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**Human Rights Council****Twenty-third session**

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development****Report of the Special Rapporteur on the  
independence of judges and lawyers,  
Gabriela Knaul***Summary*

In the present report, the Special Rapporteur on the independence of judges and lawyers examines the relevance and analyses the possibilities of providing legal aid to individuals who come into contact with the law but cannot afford the costs of legal advice, counsel and representation. The main goal of the report is to encourage States to develop and implement effective and sustainable legal aid schemes to enable individuals to exercise and enjoy a number of human rights, including the rights to a fair trial and to an effective remedy. The Special Rapporteur considers that legal aid should be ensured both in criminal and in non-criminal cases, and encompass all stages of judicial or extrajudicial procedures, thus contributing to the elimination of obstacles that hamper access to justice through the provision of assistance to people otherwise unable to afford legal counsel, representation and access to the court system.

Following a brief outline of the activities carried out by the Special Rapporteur in 2012, the thematic section of the present report consists of three parts. The first highlights existing international human rights standards relating to legal aid; the second focuses on the normative content of the right to legal aid, and reviews the jurisprudence of human rights treaty bodies and regional courts on this issue; while the third contains an analysis of the legislative, judicial, administrative, budgetary, educative and other measures that States are required to take in order to give effect to the right to legal aid in their domestic order. The final section contains conclusions and a number of recommendations aimed at assisting States and other stakeholders in adopting and implementing appropriate and effective measures to strengthen access to legal aid in their systems of administration of justice.

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## **I. Introduction**

1. The present report is submitted in accordance with Human Rights Council resolution 17/2.
2. Following a brief outline of the activities carried out by the Special Rapporteur on the independence of judges and lawyers in 2012, the thematic section of the present report focuses on legal aid. It consists of three parts: the first part highlights existing international human rights standards relating to legal aid; the second part focuses on the normative content of the right to legal aid, and reviews the jurisprudence of human rights treaty bodies and regional courts on this issue; while the third part contains an analysis of the legislative, judicial, administrative, budgetary, educative and other measures that States are required to take in order to give effect to the right to legal aid in their domestic order.
3. The Special Rapporteur notes that an independent judiciary should guarantee an efficient and effective administration of justice for all, without discrimination of any kind, such as on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, in order to protect and enforce human rights equally. Legal aid is an essential component of a fair and efficient justice system that is founded on the rule of law and, as such, it represents an important safeguard that contributes to ensuring the fairness and public trust in the administration of justice.
4. Despite the above, the implementation of legal aid systems remains a challenge for many States, either because the definition of legal aid and the established eligibility criteria pose excessive restrictions on the kinds of service available or because States lack expertise and financial resources to implement effective schemes.
5. In the present report, the Special Rapporteur addresses these challenges and proposes a number of solutions, encouraging States to establish effective and sustainable legal aid systems aimed at guaranteeing the exercise and enjoyment of a number of human rights, including the rights to a fair trial and to an effective remedy. The analysis, conclusions and recommendations made by the Special Rapporteur are based on international human rights standards, which, together with national legislation, may provide adequate guidance on how to face the challenges relating to legal aid and ensure that all have access to it.

## **II. Activities in 2012**

### **A. Country visits and communications with Member States**

6. The Special Rapporteur carried out official visits to Pakistan, from 19 to 29 May 2012 (A/HRC/23/43/Add.2), El Salvador, from 19 to 26 November 2012 (A/HRC/23/43/Add.1), and Maldives, from 17 to 24 February 2013 (A/HRC/23/43/Add.4) at the invitation of the respective Governments.
7. The Special Rapporteur addressed requests for official visits to the Governments of Bangladesh, Fiji, Kenya, Myanmar, Nepal, the Philippines, the Russian Federation, Swaziland, Ukraine, Zambia and Zimbabwe. She thanks the Government of the Russian Federation for the invitation it extended to her and encourages those who have not responded yet to consider extending an invitation to visit in the near future.
8. From 16 March 2012 to 1 March 2013, the Special Rapporteur sent a total of 96 communications alleging violations of human rights in the context of her mandate to 49 Member States. Of the communications sent, 77 were urgent appeals and the remaining 19

were letters of allegation. Details of the communications and responses from Governments are included in the communications reports of special procedures (A/HRC/22/67).

## **B. Other activities**

9. From 4 to 6 May 2012, the Special Rapporteur participated in the meeting of the California Academy of Appellate Lawyers on the theme “Judicial independence from a State, national, and international perspective”, in Carmel, California, United States of America.

10. From 4 to 6 June 2012, the Special Rapporteur participated as speaker in a conference on the role of the Special Rapporteur on the independence of judges and lawyers and universal standards at the Universidad Católica Andrés Bello in Caracas, and in the forty-eighth annual conference of the Inter-American Bar Association on Margarita Island in the Bolivarian Republic of Venezuela.

11. From 11 to 15 June 2012, the Special Rapporteur participated in the annual meeting of special procedures mandate holders.

12. On 25 June 2012, the Special Rapporteur presented her annual thematic report to the Human Rights Council (A/HRC/20/19), as well as her reports on her official visits to Romania, Bulgaria and Turkey (A/HRC/20/19/Add.1 to Add.3). She also presented an advance report on her global thematic study on human rights education and the training of legal professionals (A/HRC/20/20). She also participated as a panellist in a side event on the issue of the stoning of women.

13. On 26 and 27 September 2012, she participated in the Human Dimension Implementation Meeting of the Organization for Security and Cooperation in Europe Office for Democratic Institutions for Human Rights, held in Warsaw.

14. From 30 September to 1 October 2012, she participated in the opening of the Legal Year of England and Wales.

15. On 24 October 2012, the Special Rapporteur presented her annual report to the General Assembly at its sixty-seventh session (A/67/305).

16. From 28 October to 1 November 2012, the Special Rapporteur attended the seventeenth Annual Conference and General Meeting of the International Association of Prosecutors, held in Bangkok, and organized a panel discussion on the theme of the prosecution of organized crime.

17. On 7 November 2012, the Special Rapporteur attended an award ceremony organized in Brasilia by the Human Rights Institute of the International Bar Association and the Innovare Institute, in Brazil.

18. On 28 and 29 November 2012, the Special Rapporteur organized, with the support of the Office of the United Nations High Commissioner for Human Rights, a subregional consultation in Panama City on the independence and impartiality of the judiciary in Central America. A summary of its proceedings and conclusions is contained in an addendum to the present report (A/HRC/23/43/Add.3).

19. On 10 December 2012, the Special Rapporteur participated, with the members of the Commonwealth Magistrates’ and Judges’ Association, the International Association of Prosecutors and Lawyers for Lawyers, in a meeting organized in Amsterdam by the law firm Kennedy Van der Laan to celebrate International Human Rights Day.

### III. Legal aid

#### A. Introduction

20. Legal aid is an essential component of a fair and efficient justice system founded on the rule of law. It is also a right in itself and an essential precondition for the exercise and enjoyment of a number of human rights, including the right to a fair trial and the right to an effective remedy. Access to legal advice and assistance is also an important safeguard that helps to ensure fairness and public trust in the administration of justice.

21. Several international and regional human rights treaties recognize access to free legal assistance as an essential component of the right to a fair trial. Article 14 (3) (d) of the International Covenant on Civil and Political Rights lists, among the procedural guarantees available to persons charged with a criminal offence, the right “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.”

22. Article 18 (3)(d) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families includes a formulation that is almost identical to that included in the International Covenant on Civil and Political Rights. The Convention on the Rights of the Child recognizes that children deprived of their liberty and those alleged as, accused of or recognized as having infringed criminal law have the right to have access to “legal and other appropriate assistance” (arts. 37 (d) and 40 (2)(b)(ii) and (iii)), but does not contain any express reference to free legal assistance. In its general comment No. 10, however, the Committee on the Rights of the Child stressed that this assistance should be free of charge.<sup>1</sup>

23. Among regional instruments, the right to free legal assistance is recognized in both the European and Inter-American systems. Article 6 (3)(c) of the European Convention on Human Rights includes the right of the accused to be given free legal assistance when that person does not have sufficient means to pay for it and the interests of justice so require in the list of “minimum rights” of defendants in criminal proceedings. Article 8 (2)(e) of the American Convention on Human Rights qualifies the right to be assisted by counsel provided by the State as an “inalienable right” but, unlike the United Nations and the European texts, it does not include any reference to the interests of justice or the financial situation of the defendant.

24. The right to free legal assistance has been proclaimed in a large number of United Nations legal instruments, including the Standard Minimum Rules for the Treatment of Prisoners,<sup>2</sup> the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>3</sup> the Basic Principles on the Role of Lawyers,<sup>4</sup> the Rules for the Protection of Juveniles Deprived of their Liberty (“the Havana Rules”)<sup>5</sup> and the Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”).<sup>6</sup>

<sup>1</sup> CRC/C/GC/10, para. 49.

<sup>2</sup> Economic and Social Council resolutions 663 C (XXIV) and 2076 (LXII), para. 93.

<sup>3</sup> General Assembly resolution 43/173, annex, principle 17, para. 2.

<sup>4</sup> Adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, principle 6.

<sup>5</sup> General Assembly resolution 45/113, annex, para. 18(a).

<sup>6</sup> General Assembly resolution 40/33, rule 15.1.

25. In December 2012, the General Assembly adopted the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,<sup>7</sup> which 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”. Although the Principles and Guidelines only focus on the provision of legal aid in the criminal justice system, the Special Rapporteur considers that they represent the most comprehensive legal instrument to date for the development and strengthening of legal aid systems at the national level.

## **B. Normative framework**

26. Existing human rights treaties do not provide any definition of legal aid. The only internationally agreed definition is that contained in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which construes the term “legal aid” as including “legal advice, assistance and representation for victims and for arrested, prosecuted and detained persons in the criminal justice process, provided free of charge for those without means. 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”.<sup>8</sup>

27. The Special Rapporteur considers that the aim of legal aid is to contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people otherwise unable to afford legal representation and access to the court system. Accordingly, the definition of legal aid should be as broad as possible. It should include not only the right to free legal assistance in criminal proceedings, as defined in article 14 (3) (d) of the International Covenant on Civil and Political Rights, but also the provision of effective legal assistance in any judicial or extrajudicial procedure aimed at determining rights and obligations.

28. The Special Rapporteur is of the view that the right to legal aid can be construed as both a right and an essential procedural guarantee for the effective exercise of other human rights, including the right to an effective remedy, the right to liberty and security of person, the right to equality before the courts and tribunals, the right to counsel and the right to a fair trial. Owing to its importance and considering its potential scope, the right to legal aid should be recognized, guaranteed and promoted in both criminal and non-criminal cases.

29. In its general comment No. 32 (2007), the Human Rights Committee acknowledged that “the availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way”, and encouraged States to provide free legal aid not only in criminal proceedings, but also in other cases where individuals do not have sufficient means to pay for it. In some cases, the Committee considered that States may even be obliged to do so, for instance “where a person sentenced to death seeks available constitutional review of irregularities in a criminal trial but does not have sufficient means to meet the cost of legal assistance to pursue such a remedy” (para. 10).

30. In its general comment No. 28 (2000), the Human Rights Committee requested States parties to provide information on whether access to justice and the right to a fair trial, provided for in article 14 of the Covenant, were enjoyed by women on equal terms with

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<sup>7</sup> General Assembly resolution 67/187, annex.

<sup>8</sup> *Ibid.*, para. 8.

men, and whether measures had been taken to ensure that women had “equal access to legal aid, in particular in family matters”.<sup>9</sup>

31. Other human rights treaty bodies have also mentioned the right to have access to legal aid in their general comments or general recommendations. In its general comment No. 7 (1997), the Committee on Economic, Social and Cultural Rights included legal aid in the list of procedural guarantees that should be provided to persons who have been subject to forced eviction and seek redress from the courts.<sup>10</sup>

32. In its general recommendation XXXI (2005), the Committee on the Elimination of Racial Discrimination recommended that States parties to the Convention should (a) supply legal information to persons belonging to the most vulnerable social groups, who are often unaware of their rights; (b) promote, in the areas where such persons live, institutions such as free legal help and advice centres, legal information centres and centres for conciliation and mediation; and (c) expand their cooperation with associations of lawyers, university institutions, legal advice centres and non-governmental organizations specializing in protecting the rights of marginalized communities and in the prevention of discrimination.<sup>11</sup> In its general recommendation XXIX (2002), the Committee also recommended that States take the necessary steps to secure equal access to the justice system for all members of descent-based communities, “including by providing legal aid, facilitating of group claims and encouraging non-governmental organizations to defend community rights”.<sup>12</sup>

33. In its general comment No. 3 (2012), the Committee against Torture stated that States parties should provide adequate legal aid to those victims of torture or ill-treatment lacking the necessary resources to bring complaints and to make claims for redress, and that the failure to provide sufficient legal aid and protection measures for victims and witnesses impede the enjoyment of the right to redress and prevent effective implementation of article 14.<sup>13</sup>

34. In its general comment No. 1 (2011) on domestic migrant workers, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families encouraged embassies and consulates of countries of origin present in countries where migrant domestic workers are employed to ensure, in coordination with the authorities in the countries of employment, adequately trained staff and mechanisms, including telephone hotlines, to receive and address complaints made by migrant domestic workers, including through the provision of legal aid.<sup>14</sup>

35. In accordance with the jurisprudence of existing human rights treaty bodies, the Special Rapporteur considers that the notion of beneficiaries of legal aid should be extended to any person who comes into contact with the law and does not have the means to pay for counsel. This concept also includes (a) any person whose rights or freedoms have been violated as a result of an act, or a failure to act, perpetrated by a State actor, and (b) any person who participates in judicial or extrajudicial procedures aimed at determining rights and obligations “in a suit at law”.

<sup>9</sup> CCPR/C/21/Rev.1/Add.10, para. 18.

<sup>10</sup> *Official Records of the Economic and Social Council, 1998, Supplement No. 2 (E/1998/22)*, annex IV, para. 15.

<sup>11</sup> *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, general recommendation XXXI, paras. 7-9.

<sup>12</sup> *Ibid.*, *Fifty-seventh Session, Supplement No. 18 (A/HRC/57/18)*, general recommendation XXIX.

<sup>13</sup> CAT/C/GC/3, paras. 30 and 38.

<sup>14</sup> CMW/C/GC/1, para. 62.

36. In the first case, the obligation to provide legal aid to those who lack sufficient financial means to pay for these services stems from article 8 of the Universal Declaration of Human Rights and article 2, subparagraphs 3 (a) and (b) of the International Covenant on Civil and Political Rights, which recognize the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights set out in international treaties, the Constitution or the law.

37. In the latter case, the obligation derives from article 14, paragraph 1 of the International Covenant, which recognizes the right to a fair trial in cases regarding the determination of the rights and obligations of individuals in a suit at law. In its general comment No. 32 (2007), the Human Rights Committee noted that the concept of “suit at law” was based on the nature of the rights in question rather than on the status of one of the parties or the particular forum provided by domestic legal systems for the determination of particular rights.<sup>15</sup> The concept encompasses (a) judicial procedures aimed at determining rights and obligations pertaining to the areas of contract, property and torts in the area of private law, and (b) equivalent notions in the area of administrative law, such as the termination of employment of civil servants or the determination of their social security benefits.

38. The jurisprudence of the European Court of Human Rights has adopted a similar position. Although article 6 of the European Convention does not expressly require States to provide free legal assistance in civil matters, the Court found such an obligation in article 6, paragraph 1, in its guarantee of access to the courts, holding that “indigent applicants are entitled to free counsel when such assistance is indispensable for effective access to the courts and a fair hearing”. In *Airey v. Ireland*, the Court found a violation of article 6 (1) where the applicant was unable to obtain a judicial separation from her husband without legal assistance. The Court found that she had effectively been denied access to the courts, highlighting the complexity of the proceedings and the fact that marital disputes often entail emotional involvement that is scarcely compatible with the degree of objectivity required for advocacy in court.

39. The right to legal aid is subject to two conditions. First, the beneficiary must lack “sufficient means” to pay for legal aid services. Existing human rights treaties contain no definition of “sufficient means”, and there is no case law indicating the level or kind of private means that may be taken into account when deciding whether to award legal aid.<sup>16</sup> Second, in criminal proceedings, legal aid should be provided “where the interests of justice so require”. The interests of justice take into consideration a number of factors, such as what is at stake for the applicant in terms of the seriousness of the offence and hence the possible sentence that could result from it. In cases involving capital punishment, the Human Rights Committee stated that “it is axiomatic that the accused must be effectively assisted by a lawyer at all stages of the proceedings”.<sup>17</sup> The more complicated the case is on the law or the facts, the more likely that legal aid is required, although due regard must be given to the capacity of the accused to defend himself.

40. Counsel provided by the competent authorities must be effective in the representation of the beneficiary of legal aid. As the Human Rights Committee pointed out, “blatant misbehaviour or incompetence, for example the withdrawal of an appeal without consultation in a death penalty case, or absence during the hearing of a witness in such cases may entail the responsibility of the State concerned for a violation of article 14,

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<sup>15</sup> CCPR/C/GC/32, para. 16.

<sup>16</sup> David Harris, Michael O’Boyle and Colin Warbrick, *Law of the European Convention on Human Rights*, second edition (New York, Oxford University Press, 2009), p. 317.

<sup>17</sup> CCPR/C/GC/32, para. 38.



paragraph 3 (d)”<sup>18</sup> In *Artico v. Italy*, the European Court of Human Rights found that the right to free legal assistance in article 6, paragraph 3 (c) was not satisfied simply by the formal appointment of a lawyer; rather, it required that legal assistance be effective. The State must take “positive action” to ensure that the applicant effectively enjoys his or her right to free legal assistance.

41. Effective legal aid should be provided promptly and continuously at all stages of judicial or extrajudicial proceedings. Effective legal aid includes, but is not limited to, unhindered access to legal aid providers, confidentiality of communications, access to information and to case files, and adequate time and facilities to prepare legal cases, as well as the provision of legal advice and education, and mechanisms for alternative dispute resolution. Persons who are deprived of their liberty should be informed, prior to any questioning, of their right to legal aid and of other procedural safeguards.<sup>19</sup> In *S v Switzerland*, for example, the European Court of Human Rights found that article 6, paragraph 3 (c) was infringed when the accused, who was in detention on remand, was not allowed to consult his lawyer out of the hearing of a prison officer.

42. The effectiveness of legal aid should be further ensured through the institutionalization of services so that their provision may be evaluated, organized and monitored. The providers of legal aid should, moreover, be held accountable for the services they offer as a means to ensure the quality of legal advice, counsel and representation, and proper and adequate access to the court system.

## C. States’ obligations

### 1. General legal obligations

43. According to international human rights law, the State bears the primary responsibility to adopt all appropriate legislative, judicial, administrative, budgetary, educative and other measures towards the full realization of the right to legal aid for any individual within its territory and subject to its jurisdiction who does not have sufficient financial means to pay for legal aid or to meet the costs associated with judicial proceedings. The Special Rapporteur wishes to emphasize that access to legal aid must be available to all individuals, regardless of nationality or statelessness, including asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State party.<sup>20</sup>

44. States have an obligation to take the steps necessary to give effect to the right to legal aid in their domestic order. If this right is not already guaranteed by national legislation or practices, States are required to make such changes to their legislation and practices as necessary to ensure their conformity with the international legal obligations that they have undertaken. Where there are inconsistencies between domestic law and international obligations stemming from an international human rights treaty to which they are a party, domestic law or practice should be changed to meet those human rights standards.

45. Article 8 of the Universal Declaration of Human Rights and article 2, subparagraph 3 (a) and (b) of the International Covenant on Civil and Political Rights recognize the right

<sup>18</sup> Ibid.

<sup>19</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, principle 8.

<sup>20</sup> See *Official Records of the General Assembly, Forty-first Session, Supplement No. 40 (A/41/40)*, general comment No. 15, paras. 1-2.

to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law. With regard to legal aid, according to principle 9 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (see paragraph 25 above), States have an obligation to establish effective remedies if access to legal aid is undermined, delayed or denied or if persons have not been adequately informed of their right to legal aid.

## 2. Specific legal obligations

46. In previous reports, the Special Rapporteur noted that access to justice requires the establishment of a judicial system that guarantees rights and of parallel measures, such as mechanisms and programmes to facilitate free legal assistance, in both criminal and civil cases.<sup>21</sup> Nevertheless, the Special Rapporteur noted that, in practice, many countries still lack the resources and capacity necessary to promote the right of everyone to free legal aid, and that the inadequacy of funds to ensure legal support for those who do not have sufficient financial means adversely affects their access to justice and, consequently, their equal and effective enjoyment of human rights and fundamental freedoms.

47. At the individual level, court proceedings may represent a heavy financial burden. Costs include initiating and pursuing legal proceedings, lawyers' fees and other costs such as travel and loss of working time as a result of a court case. These costs have proportionally greater effects on low-income sectors, and the impossibility of paying for legal aid or of meeting the costs associated with a court case has been regarded as constituting a form of discrimination in cases where a person's financial situation places him or her in a position of inequality before the law.<sup>22</sup>

48. In order to implement the right to legal aid at the domestic level, States are required to develop and implement an effective and sustainable legal aid system that draws from international human rights standards and recognized good practices. The Special Rapporteur notes that the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provide guidance on the fundamental principles on which legal aid systems should be based, and outline the specific elements required to strengthen access to legal aid for those without the necessary financial resources. Although the Principles and Guidelines only refer to legal assistance in criminal proceedings, the Special Rapporteur is of the view that they may also be applied, *mutatis mutandis*, in civil and administrative law cases where free legal assistance is indispensable for effective access to the courts and a fair hearing, as well as for access to legal information and counsel and to mechanisms of alternative dispute resolution.

### (a) *Establishment of a national legal aid system*

49. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems list the following models for the provision of legal aid: public defenders, private lawyers, contract lawyers, *pro bono* schemes, bar associations, paralegals, and others. They also note that States include a wide range of stakeholders as legal aid service providers, including non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations, and academia.

50. The Special Rapporteur is of the view that it is up to the individual State to identify the legal aid model that can maximize access to free legal aid for all individuals within its

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<sup>21</sup> A/HRC/8/4, para. 23.

<sup>22</sup> *Ibid.*, para. 25.

territory and subject to its jurisdiction, taking into account the scope and funding of legal aid schemes, the type of justice systems they belong to, and the area of jurisdiction where they function. Nevertheless, she also wishes to emphasize that, regardless of the structure of the legal aid programme or its formal status, it is of paramount importance that legal aid schemes be autonomous and independent in order to ensure that they serve the interests of those who need financial support to have access to justice on an equal basis with others.

(b) *Legislation*

51. Since access to legal aid constitutes an essential procedural guarantee for the effective exercise of a number of human rights, the right to legal aid must be legally guaranteed in national legal systems at the highest possible level, possibly in the Constitution.<sup>23</sup> In this regard, the Special Rapporteur notes with satisfaction that some States have already incorporated this right into their constitutional charters,<sup>24</sup> whereas some constitutional courts or other judicial authorities have considered this right an implicit yet essential precondition for the effective exercise of the right to a fair trial set out in the Constitution.<sup>25</sup>

52. A number of States protect the right to legal aid through the enactment of legal aid bills at the statutory level. While variations exist in the definition, scope and delivery terms of legal aid services, in a number of countries, domestic legislation provides for legal aid beyond cases of mandatory defence to all indigent persons when the interests of justice so require. Such domestic legal aid provisions render legal aid available not only in court proceedings, but also throughout the procedural stages of a case and in extrajudicial proceedings.<sup>26</sup>

53. States that have not already enacted specific legislation to establish a comprehensive legal aid system that is accessible, effective, sustainable and credible should consider doing so. Legislation on legal aid should ensure that effective legal assistance is provided at all stages of the justice process, at the pretrial stage, as well as in any judicial or extrajudicial procedure aimed at determining rights and obligations, provided that the person does not have sufficient means to pay for legal aid and, in criminal cases, that the interest of justice so require. In particular, legislation should ensure that effective legal aid is provided to victims of human rights violations in order to ensure that they have access to an effective remedy by the competent national tribunals for acts violating the fundamental rights set out in international treaties, the Constitution or the law.

54. National legislation should also include specific criteria to determine eligibility for legal aid, particularly with regard to the limits of the financial means that trigger eligibility. Moreover, persons who are denied legal aid on the basis of the criteria set out in national

<sup>23</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, principle 1.

<sup>24</sup> See for example article 39 A of the Constitution of India: “The State shall (...) provide free legal aid (...) to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”; article 294 (I) of the Constitution of Ghana: “A person is entitled to legal aid in connection with any proceedings relatively to this Constitution if he has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings”; and article 18 (1) of the Constitution of the Netherlands: “Everyone may be legally represented in legal and administrative proceedings.”

<sup>25</sup> See for example David McQuoid Mason, “South African legal aid in non-criminal cases, in *Making legal aid a reality: a resource book for policy makers and civil society* (Budapest, Public Interest Law Institute, 2010).

<sup>26</sup> See for example the 1969 Legal Aid Act of South Africa, the 1999 Access to Justice Act of England and Wales, the 2005 New Legal Aid Law of Lithuania, and the 2009 Legal Aid Bill of Sierra Leone.

legislation should have the right to appeal the decision.<sup>27</sup> In criminal cases, for instance, persons urgently requiring legal aid, such as those held at police stations or detention centres, should be provided preliminary legal aid while their eligibility is being determined. While the onus is on the accused to show that he or she lacks sufficient means, he or she need not, however, do so “beyond all doubt”; it is sufficient that there are “some indications” that this is so.<sup>28</sup> It is up to the court, with due regard for the particular circumstances of the case and the situation of the accused, to determine whether the person should be provided with legal aid and whether it is in the interests of justice that this aid be provided.<sup>29</sup> In civil cases, establishing substantive eligibility criteria is usually more complex. The elements considered when legal aid is to be provided in these cases are often based on financial criteria and on an evaluation of costs and benefits, which may demonstrate the likelihood of success on the basis of the merits and the potential gain or loss to the client.<sup>30</sup>

55. While it is necessary to set out financial guidelines in order to avoid diluting the capacity of legal aid programmes, it is important that, when means testing criteria are put in place, they be accurate and take into account the distribution of wealth in the household, so as not to disadvantage those who have restricted access to household wealth, such as women and older persons. In addition to financial eligibility criteria, many legal aid programmes also impose substantive eligibility criteria. When such merit tests condition the delivery of legal aid, they should not be so restrictive that they deprive individuals of their right to legal assistance, even if the case is weak. Substantive eligibility criteria in civil legal aid programmes are generally based on the likelihood of success of the case, and can help to channel resources effectively. In any case, persons who are denied legal aid on the basis of the criteria set out in national legislation should have the right to appeal the decision of the court.

56. The quality of legal aid depends in primis on the qualifications and training of legal aid providers. In this regard, national legislation on legal aid should ensure that professionals working for the legal aid system possess the qualifications and training appropriate for the services they provide.<sup>31</sup> Where there is a shortage of qualified lawyers, the provision of legal aid services may also include non-lawyers or paralegals. In such cases, national legislation should ensure that minimum quality standards for paralegal services are met and that paralegals receive appropriate training opportunities and operate under the supervision of a qualified lawyer. Legislation should also specify the types of legal services that may be provided by paralegals and those that can only be provided by qualified legal professionals.

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<sup>27</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, guideline 1.

<sup>28</sup> Harris, O’Boyle and Warbrick, *Law of the European Convention on Human Rights* (see footnote 16) p. 317.

<sup>29</sup> The European Court of Human Rights specified in *Quaranta v. Switzerland* that, when deciding whether legal assistance is required for the interest of justice to be met, domestic courts must consider the seriousness of the offence, the complexity of the case and the ability of the defendant to provide his or her own representation.

<sup>30</sup> National Legal Aid and Defender Association, *International Legal Aid and Defender System Development Manual: Designing and Implementing Legal Assistance Programs for the Indigent in Developing Countries*, November 2010 (available from [www.nlada.org](http://www.nlada.org)), p. 44.

<sup>31</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, guideline 13.

*(c) Information on legal aid*

57. Information on the right to legal aid and in what such aid consists, including the availability of legal aid services and how to gain access to them, constitutes an essential precondition for the effective exercise of this right. Such information should be made available to the general public through all appropriate means, including the media and the Internet, and should be accessible in any facility where persons are imprisoned or detained (such as in police stations, detention centres or prisons). Furthermore, police officers, prosecutors, lawyers and judges should inform unrepresented persons of their right to legal aid and other procedural safeguards. Foreign detainees and prisoners should be informed, in a language they understand, of their right to request contact with their consular authorities without delay.<sup>32</sup>

*(d) National legal aid system: different options*

58. The structure of legal aid models varies greatly, depending on their scope and funding, the type of justice systems they belong to and the area of jurisdiction where they function. Some of the most common models for the provision of legal aid are public defenders, private lawyers, contract lawyers, pro bono schemes, bar associations and paralegals. Although States have the primary obligation to provide legal aid services, a wide range of stakeholders may contribute to providing legal aid to those lacking the necessary financial means.

59. The Special Rapporteur is of the view that it is up to the individual State to identify the legal aid model that can maximize access to free legal aid for all individuals within its territory and subject to its jurisdiction, taking into account the specific characteristics of its justice system.

60. States employ different models for the provision of legal aid to those lacking the necessary financial resources. These models include the ones set out below.

*(i) State-run legal aid programmes*

61. In some cases, legal aid programmes are established and administered solely by the State, constituting an exclusively public service. Legal aid is provided by independent and autonomous legal aid agencies or authorities that provide, administer, coordinate and monitor legal aid services. Under these schemes, lawyers operate as if they were civil servants paid by the State to provide free legal assistance.

62. State-run legal aid schemes, regardless of their administrative structure, should be free from undue political or judicial interference and be independent of Government in decision-making related to legal aid. They should also have the powers necessary to provide legal aid in, for example, the appointment of personnel and setting the criteria and accreditation of legal aid providers, and should develop, in consultation with key justice sector stakeholders and civil society organizations, a long-term strategy on legal aid.

63. Some States, particularly in Latin America, have established public defender's offices either as State institutions (namely, as part of the judiciary or the Ministry of Justice) or as functionally and financially autonomous entities. Whatever its organization and structure, public defenders' programmes should be autonomous and independent of the judiciary, the prosecutor's office and executive power. The Special Rapporteur considers that this kind of programme often constitutes one of the most effective ways of delivering legal aid, since public defenders have financial incentives to provide adequate, continuous

<sup>32</sup> Ibid., guideline 2.

and effective legal aid to those who cannot afford a lawyer and to other disadvantaged persons.

(ii) Partnerships with non-State legal aid service providers

64. Other legal aid schemes are based on a public-private partnership with bar associations, non-governmental or community-based organizations, faith-based groups or the academia, to mention but a few. States may encourage the establishment of centres to provide legal aid services that are staffed by lawyers and paralegals or enter into agreements with law societies and bar associations, university law clinics and non-governmental or other organizations to provide legal aid services. Under these public-private partnerships, States must set quality standards for legal aid services, support the development of standardized training programmes for non-State legal aid service providers and establish monitoring and evaluation mechanisms to ensure the quality of legal aid services. Some States also have a mixed legal aid system combining different models.<sup>33</sup>

65. The Special Rapporteur encourages States to recognize and support the contribution of non-State actors in providing legal aid, and recommends that they adopt all appropriate measures to ensure that non-State legal aid providers are able to carry out their work effectively, freely, autonomously and independently, and without any intimidation, harassment or improper interference.

66. In some cases, legal aid is provided by private lawyers or bar associations, which are later reimbursed by the State for the services provided. In some countries, this scheme is referred to as the “judicare” system.<sup>34</sup> In these schemes, judges or administrative bodies assign a case on an ad hoc basis to a private lawyer, who is paid per hour of work and is often subject to restrictions on the number of cases allocated to him or her. The disadvantages of this approach include favouritism and corruption during the appointment of counsel, and the lack of monitoring and continuity of legal assistance of the services provided. Bar associations may also help to enhance the reach of legal aid services. They can help to create legal assistance telephone hotlines for inquiries and advice, support lawyers’ pro bono activities and provide information and education tools on legal issues to the general public.

67. In other cases, legal aid is provided by pro bono lawyers, either on a volunteer or compulsory basis. In the first case, bar associations may encourage members of the legal profession to provide pro bono legal aid services. In the second case, a mandatory pro bono requirement may be imposed on lawyers by the bar association, a licencing agency or the Government. Mandatory requirements to provide legal aid often result in low-quality services, since members of the legal profession do not have any financial incentive to act on the cases compulsorily assigned to them.

68. Another problem associated with pro bono legal aid is the lack of appropriate mechanisms to monitor the quality of the services provided. In this regard, the Special Rapporteur wishes to recall that international human rights standards require that free legal aid be “effective” and sustainable (see paragraph 40 above). A lawyer, even though appointed by the State, is not an “organ” of the State who can engage its direct responsibility by his or her action, while the State cannot be held responsible for every

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<sup>33</sup> For example, in the Netherlands, the legal aid system relies on both a network of publicly funded legal aid centres, which employ salaried staff lawyers who provide legal services to clients, and on private lawyers, who are paid by the State to provide services directly to qualifying low-income clients.

<sup>34</sup> See for example the legal aid system in the United States of America, where civil legal aid is generally provided by private attorneys who are reimbursed by the State.

shortcoming of a lawyer acting for the defence. Nevertheless, lawyers must be responsible for the services they provide, as they must guide their actions according to the codes of ethics or conduct relating to the legal profession. Hence, once lawyers offer their services, either voluntarily or compulsorily, they must be held accountable for their professional conduct and actions.

69. Another model of legal aid scheme consists in the establishment of legal aid clinics in the law department of a university. Under such schemes, students provide free legal assistance, help in the preparation of cases and represent clients in court proceedings, usually under the supervision of a qualified lawyer or faculty staff member. With regard to legal aid clinics, States should take appropriate measures to encourage the support and establishment of such clinics in university law departments and provide incentives to allow students to practice in court under the supervision of a senior lawyer or a law professor.

70. Paralegal programmes are often the only feasible way of delivering effective legal aid in countries where there are not enough lawyers to provide the legal aid services required by the population. Both guideline 14 of the United Nations Principles and Guidelines and the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa<sup>35</sup> recognize the role played by paralegals or similar service providers in providing legal aid services where access to lawyers is limited. The Lilongwe Declaration, for example, recognizes that, in the African context, relying on non-lawyers, including law students, paralegals and legal assistants, is the only way of ensuring access to the justice system, and that an effective legal aid system should employ complementary legal and law-related services by paralegals and legal assistants.

71. The Special Rapporteur considers that the benefits of a legal aid system based on the support of paralegals should not be underestimated. Paralegals can provide legal aid services on a volunteer basis or at a very low cost. They often work together with trained workers, social workers and other professionals, and since they usually live and work within the community, they often have direct knowledge of the situation and needs of the community that legal professionals working outside frequently do not. Non-lawyers or paralegals can provide clients with assistance during hearings, procedures and negotiations. They can further assist with the drafting of documents and support licensed lawyers during the investigation of cases and interviews with clients and witnesses, thus helping to accelerate the pace of legal procedures and alleviating the heavy case loads of lawyers.

72. States should develop training programmes and a code of conduct to which all paralegals are bound so that they may offer effective legal aid services, such as proper legal advice or even by participating in court proceedings where and when there is a lack of lawyers to do so.

### (iii) Funding

73. Regardless of the nature and model of legal aid schemes, States should make appropriate budget provisions for legal aid services that are commensurate to their needs so as to ensure that prompt and effective legal aid services are provided to all individuals within their territory and subject to their jurisdiction who would not otherwise be able to afford the costs associated with initiating and pursuing legal proceedings.

74. Funding for legal aid should include legal assistance in criminal, civil and administrative cases. Some States have completely separate systems for criminal and civil

<sup>35</sup> Adopted by consensus by the participating countries in the Conference on Legal Aid in Criminal Justice: the Role of Lawyers, Non-Lawyers and other Service Providers in Africa, held in Lilongwe, from 22 to 24 November 2004.

legal aid,<sup>36</sup> while others have merged ones.<sup>37</sup> Although there is no indication that one system should prevail over the other, it is important that, in one-budget systems, funding is not shared to the complete detriment of civil and administrative legal aid. Setting up specific “impact litigation” funds in the area of civil legal aid, with specific eligibility criteria based on the fact that the selected cases should be likely to set a precedent that benefits the population at large, can also be seen as a cost-effective way to support civil legal aid when resources are scarce.<sup>38</sup>

75. To this end, guideline 12 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems recommends that States take all appropriate measures 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, support university clinics, and sponsor non-governmental and other organizations, including paralegal organizations, in providing legal aid services throughout the country. States should also identify appropriate fiscal mechanisms for channelling funds to legal aid, such as by allocating a percentage of the State’s budget for the administration of justice to legal aid services and using funds recovered from criminal activities to cover legal aid for victims.

76. The Special Rapporteur wishes to emphasize the importance of technical cooperation for the development and implementation of a sustainable and effective system of legal aid. In many countries, legal aid services rely solely on the financial assistance of donors, and may be thus terminated at any time. To ensure the sustainability of legal aid services, technical assistance based on the needs and priorities identified by requesting States should be provided by relevant United Nations specialized agencies, programmes and funds, States, donors and non-governmental organizations in the framework of bilateral or multilateral cooperation, with a view to building and enhancing national legal aid systems.<sup>39</sup>

77. The Special Rapporteur wishes to remind States that, in accordance with Article 1, paragraph 3 and Articles 55 and 56 of the Charter of the United Nations and with well-established principles of international law, international cooperation for development and thus for the realization of all human rights and fundamental freedoms is an obligation incumbent upon all States, particularly those in a position to assist others in this regard.

78. International non-governmental organizations can also contribute to the funding of legal aid schemes by offering technical support and exchanging information on best practices on how to implement, develop and maintain legal aid programmes. This type of funding, while generally only able to complement other forms of funding, certainly helps to broaden the provision of legal services, especially in States that lack resources to do so.

79. The Special Rapporteur wishes to stress that, although legal aid is an essential feature of the right of access to justice, States should also take measures in other fields to guarantee this right. Such measures include, inter alia, the simplification of judicial and

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<sup>36</sup> For example, see the Criminal Defence Service and the Community Legal Service in England and Wales.

<sup>37</sup> See for example the Legal Aid Board in South Africa (see <http://legalaid.onsite.hosting.co.za/about/what.htm>).

<sup>38</sup> See for example the Special Impact Litigation Fund set up by the Board of South Africa in 2001 to support claims that have “a reasonable chance of success where a positive outcome will set a precedent that will benefit South Africa’s indigent population”. Legal Aid Board Annual Report, 2002.

<sup>39</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, guideline 18.



extrajudicial procedures, the provision of legal information and education to the population and the development of self-representation mechanisms.

(iv) Legal aid for women, children and groups with special needs

80. The right to equality before the courts and tribunals as enunciated in article 14, paragraph 1 of the International Covenant on Civil and Political Rights aims to guarantee equal access to the administration of justice. This provision not only requires States to prohibit any distinction with regard to access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds, but also requires them to take positive measures to ensure that no individual is deprived of his or her right to claim justice.

81. In a previous report, the Special Rapporteur noted that the lack of public policies to eliminate obstacles to access to justice for all has a greater impact on groups in a vulnerable situation or living in extreme poverty, or who are culturally, economically or socially disadvantaged.<sup>40</sup> In order to ensure equal and effective access to legal aid for those lacking sufficient means, legal aid must be provided to all persons regardless of age, race, colour, sex, 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.

82. In order to guarantee equal and effective access to legal aid to everyone, special measures should be developed and 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 these groups, including gender-sensitive and age-appropriate measures.<sup>41</sup> The development of joint strategies to guarantee a more comprehensive, equitable and sustainable system of legal aid is important to ensure that these individuals have prompt access to the tools necessary to claim their rights.

83. In a previous report, the Special Rapporteur noted that legal services designed to meet the particular needs of women were still rare, particularly for women living in poverty. In the area of free legal aid, for example, the Special Rapporteur found that women were in competition with men for resource allocations, and those resources were in any case provided for a single type of service, regardless of the fact that needs could differ.<sup>42</sup> To improve access to legal aid for women, guideline 9 of the United Nations Principles and Guidelines recommends incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid; taking steps to ensure that, insofar as possible, female defendants, accused and victims are assisted by female lawyers; and providing legal aid, advice and court services in all legal proceedings to female victims of violence so as to ensure access to justice and avoid secondary victimization.

84. Access to justice for children requires that all children, however they come into contact with the law, be able to participate fully in legal proceedings. While enjoying the same guarantees as adults, children require special protection, as their best interests are paramount.<sup>43</sup> A recent report showed that legal systems can be immensely confusing and difficult, if not impossible, to navigate for children, especially without the help of a legal

<sup>40</sup> A/HRC/8/4, para. 48.

<sup>41</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, principle 10.

<sup>42</sup> A/HRC/8/4, para. 51.

<sup>43</sup> *Ibid.*, para. 53.

professional.<sup>44</sup> Legal assistance provides children with the means to understand legal proceedings, to defend their rights and to make their voices heard. In practice, however, the availability and quality of legal aid for children both in and out of detention varies dramatically from one jurisdiction to another.

85. Guideline 10 of the United Nations Principles and Guidelines recommends that States adopt special measures to promote children's effective access to justice and to prevent stigmatization. Such measures should include ensuring the right of the child to have counsel assigned to represent him or her; prohibiting any interviewing of a child in the absence of his or her lawyer or other legal aid provider; ensuring that children may consult freely and in full confidentiality with parents and/or guardians and legal representatives; providing information on legal rights in a manner appropriate for the child's age and maturity, and in a language that the child can understand; encouraging, where appropriate, the use of alternative measures and sanctions to the 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.

#### **IV. Conclusions**

86. **Legal aid is an essential element of a fair, human and efficient system of administration of justice that is based on the rule of law. It is a foundation for the enjoyment of other rights, including the right to a fair trial and the right to an effective remedy, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the administration of justice.**

87. **The Special Rapporteur considers that the aim of legal aid is to contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people otherwise unable to afford legal counsel, representation and access to the court system. Accordingly, the definition of legal aid should be as broad as possible and include the provision of effective legal assistance in any judicial or extrajudicial procedure aimed at determining rights and obligations. Furthermore, legal aid should not be limited to covering only legal assistance and representation in criminal, administrative and civil proceedings, but should also include legal education, access to legal information and other services provided through alternative dispute resolution mechanisms and restorative justice processes.**

88. **In accordance with this broader definition of legal aid services, the Special Rapporteur believes that notion of beneficiaries of legal aid should not only include defendants in criminal proceedings but should also include (a) any person whose rights or freedoms have been violated as a result of an act, or a failure to act, perpetrated by a State actor; and (b) any person who participates in judicial or extrajudicial procedures aimed at determining rights and obligations "in a suit at law".**

89. **States bear the primary responsibility to develop and implement an effective and sustainable legal aid system that draws from international human rights standards and recognized good practices. If the right to legal aid is not already guaranteed by national legislation or practices, States are required to make such changes to their legislation and practices as necessary to ensure their conformity with**

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<sup>44</sup> Child Rights International Network, Legal Assistance Toolkit for Children and Children's Rights Organisations, 2013. Available from [www.crin.org/docs/CRIN\\_Legal\\_Assistance\\_Toolkit\\_Updated\\_2013.pdf](http://www.crin.org/docs/CRIN_Legal_Assistance_Toolkit_Updated_2013.pdf).

the international legal obligations that they have undertaken. Legal aid systems should be institutionalized so that they can be duly organized and monitored and providers can be held accountable in the event that they fail to offer adequate, proper, timely and effective services.

90. The Special Rapporteur notes that, in practice, many countries still lack the necessary resources and capacity to promote the right of everyone to free legal aid, and that the inadequacy of funds to ensure legal support for those who do not have sufficient financial means adversely affects their access to justice and, consequently, their equal and effective enjoyment of human rights and fundamental freedoms.

## **V. Recommendations**

91. With due regard for the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the Special Rapporteur makes the recommendations below with the aim of assisting States in developing and taking appropriate and effective measures to strengthen access to legal aid in their justice systems.

### **A. Legislation on legal aid**

92. The right to legal aid should be legally guaranteed in national legal systems at the highest possible level, if possible by the Constitution.

93. States should consider enacting specific legislation to establish a comprehensive legal aid system that is accessible, effective, sustainable and credible.

94. Legislation on legal aid should, *inter alia*:

- (a) Contain a broad definition of legal aid;
- (b) Develop specific criteria to determine eligibility for legal aid;
- (c) Ensure that effective legal assistance is provided at all stages of the criminal justice process, at the pretrial stage and in any non-criminal judicial or extrajudicial procedure aimed at determining rights and obligations;
- (d) Ensure that information on the right to legal aid and in what such aid consists, including the availability of legal aid services and how to gain access to them, is made available to the general public through all appropriate means, including the media and the Internet, as well as in any facility where persons are imprisoned or detained;
- (e) Determine the minimum qualifications and training of professionals and paralegals working for the legal aid system.

### **B. Establishment of a national legal aid system**

95. States should identify, among the different models for the provision of legal aid, the one that can maximise access to free legal aid for all individuals within its territory and subject to its jurisdiction, taking into account the scope and funding of legal aid schemes, the type of justice systems to which they belong and the area of jurisdiction where they function.

96. States should consider establishing independent legal aid agencies or authorities, such as public defenders' offices, that provide, administer, coordinate and monitor legal aid services. State-run legal aid schemes, regardless of their

administrative structure, should be free from undue political or judicial interference and be independent of Government in decision-making related to legal aid.

97. Where responsibilities to provide legal aid are shared among State institutions and non-State legal aid providers, appropriate mechanisms should be put in place to facilitate coordination among different legal aid providers and thus maximize the effectiveness of the legal aid system.

98. States should encourage bar associations to develop legal aid programmes or to support existing systems in order to ensure a broader reach of the legal aid services provided or of pro bono legal aid.

99. Where appropriate, States should establish partnerships with bar associations and legal clinics to ensure the provision of legal aid at all stages of criminal proceedings, at the pretrial stage and in any non-criminal judicial or extrajudicial procedure aimed at determining rights and obligations.

100. States should take appropriate measures to encourage the support and establishment of the above-mentioned clinics in university law departments, and provide incentives to law students to participate in legal aid clinic schemes as part of their academic curriculum or professional development.

101. Where there is a shortage of qualified lawyers, States should develop a nationwide network of paralegal services with standardized training curricula and accreditation schemes.

102. In cooperation with private legal aid providers, States should develop criteria for the accreditation of legal aid providers; ensure that legal aid providers are subject to applicable professional codes of conduct; put in place mechanisms to ensure that all legal aid providers possess adequate education, training, skills and experience that are commensurate with the nature of their work; and establish appropriate oversight mechanisms for legal aid providers, in particular to prevent them from receiving any payment from the beneficiaries of legal aid, except when authorized to do so.

### **C. Funding of legal aid schemes**

103. Regardless of the nature and model of legal aid schemes, States should make appropriate budgetary provisions for legal aid services that are commensurate to their needs. To this end, States should take all appropriate measures to establish a legal aid fund to finance legal aid schemes, and identify appropriate fiscal mechanisms for channelling funds to legal aid.

104. To facilitate the development and strengthening of national legal aid systems, United Nations specialized agencies, programmes and funds, States, donors and non-governmental organizations should provide technical assistance based on the needs and priorities identified by requesting States in the framework of bilateral or multilateral cooperation.

### **D. Legal aid for women, children and groups with special needs**

105. Recognizing that the lack of public policies to eliminate obstacles to access to justice for all has a greater impact on groups in a vulnerable situation or living in extreme poverty, States should develop and implement appropriate policies to ensure meaningful access to legal aid for women, children and groups with special needs.