

Legal Aid Sector of Sri Lanka

Final Report on Stakeholder Mapping with Recommendations

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INTRODUCTION

“In the epoch where mainstream of the populace is finding it difficult even to meet the expense of the elementary facilities of life, it is next to impossible for them to represent themselves in the Court of law through a good lawyer”¹

The above statement remains true in the present Sri Lankan context, when one considers the sharp rise in the cost of living during the years 2021 and 2022² which has resulted in an increase in the populace who are economically and socially disadvantaged. Right to legal representation is a *sine qua non* for the realisation of the right to fair trial and equal access to justice³. Legal aid is a crucial component in the fabric of the justice system and plays a key role in facilitating access to justice by ensuring that individuals can establish or enforce their rights across various fields of law and that their legal needs are met.⁴

The State has a duty towards its citizens to protect and ensure the realisation of economic, social and cultural rights⁵, to prioritise the implementation of the laws, policies, and practices that prohibit discrimination and to protect the rights of marginalised populations by using the maximum available resources efficiently and effectively.⁶

¹ Adapted from ‘Concept of Free Legal Aid: A Comparative Analysis Free Legal Aid in India, United Kingdom and Australia’ by Dolly Choudhury (2015), Vol.3, Issue 3, International Journal of Law and Legal Jurisprudence Studies, pg. 104

² Central Bank of Sri Lanka, Inflation. <https://www.cbsl.gov.lk/en/measures-of-consumer-price-inflation>

³ ‘Constitutional and Administrative Law’, Alex Carol (2017), 9th Edition, Chapter 14-370

⁴ Adapted from ‘We are Legal Aid: Findings from the 2021 Legal Aid Census’ by Catrina Denvir et al., (2022), pg.9

⁵ United Nations, International Covenant on Economic, Social and Cultural Rights. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>

⁶ United Nations, Human Rights Office of the High Commissioner. <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights>

The Sri Lankan Constitution⁷, sets out the Fundamental Rights in Chapter Three (3) and Article 12(1) specifically provides that ‘all persons are equal before the law and are entitled to equal protection of the law’. While there is no explicit right to free legal aid as guaranteed under the Constitution, as far back as 1978, the Sri Lankan Government enacted the Legal Aid Act No.27 of 1978 (the ‘Act’), giving statutory acknowledgement for provision of legal aid to ‘deserving persons’ across the country, with the establishment of the Legal Aid Commission (**‘LAC’**)⁸.

The objectives of the LAC, have been broadly set out as ‘to operate throughout Sri Lanka an efficient Legal Aid Scheme to provide deserving persons with legal advice, funds for the conduct of legal proceedings, the services of attorneys-at-law and such other assistance as may be necessary...’⁹ Thus the LAC is vested with the responsibility of administering legal aid throughout the country, as an independent corporate body¹⁰, fully funded by the Government and falling under the purview of the Ministry of Justice.

The extent of the current state of legal aid in the country has been drawn, based on a set of comprehensive surveys of clusters of participants consisting of¹¹;

1. the lawyers of the Regional Legal Aid Centres (**‘RLACs’**) of the LAC
2. private lawyers of the Regional Associations of the Bar Association of Sri Lanka (**‘BASL’**)
3. current users/beneficiaries of the RLACs
4. potential users/beneficiaries as found in court premises, police stations and the District Secretariat Office and

⁷ Const. (1978) (LK)

⁸ Const. (1978), art. 2 (1), Legal Aid Act No.27, (LK)

⁹ Const. (1978), art. 3, Legal Aid Act No.27, (LK)

¹⁰ Const. (1978), art. 2 (2), Legal Aid Act No.27, (LK)

¹¹ Table 1.3 –Island wide Data Collection in Capacity Needs Assessment Report (Annex 3)

5. Interviews conducted of the relevant government departments, academic institutions and civil society organisations involved in the legal aid landscape.

The present study engaged in a stakeholder mapping exercise that drew up on the level of interest and influence of the legal aid workforce in the country specifically including the LAC, RLACs, the BASL, academic institutions, and the Civil Society Organisations ('CSOs') that either actively provide legal aid or facilitate legal aid provision to marginalised individuals and communities in terms of capacity building and skills development in the legal aid sector against the present crises and challenges [See **Table A** below].

As per the said stakeholder mapping, based on the qualitative data gathered, the level of interest and influence of the Legal Aid Commission, the Bar Association of Sri Lanka and the Ministry of Justice remained high while the Judicial Service Commission, Sri Lanka Judges Institute and the Attorney General's Department have been mapped as having high levels of influence with a low level of interest in the present legal aid landscape. Other stakeholders specifically including governmental and non-governmental organisations displayed varied levels of interest and influence in a mid-range (**Annex 2-Interest and Influence Grid for Stakeholders – Stakeholder Mapping Report**).

No	Stakeholder	Interest	Influence
1	Legal Aid Commission ('LAC')	High	High
2	The Bar Association of Sri Lanka ('BASL')	High	High
3	Ministry of Justice ('MOJ')	High	High
4	Women-in-Need ('WIN')	Mid	Mid
5	Transparency International Sri Lanka' ('TISL')	Mid	Mid

6	Center for Environmental Justice ('CEJ')	Mid	Mid
7	Center for Human Rights Development ('CHRD')	Mid	Mid
8	Jaffna Social Action Center ('JSAC')	Mid	Mid
9	Women's Development Center' ('WDC')	Mid	Mid
10	Media Law Forum ('MLF')	Mid	Mid
11	Suriya Women's Development Center ('SWDC')	Mid	Mid
12	Organisation for the Rehabilitation of the Handicapped ('ORHAN')	Mid	Mid
13	Center for Women's Research ('CENWOR')	Mid	Mid
14	Center for Equality and Justice ('CEJ')	Mid	Mid
15	United States Agency for International Development ('USAID')	Mid	Mid
16	HelpAge Sri Lanka ('HASL')	Mid	Mid
17	Center for Policy Alternatives ('CPA')	Mid	Mid
18	Law & Society Trust ('LST')	Mid	Mid
19	Disabilities Organisations Joint Front (DOJF)	Mid	Mid
20	Japan International Cooperation Agency ('JICA')	Mid	Mid
21	The Asia Foundation	Mid	Mid
22	University of Peradeniya, Department of Law ('UOP')	Mid	Mid

23	University of Colombo, Faculty of Law ('UOC')	Mid	Mid
24	Sri Lanka Law College ('SLC')	Mid	Mid
25	National Authority for the Protection of Victims of Crime and Witnesses ('NAPVCW')	Mid	Mid
26	Judicial Service Commission Secretariat ('JSC')	Low	High
27	Sri Lanka Judges Institute ('SLJI')	Low	High
28	Attorney General's Department ('AG')	Low	Mid
29	District Administration Branch-Ministry of Public Administration, Home Affairs, Provincial Councils & Local Government	Low	Mid
30	Sri Lanka Police - Children & Women's Bureau	Mid	Mid
31	Department of Prisons	Mid	Mid

Table A

In the stakeholder mapping exercise and capacity needs assessment conducted in the present study, several areas have been identified as challenges to the effective implementation of legal aid services. Therefore, a set of recommendations are presented hereinafter, with the objective of strengthening the legal aid framework to ensure that sufficient and quality legal aid services are available to those marginalised not only due to economic challenges posed in the present day but also as interests of justice may require.

The present report sets out the most suited recommendations for a progressive improvement of the legal aid system in the country with a view to tackle fundamental problems identified in terms of capacity needs building in the sector.

RECOMMENDATIONS

The recurring theme from the comprehensive surveys conducted in the study, point to a need to expand the current administrative scheme for legal aid provision in the country mainly involving the Legal Aid Commission (LAC), with major contributions from the private legal practitioners of the BASL, aspiring lawyers as well as the Civil Society Organisations, together with a strong referral system of the Police Officers, Grama Niladhari Officers, the officials of the District Secretariats and other grass root communities in the country.

The research findings reveal that the legal aid sector is characterised by significant issues which has led to non-delivery of sufficient and meaningful legal aid services to those deserving individuals and communities who may very well be entitled to legal aid. While each issue may be traced to the inadequacy of legal aid funding or legal illiteracy of the masses or due to delays in the administration of justice, the findings highlight that an overall platform needs to be set as supported by the existing legal system, coupled with attitudinal changes to enable all stakeholders to combine their resources and expertise towards availing quality legal aid services to those weaker factions in the community. As discussed at the National Forum of Access Justice in 2016¹², while the challenges and insecurities faced by the sector are from new¹³, legal aid providers including the policy makers, and facilitators specifically seem to show less capacity and commitment

¹² 'Held in Colombo on 16th June 2016 organised by the Bar Association of Sri Lanka with the support of USAID' cited from Dr Ramani Jayasundere, 'Legal Aid in Sri Lanka - The Past and the Present, Challenges and Possibilities', (2016)

¹³Dr Ramani Jayasundere, 'Legal Aid in Sri Lanka - The Past and the Present, Challenges and Possibilities', (2016), Recommendations such as 'the need for a monitoring mechanism for legal aid that is independent from the Legal Aid Commission', 'ensuring better commitment of lawyers to legal aid', 'serving the needy based on merit test

towards providing free legal assistance to a wide array of persons reflective of the need for legal aid amidst the current economic challenges¹⁴ faced by the public at large.

Short-Term, Mid-Term, and Long-Term Recommendations

The recommendations set out in this Report inclusive of both policy directives and institutional interventions are categorised into Short-Term, Mid-Term, and Long-Term recommendations aimed at capacity building in a progressive fashion together with a comprehensive and deliberated Action Plan through continuous stakeholder engagement.

1. Proposed Short-Term Recommendations (A Time Framework of 6 Months)

1.1. Defining Legal Aid

Legal Aid has been broadly defined as *‘the system adopted to ensure that no one is deprived of professional advice and help because of lack of funds. Therefore, the main objective is to deliver equal justice which is to be made accessible to the poor, downtrodden, and weaker section of society*¹⁵.

Paragraph 8 of United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems declares that the term “legal aid”¹⁶ includes legal advice, assistance, and representation for persons detained, arrested or imprisoned, suspected or accused

as well as a needs test’, ‘enabling legal aid at the first point of entry in the criminal justice system’, ‘the need to include alternative dispute resolution systems within the legal aid system’.

¹⁴ Central Bank of Sri Lanka, Sri Lanka Macro Economics Development.

https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/statistics/mecpac/Chart_Pack_Q2_2022_e.pdf

¹⁵ Adapted from ‘Concept of Free Legal Aid: A Comparative Analysis Free Legal Aid in India, United Kingdom and Australia’ by Dolly Choudhury (2015), Vol.3, Issue 3, International Journal of Law and Legal Jurisprudence Studies, pg. 104

¹⁶ United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013). https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf

of or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes’.

The present survey reveals that legal aid services are mainly focused in the area of family law, specifically divorce and maintenance matters, targeting female beneficiaries. Moreover, even though the LAC is guided by two kinds of tests known as ‘means test’ and ‘justice test’ in identifying all ‘deserving persons’ in the implementation of legal aid services through its Regional Legal Aid Centres (**RLACs**), the *means test* is being overused¹⁷. As a result, there is very little activity by the RLACs and few CSOs who provide legal aid to the needy in the area of Criminal law, Fundamental Rights or Appeals or other areas such as public interest litigation, despite the visible demand for legal aid in those areas¹⁸. The present study also highlights the need to promote Alternative Dispute Resolution (ADR) mechanisms by the legal aid workforce in alleviating prolonged litigation in the formal adjudicatory system.

In light of the above, it is recommended that consensus be built amongst all stakeholders at a policy level in the form of directives/guidelines by the LAC, in defining ‘Legal Aid’. In a context where the Legal Aid Commission Act has not defined the meaning of ‘legal aid’ or ‘deserving persons’, it leaves the LAC with a broader mandate to provide ‘legal aid’ to ‘deserving persons’. It is also noted that no amendment or directive has been passed under the Legal Aid Commission Act in the past 44 years of its operation since its enactment in 1978. Hence, a broader consensus in defining ‘legal aid’ is recommended, as guided by the definition contained in Paragraph 8 of United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems¹⁹ to include defence or

¹⁷ As per the interviews conducted in the present study (Annex 1).

¹⁸ As per the Capacity Needs Assessment of the present study. (Annex 3)

¹⁹ United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013). https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

enforcement of rights of the accused in the criminal justice system and to specifically include Alternative Dispute Resolution (ADR) mechanisms in the areas of family law, land and property, employment law and other areas as per the requirements of the community. Moreover, public discourse of such a policy is recommended²⁰ in light of its potential implications on a wide range of stakeholders in the country.

1.2. Expanding the eligibility & improving accessibility of legal aid

Corresponding to the broad definition given to 'Legal Aid' under a national policy, it is also recommended that an eligibility criteria be set out in such a policy listing the 'Deserving Persons'.

The Indian law on legal aid as implemented from 1995²¹, endorses a criteria for identifying the eligible persons 'as every person who has to file or defend a case' and includes *a member of a Scheduled Caste, a victim of trafficking in human beings, a woman or a child, a mentally ill or otherwise disabled person, a person under circumstances of underserved want such as being a victim of a mass disaster, an industrial workman, a person whose annual income less than rupees fifty thousand or such other higher amount as may be prescribed by the State Government.*²²

Hence, by including a list of 'deserving persons', the legal aid providers would be obliged to include all such persons in its mandate, such as children, senior citizens and persons with disabilities ('PWDs'). In fact, certain RLACs are not physically accessible to those with disabilities or using wheelchairs²³. At a juncture, when the Rights of Disabled Persons Law is at the Bill stage, it would be

²⁰ In the interviews had with stakeholders (Annex 1), it was revealed that 'The National Legal Aid Policy of Sri Lanka' as formulated with the initiation of the Ministry of Justice in 2015 has not become a subject of public discourse and has not been implemented to date, despite the cabinet approval of it in April 2016.

²¹ National Legal Authorities Act (1987) (IND)

²² National Legal Authorities Act (1987), Section 12 (IND)

²³ As per the interviews had with the LAC (Annex 1)

significant to include provision for such persons in the legal aid law of the country²⁴. As part of a recommended action plan, the stakeholders to publish a list of ‘deserving persons’ for legal aid in public places and using media, thus creating a strong referral system.

1.3.Revisiting the Guidelines on the ‘Means Test’ and ‘Justice Test’

It is recommended that a revision of the current threshold of Rs.25,000/- as the monthly income under the *means test* be increased, given the inflationary rates in the country²⁵. It is also recommended that the existing rules on the mode of verification of such monthly income of potential beneficiaries be relaxed, as its strict application would lead to misuse or exclusion of eligible persons from receiving legal aid²⁶. Hence, it is recommended to move beyond the existing practice of producing a certificate of proof of income by the Grama Niladhari Officer, and provide other options to potential beneficiaries by means of a referral system such as by a reputed CSO, a designated Community Leader or an Employer. Specific guidelines should be issued for the use of the ‘*justice test*’ in the areas of violation of Fundamental Rights, Defence of Accused Persons, Prisoner’s right to Appeal and other areas commensurate with the needs of such vulnerable persons or classes of persons.

²⁴ As per the interview had with Disabilities Organisations Joint Front (DOJF) during the present study. (Annex 1)

²⁵ Central Bank of Sri Lanka, Sri Lanka Macro Economics Development.

https://www.cbsl.gov.lk/sites/default/files/cbslweb_documents/statistics/mecpac/Chart_Pack_Q2_2022_e.pdf

²⁶ As per the interviews had with stakeholders including the LAC (Annex 1)

1.4. Establishing a Strong Referral System at Grassroots Level

The present study also identifies police officers (09) and officials at the District Secretariat level (9) from each Province, as potential providers or facilitators of legal aid services as the first point of contact of the communities around the country²⁷.

Police Officers

In the present study, a recurrent theme is the vital role played by Police Officers not only as investigators of crime but as facilitators in early access to legal aid as part of a formal referral system connecting vulnerable persons and communities with legal aid providers.

To this end, Police Officers are recommended to be trained as legal aid facilitators and equipped with skills in identifying legal disputes of disadvantaged persons or communities in need of legal aid services. Hence, there should be a clear procedure as to how a police officer could connect a deserving person to a legal aid provider.²⁸ Hence appropriate guidelines should be developed and implemented jointly by the LAC and other stakeholders including the Police Department.

It is recommended that posters and notices be displayed in all police stations across the country in all three languages, informing the public of the availability of legal aid and the eligibility criteria in plain language. Such posters and notices ought to contain a list of the RLACs nearest to the police station with working hours, locations and contact numbers of legal aid providers.

Furthermore, the rights of persons accused of a crime, victim and witnesses of crime too must be displayed in prominent places in plain language. The RLACs must also provide the police stations with a roster of panel lawyers who would visit the police stations as and when requested by a person arrested or in police custody. In fact, such persons should be given the facility to confidentially consult the lawyer via a phone call. This is a call-in duty lawyer scheme, under which a legal aid provider is called in when a suspect or accused

²⁷ As per the interviews had with stakeholders (Annex 1),

²⁸ United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013), pg.77. https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

person is in need of legal aid.²⁹ In the event of any systemic or routine failure by police officers to respect the right to early access to legal aid by such persons, complaints could be lodged to the LAC for appropriate action by the Police Department against such officers.³⁰

Grama Niladhari Officers

The present research reveals that an ad hoc form of referral to legal aid services occurs through the Village Officer or the Grama Niladhari Officer in every village. Hence, there is potential to use the office of Grama Niladhari Officer as a central point of reference for those in need of legal aid. To this end, Grama Niladhari Officers are recommended to be trained as legal aid facilitators and equipped with skills in identifying legal disputes of disadvantaged persons or communities in need of legal aid services. Further, appropriate guidelines to determine vulnerabilities of persons and their legal needs, should be developed and implemented jointly by the LAC, other stakeholders including the Ministry of Public Administration and Home Affairs under whom the Grama Niladhari Division ultimately falls as the smallest administrative unit in the country.

It is recommended that posters and notices are displayed in all Grama Niladhari Offices, Divisional Secretariat Offices and District Secretariat Offices in all three languages, informing the public of the availability of legal aid and the eligibility criteria under Legal Aid

²⁹ United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013), pg.88. https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

³⁰ United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013), pg.123. https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

Law in plain language. Such posters and notices ought to contain a list of the RLACs nearest to the community with working hours, locations and contact numbers of such legal aid providers.

The LAC must also keep track of the referrals made through Grama Niladhari or other government officers and to conduct a survey of customer satisfaction or client interview as collection of feedback from beneficiaries can produce information, and data for analysis and improvement³¹.

Other Community Leaders

It is also recommended that posters and notices are displayed in all schools, community halls, hospitals and like other public places via the *Grama Niladhari Officer* in all three languages, informing the public of the availability of legal aid and the eligibility criteria under Legal Aid Law in plain language. Such posters and notices ought to contain a list of the RLACs nearest to the community with working hours, locations and contact numbers of such legal aid providers.

1.5. Towards a formal culture of law student placements for early legal aid counselling

It is recommended that all the Stakeholders involving the LAC, the BASL, and academic institutions including Sri Lanka Law College ('SLLC') in consultation with the reputed and long-standing CSOs formulate a policy and strategic plan to place, train and supervise law students towards skill acquisition in providing early legal advice and counselling, thus supporting the formal legal aid workforce.

³¹ United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013), pg.98. https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

Upon completion of such placements by students, the LAC to issue a certification that carries validity and of value to such student for his or her future career. Given the fact that the Regional Legal Aid Centres of the LAC are experiencing unprecedented challenges in availing legal aid counselling to a wide array of persons, due to severe staff shortages and government budgetary constraints, placement of trained students for early legal counselling would be an important step towards strengthening the legal aid workforce. Initial screening and legal counselling or early legal advice includes pre-litigation mediation, conciliation, and other suitable forms of ADR (Alternative Dispute Resolution) for prescribed matters (excluding grave criminal offences) by trained law students by placing them physically in the RLACs/CSOs and/or via virtual platforms (including through a dedicated hotline) is recommended as it gives the required exposure to students and also fills the current gap of little use of ADR and lack of trained legal aid workforce in the sector. The stakeholders are recommended to formulate an Action Plan that includes a properly functioning and dedicated hotline, together with an interactive social media platform that offers initial counselling to 'deserving persons' by a roster of law students as administered jointly by the stakeholders on a short-term scale and by a duly established body on a long-term scale.

University Law Clinic Programmes

There is potential for law students to provide legal aid services via law clinics or specifically legal aid clinics organised by universities. However, students need to be appropriately trained and supervised by legal practitioners to groom them into dedicated legal aid lawyers in the future.³²

Following the example of the Department of Law, University of Peradeniya, it is recommended that Sri Lanka Law College and all universities to provide a mandatory law clinic programme as part of the legal curricular due to its potential to contribute to the quality

³²United Nations, Office on Drugs and Crime (UNODC) Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes Practical Guidance and Promising Practices (2019), pg.20

of legal aid services. These programmes could help in expanding the scope of legal aid³³ and promoting awareness of legal aid amongst the public, while students learn to interact and communicate with clients and practice law and ethics.

It is recommended that Sri Lanka Law College and the academic institutions should explore the possibility of devising a minimum of six months to one-year mandatory legal aid course into the curriculum. The legal aid course to build in a compulsory component that guides students to visit or conduct mobile legal aid clinics in remote areas across the country with the assistance of legal professionals, aimed at socially backward individuals and communities in need of legal aid.

It is further recommended that the stakeholders formulate a training curriculum and provide mandatory training to law students prior to placements for early legal advice together with basic counselling and administrative tasks. Specific skills to be developed in law students include *inter alia*;

- a) Listening skills, non-judgmental and empathetic responding in the case of vulnerable clients;
- b) Assertion skills to stand up for the rights and interests of the client,
- c) Information-gathering skills to obtain relevant information from the client, the police and third parties,
- d) Legal advice and representation skills to provide sound advice in a way that is appropriate to a client and, where necessary, representing the client before a government entity
- e) Negotiation skills: seeking to persuade a police officer, prosecutor or other official to adopt a course of action or make a decision that is in the interests of the client.³⁴

³³United Nations, Office on Drugs and Crime (UNODC) Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes Practical Guidance and Promising Practices (2019), pg.21

³⁴United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013), pg.126. https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf

1.6. Formulate a policy for pre-litigation mediation, conciliation or any other suitable form of ADR as a mandatory step. & Training on the use of Alternative Dispute Resolution (ADR) mechanisms

The present study revealed that Alternative Dispute Resolution (ADR) mechanisms are not formally availed of by legal aid providers to the beneficiaries as part of legal aid services. Hence, ADR mechanisms such as pre-litigation mediation, conciliation, negotiation as well as out-of-court settlements are to be explored in providing legal aid services³⁵ to improve access to justice in an efficient manner. Hence, it is recommended that ADR mechanisms are regularly used as a mandatory component in certain types of matters (excluding serious criminal matters such as gender-based violence, child abuse, sexual bribery etc). It is also essential to incorporate skills development of legal aid providers such as lawyers and facilitators including Grama Niladhari Officers, Police Officers, and mediators, for expeditious and less costly resolution of conflicts. These alternative mechanisms would ideally serve as a method to circumvent the need to formally litigate minor criminal proceedings³⁶, commercial as well as civil disputes in courts.

Quality training of the staff at the RLACs & law students with counselling & mediation skills is a *sine qua non* for such policy implementation.

1.7. Scaling up Legal Aid Services by Panel Lawyers

The survey results of the two hundred and seventy seven (277) private legal practitioners as well as fifty three (53) Regional Legal Aid Centres ('**RLACs**') in the present study, point to the low levels of involvement by private lawyers as 'Panel Lawyers' of the Legal Aid Commission due to certain unresolved issues between the RLACs and their Panel Lawyers. Amongst such issues, financial constraints

³⁵ Dr Ramani Jayasundere, 'Legal Aid in Sri Lanka - The Past and the Present, Challenges and Possibilities', (2016), Page 15

³⁶ Adapted from 'Victim-Offender Mediation in Europe-Making Restorative Justice Work' by the European Forum for Victim-Offender Mediation (2000), page 83

faced by young panel lawyers take prominence as the fixed nominal fees (known as '*Honararium*') are not paid timely by the LAC³⁷ nor any other additional expenses borne by such lawyers, followed by lack of recognition and reward for legal aid work. The survey also indicates that the LAC does not communicate the required levels of commitment nor any competent framework to Panel Lawyers when they take up legal aid matters. There is no guidance for the lawyers at the RLACs in selecting and coordinating with their Panel Lawyers from the Regional Associations of the BASL. Hence, there is a prevalent negative perception of legal aid work of the LAC amongst private lawyers, given the fact that the availability of legal aid services and competence of the LAC are mainly confined to family law (divorce and maintenance) and due to prioritising female beneficiaries.³⁸ However, there seems to be an established tradition for private lawyers to engage in 'pro bono' services for selected clients³⁹ on an *ad hoc* basis. The fact that 44.1% of the private practitioners in the survey confirmed their willingness to accept legal aid matters, indicates their readiness to be part of the LAC if there is a suitable platform for it.

During the stakeholder mapping exercise of the present study, it was identified that the BASL could potentially function as a better forum for deliberation and coordination of legal aid services with both individual lawyers and civil society organisations, who actively supplement lack of availability of services by the RLACs⁴⁰. Moreover, the BASL is the only organisation that holds membership of all the lawyers practising in the country. Hence, it is recommended that the BASL formally contribute to an efficient administration of legal aid scheme, as the Act too provides that, 'in the exercise, discharge and performance of its powers, functions and duties, the Commission shall be subject to and act in accordance with the advice of the Bar Council.'⁴¹

³⁷ As stated by the Chairman of the LAC on the stakeholder validation conference held on 27.03.2023 at Galadari Hotel, Colombo.

³⁸ As per Survey Data 67% of registered beneficiaries of the LAC are female beneficiaries.

³⁹ As per Survey Data 33.8% of the senior lawyers said that they have handled **more than 100** legal aid cases during **their careers**.

⁴⁰ As per the interviews had with the BASL (Annex 1) and Stakeholder Mapping (Annex 2)

⁴¹ Legal Aid Commission Act (1978,), Section 13, (LK)

Hence, as a preliminary recommendation, the BASL should conduct an audit of all the lawyers (both senior and junior) and maintain a database of their willingness to contribute to the legal aid services by the LAC by recording their committed hours and declared interest and/or expertise. Short-term to Mid-term strategic directions based on stakeholder discussion would offer a platform to harness the expertise of Senior Lawyers not only to provide legal aid in diverse areas including civil, criminal, FR, Writ, and other areas of law but also to provide guidance and training to junior lawyers as Panel lawyers of the LAC.

1.8. Create a culture of professionally trained legal aid lawyers

The BASL, the LAC, and other stakeholders should formulate directives and guidelines for mandatory regular hands-on training for junior lawyers who undertake legal aid work. Trained lawyers could be recommended by the BASL as Panel Lawyers to the LAC to serve the RLACs for a fixed number of years subject to a revised 'Honorarium' (scheme of fees) as per deliverables determined by the LAC. The following basic guidelines are recommended to be implemented as part of a policy decision;

1. All Panel Lawyers must be clear about their role as legal aid lawyers, be familiar with the relevant law and procedures, and must possess the skills necessary to apply their knowledge in practice.
2. A Code of Ethics to define the role and professional obligations of legal aid lawyers is recommended. Each member of the BASL would be required to undertake a minimum of five (05) legal aid matters per year based on their expertise. When assigning legal aid matters, the declared interests and expertise of such lawyers will be considered.

1.9.Improvements to the Developmental Legal Aid Desks

Principle 14 of the United National Principles and Guidelines on access to legal aid⁴² provides that ‘States should recognize and encourage the contribution of lawyers’ associations, universities, civil society and other groups and institutions in providing legal aid’. Moreover, contribution of civil society organisations and other groups in providing legal aid is also encouraged as it can play an important role in catering to persons with special needs⁴³ in innovative and effective ways of delivering legal aid.

The present study revealed that there is no formal platform for cooperation between the eighteen (18) selected CSOs⁴⁴ who directly provide legal aid (legal advice and/or enforcement of rights) and/or facilitate legal aid services (by raising awareness in the community or by conducting workshops for lawyers, police officers, mediators) with the main legal aid provider in the country being the LAC. Hence, a need exists to build a strong network between other governmental entities, CSOs and the LAC, by aligning the expertise and resources of the two, to strategize into an integrated approach of multi-stakeholder engagement leading to an overall performance in the legal aid sector. Many such organisations including Women-in-Need and Transparency International have successfully built their own network of lawyers for provision of legal aid services in many regions targeting at beneficiaries as per the objectives of these organisations⁴⁵.

⁴²United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013), Principle 14. https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

⁴³ As per Annex 1 (Interviews of stakeholders) and Annex 3 – Capacity Needs Assessment

⁴⁴ As per Annex 2 - Stakeholder Mapping

⁴⁵ As per the interviews conducted in the present study (Annex 1)

'Developmental Legal Aid Desks' of the LAC such as 'Desk for Senior Citizens', 'Desk for Right to Information', 'Desk for Migrant Workers', 'Desk for Prisoners', 'Desk for Women' and 'Desk for differently abled Persons'⁴⁶ could be improved through substantial contributions from such CSOs active in the community not only in Colombo but throughout the country. The Developmental Legal Aid Desks as listed below, from (ii) to (vii) are already functioning, which nevertheless need improvement. For instance, the LAC head office in Colombo works in collaboration with the National Elders Secretariat of Sri Lanka. It is recommended that a 'Desk for Human Rights' as well as two other Desks for Victims and Witnesses (including that of bribery & corruption) and for the Lesbian, Gay, Bi-Sexual, and Transgender ('LGBT') community are established to customise services to such marginalised factions in the society.⁴⁷

- i. Desk for Human Rights
- ii. Desk for Senior Citizens
- iii. Desk for Right to Information
- iv. Desk for Migrant Workers
- v. Desk for Prisoners
- vi. Desk for Women
- vii. Desk for differently abled Persons
- viii. Desk for Victims and Witnesses (including bribery, sexual bribery & corruption cases)
- ix. Desk for the Lesbian Gay Bi-Sexual and Transgender ('LGBT') community.

⁴⁶ As per the webpage of the LAC; <https://www.legalaid.gov.lk/index.php/developmental-legal-aid>

⁴⁷ As per the feedback received from the stakeholders (specifically CSOs and government institutions) at the Stakeholder Validation Conference held on 27.3.2023 at Galadari Hotel, Colombo.

The stakeholders in the legal aid sector are recommended to formulate a policy and strategic plan for the LAC to expand its services through each of the Developmental Legal Aid Desks to share resources and expertise by aligning with relevant government bodies and CSOs specialized in serving disadvantaged individuals/communities. The LAC should identify specific CSOs that represent each of these communities and form partnerships/alliances with the overall objective of formulating a policy framework and a strategic plan to establish and operate a dedicated hotline and a social media platform. In doing so, the LAC could consider the marketability of its services, for instance, initial counselling and customised legal aid services to 'deserving persons' under each of these Developmental Legal Aid Desks.

2. Proposed Mid-Term Recommendations (A Time Frame of 6 to 9 Months)

2.1 Training the staff at the RLACs

In the present study, it was revealed that there is very limited training, supervision and evaluation of the staff at the RLACs including the lawyers of the LAC⁴⁸. Hence, regular workshops and training ought to be conducted by the LAC together with other stakeholders for the following;

- i. To train on the best practices and ethics in the legal aid profession especially in coordinating between the clients and Panel Lawyers.

⁴⁸ As per the Capacity Needs Assessment (Annex 3) and interviews conducted in the present study (Annex 1).

- ii. To train on formally availing pre-litigation mediation, and other forms of ADR for certain matters and to negotiate out-of-court settlements.
- iii. To offer basic counselling and communication skills training.
- iv. Train in managing & evaluating law students as support staff of the RLACs.
- v. To offer a pathway for continuous professional development and a reward system.
- vi. Basic professional counselling skills including empathetic responding, active listening, and having a non-judgemental outlook towards clients and their problems when liaising with client's families and other relevant persons.
- vii. Enhanced use of Information Technology (such as computer software) to maintain and update statistics or data of its clients, to equip with necessary skills to record relevant information such as advice given by a lawyer, to maintain case records, etc.

2.2 Reconstitution of the Membership of the Legal Aid Commission

According to Section 5 of the Legal Aid Act No. 27 of 1978⁴⁹, the LAC consists of Nine (09) Commissioners, of whom three (03) members are nominated by the Ministry of Justice, and the remaining six (06) members are appointed by the Bar Council of the Bar Association of Sri Lanka ('BASL'). Since its enactment in 1978, the LAC has been in operation for the past 44 years and has operated as the only state funded legal aid service provider in the country. Currently, the LAC administers eighty five (85) legal aid centres in regions spread all across the country ('**RLACs**'), supported by its permanent staff who are on public payroll⁵⁰. The LAC maintains a permanent cadre that includes lawyers and their assistants operating from the RLACs⁵¹.

⁴⁹ Legal Aid Commission Act No.27 of 1978 (LK)

⁵⁰ As per Annual Report 2020 of the LAC and the interviews had with the officers of the LAC (Annex 1)

⁵¹ *ibid*

In view of the urgent requirement to scale up the legal aid services to meet the needs for legal aid as currently exists in the country⁵², it is recommended that the Legal Aid Commission be re-engineered as a powerful force by reconstituting the composition with two (02) representatives from the Ministry of Justice, Three (03) Representatives from the BASL, one (01) representative each from the Police Department, the Human Rights Commission, National Authority for the Protection of Victims of Crime and Witnesses to act as a multi-stakeholder forum with the objective of collaborating the efforts to provide legal aid to those marginalised persons under civil law, human rights law as well as under the criminal justice system. The proposed term of office of a Commissioner would be two (02) years with eligibility for re-appointment for a further term of two (02) years. It is also recommended that gender equality be considered when re-constituting the membership of the LAC.

2.3 Contributions of the Judiciary via a re-activated Legal Aid Advisory Council

The Canadian Judicial Council's Statement of Principles on Self-Represented Litigants and Accused Persons as cited by the Commonwealth Magistrates' and Judges' Association (CMJA),⁵³ states that 'all aspects of the court process be open, transparent, clearly defined, simple, convenient and accommodating' to promote access to justice for those who represent themselves. Further, the guide includes provision of 'Information, assistance and self-help support' made available through the normal means of information, including pamphlets, telephone and court house inquiries, legal clinics and internet searches. All such persons should be informed of the potential consequences and responsibilities of proceeding without a lawyer and should be referred to available sources of representation, including those available from Legal Aid, pro bono assistance and community and other services' and 'Judges and court

⁵² As per the Capacity Needs Assessment (Annex 3) and interviews conducted in the present study (Annex 1).

⁵³ Adapted from 'A Guide for the Magistrate in the Commonwealth: Fundamental Principles and Recommended Practices' (2021), by Commonwealth Magistrates' and Judges' Association (CMJA), pg. 74

administrators should do whatever is possible to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons'⁵⁴.

Section 14 of the Legal Aid Commission Act⁵⁵ establishes a '**Legal Aid Advisory Council**' that would meet at least once every six months⁵⁶, which is empowered to advise the Minister of Justice as well as the LAC on the nature, scope, and extent of the provision of legal aid service and other related matters. As per the Act, the said Legal Aid Advisory Council is headed by the Chief Justice of Sri Lanka (*ex-officio* chairman) and thirty (30) other Members, consisting of the Nine (09) Members of the LAC, Three (03) Members nominated by the BASL, Six (06) Members nominated by the Chief Justice to represent the Judiciary and Twelve (12) Members nominated by the Minister to represent diverse interests including that of the Government, Local Authorities, education institutions, and community, other groups having an interest in the provision of legal aid.

The study revealed that the said Legal Aid Advisory Council remains at a dysfunctional state⁵⁷, despite being statutorily required to meet at least once every six months.⁵⁸

When considering the judiciary as the 'Guardian of the People'⁵⁹ and the court administration system, there is high potential towards having an integrated system of legal aid provision in the country. As such it is recommended that the **Legal Aid Advisory Council** which has been created under Section 14 of the Legal Aid Act No.27 of 1978 be resuscitated.

⁵⁴Adapted from 'A Guide for the Magistrate in the Commonwealth: Fundamental Principles and Recommended Practices' (2021), by Commonwealth Magistrates' and Judges' Association (CMJA), pg. 74

⁵⁵ Legal Aid Commission Act No.27 of 1978 (LK)

⁵⁶ Legal Aid Commission Act (1978), Section 16 (1), LK

⁵⁷ As per the interview had with the LAC and Judicial Service Commission (Annex 1) and Capacity Needs Assessment ((Annex 3)

⁵⁸ Legal Aid Commission Act (1978), Section 16 (1), LK

⁵⁹ 'The Judiciary - The Guardian of the People'' by Justice Saleem Akhtar (Law Asia 93 Sri Lanka)

Hence, together with the reconstitution of the LAC, it is also recommended that the total number of members of the Legal Aid Advisory Council be reduced to a maximum of fifteen (15) members consisting of Five (05) commissioners of the LAC (including Chairman, Two representatives of the MOJ and Two representatives of the BASL). Out of the remaining Ten (10) members, Five (05) members to be nominated by the Chief Justice to represent the judiciary including the nominees of the Judicial Service Commission (JSC), Sri Lanka Judges Institute (SLJI), nominee judges of Primary Courts, Juvenile Courts, High Court, Appellate Courts, One (01) nominee from the Attorney General's Department and four (4) members appointed by the MOJ to represent diverse interests including educational institutes, legal aid community to form a consultative forum. Therefore, the supervisory role played by the Advisory Council over the LAC would enable it to build in judicial contributions towards improving the overall legal aid sector in the country.

Further, it is to be noted that in the absence of a mandatory legal provision or national consensus on a legal aid policy, directives to judges and court staff towards sensitising and facilitating legal aid to uphold rule of law is highly desirable, given the adversarial nature of the adjudicatory system of Sri Lanka. In the event such a consensus is reached to either formulate or revise and to implement a national legal aid policy, judges would be guided to facilitate legal aid for the most deserving persons in court. For instance, the JSC could assign a Court Officer in the Magistrate Courts and High Courts to report the persons without legal representation (accused, victims, and witnesses) and facilitate services by the LAC.

In fact, Justice Bhagwati noting the judge's role in facilitating access to justice, observed that "even while retaining the adversary system, some changes may be effected whereby the judge is given greater participatory role in the trial so as to place poor, as far as possible, on a footing of equality with the rich in the administration of justice."⁶⁰ In this regard, an amendment to the Code of Criminal Procedure,⁶¹ enabling suspects and accused persons to be informed of their right to legal aid at an early stage of criminal proceedings such as at the

⁶⁰ Silky Mukherjee, *Bharati Law Review: Constitutional Provisions for Legal Aid in India* (2013), pg.149

⁶¹ Code Of Criminal Procedure Act (No. 15 of 1979) of Sri Lanka

time of arrest and continued till detention, pre-trial and trial stage as well as at sentencing is highly recommended in view of proper administration of the criminal justice system.

3. Long-Term Policy & Institutional Recommendations (A Time Framework of 1 to 5 years)

Policy Recommendations

3.1 To recognise the right to legal literacy & right to legal aid under the Constitution.

It has been observed that; “for many years, observers believed that the principal source of the access to justice crisis was cost—the cost of lawyers’ services and court proceedings—but contemporary research reveals deeper causes. One is the fact that many people do not recognize the legal aspects of their justice issues and often do not consider seeking any kind of assistance in handling them, including legal assistance. The second insight is that how legal service are regulated is a contributor to the access crisis. Even if the problem of access to justice is framed narrowly as a lack of access to legal services, traditional routes to tackling it—government-funded civil legal aid and pro bono service from attorneys—have been robustly ineffective at scaling up to meet widespread need”⁶²

In line with the above findings, the present study throws light on the level of legal illiteracy and ignorance of the availability of legal aid services amongst communities in certain remote areas in the country as high⁶³. Hence, while the first long-term recommendation is on

⁶² Adapted from ‘Access to Justice and Legal Services Regulatory Reform’ by Rebecca L. Sandefur, Emily Denne (2022), Vol.18 Annual Review of Law and Social Science, pg.27-42

⁶³ As per the interview had with RLAC, Rathnapura (LK), ‘legal illiteracy remains high in areas such as Rakwana and Kalawana’.

raising legal literacy and the right to legal aid at a constitutional level, the succeeding sections contain long-term recommendations to scale up the legal aid services island-wide to match the need to provide access to justice to all who need it.

In general, the State is obliged to raise knowledge and awareness of rights among the population, and in particular awareness of the right to legal aid⁶⁴. Since its inception, the LAC has acted responsibly in creating awareness amongst diverse communities through community organisations, schools, hospitals, Grama Niladhari officers⁶⁵, etc. CSOs too have played an important role in raising awareness among such communities in this regard⁶⁶.

In line with Article 14 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems,⁶⁷ the right to legal literacy and the right to legal aid are necessary rights that ensure enjoyment of equality provisions and are recommended to be enshrined in the Constitution. Further, as a preventive measure, it is recommended that legal literacy make way to both the school and higher education curricula in the country.

The Indian Constitution has in fact, crystalised the right to legal aid as a measure of protection towards the disadvantaged citizens due to poverty or other disabilities.⁶⁸ Such a constitutional guarantee would pave the way for empowerment of those marginalised by strengthening the right to legal aid of the oppressed individuals and communities through judicial pronouncements and judicial activism. In particular, Justice V.R. Krishna Iyer and Justice Bhagwati of the Supreme Court of India 'have expanded the dimensions of free legal aid

⁶⁴ United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013), Art. 42, Guidelines 2. https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

⁶⁵The Legal Aid Commission of Sri Lanka (2018), Annual Report. <https://www.parliament.lk/uploads/documents/paperspresented/1642744833029475.pdf>

⁶⁶As per the interviews with stakeholders (LK), (D3-Stakeholder Mapping Report)

⁶⁷ United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013). https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

⁶⁸ Const. (1976), Art. 39 (a). (IND)

to a greater horizon through judicial activism'.⁶⁹ With regard to legal literacy, it was also observed by the Chief Justice of India in 2013 that 'access to legal literacy is guaranteed under the framework of the Constitution, though not an explicit right. The right to legal literacy exists as part and parcel of the general right to the rule of law and Constitutionalism.'⁷⁰

Institutional interventions

This section makes several institutional interventions towards capacity building in the overall legal aid sector on a long term basis, with the objective of providing a wide array of services to a wider deserving community with sufficient and meaningful access to justice matching up with current needs of the populace.

3.2 Expanding the administration of the LAC by establishing a Training Arm (a 'Coordinating Body')

A host of needs have been highlighted in the research findings revolving around an efficient administrative and professional practice of legal aid in the country.

The current administration style of the LAC lacks capacity to improve the quality in services as elicited from the survey results, and fails to take account of the view-points of panel lawyers, prosecutors, the judiciary and other facilitators in the sector⁷¹. Hence, the system is not geared towards providing advanced professional services by offering continuous professional development, advanced career prospects, or attracting the best talent in the country. Financial constraints in funding legal aid programs and training sessions remain a

⁶⁹ Adapted from 'Bharati Law Review' Bharati Vidyapeeth Deemed University, India (2013), Vol.2, Issue 2, pg.151

⁷⁰ The Economic Times, 'Right to Legal Literacy guaranteed under the Constitution, says Chief Justice', 2013. <https://economictimes.indiatimes.com/news/politics-and-nation/right-to-legal-literacy-guaranteed-under-constitution-says-chief-justice-of-india/articleshow/24758711.cms>

⁷¹As per the interviews with the RLACs, private counsels and honourable members of the judiciary (LK), (Annex 1) (Capacity Needs Assessment Report-Annex 3)

major concern. Due to such financial constraints, lawyers of the LAC cannot be paid fees in line with the market rates (in comparison to private practitioners) and lawyers cannot be trained to upgrade the quality of services provided by the LAC.⁷²

Consequently, financial challenges and dim career prospects discourage legal aid lawyers both at the RLACs as well as in the case of Panel lawyers. It appears that the comparatively low fees ('Honorarium') paid to Panel lawyers combined with loose administration of Panel Lawyers by the LAC have pushed legal aid work out of such practitioners, as they have become reluctant to accept legal aid clients but supplement with private work⁷³. In the survey, it was revealed that despite the fact that legal aid work is satisfying to private lawyers, it is not possible to sustain such practice as the payment is not commensurate with the effort and responsibility required of a lawyer. The allegation of 'touting' leveled at certain lawyers attached to the RLACs⁷⁴ could also be a means of supplementing their income with additional means.

As a precursor to a training arm of the LAC, it has been recommended that the BASL takes a more proactive role in generating a database of all lawyers (both senior and junior) by recording their willingness for providing legal aid work, with their committed hours assorted by their expertise and/or interest. As a long-term strategic direction, it is now proposed that the administration of the LAC be expanded by establishing a training arm for the particular task of selecting, training, monitoring and retention mainly of panel lawyers who make up a vital legal aid workforce, with eighty-eight (88) Regional Associations of the BASL and more than 23,000 lawyers in the country.

⁷² *ibid*

⁷³ As per survey results (Annex 3-Capacity Needs Assessment Report)

⁷⁴ As revealed in interviews with stakeholders.

3.3 Proposal to set up a ‘Coordinating Body’

The first and foremost institutional intervention proposed is to set up a ‘**Coordinating Body**’ that consults the LAC (See *Figure 3.1*) as and when required and reports at the monthly meetings of the LAC. However, said ‘Coordinating Body’ enjoys considerable independence and expertise in the area of selection, training, and supervision of the Panel Lawyers of the RLACs and to that extent oversees the operations of the RLACs in the assignment of Panel Lawyers to the clients of such RLACs. The current centralised system of administration by the LAC through its head office in Colombo is recommended to be expanded to **Nine (09) Provincial Expert Panel of Lawyers (‘PEPLs’)** operating under the direct guidance of the aforesaid Coordinating Body.

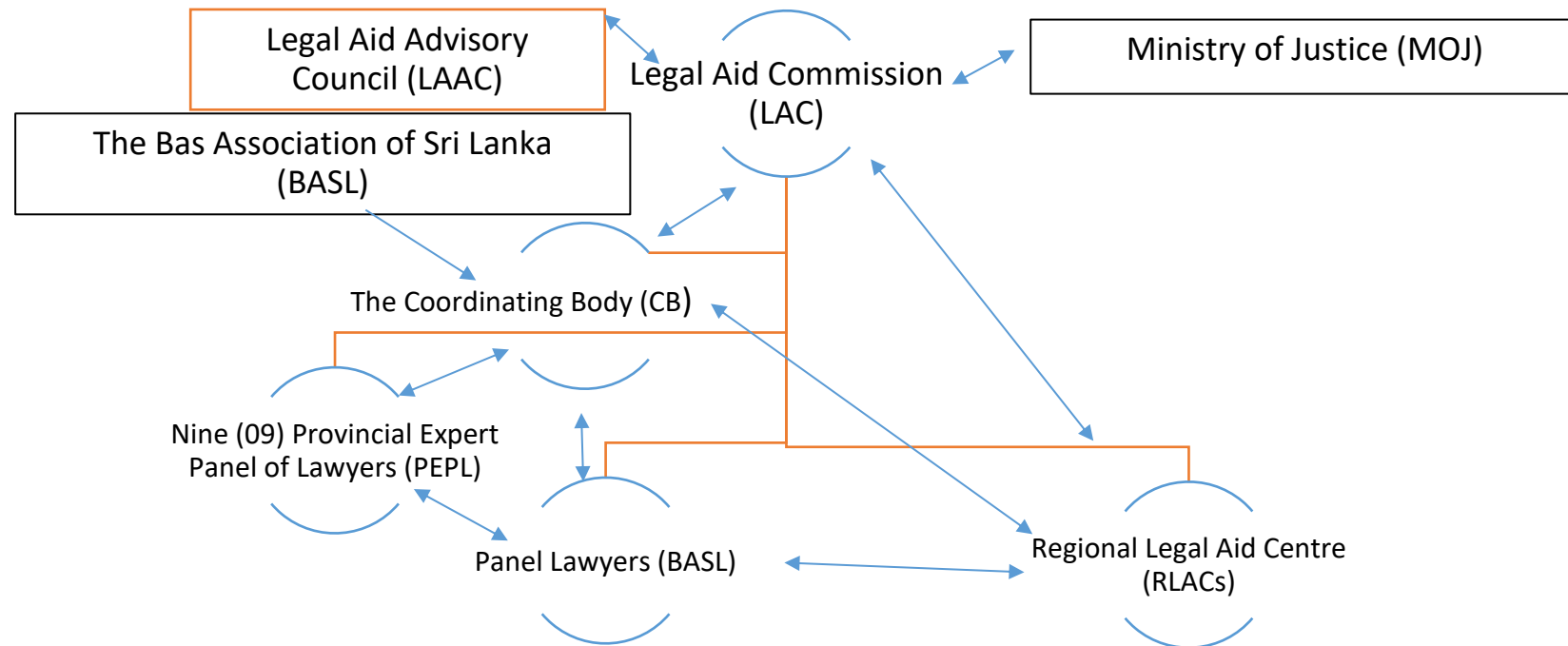


Figure 3.1

The bulk of the said Coordinating Body should consist of lawyers from the BASL, preferably those currently working in legal aid matters such as the Sub-Committee on Legal Aid or its 'Anti-Torture Unit'⁷⁵ with representation from Sri Lanka Law College as the only institution in the country responsible for assessing and training law students into 'Attorneys-at-Law' or lawyers authorised to practise in Sri Lanka. Additionally, the Coordinating Body to represent reputed, long-standing Civil Society Organisations (CSOs) active in the legal aid landscape of the country as well as universities including the Legal Aid Unit of the University of Colombo, University of Peradeniya, Open University and the University of Jaffna as well as private universities providing legal education in the country. Therefore, the LAC should identify and register such key CSOs and universities and appoint their nominees to the Coordinating Body based on an assigned quota in the composition of the Coordinating Body. It is recommended that the CSOs be specifically assigned with the tasks of reporting to the LAC the specific needs of communities or factions thereof including that of senior citizens, migrant workers, prisoners, women, children, victims of sexual and gender-based violence (SGBV), Lesbian, gay, bisexual & transgender (LGBT) community and disabled persons. Further, CSOs could be assigned the task of formulating a coordinated action plan with budgetary allocations to conduct required seminars and workshops, aimed at training government officers such as Grama Niladhari officers, police officers, officers at the District Secretariat, mediators who would form part of a formal referral system from grass root to official legal aid providers in the regions.

The recommendation towards eliciting active participation of the CSOs in the Coordinating Body is to take precedence from the 'Consortium of Legal Aid Organisations' (CLAO) which had been active in 1997 as convened by the Asia Foundation in collaboration with the Legal Aid Commission with enhanced recognition and responsibilities. It has been observed that the said CLAO 'was seen as the forum for networking, sharing resources and experiences, capacity building, a place that enabled referrals and thus streamlining legal aid in the country' during a time when the operation of the LAC was confined to few regions in the country⁷⁶. Hence, in the present context, with the present wide outreach of the 85 RLACs, resuscitating a strong network and cooperative platform between the LAC and CSOs in the country

⁷⁵ Annual Report (2021), BASL

⁷⁶ Dr Ramani Jayasundere, 'Legal Aid in Sri Lanka - The Past and the Present, Challenges and Possibilities', (2016), pg. 11

together with the support of international donor organisations such as USAID, JICA would enhance the capacity of both governmental and non-governmental legal aid providers to provide quality service to meet the needs of those marginalised in the country.

3.4 Clear demarcation of the official functions of the LAC and its Coordinating Body.

The LAC shall make policy decisions in regard to the recruitment of its Permanent staff of the RLACs in consultation with the Coordinating Body. It is recommended that the Coordinating Body be in charge of the selection, training, and monitoring of the Panel of lawyers in the areas of family law, criminal law, property law, business law, fundamental rights law, appeals, writ and revision applications and other areas as per the legal aid needs in the respective regions and districts in the country.

It is also recommended that a legal aid contract is signed between the RLAC and the Panel Lawyer for each assigned legal aid matter that requires continuous representation in court. This also enables building service quality assurance in legal aid service provision. However, the lawyers and support staff of the RLACs remain the main contact point for their client, and as such RLACs shall keep track of all communications between the assigned Panel Lawyer and the Client. The lawyers and support staff of the RLACs must coordinate all matters between its clients and the assigned Panel Lawyer.

A training curriculum should be developed by the Coordinating Body in line with international best practices but customised to areas such as providing legal aid to suspects and accused persons at the early stage of the criminal justice system, land and money recovery cases, appeals, fundamental rights, writs and revisionary applications. The said training curriculum to instruct resource persons to conduct practical training sessions involving problem-solving skills, group discussions, and role plays. For example, prosecutors from the Attorney General's Department could help train young lawyers towards developing knowledge and understanding in representing and defending an accused at the police station and in Court.

The Coordinating Body should regularly monitor and supervise the availability, skill acquisition, competency, and commitment of each Panel Lawyer and provide weekly or monthly reports of performance of such Panel Lawyers to the Coordinating Body, consequently, the LAC shall maintain service records of all Panel Lawyers of the nine (09) Provincial Expert Panel of Lawyers (PEPLs)⁷⁷ in the country⁷⁸.

The Coordinating Body should offer regular training, evaluation, and supervision of the lawyers at the RLACs and its supportive staff within the mandate of the LAC. It is to be noted that the CB could reach out to regional as well as other international organisations with similar interests to share knowledge and resources.

It is also proposed that a Peer Review mechanism be implemented⁷⁹, allowing assigned Panel Lawyers to assess the skills, professionalism and performance of the lawyers and staff of the RLAC at regular interviews, likewise, the staff of the RLACs to assess the level of commitment, skills, performance and professionalism of Panel Lawyers.

The Coordinating Body should create a culture of professional legal aid lawyers with a special code of ethics to be administered to and to be complied by all legal aid lawyers.

The Coordinating Body ('CB') should set up an open culture to receive complaints of non-compliance with ethical guidelines or lack of professionalism by any Panel lawyer, trainee or staff of a RLAC, law student and to develop appropriate responses to instances of unethical conduct as reported by the CB or the RLACs or any legal aid client or any Panel Lawyer.

⁷⁷ See 3.7 below

⁷⁸ As the current survey revealed that there is no reliable record of Panel lawyers maintained at the LAC with regard to performance etc. (D4 - Capacity Needs Assessment Report)

⁷⁹ United Nations, UNODC, Handbook on ensuring quality of Legal Aid Service in Criminal Justice Processes (2019), pg 102

The Coordinating Body should create a reward system and recognition of the commitment and service given to legal aid clients by Panel Lawyers, lawyers of the RLACs, and law students. The LAC and the Coordinating Body should develop and organise an annual award scheme for legal aid lawyers, based on performance appraisal of Panel Lawyers, Lawyers, Staff of the RLACs, and Law Students in recognition of their professionalism and commitment towards legal aid.

3.5 Performance appraisal of Legal aid Service Providers

In addition to peer review, the performance of Panel Lawyers to be assessed by the Coordinating Body and the PEPL. The Coordinating Body should regularly monitor the performance of the lawyers and the supportive staff of the RLACs through the PEPL or independently and report to the LAC on a regular basis. The Coordinating Body to regularly train the lawyers and supportive staff of the RLACs through the PEPL or on an independent basis.

3.6 A Code of Ethics for Legal Aid Lawyers

A Code of Ethics, that guarantees legal aid lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference, must specifically state the role of the legal aid lawyer;⁸⁰

- a) To protect and advance the rights and legitimate interests of his or her clients, provide advice and assistance to and, as appropriate, representation for, his or her clients, taking into account any of their relevant vulnerabilities.

⁸⁰ United Nations, UNODC, Handbook on ensuring quality of Legal Aid Service in Criminal Justice Processes (2019), pg 41

- b) To respect and take any necessary actions to further the interests of his or her clients, having particular regard to their age, gender, ethnicity, or sexual orientation.
- c) To ensure that the decisions of their clients are respected.
- d) To ensure that clients continue to receive advice, assistance and representation until their case is finally disposed of, including in any appeal.
- e) To ensure that his or her clients are treated with dignity, that their human rights are respected and that they are treated in accordance with the law.
- f) To accept cases with reasonable response times including time limits for responding to a call and/or attending the police station, or minimum requirements for lawyers attending in person, appropriate methods of service delivery and assistance, the maintenance of case records, continuity of representation, prohibition of charging fees for legal aid cases.⁸¹
- g) To advise clients as to their legal rights and obligations, and as to the working of the legal system in so far as it is relevant to those rights and obligations.⁸²

3.7 Nine (09) 'Provincial Expert Panel of Lawyers' operated by the Coordinating Body

The Coordinating Body in consultation with all Regional Associations of the BASL, should appoint a panel of legal experts in each Province known as the '**Provincial Expert Panel of Lawyers**' (the '**PEPL**'). The number of members and their expertise in each of the Nine (09) PEPLs should be determined in consultation with the respective Regional Associations of the BASL and the RLACs located in each of such

⁸¹ United Nations, Basic Principles on the Role of Lawyers (1990).

<https://www.ohchr.org/en/resources/educators/human-rights-education-training/12-basic-principles-role-lawyers-1990>

⁸² United Nations, UNODC, Early Access to Legal Aid (2014), pg 91

Province, consequent to identified needs and demands of the underprivileged communities in the province. The Coordinating Body should devise criteria and mechanisms for the selection of members to a PEPL. It is recommended that at least one (01) such Member of the PEPL to represent each District in the Province⁸³. The existing post of Provincial Director of the LAC⁸⁴ to become the only full-paid officer of the PEPL, who shall act as the Secretary and Coordinator of the affairs of the PEPL and of the RLACs in each Province.

An official term of at least three (03) years should be given to such lawyers in the PEPL as per the guidelines of the Coordinating Body and to hold weekly progress meetings with all the RLACs under its governance with visiting schemes to the RLACs in the province.

As per the guidelines given by the Coordinating Body, the PEPL should coordinate with the RLACs and assign cases to Panel Lawyers on the basis of expertise and the undertaking of commitment given by such Panel Lawyers (including both junior and senior lawyers) as registered with the PEPL. In order to harness the expertise of senior lawyers in each Province, the Coordinating Body shall maintain a roster of senior lawyers assorted by their willingness to provide expertise in a given area of law and shall coordinate with the PEPLs as per the requirements of the RLACs. Each RLAC would be given a roster of Panel Lawyers by the PEPL, indicating their seniority, their willingness to provide expert advice, their willingness for court representation, and the committed hours/cases, with contact numbers of Panel lawyers.

Lawyers of the RLACs may engage in discussion from time to time as required for case conferencing and communicate the expertise as required for legal advice and representation of its clients from the PEPL.

All 9 PEPLs shall select, train, assign, monitor and supervise a pool of panel lawyers (preferably for each RLAC) from private practice in consultation with the Branch Associations of the BASL. The said pool of panel lawyers shall consist of a majority of trainees and junior

⁸³ There are Nine (09) Provinces in Sri Lanka, and twenty five (25) Administrative Districts in the country.

⁸⁴ Annual Report (2020), LAC (LK)

lawyers who work under the supervision of senior lawyers. The Coordinating Body has the fullest responsibility and authority to oversee the operations of the PEPLs and to make decisions on behalf of any PEPL in consultation with the LAC.

3.8 Specialised Lawyers trained to provide Legal Aid in Criminal Justice System

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems states that ‘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.’⁸⁵

The right to legal aid in criminal proceedings is enshrined in a number of other instruments operative in the country.

In terms of Section 4 of the International Covenant on Civil and Political Rights (ICCPR) Act No.56 of 2007, a person charged with a criminal offence is entitled to ‘have assistance assigned to him in appropriate cases where the interest of justice so requires and without any payment by him, where he does not have sufficient means to pay for such assistance’.⁸⁶

Article 13 (3) of the Sri Lankan Constitution sets out that ‘any person charged with an offence shall be entitled to be heard, in person or by an attorney-at-law, at a fair trial by a competent court’.

⁸⁵ United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013), Article 5. https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

⁸⁶ As quoted from ‘Making available Duty Lawyers to provide a legal aid at Police Stations in Sri Lanka’: A concept note exploring feasibility by Dr Ramani Jayasundere for the UNDP (2015), pg. 3 (Unpublished)

Section 260⁸⁷ of the Criminal Procedure Code of Sri Lanka states that every person accused of a criminal offence has the right to be defended by a lawyer and every aggrieved person has the right to be represented in court by a lawyer. Further, Section 195⁸⁸ of the Criminal Procedure Code imposes a duty on a High Court Judge to assign private counsel to an accused when indicted (at the trial stage). Hence, Judges of the High Courts of Sri Lanka are mandated by the Criminal Procedure Code to assign a private counsel to an accused at the trial stage, if the defence is not supported by legal representation.

Section 4 of the International Covenant on Civil and Political Rights (ICCPR) Act No.56 of 2007 provides for a general right to free legal assistance in criminal cases, where the interest of justice so requires without any payment by persons charged with a criminal offence. Despite the fact that this provision applies to all courts including the Magistrate Courts,⁸⁹ the present study revealed that there is no similar practice adopted by the Magistrates Courts in the absence of mandatory legal provision or direction by the Judicial Service Commission (JSC) to the Judges of Magistrate Courts⁹⁰. The Magistrate Court being the court of first instance for criminal matters, is the court where most of the potential beneficiaries for legal aid could be found. The current practice is for the Judge of the Magistrate Court to explain the step of the case to an accused and adjourn the proceedings until the accused could seek the assistance of an Attorney-at-Law. Ideally the LAC could supplement such lack of representation as needed by such accused in the Magistrate Courts. As such, there is an obvious disconnect, partly due to lack of legal provisions and also due to lack of expertise and incapacity of the LAC to cater to such a high demand in the area of criminal law.

⁸⁷ Code of Criminal Procedure (1979), Act No. 15 (LK, amend.)

⁸⁸ Code of Criminal Procedure (1979), Act No. 15 (LK, amend.)

⁸⁹ As quoted from 'Making available Duty Lawyers to provide a legal aid at Police Stations in Sri Lanka': A concept note exploring feasibility by Dr Ramani Jayasundere for the UNDP (2015), pg. 3 (Unpublished)

⁹⁰ As per the interview with the JSC (LK) (D4 Capacity Needs Assessment Report)

In the case of *Khatari v State of Bihar*⁹¹, the Supreme Court of India pronounced that the State is constitutionally bound to provide legal aid not only at the stage of the trial but also when they are first produced before the Magistrate or remanded from time to time and that such a right cannot be denied on the ground of financial constraints or that the accused did not ask for it. The Judge must inform the accused of such rights. The right to free legal services is an essential ingredient of reasonable, fair, and just procedure for a person accused of an offence, if the circumstances of the case and the needs of justice so require.⁹²

The right to a fair trial extends from the point of arrest, up to and including the trial, on the basis that the accused's rights are adversely affected from the moment that she or he becomes a suspect.⁹³ It is an integral part of the right to a fair trial that legal assistance is given from the stage of interrogation at the police station as evidence obtained through police questioning is crucial when framing charges, according to rules of evidence. For example, a suspect's silence when questioned may result in the drawing of adverse inferences at trial⁹⁴

In fact Guidelines, 3, 4, 5 of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, states the obligations to provide legal assistance at all stages and specifically to inform that person of his or her right to legal aid and to enable him or her to make a voluntary and informed decision. When necessary, the judge should adjourn the hearing to enable the person to exercise his or her right to legal aid etc.⁹⁵

⁹¹ See *Khatari v. State of Bihar*, AIR (1981) SC 262, IND, <https://indiankanoon.org/doc/705101/>

⁹² Adapted from 'Concept of Free Legal Aid: A Comparative Analysis Free Legal Aid in India, United Kingdom and Australia' by Dolly Choudhury (2015), Vol.3, Issue 3, International Journal of Law and Legal Jurisprudence Studies, pg. 107

⁹³ Adapted from 'Legal Aid and Access to Legal Representation: Redefining The Right To A Fair Trial' By A. Flynn et al., Melbourne University Law Review [Vol 40:207], Pg. 212

⁹⁴ Adapted from 'Legal Aid and Access to Legal Representation: Redefining The Right To A Fair Trial' By A. Flynn et al., Melbourne University Law Review [Vol 40:207], Pg. 212

⁹⁵ United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013), https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

Against the backdrop of existing legal provisions and international best practices, there is an unmistakable void of legal aid in the criminal justice system in Sri Lanka with the exception of a bail application made by RLACs on behalf of prisoners in remand custody. Hence, there is no system in place for persons accused to have access to legal aid through a private counsel from the time of police arrest, during police interrogation to pre-trial detention to the trial stage. Hence, there is a need to scale up the legal aid workforce to cater to provide legal aid in the criminal justice system. Previously, there has been a proposal to implement a duty lawyer scheme at police stations to cater to the needs of the accused⁹⁶, which has so far not reached the implementation stage due to lack of incapacity and lack of willingness on the part of private lawyers to be part of such a scheme.⁹⁷

Considering the above, it is recommended that a vibrant force of young legal aid lawyers specialised in criminal practice be selected, trained, and supervised by the Coordinating Body via the PEPLs in consultation with the LAC, with a higher honorarium, with the objective formally setting up a mechanism for legal aid in the criminal justice system including at police stations and courts. Contributions towards grooming a specialised group of lawyers in criminal defence is expected from eminent lawyers in criminal practice, the Attorney General's Department, the Police Department, the Prisons Department, and the National Authority for the Protection of Victims of Crime and Witnesses (NAPVCW) as well as reputed CSOs.

It is recommended that the police officer involved in the arrest of a person or the police officer on duty and responsible for investigating and/or detaining such a person (until production before the nearest Magistrate Court) be held accountable for informing the arrested persons (suspect) of his/her right to legal representation including legal aid, thereby coordinating the efforts of the LAC to facilitate legal aid at the initial stage of criminal justice system at the police stations. Thereafter, if the suspect is not represented by a lawyer before the Magistrate Court at any hearing of the matter, the police officer/court sergeant once again remains responsible to report to the RLAC or

⁹⁶ Dr Ramani Jayasundere, 'Legal Aid in Sri Lanka - The Past and the Present, Challenges and Possibilities', (2016), Page 15

⁹⁷ As per the interviews with the Legal Aid Commission (LK) (Annex 1)

the Court Registry, the list of suspects unrepresented in court. The Police Department should recommend guidelines in consultation with the LAC on the implementation scheme, as a representative of the Police Department is recommended to be part of the LAC. Hence the Police Department to be legally mandated to place and hold police officers accountable for facilitating legal aid services of the LAC and to enable confidential communication between the legal aid providers and suspects or the accused.⁹⁸ Similar responsibility should be cast on prison officers while suspects are held in remand. Additionally, the JSC should direct and guide the Magistrates as well as the court registrars to facilitate the provision of legal aid to those suspects, victims, and witnesses unrepresented in court. The JSC should be guided by the Legal Aid Advisory Council and ideally supported by an amendment to the Criminal Procedure Code.

While the need for legal aid by the victims and witnesses of crime has been supplemented by the services rendered by the National Authority for the Protection of Victims of Crime and Witnesses⁹⁹, the need for legal aid for such victims and witnesses around the country is recommended to be efficiently coordinated via the RLACs and the Police officers to provide wider access and efficient services island-wide.

Therefore, it is recommended that the rights accused, victims as well as witnesses, especially the right to legal assistance be displayed on posters and notices in all three languages as plainly as possible, together with contact numbers of the nearest RLACs, private counsels (as per a roster) and other CSOs willing to provide legal aid. Such display must be targeted at the suspects, and accused persons arrested or detained at police stations and at the RLACs located in the court premises and other public places.

⁹⁸ United Nations, Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2013), pg.131. https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

⁹⁹ NAPVCW established under the Assistance to and Protection of Victims of Crime and Witnesses No.04 of 2015 of Sri Lanka

3.9 Providing Legal Aid in Other matters such as Fundamental Rights Applications, Appeals, Writ and Revision Applications

With legal illiteracy prevalent mostly in remote areas in the country, such persons and communities become marginalised, as they are not aware of constitutionally guaranteed Fundamental Rights ('FR') nor when such rights have been violated or what remedies are available. The present study revealed that there is a general lack of competency in Fundamental Rights, Appeals¹⁰⁰, Writ and Revisionary applications amongst the lawyers of the RLACs as well as trainee lawyers or in general lawyers from the Regional Associations of the BASL, as these seem to be specialised areas confined to few practitioners in Colombo,¹⁰¹ when considering the fact that the relevant judicial forums for these applications such as the Supreme Court and the Court of Appeal are located only in Colombo. The LAC should identify and register such CSOs that are active in the area of human rights protection and public interest litigation and to appoint nominees of such CSOs to the Coordinating Body as well as form a special panel of experts in this specialised area. Thus, the LAC could resuscitate its specialised Desk for 'Human Rights' to provide legal aid to any potential beneficiary island wide in regard to violation of Fundamental Rights, as well as for Writ and Revisionary Applications to the Court of Appeal and final appeals. Moreover, Panel Lawyers active in these areas as well as registered CSOs active in the area could contribute towards training a specialised group of young lawyers who could take up such matters for those in need. In this regard, as it has been suggested¹⁰² a system that includes 'tax concessions on earnings for lawyers who provide legal aid', and legal aid work being an eligibility criteria for nominations to the posts in the Bar Association and in case of appointment of President's Counsels would be useful.

In fact, the Supreme Court Rule 44(7) enables the Supreme Court to refer a person alleging violation or imminent violation of a fundamental right or language right, for legal assistance by the LAC or any other lawyer, directing to prepare a formal petition in support

¹⁰⁰ Judicature Act (1978), art. 105 (i) (LK)

¹⁰¹ As per the interviews with the respondents (LK) (Annex 1) (Capacity Needs Assessment Report-Annex 3)

¹⁰² Dr Ramani Jayasundere, 'Legal Aid in Sri Lanka - The Past and the Present, Challenges and Possibilities', (2016), Page 17

of such a complaint. While it is essential that litigants in superior courts such as the Supreme Court and the Court of Appeal retain the services of a counsel for meaningful access to justice, the current practice of assigning a lawyer remains a choice of a particular judge, in the absence specific directives to judges in other areas such as Appeals, Writs and Revision Applications¹⁰³.

3.10 Special Legal Aid Fund

In order to attract more lawyers to serve legal aid clients of the RLACs, the following suggestions are made;

The Honorarium to Panel Lawyers should be revised to match up with the market rate.

It is recommended that a separate fund be maintained for payment of Panel Lawyer fees and for payments under the suggested 'Partial Legal Aid Schemes' (see section below)¹⁰⁴, and which account to use for collecting funds towards regular training of Panel Lawyers. Hence, the said Fund would be dedicated towards timely payment of the 'Honorarium' to assigned Panel Lawyers and to cover their expenses as agreed to by the CB/PEPL under the legal aid contract. CB remains responsible in giving a cost estimate and a breakdown of reimbursable expenses for each legal aid case of the RLAC when accepted by Panel lawyers. The PEPL shall grant clearance for all such payments due to Panel Lawyers with an assessment of task completion, performance appraisal of such Panel Lawyer in service delivery.

¹⁰³ As per the interviews with the respondents (LK) (Annex 1) (Capacity Needs Assessment Report-Annex 3)

¹⁰⁴ As proposed by Dr Ramani Jayasundere in 'Legal Aid in Sri Lanka - The Past and the Present, Challenges and Possibilities'-pg 16

3.11 Providing Partial Legal Aid

It has been recommended that¹⁰⁵, where the ‘means test’ fails but in the case of certain potential beneficiaries, for instance, those who wish to file a money recovery action or seek advice on starting up a business, there ought to be a mechanism to charge partial fees or at least the costs supported by proper guidelines.

It is also recommended that the strategic goals and objectives of the LAC ought to be revisited to take into account, region-specific needs and thereby devise appropriate strategies for each district of operation¹⁰⁶ including issuing guidelines to recognise potential beneficiaries and target groups who would receive legal services for free and those who are capable of partially bearing expenses or legal fees.

3.12 Regular Client Feedback and Formal Grievance Handling Mechanism

A uniform directive should be given by the LAC on how to conduct consultations with the clients which includes explaining in plain language the success of the claim, options towards a mediated settlement of the dispute that include Alternative Dispute Resolution (ADR) mechanisms, the course of action, possible outcome of the case, the duties and best practices expected of the client, additional costs involved, and possible delays in the court system, in order to prevent any disappointment of the client.

It is recommended that the LAC should implement a proactive formal grievance handling mechanism for legal aid clients and the public, as honest feedback on their grievances and complaints such as incompetence, rudeness of a legal aid provider, breach of ethics such as touting, ‘solicitation of bribes’, failing to attend at key court hearings, ignoring the legitimate instructions of the client¹⁰⁷ would lead to a

¹⁰⁵ Dr Ramani Jayasundere, ‘Legal Aid in Sri Lanka - The Past and the Present, Challenges and Possibilities’, (2016), Page 16

¹⁰⁶ Norwegian Refugee Council (NRC) Sri Lanka, (2008) Mid Term Evaluation Final Report: Information Counselling and Legal Assistance Programme (ICLA), pg.8

¹⁰⁷United Nations, Office on Drugs and Crime (UNODC) Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes Practical Guidance and Promising Practices (2019), pg.94

review and upgrade of the system. Clients should be able to make complaints or suggestions either via the RLAC or PEPL or the Coordinating Body or the LAC or the Advisory Council by use of a complaint box kept at the RLAC, via a designated hotline, e-mail address and any other accessible means to the public. All such complaints should be looked into by a designated officer of the Coordinating Body and records should be kept of the inquiries made and formal action should be taken in regard to such grievances. Furthermore, guidelines for disciplinary inquiries of such legal aid providers should be developed by the Coordinating Body in consultation with the LAC.

CONCLUSION

When considering the findings of the present study it is clear that there is a lacuna in the provision of effective and efficient legal aid services by the Legal Aid Commission and other legal aid providers in the country. However, it must also be noted that there are systems and policies already in place for the provision of legal aid services which are underutilised or have not been properly implemented through an effective scheme. The recommendations given above have taken into consideration the systems and/or policies already in existence and have presented a mechanism in which a system could be revived or revamped to better suit the needs of the underprivileged communities in the country. Lack of enthusiasm from the Bench and the Bar arises due to the lack of a formal implementation scheme as supported by a constitutional guarantee and/or national policy on legal aid, consequent to which negative attitudes revolve around certain aspects of service provision by the Legal Aid Commission. In consideration of this, the recommendations include several methods in which practising lawyers and prospective lawyers could be encouraged to make substantial contributions to the legal aid sector. Hence, several policy and institutional interventions are proposed based on short-term, midterm and long-term milestones, within the existing system to harness the services of best lawyers, offer hands-on training to junior lawyers and supervision by an independent body (the 'Coordinating Body') as the training arm of the LAC with the aim of creating a vibrant culture of legal aid professionals in the country. It must also be noted that the constitutional guarantee of legal aid supported by the judiciary and other stakeholders such as the CSOs, universities, the Police Department, the District Secretariat and other identified stakeholders would lead to a better system of efficient

administration based on coordination to improve the overall system of administration of justice in the country. It must also be noted that, legal literacy of the populace should be improved as a fundamental requirement for creating awareness of legal aid and for the overall purpose of guaranteeing access to justice. Despite several mechanisms for providing legal aid services in place, the general public lack of awareness has led to the underutilization of the systems. As such, our recommendations include several methods through which awareness of the general public on the availability of legal aid services be coupled with sufficient and quality services offered to the deserving persons in the country.

Recommendations in Summary Form

Constitutional, Legislative & Regulatory Interventions	No.	Type of Recommendation (Long/Mid/Short)	Recommendation
Right to legal literacy & legal aid under the Constitution	1.	Long-Term	Amendment to the Constitution to recognise the right of citizens for legal literacy and legal aid within the framework of 'Fundamental Rights'.
Amendment to the Legal Aid Act No.27 of 1978	2.	Long-Term	Amendments to the Legal Aid Commission Act No.27 of 1978 (the 'Act') to define 'Legal Aid' and 'Deserving Persons'.
Guidelines on defining 'Legal Aid'	3.	Short-Term (6 months)	Re-define Legal Aid to include legal advice & mediated settlements (ADR Methods).

			<ul style="list-style-type: none"> ▪ Formulate a policy for pre-litigation mediation, conciliation or any other suitable forms of ADR as a mandatory step in certain areas (excluding criminal cases such as child abuse, gender based violence etc). ▪ Law students as supportive staff of the RLACs to provide counselling & legal advice under the supervision of senior lawyers. ▪ Training the RLACs & Law students with counselling & mediation skills.
Guidelines on defining 'Deserving Persons' under the 'means test' and 'justice test'	4.	Short-Term (6 months)	<ul style="list-style-type: none"> ▪ Formulate a list of 'deserving persons' and the criteria for determining 'deserving persons' under the 'means test' and 'justice test' ▪ Publish a list of 'deserving persons' for legal aid in public places and media. ▪ Establish a dedicated hotline and a social media platform to offer initial counselling to 'deserving persons'. ▪ Quality training to Law students to offer early advice & counselling skills.

			<ul style="list-style-type: none"> ▪ Legal Aid Clinics by law students including Mobile legal aid clinics in remote regions. ▪ Discussion on how to build a mandatory component of a legal aid course into law syllabuses with practical training.
Support by Law Students/Legal Apprentices & Training of Law Students/Legal Apprentices	5	Short-Term (6 months)	The LAC and the Coordinating Body in consultation with the educational institutes that specifically include Sri Lanka Law College, public universities and private institutes engaged in providing legal education in the country, to ensure that a certain number of students and apprentices are placed at RLACs and NGOs (as per the requirement of each RLAC) to conduct of counselling sessions (including pre-litigation mediation), administrative tasks and support litigation of the RLACs.
Scaling up Legal Aid Services by Panel Lawyers	6	Short-Term (6 months)	<p>BASL to strategically link with the LAC to scale up legal aid activity of Panel Lawyers. Hence the BASL to conduct an audit of all senior lawyers & maintain a database of their willingness towards committed hours of work for legal aid assorted by their expertise/interest for the two objectives;</p> <p>1) To harness the expertise of Senior Lawyers;</p> <ul style="list-style-type: none"> ➤ to provide legal aid in diverse areas including civil, criminal as well as FR, Writ, and Other areas of law. ➤ to provide guidance and training to the junior lawyers as Panel lawyers of the LAC.

			2) To create a Vibrant Force of Junior Lawyers as Panel Lawyers of the LAC to provide legal aid in civil, and criminal practice as well as FR, Writ, and other areas of law.
Improvements to the Developmental Legal Aid Desks	7	Short-Term (6 months)	<p>Formulate a policy and strategic plan for the LAC to expand its services through each of the Developmental Legal Aid Desks to share resources and expertise by aligning with those CSOs specialized in serving disadvantaged individuals/communities.</p> <ul style="list-style-type: none"> ➤ To register one or more CSOs under each of the Developmental Legal Aid Desks. ➤ To establish a dedicated hotline and a social media platform to offer initial counselling to ‘deserving persons’ under each of the Developmental Legal Aid Desks. <ol style="list-style-type: none"> 1. Desk for Human Rights 2. Desk for Senior Citizens 3. Desk for Right to Information 4. Desk for Migrant Workers 5. Desk for Prisoners 6. Desk for Women 7. Desk for differently abled Persons 8. Desk for LGBTQ Community 9. Desk for victims of bribery (including sexual bribery) and corruption
Training the staff at the RLAC	8	Mid-Term (6-9 months)	Separate workshops and training to be conducted by the LAC;

			<ul style="list-style-type: none"> ➤ To train on the best practices and ethics in the legal aid profession especially in coordinating between the clients and Panel Lawyers. ➤ To train on formally availing pre-litigation mediation, and other forms of ADR for certain matters and to negotiate out-of-court settlements. ➤ To offer basic counselling and communication skill training. ➤ Training in managing & evaluating law students as support staff of the RLACs. ➤ To offer a professional pathway for continuous professional development and a reward system. ➤ Professional counselling skills including empathetic responding, active listening, having a non-judgemental attitude towards clients and their problems when liaising with client's families and other relevant persons. ➤ To be sensitized towards the issues of gender and especially the LGBTQ+ community. ➤ Enhanced use of Information Technology (such as computer software) to maintain and update statistics or data of its clients, to equip with necessary skills to record relevant information such as advice given by a lawyer, to maintain case records etc
Training on the use of Alternative Dispute	9	Short-Term to Long-Term	To introduce ADR as a mandatory component in legal aid services in the country via a policy decision, coupled with skill development for legal aid providers such as law students, lawyers and facilitators including

Resolution (ADR) mechanisms			Grama Niladhari Officers and Police Officers to resolve conflicts, ideally circumventing the need for criminal proceedings as well as civil disputes.
Towards a formal culture of placement of law students in legal aid centers.	10	Short-Term to Long-Term	To place trained law students in early advice, counselling and administrative tasks with enhanced use of information technology.
Implementation of University Law Clinic Programmes	11	Short-Term to Long-Term	To promote these programmes as they help to expand the scope of legal aid and promote awareness of legal aid amongst the public while students learn to interact and communicate with clients and practice law and ethics
Establishing a Strong Referral System at Grassroots Level	12	Short-Term to Long-Term	<ul style="list-style-type: none"> ● Training Police Officers to fulfill their role in facilitating legal aid. ● Training Grama Niladhari Officers and the Officers at the District Secretariat Office (Government Agent's Office) to fulfill their role in facilitating legal aid. ● Facilitation of legal aid through community leaders.
Establishment of a Training Arm of the LAC (The 'Coordinating Body')	13	Long-Term (1 to 5 years)	The 'Coordinating Body' enjoys considerable independence and expertise in the area of selection, training, supervision of the Panel Lawyers of the RLACs and to that extent oversee the operations of the RLACs in the assignment of Panel Lawyers to the clients of such RLACs. The current centralised system of administration by the LAC through its head office in Colombo, is recommended to be expanded to Nine (09)

			Provincial Expert Panel of Lawyers ('PEPLs') operating under the direct guidance of the aforesaid Coordinating Body.
<i>'Provincial Expert Panel of Lawyers' ('PEPL')</i>	14 (1)	Long-Term (1 to 5 years)	<p>The 'Coordinating Body', in consultation with the BASL, to appoint a Panel of Expert lawyers for each of the Nine (09) Provinces, known as the 'Provincial Expert Panel of Lawyers' ('PEPL'). The number and expertise of the members of each PEPL from the respective Bar Associations of the BASL in each Province, would depend on the identified needs and demands of the communities, and the number of Regional legal Aid Centers ('RLACs') located in such provinces. The Coordinating Body to devise a criteria and mechanism for the selection of the members to the PEPL. The lawyers in the PEPL could rotate based on a roster as per the guidelines of the Coordinating Body and the PEPL to hold weekly progress meetings with all the RLACs under its governance with visiting schemes to the RLACs in the province.</p> <ul style="list-style-type: none"> ● It is recommended that at least one (01) such Member of the PEPL to represent each District in the Province. ● All Nine (09) PEPLs shall coordinate the requirements for panel lawyers of the RLACs in the Province and shall report to the Coordinating Body.
Provincial Expert Panel of Lawyers ('PEPL') and the Regional Legal Aid Centers ('RLACs')	14(2)	Long-Term (1 to 5 years)	<p>Training, evaluation and supervision of the lawyers at the RLACs shall fall under the direct administration and supervision of the PEPL in the Province. However, the ultimate supervision and administration of all the RLACs shall lie with the LAC.</p> <ul style="list-style-type: none"> ● Lawyers of the RLACs should engage in case conferencing and communicate the expertise required for legal advice and representation of its clients from the PEPL.

			<ul style="list-style-type: none"> • The cost and salaries of the permanent cadre of the RLACs shall continue under the direct administration of the Head office of the LAC as allocated by the MOJ.
Selection, Training & Supervision of Panel Lawyers of the RLACs by the PEPL	14(3)	Long-Term (1 to 5 years)	<p>All 9 PEPLs shall select, train, assign, monitor and supervise a pool of panel lawyers (preferably for each RLAC) from private practice in consultation with the Branch Associations of the BASL. The said pool of panel lawyers shall consist of a majority of trainee and junior lawyers who work under the supervision of senior lawyers.</p> <ul style="list-style-type: none"> ▪ All Panel Lawyers should be clear about their role as legal aid lawyers, to be familiar with the relevant law and procedures and to have the skills necessary to apply their knowledge in practice. ▪ A training curriculum should be developed by the Coordinating Body, customized to areas such as, providing legal aid to suspects and accused persons at the early stage of criminal justice system, land matters, money recovery, appeal, fundamental rights, and writ and revision applications. Such curricula should include problem solving exercises, group discussion and role play. Training could be conducted jointly by resource persons being expert lawyers in the given areas. For example, prosecutors from the Attorney General's Department could help train young lawyers towards developing knowledge and understanding in representing and defending an accused at the police station and in the Court. ▪ , The PEPL to regularly monitor and supervise the availability, skill acquisition, competency, commitment of each Panel Lawyer against a competency framework and provide all data related to

			<p>such Panel Lawyers and their work to the Coordinating Body and the LAC for monthly appraisal.</p> <ul style="list-style-type: none"> ▪ Professional counselling skills including empathetic responding, active listening, non-judgemental attitude towards clients especially regarding gender and LGBTQ+ issues.
Code of Ethics for Legal Aid Lawyers	14 (4)	Long-Term (1 to 5 years)	<ul style="list-style-type: none"> ▪ A Code of Ethics for lawyers towards provision of legal aid, by defining their role and professional obligations is recommended. Each member of the BASL would be required to undertake a minimum of five (05) legal aid matters per year based on their expertise. When assigning legal aid matters, the PEPL shall consider the declared interests and expertise of such lawyers. ▪ The Code of Ethics, while guaranteeing that legal aid lawyers are able to perform their professional functions without intimidation, hindrance, harassment or improper interference must specifically state the role of the legal aid lawyer to protect and advance the rights and legitimate interests of his or her clients, provide advice and assistance to and, as appropriate, representation for, his or her clients, taking into account any relevant vulnerability and ✓ Loyally respect and take any necessary action to further the interests of his or her clients, having particular regard to their age, gender, ethnicity or sexual orientation

			<ul style="list-style-type: none"> ✓ Seek to ensure that clients continue to receive advice, assistance and representation until their case is finally disposed of, including in any appeal. ✓ Seek to ensure that his or her clients are treated with dignity, that their human rights are respected and that they are treated in accordance with the law ▪ Ethical Standard could also spell out matters such as the obligation to accept cases, adequate response time for requests by the RLACs, time limits for responding to a call and/or attending the police station, or minimum requirements for lawyers attending in person, appropriate methods of service delivery and assistance, the maintenance of case records, continuity of representation, prohibition of charging fees for legal aid cases ▪ The Coordinating Body to develop appropriate responses to instances of unethical conduct as reported by the PEPL or the RLACs or any legal aid client of any such Panel Lawyer.
Roster of Panel Lawyers at the RLAC	14 (5)	Long-Term (1 to 5 years)	<ul style="list-style-type: none"> ▪ Each RLAC would be given a roster of Panel Lawyers by the PEPL, indicating the seniority, their willingness to provide expert advice, willingness for court representation and the committed hours/cases, with contact numbers of Panel lawyers. ▪ Specialised group of lawyers to be trained to provide legal aid in Criminal Justice System.

			<ul style="list-style-type: none"> Specialised group of Lawyers to be trained to provide legal aid in other matters such as Fundamental Rights Applications, Appeals, Writ and Revision Applications and the like as per the needs of those deserving legal aid.
Contract with the Panel Lawyer to build quality assurance requirements	14(6)	Long-Term (1 to 5 years)	<ul style="list-style-type: none"> It is preferred that a legal aid contract is signed between the RLAC and the Panel Lawyer for each assigned legal aid matter that requires continuous representation in court. This also enables the PEPL to build in service quality assurance in legal aid service provision. However, the lawyers and supportive staff of the RLAC remain the main contact point for their client and as such shall keep track of all communications between the assigned Panel Lawyer and the Client. The lawyers and supportive staff of the RLACs must coordinate all matters between its clients and the assigned Panel Lawyer.
RLACs to assess the performance of Assigned Panel Lawyers.	14(7)	Long-Term (1 to 5 years)	<ul style="list-style-type: none"> Each RLAC should report to the PEPL a monthly report of the performance and level of commitment of assigned Panel Lawyers. The Coordinating Body should develop appropriate responses to the RLACs that report non-compliance with the ethical guidelines or the legal aid contract by any assigned Panel lawyer.

Panel Lawyers to assess the performance of the RLACs.	14(8)	Long-Term (1 to 5 years)	<ul style="list-style-type: none"> ▪ Assigned Panel Lawyers should assess the skills, professionalism and performance of the lawyers and staff of the RLAC on a monthly basis. ▪ The Coordinating Body should develop appropriate responses to the Panel Lawyers who report non-compliance with the ethical guidelines or lack of professionalism of any lawyer, trainee or staff of a RLAC.
Recognition for Commitment towards Legal Aid	14(9)	Long-Term (1 to 5 years)	<ul style="list-style-type: none"> ▪ The LAC and the Coordinating Body should develop and organize an annual award scheme for legal aid lawyers, based on the monthly performance appraisal of Panel Lawyers, Lawyers and Staff of the RLACs for recognition of their commitment towards legal aid.
Performance appraisal of Legal aid Service Providers by the Coordinating Body and/or the PEPL	14(10)	Long-Term (1 to 5 years)	<ul style="list-style-type: none"> ▪ In addition to peer review, the performance of Panel Lawyers should be assessed by the Coordinating Body and the PEPL. The Coordinating Body should also regularly monitor the performance of the lawyers and supportive staff of the RLACs through the PEPL or independently and report to the LAC on a regular basis.
Payments to Panel Lawyers through a special fund maintained by the Coordinating Body.	14 (11)	Long-Term (1 to 5 years)	<ul style="list-style-type: none"> ▪ The Coordinating Body should revise payment schedules (Honorarium) of assigned Panel Lawyers in consultation with the LAC and give appropriate directions to the PEPL to include the terms in the legal aid contract, including payment stages and timelines.

			<ul style="list-style-type: none"> ▪ A special Fund to be maintained for payment of Panel Lawyers fees, related expenses and accepting payments under 'Partial Legal Aid Schemes'. PEPL to grant clearance for all such payments due to Panel Lawyers with an assessment of task completion, performance appraisal of such Panel Lawyer in service delivery.
Providing Partial Legal Aid	14 (12)	Long-Term (1 to 5 years)	The LAC should issue guidelines to recognise potential beneficiaries and target groups to receive legal services for free and those who are capable of partially bearing expenses or legal fees.
Regular Client Feedback and Formal Grievance Mechanism	14 (13)	Long-Term (1 to 5 years)	<p>The LAC to implement a proactive formal grievance handling mechanism for legal aid clients and the public. Clients could make complaints or suggestions either via the RLAC or PEPL or the Coordinating Body or the LAC or the Advisory Council by use of a complaint box kept at the RLAC, via a designated hotline, e-mail address and any other accessible means to the public.</p> <p>All such complaints should be looked into by a designated officer of the Coordinating Body and records should be kept of the inquiries made and formal action taken in regard to such grievances. Furthermore, guidelines for disciplinary inquiries of such legal aid providers to be developed by the Coordinating Body in consultation with the LAC.</p>

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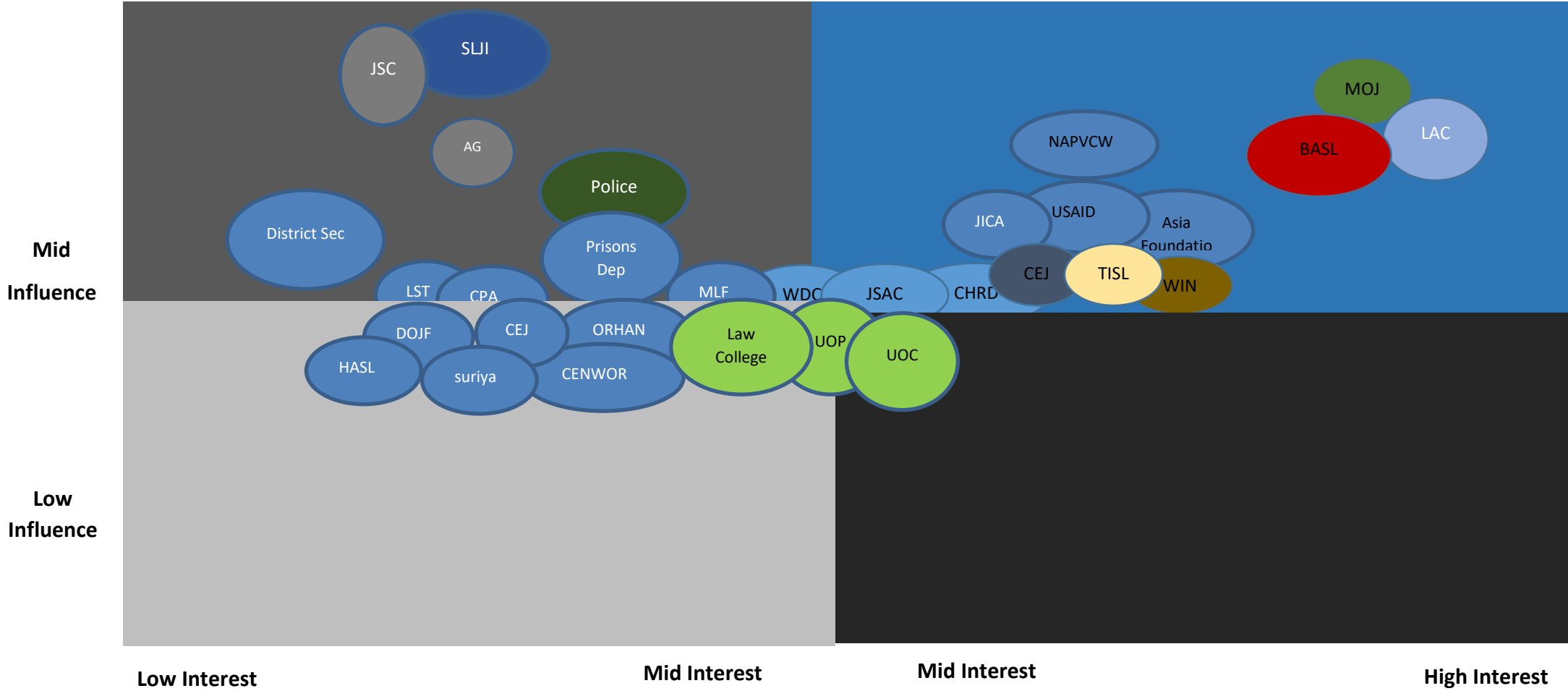
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Annex 1- Schedule of Stakeholder Interviews

Stakeholders	Date of Interview
Ministry of Justice (MOJ)	13 th October 2022, 1 st and 23 rd of November 2022
Legal Aid Commission (LAC)	17 th October 2022, 20 th October 2022 & 15 th December 2022
HelpAge, Sri Lanka (HASL)	11 th October 2022
Jaffna Social Action Center (JSAC)	12 th October 2022
Police Headquarters, Children and Women's Bureau	20 th October 2022
Faculty of Law, University of Colombo	20 th October 2022
Organization for the Rehabilitation of the Handicapped (ORHAN)	21 st October 2022
Center for Equality and Justice (CEJ)	24 th October 2022
Women-in-Need (WIN)	25 th October 2022
Suriya Women's Development Centre	25 th October 2022
Centre for Policy Alternatives (CPA)	26 th October 2022
Sri Lanka Law College	27 th October 2022
Women's Development Centre (WDC)	29 th October 2022
United States Agency for International Development (USAID)	31 st October 2022
Center for Women's Research (CENWOR)	31 st October 2022
Transparency International Sri Lanka (TISL)	1 st November 2022
Media Law Forum (MLF)	6 th November 2022

Center for Human Rights Development (CHRD)	09 th November 2022
Law and Trust Society (LST)	09 th November 2022
Attorney General's Department (AG's)	10 th November 2022
Department of Law, University of Peradeniya	12 th November 2022
Sri Lanka Judges Institute (SLJI)	17 th November 2022
Center for Environmental Justice (CEJ)	24 th November 2022
National Authority for the Protection of Victims of Crime and Witnesses ('NAPVCW')	25 th November 2022
Prisons Department	25 th November 2022
Bar Association of Sri Lanka (BASL)	27 th October 2022
Disability Organizations Joint Forum (DOJF)	29 th November 2022
Japan International Cooperation Agency (JICA)	29 th November 2022
Law Asia Foundation	1 st December 2022
Judicial Service Commission (JSC)	20 th December 2022

Annex 2 - Interest/Influence Grid for Stakeholder Mapping.



Annex 3 – Capacity Needs Assessment