

LEGAL AID/PUBLIC DEFENSE SERVICES: A GLOBAL PERSPECTIVE

WHAT IS LEGAL AID? WHAT IS PUBLIC DEFENSE? WHAT IS INDIGENT DEFENSE?

In the United States, “public defense” or “indigent defense” services generally apply to services for criminal matters, while “legal aid” generally applies to services for civil matters. In other countries, the term “legal aid” often covers services for both categories of cases. Legal aid has come to serve as an umbrella term that covers free or low cost legal assistance from lawyers, paralegals and other legal professionals that is provided to those deemed “indigent” – or cannot afford to retain an attorney -- regarding matters entailing criminal, civil, administrative and international law. The following is a short overview of the diversity of approaches countries are using to provide “legal aid”.

INTERNATIONAL NORMS ON LEGAL AID

- *Universal Declaration of Human Rights. 1948*

The Universal Declaration of Human Rights, approved by the United Nations General Assembly on December 10, 1948, guarantees the right to a fair trial. Many justice systems around the world, and the United Nations itself, have interpreted a right to counsel as a necessity for a fair trial.

- *Convention for the Protection of Human Rights and Fundamental Freedoms. 1950*

The Convention for the Protection of Human Rights and Fundamental Freedoms, commonly known as the European Convention on Human Rights, recognized the right to a fair trial, including an explicit right to counsel, in 1950.

- *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. 2012*

On December 20, 2012, the United Nations Economic and Social Council approved the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (the “Legal Aid Guidelines.” These Guidelines are the first direct, detailed statement on Legal Aid. The Guidelines affirm the right to counsel as essential to the rule of law.

- Definition of Legal Aid: "legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require."
- Legal Aid is Not Just for Defendants: The Guidelines contemplate not only counsel for those accused of crimes, but also, where appropriate, for others who may be involved in the legal system, such as “victims and witnesses.” (Principles 4 & 5).

- Legal Aid is Not Just Representation; The Guidelines include a wide sphere of activities within the concept of legal aid, including “the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.”
- Legal Aid is Not Just for Criminal Courts: The Guidelines discuss not only the representation of counsel in criminal courts, but also “alternative dispute resolution mechanisms and restorative justice processes.”

The Legal Aid Guidelines can be viewed here. [[United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#)]

For a brief summary of Legal Aid/Public Defense services in the countries listed below that provide a snapshot of the approaches being used among countries providing these services, please access the links below:

Afghanistan	Finland	Norway
Argentina	Germany	Pakistan
Australia	Hong Kong	Panama
Bangladesh	India	Peru
Brazil	Indonesia	Scotland
Canada	Ireland	South Africa
Chile	Israel	Taiwan
China	Latvia	Tanzania
Columbia	Netherlands	United States
Costa Rica	New Zealand	Uruguay
Ecuador	Nicaragua	Venezuela
England and Wales	Northern Ireland	

For a more detailed international perspective on indigent defense and legal aid services, see: [International Perspectives on Indigent Defense and Legal Aid: Shared Challenges and the Road Forward](#) at www.american.edu/justice/spa/jpo.

FUNDING FOR LEGAL AID

- **Sources of Funding**

Government funds usually make up most to all of the spending provided for legal aid services. Legal aid services in most countries’ are funded by the central government. In some countries, however, legal aid services are funded by individual provinces or by both the province or subdivision together with the central government. Every country has a form of means testing for legal aid applicants. Countries with civil legal aid programs that are well-developed also apply criteria for prioritizing cases for which counsel is provided. In most Western countries, the individual receiving legal aid, particularly in civil cases, is required to make some financial contribution. Generally, legal aid in criminal cases is subject to well-defined income or assets cutoffs and involves no repayment.

- **Amount of Funding Provided: Percentage of GDP (Gross Domestic Product)**

As noted above, provision of legal aid services is generally provided by the government of the country involved. While the relative “need” among countries for legal aid services is a product of numerous factors, including the nature and volume of litigation that is conducted and the economic situation of

litigants, there is no accepted formula that has been developed to determine the funding needed, as well as a framework for assessing the degree to which these services are provided on an international level. However, some comparative assessment can be derived by considering legal aid funding in a country as a percentage of that country's Gross Domestic Product (GDP). Charts 1 and 2 below illustrate the range of public spending on legal aid as a percentage of the GDP for 18 countries for which this information was readily available. The information for the United States is not readily available because of the multiple levels of government involved in the funding of indigent defense services and legal aid.

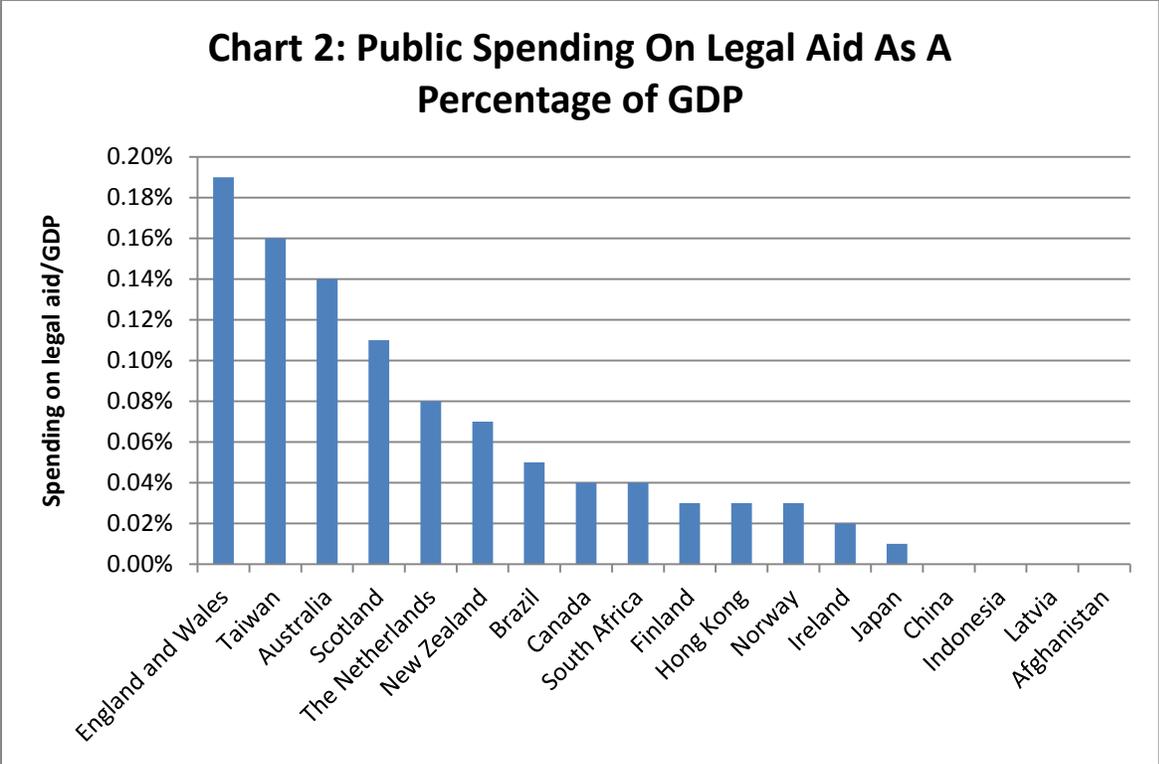
Chart 1: SPENDING ON LEGAL AID As a Percentage of the Country's Gross Domestic Product (GDP): Eighteen Countries Where Information is Readily Available

COUNTRY	SPENDING ON LEGAL AID AS A PERCENTAGE OF GDP	SOURCE*
Afghanistan	<0.01% (2012)	-Sarah Han, "Legal Aid in Afghanistan" (2012): http://www.afghanistan-analysts.org/wp-content/uploads/downloads/2013/08/20120417-SHan-Legal-Aid-in-Afghanistan1.pdf
Australia	0.14% (2012)	-Marjorie Todd, ILAG report on Australia, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/Australia_National_Report.pdf -National Legal Aid, Finance: http://www.nationallegalaid.org/home/finance/
Brazil	0.05% (2009)	-Cleber Alves, ILAG report on Brazil, 2011: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/Helsinki_2011/national_reports/Brazil_National_Report_ILAG_2011.pdf
Canada	0.04% (2012)	-Jacqueline Schaffter, ILAG report on Canada, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/Canada_National_Report.pdf
China	<0.01% (2012)	-Xia Hui, ILAG report on China, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/China_National_Report.pdf
England and Wales	0.19% (2009) (Recent cuts have reduced the legal aid budget by about 410 million GBP in 2012)	-Steve Hynes, ILAG report on England and Wales, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/England_and_Wales_National_Report.pdf -Hugh Barrett, ILAG report on England and Wales, 2011: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/Helsinki_2011/national_reports/National_Report_-_England_and_Wales.pdf

Finland	0.03% (2012)	-Merja Muilu, ILAG report on Finland, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/Finland_National_Report.pdf
Hong Kong	0.03% (2012)	-Witman Hung Wai-Man, ILAG report on Hong Kong, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/Hong_Kong_National_Report.pdf
Indonesia	<0.01% (2010)	-Erna Ratnaningsih, ILAG report on Indonesia, 2011: http://www.ilagnet.org/images/docs/helsinki/National_Report_Indonesia_Erna_Ratnaningsih.pdf
Ireland	0.02% (2012)	-Moling Ryan, ILAG report on Ireland, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/Ireland_National_Report.pdf
Japan	0.01% (2012)	-Tomoki Ikenaga, ILAG report on Japan, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/Japan_National_Report.pdf
Latvia	<0.01% (2012)	-Agris Batalauskis, ILAG report on Latvia, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/Latvia_National_Report.pdf
The Netherlands	0.08% (2012)	Lia Combrink and Susanne Peters, ILAG report on The Netherlands, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/Netherlands_-_Brochure_-_Legal_Aid.pdf
New Zealand	0.07% (2009)	-Marie Cope, ILAG report on New Zealand, 2009: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/Wellington_2009/National_Reports/New_Zealand_-_Marie_Cope.pdf -“Transforming the Legal Aid System: Final Report and Recommendations,” 2009: http://www.justice.govt.nz/policy/justice-system-improvements/publications/global-publications/t/transforming-the-legal-aid-system/
Norway	0.03% (2012)	-Olaf Ronning, ILAG report on Norway, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/Norway_National_Report_Final.pdf
Scotland	0.11% (2012)	-Scottish Legal Aid Board, ILAG report on

		Scotland, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/Scotland_National_Report.pdf
South Africa	0.04% (2012)	-Vidhu Vedalankar and Brian Nair, ILAG report on South Africa, 2013: http://www.ilagnet.org/jscripts/tiny_mce/plugins/filemanager/files/The_Hague_2013/National_Report/South_Africa_National_Report.pdf
Taiwan	0.16% (2011)	-Legal Aid Foundation ,2012 Annual Report: http://www.laf.org.tw/en/c3_1.php?PHPSESSID=ehkoji3ldokdp37rp3no65tg64

*Sources given are those for spending on legal aid. Figures for GDP in local currency are taken from the United Nations at <http://unstats.un.org/unsd/snaama/dnllist.asp>. Figures for GDP in US dollars are taken from the CIA World Factbook at <https://www.cia.gov/library/publications/the-world-factbook/>. Figure for Scottish GDP in 2012 taken from <http://www.scotland.gov.uk/Topics/Statistics/Browse/Economy>.



- Legal Aid Funding and the Impact of the Global Economic Crisis:**

While the UN Guidelines represent a major substantive step forward in the international recognition of the importance of Legal Aid, these progressive developments are occurring at a time that many legal aid systems are facing budget cuts and the curtailment of services. This is particularly the case in some of the

countries with the oldest and best funded legal aid systems, such as England and Wales, The Netherlands and New Zealand. Much of this is due to austerity measures put in place by governments following the financial crisis of 2007-2008.

For a fuller discussion of the various approaches for providing legal aid services internationally see: [*International Perspectives on Indigent Defense and Legal Aid: Shared Challenges and the Road Forward*](#). Sam Flores. May 2014. www.american.edu/justice/spa/jpo.