

**INTERNATIONAL ACCESS TO JUSTICE
LEGAL AID FOR THE ACCUSED AND REDRESS FOR
VICTIMS OF VIOLENCE**

A Report by the Bingham Centre for the Rule of Law

EXECUTIVE SUMMARY

The International Bar Association (IBA) provides assistance to the global legal community with the aim of influencing the development of law reform and promoting the highest professional standards and the rule of law throughout the world. As part of that mission, the IBA **Access to Justice and Legal Aid Committee**, formed in 2013, has undertaken and commissioned research into issues it sees as being of prime contemporary importance. **This study, the Committee's second project, focuses on legal aid in criminal cases and redress for victims of violence.** These issues are of global importance now as the United Nations agrees on a set of **Sustainable Development Goals for 2015-2030 which include access to justice and the rule of law.** The Bingham Centre for the Rule of Law conducted the research and wrote this report with contributions and comments from the Committee.

This report uses a **comprehensive concept of access to justice** that covers different stages of the process of obtaining a solution to civil or criminal justice problems, including: the existence of rights enshrined in laws and awareness thereof; access to both formal and informal dispute resolution mechanisms; the availability of, and access to, counsel and representation; and the ability of such mechanisms to provide fair, impartial and enforceable solutions.

The report focuses on access to justice in relation to the commission of violent criminal acts, considering the positions of both offenders and victims. Access to legal advice, assistance and representation for alleged perpetrators, and redress for victims of crimes are core elements of a justice system based on the rule of law and respect for human rights.

The report primarily adopts **the definition of 'legal aid' employed by the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems**, which defines legal aid as assistance provided free of charge, but slightly expands on the UN definition by including in the analysis legal services that may be provided at low cost as part of access to justice programmes, capturing a wider range of legal support. Similarly, it adopts a broad definition of redress for victims of violence that encompasses economic reparation, rehabilitation, different schemes of victim involvement in criminal proceedings, and mechanisms allowing them to have an impact in sentencing.

The Committee's goals in undertaking and presenting this work are to:

- **Raise awareness** of the different types of barriers to access to justice regarding legal aid and victim redress.
- **Provide a valuable tool** for lawyers, practitioners, civil society organisations and others who are engaged in reform processes, to ensure that rights are enjoyed in practice, rather than existing solely on paper.
- **Provide a basis for further discussion and research** into how the legal community, working with civil society and governments, can be involved in maintaining or improving access to justice in the criminal sector, especially in times of austerity.

The report consists of six chapters. The introduction (Chapter 1) explains the aims and structure, Chapter 2 outlines the methodology, before the three core chapters of the report (Chapters 3 – 5) address groups of obstacles in access to legal aid for the accused and redress for victims of violence, and related examples of projects and best practices adopted to surmount them. In order, these examine:

**Tuesday, 6 October 2015
Room 2.95, Level 2**

13:30 – 14:30

Open Committee business meeting

14:30 – 17:30

The availability and effectiveness of legal aid for those accused of crimes and redress for victims of violence

Join the Access to Justice and Legal Aid Committee

- Lucy Scott-Moncrieff (co-chair)
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- **Access to legal aid for the accused in a criminal case**, including: access to legal information; access to free legal advice, assistance and representation; due process, fair procedures and an efficient judiciary.
- **Redress for victims of violence**, including: access to legal information; access to legal aid; access to a fair dispute resolution and participation in the process; enforcement of decisions and types of redress.
- **Dualities**, as the paths to justice intersect when an accused also becomes a victim, or a victim also becomes an accused, then barriers operate in complex ways for a person with this dual status.

The concluding chapter (Chapter 6) looks at directions and pathways ahead.

In examining the strategies that are used to tackle different types of barriers to access justice, two important considerations arise:

- There is a degree of **universality** about **access to justice and the rule of law**, which should be balanced against context specificity.
- The multi-dimensional nature and impact of access to justice highlights **the importance of measurement of progress**, which is a core component of the UN Post-2015 Development Agenda.

The research suggested some general guidelines with regard to the conceptualisation, formulation, and application of solutions to overcome barriers to access to justice solutions, with both universality and particularity in mind:

- The **international context** for access to justice and legal aid is likely to be **profoundly influenced by the UN Sustainable Development Agenda** for 2015-2030, and particularly **Goal 16** of that Agenda which identifies access to justice and the rule of law as core aims to be achieved, and there will thus be a clear and strong point of reference against which the commitments of states to improve access to justice and the rule of law might be measured.
- The **legal profession can play a strategic role in the context of the achievement of Goal 16** with regard to promoting the rule of law and ensuring equal access to justice for all, including through cooperation with other stakeholders, including from civil society, academia, and international organisations.
- The successful involvement of other stakeholders rests on two important pillars: a formal **recognition of the role to be played by non-state non-professional actors in providing legal aid services**; and the establishment of **mechanisms** (including monitoring and evaluation mechanisms) **that guarantee quality standards** for legal aid services.
- The **effectiveness of the legal aid system** for both the accused and victims can be maximised through **coordinated action** between justice agencies and legal professionals, and professionals from other sectors, such as health, social services and victim support workers.
- **Training and education** are important ingredients of access to justice and enable effective functioning of the legal aid system.
- Regular **collection, monitoring and publication of data** enables the identification of problems and best practices to overcome them, and increases the usefulness of good practices in the provision of legal aid by facilitating sharing internationally.
- **Multiple and complex barriers need to be addressed carefully**, especially where they involve **dualities that render a person both accused and victim**, with the need to understand how they operate in the specific context and the identification of solutions that work for the particular circumstances.
- **Across all jurisdictions there is room for improvement** in standards and practices in access to justice, access to legal aid and redress for victims of violence. An approach that cuts across all these areas, and which identifies good, effective practices, provides opportunities for constructive cooperation between, especially (though not limited to), states and legal professional bodies.

The report is available online from:

Access to Justice & Legal Aid Committee:

www.ibanet.org/PPID/Constituent/AccessToJustice_LegalAid/Default.aspx

The Access to Justice and Legal Aid Committee web site provides additional resources including summaries of projects from across the globe and our 2014 report on barriers and solutions to access to justice.

The report is also available from the Bingham Centre for the Rule of Law: www.binghamcentre.biicl.org/publications