



# **Conceptual framework**

## **Legal aid in humanitarian settings**

Global Protection Cluster  
Task Team on Law and Policy

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## 1. Purpose and scope

The *purpose* of this Conceptual Framework developed under the leadership of the Global Protection Cluster’s Task Team on Law and Policy (GPC TTLP) is to consolidate standard terminology related to legal aid in humanitarian settings. One of the key objectives of this document is therefore to identify common language and create a shared understanding among the international and national humanitarian, development, peace and human rights actors around the work on legal aid and justice interventions while preserving and respecting the identity, richness, specificity, relevance and expertise of each separate organization.

The document does not aim at harmonizing the definitions adopted by the different agencies operating in this sector. The proposed framework is not exhaustive nor prescriptive but it can be useful to guide and support collective planning and coordinated response exercises on this topic.

The Conceptual Framework provides:

- Definitions of legal aid, access to justice, legal aid needs, legal capability and legal aid actors;
- Definitions of “direct legal aid service provision” and “interventions aimed at creating/strengthening a legal aid conducive/enabling environment” in humanitarian settings;
- An overview of the flow of direct legal aid service provision and its main components,
- An overview of interventions aimed at creating and/or strengthening an environment that is conducive to legal aid;
- An overview of areas of law and thematic focus;
- An overview of possible target groups of legal aid interventions.

The document is based on a desk review of the existing concepts, definitions and frameworks on legal aid in humanitarian settings as well as a series of key informant interviews with focal points of international and national organizations working in this sector.

## 2. Defining legal aid, access to justice, legal aid issues, legal capability and legal aid actors

### Access to justice

Access to justice is defined as the ability of people to seek and obtain a remedy through justice systems (both “statutory/official” and/or “traditional, customary and religious”), and in conformity with human rights standards. Everyone should, on an equal basis with others, enjoy the rights to equality before the law, to equal protection under the law, to a fair resolution of disputes, to meaningful participation and to be heard. States must ensure equal access to justice for all persons residing in their territory<sup>1</sup>.

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<sup>1</sup> The right to access to justice has developed over time. UDHR provides for the right to equality before the law without discrimination, equal protection under the law, the right to an effective remedy for violations of rights, the right to a fair and public hearing by an independent and impartial tribunal, and the presumption of innocence. ICCPR recognizes these principles and rights and it provides several due process guarantees for the conduct of judicial proceedings to ensure the right to a fair

Access to justice is a fundamental right in itself and an essential prerequisite for the protection and promotion of all other human rights<sup>2</sup>. Access to justice encompasses the right to a fair trial, including equal access to and equality before the courts, and seeking and obtaining just and timely remedies for rights violations. Guaranteeing access to justice is indispensable to democratic governance, for ensuring that justice systems are humane, fair and based on the rule of law as well as to combat social and economic marginalization.

Goal 16 of the 2030 Agenda for Sustainable Development, adopted by the United Nations General Assembly in 2015, focuses on promoting peaceful and inclusive societies, providing access to justice for all and building effective, accountable and inclusive institutions at all levels. The targets under Goal 16, in particular targets 16.3 and 16.b, seek to measure the extent to which the rule of law and equal access to justice for all are promoted, as well as the extent to which non-discriminatory laws and policies are enforced<sup>3</sup>.

Certain groups of persons (e.g. with disabilities, belonging to minorities, women) face significant obstacles in accessing justice, including criminal proceedings and the determination of civil rights and obligations. These obstacles include denial of their legal standing and due process guarantees. Furthermore, national legislation often contains provisions that deny equal treatment of certain groups of persons before courts.

In 2019, Ministers and high-level representatives from countries and international organizations recalled that the 2030 Agenda is based on a vision of a “just, equitable, tolerant, open and socially inclusive world

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trial that apply to any judicial body with any legal competence. The Human Rights Committee has determined that States are required to guarantee that individuals have accessible and effective remedies to assert their rights. ICESCR also recognizes that everyone has the right to an effective remedy, be it judicial or administrative, and its Committee has determined that, should an administrative remedy be deemed appropriate, it too must be “accessible, affordable, timely and effective”. The Committee against Torture has interpreted CAT provisions on redress as encompassing the concepts of effective remedy and reparation, and emphasized the importance of victim participation in achieving the ultimate objective of restoration of the dignity of the victim. CEDAW Committee adopted a general recommendation on women’s access to justice in which it recognized that effective access to justice optimizes the emancipatory and transformative potential of the law; it encompasses justiciability, availability, accessibility, good quality, the provision of remedies and accountability of justice systems. The Committee on the Rights of the Child also calls for particular attention by States parties to ensure that effective, child-sensitive procedures are available to children and their representatives in accessing independent complaint procedures and courts. Regional human rights mechanisms also enshrine the right to fair trial and an effective remedy. The Convention on the Rights of Persons with Disabilities is the first international human rights instrument that enshrines an explicit right to access to justice. The Convention expands this right beyond the notions of a fair trial and effective remedies. The “Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels,” A/RES/67/1, 2012, o.p. 14, refers to the right of equal access to justice for all, including members of vulnerable groups, and the importance of awareness-raising concerning legal rights, as well as commitments to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.

<sup>2</sup> Access to justice is also defined as the “ability of people to obtain just resolution of “justiciable problems” and enforce their rights, in compliance with human rights standards”, if necessary, through state or traditional institutions and mechanisms of justice and with or without appropriate legal support”, adapted Programming for Justice: Access for All – A Practitioner’s Guide to a Human Rights-Based Approach to Access to Justice, UNDP (2005). IRC definition: Access to Justice (A2J) as the ability of individuals/groups (rights holders) and the state, non-state and community actors responsible for protecting those individuals/groups (duty bearers) to understand their respective rights and responsibilities and to seek and provide satisfactory remedies for rights violations through formal and/or informal institutions of justice, in conformity with human rights standards.

<sup>3</sup> The UN has defined 12 Targets and 23 Indicators for SDG 16. Targets specify the goals and Indicators represent the metrics by which the world aims to track whether these Targets are achieved. Of particular interest for this study are target 16.3 “Promote the rule of law at the national and international levels and ensure equal access to justice for all” and target 16.B “Promote and enforce non-discriminatory laws and policies for sustainable development”.

in which the needs of the most vulnerable are met, acknowledging that the SDGs contain a pledge to leave no-one behind.<sup>4</sup>

The UN special procedures have adopted a number of guiding principles to establish international human rights standards related to the access to justice of specific populations in need of special protection such as children, women, internally displaced persons, migrants and people with disabilities.

### **Legal aid**

The concept of “legal aid” is inseparable from its function as a vital means of access to justice. Legal aid plays a crucial role in enabling people to navigate the justice system, to make informed decisions, as well as to obtain justice remedies. Legal aid makes a critical connection between populations and the justice systems. “Legal aid is both a right in itself and an essential precondition for the exercise and enjoyment of a number of human rights, including the rights to a fair trial and to an effective remedy,” and its aim “is to contribute to the elimination of obstacles and barriers that impair or restrict access to justice by providing assistance to people otherwise unable to afford legal representation and access to the court system.”<sup>5</sup>

Existing human rights treaties do not provide any definition of legal aid. The only internationally agreed definition is the one contained in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which defines the term “legal aid” as including “legal advice, assistance and representation for victims and for arrested, prosecuted and detained persons in the criminal justice process, provided free of charge for those without means”.<sup>6</sup> Several international and regional human rights treaties recognize access to free legal assistance as an essential component of the right to a fair trial.<sup>7</sup>

The right to legal counsel is a fair trial right and includes the right to free legal aid.<sup>8</sup> In some countries where legal aid services have been established, in practice they lack the necessary resources; do not operate on an independent basis; are inaccessible to persons with disabilities; or lack sufficient expertise

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<sup>4</sup> Declaration on Equal Access to Justice for All by 2030, February 7 2019, The Hague.

<sup>5</sup> See United Nations Special Rapporteur on the independence of judges and lawyers, Report on legal aid (A/HRC/23/43).

<sup>6</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, General Assembly resolution 67/187. See section below on definition of direct legal aid service provision.

<sup>7</sup> Article 14 (3) (d) of the International Covenant on Civil and Political Rights lists, among the procedural guarantees available to persons charged with a criminal offence, the right “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.” Article 18 (3)(d) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families includes a formulation that is almost identical to that included in the International Covenant on Civil and Political Rights. The Convention on the Rights of the Child recognizes that children deprived of their liberty and those alleged as, accused of or recognized as having infringed criminal law have the right to have access to “legal and other appropriate assistance” (arts. 37 (d) and 40 (2)(b)(ii) and (iii)), but does not contain any express reference to free legal assistance. In its general comment No. 10, however, the Committee on the Rights of the Child stressed that this assistance should be free of charge. The right to free legal assistance has been proclaimed in a large number of United Nations legal instruments, including the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Basic Principles on the Role of Lawyers, the Rules for the Protection of Juveniles Deprived of their Liberty (“the Havana Rules”) and the Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”).

<sup>8</sup> United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, and Basis Principles on the Role of Lawyers.

about the rights of vulnerable groups. The absence of free legal aid is one of the most common barriers to equality and equal access to justice, particularly for vulnerable and marginalized persons who face challenges in affording legal advice and representation. States should enact legislation and allocate resources to support the provision of free legal aid for all. Legal aid should be accessible, and States must ensure the availability of services and information about them.

**Legal aid needs:<sup>9</sup>**

For the purpose of this study, a legal aid need arises when an individual, household, community or population group:

- requires support from specialized entities/actors to deal appropriately with a justiciable problem because they lack of legal capacity/knowledge/awareness to identify, address and solve a justice problem;
- faces legislative, institutional, practical, legal, administrative or other type of obstacles in accessing justice;
- suffers (or at risk of suffering) a human rights violation and has the right to receive timely, adequate, comprehensive and effective reparations / remedies;

Appropriate and quality legal aid services enable individuals and communities to achieve rights-based solutions to legal aid issues. According to international human rights law, States bear the primary responsibility to adopt all appropriate legislative, judicial, administrative, budgetary, educative and other measures towards the full realization of the right to legal aid for any individual within their territory and subject to their jurisdiction who does not have sufficient financial means to pay for legal aid or to meet the costs associated with judicial proceedings,<sup>10</sup> and to ensure non-discriminatory access.

The need to approach legal aid and justice systems reflects people's relationships with their families and communities. The nature, complexity, severity of the legal aid issues in a given society are often shaped by (i) the legal capability of individuals and communities; (ii) the existing capacities of legal aid actors (civil society, private sector, international mechanisms, ..) and (iii) official and traditional justice authorities' capacity, social/political legitimacy, and their ability to ensure needs based and quality legal aid services accessible to all, without discrimination.

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<sup>9</sup> For the purpose of this study, these can be also referred to as legal problems, justice problems, legal aid issues, justice needs.

<sup>10</sup> The United Nations Special Rapporteur on the independence of judges and lawyers emphasized that "access to legal aid must be available to all individuals, regardless of nationality or statelessness, including asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State" Report on legal aid (A/HRC/23/43).

### Most common justice problems across the globe according to the ‘Taskforce on Justice’<sup>11</sup>

Notwithstanding the differences between countries and the diversity of legal systems, legal aid surveys reveal that people across the world experience many of the same types of legal aid issues. Below the six areas that account for most justice problems:

- ◆ Around one in five people have legal aid issues arising from violence and crime.
- ◆ Nearly a quarter of people are involved in disputes over housing, land or neighbors.
- ◆ Almost a third of people have legal problems related to money and debt, or as consumers.
- ◆ One in five people have problems related to access to public services.
- ◆ Almost one in 11 people are involved in family disputes.
- ◆ One in 12 people have legal needs related to employment or their businesses.

### Legal aid needs in humanitarian settings

Very often legal aid needs in crisis settings differ from those in development settings.

- The unique situation created by a crisis can lead to the emergence of *particular sets of legal aid needs* that may create an additional burden on the existing justice systems.
- In crisis settings, justice systems are often *more fragile* and their role prior/during/post conflict may have influenced their ability to solve justice problems.
- In addition, in situations of conflict and/or generalized violence, justice authorities (both traditional and official ones) may have *lost the trust* of the affected population.
- Conflict may have contributed to erode justice systems *operational capacities* or traditional authorities’ leadership and power dynamics.
- In some contexts, the presence of non-nationals (refugees, migrants, stateless people or people at risk of statelessness) may put additional burden on justice authorities in terms of complexity of the issues raised by this particular caseload, additional costs to cover the legal aid needs of this constituency and in terms of external relations with the country of origin.
- In IDPs, refugees and migrants’ contexts, a particular group may face specific barriers to access justice such as discrimination, specific administrative/legal procedure, restriction of freedom of movement, among others.

The distinction between humanitarian and development settings is not always that clear. For example, in some countries hosting refugees, the national system on legal aid may have been well developed but the sudden humanitarian crisis and the extra pressure on the legal aid system aggravates the situation.

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<sup>11</sup> ‘Justice for All: The Task Force on Justice, Final Report and ‘Highlights and Policy Recommendations’, April 2019, <https://www.justice.sdg16.plus/report>. The ‘Taskforce on Justice’, comprised of distinguished justice leaders and experts, further found that at least 253 million people live in extreme conditions of injustice such as modern slavery, statelessness or conflict; large numbers of persons across regions cannot resolve their justice problems and are either victims of crimes or have serious civil or administrative problems they cannot resolve; and an even higher number are excluded from the opportunities the law provides including lack of legal identity or documentation, which prevent them from accessing services and economic opportunities, or lack protection of the law.



Based on the above, legal aid interventions in humanitarian settings should aim at bridging the transition from crisis to development phase, ensuring an efficient division of labor with rule of law and access to justice actors.

**Legal capability:** The concept of legal capability centers on the “range of capabilities” necessary to make and carry through informed decisions to resolve legal aid issues. There is no consensus on the precise constituents of legal capability, but there is much agreement among recent accounts of the concept. All reference, to some extent, the following constituents: the ability to recognize legal issues; awareness of law, services and processes; the ability to research law, services and processes; the ability to deal with law related problems (involving, for example, confidence, communication skills and resilience), ability to afford the cost of the justice journey (financial, psychological and other types of costs)<sup>12</sup>.

The structure of legal aid models varies greatly, depending on their scope and funding, the type of justice systems they belong to and the area of jurisdiction where they function. Some of the most common models for the provision of legal aid are public defenders, private lawyers, contract lawyers, pro bono schemes, bar associations, national and international NGOs and paralegals<sup>13</sup>. Although States have the primary obligation to provide legal aid services, a wide range of stakeholders may contribute to providing legal aid to those lacking the necessary financial means.

According to international human rights law, States are required to develop and implement an *effective* and *sustainable* legal aid system,<sup>14</sup> free from undue political or judicial interference and independent.<sup>15</sup>

**State-funded legal aid** means State funding of legal advice, assistance and/or representation, which is provided at no cost to the recipient, or State subsidy of the cost to the recipient (i.e., the recipient pays a contribution, with the remainder of the cost paid for by the State).

**Legal aid provider:** A legally trained professional (lawyer or paralegal or other suitably trained person) who provides legal aid services on a full-time or part-time basis. Traditionally, legal aid providers were lawyers, but this has been expanded in many jurisdictions to include non-lawyers who have specific or specialized training in order to meet the demand for legal aid, especially in developing and low-income countries where the use of paralegals have greatly enhanced access to justice.

**Legal aid service provider:** The organization that provides legal aid services, or on behalf of which a legal aid provider works. The UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (‘UN Principles and Guidelines’) establish that lawyers are the “first” providers of legal aid. There are a variety of legal aid service providers engaged in service delivery according to the delivery model adopted by the state<sup>16</sup>. States may involve a wide range of stakeholders as legal aid service providers such as

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<sup>12</sup> Adapted by “Legal needs surveys and access to justice”, OECD and OSF, 2019. ‘Personality before the law’ is also critical. One will not be able to access or utilize the law, if the law does not ‘see’ or ‘recognize’ them, such as in the case of statelessness.

<sup>13</sup> Also referred in many contexts as people with basic legal skills. Please see below on community paralegals.

<sup>14</sup> In *Artico v. Italy*, the European Court of Human Rights found that the right to free legal assistance in article 6, paragraph 3 (c) was not satisfied simply by the formal appointment of a lawyer; rather, it required that legal assistance be effective. The State must take “positive action” to ensure that the applicant effectively enjoys his or her right to free legal assistance.

<sup>15</sup> United Nations Special Rapporteur on the independence of judges and lawyers, Report on legal aid (A/HRC/23/43).

<sup>16</sup> A summary of legal aid delivery models is provided by UNDOC, UNODC, Model Law on Legal Aid in Criminal Justice Systems with Commentaries, 2016, pp. 81–86. And also UNODC, “Ensuring quality of legal aid services in criminal justice processes”, 2019, available at: [https://www.unodc.org/documents/justice-and-prison-reform/20-00556\\_Handbook\\_Legal\\_Aid\\_Ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/20-00556_Handbook_Legal_Aid_Ebook.pdf).

international and national non-governmental organizations (NGOs), community based organizations, charitable organizations, professional bodies or associations, Public Defender institutions, private lawyers mandated and/or funded by the State to carry out legal aid and educational institutions. As highlighted by the UNDP/UNODC Global Study on Legal aid<sup>17</sup>, an increasing number of civil society actors are providing legal aid services worldwide, including civil society providers who are funded by the State or where non-governmental institutions provide full time legal aid services and are privately funded through individual contributions or through national and international donors. Legal aid services are also often provided as pro-bono activities by private law firms as well as *ex officio* by Bar associations.

**Legal aid actors:** legal aid actors include legal aid providers and legal aid service providers. For the purpose of this study, legal aid actors are organized into two categories:

- Those belonging to civil society (such as organizations providing legal aid in its different components), private sector (such as private lawyers networks), international organizations (such as UN agencies, international NGO providing legal aid services), Bar Association (often private but with a public role related to legal aid service provision);
- Those belonging to the authorities (such as lawyers funded by the State to provide legal services)

**Justice actors:** For the purpose of this study, justice actors are organized into two categories:

- statutory/official justice authorities, law enforcement authorities, and other state institutions relevant to guaranteeing access to justice;
- those authorities who are recognized as traditional, customary or religious justice authorities<sup>18</sup> (such as community leaders or local councils resolving disputes).

### 3. Definition of legal aid in humanitarian settings

Legal aid programmes in humanitarian settings often provide a combination of direct legal aid service provision and of interventions aimed at creating and/or strengthening a legal aid enabling environment.

#### Humanitarian settings

“Humanitarian settings” are defined based on the criteria outlined in the Sphere Standards, which describe humanitarian action as taking place in “a range of situations including natural disasters, conflict, slow- and rapid-onset events, rural and urban environments, and complex political emergencies in all countries”<sup>19</sup>. This implies including all countries that have experienced any type of situation outlined in the definition above, as well as those within any phase of the emergency or recovery process.<sup>20</sup>

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<sup>17</sup> UNODC/UNDP Global Study on Legal Aid, Global Report (2016), available at: [http://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid\\_Report01.pdf](http://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid_Report01.pdf); Country Profiles available [here](#).

<sup>18</sup> According to the context, “informal” justice systems and mechanisms may mean customary, traditional, religious, family-based or, more often a combination of those, thereof hybrid systems (see section below on official and traditional justice authorities).

<sup>19</sup> The Sphere Project, 2011, p. 9

<sup>20</sup> The focus of this study is legal aid in humanitarian settings that result in internal displacement in line with the focus of the clusters under their IASC mandate. However, all the tools developed in the framework of this project are applicable to all crisis settings and phases. To better understand the scope of the GPC please see “Transformative agenda”

### **Direct legal aid service provision**

For the purpose of this study, direct legal aid service provision entails legal information, legal awareness, legal advice, counselling, legal counselling, legal assistance, legal representation at little or no cost to the person designated as entitled to it<sup>21</sup>. It encompasses services provided by lawyers and paralegals in criminal, civil and administrative matters to individuals who are poor, marginalized, or who are affected by a crisis and are in need of special legal aid support. Direct legal aid service provision includes the provision of counselling, legal advice, representation in courts or proceedings under other State tribunals or customary and religious institutions or under international human rights law procedures and mechanisms, assistance in drafting of documents and pleadings, mediation/alternative dispute resolutions services, assistance in navigating the rules and procedures of State administrative and executive agencies, referrals to other service providers along with a range of other services. 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. Direct legal aid service delivery encompasses activities aimed at empowering individuals and/or households with a view of strengthening their ability to access justice and exercise their rights. Target of direct legal aid service provision may include: individuals who are unable to cover the costs of legal aid, crisis affected population, including internally displaced people, people who are stateless or at risk of statelessness, asylum seekers, refugees, members of the host communities<sup>22</sup>.

### **Interventions aimed at creating/strengthening a legal aid conducive/enabling environment**

For the purpose of this study, this type of interventions encompasses the broad range of activities aimed at creating, strengthening and/or consolidating an environment – political, social, cultural, institutional, economic and legal – that is conducive to the provision of needs-based, quality and affective legal aid services, to access to justice without discrimination and to address the systemic legal aid problems. It encompasses the following types of interventions:

- (i) the promotion –through advocacy and policy dialogue - of the implementation at the national level of relevant international law, including by supporting the ratification of relevant treaties and/or the establishment of adequate legal, policy and institutional frameworks and procedures;
- (ii) system strengthening of duty bearers at national and local levels;

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[https://www.globalprotectioncluster.org/assets/files/tools\\_and\\_guidance/IASC%20Guidance%20and%20Tools/transformative\\_agenda\\_protocols/Cluster-Coordination-Reference-Module-2015.pdf](https://www.globalprotectioncluster.org/assets/files/tools_and_guidance/IASC%20Guidance%20and%20Tools/transformative_agenda_protocols/Cluster-Coordination-Reference-Module-2015.pdf) and the Joint UNHCR-OCHA “Note on Mixed Situations: Coordination in Practice”.

<sup>21</sup> This definition mirrors the one provided by the UN Principles and Guidelines where “the term ‘legal aid’ is defined as “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.” United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (henceforth “UN Principles and Guidelines”), adopted by the General Assembly in December 2012 in Resolution 67/187.

<sup>22</sup> Persons in criminal detention are another key target population. Please see section below which offers an overview and definitions of possible target group of direct legal aid service provision in humanitarian settings.

- (iii) capacity building/development of relevant national legal aid actors<sup>23</sup> aimed at enhancing their ability to provide needs-based quality legal aid services and to engage in effective coordination, advocacy/policy dialogue;
- (iv) analysis and research efforts, coordination, monitoring of violations and related challenges to access justice, documentation of legal caseload;
- (v) analysis of jurisprudence and strategic litigation, aimed at identifying and overcoming systemic legal aid humanitarian crisis-related issues.

Legal aid enabling interventions encompass services provided by legal aid service providers, practitioners, licensed practicing lawyers and paralegals. Target of these types of interventions may include: rule of law institutions, local and regional authorities, ministries, traditional authorities, courts, police/border control, prosecutors, courts, prison personnel, national human rights institutions, Bar associations<sup>24</sup>, legal clinics, civil society organizations, I/NGOs, lawyers and paralegals.

#### 4. Basics of Legal aid programmes in humanitarian settings

##### Who? Legal aid providers and legal aid service providers

Legal aid programmes can be delivered by state authorities, national civil society organizations (CSOs), national or international non-governmental organizations (I/NGOs), law clinics, community based organizations (CBOs), universities, lawyers' networks, especially where limited government funding is available or where publicly funded legal aid is limited to representation in criminal proceedings. In humanitarian settings, the demand for legal aid services is wide and often outstrips existing resources. In some emergencies, state legal aid systems may be fragile, non-existent or not trusted by the affected population groups. In those cases, international development, humanitarian, human rights organizations, often with the support of national legal aid service providers, seek to fill this gap.

##### Why? Objectives of legal aid programmes:

Legal aid programmes in humanitarian settings overall objectives are generally:

- Increase ability of *crisis-affected populations* (individuals and communities) and among them the most vulnerable/marginalized, based on principles of equality and non-discrimination, inclusion and participation, to understand their rights and obligations, make informed decisions about their preferred solutions, access justice and be legally empowered to solve their legal issues and influence policy and decisions that affect their lives;
- Strengthen existing capacities and responses of *duty bearers' (authorities –official/statutory and customary, traditional, religious)* to provide legal aid that is non-discriminatory and rights protective, ensure access to justice of citizens and of those residing within their jurisdictions,

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<sup>23</sup> Interventions could also include building bridges between the official and traditional justice systems - for holistic, context specific, comprehensive justice solutions.

<sup>24</sup> Bar associations are organizations of lawyers responsible for the regulation of the legal profession in their jurisdiction (by promoting professional competence, enforcing standards of ethical conduct), or professional organizations dedicated to serving their members, or both. The UN Principles and Guidelines recognize the role of bar associations and recommend developing partnerships with them in order to ensure nation-wide coverage of legal aid (Guidelines 11 and 16), to request bar associations to establish rosters of lawyers and paralegal for police, court and prison legal aid schemes (Guidelines 4, 5 and 6) and to consult with them on the accreditation of paralegals (Guideline 14). A strong bar is important for ensuring the independence of lawyers,<sup>84</sup> which is a key requirement for ensuring quality legal aid services (chapter 3, section A. 3).

prevent rights violations through access to justice and respond to rights violations through effective remedies;

- Strengthen the existing willingness and capacities of *legal aid providers and legal aid service providers* to provide quality, rights protective and effective legal aid services and to positively influence the legal and policy environment towards an enabling environment for the provision of needs-based, quality and effective legal aid and access to justice.

### What? Scope of the response

In humanitarian settings, the decision to initiate a legal aid programme and the definition of its scope will depend on the result of the analysis of the legal aid and justice context of the country/territory affected by the crisis, the legal aid issues faced by the crisis affected population, their consequences and the existing capacities of the individuals, communities, legal aid actors and duty bearers to identify, address and solve them.<sup>25</sup> Legal aid programmes in humanitarian settings can be stand-alone or can be integrated in other sector interventions such as protection, rule of law, access to justice, shelter, education. Other sector interventions can also encompass one or more components of legal aid programmes.

#### **Examples – Legal aid and education**

Legal aid intervention can support Education programming through<sup>26</sup>:

Maximizing programmatic benefits to children, adolescents, caregivers and teachers by supporting learning about their rights to education in international and national law, and connecting them to A2J services when their rights are being violated;

Maximizing education outcomes of children with disabilities by providing legal information, assistance and advocacy around reasonable accommodation, specialized learning plans and related entitlements;

Working with local justice authorities, security actors and other groups to increase awareness around the obligation to protect educational facilities from attack in international law and advocating for increased protection under international humanitarian law;

Working with schools to regularize and publish fee schedules to reduce opportunities for exploitation, and to create legal pathways for continued access to education under national/international law for those who cannot pay standard fees; ■ Including messaging around the benefits of educational outreach and how to access within legal information outreach;

Delivering child/parent/teacher/care giver tailored legal information sessions at school/learning spaces to improve rights protection among children, parents/caregivers and educators;

Advocating policy change around documentation requirements for access to education as well as flexibility in registration timeframes for children affected by displacement;

Identifying the educational needs of children in detention through detention monitoring.

### For whom? Target group of legal aid programmes

The primary target of direct legal aid provision in humanitarian settings is usually the crisis affected population, including IDPs and refugees. Legal aid programmes can be delivered to the whole crisis-affected population or to particularly marginalized population groups (GBV survivors, children in conflict with the law, victims of Housing, land and Property rights violations, minority groups, etc.). Legal

<sup>25</sup> See also the “Legal aid Analysis Framework” developed by the GPC TTLP “Legal aid in humanitarian settings” project, 2022.

<sup>26</sup> IRC, Protection and Rule of Law, Access to Justice Guidance, October 2019.

aid programmes should prioritize vulnerable and marginalized groups, ensuring that no one is left behind. Secondary targets should include members of the communities hosting the crisis affected population and ensure access to justice to all<sup>27</sup>. Legal aid enabling environment interventions target legal aid service providers both those representing civil society or private sector as well as justice and legal aid authorities.

**Where? Geographic scope**

Legal aid interventions may be delivered in the whole territory/country affected by the crisis or only focus on a particular geographical area. Some legal aid programs focus on urban areas while others aim at covering population residing in rural areas<sup>28</sup>. Legal aid can be delivered in camp settings or in host communities. Legal aid programmes can also have a cross border nature and include virtual legal aid services provided through phones, apps and online platforms.

**When? Crisis setting**

In humanitarian settings, the main principle underlying the provision of legal aid, and in particular legal assistance and representation, is that the services provided should not replace a properly funded and functioning legal aid system on the contrary support the establishment or the strengthening of the existing structure, where/if it exists and operates in line with human rights standards. The analysis of context is key as legal aid and justice systems existing prior to the crisis could have contributed to maintain or further deepen existing discriminatory practices or human right violations.

For the purpose of this study, three ideal-type phases of crisis are identified as follows:<sup>29</sup>

Phase of the crisis	Type of response	Transition in Responses to Displacement
Acute emergency	Humanitarian response coordinated with development/peace/human rights response and, where relevant and possible, with national and local authorities	Parallel systems – international supported systems and, where relevant and possible, parallel to the national ones
Protracted crisis	Humanitarian, Development, Peace Nexus - Integrated response led, where relevant and feasible, by national and local authorities	Alignment (international response with features compatible with national systems) and Harmonization (common features and procedures between international and humanitarian

<sup>27</sup> Non justice professionals, such as medical practitioners and land planners, are also key.

<sup>28</sup> The UNDP-UNODC Global study on Legal Aid highlighted that nearly half of the responding Member States have indicated that the acute shortage of lawyers outside urban areas is one of the biggest impediments facing the delivery of legal aid services.

<sup>29</sup> “UNDP – UNHCR theory of change Responding to Protracted Displacement Using the Humanitarian-Development-Peace Nexus Approach”, 2020.

		systems, financial support is provided by international actors)
Solutions – Transition (including prevention and preparedness) <sup>30</sup>	Nationally-owned definitions and solutions to crisis are pursued with the support of international actors	Inclusion (crisis affected population, including displaced people are covered by national systems, financially covered by government budget)

The three phases of crisis and the related responses outlined above should be seen from a dynamic (though not necessarily linear) perspective, illustrating the sequence of events from the emergency phase—when support for affected populations is facilitated by the international community and provided in parallel to national systems - to the adoption integrated humanitarian and development set of interventions — towards solutions where international and national systems are aligned and subsequently harmonized and owned. It should be noted that there is no consistent correlation between passage of time and phases of response and that different phases can coexist simultaneously as country/local situations are unique and vary over time.

**5. Direct legal aid service provision flow**

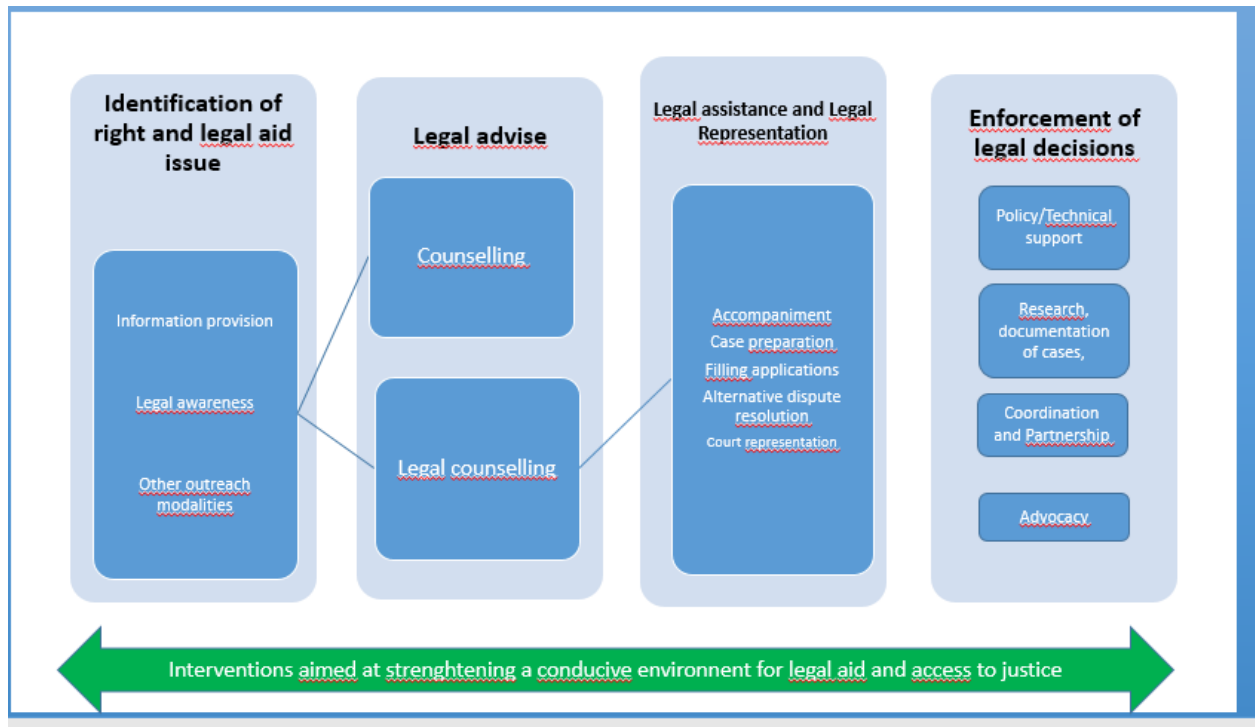
The table below helps identifying the different components of direct legal aid service provision in a form of a flow of type of interventions<sup>31</sup> . The objective of representing the components of direct legal aid provision in a form of a flow aims at:

- providing an overview of the possible legal pathways an individual or community may choose to resolve a legal aid issues, acknowledging the individual/household/community/ group as an agent of change, empowered by the legal aid intervention and not only as mere recipient;
- defining the objectives of the different components of a legal aid programme in a given context, taking into account the overall objectives of legal aid programmes outlined above;
- conceptualizing legal aid interventions around the solution of the legal aid issues/justice problems taking into consideration the justice journey itself
- adopting a international human rights law approach to access to justice, thereby identifying the grievance that calls for a remedy or redress<sup>32</sup>.

<sup>30</sup> The concept of transition, from externally provided humanitarian assistance to inclusion of displaced populations into national systems, is being developed by UNHCR in “Transitioning from Humanitarian Assistance to National Systems Supported by Development Actors: Concept Note. Division of Resilience and Solutions”, 2019. The transition from international to national systems, a movement from parallel systems to inclusion, reflects the growing importance of national systems. Also relevant for the rule of law sector “Local governance and rule of law contributions to prevent, address and solve forced displacement and statelessness situations UNHCR-UNDP Programmatic Framework”, 2020-2023 where the phases of response are defined as: preparing for the arrival of displaced people; meeting needs and supporting displaced, stateless and host communities; prevention of and solutions for forced displacement and statelessness. See also: [https://interagencystandingcommittee.org/system/files/typology\\_of\\_response\\_scenarios\\_in\\_protracted\\_settings\\_-\\_hdpn\\_diagramme\\_0.pdf](https://interagencystandingcommittee.org/system/files/typology_of_response_scenarios_in_protracted_settings_-_hdpn_diagramme_0.pdf)

<sup>31</sup> Direct legal aid service provision flow is different from legal aid case management. OECD and OSF defined the flow as a continuum of legal aid services model, see OECD/OSF, Leveraging the SDGs for inclusive growth: Delivering access to justice for all, Issues Brief, 2016, page 17.

<sup>32</sup> UNDP, Access to Justice, Practice Note, 2004.



The interventions outlined above may be delivered to an individual, a household, a community, a particular group according to the context and needs. Accordingly, the choice and the sequence of the interventions will depend on a number of factors including the nature of the legal needs, their volume, complexity, severity, the range of legal and other vulnerability criteria in place to access legal aid, the existing capacities of legal aid providers to identify, address and resolve the legal aid issues, etc. the ability of the individual/household/communities to access justice.

The “Legal aid/justice journey”<sup>33</sup> normally starts with the identification of a particular right/legal aid issue or need/ dispute by the right-holder. Legal aid providers often use group information provision, legal awareness sessions or other outreach modalities to enable individuals and communities to recognize their rights and increase their knowledge on the procedures/requirements to uphold them<sup>34</sup>. In criminal matters the beginning of the process will be the contact/complaint and investigation phases.

Once an individual has identified the legal issue to resolve, they will choose the most appropriate sequence –not necessarily linear - of steps to solve it. The willingness to access justice and to use legal aid services will be based on a number of factors including:

- understanding and characterizing the legal problem,
- awareness and/or familiarity with law, services and processes (i.e. knowledge of the legal pathway to follow to exercise the particular right),
- perceptions about the quality of the process to solve the legal issue,

<sup>33</sup> Some organizations use the concept of justice journey see, among others, HiiL.

<sup>34</sup> In some contexts, cultural and other considerations may affect right holders’ understanding of what a legal right or issue is; and their willingness to report it or have it addressed. Legal aid providers should be alive to these cultural and other constructs, and provide support where necessary.



- perception about the possible quality of the outcomes of the process,
- ability to afford the costs of accessing justice (financial costs but also time and emotional costs)<sup>35</sup>,
- level of trust in the justice/rule of law institutions/mechanisms (“legal confidence”, sometimes referred to as “subjective legal empowerment”) as well as
- existing availability of legal services, barriers to access justice, justice system’s ability to resolve the legal issue. Frequently mentioned barriers to accessing legal services include lack of legal and civil documentation, language, social convention/etiquette, gender, social status, expectation and, physical or financial obstacles to accessibility (beyond geography) - such as opening hours, waiting times, fees/expectations of bribes etc.

A legal aid journey can include both statutory/official authorities and traditional, customary/religious dispute resolution mechanisms. People facing justiciable problems take many different paths to justice, often involving little or no reference to law. A consistent finding of legal needs surveys has been that “the official judicial system is marginal to the experience of justice”. In developing and some middle-income jurisdictions, traditional dispute resolution processes are more common than court processes<sup>36</sup>. It is important to apply the principle of do not harm when defining the scope and scale of legal aid programmes engagement with traditional, customary, religious mechanisms that may perpetuate existing human rights violations or further deepen inequalities.

The expected end of a legal aid journey is the solution to the legal issue. This could be categorized into eight main categories, which are sometimes subdivided and/or merged. These are:<sup>37</sup>

- decision by a third party (often split between courts/tribunals and other third parties);
- mediation, conciliation and arbitration (often defined as being “independent”);
- action by a third party;
- agreement between the parties (often split between agreements reached “directly”/“personally” and agreements through lawyers or other representatives);
- unilateral action by the other party;
- unilateral action by the respondent (often split between action to resolve the problem and action to avoid the problem (e.g. move home)
- the problem sorted itself out.

According to other classifications, it is possible to identify four dimensions of a justice outcome:

- Fair distribution (distributive justice);
- Damage restoration (restorative justice);
- Explanation of the outcome (motivation of outcomes);

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<sup>35</sup> Normally in times of crisis, humanitarian organizations deliver legal aid services at no cost. But cost should be considered in their broad definition: the private costs of justice borne by the user in her pursuit to solve the legal problem. The instrument measures the following costs spent on the path to justice (not only the specific dispute resolution process): Out of pocket (monetary) expenses: Personal time, Stress incurred on the path to justice, Negative emotions incurred on the path to justice. Three types of commonly occurring negative emotions are measured: frustration, anger and humiliation.

<sup>36</sup> Although the use of formal process can be difficult to identify, and reporting is inconsistent, only a minority of surveys have found that courts or tribunals resolved more than 10% of justiciable problems with some suggesting a rate of 5% or lower. Legal needs surveys and access to justice, OECD and OSF, 2019.

<sup>37</sup> Legal needs surveys and access to justice, OECD and OSF, 2019.

- Problem resolution (enforcement of the result)<sup>38</sup>

Justice outcomes are positive changes in the well-being of people that result from measures or specific interventions in the process of resolving the problem. For instance, justice outcomes may include receiving an apology or financial entitlements (family problem), fair land ownership (land dispute), financial compensation (employment dispute), safety of children (children related problems), remedy in the form of restitution or compensation (for a violation suffered in the context of a conflict) or no resolution of problem. The legal aid journey could also end without the solution of the legal issue. The level of satisfaction on the solution reached to a legal issue may vary according to the changing expectations of the individual receiving legal aid, influenced by the context, or by the reality of the social/legal context in which the issue arises. Justice outcomes are not always fair but it is important that legal aid programmes support the best possible outcomes and seize every opportunity to build a protective environment.

It is key to take into consideration the last phase of the legal aid journey – when the law/ruling/decision may or may not be enforced. This phase is often overlooked by humanitarian actors due to the short term nature of their interventions. When we take people’s justice problems as a starting point, it is key to design a better journey from that problem to a resolution. What matters is both the destination (does the justice seeker achieve a satisfactory and enforceable resolution?) and the journey itself (is the justice seeker treated fairly along the way? Are justice seekers’ expectations well managed in order not to create harm? Are justice seekers kept informed through the justice journey?)<sup>39</sup>.

Direct legal aid provision intervention will generally aim at:

- Empowering people and communities
- Strengthen access to people-centred justice systems
- Contribute to fair and rights protective outcomes



Graph: Objectives of legal aid interventions <sup>40</sup>

<sup>38</sup> Among others, Hiil. Forgiveness combined with symbolic reparation (individual or collective) measures are often used in transitional justice settings.

<sup>39</sup> Justice for All, Task Force on Justice, Report initiative of the Pathfinders for Peaceful, Just and Inclusive Societies, 2019.

<sup>40</sup> Adapted by the report “Justice for All”, produced by the Task Force on Justice, 2019.

### Individual – Household - community structural legal aid issues

While it is important to start with people and their experiences, it is clear that, especially in humanitarian settings, many of the legal aid issues are collective as well as individual. If large numbers of women and children are victims of violence, this reflects a broader failure of the state to protect their rights. If families cannot obtain birth registration of their children as IDPs or refugees, this may affect potential return and durable solutions. If a community cannot protect its land, if an individual is denied the right to citizenship or if the poorest members of a society can be evicted from their homes without legal recourse, it reflects a broader failure of the justice and political system to respond to imbalances of power. Injustice and inequality often go hand in hand and may result in legal aid issues for specific population group. Direct legal aid interventions will often aim at combining individual and community's needs and design and implement immediate, medium and long term actions to also tackle structural and systemic legal aid problems.

## **6. Direct legal aid service provision in humanitarian settings and definition of its main components**

The section below aims at providing basic definitions of the direct legal aid service provision components.

### Information provision/dissemination

Information can be provided to an individual or to a group. The content is generic and it is not tailored to solve a specific legal problem or need of an individual or group. The information provided should not imply an advice on what is the best solution to a specific problem<sup>41</sup>. The objective of information provision/dissemination is to raise awareness on rights and obligations and to facilitate self-identification of legal problem by rights holders. Individuals or groups shall be provided with accurate, reliable, timely, and updated information about their rights, entitlements, and remedies, and how to claim and exercise them. Provision of legal information supports people making informed decisions<sup>42</sup>. Information provision can help facilitating communication between crisis affected communities to overcome legal barriers, when paired with monitoring and analysis on legal issues affecting the population Information provision helps legal aid providers: (i) identifying individuals in need of further legal assistance or specialized legal aid services<sup>43</sup>, (ii) understanding legal needs of particular groups of individuals, (iii) gaining an overview of obstacles faced by the rights holders in accessing justice. Information provision/dissemination can be considered a legal aid outreach modality: most commonly, participants to information sessions will want to know how the information applies to their particular circumstances therefore seeking one-to-one counselling /legal counselling.

The information can be delivered by a paralegal or a lawyer and can cover legal and/or not legal matters. Information provision/dissemination can be delivered by community paralegals (see box below on community paralegal). Information provision can be targeted at specific populations of interest (such as women, persons with disabilities or men and boys) and cover a range of legal issues relevant to their situation. Information provision can also be achieved by integrating rights education into school curricula and other existing education programmes.

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<sup>41</sup> NRC ICLA Handbook, 2015.

<sup>42</sup> DRC Legal Aid Resource Pack, updated 2021.

<sup>43</sup> See definition in section below on specialized and complementary legal aid services.

### Legal awareness sessions:

Legal awareness sessions are normally provided to a group of persons. Legal awareness sessions are organized and structured as they are provided to a pre-identified group of individuals in need of information on a particular legal issue<sup>44</sup>. Legal awareness sessions are designed to raise awareness and provide information on key legal issues faced by the targeted community. Legal awareness sessions normally cover legal matters. Legal awareness sessions can be delivered by a lawyer or a paralegal. Legal awareness sessions (i) are legal aid response to a pre-identified legal problem (ii) facilitate self-identification of legal problem by an individual/group and (iii) help legal aid providers identifying individuals in need of specialized legal aid services.

Displacement often contributes to lack of information on rights and services to which individuals/groups are entitled, personal documents they need to access services, what support is available when their rights are violated and how to seek that support. Displaced persons often feel a sense of fear or alienation regarding state justice services; these feelings are often amplified by a lack of knowledge of what is actually available and how to access it<sup>45</sup>. In humanitarian settings, legal awareness sessions may be provided to:

- familiarize crisis affected populations, including IDPs, with the existing justice systems (regulations, laws and customs regulating civil/administrative, criminal and human rights matters), particularly as they relate to their displacement<sup>46</sup>
- update crisis affected population, including IDPs, on any change in regulations or policies affecting crisis affected population's legal status/access to rights.
- collect and distribute legal information on precedent-setting cases, new procedures, state programmes specifically benefiting IDPs, etc.

Content of information needed by crisis affected population may vary according to the context and may vary over time<sup>47</sup>. Legal information programs should explain<sup>48</sup>:

#### ❖ WHAT rights/benefits are available?

for example: the availability of birth registration or work permits, protections against sexual and other forms of gender based violence, what are relevant rights in displacement for IDPs/refugees/asylum seekers, what rights/benefits are available to specific population groups;

#### ❖ WHY rights matter?

for example: birth registration prevents statelessness, civil documents secure access to basic services, freedom of movement means people can more easily seek employment or socialize; and

#### ❖ HOW to access rights and remedies?

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<sup>44</sup> The definition provided here is adopted by the majority of international legal aid organizations participating to this study. According to the contexts, some organizations do not distinguish between information and legal awareness sessions.

<sup>45</sup> IRC, Protection and Rule of Law, Access to Justice Guidance, October 2019.

<sup>46</sup> GPC, Handbook for the protection of IDPs, 2006.

<sup>47</sup> Please see section below on thematic focus of legal aid services.

<sup>48</sup> Adapted from IRC Protection and Rule of Law, Access to Justice Guidance, October 2019.

for example: what you need and where to go to apply for identity documents, how to file a claim, what to expect in terms of fee requests or waiting times or where/how to access humanitarian services.

❖ WHO is responsible for fulfilling the rights?

for example: which institution is in charge of providing compensation for damage of housing as a result of a conflict.

Particular population groups may need specialized<sup>49</sup> information *content* related to their status, gender, age, etc. as well as tailored *delivery methods* according to their specific situation.

### **Modalities for information provision and legal awareness sessions**

Where face-to-face legal information/awareness services are available but out of reach to people affected by crisis due to physical distance or other obstacles, a broad range of modalities can be used to provide information. Those modalities can be used also to multiply the effect of information provision.

Possible delivery methods include (but are not limited to):

- Public sources: mass information campaigns (radio, TV, advertisements, posters); community campaigns, groups or focal points; dissemination of printed Information, education and communication materials – leaflets, flyers, etc.;
- Telephone advice services: hotlines and emergency lines can provide an avenue for individuals to receive information remotely. Telephone advice clinics can be established at scheduled times using phones in community centres or other similar facilities, where available.
- Outreach advice clinics /Information Hubs/Helpdesks (mobile or static): where legal services are unavailable to communities due to their remoteness from urban areas, outreach clinics can link legal professionals and paralegals to provide a basic standard of advice. These can be delivered by private legal professionals, university legal clinics, NGOs or government providers and involve transporting advisors to the community for scheduled period to be available to provide short advice sessions to clients on a range of issues.
- Self-help guides: A simple empowerment technique to educate communities on basic legal skills, rights and obligations is the production of self-help guides and factsheets on various topics. These can include detail on specific legal processes (such as acting as a witness in a criminal case) or on substantive areas of law (such as property implications during the dissolution of a marriage). They can be produced in local languages, or using cartoons and diagrams for illiterate individuals, and disseminated within existing facilities (such as camp-based community centres) or during legal advice clinics.
- engagement of community/religious leaders to pass on key messaging (for example, promoting women’s legal rights at religious/cultural events);
- the use of arts and drama (theater group tour);
- the use of digitally enabled information services<sup>50</sup> or social media providing action-oriented information to clients. This service could come in the form of a simpler format of a question

<sup>49</sup> For definition of specialized laid services see section below.

<sup>50</sup> Such as Signpost29, SMS messaging, Apps.

tree, where clients answer a series of standard questions, to reduce costs and winnow out simple cases (SMS); or, more responsive models will staff online moderators to help clients navigate to relevant legal information and help them understand how to apply it to their case or seek more dedicated legal support (Signpost).

### Counselling

Counselling entails the provision of written or verbal advice tailored to the individual needs of the right holder<sup>51</sup>. It is a step beyond information as it entails a degree of analysis of the problems faced by the right holder and advice on what is the best possible course of action to solve a particular problem. Counselling services can be delivered by paralegals (including community paralegals) or lawyers, and can cover legal and/or not legal matters. Counselling may be provided to a group of beneficiaries who share a specific legal aid issue or to individuals. Counselling can also be provided via a range of modalities (in person, e-mail, telephone, WhatsApp, Signpost or similar). Counselling may require more than one interaction with the beneficiary, but does not rise to the level of direct legal support/assistance. Counselling can also result in referrals to other service providers (see box below on referrals).

### **COMMUNITY PARALEGALS<sup>52</sup>**

In this paper, paralegals are non-lawyers trained in legal matters and authorized to perform specific tasks requiring some knowledge of the law and legal procedures appropriate to the needs of the community, but not requiring a law degree. Distinct from clerical assistants to lawyers, paralegals can in certain circumstances in some states perform certain tasks independently. They may be volunteers who have received a short training on relevant legal issues, but in some states may have similar qualifications to the professional lawyers. Often paralegals can also be law students who provide basic legal advice through University law clinics.

Paralegals are often members of the community. Community paralegals, also known as “grassroots legal advocates” or “barefoot lawyers,” provide a bridge between the law and real life. They are trained in basic law and skills like mediation, organizing, education, and advocacy. They form a dynamic, creative frontline that can engage in state and traditional institutions alike. Community paralegals are different from conventional paralegals: their primary role is not to assist lawyers, but rather to work directly with the communities they serve.

Where full-scale legal services or other forms of legal assistance are not available in a particular community, paralegals can fill this gap and provide a basic level of legal information and advice. Paralegals can be trained to provide a range of basic legal services to rights holders, making the model adaptable and responsive to a range of different legal problems and displacement contexts.

Community paralegals should be connected to lawyers and the possibility of litigation or high-level advocacy if frontline methods fail. Community paralegal programs are diverse. Some take a holistic approach, addressing a range of justice needs; others focus on addressing a specific issue, like

<sup>51</sup> See NRC ICLA Handbook and DRC Legal aid Resource Pack. An example of counselling is the one provided on return, reintegration or resettlement, according to the context.

<sup>52</sup> Adapted from Namati.

violence against women or protection of customary land rights. Some paralegals serve a very local jurisdiction - a village, a neighborhood — as volunteers; others are paid staff who cover a much larger area — a chiefdom, or a district. Community paralegals use several strategies to advance justice.

These include:

- Public education to increase awareness of the law
- Advising clients on legal process, and options for pursuing remedies
- Assisting clients in navigating authorities and institutions
- Mediating disputes
- Organizing collective action
- Advocacy
- Fact-finding, investigations and monitoring

In exceptionally difficult or serious cases, a paralegal can seek the assistance of a lawyer, who, in turn, may resort to litigation or higher level advocacy. Often, the credible threat of litigation can lead more powerful parties to participate in mediation or negotiation.

At their best, community paralegals can:

- ✓ Promote empowerment by fostering legal awareness and agency of clients
- ✓ Provide tailored solutions to legal problems by using creative strategies, a range of skills and tools, and deep knowledge of the local context
- ✓ Be more cost-effective and accessible than most lawyers
- ✓ Find solutions not only for individuals, but also for entire communities
- ✓ Engage a wide range of institutions, including administrative agencies and customary authorities<sup>53</sup>
- ✓ Prioritize a fair resolution rather than taking sides with only one party to a conflict.

## Referrals

Ensuring that individuals have access to specialized services is a fundamental aspect of the work of legal aid actors. Given their expertise and knowledge of the needs of the population they serve, legal aid actors are particularly well-suited to ensure that people have access to the most adequate and quality services. Effective referral systems can be essential means for the protection of rights, especially in humanitarian settings.

Individuals may be referred to international or national organizations/entities that provide:

- specialized legal aid services for particular group of population (children, women, GBV survivors, refugees, etc.)
- specialized legal aid services on a particular area of law (criminal law)
- complementary legal aid services (psychological support, shelter options for GBV survivors)
- other services (such as health, education, cash assistance)

<sup>53</sup> To this end, paralegals play a critical role of bridging the formal and traditional justice systems; each of which have diverse but complimentary roles in extending justice to crisis affected and host communities.

### Legal Counselling<sup>54</sup>

Legal counselling entails the provision of tailored one-to-one legal advice delivered by a qualified lawyer.<sup>55</sup> Legal counselling is delivered to assist the right holder with a particular legal issue and empower him/her to solve it. Complex legal information should be conveyed according to the situation and background of the individual.

In humanitarian settings, legal counselling seeks to advise crisis affected population including IDPs on their legal options to address a specific rights violation or to claim a legal entitlement. The primary functions of a legal counsellor would be to:

- Provide individual advice by listening to the situation, explaining the situation in legal terms, and discussing potential legal mechanisms to address the problem;
- Explain potential benefits and risks associated with various options, and provide guidance about the best method to address challenges;
- Clarify incorrect information that may be circulating in the community.<sup>56</sup>

### **Legal Empowerment**

Legal empowerment is designed to give people the power to know and use the law to solve their issues and realize their rights, and is one of the most effective and responsive methods for achieving access to justice. Legally empowered, even poor and marginalized people are able to make the law work in their own interests, achieving meaningful solutions to concrete injustices. It emphasizes a people-centric approach to justice by highlighting the priorities of individuals and communities in using the law to advance and protect their interests. Often this involves a combination of lawyers and paralegals, statutory/official and traditional/customary/religious justice systems, information sharing and community-driven participation. Legal empowerment is designed to give people the power to know and use the law, and is one of the most effective and responsive methods for achieving access to justice.<sup>57</sup>

### Legal Assistance:

Legal assistance entails the provision of legal support to an individual with regards to administrative or legal procedures, without the need for a power of attorney<sup>58</sup> and with or without the beneficiary's presence. Legal assistance can be only provided by a lawyer.<sup>59</sup> Legal assistance implies some degree of representation between the lawyer and the beneficiary of the intervention. The beneficiary entrusts the

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<sup>54</sup> The definition provided here is adopted by the majority of international legal aid organizations participating in this study. According to the contexts, some organizations do not distinguish between counselling and legal counselling. Some organizations use the term "legal consultations".

<sup>55</sup> NRC ICLA Handbook, 2015; IRC Protection and Rule of Law, Access to Justice Guidance, 2019.

<sup>56</sup> Handbook for the protection of IDPs, Global Protection Cluster Working Group, 2006.

<sup>57</sup> OECD and OSF, "Leveraging the SDGs for inclusive growth: Delivering access to justice for all", Issues Brief, 2016.

<sup>58</sup> A power of attorney (POA) or letter of attorney is a written contract/ authorization to represent or act on another's behalf in private affairs, business, or some other legal matter. The person authorizing the other to act is the principal, grantor, or donor (of the power). The one authorized to act is the agent, attorney, or in some common law jurisdictions, the attorney-in-fact.

<sup>59</sup> Some organizations may require a Power of Attorney for all forms of legal assistance. In some contexts, some organizations provide legal assistance through legal advisors (legal professionals but non-certified lawyers) or by paralegals.



lawyer, more or less formally, to assist with the resolution of a specific legal problem or problems. The difference between legal assistance and legal representation is that the latter requires a power of attorney.

Below a list of possible interventions that may be classified as legal assistance:

1. *Case preparation*: lawyers will deliver their support in the preparation of the needed documentation to enable rights holders accessing justice and claiming their rights;
2. *Reviewing or filling out applications*: lawyers may approach judicial bodies on behalf of the right holder to ask about a file or about specific information needed to be able to proceed with the case;
3. *Accompaniment*: lawyers may accompany rights holder to the relevant state offices (for example to the Civil Status Department for a birth registration) or to the judicial bodies (state and traditional) to help him/her overcome challenges encountered in navigating particularly complex and bureaucratic administrative or legal procedures;
4. *Self-representation*: The right holders will be able to undertake actions to help address their legal aid needs. In this case, legal staff will guide the beneficiaries on the steps to be taken. If the person is not able to undertake the necessary steps themselves, due to vulnerabilities or lack of personal resources, legal staff will take action with the consent of the person.
5. *Dispute resolution services* through mediation, negotiation, arbitration services. If a power of attorney is signed between the lawyer and the right holder, then these services will qualify as legal representation (see box below on alternative dispute resolution<sup>60</sup>).

### Legal Representation

Legal representation consists in tailored assistance provided by a licensed practicing lawyer<sup>61</sup>, acting on behalf of an individual through power of attorney before an administrative or judicial body (including religious courts and traditional dispute settlement mechanisms and/or local human rights councils) in the framework of civil, criminal and administrative proceedings. Representation is normally the last resort, should the other legal services be insufficient in achieving the solution of the legal issue. Legal representation can be provided through state justice bodies (official courts, administrative offices) as well as in non-state/community-based/traditional/religious justice or alternative dispute resolution mechanisms<sup>62</sup>.

### **Dispute resolution**

Alternative Dispute Resolution (ADR)<sup>63</sup> – A set of mechanisms a society utilizes to resolve disputes without resort to costly adversarial litigation<sup>64</sup>. Alternative dispute resolution (ADR) are often promoted as a preliminary substitute for the state justice system, often as an avenue of resolving a dispute between parties prior to the commencement of proceedings. ADR can be offered by the state justice system as well. And they are increasingly included in legal procedure. The difference is that through ADR the legal aid issue is solved outside the court, and therefore not following adversarial

<sup>60</sup> In criminal cases, it would include restorative justice or penal mediation.

<sup>61</sup> For the purposes of this study licensed practicing lawyer means any person qualified and entitled in national law to provide legal advice, assistance and representation.

<sup>62</sup> See box below on dispute resolution.

<sup>63</sup> NRC developed useful capacity development material on Collaborative Dispute Resolution (CDR).

<sup>64</sup> UNDP - UNODC Global Study, Global Study on Legal Aid Global Report, 2016.

procedures. The solution/justice outcome often consists in seeking compromise and agreement instead of victory of one part over the other.

ADR can include community mediation, arbitration, conciliation or pre-trial negotiations as a means to establish a consensus between parties. In displacement and traditional settings, community-based ADR measures are often the first point of call for aggrieved parties. Many legal systems also require parties to utilise such mechanisms before they are permitted to commence civil proceedings in court. As they are less formal and generally more cost-effective than court proceedings (not requiring the representation of a lawyer), ADR measures can be an effective tool in promoting access to justice.

In humanitarian settings, legal assistance and legal representation may be provided to support crisis affected population, including IDPs, overcome legal obstacles, access entitlements, obtain redress for rights violations and resolve disputes through appropriate channels. When providing legal assistance, a lawyer with power of attorney, may:

- Act as legal counsel for the displaced person/s in relevant administrative procedures. Administrative procedures are commonly used to address cases involving human rights, property restitution or land tenure rights, documentation required for citizenship or identity documentation, or social benefits such as employment or pension rights;
- file legal complaints with courts and provide in-court representation through staff or outside counsel. Legal representation may be particularly useful in cases of neglect, deliberate obstruction of justice, or unlawful actions such as arbitrary arrest or detention;
- accompany client/s to gather documents from public offices or documentation centres in the area of displacement or in the IDPs' area of origin;
- Prepare and file "test cases" in domestic, regional and international courts and human rights bodies on behalf of IDP clients;
- Assist clients with the submission of cases, representation and mediation in 'traditional' or 'tribal', religious, customary justice mechanisms<sup>65</sup>.

Legal assistance and legal representation in proceedings are provided by lawyers to individuals without the capacity to pay for a private lawyer, who is normally subject to a system of eligibility criteria based on vulnerability, legal and means testing. Legal and other vulnerability criteria should be in place<sup>66</sup> to determine prioritization of cases for legal assistance and legal representation<sup>67</sup>. These criteria could include support public interest and other strategic litigation cases (see section below on strategic litigation).

### **Eligibility criteria for legal assistance and legal representation**

In humanitarian settings, information, legal awareness, counselling and legal counselling services are often provided to all who apply and present a legal issue that falls within the expertise/knowledge of the legal aid provider. On the contrary, prioritizing the focus of legal assistance and legal representation services is inevitable in the face of overwhelming demand and taking into

<sup>65</sup> Adapted from "Handbook on the protection of IDPs", Global Protection Cluster Working Group, 2006.

<sup>66</sup> Information on eligibility criteria should be accessible by rights holders.

<sup>67</sup> Please see box below on eligibility criteria.

consideration time and costs associated with this type of activity. Prioritizing who/what type of cases should receive legal aid services is a difficult task. Often eligibility criteria for legal assistance/representation take into consideration the following aspects<sup>68</sup>:

- Merit test – “in any case where the interests of justice so require” Categories of legal cases whose precedence may bring positive change to a larger population, even if the beneficiary of the assistance is not meeting the usual beneficiary criteria. Impact of judgement/decision goes beyond the individual case;
- Means test – “if the individual does not have sufficient means to pay for it”, meaning the socio-economic status of the beneficiary receiving legal assistance/representation.
- Vulnerability of the individual requesting legal aid (based on discrimination, exclusion, etc.) Categories of individuals are considered particularly vulnerable or marginalized include: refugees, IDPs, migrants, elderly people, female-headed households, victims of domestic violence, children in conflict with the law, people at risk of statelessness, beneficiaries of time bound amnesty or specific reparation/social protection/safety nets state-fund programmes, etc.
- Severity of the justiciable problem and individual /community capacities to overcome it;
- Likelihood to achieve the desired justice outcome is higher.

In humanitarian settings, legal aid providers should assess the need to provide legal representation in all types of cases and verify for which types of cases it is feasible for rights holders (and marginalized and vulnerable groups) to navigate the justice system with just information and/or legal advice. It should also be avoided to offer legal aid services that cannot be provided in a sustainable manner after the crisis. It is advisable to:

- Discuss and agree legal eligibility/prioritization criteria among all actors providing legal aid (humanitarian international organizations, local civil society, bar association, development actors, etc.) and develop a network of cooperation agreements based on a clear division of labour.
- Clearly set out legal eligibility/prioritization criteria in a legal assistance manual, programme guidelines or other policy document available to all legal aid staff to ensure clarity within the programme and externally
- Communicate eligibility/prioritization criteria to the target population
- Ensure complementarity and coordination among all legal aid actors

Legal representation is often embedded into domestic legal aid frameworks. In humanitarian settings, legal representation may be provided by lawyers working for public defenders, national legal aid civil society organizations, I/NGOs, contracted lawyers or pro bono lawyers. The decision on whether to provide legal representation in crisis contexts, on its scale and scope shall be subject to an in depth assessment and take into account existing capacities and responses<sup>69</sup>. When domestic remedies have

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<sup>68</sup> The proposed list is not exhaustive. Context specific considerations can be also taken into account.

<sup>69</sup> Among other factors elements of this assessment may include: organization’s capacity to provide legal aid in the country aid in accordance with national laws; to register as a legal service provider or the requirement to implement representation activities through partners or contracted national attorneys must be studied for all areas of law and for all typologies of cases. (IRC, Access to justice, 2019).

been exhausted or are ineffective, legal assistance or representation may be provided for international litigation and non-litigation mechanisms.

#### **Distinction on primary and secondary legal aid**

In some systems, “primary legal aid” includes the provision of legal information, mediation and education, legal assistance in preparing cases at the local, national or international level, psychological support and specialized assistance, and legal advocacy. Some systems define “secondary legal aid” legal advice, assistance and representation<sup>70</sup>.

#### **Legal aid case management**

Legal case management (LCM) is a way of organizing and carrying out legal assistance activities to address the legal needs of an individual or group, in an appropriate, systematic and timely manner, through direct support and/or quality referrals, and in accordance with best practices and international protection standards. Effective LCM supports prevention and response to protection risks linked to legal issues and concerns both in the immediate and longer term. Legal case management entails an on-going relationship with the client individual and/or household, which form a common thread throughout the provision of services by multiple specialized service providers<sup>71</sup>.

#### Execution/enforcement of rulings<sup>72</sup>

As mentioned above, the expected end of a legal aid journey is the solution of the legal aid issue. It is therefore important to take into consideration the enforcement phase of the legal aid and justice journey. When administrative, civil, criminal proceedings end, the relevant authority that has considered the case will render what is called a final judgment or decision. The forms of such judgments or decision differ substantially between areas of law and vary according to the different legal systems. All countries have enforcement procedures that are intended to require parties to comply with the judgment or decision. Some of legal aid interventions implemented during this phase of the journey will fall under “legal aid enabling environment interventions”; others will be instead linked to the particular legal aid case and therefore be considered part of the legal aid service provision flow. Support to enforcement can be defined as the “interventions aimed at supporting the capacities of the state and traditional authorities and systems to implement/operationalize orders, decisions and settlements”. It is critical to support the capacities to enforce civil court decisions and to institute reasonable appeal procedures against arbitrary actions or rulings.<sup>73</sup>

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<sup>70</sup> UNDP/ UNODC Global Study on Legal Aid: Country Profiles (November 2016), p. 24; Box 3 on page 25, [http://www.undp.org/content/undp/en/home/librarypage/democraticgovernance/access\\_to\\_justiceandruleoflaw/global-study-on-legal-aid.html](http://www.undp.org/content/undp/en/home/librarypage/democraticgovernance/access_to_justiceandruleoflaw/global-study-on-legal-aid.html). Also see Legal Aid in Donetsk and Luhansk oblasts: Assessment of accessibility of the free legal aid provision system in Donetsk and Luhansk oblasts, 2020, UNDP in cooperation with UN Women, NFPA and FAO.

<sup>71</sup> Please see also: IRC – UNHCR, Your Guide to Protection Case Management.

<sup>72</sup> Depending on the area of law and the legal system of the country, those decisions can be called judgments, verdicts, decisions, rulings.

<sup>73</sup> UNDP, Access to Justice, Practice Note, 2004.

The enforcement phase of the legal aid journey can be unpacked in four components:

- Participation of rights holders<sup>74</sup>

Put people and their legal needs at the center of justice systems. Understand what people need and want when they seek justice, which obstacles they face and what kind of justice they receive.

- Civil society and parliamentary oversight - meet standards for human rights

Human rights organizations, National human rights institutions and other civil society justice defenders can play a role in pressing for fair outcomes where decisions do not comply with international rights standards. Activities aimed at strengthening civil society's watchdog and monitoring capacities will reinforce the overall accountability within the justice system.

- Offer the right remedy

In line with international standards,<sup>75</sup> sentencing decisions should ensure the right to comprehensive reparation, guarantees of non-repetition, recognizing the harm done to victims thereby contributing to social cohesion. Legal aid teams can support with community re-integration of offenders who have completed their sentences, to address these tensions and set a framework for peaceful co-existence.

- Collect and disseminate data on outcomes

To create the right incentives for justice systems to provide fair outcomes, data on judicial effectiveness should be gathered and made available to the public. Proof that fairness is increasing may lie in reductions in reoffending (since resentment at unfair treatment can be a significant driver of crime), in reduced incidence of unmet legal needs, or in diminished stress levels and improved mental health among complainants and defendants. Data on public perceptions is also important in assessing whether a justice system is providing fair outcomes. Cost-benefit analysis, meanwhile, can help determine whether societies as a whole are receiving a fair return from their investments in justice.

- Establish effective grievance mechanisms

People can be satisfied about the outcome of a case, and see an outcome as fair, even if they have lost. Key elements in determining their satisfaction include the perceived independence of justice institutions and the degree to which their cases were taken seriously. Legal aid and justice service providers must set and meet basic standards related to the quality of the process, based on affected people's feedback. In addition to appeal procedures for legal decisions, effective and independent grievance mechanisms are needed to deal with complaints. Improving the transparency of decisions will facilitate grievance processes.

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<sup>74</sup> Survivor centered approach are key, especially for GBV cases.

<sup>75</sup> See among other the Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, August 2017 focusing on the issue of transitional justice in weakly institutionalized post-conflict settings.

## 7. Specialized and complementary legal aid services

### Specialized legal aid services

The right to equality before the courts and tribunals, as enunciated in article 14, paragraph 1 of the International Covenant on Civil and Political Rights, aims to guarantee equal access to the administration of justice. This provision not only requires States to prohibit any distinction with regard to access to courts and tribunals that are not based on law and cannot be justified on objective and reasonable grounds, but also requires them to take positive measures to ensure that no individual is deprived of his or her right to claim justice. In order to guarantee equal and effective access to legal aid to everyone, special measures should be developed and 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, Lesbian, Gay, Bisexual, Transgender/Transsexual and Intersex (LGBTIQ+), 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.

Establishing specialised legal aid services serves two general purposes. First, they ensure quality of legal aid services through specialisation of providers and creating a framework for monitoring the quality of services, and its continuous improvement. Second, they ensure that specific needs and specific rights of groups (recognised in international or national law) are acknowledged, respected and fulfilled.

In order to ensure quality of legal aid services for marginalized or groups with special needs may include: specifying roles of legal aid providers and authorities for each group; special multi-disciplinary panels to deal with specific special needs groups; capacity-development sessions on special needs groups – laws, policies, needs, and their responsibilities towards each group; specific reporting on legal assistance provided to each special group, particulars of cases, challenges faced and unresolved issues can be important in not only documenting legal services provided to particular groups but can also shape policy changes or push implementation of existing laws; standardized training modules for techniques and methods for effective learning on each specific group; guidebooks with standards and jurisprudence for each special needs group (basic minimum standards for quality legal aid services to such groups); periodic monitoring by legal services authorities<sup>76</sup>.

In crisis settings, it is important to take into account that the specific vulnerability of a target group often requires specialized expertise. Legal aid actors who lack this type of expertise should refer to the specialized agencies, always applying the protection principles that should inform all humanitarian action<sup>77</sup>:

- Enhance people's safety, dignity and rights and avoid exposing people to further harm as a result of your actions
- Ensure people's access to impartial assistance – in proportion to need and without discrimination
- Assist people to recover from the physical and psychological effects of threatened or actual violence, coercion or deliberate deprivation

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<sup>76</sup> Principle 10 of the UN Principles and Guidelines. For specific legal vulnerabilities of children, women and elderly, IDPs, Refugees and migrants see also: ICRC, *Enhancing Protection: for civilians in armed conflict and other situations of violence*, 2001; Justice for All, Task Force on Justice, Report initiative of the Pathfinders for Peaceful, Just and Inclusive Societies, 2019.

<sup>77</sup> The Sphere Handbook, The Humanitarian Charter and minimum standards in humanitarian response, Sphere, 2018 edition.

- Assist people to claim their rights, access available remedies and recover from the effects of abuse.

### **Complementary services to legal aid provision**

There are a set of complementary services that legal aid providers should provide, or refer them to. These may include, among others:

- Involving investigators or experts in the solution of the legal aid need;
- Involving specialized mediators to solve particular set of disputes;
- Providing psychosocial support to the victim/survivor of a human rights violation;
- Providing temporary residential accommodation for victims of violence or legal aid beneficiaries at risk of becoming victims of violence.

Good practices of legal aid interventions in humanitarian settings include one-stop centers where people in need of legal aid services can obtain a range of different services provided by a variety of authorities and organizations. Coordination and functioning referral pathways are key.

## **8. Overview of interventions aimed at strengthening legal aid enabling environment**

As mentioned above, for the purpose of this study, interventions aimed at creating/strengthening a legal aid conducive/enabling environment encompass the broad range of activities aimed at creating and/or consolidating an environment – political, social, cultural, institutional, economic and legal – conducive to the provision of needs-based and quality legal aid services and to access to justice without discrimination.<sup>78</sup> The section below offers an overview of the different typologies of interventions included in this category. In general interventions will aim at supporting the independence, fairness, effectivity, and accountability of the justice systems (both official and traditional) and strengthening an effective legal aid system, in line with international human rights standards.<sup>79</sup>

### **Advocacy and policy dialogue**

Advocacy and policy dialogue often complement direct legal aid service delivery as a way to tackle systemic obstacles and/or gaps of the existing domestic legal/policy/institutional framework, or of its practical implementation. Advocacy can aim at promoting the signature and ratification of relevant treaties or the implementation at the national level of relevant international law. Activities will vary according to the particular context and will typically involve:

- (i) direct policy dialogue with duty bearers, representatives of the institutions relevant to guaranteeing access to justice and legal aid services;
- (ii) submissions to parliamentary committees and public inquiries,

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<sup>78</sup> DRC Legal Aid Resource Pack defines “legal aid environment building activities” as activities aimed at “creating awareness and addressing gaps and obstacles for the enjoyment of rights. These activities include law and policy engagement, advocacy, strategic litigation, capacity building of authorities and other stakeholders, and monitoring and reporting”. IRC defines this type of activities as “Justice systems support (JSS)” – “supporting justice service providers (formal and informal) to be responsive, capable, and protective of people’s rights”. NRC ICLA Handbook defines advocacy and monitoring as “methods” used by legal aid programmes.

<sup>79</sup> “Regardless of the structure of the legal aid programme or its formal status, it is of paramount importance that legal aid schemes be autonomous, independent, effective, sustainable and easily available in order to ensure that they serve the interests of those who need financial support to have access to justice on an equal basis with others,” United Nations Special Rapporteur on the independence of judges and lawyers, Report on Legal aid.

- (iii) submission of reports to international human rights mechanisms and procedures<sup>80</sup>;
- (iv) campaigns and awareness-raising initiatives.

Target of advocacy efforts can be also civil society, UN agencies, conflict affected population, including IDPs, representative bodies, etc. It is important to engage with national authorities and civil society in a partnership approach that improves the understanding of what pending impediments the crisis affected people including displaced, are facing in accessing their rights, and guides/informs normative processes that remove such impediments.

### **Strategic Litigation**

Strategic litigation involves commencing domestic and sometimes international cases, usually on behalf of a class of aggrieved individuals, to effect change to the law or jurisprudence, promote a particular change in the legal/policy framework or judicial practice to solve a broad category of cases, seek a collective remedy or prevent a practice that is harmful to a particular community. Sometimes known as a “test case”, strategic litigation can be a valuable advocacy tool, particularly where the claim affects a broad category of individuals. Strategic litigation on complex and often sensitive legal issues can influence how courts examine and solve pending cases. Those decisions will become vitals tools through which civil society actors can advocate for change and adherence to rule of law in line with international standards. Strategic litigation can support the development of remedies and/or strengthen the courts’ ability to use national or international human rights standards to affect social change. Successful cases can also contribute to change law or policy, increase public awareness and inspire rights holders and civil society to advocate for their rights.

### **Coordination**

Coordination is a means to achieve:

- ✓ Complementarity – coordination mechanisms are effective where they are able to build synergies among actors based on their added value;
- ✓ Collaboration: coordination mechanisms work when they can come up with joint framework for action or coalitions (for example a joint advocacy matrix, a joint analysis framework, ...);
- ✓ Division of labour: coordination mechanisms can facilitate assignation of responsibilities according to organizations’ mandate/scope/strength and avoid duplication of efforts.

Coordination on legal aid and access to justice can occur at international level (for example the efforts related to the 2019 Hague Joint Action Plan)<sup>81</sup>, at regional level (include different countries of the same region, for example affected by a unique set of challenges deriving from a conflict), at national level or can be carried out at local level (region, municipality). Legal aid actors may be part of international coordination platforms where legal aid is dealt (for example Protection Cluster), national/sub-national platforms led by state authorities or by civil society legal aid actors. National and local authorities may be part of those platforms.

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<sup>80</sup> Submissions to the UN human rights machinery can also be considered, in consultation with UNHCR guidance Using UN Human Rights Mechanisms in Protection Activities: A Good Practice Guide (2014).

<sup>81</sup> Declaration on Equal Access to Justice for All by 2030, February 7 2019, The Hague.



**IMPORTANT:**

The recognition of the fact that law and policymaking processes may take years, does not diminish the importance of law and policy engagement, coordination, strategic litigation; it rather highlights the need for legal aid actors operating in humanitarian settings to build alliances and strengthen cooperation with development and human rights organizations and, most importantly, with national actors including civil society organizations and crisis affected populations' representatives.

**Policy advice and technical assistance**

In addition to traditional advocacy, interventions can aim at providing policy advice and technical assistance to duty bearers and to legal aid actors.<sup>82</sup> This may involve:

- (i) assistance in developing national access to justice strategies or incorporating access to justice in existing national development or justice sector strategies,
- (ii) drafting, amending, commenting specific draft laws, regulations and policies related to legal aid;
- (iii) making formal submissions to public inquiries and other reform processes that relate to populations of concern;
- (iv) analyzing a particular set of laws and policies related to legal aid and access to justice with a view of institutionalize key human rights standards;<sup>83</sup>
- (v) assist the justice institutions in delivering legal aid services that respond to the legal needs identified and are people-centered.<sup>84</sup>

Technical assistance to legal aid civil society actors can involve increasing the quality of the legal aid case management, strengthening their data base systems, ensuring that a solid system of standard operating procedures is in place for different type of cases, etc.

**Institutions/system strengthening interventions**

This type of interventions aims at strengthening the knowledge and/or skills of national duty bearers about their obligation to respect, protect and fulfill the rights of their citizens, including crisis affected population and IDPs in a manner consistent with international law.<sup>85</sup> Capacity development activities can include knowledge/skills transfer (including through secondments), supporting law enforcement

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<sup>82</sup> The United Nations Special Rapporteur on the independence of judges and lawyers emphasized “the importance of technical cooperation for the development and implementation of a sustainable and effective system of legal aid. In many countries, legal aid services rely solely on the financial assistance of donors, and may be thus terminated at any time. To ensure the sustainability of legal aid services, technical assistance based on the needs and priorities identified by requesting States should be provided by relevant United Nations specialized agencies, programmes and funds, States, donors and non-governmental organizations in the framework of bilateral or multilateral cooperation, with a view to building and enhancing national legal aid systems”, Report on legal aid (A/HRC/23/43).

<sup>83</sup> UNHCR Guidelines for Reviewing and Commenting on National Legislation and International standards relating to refugee law - Checklist to review draft legislation, both contained within the UNHCR Protection Manual, offer important information on how to engage local legislative processes.

<sup>84</sup> This may include: accelerate and simplify processes, support alternative pathways to justice, provide one-stop services; Tailor services to justice needs. Justice for All, Task Force on Justice, Report initiative of the Pathfinders for Peaceful, Just and Inclusive Societies, 2019.

<sup>85</sup> GPC Handbook for the protection of IDPs, 2006.

authorities in the prompt and quality execution of decisions/rulings (case management and processing), strengthening social outreach accountability and transparency of justice service providers, provide financial support to start legal/administrative proceedings (i.e. legal services, administrative fees, expenses or ‘incentives’ that may be necessary to broaden legal aid programs to conflict affected population). Other modalities of system strengthening can include the establishment or the strengthening of mobile courts or mobile legal aid clinics to overcome the physical distance between individuals and courts and to provide immediate access to legal aid by the community. Legal aid organizations may provide training to relevant officials on a variety of issues including: international human rights and humanitarian law; IDPs rights; transitional justice<sup>86</sup>. Legal aid organizations may also consider providing basic material assistance (such as office equipment, legal research materials, building case management systems, digitalizing some of services provided by the state) to help courts and tribunals to improve their service to the crisis affected population.

### **Capacity development to legal aid actors**

International legal aid actors may consider delivering capacity development intervention to national legal aid providers aimed at enhancing their ability to provide needs-based quality legal aid provision and/or to engage in effective coordination, advocacy/policy dialogue and system strengthening interventions. International legal aid actors may strengthen national legal aid providers’ ability to create coalitions and partnership. The creation/facilitation of multi stakeholders’ dialogue platforms around legal aid issued at national or local level may be also part of a legal aid programme. By equipping civil society organizations with more effective advocacy skills, International legal aid actors can contribute to the creation of a cadre of human rights defenders who in turn will disseminate knowledge about conflict affected people’s rights and responsibilities. Community leaders, community paralegals, human rights defenders may receive training on the applicable local laws, international human rights standards, correct administrative procedures, etc, with the objective of improving their ability to resolve disputes and uphold rights within their communities. Capacity development interventions can also have the objective to enhance legal aid organizations’ technical and managerial capacities, including increased efficiency and long-term planning abilities.

### **Research, Legal analysis, monitoring, documentation and profiling**

It is important that advocacy, policy dialogue, technical assistance, coordination interventions are evidence-based: very often policy makers do not have direct access to individuals/communities and legal aid needs therefore the role of legal aid providers is key to bring those to the attention of decision makers and to inform relevant policy and legislation. These activities may include:

- (i) monitoring and reporting on legal aid providers’ adherence to human rights and legal process standards;
- (ii) human rights/protection monitoring,<sup>87</sup> documenting legal aid cases, identifying trends, understanding seriousness and clustering of justiciable problems and solutions;
- (iii) institutionalize and promote use of profiling and other comprehensive data collection exercises;

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<sup>86</sup> Further detail on the importance of transitional justice in displacement can be found in the ICTJ and Brookings-LSE Guide, Transitional Justice and Displacement Challenges and Recommendations.

<sup>87</sup> DRC defines Protection monitoring as “systematically and regularly collecting, verifying, and analyzing information over an extended period in order to identify violations of rights and protection risks for populations of concern for the purpose of informing effective responses”.

(iv) legal analysis of particular legislation/policy and its application.

All these activities can be tools to improve the understanding of legal aid needs of conflict affected population as well as obstacles faced.

#### **Measuring quality of interventions and identifying changing legal aid needs**

As part of the commitment of measuring the implementation of SGD 16.3, it is key to evaluating and measuring quality legal aid. Data on legal aid needs, justice outcomes, justice processes and perception of justice should inform legal aid strategies and interventions. National systems for the collection, analysis and dissemination of inclusive and people-centered data and trends should be strengthened.

#### **Partnership and mutual capacity development activities with legal aid actors**

Engaging with existing national legal aid actors is at the earliest possible stage key. Very often legal aid actors have been providing legal aid services before the crisis and will probably remain after the crisis is resolved. It is important to map existing capacities of those actors and understand the nature, scope, coverage, quality of their legal aid services. Dialogue with national legal aid actors will allow designing legal aid strategies that are relevant, complementary to the existing capacities and sustainable.

### **9. Overview of areas of law and thematic focus of legal aid in humanitarian settings**

#### **Official/statutory justice authorities and systems**

For the purposes of this study, the official justice system involves civil, administrative and criminal justice authorities and includes state-based justice institutions and procedures, such as police, prosecution, courts (religious and secular) and custodial measures<sup>88</sup>. State institutions are codified—e.g., under laws and regulations—and usually have international sanctioning mechanisms to make them effective, stemming from international obligations of the State<sup>89</sup>. State justice systems and authorities are also referred as “official” or statutory.

#### **Traditional/religious/customary justice authorities and systems**

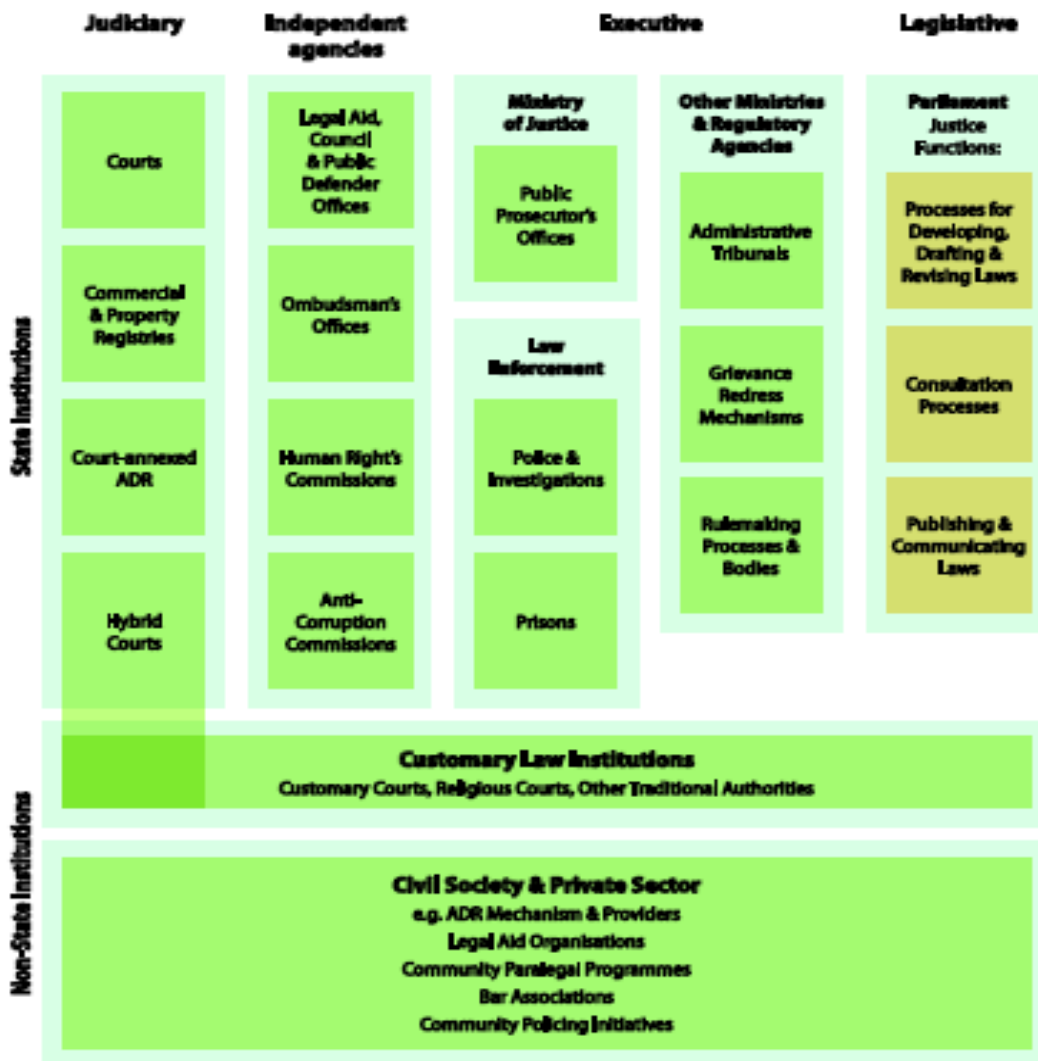
Those systems can be also referred as “informal”, “traditional”, “indigenous”, “customary” or “non-state” justice systems. These systems imply the resolution of disputes and the regulation of conduct by adjudication or the assistance of a neutral third party that is not a part of the judiciary as established by law and/or whose substantive, procedural or structural foundation is not primarily based on statutory law.

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<sup>88</sup> UNDP, Oslo Governance Centre, *Doing Justice: How informal justice systems can contribute*, 2006.

<sup>89</sup> UNDP, *Guidance Note on Assessing the rule of law using institutional and context analysis*, 2014.

Figure 1. Components of justice system



Source: Adapted from World Bank (2012).

### Complementarity between the two systems

As highlighted by the Declaration on Equal Access to Justice for All by 2030 and its joint action plan,<sup>90</sup> the two systems “can complement each other and ensure that no one is left behind”. The two systems are interlinked and there is more often a continuum between them as they are both product of the

<sup>90</sup> Declaration and Joint Action Plan on Equal Access to Justice for All by 2030, February 7 2019, The Hague.

social system of a given society in a given time. Legal aid interventions should therefore support both systems with the aim of: (i) enabling the achievement of justice outcomes that are the best in terms of rights protection; (ii) supporting individuals in navigating complex justice systems towards the best justice outcomes. All legal aid interventions should be built in existing structures and systems instead of creating ad hoc ones.

In most countries in which legal aid programmes operate, traditional justice systems are extensively used. A consistent finding of legal needs surveys has been that “the formal judicial system is marginal to the experience of justice”<sup>91</sup>. These systems are usually more culturally appropriate, perceived to be more legitimate than formal systems, generally more familiar and accessible (in terms of cost, geography, language, etc), are usually quicker and cheaper, focus on social harmony and therefore may mitigate conflict.

On the other hand, interaction with traditional systems requires care by legal aid programmes as, frequently, decisions may be made or rules followed that are inconsistent with human rights standards, particularly with respect to the rights of women, children and minority groups. Procedural fairness and enforcement capabilities may be entirely lacking and if decisions are not recognised within the national legal framework, resolutions achieved within informal systems may not be sustainable. Informal justice systems, particularly in a crisis context, may also be susceptible to domination by the local elite and a lack of accountability. Also, in many instances the division between formal and informal, state or non-state-administered, etc. does not reflect situations when the state recognizes customary and religious institutions and religious and customary law is acknowledged as part of the legal framework. **Legal pluralism** is inherent to countries with strong informal systems. Legal pluralism means the existence of multiple legal systems within one geographic area. Addressing justice issues through informal systems in contexts of legal pluralism is not free from controversy. There are concerns that informal systems may not be fully in line with international human rights standards, in particular regarding due process and women’s rights. Another concern is the validity and durability of decisions adopted by informal bodies, especially in situations where laws and rules may be at conflict with each other and decisions may be subsequently superseded by newly created institutions creating tensions among individuals and communities. Support to justice systems should be provided in line with international human rights standards, ensuring that those systems don’t maintain or further deepen existing inequalities, discrimination, human rights violations.

### **Areas of Law**

Legal aid can be provided on different areas of law: employment, family law, land law, property law, criminal law, among others. Legal aid in criminal proceedings is a fundamental human right and is often made available by government authorities to their own citizens in most countries<sup>92</sup>. However, it is not always provided in all civil and family matters and that is where legal aid actors usually focus their

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<sup>91</sup> OECD, OSF, Legal needs survey and access to justice, 2019. “Although the use of formal process can be difficult to identify, and reporting is inconsistent, only a minority of surveys have found that courts or tribunals resolved more than 10% of justiciable problems with some suggesting a rate of 5% or lower. And where formal process is used, it tends to be used in relation to particular problem types, such as those concerning family breakdown. In developing and some middle-income jurisdictions, traditional dispute resolution processes are more common than court processes”.

<sup>92</sup> UNDP/ UNODC Global Study on Legal Aid highlighted that legal aid for criminal matters has been granted in most jurisdictions, through the constitution or other national laws (see the Table of Legislation in the Global Study on Legal Aid: Country Profiles publication). Source: UNDP/ UNODC Global Study on Legal Aid, 2016.

interventions. In countries or territories affected by crises, where the official and customary justice system collapse, legal aid in criminal law is often not available, therefore legal aid programmes may cover this area of law.

**The thematic focus of legal aid programmes in humanitarian settings**

As mentioned above, the thematic focus of legal aid programmes in humanitarian settings should depend on a comprehensive legal aid and justice assessment. The reality is that people, especially in times of crisis, encounter more than one legal problem at the time<sup>93</sup>. When designing legal aid programmes, it is therefore important to identify the most common legal problems encountered by the crisis affected population, their seriousness, volume among other variables and the ability of rights holders and existing legal aid systems and actors to identify, address and solve them.<sup>94</sup>

Organizations providing direct legal aid services may decide to provide all legal aid components on all areas of law or themes, or to focus on a particular “justiciable problem/legal issue”, also taking into consideration their own expertise and capacity. If right holders present a problem that the legal aid provider cannot solve, they are normally “referred” to state authorities providing legal aid or to other national or international organizations, to ensure that people receive the relevant support in an effective and secure manner (see box on referrals).

Here below a categorization of the possible themes that legal aid programmes in humanitarian settings may cover:

Problem category	Primary sub-category	Secondary sub-category
<b>Legal identity and civil documentation</b>	Legal identity documents	Passports
		ID cards
	Civil documents	Birth certificate
		Marriage certificate
		Death certificate
		Divorce certificate
		Missing certificate
		Child marriage
		Family lineage
		driving license

<sup>93</sup> For example, a lack of or incomplete documentation may directly affect the return processes by complicating or impeding the issuance of travel documents, the departure from the host country and re-entry to the country of origin. Under or undocumented individuals can find themselves separated from their families and face longer-term identity and nationality concerns. Protection risks may emerge where individuals feel compelled to resort to informal or illegal means to address their documentation gaps such as acquiring fraudulent documents, adopting false identities and paying bribes. UNHCR – NRC, “Legal Safety for Return Preparedness. Legal and civil documentation challenges for Syrian refugees in Jordan in view of return”, March 2020.

<sup>94</sup> Also called problem clustering phenomenon, which is the increased tendency of particular justiciable problems to co-occur, when more than one problem type is experienced.

		Will or testament
<b>Residency</b>	Residency documents	IDP status cards
		Residency cards
<b>Children rights</b>	Documents	Alimony
		Custody
		Adoption
		Guardianship
	Domestic violence	
	Child in conflict with the law	
<b>Housing, Land and Property</b>	Housing	Lease contract
		Eviction
		Ownership
		Housing conditions
		Tenancy disputes
		Inheritance
		payment of utility bills
		Construction permit
	Land	Land grabbing
		Secondary occupation
		Land deed
		Restitution/compensation
		Land grabbing
		Building permit
		Use
		inheritance
	Property	Transfer
		Use
		Restitution /compensation
		Property title deed
<b>Gender rights</b>	Violence	GBV
	Discrimination	
<b>Freedom of movement</b>	Restrictions on exercise of economic, social, cultural rights	Right to health, right to work/livelihood, right to education, family reunification, religious freedoms, etc.
	conditions and requirements	cross the contact line, border, quarantine restrictions, crossing the national/international border

<b>Criminal justice</b>	fair trial and due process	
	human trafficking	
	torture	
	detention	prolonged pretrial detention
		and arbitrary pretrial detention
		coerced confessions
	Deportation	
	Violence	GBV
	Children and crimes	
	Missing	
	child marriage	
	accountability for violations	
<b>Access to services</b>	education	primary, secondary, higher education, vocational training,..
	health	health insurance card
	pension	inheritance, renewal, ..
	social benefits	
	water and sanitation	
	disability allowances	
<b>Employment</b>	work permit	
	recognition	
	termination	Unfair dismissal Redundancy
	exploitation	
	conditions/rights at work	
	disciplinary procedures	
	pension	
	business (creation/access)	
<b>Solutions</b>	Return to the area of origin	
	Local integration	
	Resettlement	
	Complementary pathways	
<b>Humanitarian and civic space</b>	Freedom of associations to operate	
	Human rights defenders, community activists, etc.	



## 10. Overview of possible target groups of legal aid programmes in humanitarian settings

Usually, individuals and/or households are targets of direct legal aid interventions.

**Legal aid beneficiary:** for the purpose of this study, a legal aid beneficiary is any natural person, (including non-citizens) who has been granted legal aid after having met the eligibility criteria to receive legal aid pursuant to the national law (for state-funded legal aid) or pursuant organization’s criteria, where applicable. They can be also called: beneficiaries, clients, users of legal aid. Individuals/households are those who experience a legal/justiciable problem and therefore need legal aid to access justice and exercise their rights.

The table below outlines some of the existing sub-categories of individuals receiving legal aid services in humanitarian settings and their definitions.

Possible sub- categories of individuals receiving direct legal aid provision	Definitions
<b>Crisis affected population</b>	Individuals, groups, and communities that are directly or indirectly affected by a humanitarian crisis.
<b>Internally Displaced Persons (IDPs)</b>	Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized state border <sup>95</sup> .
<b>Refugee</b>	Someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion.
<b>Returnees</b>	A distinction should be made between ‘returning refugees’ and ‘returning IDPs’. In the case of internal displacement, a returnee is a former IDP who, based on a voluntary and informed decision, has returned in safety and dignity to their place of former habitual residence. Former refugees or migrants who cannot go back to their former habitual residence for one of the reasons set out in the Guiding Principles and are unable to sustainably integrate elsewhere are IDPs. Similarly, former refugees or migrants who, after their return, are forced to flee or leave their home or place of habitual residence for one of the reasons set out in the Guiding Principles, are also IDPs. <sup>96</sup>
<b>Host communities</b>	In the context of displacement, host communities are those communities where IDPs or refugees are living.
<b>Victims of crime</b>	Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic or financial loss or

<sup>95</sup> UN Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, 1998.

<sup>96</sup> IDMC, A decade of displacement, in the Middle East and North Africa, 2020.

	substantial impairment of their fundamental rights through acts or omissions in violation of criminal laws. <sup>97</sup>
<b>GBV survivors</b>	Victims of gender based violence defined as “any act...that results in, or is likely to result in, physical, sexual, or psychological harm or suffering, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life.” <sup>98</sup> Gender-based violence is a somewhat more inclusive term than violence against women. GBV could include violence against men, provided the violence stems from a man’s gender identity or presentation.
<b>People with disabilities</b>	Include those individuals who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. <sup>99</sup>
<b>LGBTIQ+</b>	An acronym for lesbian, gay, bisexual, transgender, intersex and queer. The plus sign represents people with diverse SOGIESC <sup>100</sup> who identify using other terms. In some contexts, LGB, LGBT or LGBTI are used to refer to particular populations. Additional characters may be added, such as A for asexual, a gender or ally, 2S for Two-Spirit or P for pansexual. In many locations, the letter order varies, e.g., LGBTIQ+ or GBLTQI+. SOGIESC-related acronyms are not static and continue to evolve over time. To ensure inclusivity and accuracy, they should be applied with careful consideration to the individuals or populations being referenced. <sup>101</sup>
<b>Children</b>	Child means every human being below the age of eighteen years, unless majority is attained earlier under the law applicable to the child. <sup>102</sup>
<b>Stateless people</b>	A person who is not considered as a national by any State under the operation of its law. <sup>103</sup>

<sup>97</sup> Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, GA resolution 40/34, 1985.

<sup>98</sup> UN Declaration on the Elimination of Violence Against Women.

<sup>99</sup> United Nations Convention on the Rights of Persons with Disabilities, 2006, Article 1.

<sup>100</sup> SOGIESC is an acronym for sexual orientation, gender identity, gender expression and sex characteristics. People with diverse SOGIESC is an umbrella term for all people whose sexual orientations, gender identities, gender expressions and/or sex characteristics place them outside culturally mainstream categories.

<sup>101</sup> IOM SOGIESC glossary. Available online at:

[https://static1.squarespace.com/static/5367af22e4b0915380a1eb0a/t/5f9c9c6a3f9e430eb9406d4/1607453160297/IOM\\_SOGIESC\\_Full\\_Glossary\\_2020.pdf](https://static1.squarespace.com/static/5367af22e4b0915380a1eb0a/t/5f9c9c6a3f9e430eb9406d4/1607453160297/IOM_SOGIESC_Full_Glossary_2020.pdf)

<sup>102</sup> The United Nations Convention on the Rights of the Child, 1989, Article 1.

<sup>103</sup> Convention relating to the Status of Stateless Persons, 1954, Article 1 (1).

Target of interventions aimed at creating/strengthening a legal aid conducive/enabling environment may include:

- Duty bearers: rule of law institutions, local and regional authorities, ministries (often Ministries Interior and Justice), informal authorities and courts, police/border control, prosecutors, courts, prison and pre-trial detention facilities personnel, law enforcement officials, members of the judicial branch of government, national human rights institutions.
- Civil society actors: Community based organizations, legal aid organizations, Bar associations, legal clinics, universities law faculties, and civil society organizations, UN and INGOS, private sector, private network of lawyers, local leaders (for example, refugee community leaders, chiefs, religious leaders, political activists, local NGO and CBO representatives), paralegals.