

The Kyiv Declaration on the Right to Legal Aid

Conference on the Protection and Promotion of Human Rights through Provision of Legal Services

Best Practices from Africa, Asia and Eastern Europe

Kyiv, Ukraine

27-30 March 2007

115 delegates from twenty-five countries, among them Government representatives, legal aid practitioners, academics, and representatives from human rights, legal advocacy, and legal and justice sector reform organisations, met in Kyiv, Ukraine, between 27-30 March, 2007, to discuss and identify best practices in the protection and promotion of human rights through the provision of legal services. The Kyiv Declaration on the Right to Legal Aid, set forth below, was adopted by consensus at the conclusion of the conference, with a request that it be forwarded to national governments, to legal aid bodies and organisations, public and private, at national level, and to relevant national and multilateral bodies engaged in developing or implementing policies and programmes addressing legal aid, access to justice and rule of law.

Preamble

Recalling that governments have the primary responsibility to recognise and give effect to international human rights standards;

Recognising that many governments fall short of these standards;

Bearing in mind that access to justice in criminal, civil, administrative and other fields of law depends on the recognition of and compliance with international human rights standards;

Noting that in many countries the government and law enforcement agencies are feared and mistrusted;

Recognising that people in the legal systems of many states are denied access to justice and are ignorant about their human and legal rights and procedures;

Considering that a legal aid system is a public good that is the common property of all members of society, that the promise of justice for all can only be realised when its rules and operation are understandable and accessible to all, and that the provision of legal aid is a vital element in this regard;

Aware that the provision of legal aid will promote access to justice;

Noting that legal aid achieves societal benefits including the elimination of unnecessary detention, speedy processing of cases, fair and impartial trials and dispute resolution, the reduction of prison populations, the lowering of appeal rates, decreased reliance on a range of social services, the advancement of social and economic rights, and greater social harmony;

Understanding that legal aid encompasses the provision to a person, group or community, by or at the instigation of state or non-state actors, of legal information, education, advice, assistance, representation and advocacy and mechanisms for alternative dispute resolution;

Mindful of the UN Basic Principles on the Role of Lawyers;

Welcoming the practical measures to realise access to justice through the provision of legal aid that have been taken in many countries;

Respecting governments' need to ration and allocate available resources according to need, and that each country has its own capabilities and needs when consideration is given to what kind of legal aid systems to employ;

Noting the growing incidence of partnerships among governments, nongovernmental organisations, civil society organisations, business corporations and the international community in developing legal aid programs;

Observing that in many countries there are not enough lawyers, resources and mechanisms to provide the legal aid services required to ensure access to justice;

Acknowledging that traditional and community-based alternatives to formal legal processes have the potential to resolve disputes without acrimony, to restore social cohesion within the community, and to develop self-reliance within communities;

The Participants of the Conference on the Protection and Promotion of Human Rights through Provision of Legal Services – Best Practices from Africa, Asia and Eastern Europe, Kyiv, Ukraine 27-30 March 2007, hereby declare the importance of:

1. Recognising and supporting the right to legal aid in the justice system

Legal aid is a right and governments are obliged to implement sustainable, quality controlled, legal aid programs that deliver legal aid services without discrimination to all people in their jurisdictions, subject only to a transparent and reviewable assessment of need, and with special attention to women and vulnerable groups, such as indigent people, children, young people, the elderly, persons with disabilities, persons living with HIV/AIDS, the mentally and seriously ill, asylum seekers, refugees, internally displaced persons, stateless persons, foreign nationals, prisoners, and other persons deprived of their liberty.

2. Providing legal aid at all stages of the justice process

A legal aid program must include legal advice and assistance at all stages of the criminal, civil and administrative process.

3. Sensitising all government officials

Governments are obliged to make public officials aware of the crucial role that legal aid plays in both ensuring access to justice and achieving desirable societal goals, and to educate and train them in procedures necessary to ensure that the right to legal aid is provided at all stages of criminal, civil and administrative proceedings.

4. Viewing legal aid as one means of ensuring a justice system that is accessible and available to all

Governments are obliged to ensure that legal information is available regarding administrative, civil and criminal matters and to this end public servants are obliged to inform and explain substantive and procedural aspects of legal matters to all members of the public.

5. Cooperating with other stakeholders and the public

Governments should establish cooperative arrangements with a wide range of stakeholders – such as non-governmental organisations, community-based organisations, religious and non-religious charitable organisations, professional bodies and associations and academic institutions – and ensure effective public participation in the formulation of legal aid policies, programs and legislation.

6. Recognising the right to redress for violations of human rights

Legal aid should be available to all people without discrimination who seek legal redress for violation of their human rights, including for violations by any organ of state.

7. Recognising the role of non-formal means of conflict resolution

Governments and all stakeholders should recognise the significance of traditional and community-based alternatives to formal legal processes, and should provide support for such mechanisms provided that they conform to human rights norms.

8. Diversifying legal aid delivery systems

Governments should consider a variety of service delivery options such as government funded public defender offices, judicare programmes, justice centres, law clinics, as well as partnerships with civil society and faith-based organisations.

9. Diversifying legal aid service providers

Governments should consider appropriate alternatives to the use of lawyers through the provision of complementary legal and related services by non-lawyers such as lay advocates, law students, paralegals, legal assistants, and other service providers.

10. Encouraging pro-bono provision of legal aid by lawyers

Support for and involvement in the provision of legal aid should be recognised as an important duty of the legal profession which should, through the organised bar and law schools, provide moral, ethical, professional and logistical support to those providing legal aid, especially through pro-bono legal aid services. Governments should promote an enabling environment for private practitioners to provide pro-bono services and ensure competitive rates of remuneration.

11. Guaranteeing sustainability of legal aid

Governments should make appropriate fiscal, budgetary and operational arrangements for a sustainable legal aid program, including for the provision of a broad range of legal aid services, establishment of infrastructure, an independent, cost-effective, professional and quality driven case management system, and with the ability to satisfy the needs of the community in the long term.

12. Promoting legal literacy through legal education and advocacy

Governments should ensure that human rights education and legal literacy programmes are conducted in educational institutions and in non-formal sectors of society, particularly for vulnerable groups such as children, young people, and the urban and rural poor. Governments are encouraged to ensure that human rights and legal documents are translated and made widely available. International and regional bodies are encouraged to make available human rights documentation in relevant languages.

13. Ensuring access to justice in programmes of assistance to justice systems in developing and transitional countries

Governments and multilateral donors should ensure that programmes of assistance to justice systems in developing and transitional countries include the provision of legal aid information and other measures to further access to justice, particularly among the poor and vulnerable, in a sustainable way.

14. Guaranteeing a secure environment for the provision of legal aid

Governments should ensure that there is an enabling environment for the provision of legal aid services, including protection for lawyers and all other service providers from harassment, intimidation and other threats to their safety and security.