legal Aid Service reports to the Parliament.

Comparative models

Article 2. Establishment of Legal Aid South Africa and its relationship with Board

(1) There is hereby established a national public entity as provided for in the Public Finance Management Act, to be known as Legal Aid South Africa, which is governed by a Board appointed under section 6.

[...]

Article 3. Objects of Legal Aid South Africa

The objects of Legal Aid South Africa are to:

- (a) Render or make available legal aid and legal advice;
- (b) Provide legal representation to persons at state expense; and
- (c) Provide education and information concerning legal rights and obligations, as envisaged in the Constitution and this Act.

South Africa, Legal Aid South Africa Act, 2014.

Section 2. Establishment of Board

(1) There is hereby established a body to be known as the Legal Aid Board.

(2) The Board shall be a body corporate having perpetual succession and capable of acquiring, holding and disposing of any property, whether movable or immovable, and of suing and being sued in its corporate name, and subject to this Act, of performing all acts that bodies corporate may by law perform.

[...]

Section 11. Independence of Board

The Board shall not be subject to the direction or control of any person or authority in the performance of its functions.

Sierra Leone, Legal Aid Act, 2012.

Article 8. Legal Aid Service

1. A Legal Aid Service (the Service) is an independent legal entity of public law, which secures accessibility of legal advice and legal aid and exercises its powers on the basis of the Constitution of Georgia, this Law, other laws and legal acts, and the Statute of the Service.

[...]

3. The Service is not under control of any state body and is only accountable to the Parliament of Georgia in a manner prescribed by Georgian legislation.

4. The director of the Service (the Director) shall submit the report regarding the implemented activities of the previous year to the Parliament of Georgia not later than March 5 of each year. The Parliament shall approve the report by passing a resolution or address the Service to fill in existing gaps and/or implement quality-enhancing activities.

[...]

Article 10. Legal Aid Council

1. In order to secure the Service's functioning independence, transparency and effectiveness, the supervisory body, collective body—the Legal Aid Council (the Council) shall be set up.

2. The Council shall consist of 9 members. Three members shall be elected by the Executive Council of the Georgian Bar Association; three members by the Public Defender's Office; one member by the legal aid bureaus from among the lawyers of the bureaus; one member shall be presented by the Minister of Justice from Ministry employees; one member by the High Council of Justice from non-judge members of the Council.

Georgia, Law on Legal Aid, 2014.

Section 3. Establishment of the National Legal Aid Services Organization.

(1) As soon as may be after the commencement of this Act, the Government shall, by notification in the official *Gazette*, establish an organization to be called the National Legal Aid Services Organization for carrying out the purposes of this Act.

(2) The Organization shall be a body corporate having perpetual succession and a common seal with power to acquire, hold, manage and dispose of property, both movable and immovable, and shall by the said name sue and be sued.

Bangladesh, Legal Aid Services Act, 2000.

Article 6

(1) The state policy in the area of legal aid shall be formed, coordinated and implemented by the Minister of Justice.

(2) Legal aid shall be organized by the National Legal Aid Bureau (NLAB) and by the bar councils.

(3) NLAB shall be an independent state body, which is registered as a legal entity, state funded and based in Sofia. NLAB shall be a second-level spender of budgetary appropriations.

(4) NLAB shall have a separate budget, which is prepared, executed, finalized and rendered account of by the Bureau itself.

Article 7

(1) NLAB shall be assisted by an administration.

(2) The organization of NLAB's work, structure, staff and the functions of the units of its administration shall be regulated by Rules of Procedure adopted by the Council of Ministers.

Bulgaria, Legal Aid Act, 2005.

(3) Public defender model

In many jurisdictions, the provision of legal aid is entrusted to the office of the public defender. The office of the public defender can be set up as an independent office or be based in the Ministry of Justice or the judiciary. This model is in place in Argentina, Brazil and Israel, among others.

In Argentina, the Federal Public Defender's Office is recognized under the Constitution as the institution responsible for providing legal aid and public defence services. It is an autonomous and financially independent office that performs its functions without interference or restriction from other ruling authorities. Public defence services are provided by public defenders, who are magistrates selected via public examinations and hold a status similar to that of judges and prosecutors. The Federal

Public Defender's Office represents beneficiaries in federal cases throughout the country. The Offices of Argentine Public Defenders follow the geographical distribution of the judicial districts.

In Brazil, the Offices of Public Defenders are recognized as having status equal to that of other judicial institutions.¹⁹ The Chief Defender is a member of the Office of Public Defenders, elected internally and approved by a majority of the Senate for a two-year mandate in order to guarantee expertise and accountability.

In Israel, the Public Defender's Office has been set up at the Ministry of Justice and coordinates the provision of legal aid by assigning cases to internal public defenders and externally contracted lawyers in private practice.

Comparative model

Article 1. Establishing the office of public defender

- (a) The Minister of Justice shall establish, within the Department of Justice, an office of public defender.
- (b) The office of public defender shall provide legal representation in criminal proceedings to those entitled thereto under this law.

Israel, Public Defender Law, 1995.

Whatever the institutional structure of the legal aid entity is, the adoption of oversight mechanisms is recommended to ensure independence in its decision-making and activities related to the provision of legal aid. It is advisable that the legal aid entity have sufficient autonomy from external agencies so that it can have the authority to develop its own strategy to best serve the interests of the potential beneficiaries of legal aid. Among possible means to safeguard the independence of a legal aid entity are independent oversight boards or commissions of mixed composition, whose members may be appointed by a variety of authorities, including bar associations, the office of the public defender, the executive, the legislature and the judiciary, provided that no member of the oversight commission may be a judge or a prosecutor. The Law on Legal Aid of Georgia, for example, has established the Legal Aid Council, a supervisory collegial body, in order to secure the independence, transparency and effectiveness of the Legal Aid Service.

¹⁹ Brazil, Complementary Law No. 80 of 12 January 1994, art. 44, item XIII.

Article 23. Structure of the Legal Aid Authority

Principle 2 of the United Nations Principles and Guidelines requires legal aid systems to be, among other things, “credible”. For a Legal Aid Authority to be credible, it would be desirable for the majority of its Board not to be composed of employees of the State so as to avoid any undue influence or interference.

Guideline 13 of the United Nations Principles and Guidelines provides that States should make adequate and specific provisions for staffing the nationwide legal aid system that are commensurate with their needs. While the Model Law provides guidance on the composition of the Board of the Legal Aid Authority, it leaves the determination of procedures for the staffing of the Authority and the establishment of its local offices to the regulating authority.

The following comparative models offer examples of the composition of legal aid boards.

Comparative models

Article 6. Composition and appointment of Board

- (1) The Board consists of the following 14 voting members, appointed by the Minister [of Justice] in writing:
 - (a) A judge in active service of a court referred to in section 166(a), (b) or (c) of the Constitution, nominated by the Chief Justice of South Africa after consultation with the Board.
 - (b) Eight members who, as a whole, have the skills referred to in section 7(d).
 - (c) The chief executive officer.
 - (d) Three employees appointed by the Board for the management of Legal Aid South Africa, and who are responsible for the management, including the financial management, of Legal Aid South Africa and who are actively involved in developing and implementing Legal Aid South Africa’s strategy nominated by the Board.
 - (e) The Director-General: Justice and Constitutional Development, or his or her nominee.
- (2) The Minister may appoint a person to serve as an alternate in the place of any member referred to in subsection (1)(b), (c) and (d) during

that member's absence from any meeting of the Board, if that person is qualified to be appointed as such member and has been nominated in the same manner as that member.

(3) A decision taken by the Board or an act performed under the authority of the Board is not invalid merely because of a vacancy on the Board or because a person who is not entitled to sit as a member sat as a member at the time the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the required majority of members present at the time, who were entitled to sit as members.

(4) In the case of directors referred to in subsection (1)(b), the Board must, whenever necessary, invite nominations for the appointment of persons as directors in the manner determined by the Minister in consultation with the Board.

(5) Any vacancy on the Board arising pursuant to section 10 must be filled in accordance with this section.

South Africa, Legal Aid South Africa Act, 2014.

Section 5. Board of directors

(2) The board of directors of the Corporation shall be composed of persons appointed by the Lieutenant Governor in Council as follows:

1. One person, who shall be the chair of the board, selected by the Attorney General from a list of persons recommended by a committee comprised of the Attorney General or a person designated by him or her, the Treasurer of the Law Society or a person designated by him or her and a third party agreed upon by the Attorney General and the Treasurer of the Law Society or persons designated by them.
2. Five persons selected by the Attorney General from a list of persons recommended by the Law Society.
3. Five persons recommended by the Attorney General.

Canada, Legal Aid Services Act of Ontario, 1998, chap. 26.

Section 49. Composition [of Legal Aid Board]

(1) The board consists of 5 persons appointed by the Governor in Council.

(2) One of the persons must be appointed, on nomination by the Minister, as an appropriate person to represent the interests of legally assisted persons.

(3) A person, other than the person appointed under subsection (2), is not eligible to be appointed by the Governor in Council unless the person has knowledge or experience in commerce, economics, finance, management or providing legal services.

(4) The Governor in Council is to appoint 1 board member as the board chairperson.

(5) A member is to be employed under this Act and not under the Public Service Act 2008.

Australia, Legal Aid Queensland Act, 1997.

Section 11. Composition of Regional Committees

(1) A Regional Legal Aid Committee shall consist of:

(a) A Judge or retired Judge of the Superior Court in the region who shall be the Chairman of the Committee;

(b) A representative of the Attorney-General in the region;

(c) Three nominees of the General Legal Council;

(d) Two representatives of the Ghana Bar Association in the region;

(e) A social worker nominated by the Department of Social Welfare in the region; and

(f) A representative of the Controller and Accountant-General in the region.

(2) The members of a Regional Committee shall be appointed by the Board.

Ghana, Legal Aid Scheme Act, 1997.

Section 4. Composition of Board

The Board shall consist of the following members:

(a) A chairman who is judge of the Superior Court of Judicature recommended by the Chief Justice and appointed by the President subject to the approval of Parliament;

(b) A representative of the Law Officers Department not below the rank of Principal State Counsel;

- (c) A representative of the Ministry responsible for social welfare not below the rank of Deputy Director;
- (d) A representative of the Bar Association of not less than five years standing at the Bar;
- (e) A representative of the Department of Law Fourah Bay College;
- (f) A representative of the Council of Chiefs;
- (g) One representative each from civil society and non-governmental organizations having experience, knowledge and expertise on issues relating to legal aid;
- (h) A representative of the Inter-Religious Council; and
- (i) The chairman of the Local Government Association.

Sierra Leone, Legal Aid Act, 2012.

Section 3B. Composition of Board

- (1) The Board shall consist of the following part-time members appointed by the Minister:
 - (a) A person qualified to be a judge of the High Court who shall be the Chairperson;
 - (b) The Permanent Secretary in the Ministry responsible for justice;
 - (c) A representative of the Law Association of Zambia;
 - (d) A representative of the Ministry responsible for home affairs;
 - (e) A representative of the Ministry responsible for finance and national planning;
 - (f) A representative of the Ministry responsible for community development and social welfare;
 - (g) A representative of the Ministry responsible for labour;
 - (h) A representative of a non-governmental organization active in the promotion of human rights;
 - (i) A representative of the Ministry responsible for sport, youth and child development; and

- (j) One other person.
- (2) The members referred to in subsection (1) shall be nominated by their respective organizations or ministries.
- (3) The person referred to in paragraph (j) of subsection (1) shall be a person who has expertise in the administration of justice or law.
- (4) The Vice-Chairperson shall be elected by the members of the Board from among their number.
- (5) A person shall not be appointed as a member of the Board if the person:
 - (a) is an undischarged bankrupt;
 - (b) has been convicted of an offence involving fraud or dishonesty; or
 - (c) has been convicted of an offence under any other written law and sentenced to a term of imprisonment of not less than six months, without the option of a fine.

Zambia, Legal Aid Act, 1967 as amended in 2005.

Section 9. Establishment of the Board

- (1) The Service shall be governed by a board which shall consist of:
 - (a) A person appointed by the President from among persons qualified to be appointed as a judge of the High Court, who shall be the chairperson;
 - (b) A judge of the High Court nominated by the Chief Justice;
 - (c) The Principal Secretary in the Ministry for the time being responsible for matters relating to justice;
 - (d) The Principal Secretary in the Ministry for the time being responsible for matters relating to finance;
 - (e) The Principal Secretary in the Ministry for the time being responsible for the interior and coordination of National Government;
 - (f) The Director of Public Prosecutions or his representative;
 - (g) One person nominated by the Law Society of Kenya;
 - (h) One person nominated by the Kenya National Commission on Human Rights;

- (i) One person nominated by the Council for Legal Education;
 - (j) One person elected by a joint forum of Public Benefit Organizations offering legal aid to the public, including women, youth and children;
 - (k) One person nominated by the National Council of Persons with Disabilities; and
 - (l) The Director.
- (2) Each nominating body under sub-section 1(h) to (k) shall submit the names of three nominees to the Cabinet Secretary.
- (3) The nomination of board members shall take into account the principles of equality, non-discrimination, regional balance and in so doing shall ensure that not more than two thirds of the members of the Board shall be of the same gender.

Kenya, Legal Aid Act, 2016.

Article 2. The board of public defender

- (a) A board of public defender is hereby established; the board shall be composed of five members as follows:
- (1) The Minister of Justice, who shall preside;
 - (2) A retired supreme court justice appointed by the president of the supreme court;
 - (3) A lawyer, engaged in the representation of defendants in criminal trials, selected by the national council of the bar association;
 - (4) A lawyer engaged in the representation of defendants in criminal proceedings, appointed by the Minister of Justice upon the consent of the Chairman of the Bar Association;
 - (5) A criminal law specialist appointed by the Minister of Justice upon consultation with deans of law faculties;
- (b) The term of office of a member of the board of public defender, except for the Minister of Justice, is five years; and it may be extended by an additional term not exceeding five years; a member of the board of public defender shall hold office until another member is appointed to replace him.

Israel, Public Defender Law, 1995.

Article 24. Tenure of office of members of the Board of the Legal Aid Authority

Provisions on the tenure of office of members of legal aid bodies may include provisions on grounds for termination. Some examples are provided below.

Comparative models

Section 17. Tenure

- (1) A Commissioner shall hold office for the period (being not longer than three years) specified in the instrument of appointment.
- (2) A person who holds or has held office as Commissioner is eligible for reappointment.
- (3) A Commissioner may resign office by notice in writing delivered to the Minister.

Fiji, Legal Aid Act, 1996.

Section 13. Tenure of members of Regional Committee and allowances

- (1) The members of a Regional Committee shall hold office for three years and are eligible for re-appointment on the expiration of the period.
- (2) There shall be paid to the members of a Regional Committee such allowance as the Minister in consultation with the Minister for Finance may determine.

Ghana, Legal Aid Scheme Act, 1997.

Section 5. Tenure of office of members of Board

- (1) Members of the Board shall hold office for a term of three years and shall be eligible for appointment for another term only.
- (2) A person shall cease to be a member of the Board on any of the following grounds:
 - (a) If his term of office expires;
 - (b) If he resigns his office by written notice to the President;
 - (c) If he is convicted of an offence involving fraud or dishonesty;
 - (d) If he is declared bankrupt;

(e) For his inability to perform the functions of his office by reason of infirmity of mind/body;

(f) For proven misconduct.

(3) Where a vacancy occurs in the membership of the Board, the President or the appropriate body shall appoint a replacement who shall hold office for the remainder of the term of the person replaced and shall, subject to this Act, be eligible for reappointment.

Sierra Leone, Legal Aid Act, 2012.

Article 25. Independence of the Legal Aid Authority

The importance of the independence of a legal aid body or authority is recognized in guideline 11, paragraph 59(a), of the United Nations Principles and Guidelines, which provides that such a body or authority should:

be free from undue political or judicial interference, be independent of the Government in decision-making related to legal aid and not be subject to the direction, control or financial intimidation of any person or authority in the performance of its functions, regardless of its administrative structure.

Comparative models

Article 5. Independence and impartiality of Legal Aid South Africa

Legal Aid South Africa, its directors, employees and agents must serve impartially and independently and exercise their powers and perform their duties and functions in good faith and without fear, favour, bias or prejudice.

South Africa, Legal Aid South Africa Act, 2014.

Article 6

(3) The [National Legal Aid Board] shall be an independent state body, which is registered as a legal entity, state funded and based in Sofia. NLAB shall be a second-level spender of budgetary appropriations.

Bulgaria, Legal Aid Act, 2005.

Section 23. Independence of the Board

The Board shall not be subject to the direction or control of any person or authority in the performance of its functions.

Kenya, Legal Aid Act, 2016.

Section 11. Independence of Board

The board shall not be subject to the direction or control of any person or authority in the performance of its functions.

Sierra Leone, Legal Aid Act, 2012.

Section 4. Director of Legal Aid Casework

- (1) The Lord Chancellor must designate a civil servant as the Director of Legal Aid Casework (“the Director”).
- (2) The Lord Chancellor must make arrangements for the provision to the Director by civil servants or other persons (or both) of such assistance as the Lord Chancellor considers appropriate.
- (3) The Director must:
 - (a) Comply with directions given by the Lord Chancellor about the carrying out of the Director’s functions under this Part, and
 - (b) Have regard to guidance given by the Lord Chancellor about the carrying out of those functions.
- (4) But the Lord Chancellor:
 - (a) Must not give a direction or guidance about the carrying out of those functions in relation to an individual case, and
 - (b) Must ensure that the Director acts independently of the Lord Chancellor when applying a direction or guidance under subsection (3) in relation to an individual case.
- (5) The Lord Chancellor must publish any directions and guidance given under this section.
- (6) Directions and guidance under this section may be revised or withdrawn from time to time.

*England and Wales, Legal Aid,
Sentencing and Punishment of Offenders Act, 2012.*

Article 26. Functions of the Legal Aid Authority

Article 26 enumerates the functions of a Legal Aid Authority. One of those functions is to facilitate the work of various legal aid providers and establish a coordination mechanism, which is an essential part of providing effective and prompt legal aid services.

Guideline 16 of the United Nations Principles and Guidelines states:

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

71. 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 service providers;

(c) To establish monitoring and evaluation mechanisms to ensure the quality of legal aid services, in particular those provided at no cost;

(d) To work with all legal aid service 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 among minority 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.

72. States should, where appropriate, 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, including in the accredited curriculum of universities;

- (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 that 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) To develop, in jurisdictions requiring law students to undertake legal internships, rules for them to be allowed to practise in the courts under the supervision of qualified lawyers.

Principle 8 of the United Nations Principles and Guidelines calls upon States to “ensure that information on rights during the criminal justice process and on legal aid services is made freely available and is accessible to the public”. Therefore, one of the functions of the Legal Aid Authority is to compile and disseminate information on the right to legal aid and how to access legal aid so that it is made available to the public.

In this regard, guideline 2, paragraph 42(d), of the United Nations Principles and Guidelines recommends:

- (d) Information on the rights of a person suspected of or charged with a criminal offence in a criminal justice process and on the availability of legal aid services is provided in police stations, detention centres, courts and prisons, for example, through the provision of a letter of rights or in any other official form submitted to the accused. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children; and such information should be in a language that those persons understand. Information provided to children must be provided in a manner appropriate to their age and maturity.

The Legal Aid Authority is also responsible for the accreditation of legal aid providers. To ensure that accredited legal aid providers are adequately skilled and competent, the Legal Aid Authority is responsible for the organization and regular provision of mandatory training programmes for legal aid providers, in line with principle 13 of the United Nations Principles and Guidelines, which provides, in paragraph 37, that:

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

The Legal Aid Authority is responsible for making information available to the general public on the right to legal aid and how to obtain access to legal aid, in line with guideline 2 of the United Nations Principles and Guidelines, which provides:

42. 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, including the availability of legal aid services and how to access such services and other relevant information, is made available to the community and to the general public in local government offices and educational and religious institutions and through the media, including the Internet, or other appropriate means;

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

On the basis of guideline 15, paragraph 69(e), of the United Nations Principles and Guidelines, which provides that States should “establish appropriate oversight mechanisms for legal aid providers, in particular with a view to preventing corruption,” the Legal Aid Authority is also responsible for monitoring the provision of legal aid to ensure transparency and accountability, as well as for handling disciplinary complaints.

Moreover, the Legal Aid Authority is responsible for conducting research and compiling data on legal aid, in line with guideline 17 of the United Nations Principles and Guidelines, which provides:

73. States should ensure that mechanisms to track, monitor and evaluate legal aid are established and should continually strive to improve the provision of legal aid.

74. For this purpose, States could introduce measures:

(a) To conduct regular research and collection of data disaggregated by the gender, age, socioeconomic status and geographical distribution of legal aid recipients and to publish the findings of such research;

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

(c) To monitor the efficient and effective delivery of legal aid in accordance with international 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 to agree on solutions to improve the provision of legal aid.

The Legal Aid Authority is also responsible for ensuring that its staff members are regularly trained and for introducing supervision mechanisms, in line with guideline 13, paragraph 64, of the United Nations Principles and Guidelines, which provides that “States should ensure that professionals working for the national legal aid system possess qualifications and training appropriate for the service they provide”.

Comparative models

Article 4. Powers, functions and duties of Board

- (1) The Board may do all that is necessary or expedient to achieve the objects referred to in section 3, including the following:
 - (a) Provide legal services, representation and advice, by:
 - (i) Employing legal practitioners and candidate attorneys;
 - (ii) Employing paralegals, who are persons that are not legal practitioners but have knowledge and understanding of the law, its procedures and its social context acquired through training, education, work experience or a national registered qualification in paralegal practice; and
 - (iii) Procuring the services of legal practitioners in private practice by entering into contracts or agreements with them and other entities.
 - (b) Determine, in consultation with the Minister and the Minister of Finance, its own staff establishment and the terms and conditions of employment for its staff as provided for in section 18.
 - (c) Purchase or otherwise acquire, hold or alienate any:
 - (i) Movable property; or
 - (ii) Immovable property with the approval of the Minister acting in consultation with the Minister of Finance.
 - (d) Hire or let any movable or immovable property.
 - (e) Fix conditions subject to which legal aid is to be rendered, including:

- (i) Conditions in accordance with which any rights in respect of costs recovered or recoverable in any legal proceedings or any dispute in respect of which the aid is rendered, are ceded to Legal Aid South Africa; and
 - (ii) The payment of contributions to Legal Aid South Africa by persons to whom legal aid is rendered.
- (f) Provide legal representation at state expense as envisaged in the Constitution and this Act, where substantial injustice would otherwise result and render or make legal aid and legal advice available.
- (g) Conduct programmes to promote public awareness of constitutional and other legal rights and public understanding of the objects, role and activities of Legal Aid South Africa.
- (h) Pay out of the funds of Legal Aid South Africa such remuneration and allowances to members of the Board, their alternates and any committee members appointed in accordance with section 13 who are not in the full-time service of the State, as may be determined by the Minister of Finance from time to time.
- (i) Do all things and perform all functions necessary for, or incidental to, the attainment of the objects of Legal Aid South Africa.
- (2) The Board is the accounting authority of Legal Aid South Africa in accordance with section 49 of the Public Finance Management Act, and is charged with the responsibilities referred to in that Act.

South Africa, Legal Aid South Africa Act, 2014.

Section 7. Functions of the Service

- (1) The functions of the Service shall be to:
- (a) Establish and administer a national legal aid scheme that is affordable, accessible, sustainable, credible and accountable;
 - (b) Advise the Cabinet Secretary on matters relating to legal aid in Kenya;
 - (c) Encourage and facilitate the settlement of disputes through alternative dispute resolution;
 - (d) Undertake and promote research in the field of legal aid, and access to justice with special reference to the need for legal aid services among indigent persons and marginalized groups;

- (e) Take necessary steps to promote public interest litigation with regard to consumer protection, environmental protection and any other matter of special concern to the marginalized groups;
 - (f) Provide grants in aid for specific schemes to various voluntary social service institutions, for the implementation of legal aid services under this Act;
 - (g) Develop and issue guidelines and standards for the establishment of legal aid schemes by Non- Governmental Agencies;
 - (h) In consultation with the Council of Legal Education, develop programs for legal aid education and the training and certification of paralegals;
 - (i) Promote, and supervise the establishment and working, of legal aid services in universities, colleges and other institutions;
 - (j) Promote the use of alternative dispute resolution methods;
 - (k) Take appropriate measures to promote legal literacy and legal awareness among the public and in particular, educate vulnerable sections of the society on their rights and duties under the Constitution and other laws;
 - (l) Facilitate the representation of persons granted legal aid under this Act;
 - (m) Assign legal aid providers to persons granted legal aid under this Act;
 - (n) Establish, coordinate, monitor and evaluate justice advisory centers;
 - (o) Coordinate, monitor and evaluate paralegals and other legal service providers and give general directions for the proper implementation of legal aid programs;
 - (p) Administer and manage the Legal Aid Fund; and
 - (q) Perform such other functions as may be assigned to it under this Act or any other written law.
- (2) The Service shall issue guidelines specifying matters or classes of matters relating to the provision of legal aid.

Kenya, Legal Aid Act, 2016.

Section 43. Main functions

- (1) Legal Aid's main functions are:
 - (a) To ensure legal assistance is given to persons in the most effective, economic, commercial and efficient way; and
 - (b) To manage its resources so as to make legal assistance available at a reasonable cost to the community and on an equitable basis throughout the State; and
 - (c) To control and administer amounts given to it by the State or Commonwealth under a legal assistance arrangement or otherwise; and
 - (d) To pursue innovative ways of giving persons legal assistance to minimise the need for individual legal services in the community.

Section 44. Other functions

- (1) Legal Aid's other functions are:
 - (a) To ensure that its activities are carried out consistently with, and do not prejudice, the independence of the legal profession; and
 - (b) To liaise, cooperate and, if it considers it desirable, make reciprocal arrangements with the following—
 - (i) Other legal aid entities
 - (ii) Professional entities representing private lawyers;
 - (iii) Other entities engaged or interested in giving legal assistance in the State or elsewhere; and
 - (c) To liaise with professional entities representing private lawyers to facilitate the use, in appropriate circumstances, of services provided by private lawyers; and
 - (d) To make maximum use of services offered, on a voluntary basis, by Legal Aid service providers; and
 - (e) To make its services available to persons eligible for legal assistance by establishing the local offices, and making other arrangements, it considers appropriate; and
 - (f) To arrange for the provision of duty lawyer services at court sittings in the State as it considers appropriate; and

- (g) To endeavour to secure the services of language interpreters, marriage counsellors, mediators, welfare officers and other appropriate persons to help legally assisted persons in matters for which they are legally assisted; and
 - (h) To the extent Legal Aid considers it appropriate, to encourage and allow law students to participate, on a voluntary basis and under professional supervision, in giving legal assistance by Legal Aid lawyers.
- (2) Under a legal assistance arrangement, Legal Aid may give financial assistance to community legal centres or other entities in the State for legal assistance.
- (3) In performing the function mentioned in subsection (2), Legal Aid must have regard to the amounts received, or likely to be received by, Legal Aid under this Act.

*Australia, Legal Aid Queensland Act, 1997,
as amended in 2014.*

Section 9. Functions of the Board

- (1) The object for which the Board is established is to provide, administer, coordinate and monitor the provision of legal aid in civil and criminal matters.
- (2) Without prejudice to the generality of subsection (1), it shall be the function of the Board to:
- (a) Provide legal aid;
 - (b) Accredite persons or bodies to provide legal aid;
 - (c) Determine the types of persons and cases for which legal aid may be granted;
 - (d) Determine the circumstances in which contributions towards legal aid shall be paid by legally-aided persons and how the contributions shall be calculated;
 - (e) Enter into cooperation agreements with legal practitioners, civil society and nongovernmental organizations, university law clinics or law departments;
 - (f) Compile and publish information about the functions of the Board and other legal aid providers;

- (g) Cooperate with other bodies as it may determine for achieving its object;
 - (h) Carry out other activities conducive to the attainment of the object of the Board;
 - (i) Undertake research into all aspects of legal aid.
- (3) The Board shall, in performing its functions establish offices in places that it may determine.

Section 10. Powers of the Board

The Board shall have power to do all things necessary to provide legal aid in accordance with its functions under this Act including:

- (a) Granting legal aid with or without conditions or varying, withdrawing or revoking the legal aid;
- (b) Contracting legal aid work to legal aid practitioners in private practice on such terms and conditions as the Board may consider appropriate;
- (c) Entering into co-operation agreements with legal aid providers;
- (d) Establishing mechanisms for the effective administration, coordination and evaluation of legal aid;
- (e) Undertaking inquiries or investigations which the Board considers expedient in order to discharge its functions;
- (f) Disseminating information regarding the national legal aid scheme;
- (g) Requesting assistance of the ministry responsible for justice, public and private and other bodies as may be necessary for carrying out its functions.

Sierra Leone, Legal Aid Act, 2012.

Article 18

The bar councils organize the provision of legal aid in the respective court districts and:

- (1) Prepare a statement (position) in regard of the applications of attorneys from the bar for registering with the National Legal Aid Register;

- (2) Prepare and maintain a list of attorneys on duty;
- (3) Pursuant to art. 25 i. 4 and 5 assign the providing of legal aid to an attorney registered with the National Legal Aid Register. The assignments shall take into consideration the professional experience and qualifications of the attorney and the type, the factual and legal complexity of the case, as well as other assignments of the attorney and his/her workload;
- (4) Monitor the provision of legal aid by the attorneys from the bar;
- (5) Certify the reports of the attorneys who have provided legal aid and prepare proposals for remuneration within the amounts indicated by the regulation pursuant to art. 37.

Bulgaria, Legal Aid Act, 2005.

Section 69. Methods of delivery of legal services

Without limiting section 68(2)(c), the methods of delivery of legal services may include:

- (a) Making arrangements ... for the services of non-lawyers to be made available;
- (b) Entering into agreements with individual lawyers, groups of lawyers, or law firms for the provision of legal services;
- (c) Employing salaried lawyers to provide legal services:

New Zealand, Legal Services Act, 2011.

Article 27. Accreditation of legal aid providers

Principle 13, paragraph 37, of the United Nations Principles and Guidelines provides that:

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

Pursuant to that principle, article 27 provides for a process for the accreditation of legal aid providers that is based on guideline 15 of the United Nations Principles and Guidelines, which calls on States to “ensure that criteria are set for the accreditation of legal aid providers”.

Comparative models

Section 4. Panels of solicitors

(1) The Director shall prepare and maintain panels of solicitors willing:

- (a) To investigate, report and give an opinion upon applications for the grant of legal aid under this Act ... ;
- (b) To act for persons receiving legal aid under this Act ... ; and
- (c) To give legal advice under the provisions of this Act ...

(2) Any solicitor shall be entitled to have his name on the panels or any of them unless there is good reason for excluding or removing him on any of the grounds under subsection (2A).

(2A) The Director may, at any time, exclude or remove any solicitor from any panel —

- (a) If the solicitor has ceased to be a practicing solicitor for any reason;
- (b) If the solicitor has requested that the Director remove him from the panel;
- (c) If the solicitor has shown from his conduct when assigned to act for persons receiving legal aid or from his professional conduct generally that he is not a suitable person to remain on the panel;
- (d) If, in the opinion of the Director:
 - (i) The solicitor is not a suitable person to be or to remain on the panel for any other reason; or
 - (ii) It is necessary or expedient to exclude or remove the solicitor's name from the panel for any other reason.

(3) Where a solicitor is aggrieved by any decision excluding or removing him (whether permanently or temporarily) from the panels or any of them, he may appeal against the decision to a judge of the High Court and the judge (whose decision shall be final) may confirm or quash the decision appealed against or may substitute such decision as he thinks fit.

(4) A solicitor shall have the duty to disclose to the Director any information or give any opinion which may enable the Director to perform his functions under this Act, including such information or opinion which

may reasonably be taken into account by the Director or the board referred to in section 8 in determining whether to refuse or cancel legal aid to a person or an aided person, and the solicitor shall not be precluded from so doing by reason of any privilege arising out of the relationship between solicitor and client.

(5) Subject to any regulations made under this Act, the Director shall pay to a solicitor investigating and reporting, or giving an opinion, upon applications for the grant of legal aid or acting for persons receiving legal aid or giving legal advice under the provisions of this Act or Part IV of the International Child Abduction Act such fees as may be agreed between the Director and the solicitor.

Singapore, Legal Aid and Advice Act, 1995, as amended in 2014.

Article 81(L). List of legal aid providers

1. The list of legal aid providers is made up of applying legal service providers who meet the requirements provided in paragraph 2.
2. Inclusion on the list of legal aid providers is decided by the Bar Association, which evaluates the following requirements and conditions:
 - a) Aptitude and professional experience;
 - b) Absence of disciplinary sanctions;
 - c) Professional activity of not less than six years.

Italy, Presidential Decree No. 115, 2002.

Article 28. Code of conduct for legal aid providers

In line with guideline 15, paragraph 69(b), of the United Nations Principles and Guidelines, which calls upon States to ensure that “legal aid providers are subject to applicable professional codes of conduct, with appropriate sanctions for infractions,” article 28 imposes on the Legal Aid Authority an obligation to adopt a code of conduct for legal aid providers. Compliance with the code of conduct for legal aid providers should have no bearing on providers’ obligations relating to professional conduct.

However, a code of conduct for legal aid providers should be wider in scope than the ethical rules that apply solely to the legal profession. Specifically, a code of conduct for legal aid providers should reconcile the traditional rules applicable to the legal

profession with the rules specific to the delivery of legal aid, upon which restrictions apply, such as the prohibition of advertising. In addition, the code of conduct for legal aid providers should be designed to determine the ethical responsibilities of the various types of legal aid providers, including non-lawyers. A code of conduct for legal aid providers may include rules on conflict of interest, confidentiality, privacy and other forms of protecting the interests of the legal aid beneficiary.

Article 28.3 is based on principle 13, paragraph 38, of the United Nations Principles and Guidelines, which provides:

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.

Comparative model

Section 29. Code of conduct

- (1) The Lord Chancellor must publish a code of conduct to be observed by the following persons when providing services to an individual under arrangements made for the purposes of this Part:
 - (a) Civil servants, and
 - (b) Employees of a body established and maintained by the Lord Chancellor.
- (2) The code must include:
 - (a) Duties to avoid discrimination,
 - (b) Duties to protect the interests of the individuals for whom services are provided,
 - (c) Duties to courts and tribunals,
 - (d) Duties to avoid conflicts of interest,
 - (e) Duties of confidentiality, and
 - (f) Duties on persons who are members of a professional body to comply with the rules of the body.

*England and Wales, Legal Aid,
Sentencing, and Punishment of Offenders Act, 2012.*

Set out below is an example of a code of conduct for legal aid lawyers in criminal cases, prepared by the Legal Aid Reformers Network.

Model code of conduct for legal aid lawyers in criminal cases

1. Relationship with other Codes of Conduct

1.1. A legal aid lawyer shall comply with any Professional Code of Conduct by which they are bound and have regard to any guidance by any professional body by which their conduct is governed. The code is secondary to the provisions of any Professional Code, which takes precedence over it and is intended to make more specific its provisions in relation to legal aid lawyers.

1.2. The Code should be read in conjunction with the model Practice Standards for legal aid lawyers in criminal cases also drafted by the Legal Aid Reformers Network.

1.3. The provisions of this Code may be incorporated into a contract with legal aid lawyers by the relevant legal aid authority to whom reference should be made for clarification and guidance.

2. The main duties of the legal aid lawyer

A legal aid lawyer must:

2.1. Act in the best interests of his/her client; use all reasonable legal measures to do so; and provide active and high-quality representation at all stages of the criminal process.

2.2. Carry out this duty within the provisions of any relevant Professional Code of Conduct, statute or rules of court and in accordance with the interests of justice.

2.3. Provide legal advice and representation to the defendant in the same manner and to the same degree as to a private client, except where limited by specific restriction on their appointment.

2.4. Honestly represent the interests of the client and advise him/her to choose the best strategy for their defence or plea. A legal aid lawyer is, however, bound by the instructions of a client save where these would involve misleading the court.

2.5. Maintain his/her professional independence and not allow it to be compromised by their funding or employment by the legal aid authority

or any other interest such as the prosecution, court, any public authority, the lawyer's own interest or that of any other third party. For the avoidance of doubt, a payment for legally aided services does not constitute interference in the lawyer's independence.

2.6. Remain alert to conflicts of interest between the instructions of a client and respect for the rule of law. If a lawyer fears that such a conflict arises, he/she must explain the potential difficulty to his/her client. For example, a lawyer may need to explain why he/she cannot file a dishonest case or assist in doing so but such a refusal should not, by itself, undermine his/her duties to do the best for his/her client.

2.7. Carry out his/her duties with honesty and integrity. A legal aid lawyer shall never knowingly or recklessly give false or misleading information to the court or prosecution.

2.8. Represent the defence in the criminal procedure, being a party to the process with rights equal to the state prosecution.

2.9. Actively defend his/her client and, in particular:

- (a) Collect new pieces of evidence where necessary;
- (b) Not limit his/her contribution solely to reaction to the charges brought by the prosecution;
- (c) Not put a client under undue pressure to plead guilty;
- (d) Not advise a client to assert his/her guilt unless satisfied that the prosecution has sufficient proof;
- (e) Have the instructions of his/her client for the defence strategy including, in particular, if there is to be a plea of guilty;
- (f) Put the prosecution to proof of its case, if appropriate even when a client recognizes his/her guilt to the lawyer;
- (g) Act on the instructions of a client even when this is against the lawyer's advice provided that the client has been fully advised as to the consequences;
- (h) Keep the client regularly informed of the progress of the case; and
- (i) Not disagree with, or disapprove of, his/her client before judge or prosecution even if taken by surprise by something that the client says or does.

2.10. Act holistically for his/her client. Where a client is found or pleads guilty, the lawyer will:

- (a) Do his/her best to determine the cause of the illegal behaviour of the client; and
- (b) Assist in preventing his/her return to a criminal environment, undertaking reasonable measures to assist the client to address the social, health and any other services which could eventually help the client to resolve any issues which contributed to the commission of the crime - particularly in relation to offences committed for socioeconomic, family or health reasons.

2.11. Treat all clients fairly and without direct or indirect discrimination based on race, colour, nationality or citizenship, ethnic origin or ethnicity, language, religion or religious belief, gender, age, birthplace, health condition, disability, sexual orientation, opinion, political affiliation, wealth, social origin, membership to a category of disadvantaged people.

2.12. Not refuse to act for a client because of:

- (a) The nature of the allegation;
- (b) The nature of the client; or
- (c) The lawyer's own personal views and beliefs.

3. Competence and diligence of the legal aid lawyer

3.1. A lawyer must have sufficient experience, knowledge and competence to provide quality representation. She/he should refuse to act in a case where she/he feels that she/he does not.

3.2. A legal aid lawyer must ensure that he/she has available sufficient time and resources adequately to represent a defendant. This should be done before agreeing to represent a client or immediately after providing urgent initial representation. If, after taking initial instructions, she/he later considers that he/she is unable adequately to represent a client, she/he should explain this to the client and the appointing authority and take steps to withdraw from the case.

4. Record-keeping, note-taking, maintaining case notes and files

4.1. A legal aid lawyer shall keep a file for every case where he/she provided legal aid.

4.2. The file must contain all material documents from the opening to the closing of the lawyer's involvement in the case.

4.3. The defence file should contain:

- (a) Procedural documents;
- (b) Personal notes on the discussions held on the case, the developments on the defence strategy; and
- (c) Any other information relevant to the defence of his/her client.

4.4. The lawyer should remember that the case file has a double purpose: to help the lawyer in preparing and organizing his/her defence and to provide sufficient information to an outsider that might review the case file to understand the lawyer's strategy of the case and have the relevant proofs regarding the lawyer's work on the case.

4.5. Each defence file is best organised in chronological order in various appropriate categories (for instance, pieces of proof, procedural acts and copies of materials in the criminal file, complaints and challenges of the lawyer, etc.). It should contain a list of its contents. The file may be kept in electronic or paper format, as required by relevant legal regulations or, if these do not exist, as the lawyer considers best, provided that it can easily be made available in whatever form.

4.6. The lawyer should ensure that the file is kept in his/her archives for as long as is provided by national legislation.

5. Confidentiality and exceptions to confidentiality

5.1. A legal aid lawyer must keep all information about a client confidential exactly as a lawyer in private practice.

5.2. As a limited exception to this duty, a lawyer funded by legal aid should inform the client that their file may be reviewed by other lawyers in charge of quality for the legal aid administration or within a public defender office but only for the purpose of ensuring that the client has received sufficiently high-quality services.

5.3. Lawyers inspecting a file for quality purposes are themselves subject to a duty of confidentiality in relation to its contents.

5.4. The client shall be asked for consent to the above, preferably in writing.

5.5. The client may, if appropriate, be asked to agree a list of family members and others with whom the lawyer may discuss aspects of the case. It is recommended that this agreement is in writing.

6. Conflicts of interest

6.1. A legal aid lawyer may not represent a client if to do so would give rise to a conflict of interest with an existing or previous client either of the lawyer him/herself or any partner or employee of the lawyer.

6.2. A lawyer should also not act for a client where there is a conflict or risk of a conflict:

- (a) With the legal aid lawyer him or herself;
- (b) Where there is any risk of breach of confidentiality;
- (c) If there is any threat to the independence of the lawyer;
- (d) Where there is any third party whose relationship to any legal aid lawyer or employee of the respective legal aid office might reasonably cause the client to believe that the legal aid lawyer may not act in that client's best interests.

6.3. Lawyers should be alert to conflicts of interest between co-defendants or those facing charges in relation to the same events. If a conflict emerges between two existing clients, the lawyer shall retain the one who instructed him first and refer the second unless the lawyer feels so compromised that she/he should refer both.

6.4. A legal aid lawyer must not accept an assignment from a new client where information obtained in the service of a former client would be relevant to the case.

7. Unsolicited payment

7.1. A legal aid lawyer shall not offer or accept any fee, gift, benefit, commission or any other form of compensation, direct or indirect, related to the provision of legal aid to a legal aid client.

7.2. A legal aid lawyer may contact the legal aid authority for verification of a client's financial eligibility for legal aid but, while the client is legally aided, in no circumstances may the legal aid lawyer solicit any payment from the client.

8. Refusing to accept a legal aid client or ceasing to represent a client

8.1. A legal aid lawyer must refuse or cease to represent a legal aid client in the following circumstances:

- (a) There is a significant risk of conflict of interest or significant risk of breach of confidentiality;
- (b) A client's instructions conflict with the lawyer's duty to the court;

(c) The client refuses to be represented by the respective legal aid lawyer or solicits his/her replacement and the legal aid appointing authority accepts it;

(d) The legal aid lawyer cannot fulfil his/her obligation due to illness, long-term travel, impossibility to communicate with the client in the latter's language and an interpreter is not provided.

8.2. A legal aid lawyer may refuse or cease to represent a legal aid client in the following circumstances:

(a) The client's behaviour towards the legal aid lawyer or any other employee of the legal aid office is violent, threatening or abusive;

(b) There is inadequate trust between the client and the lawyer;

(c) The legal aid lawyer's extensive workload, incompetence or lack of specialization in the respective field, or another substantial reason approved by the appropriate person in the legal aid administration for refusing to accept, or ceasing to represent the client.

8.3. If the legal aid lawyer refuses to accept a client or ceases to represent a client, he/she shall give reasons to the client for doing so, except when the client refuses to be represented by the respective legal aid lawyer or solicits his/her replacement and the legal aid appointing authority agrees.

Legal Aid Reformers' Network, Model code of conduct for legal aid lawyers in criminal cases, 2014.

Article 29. Reporting requirements

The Legal Aid Authority's reporting requirements comply with the recommendation provided in Guideline 11, paragraph 59(d), of the United Nations Principles and Guidelines, which provides that a legal aid body or authority should "report periodically to the responsible authority".

Comparative models

Section 5. Duties of the Board

(1) The Board shall, from time to time, publish information as to the discharge of its functions in relation to advice, assistance and

representation, including the forms and procedures and other matters connected therewith.

(2) The Board shall, from time to time, furnish to the Lord Chancellor such information as he may require relating to its property and to the discharge or proposed discharge of its functions.

(3) It shall be the duty of the Board to provide to the Lord Chancellor, as soon as possible after 31st March in each year, a report on the discharge of its functions during the preceding twelve months.

(4) The Board shall deal in any report under subsection (3) above with such matters as the Lord Chancellor may from time to time direct.

(5) The Board shall have regard, in discharging its functions, to such guidance as may from time to time be given by the Lord Chancellor.

England and Wales, Legal Aid Act, 1998, chap. 34.

Chapter II. Legal aid council

Part 2. Council duties and procedures

Section 9.

1. A council shall present annual reports to the Minister. Such a report shall consist of a financial and an activities report. The activities report shall devote attention to developments pertaining to the provision of legal aid in the relevant council's area of jurisdiction.

2. Rules concerning the structure of such reports may be drawn up in the form of ministerial regulations.

3. A council shall provide the Minister with any information he may require, in a form that cannot be traced to any individual person seeking justice.

4. Should the Minister be of the opinion that a council is guilty of grave dereliction of the duties referred to in Section 7(1) and (2), he shall take action as required. The Minister shall immediately notify the States General to this effect.

The Netherlands, Legal Aid Act, 1993.

Section 14. Annual Report

(1) As soon as is practicable, but not later than ninety days after the end of the financial year, the Board shall submit to the Minister a report concerning its activities during such financial year.

(2) The report referred to in subparagraph (1) shall include information on the financial affairs of the Board and there shall be appended to the report-

- (a) An audited balance sheet;
- (b) An audited statement of income and expenditure;
- (c) An audited statement of income and expenditure of the Fund; and
- (d) Such other information as the Minister may require.

(3) The Minister shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subsection (1), lay a report before the National Assembly.

*Zambia, Legal Aid Act, 1967, as amended by
Act No. 19 of 2005, appendix.*

Chapter 5. Procedures

Article 30. Early access to legal aid for individuals in custody

In order to guarantee the right of an individual to be informed of his or her right to legal aid, guideline 2, paragraph 42(c), of the United Nations Principles and Guidelines provides that States should ensure that:

Police 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.

In accordance with the relevant applicable law, individuals should also be informed of their procedural rights, upon deprivation of liberty, as is also highlighted in guideline 3, paragraph 43(a), of the United Nations Principles and Guidelines, which provides that States should introduce measures:

To promptly inform every person detained, arrested, suspected or accused of, or charged with a criminal offence of his or her right to remain silent; his or her right to consult with counsel or, if eligible, with a legal aid provider at any stage of the proceedings, especially before being interviewed by the authorities; and his or her right to be assisted by an independent counsel or legal aid provider while being interviewed and during other procedural actions.

The methods for implementing the right to information may vary, depending on several factors. The United Nations Principles and Guidelines suggest the use of a letter of rights that could be made available at police stations, detention centres, courts and prisons, so that suspects or persons charged with a crime can be easily informed of their rights, including the right to legal aid.

In particular, information regarding the implications of waiving the right to legal aid should be provided in plain and simple language, so that a waiver is exercised on the basis of informed and voluntary consent. Guideline 3, paragraph 43(b), of the United Nations Principles and Guidelines suggests the establishment of mechanisms for verifying the voluntary nature of the person's consent, especially in the case of children or other vulnerable suspects or accused persons who may be easily persuaded to waive their right to legal aid. Regulations could be adopted to govern the way suspects and accused are informed about the right to legal aid, and how to waive that right, so

that it must be explicitly expressed and never implied by the authorities. In addition, a waiver should always be revocable at any stage of the criminal proceedings.

Implementation of the right of defence is particularly crucial during the early stages of the criminal justice process. This is a phase in which decisions are made about appearance before a judge, pretrial detention, bail application and diversion from the formal criminal justice system, which ultimately affect a person's effective defence and access to a fair trial. One practical option to implement the right to early access to legal aid would be to provide for a mechanism under which legal aid providers are present at police stations or detention centres (e.g., through a "duty lawyer" scheme) and which requires a mandatory recording of any conversation between the police and an individual in custody that takes place in the absence of a legal aid provider.

In some countries, exceptions exist to the prohibition of questioning in the absence of a legal aid provider, as shown below in the example of England and Wales.

Comparative models

6. Right to legal advice

(a) Action

6.4. No police officer should, at any time, do or say anything with the intention of dissuading any person who is entitled to legal advice in accordance with this Code, whether or not they have been arrested and are detained, from obtaining legal advice.

[...]

6.6. A detainee who wants legal advice may not be interviewed or continue to be interviewed until they have received such advice unless:

(a) Annex B applies, when the restriction on drawing adverse inferences from silence in Annex C will apply because the detainee is not allowed an opportunity to consult a solicitor; or

(b) An officer of superintendent rank or above has reasonable grounds for believing that:

(i) the consequent delay might:

- Lead to interference with, or harm to, evidence connected with an offence;
- Lead to interference with, or physical harm to, other people

- Lead to serious loss of, or damage to, property;
 - Lead to alerting other people suspected of having committed an offence but not yet arrested for it;
 - Hinder the recovery of property obtained in consequence of the commission of an offence.
- (ii) When a solicitor, including a duty solicitor, has been contacted and has agreed to attend, awaiting their arrival would cause unreasonable delay to the process of investigation.

Note: In these cases the restriction on drawing adverse inferences from silence in Annex C will apply because the detainee is not allowed an opportunity to consult a solicitor.

- (c) The solicitor the detainee has nominated or selected from a list:
- (i) Cannot be contacted;
 - (ii) Has previously indicated they do not wish to be contacted; or
 - (iii) Having been contacted, has declined to attend; and
 - The detainee has been advised of the Duty Solicitor Scheme but has declined to ask for the duty solicitor;
 - In these circumstances the interview may be started or continued without further delay provided an officer of inspector rank or above has agreed to the interview proceeding.

Note: The restriction on drawing adverse inferences from silence in Annex C will not apply because the detainee is allowed an opportunity to consult the duty solicitor;

- (d) The detainee changes their mind about wanting legal advice or (as the case may be) about wanting a solicitor present at the interview and states that they no longer wish to speak to a solicitor. In these circumstances, the interview may be started or continued without delay provided that:
- (i) An officer of inspector rank or above:
 - Speaks to the detainee to enquire about the reasons for their change of mind (see Note 6K), and

- Makes, or directs the making of, reasonable efforts to ascertain the solicitor's expected time of arrival and to inform the solicitor that the suspect has stated that they wish to change their mind and the reason (if given);
- (ii) The detainee's reason for their change of mind (if given) and the outcome of the action in (i) are recorded in the custody record;
- (iii) the detainee, after being informed of the outcome of the action in (i) above, confirms in writing that they want the interview to proceed without speaking or further speaking to a solicitor or (as the case may be) without a solicitor being present and do not wish to wait for a solicitor by signing an entry to this effect in the custody record;
- (iv) an officer of inspector rank or above is satisfied that it is proper for the interview to proceed in these circumstances and:
 - Gives authority in writing for the interview to proceed and, if the authority is not recorded in the custody record, the officer must ensure that the custody record shows the date and time of the authority and where it is recorded, and
 - Takes, or directs the taking of, reasonable steps to inform the solicitor that the authority has been given and the time when the interview is expected to commence and records or causes to be recorded, the outcome of this action in the custody record.
- (v) When the interview starts and the interviewer reminds the suspect of their right to legal advice ... the interviewer shall then ensure that the following is recorded in the written interview record or the interview record made in accordance with Code E or F:
 - Confirmation that the detainee has changed their mind about wanting legal advice or (as the case may be) about wanting a solicitor present and the reasons for it if given;

- The fact that authority for the interview to proceed has been given and, subject to paragraph 2.6A, the name of the authorising officer;
- That if the solicitor arrives at the station before the interview is completed, the detainee will be so informed without delay and a break will be taken to allow them to speak to the solicitor if they wish, unless paragraph 6.6(a) applies, and
- That at any time during the interview, the detainee may again ask for legal advice and that if they do, a break will be taken to allow them to speak to the solicitor, unless paragraph 6.6(a), (b), or (c) applies.

*England and Wales, Police and Criminal Evidence Act, 1984,
Code of Practice C.*

Article 386. Duties of the judicial police in case of arrest

3. Judicial police officers who have performed an arrest or have received an arrested person, immediately inform the public prosecutor in the district where the arrest was performed. They give to the arrested person a written form, clear and detailed and, if the arrested person does not speak the Italian language, translated into a language he or she understands, which informs him or her: a) of his or her right to appoint a lawyer of his or her choice and of the right to legal aid in accordance with the law.

[...]

7. The arrest is null and void if the requirements of paragraph 3 are not satisfied.

Italy, Code of Criminal Procedure, 1989.

Section 42. Persons in lawful custody

(1) The officer-in-charge of a prison, police station, remand home for children or other place of lawful custody shall:

(a) Ensure that every person held in custody is informed, in language that the person understands, of the availability of legal aid on being admitted to custody and is asked whether he or she desires to seek legal aid;

(b) Maintain a register in which shall be entered the name of every person held there and the response of each such person when asked if he or she desires to seek legal aid; and

(c) Ensure that a legal aid application form is made by a person in their custody wishing to apply for legal aid and shall inform the Service of the application within twenty-four hours of the making of the application.

(2) A person who wilfully obstructs a person held in lawful custody from applying for legal aid commits an offence.

Kenya, Legal Aid Act, 2016.

Section 19. Prison monitoring and review cases of awaiting trial inmates

(2) It shall be the duty of all police officers and courts to inform suspected person of his entitlement to the services of a legal practitioner from the moment of arrest and if such suspect cannot afford the services of a legal practitioner to notify the Council to represent him if he so desires.

(3) The Council and the lawyers designated by it shall be entitled to have access to and interview suspects detained in prisons, police stations, or any other places of detention in Nigeria and such designated lawyers shall be entitled to be present during the interrogation of the suspects in accordance with the rights guaranteed to suspects under the Constitution.

Nigeria, Legal Aid Act, 2011.

Article 31. Legal aid application

A legal aid application is a necessary procedural step in requesting legal aid services. It triggers the procedure of determining whether legal aid shall be granted, especially when a decision about the interests of justice is involved. The Legal Aid Authority may regulate the process to make it as speedy and simple as possible.

Set out below is information that may be considered for inclusion in a legal aid application.

Information for potential inclusion in a legal aid application

1. Applicant's name and date of birth, contact information and, when available, personal identification document number
2. If applicable and known, the relevant offence
3. If applicable and known, the name of the court or tribunal where the proceedings have been or will be initiated
4. Type of legal aid that the applicant is requesting
5. If applicable and known, type of provider the applicant prefers
6. When applicable, the applicant's income for the past 12 months and liquid assets
7. Any time constraint that would require an expedited handling of the application
8. Any other relevant information.

Comparative models

Section 22. Application for legal aid

A person who wishes to apply for legal aid shall complete the application in the prescribed form.

Sierra Leone, Legal Aid Act, 2012.

Section 12. Format of application and information contained in an application

- (1) The following shall be set out in an application submitted to receive state legal aid:
 - 1) The name, address and personal identification code or, in the absence of the latter, the date of birth of the applicant, or the registry code of the applicant who is a legal person;
 - 2) A description of the problem for the resolution of which state legal aid is applied for;
 - 3) The category of state legal aid [...] which is applied for;
 - 4) The reasons why state legal aid is necessary to protect the rights of the applicant;

5) The amount of compensation possibly received by the applicant upon adjudication of the case;

6) The name of the provider of state legal aid from whom the applicant wishes to receive legal services if an advocate has granted their consent to the applicant for provision of state legal aid to the applicant in the given case;

7) The language in which the applicant is able to communicate with the provider of state legal aid;

[...]

9) other relevant information.

[...]

(3) In order to receive state legal aid, an application shall be submitted in writing in Estonian. In order to simplify submissions, the Ministry of Justice shall prepare the standard form application which shall be freely accessible to everyone on the website of the Ministry of Justice and in every court and law office.

Estonia, State Legal Aid Act, 2004.

Article 16. Applications for approval of legal aid

(1) The application is to be submitted to the office on the prescribed form, and it is also necessary to enclose a written statement by the applicant and members of his/her household on their assets, and a written statement by the applicant and members of his/her household giving permission to inspect all data on assets and revenue.

(2) As an exception to paragraph 1 of this article, victims of domestic violence shall only submit the statement from paragraph 1 of this article for themselves.

(3) Asylum seekers and those granted asylum, foreigners under subsidiary protection, foreigners under temporary protection and victims of trafficking in human beings, shall enclose with their application a certificate on their status from the competent body.

(4) Exceptionally, if a person applies directly to an authorized provider from article 15, paragraph 2, along with the prescribed form he/she shall enclose a certificate from the tax administration on the amount of revenue of the applicant and members of his/her household and a statement by the applicant and members of his/her household on their assets.

(5) The applicant from paragraph 4 of this article who is the beneficiary of some other right from the social welfare system and other forms of support shall include with the application a certificate from the competent centre for social welfare on the type and amount of support received in the last twelve months, or who is a beneficiary of the right to maintenance pursuant to the Act on the Rights of Croatian Homeland War Veterans and members of their Families, and the Act on Protection of Military and Civilian War Invalids shall include with the application a certificate or copy of the ruling on maintenance.

Croatia, Free Legal Aid Act, 2008.

Section 13. Application for legal assistance

(1) The Commission may require applications for legal assistance, or for particular categories of legal assistance, to be in writing and substantially in accordance with a form approved by the Commission. An application may in special circumstances be considered notwithstanding that it does not comply with the requirements of this Section.

(2) An applicant for legal assistance shall furnish to the Commission such declarations, certificates and other documents as the Commission requires for the purpose of enabling a decision to be made as to whether legal assistance should be granted.

(3) The Commission may distribute to private legal practitioners and Court Registries application forms for completion by persons wishing to apply for legal assistance. The person in charge of every Court Registry, or a person appointed by that person in charge, shall be responsible for assisting applicants for legal assistance to complete the application forms, and shall forward the completed application forms to the Legal Aid Commission for determination.

Fiji, Legal Aid Act, 1996.

Section 10. Application for legal aid

(1) Legal aid shall be applied for from the legal aid office. The application can be made at any stage of the proceedings, up to the time when the court decision on the matter has become *res judicata* or the consideration of the matter has otherwise been concluded. The application may be made orally or in writing. The applicant shall supply information on his or her means and on the matter for which legal aid is being applied for. More detailed provisions on the information to be supplied on the means and the matter shall be issued by a Decree of the Ministry of Justice.

Finland, Legal Aid Act, 2002.

Section 6. Application for legal aid

- (1) Any person who (whether in his own right or in a representative capacity) desires to be granted legal aid shall make an application in that behalf to the Director.
- (1A) Every application made under subsection (1) shall be accompanied by such fee (which shall be inclusive of goods and services tax) as may be prescribed.
- (2) Where the person who desires to be granted legal aid is a minor, the application shall be made on behalf of the minor by his guardian.
- (3) Where any application is made on behalf of a minor then:
 - (a) A reference in section 7 or 8(2)(a) to the applicant shall be construed as a reference to the guardian and the minor jointly or to either of them severally; and
 - (b) A reference in sections 8(2)(b) and 9(1) or in the Second Schedule to the applicant shall, in any case where the minor is unmarried and the guardian is a relative of the minor, be construed as a reference to both the guardian and the minor and in every other case shall be construed as a reference to the minor only.

Singapore, Legal Aid and Advice Act, 1995, as amended in 2014.

Article 32. Proceedings in court

A provision on stay of proceedings is optional in legal systems that do not provide for this procedural institution or may be appropriately modified to comply with a country's criminal justice system.

Comparative models

Section 26. Stay of proceedings upon making of application for legal aid

- (1) Where litigation has been instituted and any party makes an application for legal aid under this Act the Director General shall, as soon as practicable after the application is made, notify the other party or each of the other parties, and file in the court in which the litigation is pending a memorandum of such notification and no fee shall be charged in respect of the filing of the memorandum.

(2) Where any memorandum is so filed, unless otherwise ordered by a judge of the court in which the litigation is pending, all proceedings in the litigation shall, by virtue of this section be stayed for a period of fourteen days, and during such period (unless otherwise ordered by any such judge) time fixed by or under any written law or by or under any rules of court, regulations or otherwise for the doing of any act or the taking of any step in the proceedings shall not run:

Provided, however:

(a) That the filing of the memorandum shall not operate to prevent the making of:

- i. An interlocutory order for an injunction or for the appointment of a receiver or manager or receiver and manager;
- ii. An order to prevent the lapse of a caveat against dealings with land; or
- iii. Any other order which, in the opinion of a judge of the court in which the litigation is pending is necessary to prevent an irremediable injustice;

(b) That, unless otherwise ordered by a judge of the court in which the litigation is pending, the filing of the memorandum shall not operate to prevent the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect any such order as is mentioned in paragraph (a) of this proviso or a decree to the like effect.

(3) The time during which proceedings are stayed by virtue of this section may be reduced or extended by order of a judge of the court in which the litigation is pending.

Malaysia, Legal Aid Act, 1971, as amended in 2006.

Section 17. Stay of proceedings upon making of application for legal aid

(1) Where proceedings have been commenced and any party makes an application for legal aid, the Director shall, as soon as practicable after the application is made, notify the other party or each of the other parties, and file with the court in which the proceedings are pending, a notification in a prescribed form and no fee shall be payable in respect of the filing of the notification.

(2) Where any notification is so filed, then, unless otherwise ordered by the court before which the proceedings are pending, all steps in the proceedings shall, by virtue of this section, be stayed for a period of 14 days, and during that

period (unless otherwise ordered by the court), time fixed by or under any Act or by or under any Rules of Court, regulations or otherwise for the doing of any act or the taking of any step in the proceedings shall not run, except that:

(a) The filing of the notification shall not operate to prevent the making of:

- i. An interlocutory order for an injunction or for the appointment of a receiver or manager or receiver and manager;
- ii. An order to prevent the lapse of a caveat against dealings with land; or
- iii. Any other order which, in the opinion of the court before which proceedings are pending, is necessary to prevent an irremediable injustice; and

(b) Unless otherwise ordered by the court before which proceedings are pending, the filing of the notification shall not operate to prevent the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect any such order as is mentioned in paragraph (a) or a decree to the like effect.

(3) The time during which proceedings are stayed by virtue of this section may be reduced or extended by order of the court before which proceedings are pending.

*Singapore, Legal Aid and Advice Act, 1995,
as amended in 2014.*

Section 34. Stay of proceedings upon making of application for legal aid

(1) Where litigation has been instituted and any party makes an application for legal aid under this Act, the Director shall, as soon as practicable after the application is made, notify by memorandum the other party or each of the other parties, and file the memorandum in the Court in which the litigation is pending; and no fee shall be charged in respect of the filing of the memorandum.

(2) Subject to subsections (3) and (4), where any memorandum is so filed, then, unless otherwise ordered by a Judge of the Court in which the litigation is pending, all proceedings in the litigation shall, by virtue of this section be stayed for a period of fourteen days, and during the period (unless otherwise ordered by any such Judge) time fixed by or under any Act or by or under any Rules of Court, Regulations or otherwise for the doing of any act or the taking of any step in the proceedings shall not run.

- (3) The filing of the memorandum shall not operate to prevent the making of—
 - (a) An interlocutory order for an injunction or for the appointment of a receiver or manager or receiver and manager;
 - (b) An order to prevent the lapse of a caveat against dealings with land; or
 - (c) Any other order which, in the opinion of a Judge of the Court in which the litigation is pending, is necessary to prevent an irremediable injustice.
- (4) Unless otherwise ordered by a Judge of the Court in which the litigation is pending, the filing of the memorandum shall not operate to prevent the institution or continuance of proceedings to obtain, enforce or otherwise carry into effect any such order as is mentioned in subsection (3)(a) or a decree to the like effect.
- (5) The time during which proceedings are stayed by virtue of this section may be reduced or extended by order of a Judge of the Court in which the litigation is pending.

*Trinidad and Tobago, Legal Aid and Advice Act, 1976,
as amended in 2013.*

Article 33. Means test

The adoption of financial eligibility criteria for legal aid and the requirement of a means test to ascertain the applicant's financial situation must balance two factors: (a) availability of resources; and (b) demand for legal aid services.

When the available resources are limited, it is imperative to focus the provision of legal aid on the most financially disadvantaged members of the community. Financial eligibility criteria must be included in laws or regulations to ensure that the benefits of legal aid are actually targeted to the poor.

The financial eligibility criteria can be very specific or simply establish broad parameters. A number of countries adopt the broader criterion that a person has the right to legal aid if he or she does not have sufficient means to pay for the costs of legal assistance. International legal instruments do not provide a definition of "sufficient means" and leave it to domestic authorities to determine a financial threshold for the means test and how to implement such a test. Similarly, the United Nations Principles

and Guidelines are not prescriptive in terms of financial eligibility criteria. However, guideline 1 of the United Nations Principles and Guidelines provides:

41. Whenever States apply a means test to determine eligibility for legal aid, 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 and where it is in the interests of justice to provide such aid, are not excluded from receiving assistance;
- (b) The criteria for applying the means test are widely publicized;
- (c) Persons urgently requiring legal aid at police stations, detention centres or courts should be provided preliminary legal aid while their eligibility is being determined. Children are always exempted from the means test;
- (d) Persons who are denied legal aid on the basis of the means test have the right to appeal that decision;
- (e) A court may, having regard to the particular circumstances of a person and after considering the reasons for denial of legal aid, direct that that person be provided with legal aid, with or without his or her contribution, when the interests of justice so require;
- (f) If the means test is calculated on the basis of the household income of a family, 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.

In determining the financial threshold, the adopted model may vary, depending on the country's approach to legislating. For example, a country may provide for the general right to legal aid for those without sufficient means to pay for legal services by law and leave the determination of the financial threshold and its process to regulations.

Comparative models

Section 21. Determination of indigence

- (1) The Board shall prescribe the level of income which qualifies a person as indigent.

Sierra Leone, Legal Aid Act, 2012.

Section 21. Financial resources

- (1) A person may not make a relevant determination that an individual qualifies under this Part for services unless the person has determined that the individual's financial resources are such that the individual is eligible for the services (and has not withdrawn the determination).
- (2) Regulations may:
 - (a) Make provision about when an individual's financial resources are such that the individual is eligible under this Part for services, and
 - (b) Make provision for exceptions from subsection (1).
- (3) Regulations may provide that an individual is to be treated, for the purposes of regulations under subsection (2), as having or not having financial resources of a prescribed description.

*England and Wales, Legal Aid,
Sentencing and Punishment of Offenders Act, 2012.*

Some countries indicate in the legal aid law an income or income and assets ceiling to measure the applicant's financial eligibility. Such a ceiling is ordinarily periodically adjusted on the basis of changes in the consumer price index or other cost of living indexes. Limits are usually increased according to family size. This model is intended to provide sufficient statutory guarantees against arbitrary determination of the applicant's eligibility for legal aid.

Comparative models

Section 6

Legal aid may be granted to a private person, whose financial base ... does not exceed SEK 260,000.

Sweden, Legal Aid Act, 1996.

Section 34. The standards applicable to the financial capacity of a person seeking justice

1. Legal aid may be provided in accordance with the provisions of this act to any person whose monthly income amounts to NLG 2,810.00 (EUR ,438.00 as of 1 January 2005—Editor's note) or less, provided that such a person is single, or no more than NLG 4,020.00 (EUR 2,055.00 as of 1 January 2005—Editor's note), if he cohabits with one or more other people.

2. Contrary to the provisions of Subsection (1), no legal aid shall be provided to a person seeking justice who possesses assets of his own amounting to no less than EUR 7,300.00, provided that he is single, or no less than EUR 10,500.00 in any other case.

The Netherlands, Legal Aid Act of 23 December 1993.

Article 76(L). Conditions for admission

1. Whoever has a taxable income, for the purpose of personal income taxes, as resulting from the latest tax return, that does not exceed EUR 11,369.24, is eligible to free legal aid.

2. ... If the interested person lives with a spouse or other dependants, the income is calculated by the total sum of all the incomes earned over the same tax year by each member of the family, including the applicant.

Italy, Presidential Decree No. 115, 2002.

Section 3. Person authorized for Legal Aid

(1) A person having less than the specified annual income shall only be entitled to Legal Aid under this Act.

Nepal, Legal Aid Act, 1997.

Rule 6. Legal Aid shall not be entitled

(5) The committee shall not provide legal aid to the person whose annual income is more than NPR 40,000.

Nepal, Legal Aid Rules, 1998.

An alternative approach employed by many countries is to indicate the minimum wage, or multiples thereof, in the legal aid law as the applicable financial threshold.

Comparative models

Section 30. Scope of Legal Aid

(2) A person is also entitled to legal aid if he or she desires legal representation in any criminal or civil matter and earns not more than such minimum wage as the Government may specify.

Gambia, Legal Aid Act, 2008.

Article 14. Persons that have right to free secondary legal aid

(1) In accordance with this Law and other laws of Ukraine, the following categories of persons have the right to free secondary legal aid:

1) Persons under jurisdiction of Ukraine, if the average monthly income of their families is lower than the minimum subsistence level calculated and approved in accordance with the Law of Ukraine on the Minimum Subsistence Level (966-14) for persons belonging to the principal social and demographic groups of population, and disabled persons who receive a pension (or allowance) of less than two minimum subsistence levels for disabled persons have the right to all types of legal services set forth in Article 13, part two, of this Law.

Ukraine, Law on Free Legal Aid, 2011.

Section 10. Persons entitled to legal aid

(1) Legal aid shall only be granted to a person whose income does not exceed the national minimum wage.

(2) Notwithstanding the provision of subsection (1), the Board may, in exceptional circumstances, grant legal aid service to a person whose earnings exceed the national minimum wage.

Nigeria, Legal Aid Act 2011.

Some countries provide not only a ceiling, but also a more detailed indication in the law as to how to ascertain the applicant's financial means.

Comparative models

Article 12

The financial position of the applicant shall be determined by taking into account the applicant's incomes and receipts, the incomes and receipts of the applicant's family, the property owned by the applicant and the applicant's family, unless otherwise determined by this Act.

In the procedure for granting legal aid, the financial position of the applicant shall not be determined if the applicant receives social security assistance on the basis of a decision issued by the competent authority pursuant to the provisions of the act governing social security benefits (extraordinary legal aid).

Article 13

Legal aid shall be granted to persons who, given their financial position and the financial position of their families, are not able to meet the costs of the judicial proceeding without causing harm to their social position and the social position of their families.

It shall be deemed that the social position of the applicant and his or her family is put at risk by the costs of the judicial proceeding if the monthly income of the applicant (personal income) or average monthly income per family member (personal family income) does not exceed the amount of the minimum wage laid down in the act governing the minimum wage.

Article 14

The income of the applicant and the income of the applicant's family shall be deemed to include inheritance, gifts, incomes and benefits, including non-taxable incomes and benefits, received in Slovenia and abroad, except for:

- Supplements for assistance and attendance and other benefits received for care and assistance, and supplements for care and assistance by other persons;
- Child supplements;
- Childcare supplements;
- Assistance for newborn supplies;
- Costs of transportation to work and meals during work;
- Grants and other benefits intended for or enabling training and education;
- Income from occasional work by disabled persons receiving institutional care and received outside the criteria applying to regular employment;
- Funding intended for addressing the consequences of a natural disaster;
- An allotment for a foster child received by the applicant's family;
- Compensation for non-property damage resulting from diminished capacity in everyday activity.

Paid maintenance in the amount of the executable legal title shall be deducted from the determined personal income.

Slovenia, Legal Aid Act, 2001.

Article 3

The financial situation of the applicant for granting legal aid shall be determined based on his income and property, and income and property of his family members, if not stipulated otherwise by this Law.

Montenegro, Law on Legal Aid, 2012.

Section 9. Assessment of means

(1) In assessing the means of any person for the purposes of this Act, the Director shall take into account the income and property of the applicant, excluding:

- (a) The dwelling house of the applicant; and
- (b) Necessary beds, bedding and clothing of the applicant or any member of his family; and
- (c) Necessary furniture of the applicant, other than beds, and household utensils in so far as they do not exceed in value such sum as may be prescribed; and
- (d) Tools and implements necessarily used by the applicant in his trade or occupation; and
- (e) Food and drink necessary to meet the needs of the applicant and members of his family for one month.

(2) The Director shall make due allowances for such other commitments as may be prescribed.

Zimbabwe, Legal Aid Act, 1996.

1.5. Financial eligibility criteria

a) Effective representation should be provided to anyone who is unable, without substantial financial hardship to himself or to his dependents, to obtain such representation. This determination should be made by ascertaining the liquid assets of the person, which exceed the amount needed for the support of the person or his dependents and for the payment of current obligations. If the person's liquid assets are not sufficient to cover the anticipated costs of representation as indicated by the prevailing fees charged by competent counsel in the area, the person should be considered eligible for publicly provided representation. The accused's assessment of his own financial ability to obtain competent

representation should be given substantial weight. Liquid assets include cash in hand, stocks and bonds, bank accounts and any other property which can be readily converted to cash. The person's home, car, household furnishings, clothing and any property declared exempt from attachment or execution by law, should not be considered in determining eligibility. Nor should the fact of whether or not the person has been released on bond or the resources of a spouse, parent or other person be considered.

b) The cost of representation includes investigation, expert testimony, and any other costs which may be related to providing effective representation.

United States, National Legal Aid and Defender Association, Guidelines for Legal Defense Systems in the United States, 1976.

When establishing a means test for legal aid eligibility, States should also take into account the level of demand in the country for legal aid services. For example, the means test procedure should not be too long or cumbersome, especially in those countries where the majority of the population would be eligible for State-funded legal aid. Normally, the burden of proof rests with the applicant. The European Court of Human Rights is of the opinion that the applicant does not have to prove his or her indigence “beyond all doubt,”²⁰ but that some indications, such as tax returns or a statement of means, can be sufficient for proving that the applicant lacks the necessary means to pay for legal assistance.

Countries may opt to require verification through documentation, such as pay stubs and tax returns, or simply accept a declaration by the applicant and presume the information provided by the applicant is accurate. This second option would be appropriate in countries where the vast majority of the population has a very low income and, consequently, most applicants are eligible. In such cases, a means test procedure may turn out to be a poor use of resources and time, as it may delay the provision of legal aid. A number of States accept a self-certification, a certificate of indigence or a certificate of eligibility for social services.

²⁰ *Pakelli v. Germany*, App. No. 8398/78, judgment of 25 April 1983, 6 EHRR 1.

Comparative models

Article 6

Any person who intends to claim the benefit of legal aid must prove his state of indigence, notably by providing a certificate of indigence, a certificate of tax exemption issued by the competent authorities or any other document proving his precarious financial situation.

Burkina Faso, Decree No. 33, 2009.

Section 12. Criteria for giving legal services

Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is:

[...]

- (h) In receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Government, if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Government, if the case is before the Supreme Court.

Section 13. Entitlement to Legal Services

- (2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.

India, Legal Services Authorities Act, 1987.

Examples of certificate of indigence

Dear Sir,

I, being very poor, hereby apply for free legal aid under the “Pakistan Bar Council Free Legal Aid Rules, 1999” for pursuing my case pending/to be instituted/filed in the _____ Court. The nature and particulars of my case are detailed as under:

[...]

Pakistan, Bar Council Free Legal Aid Rules 1999, Schedule 1.

Republic of the Philippines
Province of Cagayan
Municipality of Lal-lo
Barangay Alaguia

OFFICE OF THE BARANGAY COUNCIL
CERTIFICATE OF INDIGENCY

TO WHOM IT MAY CONCERN:

This is to certify that [*name*] of legal age, is a bona fide resident of Barangay Alaguia, Lal-lo, Cagayan. The said person is of good moral character and an active member of the community. She is one of those who belong to a low-income family.

This certification is being issued upon the request of the above-named person for whatever purposes it may serve her best.

Given this [*date*]th day of [*month, year*] at Barangay Alaguia, Lal-lo, Cagayan.

*Philippines, Office of the Barangay Council,
Certificate of Indigency.*

CERTIFICATE OF INDIGENCY

1. I am the defendant in the above matter and because of my financial condition am unable to pay the fees and costs of defending the proceeding.
2. I am unable to obtain funds from anyone, including my family and associates, to pay the costs of litigation.
3. I represent that the information below relating to my ability to pay the fees and costs is true and correct.

*United States, Petition to proceed in forma pauperis
in Perry County, Pennsylvania.*

Article 34. Determination of eligibility

In many jurisdictions, a person is entitled to legal aid if two conditions are satisfied: (a) if he or she does not have sufficient means to afford the costs of legal assistance; and (b) if the interests of justice so require. However, the Model Law does not require this dual test when the conditions enumerated in article 4.1 are met (i.e. the crime in question is punishable by a term of imprisonment or the death penalty, when the interests of justice so require owing to the urgency of the circumstances, the complexity of the case or the severity of the potential penalty, or when the beneficiary comes under the definition of vulnerability in article 3.18).

In addition, as provided in article 30.4, an individual in custody shall always be presumed eligible for legal aid until eligibility is determined. Finally, as provided in article 3.3, even when the applicant would not be financially eligible for legal aid based on a means test, the Legal Aid Authority may consider granting legal aid on condition of a contribution, if the interests of justice so require. Article 33.4 provides a list of factors that may be taken into account in evaluating whether the interests of justice would require the provision of legal aid.

Regulations can impose response times and make the process fast and easy. Since time is of the essence in the early stages of a criminal justice proceeding, simply filling out and signing a template form already available at police stations and detention centres to request a legal aid provider would suffice.

Comparative models

Section 17. Qualifying for representation

(2) In deciding what the interests of justice (2) consist of for the purposes of [a legal aid determination], the following factors must be taken into account:

- (a) Whether, if any matter arising in the proceedings is decided against the individual, the individual would be likely to lose his or her liberty or livelihood or to suffer serious damage to his or her reputation,
- (b) Whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law,
- (c) Whether the individual may be unable to understand the proceedings or to state his or her own case,

(d) Whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual, and

(e) Whether it is in the interests of another person that the individual be represented.

England and Wales, Legal Aid, Sentencing and Punishment of Offenders Act, 2012.

Section 8. Eligibility for legal aid

Subject to this Act, a person shall be eligible for legal aid under this Act if, in the Director's opinion:

(a) He has insufficient means to obtain the services of a legal practitioner on his own account; and

(b) He has reasonable grounds for initiating, carrying on, defending or being a party to the proceedings for which he applies for legal aid; and

(c) He is in need of or would benefit from the services provided in terms of this Act in respect of the proceedings for which he seeks legal aid.

Zimbabwe, Legal Aid Act, 1996.

Article 9. Legal criteria

1. According to the legal criteria, legal aid shall be provided by assessing validity of the case as:

1.1 Real value of the request;

1.2 Argumentative power of the evidence presented by the applicant; and

1.3 Probability for the success of the request.

Kosovo, Law on Free Legal Aid, 2012.

Section 2. Legal aid (District Court) certificate

(1) If it appears to the District Court:

(a) That the means of a person charged before it with an offence are insufficient to enable him to obtain legal aid, and

(b) That by reason of the gravity of the charge or of exceptional circumstances it is essential in the interests of justice that he should have legal aid in the preparation and conduct of his defence before it,

the Court shall, on application being made to it in that behalf, grant in respect of him a certificate for free legal aid (in this Act referred to as a legal aid (District Court) certificate) and thereupon he shall be entitled to such aid and to have a solicitor and (where he is charged with murder and the Court thinks fit) counsel assigned to him for that purpose in such manner as may be prescribed by regulations under section 10 of this Act.

(2) A decision of the District Court in relation to an application under this section shall be final and shall not be appealable.

Ireland, Criminal Justice (Legal Aid) Act, 1962.

Section 28. Persons eligible for legal aid

(4) Despite subsections (1), (2) and (3), the Service shall not provide legal aid services to a person unless the Service is satisfied that:

(a) The cost of the proceedings is justifiable in the light of the expected benefits;

(b) Resources are available to meet the cost of the legal aid services sought;

(c) It is appropriate to offer the services having regard to the present and future demands;

(d) The nature, seriousness and importance of the proceedings to the individual justify such expense;

(e) The claim in respect of which legal aid is sought has a probability of success;

(f) The conduct of the person warrants such assistance;

(g) The proceedings relate to a matter that is of public interest;

(h) The proceedings are likely to occasion the loss of any right or the person may suffer damages;

(i) The proceedings may involve expert cross-examination of witnesses or other complexity;

(j) It is in the interest of a third party that the person be represented;

- (k) Denial of legal aid would result in substantial injustice to the applicant; or
- (l) There exists any other reasonable ground to justify the grant of legal aid.

Kenya, Legal Aid Act, 2016.

Section 11. Free legal aid certificate

- (1) Where application is made under section 10 the judge or the Director General of Legal Aid may refer the application to the Director of Social Welfare for a report on the means of the applicant.
- (2) If the judge or the Director General of Legal Aid is of opinion on the facts brought before him including any report by the Director of Social Welfare that the person making the application is without adequate means to obtain legal aid and that it is desirable in the interests of justice that such legal aid should be supplied, he shall certify to that effect and the Director General of Legal Aid may thereupon cause arrangements to be made for the defence of that person and payment of the expenses of all material witnesses or for the preparation and conduct of the appeal or for resisting the appeal, as the case may be.
- (3) Any doubt whether an applicant's means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid shall be resolved in favour of the applicant.

Malaysia, Legal Aid Act, 1971.

Section 7. Grounds for refusal to grant state legal aid

- (1) State legal aid will not be granted if:
 - 1) Applicants are able to protect their rights on their own;
 - 2) Applicants cannot have the right for the protection of which they are applying for state legal aid;
 - 3) Applicants could bear the costs of legal services at the expense of their existing property that can be sold without any major difficulties, except at the expense of the assets specified in subsection 14(2) of this Act;
 - 4) The costs of legal services do not presumably exceed twice the applicant's average monthly income that is calculated on the basis of the average monthly income in the last four months preceding the

submission of the application, from which taxes and compulsory insurance payments, amounts earmarked for fulfilment of a maintenance obligation arising from law and also reasonable housing and transport costs have been deducted;

5) Under the circumstances it is clearly unlikely that applicants will be able to protect their rights;

6) State legal aid is applied for in order to file a claim for non-pecuniary damages and there are no overriding public reasons in the case;

7) The dispute is related to the business activities of applicants and does not harm their rights that are unrelated to their business activities;

8) State legal aid is applied for to protect a trademark, patent, utility model, industrial design or a layout-design of integrated circuits or, other form of intellectual property, except rights arising from the Copyright Act;

9) State legal aid is applied for in a case in which the applicant clearly has joint interests with a person who is not entitled to state legal aid;

10) State legal aid is applied for to protect a right transferred to the applicant and there is reason to believe that the right was transferred to the applicant in order to receive state legal aid;

11) The provision of legal services is guaranteed to the applicant under a legal expenses insurance contract or compulsory insurance;

12) The compensation possibly received by the applicant upon adjudication of the case is unreasonably small in comparison with the estimated legal aid expenses of the state.

(2) State legal aid will not be refused on the grounds specified in subsection (1) of this section if state legal aid is applied for in the case specified in subsection 6 (2) of this Act. State legal aid will not be refused on the basis of clauses (1) 1), 2), 5)–10) or 12) of this section if state legal aid is applied for in the case specified in subsection 6 (4) of this Act.

(3) State legal aid may be granted without the restriction provided for in clause 1) of subsection (1) of this section if the assistance of an advocate is clearly necessary for the correct adjudication of the case in order to ensure the equality of the parties or due to the complexity of the matter.

Estonia, State Legal Aid Act, 2004.

Article 35. Legal aid certificate

Article 35 establishes that once the decision to grant legal aid has been made, the applicant will receive a legal aid certificate containing relevant information.

Comparative models

Section 23. Issue of certificate

(2) When the Board grants an application, it shall issue a legal aid certificate in the prescribed form to the applicant.

Sierra Leone, Legal Aid Act, 2012.

Section 39. No aid unless applicant has certificate

(1) Except as to professional services provided by duty counsel or staff solicitors, a person is not entitled to legal aid in a matter unless the person holds a certificate or provisional certificate respecting the matter that has been issued to him or her in accordance with this Act and the regulations.

(2) Where the holder of a legal aid certificate does not retain a solicitor within 30 days of the date of issue of the legal aid certificate, the legal aid certificate expires.

*Canada, Legal Aid Act of Newfoundland and Labrador, 1996,
as amended in 2012.*

Section 9. Certificate

1) Where a Judge to whom an application is made under section 8 is satisfied that a person seeking legal aid is qualified to receive legal aid under this Act, he shall grant him a certificate.

2) Where a Judge refuses to grant a certificate in respect of any proceedings before the Court of Appeal, a Justice of Appeal may, on a consideration of the facts placed before him, grant such certificate.

3) A certificate granted under this section shall be authority:

- (a) For the person to whom it is granted, to receive legal aid; and
- (b) For the Registrar, to meet out of the moneys of the Fund the expenses of legal aid.

Seychelles, Legal Aid Act, 1986.

Article 36. Choice of legal aid provider

Article 36 establishes the procedure and considerations for the appointment of a legal aid provider. These considerations can include relevant experience for the case or relevant skills for representing the client (e.g., particular language skills or experience in representing children).

Comparative models

Section 12. Choice of counsel etc.

(1) Subject to subsections (2) to (4), whenever a certificate is granted by the Committee it shall be the duty of the Senior Legal Aid Counsel to assign to the assisted person a counsel:

- (a) Whose name appears upon a roster maintained under section 5; and
- (b) Who is the assisted person's counsel of choice.

(2) Subsection (1) does not apply where the counsel chosen by the assisted person:

- (a) Refuses to be bound by the Schedule of Fees annexed to the Legal Aid (Scale of Fees) Regulations 1980; or
- (b) For any other reason refuses the assignment.

(3) Where:

- (a) An assisted person, for whatever reason, does not exercise his right to choose a counsel under subsection (1); or
- (b) Pursuant to subsection (2), subsection (1) does not apply,

the Senior Legal Aid Counsel shall assign to the assisted person a counsel whose name appears upon the roster referred to in subsection (1)(a).

(4) For the purpose of subsection (3), the Senior Legal Aid Counsel shall have regard to the principles that:

- (a) The assignment of counsel should be appropriate to the nature of the proceedings for which the certificate is granted; and
- (b) So far as is practicable, the volume of legal aid work should be evenly distributed between counsel listed on the appropriate roster.

Bermuda, Legal Aid Amendment Act, 2003.

Section 27. Choice of provider of services etc.

(1) The Lord Chancellor's duty under section 1(1) does not include a duty to secure that, where services are made available to an individual under this Part, they are made available by the means selected by the individual.

(2) The Lord Chancellor may discharge that duty, in particular, by arranging for the services to be provided by telephone or by other electronic means.

(3) The Lord Chancellor's duty under section 1(1) does not include a duty to secure that, where services are made available to an individual under this Part, they are made available by a person selected by the individual, subject to subsections (4) to (10).

*England and Wales, Legal Aid,
Sentencing and Punishment of Offenders Act, 2012.*

Article 18. Withdrawal of services by solicitor

(1) A solicitor who is appointed to act for a client may withdraw his or her services with respect to that client by notifying the chief executive officer, or any person that the chief executive officer may designate, of his or her intention to do so.

(2) No solicitor who has been appointed to provide legal services pursuant to this Act shall secure another solicitor to provide those services unless a solicitor designated by the chief executive officer approves of the action by the solicitor.

(3) Nothing in subsection (1) renders inoperative any law or rule with respect to a solicitor withdrawing his or her services from a client or prospective client.

Canada, Legal Aid Act of Saskatchewan, 1983.

Article 37. Conflict of interest

Article 37 provides guidance on addressing potential conflicts of interest in various situations (e.g., between client and provider or between clients). To deliver effective and unbiased defence, it is important to establish rules for such situations in the law or respective regulations.

Comparative models

Section 19. Refusal of advocate to provide state legal aid

(2) In the event of the occurrence of the circumstances specified in § 44 of the Bar Association Act and also if their interests or the interests of their spouse or close relative or a close relative of their spouse in the same case are in conflict with the interests of the recipient of state legal aid, an advocate will not provide state legal aid to the person and is required to refuse to provide legal services or immediately terminate the provision of the legal services already commenced.

[...]

(4) If an advocate terminates the provision of legal services on the basis of subsection (2) of this section and the advocate was aware or should have been aware of the circumstances precluding the provision of legal services at the time of commencing the provision of legal services, the advocate will not be receive a fee for provision of state legal aid.

Estonia, State Legal Aid Act, 2004.

Article 7. Conflict of interest

Whenever there is a conflict of interest between the indigent client and advocate or the client is not happy with the advocate, the client or advocate is obliged to inform the legal aid authority in writing and the legal aid authority shall appoint another legal aid provider.

Afghanistan, Legal Aid Regulation, 2008.

(b) Appointment of counsel

The United States magistrate judge or the court shall appoint separate counsel for persons having interests that cannot properly be represented by the same counsel, or when other good cause is shown.

*United States, United States Code,
Title 18, sect. 3006A - Adequate representation of defendants.*

Section 26A. No conflict of interest

A barrister employed by the Commission to provide legal aid is not in a conflict of interest by reason only of representing a person in a dispute where a party opposite in interest in the dispute is being advised or represented by another barrister working for a different office of the Commission.

Canada, Legal Aid Act of Nova Scotia, 1989, chap. 252.

Article 38. Suspension and termination of legal aid

Article 38 lists the grounds and procedures for refusal or suspension of legal aid by the Legal Aid Authority.

Comparative models

Section 19. Refusal or suspension of legal aid

Legal aid may be refused, suspended or withdrawn, as the case may be, or a certificate cancelled with regard to any person otherwise eligible when that person, without sufficient reason:

- (a) Refuses to provide the information or documents required to study his application;
- (b) Refuses to provide the information required under this Act and by the regulations;
- (c) Refuses to exercise his legal rights and remedies;
- (d) Refuses to co-operate with the solicitor rendering professional services for him, in the manner that is normal and customary between a solicitor and his client;
- (e) Makes a false statement or conceals information in applying for legal aid;
- (f) Is charged for an offence the same as or similar to one for which he has been convicted previously;
- (g) Is receiving or has received an unreasonable total amount of legal aid; or
- (h) Is not ordinarily resident in one of the provinces of Canada.

Canada, Legal Aid Act of Nova Scotia, 1989, chap. 252.

Section 24. Cancellation of certificate

- (1) Where a legally-aided person after being granted a legal aid certificate fails to meet the prescribed criteria, the Board may cancel the legal aid certificate.
- (2) Prior to the cancellation of a certificate, the Board shall give the legally-aided person notice in writing of its intention to do so, specifying the grounds on which the Board considers the certificate ought to be cancelled.

(3) A legally-aided person who is given notice under subsection (2) may within fourteen days of receipt of the notice, submit to the Board a written statement of objection to the cancellation.

(4) The Board shall notify the legally-aided person of its decision within seven days of receipt of the statement of objection.

Sierra Leone, Legal Aid Act, 2012.

Section 24A. Person may refuse or dispense with legal aid

(1) Notwithstanding anything to the contrary contained in this Act:

a) An accused person may (should he so decide) refuse legal aid which would otherwise be granted to him in furtherance of a legal aid certificate issued or to be issued under Part III;

b) A court may, on the application of a legally aided person:

i. Cancel any legal aid certificate which has been issued in respect of that person;

ii. Cancel any recommendation made under subsection 2) of section nine;

iii. Permit him to conduct his own case or by a practitioner of his choice without legal representation which has been arranged by the Director.

(2) Where an accused person refuses legal aid or makes application under paragraph (b) of subsection (1), the court shall record reasons put forward by the accused person for the refusal or the application, as the case may be.

(3) Where in any proceedings commenced before a court an accused person has refused legal aid or the court has cancelled a legal aid certificate or a recommendation under paragraph (b) of subsection (1), the court shall continue with and conclude such proceedings without the legal aid.

(4) The cancellation of a legal aid certificate or the recommendation under paragraph (b) of subsection (1) shall not affect the right of the Director to require an accused person to contribute to the cost of such legal aid as may have been provided before the cancellation.

Zambia, Legal Aid Act, 1967, as amended in 2005, chap. 34.

Section 10. Cancellation of grant of aid

- (1) The Director may, at any time and whether or not an application has been made for the purpose, cancel a Grant of Aid, and subject to subsection (2), the person to whom the Grant of Aid was issued shall, as from the date of cancellation, cease to be an aided person.
- (2) Where the Grant of Aid cancelled under subsection (1) has been filed with any court, the Director shall file with the court a notification of the cancellation, and the person to whom the Grant of Aid was issued shall, as from the date of filing of such notification, cease to be an aided person.
- (3) Upon the filing in court of such notification, then, unless otherwise ordered by the court before which any proceedings are pending, all steps in the proceedings shall, by virtue of this subsection, be stayed for a period of 14 days and, subject as aforesaid, during such period, time fixed by or under any Act or by or under any Rules of Court, regulations or otherwise for the doing of any act or the taking of any step in the proceedings shall not run.
- (4) The time during which proceedings are stayed by virtue of subsection (3) may be reduced or extended by order of the court before which any proceedings are pending.
- (5) The Director shall take such steps as seem to him reasonable or necessary to inform the person to whom a Grant of Aid has been issued of the cancellation of any such Grant of Aid.

Singapore, Legal Aid and Advice Act, 1995, as amended in 2014.

Article 39. Change of legal aid provider

Article 39 lists the situations in which a legal aid provider may be replaced by another provider, such as incapacity to provide services, disbarment or other legitimate reasons in accordance with the practice of the legal profession in the enacting State.

Comparative models

Section 20. Change of provider of state legal aid

- (1) By agreement between an advocate providing state legal aid and the recipient of state legal aid, legal services in the same case may be provided to the person by another advocate who grants his or her consent for the

transfer of the obligation to provide state legal aid to such person. The new provider of state legal aid will be appointed on the basis of the application of the court, the Prosecutor's Office or investigative body in accordance with the procedure provided for in § 18 of this Act. In such an event, the court, the Prosecutor's Office or investigative body will decide the amount of the state legal aid fee and state legal aid expenses that will be compensated to the former provider of state legal aid.

(2) If, under this Act, a provider of state legal aid is unable to continue to provide legal services to a recipient of state legal aid, the provider of state legal aid will submit an application for the appointment of a new provider of state legal aid to the court, the Prosecutor's Office or investigative body. The new provider of state legal aid will be appointed in accordance with the procedure provided for in § 18 of this Act.

(3) Upon exclusion of an advocate providing state legal aid from the Bar Association or his or her disbarment or upon suspension of the professional activities or long-term incapacity for work or the death of an advocate, and in other cases provided by law, the Bar Association will appoint a new provider of state legal aid on the basis of an application of the former provider of state legal aid, the recipient of state legal aid, the court, the Prosecutor's Office or investigative body or on its own motion in accordance with the procedure provided for in § 18 of this Act.

(4) If the provider of state legal aid is changed, the new provider of state legal aid will continue providing the person with legal services from where the former provider of state legal aid finished. The state legal aid fee will be paid to the former provider of state legal aid according to the work performed and the state legal aid expenses borne thereby will be compensated for.

Estonia, State Legal Aid Act, 2004.

Article 12. Removal and assignment of other legal aid providers

(1) When a legal aid provider is not able to perform his/her given duty due to a justified excuse after appointing, the legal aid authority introduces another legal aid provider.

(2) Indigent suspects and accused persons have the right to dismiss the legal aid provider in all detection, investigation or trial processes. In such cases the suspect or accused person is obliged to inform the responsible authority, and the authority shall appoint another legal aid provider in such cases.

Afghanistan, Legal Aid Regulation, 2008.

(c) Duration and substitution of appointments

A person for whom counsel is appointed shall be represented at every stage of the proceedings from his initial appearance before the United States magistrate judge or the court through appeal, including ancillary matters appropriate to the proceedings. If at any time after the appointment of counsel the United States magistrate judge or the court finds that the person is financially able to obtain counsel or to make partial payment for the representation, it may terminate the appointment of counsel or authorize payment as provided in subsection (f), as the interests of justice may dictate. If at any stage of the proceedings, including an appeal, the United States magistrate judge or the court finds that the person is financially unable to pay counsel whom he had retained, it may appoint counsel as provided in subsection (b) and authorize payment as provided in subsection (d), as the interests of justice may dictate. The United States magistrate judge or the court may, in the interests of justice, substitute one appointed counsel for another at any stage of the proceedings.

*United States, United States Code,
Title 18, sect. 3006A - Adequate representation of defendants.*

Chapter 6. Financial provisions

Article 40. Legal Aid Fund

Funding the legal aid system is primarily the responsibility of the State, and it is imperative that the established system guarantee accessible, affordable and sustainable legal aid. Guideline 12 of the United Nations Principles and Guidelines calls upon States to make specific budget provisions for the allocation of funds for the administration of the legal aid system and the provision of legal aid services.

60. Recognizing that the benefits of legal aid services include financial benefits and cost savings throughout the criminal justice process, States should, where appropriate, make adequate and specific budget provisions for legal aid services that are commensurate with their needs, including by providing dedicated and sustainable funding mechanisms for the national legal aid system.

61. 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; to support university law clinics; and to 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 that are commensurate with the needs of effective legal aid provision;

(ii) Using funds recovered from criminal activities through 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 (e.g., tax exemptions or reductions, student loan payment reductions);

(d) To ensure fair and proportional distribution of funds between prosecution and legal aid agencies.

62. The budget for legal aid should cover the full range of services to be provided to persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence, and to victims. Adequate special funding should be dedicated to defence expenses such as expenses for copying relevant files and documents and collection of evidence, expenses related to expert witnesses, forensic experts and social workers, and travel expenses. Payments should be timely.

The allocation of sufficient funds is crucial for the successful administration of a national legal aid system. The Model Law provides for potential sources of funding, bearing in mind that the allocation of funds for legal aid is the responsibility of the State. Other sources and methods of allocation may be considered, depending on a State's budgetary and legal system. For instance, sums received from foreign, regional and international donors can contribute to the funding of the legal aid system.

Similarly, funding mechanisms and structures must be established in accordance with the State's legal system and may vary, for example, as a result of the federal nature of the jurisdiction.

It is always essential that the level of funding be adequate and appropriate for the establishment of an accessible, effective and sustainable legal aid system. The level of necessary funding should be calculated on the basis of the demand for legal aid services and the cost of providing such services, with due regard to priorities determined by the Legal Aid Authority. Therefore, the proposed model entrusts the Legal Aid Authority with the responsibility of preparing detailed financial reports and collecting data on the beneficiaries' needs in order to contribute to the determination of sufficient allocation to legal aid in the State's budget. Specifying that the legal aid budget must be commensurate with the needs of beneficiaries is important for ensuring that there can be flexibility in adjusting the level of funding over time in response to real needs. However, while the funding for civil legal aid may be adjusted on the basis of government priorities, the criminal legal aid budget should not be reduced as a result. Appropriate consideration should also be given to fair and proportionate distribution of funds between prosecution and legal aid agencies.

Operational costs and expenses of the Legal Aid Authority may include: salaries and wages of the Legal Aid Authority's staff; travel expenses and subsistence allowances for legal aid providers; consultancy fees for experts, trainers, translators, health specialists and social workers; publication expenses; training costs; operational expenses, such as office rental, utilities, furniture and equipment; and the costs of research and innovation in the delivery of legal aid services.

Comparative models

Article 22. Source of financing of the Service

1. The sources of financing of the Service shall be:
 - (a) The purposeful funds allocated from the state budget;
 - (b) Donations and grants;
 - (c) Other incomes allowed by Georgian legislation.
2. The state financing is defined by annual law of Georgia on “State Budget”.
3. The draft project of the Service shall be presented to the Ministry of Finance with consent of the Council and on the basis of coordination with the Parliament, in a manner prescribed by the Budgetary Code of Georgia.

Article 22¹. Shortening of the Service’s budget

The reduction of the Service’s budget in relation to the indicator prescribed by the relevant article of the economic classification of the previous year, is allowed only in the case of the Council’s consent.

Georgia, Law on Legal Aid, 2014.

Section 9. General Fund and Legal Aid and Access to Justice Fund

There is established the Legal Aid General Fund for the day-to-day administration of the Council into which shall be paid:

- (a) Such sums as shall be appropriated annually by the National Assembly pursuant to section 46 of the Constitution of the Federal Republic of Nigeria; and
- (b) Such sums as shall be appropriated annually or otherwise provided from time to time by the Government of each State of the Federation and the Federal Capital Territory.

Nigeria, Legal Aid Act, 2011.

Section 30. Application of the Fund

The Service may use the monies of the Fund to:

- (a) Defray the expenses incurred in the representation of persons granted legal aid in accordance with this Act;

- (b) Pay the remuneration of legal aid providers for services provided in accordance with this Act;
- (c) Meet the expenses incurred by legal aid providers in providing services under this Act; and
- (d) Meet the expenses of the operations of the Service as approved by the Board.

Kenya, Legal Aid Act, 2016.

Section 6. Resources of the Council

The resources of the Council shall comprise:

- (a) Such sums as may from time to time be placed at the disposition of the Council by Parliament for the purposes of this Act;
- (b) Sums donated to the Council by any person or organisation;
- (c) Contributions to be made by applicants for legal aid;
- (d) Costs awarded to any applicant, or any part of such costs;
- (e) Such other sums as may lawfully be paid to the Council.

Jamaica, Legal Aid Act, 1997, as amended in 2005.

Section 62. Legal Aid Fund

The Commission shall establish and administer a fund, to be called the “Legal Aid Fund”.

Section 63. Payments into Fund

- (1) Except as provided by section 64A, there shall be paid into the Fund:
 - (a) All amounts paid out of the Public Purpose Fund maintained under Division 7 of Part 3.1 of the Legal Profession Act 2004 for the purpose of supplementation of the Legal Aid Fund;
 - (b) Any money appropriated by Parliament for the purposes of the Fund;
 - (c) Any money received by the State of New South Wales from the Commonwealth for the purposes of legal aid;
 - (d) Amounts paid to the Commission under section 36 (1) (a) or (b) or recovered by it under section 36 (3);

- (d1) Money received by the Commission in respect of services performed or carried out under clause 20 of Schedule 8;
 - (e) Money received by the Commission by way of payment of party and party costs;
 - (f) Money received by the Commission pursuant to a direction under section 44 (1);
 - (g) Money recovered by the Commission under section 45 (2);
 - (h) Amounts paid to the Commission pursuant to a determination under section 46 (1) or recovered by it under section 46 (3);
 - (i) (Repealed);
 - (j) Penalties recovered pursuant to this Act; and
 - (k) The interest from time to time accruing from the investment of the Fund.
- (2) There may be paid into the Fund money, other than money referred to in subsection (1), which may lawfully be paid into the Fund.
- (3) The Commission shall maintain a separate account or accounts in the Fund for money:
- (a) Received for or on behalf of a legally assisted person by a private legal practitioner when acting as a solicitor on behalf of the person; or
 - (b) Otherwise payable to a legally assisted person, not being money payable into the trust account referred to in section 64A.
- (4) Interest from time to time accruing from the investment of money in a separate account referred to in subsection (3) does not form part of that separate account and is not payable to the legally assisted person concerned.

Section 64. Payments out of the Fund

There may be paid out of the Fund:

- (a) All charges, costs and expenses incurred by the Commission in the exercise of its functions under this Act;
- (b) Costs and expenses incurred in respect of applications for legal aid;
- (c) Fees payable to private legal practitioners to whom work is assigned by the Commission;

- (d) Disbursements incurred on behalf of legally assisted persons;
- (e) Subject to section 47, costs awarded against legally assisted persons;
- (f) Money referred to in section 63 (1) (f) which is payable by the Commission to legally assisted persons;
- (g) Money granted by the Commission in respect of legal aid schemes administered by other persons; and
- (h) All other amounts required or authorised by this Act to be paid out of the Fund.

*Australia, Legal Aid Commission Act of New South Wales, 1979,
as amended in 2014.*

Section 13. Funds of the Board

- (1) There shall be a fund of the Board and the following sums shall be credited to the fund, namely:
 - (a) Grants made by the Government;
 - (b) Grants from the local authorities, any other institution, company or person;
 - (c) Grants from any foreign organization;
 - (d) Money received by the Board from any other source.
- (2) The money of the fund shall be kept in a scheduled Bank approved by the Board.
- (3) The money of the fund may be withdrawn by the joint signature of the Chairman and Member Secretary of the Board.
- (4) Money as may be required for the District Committee shall be sanctioned from this fund.
- (5) All necessary expenses of the Board shall be met up from the fund.
- (6) The Board may invest its fund to any scheme approved by the Government.

Section 14. Fund of the District Committee

- (1) Every District Committee shall have a fund and money sanctioned by the Board, grant from any person or institution and money received from any other source shall be credited to the fund.

(2) The money of the fund of the District Committee shall be kept in the respective district branch of any government bank.

(3) From this fund the litigants who are incapable of seeking justice due to financial insolvency, destitution, helplessness and for various socio-economic conditions shall be given legal aid according to the application or petition which are granted and the necessary expenses of the District Committee shall be met up.

Bangladesh, Legal Aid Services Act, 2000.

Section 15. National Legal Aid Fund

(1) The Central Authority shall establish a fund to be called the National Legal Aid Fund and there shall be credited thereto:

(a) All sums or money given as grants by the Central Government under Section 14;

(b) Any grants or donations that may be made to the Central Authority by any other person for the purposes of this Act;

(c) Any amount received by the Central Authority under the orders of any court or from any other source.

(2) The National Legal Aid Fund shall be applied for meeting:

(a) The cost of legal services provided under this Act including grants made to State Authorities;

(b) The cost of Legal services provided by the Supreme Court Legal Services Committee;

(c) Any other expenses which are required to be met by the Central Authority.

Section 16. State Legal Aid Fund

(1) A State Authority shall establish a fund to be called the State Legal Aid Fund and there shall be credited thereto:

(a) All sums of money paid to it or any grants made by the Central Authority for the purposes of this Act;

(b) Any grants or donations that may be made to the State Authority by the State Government or by any person for the purposes of this Act;

- (c) Any other amount received by the State Authority under the orders of any court or from any other source.
- (2) A State Legal Aid Fund shall be applied for meeting:
 - (a) The cost of functions referred to in Section 7;
 - (b) The cost of legal services provided by the High Court Legal Services Committees;
 - (c) Any other expenses which are required to be met by the State Authority.

India, Legal Services Authorities Act, 1987.

Article 41. Budget

Budget provisions must be adjusted in accordance with the applicable national law and the federal nature of the jurisdiction, if applicable.

Comparative models

Section 17. Budget

The Organization shall, by such date in each year as may be specified by the Government, submit to the Government for approval a budget for each financial year showing the estimated receipts and expenditure and the sums which are likely to be required from the government during that financial year.

Bangladesh, Legal Aid Services Act, 2000.

Section 25. Annual budgets

- (1) The commission shall, not later than September 30 in each financial year, prepare and adopt and submit to the minister a budget containing estimates of all sums required during the next financial year for the purposes of the commission, and in each budget there shall be set out the estimated revenue and expenditure in the detail and in the form that the minister prescribes.
- (2) Where in a financial year it appears that the actual revenue or expenditure of the commission is likely to be substantially greater or less than estimated in its budget, the commission may, and, where required by the minister, shall submit to him or her a revised budget containing the

particulars required under subsection (1), and, in addition, the particulars of actual receipts and payments and outstanding liabilities up to the date of submission.

(3) The minister may disapprove or, subject to the approval of the Lieutenant-Governor in Council, approve a budget submitted by the commission.

(4) Where the minister requires the commission to submit a revised budget under subsection (2), he or she may notify the commission that the approval given in respect of a budget previously submitted is withdrawn and in each case shall state the date upon which the withdrawal takes effect.

*Canada, Legal Aid Act of Newfoundland and Labrador, 1996,
as amended in 2012.*

Section 27. Budget

The Commission shall before the commencement of each financial year adopt a budget indicating its estimates of revenue and expenditure in respect of that financial year. A copy of the budget shall be forwarded to the Minister. The Minister shall be provided promptly with any information he or she may request from time to time relating to the financial position of the Commission.

Fiji, Legal Aid Act, 1996.

(i) Appropriations

There are authorized to be appropriated to the United States courts, out of any money in the Treasury not otherwise appropriated, sums necessary to carry out the provisions of this section, including funds for the continuing education and training of persons providing representational services under this section. When so specified in appropriation acts, such appropriations shall remain available until expended. Payments from such appropriations shall be made under the supervision of the Director of the Administrative Office of the United States Courts.

*United States, United States Code,
Title 18, sect. 3006A - Adequate representation of defendants.*

Section 13. Audit

The accounts of the Council shall be audited in accordance with the relevant laws after the end of each financial year by auditors appointed by the Board and the fees of the auditors and the expenses for the audit generally shall be paid from the Legal Aid General Fund.

Nigeria, Legal Aid Act, 2011.

Article 42. Exemption from court costs

Pursuant to article 12.1.7, article 42 confirms the right of the legal aid beneficiary to be exempted from court costs. A legal aid system that is accessible and affordable must provide for exemption from court fees and costs. For example, in Mexico, exemption from court costs is guaranteed in the Constitution.

Article 17

Every person has the right to have quick, complete and impartial justice by courts, which shall be open for the administration of justice at such times and under such conditions as established by law. The courts' services shall be gratuitous and all judicial costs are, therefore, prohibited.

Mexico, Constitution, 1917.

While it is important to recognize that the criminal justice system must absorb costs in order to operate, economic impact studies show that the provision of legal aid reduces the length of pretrial detention, shortens case-resolution times and minimizes the risk of miscarriage of justice, which ultimately results in savings for the criminal justice system and may have an economic stimulus effect.

Some legal systems provide for another form of legal aid called “judicial aid”, whereby the legal aid entity can be held liable for court costs in civil actions filed by a victim of a crime seeking compensation for damages. In South Africa, when costs are made payable to a legal aid beneficiary, Legal Aid South Africa can recover those costs.

Article 20. Recovery of costs by Legal Aid South Africa

(1) Whenever in any judicial proceedings or any dispute in respect of which legal aid is rendered to a litigant or other person by Legal Aid South Africa, costs become payable to that litigant or other person in terms of a judgment of the court or a settlement or otherwise, it is, subject to the powers of the Board referred to in section 4 with regard to the fixing of conditions, deemed that the litigant or other person has ceded his or her rights to those costs to Legal Aid South Africa.

(2) A litigant or person referred to in subsection (1) or his or her legal representative or Legal Aid South Africa must, at any time before payment of the costs deemed in terms of subsection (1) to be ceded to Legal

Aid South Africa, whether before or after those costs become payable, give the person by whom the costs are to be paid at his or her last known address and the registrar or clerk of the court concerned notice in writing that legal aid is being or has been rendered, and Legal Aid South Africa may proceed in its own name to have those costs taxed and to recover them, without being substituted on the record of the judicial proceedings concerned, if any, for the litigant in question.

(3) The costs referred to in subsection (1) must be calculated and the bill of costs concerned, if any, must be taxed or agreed as if the litigant or person to whom legal aid was rendered, had obtained the services of the legal representative acting on his or her behalf in the proceedings or dispute concerned, without the aid of Legal Aid South Africa.

South Africa, Legal Aid South Africa Act, 2014.

Chapter 7. Rules and regulations

Article 43. Regulating authority

In most countries, enactment of primary legislation is not enough when establishing a legal aid system. The establishment of a legal aid system and delivery of legal aid services require, in addition to primary legislation that provides a more general framework, the adoption of rules and regulations that set out in detail how the legal aid is to be delivered in practice.

Regulations are generally adopted by administrative bodies, typically within the executive branch of the government. In some countries, a minister may adopt regulations based on recommendations of the Legal Aid Authority, subject to parliamentary approval (e.g., in South Africa). In other countries, regulations are adopted by the Legal Aid Authority and are subject to governmental approval (e.g., in Bangladesh), or by the Legal Aid Authority alone, (e.g., in Sierra Leone).

Comparative models

Article 23. Regulations

- (1) The Minister must, after receipt of recommendations of the Board, make regulations relating to:
 - (a) the types of matters, both civil and criminal, in respect of which Legal Aid
South Africa:
 - (i) Provides legal aid;
 - (ii) Does not provide legal aid; and
 - (iii) Provides limited legal aid and the circumstances in which it does so;
 - (b) The requirements or criteria that an applicant must comply with in order to qualify for legal aid, as well as the terms and conditions on which such legal aid is made available to the applicant;

(c) The policy relating to the approval or refusal of legal aid, the termination of legal aid and appeals against such refusal or termination of legal aid; and

(d) Any matter which it is necessary or expedient to prescribe for the proper implementation or administration of this Act.

(2) Any regulations made under subsection (1) must, before publication thereof in the Gazette, be tabled in Parliament by the Minister for approval.

(3) The regulations made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding one year.

South Africa, Legal Aid South Africa Act, 2014.

Section 24. Power to make regulations

The Organization may, with prior approval of the Government and by notification in the Official Gazette, make regulations for carrying out the purposes of this Act.

Bangladesh, Legal Aid Services Act, 2000.

Section 40. Regulations

(1) The Board may by statutory instrument make rules or regulations for carrying out the purposes of this Act.

Sierra Leone, Legal Aid Act, 2012.

Article 44. Legal aid regulations

A legal aid law may designate the executive branch or other entity to make regulations (as in Fiji and Queensland, Australia) or provide guidelines on specific topics that should be formally regulated (as in Kenya and Singapore). Regulations may be used to expand the protection guaranteed by a legal aid law, as long as it is not done in contradiction with the law itself. A legal aid law may also provide for the amendment of regulations on the operation of the police and prosecutors, especially with regard to access to legal aid at police stations and during the early stages of the criminal justice process.

Comparative models

Section 35. Regulations

The Minister may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Fiji, Legal Aid Act, 1996.

Section 88. Regulation-making power

- (1) The Governor in Council may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may prescribe anything necessary or convenient to be prescribed:
 - (a) To enable a legal assistance arrangement to be made; or
 - (b) For performing or giving effect to a legal assistance arrangement.

*Australia, Legal Aid Queensland Act, 1997,
as amended in 2014.*

Section 23. Regulations

- (1) The Minister may make regulations not inconsistent with this Act prescribing all matters (other than the rules regulating the practice and procedure of any court referred to in section 19) which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without prejudice to the generality of subsection (1), the regulations may:
 - (a) Regulate all matters relating to fees, charges and costs in relation to proceedings to which an aided person is a party;
 - (b) Remit or provide for the remission of any fees or charges in any such proceedings;
 - (c) Make provision as to the cases in which a person may be refused legal aid or advice by reason of his conduct when seeking or receiving legal aid or advice (whether in the same or related matter or in a different matter);
 - (ca) Make provision as to the circumstances [in which] a Grant of Aid issued to a person may be cancelled;

- (d) Make provision for the recovery of sums due in respect of legal aid and for making effective the charge created by this Act on property recovered or preserved for a person receiving legal aid, including provision:
- (i) For the enforcement of any order or agreement for costs made in favour of a person who has received legal aid; and
 - (ii) For making a solicitor's right to payment wholly or partly dependent on his performance of any duties imposed on him by regulations made for the purposes of this paragraph;
- (e) Make any provision necessary to meet the special circumstances where:
- (i) A person seeks legal aid in a matter of special urgency;
 - (ii) A person begins to receive legal aid after having consulted a solicitor in the ordinary way with respect to the same matter, or ceases to receive legal aid before the matter in question is finally settled; and
 - (iii) There is any relevant change of circumstances while a person is receiving legal aid; and
- (f) Prescribe any forms to be used under this Act.
- (3) The regulations may apply generally to all legal matters, whether relating to proceedings in court or otherwise, or may apply to any specified class of matters or proceedings or to all matters or proceedings other than matters or proceedings of a specified class.
- (3a) Any fund established under this Act to meet the costs, fees, disbursements or expenses in connection with legal aid or advice under this Act may be applied for the purposes of legal aid or advice under the International Child Abduction Act (Cap. 143C).
- (4) The regulations may impose a penalty not exceeding \$2,000 for any breach of the regulations.
- (5) All regulations made under this Act shall be presented to Parliament as soon as possible after publication in the *Gazette*.

*Singapore, Legal Aid and Advice Act, 1995,
as amended in 2014.*

Section 86. Regulations

- (2) Notwithstanding the generality of subsection (1), the Regulations made under this Act may provide for:
- (a) The criteria for eligibility for legal aid;
 - (b) The procedures for the provision of legal aid to persons detained at police stations, or in remand, prison or other places of lawful custody;
 - (c) Procedures and terms and conditions of accreditation of service providers;
 - (d) The records to be kept by legal aid providers in relation to legal aid assignments and the reports to be submitted to the Service;
 - (e) The manner of applying for legal aid under this Act;
 - (f) The manner of assessing the financial resources of applicants and the eligibility of applicants for legal aid;
 - (g) The amount or amounts payable by a aided person;
 - (h) The method or methods for calculating what maximum grant, if any, should be set under a grant of legal aid in respect of proceedings;
 - (i) The manner in which applications for, and grants of, legal aid in respect of a child, and other persons with special requirements, are to be dealt with;
 - (j) The class or classes of defendants to whom priority shall be given or for whom services may be limited;
 - (k) The conditions relating to the delivery of services under any scheme;
 - (l) The methods for calculating the cost of services;
 - (m) The payment of interest in respect of costs of service;
 - (n) The circumstances and terms of refusal, variation and withdrawal of legal aid;
 - (o) Anything required to be prescribed under this Act; and
 - (p) Any other matters necessary for the administration of this Act.

Kenya, Legal Aid Act, 2016.

(h) Rules and reports

Each district court and court of appeals of a circuit shall submit a report on the appointment of counsel within its jurisdiction to the Administrative Office of the United States Courts in such form and at such times as the Judicial Conference of the United States may specify. The Judicial Conference of the United States may, from time to time, issue rules and regulations governing the operation of plans formulated under this section.

*United States, United States Code,
Title 18, sect. 3006A - Adequate representation of defendants.*

Chapter 8. Final provisions

Article 45. Commencement

Entry into force may be set on a specific date or within a set number of days from the publication in the official gazette or other official journal.

Article 46. Offences

In accordance with national law, countries may opt to introduce new crimes or offences for violation of the legal aid law or provide for a general prohibition against violation of the law, subject to an appropriate penalty, as in the law of Kenya.

Comparative model

Section 85. Offences

- (1) A member of the Board or an employee of the Service who:
 - (a) Knowingly subverts the process of providing legal aid;
 - (b) Knowingly obstructs the Service in the discharge of its functions; or
 - (c) Otherwise interferes with the functions of the Service, commits an offence.
- (2) Any person who commits an offence under this Act for which no penalty is provided is liable on conviction to a fine not exceeding two hundred and fifty thousand shillings or to imprisonment for a term not exceeding one year or to both.

Kenya, Legal Aid Act, 2016.

Other laws or regulations, such as the criminal code, may need to be amended in order to give effect to the law on legal aid.