



**Global Protection Cluster  
Task Team on Law and Policy (TTLP)**

**Legal aid in humanitarian settings:**

**Analysis Guide**

Advanced version  
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## Introduction

This Guide accompanies the Legal aid analysis framework, which resulted from a project led by the Global Protection Cluster’s Task Team on Law and Policy (GPC TTLP) on legal aid in humanitarian settings aimed at:

- improving the capacities of the Protection clusters, including the Areas of Responsibility and participating agencies, development, humanitarian, peace and human rights actors, to understand and assess the legal aid needs in their countries of operation, address existing gaps and promote legal aid interventions so people affected by humanitarian crises have access to justice and can enjoy their rights
- enhancing the GPC TTLP’s ability to demonstrate the need to integrate legal aid in humanitarian response from the outset
- developing knowledge products and tools for the protection clusters at field level to address legal aid needs collectively.

The Legal aid analysis framework is a tool designed to assist Protection Clusters (co-)coordinators, Area of Responsibility focal points, international as well as national and international development, human rights, peace and humanitarian organizations in conducting a comprehensive assessment of legal aid landscape in a given country or territory affected by a crisis.

This Guide aims at presenting the Legal Aid Analysis Framework (also referred here as the “Analysis tool” or the “tool”), which is available in Annex 1. This Guide should be read in conjunction with the “Conceptual framework on legal aid in humanitarian settings”, which provides a glossary of key terms and concepts used in the tool and is available in Annex 2.

This Guide is divided into two parts: Part 1 provides users with the theoretical and conceptual background to the Legal aid analysis framework, outlining its purpose, structure and logic. Part 2 is the practical section of this Guide, which provides a step-by-step guide on how to use the tool, clarifies its intended audience and suggests criteria on how to select the best workflow.

### **Main content of this Guide**

- ❖ **Conceptual: definitions and descriptions to explain each pillar**
- ❖ **Practical: an explanation of when and how to use the framework**
- ❖ **Visual: visual representation of the framework - pillars, sub-pillars, categories**
- ❖ **Workflow: describing the analysis process, steps and expected results**

## PART 1

### SECTION 1 A. Rationale and purpose of the Legal aid analysis framework

Rationale

What it is - and what it is not

Purpose

#### Rationale

The GPC TTLP recognized the need for:

- Going beyond each organization's analysis efforts, through the adoption of a common analysis tool (each agency has its own legal aid landscape assessment) and a common terminology (each type of actor involved in justice/legal aid intervention speak a different language when referring to legal aid).
- Creating better coordination through a joint tool that can facilitate constructive dialogue between humanitarian, development, human rights and peace actors involved in the legal aid and justice sphere, anchored in a solid partnership with national counterparts.
- Building on existing initiatives endorsed at the global level, including the Protection Analytical Framework (PAF)<sup>1</sup>.
- Strengthening synergies between legal aid and other sectors including the general protection sector.
- Investing in collective analysis, understanding the context before and during the design and implementation of any intervention, jointly reflecting on existing national capacities to ensure sustainability.

The work around the Legal aid Analysis Framework is based on two premises:

- An analysis of the national legal aid/justice system should be included in early planning stages and repeated throughout the phases of the crisis to analyze changing needs/priorities/systems, to evaluate the relevance of the existing interventions and eventually to redirect collective efforts.
- Too often, humanitarian legal aid actors over-prioritize technical solutions at the expense of a fuller appreciation of existing power dynamics and capacities; as a result, many technically-sound legal aid programmes have failed to make a difference: the tool provides support to undertake problem-driven analysis of legal aid needs taking into account their origins, nature and consequences.

The framework is designed as a theoretical tool and should be adapted to the context of the country or the territory under study. This has implications on the process and on the concepts and definitions: legal aid needs, their origins and their consequences should be discussed and defined together with rights holders and national duty bearers, where possible. Please note that some categories may not always be relevant for each legal aid context and issue being examined. This framework presents the

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<sup>1</sup> The PAF was initiated by the USAID BHA-funded IRC-DRC Results-based Protection Analysis Project to contribute to collective efforts of improving and streamlining protection analysis. It was developed together with and with the full support of the Information and Analysis Working Group of the Global Protection Cluster. It has been endorsed by the Global Protection Cluster. <https://www.globalprotectioncluster.org/2021/08/11/protection-analytical-framework/>

full scope of information that is important to consider to help support a structured and systematic approach, but users will need to ensure this is appropriately tailored to their own situation and needs.

### What it is - and what it is not

The Legal aid analysis framework is:

- A practical matrix that will help identify and organize available quantitative and qualitative data on legal environment, justice system, legal aid needs, existing capacities and responses in a country or territory affected by a crisis;
- A human rights-based tool that facilitate joint analysis of the legal aid landscape to achieve more solid, evidenced-based analytical conclusions that can be used to foster collective and coordinated response, in dialogue with national counterparts;
- A simple framework that may help identify the linkages between legal aid and justice sector and other sectors;
- If used over time, the tool could serve to monitor changes in experience and behavior of individuals and communities against a backdrop of legal services provided prior, during, after a crisis.

The Legal aid analysis framework is *not*:

- A data collection or monitoring tool in itself: it does not replace existing legal aid, rule of law or access to justice assessment data collection and analysis tools;
- An information tool itself: instead, it builds on existing data, theories and data collection methodologies;
- A legal assessment tool: the objective of the matrix is *not* to help analyzing the legal system of a country or territory affected by a crisis but its *legal aid and justice system*;
- A legal aid needs survey, which normally investigates the nature and experience of justiciable problems from the perspective of those who face them and the strategies, the type of help sought and the processes used in their resolution.

### Purpose

The purpose of the Legal aid analysis framework is to support Protection Clusters (co)coordinators, AoR focal points, international and national humanitarian, peace, development human rights organizations in assessing the legal aid and justice situation in crisis settings *in dialogue with national counterparts*<sup>2</sup>. Ultimately, the tool facilitates coordinated and collective legal aid and justice interventions and supports national dialogue and policy processes around legal aid and justice in crisis settings.

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<sup>2</sup> This implies that, even if the focus of the project is legal aid in humanitarian settings, the scope of the tools and their applicability go beyond legal needs created by humanitarian situations or interventions targeting IDPs.

The process as well as its findings should contribute to:

- Develop a comprehensive evidence base upon which humanitarian, development, peace actors but also national duty bearers and legal aid/justice actors can draw upon when designing their strategic vision and plans;
- Inform collaborative and coordinated analysis and response at strategic, programmatic, coordination, advocacy level, fostering better division of labour among international and national legal aid actors as well as clearer and better functioning referral pathways; the tool may be used by one organization as an internal tool that guides a legal aid programme strategizing and planning phases but it has been designed to assist outward-focused collective debate leading to coordinated policy and programme change.
- Transform the thinking around legal aid, re-directing the efforts and/or re-conceptualize existing interventions beyond the mere immediate response to needs;
- Situate legal aid into a broader policy/legal context: legal aid actors may re-consider how they engage with other sectors, just as other sectors' may reflect upon how legal problems and services may be important to their concerns and goals;
- Harmonize existing analysis and response efforts around a unique theory of change, fostering a more articulated interaction which includes and puts at the center national systems and actors;
- Consider dynamics and mechanisms beyond the territory/country under analysis, taking into consideration regional and global frameworks and capacities;
- Go beyond the traditional humanitarian analysis (which is usually descriptive of legal aid needs in a given context), facilitating reflections around political, economic, legal origins on one side and safety/dignity consequences of legal aid/justice needs on the individual, the community, the crisis affected population, the society as a whole, on the other<sup>3</sup>;
- Profile legal aid and justice landscape, make the link between the individual legal aid case and the collective nature of some structural legal aid/justice issues taking into account the existing (prior to the crisis and after the crisis) capacities and identifying where opportunities and barriers to policy/legislative/regulatory change exist;
- Provide key elements to advocate for a cost-benefit analysis of legal aid intervention (considering consequences of legal aid needs as costs for the systems and existing capacities as benefits).

#### **Methodology: How was the Legal aid Framework designed?**

The first version of the tool was designed through a review of existing tools and training material designed and used by international and national legal aid organizations. The sources of the desk review are organized in a Virtual Library available at:

[https://drive.google.com/drive/folders/10ICw\\_HPTAX6xEr9YtvhLxIkuTEUcqX8F?usp=sharing](https://drive.google.com/drive/folders/10ICw_HPTAX6xEr9YtvhLxIkuTEUcqX8F?usp=sharing).

The tool was then presented to 23 representatives of international organizations working on legal aid and access to justice through semi-structured interviews that took place in March-April 2022. The final version of the tool, together with the accompanying Guide Note and Conceptual Framework, was validated during a workshop on 28 April 2022 and presented to field clusters' and AoRs' colleagues during a meeting of the Task Team on Law and Policy in May 2022 before being tested at the country level.

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<sup>3</sup> As such the analysis can lead to the identification of the need to support transitional justice processes and important structural (rather than punctual) reforms.

## SECTION 1 B. Content of the Legal aid analysis framework

- Overall structure
- Pillar 1. Legal aid and justice context
- Pillar 2. Legal aid needs
- Pillar 3. Consequences of legal aid needs
- Pillar 4. Existing capacities and responses

### Overall structure

The tool unpacks the legal aid and justice landscape into different components with a view to support:

- Systematically organizing existing and available information and data
- Conducting comprehensive analysis
- Facilitating dialogue processes on a range of sub-set of issues and perspectives

The tool is articulated around four *pillars*. Each pillar is organized into 3 *sub-pillars* and each sub-pillar divided into a set of *categories*.

Graph: Detailed structure of the tool (see excel sheet 2)

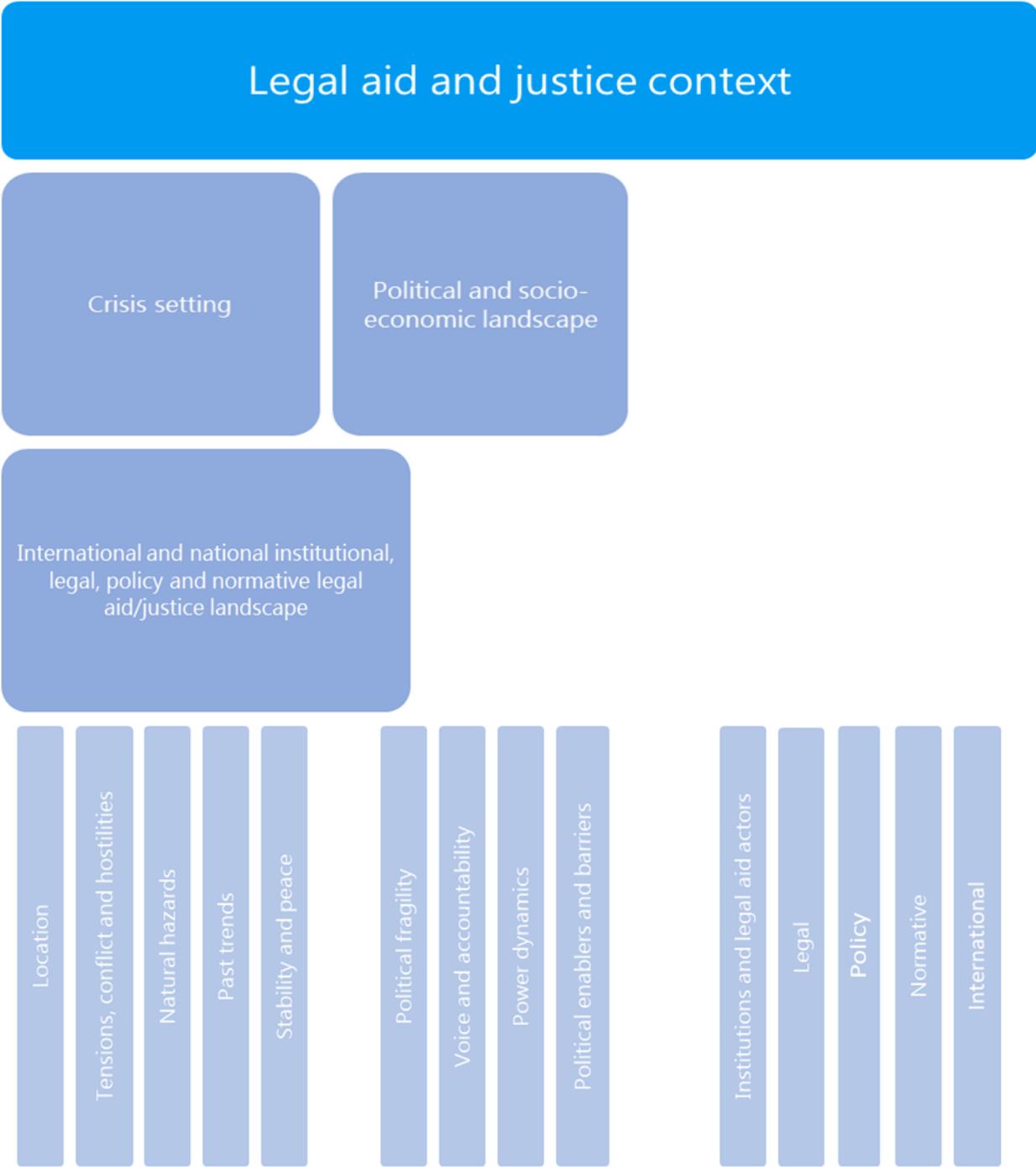
Legal aid analysis framework				
PILLAR	Legal aid and justice context	Legal aid needs	Consequences of legal aid issues	Existing capacities and responses
DESCRIPTION	Specific characteristics of the legal aid institutional, policy, social context and environment and factors to understand what's provoking and shaping legal aid dynamics and resulting in legal aid issues.	Typology of legal aid issues and how these are affecting different population groups. Includes information describing the origins of the violations and main actors involved.	The consequences of the legal issues identified in terms of safety and dignity, the coping strategies adopted and how those consequences and coping strategies may be different across different population groups and geographic areas.	The resources and capabilities that exist at the individual/community levels to identify, address and resolve legal aid needs. This also includes analysis of the capacities of national civil society and duty bearers at local and national level as well as of traditional customary dispute resolutions mechanisms. This includes capacities of informal mechanisms/organizations.
SUB-PILLARS	CRISIS SETTING	TYPOLOGY LEGAL AID ISSUES	CONSEQUENCES OF LEGAL AID ISSUES (safety)	AFFECTED POPULATION (rights holders: individual and communities)
DESCRIPTION	Contextual and historic elements that influence the existing human rights violations resulting in legal aid issues, including tensions, conflict and hostilities, natural hazards, stability and peace processes.	The types of legal aid needs, volume, prevalence, severity, distribution across individual, communities, population groups (in whole of population, CAP and specific groups within CAP). Includes demography, population groups, geographic locations, movements, level of exposure.	SAFETY: immediate, medium or long-term effects of the legal aid issues for each population group and location affected. This includes specific implications for particularly vulnerable categories of individuals/communities. This includes analysis of implication on others sectors.	The physical, social and psycho-social, legal material capabilities (including skills, resources, knowledge, power, etc.) of individuals, households, families and communities to resolve the legal aid issue and mitigate/address its consequences.
SUB-PILLARS	POLITICAL AND SOCIO-ECONOMIC LANDSCAPE	MAIN ACTORS INVOLVED	CONSEQUENCES OF LEGAL AID ISSUES (dignity)	LEGAL AID AND JUSTICE ACTORS (civil society, private sector and international actors)
DESCRIPTION	Contextual elements that inform the legal aid delivery model and may cause, counter or sustain existing legal aid issues. This includes overview of existing barriers to access justice.	Mapping of all actors involved and their link with the legal aid issues identified (and/or with their origins and their consequences) and their relationships/abilities vis-à-vis the affected population.	DIGNITY: immediate, medium or long-term effects of the legal aid for each population group and location affected. This includes specific implications for particularly vulnerable categories of individuals/communities. This includes analysis of implications on others sectors.	Capacities of the national legal aid/justice actors in the affected location to identify/address the legal aid needs. This includes identifying the extent to which these actors are functioning, available, and accessible to the population and whether the services provided are of quality. This includes assessing capacity of informal mechanisms and their ability to respond.
SUB-PILLARS	NATIONAL AND INTERNATIONAL INSTITUTIONAL, LEGAL, POLICY AND NORMATIVE LANDSCAPE	ORIGINS OF THE LEGAL AID ISSUES	AFFECTED POPULATION COPING STRATEGIES	LEGAL AID AND JUSTICE ACTORS (duty bearers: authorities - formal and informal and mechanisms)
DESCRIPTION	Formal and informal rules, norms, policies, systems and institutions involved in the legal aid/justice system. This includes mapping of legal aid actors and analysis of international legal framework and existing mechanisms to protect access to justice. An analysis of barriers to international response to operate is also included.	Factors that generate (id) legal aid issues. This includes analysis on whether legal issues are the result of a particular violation, and whether the violation is the result of a particular behaviour/action (omission or commission), organization/group practice or government or non-government policy. Includes socio-economic, environmental, ethnic or political drivers/barriers (factors that help create, sustain, resolve, exacerbate the legal issues and access to justice at the local, national, and/or international levels).	Responses (positive/negative) of the affected population to the identified consequences of the legal issue. Includes evasion, adjustment, action, confrontation and other strategies, as well as how the perceptions of legal issue influence these decisions.	Capacities of the actors who have the duty to protect, fulfill and promote access to justice: describes legal aid, justice and law enforcement institutions' will, resources and capabilities to protect and respond to legal aid issues. This includes identifying the extent to which these actors are functioning, available, and accessible to the population and whether the services provided are of quality. This includes informal justice/dispute resolution mechanisms and their ability to respond.

A set of *macro analytical questions* for each category helps determine the overall research scope of the analysis. A number of *granular questions* helps unpack the macro analytical questions in a subset of detailed queries, supporting the identification of contextualized information and data gaps. The tool also contains a range of *suggested data and information needs* to support the contextualization and the prioritization of data. Finally, a number of *sources, material, helpful resources and tools* are listed to help users find the needed information. In the sections below you will find for each pillar:

- Structure: sub pillars and categories
- What does it help you determine?
- What does it help you conclude?

**Pillar 1. Legal aid and Justice context**

Structure of the pillar



### What does it help you determine?

The analysis under this pillar will help determine:

- Type of crisis the territory/ country is suffering

A comprehensive assessment of the legal aid and justice landscape should start by an in-depth analysis of the operating environment. It is key to gain solid understanding of the crisis, its nature and causes as well as the history, structural and immediate drivers of human rights violations. It is important to map existing stability and peace/transitional justice processes that influence ability of population to obtain redress from past violations.

- Political and economic dimensions of the crisis that are relevant to understanding the legal aid

and justice system: Laws and regulations, as well as their implementation, reflect the power structures that affect broader governance dynamics and are part of larger political and economic circumstances. Poverty, social exclusion and/or marginalization, socio/economic/political inequalities can fundamentally impinge on the functioning of the legal aid and justice system and influence the ability of the overall population, the population affected by the crisis and some particularly marginalized, vulnerable groups, to recognize, claim their rights and exercise them. This sub- pillar is key to gain a comprehensive overview of barriers to access justice prior and after the crisis.

- International and national institutional, legal, policy and normative legal aid/justice landscape.

This section of the assessment should help identifying:

(i) the *type of legal system in the country*: civil or common law, mixed jurisdiction, or other legal tradition, the existence of legal pluralism, and the role of religious, customary and traditional law in the country, the links between formal and informal mechanisms (referrals, appeals), and their legal status, the federal organization of certain states and different levels of laws;

(ii) understand the *national legal aid delivery model, its institutions and actors* (national, regional and local): identify laws that establish the right to legal aid, laws that create procedures and mechanisms for implementing the right, as well as laws pertaining to monitoring the quality of legal aid services, or specific legislation on entitlement to legal aid for certain specific groups, identify the existing delivery model: who are the leading stakeholders, justice and law enforcement administrations, legal aid actors and what roles and positions they hold;

(iii) provide an overview of the *international legal framework*, the compliance of the national legal aid delivery model with human rights, humanitarian, refugee law (if applicable) and analysis of existing mechanisms to protect access to justice. An analysis of barriers to international response to operate should be also carried out under this sub-pillar.

### What does it help you conclude?

- ✓ Understand the origins and patterns of the crisis and its effects on the national legal aid and justice system;
- ✓ Gain a solid knowledge of the roles and responsibilities of legal aid and justice actors and appreciate the complex interplay between them, their respective incentives and interests;

- ✓ Identify gaps in policy and legislation that can influence structural obstacles to access to justice and exacerbate legal aid needs;
- ✓ Identify suitable areas of advocacy and policy engagement, thereby assist in the formulation of more evidence based advocacy.

## Pillar 2 Legal aid needs

### Structure of the pillar



## What does it help you determining?

The analysis under this pillar will help determining:

- Typology of legal aid needs

This section of the assessment enables to identify legal aid needs, their volume, prevalence, severity, clustering across individual, communities, population groups. This sub-pillar allows to determine demography, population groups, geographic locations, movements, level of exposure of the affected population. This section of the analysis includes a reflection on the nature of the legal needs, how they are perceived by rights holders, whether they can be solved and how. It is suggested to adopt a “whole of population approach” and consider legal aid needs affecting the entire population (citizens of the countries and foreigners residing in their territories), as opposed to focusing from the start only on the crisis-affected population. This will allow to identify commonalities and differences between the nature and types of legal needs across different population groups (for example displaced versus host communities).

- Main actors involved

This category allows you to map all actors involved, their link with the legal aid needs identified (and/or with their origins and their consequences) and their relation/responsibilities vis-à-vis the affected population. The difference between the mapping of actors in the first pillar and the one undertaken here is that the first concerns the legal aid/justice actors, while this sub-pillar includes the mapping of *actors beyond the justice/legal aid sector* and their ability to identify, address and solve the legal aid issue and its consequences. For example, if lack of identity documents hampers displaced children’s access to school, the ministry of education and its departments should be considered as potential counterparts to engage with.

- Origins of the legal aid needs

This sub-pillar focuses on factors that generate(d) the legal aid needs identified. This includes analysis on whether legal aid needs are the result of a particular violation, and whether the violation is the result of a particular behavior and/or action (omission or commission), practice or policy. Very often legal aid needs may be generated by administrative, legislative and systemic obstacles that are not necessarily linked with violations (for example, it may be difficult for people affected by crises to navigate systems that may be complex, malfunctioning or intimidating; or a particular community may be unable to access certain services because of a language barrier). This includes an analysis of socio-economic, environmental, ethnic or political drivers/barriers/norms that help create, sustain, resolve or exacerbate the legal aid needs and access to justice at the local, national, and/or international levels.

While the analysis on the obstacles/norms related to accessing justice under the first pillar focuses on general barriers to justice encountered by the whole population (such as access, discrimination, complexity of procedures, lack of legal education, etc.), the analysis here focuses on the obstacles faced by population when trying to solve the specific legal aid needs identified. The analysis includes reflecting upon the perceptions of the legal aid needs by the rights holders, including considering the solutions displaced individuals would like to pursue in the short, medium and long terms.

### **How to prioritize legal aid needs?**

Although all legal needs are important, limited resources often require prioritizing response to some legal aid needs over others. Prioritization criteria should be clear and transparent. They may vary and can include:

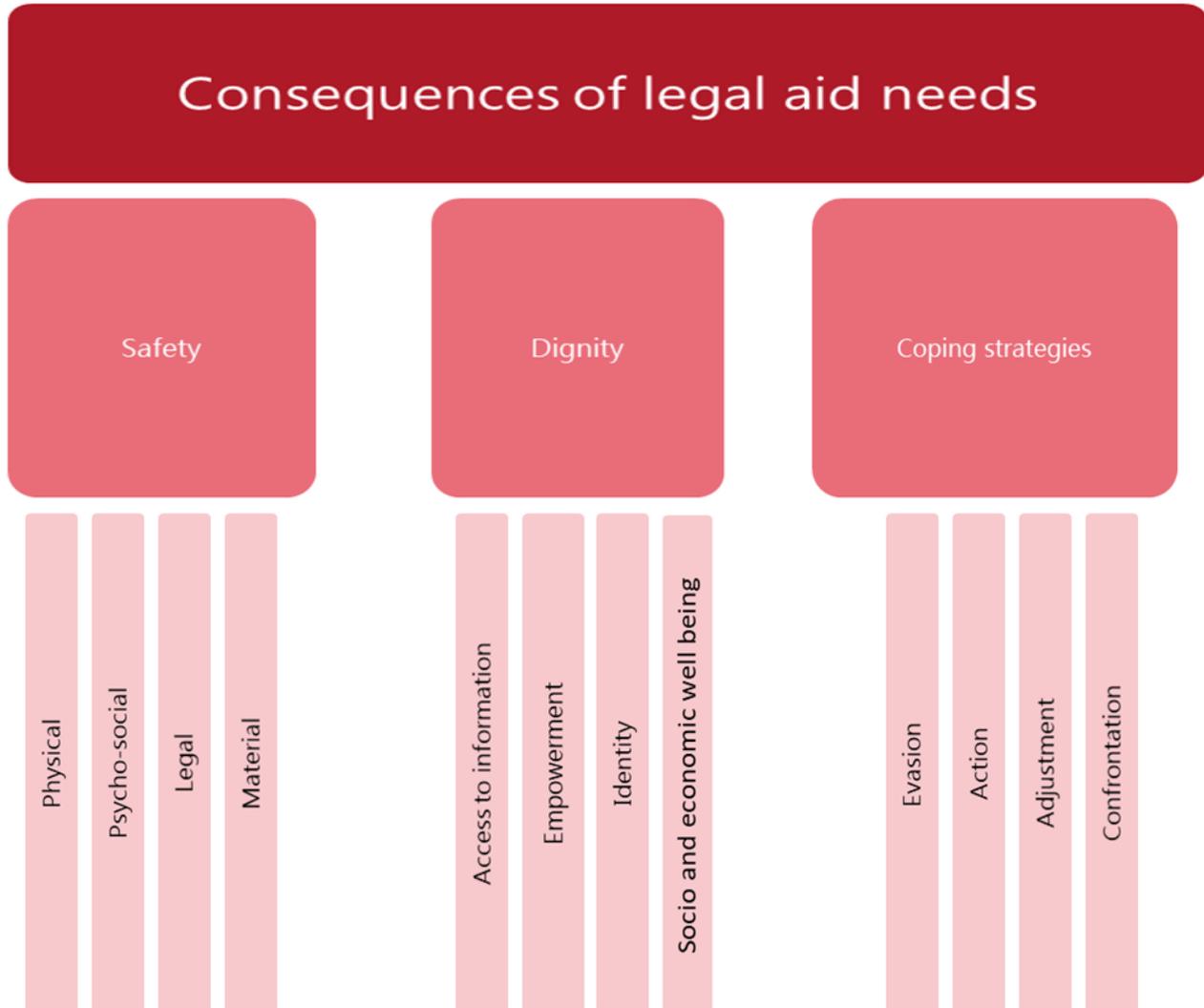
- Quantitative data (prevalence of a legal aid need over others, volume of legal aid needs in a particular location, etc.);
- Severity of the legal aid need and assessment of the consequences on particular population group;
- Analysis of the perceptions of legal aid needs by rights holders: how do communities/individuals prioritize the legal issue? How do communities perceive the legal issue? Does this reflect the quantitative data that is available?
- Geographical areas and/or population groups most affected by the risk of not having access to legal aid. This analysis may inform Humanitarian Country Team analysis of protection landscape.
- Timing: When to prioritize? The analysis should help the identification of a sequence of interventions. Ideally, legal aid should be available at all stages of justice processes, including before they arise (e.g., conflict resolved through alternative dispute resolution or early access to legal aid in police custody).

### What does it help you conclude?

- ✓ Identify the “demand” side of legal aid through a detailed typology of legal aid needs in the country/territory under study before and after the crisis and how those affect different population groups;
- ✓ Understand what are the legal aid needs putting people most at risk in the context, who is most heavily impacted by these risks, what types of direct legal aid services will be most welcomed by the population and most likely to solve their legal problems;
- ✓ Understand what/how justice problems are affecting women/men/boys/girls, people of varying abilities and members of different social groups;
- ✓ Appreciate local perceptions about the available justice mechanisms, where and through what delivery methods legal aid could be offered;
- ✓ Unpack the causes of the identified legal aid needs and understand whether existing interventions are tackling those causes, the legal aid needs themselves and/or their consequences;
- ✓ Identify actors involved in the legal aid needs beyond the justice sector and beyond the boundaries of the country/territory under study (regional and international actors);
- ✓ Appreciate the perception of the legal aid needs by rights-holders, enabling re-thinking legal aid from the perspective and solutions to be pursued by the people residing in the territory/country under study.

## Pillar 3 Consequences of legal aid needs

### Structure of the pillar



### What does it help you determine?

The analysis under this pillar will help determine:

- Consequences of legal aid needs on aspects related to safety and dignity of the affected population

The two categories of safety and dignity have been designed to unpack the immediate, medium or long-term effects of the legal aid needs on the enjoyment of rights of the affected population. The “safety” categories refer to the physical, psycho-social, legal and material implications (for example, lack of documentation hampers freedom of movement and simultaneously affect the ability of individuals to access services provided by state or by humanitarian and development actors), while the “dignity” categories refer to the limitations imposed by the legal aid needs on the ability to exercise political, economic, social and cultural rights (for example, lack of legal and

civil documentation influence the ability of internally displaced people to vote or to be voted, while simultaneously influence their ability to seek legal and decent job opportunities, protect/maintain/express their cultural identity, participate in the decisions that affect their community, etc.). This analysis involves taking into consideration the effects of legal aid on all aspects of rights holders' life and studying the possible ramification of a legal aid issue and its effect on other sectors.

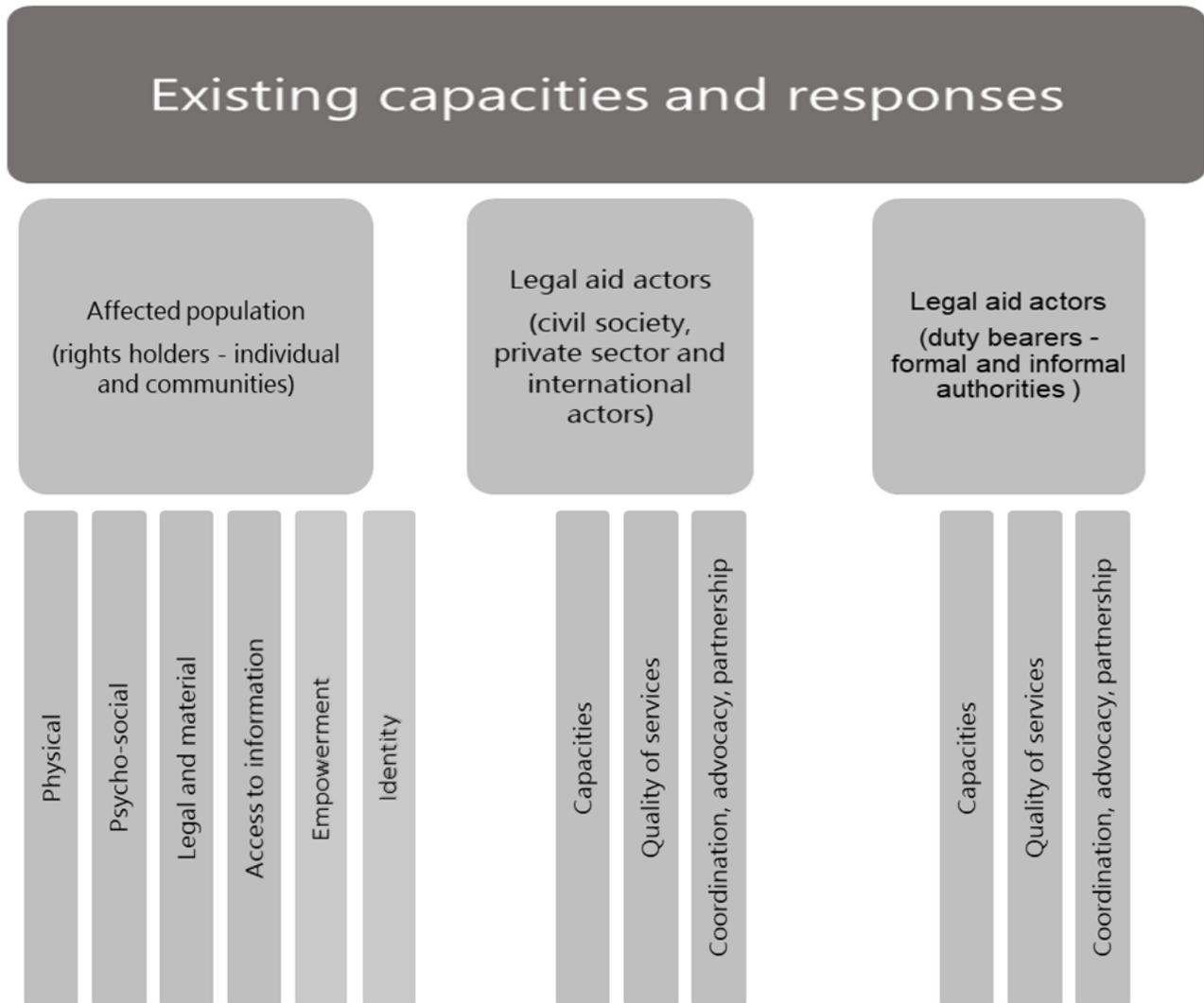
▪ Coping mechanisms by the population to respond to those consequences

This section facilitates the analysis of the responses (positive/negative) of the affected population to the identified legal aid needs and their consequences. The different types of strategies adopted by individuals and communities are classified in this category to help users gain an overview of the resilience levels of the affected population, while also appreciating the risks that can arise from some legal aid needs that are perceived as key by certain population groups (for example, the lack of an official document issued by a religious court acknowledging the husband of a displaced woman as missing person can hamper her ability to rebuild her life and engage with her social community; as a result, the woman may decide to obtain a forged document, which can have legal implications).

What does it help you conclude?

- ✓ Map the range of possible legal aid interventions taking into account that some may be aimed at responding to the legal aid needs identified, others at addressing some of the immediate consequences, others at resolving in the medium-long term the structural origins of the legal aid needs;

## Pillar 4 Existing Capacities and responses



### What does it help you determine?

The analysis under this pillar will help understanding the resources, capabilities, capacities existing prior to the crisis and how those were affected by the crisis. The pillar is divided according to the actor whose capacities are analyzed: the first category looks at individuals, households and communities; the second and third categories look at the legal aid actors. In line with the Conceptual Framework accompanying this Guide, legal aid actors include legal aid providers, legal aid service providers, justice (statutory/official as well as customary, traditional, religious) authorities, law enforcement authorities. In order to facilitate the analysis, the tool organizes legal aid/justice actors into two categories:

- Those belonging to civil society (such as organizations providing legal aid in its different components, national or international), private sector (such as Bar Associations and other types of private lawyers' networks), international organizations (such as UN agencies, international NGOs providing legal aid services), Bar associations, Universities' law clinics, and others.

- Those belonging to the formal justice authorities (such as public defenders or state-funded lawyers working for the Ministry of Justice) or informal justice authorities (such as community leaders resolving disputes).

While pillar 1 – category 3 should have resulted in a mapping of the existing legal aid actors (civil society/private sector/international actors) and their role and responsibilities according to the legal, policy, normative framework, this section aims at understanding *in practice* their capacities to identify/address/solve to legal aid needs and the quality of the legal aid services they offer<sup>4</sup>.

- Affected population (rights holders – individuals and communities)

Building upon the same categories of safety and dignity used for the identification of the consequences of legal aid needs in pillar 3, this section of the assessment focuses on the existing capabilities (including skills, resources, knowledge, power, etc.) of individuals, households, families and communities to identify, address and solve the legal aid needs and mitigate/address their consequences.

- Legal aid actors (civil society, private sector, international response)

The analysis under this category should help understand to what extent legal aid providers (lawyers) and legal aid service providers' (organizations, bar associations, private sector offering pro bono legal aid services, etc.) are available, effective and acceptable to the population and whether the services provided are of quality. The assessment should also look at the existing response by international humanitarian, development, human rights, peace actors operating in the legal aid /justice sector.

- Legal aid actors (duty bearers, official/statutory and customary, traditional, religious justice authorities)

This section of the assessment aims at describing the capacities of the actors who have/are perceived to have the duty/responsibility to protect, fulfil and promote access to justice and legal aid in the country, territory affected by the crisis. This includes justice and law enforcement institutions' political will, financial and human resources, structural, outcome and process capabilities to protect and respond to legal aid needs, the extent to which these actors are functioning, available, and acceptable to the population and whether the services provided are accessible and of quality<sup>5</sup>. The analysis under this category should include customary, religious, traditional justice and dispute resolution mechanisms and their ability to respond. Support to those mechanisms should be provided according to international human rights standards, in order to avoid perpetuating or deepening existing inequalities, discrimination and/or human rights abuses.

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<sup>4</sup> Assessing the quality of legal aid services is very complex, especially in crisis settings. However, it is feasible as long as purpose of analysis is clear (e.g. to look at quantity, specialization, outcome of cases, feedback from recipients; assess whether lawyers need resources/training/etc.).

<sup>5</sup> The suggested macro and granular questions in the framework should help identifying existing sources that speak to the quality aspects of the legal aid services provided by national legal aid actors.

### What does it help conclude?

- ✓ Explore the “supply” side of legal aid and identify structural weaknesses of the delivery system (and related potential areas for reform/advocacy) and immediate gaps (and related capacity development/systems strengthening interventions)
- ✓ Measure access to legal aid in particular in remote and rural areas and/or by particular population group affected by the crisis.
- ✓ Assess the extent, the challenges and risks related to the opportunity to partner with legal aid actors
- ✓ Generate insights on what capacities exist and where and how the various legal aid/justice actors’ interests and forces can be influenced, supported towards the delivery of needs based and quality legal aid services
- ✓ which entry points for “legal aid enabling environment interventions” may prove most fruitful and whether the formulation of win-win scenarios is possible
- ✓ Which actions can increase rights holders’ capacities and simultaneously support, through advocacy and policy change, those of legal aid/justice actors
- ✓ Understand the risks associated with some interventions that can substitute/replace duty bearers, strengthen one population group over another, disregard certain sensitivities around legal aid provision, perpetuate some existing inequalities
- ✓ Understand the relative ability of each legal aid actor to contribute to the solutions of the legal aid needs and therefore illustrate the degree and type of engagement required as well as alliances and coalitions that may be pursued

## SECTION 1 C. The theoretical framework explained

The concept of legal aid need

Legal aid and access to justice before, during and after the crisis

Unpacking the legal aid issue and defining the purpose of legal aid interventions

### The concept of legal aid need

As defined in the Conceptual Framework accompanying this Guide, a legal aid need arises when an individual, household, community or population group:

- requires support from specialized entities or actors to deal appropriately with a justiciable problem because they lack legal capacity, knowledge or 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 is at risk of suffering) a human rights violation and has the right to receive comprehensive reparation and remedy<sup>6</sup>.

The idea behind adopting this definition is to adopt a right based approach to legal aid, considering the solution of a legal aid issue an entitlement itself. Many of the problems people face in their lives have a legal dimension and can be considered legal aid needs. They are also interconnected. A divorce can trigger disputes over land and property. Unsolved civil and administrative justice problems can lead to violence. The boundaries between these different forms of legal aid needs often mean little in everyday life. However, for the purpose of this study it is important to distinguish among types of legal aid needs, as their consequences may vary:

- if you are lacking legal and civil documentation, you may be excluded from the social, economic, and political opportunities that the law provides you. *Example:* if you lack documents you may be employed in informal economy and you may lack proof of housing, land ownership, tenure
- if you have a criminal, civil, or administrative justice problem. *Example:* Your husband/wife has disappeared and you would like to bring perpetrators to justice.
- If you have been discriminated, displaced (refugee/IDP), if you are at risk of stateless or if you have been a victim of violence or a crime, if you have a legal dispute. *Example:* your house has been damaged as a result of conflict and you are entitled to compensation by the State.

Understanding the nature, causes and consequences of legal aid needs requires a multidimensional approach to research and data management. Access to justice extends beyond formal processes, to include informal dispute resolution and, ultimately, social justice and equitable distribution of welfare, resources and opportunity. The above definition of legal aid needs incorporates the dimensions of justice reflected in the components of the tool:

- The legal, policy, normative framework related to legal aid and access to justice
- Economic, political, social barriers to access justice
- The nature, cause and consequences of justiciable problems
- Individual and collective legal capabilities

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<sup>6</sup> Legal aid needs which result from a protection risk (see PAF definition) may also require a protection risk analysis to ensure the analysis is appropriately tailored to understanding the context-specific threats, vulnerabilities, and capacities related to the risk, to be able to inform the full range of risk reduction (including prevention) strategies which could be used.

- Availability and quality of formal or informal institutions to secure justice
- Availability and quality of legal aid services to resolve legal needs/justiciable problems
- Quality and sustainability of legal aid and justice outcomes

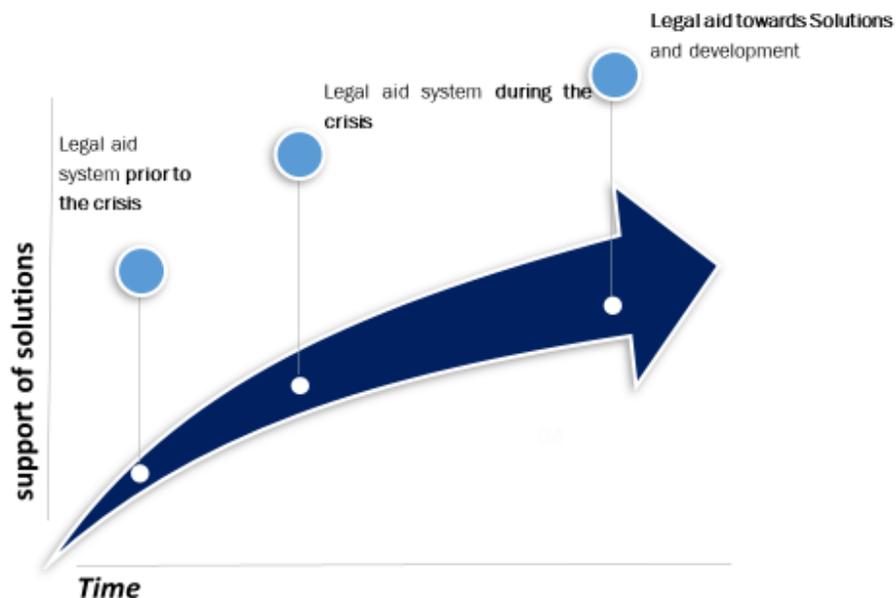
### Legal aid and access to justice before, during, after the crisis

As indicated in the description of the structure of the tool, the legal aid analysis framework seeks to facilitate a constructive dialogue around following main questions:

- ✓ Who is eligible for legal aid services according to the law, policy, regulatory framework of the country/territory under study? How have people solved their legal aid needs, prior to and after the crisis? Do they use formal or informal justice systems to resolve their legal aid needs? Why?
- ✓ What do people consider as their main legal aid needs?
- ✓ Who asks for legal aid services as a result of the crisis? Which legal needs for? prior to and resulting from the crisis?
- ✓ Who provides legal aid to whom in practice? Who receives legal aid in practice and who does not? Why?
- ✓ Are the existing legal aid systems and actors providing meaningful access to justice to the whole population, including to the crisis affected population and to specific vulnerable and marginalized groups? Are the existing systems and actors able to absorb increasing or diverse demand for legal aid support?

Graph:

### Legal aid Analytical Framework



The main idea behind the different components of the tool is that a legal aid framework and system, as well as legal aid needs, exist prior to the crisis and will continue after the crisis. New and unique legal aid needs may arise during (and as a consequence) of the crisis. Humanitarian, development, peace and human rights organizations should therefore anchor their strategic interventions national and local around existing capacities and responses.

### Unpacking the legal aid needs and defining the purpose of legal aid interventions

Unpacking the legal aid issue	Identify the nature and purpose of a legal aid intervention
<p>Origins of the legal aid issue Does it come from violation? Source of the issue – who is responsible and why – what are the motivation behind the violation – what are the incentives? The drivers? Does the violation stem from omission? Does the legal aid issue stem from a particular administrative barrier /malfunction of the system?</p>	<p>Actions aimed at targeting the violation at the origin of the legal aid issue</p>
<p>Legal aid need</p>	<p>Actions aimed at addressing the legal aid issue how to prioritize? how to avoid substitution and duplication?</p>
<p>Consequences</p> <ul style="list-style-type: none"> <li>▪ In terms of safety -</li> <li>▪ In terms of dignity–</li> <li>▪ In terms of social and economic well being</li> </ul>	<p>Actions aimed at avoiding/preventing/mitigating the negative consequences of the legal aid issue</p>
<p>Capacities</p> <ul style="list-style-type: none"> <li>▪ Legal capabilities individuals and communities: relationship, skills, tactics strategies used by individuals to resolve the legal issue. How to increase these capacities?</li> <li>▪ Willingness and Capacities of justice actors to resolve the legal aid issue in a fair, cost efficient, timely and effective manner</li> </ul>	<p>Actions aimed at increasing the abilities of individuals to address legal aid needs</p> <p>Actions aimed at supporting the existing capacities of systems to support the sustainable resolution of legal aid needs</p>

## PART 2

### SECTION 2 A. Using the Legal aid analysis framework

- Who are the target users of the framework?
- Who should lead the analysis?
- Who should be consulted? Starting from rights holders' perceptions of legal aid needs
- Which data sources should be used?
- When and how often should the analysis be carried out?
- The process in 7 steps
- Select and adapt the most suitable workflow

#### Who are the target of the framework?

The framework is intended for Protection Clusters (co-)coordinators, AoR focal points, UN staff, International non-Governmental Organizations (INGOs), donors, as well as other legal aid practitioners – whether representing government entities, national Non-Governmental Organizations (NGOs), national civil society organizations (CSOs) and community-based organizations.

#### Who should lead the analysis?

One of the crucial steps of the assessment process is the definition and selection of the Legal aid Analysis Team. The Team should ideally involve a mixed team of international/ regional and national experts with diverse backgrounds,<sup>7</sup> as well as a national person to interact on behalf of the government or the legal aid body and assist in liaison. The team may also include experts in data collection and analysis that can assist with designing additional tools, if relevant.<sup>8</sup>

The use of recognized, non-affiliated national experts can, from the outset, help build confidence and credibility with the country's leadership, supply important information and insights, and allow capturing the relevant peculiarities of the general and/or cultural context. A contact person from the government or legal aid system has an important role in ensuring smooth interaction with national authorities, including planning of sufficient time for meetings and adhering to protocol, access to information, and national ownership of the assessment.

#### Who should be consulted? Start from rights holders' perceptions of legal aid needs

The voice and knowledge of the rights holders and of the affected population, local staff, national partners on the ground, and first line workers is essential. The legal aid Analysis Team must ensure this happens, either with their direct participation in preparation meetings, through bilateral conversations, or through joint analysis sessions and workshops. National duty bearers should be consulted and in

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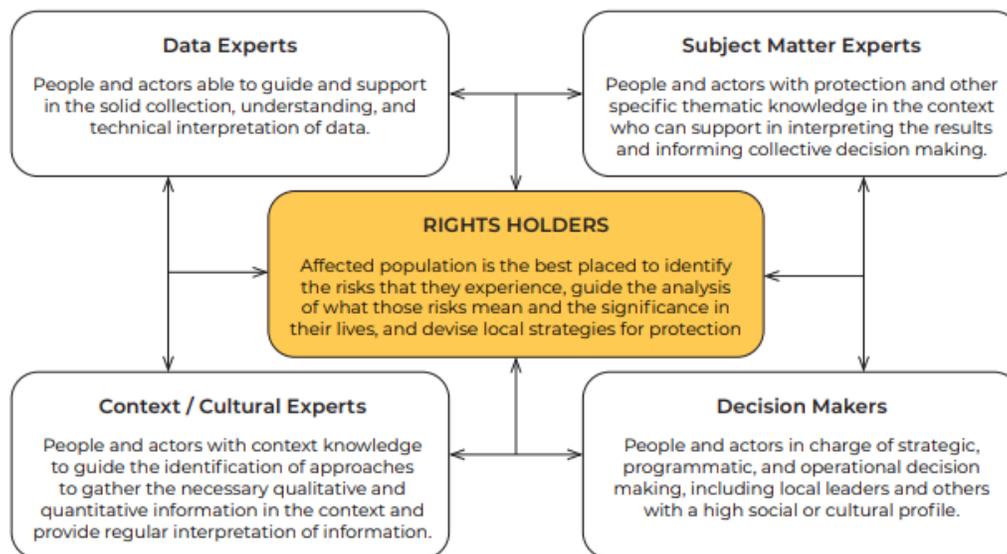
<sup>7</sup> Dory Reiling, Linn Hammergren & Adrian Di Giovanni, *Justice Sector Assessments: A Handbook*, the World Bank (2007), pp. 17-19: Building Assessment Team and Expertise. Available at <https://documents1.worldbank.org/curated/en/803711468338346161/pdf/437070WP0Box3210March0200701PUBLIC1.pdf> (Hereinafter: World Bank Handbook on Justice Assessments).

<sup>8</sup> For example, an assessment of legal aid in two provinces in Ukraine, carried out in 2020 by UNDP in cooperation with UN Women, NFPA and FAO, included an international expert, two national experts, and a sociological company with expertise in surveys. See *Legal Aid in Donetsk and Luhansk oblasts: Assessment of accessibility of the free legal aid provision system in Donetsk and Luhansk oblasts (2020)*. The Report assessed the quality of the legal aid provided, by both staff of the correspondent institutions and contracted private lawyers. While it focused on civil legal aid, its methodology is applicable to criminal legal aid assessments as well. Available at <https://www.ua.undp.org/content/ukraine/en/home/library/recovery-and-peacebuilding/assessment-of-legal-aid-accessibility-in-Donetsk-and-Luhansk-oblasts.html>.

particular legal aid/justice service providers such as public defenders, lawyers, legal practitioners, paralegals, legal aid clinic/centers staff, community/traditional/religious leaders.

Graph: Taken from the PAF (GPC Protection Analytical Framework), to be adapted to legal aid

Figure 8: Roles in protection analysis



**BOX – Guiding principles on the use of the legal aid analysis framework**

- ❖ Start from the rights holders’ perception of legal aid needs
- ❖ Ensure national ownership of the assessment of existing capacities
- ❖ Take account of the political, economic and social context as affected by the crisis
- ❖ Adopt a human rights perspective to legal aid/justice assessments
- ❖ Engage in effective coordination and partnerships with all relevant stakeholders

**Which sources of data/information should be used?**

The analysis can be undertaken as a secondary data review, where existing resources are available. This can be done through a desk review. However, primary data collection may also be needed to complement secondary source. Guaranteeing availability of key data is key. For that to happen, it is necessary to have buy in and trust among all relevant stakeholders involved in the exercise who are

meant to share their data. The Legal aid analysis framework contains a set of suggested data and information needs to help contextualizing and streamlining data collection priorities and modalities linked to each of the macro/micro analytical questions.

### **When and how often to do the analysis?**

The use of the legal aid analysis framework does not necessarily have a specific starting point and it may be triggered by a specific occurrence, shock or event. The tool serves in different phases of the crisis:

- a) *In emergency contexts, including active conflict or disaster, and displacement*: it can help to quickly understand the context, map the legal aid demand before the crisis and learn about the immediate effect on the legal aid delivery system in the country/territory affected by the crisis. The framework can help identify immediate constraints of the existing legal aid service providers (duty bearers, formal and informal justice actors, civil society, private sector and others), quick ways the system should be adapted to respond to the increase/change in legal aid demand. In emergencies, the framework could help define the purpose and scope of the set of legal aid/justice interventions aimed at responding to immediate needs by using existing structures/networks.
- b) *In protracted/nexus contexts*: The framework can help define a more articulated division of labor among human rights, development, peace and humanitarian actors involved in the legal aid and justice sector. National duty bearers and rights holders can help assess the relevance of the existing interventions and re-direct them towards evolving needs, priorities and changing capacities.
- c) *In solutions/transition contexts*: The framework can help the transition of the existing legal aid space from humanitarian actors to national systems with the support of development and human rights actors.

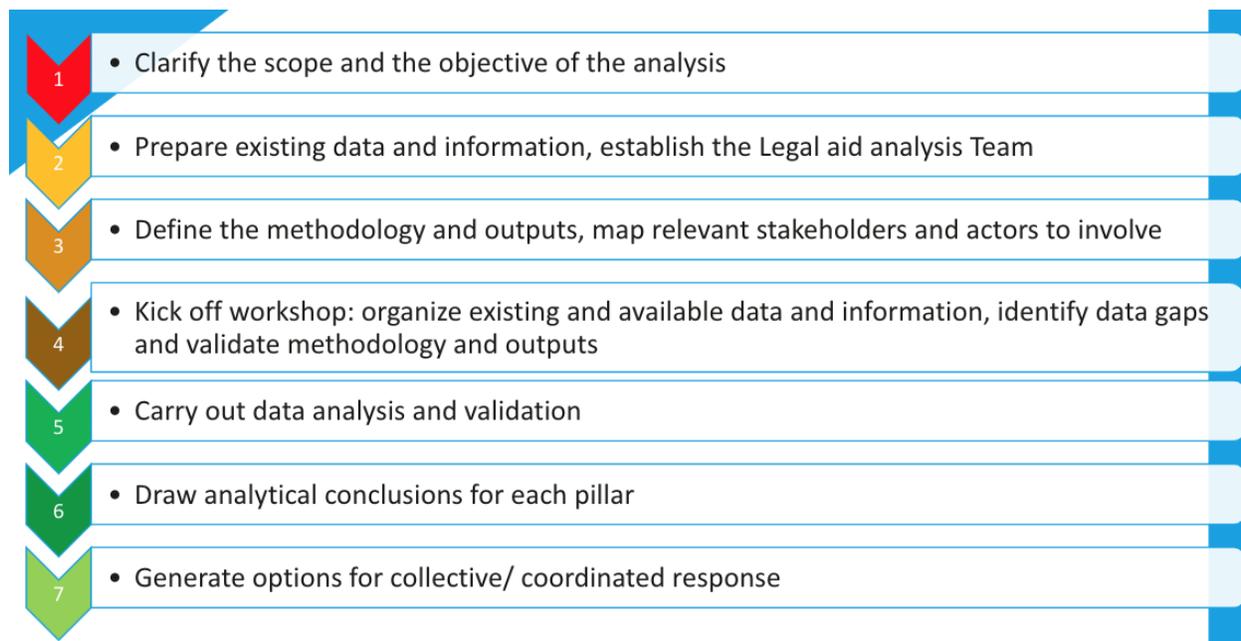
### **When and how often should the analysis be carried out?**

The analysis, guided by the legal aid analysis framework, should be carried out or updated regularly within a timeframe of 18 months to ensure sufficient time for relevant actors to carry out specific reforms, actions, adjustments. When defining the analysis timeframe, it is important to consider contextually relevant events or seasonal dynamics affecting the population, and generate key deadlines according to those.

## The process: key steps

STEP 0. The Protection Cluster/AoRs (co-)coordinators, or a group of interested agencies, decide to undertake the analysis and mobilizes resources (alone or with other clusters'/AoRs' members).

Once the decision to proceed with the analysis has been take, the following 7 steps should follow:



Two additional optional steps can be envisaged:

STEP 8. (OPTIONAL). Draft a Legal aid assessment report

STEP 9. (OPTIONAL). Share the result of the analysis in a form of report

### **STEP 0. The Protection Cluster / AoRs (co) coordinators, or a group of interested agencies, decide to undertake the analysis and mobilizes resources (alone or with the cluster members).**

According to the context and needs, the Protection Cluster coordinator decides to undertake the analysis and consult the cluster members. This initiative may be also taken by one or more agencies (INGOs or UN agencies, with national counterparts).

### **STEP 1. Clarify the scope and the objective of the analysis**

The first step in any assessment is defining its objective and scope, including the research questions. The tool can be tailored to fit different contexts, purposes and circumstances. The research question can be quite general and open-ended, or very specific. The starting point of the analysis process consists in understanding what the assessment is aimed at; the reason why it is undertaken, for whom is it intended, what is the purpose, what exactly it aims to achieve. The analysis may be a general review of the state of legal aid nationwide, or of a particular city or region; it may focus on the needs of a specific population group (for example GBV survivors) or on the demand and supply of legal aid services on a specific thematic issue (for example, housing land and property rights). Depending on the objectives of a particular analysis, components (i.e. pillars, sub-pillars) of the legal aid analysis framework can be

selected, rather than applying the whole framework. This will also have effects on the timeframe and resources needed to conduct the analysis.

- ⇒ *Expected output:* The research questions of the exercise could be integrated in Terms of Reference. The ToR can be used as a document to create buy in among national and international stakeholders as well as to generate donor's interest.

## **STEP 2. Prepare existing data and information, establish the Legal aid analysis Team members**

Once the purpose of the assessment has been agreed upon, the next steps are to select the Legal aid analysis Team and identify the required data, information, resources and tools. At this stage, it is also important to establish how the team's work will be coordinated and to delineate responsibilities and roles. This will of course differ when assessments are restricted to a particular city or region, and/or conducted by local staff of NGOs, CSOs or professional associations. Such organizations might have their own guidelines or templates for assessments that should be consulted<sup>9</sup>.

- ⇒ *Expected output:* Recruitment of the Legal Aid Analysis Team. The composition of the team will depend on the resources available (time, costs, etc.), partners' availability, ability to count on national/international experts, among other factors.
- ⇒ *Expected output:* Desk Review on existing and available data and information and preliminary identification of data gaps.

## **RECOMMENDATIONS<sup>10</sup>**

- ❖ After an initial review of existing available data and information, the legal aid analysis team may consider sending a list of questions to the relevant authorities and other stakeholders, as well as specific questions that arose from the desk review, including follow-up quantitative questions to request missing data. This way, national stakeholders have sufficient time to prepare for the assessment exercise, and can either respond in advance in writing, or prepare data and responses for when the exercise takes place. Another option is to have a preparatory meeting, to start creating buy in among national and international stakeholders working in the country and get an impression of the main needs and main challenges related to the substantive areas the assessment covers.
- ❖ It is also recommended that the Legal aid Analysis Team familiarize themselves with history and political situation as well as with any political sensitivities related to the provision of legal aid in the country, to ensure their conduct during the analysis would be respectful and effective. It is also important to understand any privacy and confidentiality provisions and exceptions that may exist in the country, and what information might be restricted. Just as important is gaining an understanding of the political sensitivities that may be associated with issues covered by the assessment, for example, concerns about the independence of lawyers in some countries, or resistance to employing paralegals for provision of legal aid services in others. Receiving this type of

<sup>9</sup> UNODC Criminal Justice Assessment Toolkit (CJAT), developed in 2006. Introduction of the Toolkit ([https://www.unodc.org/documents/justice-and-prison-reform/cjat\\_eng/Introducing\\_the\\_Toolkit.pdf](https://www.unodc.org/documents/justice-and-prison-reform/cjat_eng/Introducing_the_Toolkit.pdf)), and the separate thematic modules. "UNODC Assessment Tool – Legal Aid in Criminal Justice Systems (forthcoming, 2022)"

<sup>10</sup>"UNODC Assessment Tool – Legal Aid in Criminal Justice Systems (forthcoming, 2022)"

information may have implications on the content of the final assessment report or reports, and their dissemination – for instance, if internal governmental data is shared for the purpose of understanding certain aspects of the legal aid system, these may then not be included in a public report. These issues should ideally be discussed with national stakeholders during the joint development of the terms of reference of the assessment.

### **STEP 3. Define the methodology and map relevant stakeholders and actors to consult**

In close cooperation with relevant partners, the Legal aid analysis Team would need to:

#### 1. Define the DRAFT methodology and in particular:

- Select and adapt the suggested analytical questions to the scope of the analysis;
- Identify available data sets and gaps and the type of data to be collected;
- Map the number and type of stakeholders to be interviewed, ensuring that all relevant stakeholders are included appropriately;
- The number of field missions to or within the country being assessed, or trips to the localities in case of a regional assessment, if relevant;
- The number of people or legal aid users to be surveyed, if relevant;
- The number of events that should be organized (e.g., workshops or roundtables in order to gather feedback from the relevant stakeholders), and a matrix of planned activities;
- The timeframe of the overall endeavour;
- Instruments to be used in the assessment (structured or semi-structured interview, questionnaires, surveys, round table discussions (workshops), site visits, analysis of documents and IT database, websites, seminars to discuss the results of the assessment, etc.);
- Required budget for overall endeavour (travel costs, accommodation costs, translation and interpretation costs, etc.);
- Risk assessment of the exercise (e.g., ongoing armed conflict, humanitarian or health crisis, etc.);
- (optional) A tentative structure of the final legal aid analysis report.

2. Conduct mapping of all relevant stakeholders that can, and should, provide input and data for the assessment. This is crucial, as many of them will have expertise and knowledge when analyzing the situation and choosing measures to improve the system is invaluable. It is important to consult *national duty bearers as well as national* and international civil society organizations (human rights, development, humanitarian, peace organizations) and *platforms* active in the country on legal/justice matters *prior/during* the crisis.

⇒ *Expected output*: Document defining a DRAFT methodology, work plan with expected timeframe and milestones.

⇒ *Expected output*: Mapping of stakeholders who will contribute to the analysis and their roles/interests/incentives.

### **STEP 4. Kick off half a day meeting or workshop: organize existing and available data and information, identify data gaps and validate methodology and outputs**

The desk review should have identified the information and data gaps. A kick-off meeting/workshop with all stakeholders involved should allow for promoting buy-in by all actors involved and sharing

preliminary understanding of the legal aid/justice landscape. At the end of the workshop, the Team should be able to define:

- Which types of data they can generate and whether there are sources that are already available to them without further effort, such as court, prosecution or police statistics, and data generated by legal aid providers....
- Which macro- questions would require additional research, interviews, meeting, data collection
- Which actor can be interviewed, can support the analysis of a particular data set, can answer a particular macro- question based on its role, expertise, access.

⇒ *Expected output:* Document defining the agreed methodology, work plan with expected timeframe and milestones as well as roles and responsibilities of all actors involved in the exercise.

#### **BOX - Integrating a gender perspective into data collection and analysis<sup>11</sup>**

Data collection on legal aid should integrate a gender perspective, including by involving CSOs and community-based organizations working on gender equality and against gender-based discrimination – in the context of legal aid and on broader justice reform. All key issues for each of the stages mentioned in this Guide should be assessed from a gender perspective. Data collection should gather sufficient information on the different experiences of women and men. This should entail, as a minimum, to consider whether and to what extent these issues affect women and men differently. Ideally, this should also include assessing how these issues affect those facing discrimination on account of their gender identity or their sexual orientation, including LGBTIQ persons given that those who are different remain frequently invisible unless specific efforts are undertaken.

#### **STEP 5. Carry out data analysis and validation**

During this phase, the Legal aid analysis Team will meet rights holders, field staff of different organizations, experts, institutions, communities, donors and will try to address all the relevant macro-questions of the tool. The team will gather observations that may need explanation or issues that remain unsolved or unclear. According to the agreed methodology, the Team will organize workshops with relevant stakeholders to consult them on preliminary analytical conclusions, field observation missions, interviews with rights holders and their representatives.

⇒ *Expected outputs:* A draft Legal aid analysis framework is filled out and all the relevant macro-questions are answered. Quantitative/Qualitative data sources are indicated next to each reply.

#### **STEP 6. Draw analytical conclusions for each pillar and validate them with stakeholders**

Analytical conclusions for each pillar should determine the actual legal aid/justice needs of a country/territory affected by a crisis. This phase is critical so it is suggested that the team validates the

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<sup>11</sup> “UNODC Assessment Tool – Legal Aid in Criminal Justice Systems (forthcoming, 2022)”

conclusions validated with national counterparts (duty bearers, legal aid actors, rights holders). It can be useful to organize a roundtable with the Government, CSOs, and other counterparts engaged in the assessment itself, or a target group of recommendations. This will allow for presenting initial, immediate recommendations, obtaining feedback and discussing issues such as confidentiality of information (e.g., which parts of the report can be shared, which types of information are considered confidential). These meetings are sometimes referred to as 'validation meetings' since they provide an opportunity to validate initial findings with national stakeholders, prior to in-depth review, finalization and publishing of the recommendations. They also provide an opportunity to discuss which types of commitments can be taken up by national authorities, and how realistic or feasible follow-up action can be. Finally, these meetings are also an opportunity to suggest the types of projects or programmes that could be developed on the basis of recommendations. Follow up should continue to ensure local ownership, and that relevant stakeholders understand the data and the analysis, and what they can do to use this new evidence in a meaningful way. Therefore, tasks can include meetings with policy makers to present key findings, conducting additional assessments to monitor progress in specific areas, and reviewing the implementation of past recommendations.

⇒ *Expected outputs:* Findings stemming from the legal aid/justice analysis with related analytical conclusions are presented to main stakeholders and validated through a workshop/series of workshops.

#### **STEP 7. Generate options for collective/ coordinated response**

Based from the analysis of the legal aid/justice landscape of the territory/country affected by the crisis, a set of legal aid/justice priority interventions should be identified for:

- Immediate action (i.e., high impact, low/no cost, involving administrative action and no law reform);
- Short term (some costs, visible impact, urgent, involving administrative action, consensus building);
- Medium term (involving further research, strategic planning, costing, funding development, public sensitization, building coalitions of interest);
- Long term (law and penal reform, major policy changes, long term planning and costing, funding development, inculcating a rights-based approach).

Recommendations for action can refer to, among others:

- Existing national strategies or action plans in related areas, such as national development plans or human rights related reforms;
- Existing interventions being carried out by international/national organizations;
- Changes to be applied to the existing set of ongoing interventions;
- Synergies among actors who have similar yet complementary mandates, scope of intervention, expertise;
- Gaps in the current set of interventions and related suggestions to overcome those;
- Risks related to the existing set of interventions or to the existing set of negative consequences of legal aid needs identified;
- Better division of labour among existing legal aid/justice actors;
- Better balanced composition among the different type of legal aid/justice sector interventions (advocacy, direct legal aid provision, technical advice, etc.);
- Specific sector of legal aid/justice landscape that should receive more financial/technical/... support from donors and actors.

⇒ *Expected outputs:* A series of options for collective/ coordinated response stemming from the legal aid/justice analysis and its related analytical conclusions are presented to main stakeholders through a workshop/series of workshops.

#### **STEP 8. (OPTIONAL). Draft a Legal aid assessment report**

The structure of the assessment report could already be agreed upon during the desk review and adapted as necessary during the assessment. Some organizations develop a template report for assessments,<sup>12</sup> which helps them frame the data to be collected. The report could also contain the analytical conclusions and

#### **STEP 9. (OPTIONAL). Share the result of the analysis in the form of a report**

If the report contains sensitive information, the option of producing a classified version in addition to a public version could be considered.<sup>13</sup> The dissemination of the report should be planned with the aim of ensuring national buy-in and national ownership, or provincial/state/local ownership – depending on the scope of the assessment. It could also be adapted to allow for advocacy, knowledge transfer and public information or reporting (e.g., preparation of short executive summaries of key findings and recommendations that can be disseminated widely). In addition to sharing the assessment report with the national legal aid body and other institutions, it could be considered to share the report with practitioners and donors, as this may inspire reform that affects service delivery, such as future training, or research activities as well as strategic support. The assessment report may be distributed to all organizations or institutions that collaborated in the assessment process, in line with the initial agreement with the government and/or all stakeholders, and respecting confidentiality.

#### **Select and adapt the most suitable workflow: a modular approach**

For the purpose of this Guide, Work flow is intended as the decision on the order of pillars (and related sub-pillars, categories) to analyze, in other words how to use the tool, where to start and how to reach the analytical conclusions. The matrix of pillars and sub pillars is therefore not sequential; the order in which the components are analyzed is not prescriptive and it will depend on the objective and scope of the analysis. In addition, as mentioned before, depending on the objectives of a particular analysis, components (i.e. pillars, sub-pillars) of the legal aid analysis framework can be selected, rather than applying the whole framework.

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<sup>12</sup> For example, ABA, *Access to Justice Assessment Tool: A guide to analyzing access to justice for civil society organizations* (2012). Available at [https://www.americanbar.org/content/dam/aba/directories/roli/misc/aba\\_rol\\_i\\_access\\_to\\_justice\\_assessment\\_manual\\_2012.athcheckdam.pdf](https://www.americanbar.org/content/dam/aba/directories/roli/misc/aba_rol_i_access_to_justice_assessment_manual_2012.athcheckdam.pdf)

<sup>13</sup> Once the report is publicly shared, local CSOs may use it for advocacy and awareness raising, for example by highlighting key implementation and policy gaps, engaging in capacity building workshops with legal aid providers to jointly develop solutions for areas of intervention identified in the report, holding round table consultations with legal aid functionaries and policy makers, engaging with parliamentarians through raising questions pertaining to legal aid in the parliament or through sessions with key members of parliament on policy reforms suggested by the assessment.

## **SECTION 2 B. Operationalizing the tool: expected results**

The relevance of an inclusive and participatory process

Analytical conclusions: a roadmap on legal aid and justice sector

Identifying options for coordinated legal aid and justice response strategy

### **The relevance of an inclusive and participatory process**

As mentioned in the section above and reiterated in the detailed explanation of the 7steps process, the tool is designed to facilitate joint work - analysis and action - among various stakeholders. This includes, for example, conducting joint monitoring actions, coordinated information activities, protection/legal aid cluster engagement and joint advocacy *during the assessment phase*.

### **Analytical conclusions: a roadmap on legal aid/justice sector**

The process of analysis will achieve stronger results if directed towards the identification of a set of coordinated actions to achieve common goals (based on the comparative added value of the work of the various actors involved).

The analytical conclusions will help all actors to gaining good understanding of:

- Human rights claims of rights-holders and the corresponding legal obligations of duty-bearers as well as the immediate, underlying, and structural causes of the non-realization of rights;
- Understand causes and effects of main (most prevalent, most common, most severe, etc...) legal aid needs
- Barriers to justice suffered by the whole population, the population affected by the crisis and specific vulnerable groups;
- legal aid supply and demand at the time of the analysis;
- Map capacity of rights-holders to claim their rights, of duty bearers to fulfil their obligations and of relevant legal aid actors to complement the legal aid supply and to represent rights holders claims in decision making processes;
- Map existing international response capacity and each organization's sector of intervention, added value, interest, incentives.

These are all key elements to jointly design a realistic and sustainable roadmap for the legal aid/justice sector (with immediate, medium, long term objectives and actions) and to identify the complementary added value of each and every actor's work.

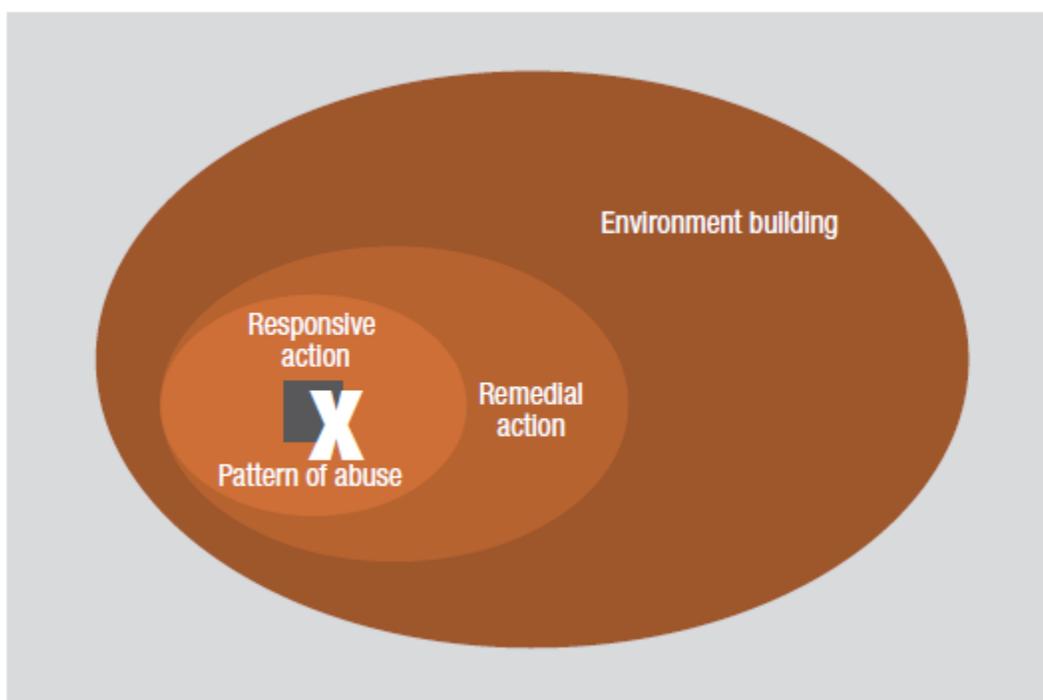
### **Identifying options for coordinated and collective response strategy settings**

No single organization is able to meet the sheer diversity of legal aid/justice needs as this requires a wide array of skills and means. It is therefore natural that various organizations operate in the same arena and often target the same rights holders. In certain cases, this may result in confusion and contradictions, overlap and duplication, not to mention competition - while certain needs have remained unmet. The conclusions at the level of analysis chosen (community, area-based, national, etc.) should lead to the identification of a series of options for legal aid and justice interventions. The conceptual framework helps identify two type of interventions:

- direct legal aid service provision
- interventions aimed at creating or strengthening a legal aid enabling environment.

At this stage, it could be useful to also discuss among stakeholders the nature of the interventions and classify them using the ICRC protection egg - remedial, responsive, environment enabling - interventions<sup>14</sup>:

- ❖ **“responsive action”**: any activity undertaken in the context of an emerging or established pattern of abuse to prevent its recurrence, put a stop to it, and/or alleviate its immediate effects;
- ❖ **“remedial action”**: action taken to restore people’s dignity and to ensure adequate living conditions after a pattern of abuse;
- ❖ **“environment-building”**: efforts to foster a political, social, cultural, institutional and legislative environment that enables or encourages the authorities to respect their obligations and the rights of individuals.



This model divides into three groups the various protection activities undertaken by humanitarian, development, peace and human rights organizations when the authorities have failed to meet their obligations under international law. These three groups – or types of activity – constitute a “protection framework” which may be imagined in the form of an egg and which is meant to convey the non-hierarchical and interdependent nature of the activities as well as the possibility of carrying them out simultaneously. Ideally, a good strategy will address these three levels by making use of a wide range of very different activities. Applying the “protection egg” to the legal aid interventions may help identify activities that an organization is emphasizing, as well as those which it has chosen to neglect. It is a method of taking a comprehensive stock of each organization’s work. The “protection egg” also makes it

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<sup>14</sup> See Giossi Caverzasio, Silvie (ed.), *Strengthening Protection in War: A Search for Professional Standards*, ICRC, Geneva, 2001.

possible to study the approach of various organizations to a specific problem and to assess the strengths and weaknesses of that approach.

Once the Team and the stakeholders are identifying options for collective/coordinated response, another way of categorizing “modes of actions” that can be useful to use is the following:

- ❖ *Persuasion*: Persuasion is based on a confidential dialogue with the authorities concerned.
- ❖ *Support*: Direct or indirect support can be provided to the authorities by giving them technical or financial assistance to fulfil their legal obligations.
- ❖ *Substitution*: In certain instances, acting wholly or partially in lieu of the defaulting authorities, who are incapable of fulfilling their obligations to end violations or to rescue the victims of these violations, might be a valuable solution.
- ❖ *Mobilization*: Mobilization seeks to generate interest among other entities (States, NGOs, institutions of civil society, international or regional organizations) that are likely to influence the authorities/weapon bearers to prevent or put a stop to a violation, or to elicit encouragement or help
- ❖ *Denunciation*: only under exceptional circumstances<sup>15</sup>.

### **The added value of adopting this framework**

#### **From collective analysis to coordinated and collaborative response:**

- (analysis) Human rights based approach: this puts at the center the rights holders, the human right violations they have suffered and their legal aid needs - their origins and consequences
  - ⇒ (response) It helps bridging dialogue between national actor and between different type of international actors (peace devel humanitarian)
- (analysis) mapping of responsibilities of duty bearers vis a vis legal aid needs
  - ⇒ (response) This helps build a solid, evidenced based stakeholder mapping for advocacy but also helps design a sustainable response
- (analysis) Participatory approach: it is key that the analysis happens with national actors including rights holders (or their representatives as relevant) and starts from their perception of legal needs
  - ⇒ (Response) This helps enhancing accountability to affected population

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<sup>15</sup> ICRC reserves the right to issue a public denunciation of specific violations of international humanitarian law, and other fundamental norms protecting individuals in situations of violence, provided the following conditions are met: (1) the violations are serious and repeated or likely to be repeated; (2) delegates have witnessed the violations first hand, or the existence and extent of those violations have been established on the basis of reliable and verifiable sources; (3) bilateral confidential representations and, when attempted, humanitarian mobilization efforts have failed to put an end to the violations; (4) such publicity is in the interest of the persons or populations affected or threatened.” See “Action by the International Committee of the Red Cross in the event of violations of international humanitarian law or of other fundamental rules protecting persons in situations of violence,” International Review of the Red Cross, No. 858, 30 June 2005, pp. 393-400 on <http://www.icrc.org/eng/action-ihl-violations>.

- (analysis) language common to human rights, peace and development actor the analysis framework reconciles emergency and development approaches and avoids categorizing urgent/non urgent - It highlights the fact that each type of activity that makes up protection is parallel and simultaneous rather than chronological and successive. It suggests contiguity rather than continuum.
  - ⇒ (response) consider integration legal aid and other sector interventions
  
- (analysis) Beyond country response: looking at regional/cross border/global aspects of the violations, responsibilities and capacities
  - ⇒ This helps promote cross- boundaries solutions ( human rights mechanisms, regional dimension of some of the issues, ...)
  
- (analysis) Looking at political and power dynamics forces humanitarian to go beyond traditional descriptive analysis of the legal context and to identify factors that enable, exacerbate legal aid needs
  - ⇒ (response) This helps building stronger theory of change
  
- (analysis) Looking at existing social norms and communities existing capacities to claim rights and resolve issues, identify those who helps protect and those which exacerbate existing legal aid needs
  - ⇒ (response) This enhance design programmes and existing tools/approaches/methodologies that are better tailored and sustainable
  
- (analysis) the framework is applicable in all situations, whether they involve high- or low-intensity conflict. It may even be applicable in peacetime.
  - ⇒ (response) can serve to present information so in itself can be a tool for advocacy
  
- (analysis) people centered: starts from rights holders perception of justiciable problems, national experts advice on the context and capacities, helps to bridge a gap between justice/rule of law/development actors (often focused on justice systems, reforms, – environment building), peace and human rights actors (often focused access to justice as a way to restore violations - remedial), humanitarian actors (often focused to respond to immediate needs – responsive )
  - ⇒ (response) A people-centered approach to justice reform starts with people’s needs and aims to solve the justice problems that matter most to them. People-centered justice empowers people to seek solutions and provides them with quality services throughout their justice journey.