

# THE UNITED NATIONS PRINCIPLES AND GUIDELINES ON ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS: A COMPREHENSIVE APPROACH TO LEGAL AID

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## ABSTRACT

*The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems were adopted on 20 December, 2012. The article embraces that the approval of the Principles and Guidelines is a landmark in the area of access to justice because it is the first international instrument that entirely focuses on legal aid. In this context, the aim of the present article is to demonstrate that the scope of State obligations towards ensuring a legal aid system under the Principles and Guidelines extends beyond previous international human rights standards. The authors, therefore, discuss the elements of a legal aid system as put forward by the instrument. Finally, the article recommends that even if the Principles and Guidelines refer to access to legal aid in criminal proceedings, it is desirable to apply similar standards to civil proceedings, as free legal assistance is indispensable for effective access to the courts and a fair hearing, and eventually to establish the rule of law.*

## I. INTRODUCTION

The right to legal aid is considered a basic requirement in ensuring effective access to justice and States are under an obligation to ensure such right.<sup>1</sup>

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<sup>1</sup> Skinnider, E., "The Responsibility of States to Provide Legal Aid", Paper prepared for the Legal Aid Conference Beijing, China (March 1999) at 16, <http://www.icclr.law.ubc.ca/publications/reports/beijing.pdf> (Last visited on 1 June 2011); Smith, R., "Human Rights and Access to Justice," 14(2007) International Journal of the Legal Profession at p. 278; Fleming, D., "Legal Aid and Human Rights", Paper presented to the International Legal Aid Group Conference, Antwerp, (6-8 June 2007) at p. 27, [http://www.ilagnet.org/jscripts/tiny\\_mce/plugins/filemanager/files/Antwerpen\\_2007/Conference\\_Papers/Legal\\_Aid\\_and\\_Human\\_Rights.pdf](http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/Antwerpen_2007/Conference_Papers/Legal_Aid_and_Human_Rights.pdf) (Last visited on January 07, 2011).

However, existing human rights instruments have not provided any specific definition of legal aid before the adoption of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems on 20 December, 2012.<sup>2</sup> The approval of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (hereinafter the Principles and Guidelines) is a landmark in the area of access to justice because it is the first international instrument that entirely focuses on legal aid.<sup>3</sup> The Principles and Guidelines are based on international standards and recognized good practices, and are presented as a progressive,<sup>4</sup> complete and realistic model of legal aid that takes into account the great variety among legal systems, as well as among socioeconomic conditions.<sup>5</sup> They thus take a comprehensive approach and introduce a complete programme for an effective and fair legal aid scheme.<sup>6</sup> In this context, the aim of the present article is to demonstrate that the scope of State obligations towards ensuring a legal aid system under the Principles and Guidelines extends beyond previous international human rights standards. The authors, therefore, discuss the elements of a legal aid system as put forward by the instrument. Finally, the article recommends that even if the Principles and Guidelines refer to access to legal aid in criminal proceedings, it is desirable to apply similar standards to civil proceedings, as free legal assistance is indispensable for effective access to the courts and a fair hearing,<sup>7</sup> and eventually to establish the rule of law.

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<sup>2</sup> Knaul, G., Report of the Special Rapporteur on the Independence of Judges and Lawyers, para. 26, A/HRC/23/43 (15 March 2013), <http://www.wave-network.org/sites/default/files/UN%20Special%20Rapporteur%20on%20the%20Independence%20of%20Judges%20and%20Lawyers.pdf> (Last visited on March 16, 2016). The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, General Assembly Resolution, A/RES/67/187(28 March 2013). [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/RES/67/187](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/67/187) (Last visited on October 10, 2013).

<sup>3</sup> Willems, A., “The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems: A Step toward Global Assurance of Legal Aid?” 17(2014) *New Criminal Law Review*, pp 184-219, at p. 185.

<sup>4</sup> Open Society Justice Initiatives, Fact Sheet: UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. <http://www.opensocietyfoundations.org/sites/default/files/factsheet-un-principles-guidelines-20130213.pdf> (Last visited on July 20, 2014).

<sup>5</sup> The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Recital 10.

<sup>6</sup> *supra* note 3 at pp. 190, 198.

<sup>7</sup> *supra* note 2, para. 48.

## II. ORIGINS AND LEGAL STATUS OF THE PRINCIPLES AND GUIDELINES

In 2012, the United Nations General Assembly (UNGA) unanimously adopted the Principles and Guidelines, considering the vital role of legal aid in strengthening criminal justice systems and the rule of law.<sup>8</sup> The Lilongwe Declaration of 2004 marks the first step towards adopting the document.<sup>9</sup> The Declaration provided the requisites for establishing an effective legal aid service in order to make this right a reality. In 2007, the UN Economic and Social Council adopted Resolution 2007/24,<sup>10</sup> noting that suspects and pre-trial detainees faced the violation of their human rights due to prolonged incarceration without their being provided with access to legal aid or to a court. The resolution requested the UN Office on Drugs and Crime (UNODC) to convene an open-ended intergovernmental meeting of experts to study ways and means of strengthening access to legal aid in criminal justice systems and develop a global instrument for improving access to legal aid.<sup>11</sup>

In 2009, the UNODC convened a working group for the purpose of drafting a document on access to legal aid based on global best practices. The working group developed a draft which was presented at the UNODC Intergovernmental Expert Group Meeting (IGEGM) in Vienna in November 2011.<sup>12</sup> The meeting discussed the instrument thoroughly and decided to endorse the proposal with the recommendation that the document was required to be considered for adoption by the UNODC Commission on Crime Prevention and Criminal Justice (CCPCJ).<sup>13</sup> For the approval of the document by the CCPCJ, unanimity of the Commission of the Whole (CoW), which consists of 40 UN Member States was required.

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<sup>8</sup> Penal Reform International, “Briefing on the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems” (April 2013). <http://www.penalreform.org/wp-content/uploads/2013/05/PRI-Briefing-on-Legal-Aid-Guidelines-and-Principles-April-20131.pdf> (Last visited on March 12, 2016).

<sup>9</sup> *supra* note 3 at p. 187.

<sup>10</sup> ECOSOC Resolution 2007/24, International cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa. <http://www.un.org/en/ecosoc/docs/2007/resolution%202007-24.pdf> (Last visited on March 01, 2016).

<sup>11</sup> Report of the open-ended intergovernmental expert group meeting on strengthening access to legal aid in criminal justice systems, Commission on Crime Prevention and Criminal Justice, para. 1 (Introduction), (E/CN.15/2012/24), held in Vienna from 16 to 18 November 2011. [https://www.unodc.org/documents/justice-and-prison-reform/DRAFT\\_report\\_IEGM\\_legal\\_aid.web.pdf](https://www.unodc.org/documents/justice-and-prison-reform/DRAFT_report_IEGM_legal_aid.web.pdf) (Last visited on May 05, 2016).

<sup>12</sup> *supra* note 3 at p. 187.

<sup>13</sup> *ibid.*