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Widening Access to Justice:

Quality of Legal Aid and New UN Principles
and Guidelines on Access to Legal Aid



International Workshop Report

*Organized jointly by the United Nations Development Programme,
the Ministry of Justice, and the National Legal Aid Council of the Republic of Moldova*

International Workshop

Widening Access to Justice: Quality of Legal Aid and New UN Principles and Guidelines on Access to Legal Aid

Chisinau, Republic of Moldova
25-26 April 2013

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the Ministry of Justice, and the National Legal Aid Council of the Republic
of Moldova*

Report

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Executive Summary

In April 2012, the UN Commission on Crime Prevention and Criminal Justice adopted the first international instrument exclusively dedicated to legal aid. The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, subsequently endorsed by the General Assembly in December 2012, provide a broad framework for institutionalizing and applying international principles in local contexts to ensure that suspects, detainees, accused and imprisoned persons have access to legal aid.

The Principles and Guidelines call on Member States “to adopt and strengthen measures to ensure that effective legal aid is provided, in accordance with the spirit of the Principles and Guidelines, bearing in mind the diversity of criminal justice systems among different countries and regions around the world”. They further encourage States to draw upon the guidelines in accordance with national laws “in undertaking national efforts and measures to strengthen access to legal aid in criminal justice systems”.

Access to justice for the poor and disadvantaged occupies a specific niche in UNDP’s mandate to strengthen democratic governance and promote pro-poor change. Empowering disadvantaged individuals and

groups through legal aid to seek remedies for injustice can strengthen the accountability mechanisms between right-holders and duty-bearers, and contribute to creating transparent, accountable and inclusive institutions.

Legal aid, as part of an access to justice agenda, is a rapidly growing area in the world, which is in its advanced stages in some countries of the region (as in Georgia, Moldova and Ukraine), and which is emerging in the other countries (as in the case of the Central Asian countries).

Legal aid and awareness can help disadvantaged groups and marginalized communities to seek redress for a host of situations where rights are denied or violated, such as forced evictions, forced labour without pay, arbitrary arrest or torture. Remedies for violations of such rights often require the services of lawyers and considerable expenses that discourage those who cannot afford them from seeking just remedies. Legal aid can help overcome some of these barriers.

Bearing this in mind, the UNDP Bratislava Regional Centre and UNDP Moldova, in partnership with the Ministry of Justice of the

Republic of Moldova and the National Legal Aid Council of the Republic of Moldova (NLAC), convened a two-day international workshop on “Widening Access to Justice: Quality of Legal Aid and New UN Principles and Guidelines on Access to Legal Aid” in Europe and the CIS countries.

The workshop pursued the following objectives:

- To introduce the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (hereinafter, UN Principles and Guidelines) and set up a framework for their further implementation;
- Exchange knowledge and expertise showcasing different national legal aid systems and mechanisms in Europe and Central Asia, and introduce lessons learned and good practices from different regions/sub-regions in order to find practical solutions to existing challenges;
- Contribute to the ongoing networks of national legal aid institutions, experts and practitioners.

The workshop was attended by a wide range of actors dealing with legal aid issues in Europe and the CIS region. Participants represented national legal aid institutions, bar associations, ministries of justice, NGOs, civil society organisations (CSOs) active in the provision of legal aid and promoting community-based legal awareness programmes, and the UN agencies (United Nations Development Programme (UNDP) and United Nations Office on Drugs and Crime (UNODC)). Among the participating countries were: Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Montenegro, the

Republic of Moldova, Tajikistan, Ukraine, the United Kingdom and Uzbekistan.

The workshop discussions were structured to address the access to legal aid issues both from the perspective of international developments and of country practices and innovative examples. Day 1 focused on introducing the UN Principles and Guidelines and featured a detailed debate on how these international standards can be operationalized at the national level by the interested parties: the “supply” side (national legal aid services) and the “demand” side (representatives of NGOs, CSOs, bar associations and other organizations). The discussions continued with how the access to justice can be expanded through access to legal aid, and what the emerging trends and issues in this field are. A number of country-specific proposals were also presented.

During Day 2, the participants further explored the way in which the national legal aid systems represented work, the challenges to ensuring access to legal aid for vulnerable groups and possible solutions. The value of the assessment exercise as a tool for the identification of capacity gaps and priorities for action was emphasized. Based on the example of the Republic of Moldova it was demonstrated that assessing the quality and effectiveness of national legal aid systems can be used to optimize the provision of qualitative legal aid. Particular attention was given to *pro bono* services as an opportunity to further promote and ensure access to justice to those in need. Another session was dedicated to discussions on the next steps/actions to be undertaken for setting up a regional follow-up agenda in the access to justice and legal aid fields.

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Recommendations

- (a) The UN Principles and Guidelines are an important instrument which shall be taken into account and implemented in national contexts.
 - (b) Taking into account that certain groups are entitled to additional protection or are more vulnerable when involved with the justice system, States should introduce in their legal aid systems specific provisions for women, children and groups with special needs.
 - (c) The UN Principles and Guidelines embody key elements of an effective and functional legal aid system. These standards could be applied as a tool for assessing the operation of national legal aid systems. They could be used to explore and verify how the standards are put in practice and how the situation could be improved, if necessary.
 - (d) The legal aid service should be concerned not only with provision of legal aid, but also with ensuring quality. This complex approach requires close interaction of the legal aid service with other interested State, private and professional bodies.
 - (e) Establishing legal aid services is a “creative” process. Copying a legal aid scheme from another legal system would be counterproductive.
- Interventions should be adapted to national context. Governments are constantly in search of ways to set up legal aid services in order to accommodate both their capacities and people’s needs. The position of legal aid services as institutions within government structures should be an internal decision of the State, which corresponds to the arrangements and resources available. In this case, it should be ensured that the legal aid service is independent and has the necessary instruments, funds and other resources in place in order to function effectively.
- (f) The bar associations are important players when instituting legal aid services. In this sense the bar can be a powerful means to providing quantity and quality in legal aid and, therefore, should be perceived as a reliable partner. However, bar associations from the region still lack the capacity to efficiently manage the legal profession, and in some cases even disapprove of setting up legal aid schemes which are not under the control/management of bar associations. This situation requires particular attention and consideration. There is a need to strengthen bar

- associations, specifically their quality assurance and disciplinary functions.
- (g) Training is important in order to ensure qualitative legal aid. The legal aid service, along with other interested parties, including bar associations, ministries of justice and NGOs, should play an important role in developing and promoting training schemes. A well-structured training system may be one of the incentives for the lawyers to join and stay within the legal aid system.
 - (h) NGOs have unexplored potential in the legal aid field, and specifically in providing primary legal aid. States should pay particular attention to developing partnerships in this field.
 - (i) States should undertake measures to inform their populations through all appropriate means about their rights and obligations under the law, what constitutes illegal activity, and the general functioning of the justice system.
 - (j) *Pro bono* and free legal aid look and sound alike, but are different. Legal aid systems could develop partnerships with *pro bono* aid, but this requires creativity, openness and flexibility.

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Workshop proceedings

3.1. Day 1: International Principles and New Developments

Day 1 delivered a platform for introducing the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. This international instrument, exclusively dedicated to legal aid, connects in an effective manner different blocks of justice systems with the demands and needs of different groups of people, including vulnerable and disadvantaged groups. Legal aid is increasingly seen as a vital component of a fair and accessible justice system, and necessary for redressing situations where rights are denied or violated. Therefore, unlocking the full potential of the UN Principles and Guidelines is critical. This work is in line with the UN post-2015 consultations as part of formulating new global development goals. In this context, legal aid can be very powerful in making governments responsive and accountable to people.

The workshop was opened by Vladimir Grosu, Deputy Minister of Justice of the Republic of Moldova, followed by Nicola Harrington-Buhay, UN Resident Coordinator and UNDP Resident Representative in the

Republic of Moldova, Monjurul Kabir, UNDP's Policy Adviser and Regional Project Manager for the Rule of Law, Justice, and Human Rights, and Victor Zaharia, Chair of NLAC. The panel highly appreciated the decision to choose the Republic of Moldova as the host country of the first international event dedicated to the UN Principles and Guidelines. The host country had relatively recently reformed the legal aid system, and had succeeded in making significant advances in its organization, so it served as a good practice example for the region.

Vladimir Grosu highlighted the significance of legal aid in a democratic society and mentioned the recent developments in the legal aid field in Moldova: expanding legal aid to non-criminal matters, and setting up the administrative body of the NLAC for better management of the system.

Nicola Harrington-Buhay mentioned the importance of ensuring access to justice for the vulnerable groups and the critical value of legal aid in this respect. The UN Principles and Guidelines should be used at full potential to develop a global discussion on legal aid systems and promote regional/country experience and sharing of best practices.

Monjurul Kabir reiterated that legal aid is increasingly seen as a vital component of fair and accessible justice systems and that it is necessary for the protection of rights. Therefore, unlocking the full potential of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice and other legal standards is critical. This echoes the priorities identified by people from all over the world through MY UN Survey on what new development goals the UN should develop to replace the Millennium Development Goals (MDGs) post-2015. Legal aid can be very powerful in making governments both responsive to and accountable to people.

He summarized the key reasons for the regional initiatives:

1. To understand and operationalize UN Standards and Guidelines better – what they mean for us in the context of delivering justice – and to develop and improve national legal aid systems;
2. To promote assessment of legal aid systems and benefit from the experiences of others so that those who need legal aid the most can depend on its quality and predictability;
3. To facilitate exchange of knowledge and expertise showcasing different national legal aid systems and mechanisms in order to find practical solutions to existing access to justice challenges, as highlighted in the Concept Note for the conference.

Victor Zaharia pointed out that a functional legal aid system is based on several building blocks, including an operational management structure, the

multidisciplinarity of legal aid providers and a quality assurance mechanism. The Republic of Moldova's experience showed that the legal aid system has a disciplining effect on legal services providers. Many of the legal aid lawyers extended the legal aid requirements to their private practice. NGOs have unexplored potential in the legal aid field, specifically for providing primary legal aid. At the same time, it was expected that the international workshop would serve as a starting point for further regional cooperation, and knowledge and experience sharing.

The expert discussions started with a presentation by **Olga Zudova** (UNODC) of the UN Principles and Guidelines: process, challenges, content, and innovations. The UN Principles and Guidelines is the first international instrument exclusively dedicated to legal aid. ECOSOC resolution 2007/24 on International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa, paved the way for the new approach to legal aid that the Principles and Guidelines reflect. The process that led to the adoption of the new Principles and Guidelines took three years, and involved national experts from different legal systems and geographical backgrounds. It was initiated and led by several Member States from Africa, in particular Namibia and South Africa, which were later joined by other interested states such as Georgia and the Philippines. It also involved civil society organizations, the Open Society Institute (OSI), the International Legal Foundation (ILF) and the relevant UN agencies (UNDP, Office of the High Commissioner for Human Rights (OHCHR), United Nations Children's

Fund (UNICEF) and UN Women) and other international organizations (Council of Europe).

Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process (Principle 1).

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.

The UN Principles and Guidelines, which are drawn from international standards and recognize good practices, aim to provide guidance to States on the fundamental principles on which a legal aid system in criminal justice should be based and to outline the specific elements required for an effective and sustainable national legal aid system.

The UN Principles and Guidelines define “legal aid” as broadly as possible to include legal advice, assistance and representation for persons detained, arrested or imprisoned,

suspected, accused of, or charged with a criminal offence, and for victims and witnesses in the criminal justice process. Legal aid is provided at no cost for those without sufficient means, or when the interests of justice so require. Furthermore, it also includes 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 UN Principles and Guidelines recognize the State’s duty and responsibility to provide legal aid and to ensure that a comprehensive, accessible, effective, sustainable and credible legal aid system is in place (Principle 2). From this perspective, States are encouraged to establish a legal aid body to provide, administer, coordinate and monitor legal aid services. This body should be independent and have sufficient resources to operate the legal aid system (Guideline 11, Guideline 12). A good example of this is South Africa, where the Legal Aid Board has been active since 1971 to ensure provision of legal aid to indigent clients.

The UN Principles and Guidelines urge States to provide, without discrimination, prompt and effective legal aid (Principle 6 and Principle 7) to anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty, or if the interests of justice so require, at all stages of the trial (Principle 3, Guidelines 1-6). The same should be provided to the victims (Principle 4, Guideline 7) and witnesses (Principle 5, Guideline 8) of crime.

Recognizing that certain groups are entitled to additional protection or are more vulnerable when involved with the criminal justice system, the UN Principles and Guidelines also provide specific provisions for women (Guideline 9), children (Principle 11, Guideline 10) and groups with special needs (Principle 10).

The main providers of legal aid are lawyers, but the UN Principles and Guidelines also suggest that States should involve a wide range of stakeholders as legal aid service providers in the form of non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations, and academia. They recognize the use of paralegals – non-lawyers with sufficient knowledge and training to assist with basic legal needs, specifically where access to lawyers is limited (Guideline 14). One example of this is Malawi, where the Paralegal Advisory Service Institute managed to bring about a real improvement in the rights of detainees and prisoners. The importance of utilizing all resources available to a country, including law students (Guideline 16) is also recognized. In addition, States should ensure that legal aid providers are able to carry out their work effectively, freely and independently, without intimidation, hindrance, harassment or improper interference (Principle 12).

Early access to legal aid is essential for the proper protection of people's rights. Therefore, the UN Principles and Guidelines recommend that people urgently requiring legal aid at police stations, detention centres or courts should be provided with

preliminary legal aid while their eligibility is being determined (Guideline 1). A similar approach was taken by the European Court of Human Rights in *Salduz v. Turkey* (2008). To support this standard, UNODC and UNDP are developing a tool/handbook on early access to legal services. The aim of this tool is to provide guidance on how to establish early access schemes, considering that the first encounter of suspects with the criminal justice system is crucial to maintaining their rights throughout the criminal justice process. It is also the moment where there is the highest risk of abuse, for example, torture, coerced confessions and corruption.

As a first intervention, Andrii Vyshnevskiy (Legal Aid Coordination Centre, Ministry of Justice, Ukraine) mentioned that in the case of the Ukrainian legal aid system, to preserve the independence of advocates, all legal aid lawyers have the same status (there is no separation between private legal aid lawyers and public defenders). Another important aspect of the Ukrainian system is that there are incentives for lawyers to provide legal aid in difficult-to-access and remote regions (e.g., less competition, differentiated remuneration, travel cost recovery). In Belarus, however, there is a minimum (and no maximum) number of lawyers practicing in a specific area. One opinion was that lawyers should not "privatize" provision of legal aid, but that a variety of providers should be involved to ensure a fair and accessible legal aid system.

The introduction of the UN Principles and Guidelines was followed by the working group session: *Optimising and Operationalizing New International Standards on Legal Aid*, moderated by Roger

Smith, independent consultant and legal aid expert, United Kingdom. The moderator started the session with a debate on the three most important duties of States in connection with legal aid field. A variety of responses were received from participants, as follows:

- To allocate financial resources, the duty of legal aid services to include all subjects and to cover all regions;
- To ensure early access to legal services and offer services covering all groups with special needs, including women, children etc.;
- To provide legal aid services within 48 hours of a request being made, and also, in cases when it is impossible to verify the beneficiary's status, to cover costs related to procedural actions, like forensic/judicial expertise etc.;
- To ensure effective legal aid, excluding pro-forma assistance – the mere physical presence of a lawyer does not mean effective defence and assurance of equality of arms;
- To establish a legal framework, sufficient financial coverage and encourage involvement of non-state financial resources through fundraising activities;
- To ensure accessibility, non-discrimination, transparency and quality of legal aid services;
- To ensure the quality and control of legal aid services.

All of the above-mentioned duties are covered by Principle 2 of the UN Principles and Guidelines, which guided this discussion. However, none of the involved participants reflected on the duty of States to ensure the independence of the legal aid

providers. The lawyer is an important link for ensuring effective access to justice and the lawyer's independence is essential. The lawyer is accountable to the client only. The legal aid system should apply the same rule, with the peculiarity that the lawyer is accountable both to the client and to the State, taking into account that lawyers are contracted and paid by the State. Of course, in this situation the beneficiary of legal aid services is the client of legal aid. Another State duty is to inform and enhance the knowledge of the general public about their rights and obligations under the law, criminal actions, and the general functioning of the justice system.

The UN Principles and Guidelines embody the key elements of an effective and functional legal aid system. These standards could even be applied as a tool for assessing the operation of national legal aid systems. They invite the reader to explore and verify how the standards are put in practice and how the situation could be improved, if necessary. Bearing this in mind, the Working Group Session: Optimizing and Operationalizing New International Standards on Legal Aid engaged the participants in critical discussions along the lines enunciated in the UN Principles and Guidelines. Workshop participants were divided into two groups to address this topic from a double perspective: the "supply" side (national legal aid services) and the "demand" side (representatives of the NGOs, CSOs, bar associations and other organizations). Although both groups had significant overlaps in terms of topics and issues discussed, the following broad division was applied: the first group (Supply Side) brought together State actors – legal

aid services – to focus mainly on State institutions in charge of legal aid, and on their institutional development, challenges and solutions; the second group (Demand Side) brought together non-state actors – CSOs, bar associations and other actors to discuss provision of legal aid from the non-State perspective. As a group that often stands at the front line of legal aid and has direct interaction with stakeholders and beneficiaries, discussions here were expected to focus on the specific issues and challenges to implementation that exist in the field.

Supply side

The working group discussion focused mainly on the institutional place of the legal aid service in government structure, and its advantages and disadvantages, legal aid service and wider justice reforms; the independence and protection of legal aid providers, and regulation and oversight.

The group analyzed briefly three models of institutionalized legal aid services: Moldova, Georgia and Ukraine. In Moldova, the legal aid service is an independent collegial body, where various actors are represented (Ministry of Justice, Bar Association, Ministry of Finance, Superior Council of Magistracy and CSO/academia). This body has a cooperation relationship with the main actors: the Ministry of Justice and the Bar Association. The legal aid service in Georgia is part of the Ministry for Corrections and Legal Assistance. There is a consensus in Georgia that this organization is constantly under the risk of conflict of interest. On the one hand, the ministry is in charge of enforcing the criminal sentences, and on the

other, it is in charge of providing legal aid in the same cases. This situation led to the initiative to reform the legal aid service. Ukraine had very recently (January 2013) instituted the legal aid service under the Ministry of Justice with 27 regional centres for legal aid provision.

The UN Principles and Guidelines do not endorse any specific model for legal aid services, but encourage States to guarantee the basic right to legal aid to people detained, arrested or imprisoned, suspected or accused of, or charged with, a criminal offence, while expanding legal aid to include others who come into contact with the criminal justice system and diversifying legal aid delivery schemes.

Therefore, the institutional place of the legal aid service in the government structure is an internal decision of the State, which corresponds to the internal arrangements and resources available. In this case, it is very important to ensure that legal aid services are independent and have the necessary instruments, funds and other resources in place in order to function efficiently.

The legal aid service should be concerned not only with provision of legal aid, but also with ensuring quality. This complex approach requires a close interaction of legal aid service with other interested State, private and professional bodies. On the other hand, the legal aid system involves a larger group of authorities than legal aid services themselves. For instance, the Ministry of Justice is usually responsible for drafting policies and legislation and integrating the legal aid budget into the State budget; the bar association deals with

general legal service standards and disciplinary issues.

Demand side

As a group that often stands at the front line of legal aid and has direct interaction with stakeholders and beneficiaries, discussions in this group were focused on specific issues and implementation challenges that exist in the field. The group identified a number of issues as follows:

- Lack of information on the right to legal aid – the beneficiaries, particularly the vulnerable groups or people with special needs, lack information in a manner that corresponds to their needs on the right to legal aid and how such services may be accessed;
- Weak and inefficient lawyers' professional bodies – quality related issues, professional standards of quality, and licensing/qualification of lawyers are matters which concern directly the bar association. The rules to be applied should be developed and approved within the profession rather to be imposed by the State;
- Lack of communication/collaboration between the State and NGOs and bar associations. At the same time, there is a lack of communication among the legal professions themselves: lawyers, judges, prosecutors, when issues connected to the legal aid system are raised.

Dealing with these and many other emerging issues is a constant challenge for the legal aid systems. Lack of information on the right to legal aid is particularly addressed by the UN Principles and Guidelines.

Principle 8 provides that "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". Guideline 2 further develops the principle and prescribes a number of actions meant to strengthen the right to information, including disseminating information on the right to legal aid through the media and other appropriate means; targeting isolated groups and marginalized groups; instituting the obligation of law enforcement officials to inform people about the right to legal aid in a manner appropriate to his/her special needs, age and maturity; introducing effective remedies when people have not been appropriately informed about the right to legal aid; and putting in place means of verification that a person has actually been informed.

Bar associations are important players with regard to the legal aid service. The bar can be powerful as a provider of both quantity and quality in legal aid and therefore should be perceived as a reliable partner. However, the group revealed that the bar associations from the region still lack the capacity to efficiently manage the legal profession, being even reluctant to endorse the legal aid system as such in some cases, as previously described. This situation requires particular attention and consideration. On the other hand, there is a need to strengthen the bar associations, specifically their quality assurance and disciplinary functions. It was pointed out that this process would require a "critical mass" of lawyers to put pressure on governments and push forward the reform of the legal profession.

During the open discussions it was acknowledged that a perfect legal aid system does not exist. Establishing a legal aid service is a “creative” process. The copy/paste approach is counterproductive. Governments are constantly in search of a form of legal aid service that will accommodate their capacities and people’s needs. A number of factors may influence the decision on how to structure legal aid services, including, but not limited to: the amount of legal aid needed, the geography of the State, financial situation of the State, the structure of law enforcement bodies and legal traditions, the situation of the bar association and the prestige of the legal profession. For instance, Kyrgyzstan, the pioneer of legal aid in Central Asia, was initially considering the establishment of a separate body to deal with legal aid issues. However, the administration of legal aid required additional resources which the State could not afford, so management is done by the Ministry of Justice in cooperation with the bar association.

The legal aid services of many countries participating in the workshop have a connection with ministries. This common feature may be further explored by other countries while deciding on the structure of their legal aid system.

Following the workshop agenda, the next session focused on Expanding Access to Justice through Legal Aid.

Access to justice is a complex notion, which is constantly evolving in modern societies. The use of information and web technologies has pushed the limit of access to justice to new dimensions. The UN

Principles and Guidelines embody many of these trends, urging States to undertake appropriate measures to update legal aid systems as an element of the access to justice concept. These standards may serve as a resource for the bar associations and this document provides the necessary information for developing a set of quality standards to ensure proper access to justice to any party.

During 2011, UNDP BRC conducted a number of studies concerning access to justice. Among the states studied were Kyrgyzstan and Kazakhstan. The conclusions are not the most encouraging. Court buildings are still not accessible for people with disabilities, which limits their access to justice from this perspective.

In addition to accessibility issue, the studies identified following problem areas with regard to access to justice: non-involvement in conflict resolution of other parties, low level of legal knowledge and awareness among the vulnerable and poor, lack of financial and human resources and corruption.

In order to ensure access to justice, UNDP BRC is promoting and supporting a series of programmes, focusing, inter alia, on e-justice and ensuring women’s access to justice, particularly in cases of domestic violence. A good e-justice system exists in Turkey, which required an impressive amount of investment. This system is based on a centralized database, which allows users to access different topics. This model could be useful for other States who are considering an e-justice project.

Another issue linked to access to justice is the complexity of legislation. The law must be clear, predictable and accessible. Therefore, legislators must pay particular attention to the law drafting process. Adopting a law means adapting it to the necessities of the community; a copy/paste approach may be harmful. In addition to that, it is a common feature for countries in the region to adopt laws very quickly, without making any kinds of impact assessment, including financial implications, which thus hampers implementation of laws.

The discussion about the new frontiers of justice, emerging trends and issues, was followed by country-by-country presentations of recent developments and innovative approaches to legal aid issues. Examples from Armenia, Montenegro, Kazakhstan, Uzbekistan, Tajikistan, Belarus and Moldova were shared.

The legal aid service in Armenia is based on the public defenders scheme, which was established in 2006 to provide socially vulnerable groups with free legal assistance. The major focus of public defenders activity is on criminal cases, but recent amendments (in force since January 2013) will increase the rate of civil cases in the overall workload of public defenders. The eligibility criteria are focused on the social status of the legal aid applicant. From the financial point of view, Armenia implements a three-pronged model: contribution, co-financing, and reimbursement (in case of abuse by client).

Montenegro passed the Law on Legal Aid in 2011. The law stipulates that the beneficiary can request legal aid for legal counselling (information and advice), preparation of

pleadings and representation in proceedings before the court of law, the state prosecution and the Constitutional Court of Montenegro and any procedure for out-of-court dispute settlement. Women have access to legal aid, irrespective of their financial status, if they are victims of domestic violence. Legal aid is available in disputes (domestic and foreign) with an international element.

Legal aid is granted by various competent authorities: (a) the president of the basic court¹ or the judge authorized by him/her within the territory of whose jurisdiction the applicant is domiciled or resides; (b) the legal aid service within basic courts (professional and administrative tasks, information/advice to interested persons); (c) the local government/NGO. Only legal aid services (legal counselling) and lawyers are authorized to provide legal aid.

The current legal aid system in Montenegro was developed with UNDP support in 2008. Assistance was provided to draft and publically discuss the law, to conduct fiscal impact analysis and gender sensitivity analysis of the draft law, to give infrastructure support, assist with training and capacity developing activities, as well as raising public awareness.

Tajikistan does not have a legal aid system in place. Work on the concept is ongoing, and it has not yet been decided who will deal with this system: the bar association, the Ministry of Justice or a separate legal aid service/body. Another area currently under discussion is whether mediation should be integrated into the legal aid system or kept as a separate system.

1 The basic courts decide in first instance in civil, labour and criminal cases. There are 15 basic courts in Montenegro.

Kazakhstan does not have a legal aid system in place. Work on the concept of a legal aid system is ongoing.

Belarus does not have a legal aid system in place. The law prescribes the detained person's right to have access to a lawyer before interrogation. The Ministry of Justice is responsible for issuing lawyers' qualifications. There is no mechanism in place for checking a person's income for legal assistance purposes. The experience of other countries may be useful in this respect.

The new legal aid system in Moldova has been operational in criminal matters since 2008. Since January 2012 legal aid has also been available for non-criminal (civil, administrative, misdemeanour) matters. Such vast coverage, with legal aid both for criminal and non-criminal matters is not common in the region. Despite cases where the participation of a lawyer is mandatory (in the majority of criminal cases and some specific civil cases, such as limitation or deprivation of one's legal capacity or forced hospitalization in a psychiatric institution), other applicants should take an income test to be eligible for legal aid. One of the issues faced by the legal aid system in Moldova concerns the low public awareness about the availability of legal aid in non-criminal matters. Specialization of lawyers is one of the innovative approaches applied to ensure good quality legal aid. Lists of specialized lawyers providing legal aid to children in conflict with the law, refugees and asylum seekers are available. There are also plans to develop a list of lawyers specialized in cases of domestic violence and in cases involving people with mental disabilities.

3.2. Day 2: Country Examples, Assessments, and Follow-up

After a short summary of Day 1, the discussions continued emphasizing the Emerging Trends and Challenges in National Legal Aid Systems. Examples from Ukraine, Georgia, Kyrgyzstan and Moldova were presented.

Ukraine has recently instituted the new legal aid system (January 2013). The new legal aid law classifies legal aid to defendants as "secondary" legal aid. It is a 24/7 service, available for assistance in criminal matters. It covers defence against prosecution; representation of the interests of persons eligible for "secondary" free legal aid before courts, other public authorities, local self-governance bodies, and before other persons. It also covers drafting of procedural documents. The new scheme includes 27 regional centres and a coordination centre for free legal aid. Quality assurance issues are dealt with by the national bar association through the Regional Commission for Free Legal Aid Quality Assurance. There are also 32 community-based "primary" legal aid centres, funded by regional governments and municipalities, which provide legal information and advice for all citizens.

The administration of the Ukrainian legal aid system through a network of regional state centres implies a number of advantages, including, but not limited to, providing a common approach to the implementation of legislation on free legal aid all over the country; encouraging exchange of experience, best practices, and

development of common defence strategies among lawyers providing free secondary legal aid; stimulating transparency in police operations; stimulating changes in the bar association and introducing new standards of legal aid in general.

Other positive developments recorded since the new legal aid system is in place are as follows:

- Eligibility for free legal aid has been opened up, primarily with regard to people detained for administrative offences or those who are crime suspects;
- “Secondary” free legal aid is provided to detained people on a 24-hour basis;
- The appointment of lawyers for free “secondary” legal aid provision eliminates the institutional conflict of interests between the public prosecution and public defence;
- Lawyers are involved in free “secondary” legal aid provision voluntarily and the relationship between the lawyer and the State are based on a civil contract which determines the lawyer’s workload and guarantees his/her activity;
- The funding of the legal aid system from the State budget has increased from €180,000 in 2012 to €2.9 million in 2013.

Georgia is among the countries initiating the adoption of the UN Principles and Guidelines. Georgia has had a new legal aid system since 2007. Initially the legal aid service was under the Ministry of Justice. Since 2009 this service has been placed

under the Ministry for Corrections and Legal Assistance.

The Georgian system is based on the public defenders and legal aid lawyers scheme. It covers primarily criminal matters. *Case Bank* software allows monitoring the lawyers’ workload and following up major criminal investigation activities. Primary legal aid is also available to everyone regardless of their level of income.

The Georgian Legal Aid Service’s priorities are as follows: expanding access to legal aid (specifically through extending the mandate of the Legal Aid Service), ensuring high quality legal aid (through training, establishing a set of professional standards), raising public awareness about legal aid and enhancing its transparency and independence (defining the new status of the service, establishing a collegial body for managing the system).

Kyrgyzstan is the pioneer of legal aid in Central Asia. The Law on Legal Aid has been in force since 2011. The system is managed through the Ministry of Justice, which also has competences in the field of the legal profession: licensing/qualification of lawyers, disciplinary procedures, and so on. All legal aid-related issues are discussed with the bar associations. Legal aid is mainly provided in criminal cases. Primary legal aid is under development. The legal aid budget is increasing. However, Kyrgyzstan’s legal aid system has two major problems: (a) the new legal aid system has not eradicated the “pocket lawyer”² practice; (b) low level of interest among lawyers in joining the legal aid system.

2 In Kyrgyzstan the phrases “duty” or “pocket” lawyer have become terms of art. They mean “defender”, who is appointed by the investigator or a judge, not only for formality (the law requires a lawyer to be involved in the case), but also to ensure the interests of the investigation and/or court. (<http://freedomhouse.kg/en/newsletters/224-kyrgyzstan-how-much-does-a-free-state-lawyer-cost>; <http://www.osce.org/bishkek/14198>)

Moldova has succeeded in significantly advancing the provision of legal aid to people in need. The number of beneficiaries has increased five-fold since 2008, the budget has increased three-fold during 2009-2013, and the number of legal aid lawyers has doubled since 2008. Despite these achievements, the legal aid system in Moldova faces a number of major challenges, including but not limited to:

- Checking the payment capacity of legal aid applicants;
- Lack of a legal aid costs recovery mechanism;
- Quality control of legal aid services;
- Institutionalization of primary legal aid system by extending the paralegal network nationwide.

The next round of discussions brought to participants' attention the training of lawyers as an element of the quality assurance system. Principle 13 of the UN Principles and Guidelines urges the State to ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work. The participants came to the conclusion that training is important for ensuring qualitative legal aid. Moreover, training should combine theory with comprehensive capacity and skill

development activities. Knowing the law is only one side of the coin; it should be complemented with a practical component. The legal aid service, alongside other interested parties, including the bar association, the Ministry of Justice and NGOs, should play an important role in developing and promoting training schemes. A well-structured training system may serve as an incentive for lawyers to join and stay within the legal aid system. For instance, NLAC has set up developing an integrated (initial and continuous) training system for legal aid lawyers as a medium-term priority.

States should neither hamper, nor entirely undertake the development and delivery of training for lawyers. The workshop participants largely recognized that training of lawyers should come under the competence of the bar. However, States, as the main sponsors of legal aid systems, may supplement the knowledge and skills of legal aid lawyers. The general obligation of lawyers to undertake a specific number of training hours per year is prescribed in many countries. Nonetheless, the enforcement of this obligation by the bar associations seems to be poor. On the other hand, the majority of lawyers from the CIS region are not psychologically ready to pay for training as part of their professional development.

4

Assessing the Quality of Legal Aid: From Systems to Networks

Quality is a constant issue in emerging legal aid systems. The national reports highlight concerns about the quality of publicly-funded legal services. In addition, the beneficiaries of publicly-funded legal aid have little incentive and capabilities to control the quality of the services provided. In the countries where there is a functioning authority responsible for the criminal legal aid system there is an institutional actor motivated to control quality and guarantee that the tax payer's money is spent efficiently, though often these institutions do not have workable criteria for the assessment of quality. What can be done is to refine quality standards in consultation with the involved stakeholders and organize a process of systemic monitoring of the quality of publicly-funded legal services.

Bearing this in mind, in 2012 Roger Smith, on behalf of UNDP BRC, conducted a capacity needs assessment of the NLAC, focusing on quality of legal aid. He discovered that quality is an issue for Moldova's legal aid system and this concern was expressed by various observers. For the purpose of the report, the concept of quality of legal aid was broken down under the following three headings: (a) technical; (b) ethical; (c) professional/practical.

Some of the report findings are:

- It is very likely that the quality of legal aid services has improved substantially over the last five years as a result of the work of NLAC, piloting of peer reviews and greater experience of practitioners;
- There may well be a quality gap among legal practitioners. Certainly, one is widely asserted between private and publicly funded practitioners - particularly by the private lawyers themselves. However, it is possible that the full-time public defenders provide a better service than those paid on a case-by-case basis;
- Some problems will be due to the low remuneration of those undertaking public defence work, but there seems to be a gap in the training of newly-qualified lawyers undertaking legal aid which is independent of remuneration levels;
- It is likely, though we saw no proof and heard little comment, that the position in civil cases is the same as in criminal matters. Indeed, given their diversity, the range of quality is likely to be even more diverse;
- The issue of the quality of legal aid services is integrally linked to the quality

of all legal services more generally, to the extent that there is a deficiency of practical skills training for all those entering the profession.

The issues considered in the assessment in the context of Moldova are both national and regional. Moldova provides a good example of the difficulties of countries emerging from domination by the concepts encouraged by the Soviet Union, but now in need of change.

One way of putting the difference is that a fundamental constitutional shift is being engineered – from the primacy of the interests of the State to the primacy of the rule of law. In such a conception, the role of the lawyer changes fundamentally to a much more independent and adversarial figure who is, in US jargon, a “zealous advocate” for the interests of their client within a legal system which depends on the defence and prosecution taking more adversarial positions.

The consequence of this is that issues will manifest in Moldova in a particular form dictated by the state’s own particular circumstances, but the general issue of the change of lawyers’ role and the need for more practicality and effectiveness is likely to be general to all those countries affected by the break-up of the Soviet Union. They will all be making the same transition.

Thus, there are great opportunities here for UNDP at a regional level. The first step would be for UNDP to have an internal discussion between representatives of its offices within the region on what makes the most sense as a common issue on which to focus, as a way

of building capacity within the countries in which it works. Alternatives (which could be combined) would include:

- Using the recently agreed UN Principles and Guidelines to encourage States within the region to look at effective criminal defence. The role of UNDP would be very clear in such an initiative since it would be working on a UN document and within a UN initiative, though it would be limited to crime;
- Using legal aid as a common issue for all countries;
- Taking up the issue of legal education and training.

The recommendations in the needs assessment report reflected the situation in Moldova, but they could be useful at regional level as well:

1. There is a need to raise the quality of legal aid and, more generally, legal services in Moldova, although this must be seen not only as an issue of control and monitoring but as one of training and professional culture;
2. There is a strategic role for the UNDP to assist legal practitioners, the NLAC and the bar association to raise the quality of practitioner training in Moldova;
3. UNDP should consider how capacity might be built within the countries of Eastern Europe in advancing a more independent and skilled role for lawyers within the criminal justice system; within legal aid; and ultimately the legal system generally. It might want to begin with a high level regional meeting of representatives of its offices to decide on a regional strategy;

4. The current initial interview for practitioners wishing to undertake legal aid work could be expanded into an organised course that was mandatory before selection. This course could be developed into a compulsory part of the requirement on interns to undertake 80 hours of initial legal education during their internship;
5. To deal with undersupply of lawyers in some regions, it might be that the NLAC could appoint peripatetic public defenders or other incentives such as assistance with travel costs. Alternatively, it might, at the extreme, waive the selection criteria for regions where, otherwise, be no provision. A stronger approach would be to demand passage of the criteria, which are hardly onerous, on pain of payment of a lower tariff if the lawyer did not meet them;
6. The bar association might consider monitoring its requirements for compulsory professional development. It might be that the total number of hours could be dropped in return for stronger enforcement;
7. Improvement might be undertaken of the practical skills of the training of the whole legal profession. Suggestions would include:
 - i. Re-conceiving internship as more of a training period (perhaps going through the work of identifying what might be learnt);
 - ii. A specification for the role, and approval by the bar association, of mentors;
 - iii. A professional skills course of the kind considered above for all those qualifying as lawyers;
 - iv. Approval of a set of skills and outcomes that a trainee should develop during their period of training;
 - v. A requirement that all entrants to the profession undertake the professional skills course; the examinations; and a period of training (which might be shortened for those using the current experience route available to prosecutors and judges).

Particular attention was given to *pro bono* services and networking as opportunities to further promote and ensure access to justice to those in need and to promote standards and best practices.

Victor Munteanu, Justice Programme Director, Soros Foundation Moldova, mentioned that there is only limited experience with *pro bono* services in the region. This activity is not very popular among lawyers, although *pro bono* cases may contain potential for professional development and growth.

It was emphasized that *pro bono* is neither a “twin brother” nor a “step brother” of free legal aid. *Pro bono* and free legal aid look and sound alike, but differ in meaning. The legal aid system could partner with *pro bono*, but it requires creativity, open mindedness and flexibility. A number of *pro bono* opportunities are already available (university legal clinics, apprentice lawyers, legal empowerment through community-based paralegals, and so on), but they need support and development.

For instance, in South Africa legal clinics are one of many legal aid providers. The

university legal clinics scheme was successfully tested in Moldova in the late 1990s and early 2000s. A legal clinic combines two objectives: developing knowledge and skills and putting them into practice. The issue is that a legal clinic needs a creative approach and a dedicated team. They may serve as a filter for various small claims, which may be solved easily without involving legal aid lawyers.

A useful source of communication, professional exchange of information and resources and promotion of standards on legal aid might be the legal aid networks. The Legal Aid Reformers' Network (www.legalaidreform.org) is an example of this kind of network, active in the region. The Legal Aid Reformers' Network (LARN) was created in 2009 by public defenders, legal aid managers and Soros Foundations from Bulgaria, Georgia, Lithuania, Moldova, Mongolia and Ukraine. It is an international information-sharing network of organizations and individuals working to promote the right to legal aid and effective defence. The network provides for a platform to exchange experiences and collaborate in developing the newly created legal aid systems, involving both policymakers and legal practitioners. LARN is open to any interested organization and individual.

One discussion raised the idea that *pro bono* might be connected with the bar association and qualification of lawyers, for instance, by introducing a requirement to allocate 10% of lawyer's work time to *pro bono* assistance or by undertaking complex or high profile cases free of charge. However, some participants thought that *pro bono* should not involve "coercion", but rather should be based on free consent of the legal services provider to undertake cases and provide assistance. On the other hand, *pro bono* may be an appropriate solution for those cases where the applicant is not eligible for legal aid, but the case is of high interest or represents a strategic litigation situation.

In a larger forum it was mentioned that assessment of the quality of legal aid is an important aspect of effective access to justice. The essence of quality is part of the professional culture. The quality assessment mechanism is used at the end of a case. In some jurisdictions, for example in Wales, the quality assessment mechanism was perceived as an advantage and not a threat. Whether or not to establish a quality assessment mechanism remains an open question for the countries in the region. It is a complex and costly endeavour, which requires a clear-cut approach.

5

Concluding Remarks

The follow-up activities need to be planned and developed in a participatory manner. Thus, the workshop participants were divided into two groups (countries with a national legal aid system and countries without a national legal aid system) to debate and come up with a number of specific actions to be undertaken at the national, as well as at the regional level.

The following were highlighted:

- *Systemic professional training* for lawyers and other legal aid providers is needed – this might involve conducting training needs assessments, assessment of training procedures and the impact of training; it should be integrated into one system; partnership with bar associations is a must;
- *Need for complex assessment of legal aid systems* – to highlight strengths and weaknesses and trace further necessary interventions. Moldova has experienced this kind of assessment and this experience could be replicated in the region;
- *Quality requires a comprehensive approach* – it is not about control, but rather monitoring and guidance to ensure effective access to justice;

- *Legal aid standards* should be developed by the legal aid community, bar association, civil society organizations and governments. They should not be used as repressive tools. The monitoring of legal aid standards should be compulsory;
- *Public awareness and information campaigns* – the potential beneficiaries must be informed by all accessible and appropriate means about the right to legal aid and about the legal aid system. Particular attention should be paid to the vulnerable groups and people with special needs. The information strategy should be developed jointly by all interested parties;
- *Improve the communication and exchange of information and practices* between legal aid actors;
- *Explore the possibilities of alternative providers and solutions* – this might include but not be limited to *pro bono* services, legal clinics, the NGO sector, legal aid research networks and other professional networks.

Despite the diversity of regulations and measures that exist in different legal systems, the problems faced by States and institutions governing the legal aid and

justice sector have common characteristics:

- Legislative gaps or insufficient legislative guarantees for legal aid and early access to legal counsel;
- Insufficient development of the legal profession; lack of capacities and financial resources of national legal aid institutions;
- Lack of analysis/assessment of the quality and effectiveness of legal aid services (methodology, monitoring, data collection and assessment);
- Lack of public awareness and access to national legal aid mechanisms.

These commonalities therefore suggest a need to engage in intensive exchange and collaboration to elaborate customized, context-specific responses by drawing on regional and international knowledge and expertise.

The international workshop showed that legal aid is an important topic on countries' agendas. Tajikistan is going through a reform process and the legal aid bill is being considered by the parliament; Moldova has a more vibrant system; Georgia has a powerful system too, which requires some changes. All these prove that there is no static legal aid system and each system needs constant monitoring, assessment, improvement and changes.

Analyzing more globally the legal aid system's issues, the following aspects can be pointed out as common issues, which need further development and/or follow-up:

1. Analyzing the legal framework;
2. Conducting legal aid systems assessment;
3. Strategic planning;
4. Involving paralegals in legal aid systems;
5. Increasing responsiveness of legal aid providers, both state and non-state, to the vulnerability of disadvantaged groups;
6. Developing communication strategies to reach out to vulnerable groups, increasing awareness of vulnerable groups about legal aid services and providing for innovative solutions using social media for outreach and communication;
7. Continuing to work on the professional development of lawyers and legal aid providers, especially their training needs with regard to vulnerable groups, developing capacities for timely responses to women, children, stateless persons, people living with HIV, people with disabilities and other beneficiaries of legal aid;
8. Creating an enabling environment for legal professionals to exchange and interact with beneficiaries, including through social media and online platforms to foster cohesiveness, awareness and informed response;
9. Prioritizing institutional strengthening of legal aid institutions by initiating strategic planning to address key areas of development of legal aid bodies. Such processes should lay out the strategic areas for development and define priorities.

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Annex 1: Agenda

Thursday 25 April

DAY 1: International Principles and New Developments

09.00 – 09.30 Registration

Plenary Session I: Unlocking the Potential of New International Standards on Legal Aid

Moderator: A.H. Monjurul Kabir, Policy Adviser, Rule of Law, Justice, and Human Rights, UNDP Europe and CIS [UNDP BRC]

09.35 – 10.10 Welcome Remarks

- Vladimir Grosu, Deputy Minister of Justice, Ministry of Justice, Government of the Republic of Moldova
 - Nicola Harrington-Buhay, UN Resident Coordinator and UNDP Resident Representative, UNDP Moldova
 - Victor Zaharia, Chairperson, National Legal Aid Council, Republic of Moldova
-

10.10 – 10.40 Introduction of Participants

10.40 – 11.15 Group Photo and Networking Coffee

11.15 – 11.40 Introducing UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems:

Olga Zudova, UNODC Senior Legal Advisor, Regional Office for Central Asia, Kazakhstan

11.40 – 11.55 Open Forum: Discussion and Q&A

12.00 – 13.00 Working Group Discussion

Working Group Session: Optimising and Operationalizing New international Standards on Legal Aid

Moderator: Roger Smith, Independent Consultant and Legal Aid Expert, United Kingdom

Group 1: The Supply Side – National Legal Aid Services

Facilitators: Tamar Khidasheli, UNDP Georgia, and Alexandru Cocirta, UNDP Moldova

Group 2: The Demand Side – Challenges in the Field (CSOs, Networks, bar associations and other organisations)

Facilitators: Vahagn Muradyan, UNDP BRC, and Aigul Mukanova, UNDP Regional HIV Legal Network

13.00 – 14.15	Lunch
14.15 – 14.40	Working Group Presentations (Operationalising International Standards on Legal Aid)
14.40 – 15.00	Open Forum: Discussion and Q&A

Plenary Session II: Expanding Access to Justice through Legal Aid

Moderator: Pradeep Sharma, Deputy Resident Representative, UNDP Kyrgyzstan

15.00 – 15.20	New Frontiers of Justice? Emerging Trends and Issues: A.H. Monjurul Kabir, UNDP BRC
15.20 – 15.30	Q&A
15.30 – 16.10	New Developments/Innovative Country Examples: Legal Aid Service/ Ministry of Justice Representatives from Montenegro, Armenia, Kazakhstan, Uzbekistan
16.10 – 16.30	Coffee Break
16.30 – 17.00	New Developments/Innovative Country Examples: CSO/NGO/Bar Association Representatives from Tajikistan, Belarus and Moldova
17.00 – 17.30	Open Forum: Discussion and Q&A (Display of Knowledge Products and Resources)
18.30	Welcome Reception

End of Day 1

Friday 26 April

DAY 2: Country Examples and Assessments, and Follow-up

09.00 – 09.10 Recap of Day I: Evghenii Golosceapov, Programme Analyst, UNDP Moldova

Plenary Session III: Emerging Trends and Challenges in National Legal Aid System

Moderator: Pradeep Sharma, Deputy Resident Representative, UNDP Kyrgyzstan

09.10 – 10.30 Priorities, Challenges and Innovation in National Legal Aid System

Ukraine: Andrii Vyshnevskiy, Director of the Legal Aid Coordination Centre, Ministry of Justice (Institutionalized Public Defence in Criminal Process)

Georgia: Meliton Benidze, Director, Legal Aid Service, Ministry of Corrections and Legal Assistance

Moldova: Victor Zaharia, Chairperson, National Legal Aid Council

10.30 – 11.00 Open Forum: Q&A/Discussion

11.00 – 11.30 Networking Coffee

11.30 – 12.30 Open Clinic: How Do We Address the Capacity Gaps and Priorities Identified?
Resource Facilitators: Roger Smith, Legal Aid Expert and Olga Zudova, UNODC

12.30 – 13.00 Q&A/Open Discussion

13.00 – 14.15 Lunch

Plenary Session IV: Assessing the Quality of Legal Aid: From Systems to Networks

Moderator: Duska Velimirovic, Adviser, Ministry of Justice, Montenegro

14.15 – 14.45 Assessing Quality and Effectiveness of Legal Aid System: Lessons Learned
Roger Smith, Independent Consultant and Legal Aid Expert, UK
Assessing Pro Bono Services and Networks: Victor Munteanu, Justice Programme Director, Soros Foundation-Moldova

14.45 – 15.15 Open Forum: Q&A/Discussion

15.15 – 15.30 Coffee Break

15.30 – 16.15	Working Session: Towards an Agenda for Follow-up Group 1: Countries with NLAs; Group 2: Countries without NLAs (self-facilitated group work)
16.15 – 16.30	Group Presentations
16.30 – 17.00	Closing Session: Going Beyond Minimum – From Standard-Setting to Practice Strengthening

Closing Remarks:

Narine Sahakyan, Deputy Resident Representative, UNDP Moldova

Victor Zaharia, National Legal Aid Council, Moldova

A.H. Monjurul Kabir, UNDP BRC

End of Workshop

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Annex 2: List of Participants

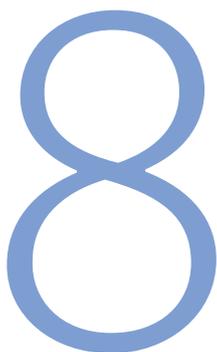
ARMENIA		
Ms. Lusine Iskandaryan	Junior Specialist, Legal Support Department	Ministry of Justice
BELARUS		
Mr. Alexei Kozliuk	Lawyer	Legal Transformation Centre, NGO
Mr. Viktor Chaychits	Chairperson	Belarusian Bar Association
Ms. Iryna Serabrakova	Project Manager, Facilitating the Improvement of the Court System through the Development of the Specialization of Courts	UNDP
GEORGIA		
Mr. Meliton Benidze	Director	Legal Aid Service under the Ministry of Corrections and Legal Assistance of Georgia
Ms. Tamar Khidasheli	Programme Coordinator, Access to Justice and Human Rights Protection	UNDP
KYRGYZSTAN		
Ms. Maripa Seidalieva	Head, Directorate on Notary and Advocateship	Ministry of Justice
Mr. Pradeep Sharma	Deputy Resident Representative	UNDP

KAZAKHSTAN		
Ms. Tynyshtyk Raiymbekova	Chief Expert	Committee on Registration and Legal Aid
MONTENEGRO		
Ms. Duska Velimirovic	Advisor	Ministry of Justice
Ms. Irena Jokic	Programme Associate	UNDP, Rule of Law and Human Rights
UKRAINE		
Mr. Andrey Vyshnevsky	Head, Legal Aid Coordination Centre	Ministry of Justice
Mrs. Yuliya Shcherbinina	Senior Programme Manager	UNDP, Democratic Governance
UZBEKISTAN		
Mr. Anvar Yoriev	Leading Consultant, Department on notaries, lawyers' activities and civil status acts offices	Ministry of Justice
TAJIKISTAN		
Mr. Saidahmad Ikromov	National Expert	UNDP Rule of Law and Access to Justice
Mr. Abubakr Inomov	Head, Civil, Economic and Social Legislation Department	Ministry of Justice
Ms. Farangis Valieva	Head, Legislation Department	Ministry of Justice
Mr. Muslihiddin Nidoev	Deputy, Civil and Political Rights Department	Office of the Ombudsman
Mr. Kahramon Sanginov	Law Program Coordinator	Open Society Institute
MOLDOVA		
Mr. Vladimir Grosu	Deputy Minister	Ministry of Justice

Ms. Natalia Bordianu	Head of Qualified Legal Aid and Mediation	Ministry of Justice
Mr. Daniel Goinic	Consultant, Law Drafting Department	Ministry of Justice
Mr. Victor Zaharia	Chairperson	National Legal Aid Council
Mr. Vasile Cretu	Member (representative of Superior Council of Magistracy)	National Legal Aid Council
Mr. Mihai Lupu	Member (representative of bar association)	National Legal Aid Council
Mr. Eduard Revenco	Member (representative of bar association)	National Legal Aid Council
Ms. Elena Gritco	Member (representative of Ministry of Justice)	National Legal Aid Council
Mr. Lilian Darii	Executive Director	National Legal Aid Council
Ms. Cristina Paladi	Consultant	National Legal Aid Council
Mr. Gheorghe Amihalachioaie	Chairperson	Bar Association
Mr. Eugeniu Tetelea	Chairperson, Ethics and Discipline Board	Bar Association
Ms. Nicola Harrington-Buhay	Resident Coordinator/Resident Representative	UN/UNDP
Ms. Narine Sahakyan	Deputy Resident Representative	UNDP
Mr. Evghenii Golosceapov	Programme Analyst, Justice and Human Rights	UNDP
Mr. Alexandru Cocirta	Project Manager, Support to Justice Sector Reform in Moldova Project	UNDP

Ms. Olga Rabei	National Consultant	UNDP
Mr. Andrei Lutenco	Project Coordinator	IOM
Mr. Dirk Schuebel	Ambassador	Delegation of the European Union to the Republic of Moldova
Ms. Ingrid Tersman	Ambassador	Embassy of Sweden in Chisinau
Mr. Ulvi Akhundlu	Head of Office	Council of Europe Office in the Republic of Moldova
Ms. Veronica Mihailov-Moraru	Public Defender	Public Defender's Office
Ms. Natalia Molosag	Public Defender	Public Defender's Office
Mr. Victor Munteanu	Director, Justice Programme	Soros Foundation Moldova
Mr. Sergiu Rusanovschi	Project Coordinator, Enhancement of quality assurance tools and management of the legal aid system in Moldova	Soros Foundation Moldova
Mr. Sorin Mereacre	President	East Europe Foundation Moldova
Ms. Mihaela Vidaicu	Lawyer	American Bar Association Rule of Law Initiative (ABA/ROLI)
Mr. Harald B. Ciarlo	Lawyer	Norwegian Mission of Rule of Law Advisers to Moldova (NORLAM)
Ms. Nadejda Hriptievschi	Lawyer and Researcher	NGO Legal Resources Centre
Mr. Veaceslav Turcan	President	NGO Human Rights Embassy
UNODC		
Ms. Olga Zudova	Senior Legal Advisor	UNODC

UNDP Europe and CIS [Bratislava Regional Centre]		
Mr. Monjurul Kabir	Policy Adviser and Project Manager, Rule of Law, Human Rights, and Justice	UNDP BRC, Democratic Governance
Mr. Vahagn Muradyan	Programme Associate	UNDP BRC, Democratic Governance and Gender
Mr. Roger Smith	Independent Consultant/Legal Aid Expert	UK
Ms. Aigul Mukanova	Coordinator	Regional HIV Legal Network



Annex 3:

UN Principles and Guidelines on Access to Legal Aid in Criminal Justice System

United Nations

A/RES/67/187

General Assembly

Distr.: General 28 March 2013

Sixty-seventh session

Agenda item 103

Resolution adopted by the General Assembly

[on the report of the Third Committee (A/67/458)]

67/187. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

The General Assembly,

Recalling the Universal Declaration of Human Rights,¹ which enshrines the key principles of equality before the law and the presumption of innocence, as well as the right to a fair and public hearing by an independent and impartial tribunal, along with all the guarantees necessary for the defence of anyone charged with a penal offence, other minimum guarantees and the entitlement to be tried without undue delay,

Recalling also the International Covenant on Civil and Political Rights,² in particular article 14 thereof, which states that everyone charged with a criminal offence shall be entitled to be tried in his or her presence and to defend himself or herself in person or through legal assistance of his or her own choosing or assigned to him or her where the interests of justice so require, in a fair and public hearing by a competent, independent and impartial tribunal established by law,

1 Resolution 217 A (III).

2 See resolution 2200 A (XXI), annex.

Bearing in mind the Standard Minimum Rules for the Treatment of Prisoners,³ approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957 and extended by the Council by its resolution 2076 (LXII) of 13 May 1977, according to which an untried prisoner, for the purposes of his or her defence, shall be allowed to receive visits from his or her legal adviser,

Bearing in mind also the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,⁴ principle 11 of which states that a detained person shall have the right to defend himself or herself or to be assisted by counsel as prescribed by law,

Bearing in mind further the Basic Principles on the Role of Lawyers,⁵ in particular principle 6 thereof, which states that any persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services,

Recalling the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,⁶ especially paragraph 18 thereof, in which Member States are called upon to take steps, in accordance with their domestic laws, to promote access to justice, to consider the provision of legal aid to those who need it and to enable the effective assertion of their rights in the criminal justice system,

Recalling also the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,⁷ especially paragraph 52 thereof, in which it is recommended that Member States endeavour to reduce pretrial detention, where appropriate, and promote increased access to justice and legal defence mechanisms,

Recalling further Economic and Social Council resolution 2007/24 of 26 July 2007 on international cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa,

Recognizing that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process,

Recognizing also that the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, annexed to the present resolution, can be applied by Member States,

3 *Human Rights: A Compilation of International Instruments*, Volume I (First Part), *Universal Instruments* (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part 1)), sect. J, No. 34.

4 Resolution 43/173, annex.

5 *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.

6 Resolution 60/177, annex.

7 Resolution 65/230, annex.

taking into account the great variety of legal systems and socioeconomic conditions in the world,

1. *Notes with appreciation* the work of the open-ended intergovernmental expert group on strengthening access to legal aid in criminal justice systems, at its meeting held in Vienna from 16 to 18 November 2011, to develop a set of principles and guidelines on access to legal aid in criminal justice systems;
2. *Adopts* the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, annexed to the present resolution, as a useful framework to guide Member States on the principles on which a legal aid system in criminal justice should be based, taking into account the content of the present resolution and the fact that all elements of the annex will be applied in accordance with national legislation;
3. *Invites* Member States, consistent with their national legislation, to adopt and strengthen measures to ensure that effective legal aid is provided, in accordance with the spirit of the Principles and Guidelines, bearing in mind the diversity of criminal justice systems among different countries and regions around the world and the fact that legal aid is developed in accordance with the overall balance of the criminal justice system, as well as the circumstances of countries and regions;
4. *Encourages* Member States to consider, where appropriate, the provision of legal aid and to provide such aid to the maximum extent possible;
5. *Also encourages* Member States to draw upon the Principles and Guidelines, as appropriate, and in accordance with national law, in undertaking national efforts and measures to strengthen access to legal aid in criminal justice systems;
6. *Requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to continue to provide advisory services and technical assistance to Member States, upon request, in the area of criminal justice reform, including restorative justice, alternatives to imprisonment and the development of integrated plans for the provision of legal aid;
7. *Also requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to make the Principles and Guidelines widely available, including through the development of relevant tools such as handbooks and training manuals;
8. *Invites* Member States and other donors to provide extrabudgetary resources for the purposes described above, in accordance with the rules and procedures of the United Nations;

9. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its twenty-third session on the implementation of the present resolution.

*60th plenary meeting
20 December 2012*

Annex

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

A. Introduction

1. Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in article 11, paragraph 1, of the Universal Declaration of Human Rights,¹ a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.
2. Furthermore, article 14, paragraph 3 (*d*), of the International Covenant on Civil and Political Rights² states that everyone should be entitled, among other rights, “to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it”.
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.
4. Legal aid plays an important role in facilitating diversion and the use of community-based sanctions and measures, including non-custodial measures; promoting greater community involvement in the criminal justice system; reducing the unnecessary use of detention and imprisonment; rationalizing criminal justice policies; and ensuring efficient use of State resources.

5. Regrettably, many countries still lack the necessary resources and capacity to provide legal aid for suspects, those charged with a criminal offence, prisoners, victims and witnesses.
6. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which are drawn from international standards and recognized good practices, aim to provide guidance to States on the fundamental principles on which a legal aid system in criminal justice should be based and to outline the specific elements required for an effective and sustainable national legal aid system, in order to strengthen access to legal aid pursuant to Economic and Social Council resolution 2007/24 of 26 July 2007, entitled "International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa".
7. In line with the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa and the Lilongwe Plan of Action for the implementation of the Declaration, the Principles and Guidelines follow a broad concept of legal aid.
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.
9. For the purposes of the Principles and Guidelines, the individual who provides legal aid is herein referred to as the "legal aid provider", and the organizations that provide legal aid are referred to as the "legal aid service providers". The first providers of legal aid are lawyers, but the Principles and Guidelines also suggest that States involve a wide range of stakeholders as legal aid service providers in the form of non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academia. Provision of legal aid to foreign nationals should conform to the requirements of the Vienna Convention on Consular Relations⁸ and other applicable bilateral treaties.
10. It should be noted that States employ different models for the provision of legal aid. These may involve public defenders, private lawyers, contract lawyers, pro bono schemes, bar associations, paralegals and others. The Principles and Guidelines do not endorse any specific model but encourage States to guarantee the basic right to legal aid of persons detained, arrested or imprisoned,⁹ suspected¹⁰ or accused of, or charged with a criminal

8 United Nations, *Treaty Series*, vol. 596, No. 8638.

9 The terms "arrest", "detained person" and "imprisoned person" are understood as defined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (resolution 43/173, annex).

10 The right to legal aid of suspects arises before questioning, when they become aware that they are the subject of investigation, and when they are under threat of abuse and intimidation, e.g., in custodial settings.

offence, while expanding legal aid to include others who come into contact with the criminal justice system and diversifying legal aid delivery schemes.

11. The Principles and Guidelines are based on the recognition that States should, where appropriate, undertake a series of measures that, even if not strictly related to legal aid, can maximize the positive impact that the establishment and/or reinforcement of a properly working legal aid system may have on a properly functioning criminal justice system and on access to justice.
12. Recognizing that certain groups are entitled to additional protection or are more vulnerable when involved with the criminal justice system, the Principles and Guidelines also provide specific provisions for women, children and groups with special needs.
13. The Principles and Guidelines are primarily concerned with the right to legal aid, as distinct from the right to legal assistance as recognized in international law. Nothing in these Principles and Guidelines should be interpreted as providing a lesser degree of protection than that provided under existing national laws and regulations and international and regional human rights conventions or covenants applicable to the administration of justice, including, but not limited to, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child,¹¹ the Convention on the Elimination of All Forms of Discrimination against Women¹² and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.¹³ However, this should not be interpreted as meaning that States are bound by international and regional instruments that they have not ratified or acceded to.

B. Principles

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

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

12 *Ibid.*, vol. 1249, No. 20378.

13 *Ibid.*, vol. 2220, No. 39481.

14 The term "justice process" is understood as defined in the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex). For the purpose of the Principles and Guidelines, the term shall also encompass extradition, transfer of prisoners and mutual legal assistance proceedings.

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.
16. The State should not interfere with the organization of the defence of the beneficiary of legal aid or with the independence of his or her legal aid provider.
17. States should enhance the knowledge of the people about their rights and obligations under the law through appropriate means, in order to prevent criminal conduct and victimization.
18. States should endeavour to enhance the knowledge of their communities about their justice system and its functions, the ways to file complaints before the courts and alternative dispute resolution mechanisms.
19. States should consider adopting appropriate measures for informing their communities about acts criminalized under the law. The provision of such information for those travelling to other jurisdictions, where crimes are categorized and prosecuted differently, is essential for crime prevention.

Principle 3

Legal aid for persons suspected of or charged with a criminal offence

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.
22. Children should have access to legal aid under the same conditions as or more lenient conditions than adults.
23. It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.

Principle 4
Legal aid for victims of crime

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

Principle 5
Legal aid for witnesses

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

Principle 6
Non-discrimination

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.

Principle 7
Prompt and effective provision of legal aid

27. States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process.

28. Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defence.

Principle 8
Right to be informed

29. 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.

30. 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.

Principle 9

Remedies and safeguards

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.

Principle 10

Equity in access to legal aid

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.

Principle 11

Legal aid in the best interests of the child

34. In all legal aid decisions affecting children,¹⁵ the best interests of the child should be the primary consideration.
35. Legal aid provided to children should be prioritized, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.

Principle 12

Independence and protection of legal aid providers

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.

Principle 13
Competence and accountability of legal aid providers

- 37. 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.
- 38. 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.

Principle 14
Partnerships

- 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.

C. Guidelines

Guideline 1
Provision of legal aid

- 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.

Guideline 2

Right to be informed on legal aid

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;
 - (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 other procedural safeguards;
 - (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;

- (e) Effective remedies are available to persons who have not been adequately informed of their right to legal aid. Such remedies may include a prohibition on conducting procedural actions, release from detention, exclusion of evidence, judicial review and compensation;
- (f) Means of verification that a person has actually been informed are put in place.

Guideline 3

Other rights of persons detained, arrested, suspected or accused of, or charged with a criminal offence

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;
- (b) To prohibit, in the absence of any compelling circumstances, any interviewing of a person by the police in the absence of a lawyer, unless the person gives his or her informed and voluntary consent to waive the lawyer's presence, and to establish mechanisms for verifying the voluntary nature of the person's consent. An interview should not start until the legal aid provider arrives;
- (c) To inform all foreign detainees and prisoners in a language they understand of their right to request contact with their consular authorities without delay;
- (d) To ensure that persons meet with a lawyer or a legal aid provider promptly after their arrest in full confidentiality; and that the confidentiality of further communications is guaranteed;
- (e) To enable every person who has been detained for any reason to promptly notify a member of his or her family, or any other appropriate person of his or her choosing, of his or her detention and location and of any imminent change of location; the competent authority may, however, delay a notification if absolutely necessary, if provided for by law and if the transmission of the information would hinder a criminal investigation;
- (f) To provide the services of an independent interpreter, whenever necessary, and the translation of documents where appropriate;
- (g) To assign a guardian, whenever necessary;
- (h) To make available in police stations and places of detention the means to contact legal aid providers;
- (i) To ensure that persons detained, arrested, suspected or accused of, or charged with a criminal offence are advised of their rights and the implications of waiving them in a

- clear and plain manner; and should endeavour to ensure that the person understands both;
- (j) To ensure that persons are informed of any mechanism available for filing complaints of torture or ill-treatment;
 - (k) To ensure that the exercise of these rights by a person is not prejudicial to his or her case.

Guideline 4

Legal aid at the pretrial stage

44. To ensure that detained persons have prompt access to legal aid in conformity with the law, States should take measures:
- (a) To ensure that police and judicial authorities do not arbitrarily restrict the right or access to legal aid for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular in police stations;
 - (b) To facilitate access for legal aid providers assigned to provide assistance to detained persons in police stations and other places of detention for the purpose of providing that assistance;
 - (c) To ensure legal representation at all pretrial proceedings and hearings;
 - (d) To monitor and enforce custody time limits in police holding cells or other detention centres, for example, by instructing judicial authorities to screen the remand caseload in detention centres on a regular basis to make sure that people are remanded lawfully, that their cases are dealt with in a timely manner and that the conditions in which they are held meet the relevant legal standards, including international ones;
 - (e) To provide every person, on admission to a place of detention, with information on his or her rights in law, the rules of the place of detention and the initial stages of the pretrial process. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in each detention centre;
 - (f) To request bar or legal associations and other partnership institutions to establish a roster of lawyers and paralegals to support a comprehensive legal system for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular at police stations;
 - (g) To ensure that every person charged with a criminal offence has adequate time, facilities and technical and financial support, in case he or she does not have sufficient means, to prepare his or her defence and is able to consult with his or her lawyer in full confidentiality.

Guideline 5

Legal aid during court proceedings

45. To guarantee that every person charged with a criminal offence for which a term of imprisonment or capital punishment may be imposed by a court of law has access to legal aid in all proceedings at court, including on appeal and other related proceedings, States should introduce measures:
- (a) To ensure that the accused understands the case against him or her and the possible consequences of the trial;
 - (b) To ensure that every person charged with a criminal offence has adequate time, facilities and technical and financial support, in case he or she does not have sufficient means, to prepare his or her defence and is able to consult with his or her lawyer in full confidentiality;
 - (c) To provide representation in any court proceedings by a lawyer of choice, where appropriate, or by a competent lawyer assigned by the court or other legal aid authority at no cost when the person does not have sufficient means to pay and/or where the interests of justice so require;
 - (d) To ensure that the counsel of the accused is present at all critical stages of the proceedings. Critical stages are 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;
 - (e) To request bar or legal associations and other partnership institutions to establish a roster of lawyers and paralegals to support a comprehensive legal system for persons detained, arrested, suspected or accused of, or charged with a criminal offence; such support could include, for example, appearing before the courts on fixed days;
 - (f) To enable, in accordance with national law, paralegals and law students to provide appropriate types of assistance to the accused in court, provided that they are under the supervision of qualified lawyers;
 - (g) To ensure that unrepresented suspects and the accused understand their rights. This may include, but is not limited to, requiring judges and prosecutors to explain their rights to them in clear and plain language.

Guideline 6

Legal aid at the post-trial stage

46. States should ensure that imprisoned persons and children deprived of their liberty have access to legal aid. Where legal aid is not available, States shall ensure that such persons are held in prison in conformity with the law.
47. For this purpose, States should introduce measures:

- (a) To provide all persons, on admission to the place of imprisonment and during their detention, with information on the rules of the place of imprisonment and their rights under the law, including the right to confidential legal aid, advice and assistance; the possibilities for further review of their case; their rights during disciplinary proceedings; and procedures for complaint, appeal, early release, pardon or clemency. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and should be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in those parts of the facilities to which prisoners have regular access;
- (b) To encourage bar and legal associations and other legal aid providers to draw up rosters of lawyers, and paralegals, where appropriate, to visit prisons to provide legal advice and assistance at no cost to prisoners;
- (c) To ensure that prisoners have access to legal aid for the purpose of submitting appeals and filing requests related to their treatment and the conditions of their imprisonment, including when facing serious disciplinary charges, and for requests for pardon, in particular for those prisoners facing the death penalty, as well as for applications for parole and representation at parole hearings;
- (d) To inform foreign prisoners of the possibility, where available, of seeking transfer to serve their sentence in their country of nationality, subject to the consent of the States involved.

Guideline 7

Legal aid for victims

48. Without prejudice to or inconsistency with the rights of the accused and consistent with the relevant national legislation, 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;¹⁶
 - (b) Child victims receive legal assistance as required, in line with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;¹⁷
 - (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

16 "Repeat victimization" and "secondary victimization" are understood as defined in paragraphs 1.2 and 1.3 of the appendix to Recommendation Rec(2006)8 of the Committee of Ministers of the Council of Europe to member States on assistance to crime victims.

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

compensation in separate legal proceedings, whichever is consistent with the relevant national legislation;

- (d) Victims are promptly informed by the police and other front-line 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.

Guideline 8

Legal aid for witnesses

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.

Guideline 9**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 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.

Guideline 10**Special measures for children**

53. States should ensure special measures for children to promote children's effective access to justice and to prevent stigmatization and other adverse effects as a result of their being involved in the criminal justice system, 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.

Guideline 11

Nationwide legal aid system

55. In order to encourage the functioning of a nationwide legal aid system, States should, where it is appropriate, undertake measures:

- (a) process for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence, and for victims of crime;
- (b) To provide legal aid to persons who have been unlawfully arrested or detained or who have received a final judgement of the court as a result of a miscarriage of justice, in order to enforce their right to retrial, reparation, including compensation, rehabilitation and guarantees of non-repetition;
- (c) To promote coordination between justice agencies and other professionals such as health, social services and victim support workers in order to maximize the effectiveness of the legal aid system, without prejudice to the rights of the accused;
- (d) To establish partnerships with bar or legal associations to ensure the provision of legal aid at all stages of the criminal justice process;
- (e) To enable paralegals to provide those forms of legal aid allowed by national law or practice to persons detained, arrested, suspected of, or charged with a criminal offence, in particular in police stations or other detention centres;
- (f) To promote the provision of appropriate legal aid for the purpose of crime prevention.

56. States should also take measures:

- (a) To encourage legal and bar associations to support the provision of legal aid by offering a range of services, including those that are free (pro bono), in line with their professional calling and ethical duty;
- (b) To identify incentives for lawyers to work in economically and socially disadvantaged areas (e.g., tax exemption, fellowships and travel and subsistence allowances);
- (c) To encourage lawyers to organize regular circuits of lawyers around the country to provide legal aid to those in need.

57. In the design of their nationwide legal aid schemes, States should take into account the needs of specific groups, 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 line with guidelines 9 and 10.

58. States should take appropriate measures to establish child-friendly¹⁸ and child-sensitive legal aid systems, taking into account children's evolving capacities and the need to strike an appropriate balance between the best interests of the child and children's right to be heard in judicial proceedings, including:

- (a) Establishing, where possible, dedicated mechanisms to support specialized legal aid for children and support the integration of child-friendly legal aid into general and non-specialized mechanisms;
- (b) Adopting legal aid legislation, policies and regulations that explicitly take into account the child's rights and special developmental needs, including the right to have legal or other appropriate assistance in the preparation and presentation of his or her defence; the right to be heard in all judicial proceedings affecting him or her; standard procedures for determining best interest; privacy and protection of personal data; and the right to be considered for diversion;
- (c) Establishing child-friendly legal aid service standards and professional codes of conduct. Legal aid providers working with and for children should, where necessary, be subject to regular vetting to ensure their suitability for working with children;
- (d) Promoting standard legal aid training programmes. Legal aid providers representing children should be trained in and be knowledgeable about children's rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding. All legal aid providers working with and for children should receive basic interdisciplinary training on the rights and needs of children of different age groups and on proceedings that are adapted to them, and

18 "Child-friendly legal aid" is the provision of legal assistance to children in criminal, civil and administrative proceedings that is accessible, age-appropriate, multidisciplinary and effective, and that is responsive to the range of legal and social needs faced by children and youth. Child-friendly legal aid is delivered by lawyers and non-lawyers who are trained in children's law and child and adolescent development and who are able to communicate effectively with children and their caretakers.

training on psychological and other aspects of the development of children, with special attention to girls and children who are members of minority or indigenous groups, and on available measures for promoting the defence of children who are in conflict with the law;

- (e) Establishing mechanisms and procedures to ensure close cooperation and appropriate referral systems between legal aid providers and different professionals to obtain a comprehensive understanding of the child, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

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.

Guideline 12

Funding the nationwide legal aid system

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.

Guideline 13

Human resources

63. States should, where appropriate, make adequate and specific provisions for staffing the nationwide legal aid system that are commensurate with their needs.
64. States should ensure that professionals working for the national legal aid system possess qualifications and training appropriate for the services they provide.
65. Where there is a shortage of qualified lawyers, the provision of legal aid services may also include non-lawyers or paralegals. At the same time, States should promote the growth of the legal profession and remove financial barriers to legal education.
66. States should also encourage wide access to the legal profession, including affirmative action measures to ensure access for women, minorities and economically disadvantaged groups.

Guideline 14

Paralegals

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.

Guideline 15

Regulation and oversight of legal aid providers

69. In adherence to principle 12, and subject to existing national legislation ensuring transparency and accountability, States, in cooperation with professional associations, should:
- (a) Ensure that criteria are set for the accreditation of legal aid providers;
 - (b) Ensure that legal aid providers are subject to applicable professional codes of conduct, with appropriate sanctions for infractions;

- (c) Establish rules to ensure that legal aid providers are not allowed to request any payment from the beneficiaries of legal aid, except when authorized to do so;
- (d) Ensure that disciplinary complaints against legal aid providers are reviewed by impartial bodies;
- (e) Establish appropriate oversight mechanisms for legal aid providers, in particular with a view to preventing corruption.

Guideline 16

Partnerships with non-State legal aid service providers and universities

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.

Guideline 17

Research and data

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.

Guideline 18

Technical assistance

75. Technical assistance based on needs and priorities identified by requesting States should be provided by relevant intergovernmental organizations, such as the United Nations, bilateral donors and competent non-governmental organizations, as well as by States in the framework of bilateral and multilateral cooperation, with a view to building and enhancing the national capacities and institutions for the development and implementation of legal aid systems and criminal justice reforms, where appropriate.



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