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Synopsis of introductory notes by Zaza Namoradze[1]
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Throughout the world, the vast majority of people charged with crimes cannot afford private counsel. Diverse "safety net" schemes -- haphazard *ex officio* panel appointment systems, assigning random attorneys from the practicing bar, often at very low government pay rates -- produce erratic or poor quality service, and in turn, sub-standard justice. Effective legal assistance remains illusory due to a lack of government commitment, funds and management systems. In some jurisdictions, the government is obligated to provide legal assistance only against accusations of the most serious crimes, leaving many defendants facing imprisonment without legal counsel. All too often, the outcomes of criminal proceedings—guilt or innocence, freedom or detention—hinge arbitrarily on defendants' finances. Where legal aid is available, often the quality is poor – either because of lack of tradition of client centered defense or lack of incentives for qualitative representation of legal aid cases.

Although applicable national and international standards and in our case, International Covenant on Civil and Political Rights (ICCPR), European Convention on Human Rights (ECHR) and Organization for Security and Co-operation in Europe (OSCE) instruments, all suggest an implied or express *governmental responsibility* to provide free and effective legal assistance to all indigent criminal defendants, there is little understanding among policy-makers of the need for an organized, systematic and purposeful response to fulfill this responsibility. Government officials preoccupied with other aspects of criminal justice reform often fail to acknowledge the complexity of ensuring adequate representation for those accused of crimes, passing the responsibility to the private Bar without adequate pay and any checks on the services delivered. As a result, government policy in this area is often *ad hoc*, ill-conceived, or poorly administered. Legal aid for criminal defendants is often overlooked in donor-supported criminal justice initiatives too.

No international standards prescribe a particular system or structure to ensure the delivery of legal aid. Each state must tailor appropriate solutions to its own context. Often this leads governments to strike an imperfect balance between meeting increasing legal aid needs and bowing to budgetary constraints. Sound legal aid policy making requires continuous evaluation of needs and performance with regard to legal aid institutions and identification of efficient models of delivery.

The Open Society Justice Initiative (Justice Initiative), an operational program of the Open Society Institute (OSI), pursues law reform activities grounded in the protection of human rights, and contributes to the development of legal capacity for open societies worldwide[2]. The legal aid programme of Justice Initiative, which I represent, seeks to promote implementation of the right to legal aid guaranteed by international instruments and of governments' obligation under international law. The Justice Initiative aims to raise awareness of the problems that exist in implementation of the right to legal aid, advocate for the need of workable policies in the field and assist governments and local civil society groups identify the adequate institutional solutions to meet the need.

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[2] The Justice Initiative combines litigation, legal advocacy, technical assistance, and the dissemination of knowledge to secure advances in following priority areas: national criminal justice, international justice, freedom of information and expression, equality and citizenship. Its offices are in Abuja, Budapest, and New York. For more information please visit our website: www.justiceinitiative.org.

International Standards:

International Covenant on Civil and Political Rights

Article 14, para. 3 (d):
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

…

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his 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.

European Convention on Human Rights

Article 6, para. 1 and 3 (c):
1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law…

3. Everyone charged with a criminal offence has the following minimum rights:

…

c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

This right is part of the core requirement of the ECHR for fair trial under Article 6. The core requirement of the legal aid provision is to provide equality of arms between individual and state. State is under obligation to provide legal aid if the following two conditions/tests are met: financial – indigence and merits – interest of justice. Financial – the person does not have sufficient means to pay for legal aid. The defendant has a burden to prove his/her indigency, but the test should not be beyond all doubts (Pakelli v. Germany, 1983). Merit – Interest of justice. Quaranta v. Switzerland (1991) provides 3 factors to be taken when assessing it: a) seriousness of the offence and severity of potential sentence. It further states that " where deprivation of liberty is at stake the interest of justice in principle call for legal representation; b) complexity of case(facts and law, ability of person to understand and defend himself; highly emotive nature of subject matter, etc.); c) personal situation of the defendant;

Legal aid should be available, immediately upon arrest, given the vulnerability of the defendant at that stage and the crucial importance of this stage in the context of the criminal proceedings as a whole in terms of evidence collection. The determining factor is the consequences of the lawyer's absence for the defendant. Although the Court has not expressly stated this as a standard, such could be drawn from the Court's language in various judgments (lack of legal assistance at the initial stages of police questioning may irretrievably prejudice the defense) and the recommendations of the European Committee for the Prevention of Torture and Inhuman Degrading Treatment or Punishment[3].

[3] See for example the reports of the European Committee for the Prevention of Torture and Inhuman Degrading Treatment or Punishment (*CPT hereinafter*) (e.g. the Report to the Government of the Slovak Republic on the visit to Slovakia carried

The following legal aid standards can be derived from the international instruments, to name a few:

- Right to be informed about the right to free legal assistance if the person does not have means to hire a lawyer;
- Any deprivation of liberty or likelihood of imprisonment is a sufficient basis to trigger government's obligation to provide for free legal aid ;
- Suspect should have legal aid throughout the entire proceedings, both trial and pre-trial. Appeal and cassation proceedings are covered;
- Legal aid should be available immediately after arrest;
- Right to meet with a lawyer before the police interrogation;
- Right to have a private meeting with the lawyer;
- Lawyer's duty to act in the interests of the client. Legal aid should be real and effective. Mere appointment of a lawyer does not meet this requirement.

OSCE Instruments:

Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990

> 5.17 - any person prosecuted will have the right to defend himself in person or through prompt legal assistance of his own choosing or, if he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
>
> 11. The participating States further affirm that, where violations of human rights and fundamental freedoms are alleged to have occurred, the effective remedies available include:
> 11.1 - the right of the individual to seek and receive adequate legal assistance (...)

Supplementary human dimension meeting on the prevention of torture, Final Report, Vienna, 6-7 November, 2003

> All OSCE participating States must ensure that all persons deprived of their liberty are:
> Provided with information about their rights and how those rights can be accessed;
> Granted access to lawyer, including during all interrogations, and the opportunity to consult with their lawyer in confidence. National legislation should provide for effective access to a lawyer from the moment of whatever form of detention. In all cases where a detainee may risk any kind of imprisonment he/she should be offered a lawyer recompensed by his/her work by the state, in the event that they are unable to pay for a lawyer.

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out by CPT from 22 February to 3 March 2005, para. 22, available at http://www.cpt.coe.int/documents/svk/2006-06-inf-eng.htm; Report to the Austrian Government on the visit to Austria carried out by CPT from 14 to 23 April 2004, paras 22 to 26, available at http://www.cpt.coe.int/documents/aut/2005-14-inf-eng.htm.

Observations and Recommendations of the OSCE legal system monitoring section; Report No.7: Access to effective counsel; Stage 1: Arrest to the first detention hearing, Pristina, May 23, 2000[4]

> Law enforcement authorities must advise detainees immediately upon their arrest or detention that they have:
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> - the right to consult with defense counsel prior to interrogation,
> - the right to have defense counsel present during any interrogation.

State of implementation

Monitoring report which was implemented by a group of NGOs[5] to evaluate access to justice in 10 EU accession countries in 2002 and our practice of having worked in several countries to address problems in the field indicate serious systemic deficiencies that result in failure to fulfill the implementation of these rights in a consistent manner. Some problems:

- Limited availability of legal aid, large number of defendants being deprived of liberty without legal representations at different stages of criminal proceedings;
- No clear guarantees of the right to counsel provided at state expense outside of the scope of mandatory defense, which is limited to few categories of cases;
- No procedural rules requiring the proceeding authorities to inform the defendant of his or her right to seek appointment counsel on state expense;
- Lack of means test or any uniform standards as to when to appoint counsel at state expense on the basis on indigence;
- Lack of guarantees for the presence of counsel during preliminary investigation;
- Legal aid lawyers' appointment procedures cumbersome and not transparent;
- Lack of transparency in determining legal aid budgets;
- Poor quality of legal aid;
- Lack of legal aid management institution (divided responsibilities among various institutions).

One of the major problems discovered in the study was the lack of a centralized body authorized to manage the legal aid system. The lack of an administrative body to consolidate these functions was considered to be a chief reason for the lax management, disorganized policy and erratic performance of attorneys appointed to indigent clients in many countries. Centralized legal aid authorities need to undertake the following functions:

- Ensure that the legal aid priorities are met continuously, to establish the precise extent and nature of the needs in the country for legal aid, or to tailor the structures and systems for delivery of legal aid to the proven needs for legal aid;

[4] The OSCE has been working in conjunction with agencies involved in the study and development of access to justice programs for BiH. OSCE field offices are monitoring access to justice issues, concentrating on eight basic themes: the existence of any indigence tests, judges' interpretation of the interests of justice requirement, the swiftness of attorneys' appointments, the implementation of the principle of instruction of rights, the manner of ex officio lawyers' selection, dismissal of ex officio lawyers and the adequacy and allocation of legal aid budgets.

[5] Public Interest Law Initiative, INTERIGHTS, Bulgarian Helsinki Committee and Polish Helsinki Foundation for Human Rights, in cooperation with Open Society Justice Initiative, within the framework of the project on Promoting Access to Justice in Central and Eastern Europe, funded by European Union and Open Society Institute.

- Ensure the quality of services, sufficient to fulfill the right to an attorney and an effective defense;
- Establish payment criteria and ensure its efficient administration;
- Determine the scope of legal aid services and implement eligibility criteria for accessibility to the services;
- Gather and maintain information and data on the delivery of effective legal aid with an eye to seeking systematic improvements to systemic problems.

A recent study[6] on "Procedural Safeguards in Criminal Proceedings: existing Level of Safeguards in the European Union" found that in Austria it is not clear whether the lawyer may be consulted prior to the police interview and is not allowed being present during the police interrogation; in Poland the police has the authority to supervise the conversations between lawyer and suspect during the investigation[7]. The practice regarding the moment at which defense lawyer is granted access to the suspect and/or the moment a lawyer is assigned to the suspect are also very different in different European countries. In the same study, the following have been found in this respect. Only Estonia (within 24 hours of detention), Latvia (within 24 hours) and Malta (within 48 hours after arrest) mention specific time limits; 9 states mention time limits such as "from the beginning of the proceedings" or "from the moment the person is charged" or "after the police interview", without specifying the exact time period. The other EU member states do not mention a time limit at all. Emergency schemes for providing legal assistance on a 24 hour basis exist only in 7 member states[8]. The study concluded that the information given by the ministries of justice of all EU member states was not sufficient to draw a clear conclusion about all the states as to: when lawyers are granted access and/or appointed to the suspect[9]; whether the suspects have the right to receive legal advice before answering questions related to their charge[10]; whether the defense counsel is allowed to be present during police interview[11], and whether confessions made without the presence of a defense counsel are inadmissible in evidence[12].

Further in depth research, relying on qualitative and quantitative research tools, such as interviews with different actors in the criminal proceedings, trial observations, court case-file surveys, etc to document and analyze problems indicate the inadequate level of implementation of the right to free legal aid for indigent defendants. Below are only a few examples where implementation falls short from the desired and required standards. These examples are not exhaustive or indicative of

[6] The Study on "Procedural Safeguards in Criminal Proceedings: Existing Level of Safeguards in the European Union", 12 December 2005, conducted by Professor Taru Spronken, Faculty of Law, University of Maastricht, for the European Commission, assessing the level of provision of procedural rights afforded to suspected persons in criminal proceedings throughout the EU with the aim of drawing up conclusions about existing levels of safeguards and provisions of rights in the EU. The study analyzed answers to questionnaires on the five safeguards in the draft EU framework decision on procedural safeguards: the right to legal advice including the level of legal aid; the right to interpretation and translation for non-native defendants; the right to specific attention for persons who cannot understand or follow the proceedings; the right to communication and/or consular assistance, and the way in which the suspect/defendant is notified of his rights (Letter of rights).

[7] See for details the Study on "Procedural Safeguards in Criminal Proceedings: Existing Level of Safeguards in the European Union", 12 December 2005, conducted by Professor Taru Spronken, Faculty of Law, University of Maastricht, pp 62 and 74.

[8] Ibid, p. 80

[9] See examples on this above.

[10] Only Germany's response showed that if the suspects wishes to speak first with a defense counsel, then the intended questioning, must, pursuant to Supreme Court practice, be postponed (p.80).

[11] From the responses included in the above-mentioned study, only 16 member states provide for such a right, namely: Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Hungary, Italy, Latvia, Luxembourg, Lithuania, Poland, Portugal, Spain, Sweden and England.

[12] Only Czech Republic, Estonia, Italy and Spain had mentioned clear provisions on excluding such confessions.

problems only in the respective countries, rather brought here as some illustrations of the problem form countries where empirical studies have been conducted. These may be common for other countries.

For example, in Bulgaria suspects have the right to defense from the moment of detention or the moment charges have been brought, according to the Criminal Procedure Code. However, the Study on Criminal Legal Aid in Bulgaria[13] has shown that 34.6 percent of defendants have not been represented by a lawyer at the pre-trial phase, out of which 57.07 defendants did not have defense counsel at police investigations and 86.36 at immediate police investigations. In Turkey, the Code of Criminal Procedure provides that the detainee or the accused has the right to benefit from legal assistance by one or more defense counsel at all levels of the investigation. It further compels law enforcement officers to inform the detainee or the accused about his/her right to request legal counseling from the bar association before interrogation both orally and also in written form. The person should be informed about his right to an attorney during seizure or at the latest in the police station[14]. However, preliminary data suggest that in parts of Turkey as few as 20 percent of indigent criminal defendants have access to free legal representation[15]. In Moldova, studies indicate that often first interrogation of the suspect/defendant takes place without the presence of a defense lawyer[16]. In Ukraine, the suspect has the right to meet with the lawyer before the first interrogation; however this happens rarely due to the cumbersome procedure of receiving law enforcement bodies' approval for each visit to the client[17].

Reform initiatives and focus

In the last 2 to 3 years legal aid reforms have been initiated in many countries in the Central and Eastern Europe (CEE) and the former Soviet Union (fSU), just to name few: Lithuania, Bulgaria, Hungary, Poland, Slovenia, Ukraine, Moldova, Georgia, Kyrgyzstan. The list is longer. Justice Initiative has participated in several of them.

Reforming legal aid is primarily driven by two considerations: 1. To ensure that governments meets international and constitutional obligations and standards in providing free legal aid and 2. To come up with the most cost efficient model for fulfilling the first. If the former is about the obligation that one has to comply with, the latter rests on governments' policy-making and good governance principles for creating efficient and transparent system of publicly funded services.

As indicated above, problems in the field are complex and their solution requires institutional measures with participation of different justice actors. Justice Initiative's main approach in

[13] Conducted by OSI-Sofia in 2004, reviewing 900 cases closed in 2000 and 2001.
[14] See for details the report on Legal Aid in Turkey, prepared by Idil Elveris, Sercin Kutuku and Ymihhan Yasar, in April 2004, for the Round Table on legal aid in Turkey, organized by Bilgi University and Justice Initiative on April 16, 2004, pp. 13-15.
[15] See the report from the Round table on Legal aid in Turkey, 16 April 2004, available on http://www.justiceinitiative.org
[16] See the Institute for Penal Reform, Criminal Justice and Human Rights report, 2004; The Soros Foundation Moldova statistical research on criminal legal aid delivery in Moldova reviewing closed case files of January 2002 - June 2003.
[17] See for details the Report on Access to Legal Aid in Criminal Proceedings in Ukraine, prepared in December 2005 by Center for Political and Legal Reforms, Centre for Legal Reform and Legislative Drafting under the Ministry of Justice of Ukraine and Kharkiv Group for Human Rights Protection, pp. 5, 21-25.

advocating for the implementation of the right to legal aid is supporting the establishment of sustainable national legal aid schemes that would ensure accessible and qualitative legal aid services to the indigent. In this respect we focus our work both on the scope of the meaning of the right and on the necessary mechanisms to implement this right.

We advocate for national legal aid schemes to include at minimum basic legal advice and information to citizens on all matters. Through such advice the population would be more aware and as a consequence more assertive of their right, and also many legal conflicts can be solved at the incipient stage and with lesser efforts than court mechanisms require. In criminal field, we advocate for national schemes to include the right to legal aid of every indigent defendant that risks loss of liberty at any point during or after the examination of the case.

In terms of organization of the system, although local circumstances must dictate local solutions, we believe that legal aid reform must endeavor to create a unified, professional management structure, and to ensure that adequate standards of quality representation are met**.**

Most of our target countries do not have designated and centralized institutions responsible for legal aid policymaking and implementation. Our advocacy has therefore emphasized unified management structures and evidence-based legal aid policy making. International practice shows that legal aid is a highly dynamic field that requires constant fine-tuning to respond to legal aid needs in light of financial and political pressures and changing socio-economic dynamics. Governments must be prepared to be more flexible and adaptive, capable of assessing and reassessing their operations, particularly with regard to eligibility to receive state-funded assistance, actual accessibility and the quality of legal aid services. A dedicated institution, appropriately equipped, is essential for this purpose. In addition to becoming advocates for further reform and needed legal aid resources, such agencies bear responsibility for ensuring that publicly funded services are delivered in a transparent and accountable manner. In this regard, they can provide quality control over important aspects of the legal aid delivery, and indirectly on law enforcement, which are held in check by a vital defense bar and improving efficiency and adversarial form of judiciary.

As government created institutions and publicly funded services are usually under pressure for budget cuts, and legal aid is not an exception, often less favored politically as compared to issues of public safety and security, a vibrant civil society to watch the implementation of the right to legal aid in criminal cases and keep the issue on political agenda is crucial in any country. In this regard having an independent or quasi-independent legal aid management institution is of great advantage, with civil society members represented on its board.

If the equality of arms is ever to be adequately implemented in the legal system, creation of a separate body in charge of ensuring qualitative legal services for those unable to pay for the services a lawyer is the proper way to do it. The absence of an independent or semi-independent body to administer legal aid uniformly as a matter of policy in all instances allows for bias or the appearance of bias to influence the appointment and monitoring of attorneys to cases of the indigent. Given that attorneys and their clients will often face government institutions or other influential parties as their procedural adversaries in adversarial justice proceedings, public legal assistance must function neutrally through a consistent mechanism that is immune to the potential interests of all parties in individual cases. A member organization such as national Bars cannot be asked to provide that neutral buffer vis-à-vis its own members. Government institutions likewise cannot always be independent of pressures that can arise when government parties are involved in legal cases.

Even if this body is accountable to the Ministry of Justice or Parliament, its independence is crucial, for several reasons:

- To engender public confidence in proceedings involving public attorneys or private *ex officio* lawyers, so that they are not seen as an arm of the government (especially in the criminal cases where it is the government that prosecutes defendants).
- In order to avoid any conflict of interest between the appointment function and the ministry that finances legal services—the legal aid body would distance the ministry from decisions in individual cases. For example, if a case involves public attention, several lawyers competing for the same case or civil servants, the government would not wish to be seen as part of decision making over the various aspects of the case.

It is precisely these problems that many countries of the world resolved by forming legal aid boards or councils—the Netherlands, England, Scotland and others. The creation of a single administrative body to oversee legal assistance to the poor has resulted in effective management of legal aid needs and the services.

Costs are often a key considerations when addressing issues related to legal aid. Cost argument should be based on public policy and good governance considerations: when it comes to legal aid, current systems hidden costs in addition of money-wasting\inefficient administration vs. functional, transparent, efficient. Certainly, if no or grossly insufficient funds are provided for legal aid, then no new model can be "cheaper". But in a number of countries we have engaged governments were providing considerable size of public funds for legal aid services, but the situation, to quote one of legal aid reform activities in Poland, was that in this system nobody was happy: government, lawyers, judiciary and defendants. In other countries, governments are not willing to increase funding for legal aid because they do not trust that the legal aid providers will do a better job and on the other hand – legal aid providers refuse to work if the funds are not increased.

In terms of delivery, our advocacy has emphasized the benefits of mixed systems of legal aid delivery, combining a mix of any of the following models: public defender offices (PDOs), private assigned lawyers/ *ex officio* appointed lawyers and contracts for multiple cases.

The presumption of innocence, the adversarial process, and the equal powers of the prosecution and the defense in criminal proceedings to prove or disprove guilt and innocence—cornerstones of justice and fairness—assume that there is a force of attorneys poised to counter the weight of government accusation and prosecution. This need is particularly acute in criminal cases, where indigent defendants face government prosecution and judgment that can result in loss of freedom and stigmatization.

The absence of a unified cadre of attorneys to set the standard for active advocacy of indigent clients' rights allows room for arbitrary proceedings and unreliable outcomes. In *ad hoc* appointment systems, the provision of legal assistance to the poor too often falls to chance: whether a given appointed attorney happened to be good, happens to know the law and happens to be willing to advocate his or her client's rights in a single case against institutional adversaries he or she encounters repeatedly. There are countries where strong criminal defense bars and/or tradition of defense in the best interest of a client are absent. In others, and this extend to many of the fSU countries, due to almost complete failure of legal aid systems, presence of a lawyer became just a formality to satisfy the requirements of legality of proceedings. A notion of a "pocket lawyer" is widely known,- when lawyers are appointed by police, investigators, prosecutors for a nominal fee or other favors when they get "real" clients, in exchange of not creating any trouble to them.

It was against this or similar backgrounds that Justice Initiative piloted public defender offices in several countries. Our experiences indicate that public defender institutions help establish that balance, contributing to the ultimate objectivity of justice proceedings (while also making way for appointed attorneys to benefit from their institutional support). Public defenders as institutions of justice have been found to promote the legitimacy, consistency and smooth operations of the justice system, so that its results are predictably reliable by design, not by accident:

- They act as a counter-force to abuses of state power than can take place in any justice system;
- They provide uniform ability and quality through management and supervision, continuing skills training, and institutional support;
- They increase the effectiveness of the justice system by providing well-trained lawyers who are obliged to know their clients, know the facts of their cases and laws applicable to them; and prepare strategies and arguments in advance, so that the proceedings are not marred by improvised defense;
- They increase public confidence that the justice system is fair;

Justice Initiative pioneered with the introduction of a public defender model for indigent criminal legal aid in the CEE and fSU region in 2000 in Lithuania jointly with the Lithuanian government. These models have played a crucial role in most of our later projects in promoting legal aid reforms in Bulgaria, Ukraine, Moldova and Georgia. Pilot public defender institutions demonstrate the benefits that organized full-time lawyers can provide, including improving accessibility and quality, fostering mechanisms of accountability, and establishing administrative procedures. Quality standard-setting facilitates monitoring and measuring results against a baseline with respect to payment, case workload, quality of representation, and other aspects of legal aid policy.

While public defender units generally have greater impact on law-enforcement and the judiciary than individual practitioners, a mixed model creates better cost-efficiency incentives by encouraging healthy competition and checks and balances among different actors. And as police, prosecutors and judges become more accustomed to the higher standards that public defender institutions offer, they come to demand higher quality from *ex officio* attorneys, as well.

Despite the short period of time the pilot PDO offices have been operating in several countries, we can already identify important achievements of the pilots:

- improved efficiency of the criminal justice system by timely appearances of lawyers at all necessary criminal proceedings stages;
- developing standards for office management and practice, for a permanent monitoring for efficiency and quality;
- ability to monitor time and efforts office lawyers spend on different categories of cases and on non-litigation related activities;
- improved legal aid case assignment procedure by exposing the erratic and hidden practice of “pocket” lawyers and working with the national Bars in setting up a transparent procedure.

The PDOs offer the Government an insight into the system of delivery and costs and further monitoring of the pilot offices will help finding objective answers to the following issues:

- minimum standards of performance for state guaranteed legal aid, irrespective of the provider;
- objective system of payment, based on the minimum performance indicators and time needed to qualitatively meet them;
- effective system for coordination of legal aid cases;
- mechanism for monitoring and accountability of legal aid lawyers.

The PDOs will help the government and future legal aid institutions to distill the necessary information and experiences to set up effective mechanisms for management and delivery of legal aid, and in future will play an important role in maintaining the high quality of the legal aid as a way of balancing and coexistence with private providers in a mixed system of delivery. PDOs should not be aiming to meet all legal aid needs in a country, being most appropriate in areas with high volume of cases and/or in areas unpopular for private lawyers and therefore in need of state support in placing lawyers there.

Irrespective of the model of delivery, we are supporting the early intervention of defense attorneys in the case, be it through internal practice of pilot public defender offices or developing special schemes of duty attorneys.

In our activities aimed at supporting qualitative indigent defense we are guided by general lawyer's duty to act in the best interest of the client, the European Court of Human Rights standards, requiring the defense to be "practical and effective, not theoretical and illusory", and the role defense lawyers should play in a adversarial criminal process as guaranteed in most of the countries we work in. We are supporting the development of national standards for qualitative representation, as well as providing capacity-building to individual attorneys enabling them to become zealous advocates of their clients.

Reforms in Action

The Justice Initiative has been engaged in advocacy for promoting the establishment of "legal aid boards" and full-time public defender offices. Working with the Lithuanian Ministry of Justice we helped to establish two pilot public defender offices and provided technical assistance to the Government Working Group on a concept paper for reform that resulted in adoption of the law on legal aid in January 2005. During 3 years the Ministry of Justice and Justice Initiative engaged in a process to identify issues that the law should have addressed. For example, a legal aid study[18] indicated that 90% of all defendants qualified for free legal aid (and this figure proved to be true in other countries as well); eligibility determination and case assignment mechanisms were not transparent, creating possibilities for corruption and abuse (the study found that in one case 20 legal aid lawyers were appointed consecutively, each claiming reimbursement for reviewing the case materials) and overall management and quality assurance mechanisms were not efficient and suffered from miss-coordination. This state of affairs led to inefficient use of the tax payers' money, on the one hand, and to allocation of the scarce government funds for legal aid to any purpose but qualitative defense of indigent defendants. The new law created a legal aid management system under the Ministry of Justice with the Legal Aid Coordination Council as a monitoring and advisory body. Five legal aid offices take responsibilities for eligibility determination, legal aid case coordination, payment and monitoring and delivery of legal aid in administered through a mixed model of individually contracted full-time lawyers (prototype of public defenders) and ex officio appointed private lawyers. Bulgaria passed a legal aid law last year which created a National Bureau for Legal Aid as an independent executive agency to administer legal aid in the country, the first of the kind in the CEE. In a similar effort in Ukraine, Georgia and Moldova the draft law has been prepared by the Ministries of Justices, which envision the establishment of national legal aid institutions and mixed models of delivery where public defender offices play important roles in delivery of legal aid.

[18] The study on criminal legal aid delivery in two regions of Lithuania was carried out by the Law Institute of Lithuania, in 2003, reviewing closed cases of 2001.

Concluding remarks

In most of our projects we have sought to demonstrate institutional benefits -- improved cost-efficiency and quality -- of organized and systemic legal aid. At the same time we see improvements in the quality of justice, and potential inroads against attendant problems such as jail or prison overcrowding, and respect of rights to detainees at police stations and development of practice of adversarial judicial process.

Legal aid reforms have faced obstacles from different actors in many countries where we have worked. Usually, major opposition comes from the Bar associations – often as a result of misperception and misunderstanding: Bars oppose centralized legal aid management institution, which are seen to extend "control" over legal profession, while in fact these institutions take the burden of administration from the Bars, leaving the latter with the function that belongs to them – delivery of legal aid. Bars also have strongly opposed ideas for public defender models of legal aid delivery, fearing to loose monopoly over legal services and legal profession, while in fact the public defenders are the same lawyers, members of the Bar or part of the legal professions, simply organized differently than private lawyers and having a mandate of delivering qualitative services to indigent defendants. Police and investigative authorities have usually not embraced proposals for mechanisms which ensure active participation of lawyers from the first moment of arrest and at any subsequent stages of proceedings. In principle, only judiciary has been an active proponent for the reforms as judges are able to observe the effect of absence of lawyer during trial or their nominal presence in the court-room.

These experiences and knowledge-sharing lie at the hart of much of our work. With every exchange, training and joint collaboration we learn a bit more about the complex nature of changing legal culture. Notwithstanding how much we still do not know, some things seem reasonably clear when it comes to improving legal aid and quality of legal representation afforded criminal defendants:

- Accused persons who can not consult with a lawyer in timely fashion are more vulnerable to serious abuse – torture, coerced confessions, reliance upon legally inadmissible evidence for conviction. In countries where such practices are endemic, access to a lawyer may be the difference between liberty and prolonged confinement;
- Absence of counsel not only endangers rights violation; it also distorts the truth-seeking function, renders less reliable the outcomes of criminal proceedings and ultimately undermines public trust in legal system;
- Formalist systems not only deprive majority of criminal defendants of the right to fair trial, it makes a mockery of the equality of arms: prosecution habitually dominates the legal process, the police can act without fear of rigorous scrutiny and imprisonment becomes the default outcome of both pre-trial and post trial processes..
- Vulnerable groups, such as racial and ethnic minorities are often disproportionately prosecuted and convicted;
- There are different models of organization and delivery but whatever models state choose they must ensure that each person charged with crime, facing any loss of liberty and lacking funds to hire a private lawyer, has quality legal assistance at state expense;
- Improving quality of legal representation should take account of the local environment. Nonetheless, it is important not to confuse legal prohibition with cultural predilection. Just because lawyers have not traditionally filed written motions, relied expressly on constitutional and international jurisprudence or conducted their own investigations on behalf of defense does no necessarily mean that they may not, cannot or should not.

Legal aid is the cornerstone of a fair justice system and a barometer of state's commitment to ensuring defendants' rights. It is very exciting to observe that the right to free legal aid is receiving more recognition and given real essence and meaning as more countries take it seriously. Legal aid reformers should keep the following key considerations when engaging in the process:

- Legal aid is a constantly changing field when it is taken seriously. That is especially true for newly established legal aid institution. Therefore the newly created institutions should have large flexibility to adopt to changing socio-economic circumstances;
- Irrespective for the organizational form, legal aid management institution should be given some independence from executive, and ensure participation of different sectors of relevant legal profession and civil society in its decision-making or at least in monitoring and evaluation;
- a mixed model of delivery of legal aid creates better cost-efficiency incentives by encouraging healthy competition and checks and balances among different actors;
- Governments should provide adequate funding for legal aid;
- Mechanisms for ensuring quality of legal aid services should be put in place and national Bars should play an important role in elaborating and enforcing them.

It is high time for Governments around the world to appreciate the importance of guaranteeing effectively the right to legal aid and allocate adequate human and financial resources in this respect. It is similarly important for Intergovernmental Organizations and Donor Agencies to focus their efforts in this field and aid Governments striving to ensuring fare criminal justice systems through providing the right to free legal aid for all in need.