

"Panel Discussion (1):

International Collaboration - Working Together towards Achieving UN's Legal Aid Principles and Guidelines"

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The people have the right to fair trial and the right to legal aid. International and regional human rights conventions have recognized free legal aid as the basic element to fair trial. Article 14-3-(d) of the International Covenant on Civil and Political Rights states that: "everyone shall be entitled... in the determination of any criminal charge against him... to defend himself in person; or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it."

Article 18-3-(d) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families is fundamentally identical to the International Covenant on Civil and Political Rights. The Convention on the Rights of the Child states that every child deprived of his or her liberty and those who have been accused, indicted or convicted of crime "shall have the right to prompt access to legal and other

appropriate assistance” (Article 37-(d) and Article 40-(2)-(b), items (ii) and (iii)), but does not mention about free legal aid.

Nevertheless, the Committee on Children's Rights has emphasized in its general opinion #10 that legal aid should be provided without payment.

Some regional literatures have established that the European and American legal systems do in fact recognize the people's right to free legal aid.

Article 6-3-(c) of the European Convention on Human Rights states that everyone charged with a criminal offense has the "minimum right" to defend himself in person or through legal assistance of his own choosing, or to be given it free when the interests of justice so require if he has not sufficient means to pay for legal assistance.

Article 8-2-(e) of the American Convention on Human Rights states that the people has the "inalienable right" to be assisted by counsel provided by the state, but unlike the European Convention, the American Convention neither mentions the interests of justice nor the defendant's financial capabilities.

Many UN documents including "Standard Minimum Rules for the Treatment of Prisoners," "Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment," "Basic Principles on the Role of Lawyers," "Rules for the Protection of Juveniles Deprived of Their Liberty" (“the Havana Rules”) and "Standard Minimum Rules for the Administration of Juvenile Justice" (“the Beijing Rules”) all mention about the people's right to free legal aid.

In December 2012, the UN General Assembly passed its Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which “aim to provide guidance to States on the fundamental principles on which a legal aid system in criminal justice should be based and to outline the specific elements required for an effective and sustainable national legal aid system.”

Although these principles and guidelines focused solely on legal aid in criminal justice, the UN Special Rapporteur still considered them as the most comprehensive legal documents to date for developing and enhancing a state's legal aid system.

Human rights conventions available today have yet to give any definitions on legal aid. The only world-recognized definition is found in "Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems". Under the "Principles and Guidelines," the term “legal aid” includes legal counsel, assistance and representation to people who have been held in custody, arrested or detained for criminal charges, and suspects, defendants, the prosecuted, victims and witnesses in a criminal proceeding.

The Principles and Guidelines also mention that legal aid should be given without payment to those who have not the means to pay, and where the interests of justice so require. In addition, “legal aid” also embodies services such as legal education, legal information, dispute resolution and retrospective justice.

The UN Special Rapporteur held the opinion that the purpose of legal aid is to assist those who are otherwise unable to seek

legal assistance, hire legal representation or undergo legal proceedings on their own. The availability of legal aid should help them eliminate damages, obstacles and disadvantages encountered in the search for justice. Legal aid should be provided without payment not only during criminal proceedings, as stated in Article 14-3-(d) of International Covenant on Civil and Political Rights, but also when rights and obligations are being determined during any judicial or extrajudicial procedures.

The UN Special Rapporteur believes that access to legal aid can be considered a human right on its own as well as a means of protecting other human rights such as rights to freedom, security, equality in court and tribunal, a fair trial and legal representation. Access to legal aid can have profound benefits, given the scope of impact, which is why the people's right to legal aid should be acknowledged, protected and enhanced whether in criminal or non-criminal cases. (Please refer to: United Nations Human Rights Council 23rd Session.

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Furthermore, to secure the people's rights to legal aid described above, the state shall be responsible for providing an adequate budget not only in criminal cases, but also in civil and administrative litigations.

The UN's special report also concurred with the idea:

"Regardless of the form of the legal aid system, it is important that the state provides a budget equivalent to the level of service required, so as to guarantee timely and effective legal aid to every citizen within the respective region who would otherwise be unable to afford litigations.

These budgets should be spent on providing legal aid for criminal, civil and administrative cases. Some countries have separated legal aid for criminal cases from those of civil cases, while other countries have combined them together. Although there is no sign to suggest which system is superior, but in any case, the division of budget should never be made at the expense of legal aid for civil and administrative cases. The cases chosen for this publication are "impact litigations" that should suffice in establishing good precedents as far as civil legal aid are concerned."

The notion of legal aid conveyed in UN's international conventions have been implemented differently from state to state.

However, the progress would definitely be more significant if there were international collaborations. Below is an introduction to the various cross-border efforts that the Legal Aid Foundation has made over the last ten years in an attempt to deliver the level of legal aid required by the conventions mentioned above.

We hope to inspire greater level of collaboration across countries in this regard.

I. Cross-border collaboration on legal aid cases

1. Hong Kong, 2005

During the 2005 WTO conference held in Hong Kong, a student from National Taiwan University traveled to Hong Kong to protest against globalization of the economy and was arrested for it.

The Legal Aid Foundation then contacted Hong Kong Legal Aid Department and arranged to have Hong Kong Legal Aid Department coordinate legal aid for the arrested student.

2. Coordinated legal aid for leprosy patients between Taiwan, Japan and Korea

In the 1900's, at a time when Taiwan was still under Japanese rule, people held strong discriminations against leprosy patients because they lacked proper knowledge towards the disease.

The government then forcedly gathered leprosy patients into a designated camp that would later be known as the "Lo-Sheng Sanatorium."

The Legal Aid Foundation joined public interest lawyers from Japan and Korea to help occupants of Lo-Sheng Sanatorium file a class suit for their interests.

This movement had led to the enactment of "Act of Human Rights Protection and Compensation for Hansen's Disease Patients" by the congress, giving leprosy patients the compensation and care they deserved from the government.

II. Assistance to legislation of legal aid systems

1. In 2007, Legal Aid Foundation organized a visit to LSC in the UK that later progressed into more productive interactions, including the introduction of "legal representation at first interrogation" into Taiwan.

2. The Legal Aid Foundation worked with Japanese legal advisors to learn the debt rehabilitation system currently implemented in Japan. This effort would later give birth to the "Consumer Debt Rehabilitation Regulation" that helped credit card debtors start anew.

III. Collaborations with legislators around the world

1. Taiwan hosted its first International Forum on Legal Aid in 2005, during which representatives from 19 countries had participated.

2. Taiwanese, South African and Thai representatives participated in Indonesia's legal aid conference, which later enabled Indonesia to develop legislative framework for its legal aid system in 2011.

3. Taiwanese representatives participate in Malaysia's legal aid conferences to collaborate on the exchange of knowledge.

IV. Prevailing challenges that still need to be improved through cross-border collaborations

1. The case of sexual assault against foreign worker in Tainan is currently assisted by Legal Aid Foundation; however, it still requires the collaboration between two nations to fundamentally improve the labor agency system.

2. Although most of the legal aid offered in countries around the world do extend to foreigners; however, closer cross-border collaboration is still required to protect the interests of help seekers.

V. Collaborations currently feasible among legal aid institutions across the world

1. Case-by-case collaboration.

Such as the example between Legal Aid Foundation and Hong Kong Legal Aid Department.

2. Regular convention of international legal aid forums.

For the purpose of promoting consensus and collaboration between countries.

3. Contractual arrangements across legal aid institutions on ways to collaborate in individual cases.

Countries may develop long-term and systematic relations through the use of cross-border agreements.

These agreements may embody the following terms:

- (1) Offering free and immediate legal aid upon being notified by one contract party.
- (2) Offering immediate on-site legal counsel to citizens being held in custody when notified by one contract party, and the authority to accept legal aid request where necessary.
- (3) In a scenario where a citizen has received legal aid and has subsequently left the country, the aiding party shall continue to provide assistance on all subsequent proceedings.
- (4) The requirement to entitle foreigners the same quality of legal aid as do local citizens.
- (5) Provision of interpretation services where necessary to facilitate legal aid mentioned above.
- (6) Creation of a list of lawyers who are available to provide legal aid, which may be used as a reference to those seeking assistance.
- (7) Provision of other social resources (e.g. emergency assistance) to foreigners in need, apart from legal services.

4. States may assist each other on the legislation of legal aid system, and collaborate towards satisfying the requirements of UN conventions.

Lastly, I would like to thank all representatives for your presence in this international forum, especially those from Korea and the Philippines, who had agreed to work with the Legal Aid Foundation at the very first instance.

Together, we shall facilitate closer interaction and offer more comprehensive legal aid for locals and foreigners, and achieving greater protection of human rights for one another.

Thank you.