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LEGAL AID PROGRAMS IN THE MIDDLE EAST AND NORTH AFRICA

CURRENT PRACTICES AND LESSONS FROM OTHER REGIONS

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ACRONYMS AND ABBREVIATIONS

ABA/ROLI	American Bar Association Rule of Law Initiative
ADR	Alternative Dispute Resolution
CBA	Cost Benefit Analysis
CEA	Cost Efficiency Analysis
CEPEJ	European Commission for the Efficiency of Justice
CLE	Continuing Legal Education
CSO	Civil Society Organization
Expat	Expatriate
EU	European Union
HIIL	Hague Institute for Innovation in Law
ICT	Information and Communication Technology
IDP	Internally displace person
ILAC	International Legal Assistance Consortium
JP	Justice of the Peace
LAB	Legal Assistance Board (Netherlands)
LGBT	Lesbian, Gay, Bisexual, and Transgender
LSC	Legal Services Corporation
MAD	Moroccan dirham
MENA	Middle East and Northern Africa
MOJ	Ministry of Justice
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
OSJI	Open Society Justice Initiative
PD	Public Defender
PDO	Public Defense Office
PSL	Personal status law (i.e., family issues)
UAE	United Arab Emirates
UN	United Nations
UNDP	United Nations Development Program
UNODC	United Nations Office on Drugs and Crime
US	United States
USAID	United States Agency for International Development

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EXECUTIVE SUMMARY

1. Legal aid (here defined as state subsidized assistance to actual or potential parties to court cases) is a relatively new addition to all justice sectors and its organization and operations vary considerably around the world. Types of assistance offered include some mix of fee exemption/deferral; primary aid or counseling and information; and secondary aid or legal representation in specific stages of a trial process. Even within a single country what is offered and to whom vary by client and case type.

2. Classic programs (those first introduced within the past century in high-income countries) take three basic forms:
   - A government office that hires or contracts attorneys and staff to provide services. Most began with criminal defense, but over time many **Public Defense Offices (PDOs)** expanded their services to victims and none-criminal cases.
   - Individual attorneys (**assigned counsel**) selected by a sector agency or an individual member, to handle individual cases with fees subsidized in full or in part by the government. Some government programs recognize and occasionally stipulate pro bono services at least in part.
   - With government funding, through one or more NGOs or similar not-for-profit organizations (e.g., university legal clinics, community legal centers).

3. As demand/need for services has grown, there is increasing recourse to **hybrid programs,** combining two or three of these modalities. Moreover, alternative (**extra-program**) aid is often provided by NGOs, university clinics, bar associations and individual attorneys offering pro bono or discounted services. Although not covered in detail here, in emergent countries they are often the principal providers by number of clients served and are highly dependent on donor funding.

4. In government or **formal programs** (the present focus) there is no advantage per se of any of the three modalities, or their combination as a hybrid. PDOs offer a greater potential for control of service quality but are expensive to set up and maintain and adjust to sudden changes in demand with difficulty. Assigned counsel systems are vulnerable to more abuses but offer greater flexibility in adjusting to demand and avoiding conflict of interest issues while NGOs can offer the best of both worlds but are inevitably dependent on the changing priorities of external funders.

5. What does make a difference in any modality are a series of operational details:
   - Selection of attorneys for service provision to ensure they are sufficiently qualified and motivated
   - Reimbursement for services, whether as salaries (in PDOs) or fees for assigned counsel based on a study of salary scales for independent practitioners (and not only on negotiations with the bar)
   - Monitoring and evaluation of service quality from individuals
   - Training and mentoring – these are less common for assigned counsel
   - Record keeping and use of Information and Communication Technology (ICT) for internal business and to develop data-driven management

6. More recent approaches include program (not just provider) evaluations, user and legal needs surveys, victims' services, caseload weighting studies to better distribute cases among participating counsel, addition of paralegals and skilled administrative and auxiliary personnel, online services; incorporation of Alternative Dispute Resolution (**ADR**) and Traditional Dispute Resolution (**TDR**); and promotion of non-legal measures (legal and policy change) to directly address some legal issues common to legal aid recipients and so avoid individual litigation.

7. Although OECD countries have come a long way in their provision of legal aid, by case, client, and assistance type, there is no country without a significant "**supply-demand**" gap between those receiving legal aid and those theoretically eligible for assistance. This is a recognized issue for which better solutions are constantly being sought.

8. In MENA, as in other emergent regions, most countries came still later to recognizing the need for legal aid programs. However, a few countries introduced their programs decades ago and Tunisia's first program dates to 1922. By now nearly all have created one. Except for the early adopters (Tunisia, Morocco, and Algeria) programs were usually established by incorporating facilitating provisions within various legal codes (and very rarely in the Constitution). Only a few have a separate legal aid law, although it may still not be consistent with other legislation. For most, the disjointed legal frameworks would require improvements to make these programs works more effectively.

9. In light of resource limitations, there will be limits to what will be provided and to whom. However, in MENA these restrictions are 1) fairly extensive, 2) lack explicit justifications, whether budgetary or otherwise, and 3) based on weak assumptions about parties' ability to defend themselves.

10. MENA's decentralized organization and implementation of these programs has become a cause of concern. This is because of the piecemeal legal framework and absence of effective implementation rules, evaluation standards, and reporting requirements. It is not possible to locate a consolidated tally of clients served.

11. Under these conditions it is impossible to say how many or what proportion of "eligible clients" receive assistance. In countries that limit eligibility to a small group of citizens the gap may also be small if subject to considerable criticism. However, in those (the majority) where much of the population is theoretically eligible if only because of indigency, it appears to be significant. This is in part because many potential beneficiaries lack information on availability. Putting information online is of little help because of limited connectivity, ordinary and computer literacy, and adequate equipment to access it. Other obstacles, varying by country, are often cultural, ranging from social pressure and consequent hesitancy to use courts and lawyers, to judicial resistance to having lawyers participate in trials. Generally, NGOs do a better job of publicizing rights and legal information than do the formal programs. Where counseling is available under the formal programs, it often comes only after a lawyer has been assigned.

12. Programs thus could be improved, but the specifics depend on the 1) local economic situation and 2) the types and numbers of unserved populations. In lower income countries with large numbers of unserved potential beneficiaries, the primary constraints, aside from budgetary limitations, are organizational. The number of beneficiaries and the quality of services could be improved with better targeting of clients and of the selection and monitoring of service providers. In higher income countries, where most of the non-citizen population is effectively if not legally excluded, the issues are political and equally difficult to resolve. Countries with large refugee and migrant populations, whatever their financial situation, fall somewhere in between as both budgets and politics pose impediments.

13. In short, most MENA nations have accepted the need for a legal aid program. At the same time, significant shortcomings remain. The final section offers some recommendations on how to address them.

14. Recommendations are multiple and are provided below in tabular form, divided between immediate actions and those to be taken later. It should be stressed that immediacy refers only to when an action should be started and has no necessary relation to how long it will take to complete. Similarly later actions could be accomplished quickly or also extend over a longer period.

IMMEDIATE TASKS	
Task	**Details**
Select a national coordinating agency for the program or where one exists strengthen its role.	Initial responsibilities for all include collection/consolidation of performance data; consolidation/dissemination of legal rules on implementation, and promotion of mechanisms to broaden knowledge about aid program(s) Over time responsibilities should extend to conducting/sponsoring a review of the legal framework to identify and treat internal inconsistencies/ambiguities; holding discussions among implementers about issues, problems, suggested remedies; coordinating with extra-program NGOs to receive their output data; and with participation of all stakeholders developing a plan to improve programs.
Review and rationalize criteria for aid eligibility	This should start with the means test rules with the aim of making them less complex/easier for applicants. Other rules to reconsider include any assumptions about who needs only fee exemptions not legal counseling and representation (women, workers), other civil cases where only fee exemption is provided; and limitations (de jure or de facto) on eligibility to citizens or expatriates with reciprocity agreements.
Improve record keeping	Given what appears to be the fact that individual implementing agencies either do not collect output information or vary as to what is collected and in what form, steps should be taken to reach agreements on basic collection and reporting formats. Find ways to avoid double

	counting, and over time to include data from extra-program services (e.g., NGOs, legal clinics).
Improve public education program	Introduce different channels for providing information, not limiting this to online programs and websites, while taking into account the capacities of the target audience. Either fund nationally or explore donor support to develop and test pilots.

TASKS FOR LATER ADOPTION	
Task	**Details**
Commission or do a review of existing rules	The study should address the extent to which existing rules are implemented and their impact on potential and actual clients. Again, if the country lacks funds to do a complete review, donor support might be explored. The study might not be feasible in countries still experiencing internal conflict, although over time, information on how different internal regions operate would be important.
Within the coordinating agency create a department to use/analyze performance data	The department could be exclusively for legal aid or part of a larger office doing broader analysis and planning for the justice sector. Staff should be multidisciplinary including statisticians, planners, economists, and lawyers, but lawyers should not dominate.
Explore means for providing assistance to groups for whom full legal aid would be prohibitively costly	Criminal defense is the first priority, but most countries have other larger groups who suffer a lack of any type of assistance. There are various means to help them – legal education, counseling services, ADR, paralegals, and so on that merit exploration to ensure they are not abandoned.
Review, standardize, or introduce monitoring and evaluation criteria as well as disciplinary and complaints mechanisms	In most countries this will be "introduce" criteria, but if some exist, they should be reviewed for the level and impact of implementation. The aim is a (better) set of criteria that will improve the user experience. They should be developed with ample participation from stakeholders with similar attention directed to disciplinary mechanisms and complaints systems.
Rationalize payment system for assigned counsel and reduce reliance on pro bono work.	Develop fee schedules and funding sources so that what counsel is paid is reasonably related to what most earn in private practice. As pro bono work does not appear to function well in the region, to the extent it is used, other types of "compensation" might be considered. Work with bar associations, NGOs (for information as the schedule will not affect them) and other ministries (which in a few countries have their own staff to provide some legal aid) for input but base the results on a serious study of lawyer income.
Do case weighting study	Ideally, this information should feed into the payment scheme, whether for the few government employees or assigned counsel. Donors frequently support such work.
Conduct legal needs and user surveys	For most countries the best start could be a legal needs study (incorporating the entire population and not just a limited part eligible by citizen/residence status). A user or multi-stakeholder survey directed only at legal aid might complement this or be an alternative depending on the country situation. A multi-stakeholder survey could

	also interview judges, opposing counsel and other with significant contact with the legal aid program.
Develop a budget line to finance central coordination and payments to service providers	Few countries have one, and it often is insufficient, but it will be necessary as part of an improvement plan. Over time both funding and eligibility will have to expand, but this will take time and in the short to medium run any dedicated funding could be used to encourage cooperation and coordination among implementers.

CHAPTER I: EXPLANATORY INTRODUCTION

1.1. Purpose, Audience, and Method

15. **Legal aid programs (i.e., subsidized assistance to parties to a legal dispute) are currently receiving universal attention as countries attempt to expand access to their justice services to citizens with justiciable problems and limited means of resolving them because of costs, information gaps, and legal, geographic, and other barriers.** The current report combines a review of worldwide practices and innovations in legal aid/assistance[1] with World Bank fieldwork conducted in the Middle East and North African (MENA) region, where legal aid programs have been adopted in almost all countries. Its purpose is to assist MENA countries in identifying how they might modify their existing programs to improve the quality, quantity, and impact of their legal aid services. Secondary audiences include governments and justice sector organizations in other regions, the World Bank and other donors, and anyone else interested in expanding access to justice for needy populations facing de jure and/or de facto exclusion.

16. **Earlier judicial or justice sector reforms in MENA and elsewhere typically expanded the territorial reach, budgets, physical resource endowments, personnel, and salaries of courts, prosecution and other organizations involved in dispensing justice while also altering the legal frameworks guiding their actions.** These changes have had positive effects in many countries, reducing delays, combatting corruption and bias, decreasing political interference in decisions, and attracting more competent personnel to work within the sector. However, they have not necessarily made justice services significantly more accessible to impoverished and otherwise marginalized populations. Those who can afford to pay for access and have the legal information to do so can benefit from these modernization efforts, but for others the traditional obstacles still stand in their way.

17. **Expanding access can have positive economic, social, and developmental consequences (World Bank 2020); it can also increase citizen trust in all their governance institutions and reduce certain forms of violent conflict.** Still, the challenges are substantial even for countries that established these programs decades ago. They are even more so for latecomers, not only because their programs are relatively new but also because of budgetary implications as well as resistance from system actors entrenched in the status quo.

18. **Following this brief introduction and a review of key terms used in the report, the rest of the document comprises two chapters:** a review of variations in the organization and conduct of legal aid programs and of what can be considered good practices and a fieldwork-based review of common arrangements and practices throughout MENA; along with a series of recommendations for MENA countries, taking into account some region-specific issues and constraints.

[1] Both terms are used but legal aid will be applied here for simplicity's sake.

1.2. Definition of terms used in this report

19. **Legal aid/assistance:** using but expanding the European Commission for the Efficiency of Justice (CEPEJ), definition this is "the assistance provided by the State to persons who do not have sufficient financial means to defend themselves before a court… [or] to initiate a court proceeding" and to help them understand and choose among the alternative ways they might deal with what they believe to be a legal problem. This assistance may also include services (often through nongovernmental or civil society organizations) funded by non-governmental sources with little or no State involvement.

20. **Legal aid program:** here used to denote subsidized services provided to indigent citizens and/or other targeted groups, regardless of level of central supervision within or among the various types.[2] Discussion in the following chapters focuses on what is termed a **formal (governmental) program**, meaning one whose coverage, scope, and operating rules are established by law/s. Both formal and extra-program aid can include any of the following, not all of which may be available:

    Primary legal aid: the provision of information, advice, and/or assistance in preparing legal documents to individuals with a potentially justiciable problem who want to know what they can do about it or who simply want information "just in case." This may be personalized or involve general information (and occasionally further instructions and template forms) available online or in print to any interested party.

    Secondary legal aid: the provision of assistance in court cases including drafting of required documents and representation by an attorney in pre-trial, trial, and post-trial stages of adjudication. This is always personalized but is increasingly done at least partly online.

    Waiver of court fees and other costs: a waiver may be granted separately from other service provision, for example in a direct request to the court; it is sometimes automatic for certain cases (e.g., child support). However, waivers are often obtained through an attorney who will know the relevant conditions and coverage. It is worth noting that some countries do not charge court fees, making a waiver or deferral (but not coverage of other costs - e.g., for accessing/copying documents, and of course paying attorneys, experts, and the like) irrelevant. Mexico prides itself on making justice "free," although as several observers note, it still can have substantial costs for the user.

    Fee Deferral: This allows a party to postpone fee payment until after judgment. In the US, a means test is required to qualify, but this is not the case everywhere. Depending on how fees

[2] This definition is broader than that used by other authors – for example, the Open Society Justice Initiative (OSJI, 2015) states that Germany does not "have a legal aid scheme," presumably because services are not administered by an independent body but rather directly by individual judges and decisions on who pays the court appointed attorney are deferred until the case is disposed.

are assigned in the judgment (or by other rules), deferral may result in total or partial fee exemption, or may have no effect on post-judgment payments.

Assistance in mediation procedures: If mediation or other forms of alternative dispute resolution (ADR) exist in the country, provision of subsidized attorney services to help clients during the process. Where ADR is also government subsidized it can be counted as part of an aid program, as further discussed in Part III.

21. **Program coverage:** Numbers and identity of those receiving some type of aid. Can also be expressed as percentage of all citizens or of those with "justiciable issues" receiving aid. Coverage may be limited through means tests (see below) or by identity of recipients.

22. **Program scope:** refers to types of cases covered for qualified parties. It could be for all criminal and civil (including administrative), one or the other, or include further limitations/extensions according to the type of case, severity of crime (for criminal) or amount in question (civil).

23. **Means test:** where, as is usually the case, legal aid is intended for poor/indigent parties, a method to determine they qualify because of income level. While most often done as a condition for providing further assistance, in some countries it is applied only after the case is decided.

1.3. Criteria and Methodology for Evaluating Legal Aid Programs

24. **There are no internationally accepted standard reference frameworks against which legal aid programs are evaluated.** As further elaborated in Chapter II, evaluation of a legal aid program is necessarily independent of its structure since programs vary substantially in their basic organization with no apparent effects on their performance. For these reasons, this report does not rank systems, internationally or within the MENA region, but at most discusses where they might better fulfill their aims.

25. **Presumably a program should be measured against its official objectives.** However, many of these are too vague to be operationalized for this purpose. Moreover, ambitious programs will always fall short of full achievements of aspirational goals, whereas a program that limits assistance to a narrowly defined group (say defendants in major felony cases) may well attain its objectives. However, linking evaluation to official objectives falls short of a universal understanding (and definition) of the purpose of legal aid – making justice accessible (either in courts or some reasonably satisfactory dispute resolution mechanism in which participants will receive fair, equitable treatment) to marginalized populations.

26. **If the latter is taken as the principal criterion, then programs can be evaluated on a series of secondary criteria**. These are divided into two sets, the first assessing outcomes/results, and the second reviewing operational factors, commonly believed to improve the former. However, given the

difficulty in measuring results, and certain disagreements as to evaluation criteria there, limited research has been done to test the assumed impact of internal operations on them.

27. **Outcome/results criteria for program assessment:** Here the greatest difficulty is the frequent lack of data permitting evaluation of the de facto situation. Consequently, a review of the legal framework may be all that is possible, making the assessment at best partial.

    Extent of coverage or what proportion of the marginalized population are defined as program beneficiaries. This is the primary criterion, even where it contradicts official policy since it draws on what is universally understood as the purpose of a legal aid program.[3] This can be done with legal review.

    The proportion of the target population that actually receives assistance. Only a few countries track the inevitable supply-demand gap, and for the rest, the evidence on the shortfall is at best anecdotal, but still important (and can be supplemented by the surveys and feedback mechanisms suggested below). Requires statistics that in many instances are not available meaning that even a partial assessment may rely on sources like interviews and observation.

    Ease of accessing services – again may have to rely on legal analysis (the de jure situation) for a partial assessment. Surveys and statistical data, if available can provide more information on the de facto situation as it involves details like eligibility requirements, simple logistics (where and to whom applications must be made), or difficulty of obtaining information on these and other factors.

    Suitability of aid provided for enhancing access – legal review on rules for coverage, scope, and how aid is delivered. Generally, among the three usual types of aid, fee exemptions are least important, and access enhancement is best advanced by a combination of primary and secondary aid.

28. **Operational criteria:** These are based on guidelines and recommendations produced by agencies like the United Nations (UNODC, 2019 and 2011) that draw on a broader consensus among legal reform experts. Their assessment is based partly on a review of legal guidelines and partly on observation and available research on real practices.

    Effective program oversight –is there an agency responsible for overseeing program performance, collecting and analyzing relevant performance data, identifying areas for improvement, and developing plans to meet current and projected unmet needs? Even in decentralized or hybrid

[3] As per the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, and the Arab Charter on Human Rights, Article 13 of which states "each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights." All of this is posited on the primacy of legal aid for criminal defendants, but makes clear the potential for other types of cases.

programs, this is believed essential to program quality. Lack of data complicates assessing a program, but is also an indication of inadequate management, something that can be assessed on this basis.

Adequate public information programs, informing the public on legal aid offerings and how to access them in formats appropriate for the targeted audience.

Use of feedback from users (and possibly from system actors) to determine the extent to which the services provided satisfactorily meet their needs. Feedback may be best obtained through surveys, but other mechanisms include focus groups, interviews, public meetings, and complaints mechanisms

Other operational practices found vital to quality enhancement (and incorporated in guidelines like those elaborated by the UN - see UNODC, 2019). These are laid out in Chapter II below and include: adequate selection and vetting of personnel, reasonable payment schemes, monitoring and evaluation of individual performance, training and mentoring, collection and analysis of overall performance data, and use of the results to improve program organization, operating rules, and standards (also called data-driven management).

29. **As the above suggests, the evaluation methodology has two parts: one is the de jure (legal) provisions, and the second is the de facto situation.** The former will tell a good deal about official policy. The second relies on available statistics and surveys, interviews, official documents, analytic studies, and expert observations. Because MENA programs are relatively new (with only few dating back decades) it is assumed that as with older programs in OECD countries, they necessarily start small, either in intent or in real achievements. A fair evaluation takes this into consideration and expects their reach to grow over time. As noted, this report does not pretend to evaluate overall programs, but only to suggest where they might improve their performance at a reasonable rate.

CHAPTER II: INTERNATIONAL VARIATIONS IN LEGAL AID PROGRAMS AND A REVIEW OF GOOD PRACTICES

30. **The organization and operations of legal aid programs vary considerably around the world. This chapter reviews the common variations, their strengths and weaknesses, and the factors that influence both. It is divided into three sections.** The first looks at the macro-organization of what are called "classic programs," the second reviews internal details that further condition their effectiveness, and the third focuses on recent innovations, most of which can be seen as positive contributions to improving the quantity, quality, and reach of assistance to target populations.

31. **Good practices, or those increasing access without posing significant negative externalities, often require additional financing**. Some do not, and thus should be of particular interest where justice

sector institutions already face budgetary constraints. Although some examples are drawn from fieldwork findings, the search for good practices covers examples from all regions, legal traditions, and country contexts. It draws on World Bank and other donors' experience, some phone or email interviews, and a search of available literature on the topic. A particular effort was made to include examples from countries with large supply-demand gaps as is often the case in MENA. However, as elaborated below, supply-demand gaps are a challenge even in the wealthiest countries with a relatively smaller target audience for services.

32. **Identifying good practices in legal aid is a challenge given the shortage of available information from national programs on such basics as numbers of requests received and granted, budgets, outcomes, and client satisfaction.**[4] General descriptions of country systems can be found, but they are often limited to legal (de jure) provisions. Typically, only the more developed countries collect and publish much quantitative data. Both collection and publication are facilitated in systems centralizing the oversight and sometimes provision of service delivery, but as further discussed below this is not the most common arrangement.

33. **Comparative, evaluative studies are in still shorter supply.** The few exceptions include Namoradze (2016), US Department of Justice (2011), CEPEJ (2020 and earlier), and UNODOC/UNDP (2016 a and b). All but UNODC/UNDP cover a limited range of countries, all or most in Europe. CEPEJ provides data on 46 European nations (plus Morocco and Israel from 2018 onward) but offers no qualitative judgments. The UNODC/UNDP study is unique in its attempted coverage of the 197 UN member states via a questionnaire sent to their governments, of which only 68 responded, complemented by input from 121 experts from 89 countries. Between the two sources, 105 states were included, but statistical data cover only 68. Moreover, UNODC (2016a), which offers country profiles, only includes the 49 countries for which both government and expert reports were available, none of which are in MENA. Where donors contribute to funding legal services in their development cooperation, they provide some information and do evaluations, but this is limited to their own projects. This makes it difficult to evaluate program achievements across or even within countries.

34. **It is worth noting the need for caution in adopting "good practices" as their success in their countries of origin may be overrated or depend on conditions not present in countries seeking to adopt them.** This warning seems contrary to the notion of "good practices," but is nonetheless important. As further elaborated below, many arrangements that seem to function effectively in one place do not travel well, at the very least requiring additional measures to make them work, some of which are discussed in Part 2 below. Much also depends on national objectives, which vary as well. Limitations on coverage and scope can facilitate implementation. They can be practical decisions, but in some cases simply represent local preferences and a sense of who needs/merits assistance.

[4] UNODC/UNDP (2016b) notes this issue, making data collection its first overall recommendation.

Part 1: Experiences in classic legal aid programs

35. **The following sections review what can be considered "classic programs," those in operation in many countries over decades without some of the less common variations and innovations discussed in Part 3.** They are usually government-funded, often include a mix of primary and secondary assistance, frequently provide waivers or fee deferrals, and depend on personal assistance provided by attorneys either working directly for government agencies or drawn from private practice or civil society (CSOs) and non-governmental organizations (NGOs).[5]

1.1. Major program types: are some better than others?

36. **Subsidized legal services exist in some form nearly universally,[6] but coverage, scope, and organization vary considerably.** Service arrangements fall into the following three broad categories,[7] any of which may provide primary, secondary or both service types (as well as fee waivers or deferrals and additional kinds of support):

    A government office that hires or contracts attorneys (and occasionally paralegals[8]) to provide services. Most commonly they focus on criminal defense in which case they are usually called Public Defenders (PDs) working within Public Defense Offices (PDOs). However, the same or separate offices and attorneys sometimes also handle non-criminal cases and victims. Attorneys are usually paid a fixed salary, not by case, and are expected to do this work full-time.[9]

    Individual attorneys (**assigned counsel**) selected by a sector agency (or an individual member, most commonly a judge), a bar association, a law firm,[10] or the client, with fees subsidized in full or in part by the government.

    With government financing and oversight, through one or more NGOs or similar not-for-profit organizations (e.g., university legal clinics, community legal centers). As discussed below, in

[5] There is a theoretical difference between a CSO (civil society organization) and an NGO (non-governmental organization) but the terms are typically used indiscriminately. To simplify matters, only NGO is used here as it tends to be applied for legal aid in MENA. For a discussion on the distinctions and usages see Australian AID and UNDP (2012) 123-125.

[6] UNODC (2016b) does note that one-third of the countries surveyed lacked specific legislation on legal aid, but this does not mean lack of any services, only the absence of a constitutional or legislative guarantee on their provision.

[7] There are more complicated typologies, which include, for example distinctions between contracted lawyers and firms and those assigned ad hoc, See Michigan Indigent Defense Commission (2016) and UNODC/UNDP (2016b).

[8] This is discussed in Part 3 as an innovative service.

[9] There are exceptions to the full-time requirement. One Latin American country, Colombia, contracts attorneys and since they are not tenured employees, allows them to do other work once they have met a targeted quota of subsidized cases for each period. This is not a recommended practice for a variety of reasons.

[10] In some countries law firms receiving contracts for providing legal aid services assign the attorney to the case.

many countries most NGOs providing services operate **extra-program** relying on alternative funding sources.

37. I**n an increasing number of countries, two or more of the above delivery systems are combined into a government-funded program.** The use of such **"hybrid or mixed systems"** is most common where a PDO or similar agency already exists or is being created. It is typically a response to demographic constraints – for example, problems encountered when populations are dispersed with some communities too small to justify the presence of an office or even a full-time defender and too far removed to allow travel by defenders from another office. This may lead to appointing/contracting individual attorneys to handle the few cases present (although another problem is that such communities may have no lawyers at all). Other reasons include overburdening of office attorneys, sudden changes in demand the existing office cannot absorb, conflicts of interest, or a decision to split primary and secondary aid among different types of providers. For example, an NGO or as in the Netherlands, an office staffed by government employees might be funded to provide primary services only, with secondary assistance provided by assigned counsel or another government agency.

38. **Because they are not government funded, the CEPEJ definition excludes a variety of additional mechanisms that nonetheless add to the supply and on which governments may depend to fill the gaps.** Aside from donor-funded NGOs, which in low-income countries may provide half the available services,[11] the most common are pro bono offerings from individual attorneys, university legal clinics, and some community organizations (especially those involving traditional or customary systems). Governments sometimes offer incentives to these service providers – for example tax benefits for attorneys or legal offices providing pro bono services or fulfillment of community service requirements for students seeking a university degree.[12] Some of these additions may later be folded into a program with government financing but even when not, they are important as further elaborated below.

39. **By sheer numbers of countries, the most common arrangements in government programs involve the assignment of independent attorneys paid to handle individual cases, sometimes with additional expenses covered as well (UNODC/UNDP, 2016 a and b).** This is usually how a program starts and many countries have kept this arrangement even as their programs expand. Although less common, a related variation used in some Western European countries is to provide funds to a qualifying client who can then select her/his own attorney.

40. **The creation of a legal aid department, most often a Public Defense Office for criminal cases only, was an early US development.[13]** It later spread throughout Latin America, partly through US

[11] UNODC/UNDP (2016b: 96) finds that 45 percent of all legal aid services in the least developed countries are provided by NGOs funded by private and/or international donors. In high income countries, the figure is 4 percent. These are only estimates based on information from 9 low income and 22 high income countries.

[12] This is a policy in Mexico. Students, even those wishing a law degree, can perform other services, but work in a legal clinic (unfortunately not available in most universities) may strike them as more relevant.

[13] The first of these was created in 1913 in California, with other states soon following suit.

assistance programs. Here it replaced a former reliance on assignment (usually by a judge) of individual cases to private lawyers. The US also pioneered the use of grants to NGOs to provide legal aid in non-criminal areas. This is organized through its Legal Services Corporation (LSC), "an independent nonprofit established by Congress in 1974 to provide financial support for civil legal aid to low-income Americans." According to the LSC website:

> LSC promotes equal access to justice by providing funding to 132 independent non-profit legal aid programs in every state, the District of Columbia, and U.S. Territories. LSC grantees serve thousands of low-income individuals, children, families, seniors, and veterans in 813 offices in every congressional district.

41. **Government grants to NGOs and other not-for-profit organizations are found in some other common law countries (e.g., Australia, South Africa) but are less used elsewhere.** Foreign assistance programs have used them in partner countries where they consider existing government services inadequate because of scant funding, poor organization, insufficient oversight, and/or the exclusion of some categories of potential users. However, whatever the funding source, CSO/NGO programs are subject to the same caveats and conditions as for direct government assistant provision.

42. **On the basis of existing information, it is impossible to identify one or more service modalities as better or worse; each has strengths and weaknesses:**

- The creation of an assistance agency with full-time employees has higher start-up costs,[14] leaves the government responsible not only for salaries but also for other staff benefits (most notably pensions and insurance),[15] is less flexible in responding to sudden changes in demand, and can pose conflicts of interest when both parties (or a victim) qualify for assistance. It does, however, facilitate oversight, training programs, and evaluation. Placement of the office and its independence from other sector institutions are often issues, although there are no clear lessons here.[16]

Good and less good practices with PDOs: Costa Rica and Colombia

Both countries have Public Defense Offices although Costa Rica introduced its PDO 25 years earlier (in 1967). It has also been a model for and provided assistance to other Latin American countries. Both PDOs are attached to other sector entities – in Colombia until recently, the *Defensoría del Pueblo* (Ombudsman) and in Costa Rica to the Judiciary – a situation that does not appear to interfere with their independence but may account for lower funding in Colombia.

[14] Michigan Indigent Defense Commission (2018) comparing PDOs and assigned counsel in that state.

[15] This appears to be the reason Colombia hires defenders on one-year contracts (and lets them handle other work). Peru's PDO also used contracted attorneys, but they work full time and receive some additional benefits.

[16] Most PDOs would prefer to be located outside any other organization, arguing that this reduces the threat of external interference, and seemingly expecting they could obtain greater funding this way. However, neither argument has been systematically reviewed.

Despite starting with criminal defense and the retention of the PDO title, both offices now aspire to cover civil cases as well, but again Costa Rica has more experience. However, the more important differences are that 1) Costa Rica's PDs are permanent employees while those in Colombia serve on one-year contracts and are allowed to work on other cases (to which they reportedly devote more time); 2) Costa Rica's PDs have salaries and benefits equivalent to those of judges and prosecutors while Colombia's receive only a salary for their annual, renewable contracts; 3) Costa Rica's PD's receive extensive training and on-site mentoring; and 4) many Colombian cases are handled by university and "popular" legal clinics without any connection with its PDO.

Costa Rica's program initially required no means test; one was later introduced because of high demand from non-indigent parties. The latter can still hire a PD but are charged on a sliding scale. Average annual caseloads for Costa Rica's PDs (322 per PD in criminal cases, significantly more in some civil areas) are far higher than in Colombia, which according to an early study averaged 64.[17] Based on willingness to pay, workloads, and an excellent informative website,[18] Costa Rica seems to deserve its reputation as a model. Still, it has advantages over Colombia – a smaller population and geographic expanse, few people who cannot be reached easily, and a more efficient judicial system.[19]

- Use of individual attorneys paid to represent specific clients avoids the disadvantages of the office system, but is more prone to abuses (poor service, lawyers charging illegal additional fees, and when selected by judges or other government officials, rampant nepotism and corruption)[20].
- Use of NGOs shares many of the strengths and weaknesses of the assigned counsel approach, although an NGO can provide training, oversight, and evaluations for its in-house or contracted attorneys.
- Hybrid systems may be able to utilize the strengths of each of their parts and take measures to avoid the weaknesses, but this is hardly guaranteed, especially, where, as in Colombia (see box), there is little or no coordination among the parts.

Table 1: Summary of Advantages/disadvantages of different legal aid program structures[21]

[17] Lopez Pulero (2002). USAID (2010) found average caseloads even lower – at 50 per PD.

[18] The Colombian website (https://www.defensoria.gov.co/es/direcciones/4/), provides information for potential users that is limited to a few fairly complicated forms for requesting assistance.

[19] One interviewee cited this as a reason for Colombian PDs' low caseload. The issue is poor scheduling of hearings and judges' failure to control their length, meaning that a PD may spend days either waiting outside a courtroom for a hearing or participating in one that lasts hours or days longer than it should.

[20] This is not true of all assigned counsel systems but has been observed in several countries and promoted the shift to PDOs in much of Latin America. (Hammergren, 2007 and 2014) Worth noting is that collaboration between judges and assigned counsel has been observed even in Germany (OSJ, 2015) despite the usually high overall ranking of its legal aid system as per HIIL (2014b).

[21] Note, these generalizations cannot account for some important variations, like the creation of a central oversight body for assigned counsel and NGO based systems. An effective oversight body could counter some of the usual issues with both structures, but can also face resistance from those required to accept its role.

Organization Type	Pros	Cons
PDO	Easier to: • Control staff selection • Standardize operations • Monitor staff performance • Evaluate system performance • Provide training/mentoring • Include primary aid in PDO operatin=ons	• Most expensive to set up/maintain • Handles sudden demand changes with difficulty • Once goes beyond criminal defense, faces conflicts of interest • Unless a country had no prior system, transcending to a PDO often faces resistance
Assigned Counsel	• Adjusts easily to changes in demand • Minimizes conflicts of interest • As this is most likely the system already in place, making improvements will be easier than transcending to another structure	Poses issues with: • Selection of attorneys and risks of collusion with those who select • Designating a credible body to monitor/evaluate individual performance and overall operations • Requiring/programming training and mentoring • Collecting data for systemwide planning • Provision of primary aid separately from secondary
NGOs	Always a partial system – no known example of exclusive use, but within individual units could facilitate: • Control of staff selection • Monitoring/evaluation of NGO staff (but not of outsourced counsel) • Data collection but possibly not in standardized form	Poses challenges with • Collection and analysis of data from individual units • Systemwide planning • Standardized rules • Coordination among parts
Hybrid	Depending on composition could facilitate: • Changes in demand levels • Adjustment to varying needs in different internal regions • Acceptance of system by those already providing aid through assigned counsel or NGOs	Poses same problems as in NGO and assigned counsel systems – largely with coordination among parts in all areas, data collection and analysis, and systemwide planning

43. **Existing arrangements rarely arise from what is known about their strengths and weaknesses. Instead, they originate as a mix of history and politics as well as the costs of and resistance to change.** While any of the existing institutional arrangements can perform, its efficacy depends on other factors. Among these, but least subject to control, are the level of corruption, nepotism, and clientelism in the country and low numbers and skewed distribution of attorneys. Conversely, a high number of lawyers compared to actual need can encourage corruption in case assignments and result in perverse incentives to charge illegal fees, encourage clients to pursue cases they cannot win, and introduce the number of procedural seps they are paid for (e.g., unnecessary motions, expert witnesses, and appeals). International experience shows that the most effective services (and the fewest abuses) hinge on some level of centralized oversight, standard setting, and performance monitoring. This does not preclude decentralized implementation but can limit the discretionary assignment of cases to private attorneys.

The Netherlands' good, if complex example of centralized oversight[22]

In geographic dimensions and population, the Netherlands is a medium-size country, thus facilitating central oversight of its legal aid program. Its so-called three-tier system comprises an interactive online program (*Rechtwijzer*[23]) providing information and recommendations on common case types; ordinary primary, and secondary assistance. A Legal Aid Board (LAB) has overseen the program from the start, but in the early 2000s it was decided to separate primary from secondary services. This was done to avoid conflicts of interest in the selection of counsel. Primary aid, through Legal Services Counters (staffed by government employees) and provided by phone, online, or in person is open to anyone, but there are means tests for secondary aid.

The Board decides on case eligibility based on client income and assets, and the (financial) significance of the legal problem. To discourage frivolous suits, even clients qualifying for assistance are required to make a partial payment. The Legal Aid Board has a system for certifying attorneys into a High Trust category, whereby the cases they submit for government funding require less documentation than those from other attorneys. Clients are encouraged to visit the Legal Service Counters before contacting an attorney and receive a discount on their required payments for doing so.

1.2. Best/good practices in overall organization

[22] Information from Legal Aid Board (2015).

[23] The system has undergone changes over its development. An initial plan for online dispute resolution found few users and has been replaced by this less ambitious version.

- **Centralized standard-setting, oversight, and evaluation**: Several more advanced countries do not follow this practice. Germany's system performs well and is extremely decentralized.[24] In France, the oversight by local bar associations and implementation through offices in local courts works well, but both arrangements may invite abuses in countries with less professionally run bars and or local offices.[25] However, for most countries centralized oversight is recommended regardless of how services are delivered. For newcomers this is particularly important.[26]
- **Record keeping on (at least) requests received and granted as well as case outcomes:** This is most easily achieved through centralized supervision, but with good coordination can be (but often is not) done with decentralized systems. Without record keeping, evaluating system efficacy is virtually impossible.
- **The complex arrangements in the Netherlands appear to work well there, but it is questionable whether they could be satisfactorily replicated in larger and less developed countries**. Still some aspects of the system are worth consideration, especially the oversight provided by the central board, the use of a Legal Services Counter to provide information to potential clients, and the "triviality" test to discourage frivolous suits. The latter is not advisable in the least advanced countries, but in many transitional nations might merit consideration given reports on some of the cases that make it to court (World Bank, 2013 on Romania and 2014 on Serbia, both on vexatious criminal complaints).
- **Where budgets are constrained, use of hybrid systems can extend coverage, especially where some intra-program pro bono services are available.** However, where there is little or no coordination among the parts of the formal program or between the intra and extra-program options (e.g., Colombia as per box above on PDOs) the results can be sub-optimal.
- **For government offices, regular employment is preferable to contracted services.** Governments often prefer contracts because they limit contingent liabilities, but systems that use them at best (the US) suffer frequent turnovers and at worst can reduce incentives for employees to do well.[27]
- **To ensure equality of arms, delivery models should fund not only lawyers' services, but also the costs of investigators, expert witnesses and travel, equivalent to what is provided to prosecutors**. The most effective PDOs and other government agencies include these in their budgets. For assigned counsel they could be incorporated in their fees or reimbursed separately; however, they should be audited separately given the risk of misuse of these funds and collusion with expert witnesses.

1.3. A note on additional (extra-programs) services not financed by government

[24] See HIIL (2014b) for relative rankings of Germany and France.
[25] World Bank Group 2020.
[26] See in particular ABA (2021) on standards for governance and UNODC (2019: 31-34) noting the need for a national legal aid body that can establish and monitor legal aid quality as per Guideline 11 of the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.
[27] For Colombia see above box on PDOs. On a more positive note, ABA (2021:205) notes that organization should "strive to maintain staff by providing air compensation [and] benefits.

44. **These additional programs merit mention as in some countries they are a major source of services to indigent populations.** They also may offer primary and/or secondary assistance to members of underserved groups (e.g., refugees, guest workers, and LGBT populations) or poorly served (e.g., victims of sexual violence). Among them the most common are services provided by NGOs with private or donor financing, university clinics in which law students participate as part of their training or as a degree requirement, and occasional pro bono work by private attorneys. In countries where government-funded programs are small in scale and thus unable to meet a large demand, these programs can fill important gaps, but there are a few caveats regarding their ability to do so.

45. **First, financing for these complementary services is often uncertain because of their dependence on private or donor funding.** Funders can lose interest or change their priorities, meaning that once important services either disappear or become greatly reduced in size. (Hammergren, 2014: 138-139) Moreover, governments sometimes restrict or terminate NGO activities. Over the short to medium run, these complementary programs can be an import service source. The risk is that their presence constitutes a disincentive to governments as regards improving and expanding their own offerings.

46. **Second, service quality can be uneven and there may be legal obstacles to the scope of their activities.** Students in legal clinics can be very enthusiastic about their participation, but legally may be unable to do more than offer advice and/or help draft documents. Also, unless closely monitored by experienced lawyers, the quality of their advice and actions can be questionable.

47. **Third, as these programs operate independently of government oversight, information on the quantity and quality of their activities can be difficult to obtain.** Donor financed programs usually do require service monitoring, often better than that in government programs, but this is not universally the case. A related issue is their frequent lack of contact/coordination with whatever the government finances directly, making it difficult to determine which needs are being addressed by anyone. It is often suggested that a good government program should coordinate directly with service alternatives, but examples of this occurring could not be found.

48. **Fourth, pro bono work is also rarely tracked and moreover is said to be dependent on what is called a "pro bono culture" among lawyers.** While a common explanation for its seeming infrequency in many countries, lawyers may simply have too much or too little work to make it feasible. Some countries and/or bar associations do make pro bono work a requirement for retaining a license to practice. A few, including some in MENA, regard this as the backbone of their legal aid programs – although contributing no financial support to its sustainability. However, whether imposed by the government or the bar associations, these requirements are often honored in the breach, and in no case are sufficient to come anywhere near meeting real needs.

Part 2: Further details of internal operations affecting program efficacy

76. Although the emphasis here is on government-financed programs, most of what follows also applies to CSOs/NGO, funded by other sources. This is a short list of practices commonly endorsed by the UN (UNODC, 2019 and 2011), the American Bar Association (2021), HIIL (2014b), and various individual specialists (e.g,. Namoradze, 2015, Fabela, 2011) The two UNODC handbooks and the ABA offer more extensive lists, but in too much detail to be applicable to all circumstances.

2.1. Selection of service providers.

77. Justice services of all types are labor intensive; thus, the quality of their personnel is critical to their success. Service modalities have different impacts on how these issues are addressed and so are addressed separately.

2.1.1. Selection of staff in PDOs and other services staffed by government employees

78. Dedicated assistance offices (a PDO or other government legal aid agency) have an advantage, not that they always use it. PDOs are less common in countries (typically of the civil law tradition) emphasizing career systems for judges and other sector personnel. Latin America constitutes an exception, with most of its countries having defense departments with their own, often career attorneys. Costa Rica has gone still further in selecting defenders on the same basis and with the same procedures as judges and prosecutors and allowing those in any of these career tracks to transfer to another. Argentina's Federal Defenders are also paid and serve under the same conditions as federal judges and prosecutors (UNODC, 2019: 85). In the US, PDs are not career employees, serving in much the same conditions as (elected) judges and prosecutors. However, it is not uncommon for US lawyers to start as defenders and later shift to positions as prosecutors or judges. This is logical as PD caseloads are high, pay at the state level is relatively low (an average of $60,000 annually as of 2021),[28] as are requirements for entry with many PDs being hired in their final year of law school or clerkship year.[29] Hired this young, the qualifications used are somewhat soft, including:[30]

- Demonstrated commitment to the indigent
- Client-based skills, including cultural competency and ability to relate to indigent clients
- Litigation skills, particularly experience in oral advocacy and/or in-court experience
- Law school courses and clinical experiences focused on criminal justice/public defense
- Internships focused on criminal justice/public defense
- Writing skills, especially for appellate positions
- Language skills (particularly Spanish).

[28] https://www.zippia.com/public-defender-jobs/salary/.
[29] https://hls.harvard.edu/dept/opia/what-is-public-interest-law/public-service-practice-settings/public-defenders/#tab1-2.
[30] Loc cit.

79. These are general standards; among individual states, there are differences, but universally high caseloads and lower salaries do limit the entry-level pool to relatively less experienced attorneys. Those who stay on earn higher salaries although still less than other sector actors. Both standards and salaries are higher for federal defenders, who by law must receive the same compensation as federal prosecutors.[31] Given the amount of literature on the US system, there is no reason to doubt that the official standards and conditions of work operate in practice.

80. For PDOs in many other countries, it is difficult to verify whether formal rules are really followed. UNODC/UNDP (2016a) lists conditions and qualifications for the 49 countries providing information (not all of which use PDOs). However, given that many low and low-middle income countries could not provide even the number of full-time defenders, a certain level of skepticism is warranted. This applies both to selection systems and meeting of other conditions. In any event, in many only a law degree is required; unless the candidate pool is minimal (either because there are few lawyers or those that exist have more attractive options) this does suggest that selection relies on less transparent criteria.

2.1.2. Vetting/selection of assigned counsel

81. Programs using private attorneys vary in the type and amount of vetting they do for eligibility as well as its seeming efficacy. Traditionally, little vetting was done, and judges were free to select any available attorney to provide subsidized services. This obviously invited corruption and collusion as it still does in many less advanced economies.

82. In Western Europe, systems have evolved and range from that of the UK (England and Wales), which has individual attorneys and firms compete for contracts for service provision, to that of Germany, which simply requires that a legal representative be a member of the bar. Several countries maintain lists of eligible attorneys, at times depending only on willingness to serve, but also as in the Netherlands using documented "rule compliance" to separate "High Trust" providers from others, whose submission of cases for government funding will require more documentation.

83. Among OECD countries, Germany's system is seemingly sui generis, combining the absence of further vetting or monitoring (by the courts or the bar associations) with the automatic deferral of attorneys' fees for those using assigned counsel. Here fee assignment is decided only after the case has ended, typically against the losing party even in criminal cases. At that point, parties can claim indigence to avoid having to pay, but the procedures here were found to be "complex."[32] An external review has noted that "there have been some criticisms that those lawyers who are 'regularly chosen' may not be fully independent and willing to stand up to the judges on whom they depend for their living."[33] Still, in HIIL's review of the efficiency and quality of nine European systems, Germany ranks high (HIIL, 2014b). In

[31] Currently $161,347. See https://www.comparably.com/salaries/salaries-for-federal-public-defender attorneys.
[32] OSJI (2015).
[33] Op cit.

Germany, the Netherlands, and several other European countries, those who can afford it often buy legal insurance because of uncertainties as to whether and how much they might have to pay (HIIL, 2014b; 109).

2.3. Reimbursement of service providers

2.3.1. Government employees

84. Nearly universally, payments to agency attorneys are less than what they might make in private practice. However, "might make" is an important qualification, and is generally calculated at the high end by those pushing for increases. The same complaint, it is worth noting, is often voiced by judges, prosecutors, and other government employees in the sector – who often for the sake of argument do not factor in the other benefits of a government position, usually a pension, a guaranteed paycheck no matter what the shape of "business," health insurance, and sometimes housing and other allowances.

85. The policy of making defenders' salaries equivalent to those of prosecutors is a good practice, especially when supplemented with comparable funds to hire investigators, other staff, and pay expert witnesses. This applies in Costa Rica, Argentina, and for US federal defenders, but information from other countries is not readily available.

2.3.2. Fees for private attorneys

86. Information collected by UNODC/UNDP (2016b; 106) from 68 countries lists 4 basic schemes for payment to assigned counsel: by case (36 percent), on an hourly basis for pre-identified actions (24 percent), on an hourly basis alone (23 percent), and by each action (20 percent). Inasmuch as the total exceeds 100 percent, it appears some states use more than one system.[34] In roughly 20 percent of the states covered, procedural actions must be approved and witnessed by a state agent as a condition for payment. This appears to be a good practice because of doubts raised in some countries as to the credibility of attorneys' self-reporting and the inability of judges, who usually oversee the system, to do active post-hoc accounting. UNODC/UNDP (2016b) warns that the practice can create conflicts of interest if the authorizing agent comes from the agency "her/his client is opposing." Still, it is an unlikely situation unless someone other than a judge does the authorization. However, where the prosecutor does the selection, this could pose problems and so is not a recommended arrangement.

87. Amounts paid under any system vary by country and arguably not in a particularly logical fashion. There are instances where remuneration seems excessive for the work done or encourage (when by action) unnecessary complications to case processing; those where amounts seem comparable to ordinary private work; and those where they are reportedly so low that they attract only the unemployed or inexperienced. Information on how fees are set is rarely publicly available despite this having a major

[34] There is also a separate category of bulk payment to firms or individuals for a set number of cases. However, only 6 percent of the responses indicate this as a payment system.

impact on both the quality and quantity of available services. So far as could be determined (based on selected countries) it appears that fees are set in discussions between the government and private attorneys, usually through their bar associations. In countries with ample information on private attorneys' usual fees, they at least have some basis here. Where this information is lacking, even in the presence of "official" fee schedules (set by law but often ignored in practice), the results may only depend on the interests and bargaining skills of each side.[35]

88. Given the many complaints from many stakeholders about fee levels, this is an area requiring both more information on and analysis of practices in specific nations. Ideally, if less realistically, development of methods that could be adopted universally would be a positive step forward. This is especially important as assigned counsel remains the most common service delivery modality across countries of different income levels.

2.4. Monitoring and evaluation of service providers

89. Monitoring and evaluations go hand in hand; monitoring tracks aspects of individual performance while evaluation assesses it.[36] Both are potentially more critical than selection criteria, given uncertainties as to how candidates will perform once in place. Additionally, performance can be affected by changing work conditions, the often-imperfect fit between candidate profiles and work requirements, and the failure of the excellent at entry to attain expected improvements with on-the-job experience.

90. Monitoring and evaluations are easier in a dedicated legal assistance agency (and possibly an NGO), although this advantage is not always realized. While the UNODC/UNDP survey is not representative, with only 68 countries out of 197 providing information, it found that 43 percent provided legal assistance through "salaried employees of a public legal aid institution." Presumably, this is not exclusively and thus often in a hybrid or mixed system. Even for salaried employees, information on evaluation systems was scanty or non-existent. Moreover, where they exist, except in the longer-standing systems (e.g., US, Costa Rica) their use and usefulness are questionable. For example, in Colombia, the supervision format focuses largely on timeliness of submission of reports.[37] In other countries, only a caseload quota may be used, ignoring questions as to quality of service, user satisfaction, and outcomes.

91. For assigned counsel systems, the challenges are greater, first because it is unclear who should evaluate/monitor performance (probably not the judge assigning the attorney as this can lead to other problems), and second (as with government employees) on what it should be based. The Dutch "compliance system" appears to emphasize "working to the rules," but for many others (according to

[35] Interests would include not only whether the lawyers' representatives even need this work, but also the payoffs in keeping content those who do (because inter alia their votes are needed to elect association officials).
[36] See UNODC (2019) which stresses both throughout the document and ABA (2021:205) Standard 6.2 on Characteristics of Staff
[37] https://www.defensoria.gov.co/public/pdf/11/formato_supervision.pdf.

UNODC/UNDP, 2017b, 57 percent), the most that occurs is a reliance on client complaints. If there are no complaints, then the assigned counsel can continue to handle cases.

92. The fundamental challenge for all systems (including NGOs operating extra-program) is what to track (monitor) and how it should be assessed (evaluation). Numbers of cases handled can hide shoddy treatment, but technically good representation may still displease a losing client. Who does the monitoring is another issue – with 11 percent of the UNODC/UNDP countries reporting no mechanism, and 35 percent depending on bar associations. Lack of data is another impediment, largely but not exclusively for systems using assigned council. Again, this is an understudied area where more work is needed, especially since it is obvious that unevaluated work can decline in quality and provide no incentive to improve.

2.5. Training and mentoring

93. Lack of requirements for continual education, and inability of many systems to monitor what is taken are frequent issues. Even PDOs and other government agencies may either provide no training or mentoring or offer required training and accompaniment of questionable quality. Use of specialized training institutes, as in Costa Rica, is rare even in high income countries. Costa Rica also uses weekly meetings among defenders in specific offices to discuss their cases and problems encountered. This is a good practice but may be less possible in offices where caseloads are still higher than those in Costa Rica (for example, many overtaxed systems in the US).

94. Mentoring Is unlikely in assigned counsel systems, many of which do not require further training either. The exceptions, but only for training, are countries where the bar associations themselves require continuing legal education (CLE) for all members. However, there is often no connection between the cases typically assigned to counsel and the course they choose to take.

2.6. Record-keeping and use of Information and Communication Technology (ICT) for internal business

95. It is virtually a given that legal aid services can be improved through the collection of information on such basics as applications received, services granted, attorney caseloads, and outcomes. While this can be and has been done manually, automation makes it easier and facilitates analysis. Legal aid providers are not inherently averse to automation and usually welcome the arrival of computers for basic word processing and report preparation. Their nearly universal problem has been insufficient funding. ICT's use for performance data collection may encounter more resistance, as it does in any organization. Here the critical factors are the interest of program directors and their understanding of the potential applications. Directors can be motivated by increasing demands for accountability, both in use of funds and quantity and quality of services. The required publication of annual reports, while not always ideally informative, has moved the process ahead, as it has for other justice sector actors.

96. Unsurprisingly, levels and uses of ICT for tracking internal business are higher in wealthier countries with centralized supervision and older programs. However, it is significant that CEPEJ (2020; 41) only received information on total numbers of legal aid cases (from which it derived amounts spent per case) from 20 of the 48 countries it surveyed, with some surprising exclusions like Denmark, France, and Sweden. This may not mean they lack the data, but in decentralized systems providing them at the aggregate national level can be problematic. Even in the US, which has perhaps gone furthest in ICT use for legal aid organizations, information not available from LSC-funded organizations, must be sought at the state level.

2.6.1. Recommendations on record keeping and ICT introduction

- **Collect data on basic actions even prior to automation.** This accustoms service providers to registering information and program directors to receiving and using it. History cannot be changed, but rather than waiting for the ideal automated system, legal services programs are better positioned if they collect what they can manually and perform some validation checks.
- **Define what information is most necessary to oversee service provision.** For legal assistance programs this can be relatively simple – case numbers overall and by individual provider, outcomes, client satisfaction (if not in a formal survey then in questionnaires provided to clients or even in focus groups as suggested in UNODC, 2019).
- **In automation, start with what most matters to individual providers (and not coincidentally facilitates other uses)** This is usually computers and basic software for recording actions and preparing reports. Software provided for these purposes should be programmed to permit performance data collection and analysis, with the potential for subsequent expansion to capture additional information.
- **Take advantage of government requirements for accountability and transparency.** These requirements are expanding globally, although not always respected in practice.[38] Where annual reports are required (a good practice), review of models from other countries is recommended to discourage reports filled with photographs of staff and buildings, but few numbers.

2.6.2. Data-driven management

97. **Even pre-Covid, tightening sector budgets, an emphasis on financial accountability, and the growing supply-demand gap put a premium on better planning and resource use in legal aid programs.** Generally, in more advanced countries, the pressures were greater here than in the rest of the justice sector. For reasons that vary by country, judiciaries and prosecution offices typically have more success in defending and even increasing their budgets and staffing than do legal assistance

[38] For example, despite their existence in Tunisia, as of 2020, the administrative courts made no statistics publicly available and restricted availability even among administrative judges. (World Bank, 2020).

programs.[39] Data-driven management is not all about quantitative goals, but the organization's purpose is better served if it knows what it is doing, where it is falling behind, and which programs are most effective, including in client satisfaction. It is also a first step to developing a strategic plan for service improvement.[40]

98. **Not only for justice but for the entire public sector, the new rule of "doing more with the same amount" or even less has encouraged the development of data-driven management**. Although facilitated with the adoption of ICT, there are two caveats. The best systems started with manual data collection (thus indicating interest and reducing resistance to later ICT developments) and not all those with ICT capacity collect appropriate data for management purposes or adequately use what they have. Justice has always been an area favoring doctrine over data and this is no less true of legal aid. However, if coming still later to this realization, more advanced legal aid programs (including some in emergent and transitional nations) are refining their internal systems to track performance, and not coincidentally, to support their arguments for more resources. Still the dearth of information provided to UNODC/UNDP (2016 a and b) in its attempt at global coverage suggests that many countries still have a long way to go in collecting and analyzing performance statistics from their legal aid programs as well as those on need for services.

103. Data-driven management has several basic components: tracking of performance by individual actors, identifying the most efficient/effective delivery systems, and planning for anticipated future needs. Typically, the first is the most developed while the other two lag behind or are completely ignored. Individual performance can be tracked by each service delivery unit, but the others require broader oversight, ideally by a legal services board or comparable organization. The process depends not only on data on output, but ideally also on client satisfaction and unmet needs (see section below). These elements are best addressed through surveys and done repeatedly over time to identify positive and negative changes. All of this implies the presence of a unit, ideally centrally located, that can receive and analyze the data as well as proposing ways to act on the results.

2.6.3. Best/good practices in data-drive management

- **Collect basic data on service outputs, client satisfaction, and if economically feasible on needs of the target population.** These are the intended beneficiaries of the legal aid program. Examples include Legal Services Corporation (2019 and earlier) which collects data on service outputs from its funded organizations throughout the United States.

[39] Lesser interest in legal aid may be one reason. However, the laws often benefit judiciaries and prosecution by setting numbers of judges and if less often prosecutors by district and guaranteeing them immovability. Politicians' interests in stacking the courts or maintaining good relations with them can also count. Although legal aid clients can sometimes lobby for attention this is less usual and offers fewer political rewards.

[40] See Legal Services Corporation (n.d.) "Developing a Strategic Plan." https://www.lsc.gov/grants-grantee-resources/resources-topic-type/developing-strategic-plan. Also, UNODC (2019; 70-74).

- **In hybrid programs, or those with non-government elements, track at least output data on all parts.** This is easiest, as with the LSC program, when the central agency is also the source of funding.
- **Create an office (preferably only one) to analyze information received and produce proposals for improving and if possible, expanding services.** Allowing decentralized units (or even individuals) to analyze their own data and compare it with others is still more desirable but not more so than having a central office to do this for all.
- **Explore alternative means of providing services**, at lower cost but without reducing quality – for example the Netherlands' introduction of online primary aid.

2.7. Summary of findings and recommendations on good practices in internal operations

- **Because service quality depends on personnel, no matter what the delivery system, selection criteria are important.** Where the requirements are only a law degree, membership in a bar association (not universal[41]), and perhaps an interview, quality is hardly guaranteed.[42] The Netherlands' system of Trust compliance is complex but is assessed as working well. Like the rest of the Dutch legal aid system, its adaptability to other countries is questionable. Interestingly, according to UNODC/UNDP)2016b: 98-99), states that have undergone a recent reform of their legal aid system tend to "have a higher qualification standard for legal aid providers."
- **Set salaries and fees to encourage good work without overpaying.** Paying permanent employees' salaries equivalent to those of prosecutors is a good practice, although begging the question of whether either is paid enough (or too much). The more difficult issue is setting fees for assigned counsel. Decisions here are often based more on politics and negotiation than a serious consideration of what is received for what is paid. Of the four systems listed by UNODC/UNDP (2016b), each is susceptible to gaming unless complemented by adequate monitoring and evaluation.
- **Design and implement good monitoring and evaluation criteria.** Among all justice sector organizations this seems least developed for legal aid, in large part because of uncertainties as to what should be assessed combined with poor data collection, perverse incentives, and inadequate funding for either activity in many systems.
- **Introduce training programs.** Requirements for continual legal education are important, but as with evaluation, the issue is appropriate content. Programs tailored to specific assistance areas (for example, misdemeanors versus major felonies, those involving juveniles, or specific non-criminal areas) are advisable, but rarely available even in government-funded offices.

[41] In many Latin American countries, membership in a bar association is optional and practicing lawyers are required only to have a law degree. For Mexico, see ABA/ROLI (2011).

[42] Still, neither does this automatically signal problems. For example, HIIL (2014b) notes that for Germany this suffices because of its rigorous training for all lawyers and conditions for admittance to the bar.

- **Use mentoring where possible.** The Costa Rican use of weekly meetings (as well as additional help to defenders with specific problems) is a good practice, but one rarely used and impractical for assigned counsel systems except where trainees provide services.
- **Collect and use data on service delivery.** This can be vital to maintaining existing budgets and services and to making better use of resources. Otherwise, legal aid tends to get the "leftovers."

Part 3: Recent innovations in service delivery

114. Most innovations began in higher income countries and have often not spread much further. This is in part because they have the funds, but also because of their increasing need to make these funds go further. However, there are some innovations – ADR, paralegals, and incorporation of customary mechanisms – where lower income nations provide interesting models. Although some innovations simply work to improve the classic systems, others provide alternatives. These are especially important as it has become apparent that the classic systems – all disputes settled by a judge with parties represented by a lawyer – have financial limits and may be less appropriate for many types of disputes or "justiciable problems."

3.1. Victims' services

115. Victims' services have recently received more attention, under the argument that in criminal cases the victim is the usual forgotten party. In theory this should not occur because prosecutors depend on victims' cooperation to strengthen their cases. Still activists for victims' rights have pushed this agenda ahead, more successfully in Europe and Latin America than elsewhere in the world. Common law countries, while acknowledging the victims' right to be heard in court (often via victim impact statements), have so far resisted the notion that the victim is an equal party, who can, inter alia, ask for a judges' recusal or oppose sentencing or deferred prosecution. Apart from the fear that a victim's rights may undercut those of the defendant, a more practical issue is how and by whom a victim should be represented. Turning this over to a PDO poses obvious conflicts of interest but creating a separate office or program to represent victims adds costs. As additional victim services (housing, protection, counseling) can also be costly the major constraints on their provision are not ideological (e.g., conflict with defendants' rights) but rather mundanely budgetary. Wealthier civil law countries have taken this development furthest, but even they confront purely economic issues. For poorer countries (see box below) budgetary constraints are still more daunting and may suggest the need for a slower and less ambitious start.

An example of the aspirations and limitations of victims' services and representation[43]

Mexico, an OECD country, has taken victims' rights and services seriously but also demonstrates the issues when budgetary constraints may not allow even adequate coverage of criminal defendants. Its most important victims' services are offered in special centers and combine primary and secondary aid with housing and material and psychological support to women victims of domestic abuse.

[43] Based on information available in USAID (2019).

However, the centers are only located in state capitals and so nearly exclusively available to women living in or near there. The centers are promoted by Mexico's federal government, and their establishment is a condition for some federal subsidies to state judicial reform programs. There have been attempts to establish separate government-funded offices offering only primary and secondary aid; those observed for the USAID report were still understaffed and underutilized.

3.2. Definition of appropriate caseloads via case-weighting studies or similar methods

116. Although introduced for judiciaries in the US in the 1970s and gradually spreading to other counties (CEPEJ, 2020a), sometimes with donor funding, case weighting is a relative novelty for legal aid programs. Several legal assistance agencies in the US have adopted this approach, but information on its use elsewhere is not easily available. Estimation of feasible caseloads is most important for dedicated service providers – those employed full-time by a government agency. As with all case-weighting systems this requires not just absolute numbers of cases, but also an estimate (the weighting part) of the level of effort required in each case type. The exercise is important in determining where offices/counsel should be assigned and in arguing for more staff when caseloads rise above the estimated upper level.

117. For assigned counsel systems, presumably attorneys are not likely to be overburdened as they can refuse cases when they believe they have reached their limit. However, case weighting could be important in calculating fees because, as elaborated in earlier sections, these rarely have a scientific basis. No example of the use of case weighting for this purpose could be found, and it seems unlikely they exist. However, as regards the above recommendation about systematizing fee setting, this could be a means of arriving there.

Case Weighting Studies for Legal Aid Programs

As noted, case weighting studies were first developed in the US for use in judiciaries (Gramchow, 2011; Hammergren and Harley, 2017); however, if less frequently they have also been applied in public defense and prosecution offices in that country. For legal aid, this is easiest with a PDO system, which likely explains why no examples could be found of their application to an assigned counsel system. In the US, adoption for PDOs was as early as the 1980s (Jacoby, 1985) although at that date the methodology was completely manual – using time logs and calculations of attorney time spent on case and non-case activities. Still Jacoby's guidebook could be useful to systems without an abundance of ICT resources. Given that US attorneys in the private sector have long used a billable hours system (often tracking activities in 15 minute intervals) it was not a huge stretch to translate this to those working in a state office.

Later documents (Pace et al., 2011 and Washington State, 2014) describe similar methods based on computerized logs. All documents cited emphasize the need to track time spent out of court (or their

offices) as for active defenders this can be substantial [44] The intended uses of the CWS are the same in legal aid as in the courts or prosecution (APRI, 2002) – to improve distribution of cases within and among units and to substantiate arguments for more resources and staff. As with the courts, most reports do not report the impacts in any of these areas. Washington State (2014) is an exception in noting that the former estimate of an annual average of 400 misdemeanor cases per attorney was changed under the weighting system based on assigning different weights to different types of cases.

3.3. Online services

118. Some of the most promising and innovative approaches to legal aid provision involve online programs. They provide information, connect potential clients with NGOs or attorneys, allow users to assemble documents and prepare their cases, and in some instances, offer entire online proceedings (the initial version of the Dutch *Rechtwijzer*, British Columbia's online Civil Resolution Tribunal handling small claims and providing a "Solutions Explorer" and a short video @ https://civilresolutionbc.ca/). These and other online services are not limited to indigent clients who probably are not majority online users. The Covid19 pandemic has accelerated their adoption, but this was a developing innovation for years.

119. The best-known innovations come from higher income countries with the benefit of sufficient connectivity and funding levels to introduce and experiment with the programs. These same programs have also received numerous independent evaluations of their strengths and weaknesses. As these studies indicate,[45] there are a series of issues for any type of online service. They especially apply to programs aimed at indigent populations who to start are unlikely to have internet or a computer, generous data plans for their phones, and much computer and even ordinary literacy (World Economic Forum, 2018). As Bertrand and McQueen (2021) note of e-government in general, a "large minority of citizens lack the skills or means to access digital services." Since the survey informing their comments was done online, this "minority" only included those with access at least through a cell phone. Even in the US, it is currently estimated that 10 percent of the population has no internet access while in India (the country with the lowest income and connectivity levels of the 12 in the survey[46]) a full 38 per cent of the population lacks a smart phone, let alone a computer. This is the digital divide in action and one caution from Bertrand and McQueen is not to let online services widen it.

120. There are other issues. Accessing the internet for social media, statistically the most common use, is not the same as navigating a website promising information on legal services. Recent surveys in developed countries indicate that many potential online users still prefer phone or in-person

[44] Although not using a case weighting system, in several countries, defenders can spend considerable time waiting to see detained prisoners, or per the box above on Costa Rican and Colombian PDOs, waiting for a hearing to begin. Washington State (2014) also notes the importance of adding travel and wait times to the time attorneys spend on each case.

[45] Examples include Houseman (2019) on the US for civil cases; Bertrand and McQueen (2021) on a 12-country study; Justice Connect (2020 on Australia; Legal Services Corporation (n.d.) on Content Findings Overview.

[46] The countries surveyed were Malaysia, Australia, South Africa, Brazil, Germany, the US, Mexico the UK, France, Japan, India, and the UAE.

consultations, and that even when willing to use the internet may require further assistance. The same surveys also provide recommendations on website design – ease of finding the site; updated information; use of plain language; attention to access for those with limited proficiency in the site language; and connections with community resources that can help the user go further. The list of findings and recommendations is much too long to summarize here. They are best understood by perusing sources like Justice Connect (2020) and the various LSC examples.

121. Even in high income countries, many observers encourage the use of what is called "blended service," connecting site users to community groups, legal assistance agencies, and others who can help take the process ahead. One practice in some emerging markets (e.g., Brazil, Peru, Colombia[47]) is to place e-government facilities in locations with employees who can help citizens use them. This also transcends the issue of potential users not having sufficient connectivity or equipment in their homes. Over time as connectivity increases globally, online services will become more important, but for those lacking equipment and adequate data plans, this can present a problem unless they are also taken into account.

3.4. Paralegals and other non-lawyer personnel

122. These are treated together because although both can increase the reach of existing resources, as in the rest of the justice sector they are too frequently resisted or simply overlooked. Although the most prominent examples featuring paralegals come from less developed countries with low legal aid budgets and few lawyers (see box below), they are also found in the most developed systems, either assisting attorneys or operating independently. As in the medical profession, it has become evident that some legal services can be attended by adequately trained personnel without a law degree. This reduces costs, but also may provide solutions not requiring taking a dispute to court. Still, even in the US, one of the countries to take this furthest (Houseman, 2020), opposition from the bar has produced significant obstacles (Winston et al., 2021).

Good practices: use of paralegals (Malawi, Central American Facilitators, Sierra Leone, Peru)[48]

All of these are poor or very poor countries, but services by paralegals are also found elsewhere. Applied first to criminal cases, Malawi's paralegals (first financed by donors) are reportedly useful in helping detainees qualifying for release escape long pretrial imprisonment. Another donor funded program (unfortunately with scant information on its outcomes) promoted the use of lay facilitators in several Central American countries, to help local justices of the peace deal with their cases. In Sierra Leone, paralegals were trained (with donor financing) to inform citizens in more remote places about their rights and means to access them as well as to encourage mediation among disputing parties.

[47] In Peru and Colombia this started with court services – kiosks located in courts for users to track their cases. In Brazil, there are sites where a multitude of e-governance outlets are present for users. The system is not perfect, and a test by evaluators in one of Colombia's rural regions found no one answering the question posed on the dedicated kiosk (USAID, 2015).

[48] For further background, see Hammergren (2014: 139-143).

Peru's lay justices of the peace operate in rural areas and have been present since the 1850s. There are currently over 5,000 lay JPs, as opposed to fewer than 3,000 legally trained and appointed judges. They use a combination of local tradition and formal law (with training initially financed by donors). A proposal to replace lay JPs with legally trained attorneys was rejected because of costs but given the remaining reliance on customary law appears ill-advised.

These programs appear most successful in parts of a country lacking any trained attorneys or, as when they were first introduced in Malawi, there were hardly any lawyers present anywhere. There are many nations in similar conditions that might consider its adoption. The usual complaint – that lay judges or paralegals are ignorant of the law and especially of guaranteed rights – should be explored, but so far no examples of this being a major issue were found. As contrasted with advice offered by "volunteer facilitators," the difference is that paralegals in these programs are selected, trained, and overseen by the courts, a ministry, or some other authority.

123. The other often forgotten "lay"[49] personnel (some of whom may be legally trained) are auxiliary and administrative staff, whose selection, training, evaluation, and monitoring should be just as important as that of attorneys. Insufficiencies in these areas as well as ineffectual policies shaping their distribution and functions are important contributors to inefficiency, corruption, and client dissatisfaction in the justice system as a whole. Legal aid programs of all types generally have fewer members of this group, but that makes them no less important as potential contributors to greater productivity, thus extending the capacity of an already limited group of sector legal professionals.[50] Unlike paralegals these other lay employees are usually present and thus there is no need to stress their addition. However, as is true in the rest of the sector, they are often accorded little attention, too frequently receiving their positions on the basis of criteria (e.g., patronage, nepotism) unrelated to their functional qualifications.[51] Nonetheless, as with paralegals, one means of stretching the impact of already tight budgets is to improve their use, insist that those recruited both to PDOs and the sector in general are up to the tasks they perform, and ideally receive expanded functions, so relieving scarce and more expensive lawyers of work that could/should be performed by others.

124. The best practices, usually seen only in more advanced countries, are to treat non-lawyer staff as professionals with their own career paths and educational requirements. Using these positions, as often occurs, as a short-cut to judicial status is not recommended for several reasons. It can lead to disappointment when this does not happen and consequently "justify" abusive behavior. It also detracts from the creation of professional careers in these areas and can distort the performance of the functions

[49] This term is used advisedly as some of this staff may have law degrees, either because they hope to be candidates for a legal position or because lawyers, whether adequately trained for the functions they perform are the preferred candidates.

[50] UNODC (2019) stresses the importance of training all staff, including auxiliaries in legal aid programs.

[51] In Tunisia (World Bank, 2020c) appointments of court staff for some time favored veterans of the 2011 revolution regardless of their suitability for their positions. As Tunisia uses an assigned counsel system, this may not directly affect its legal aid programs. However, court (and prosecutorial) staff can be important in orienting would-be legal aid users or in undercutting their efforts.

they currently have. A further questionable practice seen in parts of both Eastern Europe and Latin America is to assign higher level administrative positions to judges, who rarely are prepared to perform them.

3.5. Use of small claims courts and self-representation

125. Two ways of expanding access are the introduction of small claims courts and the use of self-representation there and elsewhere. This is an alternative to legal aid and while neither is aimed specifically at poorer citizens, both can facilitate their access to court services without their incurring more costs. Many justice systems had procedures and provisions for "small value" disputes, but they typically required an attorney and were often no less complicated than higher value cases. The latest round of small claims courts combats both impediments.[52] Moreover, the potential for self-representation offered for these courts has in some instances been extended to ordinary proceedings.

126. Self-representation as a legal aid alternative is a two-edged sword. It can leave a "lawyer-less" party at the mercy of biased judges or clients with counsel. However, the negative effects can be avoided with a variety of tools, including training judges to deal with pro se parties and adding online services to provide necessary information and produce required documents. Among small claims courts allowing (sometimes requiring) self-representation, one of the best examples is Brazil's use of federal small claims courts to handle pension cases.[53] The US was Brazil's model, but its small claims are more often disputes between neighbors, landlords and tenants, or small traffic infractions.

127. Because many civil claims and criminal cases involve small values (or lesser sanctions), developing simple procedures that may not require legal representation can be an important means of expanding access. Where there is a concern that parties may not understand what is involved, the use of paralegals, more knowledgeable lay assistants, or online information system can also help them.

3.6. Alternative Dispute Resolution (ADR): stand alone and with legal assistance

128. Government-financed ADR can be considered as part of a government legal aid program, not only when lawyers are paid to help the users but also when the proceedings are conducted by government-financed, trained, and certified ADR experts. Although use of ADR for this purpose was first promoted in the US, several Latin American countries have taken it much further, encouraging and sometime requiring that mediation/conciliation be attempted before a case goes to court.

129. Research has not yet been able to explain why ADR was more successful in Latin America and so little elsewhere. US assistance promoted it in Eastern Europe with little impact beyond the enactment of laws to permit mediation. It arguably would be helpful where (as in many Eastern European countries) even extremely trivial cases are accorded investigation and a hearing (although a better filter at admission

[52] The World Bank has produced several reports on the topic. For ECA and MENA, see World Bank 2019a, 2020c.
[53] World Bank 2004. Brazilian states also have small claims courts handling a broader variety of cases. However, studies suggest major users are middle class citizens with their own low value legal issues. World Bank (2004).

and/or the Dutch practice of charging legal aid recipients a part of the costs might do still better at ending these abuses).

130. Whether a lawyer should be allowed/required/provided for ADR cases is debatable, and less often resolved on the merits than on the legal communities' political weight and interest. In Latin America many of the issues submitted to ADR either have no monetary value or involve amounts too small to interest even underemployed attorneys. However, in Western Europe, space for lawyers had to be made to confront the feared loss of income. Even the Dutch efforts at promoting online ADR involve participation by attorneys. So long as lawyers' services are subsidized, this should not discourage poor litigants, although involvement of attorneys structurally tends to string out some processes, creating unnecessary delay.

131. Latin America's experience with ADR is rarely adequately documented, either in number of cases submitted and resolved, or in the types of issues covered. Where donors have subsidized part of the process (e.g., Colombia, Mexico) more data are available,[54] although only in Mexico do they tabulate cases submitted to and resolved through ADR, and then only in a few states. One enormous difference between the two countries is that Mexico's mediators (most covering criminal disputes in the Public Ministry, but a lower number attached to the courts to handle civil as well as criminal cases) are paid whereas many of those in Colombia (called equity mediators as opposed to "law mediators"[55]) are trained volunteers who operate in communities and community justice centers. This means, as indicated in USAID (2015) that the Colombian equity mediators handle few cases and frequently abandon these activities after a time.

132. In recognition that ADR can save time and costs as well as produce more satisfactory solutions and improve relationships between the parties, a few Western European countries are attempting to foment its use. But even in the Netherlands where this drive is most advanced numbers are still low. Conceivably for low-income countries in regions beyond Latin America it could be a positive addition to legal aid programs, but it does require upfront investment, both in training (and paying) mediators/conciliators and in promoting the program more widely especially to low-income citizens other programs cannot reach.

3.7. Incorporation of traditional/customary dispute resolution into legal aid programs

133. Most countries have some customary dispute resolution mechanisms, but they only affect large portions of the population in the economically least advanced. In the latter, they are typically regarded as a necessary evil, something to be tolerated until means are available to extend formal services to their users. Decisions made in traditional forums are sometimes

[54] See USAID (2015) for Colombia and USAID (2019) for Mexico. In Colombia, where USAID has worked with the Justice Ministries' program of Justice Houses and equity mediators, there are a series of earlier studies on the issue.
[55] Equity mediators are usually not lawyers and are trained to resolve misdemeanors, many family matters, and low value civil disputes. Law mediators, who do charge for their services, are lawyers certified for by the state for their services.

accorded legal weight should they be taken to courts.[56] Otherwise, efforts to deal with them are largely absent, and some initial attempts at partial incorporation (including in MENA, as for example Morocco's municipal and district courts staffed by lay judges and replaced by "proximity judges" in 2011) were reversed in favor of expanding formal services. At the same time, this usually meant lesser access for citizens, especially those living in rural areas.[57]

134. More recently, there have been renewed efforts to build connections between formal and customary systems, including within legal aid programs. The examples are few and some of the most interesting come from economically less advanced countries. This is in part out of necessity because so much of their population remains far removed from formal services and reluctant to access them out of unfamiliarity or cultural preferences. Only later have more developed countries with significant populations using traditional practices (e.g., Australia, New Zealand, Canada, the US) begun to move in this direction. Here the motivating factor is more frequently demands for recognition by traditional groups. Neither Western nor Eastern Europe seem to provide examples here.

135. Since almost by definition citizens already use these systems, the obvious question is what kind of legal aid could be provided. Generally, this is of four types: first, outreach programs to ensure users are familiar with their rights as provided by the national system (out of concern that traditional systems might violate them); second, training of traditional leaders in national standards and more inclusive forms of dispute resolution (e.g., several Pacific Island countries, Sierra Leone, and Peru with its lay justices of the peace); third, direct participation by trained paralegals in actual dispute resolution sessions (e.g. Sierra Leone); and fourth, additional support to populations that still might be marginalized by traditional mechanisms. The latter include women, children, small minority groups, and those with less power in the traditional community. Input of all types can be extremely controversial, and any "best practice" in the end depends on national conditions.

136. Peru's JPs expected to use both customary and formal dispute resolution are the oldest reported practice, but the systems adopted in several Pacific Island countries (e.g., Vanuatu, Samoa, in particular[58]) are possibly the most interesting. Here there are three recognized levels of dispute resolution: purely customary mechanisms, traditional community leaders trained in

[56] In common law systems, the notion of customary usage has long afforded weight to some "informal" mechanisms and understandings, for example in dealings between businesses. This may increase a willingness to recognize decisions/agreements reached through customary systems.

[57] As explained in World Bank (2020b), to overcome this problem in part, Morocco has developed some itinerant services to reach these populations.

[58] Hammergren (2014: 150-152) including sources on practices in the PICs, as the Pacific Island Countries are called.

formal procedures as well; and the formal court system. There have been complaints about all levels –- women interviewed in Vanuatu said that traditional biases continued in both the purely traditional and the mixed systems while both the latter and the formal system were much slower in resolving their cases.[59] Still, this remains an interesting variation on the theme and one that may well exist, if unrecognized, in other countries.

137. In countries, like those mentioned, expectations about making formal court services available to the entire population are unlikely to be met soon. In the Pacific Island countries this is not because of their population size (usually fewer than 200,000) but because many citizens live in relative isolation on islands without Wi-Fi or internet connections and from which it may take days by boat to reach the country capital. Moreover, as users of traditional systems defend their right to keep their practices, including in some less developed countries, their anticipated absorption into the formal state system is harder to maintain. Without entering this recent debate, which is still limited to a few countries, those where most citizens only have easy access to traditional systems may want to consider some of these alternative paths. They could help ensure that customary biases are not inflicted on populations with no other options and would be faster and less expensive than expanding access to formal systems, including both courts and legal aid.

3.8. Creation of alternative services/policies to address issues before they get to courts

138. Access to justice does not mean access only to courts; its goal is, or should be, ensuring the resolution of justiciable problems for those lacking funds and information to take them to the formal system. Providing them with subsidized legal aid for court cases is one means of fulfilling this objective, but it is hardly the only one. ADR is another means, but like court services it aims at solutions for individuals (or in the case of class actions for an entire category of claimants). Still these solutions are costly and aim at resolving problems after the fact, rather than preventing their occurrence. For the latter a broader vision, beyond the justice sector, is needed. This is admittedly the most radical of the approaches discussed here, but in part inspired by the pandemic crisis, it is being pursued experimentally for a few case types and in a few countries.

139. As mentioned earlier, many problems common to marginalized populations (e.g., evictions, ordinary debt, land disputes, some family matters) could be sent to courts. However, aside from the costs for the individual or the State, judges may be constrained by existing law in providing satisfactory solutions. For those anticipating this, ADR or TDR may provide another path. However, it also appears that these justiciable problems might be more effectively and efficiently resolved through decisions and programs taken by other branches of government.

[59] Interviews by author (notes on file) in 2008 as part of a New Zealand funded project, implemented by the Australian Federal Courts.

140. One quick solution is to change the law, possibly prohibiting evictions or awarding land ownership to those currently on the contested site. However, these remedies introduce their own injustices because of their zero-sum (someone wins, someone loses) logic. The tenant stays, but the landlord suffers or the person who once occupied the land but left because of civil conflict loses to whoever came in next.

141. Possibly more satisfactory than simple legal change, might be the introduction of additional mechanisms, beyond the courts, for addressing the issues. One solution would be to improve the administrative dispute resolution process. It is wonderful that the Brazilian federal courts correct "errors" in the calculation of pensions, but it would be less expensive and far faster to find means (fines, criminal sanctions) to ensure the social security agency does this right the first time or at least in response to the initial complaint (World Bank, 2004). For other issues a combination of legal change and non-judicial mechanisms for resolving conflicts would help. The Covid-19 pandemic has inspired this response to the many evictions it has caused because of loss of employment and income. In both the US and the Netherlands, mechanisms have been created to help landlords and tenants reach agreements on how back payments will be met and under what conditions (e.g., necessary repairs made to buildings). In the US, federal funds, often used to pay back rents, have also been provided to unemployed workers. It is true that such programs cost something, but they are far less costly than taken every eviction case to court.

142. Although this discussion focuses on legal aid programs, the larger point is that many legal issues only occur because countries fail to address the underlying problems and their causes. Many "legal" needs faced by citizens and especially the poor do not start as legal, but only become so when no other solutions seem available. Ideally, the legal aspects can be avoided if the issues are addressed first by new policies and laws. Where this is attempted, "legal aid" now shifts to helping make these solutions work by informing parties of their existence and helping them reach agreements. No one expects this to be an immediate solution for all "unmet legal needs," but over time, and with experimentation, this may prove a better means of providing access to justice.

CHAPTER III: LEGAL AID EXPERIENCE IN MENA AND RECOMMENDATIONS

INTRODUCTION

143. The discussion in this chapter is based on interviews, information from local experts, and analytic studies and reports available online. Most of the latter comes from international sources, including donors, NGOs, researchers, and legal firms. The relative shortage of analytic material produced by MENA governments and national experts is noteworthy, but here the situation is rapidly changing, as demonstrated by several recent articles cited in the references. This is an extremely positive sign meaning an increasing attention to the strengths and weaknesses of legal aid programs within the region's countries and a willingness to discuss, from the inside, how they could be improved.

144. In this respect, some MENA experts have argued for a slower development of legal aid in MENA because of local culture and especially the absence of a perceived need for legal representation in Sharia courts. However, this appears to apply only to countries like Yemen (or Iran) where according to Al-Zwain (2012:47).

> Legal representation was formerly unknown in Islamic courts. Classical fiqh prescribed that the Islamic judge interacts face-to-face with the litigant, without any intermediary or representative. In Yemen, apart from imams (religious leaders) or muftis (Islamic scholars issuing fatwas, legal opinions), court litigants could turn to so-called wukalâ' al-sharî`a (Islamic legal agents), to advise them about shari`a rulings and proceedings pertinent to their specific case.

To the extent any such tradition remains, as discussed below, it is most likely found only in the remaining Sharia courts and the occasional assumption that parties to the Personal Services (PSL) cases they handle do not need legal representation.

145. Otherwise, there are now lawyers in all MENA countries interested in expanding legal aid programs as well as a host of NGOs already offering services. Moreover, nearly all countries are signatories to international conventions that stress both the right to defense and the provision of legal representation to those unable to pay for these services. As applied throughout MENA, the right to defense is recognized, but as explored below, there are constraints on its availability in the form of subsidized assistance. These are often budgetary, but also limit who can receive aid, for what types of cases, what will be provided, and in some instances the services offered by NGOs and private attorneys operating outside the formal program.

146. A further issue, affecting research (as well as this report) is the scarcity of available data on such basics as the number of clients served, the types of aid they received (e.g., fee exemptions/deferrals, counseling, and/or representation), and the relative contributions of different providers – e.g., government lawyers, private lawyers receiving compensation, private lawyers serving pro bono, NGO staff or private attorneys working for them. The fact that in most countries there are a variety of organizations involved within and outside any formal (i.e., government) program complicates the situation. Some collect their own data, but there is no central system for consolidating them, and little of what exists is publicly available. Consequently, most of the following discussion reviews the de jure system. Information on real practices tends to be anecdotal or limited to only part of a complex system.

Part 1: Review of existing experience in MENA

1.1. Early History

147. The 1994 creation of the Arab Charter on Human Rights and its subsequent ratification in 2004 by seven members of the Council of the League of Arab states signaled an official commitment to items in the UN Charter on Human Rights, including the provision of legal aid to indigent defendants in criminal cases, As of January 2021, 16 States were signatories to the Charter: Algeria, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Palestine, Qatar, Saudi Arabia, Sudan, Syria (since 2011 expelled from the League), the United Arab Emirates, and Yemen. However, several others

(Djibouti, Oman, Morocco, Tunisia) provide legal aid, some (Tunisia and Morocco) exceeding the Charter's emphasis on criminal justice**.**

148. The Arab Charter was not the beginning of legal aid programs in MENA and several states already had one in place; among the earliest were Algeria, Morocco and Tunisia[60] For example, Algeria's Law on legal aid was first established by the Ordinance No. 66-158 on legal aid, further modified by Ordinance No. 66-298 of 26/06/1966. In Morocco, Royal Decree Law No. 514-65 of 1 November 1966, guaranteed legal aid benefits to any Moroccan individual, public establishment or association lacking the resources to afford litigation costs and lawyers' fees. In Tunisia, legal aid dates to a decree of 13 August 1922. This unusually limited its scope to civil matters until it was amended in 1956 and 1959.

1.2. Legal framework

149. As in Chapter II, a distinction is made between a *formal legal aid program* and whatever assistance is delivered outside of it, most often by NGOs or attorneys offering pro bono or discounted services on their own. A **formal program** is defined by laws that specify what kind of assistance will be provided, to whom, by whom and under what conditions. "Laws" is intentionally plural as in MENA, a single framework act is relatively rare, and even where one exists, it usually does not cover activities included in other codes or even in laws governing bar association operations (e.g. Lebanon, Jordan) or those of seemingly unrelated ministries (e.g., Yemen, West Bank and Gaza). This is thus a minimal definition and one whose boundaries are themselves a little vague. However, given the enormous variations within the region, it was found to be the best overall term for situations ranging from a seemingly unenforced requirement that lawyers serve X numbers of pro bono clients annually to one where a local or national authority must review requests for aid, determine eligibility, and assign and pay counsel.

150. So far as could be determined all 19 MENA countries[61] include in their constitutions the right to defense in any court case[62] or at the very least universal access to courts. This is not, as is sometimes supposed, a commitment to provide counsel or other assistance to those who cannot afford to pay for it, as per the usual definition of legal aid. Instead, the scope, coverage and other program details are usually found in secondary legislation: the criminal procedures code, the civil procedures code, the law(s) regulating the legal profession, and in a few cases (e.g., Algeria, Djibouti, Jordan, Morocco, and Tunisia[63])

[60] See Euromed (2019) on the experience of these three countries and the three others (Egypt, Israel, and Egypt) in its review.

[61] In the World Bank definition MENA also includes Malta, while Euromed (2012) included Israel in its Mediterranean partners. Neither country is treated here because their experience and issues are very different from those in the rest of the region. Both have reasonably good legal aid programs, but their situations make them less useful as models for the other MENA countries.

[62] However, according to ILAC (2017) in Syria that right does not exist for certain crimes deemed a threat to the State and for those judged in military and other exceptional courts.

[63] Algeria's law (No 09-02of 25/02/2009) was preceded by three ordinances, beginning in 1966. Djibouti's law on legal aid dates to 2011. In Morocco a series of "royal edicts "provide a general framework for legal aid provision.

an additional act on legal aid. While it is often recommended that all countries adopt a specific law, there are extra-regional examples of systems that operate reasonably well without one. A further issue in MENA, and possibly elsewhere, is that unless care is taken to coordinate this law with provisions in other codes, inconsistencies among the various sources can complicate their application.

1.3. What is meant by legal aid?

151. This may seem like a surprising question, but in many countries, and especially in MENA, it has a variety of meanings. As detailed in Euromed (2012:45) there were four situations in its six "Mediterranean Partners" [64] However, the fourth model referred to Israel's provision of "representation before a psychiatric committee responsible for assessing the need for forced hospitalization; representation of detainees." As this not provided elsewhere, a simpler version features three types of assistance, all or only one or two of which are included, further depending on the type of case and the situation of the potential beneficiary:

- Fee exemption or deferral for trial and/or execution of judgement
- Information, counseling, and assistance with preparing documents
- Representation during the proceedings further divided by starting point (upon initiation of an investigation or presentation of a demand, in detention for criminal cases, or only once a trial begins).

152. When all 19 MENA countries are included, fee exemption or deferral is arguably the most common aid provided; it may be all that those qualifying for aid receive. In MENA as elsewhere, fees represent only a small portion of total costs, especially if a lawyer is paid, but still may be high enough to make a difference to poor clients. Moreover, for most countries fee exemption and deferral do not include other initial costs (e.g., stamps, judicial taxes) while in some (e.g., Algeria) exemptions cover even payments to clerks and notaries. Rules and consequences of deferrals also vary, as do judges' interpretations. It was reported for example, that although by law, the loser pays all fees in Jordan, some judges insist the winning party pay her/his fees to be reimbursed only after enforcement of any award. Jordan is also one of the countries charging fees to women in PSL cases, and as reported by Barakat (2018) these were raised in 2015 for cases usually filed by women, for example alimony, dowery and custody claims.

153. Fees are usually not charged to criminal defendants and for some categories of parties (commonly laborers and women) are automatic. However, for many civil cases, some exemptions/deferrals must be requested, sometimes by a lawyer, which also limits their application. Generally, and even when the request comes directly from the affected party, the documentation required tends to be onerous. Fortunately, such requirements usually do not affect NGO providers or

Tunisia's 2002 law did much the same but even as subsequently amended did not set a specific organization. Jordan's framework law is the most recent dating to 2018.

[64] Partners vary among the Euromed publications, but here refer to Algeria, Israel, Jordan, Morocco, Palestine and Tunisia.

cases taken by bar associations on their own (i.e., when not requested by a judge, prosecutor, or other government actor).

154. The same requirements apply to most secondary assistance (representation) except for that provided automatically regardless of financial situation (e.g., for minors or sometimes for major felonies). Primary assistance (i.e., counseling, or general information on programs) is less common within formal programs except when part of legal representation. In formal programs offering it separately (e.g., some of the online offerings in wealthier countries) it is available to any interested party with internet access or on a more individualized basis in pilot programs like that in Egypt for women with personal status cases. Absent data on program operations, it is impossible to quantify the numbers of beneficiaries in total or by assistance type.

155. Finally, in much of the region it is assumed that while women may be exempted from fees in PSL cases they have no need of legal assistance and can represent themselves. While primary and/or secondary assistance are sometimes provided these are the exceptions rather than the rule. A woman without a lawyer in these cases operates at a significant disadvantage as she probably will not know the law, and if the opposing party does have representation is more likely to lose her case. An aggravating factor here is the gender profile of the judiciary throughout MENA (with Tunisia as an important exception with a high representation of women judges). Similar questions apply to cases brought by employees, which often receive automatic fee exemptions as well. Although this removes one barrier to access, without legal counsel the equality of arms is hardly guaranteed.

156. These generalizations do not apply to the numerous NGOs providing some type of assistance in most countries. Nor do they apply to independent actions by specific bar associations or individual members beyond what is required by law. NGOs are not affected by the legal framework, except as it may hinder their ability to operate, or in some instances, to represent clients in court. They of course cannot grant fee exemptions but can help clients apply for it. NGOs seem to do a better job with primary assistance than the formal programs while also providing direct primary and/or secondary assistance to claimants not eligible under the existing law (e.g., refugees, migrants, and other non-citizens).

1.4. Scope

157. Here, scope refers to case types covered. In most countries provision of subsidized counsel for defendants accused of major felonies is not subject to a means test and at least in theory is legally guaranteed (See Table 1 below). Generally, this will be provided only as representation in a trial; in only a few countries is it available at detention or during investigation. Otherwise, there is considerable variation as to the types of cases for which aid may be requested and what is included if provided – for example exemption from or deferral of fees, legal advice and counseling, and/or representation in court. In some countries aid is also available for victims in criminal cases or for both the plaintiff and defendant in civil disputes. Reading only the laws, the scope appears quite ample. However, there is usually an enormous gap between what is theoretically available and what is received. Consequently, there are two further qualifications to the chart below.

158. First, except for cases where eligibility is automatic (often only for fee exemptions) or "mandatory" (major felonies in some countries), the potential beneficiary must request aid. For most civil and lesser criminal cases, proof of indigency is required and the necessary documentation is usually extensive. These conditions create a gap between who receives assistance and the legally eligible population. As noted in Chapter II, this gap is virtually universal, but within MENA is increased by lack of information even on availability of aid and, for those who surmount that obstacle, the difficulty of meeting the eligibility requirements.

159. Second, "availability" implies considerable discretion by those determining eligibility and so further reduces real provision. Throughout the region the scope of assistance is augmented by individuals and agencies operating outside the formal programs -- NGOs and/or bar associations that make their own decisions as to who they will help. For example, the Jordanian and Palestinian Bar Associations' laws allow their presidents to assign a *pro bono* attorney to represent an indigent defendant. In Jordan, "[however], this *pro bono* assignment fails to consider specific guidelines concerning who is entitled to legal aid" (Al-Zoubi, 2020). These additions reduce, but hardly eliminate the gap.

Table 2: Availability of legal aid by case type in formal (i.e., government) programs (de jure situation only)

Country	Criminal defense (representation) in major felonies	Criminal defense (representation) in other criminal cases	For indigent parties to some civil and administrative cases	Automatic regardless of ability to pay
Algeria[65]**--** includes indigent resident foreigners	Yes	Yes	Yes, also fee exemptions provided provisionally	Women victims of violence, minors in criminal cases, claimants in alimony cases, the disabled and……[66]
Bahrain	Yes (all felonies and extradition cases) —victims as well	Yes – for victims as well	No	Fee exemption for labor cases initiated by workers or their beneficiaries
Djibouti – for citizens and expats with reciprocity. Can be exceptionally	Yes, with proof of indigency	Yes, with proof of indigency	Yes	Minors and those with HIV Aids

[65] Algeria has one of the few MENA constitutions guaranteeing a right to legal aid (Art 57 "right to legal assistance for those with lack of resources is foreseen") and Art 175 for criminal matters (with no mention of financial means).
[66] The complete list is lengthy and includes widows and single daughters of martyrs, war invalids, workers with job-related injuries and their dependents; victims of smuggling networks, mothers in child custody cases, victims of terrorism (Euromed 2019).

granted to association based in Djibouti				
Egypt - exceptionally for MENA, the Constitution (Articles 54 and 98) requires provision of legal aid to indigent individuals in civil and criminal cases.[67]	Yes "mandatory"[68]	Yes, for crimes punishable by imprisonment[69]	Civil procedures code allows fee exemption and legal counsel for the indigent. Administrative Tribunal requires that party request fee exemptions and/or counsel	Fee exemptions and counsel for minors (defendants and victims) in criminal and civil cases. Fee exemption for employees filing labor cases[70] and for women in PSL cases involving alimony and child support.
Iran: no formal program	Not by law[71] but may be provided for those without means to afford a lawyer[72]	Same as other criminal cases	Exemption from costs and/or legal representation can be requested with proof of indigency	Children in criminal cases, fee exemption and representation
Iraq	Yes, for criminal defendants	Yes, for criminal defendants	Yes, to be decided by Courts	None identified
Jordan	Yes, for defendants in cases with penalties of death or hard labor. Means test required and no prior criminal record	Yes, for crimes with penalties of over 10 years of imprisonment; [73] Means test required and no prior criminal record	Not by law although Bar President may appoint a pro bono attorney	None identified
Kuwait – only for citizens and expats with reciprocal agreements	Yes, with means test	Yes, with means test	Not by law	Fee exemption for workers in labor cases

[67] However, recent cases before the Court of Cassation have reviewed its application especially where legal counsel is not required (e.g., PSL cases, see Fernandez, 2021).
[68] Article 124 of Criminal Procedures Code.
[69] Article 237 of Criminal Procedures Code.
[70] Council of State Law No. 47 of 1972, Article 27; Judicial Fees Law No. 90 of 1944, Article 23.
[71] Means that this is not legally specified but may occur on judges' initiative (and counsel's willingness to serve). Where no such initiatives were identified, the answer is "No."
[72] Means not specified or regulated by any law although it is sometimes requested by judges.
[73] Added in 2017 as a delayed result of findings from the 2011 household survey on justice.

Lebanon – only for citizens and expats with reciprocal agreements	Yes, if lacks financial means, also victim	Yes, if lacks financial means, also victim	Yes, if lacks financial means and case has merit	Minors in criminal cases, defendants in military courts, women victims of violence. Fee exemption/deferral for PSL cases varies among religious courts.[74]
Libya	Yes	Yes, if remanded in custody	Not by law except for "urgent" PSL cases	None identified
Morocco – only for citizens and foreign nationals under reciprocity agreements	Yes	Yes, for other felonies; for lesser crimes only for juvenile, blind, or mute defendants, or cases incurring exile.	Yes, with proof of indigency	Fee exemption in labor cases filed by employee, and in PSL cases for alimony, divorcing and abandoned women
Oman – Ministerial Decree 91/2009 regulates conditions for establishing indigency	With means test	With means test	With means test if likely to win	Only for minors with identified conflict of interest with legal guardian[75]
Qatar	Yes, also for victims	Yes, also for victims	Yes (fee waiver)	Automatic fee exemption for all cases filed by workers
Saudi Arabia – no general law or system	Yes, for those accused of "major felonies"	No, except for fee exemptions	No, except for fee exemptions	Fee exemptions for employees over labor contracts, claims relating to imprisoned and detained persons, PSL cases, bankruptcy[76]
Syria no formal program[77]	No	No	No	No

[74] See Barakat (2018).

[75] DLA Piper (2014), p. 4.

[76] Prior to 2022 no fees for civil cases; 2022 law adds fees with listed exceptions.

[77] Even prior to 2011 (when it was removed from the League of Arab States), Syria had "no formal legal aid system." Lawyers did provide some pro bono assistance to indigent clients, but since that date have been severely constrained as to the clients and cases they can represent. (ILAC, 2017; 57).

Tunisia	Yes, no means test required; can be requested from detention on, but indications this rarely occurs[78]	Same as major felonies	Yes, means test required	Children, women victims of violence
United Arab Emirates: With few exceptions all emirates use common federal laws.[79] No seeming limitation on case types, only on financial situation ("poor, needy people")	Yes (Federal Criminal Procedures Code for all Emirates)	So long as case is "serious" (Federal Criminal Procedures Code for all Emirates)	Indigent defendants in civil cases so long as case is "serious," but may be only fee exemptions	Fee exemptions for labor cases, minors who are victims of crimes, the disabled, cases submitted by alimony applicant, cases submitted by federal and local authorities, requests to cancel administrative decision or to investigate deaths or inheritance
West Bank and Gaza	Yes[80]	Yes, for indigent defendants where crimes punishable with 3 or more years of imprisonment[81]	Not by law; state program only allows fee exemption and deferral	Juveniles in criminal cases[82]; workers receive fee exemptions
Yemen: no formal system in place	Possible for poor and vulnerable people (Constitution Art. 49)	Possible for poor and vulnerable people (Constitution Art. 49)	Possible for poor and vulnerable people (Constitution Art. 49)	Automatic fee exemption for PSL cases involving separation, divorce, alimony.

160. As illustrated above, the legal frameworks on aid availability vary considerably among countries, with a few lacking any type of formal program, although occasionally offering assistance at the discretion of judges, prosecutors, or in a few cases ministries other than Justice. For a few, most notably Oman, information about the latter exceptions is scarce, if available to potential beneficiaries at all. This distinction explains the difference between a "not by law" (but with exceptions) and "no" (no

[78] See Human Rights Watch (2018).
[79] Both Dubai and Ras al Khaimah have modified details on who decides on exemptions.
[80] Palestinian Basic Law, Article 14 and Law of the Legal Profession.
[81] Article 244 of the criminal procedures code.
[82] In West Bank only under juvenile protection code.

exceptions found). Nonetheless, scope, as defined by law, is limited throughout the region, and even more so when applicants must apply for eligibility.

1.5. Coverage

161. As per the definition In Chapter I, coverage refers to the types of parties eligible to receive aid under whatever legal framework exists; it does not affect NGO's aid activities, nor does it apply to any country (e.g., Syria) whose laws do not formally recognize legal aid. Otherwise, aid is legally available for all Individuals who meet each program's criteria. Additionally, several programs include as potential recipients, private and public organizations, victims of crimes, and third parties to criminal cases who cannot afford counsel and/or pay legal fees. However, throughout the region, assistance is typically received by only a small portion of the legally eligible. This is largely because provision usually depends on the potential beneficiaries requesting aid, which they may not do, or document incompletely. Some local experts also suggest that the actors reviewing their requests may not provide a reason for their refusal, which is typically unappealable. There is no information on how often or why eligibility is denied, and the answers are likely to vary within and across countries, strongly suggesting the need for further exploration of the issue.

162. Among the factors at work here are potential recipients' lack of knowledge of the availability of legal aid and how to obtain it, their inability to provide supporting documentation. their reluctance to use the courts, or their distrust of lawyers. Surveys done in several countries[83] indicate, as they do in other regions, that lack of awareness is most often a major factor. It is also the one most easily remedied through campaigns to inform citizens of their rights. However, the level of trust in courts and lawyers varies between countries in the region. 149. Recent information from Iran (Banakar and Ziaee, 2020) indicates that only 7 percent of those going to court have legal representation. The authors attribute this in part to judges' reported preference not to have lawyers present and the belief, as in other several countries, that women in PSL cases do not require legal representation.

163. There is no indication that coverage excludes internally displaced persons (IDPs). However, especially in countries with large, displaced populations (e.g., Algeria, Iraq, Libya, Syria, and Yemen), there are additional impediments to their being treated. These include loss of identity and other documents, unstable residency, and their inability to reach any potential source of assistance or even information on how to access it. In some cases, NGOs try to fill the often-enormous gap in availability.

164. Non-citizens – guest workers, other expatriates residing in the country or simply passing through, migrants, refugees, and others –are usually not explicitly excluded from assistance through government programs.[84] However, they often find it difficult if not impossible to meet eligibility requirements for establishing their identities, residence, and documentation on their finances (to meet the standards of any means test). Instead, what is available usually comes through NGOs. In several Gulf countries, the situation for guest workers is so troubling that their embassies have established their own

[83] See for example, Prettitore (2014 a and b) on surveys in Jordan; UNDP (2015) on Palestine.

[84] Some legislation (e.g., in Djibouti, Kuwait, Lebanon, Morocco) stipulates that aid recipients must be citizens or non-citizen residents covered by reciprocal agreements. However, this is more often than not the real situation.

services to help them.[85] Here their legal problems usually concern terms of employment – employers' failure to pay wages or meet other contractual guarantees and their unfortunate tendency to confiscate employees' passports and other identification documents thereby precluding the employees' ability to change jobs, leave the country, or file and document complaints in court. Several countries with large guest worker populations are attempting to curb these practices and have expanded workers' rights, but enforcement of new laws is, as always, difficult.

1.6. Organization

165. In MENA countries with a legally recognized (e.g., formal) aid program,[86] its organization is highly decentralized (or even, as described for some countries "fragmented[87]). Except for the few nations where a Ministry of Justice (e.g., Abu Dhabi's Justice Department within the Ministry; Jordan and Djibouti's Ministries) actively (not just theoretically) oversees assistance, decisions on eligibility are usually made by local legal aid bureaus, individual judges and/or prosecutors, while the assignment of lawyers is left to local bar associations or court staff. Libya's program of "public lawyers" (or people's legal defenders) overseen by the Ministry of Justice is an interesting exception to the usual decentralized control and implementation, but there is little information on how it has evolved post-Qaddafi (who introduced it, ILAC, 2013: Little of this affects NGO programs, which operate independently except for rules imposed by their external funders and more recently in several countries (e.g., Egypt, Jordan) stricter enforcement of rules on receipt of foreign funding.

166. As discussed in a later section, government programs often do not provide a budget for legal services, and in many countries, even the wealthiest (e.g., Saudi Arabia), attorneys assigned to cases are expected to work pro bono. Otherwise, any financing comes from court budgets or bar associations, although it is unusual for either to earmark funds for this purpose. Some bar associations also run and finance their own parallel services (e.g., Jordan and Lebanon if to a limited degree), within the formal programs they only assign paid or pro bono counsel after a government organization or actor (legal aid bureau, court, prosecutor, MOJ) decides the client merits assistance. While included in the programs summarized here, this does raise the question as to whether, using the CEPEJ definition, an arrangement relying primarily on pro bono services should be considered a formal legal aid program. So long as this is "by law," for present purposes the answer is yes.

167. This decentralized system resembles that of France and most other Western European countries, although with a higher level of legal, financial, and organizational fragmentation. This is

[85] "Legal aid cell for Kerala expats launched in Oman," https://www.thearabianstories.com/2019/11/22/kerala-expats-in-oman-to-get-legal-aid/ dated November 22, 2019. For a similar program in Kuwait, see https://www.indiansinkuwait.com/news/Free-legal-advise-for-Indians-Embassy-issue-list-of-lawyers

[86] Currently those without a program (which does not mean no legal aid is provided, simply not systematically) are Iran, Oman, Syria, Yemen, and Saudi Arabia, and the latter is said to be developing one. Its bar associations do require that members take on nine pro bono cases annually. No information was available on how these are chosen (and whether the quota is in fact enforced).

[87] This term has been used for West Bank and Gaza, and could also be applied to Yemen, because in both countries, and possibly others, individual ministries, aside from Justice, have staff whom they may assign to provide assistance in cases they prioritize. These are summarized in Tables 3 and 4 below.

hardly surprising as while only a few MENA nations are former French colonies or protectorates, the French legal influence, especially in North Africa, Lebanon, and Jordan, is very pronounced. Moreover, French judicial organization (if fewer of its legal aid elements) serves as a model even in Gulf countries, which have less historic reason to use it. As practiced in France and elsewhere in Europe, the quality and especially the consistency of most legal aid systems in the end depend on the local judicial actors and bar associations who implement it. Anecdotal evidence suggests that in many MENA countries, judicial actors (judges, prosecutors, legal aid bureaus) vary enormously in their interpretation of the rules and can be susceptible to several non-merit considerations in appointing counsel. Thus, while a centralized system may not be needed or possible, centralized standard setting and monitoring could be usefully adopted. A framework law could help here, but even in MENA countries that have one, there are indications that local implementation is hardly consistent.

168. The region's heavy dependence on NGOs and their reliance in turn on various external funders further exacerbate the decentralization. Governments, although doubtless alleviated by the NGOs ability to fill certain gaps, typically do not integrate them in their formal programs. NGOs have their own criteria for determining and prioritizing aid eligibility. These may be more generous than those in the laws governing official programs while also addressing groups (e.g., refugees, guest workers) not included in the latter. Given their dependence on donor funding, NGO activities are also heavily influenced by donor priorities.

1.7. Decisions on Eligibility for Legal Aid

169. Nearly all formal programs separate decisions on aid eligibility from the process of assigning counsel (See Table2 and 3 below). Although ostensibly the separation is a good practice (see discussion of the Dutch system in Chapter 2), complicated eligibility requirements along with the absence of transparent decisional criteria in both stages allow considerable subjectivity. Critics claim that as a result, few applicants survive the eligibility filters and that many of the theoretically eligible stop part way through the process or do not even try.

170. Several countries use a "legal aid bureau" to decide on eligibility. Their members typically include a prosecutor and judge (with differences as to which heads the bureau) as well as the other judicial staff. These bureaus rarely assign counsel although individual judges and prosecutors sometimes short-circuit the system and decide on eligibility and choose counsel at the same time. None of the latter is a de jure arrangement, but something that just happens for convenience's sake. In a few countries (see Table 2 below) Ministries of Justice make the final decisions on both eligibility and assignment of counsel, especially for criminal cases.

171. Except for automatic fee exemptions, means tests are usually required for non-criminal cases (and for some criminal as well). However, while complicated for the applicant the criteria are seemingly flexible in their application. Although often non-appealable, the reasons for acceptance or rejection are neither explained nor bound by explicit rules. It appears, but absent a review of real outcomes cannot be determined, that the situation for automatic fee exemptions and deferrals is more clearcut.

Table 3: Decisions on Eligibility for Legal Aid – refers to those that are not automatically awarded

Country	By judges/prosecutors	By MOJ	By Legal Aid Bureau	Other
Algeria[88]	No	No	Yes, with Public Prosecutor as head	None identified
Bahrain	Yes, for criminal and extradition cases	No	Yes	None identified
Djibouti	No	Yes	No	None identified
Egypt	Yes	No	No	MOJ's family dispute resolution and legal aid offices
Iran	Yes	No	No	None identified
Iraq	Yes, for criminal defendants and parties to civil cases with proof of indigency	No	No	None identified
Jordan	Yes, for eligible criminal cases, but must be approved by MOJ	Yes	No	President of Bar Association extra-program
Kuwait	Yes for felonies	No	Yes for fee exemption	
Lebanon	Yes, both civil and criminal cases are reviewed by General Prosecution (and opposing party) and then returned to relevant court for its non-appealable decision.[89]	No	No	For PSL cases depends on the religious community court (there are 15) to which the case is submitted

[88] Includes legal foreign residents with insufficient resources.

[89] Ministry of Finance also consulted on tax statements and local authority must provide document to establish indigency.

Libya	No	Yes, through Department of People's Legal Defense	No	Bar associations, extra program
Morocco	Yes, occasionally	No	Yes	None identified
Oman	Yes	No	No	None identified
Qatar	Yes	Yes, for criminal cases	No	None identified
Saudi Arabia	Yes	No	No	None identified
Syria – no formal system in place and what existed damaged by civil war and introduction of counterterrorism and security counts	Yes, where defense is allowed.	No	No	None identified
Tunisia	Occasionally	No	Yes	None identified
United Arab Emirates varies by emirate	Yes	Yes, for fee exemptions in criminal cases	No	Decisions on other fee exemptions/deferrals by Court Fee Committee
West Bank and Gaza	Yes	No	No	Ministries of Detainees and ex-Detainees, and of Public Settlements may decide to accept cases using their own staff lawyers.
Yemen No formal system in place; what exists informally further disrupted by war.	Yes	MOJ's Department of Women and Children may do this for certain cases filed by women	No	Ministry of Social Affairs, Ministry of Interior can apparently make some decisions and assign staff without consulting with courts

1.8. Assignment of counsel in official programs

172. With few exceptions assignment is done by a local bar association, although in some cases (not by law) a judge, prosecutor or the local legal aid bureau may do it on their own. Exceptions also include the few countries using government lawyers (Libya's "public lawyers", those working in Egypt's family court program,[90] lawyers attached to several ministries in Yemen). Otherwise, MENA's legal aid providers are private attorneys who are assigned to a specific case. Djibouti appears to be another exception (at least under its 2011 legal assistance law) in that once a client's eligibility is determined by a legal aid bureau, the client chooses her/his own attorney.[91] In many countries, as with decisions on eligibility, assignment practices include several modalities with the application of each hinging on available resources, type of case or client, or the inclination of those determining eligibility to choose a provider as well. Given the widespread use of pro bono assignments and the relatively low fees for those who are paid, accusations of corruption in selecting counsel are rare.

Table 4: Assignment of counsel in official programs (de jure situation plus some less regular practices)

Country	By judges	By prosecutors	By bar	Other
Algeria	In criminal cases, the investigative judge may appoint	No	Yes, once Legal Aid Bureau orders	None Identified
Bahrain	Yes	No	Yes, once judge requests	Legal aid committee
Djibouti	No	No	No	By beneficiary once accepted as eligible by the MOJ
Egypt	Yes, occasionally	No	Yes, once court/prosecutor requests	MOJ in own legal aid offices in family courts
Iran	Yes	Yes, for children	No	None identified
Iraq	Yes, for criminal defendants, from lawyers'	Yes, for criminal defendants, from lawyers'	Following Judges' request	None identified

[90] Since 2011, Abu Dhabi's Judicial Department (ADJD, per administrative decree 016/2011) oversees the programs although it is implemented by committee's organized in the competent court.

[91] According to Women Connect (n.d.) the claimant often contacts a lawyer first, and the latter prepares documentation to justify the provision of assistance. This is provided to the Ministry of Justice's Bureau of Legal Aid for its decision on eligibility. If accepted the claimant will use the lawyer first contacted, although this is not a rule. This resembles the Dutch system without prior consultations with a legal services bureau and the classification of attorneys as high trust or other.

	room or pool in each court	room or pool in each court		
Jordan	No (after 2018 framework law)	No (after 2018 framework law)	Yes, President of Bar Association can appoint a pro bono lawyer – no legal conditions set for case types, eligibility	Usually MOJ, which also decides eligibility (criminal cases)
Kuwait	Yes	No, except as member of legal aid committee	Kuwait Bar Association, once judge orders	Also, legal aid committee
Lebanon	Judge in some criminal cases	No	Yes, after judicial request in 90 percent of cases and 10 percent after direct request by party to Bar[92]	None identified
Libya	No	No	Extra-program by some bar associations, but not well developed	MOJ from among "public lawyers" following request from potential beneficiary
Morocco	President of Court if no bar association is present	No	After legal aid bureau requests	None identified
Oman	Yes		Provides list of lawyers for court to choose	
Qatar	Yes	Yes, for criminal cases	No	None identified
Saudi Arabia	Yes	No	Yes	None identified
Syria – no formal system in place and what once existed damaged by civil war	Yes, where defense is allowed	No	No	None identified

[92] Open Society Foundation, 2017.

Tunisia	Yes, occasionally	No	At request of Legal Aid Bureau in each common or administrative court	None identified
United Arab Emirates varies by emirate	Dubai, courts from program with authorized law firms	No		Abu Dhabi Judicial Department of MOJ
West Bank and Gaza	Court from among lawyers present	Yes, but only for juveniles in West Bank	Yes, at court request or that of affected party	Ministries of Social Development, Detainees and Ex-Detainees, and Public Settlements, have staff lawyers to handle cases.
Yemen No formal system in place; what exists informally further disrupted by war.	No	No	May assign lawyer at judge's request on a case-by-case basis	MOJ on court request or on own initiative for cases filed by women; Ministries of Social Affairs and Interior can assign a staff lawyer on their own initiative.

173. As regards service quality, none of these modalities appears to be automatically better or worse than the others; moreover, as suggested in Table 3, assignments of counsel sometimes escape the "strict" de jure requirements because of convenience or urgency. Thus, depending on the country, any one of the formal models (and its less formal deviations) may incur complaints about providers' lack of dedication to the task (often but not always when they are required to serve pro bono), reliance on a limited pool of lawyers in need of work, or collusion with those making assignments. Such issues could be addressed through a monitoring and evaluation program, but throughout the region, these are nearly nonexistent. For example, regardless of what the law says about attorneys accepting appointments (even when it makes this obligatory[93]), in most countries there does not appear to be any sanction for not doing so. For those (e.g., Algeria) that do specific a sanction (in this case referral to the disciplinary board), there

[93] Examples include Saudi Arabia which sets an annual quota of 9 pro bono cases.

is no indication that it is applied. Conceivably a lawyer is more likely to comply when the assignment is not pro bono.

1.9. Monitoring and funding of counsel performance.

174. According to the few available evaluations (usually by external experts[94]), assigned counsel, whether paid or not, are rarely held accountable for their actions, even by the local bar associations to which they belong. Egregious misbehavior (charging for pro bono services, not showing up a hearings or meeting at any point with their presumed clients) is only detected when the client makes a complaint.[95] There is no information on how often this occurs (presumably rarely), to whom the complaint is addressed, how it is handled, and what the consequences are. In Tunisia, there is no complaints system, but a client may request replacement of assigned counsel; how frequently this occurs in practice is unknown. This situation contrasts with complaints about judicial malfeasance where some MENA countries do provide information on the numbers and outcomes of disciplinary proceedings.

175. No formal aid program appears to have any standards for evaluating performance; where monitoring is attempted, this is at the discretion of local implementers. It was noted in Lebanon (Open Society Foundations, 2017), that despite the extensive use of trainees, there is little mentoring or supervision of their work. Moreover, Lebanon has no quota or limit for cases taken, meaning that some attorneys or trainees take on a seemingly excessive number.

176. Several published reports (e.g., Barakat, 2018) also mention misbehavior by court staff, who may charge additional fees for doing ordinary work. As Barakat also notes, staff can have a huge effect on how and when a case is processed and can also provide advice to clients lacking legal representation. Hence a party or an attorney ignores any requests for extra fees at their own risk. Since monitoring and evaluation of staff is still less systematic than that of attorneys, these practices, when and where they occur, are unlikely to be checked. Thus, although never considered part of a legal aid program, staff can have an enormous influence on its operations, as can judges or prosecutors with their own views on who merits assistance.

177. Payment to Service Providers. A few countries (e.g., Morocco, Djibouti, Jordan only for capital crimes) set fees for assigned counsel; this is by case not action but can be incremented when cases are appealed to higher levels. Some governments (e.g., Morocco) set aside funds to cover expenses, but they are rarely sufficient even for the limited number of accepted cases. In others (e.g., Tunisia) funds for assigned counsel come from the court budgets. Fee exemptions and deferrals represent funds lost to courts, which apparently are not included in or reimbursed from the government budget.

178. Otherwise, the bar associations are responsible and either provide funds out of their own resources (some of which come from the State) or insist on pro bono services from assigned attorneys.

[94] See for example OSF (2017) on Lebanon; ILAC (2021) on Yemen; Barakat (2018) on Lebanon, Jordan, Egypt, and Yemen.

[95] In Jordan, however, the Ministry of justice (which funds and oversees the program) is said to keep track of lawyers' attendance at hearings, and after two no-shows, remove the lawyer from the cases and refuse her/him any payment.

In Lebanon, the two bar associations set fees and pay from their own funds. Fee setting is a step forward, except when fees are out of line with level of effort or too low to be attractive. Absent these arrangements, most countries appear to use pro bono services, with in Saudi Arabia, for example, an annual quota set; information on how or whether it is tracked was not available.

179. Morocco's government program is among the best developed and financed in MENA despite its decentralized implementation. It does not include the various NGOs providing pro bono assistance (and depending on donor funding). Findings in the World Bank (2020) sector assessment lay out the details of government aid:

180. Lawyers are required to accept cases assigned to them under the local arrangements. Following the enactment of a 2008 law they are entitled to compensation from the government. A 2013 decree fixed rates at MAD [Moroccan Dirham] 1,500 (then equivalent to 110 Euros) for first instance proceedings; MAD 2,000 (140 Euros) for appellate cases and MAD 2,500 (then 190 Euros) for those before the Supreme Court. These fees were again raised in December 2019 …to MAD 3,500 (currently 314 Euros) for the CC [Court of Cassation or Supreme Court], MAD 3,000 (224 Euros) for appellate cases, and MAD 2,000 (179 Euros) for the first instance.[96]

181. It was not possible to determine whether these rates are reasonable, but they do not appear excessive, a problem in other regions as for example in parts of the Balkans (See World Bank, 2014 on Serbia). In some MENA countries with set rates (e.g., Lebanon) they are said to be so low that only legal trainees would accept the work.[97] Here much depends on the employment situation for legal professionals; where jobs are scarce some may take on any paid work, no matter the amount offered.

1.10. Legal information outreach and counseling

182. In these two areas MENA lags behind other regions. In most MENA countries the best outreach and counseling is provided by one or more NGOs. Research is yet to identify the reasons for this. What Euromed (2019; 29) says of Egypt is not unusual for the entire region and in fact it does a better job than many for its family courts:

183. "The State does not carry out any public information campaigns to raise awareness about the legal aid services provided for in the law. However, the website on "Legal Aid and Disputes Settlement Office Project" provides the public with comprehensive information about the legal aid services available in family courts and where they can find these services. The location of the family court offices throughout Egypt are made visible on the website's map. The State, however, has not carried out official campaigns to inform people of other legal aid services, like the ones related to the Criminal Procedure Law, the Egyptian Child Law and how people can access these types of services."

[96] Bulletin Officiel No. 6840 of December 19, 2019.

[97] However, it was reported that in Romania (World Bank 2014) the same situation prevailed – only underemployed attorneys and interns were willing to accept the work under the existing fee schedule.

184. Of course, more information would produce more clients for an already strapped service. Still, information and counseling, if well done, can ensure services get to the right clients – by educating them as to the types of issues the justice system can address and pointing them to alternatives, like mediation or any administrative complaints resolution services that could resolve their issues more quickly and more satisfactorily. As already noted, online services and digitalization are not the best way to reach much of the target population; for them, MENA will need to find parallel means to achieve these ends. There are ample examples from outside MENA on how this could be done. As donor agencies have funded many of them, they could be of great help in identifying alternatives.[98]

1.11. Use of NGOs

185. Given limited scope and coverage of formal aid programs, in practice if not always in theory, many MENA countries depend on NGOs to expand the offerings available. In some instances, NGOs address the gaps in provision of aid to the legally eligible, but in many others, they also attend groups (refugees and migrants, victims of gender violence) not included in formal programs. The status of these NGOs varies, but they almost never form part of any official government program, at times barely tolerated, and in a few instances suffering severe constraints on their actions. There are exceptions as Barakat (2018) reports for Lebanon where the Ministry of Social Affairs is said to make referrals to NGOs offering legal assistance. Virtually everywhere these alternative sources of aid are wholly dependent on external, usually donor funding. This has caused them problems with some governments and always poses threats to their sustainability. The situation, however, is hardly unique to MENA and is visible in all countries where donors operate.

186. NGOs may have their own staff engaged in service provision or function as a conduit to lawyers willing to work pro bono or for whatever fees the NGOs can pay. NGOs may provide primary and/or secondary aid, but unlike most of government programs, are important in apprising citizens of their rights including those to legal aid (from whatever source), giving them information on legal proceedings and mediation (which they may also provide), and advising them as to the merits of their claims. These are services rarely available through government programs on a stand-alone basis. Where counseling is provided it is generally after a lawyer has been assigned for representation.

187. There is, however, an issue posed by NGOs in that their actions can take the pressure off governments to improve their formal programs. Jordan, for example, has numerous NGOs providing legal assistance and a formal program that is unusually limited in coverage – "guaranteeing" assistance only to those accused of crimes with penalties of death, hard labor, or since 2018, penalties of over 10 years of imprisonment. "Financing" of any sort of government legal aid involves taking money out of court budgets. There is no line item in Jordan's executive budget. The effectiveness of Jordan's NGOs makes that the government is less pressed to improve and expand its own contribution.

[98] Latin America has taken a lead here. For a Mexican example, see USAID 2019 on use of radio programs, pamphlets, comics, and traveling dramatic presentations.

1.12. Record Keeping, Use of ICT, and Data-driven Management

188. This section consolidates two entries from Chapter II for the simple reason that so little of this is practiced within MENA. Record keeping for legal aid programs is scant, ICT adoption is seemingly non-existent, and both the consequent lack of data and the programs' decentralized organization make data-driven management nearly impossible. This offers an interesting comparison with programs in economically more advanced civil and common law countries, which have always done some basic tracking of their activities, if only to ensure that counsel is paid and serves in line with government funding requirements. This was common practice even prior to extensive automation although the latter allows collection of considerably more information. Legal aid programs rarely benefit from the sophisticated types of Case Management Information Systems (CMIS) used by other justice agencies. Still, basic performance tracking has been a common practice since their inception and in some cases came before the rest of the sector.

189. In MENA, the order is reversed. Performance tracking came late to MENA justice institutions, but that for legal aid has lagged behind other sector actors. This is partly a consequence of a highly decentralized organization and affects more developed countries as well. Still, European countries that could not provide consolidated program statistics to CEPEJ do track them locally. The absence of composite accounting is also seen in the US with its extremely decentralized systems. (And for the US, as with other federal countries, this decentralization also impedes collecting consolidated data across the several court systems.)

190. Nonetheless, it is surprising that so little information on legal aid programs is available in MENA, even where central governments provide funding for assigned counsel. It is also striking that the increasingly available judicial performance data, including systems wholly or partially financed by donors (e.g., West Bank and Gaza, Jordan), do not incorporate and publish such basic information as the number of cases represented by assigned counsel or awarded fee exemptions. As countries begin to use CMIS in their courts there are usually fields for entering information on counsel and fees. [99] Thus, the data may well be there. However, as is known from experience with other regions, fields can be left empty when no one bothers to check them.[100] Also, as one informant noted of Jordan, while the Ministry of Justice has statistics on the number of parties with counsel, the CMIS does not record whether they are assigned/paid by legal aid or by the affected parties. Once governments have established a legal aid program, it would appear logical to collect and disseminate information on its outputs. Moreover, local legal aid boards and bar associations should not find it difficult to collect the information manually and quite possibly do. Still doubts were expressed in interviews and external evaluations (OSF, 2017) as to whether this happened. Records are absent.

[99] One interviewee noted that for civil cases, only the plaintiff's lawyer may be included in the initial file as any representation for the defendant would be provided later. Adding that information would require going back and amending the entry.

[100] See World Bank (2010) on Ethiopia, noting that fields on amounts claimed in civil cases were rarely provided in the federal courts' CMIS because no one checked them.

191. The only entities that systematically collect information on their legal aid activities, sometimes disseminating it more broadly, are the extra-program NGOs. Whatever their intrinsic interest in record keeping, they usually must do this for the donors that finance them. The impediment for the formal program may be less a dependence on manual recording than the lack of sufficient reason for keeping track of legal aid assignments. Unfortunately, even as justice is digitalized, the collection of data on legal aid will only move ahead when someone with power requests it. Moreover, until such data are collected, their use for program planning is a moot case despite the abundance of evidence that even with scant funding, legal aid could be provided to more beneficiaries were it better organized and targeted.

1.13. Availability of information on output: government and non-governmental programs

192. As the above suggests, if no information is systematically collected, there will be little to make publicly available; only two examples of multi-year information on legal aid output were identified for a government agency/program in MENA. The first is for Tunisia's administrative courts and recorded both requests made and granted. However, this was only available in the Administrative Tribunal's annual reports. Moreover, these courts are the least likely to be used by poor citizens, thus accounting for the low number of both requests and those granted. For the much larger program for the ordinary courts no information was available. In fact, it could not be determined whether the Ministry of Justice had such data and they may not exist given that Tunisia's program is highly decentralized to local legal aid bureaus and bar associations. In another country local practitioners suggested the bar associations did not keep track of requests or recipients, which reportedly is true elsewhere.

193. The second was found on the website (www.pmp.ma/) of Morocco's Public Ministry and thus covers only criminal cases. The legal aid bureau attached to Morocco's Court of Cassation also provided detailed statistics on requests received, approved and type of aid awarded (representation only, fee exemption only, or both). While legal aid for all criminal cases reached 9306 requests in 2018 (the last year listed), that for cassation for the same year (and without specification of case type) declined from 144 to 79 approved requests between 2016 and 2018.

194. The scarcity of performance data is typical of the entire justice sector in most MENA countries. The major exceptions are of two types. First, are the countries, largely in the Gulf but also others, like Morocco, with adequate funding to digitalize their court practices. So far whatever data have been collected, and they most probably are extensive, are not widely available.[101] However, there is no indication that they include information on legal aid. Second, in countries receiving substantial donor funding, information on court output is often collected through donor programs. Again, but not for lack of interest this typically does not include data on legal aid. Also, overall (largely court) performance data

[101] Morocco does publish summary statistics on court output, and after joining CEPEJ in 2018, also provides performance indicators for its biennial publication. Tunisia is another exception in making summary court statistics (except for the Administrative Tribunal) available online.

do not appear to be collected systematically, meaning that what is available may appear sporadically and be several years out of date.

195. Information on individual NGOs is sometimes publicly available as a condition for donor financing. Still with funding from many different donors, protocols for collecting and disseminating information vary greatly. National programs do not collect them or coordinate with NGOs, or with bar associations or individual attorneys offering services outside the national program. This is unfortunate because coverage and scope could be improved across the board with coordination among the various aid sources. The absence of coordination is not unusual in other regions, but in some countries, efforts are increasingly directed at changing the situation for the benefit of the programs and of their clients.

Part 2: Use of innovations in legal aid programs introduced elsewhere

197. Not surprisingly, the adoption of the several innovations discussed in Chapter II has not been replicated in MENA. A possible exception is the use of ICT and online services, but as elaborated below, adoption of both has been slower in legal aid programs while their usual target beneficiaries, i. e. the poor and marginalized, are the least likely to use them.

2.1. Online services

198. With the impetus from Covid and donor support, governments are gradually expanding their provision of online justice services in the region. Their development is faster in countries (e.g., in the Gulf, Morocco) that can afford to do this on their own. Saudi Arabia, for example, has a justice section in its Vision 2030 that is almost all about digital transformation. Abu Dhabi says it has a digitalized system that rivals any in the world. However, this refers to judicial operations; legal aid services do not appear included (and there is no mention of them in the Saudi Vision 2030).

199. Still, it is questionable whether online services and information would be of much use to the target legal aid beneficiaries, the poor and other marginalized groups. These populations are often impeded by computer and ordinary illiteracy, possibly by operating in different languages, as well as a lack of equipment, access to internet, or if operating off a smartphone, limited data plans. As discussed in Chapter II, even countries with higher levels of connectivity and computer literacy have problems here. They thus must operate on parallel tracks offering something besides online services to the most marginalized (who are also usually the least capable of operating in a digital world). Other solutions – for example, sites where those wishing to access online services can receive assistance in using them – have not been attempted in MENA. In fact, the enthusiasm with online programs appears to have further diminished attention to often large population groups for whom they will not work. In countries where much of this same population is not legally entitled to aid (e.g., guest workers, migrants, refugees) it will be up to NGOs or, as in Oman, services provided virtually or physically by their countries of origin.

2.2. Traditional Dispute Resolution (TDR)

200. All MENA countries have traditional dispute resolution (TDR) systems. They often are used by a substantial portion of the population. They are maintained predominately in rural areas and incorporate certain Sharia elements along with still older practices. The persistence of these systems is a result of cultural preferences and community pressure along with the usual barriers to accessing formal mechanisms – physical distance, anticipated costs, unequal distribution of lawyers with most in urban centers, and unfamiliarity with or distrust of formal justice. A tendency for governments to tolerate such systems without promoting them is seemingly nearly universal within MENA. This means, inter alia, that the innovative approaches for dealing with TDR seen elsewhere (see Chapter II on paralegals, outreach, training of traditional leaders) have not been tried here.

201. In conflict-afflicted countries (e.g., Libya, Iraq, Syria, and Yemen) national governments have sometimes reached agreements with traditional leaders that also give the latter the authority to resolve local conflicts. However, this is only a peripheral result of such arrangements. Morocco offers a more interesting example of how TDR has been treated, first by incorporating it into the legal system, and then by eliminating that formal recognition.

Morocco's experiments with incorporating TDR[102]

In an initial effort to expand access to justice to rural populations, Morocco created over 800 municipal and districts courts with lay judges (selected by local authorities) in the 1970s. However, in 2011, these courts were replaced by a far lesser number of "proximity courts" staffed by legal professionals. Although the proximity courts were located alongside first instance or regional centers, it was intended that they also visit outlying areas within their jurisdiction. The impact on access to justice and the quality of that delivered has yet to be evaluated. Same for the impact on the use of TDR. Consequently, this cannot figure as a model but simply as the way one country has dealt with TDR. Still, while legal aid was never provided to users of municipal and district courts, it is theoretically available for the proximity courts although many of their cases allow pro se representation.

202. Given the identity of TDR users (as in Morocco, largely rural populations, often ethnic minorities wherever residing), and the shortcomings of formal legal aid programs, it could be asked whether more should be done with TDR. This may not be an either-or proposition, but where funds are scarce, perhaps they should be directed to providing assistance to those living in areas not ruled by TDR. Still countries wishing to deal with contradictions between TDR and formal law and rights, might consider some of the less costly mechanisms mentioned in Chapter II – training of local leaders in constitutional rights and different forms of dispute resolution and broader popular education programs directed at the populations depending on them. However, where such interventions threaten conflicts with these populations, care is advised, and they may have to wait till later.

[102] The summary is taken from World Bank (2020b), which also lists the sources of this information.

2.3. Alternative Dispute Resolution (ADR)

203. Throughout MENA there are legal procedures that incorporate some sort of mediation – largely in personal status or family justice and some small claims courts, as well as in traditional systems. Most of this is different from modern mediation in which mediators are trained in promoting *equitable* agreements between the parties, as well as in formal law and rights to ensure they do not breach either. This contrasts with traditional forms that are shaped by customary biases and power hierarchies. MENA countries have begun developing modern ADR programs but largely in commercial justice and thus in arbitration or mediation for enterprises. Some countries (e.g., Egypt, Jordan) have set up reconciliation offices for personal status cases, either requiring an effort at mediation before the case goes to court, or as a first step in a judicial process. Information on their effectiveness in reaching agreements is not available (and may not be tracked). Worth noting, however, are the comments of Egyptian and Jordanian women (cited in Barakat, 2018) about the programs' largely male staffing and the efforts of some mediators to force reconciliations between the estranged spouses.

204. Otherwise, no examples of the incorporation of ADR into legal aid programs could be identified. This need not be a problem so long as there are means of directing potential legal aid beneficiaries to mediation facilities where legal representation is not required and may even be prohibited.[103] Like some of the extra-regional innovations to improve TDR, the addition of mediation to legal assistance programs is a possible way of benefiting more of the target population. It does, however, require a modest investment in setting up services, training mediators, and monitoring their performance. Conceivably lawyers now "required" to provide pro bono services might be interested in involvement, as any training in mediation might help them in their normal, non-pro-bono work. This is an area meriting exploration in MENA, which at least has the advantage of lacking the anti-ADR bias seen in some European countries.[104]

2.4. User and legal needs surveys[105]

205. MENA nations are still not significant users of surveys for any service. That the justice sector in general and their legal aid programs in particular lag still further behind is hardly a surprise. That has also been the case in much of Europe, the region with most influence on MENA practices. The developed common law countries adopted surveys earlier (see Chapter II) with legal aid services sometimes running ahead of the rest of the sector. However, they have less influence in MENA.

206. Only a few MENA countries have conducted their own justice surveys, most of which still involved donor funding and participation in their design. The 2012 Euromed publication reported that

[103] It is often argued by ADR proponents that while lawyers can be trained as mediators, at times quite successfully, allowing them to represent or advise the parties in a mediation or conciliation is not advisable. For a concrete example, see "Breaking up is less hard to do," *The Economist*, January 22, 2022;53-54, on new trends in handling divorces out of court.

[104] This seeming bias has impeded donor efforts to promote ADR in Eastern Europe (see World Bank 2014 and 2019b). Much of Western Europe has also been slow to adopt modern ADR although this is gradually changing.

[105] A companion document on use of surveys in MENA is also available (World Bank, 2022). However, it focuses on justice in general and is not limited to surveys on legal aid.

surveys had been done in its six partner countries (Algeria, Jordan, Israel, Morocco, Palestine, Tunisia). However, it only identified regular survey use in two (Jordan and Palestine) and, at least for Jordan, that appears questionable. As Euromed counted its questionnaire sent to governments and/or local experts as a survey, its definition of survey is not very rigorous.

207. The earliest examples that could be documented are Jordan (Prettitore 2014 a and b) and Tunisia (Republic of Tunisia, 2013) done in 2011 and 2013 respectively and unfortunately never repeated. Neither focused on legal aid, but both provided information on legal problems, the use of courts to resolve them, and citizens' perceptions of the quality and accessibility of formal services. It was reported that the Jordan survey did influence changes, including one in legal aid that extended coverage beyond major felonies to any crime with a penalty of ten or more years of imprisonment. Tunisia's survey was done in conjunction with nationwide consultations and focus groups on legal reform, which collectively produced, as was intended, some significant changes in court distribution and practices.

208. More recent, if less comprehensive examples come from Morocco, Egypt, and the UAE. Morocco's Planning Institute has conducted a few surveys on justice largely focused on commercial issues. Egypt's State Council (Administrative Courts) is currently conducting its own multi-user survey having contracted a local firm with extensive local experience in other sectors. The Gulf countries (e.g., Abu Dhabi) offer online surveys for users of certain services.[106] Four UAE members (Abu Dhabi, Dubai, Sharjah, and Ajman) also requested and funded a legal needs assessment from HIIL (2016), but only a summary of its findings was published. HIIL could not provide information as to whether it was used.

209. Otherwise, Justice surveys conducted in MENA respond more to donor priorities, either as part of a donor project or using donor-defined methodologies and objectives. They include several UNDP-funded surveys in West Bank and Gaza; two USAID surveys on Egypt's commercial courts; a recent World Bank survey on trust in Moroccan public institutions (including those handling "justice" and security), and HIIL's legal needs surveys in Jordan, Lebanon, Morocco, Tunisia, and Yemen. More importantly, except for surveys specifically on user experience with legal aid, none of which could be found in MENA, legal needs surveys are the most relevant for legal aid programs. There is no indication they produced changes to sector plans.

210. Many MENA countries are also included in external surveys that either focus on justice or include it among a broader range of topics. Again, even those on justice do not cover legal aid, instead focusing on themes like trust in institutions, quality of decisions, ease of use, and only for the World Justice Project, accessibility, a combination of cost and distance to courts. Except for the now defunct Doing Business, there is no evidence that these surveys have had any impact on sector operations or proposed reforms. Focused on commercial disputes Doing Business had no relevance for legal aid.

211. The three obvious questions – why are there so few self-initiated surveys, why legal aid is not treated, and why so little is done with what is available? –can be answered in part by looking at history elsewhere. First, the Western European nations, which more than the US and other common law

[106] Essentially, these ask for feedback on online programs, not legal aid. See https://www.adjd.gov.ae/sites/eServices/EN/Pages/CSS.aspx.

countries, served as models for MENA, also came late to surveys, and still, as discussed in Chapter II, seem especially reticent about surveying users of any court service. Instead, they prefer to focus on the opinions of judges or litigating attorneys. Second, allowing or conducting and then not embracing survey results to inform reform initiatives is hardly unique to MENA. In countries that disregard survey results, the issue is often further muddied by concerns about judicial independence, and judges' fear that asking the public about judicial performance interferes with their autonomy. These concerns affect many MENA countries, further explaining why surveys may not be appreciated.

212. Still, getting feedback from users and non-users of justice services, including legal aid is arguably one of the most important means of determining where improvements are needed. It also is a way of building confidence in services, and, important for judiciaries fighting battles for independence, a way of building public support. So, while the lack of interest in conducting or using surveys is understandable, MENA nations may want to overcome these tendencies, in their own interest as well as that of their user populations.

2.5. Alternative (non-judicial) remedies

213. As in most emergent regions, MENA nations have large proportions of their populations with what are called "unmet legal needs" – potentially justiciable problems for which they find no solution. Legal aid is hardly the overall remedy, and as is true elsewhere, many unmet needs are not necessarily legal and could be addressed by changes in laws and government policies. Nonetheless, cutting the Gordian Knot for these social issues would doubtless face more resistance from powerful groups than would giving greater access to a certain amount of legal assistance. So, it is hardly surprising that these alternatives are often not pursued.

214. More realistically, immediate improvements for more people could be achieved with changes to existing programs to make them more efficient, better targeted, and easier to use. This still will not help all the potentially eligible, but could benefit more than at present, at a comparable cost, and within a more reasonable timeframe than waiting for the legal or policy revolution to come. A second consideration is that nearly all MENA countries are facing a series of basic issues within their justice sectors. The region came late to these challenges and some of its countries are still grappling with questions about judicial independence, political intervention, corruption and bias, efficiency, efficacy and even transparency and performance tracking. It is significant that nearly all countries have created some sort of legal aid program. This is a start on recognizing the problems of the poor and otherwise marginalized populations, and with time, a first step toward addressing more basic problems that access to courts alone cannot resolve. Moreover, even once these basic problems are addressed, there will always be those for whom access to courts and assistance in achieving it are the most logical remedies.

Part 3: Recommendations

215. As noted at the beginning, this report does not pretend to rate the region or individual countries within it on the performance of their legal aid programs. The national situations vary and the available information is not sufficiently granular and complete to do that. Chapter three has noted a series of

shortcomings measured against the evaluation criteria elaborated in Chapter I. These are the focus areas for the recommendations.

216. Some of these are in the outcome/results category although conclusions here are tentative given insufficient data to move beyond de jure conditions. On the positive side, nearly all countries have a legal aid program, some of them decades old. Moreover, most set coverage beyond only major felonies and thus what the principal conventions and charters mandate. How much of this coverage is realized in fact cannot be determined (and, so far as could be determined, none of the region's countries has attempted to determine this). As for the two other outcome/results indicators, there are apparent shortcomings here —difficulty in accessing aid primarily because of eligibility requirements and insufficient information, and suitability of what is provided for enhancing access. Here the principal issues are: the overdependence on fee exemptions, which in the scheme of things do not help that much, and an apparent deemphasis on primary aid, which if provided might orient would-be beneficiaries better.

217. The second set of criteria focusing on practices generally found to improve outcomes suggest more shortcomings, the resolution of which forms the basis for the following recommendations. Many programs do not have an effective oversight agency, lack adequate public information programs, do not use or seek feedback from users, and fall short on the series of details endorsed by the UN and other agencies providing specialized guidance on legal aid programs. None of this is to say that the region's countries have not made progress, some much more than others, but simply to suggest where specific actions might move things ahead.

218. Given the range of challenges facing MENA's justice systems, it would be unrealistic to expect quick resolution of those affecting legal aid in all 19 countries. Moreover, countries vary as to their potential for addressing legal aid shortcomings. For nations still afflicted by internal conflicts, legal aid is likely to remain on a back burner for some time. For judiciaries facing budget cutbacks, including those produced by the pandemic, expanding legal aid is not likely to be a priority. However, what is provided could be done more efficiently and effectively, two more reasonable goals that could also allow some expansion at the same "price." And for higher income countries in the region, more thought might go to the excluded populations. The recommendations below are quite basic, less fundamental but also less costly, and affect all programs no matter how implemented or for whom.

3.1. Immediate tasks

219. Here "immediate" means start now, but with no expectation that the work will be done in a few months. Still these recommendations address the issues most essential to improving service quality, coverage, and cost-efficiency and so should not be put off.

3.2. Select a national coordinator for the program or where one exists, strengthen its role

220. In a few countries, a Ministry of Justice is already "in charge" if in name only, but in most there is no single program "owner." If one is to be chosen it could be the Ministry, the Judiciary (or one of its

branches) or a multi-sector Judicial Council (meaning a council with judicial actors beyond judges included). Whichever is designated, it would not initially have more control over the decentralized actors involved. Rather its immediate roles are several:

- Receipt, consolidation, and dissemination of performance data from all actors within the formal program.
- Consolidation of the legal rules on program implementation and their dissemination to the decentralized implementers.
- Promotion, either directly or through other agencies, of mechanisms to broaden knowledge and understanding of the legal aid program among potential beneficiaries.

221. Where an agency (usually a Ministry of Justice or an internal department) already has been named as responsible for the program, it still may not be performing these minimal tasks and should ensure it now does so. A further problem affecting both existing coordinators and those to be named is how to gain the cooperation of the decentralized parts, starting with how to ensure they send data. This may require some financial incentives but depending on the agency selected there could be other means.[107] Experience from other regions may add other ideas. For the time being extra-program NGOs can be excluded, but eventually adding their data would be important.

222. Over time, the lead agency (whether pre-existing or recently designated) can also perform other functions to improve outputs. These include:

- Review of existing legislative framework to ensure internal consistency, and where there are issues, promote modifications to eliminate them.
- Sponsor and coordinate discussion among participating agencies on issues, problems, and suggestions for addressing them.
- Coordination with extra-program NGOs and receipt of their data on the basics –number of clients served, types of assistance provided, groups targeted, and so on.
- Develop with the above inputs and ample participation of all interested parties, a plan to improve the legal aid program, and use this to discuss with donors how they might support it. For countries not needing or receiving donor assistance, the plan is still necessary and might include means of identifying possible models and sources of technical assistance.

3.3. Review and rationalize criteria for legal aid eligibility

223. Although conceivably part of the "eventual functions" listed above, the impediments created by existing eligibility rules are critical enough to merit separate mention. The first priority is to reassess the criteria for establishing indigency, which is most countries are overly complex, extremely difficult for

[107] For example, a national bar association could restrict recognition of local chapters not cooperating. A judicial council or Supreme Court could threaten to disband local legal aid bureaus or investigate seemingly irregular operations.

applicants to meet, and arguably overly restrictive.[108] MENA countries might look to those in other regions with simpler requirements. In the few countries (e.g., West Bank and Gaza) where criteria do not exist and eligibility is up to individual judges, introduce some simple universal standards. Other eligibility rules worth reconsideration include the frequent assumption that women only need fee exemptions (and in Jordan not even that[109]), not secondary and primary aid; other civil cases where aid is limited only to fee exemptions; and limitations of eligibility only to citizens or expatriates under reciprocity agreements.

3.4. Improve recordkeeping

224. MENA nations tend not to publish much performance data and especially not in the justice sector. Interviewees and documents suggest that for legal aid, this is often less unwillingness to offer the information that the institutions have than a more fundamental problem of having very little. Publication of information would be ideal, but still more important is its collection and consolidation so that an overall plan can be developed. This should be a priority for all countries with a legal aid program. Inclusion of NGO data would be ideal as it would help everyone better target and distribute their resources.

225. Decentralized implementation complicates applying this recommendation. This is less an issue of refusal to send records (treated above), than of not keeping any or keeping them in non-uniform formats. This thus means that standardized recording and reporting forms must be developed and then required of data collectors. Where, as is usually the case in MENA (and in Europe) several actors are involved in the decisions on awarding aid and assigning counsel, the individual records of each should be organized to avoid redundant counting. This is to avoid counting aid awards twice, once when eligibility is declared and a second time, when someone else (a bar association?) assigns an attorney. There are countries that have successfully met this challenge. The World Bank and other donors could suggest examples for possible replication, especially regarding minimal data collection standards for each institutional actor and the ways these data can be consolidated.

3.5. Improve public information programs

226. The multiple unmet justice needs surveys make it clear that a major obstacle to legal aid's effectiveness is the public's lack of knowledge of its existence. Multi-user surveys conducted by the World Bank in other regions (largely Eastern Europe) also demonstrate that this is a problem there, as do surveys from even more developed countries. The overall problem is that those who are supposed to benefit from legal aid often do not know it exists, let alone how to access it.

227. Programs to increase public understanding will have to be conducted through several channels, rather than depending only on online dissemination. Alternative methods used elsewhere include radio and television programs (depending on which are used by poor populations), social media, comic books,

[108] For example, in Jordan, car ownership disqualifies an applicant, although for some low-paying jobs (taxi driver) a car may be essential. Rather than using a series of criteria it might be best for all to set a minimum income and use that for eligibility.

[109] As noted in the mid-prior decade, fees for the PSL cases usually brought by women were actually increased.

simple manuals and even school programs, counting on the educated children passing the information on to their parents. Given likely variations among the target groups, several channels are better than one.

228. Programs should not only use multiple channels but also have content appropriate to the targeted audience, including in their own language. Online content can probably be more sophisticated (like those who will use it), but other channels require simpler approaches to get the message across to those who will use them. This is one reason why radio and television programs that use a story format have been considered most effective (see USAID, 2018 on Mexico) and why, following on the same logic, timing television programs to be transmitted during a break in a popular soap opera can be a good tactic.

3.6. Recommended tasks for later adoption

229. This are tasks that could be started later, but that still respond to issues identified in this brief assessment. Again, a central agency charged with overseeing even the most decentralized legal aid program, would be the place to start.

3.7. Review the implementation of existing rules and their impacts

230. This recommendation is not meant to validate existing rules, but to provide information on the extent to which they are implemented and the impacts on potential and actual clients. There clearly are rules that impede access to aid, others that are skirted to good effect, and still others that are avoided to allow bias, corruption, and favoritism to enter. There is no MENA country where this information already exists, and thus nowhere, that this kind of study would not be vital to improving government programs. In countries receiving donor assistance, donors might finance and even conduct the exercise. In some others, financing would be entirely possible with local resources. The only countries excluded are those where current situations (especially on-going internal conflicts if not civil war) would not only make this difficult but also provide information that, one hopes, would be inaccurate later on. Policy design without information is never a good idea, and for legal aid in much of MENA there is a large information vacuum.

3.8. Explore alternative means to help large but lower priority beneficiary groups

231. Defendants in major criminal cases are a first priority, but there are other, much larger groups that suffer from the lack of any assistance. Except for the high-income Gulf countries, the groups (women in PSL cases, laborers, SMEs, those accused of lesser crimes or misdemeanors) that cannot afford counsel, but need assistance greatly exceed current budgetary resources. There are, however, other means of assisting them beyond the impossible provision of representation for every case. These include popular legal education programs, counseling services, use of paralegals trained to provide advice, training of judges to deal with pro se clients, inclusion of female staff in PSL reconciliation programs, incorporation of some NGO programs, university clinics, and so on. Donors may be able to help set up these programs, but what is developed must be something the country can sustain on its own. If a lesser priority than defense of defendants in major felonies, the sheer number of these additional beneficiaries and the

implications for their wellbeing and that of their families argue for attention to meeting at least some of their needs.

3.9. Within the official program coordinator create a department to collect and analyze statistical reports, do planning, and oversee analyses and studies

232. This could be an office exclusively for legal aid or part of a department (possibly planning) that does this work for the rest of the agency's programs. Wherever located and whatever its overall responsibilities, it is vital that it perform these functions for the legal aid program. Its staff should be multidisciplinary, including statisticians, economists, planners and possibly a lawyer, but this is neither legal work nor the traditional statistical function of collecting, collating, and publishing numbers. Some of the less frequent, sophisticated analysis could be contracted out to universities, think tanks and survey specialists, but the offices staff should be professionals well capable of directing them.

3.10. Review, standardize, and where necessary introduce monitoring and evaluation of services, counsel's obligations, and complaints registry

233. Standard criteria for monitoring and evaluation of overall programs and of the work of agencies and individuals are not practiced in MENA. External reports and local practitioners commented that many of the rules for assigned council (e.g., obligatory acceptance of assignment whether paid or pro bono, annual case quotas, expected actions) were honored in the breach, or simply not tracked. On the one hand, rules should exist and be enforced, but on the other they should be realistic. Expecting counsel to work for free or attend an unrealistic number of cases can invite non-compliance. Having monitoring and evaluation dependent solely on client complaints, while found in many regions, is rarely effective. Recommendations here thus have several parts:

- Review any rules and standards that do exist in terms of practicality, completeness, and against what really occurs (which may require an assessment, surveys, or some similar tool to define the real situation).
- Develop and promote a plan to improve the existing rules and standards to remedy issues identified in the review.
- Promote discussions with program implementers to review ideas on how monitoring and evaluation should be done, by whom, the likely results absent other changes, and what should be done when agencies or individuals are found in default. Should there be sanctions, a list of prohibited attorneys, remedial training, or something else?
- Review disciplinary mechanisms and their efficacy. Since they will probably fall short, invite discussion as to how they could be improved.

3.11. Standardize payment system for assigned counsel and reduce the number expected to work pro bono

234. Expecting assigned counsel to work pro bono is asking for trouble, except in countries like the US, where law firms get tax breaks for having their attorneys do this (and probably compensate those attorneys for this work.) Fee schedules are thus a good idea, but should be set realistically, not, as usually happens, pulled out of the air. This will require a serious study of salaries for public and private attorneys, of the level of effort required for legal aid work, and of the availability of lawyers who can do this.

3.12. Do a case-weighting study to determine the level of effort required for representing different types of cases and clients

235. This information ideally would feed into the payment system. However, even if done later would help in case assignment, whether for attorneys only doing this work (and so probably working directly for government agencies) or taking it on sporadically. Some existing "quotas" may be unrealistically low or high. Additionally, when private practitioners (or trainees) depend on this work, it has been reported that some take on too much voluntarily, thereby reducing the quality of the services provided. There are various ways of conducting these studies, and either donors or providers can provide more information on them.

3.13. Conduct or have conducted a legal needs and possibly a user survey (on those receiving legal aid)

236. These surveys are vital to program planning. They provide information on what the target populations knows about legal aid (possibly nothing), whether they have used it, if so with what results, and in addition on the types of justiciable problems they normally confront. Feedback from program users and implementers is important. Still, given the typically enormous gaps in real coverage for these programs, much necessary information will have to be collected through surveys of these types. There are several organizations capable of doing these surveys, and for countries short of funds, donors to provide financing.

237. Taking into account the still minimal coverage of legal aid programs in the region, a legal needs survey makes more sense than a user survey. This is because its principal focus is identifying justiciable needs, how they are addressed, whether they are resolved, and whether respondents received or even knew about legal aid programs. A legal needs survey will capture information on those who used legal aid as well as their satisfaction with it. A general user or multi-stakeholder[110] survey can be designed to

[110] Multi-stakeholder surveys as developed by the World Bank tap the perspectives and experience of a variety of actors—the general public, system users, judges, prosecutors, litigating attorneys and others. None so far has

include relevant questions about knowledge and use of legal aid but covers many more themes and consequently is more expensive. Although only the sections on legal aid could be extracted, it is more practical to start with the needs survey and do a legal aid user survey later.

3.14. Develop a budget line, possibly in the Ministry of Justice, to finance central coordination and providers' salaries

238. This makes most sense if the Ministry is the official program coordinator, and in fact in some countries it does have a budget set aside to pay assigned counsel. Still, it often appears insufficient to cover all cases. In some countries bar associations or courts use their own funds to reimburse assigned counsel, but again the funds may be insufficient. However, until the coordinating agency, whether Ministry of Justice or another entity, takes on the functions listed above (as well as others), its budgetary needs will be minimal for its "normal" functions. Once these functions are broadened along the lines of those suggested, it will need more funding to carry them out. Ideally, but perhaps unrealistically for many countries, these funds should also cover the fees and expenses of assigned counsel. Depending on pro bono contributions or bar association resources to fund an entire program is simply not realistic except in countries that have narrowed eligibility to the point of excluding anyone who needs aid. Over time, both eligibility and funding will have to expand, but in the short to medium term, giving the coordinator some financing would also help encourage cooperation with its plans and requests.

focused specifically on legal aid, but conceivably the model could be adapted with a legal aid focus and in this form deliver a 360 degree vision of its operations.

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