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**STUDY**

# **EUROMED JUSTICE**

## **Regional Study on LEGAL AID**

**Working Group on Legal Aid**



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Lead Firm /Chef de file



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# Summary

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# Executive Summary

## **COMPONENT: Access to justice and legal aid**

**Focus countries: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, and Tunisia**

### **What are the country profiles?**

This is a regional study on legal aid undertaken by EuroMed Justice, aiming to provide a brief summary of the current state of legal aid in eight SPCs, namely Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, and Tunisia. This study is supposed to serve as a reference to learn about legal aid in these countries in order to evaluate and help developing their legal aid framework and services.

### **What is the source of this information?**

Each country profile includes the main findings from a regional survey on legal aid administered to government representatives in the eight countries. The study also relied on literature review to identify, evaluate and synthesize the existing legal corpus, including laws, books, articles, reports and statistical studies about legal aid and justice in these countries.

### **What is covered in a country profile?**

1. Country's general facts
2. Legal aid legal framework
3. Delivery model
4. Services providers
5. Quality safeguards
6. Provision of legal aid
7. Finances

# 1. Foreword and acknowledgements

## Foreword

In this **Regional Study updating the chapters addressing legal aid from the “Handbook, which identifies and describes possible approaches and best practices to improve access to justice and legal aid” developed during the EuroMed Justice III Project**, the reader will find a complete study on the different legal aid systems of the following Southern Partner Countries (SPCs): **Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, and Tunisia**.

This research work has been elaborated on the basis of the contributions of the representatives of the above-mentioned SPCs<sup>1</sup> —in the form of reports and comments— and different bibliographic sources. A questionnaire was elaborated with the agreement of all participants in order to study the legal aid's scheme content items of their respective countries. The questionnaire's responses have been particularly useful for the research development.

The analysis of the conclusions has been made in light of various international and European standards. In this respect, quality indicators have been used to measure the different systems and their approach to the minimum standards recommended in different international instruments.

The analysis outcome, the shortcomings, and main findings identified, together with the country case studies served as the basis to accomplish the overall aims of this research on legal aid: 1) to identify good practices to be implemented at the national level, 2) to identify priority areas for support at the national level, and 3) to draw a roadmap on how to move forward.

Both the good practices described and the identified areas for support benefited from the inputs, recommendations, and comments received from the representatives of the eight SPCs that participated in the two EuroMed Justice seminars held in Luxembourg on 2-5 October 2017 and Ljubljana on 17-19 July 2018. These seminars' discussions and remarks from all country representatives have been the main contributions to this work.

In these seminars, the good practices of each of the different schemes under review, as well as the ones recommended by different international and European institutions in legal counselling were presented.

The conclusions described are also elaborated considering the different legal aid schemes under study and internationally accepted standards.

Finally, the agreed roadmap on how to move forward symbolizes the constant willingness to improve.

<sup>1</sup>. Except for Lebanon.

## Acknowledgements

This study is the outcome of the generous input and feedback of the SPCs' representatives. We are grateful to them and appreciate the time and effort they have invested to produce this study. It is also the result of the hard work of the EuroMed Justice Project Management Team to whom we are also thankful. Finally, it is the result of the deskwork and research of the experts.

We hope that the main objectives of this study, namely capacity building development for the relevant stakeholders involved in the implementation of legal aid, law drafting, in line with international standards and harmonization of national legislation with international norms, will be realized.

## 2. List of acronyms

<b>AFTD</b>	Association Tunisienne des Femmes Démocrates
<b>AFTURD</b>	Association des Femmes Tunisiennes pour la Recherche sur le Développement
<b>AJEM</b>	Association Justice et Miséricorde
<b>ARDD</b>	Arab Renaissance for Democracy and Development
<b>ASF</b>	Avocats sans Frontières
<b>BBA</b>	Beirut Bar Association
<b>CCBE</b>	Council of Bar Associations and Law Societies of Europe
<b>CEDAW</b>	Convention on the Elimination of all Forms of Discriminations against Women
<b>CoE</b>	Council of Europe
<b>CJEU</b>	Court of Justice of the European Union
<b>DSO</b>	Disputes Settlement Office
<b>EBA</b>	Egyptian Bar Association
<b>ECHR</b>	The Convention for the Protection of Human Rights and Fundamental Freedoms better known as the European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECHO</b>	European Commission's Humanitarian Aid and Civil Protection Operations Department
<b>EU</b>	European Union
<b>FRA</b>	European Union Agency for Fundamental Rights
<b>IBA</b>	Israel Bar Association
<b>ILF</b>	International Legal Foundation
<b>ISPA</b>	Institut por la Profession d'Avocat en Tunisie
<b>LAL</b>	Legal Aid Office



<b>LAS</b>	Legal Aid System
<b>MoJ</b>	Ministry of Justice
<b>MoSA</b>	Ministry of Social Affairs
<b>MoU</b>	Memorandum of Understanding
<b>NGO</b>	Non-Governmental Organization
<b>NLAC</b>	National Legal Aid Committee
<b>OCTT</b>	Organisation contre la Torture en Tunisie
<b>PBA</b>	Palestinian Bar Association
<b>TBA</b>	Tripoli Bar Association
<b>SPC</b>	Southern Partner Countries
<b>UN</b>	United Nations
<b>UNHCR</b>	Office of the United Nations High Commissioner for Refugees
<b>UNDP</b>	United Nations Development Programme
<b>WCLAC</b>	Women's Centre for Legal Aid and Counselling

## 3. Introduction and methodology

### 3.1. European and international standards

Access to legal aid is an important part of the right to a fair trial under Article 6 of the ECHR<sup>2</sup> and Articles 47 and 48 of the EU Charter of Fundamental Rights<sup>3</sup>. These articles provide for the right to legal aid to those who do not have sufficient financial resources in so far as such aid is necessary to ensure effective access to justice. The meaning and scope of those rights should be interpreted in line with the ECtHR and CJEU case law.<sup>4</sup>

These rights are also provided in two important international instruments: the African Charter on Fundamental Peoples' Rights,<sup>5</sup> also known as 'the Banjul Charter', and the 2004 Arab Charter on Human Rights<sup>6</sup> adopted under the auspices of the League of Arab States. All SPCs are parties to the Charter except for Israel.

The African Charter on Fundamental Peoples' Rights is an international human rights instrument that aims to promote and protect human rights and basic freedoms on the African continent. The Charter was adopted in Nairobi on 27 June 1981 and entered into force on 21 October 1986. Libya, Algeria, Tunisia, and Egypt, *inter alia*, are parties to the Charter.

The oversight and interpretation of the Charter is the task of the African Commission on Human and Peoples' Rights, which was established in 1987 and is now headquartered in Banjul, Gambia. A protocol to the Charter was subsequently adopted in 1998 whereby an African Court on Human and Peoples' Rights was to be created. The protocol came into effect on 25 January 2005.

The right to a fair trial is foreseen in Article 2 of the 'Banjul Charter': "*Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.*" Moreover, Article 3 of the Charter recognizes the right to every individual to be equal before the law and Article 7.1 provides the right to every individual to defence and to be defended by a counsel of his or her choice.

As for the 2004 Arab Charter, its drafting history begins in 1960. As Mohammed Amin Al-Midani has noted, "[i]n that year, members of the Union of Arab Lawyers (the oldest NGO in the Arab world) requested the League of Arab States (created in 1945) during their meeting in Damascus to adopt an Arab Convention on Human Rights (...). In 1994, the League of Arab States adopted the first version of the Arab Charter on Human Rights."<sup>7</sup>

2. <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680063765>.

3. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT>.

4. Handbook on European law relating to Access to Justice. FRA/ECtHR

5. <http://www.achpr.org/instruments/achpr/>.

6. [www.icnl.org/research/library/files/.../arabcharter2004en.pdf](http://www.icnl.org/research/library/files/.../arabcharter2004en.pdf).

7. Arab Charter on Human Rights 2004, Translation by Dr. Mohammed Amin Al-Midani and Mathilde Cabanettes, Revised by Professor Susan M. Akram, Boston University International Law Journal 24, No. 2 (2006), pp. 147-164 Available at: [http://www.eods.eu/library/LAS\\_Arab%20Charter%20on%20Human%20Rights\\_2004\\_EN.pdf](http://www.eods.eu/library/LAS_Arab%20Charter%20on%20Human%20Rights_2004_EN.pdf).

The League's adoption of the Arab Charter was critical because the Charter of the League had a main weakness: the lack of any human rights enforcement mechanism, particularly in comparison to the mechanisms established with regard to the European and American Conventions on Human Rights, and the African Charter on Human and Peoples' Rights.<sup>8</sup> Finally, on 23 May 2004, a new version of this Charter was presented to the Arab Summit in Tunisia, where the new version was adopted.

"However, the main criticism of the old version remains unresolved in the new one: there is no effective enforcement mechanism. The expert Committee remains the only system of monitoring state compliance. The Committee, comprising 7 members, receives periodic reports from States parties, but there is no mechanism for petitions from a State party or an individual to this Committee for violations of the Charter. Nor does the Charter establish any other enforcement mechanism, such as the hoped-for Arab Court on Human Rights."<sup>9</sup>

Nonetheless, Article 13.1 of the 2004 Arab Charter provides for the right to a fair trial and adds that "State Parties shall ensure financial aid to those without the necessary means to pay for legal assistance to enable them to defend their rights."

Finally, these rights are also provided for in international instruments, such as Articles 2 (3) and 14 of the United Nations (UN) International Covenant on Civil and Political Rights (ICCPR)<sup>10</sup> and Articles 8 and 10 of the Universal Declaration of Human Rights (UDHR).<sup>11</sup> Thus, the fundamental principles on which a legal aid system should be based are outlined in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems adopted on 20 December 2012 by the General Assembly.<sup>12</sup>

According to international and European human rights law, the principle of access to justice imposes an obligation on States to guarantee each individual's right to go to court to obtain a remedy if it is found that the individual's rights have been violated. It is thus an enabling right that helps individuals enforce other rights. Access to justice encompasses a number of core human rights, such as the right to a fair trial under Article 6 of the ECHR and Article 47 of the EU Charter of Fundamental Rights, and the right to an effective remedy under Article 13 of the ECHR and Article 47 of the Charter.

However, this fundamental right would become a mere formal declaration without substantive content if the economic, personal or social circumstances of an individual would operate as deterrent factors, preventing that person from seeking justice before the courts of law to settle a dispute or to obtain a remedy for an unfair situation. Therefore, access to legal aid is an important part of the right to a fair trial. Article 6 of the ECHR and Article 47 of the EU Charter of Fundamental Rights guarantee the access to justice irrespective of the individual's financial means.

Standards defining the minimum content of the right to legal aid can be found in several international instruments such as the European Commission Recommendation of 27 November 2013 on the right to legal aid for suspects or accused persons in criminal proceeding; the Recommendations on Legal Aid

8. Ibid, p. 148.

9. Ibid, p. 149.

10. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

11. <http://www.un.org/en/universal-declaration-human-rights/>

12. [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013H1224\(03\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013H1224(03))

(2010) by the CCBE; the Council Directive 2002/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes in civil and commercial matters,<sup>13</sup> and the UN principles and guidelines on access to legal aid in criminal justice systems adopted by the General Assembly on 20 December 2012.<sup>14</sup>

The Council of Europe (CoE) encourages its Member States to develop their legal aid systems and has adopted several Recommendations and Resolutions in this field: Resolution (76) 5 on Legal aid in civil commercial and administrative matters,<sup>15</sup> Resolution (78) 8 on Legal aid and advice,<sup>16</sup> Recommendation (93) 1 on effective access to the law and justice for the very poor; Recommendation (2005) 12 containing an application form for legal aid abroad for use under the European Agreement on the transmission of applications for legal aid, the European Agreement on the transmission of applications for legal aid (CETS No. 092) and its Additional Protocol (CETS No. 179).

Likewise, the ECtHR has developed detailed rules about how legal aid should be provided, many of which have been affirmed by the UN Human Rights Committee applying the International Covenant on Civil and Political Rights.

This research has revealed that the terminology used to define legal aid varies considerably in the countries analysed. Legal aid is provided in various ways in the countries under review and may encompass legal information and advice, legal assistance, and legal representation. This research has also found that a variety of stakeholders may be involved in the provision of legal aid.

Finally, this work will, in light of these various European and international standards, present an overview of the legal aid scheme of Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, and Tunisia.

The following minimum standards on the aspects of legal aid some quality indicators have been taken into consideration: accessibility, eligibility, legal certainty and homogeneity, transparency, quality control, fairness and accountability. These indicators help measuring several standards and aspects of a legal aid scheme.

## 1. Accessibility

This indicator measures the facility of the legal aid system to ensure the right of all the citizens to a fair trial regardless of their financial capacity, as an expression of the overall Rule of Law system in a democratic country. According to the United Nations 'Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems' adopted on 20 December 2012 by the General Assembly, States should guarantee the right legal aid in their national legal systems at the highest possible level, including where applicable in the Constitution.

13. Text of the Decision at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32003L0008&from=EN>

Implementation of the Decision at [https://e-justice.europa.eu/content\\_legal\\_aid-390-en.do](https://e-justice.europa.eu/content_legal_aid-390-en.do)

14. [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013H1224\(03\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013H1224(03))

15. [http://euromed-justice.eu/files/repository/20090128124611\\_res\(76\)5e.pdf](http://euromed-justice.eu/files/repository/20090128124611_res(76)5e.pdf)

16. [https://www.euromed-justice.eu/en/system/files/20090128115013\\_res%2878%298eCoE.pdf](https://www.euromed-justice.eu/en/system/files/20090128115013_res%2878%298eCoE.pdf)

## **2. Eligibility**

The concept of eligibility enshrines all the criteria that enable the individuals or legal persons who lack the means or who are in special situations worth of being protected to defend their legitimate interest before a court as far as the interest of justice so requires (the merits test).

Both the CoE and EU have regulated this criterion: COM REC (2013) of the EU Commission, Section 2, paragraphs 6 – 13; Directive 2016/343 of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings. Finally, the UN Principles and Guidelines also touch upon this indicator (Principles 10 and 11).

## **3. Legal certainty and homogeneity**

The general concept of legal certainty can be broken down into more specific sub-concepts related to the predictable outcomes of justice procedures in the field of legal aid. In particular, a consistent line of decisions settling similar resolutions countrywide for similar applications is a requirement aligned with the best European Acquis. The improvement of practices, and the standardization of proceedings and templates can be deemed a step in the best direction.

The CoE and FRA Handbook on European Law relating to Access to Justice<sup>17</sup> states that the existence of great disparities in the legal assistance available to parties may violate Article 6 of the ECHR. Moreover, Article 5 of Council Directive 2002/8/EC provides that the economic situation of a person shall be assessed in light of objective criteria.

## **4. Transparency**

The concept involves the ready availability of information about the whole legal aid procedure. In the framework of an open government philosophy, transparency is a current demand of modern civil societies in relation to public administration. Public awareness is therefore an important aspect.

This new standard is not overlooked in the afore-mentioned international legal instruments, such as COM REC 2013, Section 2, and guideline 12 of the UN Principles and Guidelines.

## **5. Quality Control**

A wide range of quality benchmarks can help to measure the proper functioning of the system: protocols of quality measurement to ensure the fairness of the system, malfunctioning control mechanisms, periodical review of working methods, and continuous improvement and excellence policies.

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17. [https://www.echr.coe.int/Documents/Handbook\\_access\\_justice\\_ENG.pdf](https://www.echr.coe.int/Documents/Handbook_access_justice_ENG.pdf)

In this sense, paragraph 17 of COM REC (2013) establishes that legal assistance provided under legal aid schemes should be of high quality in order to ensure the fairness of proceedings. To this end, systems to ensure the quality of legal aid should be in place in all Member States.

## **6. Fairness**

Procedural fairness protects legitimate expectations as well as legal rights. The principles of ethics and fairness inspiring all the proceedings, daily practice and decisions for a modern legal aid service build the needed complement to written legislation. In this sense, fairness is related to the equity of the proceedings and the protection of vulnerable groups.

This indicator is enshrined in section 3 paragraphs 9 and 11 of COM REC (2013) and in principle 10 of the UN Principles and Guidelines.

## **7. Accountability**

Accountability measures the degree to which the organization in charge of rendering a public service takes complete responsibility for what the organization did or failed to do (although it was its duty) and the degree to which such organization is able to provide a satisfactory reason for it.

Accountability constitutes one of the fundamental principles on which a legal aid system should be based and is outlined in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (principles 9 and 13, guidelines 11 and 15). This indicator is also set out in Section 2, paragraphs 14, 15 and 16; Section 3 paragraphs 17 and 18 of the COM Rec (2013) and in article 15 of Council Directive 2002/8/EC.

## **3.2. Methodology**

The EuroMed Justice Regional Study on Legal Aid analyzes the situation of legal aid and access to justice in the Southern Partner Countries (SPCs) —Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine and Tunisia— through the update of the chapters addressing Legal Aid from the 'Handbook which identifies and describes possible approaches and best practices to improve access to justice and legal aid' developed during the EuroMed Justice III Project.

In order to achieve this result, two seminars have been held. The first one took place in Luxembourg (2-5 October 2017) in which representatives of the Justice Ministries, bar associations, and civil society organizations from the eight SPCs, the Project Management Team and the experts involved in the elaboration of the study participated.

The objectives of this seminar focused on defining the scope of the Regional Study on legal aid and agreeing on the methodology, the expected inputs-outputs and the possible questionnaire to be fulfilled by the SPCs. Furthermore, it aimed to identify the model of jurisdiction applicable in each country regarding legal

aid and to clarify how legal aid systems function in order to exchange experiences with regional and European partners.

The participants shared experiences about their legal aid systems, have learned about the international and EU standards, discussed and agreed on the questionnaire. In order to collect primary information on legal aid, the questionnaire was drafted and proposed to the SPC representatives for discussion by the experts and then sent to the SPCs representatives for their answers and comments.<sup>18</sup>

The experts undertook a qualitative analysis of the legal aid situation in each of the SPCs, through a literature review of reports, studies, and articles on legal aid and an analysis of the legislation of the SPCs. Data collection was done through desk research based on the questionnaire, using sources publicly available in the national language (mainly Arabic), although some others were translated into English and French.

The experts also undertook exploratory interviews with some legal aid stakeholders, whenever that was possible, such as criminal judges, courts clerks, Ministry of Justice representatives, but also lawyers and NGOs that provide legal aid services. The purpose of the interviews was to get an in-depth look at the practical issues/aspects of legal aid in each of the SPCs, and discover to what level the provisions of legal aid are applied in practice. The objective was also to learn about the procedures for obtaining legal aid services in the SPCs.

For a better understanding of the SPCs' legal aid scheme, the experts, upon the recommendation of the representatives of the SPCs, decided to develop a common legal aid profile for each country under study. This methodology therefore followed a different approach from the one used in the 'Handbook which identifies and describes possible approaches and best practices to improve access to justice and legal aid'.

To have an overview of the legal aid scheme of each country, profile items were selected in order to cover the main aspects of a legal aid scheme. The EU and international minimum standards on the aspects of legal aid and some of its quality indicators have been taken into consideration: accessibility, eligibility, legal certainty and homogeneity, transparency, quality control, fairness and accountability.

Each country profile covers the following aspects:

1. **Country General Facts**
2. **Legal Aid Legislative Framework**
  - Scope
  - Public Awareness
3. **Delivery Model**
  - Authority
  - Legal Aid Providers
  - Process for obtaining legal aid (means and merit tests)
  - Appointment of legal aid Providers
4. **Services Providers**
5. **Quality Safeguards**

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18. See the questionnaire in annex.

6. **Provision of legal aid (eligibility)**
  - Access to justice for vulnerable groups
7. **Finances**
  - Cost to recipients
  - Legal aid in the annual justice budget
  - Payment to legal aid providers

The first draft of the country profiles was then shared with the SPCs participants before the second seminar, which was held on 17-19 July 2018 in Ljubljana, Slovenia.

The seminars' objectives were to develop capacity building for the relevant stakeholders involved in the legal aid scheme, regarding law drafting in line with international standards and the harmonization of national legislation with international norms. The seminar was built on the main findings of the legal aid's study draft and was debated by the seminar's participants.



## 4. Country-by-country analysis

### 4.1. Legal aid in Algeria



#### 1. Country general facts

- **Governmental system:** Democratic Popular Republic. Presidential Republic
- **Population:** 41 million
- **Poverty rate:** 5,5%
- **Unemployment:** 11,2 (16.6 % women; 29.9% youth)
- **People's trust in courts** (Justice): little trust in courts and even less in judges pursuant to household surveys,<sup>19</sup> (rated 4 on a scale to 10)

#### 2. Legal aid legislative framework

##### 2.1. The right to legal aid is granted according to the following legal provisions

The concept of a fair trial is present in the Algerian judicial system; the defendant is entitled to be informed of the indictment and no exhibits can be produced before the court unless parties have exchanged them earlier. The judge may base his or her ruling only on the evidence presented during the hearing and discussed by the parties before them.

Court decisions are pronounced in public hearings (Constitution, art. 144) by magistrates (Constitution, art. 146) and the right to defence is recognized and guaranteed in criminal matters (Constitution, art. 151). The Algerian Constitution is dated 1976 and was last amended in 2016.

Nonetheless, the right to legal aid is enshrined in the Algerian Constitution, as article 151 states that: "The right to defence is recognized and guaranteed." Moreover, pursuant to Article 57 of the Algerian Constitution, the right to legal assistance for those with lack of resources is foreseen.

Law No. 09-02 of 25 February 2009 entered into force in compliance with the developments and the reforms brought to the justice sector and in accordance with the UN Charter, the Universal Declaration of Human Rights, and other international conventions ratified by Algeria.

Hence, a Law on legal aid was adopted and amended according to the following path: it was first established by the Ordinance No. 66-158 on legal aid, further modified by Ordinance No. 66-298 of 26/06/1966, then Order No. 71-57 of 03/08/1971, modified by Law No. 06/01 of 22/07/2006, and finally amended by the law No. 09-02 of 25/02/2009.

19. <https://www.bti-project.org/en/reports/country-reports/detail/itc/dza/#management>

Besides the Constitution and the Law on legal aid, several Algerian legal provisions foresee the right to legal aid, such as:

- Code of Criminal Procedure;
- Family Code;
- Code of Civil and Administrative Procedure;
- Labor Code;
- Law No. 13-07 of 29 October 2013 on the organization of the Legal Profession.

## 2.2. Scope of legal aid

Pursuant to the Law on legal aid, all Algerian individuals and legal persons with insufficient financial resources to afford litigations costs and lawyers fee have the right to benefit from legal aid.

Moreover, the foreigners who are residing lawfully in Algeria and who cannot afford a trial also have the right to legal aid.

Legal aid has a broad scope. The services covered by legal aid funds, when granted, are the following:

- All litigation and actions brought before civil and administrative courts, as well as all acts of grace, and acts of procedure;
- Precautionary and enforceable proceedings.

Within the scope of legal aid, beneficiaries are provisionally exempted to pay:

- Stamp duties,
- Registration and court fees,
- Judicial tax or a fine,
- Sums due to secretaries-clerks,
- Notaries' fees,
- Lawyers' fees,
- Defender for rights' emoluments and fees.

In addition to the aforementioned exemptions,

- The procedural documents made at the request of the judicial assistant, are stamped and recorded in debits,
- The decisions rendered in the trial are issued free of charge.

Finally, notaries are not obliged to freely issue the deeds and documents requested by the judicial assistant except on the order of the President of the Civil Court.

## 3. Delivery model

### 3.1. Authority

The decision-making authority with regards to legal aid lies with the Ministry of Justice through the public prosecution – the public prosecutor (*procureur de la République*). The members from the public prosecution are Presidents of the Legal Aid Bureau (*bureau de l'assistance judiciaire*).

The Legal Aid Bureau is composed of the public prosecutor (or the Prosecutor General at the Court or the General Prosecutor at the Supreme Court, depending on where the case is filed), a magistrate, a representative of the Treasury, a representative of the regional chamber of judicial officers, a bar association representative and an elected person.

In Algeria, legal aid is provided by the competent Legal Aid Bureau (depending on the competent court).

### 3.2. Process for obtaining legal aid: objective criteria. Merit and means test

Anyone applying for legal aid submits a written request to the President of the competent Legal Aid Bureau —the prosecutor— and lodges it with the permanent secretariat of the Legal Aid Bureau in return for a receipt (provided by a clerk).

Applications for legal aid must be addressed to the President of the competent Legal Aid Bureau along with a summary of the subject-matter of the action to be undertaken.

In addition, along with the application and the aforementioned summary, the applicant must provide the President of the Legal Aid Bureau with an income tax exemption certificate, a statement of the income of the last three months, if applicable, and a declaration of honour attesting the resources of the concerned, duly legalized by the President of the municipality where the applicant lives in.

Means and merits tests are assessed in order to decide whether to grant or not legal aid to the potential beneficiary. Nonetheless, there is no threshold or any other objective criteria beside the case-by-case analysis. The Legal Aid Bureau, seized by the Republic Prosecutor, can take all the necessary information to verify the insufficient resources of the applicant. Furthermore, in order to undertake the investigation, and pursuant to article 7 of the Law on legal aid, the Legal Aid Bureau may, after referral by its President, undertake any useful research concerning the financial resources of the applicant for legal aid. Accordingly, all State services, local authorities, and social security services must gather and deliver to the Bureau all the information requested in order to verify the financial situation of the person concerned. The Bureau must issue a decision without delay and even can interview the applicant if needed in order to prove his or her situation.

The request for legal aid is considered accepted if no decision is issued within 20 days starting from the submission of the application.

The decisions of the Legal Aid Bureau contain a summary of the facts, the means test taken into consideration, and the declaration that legal aid is granted or refused without giving reasons. Nonetheless, if the decision rejects to grant legal aid, the Legal Aid Bureau must give reasons for the decision.

The decision can be appealed by the potential beneficiary or by the authorities. The decisions of the Legal Aid Bureau are not subject to any judicial remedy, but they can be appealed to the same Legal Aid Bureau within 10 days from the decision's notification.

Likewise, the senior public prosecutor (*procureur général*) or the State Commissioner, if they consider that legal aid is wrongly granted, may refer the decision to the Compiling Office for reform, if necessary.

If it is found that the granting of legal aid to the applicant was wrongly decided, the beneficiary is required to reimburse the funds coming from legal aid.

Within three days of the final decision ensuring the right to the benefit, an extract is submitted with the documents of the case, to the president of the competent jurisdiction.

Pursuant to the Law No. 13-07 of 29 October 2013 on the organization of the legal professionals, the magistrate or judge invites the president of the bar association to appoint a lawyer whom residence is the nearest. Within the same period the decision is notified to the beneficiary.

Once a citizen is granted with the legal aid benefit, such benefit is maintained in case of appeal or appeal to the Supreme Court, the Council of State or in case of referral to the Court of jurisdictional conflicts (*Tribunal des conflits*).

The same provision which stipulates that the submission of an application for legal aid suspends the time for lodging an appeal in cassation and / or issuing of the response, sets that this period runs again since the approval or refusal decision is notified to the person concerned.

A merit test is carried out considering the documents submitted along the application form proving the financial situation of the applicant.

Nonetheless, someone may exceptionally be granted legal aid without fulfilling the conditions set out in the preceding paragraphs, when his or her situation appears to be worthwhile in light of the subject-matter of the dispute, i.e. in the interest of justice.

## **Withdrawal of the benefit of legal aid**

The benefit of legal aid may be withdrawn at any time, even upon the completion of proceedings for which it has been granted. The reimbursement will be required when the beneficiary has improved his or her financial situation or if it has been found that the application was submitted fraudulently. The withdrawal of the benefit of legal aid may be requested either by the public prosecutor or by the other party.

However, the decision on withdrawing the legal aid benefit can only be taken after the beneficiary has been heard or put on notice in order to present his or her allegations.

The decision on withdrawing the benefit of legal aid entails the obligation for the beneficiary to reimburse fees and advances of all kinds, which (s)he had been exempted from as a result of receiving legal aid.

### 3.3. Appointment/assignment of legal aid providers

The appointment of a lawyer for the beneficiaries of legal aid is regulated in the Law No. 13-07 of 29 October 2013 on the organization of the legal profession. According to Article 11 of this Law, within the framework of legal aid, the lawyer appointed by the president of the bar or his or her delegate must lend his or her assistance to any litigant who benefits from it in accordance with the laws and regulations in force.

When appointed by the president of the bar or his or her delegate, the lawyer must necessarily defend the interests of all litigants, before all courts, either for free or for a fee. The lawyer assigned under the aforementioned circumstances cannot refuse his or her appointment without invoking certain reasons for excuse, which must be approved by the bar association's president or his or her delegate. In case the lawyer's rejection is not approved and the lawyer persists in his or her refusal, the decision is submitted to the Bar Disciplinary Board, which can impose to that lawyer one of the penalties foreseen in the law.

A compulsory rule is that any request or acceptance of fees from litigants in any form whatsoever, once they are beneficiaries of legal aid, is forbidden. The same applies to those who have been officially appointed (*commis d'office*).

## 4. Services providers

It should be noted that the judiciary and the bar association coordinate with one another in order to hold periodic meetings to assess the functioning of the legal aid scheme. In addition, there are relations between the bar association and non-governmental organizations in order to ensure that the citizens who resort to these non-governmental organizations for legal assistance or advice are well taken care of.

### 4.1. Lawyers

Lawyers provide legal aid service as they are responsible for legal counselling and legal representation by law, according to the Law on the Legal profession. Legal aid lawyers are appointed by the bar association at the request of the judiciary.

### 4.2. Others (Clinics, NGOs)

With regard to the rights of refugees and asylum seekers, the UNHCR statistics generally rely on data from host countries. Statistics on refugees alone can provide an insufficient account of refugee numbers, as some host countries will not grant refugee status to certain groups. Even the statistics on individuals in refugee-like situations, an attempt to account for unrecognised refugees, do not include internally displaced persons. The statistics on stateless refugees are included if available.

In Algeria, the refugee crisis focuses mainly on the Sahrawi population.<sup>20</sup> "A four-decade long unresolved political conflict with humanitarian consequences in Western Sahara has left behind around 174.000 refugees"

20. [https://ec.europa.eu/echo/where/africa/algeria-western-sahara\\_en](https://ec.europa.eu/echo/where/africa/algeria-western-sahara_en).

(according to UNHCR figures) and 90.000 vulnerable refugees targeted by the EU Civil Protection and Humanitarian Aid Operations department (ECHO).<sup>21</sup>

Sahrawi refugees live in five camps in the Tindouf region, south-west Algeria, with little access to outside resources, making aid essential to their survival. "In the remote region where the refugee camps are located, access to basic resources such as food, water, healthcare, housing, and education is very limited."<sup>22</sup>

"Based on the lack of donors support and the low media coverage, the Sahrawi refugee situation is considered a 'forgotten crisis'. (...) The EU remains one of the leading donors in this crisis".<sup>23</sup>

In addition, there are two non-governmental organisations providing legal assistance and representation to people belonging to refugees and asylum seekers:

Ligue Algérienne pour la Défense des Droits de l'Homme (LADDH) : "The *Ligue Algérienne pour la Défense des Droits de l'Homme* (LADDH) is a non-political NGO that promotes human rights in Algeria. The LADDH is a member of the Euromed Human Rights Network's Migration and Asylum Working Group."<sup>24</sup>

"Wadie Meraghni is a lawyer member at the Bar Association of Algiers and since 2010 he has collaborated with the UNHCR in defending refugees and asylum seekers. He defends refugees and asylum seekers who get arrested, and he supports them in jurisdictions when they are victims of aggressions. He also supports them in obtaining documents from the civil state, especially for children born in Algeria who encounter difficulties in obtaining birth certificates. Wadie Meraghni gives legal advice to refugees and asylum seekers to explain how they can assert their rights in Algeria."<sup>25</sup>

## 5. Quality safeguards

### 5.1. Qualifications required (to become a legal aid lawyer/provider)

There is no specific qualification requirement set by the State to become a legal aid lawyer. Hence, no further qualification is required to provide legal aid services besides the requirements to be a legal practitioner in Algeria: the law degree and the obligation to pass the bar exam.

### 5.2. Accountability for the quality of legal aid services

The accountability for the quality of the legal aid services is part of the general accountability of the legal quality services. Therefore, the responsibility lies with the bar association in accordance with its ethic rules or Deontological Code.

21. European Commission Civil Protection and Humanitarian Aid Operations Department, Factsheet on Algeria, Last updated 19/12/2018. Available at: [https://ec.europa.eu/echo/printpdf/where/africa/algeria\\_en](https://ec.europa.eu/echo/printpdf/where/africa/algeria_en).

22. Ibid.

23. Ibid.

24. <http://www.refugeelegalaidinformation.org/algeria-pro-bono-directory>.

25. <http://www.refugeelegalaidinformation.org/algeria-pro-bono-directory>.

## 5.3. Monitoring the quality of legal aid services

The aforementioned situation applies also to monitoring the quality of legal aid services.

## 6. Provision of legal aid

### 6.1. Eligibility in criminal legal aid cases

Pursuant to the Code of Criminal Procedure (articles 100, 271, 454), there are some cases where legal aid is granted automatically or under the petition of the potential beneficiary.

The situations foreseen are as follows:

- The investigating judge shall inform the accused of his or her right to choose a lawyer and, failing a choice, (s)he shall automatically assign him or her one, if the accused so requests.
- The accused must have a defence lawyer during the criminal court proceedings. Failing that, the accused is invited by the President of the Criminal Court to choose a counsel to assist him or her in his or her defence; if the accused does not choose one, the President assigns one, automatically.
- The presence of a lawyer to assist a minor in all phases of the prosecution and the judgment is obligatory. If necessary, it will be assigned one by the judge of the minors.

The same protection is foreseen in the Law on legal aid (articles 25, 232 and 351):

- A lawyer shall be appointed ex officio to all minors appearing before the juvenile's judge or any other criminal court.
- The accused has the right to be assisted by a defence lawyer if (s)he has not chosen a defence counsel before the hearing, and if (s)he nevertheless requests assistance, the president may assign one automatically.
- The assistance of a defence lawyer is compulsory by law when the defendant is suffering from an infirmity likely to compromise his or her defence, or when (s)he incurs the penalty of relegation.
- The presence of a lawyer in the hearing to assist the defendant is obligatory. If necessary, (s)he will be assigned one by the presiding judge of the hearing.

### 6.2. Eligibility in civil legal aid cases

Eligibility in civil matters is also foreseen in several legal provisions. For instance, article 105 of the Family Code provides that the person who has been the subject of an application for a prohibition must be in a position to defend his or her interests. The court assigns a defence lawyer if the court deems it useful.

Legal assistance also covers all civil and administrative disputes, concerning the actions pending before the First Instance Court, the Court of Appeal, the Court of Cassation or the State Council, as well as all the acts of non-contentious jurisdiction and provisional measures, regardless of the status of the beneficiary of the legal aid, plaintiff, or defendant.

There are no established objective criteria or a threshold set forth in national legislation for assessing the financial situation. Thus, the decision taken by the Legal Aid Bureau is discretionary and it may differ, even in identical cases, from one Legal Aid Bureau to another.

## 6.3. Access to legal aid for vulnerable groups

The benefit of legal aid is automatically granted to the categories of citizens considered as vulnerable. Those cases are foreseen in the Law on legal aid, the Code of Civil and Administrative Procedure, and the Labour Code.

The automatically potential beneficiaries of legal aid funds are:

- Widows and single daughters of martyrs (*Martyrs de la Révolution*);
- War invalids;
- The juveniles who are parties to the case;
- Any claimant in alimony matters;
- Workers in the field of accidents at work or occupational diseases and their dependents;
- Victims of human trafficking and organ trafficking;
- Victims of smuggling of migrants;
- People with disabilities with specific needs;
- Mothers in child custody matters;
- Victims of terrorism;
- The disabled.

The request, made by the person applying for legal aid, must be submitted to the President of the Legal Aid Bureau, along with the documents proving one of the situations indicated above.

The decision of the Legal Aid Bureau shall be taken within a period not exceeding eight days from the application submission without further requirements action of the parties.

## Minors and juveniles

As mentioned above, minors and juveniles are specifically protected by the law and must always be assisted by a lawyer. Pursuant to the Code of Criminal Procedure, the presence of a lawyer to assist a minor in all phases of the prosecution and the judgment is compulsory; if needed, a lawyer will be assigned by the juvenile judge. Likewise, the Law on legal aid establishes the obligation to appoint a legal provider ex officio to all minors appearing before the juvenile judge or any other criminal court.

## 7. Finances

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### 7.1. Cost to recipients

Pursuant to the Code of Civil and Administrative Procedure and the Code of Criminal Procedure, all litigation and actions brought before the civil and administrative courts, as well as all acts of non-contentious jurisdiction, procedural documents, provisional measures, and enforceable procedures are covered by legal aid funds.



In addition, legal aid beneficiaries are provisionally exempted to pay:

- Stamp duties;
- Registration and court fees;
- Judicial tax or fines;
- Sums due to secretaries-clerks;
- Notaries' fees;
- Lawyers' fees;
- Defender for rights' emoluments and fees.

## 7.2. Payment to legal aid providers

Article 29 bis, amended by Law 1-06 and Law 09-02 of 25.02.2009, provides that the lawyer in civil and administrative matters, the bailiff and the notary in charge of the legal assistance in the event of an *ex officio* appointment, will receive compensation paid by the State Treasury.

The payment of the sums due to the lawyer, bailiff, or notary appointed under the scope of legal aid, is made by the secretary general of the court of appeal, administrative court, secretary general of the Supreme Court and the Council of the state.

The allowances allocated for this purpose are charged to the operating budget of the Ministry of Justice.

It should be noted that Executive Decree No. 01/244 fixing the amount of compensation awarded to the lawyer appointed for legal aid stipulates that the allowance shall be doubled when the professional domicile of the person lawyer is located within a radius of 200 km or more of the place of jurisdiction.

### Note. Final Remark

*Legal assistance is to be distinguished from legal representation. Whereas legal representation implies the capacity of the legal aid provider to act on behalf of and represent his or her client i.e. the asylum seeker, legal assistance is mainly restricted to a purely advisory relationship between the provider of legal aid and the asylum seeker. The latter usually does not allow the service provider to act on behalf of the asylum seeker in the asylum procedure.*



## 4.2. Legal aid in Egypt

### 1. Country's general facts

- **Governmental system:** Unitary government system
- **Population:** 95.69 million (World Bank, 2016)
- **Poverty rate:** 28.7% (Egypt's official statistics agency, 2016)
- **Unemployment:** 11.30% (tradingeconomics.com, 2017)
- **People's trust in courts:** Not available

### 2. Legal aid legislative framework

"In Egypt, access to the justice system and legal aid are constitutional rights. This concept can be found in various legislative instruments across the legislative spectrum, including the Criminal Procedure Code, Family Law, Child (Juvenile) Law, Human Trafficking Law, and Advocacy Law. Both rights are also affirmed by Supreme Court of Egypt, the Court of Cassation, in its rulings. The court system demonstrates free access to the justice system and legal aid."<sup>26</sup>

"The right to free legal counsel is mandatory before criminal courts. In family courts, legal assistance offices and dispute settlement offices provide free legal aid services. Similarly, in courts of first instance and labor courts, legal aid offices provide legal assistance and advice to women who are victims of violence, and to labor litigants. Child courts also require use of a special panel (with a specified composition) and special trial proceedings to ensure free legal assistance and effective legal representation. Law clinics, a relatively recent addition, provide free legal assistance as well."<sup>27</sup>

#### 2.1. The right to legal aid is granted according to the following legal provisions

##### 2.1.1. Constitution

Basic rights and freedoms of citizens, without discrimination on the basis of sex, ethnicity, language or religion, were enshrined in the abolished Egyptian Constitution of 1971. The abolished Constitution also provided for the right to litigation and to a fair trial, including the right to defence and access to counsel, specifically to those in financial need mainly in criminal matters.

##### *Constitution of 2014*

The current Constitution also guarantees the same rights and freedoms that were enshrined in the abolished Constitution of 1971. It has gone even further, in complying with international standards, as article 54 of the Egyptian Constitution states that: "In all events, it is not permissible to present an accused for trial in

26. Egypt: Access to the Justice System and to Legal Aid, Mohamed M. Youssef, 2017, p.1, available online at: <https://www.loc.gov/law/help/access-to-justice/egypt-access-to-justice-system.pdf>.

27. Ibid.

crimes that may be punishable by imprisonment unless a lawyer is present by virtue of a power of attorney from the accused or by secondment by the court.”

Further, article 97 of the said Constitution states that: “Litigation is a right that is safeguarded and an inalienable right for all. The State shall guarantee the accessibility of judicature for litigants and rapid adjudication on cases”

## **2.1.2. Egyptian Civil Procedure Law No. 13 of 1968.**

The Egyptian Civil Procedure Law does not stipulate that lawyers must represent the cases of the citizens before the court, except in certain matters such as appearing before the Court of Cassation. The position of Egyptian law is, at least from a theoretical perspective, to facilitate access to justice allowing citizens to appear before the court directly, to represent their cases, without retaining lawyers to represent them according to Article 72 of the mentioned law.

## **2.1.3. Egyptian Criminal Procedure Law No. 150 of 1950, as amended by law No. 95 of 2003.**

Article 237 stipulates that: “If the accused is (...) in a misdemeanor punishable by imprisonment, the court must assign him or her a lawyer to defend him or her.”

“Further, article 97 of the said law prohibits interrogating the accused or cross-examining him or her in the absence of a lawyer, except in cases where the accused is caught in flagrante delicto or where there is a fear that evidence may be lost. It further states that if the accused does not have a lawyer or cannot afford one, the prosecutor must appoint one.”<sup>28</sup>

Such provisions are compatible with international standards. However, in practice, many lawyers do not show up when they are assigned by the court.

## **2.1.4. Egyptian Law No. 10 of 2004 Establishing Family Courts**

According to the Egyptian Law establishing Family Courts, in personal status claims, the legislation specifically allows courts to assign a defence lawyer to a plaintiff, with the attorney fees being paid out of the public treasury. Article 3 states that: “Alimony cases, and similar cases, are exempt from legal fees at all stages.”

Furthermore, the Regulating Litigation Procedures in Personal Status Affairs Law No. 1 of 2000 stipulates in Article 3 that “(...) all claims for alimony and support are exempt from litigation fees and charges.”

## **2.1.5. Egyptian Labor Law No. 12 of 2003**

Article 6 and 7 stipulate that “Labor cases filed by workers are similarly exempted from any legal fees.”

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28. Egypt: Access to the Justice System and to Legal Aid, Mohamed M. Youssef, 2017, p.3, available online at: <https://www.loc.gov/law/help/access-to-justice/egypt-access-to-justice-system.pdf>.

## 2.1.6. Egyptian Child Law No. 12 of 1996 as amended by law No. 126 of 2008

According to the Egyptian Child law, in matters dealing with children having infringed the penal law, free legal assistance should be provided for the child in question. Article 125 of the said law stipulates that: "The child has the right to legal assistance; (s)he shall be represented in criminal and misdemeanor cases whose penalty is placing him or her in custody by lawyer to defend him or her in both the investigation and trial phases. If no lawyer has been selected by the child, the public prosecution or the Court shall appoint one, in accordance with the rules and regulation of the Criminal Procedure Code."

Although legal assistance is incorporated within various legal sources, in different pieces of legislation, such as the family law and the child law, there is no available comprehensive law to regulate legal assistance for citizens, especially those who suffer from economic hardship.

## 2.1.7. Law No. 64 of 2010 on Combating Human Trafficking

Article 23/e stipulates that: "In addition, the following rights of the victim shall be guaranteed: ... e ) The right to legal assistance, in particular the right to counsel in the investigation and trial stages; if he has not chosen a lawyer, the public prosecutor or the court, whichever the case, may assign him a lawyer in accordance with the rules prescribed in the Criminal Procedure Code regarding assigning a lawyer to the accused; f) In all cases, the competent court shall take measures to ensure that protection is provided to the victims and witnesses to avoid any influence upon them and shall take whatever measures required to conceal their identity, all without prejudice to the rights of the defence and the requirements of the principle of confrontation between adversaries."

## 2.1.8. Articles 93–94 of the Advocacy Law No. 17 of 1983

Requires the Egyptian Bar Association (EBA) to form legal aid committees to provide pro bono legal assistance and legal representation to those who cannot afford it during the investigation, pretrial, or trial stages.<sup>29</sup>

## 2.2. Scope of legal aid

In civil cases, legal aid is provided by the State in the form of judicial fee exemptions for those who prove eligibility for this service and for plaintiffs in labor cases. Legal clinics in Egypt provide free legal advice and raise legal awareness among community members in all fields of law, including civil law.

In criminal cases, the State provides juveniles with legal representation and legal advice under the Egyptian Child Law No. 12 of 1996, amended in 2008. The defendants who have been accused of committing a felony under the Criminal Procedure Law No. 150 of 1950, amended in 2003, also benefit from legal representation. Some NGOs provide legal representation and legal advice in criminal cases.

In family cases, the State, through its legal aid offices located in each family court, provides free legal advice for female litigants, raises legal awareness, provides free pre-litigation services (legal mediation), disputes settlement services and provides judicial fee exemptions.

29. Egypt: Access to the Justice System and to Legal Aid, Mohamed M. Youssef, 2017, p. 5, available online at: <https://www.loc.gov/law/help/access-to-justice/egypt-access-to-justice-system.pdf>.

## 2.3. Awareness of the right of legal aid.

The State does not carry out any public information campaigns to raise awareness about the legal aid services provided for in the law. However, the website on “Legal Aid and Disputes Settlement Office Project” provides the public with comprehensive information about the legal aid services available in family courts and where they can find these services. The location of the family court offices throughout Egypt are made visible on the website’s map. The State, however, has not carried out official campaigns to inform people of other legal aid services, like the ones related to the Criminal Procedure Law, the Egyptian Child Law and how people can access these types of services.

There are some NGOs and legal clinics that work on raising awareness about the right to legal aid services.

## 3. Delivery model

### 3.1. Legal aid authority

The State has not created a legal aid authority. However, the Ministry of Justice provides legal aid services in family courts only, and it does not provide legal aid in other fields of law.

### 3.2. Legal aid providers (organization of legal aid services)

Legal aid services are provided through the following:

**3.2.1. The Ministry of Justice: and this is the case only in family court cases,** through legal aid offices and dispute settlement offices that are located in most family courts throughout Egypt. In April 2008, the Egyptian Ministry of Justice and the UNDP office in Egypt started a project through which to provide legal aid services in family courts. Funded by the UNDP program and directed by the Egyptian Ministry of Justice, the “Legal Aid and Disputes Settlement Office Project” focuses on female litigants. The project’s head office is located at the Egyptian Ministry of Justice, which also opened several legal aid offices in most of family courts throughout Egypt. The official project’s website offers a map of the locations of these offices, this project is still active at the time of writing.

Another initiative that aims to improve access to justice was implemented by the protection project of the John Hopkins University in association with the Alexandria University and financed by USAID. The project aims to serve the community in Alexandria and its suburbs through volunteer legal services in collaboration with the legal aid offices in family courts and the Ministry of Justice in Alexandria. Further, the project aims to train volunteer students offering legal work for groups that need assistance. Finally, the project aims to prepare the future lawyers with valuable skills and practical experience under the supervision of professors, the Ministry of Justice, and the Bar Association.<sup>30</sup>

**3.2.2. The Public Prosecution mandates a lawyer** to represent the defendant if (s)he does not have a lawyer to defend him or her at the criminal court.

30. Access to Justice after the Arab Spring: Is the Promise Fulfilled?, Marco Soliman, 2013, p.35, available online at: <https://www.luc.edu/media/lucedu/prolaw/documents/MARCO%20SOLIMAN%20FINAL%20VERSION.pdf>.

## 3.2.3. The Bar Association

Articles 94 and 95 of the Egyptian Bar association (EBA) law in state that: "Legal aid is provided to citizens in the following situations: (1) to anyone exempted from the litigation fees because (s)he is financially disabled; (2) if no lawyers take his or her case; (3) in cases of his or her lawyer's death; or (4) any other case where the lawyer becomes unable to proceed with his or her work." The fourth chapter of the said law specifically addresses legal aid, by listing the situations in which a defendant is entitled to legal aid. According to Article 93 of the aforementioned law, legal aid covers a wide range of services, including legal representation, legal consultation and the drafting of contracts.<sup>31</sup>

## 3.2.4. Civil society organizations and NGOs

Several quasi-governmental Egyptian organizations provide a variety of legal aid services. For example, the National Council of Human Rights, which was established as a subsidiary to the Shoura Council (the upper house of the Egyptian Parliament) in 2003, aimed to promote and develop human rights and spreading their awareness to ensure their practice. Since its inception, the Council has issued yearly reports on the status of human rights practices in Egypt, among other activities. There are approximately 16,000 NGOs operating in Egypt. More than 40 of these organizations provide some level of legal aid services on a wide array of issues.<sup>32</sup>

**The following are the main NGOs that provide legal aid in Egypt:**

### *The Arab Council for Fair Trial and Human rights (ACSFT)<sup>33</sup>*

The Arab Council for Supporting Fair Trials (ACSFT) was established in 2006 as an NGO to defend human rights and freedoms in Egypt and other Arab countries.

The Arab Council is a main partner of the United Nation's High Commissioner for Refugees (UNHCR) concerning protection and legal aid for refugees. The council works in cooperation and coordination with the International Organization for Migration as well as with other human rights national, regional, and international institutions and organizations.

ACSFT monitors and follows up violations against human rights and freedoms, especially violations of the right to a fair trial and provides defence, supervision, assistance, and legal consultancy opportunities to those who are detained, and declares anti-violation situations against the right to a fair trial. ACSFT issues statements and reports in this respect and makes the necessary recommendations for the maintenance of the right to a fair and just trial.

The council aims to support the human rights of refugees, asylum seekers, and immigrants in Egypt, and supports a fair and just trial according to national and international standards.

The ACSFT's scope of work is spread in Cairo, Giza and 6th of October city, and the ACSFT hopes to extend to Arish, Marsa Matrouh and Assouan.

31. Ibid.

32. ACCESS TO JUSTICE AFTER THE ARAB SPRING: IS THE PROMISE FULFILLED?, Marco Soliman, 2013, PP36.

33. ACSFT Website: <http://www.acsft.org/>.

The organization works with a large network, specialized team of lawyers, researchers, and translators who are involved in field work.

## *The Centre for Egyptian Women Legal Assistance (CEWLA)<sup>34</sup>*

The Center for Egyptian Women's Legal Assistance (CEWLA) is a leading Egyptian women's lawyers group, founded in 1995 to advance women's rights through the law. They provide legal aid, mainly to impoverished women, and advocate against female genital mutilation (FGM), 'honor crimes', and discriminatory divorce laws.

CEWLA also seeks to provide women with the skills and abilities that enable them to exercise their lives and overcome their problems.

The Center for Egyptian Women Legal Assistance's initiative has been established to address the violation of women's rights by raising their awareness and supporting them in obtaining legal, social, economic and cultural rights. Part of CEWLA's work is to change discriminatory laws against women through advocacy campaigns.

## *The Egyptian Center for Women's Rights (ECWR)<sup>35</sup>*

The Egyptian Center for Women's Rights is an independent, non-partisan and non-governmental organization. The Center is dedicated to supporting women in their struggle to research their full rights and establish gender equality. The ECWR works on eliminating all forms of discrimination against women and urging legislative authorities to reconsider all legislations opposing women-related international agreements, especially CEDAW.

In this framework, ECWR, via its programs, is concerned with raising women's awareness, emphasizing the necessity of women's participation in public life —as an elector and nominee— and improving women's legal knowledge.

The ECWR's main objectives are:

- Making women capable of controlling and providing them with the opportunity to control their lives, taking decisions, enjoying equality, participating effectively in the political field and having access to justice.
- Achieving a powerful women's movement capable of empowering women to raise their voices and demand their rights.
- Reaching a democratic society respecting women as a complete partner in life, rejecting all forms of discrimination against women and entrenching citizenship values.

In order to achieve these objectives, ECWR aims at concerting efforts of governmental bodies, media means and civil society in order to ensure women's access to justice and human rights, raise the awareness of people, enhance the capability of local community and civil society organizations, so as to support wom-

34. CEWLA website: <https://www.soas.ac.uk/honourcrimes/partners/egypt---centre-for-egyptian-women-legal-assistance-cewla.html>.

35. ECWR website: <https://ecwronline.org/>

en's legal rights, advocacy campaigns, and attempts of calling for changing the laws and policies that provide women with no protection from and no defence against discrimination.

The Egyptian center for women's right aims to:

- Raise awareness of women's rights as an integral part of human rights.
- Develop the right of women to participate in public life and increase women's representation in all elected councils.
- Empower women to have access to justice.
- Reduce violations and assaults against women practiced either by individuals, governmental bodies or non-governmental groups. Monitoring and changing laws, legislations and policies curbing women's rights and opposing constitutions and international conventions.

### *ANHRI – The Arabic Network for Human Rights Information<sup>36</sup>*

The Arabic Network for Human Rights Information (ANHRI), is a legal institution with lawyers and researchers working on defending Freedom of Expression in Egypt and the Arab world, especially Freedom of the Press, as a gateway to empower and give access to the rest of human rights.

The Arabic Network for Human Rights Information announced its official launch on March 28, 2004.

The ANHRI's main objective is to defend the freedom of expression through:

- Providing support and legal defence to victims of violations of freedom of expression of all kinds.
- Training journalists —especially young journalists— online activists on credibility, professional writing, and how to avoid publishing crimes.
- Campaigns to defend prisoners of opinion.
- Documenting the violations and publishing reports and studies that reveal these violations and making recommendations on how to avoid them.
- Urging governments, political groups, and businesses to respect the values of human rights, particularly freedom of expression, and to uphold international laws and conventions.
- Making initiatives on media reform and the reform of institutions entrusted with the implementation of the law.
- Raising the awareness of citizens with regard to their rights and how to defend them, and how to gain supporters and volunteers for their work.

Since it was established in 2004 till now, ANHRI has undergone several developments mentioning some of them related to legal aid:

- Launching the first website on Freedom of the Internet in the Arab World: <http://openarab.net/ar/>
- Launching the first website for publishing the complaints and concerns of Arab citizens: <http://humum.net/>
- Launching the first human rights library in Egypt: <http://maktaba.anhri.net/>

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36. ANHRI website: <http://anhri.net/?lang=en>



- Launching a website dedicated to defending Arab prisoners of opinion: <http://gohod.net/>
- Beginning to provide legal defence on freedom of expression through a specialized unit of lawyers, and launching a website “Qadaya” which is specialized in trials and legal defence issues: <http://qadaya.net/>
- Issuing “Wasla” (Arabic for link) newspaper, which is the first newspaper to contain what the bloggers and Internet activists publish, with the objective of reaching out to the older generations and creating a link between the two generations. 81 issues were published: <http://wasla.anhri.net/?cat=9>
- Beginning to document the cases of the Revolution, and the victims and providing legal support to the civilian victims facing military trials and monitoring the democratic path through “Lawyers for Democracy” initiative.

### *The Egyptian Foundation for Refugee Rights (EFRR)<sup>37</sup>*

The Egyptian Foundation for Refugee Rights (EFRR) is a non-governmental organization established since mid-2008. The EFRR currently provides legal assistance to refugees and migrants who are in detention and who find themselves the victims of crime (both from private individuals and public officials). The EFRR also acts as counsel to groups of refugees seeking to organize community-based organizations (CBOs) and to existing refugee CBOs when they encounter problems with the Egyptian government. The EFRR is the only organization providing these services in Egypt.

Programs and services provided by the organization:

- Educational services and scholarships: Educate refugees in Egypt, Egyptian lawyers, non-governmental organizations, Egyptian government officials, journalists in Egypt, the Egyptian public and others about the rights of refugees in Egypt.
- Livelihood support services: Advocates for the enjoyment by refugees in Egypt of their rights and other benefits fundamental to their basic human dignity.
- Legal aid: Provide assistance to individual refugees and groups of refugees in domestic and international legal proceedings designed to secure the enjoyment of their rights in Egypt.

The EFRR is a member of the Southern Refugee Legal Aid Network (an international network of legal aid organizations providing assistance to refugees in the Global South) and the International Detention Coalition (an international network of NGOs seeking to reduce the detention of migrants and refugees).

### *Legal services project:<sup>38</sup>*

The National Network of Refugee Lawyers project organizes and trains a national network of lawyers who are qualified with willing to provide legal services to refugees. The network allows an increased number of refugees to access legal services in Cairo and provides, for the first time, legal services to refugees outside of Cairo. The Network is about training lawyers in the basics of refugee law and the situation of refugees in Egypt; provides guidance on the topics of assistance that are most commonly requested by refugees; and creates a national mechanism to coordinate the requests for assistance by refugees and the providers of pro bono assistance to refugees. Focusing on the representation of refugees who are arrested, detained

37. EFRR website: <http://www.efrr-egypt.org/>

38. <https://www.efrr-egypt.org/index.php/features/legals>.

and possibly facing the deportation, the representation of refugees who are victims of crime, torture and provision of legal advice to refugees who have disputes over housing and employment matters.

They provide all kinds of legal services to refugees:

- They represent refugees in Civil, Criminal and legislative courts.
- They assist refugees in producing any legal document.
- They provide refugees legal advice.
- They also represent refugees in police stations, detention centers and in prosecution.

### *The National Council for Childhood and Motherhood (NCCM)*<sup>39</sup>

The Council is entrusted with policymaking, planning, coordinating, monitoring and the evaluation of activities in the areas of protection and development of children and mothers. The NCCM operates through a strong network of NGOs, students, volunteers, community leaders, academia, youth centers and schools and in partnership with a large number of donors as well as the UN family. Since the 1990s and to date, the NCCM has played a vital role in policy making, monitoring and coordinating actions in the best interests of children on the national and local levels and has demonstrated a successful model on a regional and international level.

### 3.3. Process for obtaining legal aid

The process for obtaining legal aid depends on the type of case, whether it is a criminal, a family law or a civil case, and, on the institution that is responsible for assigning the legal aid provider. The process for obtaining legal aid in civil, criminal and family cases is as follows:

- **Criminal cases:** Pursuant to the Egyptian Criminal Procedure Law and the Egyptian Child Law, there are two categories in which legal aid is provided in criminal cases. In the first category, according to article 124 of the Criminal Procedure Law,<sup>40</sup> after the public prosecutor decides that the criminal action is a felony, the public prosecutor transmits the case to the felonies court accusing the defendant of committing a felony and if the defendant has no lawyer to defend him or her, the public prosecutor's office mandates him or her a lawyer to defend him or her. Even if the defendant does not ask for legal aid or apply for it, the public prosecutor still mandates a lawyer for all defendants accused of committing a felony and have no lawyers to represent them because, according to the law, defendants accused of committing a felony should not appear before the court without a lawyer to represent them even if the defendant does not ask for a lawyer. In the second category, the law provides legal aid to juveniles in criminal cases. According to article 125 of the Egyptian Child Law, a juvenile accused of committing a criminal act, regardless of whether it is a felony or misdemeanor, has the right to obtain legal aid at all stages of litigation. Therefore, juveniles can get legal aid representation if they are accused of committing a criminal act without requesting it, as long as they do not have a lawyer to defend them.

39. NCCM website: <http://www.nccm-egypt.org/>

40. Interpreting article 124, the Court of Cassation (the highest court of the land) has ruled that a prosecutor has the discretion to determine that the accused was caught in flagrante delicto or that there was a "fear of losing existing evidence," either of which would support waiving the right of the accused to have an attorney present during the interrogation process, and accordingly can conduct the interrogation in the absence of a lawyer. This discretion, however, is subject to review by the trial court./Court of Cassation, Criminal Chamber, petition no. 25770/83, session of 9 Nov. 2015.

- **Civil cases:** The only legal aid service the State provides in civil cases is court fees exemption, which is provided under two different laws: the Labor Law and the Court Fees Law. Labor cases are subject to fee exemptions and the process for obtaining legal aid in labor cases is an automatic one. According to article 6 of the Labor Law, when the plaintiff in a labor case submits his or her case, the court clerk employee does not ask for court fees to continue the submission process. The court fee exemption is also granted to plaintiffs regardless of the type of case. Under article 23 of the Court Fees Law, to obtain this service, the litigant should submit an exemption request through the court clerk and the clerk forwards the request to a committee of six members, out of whom five members are judges from all different litigation levels and the sixth member is the public prosecutor. The court clerk notifies both parties of the date of hearing their claims and following the hearings, the committee issues its decision after either accepting or dismissing the plaintiff's request.
- **Family law cases:** As mentioned above, there are specialized legal aid offices in almost each family court in Egypt directed by the Ministry of Justice, which provide free consulting services in family cases and exemption of family court fees besides offering free mediation services in family cases. To obtain free mediation services, the applicant in a family case should submit a request at the legal aid office, located in the family court that handles the dispute. The request should contain information about the applicant and the dispute's subject-matter and should include all documents that support his or her position in the case.

Moreover, according to Article 3 of the Law on Regulating Litigation Procedures in Personal Status Affairs, litigants are allowed to appear before family courts pro se. Unlike other civil lawsuits, legal complaints can be filed before family courts without being signed by a lawyer; thus, litigants do not have to hire a lawyer. Nonetheless, the court still can appoint a legal representative for the plaintiff, free of charge, if deemed necessary.

### 3.4. Assigning legal aid Legal providers

"The competence of court-appointed defence in criminal cases for indigent defendants is still a matter of concern. These lawyers are appointed at random from a list of attorneys present in the courthouse that day and with no preparation. Thus, in reality, the defendant is restricted when selecting a lawyer of his or her choice. These lawyers often lack relevant experience pertaining to the case adjudicated, thereby jeopardizing the defendant's right to effective legal representation."<sup>41</sup>

## 4. Services providers

- Licensed practicing Lawyers
- Legal clinics (University-based and mobile legal clinics): There are several university legal clinics that provide legal assistance, including: Alexandria University Faculty of Law Legal Clinic (which provides legal assistance to victims of domestic violence and human trafficking); Legal Clinic of Women's and Children's 55 Rights, Assiut University College of Law; Tanta University Legal Clinic; International Justice Center, Tanta; Legal Clinic, Menoufia University Faculty of Law; Legal Clinic, Zagazig University Faculty of Law; and Environmental Law Clinic and Consumer Law Clinic, Helwan University.

41. Egypt: Access to the Justice System and to Legal Aid, Mohamed M. Youssef, 2017, p. 14, available online at: <https://www.loc.gov/law/help/access-to-justice/egypt-access-to-justice-system.pdf>.

## 5. Quality safeguards

### 5.1. Qualification required

While neither the Criminal Procedure Law nor the juvenile law has any qualification requirements for the legal aid provider, the legal aid provider should meet the following minimum qualifications for any lawyer to be able to represent a client at the court of law. To deliver legal aid services (legal representation) in criminal cases, legal aid providers must have a law degree, a professional license, and a proof of passing a professional examination (bar examination). They must also be current members of the bar association and have completed an internship with a lawyer.

Some NGOs that provide legal aid have determined further qualifications requirements for legal aid providers, such as requesting the legal aid provider to be specialized in the legal matter that is the subject-matter of the legal aid services at stake.

### 5.2. Accountability for the quality of legal aid services

“There is no clear practical measure for evaluating the efficiency of services provided by the court-appointed lawyers, absent a formal complaint or serious malpractice or misconduct reported to the Disciplinary Committee. Despite the Advocacy Law’s requirement that lawyers provide legal assistance to disadvantaged defendants with the same care and diligence as a retained lawyer; in practice, they exercise their role in a *pro forma* manner for procedural due process.

In this regard, the Court of Cassation has ruled that the preparedness of a lawyer to represent a defendant is at the sole discretion of the lawyer; depending on his or her conscience, diligence, and professional practice traditions.”<sup>42</sup>

### 5.3. Monitoring the quality of the legal aid services

While the Ministry of Justice is responsible for monitoring the quality of legal aid that is provided by its legal aid offices in family courts, there are no methods or official criteria on monitoring the quality of legal aid services that are provided under the criminal law.

## 6. Provision of legal aid

### 6.1. Legal aid in criminal cases

#### Who is eligible?

Under the Egyptian Criminal Procedure Law No. 150 of 1950 and Child Protection Law No. 12 of 1996, legal aid is available for defendants accused of committing a felony and for juveniles regardless of the type

42. Egypt: Access to the Justice System and to Legal Aid, Mohamed M. Youssef, 2017, p. 14, available online at: <https://www.loc.gov/law/help/access-to-justice/egypt-access-to-justice-system.pdf>.

of their criminal charges. The State is obligated to provide legal aid to those persons irrespective of their financial situation.

## **At what stage of the criminal case?**

According to article 124 of the Child Protection Law, legal aid is provided to juveniles during questioning by the public prosecution office, during the trial and for any appeal. Defendants accused of committing a felony receive legal aid representation during the trial and for any appeal.

## **6.2. Legal aid in civil cases**

### **Who is eligible?**

Legal aid in civil cases is available to persons who meet the criteria that have been determined by both the Labor Law and the Court Fees Law. According to the Labor Law, legal aid services are limited to court fees exemptions in any labor case, while legal aid services under the Court Fees Law are limited to fees exemption for persons who meet the financial criteria.

For what actions is a party eligible for legal aid?

Under the law, legal aid in civil cases can only be provided in the form of fees exemptions.

## **6.3. Access to legal aid for vulnerable groups**

### **6.3.1. Access to legal aid for children**

The justice system has specialized judges and specialized prosecutors to represent child victims and specialized social workers who attend all the hearings of juvenile cases. Article 125 of the Juvenile Law that guarantees legal presentation for juveniles at all stages of the trial. It provides that a child “shall be represented in criminal and misdemeanor cases whose penalty is placing him in custody by a lawyer to defend him in both the investigation and trial phases”, and that, “if no lawyer has been selected by the child, the public prosecution or the Court shall appoint one, in accordance with the rules and regulation of the Criminal Procedure Code”. Article 140 provides that “children shall not pay any fees or expenses before all courts in connection with cases related to this Part.”

“Article 116 of the Children’s Law provides that child victims and witnesses of crime, “at all stages of arrest, investigation, trial, and implementation,” shall have the right to legal assistance in accordance with the UN Guidelines on Justice for Child Victims and Witnesses of Crime.”<sup>43</sup>

“Children or their representatives can make complaints about violations of children’s rights via a 24-hour free emergency telephone helpline, known as the children’s emergency line 16000, which was launched in 2005 and covers the whole territory of Egypt. Article 144 of the Children’s Law establishes the service as a monitoring instrument responsible for receiving, handling, referral and requesting the investigation of

43. ACCESS TO JUSTICE FOR CHILDREN: ARAB REPUBLIC OF EGYPT, *Child Rights International Network*, 2014, pp4., available online at: [https://archive.crin.org/sites/default/files/egypt\\_access\\_to\\_justice.pdf](https://archive.crin.org/sites/default/files/egypt_access_to_justice.pdf).

complaints. The service also follows up the outcome of the investigation process and the protection provided. In the period from June 2005 to December 2008, the service received 1,025,218 calls for legal advice, education, health and safety services.”<sup>44</sup>

It is also possible for children or their representatives to obtain legal assistance from practicing lawyers or organizations on a pro bono basis.<sup>45</sup>

### **6.3.2. Women’s access to legal aid**

“Over the last decade, the Ministry of Justice declared that the empowerment of women has been its top priority. Initiatives have been taken to fight violence against women by facilitating women’s access to the justice system and providing them with free legal assistance and legal representation.

In cooperation with the British Council, the Ministry of Justice established the “My Right” project. Four pilot offices have been created in four courts of first instance to provide legal advice and legal aid to women and girls who are victims of violence. This is accomplished by raising the awareness of women who are victims of violence, informing them about their legal rights, and assisting them in filing police reports and gathering evidence in the pretrial and trial stages. Four additional offices are planned.”<sup>46</sup>

### **6.3.3. Access to Justice in family courts**

“Family courts are vested with specific attributes in order to simplify litigation procedures and allow for a more user-friendly court system, where litigants tend to be women and children. The right of litigants to represent themselves pro se, combined with the reduced age of legal capacity from twenty-one to fifteen, enables children to pursue their legal rights, and to combine all family disputes into one file before a single court.

In addition, two venues were established in family courts to provide free legal assistance to litigants: Dispute Settlement Offices and Legal Aid Offices.

#### *1. Dispute Settlements Offices*

The family court system introduced the concept of mediation (prior to initiating any litigation) through the establishment of Dispute Settlement Offices (DSOs). The mandate of these offices is to mediate between the parties to reach an amicable settlement of their dispute before referring the conflict to the court.

There is a DSO at every family court. Each DSO comprises a legal specialist, a psychologist, and a social worker. The specialists summon the parties to a dispute to mandatory, pretrial mediation. They inform the parties about their legal rights and explain the consequences of their dispute in an effort to reach an amicable settlement. If an agreement is reached, it is as enforceable as a court decision. Otherwise, the dispute is referred for adjudication before the court.

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44. Ibid, p. 3.

45. Ibid, p. 8.

46. Egypt: Access to the Justice System and to Legal Aid, Mohamed M. Youssef, 2017, p. 11, available online at: <https://www.loc.gov/law/help/access-to-justice/egypt-access-to-justice-system.pdf>.

## 2. Legal Aid Offices

In 2008, in a groundbreaking move to promote the concept of legal aid, the Ministry of Justice established Legal Aid Offices (LAOs) in family courts through a partnership with the United Nations Development Program (UNDP).

The idea of selecting family courts as a primary venue for LAOs arose from the growing volume of family conflict cases, in addition to the complexity and sensitive nature of such cases. The majority of litigants are women or disadvantaged persons who want to avoid lengthy and costly litigation procedures.

There are thirty-five LAOs now in place in seven Egyptian governorates. The UNDP reports that the office, which was established in 2008, had addressed a total of 49,597 cases by early 2015, of which 36,948 cases were filed by women.”<sup>47</sup>

## 7. Finances

### 7.1. Costs to recipients

Legal aid services are free of charge for those who meet the eligibility criteria, whether they requested legal aid in a criminal, civil, or family case.

### 7.2. Legal aid in the annual justice budget

There is a separate component on legal aid in the annual justice budget but in practice this component does not exist. However, the State considers the exemption of court fees as a contribution from the annual justice budget.<sup>48</sup> The courts' funds and international donors cover the costs of specialized legal aid services for disadvantaged populations.

### 7.3. Payment to legal aid providers

Legal aid providers receive a fee for each case on which they provide legal aid. This fee is decided by the court and usually ranges between 20 EUR to 250 EUR.<sup>49</sup> There are no standards on which the judge bases his or her decision on the payment to the legal aid provider.

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47. Egypt: Access to the Justice System and to Legal Aid, Mohamed M. Youssef, 2017, pp. 8-9.

48. According to Mr. Abuljawad Abdulhameed, the vice president of the EBA.

49. Ibid.



## 4.3. Legal aid in Israel

### 1. Country general facts

- **Governmental system:** Parliamentary Republic
- **Population:** 8,7 million (World Bank)
- **Poverty rate:** 31%
- **Unemployment:** 6,92% (Borgen Project.org)
- **People's trust in courts (Justice) CEPEJ:** 6,3% of the population trust in courts' procedural fairness and in their competence<sup>50</sup>

### 2. Legal aid legislative framework

#### 2.1. The right to legal aid is granted according to the following legal provisions

"The State of Israel has an unwritten constitution. Instead of a formal written constitution, and in accordance with the Harari Decision of 13 June 1950 adopted during the Israeli Constituent Assembly, the State of Israel has enacted several Basic Laws of Israel dealing with the government arrangements and with human rights. The Israeli Supreme Court President Aharon Barak ruled that the Basic Laws should be considered the state's constitution, and that became the common approach throughout his tenure."<sup>51</sup>

Legal aid is not enshrined in a Basic Law. However, it is part of the basic principles in Israel, in particular due process. It is worth highlighting civil appeal judgement 733/95 Arpal Alominuim LTD v' Klil Tashiyot LTD that stated: "access to justice right is not a basic right in its common sense. It belongs to a different order of norms in the legal system. It can be said that it is superior to the basic rights. Even more, its existence is a necessary and essential condition for the fulfillment of the other basic rights."

In accordance with what is mentioned and bearing in mind that legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system, by ensuring equality before the law, the right to counsel and the right to a fair trial, are foreseen in some specific provisions taking into account that Israel's Legal aid scheme differs from the one related to legal aid in criminal procedures and the one related to legal aid in civil (including administrative) proceedings or matters.

Finally, the legal provisions governing legal aid are: the Legal Aid Law 5732 – 1972, the Legal Aid Regulations 5733-1973, and the Public Defence Act 5755-1995.

Beside those provisions, Section 3(2) of the Israel Bar Association Law, stipulates that "[t]he Bar Association is entitled, inter alia, to provide legal aid to those of limited means."

50. [https://www.europeansocialsurvey.org/docs/findings/ESS5\\_toplevels\\_issue\\_1\\_trust\\_in\\_justice.pdf](https://www.europeansocialsurvey.org/docs/findings/ESS5_toplevels_issue_1_trust_in_justice.pdf).

51. [https://en.wikipedia.org/wiki/Basic\\_Laws\\_of\\_Israel](https://en.wikipedia.org/wiki/Basic_Laws_of_Israel).



The above-mentioned framework is relevant due to the dual body model legal aid scheme delivered in Israel with regard to civil and administrative matters: by the Ministry of Justice and by the Israel Bar Association.

With regard legal aid in criminal matters: The Public Defence at the Ministry of Justice was founded in 1996 upon the adoption of the Public Defence Act 5755-1995. It was founded “in order to guarantee high quality and professional legal assistance for defendants and detainees without means” and it “plays a crucial role in maintaining justice in criminal legal proceedings.”<sup>52</sup>

## 2.2. Scope of legal aid (services included as part of legal aid)

**Legal aid in civil and administrative cases includes:**

- Legal advice;
- Legal representation before courts and the Execution Office;
- Exemption of court fees;
- Coverage of some fees for expert opinions, translation of documents, DNA tests, etc.;
- ‘First Aid’ in access to justice posts in courts.

The service is provided by lawyers appointed by the Ministry of Justice (through the Legal Aid Department), using also external lawyers appointed by the said Body or by the Israel Bar Association.

Legal aid is provided free of charge, except for payment of a contribution of an amount specified in the 1973 Legal Aid Regulations, according to the applicant’s income. The Regulations stipulate a number of cases in which the applicants will be exempt from the payment of a fee.

The services covered by the legal aid funds depend, mainly, on the income level of the applicant. Pursuant to the 1973 Legal Aid Regulations, a small contribution can be required to specific beneficiaries (the amount of which is equal to 30 € or less).

The legal aid service is provided by external lawyers, who work with the Department in the Courts, in the Labour Tribunals and Religious Tribunals, in the Execution Offices, and also, in special cases, in the quasi-judicial committees. For example, they may provide legal representation before District Psychiatric Committees when forced hospitalization is ordered. The average is about 100 internal lawyers and about 1100 external ones.<sup>53</sup>

In 2017, the Legal Aid Department provided legal representation in more than 200.000 proceedings of all sorts, and handled applications received by over 70.000 new legal aid applicants.

The Department’s services are provided in extensive fields of law and include almost all the fields of civil law, including personal status matters (divorce, maintenance, custody, protective orders, etc.), civil matters (monetary claims, land matters, labour laws, execution office, bankruptcy, etc.), National Insurance matters (unemployment, income assurance, various disabilities, old age pensions, pregnancy bed rest, etc.).

52. <https://www.justice.gov.il/En/Units/PublicDefense/About/Pages/default.aspx>.

53. <https://www.justice.gov.il/En/Guides/TheLegalAidDepartment/Pages/LegalAidDepartment.aspx>.

In some areas of law, legal aid **is provided without means test**: matters such as representation of people under forced hospitalization, representation of victims of human trafficking for the purposes of prostitution and slavery, support and representation of victims of homicides, representation of minors, representation in accordance with international conventions and agreements, representation of Holocaust survivors, etc.

## 2.3. Public awareness of the legal aid

Public awareness is basically carried out by the Ministry of Justice, the Israel Bar Association, through its pro-bono program, together with its allies in Universities and NGOs and, finally, by NGOs and specialized Legal Education Clinics whose activity focuses on assisting individuals belonging to vulnerable groups.

## 3. Delivery model<sup>54</sup>

### 3.1. Authority

#### Legal aid in civil and administrative matters

There is a dual authority or dual body entitled to deliver legal aid in civil and administrative cases in Israel: The Ministry of Justice's Legal Aid Department and the Israel Bar Association through its Pro Bono program.

The Legal Aid Department provides legal representation by virtue of the provisions of the Legal Aid Law 5732 – 1972 and the Legal Aid Regulations 5733 – 1973.

As a governmental branch, the Legal Aid Department works in the following areas:

- cooperation with other government branches;
- academic issues – including legal education clinics;
- promotion of legislation.

The Legal Aid Department operates by means of six districts all over the country: Nazareth-North, Beer-Sheba-South-, Tel-Aviv, Haifa, Jerusalem and Lod–Center.

The core of the Legal Aid Department's activity is the provision of legal aid to whoever cannot afford trial costs in order to ensure his or her rights to access to justice and to a fair trial.

#### Legal aid in criminal matters

There is a main authority delivering legal aid in criminal matters: The Public Defence Office. The latter and the Legal Aid Centre at the Israel Bar Association provide legal representation in criminal matters.

54. <http://www.justice.gov.il/En/Guides/TheLegalAidDepartment/Pages/LegalAidDepartment.aspx>  
<http://www.refugeelawaidinformation.org/israel-pro-bono-directory>  
[http://www.israelbar.org.il/english\\_inner.asp?pgId=75176&catId=372](http://www.israelbar.org.il/english_inner.asp?pgId=75176&catId=372)  
<https://www.coe.int/en/web/cepej/country-profiles/israel>

“The Public Defence Office, from an administrative perspective, is an integral part of the Ministry of Justice, though from the professional perspective, it operates as an independent entity loyal to its clients, as has been defined explicitly by law. The Public Defence is supervised, by Law, by the Public Defence Committee that consists of the Minister of Justice (chairperson), a former Supreme Court justice, an expert on criminal law, a lawyer appointed by the Israel Bar Association, and a lawyer appointed by the Minister of Justice and approved by the President of the Bar Association. The Public Defence is combined of an internal staff of government-employed attorneys, and an external staff of attorneys at private law firms.

The services provided to the public are therefore outsourced to external parties, but the administrative and professional aspects of these external attorney’s work are still supervised by the state.

The Public Defence is headed by the National Public Defender who directs the Public District Defence Attorneys and the Public District Defenders, as well as the National Public Defence Unit.

The National Public Defence Office includes the National Public Defender’s Office, an administrative department, and a department for Supreme Court cases. In addition, the National Public Defence Office coordinates broad-scale issues related to youth, detention, parole committees, psychiatry, information systems and some others. The Public Defence consists of six Districts: Tel Aviv, Central Israel, Jerusalem, Southern Israel, Haifa and Northern Israel. Each District Office is headed by a Public District Defence Attorney who manages the office and is responsible for all legal representation provided in that district.”<sup>55</sup>

## 3.2.- Legal aid providers

### 3.2.1. Legal aid providers in civil matters:

“**The Legal Aid Department in the Ministry of Justice** provides legal aid in civil matters to applicants who are entitled to it. Legal aid includes legal advice and principally, representation before legal forums by lawyers appointed by the Department. Legal aid is provided to exempt totally all litigation costs, except for payment of a contribution of an amount specified in the Regulations, according to applicant’s income. The Legal Aid Regulations stipulate a number of cases in which the applicants will be exempt from the payment of a fee.

In the Legal Aid Department, there are currently [6] Legal Aid Bureaus operating:

- The Northern Bureau (located in the City of Nazareth), which provides legal services for the Northern Region.
- The Haifa Bureau - which provides legal services for the Haifa Region.
- The Tel Aviv Bureau - which provides legal services for the Tel Aviv area.
- [Lod (Central) Bureau- which provides legal services for the Central Region.]
- The Jerusalem Bureau - which provides legal services for the area of Jerusalem and the South (Ashdod and Eilat [sic]).
- The Beersheba Bureau - which provides legal services for Beersheba and the surrounding area, (with the exception of Ashdod and Ashkelon as previously mentioned).”<sup>56</sup>

55. <https://www.justice.gov.il/En/Units/PublicDefense/About/Pages/default.aspx>.

56. <https://www.justice.gov.il/En/Guides/TheLegalAidDepartment/Pages/LegalAidDepartment-.aspx>.

## *“Schar Mitzvah” – The Israel Bar Association Pro Bono Program<sup>57</sup>*

The Israel Bar Association was established in 1961 as an autonomous statutory entity in order to incorporate the lawyers in Israel and to guarantee the standards and integrity of the legal profession. “Schar Mitzvah”, the Israel Bar Association pro bono program, was established in 2002.

The Program enables the implementation of Section 3(2) of the Israel Bar Association Law, which stipulates that *“The Bar Association is entitled, inter alia, to provide legal aid to those of limited means”*.

The objective of the program is to increase accessibility to the legal system, and to protect the rights of those who lack the means to hire professional legal services.

The Program’s mission is to substantially expand accessibility to the justice system and provide legal aid to those who cannot afford to pay legal services.

The Program covers a wide range of non-criminal legal issues, such as:

- Family law,
- Bankruptcy,
- Employment law,
- Housing,
- Civil disputes,
- Banking,
- Social security, etc.

The Program’s criteria are flexible. Each case is examined on its merits. On occasions, individuals who do not meet the Program’s criteria or whose legal issues are not covered by the Program may still be included, in the interest of justice.

### **Israel Bar Association Legal Aid Centers:**

The Israel Bar Association operates 43 Legal Aid Centers across the country. These centers provide free legal advice by fully qualified Lawyers to under-privileged populations and assisted by law students. It is a pro bono service in conjunction with Legal Education Clinics.

There are no strict eligibility criteria within the Israel Bar Association pro bono program; such criteria are significant only if a volunteer lawyer is to be appointed to litigate the case, as explained below.

### **Scope of the pro bono program:**

The Program provides pro bono legal representation to people who meet certain economic criteria, as determined by the Israel Bar Association. The Program’s criteria relate to the legal aid services provided by the Ministry of Justice. The Legal Aid Bureau of the Ministry of Justice provides legal representation to those

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57. All the information presented on the Schar Mitzvah program is retrieved from the website of the Israel Bar Association, available at the following address: [http://www.israelbar.org.il/english\\_inner.asp?pgId=75176&catId=372](http://www.israelbar.org.il/english_inner.asp?pgId=75176&catId=372).

of very limited means, in accordance with the criteria laid down in the 1973 Legal Aid Regulations, and as such, they are inflexible by nature. The eligibility criteria for legal aid by the Israel Bar Association, on the other hand, enable some flexibility.

### 3.2.2. Legal aid providers in criminal matters

The Public Defence at the Ministry of Justice was founded “in order to guarantee high quality and professional legal assistance for defendants and detainees without means. (...) Thus, [in 1996,] the legislator decided to create a public, nationwide entity that would be capable of supervising the defence attorneys that work on its behalf and have the authority to monitor the quality of service that these attorneys provide.

The goal of the Public Defence is to raise the quality of criminal representation in Israel by offering professional and high-quality legal representation for all clients of the public defence system. Its goals are to promote the best interests and protect the rights of all suspects, defendants and convicts in Israel.

The Public Defence provides legal representation throughout the entire criminal proceedings, through:

- Consultation for suspects during police interrogation;
- Representation in detention hearings, including petitions to detain a suspect until the end of the proceeding;
- Representation during criminal trials and sentencing, filing appeals and leaves to appeal, applications for reviews and retrials;
- Representing prisoners before parole committees;
- Representing mentally ill, forcibly hospitalized patients before psychiatric evaluation committees.”<sup>58</sup>

### 3.3. Process for obtaining legal aid: objective criteria. Merit and means test (in civil and administrative matters)

A means and merit test is undertaken to assess who is eligible by both providers: the Ministry of Justice and the Israel Bar Association.

“In order to maximize the extent of legal aid available, the criteria determined by the Israel Bar Association are supplementary to those of the Ministry of Justice. In addition, the Israel Bar Association Program assists with cases which do not fall within the Ministry of Justice’s criteria.

Accordingly, if an individual who has applied to the Israel Bar Association legal aid centers meets the requirements for state legal aid, the volunteer lawyer at the legal aid center will help him or her complete the Legal Aid Bureau’s application form, and will refer him or her to the local offices of the Legal Aid Bureau.”<sup>59</sup> It works as a prelitigation consultancy service and within the scope of legal aid.

“Urgent motions to extend deadlines for the submission of Court documents, stays of proceedings and restraining orders, are prepared by volunteers on duty at the Legal Aid Centers. The case is transferred simultaneously to the regional coordinator or to the local offices of the Legal Aid Bureau, as applicable.

58. <https://www.justice.gov.il/En/Units/PublicDefense/About/Pages/default.aspx>.

59. [http://www.israelbar.org.il/english\\_inner.asp?pgld=75176&catId=372](http://www.israelbar.org.il/english_inner.asp?pgld=75176&catId=372).

Applications for legal representation are transferred from the legal aid centers and/or other sources to regional coordinators who bring the applications before a District Committee. The District Committee examines the eligibility under the criteria determined by the Israel Bar Association. Once the committee has determined that the applicant is eligible for voluntary legal representation, the regional coordinator locates a lawyer who agreed to take the case and represent the applicant pro bono. While the case is ongoing, the Program staff will keep in touch with the volunteering attorney, providing assistance as needed.”<sup>60</sup>

“The Program’s criteria relate to the legal aid services provided by the Ministry of Justice. The legal Aid Bureau of the Ministry of Justice provides legal representation to those of very limited means, in accordance with the criteria laid down in 1973 Legal Aid Regulations, and as such, they are inflexible by nature. The Israel Bar Association eligibility criteria for legal aid enable some flexibility.”<sup>61</sup>

Nonetheless, when the application is fulfilled before the Israel Bar Association throughout its 43 Legal Aid Centres, the procedure can be done via telephone. A hotline is available nationwide in order to apply for legal aid.

“Once a person calls in, a student performs an initial interview and provides the caller with some general information as needed. After operating hours, a voicemail is available for the callers. When appropriate, a consultation meeting with a volunteer attorney is scheduled in accordance with the legal issue and the caller’s place of residence. In other cases, the student provides the caller with specific instructions on how he should proceed, including specific referral information to other organizations that he may turn to for additional assistance.”<sup>62</sup>

If the request is rejected the applicant has the right to appeal before the District Court within 30 days. The applicant must be a citizen or permanent resident (there are exemptions to the rule – such as the Convention on civil procedure 1954).

### **3.3.1. The Legal Aid Department’s means test:**

The means test is undertaken in order to assess the financial situation of the applicant. The Legal Aid Department assessment includes two cumulative tests:

- The income test;
- The property test.

The threshold is calculated according to the number of members of the family. The rate is considered for up to three individuals per family.

The threshold is fixed as follows: the family unit income is less than 67% of the average salary (average salary is approx. 1,700 USD) and adding a 6% addition for each additional family member.

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60. Ibid.

61. Ibid.

62. Ibid.

Heritage is also assessed: the threshold is settled on property worth less than 3 times the average salary (about 7,500.00 USD), excluding inhabited dwellings.

The means test is not required for some individuals belonging to specific groups and for certain legal matters such as: social security, holocaust survivors, adoption, human trafficking, crime victims, forced psychiatric hospitalization, etc. In these cases, legal aid is automatically recognized.

### 3.3.2. The Israel Bar Association's means test

The Israel Bar Association has also developed an objective criterion and set up a threshold.

The Israel Bar Association's objective criteria in order to assess the means test are the following:

“A family of three:

Will be eligible for IBA pro bono program when its total gross income is between 5,440-6,902 NIS (\$1,431 - \$1,816);

If the total gross income is below 5,440 NIS (\$1,431), it will be entitled for assistance from the Legal Aid Bureau of the Ministry of Justice.

A family of six:

Will be eligible for IBA pro bono program when its total gross income is between 6,902-8,364 NIS (\$1,816 - \$2,201);

If the total gross income is below 6,902 NIS (\$1,816), it will be entitled for assistance from the Legal Aid Bureau of the Ministry of Justice.

Eligibility also depends on the legal issue and specific legal analysis.”<sup>63</sup>

### 3.3.3. Merit test:

In addition to the means test (assessing the applicant's financial situation in order to decide whether to grant him or her legal aid benefits), a merits test is also carried out. The applicant will be rejected in the following cases:

- The claim lacks legal grounds, or factual, evidential or legal foundation.
- The matter is found to be frivolous or of little importance.

## 3.4. Appointment/assignment of legal aid providers in civil and administrative matters

### 3.4.1. Assignment of legal aid providers by the Israel Bar Association Program

Fully qualified lawyers and members of the Israel Bar Association belong to the program on a voluntary basis. “Over 2,000 attorneys participate in the Program today, in addition to law students nationwide.

The Program offers, in exchange, training and seminars for its student and volunteer attorneys in the relevant areas of expertise.

63. [http://www.israelbar.org.il/english\\_inner.asp?pgId=75176&catId=372](http://www.israelbar.org.il/english_inner.asp?pgId=75176&catId=372).

In addition, the Program's staff is available to advise volunteering on any questions they may have.

By joining the Program, lawyers and students demonstrate their social commitment as part of the mission the Israel Bar Association has taken upon itself to aid underrepresented people to uphold their rights.”<sup>64</sup>

### **3.4.2. Representation on behalf of the Legal Aid Department of the Ministry of Justice<sup>65</sup>**

The service is provided by lawyers appointed by the Ministry of Justice (through the Legal Aid Department), using also external lawyers appointed by the said Body or by the Israel Bar Association.

The Legal Aid Department applied a procedure for the recruitment and administration of a pool of external lawyers in the Legal Aid districts with effect from 1 November 2011. Hence lawyers are recruited in accordance with the rules prescribed in this procedure.

Pursuant this procedure, a lawyer wishing to act as an external lawyer should submit an application to the District where (s)he wishes to practice as an external lawyer, as stated in the procedure. After the application and all the accompanying documents have been filed, the procedure assessing the lawyer's candidacy begins.

### **3.4.3. Representation on behalf the Public Defence Office in criminal matters<sup>66</sup>**

The lawyers representing the defendants or detainees belong to the internal staff. Nonetheless, as in civil matters, the procedure for the recruitment of lawyers is similar and the external public defenders staff includes around 800 attorneys.

## **4. Services providers**

### **4.1. Lawyers**

Legal aid services are provided only by lawyers.

### **4.2. Others (Legal Clinics, NGOs)**

As mentioned above, the Israel Bar Association provides legal aid on a pro bono basis in civil matters.

It is also provided by legal clinics and NGOs. Some of the most relevant NGOs are:

#### **I. The Refugees Rights Clinic**

“In 2002, a year long project at Tel Aviv University's Public Interest Law Resource Center developed the country's first legal aid advocacy program devoted solely to refugees. In October 2003, this pilot project

64. [http://www.israelbar.org.il/english\\_inner.asp?pgId=75176&catId=372](http://www.israelbar.org.il/english_inner.asp?pgId=75176&catId=372).

65. <https://www.justice.gov.il/En/Units/LegalAid/Pages/LawyersInfo.aspx>.

66. <https://www.justice.gov.il/En/Units/PublicDefense/About/Pages/default.aspx>.



became the Refugee Rights Clinic. The Refugee Rights Clinic is part of the law school's Clinical Legal Education Program, which now includes six clinics in various areas of law, including welfare, employment, criminal justice, community advocacy, micro-business, environmental law and human rights. The Refugee Rights Clinic provides free legal aid to refugees and asylum-seekers regardless of nationality, promotes legal and policy reform through research and advocacy, and teaches refugee law to a new generation of Israeli lawyers. The Refugee Rights Clinic provides free legal assistance on several issues:

- Applications for refugee status;
- Appeals on the rejection of applications;
- Release from detention;
- Family reunification, etc.

The clients are referred to the Clinic by various NGOs: Physicians for Human Rights, the Hotline for Migrant Workers, the Gay and Lesbian Association, the Association for Civil Rights in Israel, and others. (...) Currently the number of people who apply for legal aid exceeds the capacity of the Clinic, and some people are turned away. The Clinic has a central role in the development of Israel's raising asylum system. Although Israel had been one of the drafters of the 1951 Refugee Convention,<sup>67</sup> and ratified it in 1954, the Convention was never adopted by enabling legislation and only in 2002 did the Government issue regulations regarding the treatment of asylum seekers in Israel. The Refugee Status Determination process is still dependent to a large extent on UNHCR. (...) The Clinic has been monitoring the process closely, and been filling position papers and petitions to ensure that asylum seekers receive a fair process."<sup>68</sup>

## Provision of legal services: Israel Pro bono (besides the IBA pro bono program)

### 2. Shatz, Mann & Cohen Law Firm

"The Shatz, Mann & Cohen Law Firm was founded in 2009 and focuses on fighting human rights abuses in Israel and in the occupied territories. One of its main areas of practice is refugee and asylum law. The Law Firm has considerable experience both in courts - fighting illegal detention and deportation - and with the ministry of interior. They represent refugees on a pro-bono basis."<sup>69</sup>

## 5. Quality safeguards

### 5.1. Qualifications required (to become a legal aid lawyer/provider)

To become a lawyer, Israel requires an undergraduate law degree (LL.B., which is a three-and-a-half-year program), a one-year apprenticeship, and the passing of the bar examination (oral and written exams).

67. <http://www.unhcr.org/1951-refugee-convention.html>

68. All the information concerning the Refugee Rights Clinic is extracted from the following website: <http://www.refugeelegalaidinformation.org/israel-pro-bono-directory>.

69. All the information concerning the Shatz, Mann & Cohen Law Firm is extracted from the following website: <http://www.refugeelegalaidinformation.org/israel-pro-bono-directory>.

## 5.2. Accountability for the quality of legal aid services

The Ministry of Justice Legal Aid Department and the Israel Bar Association are responsible for the accountability of the legal aid services in civil and administrative matters.

As for the Public Defence Office of the Ministry of Justice, it is the responsible for the accountability of the legal aid services in criminal matters.

## 5.3. Monitoring the quality of legal aid services

The Legal Aid Department is entitled to monitor the quality of the legal aid services provided on its behalf (civil and administrative matters).

“Since most of the representation on behalf of the Legal Aid Department is carried out by external lawyers, the Legal Aid Department attaches supreme importance to the professionalism and high quality of the lawyers representing its applicant public. Hence, representation on its behalf embodies additional important values alongside the professional legal work.”<sup>70</sup>

The Israel Bar Association monitors volunteer lawyers participating in the pro bono program, according to its Code of Conduct.

Concerning legal aid in criminal matters, as aforementioned, the Public Defence Office was founded in order to guarantee high quality and professional legal assistance for defendants and detainees without means.

“It was created to replace the former system in which justices and court secretaries appointed defence lawyers to represent needy defendants without the ability to monitor the quality of service that these lawyers provided. Thus, the legislator decided to create a public, nationwide entity that would be capable of supervising the defence lawyers that work on its behalf, and have the authority to monitor the quality of services provided. The goal of the Public Defence Office is to raise the quality of criminal representation in Israel by offering professional and high-quality legal representation for all clients of the public defence system. [In addition,] its goals are to promote the best interests and protect the rights of all suspects, defendants and convicts in Israel.”<sup>71</sup>

## 6. Provision of legal aid

### 6.1. Eligibility in civil and administrative legal aid matters

Eligibility in civil matters depends on the means and merit test assessment carried out by both bodies: The Legal Aid Department and the Israel Bar Association through its Legal Aid Bureau and Legal Aid Centres, as stated above.

70. See: <https://www.justice.gov.il/En/Units/LegalAid/Pages/LawyersInfo.aspx>.

71. <https://www.justice.gov.il/En/Units/PublicDefense/About/Pages/default.aspx>.

## 6.2. Eligibility in criminal legal matters

Section 18 of the Public Defence Act lists all grounds for appointing a public defence lawyer:

Pursuant the Public Defence Act a person shall be entitled to public representation, hence eligible, when:

- The legal proceedings may have a severe and crucial impact on that person's life (e.g. extended detention until the end of the proceedings, imprisonment, psychiatric hospitalization, extradition);
- A person suffers from personal disabilities that inhibit the basic ability to defend him/herself (e.g. mute, blind or deaf defendants; those who are mentally ill or suffer from cognitive disorders; minors);
- There is untypical evidence or criminal legal proceedings in trial (e.g. pre-trials, video testimony, hearsay submitted by a special investigator, etc.);
- The defendants are unable to afford private representation or when other circumstances require the appointment of a public defender in order to guarantee fair proceedings and prevent injustice.

## 6.3. Access to legal aid for vulnerable groups

The system in civil and administrative cases guarantees the access to justice for all and the Israel Bar Association pro-bono program criterion is supplementary to the Ministry of Justice Legal Aid Department's one. The same function is assigned to the Public Defence Office in criminal matters. Thus, the system guarantees the attention to those belonging to vulnerable or marginalized groups.

For instance, in the framework of the Israel Bar Association Pro-bono program, specific attention is paid to those that need it most.

"In the segmented Israeli society there are different populations. The Program and its volunteers are doing their best to reach out and assist every segment with respect to its special needs. [The program has] volunteers from all types of communities, speaking various languages and assisting those who are unfamiliar with the local culture and the Hebrew language.

In order to reach out to as many marginal populations as possible, the Program initiated:

- Intense activity within the Israel Bedouin community;
- Constant presence in the city of Sderot, which has been under attack by Qassam rockets from Gaza for the past 8 years and is under economic distress;
- Special assistance to new immigrants from the Former Soviet Union and Ethiopia;
- Special project to assist the mentally ill;
- Immediate response at time of emergency to specific populations in need."<sup>72</sup>

### Other specific population groups: refugees

The existence of the 'Procedure for Handling Political Asylum Seekers in Israel, Population Immigration and Border Authority', elaborated by the Ministry of Interior of Israel in 2011<sup>73</sup> should be underlined.

72. [http://www.israelbar.org.il/english\\_inner.asp?pgId=75176&catId=372](http://www.israelbar.org.il/english_inner.asp?pgId=75176&catId=372).

73. Available at: [https://www.gov.il/BlobFolder/policy/handling\\_political\\_asylum\\_seekers\\_in\\_israel/en/5.2.0012\\_eng.pdf](https://www.gov.il/BlobFolder/policy/handling_political_asylum_seekers_in_israel/en/5.2.0012_eng.pdf).

This procedure aims to set out the process of handling political asylum seekers in Israel, and those who were recognized as refugees by the Interior Minister by virtue of the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees. It came into effect on 2 January 2011.

Nonetheless, non-governmental associations and legal clinics provide legal advice and representation to vulnerable populations. Some of them, inter alia, are:

## *Amnesty International Israel*

"The Refugees and Asylum Seekers in Israel Department monitors the situation for refugees and asylum seekers in Israel. An advocacy organization, Amnesty International does not provide legal aid, but can provide details of other organizations that do so. Amnesty International's current activities are focused on the Anti-Infiltration Bill which is before the Israeli government, the passing into law of which will contravene Israel's responsibilities under international law and could result in the refoulement of refugees to countries from which they have fled persecution."<sup>74</sup>

## *African Refugees Development Centre (ARDC)*

"The ARDC run an Asylum Application Assistance Project to assist those seeking asylum with the Refugee Status Determination (RSD) process. The process in Israel can be extremely protracted and is one of the most stressful experiences faced by asylum seekers, and the outcome of an application dictates the fate of the individual which may include arrest, deportation or worse if it is rejected.

On 2 July 2009, the Israeli Ministry of the Interior assumed responsibility for the RSD procedure from the UN Refugee Agency (UNHCR).

The process is complicated by the absence of a clear Israeli asylum policy. As a result, the procedure is marred by inconsistencies and ad hoc decisions. The ARDC, together with a number of other human right organizations through the Refugees' Rights Forum, is advocating improving the fairness, transparency and integrity of the process. In October 2009, ARDC launched the Asylum Process Assistance Project to advise and represent asylum seekers throughout every phase of the asylum application process. Anyone seeking assistance with the RSD process should contact the Legal Aid Project Coordinator.

The ARDC also provides comprehensive information, advice and referrals in issues related to the asylum procedure, housing, employment, education and social and psychological care. Asylum seekers typically arrive to Israel in an acute state of shock as a result of their severe hardships, torture, rape and separation from family. They can provide trauma counselling to individuals who receive therapy sessions on a weekly basis from a qualified and experienced psychologist. Therapeutic services are provided for refugee individuals, couples and groups."<sup>75</sup>

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74. <http://www.refugeelegalaidinformation.org/israel-pro-bono-directory>.

75. <http://www.refugeelegalaidinformation.org/israel-pro-bono-directory>.

## *Aid Organization for Refugees and Asylum Seekers in Israel (ASSAF)*

ASSAF supports refugees and asylum seekers in Israel through advocacy and practical support programs. These include the Advocacy Support Centre which assists refugees with finding employment, accommodation, and general orientation in Israel on arrival. There are translation services available to help refugees deal with the authorities, and ASSAF then refer them to other organizations where necessary. ASSAF provides psycho-social services to help refugees find some stability and aids their integration; a Youth Club for teenage refugees with mentors able to give individual psycho-social support and advice; and also runs a community programme to strengthen community leaders, promote self-help initiatives, and giving training and support to community organisations and events.

## *B'nai Darfur (Sons of Darfur)*

"They work to assist refugees in finding employment and housing, together with the Tel Aviv Municipality, they have registered many children for school, and have established regular Hebrew and English language lessons for adults. They provide critical humanitarian aid to the refugee community along with culturally and linguistically appropriate services and information. They do not provide legal services, but refer refugees in need of this help to those who do."<sup>76</sup>

## *Hebrew Immigrant Aid Society (HIAS)*

"HIAS grants scholarships for immigrants (olim) who recently have immigrated to Israel. HIAS assists with Israeli government and UNHCR efforts to protect refugees arriving from Africa and elsewhere, and runs programs in the region to protect, assist and—in many cases—resettle refugees and migrants of all faiths and ethnicities. HIAS also undertake Refugee Law Education and co-formed the first Israeli refugee law clinic in 2003 at Tel Aviv University's Buchmann Law Faculty. HIAS has also been working closely with the Israel Ministry of the Interior (MOI) and the UNHCR to train Ministry of Interior personnel to fully assume the responsibilities of Refugee Status Determination in Israel."<sup>77</sup>

## *The Hotline for Refugees and Migrants*

"The Hotline for Refugees and Migrants is a non-partisan, not for profit organisation, dedicated to:

- (a) Promoting the rights of undocumented migrant workers and refugees and
- (b) Eliminating trafficking in persons in Israel.

[They] aim to build a more just, equitable and democratic society where the human rights of all those residing within its borders are paramount civic and political values.

76. <http://www.refugeelegalaidinformation.org/israel-pro-bono-directory>.

77. <http://www.refugeelegalaidinformation.org/israel-pro-bono-directory>.

[They] use a three-pronged approach to achieve their goals:

- Crisis Intervention: Providing information and solutions to those detained and exploited. Volunteers have assisted migrant workers, refugees and trafficking survivors through their telephone hotline and visits to detention centres.
- Legal Action: Filing suits and petitions promoting public accountability and enforcement of the rule of law. Through use of a variety of legal tools including petitions to the High Court of Justice. [They] work to ensure that existing laws protecting basic human rights are implemented. (...)
- Public Policy: Educating and informing through work with the Israeli public, academia, the media and policymakers.”<sup>78</sup>

## *Physicians for Human Rights - Israel*

In Israel, “national health coverage does not apply to a large population of immigrants. This population includes, among others, migrant workers, refugees and persons seeking asylum, children of Israeli residents that do not have legal status and women who have been disenfranchised by recent amendments to the Nationality Law.

The Department of Migrants and Persons with no Civil Status endeavours to protect the migrants' rights to health, to have them included in public health settlements, to sever the ties between civil status and entitlement to social rights, and to promote a “social residency” status that will enable immigrants' entitlement to rights unconditioned upon their civil status.

Physicians for Human Rights-Israel offers treatment to migrants and refugees, and endeavours to assist with any request for medical aid, whether directly with treatment or by assisting with payment for care. They also work to prevent deportation of the chronically ill to home countries where they cannot receive care or are at risk of inhuman treatment or death by representing them in claims against private insurance companies, by supporting seekers of political asylum, and a variety of other kinds of assistance. This advocacy action typifies their contacts with insurance companies, health funds, hospitals, government ministries and press communications in the legal aid sector:

Physicians for Human Rights-Israel relies upon assistance from the Legal Aid Clinic at the University of Tel Aviv Faculty of Law, especially in representing documented workers against the private insurance companies and on issues of refugees' rights.”<sup>79</sup>

## **7. Finances**

### **7.1. Legal aid in the annual justice Budget:**

According to CEPEJ figures, 45 million euros are allocated to legal aid in civil and administrative matters from the General Budget to the Ministry of Justice Legal Aid Department.

24 million euros are allocated to legal aid services provided in criminal cases.

78. <http://www.refugeelegalaidinformation.org/israel-pro-bono-directory>.

79. <http://www.refugeelegalaidinformation.org/israel-pro-bono-directory>.

## 7.2. Payment to legal aid providers

### **Payments made in civil and administrative matters by the Legal Aid Department (MoJ)**

Legal aid providers in civil and administrative cases are paid per action. The fee for each action is foreseen in a legal provision and in the Legal Aid Regulations.

It should also be noted that in a few areas of law, lawyers are paid based on private contracts that are signed with them.

### **Payments made by the Public Defence Office (MoJ) in criminal matters**

The external public defenders are paid in various ways:

- Payment per legal activity,
- Fixed payment per case,
- Fixed payment per day of court appearances,
- Payment per on-call hours at court,
- Payment per hour.

## 4.4. Legal aid in Jordan



### 1. Country general facts

- **Governmental system:** Constitutional monarchy
- **Population:** 9,9 million (Borgen Project.org)<sup>80</sup>
- **Poverty rate:** 13% (World Bank)<sup>81</sup>
- **Unemployment:** 15.3% (Borgen Project.org)<sup>82</sup>
- **People's trust in courts (Justice)** According to a survey conducted by ARDD in the context of an EU-funded project regarding the justice sector, 24% of male and female Jordanians who have faced legal matters took their issues to court. The percentage is lower for women when gender is disaggregated. Furthermore, 54,2% of the Jordanian people said that the Judiciary in Jordan is transparent.<sup>83</sup>

### 2. Legal aid legislative framework<sup>84</sup>

"Legal assistance, when provided by the State to people who have insufficient financial means to represent themselves legally, is termed 'legal aid'. It includes the provision of legal advice and representation for both civil and criminal cases. It ensures that people are not denied access to justice and is consequently extremely important to a country's development and the protection of its people. In essence, legal aid is fundamental for guaranteeing equal access to justice for all. Access to justice is a fundamental human right. It allows for remedies to be obtained and ensures the protection of victims of violations."<sup>85</sup>

#### 2.1. The right to legal aid is granted according to the following legal provisions<sup>86</sup>

"The law in Jordan addresses the right of individuals to access justice in different ways. However, laws that safeguard this right are scattered and as a whole do not provide a comprehensive framework to enhance the right to access to justice. This is particularly relevant in the absence of a legislative framework that clearly and explicitly outlines legal aid, its rules and procedures,"<sup>87</sup> given that accessible legal aid is a primary safeguard to the right of access to justice.

80. [www.borgenproject.org](http://www.borgenproject.org)

81. [www.worldbank.org](http://www.worldbank.org)

82. [www.borgenproject.org](http://www.borgenproject.org)

83. Public Perceptions and Satisfaction regarding the Justice Sector in Jordan Report. Government and Policy Department 2018. Arab Renaissance for Democracy and Development.

84. <http://www.refugeelegalaidinformation.org/jordan-pro-bono-directory>

85. Nina Gora, Report on 'Provision of legal services in Jordan', ARDD, October 2009, p. 8. Available at: [https://ardd-jo.org/sites/default/files/re-source-files/legal\\_aids\\_report\\_on\\_legal\\_services\\_in\\_jordan\\_0.pdf](https://ardd-jo.org/sites/default/files/re-source-files/legal_aids_report_on_legal_services_in_jordan_0.pdf).

86. <http://www.jordantimes.com/news/local/formation-national-legal-aid-system-urged>.

87. ARDD, Report on 'Women's Access to Justice. A Framework for Inquiry', 2017. p. 13. Available at: [https://ardd-jo.org/sites/default/files/attach-ments/waj\\_framework\\_of\\_inquiry\\_en.pdf](https://ardd-jo.org/sites/default/files/attach-ments/waj_framework_of_inquiry_en.pdf).



## The Jordanian Constitution: Guarantees for a fair trial

Guarantees of equality before the law and impartiality of justice systems exist in various parts of legislations in Jordan. Article 6 of the Constitution states that:

“(1) Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion.

(2) The Government shall ensure work and education within the limits of its possibilities, and it shall ensure a state of tranquility and equal opportunities to all Jordanians.”

Furthermore, Chapter Six of the Constitution of Jordan provides for the principles and guarantees of a fair trial emphasising that:

1. The Courts are open to all and are protected from interference in their affairs.
2. The Civil Courts shall exercise their jurisdiction in respect of civil and criminal matters in accordance with the law for the time being in force in the Kingdom, provided that in matters affecting the personal status of foreigners or in matters of a civil or commercial nature which in accordance with international usage are governed by the law of another country, such law shall be applied in the manner designated by the law.
3. The sessions of the Courts shall be held in public unless the Court decides to be confidential in order to observe public order or preserve the literature. In all cases, the judgment shall be pronounced in public.
4. The accused is presumed innocent until proven guilty by a final judgment.

Despite the safeguards of the rights that are enshrined in the Jordanian Constitution and its recognition of the basic principles of judicial independence and fair trial, the Constitution does not guarantee the provision of the necessary financial and technical facilities to access justice and courts to those who are unable to afford them.

Despite this recognition at the highest legislative level, in practice many obstacles prevent Jordan from achieving the fundamental right of access to justice and to a fair trial. Jordanian laws do not guarantee the right to legal counsel or representation for the majority of legal matters, except for criminal cases where the crimes are punishable by death penalty or life imprisonment.

There is neither a legal aid Law nor any other legal provision enhancing and enabling this fundamental right besides the Law No. 11 of 1972 on the Bar Association and the Criminal Procedure Law No. 9 of 1961. A few other provisions are foreseen in the Jordan Military Criminal Procedure Code and in the High Justice Court Law. In addition, in civil cases, the procedural regulations establish general limitations preventing applicants from lodging a case or appeal without legal representation for cases of a certain monetary value or specific case types. Furthermore, pursuant to the Law No. 11 of 1972 on the Bar Association, the power of the President of the Jordanian Bar Association to assign a pro bono case to one of its member lawyers is limited in scope and therefore rarely used. Bearing in mind that lawyers are the only ones entitled to provide legal counselling and representation in Jordan, clear obstacles are highlighted in order to guarantee access to justice to all. Nonetheless, it is understood that it is not an act of hostility from the Bar Association but rather a misunderstanding of the legal aid service itself.

As a result of this lack of legal framework, in practice, legal aid in Jordan is predominantly provided by non-governmental organisations focused on providing legal advice (not legal representation). However, due to the provision of this service by NGOs, the Bar Association complains of unfair competition and intrusion.

## 2.2. Scope of legal aid (services included)

As already mentioned, Jordanian laws do not guarantee the right to legal counsel or legal representation for most legal matters. However, a few legal provisions grant this fundamental right:

### 1. The Criminal Procedure Law No. 9 of 1961:

Article 208 provides for free legal aid through the appointment of a lawyer for defendants in criminal cases if their lack of financial resources has been proven. The costs of legal representation in this case are paid by the State treasury with a minimum of two hundred Jordanian Dinars and a maximum of five hundred Jordanian Dinars. However, the text restricts this type of legal aid only to specific crimes according to its penalty, namely, crimes punishable by death or life sentences with hard labour. This deprives defendants who do not meet this very restricted criterion from free legal representation.

Article 208 states that:

“1. After the public prosecutor has filed the case before the Court and in cases punishable by the **death penalty, life imprisonment with hard labour, or life imprisonment** the President of the Court or his or her representative shall bring the defendant and enquire whether they had chosen a defence counsel. If they did not, the President or his or her deputy must appoint them a lawyer.

2. The attorney appointed by virtue of the preceding paragraph **shall be paid from the Government Treasury the amount of ten dinars for each session he or she attends, provided that such fees shall not be less than two hundred dinars and do not exceed five hundred dinars.**”

There are two primary issues associated with this scheme:

- The provision of legal aid is limited to certain criminal cases and the defendant must prove that (s) he cannot afford the lawyer's fees.
- It is only **limited to representation before the court**. This means that defendants cannot benefit from free legal representation during the investigation procedures either before the police or the prosecutor.

Moreover, Article 63 of the same law provides that:

“1. When the defendant appears before the public prosecutor, (s)he shall verify his or her identity, read the charges against them and ask for his or her answer, indicating that (s)he has the right not to answer except in the presence of a lawyer. This notice shall be recorded in the minutes of the investigation. If the defendant refuses to appoint a lawyer—or is simply unable to secure legal representation— within twenty-four hours, the procedures are carried out without a lawyer.

2. It is permissible in certain cases to accelerate investigation procedures due to fear of loss of evidence. In these cases, the prosecutor can question the defendant about the charges filed against him or her prior to inviting his or her lawyer. However, the lawyer shall thereafter have access to the testimony of his or her client.”

And finally, those who lack the means to afford a trial need to overcome another requirement established by the High Justice Court Law, which requires that all claims must be filed by a licensed lawyer who has practiced law for at least five years.

## 2. Law No. 11 of 1972 on the Bar Association in Jordan

The Jordanian Bar Association, established in Amman in 1952 by virtue of Article 16 of the Jordanian Constitution that provides freedom of association, is the body that regulates the work of lawyers in Jordan.

The Law No. 11 of 1972 regulates the form and function of the Bar Association in Jordan and describes the work of lawyers by acknowledging two types of services: legal assistance that is provided for financial compensation; and legal assistance provided on a pro-bono basis to individuals who lack the financial and technical resources to obtain legal representation in courts of law.

Article 6 of the Bar Association Law describes the role and function of lawyers in Jordan as follows: “Lawyers are judicial agents who provide legal assistance to those seeking remuneration in exchange of compensation”. This includes:

- To represent and litigate on behalf on their clients and defend their rights in:
  - All courts of different types and degrees except Shari’a courts.
  - Before arbitrators, public prosecution departments, administrative judges and the judicial police.
  - All administrative bodies, public and private institutions.
- Drafting and arranging contracts.
- Providing legal advice and consultation.

While the above describes the types of legal assistance that are eligible for compensation, it does not however exclude pro-bono legal aid as it merely describes the functions and duties of a lawyer.

Article 100 para. 7 of the Bar Association Law outlines the form and function of pro-bono legal services and grants power to the President of the Bar to appoint any lawyer to provide legal services. The text specifies these types of services as follows:

1. Defending the union and any person whose lack of financial resources and inability to pay lawyer fees was proven to the President of the Bar; where the President can arrange an agreement between the appointed lawyer and the beneficiary to estimate the fees in the event that the beneficiary wins the lawsuit.
2. The same article stipulates that the President’s appointment cannot be rejected as: “Any lawyer who rejects the appointment for no valid reason or does not pursue the appointed case in all honesty and integrity shall be subjected to disciplinary sanctions”

**Although Article 100 grants power to the President of the Bar to appoint a lawyer to provide pro-bono legal services to those who cannot afford it, the law does not specify the basis and standards for this, nor the type of cases that are eligible for this service.** Moreover, the law does not specify the fees that are covered, nor whether the applicant is exempted from the lawyers' fees only or if court fees are also exempted (court fees are often not included).

Given that the refusal to take up a case appointed by the President of the Bar on the basis of this article leads to punitive measures against lawyers, the lack of explanation regarding the burden of court and administrative fees poses a challenge for both potential beneficiaries and lawyers.

Furthermore, Article 78/8 of the Bar Association Law of 1972 provides for the establishment of a "Legal Aid System" by the Council of Ministers. However, to date this system has not yet been established, although article 41 of the same law prevents appearing in Court without legal representation by a lawyer (with several exceptions).

Due to these shortcomings, **civil society organisations** have become critical providers of legal aid in Jordan.

The Association Act allows the registration of associations providing legal aid services and the inclusion of this service within their objectives.

Each association differs in the nature and target groups of the legal aid it provides. As mentioned above, some organisations provide legal representation services only, while some others provide consultations only. Finally, others provide both services in addition to legal awareness programmes that aim to increase public legal awareness.

Organisations also differ in their approaches to provide their legal services, as well as in their targeted groups.

In terms of models of legal aid providers, the **judicare** and the **staff models** available in Jordan are discussed in detail under the section regarding 'Monitoring of legal aid'.

With regard to target groups, some organisations are specialised in providing legal services to migrants, some others are specialised in the legal issues faced by migrants, while others provide legal services to victims of torture. These services are usually provided according to certain criteria or internal regulations that each organisation adopts to regulate its work.

From the perspective of the State and the bar association, legal aid covers only the lawyer's fees.

While the State pays the fees from its Treasury, the bar association appoints a lawyer to take the case on a pro-bono basis on selected cases.

## 2.3. Public awareness of legal aid

In this context, the Jordanian Government does not carry out campaigns to raise awareness about legal aid.

“There is a lack of awareness amongst the Jordanian population of their legal and constitutional rights. (...) To support and develop marginalized communities, people must understand their rights and responsibilities. Raising awareness increases trust in the rule of law and ensures that people can both abide by the law and be protected by it.”<sup>88</sup>

“Many poor and vulnerable people in Jordan are unaware of their legal rights or their ability to access non-governmental legal aid services. The national survey revealed that in 2010 only approximately 1.5% of people living in Jordan had heard about legal aid.”<sup>89</sup> These figures have improved in the last years.

One of the most important components of legal aid is raising awareness about legal rights, when people are aware of their rights and duties; the surrounding civil society will flourish and grow with more active members contributing to its progress.

Furthermore, the legal profession also benefits from legal aid. It is the duty of lawyers to provide legal aid, as they are the ones with the monopoly on the service. They must therefore ensure that it reaches all, those who can afford it and those who cannot.

Today, the understanding and acceptance amongst the wider community is increasing, especially with the establishment of more NGOs that provide legal services.

## 3. Delivery model

### 3.1. Legal Aid Authority

In Jordan there are no regulated established governmental or institutional mechanisms for the provision of legal aid. As already mentioned, while the provision of pro bono services is made possible under the Jordanian Bar Association Law, it is rarely applied in practice, so that legal aid does not have an appropriate scope.

Furthermore, although Article 100 grants power to the President of the Bar to appoint a lawyer to provide pro-bono legal services to those who cannot afford it, the law specifies neither the basis and standards for this, nor the type of cases that are eligible for this service. Likewise, the law does not specify the fees that are covered, whether the applicant is exempted from the lawyers' fees only, or if court fees are also exempted (court fees are often not included).

Given that the refusal to take up a case appointed by the President of the Bar on the basis of this article leads to punitive measures against lawyers, the lack of explanation regarding the burden of court and administrative fees poses a challenge for both potential beneficiaries and lawyers. Hence, as a matter of fact, in Jordan, legal aid is provided by a few NGOs; however they are limited in their mandates and thus cannot fill in all the legal gaps.

88. Nina Gora, Report on 'Provision of legal services in Jordan', ARDD, October 2009, p. 10. Available at: [https://ardd-jo.org/sites/default/files/resource-files/legal\\_aids\\_report\\_on\\_legal\\_services\\_in\\_jordan\\_0.pdf](https://ardd-jo.org/sites/default/files/resource-files/legal_aids_report_on_legal_services_in_jordan_0.pdf).

89. <http://www.jcla-org.com/en/legal-aid-jordan>.

They are often limited to one topic or a specific (vulnerable) group of people. This is because they are often funded through external donors who are mainly dedicated to particularly marginalized groups, such as refugees or migrant workers.

**In the case of civil society providers** of free legal aid, there are two main models of formal delivery: the *judicare* model and the staff model. Currently, both models are being implemented by civil society organizations in Jordan.

- The **judicare model** is essentially built on the concept of an extensive referral system. Civil society organizations that adopt this model deliver their legal services through private lawyers, often on the basis of geographical outreach. Accordingly, they compensate lawyers who work on these cases. “Advocates of the judicare model argue that the decentralized nature of this system encourages further outreach, provides clients with more freedom to choose counsel and holds the profession itself accountable for the provision of legal aid services on an administrative level.”<sup>90</sup>
- **The staff model** sits in contrast to the *judicare* model whereby salaried lawyers are employed to work for legal aid offices or service providers and are hired directly by and are answerable to the organizations’ administration. The civil society organizations that adopt this model have offices that are often located in areas where more vulnerable communities reside and the type of legal aid provided varies according to the particular needs of the people. “Proponents of the staffed model argue that unlike the judicare model, the centralization of services ensures consistency in the quality and administration of legal aid and most importantly acts as an effective accountability mechanism whereby, the high standard of the duty of care will not be impeached due to scattered services that are not under strong monitoring and evaluation.”<sup>91</sup>

To underline State efforts towards a comprehensive national plan for the provision of free legal assistance in Jordan, which is still under study to date, the Ministry of Justice issued in 2016 regulatory instructions to provide legal assistance. These instructions established the Legal Assistance Department within the Ministry to handle the procedures for granting legal aid and required administrative processes.

## 3.2. Legal aid providers (organization of legal aid services)

Legal aid services are provided by:

- The **Jordanian Bar Association** through the President’s right to appoint a lawyer on a pro bono basis once a year. Established in Amman in 1952 by virtue of Article 16 of the Jordanian Constitution that provides freedom of association, the Bar Association is the body that regulates the work of lawyers in Jordan. Law No. 11 of 1972 regulates the form and function of the Bar Association in Jordan and describes the work of lawyers by acknowledging two types of services: legal assistance that is provided for financial compensation, and legal assistance provided on a pro-bono basis to individuals who lack the financial and technical facilities to obtain legal representation in courts of law.

90. ARDD, “Legal Aid at a Crossroads in Jordan,” 2016 p.8 ([https://ardd-jo.org/sites/default/files/resource-files/ardd-legal\\_aid\\_legal\\_aid\\_at\\_a\\_crossroads\\_in\\_jordan.pdf](https://ardd-jo.org/sites/default/files/resource-files/ardd-legal_aid_legal_aid_at_a_crossroads_in_jordan.pdf))

91. ARDD, “Legal Aid at a Crossroads in Jordan,” 2016 p.8 ([https://ardd-jo.org/sites/default/files/resource-files/ardd-legal\\_aid\\_legal\\_aid\\_at\\_a\\_crossroads\\_in\\_jordan.pdf](https://ardd-jo.org/sites/default/files/resource-files/ardd-legal_aid_legal_aid_at_a_crossroads_in_jordan.pdf))

- The **Ministry of Justice** is a provider of free legal aid services to cover the expenses of defence lawyers appointed by the Court in case of offenses punishable by death or hard labour (Criminal Procedure Law, Art. 208). Articles 3 and 4 outline the main objectives and tasks of the department. These instructions limited free legal services as related to legal advice and legal representation in cases authorized by law, in other words, according to article 208 of the Criminal Procedure Law.
- **NGOs**
- **Finally, the Jordanian Ombudsman's Office** receives complaints concerning the performance of public administration and initiates investigations of potential violations. These services are provided to any person claiming abuse by an administrative or executive authority.

### 3.3. Process for obtaining legal aid: objective criteria. Merit and means test

There is no mechanism settled down to assign or appoint a lawyer. As mentioned above, it is the right of the President of the Jordan Bar Association to appoint a lawyer to those with lack of means. Furthermore, it is also the judge's power, in certain criminal cases (article 208 above-mentioned), to assign a lawyer to the defendant under the requirements stated above and under additional conditions.

No other provision can be found in the Jordanian legal framework.

### 3.4. Appointment/assignment of legal aid providers

Already mentioned above.

## 4. Services providers

### 4.1. Lawyers

According to Article 6 of the Law no. 11 of 1972 that regulates the form and function of the Bar Association the role and functions of lawyers in Jordan are: "Lawyers are judicial agents who provide legal assistance to those seeking remuneration in exchange of compensation". This includes

- Representation and litigation on behalf on their clients and defend their rights in:
  - All courts of different types and degrees except Shari'a courts.
  - Before arbitrators, public prosecution departments, administrative judges, and the judicial police.
  - All administrative bodies, public and private institutions.
- Drafting and arranging contracts
- Provide legal advice and consultation.

It is the duty of lawyers to provide legal aid as they hold the monopoly in this service, and thus must ensure that it reaches all, those who can financially afford it and those who cannot. Lawyers provide legal aid assistance but only on a pro bono basis.

## 4.2. Others (Clinics, NGOs)

As stated above, the gap in the provision of legal aid is being performed by non-government and quasi-governmental organizations, most of which focus on providing legal advice as opposed to legal representation.

Without State funded legal aid, there is an even greater obligation for other actors to contribute to legal aid. Currently the key actors are failing to meet the demand and NGOs alone cannot provide all the support.

A number of organizations provide legal consultations and a much smaller number provide legal representation.

Poverty should not suppose to be an obstacle for people to practise their right to legal representation and legal protection.

## 4.3. Provision of Legal Services by NGOs

In the context of Jordan and from the perspective of civil society providers, legal aid is inextricably linked to enhancing access to justice in its broadest sense. **To this end, legal aid encompasses the provision of free legal services, including legal advice, mediation, and litigation to facilitate access to justice** to those who otherwise cannot afford it. In addition to this, legal aid encompasses legal awareness through advocacy messages and workshops.

**Civil society providers of free legal aid cover all the expenses related to the case brought by an individual who matches their criteria.** These expenses include the costs of pre-litigation legal assistance (including legal advice, mediation, and arbitration,) as well as all court-related fees, including the costs of legal representation and the implementation of court decisions.

At the pre-litigation stage, civil society organisations usually resort to mediation for the purpose of reaching a settlement or consensual solution between the parties to the dispute, for the purpose of trying to recover any possible losses endured by the beneficiary, such as in the event that the beneficiary has been victim of fraud. In these cases, mediation can help recover the amount of money the beneficiary has lost. This is strictly done considering the best interest of the client.

With regard to reimbursement of expenses if the applicant lost the case, if they received free legal aid through a civil society organisation, they are not liable to pay the expenses. However, and per the Bar Association regulations, the lawyer might be entitled to be paid his fees and expenses if the applicant won the case. This is governed by an arrangement made between the applicant and the lawyer by the President of the Bar.

**For civil society organisations, free legal aid is determined by expert assessment of the legal needs of the applicant.** While there might be slight variations, most civil society organisations provide free legal aid to beneficiaries on the basis of means, merits, and suitability tests as follows:



- **The “means” test:**

The “means” test enquires whether the person can afford a private lawyer or not, hence the means test looks at a person's income and assets in conjunction with their personal circumstances.

- **The “suitability” test:**

This applies to cases that ultimately affect the rights and freedoms of poor and vulnerable people in the areas of civil, criminal and family (shari’a) law. Based on this, most civil society organisations will not take up cases related to:

- Attaining profit or obtaining additional assets. Some examples of this are insurance or compensation cases, and division of property cases (with the exception of cases involving women's arbitrary deprivation of inheritance);
- Drug trafficking, unless the beneficiary is a juvenile (below the age of 18);
- Divorce (if the beneficiary knowingly gives up all rights such as in the cases of eftida'a or khul'a.) However, assistance is provided to vulnerable women considering eftida'a or kulá.

- **The “merits” test**

This looks at whether the matter has reasonable prospects of succeeding, and whether legal representation is necessary to achieve a positive outcome. For most civil society organisations, this helps organisations in providing legal representation to the most vulnerable and better allocating their resources.

In other cases, and under Article 208 of the Criminal Procedure Code, it is compulsory to provide free legal aid to defendants facing capital punishment or hard labour. Hence, if a defendant had the “means” to assign a lawyer, but refused to hire one, the court must assign a lawyer to the defendant as the current law provides no explicit limitation regarding disadvantaged groups and their legal status.

For the Jordanian Bar Association, financial insufficiency is the primary requisite for receiving free legal aid.

Once the beneficiary is eligible for free legal aid, it covers all costs, except for indirect related costs, such as transportation to the court. The costs of the service provided are determined by the individual needs of the client and the service provided in his or her best interest. It means that in many cases, the client's needs may be satisfied with simple legal advice on a certain issue or even legal assistance to obtain a certain document. Hence, the cost and expenses are determined according to the needs of the applicant.

Civil society organisations provide their services to all groups in need of their services, whether Jordanians or non-Jordanians residing on the territory of the Hashemite Kingdom of Jordan, regardless of race, ethnicity, gender, social status, belief, or political affiliation. This includes (but is not limited to) refugees, women, juveniles, and migrant workers. This also includes legal entities as long as they fulfil the criteria for eligibility.

**Several NGOs provide free legal advice; however, they focus on certain topics or certain vulnerable groups.<sup>92</sup>**

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92. Nina Gora, Report on 'Provision of legal services in Jordan', ARDD, October 2009. Available at: [https://ardd-jo.org/sites/default/files/resource-files/legal\\_aids\\_report\\_on\\_legal\\_services\\_in\\_jordan\\_0.pdf](https://ardd-jo.org/sites/default/files/resource-files/legal_aids_report_on_legal_services_in_jordan_0.pdf).

## *MIZAN for Law (Mizan)*

“Mizan was established in 1998 and is widely known amongst the NGO community in Jordan. They currently provide legal advice and representation for women, Iraqi refugees, asylum seekers, prison detainees and juveniles. Mizan also raises awareness among women about their rights.”<sup>93</sup>

## *Arab renaissance for democracy and development. Legal Aid*

“ARDD is a civil society organization and a think tank that aspires to create all-inclusive intellectual and developmental change in the spirit of *Nahda* — The Arab Renaissance — through achieving social, economic, and political justice, and assisting vulnerable segments of society in acquiring their rights.”<sup>94</sup>

ARDD was set up because “Jordanian society has been described as having ‘scant or non-existent social safety’ which is further exacerbated by the lack of access to justice as marginalized groups and impoverished people have limited access to justice. This further perpetuates the already vulnerable position of these groups as the problems they face have legal solutions, but an inability to access advice or lawyers means their issues remain unresolved and can further be passed on to the next generation, prolonging a vicious cycle of rights-abuse. Moreover, according to a report issued by ARDD-Legal Aid titled “Provision of Legal Services in Jordan” it was found that women and refugees are “hardest hit by the lack of sufficient legal aid”, thus part of ARDD-Legal Aid’s main focus are these two entities. Among the rest of the other vulnerable groups in our community such as juveniles, migrant workers and others who can’t afford legal services and lack legal empowerment.”<sup>95</sup>

## *Jordanian Women’s Union*

It focuses on “defending and protecting women’s rights. They provide legal and social counselling and operate 24-hour counselling hotlines. Since 1996 they have taken 3000 cases. The Union also raises awareness amongst women of their rights. They care for women, children and domestic workers and offer legal services to all of them.

The legal support takes place in 3 stages:

1. Consultation
2. Helping prepare legal documents for Court
3. Free representation if the women cannot afford it.”<sup>96</sup>

## *Jordanian National Forum for Women (JNFW)*

“JNFW has offices providing legal services in the following governorates: Mafraq, Ajloun, Balqa, Karak and Aqaba.

93. Ibid., p. 15.

94. <https://ardd-jo.org/>.

95. <https://ardd-jo.org/legal-aid>.

96. Nina Gora, Report on ‘Provision of legal services in Jordan’, ARDD, October 2009, p. 14. Available at: [https://ardd-jo.org/sites/default/files/resource-files/legal\\_aids\\_report\\_on\\_legal\\_services\\_in\\_jordan\\_0.pdf](https://ardd-jo.org/sites/default/files/resource-files/legal_aids_report_on_legal_services_in_jordan_0.pdf).

Their offices provide the following:

1. Awareness sessions for women regarding their rights
2. Visitation program (only in Mafraq)
3. Specific information for women catering for their particular issues
4. Legal counselling and advice provided by professional lawyers from JNFW
5. Legal representation for the poorest women
6. Referral service to other organizations for women to benefit from their services

JNFW is looking to expand its legal services in other governorates through the establishment of other legal and social offices in addition to building the capacity of existing ones. JNFW is a member of the complaint office established by the Jordanian National Commission for Women (JNCW).<sup>97</sup>

### ***“Consortio Italiano di Solidarietà (ICS)***

This Italian NGO focuses primarily on women's rights and Iraqi refugees. (...)

### ***Friedrich Ebert Stiftung (FES)***

In collaboration with *Phenix: economic and informatics studies* the following website has been developed: <http://www.labor-watch.net/>.

This website allows for workers in Jordan to obtain information about Jordanian labour law and workers' rights. It also allows workers to obtain legal advice by completing an online query form, which is responded to by lawyers from legal aid.

### ***International Committee of the Red Cross (ICRC)***

The ICRC does not provide any direct legal services but monitor conditions in prisons and correctional centres. They inform prisoners of ways in which to seek legal services and in most cases direct individuals to Mizan and a few have also been referred to Legal Aid.

People most at risk and needing legal representation are the following: detained foreign nationals; women incarcerated on the grounds of 'protection'; and administrative detainees.

### ***IMC Worldwide***

When IMC identify a protection case or a family in need of legal services they refer the case to the most relevant person or to an agency which can best direct the beneficiaries.

### ***The Iraqi Refugee Assistance Project (IRAP)***

The IRAP are involved in creating links between students and local human rights organizations and law firms. Their aim is to encourage students of law to go into Public Interest Law rather than into corporate

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97. Ibid.

law. This organization works on Iraqi refugee resettlement issues only – helping Iraqis who wish to resettle in a third country. At the moment no organization is advising the Iraqi refugees or supporting them during the process. IRAP advocate on the Iraqi's behalf at UNHCR if a referral has been expedited; prepare refugees for their interview with IOM and write appeal letters if resettlement has been rejected.

## *Jordanian Hashemite Fund for Human Development (JOHUD)*

They provide legal consultations for victims of domestic violence and refer cases requiring legal representation to The Jordanian National Commission for Women.”<sup>98</sup>

## *“Jordanian Society for Human Rights*

They cover a wide range of human rights issues and work on monitoring human rights violations and assisting victims.”<sup>99</sup>

## *“Masaq Rule of Law Project*

They provide several grants programme to organizations providing legal aid.”<sup>100</sup>

## *“National Centre for Human Rights*

The National Centre deals with cases of human rights violations which do not require judicial proceedings but can be dealt with through dialogue with the relevant parties: mostly with ministries. For cases requiring judicial proceedings the NCHR refers those individuals to other organizations: at this time their partners are Mizan.

## *Sisterhood Is Global Institute*

In most cases SIGI provide legal consultations to women. However, when necessary they will also provide legal representation.

## *Tamkeen*

Tamkeen was established in 2008. They train judges and lawyers in Jordan on international law and how to adhere to international conventions. They also provide free legal services for migrant workers; both representation and consultation. So far, they have provided services for the following migrant communities: Egyptians, Sri Lankans, and Philippines.

## *The Jordanian National Commission for Women*

The Commission is the reference for all women. They refer cases to lawyers and partner organizations. They have established a complaint office, which has developed a national database of evidence of violence

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98. Ibid., p. 13-14.

99. Ibid., p. 15.

100. Ibid.

against women. Women come to the complaint office and get directed from there to the relevant partners for legal support.

The partners which provide legal representation are the following: Mizan, Sisterhood Is Global Institute, Jordanian Women's Union, Tamkeen and Arab Women's Legal Network.

## *Centre for Victims of Torture*

## *UNHCR*

The UNHCR are currently experiencing a very high demand from Iraqi refugees for legal services.

Their protection unit has a training component; training civil society on refugee law."<sup>101</sup>

The European Commission is also assisting Syrian refugees.

"As the civil war in Syria continues unabated, Jordan has contributed substantial and generous assistance to Syria's refugees. As of March 2018, Jordan hosts over 655 000 Syrian refugees — 51% of them children. The vast majority, some 80%, live in cities and towns, while the remainder resides in mainly two refugee camps. One of these, Zaatari, is the world's second largest camp with close to 80 000 residents. The influx of refugees from Syria, and of people fleeing the conflict in Iraq, has put substantial pressure on Jordan's overstretched resources at one of the most difficult economic periods in the country's history."<sup>102</sup>

A recent UN report has found that more than 90% of registered Syrian refugees in urban areas have fallen below the Jordanian poverty line, with over 67% of families living in debt. "With their savings depleted, many now face poverty. While a considerable number of refugees have obtained work permits, a majority of Syrian families rely on humanitarian assistance to meet their most basic needs. At the same time, increasing shortages of essential aid are worsening their plight. As a result, families have been forced to cut out meals, spend less on healthcare and take their children out of school, and sending them to work. Meanwhile, a generation of Syrian refugee children has been unable to access formal education. At the same time, refugees cite education for their children, boys as well as girls, as a top priority.

Following a 2016 terrorist attack near the Jordan's border with Syria, the Jordanian army declared the northern and northeastern border with Syria as closed military zones. As a result, some 50 000 people, mostly women and children, were left stranded in a remote border area known as "the berm" with limited access to food, water and humanitarian aid. Humanitarian access to the area remains difficult due to security risks and border closures, and international aid organizations have been unable to resume the delivery of humanitarian assistance with any regularity."<sup>103</sup>

101. Ibid., p. 15-16.

102. [https://ec.europa.eu/echo/where/middle-east/jordan\\_en](https://ec.europa.eu/echo/where/middle-east/jordan_en).

103. [https://ec.europa.eu/echo/where/middle-east/jordan\\_en](https://ec.europa.eu/echo/where/middle-east/jordan_en).

## 4.4. Provision of legal aid services in Jordan by Legal Clinics<sup>104</sup>

The Justice Centre for Legal Aid Organization has established a graduate traineeship program (recruitment and training of law graduates), and is engaging with law students and the bar association in Jordan about legal aid.

Through its programme, across its 24 Legal Clinics located in all governorates of Jordan, the Justice Centre for Legal Aid assists approximately 375 beneficiaries per month through legal consultations, and provides legal representation to approximately 150 beneficiaries per month across 200 cases.

Through collaboration and engagement with key stakeholders and the public, the Justice Centre for Legal Aid is fostering a culture of legal aid in Jordan.

## 5. Quality safeguards

### 5.1. Qualifications required (to become a legal aid lawyer/provider)

The only provision related to specific requirements is enshrined in the High Justice Court Law, which requires all claims to be filed by a licensed lawyer who has practiced law for at least five years.

Besides this, only practicing lawyers and members of the Jordan Bar Association are entitled to render legal counselling, legal advice, and representation in Jordan. Lawyers hold the monopoly of rendering legal services throughout the Kingdom.

The Jordanian Bar Association requires academic, practical, and oral exams for admission to the Bar. The probationer must hold a bachelor's degree or equivalent in law.

The Bar Association requires a minimum of two years of training under the supervision of an attorney or lawyer. However, if a post-graduate degree in law is obtained, a reduction to one year of training is possible. The bar grants the probationer, at different stages of his or her training, special rights of audience before specific courts.

**For civil society organisations, appointing legal aid lawyers** is carried out through an open application to the party that seeks to hire lawyers.

The lawyer must have a bachelor's degree in law and at least one of the statutory or legal licenses, with at least five years of proven record of practice. In addition, knowledge of human rights laws and frameworks is certainly favoured. The work of legal aid lawyers (and all lawyers in general) is governed by the code of conduct and ethics of the profession prescribed by the Jordanian Bar Association.

In addition to the professional qualifications by accredited institutions, lawyers working in the field of legal aid must undergo a process of awareness regarding the profile of the beneficiaries and the social work they undertake. This is particularly important in programs providing specialized services to socioeconomically and

<sup>104</sup>. <http://www.jcla-org.com/en/legal-aid-jordan>.

legally disadvantaged populations, as law graduate degrees do not expose students to the intricate relations between the law and existing social needs and realities that define access to justice in Jordan.

According to ARDD's experience, this awareness and professionalization of lawyers working in legal aid needs a prolonged investment over time with quality monitoring of the work undertaken.

## 5.2. Accountability for the quality of legal aid services

The accountability for the quality of legal aid services is governed by the general rules that supervise lawyers' work in accordance with professional ethic rules. Accountability is also a responsibility of NGOs regarding the services they provided.

Civil society organisations that provide free legal aid have organizational structures that are subject to clear legal and regulatory rules and standards through internal regulations and boards of directors.

In addition, any funding disbursed by donors and partners is subject to monitoring and evaluation mechanisms that are reported throughout the implementation period. In some cases, they are followed by financial audits.

**In the case of civil society providers of free legal aid**, there are two main models of formal delivery: the *judicare* model and the staff model. Currently, both models are being implemented by civil society organizations in Jordan.<sup>105</sup>

"With the *judicare* model the vast disbursement of services impedes on accountability and ensuring quality of service, especially in relation to the needs of clients. However with the staffed model it is arguable that outreach is limited and expertise in the law will be constrained to the knowledge and skills of the employed lawyers. With both models there are polarized perceptions of expenses to be incurred, as there are legitimate concerns that either can be more expensive than the other. However cost effectiveness has to be balanced against considerations of quality and thus must be managed within that particular context."<sup>106</sup>

Given the above, and regardless of which delivery model civil society organizations choose to adopt, it is necessary to acknowledge the essential role civil society play in filling the gap in the provision of free legal aid in Jordan.

Free legal aid providers among civil society organizations cover the needs of vulnerable populations, each according to their field of expertise. This greatly enhances the quality of the services they provide, but is also central to effectively respond to the varying needs of the diverse populations in Jordan including vulnerable Jordanians, migrant workers, and refugees.

<sup>105</sup>. For a definition of both models in the Jordanian context, please refer to point 3.1 of this chapter.

<sup>106</sup>. ARDD, Report on 'Legal Aid at a Crossroads in Jordan', 2016, p. 9. Available at: [https://ar-dd-jo.org/sites/default/files/resource-files/ar-dd-le-gal\\_aid\\_legal\\_aid\\_at\\_a\\_crossroads\\_in\\_jordan.pdf](https://ar-dd-jo.org/sites/default/files/resource-files/ar-dd-le-gal_aid_legal_aid_at_a_crossroads_in_jordan.pdf).

## 5.3. Monitoring the quality of legal aid services

There are no methods or criteria on monitoring the quality of legal aid services besides the control made by the NGO the lawyer is working on behalf of due to the lack of governmental legal aid system in Jordan.

The task of monitoring the legal aid system varies according to the service provider. The Court of Cassation and the Judicial Council are competent to monitor the courts' performance in providing free legal aid to their beneficiaries within the scope of the law.

The Bar Association, represented by its President, and the Council of the Bar, have the task of supervising the members of the union.

The Ministry of the Interior or the Ministry of Social Development, as the case may be, supervise the performance of organizations and associations providing free legal aid services in Jordan, under the umbrella of the Ministry of Justice.

In more details, **monitoring and evaluating the work of civil society organisations providing legal aid is divided in two parts**, the first is internal evaluations, and the second is external evaluations.

- **Internally**, each organisation monitors its performance through internal reporting. These reports seek to monitor the size and quality of the services provided to populations within a given region. This ultimately aims to continuously address the needs of the community and develop appropriate amendments and / or plans.
- **Externally**, civil society organisations are subjected to periodic external evaluations conducted by partners and donors, either directly through follow-up and reporting, or indirectly through measuring satisfaction indicators among service recipients.

**Civil society organisations that provide free legal aid have organizational structures that are subject to clear legal and regulatory rules and standards through internal regulations and boards of directors.** In addition, any funding disbursed by donors and partners is subject to monitoring and evaluation mechanisms that are reported throughout the implementation period. In some cases, they are followed by financial audits.

## 6. PROVISION OF LEGAL AID

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### 6.1. Eligibility in criminal legal aid

- **The “means” test**

Pursuant to Article 208 of the Criminal Procedure Code, it is compulsory to provide free legal aid to defendants facing capital punishment or hard labour. Hence, if a defendant had the “means” to assign a lawyer, but refused to hire one, the Court must assign a lawyer to the defendant as the current law provides no explicit limitation regarding disadvantaged groups and their legal status.



## 6.2. Eligibility in civil legal aid (means, merits, and suitability test)

As mentioned above, it depends on each NGO. **For civil society organisations, free legal aid is determined by an expert assessment of the legal needs of the applicant.** While there might be slight variations, most civil society organisations provide free legal aid to beneficiaries on the basis of means, merits, and suitability tests as follows:

- **The “means” test:**

The “means” test enquires whether the person can afford a private lawyer or not, hence the means test looks at a person’s income and assets in conjunction with their personal circumstances.

- **The “suitability” test:**

This applies to cases that ultimately affect the rights and freedoms of poor and vulnerable people in the areas of civil, criminal and family (shari’a) law. Based on this, most civil society organisations will not take up cases related to:

- Attaining profit or obtaining additional assets. Some examples of this are insurance or compensation cases, and division of property cases (with the exception of cases involving women’s arbitrary deprivation of inheritance);
- Drug trafficking, unless the beneficiary is a juvenile (below the age of 18);
- Divorce (if the beneficiary knowingly gives up all rights such as in the cases of *eftida’a* or *khul’a*.) However, assistance is provided to vulnerable women considering *eftida’a* or *kulá*.

- **The “merits” test**

This looks at whether the matter has reasonable prospects of succeeding, and whether legal representation is necessary to achieve a positive outcome. For most civil society organisations, this helps organisations in providing legal representation to the most vulnerable and better allocating their resources.

Civil society organisations provide their services to all groups in need of their services, whether Jordanians or non-Jordanians residing on the territory of the Hashemite Kingdom of Jordan, regardless of race, ethnicity, gender, social status, belief, or political affiliation. This includes (but is not limited to) refugees, women, juveniles, and migrant workers. This also includes legal entities as long as they fulfil the criteria for eligibility.

For the Jordanian Bar Association, financial insufficiency is the primary requisite for receiving free legal aid.

Once the beneficiary is eligible for free legal aid, it covers all costs, except for indirect related costs, such as transportation to the court. The costs of the service provided are determined by the individual needs of the client and the service provided in his or her best interest. It means that in many cases, the client’s needs may be satisfied with simple legal advice on a certain issue or even legal assistance to obtain a certain document. Hence, the cost and expenses are determined according to the needs of the applicant.

## 6.3. Access to legal aid for vulnerable groups:

NGOs are playing a key role in providing legal aid services (representation or legal advice or both) to those marginalized or vulnerable groups (minors and juveniles, women, and refugees or asylum seekers) as mentioned above.

## 7. Finances

Improvements in budgeting are part of a range of reforms that the Jordanian government has been introducing progressively to improve the quality of governance and the efficiency of the public sector in particular.

“In the justice sector, a comprehensive reform program has been initiated [in 2007] to modernize the operation of the courts and improve the quality and administration of justice. These reforms address, in particular, the training and remuneration of the judiciary, the quality and management of court facilities, the qualifications and skills of courts administration staff and the streamlining of courts procedures, including the progressive computerization of case management.”<sup>107</sup>

Due to the lack of a governmental system, no public budget is allocated to legal aid services. Nonetheless, **State-provided free legal aid** is financed by the State's Treasury in the cases where the State pays all the fees of the lawyer assigned to defendants facing the death penalty or hard labour. Lawyers receive 10 Jordanian Dinars per session, with a total amount that is not less than 200 Jordanian Dinars, and not exceeding 500 Dinars.

Legal aid provided **through the Bar Association** is funded internally.

As for financing legal aid provided through civil society organisations, most of civil society organisations rely on funding by private donors to sustain their operations.

Funding comes in the form of grants and financial assistance for the purpose of supporting the provision of legal aid services.<sup>108</sup> These grants are based on pre-established budgets that take into consideration rental costs, employees' salaries, and operating expenses, as well as coverage of legal aid services, including the costs of legal proceedings and court fees.

Some organisations resort to a mixed method of funding, whereby they provide for-profit services; however the profits made are directed to support and fund legal aid provided by the organisation.

### Payments

Article 208 of the Criminal Procedure Code states that:

“1. After the public prosecutor has filed the case before the Court and in cases punishable by the death penalty, life imprisonment with hard labour, or life imprisonment the President of the Court or his or her representative shall bring the defendant and enquire whether they had chosen a defence counsel. If they did not, the President or his or her deputy must appoint them a lawyer.

<sup>107</sup>. David Webber, Good budgeting better justice: Modern budget practices for the judicial sector; Law and Development Working Paper Series, No. 3, 2007, p. 45. Available at: <http://documents.worldbank.org/curated/en/225991468167380812/pdf/394770LDVVP31BudgetPractices01PUB-LIC1.pdf>.

<sup>108</sup>. ARDD, “Legal Aid at a Crossroads in Jordan,” 2016 p. 8. Available at: [https://ardd-jo.org/sites/default/files/resource-files/ardd-legal\\_aid\\_legal\\_aid\\_at\\_a\\_crossroads\\_in\\_jordan.pdf](https://ardd-jo.org/sites/default/files/resource-files/ardd-legal_aid_legal_aid_at_a_crossroads_in_jordan.pdf).

<http://www.refugeelegalaidinformation.org/jordan-pro-bono-directory>.  
<http://www.jordantimes.com/news/local/formation-national-legal-aid-system-urged>.

2. The attorney appointed by virtue of the preceding paragraph shall be paid from the Government Treasury the amount of ten dinars for each session he or she attends, provided that such fees shall not be less than two hundred dinars and do not exceed five hundred dinars."



## 4.5. Legal aid in Lebanon

### 1. Country's general facts

- **Governmental system:** Unitary government system
- **Population:** 6,090,782 million (Worldometers.com 2018); 1.5 million Syrian refugees; 34,000 Palestinian refugees from Syria; 35,000 Lebanese returnees and 277,985 Palestinian refugees in Lebanon
- **Poverty rate:** 28.5% (UNDP Lebanon Office, 2016)
- **Unemployment rate:** 6.7% (World Bank, 2017)
- **People's trust in courts:** About 60% had no trust in courts as opposed to 40% who had trust (Beirut Research and Data Centre, 2011)

### 2. Legal aid legislative framework

"The right to access to justice is not explicitly regulated in the Lebanese Constitution of 1926 but it can be inferred from Article 7 which proclaims the principle of equality before the law."<sup>109</sup> The right to legal aid is also not regulated in the Constitution. However, it is recognized by various Lebanese national laws and international treaties which form together the legislative rules applicable in Lebanon. Article 2 of the Lebanese Code of Civil Procedure recognizes the supremacy of international treaties over local Lebanese laws and regulations.

The right to legal aid is enshrined in the following international instruments ratified by Lebanon<sup>110</sup>:

- The ICCPR;
- The UDHR;
- The Convention on the Elimination of all Forms of Discrimination Against Women;
- The Convention on the Right of the Child;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Statute of the Special Tribunal for Lebanon, S/RES/1757 (2007).

Hence, according to the Lebanese Constitution and the Lebanese Code of Civil Procedure, in the event of conflict between the provisions of international treaties and those of the ordinary law, the former shall take precedence over the latter. That is supposed to guarantee the application of the aforementioned international treaties that have enshrined the right to legal aid in Lebanon.

<sup>109</sup>. Justice Needs and Satisfaction in Lebanon: Legal problems in daily life, *Hiil Innovating Justice*, 2017, pp.5, available online at: <https://www.hiil.org/wp-content/uploads/2018/07/Hiil-Lebanon-JNS-report-web-EN.pdf>.

<sup>110</sup>. "Support to Legal Aid in Lebanon: Comprehensive Assessment of the Legal Aid Situation in Lebanon", *Europe Aid/134-610/L/ACT/LB*, 2015, pp.68.

## 2.1. The right to legal aid is granted according to the following legal provisions

**2.1.1.** Article 78 of the Lebanese Code of Criminal Procedure No. 328 of 2001 stipulates the following:

“If the defendant chooses a lawyer to defend him or her, the investigating judge may not question him or her or continue with the investigative procedures unless the lawyer is present and is informed of all the investigative acts except for the witnesses’ statements, on pain of nullity of the questioning and of the subsequent procedures. If the defendant is unable to appoint a lawyer, the investigating judge shall appoint one or ask the president of the bar association to do so. At any time during the investigation, the defendant may inform the investigating judge of the name of the lawyer whom he has appointed to defend him. If he chooses several lawyers for this purpose, he shall inform the investigating judge of the name of the lawyer who should be served with notice to appear.”

2.1.2.- The Lebanese Code of Civil Procedure No. 90 of 1983 (CCP), recognizes the right to legal aid in civil matters (Chapter 7). Articles 425- 441 stipulate the following:

### *Article 425*

“If any of the parties to the case cannot afford paying the court fees, he or she may apply for legal aid.”

### *Article 426*

“Legal aid services are provided to Lebanese citizens, non-profit legal persons and legal immigrants subject to reciprocity.”

### *Article 427*

“Legal aid may be first granted at the Court of First Instance for the purpose of starting a lawsuit or defending against it. It is also possible for litigants to apply for the right to legal aid for the first time at the court of appeals. ...”

### *Article 428*

“The submission of the application for legal aid shall be exempted from any judicial fees, and shall be submitted in three copies to the clerk of the court who shall handle the case...”

The remaining articles, until Article 441, have dwelt on the procedures of awarding legal aid.

**2.1.3.** Article 42 of the Lebanese Juvenile Law No. 422 of 2002 states the following: “There must be a legal representation for the juvenile in the criminal trial and any other trials. If the juvenile has no lawyer to represent him or her, the court shall appoint a lawyer for him or her or ask the president of the bar association to do so.”

**2.1.4.** The Bar Association Code of Conduct No. 8 of 1970 provides for the following: “The president of the bar association shall have the right to assign any lawyer to provide pro-bono services for individuals who cannot afford legal representation.”

**2.1.5.** Articles 266-279 of Shari’a Courts Procedures Law of 1962 detail the procedures for obtaining legal aid in Shari’a courts. These procedures are replicas of the procedures spelled out by the Lebanese Code of Civil Procedure.

**2.1.6.** Article 21 of the Military Justice Law No. 24 of 1968 stipulates the following:

“The defence of a person dragged before military justice, who has not entrusted a lawyer to be his or her defender, shall be ensured by a lawyer or by an army officer, preferably licensed in law. The Supreme Military Authority may agree contractually with civil lawyers from the Bar Association to ensure the right to defence. The Minister of National Defence, based on a proposal from the Supreme Military Authority, shall issue a decision designating the army officers appointed to practice defence at the beginning of the year. This decision shall be subject to amendment anytime during the year.”

Article 22 states as follows: “The judges, army officers, and lawyers shall receive a compensation for their work with military justice. The amount of such compensation shall be determined by a decision of the Minister of National Defence, based on a proposal of the Supreme Military Authority, and it shall be paid from the Military Court’s budget at the Ministry of National Defence.”

Article 59 of the aforementioned law provides that: “If the defendant has not entrusted a lawyer, the president of the Military Court shall designate a lawyer in accordance with of Article 21, or shall ask the bar association president to appoint a lawyer to assure the defence.”

Article 57 states: “The appointment of a defence lawyer shall be mandatory before the Military Court, but not before a single military judge.”

**2.1.7.** Article 71(2) of Decree No. 10434 and its Amendments, organizing the State Council, of 14 June 1975, stipulates the following: “Upon request for legal aid within legal time limit, the possibility for appeal shall gain recourse starting the date of notification of the decision to the person concerned shall cut the limitation period for recourse if it occurs during this period.”

## 2.2. Scope of legal aid

The scope of legal aid in Lebanon is broad, as it covers a wide range of services. There are different types of legal aid, and different services are provided under each type.

Nonetheless, the scope of legal aid in Lebanon can be divided into three categories.

### Scope of legal aid cases

In all criminal, civil, administrative, military, and Shari’a cases, legal aid is granted by the state laws, and is delivered through two Lebanese bar associations and other non-state actors such as NGOs and civil society organization.

### Scope of legal aid services

Legal aid in Lebanon is provided in the form of legal representation (judicial assistance) and court fees exemption (judicial aid) mainly by the two bar associations in Beirut and Tripoli. It is supported by the public treasury.<sup>111</sup>

111. In addition to judicial aid, the two bar associations also provide legal counseling and legal assistance along with some non-state actors such as NGOs and civil society organization to individual applicants. Hence, the following are the different types of legal aid in Lebanon: Legal Assistance, Legal Counseling, Judicial Aid and Judicial Assistance.

Within the scope of legal aid services, beneficiaries are exempted from paying the following:

- Stamp duties;
- Registrations and court fees;
- Judicial fines;
- Lawyers' fees;
- Notaries' expenses; and
- Experts' expenses.

The two bar associations provide pre-litigation services in a non-institutionalized way.

Other legal aid providers, like NGOs, civil society organization and legal clinics, provide other forms of legal aid such as legal advice, legal assistance and legal awareness. However, only a few of them provide legal representation.

## Scope of legal aid beneficiaries

In Lebanon, legal aid may be granted to almost any person (natural or legal person) regardless of his or her nationality. Legal aid may be granted to any Lebanese citizen who is unable to afford the charges and fees of the trial. It is granted to anyone who cannot afford to pay for legal advice and/or representation and/or the costs and expenses associated with legal procedures. According to Article 426 of the Lebanese Civil Procedure Code, foreigners are also entitled to benefit from legal aid under residency and reciprocity conditions. It should also be noted that the Lebanese law enjoins foreigners to present surety in the form of legal tender or property but only before criminal courts, not before civil courts.

A legal person may also benefit from legal aid on an exceptional basis if its activity is non-profit and its head office is located in Lebanon. Such a legal person could be an association, a cooperative or a syndicate acting for the public benefit, thus making it similar to public institutions, and therefore, it is exempted from legal fees and surety.

However, commercial or civil companies cannot benefit from the legal aid system since they have a capital and their aim is for profit. Nevertheless, a jurisprudential exception allows a company, in the form of partnership, to benefit from legal aid if the company and its partners are in hardship.

## 2.3. Awareness of the right to legal aid

Lebanese citizens in general lack information on the legal aid system they are entitled to benefit from. The Lebanese state has not carried out any public information campaigns to raise its citizens' awareness about the right to legal aid. Therefore, the general population is ignorant of its right or access to legal aid services.

Some civil society organizations raise awareness about the right to legal aid through modest campaigns they carry out at schools, prisons, and community centres. However, these efforts are not sufficient to educate the public on their right to legal aid services.

## 3. Delivery model

### 3.1. Legal aid authority

In the past, the Lebanese Ministry of Justice used to oversee the legal aid scheme in the country. However, it no longer represents the legal aid authority in Lebanon. Legal aid is mainly delivered through the two national bar associations' legal aid committees. The first bar association was created in Beirut in 1919, and was followed in 1921 by another one in Tripoli. The Beirut Bar Association serves the southern, eastern and central parts while the Tripoli Bar Association serves the northern part of the country.<sup>112</sup>

The Beirut Bar Association has a number of committees, including the Legal Aid Committee, created in 1993. The decision to establish this committee was taken in response to a need to find representation for approximately 300 accused persons awaiting trial in prison, and in exchange for an agreement with the military court whose judges would no longer appoint officers from the courtroom. Many of them were not lawyers. Prior to the establishment of the committee, legal aid was provided through an *ad hoc* system based on direct requests from judges to the president of the bar association.<sup>113</sup>

The Tripoli Bar Association also has a number of committees. Recently, the bar established a legal aid committee to organize the provision of legal aid services. As reported by a bar member, the provision of pro-bono legal aid had never been the priority of some of the previous presidents of the association. The current president of the bar announced of his intention to improve the services provided by the bar with regard to the issue of legal aid. In the past, there were reports of lawyers who were strongly requested not to provide pro-bono assistance in certain cases, based on the type of case and the profile of the accused. The new president believes that everyone should have access to legal assistance regardless of nationality, accusation and political affiliation. He prepared a list of lawyers who were ready to provide legal aid. Each would be assigned one case at a time. According to the law regulating the profession of lawyer, no lawyer may practice unless (s)he is registered in one of the two bars but not in both.

In 2016, the Beirut Bar Association took approximately 1,400 cases, involving 713 lawyers in the provision of pro-bono legal aid while the Tripoli Bar Association took approximately 90 cases per annum.

### 3.2. Legal aid providers (Organization of legal aid services)

Various actors are involved in the delivery of legal aid services in Lebanon: State actors as framework regulators and Civil Society Organizations (CSOs) as service providers.

From a governmental perspective, three ministries are engaged in the legal aid framework<sup>114</sup>:

- The Ministry of Justice (MoJ) as the “depository” of judges' responsibilities in ensuring judicial guarantees at all levels of the trial;

<sup>112</sup>. Legal Aid to Vulnerable Individuals in Lebanon, *Open Society Foundation*, 2017, pp.11, available online at: [http://www.rightsobserver.org/files/CLDH\\_Legal\\_Aid\\_Project\\_Report\\_2017.pdf](http://www.rightsobserver.org/files/CLDH_Legal_Aid_Project_Report_2017.pdf).

<sup>113</sup>. Legal Aid to Vulnerable Individuals in Lebanon, *Open Society Foundation*, pp.11.

<sup>114</sup>. **Seminar on Legal Aid– Luxembourg (LU), The European Union, 2017, p. 2.**



- The Ministry of Interior (MoI) as the main administrator of prisons and the sole authority responsible for administrative detention despite governmental acknowledgment of transferring prison administration to MoJ;
- The Ministry of Finance (MoF) as the provider of legal proof of financial deficiency, a mandatory step to access legal aid services in civil cases.

However, there are some legal aid experts in Lebanon who see that the governmental action in this area is very limited and the funding efforts are close to zero as none of the legal services providers get any funding from the public treasury. Without the efforts and devotion of the Lebanese two bar associations and the local and international organizations, the access to legal services, in a country where the contours of the law are sketchy at best, would be close to impossible.

Thus, legal aid services in Lebanon are provided through two bar associations, civil society organizations, and NGOs that specialize in legal aid services.

In Lebanon, there are many civil society organizations that are active in promoting access to justice; they work mostly on conducting research and providing legal advice, but only a few of them provide legal representation like the Lebanese Centre for Human Rights and AJEM Lebanon. The Lebanese Centre for Human Rights, for example, provided legal representation to 100 vulnerable prisoners in 2013. AJEM Lebanon has cooperation agreements with the European Regional Development and Protection Program (RDPP). At present, it is implementing 2nd Action (2017- 18) of its project “Legal Support to Syrian Refugees in Detention.” The 1st Action was carried out in 2015-16. AJEM has also other legal aid projects in action. “Project Refugees & Asylum Seekers” is a case in point. The public prosecution and courts are involved by law in the procedures of providing legal aid services.<sup>115</sup>

Legal aid services by NGOs are mainly provided to foreign inmates, Syrian and Palestinian refugees in particular, and to another 26 nationalities.

Now in its seventh year, the Syrian crisis has had a profound humanitarian, socio-economic, and political impact on Lebanon and its people. The country hosts 1.5 million Syrians and several hundred thousand Palestinian refugees.

The Syrian crisis has put a heavy burden on the legal aid providers in Lebanon as well, and has also affected the quality of legal aid services provided to Lebanese citizens. Many of Syrian refugees in Lebanon belong to the marginalized groups with very low income and are subjected to domestic violence, human trafficking, sexual exploitation and labour exploitation. And those badly need legal aid services so they can have a fair access to justice. As they usually have no family to appoint a lawyer for them, they are less aware of their rights, and are often not guaranteed their right to access a translator.

The aspect that needs even more work to be done by the legal aid providers in Lebanon is sufficient funding to provide legal aid to both Lebanese citizens and the refugees in Lebanon. “More than ever, international solidarity needs to match the hospitality of Lebanon as host country. No country in the world can—or should— carry alone the challenge that Lebanon is facing. Responsibility-sharing with Lebanon is key,”

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115. AJEM Lebanon website: <http://ajemlb.org/>

UN Resident and Humanitarian Coordinator Philippe Lazzarini said at the launch of the Lebanon Crisis Response Plan (LCRP) 2017-2020<sup>116</sup>.

### 3.3. Process for obtaining legal aid

The process for obtaining legal aid can be different in civil cases and criminal cases.

In civil cases, the process for obtaining legal aid is stipulated in the Lebanese Civil Procedure Code of 1983 (Chapter 7, Articles 425 – 441). According to these articles, legal aid in civil cases is provided upon a request from the person who wants legal aid. The request should be printed in three copies. The first copy goes to the court that handles the case, while the second copy goes to the public prosecution, and the third copy goes to the other party of the lawsuit. The applicant should attach to each copy of his or her request a certificate that proves his or her financial inability to afford a lawyer. This certificate should be issued by the local government. Another certificate should also be attached to the application, which the applicant can obtain from the Ministry of Finance to declare the taxes that applicant is requested to pay. It is important to mention that this legal aid request is exempted from any court fees or other kinds of fees.

After that, the court that handles the case determines a court hearing date for the applicant and his or her opponent in the lawsuit and after studying the request, the court decides whether to accept the legal aid request or to dismiss it. The decision is not subject to appeal. If the court decides to accept the request for legal aid, it forwards its decision to one of the legal aid committees at the two bar association and then the committee concerned assigns a lawyer to handle the applicant's case based on the court decision.

In criminal cases, the process of providing legal aid depends on a request from the public prosecution or the defendant him or herself or the court that handles the case. The Legal Aid Committee at the Lebanese Bar Association is also the one that provides legal aid in criminal cases.

### 3.4. Assigning legal aid providers

Legal aid requests can be received through three different channels:

- Competent court;
- Detention centres;
- Individual application.

The relevant court, before which the accused announces his or her inability to appoint a lawyer, can refer the application to one of the legal aid committees at one of the two bar associations. The judge processing the case forwards a letter to the relevant bar requesting the appointment of a defence lawyer for the accused.

Requests may also be referred by the Prison Administrator where the accused is detained.

Detainees have the capacity to fill in a legal aid request letter and submit it to the relevant legal aid committee via the Prison Administrator.

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<sup>116</sup> In 2018, LCRP appealed for \$2.68 billion for Lebanon response, available online at: <http://www.unhcr.org/lb/11552-2018-lcrp-appeals-2-68-billion-lebanon-response.html>

Requests may be submitted by eligible individuals in need for legal aid support or their relatives at legal aid offices in both bars.

Subsequently, the application and the corresponding file are transferred to the Administrative Board which suggests nominees to the president of the bar, the sole authorized person who can officially nominate a lawyer.<sup>117</sup>

## **4. Services providers**

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### **4.1. Lawyers**

#### **Licensed practicing lawyers:**

Lawyers play a fundamental role in securing the rule of law, and guaranteeing the effective protection of human rights, and as stipulated in the Law organizing the profession of lawyer, lawyers may plead on behalf of a client pursuant to an ex officio appointment by the president of the bar as to provide legal aid upon request of the court.

There are no limits of cases per lawyer: In theory, there is no mention of the number of cases lawyers are allowed to take each year. In practice, no limit of cases is imposed on the lawyers willing to be appointed to follow up legal aid cases. In 2014, there were reportedly some lawyers who took up to 50 cases at the same time. On the other hand, the president of the Beirut Bar Association's Legal Aid Committee, in an interview with the Lebanese Centre for Human Rights, stated that the number of lawyers who applied to provide pro-bono assistance in 2016 was 713, a number he considered way too high for the requests. He raised his concern with regards to the motivation that leads lawyers to take over legal aid cases; he suggested that some of them do so for compensation rather than for the sake of guaranteeing vulnerable inmates their right to legal representation.<sup>118</sup>

#### **Trainee lawyers**

The number of lawyers and trainee lawyers available to provide legal aid is quite important in Lebanon. In 2016, the membership stood at approximately 12,000 lawyers.<sup>119</sup>

#### **Are trainee lawyers recognized by law?**

The laws regarding legal aid in Lebanon do not recognize trainee lawyers as legal aid providers although most legal aid cases are given by the bar to trainee lawyers. Most trainee lawyers do not have the necessary experience and skills to handle criminal cases and there is no sufficient supervision over their work, thus making the process less accountable to stakeholders involved in the process.

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117. Seminar on Legal Aid– Luxembourg (LU), The European Union, 2017, pp3.

118. Legal Aid to Vulnerable Individuals in Lebanon, *Open Society Foundation*, pp.18.

119. Legal Aid to Vulnerable Individuals in Lebanon, *Open Society Foundation*, pp.18

## 4.2. Others (Legal clinics and NGOs)

### 4.2.1. Legal Clinics

In the MENA region, Lebanon has followed the tracks of countries like Palestine, Egypt and Jordan in incorporating clinical legal education as of 2007 to reform its traditional and rigid teaching curricula. Among its seven law faculties in seven different universities, Lebanon has experienced the emergence of four different types of legal clinics. Four universities are home to legal clinics<sup>120</sup>:

- University of Holy Spirit of Kaslik (USEK) as of 2007;
- La Sagesse University (ULS) as of 2007;
- Saint-Joseph University in 2011 ;
- Beirut Arab University as of 2012.

Each of these unique configurations within the Lebanese legal education system has enabled students to “learn by doing” and built a significant legal professional experience ahead of graduating from law faculties. That has developed into an important element of the law faculties’ motto and teaching goals.<sup>121</sup>

Of the existing legal clinics in the Lebanese law faculties, two have incorporated the concept as a full course, either mandatory like in ULS HRLC or an elective like in USEK’s Legal Clinic. These clinics can rely on a well-established and deeply rooted civil society, whether they run under an in-house or externship models, which allows for a greater involvement of students in legal aid activity with the relevant stakeholders and a direct access to the persons seeking justice, generally coming from underprivileged communities.<sup>122</sup>

Since the establishment of legal clinics, Lebanon has been relying primarily on international support and funding. This dependence is often seen as an obstacle for the setting up of legal clinics that require a certain number of fundamental investments to function properly. The four operating legal clinics have each dealt with the sustainability challenge in its own fashion and in line with its own objectives and model. As such, the strong engagement of the believers in clinical legal education in Lebanese faculties has fostered new avenues for modern teaching methods of law disciplines in the country. At the same time, all four active legal clinics have contributed to enhancement of legal aid services to targeted underprivileged audiences, either directly such as the USJ and the Beirut Arab University structures, or indirectly through the USEK and ULS models.<sup>123</sup>

### 4.2.2. Major NGOs Providing Legal Aid in Lebanon

#### *The Lebanese Centre for Human Rights (CLDH) Lebanon*

“The Lebanese Centre for Human Rights (CLDH), a local non-profit, non-partisan Lebanese human rights organization based in Beirut, was created in 2006 by the Franco-Lebanese Movement SOLIDA (Support for Lebanese Detained Arbitrarily), which has been active since 1996 in the struggle against arbitrary detention, enforced disappearance and the impunity of those perpetrating gross human rights violations.

120. “Clinical Legal Education in Lebanon, Models and Practices,” *EuropeAid/134-610/L/ACT/LB*, 2017, pp.11

121. Ibid

122. Ibid

123. Ibid

CLDH monitors the human rights situation in Lebanon, fights enforced disappearance, impunity, arbitrary detention and racism and rehabilitates the victims of torture. CLDH regularly organizes press conferences, workshops and advocacy meetings on human rights and access to justice for vulnerable persons (foreigners, low income Lebanese, etc.) in Lebanon and collects, records and documents human rights abuses in reports and press releases.”<sup>124</sup>

CLDH has two running programmes focusing on providing legal aid services in Lebanon:

- Legal assistance to vulnerable inmates in the Lebanese prisons which has been running since 2012. It aims at reducing crowdedness in prisons and guaranteeing a better access to justice for vulnerable persons (foreigners, low- income Lebanese...) by giving them access to appropriate legal aid;
- Legal counselling to vulnerable individuals. The program, conceived in 2014, provides legal counselling assistance and referral to any person in need (victim of torture, refugees, low income Lebanese, LGBTs, migrant workers...) without any discrimination. The idea behind this project is that anyone is entitled to free legal assistance even when (s)he does not have the means to hire a lawyer. The project aims at preventing arbitrary detention, torture or any human rights violations. The current capacity of the program is 100 to 150 cases annually.

## *Caritas Lebanon Migrant Centre*

The Caritas Lebanon Migrant Centre is an autonomous, specialized centre of Caritas Lebanon. Combining both individualized legal and social support as well as advocacy efforts with the public and relevant government agencies, CLMC carries out different activities in support of respect for the human rights of migrants. It also conducts training and offers technical support to other NGOs in the Middle East serving similar groups of persons. In support of migrants, the Centre has, since 1994, been running a service of legal assistance for migrant workers who are victims of labour exploitation and forced labour. It has also identified access to justice as the key element for protection and prevention efforts against these crimes to succeed. The centre has commissioned several studies related to migrants' situation in the country.<sup>125</sup>

## *Association Justice et Miséricorde (AJEM) Legal service.*

Since its creation, AJEM has stood for the rights of representation of prisoners, ex-prisoners and their families, throughout Lebanon. AJEM is mainly concerned with the respect of human rights, the fight against torture in prisons and the work for the abolition of capital punishment. Its legal department was created at the beginning of 1998 when AJEM was founded. It grew strongly to consist nowadays of a group of specialized lawyers who offer their knowledge, experiences and skills to the prisoners' cause.

Major Services of AJEM's Legal Department<sup>126</sup>:

1. Free individual legal counselling to prisoners in places of deprivation of freedom.
2. Legal advice services at the AJEM Reception House to prisoners' families and loved ones.

<sup>124</sup> CLDH Lebanon website: <http://www.rightsobserver.org/>

<sup>125</sup> Caritas Lebanon Migrant Centre: <https://www.caritas.org/where-caritas-work/middle-east-and-north-africa/lebanon/>

<sup>126</sup> AJEM website: <http://ajemlb.org/>

3. Public awareness campaigns about important legal topics and information concerning the issues relevant to the detainees' needs. These activities take place thanks to the initiatives of groups from outside of prisons.
4. Follow-up on the legal cases and files of the prisoners who can't hire a lawyer to help them. It defends the prisoners' rights and pleads for them before different courts.

The work of the AJEM lawyers, however, isn't limited to legal counselling and prosecution. It also includes helping the detainees and their families by providing them with information and emotional support they need to cope with the situation. AJEM legal approach transcends the individual cases in order to reach a global and general level that allows talking about the different problems related to the prison environment and criminal justice.

### *The Lebanese Advocacy and Legal Advice Centre (LALAC) Lebanon*

"The Lebanese Advocacy and Legal Advice Centre (LALAC) is an initiative launched by The Lebanese Transparency Association-No Corruption. LALAC is based on a model developed by Transparency International and has branches in more than 50 countries in the world. It has also been adapted to the Lebanese context. (...)

### **Free services for victims and witnesses of corruption**

Everyone residing in Lebanon can access LALAC's free services, including Lebanese citizens and non-Lebanese citizens residing in Lebanon. The Lebanese Transparency Association is committed to the principles of equality and non-discrimination on the basis of gender, age, religion, disability, social class, geographical origins, and political background.

Free services include the following:

- Support for victims and witnesses of corruption;
- Free legal advice and assistance to develop a strong corruption case file;
- Referral of select cases to a law firm willing to represent the victim or witness;
- Opening public discussion and dialogue on corruption issues;
- Working closely with relevant governmental and private institutions to address corruption-related cases;
- Building body of evidence to lobby public authorities for necessary reforms;
- Coordinating with the mass media to highlight the danger of corruption;
- Partnering with other civil society organizations to build an effective public interest network."<sup>127</sup>

### *Father Afif Osseiran Foundation Lebanon*

In January 2004, Father Afif Osseiran Foundation was charged with the running of a program (established in 1993) in the prison of Roumieh by Terre des Hommes. The program included the rehabilitation of minors in the prison, legal follow-up of their cases and their socio-professional reintegration after their release.

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<sup>127</sup>. LALAC Lebanon website: <http://transparency-lebanon.org/En/WhatWeDoDetails/1/13/0>

The number of beneficiaries who benefit from the services provided by Father Afif Osseiran Foundation is around 150/minors annually in the prison of Roumieh. This is in addition to around 150 minors released from the prison in the four incarceration centres/year.

The organization used to provide legal follow-up services with 5 lawyers but since 2011, it has had only three lawyers due to lack of financing. The legal follow-up services include the following<sup>128</sup>:

- Follow-up of their cases in the court of justice all over Lebanon;
- Public awareness;
- Legal and psychological consultancy;
- Three round tables with judges concerning the amendment of Law 422 in 2006, 2007, 2008 and 2009;
- Conferences with Interior Security Forces (ISF) in collaboration with the Human Rights Institute of Beirut Bar Association concerning the administration of the prisons;
- Cooperation with the American Bar Association (ABA) in the Northern part of the country, in 2009, 2010 & 2011, to recruit more lawyers and to take charge of more cases and defend them in front of Northern courts.

## INSAN Association

The Insan Association has been involved in providing aid mainly to foreigners (88.1% in 2014), with their legal concerns, since 2008. With a budget of 57 million LBP (around \$38,000) in 2014, the association managed to support a total of 171 cases pertaining to criminal, civil, delinquent and personal status jurisdictions in different regions in Lebanon.<sup>129</sup>

## Palestinian Human Rights Centre

The Palestinian Human Rights Centre (PHRC) used to run a legal service to aid Palestinian refugees in Lebanon back in 2005 and 2006 with financial support from an international donor. The program had to stop for lack of funding, thus depriving Palestinian refugees of an important support while facing numerous legal issues in the country related to housing, documentation, labour, etc.<sup>130</sup>

## UNRWA

The UNRWA (the United Nations Relief and Works Agency) started providing legal assistance (Legal Aid Project) to Palestinian refugees in Lebanon in 2010 "through a referral mechanism with Lebanese lawyers from the association PINACLE". According to the CLDH's 2014 report, UNRWA provided free legal advice in 2012 (until November 2012) to some 190 cases, and in 2013 (until November 2013) to some 159 cases. It also provided legal representation to Palestinian refugees: 102 cases in 2012, and 104 cases in 2013.<sup>131</sup>

However, because of drop of financial support, UNRWA's ability to maintain the Legal Aid Project decreased. At the beginning of the second half of 2015, UNRWA "has already used up its budget and has

128. Father Afif Osseiran Foundation Lebanon website, available online at: <http://www.fondationpereafifosseiran.com/>

129. INSAN Association website: <http://www.insanassociation.org/en/>

130. Palestinian Human Rights Centre website: <https://pchrghaza.org/en/>

131. UNRWA website: <https://www.unrwa.org/>

started to refer cases to the Beirut Bar Association's Legal Aid Committee," according to its President Mr. Georges Fiani.

## *Norwegian Refugee Council*

The UNRWA also tends to refer cases to another international organization active in Lebanon and provides legal assistance. This organization is called Norwegian Refugee Council (NRC) and is active among Palestinian refugees from Syria who have found themselves in a dreadful legal deadlocking Lebanon.<sup>132</sup>

## **Information, Counselling and Legal Assistance**

The NRC started its Information, Counselling and Legal Assistance (ICLA) Program in March 2012 to support Syrian and Palestinian refugees from Syria to help them cope with legal hazards in Lebanon. The cases NRC lawyers support mainly revolve around housing, land, and property issues within civil jurisdictions with a few interventions at the level of criminal courts whenever needed. Other types of cases are referred to other associations and to AJEM in particular. In 2014, the NRC provided free of charge services to thousands of beneficiaries with legal information and represented hundreds within the Lebanese judiciary. Only the cost of residence papers was not covered by the NGO.<sup>133</sup>

## *KAFA*

Kafa has been very active in supporting Lebanese and foreign women in dealing with personal status cases in a country that continues to uphold discriminatory policies and legislations against women and in protecting women from family violence, sexual exploitation and human trafficking.<sup>134</sup>

## *ABAAD Association*

ABAAD, an NGO, was active in supporting Lebanese and non-Lebanese women in 2012 by providing legal services to women victims of family or sexual violence. ABAAD is mainly active in the Bekaa Valley and in Northern and Southern Lebanon; it offers legal services to Lebanese citizens and Syrian refugees (adults and minors) suffering from gender-based violence and sexual exploitation.<sup>135</sup>

## **5. Quality safeguards**

### **5.1. Qualification required**

There are no specific qualifications set by the two bar associations pertaining to the legal aid authority responsible for assigning legal aid providers, but there are basic qualifications which include the following:

- I. Legal aid provider must have a law degree;

<sup>132</sup>. Norwegian Refugee Council website: <https://drc.ngo/>

<sup>133</sup>. Information, Counseling And Legal Assistance website: <https://www.nrc.no/what-we-do/activities-in-the-field/icla/>

<sup>134</sup>. KAFA website: <http://www.kafa.org.lb/>

<sup>135</sup>. ABAAD website: <http://www.abaadmena.org/>



2. Legal aid provider must be a member of one of the two Lebanese bar associations in Beirut or Tripoli, regardless of whether (s)he is a lawyer or just a trainee lawyer.

That means that passing the bar examination is not a requirement since trainee lawyers are allowed practically (not by law) to provide legal aid.

## 5.2. Accountability for the quality of legal aid services

Lawyers must, in all of their acts, comply with the principles of honour, honesty and integrity and must fulfil all the duties imposed by law and traditions of the bar associations. Ethics and discipline are both enshrined in the law regulating the profession of lawyer, the internal rules of the bar associations and the Code of Ethics of the Legal Profession.

The Law Regulating the Profession of lawyer stipulates that lawyers shall be responsible towards their client for carrying out their task in accordance with the provisions of the laws and the terms of their mandate.

Moreover, the Beirut Bar Council adopted in February 2002 the Code of Ethics of the Legal Profession, which focuses more on ethics and moral guidelines than on specific requirements governing the conduct of lawyers. One of the ten main “rules” that should follow lawyers according to the Code of Ethics of the Legal Profession is related to legal aid: “The lawyer shall do his or her best and will comply with his or her obligations, even if his services are free of charge.”

To this end, if a person has a right to legal aid but the provider is unqualified or keeps missing the case hearings, the person who has the right to legal aid can make a claim to the head of the bar association and in this case, the bar assigns another legal aid provider and crosses the name of the lawyer from the legal aid providers list. The proceedings must cease until a qualified legal aid provider arrives.<sup>136</sup>

## 5.3. Monitoring the quality of legal aid services

Both bar associations (Beirut and Tripoli) are formally responsible for monitoring the quality of legal aid services. The monitoring system at the Beirut Bar Association was very efficient when the bar started to provide legal aid services, since the system was run by a committee of qualified and experienced lawyers who used to guide and monitor the legal aid providers from the beginning of assigning the providers until the end of the case. However, the committee of legal aid adopted another system in which legal aid providers are only required to fill a report at the end of each case describing the legal aid services that were provided at the case. The report contains only the following information:-

- Appointed lawyer's name;
- Date of appointment;
- Name of the client and his or her nationality;
- Type and number of the case;
- Stage of the court;
- Number of the case hearings that were attended by the appointed lawyer;
- Summary of the case proceedings;

<sup>136</sup>. Legal Aid to Vulnerable Individuals in Lebanon, *Open Society Foundation*, pp.13.

- Date of issuing the judgment;
- Place for the comments of the head of legal aid committee.

The last aforementioned system was not that efficient because it did not track the work of the legal aid provider and there was no feedback given to the legal aid provider after filling the report. For that reason, the Beirut Bar Association started to adopt a new monitoring system; it established a new monitoring committee to track the legal aid services and instead of the final report, the committee adopted a tracking schedule which the legal aid provider must start filling out from the beginning of the case and throughout, noting all the updates on the case procedures until the end of the case.<sup>137</sup>

## **6. Provision of legal aid**

### **6.1. Legal aid in criminal cases**

#### **Who is eligible?**

Under the Lebanese Criminal Procedure Law of 2001, the State has the obligation to provide legal aid when the accused is unable to secure the assistance of a lawyer for his or her defence in accordance with Article 78 of the law. Before starting any investigation work, the examining magistrate must ask the defendant if (s)he has a lawyer, and if the defendant declares that (s)he is unable to hire a lawyer, the examining magistrate mandates a lawyer for him or her or asks the legal aid committee at one of the two bar associations to mandate a lawyer for the defendant.

The victim of a criminal action can also receive legal aid services pursuant to the Criminal Procedure Law. According to Article 68, the victim can get an exemption from the court fees by filling out the criminal claim, if (s)he is financially incapable of paying these fees.

#### **At what stage of the criminal case?**

Access to legal aid should be guaranteed to all inmates during custody, pre-trial detention and imprisonment.

#### **In Custody**

Custody is regulated by Article 47 of the Lebanese Code of Criminal Procedure, where the rights of the arrested person are clearly listed: medical and legal assistance, together with access to an interpreter in case their native language is not Arabic. Although the clear outline of these guidelines leaves little space for interpretation, their application in practice is often not guaranteed. As reported by the Universal Periodic Review for Lebanon in 2015, many detainees at police stations do not have direct access to doctors or lawyers. Sometimes they are held incommunicado for days and are not provided with language assistance. According to the law, preventive detention under Judicial Police should last for a maximum of 48 hours, renewable for a similar period based on the prosecutor's justified decision. This period is often not respected, thus leading to serious consequences. The overcrowding of preventive detention facilities does not only

<sup>137</sup>. Legal Aid to Vulnerable Individuals in Lebanon, *Open Society Foundation*, pp.19.

affect the standards of detention, but also makes it harder for the arrested persons to access their rights, which have already been broken by arbitrary detention, especially access to legal aid.<sup>138</sup>

## Pre-trial detention

If the results of preliminary investigation lead to the validity of the accusations against the arrested individual, then the case is transferred to the prosecutor to take the decision on the claim, before reaching the investigating magistrate. At this stage, the prosecuted is transferred to a prison. This stage of detention is regulated by Article 108 of the CCP, according to which pre-trial detention should last no longer than 2 months for a misdemeanour, renewable once, and no longer than 6 months for a felony, with the exception of accusations of terrorism, murder and drug related crimes. During this period, access to legal aid is still not guaranteed. First, as reported by the president of the Beirut Bar Association's Legal Aid Committee, only 30 out of the 1,400 cases, assisted by the association in 2016, were referred by investigating judges. It often happens that at this stage, judges do not inform the accused of their right to have a lawyer, or exaggerate the waiting time for the appointment of the lawyer so that the accused decides to move forward with their investigation without one. In the cases in which the accused presents a request for the appointment of a lawyer to the investigating judge, the role of the lawyer remains very limited. During the investigations, in fact, lawyers do not have access to the file of their client, held in the investigating courts, and for the most serious accusations, they cannot assist them during the interrogations. Consequently, the lawyers are not able to monitor the development of investigations and to intercede for their clients. Because of this issue, a high number of vulnerable inmates lack any sort of external support and legal assistance, and are at further risk of being held under arbitrary detention for a much longer period of time than the one prescribed by the law<sup>139</sup>

## Assistance during the trial

Article 78 of the CCP states that the judge shall appoint a lawyer or request one from the bar association in case the accused was not able to do so. Two situations arise as follows:

- I. The application is referred from the court handling the conflict, namely the Criminal Court, Justice Council, the Court of Appeal, the Individual Penal Judge, or the investigating judge. The application is referred from the relevant court, in front of which the accused announces the inability to assign a lawyer. Then, the relevant court processing the case forwards a letter to the relevant bar association (Beirut or Tripoli) requesting the allocation of a defence lawyer for the accused. As in the previous stages of detention, the implementation of the regulations into practice is not very effective. At this stage of the procedure, two main concerns arise related to some of the courts' practices and to the length of the procedure.<sup>140</sup> Regarding the courts' practices, it has been reported that some judges occasionally advise the accused not to take a lawyer in order to speed up the process and the trial. Moreover, as already reported by CLDH in 2014, in some cases it happens that the sessions continue without any appointed lawyer for the accused, in flagrant violation of the right to a fair trial. Lawyers who are present in the courtroom may also be requested by the judge to represent the accused; in such case, the appointed lawyer, if (s)he agrees, will work on a pro bono basis and not receive any fees.

<sup>138</sup>. Legal Aid to Vulnerable Individuals in Lebanon, *Open Society Foundation*, pp.14.

<sup>139</sup>. Legal Aid to Vulnerable Individuals in Lebanon, *Open Society Foundation*, pp.14.

<sup>140</sup>. Legal Aid to Vulnerable Individuals in Lebanon, *Open Society Foundation*, pp.15.

Another concern is related to the delay in appointing a lawyer: Once the court processing the case forwards a letter to the relevant bar association, the latter in some cases tends to take too long to appoint a lawyer; which has severe consequences for the accused, as the audiences will be postponed as long as no lawyer is appointed.

2. 2) Personal request: in some cases, the request is presented directly from the detainee unable to assign a lawyer to the relevant bar association through the prison officer; the detainee requests to be assigned a lawyer who would mobilize his or her legal file.

At the Beirut Bar Association, even though no precise statistics were available concerning the percentage of applications from the courts and personal requests, following information provided during the interviews, 90% of the referrals that reached the Beirut Bar Association came from the courts, the remaining being personal requests put forward directly at the bar office. The intention the president expressed in 2014 to establish a system of regular visits from members of the committee to the detention places did not bring the results hoped for. As reported by the president during the interview, in 2015 the bar association met with the general director of all the prisons in Lebanon to discuss the definition of an office in the prisons reserved to legal aid lawyers. The meeting was followed by a written request, which was not taken into consideration, a clear sign of the lack of interest from the authorities to have lawyers in the detention centres and to favour the provision of legal aid.

## 6.2. Legal aid in civil cases

According to Article 430 of the Civil Procedures Law of 1983, for a legal aid applicant to have his or her request for legal aid accepted, she/he shall have a clear and evidence-based reasons why (s)he is starting the legal action if the applicant is the plaintiff in the lawsuit. There must be clear defence arguments if the applicant is the defendant in the lawsuit. If not, his or her request shall be dismissed by the court even if the applicant meets the financial criteria for granting legal aid.

Based on the aforementioned, it can be concluded that both parties in a civil case can be eligible for request for legal aid, and their eligibility depends on both meeting the financial threshold, and how reasonable the applicant's claims are for starting the legal action.

### **For what actions is a party eligible for legal aid?**

According to Articles 434 and 435 of the Civil Procedures Law, the court decision to accept the applicant's request for legal aid includes providing him or her free legal representation and an exemption from all court fees.

### **At what stage of the civil case?**

If the court accepted the legal aid request, legal aid can be provided to the applicant during the trial and in any appeal.

## 6.3. Legal Aid before the Lebanese State Council

According to Article 71(2) of Decree No. 10434, organizing the State Council, of 14 June 1975, and its amendments, upon request for legal aid within legal time limit, the possibility for appeal gains recourse

starting the date of notification of the decision to the person concerned shall cut the limitation period for recourse if it occurs during this period.

In accordance with Article 132, deciding on legal aid affairs shall fall within the competence of a judge designated for this purpose by the State Council President, and the decision shall be subject to appeal before the chamber within fifteen days.

These two articles, however, have failed to address in detail any other condition regarding legal aid before the Administrative Court. However, the State Council refers to the Lebanese Civil Procedure Code and applies its respective Chapter 7 for granting legal aid. In fact, pursuant to Article 6 of said code, the general rules of the Civil Procedure Code apply wherever there is a gap in the laws and other procedural rules.<sup>141</sup>

## 6.4. Legal Aid in Military Cases

The right to defence before military court is enshrined in Article 21 of the Military Justice Law. It states that the defence of a person dragged before military justice, who has not entrusted a lawyer to be his or her defender, is ensured by a lawyer or by an army officer, preferably licensed in law. The Supreme Military Authority may agree contractually with civil lawyers from the bar association to ensure the right to defence. The Minister of National Defence, based on a proposal from the Supreme Military Authority, issues a decision designating the army officers appointed to practice defence at the beginning of the year. This decision is subject to amendment anytime during the year. In addition, Article 59 states that if the defendant has not entrusted a lawyer, the president of the Military Court must designate a lawyer in accordance with the stipulations of Article 21, or do request from the bar association president the appointment of a lawyer to assure the defence.

In accordance with Article 22, the judges, army officers, and lawyers shall receive a compensation for their work with military justice. The amount of such compensation is determined by a decision of the Minister of National Defence, based on a proposal of the Supreme Military Authority, and it shall be paid from the Military Court's budget at the Ministry of National Defence.

Article 57 states that the appointment of a defence lawyer shall be mandatory before the Military Court, but not before a single military judge.

Even though legal aid is not detailed in the Military Justice Law, Articles 54 and 99 stipulate that the Lebanese Criminal Procedure Law shall apply on all the procedures not specifically provided for in the Military Justice Law.

## 6.5. Legal Aid in the Lebanese Religious Courts

Religious courts of personal status in Lebanon are independent from state courts for all the eighteen officially-registered Lebanese faiths. There are over 15 personal status laws which exist for each of the recognised faiths.<sup>142</sup>

<sup>141</sup>. Legal Aid Questionnaire by EUROMED JUSTICE IV PROGRAMM, submitted by Yara Issa, 2018, Section B. Q.1.

<sup>142</sup>. Lebanon's religious courts and prospects of civil laws, available online at: <https://www.alaraby.co.uk/english/comment/2015/12/22/lebanons-religious-courts-and-prospects-of-civil-laws>

Regarding legal aid in religious courts, legal aid before Shari'a courts is recognized in the Shari'a Courts Procedures Law of 1962. Article 266 - 279 of the law stipulate the procedures for obtaining legal aid in Shari'a courts, which are replicas of the procedures stipulated by the Lebanese Code of Civil Procedures.

However, legal aid in non-Muslim religious courts is not granted by its procedures laws. For instance, in the Maronite Religious Court, women or men approach the priest of their village (mandatory before attempting to go to court). The priest then would first try to solve whatever conflict amicably. In case amicable reconciliation fails, he provides the grievant with the needed paperwork for litigation. The grievant then goes to court to register the lawsuit at the clerk office. The latter registers the lawsuit and presents it to the judge. In case the grievant has the ability to appoint a lawyer, a power of attorney (tawkeel) should also be registered at the clerk's office. Both registrations are accompanied by payment of court fees, clearly specified in writing in the case of the Maronite Court. The clerk then submits all paperwork to the judge who later appoints a date for the first court hearing, where supporting documents and proofs are required.<sup>143</sup>

According to the clerk at the Maronite Court, a social assistant comes to the court twice a week to try to provide support to the poor and vulnerable people.

While it does not take much time to get paperwork appropriately filled in (depending on the number of daily registered cases, as they all have to be registered at the clerk's office), there is no support whatsoever to the poor or vulnerable litigants. There is no specific office that informs litigants of the court's administrative/legal procedures. In case a litigant cannot afford to appoint a lawyer, chances are she/he would lose the lawsuit due to her/his ignorance of legal procedures and inability to provide valid evidence to the court.

## 6.6. Access to legal aid for children

The justice system has specialized courts, judges, prosecutors and social workers to work with child victims and accused children. The right to legal aid is recognized under the Child Protection Law No.422 of 2002. According to Article 42 of the law, the court shall hire a lawyer for the juvenile if his or her family did not do so.

## 6.7. Women's access to legal aid

After passing the Law against Domestic Violence in 2014, legal aid to female victims of violence is now guaranteed under Article 10 of the law.<sup>144</sup> While the law guarantees legal protection for female victims, in practice, these laws are still not efficient, as civil society organizations claim.

Women are aware of the existence of legal procedures in Lebanon. However, physical access to courts was discouraged by the lack of knowledge of the "how" component, i.e., how to go to court and how to get a law suit properly processed.<sup>145</sup>

143. Women's Access to Justice in The Middle East Challenges and Recommendations, *Oxfam*, 2013, pp. 12, available online at: <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/606565/rw-women's-access-justice-middle-east-010813-en.pdf>

144. Article 10 of Lebanese Law of Domestic Violence No. 293 of 2014 states that "Victims of domestic violence shall have the right to request protection and legal representation and judicial officers shall inform victims of domestic violence of the mentioned rights"

145. Women's Access to Justice in The Middle East Challenges and Recommendations, *Oxfam*, pp.7

Specialized legal aid services for women are provided through the two bar associations and the civil society organizations. For instance, in 2015, the Beirut Bar Association opened the first legal aid office at Baabda women's prison to provide the female prisoners with the legal aid they needed directly from inside the prison.<sup>146</sup>

According to some civil society organizations, women in Lebanon are still ignorant of the right to legal aid services, and that has motivated the 'Justice Without Frontiers' organization to start a campaign in 2011 to empower women by promoting their access to justice. The organization also provided free legal aid to women through that campaign.

Moreover, one of the active NGOs in the field of protecting women's rights in Lebanon is KAFA; it provides free legal advice services to women who are subjected to domestic violence and sexual exploitation. KAFA has a hot line through which it provides its legal aid services.<sup>147</sup>

## 6.8. Access to legal aid for specific population groups

The only specialized legal aid services that are provided for specific population groups by the state laws are legal aid for juveniles and legal aid for female victims of violence. However, there are no legal aid services that are provided to other specific population groups such as people with special needs, the elderly and refugees, etc.

## 7. Finances

### 7.1. Costs to recipients

Legal aid services for both criminal and civil cases are free of charge for those meeting the eligibility criteria. Primary legal aid services are provided for free through both bar associations (Beirut and Tripoli). Some civil society organizations also provide primary legal aid services for free to specific groups of people.

### 7.2. Legal aid in the annual justice budget

There is no separate component on legal aid in the annual justice budget. The Lebanese two bar associations cover the costs of providing free legal representations through the bar's fund. There is no fixed budget that the Beirut Bar Association earmarks for legal aid on a yearly basis. However, the total estimated budget for 2016 was at least \$560,000, and that makes it even harder for the bar to manage legal aid in Lebanon since it provides both the services and the funding with no support from the government, which the president of the Beirut Bar Association considers too heavy of a burden for it to support on its own.<sup>148</sup>

At the Tripoli Bar Association, in 2014, 30 million Lebanese pounds (20,000 US Dollars) of the bar's annual budget were allocated to the Legal Aid Committee. In the past, the budget reserved to the provision of legal aid only allowed the bar to take approximately 90 cases per year, which is vastly insufficient in order

<sup>146</sup>. BAR website.

<sup>147</sup>. KAFA website.

<sup>148</sup>. Legal Aid to Vulnerable Individuals in Lebanon, *Open Society Foundation*, pp17.

to cover the demand, taking into consideration that the Tripoli Bar Association covers the district of Northern Lebanon, where several prisons are located (Tripoli, Halba, Amioun and Zgharta). All these prisons suffer from crowdedness, and therefore, there is a high percentage of inmates potentially in need of a lawyer<sup>149</sup>.

The present sources of funding available to the bar associations of Beirut and Tripoli for the delivery of legal aid are inadequate, uncertain, and incompatible with a program that must expand to meet the needs of eligible clients; therefore, sustainable sources of funding must be identified.

International donors cover the costs of legal aid services that are provided through NGOs; the European Union donated EUR 1,000,000 in 2013 to support legal aid in Lebanon.

### 7.3. Payment to legal aid providers

Both bar associations are responsible for paying legal aid providers who serve applicants who apply for legal aid through courts.

The payment by the Beirut Bar Association is a fixed amount of money it gives to the legal aid provider per-case. The average amount for a payment per-case is approximately \$ 400, regardless of the type of case or the period one has spent working on the case.<sup>150</sup>

In contrast, the payment method by the Tripoli Bar Association is different. Lawyers are paid \$100 when they take over a case, and the remaining \$300 is paid upon the submission of the final report and follow up modules filled in. In practice, unfortunately, some lawyers do not follow the case until the latter is closed. Other legal aid organizations like NGOs follow a different payment mechanism to pay legal aid providers. For example, they pay the legal aid provider a monthly salary, regardless of the type of case or the period one has spent working on the case.

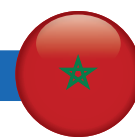
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149. Ibid

150. Ibid



## 4.6. Legal aid in Morocco



### 1. Country general facts<sup>151</sup>

- **Governmental system:** Constitutional Monarchy
- **Population:** 35,7 million
- **Poverty rate:** 3,1%
- **Unemployment:** 10,5%
- **People's trust in courts (Justice):**<sup>152</sup> People's rated 4 on a scale of 10 the independent of the judiciary and the separation of powers in Morocco (trends in 2017)

### 2. Legal aid legislative framework

#### 2.1. The right to legal aid is granted according to the following legal provisions

In Morocco the Constitution provides for a legal system. In light of international recommendations, Morocco has launched an ambitious process of legal reform in order to place "justice at the service of the citizen". This process was initiated around 2008. Among other pillars, Morocco outlined the enhancement of judicial efficiency. Thus, a draft law on legal assistance and legal aid, a decree organizing the provision of legal assistance, the creation of information desks in the courts of appeal and first instance, and the appointment of an ombudsman in charge of helping citizens during their proceedings were decided.

Pursuant to Royal Decree Law No. 514-65 of 1 November 1966, legal aid benefits any Moroccan individual, public establishment or association whose financial resources prevents him or her to access to justice and to exercise his or her right to a fair trial due to his or her incapability to afford litigation costs and lawyers' fees. Legal aid is also available for Morocco nationals living abroad. It is worth mentioning that foreigners may be eligible for legal assistance, insofar as the agreements between Morocco and their countries allow it.

Hence, the legal framework is the following:

I. Articles 118 and 121 of Constitution of Morocco state as follows:

Article 118: "Access to justice is guaranteed to anyone in defence of their rights and interests protected by law. Any legal act of a regulatory or individual nature taken in administrative matters may be appealed to the competent administrative court."

Article 121: "In the cases foreseen in the law, justice is free for those who do not have sufficient resources to bring a claim before the Court".

151. [www.borgenproject.org](http://www.borgenproject.org)

152. <https://www.bti-project.org>

2. Royal Decree Law No. 514-65 of 1 November 1966 on Legal Aid;

3. Law 28/08, amending the law on the organization and exercise of the profession of lawyer sets up in articles 40 and 41 that the following:

Article 40: "The chairman shall designate to any litigant admitted to legal aid a lawyer registered on the roll or on the duty shift to perform in the interest of the assisted person all the facts contained in the "ad litem mandate". The appointed lawyer cannot refuse the appointment unless (s)he has several reasons to do so and, while invoking them, the refusal is accepted."

Disciplinary proceedings are brought against the lawyer where (s)he persists in refusing despite the non-acceptance of the excuses and impediments invoked by him or her, as well as in case of any negligence in the performance of his or her obligations.

Article 41: "The lawyer appointed in the framework of legal aid may charge a fee when the procedure followed by him or her results in a financial or real profit for the party concerned, provided that the matter is submitted to the President of the Bar so (s)he can fix these fees".

4. Decree No. 2.15.801 laying down the conditions for the collection of fees within the framework of legal aid.

## 2.2. Scope of legal aid

Legal aid is applicable to any litigation involving joining a civil action before a court of law.

**In criminal matters**, the courts appoint assigned lawyers to represent the interests of the indigent parties.

**In civil matters**, legal aid embodies the exemption of legal costs and the right to representation by a lawyer during the trial.

Legal representation is compulsory before any court in Morocco. There are exceptions such as cases involving alimony, social matters or small cases. For example, the Moroccan legislator has adopted the proximity justice exempting litigants from the obligation of legal representation, so also from legal aid, for the claims that do not exceed 5000 Dirhams.

Pursuant to Royal decree No. 514-65 on judicial assistance, legal aid in Morocco covers "judicial assistance". This is defined as the assistance provided by the State to individuals who do not have the sufficient means to defend themselves before a court. Legal aid does not fund legal counselling.

Legal aid is granted for the whole litigation process from the legal representation of an individual before the court up to the stage of enforcement or execution of a decision by the Court.

Such legal aid encompasses all the legal costs an individual may incur such as:

- Appointment of a lawyer;
- Experts' fees;

- Translators or interpreters' fees;
- Execution costs;
- Judicial taxes (to be paid at the beginning of the procedures);
- Legal aid applies to all cases, civil or criminal ones.

## 2.3. Public awareness of the legal aid

The general public must effectively have access to legal and judicial services through appropriate infrastructure, modern legislation, and the sharing of legal knowledge.

Past and present advances made by the Ministry of Justice in this sector are undeniable. The latter has shown its ability to make significant improvements in the development of public information procedures, in particular through the dissemination of legal information by the media and the installation of info-shops in the courts.

Moreover, a brief information program, lasting from 3 to 5 minutes, was broadcast on television dealing with the rights and duties of citizens and in most jurisdictions, information windows, and front office are located at the entrance of buildings to facilitate access and information to the public.

The Government of Morocco recognizes the importance of this sector for the country and its citizens by encouraging dialogue and participation among stakeholders.

## 3. Delivery model

### 3.1. Authority

In Morocco there is an authority in charge of legal aid: The Legal Aid Bureau.

The Legal Aid Bureau is the body entitled to decide whether to grant an individual or not with the legal aid benefit. The composition of the Legal Aid Bureau varies from one Court to another. As a result, the composition may vary depending on the Court competent to solve the dispute.

The Legal Aid Bureau determines the allocation of legal aid to an individual and its composition is as follows:

1. For disputes to be brought before the Court of Cassation, the decision is made by a Legal Aid Bureau composed by:
  - The senior public prosecutor (*procureur général*) at the said Court or his or her delegate;
  - Three senior magistrates, active or retired, appointed by the Ministry of Justice;
  - A representative of the Ministry of Finance.
2. For proceedings to be brought before the Court of Appeal, the decision is made by a Legal Aid Bureau composed by:

- The senior public prosecutor (*procureur général*) at the said Court or a magistrate of his or her public prosecutor's office;
  - A delegate from the Ministry of Finance;
  - A lawyer appointed by the Court of Appeal.
3. For proceedings to be brought before other courts, the decision is made by a Legal Aid Bureau composed by:
- The public prosecutor (*procureur du Roi*) at the Court of First Instance or his or her substitute;
  - A delegate from the Ministry of Finance;
  - A lawyer.

## 3.2. Legal aid providers

Legal Aid Bureaus provide legal aid. They are composed of judges, senior public prosecutors (*procureurs généraux*), public prosecutors, a representative of the Ministry of Finance and lawyers. Consequently, all legal aid stakeholders are represented and involved in the decision-making process and in the provision of the benefit.

## 3.3. Process for obtaining legal aid: objective criteria. Merits and means test

In Morocco there is neither a specific application form nor an application procedure settled down. Nonetheless, the decision on eligibility for legal aid lays with the Legal Aid Bureau of each court as mentioned above.

After registering the application, the magistrate shall make every effort to proceed with his or her investigation. The request is forwarded by the senior public prosecutor (*procureur général*) for examination to the competent Legal Aid Bureau.

The Legal Aid Bureau gathers all the relevant documents to assess the applicant's financial situation and all necessary information, both on the means test and on the merits of the case. Furthermore, it invites him or her for a personal interview to explain himself/herself about his or her lack of financial resources.

The Legal Aid Bureau may listen to both litigant parties and even drive them to reach an amicable agreement preventing them to go through a whole procedure.

The Legal Aid Bureau may adopt the decision granting or refusing the application, depending on whether the request is justified or not. Otherwise, it is refused.

If an application for legal aid is refused, the applicant may appeal the decision within 15 days of the notification of the refusal decision.

## 3.4. Appointment of legal aid providers

Upon the decision on the granting of legal aid, the President of the Legal Aid Bureau invites the President of the Bar Association to appoint a legal aid lawyer.

Legal aid is, in practice, restricted to criminal matters. In these matters, the judge often asks lawyers who are present in the Court to voluntarily defend the accused.

In civil matters, there are no provision related to legal aid besides the principles enshrined in the 1996 Law on Legal Aid. Lawyers are required to accept the cases and individuals assigned. The designated lawyer cannot refuse the appointment unless (s)he has several reasons to do so and, while invoking them, the refusal has to be accepted. Hence a valid justification is needed and accepted.

Disciplinary proceedings are brought against the lawyer who persists in refusing despite the non-acceptance of the excuses and impediments invoked by him or her, as well as in case of any negligence in the performance of his or her obligations and professional duties.

## **4. Services providers**

Pursuant to Royal Decree No. 514-65 of 16 November 1966, legal aid is defined as the assistance provided by the State to individuals with insufficient means to afford lawyers' fees and litigation costs.

### **4.1. Lawyers**

Lawyers are the legal professionals allowed to provide legal assistance in both criminal and legal matters according to Moroccan legal provisions.

### **4.2. Others (Clinics, NGOs)**

Legal clinics and some non-governmental organizations provide legal aid assistance on a pro-bono basis such as:

#### **The Moroccan non-governmental organization DROIT ET JUSTICE**

*Droit et Justice* consistently advocates for legislative reform and greater recognition of refugees' rights in Morocco. Raising awareness among both Moroccan civil society and the migrant community facilitates their ability to educate people about the Refugee Status. This refugee and asylum seeker support program falls within the framework of *Droit et Justice* and their commitment to judicial reform, the rule of law, and pro-bono legal aid throughout the country, especially in Casablanca and Rabat.

#### **AVOCATS SANS FRONTIERES/ ADALA**

This Legal Education Clinic is a great step forward for marginalised people in Morocco, to ensure the right a fair trial. In this NGO, people receive information about laws and legal procedures. They are given free assistance and advice to enable them to assert their rights and gain access to independent and fair justice that conforms to international standards. Legal Education Clinics establish a connection between legal training and access to justice. It is essential that they work in collaboration with civil society, to ensure that people are well-informed about these services.

Avocats Sans Frontières also intends to build links among universities, legal professionals, institutional actors, and human rights civil society organisations, so that they can share their experience and best practices, propose joint comprehensive solutions to the problems encountered by vulnerable populations, and develop joint advocacy activities.

In the last five years, this ASF and ADALA project in Morocco has been funded by the Belgian Development Cooperation.

## **5. Quality safeguards**

### **5.1. Qualifications required (to become a legal aid lawyer/provider)**

Lawyers are required to hold a law degree, pass a professional examination and undertake an internship with an experienced lawyer. After this, to practice as a lawyer, it is compulsory to enrol in one of the 17 Moroccan bar associations.

### **5.2. Accountability for the quality of legal aid services**

The accountability for the quality of legal aid services rests with the Bar Association as a general rule. Only lawyers may provide legal representation; therefore, the accountability for the service's quality is the responsibility of the Bar Association in accordance with professional ethic rules.

### **5.3. Monitoring the quality of legal aid services**

Monitoring is decided by the institution paying the fees. Consequently, the Ministry of Justice monitors the quality of the legal aid service according to Royal Decree No. 2.15.801 of February 2013.

## **6. Provision of legal aid**

### **6.1. Eligibility**

Pursuant to Royal Decree No. 514-65, legal aid is granted to Moroccan:

- Citizens;
- Public-benefit institutions;
- Private associations pursuing a mission of assistance and having legal personality.

Moroccan citizens living abroad are also eligible. Furthermore, foreigners are eligible in accordance with the relevant international treaties.

Eligibility in civil matters is assessed upon means and merit tests.

In criminal matters, eligibility is assessed in light of the means test only. No objective criteria are settled down to assess the potential beneficiary's financial situation. The national legislation does not establish

either a threshold or objective criterion, tables, etc. Thus, the means test is analysed on case-by-case analysis with a certificate of poverty issued by local authorities.

In addition, in civil matters, a merits test must be fulfilled in order to be eligible; this contributes to the efficiency of the system.

## 6.3. Access to legal aid for vulnerable groups

Foreigners may be eligible for legal assistance, insofar as the agreements concluded between Morocco and their countries allow it.

## 7. Finances

### 7.1. Cost to recipients

The legal aid beneficiary is provisionally exempted from any fees deposit and any payment of taxes.

If the party that loses the case is the opponent to the legal aid beneficiary party, the fee includes costs of every kind, fees, and emoluments to which the applicant would have been liable for if no legal assistance had been granted.

Hence, the payment of litigation costs is declared in favour of the Ministry of Finance, which pursues its recovery by means of an enforceable document issued by the registry of the competent court.

Royal Decree No. 2.15.801 laying down the conditions for the collection of fees in the context of legal aid further specifies that the fees are charged to the budget of the Ministry of Justice.

### 7.2. Legal aid in the annual justice Budget

Legal aid is paid from the Ministry of Justice's budget. Endowments are then provided to cover lawyers' fees in return for the services they perform in the framework of legal aid.

### 7.3. Payment to legal aid providers

A new legal provision establishes the principle that lawyers' assistance to a beneficiary of legal aid shall be remunerated.

Royal Decree No. 2.15.801 of February 2013 sets forth the conditions under which fees are paid in return for the services provided by lawyers as part of legal aid.

The current flat rate is applicable since 1 January 2016.

The new scale is as follows:

- 2.500 dirhams, for the cases defended before the Court of Cassation;

- 2.000 dirhams for the cases defended before the Court of Appeal;
- 1.500 dirhams for the cases defended before the Court of First Instance.

These amounts may be reviewed every two years by a joint decision of the Minister of Justice and the Minister of Finance after consultation with the Bar Association.

## Final Remark

*The legal aid framework in Morocco has been identified with some shortcomings, in particular: the need for legal assistance in the pre-litigation phases; the slow pace of the award procedure, and the multiplicity of legal texts governing the legal aid scheme.*

*This is why the Ministry of Justice is preparing a draft law on legal and judicial assistance in Morocco which at this very moment is a "Projet de Loi" which aims to enter into force by 2019. This first draft distinguishes and defines the scope of legal aid, which differs from the current understanding of legal aid. It has also broadened the list of potential beneficiaries of legal aid by including vulnerable groups as refugees, disabled individuals, women victims of gender-based violence, minors, juveniles and other legal persons. Finally, it is foreseen to establish an office focused on free legal advice service in the constituency of each Court.*



## 4.7. Legal aid in Palestine



### 1. Country's general facts

- **Governmental System:** Unitary government system
- **Population:** 4.55 million (World Bank, 2014)
- **Poverty Rate:** 25% (UNDP office in the West Bank and the Gaza Strip)
- **Unemployment:** 40% (The World Bank, 2014)
- **Public trust in courts:** 42% had trust, 35% had a little trust, and 23% had no trust at all.
- (Palestinian Center for the Independence of the Judiciary and the Legal Profession (MUSAWA), 2014 Citizen Survey).

### 2. Legal aid legislative framework

Given the unstable political and sensitive security situation on the ground, due to Israeli military occupation, and the current West Bank-Gaza political divide, access to justice in Palestine is facing many barriers/challenges. Some of them have to do with legal protection: the recognition of rights within the scope of the formal or informal justice systems. This is in addition to its inadequacy as the Israeli military orders gravely contravene the basic human rights standards. Equally worse is lack of Palestinian jurisdiction to prosecute crimes committed by Israeli nationals against Palestinians. This also constitutes a major challenge to the exercise of justice.<sup>153</sup>

Another major challenge to access to justice for Palestinians is the failure of the Palestinian legislation to adequately protect vulnerable groups such as victims of torture, minors and women and people with mental health problems. This is attributed to discriminatory laws, legislative loopholes, vaguely worded laws and lawlessness/anarchy in some areas.<sup>154</sup>

Legal aid is one area that suffers from a huge legislative absence in Palestine due to the economic, legal, and political situation in Palestine<sup>155</sup>. Nonetheless, some provisions have touched upon legal aid in some Palestinian laws, such as the Criminal Procedural Law. However, the term “legal aid” is not used in any of these laws. Instead, these provisions use the term “legal defence”: A defendant has a right to have the assistance of counsel (i.e., lawyers), and if the defendant cannot afford a lawyer, the government shall appoint one or pay the defendant’s legal expenses- which is guaranteed under several laws and the Palestinian Basic Law, as a basic guarantee for a fair trial.

In this context, the Palestinian laws do not recognize the right to legal counsel in civil legal matters, thus affecting access to justice in civil cases. In these cases, general limitations are compounded by procedural regulations restricting applicants from lodging a case or appeal without legal representation for cases of a

153. Access to Justice in the Occupied Palestinian Territory, UNDP, 2009, p. 4, available online at: <http://www.undp.ps/en/fsh/pubs/a2jeng.pdf>.

154. Access to Justice in the Occupied Palestinian Territory, UNDP, 2009, p. 4, available online at: <http://www.undp.ps/en/fsh/pubs/a2jeng.pdf>.

155. A survey carried out by the UNDP, shows that access to legal assistance is challenging for most households: Up to 90.8% of those in contact with the law do not have access to a lawyer: 57.2% of households cannot easily afford to pay for a lawyer and 56% of households doubt that they would be able to obtain free legal assistance if they needed it.

certain monetary value or specific case type. Even NGOs do not provide legal counsel in civil legal matters, thus making justice in civil matters inaccessible for many Palestinians. However, in practice, predominantly legal defence provided by legal aid non-governmental organizations focuses on providing legal advice and legal representation in criminal legal matters only.

There is also a misunderstanding of legal aid itself resulting from conflict of interests. Due to the provision of the service made by NGOs, the Palestinian Bar Association (PBA) complains of unfair competition and intervention. The Bar Association prevents NGOs from providing legal representation in civil cases since there are no provisions in the Palestinian laws that guarantee the right to legal aid in civil matters.

## 2.1. The right to legal aid is granted according to the following legal provisions

1. The right to legal aid/legal defence is granted in the Palestinian Basic Law of 2002, enacted by the Palestinian Legislative Council and signed by the late Palestinian National Authority President Yasser Arafat. It is the proposed Constitution of a future Palestinian state. The Basic Law was amended on 19 March 2003.
  - Articles 9-17 of the Palestinian Basic law set up the basic legal rights of Palestinian citizens.
  - Article 14 of the Basic Law stipulates: "An accused person is considered innocent until proven guilty in a court of law that guarantees the accused the right to a defence. Any person accused in a criminal case shall be represented by a lawyer."
2. Article 244 of the Criminal Procedure Law No. 3 of 2001 stipulates the following: "The court shall ask the defendant if she/he has chosen a lawyer to defend him or her; if the defendant did not choose one because of his or her poor financial situation, the president of the **court shall** mandate him or her a lawyer, who should have practiced law for no less than 5 years or has worked at the public prosecution office or in the judiciary for no less than 2 years."
  - Article 245 of the same law stipulates following: "The court shall decide the legal representation fees at the end of the trial according to the previous article, and shall disburse these fees from the court fund."  
The article, however, has failed to provide a detailed description of the mechanism of assigning the legal defence lawyer (legal aid provider) due to the legislative loopholes in most of the Palestinian laws.
3. The Juvenile Protection Law No. 4 of 2016 defines a juvenile as a child who is less than 18 years old and has committed a criminal act. Article 10 stipulates the following: "A juvenile shall have a lawyer to defend him or her in felony or misdemeanour and in all stages of investigations and trial and if the juvenile has no lawyer to defend him or her the court or the public prosecution mandates a lawyer for him or her on the court/public prosecution fund."
4. Article 4 of Labor Law No.7 of 2000 states the following: "Workers shall be exempted from the judicial fees in the labor cases they submit asking for their labor rights, including asking for their wages, holidays, end of services benefits, compensation for workplace injuries and illness and arbitrary dismissal."
5. Article 14 of the Court Fees Law No. 1 of 2003 states as follows: "If an individual claims his or her financial inability to pay the court fees for any civil case, the court shall investigate his or her claim

of financial inability and shall decide on acceptance of the submission of the case with a delayed fees payment if his or her claim was convincing to the court.”

6. Article 12s and 44<sup>156</sup> of the Bar Association Code of Conduct No. 3 of 1999 stipulates: “The Bar shall provide legal assistance to the Palestinian citizens who are incapable financially.” However, in practice, the Bar does not provide free legal representation.

## 2.2. Scope of legal aid (Services included as a part of legal aid)

As mentioned above, Palestinian laws guarantee the right to legal defence. However, this right is limited to legal representation in criminal matters only. There are also some other legal aid services provided by the State laws and NGOs in both civil and criminal matters. The types of legal aid service depend on the type of the case.

- In criminal cases, the State provides legal representation services to juveniles, in accordance with Article 10 of the Juvenile Protection Law No. 4 of 2016, and to defendants who have been accused of committing a felony in accordance with Article 244 of the Criminal Procedure Law No. 3 of 2001. However, the court must follow a specific mechanism when assigning lawyers to criminal defendants.<sup>157</sup>

In practice, the court would ask one of the lawyers in the court room, if (s)he agreed to handle the case for which legal aid is requested. This procedure takes time until the court has assigned a lawyer; it also affects the quality of the legal representation. Some of the lawyers who are assigned in that way may not be qualified enough to provide legal aid in such cases although Article 245 of the aforementioned law requires all claims be filed by a licensed lawyer who has practiced law for at least five years. However, this is not an adequate requirement to ensure the quality of legal representation.

Legal clinics provide legal advice in these kinds of cases:

- In civil cases, the only legal aid services provided by the State are court fees exemption (only in labor cases in accordance with Article 4 of the Labor Law No. 7 of 2000) and a delayed payment of court fees under Article 14 of the Courts Fees Law No. 1 of 2003, regardless of the type of the civil case. While the government does not provide free legal representation services in civil cases, there is one NGO that provides free legal representation in civil cases, but only for women. Legal clinics offer legal advice in civil cases. Therefore, in civil matters, many Palestinians cannot afford to hire a lawyer, and those who can often struggle to find appropriately qualified lawyers or technical support they need to build a strong case.

Court fees exemption encompasses the following legal costs:

- Judicial taxes (to be paid at the beginning of the procedures);
- Execution costs.

<sup>156</sup>. “The President of the Bar Association shall have the right to delegate any lawyer to perform a free professional service to the Association once every year. This free service shall be restricted to the performance of any of the following tasks: [...] g) Defend a person whose poverty and inability to pay professional fees are proven to the President.”

<sup>157</sup>. STRATEGIC PLAN of the PBA 2015-2017 (A draft of the legal aid service of the PBA), PBA, 2015, pp.5, available online at: [http://www.palestinebar.ps/documents/10180/891581/Draft-Strategic+plan+PBA+Probono+\(ay-f\)%2011+Oct+15.pdf/038a59fd-332c-4cf3-a7b1-63d4c7eb-de18](http://www.palestinebar.ps/documents/10180/891581/Draft-Strategic+plan+PBA+Probono+(ay-f)%2011+Oct+15.pdf/038a59fd-332c-4cf3-a7b1-63d4c7eb-de18)

## 2.3. Awareness of the right to legal aid

For the demand for justice to be raised, people need to be aware of their legal rights, confident that taking legal action will provide a just remedy. Raising awareness about the right to legal aid is also important to create legal awakening among society members to push towards creating an accessible judicial system for all.<sup>158</sup>

However, many Palestinians do not trust the judicial system and have inadequate knowledge of their legal rights and are therefore unable to claim them. Moreover, they have no knowledge of the minimum legal aid services that are guaranteed by the national laws, and usually when they use these services, they get informed about them while taking a legal action through the court or a lawyer. In many cases, they do not even get the chance to know about these services and in particular in the legal aid services guaranteed in civil matters.

Palestine has failed to sponsor official public information campaigns to raise people's awareness about their right to legal aid.<sup>159</sup> Therefore, the general public is ignorant of their rights to legal aid services.

However, some NGOs specialized in providing legal aid services have conducted small campaigns to raise people's awareness about legal aid services. For instance, the campaign "Know Your Right" was carried out by the ILF organization in Palestine.<sup>160</sup> The campaign included local schools visits to educate students on the right to legal aid services granted to juveniles under the Juvenile Protection Law.

## 3. Delivery model

### 3.1. Legal aid authority

In Palestine, legal aid is mostly provided through some NGOs that work in cooperation with the Palestinian courts and the public prosecution office. However, the services that are provided by these NGOs are very limited to specific groups (i.e. criminal defendants) and are not enough to cover all legal aid needs in Palestine. This is due to the restrictions which the Bar has imposed on these NGOs and their inadequate financial and technical capacities.

In addition, there is an absence of legal aid authority or institutional mechanisms for the provision of legal aid by the State. However, a national legal aid committee was set up to establish a legal aid authority. Headed by the Palestinian Minister of Justice, the establishment of the National Legal Aid Committee (NLAC) is expected to support the formulation of a national strategy to provide legal assistance to all citizens who need legal aid to enable them to have access to justice.

In April 2017, the NLAC developed the first draft of the national legal aid strategy in cooperation with Al-Meezan system.<sup>161</sup> The NLAC developed a process to ensure the follow up of legal aid cases. It also started

<sup>158</sup>. Access to Justice in the Occupied Palestinian Territory, UNDP, p. 7.

<sup>159</sup>. 71.9% Palestinians are not aware of the role of the Palestinian Civil Police, the Attorney-General's Office, the High Judicial Council, the Ministry of Justice, and the PBA, this is according to a study on Public Perceptions of Palestinian Justice and Security Institutions carried out by the UNDP.

<sup>160</sup>. ILF Palestine website: <http://theilf.org/>.

<sup>161</sup>. MIZAN: Electronic case management system of the High Judicial Council that connects courts, prosecution police and provides a record of courts' caseload, for the use of lawyer, judges, prosecution and the public.

an awareness campaign. To that end, it created a short video on the importance of establishing a sustainable national legal aid committee in Palestine. Legal aid is now included in the 2017-2022 National Agenda of the Palestinian Ministry of Justice in line with Policy No. 4, goal No. 2. This policy aims to ensure “the activation of the legal aid system in Palestine, and develop a national legal aid strategy and a legal aid law and get them approved.”

The NLAC's work on the national legal aid system stopped temporarily at the end of 2017. NLAC's work has resumed recently. The NLAC held a meeting with legal aid stakeholders in Palestine in July 2018; the meeting that took place in Ramallah sought to finalize the draft of the NLAC. The committee organized another meeting with stakeholders in the Gaza Strip on 16 August 2018, to ensure that Gaza is also included in the document.<sup>162</sup>

It is important to mention that, in March 2016, the PBA established its own legal aid committee to unify the work of legal aid institutions in the country under the Bar umbrella, in a way that would promote the interests of lawyers and citizens in need of legal aid/counsel. The committee, however, worked only for a short period of time due to a huge protest by lawyers who claimed that such a committee would negatively affect their work, as litigants would use legal aid services rather than hire lawyers. Even though the Bar council explained that there were criteria for providing legal aid, the lawyers insisted on ending its work.

## 3.2. Legal aid providers (Organization of legal aid services)

Legal aid services are provided through the following legal institutions:

**3.2.1. Ministerial bodies**, providing legal representation services in their field of competence by means of salaried lawyers:

- The Ministry of Social Affairs (MOSA) is implementing a legal representation scheme for juvenile offenders delivered by 3 salaried lawyers based in three Districts (Hebron, Ramallah, and Tulkarem). The scheme records an average of 350 new cases per year; and currently handles 600 cases, including the pending ones;
- The Ministry of Detainees and Ex Detainees provides legal representation for Palestinians detained in Israeli prisons and detention centres. The scheme has a budget of 1,8M Shekel and employs 12 contracted lawyers who handle 1,400 cases per year;
- The Ministry for the Walls and Settlements employs 6 salaried lawyers to provide legal representation for Housing Land and Property violations.<sup>163</sup>

**3.2.2. Prosecution**, in juveniles cases, by mandating a lawyer who should be a member of the PBA.

**3.2.3. Courts** mainly by mandating a lawyer who should be a member of the PBA to provide legal aid to juveniles, regardless of the type of the crime a juvenile is accused of and for defendants accused of committing a felony and who claim a financial inability to hire a lawyer.

<sup>162</sup>. According to Mr. Mamoun Attali, Project Analyst-Civil Society UNDP/PAPP.

<sup>163</sup>. STRATEGIC PLAN of the PBA 2015-2017 (A draft of the legal aid service of the PBA), PBA, pp.6.

**3.2.4. The bar association** used to have a pro-bono program to deliver legal aid as a duty for the members of the profession who are officially appointed to perform this duty by the president of the Bar Association. However, after termination of the work of its legal aid committee, the Bar no longer provides any legal aid services.

**3.2.5. Civic society organizations and NGOs:** These institutions work directly with courts through memorandums of understanding between them and the Palestinian Judicial Council.<sup>164</sup>

## Key NGOs providing legal aid in Palestine

### *Palestine Women Center for Legal Aid and Counseling*

“The Women’s Centre for Legal Aid and Counseling (WCLAC) is an independent Palestinian, not-for-profit, non-governmental organization that seeks to develop a democratic Palestinian society based on the principles of gender equality and social justice. Established in Jerusalem in 1991, the organization has special consultative status with the UN Economic and Social Council (ECOSOC). By forging a feminist vision based on equality and social justice, WCLAC plays a prominent role in addressing gender-based violence in the Palestinian society in both the public and private spheres.”<sup>165</sup>

WCLAC is committed “to provide legal aid, social counseling and protection services to women in an environment where human rights abuses are rampant and women’s issues are regularly overlooked.”<sup>166</sup>

### *Defence for Children International Palestine section*

“Defence for Children International Palestine (DCIP) is committed to securing a just and viable future for Palestinian children in the Occupied Palestinian Territory. For more than twenty years, DCI has supported and advocated for defence and protection of children’s rights: investigating and documenting grave human rights violations, holding both Israeli and Palestinian authorities accountable for them, and providing legal services to children in urgent need. Since its inception in 1991, DCIP has remained the only Palestinian human rights organization specifically focused on child rights. DCI’s highest value is the pursuit of each child’s best interests. To this end, DCI is guided by the United Nation’s Convention on the Rights of the Child (UNCRC), as well as other international, regional and local standards.”<sup>167</sup>

### *Jerusalem Legal Aid and Human Rights Center (JLAC)*

“Since its inception over 40 years ago, the Jerusalem Legal Aid and Human Rights Center (JLAC) has formed a specific and specialized niche for itself: delivering legal aid to vulnerable communities to make them resilient to human rights violations. JLAC has since become a key and major player in certain interventions, undertaking pro-bono legal cases related to house demolition, forced displacement, land confiscation, and more recently Jewish settlers’ violence.”<sup>168</sup>

<sup>164</sup>. According to Ms. Yassmen Ya’esh, legal aid lawyer at the ILF organization in Palestine.

<sup>165</sup>. WCLAC website: <http://www.wclac.org/Page/8>.

<sup>166</sup>. Ibid.

<sup>167</sup>. DCIP website: <https://www.dci-palestine.org/>

<sup>168</sup>. JLAC website: <http://www.jlac.ps/details.php?id=iwdefva436yrcqldzq7v>.

JLAC's stated mission is to "combat all forms of human rights violations regardless of perpetrating authority through facilitating access to justice, lobbying a capital, and high professionalism."<sup>169</sup>

"Without JLAC's services, victims would face costly private sector fees compelling them to forfeit their claims. JLAC, more recently, has coupled its legal aid rendered to individuals with public interest cases, legal reform, community awareness, advocacy, among other interventions."<sup>170</sup>

## *Palestinian Center for Human Rights (PCHR)*

"The Palestinian Centre for Human Rights (PCHR) is a non-governmental organization based in Gaza City. The Centre is a non-profit institution dedicated to protecting human rights, promoting the rule of law and upholding democratic principles in the Occupied Palestinian Territory (OPT). (...)

The work of the Centre is conducted through documentation and investigation of human rights violations, provision of legal aid and counseling for both individuals and groups. This is in addition to preparation and publication of academic articles relevant to such issues as the human rights situation and the rule of law. The Centre also provides comments on Palestinian draft laws and urges the adoption of legislation that incorporates international human rights standards and basic democratic principles."<sup>171</sup>

## *International Legal Foundation- West Bank*

"Created in 2001, the International Legal Foundation (ILF) is a non-governmental organization that assists countries emerging from conflict or transition to establish public defender systems that provide effective, quality criminal defence services to the poor: (...) The lack of qualified lawyers available to provide criminal defence representation to the poor is a serious problem in post-conflict and transitional countries. Many of these countries' constitutions and other domestic laws guarantee the right to counsel to persons accused of crimes." But in practice, defence lawyers for the poor are virtually non-existent or grossly unqualified. Without access to counsel, there can be no rule of law. Accused persons are more vulnerable to arbitrary detention, coerced and tortured confessions and wrongful convictions.<sup>172</sup>

## *Independent Commission of Human Rights- Palestine*

"The Independent Commission for Human Rights (ICHR) was established in 1993 upon a Presidential Decree issued by late President Yasser Arafat in his capacity as President of the State of Palestine and chairman of the Palestine Liberation Organization. The decree was subsequently published in the Official Gazette in 1995. ICHR commenced its activities in early 1994."<sup>173</sup>

Pursuant to its legal mandate and conviction that equality before the law, through effective justice systems, constitutes the basis for good governance, ICHR monitors court cases and court decisions related to human rights as well as cases of public interest, especially in the High Court of Justice.

169. JLAC website: <http://www.jlac.ps/details.php?id=brg46la423y7j1cu88d5>.

170. JLAC website: <http://www.jlac.ps/details.php?id=iwdefva436yrcqldzq7v>.

171. PCHR website: <https://pchrgaza.org/en/>

172. ILF Palestine website: <http://theilf.org/>

173. <https://www.ichr.ps/en/1/1/84/About-Us.htm>.



The ICHR may intervene or initiate cases under the following circumstances:

- Initiating cases on behalf of those who may be unable themselves to bring cases to protect their rights. These include children, women, persons with mental disability and prisoners.
- Initiating cases to challenge the legality of executive actions and to obtain judicial orders to remedy the situation, particularly where the executive has ignored the NHRI's recommendations on the subject.
- Intervening in cases to provide legal advice to the courts, such as *amicus curiae* briefs or third party interventions, without being a party to the case.

A case in point is ICHR's intervention in the public interest case in the High Court of Justice against the government for the unlawful screening and unfair dismissal of teachers. It was successfully concluded with the judgment of the full court of nineteen judges who upheld ICHR's claim and ordered the re-instatement of the teachers who had been wrongly dismissed.<sup>174</sup>

**Legal Clinics** provide free legal advice to many Palestinians but this service provided through these legal clinics is limited to legal advice only.

### 3.3. Process for obtaining legal aid

The process for obtaining legal aid largely depends on the type of the case: criminal or civil case. As aforementioned, in criminal cases, legal aid services are limited to juveniles and defendants accused of committing a felony. According to Article 244 of the Criminal Procedure Law, the court "shall ask the defendant, accused of committing a felony, if (s)he has a lawyer to represent him or her." If the defendant says that his or her financial situation does not allow him or her to hire a lawyer, the court shall hire a lawyer for him or her. The court usually has contacts with NGOs and other organizations that provide legal aid services to send a lawyer from their staff. If it were not possible, the court shall mandate any lawyer from the court, usually a member of the Bar, to become involved in the process. The same process is followed when obtaining legal aid in juvenile cases.

In civil cases, legal aid is provided mainly by the State but it is limited to 1- exemption of court fees in labor cases under labor law; and 2- the delayed payment of court fees. These are the only legal aid services provided in civil cases by the State. The process for obtaining the first service is an automatic one. The court clerk employee does not request any court fees when a labor case is submitted to the court and no request is needed to be submitted. The process, however, is different when obtaining the service of court fees delay.

The plaintiff, before starting his or her legal action, needs to submit a legal aid request to the clerk of the court where (s)he will submit his or her case to, and then the plaintiff pays 22 EUR as fees upon the submission of the legal aid request.<sup>175</sup> After submitting the request, the president of the district court assigns a day to hear the plaintiff's request and then (s)he asks him or her about his or her financial situation. If the judge is convinced of the plaintiff's argument, the judge would accept the request and decide to delay the payment of the court fees until the announcement of the final judgment. It is important to mention that the methods to prove eligibility for legal aid are open in both criminal and civil cases.

<sup>174</sup>. ICHR website: <http://www.ichrps/en>

<sup>175</sup>. According to the head of the *Criminal Court Clerk's office* at Nablus court.



## 3.4. Assigning legal aid providers

There is no specific mechanism designed by the State for assigning legal aid providers. In practice, criminal courts have signed memorandums of understanding with the Palestinian Judicial Council and some NGOs that provide legal aid services in criminal cases. These memos stipulate that “if the defendant has no lawyer to defend him or her, the criminal court shall contact one of these NGOs to assign one of their lawyers to handle the case.”<sup>176</sup> If it were not possible, the criminal court shall mandate a lawyer, usually a member of the PBA, to provide the necessary legal aid.” It is important to emphasize that there is no place for such an assignment in civil cases because legal representation services are not available in civil cases, except for women, in which case they are provided only by one NGO.<sup>177</sup>

## 4. Services providers

### 4.1. Licensed practicing lawyers

Lawyers work with NGOs that provide legal aid services to specific sections of the Palestinian populations. However, only a few of them do voluntary legal representation due to the absence of a pro-bono services culture in Palestine, which needs to be developed through supporting law student internships at NGOs and university curriculum development. The Bar’s policy also prevents lawyers from providing any free legal aid representation under the pretext of unfair competition.

### 4.2. University-based legal clinics

Palestine is home to 6 university-based legal clinics. These clinics aim to enhance the educational legal experience of law students and serve the community at the same time through providing free legal counselling. However, only a few of them provide legal representation. The services provided by the clinics are very limited and do not meet demand and expectations and are particularly inadequate. These legal clinics are not qualified yet to provide adequate professional legal services because of their poor technical and financial capacity. Most of these clinics depend on international funding to provide legal aid services but this funding is not sustainable.

Most of these clinics provide some legal counselling services such as conducting campaigns to raise awareness of specific groups of people about their legal rights. However, there are still many people who are not aware of the services these clinics provide.

University legal aid clinics in Palestine:

#### The Al-Quds University Human Rights Clinic - Abu Dees

The Al Quds Human Rights Clinic (AQHRC) is an independent unit within Al-Quds University Law School. It “provides clinical legal education on human rights to undergraduate students. It was established in the fall of 2006 as the first clinical legal education program in Palestine and the first accredited program of its kind in the Arab world.

<sup>176</sup>. According to Mr. Firas Abdulghani, judge at the *Criminal Court of first instance in Nablus*.

<sup>177</sup>. WCLAC.

AQHRC provides quality education and hands-on training in human rights and international humanitarian law whereby students learn by practicing with lawyers and human rights organizations and get evaluated by them as well as by AQHRC staff. Students enroll in a year-long program of lectures, workshops, seminars, and training sessions and participate in actual monitoring, reporting, and advocacy work. Through its local and international networks and partnerships, AQHRC exposes students to a range of career prospects and opportunities and provides them with support to pursue them."<sup>178</sup>

## **Legal Clinic, Hebron University, Hebron**

"The Hebron University Legal Clinic was established in September 2011 after receiving a grant from the United Nations Development Program in Palestine, and from other donors. The clinic seeks to build the capacity of students to practice law before graduation in order to move to the market equipped with practical lawyering skills. The clinic allows the student-lawyers to assist marginalized groups in the society who can't afford paying lawyers, with pro-bono legal assistance. In addition, the clinic constitutes the hub for legal research, teaching and rights activism in Hebron University and in Palestine in general. The clinic offers a widerange of legal services on variety of legal fields such as criminal justice, juvenile justice, women rights, labor law, disability, human rights, civil law and humanitarian law. It works in partnership with local non-governmental organizations, governmental institutions and international organizations."<sup>179</sup>

## **Legal Clinic, An-Najah National University, Nablus<sup>180</sup>**

The legal clinic at An-Najah National University was established in early 2010. It is staffed with a team of students who have been trained to provide free legal services and consultations under the supervision of a group of law professors in all legal fields and human rights in particular.

In addition to working as a bridge between the legal theories and the practical professional life, it also aims to improve the quality of human rights in local community and strengthen the role of law, which in turn contributes to restoration of the confidence in the Palestinian legal and judiciary system.

The legal clinic's main goals are the following:

1. Disseminate the legal culture in the Palestinian community, and provide free legal services and consultations to poor and needy people villages, refugee camps and towns, thus achieving a better legal system.
2. Integrate the students into society, and allow them to translate legal theories into action, by helping and training them to provide legal services and consultations. This is in addition to promotion of the idea of teamwork and consolidation of the work ethics, and dedication of the principles of volunteerism in the society.

<sup>178</sup>. Al-Quds University Human Rights Clinic- Abu Dees website: <http://www.legalclinic.alquds.edu/en/>

<sup>179</sup>. Hebron University website: <http://www.hebron.edu/index.php/en/news-3/8712-ann-17-2-17.html>. Information also available at: <https://www.legalclinic.alquds.edu/en/27-clinical-education/legal-clinics-in-opt.html>.

<sup>180</sup>. An-Najah University website: <https://law.najah.edu/en/students/experiential-learning/legal-clinic/>. Information also available at: <https://www.legalclinic.alquds.edu/en/27-clinical-education/legal-clinics-in-opt.html>.

## **Legal Clinic/Al-Azhar University, Gaza City**

As part of the Rule of Law and Access to Justice Programme, UNDP has established partnerships with the Al Azhar University in Gaza in order to support the strengthening of clinical legal education, access to legal services, confidence-building and networking between law schools, and ultimately, to ensure that the next generation of Palestinian lawyers, judges and prosecutors are equipped with the knowledge and skills they need to make access to justice and the rule of Law a reality.

## **Legal Clinic (Legal Assistance & Consultant Unit), Islamic University, Gaza City**

The Islamic University of Gaza Legal Clinic opened its first mock trial training course on 1 August 2015. Fifty law students have attended a one-year training course in addition to their regular law curriculum courses. Delivered by academicians and law practitioners, the training course aims to strengthen the skills of law students through hand-on simulation exercises requiring them to perform the tasks of a lawyer and develop practical skills through real case representation in clinics.

## **Legal Clinic, Al-Istiqlal University, Jericho**

This clinic was established in 2013 and is supported by the UNDP.

Jericho and the Jordan valley, considered undeveloped areas, have a high rate of poverty as well as poor health and education services. The Israeli apartheid policies have increased such problems especially after placing the area under full Israeli control. Therefore, the two areas have become unattractive for living. The idea of establishing the legal clinic at Al-Istiqlal was necessary to offer legal support to the poor marginalized localities in the two areas as well as document assault incidents on human rights. The legal clinic works on recruiting a staff of professional cadres from An-Najah National University/s Faculty of Law to give legal counseling and collect adequate information of legal cases facing them at security agencies and military judiciary.

It offers legal support to humanitarian cases that are unable to access justice and courts because of economic or social reasons. It provides free legal advice and arguments in front of courts to exact justice.<sup>181</sup>

## **5. Quality safeguards**

### **5.1. Qualifications required**

There are no clear qualification requirements for legal aid providers set by the State. However, according to the Criminal Procedure Law and Juvenile Law (the only two laws that have touched upon legal aid representation), a “legal aid provider shall be a lawyer who is allowed to practice law, and (s)he shall hold a law degree, has passed the bar examination and shall be a current member of the PBA.” The Criminal Procedure Law also requires that the “legal aid lawyer shall not have less than 5 years of experience in law practice if the lawyer is going to represent a defendant accused of committing a felony.” NGOs must follow the same requirements since these requirements are stipulated in the law. However, some NGOs require additional qualifications including experience and a specialization in criminal cases or juvenile cases.

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181. Al-Istiqlal University website: <https://alistiqlal.edu.ps/>

## 5.2. Accountability for the quality of legal aid services

The accountability for the quality of legal aid services goes back to the general rules that regulate lawyers' work in the legal ethics code. For example, if the lawyer who is assigned to provide the legal aid has consistently missed the court hearings, the court would depose/dismiss him or her from the case at which (s) he was supposed to provide legal representation. It would also notify the PBA of the conduct to make sure that the Bar is aware of the lawyer's conduct and his or her failure to respect the legal ethics and then to prevent the lawyer from claiming his or her legal representation fees through the Bar.

## 5.3. Monitoring the quality of legal aid service

There are no methods or criteria for monitoring the quality of legal aid services. If the lawyer was assigned to provide legal aid directly by the criminal court, the court itself would monitor the quality of legal aid services (legal representation) by checking the lawyer's attendance during the case hearings. If the lawyer providing the legal aid was mandated by the court through one of the NGOs that provides legal aid services, the NGO would be responsible for monitoring the quality of legal aid services (legal representation). Therefore, the monitoring is decided and conducted by the institution that is covering the fees of the legal aid provider (lawyer).

## 6. Provision of legal aid

### 6.1. Legal aid in criminal cases

#### **Who is eligible?**

In criminal cases, legal aid is available to persons accused of committing a felony and to juveniles regardless of the type of crime committed: a felony or not. If the court discovered that the persons in question were financially unable of hiring a lawyer or if they just had no lawyer to represent them, the court would offer them legal aid. The eligibility criteria focus mainly on the financial situation of the accused. However, there is no specific mechanism designed to decide the eligibility for legal defence.

#### **At what stage of a criminal case?**

Under the law, juveniles and defendants accused of committing a felony can request legal representation from the moment charges against them are officially forwarded to the public prosecution office. Legal aid is also provided to them during trial and for an appeal. It is not prohibited by law for the police to interview a person in the absence of a lawyer, but it is prohibited for the public prosecution to do so in the absence of a lawyer.

### 6.2. Legal aid in civil cases

#### **Who is eligible and for what actions?**

The eligibility for legal aid services in civil cases depends on the legal aid service the applicant is requesting and, as mentioned before, there are only two legal aid services that are provided in civil cases, and the eligibility for each is the following:

1. Court fees exemption: applicants who are eligible for this service are only plaintiffs in labor cases according to Article 4 of Labor Law No. 7 of 2000.
2. Delay of payment of court fees: applicants who are eligible for this service are plaintiffs who submitted a notice to the court requesting the delay of payment of court fees based on their financial situation and approval of their request by the president of the district court.

## 6.3. Access to legal aid for vulnerable groups

### 6.3.1. Access to legal aid by minors

The justice system has specialized judges and specialized prosecutors to represent child victims. There are also specialized social workers who attend all the hearings of juveniles' cases. There is also a special provision in the Juvenile Law No. 4 of 2016 that guarantees legal representation for juveniles at all different stages of the trial.

NGOs play an important role in providing legal aid services to juveniles. Even criminal courts depend on these NGOs when it comes to providing legal representation to juveniles who are unable of hiring a lawyer. In the past, the criminal court used to mandate lawyers randomly; however, in recent years, NGOs' lawyers have become the first choice for the criminal court when it comes to providing free legal representation to juveniles who cannot hire a lawyer for financial reasons or have no lawyers to represent them.

NGOs that provide legal aid to juveniles in Palestine include 'Defence for Children International Palestine' (DCIP), whose lawyers provide legal representation for many juveniles at different trial stages and for different types of criminal cases and the 'International Legal Foundation' (ILF), which provides legal aid not only to juveniles but also to defendants who are accused of committing a felony.

### 6.3.2. Women's access to legal aid services

There are no specialized legal aid services provided to women by the State except for the legal aid services above-mentioned. There are some civil society organizations, however, that provide a range of different legal aid services to women. These include legal clinics which provide pre-litigation services to women. The Women's Center for Legal Aid and Consulting (WCLAC), for instance, has a team of lawyers and social workers working in its centers in Ramallah, East Jerusalem, Hebron and Beit Jala (near Bethlehem). Each year, WCLAC works on over 400 legal cases for Palestinian women, taking cases to Palestinian civil and Shari'a courts when necessary and mediating out-of-court negotiations where appropriate.<sup>182</sup>

It is important to mention that President Mahmoud Abbas<sup>183</sup> has signed the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in March 2009. The Convention guarantees access to legal aid services for women, but the integration of the convention's provisions into local laws does not exist. Due to many reasons, one is the Palestinian Authority's lack of full statehood and other impediments.<sup>184</sup>

<sup>182</sup> WCLAC website

<sup>183</sup> He is the [President of the State of Palestine](#) and [Palestinian National Authority](#). He has been the [Chairman of the Palestine Liberation Organization \(PLO\)](#) since 11 November 2004, and Palestinian president since 15 January 2005 ([Palestinian National Authority](#) since 15 January 2005, and [State of Palestine](#) since 8 May 2005).

<sup>184</sup> Women's rights in the Middle East and North Africa, *Sanja Kelly & Julia Breslin*, 2009, p. 366, available online at: <http://sedighedolatabadi.org/>

## 6.5. Access to legal Aid for specific population groups

The only specialized legal aid services that are provided to specific population groups by the State laws are legal aid for juveniles and legal aid for the detainees in Israeli prisons. These are provided by the Commission of Detainees and Ex-detainees Affairs, which hires lawyers to provide legal aid to detainees in Israeli prisons.<sup>185</sup> There are no legal aid services provided by the State to other specific population groups such as people with special needs, although the Law on the Rights of Disabled Persons No. 4 of 1999 stipulates that the "State shall provide the person of special needs with tools to protect his or her rights." However it does not cover legal aid. Besides, there are no special legal aid services for the elderly, migrants and refugees, etc. Nevertheless, some NGOs provide special legal aid services to certain population groups. The Jerusalem Legal Aid and Human Rights Center is one NGO that provides special legal aid (legal representation and legal advice) to Palestinian citizens who live in Area C<sup>186</sup> and in East Jerusalem.

## 7. Finances

### 7.1. Costs to recipients

According to the Criminal Procedure Law and Juvenile Law, the legal aid services spelled out in both laws are free of charge for those meeting the eligibility criteria. In civil law, and specifically in labor cases where plaintiffs get a full exemption of court fees when they ask for their labor rights, the exemption covers all fees except for the court fees over requesting a compensation for extra work hours.

With respect to the request to delay payment of court fees, the applicant (plaintiff) can only benefit from the delay until the announcement of the final judgment in his or her civil case. The plaintiff shall pay all the court fees if his or her case is dismissed by the court since the rule states that if one loses the civil case, (s) he would pay the court fees.

### 7.2. Legal aid in the annual justice budget

There is no separate component on legal aid in the annual justice budget. The cost of legal representation in criminal cases is covered by court funds if the lawyer is directly mandated by the criminal court but if (s) he is not mandated directly by the criminal court but through an NGO, then the NGO shall pay the lawyer through national and international donors.

### 7.3. Payment to legal aid providers

Payment to legal aid providers largely depends on who has appointed the lawyer. If the lawyer was directly mandated by the criminal court, then the court's final judgment will decide on the payment of the lawyer

[books/Women's Rights in the Middle East and North Africa\\_Progress Amid Resistance.pdf](#)

185. Commission of Detainees and Ex-detainees Affairs website: <http://www.mhpss.ps/en/organization/ministry-of-detainees-and-ex-detainees-affairs/tUz-RrtXXVI=>

186. "It is an administrative division of the [West Bank](#), set out in the [Oslo II Accord](#). Area C constitutes about 61 percent of the West Bank territory. The Jewish population in Area C is administered by Judea and Samaria Area administration, whereas the Palestinian population is directly administered by the Coordinator of Government Activities in the Territories and indirectly by the Palestinian National Authority in Ramallah. The Palestinian Authority is responsible for medical and educational services to Palestinians in Area C, however infrastructure construction is done by Israel." See: [https://en.wikipedia.org/wiki/Area\\_C\\_\(West\\_Bank\)](https://en.wikipedia.org/wiki/Area_C_(West_Bank)).

(legal aid provider). The criminal court generally takes into consideration the average amount of fees lawyers receive in similar criminal cases.<sup>187</sup> For example, in felony crimes, the average legal representation fees do not exceed 600 EUR.<sup>188</sup> However, if the lawyer was not mandated directly by the criminal court but through an NGO, the payment system would be different. Most NGOs sign contracts with lawyers for a fixed amount of payment per month and this depends mostly on the financial situation of the NGO and other factors.

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187. Lawyers' fees are not transparent, but negotiated between lawyers and judges or established at the discretion of the judge based on his or her perception of the lawyer's conduct and other criteria as the complexity of the case or the time spent on it.

188. According to Mr. Firas Abdulghani, judge at the *Criminal Court of first instance in Nablus*.



## 4.8. Legal aid in Tunisia<sup>189</sup>

### 1. Country general facts

- **Governmental system:** Unitary system of government
- **Population:** 11.4 million according to the World Bank (2016)
- **Poverty rate:** 15.2% according to the World Bank (2015)
- **Unemployment:** 14.7% according to Statista.com (2017)
- **People's trust in courts (Justice):** According to the Tunisian ministry of Justice,<sup>190</sup> the introduction to the Strategic plan for the 2012-2016 period highlights that citizens' trust in the justice system is very low due to its rampant corruption. However, there are no statistics that focus on citizens' trust in Tunisian courts<sup>191</sup>.

### 2. Legal aid legislative framework

In Tunisia, legal aid dates back to the beylical decree of 13 August 1922, which limited its scope to civil matters and was subsequently amended in 1956 and 1959. The adoption of this decree enshrined legal aid in Tunisian positive law and was not influenced by Islamic law. It further underlines the awareness of fundamental rights and values in Tunisian law, especially the access to justice and the right to a fair trial, as well as all the aspects that they encompass, including the right to defence.

A specific law on legal aid was adopted in 2002 (Law No. 2002-52) and the right to legal aid was also recognized in the new Constitution of 2014. Nonetheless, the regulation of legal aid remains scattered throughout different texts, so that citizens may experience difficulties in accessing them or even in knowing about their existence. Hence a debate is open among civil society organisations and the different justice stakeholders,<sup>192</sup> *inter alia*, to harmonize the legal framework governing legal aid in Tunisia.

#### 2.1. The right to legal aid is provided for in the following legal provisions:

- Article 108 of the Constitution establishes the following: "Every individual is entitled to a fair trial within a reasonable period. Litigants are equal before the law. The right to litigation and the right to defence are guaranteed. The law facilitates access to justice and provides legal assistance to those without financial means."

189. In Tunisia, the terminology used in the legislation in force is 'judicial aid' (aide judiciaire). It comprises the part of legal aid whose cost may be covered by the State, i.e. the judicial assistance provided by a lawyer before the courts and all the legal fees incurred by the parties.

[https://asf.be/wp-content/uploads/2014/06/ASF\\_Tunisie\\_EtudeAideLe%CC%81gale\\_2014\\_6.pdf](https://asf.be/wp-content/uploads/2014/06/ASF_Tunisie_EtudeAideLe%CC%81gale_2014_6.pdf)

190. <http://www.e-justice.tn/index.php?id=1335>

191. Indeed, this study is mainly based on the following study: « L'état de l'aide légale en Tunisie », drafted by the Association tunisienne de lutte contre les MST et le SIDA (ATL) at the request and in direct collaboration with Avocats Sans Frontières (ASF). This study was published in 2014 and is available online:

[https://asf.be/wp-content/uploads/2014/06/ASF\\_Tunisie\\_EtudeAideLe%CC%81gale\\_2014\\_6.pdf](https://asf.be/wp-content/uploads/2014/06/ASF_Tunisie_EtudeAideLe%CC%81gale_2014_6.pdf)

192. For example, the conference « Les Assises de l'Accès à la Justice », held in Tunis on 21 - 22 June 2018, organized by ASF Tunisie in collaboration with the Ministry of Justice and the Ministry of Social Affairs.



Pursuant to article 20 of the Constitution,<sup>193</sup> international treaties have a status superior to that of laws and inferior to that of the Constitution, provided that such treaties were approved and ratified by the Assembly of the Representatives of the People. This means that article 14 of the International Covenant on civil and political rights, ratified by Tunisia in 1968, and article 7 of the African Charter on Human and Peoples' Rights, which enshrined the right to legal aid, are directly applicable before Tunisian courts.<sup>194</sup>

- Law No. 2002-52 of 3 June 2002: Tunisia is one of the few Arab States that has adopted a specific law that regulates legal aid. This law aimed to extend the scope of legal aid to criminal matters. It was followed by another law in 2007 (Law No. 2007-27), which further extended its scope to criminal cases subject to an appeal in cassation. Article 1 reads as follows: "Legal aid may be granted in civil matters to any plaintiff who is a natural person, at any stage of the proceedings. In criminal matters, it may be granted to the plaintiff and to the person submitting an application for review, as well as regarding misdemeanours punishable by at least three years of imprisonment, provided that the individual applying for legal aid is not in a situation of legal recidivism."
- Article 141 of the Code of Criminal Procedure provides as follows: "(...) the assistance of a lawyer is mandatory before the court of first instance when it rules on a felony and also before the criminal chamber of the Court of appeal. If the accused does not designate a lawyer, the president appoints one *ex officio*."
- Pursuant to Article 69 of the Code of Criminal Procedure: "At the first hearing, the investigating judge verifies the identity of the accused, inform them of the acts attributed to them, the legal provisions applicable to such acts and hears his or her statement, after informing him or her of his or her right not to respond in the absence of the counsel of his or her choice. This is expressly mentioned in the minutes. If the accused refuses to designate a counsel, or if the latter, regularly summoned, does not appear, the investigating judge may act. In the absence of choice, when the accused is charged with a felony and requests the appointment of a lawyer, one must be appointed *ex officio* by the President of the Court. This is expressly mentioned in the minutes."
- The Law No. 2016-5 of 16 February 2016 amended and supplemented the Code of Criminal Procedure. Pursuant to this reform, lawyers may be present from the moment the individual is apprehended. Furthermore, any individual (Tunisian or foreigner, accused or victim) has to right to call upon the assistance of a lawyer in case of custody at the police station, the National Guard or at the Customs. The individual in custody, or of his or her ascendants, descendants, brothers, sisters, or spouse, or person he or she chooses, or, if applicable, the diplomatic or consular authorities if the person held in custody is a foreigner, may request, during the custody, the designation of a lawyer in order to assist him or her during the questioning or his or her confrontation by the judicial police officers. In the absence of choice, when the suspect is charged with a felony and requests the appointment of a lawyer, one shall be appointed.<sup>195</sup>
- In administrative matters, legal aid is provided for in the Law No. 2011-3, which repealed Decree No. 74-882 of 1974 and article 30 of the Law of 1 June 1972 on administrative courts. It aimed to align

193. Article 20 of the Constitution stipulates that "International agreements approved and ratified by the Assembly of the Representatives of the People have a status superior to that of laws and inferior to that of the Constitution."

194. Some other international instruments should be taken into account in the field of legal aid, including: 1) United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, No. 67/187, 2012. [https://www.unodc.org/documents/justice-and-prison-reform/UN\\_principles\\_and\\_guidelines\\_on\\_access\\_to\\_legal\\_aid.pdf](https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf) 2) Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa, 22 – 24 Nov. 2004. 3) Basic Principles on the Role of Lawyers, adopted in Havana, Cuba, 27 August-7 September 1990: <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

195. Art. 13 of the Law No. 2016-5 of 16 February 2016, amending and supplementing some provisions of the Code of criminal procedure.

the legal aid regime before administrative courts with that of ordinary courts (*tribunaux de l'ordre judiciaire*).<sup>196</sup>

- Article 93 of the Child Protection Code states as follows: "The children's investigating judge informs the known parents, tutor or guardian about the prosecution. If the child or his or her legal representative does not designate a counsel, the judge entrusts the President of the section of the National Bar Council to appoint one *ex officio* (...)."
- Article 4 of the Law No. 2017-58 of 11 August 2017 on the elimination of violence against women stipulates that "the State commits to take responsibility for women who are victim of violence and the children who live with them, in accordance with the following general principles: (...)
  - Allow equal opportunities in the access to services in the different areas and regions,
  - Provide legal counselling to victims of violence and grant them legal aid,
  - Ensure support to victims of violence in coordination with the competent services in order to provide them with the necessary social, health and psychological assistance and to facilitate their integration and housing."
- Article 81 of Organic Law No. 2015-26 of 7 August 2015 on the fight against terrorism and the suppression of money laundering provides as follows: "Legal aid must be granted to victims of terrorism if they request it in order to initiate civil or criminal proceedings affecting them."

## 2.2. Scope of legal aid

Legal aid services are granted in civil, criminal, and administrative proceedings. They cover a high number of fees due for payment since the application is filed until the judgment is enforced. Pursuant to article 14 of the Law No. 2002-52 of 3 June 2002 on the granting of legal aid, partial or full legal aid includes the ordinary costs incurred by the parties, such as:

- The registration fees and stamp duties regarding the documents the applicant attaches to the application to establish his or her right;
- The penalties in case of delayed payment and the fines in case of non-payment of the registration fees and stamp duties within the established deadlines;
- The fees relating to expertise and other duties assigned by the court;
- The fees relating to the notarial documents whose delivery is authorized;
- The fees relating to the searches conducted by judges onsite;
- The appointed lawyer's fees;
- Summons and notifications fees;
- Legal notices fees;
- Translation fees, if applicable;
- Execution costs.

Article 2 of the 2002 Law recognizes legal aid to legal persons exercising a non-profit activity abroad and whose headquarters are located in Tunisia, and to foreigners where the Tunisian courts have jurisdiction over the disputes in which they are involved and in accordance with a convention on judicial cooperation in legal aid matters concluded with the State of which they are a national, subject to the principle of reciprocity.

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196. The provisions governing the beneficiary, the fees and the procedure are almost identical under both regimes.

The scope of the State's intervention is even broader under the Law No. 2017-58 of 11 August 2017 on the elimination of violence against women. The aid provided is not limited to judicial matters and instead encompasses legal matters. Articles 4 and 13 provide that the State must provide legal advice and support to women victims of violence. Under this law, they also benefit from the following rights:

- legal protection commensurate to the nature of the violence suffered, in order to ensure their safety, their physical and psychological integrity, as well as the administrative, safety and judicial measures ordered in this respect, in accordance with their specificities;
- access to information and legal advice on the available legal remedies and services;
- entitlement to judicial aid;
- fair compensation for victims of violence if enforcement is impossible with regard to the individual responsible for the act of violence. In this case, the State subrogates victims regarding the recovery of the disbursed amounts;
- the health and psychological monitoring, appropriate social support, and, where relevant, the entitlement to public and community support, including listening;
- immediate housing, within the available means.

## 2.3. Public awareness of legal aid

Some awareness measures on the right to legal aid have been adopted by the State, including specifying the steps and procedures that must be followed to receive legal aid on the official website of the Tunisian Ministry of Justice, under the 'Frequently Asked Questions' section.

On this official portal, individuals have access to several texts, forms, or requests for different judicial services. These documents include the procedures to be followed and the nature of the documents to be provided in order to benefit from the judicial services requested.

These measures are not sufficient in order to assess whether the public opinion is well informed in legal aid services matters.

Furthermore, the creation of a referring judge in charge of guiding the individuals willing to know a specific procedure, following-up a case at the court or unlock an obstacle hindering the normal course of a case.

In another initiative, Decree No. 1549 of 26 July 1993 created the office of the relations with the citizen in all the Tunisian ministries in order to provide information about the administrative reform.

## 3. Delivery model

### 3.1. Authority

The Law No. 2002-52 of 3 June 2002 on the granting of legal aid stipulates in article 1 that legal aid may be granted in civil and criminal matters. The responsibility for managing and administering legal aid services in civil and criminal matters falls under the Legal Aid Bureau (*Bureau d'aide judiciaire*), which operates through its Legal Aid Committee (*Comité d'aide judiciaire*). The latter is responsible for accepting legal aid requests, investigating the financial situation of the applicant, and deciding whether or not the legal aid

request should be granted or dismissed. The committee may also provide mediation services to the parties requesting legal aid. Each first instance court has a Legal Aid Bureau.

The members of the Legal Aid Bureau and their tasks are governed by the above-mentioned law. The Legal Aid Bureau is composed of:

- The public prosecutor or his or her deputy, as president;
- A representative of the Ministry of Finance;
- A licensed lawyer or his or her substitute at the Court of Cassation and appointed by the Minister of Justice on the proposal of the Bar Council for one year;
- A clerk appointed by the public prosecutor from among the staff of the court, as clerk.

As for legal aid in administrative matters, the Legal Aid Bureau at the administrative court (*Bureau d'aide juridictionnelle auprès du tribunal administratif* – hereafter, 'Administrative Legal Aid Bureau') is the office responsible for managing such services. The competent commission to decide on legal aid requests is composed of a judge, a lawyer, a representative of finance, and a representative of social affairs.

In case of conflict of jurisdiction between the ordinary courts and the administrative courts, a council on the conflict of jurisdiction decides on the matter.<sup>197</sup>

In a society where the need for legal aid is very high, civil society in general, and specialized NGOs play an increasing role in order to fill in the legal gaps and State's failure to act in this matter. These NGOs often focus only on the rights of a specific group of persons, such as women or children. They are often funded by national donors.

### 3.2. Legal aid service providers

In civil and criminal matters, the Ministry of Justice is the main provider of legal aid. There are two different types of legal aid offices:

- In civil and criminal matters, the Legal Aid Bureau is the specialized office in charge of deciding on legal aid requests under the Law No. 2002-52. It is located at the court of first instance.
- As for administrative matters, the Law No. 2011-3 created the Administrative Legal Aid Bureau. It is composed of:
  - A judge at the administrative court or a deputy of the same rank, as president;
  - An assistant judge at the administrative court or a deputy of the same rank, as member;
  - A representative of the Ministry of finance or his or her substitute, as member;
  - A representative of the Ministry of Social Affairs or his or her substitute, as member;
  - A licensed lawyer at the Court of cassation, as representative of the National Council of the Bar, or his or her licensed substitute in the same section, as member.

From an administrative point of view, this Legal Aid Bureau belongs to the Ministry of Justice.

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197. Organic Law No. 96-38 of 3 June 1996, on the jurisdiction of the ordinary courts and administrative courts and the establishment of a Council on conflicts of jurisdiction.

Legal aid services are also provided by non-governmental institutions and NGOs, including EU-supported projects aiming to improve the access to justice and the modernisation of the judiciary in Tunisia.<sup>198</sup>

### 3.3. Process for obtaining legal aid: objective criteria. Merit and means test

#### 3.3.1. In criminal matters

Based on the presumption of innocence principle, the rights to defence and to a fair trial are enshrined in article 141 of the Code of Criminal Procedure, with regard to felonies, and in article 13 of the reform of the Code of Criminal Procedure. If the accused does not choose a lawyer, the President of the Court must appoint one. This holds true before the Court of first instance and the criminal chamber of the Court of appeal. Such *ex officio* appointment is ensured regardless of the financial resources; it is not decided by the committee of the Legal Aid Bureau but falls under the remit of the investigating judge. Tunisian law enshrined this procedure solely in matters of felonies.

The 2016 reform of the Code of Criminal Procedure introduced in article 13 a new modality of legal aid. It established the obligation to appoint a lawyer, at the request of the suspect, during police custody, provided that the suspect is charged with a felony. However, the suspect of a misdemeanour or a minor offence in police custody has the right to choose a lawyer without requiring the State to do so.

Legal aid is granted following the same procedure if the defendant is a minor and does not have a lawyer ensuring his or her defence, in accordance with article 77 of the Law No. 92 of 1995 on child protection.<sup>199</sup>

Besides, pursuant to the Law No. 2002-52, legal aid may be granted in criminal matters to the plaintiff and to the person submitting an application for review, as well as regarding misdemeanours punishable by at least three years of imprisonment, provided that the individual applying for legal aid is not in a situation of legal recidivism.<sup>200</sup>

#### 3.3.2. In civil and administrative matters

In order to have access to legal aid in civil and administrative matters, the applicant must prove that (s)he does not have an income or that his or her actual annual income is limited and is not sufficient to cover justice and enforcement fees without affecting substantially his or her vital needs. In addition, the applicant must prove that the right invoked is well founded if the request for legal aid is in civil matters.<sup>201</sup>

Although these conditions are reasonable and logical, it should be noted that the absence of an objective definition or criterion on the indigence or poverty line makes the decision of the commission subjective, especially since no criterion on the qualification or evidence of poverty is defined; this leaves the applicant with the freedom to provide evidence of it by all available means.

198. [http://europa.eu/rapid/press-release\\_MEMO-17-1263\\_fr.htm](http://europa.eu/rapid/press-release_MEMO-17-1263_fr.htm).

199. Art. 77: "Judicial police officers may hear the accused child or undertake any procedure against them only upon informing the competent public prosecutor. If the acts attributed to the child are especially serious (gravité majeure), the public prosecutor must appoint a lawyer to assist the child, if the latter had not designated one."

200. Art. 1, Law No. 2002-52 of 3 June 2002 on the granting of legal aid.

201. Art. 3, Law No. 2002-52 of 3 June 2002 on the granting of legal aid.

The procedures relating to legal aid requests are set forth in articles 5 and 6 of the Law No. 2002-52, which stipulate that the requests are presented to the president of the Bureau of the court that has jurisdiction to decide on the case, either directly or by post by registered letter.<sup>202</sup> This request must include the surname and name of the applicant, his or her address, occupation, civil status, and the number of his or her ID, passport, or residence card for foreigners. It must also include an account of the subject-matter of the action, the number of the case if relevant, and the number of the issued judgment.

The applicant must attach to this request:

- a copy of the documents the applicant refers to concerning the entitlement of the right (s)he relies on;
- the documents justifying that the applicant does not have an income or that his or her actual annual income is limited and is not sufficient to cover justice and enforcement fees without affecting substantially his or her vital needs.

In the event that the applicant is not able to present all or some of the documents because (s)he cannot afford to pay the fees required to issue them, the registration fees, and the stamp duties, (s)he must mention it in the application.<sup>203</sup>

The decisions issued by the Legal Aid Bureau are not subject to appeal. However, a decision to dismiss the request shall be reasoned. If the dismissal is based on the failure to produce the required documents justifying the seriousness of the application, the concerned party may renew it as soon as (s)he has new evidence justifying his or her application.<sup>204</sup>

The legal aid service may be withdrawn at any moment, even upon the end of the proceedings for which it was granted, in the following cases:

- if the beneficiary eventually has actual income that makes them ineligible for legal aid;
- or if it appears that (s)he concealed his or her income, in which case, the president of the Bureau transfers the information to the public prosecution.

Full legal aid may be reduced into partial aid if the beneficiary eventually has actual income that makes them ineligible. In this case, the Bureau must establish the rate of the Treasury's contribution in covering the fees due for payment.

In administrative matters, article 13 of the 2011 law on legal aid before administrative courts sets forth the possibility, for the concerned party, to request a review of the rejection decision.

The Administrative Legal Aid Bureau may proceed to all the necessary inquiries to verify the actual income of the applicant.<sup>205</sup>

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202. Art. 5, Law No. 2002-52 of 3 June 2002 on the granting of legal aid.

203. Art. 6, Law No. 2002-52 of 3 June 2002 on the granting of legal aid.

204. Art. 13, Law No. 2002-52 of 3 June 2002 on the granting of legal aid.

205. Art. 8, Law No. 2002-52 of 3 June 2002 on the granting of legal aid.

If the statements of the applicant are fraudulently incorrect, (s)he may be sentenced to a term of imprisonment of 16 days to six months and/or a fine of 100 dinars to 500 dinars, besides the withdrawal of the aid.<sup>206</sup>

### 3.4. Appointment/assignment of legal aid providers

According to the Law No. 2002-52 of 3 June 2002 on the granting of legal aid and Law No. 3 of 2011 on judicial aid before administrative courts, legal/judicial aid providers are appointed by legal/judicial aid committees. "The clerk at the Legal Aid Bureau must, in all cases, notify the applicant, directly or through a registered letter with acknowledgement of receipt, all the decisions issued, within five days starting from the date of the decision. A copy of these decisions is notified to the President of the Court hearing the case, the Court officers appointed by the Bureau and the general treasury."<sup>207</sup>

Article 24 of the Law No. 2002-52 establishes the obligation of appointment of legal aid providers: "The appointed lawyers, court bailiffs and other court officers may not refuse to undertake the duties assigned to them except if there is a legally valid reason for it. In this case, the appointed court officer may ask to be discharged within three days starting from the date of the appointment's notification. If the reason invoked is well founded, the president of the Legal Aid Bureau proceeds to his or her substitution."

## 4. Services providers

### 4.1. Lawyers

As there is no official competition between legal and paralegal professions, lawyers have the exclusive right to legal representation under the Law No. 2002-52 and other laws in force. This means that there are no other professions linked to the defence of individuals before national courts. The appointment of these lawyers is done either by the President of the Court,<sup>208</sup> or by the board of the Legal Aid Bureau.<sup>209</sup>

### 4.2. Others (Clinics, NGOs) Provision of Legal Services: Pro bono and NGOs

As mentioned above, the need for legal aid is very high and the current state of legal aid services cannot respond to such need. Therefore, civil society organizations are called to play a role to fill in this gap. After the revolution, the associate sector has been exceptionally active. The number of active associations in human rights matters has increased significantly. In general, their scope of intervention focuses on specific themes, such as women's rights or the fight against torture. Some of them provide free legal assistance within their specific scope of action.

Besides, it is worth mentioning that the academia, law schools (professors and students alike), as well as law clinics do not offer legal aid services. Several NGOs provide free legal representation and many of them provide free legal advice. The following organisations should be mentioned:<sup>210</sup>

206. Art. 31, Law No. 2002-52 of 3 June 2002 on the granting of legal aid.

207. Art. 12, Law No. 2002-52 of 3 June 2002 on the granting of legal aid.

208. Articles 141, 69 of the Code of criminal procedure.

209. Art. 12, Law No. 2002-52 of 3 June 2002 on the granting of legal aid.

210. There are many active associations in the field of legal and judicial aid in Tunisia. Some of them are national, such as the 'Ligue tunisienne de

## 4.2.1. L'Association Tunisienne des Femmes Démocrates (AFTD)<sup>211</sup>

The Tunisian Association of Democratic Women (*Association tunisienne des femmes démocrates* – AFTD) was officially created in 1989. It is based in Tunis but has five antennas: Ben Arous, Sfax, Bizerte, Sousse, and Kairouan.

It advocates for full equality between men and women, notably by eradicating violence against women, achieving equal pay for both sexes, the fight against sexual harassment, horizontal and vertical parity between men and women in elections, and the improvement of women's status in rural areas. The Association created a Centre for listening and guidance of women victims of violence in March 1993 (CEOFV).<sup>212</sup>

The AFTD provides legal assistance and legal aid to women on violence and economic and social discrimination issues.

## 4.2.2. L'Organisation contre la torture en Tunisie (OCTT)<sup>213</sup>

The Organisation against Torture (OCTT) is an association that defends and advocates for human rights and provides assistance to victims of torture in judicial and medical matters. The OCTT has been active since 26 June 2003, but it obtained a visa to work legally only on 2 June 2011. It is based in Tunis, and when a case is identified, the file is sent to a lawyer belonging to the network of the association in Tunisia.

## 4.2.3. L'Association des Femmes Tunisiennes pour la Recherche sur le Développement (AFTURD)<sup>214</sup>

This association was born officially in January 1989 in the wake of the AFARD (*Association of African Women for Research and Development - Association des Femmes Africaines pour la Recherche et le Développement*). The AFTURD gather female researchers or women interested in activist research on women. Their members wish to promote a critical and constructive reflection on women's status in Tunisia in order to achieve their effective participation in development in all its dimensions: cultural, social, economic and political.

Moreover, the AFTURD has had a department of information, training, and communication since 2001. It is called the 'Tanassof' Area, created within the framework of the 'positive actions for women's citizenship rights and equal opportunities in the Maghreb' project. Its general objective is to support and strengthen women's capacities so as to reach real economic autonomy. This is therefore a real laboratory in which the association's research and actions are undertaken and its objectives are materialized. Furthermore, women are welcomed and guided towards different specialized female experts (lawyers, psychologists, psychiatrists) depending on their needs. These experts make their skills available to women in distress. A file is created when they arrive; it includes the information collected by a female counsellor which allow guiding the 'victim' towards one of the following desks:

droit de l'homme (LTDH), the 'Association de lutte contre la torture en Tunisie (ALTT)', the 'Conseil national pour les libertés en Tunisie (CNLT)', as well as union and professional organisations such as the UGTT. There are also international stakeholders in this field, such as the European Union, UNICEF, UNDP, which often fund local NGOs or work in partnership with them.

211. <https://www.escri-net.org/fr/membre/association-tunisienne-femmes-democrates-atfd/>

212. <https://inkyfada.com/2016/08/tunisie-centre-ecoute-femmes-violences/>

213. <https://www.facebook.com/octtun/>

214. <http://www.afturd-tunisie.org/>



- Legal advice and guidance desk (family law, labour law, union rights...);
- Listening, support and psychological guidance desk (mental health, relationship difficulties...)
- Professional advice and guidance desk (guiding women having difficulties in integrating the labour market).

Finally, the Tanassof area also provides support and coaching for young female entrepreneurs.

#### 4.2.4. Beity Association<sup>215</sup>

Beity is non-profit organisation that dates back to the revolution of 14 January 2011. It aims to reduce women's economic vulnerability and to support homeless women through the provision of the following services: housing, psychosocial support, legal counselling and support to economic reintegration.

The objectives of the association are:

- Promoting the rights of disadvantaged people to decent housing as recognized and protected in the International Covenant on Economic and Social Rights;
- Promoting equal access of women to heritage, property and housing as proclaimed in the Convention on the Elimination of All Forms of Discrimination against Women;
- Acting within the purpose of the recognition of the right to housing as a constitutional right;
- Acting against violence, discrimination and homelessness that threaten women, especially the most disadvantaged ones.

## 5. Quality safeguards

### 5.1. Qualification required (to become a legal aid lawyer/provider)

There are no specific requirements that qualify the lawyers appointed to provide legal aid to provide such services, whether they were appointed by the Court President or by the Legal Aid Bureau. However, in general, they must have a law degree and should be a member of the National Bar Council of Tunisia. Since 2010, the training of future lawyers is the responsibility of the ISPA.<sup>216</sup> Students are selected by means of a competitive exam organised every year. Before 2008, the third cycle in law granted direct access to the profession. This is no longer the case since the establishment of the entrance exam, which gives access to the ISPA for two years for students having a three-year degree, and for one year for those who are already specialized in law (four-year degree).

### 5.2. Accountability for the quality of legal aid services

If a legal aid provider (lawyer) is unprepared or unqualified, the proceedings are postponed, or the replacement of the legal aid provider is requested in order to represent the concerned party.

215. <https://arab.org/directory/beity-tunisie/>

216. The ISPA is the Bar School, created under the Law No. 2006-30 of 15 May 2006 amending and supplementing the Law No. 89-87 of 7 September 1989 on the organisation of the legal profession.

Legal aid providers may refuse to take a case when the Legal Aid Bureau (criminal and civil matters) or the Judicial Aid Bureau (administrative matters) ask them to do so. Nonetheless, this refusal must be based on legally accepted reasons, such as in case of conflict of interest. As mentioned by the law on legal aid, the legal aid provider must respond to the appointment within three days from the date of its receipt.

## 5.3. Monitoring the quality of legal aid services

There are no measures to monitor the quality of legal aid services funded by the State. The quality of legal aid (legal representation) must align with legal ethics that all lawyers must follow, as well as the principles that are stipulated in the lawyers' code of conduct, including regular attendance of all the client's hearing and maintaining the integrity of the profession.

Furthermore, there are no means allowing assessing the degree of satisfaction of the beneficiary, such as satisfaction surveys.

## 6. Provision of legal aid

### 6.1. Eligibility

#### 6.1.1. Eligibility in criminal legal aid cases

##### *Who is eligible?*

Under the Criminal Procedure Law No. 23 of 1968, legal aid is available to the individuals charged with a felony and who do not have a lawyer representing them. In this case, the court should hire a lawyer to defend them.

In accordance with the Law No. 2002-52 of 3 June 2002 on the granting of legal aid, legal aid is also granted in criminal cases to the defendants who cannot afford a lawyer due to their financial situation and to the applicants charged with a misdemeanour punishable with a prison term of more than years.

##### *At what stage of the criminal proceedings?*

Under the Criminal Procedure Law, legal aid is provided from the moment the Court is in charge of the case, and for any subsequent appeal.

In accordance with the Law on legal aid, legal aid is provided during the trial. Nevertheless, the decision to grant legal aid does not include any appeal, except if a new request for legal aid is filed.

The new Law No. 5-2016 introduced the possibility of resorting to a lawyer in case of police custody from the moment the suspect is apprehended.

## 6.1.2. Eligibility in civil legal aid cases

### *Who is eligible?*

In civil cases, legal aid is provided to the persons – natural and non-profit legal persons who have their headquarters in Tunisia – who meet the financial criteria and whose case is based on a serious reason,<sup>217</sup> according to the Law No. 2002-52 of 3 June 2002 on the granting of legal aid.

### *For what actions is a party eligible for legal aid?*

Under article 14 of the Law on legal aid, the legal aid services in civil cases include an exemption of the following fees:

- Court fees;
- Lawyers' fees;
- Experts' fees;
- Translation fees, if necessary<sup>218</sup>.

### *At which stage of the proceedings?*

Under the Law on legal aid, legal aid is provided during the trial. Nevertheless, the decision to grant legal aid does not include any appeal, except if a new request for legal aid is filed.<sup>219</sup>

## 6.2. Access to legal aid for vulnerable groups

### 6.2.1. Children's access to legal aid

The justice system comprises specialized courts, judges, prosecutors and social workers who work with child victims and accused children. The right to legal aid is recognized under the Law No. 92 of 1995 on child protection. According to article 77 of this law, the public prosecutor must hire a lawyer for the juvenile if (s)he does not have one.

In 2016, a new bill on child protection was drafted. It recognizes the right to legal aid as a fundamental and obligatory right for children who are victims of felonies.

### 6.2.2. Women's access to legal aid

Recently in 2017, a new law on violence against women was adopted. Article 13 guarantees women's access to justice, which comprises the following rights:

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217. See para. 3.3.

218. See para. 2.2.

219. Art. 17 of the Law No. 2002-52 of 3 June 2002 on the granting of legal aid.

- legal protection commensurate to the nature of the violence suffered, in order to ensure their safety, their physical and psychological integrity, as well as the administrative, safety and judicial measures ordered in this respect, in accordance with their specificities;
- access to information and legal advice on the available legal remedies and services;
- entitlement to judicial aid;
- fair compensation for victims of violence if enforcement is impossible with regard to the individual responsible for the act of violence. In this case, the State subrogates victims regarding the recovery of the disbursed amounts;
- the health and psychological monitoring, appropriate social support, and, where relevant, the entitlement to public and community support, including listening;
- immediate housing, within the available means.

## **7. Finances**

### **7.1. Cost to recipients**

The State covers the costs of primary legal aid services provided in criminal, civil and administrative cases to those who meet the eligibility criteria.

### **7.2. Legal aid in the annual justice budget**

The State covers the costs of legal aid from the public treasury, and there is no separate component for legal aid in the annual justice system

### **7.3. Payment to legal aid providers**

The payment process to legal aid providers is governed by Decree No. 2007-1812 of 17 July 2007 on the establishment of lawyers' fees and the remuneration of the experts appointed by a decision granting legal aid when these fees are borne by the beneficiary.

According to article 2 of the Decree, legal aid providers (lawyers) may ask for their legal representation fees upon the final judgment on the case for which they provided legal aid, through a request submitted to the Court that issued the judgment. The court determines the legal representation fees after consulting the president of the Legal Aid Bureau, taking into consideration the following factors:

- The level of the Court for which legal aid was provided.
- The nature and subject-matter of the case.
- The efforts provided by the legal aid provider (lawyer).

However, the average amount paid to lawyers is approximately 700 TND (220 Euros) per case.

Other legal aid providers (experts) follow a similar process to receive their fees for providing legal aid services, according to article 5 of the same law.

## 5. Main findings, shortcomings, recommendations and conclusions by the expert group on legal aid

### 5.1. Main findings and shortcomings in light of some CoE quality indicators

To draft this research on the legal aid country profile of Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia, and Palestine, minimum European and international standards on legal aid have been taken in consideration. These standards are related to several aspects of a legal aid scheme. The CoE has accepted some quality indicators to measure these minimum standards, some of which have been used in this research study in order to draft an overview of each country legal aid scheme: accessibility, eligibility, legal certainty and homogeneity, transparency, quality control, fairness, and accountability.

Below, the standards on legal aid in the countries under review are briefly analysed in light of these quality indicators.

#### 1. Accessibility

This indicator measures the facility of the legal aid system to ensure the right of all the citizens to a fair trial regardless of their financial capacity, as an expression of the overall rule of law system in a democratic country. States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the Constitution.

In most countries, the State guarantees access to justice for those who do not have the resources to afford litigation costs and lawyers' fees.

Most of the States guarantee it in their national legal systems at the highest possible level: the Constitution by, sometimes, recognizing the right to a fair trial or the right to justice for all.

Nonetheless, in some SPCs, the right to legal aid is not guaranteed at the highest level but in a procedural law and for exceptional cases only. This is the case in Jordan, as no State legal aid scheme is established or publicly funded. However, the Jordanian Criminal Procedure Law foresees the appointment of a lawyer for those accused of an offence punishable by hard labor or the death penalty.

In some other countries, legal counselling and legal assistance are not foreseen under the scope of the legal aid benefit. Only legal representation is covered by the legal aid benefit.

## **2. Eligibility**

The concept of eligibility enshrines all the criteria that enable the individuals or legal persons who lack the means or who are in special situations worth of being protected to defend their legitimate interest before the tribunals as far as the interest of justice so requires (the merits test).

In most countries under study, a merit test is carried out.

While the economic assessment is not conducted on the basis of a poverty threshold or objective criteria (except for Israel), the merit test is assessed in all systems. Furthermore, in the countries based on a dual authority delivery model, the merit test is assessed in both of them. Therefore, the interests of justice prevail over the financial situation of the potential beneficiary.

The Jordanian system is worth mentioning: legal aid is delivered by civil society through NGOs that provide legal representation to targeted vulnerable groups on the basis of a means test and a merit and sustainability test.

## **3. Legal certainty and homogeneity**

The general concept of legal certainty can be broken down into more specific sub-concepts related to the predictable outcomes of justice procedures in the field of legal aid. In particular, a consistent line of decisions settling similar resolutions countrywide for similar applications is a requirement aligned with the best European Acquis. The improvement of practices, and the standardization of proceedings and templates can be deemed a step in the best direction. Moreover, Article 5 of Council Directive 2002/8/EC provides that the economic situation of a person shall be assessed in light of objective criteria.

While clear proceedings and templates are used in most of the States under study, there are no established objective criteria to ensure a consistent line of decisions settling similar resolutions countrywide for similar applications, except for Israel's scheme.

Furthermore, as noted above, most of the States under study have not enshrined a specific threshold in a national law. It is desirable to establish a set of measures to objectively measure the eligibility of the applicant for legal aid. This is especially relevant concerning poverty thresholds, which should be recognised by a national law.

As said above, Israel is the exception and its system follows the standard that measures this indicator:

In this regard, the Moroccan representatives underlined during the seminar in Ljubljana the need to simplify the documents to be submitted alongside the application form in order to assess the financial situation of the applicant and potential legal aid beneficiary, especially in family law cases.

## **4. Transparency**

This concept involves ready availability of information about the whole legal aid procedure. In the framework of an open government philosophy, transparency is a current demand of modern civil societies in relation to public administration. Public awareness is therefore an important aspect.

Nevertheless, the study has revealed a lack of public awareness in the entire SPC area. The lack of information available about the right to legal aid, the mechanisms and templates to request it, and the conditions of eligibility indicates an important area for improvement and support.

It must be acknowledged, however, that the Moroccan and Algerian governments have recently undertaken advertising campaigns to raise awareness of children's rights. In this regard, the Algerian representatives pointed out that the website of the Algerian Ministry of Justice should be updated in order to raise awareness among the population. In addition, the whole website should be translated into several languages.

## **5. Quality control**

A wide range of quality benchmarks can help to measure the proper functioning of the system: protocols of quality measurement to ensure the fairness of the system, malfunctioning control mechanisms, periodical review of working methods, and continuous improvement and excellence policies (systems to ensure the quality of legal aid).

Again, the study has revealed a common lack of quality control of the system itself. The quality control is related mainly to legal aid lawyers more than to measuring the system and establishing improvement mechanisms.

Nonetheless, it should be noted that in some countries, e.g. in Israel, the Ombudsman gathers complaints about the malfunction of the system. In addition, legal aid services rendered by lawyers are being monitored by both bodies involved in legal aid services: the Ministry of Justice and the Israel Bar Association.

In light of the presentation on the research outcomes at the Ljubljana's seminar, the SPC representatives made some relevant contributions in order to establish quality control mechanisms.

In this context, the Algerian representatives suggested to create joint committees of all stakeholders with the duty to report to the Ministry of Justice on a biannual or yearly basis to enhance quality control.

The Algerian representative also suggested developing a list of lawyers ready to provide pro-bono services considering the quality and the training they need to fulfil their services in order to decrease the budget and improve services quality. In this sense, the Algerian Bar Association representative suggested the possibility of assigning legal aid cases only to lawyers with five years of practicing experience.

Finally, the Israeli representative suggested to create a joint committee in order to foster cooperation among all the stakeholders involved (NGOs, Ministry of Justice, and Bar Association) and to enhance quality control.

On the other hand, the Jordanian civil society representative expressed that, in terms of delivery model of legal and services, they follow the staff model (vs. judicare model).<sup>220</sup>

This is due to the fact that working lawyers in the office enhance the quality of the service (cooperating team and comprehensive support to vulnerable populations), even economic referral.

In order to increase the quality of the services, all the countries represented agreed on promoting continuous professional training for lawyers as a way to ensure their update and professional competitiveness.

## **6. Fairness**

Procedural fairness protects legitimate expectations as well as legal rights. The principles of ethics and fairness inspiring all the proceedings, daily practice, and decisions of a modern legal aid service build the needed complement to written legislation. In this sense, fairness is related to the equity of the proceedings and the protection of vulnerable groups.

The consciousness in all countries about the fairness of the system is very high. In most countries, the legislation establishes many cases for which the right to free access to justice is automatically granted.

It should be recalled that the definition of vulnerable group varies from country to country and depends, not only on the area and the surrounding areas, but also on the economic, social, and weather conditions of each society.

However, despite the particularities of each society, all countries devote specific attention to vulnerable populations, who, in most cases, are minors, women victims of gender-based violence, the disabled, and the respective refugees and asylum seekers.

In this regard, the Algerian representatives highlighted the need for wider automatic recognition of other vulnerable groups attended by specialized NGOs, such as single mothers, children, etc.

## **7. Accountability**

Accountability measures the degree to which the organization in charge of rendering a public service takes complete responsibility for what the organization did or failed to do (although it was its duty) and the degree to which such organization is able to give a satisfactory reason for it.

There is a common lack of accountability in all the SPCs under study. While the quality safeguards for the legal aid services provided are the same as the ones generally used (bar associations and their ethic rules for lawyers), accountability remains one of the main areas for improvement.

Nonetheless, civil society in Jordan is doing a good job in this sense; and the Legal Aid Department within the Ministry of Justice in Israel also performs well in civil and administrative matters.

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220. See the case study of Jordan.



## 5.2. Recommendations and conclusions

The **EuroMed Justice Regional Study on Legal Aid** aims to provide a brief summary of the current state of legal aid in eight countries of the Middle-East and North Africa – namely Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine and Tunisia – in order to identify the list of standards and good practices that these countries could adopt at the national level. Furthermore, a roadmap was elaborated on this basis in order to achieve and implement the good practices that were discussed during the Ljubljana's seminar among all participants.

Each country profile has been described answering a set of questions (based on a questionnaire drafted at the Luxembourg's seminar) related to legal aid. It is divided into seven main sections in order to benchmark the systems under study.

These seven sections are the following: **Country's general facts; Legal aid legal framework; Delivery model; Services providers; Quality safeguards; Provision of legal aid; and Finances.**

The content of these sections constitutes the basis to identify the three main pillars to achieve the objectives of this study, i.e. to identify the standards and best practices to be adopted at the national level. The shortcomings of the legal systems under review and main findings of the analysis have served to identify the best practices of each system, the SPCs' priority areas for support, and to describe a roadmap to achieve the agreed priorities. In short:

1. to identify the best practices and standards of the SPCs' legal aid delivery models;
2. to set up priority areas for support;
3. to draft a roadmap on how to move forward.

### 5.2.1. Preliminary remarks

**Access to justice is a fundamental right.** It is an essential part and instrument of human rights, stipulated and protected by the African Charter on Fundamental Peoples' Rights,<sup>221</sup> also known as "the Banjul Charter", the 2004 Arab Charter on Human Rights,<sup>222</sup> articles 2 (3) and 14 of the ICCPR,<sup>223</sup> articles 8 and 10 of the UDHR,<sup>224</sup> and the ECHR.<sup>225</sup> It is indeed an integral part of free access to justice for any individual, regardless of his or her social status or economic position according to Article 6 of the ECHR. It is considered as one of the main pillars of the rule of law and human dignity.

#### Legal aid is an essential tool in ensuring access to justice

It is the duty of States and governments to guarantee, organise, and finance legal aid systems that allow the people in need to obtain access to justice and essentially include the cost of legal advice, defence, and

221. <http://www.achpr.org/instruments/achpr/>

222. [www.icnl.org/research/library/files/.../arabcharter2004en.pdf](http://www.icnl.org/research/library/files/.../arabcharter2004en.pdf)

223. <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

224. <http://www.un.org/en/universal-declaration-human-rights/>

225. [https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)

representation by legal professionals, who are, for the most part, lawyers, as well as other legal-service providers, such as international and national organisations.

In **international law**, many other legal texts and judgments govern the practice of this right, in order to guarantee that the individuals in need of legal aid in a country other than that of their residence may also benefit from the system.

Other conventions also exist, such as the European Agreement on the Transmission of Applications for Legal Aid, signed in Strasbourg in 1977,<sup>226</sup> or the 1980 Hague Convention<sup>227</sup> intended to ease international access to justice, which provide a scheme of transmission of applications for legal aid between the contracting parties.

The **European Union** attaches fundamental importance to compliance with human rights and access to justice in accordance with Articles 2, 6, and 7 of the Treaty on the European Union (as amended by the Treaty of Lisbon<sup>228</sup>).

The Legal Aid Directive (Directive 2003/8/EC) adopted on 27 January 2003<sup>229</sup> applies, in cross-border disputes, to civil and commercial matters regardless of the nature of the court or tribunal. It shall not extend, in particular, to revenue, customs, or administrative matters.

It is also important to note that the European Commission has identified the following minimal procedural safeguards by issuing rules to ensure procedural rights in arrest-warrant proceedings for criminal matters, which include:

- **Directive 2010/64/EU on the right to translation and interpretation in criminal proceedings**<sup>230</sup>: access to free interpretation and translation; ensuring that persons who are not capable of understanding or following the proceedings receive appropriate attention.
- **Directive 2012/13/EU on the right of subjects to be informed of their rights**,<sup>231</sup> by notifying suspected persons of their rights (by giving them a written 'Letter of Rights').
- **Directive 2013/48/EU on the right to have access to a lawyer and the right of persons in custody to communicate with family members and employers**,<sup>232</sup> the right to communicate, *inter alia*, with consular authorities in the case of foreign suspects, and ensuring access to legal advice, both before the trial and at trial.
- **Directive 2016/800/EU on procedural safeguards for children**<sup>233</sup> who are suspects or accused persons in criminal proceedings.
- **Directive 2016/1919/EU on legal aid** for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.<sup>234</sup>

226. <https://rm.coe.int/1680077322>

227. <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>

228. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12007L/TXT&from=EN>.

229. <https://publications.europa.eu/en/publication-detail/-/publication/4b090f95-d97f-47f6-9b5c-6f68bd3c87c3/language-en>.

230. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0064>.

231. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012L0013>.

232. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0048>.

233. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0800>.

234. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1919&from=EN>.

- **Commission recommendation 2013/C 378/02 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings.**<sup>235</sup>

The diversity of the different legal aid schemes and national legal traditions must be taken into consideration in the implementation of this right. In particular, one of the main divergences, at least in European systems, lies in the existence of a State-run scheme (the administration of justice) as opposed to one governed by a delegated organization (bar councils) with supervision.

According to the European legal provisions on legal aid, which ensures access to justice, this right does not have to take a particular form. In this sense, States are free to decide how to meet their legal obligations.

These schemes can be complemented along with other support schemes such as pro-bono defence legal advice centres, which may be State-funded and run by the private sector or by NGOs/civil society.

Pursuant to EU standards, the right to access to justice should be guaranteed to all individuals, regardless of their financial situation. This requires States to set up appropriate legal aid systems. Nonetheless, according to article 47 of the EU Charter of Fundamental Rights, legal aid must be available “where the absence of such aid would make it impossible to ensure an effective remedy”.<sup>236</sup>

However, States do not have an obligation to ensure equality of arms to all parties with public funds. Furthermore, objective criteria in order to avoid arbitrariness are highly recommended. The **means and merit test** must be assessed in order to decide on spending public funds to ensure access to justice for those who need it most. A legal aid scheme should establish fair mechanisms for selecting cases likely to benefit from it.

The particular circumstances of each case are important, hence the interests of justice are also a key element to take into consideration when assessing whether to grant or not an individual with legal aid. Factors such as the importance of the case to the individual, the complexity of the case, and the individual capacity to represent his or her case without the assistance of a lawyer must be considered.<sup>237</sup>

If the merits and means tests are fulfilled, legal aid should be available at all stages of proceedings, from the preliminary police investigation, through the trial, and until the final determination of any appeal. In particular, it is crucial that all people accused or suspected of crimes who are unable to afford a lawyer are provided with speedy access to legal aid at the early stages of the criminal process.

## 5.2.2. Recommendations

In light of international standards, some recommendations have been accepted and minimum standards achieved with regard legal aid systems.

The main purpose of the chapter on the conclusions and recommendations is to analyze the efficient enforcement of the fundamental right to a fair trial, which starts with the right of access to justice by means

235. [https://eur-lex.europa.eu/legal-content/en/txt/?uri=uriserv:OJ.C\\_.2013.378.01.0008.01.ENG](https://eur-lex.europa.eu/legal-content/en/txt/?uri=uriserv:OJ.C_.2013.378.01.0008.01.ENG).

236. European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European law relating to access to justice*, 2016, p. 61.

237. ECtHR *McVicar vs. the United Kingdom*, N° 46311/99, 7 May 2002.

of legal advice which, in the case of insufficient economic capacity, must be funded by the competent public services in order to prevent any person from being deprived of a defence.

In the context of this study, and in order to improve capacity-building, some comments and conclusions arise in relation to the main sections selected to draft each legal aid scheme country profile.

## I. Legal framework and delivery model

1. Each country should have clear and coherent legislation about legal aid, including a competent co-ordination authority to administer legal aid and rules to guarantee standards for legal aid beneficiaries.  
If the legal framework is fragmented or missing, beneficiaries may find it very difficult to recognise their rights and apply for legal aid in case of real need. People must be duly informed of their right to legal aid. It is therefore necessary to encourage States to take initiatives to that end, such as the financing of awareness campaigns.
2. In order to fulfil its mandate effectively, the competent authority for the administration and management of the legal aid system should have sufficient powers and competences. A formal legislative framework is therefore desirable.
3. In order to be able to identify and address any possible problems, the legal aid authority should monitor the delivery and quality of legal aid. It is advisable to offer the beneficiaries the option of giving feedback on the services provided (in order to communicate satisfaction/dissatisfaction).
4. Moreover, in non-judicial procedures, the authority responsible for the granting of legal aid should be transparent and neutral.
5. Non-governmental organisations or voluntary organisations providing support to the very poor have an essential part to play in the efforts to bring the very poor closer to the legal system, in as much as they can facilitate the achievement of the objectives established in the fundamental right to a fair trial.
6. In order to guarantee the right to legal aid, the recognition and granting system must be accessible, simple and efficient.  
In addition, **e-management** should be introduced. Applying for legal aid could be made possible through a secure webpage that directly provides information and economic simulations. The applicant could fill in application forms on the Internet.  
This electronic-form option, through a secure network, would not replace traditional forms and procedures and would rather be a complementary option – efficient and cheaper in terms of financial savings, and human and environmental resources.
7. The system whereby legal aid cases are assigned to individual lawyers should be impartial and not be compromised by a special interest and ensure equal access to legal aid to the broadest range of individuals in need.

## II. The scope of legal aid<sup>238</sup>

Legal aid must cover the main national jurisdictional orders, e.g. civil, criminal, administrative etc. The right to access legal aid must include, *inter alia*, the following activities:

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238. CCBE Recommendation on Legal Aid, February 2018.

- I. **Assistance of a lawyer** (lawyer understood within the meaning of the United Nations Basic Principles on the Role of Lawyers of 1990<sup>239</sup> and Directive 98/5/EC<sup>240</sup>). Based on the concept of universal defence, the assistance of a lawyer must be granted to all, irrespective of residence or nationality and must cover every area of legal intervention before any courts or any other alternative dispute resolution (ADR) body. It must include:
  - a. **Advice before trial**, which includes in particular: information on the possible use of the legal aid scheme, which can be free depending on the case, as well as the content and scope of such a right; helping to legalise the legal aid request form; an assessment as to whether the application for legal aid will be successful; the designation or refusal of a lawyer's appointment as defender (provisionally and without prejudice to a subsequent resolution confirming the lawyer's appointment under the legal aid scheme); effects of the application on the limitation of action, suspension of proceedings, etc.
  - b. **Any type of proceedings**: even when the intervention of a lawyer is not obligatory, before any judicial or administrative body, including ordinary and extraordinary appeals, as well as the enforcement of judgments and decisions.
  - c. **The principle of unity of defence**: the same lawyer acts for all phases of the proceedings and potential ancillary cases, in certain areas defined by the bars.
  - d. **Coverage** of the various parties to the proceedings.
  - e. **Extrajudicial solution and ADRs**: The aim is not to establish quasi-judicial methods of conflict resolution specifically for the very poor, but to ensure that they gain effective access to the quasi-judicial services available to everybody.
  - f. **The intervention of a second lawyer** in especially important and/or long trials or where significant advocacy skills are required should be envisaged.
  - g. **The free choice of the lawyer** for the defence which guarantees the independence of the lawyer from judges and public prosecutors and guarantees trust between the client and lawyer. This is essential, especially in criminal matters.
2. **Assistance of multi-disciplinary experts**: Where the defence requires a technical report.
3. **Right to interpretation and translation**: This right must be guaranteed not only for pleadings in which the beneficiary must intervene, but also for the purpose of his or her full knowledge of the proceedings and in communication with the lawyer.
4. **Exemption from ancillary costs**: People who are below the thresholds set by national laws must have access to courts by being exempted from ancillary expenses such as notary and registration fees, publications, taxes, costs of filing legal documents, transportation costs and others.
5. To establish a **threshold (poverty rate)** in a national law.
6. Specific attention is required regarding the assistance to **suspects and vulnerable groups**. In criminal matters, specific attention should be attached to the assistance of suspects in certain trials (serious charges, judgments by jury, accelerated procedures based for example on INTERPOL red notices, etc.) and to ensure their access to information and communication about the alleged crime. Likewise, specific treatment—including preliminary advice—must be granted, by proper legislation, to the most vulnerable groups, such as victims of gender-based violence, minors, older persons, migrants, and people with disabilities.

239. <https://www.ohchr.org/en/professionalinterest/pages/roleoflawyers.aspx>.

240. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998L0005&from=EN>.

## III. Legal Aid Providers

1. The Council of Europe recommendations provide that “All necessary measures should be taken to ensure that all persons have effective access to legal services provided by independent lawyers.”<sup>241</sup> Furthermore, lawyers have a role to play in the delivery of information in relation to legal aid. The CCBE Code of Conduct<sup>242</sup> provides that “A lawyer shall inform the client of the availability of legal aid where applicable”.
2. Thus it is essential to recognise the critical role of lawyers in legal proceedings, in particular by highlighting deontological supervision and quality of service initiatives developed by bar associations.
3. In order to ensure the quality of legal aid services, all legal aid providers should, as a minimum, have a legal qualification and be able to practice as lawyers in the relevant jurisdiction. The core values of the legal profession on independence, professional secrecy, and the duty to avoid any conflict of interests serve as a guarantee that legal aid services are rendered according to the rule of law.
4. Lawyers should have the possibility to refuse a mandate only under certain conditions.
5. Legal aid beneficiaries should have a right to have regard to their preferences and wishes in the choice of legal representation. Particularly in criminal cases, the free choice of the legal aid lawyer is one of the criteria of effectiveness and quality of legal aid. These recommendations are therefore particularly important in criminal cases, and hardly less so in non-criminal cases. The lack of choice can potentially lead to discrimination between parties who can afford to choose a lawyer and those who cannot.
6. Continuing professional development and training for lawyers who provide services in the framework of legal aid should be implemented as compulsory or recommended, in order to comply with the standard on quality service. In this sense, specific training for lawyers related to soft skills, general competencies, updating legal knowledge, etc. should be promoted.

## IV. Finances. Budgeting of legal aid

1. States' financial commitment is needed to ensure the effective application of this fundamental right. A discussion of the economic aspect is unavoidable since such right needs proper funding. Without funding, or in case of budget reduction, States cannot obtain efficient results when ensuring such fundamental socio-legal services.
2. Legal aid is a fundamental tool for ensuring access to justice and should be guaranteed by States through the allocation of sufficient funding to ensure that no person entitled to receive legal aid will be left without it.
3. Each State should, in the process of preparing the budget for legal aid, take into account relevant indicators, such as the legal aid budget and the caseload of the previous year, together with an estimate of the expected number of cases.
4. Each State should ensure that all legal aid providers and other entities providing legal aid are duly consulted in the preparation of the legal aid budget.
5. Payment to Legal aid providers: States should ensure that lawyers receive fair remuneration for their services. Furthermore, lawyers' fees should cover all the expenses incurred.

241. [https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/Events/20101126\\_Brussels\\_50\\_anniversary/EN\\_Legal\\_Aid\\_recommendations\\_22\\_10\\_2010.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/Events/20101126_Brussels_50_anniversary/EN_Legal_Aid_recommendations_22_10_2010.pdf).

242. <https://www.eesc.europa.eu/en/policies/policy-areas/enterprise/database-self-and-co-regulation-initiatives/72>.

6. While increasing the fees is the main way to address this problem (fair remuneration), other measures such as providing free training opportunities or other support to them, like a lower fiscal treatment, could also be used.
7. Regulations governing the rates of fees and other terms of remuneration of legal aid work should be subject to regular review, which should consider factors such as inflation, changes in the cost of living, the provision of the relevant service, or the problems affecting the existing system.

## V. Some other general remarks

1. In view of the particularly precarious situation of the very poor, the immediate granting of provisional legal aid might be advisable even before the procedure for granting aid is completed.
2. Depending on the country and surrounding circumstances, funding for legal aid varies and is often very telling of the political and economic situation in the country and the wider region. However, where there is government funding, there is often political interference and in order to uphold the rule of law and maintain the principles of the separation of powers it is important that legal aid be administered by a separate appointed body. In most cases it is the legal profession itself.

## 5.2.3. Conclusions

The overall objective of this chapter is to analyse and assess the current legal framework and implementation of the legal aid system, with a focus on the identification of areas for support and best practices of the legal aid systems, with the aim to define inputs and suggestions for a draft of an ideal roadmap on how to move forward.

In this context, this study summarizes the good practices and shortcomings of the SPCs' legal aid systems in accordance with the analysis of each country profile, the recommendations drafted, and the discussion carried out during the Luxembourg and Ljubljana seminars with the SPCs' representatives.

In this context, and in light of the quality indicators, international standards, and recommendations, several areas of improvement have been identified by the SPCs' representatives. They also highlighted their own good practices and agreed on a roadmap highlighting general conclusions for the whole Euro-Mediterranean area.

The seminars have served:

1. to identify the good practices and standards of the legal aid schemes of the country under study and to establish priority areas for support;
2. to draft a roadmap on how to move forward.

The aim is to provide a general overview of the good practices of the Euro-Mediterranean area although it mainly describes areas for support.

## 1. Priority areas for support and good practices identified

These areas have been defined with the contribution of the discussions carried out in the seminars and summarized as follows:

### LEGAL AID LEGAL AND INSTITUTIONAL FRAMEWORK

#### *a) Improve and unify the legal Framework*

As mentioned above, a clear legal framework is a must. If the legal framework is fragmented or missing, beneficiaries may find it very difficult to recognise their rights and apply for legal aid in case of real need. It is highly recommendable to unify all provisions in one single and comprehensive text addressing legal aid.

In order to strengthen the governance of the system, dialogue among all the stakeholders in the legal aid scheme should be ensured in order to be able to move towards a regulatory framework that develops a broader model with a broader understanding of the concept of legal aid.

In this sense, including ADR for the most vulnerable populations would be an important improvement.

#### *b) Enhance the cooperation, coordination and synergy among stakeholders*

Enhancing cooperation and coordination among civil society, universities, the private sector, the Ministry of Justice, and bar associations would help to improve the delivery model and the efficiency of the system. It would also enhance quality control.

This is shown, for example, by the Israeli scheme. For instance, even though the system is based on a dual authority model in civil and administrative matters, the Bar Association pro-bono program is complementary to the Legal Aid Department's one (Ministry of Justice). Civil Society, through non-governmental organizations, play a key role in ensuring access to justice for all by focusing on rendering legal services to vulnerable groups.

In this sense, all the SPCs' participants agreed on the need to reach a holistic approach to all the stakeholders involved in providing legal aid —the Ministry of Justice, the Ministry of Finance, the judiciary, bar associations, civil society organizations— by establishing a coordination entity or the creation of an integrated system among the different participants and by sharing responsibilities among different institutions.

Furthermore, it would be desirable to create national commissions or committees and to differentiate between the body/entity, which approves or is responsible for the decision-making process for granting legal aid and the body responsible for quality control.

Finally, all SPCs agreed on the need to increase the role of the Ministry of Justice in supporting legal aid.



## LEGAL AID SCOPE: A WIDER AND INTEGRATED LEGAL AID CONCEPT

### a) A holistic approach

A new legal aid understanding must be defined, from a systemic perspective of a more comprehensive, integrated, and understandable model.

This measure may increase the effectiveness of the system that shows the degree to which objectives attached to legal aid are achieved and the extent to which this service is provided in real terms.

The EU guarantees that the formal rights granted by the legislation can be exercised by all citizens in an effective way.

Effectiveness has to do with, *inter alia*:

- The extent and contents of legal aid (pre-litigation advice, legal assistance and representation in courts and exemption from – or assistance with – the cost of proceedings, including costs the connected to the cross-border nature of the case);
- The facility or complexity of the application proceedings;
- The predictability of the response.

### b) ELIGIBILITY: implication of the procedures to approve/to grant potential beneficiaries with legal aid benefits.

Legal aid is generally subject to a financial means and merits test. States can decide whether it is in the interest of justice to provide legal aid, considering the importance of the case to the individual, the complexity of the case, and the individual's capacity to represent his or her case without the assistance of a lawyer.

Pursuant to CoE law,<sup>243</sup> an explicit right to legal aid in criminal proceedings is enshrined in Article 6 of the ECHR. It provides that anyone charged with a criminal offence has a right to free legal aid if (s)he does not have “sufficient means” to pay for legal assistance (the financial or means test), where the “interests of justice” so require (the interests of justice test).

Concerning the means test, the criteria to grant legal aid depend mainly on the subjective assessment made by the competent authorities, i.e. the Ministry of Justice (legal aid bureaus/ legal aid departments), the courts, the prosecutor office, or bar associations.

No thresholds or objective criteria are enshrined in the law.

It is desirable to establish a set of measures to objectively measure the eligibility of the applicant for civil legal aid.

Finally, the right of access to a lawyer in criminal proceedings applies throughout the entire proceedings, from police to the appeal. And this legal provision should be maintained alongside the means test, which should be assessed in parallel.

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243. Handbook on European Law relating to Access to justice.

## *c) Vulnerable groups and sub-groups: children born outside marriages, single mothers, refugees.*

Besides the specific needs of each target group, there are several **barriers** that are common to all that may jeopardize their rights to access to justice, this include the following:<sup>244</sup>

- Legal and institutional discrimination: Even when laws themselves are not discriminatory, systematic or *de facto* basis and discrimination against disadvantaged/vulnerable groups may result in unfair rulings, inappropriate conduct or inadequate services for disadvantaged groups.
- Informal systems (e.g. mediation and other quasi-judicial systems) can be equally discriminating against certain groups, as traditionally, the laws may benefit to those who are positions of power.
- Insensitivity/lack of awareness of particular needs: Even when disadvantaged groups are able to access the formal system, they may not receive the services they require or be mistreated by legal personnel.
- Lack of physical access to courts: Claimants may need to travel long distances to reach a court. For people with disabilities, physically getting into the courthouse may also prove to be difficult.
- Insufficient outreach to disadvantaged groups: The formal justice system must provide disadvantaged groups with access to information through legal awareness and literacy programs so that they know what services are available and how to seek remedies for grievances.

There are several **common obstacles** that vulnerable groups face to access the justice system and benefit from legal aid:

- Lack of information and knowledge about their rights and how to access legal assistance. For various reasons, such as the lack of education or poverty, disadvantaged groups do not have knowledge about their rights to access justice. This leads to mistrust in the effectivity of the system.
- Language or communication barriers. All groups find problems not only to communicate and to explain the concerns affecting them but also to understand legal terms and to obtain the assistance of qualified translators.
- Discrimination and lack of social and cultural integration.
- Difficulties in proving their lack of means or providing the documents required in order to obtain the benefit of free legal aid.

During the discussions among the SPCs, it was agreed that a better access to justice for vulnerable groups could be reached by creating, under the scope of legal aid, a multidisciplinary professional team supporting the lawyers and vulnerable persons – for instance in family law matters.

It is desirable to build a holistic model of support hand in hand with the legal aid scheme, through the creation of mediation psychosocial units and the promotion of cooperation between the social and legal aid structures in order to integrate legal aid into the social structures. The overall objective is to get closer to citizens and to improve legal aid outreach, including to raise public authorities' awareness of vulnerable groups' needs and refugees special issues (translation, interpretation, etc.).

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244. All the following barriers and explanations are taken from: UNDP, 'Disadvantaged Groups' in Programming for Justice: Access for All, A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice, United Nations Development Programme, 2005, New York, ch. 6.

During the discussions on vulnerable groups and subgroups, it was agreed that it is highly recommended that NGOs fill in the gaps related to the vulnerable groups' needs together with bar associations. The focus on these groups with special needs by civil society organizations and bar associations through their pro-bono programs is a good practice.

Finally, it is also desirable, according to the SPCs' discussions, to prepare a training professional scheme in order to increase the knowledge and awareness of lawyers and judges of international instruments in order to better assist refugees unaware of their rights.

## *d) Implementing automatic recognition of legal aid*

It is highly recommended to conduct a feasibility study on the appropriateness of an automatic recognition of the right to free legal aid to targeted disadvantaged groups in order to avoid the obstacle that some groups (refugees, minors, etc.) face when they are unable to provide all the documents or requirements to prove their eligibility or even their own identity.

These practices have been set up in some SPCs, but this automatic recognition should be set out in a legal provision as a general rule.

Likewise, for the efficiency of the system it is desirable to establish a solid cooperation regarding targeted vulnerable groups among NGOs, bar associations, and public institutions.

## *e) Use of e-justice systems*

This would require implementing a system allowing applicants to request through a single online entry point judicial aid for legal costs and the appointment of a lawyer. This spares applicants from having to gather documentation to support their applications and dramatically reduces the time needed to process applications.

## *f) Installation of an information system dedicated to legal aid*

### **LEGAL AID PROVIDERS (ACCESSIBILITY: ENSURE ACCESS TO LEGAL AID)**

As a general rule, lawyers should be involved since the first moment of the procedures, especially when they represent individuals belonging to targeted vulnerable groups.

## *a) To provide specialised trainings and capacity building for lawyers*

As for the quality of the service, some aspects may clutter the overall picture. Most of justice key players expressed their concern about the lack of specific training. This circumstance is closely linked to budgetary restraints and it has an impact not only regarding the quality of the service provided to citizens but also regarding the justice system in general.

In particular, with regard to lawyers, the professional profile can only be reinforced throughout a solid scheme of training.

In the same priority line, the lack of main specialized areas of practice by matters may undermine the quality of the service. Bar associations are exploring this path with promising outcomes, namely with regard to the protection of victims, gender-based violence, and migration issues. It is desirable to offer specific training programmes in order to strengthen the capacities and skills of legal practitioners and judicial players. These programmes may be compulsory for the lawyers involved in legal aid, especially when dealing with vulnerable groups.

It is thus recommendable to train expert lawyers in specialized proceedings and more specifically when vulnerable groups are involved.

## *b) Encouraging – incentives for legal aid lawyers*

Some measures were proposed in order to encourage lawyers to participate as legal aid providers. For instance, the establishment of a yearly pro-bono award may encourage them to do so and increase the quality of the service provided.

## *c) Requirements to become a legal aid lawyer*

Legal aid is a tool to guarantee, from the State, the access to justice to those that need it most due to their financial situation or vulnerable position. In all the countries under review, the lawyer cannot be chosen within the legal aid scheme. Thus, a good practice consists in requiring five years of practicing experience to legal aid lawyers.

## *d) Quality safeguard*

It was agreed that quality legal aid services should be ensured through common guidelines in the region and that it is necessary to understand that the right to legal assistance is a right to effective assistance and representation.

## **MONITORING AND CONTROLLING**

The lack of robust and holistic monitoring systems in the region shows a need to strengthen cooperation among all the stakeholders providing legal aid such as NGOs, bar associations, and public institutions.

In this sense, the Ministry of Justice and the judiciary play a key role in monitoring the quality control of legal providers and of the system itself. This role is essential, especially when the legal services are rendered to individuals belonging to vulnerable groups.

A wide national monitoring mechanism should be implemented or enhanced with the aim of measuring the legal aid scheme and drive it through the work and efforts done by all stakeholders. Thus, joint committees should be created to review the provision of legal aid with the duty to report to the Ministry of Justice on a biannual or annual basis.

A controlling quality mechanism for the lawyers' services rendered is not formally set up besides the common ethic rules for the profession.

Finally, a complaint mechanism against the lawyers' service should be established as it is the case in some SPCs through the office of the Ombudsperson.

## BUDGETING AND FINANCES

### Resources to find sustainable models of budgeting

As good practices and areas for support in the near future have been identified, a roadmap has been agreed upon by all the SPCs' representatives in order to further improve legal aid systems.

### 2. Roadmap to move forward

The SPCs' representatives along with the EuroMed project team agreed, for the near future, to focus on the following steps to be adopted at the national level:

#### 1. **LEGISLATIVE AND INSTITUTIONAL LEGAL AID FRAMEWORK**

- Enhancing the legislative framework;
- Fostering campaigns calling for the legislative amendments in order to provide more safeguards and improve the legal framework;
- Foreseeing the recognition of legal aid and the access to justice as a fundamental right (balance between security and human rights - Egypt);
- Fostering and facilitating public access to information on fundamental rights (access to justice and legal aid) by updating the information available on the websites of the Ministry of Justice and bar associations.

#### 2. **WIDENING THE SCOPE OF LEGAL AID**

- Interpretation and translation, and access to information on procedural rights should be included within the scope of legal aid; the budget should be allocated to legal aid accordingly.

#### 3. **SERVICES PROVIDERS: E-MANAGEMENT INCLUSION**

- To make efforts in order to build an IT system allowing the submission of documents electronically or online.

#### 4. **BUDGETING OF LEGAL AID**

- To include bar associations —to be duly consulted or involved— in the drafting of the legal aid budget.

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