

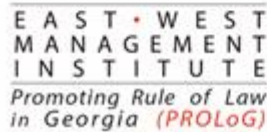


LEGAL AID SERVICE

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CONCEPT NOTE

Third International Conference on ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS

- Hosts:** The Parliament of Georgia
The Legal Aid Service of Georgia
The International Legal Foundation
The Open Society Justice Initiative
United Nations Development Programme
United Nations Office on Drugs and Crime
- Location:** Tbilisi, Georgia
- Date/Duration:** November 13 – 15, 2018; 3-day Conference
- Participants:** Representatives of Ministries of Justice, Supreme Courts, Public Defender or Legal Aid Offices, and Other entities responsible for provision of legal aid services from diverse countries and regions around the world; Private Sector and Civil Society Organizations engaged in legal aid work; International Experts; and Donors and Development Organizations
- Funding Sources:** Bilateral and multilateral donors; private foundations; in-kind contributions by hosts and participants

1. Overview

The Parliament of Georgia and the Legal Aid Service of Georgia, together with The International Legal Foundation (ILF), the Open Society Justice Initiative (OSJI), the United Nations Development Programme (UNDP), and the United Nations Office on Drugs and Crime (UNODC), and in collaboration with the United States Agency for International Development (USAID) Project “Promoting Rule of Law in Georgia” implemented by East-West Management Institute (EWMI-PROLoG), the European Union (EU), the Open Society Georgia Foundation (OSGF), the Council of Europe (CoE) “Support to the Judicial Reform” Project, and the United Nations Children’s Fund (UNICEF) will host the International Conference on Access to Legal Aid in Criminal Justice Systems in Tbilisi, Georgia from November 13 – 15, 2018 with the goal to address global challenges in ensuring access to quality legal aid services for the poor and vulnerable, particularly in criminal justice systems. This three-day event will be the third biennial global conference of its kind, following the inaugural conference held in Johannesburg, South Africa in June 2014, and the second conference held in Buenos Aires, Argentina in November 2016.

This Conference will carry forward the themes of the prior conferences by continuing to promote full implementation of the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*¹(the “UN Principles and Guidelines”), adopted by the UN General Assembly on 20 December 2012, and providing a forum in which high-level delegates from State governments, State and non-State legal aid providers, the judiciary, and legal aid experts can discuss common challenges, and share solutions, best practices and innovations for improving legal aid policies and practices. The Conference will also provide an opportunity for participants to discuss global and regional developments that can help advance access to legal aid in their individual countries. These developments include: (1) the adoption of the 2030 Agenda for Sustainable Development (specifically Goal 16 with target 16.3 on promoting the rule of law at the national and international levels, and ensuring equal access to justice for all), which promotes the principle of “*leave no one behind and reaching the furthest behind first*” and measures progress towards access to justice as a means of furthering sustainable development and sustaining peace;² (2) the call for the establishment of an international network of legal aid providers to facilitate the exchange of information and sharing of good practices and expertise;³ (3) the launch of the UNDP/UNODC Global Study on Legal Aid, which establishes a baseline understanding of how the right to legal aid has been defined and legal aid services provided in countries across different contexts, in civil, criminal, and administrative cases and makes some recommendations to strengthen the delivery of legal aid services worldwide;⁴ and (4) the Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for

¹ UN General Assembly, United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 28 March 2013, A/RES/67/187.

² UN General Assembly, Transforming our world: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1.

³ Commission on Crime Prevention and Criminal Justice, Promoting legal aid, including through a network of legal aid providers, 2016, resolution 25/2.

⁴ Available online at: http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruloflaw/global-study-on-legal-aid.html.

requested persons in European arrest warrant proceedings, which sets common standards across the European Union to ensure suspects and accused persons have access to legal aid.⁵

2. The Right to Legal Aid in Criminal Justice Systems

The right to free legal assistance for criminal defendants who are unable to afford a lawyer is a widely accepted principle of law and an essential component of the right to a fair trial. Legal aid provides a foundation for a fair and effective justice system based on the rule of law. A functioning legal aid system, as part of a functioning justice system, may reduce the length of time suspects are held in police stations and detention centers, 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.

This Conference will highlight global efforts to implement the UN Principles and Guidelines, which provide that States should put in place a comprehensive legal aid system that is accessible and effective, has a nationwide reach and is available to all without discrimination. The UN Principles and Guidelines, drawn from international standards and recognized good practices, provide practical guidance to States on the fundamental principles on which a criminal legal aid system should be based, and outline the specific elements required to ensure an accessible, effective, sustainable, and credible legal aid system – with giving due consideration to the fact that “States employ different models for the provision of legal aid”.⁶ The UN Principles and Guidelines adopt a wide approach to the definition of legal aid, including legal advice and assistance – also for victims and witnesses – to be provided at no cost to those without sufficient means or when the interests of justice so require.

Consistent with article 14 of the *International Covenant on Civil and Political Rights* (ICCPR) and the UN Principles and Guidelines, most States have laws guaranteeing the right to free legal representation for poor and vulnerable persons accused of crimes. Yet, all States face challenges in implementing this right, including limited financial resources, an inadequate number of lawyers, poor quality legal aid services, and insufficient training and awareness on the meaning and importance of effective legal representation. Further impeding access to legal aid is the fact that public awareness of legal aid is often low, and public trust and confidence in legal aid services may be compromised for a number of reasons, including bias, complexity, and concern about quality of services provided.

Legal aid is an essential tool in ensuring equal access to justice. As a result of the global crisis in access to legal aid, millions of poor and marginalized people around the world face illegal and excessive pretrial detention, torture, coerced confessions, and wrongful convictions. The poor are more likely to be held in pretrial detention, which carries severe social, economic and health consequences, as they are unable to afford bail, fines, and other fees. Police disproportionately target members of marginalized groups, including racial, ethnic and religious minorities, for arrest in many countries. Members of marginalized groups may also face disproportionate prosecutions, unfair trials, and sentences that are disproportionate to the crime committed.

Many States provide legal aid to victims and witnesses of crime, as encouraged by the UN Principles and Guidelines. This is a critically important issue, as denial of access to legal aid may result in

⁵ Available online at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L1919>.

⁶ UN General Assembly, UN Principles and Guidelines, A/RES/67/187, para. 10.

repeated victimization or secondary victimization, such as the victims' inability to escape from abusive relationships, protect their children, and manage their financial situations. In particular, for cases of sexual and gender based violence, access to legal information and assistance is part of the essential and comprehensive services that should be provided for survivors, in addition to access to health services, police and justice services, psycho-social support services and livelihood support.⁷

Women, as well as other groups such as children and persons with disabilities often also face additional barriers in accessing justice, and require specialized services, which may not be available. In many cases, children and women encounter difficulties in understanding and navigating the criminal justice system, due to language barriers, illiteracy or insufficient knowledge of their rights, as well as cultural barriers within communities; and child and women victims and survivors of violence often have no access to free legal aid or court support. As suspects, offenders and prisoners, women face unique challenges in the criminal justice system, which is typically geared to deal with male offenders and often does not adequately address the different characteristics and needs of women.

Effective legal aid institutions are also essential to sustaining peace, and preventing violence and instability from occurring or recurring. When there is insufficient and inadequate access to legal aid and justice, people are unable to resolve their grievances and disputes peacefully and might opt for violence and conflicts. Access to legal aid can also improve delivery of justice services to the victims of conflict and war and reduce impunity for serious human rights violations.

In addition to the right to legal aid for criminal matters, many states also recognize the importance of ensuring access to legal aid services for civil and family matters, particularly for the poor and marginalized. As noted in the Global Study on Legal Aid, “the demand for legal aid for civil cases is largely unmet in most countries. The need for increased access to legal aid services for civil and administrative cases, including family disputes and property matters, is particularly pronounced in Least Developed Countries.” In the context of the 2030 Agenda for sustainable development and ensuring access to justice for all, legal aid for civil matters is also essential to facilitate achievement of target 16.3 and to uphold the principle of *leaving no one behind*.

3. Background/Outcomes of the International Conferences on Access to Legal Aid

The biennial International Conference on Access to Legal Aid in Criminal Justice Systems has provided unprecedented opportunities for key stakeholders from States at all levels of development to share expertise and find better ways to meet legal aid service needs. During both previous conferences, participants were encouraged to develop concrete, action-oriented plans to address challenges related to the provision of criminal legal aid in their individual countries, and adopted outcome documents voicing their commitment to take concrete action to address the global legal aid crisis. Both the *Johannesburg Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (Johannesburg Declaration),⁸ and the *Buenos Aires*

⁷ See, for instance, UN Essential Services Package for Women and Girls Subject to Violence – Core Elements and Quality Guidelines, available online at <http://www.unodc.org/documents/justice-and-prison-reform/EN-Modules-AllInOne.pdf>.

⁸ Johannesburg Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Johannesburg, South Africa, 26 June 2014, available online at http://www.unodc.org/pdf/criminal_justice/2014_Johannesburg_Declaration_on_Implementation_of_UNPGLA.pdf.

Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (Buenos Aires Declaration)⁹ call upon States, legal aid providers, and stakeholders at all levels to pursue full implementation of the UN Principles and Guidelines.

Since the adoption of the UN Principles and Guidelines, and further to the conferences in South Africa and Argentina, a number of countries around the world have taken steps to strengthen access to legal aid, including enacting new legal aid legislation, and creating new legal aid institutions. At the regional level, there has also been significant reform. In Europe, on October 13, 2016, the Council of the European Union adopted the directive on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings. The directive lays down minimum rules concerning the right to legal aid for suspects or accused persons in criminal proceedings who are deprived of liberty, and ensures that legal aid is made available in European arrest warrant proceedings. Its adoption completes the EU Roadmap to strengthen procedural rights of suspected or accused people in criminal proceedings set up in 2009.

At the international level, a number of tools and publications have emerged including as a result of demand from the conferences. In 2017, UNODC published the *Model Law on Legal Aid in Criminal Justice Systems with Commentaries*¹⁰ to help guide and inspire legislative drafting in the development of new or reform of existing criminal legal aid legislation. In late 2016, the ILF published *Measuring Justice: Defining and Evaluating Quality for Criminal Legal Aid Providers*¹¹ to contribute to an international consensus around best practices in defining and measuring quality in criminal legal aid services. Furthermore, UNDP and UNODC announced the *Global Study on Legal Aid*¹² at the South Africa Conference and launched the results at the Argentina Conference.

4. Conference Hosts and Participants

This Conference will bring together a wide range of high level governmental, intergovernmental, private and civil society actors and experts to share and build upon successful strategies for delivering effective criminal legal aid services. A productive mix of policy makers, legal aid practitioners, and experts will ensure that this is a practical conference linking political, policy, and technical issues around strengthening or reforming legal aid systems. After hosting the first conference in Africa and the second in Latin America, the organizers hope that the third conference in Europe will provide an opportunity to spotlight key developments and challenges on the continent. Participants from countries around the world will be invited with due regard given to achieving diversity across regions, cultural backgrounds and legal traditions, and development stages, as well as varied experiences in providing legal aid services. International organizations, and donor and development organizations that support criminal legal aid reform will also be invited.

⁹ The Buenos Aires Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Buenos Aires, Argentina 17 November 2016. See ‘Outcome of the Second International Conference on Access to Legal Aid in Criminal Justice Systems, held in Buenos Aires, Argentina, 15-17 November 2016’, available online at https://www.unodc.org/documents/commissions/CCPCJ/CCPCJ_Sessions/CCPCJ_26/E_CN15_2017_CRP2_e_V1_703525.pdf.

¹⁰ Available online at: http://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Model_Law_on_Legal_Aid.pdf.

¹¹ Available online at: <http://theilf.org/wp-content/uploads/2011/08/ILF-Measuring-Justice-Report-FINAL.pdf>.

¹² See note 4 above.

The Parliament of Georgia and the Legal Aid Service of Georgia will host this conference in Tbilisi, enabling them to showcase innovative approaches, and discuss challenges to delivering criminal legal aid services in Georgia and throughout the region, in coordination with the following organizations: (i) the International Legal Foundation, an international non-governmental organization with recognized expertise in assisting post-conflict and transitional countries to provide quality, effective criminal defense services to poor and vulnerable accused persons, and a leading global advocate for the right to legal aid for the indigent accused; (ii) the Open Society Justice Initiative, an international non-government organization that protects and defends a culture of respect for human rights and the rule of law through litigation, legal advocacy and legal empowerment of individuals and communities; (iii) the UN Development Programme, which works in approximately 170 countries to achieve the eradication of poverty, reduction of inequalities and exclusion, including by promoting the rule of law, justice, security and human rights to accelerate structural transformations for sustainable development and to build resilience to crisis and shocks; and (iv) the UN Office on Drugs and Crime, which supports Member States in strengthening their systems of legal aid delivery through providing legal and policy advice, capacity building and training, based on the UN standards and norms in crime prevention and criminal justice, including the UN Principles and Guidelines.¹³

5. Objectives and Desired Outcomes of the Conference

By engaging national-level representatives, legal aid providers, civil society members, and other experts on common challenges to providing the poor and vulnerable with access to effective criminal legal aid services, and showcasing good practices and innovative solutions to common challenges this conference will focus on practical and achievable outcomes. The conference will build on the presentations and discussions from the first two conferences, and will highlight global, regional and national efforts to strengthen access to legal aid in recent years.

Throughout the conference participants will be encouraged to develop concrete, action-oriented plans to address challenges related to the provision of legal aid services and advance implementation of the UN Principles and Guidelines. Participants will also be encouraged to consider how additional frameworks and initiatives can integrate with that goal, such as the 2030 Agenda for Sustainable Development with its *principles of leaving no one behind, and reaching the furthest behind first*, and specifically Goal 16, target 3 on rule of law and access to justice for all, the most recent General Assembly Resolution on Sustaining Peace,¹⁴ the Open Government Partnership's National Action Plans, the International Legal Aid Network, and similar platforms and networks.

At the conclusion of the conference, participants will have the opportunity to adopt a declaration in which they commit to take action on items related to improving access to legal aid at the domestic level, and cooperation and collaboration at the regional and international levels.

6. Event Format

To encourage productive dialogue, discussion of good practices, and action-oriented outcomes, the conference will be divided into two types of sessions: (1) expert panel discussions, which will be

¹³ UN General Assembly, UN Principles and Guidelines, A/RES/67/187, paras. 6-7.

¹⁴ General Assembly resolution 70/305.

presented to the entire plenary or to 2-3 groups as parallel sessions, depending on the topic, will feature a broad range of speakers with diverse expertise and experience, and will be complemented by question and answer sessions from the audience; and (2) breakout sessions that will enable participants to break into 3-6 smaller groups to discuss topics addressed during panel sessions, ask questions, and brainstorm ways to implement reforms in their unique country contexts. Panel discussions on key topics may be plenary sessions, wherein all participants attend the session, or parallel sessions, where there are multiple sessions occurring simultaneously. Informal events may also be planned to foster dialogue and build networks for ongoing cooperation and collaboration.

Participants will be encouraged to develop concrete, action-oriented plans to address challenges related to the provision of legal aid to poor and vulnerable persons in their individual countries, and propose follow-up events at local, regional, or international levels. Materials will be distributed at the conference to help inform and guide discussions. To promote inclusiveness and active participation, multi-language translation services will be provided for as many sessions as possible.

7. Conference Topics

Conference topics may include the following: (1) Effective models of governance or administration of legal aid systems; (2) Mechanisms for ensuring the independence of legal aid providers and systems; (3) The role of bar associations and the private sector in legal aid, and their cooperation with public legal aid providers; (4) Good practices for measuring and improving quality of legal aid representation; (5) Standards for the monitoring and evaluation of legal aid systems; (6) Best practices for setting legal aid eligibility standards; (7) Strategies for reducing pretrial detention, including providing early access to legal aid; (8) Special measures to ensure meaningful access to legal aid for the extreme poor and for marginalized and vulnerable groups, and groups with specific needs, in line with the principle of *leaving no one behind*; (9) Core components of a child friendly system of legal aid; (10) Role of legal aid in restorative justice processes, mediation and alternative dispute resolution; (11) Providing legal aid to victims and others; (12) Innovations in expanding access to legal aid; (13) Innovating strategies to safeguard the rights of the accused, including plea bargaining and strategic litigation; (14) Challenges regarding respect of legal aid and human rights in terrorism and other serious cases; (15) Developing the International Legal Aid Network; and (16) Measuring and improving access to legal aid under Sustainable Development Goal 16, target 3.

While the conference will focus on legal aid in criminal justice systems, it will also provide an opportunity to address some related civil legal aid issues, as States and non-State actors often coordinate the strategies, funding, and administration of both criminal and civil legal aid.

8. Funding Sources

The costs of the conference will be supported by the conference hosts and co-hosts, with additional support provided by donors. Participants are responsible for any registration fees and their own expenses for travel and participation in the conference, or for securing funding to cover their costs. A limited number of scholarships may be made available by the co-hosts.