

The Legal Aid Sector in Sri Lanka: Searching for Sustainable Solutions

A MAPPING OF LEGAL AID SERVICES IN SRI LANKA



THE LEGAL AID SECTOR IN SRI LANKA: SEARCHING FOR SUSTAINABLE SOLUTIONS

A Mapping of Legal Aid Services in Sri Lanka



UNHCR
United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

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UNDP Equal Access to Justice Project
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Ministry of Constitutional Affairs and National Integration
Ministry of Justice and Law Reform

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Message from Ministry of Constitutional Affairs and National Integration

It is indeed a privilege to send this message on the launch of the report on the mapping of legal aid services in Sri Lanka titled, "The Legal Aid Sector in Sri Lanka : Searching for Sustainable Solutions." This is an initiative, to assess the overall legal aid sector in the country by the Equal Access to Justice Project funded by the United Nations Development Programme (UNDP), the United Nations High Commissioner for Refugees (UNHCR) and The Asia Foundation.

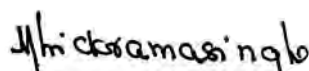
The legislative and international framework for legal aid provision in Sri Lanka presents the background for Legal Aid service in our country. The primary focus on legal aid comes from the ratification of the International Covenant on Civil and Political Rights, which obligates States to provide legal aid to its citizens. This binds Sri Lanka through the ratification in 1980 and the recent enactment of the International Covenant on Civil and Political Rights Act, No 56 of 2007.

In terms of our Constitution the right to equality before the law and the equal protection of the law is guaranteed to all citizens, regardless of ethnicity, religion or standing

in society. This paramount right strengthens the Rule of Law in any society. Today in our society there is considerable amount of persons who do not possess the ability to seek justice due to economic and social reasons. Therefore Legal Aid would be the only means through which they would be able to have recourse to justice. Failing to do so would deprive such persons of justice whereby deny equal protection of the law. This initiative is therefore a timely intervention.

This study is a stepping stone of a long journey in finding a sustainable solution for Legal Aid in Sri Lanka and the efforts of all the stakeholders deserves commendation. It provides strategic conclusions and recommendations to all stakeholders in the legal aid service provision in Sri Lanka.

Therefore the challenge before us is to follow up on the recommendations, and implement same. It is my fervent hope that this challenge will be accepted by all stakeholders in the justice sector and work collectively, towards building a nation of "Justice for All".



M. S. WICKRAMASINGHE

Project Director,

Equal Access to Justice Project

Secretary,

Ministry of Constitutional Affairs and National Integration

Message from Ministry of Justice and Law Reforms

I am pleased to be associated with the launch of the "The Legal Aid Sector in Sri Lanka: Searching for Sustainable Solutions," initiated by the Equal Access to Justice Project of the United Nations Development Program (UNDP), The Asia Foundation, and the United Nations High Commission for Refugees (UNHCR) in their joint endeavor to analyze the overall legal aid sector in Sri Lanka.

Equal standing before the law regardless of race, wealth, or political opinion is paramount to every democratic society upholding the Rule of Law. In statute, discrimination in any form is unacceptable in Sri Lanka. Yet not all in our society is placed to vindicate constitutional guarantees owing to reasons both

economical and social. Thus legal aid should be recognized as the doorway to promote equality and the rule of law.

This report is an important step in the justice sector and the efforts of the UNDP, The Asia Foundation and UNHCR should be commended for succinctly bringing out all fundamental aspects of legal aid in Sri Lanka.

Taking this venture forward would indeed be a challenge for all stake holders. The Ministry of Justice will remain committed not only to promote legal aid but also support all stakeholders to make equal access to justice, for all, a reality.



SUHADA GAMLATH

Secretary,
Ministry of Justice and Law Reforms

Message from UNDP

It gives me great pleasure to issue this message on the occasion of the publication of the report, "In Search of Sustainable Solutions: A Mapping of Legal Aid Services in Sri Lanka," which marks the culmination of almost a year of in-depth research and consultations.

For UNDP, we are proud to have been an active partner in the legal aid sector for several years and to have contributed to ensuring that legal advice and representation is available to the most vulnerable from pre-trial detainees in Welikada prison to victims of gender-based violence in the estate sector to tsunami and conflict affected Internally Displaced Persons (IDPs) in the East.

In providing this support, through our Equal Access to Justice Project with the Ministry of Constitutional Affairs and National Integration, we have also learnt that there is a need to search for a more sustainable solution to the provision of legal aid in Sri Lanka. In particular, a solution that ensures vulnerable groups easy and affordable access to high-quality legal aid services while at the same time being able to rely on sufficient and predictable funding and perhaps greater pro-bono contributions from lawyers and paralegals embodied with a sense of volunteerism.

It is for this reason that UNDP decided to undertake a forward-looking review of the legal aid sector. Fortunately, at the same time there were other stakeholders also with significant experience in the field, considering similar exercises and a decision was taken to join forces. One of the greatest strengths therefore of this endeavor, is that it brings together the resources and most importantly the technical expertise of the Ministry of Justice, the Ministry of Constitutional Affairs and National Integration, The Asia Foundation, UNHCR and UNDP.

At this stage, it is highly encouraging to see that the result of this collaborative effort is a number of very practical, innovative and concrete recommendations that could pave the way to a model legal aid service in Sri Lanka. UNDP looks forward with great enthusiasm to supporting national policy discussions around these recommendations and potential reforms that flow from them.

Thank you,



NEIL BUHNE

Resident Representative,
United Nations Development Programme

Message from UNHCR

It gives me great pleasure to issue this message on the occasion of the launching of the report, "In Search of Sustainable Solutions: A Mapping of Legal Aid Services in Sri Lanka."

UNHCR, in its role as lead agency for the protection and assistance of conflict affected Internally Displaced Persons (IDPs) both globally and in Sri Lanka, has been working with the Government of Sri Lanka to provide protection and assistance to IDP and returnee populations in the North and East of the island since 1990.

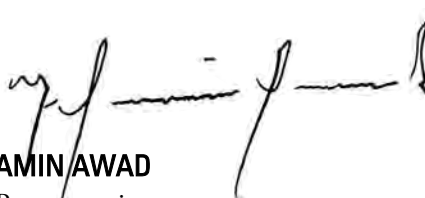
Justice plays an important role in combating impunity, ending discrimination and poverty, and paving the way for peace and national reconciliation. Therefore efforts to strengthen the rule of law and ensure full and equal access to justice for all, including internally displaced persons is recognised as a priority in ensuring their protection. UNHCR is committed to promoting this through legal literacy and the provision of free legal aid.

UNHCR works with a variety of partners including Government entities, International Non-governmental Organisations (INGOs) and Non-governmental Organisations (NGOs) in ensuring that IDPs and returnees in the North and East have access to legal

advice, assistance and court representation without charge and that IDPs are also made aware of their rights. In the course of these activities UNHCR has been aware that the provision of legal aid in Sri Lanka does not adequately meet the needs of vulnerable populations requiring these services and that despite the Government of Sri Lanka's strong commitment to legal aid, legal aid providers are largely dependent on external funding which does not support sustainability.

It is therefore with great enthusiasm that UNHCR joined UNDP and The Asia Foundation together with the Ministry of Constitutional Affairs and the Ministry of Justice in supporting this initiative to assess the current situation with regard to legal aid in Sri Lanka and to come up with practical recommendations, in consultation with all stakeholders, to work towards a mechanism for the sustainable and systematic provision of legal aid where the needs of all vulnerable groups, including IDPs, are met. These recommendations, the outcome of many months of in-depth research covering the entire island, form a framework which the Government and its partners can build on to develop an efficient and effective legal aid system for Sri Lanka.

Thank you,



AMIN AWAD

Representative,
United Nations High Commissioner for Refugees,
Sri Lanka

Message from The Asia Foundation

I wish to thank the Ministry of Constitutional Affairs and National Integration, the Ministry of Justice and Law Reforms, UNDP, and UNHCR for inviting The Asia Foundation to contribute to this important study on legal aid in Sri Lanka. It has been a pleasure working with the multi-agency steering committee that guided it. The study's success is due to the thorough desk research, tireless field work, and careful analysis of the researchers and program staff from all the agencies involved. I wish to express my deep appreciation for their dedication and collegiality. It has been a pleasure working with you.

The Asia Foundation has been a key supporter of legal aid in Sri Lanka for two decades. We had much to contribute. My sincere thanks to the UN agencies and government ministries involved for recognizing our expertise and for asking us to assist. I wish to thank the British High Commission in Sri Lanka for supporting our law and justice programs, including this important study. "In Search of Sustainable Solutions: A Mapping of Legal Aid Services in Sri Lanka" provides important baseline information on legal aid provision in Sri Lanka and insights and analysis about how to make legal aid institutionally and financially sustainable so that vulnerable and marginalized groups can continue to benefit from these services.

A few of its key recommendations are:

- To complement the solid legislative and institutional basis that exists for legal aid in Sri Lanka by developing a national strategy on legal aid that puts social empowerment and financial and institutional sustainability at its core;
- To support quality control, monitoring, and evaluation of legal aid services so that a compelling empirical case can be made for why legal aid is improving the lives of ordinary Sri Lankans and deserves government and donor support;
- To situate the role of legal aid in a broader social agenda for improving people's welfare and their civic, social, and economic rights; and
- To facilitate consistent, coordinated, rationally-allocated funding for legal aid that involves regular consultation by all supporters of legal aid in Sri Lanka.

We look forward to working closely with the Government of Sri Lanka, UNDP, UNHCR, and other agencies to take these and the other recommendations of the study forward.

With best wishes,



NILAN FERNANDO

Country Representative,
The Asia Foundation

Acknowledgements

The Steering Committee wishes to thank the following who contributed to this study in various ways:

- Ms. Malkanthi Wickramasinghe, Secretary, Ministry of Constitutional Affairs and National Integration
- Mr. Suhada Gamlath, Secretary, Ministry of Justice and Law Reforms
- Mr. S.S. Wijeratne, Chairman, Legal Aid Commission
- Bar Association of Sri Lanka and the Legal Aid Foundation
- Mr. Nilan Fernando, Country Representative, The Asia Foundation
- Ms. Dinesha deSilva Wikramanayake, former Deputy Country Representative, The Asia Foundation
- Kundasale Community Development Foundation, Community Trust Fund, Vehilihini Development Centre, Siyath Foundation, Women In Need and UNHCR Mannar office for organizing Focus Group Discussions
- Director and staff of the Legal Aid Commission and regional offices
- Director and staff of the Legal Aid Foundation and branch offices
- All legal aid service providers who participated in the mapping
- Sharmeela Rasool and Sanjitha Sathyamoorthy, Research Assistants
- Nancy Hopkins, The Asia Foundation for editing the report

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Executive Summary

The Mapping of Legal Aid Services in Sri Lanka titled, "The Legal Aid Sector in Sri Lanka: Searching for Sustainable Solutions," was initiated by the United Nations Development Programme (UNDP) and the United Nations High Commission for Refugees (UNHCR) as part of an overall analysis of the legal aid sector in the country. The study was carried out by The Asia Foundation as part of its contribution to legal aid in Sri Lanka during a period spanning over a decade. The study looks at the formal legal aid service provision sector in Sri Lanka and attempts to identify gaps and challenges aimed at recommending changes for a more comprehensive legal aid system that is accessible to all.

The study is comprised of three main parts: the legislative and institutional framework, a comparative analysis of legal aid systems around the world and empirical evidence of the status, gaps, and challenges within the legal aid system in Sri Lanka.

The legislative and institutional framework for legal aid provision in Sri Lanka presents the background for legal aid service provision in Sri Lanka. The primary focus on legal aid comes from Sri Lanka's ratification of the International Covenant on Civil and Political Rights (ICCPR) which is the key international legal instrument obligating states to provide legal aid to the public. This binds Sri Lanka through the ratification in 1980 and the recent enactment of the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007.

Legal aid was institutionalized in Sri Lanka in 1978, with the passage of the Legal Aid Act (No.27 of 1978). The Legal Aid Act mandates the operation of an effective legal aid scheme by providing legal advice, funds to conduct legal and other proceedings for and on behalf of deserving persons, obtaining the services of

attorneys at law to represent deserving persons, and by providing any other assistance that is necessary to provide legal aid to deserving persons. The section discusses the formation of the Legal Aid Commission (LAC), a statutory body primarily funded by the Ministry of Justice and Law Reforms and governed by an independent Commission. The study also highlights that over the past several years LAC's funding base has seen a significant increase. For the 2007-2008 fiscal year, the Sri Lankan government has provided LAC with Rs. 50 million (over USD \$462,000) and LAC has received grants from several international donors. LAC's geographic outreach covers most parts of the country, and it records a high caseload and provision of services. This is in addition to the non-governmental legal aid organisations that have operated in Sri Lanka as far back as, and even before, the establishment of the Legal Aid Commission and during the time when the State sponsored legal aid scheme was struggling due to lack of funds, these non-governmental organisations provided continuous services.

In the comparison between legal aid systems from a number of developed and developing countries, the study identifies that one measure of a "successful" legal aid system is that the system receives a considerable investment of public funds. However, it concludes that success is best measured against the goal for which the legal aid system is developed and against start-up conditions and seeks to answer two questions: (a) What is the goal and idea behind developing this particular system of legal aid? and, (b) What problems is society facing at that moment, how does the current legal system operate, and what is the prevailing legal culture?

The study traces the fundamental purpose of legal aid as a system that must guide all topical debates about the

development of legal aid. While efforts to design or improve a legal aid system should incorporate a conscious assertion of the state's obligation to provide effective access to justice, it should not be obscured by detail and the search for a "model" system. The study thus promotes as a contemporary solution for legal aid service delivery, the adoption of the "Mixed Models of Legal Aid Service Delivery." In cases where public funding is limited and the government does not have sufficient resources to finance all legal aid service delivery, the government takes on a regulatory role to ensure the quality and high ethical caliber of legal services provision with the participation of other non-governmental entities such as Non-governmental Organisations (NGOs), foundations, and paralegals in providing legal aid services. This model assumes that the international community is willing to contribute to the funding of these extra-governmental services, at least until the government is in a better position to expand its services or allocate government funding to the outside service providers.

The study points to the fact that several jurisdictions that have recently developed or modified their legal aid systems, particularly in East Asia, have opted for a mixed model of publicly funded legal aid services. These include China (in 1994), Japan (in 2006), and Taiwan (in 2004). Even countries like England and Wales, where traditional legal aid service delivery systems (judicare) are well established, are experimenting with mixed modes of delivery. The examples of Kosovo, India, and South Africa illustrate how mixed models can make creative use of government and donor funding, as well as partnerships with non-governmental legal service providers.

The study includes a brief section on the Sri Lanka Legal Aid Commission highlighting that the Legal Aid Commission (LAC) is the mechanism through which the Sri Lankan government has institutionalized its commitment to the provision of legal aid. LAC's main focus is litigation, but it also operates several subject-specific desks and projects. LAC operates 47 Legal Aid Centres across Sri Lanka and is staffed by Staff Attorneys

and Panel Lawyers selected from Bar Association branches nationwide. The vision of LAC's Litigation Unit is to be "a vehicle to promote the transformation of the legal culture in Sri Lanka so as to achieve the ideal of a social access to justice." LAC's main mission is to identify those members of society who lack access to the remedies available to them under the law due to social, economic, and/or other barriers, and to make available to them a means through which they can use the law and legal system to secure justice. The Litigation unit is mandated to take on civil and criminal litigation although in practice much of the litigation falls within the civil litigation category.

The analysis of empirical data provides a picture from the perspectives of service providers, legal aid beneficiaries, and broader communities. The survey of non-governmental legal service providers highlights several interesting and thought provoking facts that form the basis of many conclusions and recommendations.

- Legal aid service providers describe their legal aid objectives in terms of social empowerment and increasing access to legal aid for the poor to enable them to stand up against injustice and stem abuse of power. Legal aid is also seen as a mechanism through which to build the professional capacity of young lawyers, to increase the organisation's reputation, and to establish good relationships with other organisations, government officials, and law enforcement officers.
- Legal aid services are well structured and staffed, showing gender, age, and ethnic balances. Geographic coverage shows that Colombo currently receives the most legal aid coverage. Other well-served districts include Ampara, Batticaloa, Puttalam, Anuradhapura, Badulla, Hambantota, Matara, Trincomalee, and Kurunegala. Gampaha and Matale are less reached while there are no service providers operating in Kilinochchi and Mullaitivu districts.
- The client load handled by service providers in 2007 ranges from 225,686 clients serviced by one

organisation to 30 by another. Most organisations provide a wide range of legal aid services and most legal aid services are provided completely free of charge. The common criterion for selection of clients is income and most service providers require formal evidence of income levels.

- The bulk of funding for legal aid organisations comes from 13 donors, including UN agencies, bilateral agencies, and international NGOs. Smaller contributions are provided by a university and private individuals.
- In terms of challenges and gaps in legal aid service provision, key issues identified by service providers relate to clients, legal aid lawyers, judges, government officials and to structural and procedural issues. These are individually highlighted in this chapter.
- In order to improve legal aid services, legal aid service providers suggest numerous ways that can be broadly categorized under outreach, training, awareness-raising, monitoring and evaluation, networking, and overall service provision.
- Legal aid service providers highlight that recognition and support is needed from the government in legal aid service provision
- The distance to legal aid service providers is an issue for clients. The majority surveyed traveled more than five kilometers to reach service providers.
- In terms of need, the majority of beneficiaries surveyed accessed legal aid services for family disputes. This is the same for men and women, and all ethnic groups. Civil disputes were also common comprising money-related issues, loan defaults, accident cases, compensation issues, and contract issues.
- Clients access legal aid service providers for legal advice, counseling, and legal representation in court. A single client can and does receive more than one service (i.e. legal advice and court representation or counseling and court representation). According to beneficiaries interviewed, 60% of issues and disputes that are taken to legal aid service providers culminate in a court case.
- Legal aid service providers appear to be making a strong effort to provide services in languages that their clients understand. The majority of beneficiaries were satisfied with the language of service provision.
- The commitment of legal aid lawyers is noted. The survey shows that among the beneficiaries who responded to the question on the number of lawyers that represented a single client, 89% stated that the same lawyer followed their case in a continuous manner. This shows that a single lawyer has been dedicated to an individual case appearing in court every time the case comes up for hearing. This shows the commitment of the legal aid lawyer in following the case continuously despite receiving nominal fees for the work in comparison to the few received by lawyers in non legal aid receiving cases.
- Overall, a high level of client satisfaction is shown. 72% of beneficiaries expressed overall satisfaction with the legal services provided while only 7.5% said they were not satisfied. The balance did not answer the question as the cases/issues were new and an opinion could not be given.

The survey of legal aid beneficiaries drawn from links with service providers as well as community organisations, provides views that complement and supplement yet also contradict some of the views of service providers. The main findings from interviews with beneficiaries or clients of legal aid services are as follows:

- Clients receive information about the legal aid providers in many ways but the main way is from another individual (e.g., family member, government officer, neighbor, friends, former legal aid client). A lesser number received information from some form of organisation (NGO, government institution, religious institution), while only a small number were referred to the organisation by the policy and by the court.

The third reserve of information is drawn from community members gathered in a number of locations where focus group discussions were held. The stakeholder perspectives further bring about key points that have shaped the conclusions and recommendations in this study. The key highlights are as follows:

- Focus group participants include a cross section of community representatives, including staff from civil society organisations, *Grama Niladharis*, police officers, Land Officers, Divisional/District Secretaries, Local Authority officials, religious leaders, and school principals and teachers.
- On the availability of legal aid, participants were familiar with legal aid service providers, often due to their physical presence at the district level (e.g., an office and/or sign board in town, visibility of their lawyers in court). Participants also noted a high availability of legal aid services due to the strong presence and publicity of service providers in the main towns.
- On the availability of legal aid according to specific issues, participants identified domestic violence, divorce, maintenance and other family disputes such as inheritance as the key issues for which legal aid services are available in their communities. With the exception of one focus group, participants did not mention the availability of legal aid for rights violations which are of a political nature (disappearances and killings, unlawful detention, intimidation, and threats). Only one focus group mentioned the possibility of accessing legal aid services for abductions.
- Participants – despite their open criticism of corruption in government administration, law enforcement, and politics – did not mention the availability of legal aid for such issues, even those who mentioned that they had personally faced a situation involving corruption.
- Focus group participants identified women and children as the most marginalized, vulnerable groups in need of legal aid. The second most commonly-mentioned groups were internally displaced persons and the poor.
- In terms of need, participants identified domestic violence, child abuse, land issues, maintenance for women, child labour, and divorce as the main issues for which people in their communities need legal aid.
- One clear, consensus concern emerging from the focus group discussions is that legal aid service providers concentrate their operations (both legal aid and outreach efforts) in the towns. While legal aid is available at the district level, these services do not trickle down to reach severely marginalized people at lower levels. Services are scarce at the *Grama Niladhari* level, and more so at the village level.
- Participants also expressed concern that the level of access to legal aid services varies across different vulnerable populations.
- Focus groups noted that at the district level, community organisations play a key role in facilitating access by the poorest and most disadvantaged to legal aid services.
- The eligibility criteria that are used by many legal aid organisations in the client selection process emerged as a contentious issue in the focus groups. Many participants expressed concern that income-based testing is unfair and may exclude many deserving clients, when rigidly implemented.
- Regard for legal aid service providers – both the Legal Aid Commission and NGOs – appears to be high, but perceptions of these organisations’ effectiveness varied from district to district.
- Focus group members were able to identify several systemic barriers that prevent the poor and vulnerable from accessing legal aid services in Sri Lanka. These included poverty, security concerns especially in selected parts of the country directly affected by the war, certain cultural barriers, negative attitudes and lack of support for legal aid among relevant government officials and law

enforcement officers, lack of knowledge and awareness of legal aid services and broader shortcomings of the Sri Lankan justice system.

This study attempts to provide strategic conclusions and recommendations for all stakeholders in the legal aid service provision process in Sri Lanka. The recommendations are aimed at government and non-government service providers, supporters of legal aid services as well as policy makers in Sri Lanka.

The study captures recommendations based on main findings of three previous legal aid assessments done in 2000 and 2001 by different organisations. These recommendations that have yet to be followed up on or implemented.

The overall conclusions in this study are:

There is a strong legislative basis for legal aid in Sri Lanka. Legal aid is implicitly recognized as a fundamental right in the Constitution, especially when read with the International Covenant on Civil and Political Rights Act No. 56 of 2007. The Legal Aid Act of 1978 that set up the Legal Aid Commission and gave it the mandate "to provide for the grant of legal assistance to deserving persons," provides an administrative and regulatory background to legal aid service provisions. Although this law provides a solid framework for the provision of legal aid in Sri Lanka, it is useful to conduct a broader and deeper review of relevant legislation to evaluate the extent to which it is both reflective of the current situation and needs in the country and in line with international standards, with a view toward revising it as necessary.

The Sri Lankan government is committed to the delivery of legal aid, as evidenced by the expansion of the LAC's services over the past several years, as well as the recent increase in the government's budgetary allocation for the LAC. As a group, the NGO legal aid service providers appear to be strongly motivated by a sense of social responsibility, service, and social empowerment.

Sri Lankan legal aid service providers operate independently of government. LAC, while supported by the State, works independently of other justice sector institutions, which at least in principle ensures its impartiality and equal access to justice system for all citizens.

The policy framework for legal aid in Sri Lanka can be improved through clear articulation of the State policy and commitment, and the role of non-governmental service providers as part of broader access to justice and a human rights framework. A vision and resultant national strategy for legal aid in Sri Lanka could be developed through a collaboration among the government, professionals (Bar Association), and NGO legal aid service providers through a consultative process that involves all relevant stakeholders.

Based within a clearly articulated legal aid policy framework, backed by a more comprehensive legislative framework, the study recommends specific areas for improving service delivery. These include; more geographic coverage, more professionalism and expertise among service providers, more awareness raising, evaluation of services currently being provided by LAC, and more and systematic funding and systems of monitoring, evaluation and quality control. The study also points to links between legal aid and alternative dispute resolution mechanisms which is an area that has not been studied in Sri Lanka.

"The Mapping of Legal Aid Services in Sri Lanka" was carried out by a Steering Committee comprising representatives from the three agencies. The Steering Committee comprised Ramani Jayasundere, Programme Manager Access to Justice Programme, The Asia Foundation, Shermila Antony Perera, National Programme Coordinator, UNDP Equal Access to Justice Project, Zoe Keeler, Assistant Resident Representative (Programme) UNDP, Sri Lanka and Menique Amerasinghe, Programme Manager, UNHCR.

The Research Team comprised Ramani Jayasundere (The Asia Foundation) as Lead Researcher and Sharmeela Rasool (The Asia Foundation) and Sanjitha Satyamoorthy (UNDP) as Research Assistants. The legal framework was researched and compiled by Cyrene Siriwardene supported by Chatura Randeniya (Independent Researchers). The comparative assessment was carried out by Emilia Mugnai (Programme Specialist, Justice and Human Rights, UNDP Regional

Centre in Bangkok). The report was compiled by Ramani Jayasundere through a process of periodic review with Steering Committee members, and edited by Nancy Hopkins (The Asia Foundation).

The study was reviewed by a team of peer reviewers comprising Erik Jensen, Senior Law Advisor and Michael Lieberman, Director of the Law Programme of The Asia Foundation, and the UNDP.

1. Introduction and Methodology

This mapping of legal aid services in Sri Lanka was initiated by the United Nations Development Programme (UNDP) and the United Nations High Commission for Refugees (UNHCR) in April 2008 as part of an overall analysis of the legal aid sector in the country. The mapping serves as a complement to the second part of the analysis, which looks at Sri Lankans' perceptions of access to justice. The United Nations Development Assistance Framework for 2008-2012 highlights access to justice as one of the priority programme areas for the United Nations Country Team (UNCT). More specifically, one of the UNCT's desired outputs is "improved performance of regional and local level structures in fulfilling their role as duty-bearers in delivering services in a transparent and accountable manner," with "effective and efficient structures and mechanisms in place and operational to provide access to justice and redress mechanisms" as its target.

The Asia Foundation was invited by the UNDP to lead this legal aid services mapping exercise based on the significant expertise and experience the Foundation has gained from over fifteen years of support for legal aid service provision in Sri Lanka. The Foundation has worked closely with both government and non-governmental sector institutions; and in 1997 convened the country's first-ever coordination effort among legal service providers, the Consortium of Legal Aid Organisations (CLAO). The Foundation has also been a leader in promoting community legal empowerment as part of a more holistic approach to access to justice in Sri Lanka.

GOAL AND OBJECTIVES

The goal of this study is to help shape the development of a coordinated national solution for sustainable

provision of legal aid in Sri Lanka. The objectives are threefold:

1. To produce a comprehensive mapping of the legal aid sector which looks at existing services (structured and ad hoc), with a focus on service providers and beneficiaries, and is aimed at identifying gaps and shortfalls;
2. To understand the different options available for sustainable provision of legal aid in Sri Lanka, drawing on examples from other countries; and
3. To propose recommendations (including a plan of action for implementation) for sustainable provision of legal aid in Sri Lanka.

METHODOLOGY

The mapping was carried out as a joint effort among the UNDP, the UNHCR, and The Asia Foundation under the overall supervision of a Steering Committee, which included representatives from these three organisations as well as from the Ministry of Justice and Law Reforms and the Ministry of Constitutional Affairs and National Integration. The mapping exercise was carried out over a five-month period from April to August 2008.

The Study Team comprised a Legal Researcher from The Asia Foundation and two Research Assistants from UNDP and The Asia Foundation, who took the lead on the legal aid mapping; an independent Researcher and Research Assistant who took the lead on the legal framework; and the UNDP Legal Aid Advisor, who took the lead on the comparative assessment of legal aid systems. The Asia Foundation's Legal Researcher compiled the final report.

The mapping was produced through several research methods, including a desk review of the literature on legal aid in Sri Lanka and international legal aid systems to facilitate a comparative assessment and identification of lessons learned from more developed legal aid systems. The mapping also involved a survey of government and non-governmental legal aid providers, a survey of legal aid beneficiaries, focus group discussions with a wide range of stakeholders, and interviews with key policy makers:

- Legal aid service provider survey: Twenty-seven service providers (including the Legal Aid Commission, an independent government body, and 26 NGOs) were contacted with the survey questionnaire. The Legal Aid Commission and 12 NGOs actively engaged in legal aid service provision have been included in the analysis. Follow-on interviews were conducted with staff from the service providers' head offices, and several regional offices of these service providers were contacted to provide additional information and insights on access and services.
- Beneficiary survey: Four hundred legal aid beneficiaries were identified with assistance from legal aid service providers and other civil society organisations, and 266 beneficiary questionnaires were completed for analysis. Beneficiaries were drawn from the priority target groups of internally displaced persons and returnees, plantation workers, women heads of households, urban poor, and women victims of violence. Beneficiaries represented the districts of Kalutara, Hambantota, Galle, Matara, Kandy, Gampaha, Colombo, Puttalam, Ratnapura, Ampara, Moneragala, Nuwara Eliya, Badulla, Batticaloa, Mannar, and Jaffna. All individuals surveyed had accessed a legal aid service provider and received some type of legal aid. Seventy percent of the beneficiaries surveyed fall within the selected target groups, while 30% fall outside the target groups.

- Focus group discussions: Ten discussions were held with stakeholders who were not beneficiaries of legal aid services, including members of civil society organisations, District and Divisional Secretaries, *Grama Niladharis*, police, land officers, local authority officials, religious leaders, educational officers, mediation board members, and other community representatives. The purpose was to gather general information and perspectives on the availability of, knowledge of, and access to legal aid. Focus group discussions were held in the districts of Puttalam, Trincomalee, Batticaloa, Kandy, Moneragala, Hikkaduwa, Matara, Jaffna, Kurunegala, and Mannar.
- Interviews with policy makers: The team conducted six interviews with officials from the Ministry of Justice and Law Reforms, the Bar Association, and the Legal Aid Commission, as well as with senior members of the judiciary.

The Study Team developed the survey questionnaires and focus group guide questions, in consultation with the Steering Committee. The data collection, data analysis, and report writing was conducted in a participatory manner, with contributions from all members of the Steering Committee.

LIMITATIONS

For the survey of legal aid service providers, organisations were identified through the Legal Aid Service Provider Directory published by the Consortium of Legal Aid Organisations in 2000. Newer service providers were identified and included as the data collection progressed. Of the 27 service providers contacted, 19 organisations returned the questionnaire. From this pool it was necessary to exclude seven service providers from the analysis. One organisation was conducting very limited operations due to lack of funding and did not have sufficient data for analysis; four organisations were not providing direct legal aid

services, only referrals; and two did not respond to the team's follow-on request for an interview. This mapping exercise does not, therefore, comprise a full and complete list of legal aid service providers in Sri Lanka. However the 12 service providers included in the study represent the main legal aid providers in the country, in terms of scale and years of operation.

It is important to note that although this mapping exercise includes information from the Legal Aid Commission (LAC), it is not an assessment of LAC services. As such, no LAC branch offices were visited, nor did surveys, interviews, and focus group discussions seek to specifically draw out respondents' opinions about LAC services.

2. The Legislative and Institutional Framework for Legal Aid Provision in Sri Lanka

Key Points and Findings

- The International Covenant on Civil and Political Rights (ICCPR) as the key international legal instrument obligating states to provide legal aid to the public binds Sri Lanka through the ratification of the ICCPR in 1980 and the enactment of the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007.
- Legal aid was institutionalized in Sri Lanka in 1978, with the passage of the Legal Aid Act (No.27 of 1978). The Legal Aid Act mandates the operation of an effective legal aid scheme by providing legal advice, funds to conduct legal and other proceedings for and on behalf of deserving persons, obtaining the services of attorneys at law to represent deserving persons, and by providing any other assistance that are necessary to provide legal aid to deserving persons.
- The law resulted in the formation of the Legal Aid Commission (LAC), a statutory body primarily funded by the Ministry of Justice and Law Reforms and governed by an independent Commission.
- Over the past several years LAC's funding base has seen a significant increase. For the 2007-2008 fiscal year, the Sri Lankan government has provided LAC with Rs. 50 million (over USD \$462,000) and LAC has received grants from several international donors. LAC's geographic outreach covers most parts of the country, and it records a high caseload and provision of services.
- Non-governmental legal aid organisations have operated in Sri Lanka as far back as, and even before, the establishment of the LAC. In the face of a struggling government-sponsored legal aid scheme, these non-governmental organisations provided continuous services.

THE INTERNATIONAL LEGAL FRAMEWORK

The International Covenant on Civil and Political Rights (ICCPR) is the key international legal instrument obligating states to provide legal aid to the public. Legal aid is recognized as a basic human right in the ICCPR's provisions on minimum guarantees in the determination of criminal charges against individuals. The minimum guarantees include the right to defend oneself through legal assistance of one's own choosing, and to have legal assistance assigned to one in any case where the interests of justice so require and without payment in such case if the person does not have sufficient means to pay for it (Article 14). Sri Lanka ratified the ICCPR in 1980 and is therefore bound by its provisions. The United Nations' General Comment No. 28 on the ICCPR, which addresses equality between men and women,

holds that state parties should take measures to ensure that women have equal access to legal aid, and in family matters in particular. Provision of free legal assistance is also directed or recommended in other UN Conventions, general comments, and general recommendations in particular areas such as children's rights, racial discrimination, migrant worker rights, and housing rights.

The UN Basic Principles on the Role of Lawyers state that: "Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organisation and provision of services, facilities and other resources" (Principle 3.3). The UN Standard Minimum Rules for the Treatment of Prisoners

provides that an untried prisoner shall be allowed to apply for free legal aid, where such aid is available, for the purpose his or her trial. The UN Rules for the Protection of Juveniles Deprived of Their Liberty reiterates this right for juveniles under arrest or awaiting trial.

THE NATIONAL LEGAL FRAMEWORK

Legal aid was institutionalized in Sri Lanka in 1978, with the passage of the Legal Aid Act and the resulting formation of the Legal Aid Commission (LAC). Before providing an overview of the structure and powers of the LAC, it is useful to review other legal instruments in Sri Lanka that address the need for and right to legal aid.

The right to a fair trial by a competent court, and the right to be heard before such a court, are guaranteed to all persons by Article 13(3) of the Constitution of Sri Lanka. While Article 13 deals with a number of issues relating to due process, the right to legal aid is not explicitly included. Such a right may nevertheless be construed as implicit in Article 13(3), which reads as follows: "Any person charged with an offence shall be entitled to be heard, in person or by an attorney-at-law, at a fair trial in a competent court," particularly when read in the context of Sri Lanka's obligations under the ICCPR.

Sri Lanka's Code of Criminal Procedure states that every person accused before any criminal court has the right to be defended by a lawyer, and every aggrieved person has the right to be represented in court by a lawyer (Section 260). The Code imposes a duty on a High Court judge to assign a lawyer to an accused person when indicted, which effectively gives the accused a right to legal aid (Section 195). Similarly, the Court of Appeal may assign a lawyer to any appellant in a criminal case if it appears desirable, in the interests of justice, that the appellant have legal aid and that the appellant does not have sufficient means to obtain aid (Section 353). However, there is no equivalent provision in the Code

for legal aid in proceedings before the Magistrate's Court.

A general right to legal aid in criminal cases at all levels of the court system was recently expressly legislated for in Sri Lanka through the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007. Under Section 4 of the Act, a person charged with a criminal offence is entitled "to have legal 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." In Section 5, the Act further states that every child shall have legal assistance provided by the State at State expense in criminal proceedings affecting the child, if substantial injustice would otherwise result.

The Supreme Court Rules 1990 (Rule 44(7)) provide for the Supreme Court to act on a complaint alleging infringement or imminent infringement of a fundamental right, even if it is not in the form of a formal petition, where the complainant may not have the means to follow the usual procedures and may suffer substantial prejudice by such infringement. The Court may further direct the Registrar to refer such a complaint to the LAC or to a lawyer belonging to a similar organisation, to prepare formal documents to take the case forward.

STRUCTURE AND POWERS OF THE LEGAL AID COMMISSION

The LAC was established by the Legal Aid Act No.27 of 1978. The objectives of LAC are set out in Section 3 of the Act: "to operate an effective legal aid scheme by providing legal advice, funds to conduct legal and other proceedings for and on behalf of deserving persons, to obtain the services of attorneys at law to represent deserving persons, and to provide any other assistance that are necessary to provide legal aid to deserving persons." Although LAC is a statutory body primarily funded by the Ministry of Justice and Law Reforms, the

Government of Sri Lanka has no controlling interest in the Commission.

The LAC grants assistance in civil litigation and fundamental rights cases, and in obtaining bail for those in remand for over a year. The LAC's primary focus on non-criminal matters likely stems from the fact that legal aid in criminal cases is (at least in principle) already provided for by the Code of Criminal Procedure, as noted above.

The LAC consists of nine members: three appointed by the Minister of Justice, and six nominated by the Bar Council of Sri Lanka (the governing council of the Bar Association of Sri Lanka) from among its members.

For the delivery of legal aid services, the LAC is empowered to establish regional or district committees or clinics. The LAC may also determine guidelines for the administration of the national Legal Aid Scheme and for the allocation of work and funds, taking into consideration such imperatives as the need for legal assistance to be readily available and easily accessible to deserving persons. The LAC is empowered to consult with government and local authorities; educational institutions; community, neighborhood, professional, and social organisations; and other groups having an interest in the provision of legal aid. Section 13 of the Act also states that the Commission shall be subject to and act in accordance with advice given to it by the Bar Council from time to time, in the exercise of its powers.

The Legal Aid Act creates the Legal Aid Advisory Council, whose role is to advise the Minister and the LAC "on the provision of legal aid services, their nature, scope and extent," and to examine and comment on all reports submitted by the LAC (Sections 14-16). The Council is made up of the Chief Justice, who is its ex officio chairman, and 30 other members. The Advisory Council includes the nine members of the Legal Aid Commission, three nominees of the Bar Association of

Sri Lanka, six nominees of the Chief Justice (representing the judiciary), and 12 members nominated by the Minister of Justice to represent groups having an interest in the provision of legal aid. The Advisory Council is mandated to meet at least once in every six months.

While the LAC's main focus is legal aid, its mandate extends beyond the provision of legal aid services, covering such areas as legal awareness, training, and reform. These include developing "experimental programmes," law clinics, and special projects and carrying out legal education programmes for members of the legal profession and members of the public with "special needs" (Section 4). The Law also establishes a Legal Aid Fund to be controlled and operated by the LAC. Money voted by Parliament from the Consolidated Fund, as well as money from donors, are paid into the Legal Aid Fund. These funds are used for LAC operations around the country including administrative expenses, case expenses, and awareness and public education programmes.

Since the inception of the LAC, the Sri Lankan government has provided only a modest grant for LAC operations, with supplemental funding provided by various international donors. This low level of financial investment has affected the LAC's outreach and ability to deliver effective services. For decades, the Legal Aid Commission's services were limited to Colombo and a few other districts. A study done in 1996¹, nearly 20 years after the LAC had been established, revealed that the LAC was operating only eight legal aid centres around the country – in Colombo, Avissawela, Galle, Kandy, Kurunegala, Negombo, Panadura, and Gampaha – and all centres were located in towns that were relatively better-off in terms of existing infrastructure and services. The Commission was receiving an annual government subsidy of Rs. 700,000 and a few small grants from international donor agencies.

¹ Citizens' Participation in Democracy Project. Baseline Survey. Access to the Legal System. Report prepared for The Asia Foundation by the Law and Society Trust. (1996) unpublished.

It is encouraging to note, however, that over the past several years LAC's funding base has seen a significant increase. For the 2007-2008 fiscal year, the Sri Lankan government has provided LAC with Rs. 50 million (over USD \$462,000) and LAC has received grants from several international donors. Analysis of the current geographic outreach, caseload, and services provided by LAC is presented in Chapter 4.

THE COMMUNITY LEGAL AID PROGRAMME

In 2000, the Minister of Justice launched the Community Legal Aid Programme (CLAP), a comprehensive legal aid scheme that was designed to run parallel and in addition to the Legal Aid Commission. The aim of CLAP was "to promote the transformation of the legal culture in Sri Lanka so as to achieve an ideal of a social order based on equality through the facilitation of easier access to justice." The programme identified two key objectives: "the identification of those elements of society precluded from utilizing legal remedies owing to social, economic, or other disability," and "the enabling of those persons by making available to them the means by which to utilize the law and the legal system to secure justice for themselves."

The CLAP received immediate and extensive government support. CLAP Centres were established at the district level in Colombo, Hambantota, Ampara, Moneragala, Anuradhapura, Kegalle, Chilaw, Nuwara Eliya, and Trincomalee. These centres were staffed by full-time, paid legal aid lawyers who received significant resources and capacity building opportunities. Unlike the Legal Aid Commission, CLAP did not follow a client income eligibility test and was authorized to intervene on behalf of those broadly defined as "treated unfairly by agencies exercising their administrative decision making responsibilities."

The CLAP was in operation for approximately one year. It was considered a relatively expensive programme, receiving government and donor grants that were higher

than that of the LAC at the time (Rs. 9-10 million annually, approximately USD \$83,200 to \$92,500). The average per-case cost of the CLAP was significantly higher than the per-case cost of the LAC.

In early 2001, the government began to question the wisdom and cost-effectiveness of operating a parallel legal aid structure at the expense of the development of the LAC. LAC and service provider NGOs expressed concern that the CLAP was attracting and monopolizing funds and other support available for legal aid in the country and was duplicating existing programmes. There were also allegations of policy-level manipulations and a sense of unhealthy competition between the two government-sponsored service providers. In late 2001, when a new Minister of Justice was appointed, the government disbanded CLAP and its administrative structure was absorbed by the LAC.

THE 'ASSIGNED COUNSEL' – THE STATE SPONSORED SYSTEM OF PROVIDING LEGAL AID TO ACCUSED IN CRIMINAL CASES

The State supports a low profile legal aid system in addition to the Legal Aid Commission which is commonly known as the 'Assigned Counsel' system. This is seen primarily in the High Courts and Court of Appeal and provides legal aid for criminal defense where when a accused is not represented by a lawyer in court, the Judge of the particular picks out a lawyer who is "assigned" the particular case. The lawyer is expected to appear on behalf of the accused, defend the case and upon completion the Registrar of the particular court issues a letter of completion. On this letter the lawyer is paid Rs. 1000 for the case. There is no systematic data on this system. Ad hoc information (gathered from the High Court Registrar's office) shows that this system of State supported criminal defence has been in place for over 15 years and is carried out in an ad hoc manner. The assignment of cases is the responsibility of the Judge of the court and there are no statistics on the number of assigned cases per year, the fund allocation from the

Ministry of Justice and Law Reforms or the expenses on such cases per year. The funding for these cases comes from the general pool of administrative funds in each Registrar's office and there is no tracking system for these cases or any quality control or monitoring. The High Court Registrar's office is of the view (unsubstantiated by data) that the majority of these Assigned Counsel cases deal with narcotics related offences.

THE ROLE OF NON-GOVERNMENTAL ORGANISATIONS

Non-governmental legal aid organisations have operated in Sri Lanka as far back as, and even before, the establishment of the Legal Aid Commission. In the face of a struggling government-sponsored legal aid scheme, these NGOs provided continuous services and reached many Sri Lankans who were left behind by or never gained entry to the government's legal aid scheme.

A Directory of NGOs published in 1991² reports that at the time there were 293 NGOs working in Sri Lanka, 65% of which were established after 1977. Of these NGOs, 116 were working on community issues³ and analysis of a sample of 40 organisations dealing with community issues revealed that 50% were providing legal services. "Legal services" included legal counseling, legal aid, and legal education and training.

Following the 1996 mapping of legal aid in Sri Lanka referenced above, The Asia Foundation attempted, for the first time, to bring non-governmental legal aid

service providers together under an umbrella organisation to achieve better coordination. In 1997 the Foundation facilitated the efforts of eight organisations⁴ to form the Consortium of Legal Aid Organisations (CLAO). The broad mission of the CLAO was "to provide an opportunity for organisations providing legal aid and carrying out human rights and legal rights awareness activities to network and share information, coordinate resources, avoid duplication and engage in activities that are beneficial to themselves and the people they serve."⁵

Over the next five years CLAO membership grew to 40 organisations and the CLAO met on a monthly basis, convened by The Asia Foundation. CLAO's activities included discussions on important legal aid cases; panel discussions to build capacity and share expertise; resource sharing; referral of legal aid cases to those with specific expertise; and joint programmes such as human rights education, legal aid observations, and legal aid programme monitoring. The Asia Foundation supported a CLAO Resource Centre and a legal aid library at the Legal Aid Commission, and hosted ongoing formal and informal interaction among service providers. In September 2001, the CLAO held a National Workshop on Legal Aid and developed a practical action plan for the delivery of legal aid in Sri Lanka.⁶

But by early 2002, The Asia Foundation was no longer able to facilitate the CLAO due to a reduction in programme funding. Without this support, CLAO members' initial commitment to networking decreased and the CLAO met only sporadically. A resurgence of the CLAO's activities occurred in 2005, after the tragedy

² IRED International (Colombo). Directory of NGOs in Sri Lanka. (1991)

³ Community issues are described as counseling, awareness, and intellectual aid. The definitions to these are not included in the document.

⁴ Lawyers for Human Rights and development, Women In Need, Sarvodaya, Environmental Foundation, Movement for Inter Racial Justice and Equality, Centre for Society and Religion, Law and Society Trust and the Legal Aid Foundation and Human Rights Centre of the Bar Association of Sri Lanka with the Legal Aid Commission.

⁵ Vision and objective of the Consortium of Legal Aid Organisations in Sri Lanka.

⁶ National Legal Aid Workshop Report (2001). The Asia Foundation.

of the tsunami that devastated parts of Sri Lanka. CLAO members coordinated efforts and combined services to ensure effective legal service delivery in tsunami-affected communities. Networking diminished after the crisis, and at present the CLAO exists only on paper. However, CLAO members continue informal networking and coordination at the local level, including sharing expertise and referring cases.

3. Legal Aid Systems: Comparative Perspectives and Key Lessons

Key Points and Findings

- One measure of a "successful" legal aid system is that the system receives a considerable investment of public funds. However, success is best measured against the goal for which the legal aid system is developed and against start-up conditions. Here two questions are important: (a) What is the goal and idea behind developing this particular system of legal aid? and, (b) What problems is society facing at that moment, how does the current legal system operate, and what is the prevailing legal culture?
- The fundamental purpose of legal aid must guide all topical debates about the development of legal aid. Efforts to design or improve a legal aid system should incorporate a conscious assertion of the state's obligation to provide effective access to justice, including legal aid where it is required, and this baseline should not be obscured by detail and the search for a "model" system. While international standards obligate the state to provide free and effective legal assistance, there are no international standards that prescribe a particular system or structure to ensure the delivery of legal aid. As a result, different jurisdictions have developed different legal aid systems appropriate to their own context.
- A contemporary solution for legal aid service delivery is the adoption of the "Mixed Models of Legal Aid Service Delivery". In cases where public funding is limited and the government does not have sufficient resources to finance all legal aid service delivery, the government takes on a regulatory role to ensure the quality and high ethical calibre of legal services provision with the participation of other non-governmental entities such as NGOs, foundations, and paralegals in providing legal aid services. This model assumes that the international community is willing to contribute to the funding of these extra-governmental services, at least until the government is in a better position to expand its services or allocate government funding to the outside service providers.
- Several jurisdictions that have recently developed or modified their legal aid systems, particularly in East Asia, have opted for a mixed model of publicly funded legal aid services. These include China (in 1994), Japan (in 2006), and Taiwan (in 2004). Even countries like England and Wales, where traditional legal aid service delivery systems (judicare) are well established, are experimenting with mixed modes of delivery. The examples of Kosovo, India, and South Africa illustrate how mixed models can make creative use of government and donor funding, as well as partnerships with non-governmental legal service providers.

PRELIMINARY CONSIDERATIONS ON LEGAL AID AND ACCESS TO JUSTICE

The organisation of publicly-funded legal aid systems in different countries is invariably shaped by local culture and history, even when the countries' legal and judicial systems share the same roots. The United Kingdom and United States – both common law countries – have

developed legal aid systems that are structurally different. Most countries with well-developed, publicly-funded legal aid systems will claim that they have developed the "best" model, yet these systems are all very different. There is no "right answer" or "right model," only localized attempts to find optimum provisions for existing circumstances and goals.⁷

⁷ R. Smith, "Models of Organisations of the system for provision of legal aid," JUSTICE, paper for the OSI International Conference on 'Promoting Access to Justice in Central and Eastern Europe, Budapest 5-7- December 2002.

One common characteristic of legal aid systems that are commonly considered "successful" is that they receive a considerable investment of public funds. However, success is best measured against the goal for which the legal aid system is developed and against start-up conditions. When designing or trying to improve a legal aid system, before looking at "successful" models it is important to consider two sets of questions:

- a) What is the goal and idea behind developing this particular system of legal aid (e.g. providing access to justice to all, particularly the most vulnerable, and thus fulfilling their human rights, or expediting the justice system, or a combination of both)?; and
- b) What problems is society facing at that moment, how does the current legal system operate, and what is the prevailing legal culture?

Other factors that might influence the design of a legal aid system are effectiveness, cost, and quality control, but there is no conclusive evidence that one system or model prevails over others on these grounds.⁸

The "access to justice" movement is one reason why legal aid has received a boost in several countries, particularly during the 1970s. According to that approach, focusing only on the provision of judicial services is too narrow a response to injustice, and one needs to attack "barriers comprehensively, questioning the full array of institutions, procedures, and persons that characterise our judicial systems."⁹ When this definition is read in conjunction with the requirements

set by the international treaties and standards on human rights,¹⁰ a clear case can be made for legal aid to be provided and funded as part of governments' obligation to provide access to justice, and as an entitlement of all individuals.

The provision of publicly-funded legal aid services should not be limited to criminal legal cases. The right to legal aid services should be applied in civil cases as well, as a necessary means to ensure the fulfillment of economic, social, and cultural rights (including health and education); combat social exclusion; and foster human development. The UNDP recognizes that access to justice is important not only to protect and enforce legal rights, but also as an instrument to overcome the discrimination and economic deprivation experienced by disadvantaged groups, including the urban and rural poor, women, indigenous peoples, migrants, refugees, internally displaced persons, conflict- or disaster-affected people, and people living with HIV/AIDS.¹¹ A human rights approach to legal aid provides the most expansive case for the development of a legal aid system.¹²

The UNDP Asia-Pacific Rights and Justice Initiative describes legal aid as one prong of its "capacity to demand" strategy, together with legal empowerment and legal awareness. The goal is to strengthen people's capacities to demand justice remedies.¹³ Legal awareness can help people understand they have a right to claim remedies against infringements of their rights (e.g., forced evictions, forced work without pay, torture). However, people do not always know how to claim these

⁸ For a detailed breakdown of factors refer to D. S. Manning, "Development of a Civil legal Aid System," 2005.

⁹ Cappelletti and Garth *Access to Justice: Volume 1* Sijthoff and Noordhof, 1978, p124.

¹⁰ At a minimum, Article 14.3(d) of International Covenant on Civil and Political Rights (ICCPR) which provides, as "a minimum guarantee", a right to "legal assistance of his own choosing," to be informed of that right "and, to have legal assistance assigned to him, in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it."

¹¹ Programming for Justice, *Access for All: A Practitioner's Guide to a Human Rights-Base Approach to Access to Justice*, UNDP, 2005, at 3.

¹² As opposed to a less expansive vision in which legal aid is limited to providing equal access to courts.

¹³ For an extensive overview of legal empowerment in development efforts see Golub, S. (2003). "Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative." Carnegie Endowment for International Peace Rule of Law Series 41. October. Legal empowerment is defined as the use of legal services and other related activities to increase disadvantaged populations' control over their lives.

remedies, and may require professional help to do so. When seeking remedies through the justice system, legal counsel may assist them in making informed decisions and choices. However, inability to pay for litigation costs or to communicate effectively, or the risk of traumatic consequences, may be critical concerns. A human rights vision of legal aid addresses this full range of concerns: not only legal counsel, but also financial options and various forms of psycho-social support.¹⁴

A recently-released report by the Commission on Legal Empowerment of the Poor¹⁵ recognizes and documents the inextricable linkages among access to justice, poverty eradication, and human development. With expanded and deepened legal protection, poor people will be better able to free themselves from poverty.¹⁶ Access to justice is the first pillar of the Commission's agenda.

A human rights-based approach to legal aid requires the participation of, and accountability to, the poor and disadvantaged. The development of legal aid services should therefore be informed by an assessment of the needs, grievances, and perspectives of the population, particularly those who are most at risk of rights violations. The evaluation of legal aid schemes also needs to take into account the views of the most disadvantaged users.¹⁷

The main point of this introduction is that the fundamental purpose of legal aid must guide all topical debates about the development of legal aid, even discussions of such "technical" issues as delivery models,

quality control, and value for money. Efforts to design or improve a legal aid system should incorporate a conscious assertion of the state's obligation to provide effective access to justice, including legal aid where it is required, and this baseline should not be obscured by detail and the search for a "model" system.¹⁸

DIFFERENT DELIVERY SYSTEMS FOR LEGAL AID

While international standards obligate the state to provide free and effective legal assistance, there are no international standards that prescribe a particular system or structure to ensure the delivery of legal aid. As a result, different jurisdictions have developed different legal aid systems appropriate to their own context.

Publicly-funded legal aid delivery systems have traditionally been divided into 1) systems in which legal aid is provided by the legal profession against payment by the state (e.g., the *judicare* system that is used in the majority of the United Kingdom); 2) systems in which the state directly provides legal aid services through salaried professionals (e.g., staff attorneys, public defenders offices); or 3) a mix of the two systems. These systems are outlined in Table 1 below. Many current evolutions of legal aid systems integrate different theoretical models and tailor them to the real needs of the population. Each mode of delivery has its advantages and limitations, which are also summarized in the table.¹⁹

¹⁴ UNDP Programming for Justice, Access for All: A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice," UNDP, 2005, Chapter 5 –capacity to demand justice remedies.

¹⁵ The Commission is co-chaired by Fernando De Soto and Madeleine Albright. It comprise 21 commissioners including former heads of state and government, ministers, jurists, economic researchers and other senior policy-makers from north south east and west. The commission held 22 national consultations processes as inputs to the report.

¹⁶ Making the Law Work for Everyone, Report of the Commission on Legal Empowerment of the Poor, 2007, foreword.

¹⁷ See e.g. Hennie Van As, "The Development of a Model for the Supply of Integrated legal Aid Services in South Africa," 2005, arguing for the need to evaluate the South Africa system through bottom up, participatory research methods.

¹⁸ R. Smith, "Old wine in new bottles: legal aid, lessons and the New Europe," Paper for 'Legal aid in the Global Era', the International Legal Aid Group conference, Killarney, Ireland, 8-10 June 2005.

¹⁹ UNDP "Programming for Justice-Access for all: a Practitioner's, Guide for a Human Rights Based Approach to Access to Justice."

	Definition	Advantages	Limitations
Salaried Public Defenders	<ul style="list-style-type: none"> Delivery by salaried lawyers employed by the legal services authority or other agencies, who undertake full representation of defendants 	<ul style="list-style-type: none"> Potential for better-quality service due to higher commitment, orientation to public service, and specialization in areas of concern to poor and disadvantaged groups (e.g., criminal law) Good potential for quality control Possibility for training and professional development Greater likelihood of keeping statistics and ensuring accountability Greater ease in planning future budgets, tracking expenses 	<ul style="list-style-type: none"> Characterized by case overload, insufficiency (especially in rural areas), and bureaucracy Competition with private sector, combined with low pay, may cause high staff turnover Traditionally limited to criminal matters; may lack capacities to deal with other areas (e.g., family law, administrative law), or alternative dispute resolution mechanisms Guarantees for independence from prosecutors and courts are needed Difficult to gain confidence of the client, who may think that the court, prosecutor, and public defender are connected
Judicare	<ul style="list-style-type: none"> Delivery by way of private practitioners, funded on a case-by-case basis, often through some form of validated certificate 	<ul style="list-style-type: none"> Access to skilled, experienced private attorneys Possibility for allowing greater choice by the defendant 	<ul style="list-style-type: none"> Difficulty of matching available legal skills with nature of cases Potential to be very costly; competition with private sector Difficulty in ensuring quality of services; does not allow for community feedback
In-House Duty Counsel	<ul style="list-style-type: none"> Staff lawyers directly employed by the legal services authority to undertake duty representation 	<ul style="list-style-type: none"> Cost advantages, where a staff lawyer can be deployed to take on many cases at one time (e.g., duty lawyer at a busy court) 	<ul style="list-style-type: none"> Potential quality problems because of low status and interest of the work It can be difficult for clients because of possibility of splitting representation between different lawyers

Contracting	<ul style="list-style-type: none"> Services provided by practitioners, or by organisations employing practitioners, under a contract with the legal services authority 	<ul style="list-style-type: none"> Low administrative and operational burdens for the State Some influence on quality of legal services and accountability (non-renovation of contracts), although evaluations show monitoring is often poor Flexibility of advance planning for future budgets and expenses 	<ul style="list-style-type: none"> Conflict of interests; risk of not pursuing vigorous client representation in some cases (e.g., administrative complaints) because of dependence on government contracts Instability; difficult to find qualified attorneys to bid, as prices get increasingly higher
Mixed Systems	<ul style="list-style-type: none"> A mix of solutions above, tailored to country's legal culture and needs 	<ul style="list-style-type: none"> Efficiency of a centrally managed system Leverage of existing resources within private bar Capacity for statistical analysis, transparency, and budgetary planning Possibility for training and quality control Opportunity to experiment and cross-check cost effectiveness and adapt to varying needs of the population; Provides an element of competition between providers 	<ul style="list-style-type: none"> Mixed systems are recent experiences, they need to be evaluated Potential to set up experimental solutions that are financially unsustainable in the longer run and run counter to principle of do no harm

It is useful to consider some specific examples of how various factors can shape decision making about legal aid systems, drawing on the experiences of countries outside Sri Lanka:

- 1) When the goal of the legal aid programme is to combat social exclusion, the staff attorney/public defender office/specialized agency model might be more appropriate. If the goal is to provide a high volume of routine court representation, the private attorney/judicare model can have benefits. A social

exclusion focus requires time to become acquainted with the community being served, a working familiarity with government agencies, and a thorough knowledge of the laws that have the highest impact on poor people. Full-time staff attorneys are better situated to gain the necessary knowledge and skills. Providing a high volume of service maybe better done by private attorneys, whose business orientation leads them to move through matters more quickly.²⁰

²⁰ D.S. Manning, "Development of a Civil legal Aid System: issues for consideration," 2005 OSI website.

South Africa's system (see case study in Annex 6) went from a private attorney/judicare model to a mixed system, in which funding for legal aid is provided through a legal aid board operating mainly through justice centres staffed by salaried attorneys. This model was influenced by a number of factors, including South Africa's new constitutional requirement for legal representation in criminal cases, the incidence of fraud by practitioners involved in the judicare scheme, and the high cost of the judicare scheme.

The legal aid experience of countries in Eastern Europe after the fall of the Soviet Union demonstrates that the introduction of a public defenders office may yield visible results in countries where the quality of legal services is poor and the rates of access to legal aid are very low.²¹ However, this model may not have groundbreaking results where the quality of publicly funded legal aid is already high and the primary incentive to introduce a public defenders office is to reduce costs.²²

- 2) The local legal culture and the availability of attorneys are two facets of the same issue. Is the organised bar willing to support legal aid in any form, and, if so, which model is favored? Experiences vary widely among and within countries. In some cases, local bar associations believe that public defenders/salaried lawyers take business from private attorneys. In other cases, legal aid is seen as a way for younger attorneys to start their practices. Regardless, a legal programme can rarely function without strong support from the private bar.
- 3) The type of legal services provided depends on the goals of the legal aid programme. Pursuit of a

broader human rights agenda requires a wider range of services than a legal aid system that is focused primarily on improving access to the courts. Effective representation of disadvantaged groups may require the capacity to lobby relevant legislative bodies. If success depends on obtaining a favourable ruling from a constitutional court, legal aid organisations must have an appellate practice. Public interest litigation may require specialised support. For example, South Africa's publicly-funded justice centres are obligated to identify patterns of abuse of individuals and communities, and to defend the accused in cases with potential impact on criminal matters. Staff must also look for cases with potential to have an impact on entire communities or classes of individuals. These functions are included in the performance indicators of the South Africa's legal aid board. The legal aid board has also entered into a "cooperation agreement" with the Legal Resources Centre, an organisation specialised in high impact social litigation, which it funds with part of its allocation for legal aid.²³

Advocacy for defendants' rights might be included as part of a publicly-funded legal aid programme, and thus may receive attention in cases where the legal profession is otherwise neutral or not interested in public interest litigation or advocacy. For example, in Eastern Europe the public defenders offices – set up as pilot projects in several countries with the support of the Open Society Institute – have successfully advocated for broadening defendants' rights in criminal proceedings by challenging police practices, suggesting improvements to criminal procedure

21 Zaza Namoradze "Why Public Defenders: Reflections on Recent Experiences in Eastern Europe," paper presented at the ILAG conference, Antwerp, Belgium, June 6-8 2007.

22 England and Wales have been recently piloting a public defenders office as an alternative to their established judicare system, with mixed results. See L. Bridges, E. Cape, R. Moorhead and A. Sherr The Public Defender in England and Wales – A Flawed Experiment, paper presented at the ILAG conference, Antwerp, Belgium, June 6-8 2007.

23 Hennie Van As, "Legal Aid in South Africa: Making Justice Reality", *Journal of South African Law*, 49, 1 (2005) at 62.

legislation, and invoking international human rights law. In some cases they have pursued strategic litigation and used international human rights mechanisms to challenge systemic violations of defendants' rights at the country level.²⁴

- 4) Quality and quality control are not per se better with one model. However, it is possible to more easily set up quality control systems for staff attorney/public defender's office systems, as there is more opportunity for specialised training and supervision as part of routine operations. Donors may find it easier to audit the quality of work done by staff attorney programmes, because they are able to look at whether internal quality control mechanisms are being used.

Salaried lawyers/public defender systems can also proactively work to improve the quality of the legal profession. For example, in Eastern Europe the pilot public defenders offices mentioned above have been instrumental in developing standards for defence of indigent clients and have developed guidelines for legal representation of the poor, with a view to mainstream these guidelines into the national regulatory framework.²⁵

England and Wales have created a sophisticated "quality mark" system for contracting legal aid services to law firms and NGOs, demonstrating that it is possible to maintain high-quality services regardless of the delivery system (see case study in Annex 6).²⁶

- 5) Issues of cost cannot be immediately associated with one model over another. Programme costs generally depend more on the level of extension of the entitlement to legal aid rather than the system in place. However, research from South Africa provides an example of how investing the majority

of funding in justice centres and reserving a minority of funds for judicare has resulted in savings while serving a greater number of people (see case study in Annex 6).

- 6) Effectiveness also depends on the nature of the work of legal aid lawyers. An emphasis on access to justice and legal services for poor and disadvantaged groups often requires specialised expertise. Publicly-funded salaried attorneys are able to develop this expertise because they are able to devote their attention to serving this client group, while private attorneys do not normally have time to concentrate on issues of high relevance to the poor and disenfranchised.
- 7) Another important issue is at what level priorities for legal aid should be set (i.e., whether at the national or local level). Priority-setting at the national level has the advantage of securing uniformity, but might reduce legal aid providers' flexibility to respond to emerging needs. Local priority setting may entail making choices that could leave out certain groups of people based on where they live, but on the other hand enables legal aid providers to respond to priority local needs. In any case, an assessment of priority needs must involve a wide range of stakeholders, particularly the most disadvantaged.
- 8) Eligibility criteria are a function of the primary goals of the legal aid scheme, the specific needs it is meant to address, and the amount of funding available. A means test is normally used to assess client eligibility for assistance with civil matters. Other screening methods may include a vulnerability test or a focus on specific portions of the population that are considered more at risk or disadvantaged. It is important who sets these

²⁴ Zaza Namoradze "Why Public Defenders: Reflections on Recent Experiences in Eastern Europe," paper presented at the ILAG conference, Antwerp, Belgium, June 6-8 2007.

²⁵ This is happening for example in Lithuania. See. Zaza Namoradze, "Why Public Defenders: Reflections on Recent Experiences in Eastern Europe," paper presented at the ILAG conference, Antwerp, Belgium, June 6-8 2007.

²⁶ See generally, R. Smith, "Quality and Criminal legal Aid in England and Wales," 2005.

priorities, as is the process through which they are set. Priorities should be informed by bottom-up research and data and must reflect the views of those they are supposed to serve.

The Legal Aid Board of South Africa, recognising that funding for legal aid is limited (particularly for civil cases, given that legal aid in criminal cases is an obligation under the constitution), prioritizes the following target groups: children in civil and criminal proceedings; detained persons, including both the sentenced and accused; those wanting to appeal to a higher court; vulnerable groups, particularly women and children; and the landless.²⁷ In the United Kingdom, the Community Legal Service Commission (the civil law branch of the Legal Services Commission, in charge of administering state-funded legal aid in civil cases) prioritizes proceedings involving children, as well as civil proceedings in which the client faces a real and immediate risk of loss of life and liberty. Secondary priorities include: social welfare matters "that will enable people to climb out of social exclusion (e.g., housing, employment, debt etc); domestic violence proceedings; and proceedings against public authorities alleging serious wrongdoing, abuse of power, and significant breach of human rights."²⁸ In India, the Legal Services Act of 1987 lists key categories of disadvantaged groups (e.g., indigenous people, members of certain lower castes, people in detention etc.) as eligible for legal aid.²⁹ Tests to assess indigence and "need" are not necessarily the best way to target legal aid. Other demographical data and vulnerability assessments should

complement such criteria in order to focus services on the most vulnerable members of the population.³⁰

MIXED MODELS: A CONTEMPORARY SOLUTION

When public funding is limited, it is usually not feasible to cover the full range of legal aid needs with government-financed and organised legal aid. In these cases, it is more practical and perhaps better to opt for a model where the government takes on a regulatory role to ensure the quality and high ethical calibre of legal services provision. Government can play a monitoring role, rather than serving as the monopoly provider of legal aid services. However, this does not exclude the possibility that the government may also provide such services itself. Under such a model, both government and other entities (e.g., NGOs, foundations, paralegals) provide legal aid services. The role of government in relation to these service providers is to provide oversight and establish the regulatory framework for quality assurance and the professional requirements or licenses required to carry out such services.³¹ This model assumes that the international community is willing to contribute to the funding of these extra-governmental services, at least until the government is in a better position to expand its services or allocate government funding to the outside service providers.

Several jurisdictions that have recently developed or modified their legal aid systems, particularly in East Asia, have opted for a mixed model of publicly funded legal aid services. These include China (in 1994), Japan (in 2006), and Taiwan (in 2004). In each of these cases, the new legal aid scheme replaced a very

²⁷ South Africa Legal Aid Board, "Legal Aid Guide 2002," 2002.

²⁸ England and Wales Legal Services Commission website, www.legalservices.gov.uk.

²⁹ India Legal Services Authority Act 1987, Section 12.

³⁰ J. Bodenstein, "The role of university based law clinics in the provision of legal aid in south Africa," June 2007, ILAG website. The author uses alternative ways of measuring vulnerability, applied in South Africa, e.g., the "hunger" test.

³¹ Nina Berg, UNDP Justice Advisor, response to UNDP Democratic Governance Knowledge Network "Sudan-Comparative experiences-legal Aid Systems with the Ministry of Justice" - 31 December 2007.

limited or ad hoc scheme. In some cases, legal aid had generally been the work of NGOs, bar associations, and academics, resulting in a lack of sustainability, a narrow focus on criminal litigation, and dramatic variations in the availability and quality of legal aid. Each of these jurisdictions established a new legal aid system through national legislation and a right to legal aid or to equality before the law in their constitution or statutory law. The schemes are funded by the government, in recognition of the responsibility to enforce the law. Legal aid service providers accept civil and administrative law cases, and also provide legal awareness programmes, legal advice, and assistance for minor legal problems that are outside litigation. The schemes are organised through quasi-governmental organisations tasked with developing and administering nationwide legal aid. Services are delivered through a wide range of service providers that complement a network of public legal aid offices. These organisations include bar associations, NGOs, social organisations (in China, large publicly-funded bodies that represent the interests of particular groups in society, e.g., the disabled and women), and student legal aid centres and clinics.³²

A mixed model provides an opportunity for policy makers to experiment, cross-check costs and effectiveness, and adapt the system depending on the varying needs of the population. It also provides an element of competition among providers. Even countries like England and Wales, where *judicare* is well established, are experimenting with mixed modes of delivery (for example, in the United Kingdom, pilot public defender organisations have been established).

A mixed model allows for diversified entry points and expanded coverage, both geographical and for specific target groups, and also affords organisations the opportunity to specialise.

Particularly in environments of conflict or instability, there is a need to ensure that services are provided to the most vulnerable members of the population. This requires a flexible range of delivery mechanisms and independent bodies to administer the publicly-funded share of legal aid, although within an established framework, shared by all service providers, that places legal aid as a core tool for protecting and promoting human rights, combating social exclusion, and ensuring the proper functioning of the judicial and governance process.³³

The examples of Kosovo, India, and South Africa illustrate how mixed models can make creative use of government and donor funding, as well as partnerships with non-governmental legal service providers.

In Kosovo, a new legal aid system has been set up with the support of the UN administration based on best practices and international standards. The system aims to expand coverage of publicly-funded legal aid to a generally low-income population in a resource-constrained environment. The 2006 Regulation on Legal Aid established an independent Legal Aid Commission and five District Legal Aid Bureaus.

The Legal Aid Regulation also includes guiding principles for legal aid; a section on the role and responsibility of the Commission and Commissioners; financial eligibility criteria for client selection; client selection criteria based on area of residence of the client and a list of the types of matters for which legal aid can be granted. It also regulates cooperation arrangements with the local Chamber of Advocates (Bar Association) and NGOs contracted to provide legal aid, and specifies the client information to be included by clients in application forms, how decisions on client selection are to be made, and appeal rights. The regulation provides the Legal Aid Commission considerable scope for

³² F. Regan, "The Remarkable Rise of publicly funded and organised legal aid in Asia: a new but different 'wave of access to justice?," paper presented to the ILAG conference Antwerp, Belgium, June 6-8 2007.

³³ See, 'UNDP Legal Aid network in Darfur-Summary Note- February 2007.

entering into partnerships, setting up student legal clinics, negotiating with the Bar Association for its members to provide pro bono legal advice, and soliciting donor funds.

Legal aid is provided in three ways: through legal officers working in each of the District Legal Aid Bureaus, through NGOs providing legal aid to populations outside the reach of the Bureaus, and by contracted private lawyers for clients requiring court representation. The Legal Aid Commission has a very limited budget. It is currently working out financing models whereby NGOs and advocates can be paid a rate for provision of legal aid services that is financially viable for them and for the Commission's budget.³⁴

In South Africa, the legal aid board has entered into cooperation agreement with NGOs, law firms, and universities to expand the reach of legal aid and pilot solutions that might be replicated. In India, the Legal Services Authority partners with NGOs and universities, providing them with grants so that legal services and legal representation can be provided by a range of providers. It has also taken the view that out-of-court resolution is a preferable route in many cases, and has supported the expansion of *lok adalats* (an ADR mechanism) to divert cases that would otherwise go to courts and administrative bodies (see case study in Annex 6).

³⁴ Kosovo Legal Aid Regulation 2006, UNMIK and Martin Clutterbuck, International legal Aid Coordinator, UNMIK mission, Response to UNDP Democratic Governance Network on, "Sudan-Comparative Experiences- Legal Aid Initiatives with the Ministry of Justice, 18/12/2007.

4. The Legal Aid Commission

Key Points and Findings

- The Legal Aid Commission (LAC) is the mechanism through which the Sri Lankan government has institutionalized its commitment to the provision of legal aid.
- LAC's main focus is litigation, but it also operates several subject-specific desks and projects.
- LAC operates 47 Legal Aid Centres across Sri Lanka and is staffed by Staff Attorneys and Panel Lawyers selected from Bar Association branches nationwide.
- The vision of LAC's Litigation Unit is to be "a vehicle to promote the transformation of the legal culture in Sri Lanka so as to achieve the ideal of a social access to justice."
- LAC's main mission is to identify those members of society who lack access to the remedies available to them under the law due to social, economic, and/or other barriers, and to make available to them a means through which they can use the law and legal system to secure justice. The Litigation Unit is mandated to take on civil and criminal litigation although in practice much of the litigation falls within the civil litigation category.

STRUCTURE AND STAFFING

The Legal Aid Commission (LAC) is the mechanism through which the Sri Lankan government has institutionalised its commitment to the provision of legal aid.

LAC is headquartered in Colombo. Its operations are administered by a Director General and supervised by the Chairman of the Commission. The Director General is a paid position, while the Chairman and Commission members are not remunerated for their services.

The organisation comprises the following Units: Administration, Finance, Litigation, Human Rights, Awareness Programmes, Commission Sittings, and Centres. LAC operates 47 Legal Aid Centres across Sri Lanka, including three in Colombo (the Welikada Remand Prison Centre, the Tsunami Legal Aid Centre and the Mt. Lavinia Centre) and also in Kandy, Kurunegala, Anuradhapura, Moneragala, Ampara,

Nuwara Eliya, Kegalle, Ratnapura, Avissawella, Polonnaruwa, Matale, Bandarawela, Kuliyaipitiya, Panadura, Mahiyangana, Gampaha, Horana, Mathugama, Chilaw, Negombo, Attanagalla, Dambulla, Maho, Maravila, Deniyaya, Warakapola, Mawanella, Akkaraipattu, Balapitiya, Colombo, Galle Hambantota, Matara, Kalmunai, Kalutara, Batticaloa, Trincomalee, and Jaffna.

LAC is staffed by 72 lawyers and 66 other employees. Thirty-six staff work out of the Colombo headquarters, while each Centre has two to four staff members, including up to three full-time lawyers.

Legal aid is provided through the Centres by three types of lawyers. Staff Attorneys are paid, full-time employees of LAC. Panel Lawyers are lawyers engaged in private practice who are paid a nominal honorarium to appear for cases filed by LAC. Panel Lawyers are selected from Bar Association branches nationwide. The success of LAC's litigation efforts is due in large part to the commitment and capability of the Panel Lawyers and

the interaction between LAC's Litigation Unit and the Panelists. Panel Lawyers must be fully supported by LAC staff in the preparation of papers to be filed in courts. In addition, a cadre of senior lawyers, the President's Counsel, provide legal services to LAC and its clients free of charge.

While LAC's main focus is litigation, it also operates several subject-specific desks and projects.

The Legal Aid Desks were introduced as part of LAC's focus on developmental legal aid. The Desks look at needs of specific sectors on society that need special protection and offers more than support for litigation. The services provided by all the Desks include rights awareness programmes, legal advice clinics, legal aid training for new lawyers who enter the legal profession, legal education programmes for judicial officers and programmes to introduce legal aid and legal literacy to schools.

The Legal Aid Desks known as Special Desks deal with a number of specific issues. These Desks function under one lawyer and are supported by the general LAC staff. These Desks deal with human rights issues (Human Rights Bureau (HRB)),³⁵ migrant worker issues (Migrant Workers Rights Desk), issues related to awareness raising in the education system (Schools Programme Desk), corruption (Anti-Corruption Desk), children's issues (Child Rights Desk), internally displaced persons (IDPs) Desk, the aged (Elders Rights Desk), consumer issues (Consumer Rights Desk), differently abled people (Disabled Persons Rights Desk), women (Women's Rights Desk) and the Desk that is responsible for information disseminated through the mainstream newspapers (Daily News, Thinakaran, and Lankadeepa Legal Aid Pages Desk).

PROJECTS

- Prisons Project³⁶
- Awareness Programmes (including Newspaper Pages and Television programmes)
- Legal Clinics
- Legal Apprentices Training Programme
- Bench and Bar Training Programme

LEGAL AID PROVISION

The vision of LAC's Litigation Unit is to be "a vehicle to promote the transformation of the legal culture in Sri Lanka so as to achieve the ideal of a social access to justice." The Unit's mission is to identify those members of society who lack access to the remedies available to them under the law due to social, economic, and/or other barriers, and to make available to them a means through which they can use the law and legal system to secure justice. The Litigation unit is mandated to take on civil and criminal litigation although in practice much of the litigation falls within the civil litigation category.

Legal assistance is provided in civil and criminal litigation matters to individuals whose monthly income is a sum of Rs. 6000 (USD \$55) or less. However, LAC has the discretion to consider clients who do not meet that criteria. In certain instances, LAC can apply a Means Test to consider clients who earn less than Rs. 8000 (USD \$74) depending on the client's circumstances. This decision is taken at the discretion of the Centre Director. LAC may also apply a Justice Test in the selection of clients, in which LAC decides to take on a case that has the potential for larger impact on the entire community. These cases are selected by LAC's Director General.

³⁵ The Human Rights Bureau handles mainly Fundamental Rights Violations cases of aggrieved parties who visit the LAC and also cases referred by HRC in adherence with the Memorandum of Understanding signed between HRC and LAC to appear for cases referred by the HRC to LAC. The role of HRB is representing the Litigants in the Supreme Court, implementing the Human Rights Commission Recommendations, participation in Awareness Programmes, participation in the National Human Rights Commemoration Day, training of Apprentices and Public Interest Litigation.

³⁶ The prison project provides legal assistance to detainees in remand as well as convicted prisoners.

In 2007, LAC handled 15,547 cases through all its office and provided legal advice to 27,311 beneficiaries. These cases were categorized as follows:

Money	9%
Bail	8%
Land	7%
Labour	6%
Accident	3%
Appeals	3%
Criminal	1%
Other	17%

This case data shows that nearly half of the cases handled by LAC in 2007 (46%) were related to family issues.

LAC provides services to its clients free of charge. Each case is financed by LAC as follows:

- At the stage of registration of the case, preliminary consultations are conducted by LAC's Staff Attorneys at headquarters or in a regional Centre, and LAC bears the cost of these consultations.

- If the case is then handled by a Panel Lawyer, the professional fee component is borne in full by that lawyer. If the case is handled by a Staff Attorney, then LAC bears the cost of professional services.
- Associated expenses for Panel Lawyers, such as travel costs, are borne in part by the honorarium paid to Panel Lawyers and in part by LAC as direct programme expenses.

FUNDING

As noted in Chapter 2, since LAC's inception it has operated on a small grant provided by the Sri Lankan government. This government grant was supplemented by a modest level of funds from donor agencies. However in the past few years, LAC has experienced a rapid increase in its funding base. In 2007/08 LAC received Rs. 50 million (USD \$462,320) from the government, Rs. 16 million (USD \$147,942) from the Asian Development Bank, and Rs. 1.5 million (USD \$13,869) from the International Developmental Law Organisation, for an overall budget of Rs. 67.5 million (USD \$624,133).

5. Survey of Non-governmental Legal Service Providers

Key Points and Findings

- Legal aid service providers describe their legal aid objectives in terms of social empowerment and increasing access to legal aid for the poor to enable them to stand up against injustice and stem abuse of power. Legal aid is also seen as a mechanism through which to build the professional capacity of young lawyers, to increase the organisation's reputation, and to establish good relationships with other organisations, government officials, and law enforcement officers.
- Legal aid services are well structured and staffed, showing gender, age, and ethnic balances. Geographic coverage shows that Colombo is currently receiving the most legal aid coverage. Other well-served districts include Ampara, Batticaloa, Puttalam, Anuradhapura, Badulla, Hambantota, Matara, Trincomalee, and Kurunegala. Gampaha and Matale are less reached while there are no service providers operating in Kilinochchi and Mullaitivu districts.
- The client load handled by service providers in 2007 ranges from 225,686 clients serviced by one organisation to 30 by another. Most organisations provide a wide range of legal aid services and most legal aid services are provided completely free of charge. The common criteria for selection of clients is income and most service providers require formal evidence of income levels.
- The bulk of funding for legal aid organisations comes from 13 donors, including UN agencies, bilateral agencies, and international NGOs. Smaller contributions are provided by a university and private individuals. UNHCR provides the largest contribution for legal aid.
- In terms of challenges and gaps in legal aid service provision, key issues identified by service providers relate to clients, legal aid lawyers, judges, government officials and to structural and procedural issues. These are individually highlighted in this chapter.
- In order to improve legal aid services, legal aid service providers suggest numerous ways that can be broadly categorized under outreach, training, awareness-raising, monitoring and evaluation, networking, and overall service provision.
- Legal aid service providers highlight that recognition and support is needed from the government in legal aid service provision.

ORGANISATIONS SURVEYED

The Study Team surveyed and interviewed the 12 non-governmental organisations that are the main legal aid service providers in the country.³⁷

1. Muslim Women's Research and Action Forum
2. Norwegian Refugee Council
3. Institute of Human Rights
4. National Centre for Victims of Crime

³⁷ The list of service providers, as pointed out in Limitations of the Study (Section 1 - Introduction and Methodology) is not exhaustive. The analysis is confined to those which responded to the request for information, and to limited information provided by some organisations. The full list of service providers reached is in Annex 2. The survey instrument is included as Annexes 7 - 11.

5. Open University of Sri Lanka
6. Consortium of Humanitarian Agencies
7. Centre for Policy Alternatives
8. Women in Need
9. Lawyers for Human Rights and Development
10. Legal Aid Foundation
11. Home for Human Rights
12. Sarvodaya Legal Services Movement

All of the organisations surveyed can be broadly classified as NGOs. One is affiliated with a university, others are registered as charities, non-profit companies, established through Acts of Parliament and registered with the Department of Social Services. Some would self-identify as "legal service providers," while others have a broader mandate and are combining legal work with other complementary local and/or national-level activities.

ORGANISATIONAL OBJECTIVES

The organisations surveyed articulated a range of organisational objectives that guide their work.

Legal aid objectives were often described in terms of social empowerment and increasing access to legal aid for the poor to enable them to stand up against injustice and stem abuse of power. Service providers also expressed the desire to achieve broader societal impact through legal aid by reducing violence against women, addressing systemic injustices faced by the poor, and providing internally displaced persons (IDPs) and returnees a durable solution and protection during displacement. In more practical terms, legal aid is also seen as a mechanism through which to build the professional capacity of young lawyers, to increase the organisation's reputation, and to establish good relationships with other organisations, government officials, and law enforcement officers.

However, the objectives of the organisations surveyed were not limited to direct legal aid service provision. Commonly-articulated objectives also included:

- Creating awareness of legal rights and remedies through the provision of structured and unstructured rights education and legal literacy programmes for different target groups;
- Extending legal services through community paralegals;
- Promoting effective dispute resolution through community organisation, grassroots mediation, formal mediation, and other mechanisms outside the formal legal system;
- Achieving broader legal reform through legal research and advocacy; and
- Promoting community development and economic empowerment.

STRUCTURE AND STAFFING

Of the organisations surveyed, all have their Head Offices in Colombo. Seven have branch offices in the districts. All of the service providers operate stand-alone offices located in town centres, with the exception of the Legal Aid Foundation and National Centre for Victims of Crime, which are both located within court premises.

Table 3 on the next page, shows the geographic distribution of legal aid services for the 12 organisations surveyed. Colombo is currently receiving the most legal aid coverage, with ten legal aid service providers operating offices in the district. Other well-served districts include Ampara (by seven service providers), Batticaloa and Puttalam (by six service providers in each district), and Anuradhapura, Badulla, Hambantota, Matara, Trincomalee, and Kurunegala (by five service providers in each district). Only two service providers are operating in Gampaha and Matale, and there are no service providers operating in Kilinochchi and Mullaitivu districts.

The staff in these organisations comprises of many legal professionals, but also accountants, counselors, sociologists, and lower-level support staff. The staffing level of service providers' individual offices is diverse, ranging from one employee running a whole office (Open University) to 36 staff in one office (Women In Need's main office in Colombo). Overall, there are more female staff than male staff within these organisations (see Table 4). While most staff are under the age of retirement (age 55 in Sri Lanka), the good number of staff over the age of retirement may be reflective of both the general profile of NGO staff in Sri Lanka and the fact that the private legal profession is not subject to the age of retirement, making it common for private lawyers to engage in practice beyond the age of 55.

In terms of ethnicity (Table 4), more staff members are Sinhala. However, all service providers report a considerable number of Tamil staff. Muslims represent a lower percentage of staff, and only one organisation has a Burgher staff member. The distribution of staff across offices in terms of ethnicity is roughly reflective of the ethnic composition of the districts where the offices are located. The fact that the majority of staff is Sinhala does not appear to have a detrimental impact on the language proficiency within these organisations. Although the data is incomplete, as the Consortium of Humanitarian Agencies and Women In Need have not provided disaggregated information on staff, from the data provided by the other service providers, it shows that at least 40% of service providers' staff members is proficient in Tamil. This language proficiency enables 10 out of the 12 organisations to provide services in both Sinhala and Tamil see (Table 5). One organisation, Muslim Women's Research and Action Forum working in predominantly Tamil-speaking areas provide services only in Tamil. The Open University Legal Unit, which works in a multi-ethnic environment, confines its service provision to Sinhala.

District	Service Providers
Anuradhapura	1. Legal Aid Foundation
	2. Women In Need
	3. Lawyers for Human Rights and Development
	4. Sarvodaya Legal Services Movement
	5. Home for Human Rights
Ampara	1. Muslim Women's Research and Action Forum
	2. Norwegian Refugee Council
	3. Consortium of Humanitarian Agencies
	4. Legal Aid Foundation
	5. Lawyers for Human Rights and Development
	6. Home for Human Rights
	7. Sarvodaya Legal Services Movement
Badulla	1. Consortium of Humanitarian Agencies
	2. Legal Aid Foundation
	3. Women In Need
	4. Sarvodaya Legal Services Movement
	5. Home for Human Rights
Batticaloa	1. Muslim Women's Research and Action Forum
	2. Norwegian Refugee Council
	3. Consortium of Humanitarian Agencies
	4. Legal Aid Foundation
	5. Home for Human Rights
	6. Sarvodaya Legal Services Movement
Colombo	1. Legal Aid Foundation
	2. Women In Need
	3. Lawyers for Human Rights and Development
	4. Muslim Women's Research and Action Forum
	5. National Centre for Victims of Crime
	6. Institute of Human Rights
	7. Open University of Sri Lanka
	8. Centre for Policy Alternatives
	9. Home for Human Rights
	10. Sarvodaya Legal Services Movement

Galle	1. Consortium of Humanitarian Agencies
	2. Legal Aid Foundation
	3. Sarvodaya Legal Services Movement
	4. Home for Human Rights
Gampaha	1. Sarvodaya Legal Services Movement
	2. Home for Human Rights
Hambantota	1. Consortium of Humanitarian Agencies
	2. Legal Aid Foundation
	3. Lawyers for Human Rights and Development
	4. Home for Human Rights
	5. Sarvodaya Legal Services Movement
Jaffna	1. Institute of Human Rights
	2. Women In Need
	3. Home for Human Rights
Kalutara	1. Consortium of Humanitarian Agencies
	2. Sarvodaya Legal Services Movement
	3. Home for Human Rights
Kandy	1. Women In Need
	2. Lawyers for Human Rights and Development
	3. Sarvodaya Legal Services Movement
	4. Home for Human Rights
Kegalle	1. Legal Aid Foundation
	2. Lawyers for Human Rights and Development
	3. Sarvodaya Legal Services Movement
	4. Home for Human Rights
Kilinochchi	None
Kurunegala	1. Legal Aid Foundation
	2. Women In Need
	3. Lawyers for Human Rights and Development
	4. Sarvodaya Legal Services Movement
	5. Home for Human Rights
Mannar	1. Consortium of Humanitarian Agencies
	2. Legal Aid Foundation
	3. Sarvodaya Legal Services Movement
	4. Home for Human Rights

Matale	1. Sarvodaya Legal Services Movement
	2. Home for Human Rights
Matara	1. Consortium of Humanitarian Agencies
	2. Women In Need
	3. Lawyers for Human Rights and Development
	4. Sarvodaya Legal Services Movement
	5. Home for Human Rights
Moneragala	1. Legal Aid Foundation
	2. Sarvodaya Legal Services Movement
	3. Home for Human Rights
Mullaitivu	None
Nuwara Eliya	1. Legal Aid Foundation
	2. Sarvodaya Legal Services Movement
	3. Home for Human Rights
Polonnaruwa	1. Legal Aid Foundation
	2. Sarvodaya Legal Services Movement
	3. Home for Human Rights
Puttalam	1. Norwegian Refugee Council
	2. Consortium of Humanitarian Agencies
	3. Legal Aid Foundation
	4. Women In Need
	5. Sarvodaya Legal Services Movement
	6. Home for Human Rights
Ratnapura	1. Legal Aid Foundation
	2. Sarvodaya Legal Services Movement
	3. Home for Human Rights
Trincomalee	1. Norwegian Refugee Council
	2. Consortium of Humanitarian Agencies
	3. Legal Aid Foundation
	4. Sarvodaya Legal Services Movement
	5. Home for Human Rights
Vavuniya	1. Norwegian Refugee Council
	2. Sarvodaya Legal Services Movement
	3. Home for Human Rights

Service Providers by District	Total Staff	Male staff	Female staff	Age of staff	
				Under 55	Over 55
Total Service Providers	267	60	105	178	44

* Consortium of Humanitarian Agencies and Women in Need have not provided sex disaggregated information on staff.

Service Providers by District	Total Staff	Ethnicity of staff				Language Proficiency of staff	
		Sinhala	Tamil	Muslim	Burgher	Sinhala	Tamil
Total Service Providers	267	112	81	20	1	130	107

* Consortium of Humanitarian Agencies and Women in Need have not provided disaggregated information on staff.

Language of services	Number of Service Providers
Tamil Only	1
Sinhala Only	1
Sinhala and Tamil	10

BUDGET AND FUNDING

The bulk of funding for the 12 organisations surveyed comes from 13 donors, including UN agencies, bilateral agencies, and international NGOs. Smaller contributions are provided by a university and private individuals. Based on available data (see Table 7), it appears that the UNDP is supporting the greatest number of legal aid service providers: six organisations (50% of those surveyed) are receiving funding from the UNDP. The UNHCR provides the largest contribution for legal aid (Rs. 42 million, or USD \$338,335). SIDA, Norwegian Church Aid, the UNDP, and The Asia Foundation each provide more than Rs. 10 million (USD \$92,460) for legal aid. Further analysis (for

example, a breakdown of funding sources for each organisation) was not possible due to lack of information from the organisations.

Table 8 provides information about each organisation's annual spending on legal aid. Data is incomplete due to lack of information from several organisations, and it is difficult to draw comparisons and conclusions across organisations. Because different organisations track costs in different ways, it is even more difficult and complicated to calculate and compare the amount of money organisations spend on each client or each case, and it was not possible to draw useful conclusions from this analysis.³⁸

³⁸ See Annex 03 - Table 04 Client Servicing Cost.

Donors	Number of service providers supported	Amount (Rs.)
UNHCR	1	42,000,000
SIDA	3	28,200,000
Norwegian Church Aid	2	12,970,000
UNDP	6	18,680,000
The Asia Foundation	4	11,600,000
ECHO	2	8,400,000
NORAD	3	8,000,000
CIDA	2	5,000,000
UNFPA	1	Amount not mentioned
USAID	1	Amount not mentioned
OXFAM	1	Amount not mentioned
Co Aid	1	Amount not mentioned
Bread for the World		Amount not mentioned
Open University	1	Amount not mentioned
Individuals	4	800,000

Name	Annual Expense (Rs.)
Muslim Women's Research and Action Forum	900,000
Norwegian Refugee Council	Not mentioned
Institute of Human Rights	Not mentioned
National Centre for Victims of Crime	1,000,000
Open University of Sri Lanka	240,000
Consortium of Humanitarian Agencies	not mentioned
Centre for Policy Alternatives	not mentioned
Women In Need	6,267,115
Legal Aid Foundation	not mentioned
Lawyers for Human Rights and Development	100,000
Home for Human Rights	4,600,000
Sarvodaya Legal Services Movement	27,500

FORM OF LEGAL AID SERVICES PROVIDED

By design, this study was confined to an analysis of the legal aid work of the 12 organisations (i.e., legal education, and awareness-raising, training, advocacy, etc. were excluded). Table 9 shows that most of the organisations surveyed are providing a wide range of legal aid services, including: legal advice, legal counseling, legal representation in court, referral to other legal aid providers, and referral to non-legal mechanisms for the solving of disputes. There are, however, some differences in approach. The Centre for Policy Alternatives is the only service provider taking a group rights approach to fundamental rights violations, and therefore does not provide legal advice to all classes of beneficiaries, nor do they (along with Lawyers for

Human Rights) provide counseling services. The Open University Legal Aid Unit does not institute action in the formal court system, but only refers clients to other service providers, nor do they make referrals for dispute resolution through non-legal mechanisms.³⁹

Eight out of the 12 organisations provide legal aid services completely free of charge (see Table 10). Women in Need and Institute of Human Rights charge clients a minimum amount to cover stamp duty fees if and when a case is filed, if they have ability to pay. Lawyers for Human Rights and Development follows the same principle, but voluntary contributions made by clients are used for such expenses as photocopying, stationery, stamp duty, and transport.

Number of service providers offering the service	Legal Advice	Counseling	Legal representation in Court	Referral to other legal aid providers	Referral to non legal mechanisms
	11	10	11	11	11

	Fees	Reason
Muslim Women's Research and Action Forum	no	
Consortium of Humanitarian Agencies	no	
Legal Aid Foundation	no	
National Centre for Victims of Crime	no	
Norwegian Refugee Council	no	
Open University of Sri Lanka	no	
Institute of Human Rights	yes	Stamp duty - if client can pay
Women in Need	yes	Stamp duty - if client can pay
Lawyers for Human Rights and Development	yes	A small contribution of any amount - if client can pay
Centre for Policy Alternatives	no answer	
Home for Human Rights	no	
Sarvodaya Legal Services Movement	no	

³⁹ See also (Table 2) in Annex 3 - Types of services provided by service providers.

CLIENT PROFILE

This study focused on several specific groups of beneficiaries to ascertain their access to legal aid services. These groups included: internally displaced persons, estate workers, women heads of households, women affected by violence, and the urban poor. Table 11 shows that these groups are served in different degrees by the service providers surveyed. All service providers serve women victims of violence, while 83% serve the urban poor. A smaller percentage (66%) serves IDPs, estate workers, and women heads of households.⁴⁰

In terms of determining client eligibility, eight out of the 12 organisations have specific selection criteria for clients. Three organisations serve any client who seeks their help, irrespective of income level or any other criteria. One organisation reports serving priority clients but also reports serving anyone who needs assistance (which may point to the lack of clear criteria for client selection). Women In Need, despite its focus on women victims of violence, in principle provides services for any client. However, in practice it gives preference to women clients but actively provides support to men with family-related grievances.

Table 12 provides information on the service providers' client selection criteria. The majority of those organisations that have selection criteria are using income as the main factor. Some only accept clients who earn below the minimum wage, which is Rs. 6000 (USD \$55.47) per month, or Rs. 300 (USD \$2.77) per day for a casual worker. Some organisations require documentation of income: a *Grama Niladhari* certificate, a letter from the *Samurdhi* Officer in the locality, or "any other means," including pay slips or letters from employers. One organisation serves only *Samurdhi* recipients who fall below even the minimum wage category. The Legal Aid Foundation administers its own means test based on minimum wage. The Institute of Human Rights makes a subjective selection based on the "background" of each client. The Norwegian Refugee Council serves only IDPs, irrespective of income level, while the Centre for Policy Alternatives only accepts clients with problems related to national-level governance issues.

Type	Percentage of organisations providing services
IDP	66%
Estate workers	66%
Urban poor	83%
Women victims of violence	100%
Women heads of households	66%
Detainees	66%

⁴⁰ See also (Table 1) in Annex 3 - Type of legal aid clients served by service provider.

Table 12: Client eligibility criteria				
Service provider	Serves all clients	Serves select clients	Uses income-based criteria	Details of selection criteria
Consortium of Humanitarian Agencies	X	X		no specific criteria for selection of beneficiaries– selected on a case-by-case basis
Women in Need	X			no specific criteria for selection of beneficiaries
Lawyers for Human Rights and Development	X			no specific criteria for selection of beneficiaries
Muslim Women's Research and Action Forum	X	X	X	When selected on income, client must be a Samurdhi recipient
Legal Aid Foundation		X	X	Means test
National Centre for Victims of Crime		X	X	Income less than Rs. 6000 a month certified by a letter from <i>Grama Niladhari</i>
Institute of Human Rights		X	X	Based on the background of client
Norwegian Refugee Council		X		Serves only IDPs
Open University of Sri Lanka		X	X	Income less than Rs. 6000 a month certified by a letter from <i>Grama Niladhari</i>
Centre for Policy Alternatives		X		Serves clients with national level governance related issues only
Home for Human Rights		X		Decision to support is based on first interview with client
Sarvodaya Legal Services Movement		X		Income less than Rs. 8000 a month certified by a letter from <i>Grama Niladhari</i>

CASELOAD, CASE DOCUMENTATION, AND RANGE OF LEGAL ISSUES ADDRESSED

As presented in Table 13, in 2007 the 12 service providers studied served 250,505 people. Table 13 also shows that they handled 38,373 cases (constituting 15% of all clients served). The "number of people served" includes any person who was provided with assistance for any legal or non-legal dispute, while the "number of cases" refers strictly to cases filed in a court of law. The service providers are handling dramatically different numbers of clients and caseloads. Women In Need served 225,686 clients in 2007 through their six

branches, while the Norwegian Refugee Council served 10,870 clients through five offices. The district-based organisations like Muslim Women's Research and Action Forum and Legal Aid Foundation served from 150 to 437 clients. Colombo-based organisations with country-wide service provision through their central offices reached smaller numbers of clients: as few as 30 as in the case of the Open University Legal Aid office.

Women in Need handled the highest number of cases in 2007 (23,132) which related directly to the remedies available for their client base. For women victims of violence, remedies often lie in the formal legal system

and not in alternative dispute resolution or referrals. All 10,870 of the Norwegian Refugee Council's clients accessed the formal court system. Organisations like the Muslim Women's Research and Action Forum, National Centre for Victims of Crime, Institute of Human Rights, Lawyers for Human Rights and Development and especially Sarvodaya Legal Services Movement filed fewer cases in court relative to their total client base. This could be attributed to a number of factors, including: lack of resources (funding, pro bono lawyers), thus requiring large numbers of referrals to other organisations to take legal action; socio-cultural norms, such as in Batticaloa (where women of Tamil origin are said to be reluctant to go to court) or Ampara (where women of Muslim origin lack the confidence to go to the male-dominated Quazi courts, which handle domestic issues); or organisational approach, as in the case of Sarvodaya Legal Services Movement, which focuses on legal empowerment and tries to foster community dispute resolution without reliance on the formal court system.

Both the data and discussions with service providers revealed that there is a strong focus on the part of service providers – and willingness on the part of clients – to resolve disputes outside the court system. However, the study was not designed to gather qualitative data on alternative dispute resolution (ADR) and the role of ADR in legal aid as the issue was not identified as a critical factor in the design stage. As the scope of the study was limited by design to provide a general mapping of legal aid services and not an indepth analysis of legal aid, this finding relating to ADR was not further examined.

While all 12 legal aid service providers surveyed maintain records on clients and cases (see Table 14), they manage information in diverse ways: via written records, ad hoc computer records, a computer database, or in individual client files. All service providers reported using more than one method of record keeping,

and staff with primary responsibility for other duties (e.g., coordinators, legal advisers, lawyers, managers) were given the additional duty of record maintenance. None of the organisations has a designated documentation officer.⁴¹ This absence of a uniform or centralized system for record keeping across organisations makes information sharing and quantitative mapping of cases and services difficult.

Table 15 shows the range of issues addressed by the 12 service providers, and the number of organisations that handle each issue. Eleven organisations provide legal aid for family disputes. Discussions of these cases revealed that the majority relate to maintenance and divorce. The organisations surveyed attribute this focus to great demand within communities for help with these issues, and scarce avenues for redress for poor and vulnerable people. It is interesting to note that this study's focus group discussions (the results of which are presented in Chapter 7) surfaced a perception of legal aid as being provided primarily for family issues and, thus, more targeted at women.

Equal numbers of organisations are providing assistance on fundamental rights violations and civil matters. Legal aid for fundamental rights issues is provided mostly for individual cases. However, the Centre for Policy Alternatives and Lawyers for Human Rights and Development take on group rights cases (through individual litigants), with the objective of making an impact on broader governance issues and set positive judicial trends.

Numerous issues are grouped together as "civil matters," including money-related issues, loan defaults, accident cases, compensation issues, and contracts.

Contrary to the perception (expressed in some focus group discussions and in beneficiary interviews) that legal aid is not available for land disputes, six organisations (50% of those studied) provide legal

⁴¹ See Annex 03 - Table 05 Documentation and record keeping by service providers

assistance in this area. Fewer organisations provide legal assistance related to criminal issues, legal documentation, emergency regulations, bail applications, money matters, and labour issues.

These organisations' primary focus on individual rights (as opposed to group rights and promotion of class action suits and public interest litigation) stands in

contrast to their often-cited objective of achieving broader social impact through use of the law. Individual cases have limited ability to empower and secure justice for larger groups of marginalized and vulnerable communities. As noted above, the Centre for Policy Alternatives is the only organisation among the 12 that focuses on cases that have potential for national impact.

Table 13: Number of clients served and cases handled by service providers in 2007

Service Provider	Number of Clients served	Number of cases
Muslim Women's Research and Action Forum	150	36
Norwegian Refugee Council	10,870	10,870
Institute of Human Rights	1,346	372
National Centre for Victims of Crime	600	150
Open University of Sri Lanka	30	30
Consortium of Humanitarian Agencies	1,750	1,750
Centre for Policy Alternatives	no answer	0
Women in Need	225,686	23,132
Lawyers for Human Rights and Development	800	450
Legal Aid Foundation	437	437
Home for Human Rights	1,700	1,123
Sarvodaya Legal Services Movement	7,136	23
Total for 2007	250,505	38,373

Table 14: Record keeping by service providers

Number of service providers	Only written Records	Written and ad hoc computer	Only ad hoc computer	Database only	Database and written records	Client files	Only client files
	1	5	1	0	5	6	0

Issue	Number of service providers addressing the issue
Family issues	11
Fundamental rights	8
Civil cases	8
Land issues	6
Violence against women	6
Child rights violations	5
Criminal cases	4
Legal documents	4
Emergency regulations	3
Bail applications	3
Labour issues	2
Money issues	1

CLIENT ACCESS AND OUTREACH

The organisations surveyed receive clients in two ways: walk-in clients, and referrals (see Table 16).⁴² Walk-in clients access the organisation on their own, either by seeing the office signboard or hearing about the organisation through its outreach efforts. Referral clients come to an organisation at the recommendation of another legal aid organisation, police, the courts, or other individuals.

Service providers publicize their services in the following ways:

- Structured publicity programmes: Awareness raising

programmes, legal education programmes, mobile legal clinics;

- Posting of public notices: In Divisional Secretariat offices, police stations, places of worship;
- Media: Books, leaflets, newsletters, posters, speakers, publications, research, newspaper advertisements;
- Networking: Outreach to the courts, *Grama Niladhari*, police, government, local NGOs, community-based organisations; and
- Word-of-mouth: Through people who come to court, through current and former clients, by way of reputation.

Method	Walk In Clients	Referred by other Organisations	Referred by Police	Referred by Court	Referred by individuals
Number of service providers	11	10	9	7	10

⁴² See Annex 03 - Table 03 Method of service provision by service provider

CHALLENGES AND GAPS IN LEGAL AID SERVICE PROVISION

Legal aid service providers were asked to identify the main challenges they face and the gaps they see in legal

aid service provision in Sri Lanka. They were also asked to identify possible remedies to address some of these challenges and gaps. Their responses are summarized in Table 17.

	Challenges and gaps	Potential remedies
Related to clients	<ul style="list-style-type: none"> Being able to serve only a selected target group (e.g., IDPs) 	<ul style="list-style-type: none"> Communicate with <i>Grama Niladharis (GNs)</i> and local Community Based Organisations (CBOs) to reach inaccessible areas
	<ul style="list-style-type: none"> Communication gaps between service provider and clients 	<ul style="list-style-type: none"> Run mobile clinics to reach ground level
	<ul style="list-style-type: none"> Lack of support from clients 	<ul style="list-style-type: none"> Provide extensive client follow up
	<ul style="list-style-type: none"> Fear among potential clients 	<ul style="list-style-type: none"> Provide extensive outreach activities
	<ul style="list-style-type: none"> Lack of awareness among clients 	<ul style="list-style-type: none"> Increase referrals to LAC or other organisations
	<ul style="list-style-type: none"> Inability of those living far away from service providers to reach services; legal aid offices not very accessible 	
	<ul style="list-style-type: none"> Inability to meet demand 	
	<ul style="list-style-type: none"> Poor security situation makes it difficult to access certain localities 	
Related to legal aid lawyers	<ul style="list-style-type: none"> Careless attitudes of lawyers 	<ul style="list-style-type: none"> Create awareness among lawyers
	<ul style="list-style-type: none"> Inexperienced lawyers 	<ul style="list-style-type: none"> Help from junior lawyers
	<ul style="list-style-type: none"> Insufficient number of lawyers 	
	<ul style="list-style-type: none"> Senior lawyers unhelpful 	
	<ul style="list-style-type: none"> Lack of expertise in legal aid lawyers to take up complex cases 	
	<ul style="list-style-type: none"> Lack of interest among lawyers in legal aid 	
	<ul style="list-style-type: none"> Perceived inefficiency of legal aid lawyers (by clients) 	
Related to judges	<ul style="list-style-type: none"> Indifference of judges 	<ul style="list-style-type: none"> Better cooperation of Judges
	<ul style="list-style-type: none"> Lack of understanding about legal aid among judges 	<ul style="list-style-type: none"> Personal engagement with judges, involving police and AG's Dept

Related to government officials	<ul style="list-style-type: none"> • Overall lack of support from government administrators 	<ul style="list-style-type: none"> • Establish close relationships with law enforcement authorities
	<ul style="list-style-type: none"> • Legal advocacy issues ignored by <i>Grama Niladhari</i> and Divisional Secretaries 	<ul style="list-style-type: none"> • More links with government institutions (e.g., District Secretary, Additional District Secretary)
	<ul style="list-style-type: none"> • Limited support from, and insensitivity of, law enforcement officers 	
	<ul style="list-style-type: none"> • Difficult for clients to access services from government service provider 	
Related to structural and procedural issues	<ul style="list-style-type: none"> • Delays when dealing with land and property issues 	<ul style="list-style-type: none"> • Explore funding from government sources, international NGOs, individuals
	<ul style="list-style-type: none"> • Difficulty in accessing legal aid centres within court premises 	<ul style="list-style-type: none"> • Advocate and campaign for legal reform
	<ul style="list-style-type: none"> • Lack of funding for legal aid 	
	<ul style="list-style-type: none"> • Funding has conditions attached to it 	
	<ul style="list-style-type: none"> • Questionable sustainability of legal aid service provision 	
	<ul style="list-style-type: none"> • Inability to expand characteristic/nature of legal aid due to the demand for a particular type of legal aid 	
	<ul style="list-style-type: none"> • Lack of adequate awareness raising 	
	<ul style="list-style-type: none"> • Lack of coordination among legal aid members 	
	<ul style="list-style-type: none"> • Limited number of service providers 	
	<ul style="list-style-type: none"> • Lack of personnel 	
	<ul style="list-style-type: none"> • Legal community failing to see need for public interest litigation 	
	<ul style="list-style-type: none"> • Limited lawyers in particular geographic areas such as Jaffna peninsula 	
	<ul style="list-style-type: none"> • No regulated system of providing legal aid - legal aid is not mandatory 	
	<ul style="list-style-type: none"> • Political influence/lack of independent institutions 	
	<ul style="list-style-type: none"> • Ongoing war and political scenario 	
<ul style="list-style-type: none"> • Administrative difficulties in conflict areas 		
<ul style="list-style-type: none"> • Transportation problems 		

IMPROVING LEGAL AID SERVICES

The organisations surveyed identified numerous ways to improve the delivery of their legal aid services.

Improvements were identified in the areas of outreach, training, awareness-raising, monitoring and evaluation, networking, and overall service provision:

- ***Outreach***
 - o Legal aid centres should be located on or close to main roads
 - o Expand outreach of services to ensure that services reach all geographical areas
 - o Better equipment and vehicles for service providers to reach the community
- ***Training***
 - o Provide specific training for legal aid service providers (client counselling, case management)
 - o Provide training to increase the capacity of legal aid lawyers
 - o Provide programmes to ensure commitment from lawyers, confidence from courts
 - o Develop and train paralegals
- ***Awareness-raising***
 - o Conduct legal aid awareness programmes
 - o Enhance knowledge of legal aid among *Grama Niladharis*, school children, the general public
 - o Develop legal aid instruction manuals for clients
- ***Monitoring and evaluation***
 - o Carry out periodic evaluations involving service providers and beneficiaries
- ***Networking***
 - o Create a coordinated, grassroots referral system

- o Create a common computer database accessible to all service providers
- o Use information from computer database for lobbying and advocacy efforts
- ***Service provision***
 - o Hire more staff and increase allowances
 - o Increase staff salaries
 - o Obtain better lawyers
 - o Obtain more lawyers
 - o Provide higher quality services
 - o Refine client selection criteria
 - o Secure more donor and private sector funding

SUPPORT NEEDED FROM THE GOVERNMENT IN LEGAL AID SERVICE PROVISION

Legal aid service providers are aware of the government-supported legal aid scheme, and they articulated the need for recognition and support from the government for private legal aid service providers. Specific areas of support needed and expectations from government include:

- Provide effective and accessible legal aid services
- Raise awareness on legal aid
- Set up a State department for legal aid to provide durable solutions for legal aid needs
- Allow NGO service providers to train law enforcement officers
- Sensitise the judiciary about legal aid
- Sensitise and gather support from government agencies and officers for legal aid
- Provide financial assistance for legal aid (from international donors and other local sources)
- Create a networking mechanism with NGO service providers.

6. Survey of Legal Aid Beneficiaries

Key Points and Findings

- Clients receive information about the legal aid providers in many ways but the main way is from another individual (e.g., family member, government officer, neighbor, friends, former legal aid client). A lesser number received information from some form of organisation (NGO, government institution, religious institution), while only a small number were referred to the organisation by the policy and by the court.
- The distance to legal aid service providers is an issue for clients. The majority surveyed 66% traveled more than five kilometers to reach service providers.
- In terms of need, 50% of beneficiaries surveyed accessed legal aid services for family disputes. This is the same in men and women, and all ethnic groups. Civil disputes were also common comprising money-related issues, loan defaults, accident cases, compensation issues, and contract issues
- Clients access legal aid service providers for legal advice, counseling, and legal representation in court. A single client can and does receive more than one service (i.e. legal advice and court representation or counseling and court representation). According to beneficiaries interviewed, 60% of issues and disputes that are taken to legal aid service providers culminate in a court case
- Legal aid service providers appear to be making a strong effort to provide services in languages that their clients understand. The majority of beneficiaries was satisfied with the language of service provision. However there is a distinction here in terms of ethnicity and level of education.
- The commitment of legal aid lawyers is noted. The survey shows that among those beneficiaries who responded to the question, the same lawyer followed their case in a continuous manner.
- In the overall, a high level of client satisfaction is shown. A high percentage of beneficiaries expressed overall satisfaction with the legal services provided.

PROFILE OF BENEFICIARIES

The Study Team surveyed 266 people who had accessed legal assistance to solve disputes or issues of a legal nature.⁴³ The sample of beneficiaries included 208 females and 58 males⁴⁴ and is representative of all nine

provinces⁴⁵ and 17 districts.⁴⁶ Respondents were from 105 Divisional Secretariat Divisions.⁴⁷ The survey questionnaire has been included as Annex 07.

Survey respondents were identified in two ways: through legal aid service providers (by accessing their clientele),

⁴³ The gaps in the sample have been addressed in the section on limitations.

⁴⁴ Please note that questionnaires were given to users of legal aid, and the higher number of women reflects the fact that there were significantly more women than men using the services, rather than due to questionnaires being deliberately targeted to women.

⁴⁵ See Annex 4 - Table 1 Geographic distribution of beneficiaries (by Province and District).

⁴⁶ Ampara, Anuradhapura, Badulla, Batticaloa, Colombo, Galle, Gampaha, Hambantota, Jaffna, Kalutara, Kandy, Mannar, Matara, Moneragala, Nuwara Eliya, Puttalam, Ratnapura.

⁴⁷ See Annex 4 - Table 2 Geographic distribution of beneficiaries (by Divisional Secretariat Division).

and through community organisations (by accessing community members who have received legal aid).⁴⁸

The survey sample was purposeful, in that it sought to analyze the legal aid experience of five categories of marginalized Sri Lankans: estate workers, internally displaced persons, urban poor, women heads of households, and women affected by violence. Table 18 shows that 20% of the respondents were IDPs, 18% estate workers, 12% urban poor, 11% women heads of households and 9% women victims of violence. Thirty percent could not be categorized into one of these five groups and belonged to other social categories.

As seen from Table 19, there were far more women than men among beneficiaries surveyed: 78% of the beneficiaries were female and 22% were male. In terms of age, 77% were between the ages of 26 to 55, and of this group 60% were women. The only age group in which women and men accessed legal aid in roughly equal numbers (albeit small numbers) was in the “over 55” category.

Respondents represented the main ethnic groups and religions in Sri Lanka (see Tables 20 and 21). The sample comprised 44% Tamils, 43% Sinhala, 12% Muslims, and one Burgher respondent. The religious breakdown was as follows: 39% Buddhist, 33% Hindu, 15% Christian/Catholic, and 12% Muslim.

Respondents provided incomplete information on their current employment status (Table 22), making it difficult to describe the sample as a whole with any precision. However, out of the 45% of respondents who provided an answer to this question, 71 people (27%) were “casual workers” and 47 people (18%) held permanent employment.

These legal aid beneficiaries were largely (95%) from the non-professional sector. Their reported occupations in this sector were diverse, falling into 59 occupational categories. The most often-cited occupations were: laborers (15), farmers (10), self-employed (10), and garment factory workers (5). Among the 5% of respondents with jobs in the professional sector, five were middle management-level employees, two were family health workers, two were police officers (a sergeant and constable), two were teachers, and one was a computer operator.

The survey looked at beneficiaries’ income relative to the minimum wage (Rs. 6000 per month, or Rs. 300 per day). As noted in Chapter 5, several legal aid service providers have a policy of only accepting clients earning under minimum wage. Thirty-nine percent of respondents reported earning less than the minimum wage.

Category	Sex		Total
	F	M	
Estate workers	43	6	49 (18%)
Internally displaced persons	44	8	52 (20%)
Urban poor	21	12	33 (12%)
Women heads of households	29	1	30 (11%)
Women victims of violence	23		23 (9%)
Not categorized	48	31	79 (30%)
Total	208	58	266

⁴⁸ See Annex 04 - Non Service Provider Organisations reached to access beneficiaries.

Sex	Age									
	Under 18		19-25		26-55		Over 55		Total	
Female	8	3%	30	11%	158	60%	10	4%	206	78%
Male	0	0%	3	1%	44	17%	11	4%	58	22%
No response	-	-	-	-	-	-	-	-	2	
Total	8	3%	33	12%	202	77%	21	8%	266	

Ethnicity	Total	%	Religion	Total	%
Burgher	1	0.3	Buddhist	103	39
Muslim	33	12	Christian Catholic	41	15
Sinhala	114	43	Hindu	87	33
Tamil	118	44	Islam	33	12
			No response	2	1
Total	266	100	Total	266	100

Employment status	Total	%
Casual	71	27
Permanent	47	18
No answer	148	55
Total	266	

Income level	Total
Less than Rs. 300 a day	3
Less than Rs. 6000 a month	101
More than Rs. 300 a day	10
More than Rs. 6000 a month	41
No answer	111
Total	266

BENEFICIARIES' ACCESS TO LEGAL AID SERVICE PROVIDERS

The Study Team asked beneficiaries how they came to access legal aid services. Table 24 shows that 50% of respondents received information about the legal aid provider from another individual (e.g., family member, government officer, neighbor, friends, former legal aid client). Thirty-four percent received information from some form of organisation (e.g., NGO, government institution, religious institution), while 8% were referred to the organisation by the police and 3% by the court.

Table 24 also shows that across all ethnic groups, the most common source of information about legal aid services was another individual. However, among Muslim beneficiaries, individuals and organisations played an equal role. In terms of the referral role played by police, Sinhala people reported receiving information about legal aid services from the police more often (12%) than Tamils (6%) and Muslims (3%).

Men and women both accessed legal aid services primarily through information from individuals and organisations (see Table 25), but more women reported receiving information from police (10%) than men (3%).

Table 24: Source of access to service providers by ethnicity

Source	Ethnicity				
	Burgher	Muslim	Sinhala	Tamil	Total
Court			7		7
Individual	1	16	48	66	131
Organisation		16	39	35	90
Police		1	14	8	23
Walk In			6	3	9
No answer				6	6
Total	1	33	114	118	266

Table 25: Source of access to service providers by sex

Source	Sex		
	Female	Male	Total
Court	7		7
Individual	94	37	131
Organisation	72	18	90
Police	21	2	23
Walk In	8	1	9
No answer	6		6
Total	208	58	266

The focus group discussions (the results of which are presented in Chapter 7) surfaced a complaint that legal aid service providers are concentrated in district centres and that services have not reached communities at Divisional Secretariat Divisions. Of the beneficiaries surveyed, 66% traveled more than five kilometers to reach service providers. Only 17% traveled less than two kilometers, and 16% traveled a distance of three to five kilometers (see Table 26).

LEGAL AID ISSUES OF BENEFICIARIES

Fifty percent (50%) of beneficiaries surveyed accessed legal aid services for family disputes (see Table 27). Civil disputes were also common (20%), comprising money-related issues, loan defaults, accident cases, compensation issues, and contract issues. Fifteen percent of beneficiaries sought assistance with fundamental rights violations, 8% with land issues, and 3% with criminal issues.

In terms of sex disaggregation (also shown in Table 27), 60.5% of the female beneficiaries (47% of all

beneficiaries) sought assistance for family matters, while the most often-cited issue for male beneficiaries (34.4% - 7.5% of all beneficiaries) was fundamental rights violations. Equal numbers of men and women sought assistance for land-related matters, while more women accessed legal aid for both criminal matters and civil matters.

Across all ethnic groups, most of the beneficiaries sought assistance for family disputes (see Table 28). More Tamil beneficiaries sought help with family matters than Sinhala beneficiaries, while more Sinhala beneficiaries sought assistance with fundamental rights issues and land issues than Tamil beneficiaries. Percentage-wise, more Muslim beneficiaries sought help with civil matters than Tamil and Sinhala beneficiaries.

Across this study's five target beneficiary groups, the highest percentage of beneficiaries sought legal aid for family matters (see Table 29). Out of those seeking assistance with fundamental rights violations, the highest percentage were IDPs.

Distance to Service Provider	Total
Less than 2 kilometers	42
3 to 5 kilometers	40
More than 5 kilometers	161
No answer	23
Total	243

Sex	Legal Issue						Total
	Family	Civil	Fundamental Rights	Land	Criminal	No Answer	
Female clients	126(47%)	36(13.5%)	20(7.5%)	11(4%)	8(3%)	7(2.6%)	208(78.1%)
Male clients	7(2.6%)	17(6.3%)	20(7.5%)	11(4%)	1(0.3%)	2(0.7%)	58(21.8%)
Total	133(50%)	53(19.9%)	40(15%)	22(8%)	9(3.3%)	9(3.3%)	266

Ethnicity	Legal Issue					
	Family	Civil	Fundamental Rights	Land	Criminal	Total
Burgher	1					1
Muslim	15	10	6			31
Sinhala	46	18	24	17	5	110
Tamil	71	25	10	5	4	115
No answer	-	-	-	-	-	9
Total	133	53	40	22	9	266

Beneficiary category	Legal Issue					
	Civil	Criminal	Family	Fundamental Rights	Land	Total
Estate workers	7	3	30	3	2	45
IDPs	15	1	22	10	3	51
Urban poor	6	2	10	7	7	32
Women head of households	3		26			29
Women victims of violence	2		21			23
No category mentioned	20	3	24	20	10	77
No answer	-	-	-	-	-	9
Grand Total	53	9	133	40	22	266

LEGAL AID SERVICES RECEIVED BY BENEFICIARIES

Clients access legal aid service providers for legal advice, counseling, and legal representation in court. A single client can and does receive more than one service (i.e. legal advice and court representation or counseling and court representation). Of the beneficiaries surveyed 194 received legal advice, and 167 of the beneficiaries received counseling from the service providers, only 108 had their cases filed in court (see Table 30). Twenty-six beneficiaries had their issues/disputes referred to non-

legal mechanisms, while 55 beneficiaries were referred to other legal aid service providers (e.g., to Women In Need for gender-specific legal assistance).

Legal aid service providers appear to be making a strong effort to provide services in languages that their clients understand. Table 31 shows that 86% of beneficiaries were satisfied with the language of service provision, while only 6% said they were not. Table 32 provides further analysis of satisfaction based on beneficiary ethnicity. Of the beneficiaries who only spoke Sinhala (without the ability to read and write), 88% stated that

they were satisfied with the language in which services were provided. This percentage increased to 97% among beneficiaries who could speak, read, and write Sinhala. Among Tamil-speaking beneficiaries, 97% of those who only spoke Tamil (without the ability to read and write) expressed satisfaction, but only 72% of those who could speak, read and write Tamil were satisfied with the language in which services were provided.

In the overall high level of client satisfaction, there is a distinct difference in terms of ethnicity and level of education. The better-educated Sinhala speaking clients (those who could read and write) were even more satisfied with services than the less-educated (those who could not read and write Sinhala). This was the opposite with the Tamil speaking beneficiaries. The better-educated Tamil speakers (those who could read and write) were less satisfied with the services than the less-educated Tamil speakers (those who could not read and write). The survey however does not reveal reasons for this and it is an issue that requires further study.

As noted in the results of the survey of service providers, some organisations provide legal services free of charge, while others charge modest fees (e.g., for stamps, stationery) from clients who are willing and able to make a financial contribution. Table 33 shows that 75% of beneficiaries reported that they had not been charged fees for legal aid services, while 25% paid between Rs. 500 and 3000 (USD \$4.62 to \$27.77).

Regarding beneficiaries' overall level of satisfaction with legal aid services (Table 34), 91% of those who answered the question and 72% of all beneficiaries surveyed reported that they were satisfied with the services provided. This includes satisfaction with not only their case but also with the reception they received from the service provider, the time spent by the service provider on listening and counseling, case follow-up, and other support provided (such as financial and material assistance).

Table 30: Services received by beneficiaries

	Type of assistance received				
	Legal Advice	Counseling	Legal representation in Court	Referral to other legal aid providers for court representation	Referral to non legal mechanisms (Government institutions, NGOs)
Number of clients	194	167	108	26	55

Table 31: Satisfaction with language of service

Satisfaction Level	Total	%
Yes	228	86%
No	17	6%
No answer	21	8%
Total	266	100%

Language proficiency of clients	Satisfaction with language in which services were provided			
	yes	no	no answer	Total
Sinhala spoken	7	0	1	8
Sinhala spoken, reading, writing	101	0	4	104
Tamil spoken	32	0	1	33
Tamil spoken, reading, writing	76	15	14	105
Sinhala spoken, reading, writing and Tamil spoken	1	0	0	1
Tamil spoken, reading, writing and Sinhala spoken	6	0	0	6
Tamil and Sinhala spoken	1	0	0	1
Tamil and Sinhala spoken, reading, writing	2	1	0	3
No answer	2	1	1	4
Total	228	17	21	266

Fee	Total	%
Not paid any money	161	75%
Yes – paid some fees	53	25%
Total	214	100%

Total	Satisfaction			
	no	yes	No answer	Total
	20	192	54	266

LEGAL AID CASES FILED IN COURT

According to beneficiaries interviewed, 60% of issues and disputes that are taken to legal aid service providers culminate in a court case (see Table 35). Sixty percent of beneficiaries reported having their cases filed in a court of law by a legal aid service provider. However, this information is in conflict with the information, gathered from service providers, that only a small

percentage of total legal aid clients pursue court action. This is also different to the information provided by beneficiaries on the type of services received where only 108 (41%) of respondents stated that they received "court representation" service. One hundred and sixty (60%) respondents said they received court representation services when questioned directly whether a court case was filed or not. This implies a confusion in understanding what "court representation" means when

describing services but a clear understanding when questioned with regard to a "court case." Twenty-two percent stated that they did not get their disputes resolved. Based on the sparse available data on the type of court in which cases were filed (see Table 36), it appears that the highest percentage of cases (32%) was filed in the Magistrate's Court.

Based on information provided by beneficiaries about the number of times a lawyer appeared in court on their behalf, it appears that cases often require legal aid lawyers to appear in court more than once (see Table 37). Only in one case was there only one appearance in court. The majority of cases required ten or fewer appearances in court, while four cases required from 35 to 50 court appearances.

Legal aid lawyers working for service providers on both a permanent and as-needed basis are required by their organisations to show a strong degree of commitment to following a case. The beneficiary survey shows that among those beneficiaries who responded to the

question, the same lawyer followed their case in a continuous manner. Nineteen beneficiaries reported that different lawyers appeared on different occasions when their case was called up in court, but this appears to be more the exception rather than the rule.

As noted above, a high percentage of beneficiaries expressed overall satisfaction with the legal services provided. In relation to court cases, 78.7% of beneficiaries felt that their case was resolved to their satisfaction (see Table 38), with 35% reporting that the case was not resolved in a satisfactory manner. Satisfaction levels were consistent across all ethnic groups (see Table 39): 45% of Sinhala beneficiaries, 51% of Tamil beneficiaries, and 42% of Muslim beneficiaries were satisfied with the resolution of their case. Dissatisfaction levels were also roughly consistent, with 38% of Sinhala beneficiaries, 31% of Tamil beneficiaries, and 42% of Muslim beneficiaries reporting that their case was not resolved in a satisfactory manner (see Table 40).

Case filed	Total	%
Yes	160	60
Grand Total	266	100

Court	Total	%
District Court	51	31.8
High Court	7	4.3
Magistrates Court	86	53.7
Supreme Court	7	4.3
Not mentioned	9	5.6
Total	160	100

Table 37: Court appearances per client	
Number of appearances	Number of cases
1 to 5 appearances	61 cases
6 to 10 appearances	37 cases
11 to 15 appearances	8 cases
16 to 20 appearances	6 cases
23 to 30 appearances	5 cases
35 appearances	1 case
37 appearances	1 case
40 appearances	1 case
50 appearances	1 case

Table 38: Legal aid lawyers per court appearance	
Lawyer	Total
Different lawyers appear for a single case	19
Same lawyer appears for a single case	125
No answer	122
Total	144

Table 39: Satisfaction with court cases		
Issue solved	Total	%
yes	126	78.7
Total	160	100

Table 40: Satisfaction with court cases by ethnicity of beneficiary		
Ethnicity	Satisfaction	
	yes	% of ethnic group
Burgher	1	100%
Muslim	14	42%
Sinhala	51	45%
Tamil	60	51%
Total	126	

7. Stakeholder Perspectives

Key Points and Findings

- Focus group participants include a cross section of community representatives, including staff from civil society organisations, *Grama Niladharis*, police officers, Land Officers, Divisional/District Secretaries, Local Authority officials, religious leaders, and school principals and teachers.
- On the availability of legal aid, participants were familiar with legal aid service providers, often due to their physical presence at the district level (e.g., an office and/or sign board in town, visibility of their lawyers in court). Participants also noted a high availability of legal aid services due to the strong presence and publicity of service providers in the main towns.
- On the availability of legal aid according to specific issues, participants identified domestic violence, divorce, maintenance and other family disputes such as inheritance as the key issues for which legal aid services are available in their communities. With the exception of one focus group, participants did not mention the availability of legal aid for rights violations which are of a political nature (disappearances and killings, unlawful detention, intimidation, and threats). Only one focus group mentioned the possibility of accessing legal aid services for abductions. Participants – despite their open criticism of corruption in government administration, law enforcement, and politics – did not mention the availability of legal aid for such issues, even those who mentioned that they had personally faced a situation involving corruption.
- Focus group participants identified women and children as the most marginalized, vulnerable groups in need of legal aid. The second most commonly-mentioned groups were internally displaced persons and the poor.
- In terms of need, participants identified domestic violence, child abuse, land issues, maintenance for women, child labor and divorce as the main issues for which people in their communities need legal aid
- One clear, consensus concern emerging from the focus group discussions is that legal aid service providers concentrate their operations (both legal aid and outreach efforts) in the towns. While legal aid is available at the district level, these services do not trickle down to reach severely marginalized people at lower levels. Services are scarce at the *Grama Niladhari* level, and more so at the village level. Focus groups noted that at the district level, community organisations play a key role in facilitating access by the poorest and most disadvantaged to legal aid services.
- The eligibility criteria that are used by many legal aid organisations in the client selection process emerged as a contentious issue in the focus groups. Many participants expressed concern that income-based testing is unfair and may exclude many deserving clients, when rigidly implemented.
- Regard for legal aid service providers – both the Legal Aid Commission and NGOs – appears to be high, but perceptions of these organisations' effectiveness varied from district to district.
- Focus group members were able to identify several systemic barriers that prevent the poor and vulnerable from accessing legal aid services in Sri Lanka. These included poverty, security concerns especially in selected parts of the country directly affected by the war, certain cultural barriers, negative attitudes and lack of support for legal aid among relevant government officials and law enforcement officers, lack of knowledge and awareness of legal aid services and broader shortcomings of the Sri Lankan justice system.

FOCUS GROUP PARTICIPANTS

To gain additional perspectives on the availability, quality, and needed improvements of legal aid services, the study team facilitated focus group discussions in ten locations across Sri Lanka.⁴⁹ Focus group participants represented a cross section of community representatives, including staff from civil society organisations, *Grama Niladharis*, police officers, Land Officers, Divisional/District Secretaries, local authority officials, religious leaders, and school principals and teachers.⁵⁰

FAMILIARITY WITH ORGANISATIONS PROVIDING LEGAL AID SERVICES

Focus group participants were able to name numerous legal aid service providers, often due to their physical presence at the district level (e.g., an office and/or sign board in town, visibility of their lawyers in court). The Legal Aid Commission, Legal Aid Foundation, Women In Need, and Norwegian Refugee Council were commonly mentioned in most locations. Area-specific organisations, such as Home for Human Rights, and organisations that combine legal aid services with legal empowerment activities and/or community development activities, such as Sarvodaya, Community Trust Fund, and Vehilihini were also well-known to participants. At the district level in Ampara, Batticaloa, Trincomalee, Kurunegala, Matara, and Mannar focus group participants noted a high availability of legal aid services due to the strong presence and publicity of service providers in the main towns.

FOCUS OF LEGAL AID SERVICES

When asked about the issues for which legal aid services are available in their communities, focus group participants mentioned the following issues (in order of

declining frequency):

- divorce, maintenance
- other family disputes such as inheritance
- domestic violence
- rape, sexual harassment, sexual abuse (of women)
- obtaining legal documents (identity cards, birth certificates)
- human rights violations (mentioned as a broad category, with no specific references)
- child rights violations (child labor, sexual abuse, access to schooling)
- labor issues
- elder rights violations, including maintenance
- land disputes
- abductions
- accidents (representing victims and for compensation claims)
- arbitrary arrest, detentions, disappearances, and/or threats of such

The issues named by participants range widely, from family issues to legal identity issues to fundamental rights violations, and cover both civil and criminal matters.

With the exception of the focus group in Mannar, participants did not mention the availability of legal aid for rights violations which are of a political nature (disappearances and killings, unlawful detention, intimidation, and threats). Only one focus group (Batticaloa) mentioned the possibility of accessing legal aid services for abductions.

Participants – despite their open criticism of corruption in government administration, law enforcement, and politics – did not mention the availability of legal aid for

⁴⁹ Puttalam, Trincomalee, Batticaloa, Kandy, Moneragala, Hikkaduwa, Matara, Jaffna, Kurunegala, and Mannar.

⁵⁰ See Annex 05 for Participants of Focus Group Discussions. The Focus Group guide questions have been included as Annex 10.

such issues, even those who mentioned that they had personally faced a situation involving corruption.

PRIORITY BENEFICIARIES AND LEGAL AID NEEDS AT THE COMMUNITY LEVEL

Focus group participants identified women and children as the most marginalized, vulnerable groups in need of legal aid. The second most commonly-mentioned groups were internally displaced persons and the poor. Other categories of priority legal aid beneficiaries mentioned by participants included migrant women workers, plantation workers, the elderly, and fishermen.

When asked to name the types of issues for which people in their communities need legal aid, focus group participants mentioned the following (in order of declining frequency, and all referenced by more than two focus groups):

- domestic violence
- child abuse
- land issues
- maintenance for women
- child labor
- divorce
- rape
- family disputes
- broadly human rights violations
- incest, sexual harassment
- access to legal documentation
- issues related to migrant women workers.

These priority issues roughly correspond with the list, above, of the issues for which legal aid is perceived to be available.

Focus groups also identified other issues (albeit with lower frequency) for which legal aid is needed, including:

- abductions
- disappearances
- appeals against Quazi court rulings
- bigamy
- consumer affairs
- corruption (of lawyers and notaries, government officers, police)
- deprivation of basic rights due to the security zone
- illicit liquor cases (mostly small time female liquor sellers)
- labor issues
- loan defaults
- motor traffic cases (civil aspect)
- underage marriages.

There were some area- and situation-specific aspects to issue identification. Focus group discussions in Kandy and Nuwara Eliya – areas that are home to many plantation workers – identified issues of particular concern within plantation communities, including domestic violence, incest, and child abuse (including child labor). The focus group in Trincomalee was the only group in an area directly affected by the conflict that raised abductions and disappearances as priority issues. In contrast, the focus groups in Batticaloa and Mannar did not identify abductions and disappearances as issues for which legal aid is needed. This likely relates to the perception of focus group participants from Batticaloa and Mannar that legal aid services are already being provided for people with complaints of abductions and disappearances, while communities in Muttur (in Trincomalee) perceive that legal services exist only in and around Trincomalee town, with no services at all in the Muttur area.

ACCESS TO LEGAL AID

One clear, consensus concern emerging from the focus group discussions is that legal aid service providers concentrate their operations (both legal aid and outreach efforts) in the towns. While legal aid is available at the district level, these services do not trickle down to reach severely marginalized people at lower levels. Services are scarce at the *Grama Niladhari* level, and more so at the village level. Those marginalized people who have enough strength and knowledge to access services at the district level are able to benefit from legal aid services, but many people with acute needs are currently being denied services. The rural and urban poor are particularly affected in all parts of the country, as are recently displaced people and returnees in places like Muttur in Trincomalee district, people in remote communities in Batticaloa and Ampara, and women affected by violence across Sri Lanka. Focus group members from Muttur, Hikkaduwa, and Deltota (Kandy) articulated this concern particularly strongly.

Participants also expressed concern that the level of access to legal aid services varies across different vulnerable populations. They noted that groups that are marginalized due to long standing social (e.g., class, caste), economic, geographical, and cultural reasons are even more vulnerable if they become internally displaced persons or plantation workers. These vulnerable groups appear to have more limited access to legal aid due to the complexity of their situation within the community. Participants also expressed a perception that current legal aid efforts focus more on women clients, and that there is a gap in service provision for men.

Some people raised a concern that even where legal aid services are available, legal aid organisations may not be providing services in a language that their clients can understand. Participants expressed concern that this may limit access to legal aid services, particularly among Tamil-speaking populations.

Focus groups did note that at the district level, community organisations play a key role in facilitating access by the poorest and most disadvantaged to legal aid services. The perceptions that were surfaced from participants from marginalized communities and from community leaders suggest that the better-organised communities and marginalized groups are able to access legal aid services more easily than individuals. This increased access comes from both their improved access to information about legal services, as well as their community strength. In focus group areas that are rich in organisations (both formal and informal), participants spoke of their knowledge of service providers and confidence to reach them if necessary, with organisations providing an information-sharing role as well as other support like financial assistance for travel as well as follow-up.

The eligibility criteria that are used by many legal aid organisations in the client selection process emerged as a contentious issue in the focus groups. Many participants expressed concern that income-based testing is unfair and may exclude many deserving clients, when rigidly implemented. There appeared to be a consensus that the cut off point that organisations normally use – i.e., a monthly salary of Rs. 6000 – is too low. Focus group participants expressed a preference for a selection process that assesses clients on a case-by-case basis based on need, the sensitivity of the issue, and the level of disempowerment of the client. If an income-based means test is to be imposed, participants suggested that the ceiling be lifted to Rs. 8000.

In addition to concerns that legal aid organisations may be excluding deserving clients due to geography and other factors, the focus group discussions also surfaced concerns that people are not able to adequately access legal aid for certain types of issues. There is a perception that legal aid is provided primarily for family disputes, to the neglect of other important issues and disputes that are common within communities. In focus group areas directly affected by the conflict, there was a sense that legal aid is scarce for human rights violations of a

sensitive nature, such as disappearances, abductions, and other conflict-related human rights violations. In areas where the conflict does not directly touch people's lives, the concerns were different. Participants cited the lack of legal aid available for corruption involving political leaders, government officials, and law enforcement officers.

QUALITY OF LEGAL AID SERVICE DELIVERY

Regard for legal aid service providers – both the Legal Aid Commission and NGOs – appears to be high, but perceptions of these organisations' effectiveness varied from district to district. Focus group participants raised several specific concerns, based on their own observations and conversations with others in their community, about the quality of legal aid service delivery being provided to people in their community. Some concerns were related to legal aid lawyers. These concerns included:

- Lack of seniority, experience, and competence (e.g., inability to handle complex cases; provision of inaccurate legal advice; mishandling of disputes, especially family disputes; inexperience with court proceedings);
- Lack of commitment and motivation (e.g., failure to prepare for and appear for cases, failure to file proper documents, failure to follow a case all the way through); and
- Exploitation of clients (e.g., asking for fees, and one very serious allegation of sexual harassment of a client).

Focus group participants had more positive views of the lawyers of such organisations as Women In Need and Norwegian Refugee Council, whose full-time, in-house lawyers were viewed as providing better, more comprehensive, and more committed service.

Other concerns were aimed more at the organisational level:

- Lack of proper procedures and structure for handling legal aid cases;
- Lack of follow-up with clients;
- Ineffective management of available resources (e.g., money, personnel);
- Lack of a customer-service orientation (e.g., lack of respect shown to people seeking legal assistance, lack of client reception procedures, lack of counseling services for clients who need it); and
- Failure to deploy enough legal aid lawyers (a concern expressed in Jaffna).

One common and strongly-articulated issue among focus group participants was the lack of a mechanism to monitor and evaluate legal aid service provision as a whole. While individual organisations have their own, often ad hoc monitoring mechanisms, focus group members expressed the need for a central body that monitors and periodically evaluates legal aid. This would include a separate complaints mechanism that can be accessed by clients who feel they have been wronged by a legal aid service provider or are dissatisfied with the service they received.

It is important to note that in their assessment of service providers, focus groups also raised the issue of alternative dispute resolution. Many communities were aware of and access Community Mediation Boards, and spoke positively of the services provided by these Boards. However, in the cases where legal intervention was necessary, the weaknesses among legal aid service providers were still pronounced, even in areas where Mediation Boards were effective.

BARRIERS TO LEGAL AID ACCESS AND EFFECTIVE SERVICE DELIVERY

Focus group members were able to identify several systemic barriers that prevent the poor and vulnerable from accessing legal aid services in Sri Lanka.

Poverty was uniformly expressed as a primary reason that vulnerable people are denied access to legal aid. People's lack of resources to travel large distances to meet with service providers – who are always located in district centres – is a major concern. This concern was coupled with recognition of the social isolation faced by people from marginalized communities, whose access to legal aid services is severely limited if they are not part of a community group or a community process.

In selected parts of the country directly affected by the war, security is a primary concern. Internally displaced persons, in particular, report being denied access to legal services due to the security situation. This appears to be more of a problem within communities of newly-displaced people and within recent returnee communities, like Muttur, than among people who have been displaced long-term, such as in Puttalam. This concern about security was expressed at many other focus group discussions around the country, where threats and intimidation have occurred when the case is of a sensitive nature (e.g., a case involving a powerful community figure).

Certain cultural barriers are perceived as preventing the needy from accessing legal aid. In parts of the country, cultural norms hamper people's access to courts (e.g., among Tamil women in Batticaloa, attempts to access the court system are looked down upon). Focus group participants also mentioned that for some communities and classes of individuals, their lack of physical mobility (e.g., those in IDP camps, victims of domestic violence) prevents access to legal services.

There is concern about the detrimental impact of negative attitudes and lack of support for legal aid among relevant government officials and law enforcement officers (the *Grama Niladhari* and police officers, in particular, who are often the first point of contact for marginalized people with legal problems). Focus group members attributed this to a lack of awareness and training, as well as a lack of sensitivity. There is a concern that *Grama Niladharis* are not trained

to help people identify legal aid needs (i.e., they have no understanding of the legal issues embedded in a personal or community dispute) or to help people address their legal aid needs (i.e., they are not equipped to refer people to relevant institutions or service providers). There were also complaints within the focus groups that *Grama Niladharis* hamper access to legal aid by delaying issuing the certificate that proves income eligibility for legal aid. Regarding police, focus group participants mentioned more concerns about irregular, intimidating, or corrupt practices than about the lack of knowledge or sensitivity. Focus Group participants allege that police prevent vulnerable people from accessing the legal system, cause delays and lapses in the legal process through inaction, delay investigations, and delay the presentation of complaints to the court. Participants noted that language barriers between police and the general public can hamper access to legal aid services. There were also allegations of corruption, bribery, and bias toward the rich and powerful aimed at both police officers and *Grama Niladharis*.

Focus group participants' concern about minimal lack of knowledge of legal aid services extended beyond the police and *Grama Niladharis* to other government officials, such as *Samurdhi* Officers and Land Officers. This is not just attributed to a lack of commitment and sensitivity, but also to their lack of opportunity to access proper information about legal aid services.

Lack of awareness at the grassroots level was also articulated as a major barrier to legal aid access. Service providers' awareness campaigns do not appear to have reached many local communities, where people complain of not being able to identify rights violations or legal issues, have no understanding of the importance of legal documents, and do not have information about legal aid service providers.

Finally, the focus groups surfaced broader shortcomings of the Sri Lankan justice system. While these concerns affect not only those who are seeking legal aid but to litigants in general, they have a clear negative impact on

access to justice. Specific concerns mentioned included law delays, the lack of witness protection laws and procedures, the negative attitudes of certain judges, and ineffective State Counsels (Government Prosecutors). Many participants commented on judges' lack of sensitivity to legal aid, although with less vehemence than their comments about the negative attitudes of government officials and law enforcement officers.

RECOMMENDATIONS FOR IMPROVING LEGAL AID PROVISION AND SERVICES

Based on their own analysis of the strengths, weakness, and gaps in the current legal aid environment in their communities, focus group participants offered numerous specific recommendations for how legal aid can be improved. They fell into the broad categories of raising awareness; improving reach and access; improving existing services; creating a more conducive environment for providing and accessing legal aid; addressing structural problems; and securing the leadership and commitment of government. Specific recommendations under each of these categories were as follows:

- *Raise awareness*
 - o Start with *Grama Niladhari*, police, local government officers, *Samurdhi* officers, and others providing direct services in the community to increase their knowledge and secure their commitment to help people access legal aid and remedies.
 - o Provide information to different community groups such as school teachers, principals, children, and community-based organisations (e.g., Death Aid Societies, *Samurdhi* Societies, small scale savings and credit groups, organisations of women/farmers/fisher folk).
 - o Focus on increasing understanding of rights and laws, responsibilities and obligations, legal and non-legal remedies,
- functioning of government institutions vis-à-vis legal disputes, dispute resolution roles, and role of legal aid service providers.
- *Improve reach and access*
 - o Conduct more mobile clinics.
 - o Expand legal aid services to reach clients in rural villages (not only by setting up additional offices, but by appointing individual legal aid representatives at the community level).
 - o Increase the number of organisations providing legal aid.
- *Improve existing services*
 - o Employ more lawyers.
 - o Train lawyers to provide committed and professional legal aid services.
 - o Provide target group-specific specific legal aid (e.g., IDPs, estate workers, men).
 - o Expand the issues for which legal aid is provided (e.g., land).
 - o Improve client reception and support services (e.g., by providing counseling).
 - o Obtain the services of senior, more experienced lawyers.
 - o Concentrate more on follow-up activities.
- *Create a more conducive environment for providing and accessing legal aid*
 - o Train the judiciary on the role of legal aid, and create a more sensitive court environment for the poor and vulnerable.
 - o Create a pool of paralegals among the police, Divisional Secretary, and office of *Grama Niladhari* to forge a relationship between the community and legal aid service providers.
 - o Create and implement a more coordinated

- legal aid referral network among public officials and train them to support the legal aid process (e.g., providing documentation, follow-up).
- o In light of the barriers imposed by socio-cultural practices and attitudes, involve religious leaders in the legal aid process as catalysts to change negative views of legal aid as a means of dispute resolution.
- o Popularize citizens' groups (e.g., Civil Protection Committees, Vigilant Groups, Community Peace Groups) to change attitudes and provide avenues for redress of legal problems.
- o Further, the role of legal aid in education (secondary, university and specifically in legal education) is discussed as a means of creating a more conducive environment.
- *Address structural problems*
 - o Increase funding for legal aid.
 - o Create formal links between NGO and government service providers.
 - o Increase links with other service provider NGOs (e.g., community development NGOS, NGOs providing credit).
- *Monitor and evaluate legal aid services*
 - o Develop and implement a mechanism to evaluate and monitor legal aid providers and the services they are providing.
- o Form local legal aid monitoring committees comprising community leaders, religious leaders, police, government officers, and villagers.
- *Secure the leadership and commitment of government*
 - o Government must take full responsibility for access to legal aid services by: reviewing legal aid services being provided, facilitating improvements, creating space for NGO service providers, put in place a legal aid monitoring and evaluation system.
 - o As noted above, engage local public officials at all phases (awareness, access, support, follow-up, monitoring and evaluation) of the legal aid process.
 - o Eradicate corruption in government processes that affect legal aid service provision.

Together, these recommendations provide a useful basis for discussions about reform and enhancement of legal aid services.

8. Conclusions and Recommendations

KEY FINDINGS OF PREVIOUS ASSESSMENTS OF LEGAL AID

Before turning to a presentation of the main conclusions of this study and some specific recommendations for improving legal in Sri Lanka, it is useful to consider the main findings of three previous legal aid assessments. These assessments were conducted in 2000 and 2001 by the Centre for Women's Research (CENWOR),⁵¹ USAID,⁵² and the UNDP in partnership with the Ministry of Justice (note that this collaboration resulted in the production of two separate reports).⁵³ These assessments identified key gaps and challenges in legal aid service provision in Sri Lanka and provided recommendations for improvement. Key findings of these assessments were as follows:

- The USAID-facilitated Falt report concluded that communication should be expanded and regularized among legal aid providers through ongoing coordination to make the most efficient use of scarce resources.
- The CENWOR report recommended that the government recognize legal aid as a basic human right, and set in place a structured and accessible legal aid system for particularly marginalized groups, such as women facing legal disputes and seeking redress from violence.
- The UNDP/Ministry of Justice report by Fernando recommended establishing a Central Coordinating Body for legal aid in Sri Lanka; promoting cooperation with NGOs; regulating pro bono work among legal professionals; sensitizing the judiciary

to the need for legal aid; introducing clinical legal education; setting in place a monitoring system for legal aid; and enhancing financial support for legal aid through local marketing campaigns and individual contributions.

- The report Fontgalland prepared for the UNDP/Ministry of Justice recommended that there be an increased commitment by the State to an independent legal aid body free from political influence; coordination among service providers; targeted awareness-raising efforts; development of strategies to meet the needs of specific target groups; and reform to the Legal Aid Law. It is worth noting that no formal action has been taken by government or within the non-governmental service provider sector to implement any of these recommendations. This mapping exercise reveals that many of the core problems identified through these previous studies have not been addressed and are still hampering the outreach and effectiveness of legal aid delivery in Sri Lanka.

CONCLUSIONS

Based on analysis of the data and information emerging from this mapping exercise, it is possible to draw a number of conclusions about the current state of legal aid in Sri Lanka.

1) *The basic foundation for legal aid services is solid.*

There is a strong legal basis for legal aid in Sri Lanka.

⁵¹ Wijayatilake K and Wickramasinghe, M (2000). Women's Access to Legal Aid in Sri Lanka. Centre for Women's Research. Colombo.

⁵² Falt, Jeffrey L. (2000). Assessment of Legal Aid in Sri Lanka. USAID.

⁵³ Fernando, M (2001). Access to Justice Project Preparatory Assistance Phase. Consultancy Report for Ministry of Justice and UNDP and de Fontgalland, S.G. (2001). Access to Justice Project Preparatory Assistance Phase. Consultancy Report for Ministry of Justice and UNDP.

Legal aid is implicitly recognized as a fundamental right in the Constitution, especially when read with Sri Lanka's obligations under the ICCPR, which were enshrined in legislation through the International Covenant on Civil and Political Rights Act No. 56 of 2007. The Legal Aid Act of 1978 set up the Legal Aid Commission and gave it the mandate "to provide for the grant of legal assistance to deserving persons." Although these laws provide a solid framework for the provision of legal aid in Sri Lanka, it might still be useful to conduct a broader and deeper review of relevant legislation to evaluate the extent to which it is both reflective of the current situation and needs in the country and in line with international standards, with a view toward revising it as necessary.

The Sri Lankan government is committed to the delivery of legal aid, as evidenced by the expansion of the LAC's services over the past several years, as well as the recent increase in the government's budgetary allocation for the LAC. As a group, the NGO legal aid service providers appear to be strongly motivated by a sense of social responsibility, service, and social empowerment.

Sri Lankan legal aid service providers operate independently of government. One government-supported body (the Legal Aid Commission), one professional association (the Bar Association), and at least 12 NGOs are currently providing legal aid services to vulnerable, marginalized members of society around Sri Lanka. LAC, while supported by the state, works independently of other justice sector institutions, which at least in principle ensures its impartiality and equal access to the justice system for all citizens.

2) *Legal aid should not be considered in isolation, but as part of broader access to justice and human rights aims.*

It is important to view and treat legal aid as one aspect of a broader access to justice agenda. Under a more

holistic approach, legal aid services would be analyzed and addressed concurrent with other aspects of access to justice.⁵⁴

In expanding access to justice, legal aid needs to be looked at in conjunction with legal empowerment and legal awareness to strengthen people's capacities to demand justice remedies. Legal awareness can help people understand they have a right to claim remedies against infringements of their rights (such as protection from forced evictions, not to be forced to work without pay, or not to be tortured). Yet, people do not always know how to access these remedies, or may require professional help to do so. When seeking remedies through the justice system, legal counsel may assist them in making informed decisions and choices. However, inability to pay for litigation costs, or to communicate effectively, or the risk of traumatic consequences are all critical concerns when navigating the legal process. Under this vision, legal aid relates to all necessary capacities in this regard, including not only legal counsel, but also financial options and various forms of psycho-social support.

Efforts to improve and expand legal aid services in Sri Lanka could also benefit from a dialogue that looks at legal aid from a human rights and development perspective. This discourse would include reviewing the national legal aid legislation and framework to ascertain full compliance with requirements under international human rights law. It could also include: identification of ways to remedy current attitudes and practices that signal that legal aid is not viewed as a fundamental right; development of special programs to reach particularly marginalized and vulnerable citizens; and assessment of current eligibility requirements through a human rights lens. A human rights approach to legal aid would also require an increased focus on group (rather than individual) rights, public interest litigation, and law reform.

⁵⁴ See e.g. the England and Wales Access to Justice Act 1999 regulating all aspects of access to justice, not only legal aid.

3) *The policy aspects of legal aid have been neglected.*

With the rapid expansion of legal aid services over the last decade, it is an opportune time for Sri Lanka to articulate a broad vision for its legal aid scheme.

This vision is not contained in the legal aid-related legislation. The practical focus of the legislation and the rising demand on legal aid service providers have resulted in a rather narrow service delivery focus (particularly on the part of the LAC) that has prevented broader conceptualization and long-term thinking about and conceptualization of legal aid in Sri Lanka. A vision for legal aid could bridge the somewhat different orientations of the LAC (service delivery) and NGO service providers (promotion of justice, equality, and equity for all) and would necessarily be informed by the real needs of communities.

A vision and resultant national strategy for legal aid in Sri Lanka could be developed through a collaboration among the government, and professional (Bar Association), and NGO legal aid service providers. It would require a consultative process that involves all relevant stakeholders. This process would likely be more than a one-off consultation, and would therefore require protracted support. It might result in a stakeholders group that becomes institutionalized, with an ongoing policy formulation function. It is important that representatives of civil society and disadvantaged groups participate in this process.

4) *Socio-cultural factors have a major impact on access to legal aid.*

A national legal aid strategy must further analyze and address the deep-rooted social and cultural factors that affect people's access to legal aid.

Poverty is one of the issues that emerged from the mapping as a major barrier to legal aid access. Poverty was articulated both in terms of lack of resources to travel to legal aid service providers' offices, and in terms of the social isolation of marginalized communities.

The conflict was also mentioned in numerous discussions. People in conflict-affected areas feel physically insecure, resulting in a fear to travel far from their homes to access legal aid. Members of minority groups feel an even more acute sense of insecurity and lack of protection. There is evidence of this from the focus group discussions, as well as the analysis of access to legal aid (e.g., the finding that more Sinhala people are comfortable in approaching the police as the first point of contact with the justice system than are Tamils and Muslims).

Other socio-cultural issues that were raised in the mapping must also be considered, including norms that confine women to their communities, and lack of mobility for such groups as IDPs.

5) *Service providers must expand their geographic reach.*

The mapping reveals that while legal aid services are being provided for all types of marginalized and vulnerable people with a wide range of legal problems, some geographic areas are not being reached, resulting in a denial of access to services for parts of the population. Legal aid service providers are concentrated in Colombo (i.e., in Western province), with branch offices around the country. Their presence at the district level – i.e., in town areas – prevents many potential poor clients from accessing legal services when needed.

While locating legal aid offices in all towns and villages is not a practical solution, there is a need for service providers to appoint representatives in Divisional Secretariat Divisions, at a minimum. These representatives could come from a range of institutions (*Grama Niladhari*s, Divisional Secretariats, police at the divisional level, and community-based organisations of all types), with the mandate of providing legal aid access to people who are unable to travel to the main town due to poverty, security reasons, or other social and cultural barriers. For this to happen, it would be necessary to forge stronger links between LAC branch offices and

village level mechanisms, so that awareness of the LAC and its services extends to lower levels. These representatives could also serve as referral points for the LAC offices, so that when a problem is identified as appropriate for legal advice or assistance these institutions/organisations could refer individuals to the LAC.

The extension of legal aid services to underserved geographic areas is supported by Section 4(d) of the Legal Aid Act, which empowers the LAC to determine guidelines for the administration (including outreach) of legal aid and for the allocation of work and funds, considering inter alia the need for legal assistance to be readily available and easily accessible to those who need it. LAC efforts to work more closely with relevant government and non-government bodies is supported by section 4(f), which refers to the Commission's consultation with various groups in the performance of its functions.

6) The current focus of legal aid must be evaluated against pressing legal aid needs in society.

One finding of the mapping is that in both perception and reality, the bulk of legal aid cases are related to family disputes. It is not clear whether this is due to a conscious focus by service providers, or due to high client demand. This issue could use further exploration to ensure that legal aid is readily available for a broad range of issues, including such pressing security issues as abductions, disappearances, fundamental rights violations, and abuse of power by state officials.

7) The professionalism and expertise of legal aid lawyers could be improved.

The mapping showed that legal aid service providers employ a diverse staff that includes people of different genders, ages, and ethnic groups. Collectively, service providers' staff also have strong language skills and are able to deliver services to their clients in both Sinhala and Tamil.

At the same time, the survey of legal aid beneficiaries surfaced a number of concerns about the commitment and competency of legal aid lawyers, as well as a perception that legal aid is considered a training ground for new and inexperienced lawyers. It is important to keep in mind that such complaints about lawyers are complaints that are voiced more generally in Sri Lanka, even outside the context of legal aid. Lack of competence and commitment, however, are viewed as higher in the case of lawyers conducting legal aid, because their remuneration for such cases is lower than what they receive in a regular case. There is a perception that they give lower priority to their legal aid cases than other cases.

Improving the image of, and increasing respect for, legal aid in Sri Lanka will require demanding higher levels of professionalism and expertise from legal aid lawyers and private lawyers who do pro bono work in addition to their private practice.

Experiences from other countries show that legal aid services are enhanced when provided by full-time, salaried lawyers rather than by private lawyers, whether assigned from a panel or through some other procedure. This is supported by the mapping, which found a higher level of client satisfaction with the work of full-time lawyers in NGOs.

Sri Lanka uses a "mixed" system of legal aid provision, as do many other countries, whereby some cases are handled by staff lawyers, and others given to "panel" lawyers working in private practice. Within this mixed system, a number of strategies could be used to improve the effectiveness of legal aid lawyers. A policy could be put in place to ensure that in most cases, a staff lawyer takes on a case from start to finish, with minimal assigning of cases to private lawyers. In a more aggressive approach, the recruitment criteria for selection of legal aid lawyers could be revamped to ensure hiring of more experienced, qualified lawyers. This might entail increasing the pay of legal aid lawyers, but it could also result in the need to employ fewer staff, especially if

combined with other strategies to streamline services.

There could also be greater screening of lawyers who are eligible to serve on the panel of private lawyers willing to take on legal aid cases (e.g., selection criteria, submission of CVs, basic interview to assess competence). A minimum number of years' experience might be considered a pre-requisite. In addition, LAC could enter into an agreement with the Bar Association to obtain commitment from all its members, including the President's Counsel, to be available to take on legal aid cases if required, depending on their expertise and the complexity of the case.

8) *Current awareness-raising efforts are not sufficient.*

For marginalized and vulnerable people to have full access to legal aid, they must be aware of the services that are available to them. Many service providers combine awareness-raising about legal aid services with legal rights education. People who attend legal rights awareness sessions tend to be those who are already in contact with community organisations or part of local processes that help them access services. This may have the effect of hindering the diffusion of information about the availability of legal aid. Information about legal aid services must trickle down to those who do not have access to community organisations but are in need of legal services. It is therefore important for legal aid organisations to concentrate on publicizing their services as a separate issue, and ensure that information reaches vulnerable and marginalized people at the grassroots level.

The mapping shows that for beneficiaries of legal aid services, individuals were their primary source of information about legal aid services (e.g., family members, government officers in their personal capacity, neighbors, friends, and former recipients of legal aid). Reliance on information provided by the police and courts of law was minimal in comparison. The mapping also revealed concerns about the lack of awareness and negative attitudes of police, government officers, and

judges (albeit less so) toward legal aid, and the detrimental impact this has on people's access to services. This suggests that service providers must do a better job of equipping police and the courts with enough sensitivity and information to enable them to assist people who are already in court, engaging and empowering government officers at the community level to reach people who otherwise lack access to such information.

9) *Alternative dispute resolution should be more formally linked with legal aid services.*

The mapping highlights the strong relationship between alternative dispute resolution and legal aid. The legal aid beneficiaries surveyed aimed to resolve legal disputes by accessing the justice system. They sought a range of different legal aid services to resolve their problems, and were not solely focused on taking legal action in a formal court of law. There is a strong focus among service providers, and a willingness on the part of clients, to seek settlement of disputes outside the court system. However, this appears to be less of an articulated policy among service providers, and more of a common practice.

In the context of Sri Lanka's formal community mediation program and the support for alternative dispute resolution among service providers, it is important to create space for the more explicit promotion of alternative dispute resolution as a component of legal aid. This would have positive benefits for service providers, lawyers, and the judiciary and could provide speedier access to justice for clients seeking resolution of legal disputes.

10) *There must be consistent, rationally-allocated funding for legal aid services.*

The financial aspects of legal aid service provision are complex, and a complete analysis of service providers' budgets and expenditures has not been possible in this mapping due to lack of data. It is even more difficult to calculate the per-client cost of legal aid and compare it

with the benefit received, as legal aid funding is often coupled with activities that go beyond direct service provision, including legal empowerment, awareness raising on rights and laws, and community mobilization. It has not been possible, therefore, to gain even a good notional sense of overall spending on legal aid.

What is clear is that because legal aid service providers offer services completely free of charge (or accept modest contributions from clients on a pay-as-you-can basis), they must raise outside funds to support their operations. Funds come from international donors and sometimes local contributions from individuals, which have proven to be hard to track. The government currently provides a substantial grant to the LAC, but the LAC also relies on international donor assistance to supplement this grant.

There has been no attempt by the main donors interested in supporting legal aid to coordinate and rationalize the process of grantee selection and funding allocations, resulting in a situation where donor resources may not be achieving their maximum potential impact in terms of providing access to justice for marginalized and vulnerable people. Donors must coordinate their efforts, and these efforts must include a consensus and transparency in funding and expenditure on legal aid.

As noted above, this year there has been a substantial increase in the level of government contribution to the LAC. Unfortunately, this increase was not based on any long-term policy decision or direction, which is much needed. Despite ongoing discussion about the need for the state to assume responsibility for the funding of legal aid services, this has not yet happened.

11) Monitoring, evaluation, and quality controls must be improved.

The need for better monitoring and evaluation of legal aid provision was raised as a pressing need by the mapping exercise. There is no centralized or systematic mechanism for quality control, and the Legal Aid Act is

by and large silent on this point. This contributes to some of the perceived weaknesses in service provision, including lax management, ad hoc policies and practices, lack of accountability to clients, failure to serve those most in need, and erratic performance of lawyers and government officials in the process.

The establishment of an independent body to administer the legal aid scheme is a trend in international development of legal aid systems. Most countries that are developing or strengthening their state-funded system of legal aid see value in an intermediary body. This can take the shape of a regulatory body and/or service provider. It can take on the role of a clearing house for referrals, and also has the role of monitoring legal aid activities and priority needs in the country. It provides recommendations on the legal aid delivery system based on practical, on-the-ground experience. It should be composed of a board of government appointees and representatives from other sectors (e.g., the legal profession, the judiciary, civil society, disadvantaged groups). The body is financially accountable to the government.

Any legal aid monitoring system in Sri Lanka must be compatible with the independence and status of the LAC. Commissions in other countries may have in-built monitoring mechanisms. For semi-autonomous institutions like the LAC, the line Ministry should undertake a monitoring role (in Sri Lanka's case, the Ministry of Justice). Other issues for consideration are whether a monitoring system would be limited to the operations of the LAC, or cover all service providers; whether monitoring would be done at the district (and possibly lower) levels of governance; and whether the system would include a complaints mechanism that is accessible to all citizens.

With regard to evaluation of legal aid, the mapping highlighted the need for a participatory approach that includes a wide range of stakeholders in the evaluation process, including legal aid beneficiaries. A thorough, regular evaluation of service provision, with a genuine

commitment to soliciting and responding to clients' views, is essential to ensure accountability in the provision of legal aid.

Quality control is particularly important in a mixed system that relies on both full-time legal aid lawyers and private panel lawyers who provide legal aid on an occasional basis. It is the central authority's role (in Sri Lanka's case, the LAC's role) to establish, enforce, and frequently review quality control systems, in consultation with service providers and the bar association. Quality control systems must be applied to the services directly provided by the central authority, and also for services that may be contracted out to third parties.

12) The Legal Aid Commission's ability to play an enhanced role should be evaluated.

It is premature to draw conclusions from this mapping about the existing capacities of the Legal Aid Commission, as an assessment of the LAC was not part of the scope of work. Going forward, it will be important to examine whether the Legal Aid

Commission has the necessary capacity and orientation to serve as a regulatory body for all modalities of publicly-funded legal aid in Sri Lanka. If it were to play this role, the LAC's functions would be greatly expanded. The LAC would need to set up systems for "contracting out" legal aid services; monitor legal aid needs; balance needs with the supply of services; make recommendations to government about funding allocations for legal aid provision; and ensure quality of service delivery. The LAC's governing structure might also need to be revised to include members of civil society.

SPECIFIC RECOMMENDATIONS

The conclusions drawn from this mapping exercise suggest a number of specific recommendations for improving the legal and institutional environment for legal aid in Sri Lanka, as well as the quality and quantity of legal aid services available. These recommendations fall under a number of priority issue areas and include action items for government, NGOs and the Bar Association, and donors that support legal aid.

Issues	Recommendations for:		
	Government	NGOs and the Bar Association	Donors
Create a National Legal Aid Policy and Strategy	Develop a clear vision, goals, and objectives for legal aid in Sri Lanka through conceptualization and articulation of a national policy and strategy. Government should lead NGO service providers, the Bar Association, and donors in a consultative process that involves all stakeholders (particularly legal aid beneficiaries).	Participate in development of the national policy and strategy for legal aid in Sri Lanka.	Establish a donor coordination group for legal aid to support the national policy and strategy process.
Create a supportive legislative environment	Conduct a comprehensive review of legislative provisions for legal aid in Sri Lanka aimed at long term recommendations for law reform and Constitutional recognition for legal aid.		

<p>Increase coordination and collaboration among service providers</p>	<p>Establish a coordination and networking mechanism for legal aid. Review role and functions of the Consortium of Legal Aid Organisations. Put in place a mechanism that ensures better, more cohesive service delivery; higher standards of quality and quality control mechanisms; referral systems; coordination and better utilization of resources; a complaints mechanism that includes provisions for redress; and monitoring, evaluation, and reporting to ensure effectiveness, efficiency, productivity, and accountability.</p>	<p>Enter into Memorandum of Understanding with the Legal Aid Commission to ensure full geographic coverage, improve access by all citizens, and meet diverse legal aid needs. Goals are to achieve efficiency and effectiveness as well as to avoid duplication.</p>	<p>Conceptualize and implement a donor coordination mechanism for legal aid with the full participation of state, NGO, and Bar Association service providers.</p>
<p>Increase access to legal aid</p>	<p>Review the impact of the eligibility cut-off mark of Rs. 6000 month. Consider raising it to Rs. 8000 per month.</p> <p>Improve availability of legal aid for older people over 55.</p>		
	<p>Develop strategies to ensure access to legal aid for particularly marginalized and vulnerable groups; the economically deprived; minorities; those facing cultural discrimination; and those who are geographically marginalized.</p>		
	<p>Appoint legal aid representatives at levels lower than the district level to ensure services trickle down to the grassroots level. Examine the possibility of enlisting support of community- level government officers, NGO representatives, and legal practitioners to form a referral system to direct the needy to service providers.</p>	<p>Assist Government with representation at grassroots level.</p>	
<p>Increase lawyers' professional commitment to legal aid</p>	<p>Encourage lawyers to provide pro bono legal aid services as an ethical duty.</p>	<p>This is a natural role for the Bar Association</p>	
	<p>Establish a Code of Ethics for lawyers.</p>	<p>This is a natural role for the Bar Association</p>	
	<p>Incorporate content about legal aid in the law school curricula.</p> <p>Develop regulations to ensure law students' access to professional development opportunities in the field of legal aid, including internships.</p>	<p>This is a natural role for the Bar Association</p>	

Raise awareness of the importance and availability of legal aid services	Develop a policy on awareness-raising.		
	Concentrate on publicity as a separate function to ensure that information reaches all vulnerable and marginalized people at the grassroots level.		
	Equip police and the courts with information about legal aid services to enable them to take a proactive role in referrals, assist people who are already in court.		
	Equip government offices at the community level with information about legal aid services to reach people who otherwise have no access to such information.		
Improve monitoring, evaluation, and quality control	Ensure that legal aid priorities are met at all times: identify the extent and nature of needs for legal aid, tailor the system to meet these needs.		
	Develop minimum quality standards for legal aid services, ensure quality of services.		
	Establish payment criteria for legal aid lawyers and ensure its efficient administration.		
	Conduct a capacity assessment of the Legal Aid Commission.		
Establish closer links between legal aid and ADR	Develop procedural norms that introduce and encourage use of ADR within context of legal aid service provision; focus attention of service providers, lawyers, and the judiciary on ADR as a mechanism for speedy access to justice for clients seeking legal aid.		
Improve documentation and use of information	Gather and maintain data on legal aid, with a view to make adjustments in the system.		

Provide consistent, rationalized funding for legal aid	Include provision for an annual State allocation for legal aid in the National Strategy for Legal Aid in Sri Lanka.	Put mechanisms in place to ascertain the full cost of legal aid services (e.g., cost of court cases, advice, referrals, welfare assistance to clients) and full level of funding received for legal aid (both funding support and in-kind contributions).	Map the donor funding base for legal aid.
			Support the government to develop Fund Management Guidelines for legal aid, incorporating a periodic transparent review of receipt and utilisation of resources allocated for legal aid.
Carry out a cost benefit analysis to ascertain the full use of resources for legal aid.			

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Annex 1: Providing Legal Services for Internally Displaced Persons

The Mapping of Legal Aid Services in Sri Lanka focused on internally displaced persons as a specific beneficiary group. The intention of this focus was to provide a general overview of legal aid services available to internally displaced people in Sri Lanka in order to identify gaps and challenges in service provision. The United Nations High Commissioner for Refugees (UNHCR) was particularly concerned about this aspect of the Mapping.

In September 2007, the total number of internally displaced persons (IDPs) in Sri Lanka was said to stand at some 503,000, including more than 190,000 persons newly displaced by the upsurge in violence in April 2006. The main cause of displacement is the north east conflict where numbers of displaced people have

changed and grown in the past two years. The 2004 tsunami swelled the numbers of displaced but four years after, these numbers have reduced except those who were displaced by the tsunami and repeatedly displaced by the conflict.

UNHCR figures show that in January 2008 the number of IDPs alone stood at 797,000.

LEGAL AID SERVICES FOR IDPs

Access to justice for IDPs is a focus of UN agencies, international and local NGOs although the legal aid law of Sri Lanka does not specifically recognize providing access to justice for IDPs as a priority.⁵⁵

Planning figures							
Type of population	Origin	Jan 2008		Dec 2008 - Jan 2009		Dec 2009	
		Total in country	Of whom assisted by UNHCR	Total in country	Of whom assisted by UNHCR	Total in country	Of whom assisted by UNHCR
Refugees	Pakistan	150	150	140	140	130	130
	Various	40	40	40	40	20	20
Asylum-seekers	Pakistan	120	120	110	110	100	100
	Various	30	30	30	30	30	30
Returnees (Refugees)		200	20	1,000	100	3,000	250
IDPs		797,000	797,000	787,000	787,000	665,000	665,000
Refugees (IDPs)		50,000	50,000	102,000	102,000	100,000	100,000
Others of concern		5,000	2,000	15,000	5,000	20,000	5,000
Total		852,530	849,340	905,310	894,410	788,270	770,520

source: www.unhcr.lk

⁵⁵ See Andres A. (2008). National Legal Framework for IDPs in Sri Lanka - A Critical Analysis. Institute of Peace and Conflict Studies. India. for an in depth discussion on the legal framework for IDPs in Sri Lanka.

A 2008 study titled “National Legal Framework for IDPs in Sri Lanka - A Critical Analysis” provides background to the legal framework in Sri Lanka for IDPs. This study centres on the legal entitlements of internally displaced persons (IDPs) in Sri Lanka (in the background of the war that has led to one of the worst crises of internal displacement in South Asia). The study highlights various legislative and administrative frameworks that are looking at protection issues and it is clear that access to justice is a right which is recognized in general.

The Legal Aid Commission (LAC) as the main government supported legal aid service provider, focuses on IDPs as a special target group. The LAC IDP Desk articulates its commitment as follows:

- To visit the internally displaced persons in their camps.

- To discuss their problems in their day to day life and coordinate with the relevant authorities.
- To report to the Government and Relief Agencies in order to help them to return to their homeland.
- To make the parties aware of the Deng Guiding Principles on internal displacement as Deng Principles apply to displacement due to natural as well as man made disasters.
- To help the IDPs to get their legal documents, such as Birth certificates, Identity Cards, etc.

LEGAL AID SERVICES SUPPORTED BY UNHCR⁵⁶

In terms of strategic focus, UNHCR provides the most strategic input into facilitating access to justice for IDPs. Through its various monitoring and protection projects, its field presence and particularly its National Protection

Budget (USD)			
Activities and services	Annual Programme Budget		
	2007	2008	2009
Protection, monitoring and coordination	2,330,145	4,860,652	4,860,652
Community services	1,169,613	750,072	1,830,000
Domestic needs	598,019	717,380	1,537,925
Education	24,594	0	0
Health	14,757	0	0
Legal assistance	970,512	775,337	2,032,075
Operational support (to agencies)	350,116	175,000	200,000
Shelter and other infrastructure	0	750,000	1,500,000
Transport and logistics	208,390	283,200	600,000
Total operations	5,666,146	8,311,641	12,560,652
Programme support	1,665,634	2,477,700	2,477,700
Total	7,331,780	10,789,341	15,038,352
source: www.unhcr.lk			

56 <http://www.unhcr.lk/>

Network, UNHCR monitors the general welfare and human rights situation of IDPs. The UNHCR national protection network consists of UNHCR field offices, government institutions and NGOs and works with the aim of ensuring that displaced people have at least the same level of effective national protection as individuals who have never been forced to flee.

UNHCR's mandate⁵⁷ in Sri Lanka includes ensuring the right to access to justice. Its main objectives for 2008/9 specifically address the issues of access to justice and legal assistance as "to provide protection monitoring, reporting and advocacy for IDPs and assist them with legal assistance and individual protection interventions as necessary."

UNHCR's key targets for 2008 and 2009 further include access to legal aid as a key issue identified as "IDPs have better access to national protection mechanisms, including

free legal aid." In keeping with this, UNHCR has allocated USD 2,807,412 for providing legal assistance to IDPs in the years 2008 and 2009.

UNHCR's main partner in legal aid provision in Sri Lanka is the Norwegian Refugee Council (NRC). This support is categorized as part of UNHCR's efforts to maintain the national protection network by supporting various implementing partners. NRC maintains legal aid service providing offices, runs free legal aid clinics, and provides court representation to IDPs to facilitate the recovery of lost documents, such as birth, death and marriage certificates, or land and property deeds.

According to the findings of the Mapping of Legal Aid Services in Sri Lanka, UNHCR provides the largest single contribution for legal aid (Rs. 42 million, or USD \$338,335). This is provided to one single partner, the NRC.

Funding for Legal Aid (2007/08) (information provided by Service Providers)		
Donors	Number of service providers supported	Amount (Rs.)
UNHCR	1	42,000,000
SIDA	3	28,200,000
Norwegian Church Aid	2	12,970,000
UNDP	6	18,680,000
The Asia Foundation	4	11,600,000
ECHO	2	8,400,000
NORAD	3	8,000,000
CIDA	2	5,000,000
UNFPA	1	Amount not mentioned
USAID	1	Amount not mentioned
OXFAM	1	Amount not mentioned
Co Aid	1	Amount not mentioned
Bread for the World		Amount not mentioned
Open University	1	Amount not mentioned
Individuals	4	800,000

⁵⁷ to achieve sustainable peace, several fundamental issues need to be addressed. These include respect for human rights by all parties, security, reconciliation of communities, durable solutions for IDPs, protection of minority rights, compensation and the resolution of land and property issues. In the search for durable solutions, there are many obstacles, ranging from security issues, lack of basic infrastructure and income-generation and livelihood opportunities to continued violence, repeated displacement, and disrupted access to food, employment, health facilities and education.

The NRC target IDPs as their sole beneficiary group. NRC works in the districts of Ampara, Batticaloa,

Trincomalee, Vavuniya and Puttalam and in 2007, served 10,870 IDP clients.

Number of clients served and cases handled by service providers in 2007		
Service Provider	Number of Clients served	Number of cases
Muslim Women's Research and Action Forum	150	36
Norwegian Refugee Council	10,870	10,870
Institute of Human Rights	1,346	372
National Centre for Victims of Crime	600	150
Open University of Sri Lanka	30	30
Consortium of Humanitarian Agencies	1,750	1,750
Centre for Policy Alternatives	no answer	0
Women in Need	225,686	23,132
Lawyers for Human Rights and Development	800	450
Legal Aid Foundation	437	437
Home for Human Rights	1,700	1,123
Sarvodaya Legal Services Movement	7,136	23
Total for 2007	250,505	38,373

The other legal aid service providers⁵⁸ studied in the Mapping serve IDPs as one of the beneficiary groups

served. Sixty-six percent (66%) of these service providers serve IDPs.

Type of legal aid clients served	
Type	Percentage of organisations providing services
IDP	66%
Estate workers	66%
Urban poor	83%
Women victims of violence	100%
Women heads of households	66%
Detainees	66%

In terms of legal issues, IDPs have sought legal services on family matters, civil issues including documentation

needs and on fundamental rights issues.

⁵⁸ Muslim Women's Research and Action Forum, Institute of Human Rights, National Centre for Victims of Crime, Open University of Sri Lanka, Consortium of Humanitarian Agencies, Centre for Policy Alternatives, Women in Need, Lawyers for Human Rights and Development, Legal Aid Foundation, Home for Human Rights, Sarvodaya Legal Services Movement.

Legal issues by Beneficiary Category						
Beneficiary category	Legal Issue					
	Civil	Criminal	Family	Fundamental Rights	Land	Total
Estate workers	7	3	30	3	2	45
IDPs	15	1	22	10	3	51
Urban poor	6	2	10	7	7	32
Women head of households	3		26			29
Women victims of violence	2		21			23
No category mentioned	20	3	24	20	10	77
No answer	-	-	-	-	-	9
Grand Total	53	9	133	40	22	266

Looking at barriers to legal aid access and effective service delivery, focus groups particularly in high IDP concentrated areas such as Puttalam, Trincomalee, Batticaloa and Mannar, report being denied access to legal services due to the security situation and the community's vulnerability in the areas. This appears to be more of a problem within communities of newly-displaced people and within recent returnee communities, like Muttur, than among people who have been displaced long-term, such as in Puttalam.

The recommendations arrived at in the Mapping apply directly to IDPs as they do to other marginalized and vulnerable communities around the country. A more systematic and geographically far reaching legal aid service as envisaged by the recommendations will ensure that IDPs are better served.

Annex 2: Legal Aid Service Providers included in the Report

1. Muslim Women's Research and Action Forum
2. National Centre for Victims of Crime
3. Institute of Human Rights
 - a. branch office in Jaffna
4. Open University of Sri Lanka
5. Consortium of Humanitarian Agencies
6. Centre for Policy Alternatives
7. Women In Need
 - a. branch offices in Jaffna, Matara, Puttalam, Kandy, Badulla, Anuradhapura
8. Lawyers for Human Rights and Development
9. Norwegian Refugee Council
 - a. branch office in Batticaloa, Vavuniya, Ampara, Trincomalee, Puttalam
10. Legal Aid Foundation
 - a. branch offices in Colombo, Kegalle, Jaffna, Polonnaruwa, Badulla, Batticaloa, Ampara, Nuwara Eliya, Anuradhapura, Puttalam, Embilipitiya, Moneragala, Hambantota, Matara, Galle, Mannar, Kurunegala, Hatton
11. Home for Human Rights
 - a. branch offices in Batticaloa, Ampara, Jaffna, Hambantota
12. Sarvodaya Legal Services Movement

Original list of Service Providers reached	
Legal Aid Commission of Sri Lanka	Interviewed
Centre for Policy Alternatives – Legal Unit, Colombo	Interviewed
Consortium of Humanitarian Agencies, Colombo	Interviewed
Caritas – SEDEC, Colombo	Interviewed
Environmental Foundation, Colombo	Limited-operations
Forum for Human Dignity, Colombo	Non-operational
Organisation of Parents and Families of the Disappeared, Colombo	Non-operational
Home for Human Rights, Colombo	Interviewed
Lawyers for Human Rights and Development, Colombo	Interviewed
Institute of Human Rights, Colombo	Interviewed
Legal Aid Centre - Law College, Colombo	Non-operational
Janasansadaya (Peoples Forum), Colombo	Interviewed
Legal Aid Foundation, Colombo	Interviewed
Muslim women's Research and Action Forum, Colombo	Interviewed
Muslim Peace Secretariat, Colombo	No response

Norwegian Refugee Council	Interviewed
National Centre for Victims of Crime, Colombo	Interviewed
Rights Now, Colombo	Non-operational
Right to Life Human Rights Centre, Katunayake	Interviewed
Sarvodaya Legal Services Movement, Moratuwa	Interviewed
Vehilihini Development Centre, Moneragala	Interviewed
Women in Need, Colombo	Interviewed
Women's Resource Centre, Kurunegala	No response
Community Trust Fund, Puttalam	Interviewed
Siyath Foundation, Colombo	Interviewed
Young Men's Christian Association	No response
Open University of Sri Lanka	Interviewed

Annex 3:

Type of legal aid clients served by service provider								
Name	IDP*	EW	UP	WV	WHH	MV	CHILD	DETAIN
Muslim Women's Research and Action Forum	yes	no	No	yes	yes	yes	yes	no
Norwegian Refugee Council	yes	no	No	yes	no	yes	yes	yes
Institute of Human Rights	no	yes	Yes	yes	no	yes	yes	yes
National Centre for Victims of Crime	yes	yes	Yes	yes	yes	yes	yes	yes
Open University of Sri Lanka	no	no	Yes	yes	yes	no	no	no
Consortium of Humanitarian Agencies	no	yes	Yes	yes	yes	yes	yes	yes
Centre for Policy Alternatives	yes	no	Yes	yes	no	no	no	yes
Women in Need	yes	yes	Yes	yes	yes	yes	yes	yes
Lawyers for Human Rights and Development	yes	yes	Yes	yes	yes	yes	yes	no
Legal Aid Foundation	yes	yes	Yes	yes	no	no	yes	no
Home for Human Rights	no	yes	Yes	yes	yes	yes	yes	yes
Sarvodaya Legal Services Movement	yes	yes	Yes	yes	yes	yes	yes	yes
*IDP – Internally Displaced Persons and Returnees								
EW – Estate Workers								
UP – Urban Poor								
WV – Women victims of violence								
WHH – Women Heads of Households								
MV - Men victims of violence								
CHILD – Child related issues								
DETAIN - Detainees								

Type of services provided by services providers					
Name	Legal Advice	Counselling	Court Representation	Referral to Legal Aid Organisations	Referral to non legal aid organisations
Muslim Women's Research and Action Forum	yes	yes	yes	yes	yes
Norwegian Refugee Council	yes	yes	yes	yes	yes
Institute of Human Rights	yes	yes	yes	yes	yes
National Centre for Victims of Crime	yes	yes	yes	yes	yes
Open University of Sri Lanka	yes	yes	no	no	no
Consortium of Humanitarian Agencies	yes	yes	yes	yes	yes
Centre for Policy Alternatives	no	no	yes	yes	yes
Women in Need	yes	yes	yes	yes	yes
Lawyers for Human Rights and Development	yes	no	yes	yes	yes
Legal Aid Foundation	yes	yes	yes	yes	yes
Home for Human Rights	yes	yes	yes	yes	yes
Sarvodaya Legal Services Movement	yes	yes	yes	yes	yes

Method of service provision by service provider					
Name	Walkin	ref/org	ref/police	ref/court	ref/ind
Muslim Women's Research and Action Forum	Yes	yes	yes	yes	yes
Norwegian Refugee Council	Yes	yes	yes	yes	yes
Institute of Human Rights	Yes	yes	yes	no	yes
National Centre for Victims of Crime	Yes	yes	yes	yes	yes
Open University of Sri Lanka	Yes	no	no	no	no
Consortium of Humanitarian Agencies	Yes	yes	yes	yes	yes
Centre for Policy Alternatives	No	no	no	no	yes
Women in Need	Yes	yes	yes	yes	yes
Lawyers for Human Rights and Development	Yes	yes	yes	yes	yes
Legal Aid Foundation	Yes	yes	yes	yes	yes
Home for Human Rights	Yes	yes	no	no	yes
Sarvodaya Legal Services Movement	Yes	yes	yes	no	no

Client Servicing Cost			
Service Provider	Annual expense (Rs.)	number	Client servicing cost per client (Rs.)
Muslim Women's Research and Action Forum	900,000	150	6,000
Norwegian Refugee Council	not mentioned	10870	-
Institute of Human Rights	25% of org cost	1346	-
National Centre for Victims of Crime	1,000,000	600	1,666
Open University of Sri Lanka	240,000	30	8,000
Consortium of Humanitarian Agencies	not mentioned	1750	-
Centre for Policy Alternatives	not mentioned	no answer	-
Women in Need	6,267,115	225,686	27
Lawyers for Human Rights and Development	100,000	800	125
Legal Aid Foundation	not mentioned	437	-
Home for Human Rights	4,600,000	1700	10,526
Sarvodaya Legal Services Movement	27,500	7136	4

Documentation and record keeping by service providers					
Service Provider	Who keeps records	written records	ad hoc computer	Data base	client files
Muslim Women's Research and Action Forum	centre manager	yes	yes	no	yes
Norwegian Refugee Council	project coordinators, legal advisers and assistants	yes	no	yes	yes
Institute of Human Rights	coordinators of legal unit	yes	no	yes	yes
National Centre for Victims of Crime	legal officers	yes	yes	no	no
Open University of Sri Lanka	lawyer	yes	no	no	no
Consortium of Humanitarian Agencies	district officer, district lawyer, national programme officer	yes	no	no	yes
Centre for Policy Alternatives	coordinator, legal and constitutional unit	yes	no	yes	no
Women in Need	lawyers on staff	yes	no	yes	no
Lawyers for Human Rights and Development	legal officers	no	yes	no	yes
Legal Aid Foundation	director/accountant	yes	yes	no	yes
Home for Human Rights	each unit	yes	no	yes	no
Sarvodaya Legal Services Movement	district centre staff	yes	yes	no	no

Annex 4: Non Service Provider Organisations Reached to Access Beneficiaries

1. Kandurata Community Development Foundation, Kandy
2. Caritas, Colombo 8
3. Kurunduwatte Women's Bank, Rajagiriya
4. Janasansadaya
5. Vehilihini Development Centre, Moneragala
6. Viluthu, Batticaloa
7. Nusrath Women's Centre, Badulla
8. Siyath Foundation, Hikkaduwa
9. Right to Life Human Rights Centre, Katunayake
10. Community Trust Fund, Puttalam

Geographic distribution of beneficiaries (by Province and District)			
Province	Beneficiaries	District	Beneficiaries
North	29	Jaffna	18
		Mannar	11
South	16	Galle	2
		Hambantota	3
		Matara	11
East	60	Ampara	30
		Batticaloa	30
West	53	Colombo	22
		Gampaha	18
		Kalutara	13
North Central	1	Anuradhapura	1
Central	60	Kandy	50
		Nuwara Eliya	10
Uva	31	Badulla	9
		Moneragala	22
Sabaragamuwa	1	Ratnapura	1
North West	14	Puttalam	14

Geographic distribution of beneficiaries (by specific location)		
District	Specific location	Beneficiaries
Ampara	1. Alayadiwembu	1
	2. Ampara	1
	3. Addlachchenai	1
	4. Damana	2
	5. Karativu	7
	6. Kalmunai	7
	7. Kalmunai Muslim	1
	8. Kalmunai Tamil	4
	9. Navithanveli	1
	10. Paandiruppu	1
	11. Sainthamaruthu	1
	12. Thirukkovil	1
	13. Uhana	2
Anuradhapura	14. Kekirawa	1
Badulla	15. Lunugala	4
	16. Passara	5
Batticaloa	17. Vattaram	1
	18. Aarayampathy	1
	19. Chenkaladi	2
	20. Eravur	2
	21. Kaluwanchikudi	13
	22. Manmunai North	9
	23. Vellaweli	1
	(blank)	1
Colombo	24. Borella	1
	25. Colombo	1
	26. Dehiwala	1
	27. Kolonnawa	1
	28. Kotte	1
	29. Maharagama	1
	30. Oruwala	1
	31. Ratmalana	1
	32. Sri Jayawardenepura Kotte	10
	33. Thimbirigasyaya	2

Galle	34. Akmeemana	1
	35. Habaraduwa	1
Gampaha	36. Attanagalla	1
	37. Gampaha	2
	38. Ja-Ela	1
	39. Katana	1
	40. Kelaniya	1
	41. Mahara	1
	42. Mirigama	1
	43. Minuwangoda	2
	44. Negombo	4
	45. Wattala	3
Hambantota	46. Ambalantota	1
	47. Angunakolapelessa	1
	48. Hambantota	1
Jaffna	49. Chankanai	2
	50. Chavakachcheri	2
	51. Jaffna	4
	52. Kaarainagar	1
	53. Koappay	2
	54. Kopay	1
	55. Kyts	1
	56. Nallur	1
	57. Sandilippay	2
	58. Uduvil	1
	(blank)	1
Kalutara	59. Beruwala	1
	60. Bulathsinhala	1
	61. Kalutara	2
	62. Kalutara South	3
	63. Mathugama	2
	64. Panadura	4
Kandy	65. Deltota	7
	66. Gangawata Korale	1
	67. Nawalapitiya	1
	68. Udunuwara	1

Mannar	69. Madhu	1
	70. Mannar	6
	71. Nanaddan	4
Matara	72. Dickwella	1
	73. Hakmana	1
	74. Kamburupitiya	2
	75. Kotapola	1
	76. Malimbada	1
	77. Matara	2
	78. Meddawatte	1
	79. Thihagoda	1
Moneragala	80. Badalkumbura	1
	81. Bibile	3
	82. Buttala	3
	83. Katharagama	3
	84. Madulla	1
	85. Moneragala	3
	86. Sevanagala	1
	87. Siyambalanduwa	3
	88. Thanamalvila	2
	89. Wellawaya	2
Nuwara Eliya	90. Ambagamuwa	37
	91. Ginigathhena	13
Puttalam	92. Dankotuwa	1
	93. Kalpitiya	1
	94. Puttalam	11
	95. Wennappuwa	1
Ratnapura	96. Ratnapura	1

Annex 5: Participants of Focus Group Discussions

Ampara/Kalmunai (5 May 08) *Grama Niladharis*, teachers, religious leaders (Christian, Buddhist, Islamic), Probation officers, Staff from Labour Department, Academics, NGOs

Batticaloa (6 May 2008)

Grama Niladhari, President Saradha Women's Organizations, teachers, *Samurdhi* Officer, Youth club president, teachers, NGOs, teachers, religious leaders

Hikkaduwa (20 May 08)

School Principal, *Samurdhi* officer, community leaders, civil society organisation heads, legal aid beneficiaries

Kandy/Deltota (8 May 08)

Religious leaders, *Samurdhi* officers, Representative of the Divisional Secretariat Office, *Grama Niladhari*, NGOs, legal aid beneficiaries

Kurunegala /Kuliyapitiya (10 May 2008)

Lawyers (private bar), Counsellor (Sarvodaya), legal officer (Sarvodaya), Police officer (Women's desk), *Samurdhi* officer, Community leaders, legal aid beneficiaries

Matara (21 May 08)

NGOs, Additional District Secretary, Police Women and Children's Desk Officer, Violence Against Women District Network Representative, *Grama Niladhari*

Moneragala (14 May 08)

Religious leaders, *Samurdhi* officers, Police Officers - Women and Children's Desk, Representative of the Divisional Secretariat Office, *Grama Niladhari*, Journalists, NGOs and community leaders

Puttalam (7 May 08)

Religious leaders, *Samurdhi* officers, Representative of the Divisional Secretariat Office, *Grama Niladhari*, teachers, Internally Displaced community members, NGOs

Trincomalee/Muttur (8 May 08)

Justice of the Peace, Teachers, NGOs, *Samurdhi* officers, religious leaders (Islam and Hindu)

Nuwara Eliya/Hatton (27 May 08)

Lawyers (private bar), NGOs, Police officer (ASP), *Samurdhi* officers, Representative of Divisional Secretariat, *Grama Niladhari*, legal aid beneficiaries

Mannar (13 June 08)

NGOs, Additional District Registrar (ADR), Judicial Medical officer (JMO), Citizen Committee, *Grama Niladhari*, Assistant Divisional Secretary (ADS) Mannar

Annex 6: Case Studies from Different Jurisdictions

Different systems provide lessons on different aspects of legal aid. As it is well documented in comparative law literature, it is not feasible nor recommended to "transplant" a system of another country or to try and emulate it in toto. It is more useful to analyse steps taken and pilot initiatives taken by other systems to see what are the lessons learned in trying out specific ideas for improving parts of the domestic system. Even very sophisticated models from countries that provide a vast amount of funds can offer lessons on how they have evolved or on particular aspects of legal aid schemes that they have experimented successfully with over the years. The example of the UK and Wales on the evolution from management of the legal aid scheme to the establishment of an independent legal aid body and for the establishment of effective quality control systems might be of interest. Other jurisdictions that have more recently evolved from conflict or transition, provide more general examples of the considerations to be made when developing or strengthening a legal aid system.

The following case studies do not aim at describing the system in full but highlight those features that could be of greater interest in the context of strengthening the existing legal aid system of Sri Lanka:

1. South Africa - The provision of integrated legal aid services
2. India - Introducing a continuum of Legal Services, ADR and legal aid
3. England and Wales - Involving the profession and developing quality controls
4. Serbia - Legal Aid innovations fund with the Ministry of Justice

THE PROVISION OF INTEGRATED LEGAL AID SERVICES IN SOUTH AFRICA⁵⁹

Structural factors

South Africa is a useful model for transition and developing countries as it demonstrates what can be accomplished with a modest per capita annual expenditure on legal aid of approximately US\$ 1.36. The South African Constitution⁶⁰ requires legal aid in criminal cases. Approximately 85% of the South African legal aid budget is expended on legal services to criminal defendants. Consequently, the Legal Aid Board⁶¹ has adopted a number of creative methods to maintain its provision of legal aid in both criminal and civil cases.

In South Africa, as in England, lawyers are divided into advocates (barristers), and attorneys (solicitors).⁶² In 2003, it was estimated that approximately 15,000 attorneys and 2,500 advocates served a South African population of approximately 45 million people.⁶³ All

⁵⁹ This section is an abstract of the following articles: D. Mcquoid-Mason, "South African legal Aid in non-criminal cases," 2005 OSI; J. Bodenstien, "The role of university based law clinics in the provision of legal aid in South-Africa," ILAG Conference 2007; H. Van As "Legal Aid in South Africa: Making Justice Reality," *Journal of South African Law*, 49, 1 (2005) H. Van As "Though paper: The Development of a model for the supply of integrated legal aid services in South Africa," OSI 2005.

⁶⁰ Constitution of the Republic of South Africa Act 108 of 1996 s 35. See below foot note 12.

⁶¹ The Legal Aid Board was established in terms of the Legal Aid Act 22 of 1969 s 2. See below para 2.1. See below para 3.

⁶² At the end of the apartheid era 85% of the legal profession were white and 15% black, while 85% of the population was black ((2000) 24 *Fordham International Law Journal* (Symposium) S 111).

⁶³ Trudie Jordaan, Legal Aid Board Administration Officer: presentation to the Lithuanian Legal Aid Parliamentary Working Group during a visit to the Legal Aid Board Head Office, Johannesburg 1 April 2003. Of these approximately 6 000 participated in the legal aid scheme (ibid).

law graduates in South Africa must undertake an internship either as pupil advocates or candidate attorneys⁶⁴ before admission to practice.⁶⁵ The 21 university law schools in South Africa annually graduate approximately 3,000 graduates, of whom approximately 1,500 require internships in order to enter practice.⁶⁶ The comparatively large number of law schools with legal aid clinics, and the large pool of law graduates required to undertake internships with qualified lawyers, enables law students and law graduate interns to play a valuable role in assisting the national legal aid body - the Legal Aid Board - with the delivery of legal aid services.⁶⁷

The Constitutional provisions

The first attempt to establish organised legal aid in South Africa was made in 1935, resulting in the setting-up of a number of legal aid bureaus. This was followed by a state initiated legal aid scheme in 1962 and, eventually, the constitution of the South African Legal Aid Board in 1969.

The adoption of a Bill of Rights at the end of the twentieth century heralded the dawn of a new era, not only for the country, but also for the Board that had been in hibernation for the 25 years preceding independence. Constitutional provision was made for the right to a fair hearing, the right to equality before the law, the right to choose and consult with legal

practitioners, as well as the right to have legal practitioners assigned by the state and at state expense if substantial injustice would otherwise result. Two elements in the Constitution attempt to achieve access to a fair hearing namely equal access to the courts and the right to legal representation. These elements are seen as the main components of access to justice.⁶⁸

The state endeavours to fulfill its Constitutional obligations and to provide access to justice through the Legal Aid Board. Its mission is to provide independent and impartial legal services to as many poor persons with deserving cases as possible and to provide legal representation at the expense of the state, in accordance with the Constitution. For the first 30 years of its existence the Board met its mandate through the judicare system, but the advent of democracy and the commitment to equal access to justice led to a dramatic increase in demand for legal aid – an increase the judicare system could not cope with.

The provisions of the South African Constitution requiring legal aid in criminal cases dramatically influenced the ability of the Legal Aid Board to deliver legal aid in non-criminal cases.⁶⁹ The vast majority of the Legal Aid Board's budget is earmarked for criminal legal aid. Of the 236,282 new matters taken by the Board's justice centres during the period April 2003 to March 2004, 209,002 (88%) were criminal cases and only 27,280 (12%) were civil matters.⁷⁰

⁶⁴ Candidate attorneys also must attend an approved practical training course: Attorneys Act of 1979 s 2. Such courses vary from five month full-time practical training schools to part-time five week short courses (Law Society of South Africa Practical Legal Training: Courses 2002 (2002) 1 and 11).

⁶⁵ Law Society of South Africa Practical Legal Training: Courses 2002 (2002) 1 and 11.

⁶⁶ Cf Nic Swart Entry into the Profession : What about Articles? (1994) 1 (unpublished memorandum for the Law Society of South Africa).

⁶⁷ See below paras 3.3, 3.75 and 3.9.

⁶⁸ Constitution of the Republic of South Africa, 200 of 1993 and Constitution of the Republic of South Africa, 108 of 1996.

⁶⁹ The sections in the South African Constitution referring to the provision of legal aid services to arrested, detained and accused persons "if substantial injustice would otherwise result" provide that such persons have the right to "to have a legal practitioner assigned to the accused by the State, and at State expense" (ss 35(2) and (3)). The Constitutional Court has interpreted this to mean that an accused is not entitled to be represented by a legal representative of his or her choice at State expense (*S v. Vermaas, S v. Du Plessis* 1995 (3) SA 292 (CC)). It has been suggested, however, that where possible there is no reason why the State should not attempt to accommodate the choice of the detainee (Etienne du Toit 'Criminal Procedure' in Mathew Chaskalson, Janet Kentridge, Jonathan Klaaren, Gilbert Marcus, Derek Spitz and Stewart Woolman (eds.) Constitutional Law of South Africa (1996) 27-5).

⁷⁰ Legal Aid Board Annual Report 2003-2004 (2004) 20.

In respect of civil legal aid cases, the Constitution imposes a special duty on the state to provide legal aid to children under the age of 18 years “where substantial injustice would otherwise result.”⁷¹ The Constitution contains no additional provision that specifically requires legal aid in non-criminal matters. The Constitution, however, does provide that: “Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing in a court or, where appropriate, another independent and impartial forum.”⁷² This raises the question of whether there is a duty on the state to provide legal aid to any person in a civil case who cannot afford representation. Unlike in cases of arrested, detained and accused persons, there are no specific constitutional duties imposed on the South African state to provide the services of a legal practitioner to litigants in civil cases. If, however, the “equality of arms” interpretation adopted by the European Court of Human Rights is used,⁷⁴ it could be argued that such a duty should lie on the state.

The Constitution also includes broad provisions for standing that enable people to act either on their own behalf or on behalf of others in situations where their fundamental Constitutional rights have been infringed or threatened. It provides that anyone may approach the court who is acting (a) in his or her own interests;

(b) on behalf of another person who cannot act in his or her own name; (c) as a member of, or in the interest of, a group or a class of persons;⁷⁵ (d) in the public interest; or, (e) as an association acting in the interests of its members.⁷⁶

In addition, the Constitutional Court has held that it is a violation of the Constitution for the state to try to limit claims against it by imposing very short notice and prescription periods on litigants seeking to enforce their rights, and any such provisions are in breach of the right of access to the courts.⁷⁸

THE LEGAL AID BOARD

Establishment

The Legal Aid Board is the main vehicle for the delivery of legal aid services in South Africa. In 1966, the apartheid state outlawed the privately funded Defence and Aid Fund.⁷⁹ In order to deflect political pressure, the Legal Aid Board was established in 1969.⁸⁰ The Board has representatives from the bench, the advocates’ profession, the attorneys’ profession, government departments and independent experts on legal aid, including the Association of University Legal Aid Institutions (AULAI) and the National Community

⁷¹ Section 28(1)(h).

⁷² Section 34.

⁷³ See s 35.

⁷⁴ *Cf Airey v. Ireland* ECHR (1979) Series A, No 32; 2 EHRR 305.

⁷⁵ *Cf Beukes v. Krugersdorp Transitional Local Council* 1996 (3) SA 476 (W). This case was decided under the provisions of the interim Constitution (Constitution of the Republic of South Africa 200 of 1993 s 7(4)(b)(iv)), but the wording of the final Constitution of the Republic of South Africa Act 108 of 1996 s 38) is the same.

⁷⁶ Section 38.

⁷⁷ In this case the Constitution of the Republic of South Africa 200 of 1993 s22, which is identical to s 34 of the Constitution of the Republic of South Africa Act 108 of 1996.

⁷⁸ *Mohlomi v. Minister of Defence* 1997 (1) SA 124 (CC).

⁷⁹ GW Cook “A History of Legal Aid in South Africa” in Faculty of Law, University of Natal Legal Aid in South Africa (1974) 32-33.

⁸⁰ Legal Aid Act 22 of 1969 s 2.

Based Paralegal Association (NCBPA).⁸¹ The Board was given complete discretion as to how it would offer legal assistance to indigent persons, and to this end it established a set of working rules that are incorporated in the Legal Aid Guide.⁸² The Guide provides for the Legal Aid Board's resolutions to be carried out under the supervision of the chief executive officer.⁸³

Operation

The Board chose the *judicare* model of referrals to private lawyers, and this remained the main method of delivery until the end of the 20th Century.⁸⁴ After the introduction of the new Constitution in 1994, the Board became responsible⁸⁵ for providing legal aid in criminal cases where accused persons could not afford lawyers and “a substantial injustice would otherwise result” if they were not represented.⁸⁶ As a result, the Board was flooded with criminal cases and the *judicare* system started to break down. At the same time, expenditure on private lawyers began to escalate out of control. The Board was compelled to consider other models of delivery.

Pilot projects were established to consider different ways of using salaried public defenders to provide legal aid.⁸⁷ In the end, it was decided to move towards a public defender model that included both qualified lawyers in public defender offices and law interns attached to Board-funded law clinics.⁸⁸ The final stage in the evolution of a holistic approach to legal aid services involved the setting up of justice centres.⁸⁹ The justice centres incorporated the two public defender models as well as paralegals and legal aid officers. In addition, the Board entered into cooperation agreements⁹⁰ with legal service providers such as public interest law firms⁹¹ and the independent university law clinics,⁹² and established its own impact litigation division.⁹³ When the justice centres or impact litigation division are unable to handle cases, they are referred to private lawyers. The different methods of delivery will be dealt with in detail below.⁹⁴

Budget

During its early years, the Legal Aid Board was grossly under-funded. Gradually, however, funding increased, and by the 1990s, as the country moved towards democracy, and then particularly after the new regime,

⁸¹ Legal Aid Act s 4.

⁸² Legal Aid Board Legal Aid Guide (2002). Amendments to the Guide must be put before Parliament (Legal Aid Act s 3A(2)).

⁸³ Legal Aid Guide para 4.2.

⁸⁴ Legal Aid Guide Chapter 1 para 4.3.

⁸⁵ Legal Aid Amendment Act 20 of 1996 s 1.

⁸⁶ Constitution of the Republic of South Africa Act 108 of 1996 s 35(2)(c) and (3)(g).

⁸⁷ Legal Aid Guide Chapter 1 para 4.3.

⁸⁸ See below para 3.3.

⁸⁹ See below para 3.4.

⁹⁰ See below para 3.6.

⁹¹ See below para 3.8.

⁹² See below para 3.9.

⁹³ See below para 3.5.

⁹⁴ See below para 3.

the Board's budget began to increase dramatically.⁹⁵ There was another large increase after the turn of the century.⁹⁶

There is a special line item allocated by Parliament in the Ministry of Justice budget for legal aid. For the year 2002-2003, Parliament allocated the Board R341,8 million (approximately \$57 million) or approximately \$1.27 per head for each of South Africa's 45 million people.⁹⁷ The total justice budget for the year was R 4,559,6 million or 1.5% of the total budget for the country of R 303,153,7 million. Thus, legal aid accounted for 7.9% of the justice budget or 0.12% of the total Budget in 2002-2003.⁹⁸ During the period 2003-2004, the amount allocated was R 367,9 million⁹⁹ (approximately \$61,3 million), or approximately \$1.36 per head of the population. As previously noted, however, the vast majority of this expenditure is on criminal legal aid and the Board is presently trying to reverse this trend.¹⁰⁰ Nonetheless, while the delivery mechanisms used by the Legal Aid Board largely serve criminal legal aid clients, they have also been applied in non-criminal cases.

Eligibility Criteria

It is accepted that South Africa is a developing country with limited funds to devote to legal aid and many

demands. In recognition of the financial constraints, the board prioritises the following areas of service delivery:

- The positive rights contained in the constitution, namely:
 - (a) The right of children to have a legal practitioner assigned to them by the state, and at state expense in civil proceeding affecting the child if substantial injustice would otherwise result;
 - (b) The right of detained person, including sentenced prisoners, and accused persons, to have legal practitioners assigned to them by the state and at state expense, if substantial injustice would otherwise result and to be informed of this right promptly;
 - (c) The right of accused persons of appeal to, or review by, a higher court.
- Vulnerable groups, particularly women and children; and,
- The landless.

As far as criminal legal aid is concerned the Legal Aid Board grants legal aid to indigent persons, where indigence is established by a means test revised from time to time. Indigent person who do not qualify for legal representation at state expense in terms of the constitution, do not receive representation on a *judicare*

⁹⁵ The exponential increase from R66.3 million in 1994-5 to approximately four times that amount in subsequent years, is almost solely due to the effect of the Board acting as the agent of the State in respect of its Constitutional legal aid obligations. For instance, the budget for the period 1995-6 amounting to R182.4 million, reflected R66.4 million in respect of the conventional legal aid scheme, and R116 million for the provision of legal consultation services and legal representation by the Board in terms of the Constitution (Legal Aid Board Report on Activities (1996) A5.). The Board estimated that it had been underfunded by approximately R425,8 million for 1998-1999 and R428 million for 1999-2000 (Legal Aid Board Business Plan Covering the Period 2000 to 2003 (1999) 20).

⁹⁶ During 1999-2000 the Legal Aid Board received R224 million (Legal Aid Board Annual Report 2001-2002 (2003) 56.); in 2000-2001, R245,5 million; in 2001-2002, R322 million; in 2002-2003, R341,8 million (Legal Aid Board Annual Report 2002-3 (2004) 50; and in 2003-2004, R367,9 million (Legal Aid Board Annual Report 2003-2004 (2005) 98).

⁹⁷ This compares with the expenditure on legal aid in other Commonwealth countries, such as the almost \$60.00 per head spent by the United Kingdom, approximately \$30.00 per head by Canada, and the \$0.02 per head spent by Nigeria on legal aid (calculations by present writer based on expenditure on legal aid in the respective countries).

⁹⁸ Calculations made by the author based on statistics in Government Communication and Information System South Africa Year Book 2002/03 (2003) 242.

⁹⁹ Legal Aid Board The Legal Aid Board Annual Report 2002 (2003) 56.

¹⁰⁰ Legal Aid Board Annual Report 2003-2004 6.

basis and if they qualify, they receive representation by the justice centres. In civil matters a large number of cases are expressly excluded from judicare legal aid and thus, in view of the low threshold set by the means test and the limited availability of civil legal aid funding, they do not get access to the courts and thus do not get access to justice.

Methods employed to deliver legal aid services

The South African Legal Aid Board sees itself as the facilitator of poor people's access to justice in relation to issues which most concern and affects their livelihood. It views access to justice as the provision of different means by which the poor can achieve something akin to equality before the law and it equates equality before the law with meeting the need for legal assistance. Therefore it endeavors to achieve this through an access to justice approach that exhibits several streams (e.g., justice centres, cooperation agreements, internship programmes etc. see below).

The composition of the Board also indicates the intention to integrate the methods of delivery. Board members include representatives from private practice, the Legal Resource Centre, the judiciary, the Department of Justice, law clinics, the National Paralegal Association, the SA Council of Churches and experts that can contribute in the field of human resources and finance.

Justice centres

The Legal Aid Board has set up a network of 58 justice centres and 27 satellite offices¹⁰¹ that provide a "one stop" service for legal aid clients. The satellite offices service the more rural areas using a circuit system. The justice centres in the larger cities also have high court units, of which there are 13 throughout the country.¹⁰² The justice centres and satellite offices cover most of the regional and district courts and all the high courts in the country. Where an area is not covered by a Legal Aid Board office it is serviced using judicare,¹⁰³ or pursuant to cooperative agreements.¹⁰⁴

Depending on their location and on the demands of the local legal environment, the justice centres employ a variety of legal and paralegal professional staff. These vary from larger justice centres where there are qualified attorneys and advocates as principals and public defenders, law intern public defenders, paralegals and administrative staff,¹⁰⁵ to satellite offices that have a much smaller core staff component. Judicare is only used where the justice centre cannot handle a case because of conflict of interest or lack of capacity.¹⁰⁶ Candidate attorney interns are required to do both civil and criminal work in the district courts.¹⁰⁷ Professional assistants (interns who have qualified to appear in court) appear in the regional courts. Intern supervisors appear in the high courts (attorneys, if they have an LLB or more than three years experience) and the regional courts. Paralegals assist with the initial screening of clients, and administrative assistants and clerks provide the necessary administrative back up.

¹⁰¹ Legal Aid Board Annual Report 2003-2004 23.

¹⁰² Legal Aid Board Annual Report 2003-2004 2.

¹⁰³ *Ibid.*

¹⁰⁴ See below para 3.6.

¹⁰⁵ Legal Aid Board Business Plan op cit 20.

¹⁰⁶ Legal Aid Guide Annexure O para 1.2.

¹⁰⁷ District courts can impose fines of up to R100 000 (less than \$16 666) and imprisonment of up to 3 years (Magistrates' Courts Act 32 of 1944).

The justice centres have become the main model of delivery of both criminal and civil legal aid by the Legal Aid Board. As has been mentioned, by 2002-2003, the justice centres were addressing 53% of all new legal aid matters, and by 2003-2004 the percentage had increased to 78%.¹⁰⁸ Notably, of the 236, 282 new matters dealt with by the justice centres during 2003-2004, only 27,280, or 12%, were non-criminal cases.¹⁰⁹ The Board hopes to establish a benchmark ratio of 70% criminal and 30% civil cases in the justice centres.¹¹⁰

The centres employ salaried legal practitioners whose entire focus is on service to the poor. In practice the service entails consultation, representation and bail applications after an accused was charged with the commission of a crime. During the initial interview by front office staff, non-legal issues are not addressed, but a referral system is in place and legal aid applicants may be referred where the issue relates to pension or welfare grants, labour, consumer problems, banking, pension funds, women abuse, marital problems, family violence, child abuse, complaints against the police and maintenance. Whether the attorneys of candidate attorneys will address non-legal issues will depend on their experience. There is an Access to Justice director who gives guidance in this regard to all Justice Centres and the centres are tasked to ensure access to justice in its fullest sense for the poor. A wide range of services is rendered, from referrals, to consultation and advice, to litigation.

Each justice centre has a staff compliment, which typically may appear as follows:

- § One (1) justice centre executive who manages the centre, act as principal for the candidate attorneys

and conducts cases in the High Court or handles specialised matters.

- § Twenty-one (21) professional assistants who are newly admitted legal practitioners. Their key responsibilities are to assist and represent clients in both criminal and civil matters.
- § Eighteen (18) candidate attorneys who are law graduates.
- § One (1) paralegal who handle applications and take care of referrals, information and advice.
- § One (1) administration manager
- § Six (6) administrative officers
- § Three (3) secretaries
- § Two (2) receptionists (front office staff)
- § One (1) case investigator

The first point of contact is with front office staff and then a paralegal or an administrative officer. Generally, once it has been established that a person qualifies in terms of the means test, the file is sent to the Justice Centre Executive who assigns it.

Pro bono Legal Aid Work

One of the first attempts to set up a national state legal aid scheme in apartheid South Africa in 1962 was based on pro bono work by the legal profession. The legal profession undertook to provide free legal services to persons referred to them by local legal aid committees set up at every lower court by the Department of Justice.¹¹¹ This system subsequently failed because of lack of publicity, lack of commitment by the profession, and too much unwieldy red tape.¹¹² Until recently, pro

¹⁰⁸ Legal Aid Board Annual Report 2003-2004 19.

¹⁰⁹ Legal Aid Board Annual Report 2003-2004 20.

¹¹⁰ Vidhu Vedalankar, CEO, Legal Aid Board "Legal Aid in South Africa" (unpublished paper) (13 October 2003) 8.

¹¹¹ GW Cook 'A History of Legal Aid in South Africa' in Faculty of Law, University of Natal Legal Aid in South Africa (1974) 31-32; cf McQuoid-Mason (2000) 24 Fordham International Law Journal (Symposium) S140-141.

¹¹² PH Gross Legal Aid and its Management (1976) 176-177.

bono work was not mandatory in South Africa. In 2004, however, the Cape Law Society made it mandatory for its attorney members to perform pro bono work on an annual basis. The ethical rules of the advocate's profession require advocates to accept legal aid work,¹¹³ while the rules of the International Code of Ethics, to which the attorneys' profession subscribes, expect lawyers to take on cases "assigned by a competent body"¹¹⁴ which could include a court or the Legal Aid Board.¹¹⁵ Pro bono schemes are relatively inexpensive to operate, and, if supported by the legal profession, can engender a spirit of public service. Pro bono clients, however, may not receive the same level of service as paying clients. Furthermore, many lawyers are reluctant to take on pro bono cases to the extent that, even if they are mandatory, they may "buy out" the time they would be required to devote to them.¹¹⁶ The 1962 South African experience demonstrates that unless lawyers are paid at least something to deliver legal aid services, the chance of mounting a successful comprehensive legal aid scheme based on pro bono work is minimal.

Judicare Referrals to Private Lawyers

Under the judicare system, private lawyers who render legal aid services in accordance with the Legal Aid Board's Guide are paid for their services at fixed tariffs.¹¹⁷

As mentioned before, until the last century the Legal Aid Board operated mainly by using the judicare system. In South Africa the judicare system worked while there was an adequate administrative structure to support it, proper accounting systems were in place to deal with claims for fees and disbursements expeditiously, and budget constraints kept pace with demand. When the demand for criminal legal aid escalated beyond budgetary limits, and the Legal Aid Board could no longer pay practitioners timeously, the judicare system broke down.¹¹⁸ Attempts to solve the problem by the capping of fees in criminal and civil cases only provided a short-term solution,¹¹⁹ and eventually the Board opted for a salaried lawyer justice centre model as the main means of delivery.¹²⁰

Co-operation agreements

To maximize outreach, the legal Aid Board adopted a policy of entering into co-operation agreements with non-government organisations capable of rendering legal services. The Legal Aid Guide defines a cooperation agreement as: "An agreement entered into between the Board and another party, not being an individual legal practitioner or a group/firm/company of legal practitioners. This is for the purposes of rendering legal services to indigent persons."¹²¹

¹¹³ General Council of the Bar of South Africa Uniform Rules of Professional Ethics rule 6.3.1.

¹¹⁴ International Code of Ethics rule 17.

¹¹⁵ Robin Palmer and David McQuoid-Mason *Basic Trial Advocacy Skills* (2000) para 2.5.2.

¹¹⁶ Chief Justice Earl Johnson Jnr "Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies" (2000) 24 *Fordham International Law Journal* (Symposium) S 83.

¹¹⁷ For the tariff in civil cases see Legal Aid Guide Annexures F1-F5.

¹¹⁸ This can lead to accounting errors, fraudulent claims by lawyers, double payments and corruption. In 1999 the Board managed to reduce its error rate from 60% to 1% by installing stricter controls and radically reducing the number of judicare cases, as well as by capping the fees that lawyers could claim for judicare (Legal Aid Board Business Plan Covering the Period 2000 to 2003 (1999) 10).

¹¹⁹ Legal Aid Board Business Plan Covering the Period 2000 to 2003 (1999) 11.

¹²⁰ David McQuoid-Mason "National Legal Aid Forum, Kempton Park, 15-17 January 1998: Working Commission Recommendations" (1999) 12 *SALJ* 48, 49.

¹²¹ Legal Aid Guide Chapter 1 para 1 (definitions).

The Legal Aid Board has entered into a number of cooperation agreements with public interest law firms, independently funded law clinics, and paralegal advice offices. Most of these agreements cover civil cases. Stringent requirements are provided for cooperation agreements; for example, the organization must have “a proven track record in public interest law and effective community services.”¹²²

Cooperation agreements are entered into with legal service providers “who either have an established infrastructure in a region where the Legal Aid Board has no presence or who specialise in matters identified by the Board as priorities for service delivery.”¹²³ The service “must be provided to the poor at a cost less than *judicare* and, at no charge, to those who cannot afford the services in accordance with the means test which must always be conducted.”¹²⁴

The majority of cases handled by the justice centres are done in-house, but when a centre is unable to handle a case, it may be referred to a service provider that has a cooperation agreement with the Legal Aid Board, or in some cases on a *judicare* basis.¹²⁵ The cooperation agreement programme has provided the Board with a cost-effective way of delivering legal aid services in areas where it does not have a presence. It has also given the Board greater exposure in those areas and has played an important role in expanding access to justice in previously disadvantaged areas.¹²⁶

During 2003-2004, the Legal Aid Board had cooperation agreements with six independent university law clinics, three with Lawyers for Human Rights, one with a community-based paralegal law centre, and another with a community and rural advancement NGO.¹²⁷ In the same period, the cooperation partners administered 17,244 new cases (most of them civil), or 6% of the total number of criminal and non-criminal cases handled by the Legal Aid Board.¹²⁸

Impact litigation

Justice Centre staff are under obligation to identify patterns of abuse of individuals and communities from its caseload. In their daily dealings with clients staff must also be on the lookout for cases with the potential to make an impact on entire communities or classes of individuals, as this is one of the key performance areas in the Board’s performance management system. In 2001, the Legal Aid Board set up a special impact litigation fund¹²⁹ designed “to uphold the rights entrenched in the Constitution of South Africa.”¹³⁰ Certain conditions apply to the fund and include “a reasonable chance of success where a positive outcome will set a precedent that will benefit South Africa’s indigent population.” For instance, during 2002-2003, the Board dealt with cases involving deaths resulting from the collapse of a soccer stadium, the alleged poisoning of underground water that impacted the

122 Legal Aid Board Annual Report 2001 11: “Full disclosure of all funding and activities is also required, as is submission of audited balance sheets each year and if necessary, a financial audit by the Board and the Auditor-General.”

123 *Ibid.*

124 *Ibid.*

125 Legal Aid Guide Annexure O para 1.2.

126 Legal Aid Board Annual Report 2002 (2003) 17.

127 Legal Aid Board Annual Report 2003-2004 21.

128 *Ibid.*

129 Legal Aid Board Annual Report 2001 (2002) 4.

130 Legal Aid Board Annual Report 2002 (2003) 17.

health and livelihood of neighbouring communities, as well as the poisoning of residents by a fire that emitted very high levels of sulphur dioxide.¹³² Where the Legal Aid Board does not have the capacity to engage in impact litigation, it will refer the matter to a cooperation partner, or on a *judicare* basis to specialist lawyers, or law firms that have the necessary expertise. One such partner is the Legal Resource Centre (LRC). The LRC was established in Johannesburg in 1979 as the country's first non-profit law centre. The LRC's mainly focus is on the following two programmes: Firstly, a constitutional rights programme, dealing with access to justice, gender issues, children's rights, the enforcement of socio-economic rights and a constitutional reform project; Secondly, a land, housing and development programme which deals with both urban and rural restitution and redistribution of land, tenure security, land reform and land development. As a specialist law firm, the LRC creatively uses a range of both legal and non-legal strategies, including impact litigation, participation in partnership and development processes, training of practitioners and paralegals, back-up legal services to clinics and paralegals, as well as education, training and networking.

Law Intern Public Defenders

The Attorneys Act¹³³ allows prospective attorneys with the necessary legal qualifications to engage in internship programmes other than in an attorney's office; namely, they may undertake a period of community service¹³⁴ at law clinics accredited by provincial law societies,

including clinics under the auspices of the Legal Aid Board. Such law clinics are required to employ a principal (an attorney with sufficient practical experience) to supervise law interns in the community service programme. The candidate attorneys appear in the district courts, and the principals appear in the regional and high courts. Interns who have been indentured for more than a year may also appear in the regional courts.

The Legal Aid Board took advantage of this provision to employ candidate attorney interns and supervising attorneys, with a maximum ratio of ten interns to one supervisor. The interns were employed primarily as public defenders in the district courts, but also undertook civil cases in order to obtain well-rounded legal practice experience during their internships. The objectives of the Legal Aid Board scheme were (a) to render legal services to persons who satisfy the means test, and (b) to alleviate the shortage of internship opportunities for candidate attorneys by providing "articles of clerkship" or "contracts of community service" to law graduates required to undertake internships.¹³⁵

The Legal Aid Board began with a pilot project of five university law clinics in 1994, and eventually expanded the programme to 20 university Legal Aid Board clinics. Each clinic was provided with funds to employ a supervising attorney and up to ten community service intern public defenders. Later, some of the Board clinics employed a ratio of eight interns to two qualified professional assistants, so that the professional assistants

131 *Ibid.* "While individually expensive, these matters have the potential to establish precedents that will benefit many more persons than those who are parties to the initial litigation" (Legal Aid Board Annual Report 2002 6).

132 Legal Aid Board Annual Report 2002 (2003) 17.

133 Attorneys Act 53 of 1979.

134 The Attorneys Act 53 of 1979 s 2 (1A) (b) was amended by s 2 of The Attorneys Amendment Act 115 of 1993 to allow aspiring attorneys to 'perform community service approved by the society concerned' - provided that the person who engages them is practising the profession of attorney, *inter alia*, 'in the full-time employment of a law clinic, and if the council [of the law society] in the province in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by such council for the operation of such clinic' (s 3(1)(f)).

135 Legal Aid Board Annual Report 1993/1994 (1994) 35.

could appear in the regional (senior) magistrate's courts. During the pilot project, the Board calculated that the average cost of 24,513 criminal cases and 12,997 civil cases handled by the state-funded law clinics during the period 1 July 1994 to 31 December 1996, was R433 (approximately \$72) per case.¹³⁶ This was less than half of the average cost of R976 (approximately \$163) per case charged under the judicare system during the same period.¹³⁷ During the period 1997-1998, twenty law clinics completed 33,951 cases, of which 20,042 (59%) were criminal, and 13,909 (41%) were civil.¹³⁸ At the time, the figure compared favourably with the 18,263 civil cases done under the judicare scheme¹³⁹ at as much as twice the cost.

The law intern public defender programme is a useful model for consideration by countries with legal systems that require law graduates to serve an internship before being admitted as practitioners. In countries that do not require law graduates to undergo an apprenticeship, the law intern public defender programme could also be used, in this case, to integrate newly qualified law graduates into the legal profession. Provided the interns are subjected to proper training and supervision, the standard of service of the Legal Aid Board clinic candidate attorneys in the lower courts is at least equal to that of qualified attorneys or privately employed law interns. The law intern public defender programme has been incorporated into the justice centres and satellite offices operated by the Legal Aid Board.¹⁴⁰

Law Interns in Rural Law Firms

During 1995, the Legal Aid Board established a pilot project whereby law interns were placed in law firms in rural areas. The project was done in partnership with Lawyers for Human Rights, a human rights non-governmental organisation. The agreement was that the Board would arrange with private attorneys in rural towns to employ law interns who would be funded by the Board to do legal aid work. The Board would assist financially with the payment of the salary of the law intern, and Lawyers for Human Rights would recruit appropriate attorneys and thereafter monitor the progress of the project. The project provided access to legal aid services in rural areas, and also enabled formerly disadvantaged persons to be employed in the legal profession in the areas where they lived.¹⁴¹

The law interns were required, on behalf of the Board, to handle at least 10 new legal aid instructions per month, free of charge, as well as to perform community service one day each week. Eight candidate attorneys were involved in two pilot projects by the end of 1996-1997.¹⁴² The work done by the interns was mainly criminal, but some civil cases, usually involving divorces, were also done. For instance, interns in four rural law firms during the period from March 1997 to February 1998 completed 400 criminal cases and 73 civil cases.¹⁴³ The project proved very economical but was not continued by the Legal Aid Board once the latter began

¹³⁶ Legal Aid Report Monthly Report (4 February 1997). This includes the costs for clinics that had only just been established. Ultimately the cost per case was much less as the more established clinics cost approximately R350 (approximately \$58) per case (*ibid*).

¹³⁷ The figure is the average for criminal and civil cases - approximately 75% of the work in the clinics was criminal and 25% civil.

¹³⁸ Calculations by present writer based on statistics in Legal Aid Board Legotla: Delivery of Legal Aid by way of Salaried Staff Models, Public Defenders, Attorneys and Candidate Attorneys as at 30 October 1998 (unpublished) (November 1998) 1-5.

¹³⁹ Legal Aid Board Legotla: Overview of the Board *op. cit.* 8.

¹⁴⁰ Legal Aid Board Annual Report 2003-2004 9.

¹⁴¹ Legal Aid Board Annual Report 1995/96 (1996) 24.

¹⁴² Legal Aid Board Annual Report 1996/7 (1999) 21.

¹⁴³ Calculations by present writer based on statistics in Legal Aid Board Legotla: Statistics on the Work done by way of Salaried Staff Models (unpublished) (November 1998) 6-7.

to focus on the introduction of justice centres. It may be that in future the scheme should be revisited and introduced in those areas not covered by justice centres or cooperation agreements. The rural law intern model was very cost-effective and could have been expanded to undertake more civil cases. It could be used in those countries that require law graduates to undergo a period of internship before being admitted to legal practice. This would apply particularly to countries with large rural populations and scattered law firms. In South Africa it is much cheaper to supplement the salaries of law interns in rural law firms than to establish satellite offices of the Legal Aid Board in areas where there is a limited demand for legal aid services.¹⁴⁴

Independent University Law Clinics

Independently funded university law clinics provide training and practical skills for senior law students, and a valuable service for indigent members of the community. Some law clinic work is incorporated into optional or compulsory clinical law programmes at universities. Not all litigation may be dealt with by clinics - according to the rules of the law societies, some activities (e.g., motor vehicle insurance claims) are restricted to legal practitioners practising for their own account.¹⁴⁵ In the past, the vast majority of cases involved labour matters such as wrongful dismissals, unemployment insurance, and workmen's compensation for injuries; consumer law problems such as credit agreements (hire-purchase), defective products, loan sharks and

unscrupulous debt collection practices; housing problems such as fraudulent contracts, non-delivery and poor workmanship; customary law matters such as emancipation of women and succession rights; maintenance; and, criminal cases.¹⁴⁶ During the struggle against apartheid, many of the clinics at the progressive universities were engaged in human rights work involving pass laws, police brutality, forced removals, detention without trial and other breaches of fundamental human rights.¹⁴⁷ In many instances, because they accepted clients "off the street," law clinics tended to emphasize the service aspect rather than the teaching aspect of their function. Despite the dawn of democracy in South Africa in April 1994, the legal aid clinics have continued to deal with poverty law problems, many of them a result of lack of capacity or obstruction by the government. A few clinics have moved from general practice to more specialized constitutional issues, such as those affecting women and children, administrative justice and land restitution. The majority of clinics, however, continue to engage in general practice in a climate in which fewer restrictions are being imposed by the law societies.

The law clinics apply a more flexible means test than that of the Legal Aid Board. Qualified staff members represent clients in criminal and civil matters in both the inferior and high courts. In 1985, "student practice rules" were drafted to enable final year law students attached to law clinics to appear in criminal cases for indigents accused in the district courts.¹⁴⁸ The 1994 post-apartheid government undertook to introduce

¹⁴⁴ Legal Aid Board Annual Report 1996/7 (1999) 21.

¹⁴⁵ Cf DJ McQuoid-Mason "Legal Aid Clinics as a Social Service" in DJ McQuoid-Mason (ed) *Legal Aid and Law Clinics in South Africa* (1985) 64.

¹⁴⁶ Generally for the types of cases handled by legal aid clinics see McQuoid-Mason *Outline of Legal Aid op. cit.* 139-161.

¹⁴⁷ *Ibid.*

¹⁴⁸ The present writer drafted Student Practice Rules for South Africa based on the American Bar Association Model Rules for Student Practice (Council for Legal Education and Professional Responsibility State Rules Permitting the Student Practice of Law: Comparisons and Comments 2 ed. (1973) 43) and submitted them to the Association of Law Societies of South Africa in April 1985 for onward transmission to the then Minister of Justice. Although the rules were approved by all branches of the practising profession and the law schools in the late 1980s they appear to have been blocked by bureaucrats in the Department of Justice. The first Minister of Justice under a democratic government in South Africa, who took office in 1994, undertook to have the rules implemented but this never happened (see McQuoid-Mason (2000) 24 *Fordham International Law Journal* (Symposium) S 129 n 82).

legislation to provide for such rules during its first term of office, but this was never done.¹⁴⁹ As stated previously, approximately 3,000 law graduates are produced annually by South African law schools. The point has been made that if each final year law student were to do only ten cases a year, mainly during the summer and winter vacations, criminal defence could be provided for 30,000 criminally accused.¹⁵⁰ The impact of this could be to ease the criminal caseload of the law intern public defenders in the Legal Aid Board justice centres, who could then spend more time on civil matters.¹⁵¹

Funding for law clinics is usually provided by outside donors, including the Attorneys Fidelity Fund. The latter subsidises accredited clinics by providing funds to enable them to employ a practitioner (attorney or advocate) to control the clinic.¹⁵² Very few clinics have been funded exclusively by their universities. The Association of University Legal Aid Institutions (AULAI) has set up the AULAI Trust with an endowment from the Ford Foundation to strengthen the funding of the clinics. Financial support for the independent law clinics, however, is still precarious, as they rely primarily on annual grants. Until their contribution is recognized as an integral part of the national legal aid scheme, the future of the independent law clinics will remain uncertain. The move by the Legal Aid Board to enter into cooperation agreements with the independent university law clinics, in order to service clusters of paralegal advice offices, is to be welcomed, as it acknowledges their important role in supplementing national legal aid services.

The independent university law clinics can play a useful role in assisting legal aid litigants to compel the state to deliver in terms of its constitutional obligations, including the right to counsel. If a holistic approach is adopted in respect of legal aid services, cooperation and partnership agreements can be entered into between national legal aid structures and the university law clinics. Not only will this improve the spread of legal aid services in a country but additional funding from the state will also help to make the law clinics more financially viable.

Paralegal Advice Offices

In South Africa, a variety of organisations are involved in paralegal advice work.¹⁵³ Some of these educate the public concerning their legal rights, while others train paralegals to give advice. Paralegal NGOs, such as the Black Sash, concentrate on urban areas, while those like the Community Law and Rural Development Centre (CLRDC) focus on rural areas. The services provided vary from mere advice in the high-density townships, to full legal aid services such as provided by the Legal Aid Bureau in Johannesburg.¹⁵⁴ Paralegals in South Africa are usually paid, but often their remuneration is very low, and in some cases paralegals work as unpaid volunteers. The training of paralegals may vary, from the formal training leading to a diploma offered by Lawyers for Human Rights (LHR), Johannesburg University and the CLRDC, to mainly experiential learning obtained while working.¹⁵⁵ Paralegal offices may be linked to organisations such as the Legal Resources Centre, LHR

¹⁴⁹ See above note 144.

¹⁵⁰ Minister of Justice and Department of Justice Enhancing Access to Justice *op. cit.* 25; *cf.* McQuoid-Mason (2000) 24 Fordham International Law Journal (Symposium) S130.

¹⁵¹ See McQuoid-Mason (2000) 24 Fordham International Law Journal (Symposium) S 130.

¹⁵² DJ McQuoid-Mason "The Organisation, Administration and Funding of Legal Aid Clinics in South Africa" (1986) 1 NULSR 189 193.

¹⁵³ See generally Stephen Golub "Non-lawyers as Legal Resources for their Communities" in Ford Foundation Many Roads to Justice 297 301-306.

¹⁵⁴ In 1996 the Legal Aid Bureau experienced financial difficulties and the Legal Board agreed to provide substantial funding for it.

¹⁵⁵ See generally McQuoid-Mason (2000) 24 Fordham International Law Journal (Symposium) S 131.

and the CLRDC, or may simply rely on free services provided by private legal practitioners. Very often paralegal advice offices are able to resolve the problems of their clients without having to resort to lawyers for assistance. Several paralegal advice offices have developed expertise in particular fields such as pensions, unemployment insurance, unfair dismissals, etc. In the few cases where a paralegal advice office cannot solve the problem, the client is usually directed to the Legal Aid Board's offices, a legal aid clinic, or to an appropriate law firm.¹⁵⁶ Paralegals have also been included in the Legal Aid Board's justice centres and in certain cooperative agreements – in particular those in which independent university law clinics are required to service clusters of paralegal advice offices. A National Paralegal Institute (NPLI) has been set up to assist the more than 350 paralegal advice offices in the country, through training and fund-raising.¹⁵⁷ It is also investigating paralegal accreditation certification procedures. The NPLI works closely with the Association of University Legal Aid Institutions (AULAI) and the Legal Aid Board. The Board has entered into a number of cooperation agreements, mainly with the independent university law clinics that undertake to service clusters of paralegal advice offices. The AULAI has entered into an agreement with the International Commission of Jurists (Swedish Section) to administer funding for the university law clinics, to provide legal back up and training for clusters of paralegal advice offices. Paralegal advice offices play a complementary role to the legal

profession in the delivery of legal aid services. They operate at the grass-roots level where communities first come into contact with the law. Paralegal advice offices play an invaluable role in screening initial legal complaints and resolving legal disputes before referring potential litigants to the legal profession.¹⁵⁸ It is for this reason that the Legal Aid Board has integrated paralegals into the justice centres and has tried to establish close links with community-based organisations.¹⁵⁹ Paralegals must be paid for their services and properly trained. Accredited paralegal advice offices need to be properly funded by integrating them into the national legal aid scheme.¹⁶⁰

Conclusions

The following conclusions may be drawn from the South African experience in respect of state-funded legal aid:

1. The Constitution guarantees civil legal aid for children under the age of 18 years “where a substantial injustice would otherwise result”, and provides a general right of access to the courts and wide grounds for standing, including public interest and class actions for breaches of fundamental rights.
2. The Legal Aid Board has moved away from *judicare* referrals to private lawyers, to a justice centre salaried lawyer approach for the delivery of legal aid services.

¹⁵⁶ See McQuoid-Mason (2000) 24 *Fordham International Law Journal* (Symposium) S 133.

¹⁵⁷ *Ibid.*

¹⁵⁸ At the National Legal Aid Forum in 1998 it was suggested that paralegal advice offices should be incorporated into the legal aid system at two stages. The first stage should be to provide information and advice at community level, and the second should be to refer clients to legal services for representation. For the first stage the Legal Aid Board should: (a) build on the infrastructure of the existing paralegal community advice centres in the country; (b) empower advice offices by including paralegals and law-related education trainers to provide an educational component; (c) empower advice offices by including some professional lawyers and candidate attorneys in their staff; (d) encourage the use of alternative dispute resolution to resolve disputes; and, (e) deal with preliminary issues where people require representation. If disputes cannot be resolved during the first stage, the community advice offices should move to the second stage and refer clients to law clinics, public defenders, private lawyers or to community legal service centres or justice centres (McQuoid-Mason (1999) 12 *SACJ* 48 53).

¹⁵⁹ Legal Aid Board Annual Report 2003-2004 4.

¹⁶⁰ McQuoid-Mason (1999) 12 *SACJ* 53; *cf.* McQuoid-Mason (2000) 24 *Fordham International Law Journal* (Symposium) S 135-S 136.

3. At present, only approximately 12% of the Legal Aid Board's justice centre budget is spent on civil legal aid because of the Constitutional right to counsel requirements in respect of criminal matters. The Board hopes to reverse this and achieve a ratio of 70% criminal to 30% civil cases in the justice centres.
4. The Legal Aid Board has achieved major cost-savings by moving from a judicare system to salaried lawyers employed in justice centres.
5. The Legal Aid Board has experimented with a variety of creative cost-effective measures to deliver legal aid in civil and criminal matters. The most novel of these is the employment of law graduate apprentices as intern public defenders in the district courts – first in Board-funded university law clinics and then in the justice centres.
6. The Legal Aid Board has undertaken a civil legal aid programme of public interest litigation by setting aside funds for impact litigation that may or may not be undertaken in-house.
7. The Legal Aid Board has entered into cooperation agreements with independent university law clinics and community-based NGOs in order to extend its reach into areas where it does not have justice or satellite centres, and to expand its civil legal aid programme.
8. The Legal Aid Board's experiment with funding law interns in rural law firms deserves to be revisited to cover areas where there are no justice or satellite centres and there are no cooperation partners, and expanded to emphasize legal aid in civil matters.
9. Public interest law firms, such as the Legal Resources Centre and the independent university law clinics, play a valuable role in the delivery of legal services to the poor in civil matters, and there is scope for the Legal Aid Board to enter into more cooperation agreements with them.
10. Paralegals play an important role in the preliminary stages of assisting clients who require legal aid in

civil matters. This has been recognized as evidenced by the Legal Aid Board including them in the justice centres, and entering into cooperation agreements with certain independent university law clinics to service clusters of paralegal advice offices.

INDIA-INTRODUCING A CONTINUUM OF LEGAL SERVICES, ADR AND LEGAL AID

Constitutional Provision

Article 39A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society.

In the early 1980s movements of judges and lawyers sought to actualise the Constitution's promises of justice for all by embarking on a series of unprecedented initiatives. Social action litigation sought to use judicial powers to protect excluded and powerless groups such as prisoners, migrant labourers and the environmentally susceptible and to secure their entitlements. At the same time the government and the bar moved to implement the commitment to legal aid. In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of Hon. Justice P.N. Bhagwati then a Judge of the Supreme Court of India. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country. A

number of innovative legal services schemes appeared in which social action groups sought to use the law systematically to promote the interests of various disadvantage constituencies. These programmes pointed beyond the prevailing service notion of legal aid as episodic ad hoc representation in court and see the opportunity of providing legal aid to disadvantaged constituencies as a way to provide more specialised services and use litigation strategically to have a longer term impact on the client group.¹⁶¹ Public interest litigation however, was still hampered by the delays in the judicial system and had limitations in its inability to not always resolve disputed issues of fact and delivering concrete remedies and monitoring their enforcement. Thus the same reform energies were then channelled in the introduction of *Lok Adalats* by providing a supplementary forum to the litigants for conciliatory settlement of their disputes to promote informality, conciliation and alternative institutions. The *Lok Adalat* early template allows for cases on the docket of a local court or tribunal to be transferred with the consent of the parties to a *Lok Adalat* list. Cases then get called in front of a mediator or panel of mediators (typically retired judges or senior advocates) at intermittent one-day "camps." *Lok Adalats* decide on a variety of cases, and generally their dockets are shaped to capture cases involving the poor, particularly petty non contested cases. Many proponents of *Lok Adalats* see them not as a species of court reform but as a species of legal aid, particularly suited for the poor and disadvantaged.¹⁶² This has been recognized by the 1987 Legal Services Authority Act, which provides for the establishment of permanent and continuous *Lok Adalats* in all Districts as well as in Government Departments, Statutory Authorities and Public Sector Undertakings. The same 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern.

The National Legal Services Authority was constituted on 5th December, 1995. By February, 1998 the office of National Legal Services Authority became properly functional.¹⁶³

Eligibility Criteria

Section 12 of the Legal Services Authorities Act, 1987 prescribes the criteria for giving legal services to eligible persons. The criteria are not only based on a simple means and merit test in which the case is examined on grounds of its possibility of success and the applicant is examined in terms of her/his financial ability to pay for legal services. Instead the act puts an explicit focus on disadvantaged segments of the population recognising that they might encounter additional obstacles in obtaining legal aid. Section 12 of the Act reads:-

"12. Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is –

- (a) a member of a Scheduled Caste or Scheduled Tribe;
- (b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- (c) a woman or a child;
- (d) a mentally ill or otherwise disabled person;
- (e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) an industrial workman; or
- (g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home within the meaning of clause

¹⁶¹ See M. Galanter and J.K.Krishnan, "'Bread for the Poor': access to justice and the rights of the needy in India", 55 Hastings Law Journal 789 (2004), at 795, 796.

¹⁶² *Ibid.* at 800.

¹⁶³ See also the NALSA website at <http://causelists.nic.in/nalsa/index.html>

- (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or
- (h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Govt., if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Govt., if the case is before the Supreme Court."¹⁶⁴

According to section 2(1) (a) of the Act, legal aid can be provided to a person for a 'case' which includes a suit or any proceeding before a court. Section 2(1) defines the 'court' as a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions. As per section 2(1)(c) 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.

Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority.

Management of the System and Agreement with other providers

A nationwide network has been envisaged under the Act for providing legal aid and assistance. The National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes.

In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct *Lok Adalats* in the State. The State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired Judge of the High Court is nominated as its Executive Chairman.

A District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The District Judge of the District is its ex-officio Chairman. *Taluk* Legal Services Committees are also constituted for each of the *Taluk* or *Mandal* or for group of *Taluk* or *Mandals* to coordinate the activities of legal services in the *Taluk* and to organise *Lok Adalats*. Every *Taluk* Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman.

The following schemes and measures have been envisaged and implemented by the Central Authority:-

- (a) Establishing Permanent and Continuous *Lok Adalats* in all the Districts in the country for disposal of pending matters as well as disputes at pre-litigative stage;

¹⁶⁴ LEGAL SERVICE AUTHORITIES ACT, 39 of 1987. The rules have since being amended to increase this income ceiling to Rs.50,000 for legal aid before Supreme Court of India and to Rs.25,000. for legal aid up to High Courts.

- (b) Establishing separate Permanent & Continuous *Lok Adalats* for Govt. Departments, Statutory Authorities and Public Sector Undertakings for disposal of pending cases as well as disputes at pre-litigative stage;
- (c) Accreditation of NGOs for Legal Literacy and Legal Awareness campaign;
- (d) Entering into agreement with universities for the establishment of legal aid clinics funded through grants from the Legal Services Authority;
- (e) Appointment of "Legal Aid Counsel" in all the Courts of Magistrates in the country. This scheme has been well received all over country. Legal Aid Counsels have been provided in most of the courts of the Magistrates in the country to provide immediate legal assistance to those prisoners who are not in a position to engage their own counsel.
- (f) Disposal of cases through *Lok Adalats*;
- (g) Publicity to Legal Aid Schemes and programmes to make people aware about legal aid facilities;
- (h) Emphasis on competent and quality legal services for example by revising the payment schedule for legal aid panel advocates and also compressing the panels so that panel advocates get more work and better remuneration from legal services authorities and thus get encouraged to render higher quality legal assistance;
- (i) Establishment of Legal aid facilities in jails;
- (j) Setting up of Counselling and Conciliation Centres in all the Districts in the country. All the State Legal Services Authorities are taking steps to establish these Centres which would settle legal disputes at pre-litigative stage and would also help legal services functionaries to find out as to whether a person approaching them for legal aid has or not a prima facie case in his favour which is a pre-requisite for grant of legal aid. Counselling and Conciliation Centres at Districts and Permanent *Lok Adalats* in District are encouraged to be housed under the same roof and can effectively function in unison.
- (k) Sensitisation of Judicial Officers in regard to Legal Services Schemes and programmes;
- (l) Publication of "Nyaya Deep", the official newsletter of NALSA;
- (m) Enhancement of Income Ceiling to Rs.50,000/- p.a. for legal aid before Supreme Court of India and to Rs.25,000/- p.a. for legal aid upto High Courts; and
- (n) Steps for framing rules for refund of court fees and execution of Awards passed by *Lok Adalats*.

Expansion of *Lok Adalats*

In recognition that delay in the provision of a judicial remedy is at risk of affecting disproportionately the poor and disadvantaged, while being a recognised problem of the Indian judicial system, the NALSA sees as its most significant contribution to the administration of justice the increase of legal disputes settled through *Lok Adalats* at pre-litigative stage so that the inflow of cases in already over-burdened courts is reduced to the extent possible. Thus, NALSA has been keen to develop and promote a culture of conciliation instead of litigation in the country. Permanent and Continuous *Lok Adalats* are being established in all the Districts in the country. NALSA has been providing funds to State Legal Services Authorities for the implementation of the Legal Aid Schemes and Programmes (whereas the infrastructure is to be provided by the State Governments). Separate Permanent and Continuous *Lok Adalats* in Government Departments are aimed at amicably settling pending cases as well as the matters at pre-litigative stage between Government Departments and general public so that the inflow of litigation to regular Courts is reduced. These *Lok Adalats* are enjoying increasing popularity.

ENGLAND AND WALES-INVOLVING THE PROFESSION AND DEVELOPING QUALITY CONTROLS¹⁶⁵

History

Legal aid in England and Wales is well established and comprehensive, covering most aspects of the civil and criminal legal systems. Its cost in 2003–4 was just under €3 billion, an annual per capita cost of almost €60.¹⁶⁶ This makes the scheme the best funded in the world. Over the last decade, there has been a series of reform initiatives relating to contracts with providers, the development of quality assurance mechanisms, experiments with different forms of delivery, and research regarding the need for civil legal aid. A national legal aid scheme was originally established in England and Wales by legislation passed in 1949. The programme was initially limited to providing assistance in divorce cases. However, periodic expansions in subsequent years (particularly during the 1970s and 1980s) dramatically increased the scope of coverage. Separate elements of the scheme now provide (1) representation in criminal and civil cases and during police interviews before a criminal charge is made, (2) advice and assistance in legal matters not necessarily related to litigation, and (3) general public information relating to legal rights through the Internet and other media. The evolution of the legal aid programme occurred within the context, and often as a by-product, of larger changes in the legal profession and the justice system.

For many years after it was established, the legal aid programme did not have a fixed governmental budget. As long as costs were modest, this absence of constraints had few political consequences. However, the dramatic increases in the scope of the programme resulted in corresponding increases in costs, particularly during the early 1990s, and led to a series of budgetary reforms.

The reforms culminated in the Access to Justice Act 1999, which now governs all aspects of the legal aid programme for England and Wales. The act transferred direct administration of the programme to a Legal Services Commission, a statutory body independent of government but whose members are appointed by the responsible government minister. The minister remains responsible for overall policy, while the Commission secures and pays participating practitioners and monitors their quality. The programme is divided into two separate schemes, one relating to civil matters (the Community Legal Service) and one relating to criminal matters (the Criminal Defence Service).

Participation of the legal profession and NGOs in Civil and Criminal Legal Aid Work

Until the recent legal aid reforms, almost all solicitors and barristers who were not engaged in large corporate work undertook some cases funded by legal aid during their career. As a result of the legal profession's high level of participation in the legal aid programme, attorneys traditionally have been staunch supporters of the rights of defendants during political debates. The effect of the reforms has been that, particularly for solicitors, legal aid has become much more concentrated within a group of specialist providers. In time, this shift in participation levels may have the effect of reducing the base of political support within the legal profession for defendants' rights. Despite the recent reforms, a large number of solicitor practitioners still undertake legal aid. In March 2004, there were 4,715 contracts for general civil work and 2,669 for criminal work. Most, but not all, of the firms and solicitors that are parties to contracts for criminal work are also parties to contracts for civil work. The contracts are made with the Legal Services Commission and administered by its network of regional offices. In relation to criminal work, besides

¹⁶⁵ This section is abstract of the following articles: R. Smith, "Quality and Criminal legal Aid in England and Wales", OSI 2005; R. Smith, "Legal Aid in England and Wales: current issues and Lessons, ", Paper presented at the ILAG conference Antwerp, Belgium, June 6-8 2007.

¹⁶⁶ Just over half of those expenditures were attributable to criminal matters.

private sector contracts, a pilot project has involved a set of public defender offices (PDOs) with staff attorneys.

Participation in the legal aid programme is not limited to solicitors and barristers. The Legal Services Commission has deliberately encouraged nongovernmental organizations (NGOs), or “not-for-profit agencies,” to obtain contracts for civil work. As of March 2004, there were 414 contracts with such providers. The four largest areas of civil work by not-for-profits were welfare benefits, debt, housing, and immigration. Lawyers, on the other hand, typically perform civil work involving family law and certain areas of nonfamily civil litigation.

Each contract for legal works imposes obligations on the contracting firms and attorney that are designed to ensure performance quality. Participants in the programme are routinely audited on the basis of a number of criteria, including (1) documentation of procedures, (2) the adequacy of business plans and the financial controls, (3) the quality of reference materials, (4) employment policies (such as job descriptions, staff appraisals, equal opportunity policies, and personnel supervision), (5) file management and review, (6) the quality of cases as measured through “transaction criteria” (a checklist of inquiries and points designed to permit a trained observer to evaluate how and to what standard a file was handled), and (6) supervisor skills (measured by reference to participation in Law Society accreditation schemes, where appropriate).

The Community Legal Service and Civil Legal Aid Services

The Legal Services Commission has statutory duties to deliver community legal service, which includes “the provision of general information about the law and the

legal system and the availability of legal services,”¹⁶⁷ as well as planning and “facilitating the planning by other authorities” of services,¹⁶⁸ with the power to set, monitor, and accredit standards.¹⁶⁹ The Commission also conducts all the day-to-day management of the provision of services, including entering into contracts with providers.

The secretary of state for the Department of Constitutional Affairs determines an annual budget for the Community Legal Service (CLS) and provides directions and guidance as to funding priorities. The secretary also approves a Funding Code (which establishes the criteria for funding individual cases), which is subject to approval by Parliament. Unlike the Criminal Defence Service, aggregate expenditures are generally capped at the budgeted amount in any given year. Currently, the highest designated priorities for CLS funds are proceedings involving children and civil proceedings in which the client faces a real and immediate risk of loss of life or liberty. Secondary priorities include social welfare matters “that will enable people to avoid or climb out of social exclusion” (e.g., housing, debt, employment, and welfare benefits cases); domestic violence proceedings; and “proceedings against public authorities alleging serious wrongdoing, abuse of position or power, or significant breach of human rights.” The secretary set these priorities at the commencement of the current scheme, but they are not statutory and may be changed by the secretary at any time.

Civil contracts between the providers and the CLS cover various categories of civil legal work, including crime and family, personal injury (of declining importance given present funding priorities), clinical negligence, housing, immigration, welfare benefits, employment, mental health, debt, consumer and general contract,

¹⁶⁷ Access to Justice Act 1999, Sec. 4 (2) (a).

¹⁶⁸ Access to Justice Act 1999, Sec. 4 (6).

¹⁶⁹ Access to Justice Act 1999, Sec. 4 (7–8).

actions against the police, public law, education, and community care. Contracts are for varying levels of assistance, from merely providing legal information and advice to fully representing a client in litigation. The payment terms of contracts generally fall into two categories, based on the type of assistance provided.

Providers are paid fixed fees for “controlled” work, which is generally limited to the provision of legal advice short of litigation. Under the contract, permission is given for a stated number of “matter starts.” Of these, a specified number must be within the approved categories of work, with a “tolerance” for unspecified types of other civil cases. The tolerance levels vary with local conditions, often being larger in rural areas where there is a scarcity of solicitors. On average, the tolerance level tends to be about ten percent.

For cases that involve litigation, or “licensed” work, fees are not fixed but paid on an hourly basis. For licensed work, clients must meet a “means and merits” test. In relation to the latter, the relevant issues are the likelihood of success and the potential cost. Very expensive cases, involving £25,000 or more, are dealt with separately.

A significant modification to the existing system has been proposed that would provide for legal aid to be made available even where the cost-benefit factor is unclear or borderline, if the case has a significant wider public interest. Advice on this is given by a separate Public Interest Advisory Panel, largely comprising NGO representatives and chaired by a member of the Commission. Its advice is published on the Commission’s Web site.¹⁷⁰

Innovative Civil Projects

The use of private contractors in civil projects has

allowed the Commission to earmark funds for a number of innovative, one-off projects. These account for a small portion of the overall budget but are serving as a testing ground for novel approaches to the delivery of legal services. Certain high-profile or significant projects include the following:

- The Commission recently took over the operation of the JustAsk! Web site from the Lord Chancellor’s Department.¹⁷¹ The site has a directory of CLS providers, together with advice sections. Although the information on the site is presently only written (the site does not use video, unlike some of the interactive video kiosks in the United States), it is available from any personal computer. The Commission believes that it has enormous potential as access to the Internet broadens.
- The Commission has a number of pilot programmes exploring various methods of delivering legal services, including a recent contract for Capita, a commercial company that runs a call centre, to run a telephone advice project as well.
- The Commission maintained the direct funding of nine law centres, although these—along with others—are now being resourced through contracts. The Commission has supported the central costs of the Law Centres Federation and the Advice Services Alliance. Even though certain of the organizations receiving funding may, as a political matter, be otherwise inclined to criticize the Commission, such conflicts generally have not arisen. It is uncertain whether this will continue to be the case if funding is cut back.
- The Commission has allocated considerable funds to a pilot project evaluating Family Advice and Information Networks (FAINS). These seek to deliver family services through a partnership of different agencies—the successors to ill-fated attempts under the Family Law Act 1996 to

¹⁷⁰ www.legalservices.gov.uk.

¹⁷¹ www.justask.org.uk.

introduce mandatory information meetings and coerce people into mediation. The FAINS are an attempt to put together a more subtle package of services (including, among others, mediation, counseling, and advice regarding money) from which those approaching divorce may choose, with solicitors acting as the gatekeepers to the services. The Commission does not fund most of the services. About 12,000 cases annually are now going to mediation through FAINS, of which two-thirds are said to be successful, at a cost significantly reduced from what would otherwise have been predicted.

- The Commission established a research department that has undertaken very in-depth work on legal needs, the regional legal services committees that it inherited, and “community legal service partnerships” established more locally. The research department recently published a detailed study of need, entitled *Causes of Action: Civil Law and Social Justice*.¹⁷²

The Criminal Defence Service

The Criminal Defence Service supervises the provision of legal aid in criminal cases in England and Wales. The Criminal Defence Service has no overall fixed budget for crime, because of the requirement to provide representation and assistance under the European Convention. As with civil legal aid, the Legal Services Commission generally provides legal aid in criminal cases through contracts with providers (with separate contracts in particularly large cases), but there is a pilot programme under way that involves eight public defender offices staffed by Commission-employed lawyers. Criminal cases account for a majority of the legal aid budget—amounting to £1.1 billion, or €1.6 billion, for 2002 and 2003.

Legal aid in criminal cases is available from a duty solicitor during interrogation in the police station and,

thereafter, throughout the criminal process to varying degrees, depending on need. Legal aid in the police station is currently available in all serious cases without charge and without a means test, although there are now proposals to introduce means testing. Otherwise, in the lower criminal courts, the only test is one of merit, that the case is in “the interests of justice.” In the higher courts, there is a means test. The governing legislation states the principles on which the interests-of-justice test should be applied, and it is then left to the court to apply those principles in each individual case. The test is slightly broader in domestic law than as has been determined by the European Court of Human Rights on the basis of the same phrase. This is probably to reflect the adversarial nature of the system. In practice, almost all cases in the higher courts involve legally aid. In 2000, for example, 94 percent of those tried and 83 percent of those sentenced in the higher courts were represented through legal aid. As a cost-cutting measure, the government is introducing a measure to expand the utilization of the means test to a larger number of cases.

The Quality of Legal Aid Services and the CLS Quality Mark

Beyond those cases that it funds, the Community Legal Service has extended its influence on the quality of legal representation through the development of its “Quality Mark” (QM), which since April 2002 has been available for providers of both criminal and civil work. The Quality Mark is a designation the CLS issues to a legal provider indicating that the CLS has assessed the quality of the provider’s performance at one of five different levels—self-help information, assisted information, general help, general help with casework, and specialist—and determined that the provider meets CLS standards. The Legal Services Commission initially developed the QM as a means of ensuring the quality of its providers, but its scope has since been expanded significantly beyond that. Approximately 10,000

¹⁷² Available at www.lsrc.org.uk/publications/Causes%20of%20Action.pdf.

organizations based throughout England and Wales have requested assignment of a QM at one of the five levels. Through the QM initiative, the Commission has also developed cooperative projects with distinct groups of providers, such as the Commission for Racial Equality and an inclusive quality project designed for those “working for smaller minority groups and excluded communities who may experience difficulty in achieving the full quality mark.”

The Commission requires each provider of legal services through the criminal legal aid system to obtain and maintain a “Specialist” QM. Compliance with the standards of the mark is confirmed by the Commission prior to the grant of each contract for services. The Specialist designation is an assessment of the overall quality of a firm, evaluating its operation and management in a number of areas including staff experience, accreditations, performance, and evaluation procedures; the ability to provide “seamless” service (including referrals); financial stability and controls; file management and review systems; client satisfaction; and complaint procedures.

The process by which the CLS measures and assesses quality in monitoring QMs was initially designed to permit a single trained, objective observer to evaluate a firm’s performance within a single file, using a series of checkpoints and “transaction criteria.”¹⁷³ In essence, the intent was to permit the CLS to review a case after its conclusion, to assess “what was done and the standard to which it was done.”¹⁷⁴ The criteria were developed initially in relation to advice rather than the handling of cases.

In practice, the auditor applying the criteria selects a small random sample of files and assigns them a score expressed as a percentage; the firm passes the audit only if every file scores above the pass mark. A larger sample

may be requested if some files pass and others fail. The standard for performance is “not perfection” but, in management jargon, “fitness for purpose.”

The Legal Services Commission has a statutory right, which overrides the attorney-client privilege of confidentiality, to inspect legal aid files in connection with its evaluations.

The Commission is exploring alternative ways of assessing the quality of legal service providers. Among the methods under consideration are sending staff members undercover into firms to judge how they are treated and utilising the equivalent of “mystery shoppers,” posing as legal aid clients. The Commission is also developing a process of peer review.

The peer review scheme will provide for review of case files by an independent and experienced fellow practitioner who is trained in this process. A panel will be established for every major area of practice. Generally, participating attorneys have expressed enthusiasm for the proposal, because they believe that assessments are more properly conducted by other practitioners rather than by auditors applying a list of criteria.

The Law Society: Raising Standards by Encouragement and Accreditation

The Law Society, which is the regulatory and representative body for solicitors in England and Wales, has a significant role in ensuring the quality of effective representation generally, as well as specifically in criminal cases. Its responsibilities and activities include, among others, establishing the rules for basic qualification and practice standards for solicitors, as well as ongoing professional development requirements; establishing and monitoring a Criminal Litigation Accreditation Scheme; and establishing “best practices” for the profession by

¹⁷³ A. Sherr, R. Moorhead, and A. Paterson, *Lawyers: The Quality Agenda*, vols. 1 and 2, Legal Aid Board (1994).

¹⁷⁴ Legal Aid Board HC50, *Annual Report, 1991–92*, HMSO (1992), 24.

publishing practice guides and organizing conferences. Widespread publicity about poor performance by solicitors and their representatives during police station interrogations led the Law Society to take action to improve performance standards before the Legal Aid Board/Legal Services Commission intervened. In particular, it sought to elevate the standards of practice through the publication of practice guides, as well as to implement a more comprehensive Criminal Litigation Accreditation Scheme that would raise the performance bar. The first criminal practice guide that the Law Society published, titled *Active Defence*, is now in its second edition.¹⁷⁵ The idea behind the practices described in *Active Defence* is suggested by its title. Defense lawyers are encouraged to take initiatives rather than always being responsive to the prosecution. At significant milestones in a case, they must analyze and take stock of the information obtained so far, consider the implications of this for the prosecution and defense cases, and make decisions about the actions to be taken in consequence, particularly defense investigation.¹⁷⁶

Besides its practice guides, the Law Society has expanded its Criminal Litigation Accreditation Scheme—a scheme governing the accreditation of solicitors serving police station duty—to cover both solicitors and their representatives.¹⁷⁷ The scheme is highly detailed and comprehensive, and it focuses on the evaluation of skills that are integral to the adversarial system in place in England and Wales—including knowledge of the relevant laws and understanding of how to intervene effectively in an interrogation. To attain the accreditation, the candidate must first present a portfolio of work that covers five cases “in which the candidate has personally advised and assisted a client at the police station when no other solicitor or representative was

present.”¹⁷⁸ The portfolio is marked as pass or fail by an assessment agent approved by the Law Society. The candidate then must pass a “critical incidents test,” which includes a tape of an interview in which the candidate has to demonstrate how and why he or she would intervene. (There is a similar structure for the Magistrates Court Qualification, involving a portfolio of short notes on 20 cases and more detailed notes on five.) These tests are followed by an interview and advocacy assessment. Applicants for accreditation also must take a course offered by approved providers and pass a test on the material covered. The test includes written answers plus a practical examination in which the candidate listens to a tape of an interrogation and has to indicate where and why he or she would intervene

Lessons

Legal aid in England and Wales is highly sophisticated and is undergoing a period of major change on the basis of more than 50 years of experience with a state-funded scheme. The fact that the English legal system is based on adversarial principles and a common, not civil, law tradition—combined with the commitment to a welfare state that was a legacy of World War II—probably accounts for part of the reason that legal aid developed there at a faster rate than in many other countries in Europe. However, even though the experiences of various countries have differed, a number of general lessons can be taken from the English example.

First, dividing responsibilities between the government, which makes policy, and a separate, semi-autonomous body that will administer the scheme has contributed to success by shielding government from making decisions

¹⁷⁵ R. Ede and E. Shepherd, *Active Defence*, Law Society (2000).

¹⁷⁶ Ede and Shepherd, 37.

¹⁷⁷ The police station qualification scheme is linked to one for accrediting those who appear in the magistrates’ (lower) criminal courts; together they form “Stage 1” of the Criminal Litigation Accreditation Scheme (Stage 2—advanced—does not yet exist).

¹⁷⁸ Law Society, *Criminal Litigation Accreditation Scheme, Assessment and Accreditation Procedures*, para. 3.1.2, available at www.lawsociety.org.uk.

in individual cases regarding who gets legal aid, as well as allowing the development of management expertise independent of the policymaking expertise of government. In addition, separating the provision of services from the management of allocation of resources and policy implementation has created checks and balances between these two interests.

Second, the system should recognize that the type of legal aid may differ between civil and criminal, between advice and representation.

Third, legal aid policy must include, as one component, legal education, so that people understand their rights and can effectively exercise them using the resources made available to them.

Fourth, the legal profession and the managers of the scheme must appreciate that the quality of the service provided is fundamental to success.

Finally, any programme of legal aid requires government expenditure. It is not realistic to expect that a well-functioning and effective scheme can be maintained without some form of government assistance. Because of this, it is important that interest and advocacy groups, as well as the representative bodies of the legal profession and providers, be actively involved in the political process.

SERBIA- LEGAL AID INNOVATIONS FUND WITH THE MINISTRY OF JUSTICE ¹⁷⁹

UNDP Serbia is carrying out a project, in partnership with the Ministry of Justice (MOJ), whose aim is to establish an effective and sustainable system of free legal aid. The project is carried out along two tracks: the first, carried out principally by the Ministry of Justice,

encompasses a process of public consultation and research, and its final outputs are supposed to be a Law on Free Legal Aid and a Strategy for its implementation.¹⁸⁰

The project relies heavily on empirical research to ascertain what is the most sustainable model of free legal aid for Serbia. In the first track, the Ministry will carry out research on a number of topics, including: the financial burden to be placed on the state upon the adoption of a law and the creation of a state-financed system; the number of (potential) beneficiaries that a full-fledged system would have to serve once the criteria (e.g., poverty threshold, human rights' violations, certain types of cases) for who is eligible to receive assistance are developed, etc.

Moreover, the second track engages in research in a more direct manner, through the provision of free legal aid. Namely, UNDP has created a Legal Aid Fund, which will disburse grants to providers of free legal aid through a call for proposals. These small grants will see legal aid being provided to beneficiaries, but the Legal Aid Fund does not have the financial capacity to replace the state. Rather, their primary function will be to allow MOJ and UNDP to research the following four elements of the legal aid system:

- 1) Who the providers should be – it will research how cheap/expensive the services of the various providers are, as well as what the comparative quality of the legal assistance they provide is;
- 2) Who should be entitled to free legal aid (whether to adjust means tests for clients to different economical and social regional contexts in the country, should poverty thresholds depend on the types of legal matters handled, how to include marginalised groups – through grounds of means tests primarily,

¹⁷⁹ From Sinisa Milatovic, Human Rights Programme Manager and Marija Lukic, Legal Aid Fund Manager, UNDP Serbia, "Revised Consolidated Reply: Sudan/Comparative Experiences/Legal Aid Initiatives with the Ministry of Justice," 31 December 2007, UNDP Governance Practice Network.

¹⁸⁰ The project documents is available at (Access may require a UNDP account): http://content.undp.org/go/practices/governance/share/Network-Attachments/download/?d_id=1451570 and a document on the Legal Aid Fund: http://content.undp.org/go/practices/governance/share/Network-Attachments/download/?d_id=1451573

or on the grounds of social exclusion and discrimination; in which cases should legal aid be provided: criminal, civil (labour, family, etc) and/or administrative.

- 3) How should the system be managed and by whom (decentralized or centralized structure, direct mandate from Ministry of Justice or independent bodies, etc.)
- 4) How to finance the system (should legal aid services be fully funded, or should the system rely on the participation of the clients; if so, what should the rate of participation be; how to pay lawyers and paralegals for their services and how much the whole system would cost).

The project currently has 15 grantees, providing legal aid to poor and marginalised citizens: women and children – victims of domestic violence, Roma, refugees and IDPs etc.

Since the Fund acts as a foundation while distributing the grants and in the same time as research/testing mechanism, the requirement of cooperation between UNDP and partners (local bar associations, NGOs and municipality legal aid offices), is the usage of the unique database, created for the purpose of this project. The database will serve as a monitoring and quality control mechanism of services provided beneficiaries, their needs, frequent problems and satisfaction with the services provided.

Annex 7:

Assessment of the Legal Aid Sector in Sri Lanka

Questionnaire - Legal Aid Service Providers in Sri Lanka (State and Non Government)

A: PROFILE OF ORGANISATION

1. Name of Organisation:

2. Address:.....
.....

3. Location:
 Province:..... District:.....
 DS Division:..... GN Division:.....

4. Organization category/type:
 State NGO INGO Charity Non profit company

5. Physical location: Standalone Office Within Court Premises
 Other:.....

6. Number of staff: (please list)

Position / designation	sex	age	ethnicity	Language proficiency

B. SERVICES

7. What are the geographic areas that are served (list all districts served):

.....

.....

.....

8. What type of legal services do you provide?

Legal Advice

Counselling

Legal representation in Court

Referral to other legal aid providers for court representation

Referral to non legal mechanisms (Government institutions, NGOs)

Other

9. How many cases are served annually? Average..... 2007

10. What are the categories of cases and how many in each category?

Fundamental Rights	How many in 2007
Human Rights violations	How many in 2007
Family Disputes	How many in 2007
Land and property disputes	How many in 2007
Criminal cases	How many in 2007
Other Civil cases	How many in 2007
Other Specify:	
.....	How many in 2007
.....	How many in 2007
.....	How many in 2007
.....	How many in 2007

11. In what language do you provide services?

- Sinhala
- Tamil
- English

12. How are services provided?

- Walk in clients
- Referrals by other organizations
- Referrals by Police
- Referrals by Court
- Referrals by individuals

C. CLIENTS

13. How many clients are served annually? In 2007

14. How is an individual client served (Describe in point form the general office procedures when a client walks in)

- i.
- ii.
- iii.
- iv.
- v.

15. What type of people are served?

- | | |
|-----------------------------------|------------------------------|
| Internally Displaced People(IDPs) | Returnee IDPs |
| Plantation Workers | Women Heads of Households |
| Urban Poor | Men victims of crime/abuse |
| Women victims of crime/abuse | Child victims of crime/abuse |
| Detainees | |
| Others not mentioned above: | |
| | |

16. How are people selected for support?

Any person is served

Based on income

specify how means test is done.....

.....

.....

Other criteria

.....

17. What is expected from the client as a contribution?

Minimum fee How much is charged as minimum fees?

to cover photocopying charges

to pay stamp duty fees

to cover postage costs

to pay for or buy stationery

other

.....

D. FUNDING

18. How are services funded?

International donor funding

Name donors and amounts in 2007 –

..... amount

..... amount

..... amount

Individual contributions Amount in 2007

By charging minimum fees from clients

Other

.....

19. How much is spent annually (in 2007) to provide legal aid services?

E. DOCUMENTATION

- 20. Does the organization keep records of legal aid services provided? Yes/No

- 21. Who is responsible for keeping these records?

- 22. How are the records kept?
 - Written / hardcopy
 - ad hoc computer data storing
 - computer database
 - client files only

F. GENERAL

- 23. What are the benefits you see in providing legal aid services?
.....
.....
.....

- 24. What are the gaps you see in the services you provide?
.....
.....
.....

- 25. What are the difficulties you face in providing these services?
.....
.....
.....

- 26. What are the mechanisms you use to overcome these difficulties?
.....
.....
.....

27. What is the main challenge you come across in providing legal aid services?

.....
.....
.....

28. How would you improve the services you provide now?

.....
.....
.....

29. What is needed to improve these services?

.....
.....
.....

30. What support do you expect from the government in providing legal aid services?

.....
.....
.....

31. Are there any other organizations providing legal aid services in this area? (Names)

.....
.....
.....

Enumerator:

Date:

Annex 8:

Assessment of the Legal Aid Sector in Sri Lanka
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Questionnaire 1 – Beneficiaries of Legal Aid Services

- 1. Name (optional)
- 2. Sex (please tick): male female
- 3. Age:
- 4. Ethnicity (please tick) : Sinhala Tamil Muslim Burgher
- 5. Religion (please tick): Buddhist Hindu Christian Catholic Islam
- 6. Language proficiency (please tick the appropriate box)
I can speak Sinhala
I can speak Tamil
I can read and write Sinhala
I can read and write Tamil
- 7. Residence (please write)
Town/Village
DS Division
District.....
- 8. Employment/Occupation:
- 9. Is your employment - please tick Permanent casual/daily wage
- 10. What is your income per month Rs..... /per day Rs.....
- 11. What was the problem for which you sought legal assistance?
.....
.....
- 12. How did you find out about this organisation?
.....
- 13. Where is it located?
- 14. How far is it from your home?

15. What type of assistance did you receive there? (please tick)
- Legal Advice
 - Counselling
 - Legal representation in Court
 - Referral to other legal aid providers for court representation
 - Referral to non legal mechanisms (Government institutions, NGOs)
 - Other

If a case was filed please answer the following questions.

If a case was not filed, please go to question 27.

16. Was a case filed on your behalf? Yes No
17. If yes, in which court?
18. Which year/month was the case filed?
19. How many times have you gone to court?
20. Is it the same lawyer who comes to court every time? Yes No
21. Is it different lawyers? Yes No
22. Are there times where there is no lawyer speaking on your behalf? Yes No
23. Was your problem solved? Yes No
24. If yes, how was it solved?
25. If no, why not?
26. Did/does this case/service you received cost you any money? Yes No
27. If yes, for what do you need money?
-
28. How much did/do you need?
29. Are you satisfied with the legal aid services provide to you? Yes No
30. If yes, why?
31. If no, why not?
32. How can the services provided to you be improved?
-

Annex 9

<h3>Assessment of the Legal Aid Sector in Sri Lanka</h3>
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Questionnaire 2 – Beneficiaries of Legal Aid Services

1. Name (optional)
2. Sex (please tick): male female
3. Age:
4. Ethnicity (please tick) : Sinhala Tamil Muslim Burgher
5. Religion (please tick): Buddhist Hindu Christian Catholic Islam
6. Language proficiency (please tick the appropriate box)
I can speak Sinhala
I can speak Tamil
I can read and write Sinhala
I can read and write Tamil
7. Residence (please write)
Town/Village
DS Division
District.....
8. Employment/Occupation:
9. Is your employment - (please tick) Permanent casual/daily wage
10. What is your income per month Rs...../per day Rs.....
11. What was the problem for which you sought legal assistance?
.....
.....
12. How did you find out about this service provider?
.....
13. Where is it located?
14. How far is it from your home?

15. What type of assistance did you receive there? (please tick)
- Legal Advice
 - Counselling
 - Legal representation in Court
 - Referral to other legal aid providers for court representation
 - Referral to non legal mechanisms (Government institutions, NGOs)
 - Other

If a case was filed please answer the following questions.

If a case was not filed, please go to question 27.

16. Was a case filed on your behalf? Yes No
17. If yes, in which court?
18. Which year/month was the case filed?
19. How many times have you gone to court?
20. Is it the same lawyer who comes to court every time? Yes No
21. Is it different lawyers? Yes No
22. Are there times where there is no lawyer speaking on your behalf? Yes No
23. Was your problem solved? Yes No
24. If yes, how was it solved?
25. If no, why not?
26. Did/does this case/service you received cost you any money? Yes No
27. If yes, for what do you need money?
-
28. How much did/do you need?
29. Are you satisfied with the legal aid services provide to you? Yes No
30. If yes, why?
31. If no, why not?
32. How can the services provided to you be improved?
-

Annex 10:

Assessment of the Legal Aid Sector in Sri Lanka

Guide Questions for Focus Group Discussions

1. What are the legal assistance services available in your area?
2. Who are the legal service providers?
3. How do you rate their services? (Get details on accessibility, coverage, efficiency)
4. Who needs legal services most in your area?
5. For what type of issues?
6. Are there any gaps in these services?
7. How can these be remedied?
8. How can the State help in providing legal services to people?

Civil society organisations, *Grama Niladharis*, Police, Land Officers, Divisional/District Secretaries, local authority officials, religious leaders

Annex 11:

Assessment of the Legal Aid Sector in Sri Lanka

Guide Questions for Policymakers

1. Views on legal aid services being provided at present
2. How can they be improved
3. What should the Government do
4. Who are the other actors who can help
5. What can these actors do
6. What is the government's plan for providing legal services
7. How will resources be allocated for these
8. Who should be in charge of this service provision

“The Legal Aid Sector in Sri Lanka: Searching for Sustainable Solutions” was prepared by the United Nations Development Programme (UNDP), the United Nations High Commission for Refugees (UNHCR), and The Asia Foundation for the Ministry of Constitutional Affairs and National Integration and the Ministry of Justice as part of an overall analysis of the legal aid sector in the country. The study examines the formal legal aid services sector in Sri Lanka and recommends changes for a more effective and sustainable legal aid system that is accessible to all.

