



Global Study on Legal Aid Global Report



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Global Study on Legal Aid

Global Report

Foreword

In Tbilisi, Georgia, 25-year-old Mikheil*, who spent a year in jail after being falsely accused of a crime that he did not commit, was exonerated with help from the Legal Aid Service, the State agency responsible for delivery of legal aid in Georgia.

In Jabalia Camp in the Gaza Strip, Asma* was able to escape an abusive marriage and obtain custody of her children through help from a legal aid clinic, which assisted in compiling medical records to document ongoing abuse as well as in securing funding for a monthly allowance from the State.

In North Kivu in the Democratic Republic of Congo, Julie*, just 10 years old, is a survivor of sexual violence. She has returned to school after nearly four months of absence with help of the legal aid centre that supports victims of sexual and gender based violence. Through comprehensive service provided by the legal aid centre, including legal services, medical care, psychological counselling and support for reintegration into the community, Julie was able to focus on regaining control over her life.

The stories above are just a few examples of how access to legal aid empowers individuals and communities, contributes to reducing poverty and promotes the protection of human rights. Many initiatives around the world using different approaches and models strive to ensure access to legal services for those who cannot afford it. From university-based legal aid clinics supporting prisoners in Viet Nam in their reintegration into the community, to the national legal aid authority assisting in mediation of labour disputes and providing legal representation for employees of the garment, ship breaking, steel manufacturing industries in Bangladesh, to civil society organizations in Guatemala providing legal and psychological assistance to victims of human rights violations as part of the transitional justice process, legal aid services can help people gain knowledge about their rights, assist in resolving disputes and support them in obtaining redress for violation of their rights.

This Global Study on Legal Aid was initiated in 2014 and presents data gathered in 2015 from both Member States and independent national experts. This global effort coincided with the adoption of the 2030 Agenda for Sustainable Development by the United Nations General Assembly, which clearly acknowledges the importance of peaceful, just and inclusive societies in achieving sustainable development and an enabler for the broader Sustainable Development Goals, with access to justice for all as one of its targets.

The *Global Report*, *Country Profiles* and the *Case Studies* publications of the Global Study on Legal Aid provide an initial overview of the current state of legal aid worldwide. It illustrates how States have striven to safeguard the right to legal aid services in criminal matters and to meet the demand for legal aid services in a wide range of civil and administrative matters. While progress has been made in establishing national legal and policy frameworks on legal aid in many countries, States face common challenges in translating this into improved access to justice for its people. Indeed, effective delivery of legal aid service is but one of many aspects of broader reforms that are necessary to ensure wider access to justice. It is only when concerted efforts are made towards other crucial reforms, such as reducing excessive and arbitrary pretrial detention, improving the capacity of States to respond to violence against women and children, or enhancing the independence of judges and lawyers, that access to justice for all can truly be achieved.

In addition to presenting a global picture of the situation of legal aid, the Study also highlights specific challenges and priority areas in various aspects of legal aid delivery. Moreover, innovative approaches and lessons learned on delivering legal aid services are featured in order to inform future technical assistance to strengthen legal aid systems around the world. This Study represents the first step in raising awareness of the global state of legal aid services as well as interest and momentum towards wider reforms to improve access to legal aid as part of a broader agenda of ensuring access to justice for all.

As members of the Steering Committee overseeing this Study, we have been engaged throughout the process of the Study from conceptualization to the final review. We welcome this Study as an initial attempt to take stock of how legal aid services are being delivered worldwide.

The Global Study on Legal Aid Steering Committee

* Not their real names.

Preface

The 2030 Agenda for Sustainable Development recognizes “the need to build peaceful, just, and inclusive societies which provide equal access to justice and are based on respect for human rights.” Goal 16, and its target 3 in particular, highlight the importance of ensuring “access to justice for all” in achieving sustainable development. That target has a direct impact on progress across other goals, such as Goal 1 on Poverty, Goal 5 on Gender Equality and Women’s Empowerment, Goal 8 on Productive Employment and Decent Work, and Goal 10 on Reducing Inequalities.

Access to legal aid is central to ensuring access to justice, especially for the poorest and most vulnerable people. As emphasized by the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, legal aid is an essential aspect of a fair, humane, and efficient criminal justice system based on the rule of law. Without access to legal aid, millions of people around the world are at high risk of having their rights ignored or violated when they interact with a criminal justice system, including through arbitrary pretrial detention, torture, coerced confessions, and/or wrongful convictions.

Ensuring access to legal aid for civil and administrative matters is also critical for empowering poor and marginalized populations. So is access to legal aid for marital and custody cases, labour disputes, and property and inheritance issues. Legal aid helps people to assert their rights and to contest cases of discrimination. It contributes to enhancing people’s trust in the justice system, and it enhances the legitimacy of the state. Legal aid can also ensure that people have access to information about their rights, entitlements, and obligations. Put simply, access to legal aid is fundamental to safeguarding fair, equal, and meaningful access to justice.

The United Nations Development Programme (UNDP) and the United Nations Office on Drugs and Crime (UNODC) undertook the Global Study on Legal Aid in order to collect data systematically on legal aid, examine how the right to legal aid is being defined worldwide and how it is being addressed through laws and

policies by states, and understand better the reality of what access and delivery of legal aid looks like across countries and regions in diverse development contexts.

This global study is the first time the UN system has endeavoured to provide an overview of the current state of legal aid around the world. It increases the knowledge and evidence base on how legal aid is being provided. Drawing on survey responses from UN Member States and independent national experts, the study presents various recommendations on how to address common challenges which Member States across all regions and in different development contexts face in delivering legal aid. We hope that the study will galvanize states into taking concrete steps to enhance their legal aid systems.

UNDP and UNODC are committed to supporting access to justice for all, including through the effective provision of legal aid services. This is fundamental to building peaceful, just, and inclusive societies based on the rule of law, and thereby to ensuring sustainable development.

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The Study was developed by two GSLA consultants: Valerie Wattenberg, who initiated the Study, including developing the framework for the Study and an initial draft of the report, and Marie Laberge, who finalized the Study by completing the analysis of survey results and developing the country profiles. Research support was provided by Natasha Geber.

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Acronyms and Abbreviations

AIDEF – Inter-American Association of Public Defenders

ASK – *Ain o Salish Kendra* (A national legal aid and human rights organisation in Bangladesh)

Bangkok Rules – United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders

Beijing Rules – United Nations Standard Minimum Rules for the Administration of Juvenile Justice

BMZ – German Federal Ministry for Economic Cooperation and Development

CEDAW – Convention on the Elimination of all forms of Discrimination Against Women

CCPCJ – Commission on Crime Prevention and Criminal Justice

CLC – Community Law Centre

CRC – United Nations Convention on the Rights of the Child

CSO – Civil Society Organisation

DPKO – United Nations Department of Peacekeeping Operations

DRC – Democratic Republic of Congo

ECOSOC – Economic and Social Council

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

GIZ – *Deutsche Gesellschaft für Internationale Zusammenarbeit*

GBV – Gender-based Violence

GSLA – Global Study on Legal Aid

Havana Rules – United Nations Rules for the Protection of Juveniles Deprived of their Liberty

HIV – Human Immunodeficiency Virus

HRC – Human Rights Council

IACHR – Inter-American Commission on Human Rights

ICCPR – International Covenant on Civil and Political Rights

ICESCR – International Covenant on Economic, Social and Cultural Rights

ICT – Information and Communication Technology

IDP – Internally Displaced Person

ILF – International Legal Foundation

LDC – Least Developed Country

LGBT – Lesbian, gay, bisexual and transgender

MONUSCO – United Nations Organisation Stabilization Mission in the Democratic Republic of the Congo

Nelson Mandela Rules – United Nations Standard Minimum Rules for the Treatment of Prisoners

NGO – Non-governmental Organisation

OAS – Organization of American States

ONUCI – United Nations Operation in Côte d'Ivoire

OSCE – Organization for Security and Co-operation in Europe

OSF – Open Society Foundations

SGBV – Sexual and Gender-based Violence

UDHR – Universal Declaration of Human Rights

UN – United Nations

UN Principles and Guidelines or UNPG – United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

UNDP – United Nations Development Programme

UNFPA – United Nations Population Fund

UNGA – United Nations General Assembly

UNICEF – United Nations Children's Fund

UNODC – United Nations Office on Drugs and Crime

UPR – Universal Periodic Review

Vienna Guidelines – Guidelines for Action on Children in the Criminal Justice System

WEOG – Western Europe and Others Group

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Executive Summary

The United Nations Development Programme and the United Nations Office on Drugs and Crime undertook the Global Study on Legal Aid to establish a baseline understanding of how the right to legal aid in civil, criminal and administrative cases has been defined and addressed around the world. The Global Study is the international community's first attempt to collect data on and present a comprehensive overview of the state of legal aid globally. It provides valuable insights on a number of common priorities faced by countries for enhancing people's access to effective legal aid services.

The Global Study on Legal Aid is comprised of three publications: (i) this *Global Report*, which presents data, findings and recommendations on access and provision of legal aid services around the world; (ii) *Case Studies*, which provide in-depth analysis of the state of legal aid delivery in 8 countries; and (iii) *Country Profiles*, which contain information on various aspects of legal aid delivery in 49 countries.

The data and findings of the Global Study are based on survey responses from UN Member States and independent national experts in 106 countries—representing more than half (53%) of the world's countries—across all the regions of the world and development contexts.

Some of the findings and recommendations emerging from the report are as follows:

1. Roughly a third of responding countries have not yet enacted specific legislation on legal aid. While the development of legal aid legislation is a positive start, translating the law into national policies and strategies to ensure delivery of legal aid services is essential in establishing an effective national legal aid system.
2. Public awareness of the availability of legal aid services and how to access them is critical in delivering legal aid services, particularly for marginalized and vulnerable populations. Legal education and outreach must thus be an integral part of a national legal aid strategy.
3. Although many countries recognize the right to legal aid for criminal defendants who cannot afford a lawyer, the availability and quality of legal aid provided in practice is limited. For example, survey results show that there are gaps between legal provisions and their implementation for the requirement

that a legal aid provider be provided from the “moment a law enforcement representative restricts a person’s freedom.” This violation of the right to a fair trial increases the risk of additional abuses that many vulnerable populations are at an increased risk of, such as torture, coerced confessions and arbitrary or prolonged pretrial detention.

4. The demand for legal aid for civil cases is largely unmet in most countries. The need for increased access to legal aid services for civil and administrative cases, including family disputes and property matters, is particularly pronounced in Least Developed Countries.
5. There is limited availability of specialized and targeted legal aid provision for specific vulnerable populations, such as internationally displaced people and refugees. Specialized services, such as those for children and women, can help ensure that services provided are tailored to the specific needs of target groups.
6. Legal aid services in rural areas must be made a priority in national legal aid strategies, as nearly half of the responding Member States have indicated that the acute shortage of lawyers outside urban areas is one of the biggest impediment facing the delivery of legal aid services.
7. Civil society and other non-State actors can play a role in complementing the State delivery of legal aid services, such as through community paralegals, university-based legal clinics or other private sector initiatives for *pro bono* services.
8. The State authority responsible for delivery of legal aid should consider: (i) ensuring diversity in the types of legal aid providers within the governing board of the legal aid authority; (ii) safeguarding independence in monitoring the performance of legal aid service delivery; (iii) establishing robust national data collection system; and (iv) enhancing the quality of legal aid services, including by developing performance and qualification standards for all legal aid providers.
9. To ensure sustainability of legal aid services, it is essential that States allocate adequate budget to meet the demand for legal aid. The extent of demand and priorities can be identified through legal needs assessments, which can inform evidence-based policy making.
10. Global sharing of experiences, including by supporting the development of national, regional and global networks of legal aid providers, is encouraged to exchange lessons and good practices.

The findings and recommendations from the Global Study can assist legislators, policymakers and other national and international stakeholders working in the area of access to legal aid by identifying priorities for technical assistance and making evidence-based recommendations on how to strengthen the provision of legal aid services as a means to empower people to seek out justice and protect their rights.

Part I



"Just as one cannot let people suffer from hunger or thirst, one cannot let them suffer from injustice or arbitrary power just because legal aid might prove costly. People's aspirations for democracy and development require a 'true' rule of law, which is impossible if justice is not accessible to all [...] [A]s another saying puts it so well, "in these conditions, it is often better to be rich and guilty than poor and innocent", and lose all your rights [...] You are poor not only because you don't have money, but also because you cannot read the civil procedure code, or the penal code, or you don't know what action to take in the face of injustice. You are poor when, instead of seeing the judge as someone who is going to protect you, you fear him and dread his judgment. Yes, when you are poor, you are also afraid. Poverty has many faces, and legal aid can help address many of them."

Marou Amadou, Minister of Justice, Republic of Niger



Overview

A. Introduction to the Study

“You can’t talk about development if people within a community don’t think they have equal access to justice. Nobody feels safe. You can’t even begin to talk about development if citizens don’t share a sense of belonging and entitlement to their community justice system. Legal aid is such a fundamental necessity for human existence: it calls for a much greater public investment than we currently see.”

Yahaya Al-Hassan Seini, Executive Director, Legal Aid, Ghana

For many people, coming in contact with the justice system can be a challenging and overwhelming experience due to its complexity. Particularly for poor and marginalized groups, the justice system can be difficult to understand and navigate due to obstacles, such as lack of financial resources, lack of awareness on how to access the justice system, insufficient command of the local language and long travel distances to reach a legal service provider. As a result, legal aid is often the only means by which many people across the world can overcome such barriers. Legal aid service providers, such as lawyers, paralegals and law students, thus play a significant role by assisting people to secure their rights and entitlements, obtain redress for grievances, and ensure proper defence in criminal law proceedings.

These realities on the ground are also being increasingly recognized at the global level, including the linkages between access to justice, poverty and inequality, accountability and the rule of law, and ensuring equitable development. The 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly in September 2015, includes Goal 16 on promoting peaceful and inclusive societies, providing access to justice for all and building effective, accountable and inclusive institutions at all levels.¹

1. General Assembly resolution 70/1.

The targets under Goal 16, and in particular targets 16.3 and 16.b, seek to measure the extent to which the rule of law and equal access to justice for all are promoted, as well as the extent to which non-discriminatory laws and policies are enforced. Ensuring access to legal aid services contributes directly to the achievement of these targets by providing a means for people who are not able to afford legal services to access legal advice and representation – whether to secure inheritance and property rights for women, to protect housing rights for people who live in the margins of poverty, to access legal defence for criminal matters, or to enable vulnerable groups, including children, persons with disabilities and others, to access qualified and effective legal aid services to protect their rights in legal matters.

At the international level, the importance of legal aid has been specifically recognized by the Member States of the United Nations, who adopted the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (UN Principles and Guidelines) in 2012.² The UN Principles and Guidelines are the first international set of standards on legal aid in criminal cases, which aim to provide guidance to countries on the fundamental principles for establishing criminal legal aid systems. Moreover, in the 2012 *Declaration of the high-level meeting of the General Assembly on the rule of law at the national and international levels*, the General Assembly emphasized the importance of safeguarding “the right of equal access to justice for all, including members of vulnerable groups, and the importance of awareness-raising concerning legal rights” and committed to “tak[e] all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.”³ In addition, the Commission on Crime Prevention and Criminal Justice (CCPCJ), which serves as the UN system’s lead policymaking body in the area of criminal justice, adopted resolution 25/2 on 27 May 2016. The resolution encourages Member States to adopt or strengthen domestic measures to ensure effective provision legal aid and requests UNODC to work closely with other UN agencies to continue to develop and disseminate relevant tools and to provide advisory services and technical assistance to Member States in the area of legal aid, including through promoting greater cooperation between legal aid providers through specialized networks.

At the national level, legal aid enables society’s poor and marginalized groups to better understand and exercise their rights and entitlements, resolve their disputes peacefully, and seek remedies for grievances and thereby enjoy equal protection of the law. Effective legal aid service systems can improve the performance of justice systems, including law enforcement, simultaneously increasing accountability and respect for the rule of law – all of which are integral to sustainable development. Access to legal information and assistance with legal or justice-related issues are also

2. General Assembly resolution 67/187, annex.

3. General Assembly resolution 67/1.

key for upholding human rights – including social and economic rights - and are the main components of legal empowerment. For example, legal aid providers can help pretrial detainees avoid arbitrary and unnecessary detention and ensure speedier trials, thereby reducing the frequency and impact of pretrial detention on individuals, their families and their communities, as well as alleviating overcrowding of prisons.⁴ Moreover, in at least 45 countries, legal aid contributes to overall gender equality and women’s empowerment by providing survivors of gender-based violence with access to legal advice and assistance on property, inheritance and family matters.⁵

In the context of criminal justice, a functioning legal aid system is essential to ensure a fair, efficient and effective criminal justice system. Providing legal aid to persons accused or suspected of a crime can protect their right to a fair trial, including by ensuring lawful and appropriate treatment towards them by criminal justice actors, which is a growing problem for many countries worldwide. Providing effective legal aid can significantly reduce prison overcrowding and thus contribute to cost savings for the State. Moreover, legal aid is particularly critical in ensuring equal access to justice for women and protecting the rights of persons with special needs, such as children, the elderly, people with disabilities or persons belonging to religious, linguistic or ethnic minority groups. Legal aid also helps safeguard the rights of victims and witnesses in the criminal justice process.⁶

In civil matters, access to legal aid for poor and marginalized groups – for example, to resolve disputes over land and property or in commercial or family cases – can help empower poor and marginalized groups by providing them information and support to enable them to claim their rights and entitlements, use their assets, and grant them access to services and benefits they are entitled to under the law. It is important to note that access to civil legal aid, in addition to criminal legal aid, is essential in ensuring access to justice. The UN Special Rapporteur on Extreme Poverty, in her 2012 report on *Extreme Poverty and Human Rights*, has clearly outlined the importance of access to legal aid services for civil matters in addition to criminal matters, noting that international human rights law explicitly established the right to legal aid for criminal proceedings which is “particularly important for those living in poverty, who face a range of obstacles in negotiating bail procedures, pretrial detention, trials and sentencing, and appeals. Nonetheless, free legal aid should not only be provided in criminal matters, but also in civil matters when individuals do not have sufficient

4. Pretrial detainees may lose their jobs, be forced to abandon their education, and be evicted from their homes. They are exposed to disease and suffer physical and psychological damage that lasts long after their detention ends. Their families also suffer from lost income and forfeited education opportunities, including a multi-generational effect in which the children of detainees suffer reduced educational attainment and lower lifetime income. The ripple effect does not stop there: the communities and States marked by the over-use of pretrial detention also must absorb its socioeconomic impact. Open Society Foundations, and United Nations Development Programme, *The Socioeconomic Impact of Pretrial Detention* (New York, 2011).
5. United Nations Women, *In Pursuit of Justice, Progress of the World’s Women 2011-2012*.
6. This is recognized in General Assembly resolutions 67/1, 67/187, as well as discussed in the publication of the UNODC and UNDP, *Early Access to Legal Aid in Criminal Justice Processes: a Handbook for Policymakers and Practitioners* (2014).

resources to pay for legal assistance and, without such assistance, they are prevented from asserting their rights.” She continues to note that the “[l]ack of legal aid for civil matters can seriously prejudice the rights and interests of persons living in poverty, for example when they are unable to contest tenancy disputes, eviction decisions, immigration or asylum proceedings, eligibility for social security benefits, abusive working conditions, discrimination in the workplace or child custody decisions. Indeed, exclusion of certain categories of claims from the scope of free legal aid, such as housing or immigration proceedings, or exclusion from representation before quasi-judicial tribunals, such as welfare or employment appeal boards, discriminates against the poor.”⁷

Definition of legal aid

The concept of “legal aid” is inseparable from its function as a vital means of access to justice. Access to justice is defined as “the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards,” and it is also seen as fundamental to the protection of human rights.⁸ Legal aid plays a crucial role in enabling people to navigate the justice system, to make informed decisions, as well as to obtain justice remedies. Legal aid makes a critical connection between populations and their justice systems and provides guidance on how to navigate the often difficult-to-understand justice system.

The purpose of legal aid derives from evolving standards of justice and fairness, encapsulated in the UN Principles and Guidelines.⁹ Although the UN Principles and Guidelines address legal aid in the context of criminal justice, the goals of ensuring fundamental fairness and inspiring trust in justice proceedings and their outcomes run across all spheres of justice.

For the specific purpose of this study, “legal aid” is defined as “legal advice, assistance and/or representation at little or no cost to the person designated as entitled to it,” mirroring the more detailed definition used in the UN Principles and Guidelines.¹⁰ However, as the scope of this Study is wider than legal aid for criminal matters, the definition of “legal aid” also encompasses services provided by lawyers and paralegals in criminal as well as in civil and administrative matters to individuals who are poor, marginalized, or otherwise in need of special legal protection, to enable

7. United Nations General Assembly, Report by the Special Rapporteur on Extreme Poverty and Human Rights, 9 August 2012 (A/67/278).

8. United Nations Development Programme, Access to Justice Practice Note (2004). United Nations Office on Drugs and Crime, Access to Justice: Legal Defence and Legal Aid (2006).

9. See, e.g., the UN Principles and Guidelines (see footnote 2) recognize that: “Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in article 11, paragraph 1, of the Universal Declaration of Human Rights, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.”

10. The UN Principles and Guidelines states that “the term ‘legal aid’ is defined as “legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.”

them to exercise their rights. This includes the provision of legal advice, representation in courts or proceedings under other State tribunals, assistance in drafting of documents and pleadings, mediation, assistance in navigating the rules and procedures of State administrative agencies, along with a range of other services.

The Global Study on Legal Aid

Legal aid is a key component in ensuring access to justice, and a core principle of development and rule of law, recognized in the UN Principles and Guidelines as “an essential element of a fair, humane, and efficient criminal justice system.”

Numerous studies by national and international organisations alike have assessed the needs for legal aid and tracked progress in various countries and regions. Yet, little information is available on what is happening as different countries worldwide endeavour to meet the legal aid needs of their populations.

UNDP and UNODC undertook this Global Study on Legal Aid to establish a baseline understanding of how the right to legal aid has been defined and addressed by different countries across different contexts, and to document the various types of legal aid services provided in civil, criminal and administrative cases, including legal advice, assistance, and representation. The findings from this Study can assist legislators, policymakers and other national and international stakeholders working in this area to identify priorities, gaps and policy recommendations to strengthen access to legal aid services as a means to empower people to seek out justice and realize their rights.

As a first step in designing and developing the framework for the Study and ensuring oversight throughout the process, UNDP and UNODC established a Steering Committee of global legal aid experts and practitioners to function as an advisory group for the Study. The Steering Committee provided feedback at every step of the process: from the design of the Study to selecting and contributing to case studies, identifying national experts to fill out the survey, identifying good practices highlighted in textboxes, sharing additional data to complement country profiles, and reviewing the final drafts of the Study, country profiles and case studies.

The Study aims to provide an overall picture of the extent to which the right to legal aid is guaranteed and how its implementation looks like in practice around the world, by compiling key trends from survey responses provided by UN Member States and experts, complemented by detailed country case studies. In addition to providing an overview of various approaches currently in use to deliver legal aid to vulnerable populations, the Study examines impediments encountered by countries, and sheds light on innovative solutions being developed to address such challenges.

More specifically, the Study seeks to address the following key questions, amongst others:

1. What is the framework for the provision of legal aid by the State (i.e. laws, policies, budget allocation, service delivery model)? Which other actors are involved in the provision of legal aid and what role do they play?
2. What is the current demand for legal aid (i.e. number of applicants, types of cases, types of services, geographic distribution of cases)?
3. What is the interaction of legal aid service providers with informal justice mechanisms (traditional/customary justice systems and alternative dispute resolution mechanisms)?
4. What are some of the strengths and weaknesses of current systems and what are the major challenges facing legal aid provision?
5. What recommendations can be made to strengthen legal aid provision?

Methodology and limitations to the Study

1. Methodology

The Global Study on Legal Aid is comprised of three publications: (i) Global Report; (ii) Case Studies; and (iii) Country Profiles. The three publications collectively form the Global Study on Legal Aid.

(i) Global Report

The Global Report contains both quantitative and qualitative data on access and provision of legal aid services that have been collected through survey results from Member States and national experts as well as desk research.

Desk research — Primary and secondary sources on the provision of legal aid were reviewed to assist in designing survey instruments, including existing research on the provision of legal aid and existing data on the availability and accessibility of legal aid from a citizen's — or "user's" — perspective. The bibliography includes a summary of the sources consulted as part of the desk research process, which helped to define the parameters of the Study.

Surveys — Two sets of surveys were conducted as part of this research: the first set of surveys was circulated to UN Member States through the Permanent Missions to the

United Nations in Vienna, and a second set was sent to a selected number of national experts and practitioners (from academia, civil society, legal aid practitioners or administrators) who are familiar with the provision of legal aid in their country. Overall, survey responses from Member States and national experts were obtained for a total of 105 countries. The main findings presented in this Study draw on the data gathered through these surveys.

1. The Member State Survey (**Annex I**) focused primarily on the legislative basis for legal aid provision in each country, asking a range of questions about the nature and coverage of legal aid services, which providers are involved, and how legal aid is administered, amongst other questions. The survey also asked governments to identify key challenges in establishing legal aid systems in their countries, and to highlight areas where additional investments are needed to strengthen the national legal aid system. The Member State Survey was circulated to 197 countries¹¹ on 14 April 2015, and a total of 68 UN Member States submitted a response.
2. The Expert Survey (**Annex II**) sought to complement the information provided by the Member State Survey by soliciting input from legal aid providers, civil society members, researchers and other independent experts with experience in providing or studying legal aid in each country. While some of the survey questions directed at experts overlapped to some extent with questions directed at Member States on the legal and institutional framework for legal aid, additional questions were specifically asked to experts to gather their perceptions on the actual implementation of legal aid guarantees, the extent to which people can effectively access legal aid services, and the overall effectiveness of legal aid systems. Experts were selected in consultation with the Steering Committee of the GSLA. The Expert Survey was circulated in August 2015, and a total of 121 experts from 89 countries responded to it. For some countries, more than one expert responded to the survey, in which case their responses were synthesised into a single consolidated expert input for the country.

(ii) Case Studies

Case studies were developed to offer a detailed analysis of experiences in a range of countries across different developmental contexts. Each case study highlights a different aspect of legal aid. As such, the methodologies applied vary across countries, including a mix of research methods, such as surveys, focus groups, interviews, desk research and consulting experts.

11. 193 UN Member States, 2 Permanent Observers (The Holy See and State of Palestine) and 2 non-Member States (Niue and the Cook Islands).

The following eight case studies have been developed:

- Afghanistan: The case study summarizes lessons learned from legal aid reform efforts undertaken in a conflict context.
- Bangladesh: The case study draws on data collected through surveys and focus groups to review people's experiences and the challenges they face in accessing legal aid services.
- Brazil: The case study describes the legal aid reform process that led to the current public defender system.
- Democratic Republic of Congo: The case study attempts to identify priorities for ensuring access to legal aid services to people who have been affected by conflict.
- Georgia: The case study provides an in-depth overview of the situation facing children in accessing legal aid services.
- The Netherlands: The case study provides an overview of their three-tiered legal aid administration, including the use of an online legal aid platform.
- South Africa: The case study focuses on the role and functions of the legal aid board.
- Tunisia: The case study elaborates on some of the key challenges and efforts in reforming the legal aid system in the aftermath of the political transition.

A separate publication titled *Global Study on Legal Aid: Case Studies* is available as an online resource on the UNDP and UNODC websites.

(iii) Country Profiles

For the 49 countries for which both Member State and Expert survey responses were submitted, a detailed country profile was developed. Country profiles are intended to provide a "snapshot" of the current state of legal aid provision in a given country, and includes information on, *inter alia*, a country's legislative framework, delivery model, legal aid financing, specialized legal aid services for vulnerable populations and identified priorities for improving the national legal aid system.

The *Global Study on Legal Aid: Country Profiles* publication is available as an online resource on the UNDP and UNODC websites. This publication also includes a Table of Legislation, which contains information on which legislation provides the right to legal aid in 125 countries.

2. Limitations to the Study

While the Global Study can be commended for being the first international community's attempt to provide a comprehensive overview of legal aid provision worldwide, it is also constrained by a number of methodological limitations. As indicated above, the findings of this Study are based on both fact-based and perception-based survey responses from Member States and independent national experts and thus their accuracy is contingent on the level of awareness of respondents about the legal aid situation in their country. The Study is also constrained by the limited availability of reliable data on legal aid in responding countries.

With mostly one or two experts responding for each country (at most 4 experts, in one instance), the sample size of expert respondents is limited. Moreover, since only 53% of all UN Member States (105 out of 197 Member States) are represented in the sample, the Study should not be considered representative of all types of legal aid systems that exist in the world. It should also be noted that countries that responded to the survey are not evenly distributed across regions, nor are they proportionately represented by development status (i.e. Least Developed Countries, Middle-Income Countries, and High-Income Countries). While all Member States and numerous independent experts were invited to respond to the surveys, participation was voluntary and thus certain regions are better represented than others in the sample. Mindful of these methodological limitations, full disclosure of the varying sample sizes for each category of respondents was provided next to each figure in the presentation of survey findings (Part II).

Despite these shortcomings, the Study is still an important first attempt to collect data on and present an overview of the state of legal aid globally. Where possible, findings were disaggregated down to the level of regions or developmental status of countries. The richness of these indicative findings points to the need for more in-depth research to be conducted on a larger sample in order to further elaborate on these initial findings.

B. International legal framework

“Legal aid is a fundamental human right. Whenever someone is deprived of his right to counsel and he feels that he is a victim of injustice, that person may run away to the mountains or turn into a rebel [...] That is why we must assist everyone who has grievances to seek redress through peaceful and legal means [...] I’ve been saying that if States are willing to spend billions of dollars on anti-terrorism or counter-insurgency measures, they should spend just as much on strengthening the legal aid system.”

Persida Acosta, Chief, Public Attorney’s Office, Philippines

The right to legal aid within the international legal framework developed in a piecemeal fashion over time. The right to legal aid, mostly in the context of the right to free legal assistance for criminal defendants who are unable to afford a lawyer, and in connection with the right to defence and the right to a fair trial, was embedded in various international and regional treaties and declarations. Until the adoption of the UN Principles and Guidelines¹² in 2012, there had been no standalone international normative instrument dedicated exclusively to the right to legal aid.

International instruments

The **Universal Declaration of Human Rights**¹³ (1948, UDHR) was the first international instrument to proclaim that all persons were entitled to “equal protection of the law”¹⁴, as well as the right to a fair trial. By providing the right to be free from discrimination, the “right to an effective remedy by the competent national

12. General Assembly resolution 67/187, annex.

13. General Assembly resolution 217 A (III) of 10 December 1948.

14. *Ibid.*, art. 7.

tribunals for acts violating the fundamental rights granted to him [or her] by the constitution or the law,”¹⁵ and the right “in full equality to a fair and public hearing by an independent and impartial tribunal...”¹⁶, the Declaration called upon countries to strengthen their justice systems to make these promises a reality for every human being.

Following the UDHR, additional international instruments were developed to further elaborate on and refine concepts related to equal access to justice for all, especially for marginalized and vulnerable groups.

The **International Covenant on Civil and Political Rights**¹⁷ (1966, ICCPR) stresses States’ obligation to ensure that effective remedies are provided when rights are violated, in particular, through “competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State.” Article 14(3)(d) of the ICCPR affirms the right of individuals facing criminal charges to have legal assistance assigned to them and, “where the interests of justice so require,” that such assistance be provided “without payment by him [or her] ... if he [or she] does not have sufficient means to pay for it[.]”¹⁸ The ICCPR additionally emphasizes that “[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law.”¹⁹ The Human Rights Committee further elaborated on the right to legal assistance in its General Recommendation 32 noting that the “availability or absence of legal assistance often determines whether or not a person can access the relevant proceedings or participate in them in a meaningful way. While article 14 explicitly addresses the guarantee of legal assistance in criminal proceedings in paragraph 3 (d), States are encouraged to provide free legal aid in other cases, for individuals who do not have sufficient means to pay for it. In some cases, they may even be obliged to do so. For instance, where a person sentenced to death seeks available constitutional review of irregularities in a criminal trial but does not have sufficient means to meet the costs of legal assistance in order to pursue such remedy, the State is obliged to provide legal assistance in accordance with article 14, paragraph 1, in conjunction with the right to an effective remedy as enshrined in article 2, paragraph 3 of the Covenant.”²⁰

While not expressly addressing the right to legal assistance, the **International Covenant on Economic, Social and Cultural Rights**²¹ (1966, ICESCR) asserts State

15. *Ibid.*, art. 8.

16. *Ibid.*, art. 10.

17. United Nations, *Treaty Series*, vol. 999, No. 14668.

18. *Ibid.*, art. (2)(3)(a) and art. 14 (3)(d). Article 14 also reinforces a range of due process rights, including the right to be informed of the availability of assigned counsel (if the interests of justice require), extending the right to convicted persons. Monitoring is to be provided by the Human Rights Committee, which has stressed that the severity and complexity of a case are among the factors to consider in determining the “interests of justice.”

19. *Ibid.*, art. 26.

20. Human Rights Committee, *General Comment 32: Article 14: Right to equality before courts and tribunals and to a fair trial*, 23 August 2007 (CCPR/C/GC/32).

21. United Nations, *Treaty Series*, vol. 993, No. 14531.

parties' obligation to uphold rights without discrimination,²² and to ensure the equal rights of men and women to the protections arising from the ICESCR.

The **Convention on the Elimination of all forms of Discrimination Against Women** (1979, CEDAW)²³, which is the key international instrument for achieving equality between men and women, includes a reference to the “establish[ment of] legal protection of the rights of women on an equal basis with men ... through competent national tribunals and other public institutions [for] the effective protection of women against any act of discrimination.”²⁴ In addition, the CEDAW Committee published a General Recommendation 33: Women's Access to Justice (see **Box 1**) in 2015, which includes guidelines on strengthening access to legal aid services for women, including promoting gender-sensitive services, improving accountability and legal awareness.²⁵

States parties to the **United Nations Convention on the Rights of the Child** (1989, CRC)²⁶ undertake to treat accused children “in a manner consistent with the promotion of the child's sense of dignity and worth,” including access to “legal or other appropriate assistance” to enable the child to prepare his or her defence.²⁷ The CRC reiterates the priority established in other international instruments to provide “conditions of equality” and non-discrimination, with a right to an effective remedy as stipulated in the Optional Protocol 3 on the Involvement of Children in Armed Conflict.²⁸ Although the Convention and its concomitant optional protocols do not specifically address the right to legal aid at no cost to the child (or his parents), the Committee on the Rights of the Child addressed this in General Comment 10: Children's Rights in Juvenile Justice, which provides that “legal or other appropriate assistance in the preparation and presentation of his/her defence ... should be free of charge.”²⁹ **The United Nations Rules for the Protection of Juveniles Deprived of their Liberty** (1990, the Havana Rules)³⁰ urge that children be entitled to legal assistance “and be enabled to apply for free legal aid, where such aid is available[.]”³¹ The Havana Rules further stipulate that the right to legal aid is triggered by arrest or the status of awaiting trial.³²

22. *Ibid.*, art. 2(2): “[...] the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

23. United Nations, *Treaty Series*, vol. 1249, p. 13.

24. *Ibid.*, art. 2(c).

25. Committee on the Elimination of Discrimination against Women, *General Recommendation 33 on Women's Access to Justice*, 3 August 2015 (CEDAW/C/GC/33).

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

27. *Ibid.*, art. 40.

28. General Assembly resolution 54/263.

29. Committee on the Rights of the Child, *General Comment No. 10 on Children's Rights in Juvenile Justice*, 25 April 2007 (CRC/C/GC/10, para. 49).

30. General Assembly resolution 45/113.

31. *Ibid.*, III (18)(a). See also, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”), General Assembly resolution 40/33, arts. 7(1) and 15(1); and Guidelines for Action on Children in the Criminal Justice System (The “Vienna Guidelines”), Economic and Social Council resolution 1997/30, para. 16. Additionally, the Guidelines on Justice in Matters Involving Child Victims and Witnesses, Economic and Social Council resolution 2005/20, lay out the right to access to professional and legal assistance, stressing that such professional should have adequate training (paras. 40-42).

32. *Ibid.*, II (15) and III (18)(a).

Box 1: CEDAW General Recommendation on Women's Access to Justice – Legal Aid

The CEDAW Committee's *General Recommendation 33: Women's Access to Justice* provides guidance to States on addressing key issues on enhancing women's access to justice. The Committee noted critical challenges preventing women from accessing justice, including non-availability of courts and quasi-judicial bodies in rural/remote areas, time and money constraints, complexity of proceedings, physical barriers for women with disabilities, lack of quality and gender sensitive justice system including legal aid services. It also notes that "a crucial element in guaranteeing that justice systems are economically accessible to women is the provision of free or low-cost legal aid, advice and representation in judicial and quasi-judicial processes in all fields of law."

Key recommendations with references to legal aid include:

- **Improving Access:** Remove economic barriers to justice by providing legal aid and ensure that fees for issuing and filing documents, as well as court costs, are reduced for women with low incomes and waived for women living in poverty; (para. 17(a))
- **Enhancing Accountability:** Collect data on the nature and number of cases in which legal aid and/or public defence were required, accepted and provided, disaggregated by sex of complainant; (para. 20(d)(6))
- **Increasing Awareness of Rights:** Disseminate multi-format materials to inform women of their human rights and the availability of mechanisms for access to justice, and inform women of their eligibility for support, legal aid and social services that interface with justice systems; (para. 33(b))

Specific recommendations on ensuring accessible legal aid services for women (paras. 36-37):

- Institutionalize systems of legal aid and public defence that are accessible, sustainable and responsive to the needs of women, ensure that such services are provided in a timely, continuous and effective manner at all stages of judicial or quasi-judicial proceedings, including alternative dispute resolution mechanisms and restorative justice processes, and ensure the unhindered access of legal aid and public defence providers to all relevant documentation and other information, including witness statements;

- Ensure that legal aid and public defence providers are competent and gender-sensitive, respect confidentiality and are granted adequate time to defend their clients;
- Conduct information and awareness-raising programmes for women about the existence of legal aid and public defence services and the conditions for obtaining them using ICT effectively to facilitate such programmes;
- Develop partnerships with competent non-governmental providers of legal aid and/or train paralegals to provide women with information and assistance in navigating judicial and quasi-judicial processes and traditional justice systems;
- In cases of family conflict or when a woman lacks equal access to family income, the use of means testing to determine eligibility for legal aid and public defence services should be based on the real income or disposable assets of the woman, not that of the family.

Access to legal aid for people in administrative detention is also highlighted:

- Use administrative detention only exceptionally, as a last resort, for a limited time, when necessary and reasonable in the individual case, proportionate to a legitimate purpose and in accordance with national law and international standards; ensure that all appropriate measures, including effective legal aid and procedures, are in place to enable women to challenge the legality of their detention; ensure regular reviews of such detention in the presence of the detainee; and ensure that the conditions of administrative detention comply with relevant international standards for the protection of the rights of women deprived of their liberty. (para. 53(c))

Finally, the Committee also recommended that legal aid services be available for women in plural justice systems. (para. 64(e))

Source: CEDAW General Recommendation No. 33 – on Women's Access to Justice

Additional emphasis on access to legal assistance for children are found in the **Guidelines on Justice Matters Involving Child Victims and Witnesses**,³³ the **United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice**,³⁴ and the **African Charter on the Rights and Welfare of the Child**.³⁵

The **Convention on the Rights of Persons with Disability**³⁶ (2007) also includes provisions on access to justice for persons with disabilities. Specifically, the Convention stipulates in Article 13 that the States parties “shall ensure effective access to justice for persons with disabilities on an equal basis with others ... in all legal proceedings, including at investigative and other preliminary stages.”³⁷ The Convention further provides that States parties provide “reasonable accommodation” as may be necessary to ensure that persons with disabilities deprived of their liberty are “entitled to guarantees in accordance with international human rights law.”³⁸

In line with the ICCPR, the **International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families**³⁹ emphasizes the right of those facing criminal charges to consult with “counsel of their own choosing,” to be informed of this right and to receive legal assistance without payment “where the interests of justice so require ... if they do not have sufficient means to pay.”⁴⁰ The **Convention relating to the Status of Refugees** (1951) also notes the importance for refugees to be able to access the courts; Article 16 of the Convention states that a “refugee shall enjoy in the Contracting State in which he [or she] has his [or her] habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi*.”⁴¹

Regional instruments

In parallel with international conventions and declarations, a number of regional instruments similarly affirm the right to legal aid and complements the international instruments. For example, the **American Convention on Human Rights**⁴² (1969) provides that every person accused of a criminal offence is entitled to “minimum guarantees,”⁴³ including “the right to defend himself [or herself] or to

33. Economic and Social Council resolution 2005/20, para. 22.

34. General Assembly resolution 69/194, annex.

35. Organisation of African Unity, OAU Doc. CAB/LEG/24.9/49 (1990), art. 17(2)(c)(iii).

36. United Nations, *Treaty Series*, vol. 2515, p. 3.

37. *Ibid.*, art. 13(1).

38. *Ibid.*, art. 14(2).

39. United Nations, *Treaty Series*, vol. 2220, p. 3.

40. *Ibid.*, art. 18(3)(d).

41. United Nations, *Treaty Series*, vol. 189, No 2545.

42. Organisation of American States, American Convention on Human Rights, “Pact of San Jose”, Costa Rica, 22 November 1969.

43. *Ibid.*, art. 8(2).

Box 2: Civil society's role in promoting regional and international recognition of the right to legal aid in Africa

The legal aid reform movements in Africa have been influential on the development of international standards on legal aid and have highlighted the importance of the role of lawyers and non-lawyers in providing legal aid services. For example, the momentum built from the *Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa* (2004), adopted by both governmental and NGO participants at a conference in Malawi to discuss legal aid services in criminal justice systems of Africa, was one of the key impetuses to the development and eventual adoption of the UN Principles and Guidelines by the UN General Assembly in 2012. The *Bamako Declaration on Impunity, Justice and Human Rights* (2011), which emerged out of a regional

conference on the fight against impunity and respect for human rights in West Africa, also contributed to the recognition of legal aid as a necessity for facilitating access to justice. Moreover, the *Kampala Declaration on Community Paralegals* (2012) has highlighted the role and potential of community paralegals as legal aid providers. The preamble of the Declaration notes the important roles community paralegals play, including by empowering people “to equitably resolve conflicts; to seek protection from violence; to navigate the criminal justice system; to exercise rights over land and natural resources; to access essential services like health care and education; to hold private firms accountable; and to participate in the economy on fair terms.”

be assisted by legal counsel of his [or her] own choosing”⁴⁴ and of “the inalienable right to be assisted by counsel provided by the state.”⁴⁵ The Convention also stresses that all persons are entitled to equal protection of the law.⁴⁶ The **African Charter on Human and People's Rights**⁴⁷ (1979) likewise guarantees equal protection of the law⁴⁸ and states that everyone is entitled to the “right to defence, including the right to be defended by counsel of his [or her] choice.”⁴⁹ The **Protocol to the Charter on the Rights of Women in Africa**⁵⁰ (2003) further stresses the principle of equal protection of the law and calls upon States to ensure “effective access by women to judicial and legal services, including legal aid.”⁵¹

In addition, Article 6 of the **European Convention for the Protection of Human Rights and Fundamental Freedoms** (1950, ECHR)⁵² recognizes the right of anyone charged with a criminal offence “to defend himself [or herself] in person or through legal assistance of his own choosing or, if he [or she] has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.”⁵³

44. Ibid., art. 8(2)(d).

45. Ibid., art. 8(2)(e).

46. Ibid., art. 24.

47. Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58.

48. Ibid., art. 3(2).

49. Ibid., art. 7(1)(c).

50. African Union, Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, 11 July 2003.

51. Ibid., arts. 8(a), (b).

52. Council of Europe, ETS 5, 4 November 1950.

53. Ibid., art. 6(3)(c). See also, Council of Europe, European Social Charter (Revised), ETS 163, 3 May 1996, which also identifies children and young persons and migrant workers as particularly vulnerable groups in need of special protection.

International standards and norms

The above international and regional instruments have contributed to the establishment of the right to legal aid as a key element in protecting fundamental rights, such as the right to defence, the right to a fair trial and the right to equal protection of the law. More specific guidance on principles, guidelines and best practices on legal aid in various contexts of the criminal justice system can be found in the following set of international standards and norms.

The **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**⁵⁴ (1988) recognizes the right to legal aid for persons deprived of liberty. In particular, Principle 17 provides that “[a] detained person shall be entitled to have the assistance of a legal counsel. He [or she] shall be informed of his [or her] right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it,” and that “[i]f a detained person does not have a legal counsel of his [or her] own choice, he [or she] shall be entitled to have a legal counsel assigned to him [or her] by a judicial or other authority in all cases where the interests of justice so require and without payment by him [or her] if he [or she] does not have sufficient means to pay.”⁵⁵

Similarly, the **Safeguards Guaranteeing Protection of the Rights of those Facing the Death Penalty**⁵⁶ (1984), recognizes “the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”⁵⁷

The **Basic Principles on the Role of Lawyers**⁵⁸ (1990) provides guidance to States in “their task of promoting and ensuring the proper role of lawyers,” including their obligations to inform the public of “their right to be assisted by a lawyer of their choice upon arrest or detention or when charged with a criminal offence” and to provide prompt access to lawyers possessing “experience and competence commensurate with the nature of the offense,” whose services must be free of charge when the interests of justice so require. The Basic Principles also require that lawyers undergo periodic training, uphold the principle of non-discrimination and ensure that lawyers respect their client’s interest. It also notes the responsibility of the State to ensure that lawyers are free from intimidation and improper interference so that lawyers are able to independently perform their professional functions.

54. General Assembly resolution 43/173, annex.

55. *Ibid.*, principle 17.

56. Economic and Social Council resolution 1984/50, annex.

57. *Ibid.*, para. 5.

58. Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990).

The **United Nations Standard Minimum Rules for the Treatment of Prisoners**⁵⁹ (2015, the Nelson Mandela Rules), which was first adopted in 1957 and revised by the UN General Assembly in 2015, provides that “[p]risoners should have access to effective legal aid.” This also applies to untried prisoners— “[i]f an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay.”⁶⁰

The **United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders**⁶¹ (2011, the Bangkok Rules) complement the Nelson Mandela Rules by giving guidance to States on reducing imprisonment of women and meeting the specific needs of women in imprisonment. Noting the “particular vulnerability” of newly arrived women prisoners, the Bangkok Rules state that they shall be provided with “access to legal advice” upon admission. The Rules also provide that “prison authorities shall help [...] women [who have suffered sexual abuse or other forms of violence before or during detention secure] access to legal assistance.”⁶²

The **United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems** (2012, UN Principles and Guidelines) is the first international instrument dedicated to the right to legal aid; they highlight and reaffirm that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law; a foundation for the enjoyment of other rights, including the right to a fair trial; and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process and enables access to justice. The UN Principles and Guidelines provide States with 14 principles and 18 guidelines on the establishment, reform or administration of national legal aid systems in the context of criminal justice, and on ways to ensure that legal aid is “accessible, effective, sustainable and credible.”⁶³ Collectively, they offer detailed guidance on the provision of legal aid at various stages of criminal justice proceedings and for various types of beneficiaries. When adopting the UN Principles and Guidelines, the General Assembly urged States to establish, strengthen and expand legal aid “to the maximum extent possible.”⁶⁴

59. General Assembly resolution 70/175, annex.

60. *Ibid.*, rules 119(2) and 61(3).

61. General Assembly resolution 65/229, annex.

62. *Ibid.*, rules 2(1), 7 and 25(2).

63. UN Principles and Guidelines (see footnote 2), principle 2(15). See also, the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, General Assembly resolution 60/177, annex, and the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, General Assembly resolution 65/230, annex reiterating the role of legal aid in delivering access to justice.

64. General Assembly resolution 67/187, para. 4; see also UN Principles and Guidelines (see footnote 2), para. 10. These may involve public defenders, private lawyers, contract lawyers, *pro bono* schemes, bar associations, paralegals and others.

In 2014, the **Johannesburg Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems**,⁶⁵ which emerged from the International Conference on Access to Legal Aid in Criminal Justice Systems held in Johannesburg, South Africa, called upon States to fully implement the UN Principles and Guidelines and provisions related to legal aid contained in international and regional instruments.

Universal Periodic Review

Not only is the importance of access to legal aid being recognized and affirmed in the international community through legal instruments, standards and norms, but also in the recommendations that States make to each other as they undergo the Universal Periodic Review (UPR) process under the auspices of the Human Rights Council (see [Annex III](#)). The UPR is a review mechanism under which States are given an opportunity to declare what they have done to improve the human rights situation in their countries, and to make recommendations to other States on how to do so. The UPR provides a useful basis from which to identify good practices worldwide on the provision of legal aid, as well as effective remedial actions that States have taken to strengthen national justice systems and to ensure access to justice for all.

65. *The Johannesburg Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, Johannesburg, 24-26 June 2014.

C. Establishing the right to legal aid at the national level

“Before 1994, public defenders had a low status in the justice system, and the quality of defence was pretty poor because public defender posts were politically distributed, rather than won in a competitive manner, as it is today. In 1994, a constitutional reform took place and the new system of public defence became autonomous and independent from the judiciary; it also has financial independence, which means that there is a specific line in the national budget for the public defence budget that we ourselves develop.”

Nicolás Láino, Federal Public Defender’s Office of Argentina

The adoption of the UN Principles and Guidelines by the UN General Assembly in 2012 reflects an increasing consensus among States on the importance of legal aid in ensuring access to justice, protecting human rights and strengthening the rule of law. These guidelines reflect the best practices drawn from national experiences around the world.

In most countries, the right to legal aid is part of national legal frameworks — from constitutions to specific national laws and dedicated policies on legal aid. General references to legal assistance, and some specific references to legal representation, are included in many constitutions, and increasingly more States are developing specific legislation on the right to legal aid as the responsibility of the State.

Legal aid for criminal matters has been granted in most jurisdictions, through the constitution or other national laws (see the *Table of Legislation* in the *Global Study on Legal Aid: Country Profiles* publication). As per the ICCPR, State parties have an obligation to ensure that there is an equality of arms between parties and that everyone has access to legal counsel even when they are unable to afford one in cases where there is a

possibility of deprivation of liberty or where “the interest of justice requires it.”⁶⁶ Additional specific situations may also trigger access to legal aid in criminal cases, including if the accused is a minor, if he or she is disabled, or fulfils other eligibility requirements.

Provision of State-funded legal aid in civil matters is relatively limited. In many States, it is provided through NGOs or through *pro bono* services by the private sector. However, States are increasingly recognizing the importance of also providing services, particularly for vulnerable populations, in some civil/administrative matters, such as family law cases, property disputes, access to government entitlements and social services, amongst others.

National legal aid systems and structures have been established independently of each other in different countries and regions, often following their own specific historical pathways and trajectories. Thus there is a wide variety of schemes and approaches currently in use by various countries for the delivery of legal aid to poor and marginalized groups. The range of services that fall under the rubric of legal aid varies greatly from country to country. Services can cover criminal, civil and/or administrative matters and can include:

- Provision of ‘primary’ legal advice, which includes the provision of legal information, referral to territorial offices, mediation and public education;
- Legal representation and assistance in preparing cases at local and national levels, as well as in submitting cases to international tribunals;
- Provision of additional services, such as involving investigators or experts;
- Psychosocial support, and a range of other support services (see **Box 3** on Comprehensive/Holistic Legal Aid Services).

It is also important to keep in mind that while the right to legal aid may be established through constitutions and national laws, the extent to which these laws are implemented, the range of services available, and the quality of services provided often depend on resources and capacities available in the country. In some cases, the right to legal aid may not be met because of limited financial resources. In others, eligibility requirements may be too stringent, effectively leaving out a vast majority of people who are unable to afford legal aid services. Legal human resources available in certain countries may be inadequate, particularly in remote areas or in countries where the role of paralegals in delivering legal aid is not officially recognized. As the right to legal aid becomes increasingly recognized in national laws, it is also important to consider how this right is guaranteed in practice, what legal aid mechanism is needed, and how it will interface with the justice system.

66. United Nations, *Treaty Series*, vol. 999, No. 14668., art. 14, para. 3(d).

Box 3: Specialized services for gender-based violence

Women, and GBV survivors in particular, face very specific obstacles in accessing justice. These obstacles may include inadequate legal protection as it relates to GBV or lack of qualified personnel within the criminal justice system to handle GBV cases. Additionally, there are demand-side issues that women are faced with, such as lack of awareness of their specific legal and human rights, economic dependence on their family and possibly the perpetrator, the cultural challenge of acting against GBV and the risk of being stigmatized by the community, as well as by legal service providers.

Legal aid for GBV survivors therefore needs to be targeted and gender-responsive. Depending on the context, this includes specific protection measures for victims of domestic violence, psychosocial and economic support, the availability of female paralegals and lawyers to make survivors feel at ease, and a general understanding by legal service providers of the sensitivities involved in a GBV case. This requires special planning by legal aid service providers, in terms of training, human resources, budgeting, coordination and referral mechanisms with police and medical services. To address this need for comprehensive approaches to the provision of legal aid to GBV survivors, many UNDP and UNODC programmes support 'one-stop-shops' which place a range of services — such as lawyers, mediators, paralegals, medical and social services — under one roof. In Eastern **Cote d'Ivoire**, these centres, supported by UNDP, ONUCI and UNFPA, grew into so-called "maisons des femmes" in which women participated in revenue-generating activities, and engaged with local police, chiefs, and other authorities in an environment where they felt safe and confident. In **South Africa**, UNODC has supported several 'one-stop centres' since 1999 which provide a range of services to the survivors of violence (specifically women and children), as well as counselling and support groups for male perpetrators in order to break the cycle of violence. In **Kenya**, the 'one-stop-centre' supported by the UNDP helped to increase the reporting rate of rape cases by ten fold within three months. In **Viet Nam**, the national legal aid strategy was reviewed in 2014 to increase access for

women and children and UNODC has assisted in supporting the development of the ministerial circular on gender equality in legal aid services, as well as training of legal aid providers in domestic violence prevention. In **Nepal**, UNDP supported the Ministry of Justice in establishing a legal aid system which is run by a 'front-line' of community-based women paralegals trained and supervised by lawyers.

In conflict and post-conflict contexts, these efforts need to account also for conflict-related sexual violence. For example, in the **Democratic Republic of Congo**, in addition to 'one-stop shops', UNDP and MONUSCO supported efforts focused on the provision of holistic support to survivors by embedding legal clinics and psychosocial services in medical facilities, as well as training and sensitizing community leaders, customary chiefs, members of the armed and security forces, and CSOs on the prevention and response to sexual and gender-based violence. In **Burundi**, the Humura Centre for Gender-Based Violence, established in 2011 with support from the UNDP, is a specialized, free-of-charge referral centre where survivors of GBV can find comprehensive services, such as medical care, psychosocial support and police and legal advice. The Centre was successful in achieving an average case processing time, from complaint to referral, of one month, 500% faster than cases handled outside the Centre.

Regardless of whether countries choose to have specialized legal aid services aimed at supporting survivors of GBV, or to "mainstream" such services within general legal aid services, they must ensure that legal aid providers dealing with such cases receive adequate training, and that internal administrative and oversight measures are in place to guarantee gender-responsiveness.

Source: UNDP Rule of Law and GBV background paper presented in Seoul in March 2016 and UNODC. See also UN Women, UNFPA, WHO, UNDP and UNODC publication Essential services package for women and girls subject to violence

Box 4: Model Law on Legal Aid in Criminal Justice Systems with Commentaries

Following the adoption of the UN Principles and Guidelines in 2012, there has been an increased need and political will in countries around the world to develop or amend their legal aid legislation. In response, UNODC developed the Model Law on Legal Aid in Criminal Justice Systems with Commentaries in order to provide assistance and guidance to those States seeking to develop or upgrade their laws on legal aid.

As a legislative tool, the Model Law on Legal Aid aims to support States by suggesting possible legislation models, including on the administration, funding and organisation of a national legal aid mechanism. In addition, the Model Law includes commentaries to each article, which explains the legal basis for each provision and presents a variety of examples from different legal aid systems around the world.

Moreover, the Model Law adopts a broad approach to legal aid, in line with the UN Principles and Guidelines. It is not limited to legal representation, but also includes

the provision of legal advice, assistance and information, which may be offered by a wide variety of legal aid providers and that reaches the vulnerable members of the society as the main legal aid beneficiaries.

The Model Law acknowledges that legal aid systems around the world differ in terms of institutional arrangements, delivery schemes or general scope of application. Therefore, it is recommended that the Model Law be adjusted to the constitutional principles and particularities of each national legal system, where needed, including by taking into account the federal or unitary system of government and the civil, common or mixed legal tradition of a specific country.

Source: UNODC

Regional trends and evolution of legal aid systems

Legal aid systems around the world have developed independently from each other and thus vary greatly. However, there are certain trends that can be observed within regions. The following section aims to highlight some regional and national examples to illustrate how the right to legal aid has been established at the national level.

Western Europe — While references to legal counsel for the poor and legal aid obligation of the State may have appeared in the 1400s in the **United Kingdom**, legal assistance in England was confined to the contexts of civil litigation and misdemeanour cases well into the 18th century.⁶⁷ Counsel for the poor became a more commonplace notion in a growing number of circumstances during the 18th and 19th centuries in **Austria, France** and **Germany**, including through bar

67. See speech by Hon Mr. Justice Mostyn, "Magna Carta and Access to Justice in Family Proceedings", National Access to Justice and Pro Bono Conference, Sydney 18-19 June 2015.

associations and churches. Today, legal aid in Europe is often based on the European Convention on Human Rights (Article 6(3)), and the European Court of Human Rights provides guidance on the provision of State-funded legal aid to the region's populations. These standards emphasize the role of legal aid in ensuring fundamental fairness (particularly in criminal cases), stress the importance of delivering legal assistance to suspects due to "the particular vulnerability of an accused at the early stages of the proceedings,"⁶⁸ as well as the principle of equality of arms, particularly in criminal cases, "where the very character of the proceedings involves a fundamental inequality of the parties."⁶⁹ Where civil legal aid is concerned, the European Court's ruling in *Airey v. Ireland*⁷⁰ is decisive for many countries, holding that counsel must be available in civil cases, as well as criminal, under an "interests of justice" rationale. The majority of Western European States have adopted an assigned counsel model, in which private practitioners supply legal services, for which the State pays on behalf of the parties.

North America — The **United States of America** was among the first countries to guarantee a right to counsel in its Constitution. However, it was not until 1963 that the U.S. Supreme Court ruled that the Constitution requires the states to provide defense attorneys to criminal defendants charged with serious offenses who cannot afford lawyers themselves.⁷¹ The Supreme Court later expanded the right to appointed counsel to misdemeanour and juvenile proceedings.⁷² Today, the federal government, states and localities make use of a variety of systems to provide legal aid in criminal cases, from public defenders, to appointment systems that reimburse private attorneys, to contract models in which lawyers or organisations enter into contracts to provide legal aid. Legal aid in civil cases is still discretionary, and dependent on a determination of the merit of the claim of the party requesting legal assistance. **Canada** opted for an assigned counsel model similar to the European approach, and beginning with the 1967 Ontario Legal Aid Plan, established the first law in that country providing for payment of lawyers by the government in both civil and criminal matters.⁷³ As federal systems, the delivery of legal aid varies in both Canada and the U.S. depending on the jurisdictions. There are currently mixed systems of State-funded private practitioners and public defender institutions, funded by national, state, or local government.

Latin America — In most of Latin America, in the early 20th century, legal assistance for the poor was offered in the form of *pro bono* services by private practi-

68. *Salduz v. Turkey*, App. No. 36391/02, Judgment of 27 November 2008, ECHR 2008, para. 54.

69. P. van Dijk and G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, 3rd ed. (The Hague, Kluwer Law International, 1998).

70. *Airey v. Ireland*, App. No. 6289/73, Judgment of 9 October 1979, ECHR 3.

71. *Gideon v. Wainwright*, 372 U.S. 335 (1963).

72. *Argersinger v. Hamlin*, 407 U.S. 25 (1972), and *In re Gault*, 387 U.S. 1 (1967).

73. Frederick H. Zemans, "Legal Aid and legal Advice in Canada: An Overview of the Last Decade in Quebec, Saskatchewan and Ontario," *Osgoode Hall Law Journal*, vol. 16, No. 3 (November 1978). The law has since been superseded by the Legal Aid Services Act of 1998, which does not contemplate full coverage in civil matters, with the exception of family law, immigration matters, and matters before mental health tribunals.

tioners, with courts authorised to appoint a lawyer to defendants who lacked the resources to pay a private lawyer. During successive waves of social and political movements in the 1930s, followed by the political upheavals of the 1950s and 1960s, governments across Latin America took on the responsibility to provide legal services for the poor⁷⁴ and supported innovations in the provision of legal services, such as through clinical legal education, paralegal training, legal aid programs, and representation of the poor in tribunals.⁷⁵ By the 1980s, public defender systems were established across the continent and currently, the vast majority of Latin American and Caribbean countries guarantee legal defence at the expense of the State to individuals who cannot afford to pay for it.⁷⁶ While most countries of Latin America and the Caribbean provide legal aid for indigent populations in criminal cases, only a few – Mexico, Argentina, Colombia, and Costa Rica among them – offer legal services for the poor in civil and administrative cases. Only in **Costa Rica** and **Guatemala** is legal aid offered to everyone regardless of the financial circumstances of the applicant.⁷⁷ Additionally, the Inter-American Association of Public Defenders (AIDEF)⁷⁸ and the Inter-American Commission on Human Rights (IACHR) provide regional guarantees for the full realization of human rights and respect for the rule of law, including a regional framework to ensure access to legal aid services (see text **Box 5**).

Sub-Saharan Africa — Legal systems in Sub-Saharan Africa have emerged out of a mix of community-based dispute resolution systems drawn from traditional/religious/customary practices, colonial influences and post-independence reform processes.⁷⁹ Early post-independence constitutions, such as the ones in **Nigeria**, **Uganda** and **Kenya**, often overlooked access to legal aid for accused persons who are unable to afford lawyers, while recognizing the right to access a lawyer.⁸⁰ In most cases, though, legal aid schemes were established separately to ensure legal representation for criminal defendants, particularly in serious criminal matters. Today, a great number of constitutions in the region stipulate the right to legal representation at the expense of the State, although they do not, as a rule, guarantee lawyers to all defendants. Additionally, following the independence movements of the 1950s and 1960s, countries such as **Ghana**, **South Africa**, **Tanzania**, **Kenya**, **Ethiopia** and **Uganda** took steps toward establishing local level law schools, and clinical education programmes through which legal services could be provided by

74. Joseph R. Thom, "Inter-American Legal Services Association (ILSA): History, Functions and Future", November 1982.

75. James A. Gardner, *Legal Imperialism: American Lawyers and Foreign Aid in Latin America*. (Madison, Wisconsin, University of Wisconsin Press, 1980); see also, Winston McCalla, "Legal Aid Developments in the Caribbean", *University of Miami Inter-American Law Review*, vol. 12, No. 2 (1980).

76. However, provision of legal aid is usually limited. Maria Dacollas, "The Judicial Sector in Latin America and the Caribbean. Elements of Reform", World Bank Technical Paper No. 319 (Washington D.C., World Bank, 1996).

77. Comisión de Derechos Humanos del Distrito Federal, *Informe especial sobre la Defensoría de Oficio del Distrito Federal 2006* (México, 2007).

78. *Asociación Interamericana de Defensorías Públicas*.

79. In many countries, the traditional legal systems and customary laws in African poly-ethnic societies are "part of a functioning, coherent, and consistent totality" of the African way of life and dispute resolution and still remain the main mechanism through which disputes are resolved, particularly when 'formal' state structures are not present in remote or rural areas. George B.N. Ayittey, *Indigenous African Institutions*, 2nd ed. (Transnational Publishers, Inc., 2006); See also UNDP, UNICEF, UNWomen, *Informal Justice Systems: Charting a Course for Human Rights-Based Engagement* (2012).

80. Niki Tobi, "Right to Counsel in Nigeria", 5 *International Legal Practitioner*, vol. 5 (ii) (1980).

Box 5: The public defender system in Latin America: Examples from Argentina and the Inter-American Association of Public Defender's Offices (AIDEF)

In most Latin American countries, legal aid is provided through the public defender system. General characteristics of this legal aid model are identified by the General Assembly of the OAS in four resolutions (in 2011, 2012, 2013 and 2014) which stress the importance of public defenders' work in guaranteeing access to justice, especially for vulnerable persons. In those resolutions, the General Assembly of the OAS also recognized the importance of having Public Defender's Offices that are independent and have functional, financial and budgetary autonomy, and are free of inappropriate interference and control by other branches of government.

The Latin American public defender model for legal aid is often headed by a high-ranking State official in charge of coordinating public defender institutions. In most cases, there are no Boards in place to manage the legal aid systems; rather, assignment of cases to public defenders is determined by the jurisdiction of the tribunal that deals with the case (i.e. first instance, investigation or appeals), functioning as a parallel party to the prosecution. Public defenders in Latin America generally have functional autonomy and independence from any government structure or from the judiciary and only follow the instructions of their own institution. In some countries, the Public Defender's Office also has financial autonomy.

However, not all legal aid institutions in Latin America are able to exercise independence from executive or judicial authorities or prosecutors, which thus restricts public defenders' freedom and capacity of action in those countries. According to a survey conducted by AIDEF in 2014, only 47% of public defender institutions that participated in the survey had institutional independence. The report includes data from Public Defender's Offices in 17 states and from the local State Public Defender's Offices in Argentina and Brazil (in addition to the federal Public Defender's Offices). Although 82% of them claimed to have functional autonomy (vs. 12% with relative autonomy and 6% with no autonomy at all), about half (47%) of the institutions that participated in the survey reported not having budgetary and financial autonomy, i.e. not having and/or administering their own resources. It is also worth mentioning that only 41% of the institutions included in the report have a constitutional status, while the status of the remaining 59% is merely legal.

The Latin American model outlines the role of the public defender as providing legal advice and representing people during all phases of legal proceedings. Public defenders are lawyers who are salaried employees of the institution. The salary is a fixed amount paid on a monthly basis, which does not depend on the number of cases in which the public defender intervenes. Even in Latin American countries where the duty of public defence falls under the administration of the Supreme Court (Costa Rica) or an Executive Agency (Perú), legal aid is provided by salaried public defenders, and not by contract lawyers.

Public Defender System in Argentina

A public defender system was put in place in 1994 in Argentina, in line with international standards, such as those referred to in the UN Principles and Guidelines. The Argentine Federal Public Defender's Office is a State agency established by the National Constitution (Principle 1 of the UNPG).

The Argentine institution enjoys functional autonomy and financial autarky and is independent from government structures and from the administration of the judiciary. Functional autonomy and independence from any government structure and from the judiciary are essential for providing effective legal assistance service: no agency — whether judiciary or administrative — that is external to its structure can give orders or instructions to the Public Defender's Office (cf. Principle 12 of the UN Principles and Guidelines). Financial autarky there means that the Federal Public Defender's Office has its own budget line within the national budget and is involved in its elaboration: as stipulated by the Organic Law, the institution prepares a draft budget and submits it to the Congress each year (cf. Guideline 12 of the UN Principles and Guidelines). The budget is managed and implemented by the public defender's institution without outside interference, though subject to various internal and external accountability mechanisms.

Argentina's new Organic Law of the Federal Public Defender's Office (n° 27.149) passed by the National Congress in 2015 strengthened these principles, and stated in its first article that *"the Federal Public Defender's*

Office is an **institution for the defense and protection of human rights, guaranteeing access to justice and integral legal assistance, both in individual and collective cases**, in accordance with the principles, functions and regulations established in the present Law. It **promotes measures to protect and defend fundamental rights of people, in particular, of those who are in a situation of vulnerability**". The law also notes in Article 5 that in their different areas of work, the members of the institution must "*respect and ensure the respect of the National Constitution, the international instruments of human rights, the laws, regulations, protocols of action and all rules relating to the protection and defense of persons, in particular, the access to justice of those in condition of vulnerability or suffering structural discrimination, which shall be subject to a preferential processing*".

Argentina's Federal Public Defender's Office is empowered to intervene in all jurisdictions and instances at the federal level, in both criminal (Principle 3 of the UN Principles and Guidelines) and civil cases. It aims to protect civil, political, economic, social and cultural rights guaranteed by the National Constitution and international human rights instruments. The institution is also responsible for providing legal representation of underage and incompetent persons (Principle 11 of the UN Principles and Guidelines).

Inter-American Association of Public Defenders Offices

Latin America also has a strong regional network of public defenders which was created in 2003: the Inter-American Association of Public Defenders Offices. AIDEF's main objective is to strengthen Public Defender's Offices by creating a permanent coordination mechanism to help ensure respect for the human rights of people in conflict with the law.

The AIDEF, consisting of Public Defender's Offices and Associations from eighteen Latin American countries⁸¹, has five main goals: (1) to defend the effectiveness of internationally recognized human rights and guarantees; (2) to provide legal assistance and representation when required, with due regard for quality and excellence, thus enabling effective access to justice; (3) to encourage countries in the region to reform existing legislation to ensure it respects the human rights of people in vulnerable situations; (4) to promote the independence and functional autonomy of Public Defender's Offices so as to ensure the provision of high quality legal aid in all matters (not only in criminal matters); and, finally, (5) to support the institutional strengthening of Public Defender's Offices, in tandem with the support provided to Prosecutors' Offices.

AIDEF has also succeeded in strengthening legal aid frameworks and services at the regional level. For example, AIDEF appoints public defenders to the Inter-American Court of Human Rights, as well as to the Inter-American Commission on Human Rights to represent victims who lack either economic means or legal representation. It has also lobbied for the OAS to recognize the importance of public defenders' work in guaranteeing access to justice, especially for vulnerable persons⁸². It supported the adoption of the 2013 IACHR report by the Rapporteur on Human Rights Defenders on "*Guarantees for the independence of justice operators. Towards strengthening access to justice and the rule of law in the Americas*" which recognized the role of public defenders as a guarantee of the accused persons' inalienable right to be assisted by counsel provided by the State.

Source: AIDEF

81. Argentina, Bolivia, Brazil, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Honduras, México, Nicaragua, Panamá, Paraguay, Peru, Dominican Republic, Uruguay and Venezuela.

82. The Inter-American Court of Human Rights has recently ruled that public defenders institutions, through the provision of free and public legal aid services permit to adequately compensate procedural inequality of those who face State's criminal prosecution, as well as the vulnerability of those deprived of liberty, guaranteeing them effective and equal access to justice. Ruano Torres et al. v. El Salvador, Judgement of 5 October 2015, Series C No. 303. See also: Organisation of American States, Toward Autonomy for and Strengthening of Official Public Defenders as a Guarantee of Access to Justice, AG/RES. 2821 (XLIV-O/14). Organisation of American States, Toward Autonomy for Official Public Defenders/Criminal and Civil Legal Aid Providers as a Guarantee of Access to Justice, AG/RES. 2801 (XLIII-O/13). Organisation of American States, Official Public Defenders as a Guarantee of Access to Justice for Persons in Situations of Vulnerability, AG/RES. 2714 (XLII-O/12). Organisation of American States, Guarantees for Access to Justice. The Role of Official Public Defenders, AG/RES. 2656 (XLI-O/11).

Box 6: Examples of the right to legal assistance in legal frameworks in Sub-Saharan Africa

The scope of the right to State-funded legal aid varies across Sub-Saharan African countries:

- In **Nigeria**, legal aid has existed for persons facing the death penalty almost since the first days of independence; this right has been expanded since 1978,⁸³ following the 1976 establishment under the Federal Ministry of Justice of the Nigerian Legal Aid Council, whose mandate has been to provide legal aid, with State funding, to all who are unable to afford it.⁸⁴
- The **Ugandan** Constitution affords legal representation at the State's expense for capital defendants and those accused of serious felonies that carry a sentence of imprisonment for life.⁸⁵
- The 2006 **Malawi** Constitution provides the State-funded legal assistance of all detained persons.⁸⁶
- The **South African** Constitution of 1996 guarantees legal representation to all defendants.⁸⁷
- The 1995 Constitution of **Ethiopia** recognizes a right to legal representation at the expense of the State, but only "when justice so requires."⁸⁸
- The right to legal aid is recognized in the 1991 Constitution of **Sierra Leone** and is further elaborated in the 2012 Legal Aid Act of Sierra Leone, which establishes a mixed model of the legal aid system and recognizes the key role of paralegals in delivering legal aid services.⁸⁹

students. More recently, there has been a renewed recognition of the role that people from the community can play in providing legal assistance and advice. Given the limited number of lawyers in the region, the role of community-based paralegals is more widely acknowledged and supported.⁹⁰

Regionally, the *African Charter on Human and Peoples' Rights* stipulates the right to defence and provides clear regional norms on the provision of legal aid in criminal cases.⁹¹ Similarly, the *Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa* call upon States to ensure that "the accused person or party to a *civil case* has a right to have legal assistance assigned to him or her in any case where the interests of justice so require, and without payment ... if he or she does not have sufficient means to pay for it."⁹² Notwithstanding a number of State, civil society and international initiatives to deliver legal aid in criminal, land rights-related,

83. Jill Cottrell, "The New Nigerian Legal Aid Decree," *Journal of African Law*, vol. 22, No. 1 (Spring 1978), notes that the only effective legal aid program in Nigeria was for assistance in criminal cases, until however, in 1976, the Legal Aid Council of Nigeria was established following the promulgation of the Legal Aid Decree No. 56 to render legal aid and access to justice to indigent persons as widely as possible within its financial resources.

84. Today, branches of the National Legal Aid Council in each of Nigeria's 36 states carry out this mandate, regulated by the Legal Aid Act of 2011. Nigeria, Legal Aid Act, 2011.

85. Uganda, Constitution (1995), art. 28(e).

86. Malawi, Constitution (1994), sec. 42 (1)(c).

87. South Africa, Constitution (1996), sects. 35(2)(c), 35(3)(g).

88. Ethiopia, Constitution (1994), art. 20(5).

89. Sierra Leone, The Legal Aid Act (2012).

90. Open Society Justice Initiative, *Community-based Paralegals: A Practitioner's Guide* (New York, 2010).

91. Organisation of African Unity, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), 27 June 1981, art. 7(1)(c) stipulates that "[e]very individual shall have the right to have his case heard. This comprises [...] (c) the right to defense, including the right to be defended by counsel of his choice [...]."

92. African Union, African Commission on Human and Peoples' Rights, DOC/OS(XXX)247, sec. H (a).

Box 7: Platform for monitoring and supporting justice and the process of judicial reform in Tunisia (Observation Network of Justice)

In the wake of the Tunisian revolution in 2012, the Tunisian National Association of Lawyers (ONAT), the Tunisian League of Human Rights (LTDH) and Avocats Sans Frontières (ASF) launched a Justice Monitoring Network (ROJ) in order to promote a constructive, inclusive and proactive engagement of key actors from the justice sector in the reform process.

The ROJ mobilizes civil society, law professionals, practitioners and defenders of human rights to assess, on the basis of data collected, the administration of justice and to contribute to the formulation of recommendations for reforming the justice system in Tunisia.

Objectives of the ROJ

- Generating data and reliable analysis on the administration of justice, through trial observation by lawyers specifically trained for this purpose;
- Involving legal professionals, practitioners, and CSOs in the promotion of international standards for the administration of justice;
- Sharing conclusions with and proposing recommendations to authorities;
- Promoting good practices for judicial actors.

Expected impact

- Strong commitment of various professionals (lawyers, prosecutors, judges, members of the civil society, etc.) to increase collaboration, communication and cooperation.
- The methodology of the ROJ supports its dual role in the justice system — both as an active contributor to the justice sector reforms, and as a guardian of the effective administration of the Tunisian justice sector.

Achievements

Over the past three years, the ROJ provided an independent and non-political space where various judicial actors

were able to study and discuss the challenges faced by the Tunisian justice system, as well as good practices that should be implemented to strengthen the right to a fair trial. By the end of 2013, based on the monitoring of 94 criminal cases before Tunisian courts, three reports had been published by the ROJ highlighting major trends in the prosecution of criminal cases, and making concrete recommendations to strengthen the rule of law in Tunisia.

In February 2014, ROJ partners took the strategic decision to focus their advocacy efforts on two of the most important issues identified during the monitoring exercise, namely the *right to access legal aid* and the *right to be represented by a lawyer at all stages of a procedure, including during police custody and pretrial detention*.

ROJ partners met representatives of the Ministry of Justice and the National Constituent Assembly to present and discuss ROJ's recommendations pertaining to conditions of detention in police custody. In January 2016, the Assembly of the Representatives of the People in Tunisia adopted the revised Criminal Procedure Code, which includes a guarantee for access to a lawyer when in police custody.

Today, the ROJ continues to collect and analyse data in order to develop more detailed analysis and more specific recommendations on particular issues that impede the realization of the right to a fair trial. ROJ promotes the gradual implementation of its recommendations through consultation and collaboration with key actors in the justice sector.

Since January 2015, 45 lawyers specifically trained in trial observation monitored over 500 hearings in 10 cities, putting under scrutiny themes including the consumption of narcotic drugs, torture, as well as trials that affect civil and public liberties. Two press conferences and three roundtables were organised, and the first report was published in January 2016.⁹³

Source: Avocats Sans Frontières

93. Réseau d'observation de la justice tunisienne, "L'application de la loi 52 relative aux stupéfiants devant les juridictions tunisiennes," January 2016. Available from http://www.asf.be/wp-content/uploads/2016/03/ASF_TUN_RapportROJ_Stup%C3%A9fiants_2016_FR.pdf. Report also available in Arabic from http://www.asf.be/wp-content/uploads/2016/03/ASF_TUN_RapportROJ_Stup%C3%A9fiants_2016_AR.pdf.

family law and other civil cases, the critical challenge to guaranteeing access to legal aid services in many countries in Sub-Saharan Africa remains the insufficient numbers of lawyers and lack of funds to finance broader provision of legal aid.⁹⁴

Middle East and North Africa — In most States in the Middle East and North African region, legal aid is provided primarily for criminal matters and with heavy reliance on a mix of assigned counsel and *pro bono* services through the bar association. In **Jordan**, for example, while the State-sponsored legal aid is available only for serious crimes (those carrying the sentence of death or life imprisonment) most legal services are provided on a *pro bono* basis through the bar association and/or CSOs.⁹⁵ In **Tunisia**, legal assistance and representation are governed by a set of laws within the Criminal Procedure Code (1968), the Child Protection Code (1995), and specific laws on legal aid services (2002), legal assistance in administrative matters (2011) and the organisation of the legal profession (2011). Legal aid services are provided through an assigned council system or through an application to the legal aid office (*"Bureau d'Aide Judiciaire"*). However, the role of the President of the Bar Association and that of the presiding judge in the case are sometimes controversial on the question of who has the authority to assign cases. In **Egypt**, the Advocates Law requires that the bar associations create local committees to provide legal aid services on a *pro bono* basis, but in practice, these services are not readily available.⁹⁶ There are also limited legal aid services provided through the Ministry of Justice, mostly supported through donor funds, as well as through CSOs.⁹⁷

The Arab Spring in 2011 brought about many changes in the political landscape of the region, including reviews and reforms of legal systems. In some countries, such as **Tunisia**, governments made considerable efforts to improve access to justice, notably by developing sector-wide justice reform strategies which included the provision of legal aid (also to victims of grave human rights violations as part of the transitional justice process.) In others, most legal aid reform efforts were supported by international donors and development agencies, and focused on access to legal aid service, particularly for family matters (for example, establishing legal aid centres in family courts in **Egypt**). With an increasing number of CSOs providing legal aid services, one challenge facing many countries in the region is the tension that exists between the bar association and NGOs in the delivery of legal aid services and how to transform this competition into cooperation. Moreover, there is often resistance from the side of the bar associations to government efforts to establish State-run legal aid offices. Another challenge is the limited data available on the needs, priorities, and demand for legal aid services.⁹⁸

94. Danish Institute for Human Rights and East Africa Law Society, "Access to Justice and Legal Aid in East Africa – Comparative report" (December 2011).

95. Justice Center for Legal Aid, "Legal Aid in Jordan".

96. International Bar Association's Human Rights Institute, "Justice at the Crossroads: The Legal Profession and the Rule of Law in the New Egypt" (November 2011).

97. Latham & Watkins LLP, "A Survey of Pro Bono Practices and Opportunities in 71 Jurisdictions" (August 2012).

98. Paul Scott Prettitore, "Building Legal Aid Services from the Ground Up: Learning from Pilot Initiatives in Jordan," The World Bank: MENA Knowledge and Learning Quick Note Series, No 115, (January 2014).

Box 8: Access to justice for migrant workers in China: The Beijing Zhicheng Migrant Workers Access to Justice Project

Over the past two decades, China's commercial boom and socio-economic reforms have seen millions of rural residents and local farmers pour into cities. Over the last decade, the number of migrant workers has more than doubled, and the Ministry of Human Resources and Social Security estimated it to have passed 268 million in 2013. These workers account for the vast majority of employees in China's manufacturing, coal-mining and construction sectors.

However, despite their contribution to China's development, migrant workers face immense challenges in accessing basic social services, including healthcare and educational opportunities for their children. They frequently fall victim to workplace exploitation and abuse, including delayed or even non-payment of wages, lack of compensation for injuries and dangerous working conditions. Since most migrant workers do not have the legal knowledge or the financial and social resources to seek judicial redress by themselves, they often fail to protect their rights. Moreover, migrant workers – defined as residents living and working outside their native village for more than six months – are not granted access to social services and legal protection on equal basis as permanent urban residents, and therefore are made even more vulnerable to exploitation and other forms of abuse.

Although a large number of labour laws, regulations and rules exist to protect workers, they are often poorly enforced, particularly in the informal sector, and many migrant workers are not aware of their rights, nor of what remedies are available when they are infringed. Even in cases where migrant workers recognize infringements, many do not possess the resources to seek available remedies. According to data released by the Ministry of Construction in January 2004, more than 16 billion RMB (about 2.5 billion US dollars) in payment was unjustly withheld from migrant workers in 2003.⁹⁹

Over the past decade, non-governmental approaches towards institutionalizing legal aid for migrant workers have been explored through a legal aid model developed by the Beijing Zhicheng Migrant Workers Access to Justice (BZMWA2J) Project initiated by a Beijing law firm. Within a year and with the support of UNDP and the All China Lawyers Association (ACLA), an NGO sponsored by the Ministry of Justice, the pilot legal aid office in Beijing was used as a model to set up a network of 20 legal aid stations to provide free legal aid to migrant workers across China. Since this first scale-up, the number of legal aid stations has reached 33, and together they have secured repayments of more than 432 million RMB (equivalent to 70 million USD) in defaulted wages and other unpaid compensation to migrant workers. Education sessions for migrant workers on how to protect their legal interests and professional training to help lawyers understand migrant workers' needs have been conducted and public awareness of labour rights has been enhanced.

The UNDP project with BZMWA2J has also lobbied successfully for policy reforms to secure better legal protection of the rights of migrant workers and their families, and secured government support for legal aid providers. Overall, this project has supported legal empowerment and poverty reduction not only for the more than 430,000 direct beneficiaries of legal aid services, but also for the families of migrant workers, peers, local governments and the broader communities in which they live.

Source: Enabling Migrant Workers Access to Justice in China, UNDP 2014

99. Qi Zhongxi, "90% of Migrant Workers' Wages paid", 20 January 2004. Available from http://news.xinhuanet.com/zhengfu/2004-01/20/content_1284146.htm

Asia-Pacific — The provision of legal aid services varies greatly from country to country in the Asia-Pacific region; it is rooted in the specific history of individual countries and in their national context. In many cases, countries have adopted mixed model systems, whereby the Ministry of Justice administers legal aid schemes through one of its departments, in collaboration with private actors. Below are illustrations from a few countries in the region.

In **China**, the late 1980s saw a number of public institutions come into existence to address legal needs through a combination of mediation, legal advice, and occasionally, direct representation, provided for free or at low cost.¹⁰⁰ In the mid-1990s, legal aid rose to prominence in China with the establishment of the National Legal Aid Centre by the Ministry of Justice overseeing the subsidization of legal aid services.¹⁰¹ This was accompanied by the amendment of the *Criminal Procedure Code* and the *Lawyers' Law*, which imposed a duty on all lawyers to provide legal services to economically disadvantaged parties. The *Regulations on Legal Aid of 2003* formulated legal services as an entitlement of citizens, and since then a number of legal aid programmes, including the establishment of legal aid centres across the country that provide legal aid through a mix of salaried lawyers and appointed counsel, specialized legal aid programmes for women, and fellowship programmes for legal aid providers to work in remote areas, have been supported.¹⁰²

The 1946 Constitution of **Japan** stipulated the right of indigent defendants to receive legal counsel at the expense of the government.¹⁰³ In criminal cases, court-appointed counsel was provided to defendants after indictment.¹⁰⁴ In 1952, the Japan Legal Aid Association was founded, eventually receiving subsidies for the purpose of covering civil legal aid needs. The Japan Federation of Bar Associations established a Criminal Defence Centre in 1990, and soon thereafter initiated a duty roster for attorneys to provide advice and legal aid to suspects in criminal proceedings. In 2001, the Judicial Reform Council called for the provision of public defender services to cover criminal justice proceedings. The 2004 *Comprehensive Legal Support Act*,¹⁰⁵ and the founding of the Japan Legal Support Centre (JLSC) in 2006, resulted in the JLSC's designation as the central authority for coordinating the provision of legal aid, with the JLSC's staff attorneys providing services to cover both civil and criminal legal aid. While the coverage of legal aid provision was initially limited to cases punishable by death penalty, life imprisonment, or imprisonment for more than three years, an amendment of the

100. The Justice Offices provided a range of services unrelated to legal aid, but they also offered legal advice and operated a complaint hotline. Allen C. Choate, "Legal Aid in China," The Asia Foundation Working Paper Series, Working Paper No. 12 (April 2000).

101. *Ibid.* The National Legal Aid Center of China, as the administrative body responsible for provision of legal aid, carries out various functions, including, *inter alia*, developing policies, procedures, guidelines and regulations for the development of legal aid, coordinating the work and operations of subordinate units, organizing and conducting training for legal aid personnel.

102. Mark Jia, "Legal Aid and the Rule of Law in the People's Republic of China," *Maryland Series in Contemporary Asian Studies*, vol. 2011, No. 1 (2011).

103. Japan, Constitution (1946), art. 37: "[...] At all times the accused shall have the assistance of competent counsel who shall, if the accused is unable to secure the same by his own efforts, be assigned to his use by the State.

104. Keita Abe, "The Role of Lawyers and the quality of legal aid – The expansion of criminal legal aid in Japan and the International Human Rights Standards," Japan Legal Support Center. See also, Japan Federation of Bar Associations, "Duties of the Japan Legal Support Center and the JFBA".

105. Comprehensive Legal Support Act (Act No. 74 of June 2, 2004)

Code of Criminal Procedure in 2016, which enters into force in 2018, will abolish this limitation.

In **Indonesia**, law students began providing primary legal aid through advice and consultation bureaus in 1967 and by 1971, the Indonesia Advocates' Union (Persatuan Advokat Indonesia, Peradin) called for the establishment of a Legal Aid Institute, the first of which (*Lembaga Bantuan Hukum*) was set up with the backing and financial support of the Governor of Jakarta. Ten years later, the Indonesian Legal Aid Foundation was founded, with more than 300 non-governmental legal aid organisations now accredited to receive funding from the government to provide legal aid services. Legal aid is frequently provided to assist the poor with land and labour disputes.¹⁰⁶ While the 1945 Constitution stipulated that it guarantees "access to justice," it was the 2011 *Legal Aid Act* which ensured that legal aid would be provided in criminal, civil and administrative cases for those who cannot afford a lawyer. This Act mandated the Ministry of Justice and Human Rights to administer the system. The National Law Development Agency (*Badan Pembinaan Hukum Nasional*), a part of the Ministry, manages the legal aid system, including accrediting legal aid providers, providing funding and monitoring the delivery of legal aid in Indonesia.

The Constitution of **India** specifically provides for the right to free legal aid in order to secure justice.¹⁰⁷ Toward this aim, in 1958, the First Law Commission of India recommended that lawyers provide representation in courts, prison appeals and criminal proceedings,¹⁰⁸ and the 1961 *Advocates Act* exhorted the Bar Council to "organise legal aid to the poor." The 1970s and 1980s in India saw an intensifying interest in addressing the population's need for legal aid. During this period, the government formed two committees to examine legal aid, and created a Federal Committee on the Implementation of Legal Aid Schemes.¹⁰⁹ The 1987 Legal Services Authorities affirmed the right of anyone in custody to legal aid, irrespective of income. This Act was not enforced until 1995 when the National Legal Services Authority was established to oversee the delivery of services nationally and to disburse funds to State and District Legal Services Authorities and NGOs to provide legal aid services. Services include payment of court fees, providing an advocate for legal proceedings, obtaining of documents, preparation of appeals for eligible legal aid recipients, including women, children, members of specified groups (e.g., scheduled castes or tribes, industrial workmen, victims of mass disaster, violence, flood, drought, earthquake or industrial disaster), disabled persons, persons in custody and individuals whose annual income does not exceed R.100,000 Indian Rupees (approximately 1,500 US Dollars).¹¹⁰

106. Audrey Kahin, *Historical Dictionary of Indonesia*, 3rd ed. (Rowman & Littlefield Publishers, 2015).

107. India, Constitution (1949), art. 39A: "The 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 disabilities."

108. Law Commission of India, *List of Reports of the Law Commission of India*. See also Bombay High Court Library, *List of Law Commissions of India*. Available from: http://bombayhighcourt.nic.in/libweb/commission/Law_Commission_Of_India_Reports.html

109. Richard K. Gordon, Jr. and Jonathan M. Lindsay, "Law and the Poor in Rural India: The Prospects for Legal Aid," *American University International Law Review*, vol. 5, No. 3 (1990). See also, Varsha Chitnis and Danaya C. Wright, "The Legacy of Colonialism: Law and Women's Rights in India," *Washington and Lee Law Review*, vol. 64, issue 4 (2007).

110. National Legal Services Authority, "Introduction and History of NALSA." Available from <http://nalsa.gov.in/index.html>

While the **Bangladesh** Constitution (1972) recognizes the right to consult and be defended by a legal practitioner of choice when arrested or detained, it was not until 2000 that the legal framework was established through the *Legal Aid Services Act*, which provides legal services to people who are unable to access justice due to limited socio-economic means. This Act also established the National Legal Aid Service Organisation (NLASO) and further policies and regulations followed to establish the legal aid system, including the latest Legal Aid Services Regulations in 2015. To date, NLASO has established legal aid offices within the court premises in 41 districts and has 64 district legal aid committees. These offices provide legal advice, mediation and dispute resolution services, maintain the roster of panel lawyers who are appointed to cases by the District Legal Aid Committees, and monitor the quality of legal aid services provided by the panel lawyers. NLASO is a statutory body under the Ministry of Law, Justice and Parliamentary Affairs. It is governed by a Board consisting of representatives of Ministries, Members of Parliament, the Bangladesh Bar Council, the Supreme Court Bar Association, and members of civil society.¹¹¹

Box 9: Legal aid reform in Eastern Europe and Central Asia

Building on pilot public defence experiences, **Georgia** and **Lithuania** overhauled their legal aid schemes, establishing State-funded legal aid service institutions that substantially reduced the bar associations' former role of assigning lawyers to legal aid clients, and of making eligibility determinations. Legal aid services in both countries are administered by a dedicated agency that manages and reports on budgets and payments, runs offices across the country of staff lawyers and clerical assistants who take the bulk of cases in both criminal and civil proceedings. This public legal aid scheme is supplemented by a private-practitioner case-by-case appointment roster.

Similarly, **Moldova** established a National Legal Aid Council¹¹² that manages the legal aid system across the five territorial districts of the country. This Council oversees appointments and legal representation services, and ensures accountability for services provided by public defender offices, CSOs and private practitioners.¹¹³

Clinical legal education supplements the delivery of legal aid in a large number of countries across the region, with law students defending indigent litigants under the supervision of licensed practitioners.

111. Government of the people's Republic of Bangladesh, Law and Justice Division, "National Legal Aid Services Organisation". Available from http://www.lawjusticediv.gov.bd/static/legal_aid.php

112. Moldova, Order No. 18 of 24 January 2008 On affirming the Regulation regarding the National Council on state-guaranteed legal aid.

113. See also, Cape and Namoradze, *Effective Criminal Defence in Eastern Europe* (see footnote 110), on other reform in the region: Bulgaria established a dedicated legal aid management agency to coordinate appointments, removing this duty from the authority of other criminal justice actors, and to manage the legal aid budget; Ukraine has established a Ukrainian Legal Aid Foundation and Legal Aid Centres and state justice actors are obligated to call in to represent suspects and accused persons.

Eastern Europe and Central Asia — In the last century, legal services for the poor were delivered through an *ex officio* appointment approach where legal practitioners provided services either *pro bono* or were compensated for discrete actions in certain types of cases. Each country's local bar association, or "College of Trial Lawyers," drafted licensed lawyers to share the benefits of their education and training with the population, by offering defence services on an *ad hoc* basis, largely in criminal cases. Although commercial and civil law fields were much narrower in their scope under the Soviet regime than they are today, family law, contractual issues and economic matters were recognized and adjudicated. In these fields, as well as in criminal matters, "legal representatives" with or without legal training could appear on behalf of litigants. Some of the main challenges on legal aid delivery at the time was related to the quality of legal aid services provided, often because of questions around the appointment system, the role of the police in ensuring access to legal aid providers, limited time allocated for developing the defence and payment schemes that required actions to be taken in the presence of State actors.

Over the past decades, a majority of the region's States have reformed the legal profession, including targeted legal aid reforms, starting in the last years of the 20th century, with dedicated laws on legal aid appearing early in the new Millennium.¹¹⁴ These reforms included reconfigured payment parameters, lifting of expectations that lawyers should prioritize society's interests over their clients', reorganisation of legal services, and waiving the requirement that only licensed lawyers provide legal aid in criminal cases. Ministries of justice, often in partnership with non-governmental organisations, began examining whether the existing systems for delivering legal aid were able to meet the needs of those accused of crimes and what policies could be adopted to ensure quality delivery of legal aid services.

By 2003, pilot public defender's offices were launched with international support in **Lithuania** and **Bulgaria**, and following their examples, in **Georgia, Ukraine**, and **Moldova** over the next several years.¹¹⁵ Today, most countries in the region have established systems akin to judicare organisational schemes, in some cases alongside bureaus of staff lawyers or public defenders. Some countries ensure legal aid in all criminal cases, while others have cut-offs determined by the term of imprisonment a defendant faces. Some countries guarantee legal aid in both civil and criminal cases, while others limit the scope of legal provision to certain types of cases only.

114. For details, see, Ed Cape and Zaza Namoradze, *Effective Criminal Defence in Eastern Europe*, (Moldova: Soros Foundation, Legal Aid Reformers' Network, 2012).

115. Ministry of Justice of Ukraine and UNDP, "International Study of Primary Legal Aid Systems with The Focus on the Countries of Central and Eastern Europe and CIS", Legal Empowerment of the Poor project (Kyiv: 2012).

D. Overview of approaches to legal aid organisation and delivery

“At Legal Aid South Africa, we’ve realized that we can’t meet all the legal aid needs on our own. So we enter into partnerships with legal NGOs who specialize in particular areas, such as those who deal with children, with farming communities, or with women [...] We do the same with university law clinics [...] We are able, through a mixed-model approach, to deal with almost all cases. We’ve also encouraged professional legal bodies to set up pro bono structures.”

Honourable Dunstan Mlambo, Judge President of the Gauteng Division of the High Court of South Africa and Chairperson of Legal Aid South Africa

Legal aid services are organised and delivered through various schemes and delivery systems in different countries. While there are no specific guidelines on the set-up of legal aid systems, the UN Principles and Guidelines provide guidance on minimum standards to ensure the quality and effectiveness of legal aid systems. This Study seeks to illustrate some of the different approaches to legal aid service delivery adopted worldwide and how countries have chosen to implement their national and international commitments to ensure access to justice for their population.

As a start, in determining how to organise legal aid systems, States sometimes undertake comprehensive assessments of **legal needs and access to justice** to understand the needs and priorities as well as to identify best ways to organise systems to respond to the realities on the ground (See **Box 10**).

Once legal aid needs and priorities are established and gaps identified, one can assess what services are currently being delivered and how these services are delivered. State policies are then developed based on the eligibility criteria for legal aid. In most countries, the determination of whether a person can access legal aid services invariably falls with State justice actors, namely the police, prosecutors

or courts in criminal cases, and administrative institutions or courts in civil cases. Some systems entrust eligibility determination for legal aid to justice sector actors or to the legal aid authority. In others, there are procedural triggers for assignment of legal aid¹¹⁶ or legal aid providers are required to be on duty in various physical locations where legal aid may be required (e.g. police stations, courts, etc.) In some cases, a partnership is forged with CSOs who then notify legal aid providers when legal aid services are required.

Box 10: Determining priorities: Legal needs and access to justice assessments

Understanding how best to meet the justice needs of the population requires periodic undertaking of a comprehensive assessment. Such an assessment can help identify where gaps and bottlenecks exist for people trying to access justice, especially for vulnerable groups, and can help inform policies to better respond to the realities on the ground. For legal aid practitioners and institutions, this information can be valuable to inform specialization on particular issue areas or to respond to priorities of specific groups of people depending on the existing demand. Below are some tools that provide guidance on how to undertake access to justice assessments.

- The American Bar Association Rule of Law Initiative, *Access to Justice Assessment Tool, A guide to analyzing justice for civil society organizations*, 2012.
- National Legal Aid & Defender Association, *International Legal Aid & Defender System Development Manual: Designing and Implementing Legal Assistance Programs for the Indigent in Developing Countries*, 2010.
- UNDP, *Access to Justice Assessments in the Asia Pacific: A Review of Experiences and Tools from the Region*, 2011.

- UNDP, *Institutional and Context Analysis: Guidance Note*, 2014
- UNDP, *Programming for Justice: Access for All*, 2005.
- UNODC, *The Criminal Justice Assessment Toolkit – Access to Justice: Legal Defence and Legal Aid*, 2006. (See also UNODC, *Assessment of the Criminal Justice System in Ethiopia*, 2014).
- The World Bank, *Justice Sector Assessments: A Handbook*, 2007

These guides offer a wide range of approaches to assessing the justice system and, specifically, legal aid priorities. Data sources used for such kind of assessment include media and documentary sources, expert interviews, stakeholder interviews, user surveys, case file analyses, review of judicial decisions, focus groups and court hearing observations. It is important to draw from a variety of sources reflecting both professional and non-legal perspectives, ensure gender and human rights sensitivity as well as form a balanced team with diverse representation, e.g., in terms of gender, demographic, and geographic representation.

116. E.g., for witnesses; when a suspect of a crime or a criminal defendant is a minor; when an individual may be deprived, even temporarily, of his or her freedom; by virtue of a membership in a particular vulnerable group, pre-defined by law; or due to a particular subject matter.

Once eligibility criteria are determined, there are different ways to deliver legal aid services. The mechanisms that are developed to respond to legal aid needs in a country are often a combination of different legal aid service delivery schemes and models. In general, legal aid mechanisms that States use to provide legal aid services fall into the following categories:

- **Public defender systems** – The public defender model involves government salaried lawyers dedicated to providing legal aid services organised through the State or an independent authority.
- **Assigned counsel/panel lawyers or *ex-officio* systems** – The assigned counsel model, also called the “judicare” model in some countries, involves the assignment of legal aid cases to private lawyers on either a systematic or an *ad hoc* basis.
- **Contract services systems** – The contract service model involves a contract with a lawyer, a group of lawyers, a bar association, or a non-State-affiliated organisation (such as NGOs, community-based paralegals, university legal aid clinics, etc.) which provides legal aid services in particular jurisdictions and is funded by the State.

More often, countries establish systems that are a combination of the above-mentioned public defender system, assigned counsel system and/or contract service systems, resembling a mix of State, private and civil society providers, called ‘**mixed-model**’ or ‘**hybrid systems**’. In addition, in many countries, civil society actors provide legal aid services directly to beneficiaries, which are funded independently from the State.

When developing a system for legal aid delivery, a number of considerations must be reviewed, including the following:

- **Model of delivery** – What type of legal aid delivery system should be adopted to ensure that legal aid services are provided in an effective manner to those who are eligible for legal aid?
- **Governance system** – How will the legal aid system be managed? What governance structures can be established to ensure the independence and effectiveness of the legal aid system?
- **Appointment system** – How should legal aid providers be identified so that people are able to promptly, easily and effectively access quality legal aid services when required? What will trigger the appointment of a legal aid provider? Are incentives in place to ensure that if a person is eligible

Box 11: Community paralegals

Community paralegals, also known as “grassroots legal advocates” or “barefoot lawyers,” provide a bridge between the law and real life. They are trained in basic law and skills like mediation, organizing, education, and advocacy. They form a dynamic, creative frontline that can engage in formal and traditional institutions alike.

Instead of treating their clients as victims requiring an expert service — “I will solve this problem for you” — community paralegals focus on legal empowerment — “We will solve this together, and when we’re done you will be in a stronger position to tackle problems like these in the future.”

Community paralegals are different from conventional paralegals: their primary role is not to assist lawyers, but rather to work directly with the communities they serve.

But just as primary health workers are connected to doctors and hospitals, community paralegals should be connected to lawyers and the possibility of litigation or high-level advocacy if frontline methods fail.

Community paralegal programs are diverse. Some take a holistic approach, addressing a range of justice needs; others focus on addressing a specific issue, like violence against women or protection of customary land rights. Some paralegals serve a very local jurisdiction — a village, a neighborhood — as volunteers; others are paid staff who cover a much larger area — a chiefdom, or a district.

How Community Paralegals Work

Community paralegals use several strategies to advance justice. These include:

- Public education to increase awareness of the law
- Advising clients on legal process, and options for pursuing remedies

- Assisting clients in navigating authorities and institutions
- Mediating disputes
- Organizing collective action
- Advocacy
- Fact-finding, investigations and monitoring

In exceptionally difficult or serious cases, a paralegal can seek the assistance of a lawyer, who, in turn, may resort to litigation or higher level advocacy. Often, the credible threat of litigation can lead more powerful parties to participate in mediation or negotiation.

Advantages of this Approach

At their best, community paralegals can:

- Promote empowerment by fostering legal awareness and agency of clients.
- Provide tailored solutions to legal problems by using creative strategies, a range of skills and tools, and deep knowledge of the local context.
- Be more cost-effective and accessible than most lawyers.
- Find solutions not only for individuals, but also for entire communities.
- Engage a wide range of institutions, including administrative agencies and customary authorities.
- Prioritize a fair resolution rather than taking sides with only one party to a conflict.

Source: Namati

Box 12: Vertical and horizontal approaches to legal aid delivery

In the vertical representation model, the assigned legal aid provider enters a given case at the earliest possible stage, and the same provider represents the client at every stage until the completion of the case. Proponents of this model stress that this frees the client from the trouble of having to readjust to a new provider at each stage. To the contrary, this model allows for the provider and the client to build trust and plan legal strategies together over time.

In the horizontal representation model, a different legal aid provider is assigned to advocate for the client's rights at each stage of the case, thus developing expertise in the particular advocacy and strategies needed at each stage, such as investigative processes, pretrial advocacy, first-instance trial or specialized representation.

for legal aid, the State will provide him/her with a competent lawyer at the earliest possible moment?

- **Quality monitoring** – How will the quality of legal aid services be monitored? What incentives and support systems can be put in place to ensure that legal aid service providers are delivering the highest quality of legal aid services? What monitoring systems are in place to assess the availability and quality of services at every stage of a case? How will conflict of interest be monitored?
- **Services** – What range of services need to be provided through the legal aid system, including specialized services and other support services (e.g. medical, psycho-social, etc.)
- **Costs** – How will the costs of establishing and running legal aid services at the national and sub-national level be covered in a sustainable manner?

Below is a more detailed discussion of different approaches to organizing legal aid services.

Public defender systems

Public defender systems include governmental, quasi-governmental or sometimes non-governmental legal aid institutions that employ staff to provide legal aid services to qualified recipients, usually on a full-time basis. Public defender institutions can include: (a) a State institution or agency that operates under the guidance of an appointed or elected State official in charge of coordinating public defence; or (b) an independent or quasi-governmental institution sometimes managed by a legal aid board. Often, public defender institutions operate with their own admin-

istrative and practice managers who handle logistical planning and coordination, sometimes including supervision of quality performance and continuous legal and advocacy skills training. Public defender offices may also employ investigators, social workers and forensic experts to aid in the lawyers' work.

Appointment of cases in a public defender institution can be done through:

- (a) notification by justice sector actors that an individual requires legal aid;
- (b) assignment of public defenders to justice agencies and requirement to take up cases arising during their assignment;
- (c) assignment of a public defender to a particular procedural jurisdiction or stage of a case or for a particular specialization.

In civil cases, appointment may be based on notification or referral by State or other actors to the public defender institution.

Public defender systems ensure that the staff working in these institutions are trained specifically to provide legal aid services. Dedicated staff and budget also allow for the establishment of more robust data collection systems to monitor the quality of services, and for more effective advocacy for systemic reform to improve access to justice. Public defender systems convene their staff regularly to enable systematic exchange of knowledge, experience and perspective. This helps to foster shared adherence to standards of high quality advocacy among practitioners at all experience levels, as well as strong mentoring and supervising systems. However, funding is often limited and demand for services can be high, thus leading to excessive caseloads and negatively affecting the quality of services delivered.

Assigned counsel/panel lawyers or *ex officio* system

The assigned counsel/panel lawyer or *ex officio* model is the most common way to deliver legal aid services worldwide. In this model, private lawyers provide legal aid services to clients in either a systematic or an *ad hoc* basis and are compensated for their services by the State (lawyers may also be required or encouraged by their bar associations to provide their services *pro bono* in a certain number of cases per year). In an *ad hoc* assigned counsel system, the appointment of a counsel is generally made by the court, without benefit of a formal list or rotation method and without specific qualification criteria for lawyers.¹¹⁷ In some jurisdictions, lawyers may be appointed by the police or prosecution rather than the court. More coordinated judicare programmes have an administrative or oversight body.¹¹⁸ In such systems, lawyers are often assigned on rotation, must meet minimum qualification standards and are provided with a greater degree of

117. Robert L. Spangenberg & Marea L. Beeman, Indigent Defense Systems in the United States, 58 Law and Contemporary Problems 31-49 (winter 1995) at 33, available at <http://scholarship.law.duke.edu/lcp/vol58/iss1/3>.

118. *Id.*

Box 13: Strengthening the Public Defence Office of Liberia

Emerging from a prolonged civil war, Liberia has striven to rebuild its public institutions. In recent years, efforts to strengthen the criminal justice system in the country have concentrated on rebuilding the capacity of the prosecution and the judiciary. In 2009, the Public Defender's Office (PDO) of Liberia was created to provide legal representation to indigent criminal defendants and enhance access to justice in accordance with Article 21(c) and (i) of the Constitution of Liberia. However, in comparison to other criminal justice actors, such as the prosecutors or the judiciary, the public defenders had not received much support in post-conflict Liberia. In fact, an assessment conducted in 2010 by UNODC found that there were only 21 public defenders in the entire country, most of whom were young and inexperienced with courtroom practice.

In order to address this gap, UNODC partnered with the Washington and Lee University School of Law in the United States and the PDO in Liberia in 2013 to create a fellowship programme for law students aspiring to become public defenders. As part of their training, fellows accompanied public defenders to court, assisted in case preparation and learned how to produce petitions and motions. By introducing well-prepared lawyers into the profession, the programme contributed to the strengthening of Liberia's criminal justice system.

In order to provide a sustainable and nationally-owned benefits for the PDO of Liberia, UNODC subsequently launched a training programme for Liberian public defenders, together with the PDO of Liberia and the James A.A. Pierre Judicial Institute. In line with the UN Principles and Guidelines and other relevant UN standards and norms in crime prevention and criminal justice, the training programme aimed at improving the basic trial advocacy skills of the public defenders, as well as building their capacity to provide specialized services for particularly vulnerable populations. By delivering a series of training workshops and developing two training manuals tailored to the Liberian legislative and social context, the training programme enhanced the ability of the PDO of Liberia to provide legal representation to poor and vulnerable citizens. In particular, the Training of Trainers (ToT) course for selected Liberian defence lawyers and development of the Liberian Public Defense Office Training Manual, in collaboration with the National Association of Criminal Defense Lawyers (NACDL) of the United States, contributed to creating sustainable training capacity for the PDO.

Source: UNODC

supervision, training and support.¹¹⁹ Assigned counsel systems may pay lawyers either on an hourly basis or a flat rate per case or hearing. In some jurisdictions, lawyers may also be reimbursed for certain eligible costs incurred during the representation of their legal aid clients, such as costs for experts, and investigation travel expenses.

In such systems, it is crucial to ensure that the legal aid services provided are consistently effective and of high quality, including access to support services, and that providers are able to practice independently without fear of intimidation by the State or other powerful actors. Assigned counsel systems are often criticized for fostering patronage and lacking control over the experience level and qualifications of the appointed lawyer. In many countries, it is common for appointments to be taken by recent law school graduates looking for experience.

119. *Id.*

Additionally, flat fee arrangements can create a disincentive for lawyers to devote time to a particular case.

In others, bar associations are playing an active role in overseeing legal aid more generally, interfacing with lawyers, establishing standards, qualifications and training requirements, encouraging mentoring and peer reviewing, and advocating on providers' behalf with State funding authorities for conditions providers need to adequately exercise their clients' rights.

In some locations, legal aid providers under the assigned counsel system have formed unofficial, loose associations to coordinate strategies for improving the quality of their services and are taking steps in unison to object to practices that do not correspond to national and international standards. In others, bar associations are playing an active role in overseeing legal aid more generally, interfacing with lawyers, establishing standards, qualifications and training requirements, encouraging mentoring and peer reviewing, and advocating on providers' behalf with State funding authorities for improved conditions so that providers can adequately exercise their client's rights.

In assigned counsel systems, it is useful to have mechanisms in place to maintain the integrity of legal aid services provided, including: (a) policies and practices to guarantee early access to legal aid; (b) systems to ensure that the roster order of on-call lawyers is respected; (c) mechanisms to monitor and uphold the quality of legal services provided, to avoid conflict of interest and to ensure adequate

Box 14: Legal aid boards

Legal aid boards are independent management structures that oversee the delivery of legal aid services. These boards can act as a buffer between the State that funds legal aid and its providers, ensuring a level of independence for legal aid providers. Typically, boards are comprised of a variety of justice professionals, often including those with experience of providing legal aid, representatives of government structures, and others representing bar association interests. It is important to ensure that the boards' make-up includes individuals with sufficient authority and independence and with adequate knowledge of legal aid.

The functions of boards may include advocating for budget, policy or legislative amendments to effect improvements in legal aid coverage and quality, as well as managing overall operations, including staffing and budgets allocation. Some boards are fully staffed and funded operational institutions, while others are advisory bodies providing no remuneration to its members, but still effectively managing the delivery of legal aid. In some locations, boards play a more *pro forma* role as advisors to independent or semi-independent legal aid administrations.

capacities (such as peer review); (d) adequate budget allocations to meet the demand for legal aid services; and (e) processes of payment for legal aid providers that are not overly burdensome.

Contract services systems

The contract service model involves a government contract with a lawyer, a group of lawyers, a bar association, or an NGO that will provide representation in some or all of the criminal legal aid cases in a particular jurisdiction. Under this system, individuals or organisations enter into contracts with the government to provide legal services to a defined class of eligible clients in a given geographic region. Contract services systems can be an effective way for governments to effectively and efficiently deliver legal aid services through privatization or contracting with effective and well-established law firms or NGOs. It can also achieve many of the benefits of a public defender model, without burdening the State to establish a government public defender agency.

One concern about many contract systems is that governments may be incentivized to offer the lowest possible bids, they may fail to provide appropriate budgets for necessary support staff (e.g. paralegals, investigators, experts), and often have unrealistic or non-existent caseload limits.¹²⁰ Additionally, quality may suffer because once a firm has successfully obtained the contract for a bundle of cases, it has an incentive to treat every case as a simple one—the firm’s income for that bundle of cases is now fixed, and it can only increase its own profit margin by reducing its own operational costs for each case, which may lead to rushing or cutting corners.¹²¹ However, there are factors that mitigate these risks, and structures that may diminish negative impacts. For example, governments can create systems to recognize the best private legal aid providers¹²² to incentivize them to maintain their reputation within the justice community, establish independent organisations, such as a board of trustees to award and oversee contracts,¹²³ ensure that calls for bids and contracts meet quality-assurance conditions and agree to reporting requirements to measure quality of service.¹²⁴

120. United States Department of Justice, Bureau of Justice Assistance, “Contracting for Indigent Defense Services: A Special Report,” (2000), at 13; available at <https://www.ncjrs.gov/pdffiles1/bja/181160.pdf>.

121. Ontario Ministry of the Attorney General, “Chapter 7: The Choice of Delivery Models for Legal Aid,” (2010) at 19, available at <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/ch7.asp>.

122. *Id.*

123. United States Department of Justice, Bureau of Justice Assistance, “Contracting for Indigent Defense Services: A Special Report,” (2000), at 14; available at <https://www.ncjrs.gov/pdffiles1/bja/181160.pdf>.

124. Ontario Ministry of the Attorney General, “Chapter 7: The Choice of Delivery Models for Legal Aid,” (2010) at 19, available at <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/olar/ch7.asp>.

Box 15: Ensuring quality and effective legal aid services for criminal defence

Ensuring the quality and effectiveness of legal aid services is often a significant challenge as legal aid providers often lack the time, resources, or skills to provide quality services. For example, in providing criminal defence, legal aid providers sometimes play a passive role and only meet their clients a few minutes before having to represent them in court, without adequate investigation, case preparation and legal research prior to the court proceeding. The International Legal Foundation (ILF)¹²⁵ has adopted a three-pronged approach to ensuring quality standards of legal aid provision: (1) case-by-case mentoring, (2) clear performance standards, and (3) systematic monitoring and evaluation.

(1) *Mentoring* is an effective tool for building the skills of legal aid lawyers as it creates an on-going relationship to cultivate lawyers' ability to identify problems, incorporate new techniques and strategies into their practice, and fosters professional ethics, enabling them to become more proactive advocates for their clients. Mentoring also encourages greater application of alternative measures, such as alternatives to imprisonment, probation, and diversion. The ILF, for example, through its *International Fellows* supports mentoring by expert criminal defense lawyers to provide day-to-day, case-by-case mentorship in many post-conflict contexts. The lawyers who are being mentored are expected to become mentors themselves to institutionalize well-trained lawyers capable of providing quality legal services.

(2) *Performance Standards* provide written guidelines detailing minimum level of quality required, encourage good practices for individual legal aid providers and set a bar for uniformity in the practice across the entire legal aid system. ILF has used these standards a) in training programmes to help detail what is meant by "quality,

meaningful representation," b) to evaluate the performance of individual lawyers, public defender offices, and the overall legal aid system, c) to identify gaps in capacities and future training needs, d) to note where disciplinary action is needed, e) to identify successes over time and f) to compare the performance of individuals or groups for the purposes of awarding contracts to provide criminal defence services.

(3) *Monitoring and Evaluation* (M&E) allows for continuous gathering of information and then, at pre-selected intervals, analyse and assess that information. When establishing an M&E system, it is helpful to break it down into two components: (1) the process: who will conduct M&E, who will be evaluated, when, how, and how to catalogue information for future reference, etc.; and (2) the substance: what activities are to be monitored, against what standards, how will this differ when monitoring and evaluating the performance of an individual legal aid provider, the public defender office, or the entire legal aid system, etc. When M&E is systematically and comprehensively carried out, it is an invaluable means of improving the quality of legal aid services. For criminal legal aid providers, this includes monitoring and evaluating to assess whether the relevant standard for providing quality legal representation is met. For example, case management systems (CMS) can be developed to track each action performed on the case, such as meetings, motions filed with the court, trial activities and outcomes. The data can then be used to evaluate and compare overall performance and develop a plan to address gaps.

Source: The International Legal Foundation

125. The International Legal Foundation (ILF) assists post-conflict and transitional countries in establishing public defender systems that provide effective, quality criminal defense services for the poor. To date, the ILF has established public defender programs in Afghanistan, Nepal, the West Bank, and Tunisia

Civil society providers

An increasing number of civil society actors are providing legal aid services worldwide, including civil society providers who are funded by the State (see contract services above) or where non-governmental institutions provide full-time legal aid services and are privately funded through individual contributions or through national and international donors. While the gap in meeting the demand for legal aid services is particularly wide in developing country contexts, including in post-conflict and transitional settings, the demand often outstrips resources across all development contexts. In many cases, civil society actors have sought to fill this gap.

University-based clinical legal aid providers, for example, supplement services to people who may not be able to easily access legal aid. In clinical education programs, students work under the close supervision of faculty and practitioner mentors, learning the practice of law while putting their education to use to assist those who might otherwise be without recourse to defend their rights. Clinical legal education often provides services to under-served areas. In countries where civil legal aid is not provided or not sufficiently available, clinic students often assist with cases where vulnerable groups may be at risk of losing property, or in family disputes. In other cases, students may focus on certain geographic areas, such as urban slums or rural areas where there is lack of awareness of the law and limited access to legal services. It is important to ensure, however, that the services provided by law students are being monitored for quality, and that when cases fall outside the purview of the legal aid clinics, they are referred to competent legal aid providers.

A number of CSOs are also using paralegals as a means to extend access to legal aid, especially to underserved areas and populations. Paralegals are non-lawyers who have training in dealing with certain legal matters, and are authorised to perform specific tasks that require some knowledge of the law and legal procedures, but do not require a law degree. They can provide legal information and advice, screen legal needs in order to refer a legal aid claimant to appropriate providers, or enable litigants to advocate for their own interests in a tribunal. In some countries, paralegals are graduates of law schools who have not yet acquired a practitioner's license. In others, they have distinct training in providing legal aid at the community level. Increasingly, to address the limited availability of lawyers, community-based paralegals are drawn from the community itself to provide necessary legal assistance to help navigate the legal and administrative hurdles that many individuals face when encountering the justice system. Ensuring accountability and monitoring quality of paralegal services also need to be addressed when supporting paralegal schemes.

Box 16: Role of civil society in bridging the gap in legal aid service provision in Nepal

While responsibility for ensuring legal aid lies ultimately with the State, civil society can play a crucial role in providing legal aid services. In many cases, partnerships between State legal aid authorities and civil society have been successful in helping meet the demand for legal aid services.

In **Nepal**, for example, legal aid is administered by the Nepal Supreme Court through a contract services model. A *Baitanik Wakil* (stipendary lawyer) is meant to serve in Nepal's 75 district courts and 16 appellate courts, and two in the Supreme Court. During their one-year tenure, a *Baitanik Wakil* lawyer is responsible for representing any legal aid case referred by the court, both civil and criminal (and both victims and defendants). Additionally, Nepal's 1997 Legal Aid Law established funding for District Legal Aid Committees (DLACs), through which members of the Nepal Bar Association (NBA) would be appointed on a case-by-case basis to people below a certain income threshold, in civil and criminal matters.

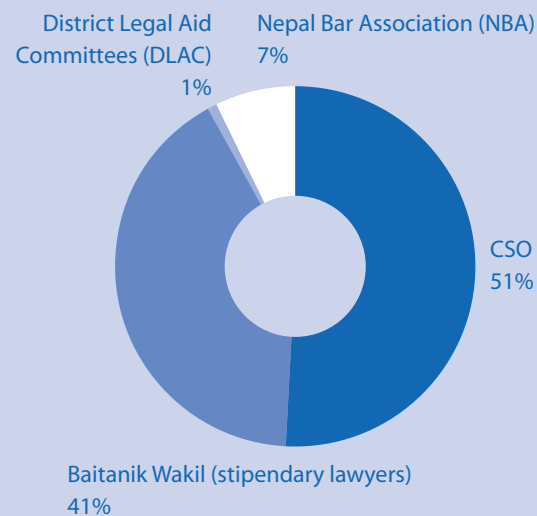
In practice, the State system is not presently capable of providing criminal defence services to all eligible parties as required by the Constitution. As of 2015, DLACs had only been established in 34 of 75 districts, and the capacity of the State-sponsored schemes to provide meaningful representation has been hampered by a lack of resources and limited oversight. Official data reflect low rates of actual representation by *Baitanik Wakil* in appellate and district court cases. UNDP noted that "in 2010-2011 the 75 district courts handled a total of 34,986 criminal cases. *Baitanik Wakil* handled 4.8% of the cases."¹²⁶ The Supreme Court's report for 2012/13 showed small improvements in 7.5% of district court cases.¹²⁷ With most criminal defendants unable to hire private counsel and with less than 8% of district court cases handled by *Baitanik Wakil* representation, the demand for and the right to legal aid services falls far short of being met.

In order to fill some of the gaps, CSOs, such as the Advocacy Forum, the Center for Legal Research and Resource Development (CeLRRd), the International

Legal Foundation and the Terai Human Rights Defenders Alliance (THRD Alliance), have provided a range of legal services to vulnerable groups, including criminal defence. ILF-Nepal, for example, focuses exclusively on providing criminal defence, and since 2008 has represented over 5,000 accused. An ILF-Nepal 2014 survey of access to justice for detainees in six districts reveals that of the 373 detainees surveyed, 59 were represented at some point in the process by a legal aid lawyer. Of those 59, 51% were represented by a CSO lawyer, 41% were represented by a *Baitanik Wakil* lawyer, 7% were represented by a lawyer directly appointed by the NBA and 1% were represented by a lawyer appointed by their DLAC.

CSOs clearly have an important role to play in closing the gap between demand and for supply of legal aid services and can complement efforts to support States in building a sustainable national legal aid system.

Legal Aid Providers in Nepal



Source: The International Legal Foundation

126. United Nations Development Project, "Strengthening the Rule of Law and Human Rights Protection System in Nepal Programme (2013 – 2017)," pp. 14, fn. 25; available at http://www.np.undp.org/content/dam/nepal/docs/projects/RoLHR/UNDP_NP_RoLHR_Project-Documents.pdf

127. Supreme Court of Nepal, Annual Statistics 2069/070, available at http://www.lawcommission.gov.np/index.php?option=com_remository&Itemid=33&func=fileinfo&id=1736&lang=en

Mixed-model/hybrid systems

'Mixed-model' or 'hybrid systems' of legal aid delivery are becoming increasingly popular as a means of maximizing the strengths and minimizing the weaknesses of the traditional models. This draws on a range of different ways of organizing legal aid delivery as discussed above and seeks to maximize coverage of legal aid provision. Mixed models offer an optimum level of flexibility, allowing governments to choose how legal aid can best be delivered in different parts of the country from any combination of public defender staff attorneys, private lawyers individually assigned to cases, blocks of cases contracted out to firms or other NGOs, paralegals and law students. With this approach, legal aid service providers may be coordinated by a legal aid board or public defender institution, or may function more independently of each other. The lack of coordination is often a challenge in hybrid systems and requires strong oversight and quality control mechanisms. In some instances, the provision of legal aid services by civil society or other actors is seen as a direct competition to the bar association and may be perceived to be against its interest.

Part II of this Study will highlight the key findings emerging from the global surveys on legal aid addressed to both Member States and independent national experts.

Box 17: Global Study on Legal Aid Case Study: Bangladesh

As part of the GSLA, an in-depth country case study was conducted on Bangladesh which included a desk review of the legal and institutional framework on legal aid, interviews with legal aid providers and users, as well as a randomized household survey in two districts, Bandarban and Patna. Some of the key findings are outlined below; for a more detailed overview, please refer to the *Global Study on Legal Aid: Case Studies* publication.

Background

Recent studies on access to justice¹²⁸ have shown that trust in and satisfaction with the justice system amongst Bangladeshis is very low: 12% of people at the community level and 25.4% of people surveyed at the court service point have full confidence in the formal judiciary, and only 31.3% of court clients are satisfied with services provided. This lack of confidence in the justice system is caused by corruption (97.3% of clients, 90.2% of judges and 84.7% of lawyers perceive corruption as a major obstacle to legal aid services provision in the justice system), high costs (the average cost per case is US\$2,130), long processing time (3.5 years on average from the filing of a criminal case to final judgment), general ineffectiveness of the justice system, and perceived discrimination. The findings of this case study also revealed that people have very low awareness of legal aid services provision and the functioning of the justice system, and that legal aid services are not effectively responding to people's needs as they are not developed in a consultative manner. As a result, the majority of people have never used formal institutions to resolve legal problems; more than 72% of disputes (including land disputes, family cases, as well as criminal cases) are resolved via non-formal systems, such as the village-level Shalish.¹²⁹

Legal framework

While the Constitution recognizes equality before the law and the right to consult with a legal practitioner when detained, the right to legal aid is not explicit. The current legal aid legislative and institutional framework includes 1) the Legal Aid Service Act, 2000; 2) the National Legal Aid Service Organisation (Upazilla and Union Committees) Regulations, 2011; 3) the Legal

Aid Service Policy, 2014; 4) the Legal Aid Service (Legal Advice and Alternative Dispute Resolution) Rules, 2015; and 5) the Legal Aid Service Regulations, 2015. The National Legal Aid Services Office (NLASO) was established in Dhaka, with representation in each state and a few District Legal Aid Committees. The NLASO is governed by a National Board of Directors comprising the Minister of Law, Justice and Parliamentary Affairs as its Chairman, two members of Parliament (both ruling party and opposition), the Attorney General, Secretaries of three ministries (Ministry of Law, Justice and Parliamentary Affairs, Home Ministry, and Ministry of Social Welfare), the Inspector General of the Police, the Registrar General of the Supreme Court, the Inspector General of Prisons, the Vice-Chairman of the Bangladesh Bar Council, the President of the Bangladesh Supreme Court Bar Association, the Chairwoman of the National Women's Association, representatives of three NGOs, representatives of three women's organisations, and the Director of NLASO as its Member-Secretary.

Services and demand

State funds for legal aid can be withdrawn from the government's account with joint signatures of the Secretary of the Ministry of Law and the Director of NLASO, to be allotted to district committees.

Legal aid fees for panel lawyers have long been a significant barrier in accessing legal aid in Bangladesh. Moreover, experienced lawyers are often reluctant to take up legal aid cases due to unfavorable payment systems. To remove such barriers, the Legal Aid Services Regulation (2001) was amended to allow for lawyers' fees to be significantly increased. The use of legal aid services at district level has increased over the years (see **Table on the opposite page**).

Over the years the use of legal aid at district level has increased (as compiled by 64 District Legal Aid Committees).

Interviews with legal aid users in Patna and Bandarban indicated that people eligible for legal aid who had requested it were provided services within a reasonable time frame. However, demand for legal aid in the districts were very low. The household survey showed that more than 75% of respondents had never heard about their right to legal aid and available services,

128. UNDP in Bangladesh, "Effective judicial reforms require hard facts" 20 February 2014.

129. Greg Moran, "Access to Justice in Bangladesh – Situation Analysis Full Report" (March 2015). *Ain o Shalish Kendra (ASK) v. Bangladesh & Ors*, 19 BLD (1999) 488.

amongst female respondents, this proportion reached 87%. When asked what they would do if they needed legal aid, 30% of respondents answered that they would contact a lawyer in civil cases, 26% said that they would do so in criminal cases, and 41% said that they would do so in administrative/writ cases. Focus group discussions with users revealed that 35% of cases involved family suits, 19 % were financial suits, 31% were land disputes and 15 % were criminal cases.

Civil society

NGOs and international development agencies play a strong role in the provision of legal aid in Bangladesh. BRAC purportedly has the largest NGO-provided legal aid service in the world, having helped resolve 111,628 disputes through alternative dispute resolution with its “Barefoot Lawyers,” and supported 206,779 cases through its legal aid clinics.

Due to its strong civil society in the legal field, Bangladesh has developed a robust practice of public interest litigation (PIL), with the first PIL case filed in 1997. According to Ain o Salish Kendra (ASK), a national legal aid and human rights organisation, 236 PILs were conducted by various NGOs as of 2012 for a wide variety of cases including abuse of power, rights

of vulnerable groups, environmental rights, consumer rights, democratic procedures and institutions, governance and health. The most successful PIL cases related to the protection of rights of vulnerable groups, such as a slum eviction case defended by ASK¹³⁰ and another case on the eviction of sex workers.¹³¹

Conclusion

Bangladesh has achieved important results in the provision of legal aid services. A fully formed legislative and regulatory framework with specific provisions on various aspects of legal aid, including on the range of services, the management and responsibilities of stakeholders, monitoring, eligibility, appointment and potential removal of panel lawyers, as well as financing. If this law is fully implemented, a well-functioning legal aid system may be achievable within the next 5 to 10 years in Bangladesh. In the interim, it is critical to support the integration of State and NGOs efforts, at both national and local levels. Awareness-raising initiatives should also be prioritized to the overall population, as well as to local-level committees to refer cases to the formal justice system.

Source: UNDP Bangladesh

Year	Number of legal aid recipients			
	Women	Men	Children	Total
2009	35%	65%	32	9,160
2010	44%	55%	90	11,266
2011	52%	48%	73	12,568
2012	52%	47%	47	15,450
2013	54%	46%	29	19,493
2014	57%	43%	23	25,283
2015 (as of July)	58%	42%	31	16,734
Total	52%	48%	325	109,954

130. Ain o Shalish Kendra (ASK) v. Bangladesh & Ors, 19 BLD (1999) 488.

131. Saiful Islam Dildar v. Bangladesh, 50 DLR (1998) 318.

Part II



“[O]ur focus are the vulnerable groups: the rights of women, the rights of children, of prisoners, of people with fewer resources, of illiterate people... [W]e are sought by all types of people, and on all types of questions, particularly for labour questions, questions on property, especially rural property. We are sought for questions of family; therefore we’re sought for questions on minors [...] on the violation of women’s rights. [W]omen run the risk of retaliation in their homes and their communities, because there is a lot of taboo [...] they are victims of domestic violence, they are victims of a combination of discriminations [...] there is always a lot of reluctance, a lot of difficulty in seeking help, and reporting these situations that violate their human rights.”

Juliano Augusto Fernandes, Coordinator of the Office for Information and Legal Consultation, Ministry of Justice, Guinea-Bissau



Survey Findings

A. GSIA Member State and expert surveys: Overview of the global response rate

In total, responses to the surveys conducted as part of the GSIA were received from 105 countries located in all regions of the world (**Figure 1**), and spanning all income groups (**Figure 2**).

Figure 1 Regions covered by the GSIA

The GSIA covers 105 countries spread across all regions of the world.

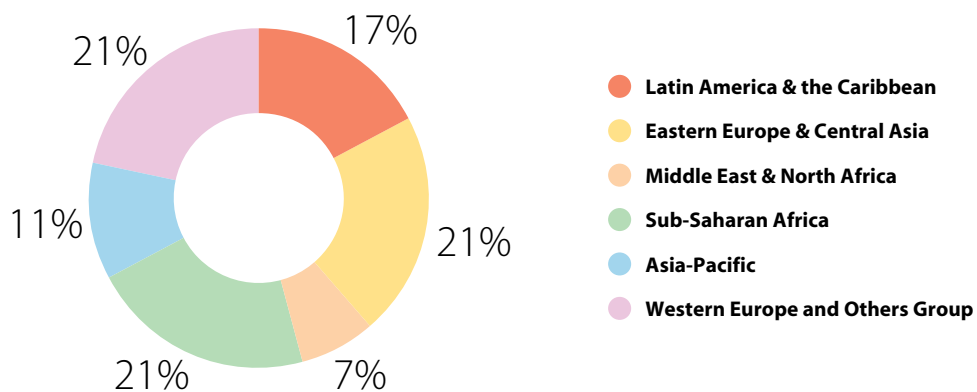
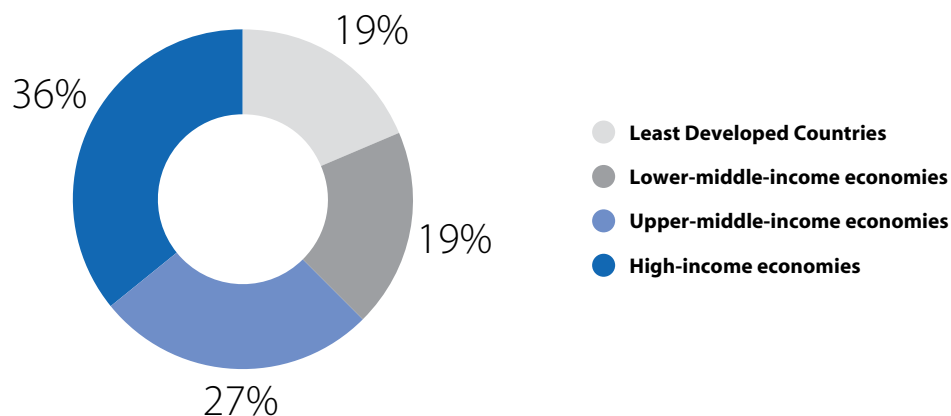


Figure 2 Distribution of country respondents by income level



Two types of surveys were used to gather data: (i) Member State surveys were circulated to relevant government institutions overseeing, administering or concerned with the legal aid system; and (ii) expert surveys were circulated to independent national experts, such as local researchers and civil society actors with first-hand experience and/or knowledge of legal aid provision in their country. While the Member State survey was mainly used to obtain information about the legal and regulatory framework of a country's legal aid system and the institutional arrangements in place for the delivery of legal aid, the expert survey solicited additional inputs on their assessment of the effectiveness, accessibility and quality of legal aid services provided.

In total, 68 government representatives, one per country, filled out the Member State survey. National experts were more numerous, with sometimes up to three experts submitting a survey for a single country. Overall, 121 national experts representing 89 countries completed the expert survey.

At least one survey from both a government representative and an independent national expert were received from nearly half (49) of the GSLA's sample of 105 countries. For each of these 49 countries, a "Country Profile" was developed based on the responses provided through both Member State and expert surveys.¹³²

The GSLA Member State and expert surveys are not in any way representative of all types of legal aid systems currently in existence across the world, nor are they drawn from any proportionate sample of countries by region or income group. All Member States and selected experts from those countries were invited to complete a survey, but participation was voluntary. Globally, more than half of the world's countries (53% — or 105 out of 197 countries) took part in the survey. As shown in **Figures 3a & 3b**, certain regions are better represented than others in the sample. The Eastern Europe & Central Asian region, for instance, is represented at a rate of 76% (with 22 countries submitting at least one survey — from a Member State and/or a national expert — among 28 countries in the region), while the Asia-Pacific region is represented at a rate of 32% (with 12 countries submitting at least one survey among 38 countries in the region).

Notwithstanding this uneven regional and income group representation in the global survey sample, the GSLA surveys provides valuable insights on trends in the provision of legal aid at both global and regional levels, as well as in each income group. This section unveils some of these trends, and highlights seeming 'correlations' between certain attributes of a legal aid system, and certain practices or outcomes, as reported by Member States and national experts.

132. See UNDP/UNODC 2016, *Global Study on Legal Aid — Country Profiles*.

However, it is important to stress that these trends are purely indicative findings and for any causal relationship to be reliably confirmed, larger-scale investigations would be required.

The results presented in this section are the first comprehensive global assessment of progress achieved to date in establishing national legal aid systems worldwide. They also bring to the forefront potential areas where additional support or investment might be needed for legal aid systems to be more accessible, effective, sustainable and credible, as set out in the UN Principles and Guidelines.

Figure 3a Global and regional representation of country respondents to the GSLA surveys

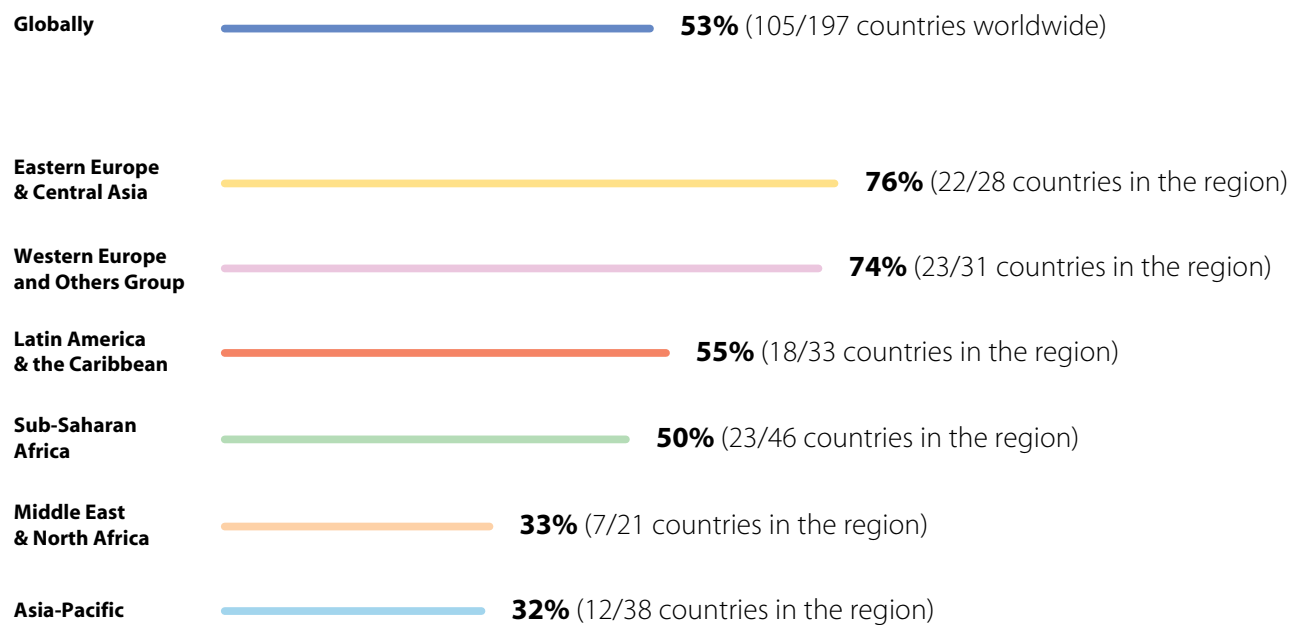


Figure 3b GSLA Member State and Expert Surveys:
Overview of the global response rate

**Sub-Saharan Africa
(23 countries)**

• Angola	MS
• Seychelles	MS
• Central African Republic	E
• Republic of Congo	E
• Cote d'Ivoire	E
• Ethiopia	E
• Gambia	E
• Guinea	E
• Liberia	E
• Mali	E
• Uganda	E
• Rwanda	E
• Sao Tome and Principe	E
• Burkina Faso	MS&E
• Cabo Verde	MS&E
• Benin	MS&E
• Chad	MS&E
• Democratic Republic of Congo	MS&E
• Ghana	MS&E
• Kenya	MS&E
• South Africa	MS&E
• Mauritania	MS&E
• Mauritius	MS&E

Asia-Pacific (12 countries)

• Cambodia	E
• Lao PDR	E
• Federated States of Micronesia	E
• Pakistan	E
• Philippines	E
• Sri Lanka	E
• Afghanistan	MS&E
• China	MS&E
• Japan	MS&E
• Nepal	MS&E
• Thailand	MS&E
• Viet Nam	MS&E

**Western Europe and
Others Group (23 countries)**

• Andorra	MS
• Denmark	MS
• France	MS
• Germany	MS
• Switzerland	MS
• Netherlands	MS
• Turkey	MS
• Iceland	E
• Ireland	E
• Norway	E
• Australia	MS&E
• Austria	MS&E
• Canada	MS&E
• Finland	MS&E
• Greece	MS&E
• Cyprus	MS&E
• Israel	MS&E
• Italy	MS&E
• New Zealand	MS&E
• Portugal	MS&E
• Spain	MS&E
• United States of America	MS&E
• United Kingdom	MS&E

**Latin America and the
Caribbean (18 countries)**

• Panama	MS
• Venezuela	MS
• Chile	MS
• Costa Rica	MS
• Jamaica	E
• Bahamas	E
• Belize	E
• St. Lucia	E
• Trinidad and Tobago	E
• Uruguay	E
• Argentina	MS&E
• Brazil	MS&E
• Dominican Republic	MS&E
• Ecuador	MS&E
• Guatemala	MS&E
• Haiti	MS&E
• Mexico	MS&E
• Paraguay	MS&E

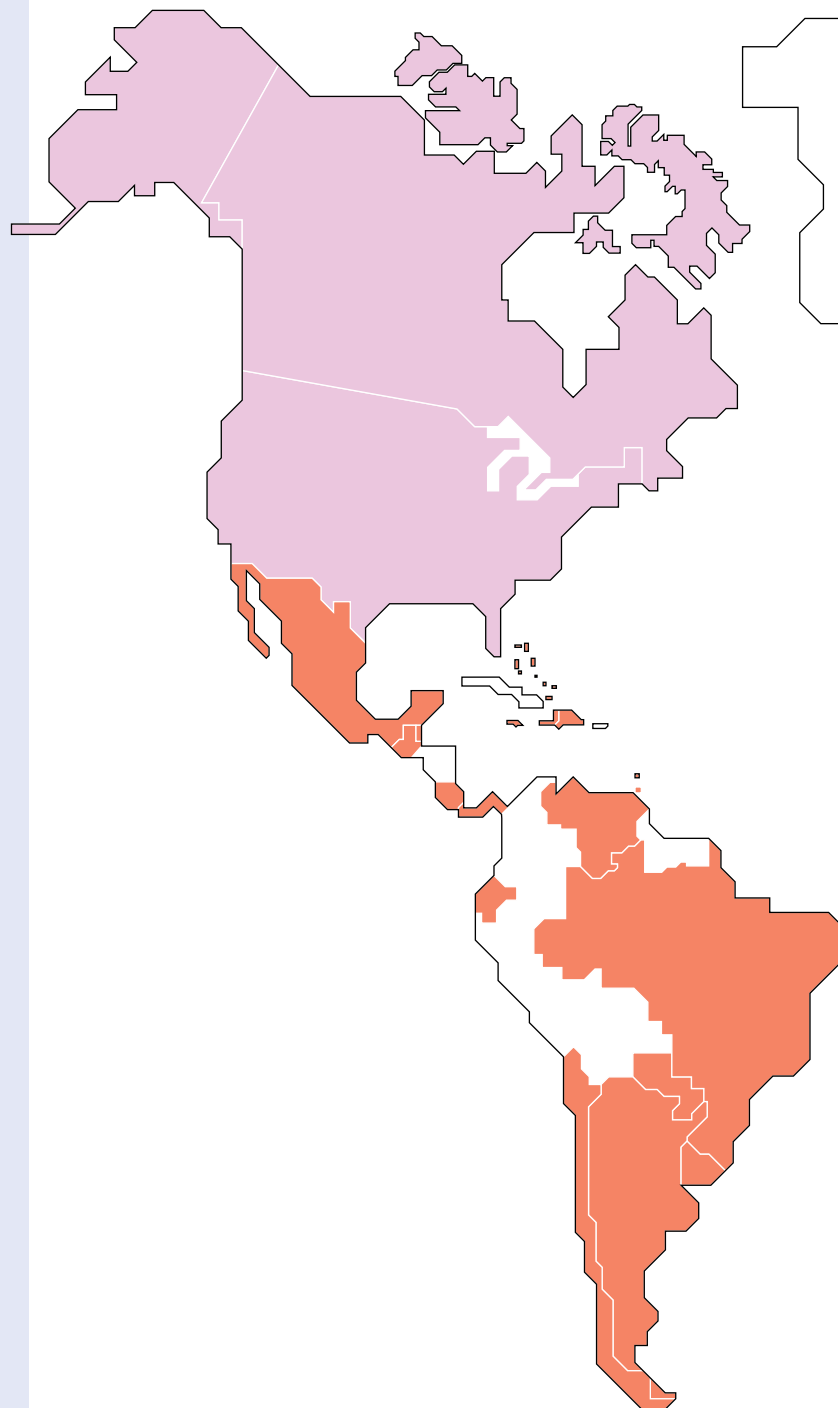
**Eastern Europe and
Central Asia (22 countries)**

• Azerbaijan	MS
• Croatia	MS
• Kyrgyzstan	MS
• Albania	E
• Bosnia	E
• Estonia	E
• Macedonia	E
• Romania	E
• Slovenia	E
• Tajikistan	E
• Armenia	MS&E
• Belarus	MS&E
• Bulgaria	MS&E
• Czech Republic	MS&E
• Georgia	MS&E
• Kazakhstan	MS&E
• Lithuania	MS&E
• Montenegro	MS&E
• Moldova	MS&E
• Slovakia	MS&E
• Turkmenistan	MS&E
• Ukraine	MS&E

**Middle East
& North Africa (7 countries)**

• Saudi Arabia	MS
• Syrian Arab Republic	MS
• Egypt	E
• Jordan	E
• Lebanon	E
• Palestine	E
• Iraq	MS&E

**MS = Member State
respondent only**
E = Expert respondent(s) only
**MS&E = Both Member State
and expert respondents**



● **Latin America
& the Caribbean**

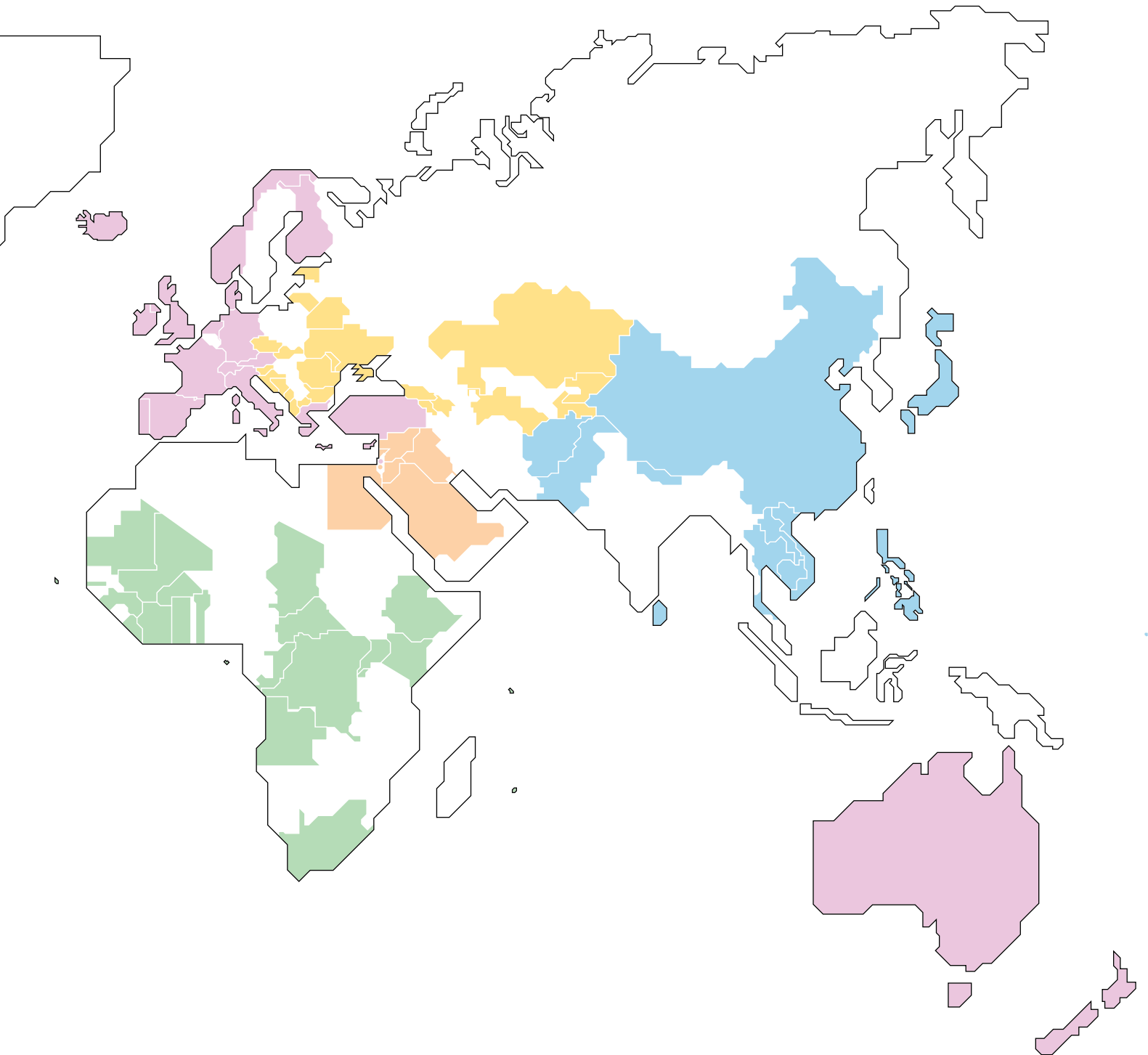
● **Eastern Europe
& Central Asia**

● **Middle East
& North Africa**

● **Sub-Saharan
Africa**

● **Asia-Pacific**

● **Western Europe
and Others Group**



B. Diagnostic of legal aid challenges at a glance

Figure 4 shows the proportion of the total number of cases filed in court for which State-funded legal aid was provided. This data was available for only 18 Member States amongst the 68 who filled out the survey. Even in this small subset of countries, there is a wide variation in the extent to which State-funded legal aid is provided in both criminal and civil cases. In criminal cases, the rate at which legal aid is provided fluctuates greatly across countries – from 78% in the Seychelles to 0.01% in Mauritius. In general, legal aid is much less frequently provided in civil cases (highest being 13% of cases in Costa Rica). However, these figures only capture cases that were filed in court; many others could have benefited from legal assistance if people had been willing and able to access legal services.

Both Member States and national experts were asked to identify what they deemed to be the main barriers — financial, technical and political — to effective provision of legal aid in their countries. “While the ‘low pay for legal aid work’ is commonly agreed as one of the top three challenges in legal aid provision, Member States and national experts have differing views on what constitutes the other two.” Member States mainly prioritize legal infrastructure challenges (such as the ‘limited number of lawyers’ and the lack of publicity around legal aid services resulting in ‘people not knowing where to find legal aid’). Meanwhile, national experts prioritize challenges related to the ‘poor quality of legal services’ and to people’s lack of awareness (‘people not knowing that legal aid is available at little or no cost’ and ‘people not understanding how legal aid services can help them’).

As depicted in **Figure 5**, some impediments to accessing legal aid are more prevalent in certain regions than in others. While national experts in the Middle East & North Africa, Sub-Saharan Africa and Asia-Pacific most frequently cite people’s lack of awareness of the availability of legal aid services at little or no cost as a main challenge, experts in Eastern Europe & Central Asia refer primarily to people’s lack of confidence in the quality of legal aid services. In Latin America, experts underline that people do not always understand how legal aid can help them, while in WEOG, experts are most concerned about lawyers being paid very little for legal aid work, as well as about prioritization of public expenditure on the police, prosecutors and judges, to the detriment of legal aid lawyers.

Another way to take the pulse of challenges facing the delivery of legal aid services is to consider recommendations and voluntary pledges related to legal aid made through the first (2008-11) and second (2012-16) cycles of the Universal Periodic Review (UPR) of the Human Rights Council (HRC). The UPR aims to assess the extent to which States respect their human rights obligations through an interactive discussion between the State under review and other UN Member States. During this discussion, recommendations are made to the State under review by other States, and voluntary pledges and commitments to improve the human rights situation are made by the State under review.

Figure 4 Proportion of the total number of criminal and civil cases filed in court for which State-funded legal aid was provided (2013)

Source: GSLA Member State Survey

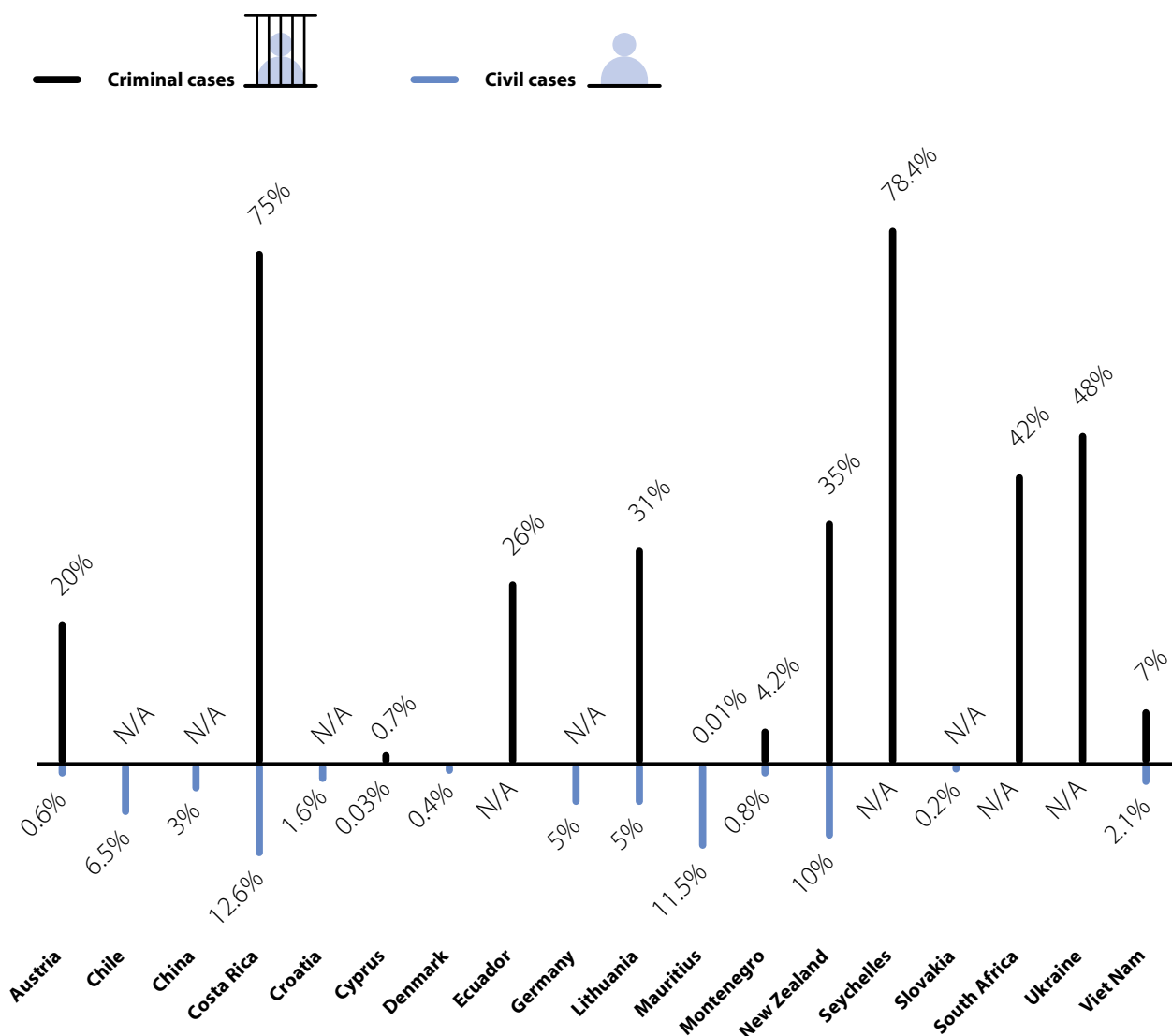
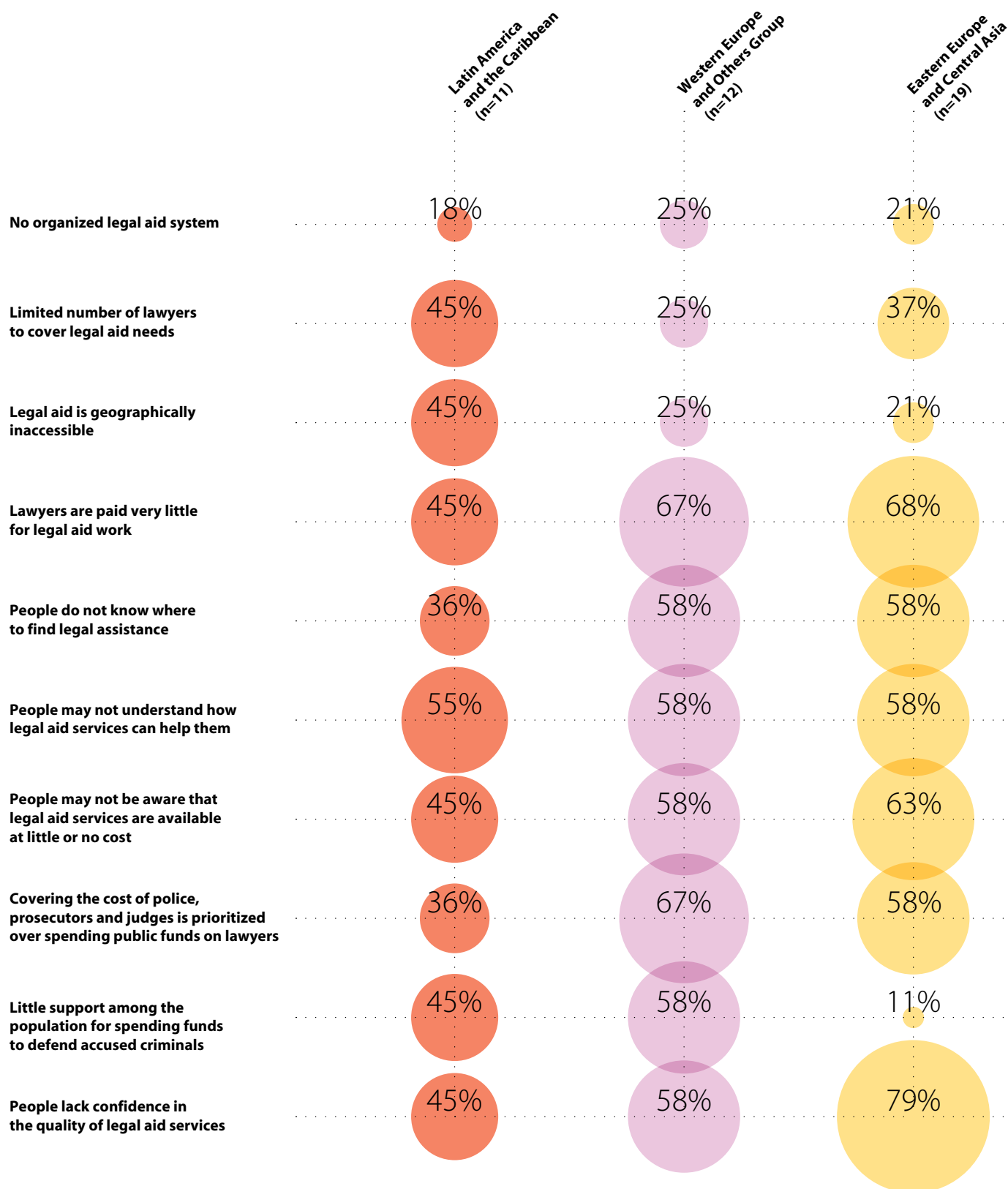
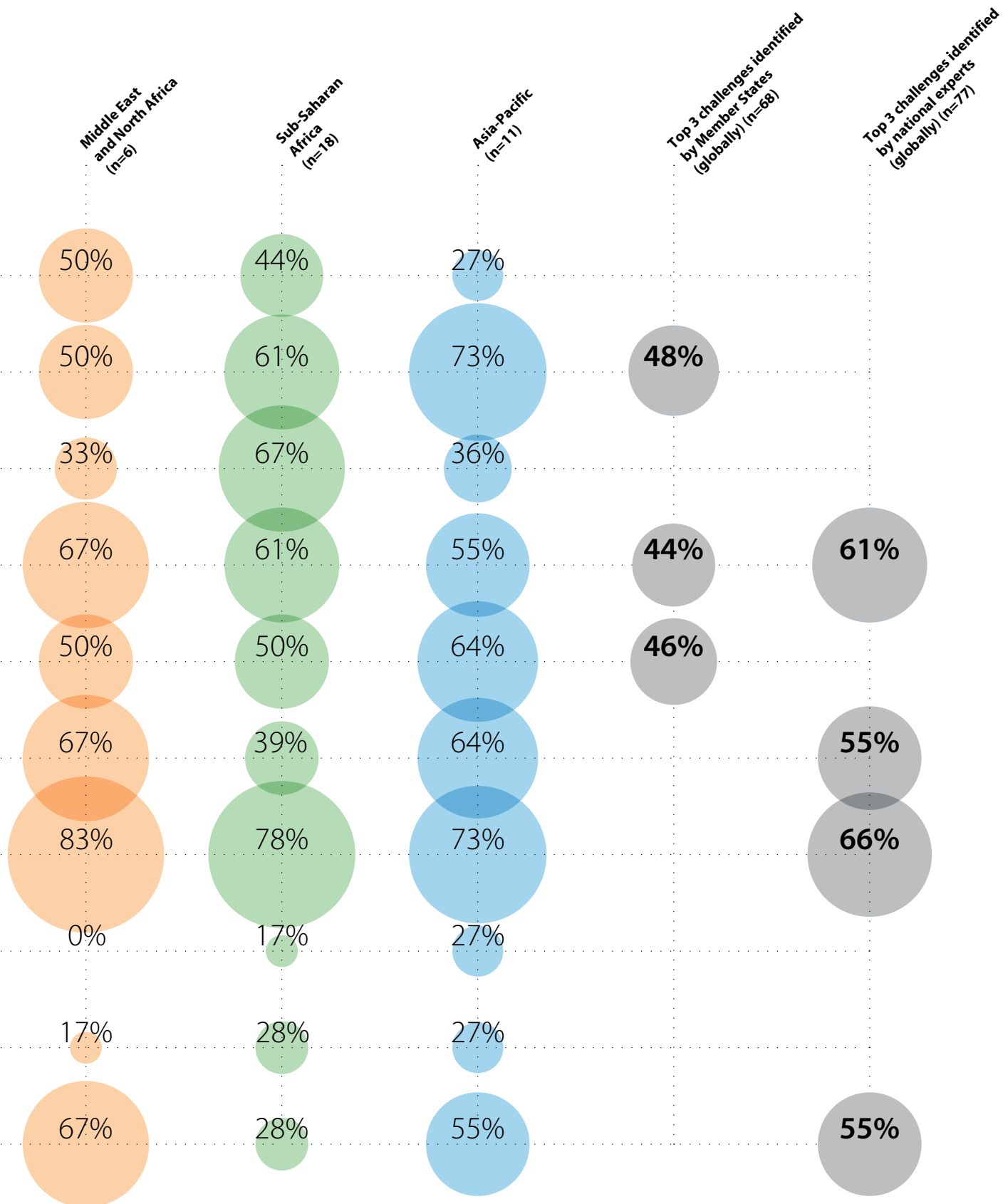


Figure 5 In your opinion, which of these issues are the most significant obstacles facing poor and vulnerable groups in accessing legal aid?

Source: GSLA Expert Survey; respondents could select multiple answer choices
n=Number of responding countries



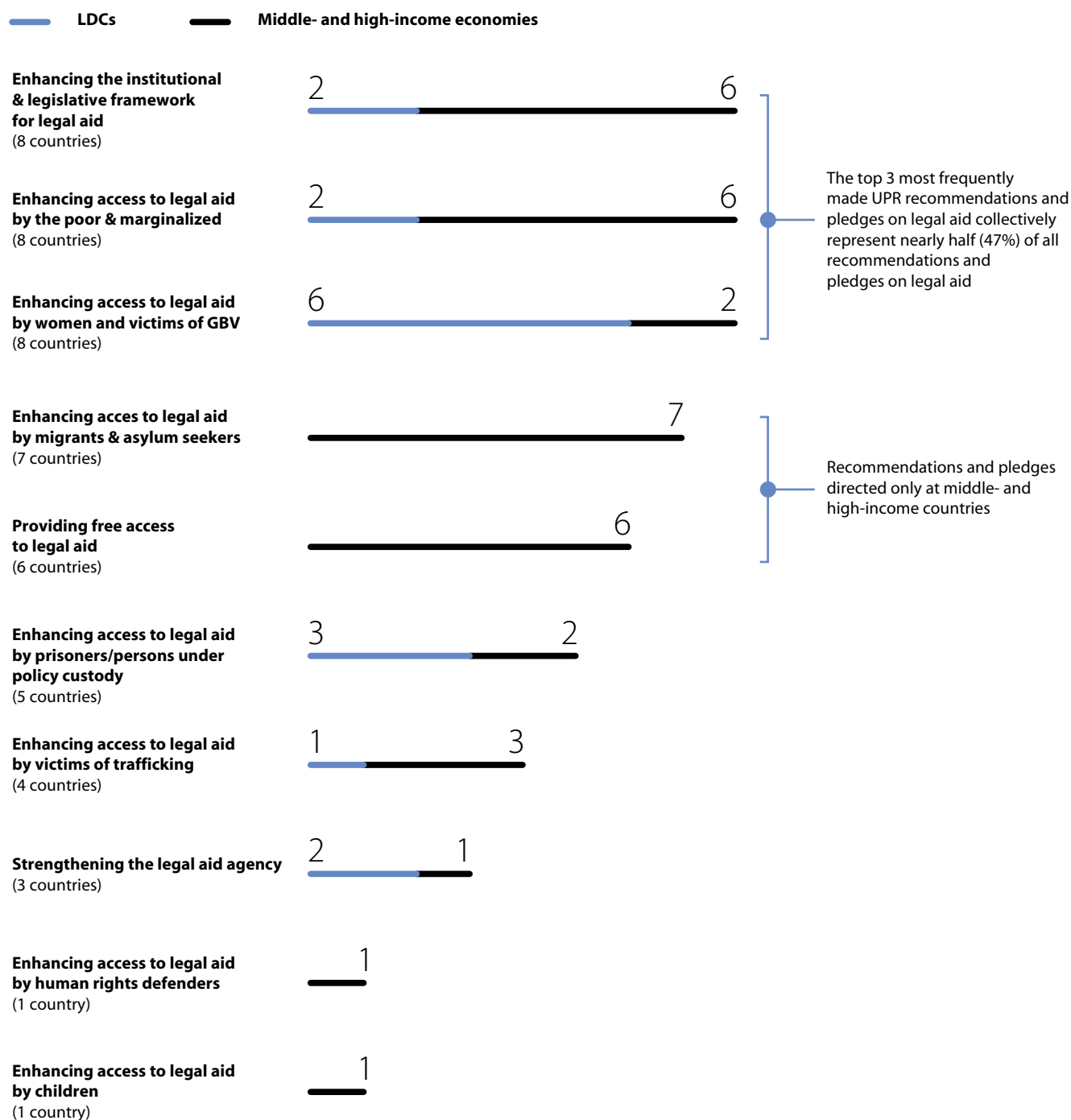


When classifying the 51 recommendations and voluntary pledges specifically referring to legal aid according to targeted population groups or type of reform, as displayed in **Figure 6**, additional insights can be gained on some key priority areas identified by Member States themselves to improve the accessibility and quality of legal aid services.

Globally, the three most frequently made recommendations and pledges on legal aid (together representing 47% of all recommendations and pledges specifically referring to legal aid) are geared towards: (i) enhancing the institutional and legislative framework for legal aid; (ii) improving access to legal aid by the poor and marginalized groups; and (iii) facilitating access to legal aid by women and victims of GBV. While the first two are mainly directed at middle- and higher-income countries, the last one is primarily addressed to LDCs. The fourth most frequently made recommendation relates to enhancing access to legal aid by migrants and asylum seekers and it is noteworthy that this recommendation was directed exclusively at higher-income countries.

Figure 6 Recommendations and voluntary pledges related to legal aid made by Member States during the first (2008-11) and second (2012-16) cycles of the Universal Periodic Review (UPR) of the Human Rights Council (HRC)

Source: UPR Info's Database of UPR recommendations and voluntary pledges (n=51 recommendations and voluntary pledges specifically referring to legal aid)



C. The right to legal aid

Principle 1 — Right to Legal Aid

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

*UN Principles and Guidelines*¹³³

Legal framework

While in most jurisdictions there has been a long tradition of providing some form of legal aid to the poor, legal recognition of the right to legal aid is a more recent phenomenon in many countries. Half of responding countries recognized it by law after 1980, and 17% did so since 2000 only (**Figure 7**). Yet, in all regions, the right to legal aid was enshrined in law as early as the 1800s in a few countries (12%; except the Middle East & North Africa).

A large majority of Member States (83%) report having undertaken a reform or restructuring of their legal aid system since its establishment. As illustrated in **Figure 9**, the bulk (86%) of reforms took place after 2000, with nearly half (46%) of countries revamping their system during the first decade of the 21st century (2000-2011), and 40% in the past three years (2012-15). The most recent reforms took place mainly in countries of the WEOG and in Sub-Saharan Africa, while the peak of reforms in Eastern Europe & Central Asia and in Asia-Pacific was recorded during the period of 2000-2011 (**Figure 8**).

133. While the UN Principles and Guidelines only reference the right to legal aid in criminal cases, many of them are equally relevant to civil legal aid systems. These guiding principles are therefore included throughout this section to provide reference to good practices for ensuring accessible, effective, sustainable and credible criminal and civil legal aid systems.

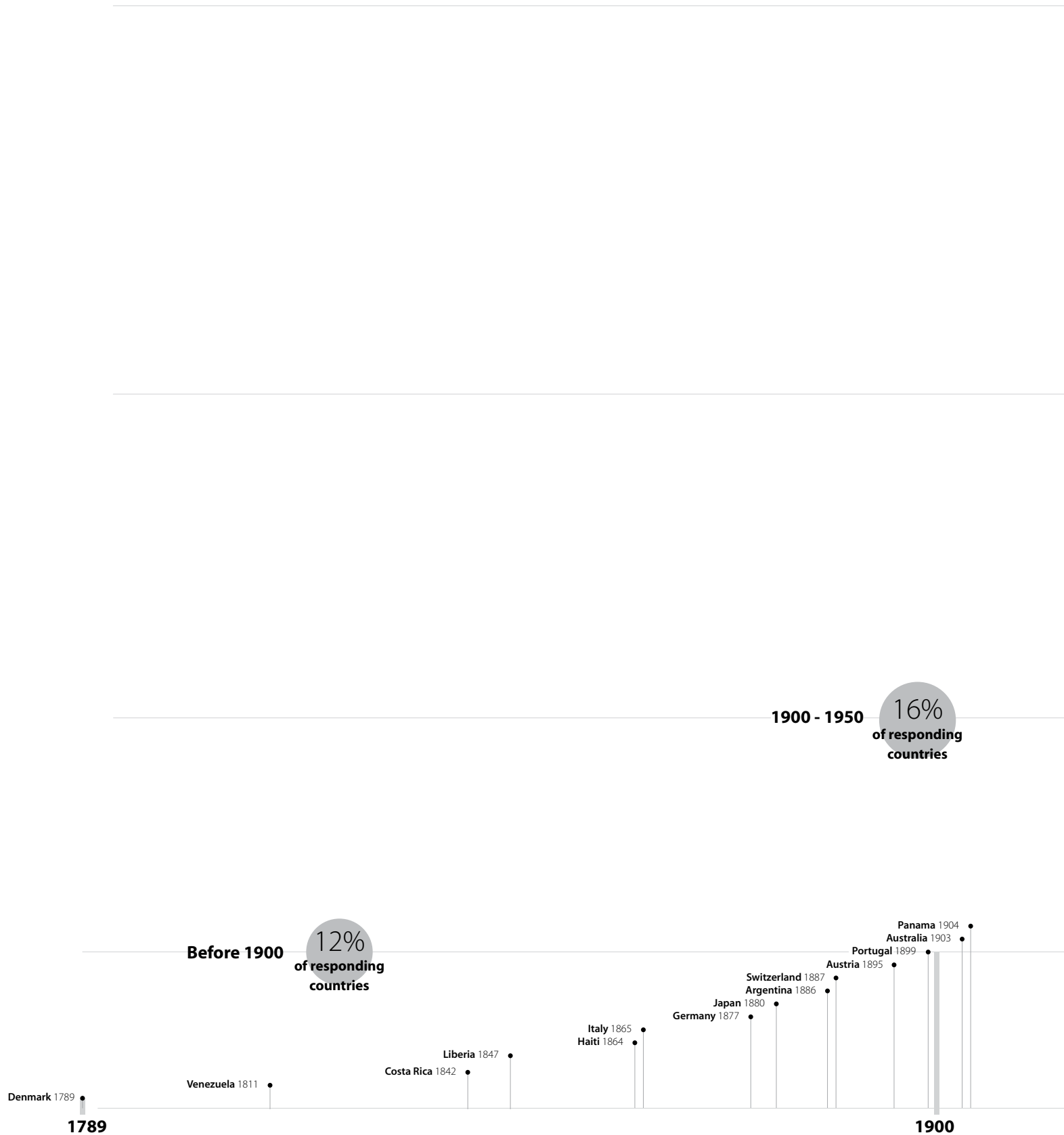
The executive agency in charge of justice sector affairs, such as the Ministry of Justice, was most frequently the institution leading such reforms in all regions except Latin America & the Caribbean, and the Middle East & Northern Africa, where other actors, such as civil society and bar associations, played an instrumental role in championing reforms of legal aid systems (**Figure 9**).

As referenced in Principle 1 of the UN Principles and Guidelines, given the importance of the right to counsel, as a foundation for the enjoyment of other rights and to ensure fundamental fairness and public trust in the justice process, States should guarantee the right to legal aid at the highest possible level, including in the constitution.

All responding Member States have recognized some form of the right to legal aid (**Figure 10**). Most often, States guarantee a right to free legal assistance for criminal defendants who are unable to afford a lawyer and when the interests of justice so require. In some countries, the right to legal aid is expressly provided in the law, while in others, it may be recognized as fundamental to the right to defence or the right to a fair trial. In addition to providing for the right to legal aid in constitutions, laws on criminal procedure (as reported by 67% of Member States), as well as laws on civil procedure (42%), many States have adopted a separate law on legal aid (71%). Only 3% of Member States report that the right to legal aid is implicit in their laws on due process, but not explicitly provided for in any legislation.

Figure 7 When was the right to legal aid first recognized by law?

Source: GSLA Member State Survey and Expert Survey and additional research



2000 - Today

17%
of responding
countries

1980 - 2000

30%
of responding
countries

1950 - 1980

25%
of responding
countries

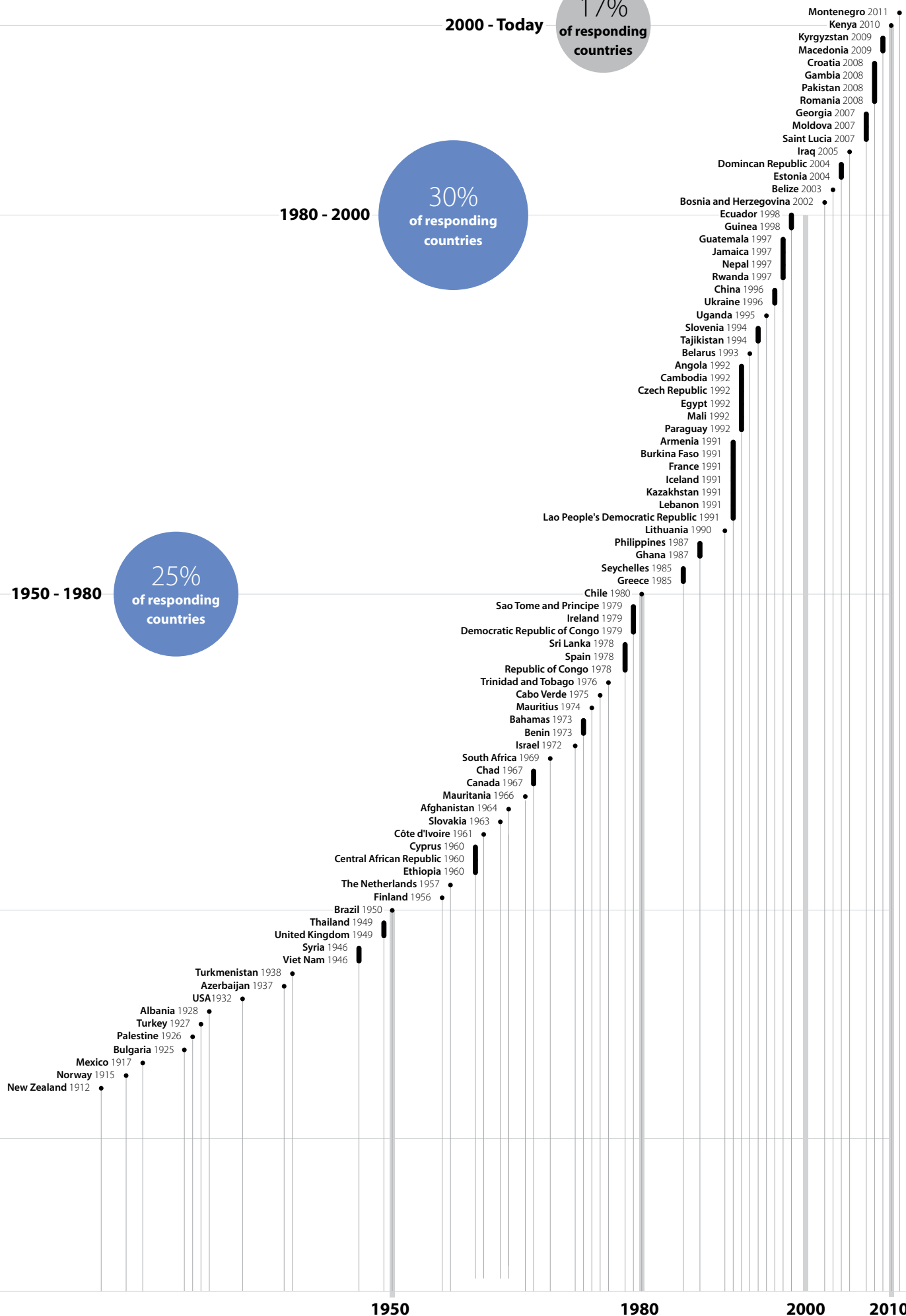


Figure 8 When was your legal aid system most recently reformed?

Source: GSLA Member State Survey and Expert Survey and additional research



Figure 9 Which institutions played an instrumental role in the reform of the legal aid system?

Source: GSLA Expert Survey; respondents could select multiple answer choices

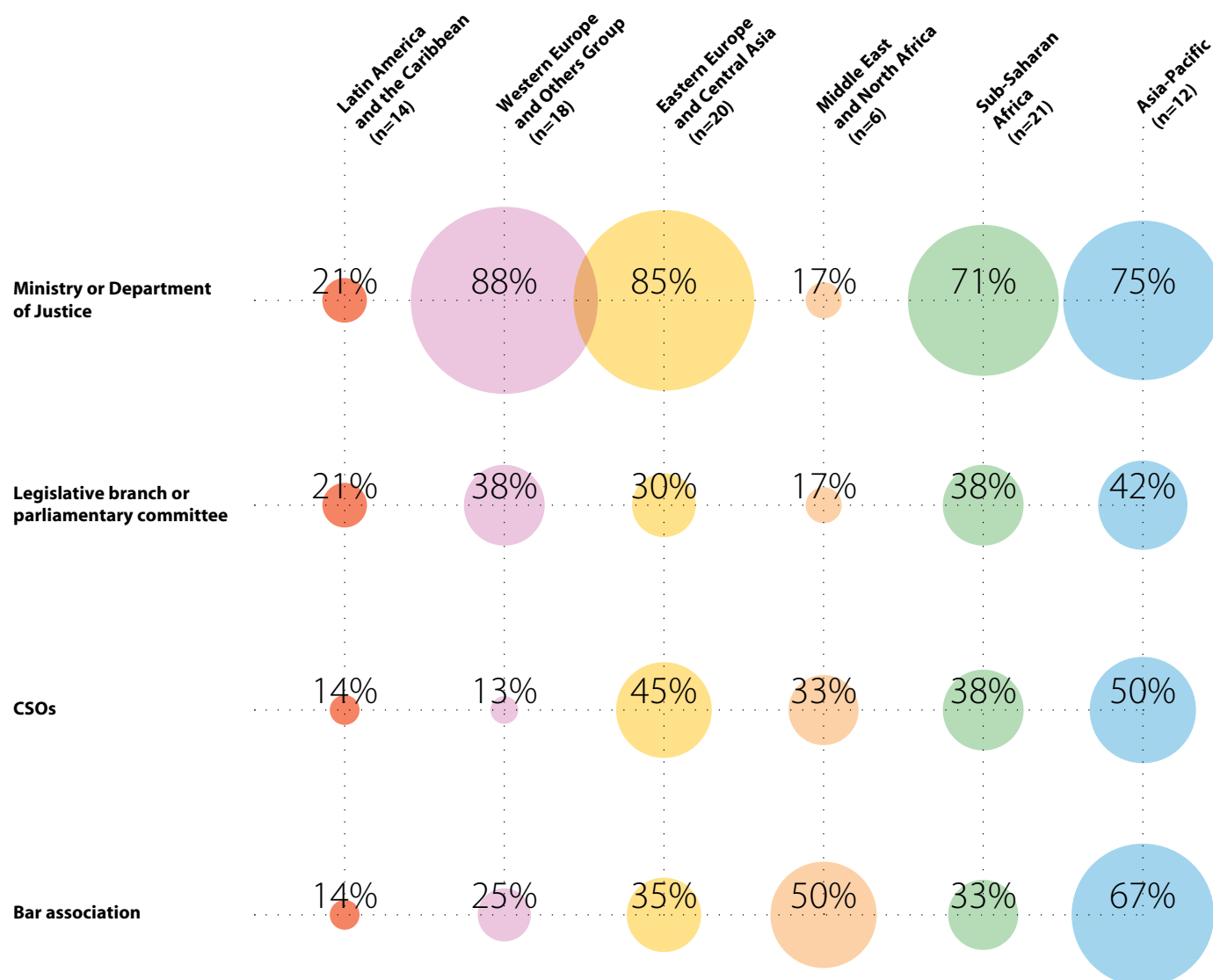
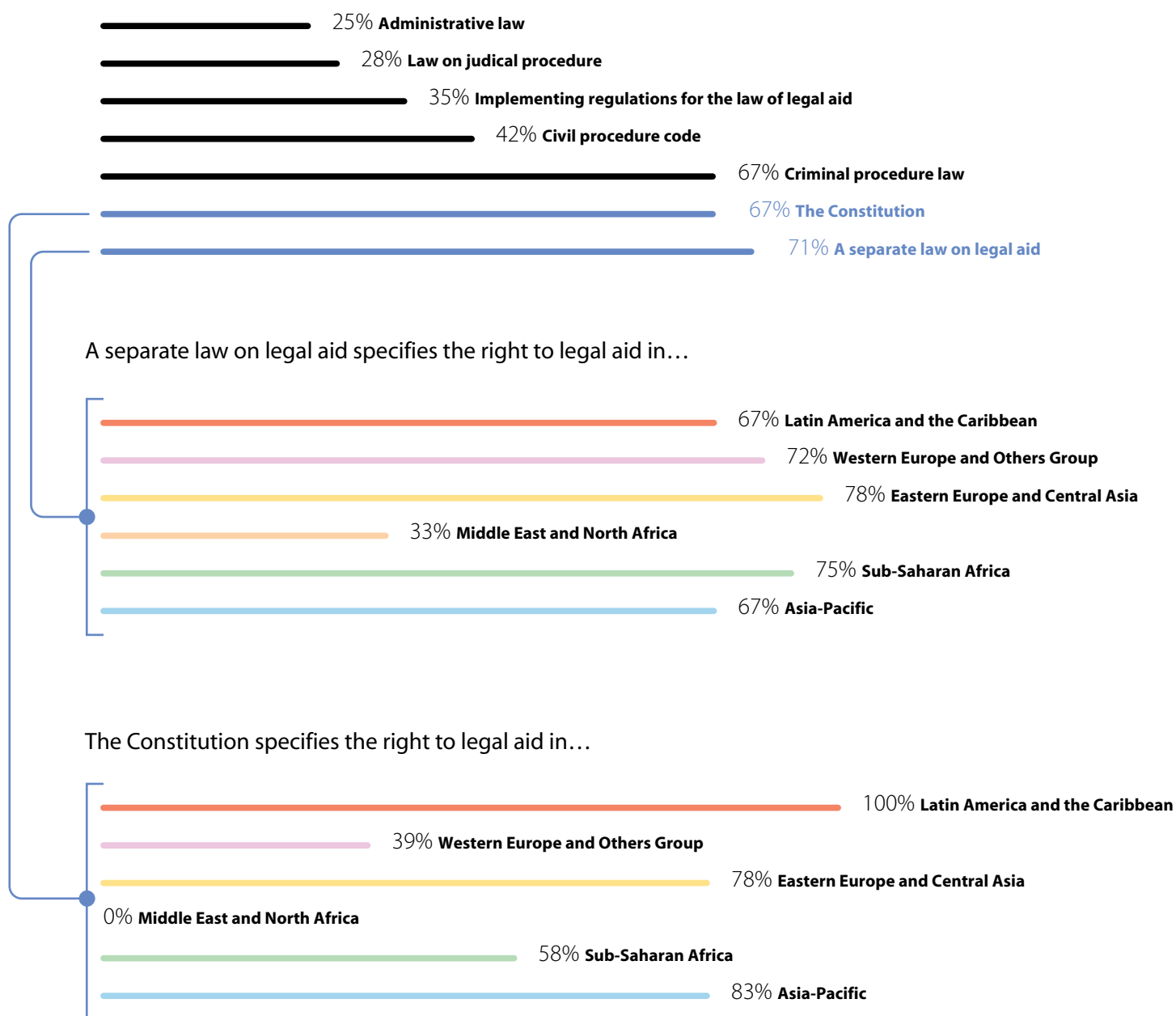


Figure 10 Which law(s) specify a person's right to legal aid in your country?

Globally, a majority of responding Member States guarantee the right to legal aid in their constitution and/or a separate law on legal aid.

Source: GSLA Member State Survey; respondents could select multiple answer choices (n=68)



Services included as part of legal aid

(i) Legal aid services provided in criminal, civil & administrative cases

Across all regions, legal aid services are more widely provided in criminal cases than in civil and administrative cases (**Figure 11**). While all responding Member States report that legal representation before a prosecutor, court or tribunal is included as part of legal aid in criminal cases, this proportion drops to 84% in civil cases. At the regional level, the provision of legal representation in civil and administrative cases is most widespread in Eastern Europe & Central Asia (94%) and least prevalent in the Middle East and North Africa (50%).

(ii) Specialized legal aid services

Principle 10 — Equity in access to legal aid

“Special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including, but not limited to, the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV and other serious contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum seekers, foreign citizens, migrants and migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures.”

UN Principles and Guidelines

Globally, specialized legal aid services are provided for a wide range of disadvantaged groups, with services most commonly available for children (57% of Member State respondents), persons with disabilities (43%), refugees, asylum seekers and stateless persons (38%), and women (37%). Only 29% of Member State respondents indicate that specialized legal aid services are not offered in their countries (**Figure 12**).

Some specialized services are more frequently provided in countries of higher or lower income levels: in LDCs, the most commonly offered specialized legal aid is targeted at women (38%) and persons with disabilities (25%), while in high-income economies, it is targeted at refugees, asylum seekers and stateless persons (**Figure 13**).

Figure 11 Under the law, which services are included as part of “legal aid”?

Legal aid services in criminal matters are more widely available than in civil matters.

Source: GSLA Member State Survey; respondents could select multiple answer choices (n=68)

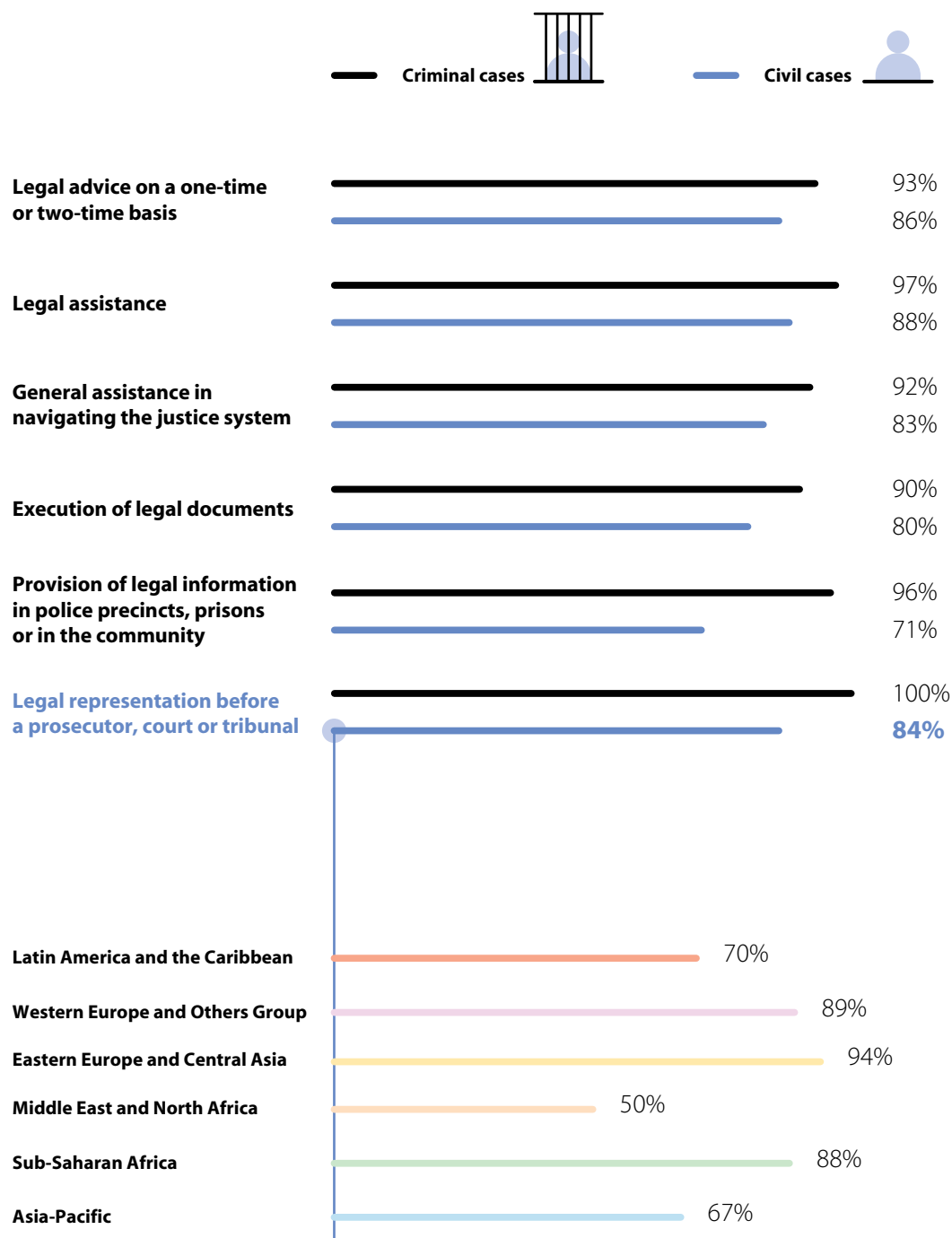
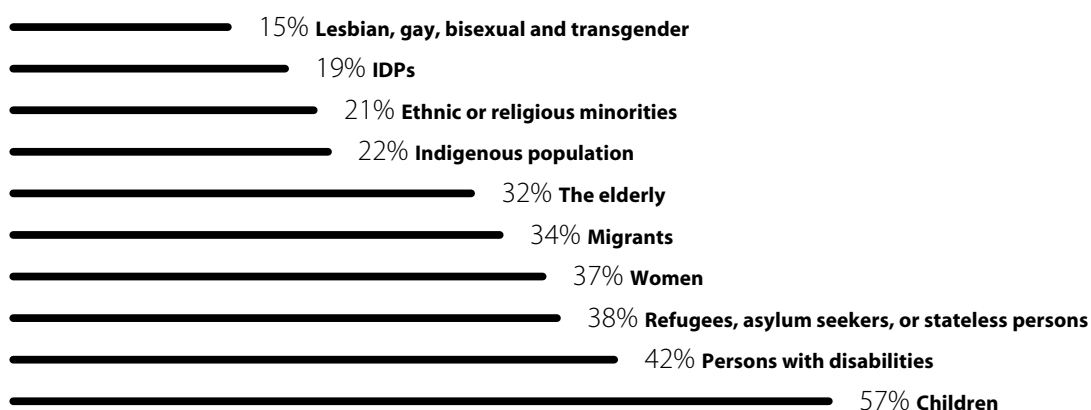


Figure 12 Are specialized legal aid services provided by the State for specific population groups?

Globally, specialized legal aid services are most frequently provided to children.

Source: GSLA Member State Survey; respondents could select multiple answer choices (n=68)



(iii) Specialized legal aid services for children

Guideline 11 — Nationwide legal aid system

“States should [...] establish, where possible, dedicated mechanisms to support specialized legal aid for children and support the integration of child-friendly legal aid into general and non-specialized mechanisms.”

UN Principles and Guidelines

Across all development levels, specialized legal aid services were most commonly provided to children. As many as nine in ten Member States report having put in place a range of specialized units and/or specialized personnel to work with children who are suspected or charged with a criminal offence (**Figure 14**).

Nevertheless, it is noteworthy that of all professionals involved in those proceedings, lawyers are least likely to be specialized (35%), followed by the police (51%), prosecutors (55%) and judges (77%). Some respondents add that they have other specialized professionals for children, such as specialized mediators and psychologists, specialized youth units in legal aid offices, and police investigators specifically authorised to carry out pretrial investigations involving minors. Moreover, the lack of specialized resources for children is more pronounced in certain regions than in others, particularly in Sub-Saharan Africa (25%) and Asia-Pacific (20%).

Figure 13 The most and least frequently provided specialized legal aid services, by income level

Source: GSLA Member State Survey; respondents could select multiple answer choices

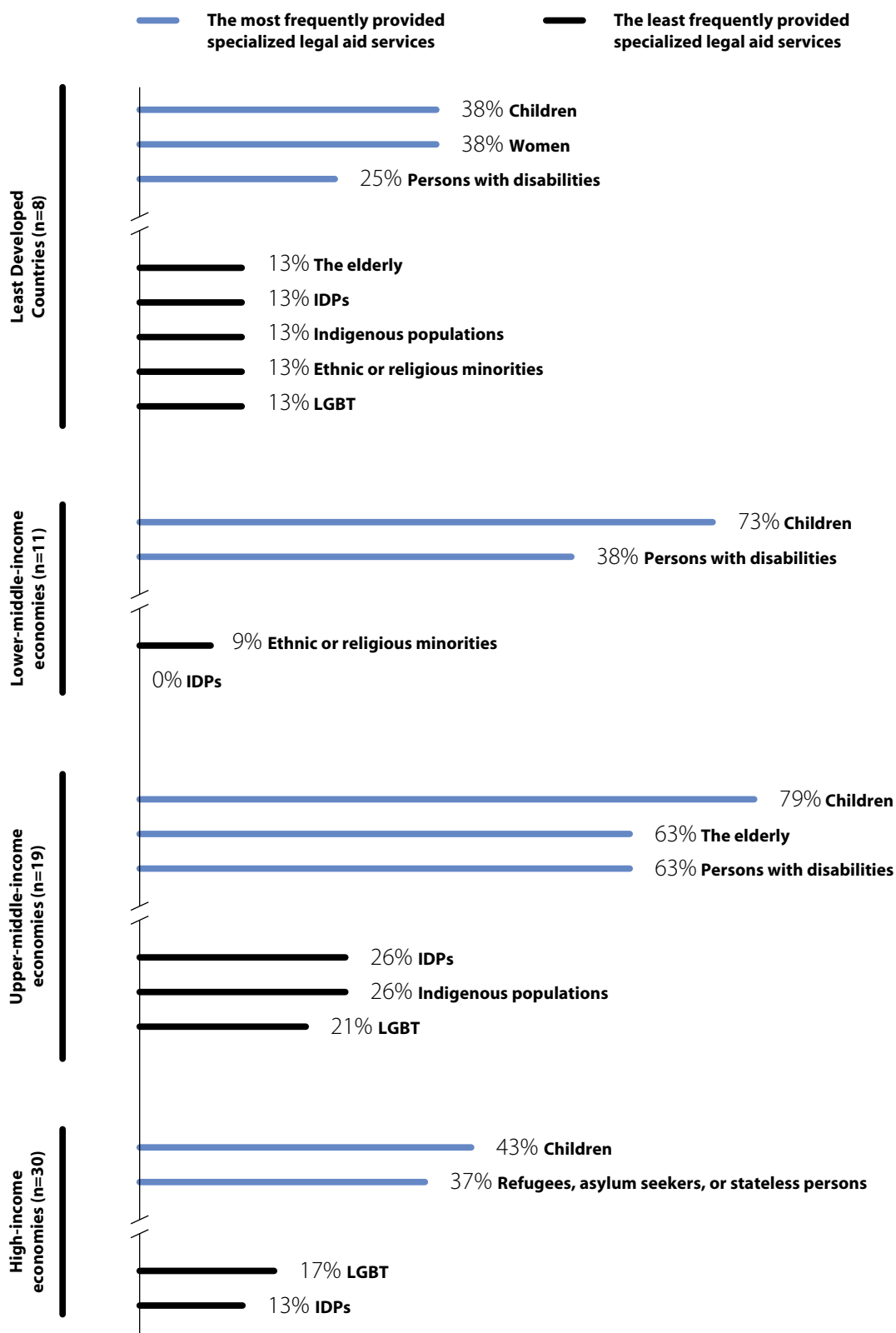
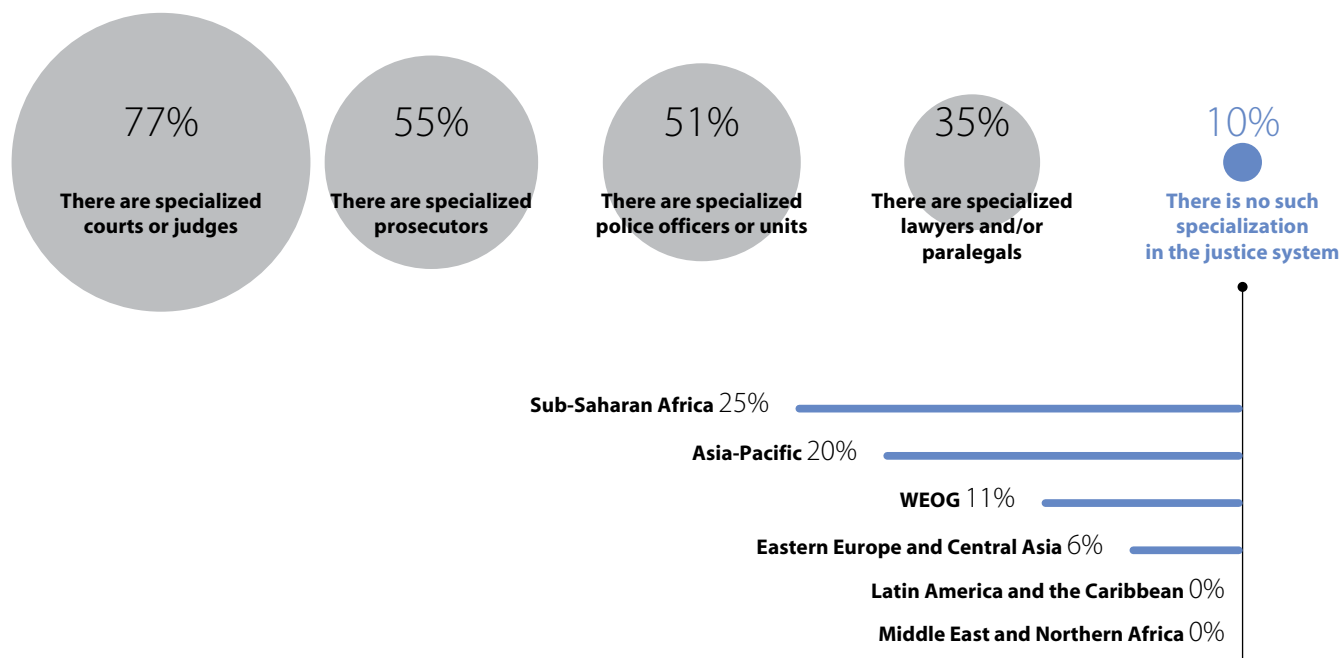


Figure 14 Which specialized divisions or personnel are in place to work with children who are suspected or charged with a criminal offence?

Globally, most responding countries say that they have specialized structures and/or personnel to work with children suspected or charged with criminal offence.

Source: GSLA Member State Survey; respondents could select multiple answer choices (n=68)



(iv) Specialized legal aid services for women

Guideline 9 — Implementation of the right of women to access legal aid

“States should take applicable and appropriate measures to ensure the right of women to access legal aid, including:

- (a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid[...];
- (b) Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused and victims;
- (c) Providing legal aid, advice and court support services in all legal proceedings to female victims of violence[...]

UN Principles and Guidelines

Globally, only 61% of Member State respondents indicate that legal advice and court services are provided in all legal proceedings to female victims of violence, including victims of SGBV. As depicted in **Figure 15**, when results are disaggregated by income level, legal aid services to female victims of violence are noticeably less accessible in lower-income countries (50%) than in higher-income countries (68%).

When asked about the most significant obstacles faced by women in accessing legal aid, national experts identify a wide range of issues, some of which are more prominent in certain regions than others (**Figure 16**). Amongst structural obstacles, a large proportion of experts from Eastern Europe & Central Asia (63%) and from the WEOG (50%) note that the lack of specialized legal aid services for women is a major hindrance. Amongst issues arising from women's lack of awareness about legal aid services, 82% of experts in Asia-Pacific observe that women may not be aware that legal aid services are available at little or no cost, while 80% of experts in the Middle East & North Africa region assert that women often do not know where to find legal assistance. Finally, amongst cultural and gender-specific obstacles, close to three quarters (73%) of experts in Asia-Pacific and 55% in Latin American & the Caribbean stress that it is difficult for women to confide in and share intimate information related to a case with legal aid providers, who are predominantly male.

Figure 15 Are legal aid advice and court support services in all legal proceedings provided to female victims of violence (including victims of SGBV)?
Female victims of violence receive legal aid in only half of responding lower-income countries.
 Source: GSLA Member State Survey

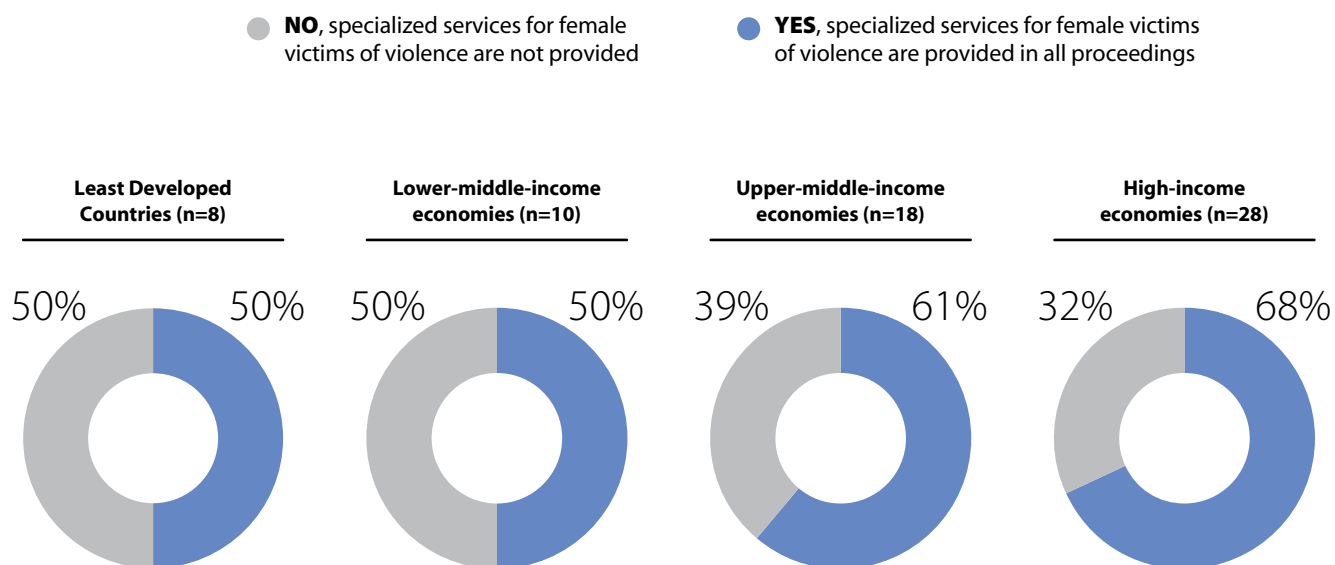
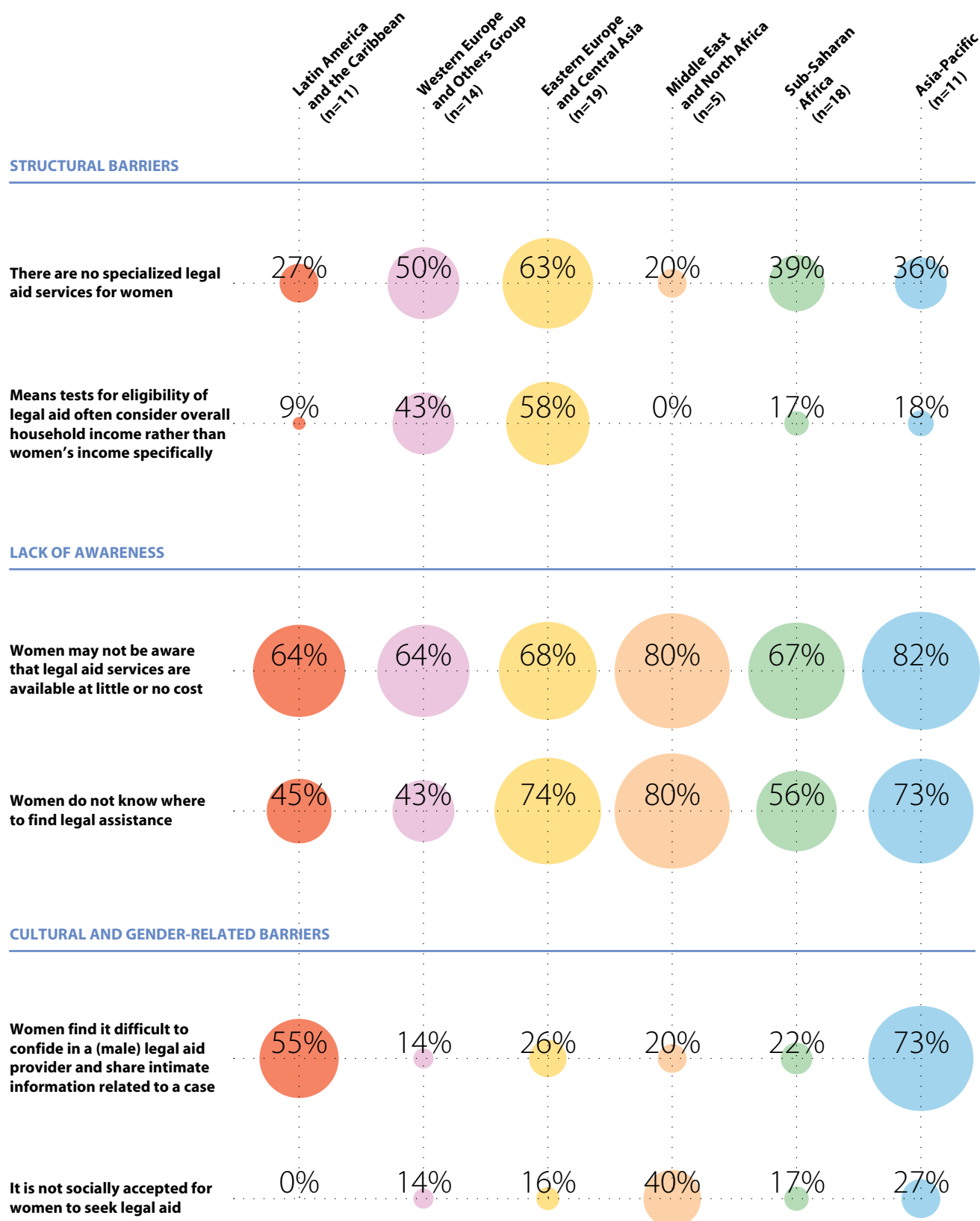


Figure 16 In your opinion, which of the issues below are the most significant obstacles facing women in accessing legal aid?

Source: GSLA Expert Survey; respondents could select multiple answer choices



Public awareness of the right to legal aid

Principle 8 — Right to be informed

“States should ensure that information on rights during the criminal justice process and on legal aid services is made freely available and is accessible to the public.”

UN Principles and Guidelines

People cannot avail themselves of legal aid services unless they are aware of their right or ability to do so, for which legal matters legal aid is available, and where to access it. It is in this context that the UN Principles and Guidelines stress the importance of ensuring access to information on the right to legal aid and on the availability of legal aid services, particularly for marginalized and vulnerable populations for whom legal awareness is most prominently lacking due to comparatively low levels of education and literacy.

National experts across all regions unanimously pinpointed people’s lack of awareness about the availability of legal aid services as one of the top three challenges facing their country’s legal aid system (**Figure 17**).

To some degree, these relatively low levels of awareness about the right to legal aid may be explained by the fact that nearly a third (29%) of Member States report never having conducted an awareness-raising campaign on how to access legal aid services. When taking a closer look at countries that recently reformed their legal aid system (since 2010), the picture remains the same: still a third (33%) of these ‘recent reformers’ say that a public information campaign to inform their population about the new legal framework and legal aid services now available to them has not yet taken place in their country (**Figure 18**).

Figure 17 In your opinion, which of these issues are the most significant obstacles facing poor and vulnerable groups in accessing legal aid?

People's lack of awareness about the availability of legal aid services is amongst the top 3 challenges facing legal aid systems.

Source: GSLA Expert Survey; selection from a longer list of answer choices (n=77)

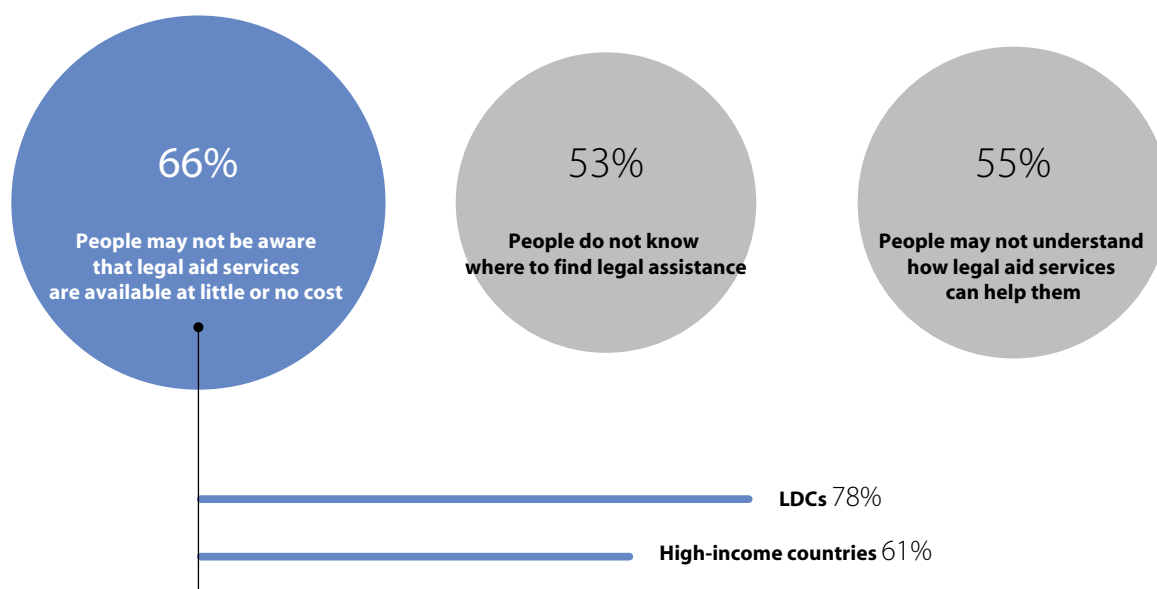
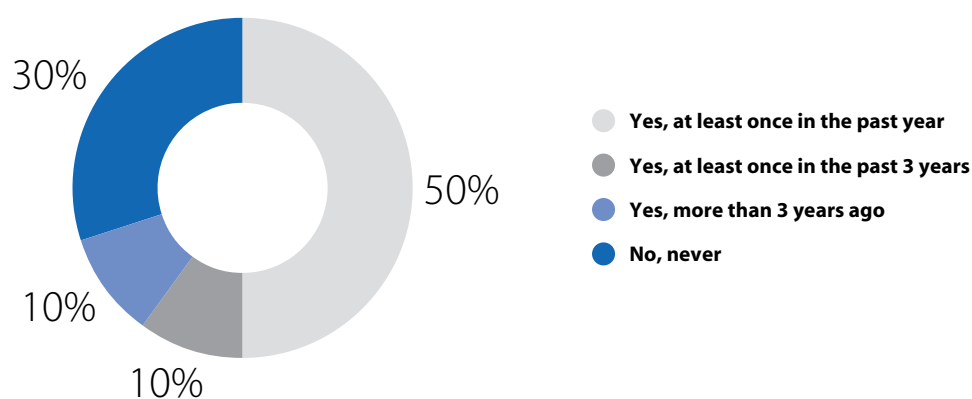


Figure 18 Has the State conducted any public information campaign on the right to legal aid and how to access legal aid services?

A third of 'recent reformers' have not yet conducted a public information campaign on the right to legal aid.

Source: GSLA Member State Survey

Amongst 'recent reformers' (countries that have reformed their legal aid system in or after 2010; n=10):



D. Organisation and administration of legal aid

Legal aid delivery models

Principle 2 — Responsibilities of the State

“States should [...] ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible.”

UN Principles and Guidelines

When surveying how countries around the world have organised the provision of legal aid, four broad categories can be identified, depending on which actors are the main providers (**Figure 19**). In the first category, legal aid is provided mainly through public defender institutions or other public institutions such as a Legal Aid Board. In the second, private practitioners take charge of providing legal aid services, through panel appointments, *pro bono* schemes and/or bar associations. The third category of countries uses a combination of both public and private institutions, and in the fourth category, civil society providers work alongside public and/or private providers.

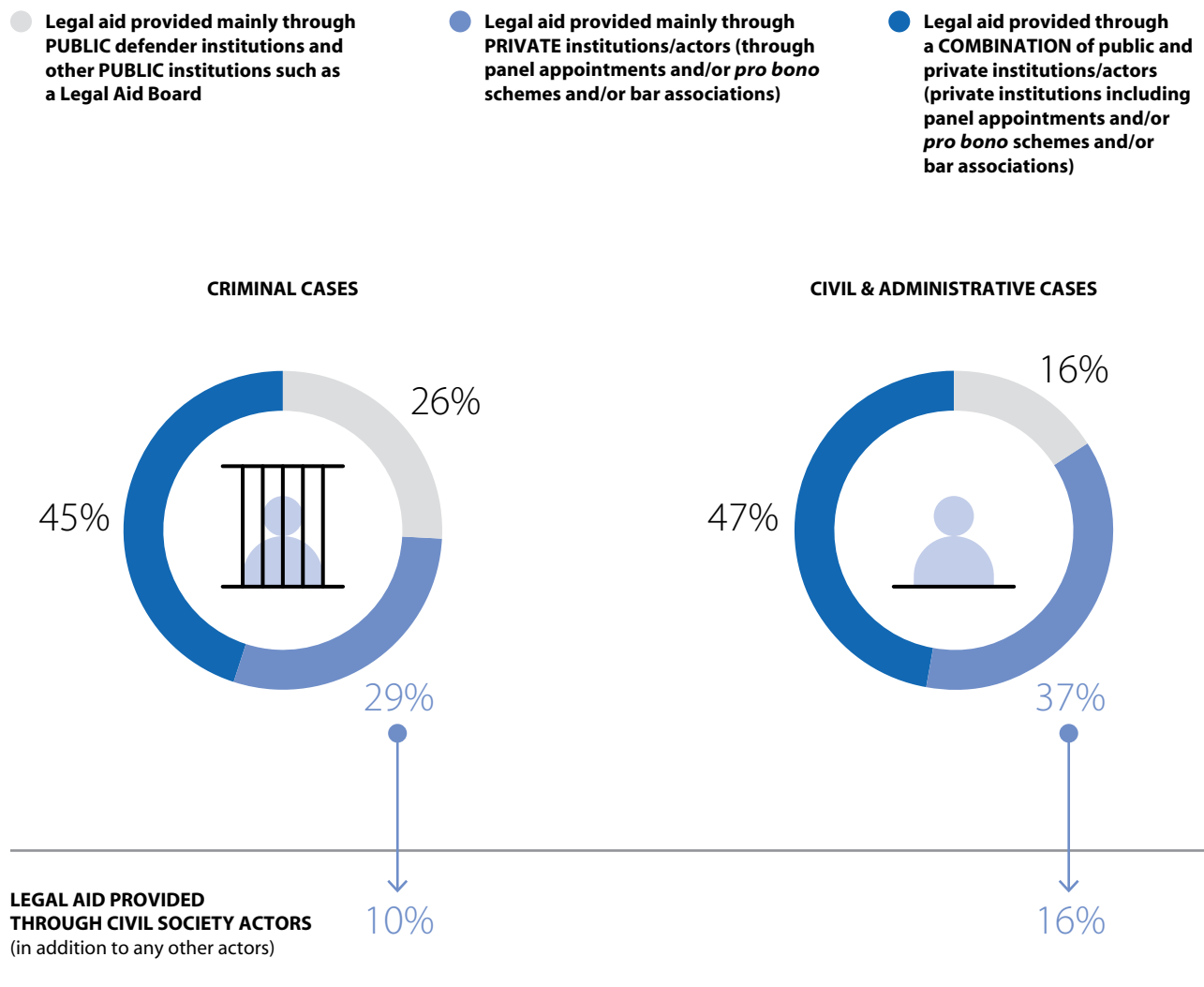
Nearly half of Member State respondents report using a combination of public and private actors for the provision of legal aid, who are supervised and managed by a single legal aid authority. As seen in **Figure 19**, the provision of legal aid through public defender institutions and other public institutions, such as Legal Aid Boards, is more prevalent in criminal cases (26%) than in civil cases (16%). On the contrary, the provision of legal aid through private institutions or actors (through panel appointments, *pro bono* schemes and/or bar associations) is more common in civil cases (37%) than in criminal cases (29%). CSOs, when they are involved in the provision of legal aid, more often do so in civil cases (16%) than in criminal cases (10%).

In many countries, civil society actors provide legal aid, either funded by the State (e.g. through contract delivery systems) or through private donors (national or international). If there is no right to legal aid in civil cases, or obligation of the State to provide legal aid in civil cases at the State's expense, in many cases civil society actors fill the gap in available services. In LDCs, CSOs funded by private and international donors deliver the bulk (43%) of legal aid services (**Figure 34**).

Figure 19 How are legal aid services organized in your country?

In the majority of responding Member States, legal aid services are provided through a mix of public and private institutions and actors.

Source: GSLA Member State Survey (n=68)



Legal aid authorities

Guideline 11 — Nationwide legal aid system

“To ensure the effective implementation of nationwide legal aid schemes, States should consider establishing a legal aid body or authority to provide, administer, coordinate and monitor legal aid services.”

UN Principles and Guidelines

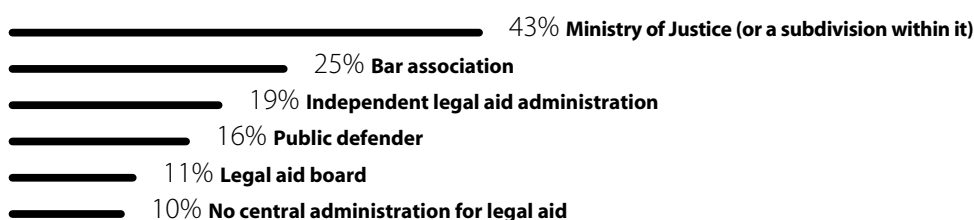
The UN Principles and Guidelines provide that legal aid authorities should be independent from government and empowered to develop their own budget, and should establish systems for coordination of appointments, for accreditation and training of legal aid providers, and for assessing legal aid needs across the national territory.

Globally, nearly all (90%) responding countries have established specialized structures to oversee the provision of legal aid (**Figure 20**). When asked which institution has the chief responsibility for the administration of legal aid in their country, 43% of Member State respondents cited the Ministry of Justice (or the executive agency in charge of justice), a quarter referred to the bar association (25%), one in five (19%) reported having established an independent legal aid administration, and nearly the same proportion (16%) said the public defender was in charge. One in ten Member State respondents (11%) reported having established a legal aid board, while more or less the same proportion (10%) indicated that there was no central administration with chief responsibility for the administration of legal aid in their country.

Figure 20 Institutions with the chief responsibility for the management and administration of legal aid

Globally, the Ministry of Justice has the chief responsibility for the administration of legal aid in nearly half of responding countries.

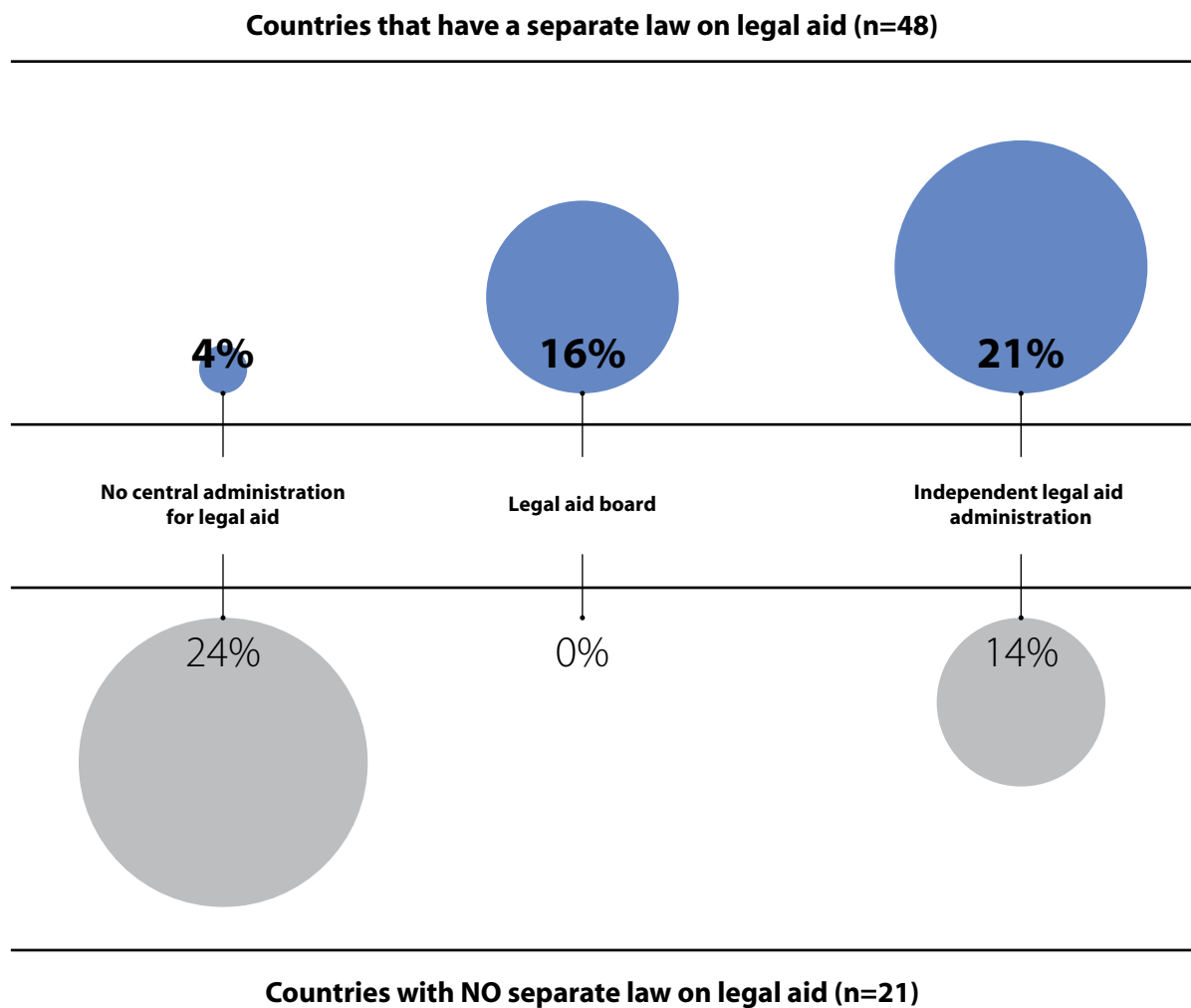
Source: GSLA Member State Survey (n=68)



It is noteworthy that countries having adopted a separate law on legal aid are more likely to have a central legal aid authority than countries that do not have such a law, as well as more likely to have established a legal aid board and/or an independent legal aid administration (**Figure 21**).

Figure 21 Type of legal aid authority depending on whether or not a separate law on legal aid exists

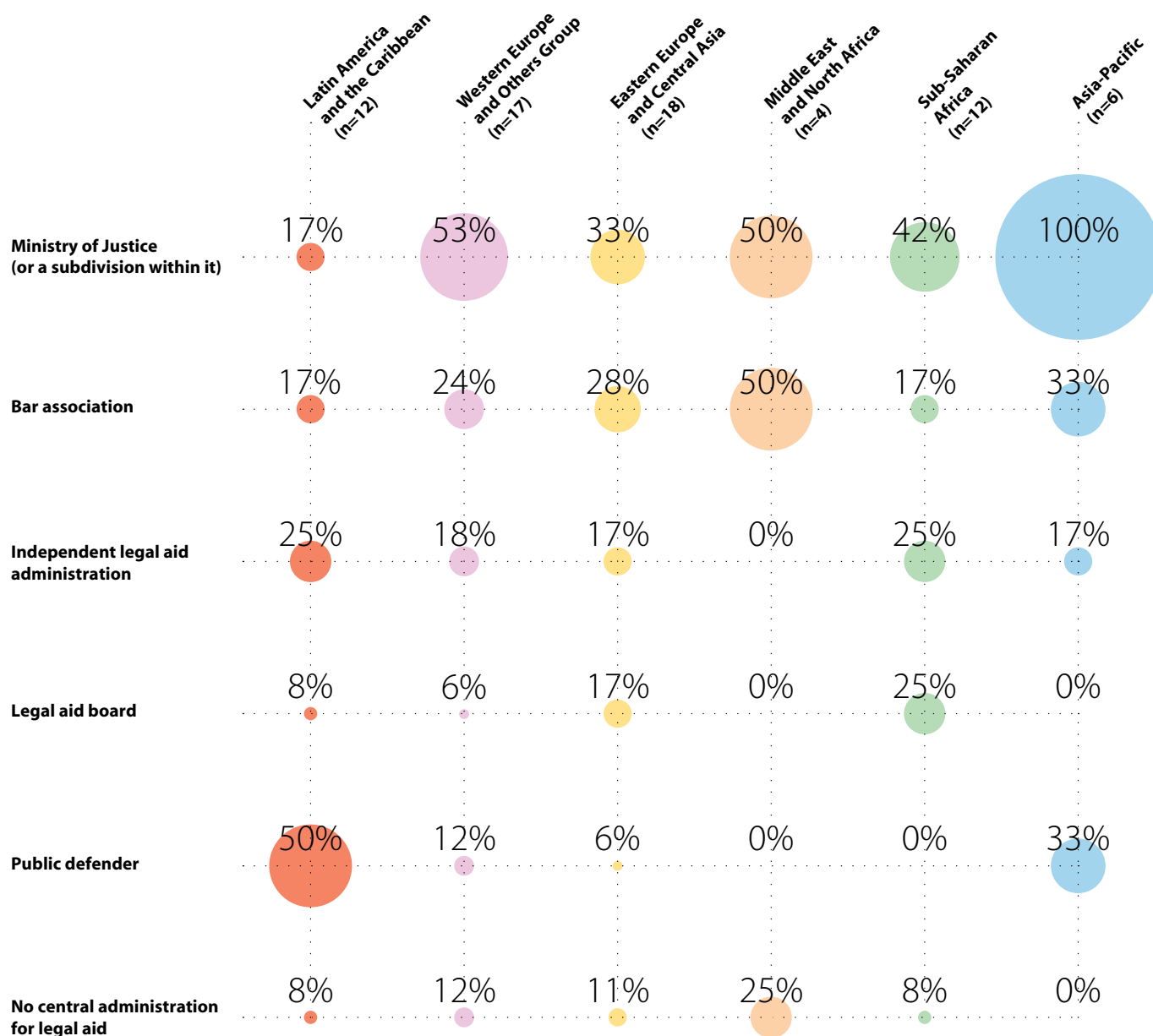
Source: GSLA Member State Survey



As shown in **Figure 22**, institutional leadership for the administration of legal aid varies significantly, at the regional level. While half of responding countries in Latin America & the Caribbean have vested central authority for legal aid in the public defender, the bar association plays a central role in the Middle East and North Africa, and Sub-Saharan Africa registers the highest proportion of countries with a legal aid board or an independent legal aid administration. Of all regions, the Middle East and North Africa reports the highest rate of countries with no central administration for legal aid.

Figure 22 Institutions with the chief responsibility for the management and administration of legal aid, by region

Source: GSLA Member State Survey; respondents could select multiple answer choices

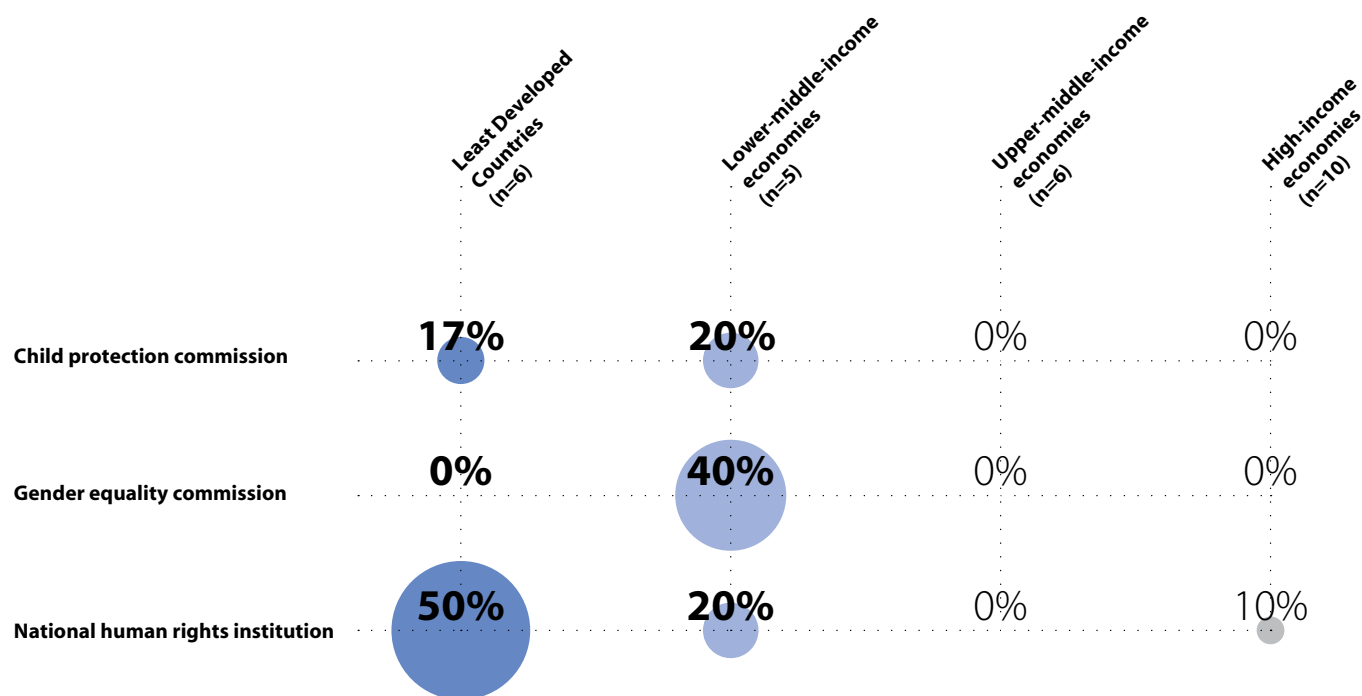


In countries where a legal aid board has been established, the membership of that board is predominantly composed of members of the bar association and representatives from the Ministry of Justice, with only 30% of responding States indicating that legal aid providers are represented on such boards. Interestingly, least developed and lower-middle-income countries regularly extend the membership of legal aid boards to State bodies with a specific human rights mandate, such as national human rights institutions as well as child protection and/or gender equality commissions (**Figure 23**). No high-income or upper-middle-income countries amongst survey respondents reported doing the same, except for 10% of high-income countries whose legal aid board includes representatives of the national human rights institution.

Figure 23 If your country has a legal aid board, which of the following institutions are included in the board's membership?

State bodies with a human rights mandate are well-represented on legal aid boards in lower-income countries, but not in higher-income countries.

Source: GSLA Member State Survey

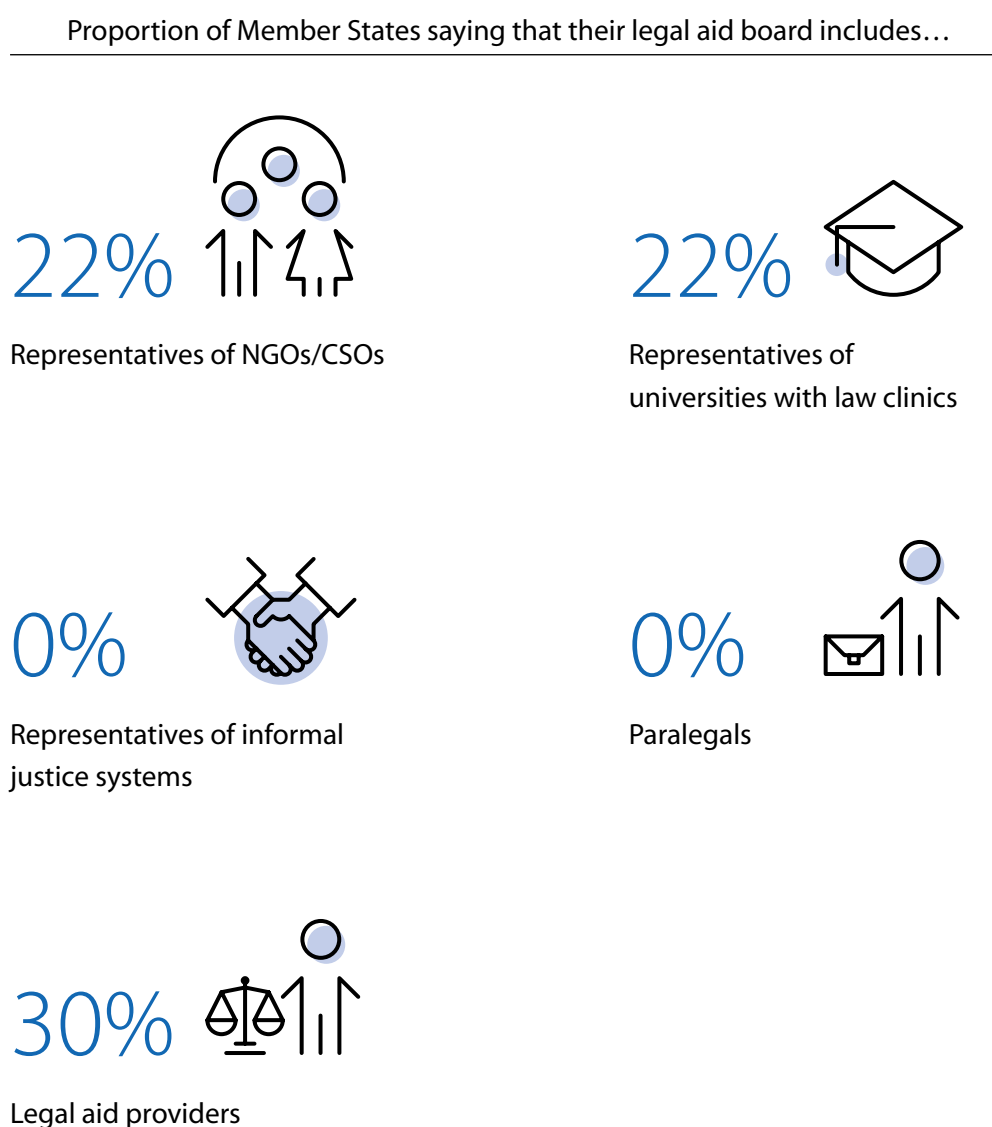


Non-governmental actors involved in the provision of legal aid are rarely represented on legal aid boards, with only one in five countries globally reporting that they have representatives of CSOs and representatives of universities with law clinics on their boards. Paralegal associations and informal justice actors are also not represented on legal aid boards. (Figure 24).

Figure 24 If your country has a legal aid board, which of the following are included in the board's membership?

Globally, CSOs and universities with law clinics are rarely represented on legal aid boards; paralegal associations and informal justice actors never are.

Source: GSLA Member State Survey (n=27)



Appointment mechanisms

Guideline 11 — Nationwide legal aid system

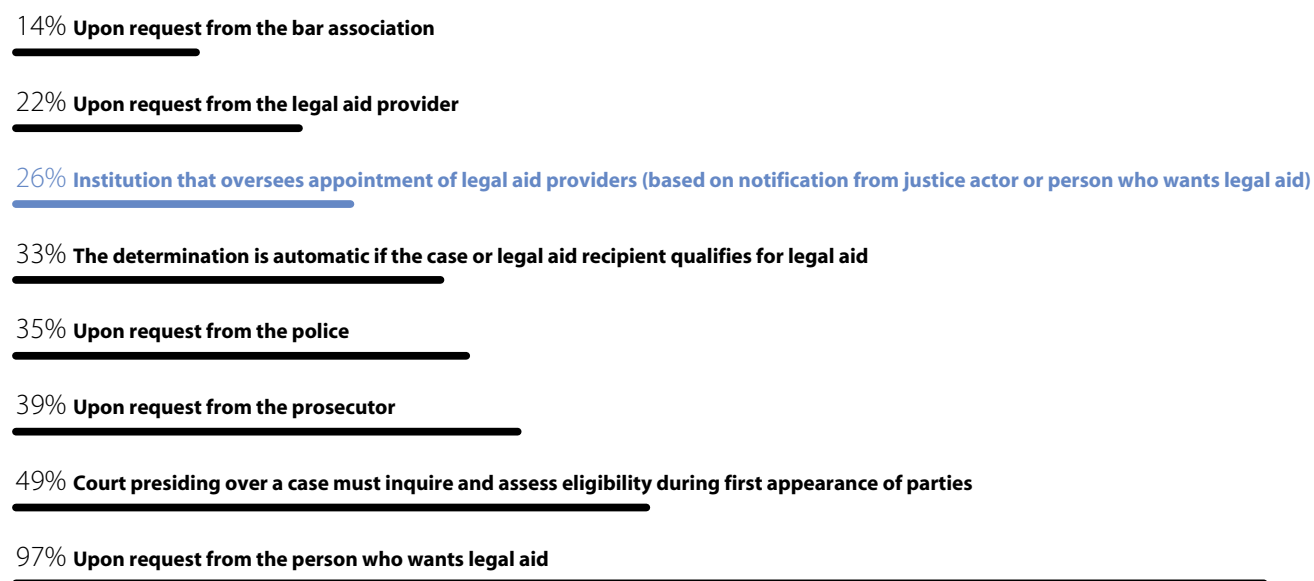
“To ensure the effective implementation of nationwide legal aid schemes, States should consider establishing a legal aid body or authority [which] should have the necessary powers to provide legal aid, including but not limited to the appointment of personnel [and] the designation of legal aid services to individuals.”

UN Principles and Guidelines

With regard to how the process for obtaining legal aid is initiated in their country, virtually all Member States (97%) report that such a process begins “upon request from the person who wants legal aid” (**Figure 25**). This approach, however, presupposes that individuals entitled to legal aid due to vulnerability understand that they have a right to request legal aid and are empowered to assert their rights in their interactions with State agencies, which may not always be the case. Nearly half (49%) of responding Member States also confirm the existence of a systematic requirement by the court presiding over a case “to inquire and assess eligibility during the first appearance of the parties.”

Figure 25 How is the process for obtaining legal aid initiated?

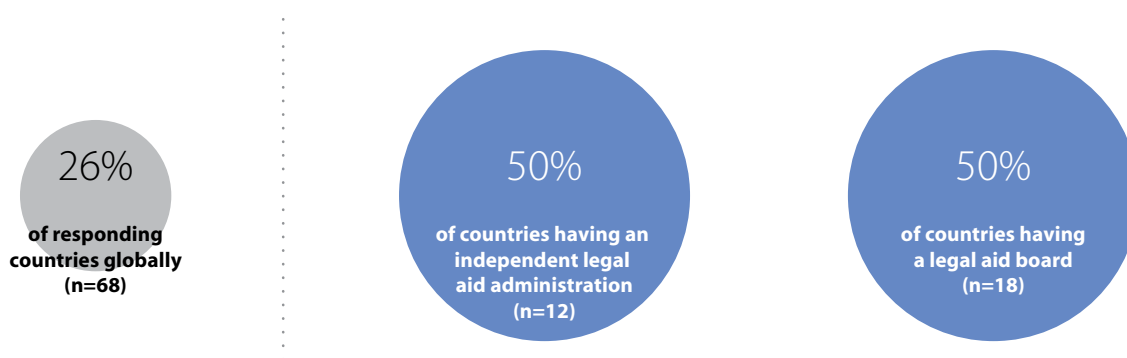
Source: GSLA Member State Survey; respondents could select multiple answer choices (n=68)



Meanwhile, only one in four (26%) respondents say that there is an independent institution with a specific mandate to oversee the appointment of legal aid providers, based on notification from justice actors or from the person who wants legal aid.

Figure 26 Which countries have an independent institution with a specific mandate to oversee the appointment of legal aid providers?

Source: GSLA Member State Survey



As depicted in **Figure 26**, the proportion of countries having a dedicated appointment mechanism increases significantly when the institution having the chief responsibility for the management of legal aid is either a legal aid board or an independent legal aid administration (in which case such a mechanism exists in 50% of States). This finding could suggest that legal aid boards and independent legal aid administrations have, to some degree, contributed to systematizing the appointment procedures in their countries.

When asked about the mechanisms used to assign legal aid providers to legal aid cases, responses from Member States are almost evenly spread amongst four types of mechanisms (**Figure 27**): in the first scenario, the courts and the police have a roster of duty legal aid providers for a given day, who can be called directly; in the second, the courts and the police contact the bar association, which coordinates the appointments; in the third, State agencies contact the legal aid board, which maintains a duty roster of legal aid providers; and in the fourth, legal aid providers are readily available in courts and police precincts.

Once again, a different picture emerges when considering countries where the chief legal aid authority is a legal aid board or an independent legal aid administration (**Figure 28**). In these countries, the presence of legal aid providers on

duty in courts and police precincts is significantly more common than in countries where the legal aid authority is a public defender institution, the Ministry of Justice or the bar association. This finding could suggest that legal aid boards and independent legal aid administrations have predominantly opted for an appointment model which places legal aid providers closest to potential beneficiaries, in courts and police precincts, so as to enable the applicants to access legal aid as early as possible.

Figure 27 What is the mechanism for assigning legal aid providers?

Source: GSLA Member State Survey (n=66)

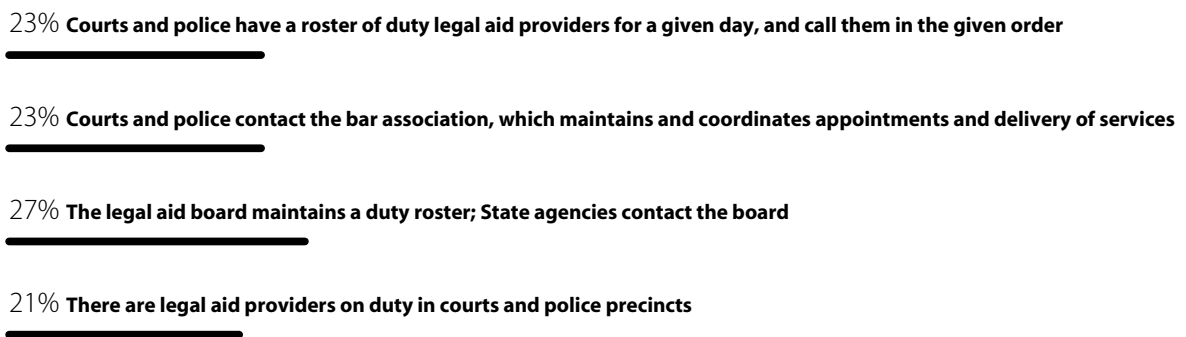
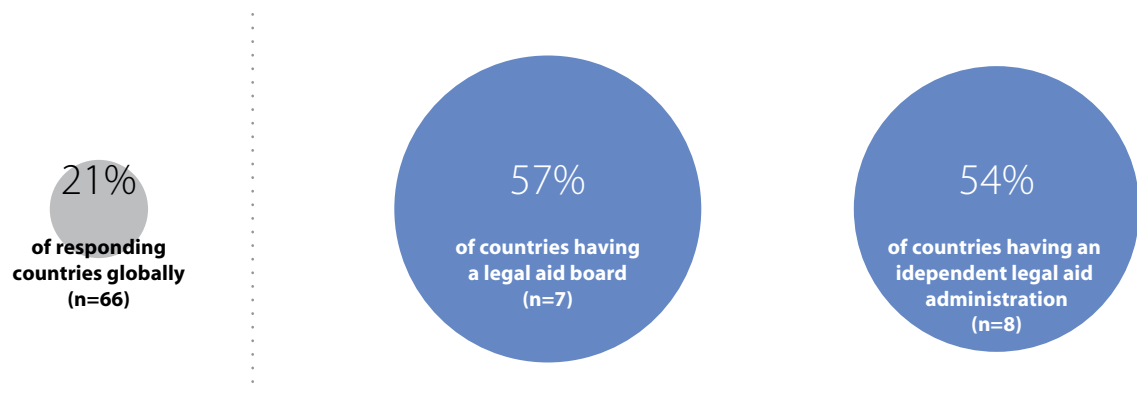


Figure 28 Proportion of countries where legal aid providers are on duty in courts and police precincts

Source: GSLA Member State Survey



Budgetary allocations for legal aid

Guideline 12 — Funding the nationwide legal aid system

“Recognizing that the benefits of legal aid services include financial benefits and cost savings throughout the criminal justice process, States should, where appropriate, make adequate and specific budget provisions for legal aid services that are commensurate with their needs, including by providing dedicated and sustainable funding mechanisms for the national legal aid system.”

UN Principles and Guidelines

When comparing on a per capita basis, there is a wide variation in the size of budgetary allocations for legal aid in 2013 amongst selected responding countries that dedicate resources for this purpose, wide variations can be observed. The Netherlands allocates as much as US\$34.16 per capita, while Nepal allocates only US\$0.01 per capita (**Figure 29**).

Of 25 States reporting budgetary figures for legal aid in 2010 and 2013, only one reported funding at the same rate over those years, while the legal aid budget increased in all other countries. Yet, LDCs remain substantially less likely to have a separate line item on legal aid in their country’s justice budget (only 14% do), when compared with higher-income countries (61%), as depicted in **Figure 30**.

The type of institution having the chief responsibility for the administration of legal aid also has significant bearing on whether or not legal aid is treated as a separate component in the annual justice budget. As seen in **Figure 31**, nearly all responding countries in which the chief legal aid authority is an independent legal aid administration or a public defender institution have a distinct allocation for legal aid in the national budget. However, no such allocation is made in countries where there is no central administration for legal aid, and an allocation is made in only half (56%) of countries where the bar association is the chief legal aid authority.

It is noteworthy that nearly half of all responding countries — irrespective of income level — do not allocate separate funding towards specialized legal aid services for specific disadvantaged groups. As depicted in **Figure 32**, funding mechanisms used to cover these costs vary greatly across income levels. While only 13% of responding LDCs allocate government funding towards such services, nearly half (43%) of high-income countries have secured such an allocation.

Figure 29 Legal aid budget per capita, for both criminal and civil cases (2013, US\$)

Source: GSLA Member State Survey



Figure 30 Is legal aid a separate component of the annual justice system budget in your country?

LDCs are significantly less likely than high-income countries to have a separate component on legal aid in their annual justice budget.

Source: GSLA Member State Survey

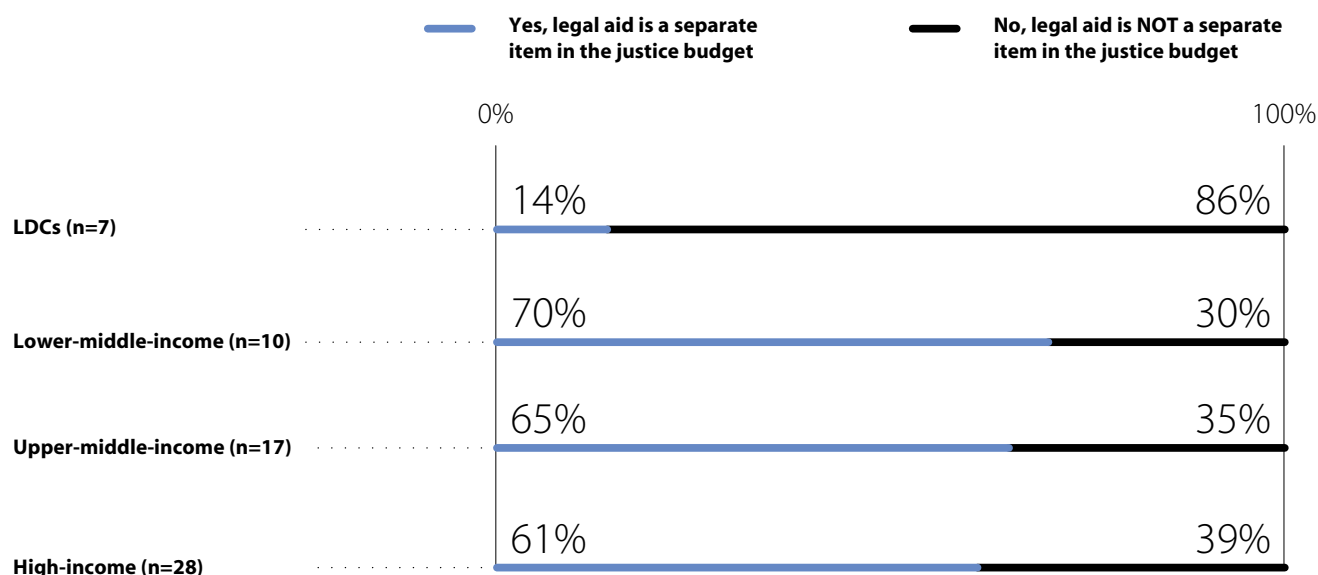


Figure 31 Proportion of countries with a separate item on legal aid in the justice budget, categorized by the institutional arrangement

Countries with an independent legal aid administration or a public defender's office are most likely to have a separate item on legal aid in the justice budget.

Source: GSLA Member State Survey

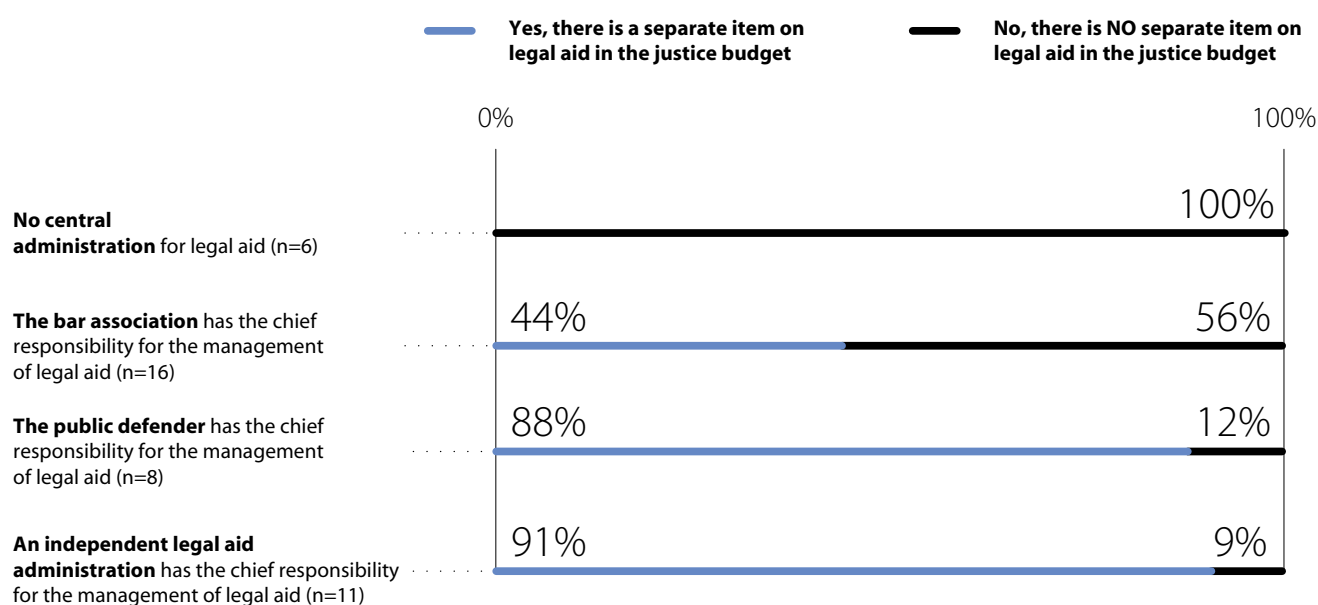
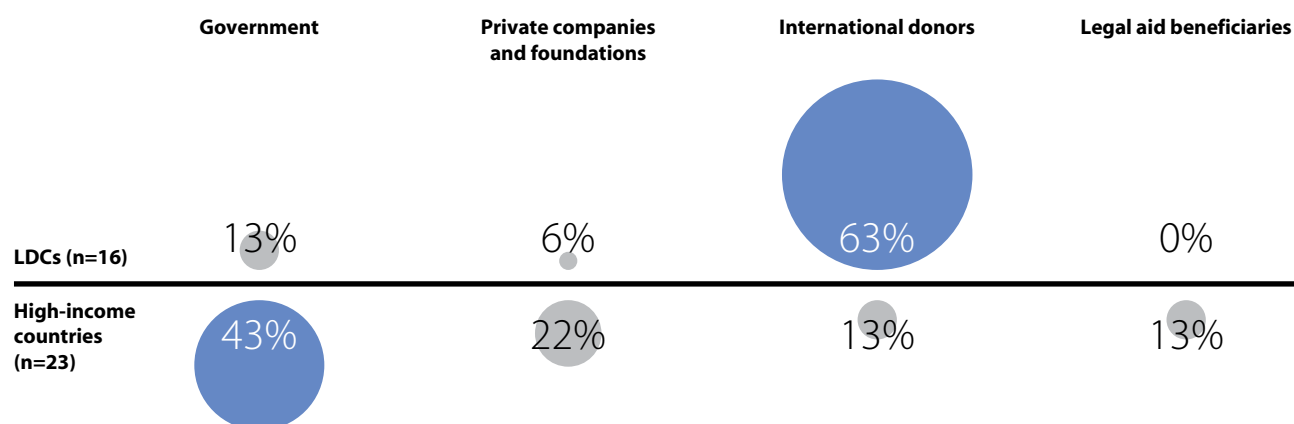


Figure 32 What funding mechanisms cover the cost of specialized legal aid services provided to specific population groups such as women, children, IDPs, etc.?

In LDCs, the cost of specialized legal aid services is primarily covered by international donors.

Source: GSLA Expert Survey; respondents could select multiple answer choices

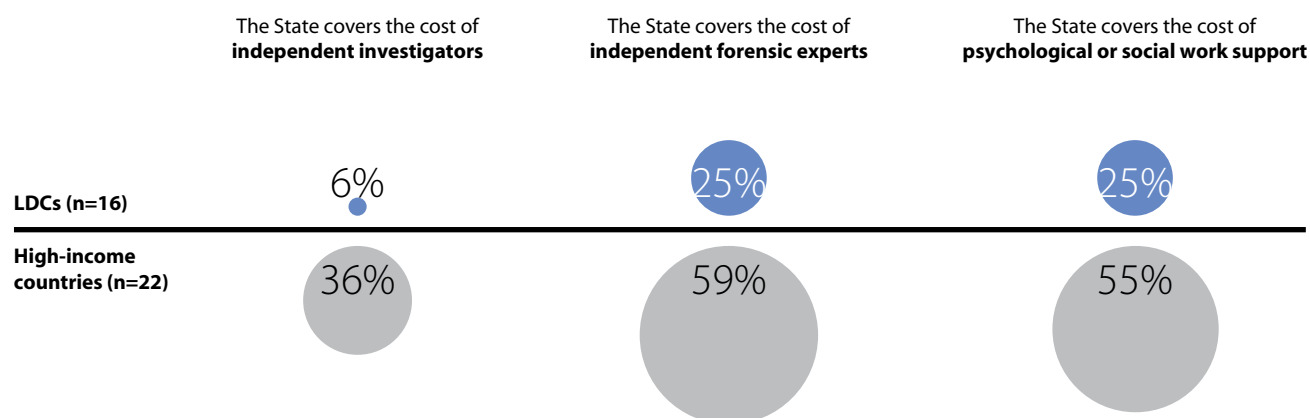


Similarly, LDC governments are much less likely to cover the costs of additional services (e.g. independent investigators, forensic experts, psychological or social work support, etc.) than governments in more developed countries (**Figure 33**).

Figure 33 Additional services covered by the State, by income level

The cost of additional services is rarely covered by the State in responding LDCs.

Source: GSLA Expert Survey; respondents could select multiple answer choices (n=16)



Qualification requirements for legal aid providers

Principle 14 — Partnerships

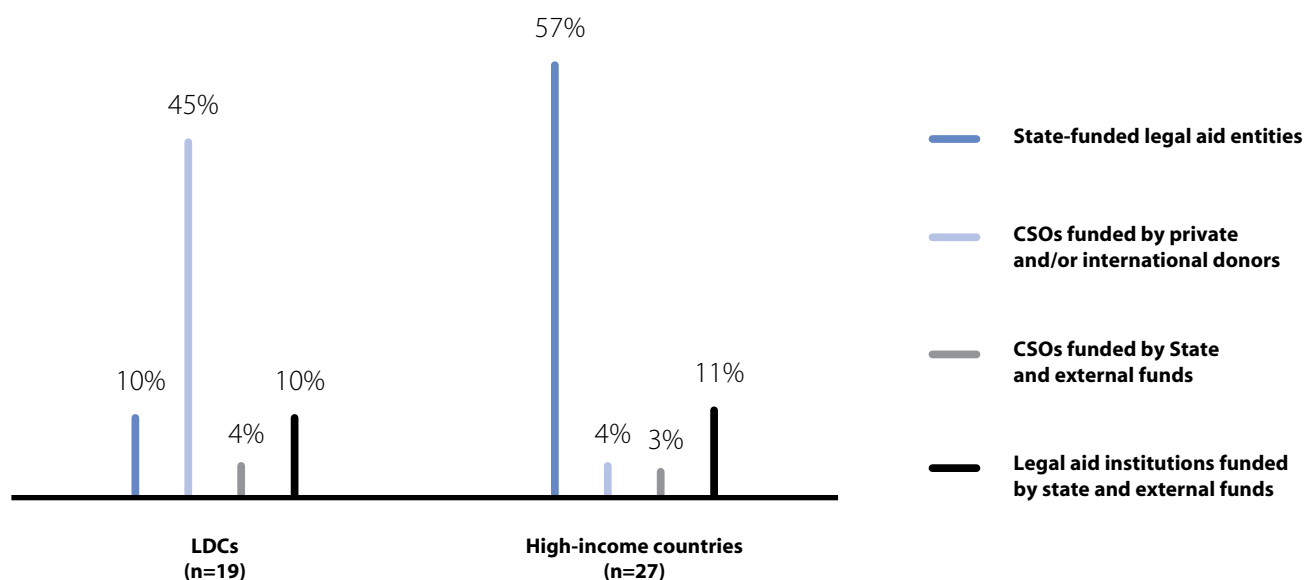
“States should recognize and encourage the contribution of lawyers’ associations, universities, civil society and other groups and institutions in providing legal aid. Where appropriate, public private and other forms of partnership should be established to extend the reach of legal aid.”

UN Principles and Guidelines

The most common type of legal aid provider varies according to income level (**Figure 34**). While the main provider of legal aid services in high-income countries is a State-funded legal aid entity (57%), in LDCs, CSOs funded by private and international donors deliver the bulk of legal aid services (45%).

Figure 34 Estimated proportion of legal aid services provided by various entities

Source: GSLA Expert Survey



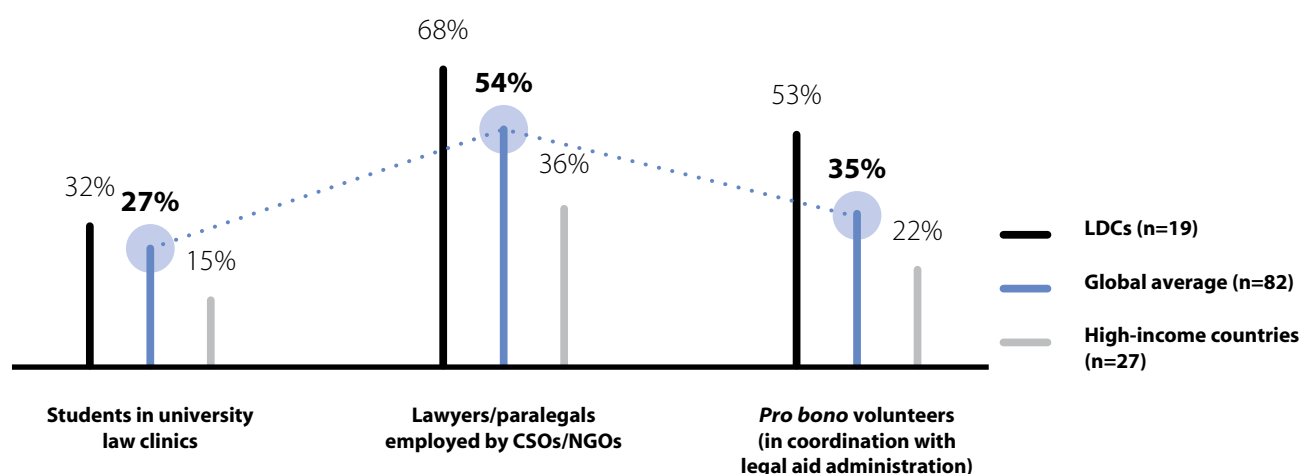
Nearly half (48%) of Member States have identified the shortage of lawyers outside urban areas as the biggest impediment to ensuring universal access to legal aid in their country. To address this shortage, Guideline 14 of the UN Principles and Guidelines emphasizes the role of paralegals in supplementing legal aid services “where access to lawyers is limited.” Yet, when asked what categories of non-governmental legal service providers are authorised to deliver legal aid in their country, only a third of national experts (36%) report that lawyers and paralegals employed by CSOs are officially recognized as legal aid providers. Students in university law clinics are only recognized in one in five (18%) countries, and *pro bono* volunteers, in one in four (24%).

However, global averages hide an important distinction between LDCs and high-income countries, as shown in **Figure 35**. The proportion of LDCs where students, CSOs and *pro bono* volunteers are authorised to provide legal aid services is roughly twice as high as that of high-income countries, which underscores the importance of strengthening the capacity of non-governmental justice actors to provide legal aid services, in lower-income countries. It should be noted, however, that while non-governmental legal aid providers in high-income countries may not be officially authorised to deliver legal aid services, they are also not prohibited from doing so — it may simply be that they are not regulated.

Figure 35 Percentage of national experts who responded that non-governmental legal aid providers are authorised to deliver legal aid services under the law

In LDCs, non-governmental legal aid providers are twice as often authorised to deliver services than in high-income countries.

Source: GSLA Expert Survey



When asked about the type of legal aid services that paralegals are allowed to provide, national experts say that paralegals, in both criminal and civil cases, are mainly allowed to provide general assistance in navigating the justice system (as reported by 31% of experts), legal advice on a one or two-time basis on the application of the relevant law or about actions that a person may appropriately take (as reported by 26% of experts), and legal information in police precincts or prisons (as reported by 14% of experts). Only 11% of national experts indicated that paralegals could provide legal representation before a court, with or without a lawyer's supervision.

Principle 13 — Competence and accountability of legal aid providers

"States should put in place mechanisms to ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work, including the gravity of the offences dealt with, and the rights and needs of women, children and groups with special needs."

UN Principles and Guidelines

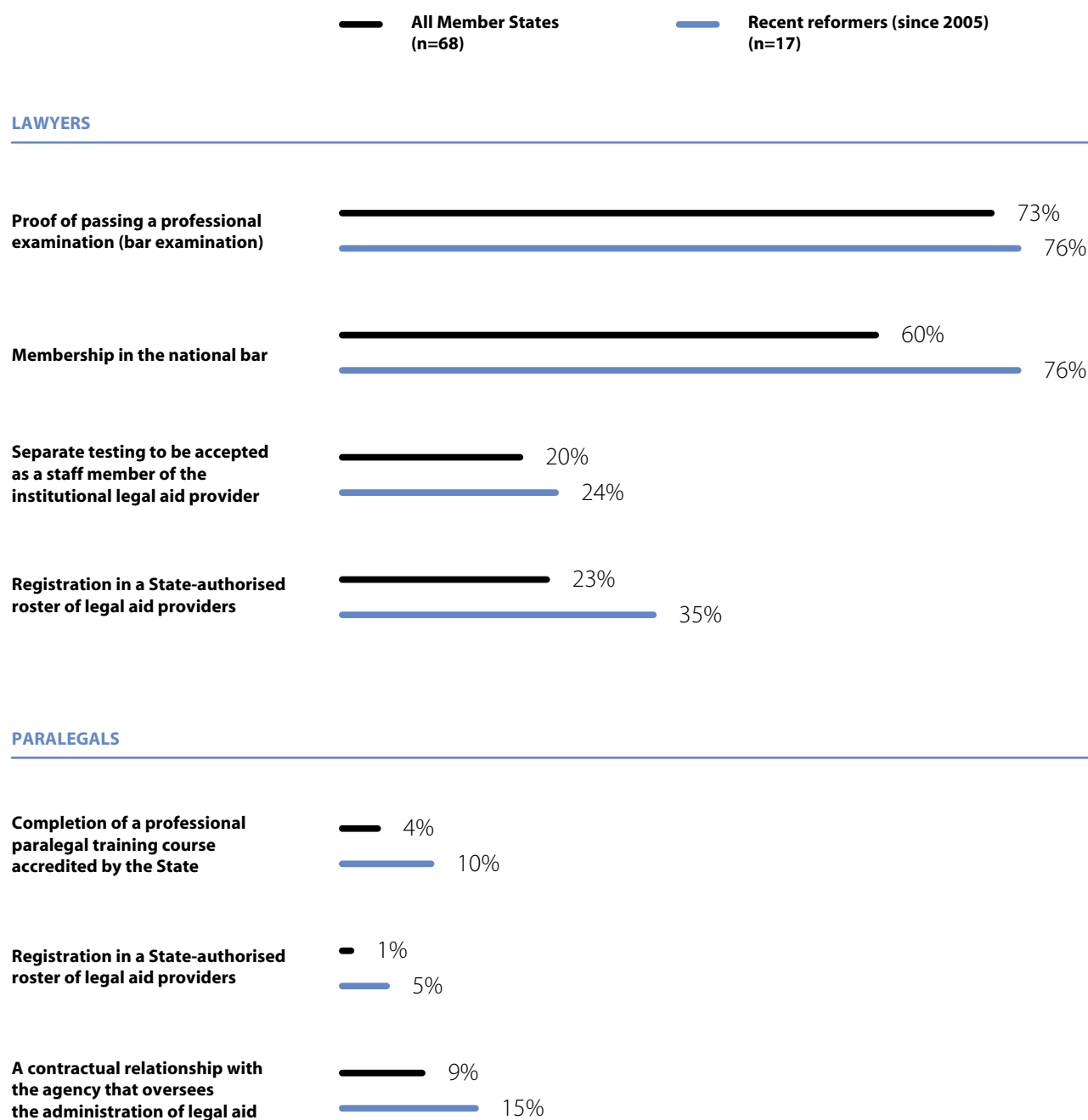
Countries that have undergone a reform of the legal aid system in the past ten years tend to have a higher qualification requirement for legal aid providers of State-funded legal aid services than those countries that have not undergone a recent reform (**Figure 36**). 'Recent reformers' are also more likely to have formalized accreditation and/or certification processes for legal aid providers. For instance, the requirement that legal aid providers be members of the national bar or be registered in a State-authorised roster of legal aid providers is common.

A similar upward trend in qualification requirements imposed on paralegals can be seen in **Figure 36**, which compares countries having recently reformed their legal aid system with others that have not yet done so or that have done so earlier than 2005. While the level of qualifications for paralegals remains generally low, recent reformers are more likely to require that paralegals complete a professional paralegal training course accredited by the State. Recent reformers are also more likely to require that paralegals be registered in a State roster of legal aid providers, and/or be in a formal contractual relationship with the institution overseeing the administration of legal aid.

Figure 36 Which of the following qualifications are required for State-funded legal aid providers?

Countries that have reformed their legal aid system in the past 10 years ('recent reformers') have a higher qualification and accreditation requirement for legal aid providers.

Source: GSLA Member State Survey; respondents could select multiple answer choices



These higher qualification standards set by countries that have recently reformed their legal aid system are still lacking the requirement of continuing education and/or skills training. Globally, only half (49%) of Member State respondents have made it mandatory for legal aid providers to engage in periodic skills training. This proportion is only marginally higher (53%) in countries that have reformed their legal aid system in the past decade. According to national experts, only 37% of countries that make periodic skills training compulsory allocate public funding towards such training.

Physical and financial accessibility of legal aid

Principle 10 — Equity in access to legal aid

“States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and to persons who are members of economically and socially disadvantaged groups.”

UN Principles and Guidelines

One of the challenges that legal aid authorities face is effectively delivering legal aid to all eligible persons, many of whom often live in the periphery of their societies and/or may not have the financial means to afford legal services. When asked about the accessibility of legal aid services in rural areas, Member States from lower-income countries consistently report that their rural areas are underserved (**Figure 37**).

It is worth noting that availability of legal aid services in rural areas is higher in those Member States that have officially recognized paralegals as legal aid providers as well as in those Member States that have conducted a legal aid needs assessment (**Figure 38**).

Figure 37 Are legal aid services available in rural areas in your country?

Less than 40% of responding LDCs say that legal aid services are available in rural areas in their country.

Source: GSLA Member State Survey

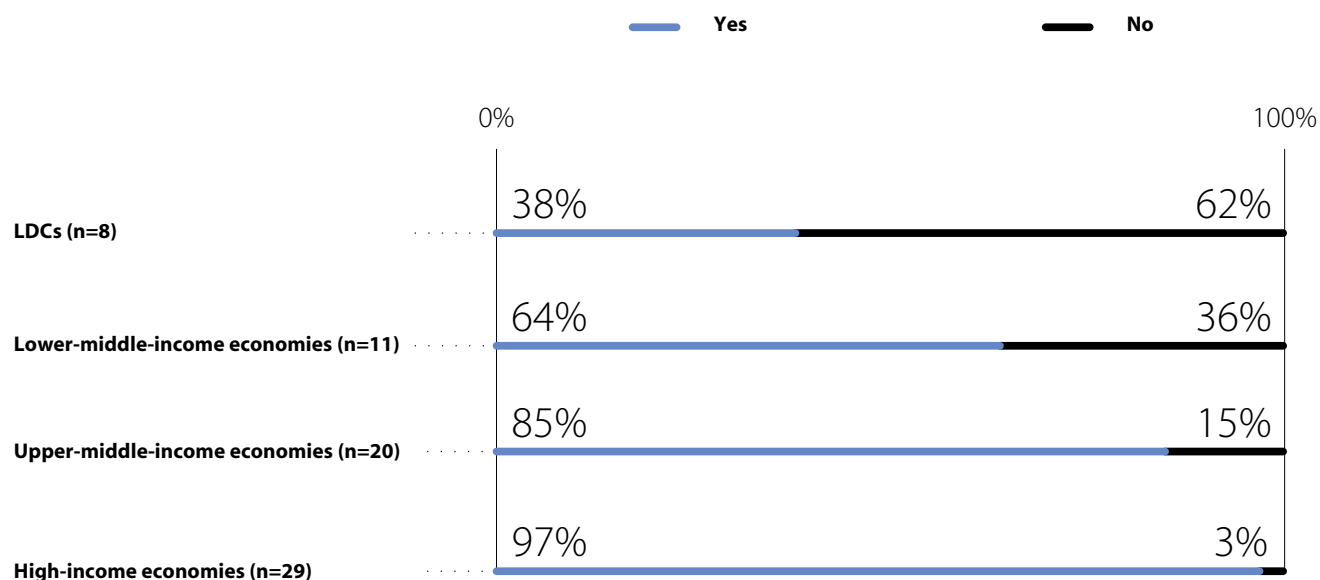


Figure 38 Proportion of Member States that responded that legal aid services are available in rural areas when...

Source: GSLA Member State Survey

93%



a needs assessment has been conducted

82%



paralegals are officially recognized as legal aid providers

Principle 3 — Legal aid for persons suspected of or charged with a criminal offence

“It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.”

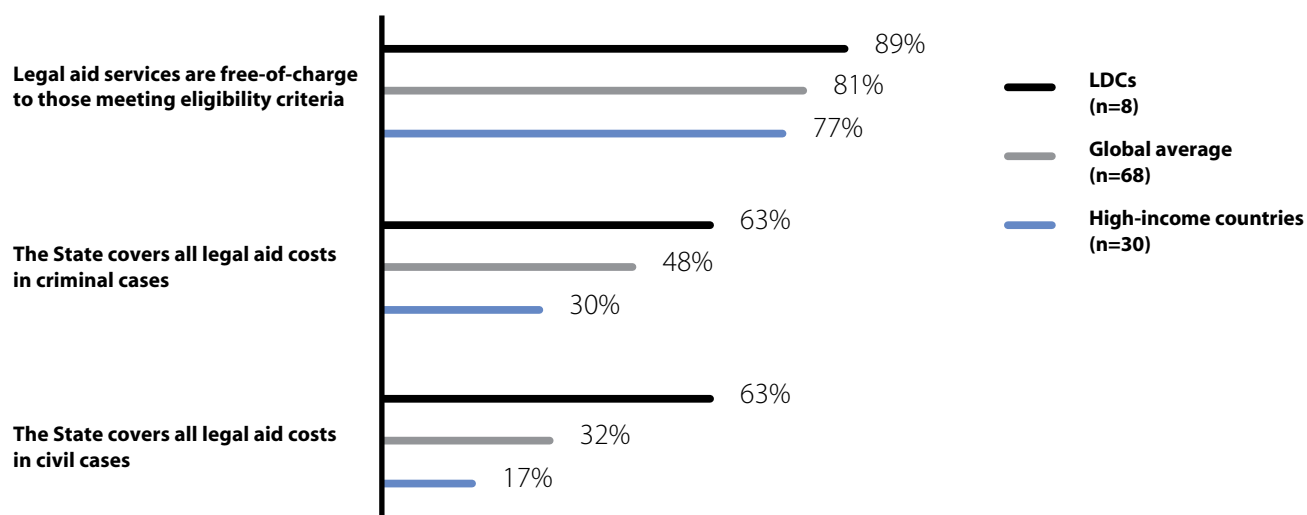
UN Principles and Guidelines

The majority of Member States (81%), regardless of region and income level, indicate that legal aid is provided free-of-charge to eligible persons. Roughly half (48%) of Member States say that the State covers all legal aid costs in criminal cases, but the proportion is lower (30%) in high-income countries. For civil cases, a similar observation can be made: roughly a third (32%) of Member States globally say that the State covers all legal aid costs in civil cases, but this proportion goes down to 17% in high-income countries (**Figure 39**).

Figure 39 Is there a cost to the recipient of legal aid services?

Legal aid services are less likely to be free of charge to recipients in high-income countries than in lower-income countries.

Source: GSLA Member State Survey

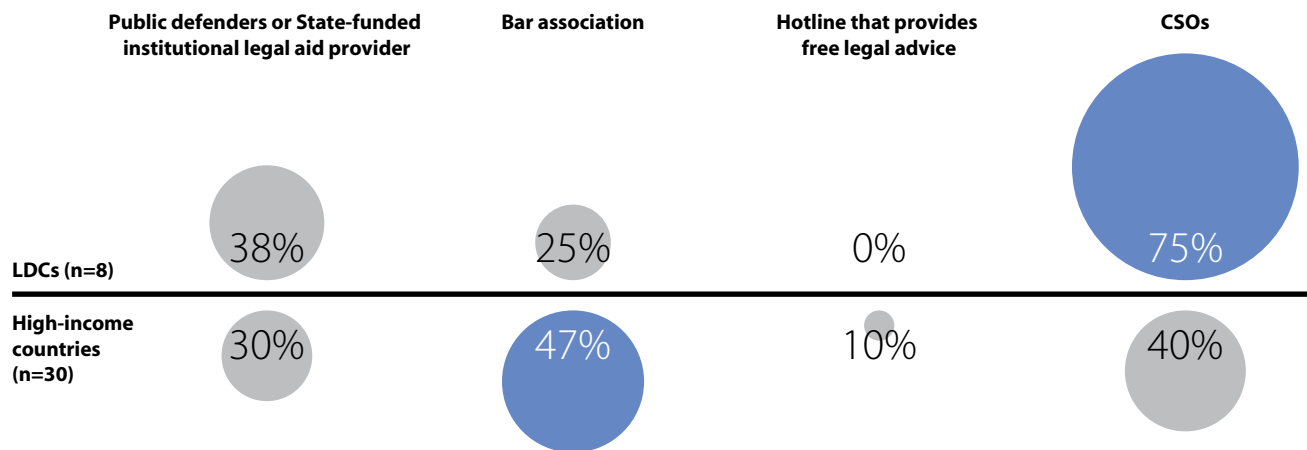


When legal aid beneficiaries pay a portion of the legal aid costs, a range of modalities are in use in high-income countries. They can include payment of a percentage of the cost (17%) as established by law, predetermined fees for certain types of actions (17%) and a sliding scale of payment based on the beneficiary's financial status (43%). However, such payment modalities are very rarely in place in lower-income countries.

Those in need of free primary legal aid services in LDCs often must seek assistance from CSOs, who are cited as the main providers of primary legal aid (by 75% of Member States). In high-income countries, on the other hand, the bar association is cited as the most common provider of free primary legal aid services (by 40% of Member States). Additionally, one in ten high-income countries reports operating a telephone hotline that people can call to obtain free legal advice—a service that is not yet in place in LDCs (**Figure 40**).

Figure 40 Where can people obtain free primary legal aid¹³⁴ services?

Source: GSLA Member State Survey; respondents could select multiple answer choices



134. Primary legal aid (to be distinguished from other types of legal aid which are more closely tied to court action, including legal representation) is often provided for free, and may take the form of legal information, assistance with the drafting of documents for submission to state institutions, an initial legal opinion on a particular matter, legal advice regarding out-of-court dispute settlements, or referral to a specialized body or organisation.

Mechanisms to ensure independence of legal aid providers

Principle 12 — Independence and protection of legal aid providers

“States should ensure that legal aid providers are able to carry out their work effectively, freely and independently. In particular, States should ensure that legal aid providers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference.”

UN Principles and Guidelines

A competent management structure that protects legal aid providers’ independence in advocating for their clients can not only prevent haphazard or *pro forma* legal assistance, but also ensure that the legal aid services provided actually contribute to achieving equality of all people before the law.

The survey results reveal that preserving the independence of legal aid providers from the State remains a common challenge across all regions. Globally, a quarter of national experts perceive that people in their country often assume that legal aid providers are State officials who are employed by either the police or judicial agencies. Fifteen percent of national experts also say that hiring a private lawyer, who receives payment from the suspect/defendant and not from the State legal aid funds, is one of the most influential factors in reaching a dismissal of charges or an acquittal in legal aid cases (**Figure 41**).

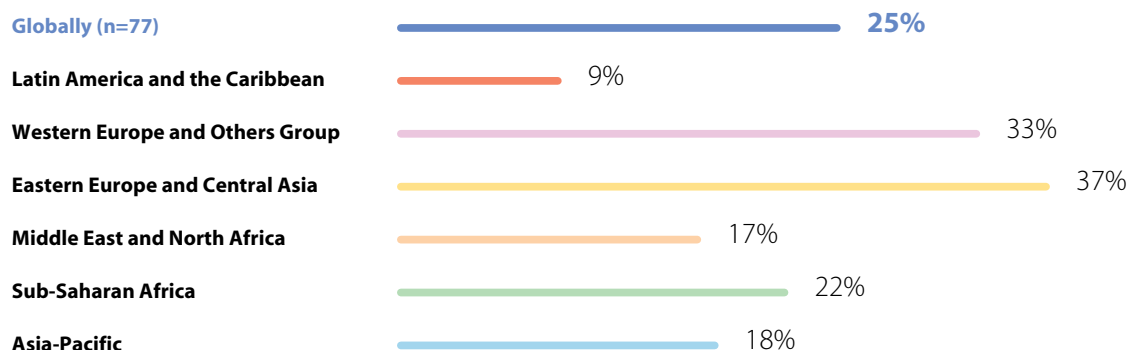
This last finding may be attributable to the fact that when a lawyer or a paralegal is paid by the State to represent a client whose case may involve conflict with or procedural opposition against a State party (which is frequent in criminal cases), legal aid providers can feel subjectively beholden to the State that pays their fees. To mitigate this risk, payment mechanisms that insert a buffer between legal aid providers and the State agency, such as when the payment is made by an independent legal aid entity, can help ensure the independence of legal aid providers. It can also help attenuate a relatively common perception held by clients that the interests of their legal aid provider are closely aligned with the State, provided that the existence of such a buffer is clearly explained to the client.

Figure 41 Perceived lack of independence of legal aid providers

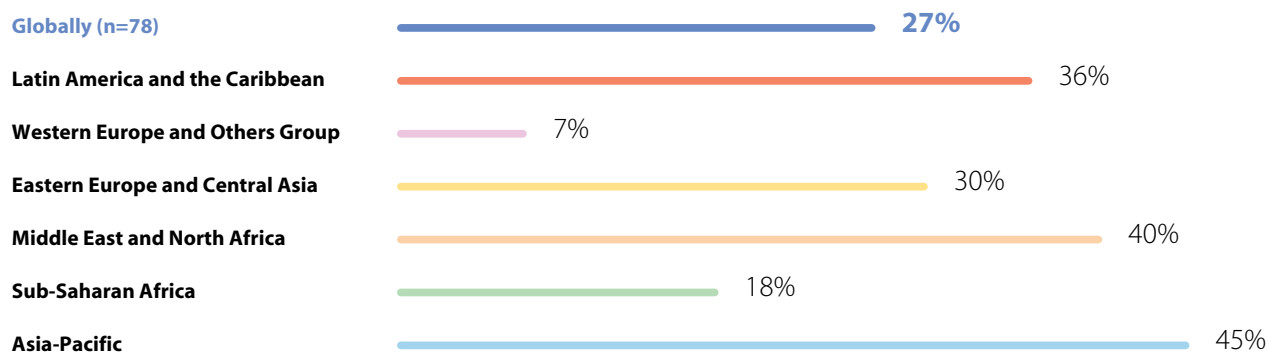
Public perception of a lack of independence of legal aid lawyers from State agencies is a common challenge across all regions.

Source: GSLA Expert Survey

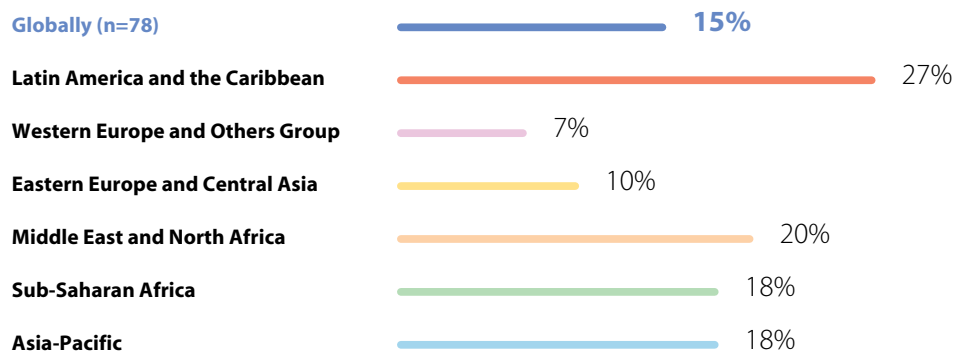
Percentage of national experts who say that people in their country think that **legal aid lawyers “are working as part of the police, prosecutor or judicial agencies”**



Percentage of national experts who say that **bribery and corruption** are amongst the most influential factors in reaching a dismissal of charges or an acquittal in legal aid cases



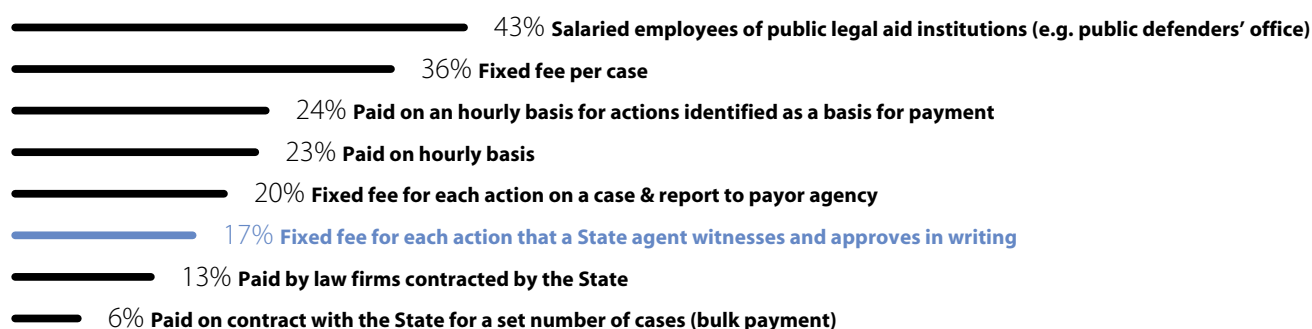
Percentage of national experts who say that **hiring a private lawyer who receives pay from the suspect/defendant, but not the State legal aid funds**, is one of the most influential factors in reaching a dismissal of charges or an acquittal in legal aid cases



Globally, 43% of Member States report that they employ salaried legal aid lawyers on a full-time basis (as per the public defender model). However, when percentages are aggregated, the assigned counsel model, wherein private lawyers are paid a fixed fee per case/action or on an hourly basis, is the most frequent form of payment (**Figure 42**). Meanwhile, close to one in five (17%) Member States indicates that in order to be paid, some legal aid providers of their country must obtain written approval from a State agent who must also witness the procedural action for which the legal aid provider is seeking remuneration (e.g. presence in court, representation at interrogation, advocacy for release from pretrial detention, investigation, etc.). This is problematic as it may create a conflict of interest when the legal aid provider has to obtain approval for his/her payment from the same agency that his/her client is opposing. Similar conflicts may arise when legal aid providers are paid on an hourly basis (24%) and must submit reports on the hours spent on a case to the same State agency that issues their payment.

Figure 42 How are legal aid providers paid for their services?

Source: GSLA Member State Survey; respondents could select multiple answer choices (n=68)



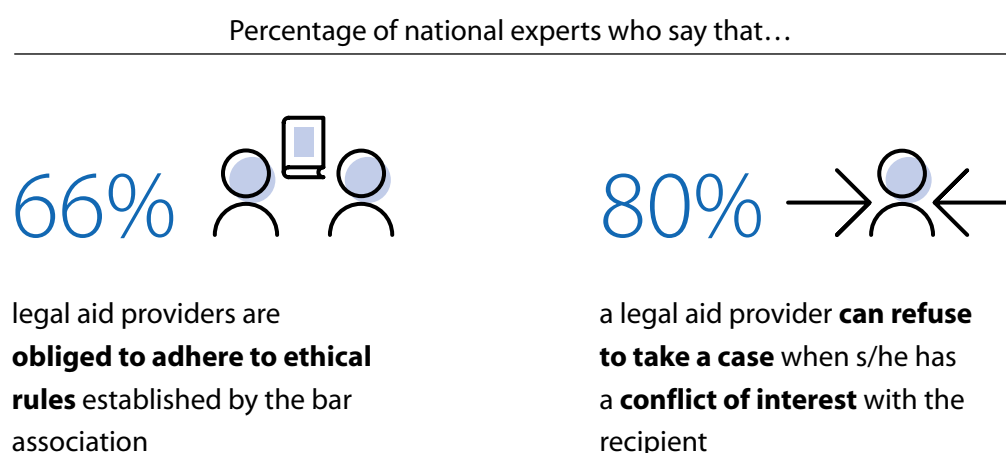
The survey inquired about the measures that safeguard the independence of legal aid providers (**Figure 43**). In 66% of responding countries, national experts report that there are ethical rules or guidelines, often established by bar associations, that legal aid providers are obliged to adhere to. Moreover, in 80% of responding countries, national experts say that a legal aid provider can refuse to take a case or ask to be removed from the duty to represent a legal aid recipient when facing a conflict of interest (e.g. when a provider represents a client in one case who may be an opponent to another client in a separate case).

While the existence of such safeguards is fairly common across regions, their effectiveness is uneven: one in seven national experts perceive that “hiring a private lawyer who receives pay from the suspect/defendant, not from State legal aid funds,”

is one of the most influential factors in reaching a dismissal of charges or an acquittal in legal aid cases. Similarly, the existence of ethical rules for legal aid providers does not prevent corruption from occurring in court proceedings for legal aid cases—27% of national experts perceive bribery to be one of the most influential factors in securing dismissal of charges or an acquittal in legal aid cases (**Figure 41**).

Figure 43 What measures are in place to safeguard the independence of legal aid providers?

Source: GSLA Expert Survey



Mechanisms to ensure the quality of legal aid services

Principle 7 — Prompt and effective provision of legal aid

“States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process. Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defence.”

UN Principles and Guidelines

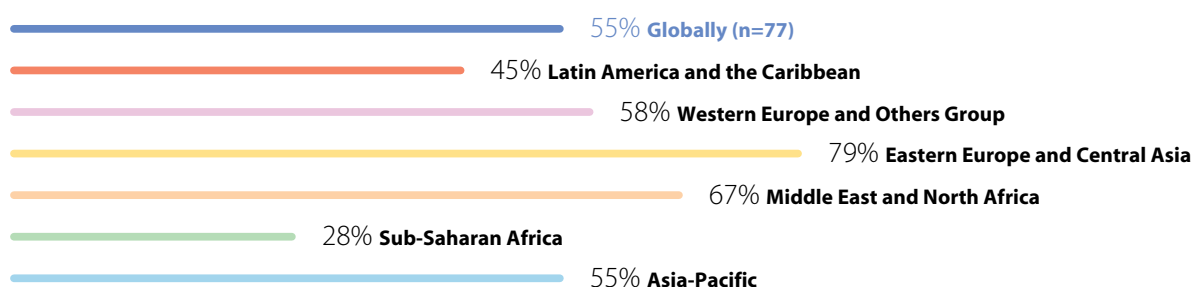
Survey results reveal that more than half (55%) of national experts cite people’s lack of confidence in the quality of legal aid services as one of the most significant challenges facing poor and vulnerable groups in accessing legal aid.

As shown in **Figure 44**, national experts from all regions, and particularly those from Eastern Europe & Central Asia (79%) and the Middle East & North Africa (67%), perceive that people in their country do not have confidence in the quality of legal aid services. In addition, when asked about the first priority area of technical assistance that their country would benefit in, 82% of national experts cite “develop[ment of] quality criteria for legal aid providers.” This priority area is also selected by 44% of Member States.

Figure 44 Percentage of national experts who say that people do not have confidence in the quality of legal aid services provided in their country

People’s lack of confidence in the quality of legal aid services is a common challenge across all regions.

Source: GSLA Expert Survey



The survey also inquired about the measures to ensure the quality of legal aid services (**Figure 45**). It is worth noting that while quality and performance standards for legal aid providers are in place in 38% of responding countries, an even greater proportion (46%) of experts indicate that there is no formal mechanism in place in their country to assess whether a legal aid provider is unprepared or unqualified. This finding may raise questions about the extent to which quality and performance standards can be upheld in practice.

Among other quality safeguards, 70% of experts report that once a legal aid provider is appointed, the same provider always or often remains in the case until it is resolved (unless the original legal aid provider becomes unavailable or otherwise unfit to provide services). This spares the legal aid beneficiaries from having to deal with successive appointments—a practice that has been found to weaken the mutual trust between legal aid providers and beneficiaries, thereby weakening the quality of services provided.

Yet another quality measure aims to safeguard against incompetent and/or overloaded legal aid providers—a large proportion of national experts report that those legal aid providers who have too many cases (45%) or who feel that they lack the legal expertise or skills required for a specific case (44%) can refuse to take a case.

Figure 45 What measures are in place to safeguard the quality of legal aid services?

Source: GSLA Expert Survey



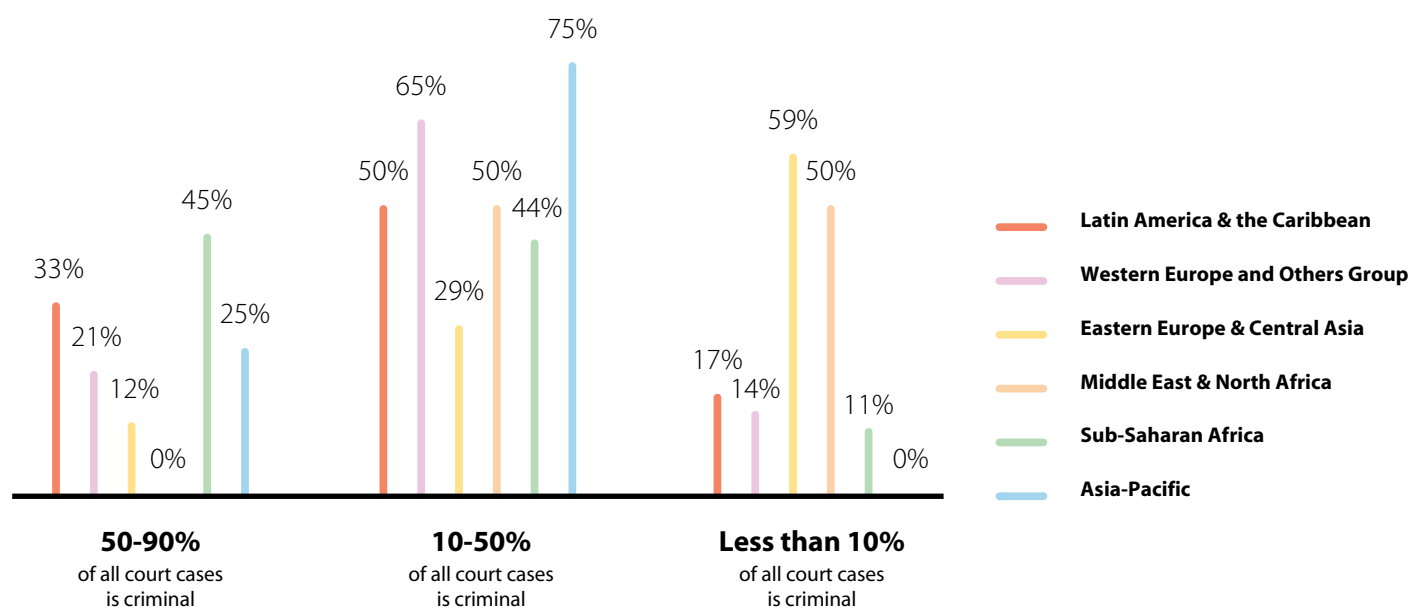
E. Legal aid in criminal proceedings

When asked about their criminal caseload, more than three quarters (77%) of Member States indicate that criminal cases make up less than half of all cases on their court dockets. As depicted in **Figure 46**, the proportion of criminal cases compared to the overall court cases varies substantially across regions. For instance, respondents from Eastern Europe & Central Asia and from the Middle East & North Africa report a comparatively small amount of criminal cases (less than 10% of all court cases), while the opposite holds true in Sub-Saharan Africa, where nearly half of respondents say that criminal cases in their country make up anywhere between 50 and 90% of all court cases.

Figure 46 What percentage of all court cases is criminal?

The proportion of criminal cases compared to all court cases is the highest in Sub-Saharan Africa.

Source: GSLA Member State Survey



Eligibility to legal aid in criminal cases

Principle 3 — Legal aid for persons suspected of or charged with a criminal offence

“States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.”

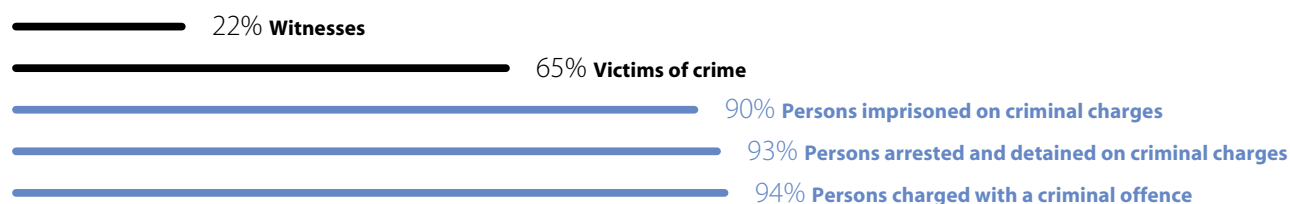
UN Principles and Guidelines

In the majority of responding Member States, eligibility for legal aid varies for defendants, victims and witnesses. Across all regions and development levels, defendants have a right to legal aid under the law upon being charged with a criminal offence, upon arrest or detention on criminal charges, and when sentenced to imprisonment (**Figure 47**). A smaller proportion of responding Member States (65%) indicate that crime victims are entitled to legal aid under the law, and only a fifth (22%) say that witnesses of crime are entitled to legal aid..

Figure 47 To whom is legal aid available under the law in your country?

Under the laws of most Member States, legal aid is almost universally available to defendants charged with a criminal offence.

Source: GSLA Member State Survey; respondents could select multiple answer choices (n=68)



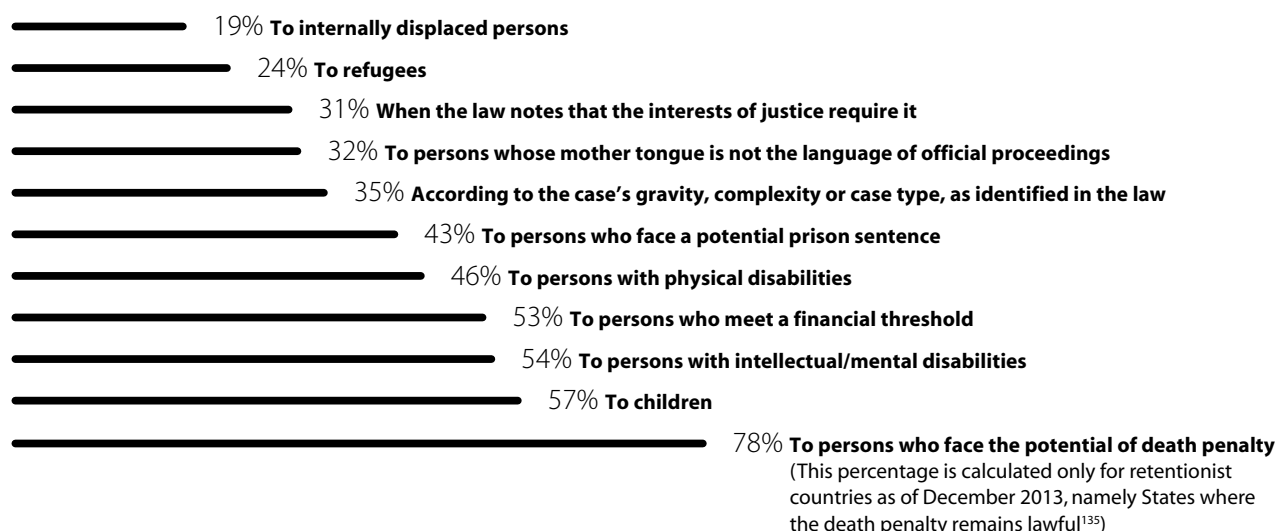
States Parties to the ICCPR are obligated to provide legal aid in criminal cases when the accused does not have the means to hire a lawyer and when the interests of justice so require. To meet this obligation, States Parties employ different methods to determine the eligibility (**Figure 48**). In some instances, a person's demographic profile determines whether he or she is entitled to legal aid, while in others, it is the type of case or gravity of the offence that is determinant, such as where defendants

are facing set terms of imprisonment or the death penalty. Globally, the three most common State obligations to provide legal aid concern children (57%), persons with intellectual or mental disabilities (54%) and persons who meet a financial threshold (53%). Meanwhile, it is important to specify that the high proportion (78%) of Member States indicating that they have an obligation to provide legal aid to persons facing the potential of the death penalty does not represent an overall average, but that it was calculated only for the subset of retentionist countries, namely for the nine responding Member States where the death penalty remains lawful.

On the other end of the spectrum, few States report having an obligation to provide legal aid to IDPs (19%) and to refugees (24%).

Figure 48 In which of the following instances is the State obligated to provide legal aid?

Source: GSLA Member State Survey; respondents could select multiple answer choices (n=68)

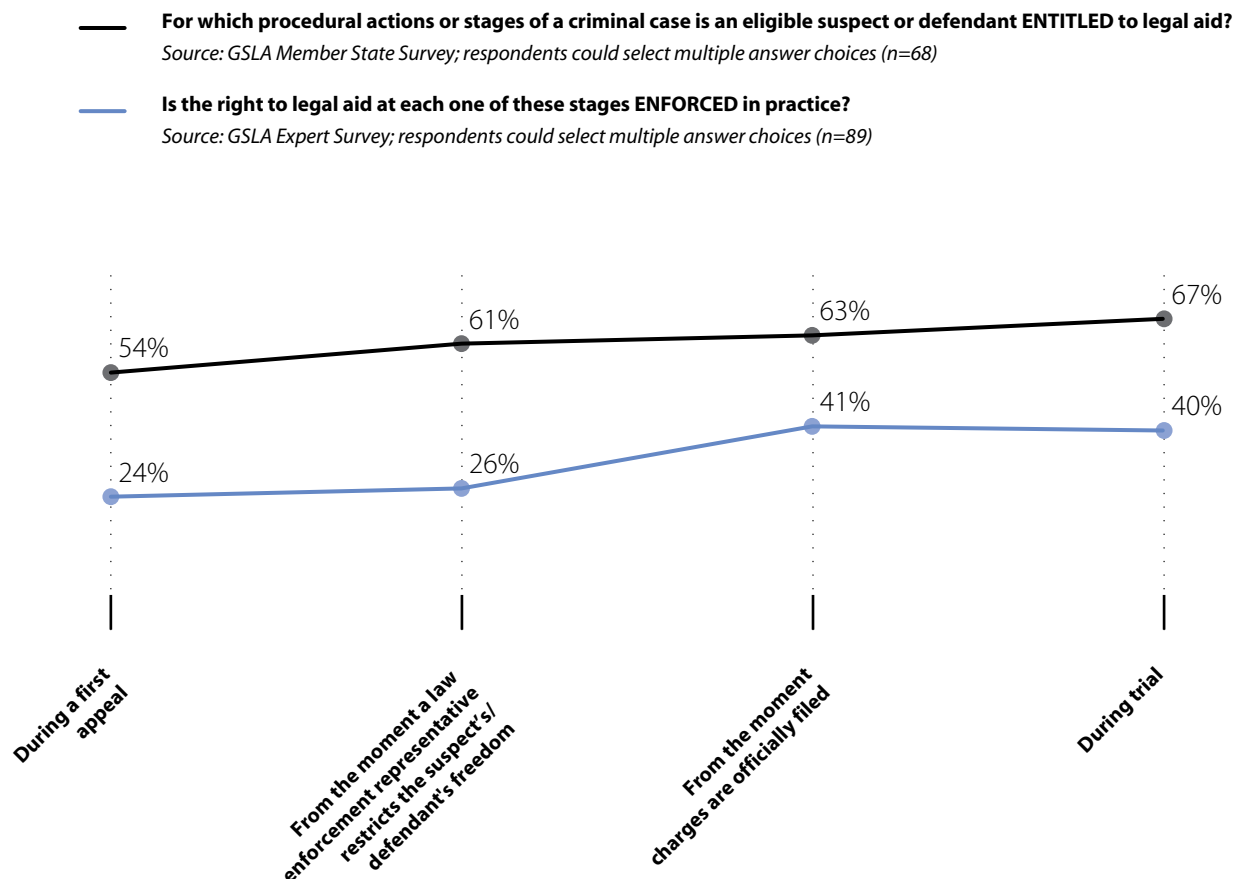


In criminal cases where eligibility for legal aid is not automatically based on the type of case or its gravity, suspects or defendants may be requested to produce evidence of eligibility (such as proof of poverty). However, since such proof may not be at their disposal at the time of arrest, it may serve as a disincentive to request legal aid for many potential beneficiaries. Some of the most common types of evidence that States require are: evidence of low income (requested by 39% of responding States), evidence proving status as a recipient of welfare or State subsidies for indigent or vulnerable members of the population (requested by 32% of responding States) and/or evidence of family hardship (requested by 28% of responding States), such as multiple children, single parent household or disability of a family member.

135. Economic and Social Council resolution 2015/49, annex.

Member State respondents cite a variety of procedural events that give rise to the right to legal aid in criminal cases (**Figure 49**), such as “during trial” (67%), “from the moment charges are officially filed against a person” (63%) and “from the moment a law enforcement representative restricts a suspect’s freedom” (61%). However, when asked whether these legal entitlements are enforced in practice, national experts point to a considerable gap between legal entitlements and delivery of legal aid in practice.

Figure 49 The gap between legal entitlements and the delivery of legal aid in practice, across various stages of a criminal case



For instance, more than three quarters of respondents say that the police, prosecutors or judges will sometimes obtain incriminating information from a suspect or defendant when no legal aid provider is present: 24% say that if it takes too long for a legal aid provider to arrive, the questioning begins regardless, and 57% say that the police sometimes questions a person first as a witness, and determines the person to have a right to legal aid only after the witness has incriminated him/herself.

This finding also highlights the need to address considerable delays encountered between the moment notice is given that legal aid is needed, and the moment a legal aid provider appears. Globally, the average delay is approximately 19 hours, yet delays are more pronounced in certain regions than others: average delays range from 3h25m in Eastern Europe & Central Asia, to 16h40m in Latin America & the Caribbean, to 29h40m in Sub-Saharan Africa.

Effectiveness and quality of legal aid services provided in criminal cases

Based on their own experience as legal aid providers or experts in this field, a majority of national experts estimate that there is no difference in the performance and quality of services provided by legal aid lawyers, when compared with private lawyers receiving pay from private clients. As shown in **Figure 50**, no more than one in five national experts perceive that legal aid lawyers ‘perform better’ than private lawyers — in terms of being more likely “to advise clients before any contact with State justice officials,” “to conduct private investigation,” and/or “to challenge the reliability of evidence against a defendant”.

Meanwhile, national experts from those countries that require legal aid providers to adhere to quality and performance standards, or to undergo periodic skills training and/or testing, are markedly more positive in their assessment of legal aid lawyers’ performance. This may suggest that such measures have indeed been effective in raising the quality of legal aid services.

Specialized legal aid for children in criminal cases

Principle 11 — Legal aid in the best interests of the child

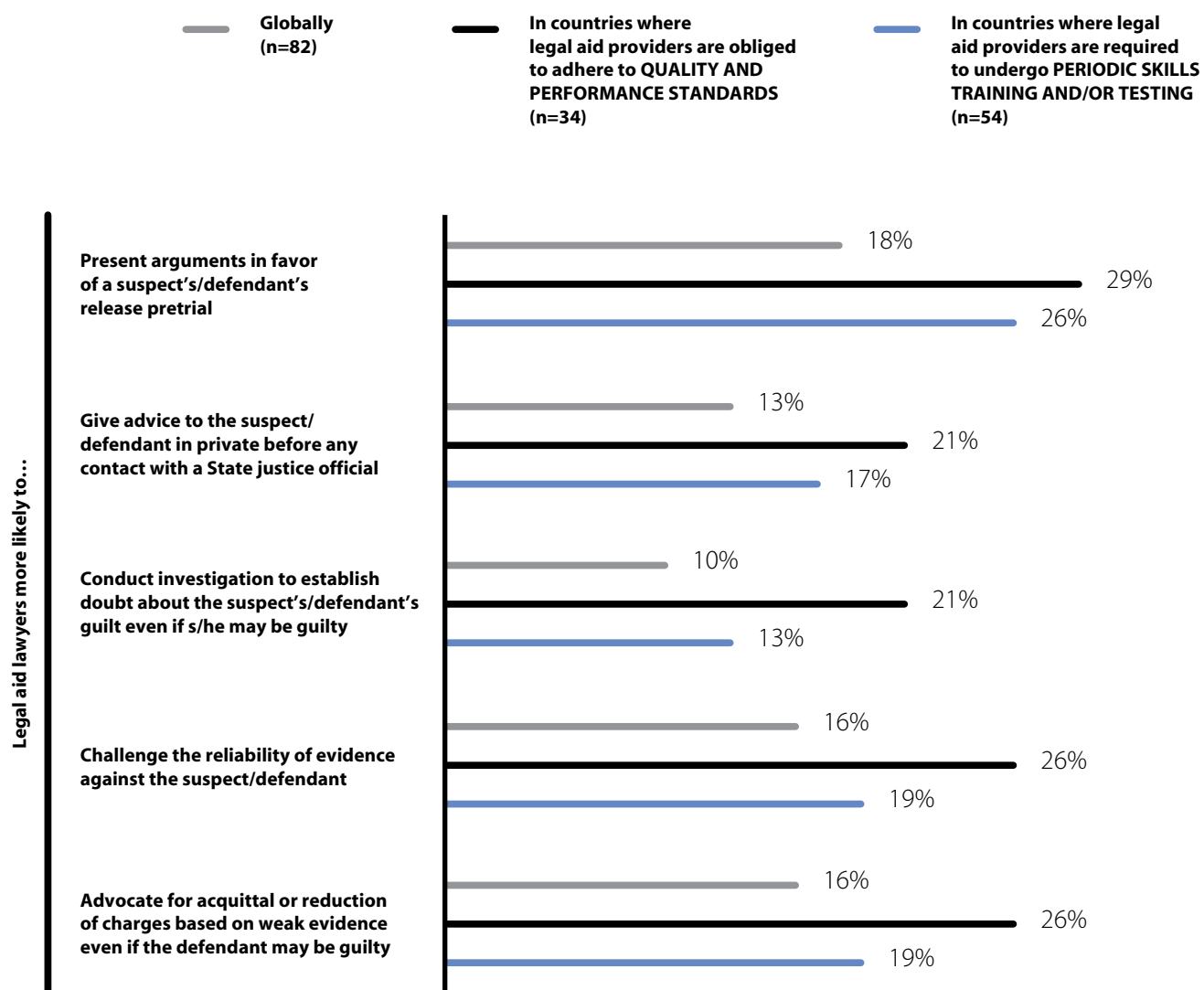
“Legal aid provided to children should be prioritized, in the best interests of the child, and be accessible, age-appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of children.”

UN Principles and Guidelines

Figure 50 Percentage of national experts who say that legal aid lawyers are *more likely* to take the actions below than private lawyers

National experts' assessment of legal aid lawyers' performance is more positive in countries where quality and performance standards exist or where periodic skills training and/or testing is mandatory.

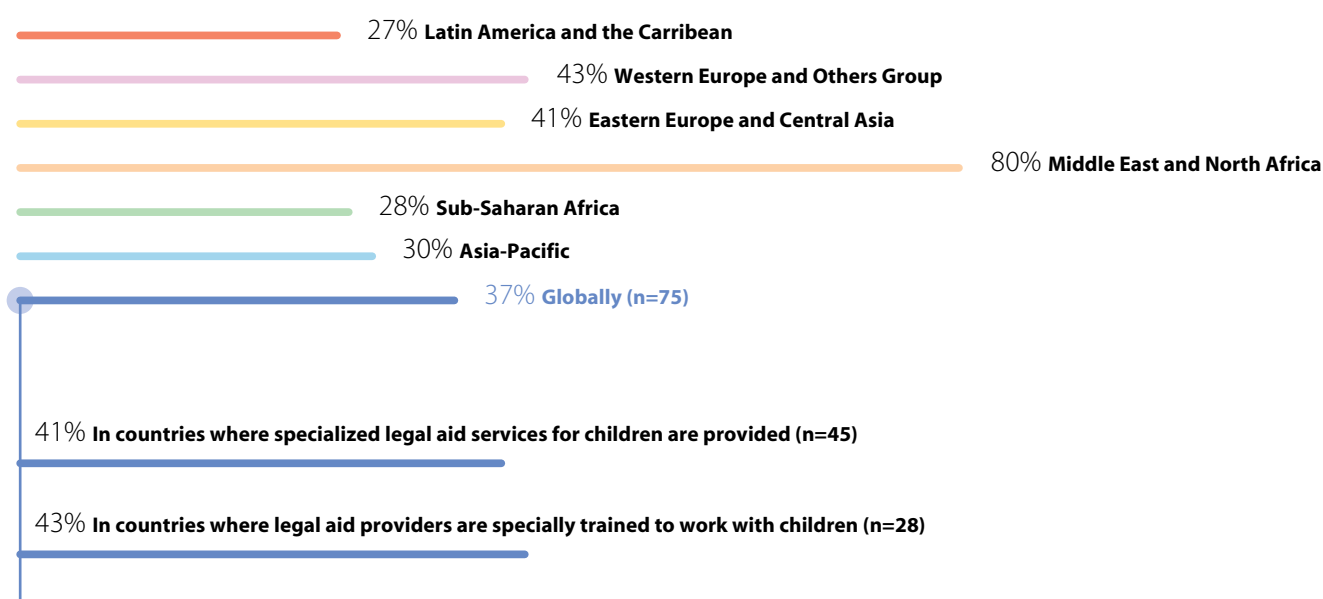
Source: GSLA Expert Survey



As seen in **Figure 51**, roughly a quarter (27%) of experts in Latin America and the Caribbean indicate that diversion from judicial proceedings in criminal cases involving suspected or accused children is “usually applied” in their country, while in the Middle East & North Africa, more than three quarters of expert respondents say the same.

Figure 51 Percentage of national experts reporting that diversion is “usually used” in criminal cases involving suspected or accused children

Source: *GSLA Expert Survey*

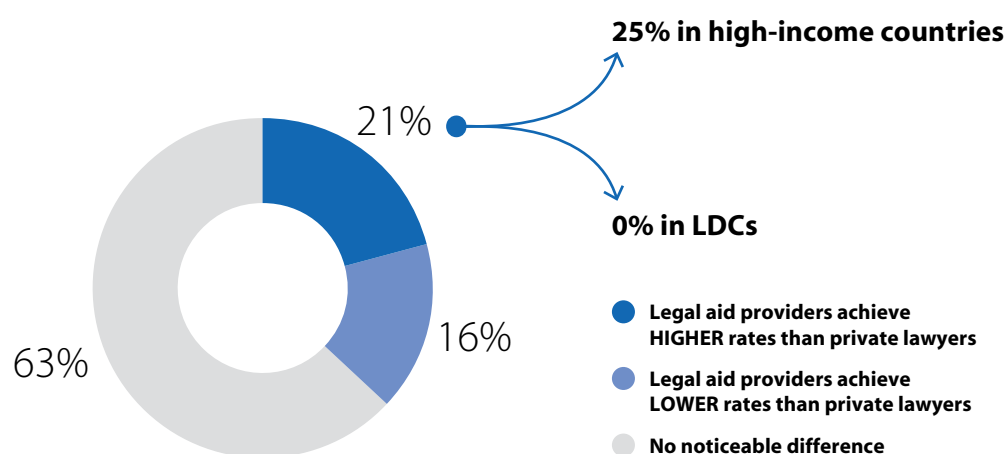


The frequency in use of diversion in cases involving children is influenced by a number of institutional considerations. For instance, survey responses show that pretrial diversion is more frequently used in countries where State-funded specialized legal aid services for children are available, and where legal aid providers are required to undertake specialized training to qualify for work with children.

When asked to compare the performance of legal aid lawyers representing children with that of private lawyers, a majority of national experts notes that “there is no noticeable difference” between the two groups in three different measures: rates at which diversion from legal proceedings is achieved, rates at which alternatives to pretrial detention are achieved, and rates at which alternatives to imprisonment are achieved (**Figure 52**).

Figure 52 Performance of legal aid lawyers vis-à-vis private lawyers in achieving alternatives to imprisonment in criminal cases involving suspected or accused children, as estimated by national experts

Source: GSLA Expert Survey (n=38)

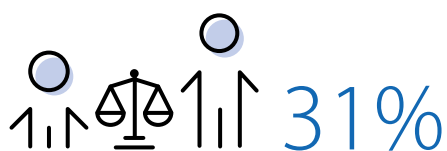
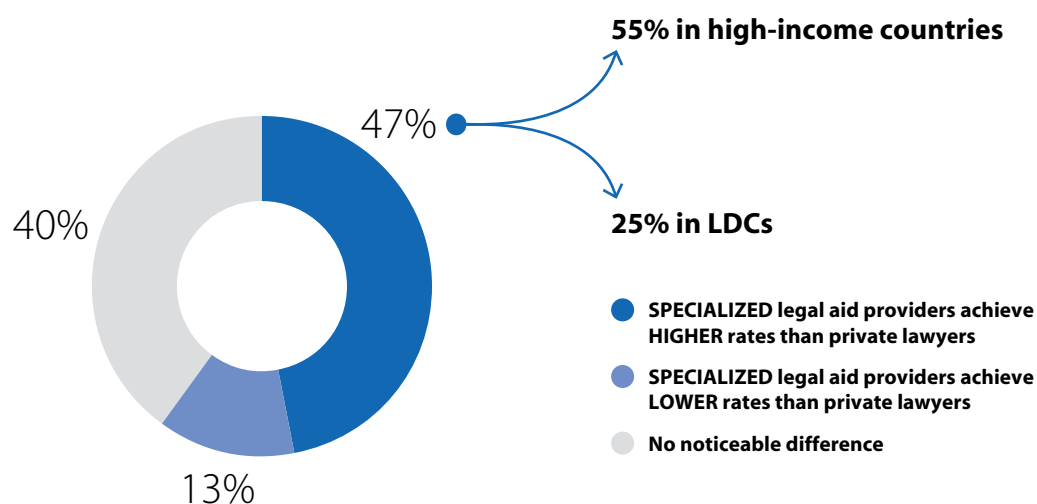


National experts also report that diversions, alternatives to pretrial detention and alternatives to imprisonment are achieved at a significantly higher rate when the legal aid providers have received specialized training to work with children (**Figure 53**).

Yet, despite such a positive assessment on case outcomes of specialized training for legal assistance to children, only 31% of national experts say that their country has made it mandatory for legal aid providers to undergo specialized training when representing children. Thus, this may be an area deserving further attention. Specialized training for handling cases involving suspected or accused children is important because a legal aid provider without specialized training may know the law applicable to a given situation, but may not have the skills to communicate with children in terms that they understand, or may not understand the factors influencing the way children perceive events that have taken place and report about them.

Figure 53 Performance of legal aid lawyers specialized in children's rights vis-à-vis private lawyers in achieving alternatives to imprisonment in criminal cases involving suspected or accused children, as estimated by national experts

Source: GS LA Expert Survey (n=32)



Despite legal aid lawyers performing better when they are specialized in children's rights, only 31% of responding countries have made it mandatory for legal aid lawyers to undergo a specialized training to qualify to work with children.

F. Legal aid in civil and administrative proceedings

Eligibility for legal aid in civil and administrative cases

The grounds for legal aid eligibility in civil cases vary considerably between countries, and even between jurisdictions within single countries having a federal justice system (**Figure 54**). Globally, financial need is the most common factor determining eligibility to legal aid in civil cases (73% of responding countries). Other frequently cited eligible beneficiaries in civil cases include children (42%) and persons with intellectual/mental disabilities (36%). Countries that have adopted a separate law on legal aid recognize financial need (78%) as a basis for eligibility to legal aid in civil matters more frequently than countries where no such law is in place (63%).

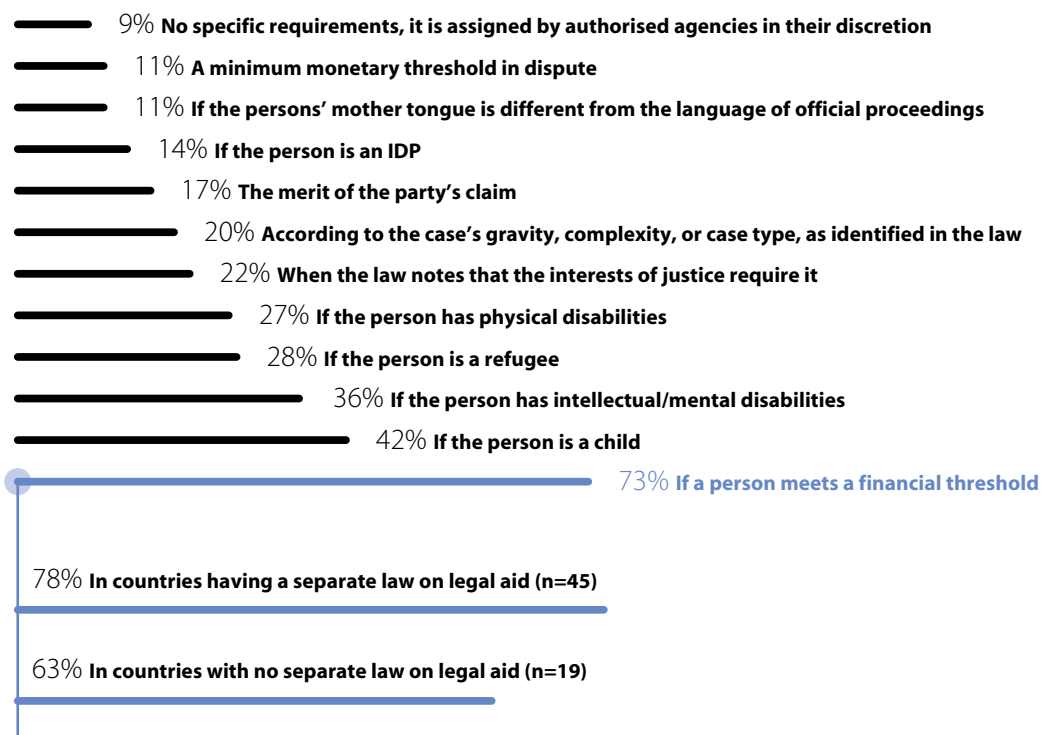
In civil cases where eligibility for legal aid is not automatically based on the type of case or its gravity, legal aid applicants may be requested to produce evidence of eligibility (such as proof of poverty). Since they often will not have this information at their disposal at the time of arrest, this may serve as a disincentive to request legal aid. States most often require evidence of low income (requested by 46% of respondents), evidence proving status as a recipient of welfare or State subsidies for indigent or vulnerable members of the population (requested by 36% of respondents) and/or evidence of family hardship, such as multiple children, single parent household, family member disability, etc. (requested by 28% of respondents).

Under the laws of responding Member States, legal aid is provided for a wide range of actions or stages in a civil or administrative matter (**Figure 55**). The most common type of legal aid for civil or administrative cases is the provision of primary legal aid (legal advice; 80%) and assistance during trial (74%). Once again, countries that have adopted a separate law on legal aid provide primary legal aid (85%) more frequently than countries where no such law is in place (68%).

Figure 54 What are the eligibility criteria for accessing legal aid services in civil cases in your country?

The most common eligibility criterion for accessing legal aid in civil cases is one's financial need.

Source: GSLA Member State Survey; respondents could select multiple answer choices (n=64)



Types of cases for which legal aid is provided in civil and administrative cases

As illustrated in **Figure 56**, the demand for legal aid from respondents as compared to complainants varies considerably by region, in civil cases. According to estimates by national experts, demand for legal aid from respondents is highest in the Middle East & North Africa (62%), while demand from complainants is highest in Eastern Europe & Central Asia (61%).

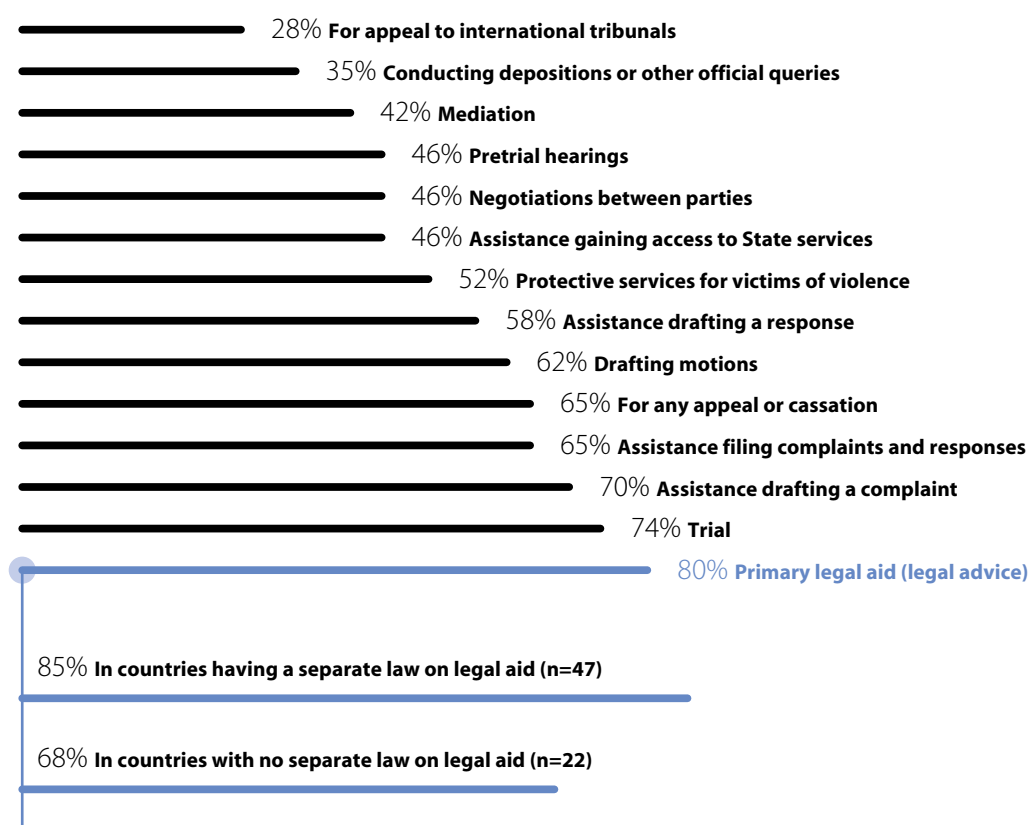
People seek out legal aid services for a wide variety of cases, most frequently for marital disputes, child custody issues, property issues and labour disputes. As depicted in **Figure 57**, the demand for legal aid services almost always outstrips the availability of services in LDCs, while the opposite seems to be the case in high-income countries.

However, it should be noted that the ‘demand’ curve in **Figure 57** represents the perceptions of national experts on the types of cases for which they think there is a demand for legal aid and does not reflect the actual demand.

Figure 55 For what actions or stages of a civil or administrative matter is a party eligible for legal aid under the law?

Primary legal aid (i.e. legal advice) is the most commonly provided form of legal aid in civil or administrative matters.

Source: GSLA Expert Survey; respondents could select multiple answer choices (n=69)



Demand for legal assistance in public interest litigation or class action is common across a range of cases (such as discrimination, labour rights, consumer rights, environmental protection and health), with close to three quarters of national experts estimating that there is a demand for this type of legal aid, irrespective of a country’s income level (**Figure 58**). Yet, few Member States from LDCs (14%) report that State-funded legal aid is available for public interest litigation in their country, compared to 67% in high-income countries.

Figure 56 Estimated demand for legal aid from respondents and complainants in civil and administrative cases

Source: GSLA Expert Survey

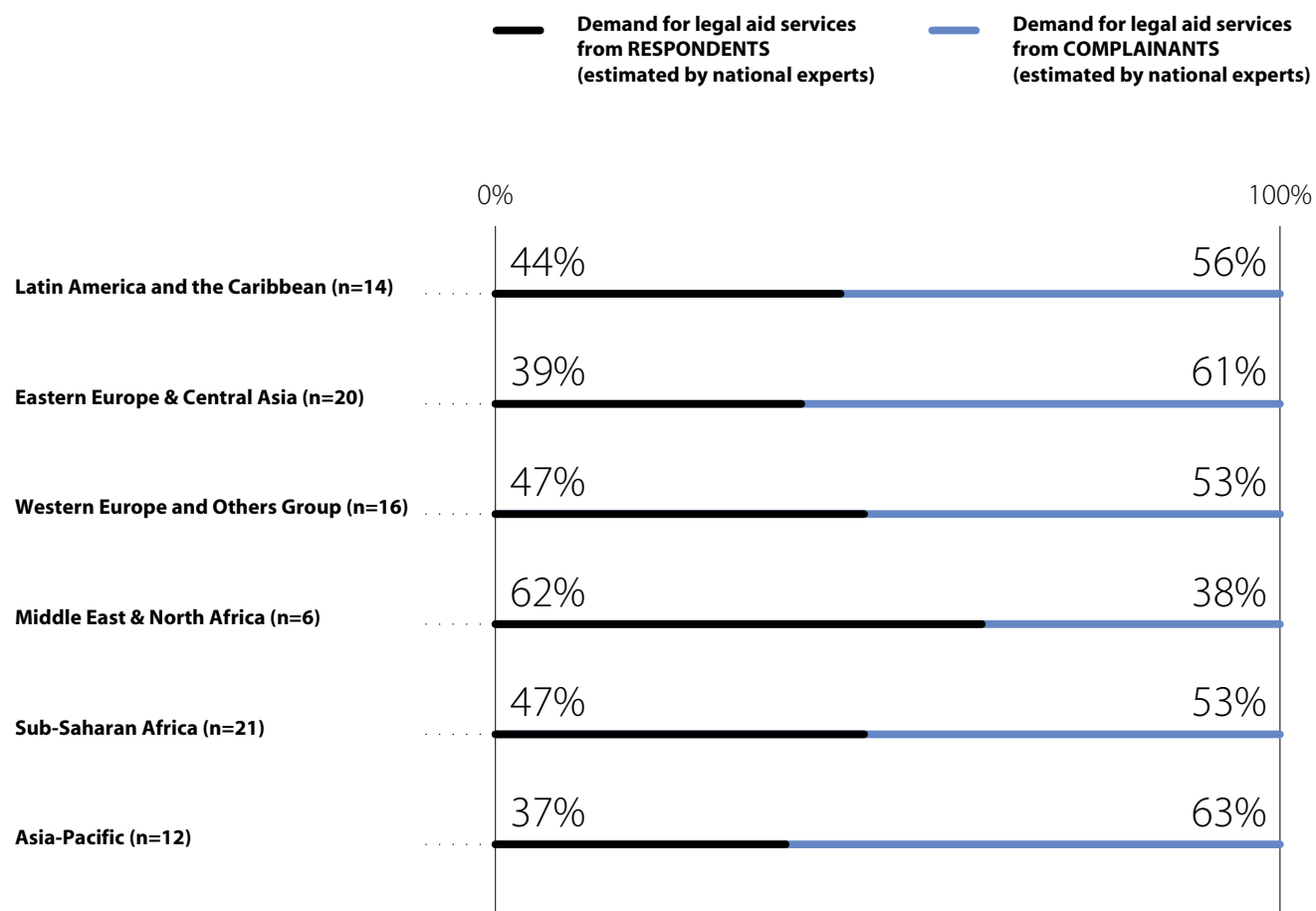


Figure 57a Demand versus availability of civil legal aid in LDCs

Demand for legal aid in civil cases frequently outstrips availability of services in LDCs.

Source: GSLA Member State Survey and Expert Survey

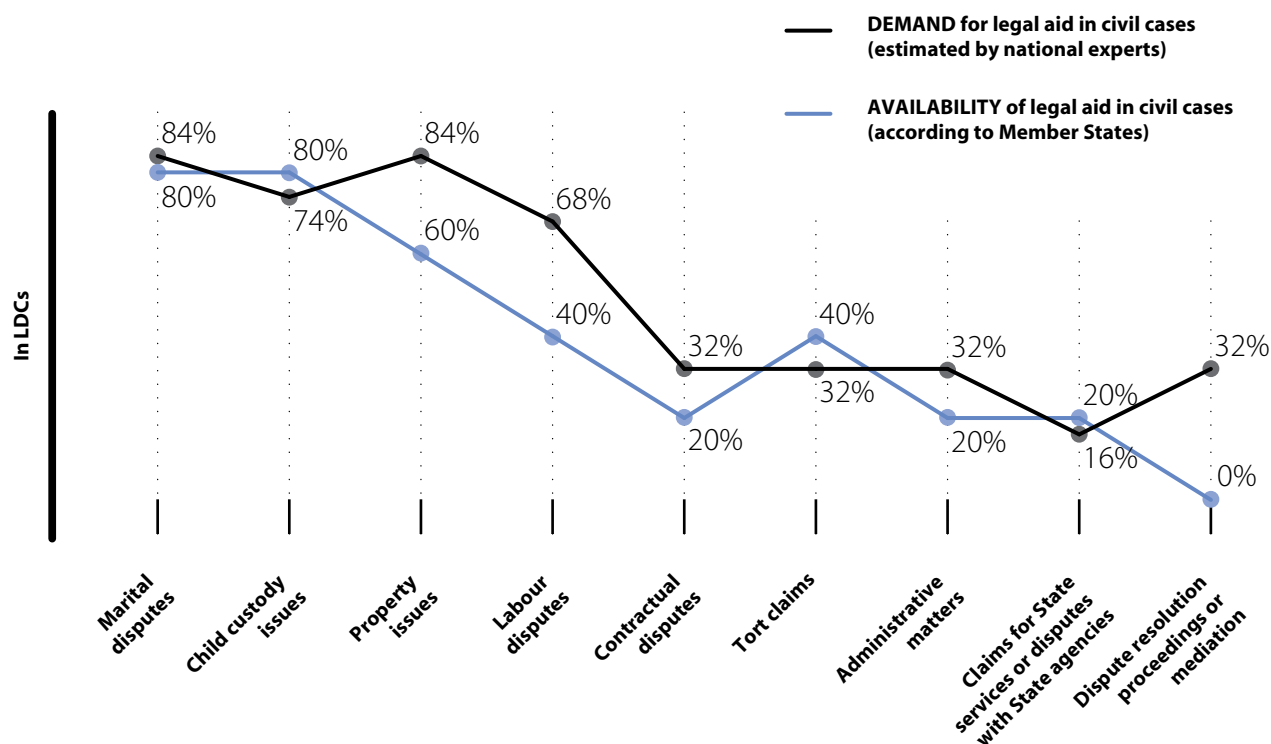


Figure 57b Demand versus availability of civil legal aid in high-income countries

Demand for legal aid in civil cases is seemingly met in high-income countries.

Source: GSLA Member State Survey and Expert Survey

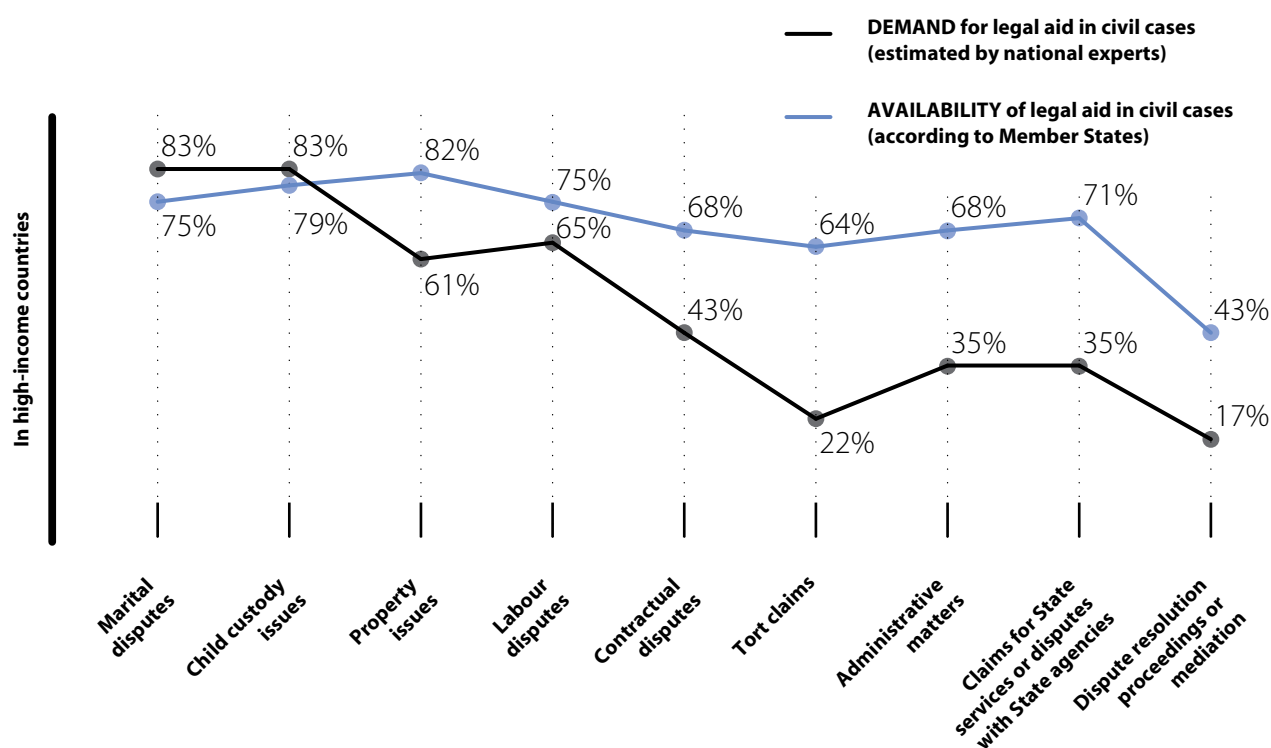
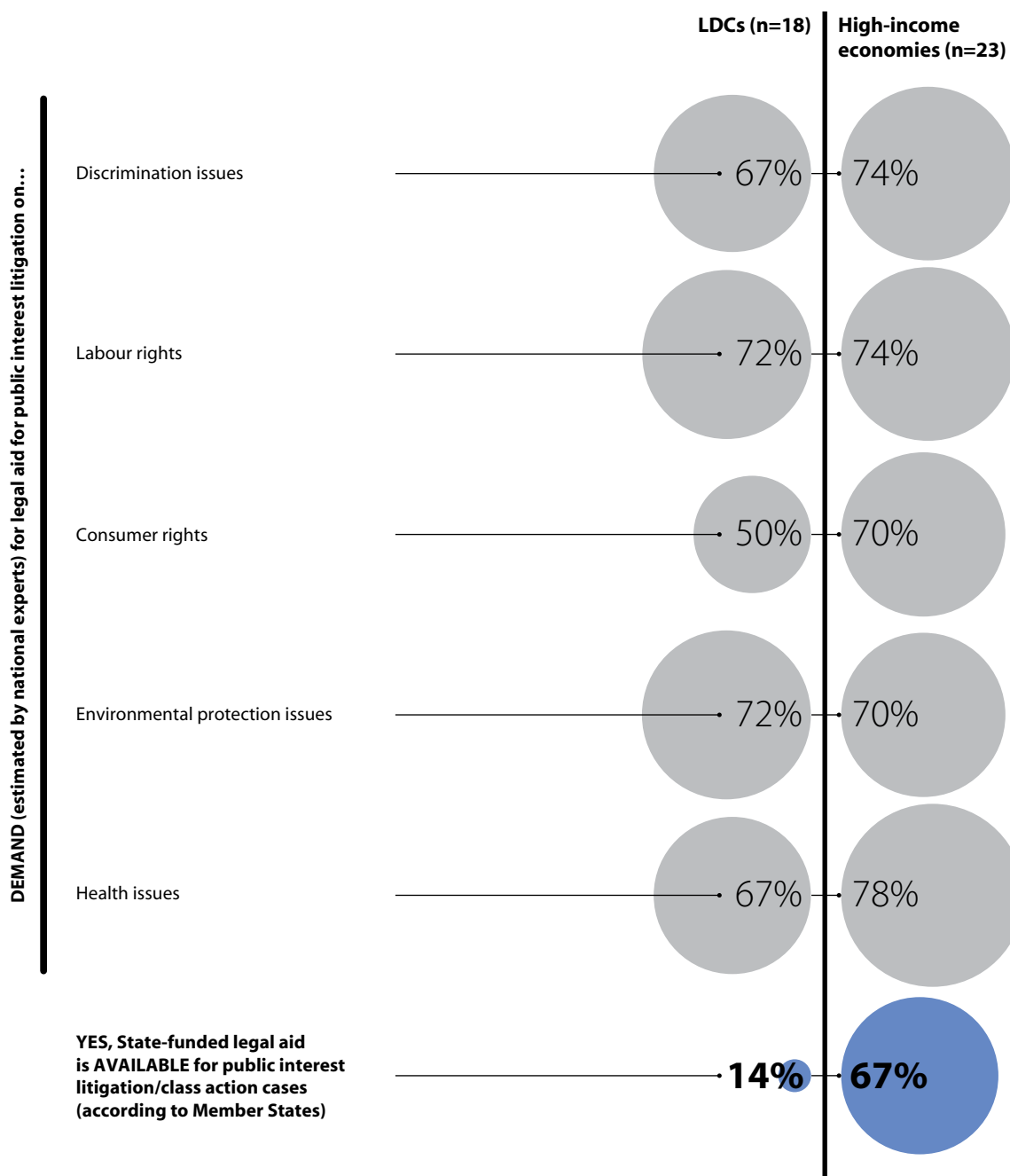


Figure 58 For which type of cases do you think there is a demand for legal aid for public interest litigation/class action in your country?

Demand for legal aid in public interest litigation or class action is high across all development levels, but that demand remains unmet in LDCs

Source: GSLA Member State Survey and Expert Survey



G. Legal aid and informal justice systems

When in need, people tend to seek assistance from the institutions they trust the most. This may be particularly true for marginalized populations, who may fear government-affiliated actors because of past incidents of abuse or mistreatment. Informal justice mechanisms strive to resolve problems without going to court—through alternative dispute resolution or community action—by identifying practical, context-specific solutions to everyday problems faced by communities. Informal justice actors include customary authorities, such as village chiefs, local elders and religious leaders, as well as community paralegals, NGO personnel and community-based volunteers.

As displayed in **Figure 59**, the most common problems handled by informal justice mechanisms globally are marital or family disputes (67%) and land and property disputes (58%). To a lesser degree, informal proceedings are also used to resolve minor criminal cases (28%), although this practice is more common in some regions than others, such as the Asia-Pacific (50%) and Sub-Saharan Africa (47%).

National experts cite various reasons to explain why people prefer to resolve disputes through informal justice proceedings. Some explanations are of a practical nature—that “informal courts are more conveniently located than formal courts in remote areas” and “informal proceedings take less time.” Another frequently cited reason is that people place a higher level of trust in the informal justice actors (such as “judges or decision-makers in informal proceedings usually know the parties and can better judge what is a just outcome”). Once again, there is considerable regional variation in the reasons given for use of informal justice systems (**Figure 60**), except for the universal recognition amongst national experts that speedier case processing time in informal justice proceedings is one of the top two reasons across regions explaining people’s preference for informal proceedings.

Figure 59 What kind of cases and disputes do informal justice proceedings handle in your country?

Source: GSLA Expert Survey; respondents could select multiple answer choices (n=72)

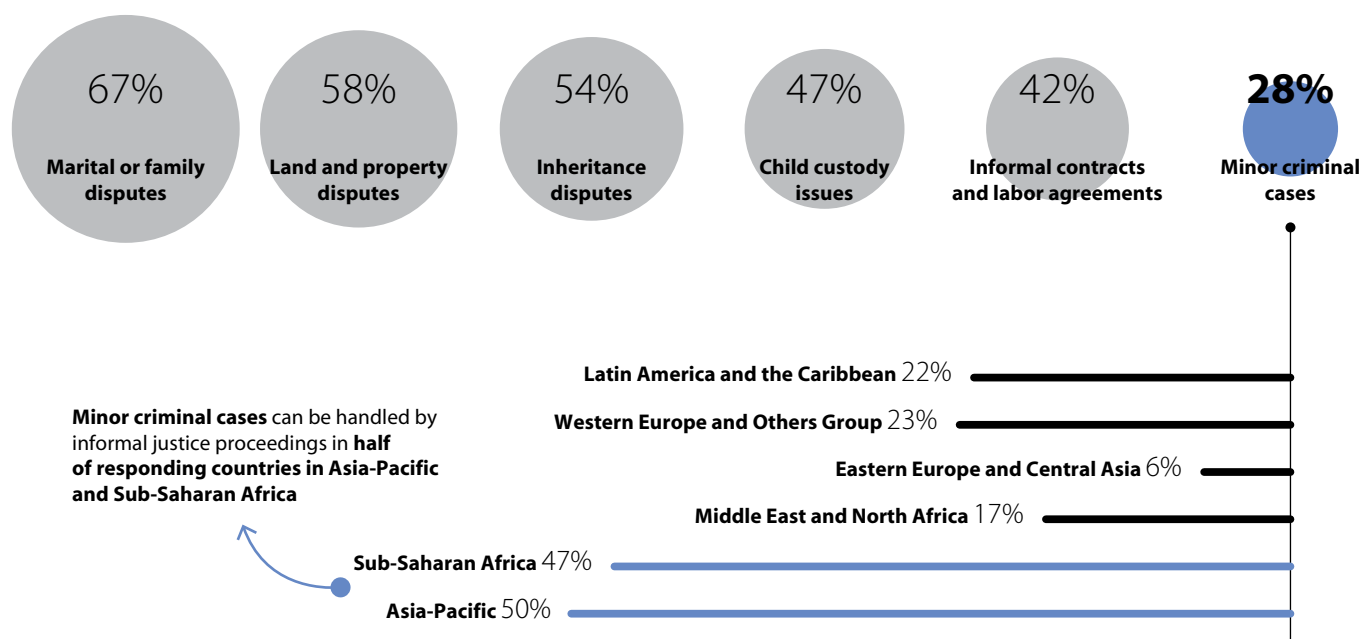
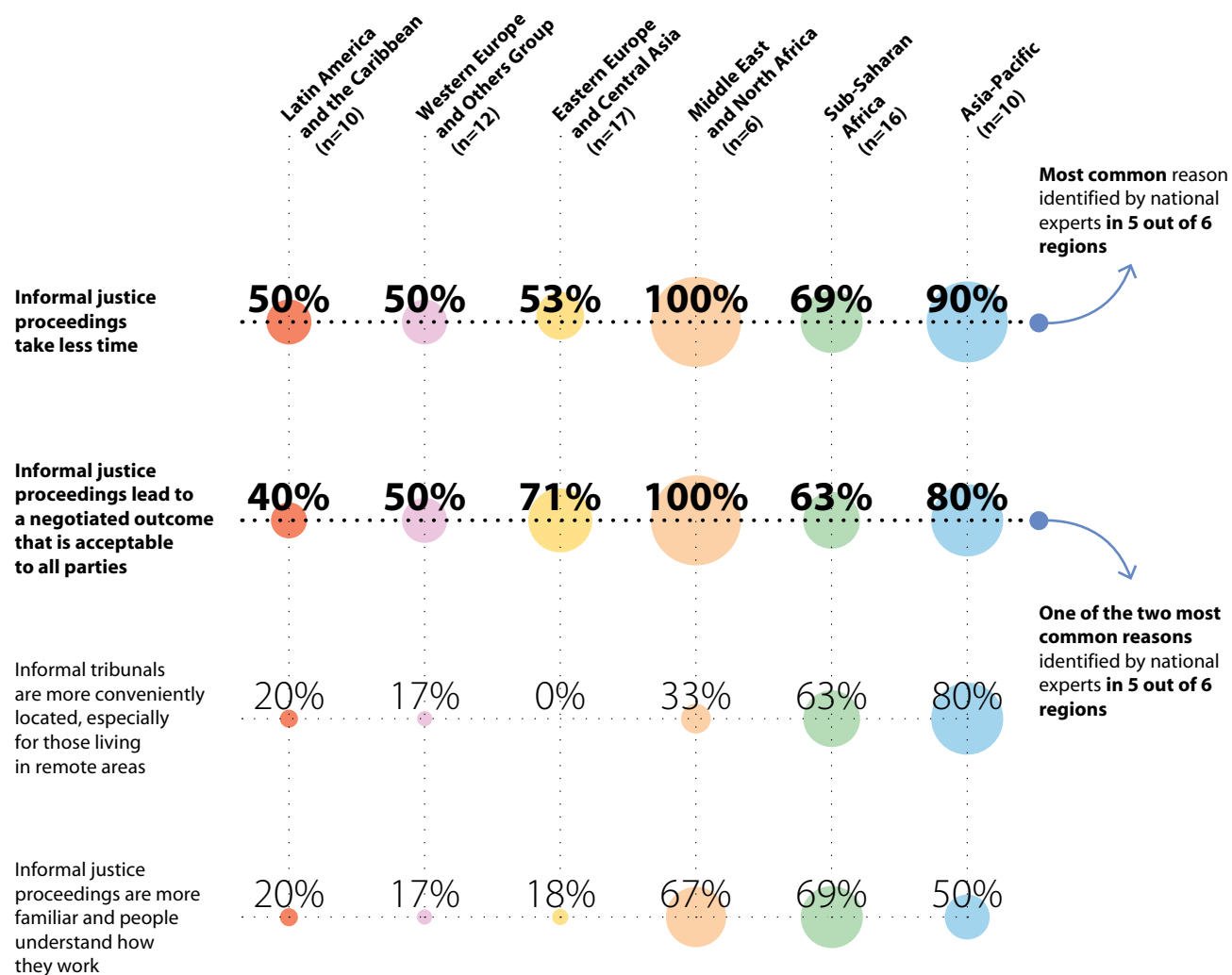


Figure 60 For what reasons do people prefer to resolve disputes through informal justice proceedings?

Source: GSLA Expert Survey; respondents could select multiple answer choices



When legal problems are resolved out of the formal justice system, the poor, the disabled, the elderly, children and women can be at a considerable disadvantage if they do not have legal assistance during the process. For instance, vulnerable persons may fail to pursue legitimate claims or settle for less because they lack awareness about their legal rights and do not know how to assert them. Therefore, it is important that lawyers or paralegals be able to provide basic legal information, advice and assistance to guide people through informal justice proceedings. At the global level, half (52%) of national experts indicate that lawyers or paralegals are able to provide assistance in formal mediation and alternative dispute resolution processes, while only 9% say that they are allowed to provide such assistance in customary or religious mediation/adjudication processes (**Figure 62**).

When a case is too serious or complex for informal justice actors to handle, or when no resolution can be found, the case is often referred to a formal court system. By the same token, it may also be that the government faces budget constraints, does not have the capacity to undertake the case itself, or has a conflict of interest with the suspect/defendant. In such cases, a referral mechanism can be helpful, whereby the State and non-governmental legal aid providers refer cases between formal and informal justice systems, as appropriate. As illustrated in **Figure 62**, such referral mechanisms are fairly well-established for formal mediation and alternative dispute resolution processes in WEOG and Asia-Pacific, but less so in other regions.

Figure 61 Do informal justice mechanisms in your country allow a lawyer or a paralegal to provide assistance in the mediation/adjudication process?

A lawyer or a paralegal is more frequently allowed to provide assistance in formal mediation than in customary or religious mediation.

Source: GSLA Member State Survey

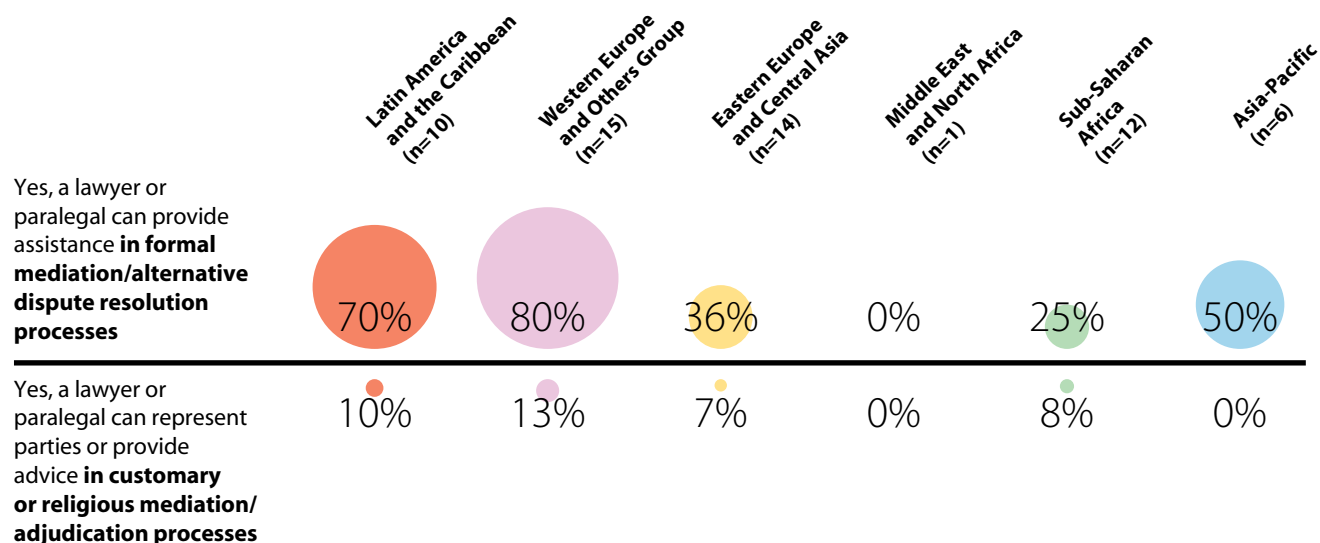
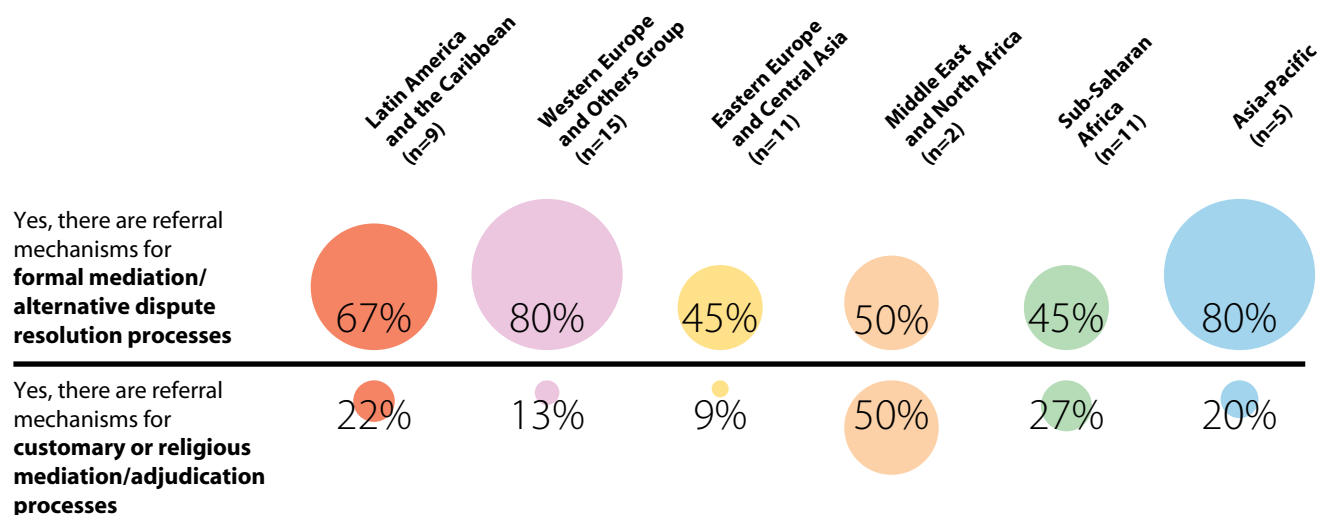


Figure 62 Are there mechanisms that allow referrals between the formal/statutory legal system and informal justice systems?

Case referral mechanisms between formal and informal justice systems are commonly used for formal mediation, but less so for customary or religious mediation.

Source: GSLA Member State Survey



H. Monitoring the scope and quality of legal aid services and remedies

Monitoring mechanisms

Guideline 17 — Research and data

“States should ensure that mechanisms to track, monitor and evaluate legal aid are established and should continually strive to improve the provision of legal aid.”

UN Principles and Guidelines

In a majority of Member State respondents, performance monitoring and data collection is a formal responsibility of legal aid authorities. As shown in **Figure 63**, functions such as “establishing and monitoring performance standards on the delivery of legal aid” (a function of legal aid authorities in 66% of responding States), “monitoring expenditure of legal aid funds” (in 56% of responding States) and “reviewing data on legal aid and incorporating it into new legal aid policy” (in 47% of responding States) are regularly included amongst official responsibilities of legal aid authorities.

When asked whether there is a mechanism in place in their country to monitor the quality of legal aid services (**Figure 64**), the bar association is the institution most frequently cited by Member States (35%). A fifth of Member State respondents say that the legal aid board or the Ministry of Justice perform monitoring functions. Only a tenth (11%) of respondents report not having such an institutional mechanism in their country.

However, it is striking that the monitoring mechanism in a given country is very often managed by the same institution that has the chief responsibility for the administration of legal aid, which can raise questions about the independence and impartiality

Figure 63 Which of the following is included among the responsibilities of the legal aid authority?

In a majority of responding Member States, establishing performance standards and monitoring the delivery of legal aid is a formal responsibility of legal aid authorities.

Source: GSLA Member State Survey; respondents could select multiple answer choices (n=62)

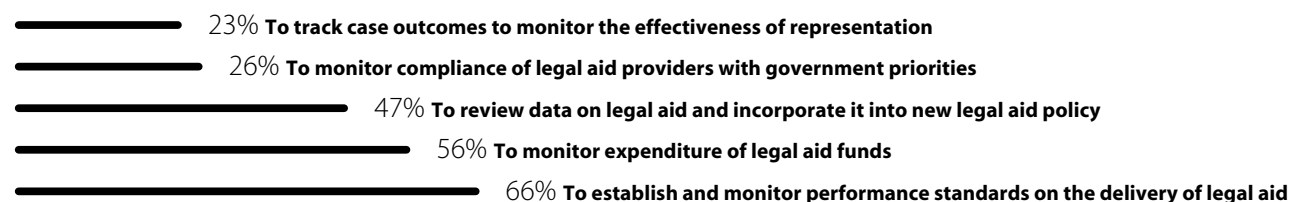
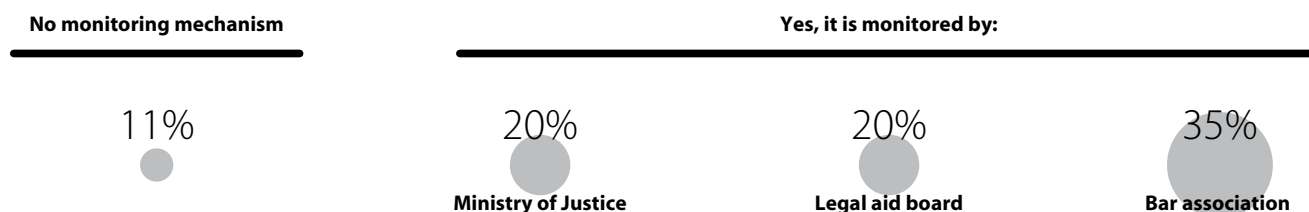


Figure 64 Is there a mechanism to monitor the quality of legal aid services in your country?

The bar association is most often the institution in charge of monitoring the quality of legal aid services.

Source: GSLA Member State Survey; respondents could select multiple answer choices (n=65)



of monitoring activities (**Figure 65**). Such an arrangement can also inhibit legal aid providers' inclination to zealously advocate for their clients' interests, given that legal aid beneficiaries often come up against State parties in litigation. This may pose a problem to legal aid providers whose livelihood depends on favourable reviews by the same institution that is also responsible for hiring and paying them.

A majority (57%) of Member State respondents indicate that data to monitor the quality of legal aid services is mainly collected through the review of complaints lodged by legal aid recipients. This method may not be optimal as many legal aid clients lack the legal sophistication, time or incentive to draft a complaint. Only a quarter of responding Member States apply a more proactive approach to monitoring, such as through satisfaction surveys filled out by legal aid recipients (**Figure 66**).

Figure 65 Percentage of countries where the bar association or the legal aid board has the chief responsibility for the management of legal aid, and for performing monitoring functions

The independence of the monitoring function may be affected when the institution that monitors the quality of legal aid services is also the institution that has the chief responsibility for the management of legal aid.

Source: GSLA Member State Survey

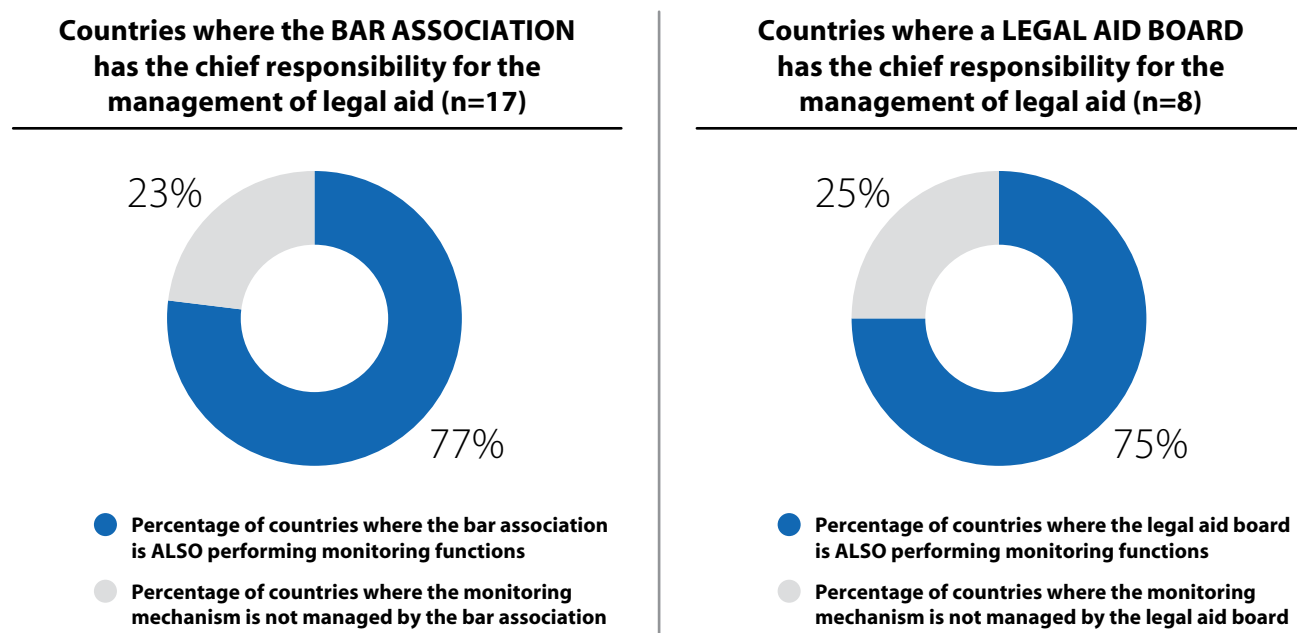
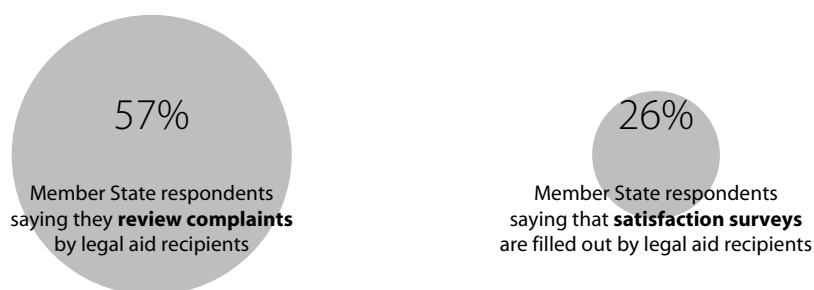


Figure 66 How is data collected to monitor the quality of legal aid services?

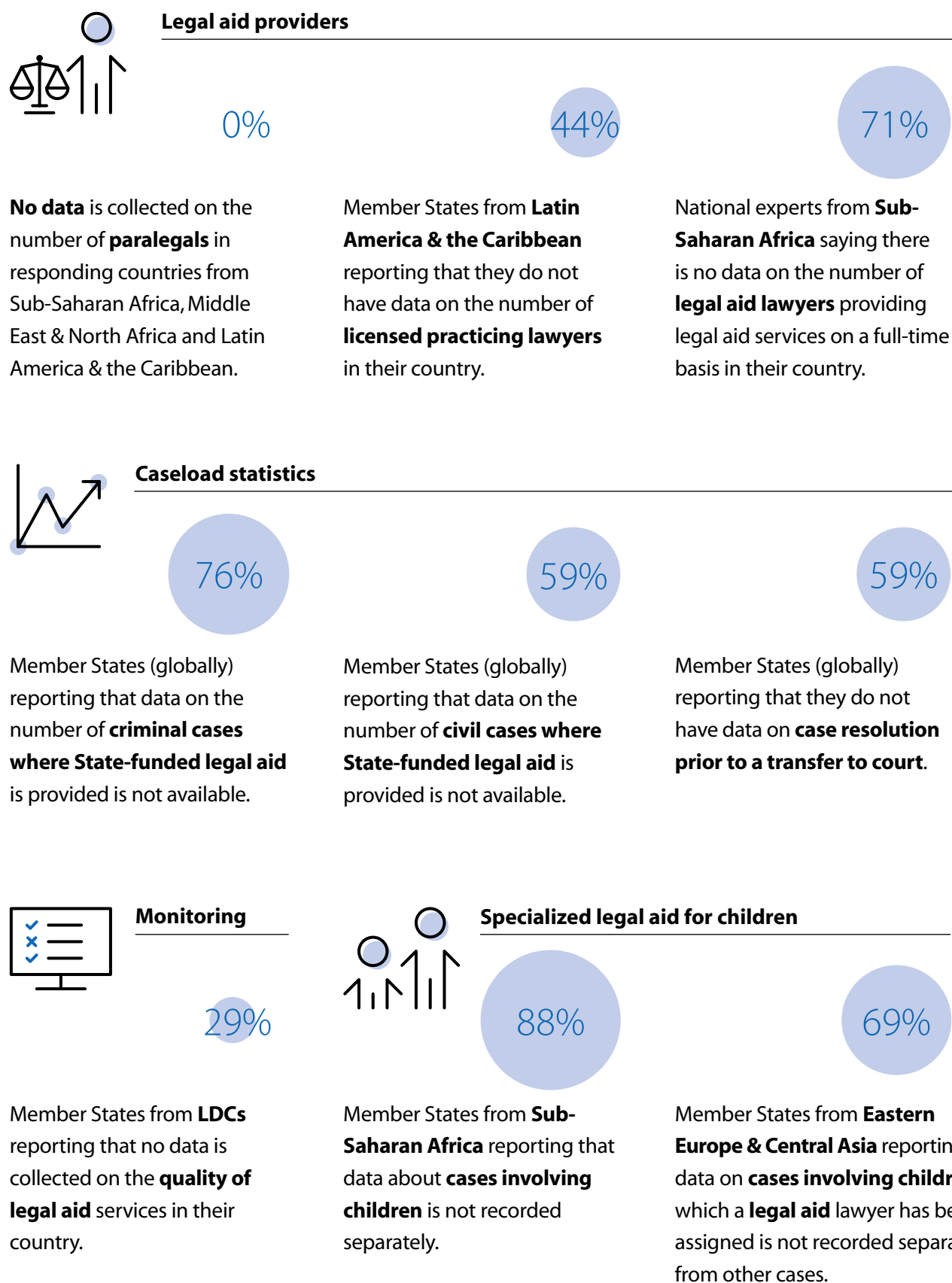
Source: GSLA Member State Survey (n=65)



The GSLA surveys has revealed numerous gaps in data across legal aid systems, as detailed in **Figure 67**. It is important critical for Members States to invest in systems that allow for the regular collection of data that is disaggregated by gender, age, socioeconomic status and geographical distribution of legal aid recipients. When properly mined, such data can yield tremendous benefits, notably by helping to identify culturally appropriate, gender-sensitive and age-appropriate solutions to improve the provision of legal aid in a given country context. Sound data can also play a catalytic role in improving communication, coordination and cooperation between all legal aid actors, especially at the local level.

Figure 67 Data gaps in legal aid systems

Source: GSLA Member State Survey and Expert Survey



Remedies

Principle 9 — Remedies and safeguards

“States should establish effective remedies and safeguards that apply if access to legal aid is undermined, delayed or denied or if persons have not been adequately informed of their right to legal aid”

UN Principles and Guidelines

In response to the question of whether proceedings must cease when a person has a right to legal aid but no legal aid provider is available, Member States (82%) provide strong reassurance that proceedings must indeed cease until a legal aid provider arrives (**Figure 68**).

Yet, in practice, only half of national experts from LDCs say that a party who is denied access to legal aid has a right to appeal that decision, as depicted in **Figure 69**.

Figure 68 If a person has a right to legal aid but no legal aid provider is available, must the proceedings cease until a legal aid provider arrives?

Source: GSLA Member State Survey (n=65)

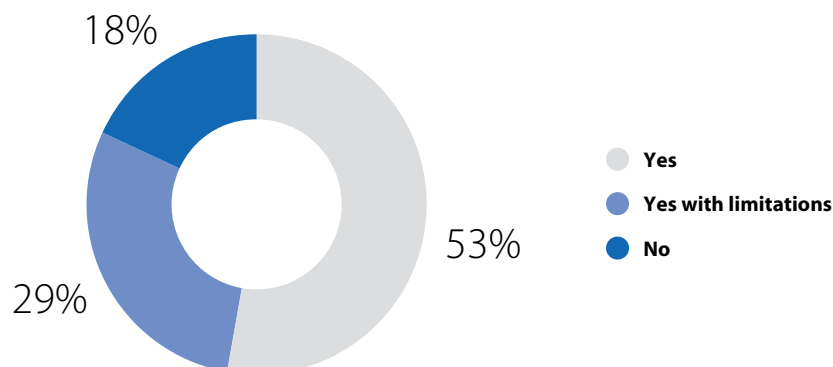
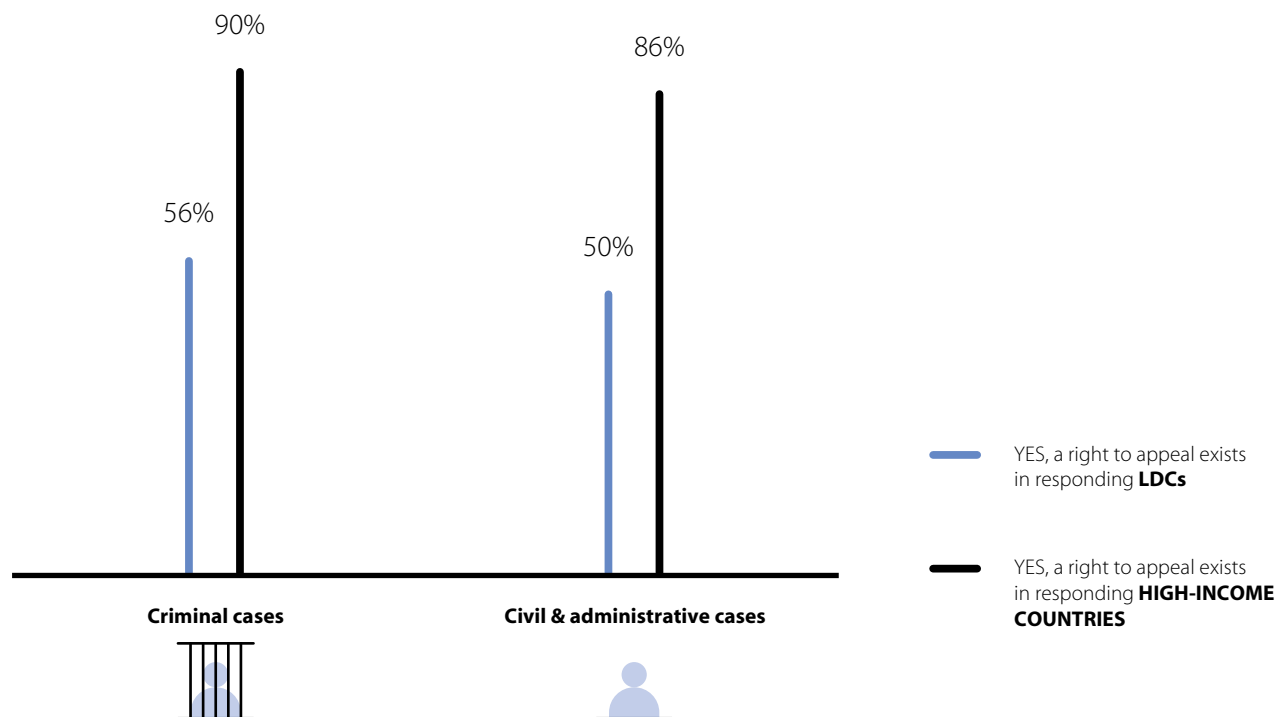


Figure 69 If a party is denied access to legal aid, is there a right to appeal that decision?

A party who is denied access to legal aid is significantly less likely to have a right to appeal that decision in LDCs than in higher-income economies.

Source: *GSLA Expert Survey*



I. Priority areas for support

When asked in which areas would their country benefit from technical assistance and/or policy and programme support to strengthen the provision of legal aid in their country, Member States (44%) and national experts (82%) unanimously selected the “development of quality criteria for legal aid providers” as their most pressing request. Yet, such priority areas for support are undeniably context-specific, as illustrated by the considerable variation observed across countries (**Figure 70**).

Overall, responding Member States selected less priority areas from the list of options than the responding national experts, which explains why aggregate Member State figures for any given area are for the most part lower than those of national experts. Yet, it is noteworthy that Member States and national experts largely agree in their assessment of the areas that warrant attention and support, relatively over others. In Latin America & the Caribbean, in the Middle East & North Africa, and in WEOG, the development of quality criteria for legal aid providers is highlighted as the first priority, while in Sub-Saharan Africa, the development of action plans and policies is more frequently identified as being the primary issue requiring support. It is only in Asia-Pacific that Member States and national experts diverge in their assessment of priority areas, with the former most frequently stressing a need for the provision of legislative drafting advice and training, and the latter aligning with other regions in emphasizing the importance of developing quality criteria for legal aid providers.

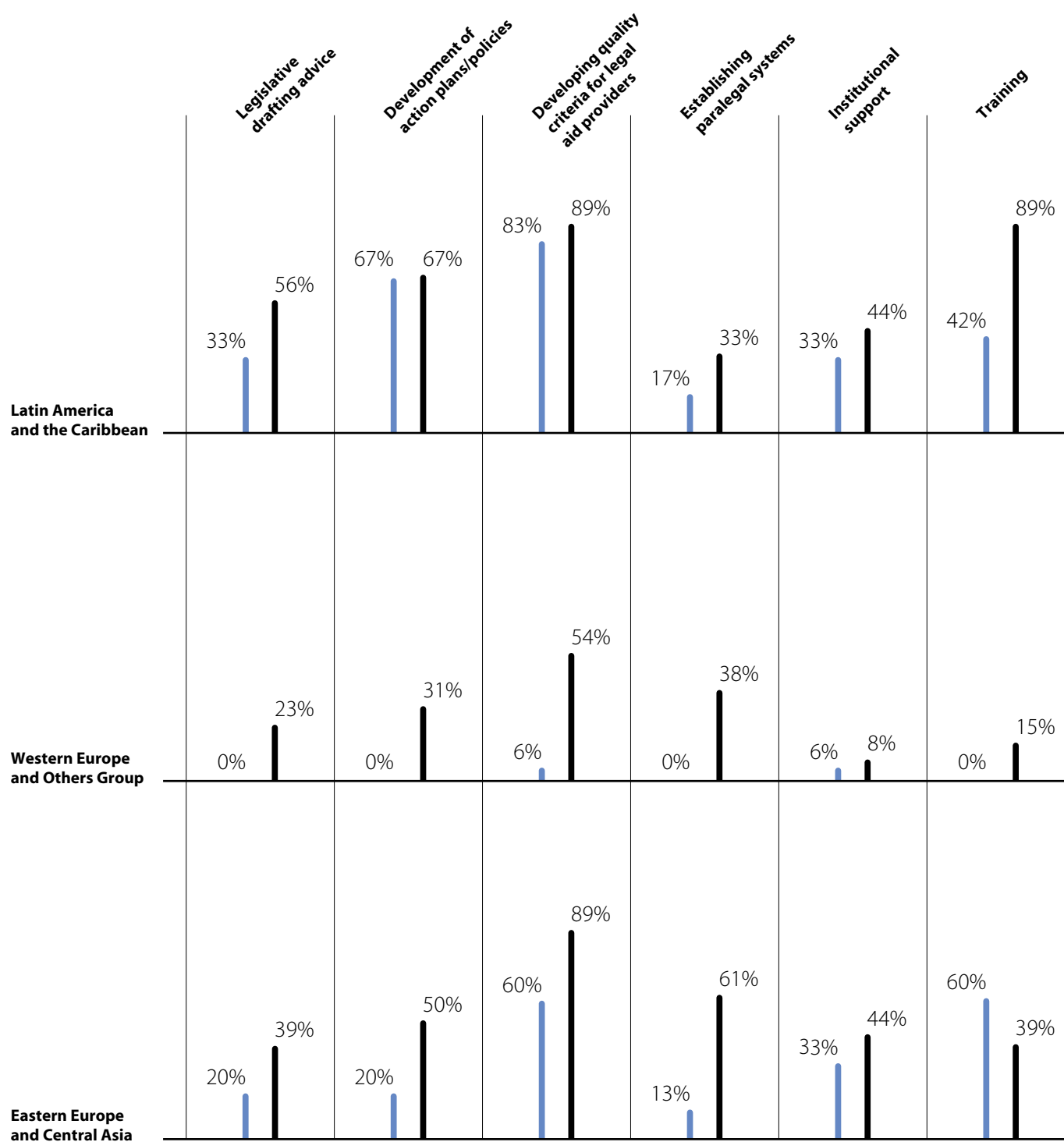
An assessment of the population’s legal aid needs is critical in analyzing whether people are able to use legal aid mechanisms to defend themselves or assert their rights, what factors affect whether they can do so, and what reforms and programmes can make the legal aid system more responsive to their needs. In the absence of such data, States are left to spend funds based on conjectures, which often leads to suboptimal allocation of resources across the country.

Globally, a majority of Member State respondents (62%) indicate that they have not conducted any form of needs assessment (**Figure 71**). When looking at the subset of countries that reformed their legal aid system after 2005, that proportion remains unchanged. This may suggest that reforms in these countries were not necessarily triggered by a rigorous analysis of the needs emerging from such an assessment conducted prior to the reform. It may also suggest that reforms which were recently carried out have not been followed by needs assessment exercises to help inform their implementation.

When zooming in on those countries that have conducted an assessment of legal aid needs, it is noteworthy that most have an independent legal aid administration. This apparent correlation may indicate that the establishment of an independent legal aid administration tends to follow the conducting of needs assessments, or that it is independent legal aid administrations themselves that call for needs assessments to be conducted.

Figure 70 In which areas would your country benefit from technical assistance to strengthen the provision of legal aid?

Source: GSLA Member State Survey and Expert Survey; respondents could select multiple answer choices



— Responses from Member States

— Responses from national experts

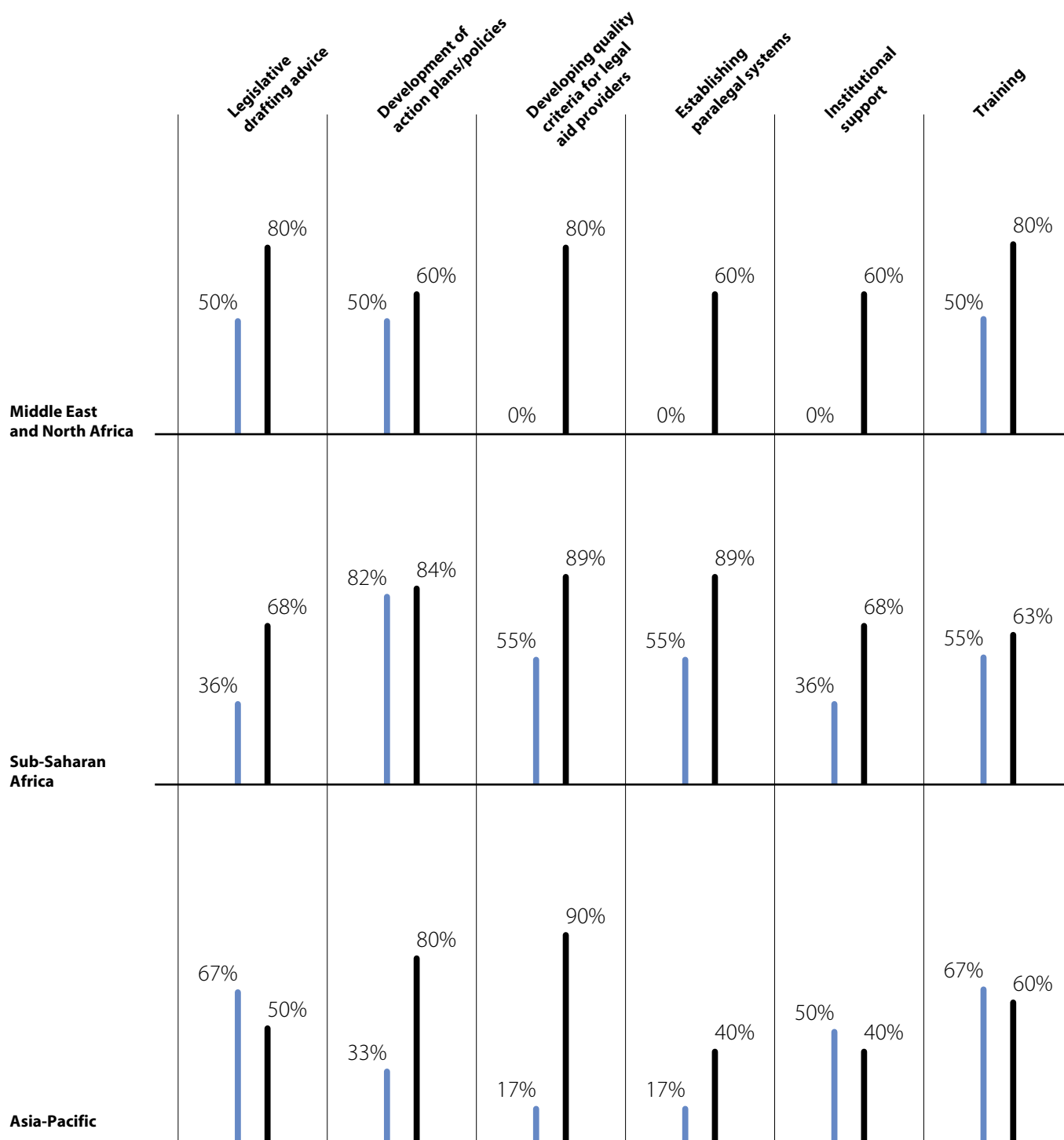


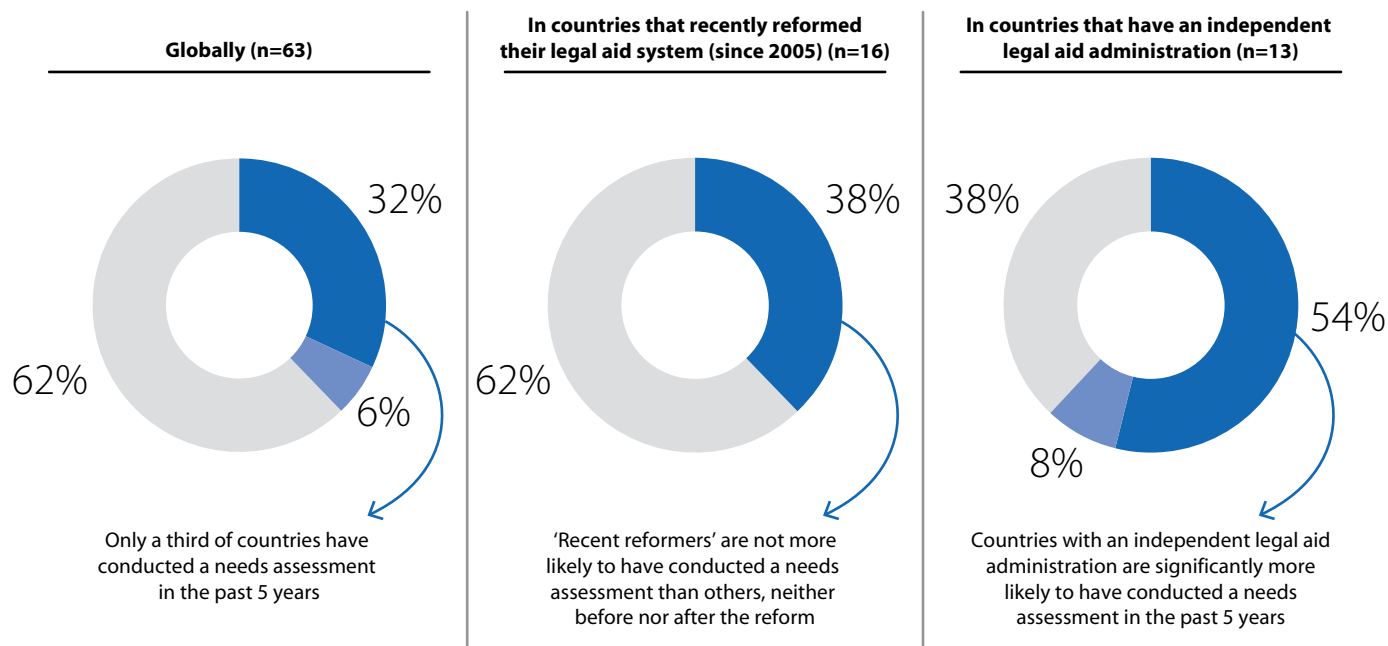
Figure 71 Has the State conducted any assessment of the legal aid needs of the population?

Source: GSLA Member State Survey

● Yes, a needs assessment was conducted in the past 5 years

● Yes, a needs assessment was conducted more than 5 years ago

● No, a needs assessment was never conducted



Box 18: Global Study on Legal Aid Case Study: the Democratic Republic of Congo

As part of the GSLA, an in-depth country case study was conducted on the DRC. The case study examined legal aid priorities and how services are delivered in a post-conflict country with regions still affected by conflict and violence. With fragile State institutions, there are large gaps in service delivery and specific challenges for the State to be able to ensure access to justice for the population for current, as well as past violations. The latter can also include cases involving the use of SGBV as a weapon of war and crimes against humanity. The case study includes a desk review of national legal and institutional framework, interviews and focus group discussions with legal aid providers and users in three Eastern Provinces of North Kivu, South Kivu and Ituri and in Kinshasa. Below are some of the key findings and extracts from the case study. For a more detailed overview, please refer to the *Global Study on Legal Aid: Case Studies* publication.

The international community has invested much attention and resources into attempting to tackle impunity and conflict-related crimes through the international criminal justice system, as well as building capacity of national civil and military justice systems. However, the systemic causes and challenges preventing access to justice remain, due to the vast needs and the geographical extension of the country, the continuous security challenges, the fragility of the State, including widespread corruption, weak presence and lack of trust by the population in the State, and the relative lack of financial resources and infrastructure. Given the extent of grave crimes in the East of the DRC, several justice programmes (UN, EU, international NGOs) have focused on that region, by attempting to go beyond emergency humanitarian support and adopt long-term, developmental approaches. This also meant supporting the government to go beyond supporting legal aid of individual survivors and perpetrators, to envisioning legal aid as a pillar of the rule of law and the necessary part of justice sector reform. Currently, due to limited political commitment and resources, the constitutional right to legal aid is not being fulfilled. To fill the gap, legal aid initiatives, including representation and paralegal support, are being led by a vast array of internationally supported civil society and the bar association.

Legal and policy framework

De jure legal aid is a right for all Congolese, whether by applicable international law or the national legal framework. The legal framework is complex and intricate, stipulating a constitutional right of access to justice for all and legal representation in criminal cases (since 2006), and the 1979 Organic Law of the Bar stipulating lawyer's responsibility to defend indigents, as well as a right to the exoneration of legal costs for indigents. However, research revealed that the national legal framework on the right to legal aid lacks the necessary specificity and clarity, which has created regulatory and implementation gaps. The fragility within State institutions *de facto* makes it difficult for the poor to obtain the papers to prove their indigence, including the many bureaucratic obstacles that facilitate corruption. Since 2007, the national plan for justice reform has been focusing on implementing the right to legal aid into practice, including by developing the draft law on legal aid.

A disconnect and distrust between the formal and customary justice systems

According to research conducted for this case study, there is an increasing lack of trust in the formal justice system, due to reasons such as the limited State presence throughout the country, the lack of capacity to deliver justice services to all citizens and to tackle impunity and prosecute grave crimes, as well as corruption and efficiency in the provision of public services.¹³⁶ Thus, the population continues to use customary systems to deal with their disputes and grievances as it is easier, more accessible, cost effective and more familiar.

The international community, however, continues to invest in the formal system and legal aid actors continue to refer people to the formal justice system without fully considering where most people go to receive justice remedies. In cases of SGBV, this often means that legal aid actors refer survivors to the criminal justice system despite a rate of 3% of convictions in cases of SGBV. While the risk of stigmatization exists in both formal and informal systems, it may be easier to receive redress and protection in customary systems, though

136. See also UNDP, MONSUCO and Harvard Humanitarian Initiative "searching for lasting peace, Survey on Perceptions and Attitudes about Peace, Security and Justice, 2014, at <http://hhi.harvard.edu/publications/searching-lasting-peace-population-based-survey-perceptions-and-attitudes-about-peace-0>

questions remain about how far customary systems are able to uphold human rights standards.

Services and demand

Estimated figures show that in the DRC, there are between 800-1000 lawyers spread across 12 sub-regional bar associations, while the number of paralegals is unknown, as a result of lack of formal recognition and of paralegals. The regional bar associations are meant to designate lawyers for *pro bono* legal aid. However, in 2014-15, the annual case load of these lawyers in Goba was only 190 cases.¹³⁷ In most cases, the *pro bono* cases were assigned to interning lawyers because of the lack of financial remuneration. This clearly illustrates the lack of legal aid services available/provided to the majority of detainees, denying them the right to a fair trial.¹³⁸

Civil society has been trying to meet the demand for legal aid through initiatives with a variety of focus areas (women survivors of SGBV, pretrial detainees, victims of torture). While these initiatives have generally been able to respond to immediate priorities and address gaps, there are many questions around the sustainability of such programmes funded with external resources, without linkages to the State legal aid system.

Recommendations

- Ensure political commitment as well as financial and human resources to adopt and implement the national legal aid strategy, through inclusive and consultative processes;
- Formalize the role of the bar associations, as well as of paralegals for their provision of quality services, as well as linkages and complementarity with CSOs;
- Estimate the cost and allocate necessary budget to establish a comprehensive legal aid system in the DRC;
- Find entry points to engage customary justice systems to connect with the formal justice system;
- Ensure that support from the international community is in partnership and coordination with national actors, and promote communication and cooperation to promote coherence of such efforts.

Source: UNDP Democratic Republic of Congo

137. Interview with the Head of the Goma Bar Association.

138. Study on legal aid in the DRC, *Avocats sans frontières/EU*, 2014: http://www.asf.be/wp-content/uploads/2014/02/ASF_RDC_EAL_2013.pdf

Part III



"One of the consequences of having a weak legal aid system is that people get wrongly convicted and they lose jobs. We've seen many breadwinners sent to jails for no good reason, and their entire family falls back into poverty. Keeping people in prison for a long time without a good reason harms the economy. And spending a lot of public funds on petty crimes and petty offences that could have been settled outside of court is a real loss of public money, which could be used much more productively elsewhere."

Andrews Kananga, Executive Director, Legal Aid Forum, Rwanda



Conclusions and Recommendations

A. Key findings and conclusions

1. The right to legal aid

The right to legal aid is recognized in every country responding to the Member State Survey, either expressly affirmed in law or recognized as an essential component of the right to a fair trial.

- As many as 71% of responding Member States have enacted a law dedicated to legal aid. However, this is less often the case in the Middle East & North African region (33%).
- Similar proportion (67%) of respondents have reported that their constitution recognizes the right to legal aid either directly in the constitution, or by development case law or legislation.

Legal recognition of the right to legal aid is a relatively recent phenomenon.

- Nearly half of responding countries have recognized this right by law after 1980, and close to a fifth of the countries have recognized the right to legal aid since 2000.

The early 2000s ushered in a massive wave of reforms, with 86% of responding countries revamping their legal aid systems sometime during the past 15 years.

- The pace of reforms remains high: as many as 40% of responding countries (mainly in Eastern Europe & Central Asia, WEOG and Sub-Saharan Africa) have launched a reform of their legal aid system in the past three years (2012-15).

Less than 40% of responding LDCs have said that legal aid services are available in rural areas; this proportion increases only slightly to 64% in lower-middle-income countries.

- Meanwhile, the availability of legal aid services in rural areas is consistently high (93%) for those Member States that have conducted a legal aid

needs assessment as well as those that have officially recognised paralegals (82%) as legal aid providers working at the grassroots.

- Yet, even in those Member States where legal aid services are available in rural areas, a majority of national experts agree (61%) in their assessment that the quality of services offered in urban areas is higher.

Nearly a third (29%) of Member States have said they have never conducted an awareness-raising campaign on the right to legal aid and on how to access legal aid services.

- This limited investment in disseminating public information may explain why national experts across all regions have unanimously pinpointed “people’s lack of awareness about the availability of legal aid services at little or no cost” as one of the most critical challenge facing their country’s legal aid system.
- Countries that have undertaken legal aid reforms in the past five years (2010-15) are not any more likely than others to have carried out public information campaigns (30% of countries that have undergone recent reforms have not yet conducted an awareness campaign on legal aid).

Globally, a majority of Member States (62%) have indicated that they have not conducted any form of a needs assessment; ‘recent reformers’ are not any more likely than others to have carried out such assessments.

- With regard to those countries that have conducted an assessment of their legal aid needs, it is noteworthy that most have an independent legal aid administration.

2. Legal aid providers

Most legal aid services are delivered by CSOs in LDCs, while State-funded legal aid entities are the main providers of legal aid in high-income countries.

- When asked to estimate the proportion of legal aid services provided by various legal aid providers, national experts from LDCs have reported that CSOs, funded by private and international donors, deliver the bulk of legal aid services in LDCs (45%). In high-income countries, a State-funded legal aid entity is by far the dominant provider (57%).
- This finding underscores the importance of strengthening legal aid capacities of non-governmental justice actors in lower-income countries.

Although the proportion of LDCs that officially authorise non-governmental actors to provide legal aid services is twice as high as in high-income countries, it is still not enough to address the acute shortage of lawyers outside of urban areas. Close to half (48%) of responding Member States have identified shortage of lawyers outside urban areas as the biggest impediment facing their legal aid system.

- When asked what categories of non-governmental providers are authorised to deliver legal aid in their country:
 - 68% of national experts in LDCs reported that lawyers and paralegals employed by CSOs are recognised as legal aid providers, compared to 36% in high-income countries; and
 - 32% of national experts in LDCs reported that students in university law clinics are recognised as legal aid providers, compared to 15% in high-income countries; and
 - 53% of national experts in LDCs indicated that *pro bono* lawyers are recognised as legal aid providers, compared to 22% in high-income countries.
- The most common types of legal aid services that paralegals are authorised to provide include:
 - the provision of general assistance in navigating the justice system (as reported by 31% of experts);
 - the provision of legal advice on a one- or two-time basis on the application of the relevant law or about actions that a person may appropriately take (as reported by 26% of experts); and
 - the provision of legal information in police precincts or prisons (as reported by 14% of experts). It is rare, however, for paralegals to be allowed to represent clients in courts (11%).

Box 19: Developing legal aid networks in Gaza, Palestine

The people of Palestine, and of the Gaza strip in particular, face excessive hardship, with poverty, insecurity and violence as an everyday reality. In an overall fragile rule of law environment, access to justice for many is limited. In 2009, UNDP began working with a number of CSOs to assist people in the Gaza strip in securing their rights and improving their access to justice, especially in the aftermath of the 2009 conflict. This included partnering with the Palestinian Bar Association (PBA), CSOs, law schools, as well as a number of grassroots and community-based organisations through a joint initiative to strengthen legal aid delivery in Gaza. This initiative, the Awn Network for Access to Justice, aimed to provide legal remedies to people who were unable to access justice due to their financial situation, social stigma or lack of legal awareness.

The network adopted a three-fold strategy to support access to justice, including: a) provision of free legal aid for vulnerable groups; b) improving the quality of the legal profession and practices; c) creating an overall conducive environment for access to justice. Interventions supported by the network include:

- Establishing the Awn Network for Access to Justice as a flexible coordination body to encourage collective action, share knowledge and avoid duplication amongst legal aid service providers. The Palestinian Bar Association serves as the secretariat of Awn Network.
- Facilitating legal aid delivery through the network of legal clinics. The network runs more than 18 community and academic legal clinics throughout the Gaza Strip and an additional 5 mobile legal clinics (e.g. to refugee camps, border areas, slums and remote rural communities). The clinics provide legal information and legal awareness, mediation services to assist in resolving disputes, as well as legal advice and representation.
- Disseminating legal information and awareness. As many people are not aware of their rights and there is an overall low literacy rate in Gaza, particularly among women, awareness raising is a priority. This included developing training materials in simplified and accessible language and fostering media partnerships to improve outreach.
- Supporting legal aid services for civil and Shari'a courts. The legal clinics also provide legal representation before Shari'a (family and personal status

law) and civil courts, as well as before public entities (municipalities, public services departments, ministries) to ensure that citizens are able to access basic social services.

- Engaging with traditional justice authorities. As part of mediation services provided by the clinics, lawyers work together with traditional justice authorities, the "Mukhtars" system, as a reliable way to settle disputes. The network also introduced the concept of female social mediators/women Mukhtars to better address women's access to justice, which has been well received by local communities.
- Establishing effective referral systems. Referral systems are necessary to ensure an efficient division of labour between legal clinics, on the basis of specialty and geographical location, and also to link up with community organisations, professional unions and for additional social, psychosocial, health- or education-related services.
- Ensuring knowledge and information management. Establishing systems to consistently and accurately collect data and information on the types of services provided, the number of clients, etc. is necessary to help inform policy and advocacy efforts. The data collected indicates that in 2015 alone, the network provided legal consultation and representation to 5800 individuals, and supported legal awareness workshops that targeted approximately 22,000 individuals.
- Supporting capacity development of legal professionals. In order to have a long-term impact on the quality of services and improvement in access to justice, developing the capacity of legal professionals and the skills of young lawyers (particularly women) is necessary, including through clinical legal education.
- Facilitating a broader enabling environment for access to justice – the network has sought to engage in policy analysis and dialogue as advocacy for reform of laws and policies to enhance access to justice, often in collaboration with the media, and it trained young lawyers and journalists to take on monitoring and oversight roles.

Source: UNDP Regional Hub in Amman

3. Specialized legal aid services

Globally, specialized legal aid services are most commonly available for children (as reported by 57% of Member States), persons with disabilities (43%), refugees, asylum seekers and stateless persons (38%) and women (37%).

- Only 29% of Member State respondents indicated that specialized legal aid services are not offered in their countries.

As many as nine in ten responding Member States reported that they have put in place a range of specialized units and/or specialized personnel to work with children who are suspected or charged with a criminal offence.

- However, it is noteworthy that out of all professionals involved in such proceedings, lawyers are the least likely to be specialized (35%), followed by the police (51%), prosecutors (55%) and judges (77%).

Globally, 61% of responding Member States (only 50% in low-income countries) indicated that legal advice and court services are provided in all legal proceedings to female victims of violence (including victims of SGBV).

- When asked about the most significant obstacles faced by women in accessing legal aid, national experts identified a wide range of issues, some of which have more prominence in certain regions than others. For instance, 80% of experts in the Middle East & North Africa region have reported that women in their countries often do not know how to access legal aid services; 82% of experts in Asia-Pacific observe that women may not be aware that legal aid services are available at little or no cost; and 63% of experts from Eastern Europe & Central Asia and 50% from the WEOG note that the lack of specialized legal aid services for women is a major hindrance.

Box 20: Legal services for IDPs in northern Iraq

With more than 3 million IDPs, Iraq currently has one of the largest numbers of IDPs in the world. In 2014, over 500,000 IDPs were living in Dohuk province in northern Iraq, which represents a doubling of Dohuk's local population of around 500,000 inhabitants. Since 2014, the German Federal Ministry for Economic Cooperation and Development (BMZ) has been providing legal services to IDPs in six camps in Dohuk province, as well as to the host communities, with projects implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH in cooperation with Harikar NGO.

IDPs at the six camps, in particular women and children, are being provided free legal and social advice, information and support. The project is also disseminating information materials about legal services available inside and outside of the camp. Legal experts organise sessions to raise awareness on subjects such as early marriage, SGBV, and the importance for each individual to have legal documents and identification papers. Free legal counselling is offered on a daily basis to all IDPs visiting the centre and to members of the host community. Whenever necessary, lawyers follow up on individual IDP cases with the courts and government institutions, including making arrangements such as covering court fees. Regular meetings are held with community leaders inside the camps, IDPs themselves and representatives of the camp management to address the needs and

problems of the IDPs. Two host communities and IDPs living outside the camps have benefitted from social and legal support provided by a mobile team of lawyers, focusing on women, social and family issues.

Since many IDPs have lost their personal documents, one of the main services provided is assistance with obtaining documents, such as birth or death certificates, identity cards and marriage or divorce certificates. Often these seemingly simple cases actually involve several steps. For example, in order to issue an identity card to a child, a marriage certificate for the parents must first be obtained along with authentication of the birth by a court and the subsequent proof of this authentication of birth through a hospital. Other common cases for which legal aid is provided involve GBV or conflicts over property and land rights.

Between April 2015 and March 2016, Harikar NGO provided 13,207 legal representations and consultations. Overall, 13 cases dealt with SGBV, 142 with GBV, 13,020 with other issues (primarily registration & certification issues), and 32 cases were transferred to other organisations/institutions (e.g. when a case had to be processed in Erbil).

Source: Federal Republic of Germany

4. Administration of legal aid

Nearly half of responding Member States have reported that they have a 'mixed model' for the provision of legal aid in their country, under which both public and private entities provide legal aid with supervision and management by a single legal aid authority.

- The provision of legal aid exclusively through public defender institutions and other public institutions, such as legal aid boards, is more frequent in criminal cases (26%) than in civil cases (16%).

- On the contrary, the provision of legal aid solely through private institutions or actors (through panel appointments and/or *pro bono* schemes and/or bar associations) is more common in civil cases (37%) than in criminal cases (29%).
- CSOs, when they are involved in provision of legal aid, do so more often in civil cases (16%) than in criminal cases (10%).

Nearly all (90%) responding Member States have established a centralized administration for legal aid with varying levels of independence.

- The Ministry of Justice (or any executive agency in charge of justice) is most frequently cited as having the chief responsibility for the management of legal aid (43% of Member State respondents).
- Other Member States reported that the bar association (25%), an independent self-governing administration (19%), a public defender institution (16%) and a legal aid board (11%) have the chief responsibility for the administration of legal aid in their country.
- Countries that have enacted a law dedicated to legal aid are more likely to have established a legal aid board (16% vs. 0% in countries without such a law) or an independent legal aid administration (21% vs. 14% in countries without such a law) than countries that do not have such a law.

Only 30% of Member States with a legal aid board have reported that legal aid providers are represented on the board, which may raise questions about the extent to which legal aid boards are able to keep abreast of challenges faced by legal aid providers.

- Furthermore, CSOs and universities with law clinics are rarely represented (22%) in legal aid boards.
- Paralegal associations and informal justice actors are not represented in the board of any responding Member State.

Globally, only one in four (26%) responding Member States have reported that they have “an independent institution with a specific mandate to oversee the appointment of legal aid providers” and that the process of obtaining legal aid is initiated by this institution.

- In the absence of such a dedicated appointment mechanism, the inquiry into an individual’s right to legal aid must be initiated by other types of justice actors, who may not have an interest in ensuring the presence of a legal aid provider at the earliest possible moment (e.g., police or prosecutors).

- The proportion of Member States with an independent appointment mechanism increases significantly when the institution responsible for the administration of legal aid is either a legal aid board or an independent legal aid administration (50% of such States report having an independent appointment mechanism). This finding may suggest that such entities have, to some degree, contributed to institutionalising and systematising appointment procedures in their countries.
- The second most frequent process for appointing legal aid providers, used by nearly half (49%) of responding States, is requiring the court presiding over a case “to inquire and assess eligibility during the first appearance of the parties”.
- Meanwhile, 97% of responding Member States leave it to individuals to seek out and obtain legal aid services themselves, which presupposes that the potential beneficiaries of legal aid are aware of their rights and are empowered to demand legal aid services from State agencies.

With regard to mechanisms used to assign legal aid providers to cases, Member States where the chief legal aid authority is a legal aid board or an independent legal aid administration report a significantly higher presence of legal aid providers readily available in courts and police precincts.

- While only 21% of Member States globally report having legal aid providers on duty in courts and police precincts, this proportion nearly triples (57%) in Member States with a legal aid board, and in countries having an independent legal aid administration (54%).
- This finding may suggest that legal aid boards and independent legal aid administrations have generally opted for an appointment model, which places legal aid providers closest to applicants, in courts and police precincts, thus facilitating faster access to legal aid services.

LDCs are considerably less likely (14%) than high-income countries to have a separate line for legal aid in the national budget (61%).

- In those Member States where the legal aid system is administered by an independent legal aid administration or a public defender institution, almost all have a dedicated budgetary allocation for legal aid (91% and 88%, respectively). When legal aid is administered by the bar association, less than half (44%) of responding Member States have such an allocation.
- A majority of respondents from LDCs (63%) have indicated that the cost of specialized legal aid services is mainly covered by international donors. In high-income countries, the government provides separate funding for specialized services in 43% of responding Member States.

Box 21: Ensuring equality of arms: lessons from the Democratic Republic of Congo

Since 2011, the United Nations Stabilization Mission in the Democratic Republic of Congo (MONUSCO) and UNDP have been providing technical and logistical support for Congolese military justice personnel, through the Prosecution Support Cell Programme (PSC). The PSC supports the Congolese military justice system in its efforts to combat impunity for serious crimes (primarily those under the Rome Statute), and serves as a capacity-building measure allowing for military prosecution in a context of limited State authority and capacity. Primarily, the PSC provides technical advice to Congolese military justice personnel. Additionally, following a request from national authorities, the PSC coordinates the provision of logistical and financial support. There are currently seven PSCs operating throughout eastern DRC.

The programme offers technical and logistical support to national counterparts for investigations, mobile hearings and trials ("audiences foraines"), victim and witness support and assistance, and capacity-building training. The

PSC may not initiate, conduct, or lead criminal investigation or prosecution. Although the programme was also meant to provide legal aid for the accused, this has not been taken forward due to MONUSCO's perceived conflict of interest insofar as PSCs would be advising and supporting both the prosecution and the defence counsel.

While support to prosecution services have been seen as an "innovative and robust initiative that has had a positive impact on efforts to combat impunity in the DRC," the lack of support provided to the defence has led to an imbalance and limited services available for people accused of serious crimes. Additionally, not only do defence lawyers typically receive shorter notice and have inadequate time to prepare, it is often difficult to ensure the presence of defence witnesses at hearings.

Source: DPKO Lessons Learned Mission to Goma, June 2015

5. Scope and coverage of legal aid in civil cases

Globally, "financial need" is the most commonly used factor in determining the applicant's eligibility for legal aid, which is used in 73% of responding Member States.

- Survey results suggest that the enactment of a law dedicated to legal aid has contributed to making this eligibility criterion more widely used: 78% of countries with a law dedicated to legal aid use this criterion, while only 63% of Member States with no such law is in place do so.

For legal aid in civil cases, for which eligibility is not automatically based on the type of case or its gravity, suspects or defendants are often required to produce evidence of eligibility (such as proof of poverty) that they do not always have at their disposal at the time of arrest. This may serve as a disincentive in seeking legal aid services.

- To prove eligibility for legal aid in civil cases, States most often require evidence of the following:

- low income (requested by 46% of responding Member States);
- evidence proving status as a recipient of welfare or State subsidies for indigent or vulnerable members of the population (requested by 36% of responding Member States); and/or
- evidence of family hardship, such as multiple children, single-parent household, family member disability, etc. (requested by 28% of responding Member States).

In more than three quarters of responding countries, legal assistance in civil matters is most commonly provided in the form of primary legal aid and assistance during trial.

- Once again, primary legal aid is more widely available in Member States that have enacted a law dedicated to legal aid (85%) than in Member States where no such law is in place (68%).

Demand for legal aid services in civil cases almost always outstrips availability of services in LDCs.

- The most frequent types of civil cases for which legal aid services are sought out for are: marital disputes, child custody issues, property issues and labour disputes.

Demand for legal aid in public interest litigation or class action is ubiquitous across a range of cases (discrimination, labour rights, consumer rights, environmental protection and health) and across development levels, but that demand remains largely unmet in low-income countries.

- While between 50-72% (depending on the type of cases) of national experts in LDCs estimate that there is a demand for this type of legal aid in their country, only 14% of Member States from LDCs report that State-funded legal aid for public interest litigation is provided in their country. Meanwhile, 67% of respondents from high-income countries indicate that State-funded legal aid is provided for public interest litigation.

6. Scope and coverage of legal aid in criminal cases

Nearly all responding Member States have indicated that defendants have a right to legal aid under the law upon being charged with a criminal offence, upon arrest or detention on criminal charges, and when sentenced to imprisonment.

- A smaller proportion (65%) have reported that crime victims have such a legal entitlement, and only a fifth (22%) report that witnesses of crime are also entitled.

Globally, the three most commonly cited beneficiaries to whom States are obligated to provide legal aid in criminal cases are: children (57%); persons with intellectual or mental disabilities (54%); and persons who meet a financial threshold (53%).

- On the other end of the spectrum, legal aid is least likely to be provided to IDPs (19%) and refugees (24%).

For legal aid in criminal cases, for which eligibility is not automatically based on the type of case or its gravity, suspects or defendants are often required to produce evidence of eligibility (such as proof of poverty) that they do not always have at their disposal at the time of arrest. This may serve as a disincentive in seeking legal aid services.

- To prove eligibility to legal aid in criminal cases, States most often require evidence of the following:
 - low income (requested by 39% of responding Member States);
 - evidence proving status as a recipient of welfare or State subsidies for indigent or vulnerable members of the population (requested by 32% of responding Member States); and/or
 - evidence of family hardship, such as multiple children, single-parent household, family member disability, etc. (requested by 28% of responding Member States).

There is a substantial gap between legal entitlements as provided for in the law and the availability of legal aid in practice across various procedural actions or stages of a criminal case.

- For instance, while 67% of Member States have reported that an eligible suspect or defendant is automatically entitled to legal aid during trial, only 40% of national experts have reported that these legal entitlements are effectively enforced in practice.
- Similar gaps between legal provisions and their implementation exist for the requirement that legal aid be provided “from the moment charges are officially filed against a person” (63% vs. 41%) and “from the moment a law enforcement representative restricts a suspect’s freedom” (61% vs. 26%).
- More than three quarters of respondents have reported that the police, prosecutors or judges will sometimes obtain incriminating information from a suspect or defendant when no legal aid provider is present: 24%

say that if it takes too long for a legal aid provider to arrive, the questioning begins regardless, and 57% say that the police sometimes questions a person first as a witness and determines that the person has a right to legal aid only after the witness has incriminated him/herself.

- A party who is denied access to legal aid is significantly less likely to have a right to appeal that decision in LDCs than in higher-income countries, where the right to appeal is nearly universal: only 56% of national experts in LDCs have reported that those who have been denied access to legal aid have the right to appeal that decision in criminal cases, while this proportion drops to 50% in civil cases.

The frequency of pretrial diversion for children's cases in criminal cases (37%) is higher in countries where specialized legal aid services are provided (41%) and where legal aid providers working with children are specially trained (43%).

- When asked to compare the performance of legal aid providers representing children with that of private lawyers, national experts have consistently noted that “there is no noticeable difference” between the two when considering three different measures: (i) rates at which diversions away from criminal justice proceedings are achieved; (ii) rates at which alternatives to pretrial detention are achieved; and (iii) rates at which alternatives to imprisonment are achieved.
- On the other hand, national experts have reported that the use of diversion, alternatives to pretrial detention and alternatives to imprisonment are achieved at a significantly higher rate by legal aid providers who have received specialized training to work with children. For instance, while only 21% of experts globally have said that legal aid lawyers achieve alternatives to imprisonment at a higher rate than private lawyers, this proportion increased to 47% when experts were asked about legal aid lawyers who are specialized in children's rights.
- Despite legal aid lawyers performing better when they are specialized in children's rights, only 31% of responding Member States have made it mandatory for legal aid providers to receive specialized training to qualify for work with children, according to experts.

7. Quality of legal aid services

When asked about priority areas for support, enhancing the quality of legal aid services was highlighted as the most pressing concern by both Member States and national experts.

- “Developing quality criteria for legal aid providers” was identified as a priority area for technical assistance by the largest proportion of both Member States (44%) and expert respondents (82%).
- This prioritisation is in line with experts’ assessment that people’s lack of confidence in the quality of legal aid services being one of the three most significant challenges faced by poor and vulnerable groups in accessing legal aid services globally. Experts in Eastern Europe & Central Asia report the highest level of concern (79%) regarding the poor quality of legal aid services.

While over a third of responding Member States (38%) have adopted specific quality and performance standards on legal aid, close to half (46%) of experts called attention to the fact that there is no formal mechanism in place in their country to assess whether a legal aid provider is adequately qualified or prepared.

- This may raise questions about the extent to which quality and performance standards can be applied in practice.

Member States that have reformed their legal aid system in the past 10 years have raised their requirements for qualification and accreditation for legal aid providers, including for paralegals.

- ‘Recent reformers’ are more likely to have formalized accreditation and/or certification processes for legal aid providers by, for instance, requiring that they be registered with the national bar (76% for recent reformers, compared to a global average of 60%) or with a State-authorized roster of legal aid providers (35% for recent reformers, compared to a global average of 23%), or that they undertake separate testing to be hired as staff of the institutional legal aid provider (24% for recent reformers, compared to a global average of 20%).
- There was a similar upward trend in imposing qualifications and accreditations requirements on paralegals, mostly by recent reformers, even though the level of requirements remained generally low. For instance, recent reformers are more likely to demand that paralegals complete a professional paralegal training course accredited by the State (10% for recent reformers, compared to a global average of 4%).

Not all Member States make continuing education and/or skills training mandatory for legal aid providers.

- Continuing education and/or skills training for legal aid providers is mandatory in only half (49%) of Member State respondents, and that proportion is only marginally higher (53%) in recent reformers.
- Of those Member States wherein periodic skills training is mandatory, only 37% have allocated public funding towards such training, as reported by national experts.

Box 22: Approaches to strengthening the quality of legal aid service delivery

The degree to which legal services to poor and vulnerable populations actually fulfil the promise of legal aid depends on the quality of providers' work. The ability of legal aid systems' management to capacitate and motivate providers to dedicate themselves to the highest possible standards of performance is one of the most important determining factors of quality.

Among key factors for ensuring quality legal aid services are:

- Activating practicable systems of practice management, including training senior practitioners to be effective, proactive supervisors who can actively mentor legal aid providers on a day-to-day, case-by-case basis;
- Establishing and ensuring adherence to performance and qualification standards for legal aid providers;
- Negotiating for cooperation from State justice actors on scheduling and logistics to enable providers to use time efficiently by consolidating provider's procedural appearances thereby cutting down on travel time from office to court and other agency locations and back;
- Gaining support from State agencies to allow sufficient time for providers to prepare their actions on behalf of their clients;
- Procuring sufficient State funds for facilities and services to support the defence of clients' rights, from office space and technical supplies like printers, computers and connectivity, to clerical assistance, social work services, and access to independent investigators and forensic experts;
- Establishing caseload limits to prevent overloading providers with work volume that precludes individualized attention to each client and his or her legal needs;
- Negotiating for time away from proceedings, and financing to guarantee that every provider undergo periodic training on advocacy skills and legal updates;
- Developing case management and statistical reporting programming to save time and enable legal aid operations to track needs and cases, and produce reports documenting trends in legal aid practice, expenditures, outcomes and data substantiating budget processes;
- Advocating for participation by legal aid providers in legislative and administrative processes that affect the practice of defending the rights of the poor and vulnerable.
- Supporting peer reviews where a team of practitioners complete periodic observations and "spot checks" of providers' work, in the form of reviews of files, interviews with practitioners and/or their clients, as well as observation of work in courthouse public proceedings.

8. Independence of legal aid providers

People in all regions perceive legal aid lawyers to lack independence vis-à-vis State agencies.

- Globally, 25% of national experts observe that people in their country often assume that legal aid providers are State officials employed by the police or judicial agencies.

In a quarter of responding Member States, payment mechanisms may interfere with legal aid providers' independence from the State in the performance of their duties.

- Close to one in five (17%) Member States have indicated that in order to be paid, some legal aid providers in their country must receive written approval from a State agent, who also has to witness the action for which the legal aid provider is seeking remuneration. This may be problematic as some legal aid providers may be facing a situation where they need the approval for their payment from the same State agency that they are opposing in their representation of a client.
- Similar difficulties may arise when legal aid providers are paid on an hourly basis (24%) and must submit reports on the hours spent on a case to the same State agency that issues payment.

While the existence of safeguards to help preserve the independence of legal aid providers is fairly common across regions, their effectiveness is uneven.

- More than a fourth (27%) of national experts in Latin America & the Caribbean have reported that "hiring a private lawyer who receives payment from the suspect/defendant, but not from the State legal aid funds" is one of the most influential factors in reaching a dismissal of charges or acquittal in legal aid cases.
- Similarly, the existence of ethical rules for legal aid providers (in 66% of responding countries, according to national experts) did not prevent corruption from occurring in court proceedings for legal aid cases: 45% of national experts in Asia-Pacific have reported the influence of bribery in securing dismissal of charges or acquittal in legal aid cases.

9. Accountability of legal aid providers

Performance monitoring and data collection is a formal responsibility of legal aid authorities in a majority of Member State respondents. Only a tenth (11%) of Member States reported that there is no institutional mechanism in their country to monitor the quality of legal aid.

- The bar association is the institution most frequently identified by Member States (35%) as the entity tasked with monitoring the quality of legal aid services.
- Regardless of which institution performs monitoring functions, it is very often the case that it is the same institution with the chief responsibility for the administration of legal aid.
- For instance, 77% of Member States where the bar association is responsible for the administration of legal aid also monitor the quality of legal aid services through the bar association; 75% of countries where a legal aid board is responsible for the administration of legal aid also monitor the quality of legal aid services through the board.
- This institutional configuration, whereby the institution evaluates its own performance, may affect the independence and impartiality in performance monitoring of their legal aid providers. For example, an institution with the chief responsibility for the administration of legal aid may be inclined to give the legal aid providers, who are their employees, as favourable an evaluation as possible so as to maintain a good public image.

A majority (57%) of Member State respondents have indicated that data is mainly collected through the review of complaints lodged by legal aid recipients.

- This approach may not be effective in ensuring legal aid providers' accountability, as it is likely that only the most egregious cases will be reported. Moreover, as many legal aid clients are often from poor and often marginalized backgrounds with limited resources, they may not be inclined to file complaints even when receiving substandard services from legal aid providers. For instance, they may not know they have a right to complain or how to make the complaint, they may be unable to draft the complaint or may not feel empowered enough to hold the legal aid provider accountable.
- Only a quarter (26%) of responding Member States have applied a more proactive approach to monitoring, such as through satisfaction surveys filled out by legal aid recipients.

There are considerable gaps in data collection with regard to the availability and quality of legal aid services provided.

- Globally, 76% of Member States have reported that no data is available on the number of criminal cases to which State-funded legal aid is provided; 59% reported the same in civil cases to which State-funded legal aid is provided.
- No data is collected on the number of paralegals in responding countries from Sub-Saharan Africa, Middle East & North Africa, and Latin America & the Caribbean.
- As many as 71% of national experts from Sub-Saharan Africa have stated that there is no data on the number of lawyers providing legal aid services on a full-time basis in their country.
- Globally, 51% of Member States have reported that data on cases involving children is not distinguished from cases that do not involve children. In the Sub-Saharan Africa, this proportion reaches 88%.
- Globally, 59% of Member States have reported that they do not have data on the number of cases that are resolved before going to court.
- Nearly a third (29%) of LDCs have indicated that no data concerning the quality of legal aid services is collected in their country.

10. Legal aid and informal justice systems

Globally, informal justice proceedings handle a wide range of disputes, the most common of which are marital or family disputes.

- According to national experts in all regions, the fact that informal justice proceedings are less time-consuming is one of the main reasons why people prefer informal proceedings.

A lawyer or a paralegal can more readily provide assistance in formal mediation (as reported by 52% of responding Member State) than in customary or religious mediation and adjudication processes (as reported by only 9% of Member State respondents).

- Nearly half of responding countries in the Sub-Saharan Africa (45%), Eastern Europe & Central Asia (45%) and the Middle East & North Africa (50%) regions have established a mechanism under which cases are referred between formal and informal justice systems (i.e. for mediation and alternative dispute resolution processes). If established more widely, such a mechanism could help address the reported shortages in lawyers and court services outside urban areas in these countries.

Box 23: Innovations on accessing legal services through information technology

An increasing number of legal aid service providers are facilitating wider access to their services through the use of technology, such as telephone helpline services, SMS, or the internet. Below are some examples of innovations that have enabled broader access to legal aid services, including for those who may not live close to urban centres, for those who may prefer to access legal advice anonymously for fear of stigma or retaliation, for improving the quality of legal aid services and information flows between justice sector actors, or for those who simply wish to access legal information and advice more conveniently.

Telephone helpline services in Mauritania¹³⁹

In 2012, the “Association Mauritanienne pour la Santé de la Mère et de l’Enfant” (AMSME) partnered with Mauritel, a telecommunications company, to launch a free helpline service for women and children victims of abuses and mistreatment, with the aim of increasing legal, medical and social protection of children and women. The helpline is free and the number is easy to remember: 80001010. The listening centre — the El Wafa Centre — has a team of advisors available 24 hours a day, 7 days a week. The AMSME hotline is part of Child Helpline International (CHI), a global network that includes 183 independent members in more than 140 countries.

AMSME helpline advisors are trained to be able to respond to a wide variety of situations. They are required to listen, understand, and respond to the caller. They also fill an information sheet with the date, name, surname, location, sex, age, geographical area, type of violation, subject of the call (legal advice, abuses, physical health, familial relationship, information request, etc.) This information is a useful starting point, for example when a legal aid provider is assigned to the case.

The collaboration between AMSME and Mauritel illustrates the positive results that can emerge from a successful public-private partnership. The agreement between the two entities allows the helpline services to be provided free of charge with Mauritel agreeing to absorb up to 990,000 MUR per year (approximately 25,000 EUR) for the helpline.

139. Avocats Sans Frontières.

140. Avocats Sans Frontières.

141. ABA-Rule of Law Initiative

Free SMS services between legal aid service providers in Mali¹⁴⁰

Association DEME SO, which means “House of Help” in national language of Mali, has set up phone lines for its paralegal network that allows free text messages between paralegals, local relays, regional liaison offices and national offices. There are currently 776 phone lines provided by DEME SO, which facilitate communication between the field and headquarters, allow better monitoring of legal services, enable legal aid providers to submit their reports quickly, improve the fluidity and regularity of information flows, and can help to enhance the oversight and quality of legal services provided.

Digital case filing system to facilitate information exchange in the Democratic Republic of Congo¹⁴¹

In eastern DRC, for a majority of reported SGBV cases, by the time police reaches the scene, significant evidence has been lost or destroyed. Furthermore, cases that are investigated are rarely shared with the prosecutor’s office in Goma due to insufficient coordination. These challenges lead to infrequent prosecutions, and feed a culture of impunity whereby perpetrators are led to believe that they will not be held accountable.

To address the communications and collaboration breakdowns that hamper the investigation and prosecution of SGBV cases in eastern DRC, the Rule of Law Initiative of the American Bar Association partnered with the prosecutor’s office and the special police force dedicated to women and children to implement an innovative digital case filing system. The digital case filing system enhances police-prosecution collaboration, provides logistical transportation support and enables investigating officers to communicate with prosecutors from the crime scene in real-time through an SMS-based case filing application. Since October 2013, the SMS case filing system has facilitated the work between prosecutors in North Kivu (Masisi, Walikale and Kasai Oriental) and police officers, resulting in these cases being heard in courts. This work is part of a larger initiative that seeks to enhance local capacity to improve access to justice for victims of SGBV in eastern DRC, including legal education campaigns, psychological and medical assistance clusters and legal aid clinics.

Virtual legal consultations in Ukraine¹⁴²

In Ukraine, the government has established free legal aid services through 125 regional centres for criminal, civil and administrative cases for specific categories of people (low-income, unemployed, etc.) Primary legal aid services (i.e. the provision of legal information, counselling and administrative assistance) are provided by 30 Community Law Centres (CLCs) across the country, which are supported by NGOs, local municipalities and other donors. The CLCs also provide legal information, advice and counselling services, including through Skype, a 'Legal Space' platform (which allows users to obtain legal information and access online chats and forums for legal consultation), and mobile services that provide direct access to a legal aid service provider.

Internet portal for legal information in Moldova¹⁴³

In Moldova, an internet portal (www.parajurist.md) has been developed to facilitate access to legal information most commonly sought out by people including, for example, on inheritance, work, marriage, domestic violence, participation in the decision-making process, effective communication with local and central authorities, consumer rights, contracts, property, land, peaceful dispute resolution between neighbours, and many other issues. The information available on the portal is formulated by legal aid service providers in a way that is accessible to non-lawyers as well. Together with its social media pages, the website provides a space where people can find the latest developments in legislation, about work, welfare or any other opportunities they can benefit from, but also where they can contact a paralegal and receive a thorough consultation within just a few days.

Legal Aid tech start-up in Uganda¹⁴⁴

Barefoot Law is a Ugandan non-profit that seeks to facilitate access to justice by maximizing the use of technology to share legal information and provide counselling, including through email, Facebook, Skype, Twitter, SMS, radio and television. Volunteers provide information in an accessible manner where people can follow conversations, post queries, and seek advice on common questions in a variety of platforms. Most queries are related to inheritance, property or employment, and people want to understand the law and what their rights are. Approximately 50 queries are received per day. In addition, Barefoot Law provides legal advice and information through radio stations, thus reaching rural populations that may otherwise not be able to access a phone or the internet.

Accessing legal aid in the Netherlands through the online platform, legal services counters and telephone, e-mail and smartphone applications¹⁴⁵

The Dutch legal aid system is a good example of how modern information technology can allow people to use legal aid services in an accessible, efficient and cost-effective manner. *Rechtwijzer* is an online-based dispute resolution platform that enables users to resolve disputes without the help of a lawyer. Developed in 2007 and updated in 2012, it allows users to learn about their legal options regarding their legal problem and enables them to manage the process and outcome at their own pace.

Even those who are not eligible to receive other types of legal aid services can use the online platform. Various types of cases, such as family law, real estate, commercial affairs, conflicts with the government, employment issues, or debt-related problems, can be processed by *Rechtwijzer*. Upon submitting their case, users are encouraged to self-reflect on the dispute by answering a series of questions. At the end of the questionnaire, the parties are presented with a recommendation or a referral to a wider range of services that can further assist. *Rechtwijzer* is particularly helpful in the early stages of a conflict, when parties need to gain all the necessary legal information from a reliable source and consider the various ways to proceed with their conflict.

In addition to the online platform, legal aid is also provided at the *Juridisch Loket*, or the Legal Services Counters ("LSCs"), which are spread evenly across the country. At LSCs, clients can receive up to 60 minutes of legal consultation free of charge, regardless of their eligibility for legal aid. The LSCs generally provide services for issues that concern employment or family issues, social security, rent and housing, taxes, consumer rights, immigration, criminal and administrative law.

LSCs also use modern information technology in order to enable people to easily access legal aid services. Not only can people visit one of the office locations for a free consultation, but they can also simply call or send an e-mail with an explanation of their legal problem. Moreover, the *Juridisch Loket* smartphone application has been developed in order to assist people in their preparation for the consultations at the LSC. Smartphone users can download this application at no cost at smartphone application stores. The application contains the contact details of important legal aid institutions, enables users to make sound recordings and to scan necessary documents, and keeps track of a user's appointments at the LSC.

142. Delivering Community Justice Services at Scale: Community Law Centres in Ukraine, Open Society Justice Initiative

143. Legal Empowerment in Moldova, Open Society Justice Initiative

144. Fallon, Amy, "Ugandan Lawyer Revolutionises Access to Justice with Just an iPhone and Facebook", Inter Press Service, May 29, 2014

145. Raad voor Rechtsbijstand — Legal Aid Board of the Netherlands

B. Recommendations

1. Data collection

Address the lack of data – The surveys have indicated that there is a significant gap in the availability of data on legal aid. This data is critical not only in identifying where in the system the problems lie, but so that policymakers and advocates can develop a streamlined and targeted solutions to address those problems. This data can also serve to establish a baseline from which to measure the progress in delivery of legal aid services for people who require them.

In particular, data needs to be collected in a consistent and reliable manner, through legal aid providers or other State entities on the:

- Number of cases for which State-funded legal aid is provided, preferably broken down by type of service (e.g., legal advice or representation) and case (administrative, civil, criminal)
- Number of lawyers providing legal aid services on a full-time basis
- Number of paralegals or other legal aid providers providing legal aid services
- Number of cases involving children
- Number of cases resolved through alternative dispute resolution mechanisms
- Data on the quality of legal aid services provided (including public perception)
- Data on the demand for legal aid services, including types of legal matters

Data on the demand for legal aid services and the number of cases where legal aid is actually provided will help inform the gap in legal aid delivery (i.e., number of persons who require legal aid but are unable to access that assistance).

Conduct legal needs assessments – Although legal needs assessments can be a costly exercise, they are useful in determining: (a) the demand for legal aid services; (b) gaps in delivery of the services; (c) specific priorities for different marginalized groups; and (d) identifying areas of improvement on legal aid service delivery. In many cases, when countries embark on establishing or reforming legal aid systems, these assessments can be a useful starting point to inform legislators and policymakers. Collecting data on a regular basis as part of the mechanism of service delivery can also help inform planning of legal aid service delivery.

Support global data collection on access to legal aid services – Collecting data globally to measure access to legal aid services can serve as a means to measure progress on achieving the 2030 Agenda for Sustainable Development, particularly target 16.3 on promoting the “rule of law at the national and international levels, and ensur[ing] equal access to justice for all” as well as keeping track of the level of implementation of the UN Principles and Guidelines.

Identify good practices and lessons learned on delivering legal aid services – A collection of good experiences and lessons learned on delivery of legal aid services can help illustrate how countries address challenges in delivering legal aid services, what innovative methods have been used to improve access to and quality of legal aid services, as well as what approaches have been identified to ensure that marginalized groups receive targeted services. Such examples can be used to highlight how the UN Principles and Guidelines can be implemented in practice for criminal matters, explore good practice in delivering civil legal aid services or establishing quality standards for criminal legal aid.

2. Legal framework

Develop legal aid laws, including related rules and regulations – While having the right to legal aid guaranteed in the constitution is critical to establishing access to legal aid services as a fundamental right, having dedicated legislation¹⁴⁶ on legal aid can help to give effect to the right enshrined in the constitution, as well as to establish a comprehensive legal aid system that is capable of implementing the

146. UNODC Model Law on Legal Aid in Criminal Justice Systems with Commentaries provides a set of minimal provisions on establishing a national criminal legal aid system based on the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

right to legal aid. Legal aid legislation can address the details regarding provision of legal aid, such as the eligibility, regulation of legal aid providers, procedure for the request and provision of legal aid and how legal aid delivery will be administered and funded. In many States, legal aid legislation also establishes a national legal aid authority that administers legal aid services and in some cases guarantees their independence and establishes separate budget lines for legal aid services.

Develop national policies, plans and strategies on legal aid – Development of an integrated national plan for provision of legal aid is likewise recommended for effective implementation of the national legal aid mandate. A comprehensive assessment of the existing legal aid provision that includes the extent of need for legal aid in administrative, civil and criminal cases, the level of existing quality of legal aid provision and a review of allocated State budgets to legal aid is desirable in developing a national plan or strategy on legal aid. A clear and transparent legal aid policy, such as the development of legal aid policy that sets out criteria for allocation of legal aid, including means tests, exclusions not covered by legal aid and the approval processes for granting of legal aid, is also necessary for improving accountability in the delivery of legal aid and the translation of legislation into practice.

3. Provision of legal aid services

Increase access to legal aid for civil and administrative cases – The Study indicates the high demand for legal aid in civil cases, especially in LDCs. Legal aid is most frequently sought out for marital disputes, child custody cases, cases involving land and property disputes and for labour disputes. As States often prioritise legal aid for criminal cases, this demand is often not met.

Increase access to legal aid in criminal cases – The Study indicates that, although many countries recognise the right to legal aid for criminal defendants who cannot afford a lawyer, in practice, many poor and vulnerable accused persons are unable to exercise their right to effective legal representation. This violation of the right to a fair trial heightens the risk of additional abuses that many vulnerable populations are at an increased risk of, such as torture, coerced confessions as well as unlawful and unnecessary use of pretrial detention.

Increase availability of quality legal aid services in rural areas – With less than 40% of LDCs indicating availability of legal aid in rural areas, ensuring access to legal aid services outside urban centres should be made a priority. Even when services are available in rural areas, quality of legal aid services needs to be on par with that

of urban areas. Member States have indicated that the acute shortage of lawyers outside urban areas must be improved. Some ways to address this issue include:

- Mobile legal aid services
- Expansion of student law clinics
- Increased availability and training of community-based paralegals
- Programmes that incentivize young lawyers to provide legal aid in rural areas

Address the lack of public awareness and legal education – In many States, the lack of awareness of the right to legal aid was identified as one of the top three challenges facing the country. It is not enough to have legal aid laws and services in place; it is critical that the public knows about their right to legal aid as well as how to access the services.

Partner with civil society organisations to deliver legal aid services –

The importance of CSOs in meeting the demand for legal aid is particularly pronounced in LDCs, where the majority of legal aid services are provided by CSOs. In many States, civil society also played a key role as the driving force behind legal aid reform movements. As such, State institutions should explore ways to partner with civil society in delivering legal aid services. For example, some States have developed legal aid schemes through which civil society can also deliver legal aid services. Partnerships between the State, private sector and civil society are key to delivering on the goals and targets of the Agenda 2030 for Sustainable Development, including SDG target 16.3 on promoting the rule of law at the national and international levels, and ensure equal access to justice for all.

4. Specialized legal services

Support specialized legal services – The Study has shown that there is limited availability of specialized and targeted legal aid provision for marginalized populations. In order to address this gap, States, based on their nationwide and situation-specific needs, should identify special measures and strategies to meet such needs. Such measures can include: (i) hiring of female lawyers and staff as well as from other marginalized groups; (ii) providing language-specific services (e.g., in indigenous languages); (iii) ensuring accessible services for persons with disabilities; and (iv) maintaining staff who are trained in child-friendly legal aid or other specialized skills, such as psychosocial support. Specialized legal services also require that specialized training be provided to legal aid service providers.

Enhance women's access to justice – Priorities in legal aid provision vary across countries and regions, including efforts towards increasing women's awareness of the right to legal aid and how to seek legal aid services. States are recommended to pay particular attention to enhancing women's access to legal aid by raising awareness on the availability of legal aid services. Additionally, States should address the lack of specialized services for women and provide training opportunities for lawyers in dealing with cases involving SGBV. Enhancing women's access to justice also requires training of practitioners and the judiciary on gender sensitivity.

5. Quality of legal aid services

Enhance the quality of legal aid services – The importance of developing quality criteria to measure how well legal aid services are provided is the priority area for technical assistance most often selected by responding countries (44% of responding Member States and 82% of Expert respondents). A majority (57%) of Member State respondents have indicated that data on quality of legal aid services is mainly collected through the review of complaints lodged by legal aid recipients. While these complaints may shed light on occasional unethical conduct by a legal aid provider, it may not be a fully accurate indicator of measuring the quality of the overall legal aid services. Rather, a review mechanism to enhance the quality of legal aid services could include:

- *Performance and qualification standards for all legal aid providers* should be adopted by bar associations and/or a legal aid oversight board. The standards should address qualifications and professional standards, training requirements, professional independence and other areas to ensure effective and meaningful representation.
- *Routine quality reviews* should be a part of legal aid delivery models; but they should be collegial rather than disciplinary in nature and examine the diligence of the provider;
- *An opportunity to discuss strategic choices must be provided during quality reviews*, so as to facilitate a learning opportunity rather than to reprimand;
- *Supervising legal professionals should receive training in managing, mentoring and supervising legal aid providers* with an emphasis on motivating legal aid providers to adhere to high standards of skill and effective advocacy;
- *Mentoring relationships* between providers of different experience levels, as well as between lawyers and paralegals with different levels of exper-

tise, to ensure that legal aid providers are able to develop and hone their skills before quality monitoring takes place; and

- *Use peer reviews, random case file reviews and court observations* as a means of determining quality of services provided.

Ensure and improve the quality of paralegals – Many respondents have indicated that there is little standardisation or training for paralegals. States may wish to consider reviewing existing requirements for paralegals and establishing standardised training courses or basic certification programmes to ensure quality of their services. In the case of community paralegals, one way to ensure quality of services provided is to establish a monitoring mechanism that connects the community paralegals to lawyers, who would be able to supervise and provide long-distance guidance to them.

6. Sustainability of legal aid

Ensure sufficient funding to meet the demand – For a legal aid system to be accessible, affordable and sustainable, it is essential that States ensure adequate budget allocations for administration and delivery of services. To this end, the following measures are recommended:

- *Conduct needs assessments* at least once every 3-5 years to confirm the volume of need, as well as the nature of legal matters for which legal aid is desired and allocate funds based on evidence of need.
- *In criminal cases, aim for proportionate parity* between the budget allocated to courts and prosecution and budget allocated to legal aid. Allocations should be sufficient to meet the need and should cover the full range of services to be provided, including administrative costs, collection of evidence, expenses related to expert witnesses, forensic experts and social workers, and travel expenses.
- *In civil and administrative cases, ensure that adequate funding is allocated* to meet the high demand for legal aid services, including for property, labour and family matters.
- *Conduct awareness-raising campaigns on legal aid* to develop popular support for legal aid as an essential tool for making justice proceedings fair and reliable.

7. Sharing experiences on legal aid

Support the development of specialized networks of legal aid providers –

The Global Study on Legal Aid illustrates that States, across all regions and different development settings, face common challenges in their efforts to promote access to and provide quality legal aid services. Civil society networks promoting legal aid on national and regional levels, such as on *pro bono* lawyering, clinical legal education and legal empowerment, have contributed significantly to advocating on the right to legal aid and helped in meeting the demand for legal aid services.

As evident from the responses to the GSLA as well as the recent call for the establishment of a global legal aid network among legal aid providers,¹⁴⁷ there is a growing interest among States in learning from the experiences of other countries on how to address similar challenges in establishing and ensuring the sustainability of quality legal aid services. States are thus encouraged to collaborate with other relevant stakeholders in the development of national, regional and global specialized networks of legal aid providers to exchange information and share good practices and expertise related to the provision of quality legal aid services.

147. See Commission on Crime Prevention and Criminal Justice (CCPCJ) 2016 resolution 25/2, titled “Promoting legal aid, including through a network of legal aid providers.”

Annexes



“When we look at the type of legal aid that is sought by the people within the community, you realize that most of it is of a civil nature, particularly matters to do with family and family law, inheritance, child maintenance and custody. With criminal law, there are those who seek legal assistance with regards to criminal law. The catch is this, in Kenya you’ve got very few organizations dealing with legal aid in the criminal justice system. Very few, close to none. There is a bit of a gap there. There is a bit of hostility from the public because these persons are seen to be criminals, circumstances surrounding the cases notwithstanding. No one wants to know what has gone on behind the scenes. Very few organizations have actually ventured into assisting accused persons.”

Christine Nanjala Ndenga, Office of the Director of Public Prosecutions, Kenya

Annex I

United Nations Member State Questionnaire

Introduction

This questionnaire is an important component of the *Global Study on Legal Aid* which aims to gather data on the current state of legal aid around the world, including legal aid for civil, criminal and administrative matters:

- The framework for the provision of legal aid by the State
- The different models/actors of legal aid service delivery
- The current demand for legal aid, and how the demand for legal aid is met
- The availability, accessibility and awareness of legal aid services
- Legal aid services in informal justice mechanisms (traditional/customary justice systems and alternative dispute resolution mechanisms)
- Strengths, challenges, and recommendations to strengthen the provision of legal aid services

Filling out the Questionnaire

- Please ensure that appropriate government authorities with access to data on legal aid complete this questionnaire. Please list the contact details of all respondents to the questionnaire on page 2.
- If you encounter a question for which data is not available, please indicate that on the response and continue to the next question.
- If you cannot provide figures for the year 2013 under questions asking for figures from that year, please provide the most recent figures available.
- If you wish to provide additional information, please use the comments section or the 'Additional Information' section at the end of the questionnaire.
- For any questions or assistance in filling out the questionnaire, please contact: legalaid@unodc.org
- The questionnaire is divided into the following sections:
 - Part I: General Information
 - Part II: Questionnaire
 - A. Preliminary Information
 - B. Legislative Framework for Legal Aid
 - C. Legal Aid Service Providers

- D. Legal Aid in Practice
- E. Legal Aid in Criminal Cases
- F. Legal Aid in Civil and Administrative Cases
- G. Legal Aid Administration and Management
- H. Legal Aid and Informal Justice Systems
- I. Challenges and Recommendations
- J. Additional Information

Submitting the questionnaire

- The questionnaire should be submitted to: legalaid@unodc.org
- The questionnaire can also be submitted by fax to: (+43-1)26060-74198.
- A Word version can be downloaded at: <http://www.unodc.org/unodc/en/justice-and-prison-reform/index.html?ref=menuse> (under Statistics and Surveys) and can be submitted via email or fax.
- This questionnaire will also be made available in electronic form for download in the other five official languages of the United Nations by 5 May 2015 at the aforementioned link.
- In cases where submission by email or fax is not possible, kindly send a paper copy of the questionnaire to:

Justice Section
United Nations Office on Drugs and Crime
P.O. Box 500
A-1400 Vienna
Austria

Should you wish to share relevant documents such as laws, strategies, and policies, kindly send them as an attachment to the completed questionnaire, or send them in a separate email or fax.

I. General Information

→ **Country:** _____

→ **Date of Submission (day/month/year):** _____

→ **Name of person submitting the questionnaire (last name, first name):**

→ **Title:** _____

→ **Department/Organisation:** _____

→ **Contact Details:**

• Email: _____

• Phone: _____

• Address: _____

→ **Authorities involved in completing the questionnaire:**

Agency 1: Name: _____

Organisation: _____

Date (d/m/y): _____

Agency 2: Name: _____

Organisation: _____

Date (d/m/y): _____

Agency 3: Name: _____

Organisation: _____

Date (d/m/y): _____

Agency 4: Name: _____

Organisation: _____

Date (d/m/y): _____

II. Questionnaire

A. Preliminary Information

1. Which type of legal system is in place in your country: *(Please select all that apply)*

- ☐ Civil law
- ☐ Common law
- ☐ Religious law
- ☐ Customary law
- ☐ Hybrid *(Specify below)*
- ☐ Other *(Please specify)* _____

2. How is the justice system in your country organized?

- ☐ Unified (unitary) national justice system with multiple levels of courts (supreme court, appellate court, first instance court)
- ☐ Unified (unitary) national justice system with a network of subordinate regional courts and justice agencies
- ☐ Separate national (federal) and regional jurisdictions that operate in parallel to each other
- ☐ One formal national justice system with multiple levels, as well as customary, informal, or religion-based tribunal
- ☐ Other *(Please specify)* _____

Section A - Comments *(optional)*: _____

B. Legislative Framework for Legal Aid

3. Which law(s) specify a person's right to legal aid? *(Please select all that apply)*

- ☐ The Constitution
- ☐ A separate law on legal aid
- ☐ Law on judicial procedure
- ☐ Law on police
- ☐ Law on the judiciary
- ☐ Law on the prosecution
- ☐ Civil procedure code
- ☐ Administrative law
- ☐ Law on pretrial detention
- ☐ Law on the penitentiary
- ☐ Criminal procedure law
- ☐ Regulations addressing State actors
- ☐ Implementing regulations for the law on legal aid
- ☐ A right to legal aid is implicit in national due process provisions, but it is not formally recognized by law
- ☐ Other *(Please specify)* _____
- ☐ Not applicable

4. Under the law, which services are included as part of "legal aid"?

(Please select all that apply)

	Criminal cases	Civil & Administrative
• Legal advice (e.g. on the application of the relevant law, and actions the person may appropriately take) on a one-time or two-time basis	☐	☐
• Legal representation before a prosecutor, court, or tribunal <i>(Please specify where _____)</i>	☐	☐
• Legal assistance (e.g. with taking any appropriate action, whether by taking action on the persons' behalf or by assisting them with taking action)	☐	☐
• General assistance in navigating the justice system (e.g. by providing instructions on filling out legal documents)	☐	☐
• Execution of legal documents	☐	☐
• Legal assistance before international tribunals	☐	☐
• Provision of legal information in police precincts, prisons, or in the community	☐	☐
• Other <i>(Please specify)</i> _____	☐	☐

5. According to the laws/policies, what is the role of legal aid in your country?
(Please select the three answers most important for your system under each column)

	Criminal	Civil & Administrative
• To ensure equality of all parties to a dispute	☐	☐
• To ensure a fair hearing	☐	☐
• To act as a neutral arbiter between the parties	☐	☐
• To help courts reach an equitable solution to disputes	☐	☐
• To prevent a wrong decision in court	☐	☐
• To minimize an unfavourable outcome for the legal aid recipient	☐	☐
• To actively defend legal aid recipients' national and international due process and human rights	☐	☐
• To reveal the truth even if it is against the legal aid recipient's interests	☐	☐
• To actively participate in proceedings to prevent the legal aid recipient from making statements against their interests	☐	☐
• To use all legal means to achieve the best result for the legal aid recipient	☐	☐
• Other <i>(Please specify)</i> _____	☐	☐

6. When was the right to legal aid first recognized by your laws?

Since _____ (year) ☐ Not applicable

7. Has there been a reform/restructuring of the national legal aid system since its establishment?

Yes, in _____ (year) ☐ No

Section B - Comments *(optional)*: _____

C. Legal Aid Service Providers

8. How many licensed practicing lawyers are there in the country? _____

- ☐ Not Applicable
- ☐ Don't have the data

9. If your country allows paralegals to provide legal aid, how many practicing paralegals are there?

Number of practicing paralegals: _____

- ☐ Not Applicable
- ☐ Don't have the data

10. Which type of legal aid services are paralegals allowed to provide in your country?

	Criminal	Civil & Administrative
• Legal advice (e.g. on the application of the relevant law, and actions the person may appropriately take) on a one-time or two-time basis	☐	☐
• Legal representation before a prosecutor, court, or tribunal (Please specify where, and whether these services can only be provided under the supervision of a qualified lawyer _____)	☐	☐
• Provision of legal information in police precincts, or prisons	☐	☐
• General assistance in navigating the justice system (e.g. by providing instructions on filling out legal documents)	☐	☐
• Other (Please specify) _____	☐	☐

11. Which of the following qualifications are required for State funded legal aid providers?
(Please select all that apply)

	Lawyer	Paralegal
• A law degree	☐	☐
• Proof of passing a professional examination (bar examination)	☐	☐
• Membership in the national bar	☐	☐
• Completion of an apprenticeship or internship with a practicing lawyer	☐	☐
• Completion of an apprenticeship with a judge or other State justice agency	☐	☐
• A contractual relationship with the agency that oversees administration of legal aid	☐	☐
• Separate testing to be accepted as a staff member of the institutional legal aid provider	☐	☐
• Interview with the legal aid administration or board	☐	☐

- | | | |
|--|--------------------------|--------------------------|
| • Completion of a professional paralegal training course accredited by the State | ☐ | ☐ |
| • Registration in a State-authorized roster of legal aid providers | ☐ | ☐ |
| • No professional qualification is required | ☐ | ☐ |
| • It depends on the type of case | ☐ | ☐ |
| • Other (Please specify) _____ | ☐ | ☐ |

12. Does any law require legal aid providers to engage in continuing education and/or skills training?

- ☐ Yes ☐ No

13. How are legal aid providers paid for their services? (Please select all that apply)

- | | Criminal cases | Civil & Administrative |
|---|--------------------------|-----------------------------------|
| • They receive a fixed fee for each case | ☐ | ☐ |
| • They receive a fixed fee for each action they take on a case and report to the agency authorized to issue payment | ☐ | ☐ |
| • They receive a fixed fee for each procedural action that a state agent witnesses and approves in writing (e.g., presence in court; representation at interrogation; pretrial detention/release advocacy; investigation; <i>et al.</i>) | ☐ | ☐ |
| • Providers work in law firms that receive funds from the State (contracted) | ☐ | ☐ |
| • Providers work full time in institutions funded by the State (e.g. public defenders' office) | ☐ | ☐ |
| • Providers sign contracts with the state agency overseeing appointments to receive payment for a set number of cases (e.g., bulk payment for ten cases) | ☐ | ☐ |
| • Providers are paid on an hourly basis for actions that the state has identified as a basis of payment | ☐ | ☐ |
| • Providers submit reports on the hours they spend on a legal aid case | ☐ | ☐ |
| • Other (Please specify) _____ | ☐ | ☐ |

Section C - Comments (optional): _____

D. Legal Aid in Practice

14. How are legal aid services organized in your country? (Please select all that apply)

	Criminal	Civil & Administrative
• Through public defender institutions	☐	☐
• Through panel appointments (<i>ex officio</i> , contract lawyers)	☐	☐
• Through the bar association	☐	☐
• Through pro bono schemes	☐	☐
• Through the legal aid boards/commissions	☐	☐
• Through civil society	☐	☐
• A combination of the above(Please specify) _____	☐	☐
• Other (Please specify) _____	☐	☐

15. How is the process for obtaining legal aid initiated? (Please select all that apply)

- ☐ Upon request from the person who wants legal aid
- ☐ The court presiding over a case must inquire and assess eligibility during the first appearance of the parties
- ☐ Upon request from the police
- ☐ Upon request from the prosecutor
- ☐ The institution that oversees appointment of legal aid providers based on notification from a State justice actor or applicant for legal aid
- ☐ Upon request from the bar association
- ☐ Upon request from the legal aid provider
- ☐ The determination is automatic if the case or legal aid recipient qualifies for legal aid for legal aid services
- ☐ Other (Please specify) _____

16. Where can people obtain *primary legal aid* services free of charge?

(Please select all that apply)

- ☐ It is available at the office of the public defender, or other state-funded institutional legal aid provider
- ☐ There is a legal advice centre in city and/or town administrative offices where lawyers or paralegals provide advice
- ☐ The bar association maintains a roster of qualified lawyers available to provide legal advice
- ☐ The bar association provides a hotline that individuals can call by phone to receive advice
- ☐ Civil society organizations provide legal advice to people who come to their offices
- ☐ Not Applicable
- ☐ Other (Please specify) _____

17. Is there a cost to the recipient of legal aid services? *(Please select all that apply)*

- ☐ No. The services are free of charge to those meeting eligibility criteria
- ☐ The State covers all legal aid costs in criminal cases
- ☐ The State covers all legal aid costs in civil cases
- ☐ The party using legal aid pays a percentage of the cost, established by law
- ☐ The legal aid recipient pays a bonus to the legal aid provider above the provider's fee from the government or donor
- ☐ There are set fees for certain actions
- ☐ There is a sliding scale of payment, based on financial status
- ☐ Other *(Please specify)* _____

18. What must a person do to prove eligibility to receive legal aid?

(Please select all that apply)

	Criminal	Civil & Administrative
• Show a paper proving status as a recipient of welfare or state subsidies for indigent or vulnerable members of the population	☐	☐
• Demonstrate family hardship (e.g., [documentary evidence] multiple children, single parent, family member disability, et al.)	☐	☐
• Evidence of low income, if employed (pay mark/contract/other document indicating pay rate)	☐	☐
• The applicant's word that he or she meets financial or vulnerability criteria	☐	☐
• Tax filing for previous year	☐	☐
• Membership of a protected group, such as migrants, children, displaced persons, refugees, women, national, ethnic, religious minority, non-fluency in the national language, or other vulnerable group or minority	☐	☐
• No proof; entitlement to legal aid depends on the gravity or complexity of the matter requiring assistance	☐	☐
• A determination by the agency or official responsible for ensuring appointment that the interests of justice require provision of legal aid in the given specific case	☐	☐
• Proof of citizenship of your country	☐	☐
• No proof; entitlement to legal aid depends on the complexity of the matter requiring assistance	☐	☐
• Proof that the legal aid applicant's claim has merit	☐	☐
• No proof is necessary when the case or situation where the State is obliged to provide legal aid under the law	☐	☐
• Other <i>(Please specify)</i> _____	☐	☐

19. What is the mechanism for assigning legal aid providers? (Please select all that apply)

- ☐ Courts and police have a roster of duty legal aid providers for a given day, and call them in the given order
- ☐ Courts and police contact the bar association, which maintains and coordinates appointments and delivery of services
- ☐ The legal aid board maintains a duty roster; State agencies contact the board
- ☐ There are legal aid providers on duty in courts and police precincts
- ☐ Other (Please specify) _____

20. If a person has a right to legal aid, but no legal aid provider is available, must the proceedings cease until a legal aid provider arrives?

- ☐ Yes
- ☐ Yes, with limitations (Please specify below)

- ☐ No

21. Is there a remedy available if a person receives legal aid services, but the legal aid provider is unprepared or unqualified?

- ☐ The proceedings are deemed invalid
- ☐ The proceedings are postponed
- ☐ A replacement legal aid provider is asked to represent the party instead of the assigned provider
- ☐ There is no means of assessing if the legal aid provider is unprepared or unqualified
- ☐ Other (Please specify) _____

22. Is there a mechanism to monitor the quality of legal aid services provided?

- ☐ Yes, it is monitored by:
 - ☐ The legal aid board
 - ☐ The executive agency in charge of justice (e.g. *Ministry of Justice*)
 - ☐ The bar association
 - ☐ The judiciary
 - ☐ The office of the prosecution
 - ☐ A bureau of statistics
 - ☐ A peer review team organized by the legal aid authority or bar association
 - ☐ A research institution that reports on its conclusions to the government and/or other stakeholders
 - ☐ Other (Please specify) _____
- ☐ No

23. How is data collected in order to monitor the quality of legal aid services?

- ☐ Through assessments by justice actors (police/prosecutors/judges)
- ☐ Review of complaints by legal aid recipients or lack thereof, lodged with the state or the bar association about a legal aid provider's actions
- ☐ Conducting satisfaction questionnaires that legal aid recipients fill out/court users surveys
- ☐ Monitoring of services provided in Court
- ☐ None, data is not collected on quality of legal aid services
- ☐ Other (Please specify) _____

24. Are specialized legal aid services provided by the State for specific population groups? (Please select all that apply)

- ☐ Yes, for:
 - ☐ Persons with disabilities
 - ☐ Children
 - ☐ Women
 - ☐ The elderly
 - ☐ Migrants
 - ☐ Refugees, asylum seekers, or stateless persons
 - ☐ Internally displaced persons
 - ☐ Indigenous populations
 - ☐ Ethnic or religious minorities
 - ☐ LGBT (Lesbian, gay, bi-sexual, transgender)
 - ☐ Other (Please specify) _____
- ☐ No

25. Has the State conducted any assessment of the legal aid needs of the population?

- ☐ Yes, in the past 5 years
- ☐ Yes, more than 5 years ago
- ☐ No

If yes, please provide details on how to access the survey results/report, or attach a document with the findings of the survey to this questionnaire

26. Has the State conducted any public information/awareness campaigns on the right to legal aid and how to access legal aid services?

- ☐ Yes, at least once in the past year
- ☐ Yes, at least once in the past 3 years
- ☐ More than 3 years ago
- ☐ No

27. Are legal aid services available in rural areas in your country?

- ☐ Yes
- ☐ No

Section D - Comments *(optional)*: _____

E. Legal Aid and Criminal Justice

28. What percentage of all court cases is criminal?

- ☐ Less than 10%
- ☐ Greater than 10% but less than 25%
- ☐ Greater than 25 percent but less than 50%
- ☐ Greater than 50% but less than 75%
- ☐ Greater than 75% but less than 90%

29. In 2013, what was the total number of criminal cases filed in court?

_____ ☐ Data not available

a. How many were acquitted after trial?

_____ ☐ Data not available

- b. How many had pretrial detention (pretrial restrictive measure) imposed?

_____ ☐ Data not available

- c. How many were resolved pursuant to a plea agreement, procedural agreement or expedited trial?

_____ ☐ Data not available

30. In 2013, what was the total number of criminal cases filed in court where State funded legal aid was provided?

_____ ☐ Data not available

- a. How many cases were acquitted after trial?

_____ ☐ Data not available

- b. How many cases had pretrial detention (pretrial restrictive measure) imposed?

_____ ☐ Data not available

- c. How many were resolved pursuant to a plea agreement, procedural agreement or expedited trial?

_____ ☐ Data not available

31. To whom is legal aid available under the law? (Please select all that apply)

- ☐ Persons arrested and detained on criminal charges
- ☐ Persons charged with a criminal offence
- ☐ Persons imprisoned on criminal charges
- ☐ Victims of crime
- ☐ Witnesses
- ☐ Other (Please specify) _____

32. In which of the following instances is the State obliged to provide legal aid?

(Please select all that apply)

- ☐ To persons who meet a financial threshold
[Please indicate threshold (in USD, if possible) _____]
- ☐ To children (under the age of 18 or as per national law)
- ☐ To persons with physical disabilities
- ☐ To persons with intellectual/mental disabilities
- ☐ To internally displaced persons
- ☐ To refugees

- ☐ To persons whose mother tongue is not the language of official proceedings
- ☐ To persons who face a potential prison sentence *[Please indicate minimum term of imprisonment for eligibility of State funded legal aid _____]*
- ☐ To persons who face the potential of the death penalty
- ☐ According to the case's gravity, complexity, or case type, as identified in the law
- ☐ When the law notes that the interests of justice require it
- ☐ No specific requirements, it is assigned by authorized agencies under their discretion
- ☐ Other *(Please specify)* _____

33. For which procedural actions or stages of a criminal case is an eligible suspect or defendant entitled to legal aid? *(Please select all that apply)*

- ☐ From the moment when a law-enforcement representative restricts the suspects/defendant's freedom
- ☐ From the moment when charges are officially filed
- ☐ From the moment when a State agency begins consideration of whether to impose pretrial detention or restrictive measures
- ☐ During an identification procedure with the suspect's/defendant's participation
- ☐ During a search of the suspect's/defendant's residence
- ☐ During questioning of a potential suspect/defendant before formal charges are filed
- ☐ During trial
- ☐ During a first appeal
- ☐ For representation of prisoners in cases involving serious disciplinary charges, or in initiating complaints
- ☐ For any appeal or cassation
- ☐ For appeal to international tribunals
- ☐ For consideration of probation, or social rehabilitation/reintegration matters after release from prison
- ☐ Other *(Please specify)* _____

34. Are legal aid advice and court support services in all legal proceedings provided to female victims of violence (including victims of sexual and gender based violence)?

- ☐ Yes ☐ No

35. Which specialized divisions or personnel are in place in the justice system to work with children who are suspected or charged with a criminal offence?

(Please select all that apply)

- ☐ There are specialized courts or judges
- ☐ There are specialized prosecutors

- ☐ There are specialized police officers or units
- ☐ There are specialized lawyers and/or paralegals
- ☐ There is no such specialization in the justice system
- ☐ Other (Please specify) _____

36. When children are suspected or charged with a criminal offence, what percentage of cases is diverted from the formal justice system without trial (for example, through mediation, restitution, a warning or apology)?

- ☐ Less than 10%
- ☐ Greater than 10% and less than 20%
- ☐ Greater than 20% and less than 35%
- ☐ Greater than 35% and less than 50%
- ☐ More than 50%
- ☐ No data is available on resolution prior to a case's transfer to court

37. In 2013, in what percentage of all cases in which a child was found culpable was an alternative to imprisonment imposed?

- ☐ Less than 10%
- ☐ Greater than 10% and less than 20%
- ☐ Greater than 20% and less than 35%
- ☐ Greater than 35% and less than 50%
- ☐ Greater than 50% and more than 75%
- ☐ Greater than 75%
- ☐ Data about children is not recorded separately

38. In 2013, when State funded legal aid was provided, what percentage of cases in which a child was found culpable was an alternative to imprisonment imposed?

- ☐ Less than 10%
- ☐ Greater than 10% and less than 20%
- ☐ Greater than 20% and less than 35%
- ☐ Greater than 35% and less than 50%
- ☐ Greater than 50% and more than 75%
- ☐ Greater than 75%
- ☐ Data about children is not recorded separately
- ☐ Data is not recorded separately with respect to legal aid providers

Section E - Comments (optional): _____

F. Legal Aid and Civil & Administrative Justice

39. In 2013, what was the total number of civil/administrative cases filed in court?

_____ ☐ Data not available

40. In 2013, what was the total number of civil/administrative cases filed in court where State-funded legal aid was provided?

_____ ☐ Data not available

41. What is the eligibility criterion for access to legal aid services in civil cases? (Please select all that apply and indicate in comments below if more than one criterion needs to be met)

- ☐ If a person meets a financial threshold
[Please indicate threshold (in USD, if possible) _____]
- ☐ If the person is a child (under the age of 18 or as per national law)
- ☐ If the person has physical disabilities
- ☐ If the person has intellectual/mental disabilities
- ☐ If the person is an internally displaced person
- ☐ If the person is a refugee
- ☐ If the persons' mother tongue is different than the language of official proceedings
- ☐ According to the case's gravity, complexity, or case type, as identified in the law
- ☐ When the law notes that the interests of justice require it
- ☐ The merit of the party's (parties') claim
- ☐ A minimum monetary threshold in dispute
- ☐ The number of parties opposing the person requesting legal aid
- ☐ No specific requirements, it is assigned by authorized agencies in their discretion
- ☐ Other (Please specify) _____

42. For which types of civil cases do people most commonly seek out legal aid services?

*(Please select the five answers most important for your system and rank them from 1-5
[‘1’ being the most common])*

- _____ Marital disputes
- _____ Child custody issues
- _____ Property issues
- _____ Labour disputes
- _____ Contractual disputes
- _____ Tort claims
- _____ Administrative matters
- _____ Claims for state services or disputes with state agencies
- _____ Dispute resolution proceedings or mediation
- _____ Assistance with entrepreneurial activity or ‘start up’ of a small business
- _____ Assistance with informal or traditional justice proceedings
- _____ Other *(Please specify)* _____

43. For which types of civil cases are State funded legal aid services made available?

(Please select all that apply)

- _____ Marital disputes
- _____ Child custody issues
- _____ Property issues
- _____ Labour disputes
- _____ Contractual disputes
- _____ Tort claims
- _____ Administrative matters
- _____ Claims for state services or disputes with state agencies
- _____ Dispute resolution proceedings or mediation
- _____ Assistance with entrepreneurial activity or start-up of a small business
- _____ Assistance with informal or traditional justice proceedings
- _____ Other *(Please specify)* _____

44. Is State funded legal aid provided for public interest litigation/class action cases (e.g. to address cases of discrimination, labour rights, consumer rights, environmental protection, etc.)?

☐ Yes ☐ No

Section F - Comments *(optional)*: _____

G. Legal Aid Administration and Management

45. Which institution has for the management and administration of legal aid?

(Please select all that apply)

- ☐ The executive agency in charge of justice or a subdivision within it (e.g. Ministry of Justice)
- ☐ The bar association or subdivision of the bar
- ☐ An independent self-governing legal aid administration
- ☐ A legal aid board or council under an executive level justice agency
- ☐ A legal aid board or council under an ombudsman's office
- ☐ A legal aid board or council under the legislature
- ☐ A legal aid board or council under the executive branch (other than the national justice institution)
- ☐ A legal aid board or council under another governmental body
- ☐ The national institutional legal services provider (sometimes called "public defender," "national defender," or "professional clinic for legal services") acts as a coordinating agency, as well as providing legal aid services
- ☐ A civil society organization
- ☐ A local city-level or village-level administration
- ☐ Other *(Please specify)* _____
- ☐ There is no central administration

46. Is legal aid a separate component of the annual justice system budget in your country?

☐ Yes ☐ No *(Please go to the next question)*

- a. What was the national level budget for legal aid in 2013 (in USD, if possible)?
 _____ For criminal cases _____ For civil cases
- b. What was the national level budget for legal aid in 2010 (in USD, if possible)?
 _____ For criminal cases _____ For civil cases

47. What was the annual budget for prosecution of criminal cases in 2013?

48. Which of the following is included among the responsibilities of the legal aid authority?

(Please select all that apply)

- ☐ To oversee and coordinate the function of legal aid appointment mechanisms
- ☐ To safeguard the rights of legal aid recipients
- ☐ To establish legal aid strategy and policy
- ☐ To establish and maintain performance standards for effective delivery of legal aid
- ☐ To serve as an independent oversight agency between legal aid providers and the state that pays them
- ☐ To oversee professional training programs
- ☐ To guarantee the independence of legal aid providers from the state
- ☐ To review data on legal aid and incorporate it into new legal aid policy
- ☐ To track case outcomes for data on effective representation
- ☐ To interface with personnel of other justice agencies and organizations (judges/prosecutors/police/experts/other) about the quality of legal aid providers' services
- ☐ To negotiate with officials to achieve reasonable conditions for legal aid providers (scheduling/caseload limitations/access to independent experts, et al.)
- ☐ To monitor expenditure of the legal aid funds
- ☐ To monitor compliance of legal aid providers with government priorities
- ☐ To advocate with appropriate officials for sufficient budget to cover the need for legal aid
- ☐ To advocate or negotiate for conditions that allow legal aid providers to advocate effectively for legal aid recipients' rights
- ☐ To consult with legal aid providers on their needs for ensuring their ability to provide effective legal aid
- ☐ Other *(Please specify)* _____

49. If your country has a legal aid board:

☐ Not Applicable

a. Which of the following are included within the Board membership?

(Please select all that apply)

- ☐ Member(s) of the bar
- ☐ Supreme Court justice(s)
- ☐ Representative(s) of the judiciary (other than the Supreme Court)
- ☐ Retired justice(s)
- ☐ Representative(s) from the Ministry of Justice
- ☐ Official(s) specializing on legal aid
- ☐ Member(s) of the national human rights institution
- ☐ Member(s) of gender equality commission
- ☐ Member(s) of the child protection commission
- ☐ Representative(s) of social or welfare agencies
(Please specify _____)
- ☐ Representative(s) of non-governmental or other civil society organizations
- ☐ Representative(s) of universities with law clinics and paralegal associations,
- ☐ Representative(s) from informal justice systems (e.g. Council of Chiefs)
- ☐ Legal aid provider(s)
- ☐ Paralegal(s)
- ☐ The law requires that certain qualifications be represented among board members *(Please specify) _____*
- ☐ Other *(Please specify) _____*

b. How are the members of the legal aid board selected? *(Please select all that apply)*

- ☐ Appointment by the parliament
- ☐ Appointment by the executive
- ☐ Appointment by the courts
- ☐ Appointment by the prosecution
- ☐ Appointment by police
- ☐ Appointment by the bar association
- ☐ Appointment by the public defender office
- ☐ Election by bar association members
- ☐ Competitive selection process
- ☐ Other *(Please specify) _____*

Section G - Comments *(optional)*: _____

H. Legal Aid and Informal Justice Systems

50. Do informal justice mechanisms in your country allow a lawyer or paralegal to provide assistance in the mediation/adjudication process? *(Please select all that apply)*

- ☐ Yes, in formal mediation/alternative dispute resolution processes
- ☐ Yes, to represent parties or provide advice in customary or religious mediation/adjudication processes
- ☐ No
- ☐ Not applicable

51. Are there mechanisms that allow referrals between the formal/statutory legal system and informal justice systems? *(Please select all that apply)*

- ☐ Yes, for formal mediation/alternative dispute resolution processes
- ☐ Yes, for customary or religious mediation/adjudication processes
- ☐ Yes, for others *(Please specify)* _____
- ☐ No
- ☐ Not applicable

If yes, can legal aid service providers work across the different systems?

- ☐ Yes
- ☐ No
- ☐ Not applicable

52. Do legal aid providers need qualifications to provide assistance in informal justice processes?

a. for formal mediation/alternative dispute resolution processes

- ☐ A law degree
- ☐ A paralegal certificate
- ☐ Being a reputable member of the community
- ☐ Basic training on legal matters
- ☐ Other *(Please specify)* _____
- ☐ Not applicable

b. for customary or religious mediation/adjudication processes

- ☐ A law degree
- ☐ A paralegal certificate
- ☐ Being a reputable member of the community
- ☐ Basic training on legal matters
- ☐ Other *(Please specify)* _____
- ☐ Not applicable

Section H - Comments *(optional)*: _____

I. Challenges and Recommendations

53. From the choices below, please select the five answers most important for your system and rank from 1-5 ('1' being the most significant) the factors that most impede access to legal aid in your country:

- _____ There is a limited number of lawyers in our country
- _____ There is a limited number of lawyers outside urban areas
- _____ Lawyers are paid very little for legal aid work
- _____ Low quality of the services provided by legal aid lawyers
- _____ The bar association is opposed to allowing paralegals to fill the gap of available lawyers
- _____ It is more important to cover the cost of police, prosecutors and judges than to spend state funds on lawyers
- _____ There is little support among the population for spending funds to defend accused criminals
- _____ People prefer to resolve issues through the informal justice system, where legal professionals do not typically participate
- _____ People do not know where to find legal assistance
- _____ There is no law on legal aid
- _____ Other *(Please specify)* _____

Comments (optional): _____

54. In which areas, if any, would your country benefit from technical assistance and/or policy and programme support to strengthen the provision of legal aid?

- _____ Legislative drafting advice
- _____ Development of action plans/policies
- _____ Developing quality criteria for legal aid providers
- _____ Establishing paralegal systems
- _____ Institutional support *(Please specify below)*
- _____ Training *(Please specify below)*
- _____ Not Applicable
- _____ Other *(Please specify)* _____

Comments (optional): _____

J. Additional Information

- **As highlighted in the introduction, if your country has laws, policies, strategies, and/or action plans related to legal aid and legal assistance, please attach them to this questionnaire when submitting it, or send it separately:**

By email to: legalaid@unodc.org

By fax to: (+43-1)26060-74198

By paper copy to: Justice Section
United Nations Office on Drugs and Crime
P.O. Box 500
A-1400 Vienna
Austria

- **If applicable, please provide additional comments:**

Annex II

Expert Questionnaire

Introduction

This questionnaire is an important component of the *Global Study on Legal Aid* which aims to gather data on the current state of legal aid around the world, including legal aid for civil, criminal and administrative matters:

- The framework for the provision of legal aid by the State
- The different models/actors of legal aid service delivery
- The current demand for legal aid, and how the demand for legal aid is met
- The availability, accessibility and awareness of legal aid services
- Legal aid services in informal justice mechanisms (traditional/customary justice systems and alternative dispute resolution mechanisms)
- Strengths, challenges, and recommendations to strengthen the provision of legal aid services

Filling out the Questionnaire

- The questionnaire can be filled out online.
- To fill the questionnaire offline, please send an email to gsla@undp.org
- If specific definitions have not been provided in the 'Key Terms' below or in the question, use national definitions.
- If you hover your cursor over the key term in the questionnaire (in blue), the definition will appear in a text box.
- If you wish to provide additional information, please use the comments section or the 'Additional Information' section at the end of the questionnaire.
- For any questions or assistance in filling out the questionnaire, please contact: gsla@undp.org
- The questionnaire is divided into the following sections:
 - Part I: General Information
 - Part II: Questionnaire
 - A. Preliminary Information
 - B. Legislative Framework for Legal Aid
 - C. Legal Aid Service Providers
 - D. Legal Aid in Practice

- E. Legal Aid and Criminal Justice
 - F. Legal Aid and Civil and Administrative Justice
 - G. Legal Aid Administration and Management
 - H. Legal Aid and Informal Justice Systems
 - I. Additional Information
- If it is not possible to submit the questionnaire online, please submit a completed Word version to: gsla@undp.org
 - This questionnaire is accessible in Arabic, Chinese, English, French, Spanish and Russian.

Should you wish to share relevant documents such as laws, strategies, and policies, kindly send them as an attachment to the completed questionnaire, or send them in a separate email.

I. General Information

- **Country:** _____
- **Date of Submission (day/month/year):** _____
- **Name (last name, first name) :** _____
- **Sex:** _____
- **Title:** _____
- **Department/Organisation:** _____
 - ☐ Professional Affiliation (Please select all that apply)
 - ☐ Staff lawyer in criminal cases working for State-funded legal aid institution
 - ☐ Staff lawyer in civil cases working for a State-funded legal aid institution
 - ☐ Lawyer on criminal cases working for civil society organization
 - ☐ Lawyer on civil cases working for civil society organization
 - ☐ Paralegal
 - ☐ Academic or researcher
 - ☐ Practicing attorney taking legal aid appointments in criminal cases on a case-by-case basis

- ☐ Practicing attorney taking legal aid appointments in civil & administrative cases on a case-by-case basis
- ☐ Bar association representative
- ☐ Provider of pro bono legal assistance in criminal cases
- ☐ Provider of pro bono legal assistance in civil cases
- ☐ Member of the organization that coordinates legal aid appointments
- ☐ Other (Please specify _____)

→ **Please indicate whether you work at the :**

- ☐ National (federal) level
- ☐ Regional (district) level
- ☐ Local (municipal) level
- ☐ Other (Please specify _____)

→ **Contact Details:**

- Email: _____
- Phone: _____
- Address: _____
- _____

→ **Highest level of education attained:**

- ☐ High school degree
- ☐ University degree
- ☐ Graduate/Professional /Master's Degree
- ☐ PhD or doctorate

II. Questionnaire

A. Preliminary Information

1. **Which type of legal system is in place in your country:** (Please select all that apply)

- ☐ Civil law
- ☐ Common law
- ☐ Religious law
- ☐ Customary law

- ☐ Hybrid (*Specify below*)
- ☐ Other (*Please specify*) _____

2. How is the justice system in your country organized?

- ☐ Unified (unitary) national justice system with multiple levels of courts (supreme court, appellate court, first instance court)
- ☐ Unified (unitary) national justice system with a network of subordinate regional courts and justice agencies
- ☐ Separate national (federal), regional (district) and/or local (municipal) jurisdictions that operate in parallel to each other
- ☐ One formal national justice system with multiple levels, as well as customary, informal, or religion-based tribunal
- ☐ Other (*Please specify*) _____

3. Please indicate in which of the following jurisdictions State-funded legal aid is available: (Please select all that apply)

- ☐ National (federal) level
- ☐ Regional (district) level
- ☐ Local (municipal) level
- ☐ Other (*Please specify*) _____
- ☐ Not applicable

Section A - Comments (*optional*): _____

B. Legislative Framework for Legal Aid

4. Which law(s) specify a person's right to legal aid? *(Please select all that apply)*

- ☐ The Constitution
- ☐ A separate law on legal aid
- ☐ Law on judicial procedure
- ☐ Law on police
- ☐ Law on the judiciary
- ☐ Law on the prosecution
- ☐ Civil procedure code
- ☐ Administrative law
- ☐ Law on pretrial detention
- ☐ Law on the penitentiary
- ☐ Criminal procedure law
- ☐ Regulations addressing State actors
- ☐ Implementing regulations for the law on legal aid
- ☐ A right to legal aid is implicit in national due process provisions, but it is not formally recognized by law
- ☐ There is no law that implies a right to legal aid at no cost to recipients
- ☐ Other *(Please specify)* _____

5. When was the right to legal aid first recognized by your laws?

Since _____ (year) ☐ Not applicable

6. Has there been any substantial reform or reorganization of the legal aid system in your country since its establishment? If yes, please indicate when:

- ☐ In the past 3 years
- ☐ 4 to 6 years ago
- ☐ 7 to 10 years ago
- ☐ 11 to 15 years ago
- ☐ More than 15 years ago
- ☐ Not applicable

7. Which of the institutions below played an instrumental role in the reform of the legal aid system mentioned in the last question? *(Please select all that apply)*

- ☐ Ministry or department of justice
- ☐ Other executive branch agency

- ☐ Courts
- ☐ Legislative branch or committee
- ☐ International donor
- ☐ Civil society association
- ☐ Bar association
- ☐ Other (*Please specify*) _____
- ☐ Don't know
- ☐ Not applicable

8. Have there been any assessments conducted of the legal aid needs of the population?

- ☐ Yes, in the past 5 years
- ☐ Yes, more than 5 years ago
- ☐ No
- ☐ Don't know
- ☐ Other (*Please specify*) _____

If yes, please indicate who conducted the assessment _____

Please email that assessment or report to gsla@undp.org

9. Have there been any public information/awareness campaigns on the right to legal aid or on how to access legal aid services?

- ☐ Yes, at least once in the past year
- ☐ Yes, at least once in the past 3 years
- ☐ More than 3 years ago
- ☐ No
- ☐ Don't know

10. What kind of information about legal aid did the public information campaign(s) provide? (*Please select all that apply*)

- ☐ A telephone number to call to obtain information about receiving legal aid
- ☐ The address and name of office or offices to go to for legal assistance or information about legal aid
- ☐ Official laws and policies on legal aid
- ☐ The right to legal aid and its importance for society
- ☐ The kinds of legal matters for which legal aid is available
- ☐ What to do if you or someone you know is taken into police custody for questioning
- ☐ What to do if you or someone you know needs help with a civil dispute (such as over land/property/family)

- ☐ The rights of children to legal representation in criminal matters
- ☐ The rights of children to legal representation in civil and/or administrative matters
- ☐ Not applicable

Section B - Comments *(optional)*: _____

C. Legal Aid Service Providers

11. How many licensed practicing lawyers are there in the country?

- ☐ Not applicable
- ☐ Don't have the data

12. How many legal aid lawyers are there in the country providing legal aid services on a full time basis?

- ☐ Not applicable
- ☐ Don't have the data

13. What categories of legal service providers are authorized to deliver legal aid under your law? *(Please select all that apply)*

	National (Federal)	Regional (District)	Local (Municipal)
• Individual ex officio lawyers appointed on a case-by-case basis to advise or represent qualifying legal aid recipients	☐	☐	☐
• Students practicing in a university-based clinical law office	☐	☐	☐

• Lawyers and/or paralegals employed by civil society (non-governmental) organizations	☐	☐	☐
• Non-governmental legal service institutions and/or law firms pursuant to a contract with the government to provide legal aid in exchange for remuneration by the state	☐	☐	☐
• Legal service institutions and/or law firms through a contractual agreement with the bar association or independent legal aid board or council in exchange for remuneration from a dedicated legal aid budget	☐	☐	☐
• Lawyers and/or paralegals employed as staff members by a public defender institutions, legal aid board, or other group of lawyers specializing in providing legal aid full-time	☐	☐	☐
• Pro bono volunteers in coordination with the bar association, legal aid administration, or government agency	☐	☐	☐
• Other (Please specify) _____	☐	☐	☐
• Not applicable, there is no law on legal service providers	☐	☐	☐

14. Which of the following qualifications are required for legal aid providers?

(Please select all that apply)

Please indicate whether your answers apply to the

☐ national (federal) level ☐ regional (district) level ☐ regional (district) level

	Criminal	Civil & Administrative
• A law degree	☐	☐
• Proof of passing a professional examination (bar examination)	☐	☐
• A professional license	☐	☐
• Membership in the national bar	☐	☐
• Completion of an apprenticeship or internship with a practicing lawyer	☐	☐
• Completion of an apprenticeship with a judge or other state justice agency	☐	☐
• A contractual relationship with the agency that oversees administration of legal aid	☐	☐
• Separate testing to be accepted as a staff member of the institutional legal aid provider	☐	☐
• Interview with legal aid administration or board	☐	☐
• Registration in a State-authorized roster of legal aid providers	☐	☐
• Demonstrate knowledge of national laws through experience or education	☐	☐
• No professional qualification is required	☐	☐
• It depends on the complexity or gravity of the case	☐	☐

- | | | |
|--|--------------------------|--------------------------|
| • Knowledge of international children's rights and/or experience working with children | ☐ | ☐ |
| • Familiarity with the local justice agencies | ☐ | ☐ |
| • Demonstrated commitment to helping disadvantaged populations | ☐ | ☐ |
| • There are no set selection criteria; selection is on a case-by-case | ☐ | ☐ |
| • Other (Please specify) _____ | ☐ | ☐ |

15. Are legal aid lawyers required to undergo periodic skills training or testing? (Please select all that apply)

- ☐ Yes, the bar association imposes this requirement on its members
- ☐ Yes, the legal aid administration imposes this requirement on all legal aid providers
- ☐ ____ Yes, the legal aid administration imposes this requirement on staff lawyers of the institutional legal aid provider
- ☐ Yes, the state imposes this requirement on all practicing lawyers
- ☐ No

16. Does the State allot funds to cover such continuing education/training for legal aid providers specifically?

- ☐ Yes
- ☐ Partially
- ☐ No
- ☐ Not applicable

17. Which of the below best summarizes legal aid providers' professional obligation in your country's justice system? (Please select three in each column)

- | | Criminal | Civil & Administrative |
|---|--------------------------|-----------------------------------|
| • To advise clients as to their legal rights, and as to the workings of the legal system in so far as it is relevant to the legal rights and obligations of the clients | ☐ | ☐ |
| • To ensure equality of all parties to a dispute | ☐ | ☐ |
| • To ensure a fair hearing | ☐ | ☐ |
| • To act as a neutral arbiter between the parties | ☐ | ☐ |
| • To help courts reach an equitable solution to disputes | ☐ | ☐ |
| • To prevent a wrong decision in court | ☐ | ☐ |
| • To minimize an unfavourable outcome for the legal aid recipient | ☐ | ☐ |

• To uphold human rights and fundamental freedoms recognized by national and international law	☐	☐
• To reveal the truth even if it is against the legal aid recipient's interests	☐	☐
• To actively participate in proceedings to prevent the legal aid recipient from making statements against their interests	☐	☐
• To assist clients in every appropriate way, and take legal action to protect their interests	☐	☐
• Other (Please specify) _____	☐	☐

18. Are legal aid providers obliged to adhere to any guidelines on effective legal aid?

	National (Federal)	Regional (District)	Local (Municipal)
• Yes, they must adhere to specific quality performance standards	☐	☐	☐
• Yes, they must adhere to ethical rules established by the bar association	☐	☐	☐
• No, there are no guidelines or ethical rules legal aid providers must adhere to	☐	☐	☐

19. In criminal cases, comparing the services of lawyers working on legal aid cases to services of lawyers working on privately paid cases, do you believe *legal aid lawyers* are more likely or less likely to take the below actions than private lawyers representing privately paid clients, or is there no difference?

	More Likely	Less Likely	No Difference
• Presenting arguments in favor of a suspect's/defendant's release pretrial	☐	☐	☐
• Giving advice to the suspect/defendant in private before any contact with a state justice official	☐	☐	☐
• Conducting investigation to establish doubt about the suspect's/defendant's guilt even if the defendant may be guilty	☐	☐	☐
• Challenging the reliability of evidence against the suspect/defendant	☐	☐	☐
• Pointing to weaknesses in the evidence presented against the suspect/defendant, even if the defendant may be guilty	☐	☐	☐
• Advocating for alternative resolution of the case (through mediation, reconciliation, apology or other resolution) when the defendant is under 18 years of age	☐	☐	☐
• Communicating with the defendant's family about the case when requested by the defendant	☐	☐	☐

- | | | | |
|---|--------------------------|--------------------------|--------------------------|
| • Advocating for acquittal or reduction of charges based on weak evidence even if the defendant may be guilty | ☐ | ☐ | ☐ |
| • Challenging the credibility of witnesses | ☐ | ☐ | ☐ |
| • Preparing written motions and requests of the court, police or prosecution | ☐ | ☐ | ☐ |

20. In your view, in criminal cases, which of the following factors are most influential in reaching a dismissal of charges or acquittal in your country?

(Please select the three most important)

- ☐ A well-prepared and/or highly skilled lawyer
- ☐ A poorly prepared prosecutor
- ☐ The judge's objective analysis of evidence and testimony
- ☐ Hiring a private lawyer who receives pay from the suspect/defendant, not from state legal aid funds
- ☐ Having a legal aid lawyer
- ☐ Availability of an independent expert testimony
- ☐ The strength of the evidence
- ☐ Bribery/Corruption
- ☐ Other *(Please specify)* _____

21. If legal aid depends to any extent on pro bono legal services, what incentives encourage providers to offer these services? *(Please select all that apply)*

- ☐ Provision of pro bono legal aid services is a condition of membership in the bar
- ☐ The bar or other professional association offers certain discounts on membership or benefits for those doing pro bono work
- ☐ The government offers tax deductions for those doing pro bono work
- ☐ Law firms require their lawyers to provide pro bono services
- ☐ Provision of pro bono legal aid services is a means to practice and acquire experience
- ☐ No incentives are necessary
- ☐ Other *(Please specify)* _____
- ☐ Not applicable

22. If your country has an institutional legal aid provider (e.g. public defender), please select all the choices below that describe the institution:

- ☐ They are the sole providers of legal assistance to poor and vulnerable populations in most urban areas
- ☐ They are the sole providers of legal assistance to poor and vulnerable populations throughout the country (both urban and rural)

- ☐ They work in parallel to State funded private practitioners who take assignments to represent people eligible for legal aid
- ☐ They coordinate appointments of private practitioners (ex officio, or panel appointments) to legal aid cases
- ☐ They supervise, coach or mentor private practitioners who take legal aid cases
- ☐ They conduct or organize training sessions for staff lawyers/paralegals
- ☐ They conduct or organize training sessions for all providers of legal aid, including both staff and private lawyers/paralegals
- ☐ Other (*Please specify*) _____
- ☐ Not applicable, there is no institutional legal aid provider

23. If your country has an institutional legal aid provider (e.g. public defender), what is the maximum caseload per lawyer at one time?

_____ at the national (federal) level

_____ at the regional (district) level

_____ at the local (municipal) level

- ☐ There is no such limitation

24. If your country has an institutional legal aid provider (e.g. public defender), do the staff lawyers coordinate to uniformly challenge common violations of national and international due process rights and human rights?

- ☐ Yes, at the national (federal) level
- ☐ Yes, at regional (district) level
- ☐ Yes, at the local (municipal) level
- ☐ No

25. If your country has an institutional legal aid provider (e.g. public defender), does it have specialized providers and/or units for representing child victims, child witnesses or suspected and accused children?

- ☐ Yes, at the national (federal) level
- ☐ Yes, at regional (district) level
- ☐ Yes, at the local (municipal) level
- ☐ No

26. If your country allows legal aid services through university-based student law clinics, are there national guidelines on how students are supervised in providing legal aid services? *(Please select all that apply)*

- ☐ Yes, there are specific guidelines for non-lawyers providing legal aid services
- ☐ Yes, there are specific guidelines on faculty/student ratios
- ☐ No, it is up to the discretion of each university
- ☐ Don't know
- ☐ There are no university-based student law clinics

27. If your country allows legal aid services through university-based student law clinics, what type of legal aid services is a student authorized to undertake? *(Please select all that apply)*

- ☐ There is no limitation; they have the same authority as lawyers
- ☐ They can represent people in administrative or civil law hearings
- ☐ They can provide primary legal aid (legal advice)
- ☐ They can prepare legal documents
- ☐ They can represent people in court in civil and criminal matters
- ☐ They have the same authority as lawyers in criminal cases of low to mid gravity
- ☐ They can provide a full range of legal services in criminal cases regardless of gravity
- ☐ They can conduct mediation
- ☐ They are authorized to provide only those services that a faculty member or practicing lawyer supervises
- ☐ Don't know
- ☐ Other *(Please specify)* _____

28. Are specialized legal aid services provided focusing on specific disadvantaged population groups? If yes, please indicate to whom these services are provided, and whether they are provided by State-funded legal aid, civil society organizations, or both. *(Please select all that apply)*

	State funded legal aid	CSOs
• Persons with disabilities	☐	☐
• Children	☐	☐
• Women	☐	☐
• The elderly	☐	☐
• Migrants	☐	☐
• Refugees, asylum seekers, or stateless persons	☐	☐
• Internally displaced persons	☐	☐

- Indigenous populations ☐ ☐
- Ethnic or religious minorities ☐ ☐
- LGBT (Lesbian, gay, bi-sexual, transgender) ☐ ☐
- Other (Please specify) _____ ☐ ☐
- No, legal services are not specialized ☐ ☐

29. If specialized legal aid services are available, are legal aid providers *required to have specialized training to qualify to work with specific disadvantaged population groups*? If yes, please indicate for which specific groups. (Please select all that apply)

Specialized training required

- Persons with disabilities ☐
- Children ☐
- Women ☐
- The elderly ☐
- Migrants ☐
- Refugees, asylum seekers, or stateless persons ☐
- Internally displaced persons ☐
- Indigenous populations ☐
- Ethnic or religious minorities ☐
- LGBT (Lesbian, gay, bi-sexual, transgender) ☐
- Other (Please specify) _____ ☐
- No, legal services are not specialized ☐

30. In representing children, do legal aid providers routinely reach out to the following people for support to assist the child throughout proceedings? (Please select all that apply)

- ☐ Parents
- ☐ Social workers or other social service workforce
- ☐ Psychologist(s)
- ☐ Child advocates or other support persons
- ☐ Child protection service practitioners
- ☐ Child welfare agency staff
- ☐ Domestic violence programme staff
- ☐ Medical and mental health professionals
- ☐ Teacher or school official
- ☐ Other personnel (Please specify) _____
- ☐ No, they do not reach out for support

31. For criminal cases involving *suspected or accused children*, how often is diversion away from judicial proceedings used?

- ☐ Usually
- ☐ Occasionally
- ☐ Diversion is not used
- ☐ Don't know

32. In criminal cases where children are represented by legal aid providers, is the use of diversion, alternatives to pretrial detention, and alternatives to imprisonment/non-custodial sentencing achieved at a higher, lower or same rate, as compared to *children who are not represented at all*?

	Diversion	Alternatives to pretrial detention	Alternatives to imprisonment/non-custodial sentencing
• Legal aid providers achieve higher rates	☐	☐	☐
• Legal aid providers achieve lower rates	☐	☐	☐
• There is no noticeable difference	☐	☐	☐
• Not applicable	☐	☐	☐
• Don't Know	☐	☐	☐

33. In criminal cases where children are represented by legal aid providers, is the use of diversion, alternatives to pretrial detention, and alternatives to imprisonment/non-custodial sentencing at a higher, lower or same rate, as compared to *children who are represented by private lawyers*?

	Diversion	Alternatives to pretrial detention	Alternatives to imprisonment/non-custodial sentencing
• Legal aid providers achieve higher rates	☐	☐	☐
• Legal aid providers achieve lower rates	☐	☐	☐
• There is no noticeable difference	☐	☐	☐
• Not applicable	☐	☐	☐
• Don't Know	☐	☐	☐

34. In criminal cases where children are represented by legal aid providers specialized in children's rights, is the use of diversion, alternatives to pretrial detention, and alternatives to imprisonment/non-custodial sentencing achieved at a higher, lower or same rate, as compared to cases where children are represented by non-specialized legal aid providers?

	Diversion	Alternatives to pretrial detention	Alternatives to imprisonment/non-custodial sentencing
• Specialized legal aid providers achieve higher rates	☐	☐	☐
• Specialized legal aid providers achieve lower rates	☐	☐	☐
• There is no noticeable difference	☐	☐	☐
• Not applicable	☐	☐	☐

35. How many practicing paralegals are there in your country?

_____ Number of paralegals

- ☐ Not applicable; paralegals are not allowed to provide legal aid independently

36. Which type of legal aid services are paralegals allowed to provide?

(Please select all that apply)

	Criminal	Civil & Administrative
• Legal advice (e.g. on the application of the relevant law, and actions the person may appropriately take) on a one-time or two-time basis	☐	☐
• Legal representation before a prosecutor, court, or tribunal under a lawyer's supervision	☐	☐
• Legal representation before a prosecutor, court, or tribunal without a lawyer's supervision	☐	☐
• Provision of legal information in police precincts, or prisons	☐	☐
• General assistance in navigating the justice system (e.g. by providing instructions on filling out legal documents)	☐	☐
• Other (Please specify) _____	☐	☐
• Not applicable, paralegals are not allowed to provide legal aid	☐	☐
• Don't know	☐	☐

37. What training must paralegals go through to be accredited to provide legal services?

(Please select all that apply)

- ☐ Completion of a short course on legal representation
- ☐ Completion of a professional paralegal training course accredited by the State
- ☐ Completion of an apprenticeship or internship with lawyers
- ☐ Experience working for the courts, prosecutors or police as assistants or clerks
- ☐ Experience working as legal assistants to lawyers, but not formal educational training
- ☐ Other *(Please specify)* _____
- ☐ Not applicable

Section C - Comments *(optional)*: _____

D. Legal Aid in Practice

38. How are legal aid services organized in your country? *(Please select all that apply)*

	Criminal	Civil & Administrative
• Through public defender institutions	☐	☐
• Through panel appointments (ex officio, contract lawyers)	☐	☐
• Through the bar association	☐	☐
• Through pro bono schemes	☐	☐
• Through the legal aid boards/commissions	☐	☐
• Through civil society	☐	☐
• A combination of the above <i>(Please specify)</i> _____		
• Other <i>(Please specify)</i> _____		

39. Please estimate the percentage of legal services provided by the following legal aid providers: *[The sum must add up to 100%]*

_____ State-funded legal aid office

_____ Legal aid office/institution funded by a combination of State and external funds

_____ Civil society organizations funded by a combination of State and external funds

_____ Civil society organizations funded by private or international donors

_____ Other (Please specify) _____

☐ Don't know

40. In your opinion, how aware is the general population of the right to legal aid services?

(Please select all that apply)

- ☐ Very knowledgeable
- ☐ Somewhat knowledgeable
- ☐ Not at all knowledgeable
- ☐ Don't know

41. In your opinion, how aware is the general population of how and where to access legal aid services? *(Please select all that apply)*

- ☐ Very knowledgeable
- ☐ Somewhat knowledgeable
- ☐ Not at all knowledgeable
- ☐ Don't know

42. In your opinion, which of the issues below are the most significant obstacles facing poor and vulnerable groups in accessing legal aid?

(In each column, from the choices below, please select the five most significant obstacles and rank them from 1-5, with 1 being the most significant, and 5 being the least significant)

	Criminal	Civil & Administrative
• There is no organized legal aid system	☐	☐
• There is a limited number of lawyers in our country to cover legal aid needs	☐	☐
• Legal aid is geographically inaccessible	☐	☐
• People may not be aware that legal aid services are available at little or no cost	☐	☐
• People do not know where to find legal assistance	☐	☐
• People may not understand how legal aid services can help them	☐	☐
• Language barriers exist between legal aid providers and those who need legal aid	☐	☐
• Lawyers are paid very little for legal aid work	☐	☐
• The bar association is opposed to allowing paralegals to fill the gap of available lawyers	☐	☐

• Covering the cost of police, prosecutors and judges is prioritized over than to spend state funds on lawyers	☐	☐
• There is little support among the population for spending funds to defend accused criminals	☐	☐
• People prefer to resolve issues through the informal justice system or outside the court system, where legal aid has no role	☐	☐
• People think legal aid lawyers are working as part of the police, prosecutor or judicial agencies	☐	☐
• People say they fear being seen entering legal aid providers' offices	☐	☐
• People do not have the confidence in the quality of legal aid services	☐	☐
• People ask for legal aid but state agencies withhold assistance or encourage them to waive the right	☐	☐
• Legal aid is physically inaccessible	☐	☐
• People say they think legal aid lawyers are more loyal to state agencies than to legal aid recipients	☐	☐
• Other (Please specify) _____	☐	☐

43. In your opinion, which of the issues below are the most significant obstacles facing women in accessing legal aid?

(From the choices below, please select the five most significant obstacles and rank them from 1-5, with 1 being the most significant, and 5 being the least significant)

- _____ Legal aid is not provided for family and civil matters
- _____ Legal aid is not provided for cases of gender based violence
- _____ Means tests for eligibility of legal aid often consider overall household income rather than the women's income specifically
- _____ Women may not be aware that legal aid services are available at little or no cost
- _____ Women do not know where to find legal assistance
- _____ Women may not understand how legal aid services can help them
- _____ There are no specialized legal aid services for women
- _____ Women prefer to resolve issues through the informal justice system or outside the court system, where legal aid has no role
- _____ Women prefer to not seek out legal assistance as they see court processes as too time consuming
- _____ Women prefer to not seek out legal assistance or take disputes to court as they perceive court processes as biased against women
- _____ Women see legal aid providers as lacking gender sensitivity

- _____ Women do not have the confidence in the quality of legal aid services provided to them
- _____ Women find it more difficult to confide in a legal aid provider and share intimate information related to the case
- _____ It is not socially acceptable for women to seek legal aid
- _____ There are very few women legal aid providers
- _____ Other (Please specify) _____

44. Are legal aid services provided to female victims of violence (including victims of sexual and gender-based violence) in all legal proceedings?

- ☐ Yes
- ☐ Only in some legal proceedings
- ☐ Only when they are seeking compensation
- ☐ No
- ☐ Other (Please specify) _____

45. Are court support services (such as interpretation and translation of documents) in all legal proceedings provided to female victims of violence (including victims of sexual and gender-based violence)?

- ☐ Yes
- ☐ Only in some legal proceedings
- ☐ No
- ☐ Other (Please specify) _____

46. How would you compare the effectiveness of the legal aid services available in urban areas, as opposed to the legal aid services available in rural areas?

(Please select all that apply)

- _____ The quality of legal services tends to be better in the urban areas
- _____ The quality of legal services tends to be better in rural areas
- _____ It depends on each individual legal aid provider
- _____ Legal aid providers in urban areas have more independence to challenge actions of other justice actors
- _____ Legal aid providers in rural areas have more independence to challenge actions of other justice actors

_____ Legal aid providers in rural areas often see judges, police, prosecutors and opposing counsel socially, which can make it difficult to oppose them in proceedings

_____ Other (Please specify) _____

47. What must a person do to prove eligibility to receive legal aid? (Please select all that apply)

Please indicate whether your answers apply to the

☐ national (federal) level ☐ regional (district) level ☐ regional (district) level

	Criminal	Civil & Administrative
• Show a paper proving status as a recipient of welfare or state subsidies for poor or vulnerable members of the population	☐	☐
• Demonstrate family hardship (e.g., (documentary evidence) multiple children, single parent, family member disability, et al.)	☐	☐
• Evidence of low income, if employed (pay mark/contract/other document indicating pay rate)	☐	☐
• The applicant's word that he or she meets financial or vulnerability criteria	☐	☐
• Tax filing for previous year	☐	☐
• Membership of a protected group, such as migrants, children, displaced persons, refugees, women, national, ethnic, religious minority non-fluency in the national language, or other vulnerable group or minority	☐	☐
• No proof; entitlement to legal aid depends on the gravity or complexity of the matter requiring assistance	☐	☐
• A determination by the agency or official responsible for ensuring appointment that the interests of justice require provision of legal aid in the given specific case	☐	☐
• Proof of citizenship of your country	☐	☐
• No proof is necessary when the State is obliged to provide legal aid under the law	☐	☐
• Proof that the legal aid applicant's claim has merit	☐	☐
• Other (Please specify) _____	☐	☐

48. Is there a cost to the recipient of legal aid services? (Please select all that apply)

	National (Federal)	Regional (District)	Local (Municipal)
• No. The services are free of charge to those meeting eligibility criteria	☐	☐	☐
• The State covers all legal aid costs in criminal cases	☐	☐	☐

• The State covers all legal aid costs in civil cases	☐	☐	☐
• The party using legal aid pays a percentage of the cost, established by law	☐	☐	☐
• The legal aid recipient pays a bonus to the legal aid provider above the provider's fee from the government or donor	☐	☐	☐
• There are set fees for certain actions	☐	☐	☐
• There is a sliding scale of payment, based on financial status	☐	☐	☐
• Other (Please specify) _____	☐	☐	☐

49. Where can people obtain *primary legal aid* services free of charge?

(Please select all that apply)

	National (Federal)	Regional (District)	Local (Municipal)
• It is available at the office of the public defender, or other state-funded institution	☐	☐	☐
• There is a legal advice centre in city and/or town administrative offices where lawyers or paralegals provide advice	☐	☐	☐
• The bar association maintains a roster of qualified lawyers available to provide legal advice	☐	☐	☐
• The bar association provides a hotline that individuals can call by phone to receive advice	☐	☐	☐
• Civil society organizations provide legal advice to people who come to their offices	☐	☐	☐
• Other (Please specify) _____	☐	☐	☐
• Not applicable	☐	☐	☐

50. After a legal aid provider is appointed, how often does the same provider remain in the case until its resolution in the court of first instance (or earlier dismissal)?

(Please select all that apply)

	National (Federal)	Regional (District)	Local (Municipal)
• Almost always - one lawyer begins representation after arrest and continues until the case is resolved	☐	☐	☐
• Often - unless the original lawyer becomes unavailable or is unqualified to represent the suspect/defendant at trial	☐	☐	☐
• Occasionally – it's in each lawyer's discretion	☐	☐	☐
• Rarely - one legal aid case can have many lawyers representing the legal aid recipient sequentially at different stages	☐	☐	☐
• Other (Please specify) _____	☐	☐	☐

- Don't know ☐ ☐ ☐
- Not applicable ☐ ☐ ☐

51. In criminal cases, are legal aid services organized to maximize the number of cases in which the same provider represents the accused/suspect throughout all stages of a case?

- ☐ Yes, legal aid institutions aim to ensure that the same provider represent the accused/suspect at all stages of the case
- ☐ No, legal aid providers specialize in representation at particular procedural stages of a case, and a new provider enters the case at each subsequent procedural stage
- ☐ Not applicable

52. What is the remedy if no legal aid provider arrives or if a legal aid provider is unprepared or unqualified?

- ☐ The proceeding is deemed invalid
- ☐ The proceeding is postponed
- ☐ A replacement legal aid provider is asked to represent the party instead of the assigned provider
- ☐ There is no means of assessing if the legal aid provider is unprepared or unqualified
- ☐ Other (Please specify) _____

53. If a party is denied access to legal aid, is there a right to appeal that decision?

- | | Criminal | Civil & Administrative |
|--|--------------------------|--------------------------|
| • Yes | ☐ | ☐ |
| • No | ☐ | ☐ |
| • No one is denied access to legal aid | ☐ | ☐ |

54. Can a legal aid provider refuse to take a case or ask to be removed from the duty to represent a particular legal aid recipient under any circumstances?

- ☐ Yes, due to having too many cases
- ☐ Yes, due to lacking expertise in the law or skills required by the specific case
- ☐ Yes, due to incompatibility with the legal aid recipient
- ☐ Yes, when they feel the pay is too little to justify the time they will spend on it
- ☐ Yes, based on a conflict of interest with the legal aid recipient
- ☐ No, the provider must take a case if it is assigned to him or her

55. How is the quality of legal aid services monitored? *(Please select all that apply)*

	National (Federal)	Regional (District)	Local (Municipal)
• An administrator from the State institution overseeing the practice of legal aid providers reviews a sampling of legal aid case files periodically	☐	☐	☐
• An administrator from the state institution overseeing the practice of legal aid providers observes their performance in court periodically	☐	☐	☐
• The bar association, legal aid board or public defender institution organize peer reviews of providers' work	☐	☐	☐
• Civil society organizations monitor legal aid providers' work	☐	☐	☐
• The monitoring institution conducts interviews with legal aid recipients following case resolution	☐	☐	☐
• The monitoring institution surveys judges, police and prosecutors about their observations of providers' work	☐	☐	☐
• Legal aid providers report to their supervisors on steps they take	☐	☐	☐
• Legal aid providers report to the monitoring institution on their actions	☐	☐	☐
• Legal aid recipients can file complaints if they are dissatisfied with the assistance they received	☐	☐	☐
• Other <i>(Please specify)</i> _____	☐	☐	☐
• Don't know	☐	☐	☐
Not applicable, there is no single established mechanism	☐	☐	☐

Section D - Comments *(optional)*: _____

E. Legal Aid and Criminal Justice

56. What is the mechanism for assigning (appointing) legal aid providers in criminal cases?

(Please select all that apply)

	National (Federal)	Regional (District)	Local (Municipal)
• Courts, prosecutors, police/other state agencies contact providers in the order listed on a duty roster received from the coordinating organization/agency	☐	☐	☐
• Courts, prosecutors, police/other state agencies contact the bar association, which coordinates appointments	☐	☐	☐
• Courts, prosecutors, police/other state agencies keep their own lists of lawyers whom they can contact if they determine that legal aid is needed	☐	☐	☐
• The legal aid board appoints legal aid providers from a duty roster when they receive notification about a person in need of legal aid	☐	☐	☐
• The public defender institution coordinates from among staff and a roster of private practitioners who supplement the public defender institution	☐	☐	☐
• The bar association or a separate coordinating agency operates the appointment mechanism that ensures the presence of lawyers	☐	☐	☐
• There are legal aid providers on duty in courts, police precincts and detention centers	☐	☐	☐
• There is a computerized system for distribution of appointments among lawyers who accept appointments to legal aid cases	☐	☐	☐
• Other (Please specify) _____	☐	☐	☐
• Don't know	☐	☐	☐
• Not applicable, there is no single established mechanism	☐	☐	☐

57. Approximately how many hours does it usually take for a legal aid provider to appear after notice is given that legal aid is needed in criminal cases?

- ☐ Less than 1 hour
- ☐ 2-6 hours
- ☐ 6-12 hours
- ☐ 12-24 hours or less
- ☐ 24-48 hours
- ☐ 48-72 hours
- ☐ Don't know

58. Is it prohibited in your law or regulation for the police (or other investigating agency) to interview a person in the absence of a lawyer?

- ☐ Yes
- ☐ Yes, but there are exceptions, for example when there are compelling reasons
- ☐ Yes, but only from the moment the person is officially suspected or accused
- ☐ Yes, but the person can waive this right and agree to be interviewed without a lawyer
- ☐ No, not when the person is interviewed as a witness
- ☐ No
- ☐ Don't know
- ☐ Other (Please specify) _____

59. Do police, prosecutors or judges ever obtain incriminating information from a suspect or defendant when no legal aid provider is present? (Please select all that apply)

- ☐ No, prosecutors do not want statements from a suspect/defendant unless a legal aid provider is present
- ☐ No, the courts are strict about excluding evidence or statements made when a legal aid provider was not present
- ☐ Rarely; the police usually stop questioning a suspect/defendant until a legal aid provider can be present
- ☐ Yes. Police and/or prosecutors wait a limited amount of time for legal aid providers to arrive; if it takes too long, the questioning begins without a provider's presence
- ☐ Yes. Police sometimes question a person first as a witness, and determine the person to have a right to legal aid only after the witness has incriminated him/herself
- ☐ Other (Please specify) _____

60. How common is it for pretrial detention (pretrial remand/preventive measures) to be used when suspects have access to legal aid services?

	National (Federal)	Regional (District)	Local (Municipal)
• Very common	☐	☐	☐
• Somewhat common	☐	☐	☐
• Not common	☐	☐	☐
• Don't know	☐	☐	☐
• Not applicable	☐	☐	☐

61. At which procedural actions or stages of a criminal case is legal aid made available to an eligible suspect or defendant? *(Please select all that apply, indicating whether the law recognizes a right to legal aid; and whether in practice the right is enforced)*

Please indicate whether your answers apply to the

☐ national (federal) level

☐ regional (district) level

☐ regional (district) level

	According to the Law	In Practice
• From the moment when a law-enforcement representative restricts the suspects/defendant's freedom	☐	☐
• From the moment when charges are officially filed	☐	☐
• From the moment when a State agency begins consideration of whether to impose pretrial detention or restrictive measures	☐	☐
• During an identification procedure with the suspect's/defendant's participation	☐	☐
• Whenever a person is confined in police custody or other state facility (before a decision on detention or remand)	☐	☐
• During a search of the suspect's/defendant's residence	☐	☐
• During questioning of a potential suspect/defendant before formal charges are filed	☐	☐
• During trial	☐	☐
• During a first appeal	☐	☐
• For representation of prisoners in cases involving serious disciplinary charges, or in initiating complaints	☐	☐
• For any appeal or cassation	☐	☐
• For appeal to international tribunals	☐	☐
• For consideration of early release from prison	☐	☐
• For consideration of early release from prison	☐	☐
• For consideration of probation, or social rehabilitation/reintegration matters after release from prison	☐	☐
• Other <i>(Please specify)</i> _____	☐	☐

62. In criminal cases, how important do you think it is for legal aid providers to assert the right to silence and the right to be presumed innocent? *(Please select all that apply)*

a. Right to Silence

- ☐ Very important
- ☐ Counter-productive; police, prosecutors and judges view such arguments as obstructing the normal flow of proceedings
- ☐ Counter-productive; it expends the respect the court, prosecutors and/or police have for legal aid providers, which damages the legal aid recipient

- ☐ Not important; these rights are mere formalities
- ☐ Not important; advocating these rights has little impact on case outcomes
- ☐ Not important; there is quality review that checks whether providers advocate these rights

b. Right to be presumed innocent

- ☐ Very important
- ☐ Counter-productive; police, prosecutors and judges view such arguments as obstructing the normal flow of proceedings
- ☐ Counter-productive; it expends the respect the court, prosecutors and/or police have for legal aid providers, which damages the legal aid recipient
- ☐ Not important; these rights are mere formalities
- ☐ Not important; advocating these rights has little impact on case outcomes
- ☐ Not important; there is quality review that checks whether providers advocate these rights

63. In criminal cases where legal aid is provided to children, please indicate whether any of the actions below is required by the legal framework and whether, in your opinion, legal aid providers advocate for/implement them in practice. (Please select all that apply)

	Legal Framework	In Practice
• Ensuring the presence of parents at all times	☐	☐
• Ensuring the presence of parents only when it's in the child's best interests	☐	☐
• Preventing the child from giving statements to the police against his/her interests	☐	☐
• Preventing disclosure of information about pending charges to the child's school, community or media	☐	☐
• Ensuring comfortable, child-friendly surroundings for any meetings with state justice officials	☐	☐
• Limiting the number of interviews with the child	☐	☐
• Ensuring any child who is held in custody is separated from adult detainees or inmates	☐	☐
• Communicating in simple language with the child about what is happening at every step of a case's development	☐	☐
• Exploring diversion and alternative measures to prevent pretrial detention and/or deprivation of liberty if the child is found culpable	☐	☐
• Exploring grounds to prevent a record of a suspect's/defendant's arrest and/or conviction or to expunge the juvenile criminal record	☐	☐

Section E - Comments (optional): _____

F. Legal Aid and Civil & Administrative Justice

64. In your country, for which types of civil cases do people most commonly seek out legal aid services? (From the choices below, please select the five most common types of cases and rank them from 1-5, with 1 being the most common, and 5 being the least common)

- _____ Marital disputes
- _____ Child custody issues
- _____ Property issues
- _____ Labour disputes
- _____ Contractual disputes
- _____ Tort claims
- _____ Administrative matters
- _____ Claims for state services or disputes with state agencies
- _____ Dispute resolution proceedings or mediation
- _____ Assistance with entrepreneurial activity or 'start up' of a small business
- _____ Assistance with informal or traditional justice proceedings
- _____ Other (Please specify) _____

65. What are the eligibility criteria for access to legal aid services in civil cases? (Please select all that apply and indicate in comments below if more than one criterion needs to be met)

	National (Federal)	Regional (District)	Local (Municipal)
• The person meets a financial threshold [Please indicate threshold (in USD, if possible) _____]	☐	☐	☐
• The person is a child (under the age of 18 or as per national law)	☐	☐	☐
• The person has physical disabilities	☐	☐	☐
• The person has intellectual/mental disabilities	☐	☐	☐

• The person is an internally displaced person	☐	☐	☐
• The person is a refugee	☐	☐	☐
• The persons' mother tongue is different than the language of official proceedings	☐	☐	☐
• Eligibility depends on the case's gravity, complexity, or case type, as identified in the law	☐	☐	☐
• When the law stipulates that the interests of justice require it	☐	☐	☐
• The merit of the party's (parties') claim	☐	☐	☐
• A minimum monetary threshold in dispute	☐	☐	☐
• The number of parties opposing the person requesting legal aid	☐	☐	☐
• No specific requirements, it is assigned by authorized agencies in their discretion	☐	☐	☐
• Other (Please specify) _____	☐	☐	☐
• Not applicable	☐	☐	☐

66. For which types of cases do you think there is a demand for legal aid for strategic litigation/public interest litigation/class action? *(From the choices below, please select the five most common types of cases and rank them from 1-5, with 1 being the most common, and 5 being the least common)*

_____ Discrimination

_____ Labour rights

_____ Consumer rights

_____ Environmental protection

_____ Health

☐ None

☐ Other (Please specify) _____

67. For what actions or stages of a civil case or administrative matter is a party eligible for legal aid under the law? *(Please select all that apply)*

- ☐ Primary legal service (legal advice)
- ☐ Assistance drafting a complaint
- ☐ Assistance drafting a response
- ☐ Assistance filing complaints and responses
- ☐ Assistance gaining access to state services
- ☐ Protective services for victims of violence
- ☐ Conducting depositions or other official queries
- ☐ Negotiations between parties

- ☐ Mediation
- ☐ Pretrial hearings
- ☐ Independent investigation
- ☐ Trial
- ☐ Drafting motions
- ☐ For any appeal or cassation
- ☐ For appeal to international tribunals
- ☐ Other (Please specify) _____

68. In your country, please estimate the percentage of demand for legal aid services in civil cases from respondents, as opposed to complainants (the total must add up to 100%).

_____ Respondents

_____ Complainants

Section F - Comments (optional): _____

G. Legal Aid Administration and Management

69. Which institution has chief responsibility for the management and administration of legal aid? (Please select all that apply)

	National (Federal)	Regional (District)	Local (Municipal)
• The executive agency in charge of justice or a subdivision within it (e.g. Ministry of Justice)	☐	☐	☐
• The courts	☐	☐	☐
• The prosecution	☐	☐	☐
• The bar association	☐	☐	☐
• An independent self-governing legal aid administration	☐	☐	☐
• A legal aid board or council under an executive level justice agency	☐	☐	☐

• A legal aid board or council under an ombudsman's office	☐	☐	☐
• A legal aid board or council under the legislature	☐	☐	☐
• A legal aid board or council under the executive branch (other than the national justice institution)	☐	☐	☐
• A legal aid board or council under another governmental body	☐	☐	☐
• The national institutional legal services provider (sometimes called "public defender," "national defender," or "professional clinic for legal services") acts as a coordinating agency, as well as providing legal aid services	☐	☐	☐
• A civil society organization	☐	☐	☐
• A local city-level or village-level administration	☐	☐	☐
• There is no central administration	☐	☐	☐
• Other (Please specify) _____	☐	☐	☐
• Don't know	☐	☐	☐
• Not applicable	☐	☐	☐

70. What is the relationship of legal aid lawyers to the legal aid administration?

(Please select all that apply)

	National (Federal)	Regional (District)	Local (Municipal)
• They are full-time salaried employees of the legal aid administration	☐	☐	☐
• They provide services as needed on a part-time contractual basis with the legal aid administration	☐	☐	☐
• They receive appointments from the bar association but have no involvement with any other agency	☐	☐	☐
• Other (Please specify) _____	☐	☐	☐
• Don't know	☐	☐	☐
• Not applicable	☐	☐	☐

71. What is the status of paralegals vis-à-vis the legal aid administration in your country?

_____ They are full-time salaried employees of the legal aid administration

_____ They sign part-time individual contracts with the legal aid administration

_____ They receive appointments from the bar or paralegal association but have no involvement with any other agency

_____ Other (please specify) _____

☐ Not applicable

72. What institution(s) determines the budget for legal aid? *(Please select all that apply)*

- ☐ The parliament
- ☐ The ministry of finance
- ☐ The ministry of justice
- ☐ The judiciary
- ☐ The legal aid board or council
- ☐ International organizations that support legal aid
- ☐ The regional (district) or local (municipal) government
- ☐ None of the above
- ☐ Other *(Please specify)* _____

73. Who participates in decisions about the budget for legal aid? *(Please select all that apply)*

- ☐ The bar association
- ☐ The legal aid board
- ☐ The legal aid administration
- ☐ Full-time lawyers who provide legal aid
- ☐ Representatives of ex officio appointed lawyers
- ☐ None of the above
- ☐ Other *(Please specify)* _____

74. What funding mechanisms cover the cost of specialized legal aid providers' services (i.e. legal aid providers that provide services to specific population groups such as women, children, internally displaced persons, et al.)? *(Please select all that apply)*

- ☐ The government provides separate funding
- ☐ Private companies, foundations or other funders provide funds
- ☐ International donors provide funds
- ☐ Legal aid recipients pay a fee
- ☐ All of the above
- ☐ No separate funding is provided
- ☐ Other *(Please specify)* _____

75. Does the State cover the cost of additional services (for example, independent investigation; experts; psychological/social work support; clerical assistance)?

- ☐ Yes, for independent investigators
- ☐ Yes, for independent forensic experts
- ☐ Yes, for psychological or social work support

- ☐ Yes, for clerical assistance
- ☐ No such services are covered
- ☐ Other (Please specify) _____

76. How are legal aid providers paid for their services? (Please select all that apply)

Please indicate whether your answers apply to the

- ☐ national (federal) level
- ☐ regional (district) level
- ☐ regional (district) level

	Criminal	Civil & Administrative
• They receive a fixed fee for each case	☐	☐
• They receive a fixed fee for each action they take on a case and report to the agency authorized to issue payment	☐	☐
• They receive a fixed fee for each procedural action that a state agent witnesses and approves in writing (e.g., presence in court; representation at interrogation; pretrial detention/release advocacy; investigation; et al.)	☐	☐
• Providers work in law firms that receive funds from the State (contracted)	☐	☐
• Providers work full time in institutions funded by the State (e.g. public defenders' office)	☐	☐
• Providers sign contracts with the state agency overseeing appointments to receive payment for a set number of cases (e.g., bulk payment for ten cases)	☐	☐
• Providers are paid on an hourly basis for actions that the state has identified as a basis of payment	☐	☐
• Providers submit reports on the hours they spend on a legal aid case	☐	☐
• Other (Please specify) _____	☐	☐

77. Who is in charge of disbursing payment to legal aid providers for their work?

(Please select all that apply)

	National (Federal)	Regional (District)	Local (Municipal)
• The national or local bar association	☐	☐	☐
• The national legal aid board or coordinating administration	☐	☐	☐
• The local legal aid board or coordinating administration	☐	☐	☐
• The courts	☐	☐	☐
• The legal aid institution that employs the legal aid provider	☐	☐	☐
• The police or prosecutor	☐	☐	☐
• The legal aid recipient	☐	☐	☐

- | | | | |
|--------------------------------|--------------------------|--------------------------|--------------------------|
| • Other (Please specify) _____ | ☐ | ☐ | ☐ |
| • Not applicable | ☐ | ☐ | ☐ |

78. From whom do legal aid providers physically receive payment for work?

(Please select all that apply)

- | | National
(Federal) | Regional
(District) | Local
(Municipal) |
|--|-------------------------------|--------------------------------|------------------------------|
| • From the national legal aid board | ☐ | ☐ | ☐ |
| • From the local legal aid board | ☐ | ☐ | ☐ |
| • From the courts | ☐ | ☐ | ☐ |
| • From the police, prosecutors or prison officials | ☐ | ☐ | ☐ |
| • Other (Please specify) _____ | ☐ | ☐ | ☐ |

79. Which of the following is included among the responsibilities of the legal aid authority? (Please select all that apply)

- | | National
(Federal) | Regional
(District) | Local
(Municipal) |
|--|-------------------------------|--------------------------------|------------------------------|
| • To oversee and coordinate the function of legal aid appointment mechanisms | ☐ | ☐ | ☐ |
| • To safeguard the rights of legal aid recipients | ☐ | ☐ | ☐ |
| • To establish legal aid strategy and policy | ☐ | ☐ | ☐ |
| • To establish and maintain performance standards for effective delivery of legal aid | ☐ | ☐ | ☐ |
| • To serve as an independent oversight agency between legal aid providers and the state that pays them | ☐ | ☐ | ☐ |
| • To oversee professional training programs | ☐ | ☐ | ☐ |
| • To guarantee the independence of legal aid providers from the state | ☐ | ☐ | ☐ |
| • To review data on legal aid and incorporate it into new legal aid policy | ☐ | ☐ | ☐ |
| • To track case outcomes for data on effective representation | ☐ | ☐ | ☐ |
| • To interface with personnel of other justice agencies and organizations (judges/prosecutors/police/experts/other) about the quality of legal aid providers' services | ☐ | ☐ | ☐ |
| • To negotiate with officials to achieve reasonable conditions for legal aid providers (scheduling/caseload limitations/access to independent experts, et al.) | ☐ | ☐ | ☐ |
| • To monitor expenditure of the legal aid funds | ☐ | ☐ | ☐ |
| • To monitor compliance of legal aid providers with government priorities | ☐ | ☐ | ☐ |

- To advocate with appropriate officials for sufficient budget to cover the need for legal aid ☐ ☐ ☐
- To advocate or negotiate for conditions that allow legal aid providers to advocate effectively for legal aid recipients' rights ☐ ☐ ☐
- To consult with legal aid providers on their needs for ensuring their ability to provide effective legal aid ☐ ☐ ☐
- Other (Please specify) _____ ☐ ☐ ☐

80. If your country has a legal aid board/council/commission, how are the board members selected/appointed? (Please select all that apply)

- ☐ Appointment by the parliament
- ☐ Appointment by the executive
- ☐ Appointment by the courts
- ☐ Appointment by the prosecution
- ☐ Appointment by police
- ☐ Appointment by the bar association
- ☐ Appointment by the public defender office
- ☐ Election by bar association members
- ☐ Competitive selection process
- ☐ Other (please specify) _____
- ☐ Not applicable

81. If your country has a legal aid board/council/commission, how often do the board members meet?

- ☐ Once a month or more
- ☐ At least once in 3-4 months
- ☐ Once or twice a year
- ☐ Less than once a year
- ☐ Never
- ☐ Not applicable

Section G - Comments (optional): _____

H. Legal Aid and Informal Justice Systems

82. Please estimate what percentage of disputes in your country is resolved through informal justice mechanisms:

_____ Formal mediation/alternative dispute resolution processes

_____ Customary or religious mediation/adjudication processes

- ☐ Don't Know
- ☐ Not applicable

83. What kinds of cases and disputes do informal justice proceedings handle?

(Please select all that apply)

- ☐ Marital or family disputes
- ☐ Child custody issues
- ☐ Land and property disputes
- ☐ Inheritance disputes
- ☐ Informal contracts and labor agreements
- ☐ Minor criminal cases
- ☐ I do not know
- ☐ Other *(Please specify)* _____
- ☐ Not applicable

84. In your opinion, which of the following are reasons why people prefer to resolve disputes through informal justice proceedings? *(Please select all that apply)*

- ☐ Informal tribunals are more conveniently located, especially for those living in remote areas
- ☐ In informal justice proceedings, the wealthy and the poor are on equal footing
- ☐ Judges or decision-makers in informal proceedings usually know the parties and can better judge what is a just outcome
- ☐ Informal justice proceedings take less time
- ☐ Informal justice proceedings are more familiar and people understand how they work
- ☐ Informal justice proceedings lead to a negotiated outcome that is acceptable to all parties
- ☐ Other *(Please specify)* _____
- ☐ Not applicable

85. Do informal justice mechanisms in your country allow a lawyer or paralegal to provide assistance in the mediation/adjudication process? *(Please select all that apply)*

- ☐ Yes, in formal mediation/alternative dispute resolution processes
- ☐ Yes, to represent parties or provide advice in customary or religious mediation/adjudication processes
- ☐ No
- ☐ Not applicable

86. Are there any mechanisms that allow cases to be referred between formal/statutory legal system and informal justice systems? *(Please select all that apply)*

- ☐ Yes, for formal mediation/alternative dispute resolution processes
- ☐ Yes, for customary or religious mediation/adjudication processes
- ☐ Yes, for others (please specify) _____
- ☐ No
- ☐ Not applicable

If yes, can legal aid service providers work across the different systems?

- ☐ Yes
- ☐ No
- ☐ Under certain circumstances
- ☐ Not applicable

87. Do legal aid providers need to demonstrate any specific qualifications to provide assistance in informal justice processes?

a. for formal mediation/alternative dispute resolution processes

- ☐ A law degree
- ☐ A paralegal certificate
- ☐ A mediation training certificate
- ☐ Being a reputable member of the community
- ☐ Basic training on legal matters
- ☐ Other *(Please specify)* _____
- ☐ Not applicable

b. for customary or religious mediation/adjudication processes

- ☐ A law degree
- ☐ A paralegal certificate
- ☐ A mediation training certificate

- ☐ Being a reputable member of the community
- ☐ Basic training on legal matters
- ☐ Other *(Please specify)* _____
- ☐ Not applicable

Section H - Comments *(optional)*: _____

I. Additional Information

- **In which areas, if any, would your country benefit from technical assistance and/or policy and programme support to strengthen the provision of legal aid?**
 - ☐ Legislative drafting advice
 - ☐ Development of action plans/policies
 - ☐ Developing quality criteria for legal aid providers
 - ☐ Establishing paralegal systems
 - ☐ Institutional support (please specify below)
 - ☐ Training (please specify below)
 - ☐ Not applicable
 - ☐ Other *(Please specify)* _____

- **If your country has laws, policies, strategies, and/or action plans related to legal aid and legal assistance, please attach them to this questionnaire when submitting it to: GSLA@undp.org**

- **If applicable, please provide additional comments:**

Annex III

Recommendations on legal aid from the Universal Periodic Review

State under review	Recommendation	Recommending State	Response	UPR cycle
Afghanistan	Further strengthen the Legal Aid Department of the Ministry of Justice and establish relevant mechanisms for coordination of its activities with other entities working in the area of providing legal assistance	Uzbekistan	Accepted	2 (2014)
Albania	Guarantee the protection of fundamental human rights and freedoms of its citizens by guaranteeing the independence of the judicial bodies, impartiality in decision-making, respecting defendants' right to fair trial, ensuring access to free legal aid and restoring citizens' trust in the justice system by fighting impunity	Netherlands	Accepted	2 (2014)
	Enforce the provisions of the "Law on legal aid" and ensure that practical procedures to obtain free legal aid are enabling applicants to fully enjoy their rights of access to justice	Moldova	Accepted	2 (2014)
Angola	Enact legislation on domestic violence as soon as possible, to further strengthen family counselling centres that assist victims, and to increase the availability of legal aid throughout the country for victims of violence	Netherlands	Accepted	1 (2010)
Armenia	Strengthen the work of the institute of public defence by providing free legal aid to the population	Kyrgyzstan	Accepted	1 (2010)
	Ensure the provision of assistance and the accessibility of legal aid to all victims of trafficking, in line with regional and international human rights standards	Moldova	Accepted	2 (2015)
Austria	Develop a fully fledged legal aid system in the context of police custody, to ensure that persons who are not in a position to pay for a lawyer can effectively benefit, if they so wish, from the assistance of a lawyer throughout their police custody	Czech Republic	Accepted	1 (2011)

State under review	Recommendation	Recommending State	Response	UPR cycle
Bangladesh	Further its endeavours with regard to the smooth and productive activity of the National Legal Aid Services Organisation (NLASO) within the country	Azerbaijan	Accepted	2 (2013)
Bhutan	Improve equal access to the legal aid system, in particular for poor and marginalized groups	Austria	Noted	2 (2014)
Burkina Faso	Guarantee the rights of prisoners, provide access to legal aid from the moment of arrest and create programmes of rehabilitation, including for juvenile offenders	Mexico	Accepted	2 (2013)
Cote d'Ivoire	Improve access to justice of its citizens by reviewing legal aid procedures and the establishment of new courts	Italy	Accepted	1 (2009)
Croatia	Continue providing free legal aid to the most vulnerable citizens	Pakistan, Palestine	Accepted	1 (2010)
	Carry out an independent assessment on the effectiveness of the law on free legal aid and, depending on the results thereof, take the measures required to guarantee that the most disadvantaged among the population have access to effective, comprehensive and non-discriminatory legal aid	Belgium	Accepted	1 (2010)
	Take necessary measures in order to guarantee to everyone who requests it, including those belonging to minorities, access to legal aid	France	Accepted	1 (2010)
	Amend the strict eligibility requirements of the Free Legal Aid Act so that all who need it can make use of its provisions	Netherlands	Noted	1 (2010)
Cyprus	Take appropriate measures for the provision of legal aid to asylum seekers and migrants	Brazil	Accepted	1 (2009)
	Continue advancing the protection of workers from third countries in Cyprus, including all victims of trafficking and exploitation in the legal aid programme and ensuring the provision of adequate funding for this	Spain	Accepted	2 (2014)
	Ensure that asylum seekers have free legal aid throughout the asylum procedure	Djibouti	Accepted	2 (2014)

State under review	Recommendation	Recommending State	Response	UPR cycle
Democratic Republic of Congo	Continue activities aimed at strengthening the judiciary and promoting access to justice, including through expanding the provision of free legal aid to victims of sexual violence, training members of the judiciary to fight against sexual violence and promoting awareness against the stigmatization of victims	Brazil	Accepted	2 (2014)
Estonia	Continue its efforts to improve the reception conditions of asylum seekers, including the provision of free legal aid, in particular to those who apply for asylum at the border, and those in detention	Slovakia	Accepted	1 (2011)
Ghana	Expand the legal aid services, in particular to rural areas	Austria	Accepted	1 (2008)
	Continue ensuring that all detainees have access to a lawyer of their choice, including through the implementation of an enhanced legal aid system that reaches all regions	Palestine	Accepted	2 (2012)
Guyana	Strengthen the provisions of legal aid services in all regions and ensure enhanced awareness of key CEDAW provisions by the judiciary	Norway	Accepted	2 (2015)
Iceland	Strengthen the protection framework for the rights of the child, particularly through measures to prevent child abuse, exploitation and violence against children, as well as facilitating access to justice and legal aid, and medical and psychological support to victims	Mexico	Accepted	1 (2011)
India	Further promote equal access to justice for all, including by reducing backlog and delays in the administration of cases in court, providing more legal aid to the poor and marginalized, as well as increasing the use of alternative measures to pretrial detention	Thailand	Noted	2 (2012)
Japan	Harmonize the procedures for reviewing asylum decisions with the Convention against Torture and other relevant human rights treaties and provide State legal aid for migrants who need it	Algeria	Accepted	1 (2008)
Kenya	Continue its efforts to establish an institutional and legislative framework for the provision of affordable legal aid and awareness services for all	Sudan	Accepted	2 (2015)

State under review	Recommendation	Recommending State	Response	UPR cycle
Kiribati	Intensify its efforts in raising awareness within communities and providing additional training for the police and the judiciary to ensure that victims of sexual and gender-based violence receive adequate medical support and legal aid	Thailand	Accepted	2 (2015)
Kyrgyzstan	Strengthen the implementation of programmes aiming at the rehabilitation of victims of trafficking in persons, including providing advice, shelter and legal aid and rehabilitation services	Kuwait	Accepted	2 (2015)
Malawi	Adopt and implement expeditiously the Prisons Bill and Legal Aid Bill and other measures needed towards humanization of its penitentiary system	Slovakia	Accepted	1 (2010)
	Enact the Legal Education and Legal Practitioners Amendment Bill and the Legal Aid Bill currently pending before Parliament	Austria	Accepted	1 (2010)
Malta	Promote the access of persons placed in migration detention centres to free legal aid	Djibouti	Accepted	2 (2013)
Mauritania	Intensify its law enforcement efforts against trafficking offenders, incorporate anti-trafficking training into its standard police curriculum, and ensure that legal aid and material assistance are made available	United States	Accepted	1 (2010)
Nigeria	Continue fighting against gender-related violence, including FGM, by enhancing measures, such as ad hoc awareness-raising campaigns and legal aid programme to increase victims' access to justice	Italy	Accepted	2 (2013)
Republic of Congo	Create a system, to include training for law enforcement, legal professionals and health care personnel, for providing legal and medical aid to survivors of gender based violence, including rape and sexual violence, domestic violence, and female genital mutilation	United States	Accepted	2 (2013)
Russian Federation	Continue ensuring State safeguards to provide free legal aid to the population	Venezuela	Accepted	2 (2013)
Serbia	Adopt a more supportive policy with regard to human rights defenders and as part of it, form a network of independent and specialized lawyers to provide legal aid for them	Hungary	Noted	2 (2013)

State under review	Recommendation	Recommending State	Response	UPR cycle
Sierra Leone	Take steps to strengthen legal aid programmes and speed up the scheduling of trial dates and provide for better living conditions in both prisons and detention centres	United States	Accepted	1 (2011)
	Raise awareness by the poor and marginalized population of the legal provisions of the Domestic Violence Act, open investigations into all complaints lodged relating to domestic violence, and prosecute all cases and provide victims to appropriate services, especially the possibility to benefit from a free medical report and legal aid	Switzerland	Accepted	1 (2011)
Slovenia	Implement measures enabling socio-economically disadvantaged persons to receive free legal aid	Chile	Accepted	1 (2010)
Spain	Pursue actions targeted at enforcing access to health-care services and legal aid to vulnerable groups, including migrants regardless of their migration status	Moldova	Accepted	2 (2015)
United Kingdom	Take all measures to ensure that all trafficked people are able to access the support and services they are entitled to, including free legal aid and access to their right to compensation	Greece	Accepted	2 (2012)
Vanuatu	Within the context of the National Plan of Action for Women 2007-2011 and the Family Protection Act, consider raising public awareness to combat domestic violence and making legal aid available to all victims of such violence	Brazil	Accepted	1 (2009)
Venezuela	Further enhance effective access to legal aid for women from all regions, including indigenous women and women of African descent	Sri Lanka	Accepted	1 (2011)

Source: UPR INFO, December 2015

Glossary

Alternative Dispute Resolution (ADR) – A set of mechanisms a society utilizes to resolve disputes without resort to costly adversarial litigation. These often include arbitration, mediation, conciliation.

Child – As per the Convention on the Rights of the Child, a child means every human being below the age of eighteen years unless under the law applicable to the child.

Contract lawyers, ex officio or panel appointment – A mechanism through which licensed practicing lawyers participate in the provision of State-funded legal aid on a case-by-case basis.

Informal justice systems – The resolution of disputes and the regulation of conduct by adjudication or the assistance of a neutral third party that is not a part of the judiciary as established by law and/or whose substantive, procedural or structural foundation is not primarily based on statutory law.

Legal aid – Legal advice, assistance and/or representation at little or no cost to the person designated as entitled to it.

Legal aid provider – A legally trained professional who provides State-funded legal aid on a full-time or part-time basis.

Legal aid administration – An institution that carries out the organisational and management functions to ensure the appointment of legal aid providers and delivery of legal aid services to eligible recipients.

Legal aid board/council – A supervisory body that oversees the formulation and implementation of policy on legal aid.

Paralegals – Non-lawyers trained in legal matters and authorised to perform specific tasks requiring some knowledge of the law and legal procedures but not requiring a law degree. Distinct from clerical assistants to lawyers, paralegals can perform certain tasks independently.

Plea agreement, procedural agreement, expedited trial – An arrangement prior to trial between the State and the defendant in a criminal case through which the defendant agrees to waive the right to a full trial and acknowledge some level of guilt, with the understanding that a lesser sentence may be imposed than the maximum penalty contemplated for the crime charged.

Primary legal aid – This form of legal aid involves the provision of information, referral to territorial offices, mediation and public education. It is available regardless of the financial circumstances of the applicant, and is provided either immediately on request or within a maximum of several days of submission of the request.

Pro bono lawyer – A lawyer who provides legal assistance on a voluntary basis without pay from either the state or the person requiring assistance.

Public defender – A lawyer providing state-funded legal aid as a salaried employee of a group of lawyers who work exclusively as advocates of the rights of qualifying legal aid recipients

Public defender institution – An institution dedicated exclusively to meeting the legal needs of qualified recipients of legal aid through the services of salaried public defenders. Public defender institutions may be organised at the national, regional or city level, and may provide legal aid in a variety of jurisdictions. (Public defender institutions may also be called, collectively, “national defenders,” “public attorneys,” “legal aid societies” or professional “legal aid clinics,” et al.)

State-funded legal aid – Legal advice, assistance and/or representation that is provided at no cost to the recipient, or at a reduced cost to the recipient, with the remainder of the cost paid for by the State.

Public interest litigation and/or class action – Legal action taken to bring about social change to benefit the public. Class action refers to lawsuits that are undertaken on behalf of a group of people.

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