

A TOOL FOR JUSTICE

THE COST BENEFIT ANALYSIS OF LEGAL AID

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ABSTRACT

The world faces a global justice gap and the poor and vulnerable are the most affected. *The Justice for All Report of the Task Force on Justice* reveals that around 5.1 billion people today—two-thirds of the world's population—lack meaningful access to justice. Lack of access to justice traps people in vicious cycles of poverty, inequality and marginalization. The burden of this justice gap falls disproportionately on the most vulnerable, including women, children, minorities and people with disabilities. Lack of access to justice also increases the risk of conflict and violence within a society.

Policymakers are increasingly looking for ways to address the justice gap. Faced with challenging budgetary environments, governments are under increased pressure to show the most cost-efficient allocation of government funding. In a world where data increasingly informs policy making, evidence-based policy proposals that demonstrate the benefits of investments in legal aid programs are useful and persuasive. In this spirit, policymakers and policy influencers have turned to cost benefit analysis as a tool to better evaluate the economic impact of legal aid services and make informed decisions on how to address the justice gap and allocate funding most efficiently and effectively.

Cost benefit analyses from around the world suggest that the benefits of legal aid and related services significantly outweigh their costs. This report surveys around 50 cost and benefit studies of past and proposed legal aid programs covering civil and common law jurisdictions in developed and developing countries, large and small jurisdictions, and common and civil law systems. Cost

benefit analysis offers a quantitative and quantitative data-based evaluation of the net economic benefits of a legal aid program. As in other sectors, not all costs and benefits can be quantified, but a good cost benefit analysis will quantify what it can and note what it cannot. Some cost benefits analyses evaluate the economic impact of fully-fledged access to justice programs. Others focus on the impact of particular legal aid or related services. Overwhelmingly, these studies suggest that the benefits of legal aid outweigh the costs: for the individual involved, the community, the justice sector, as well as the economy and the society.

This report examines the findings of the various cost benefit analyses and provides guidance on how to conduct one's own cost benefit analysis of a legal aid program.

To assist interested policymakers and those who influence them, Part 3 offers a practical step-by-step guide on how to conduct a cost benefit analysis of different policy alternatives. With this guide, the report hopes to make a small contribution to the research in the field of the net benefits of legal aid. The guide offers governments, CSOs and others the tools to gather the relevant data needed to conduct their own cost-benefit analysis. The result can be better informed policies that allocate government resources efficiently and effectively to close the justice gap.



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Special thanks go to experts from around the world who provided examples of cost benefit studies from their jurisdictions. The team is grateful to these colleagues for their collaboration, which enabled these studies to be compiled for the first time in one report for the reader's ready reference.

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PREFACE

The motivation for this report was spurred by discussions between the IBA and the World Bank in Belfast in 2017. Together, we discussed how access to justice is a “win-win” for clients and the economy in light of growing evidence about financial and economic returns to investments in legal aid. We also discussed the increasing desire among justice policymakers to make a savvy “business case” for investments in justice. Work is underway in jurisdictions around the world to make this business case. It is a strong case. This report is one small contribution to that greater endeavor.

The audience for this report is legal aid policymakers and those who advise them. In many jurisdictions, these people will work in an Attorney General’s Department or Ministry of Justice. In some jurisdictions, they may work at an independent legal aid commission, bar association or civil society organization. In most cases, these people are lawyers and not economists. They are accustomed to making the intrinsic arguments for legal aid. They express a desire to complement intrinsic arguments with economic considerations—but they feel less comfortable doing so because they are not familiar with the intricacies of economic arguments and have not previously used the relevant analytical tools. If you are one of these people, this report is for you.

Here, we aim to demystify the cost benefit analysis—a tool that is much used in other sectors and increasingly used in justice. We encourage you to explore the examples and guidance contained in this report and to see how you might adapt this work to your own context.

Hopefully this report will help you engage with your funders—whether they be Ministries of Finance, parliaments, development partners or foundations—in new and compelling ways.

Enjoy!



ACRONYMS AND ABBREVIATIONS

AJS	Aboriginal Justice Strategy
CAO	Community Advice Offices
CBA	Cost Benefit Analysis
CBR	Cost Benefit Ratio
CEPEJ	Council of Europe European Commission for the efficiency of justice
CMS	Case Management System
ENPV	Economic Net Present Value
ERR	Economic Rate of Return
FAO	Food and Agriculture Organization of the United Nations
FDR	Family Dispute Resolution Service
FNPV	Financial Net Present Value
FRR	Financial Rate of Return
IBA	International Bar Association
ICPR	Institute of Criminal Policy Research
IRR	Internal Rate of Return
MJS	Mainstream Justice System
M&E	Monitoring and Evaluation
NLAP	National Legal Aid Policy
NPV	Net Present Value
ODI	Overseas Development Institute
OECD	Organisation for Economic Co-operation and Development
PAS	Paralegal Advisory Service
PV	Present Value (Discounted Present Value)
PWC	PricewaterhouseCoopers
SCF	Standard Conversion Factor
SDGs	Sustainable Development Goals
SDR	Social Discount Rate
UK	United Kingdom
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
US	United States
WTP	Willingness To Pay

CHAPTER 1: WHY EXAMINE THE COSTS AND BENEFITS OF LEGAL AID?

The world faces a global justice gap, which is causing millions of people to live in extreme conditions of injustice, without access to legal recourse to resolve their problems. To close the justice gap in increasingly challenging budgetary environments, governments are turning to cost benefits analyses of legal aid programs to better estimate the benefits of such policies and to make evidence-based decisions on the allocation of resources.

THE THREE DIMENSIONS OF THE GLOBAL JUSTICE GAP:

- 235 million people live in extreme conditions of injustice
- 1.5 billion people cannot resolve their justice problems
- 4.5 billion people are excluded from the opportunities the law provides

UN Task Force on Justice, Justice for All, 2019

The “justice gap” undermines human development, reinforces the poverty trap, and imposes high societal costs.

Measuring the Justice Gap, World Justice Project, 2019

THE CHALLENGE OF ACCESS TO JUSTICE

1. The world faces a widespread justice gap, where billions of people lack access to basic justice services. *The Justice for All Report of the Task Force on Justice* reveals that around 5.1 billion people today—two-thirds of the world’s population—lack meaningful access to justice.¹ While people in all countries are affected, women, children, people with disabilities, and people from minority ethnic communities are often the most vulnerable.² One billion children are victims of violence, and half of women surveyed say it is pointless to report a case of sexual harassment to the authorities.³ Businesses face myriad legal issues relating to tax, regulation, employment, and the payment of invoices, debt, and goods or services. These legal issues are particularly challenging for small and medium-sized enterprises to identify and resolve on their own.⁴

2. This justice gap undermines human development, reinforces the poverty trap, and imposes high societal costs.⁵ Justice is a thread that runs through all 17 of the Sustainable Development Goals (SDGs) and is critical to end poverty, reduce inequality, reach those left behind and promote peace and security.⁶ SDG16, and in particular targets 16.3 and 16.b, seek to measure the extent to which the rule of law and equal access to justice for all are promoted, as well as the extent to which non-discriminatory laws and policies for sustainable development are enforced.⁷

⁵ The World Justice Project, *Measuring the Justice Gap*, 2019, https://worldjusticeproject.org/sites/default/files/documents/WJP_Measuring%20the%20Justice%20Gap_final_20Jun2019.pdf.

⁶ UN Taskforce on Justice, *Justice for All: the Report of the Task Force on Justice*, April 2019, p. 11, <https://www.justice.sdg16.plus/report>.

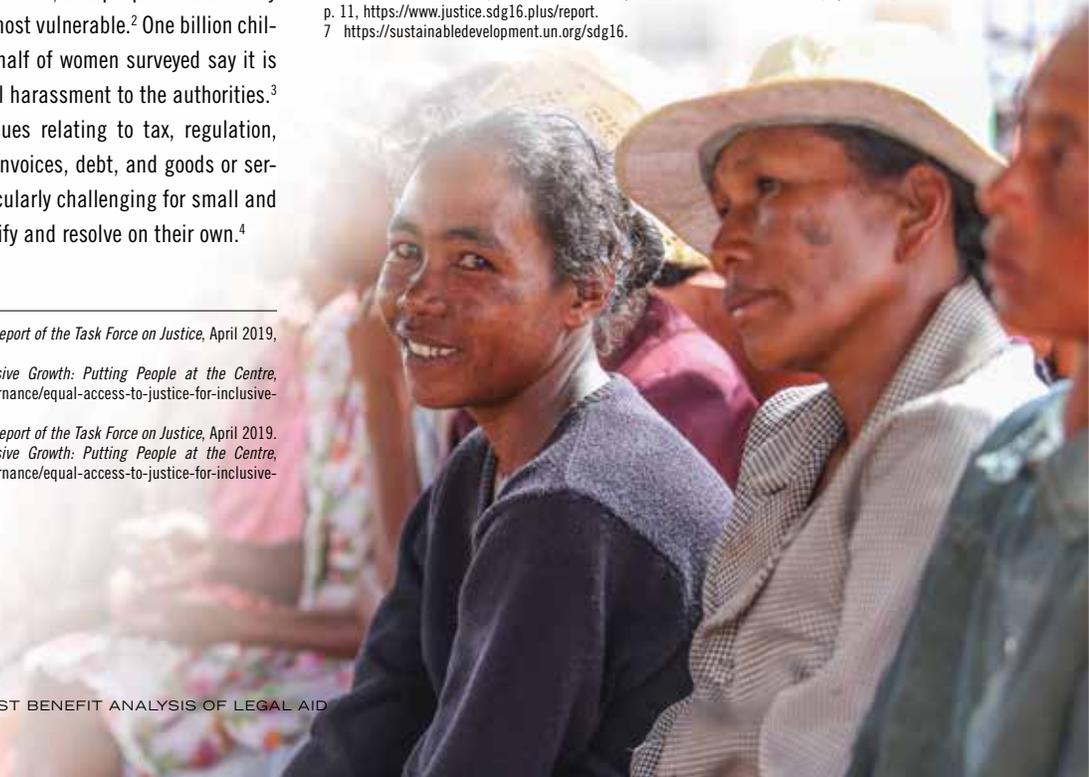
⁷ <https://sustainabledevelopment.un.org/sdg16>.

¹ UN Taskforce on Justice, *Justice for All: the Report of the Task Force on Justice*, April 2019, p. 12, <https://www.justice.sdg16.plus/report>.

² OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, March 2019, https://www.oecd-ilibrary.org/governance/equal-access-to-justice-for-inclusive-growth_597f5b7f-en.

³ UN Taskforce on Justice, *Justice for All: the Report of the Task Force on Justice*, April 2019.

⁴ OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, March 2019, https://www.oecd-ilibrary.org/governance/equal-access-to-justice-for-inclusive-growth_597f5b7f-en.



Equal access to justice and legal empowerment are intrinsic goods; they are also fundamental components of inclusive development, good governance, public policy performance, and the rule of law, as underlined by the UN Sustainable Development Agenda.

OECD, Equal Access to Justice for Inclusive Growth: Putting People at the Centre, 2019

Put simply, access to legal aid is fundamental to safeguarding fair, equal, and meaningful access to justice.

UNDP and UNODC, Global Study on Legal Aid Global Report, 2016

THE INTRINSIC ARGUMENTS FOR LEGAL AID

3. Access to legal aid⁸ is central to ensuring access to justice, especially for the poorest and most vulnerable people. That said, legal aid systems are different in each jurisdiction.⁹ While to some extent, the differences may be influenced by a country's income level, there is significant variation among countries of similar levels of development in their approaches to legal aid services. Services provided generally cover primary legal advice. This includes the provision of legal information, mediation and education, legal representation and assistance in preparing cases at the local, national or international level, psychological support and specialized assistance, and legal advocacy.¹⁰

4. Legal aid has long been viewed as an expression of society's values. The primary arguments for supporting legal aid have rested on the inherent value to society of protecting the most vulnerable, and of ensuring access to justice for those who cannot afford a lawyer. By leaning heavily on constitutional, human rights and ideological principles underpinning the concepts of "access to justice" and "rule of law," proponents highlight how legal aid is intrinsically tied to the concept of the state and its duty to guarantee equality of arms as an element of equality under the law. Legal aid can help to ensure that people have access to information about their rights, entitlements, and obligations.¹¹ It is also essential for the protection and promotion of all other civil, cultural, economic, political and social rights. Without it, people who are living in poverty or otherwise vulnerable are denied the opportunity to claim their rights, resolve disputes, or challenge crimes, abuses or human rights violations committed against them.¹²

⁸ Legal aid is the provision of legal advice, assistance, and representation to people or groups who cannot afford to pay privately for that legal help. Legal aid is mainly provided by lawyers and paralegals to help address specific legal problems and is funded, in whole or part, by the state and includes court fee waivers and other financial concessions. Legal aid may include legal education and access to legal information, as well as other services provided through alternative dispute resolution mechanisms and restorative justice processes.

⁹ For an extensive discussion on the comparative development of legal aid refer to Francis Regan, Alan Paterson, Tamara Goriely & Don Fleming, *The Transformation of Legal Aid: Comparative and Historical Studies 1999*, Oxford: Oxford University Press, Part 2, and Francis Regan, *Why Do Legal Aid Services Vary Between the Societies? Reexamining the Impact of Welfare States and Legal States*.

¹⁰ See e.g., United Nations, *Global Study on Legal Aid: Country Profiles* (November 2016), p. 24; Box 3 on page 25, http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/global-study-on-legal-aid.html. The report also states that, without legal aid, millions of people around the world are at heightened risk of rights violations when they interact with the criminal justice system, through arbitrary pre-trial detention, torture, coerced confessions, and/or wrongful convictions.

¹¹ *Ibid.*

¹² *UN Report of the Special Rapporteur on extreme poverty and human rights, A/67/278*, <https://www.ohchr.org/Documents/Issues/Poverty/A-67-278.pdf>.



5. **These values are also reflected in national and international law. Various international instruments enshrine the right to legal aid in criminal matters.**¹³ Treaty bodies have also highlighted the importance of legal aid as a fundamental safeguard.¹⁴ Most recently, the UN has adopted global standards for legal aid and invited States to adopt and strengthen measures to ensure effective legal aid is in their jurisdictions.¹⁵ In most countries, the right to legal aid is also part of national legal frameworks, from constitutions to national laws and policies on legal aid.¹⁶ A growing number of States are developing legislation on the right to legal aid as the responsibility of the State.¹⁷

LEGAL AID CAN ALSO BE SMART ECONOMICS

6. **While not detracting from intrinsic arguments, there are also economic arguments that support investment in justice and legal aid in particular.** The price of failing to address the global justice gap is high. Not providing legal aid can be a false economy, as the costs of unresolved problems shift to other areas of government spending such as health care, housing, child protection, and incarceration. For example, a study for Canada estimates the cascading costs of unequal access to justice on public spending in other areas (e.g., employment insurance, social assistance, and health care costs) to be approximately 2.35 times more than the annual direct service expenditures on legal aid.¹⁸ In Australia, numerous studies show that there are net public benefits from legal assistance expenditures.¹⁹ Investments in legal aid can lead to significant government savings through avoided cost of arrest,

THE HIDDEN COSTS OF NOT INVESTING IN LEGAL AID

The expense which governments incur in funding legal aid is obvious and measurable. What is not so obvious, and not so easily measurable, but what is real and substantial, is the cost of the delay, disruption and inefficiency, which results from absence or denial of legal representation. Much of that cost is also borne, directly, or indirectly, by governments. Providing legal aid is costly. So is not providing legal aid.

Murray Gleeson, former Chief Justice of Australia

Law Council of Australia, the Justice Project Final Report: Introduction and Overview, 2018

conviction, incarceration, probation, and post-prison supervision.²⁰ In addition, public investments in legal aid are also found to generate net savings in terms of avoided shelter/housing costs.²¹ Studies find significant net economic benefits, even in the short term, including immediate benefits to clients and cost-savings to governments. Moreover, many studies may under-estimate net benefits due to short time horizons and conservative assumptions.

7. **There is a clear correlation between a country's global ranking on access to justice and its ranking on human capital formation, as Figure 1 shows.**²² The inability to access legal and justice services can be both a result and a cause of disadvantage, poverty and inequality. This is true in both income and non-income

13 UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, <https://www.refworld.org/docid/3ae6b3aa0.html>. Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, <https://www.refworld.org/docid/3ae6b3b04.html>. African Union, *Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa*, 11 July 2003, <https://www.refworld.org/docid/3f4b139d4.html>.

14 The UN Subcommittee on Prevention of Torture and the European Committee for the Prevention of Torture have repeatedly emphasized the importance of legal aid as a fundamental safeguard against intimidation, ill-treatment, and torture. Both committees have identified that the period immediately following deprivation of liberty is when the risk of intimidation and physical ill-treatment is greatest. In order to protect the vulnerable position of people in police custody, they call on all States to develop an appropriate system of legal aid for those who are not in a position to pay for a lawyer. See also UNODC and UNDP, *Global Study on Legal Aid Global Report*, October 2016.

15 *The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice System*, 3 October 2012, UN Doc. A/C.3/67/L.6, http://www.uanet.org/sites/default/files/RES_GA_UN_121003_EN.pdf.

16 For a list of countries and further reference, consult United Nations, *Global Study on Legal Aid: Country Profiles*, November 2016, pp. 525-562, http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/global-study-on-legal-aid.html.

17 UNODC and UNDP, *Global Study on Legal Aid Global Report*, October 2016, pp. 21-23, https://www.unodc.org/documents/justice-and-prison-reform/LegalAid/Global-Study-on-Legal-Aid_Report01.pdf accessed on July 26, 2019.

18 See Farrow et al., *Everyday Legal Problem and The Cost of Justice in Canada: Overview Report*, 2016, <http://www.ctcj-fcjc.org/sites/default/files/Everyday%20Legal%20Problems%20and%20the%20Cost%20of%20Justice%20in%20Canada%20-%20Overview%20Report.pdf>.

19 See Law Council of Australia, *The Justice Project Final Report*, August 2018, p. 15, <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20-%20Final%20Report%20in%20full.pdf>.

20 One study for the US estimates that, on average, American taxpayers spend approximately US\$ 14 billion to jail people who are awaiting trial (roughly 460,000 people or 65 percent of the jail population on any given day are). See *Pretrial Justice: How Much Does it Cost?* (2017), <https://nicic.gov/pretrial-justice-how-much-does-it-cost-2017>.

21 Providing legal counsel for low-income people at risk of losing their homes saves the city of New York \$320 million a year. See Stout Risius Ross Inc, *The Financial Cost and Benefits of Establishing a Right to Counsel in Eviction Proceedings Under Intro 214-A*, (Paper Presented for: Pro Bono and Legal Services Committee of the New York City Bar Association, March 16, 2016).

22 Even after controlling for income levels, access to justice has a positive statistically significant effect on human capital formation, albeit of a smaller magnitude (0.35) than indicated by a correlation coefficient (0.5). It should also be noted that this report does not claim a causal link between access to justice and human capital. To proxy for access to justice, we use the WJP Rule of Law Index and sub-factor 7.1 ("people can access and afford civil justice") which aims to measure how easy (or difficult) it is for the average citizen of a country to assert and protect his/her rights and to understand his/her duties under civil law. For more information about the Index and its methodology, see <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019/current-historical-data>. The Human Capital Index quantifies the contributions of health and education to worker productivity. The index score ranges from zero to one and measures the productivity as a future worker of child born today relative to the benchmark of full health and complete education. For more information about the Human Capital Project, see <https://openknowledge.worldbank.org/handle/10986/30498>.

Whenever someone is deprived of his right to counsel and he feels that he is a victim of injustice, that person may run away to the mountains or turn into a rebel [...]. That is why we must assist everyone who has grievances to seek redress through peaceful and legal means.

Persida Acosta, Chief, Public Attorney's Office, Philippines

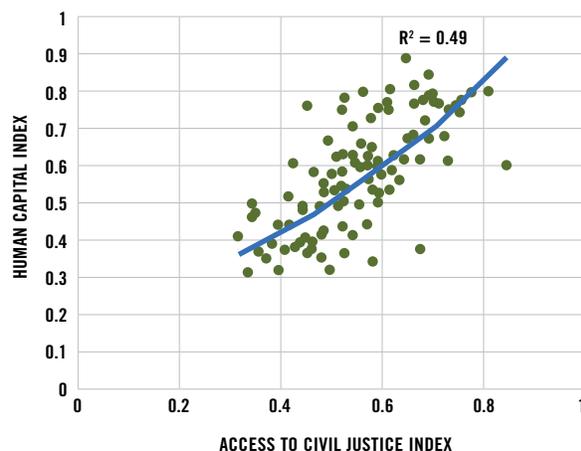
scenarios, such as employment opportunities, educational attainment and health conditions, all of which are important determinants of an individuals' social and economic potential, as well as inclusive and sustainable growth of the economy in which they live.²³ Conversely, investing in access to justice, particularly for poor and marginalized groups, can reduce inequality and foster human capital accumulation via several channels. In this sense, access to justice is no less important to equitable and sustainable economic development than good schools, functioning hospitals, and passable roads.²⁴

8. Unaddressed legal needs affect individuals, their families, the justice system, the economy and the society. As this report outlines, impacts include not only monetary losses, such as stolen or damaged property, medical expenses, the loss of employment, income or productivity, but also socioeconomic costs that are real but harder to quantify. Often referred to as victimization costs, these may include pain, suffering, trauma, fear, reduced quality of life, damaged reputation, lost dignity, and reduced life chances. Children in families unable to assert their rights may be harmed by the effects of avoidable family breakdown, homelessness, and disrupted schooling, which may limit their ability to become productive and well-integrated members of society and may increase the likelihood of them requiring state support or intervention. Unaddressed legal needs may also incur a cost to communities. Foreclosure, for example, can lead to reduced business investment, lower property values, reduced economic output, and misappropriated financial resources (e.g., the potentially avoidable provision of emergency housing).

²³ OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, March 2019, https://www.oecd-ilibrary.org/governance/equal-access-to-justice-for-inclusive-growth_597f5b7f-en.

²⁴ Goldston, 2014. *Justice for Development: integrating justice and human rights into the post 2015 development framework* (Open Society Foundations).

FIGURE 1: RELATIONSHIP BETWEEN ACCESS TO JUSTICE AND HUMAN CAPITAL



9. Improving access to justice can also help to prevent and mitigate the risk of fragility, conflict and violence. The joint United Nations-World Bank flagship report, *Pathways for Peace: Inclusive Approaches to Preventing Violent Conflict*, cites grievances around social group-specific exclusion from access to justice and security as one of four arenas of social contest that inform the risk of violence.²⁵ The Pathways for Peace specifically identifies the delivery of justice and security as part of “the glue that binds state and society together” and is a tangible expression of the minimum that citizens expect from the state in exchange for their deference to the state’s rule over them.²⁶ The Pathways for Peace report highlights the enormous human and economic costs of violence and conflict which make preventive actions both self-evident and highly cost-effective. The report recommends that the best way to prevent societies from descending into crisis, including but not limited to conflict, is through long-term investment in inclusive and sustainable domestic policies and programs that prevent the fraying of

²⁵ See United Nations. World Bank, *Pathways for Peace: Development Approaches to Prevention of Violent Conflict*. 2018, Washington D.C., <https://openknowledge.worldbank.org/handle/10986/28337>.

²⁶ Ibid, p. 158.

In short, we now understand that justice and governance are no less important to equitable and sustainable development than good schools, functioning health clinics, and passable roads.

James A. Goldston, Remarks to UN General Assembly, 2014

social fabric, including by addressing inequalities and exclusion and making institutions more inclusive. In particular, it calls for expanded access to justice services, especially for those who have been excluded.²⁷

THE DATA ENVIRONMENT FOR LEGAL AID IS IMPROVING

10. Estimates of the economic benefits of access to justice reflect a growing body of research on legal aid needs. Recent progress has been made in understanding the extent of legal problems, including the kinds of groups most in need of legal aid, the reasons why legal needs remain unmet, and the barriers that people encounter to access justice.²⁸ This body of research suggests that legal aid focus on everyday legal needs, which also happen to be predominantly civil in nature.²⁹ In housing for instance, the most frequently cited legal needs relate to evictions, foreclosure, utility payment issues, unsafe housing conditions and homelessness. Family legal needs generally include divorce, domestic violence, child custody, visitation, maintenance and alimony, and division of family assets. Depending on the context, access to criminal legal aid, especially in the early stages of the criminal justice process, such as pre-trial detention, is found to be essential for poor and marginalized groups, who are often unaware of their legal rights and lack the resources to obtain legal advice or representation.³⁰ Our understanding of legal needs has been deepened significantly by the World Justice Project, which now collects survey data on legal needs from more than 100 countries.³¹

11. While there is growing evidence on legal needs³² and the high cost of non-intervention,³³ less is known about the extent to which society could benefit from legal aid, as well as whether the intervention can be justified from an economic perspective.³⁴

²⁷ Ibid, p. 168.

²⁸ See Pascoe Pleasence, Nigel J. Balmer and Rebecca L. Sandefur, *Paths to Justice: A Past, Present and Future Road Map* (August 2013), <https://www.nuffieldfoundation.org/sites/default/files/files/PTJ%20Roadmap%20NUFFIELD%20Published.pdf>; See also OECD and Open Society Foundation, "Understanding Effective Access to Justice," *Workshop Background Paper*, November 2016, pp. 8-9, <http://www.oecd.org/gov/Understanding-effective-access-justice-workshop-paper-final.pdf>.

²⁹ Ibid, p. 5.

³⁰ See generally United Nations Office on Drugs and Crime and United Nations Development Programme, *Early access to legal aid in criminal justice processes: a handbook for policy-makers and practitioners*, 2014, http://www.undp.org/content/undp/en/home/librarypage/democratic-governance/access_to_justiceandruleoflaw/early-access-to-legal-aid-in-criminal-justice-processes-handbook.html.

³¹ <https://worldjusticeproject.org/>.

³² From an evaluation perspective, the recognition of a clearly defined need is one of the key prerequisites for government intervention, followed by the idea that the proposed intervention is likely to be worth the cost. See HM Treasury, *Green Book*, <http://www.fao.org/ag/humannutrition/33236-040551a7cfbc0e73909932192db580c4.pdf>.

³³ This is particularly true in the case of violence against women, where enormous costs of non-intervention were found throughout the literature. See, e.g., Ashe, S., Duvvury, N., Raghavendra, S., Scriver, S., & O'Donovan, D., *Costs of Violence Against Women: An Examination of the Evidence*, 2016, <https://www.whatworks.co.za/documents/publications/68-authors-ashe-s-duvvury-n-raghavendra-s-scriver-s-and-o-donovan-d/file>.

³⁴ See generally J.J. Prescott, "The Challenges of Calculating the Benefits of Providing Access to Legal Services," 37 *Fordham Urb. L.J.* 303 (2010), pp. 319-320, <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2329&context=ulj>.

LEGAL PROBLEMS ARE COMMON AND WIDESPREAD

1.4 billion people have unmet civil or administrative justice needs. 2.3 billion people lack proof of housing or land tenure. 1.1 billion victims of non-violent crime have not reported their victimization. 235 million victims of violence have not reported their victimization. 560 thousand people are victims of lethal violence. 1.1 billion people lack legal identity. 2.1 billion people are employed in the informal economy. 12 million people are stateless. 40 million people are living in modern slavery. 203 million people live in countries with high levels of insecurity and no rule of law.

World Justice Project, 2019

In Colombia, a 2014 national survey established that approximately 40 percent of those surveyed had faced a legal problem in the preceding four years, with fraud, theft, access to public services, and housing being the most common problems.

Encuesta Nacional de Necesidades Jurídicas, 2013

In Papua New Guinea, a 2009 national survey found that 40 percent of respondents had a dispute in the previous 12 months, and that the main sources of dispute related to land, water, and other natural resources.

World Bank, 2014

Generally, budget data on the costs of legal aid has been reported whenever available. For instance, the Council of Europe regularly publishes data on the cost of legal aid in its member states.³⁵ According to the 2018 CEPEJ report, in 2016 the 28 EU member countries spent an average of €6.5 annually per inhabitant on

³⁵ https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=09000016808e349b.

LEGAL NEEDS ARE PREDOMINANTLY CIVIL IN NATURE

Research shows that legal needs are predominately civil in nature. The most common types of problems for which legal aid services are sought relate to consumer rights, government benefits, housing, employment issues, land and property disputes, family issues, conflicts with neighbors, and debt relief.

Pascoe Pleasence, Nigel J. Balmer and Rebecca L. Sandefur, Paths to Justice: A Past, Present and Future Road Map, 2013

legal aid.³⁶ Quantifying the full net economic impact of the provision of legal aid is not straightforward, but there is at least some consensus on the direction of the impact and the main channels of transmission. Assessing the impact of some direct and predominantly indirect economic benefits proves to be a more challenging exercise, as there are many areas of influence that are not easily disentangled and quantified.³⁷

12. In a world where data is becoming a prerequisite for the evaluation of policies and programs,³⁸ governments need qualitative and quantitative data to help them allocate social spending most efficiently and effectively on a range of services, including legal aid. At times of budgetary constraint, policy-makers are under greater scrutiny to show that justice expenditures are evidence-based.³⁹ As a result, cost benefit analyses of legal aid have drawn greater attention, and decision-makers throughout the international justice community have begun to acknowledge the importance of this line of work.⁴⁰

36 Interestingly, on the basis of the right to Habeas Corpus, the UK allocates the highest percentage of its justice system budget to legal aid, with 39 percent in England and Wales and 34 percent of the total budget allocated to legal aid in Scotland. Northern European states also have a strong tradition of generous legal aid systems with a significant budgetary share within the total budget of the justice system: Norway (38 percent), Ireland (35 percent), Sweden (28 percent), Netherlands (22 percent) and Finland (21 percent). Council of Europe, European Commission for the Efficiency of Justice, "European Judicial Systems Efficiency and Quality of Justice," CEPEJ Studies No. 26, pp. 77-78, available at: <https://rm.coe.int/rapport-avec-couv-18-09-2018-en/16808def9c> accessed on July 28, 2019.

37 Supra note 28.

38 *Volume 2 Inquiry Report—Access to Justice Arrangements*, p. 880, <https://apo.org.au/sites/default/files/resource-files/2014/12/apo-nid42575-1217831.pdf>.

39 See also World Bank, What works?: examples of empirically proven justice reforms, 2017, <http://documents.worldbank.org/curated/en/506611513850612331/pdf/WP-P165762-PUBLIC-WhatWorksFINAL.pdf>.

40 See, e.g., Canadian Forum on Civil Justice, *The Cost of Justice: Weighing the Costs of Fair and Effective Resolution to Legal Problems*, available at [need link]. The background report notes "a lack of previous integrated scholarly work from which to build" to inform the research on costs of justice research, as well as "the need to solve the current methodological problems in costs of justice research;" U.S. Department of Justice, White House Legal Aid Interagency Roundtable: *Civil Legal Aid Research Workshop Report*, February 2016, <https://www.justice.gov/lair/file/828316/download>.

CHAPTER 2: FINDINGS AND EMERGING TRENDS FROM COST-BENEFIT ANALYSES

There are many different costs and benefits of legal aid services. Some are direct costs and benefits deriving from the provision of legal aid services. Others are indirect consequences of such services on the individual, the community, the justice system, the economy and the society. By relying on a set of conservative assumptions and generally quantifying only short-term impacts, these studies suggest that the benefits of investing in legal aid greatly outweigh the costs. Overall, we notice that cost-benefit work is still relatively new to legal aid service delivery. But the handful of legal aid programs to which CBA has been applied demonstrate its promising policy application.

SECTION 1: THE COST-BENEFIT ANALYSIS: A TOOL FOR EXAMINING THE ECONOMIC RETURNS ON LEGAL AID

WHAT IS A COST-BENEFIT ANALYSIS?

13. Cost benefit analysis (CBA) is a method for assessing the economic efficiency of public policies through the systematic measurement of social costs and benefits.⁴¹ The CBA does this by building a model that identifies the benefits of a policy, intervention, program or project, as well as the associated costs, and then subtracts the costs from the benefits to estimate the net cost-benefit. When completed, a CBA will yield estimates of the net benefits of an investment and evidence-based conclusions around the feasibility and/or advisability of a decision to invest in a certain policy, intervention, program or project. While individual decisions focus on benefits and costs to the individual, the CBA examines the benefits accruing to, and the costs incurred by, all members of society, hence the terms social benefits and costs.⁴²

14. A CBA requires the monetization of costs and benefits, which allows for the comparison of different policy alternatives. A distinctive feature of CBA is that the social costs and benefits of different policy interventions are expressed in monetary terms, which allows for direct comparisons along a common scale. Because the investment effects are monetized, CBA enables decision makers to compare policies and programs that have different outcomes and purposes. For example, a scenario including the provision of legal aid services would be contrasted with a counterfactual baseline scenario that foregoes the provision of these services. As with CBAs in any sector, not all of the costs and ben-

efits of legal aid can be quantified. Nonetheless, a good CBA will monetize the costs and benefits to the extent possible and will note what cannot be monetized. This enables a systematic evaluation of different investment alternatives, to inform decision-makers in reaching their final investment decision.

15. A CBA offers both a financial and economic performance assessment of the policy alternatives. Financial analysis only considers the costs and benefits that occur in monetary form, while economic analysis takes into account adjusted values of financial flows and adds the monetized value of costs and benefits which are otherwise not expressed in money terms (e.g., value of time, suffering, injuries, etc.). Both parts of the assessment yield performance indicators (i.e., financial and economic performance indicators) which are used to make an assessment of the financial and economic viability of the program.

16. CBAs can be done *ex-post* or *ex-ante*. An *ex-post* CBA is conducted after a program has already been implemented in order to measure its performance. *Ex-post* CBAs evaluate whether the investment was economically beneficial and inform decision-making about whether it should be renewed or expanded. An *ex-ante* CBA,⁴³ on the other hand, is developed before a legal aid program is set up, to determine the best types and scope of funding. *Ex-ante* CBAs guide the formulation of investments, the evaluation of various alternatives for achieving the desired targets, and the decision making about whether or not to fund the proposed investment.⁴⁴

⁴¹ *International Encyclopedia of the Social & Behavioral Sciences*, 2001, <https://www.sciencedirect.com/topics/social-sciences/cost-benefit-analysis>.

⁴² Anthony E. Boardman, *International Encyclopedia of the Social & Behavioral Sciences* (Second Edition), 2015, <https://www.sciencedirect.com/topics/social-sciences/cost-benefit-analysis>.

⁴³ Most of the studies on the economic impact of legal aid assess annual costs and benefits arising from legal aid programs as a whole. The Australian government used this comprehensive approach to evaluate economic benefits of the entire legal aid program for a 12-year period in order to make necessary adjustments to their legal aid funding model (PWC, 2015).
⁴⁴ <http://www.fao.org/in-action/herramienta-administracion-tierras/module-5/practical-evaluation-guide/introduction-cba/en/>.

THE USE OF CBAs FOR LEGAL AID GOVERNMENT SPENDING

17. To help weigh their options, policy-makers are increasingly turning to CBAs.

Originally developed to evaluate engineering projects, the CBA has since been adapted and used by governments and non-government entities alike to examine the intangible and tangible benefits of policies dealing with mental illness,⁴⁵ substance abuse,⁴⁶ college education,⁴⁷ and chemical waste.⁴⁸ The justice sector has been slow to catch on to this trend. In recent years though, CBAs are used increasingly to evaluate spending on access to justice programs, including legal aid.⁴⁹

18. CBAs can be a powerful tool for those seeking expanded funding of legal aid services.⁵⁰

This is particularly relevant because many of the benefits brought by the provision of legal aid programs go far beyond the clients served, generating results for individuals, the economy and society at large. Carefully conducted CBAs may therefore create a broader consensus in favor of increased funding for legal aid programs, while guiding the design, evaluation and monitoring of such programs in the future.

19. The use of CBA to evaluate legal aid investment is a small but growing field. This study surveyed around 53 cost and benefit studies that sought to evaluate the economic impact of past or future interventions in legal aid and related services around the world.⁵¹ This is a first attempt at analyzing the results of legal aid

The justice sector has been slow to catch on to this trend [of conducting CBAs]. In recent years though, CBAs are used increasingly to evaluate spending on access to justice programs, including legal aid, to determine the appropriate allocation of public resources.

CBAs at a global scale.⁵² In particular, this study surveyed CBAs from a range of jurisdictions,⁵³ including from OECD countries and non-OECD countries, large and small jurisdictions, and civil and common law systems. Most of these CBA studies have either examined the impact of overall legal aid programs or the impact of legal aid in specific fields. These include legal aid policies aimed at preventing domestic violence, delaying/avoiding foreclosures, preventing evictions, reducing the rate of arbitrary detention of low-income individuals and improving the efficiency of the courts system. Researchers have applied CBAs to assess: (i) the cost-effectiveness of a protective order for victims of domestic violence; (ii) access to legal aid representation in both criminal and civil legal matters; and (iii) access to legal aid information, including legal advice, education, workshops and clinics. This report also surveyed some examples of CBAs and impact evaluations of access to justice interventions beyond legal aid.

THE ANALYTICAL APPROACH TO CONDUCTING A CBA OF LEGAL AID

20. A CBA uses an incremental approach to assess the costs and benefits arising from a “with-project” versus a “without-project” scenario. The costs and benefits of each scenario are then developed independently from one another and subsequently compared to arrive at a series of net benefits which represents the difference that the additional (i.e., incremental) action is expected to bring about. Additionally, a CBA could consider more than one alternative to the “without-project” scenario in order to develop an optimal program. Whatever the case, the comparison of project alternatives (e.g., scenarios) should consider only the incremental portion of the “with-project” scenario (i.e., the portion of financial and economic costs and benefits which are the result of that particular scenario versus a “do-nothing” approach).

45 Weisbrod, Burton A., “Benefit-Cost Analysis of a Controlled Experiment: Treating the Mentally Ill.” *Journal of Human Resources*, 16 (4): 523–548, 1981, doi:10.2307/145235. JSTOR 145235.

46 Plotnick, Robert D., “Applying Benefit-Cost Analysis to Substance Abuse Prevention Programs.” *International Journal of the Addictions*, 29 (3): 339–359, 1994, doi:10.3109/10826089409047385.

47 Weisbrod, Burton A.; Hansen, W. Lee (1969). *Benefits, Costs, and Finance of Public Higher Education*. Markham.

48 Moll, K. S.; et al., *Hazardous wastes: A Risk-Benefit Framework Applied to Cadmium and Asbestos*, 1975, Menlo Park, CA: Stanford Research Institute.

49 See Yvon Dandurand and Micheal Maschek, *Assessing the Economic Impact of Legal Aid in British Columbia: Promising Areas for Future Research*, University of the Fraser Valley, April 19, 2012.

50 See Ken Smith, Barbara Finkelstein and Christopher O’Malley, “Economic Impacts of Legal Aid: Civil Justice for Low-Income People Creates Ripple Effects That Benefit Every Segment of The Communities We Serve,” *Management Information Exchange Journal*, Fall 2011, http://www.greatprograms.org/mie_article/pdfs/Economic%20Impacts%20of%20Legal%20Aid_MIE%20Journal_Fall%202011.pdf

51 Access to justice can be ensured in a variety of ways. While reviewing the costs and benefits of policies and programs, this report does not advocate for any particular type of legal aid or related service. Rather, to the extent possible, it tries to take a stock of existing evidence on costs and benefits of legal aid and related programs. In doing so, it offers practitioners guidance and tools to assess the economic viability of their own legal aid or related services.

52 In developing this Study, the International Bar Association and the World Bank used their joint networks to collect all known examples of CBAs of legal aid from around the world. No guarantee can be made, however, that all have been captured.

53 The World Bank Group utilizes CBAs to perform both *ex-post* and *ex-ante* assessments of justice reform projects. For further details, please refer to the examples of *Implementation Completion and Results (ICR) Report for Justice Reform Projects in Romania* (<http://documents.worldbank.org/curated/en/676791513998156427/pdf/Implementation-Completion-and-Results-Report-ICR-Documents-12202017.pdf>) and *Croatia* (<http://documents.worldbank.org/curated/en/725001497278193801/pdf/ICR00003984-06072017.pdf>).

21. Conceptually, the development of a CBA has three main analytical blocks. As an illustration, let us consider a simplified environment where a decision-maker is considering whether and how to increase funding for a legal aid program for victims of domestic violence. Applying the incremental approach would typically involve the following:

1) *Develop an estimate of all costs and benefits related to the current program operation (i.e., the “without-project” scenario).*⁵⁴ The amount of public and/or private funding that the current legal aid program requires would be considered the total cost, while benefits would be estimated as the number of domestic violence cases avoided due to this program. These benefits include many sub-items, of which the most common are the avoidance of: pain, suffering, health deterioration, decrease in production, consumption costs, administrative costs, second generation costs and the economic costs of transfers.⁵⁵

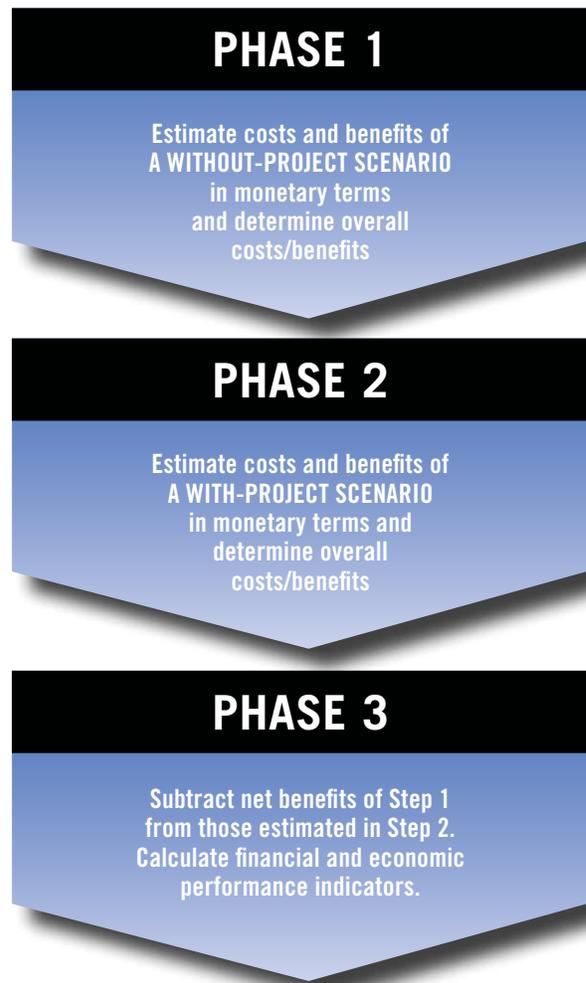
2) *Estimate the scope and funding of the “with-project” alternative and make a projection of the costs and benefits of this scenario.* The costs of this scenario would be those associated with additional funding for the provision of legal aid. The main benefits would come from the additional reduction of costs resulting from cases of domestic violence avoided due to the new legal aid program. This would be calculated using the same criteria as for the existing program.

3) *Finally, compare the results of the “with” and “without” additional funding scenarios (i.e., determining the net benefits from adding more funds).* These net benefits would be used to calculate financial and economic performance indicators, which would inform a final assessment of the effectiveness of the additional funding. In other words, if the performance indicators show that adding funds to the existing legal aid program will bring net additional benefits, then that program expansion is economically viable.

⁵⁴ The “without-project” scenario actually refers to the scenario where no additional investment is made (i.e. keeping the current volume of legal aid program—current situation). This additional investment, made on top of the current program, is what the CBA deals with.

⁵⁵ Consumption costs include: property replacement, bad debts, and lost economies of scale in household operation. Administrative costs include: legal/forensic services, temporary accommodation, paid care (i.e., housekeeper), counseling, perpetrator programs, interpreter services, and funerals. Second generation costs include: childcare, changing schools, counseling, child protection services, remedial/special education, increased future use of government services, and increased juvenile and adult crime. Transfer payments include: Victim compensation, income support, accommodation subsidies, lost taxes, financial help to victim from friends and family and child support. *Access Economics, The Cost of Domestic Violence to the Australian Economy: Part I*, 200, p. 5 at: https://www.dss.gov.au/sites/default/files/documents/05_2012/cost_of_dv_to_australian_economy_i_1.pdf

FIGURE 2: THE THREE ANALYTICAL BLOCKS OF A CBA



SECTION 2: MAIN FINDINGS OF CBA STUDIES

COSTS AND BENEFITS OF LEGAL AID SERVICES

22. **Legal aid services can deliver a range of benefits to the parties affected.** Tangible costs and benefits are those that involve monetary payments as a result of the provision of legal aid services. These costs and benefits can be estimated quite accurately. Examples of tangible costs include government expenditures on legal aid programs, out-of-pocket losses to legal aid clients as well as the costs of pro-bono services provided by private lawyers, bar associations and that of other providers. Tangible benefits include public benefits recovered on behalf of legal aid clients or cost savings to the government and society from avoided provision of government welfare programs. Tangible benefits may also include efficiency gains to the justice system from more expedient court processes as a result of representation by legal aid litigants.

23. Intangible costs and benefits are harder to quantify. Intangible benefits can include social capital, feelings of empowerment, and increased trust in government and/or the rule of law. Such benefits are not easily quantified, and evaluating them is more subjective than for tangible benefits. Therefore, a CBA should generally not be conducted using intangible benefits alone.

24. With regards to measurement methods, benefits and costs can be classified as either direct or indirect. Direct costs and benefits are associated with the provision of legal aid. To calculate these, researchers look first at primary sources of information, such as civil legal aid surveys or the budgets of legal aid service providers. Avoided costs of hospitalization and medical treatment that legal aid help avert, for instance, is a direct benefit to survivors of domestic violence (in countries where users pay directly for these services) and to governments or businesses (when the services are

paid for through taxation or insurance). Government expenditures on legal aid programs are an example of direct costs to society from providing legal aid services.

25. Indirect benefits and costs are the secondary results of legal aid. The efficiency gains to the courts derived from the provision of legal assistance, the training of legal aid clients and self-represented litigants, and preserved property values resulting from legal aid are just a few examples of its indirect benefits. To estimate such benefits and costs, researchers generally tap secondary sources of information, such as property valuation, surveys on productivity loss due to workdays missed, statistical data on increased morbidity as a consequence of lack of legal representation, and court data on court efficiency gains/losses derived from the provision of legal assistance and from self-representing clients.

TABLE 1. SUMMARY OF THE COMMON COSTS OF UNMET LEGAL NEEDS AND THE BENEFITS OF LEGAL AID PROGRAMS

COST/ BENEFITS	DIRECT	INDIRECT
TANGIBLE	<p>TO THE INDIVIDUAL AND SOCIETY:</p> <ul style="list-style-type: none"> ● Property damage ● Medical and mental health care ● Government legal aid and related social services ● Lost income for unpaid work days ● Legal fees <p>TO THE JUSTICE SYSTEM:</p> <ul style="list-style-type: none"> ● Pre-trial detention ● Prosecution ● Incarceration ● Court expenses associated with legal cases (e.g., filing, court staff time for record keeping etc.) 	<p>TO THE INDIVIDUAL AND SOCIETY:</p> <ul style="list-style-type: none"> ● Productivity losses for unpaid workdays ● Increased probability of mortality and morbidity ● Lost housework ● Tax losses <p>TO THE JUSTICE SYSTEM:</p> <ul style="list-style-type: none"> ● Court efficiency gains/losses from the provision of legal assistance ● Court efficiency loss due to self-representing clients
INTANGIBLE	<p>TO THE INDIVIDUAL AND SOCIETY:</p> <ul style="list-style-type: none"> ● Pain, suffering and quality of life losses ● Behavioral problems and performance decline and lost education of children <p>TO THE JUSTICE SYSTEM:</p> <ul style="list-style-type: none"> ● Skills of legal aid clients and self-represented litigants developed as a result of capacity building training 	<p>TO THE INDIVIDUAL AND SOCIETY:</p> <ul style="list-style-type: none"> ● Feelings of disempowerment/empowerment ● Increased/decreased trust in the justice system <p>TO THE JUSTICE SYSTEM:</p> <ul style="list-style-type: none"> ● Social clout and feelings of empowerment

26. The terms “costs” and “benefits” are used interchangeably depending on whether one is examining the effect of a legal aid program or the lack thereof. In other words, the cost of an incident of domestic abuse, for instance, equals the benefit of an incidence of domestic abuse that was prevented as a result of legal aid. Similarly, the benefits of legal aid in terms of increased court efficiency will equal the cost of reduced court efficiency when legal aid is not provided. In addition, this study does not aim to offer an exhaustive overview of all the potential costs and benefits associated with legal aid programs. Rather, the types of costs and benefits described here are simply indicative of the those commonly identified in the CBAs surveyed for this report.

To calculate indirect benefits or avoided costs (e.g., pain, suffering, reduced quality of life, etc.), studies generally rely on existing literature on the cost of victimization.

COMMON FEATURES OF LEGAL AID CBAs

27. The main findings of these CBAs suggest that the economic benefits of legal aid investment outweigh the costs, and that support for legal aid programs can bring significant budgetary savings to the government and economic savings to the society. This is particularly relevant because many of the benefits brought by the provision of legal aid programs go far beyond the clients served, bringing tangible results for the economy, society and the justice system. As a result, CBAs offer a powerful tool for finding the most efficient and effective allocation of government funding.

28. With regards to the costs and benefits quantified, CBAs of legal aid can be classified as either narrow or comprehensive. Narrow cost-benefit analyses focus primarily on direct tangible benefits and costs resulting from the provision of legal aid services. Comprehensive cost-benefit analyses include narrow cost-benefit analyses plus a more extensive accounting of the indirect economic benefits to all those affected. This accounting includes all the costs and benefits to individuals, the justice system, the economy and society, such as: the avoided indirect costs of pain, suffering, fear and quality of life losses due to a specific crime, property value and tax losses for communities, or efficiency losses for the courts from self-represented litigants. In other words, this comprehensive assessment aims to capture the welfare costs of legal aid problems and tax losses that are avoided, along with the efficiency gains to the justice system.

29. The narrow cost-benefit analysis is more common among the CBAs surveyed for this report. An extensive body of evidence comes from the U.S., where in the last two decades many states have

assessed the net economic impacts of their legal aid systems.⁵⁶ These studies generally look at the direct economic benefits and costs of legal aid, and some indirect benefits attained predominately in the areas of homelessness and domestic violence prevention.⁵⁷ Most of these studies rely on a set of conservative assumptions, quantifying only the directly observable tangible costs and benefits of legal aid that are most likely to be realized.⁵⁸

30. Most CBAs follow the standard method of calculating the direct monetary benefits and costs from the provision of legal aid services. The calculation of direct benefits usually involves the sum of retroactive awards and new benefits won by the clients of legal aid, as well as the anticipated future

benefits.⁵⁹ Total direct monetary benefits are computed by multiplying reward amounts by the number of beneficiaries and average duration of each type of benefits.⁶⁰ The calculation of direct costs associated with the provision of legal aid is also straightforward. The figures are usually obtained directly from the providers of legal aid and typically include all sources of revenues within a jurisdiction of interest.⁶¹

31. The calculation of indirect benefits of legal aid for CBAs generally requires more expert knowledge and evidence on the subject. Most CBAs only consider direct costs such as damaged property or medical costs, but some also account for indirect costs such as pain, suffering, fear, and reduced quality of life. When included, these costs are often drawn from existing literature on the cost of victimization. For CBAs of domestic violence legal aid programs, numerous studies in the U.S. utilize the cost of victimization provided by a renowned CBA study in the U.S. State of Wisconsin.⁶² That study finds that each prevented incident of domestic violence

56 States that undertook economic impact analyses of their legal aid systems include Alaska, Arizona, Arkansas, California, Florida, Georgia, Iowa, Illinois, Louisiana, Maryland, Massachusetts, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, and Virginia. In part, the decision to utilize these evidence-based practices was driven by the need to preserve and even extend funding for legal aid programs in times of historic budgetary pressures, by showing decision makers that the work of legal aid services reaches beyond the clients served.

57 Ibid.

58 Ibid.

59 For the purpose of comparison, future streams of benefits are discounted to arrive at a present value.

60 The information on the duration of benefits can be obtained from legal documents.

61 In the case of U.S. CBAs, the direct costs typically cover all in-state revenues of legal aid providers, such as state or local tax dollar support, contributions from other organizations within the state, as well as voluntary donations.

62 See Liz Elwart, et al., “Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program,” *Wisconsin Access To Justice Committee Report*, December 2006, <http://www.nlada.org/DMS/Documents/1176146724.92/>.

saves US\$3,201 in avoided medical care, mental healthcare, lost productivity, and property damage costs.⁶³

32. Using these research findings as well as other data sources, CBA studies in the U.S. States of Tennessee (2015) and Illinois (2012) estimate the costs of an avoided domestic violence incident to be US\$10,620 and US\$16,599 respectively. This includes a wide range of impacts brought on by domestic violence, including intangible losses.⁶⁴ Other studies apply more conservative estimates for the cost of domestic assault,⁶⁵ factoring in only the cost of medical and mental health care, estimated at US\$816 per incidence of abuse.⁶⁶ As shown, the cost estimates of domestic violence vary widely across CBA studies, depending largely on the range and nature of impacts included in the cost of domestic abuse.⁶⁷

33. Among the indirect benefits are those derived from the so-called multiplier effect. An inflow of extra money into the community because of legal aid can support additional economic activity, which generates more income, which in turn leads to more spending, more income and so on. The multiplier effect analyses have generally been conducted under a set of conservative assumptions, with expert opinions given great consideration.⁶⁸ The overall multiplier effect varies depending on the size of the community where the legal aid services are provided, as well as the spending patterns of the civil legal aid organizations and their clients.⁶⁹ It is also commonly known that at lower income levels, an increase in income is likely

An inflow of extra money into the community because of legal aid can support additional economic activity, which generates more income, which in turn leads to more spending, more income and so on.

to result in more spending. This is because low-income households, which are the typical recipients of legal aid, tend to spend most of their income instead of saving it. Also, spending by low-income households typically takes place within their own communities rather than outside of them, which adds to the potential multiplier effect of legal aid interventions.⁷⁰

34. When accounting for the multiplier effect, most U.S. CBA studies show substantial economic benefits from the provision of legal aid. A CBA of civil legal aid in Maine found that every dollar coming into the state (e.g. recovered federal benefits, income tax refunds and reductions for the legal aid clients, as well as federal grants to the providers of legal aid) generates about one extra dollar through multiplier effects. The statewide monetary impacts associated with one-to-one civil legal aid services totaled an

estimated \$37 million in 2015, including US\$6.6 million in federal dollars received and US\$6.7 million from their associated multiplier effects.⁷¹ A CBA of legal aid in the U.S. State of Texas found a sizeable benefit to the Texas economy: it estimated that for every dollar spent on the provision of legal aid services, the state economy gains US\$7.48 in overall spending, US\$3.56 in gross product, and US\$2.22 in personal income.⁷² None of the studies, however, attempted to determine the correct multiplier for various types of legal aid benefits,⁷³ but instead relied on the Bureau of Economic Analysis Regional Input Output Multiplier System⁷⁴ and the respective regional multipliers⁷⁵ for the quantification of such net benefits.

35. Some CBAs adopt a more tailored approach to estimating the costs and benefits of legal aid. In many instances, the need is prompted by the wide range of legal aid services, the valuation

63 Ibid., p. 13. See Minnesota 2013 (p.13), New York City 2010 (p. 26), Virginia (p.6), and Montana 2015 (p. 17).

64 See Tennessee 2015, (p. 12); Illinois 2012 (p. 14). The per-incident cost of assault used in the analysis captures the losses in workplace productivity, lost income, medical and mental health treatment expenses, costs of social services, law enforcement, and justice system costs.

65 See Maryland 2013, p. 13.

66 Ibid. The studies use the average cost of US\$816 for medical and mental health care resulting from a physical assault, referring to Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, *Costs of Intimate Partner Violence Against Women in the United States*, March 2003, <https://www.cdc.gov/violenceprevention/pdf/ipvbbook-a.pdf> (DHHS study).

67 For instance, when the quality of life is incorporated into the analyses, the cost of a domestic violence incident can average as much as US\$26,000 (Wisconsin study).

68 See Iowa Legal Aid, *The Economic Impact of Iowa Legal Aid*, January 2013, <http://www.iowalegalaid.org/files/A3ED30CF-AFFE-7431-9310-0D521E4312AF/attachments/CF9C722F-986A-48F4-A399-D664E1837D79/economic-impact-study-1-22-13.pdf>. The decision to apply a multiplier of 1.25, a lower bound of the 1.25-1.4 multiplier range found by Iowa State Professor of Economics David Swenson, was made by the authors based on the conservative assumption, implying that “each new dollar brought into Iowa as a result of Iowa Legal Aid’s work results in an additional 25 cents of economic activity”; Feelhaver et al., *The Economic Impact of Legal Aid of Nebraska* (March 2008), [available at <http://legalaidresearch.org/wp-content/uploads/Research-The-Economic-Impact-of-Legal-Aid-of-Nebraska.pdf>] The researchers used a multiplier of 2.0, finding it to be “conservative when compared to basic industries” for Nebraska.

69 See generally Paola Cavallari, Matthew D. Devlin and Rebekah A. Tucci, *Justice Measured: An Assessment of the Economic Impact of Civil Legal Aid in Arkansas*, October 2014.

70 See Laura K. Abel & Susan Vignola, “Economic and Other Benefits Associated with the Provision of Civil Legal Aid,” 2010, *Seattle Journal for Social Justice*. Vol. 9: Iss. 1, Article 5., p.p. 142-143 available at <https://digitalcommons.law.seattleu.edu/sjsj/vol9/iss1/5>

71 See Todd Gabbe, *Economic Impact of Civil Legal Aid Services in Maine*. Maine’s Justice Action Group, November 2016.

72 The Perryman Group, *Current and Potential Economic Benefits of Legal Aid Services in Texas: 2013 Update*, February 2013.

73 See Supra note 72.

74 “Multiplier models” or input-output models are often used to trace individual changes in final demand through the economy over short periods of time. These multipliers can generally be applied to all federal funds coming into a state, including federal grants that are used to finance the provision of legal aid services and federal benefits recovered on behalf of legal aid clients.

75 See Jonah Kushner, *Legal Aid in Illinois: Selected Social and Economic Benefits*, July 2012, http://iejf.org/wordpress/wp-content/uploads/LegSrvs_Report_120717.pdf. The researchers applied the retail trade sector multipliers to model the impact of Social Security, Temporary Assistance to Needy Families (TANF), veterans’ benefits and IRS tax awards. Similarly, the real estate sector multipliers were applied to rental assistance awards, and multipliers for the ambulatory care services sector were used for Medicare and Medicaid awards.

of which could not easily be performed on an individual basis. For example, a CBA of the Community Advice Offices (CAOs) in South Africa⁷⁶ adopted a contingent valuation Willingness To Pay (WTP)⁷⁷ approach to the CAO's service users. By following this approach, a total of 186 service users were asked about the amount of annual contribution they would be willing to offer, if legal advice services were not provided for free. The users were also asked about the amount they would be willing to offer for the service they received on the day of the interview. The main assumption of the evaluation was that users are sufficiently informed about what value the CAO brings and that their willingness to pay to keep it in operation would be a reasonable proxy for the benefits it provides. This South Africa study demonstrates alternative ways to estimate the benefits of legal advice that are not easily to be monetized.

SECTION 3: EMERGING TRENDS OF CBAs

CBAs OF LEGAL AID PROGRAMS: PRE-TRIAL DETENTION, LEGAL ADVICE, LEGAL REPRESENTATION AND ALTERNATIVE DISPUTE RESOLUTION

36. Legal aid can make the justice system more cost-efficient and equitable. Economic research suggests that there are several channels of transmission through which the justice system can become more cost-efficient and equitable as a result of the provision of legal aid. In the case of the criminal justice system, a functioning legal aid delivery system may help reduce the length of time suspects are held in police stations and detention centers.⁷⁸ In addition, it can contribute to a reduction in the prison population, the number of wrongfully convicted persons, as well as the prevention of crime by increasing awareness of legal rights among marginalized groups. Legal aid in civil, administrative and family justice systems can also make them more efficient by resolving legal problems at early stages through alternative dispute resolution mechanisms, as well as by reducing the time spent by courts on otherwise self-represented litigants.

37. A growing number of CBAs argue that the provision of legal aid can bring cost savings to the justice system. These include the avoidance of pre-trial detention,⁷⁹ avoided sentencing costs, and efficiency gains for the courts via reduced time spent on self-represented litigants. More easily quantifiable evidence includes

savings to the justice system from the reduced number of people held in pre-trial detention. In this example, the costs of detention are generally observable and can be linked to the number of detainees. When legal aid is accessible and arbitrary detention is avoided as a result, the calculation of savings realized is relatively straightforward. Other economic benefits to the justice system, such as increased public trust in the rule of law, are more difficult to calculate. However, depending on the political context of the country (e.g., fragile and conflict affected settings), neglecting those variables can significantly underestimate the overall benefits of the legal aid delivery system.

38. Within this line of work, some studies analyzed the costs and benefits attributable to alternative dispute resolution, legal advice and legal representation in courts. For example, in Uganda⁸⁰ a CBA was conducted of the National Legal Aid Policy (NLAP) with the aim of expanding early access to dispute resolution mechanisms for indigent, marginalized and vulnerable groups through greater use of paralegals⁸¹ and students in law clinics as legal aid providers. Land disputes, especially for women, were identified as a key priority of legal aid in the country. To conduct the CBA, the study relied on various sources of information, such as desks reviews, interviews with various stakeholders, relevant baseline surveys, as well as the available literature on the costs and benefits of legal aid in the African context. The benefits and costs of legal aid identified in the study included:

- a. cost savings to police by reducing avoidable detentions at police stations;
- b. cost savings to prisons by reducing populations in pre-trial detention and remand;
- c. cost savings to courts through fewer self-representing litigants and the number of cases diverted from the courts system;
- d. employment related benefits (post detention);
- e. cost savings from using paralegals compared to legal officers at magistrate districts;
- f. pro-bono services;
- g. cost savings to individuals from resolved land dispute cases, and;
- h. direct budgetary costs of legal aid services.⁸²

In addition, the study mentions other commonly identified social and economic costs of pre-trial detention to low-income individuals and their families, such as loss of income, suspension of education, loss

76 See YD Davids et al, *Community advice offices: Making a case for public funding*, September 2015.

77 See: <https://marketbusinessnews.com/financial-glossary/willingness-pay-definition-meaning/>.

78 See generally Dandurand, Yvon and Jahn, Jessica, *A Feasibility Study on Measuring Economic Impact of Criminal and Immigration and Refugee Legal Aid in Canada Issues, Options and Recommendations*, 2018, 10.13140/RG.2.2.30042.18882.

79 High rates of pre-trial detention are particularly evident in low income countries and states emerging from conflict. According to the Institute for Criminal Policy Research (ICPR), pre-trial detainees account for 86 percent of the prison population in Bolivia, 83 percent in Liberia, and 74 percent in Bangladesh. It has been estimated that globally about 3 million people or one third of the global prison population are held in pre-trial detention at any given time (Open Justice Foundations).

80 See Legal Aid Service Providers' Network, *Cost Benefit Analysis of the Uganda National Legal Aid Policy*, May 2016, <http://www.laspnet.org/joomla-pages/reports/research-reports/405-cost-benefit-analysis-of-the-uganda-national-legal-aid-policy/file>.

81 A paralegal is generally referred to as a person who is not a fully qualified lawyer, but capable of providing some or all of the services that are provided by fully qualified lawyers. The reliance of paralegals as legal aid providers has been growing in many regions of the world, particularly in developing African countries. See generally the *Kampala Declaration on Community Paralegals*, available at https://namati.org/wp-content/uploads/2015/02/Kampala_Declaration_on_Community_Paralegals.pdf.

82 Ibid. See pp 34-44 for further reference, *Cost Benefit Analysis of the Uganda National Legal Aid Policy*.

of housing, exposure to disease, and psychological abuse. However, these benefits are described generally as a way to strengthen the case for the legal aid intervention, but are not monetized and so do not influence the empirical results of the CBA.

39. The provision of legal aid through alternative dispute resolutions, legal advice, education and representation also generated significant benefits for women, children and marginalized communities in Bangladesh. Through 453 legal aid clinics in 63 out of 64 districts across the country, the Human Rights and Legal Aid Services program reported the following results: (i) 90,118 people were made aware of human rights and received basic legal education, (ii) 28,000 complaints were received at legal aid clinics, with 18,656 resolved through alternative dispute resolutions, (iii) 2,023 cases of violence were reported and (iv) more than US\$ 5million recovered in favor of legal aid clients.⁸³

40. In Liberia, an impact evaluation⁸⁴ of a pro bono legal aid program found that legal aid for marginalized groups had significant and positive impacts on legal case outcomes, as well as significant downstream economic effects, including on household and child food security.⁸⁵ Another study in Liberia measured the effects of mediation services and found that land disputes were 29 percent less likely to remain unresolved, property destruction was lowered by 32 percent, and disputants were 10 percent more satisfied with outcomes.⁸⁶

41. Several studies demonstrate that legal aid can deliver substantial savings to the government by reducing expenditure on other public services or by avoiding or limiting the use of state resources. For example, a study from the U.K. examines how adverse consequences associated with civil justice problems, and the downstream costs for other public services, can be mitigated by legal advice.⁸⁷ Using data from the justice survey and the outcome data from legal aid work, the study finds that:

- for every £1 of legal aid expenditure on housing advice, the state potentially saves £2.34;
- for every £1 of legal aid expenditure on debt advice, the state potentially saves 2.98;
- for every £1 of legal aid expenditure on advice relating to social welfare entitlements, the state saves £8.80;
- for every £1 of legal aid expenditure on employment advice, the state saves £7.13.

The CBA model builds upon three main variables: (i) the incidence of adverse consequence amongst legal aid clients, (ii) the cost of adverse consequences⁸⁸ on other public services, and (iii) the link between receiving advice with a positive outcome⁸⁹ and avoidance of adverse consequences. The authors then calculate the total cost to the government for those people receiving legal aid who would experience adverse consequences. The cost of prevented adverse consequences because of legal advice is calculated by adjusting the total costs by the percentage of legal aid recipients who had a positive outcome. Total savings (overall costs minus the cost of prevented adverse consequences) are adjusted for the cost of legal aid to arrive at the savings to the government per type of legal aid advice.

42. An assessment of legal aid in Scotland also points to significant social returns on investment.⁹⁰ That study concluded that, for a period of up to 12 months following legal aid:

- Every £1 spent on legal aid in housing cases saw a return of around £11;
- Every £1 spent legal aid in criminal or family cases saw a return of around £5.

Across these three areas, at least 80 percent of the net benefits accrued to the legal aid clients. For the clients, quantified benefits included: avoided eviction; avoided custodial sentences (including avoided loss of income); more and better prospects of employment; and better health and family relationships. For the justice system, the quantified benefits included: fewer cases going to court; fewer custodial sentences and incarceration costs; and reduced public spending on social services, including homelessness. Another study in Indonesia⁹¹ showed that community-based justice can also reduce public spending by limiting the use of state resources on other services.⁹²

83 See the 2018 BRAC annual report for Bangladesh, *Human Rights and Legal Aid Services*, p. 28, <http://www.brac.net/sites/default/files/annual-report/2018/Bangladesh-Annual-Report-2018.pdf>. BRAC is a leading NGO that works to empower the poorest and most vulnerable in Bangladesh and eleven other countries across the world.

84 An impact evaluation applies rigorous methods to determine the changes in outcomes which can be attributed to a specific intervention. It differs from a CBA in that it focuses on the causal impact of an intervention, it is always done ex post, and it does not necessarily assess the economic viability of the intervention or quantify all costs and benefits. Impact evaluations can, however, inform CBAs, particularly where they demonstrate socio-economic impacts of legal aid. In this spirit, examples of impact evaluations are included in this study for the reader's reference.

85 See Bilal Siddiqi and Justin Sandefur, *Delivering Justice to the Poor: Theory and Experimental Evidence from Liberia*, March 2015, https://editorialexpress.com/cgi-bin/conference/download.cgi?db_name=CSAE2013&paper_id=1014.

86 See Blattman et. al., How to Promote Order and Property Rights under Weak Rule of Law? An Experiment in Changing Dispute Resolution Behavior through Community Education, 2014, *American Political Science Review*, 108(1), 100-120. doi:10.1017/S0003055413000543, available at <https://chrisblattman.com/documents/research/2014.ImprovingOrder&PropertyRights.APSR.pdf>.

87 See The National Association of Citizens Advice Bureau, *Towards a business case for legal aid*, July 2010, available at https://www.accesstojusticeactiongroup.co.uk/wp-content/uploads/2011/07/towards_a_business_case_for_legal_aid.pdf.

88 Ibid., this is estimated on the basis of the percentages of respondents who reported particular adverse consequences times and the average cost of an adverse consequence to the government.

89 Ibid., the case data used for the CBA included information on the outcome for the legal aid client. This analysis assumes that getting a substantive benefit for a client means that the adverse consequences of the civil justice problem are avoided.

90 See Hammond, Clare, Vermeulen, Inga, *Social Return on Investment in Legal Aid*, 2017, Rocket Science UK Ltd commissioned by the Law Society of Scotland, <https://www.lawscot.org.uk/media/359230/social-return-on-investment-in-legal-aid-technical-report.pdf>.

91 See Berenschot W., Rinaldi T. *Paralegalism and Legal Aid in Indonesia: Enlarging the Shadow of the Law*, 2011, available at http://namati.org/wp-content/uploads/2013/12/Paralegalism-and-Legal-Aid-in-Indonesia_Final-Report.pdf.

92 Ibid., analysis of 338 cases in Indonesia showed that paralegals in Indonesia often found alternative solutions that minimized the need to involve police, mediating between conflicting parties in 54 percent of cases reviewed.

43. Several studies⁹³ suggest that legal aid can have a significant positive impact on pre-trial detention and the justice system. Examples from across the globe⁹⁴ show that early intervention schemes can reduce the use of pre-trial detention, improve the performance of the criminal justice system, and increase accountability and respect for the rule of law. An impact evaluation of legal aid in three target districts of Sierra Leone found that the pilot secured bail for about 50 percent of people assisted in police stations. In addition, in 28 percent of the cases, the charges were dropped, usually due to errors of identity, the misunderstanding of facts, or a lack of evidence.⁹⁵ As a result, within nine months of operation and with only ten paralegals on duty, the pilot secured the release of approximately 80 percent of people from pre-trial detention at police stations. A similar project aimed at providing early access to legal aid on pre-trial detention was introduced in Nigeria in 2005.⁹⁶ The project sought to reduce both the number of pre-trial detainees as a proportion of the overall prison population and the average duration

of detention. Within its first year of operation, the project recorded significant successes in terms of the numbers of persons released or diverted from pre-trial custody (611 detainees⁹⁷) and police stations (644 persons), as well as in the average duration of pre-trial detention (the average length of detention declined from 609 days to 171 days as a result of the project).

44. Another example of the impact of legal aid on pre-trial detention comes from a project carried out by the Paralegal Advisory Service (PAS) in Malawi.⁹⁸ The initial purpose of PAS was to reduce unlawful detention and prison overcrowding. During the first four years of its operation PAS contributed to the release of approximately 2,000 prisoners, reduced substantially the number of persons unlawfully remanded in prison and stabilized the remand population at 22 percent compared to 50 percent before the project was implemented. In addition to the reduction in the remand population, paralegals benefited the criminal justice system in many other ways: (i) about 100,000 prisoners were enabled to represent themselves in court, argue for bail or enter a plea to the charges against them; (ii) the number of illegal remand warrants used by police declined significantly because of the routine administrative checks brought by the project; (iii) 354 juveniles were diverted out of

93 It should also be noted that most of these studies are impact evaluations that did not attempt to quantify all the costs and benefits of legal aid programs under consideration. Nevertheless, they provided important evidence on the outcome of legal aid interventions, as well as their magnitudes that could be regarded as an important milestone for a hypothetical CBA.

94 See generally Open Society Foundations, *Improving Pretrial Justice: The Roles of Lawyers and Paralegals*, 2012, <https://www.justiceinitiative.org/uploads/ce76d68b-747d-4743-a594-4cd18d1759cb/improving-pretrial-justice-20120416.pdf>.

95 See Open Society Foundations, *Improving Pretrial Justice in Sierra Leone*, <https://www.justiceinitiative.org/publications/socioeconomic-impact-pretrial-detention-sierra-leone>

96 See Anthony Nwapa, *Building and Sustaining Change: Pretrial Detention Reform in Nigeria in Justice Initiatives: Pretrial Detention*, Open Society Institute, 2008, https://www.opensocietyfoundations.org/sites/default/files/Justice_Initiati.pdf

97 *Ibid*, this also represents a 19.6 percent decrease in the baseline number of persons awaiting trial in the pilot states.

98 See Clifford Msiska, *On the Front Lines: Insights from Malawi's Paralegal Advisory Services in Justice Initiatives: Pretrial Detention*, Open Society Institute, 2008, https://www.opensocietyfoundations.org/sites/default/files/Justice_Initiati.pdf



the criminal justice process; and (iv) savings to the justice system resulting from prisoners entering informed pleas to their charges. Another positive impact of a paralegal program was found in the case of Bangladesh, where a program operating in three prisons resulted in the release of 700 unnecessary detained prisoners in just one year.⁹⁹

45. The excessive use of pre-trial detention also comes at a heavy socio-economic cost to defendants, their families and society at large, which can be mitigated through the effective provision of legal aid.

Ineffective and corrupt penal systems are most damaging to the poorest and foster inequalities in society. Reports from around the world indicate that those entering pre-trial detention come predominantly from the poorest and most marginalized groups of society, who are also least prepared to encounter the criminal justice process, but more likely to be detained awaiting trial, and less able to make bail or pay bribes for their release.¹⁰⁰ Excessive and arbitrary pre-trial detention comes with a wide range of socioeconomic shocks to detainees and their families—pre-trial detainees may lose their job and be forced to abandon their education or be evicted from their homes. In addition to direct economic costs, detention imposes significant yet difficult-to-quantify costs on individuals, including the loss of liberty, dignity, damaged reputation and disruptions to family life, including multi-generational effects. The over-use of pre-trial detention also makes the communities worse off, depriving them of income-earners and, in some cases, exposing them to communicable diseases contracted in detention facilities.¹⁰¹ Releasing detainees may also come at cost (such as the costs-imposed if these individuals commit crimes similar to those for which they are accused while on bail). But even when the costs associated with the risk posed by each defendant to commit a crime during their pre-trial releases are taken into account, some studies still find significant societal benefits (approximately US\$78 billion in economic value).¹⁰²

A study from the U.S. State of Kentucky found that every US\$1 spent on legal aid to secure a domestic violence protective order generated US\$32 in avoided costs for society.

46. Some studies focus only on the net efficiency benefits of legal aid for the courts.

An example comes from a CBA analysis conducted by PricewaterhouseCoopers (PwC) for the National Legal Aid in Australia.¹⁰³ That study focused exclusively on quantifying the direct costs and benefits of legal aid which accrue to the efficiency of the court system. It did not attempt to quantify benefits to clients, the community or the broader economy/society. Moreover, the report focused only on legal representation, dispute resolution services, and duty lawyer services, and did not account for other services, such as legal advice, information and education, though it also noted that these net benefits would be expected to be significant, particularly because they provide early intervention and prevent unnecessary escalation of matters

through the system. The costs were measured in terms of the funding provided for legal aid services. The savings to courts were measured based on the average court costs per type of outcome.¹⁰⁴ Key areas of efficiency savings included:

- the resolution of legal issues at an early stage* and streamlining of matters appropriately through the justice system;
- the diversion of cases away from the courts* through the provision of dispute resolution mechanisms;
- the increased efficiency of court processes* by having duty lawyers on hand to *help self-represented litigants to address the court* and present relevant information, and;
- the increased efficiency of the court associated with otherwise *self-representing litigants having legal representation*.

The study finds the net efficiency benefits to the courts of providing legal aid to be in the range of AUD\$15.86 million to AUD\$32.90 million per annum.

47. Another study finds that legal workshops and clinics provided to self-represented litigants can produce cost savings for courts and litigants.

This was shown by research conducted in the six trial courts of California's San Joaquin Valley. The study found that courts that provided legal aid services through a workshop managed to reduce the number of court hearings and staff time, and that only US\$0.23 was spent on legal aid for every dollar of overall savings for the courts. When benefits to litigants were taken into account, the

99. *Supra* note 82, page 46.

100. See Teresa Garcia Castro, *Pretrial Detention in Latin America: the Disproportionate Impact on Women Deprived of Liberty for Drug Offenses*, June 2019, https://www.wola.org/wp-content/uploads/2019/05/Pretrial-detention-in-Latin-America_June-2019.pdf; See also Penal Reform International, *Global Prison Trends 2018 (May 2018)*, available at https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Global-Prison-Trends-2018_EN_WEB.pdf.

101. See Open Society Foundations, *The Socioeconomic Impact of Pretrial Detention* (February 2011), available at <https://www.justiceinitiative.org/uploads/84ba76d-0764-42db-9ddd-0106dbc5c400/socioeconomic-impact-pretrial-detention-02012011.pdf>.

102. See Shima Baradaran, "Cost of pretrial detention," *Boston University Law Review*, Boston University, School of Law, January 2017, <file:///C:/Users/wb402468/Downloads/costsofpretrialdetention.pdf>.

103. PricewaterhouseCoopers, 2009, *Economic Value of Legal Aid. Analysis in relation to Commonwealth funded matters with a focus on family law*, available at http://legalaidact.org.au/sites/default/files/files/publications/economic_value_of_legalaid.pdf.

104. *Ibid.*, pp. 32-34. See also Australian Government, 2009, *Productivity Commission, Inquiry Report*, Volume 2, pp. 1060-1062 on a review of the study and issues with its assumptions, available at <https://www.pc.gov.au/inquiries/completed/access-justice/report/access-justice-volume2.pdf>.

THE COST SAVINGS OF LEGAL AID FOR HOMELESS PEOPLE IN PHILADELPHIA

If the city of Philadelphia invested \$3.5 million per year to fund counsel for low-income tenants, the city would save \$45.2 million per year in other costs and expenses.

Annual savings consist of:

- \$26 million in shelter costs for newly homeless persons
- \$7.5 million in in-patient hospital costs
- \$1 million in emergency room treatments
- \$7.5 million in mental health costs

Philadelphia Bar Association's Civil Gideon and Access to Justice Task Force, November 2018

costs dropped to US\$0.13 for every dollar of savings. Additionally, courts that provided one-on-one assistance and information services to litigants saved at least 5 to 15 minutes of hearing time for every hearing held, and 1 to 1.5 hours of court staff time related to aiding self-represented litigants. The court savings as a result of the legal aid program ranged from a high of US\$0.55 to a low of US\$0.36 for every dollar saved. If the cost savings to litigants were included, the overall costs decline to a range of US\$0.33 to US\$0.26 for every dollar of savings. Finally, assistance to self-represented litigants in resolving cases at the first court appearance reduced the number of future court hearings, as well as their costs.¹⁰⁵ The cost of the self-help services was about US\$0.45 for every dollar of savings, declining to US\$0.14 for every dollar saved when the cost savings to litigants were included.

CBA'S OF SPECIFIC LEGAL AID PROGRAMS: DOMESTIC VIOLENCE LEGAL AID

48. Overall, the most common type of legal problem covered by legal aid CBAs focuses on domestic violence. Most of these studies follow a comprehensive cost-benefit analysis framework. So in addition to the direct benefits, these studies identify and quantify the indirect benefits attributable to the prevention of legal problems. Among the CBAs surveyed for this study, there are three commonly identified types of positive impacts arising from reductions in the incidence of domestic abuse:

- The predominantly direct/tangible benefits to victims of domestic violence;
- The savings in the cost of emergency shelters for survivors of domestic abuse, and;
- The benefits to children by protecting them from the negative consequences of domestic violence.¹⁰⁶

49. Much of the domestic violence research looks at “improved safety” in terms of “civil protective orders obtained” or “rates of re-abuse.”¹⁰⁷ A study from the U.S. State of Kentucky examined the impact of civil protective orders on victims of domestic violence. To evaluate the intervention, the authors quantified the economic costs of partner violence six months before a protective order was issued and six months afterwards.¹⁰⁸ The estimated costs were focused primarily on direct costs related to service utilization, including health and mental care services, legal services, and civil and criminal courts. Indirect costs related to lost opportunities to work and perform other duties, loss of quality of life, property losses and time spent on transportation.¹⁰⁹ Findings from the study suggested that protective orders made a difference in terms of safety, fear levels and cost savings. The relative cost of a protective order was found to be small compared to the total costs associated with partner violence.¹¹⁰ Overall, the study found that for every US\$1 spent on the protective order, there were US\$32 in avoided costs for society.

50. A similar study was conducted in the U.S. State of Wisconsin¹¹¹ to inform a decision on legal aid funding for victims of domestic violence. The study assumed that a legal aid service was successful if an effective restraining order was granted, meaning that it prevented at least one violent attack per victim. According to the study, this was a conservative assumption given that the average victim is assaulted an average of 3.4 times per year.¹¹² Among the primary costs and benefits used in the model, the authors included the direct costs of the legal aid program, the victims' loss of access to their abusers' income, and the cost-savings to victims of preventing abuse, including the avoided costs of medical care, mental

¹⁰⁶ See Supra note 56.

¹⁰⁷ None of those studies, however, attempts to measure the “improved safety” as such. Although not measured empirically, many studies point to consistent victim satisfaction with restraining orders. These findings are supported by other studies that find that “restraining orders do not appear to significantly increase the risk of re-abuse and may deter some abusers” See e.g., Jane Murphy, “Engaging with the State: The Growing Reliance on Lawyers and Judges to Protect Battered Women,” 11 *Am. U. J. Gender Soc. Pol'y & L.* 499, 2003, p. 504 available at <http://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1404&context=jgspl>.

¹⁰⁸ TK Logan et al., *The Kentucky Civil Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, & Costs*, University of Kentucky, September 2009, <http://www.ncjrs.gov/pdffiles1/nij/grants/228350.pdf>.

¹⁰⁹ In order to construct cost estimates, victims of domestic abuse were asked to report their services utilization, including services used because of the abuse, time lost from work, as well as any property losses stemming from the abuse, during the six months before and after the issuance of the protective order.

¹¹⁰ Ibid.

¹¹¹ Wisconsin report. Liz Elwart, et al. “Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program,” *Wisconsin Access To Justice Committee Report*, December 2006.

¹¹² Ibid., p. 12.

¹⁰⁵ See Greacen John, *The Benefits and Costs of Programs to Assist Self-Represented Litigants*, May 2009, http://www.courts.ca.gov/partners/documents/Greacen_benefit_cost_final_report.pdf.

health care, lost income, lost quality of life and property damage. Total benefits or avoided costs were adjusted further for the effectiveness of a restraining order of 40 percent to arrive at an estimate of US\$20.6 million. When total costs were taken into account (about US\$10.7 million, including the costs of the proposed program, as well as costs associated with losing access to abuser's income), the net benefit of expanding the legal aid program was estimated to be US\$9.8 million.

51. Given the inherent uncertainty surrounding estimates of costs and benefits of domestic violence legal aid, some studies have conducted additional robustness checks to corroborate the findings. To assess the robustness of estimates of avoided costs to the victims of domestic violence, CBA studies have utilized various modelling techniques, including Monte Carlo¹¹³ sensitivity analysis and worst-case scenario analysis. Monte Carlo analysis was applied to assess the program's outcome under various changes in the model's inputs (e.g., changes in the number of victims of domestic violence, the proportion of victimizations that are rape or physical assault, the number of effective restraining orders in deterring

future domestic violence attacks, the increase in the number of victims served by the legal aid program, and the increase in the number of restraining orders granted).¹¹⁴ The results indicated mean net benefits of \$9.1 million, with minimum benefits of \$600,000 and maximum benefits of \$27.5 million. The mean net benefits from the Monte Carlo sensitivity analysis were still high, indicating an economically viable program even given the uncertainty of some parameters used in the model. Under the worst-case scenario, the authors looked at the lowest possible benefits yielded by the legal aid program subject to the minimum value of the model parameters (except the percent of victimizations that were physical assaults, which was at its maximum in the worst-case scenario). When the worst-case outcomes were considered, the legal aid program was still yielding net benefits of about \$344,000, suggesting that the program expansion would still be economically viable.¹¹⁵

52. Alternative social services can also reduce the probability of future domestic violence. Some studies demonstrate that women's access to alternative social services, including legal assistance, can reduce the probability of future domestic violence. In an effort to explain the causes behind a decrease domestic violence in the

113 Monte Carlo is a statistical technique that uses sampling and probability distribution to simulate the effects of uncertain variables on model outcomes. The advantage of this method is that it gives insights into the cumulative effect of multiple sources of uncertainty on each of the costs and benefits, including possible interactions between them.

114 *Ibid.*, supra note 110, pp. 14-15.

115 *Ibid.*, supra note 110, p. 16.



U.S. during the 1990s, Amy Farmer and Jill Tiefenthaler empirically explored the linkages between an individual woman reporting abuse and relevant individual and county-level characteristics, including the availability of legal assistance programs in the counties.¹¹⁶ The study found that women who lived in counties with legal assistance programs designed to help women victim of domestic violence were significantly less likely to be victims of domestic violence and report abuse than women who lived in counties without aid.¹¹⁷ The study also found that other policy responses to domestic violence, namely “hotlines, shelters, safe homes, emergency transportation, and counseling programs,” did not contribute to the decline in domestic abuse,¹¹⁸ though they did provide some temporary safety nets to the victims. Overall, the study supported a continued expansion of civil legal aid services in communities, with the long-term benefit of reducing the incidence of domestic abuse.¹¹⁹

CBA OF SPECIFIC LEGAL AID PROGRAMS: FORECLOSURE LEGAL AID

53. A growing number of CBAs examine the impact of legal aid on eviction or foreclosure. As in the case of domestic violence and other CBAs, measuring the benefits of avoiding eviction or foreclosure requires an estimate of a favorable outcome achieved for the clients compared to a business-as-usual scenario without legal aid. By design, most legal aid housing programs include a range of predetermined positive outcomes that may be achieved for the clients (e.g., avoided eviction, obtained additional time, or avoided foreclosure). Whenever the outcome-to-case tracking is available, the existing studies rely upon that information to derive their outcome ratios.¹²⁰ In other cases, some general assumptions are made about the degree of success.¹²¹

54. Foreclosures avoided through legal aid can generate significant savings for individual homeowners and for neighboring low-income communities, by helping preserve home values in the area. CBA studies generally rely on cost-of-foreclosure literature to derive their estimates on the resulting reduction in property

values.¹²² A CBA for the U.S. State of Tennessee notes that every foreclosure may lead to a reduction in property value for the actual homeowners of as much as 43 percent, with an average reduction of nine percent in the property value of homes in the neighborhood.¹²³

56. By preventing foreclosures, local governments and communities may avoid unnecessary spending on maintenance, sheriff evictions, inspections, and the public safety of otherwise vacant and abandoned properties. These costs can be obtained from previous cases of foreclosure and relevant financial statements of government agencies.¹²⁴ Another cost to governments is a reduction in property tax revenues resulting from foreclosures.¹²⁵ The amount of property tax losses avoided due to the provision of legal aid can be calculated by multiplying the avoided reduction in assessed value per foreclosure by the property tax in the service area. As for costs saved by keeping people out of homeless shelters, the overall savings are determined by multiplying the number of cases in which foreclosure was avoided or eviction was prevented/delayed by the number of families in need of an emergency shelter and the average cost of emergency shelter per family.¹²⁶ According to the report, the average costs of shelter for first-time homelessness is between US\$1,634 and US\$2,308 for an individual and between US\$3,184 to US\$20,301 for a family. So, preventing foreclosures can avoid these costs as well.

116 See Amy Farmer & Jill Tiefenthaler, “Explaining the Recent Decline in Domestic Violence,” 21 *Contemporary Economic Policy* 158, 2003, https://www.cga.ct.gov/jud/tfs/20160729_Task%20Force%20to%20Improve%20Access%20to%20Legal%20Counsel%20in%20Civil%20Matters/Reference%20Materials/Explaining%20the%20Decline%20in%20Domestic%20Violence.pdf

117 *Ibid.*, pp. 10-12. In addition to the increased provision of legal assistance for victims of domestic violence, the authors report improvements in women’s economic status and demographic trends among the key factors contributing to the decline in the incidence of domestic violence during the period analyzed.

118 *Ibid.*

119 See Lou Marano, *Access to Legal Aid Lowers Domestic Abuse*, January 2003, United Press International, http://www.upi.com/Odd_News/2003/01/08/Access-to-legal-aid-lowers-domestic-abuse/UPI-20631042061919/.

120 Assumptions are generally based on the success rate of legal aid in avoiding/delaying eviction or avoiding foreclosure. See Tennessee 2015 (p. 10): by drawing on a scientific survey on legal aid in the U.S. State of Pennsylvania, the authors assume an outcomes ratio of 11 percent and 51 percent, for brief representation versus extended representation housing cases, respectively. See also Pennsylvania 2012 (p. 7).

121 This may also include “borrowing” the estimates from other studies. See Tennessee, 2015, http://www.tba.org/sites/default/files/2015-TN-Final%20Report%20Package_Consolidated%20Statewide_3-18-2015.pdf.

122 This includes the actual properties involved in foreclosure, as well as the immediate neighboring properties affected by the foreclosure.

123 See Ohio 2010 (p. 7). The study reports that each incidence of foreclosure may lower property values for other homes by as much as 2.1 percent, referencing Brien A. Mikelbank, November 2008. *Spatial Analysis of the Impact of Vacant, Abandoned, and Foreclosed Properties*, Federal Reserve Bank of Cleveland, <https://www.clevelandfed.org/newsroom-and-events/publications/special-reports/sr-200811-spatial-analysis-of-impact-of-vacant-abandoned-foreclosed-properties.aspx>; See also Tennessee 2015 (p. 7), Montana 2015 (p. 18) and North Carolina 2012 (p. 16). These studies reference Li Schloemer, Ernst and Keest. 2006. *Losing Ground: Foreclosure in the Subprime Market and The Cost to Homeowners*, Center for Responsible Lending, Table 6, available at http://www.peri.umass.edu/fileadmin/pdf/conference_papers/SAFER/Schloemer_etal_Losing_Ground.pdf; According to the study, homeowners impacted by nearby foreclosures experience on average a loss of US\$23,150 as a result of their proximity to the foreclosures.

124 *Ibid.*

125 *Ibid.*, see Tennessee 2015, p. 11.

126 The average cost of emergency shelter provision for one family is based on the length of stay (usually the number of days) and the cost of alternative housing in the area (e.g., the lowest cost of a hotel stay). Some studies (e.g., North Carolina 2012 and Montana 2015) derive their cost estimates for emergency shelter from a research study conducted by the Department of Housing and Urban Development. See U.S. Department of Housing and Urban Development, Office of Policy Development and Research, March 2010. *Cost Associated with First-Time Homelessness for Families and Individuals*, available at https://www.huduser.gov/publications/pdf/Costs_Homeless.pdf.

55. In addition to the foreclosure studies in the US, there is considerable literature on the benefits of legal aid and legal empowerment in land cases in the developing world, but no CBAs.¹²⁷ Literature highlights various benefits that can flow to poor households through better access to legal information about land titling, and legal advice and representation in land disputes, including early conflict resolution and the prevention of conflict

escalation, heightened security of land tenure, more productive use of land, improved household incomes, better food security, and better access to credit. There is also considerable qualitative evidence of the benefits of legal empowerment for women in the context of land titling, inheritance and land disputes arising from gendered land tenure practices. However, few cases have sought to quantify these benefits, and none appear to have used a CBA methodology. Lessons could be applied from the CBAs in other fields to develop CBAs of this type of legal aid.

¹²⁷ See Mueller et. al, *Filling the legal void? Impacts of a community-based legal aid program on women's land-related knowledge, attitudes, and practices*, Oxford Development Studies, 2018, 46:4, 453-469, DOI: 10.1080/13600818.2017.1414174; Robin Nielsen and Tim Hanstad, "Land-related legal aid in community driven development projects: lessons from Andhra Pradesh," 2008, *Agricultural and Rural Development Notes*, no. 37, Washington, DC: World Bank, <http://documents.worldbank.org/curated/en/234371468161671426/Land-related-legal-aid-in-community-driven-development-projects-lessons-from-Andhra-Pradesh>; Behrman et. al., "Evaluation of grassroots community-based Legal aid activities in Uganda and Tanzania: Strengthening women's legal knowledge and land rights," 2013, *CAPRI Working Paper No. 108*, Washington, D.C.: International Food Policy Research Institute, <http://dx.doi.org/10.2499/CAPRIWP108>; Massay, Godfrey, *Pillars of the community: How trained volunteers defend land rights in Tanzania*, London: International Institute for Environment and Development, 2016.



CHAPTER 3: HOW TO CONDUCT A COST BENEFIT ANALYSIS OF A LEGAL AID PROGRAM

This chapter offers guidance on how to structure and conduct a CBA of any legal aid or related program. Building on the explanations and categorization outlined in previous chapters, the following sections provide an overview of the fundamentals of legal aid CBAs and practical guidelines for implementing them.

SECTION 1: STRUCTURE AND FUNDAMENTALS FOR CONDUCTING YOUR OWN CBA

HOW TO STRUCTURE A CBA

57. The main objective of conducting a CBA is to identify the net benefit (benefits minus costs) of a policy in a standardized, comparable manner. Utilizing CBAs to assess the costs and benefits of a business investment is a well-known and widely recognized procedure. The use of CBAs in legal aid is not as common, but a growing number of countries and sub-national authorities across the world are beginning to see the importance of assessing the cost-effectiveness of their legal aid programs using the CBA framework. Existing CBAs either evaluate legal aid programs as a whole or assess the benefits of legal aid programs in a specific field (e.g., domestic violence, foreclosure and homelessness). In each evaluation, different costs and benefits must be taken into consideration.

58. As shown in Part 1, a CBA utilizes three main analytical blocks when assessing the viability of an investment. The first analytical block is estimation of what would be expected from the “do-nothing” (i.e., without-project) scenario. Second is development of the “with-project” scenario performed through a quantitative assessment of the costs and benefits of pursuing this alternative. Finally, a comparison of these two scenarios yields a stream of net benefits expected to occur at different stages of implementation of the legal aid program/policy. These benefits will be used to calculate a set of financial and economic performance indicators, to determine how effective the allocation of resources to the proposed legal aid program would be.

59. These blocks comprise a five-step technical procedure used to conduct the cost benefit analysis of a legal aid program:

STEP 1: Analyze the social, economic, political and institutional framework of the project in the selected jurisdiction.

STEP 2: Define the objectives and the monitoring and evaluation (M&E) indicators of the analysis, keeping in mind the existing demand for legal aid, including the special needs of the poorest and most vulnerable segments of society.

STEP 3: Conduct comparative financial analyses that weigh the costs and benefits of two alternatives: the “with-project” and “without-project” scenarios. Calculate the financial performance indicators.

STEP 4: Conduct comparative economic analyses that weigh the costs and benefits of two alternatives: the “with legal aid” and “without legal aid” scenarios. Calculate the economic performance indicators.

STEP 5: Undertake a risk assessment of the “with-project” scenario and analyze the possible effects on the financial and economic performance indicators.

THE FUNDAMENTALS OF A CBA

60. One of the important underlying principles of CBA is the incremental approach. This approach requires a comparison of the net benefits of the with- and without-project scenarios, i.e., the difference between implementing the project and leaving everything as is.¹²⁸ A practical example is offered in Box 1 on the following page. The box shows different alternatives for the provision of legal assistance on family law matters in Australia. The study considered three alternative scenarios: first, the existing level of legal assistance on family matters, second, the removal of all legal assistance and, third, the expansion of services).¹²⁹

¹²⁸ All costs and benefits must be converted to one unique currency to ensure comparability. Most often, such cases are encountered when legal aid is financed from a foreign-currency denominated donation while other costs and most of the benefits are generated in local currency. Also, prices are generally expressed in real terms rather than nominal since the use of nominal prices involves development of inflation rate projections which are seldom reliable enough.

¹²⁹ PricewaterhouseCoopers, 2009, *Economic Value of Legal Aid. Analysis in relation to Commonwealth funded matters with a focus on family law*, http://www.legalaidact.org.au/pdf/economic_value_of_legalaid.pdf.

BOX 1. THE PWC THREE-SCENARIO STUDY OF THE NET BENEFITS OF LEGAL AID ON FAMILY MATTERS IN AUSTRALIA

<p>In order to assess the benefits of legal aid, PwC investigated the impact of legal aid services on the costs and benefits of the Family Court in three scenarios:</p>	
<p>SCENARIO 1 Removing all existing legal aid services</p>	<p>OUTCOME: X litigants normally assisted by legal aid in court would now be self-representing litigants and the actual court costs would increase by Y%</p>
<p>SCENARIO 2 Maintaining the existing legal aid services currently provided by duty lawyers^{129a}</p>	<p>OUTCOME: X litigants normally assisted by legal aid in court would be self-representing and use duty lawyer services, and therefore actual court costs would increase by Y% - Z% where Z% is the efficiency gain from duty lawyer services</p>
<p>SCENARIO 3 Providing duty lawyers and legal representation in the court</p>	<p>OUTCOME: X litigants would normally be assisted with legal representation, so actual court costs wouldn't change</p>

^{129a} A duty lawyer is a lawyer who offers services on a volunteer basis. They often represent clients who meet income eligibility requirements.



61. The CBA of legal aid requires the calculation of three main metrics: the Net Present Value (NPV), the Internal Rate of Return (IRR) and the Cost Benefit Ratio (CBR). All costs and benefits must be discounted to the present value to ensure comparability. The NPV, also called Discounted Present Value, is the estimated current value of the future costs and benefits, discounted at an appropriate rate.¹³¹ The IRR is the percentage rate earned on each currency unit invested for each period it is invested¹³² and is used to assess the annual growth rate of an investment. Finally, the CBR is the ratio of the discounted benefits of a project or proposal, expressed in monetary terms, relative to its discounted costs, also expressed in monetary terms.

62. In applying the concept of discounting, it is crucial to select the proper discount rate. This would be the rate at which the estimated stream of future net benefits will be brought down to the present value. The choice of the level of discount rate should be driven by the opportunity cost of capital used to finance the particular program. This opportunity cost represents the returns foregone from not investing in another project with a similar risk profile. There are several ways of estimating the discount rate. One way is by using the “marginal direct cost of public funds,” which is usually proxied by the real return on government bonds. Alternatively, it can be estimated by considering the returns on a portfolio of a government’s financial assets that reflect the risk profile of the project under consideration. The discount rate for developed countries is normally in the range of 3 to 5 percent in nominal terms.

63. The time horizon (i.e., reference period) of a CBA should be the duration of the legal aid program. If done *ex-ante*, the CBA will typically consider the expected duration of the program/policy and should ideally be informed by the cost and benefit estimates taken from *ex-post* CBAs from existing and/or completed legal aid programs. A large majority of reviewed CBAs in the legal aid field are done for one year only. However, legal aid programs may take time to fully realize their true potential in terms of the benefits they bring to the economy and society. Alternatively, the final years of a program may see some tapering off in the level of gains citizens collect from these programs. Hence it is very important to include all years of the program duration to be able to capture these variations.

64. If the CBA is done over a multi-year period, the calculation of the present values of the costs and benefits should acknowledge the time value of money. As mentioned above, all future financial and economic flows should be brought down to the present value (PV) by using an appropriate discount rate. In both *ex-ante* and *ex-post* CBAs the costs and benefits of the project should be discounted to the value in the year zero (i.e., the year preceding the beginning of program implementation). This is essential to recognizing the different timing in the occurrence of various costs and benefits.

65. The first performance indicator of a legal aid CBA is the Net Present Value (NPV). The NPV of a project is simply the sum of the present value of benefits less the present value of costs for the entire duration of the project.¹³³ The NPV helps determine whether or not an investment opportunity is a smart decision. If the NPV is positive, that means that the project makes financial and/or economic sense. The opposite is true when the NPV is negative. When the NPV is 0, there is no gain or loss associated with the legal aid program.

66. Another performance indicator, showing the expected annual return on investment, is the Internal Rate of Return (IRR). The IRR, expressed as a percentage, is used in CBA to estimate the profitability of a potential investment. It is an indicator used together with NPV. The financial IRR, or Financial Rate of Return (FRR), is the percentage growth of the financial costs and benefits; the economic IRR, or Economic Rate of Return (ERR), is the percentage growth of the economic costs and benefits of a legal aid program. Projects are considered financially and/or economically viable if their IRR is higher than the rate used to discount cash flows expected as a result of project implementation (i.e., the rate used when calculating NPV). This rate is essentially considered as the cost of capital, while IRR represents the rate of return. Hence, positive net returns (i.e., IRR is higher than the discount rate) imply that the project will bring net benefits.

¹³¹ The discounted present value or present value (PV) or present worth provides a common basis for comparing investment alternatives. The present value is always less than or equal to the future value because money has interest-earning potential. This is a characteristic referred to as the time value of money, except during times of negative interest rates, when the present value will be more than the future value.

¹³² Robert Schmidt, *What is IRR and How Does it Work?* June 9, 2014, <https://www.property-metrics.com/blog/2014/06/09/what-is-irr/>

¹³³ The NPV is the present value (PV) of all the cash flows (with inflows being positive cash flows and outflows being negative), which means that the NPV can be considered a formula for revenues minus costs. If the NPV is positive, that means that the value of the revenues (cash inflows) is greater than the costs (cash outflows). When revenues are greater than costs, the investor makes a profit. The opposite is true when the NPV is negative. When the NPV is 0, there is no gain or loss.

67. Finally, to estimate the potential profitability of a project, one can calculate the third performance indicator, the Cost-Benefit Ratio (CBR). The CBR is the ratio of the benefits of a project or proposal, relative to its costs, with both expressed in monetary terms. The financial CBR is the ratio of the financial costs and benefits; the economic CBR is the ratio of the economic cost and benefits. If the ratio is greater than 1, the benefits are greater than the costs, and the project is economically viable.¹³⁴

68. Some governments—often in more advanced economies—will have a locally available CBA framework to follow and input parameters that are set in advance.¹³⁵ These guidelines usually contain input parameters that are required by all CBAs across the economy (e.g., the social discount rate and value of time). However, most often they contain little or no reference to investments in the judicial sector, and are more focused on sectors with large-scale investment projects (e.g., transport and energy). Section 2 below reiterates the common steps in conducting a CBA, which have appeared in other publications. However, its approach is adjusted to the needs of assessing legal-aid-related interventions (i.e., investments) and thus represents a useful supplement to the existing guidance material on CBAs.

69. Moreover, there is an ongoing global effort to standardize the way in which CBAs are carried out across different sectors. An example is a comprehensive CBA Guide developed by the EU Directorate-General for Regional and Urban Policy, *Guide to Cost Benefit Analysis of Investment Projects*, which stretches across five sectors (i.e., transport, energy, environment, broadband, research and innovation) and contains overall guidance for other sectors. Over time, these efforts to standardize the process will enable a direct comparison of investment alternatives in various sectors, and allow decision makers to choose the optimal sectoral mix of public investments. As we have seen from Parts 1 and 2 above, there is a degree of inconsistency among CBAs in the field of legal aid. This report introduces the conventional CBA framework and offers practical guidance on how to calculate a set of common and widely used financial and economic performance indicators in legal aid CBAs. It is a step toward enabling the consistency of not only legal CBAs but overall consistency as well.

¹³⁴ A CBR takes into account the amount of monetary gain realized by performing a project versus its costs. A ratio of greater than one indicates that the project is a viable one. General rule of thumb is that if the benefit is higher than the cost the project is a good investment. The higher the BCR the better the investment.

¹³⁵ In France, guidance is provided in the *Instruction du Gouvernement du 27 juin 2014 relative à l'évaluation des projets de transport* (https://www.ecologique-solidaire.gouv.fr/sites/default/files/Note_technique_completesignatureok.pdf). In the UK, guidance is provided in *The Green Book: Central Government Guidance on Appraisal and Evaluation* (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/685903/The_Green_Book.pdf). In Chile, the framework is part of the National Investment System managed by the Ministry of Social Development and Family (<http://sni.ministeriode-sarrolsocial.gob.cl/quienes-somos/marco-legal/>). Overall guidance for EU member states is provided in the *Guide to Cost Benefit Analysis of Investment Projects* (https://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/cba_guide.pdf). These guidelines are also applied in other countries for projects financed by the EU (i.e., predominantly EU accession countries).

SECTION 2: THE FIVE STEPS OF A LEGAL AID CBA

STEP 1: DEFINITION OF THE PROJECT CONTEXT

70. The first step of a legal aid program CBA is to conduct a careful study of the political, social and institutional framework of the jurisdiction of the program. This step is critical to define the exact scope and geographical limitation of the program and to identify the main actors involved. The elements that should be considered include: the socio-economic conditions of the jurisdiction that are relevant to the project objectives (i.e., to which the legal aid program applies), and are supported by credible data and reports; existing national/regional/sectoral strategies, policies and development plans and the respective roles of the key stakeholders in the legal aid program; existing legal aid programs and services provided; and the summary of the findings of any previous cost benefit analyses of the legal aid field.

71. At this stage it also important to identify the most salient legal needs in the area under consideration and the market demand for legal aid. Market research assesses and quantifies the current demand, while forecasting future demand. The research should first identify the variety of factors affecting the demand for legal aid and the overall “market” conditions. The demand indicator should describe the level and quality of existing legal aid services and deficiencies that can be addressed by the program. It should contain detailed data on the frequency of a particular event—such as the rate of eviction or domestic violence—that could be prevented or remedied by the provision of legal aid. Reference should be made to any existing legal aid programs, their effectiveness and the residual (i.e., unmet) demand for legal aid services.

72. The way this step is conducted largely determines the quality of the remaining parts of the analysis. The context should provide the framework for deriving assumptions which are instrumental to estimating the financial and economic costs and benefits—from those related to the macroeconomic and social conditions in the area to those relating to the legal system. Ideally, this section should be based on relevant statistical data obtained from reliable sources, such as the national statistical office, judicial authorities or reputable survey firms. In the absence of these, which is a pronounced issue in some developing countries, one should reach for alternatives which are sufficiently trustworthy and consistent (See Box 2).

BOX 2. WHERE TO FIND USEFUL DATA ON THE DEMAND FOR LEGAL AID SERVICES

CIVIL JUSTICE PROBLEMS ARE MORE COMMON THAN CRIMINAL PROBLEMS

The usual methods of estimating and forecasting market demand for a product or service require comprehensive datasets. These datasets originate either from surveys from the representative sample or secondary data from the legal administration institutions. However, conducting such surveys may be challenging for various reasons (e.g., accessibility and budget). Likewise, proper administrative data on legal issues may be unavailable due to poor record-keeping. In such situations, there are several alternatives which would provide an overview of the trends and structure of the demand for legal aid.

EXISTING DATA SOURCES

USING DATA FROM EXISTING SURVEYS. The World Justice Project conducts periodic surveys of people's legal needs in more than 120 countries, and they are adding more

countries each year. Their dataset has significantly increased the availability of data on legal needs. See <https://worldjusticeproject.org/>

USING KEYWORD RESEARCH TOOLS: One of the simplest and cheapest ways to assess demand is to use **Keyword Research Tools**. These web analytic tools provide information on how many online searches have been conducted by internet users for a specific keyword or phrase during a specific time period and location. While this certainly cannot substitute for an analysis based on high quality data, it can provide initial

insights on the trend of demand. There are many free Keyword Research Tools available on the internet. One of the simplest is Google Trends (available at <https://trends.google.com/>), which shows the popularity of key words or phrases (e.g., "free legal aid" or "domestic violence") for a specified location and time period.

USING DATA FROM OTHER INSTITUTIONS: Most national statistical institutes provide at least some basic statistics on criminal acts, which can be used to forecast aggregate trends of legal aid demand. However, this data is often insufficient to gain an insight into the structure of the demand for a service. In such cases, data from other institutions in countries with a developed statistical system may be useful to assess figures on relative demand across categories of legal aid

services. The UK Ministry of Justice (available at <https://data.gov.uk/dataset/77f5eb2d-8162-4655-b107-974240064031/legal-aid-statistics>) provides a good example of very detailed statistics on the volume and associated value of submitted claims for legal help and controlled legal representation (and other useful legal aid statistics) in England and Wales.

TIME- AND COST-SAVING SURVEY METHODS

USING DATA FROM EXISTING SURVEYS: The World Justice Project conducts periodic surveys of people's legal needs in more than 120 countries, and they are adding more countries each year. Their dataset has significantly increased the availability of data on legal needs. See <https://worldjusticeproject.org/>.

USING ONLINE SURVEYS: Online surveys have gained popularity in recent years due to their cost effectiveness and the proliferation of internet users.

See the website of the Law Society of UK (www.lawsociety.org.uk) for a recent example of a large online survey of individuals' handling of legal issues in England and Wales.^{135a}

USING THE ASSISTANCE OF A NATIONAL STATISTICAL INSTITUTE: In many countries, national statistical institutes will conduct customized surveys at subsidized prices or simultaneously with some standard surveys for the purpose of non-commercial research. For instance, a survey on legal

aid can be combined with a survey on poverty and living conditions, to get detailed insight into the demand for legal aid of vulnerable groups in society.

135a <https://www.lawsociety.org.uk/support-services/research-trends/documents/legal-needs-survey-online-survey-individuals-handling-legal-issues-may-2016/>.

STEP 2: IDENTIFICATION OF THE PROJECT OBJECTIVES AND M&E INDICATORS

73. The second step of a CBA should clearly define the objectives and M&E indicators of the proposed legal aid intervention. The project objectives should clearly illustrate how the program will meet the existing needs for legal aid services and create benefits for the designated community. Project M&E indicators should be defined in a clear and precise manner using quantitative indicators

whenever possible (including baseline and target values) (e.g., the expected reduction in the rate of domestic violence or foreclosures). If objectives cannot be quantified, a clear explanation of the way qualitative definitions will be verified must be provided. Table 2 gives several examples of how the project objectives of providing legal aid can be quantified by objectively verifiable indicators.

TABLE 2. EXAMPLES OF OBJECTIVES AND INDICATORS OF LEGAL AID INTERVENTIONS

AREA OF INTERVENTION	OBJECTIVE	POSSIBLE INDICATOR	BASELINE VALUE	TARGETED VALUE
FAMILY RELATIONSHIP CENTRE SOLICITOR	Assist people in coming to a negotiated agreement that is in the best interests of the children	Percentage of negotiated outcomes between parents that are in the best interests of the children	50%	60%
HOMELESS PERSONS' SERVICE	Provide legal advice to people experiencing, or at risk of, homelessness	Number of one-hour appointments to provide legal advice per applicant	Not applicable	Three appointments per applicant
BULK DEBT SCHEME	Bulk debt negotiation scheme to help low-income debtors in financial hardship	Percentage of disputes on debt repayment negotiated and settled out of court	30%	50%
IMMIGRATION ADVICE SERVICE	Provide legal assistance to immigrants at risk of return to unsafe situations or countries	Percentage of immigrants receiving a permanent visa	60%	80%

Note: activities and objectives are adopted from Stubbs et al. (2012)



74. The second step of a CBA should also determine the key stakeholders, timeline, and the funding available for the implementation of the CBA. At this stage, it is important to outline the details of the legal aid services to be provided. This should include the scope, level and source of proposed funding, the impact area, the beneficiaries and stakeholders, the timetable of the project implementation, the body responsible for implementation, and the assessment of its technical, financial and institutional capacity to successfully carry out the project.

75. When designing the provision of legal aid services and the impact area, special attention should be paid to the benefits to poor and vulnerable groups. Most of the existing methodologies of legal aid CBAs focus on the average impact of the provision of legal services on the public at large. However, Mahony, Manning and Wong (2019) warn that the effects of justice policies are often heterogeneous with respect to groups of population. Therefore, a comprehensive CBA framework that measures the differential impact of justice services across individuals and communities

BOX 3. DIFFERENCE BETWEEN FINANCIAL AND ECONOMIC ANALYSIS

FINANCIAL ANALYSIS

Considers solely the costs and benefits that occur in monetary (i.e., financial or money) form. It does not include any non-monetary cost and benefit items. These financial flows are used to calculate a set of financial performance indicators which are used to assess the financial viability of the proposed project.

ECONOMIC ANALYSIS

Broadens the context of financial analysis by taking the perspective of the society. It builds on the financial analysis by adjusting the monetary costs and benefits estimated within financial analysis to ensure that these financial flows reflect their value to the society. It also adds the monetized (i.e., quantified) estimates of non-monetary costs and benefits (e.g., value of time, suffering, injuries, etc.) to this adjusted stream of costs and benefits. The economic flows obtained in this way are used to calculate economic performance indicators, which are used to assess the economic viability of the project.

should: i) identify the differences between groups or populations; ii) identify how justice processes differ across groups/populations; iii) distribute the costs and benefits according to the identified variations (i.e., heterogeneous impact).

STEP 3: FINANCIAL ANALYSIS

76. The third step of a legal aid CBA is estimating the financial costs and benefits of the with-project versus the without-project scenario. Estimates must be made for each year of the program duration. These estimates will enable the calculation of the project's financial performance indicators (i.e., the Financial Net Present Value (FNPV), the Financial Rate of Return (FRR) and the Financial Cost-Benefit Ratio). The appraisal of financial benefits requires the use of heterogeneous data sources and the formulation of appropriate assumptions to overcome possible gaps in the data. The majority of the financial benefits are represented by cost savings. Depending on the type of service provided, there may also be direct client benefits in the form of cash inflows, such as in cases where legal aid helps clients to access social welfare entitlements, receive compensation, or recoup lost wages from an employer. Case Study 1 in Annex II (KPMG, 2008) illustrates in greater detail how the benefits of legal aid are calculated in terms of avoided costs to the justice system.

77. The main financial outflow item in legal aid interventions is the total funding of the legal aid program.¹³⁶ The CBA should acknowledge and discuss the structure of this funding. It is important to differentiate among sources of financing, and to show precise numbers as to which portion of the funding comes from public versus private funds. The importance of this breakdown comes from the requirement to perform adjustments to these financial outflows in the economic analysis stage of the CBA (i.e., Step 4). These adjustments are of different magnitudes depending on the source of funding.

78. The financial benefits of legal aid programs can be grouped into three categories:

a) Direct client benefits: Direct monetary income that accrues to the users of legal aid which is either secured or obtained as a result of legal assistance provided. These benefits come from both public and private (i.e., non-governmental) sources. Some examples include supplemental security income, disability income, medical aid, veteran benefits, tax credits, child support aid, spousal maintenance awards, as well as recoveries from consumer and mortgage scams.

¹³⁶ A recent study by Manuel et al (2019) provides estimates of the cost of providing access to justice in different categories of countries across the world. Although not focused on a particular type of legal aid, this paper is a source of information for legal aid program design and scoping, and it may also point to the overall benefits (or costs foregone) that come as a result of legal aid program implementation.

b) Client cost savings: Cost savings that accrue to legal aid beneficiaries in the court procedure. Typical examples include savings on various fees of lawyers and associated providers. An estimate of these cost savings implicitly assumes that clients benefiting from legal aid would otherwise go to court and pay for these services on their own, which is not often the case, especially in countries where such services are not affordable for a majority of population. Absent a reliable survey or other direct empirical information, the assumption of the percentage of clients that would go to court should be made based on the target group's willingness and capacity to pay for legal services (i.e., affordability assessment).

c) Justice system cost savings: These consist of reduction of costs that normally accrue to courts as a result of increased efficiency. Estimating these costs requires case-related information and requires assumptions on case outcomes had legal aid not been provided. This is necessary since different costs are associated with different cases depending on the format of case closure (e.g., mediated agreements vs interim or final order, etc.).

79. When appraising the financial costs and benefits, it is important to understand the use and effectiveness of available legal aid instruments. *The 2019 OECD Equal Access to Justice for Inclusive Growth* report¹³⁷ provides a summary of some important benefits of investing in the justice system. It also describes the challenges to a proper appraisal of those benefits, including legal information, assistance, advice, representation, and alternative dispute resolution. The study considers: i) direct benefits for the users of legal services, from alleviating the burden of legal problems on citizens; ii) indirect benefits for the broader society, including a more inclusive society, the reduction of social costs of violence, and better institutional governance. According to the OECD, some important aspects to consider when assessing the effects of legal aid include:

a) Use of legal jargon: When legal jargon is overused, a targeted group of beneficiaries may fail to utilize legal information services, especially if this group includes a less-educated, vulnerable population, or migrants who have not mastered the official language.

b) Technology of providing information/advice: The choice of a medium for disseminating legal information (face-to-face, telephone, internet) should align with local preferences (local culture, habits and education) to maximize the effectiveness of the legal aid service provided.

c) Degree of legal representation: Advocacy for better access to justice has traditionally focused on the provision of full legal representation. Indeed, in complex disputes such as divorce or child protection cases, full representation by a lawyer remains the most effective form of assistance. Full representation is less beneficial

when the area of the law and the case itself are less complex, when the client has greater capabilities, or when the courts are supportive of self-representation. Empirical analysis has shown that, in some contexts, limited legal assistance may be sufficient to support families in their applications for benefits and administrative tasks; enforce child support orders; explain education laws and school discipline policies to help keep children in school; and advise and represent parents of children with special needs in schools.

d) Mediation (alternative dispute resolution): Mediation has been shown to lead to positive results, especially when parties were willing participants and of relatively equal strength, and where services are free from corruption and conflicts of interest. The use of mediation in legal aid cases can generate significant savings compared to non-mediated cases.

80. The possession of reliable and complete data helps to develop accurate estimates of the financial benefits of providing legal aid. For instance, to make a quantitative (i.e., monetary) estimate of a benefit stemming from legal aid that is a result of cost reduction due to an increase in the efficiency of the court system, one would need to know the cost difference among similar cases with and without legal aid. To calculate this, an analyst would need: i) financial statements of relevant justice agencies, differentiating between cases that received legal aid and those that did not, and ii) case-related data from relevant case-management systems (CMS), providing information on the type of cases and their outcome, and separating cases that included legal aid from those that did not. Although it looks relatively simple, the availability of data is often an issue. It depends largely on the design of the CMS across the judiciary, the interoperability of the CMS and the financial management software, as well as the overall implementation status of both systems.

81. Generally, the less information is available, the more assumptions must be made based on the available information. When accurate and research-based sources are not available, it is important to develop realistic assumptions. As an illustration, analyses based on the assumption that an individual will never act on a legal problem without legal assistance may substantially overestimate the benefits of such assistance. Conversely, assuming that legal problems will go away on their own could significantly underestimate the benefits from legal aid.¹³⁸

82. Once the necessary valuations and assumptions have been made, it is possible to discount all costs and benefits to the pres-

137 OECD, *Equal Access to Justice for Inclusive Growth: Putting People at the Centre*, March 2019, https://www.oecd-ilibrary.org/governance/equal-access-to-justice-for-inclusive-growth_597f5b7f-en.

138 When it is not possible to make assumptions, it is advisable to restrain from the quantification of specific financial costs and benefits to preserve the credibility of the CBA. In such circumstances, the author should ensure that the unquantifiable share of benefits is clearly stated and that their expected effect, if quantified, is thoroughly explained.

BOX 4. QUESTIONS DRIVING ESTIMATION OF ECONOMIC COST AND BENEFITS

According to the Productivity Commission of Australia, there are at least four important questions that an analyst must answer—and make correct and impartial assumptions about—to arrive at a reliable estimate of net benefits associated with legal aid:

- 1 What would happen to an individual if legal assistance were not provided?
- 2 How much does receiving assistance affect the legal outcome of a case?
- 3 Does obtaining a favorable legal outcome avoid adverse outcomes in the client’s life “outside the court room?”
- 4 What are the costs of these adverse outcomes that are avoided?

ent values and calculate the financial performance indicators.¹³⁹ When all financial costs and benefits have been considered and discounted to the present value, one can then calculate the Financial Net Present Value (FNPV), the Financial Rate of Return (FRR) and the Financial Cost-Benefit Ratio (See Appendix III: CBA Mathematical Computation). If the NPV is positive, the investment will be a profitable one. If the FRR percentage of a with-project scenario is higher than the FRR of the “without-project” or other alternative scenarios, the investment will be more profitable than other investments. If the Financial Cost-Benefit Ratio is above 1, the benefits will exceed the costs, and the investment will be profitable.

83. The choice of the appropriate financial discount rate should be carefully made. As explained in the section on Fundamentals of the CBA, the discount rate is the rate used to bring the set of future financial (or economic) flows to their present value. It is used to determine the Cost-Benefit Ratio by calculating the NPV and discounting costs and benefits. The IRR is compared to the discount rate to determine a project’s profitability. The rate can be expressed in nominal (i.e., including the expected increase in price level) or real terms.

¹³⁹ Legal aid CBAs should distinguish between the Financial Net Present Value and the Economic Net Present Value. The former is simply the NPV of the financial costs and benefits, and the latter is the NPV of the economic costs and benefits. If the benefits are greater than the costs, the net benefits will be positive. If the costs are greater than the benefits, the net benefit will be negative.

STEP 4: ECONOMIC ANALYSIS

84. The fourth step of a legal aid CBA is an estimate of the economic net benefits of the with-and without-project scenarios. As with the financial costs and benefits, estimates must be made at the annual level for all years of the program duration. These estimates will enable the calculation of the project’s economic performance indicators (i.e. the Economic Net Present Value (ENPV), the Economic Rate of Return (ERR) and the Economic Cost Benefit Ratio). The appraisal of the economic benefits is a critical component of the CBA that usually requires creative thinking and an understanding of the relevant transfers of wealth within the economy that occur or are affected by the program intervention.

85. The economic analysis is broader than the financial analysis, and includes the monetary value of social costs and benefits. The economic analysis captures both the financial outcomes of the legal aid project and the non-monetary benefits and costs. These are often more challenging to express in monetary terms and include costs and benefits such as health costs and benefits, time savings or loss, a reduction or increase in suffering, and productivity losses or increases. The economic analysis of a legal aid CBA can be completed in three stages:

1. Conversion of market to accounting prices;
2. Monetization of non-market impacts;
3. Calculation of the economic performance indicators (economic net present value, economic rate of return and B/C ratio).

FIGURE 3. STAGES OF THE ECONOMIC ANALYSIS OF A LEGAL AID CBA



BOX 5. SIMPLIFIED ILLUSTRATION OF A LEGAL AID PROGRAM CBA FINANCIAL ANALYSIS

The fictional country of Legaland is considering introducing a three-year program of legal aid to help its citizens address issues of family violence. The government considers building five centers across the country and employing 40 people in each one. The government expects that raising awareness of legal aid will increase the number of clients and therefore expects 10 additional people will need to be employed in the second and third years of the program to match the rising demand for services.

After conducting market-demand research, a government analyst envisages the following cost of the project in local currency units:

- i) the costs of building five centers in “zero” year, at 300,000 Legaland dollars (LD) each
- ii) the operation and maintenance (O&M) cost of five centers, at 30,000 LD per center, during each year of the program
- iii) salary costs, which equal the number of staff times an annual salary of 50,000 LD per year of program operation.

On the benefits side, the analyst considers that one employee may serve around 40 clients annually, so the estimated cost savings to the judicial system per client due to legal aid is 1,800 LD.

Since the official Financial Discount Rate in Legaland is eight percent, the following are the estimates of the financial costs and benefits of the project implementation:

YEAR (T)	0	1	2	3
Financial costs (in LCU of year t):				
i) Buildings	1,500,000	0	0	0
ii) O&M costs	0	150,000	150,000	150,000
iii) Salaries (gross)	0	2,000,000	2,500,000	3,000,000
Total	1,500,000	2,150,000	2,650,000	3,150,000
Financial benefits (in LCU of year t)				
Avoided costs of judicial system	0	2,880,000	3,600,000	4,320,000
Discounted financial cash flows (in LCU of year 0)				
Total costs	1,500,000	1,990,741	2,271,948	2,500,572
Total benefits	0	2,666,667	3,086,420	3,429,355
Net Undiscounted Financial Cash Flow	1,500,000	675,926	814,472	928,784
Net Discounted Financial Cash Flow	-1,500,000	625,857	698,278	737,299

After the cash inflows and outflows are projected, FNPV, FRR and Financial Benefit-Cost ratio can be computed:

- i) FNPV = 561,435
- ii) FRR = 27%
- iii) Financial Cost-Benefit Ratio = 1.61

All three indicators provide the same assessment of the profitability of the legal aid program, and in this case, it is clearly profitable.

86. The first step of economic analysis entails the conversion of market to accounting prices (i.e., transforming the financial to economic cash flows). Economic analysis requires that adjustments be made to the financial costs and benefits estimated under Step 3. These adjustments are made to ensure that the costs and benefits used in the economic analysis reflect their true value to society. This is achieved by eliminating various transfers between different agents acting within the society (e.g., excluding taxes and social contributions) and accounting for various market inefficiencies (e.g., unemployment rate).

87. Apart from eliminating taxes from financial estimates, another key element of this step is the use of conversion factors to address the inefficiencies of the market in which the legal aid program is implemented. Prices of major non-tradable items must be converted using an appropriate (i.e., specific) conversion factor while tradable items and all minor items are adjusted using the Standard Conversion Factor (SCF). Please refer to Appendix III for further details on how to calculate the SCF and specific conversion factors.

88. In the second step, economic analysis should include quantification of the so-called “non-market” impacts, which refer to the social utility of implementing the program. For example, in the case of the evaluation of a legal aid program for domestic violence cases, the main non-market impact will be the reduction in domestic violence cases. This is typically estimated as the sum of the value of the change in numerous indices relating to domestic violence such as: pain, suffering, health, productivity, etc.

89. The monetization of the non-market impacts determines the money value of non-market aspects of a legal aid program. It can be difficult to calculate the value of a net change of suffering and pain as a result of legal aid, since individuals assign very different values to this. To address the problem, CBA studies often rely on a method called “Willingness-To-Pay” (WTP).¹⁴⁰ WTP is a survey-based methodology that yields an estimate of the average value a group of individuals from a representative sample is willing to pay for a certain good or service. These studies are complex and expensive to carry out for each benefit surrounding legal aid issues.

90. If the use of WTP is not possible, CBA analysts must rely on external sources. If budget or other constraints limit the use of WTP, a CBA analyst should either turn to a relevant scientific source for building a trustworthy assumption or look for justified and objective alternatives elsewhere. An example would be a *UK Green Book*¹⁴¹ which provides detailed guidance and quantitative inputs for the

¹⁴⁰ See footnote 57.

¹⁴¹ *UK Green Book: Government Guidance on Appraisal and Evaluation*, 2018.

SIMPLIFIED EXAMPLE OF THE WILLINGNESS-TO-PAY APPROACH

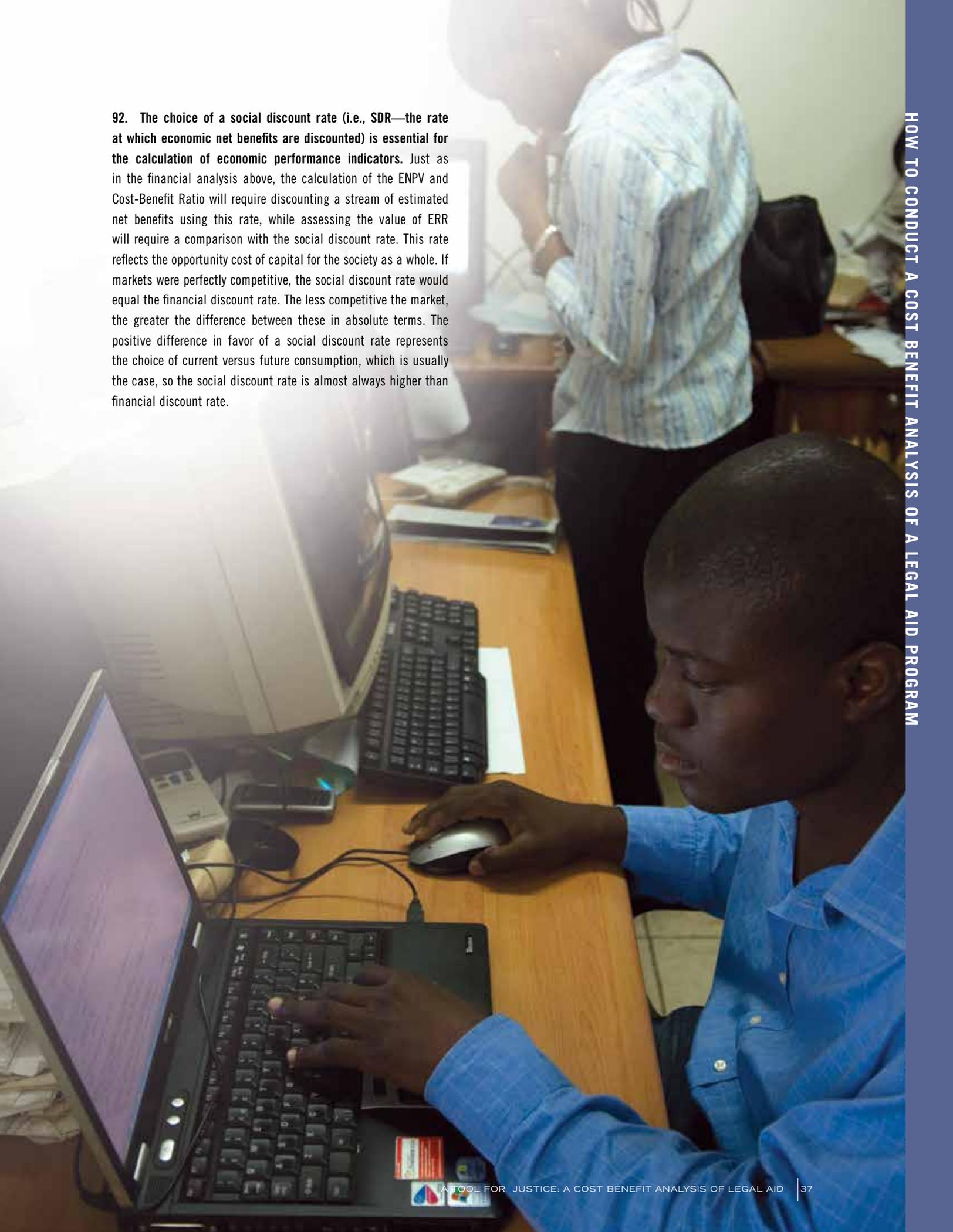
Improvements in transportation frequently save people time. Measuring the money value of that time saved involves gathering information on how much the public values time, revealed by their choices between time and money. If people have a choice of parking close to their destination for 50 cents more, or parking farther away and spending five more minutes walking, and they always choose to spend the money to save the time and effort, then they have revealed that their time is more valuable than 10 cents per minute. If they were indifferent to the two choices, they would have revealed that the value of their time was exactly 10 cents per minute.

appraisal and evaluation of various policy alternatives. Secondary sources must be chosen carefully to ensure that the underlying conditions of the source are as close as possible to the circumstances of the study in question. Depending on which costs and benefits of a legal aid program are factored into a study, different estimates related to the same legal aid program may yield considerably different results. For instance, a CBA of the legal aid services for domestic violence cases in the U.S. State of Minnesota estimated the avoided costs due to legal aid at USD 26,000 per victim in one case and USD 16,449 in another.¹⁴²

91. The third and final stage of the economic analysis is the calculation of the economic performance indicators (the economic net present value, the net economic rate of return and the net economic cost/benefit ratio). As in the financial analysis, the economic performance indicators provide a valuation of the profitability of the legal aid project. The difference between the two is that the economic performance indicators work with economic net benefits which include monetized values of the economic costs and benefits and account for the effects of taxes and various market imperfections. Using a few mathematical formulas (See Appendix III: CBA Mathematical Computation) is therefore possible to obtain the Economic Net Present Value (ENPV), the Economic Rate of Return (ERR) and the Economic Cost-Benefit Ratio.

¹⁴² See CBA of legal aid in the U.S. State of Minnesota.

92. The choice of a social discount rate (i.e., SDR—the rate at which economic net benefits are discounted) is essential for the calculation of economic performance indicators. Just as in the financial analysis above, the calculation of the ENPV and Cost-Benefit Ratio will require discounting a stream of estimated net benefits using this rate, while assessing the value of ERR will require a comparison with the social discount rate. This rate reflects the opportunity cost of capital for the society as a whole. If markets were perfectly competitive, the social discount rate would equal the financial discount rate. The less competitive the market, the greater the difference between these in absolute terms. The positive difference in favor of a social discount rate represents the choice of current versus future consumption, which is usually the case, so the social discount rate is almost always higher than financial discount rate.



BOX 6. SIMPLIFIED ILLUSTRATION OF A LEGAL AID PROGRAM CBA ECONOMIC ANALYSIS

Building on the example of a fictional country Legaland presented in Box 5, the CBA analyst decides to add the economic costs and benefits to the computation. The legal aid program under consideration is a 3-year program to assist victims of family violence. The government is considering building five centers across the country and employing 40 people in each of them. The government expects that raising awareness of legal aid will increase the number of clients, and therefore expects 10 additional people will need to be employed in the second and third years of the program to match the rising demand for services.

Prior to the calculation of the economic performance indicators, the CBA analyst will conduct a monetization of the economic costs and benefits, and find the necessary metrics by conducting a WTA survey or by using existing sources. The results of these steps are:

- Benefits are assumed to be 80% of the avoided costs of the judicial staff's gross salaries and 20% of avoided operation and maintenance costs. Thus benefits are adjusted to economic value using the weighted average of SCF and SWF in relevant proportion (i.e., 80% SWF and 20% SCF);
- In addition to the benefits derived from the avoided costs to the judicial system, it is assumed that additional benefits to society are gained through the avoided costs of productivity loss (positive externality), economically valued at 800 LCU per client;
- The Standard Conversion Factor (SCF) is 0.88;
- The Shadow Wage Factor (SWF) is 0.75;
- The Official Social Discount Rate in Legaland is 10%.

After costs and benefits are adjusted by relevant factors, externality is added to calculation, and SDR is applied to discount cash flows, projected economic values are given in table below:

YEAR (T)	0	1	2	3
Economic costs (in LCU of year t):				
i) Buildings	1,320,000	0	0	0
ii) O&M costs	0	132,000	132,000	132,000
iii) Salaries (gross)	0	1,500,000	1,875,000	2,250,000
Total	1,320,000	1,632,000	2,007,000	2,382,000
Economic benefits (in LCU of year t)				
Avoided cost of judicial system	0	2,234,880	2,793,600	3,352,320
Avoided costs of productivity loss (positive externality)	0	1,280,000	1,600,000	1,920,000
Total Economic Benefits	0	3,514,880	4,393,600	5,272,320
Discounted economic cash flows (in LCU of year 0)				
Costs	1,320,000	1,632,000	2,007,000	2,382,000
Benefits	0	3,514,880	4,393,600	5,272,320
Net Undiscounted Economic Cash Flow	-1,320,000	1,882,880	2,386,600	2,890,320
Net Discounted Economic Cash Flow	-1,320,000	1,711,709	2,887,786	2,171,540

Following the valuation of the economic costs, the ENPV, ERR and Benefit-Cost ratio are computed:

- ENPV = 5,451,035
- ERR = 146%
- C-B ratio = 1.80

The economic performance indicators show that the project is profitable. The socio-economic performance of this project slightly exceeds that of the financial analysis, mainly due to avoided costs of production loss gained from legal aid, which were not included in the financial analysis.

STEP 5: RISK ASSESSMENT

93. The fifth and final step of a legal aid CBA is the assessment of risks associated with the implementation of the proposed project. Risk assessment is an analysis of events that surround legal aid project implementation which could have a negative impact on the fulfillment of project objectives. It consists of a qualitative and quantitative risk analysis and probabilistic assessment of the likeli-

hood of their occurrence, as well as an estimate of their effect on project implementation. The risk assessment of a CBA should also include a detailed discussion on the risk prevention and mitigation measures that the responsible institution will undertake. Some examples of the common risks attributable to the development of a legal aid system and the associated probabilities and mitigation measures are provided in the table below.

TABLE 2. SOME EXAMPLES OF THE RISKS COMMONLY ASSOCIATED WITH THE ESTABLISHMENT OF A LEGAL AID SYSTEM

PROBABILITY	RISK	MITIGATION MEASURE
LOW	Lack of a political commitment and a willingness to support actions toward the development of a legal aid system.	Setting up a comprehensive monitoring and evaluation framework that will provide timely warnings on insufficient commitment to the development of the legal aid system.
MEDIUM	Insufficient awareness of the roles of all beneficiaries in the development of the legal aid system.	Active participation of all beneficiaries in the process of legal aid development, through public consultations and designated working groups.
MEDIUM	Insufficient capacities and high turnover rates among the staff involved in the provision of legal aid.	Development of an extensive training program to support the strengthening of the capacities of the existing staff, and timely recruitment of new staff if needed.
MEDIUM	Relevant government institutions hesitant to commit necessary human resources to the provision of legal aid services.	Conduct workload analyses of the human resources of involved institutions to ensure that the burden of tasks is evenly and properly distributed.
HIGH	Lack of financial resources from the national budget to provide sufficient funding of the legal aid system.	Continuous efforts of government institutions to ensure additional funding from external sources, such as financial assistance from donors.



CONCLUSIONS

94. Policymakers are increasingly looking for ways to address the justice gap. In a world where data increasingly drives policy making, and where budgetary pressures can crunch social spending, evidence-based proposals that demonstrate the net benefits of legal aid are useful and persuasive. In this spirit, policymakers and policy influencers have turned to cost benefit analysis as a tool to better evaluate the economic impact of legal aid and related services and to make informed decisions on how to address the justice gap and allocate funding most efficiently and effectively.

95. The cost benefit analyses surveyed in this report suggest that the benefits of legal aid outweigh the costs. This report summarizes the results of around 50 cost benefit analyses conducted around the world. The study does not presume to provide a conclusive response on the economic desirability of any specific legal aid policy. However, under the assumption that social costs and benefits involve discretion by analysts, the results from the survey suggest overwhelmingly that the benefits of legal aid investments greatly outweigh the costs.

96. CBAs rely on a variety of assumptions regarding the costs and benefits of legal aid, and more work is needed to develop consistency among these assumptions. As more studies are conducted—and the more that each learns from the others—this consistency is likely to develop over time. Nearly all the studies reviewed build their analytical strategies on a set of conservative assumptions, meaning that the likely identifiable and quantifiable

benefits are included in the analysis and may understate the net benefits. Also, the indirect benefits of legal aid on the community are a significant portion of the overall benefits. The multiplier effect accounts for most of the overall economic benefits brought as a result of legal aid. By omitting those benefits, decision-makers may be missing a substantial component of the benefits of legal aid.

97. International consensus is growing on the utility of the use of CBAs for legal aid and related access to justice programs. Critical gaps in the literature should be filled before robust cost-benefit analysis can be conducted for all legal aid policies and interventions.

98. To assist interested policymakers and those who influence them, Chapter 3 offers a practical step-by-step guide on how to conduct a cost benefit analysis of different policy alternatives. With this guide, the report hopes to make a small contribution to the research in the field of the net benefits of legal aid. The guide offers governments, CSOs and others the tools to gather the relevant data needed to conduct their own cost-benefit analysis. The result can be better informed policies that allocate government resources efficiently and effectively to close the justice gap.





ANNEX I: SUMMARY TABLE OF COST AND BENEFIT STUDIES OF LEGAL AID

#	COUNTRY	STUDY REFERENCE	YEAR	STUDY TYPE	LEGAL AID NEEDS	LEGAL AID BENEFITS/ COSTS	RESEARCH METHOD
1	NIGERIA	Anthony Nwapa, <i>Building and Sustaining Change: Pre-trial Detention Reform in Nigeria in Justice Initiatives: Pre-trial Detention</i>	2008	Narrow CBA/ Impact Evaluation	Access to justice (pre-trial detention)	Reduction in the number of pre-trial detainees and the average duration of detention	Impact evaluation
2	MALAWI	Clifford Msiska, <i>On the Front Lines: Insights from Malawi's Paralegal Advisory Services in Justice Initiatives: Pre-trial Detention</i>	2008	Narrow CBA/ Impact Evaluation	Access to justice (pre-trial detention)	Reduction in the remand population; in the number of pre-trial detainees, savings to the justice system resulting from prisoners entering informed pleas to their charges	Impact evaluation
3	SIERRA LEONE	Open Society Foundations, <i>Improving Pre-trial Justice in Sierra Leone</i>	2013	Narrow CBA/ Impact Evaluation	Access to justice (pre-trial detention)	Reduction in the number of pre-trial detainees	Descriptive statistics/ survey
4	SOUTH AFRICA	YD Davids et al., <i>Community advice offices: Making a case for public funding</i>	2008	Narrow CBA/ Impact Evaluation	Access to justice (pre-trial detention)	Reduction in the number of pre-trial detainees and the average duration of detention	Impact evaluation
5	AUSTRALIA	PricewaterhouseCoopers. <i>Economic Value of Legal Aid. Analysis in relation to Commonwealth funded matters with a focus on family law</i>	2009	Narrow CBA	Access to justice (legal representation, duty lawyer assistance, alternative dispute resolution mechanisms, etc.)	Quantifiable benefits and costs of legal aid to the court system.	Direct calculation/ administrative records

N#	COUNTRY	STUDY REFERENCE	YEAR	STUDY TYPE	LEGAL AID NEEDS	LEGAL AID BENEFITS/ COSTS	RESEARCH METHOD
6	USA	Liz Elwart, et al. "Increasing Access to Restraining Orders for Low-Income Victims of Domestic Violence: A Cost-Benefit Analysis of the Proposed Domestic Abuse Grant Program," <i>Wisconsin Access To Justice Committee Report</i>	2006	Comprehensive CBA	Domestic violence prevention/restraining order	Direct benefits and costs; indirect benefits of avoided costs per violent incident	Direct calculation; expert inputs on indirect benefits; sensitivity analysis
7	USA	Laura K. Abel, Susan Vignola, <i>Economic and Other Benefits Associated with the Provision of Civil Legal Aid</i>	2010	Comprehensive/ Narrow CBAs	Consumer rights, government benefits, housing, employment issues, land and property disputes, family problems, justice system, etc.	Direct benefits and costs; indirect benefits of avoided costs	Literature review of studies/ analysis of CBAs of legal aid
8	USA	TK Logan et al., <i>The Kentucky Civil Protective Order Study: A Rural and Urban Multiple Perspective Study of Protective Order Violation Consequences, Responses, & Costs</i>	2009	Comprehensive CBA	Domestic violence prevention/restraining order	Costs include medical, mental health, criminal justice, legal, lost earnings, property losses, and time lost for family and civic responsibilities as well as an index of quality of life	Experimental research
9	USA	Amy Farmer & Jill Tiefenthaler, "Explaining the Recent Decline in Domestic Violence," <i>Contemporary Economic Policy</i> , Volume 21, pg.158	2003	The effectiveness of legal aid	Domestic violence prevention	Assessment of legal aid effectiveness	Survey/ econometric analysis
10	WORLD	Open Society Foundations and United Nations Development Programme, <i>The Socioeconomic Impact of Pre-trial Detention</i>	2010	Costs of pre-trial detention	Access to the justice system (pre-trial detention)	Costs of pre-trial detention: income, employment, education, incarceration-related expenses, and long-term effects	Literature/ evidence review

N#	COUNTRY	STUDY REFERENCE	YEAR	STUDY TYPE	LEGAL AID NEEDS	LEGAL AID BENEFITS/COSTS	RESEARCH METHOD
11	WORLD	Vera Institute of Justice. <i>A Guide to Calculating Justice-System Marginal Costs</i>	2013	Costs to the justice system	Various legal aid needs overlapping with the criminal justice system	Costs to law enforcement (per arrest); courts (per case); jails and prisons (per inmate); probation and parole (per supervisee); juvenile detention and commitment (per youth); juvenile supervision (per youth); criminal justice programs (per participant), etc.	The top-down and bottom-up approaches to calculating marginal costs to justice system
12	WORLD	Sandefur L. Rebecca, <i>The Impact of Counsel: An Analysis of Empirical Evidence</i>	2010	Costs to the justice system	Various legal aid needs related to the civil justice	Costs of unaddressed civil justice problems	Literature/evidence review
13	USA	Albiston R. Catherine and Sandefur L. Rebecca, <i>Expanding the Empirical Study of Access to Justice</i>	2013	The effectiveness of legal aid	Access to justice	Costs to the justice system from self-represented litigants	Literature/evidence review
14	USA	John Greacen, <i>The Benefits and Costs of Programs to Assist Self-Represented Litigants, Results from Limited Data Gathering Conducted by Six Trial Courts in California's San Joaquin Valley</i>	2009	Narrow CBAs	Various legal aid needs	Direct costs of legal aid; savings to the courts and litigants	Direct calculation/survey/administrative data gathering
15	WORLD	J.J. Prescott, "The Challenges of Calculating the Benefits of Providing Access to Legal Services," <i>Fordham Urban Law Journal</i> , Volume 37, pg. 303	2010	Costs and benefits of legal aid	Various legal aid needs	General discussion on how to calculate costs and benefits of legal aid programs	Literature/evidence review

N#	COUNTRY	STUDY REFERENCE	YEAR	STUDY TYPE	LEGAL AID NEEDS	LEGAL AID BENEFITS/COSTS	RESEARCH METHOD
16-40	USA	Assessments of cost-effectiveness of legal aid for the states of Alaska, Arizona, Arkansas, California, Florida, Georgia, Iowa, Illinois, Louisiana, Maryland, Massachusetts, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, and Virginia	N/A	Narrow CBAs	Consumer rights, government benefits, housing (e.g. evictions), employment issues, land and property disputes, family problems, justice system, etc.	Direct benefits and costs; indirect benefits of homelessness and domestic violence prevention	Direct calculation; expert inputs on indirect benefits/avoided costs
41	CANADA	Farrow et al., Everyday Legal Problem and The Cost of Justice in Canada: Overview Report	2016	Narrow CBA	Various legal aid needs	Direct monetary costs to individuals (e.g., lawyers' fees, transportation costs, court fees, etc.), cost of service provision, avoided public costs on social assistance, health care, and employment insurance	Direct calculation/survey
42	USA	Assessments of cost-effectiveness of legal aid for the states of Alaska, Arizona, Arkansas, California, Florida, Georgia, Iowa, Illinois, Louisiana, Maryland, Massachusetts, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, and Virginia	N/A	Narrow CBAs	Consumer rights, government benefits, housing (e.g. evictions), employment issues, land and property disputes, family problems, justice system, etc.	Direct benefits and costs; indirect benefits of homelessness and domestic violence prevention	Direct calculation; expert inputs on indirect benefits/avoided costs

N#	COUNTRY	STUDY REFERENCE	YEAR	STUDY TYPE	LEGAL AID NEEDS	LEGAL AID BENEFITS/COSTS	RESEARCH METHOD
43	USA	Baughman, Shima Baradaran, The State of Pre-trial Detention	2011	Comprehensive CBA	Access to justice (pre-trial detention)	Direct costs of pre-trial detention; benefits/avoided costs of detention associated with (i) prosecuted crimes, (ii) failures to appear in court, (iii) felonies for which no arrest is made, and (iv) post-prison monitoring. Economic costs of detention associated with (i) loss of freedom, (ii) loss of income, (iii) loss of housing, (iv) childcare costs, (v) stolen or lost property, (vi) loss of income taxes, etc.	Direct calculation/estimation with expert inputs for unit cost of crime and economic cost of detention
44	USA	Rhode et al., Access to Justice Through Limited Legal Assistance, 16 Nw. J. Hum. Rts. 1	2018	Comprehensive CBA	Access to justice (limited legal assistance programs)	Overall effectiveness of legal aid in terms of obtained positive outcomes; direct costs of legal aid programs	Literature/evidence review/survey analyses
45	INDONESIA	Ward Berenschot, Taufik Rinaldi, Paralegalism and Legal Aid in Indonesia: Enlarging the Shadow of the Law	2011	Narrow CBA/ Impact assessment	Access to justice	Overall effectiveness of community-based justice; public savings from reduced use of police services	Impact assessment

#	COUNTRY	STUDY REFERENCE	YEAR	STUDY TYPE	LEGAL AID NEEDS	LEGAL AID BENEFITS/COSTS	RESEARCH METHOD
46	UK	The National Association of Citizens Advice Bureau, Towards a business case for legal aid	2010	Narrow CBA	Various legal aid needs related to housing, debt, welfare benefits, and employment	Direct costs of civil legal aid; cost-savings of avoided “mounting problems”: (i) housing, (ii) debt, (iii) welfare benefits and (iv) employment	Direct calculation using case management data/expert input
47	WORLD	Open Society Foundations, Improving Pre-trial Justice: The Roles of Lawyers and Paralegals	2012	Impact assessment	Access to justice (pre-trial detention)	Assessments of the benefits brought by lawyers and paralegals for the administration of justice, the efficiency of criminal justice systems, and respect for the rule of law	Literature/evidence review/survey analyses
48	BANGLADESH	2018 Annual BRAC report for Bangladesh, Human Rights and Legal Aid Services program, p. 28	2018	Impact assessment	Various legal aid needs	Assessment of the legal aid program results; recovered cash benefits for legal aid clients	Impact assessment
49	UGANDA AND TANZANIA	Behrman, J., L. Billings, and A. Peterman. Evaluation of grassroots community-based Legal aid activities in Uganda and Tanzania: Strengthening women’s legal knowledge and land rights. CAPRI Working Paper No. 108. Washington, D.C.: International Food Policy Research Institute	2013	Impact assessment	Access to justice (land rights)	Qualitative evidence on the benefits of legal aid; costs of providing legal aid	Impact assessment

#	COUNTRY	STUDY REFERENCE	YEAR	STUDY TYPE	LEGAL AID NEEDS	LEGAL AID BENEFITS/ COSTS	RESEARCH METHOD
50	INDIA	Robin Nielsen and Tim Hanstad. Land-related legal aid in community driven development projects: lessons from Andhra Pradesh. Agricultural and Rural Development notes; no. 37. Washington, DC: World Bank.	2008	Impact assessment	Access to justice (land rights)	Qualitative evidence on benefits of legal aid; costs of providing legal aid	Impact assessment
51	UK	Hammond, Clare, Vermeulen, Inga. Social Return on Investment in Legal Aid. Rocket Science UK Ltd commissioned by the Law Society of Scotland	2017	Narrow CBA	Housing, family and criminal law matters	Cost of legal aid; eviction avoided; custodial sentence avoided—loss of income avoided, social isolation avoided; more and better employment prospects during the case; better health and family relationships during the case; fewer cases going to court; fewer custodial sentences; reduced public spending because homelessness avoided	Direct calculation/ case management data
52	LIBERIA	Bilal Siddiqi and Justin Sandefur. Delivering Justice to the Poor: Theory and Experimental Evidence from Liberia (paper presented at the World Bank Workshop on the African Political Economy, Washington D.C.)	2013	Impact assessment	Access to justice (Property Rights)	Socioeconomic gains as a result of legal aid; better outcomes for legal aid clients; 10% reduction in the incidence of bribe	Impact assessment/a randomized trial of legal aid program

#	COUNTRY	STUDY REFERENCE	YEAR	STUDY TYPE	LEGAL AID NEEDS	LEGAL AID BENEFITS/ COSTS	RESEARCH METHOD
53	LIBERIA	Blattman et. al. How to Promote Order and Property Rights under Weak Rule of Law? An Experiment in Changing Dispute Resolution Behavior through Community Education (2014). American Political Science Review, 108(1), 100-120	2014	Impact assessment	Access to justice (Property Rights)	Effectiveness of legal aid through Alternative Dispute Resolution in addressing land related disputes	Impact assessment
54	CANADA	Dandurand, Yvon and Jahn, Jessica. A Feasibility Study on Measuring Economic Impact of Criminal and Immigration and Refugee Legal Aid in Canada Issues, Options and Recommendations	2018	Methodological note	Access to justice	Measurable outcomes of legal aid related to (i) the efficiency of the criminal justice process (including pre-trial detention) and (ii) case disposition	Literature/ evidence review

ANNEX II: CASE STUDIES OF CBAs OF LEGAL AID

CASE STUDY A: COST BENEFIT ANALYSIS OF THE FAMILY DISPUTE RESOLUTION SERVICE (FDR) IN AUSTRALIA

In December 2018, KPMG reported on the evaluation of the Family Dispute Resolution (FDR) services in legal aid commissions throughout Australia, at the request of The Attorney-General's Department. The FDR evaluation reports also encompassed a CBA analysis, which considered the costs and benefits of FDR services for the program, in the commissions of each jurisdiction, in cases where:

- i) the costs are represented by the financial costs of FDR to the Australian Government;
- ii) the benefits are represented by the value of court event hours that are avoided as a result of successful FDR outcomes.

The costs of FDR services are estimated as the lump sum based on the administrative data of the Attorney General's Department (Table A1). However, the computation of total benefits in terms of avoided court costs required a more complex approach, that combines heterogeneous data sources and types of assumptions to derive the interim (Table A2) and final (Table A3) inputs and outputs of the benefit analysis.

TABLE A1. CALCULATIONS OF THE FAMILY DISPUTE RESOLUTION SERVICE (FDR) COSTS

	CATEGORY	SCOPE/UNIT OF MEASUREMENT	VALUE	SOURCE	ASSUMPTION
A	COSTS OF FDR SERVICES	Grant, Screening and Administration (\$)	19,748,000	Attorney General's Department	Consistency across the state

The estimate of avoided costs per case due to Family Dispute Resolution service is considered an interim output. The avoided cost per case is estimated on an hourly basis, by dividing the appraised expenditure per case by the funded hours of the legal aid provision.

TABLE A2. CALCULATIONS OF THE FAMILY DISPUTE RESOLUTION SERVICE (FDR) BENEFITS PER CASE, BASED ON CALCULATING THE COSTS OF A CASE GOING TO COURT WITH FULL LEGAL AID

	CATEGORY	SCOPE/UNIT OF MEASUREMENT	VALUE	SOURCE	ASSUMPTION
BENEFIT (AVOIDED COSTS) PER CASE					
B	EXPENDITURE PER CASE	Real net recurrent expenditure per finalization for Family Court (\$)	3,369	Real net recurrent expenditure per finalization for the <i>Family Court Productivity Commission Review of Government Services</i> , 2008, pp. 7.11s	The components of the expenditure include salary and non- salary expenditure, court administration agency and umbrella department expenditure, and contract expenditure.
C		Real average cost of legal aid fees per case for a family law matter (\$)	2,706	Hunter, R. (2000) <i>Legal services in family law</i> , Law Foundation of NSW, pp 224	The median amount paid by legal aid prior to a hearing for cases handled by private lawyers.
D	HOURS FUNDED BY LEGAL AID	Hours	22	Productivity Commission reports	Weighted average of estimates provided during consultation
E	HOURLY COST PER CASE TO LEGAL SYSTEM	Hourly cost per case in (\$)	281.25	Derived value	(B+C)/D

The interim results from the FDR benefits per case assessment help calculate the avoided costs per case. All cases are classified into fully resolved and partially settled. The partially settled ones are further divided into two criteria: partially-saved and fully-saved

court time. Using the additional assumptions on the distribution of the outcomes of legal aid on the outcome of litigation, the avoided costs are computed for all groups of cases, and then summarized to determine the total benefit.

TABLE A3. CALCULATIONS OF THE FAMILY DISPUTE RESOLUTION SERVICE (FDR) TOTAL BENEFITS

	CATEGORY	SCOPE/UNIT OF MEASUREMENT	VALUE	SOURCE	ASSUMPTION
BENEFIT (AVOIDED COSTS) PER CASE					
F	CASES FULLY RESOLVED	Cases	3,887	Attorney General's Department	
G		Court event hours avoided	84,115	Derived value	D x F
H		Cost of hours avoided (\$)	23,611,000	Derived value	E x G
I	CASES PARTIALLY SETTLED IN A WAY THAT	Cases	1,567	Attorney General's Department	
J	I) COURT EVENT TIME IS FULLY SAVED	Number of cases which do not result in litigation (fully saved court event time)	1,175	Assumed value	75% of total cases at J
K		Court event hours avoided	25,432	Derived value	D x J
L		Cost of hours avoided (\$)	7,139,000	Derived value	E x K
M	II) COURT EVENT TIME PARTIALLY SAVED	Number of partially settled cases that result in litigation but experience saved court event time		Assumed value	50% of the 25% that proceed to litigation
N		Court event hours avoided	1,411	Derived value	On average, the number of court event hours saved equals a third of the average court time (7.2 hours), D/3 x M
O		Cost of hours avoided	397,000	Derived value	E x N
P	CASES PARTIALLY SETTLED	Total cost of cases partially avoided	7,536,000	Derived value	L + O
TOTAL BENEFITS			31,147,000	DERIVED VALUE	H + P

Eventually, the CBA was determined by calculating the Net Present Value and Cost-Benefit ratio to indicate the profitability of the Family Dispute Resolution service as a form of legal aid. As Table A4 reads, the FDR generated important savings in judicial costs. So, the Cost-Benefit Ratio of 1.58 suggesting that the legal aid program was highly successful.

Nonetheless, the assessment was performed from the perspective of the sponsor (The Attorney General's Department) and as such did not quantify several other benefits that evidently accrued to other agents within the Australian society. Those include primarily saving litigants' time, as well as a series of benefits that would depend on the specific disputes that legal aid helped resolve (e.g., avoided domestic violence and associated productivity and health benefits).

TABLE A4. CALCULATIONS OF THE FAMILY DISPUTE RESOLUTION SERVICE (FDR) CBA INDICATORS

	CBA INPUTS/OUTPUT (\$)		CALCULATION	VALUE
Q	INPUT	VALUE OF BENEFITS	Table A3	19,748,000
R	INPUT	VALUE OF COSTS	Table A1	31,147,000
S	OUTPUT	NPV	Q – R	11,399,000
T	OUTPUT	COST-BENEFIT RATIO	Q/R	1.58

CASE STUDY B: COST BENEFIT ANALYSIS OF THE ABORIGINAL JUSTICE STRATEGY IN CANADA

As a part of an evaluation of the Aboriginal Justice Strategy (AJS), the Department of Justice of Canada conducted a statistical analysis of how AJS-funded community-based justice programs affected the rates of recidivism. These studies compared recidivism rates for offenders who participated in one of the selected AJS programs, with a group of offenders who were referred but did not participate.

Since the rates of re-offending were significantly lower among program participants at every point in time after completing the program, a cost analysis was conducted to estimate the impact of the AJS programs on reducing costs to the Mainstream Justice System (MJS). This is an example of an access to justice intervention that goes beyond legal aid. It demonstrates that CBAs can be conducted on a range of justice programs.

The analysis was carried out in the following steps:

1. To calculate the mean of the average cost per participant in the AJS programs (which were \$2,831 in 2014-15) researchers divided the total costs of AJS program by the total number of clients (i.e., $\$2,831 = \$25,591,255 / 9,039$).

2. To determine the average cost per case of going through the MJS, researchers divided the total costs (administration of court services, prosecution and legal aid) by the number of cases. In the 2014-15 period, total costs of \$1,650,268,754, divided by the number of cases, equaled \$4,435.

3. For the sake of the cost savings assessment, the incremental reduction in the average recidivism rates between program participants and the comparison group were calculated each year for eight years following program participation, using the findings from the abovementioned statistical studies (8.8 percent in the first year down to 0.5 percent in eighth year). For example, since the recidivism analysis found the program participants in the study were 8.8 percent less likely to re-offend after one year than the comparison group, and the average cost per case in the MJS was estimated at \$4,435, the cost savings per program participant, in 2014 dollars, one year later was $\$4,435 \times 8.8\% = \390 .

4. The social discount rate was set to 8 percent (official social discount rate set by the Treasury Board of Canada Secretariat).

5. Immediate savings per program participant (in the current year) equal the MJS cost per case minus the AJS cost per case (or \$4,435 - \$2,831 = \$1,604, according to 2014-15 figures). This amount basically reflects the difference in the per-participant expenses between the with- or without-program scenario.

6. The stream of cash flows for each of the eight years is calculated based on the previous inputs, using the formula for economic net present value $ENPV = \sum_{t=0}^T d_t NEC$ given in the table below:

7. Eventually, the present value of the cost savings of the total AJS-funded program would be calculated by taking the total present value of savings per case and multiplying it by the number of AJS clients for 2014-15 (\$2,264 x 9,039 clients), which gives the respectable number of \$20,464,296 cost savings.

Alternatively, B/C per participant could be used as an indicator of economic profitability. In that case, the total benefit would equal the sum of the discounted stream of future cost savings, plus the full MJS cost savings in the current year (\$5094.6 = \$ 659.6 + \$4,435). Then the Cost-Benefit ratio would be computed as $B/C = \$5094.6 / \$2831.2 = 1.8$, confirming that program is highly profitable in an economic sense.

As in the example from Annex A above, the Cost-Benefit ratio of 1.8 suggests that the project is economically sound.

Nonetheless, the value seems underestimated as a range of other benefits are not quantified in this study. Some of those include the benefits of avoiding imprisonment (e.g., lost time and productivity and the avoided expense of imprisonment), probation costs, avoided costs associated with the offender's family support in their absence, etc.

TABLE B1. CALCULATIONS OF THE NET PRESENT VALUE OF THE ABORIGINAL JUSTICE STRATEGY PROGRAM, USING DISCOUNTED CASH FLOWS

YEAR	0	1	2	3	4	5	6	7	TOTAL
I Rate of incremental re-offense reduction		8.8	3.4	1.5	1.3	0.8	0.7	0.7	
II Savings of MSJ costs per program participant (I*4,435)		390.3	150.8	66.5	57.7	35.5	31.0	31.0	
III Discount factor $1/(1+0.08)$ Year		0.9	0.9	0.8	0.7	0.7	0.6	0.6	
IV Discounted economic future cost savings (II*III)		361.4	129.3	52.8	42.4	24.1	19.6	18.1	659.6
V Immediate savings	1603.8								1603.8
Total NPV of savings (IV+V)									2263.4

ANNEX III: CBA MATHEMATICAL COMPUTATION

THE CALCULATION OF FINANCIAL PERFORMANCE INDICATORS

Financial performance indicators are obtained by applying the Discounted Cash Flow (DCF) Method¹⁴³ to the series of net financial benefits arising from legal aid over the investment horizon under consideration. Discounting is applied to account for the time value of net benefits expected to accrue at different points in time. Accounting for the difference in time these benefits accrue enables a determination of their aggregate value at a common point in time (i.e., present). There are three main financial performance indicators:

a) Financial Net Present Value (FNPV)—Expressed in absolute number and thus varying with project size. Calculated by using the following formula:

$$FNPV = \sum_{t=0}^T d_t NFCF_t$$

where $NFCF_t$ is an annual net financial cash flow in year t , T is the length of the project lifecycle in years, and d_t is the financial discount factor in year t .

The financial discount factor d_t shall be computed as $d_t = \frac{1}{(1+i)^t}$, where i is the **financial discount rate**.

The financial discount rate is the rate at which a series of cash flows (i.e., net benefits in our case) are discounted. It represents the opportunity cost of capital at an annual level. Hence, the cash flow (i.e., net benefits) accruing a year after the assessment is made are discounted (i.e., divided) by a factor equal to $1+i$, while cash flow accruing in two years are discounted (i.e., divided) by a factor equal to $(1+i)^2$, and so forth.

b) The Financial Rate of Return (FRR)¹⁴⁴—Expressed in percentage points and scale-invariant. This feature of the indicator allows a comparison of many different project alternatives regardless of size. It represents a discount rate which returns a FNPV of zero (i.e., makes the stream of future financial cash flows from project implementation equal to zero). It can be viewed as return on the investment in the project being considered. It is calculated as follows:

$$0 = \sum \frac{NFCF_t}{(1+FRR)^t}$$

¹⁴³ The *discounted cash flow* is a valuation method used to estimate the value of an investment based on its future *cash flows*.

¹⁴⁴ Adopted from the more common term “internal rate of return” to allow for differentiation between the financial term and the economic rate of return.

where $NFCF_t$ is an annual net financial cash flow in year t , T is a length of the project lifecycle in years.

c) Financial Benefit-Cost (B/C) Ratio—The ratio of discounted project benefits relative to discounted project costs. It is particularly useful when running comparisons between two projects of different scope.

THE CALCULATION OF ECONOMIC PERFORMANCE INDICATORS

As with the financial performance indicators, economic performance indicators are obtained by applying the Discounted Cash Flow (DCF) Method to the net economic benefits occurring over the period analyzed. There are three main economic performance indicators:

a) The Economic Net Present Value (ENPV) is the difference between the discounted economic benefits and the costs. The ENPV is a measure of the socioeconomic profitability of the project that indicates whether the present value of economic benefits exceeds the present value of economic costs. It is calculated as follows:

$$ENPV = \sum_{t=0}^T d_t NECF_t$$

where $NECF_t$ is an annual net economic cash flow in year t , T is a length of the project lifecycle in years, and d_t is a discount factor in year t .

Social discount factor d_t shall be computed as $d_t = \frac{1}{(1+i)^t}$, where i is the **social discount rate**.

b) The Economic Rate of Return (ERR) is the internal rate of return that equals value of ENPV to zero. The economic rate of return is a measure of the socioeconomic profitability of the project, indicating whether the project rate of return is higher or lower than the benchmark economic discount rate. If higher, the project is considered beneficial to the society. It is calculated as follows:

$$0 = \sum_{t=0}^T \frac{NECF_t}{(1+ERR)^t}$$

where $NECF_t$ is an annual net financial cash flow in year t , T is a length of the project lifecycle in years.

c) **The Economic Benefit-Cost (B/C) Ratio** is a measure of project profitability and viability computed as the ratio of total discounted benefits to total discounted costs over a project lifecycle. The BC ratio indicates whether the present value of economic benefits is higher than the present value of economic costs. The program is generally financed or considered beneficial if:

$$B \geq C \text{ or } \frac{B}{C} > 1$$

As pointed out in the main text, the choice of an appropriate social discount rate is one of the key elements of an economic analysis. The main methods used to calculate the social discount rate are:

a) **The social rate of time preference.** This approach is based on the argument that public investment reduces private consumption

and thus equates the social discount rate to a rate of time preference, usually estimated with the Ramsey formula.

b) **The social opportunity cost of capital.** This approach is based on the argument that public investment crowds out private investment one-for-one and, as such, the discount rate is estimated based on the pre-tax real rate of return for private investment, typically estimated using returns to private capital.

The estimated value of the social discount rate usually falls within the range of 10-12 percent for developing countries, or 3-5 percent for advanced countries. Based on the social opportunity cost of the capital approach, development banks (e.g., the World Bank and the Asian Development Bank) typically apply a real discount rate in the range of 10-12 percent when evaluating projects in developing countries. Consequently, many government agencies in

BOX 7. ESTIMATING THE SOCIAL DISCOUNT RATE IN MYANMAR USING THE RAMSEY FORMULA

According to the Ramsey formula, a social discount rate rests on three key variables:

i) how much the future is discounted relative to the present (∂), ii) how the additional utility from an increase in consumption changes (y), and iii) how much consumption will grow over time (g). The formula reads as:

$$SDR = \partial + yg,$$

The study of Dobermann (2018) attempts to capture the social discount rate for Myanmar under several scenarios, utilizing the following assumptions on Ramsey formula parameters:

- Time discount rate ∂ : Typically, between 1-1.5%, adjusted up or down based on whether mortality is high or low. Using a 10-year average of the crude death rate for Myanmar from WDI data, it is adjusted to 0.83%.

- Elasticity of the marginal utility of consumption y : Typically, between 1-2. In the absence of adequate study for Myanmar, an approximation is made based on the estimated elasticity for India (value 1.64), drawing from data between 1965 and 1995 (Kula, 2004).

- Growth rate of per capita consumption g : the first scenario is a historical average of Myanmar per capita consumption growth rates (3%); the second scenario is a historical average of the Least Developed Countries per capita consumption growth rates (4.72%).

Based on these assumptions, the following values of SDR are computed for Myanmar:

PARAMETER	MINIMUM	MIDDLE	MAXIMUM
Time discount ∂	0%	0.83%	1.5%
Utility y	1%	1.64%	2%
SDR if consumption growth $g = 3\%$ (scenario 1)	3%	5.75%	7.5%
SDR if consumption growth $g = 4.72\%$ (scenario 2)	4.72%	8.57%	10.94%

these countries follow such guidelines and apply a discount rate within similar range when evaluating public projects. In the case of advanced countries, the European Commission, for example, recommends that the social discount rate of five percent be used for major projects in cohesion countries¹⁴⁵ and three percent for the other member states. Some comparison of real discount rates being used for selected advanced and developing countries can be found in Harrison (2010). Nevertheless, such high social discount rates for developing countries are prone to serious criticism. For instance, Warusawitharana (2014) argued that the SDR for developing coun-

tries should be valued at the yield-to-maturity of the recent issuance of dollar-denominated sovereign debt with a maturity greater than five years. This is considerably lower than the usual range of 10-12 percent, as illustrated in Table 3 below.

¹⁴⁵ Cohesion countries are EU countries with a GNI of less than 90 percent of the EU average. These countries are beneficiaries of the EU Cohesion Fund, established to reduce economic and social disparities within the Union.

TABLE 3. YIELD TO MATURITY ON SOVEREIGN DEBT ISSUANCE BY DEVELOPING COUNTRIES AS A PROXY OF SDR

COUNTRY	ISSUE DATE	YIELD-TO-MATURITY PROXY FOR SDR	COUNTRY	ISSUE DATE	YIELD-TO-MATURITY PROXY FOR SDR
Kenya	6/17/2014	6.88%	Senegal	7/23/2014	6.25%
Zambia	4/7/2014	8.63%	Honduras	12/11/2013	8.75%
Ivory Coast	7/16/2014	5.63%	Gabon	12/5/2013	6.38%
Sri Lanka	4/8/2014	5.13%	Bolivia	8/15/2013	6.25%
Pakistan	4/9/2014	8.25%	Nigeria	7/2/2013	6.63%

Source: Warusawitharana (2014)

Finally, in order to transform the market to accounting prices and address inefficiencies of the market environment in which legal aid is delivered, it is necessary to use the **The Standard Conversion Factor (SCF)**. SCF is estimated using the following formula:

$$SCF = \frac{(M + X)}{[(M + R_m) + (X - R_x)]}$$

Where M corresponds to the total value of imports (X – total value of exports), R_m stands for import taxes, while R_x stands for export taxes. The computation of SCF values for five selected African countries, based on the data from WDI, is given in the table below.

TABLE 4. STANDARD CONVERSION FACTORS FOR SELECTED AFRICAN COUNTRIES (IN LCU BILLIONS, 2017)

COUNTRY	IMPORT	IMPORT DUTIES	EXPORT	TAX ON EXPORT	STANDARD CONVERSION FACTOR
Botswana	61,108	17,864	71,735	2	0.88
Cote d'Ivoire	7,022,003	485,539	7,532,730	601,891	1.01
Equatorial Guinea	2,731,809	12,292	4,109,215	8,074	1.00
Senegal	4,342,562	263,495	2,665,072	2,891	0.96
Togo	1,667,073	100,130	1,133,838	1,556	0.97
AVERAGE					0.96

Source: own computation using WDI data

The average value of SCF is around 0.96, which is in line with the assessed average values of SCF in other world regions, but individual values per countries may considerably vary relative to the average. In the case of selected countries, the SCF for Botswana is considerably lower at 0.88. It means that the economic value of the estimated costs and benefits will be considerably lower than the financial value. For example, if we apply this rate to the estimated financial costs of the buildings in Box 4 (i.e., construction costs), then the economic value of the costs will be $1,500,000 \times 0.88 = 1,322,214$.

Shadow wage factors (SWF) is a specific conversion factor used to account for imperfections on the labor market. These imperfections are reflected through the unemployment rate and the rate at which wages are taxed in the economy. Please see the box on the following page for the details on how to calculate it.

BOX 8. SHADOW WAGE FACTOR (SWF) AS A SPECIAL CASE OF STANDARD CONVERSION FACTOR

While the use of SCF is particularly worthwhile in a CBA when significant portions of the cost stem from investments in physical assets, it has limited usefulness in a CBA of investments in social infrastructure where labor costs dominate the total cost structure. This is typically the case with legal aid projects/programs. The labor cost is adjusted using the Shadow Wage Factor. (SWF) calculated as: $SW = (1-u) \cdot (1-t)$, where u is the unemployment rate while t is the rate of social security and related taxes. Both parameters apply to the market segment relevant for the project (e.g. lawyers in the case of legal aid programs). However, if these data do not exist, the analyst would have to make a reasonable adjustment to the overall unemployment and overall wage tax burden data of the country in question.

The SW factor is designed to account for local labor market imperfections and to arrive at the social cost of labor. Generally, the higher the unemployment rate and wage tax burden, the less competitive the labor market is and the higher the magnitude of adjustment.

For instance, let's consider Rwanda data on SWF inputs from WDI in 2017:

- i) The unemployment rate (% of the total labor force, entire economy) = 17.4%;
- ii) The tax rate on income, profits and capital gains (% of total taxes, overall) = 39%;
- iii) The social contribution (% of revenue, overall) = 8.4%.

When the inputs are inserted into the SWF formula, the following estimate of the SWF for Rwanda is obtained:
 $SWF = (1 - 17.4\%) \cdot (1 - (39\% + 8.4\%)) = 0.44$

Thus, according to this calculation, when the performing the adjustment using the SW factor, the economic labor costs would represent only 44% of the initially estimated financial labor cost. Adjustments of such magnitude are usually seen in non-competitive labor market segments (e.g. low-skilled staff). Legal aid provision entails the participation of highly skilled labor for which the market is highly competitive. Therefore, the adjustment will typically not be so intensive.



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