



## **FOREWORD**

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Dear Colleagues,

Due to the industry of Peter van den Biggelaar Vice Chair of ILAG, we have another thought-provoking newsletter for ILAG members. This time it has three contrasting papers all focusing on different aspects of ILAG's central mission, fostering evidence-based policy making. The first, by Dr. Jin Ho Verdonshot, Knowledge Center Dutch Legal Aid Board, reveals yet again the forward-thinking characteristics of the Dutch Legal Aid Board. Wondering, like so many other policymakers before them, as to how well their legal aid system is performing for their citizens the Dutch resolved to implement a systematic monitoring and evaluation programme, to assess just this. Atanas Poitov and Joanna Khatib explore a complementary theme, namely the evolution of pro bono support for citizens in continental Europe. Thirdly, Madhurima Dhanuka, from the Commonwealth Human Rights Initiative, has conducted research into the 54 legal aid systems of the Commonwealth regarding safeguarding the rights of pre-trial detainees. Three different papers from different parts of the globe, each with key lessons to impart in relation to enhancing Access to Justice.

As most of you will know, I hope, in June we will have our biennial opportunity to discuss in depth these and other challenges to Access to Justice, at the next ILAG conference to be held at Harvard University, USA 21-23rd June 2023. Most significantly, given the impact of COVID, it will be our first opportunity to meet in person as a group since our gathering in Ottawa, Canada in 2019. The conference will be discussing a wide range of contemporary issues, including, but not limited to: *UN Sustainable Development Goal 16.3; the cost-effectiveness of legal aid; holistic approaches to service delivery; crime and access to justice; where the legal aid lawyers of the future will come from; technology and innovative forms of delivery; self-help and litigants in person.* I look forward to seeing many of you there. There is a registration fee which is little more than in Ottawa which will cover all conference costs, including the conference venue, conference materials, lunches, and refreshments throughout the conference as well as the conference dinner. Further details as to the conference venue and the hotels, and the registration process can be obtained from Ms Eileen Ritchie, email address: [eileen.ritchie@ilagconference.com](mailto:eileen.ritchie@ilagconference.com). We will be sending out the formal invitation to register with the on-line shop for the conference in the next two weeks.

Finally, thanks are due to our webmaster Paul Ferrie for putting together the news items accompanying this Newsletter and for the formatting of the Newsletter itself.

Ever best wish,

A A Paterson

## **COMPARATIVE RESEARCH ON LEGAL AID SYSTEMS ACROSS 54 COUNTRIES: MILES TO GO...<sup>1</sup>**



**MADHURIMA DHANUKA**

*PROGRAMME HEAD, PRISON REFORMS PROGRAMME,  
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December 20<sup>th</sup>, 2022 marked the 10-year anniversary of the adoption of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems by the UN General Assembly. The principles recognize legal aid as an essential element of a fair, humane and efficient criminal justice system, providing guidance to states on how to implement this right in practice. However, one must acknowledge that despite the extensive guidance, a large number of persons accused of offences, unable to afford legal representation, remain unrepresented or do not receive effective or prompt legal assistance. This is indicated from a recent research study conducted by the Commonwealth Human Rights Initiative (CHRI) – ***‘Guilty till Proven Innocent? Safeguarding the Rights of Pre-trial Detainees across the Commonwealth’***, which made an enquiry into the legal aid systems of 54 countries of the Commonwealth.

Identifying a robust state-funded legal aid mechanism as an integral safeguard to protect the rights of pre-trial detainees, the report explored the availability of the right to legal aid for suspects, arrested persons and prisoners; the eligibility criteria for availing legal aid; and the specific mechanisms through which legal aid is made available at different stages of a criminal proceeding. The report identified good legislative practices that can be replicated in other jurisdictions. This would further adherence of UN member states to Principle 3 of the UN Principles which sets out the responsibility of the state to ensure that anyone who is arrested, detained or charged with a criminal offence punishable by a term of imprisonment or death penalty is entitled to legal aid at all stages of the criminal justice process.

Some of the **key findings** emanating from the research include:

- In only 21<sup>2</sup> of the 54 countries legal aid is available for suspects.

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<sup>1</sup> Written by Madhurima Dhanuka, Programme Head, Prison Reforms Programme, Commonwealth Human Rights Initiative and the Lead Author of the CHRI report – ‘Guilty till Proven Innocent: Safeguarding the rights of Pre-trial detainees across the Commonwealth’

<sup>2</sup> Canada, Cyprus, Fiji, The Gambia, India, Kenya, Malawi, Malaysia, Maldives, Malta, Namibia, New Zealand, Nigeria, Solomon Islands, South Africa, Tanzania, Trinidad and Tobago, Uganda, UK, Vanuatu and Zambia

- In 25<sup>3</sup> countries legal aid is available for arrested persons.
- In 9<sup>4</sup> countries legal aid was not available for prisoners during the course of their trial.
- Some countries there was no national legal aid body, and legal aid was provided through law firms, law school clinics, bar associations or non-profit organisations.
- The right to legal aid was not enshrined in the Constitutions of all countries.
- In several countries<sup>5</sup> legal aid was only provided in trials for offences punishable with death.
- The eligibility criteria differed across jurisdictions, with some countries applying extensive criteria, which effectively placed limitation on the number of people who could avail legal aid. These criteria included the jurisdiction test, means test, merit test, matters test, availability of funds test and interest of justice test. Only few countries provided legal aid to all persons in custody, irrespective of other eligibility criteria.
- Lengthy procedures for acceptance of legal aid applications led to non-availability of access to legal advice at time of questioning and interrogation.
- In very few jurisdictions, the police were obligated to inform the accused person of their right to counsel.
- Specific mechanisms for provision of legal aid for suspects and arrested persons exist in select jurisdictions, mostly through duty counsel systems available either at police station or courts.
- Specific mechanisms for providing access to legal aid for prisoners existed in even fewer countries, mostly through prison legal service visits or prison legal aid clinics or mobile clinics for remand prisoners etc.

In addition to the above, the report looked into other pre-trial procedures and safeguards (see box below for details) available in legal and policy frameworks of the 54 countries, identifying good legislative practices where found. Some of the other interesting findings of the analysis include:

- Once detained or arrested, the time within which a person is brought before a judge or competent authority varied from 6 hours to 7 days.
- In 34 countries criminal proceedings continue despite the absence of a lawyer to defend the accused.
- Mechanisms to periodically review the need for continued detention of pre-trial detainees were available only in 10 countries.
- Very few countries prescribe a timeline for completion of investigation and trial, with even fewer defining the maximum period of imprisonment for a pre-trial detainee.
- Laws of very few countries define an illegal arrest and include remedies against such arrests.
- The absence of any robust international standards that specify the consequences in trial proceedings where an accused goes unrepresented, which often makes the right to legal representation and legal aid meaningless.

The report was released at the Commonwealth People's Forum during the Commonwealth Heads of Government Meeting in Kigali in June 2022 and also provides an insight into:

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<sup>3</sup> Canada, Cyprus, Fiji, The Gambia, India, Jamaica, Kenya, Malawi, Malaysia, Maldives, Malta, Mozambique, Namibia, New Zealand, Nigeria, Papua New Guinea, Seychelles, Solomon Islands, South Africa, Kingdom of Eswatini, Tanzania, Trinidad and Tobago, UK, Vanuatu and Zambia.

<sup>4</sup> Antigua and Barbuda, Dominica, Guyana, Kiribati, Papua New Guinea, Rwanda, St Kitts and Nevis, St Lucia and Tuvalu.

<sup>5</sup> Belize, Botswana, Brunei, Grenada, Pakistan, Sierra Leone, and Singapore.

- the past initiatives of the Commonwealth bodies and heads of governments in enhancing rule of law and people's access to justice;
- the statistical trends on imprisonment, prison occupancies and pre-trial detention in the countries of the Commonwealth;
- reporting by Governments on Sustainable Development Goals Target 16.3.2.

The report assumes importance given the increase in the number of pre-trial detainees worldwide. The presumption of innocence is one of the most revered human rights principles, yet one finds that 1 in every 3 persons detained in prisons across the world is a pre-trial detainee.<sup>6</sup> A large number of these persons spend years in detention awaiting trial, thus for them the presumption appears to have become of guilt rather than innocence. The COVID-19 pandemic has further precipitated this crisis in prisons worldwide, with recent prison population figures indicating a further increase in the period of detention of pre-trial detainees.

The report calls upon governments to:

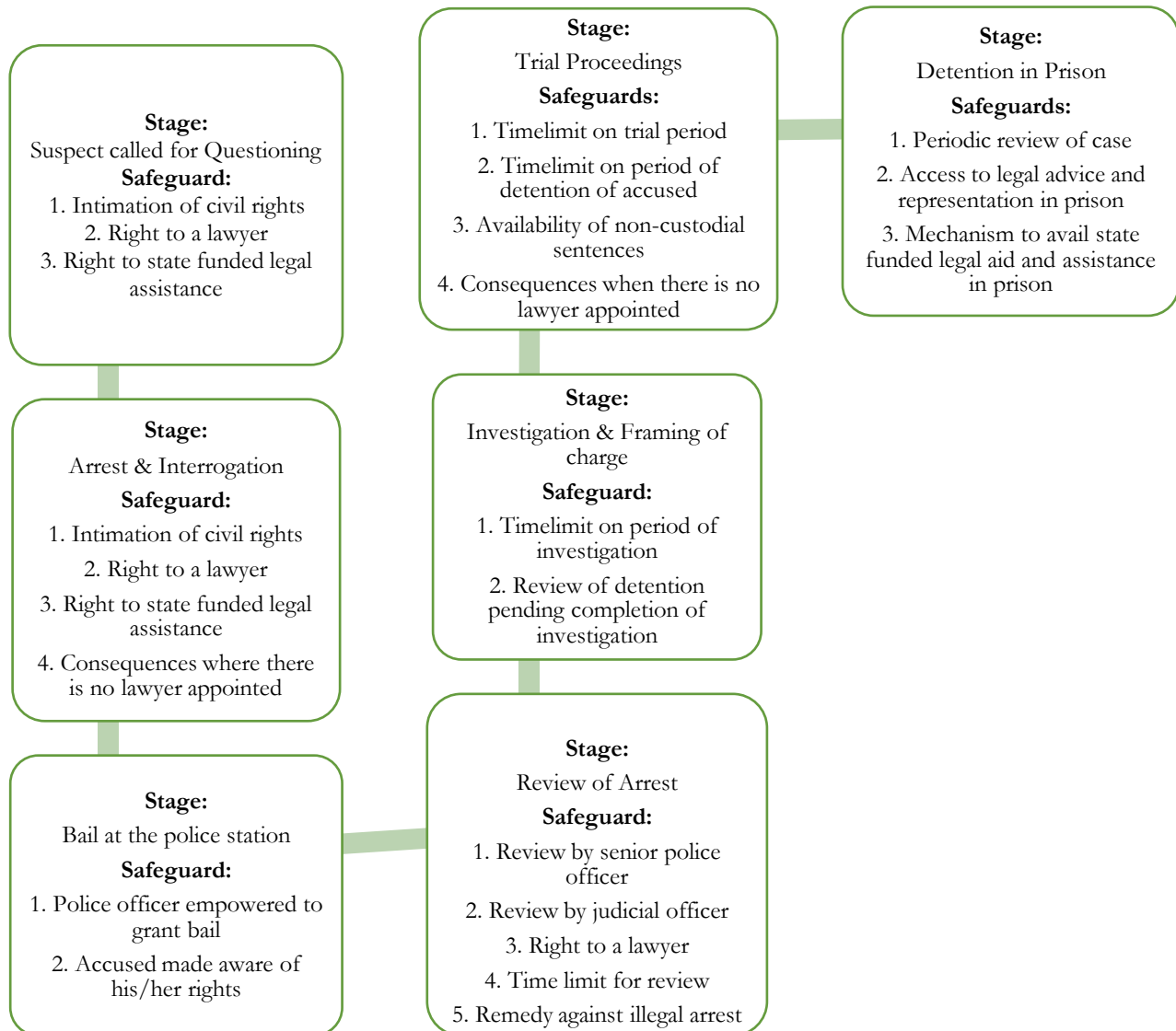
- ✓ prioritise efforts to address the increasing use of pre-trial detention;
- ✓ ensure that cases of pre-trial detainees are subject to regular reviews;
- ✓ re-examine their arrest laws, and ensure that grounds of arrest are clearly defined and arrests are reviewed by senior police officers;
- ✓ implement enabling legislations that further the realisation of constitutional promise of legal representation;
- ✓ explore alternatives to pre-trial detention; proactively share data and statistics on arrests and detention;
- ✓ report on SDG indicator 16.3.2 on proportion of unsentenced prisoners in their voluntary national reports; and
- ✓ to make their legal aid systems more robust.

The research findings are relevant to academicians, experts, lawyers, government functionaries, legal service providers not only in the jurisdictions covered by the report, but also in others. One hopes that the research will encourage a closer look at safeguards necessary to prevent unnecessary detention and enable adoption of good legislative practices in other jurisdictions.

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<sup>6</sup> Global Prison Trends 2022, Penal Reforms International.

## Important Pre-trial Procedures and Safeguards



## **HOW WELL ARE WE DOING FOR OUR CITIZENS? IMPLEMENTING SYSTEMATIC MONITORING AND EVALUATION IN THE DUTCH LEGAL AID SYSTEM**

### ***DR. JIN HO VERDONSCHOT***

*Dr. Jin Ho Verdonschot currently is Advisor Knowledge Center of the Dutch Legal Aid Board. He has been working on access to justice issues for the past 20 years as a researcher and advisor, and in the private sector as an entrepreneur and board member. His work experiences cover Europe, North America, Asia and Africa.*



How is the Dutch legal aid system performing for our citizens, service providers, and society? Without the availability of systematically collected data, this question remains difficult to objectively answer.

Three years ago, the Dutch Legal Aid Board initiated the creation of a Knowledge Centre for the Legal Aid System. It is accommodated by the Legal Aid Board but has an independent position when it comes to researching the legal aid system, and proactively involves partners in the system. One of its key assignments is to monitor and evaluate the performance of the legal aid system. The scope of research includes the services of the Dutch Legal Aid Board but extends to the is broader than this.

The Knowledge Center fills a void since currently there is no central point where knowledge about the different elements of the legal aid system is systematically collected and analysed. Although several initiatives (most often more incidental projects) exist, combined insights are required for an overall perspective. Moreover, most data is output data, indicating how many people applied for a subsidised lawyer specified for different type of legal problems, or how many people contacted the legal services counter for advice. Experiential data (reflecting experiences of citizens and professionals) is more scarcely collected. This is similar for objective data that indicate quality, time expenditure and effectiveness of legal aid.

### ***Measuring the experiences of citizens and professionals***

Broader monitoring and evaluation are critical for several issues. Firstly, it provides insight in how well the system serves citizens. What are the experiences of them while they navigate different processes? How comprehensible are the points of legal advice, what is the performance of legal aid lawyers in terms of procedural, informational, and interactional justice? Additionally, systematic collection of experiences of legal aid professionals provides a rich source of data and learning. A 360 degrees feedback loop gradually provides a solid basis for evaluation of how the legal aid system functions.

The first experiences with such feedback loop were gained via a (longitudinal) monitoring and evaluation study of a special arrangement designed for self-help support for “minor” legal issues. The assumption that people can deal with minor tax issues, conversation with Child Protection, and others. This arrangement provides those people with a “light” advice and support service. The Knowledge Center, together with the Dutch Legal Services Counter, measured citizens’ and legal aid lawyers’ experiences. The results will be available during the first quarter of this year.



This approach is now gradually extended to more legal issues and the feedback loop will become an instrument that is structurally and broadly used. Additionally, a measurement instrument is developed that follows people throughout their entire path to justice. It will collect data about the situation of people 6-12 months after they received an outcome, to track its impact: is the problem solved, have people been able to move on, did follow-up issues arise?

### ***The expediency of legal aid***

Systematic monitoring and evaluation helps us to develop insight in the expediency of the legal aid system and legal aid lawyers. Currently, data about the time spent by legal aid lawyers is hardly available. The most recent available data dates back more than five years ago, when a study covering a sample was commissioned as part of a broader review of the legal aid system. At the same time, there is an ongoing debate about appropriate levels of compensation.

The Legal Aid Board and the Knowledge Center are developing a methodology for systematically collecting data about the time legal aid lawyers spent on different tasks during different stages of a procedure. Collection will take place across different legal problems. Such data not only will provide an empirical basis to discussion about compensation. Combined with data from citizens experiences, it may help to identify good and not so good practices (in terms of quality, effectivity, and robustness of practice) that could be scaled to the broader profession.

### ***Early warning system***

Systematic monitoring and evaluation, thirdly, helps to timely signal bottlenecks. The Knowledge Center, for example, created dashboards with legal aid data per municipality. It has “almost live data” that show how many people, in which part of the municipality, applied for legal aid for an issue with the municipality. These dashboards have proven to be valuable to local governments. Not only to create awareness, but also to indicate sudden increases. These dashboards also have been useful to indicate impact; incidences of applications decreased in a municipality during the period where it implemented a more problem-solving approach towards their citizens.

### ***Safe innovation***

Fourthly, systematic monitoring and evaluation contribute to creating a safer space for changes. (Technological and other) innovations seem to have potential, but often come with concerns about quality, inclusiveness, and other. Impact of introduction is difficult to predict. Availability of good baseline data, control group data and an existing monitoring infrastructure reduces that negative effects associated with changes occur at larger scale. Of course, there needs to be regulatory space as well, but the ability of systematic monitoring and evaluation creates a precondition for safe innovation.

In the past year, the Dutch Legal Aid Board introduced a new process for people experiencing issues with the Dutch Tax Authorities concerning childcare benefits. To create more transparency in the supply of legal aid lawyers, the Board offered citizens seeking a lawyer three suitable options. These lawyers were selected based on case, preferential and geographical criteria. The Knowledge Center monitored the experiences of citizens with this new process, and

with their legal aid lawyer, finding that the experiences of a large majority of people were positive.

### ***From formation to programmatic research***

In December 2022, the formation period of the Knowledge Center of the Dutch Legal Aid Board ended, and 2023 marks the launch. In the past years, several research projects were conducted, of which most are finalised and some are pending.

In the coming period, the abovementioned and other instruments are further developed, validated, and operationalised. Additionally, the Knowledge Center started to work more programmatic. The research program for 2023-2025 is still under development and focuses on a) creating a better understanding of citizens (not only when it comes to their needs and abilities, but also developing a better understanding of why they do not make use of the system, people with clusters of (legal) problems), b) criteria for quality of legal aid services (broadening the perspective beyond traditional criteria resulting from legal profession regulations, but also including citizen experiences, working evidence-based, etc.), and c) best practices for repeat players like governments that help reduce the burden they put on citizens. With its activities, the Knowledge Center together with the partners in the legal aid system seeks to provide the basis for a learning legal aid system, and for more evidence-based working.

## **IMPORTANT DEVELOPMENTS IN PRO BONO SUPPORT FOR INDIVIDUALS IN EUROPE**



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### **I. Introduction: the world of European pro bono in 2016 and one prophecy.**

The development of pro bono culture in Continental Europe over the past 20 years is an important piece of the puzzle in providing access to justice on the Continent. Although traditionally equipped with some of the better legal aid schemes – including in civil law cases –



European legal systems have benefited from the growth of American and British law firms in Europe - not only in terms of commercial legal advice also in the field of (free) legal support to important social causes.<sup>[1]</sup> Unlike in the US and to a lesser extent in the UK, pro bono in Europe was not necessarily provoked or inspired entirely by access-to justice-objectives and was never designed to provide any serious substitution or support for state-provided legal aid. There is little evidence to suggest that this changed substantially, even after legal aid budget cuts by European governments after the 2007-2009 global financial crisis. Law firms in major European cities -- never as big as in New York, Washington DC, Chicago, or London -- were not truly ready or destined to take on a share of the legal aid to individuals. In fact, many of them were fearful of such prospects.

This has started to shift in the last few years as a result of the humanitarian crises and conflicts in the Europe-Eurasia region over the last decades– the war in Syria, the war in Afghanistan and the Taliban takeover of the country, the COVID-19 global pandemic, and the Russian invasion of Ukraine, among others.

What was the actual change and how has it manifested?

In 2016, on the 10th anniversary of the European Pro Bono Forum, PILnet<sup>[2]</sup> commissioned and published a report on the growth of pro bono in Europe.<sup>[3]</sup> The report was drafted by Lamin Khadar as part of his PhD research in public interest lawyering in Europe and was co-sponsored by DLA Piper. For more than a decade, PILnet had been on the front line in spearheading a young but expanding pro bono culture in continental Europe. The report was a milestone in more ways than one. To this day, it remains the most detailed overview of pro bono developments in the continent.

In the report, Khadar started with the assertion that a new pro bono movement had begun to take shape in Europe over the previous 15 years. The emergence of modern pro bono practice in Europe was aided by the growth and internationalization of US and UK law firms committed to the institutionalization of pro bono in all their offices. This coincided with a decline in legal aid in Europe, the report claimed. In the meantime, several non-US and non-UK centric international law firms like Dentons<sup>[4]</sup> had begun to leave their mark on the continent and globally as well.

In Chapter V. Dilemmas and Debates, section A “NGO clients vs. Individual clients”, Khadar made it abundantly clear that at the time of the report, legal aid work (access to justice to individual clients) was foreign to most big law firms’ pro bono programs or at best a nice to have. The beneficiaries of pro bono services in Europe had traditionally been non-profits and charities. A survey of 21 law firms conducted for the report found that 85% of all European pro bono work was carried out for NGOs.<sup>[5]</sup> This had been the case for decades, as it was easier for law firms to work with charities than individuals. Non-profits were like their paid clients – incorporated under the law of the land, executing projects, employing staff and operating Board of Directors or similar governance structures. NGO legal needs were not too dissimilar to those of for-profit corporations: legal issues of incorporations, governance and by-laws queries, employment, labour and other contracts, etc. The NGO was a known and predictable client to a big corporate law firm.

On the other hand, how do you screen and vet an individual who doesn’t have a bank account and sometimes not even personal papers or an ID? Law firms were not equipped to do so.

Corporate lawyers were not suited to cover the very essence of the legal requests and the field of law required to solve the traditional legal aid client's concerns. By way of an example, even today, there are hardly any refugee or asylum law specialists in any big international law firms.

A quote from one of the interviewed NGO employees, who ran a pro bono clearinghouse, is telling:

*"The first thing the law firms will tell you is that their biggest fear is to open their doors and be overwhelmed by clients, by individual people [who need assistance]. They would never do that. They would never open their doors and say, 'Come in, free legal aid'. . . They need to be able to measure the time and money they are investing into each project. The first thing they will tell you is that we don't want to be a legal aid center, we cannot be a legal aid Center."*

However, Khadar showed some optimism. He claimed that he witnessed "an overwhelming consensus among pro bono lawyers and NGOs around the idea that law firms can and should collaborate more in the context of pro bono." More specifically, Khadar wrote, there was wide support for the idea that law firms should collaborate "to tackle systematic challenges such as ... the migrant crisis". Most of the law firms surveyed for the report agreed with that idea as did several NGOs. As one NGO director put it:

*"Law firms collectively do not understand how they can collaborate to help the NGO sector... Law firms need to talk to each other to create coordinated and concerted efforts to deal with systematic issues. They need to start acting in the way that NGOs already are. Focusing on what the sector is trying to achieve and taking a multi-disciplinary, intersectional, collaborative, concerted approach."*

That was 2016. Not anymore. And as the saying goes, 'if you build it – they will come'. This paper details the extraordinary rise of high-impact collaborative projects involving more than a dozen global law firms in several European jurisdictions. The paper demonstrates that when a group of pro bono professionals comes together to design and implement serious initiatives, they can overcome an important long-standing barrier for the pro bono culture in Europe and achieve success. It takes a village to raise a child, and these ongoing collaborative processes demonstrate that it takes more than a few to move the goal post.

## **II. The 2015 Refugee crisis and its impact on legal aid systems in Europe**

It's 2015 - the year of Europe's "refugee crisis". Hundreds of thousands of vulnerable individuals flee across the Mediterranean Sea to escape persecution and war. Many of them arrive on the shores of Italy and the Greek islands, unaware of the fact that they will be in need of legal services and support. This sudden and concentrated influx of individuals in search of protection has put the legal infrastructure of European countries under severe pressure as regards their capacity to process, accommodate and offer free legal aid.

Fast forward eight years later to 2023. The number of individuals fleeing persecution, violence and conflict continues to rise. According to the United Nations High Commissioner for Refugees (UNHCR), we have reached more than 100 million forcibly displaced persons worldwide.<sup>[6]</sup> Large humanitarian crises, such as in Afghanistan, Ukraine and Iran, have exacerbated the existing problem, namely the shortage of resources and legal assistance available to those who have been forcibly displaced. As a result, countless asylum seekers, refugees and migrants are forced to

navigate the complex legal system on their own, without sufficient legal information, advice or representation needed to enforce their rights.

The 2015 refugee crisis placed a spotlight on the gap between the legal needs of the forcibly displaced and the available state resources to provide legal aid. The shortage of legal aid practitioners, as well as a general lack of resources and capacity, have led insufficient legal support for asylum seekers and refugees during the asylum procedure. NGOs have had to step in to fill those legal aid gaps by offering legal guidance, advice and representation when this has not been adequately provided by governments. Private sector entities, including international commercial law firms, have also tried to mobilise their resources in ways that have allowed them to contribute to the existing efforts and enhance the capacity and work already done by legal aid practitioners and NGOs. One of the most notable ways in which this has been done is through the establishment of **Collaborative Pro Bono Projects** across Europe. For the purposes of this paper, we have selected the following three case studies to be discussed in more detail in Section VI: **The Greece Pro Bono Collaborative** (GPBC), **The Italian Pro Bono Collaboration for Afghan Refugees** (CIPBRA), and the **Rule 39 Initiative**.

### III. The need for legal aid throughout the asylum process

Under international law, the right to legal aid has been interpreted as a key component of the right to an effective remedy and fair trial, access to effective justice, and equality of arms.<sup>[7]</sup> Whether applicants are at the early stages of registering themselves with the relevant authorities, applying for asylum or other forms of protection, entering the re-settlement process or applying for family re-unification, it is important that they receive the necessary legal guidance at all stages of the process. At the early stages in particular, the existence of competent legal assistance shapes the asylum applicant's understanding of their rights and obligations before the country's asylum authorities.

The provision of, as well as access to, free legal aid is crucial to safeguard the rights of those who are in need of international protection throughout the asylum procedure. This helps to ensure that:

- Applicants are aware of, and understand, the relevant legal processes as well as their rights and obligations at each stage;
- The appropriate procedure is followed;
- Deadlines are met;
- Vulnerabilities are detected at the earliest possible stage;
- The process is conducted in a fair manner;
- Basic human rights are fulfilled and respected.

A lack of understanding of the legal complexities of the procedure and the country's legal system often significantly disempowers applicants, as does the language barrier. Without appropriate legal assistance and representation, refugees are often unable to present their asylum claim or application in a clear, informed and effective manner. As a result, the asylum procedures and remedies are rendered ineffective for many, thereby risking the full realisation of rights under international law.

Despite the crucial importance of free legal aid, access to such assistance for asylum applicants unfortunately remains problematic in many European countries. In a first instance application, legal assistance is typically contingent on the availability of resources and is left at the discretion

of individual member states. In some countries, such as Greece, state legal aid is not provided in the first instance of the asylum process. Civil society organisations therefore play a key role in filling the gap and providing legal assistance to those applicants.

#### IV. The role of collaborative pro bono projects in bridging the legal aid gap

There has been a growing consensus around the idea that commercial law firms can collaborate in the context of pro bono in order to tackle systematic challenges and unmet legal needs. The realisation that multiple firms working together leads to a significantly higher impact than firms acting on an individual basis has further encouraged the formation of collaborative pro bono initiatives. Since the refugee crisis has created an urgent need for legal pro bono resources to be directed towards the protection of displaced individuals,, the number of collaborative initiatives providing legal support to asylum seekers and refugees has grown significantly.

Before setting up new collaborative projects, it is essential to conduct extensive research into the local legal aid system as well as the role of legal aid lawyers in that jurisdiction. The local partner organisation plays a key part in this, as they are best placed to identify and map out the gaps and needs on the ground. On the basis of this mapping, the participating law firms then direct their pro bono efforts to those areas where legal aid is not available or not sufficiently funded by the state. The ultimate goal remains for state authorities to increase funding in order to fill these gaps. It is important to highlight that the role of commercial firms and collaborative projects is not to fill the void of state legal aid funding, nor to take over the work that immigration lawyers would be better placed to do. The aim is rather to bolster the efforts of civil society organisations, NGOs and expert legal aid lawyers that are working in the area but lack capacity.

#### V. The collaborative pro bono model - what does it look like?

The collaborative pro bono model that we see in Europe is typically used for access-to-justice projects, whereby pro bono lawyers provide legal support to **vulnerable individuals** who would otherwise not have access to such support. As set out in the introduction of this paper, this type of support is different from the traditional pro bono assistance that, for historical reasons, law firms have provided in Europe.<sup>[8]</sup>

Projects that have adopted the collaborative model vary slightly in format. Aside from the smaller logistical variations in how the projects may be run, there is one important difference that is worth highlighting - the difference between the **volunteering model** on the one hand, versus the **direct representation model** on the other. When adopting the volunteering model, pro bono lawyers of the firms become legal volunteers of the partner organisation. The partner organisation therefore retains a direct relationship with the beneficiaries and remains in charge of the case management aspects. The beneficiaries are clients of the partner organisation, rather than clients of the law firms. Through this model, the pro bono lawyers are (usually) covered by the insurance of the partner organisation as they are effectively seen as the organisation's "volunteers". The volunteering model is a popular option and has been adopted in several projects including the **Italian Pro Bono Collaboration for Afghan Refugees (CIPBRA)** and the **Greece Pro Bono Collaborative (GPBC)**.

The **direct representation** model differs from the **volunteering model** in the sense that the pro bono lawyers do not act in their capacity as volunteers of the partner organisation. In this model, the partner organisation plays more of an intermediary role by introducing the

beneficiaries to the relevant pro bono lawyers and taking the lead in setting up the first meeting. The supervising lawyer remains involved by guiding and supervising the lawyers through the process. However, the relationship between the partner organisation and the beneficiary is distinct from the relationship between the pro bono lawyers and the beneficiary. The beneficiaries become direct clients of the firm. This means that the firm is required to onboard the individual client in the same way it onboards its usual pro bono clients. It is likely that internal AML and Risk teams are not accustomed to onboarding vulnerable individuals as pro bono clients. A standard list of KYC documents and a signed engagement letter, which often contain complex legal jargon, are usually a prerequisite to be able to open a new pro bono matter or file. Collaborative models that adopt the direct representation model have therefore pushed pro bono leads firms to come up with new ways to simplify this process. To give an example, several firms have developed special and simplified engagement letters and privacy policies for those projects where they take on asylum seekers and refugees as their direct clients.

Although the collaborative projects that have been set up across Europe vary slightly in format, there are several key components that have been identified by Amy Grunske, Head of International Pro Bono, Sustainability & Community Responsibility at Orrick Herrington & Sutcliffe, and a leading expert in the field of developing pro bono collaboratives, as “crucial” to incorporate into a collaborative model. These include:

- A **group of law firms** coming together to form a collaborative pro bono project;
- A **financial contribution** paid by the firms to finance the project;
- A **partner organisation** with **expertise** in the relevant field;
- **Comprehensive training** and **capacity building** of volunteer lawyers;
- Adequate **supervision** for the volunteer lawyers during their involvement in the project;
- **Regular communication** and sharing of **feedback** among the project partners.

*1. A group of law firms coming together to form a collaborative pro bono project*

In each collaborative project, there is a group of firms that comes together to collectively offer support on an agreed upon matter. The number of firms joining the collaborative can be as little as two or three, and as high as ten (or more). Although it may seem attractive to include as many law firms as possible in order to increase resources and financial contributions, it is important to note that this may also slow down the decision-making processes within the collaborative.

In each collaborative project, the project partners enter into a Memorandum of Understanding (MoU) in order to formalise the partnership and set out the important elements of the project that have been agreed on. Topics that may be addressed in the MoU include:

- The **scope** of the project;
- The **format or structure** of the project (direct representation model or volunteering-model);
- The **duration and termination** of the project;
- Clearly **defined roles and responsibilities** of the legal supervisor, the project coordinator (if applicable), the volunteer lawyers and the law firm pro bono coordinators;
- The **financial contribution** to be paid by the firms;
- **Communication** on the project;
- **Insurance** and **liability**;
- **Data Protection** and **Intellectual Property Rights**.



## *2. A financial contribution paid by the firms to finance the project*

Obtaining external funding for collaborative pro bono projects in Europe would be optimal but has proven to be difficult. The model therefore includes a financial contribution to be paid by the participating law firms to cover the project's expenses (i.e., overheads, training sessions and resources for volunteer lawyers, an expert legal supervisor/project coordinator, interpreters, and other miscellaneous expenses that may arise). Preparing the budget is a comprehensive but crucial process that must take place prior to setting up the project.

## *3. A formal partnership with an organisation that has expertise in the relevant field on which the project will focus*

A strong partnership with an organisation in the relevant field is a crucial element to a successful collaborative pro bono project. The best practice in these types of collaborative projects is for the law firms to formally partner with an organisation (NGO, association, law center etc.) that has the necessary legal expertise in the relevant area and has experience working with the target beneficiaries. Such organizations are best placed to identify those areas where the need is highest.

Aside from needing additional resources to increase the volume and capacity of their work, the organisation would need to have a good understanding (or be open to understanding) the benefits of pro bono and how to best utilise the additional resources that law firms can provide.

## *4. Comprehensive training and capacity building of volunteer lawyers who will be joining the project*

In most instances, the areas of law that these collaborative projects focus on do not align with the day-to-day legal practice areas of the pro bono lawyers. It is therefore crucial that the volunteer lawyers, who participate in the collaborative project, receive training on the relevant area of law as a prerequisite to joining the project. The training should also include practical tips and guidance on how to work with vulnerable clients as well as self-care and vicarious trauma.

The content and structure of the training materials will differ per project (depending on the legal focus area, as well as the complexity of the tasks that the lawyers will take on). In most projects, the training materials consist of:

- A live training session (ideally online via videoconference) of 90 minutes to 3 hours to ensure high attendance and participation;
- Written materials that the volunteer lawyers review prior to the live training session. The written materials should consist of:
  - A volunteer handbook to which the volunteer lawyers can refer while participating in the project;
  - Template applications, research memos or other types of documents that the volunteer lawyers will be asked to prepare while participating in the project.

Ideally, the training materials should be discussed and prepared well in advance of the project start date. In developing the training materials, input is needed from both the expert partner organisation, as well as the law firm pro bono leads. In most collaborative projects, the



supervising lawyer prepares, conducts and updates the training materials over the course of the project.

#### *5. Adequate supervision for the volunteer lawyers during their involvement in the project*

The supervision element ties in closely with the point on training. Seeing that the lawyers are (in most cases) introduced to a new legal field, it is crucial that they are guided, supported and supervised by an expert lawyer throughout the process. In most instances, the legal supervisor will be responsible for conducting a final review of the work that was prepared by the pro bono lawyers and will be the one submitting the final product.

#### *6. Regular communication*

Finally, it is very important that the project partners engage in regular communication, ideally pre-scheduled meetings, to discuss feedback and troubleshoot any issues in the project. In the majority of projects, the partner law firms meet for coordination calls on a bi-weekly or monthly basis. It is particularly important to make sure that regular communication is in place during the first phase of a new project to identify and address potential problems as early as possible.

## **VI. Case studies**

### **1. Greece Pro Bono Collaborative (GPBC) - secondment format**

The **Greece Pro Bono Collaborative (GPBC)** is a pro bono collaboration between **European Lawyers in Lesbos (ELIL)**, and six international law firms – **Allen & Overy, Ashurst, Charles Russell Speechlys, Dentons, Orrick and White & Case**. ELIL works with experienced Greek and European asylum lawyers to provide free, independent legal advice to refugees and asylum seekers. The team familiarises asylum seekers with the Greek asylum process and criteria and helps them understand their rights and obligations, allowing them to be fully prepared for their asylum interview. The GPBC was the first large-scale collaborative pro bono project in Continental Europe. It brought together commercial law firms with a common aim: to support ELIL in their mission to increase legal assistance for asylum seekers and refugees. Prior to the partnership, several firms had attempted to set up individual projects to offer legal aid to refugees and asylum seekers in Greece. It soon became clear that, financially as well as logistically, an individual approach would not be a sustainable option in the long term as legal assistance would only be provided on an ad hoc basis, without proper structure or consistency and depending on the firm's resources and capacity at any given point in time.

Amy Grunske, Head of International Pro Bono, Sustainability and Community Responsibility at Orrick, Herrington & Sutcliffe, took the lead in consulting with Phil Worthington, Managing Director of ELIL, on how to best identify those areas where the needs were highest and where volunteer pro bono lawyers could offer large-scale support. The team also conducted extensive research into the Greek legal aid system, looking particularly at those areas lacking state-funded legal aid. Despite the fact that the asylum process is a legal one, the Greek authorities currently do not provide legal aid to asylum seekers prior to their first interview.

The project partners opted for a **secondment format**, in which pro bono lawyers from the participating law firms are seconded to ELIL, either remotely or in-person, for a two-week period. During their secondment, the pro bono lawyers become volunteers of ELIL in order to

support them with their operations on the Greek islands, and since recently, also on the Greek mainland. Since the formation of the GPBC, **more than 200 pro bono lawyers** from the six law firm partners have boosted the capacity of the asylum lawyers at ELIL by taking over some of the legal tasks where extensive knowledge of the Greek asylum system is not a necessity. These tasks include supporting the asylum lawyer during interview preparations by taking verbatim notes, conducting research into the political and human rights landscape of a client's country of origin, and helping prepare written submissions in support of a client's case.

## **2. CIPBRA (Italy) - Volunteering-model**

**The Italian Pro Bono Collaboration for Afghan Refugees (CIPBRA)** is a collaborative project, hosted by the **Italian Coalition for Civil Liberties and Rights (CILD)** in partnership with **Dentons, Hogan Lovells, Linklaters and Orrick**. The project focuses on providing pro bono legal advice and support to Afghan refugees, who are applying for re-unification with family members in Italy, or who are eligible for alternative humanitarian pathways to Italy. Seeing that these individuals are not yet on Italian territory, they are not considered to be eligible for legal aid. Pro bono lawyers from the partner firms have been trained and supervised by Loredana Leo, an expert in the field of refugee and migration law. The project is managed by Fabi Fugazza, lawyer and Chief Operating Officer at CILD.

CIPBRA uses the volunteering model, whereby the pro bono lawyers act as volunteers of the partner organisation, working under (in this case) Loredana as the supervising lawyer. The pro bono lawyers are able to participate in the project on a fully remote basis, due to the fact that applications for family re-unification are done for Afghan refugees who are still not on Italian territory. This remote format has made the project accessible to a large group of pro bono lawyers.

In the first 10 months of the project, the partners provided **more than 500 hours of pro bono assistance** to vulnerable individuals from Afghanistan in need of protection, family re-unification and resettlement. The project supported **more than 120 Afghan refugees** during that time, **37 of whom were children**. The project responded to 47 legal assistance requests, of which five cases have already been resolved successfully, resulting in the issuance of **19 visas for safe resettlement in Italy**.

The CIPBRA project is part of the larger network of projects that have been set up across Europe (including in France, the UK and Germany) in response to the humanitarian crisis in Afghanistan and focusing specifically on supporting Afghan refugees. The efforts are amplified through the strong network and monthly coordination with representatives of the sister projects in the above-mentioned jurisdictions. The strong collaboration between the different projects has encouraged knowledge and best practice sharing as well as collective problem solving. Referrals are also being made between the projects, allowing more individuals to receive the necessary legal support they need.

## **3. Rule 39 – Interim measures at the European Court of Human Rights (ECtHR)**

**The Rule 39 Initiative** is a collaborative project between **CILD** and eight law firms, including **DLA Piper, Eversheds Sutherland, Freshfields, Herbert Smith Freehills, Linklaters, Orrick and Osborne Clarke**. The project aims to assist asylum seekers, refugees and migrants in European countries by supporting NGOs and sometimes individuals with submitting in their

interest Rule 39 requests and Article 34 individual applications to the European Court of Human Rights. These actions allow asylum seekers, refugees and migrants to seek the prevention of, or redress for, human rights violations committed by government administrations, where domestic remedies in the host countries provide little to no relief.

Rule 39 requests are fast-acting tools, allowing the issuance of temporary measures by the ECtHR before the completion of the examination of the merits of a case. The requests are typically utilised by NGOs seeking urgent help in:

- Stopping collective pushbacks of asylum seekers;
- Preventing expulsion or extraditions of vulnerable individuals to countries where they may be at risk of human rights violations;
- Urging governments to provide adequate shelter, food and first-aid assistance to asylum seekers.

The project initially focused solely on requests for interim measures under Rule 39 of the Rules of the ECtHR in favour of Afghan nationals in need for assistance in Greece, Italy and Turkey. As it quickly emerged that the need for assistance went beyond the initial scope of the project, the project has now been extended to cover not only Rule 39 requests, but also individual applications on the merits of the case under Article 34 of the ECHR, and to benefit migrants and asylum-seekers of any nationality, within the territory of any Council of Europe member state.

The financial contribution provided by the law firms engaged in the project enabled host NGO, CILD, to retain Dr. Daria Sartori, a lawyer and expert in actions before the ECtHR, to lead and supervise the project. Pro bono lawyers, who are engaged in the project, receive training, consisting of an annual two-hour live session, and self-study materials including template applications, research memos and other documents that the pro bono lawyers will be asked to prepare while participating in the project. The training materials provide the pro bono lawyers with an insight into the ECtHR proceedings and on how to draft Rule 39 requests and Article 34 ECHR individual applications. Throughout the project, Dr. Sartori supervises and guides the pro bono lawyers.

So far, the project partners have already dedicated **more than 3,000 hours of pro bono support** to the project. They have assisted **at least 260 individuals, more than 48 of whom were children**, with lodging applications to the ECtHR. The **applications were lodged against seven different Council of Europe Member States**.

## VII. Conclusion

The pro bono landscape in Europe has evolved since Lamin Khadar's report on the growth of pro bono was first published in 2016. At the time of the report, there was still a reluctance on the part of international firms to engage in providing direct legal pro bono support to individuals. Although non-profits and charities continue to be the primary beneficiaries of pro bono legal services in the region today, providing legal aid type of pro bono support to individuals is no longer considered to be uncharted territory for international law firms.

So what is it that has changed since 2016? While the majority of firms still do not have the necessary internal resources, knowledge, network or expertise to act on their own in offering direct pro bono aid to vulnerable individuals in a structured and impactful manner, collaborative projects have paved the way for firms to offer direct pro bono support to individuals.

The elements discussed in this article -- including strong coordination and accountability between a group of law firms, a partner organisation in the field, a financial contribution, legal supervision and training, and regular communication -- are all key factors to consider.

The Greece Pro Bono Collaborative will be remembered as a landmark shift in the history of European bono. It created a precedent and provided a blueprint for other, similar projects, such as CIPBRA and Rule 39, to be developed when and where needed. This pioneering project in Europe brought together pro bono professionals from different law firms, NGO representatives and lawyers to create an environment where professionals can share their high-level expertise and learn from one another in one collaborative space. When faced with political and legal challenges, the project partners have been able to bring together their different perspectives and expansive knowledge to find suitable and creative solutions.

The impact and success of these collaborative projects -- such as CIPBRA, the GPBC and Rule 39 -- cannot be quantified. Proof of the real impact can be found in the heartfelt testimonials of individuals, who received the legal support they were desperately seeking. It can be found in the successful asylum cases and in the smiles on the applicants' faces once they hear that they will be reunified with their families. Yet, it is important to remember that it is not only the individuals who are positively impacted through these projects. The impact is also reflected in the progression of the pro bono environment in those jurisdictions where collaborative projects have been set up. It is in the in-house skills and knowledge that firms have developed through these projects and in the willingness of lawyers to step out of their comfort zone to help those in need.

**The authors would like to extend their sincere gratitude to Amy Grunske, Head of International Pro Bono, Sustainability & Community Responsibility at Orrick Herrington & Sutcliffe, Phil Worthington, Managing Director at European Lawyers in Lesvos (ELIL) and Fabi Fugazza, Lawyer and Chief Operating Officer at the Italian Coalition for Civil Liberties and Rights, for openly sharing their highly valued insights and expertise on these topics.**

<sup>[1]</sup> It should be mentioned from the outset that many of the legal aid systems in Europe have not been providing coverage for all underprivileged groups, for example state provided legal aid was not always fully available to refugees and asylum seekers.

<sup>[2]</sup> PILnet is a global non-governmental organization with programs in Europe & Eurasia, Asia, and at the global level. For more information see [pilnet.org](http://pilnet.org) for more info

<sup>[3]</sup> "The Growth of Pro Bono in Europe: Using the Power of Law for the Public Interest" by Lamin Khadar (PILnet, 2016) available at: <https://www.pilnet.org/resource/the-growth-of-pro-bono-in-europe/>

<sup>[4]</sup> As of 15 February 2023, Dentons – the biggest law firm in the world that operates in a polycentric (no-HQ) model. It has more than 20,00 people and operates in than 80+ countries. In Europe, Dentons has 24 offices in 18 different jurisdictions.

<sup>[5]</sup> The report makes a reference to the fact that in comparison in Australia around 60% of pro bono practice is undertaken for individuals.

<sup>[6]</sup> [UNHCR - Refugee Statistics](#)

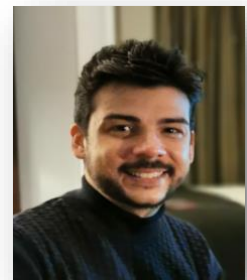
<sup>[7]</sup> See, generally, on the legal standards under international and European law for the provision of legal aid: ECRE/ELENA, Survey on legal aid for asylum seekers in Europe (2010), pp. 12-19, available at: <http://bit.ly/2oBIZIE>; on the right to legal aid in EU Law: Elspeth Guid, The Asylum Seeker's Right to Free Legal Assistance and/or Representation in EU Law, available at: <http://bit.ly/2upPiNO>; on the guarantees for legal aid under the EU Charter of Fundamental Rights: ECRE and the Dutch Council for Refugees, The Application of the EU Charter of Fundamental Rights to asylum procedural law, Chapter V, pp. 55-67, available at: <http://bit.ly/2uQ3dK7>

<sup>[8]</sup> See footnote 3

## LEGAL AID NEWS FROM AROUND THE WORLD

**PAUL FERRIE**

ONLINE ADMINISTRATOR, ILAG AND ASSOCIATE SOLICITOR, FULTON'S, SCOTLAND



The news items shown below are largely compiled from online articles, found based on a simple search for terms such as 'legal aid', 'access to justice' and 'pro bono'. Therefore, readers must, just as buyers, beware of authenticity. The links worked at the time of writing, but some will obviously fail after a period.

### Australia

[Legal Aid Enhances Access To Justice In Western Australia With New Virtual Office - Australasian Lawyer](#)  
[Robot Lawyer Set to Argue First Case - Lexology](#)

### Canada

[Alberta Increases Tariff For Legal Aid Lawyers By 25% - Canadian Lawyer](#)  
[Why The Experiences Of Trans People With The Legal System Are So Often Negative - National Magazine](#)

### China

[Legal Aid Agencies Help Recover Unpaid Wages - China Daily](#)

### England & Wales

[Government Review To Explore Options To Improve Civil Legal Aid Market - Ministry of Justice](#)  
[Legal Aid Widened For Child Cases Following Public Law Challenge - The Law Society Gazette](#)  
[Ministers Face Legal Battle With Criminal Solicitors Over Legal Aid - The Guardian](#)  
[Moj Should Rethink Legal Aid Funding Or Risk Judicial Review - The Law Society](#)  
[Moj Reveals Drawn Out Timetable For Civil Legal Aid Review - The Law Society Gazette](#)  
['Raise Legal Aid': Wales's Message To Westminster - The Law Society Gazette](#)  
[Record Number Of Cases Waiting 2+ Years In Criminal Court Queue - The Law Society](#)  
[UK Public Overwhelmingly Supports Legal Aid - The Law Society](#)

### India

[AI To The Rescue: CJI Chandrachud Advances Access To Justice With Translated Judgments In All Indian Languages' - Times Now](#)  
[Can ChatGPT Revolutionize Access To Justice In India? - Forbes](#)  
[E-Courts To Stay. Can't Depend On Likings Of HC Chief Justices: Supreme Court - Hindustan Times](#)  
[India's Per Capita Lawyer Ratio Is Better Than Most Countries, But Legal Aid Unavailable To Many: Justice Sanjiv Khanna - Live Law](#)  
[Legal Aid Defense Counsel System Launched Across 10 Districts Of West Bengal - The Hindu](#)  
[Why Is The Quality Of India's Free Legal Aid So Poor? IDR Online](#)

## **Jamaica**

[Canada Funds Project Focusing On Equitable Access To Justice In Jamaica](#) – Caribbean News Weekly

## **The Philippines**

[Bill Seeks To Expand Legal Aid, Use Of Funds For Distressed Ofws](#) – Philippine News Agency

## **Republic of Ireland**

[Chief Justice: Civil Legal Aid Cannot Be Limitless Demand-Led System](#) – Irish Legal News  
[Deadline Extended For Submissions To Historic Review Of Civil Legal Aid Scheme](#) – Department of Justice, Ireland

[Families 'Should Get Legal Aid At Inquests Of Their Loved Ones'](#) – Irish Examiner  
[Planning Bill Threatens To Limit Access To Justice, Environmental Lawyer Warns](#) – Irish Examiner

[Significant Increase In Judicial Resources To Improve Access To Justice Announced By Minister Harris](#) - Department of Justice, Ireland

## **Scotland**

[Legal Aid £11m Package Agreed](#) – The Scottish Government  
[Scottish Government's Legal Aid Package Not A 'Product Of Agreement'](#) – Scottish Legal News

## **Switzerland**

[CAS Football Legal Aid Fund Launched And Funded By FIFA](#) - FIFA

## **United States of America**

[DOJ Access to Justice Leader Makes Longevity a Paramount Concern](#) – Bloomberg Law  
[Legal Aid For Lowest Earners Has Been On The Rise. But Chief Justice Says Mass. Needs More](#) – State House News Service  
[1,000 Legal Aid Workers In New York City Hold Walkout In Contract Struggle](#) – World Socialist Website

For more information about the work of the *International Legal Aid Group*, please visit our website which can be found at <http://www.internationallegalaidgroup.org>.