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United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

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Use and application of United Nations standards and norms in crime prevention and criminal justice

Georgia, Philippines and South Africa:* revised draft resolution

The Commission on Crime Prevention and Criminal Justice recommends to the Economic and Social Council the approval of the following draft resolution for adoption by the General Assembly:

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

The General Assembly,

Recalling the Universal Declaration of Human Rights,[1] which enshrines the key principles of equality before the law and the presumption of innocence, as well as the right to a fair and public hearing by an independent and impartial tribunal, established by law, along with all the guarantees necessary for the defence of anyone charged with a penal offence, other minimum guarantees and the entitlement to be tried without undue delay,

Recalling also the International Covenant on Civil and Political Rights,[2] in particular article 14, which states that everyone charged with a criminal offence shall be entitled to be tried in his or her presence and to defend him or herself in person or through legal assistance of his or her own choosing or assigned to him or her where the interests of justice so require, in a fair and public hearing by a competent, independent and impartial tribunal established by law,

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* On behalf of the States Members of the United Nations that are members of the Group of African States.

[1] General Assembly resolution 217 A (III).

[2] General Assembly resolution 2200 A (XXI), annex.

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Bearing in mind the Standard Minimum Rules for the Treatment of Prisoners,[3] approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957 and extended by the Council in its resolution 2076 (LXII) of 13 May 1977, according to which an untried prisoner, for the purposes of his or her defence, shall be allowed to receive visits from his or her legal adviser,

Bearing in mind also the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,[4] principle 11 of which states that a detained person shall have the right to defend him or herself or to be assisted by counsel as prescribed by law,

Bearing in mind further the Basic Principles on the Role of Lawyers,[5] in particular principle 6, which states that any persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services,

Recalling the Bangkok Declaration on Synergies and Responses: Strategic Alliance in Crime Prevention in Criminal Justice,[6] especially paragraph 18, in which Member States are called upon to take steps, in accordance with their domestic laws, to promote access to justice, to consider the provision of legal aid to those who need it and to enable the effective assertion of their rights in the criminal justice system,

Recalling also the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,[7] especially paragraph 52, in which it is recommended that Member States endeavour to reduce pretrial detention, where appropriate, and promote increased access to justice and legal defence mechanisms,

Recalling further Economic and Social Council resolution 2007/24 of 26 July 2007, on international cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa,

Recognizing that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process,

Recognizing also that the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, annexed to the present resolution, can be

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[3] *First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955: report prepared by the Secretariat* (United Nations publication, Sales No. 1956.IV.4), annex I.A; and Economic and Social Council resolution 2076 (LXII).

[4] General Assembly resolution 43/173, annex.

[5] *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex.

[6] General Assembly resolution 60/177, annex.

[7] General Assembly resolution 65/230, annex.

applied by Member States, taking into account the great variety of legal systems and socioeconomic conditions in the world,

1. *Notes* with appreciation the work of the open-ended intergovernmental expert group on strengthening access to legal aid in criminal justice systems at its meeting held in Vienna from 16 to 18 November 2011 to develop a set of principles and guidelines on access to legal aid in criminal justice systems;

2. *Adopts* the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, annexed to the present resolution, as a useful framework to guide Member States on the principles on which a legal aid system in criminal justice should be based, taking into account the content of the present resolution and that all elements of the annex will be applied in accordance with national legislation;

3. *Invites* Member States, consistent with their national legislation, to adopt and strengthen measures to ensure that effective legal aid is provided, in accordance with the spirit of the Principles and Guidelines, bearing in mind the diversity of criminal justice systems among different countries and regions around the world and the fact that legal aid is developed in accordance with the overall balance of the criminal justice system, as well as the circumstances of countries and regions;

4. *Encourages* Member States to consider, where appropriate, the provision of legal aid and to provide such aid to the maximum extent possible;

5. *Also encourages* Member States to draw upon the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice, as appropriate, and in accordance with national law, in undertaking national efforts and measures to strengthen access to legal aid in criminal justice systems;

6. *Requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to continue to provide advisory services and technical assistance to Member States, upon request, in the area of criminal justice reform, including restorative justice, alternatives to imprisonment and the development of integrated plans for the provision of legal aid;

7. *Also requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to make the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems widely available, including through the development of relevant tools such as handbooks and training manuals;

8. *Invites* Member States and other donors to provide extrabudgetary resources for those purposes, in accordance with the rules and procedures of the United Nations;

9. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its twenty-third session on the implementation of the present resolution.

Annex

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

A. Introduction

1. Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in article 11, paragraph 1, of the Universal Declaration of Human Rights, a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.

2. Furthermore, article 14, paragraph 3(d) of the International Covenant on Civil and Political Rights states that everyone should be entitled, among other rights, "to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it".

3. A functioning legal aid system, as part of a functioning criminal justice system, may reduce the length of time suspects are held in police stations and detention centres, in addition to reducing the prison population, wrongful convictions, prison overcrowding and congestion in the courts, and reducing reoffending and revictimization. It may also protect and safeguard the rights of victims and witnesses in the criminal justice process. Legal aid can be utilized to contribute to the prevention of crime by increasing awareness of the law.

4. Legal aid plays an important role in facilitating diversion and the use of community-based sanctions and measures, including non-custodial measures; promoting greater community involvement in the criminal justice system; reducing the unnecessary use of detention and imprisonment; rationalizing criminal justice policies; and ensuring efficient use of State resources.

5. Regrettably, many countries still lack the necessary resources and capacity to provide legal aid for suspects, those charged with a criminal offence, prisoners, victims and witnesses.

6. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which are drawn from international standards and recognized good practices, aim to provide guidance to States on the fundamental principles on which a legal aid system in criminal justice should be based and to outline the specific elements required for an effective and sustainable national legal aid system, in order to strengthen access to legal aid pursuant to Economic and Social Council resolution 2007/24, entitled "International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa".

7. In line with the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa and the Lilongwe Plan of Action for the implementation of the Declaration, the Principles and Guidelines follow a broad concept of legal aid.

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

9. For the purpose of the Principles and Guidelines, the individual who provides legal aid is herein referred to as the "legal aid provider", and the organizations that provide legal aid are referred to as the "legal aid service providers". The first providers of legal aid are lawyers, but the Principles and Guidelines also suggest that States involve a wide range of stakeholders as legal aid service providers in the form of non-governmental organizations, community-based organizations, religious and non-religious charitable organizations, professional bodies and associations and academia. Provision of legal aid to foreign nationals should conform to the requirements of the Vienna Convention on Consular Relations and other applicable bilateral treaties.

10. It should be noted that States employ different models for the provision of legal aid. These may involve public defenders, private lawyers, contract lawyers, pro bono schemes, bar associations, paralegals and others. The Principles and Guidelines do not endorse any specific model but encourage States to guarantee the basic right to legal aid of persons detained, arrested[a] or imprisoned, suspected[b] or accused of, or charged with a criminal offence, while expanding legal aid to include others who come into contact with the criminal justice system and diversifying legal aid delivery schemes.

11. The Principles and Guidelines are based on the recognition that States should, where appropriate, undertake a series of measures that, even if not strictly related to legal aid, can maximize the positive impact that the establishment and/or reinforcement of a properly working legal aid system may have on a properly functioning criminal justice system and on access to justice.

12. Recognizing that certain groups are entitled to additional protection or are more vulnerable when involved with the criminal justice system, the Principles and Guidelines also provide specific provisions for women, children and groups with special needs.

13. The Principles and Guidelines are primarily concerned with the right to legal aid, as distinct from the right to legal assistance as recognized in international law.

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[a] The term "arrest", "detained person" and "imprisoned person" are understood as defined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173, annex).

[b] The right to legal aid of suspects arises before questioning, when they become aware that they are the subject of investigation, and when they are under threat of abuse and intimidation, e.g. in custodial settings.

Nothing in these Principles and Guidelines should be interpreted as providing a lesser degree of protection than that provided under existing national laws and regulations and international and regional human rights conventions or covenants applicable to the administration of justice, including, but not limited to, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. However, this should not be interpreted as meaning that States are bound by international and regional instruments that they have not ratified or acceded to.

B. Principles

Principle 1. Right to legal aid

14. Recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process,[c] States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.

Principle 2. Responsibilities of the State

15. States should consider the provision of legal aid as their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system.

16. The State should not interfere with the organization of the defence of the beneficiary of legal aid or with the independence of his or her legal aid provider.

17. States should enhance knowledge of the people about their rights and obligations under law through appropriate means, in order to prevent criminal conduct and victimization.

18. States should endeavour to enhance the knowledge of their communities about their justice system and its functions, the ways to file complaints before the courts and alternative dispute resolution mechanisms.

19. States should consider adopting appropriate measures for informing their community about acts criminalized under the law. The provision of such information for those travelling to other jurisdictions, where crimes are categorized and prosecuted differently, is essential for crime prevention.

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[c] The term “justice process” is understood as defined in the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council resolution 2005/20, annex). For the purpose of the Principles and Guidelines, the term shall also encompass extradition, transfer of prisoners and mutual legal assistance proceedings.

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

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

21. Legal aid should also be provided, regardless of the person's means, if the interests of justice so require, for example, given the urgency or complexity of the case or the severity of the potential penalty.

22. Children should have access to legal aid under the same conditions or more lenient conditions as adults.

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

Principle 4. Legal aid for victims of crime

24. Without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to victims of crime.

Principle 5. Legal aid for witnesses

25. Without prejudice to or inconsistency with the rights of the accused, States should, where appropriate, provide legal aid to witnesses of crime.

Principle 6. Non-discrimination

26. States should ensure the provision of legal aid to all persons regardless of age, race, colour, gender, language, religion or belief, political or other opinion, national or social origin or property, citizenship or domicile, birth, education or social status or other status.

Principle 7. Prompt and effective provision of legal aid

27. States should ensure that effective legal aid is provided promptly at all stages of the criminal justice process.

28. Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defence.

Principle 8. Right to be informed

29. States should ensure that, prior to any questioning and at the time of deprivation of liberty, persons are informed of their right to legal aid and other procedural safeguards as well as of the potential consequences of voluntarily waiving those rights.

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

Principle 9. Remedies and safeguards

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

Principle 10. Equity in access to legal aid

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

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

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

34. In all legal aid decisions affecting children,[d] the best interests of the child should be the primary consideration.

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

Principle 12. Independence and protection of legal aid providers

36. States should ensure that legal aid providers are able to carry out their work effectively, freely and independently. In particular, States should ensure that legal aid providers are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; are able to travel, to consult and meet with their clients freely and in full confidentiality both within their own country and abroad, and to freely access prosecution and other relevant files; and do not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

Principle 13. Competence and accountability of legal aid providers

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

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[d] "Child" shall mean any person under 18 years of age, in line with the Convention on the Rights of the Child.

38. Disciplinary complaints against legal aid providers should be promptly investigated and adjudicated in accordance with professional codes of ethics before an impartial body and subject to judicial review.

Principle 14. Partnerships

39. States should recognize and encourage the contribution of lawyers' associations, universities, civil society and other groups and institutions in providing legal aid.

40. Where appropriate, public-private and other forms of partnerships should be established to extend the reach of legal aid.

C. Guidelines

Guideline 1. Provision of legal aid

41. Whenever States apply a means test to determine eligibility for legal aid, they should ensure that:

(a) Persons whose means exceed the limits of the means test but who cannot afford, or do not have access to, a lawyer in situations where legal aid would have otherwise been granted and where it is in the interests of justice to provide such aid, are not excluded from receiving assistance;

(b) The criteria for applying the means test are widely publicized;

(c) Persons urgently requiring legal aid at police stations, detention centres or courts should be provided preliminary legal aid while their eligibility is being determined. Children are always exempted from the means test;

(d) Persons who are denied legal aid on the basis of the means test have the right to appeal that decision;

(e) A court may, having regard to the particular circumstances of a person and after considering the reasons for his or her refusal of legal aid, direct that that person be provided with legal aid, with or without his or her contribution, when the interests of justice so require;

(f) If the means test is calculated on the basis of the household income of a family, but individual family members are in conflict with each other or do not have equal access to the family income, only the income of the person applying for legal aid is used for the purpose of the means test.

Guideline 2. Right to be informed on legal aid

42. In order to guarantee the right of persons to be informed of their right to legal aid, States should ensure that:

(a) Information on the right to legal aid and what such aid consists of, including the availability of legal aid services and how to access such services and other relevant information, is made available to the community and to the general public in local government offices and educational and religious institutions and through the media, including the Internet, or other appropriate means;

(b) Information is made available to isolated groups and marginalized groups. Use should be made of radio and television programmes, regional and local newspapers, the Internet and other means, in particular following changes to the law or specific issues affecting a community, of targeted community meetings;

(c) Police officers, prosecutors, judicial officers and officials in any facility where persons are imprisoned or detained inform unrepresented persons of their right to legal aid and of other procedural safeguards;

(d) Information on the rights of a person suspected of or charged with a criminal offence in a criminal justice process and on the availability of legal aid services is provided in police stations, detention centres, courts and prisons, for example, through the provision of a letter of rights or in any other official form submitted to the accused. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children; and such information should be in a language that those persons understand. Information provided to children must be provided in a manner appropriate to their age and maturity;

(e) Effective remedies are available to persons who have not been adequately informed of their right to legal aid. Such remedies may include a prohibition on conducting procedural actions, release from detention, exclusion of evidence, judicial review and compensation;

(f) Means of verification that a person has actually been informed are put in place.

Guideline 3. Other rights of persons detained, arrested, suspected or accused of, or charged with a criminal offence

43. States should introduce measures:

(a) To promptly inform every person detained, arrested, suspected or accused of, or charged with a criminal offence of his or her right to remain silent; his or her right to consult with counsel or, if eligible, with a legal aid provider at any stage of the proceedings, especially before being interviewed by the authorities; and his or her right to be assisted by an independent counsel or legal aid provider while being interviewed and during other procedural actions;

(b) To prohibit, in the absence of any compelling circumstances, any interviewing of a person by the police in the absence of a lawyer, unless the person gives his or her informed and voluntary consent to waive the lawyer's presence and to establish mechanisms for verifying the voluntary nature of the person's consent. An interview should not start until the legal aid provider arrives;

(c) To inform all foreign detainees and prisoners in a language they understand of their right to request contact with their consular authorities without delay;

(d) To ensure that persons meet with a lawyer or a legal aid provider promptly after their arrest in full confidentiality; and that the confidentiality of further communications is guaranteed;

(e) To enable every person who has been detained for any reason to imminently notify a member of his or her family, or any other appropriate person of

his or her choosing, of his or her detention and location and of any imminent change of location; the competent authority may, however, delay a notification if absolutely necessary, if provided for by law and if the transmission of the information would hinder a criminal investigation;

(f) To provide the services of an independent interpreter, whenever necessary, and the translation of documents where appropriate;

(g) To assign a guardian, whenever necessary;

(h) To make available in police stations and places of detention the means to contact legal aid providers;

(i) To ensure that persons detained, arrested, suspected or accused of, or charged with a criminal offence are advised of their rights and the implications of waiving them in a clear and plain manner; and endeavour to ensure that the person understands both;

(j) To ensure that persons are informed of any mechanism available for filing complaints against torture or ill treatment;

(k) To ensure that the exercise of these rights by a person is not prejudicial to his or her case.

Guideline 4. Legal aid at the pretrial stage

44. To ensure that detained persons have prompt access to legal aid in conformity with the law, States should take measures:

(a) To ensure that police and judicial authorities do not arbitrarily restrict the right or access to legal aid for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular in police stations;

(b) To facilitate access for legal aid providers assigned to provide assistance to detained persons in police stations and other places of detention for the purpose of providing that assistance;

(c) To ensure legal representation at all pretrial proceedings and hearings;

(d) To monitor and enforce custody time limits in police holding cells or other detention centres, for example by instructing judicial authorities to screen the remand caseload in detention centres on a regular basis to make sure that people are remanded lawfully, that their cases are dealt with in a timely manner and that the conditions in which they are held meet the relevant legal standards, including international ones;

(e) To provide every person, on admission to a place of detention, with information on their rights in law, the rules of the place of detention and the initial stages of the pretrial process. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in each detention centre;

(f) To request bar or legal associations and other partnership institutions to establish a roster of lawyers and paralegals to support a comprehensive legal system for persons detained, arrested, suspected or accused of, or charged with a criminal offence, in particular at police stations;

(g) To ensure that every person charged with a criminal offence has adequate time, facilities and technical and financial support, in case he or she does not have sufficient means, to prepare his or her defence and is able to consult with his or her lawyer in full confidentiality.

Guideline 5. Legal aid during court proceedings

45. To guarantee that every person charged with a criminal offence for which a term of imprisonment or capital punishment may be imposed by a court of law has access to legal aid in all proceedings at court, including on appeal and other related proceedings, States should introduce measures:

(a) To ensure that the accused understands the case against him or her and the possible consequences of the trial;

(b) To ensure that every person charged with a criminal offence has adequate time, facilities and technical and financial support, in case he or she does not have sufficient means, to prepare his or her defence and is able to consult with his or her lawyer in full confidentiality;

(c) To provide representation in any court proceedings by a lawyer of choice, where appropriate, or by a competent lawyer assigned by the court or other legal aid authority at no cost when the person does not have sufficient means to pay and/or where the interests of justice so require;

(d) To ensure that the counsel of the accused is present at all critical stages of the proceedings. Critical stages are all stages of a criminal proceeding at which the advice of a lawyer is necessary to ensure the accused's right to a fair trial or at which the absence of counsel might impair the preparation or presentation of a defence;

(e) To request bar or legal associations and other partnership institutions to establish a roster of lawyers and paralegals to support a comprehensive legal system for persons suspected, arrested, detained, accused or charged with a criminal offence; such support could include, for example, appearing before the courts on fixed days;

(f) To enable, in accordance with national law, paralegals and law students to provide appropriate types of assistance to the accused in court, provided that they are under the supervision of qualified lawyers;

(g) To ensure that unrepresented suspects and the accused understand their rights. This may include, but is not limited to, requiring judges and prosecutors to explain their rights to them in clear and plain language.

Guideline 6. Legal aid at the post-trial stage

46. States should ensure that imprisoned persons and children deprived of their liberty have access to legal aid. Where legal aid is not available, States shall ensure that such persons are held in prison in conformity with the law.

47. For this purpose, States should introduce measures:

(a) To provide all persons, on admission to the place of imprisonment and during their detention, with information on the rules of the place of imprisonment and their rights under the law, including the right to confidential legal aid, advice and assistance; the possibilities for further review of their case; their rights during disciplinary proceedings; and procedures for complaint, appeal, early release, pardon or clemency. Such information should be provided in a manner that corresponds to the needs of illiterate persons, minorities, persons with disabilities and children and should be in a language that the person in need of legal aid understands. Information provided to children should be provided in a manner appropriate for their age and maturity. The information material should be supported by visual aids prominently located in those parts of the facilities where prisoners have regular access;

(b) To encourage bar and legal associations and other legal aid providers to draw up rosters of lawyers, and paralegals, where appropriate, to visit prisons to provide legal advice and assistance at no cost to prisoners;

(c) To ensure that prisoners have access to legal aid for the purpose of submitting appeals and filing requests related to their treatment and the conditions of their imprisonment, including when facing serious disciplinary charges, and for requests for pardon, in particular for those prisoners facing the death penalty, as well as for applications for parole and representation at parole hearings;

(d) To inform foreign prisoners of the possibility, where available, of seeking transfer to serve their sentence in their country of nationality, subject to the consent of the States involved.

Guideline 7. Legal aid for victims

48. Without prejudice to or inconsistency with the rights of the accused and consistent with the relevant national legislation, States should take adequate measures, where appropriate, to ensure that:

(a) Appropriate advice, assistance, care, facilities and support are provided to victims of crime, throughout the criminal justice process, in a manner that prevents repeat victimization and secondary victimization;[e]

(b) Child victims receive legal assistance as required, in line with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;

(c) Victims receive legal advice on any aspect of their involvement in the criminal justice process, including the possibility of taking civil action or making a claim for compensation in separate legal proceedings, whichever is consistent with the relevant national legislation;

(d) Victims are promptly informed by the police and other frontline responders (i.e. health, social and child welfare providers) of their right to

[e] "Repeat victimization" and "secondary victimization" are understood as defined in paragraphs 1.2 and 1.3 of the appendix to Recommendation Rec (2006) of the Committee of Ministers to Member States on Assistance to Crime Victims of the Council of Europe.

information, their entitlement to legal aid, assistance and protection and how to access such rights;

(e) The views and concerns of victims are presented and considered at appropriate stages of the criminal justice process where their personal interests are affected or where the interests of justice so require;

(f) Victim services agencies and non-governmental organizations can provide legal aid to victims;

(g) Mechanisms and procedures are established to ensure close cooperation and appropriate referral systems between legal aid providers and other professionals (i.e. health, social and child welfare providers) to obtain a comprehensive understanding of the victim, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

Guideline 8. Legal aid for witnesses

49. States should take adequate measures, where appropriate, to ensure that:

(a) Witnesses are promptly informed by the relevant authority of their right to information, their entitlement to assistance and protection and how to access such rights;

(b) Appropriate advice, assistance, care facilities and support are provided to witnesses of crime throughout the criminal justice process;

(c) Child witnesses receive legal assistance as required, in line with the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime;

(d) All statements or testimony given by the witness at all stages of the criminal justice process are accurately interpreted and translated.

50. States should, where appropriate, provide legal aid to witnesses.

51. The circumstances in which it may be appropriate to provide legal aid to witnesses includes, but is not limited to, situations in which:

(a) The witness is at risk of incriminating him or herself;

(b) There is a risk to the safety and well-being of the witness resulting from his or her status as such;

(c) The witness is particularly vulnerable, including as a result of having special needs.

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

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

(a) Introducing an active policy of incorporating a gender perspective into all policies, laws, procedures, programmes and practices relating to legal aid to ensure gender equality and equal and fair access to justice;

(b) Taking active steps to ensure that, where possible, female lawyers are available to represent female defendants, accused and victims;

(c) Providing legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization and other such services, which may include the translation of legal documents where requested or required.

Guideline 10. Special measures for children

53. States should ensure special measures for children to promote children's effective access to justice and to prevent stigmatization and other adverse effects as a result of their being involved in the criminal justice system, including:

(a) Ensuring the right of the child to have counsel assigned to represent the child in his or her own name in proceedings where there is or could be a conflict of interest between the child and his or her parents or other parties involved;

(b) Enabling children who are detained, arrested, suspected or accused of, or charged with a criminal offence to contact their parents or guardians at once and prohibiting any interviewing of a child in the absence of his or her lawyer or other legal aid provider, and parent or guardian when available, in the best interests of the child;

(c) Ensuring the right of the child to have the matter determined in the presence of the child's parents or legal guardian, unless it is not considered to be in the best interests of the child;

(d) Ensuring that children may consult freely and in full confidentiality with parents and/or guardians and legal representatives;

(e) Providing information on legal rights in a manner appropriate for the child's age and maturity, in a language that the child can understand and in a manner that is gender- and culture-sensitive. Provision of information to parents, guardians or caregivers should be in addition, and not an alternative, to communicating information to the child;

(f) Promoting, where appropriate, diversion from the formal criminal justice system and ensuring that children have the right to legal aid at every stage of the process where diversion is applied;

(g) Encouraging, where appropriate, the use of alternative measures and sanctions to deprivation of liberty and ensuring that children have the right to legal aid so that deprivation of liberty is a measure of last resort and for the shortest appropriate period of time;

(h) Establishing measures to ensure that judicial and administrative proceedings are conducted in an atmosphere and manner that allow children to be heard either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law. Taking into account the child's age and maturity may also require modified judicial and administrative procedures and practices.

54. The privacy and personal data of a child who is or who has been involved in judicial or non-judicial proceedings and other interventions should be protected at all stages, and such protection should be guaranteed by law. This generally implies that no information or personal data may be made available or published, particularly in the media, that could reveal or indirectly enable the disclosure of the

child's identity, including images of the child, detailed descriptions of the child or the child's family, names or addresses of the child's family members and audio and video records.

Guideline 11. Nationwide legal aid system

55. In order to encourage the functioning of a nationwide legal aid system, States should, where it is appropriate, undertake measures:

(a) To ensure and promote the provision of effective legal aid at all stages of the criminal justice process for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims of crime;

(b) To provide legal aid to persons who have been unlawfully arrested or detained or who have received a final judgement of the court as a result of a miscarriage of justice, in order to enforce their right to retrial, reparation, including compensation, rehabilitation and guarantees of non-repetition;

(c) To promote coordination between justice agencies and other professionals such as health, social services and victim support workers in order to maximize effectiveness of the legal aid system, without prejudice to the rights of the accused;

(d) To establish partnerships with bar or legal associations to ensure the provision of legal aid at all stages of the criminal justice process;

(e) To enable paralegals to provide those forms of legal aid allowed by national law or practice to persons arrested, detained, suspected of or charged with a criminal offence, in particular in police stations or other detention centres;

(f) To promote the provision of appropriate legal aid for the purpose of crime prevention.

56. States should also take measures:

(a) To encourage legal and bar associations to support the provision of legal aid by offering a range of services, including those that are free (pro bono), in line with their professional calling and ethical duty;

(b) To identify incentives for lawyers to work in economically and socially disadvantaged areas (e.g. tax exemption, fellowships and travel and subsistence allowances);

(c) To encourage lawyers to organize regular circuits of lawyers around the country to provide legal aid to those in need.

57. In the design of their nationwide legal aid schemes, States should take into account the needs of specific groups, including but not limited to the elderly, minorities, persons with disabilities, the mentally ill, persons living with HIV and other severe contagious diseases, drug users, indigenous and aboriginal people, stateless persons, asylum-seekers, foreign citizens, refugees and internally displaced persons, in line with guidelines 9 and 10.

58. States should take appropriate measures to establish child-friendly[f] and child-sensitive legal aid systems taking into account children's evolving capacities and the need to strike an appropriate balance between the best interests of the child and children's right to be heard in judicial proceedings including:

(a) Establishing, where possible, dedicated mechanisms to support specialized legal aid for children and support the integration of child-friendly legal aid into general and non-specialized mechanisms;

(b) Adopting legal aid legislation, policies and regulations that explicitly take into account the child's rights and special developmental needs, including the right to have legal or other appropriate assistance in the preparation and presentation of his or her defence; the right to be heard in all judicial proceedings affecting him or her; standard procedures for determining best interest; privacy and protection of personal data; and the right to be considered for diversion;

(c) Establishing child-friendly legal aid service standards and professional codes of conduct. Legal aid providers working with and for children should, where necessary, be subject to regular vetting to ensure their suitability for working with children;

(d) Promoting standard legal aid training programmes. Legal aid providers representing children should be trained in and be knowledgeable about children's rights and related issues, receive ongoing and in-depth training and be capable of communicating with children at their level of understanding. All legal aid providers working with and for children should receive basic interdisciplinary training on the rights and needs of children of different age groups and on proceedings that are adapted to them; and training on psychological and other aspects of the development of children, with special attention to girls and children who are members of minority or indigenous groups, and on available measures for promoting the defence of children who are in conflict with the law;

(e) Establishing mechanisms and procedures to ensure close cooperation and appropriate referral systems between legal aid providers and different professionals to obtain a comprehensive understanding of the child, as well as an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation and needs.

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

(a) Be free from undue political or judicial interference, be independent of the Government in decision-making related to legal aid and should not be subject to the direction or control or financial intimidation of any person or authority in the performance of its functions, regardless of its administrative structure;

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[f] "Child-friendly legal aid" is the provision of legal assistance to children in criminal, civil and administrative proceedings that is accessible, age-appropriate, multidisciplinary and effective, and that is responsive to the range of legal and social needs faced by children and youth. Child-friendly legal aid is delivered by lawyers and non-lawyers who are trained in children's law and child and adolescent development and who are able to communicate effectively with children and their caretakers.

(b) Have the necessary powers to provide legal aid, including but not limited to the appointment of personnel; the designation of legal aid services to individuals; the setting of criteria and accreditation of legal aid providers, including training requirements; the oversight of legal aid providers and the establishment of independent bodies to handle complaints against them; and the assessment of legal aid needs nationwide; and the power to develop its own budget;

(c) Develop, in consultation with key justice sector stakeholders and civil society organizations, a long-term strategy guiding the evolution and sustainability of legal aid;

(d) Report periodically to the responsible authority.

Guideline 12. Funding the nationwide legal aid system

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

61. To this end, States could take measures:

(a) To establish a legal aid fund to finance legal aid schemes, including public defender schemes, to support legal aid provision by legal or bar associations; support university law clinics; and sponsor non-governmental organizations and other organizations, including paralegal organizations, in providing legal aid services throughout the country, especially in rural and economically and socially disadvantaged areas;

(b) To identify fiscal mechanisms for channelling funds to legal aid, such as:

(i) Allocating a percentage of the State's criminal justice budget to legal aid services that are commensurate with the needs of effective legal aid provision;

(ii) Using funds recovered from criminal activities through seizures or fines to cover legal aid for victims;

(c) To identify and put in place incentives for lawyers to work in rural areas and economically and socially disadvantaged areas (for example, tax exemptions or reductions, student loan payment reductions);

(d) To ensure fair and proportional distribution of funds between prosecution and legal aid agencies.

62. The budget for legal aid should cover the full range of services to be provided to persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence, and to victims. Adequate special funding should be dedicated to defence expenses such as copying relevant files and documents, collection of evidence, expenses related to expert witnesses, forensic experts and social workers, and travel expenses. Payments should be timely.

Guideline 13. Human resources

63. States should, where appropriate, make adequate and specific provision for staffing the nationwide legal aid system that are commensurate with their needs.

64. States should ensure that professionals working for the national legal aid system possess the qualifications and training appropriate for the services they provide.

65. Where there is a shortage of qualified lawyers, the provision of legal aid services may also include non-lawyers or paralegals. At the same time, States should promote the growth of the legal profession and remove financial barriers to legal education.

66. States should also encourage wide access to the legal profession, including affirmative action measures to ensure access for women, minorities and economically disadvantaged groups.

Guideline 14. Paralegals

67. States should, in accordance with their domestic law and where appropriate, recognize the role played by paralegals or similar service providers in providing legal aid services where access to lawyers is limited.

68. For this purpose, States should, in consultation with civil society and justice agencies and professional associations, introduce measures:

(a) To develop, where appropriate, a nationwide scheme of paralegal services with standardized training curricula and accreditation schemes, including appropriate screening and vetting;

(b) To ensure that quality standards for paralegal services are set and that paralegals receive adequate training and operate under the supervision of qualified lawyers;

(c) To ensure the availability of monitoring and evaluation mechanisms to guarantee the quality of the services provided by paralegals;

(d) To promote, in consultation with civil society and justice agencies, the development of a code of conduct that is binding for all paralegals working in the criminal justice system;

(e) To specify the types of legal services that can be provided by paralegals and the types of services that must be provided exclusively by lawyers, unless such determination is within the competence of the courts or bar associations;

(f) To ensure access for accredited paralegals who are assigned to provide legal aid to police stations and prisons, facilities of detention or pretrial detention centres etc.;

(g) To allow, in accordance with national law and regulations, court-accredited and duly trained paralegals to participate in court proceedings and advise the accused when there are no lawyers available to do so.

Guideline 15. Regulation and oversight of legal aid providers

69. In adherence with principle 12, and subject to existing national legislation ensuring transparency and accountability, States in cooperation with professional associations, should:

(a) Ensure that criteria are set for the accreditation of legal aid providers;

(b) Ensure legal aid providers are subject to applicable professional codes of conduct, with appropriate sanctions for infractions;

(c) Establish rules to ensure that legal aid providers are not allowed to request any payment from the beneficiaries of legal aid, except when authorized to do so;

(d) Ensure that disciplinary complaints against legal aid providers are reviewed by impartial bodies;

(e) Establish appropriate oversight mechanisms for legal aid providers, in particular with a view to preventing corruption.

Guideline 16. Partnerships with non-State legal aid service providers and universities

70. States should, where appropriate, engage in partnerships with non-State legal aid service providers, including non-governmental organizations and other service providers.

71. To this end, States should take measures, in consultation with civil society and justice agencies and professional associations:

(a) To recognize in their legal systems the role to be played by non-State actors in providing legal aid services to meet the needs of the population;

(b) To set quality standards for legal aid services and support the development of standardized training programmes for non-State legal aid service providers;

(c) To establish monitoring and evaluation mechanisms to ensure the quality of legal aid services, in particular those provided at no cost;

(d) To work with all legal aid service providers to increase outreach, quality and impact and facilitate access to legal aid in all parts of the country and in all communities, especially in rural, economically and socially disadvantaged areas and among minority groups;

(e) To diversify legal aid service providers by adopting a comprehensive approach, for example, by encouraging the establishment of centres to provide legal aid services that are staffed by lawyers and paralegals and by entering into agreements with law societies and bar associations, university law clinics and non-governmental and other organizations to provide legal aid services.

72. States should, where appropriate, also take measures:

(a) To encourage and support the establishment of legal aid clinics in law departments within universities to promote clinical and public interest law programmes among faculty members and the student body, including in the accredited curriculum of universities;

(b) To encourage and provide incentives to law students to participate, under proper supervision and in accordance with national law or practice, in a legal aid clinic or other legal aid community scheme, as part of their academic curriculum or professional development;

(c) To develop, where they do not already exist, student practice rules that allow students to practice in the courts under the supervision of qualified lawyers or faculty staff, provided such rules are developed in consultation with and accepted by the competent courts or bodies that regulate the practice of law before the courts;

(d) In jurisdictions requiring law students to undertake legal internships, develop rules for them to be allowed to practice in the courts under the supervision of qualified lawyers.

Guideline 17. Research and data

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

74. For this purpose, States could introduce measures:

(a) To conduct regular research and data collection disaggregated by gender, age, socio-economic status and geographical distribution of legal aid recipients and to publish the findings of such research;

(b) To share good practices in the provision of legal aid;

(c) To monitor the efficient and effective delivery of legal aid in accordance with international human rights standards;

(d) To provide cross-cultural, culturally appropriate, gender-sensitive and age-appropriate training to legal aid providers;

(e) To improve communication, coordination and cooperation between all justice agencies, especially at the local level, to identify local problems and to agree on solutions to improve the provision of legal aid.

Guideline 18. Technical assistance

75. Technical assistance based on needs and priorities identified by requesting States should be provided by relevant intergovernmental organizations, such as the United Nations, bilateral donors and competent non-governmental organizations, as well as by States in the framework of bilateral and multilateral cooperation, with a view to building and enhancing the national capacities and institutions for the development and implementation of legal aid systems and criminal justice reforms, where appropriate.