

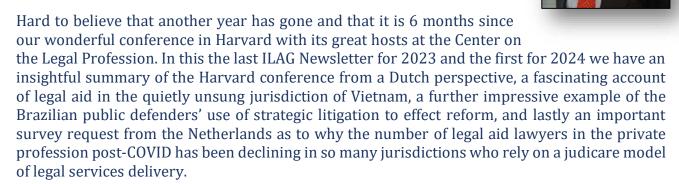
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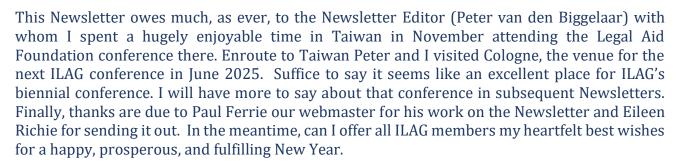
FOREWORD

PROFESSOR ALAN PATERSON

CHAIR, INTERNATIONAL LEGAL AID GROUP & DIRECTOR, CENTRE FOR PROFESSIONAL LEGAL STUDIES, STRATHCLYDE UNIVERSITY, GLASGOW

Dear Colleagues,





Ever best wish,

Alan

ILAG CONFERENCE: THE CHALLENGES OF ACCESS TO JUSTICE 21ST – 23D OF JUNE AT HARVARD LAW SCHOOL

DR. SUSANNE PETERS

RESEARCHER, LEGAL AID BOARD, NETHERLANDS

Some insights and thoughts about the Harvard-ILAG conference from the Dutch Legal Aid Board.



We've had a wonderful and inspiring time at the ILAG conference. We've listened to many interesting presentations and examples of legal aid in countries like India and Rwanda. Also, we've had many stimulating conversations with other ILAG-members. Below we would like to share some insights that we've learned at Harvard last June and took home to the Netherlands.

Obviously, it doesn't do justice to all the presenters and presentations at the conference; but we had to make a choice from all the inspiring things we've heard.

What we've learned from ILAG:

A2J is a multi-layered concept, and many people think it should be redefined. It already has been redefined in the sense that A2J is not (anymore) seen in the traditional 'law'-kind of way, but a further development of the concept is in progress. ChatGPT may play a role in this development as well.

Since the first Paths to Justice studies people's needs have been of interest to researchers as well as policy makers. A diversity in the needs of people can be seen; various groups and vulnerable people are especially prone to injustices. For example, those who are incarcerated: do we know enough about what happens in those environments? More and more often it can be seen that there is no love for the stranger. Immigrants and asylum seekers are often not (anymore) seen as vulnerable.

Globally a justice gap can be seen. There is a mismatch between the services provided and the justice people want and need. People do not only need legal advice and help but need to be seen as a person with all kinds of needs and problems (holism). The starting point is not always law, but often social problems, welfare problems or health issues.

There are people that experience a whole range of problems (multi problems), there are marginalized people and there are people that distrust governments and institutions. In many countries it has become clear that there should be a shift towards people-centered justice. The advice and help that is offered should match the needs of people and people should be the point of reference. An example of people-centered justice is community courts. Correlations between health & justice problems shows how intertwined problems can be and how necessary it is to see people as persons with different kinds of problems.

Globally there is a variation in the supply of legal aid: private, public, salaried, contracts. what is the right mix of supply? In many countries, as well as in the Netherlands, there are concerns about the supply of legal aid in the (near) future: will there be enough professionals available in legal aid systems to help people? On the one hand, demographics lead to older lawyers leaving the system. On the other hand, young lawyers often do not want to work in the legal aid system.

How to turn this around? What can we do to make sure enough professionals will be available for legal aid in the near future? And what kind of work must be done (diversification of work)?

ACCESS TO WATER JUSTICE IN BRAZIL: THE BRAZILIAN PUBLIC DEFENDER'S OFFICE AND THE STRATEGIC LITIGATION FOR ACCESS TO WATER FOR VULNERABLE GROUPS

EDUARDO CHOW DE MARTINO TOSTES

PUBLIC DEFENDER OF THE STATE OF RIO DE JANEIRO, BRAZIL AND COORDINATOR THE CONSUMER DEFENSE UNIT



ANDRÉ LUÍS MACHADO DE CASTRO

PUBLIC DEFENDER OF THE STATE OF RIO DE JANEIRO, BRAZIL AND COORDINATOR OF THE HUMAN RIGHTS DEFENSE UNIT

Abstract:

Access to water in Brazil has historically followed the exclusive urban development of Brazilian cities, favoring access for residents in

affluent neighborhoods with complete infrastructure for public services that require payment of fees to enable access. Vulnerable groups, mostly composed of Black and economically disadvantaged individuals, have not been the focus of a public policy prioritizing the right to access water for those living in slums, who have historically not been able to afford the fees.

Through strategic litigation led by the Public Defender's Office, in coordination with the gathered demands of civil society, it became possible to initiate the Brazilian debate on recognizing water as a human right rather than just a commodity. This includes the necessary stance to guarantee access to water for all individuals, even providing it free of charge to those who cannot afford it, as a means to ensure the right to life for everyone, preventing death from thirst due to poverty under national law.

<u>Keywords</u>: water; human rights; public defender's office; poverty.

Introduction: Water and Poverty in Brazil

This present work aims to identify current challenges regarding the realization of the right to clean water in Rio de Janeiro, within the broader framework of the right to life, health, and basic sanitation, through the lens of the public institution responsible for providing legal assistance to those in need in Brazil: the Public Defender's Office.

The underlying issue involves the attempt to reverse a historical cycle of discriminatory policies and models governing access to water, exposing ostensibly scientific categories that "explain" the denial of this right to a vast contingent of people. These individuals are often rendered invisible since they reside in "irregular" areas (informal settlements or favelas) or belong to lower-income groups. This stands in contrast to those who have absolute access to these rights because they live in 'regular' areas of the city and have the financial means to pay for the commodity of water.

Through strategic legal action on behalf of individuals deprived of this essential resource, it is hoped that the concept of the fundamental right to water can be reinterpreted. Through collaboration with various social actors, the universalization of this human right is sought, irrespective of financial conditions.

Understanding the city's development, exposing the relationship between the implementation of public services (including water supply) and the existence and emergence of impoverished communities—ghettos, favelas, informal areas, or any other denomination encompassing these spaces inhabited by the less fortunate in our city—is paramount to understanding how our territory was constructed to accept spaces devoid of the minimal rights for people considered not integrated into society.

It is relevant, therefore, to highlight how favelas and impoverished communities arise in light of the discrimination in the provision of public services. Urban planners had always viewed the favela as an "aesthetic leprosy," necessitating modernization and beautification reforms for the city. It was perceived as an unhygienic, unhealthy space, a concentration of poor and dangerous people, constituting a "lawless area."

The pejorative definition of favela from the beginning of scientific and technical research reveals the exclusionary and marginalizing gaze of this territory, disapproved by the public authorities. Emphasizing the racism present in scientific studies produced at the time about favelas helps us understand how a policy denying access to water – a vital necessity for any human being – had disregarded favela residents or the economically disadvantaged as deserving recipients of this public service/good—although it has always been seen merely as a market commodity. Thus, understanding the law and the city, comprehending the right to water and the different territories where this right is applied or not, involves investigating the history of how the city of Rio de Janeiro (and Brazil) has always privileged wealthier neighborhoods with a generous supply of public services, such as basic sanitation, public transportation, and others, in contrast to the absence or precariousness of these services in favelas or peripheral neighborhoods occupied by low-income families.

This issue gained special prominence and urgency during the Covid-19 pandemic, when a vast contingent of favela residents and impoverished neighborhoods found themselves compelled to stay at home, often deprived of their meager sources of income and, consequently, unable to afford the water supply— an essential resource for public health and pandemic control.

In April 2020, the External Ombudsman of the Public Defender's Office of Rio de Janeiro (DPRJ) presented a report on water scarcity in communities and outskirts of the state during the Covid-19 pandemic. Through remote interviews, a total of 550 complaints were raised, including 434 complaints of permanent or regular water shortages (most of the day), coming from 143 different locations, including neighborhoods and favelas in 14 municipalities.

In addition to the scarcity problem, many families reported the inability to pay water bills (subsequently, the suspension of water supply due to non-payment was prohibited).

To grasp the extent of the number of people in this situation, as of January 2023, there were 3,308,635 families registered in the Unified Registry in the state of Rio de Janeiro. This government program identifies low-income families for inclusion in social assistance and income redistribution programs. More than half of these families (63%) live in extreme poverty,

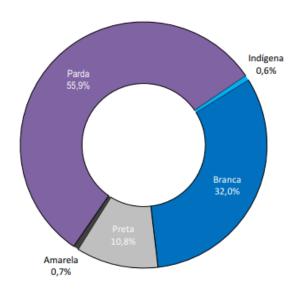
with a monthly income of up to USD 20 per person, while 7% live in poverty, with a per capita income of up to USD 40.00, and 13.5% of families have a monthly income between USD 20 and USD 300 per person.

It is crucial to clarify that, in the State of Rio de Janeiro, water supply and sewage disposal through a collective network are not universalized. In other words, there is still a portion of the population that lacks residential water and sanitation.

Furthermore, quantitative data demonstrates unequal treatment concerning social class and race, permeating the entire discussion on access to water resources (the 2022 census found that 56.1% of the Brazilian population self-identifies as Black or Brown). According to 2006 data from the Unified Health System (Ministry of Justice), the number of deaths from diseases related to inadequate environmental sanitation is significantly higher in the Black population.

As observed from data by the Brazilian Institute of Geography and Statistics (IBGE), 46% of households in Brazil experience some form of basic sanitation deprivation. Nearly 9 million people lack access to the general water network, almost 17 million experience insufficient water supply frequency, about 11 million lack water storage facilities, approximately 1 million lack bathroom facilities, and 22 million lack sewage collection. The graphs below illustrate the impact of water scarcity, with a higher incidence among the economically disadvantaged and Black (Black and Brown) populations¹:

Translation to English: Distribution of the population with irregular supply of treated water by self-declared race and relative frequency, Brazil, 2022.



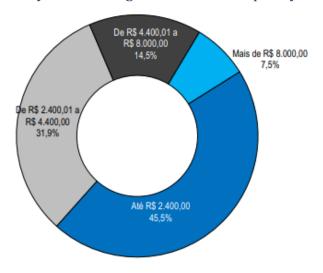
Em (%) do total

Brown: 55.9%; Indigenous: 0.6%; White: 32.0%; Black: 10.8%; Yellow: 0.7%

¹ BRAZILIAN INSTITUTE OF GEOGRAPHY AND STATISTICS (IBGE, in Portuguese). National Household Sample Survey of 2022. Rio de Janeiro, 2023. Information extracted from the official PNADCA survey by IBGE from 2013 to 2022, with the creation of graphs and findings presented above by the Trata Brasil Institute.

 $<\underline{https://static.poder360.com.br/2023/11/estudo-trata-brasil-saneamento-16nov2023.pdf}>. Accessed on 13 Dec 2023. Accessed on 13 Dec 2023.$

Translation to English: Distribution of the population with irregular supply of treated water by household monthly income range and relative frequency, Brazil, 2022.



Em (%) do total

Note: In December 2023, the exchange currency rate is 1 USD = 5 BRL (R\$)

The Public Defender's Ombudsman Report confirmed what was already known to researchers and scholars of the subject: In Brazil, only those living in "regular areas" with the means to pay for water tariffs have regular access to water and sanitation. Meanwhile, poor individuals, even amidst a pandemic and confined to their small residences, suffer from the lack of this essential life resource.

Strategic Litigation by the Public Defender's Office on the Human Right to Water

Observing, engaging, and acknowledging the invisible perspectives of those who do not participate in political games and the legal-political decisions of the city reveals the vicissitudes of social reality, as well as the possible paths for transforming it. The ways of access and exclusion to clean water are a socially constructed process historically designed to generate this hydro social exclusion. In underprivileged peripheries, residents often lack effective sociopolitical power to bring about necessary transformations.

To balance the scales, the Public Defender's Office gathered a substantial amount of information and narratives on the subject and filed a public civil action lawsuit against the State of Rio de Janeiro, the regulatory agency, and companies operating in the potable water distribution sector. The goal is to secure a minimum water volume for all individuals unable to afford water and sewage tariffs. The legal action challenges the established water development model, relying on legal principles of environmental justice, asserting that the interaction between nature and society should produce equal opportunities for access to water for all social groups, while ensuring the conservation of socio-environmental balance.

It is noteworthy that the Public Defender's Office is an institution foreseen in the Federal Constitution, the mission of which to ensure access to justice for the indigent population. Considered a permanent and essential institution for the State's jurisdictional function, it is an "expression and instrument of the democratic regime," endowed with administrative and

budgetary autonomy, capable of exercising its functions even against the State, whenever necessary to defend the individual or collective rights of vulnerable individuals.

In this context, the Public Defender's Office also bears the responsibility to promote the defense and resistance to the grave social problem of criminalizing poverty. In the present case, this criminalization manifests in numerous individuals criminally prosecuted for irregularly accessing water supply services, often done for survival (the so-called "water theft").

Additionally, there is a significant number of individuals seeking the services of the Public Defender's Office daily due to their inability to pay water bills, people who are experiencing conditions of poverty or even destitution. These and other real problems in serving the indigent have led public defenders to delve into the subject, resulting in the filing of this collective classaction lawsuit.

It is essential to emphasize that, due to its social and legal complexity, the topic underwent extensive scientific research, coupled with an analysis of the standards protecting the human right to water in regional (Organization of American States - OAS) and universal (United Nations) systems. Based on these parameters, the Public Defender's Office constructed its legal foundation, positioning water as a human right rather than a commodity.

A comprehensive discussion on the topic was held with various entities from civil society, such as the Federation of Favelas of the State of Rio de Janeiro (FAFERJ), universities, and various social entities, all of which joined the debate proposed by the Public Defender's Office and issued statements in support of recognizing water as a human right.

Through this collective action, the aim was to establish the recognition of the human right to water, ensuring a minimum free volume based on technical parameters for those unable to afford water tariffs. Thus, the entire indigent population of the State of Rio de Janeiro is under the guardianship of the Public Defender's Office through this legal measure.

The fact that the water market in the State of Rio de Janeiro is worth billions of reais—and the financial impact of this legal action involves significant economic figures—posed no insurmountable barrier for the Public Defender's Office to protect the right to life (health and water) of the most indigent, despite much resistance and pressure to maintain the existing system.

Conclusion

The initiative of the Public Defender's Office to file a public civil lawsuit against the State of Rio de Janeiro to secure the right of the low-income population to free water supply is a case of strategic litigation, aiming to bring about changes in the regulatory model and the recognition of water as a human right throughout Brazilian territory. This collective action brings to the judicial and political debate an important suppressed demand from a significant segment of the population that has been made almost invisible by poverty and social marginalization.

Acting as an institution composed of various bodies and in permanent coordination with organized civil society, the Public Defender's Office demonstrated its ability to identify and map the serious problem of access to water and its social repercussions. The intersectionality of the issue can also be identified, such as the sad history of structural racism and other forms of

discrimination that hinder the recognition of the basic right to life for indigent and Black individuals, residents of poor and marginalized regions.

Given that it is a structural process, it is expected that a set of measures and understandings between the involved parties and other relevant social actors will be capable of indicating solutions to overcome such a complex problem.

The experience narrated here also demonstrates the relevance of a public access to a justice service with constitutional autonomy, ensuring the effective fulfillment of the Public Defender's Office's mission to strengthen democracy and promote social justice.



SOCIAL PERSPECTIVE OF VIETNAMESE LEGAL AID

DR. TA THI MINH LY

CHAIRWOMEN, VIETNAM JUSTICE SUPPORT ASSOCIATION FOR THE POOR (VIJUSAP)

Judicial assistance in Vietnam was implemented from 1945-1954, then stopped due to the war situation. In the 1980s, the legal aid system of people's advocates and lawyers was formed and there was an Ordinance

on Advocates in 1978. But it's just the beginning and in some cities.

Only until 1996 that the Government had a policy to establish a legal aid system for the poor, ethnic minorities, policy beneficiaries and disadvantaged groups. Two legal aid centers were established on a pilot basis in 02 localities (Can Tho and Son Tay). The National Legal Aid Agency (NLAA) was set up by Decision No.734/TTg dated 6 September, 1997 of the Prime Minister.

After that, Legal aid centers were established one by one at the provincial level in 64 localities (later merged with Ha Tay into Hanoi, leaving 63).

At the NLAA, there is a Legal Aid Center with the function of supporting groups of people with cases related to central agencies such as the Supreme People's Court, ministries and branches; resolve cases involving many localities; Direct and provide professional support to localities. However, in 2006, the Law on Legal Aid was promulgated, and the Legal Aid Center at the Department was disbanded to establish the Legal Aid Fund. The Fund has the function of attracting sponsorship and financial support for centers in localities with financial difficulties. According to the Law on Legal Aid 2006, the group of subjects provided with free legal aid is relatively wide. By the end of 2010, PLACs have provided 41,966 cases among them 2,190 criminal cases, 7,904 civil cases, 3,931 marriage and family cases, 2,451 administrative cases, 11,088 land cases, 540 labors cases, 8,037 social welfare cases, and 5,318 cases in other legal fields. There were including 929 cases of representations, 39,591 cases of legal consultancies, and 242 cases of conciliations and thousands of popular consultations over the past year providing mobile legal aid in the community (Source by NLAA).

During the past period, when researching the establishment and developing professional guidance documents, the NLAA received great sponsorship from international organizations

such as NOVIB of Netherlands, SIDA of Sweden, SDC of Switzerland, and Save of Children's Sweden, Danish Institute for Human Rights, Asia Foundation...

The centers have not only enhanced the capacity of legal aid staff but also of collaborators. Strongly formed centipede organizations are legal aid clubs, groups of collaborators in the community, and mobile legal aid groups in the community.

With the view that legal aid is not only a legal issue but a socio-legal issue, strongly promoting social forces to participate right in the community is encouraged. Especially for ethnic minority groups, it is necessary to have local collaborators who know the language, customs and understand the subject's psychology. Or the group of victims of domestic violence and returning victims of trafficking need support as soon as possible.

In addition to retired legal officers and lawyers, a large number of qualified officials from other professions have retired, social workers, village elders, wise man, village chiefs, etc. They are trained on legal aid law, specialized law and subject approach skills, initial support skills, case filing skills, referral skills; security skills and keeping secrets of cases; Coordination skills with legal aid organizations, lawyer organizations and state agencies. These groups of collaborators regularly exchange and share experiences and work side by side with specific subjects in the process of resolving cases.

Re-checking the quality of the case, checking records, monitoring the results of the case, monitoring the progress of the subject following the case and reflecting opinions have helped the legal aid organization reach the subject early and gain information, document information, save time and effort and have extended arms. However, in the process, legal aid organizations also eliminate those who are incompetent or have no reputation in resolving cases... or revealing the subject's information.

The social nature of legal aid is consistent with the requirement for socialization of general service activities of the Communist Party of Vietnam. Connecting with the community through collaborators and mobile legal aid sessions, creating dialogues between people and the government has truly formed a team of legal assistants to accompany people in solving problems caught by the law. Increase the number of cases involving lawyers in court. At the same time, increase the public service responsibilities of the sectors in solving the problems of the people, especially the poor and disadvantaged groups after they have been consulted on the law and have understood their problems.

Legal aid has also become a powerful channel for conveying legal information to the people. Communicating legal documents to the community through mobile legal aid and through specific cases is truly the most effective channel for disseminating the law.

However, the 2017 Legal Aid Law has narrowed the number of collaborators, narrowed district-level legal aid branches, eliminated mobile legal aid in the community, and abolished legal aid clubs. Which enhances participation in litigation in court. By the end of June 2023, the system has 63 State Legal Aid Centers with 1,209 people (including 698 legal aid providers, 377 legal experts, 59 accountants and 70 other people); 97 branches of the State Legal Aid Center are located at district and inter-district levels, 1.477 legal aid club. In addition, there are 643 lawyers and 41 collaborators who signed contracts to implement legal aid with the State Legal Aid Center; 155 organizations registered to participate in legal aid and 30 organizations signed contracts to

implement legal aid with the Department of Justice. (Locally, as of December 31, 2014, nationwide there were 201 Legal Aid Branches in districts and inter-districts, and 4,339 Legal Aid Clubs, nearly 10,000 legal aid collaborators in province, district and commune levels.)

From January 1, 2018, to June 30, 2022, 146,148 legal aid cases have been carried out for 146,148 people receiving legal aid, including 77,707 cases of legal advice, 67,107 cases of participation in legal proceedings, and 1,334 cases extrajudicial representation case. In particular, the number of cases participating in legal proceedings increases every year, specifically: in 2018 there were 11,860 cases, in 2019 there were 13,428 cases, in 2020 there were 16,168 cases and in 2021 there were 20,868 cases (Source by NLAA).

Therefore, early legal help and legal aid in the community need the participation of social organizations. Although this is very practical work to help people right in the community, it is also difficult work. Because the current social organization does not have many resources (human and financial). This is also a challenge for legal aid workers because they no longer have an extended arm to assist in contacting localities, collecting information, approaching people in the area...

In the context of digital technology development, building a connection to support people's cases requires core groups with legal expertise, social experience, and information technology capacity to support the poor, ethnic minorities and disadvantaged groups use internet in commune levels.



SHORT SURVEY: SUSTAINING SUFFICIENT SUPPLY OF LAWYERS IN THE LEGAL AID SYSTEM

IIN HO VERDONSCHOT

CHIEF SCIENCE OFFICER, LEGAL AID BOARD, NETHERLANDS

The Knowledge Centre Legal Aid System of the Dutch Legal Aid Board would like to request your participation in a short survey.

During the most recent ILAG conference in Cambridge, one prominent theme was the availability of legal aid lawyers. It became apparent that this is a challenge in many jurisdictions. The Netherlands is no exception. We currently explore different paths to overcome the challenge on the supply side of legal aid.

Together with ILAG, we would like to ask you to participate in a survey. Aim is to construct an initial, modest map of the availability of legal aid lawyers across the globe and the different measures that have been taken or are considered to increase or secure supply.

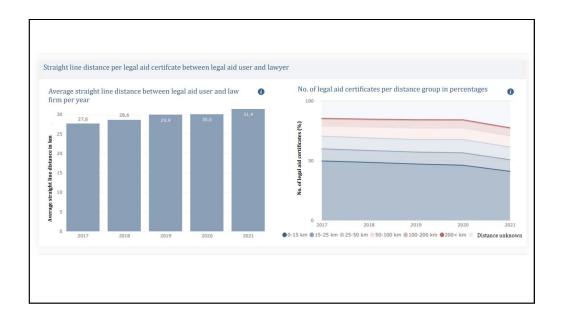
The survey has *13 questions* and takes *10 to 15 minutes* to fill out. The Knowledge Centre collects and structures the data, which will be shared via the ILAG Newsletter.

Your input is very highly appreciated.

Click here to start the survey.

Earlier, we created a <u>dashboard</u> that shows the supply of legal aid per type of legal issue, compares the supply with the demand, and much more. The dashboard unfortunately is available in Dutch only. The following translated screens give some impression of what the dashboard is capable of.







In case you have questions about this or would like to learn more, please feel free to reach out to us via onderzoek@rvr.org.

(Instead of scrolling back up, you can also click **here to start the survey**.)

LEGAL AID NEWS FROM AROUND THE WORLD

PAUL FERRIE

ONLINE ADMINSTRATOR, ILAG AND LEGAL DIRECTOR, FULTON'S, SOLICITORS 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

<u>Australian Legal Aid At Risk Of Turning People Away Unless \$484m Extra Funding Provided – The Guardian</u>

<u>Access To Justice Requires Major Boost To Legal Assistance Service Funding</u> – Law Council of Australia

<u>Experienced Lawyer Leads WA's Largest Provider Of Legal Aid Services</u> – Western Australian Government

<u>Legal Aid Sector On 'Brink Of Failure'</u> – Lawyers Weekly

Canada

Edmonton Low-Income Legal Clinic Sees Call Volumes Double Since 2020 - CBC

"Out of Touch" Advocate Says Ford Government's New Legislation Boosting Victims' Rights Doesn't Go Far Enough – Toronto Star

What's The Prescription For B.C.'S Ailing Courts? - Vancouver is Awesome

China

OMG, China Has ACTUAL Legal Robots And All The Legal Tech Patents

– Above the Law

England & Wales

AI In Legal Services - Will Lawyers Or Citizens Win In This Battle For The Future? - Diginomica Legal Aid System In England And Wales Is 'Broken', High Court Told - Financial Times Should the Largest Law Firms Pay For the UK's Legal Aid System? - Law.com

The Legal Aid Sector Is Collapsing And Millions More May Soon Be Without Access To Justice - The Conversation

India

South Tie-Ups To Expand Access To Justice - NDTV

<u>India Hosts Landmark Regional Conference On Legal Aid And Technology</u> – Hindustan Times <u>Legal Aid Has Key Role In Strengthening Justice System: Supreme Court Judge - NDTV <u>Legal Aid In India – More Needs To Be Done</u> – The Hindu Business Line</u>

Northern Ireland

<u>Barristers' Strike Yields Immediate Boost To Northern Ireland Legal Aid Budget</u> - Irish Legal News

Legal Aid: Lawyer Strike Disrupts NI Courts - BBC News

Scotland

<u>Justice Not Served As Legal Aid Ignored Again In Scottish Budget</u> – Law Society of Scotland <u>More Than 400 Inactive Lawyers On Criminal Legal Aid Register</u> – Scottish Legal News <u>Strathclyde Mediation Clinics To Be Expanded Around Scotland</u> – Strathclyde University

United States of America

<u>Cost of Living, Legal Aid: The Year Law Firms Focused Pro Bono on UK Causes</u> – Law.com <u>Civil Legal Aid Attorneys In Short Supply, ABA Report Finds</u> – Reuters <u>Legal Aid Officially Files For Federal Takeover Of Rikers Island</u> – Queens Eagle

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.