

2014 International Forum on Legal Aid

Implementing international conventions: allocating legal aid resources to provide services which reflect international human rights standards and principles.

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Human rights are rights that every single person has by virtue of being human. Human rights reflect the minimum standards necessary for people to live with dignity. They belong to all people equally regardless of status and are considered essential to the full development of individuals and communities. Human rights also guarantee people the means necessary to satisfy their basic needs so that they can they can take full advantage of all opportunities. Maryland Legal Aid adopted the human rights framework to uphold these principles in the provision of legal services to the poor. Simultaneously, the pivot to a human rights frame seems to have reinforced a growing consensus about the role access to justice plays in actualizing poor people's human rights and lifting them out of poverty. In a recent report, the United Nations (U.N.) Special Rapporteur on extreme poverty and human rights stated that access to justice is not only a fundamental human right in itself, but it is an essential prerequisite for the protection and promotion of all other civil, cultural, economic, political and social rights.¹ Mary Robinson, the former High Commissioner for Human Rights, is a key leader in the push to include access to justice in the U.N.'s post-2015 Development Goals, which recognize the "lack of legal protection as a form of repression and an affront to human dignity."² Both sources recognize that achieving access to justice for the poor necessitates legal services for the poor, underscoring the import of our collective work.

In light of limited resources, what considerations guide the prioritization of services offered?

With an organizational vision to protect and advance human rights so as to effect lasting social change, Maryland Legal Aid achieves its clients' goals through a broad continuum of services ranging from brief advice and service, *pro-se* assistance and targeted referrals, *pro-bono* coordination and referrals, community education, policy and impact advocacy, transactional work, collaborative endeavors with other organizations, and litigation in state and federal trial-level and appellate courts. The priority areas for representation are family/domestic, housing, income maintenance (public benefits and employment), consumer, and education law.

Maryland Legal Aid sets priorities for service delivery based on the expressed and assessed needs of potential clients. To date, demand for services has been highest on issues related to family/domestic law, housing, consumer and income maintenance (both employment and public benefits) law. Maryland Legal Aid's 2007 comprehensive assessment of client community needs indicated that affordable housing, employment that provides a living wage and access to health care were the highest priority needs identified among the poor in all Maryland counties. These findings continue to be relevant based upon issues presented by clients at intake and through feedback from community forums and outreach activities. In addition, Maryland Legal Aid has increased its focus on serving the needs of limited English-proficient populations in Maryland, to the ethnic and cultural diversity of Maryland's low-income population and to veterans. Maryland Legal Aid attempts to strategically coordinate advocacy and resources to meet these needs statewide.

* Reena Shah, Esq., Director of Maryland Legal Aid's Human Rights Project was a principal collaborator on this report.

¹ Report of the Special Rapporteur on extreme poverty and human rights, A/67/278, August 9, 2012.

² See, Justice 2015 at <http://www.opensocietyfoundations.org/sites/default/files/justice2015-statement-06122014.pdf>

What are the ways in which legal aid organizations may effectively offer legal aid services at the early stages of criminal investigations?

Legal Aid lawyers assume a critical role at the beginning of a criminal prosecution to safeguard poor and low-income people's most important human right – their freedom against unlawful government action. Yet, in many countries including the United States, an accused may remain in jail without a lawyer for long periods before having had a trial, thus depriving them of liberty and a fair opportunity to defend against government's charges. Published studies show that a lawyer's early representation and advocacy often makes the critical difference between an accused being freed or remaining incarcerated for lengthy periods before trial. Governments would save substantial money investing in lawyers at poor people's first appearances before a judicial officer. Guaranteeing early counsel would not only reduce the cost of managing the pretrial jail populations; it could also be a significant step forward to level the playing field for impoverished defendants.

The state of Maryland has recently taken a major step in recognizing the right of criminal defendants to receive counsel at the early stages of criminal investigation. On September 25, 2013, in the landmark case of *DeWolfe v. Richmond*,³ the Maryland Court of Appeals held that an indigent criminal defendant is entitled to state-furnished counsel at the defendant's initial appearance before a District Court commissioner and during bail reviews before District Court judges under Maryland's Public Defender Act. This decision expanded the right to counsel in criminal proceedings that was found under the U.S. Supreme Court case of *Gideon v. Wainwright*,⁴ which initially prompted the creation of The Office of the Public Defender in Maryland. As a result of the *DeWolfe* case, the right to counsel now attaches in any proceeding that may result in incarceration, including in any pre-trial matters.

The Maryland judiciary has been tasked with implementing the *DeWolfe* decision. At this point, however, the Office of Public Defender of Maryland, which is responsible for providing indigent criminal defense after the pre-trial stage, and is the largest legal services organization in the state, will not have any official role in the implementation of *DeWolfe*. Instead, programs have focused on recruiting private attorneys to do this work. For example, during the summer of 2014, the judiciary launched the Appointed Attorneys Program (AAP) to provide legal counsel for indigent defendants at appearances before district court commissioners. The AAP will provide compensation of \$50 an hour, plus mileage and tolls, to attorneys who contribute their legal expertise and time to assist low-income Marylanders. Attorneys must also comply with the program's training requirements, certify that the rules on initial appearances have been reviewed, and complete an application form and sworn statement. Further, the Maryland General Assembly passed the state budget for fiscal year 2015, setting aside \$10 million to pay private attorneys to represent indigent defendants at those bail hearings.

What are the ways in which legal aid organizations may maximize the benefits of out-of-court dispute resolution for legal aid applicants or recipients?

Alternative Dispute Resolution (ADR) includes processes for resolving disputes without going to trial. In Maryland, there are several entities that offer alternative dispute resolution programs such as mediation, settlement conferences and community conferencing. Further, the court operates its own Alternative Dispute Resolution Office that offers mediation and settlement conferences for pending civil cases at no charge on the day of the trial or before the trial date. Parties that successfully reach an agreement reap numerous benefits by avoiding trial. ADR saves money and time, helps to preserve the relationship of the parties, and increases control over their particular outcome.

³ Case No. 34 (MD Ct. App., Jan. 4, 2012).

⁴ 372 U.S. 335 (1963).

Legal aid organizations may maximize the benefits of ADR by encouraging applicants to participate in ADR processes by either facilitating the process or referring the parties to a qualified mediator. Additionally, legal aid organizations can educate applicants or recipients of their rights so that when they enter ADR processes, they have a greater command of the factual and legal basis for his/her claim and can obtain a favorable outcome.

To maximize benefits of ADR, Maryland Legal Aid is working on an innovative ADR program that will increase access to justice for underserved people in Baltimore. In collaboration with the Maryland Judiciary's Mediation and Conflict Resolution Office, the Pro-Bono Resource Center, the University of Baltimore Law School's Family Law Mediation Clinic, the University of Maryland Law School's Center for Dispute Resolution and the Baltimore City Community Mediation Center, Maryland Legal Aid is creating a program to screen the hundreds of people who come to the Maryland Legal Aid office in Baltimore City every day and must be turned away because they do not meet the qualifications for representation by Maryland Legal Aid.

Those not meeting Maryland Legal Aid's qualifications will be screened during intake and appropriate cases will be referred to mediation. The Pro Bono Resource Center will provide *pro-bono* lawyers to represent each party, solely for the purposes of the mediation. These lawyers will prepare the clients for mediation, represent them during mediation and draft mediated agreements. The mediators will be skilled and trained law students or skilled and trained community mediators. Mediation successfully helps opposing parties reach full or partial agreement in approximately 75% of cases. This pilot program will collect data and survey all of the participants to monitor and evaluate the program. If, as is hoped, it is successful, it can be replicated across the state and across the country.

What is the extent to which legal aid organizations may provide legal aid services through the use of technologies? What are the limitations?

There is great promise for legal aid organizations to provide legal aid services through the use of technologies. Indeed, at Maryland Legal Aid, most legal research now happens via computer as does all of the organizations' case management. Maryland courts also demand the use of technology, now requiring that certain types of cases be filed only online and all documents associated with the case, including pleadings and exhibits, be submitted only digitally. Of course, the organization has employed some form of technology in the provision of legal services for many years. For example, Maryland Legal Aid has conducted intake and provided information, referral and advice to applicants and clients by phone for many years. It also uses the "language line" a telephone-based interpretation service, to serve clients who are limited English proficient.

Last year, Maryland Legal Aid began to provide a new option to access legal assistance through an online intake form. Online intake allows Marylanders to complete an application for services at any time from their own home, local library, or anywhere they can access the internet. Since being deployed, the online intake process has already generated 2,438 requests for services, suggesting that there was tremendous demand to receive services in this manner.

Maryland Legal Aid also uses technology to inform potential applicants of services offered by the organization through the use of its website. It also maintains an outreach presence to clients and the community via MDJustice.org, Facebook, Twitter, YouTube, custody interview materials on the People's Library website, and a Google+ page. Last year, Maryland Legal Aid reached 27,437 people via Facebook, 15,691 people via Twitter, 163 via Google+ and 3006 via YouTube (where two public videos have been posted, both on human rights issues). In addition, MDJustice.org currently has 522 members and 3250 pages of materials.

Beyond intake and outreach, Maryland Legal Aid also experienced a spike in its ability to offer self-help services through use of technology. Maryland Legal Aid operates two family law *pro se* centers in the circuit courts for Anne Arundel and Cecil Counties and a District Court Self-Help Center (DCSHC) in Anne Arundel County with funding from the Administrative Office of the Courts (AOC). The DCSHC, a pilot project launched by the District Court of Maryland with the assistance of the Maryland Access to Justice Commission, opened to the public on December 1, 2009. The DCSHC provides assistance statewide to self-represented individuals with civil cases pending in the District Courts of Maryland. In 2011, the DCSHC expanded from walk-in assistance to provide assistance via phone and live chat. This expansion of services resulted in a dramatic increase in the number of unrepresented litigants assisted from approximately 5,700 per year to just under 23,000. Due to the success of the pilot project, DCSHC plans to expand into two additional high-volume jurisdictions in the state.

Further, legal aid organizations are continually exploring other creative way to use technology to reach more clients and better serve them. The Legal Services Corporation, which is premiere funder of legal services nationally, has a special track of funding called Technology Initiative Grants (TIG). In 2013, TIG grants were awarded to legal services organizations for a range of purposes, including developing online “triage” assessment and referral systems; developing online interactive training resources for pro-bono attorneys; and creating an online legal forms and document center.

Legal services organizations could also utilize technology in other ways to enhance the provision of legal services. For example, organizations could use video-conferencing to conduct client interviews to reduce time and travel costs, especially when trying to reach applicants or clients in remote areas. Indeed, a Maryland Legal Aid attorney used video-conferencing in a case last year to enable her bed-bound client to testify in court. Another technology under exploration for use by legal services is SMS because it does not require an internet connection or any internet savvy.

While technology can improve certain types of services offered to clients, such as information or intake, it cannot serve as a panacea. For example, it is difficult to imagine that face-to-face interaction during the course of legal representation will be obviated. Further, Maryland Legal Aid understands that reaching some vulnerable populations is not possible through technology and requires other, more personal, strategies. Maryland Legal Aid’s state-wide presence through 13 physical offices allows for strong outreach at the local level. Maryland Legal Aid also assures that clients with disabilities who may not have access to technology can still access our services through home-visits and/or community outreach.

Should legal aid organizations play a prominent role in death penalty issues?

Legal aid organizations should play a prominent role in death penalty issues. Maryland’s example demonstrates that having the Office of the Public Defender (OPD) deeply engaged for decades in capital punishment cases had the tremendous impact of actually repealing the death penalty in Maryland. On March 6, 2013, the Maryland General Assembly voted to repeal the death penalty. The repeal was signed into law on May 2, 2013, putting an end to the state’s 375 year history of capital punishment. Although the numbers vary by source, approximately 300 people were executed since the inception of the colony that became the state of Maryland in 1638, but only 5 have been executed since the creation of the OPD in 1971.

Maryland’s OPD was founded following the landmark Supreme Court decision in *Gideon v. Wainright* which mandated that criminal defendants had a right to counsel. The Maryland OPD had a separate unit just to handle capital defense litigation and this group became a national model for how best to represent inmates on death row. OPD successfully mastered team driven representation and worked incrementally to achieve the ultimate goal of abolishing the death penalty. Some of OPD’s cases went all the way to the U.S. Supreme Court. Those cases had the effect of narrowing the instances when the death penalty could

be granted. The OPD's zealous representation succeeded in maintaining one of the smallest death rows in the country. Due to their involvement, not a single person received the death sentence in Maryland since 2004.

The OPD also engaged in studies of the death penalty that emphasized the following: the existence of both racial and jurisdictional bias in death sentencing; the monetary cost, which was estimated to have exceeded \$186 million dollars; the negative effects of prolonged litigation on the family members of the victims; arbitrariness in the imposition of the death sentence; the fact that the death penalty fails to act as a deterrent to the commission of homicides; and the risk of executing an innocent person. Citing these factors, a 2008 report prepared by the Maryland Commission on Capital Punishment concluded that the application of the death penalty in Maryland resulted in both "failure and futility." The totality of OPD's involvement in death penalty representation as well as advocacy to limit the application of the death penalty, ultimately led to its repeal in Maryland. This strongly suggests that sustained involvement by a legal services organization can have a tremendous impact on people facing the death penalty.

Should legal aid organizations play a prominent role in assisting indigenous people?

Legal aid organizations can and do play a role in assisting indigenous people, but could do more to meet the legal needs of this poor and vulnerable population. Federally recognized American Indian tribes in the United States have sovereignty and the authority to govern themselves as independent tribal nations. Each federally recognized tribe has its own tribal government, laws and courts. Native Americans thus have unique and specialized legal needs because they are governed by tribal law and a complex web of federal law.

Legal aid organizations interested in playing a role in assisting indigenous populations must have expertise in both U.S. law and tribal law. The Legal Services Corporation (LSC), a federal funder for many legal services organizations across the U.S., has a special funding track to serve Native American populations. The Bureau of Indian Affairs also provides special funding for programs to federally recognized tribes. Therefore, the availability of legal services targeted to indigenous populations in the U.S. depends on the federal recognition of the Native American populations as sovereign tribal nations.

This differentiation has resulted in tailored and targeted services for Native Americans only in states with large federally recognized tribes. The state of Maryland, for example, has nine tribes identified by the Maryland Commission on Indian Affairs as being indigenous to Maryland, but none of them is federally recognized. As such, Maryland Legal Aid does not have any specialized program targeted to Native Americans. In contrast with this, are states with large federally recognized indigenous populations that either have a sub-section within the organization that serve indigenous populations or have entire organizations dedicated to serve the indigenous population. In California, for example, the frequency and complexity of legal problems faced by California's Native American population led to the formation of the California Indian Legal Services (CILS). In instances where tribal law is enforced or the matter takes place in tribal court, CILS has specially trained advocates with both tribal law and state law to properly handle the case.