

The Buenos Aires Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

*Buenos Aires, Argentina
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We, the participants of the **Second International Conference on Access to Legal Aid in Criminal Justice Systems**, assembled from 15 to 17 November 2016 in Buenos Aires, Argentina, to discuss effective strategies to improve access to justice consistent with the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UN Principles and Guidelines)*, adopted by the General Assembly in resolution 67/187, and to discuss avenues to promote legal aid, including through the establishment of national, regional and international specialized networks of legal aid providers, to exchange information and share good practices and expertise as called for in resolution 25/2 of the 25th session of the Commission on Crime Prevention and Criminal Justice (CCPCJ), ‘Promoting legal aid, including through a network of legal aid providers’.

The Second International Conference on Access to Legal Aid in Criminal Justice Systems (Conference) brought together over 200 participants from over 50 countries, among them legal aid policy makers and practitioners including representatives of Ministries of Justice, the Judiciary, Public Defender Offices, Bar Associations, Offices of Public Prosecution, and Intergovernmental Organizations, as well as legal aid lawyers, paralegals, members of civil society and other experts. The Conference built on the progress achieved since the First International Conference held in Johannesburg, South Africa in 2014, and discussed common challenges, good practices and practical and achievable solutions in providing access to effective legal aid in criminal justice systems, based also on the findings and recommendations of the UNDP/UNODC Global Study on Legal Aid.

This Declaration is a result of the three days of deliberations, and was adopted at the closure of the Conference, with the request that it should be publicised widely in legal aid networks, forwarded to all relevant stakeholders, including national governments, the UN Human Rights Council, the CCPCJ, regional commissions and shared in discussions on the implementation of the Agenda 2030 for Sustainable Development (Agenda 2030), adopted by the General Assembly in resolution 70/1.

We reaffirm that ‘legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial’ and that it should be guaranteed by the State, as set forth in the *UN Principles and Guidelines*, and reemphasized in the Doha Declaration, adopted by the 13th United Nations Congress on Crime Prevention and Criminal Justice in March 2015. We are convinced that its implementation at the earliest possible stage is crucial in improving the functioning of criminal justice systems across the world and decreasing excessive detention and imprisonment. In this regard, we welcome the recognition of the importance of providing and ensuring access to effective legal aid in all matters and all its forms, and of improving access to legal aid in addressing the challenge of prison overcrowding and reduction of pre-trial detention in

the Doha Declaration. We also welcome the joint commitment of Member States, as voiced in the outcome document of the Special Session of the United Nations General Assembly on the World Drug Problem in April 2016, ‘to ensure timely access to legal aid and the right to a fair trial’.

We recall Goal 16 of the Agenda 2030 and its call to ‘Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels’. Furthermore, we acknowledge access to legal aid as a critical component of achieving Target 16.3, which calls for the ‘Promot[ion of] the rule of law at the national and international levels and [to] ensure equal access to justice for all’. In particular, we refer to the pledge to leave no one behind to guide efforts to provide legal aid.

Without access to effective legal aid, which encompasses access at the earliest possible stage, groups who are marginalised and vulnerable when in contact with the justice system or have special needs face high risk of arbitrary, excessive or illegal pre-trial detention, as well as torture and other cruel, inhuman or degrading treatment or punishment, coerced confessions, wrongful convictions, social stigma, detrimental impacts on health and livelihood and other abuses. Many of these persons also have legal needs in civil and administrative cases and matters that can contribute to crime and recidivism if left unmet, and thus are in need of access to legal aid.

We acknowledge the challenging environment that ongoing conflict, post-conflict, conflict-affected and fragile settings present, calling for an early intervention for providing legal aid. We recognize that access to justice, including access to legal aid, can prevent a return to instability or conflict. In that respect, we affirm the need for intentional efforts to provide legal aid through innovative and responsive rapid response initiatives that can serve as a springboard for future sustainable long-term legal aid reforms.

As we initiate the development of other national, regional and international networks at this Conference held in Latin America, we are guided by the regional experience of the Inter-American Association of Public Defense Offices (AIDEF) and the cooperation it has developed with the Organization of American States (OAS), to strengthen the role of public defenders and their autonomy and independence throughout the Americas and the world.

In line with the recommendations of the participants attending this Conference, we resolve the following:

- I. **We call upon all States** to demonstrate political will and commitment to achieve the aspirations and objectives set out in this Declaration and in Goal 16 of the Agenda 2030, and to fully implement the provisions of the *UN Principles and Guidelines*, as well as the related provisions under other relevant international and regional instruments, with particular attention to enhancing access to legal aid for marginalized or vulnerable populations, groups with special needs, and those

living in rural, remote and underserved areas. In this regard, we call upon all States to review and, where necessary, amend existing, or enact new legal aid legislation; to establish effective systems for the delivery of legal aid; to prioritize the dedicated and sustainable funding of the delivery of legal aid to ensure fair and proportional distribution of funds between prosecution and legal aid agencies; and to ensure legal aid service providers are independent and have the necessary qualifications, training and experience to provide quality legal aid services that are rooted in a firm understanding of professional codes of conduct and ethical duties placing the interest of the client above all. We also call upon States to facilitate assistance, sharing of information and best practices among legal aid service providers, making best possible use of existing information and communication platforms, and to share expertise on the development of national-level indicators for Target 16.3 of the Agenda 2030.

- II. **We call upon all legal aid service providers, governmental and non-governmental**, to develop and maintain quality, effective, client-centred, independent, and holistic legal aid for all persons without discrimination and to promote quality through training and sharing of information, to ensure meaningful access for groups who are disparately impacted or discriminated against based on grounds such as race, colour, religion, national origin, gender, and any other status, and to ensure quality representation with specialized expertise for groups with special needs, including children, persons with disability, victims of sexual and gender-based violence, refugees and displaced persons. To implement this, we ask that legal aid service providers develop partnerships with each other and other State agencies and civil society to facilitate access to other [related] services. Furthermore, we encourage legal aid service providers to support each other by sharing experiences, expertise, good practices, legal information and other relevant assistance, and to establish contact with each other in networks at the national, regional, and international levels to facilitate this cooperation.
- III. **We call upon the international community**, including international and regional bodies, networks, civil society organisations, international donor organisations, bilateral agencies and the UN system to continue to support the implementation of the *UN Principles and Guidelines* and Goal 16 of Agenda 2030, in particular Target 16.3, through technical assistance, such as legislative assistance, and financial assistance by prioritizing funding for legal aid within development and justice reform agendas. We note that funding other parts of the justice system while underfunding legal aid may create an unlevel playing field. We also call upon the international community to facilitate assistance, sharing of information and best practices among legal aid service providers, making best possible use of existing information and communication platforms, and to share expertise on the development of national-level indicators for Target 16.3 of the Agenda 2030.

Action Points:

- A. Build on efforts made at the Conference to establish the International Legal Aid Network (ILAN) and continue to promote national and regional legal aid networks. In this respect we call upon donors, governmental and non-governmental organizations and the private sector to provide the resources and support necessary for the establishment, administration and organization of such networks. To this end, we establish a working group to support the establishment of ILAN.
- B. Support the convening of a Third International Conference on Access to Legal Aid in Criminal Justice Systems in 2018, as well as regional and national conferences, to enable discussion of progress, challenges and exchange of good practices among governments, legal aid service providers, civil society and community organizations, academia and other relevant stakeholders.
- C. Advocate and assist State, governmental and non-governmental stakeholders to develop methodology and collect, on a continuous basis, relevant statistics and information concerning the provision of legal aid in criminal matters, which could include adding new questions to existing survey instruments and reporting mechanisms, and also undertaking frequent assessments at the country level to measure progress in achieving Target 16.3. We endeavour to report progress at the Third International Conference on Access to Legal Aid in Criminal Justice Systems, to inform relevant fora including the High Level Political Forum under the auspices of the Economic and Social Council, to be held in 2019.
- D. Advocate with and assist State, governmental and non-governmental stakeholders in their efforts to provide early access to legal aid to reduce excessive, arbitrary and unlawful pre-trial detention, including by improving effective communication between police stations, administration of prison/detention or other facilities where persons are deprived of their liberty, and legal aid service provider networks, and establish the provision of legal aid as an integrated part in prison/detention facility management policies and practices.
- E. Review, develop and implement strategies to meet the legal aid needs, including in civil and administrative matters, for groups who are disparately impacted or discriminated against based on grounds such as their race, colour, religion, national origin, gender, or any other status, for persons who are socially and economically excluded and deprived, and for groups with special needs, including children, persons with disability, victims of sexual and gender-based violence, refugees and displaced persons, consistent with the Agenda 2030 pledge to leave no one behind, as a means of ensuring that they enjoy full access to justice on an equal basis.