

The Tbilisi Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and Progress on ‘Access to Justice for All’ of the 2030 Agenda on Sustainable Development

*Tbilisi, Georgia
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We, the participants of the **Third International Conference on Access to Legal Aid in Criminal Justice Systems**, assembled on 13-15 November 2018 in Tbilisi, Georgia to discuss effective strategies to improve access to justice in criminal justice systems consistent with the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (UN Principles and Guidelines) unanimously adopted by the General Assembly in its resolution 67/187 in December of 2012 and the aspirations of the 2030 Agenda on Sustainable Development to achieve more peaceful, just and inclusive societies guaranteeing “access to justice for all.”

The Third International Conference on Access to Legal Aid in Criminal Justice Systems (Conference) brought together over 270 participants from more than 60 countries who are legal aid policy makers and practitioners from Ministries of Justice, the judiciary, public defender offices, bar associations, offices of public prosecution, and international organisations, as well as legal aid lawyers, community-based paralegals, civil society members, and other experts. The Conference built on the progress achieved since the First International Conference held in Johannesburg, South Africa in 2014 and the Second International Conference held in Buenos Aires, Argentina in 2016, and focused on addressing global challenges in ensuring access to quality legal aid for the poor and vulnerable, particularly in criminal justice systems.

Three days of deliberations produced this declaration, which was adopted at the closure of the Conference, with the request that it be publicised widely to legal aid networks and forwarded to national governments, the United Nations Human Rights Council, regional commissions, the Commission on Crime Prevention and Criminal Justice, the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice to be held in Kyoto, Japan in 2020, and shared in discussions around achieving the Sustainable Development Goals of the 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly in resolution 70/1.

We reaffirm that “legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial” and that it should be guaranteed by the State, as set forth in the UN Principles and Guidelines. We are convinced that provision of effective legal aid services that are provided promptly at all stages of the criminal justice process from the earliest stage possible, and that are of the highest possible quality, is necessary to guarantee the fundamental right to a fair trial as envisioned by the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights, and is indispensable to improving the functioning of criminal justice systems across the world, and decreasing excessive detention and imprisonment.

We acknowledge that there is a pressing need to enhance the quality of legal aid services to ensure that legal aid services are of sufficient quality to meaningfully safeguard the fairness of the proceedings and protect the fundamental rights of suspects, accused, or victims of crime. Further,

that States must provide sufficient funding to ensure that there is an effective legal aid system that provides quality legal aid services. We also acknowledge the need for legal aid systems to institutionalise quality measures, as well as a need for having external oversight mechanisms to assess and evaluate services and functioning of legal aid authorities, organisations, and providers.

We recognise that legal aid and assistance for civil and administrative matters is also critical to ensure access to justice for poor, vulnerable, and marginalised populations. Access to civil and administrative legal aid and awareness of legal rights, e.g., on family cases, labour disputes, and property and inheritance matters, is a powerful means for empowering people to realise their rights and entitlements, address their grievances, and overcome all forms of discrimination.

We acknowledge the role of legal aid services in supporting progress across the 2030 Agenda, including on poverty eradication (Goal 1), gender equality (Goal 5), decent work (Goal 8), reducing inequalities (Goal 10) and achieving more peaceful, just and inclusive societies (Goal 16), and note the need to invest in establishing robust legal aid systems as part of national development and justice sector plans. We recall Goal 16 of the Sustainable Development Goals in particular and its call to “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable, and inclusive institutions at all levels.” Furthermore, we acknowledge access to legal aid as a critical component of achieving Target 16.3, which calls for the “Promot[ion of] the rule of law at the national and international levels and [to] ensure equal access to justice for all.” In particular, we refer to the pledge to leave no one behind as a guide to efforts to provide meaningful access to quality legal aid, especially for populations that face multiple and intersecting barriers to accessing justice.

We are convinced that legal aid is an essential tool in ensuring equal access to justice for all, and that both State and non-State stakeholders have important roles to play in moving legal aid systems toward the ability to provide meaningful access to high quality legal aid. To expand access to legal aid, States are encouraged to recognize and encourage the contribution of a wide range of stakeholders and organisations that provide legal aid, including non-governmental organisations, community-based organisations, religious and non-religious charitable organisations, professional bodies and associations, and academia, and should consider establishing public-private and other forms of partnership. Further, States should consider including non-lawyers, including law students or paralegals, in the provision of legal aid services, with the guarantee of quality mechanisms in place, particularly where there is a shortage of qualified lawyers. Further, we encourage both State and non-State stakeholders to facilitate access to justice by using innovative approaches, including technology, to multiply human efforts, with appropriate safeguards to protect privacy and confidentiality.

We recognize that despite codified guarantees of non-discrimination and equal treatment before the law, minority and marginalised communities frequently encounter both implicit and explicit bias in their interactions with the justice system. Inequity can manifest at any point of contact with the justice system, from policing to sentencing to post-conviction processes. Rates of pre-trial detention have remained high over the last 10 years and often it is minority and marginalised populations that face the largest burden in terms of socio-economic, health, and personal cost of lengthy pre-trial detention. We welcome governments taking steps to recognise and reverse

discrimination in their justice systems, and recognise that meaningful access to high quality legal aid services for all poor, vulnerable, and marginalised suspects, accused persons and victims is an effective and efficient means of addressing the problem. We also welcome States taking steps in providing access to quality legal aid for the most vulnerable victims of crime, such as survivors of sexual and gender-based violence, persons with disabilities, and others.

We recognize that access to legal aid can contribute to reducing the number of pre-trial detainees and prisoners and the prevention of their torture and ill-treatment, and that reducing pre-trial detention is a key indicator of progress towards access to justice under Sustainable Development Goal 16. To uphold fair trial standards and the right to liberty, it is crucial to inform persons of their right to legal advice and assistance and the consequence of any waiver prior to any questioning and at the time of deprivation of liberty, to ensure that persons meet with a legal aid provider promptly after their arrest and at all stages of the case, including when pre-trial detention decisions are made, and to prohibit, in the absence of any compelling circumstances, any interviewing of a person by the police in the absence of a legal aid provider.

We acknowledge the particular challenges facing conflict-affected and fragile contexts, and recognise that access to justice, including meaningful access to quality legal aid services, can be a means of sustaining peace and preventing a return to instability or conflict. We affirm the need to provide legal aid through innovative and rapid response initiatives, including for detainees, refugees and displaced persons, survivors of conflict-related sexual violence, and victims of human rights violations, as well as to lay the foundations for sustainable legal aid systems capable of ensuring accessible, effective, high quality and credible legal aid services.

With this Declaration, we assert the critical role that legal aid plays in ensuring equal access to justice for all, protecting fundamental rights, countering all forms of discrimination, and directing improvements in the justice system. Supporting prompt and effective access to high quality legal aid and the independence of the function of legal aid providers and organisations that provide legal aid services, along with other measures, facilitates the protection of marginalised groups and the reversal of discrimination and disparate impact. Furthermore, legal aid providers, legal aid organisations and legal aid authorities that provide or administer legal aid improve and increase these groups' access to the justice system and, with it, the enjoyment of other rights and freedoms.

In line with the recommendations of the participants attending the Conference we resolve the following:

- I. *We call upon all States* to proclaim and demonstrate political will and commitment to achieve the aspirations and objectives as set out in this Declaration, and to fully implement the provisions of the UN Principles and Guidelines, as well as the related provisions under other relevant international and regional instruments, in pursuit of the aspirations of the 2030 Agenda on Sustainable Development (Goal 16 and Target 16.3 in particular), and with particular attention to “leaving no one behind” by enhancing meaningful access to quality legal aid for marginalised or vulnerable populations, groups with special needs, and those living in rural, remote or underserved areas. In this regard, we call upon all States to review and, where necessary, amend existing, or enact new legal aid legislation and

policies; to establish effective systems for the delivery of legal aid, with a particular emphasis on ensuring there are mechanisms and policies in place to provide access to legal aid to *all* suspected or accused persons who cannot afford a lawyer as early as possible in the criminal justice process but no later than before the first questioning; to prioritise the dedicated, independent, and sustainable funding of the delivery of legal aid as well as to ensure equal distribution of funds between prosecution and legal aid agencies; to ensure that legal aid providers, organisations and authorities that oversee and provide legal aid operate independently of the influence of the government, judiciary, the prosecution, bar associations, and other criminal justice system stakeholder groups; and to ensure that legal aid providers have the necessary qualifications, training, experience, and supervision to provide quality legal aid services that are rooted in a firm understanding of professional standards for legal aid providers, codes of conduct, and ethical duties, including specialized legal aid services for vulnerable and marginalised populations, including detainees, convicted persons, and prisoners, persons with disabilities, women, children, the elderly, and people on the move affected by conflict such as refugees, internally displaced persons and migrants, victims and witnesses, among others. We also call upon States to incorporate the principles of the 2030 Agenda for Sustainable Development as part of justice sector policy development and integrated into national development plans so that no one is left behind and that the furthest behind are reached first, to ensure that the administration of justice protects the rights of poor and marginalised populations, and to promote equitable justice outcomes for all.

II. *We call upon all organisations that provide, supervise and administer legal aid services,* both governmental and non-governmental, to develop and maintain high quality, effective, client-centred, independent, and holistic legal aid services for all persons without discrimination. To implement this, we call upon organisations that provide, supervise and administer legal aid services to engage in the development and implementation of clear performance standards and guidelines that set the minimum activities necessary for providing quality legal aid services, both during and outside of the litigation of a particular case, and at the pre-trial, trial, and post-disposition phases of cases; to establish effective monitoring and evaluation mechanisms to ensure the quality of legal aid services; to require and engage in the necessary education, training, and specialisation to provide quality legal aid services; to facilitate access to their services for marginalised groups through both geographic presence and community outreach; to expand the scope of their mandate, where possible, to work to change policies that harm poor, vulnerable, and marginalised groups in the justice system, as well as their families and communities; to incorporate coordinated civil legal services with criminal legal aid services where possible or make appropriate referrals to other service organisations, including pro bono services provided by bar associations or others, facilitating holistic services that address the full impact of an individual's contact with the justice system; and to establish individualised needs assessments to determine each client's needs for social services and identify opportunities for diversion.

III. We call upon the international community, including international and regional bodies, networks, civil society organisations, international donor organisations, bilateral agencies, and the UN system, to continue to support the full implementation of the UN Principles and Guidelines and Goal 16 of the Sustainable Development Goals through programmatic and technical assistance to national partners, appropriately contextualized, and the development of practical guidance to improve access to justice for all, with a particular emphasis on promoting quality in legal aid services; to allocate a proportionate share of the funding dedicated to strengthening justice and security institutions to strengthening legal aid, and to commit to multiyear budgeting to ensure long-term, predictable funding throughout the process of building effective legal aid institutions.

Action Points:

- A. Advocate with and assist State, governmental, and non-governmental organisations that provide legal aid services to develop a clear understanding and guidance and standards on the provision of quality legal aid services and encourage the adoption of quality assurance mechanisms which will guarantee adequate, effective, and prompt legal aid services.
- B. Encourage structured partnerships between governmental and non-governmental organisations to develop and implement national legal aid strategies that expand access to legal aid and improve equal access to justice for all.
- C. Advocate with and assist State, governmental, and non-governmental stakeholders to establish clear policies and mechanisms to provide early access to legal aid to ensure a fair trial, reduce excessive, arbitrary, and unlawful pre-trial detention, and prevent torture and ill-treatment, including by improving effective communication between police stations, administration of prison/detention or other facilities where persons are deprived of their liberty, and organisations and networks that provide legal aid services, and establish the provision of legal aid as an integrated part of prison/detention facility management policies and practices.
- D. Encourage legal aid authorities, justice stakeholders, governmental and non-governmental organisations and authorities that provide and administer legal aid services to collect, analyse and exchange data on the functioning of the legal aid system and regularly monitor the progress of the system, and also to proactively disclose information and data on legal aid services in the public domain to facilitate transparency and accountability. Further, regularly review, develop, and implement aggregate legal aid needs assessment mechanisms, strategies, and legislation to meet people's holistic legal needs, including on civil and administrative matters, for groups who are disparately impacted or discriminated against based on grounds such as their race, colour, religion, national origin, gender, or any other status, for persons who are socially and economically excluded and deprived, and for marginalized and vulnerable groups, including children, the elderly, persons with disability, victims of sexual and

gender-based violence, refugees, migrants, and displaced persons, consistent with the Sustainable Development Goal pledge to leave no one behind, as a means of ensuring that they enjoy full access to justice on an equal basis.

- E. Support the development of child-friendly legal aid systems to provide high-quality legal aid to children in contact with the justice system, including children in conflict with the law, child victims and witnesses of crime, children at risk, and children participating in civil and administrative proceedings.
- F. As an integral part of achieving the 2030 Agenda on Sustainable Development and particularly Goal 16 and Target 16.3 of the Sustainable Development Goals, advocate and assist State, governmental, and non-governmental stakeholders to implement, monitor, and report on the role of legal aid in ensuring access to justice for all, including investing in systematic data collection, in line with human rights based approaches to data, to measure progress in provision of legal aid services in criminal, civil, and administrative matters. Furthermore, in light of the scheduled review of the progress on implementation of Goal 16 in 2019 at the United Nations High Level Political Forum, we the participants of this Conference will reach out to our respective governments for the purpose of feeding into the “Voluntary National Report” drafting processes and ensure that access to justice and pre-trial detention target and indicator are included in the national reports that are to be submitted to the United Nations.
- G. Encourage the delegates to the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, convening in Kyoto, Japan in 2020, to recognise and reinforce the importance of effective application of the UN Principles and Guidelines and prioritisation of implementation of Goal 16, and Access to Justice target in particular, in its final declaration, and further to reinforce the call for the establishment of networks of legal aid providers to facilitate the exchange of information and sharing of good practices and expertise, as called for by the Commission on Crime Prevention and Criminal Justice, resolution 25/2, Promoting legal aid, including through a network of legal aid providers.
- H. Establish international and regional cooperation mechanisms among legal aid authorities and organisations that provide legal aid services, particularly for the purpose of international assistance and cooperation in the representation of poor, vulnerable, or marginalised persons unable to fully access, enjoy, and enforce their legal rights universally.
- I. Engage in national, regional, and international forums to ensure that the recommendations from this Conference and the previous conferences are taken forward, and advocate for the promotion of legal aid strategies to address inequality and discrimination as part of the sustainable development, human rights and crime prevention agendas in a concrete and measurable manner.

- J. Build on efforts made at the Conference to establish the International Legal Aid Network (ILAN) and continue to promote the establishment of national and regional legal aid networks. In this respect we call upon donors, governmental and non-governmental organisations, and the private sector to ensure the resources and support necessary for the establishment, administration, and organisation of such networks.

- K. Support the convening of the Fourth International Conference on Access to Legal Aid in Criminal Justice Systems in 2020, as well as regional and national-level conferences, to enable discussion of progress, challenges, and exchange of good practices among governments, organisations that provide legal aid services, civil society and community-based organisations, academia, and other relevant stakeholders.