



Permanent Mission of the Republic of South Africa
to the United Nations

INVITATION

The Permanent Mission of the Republic of South Africa to the United Nations,
together with the United Nations Office of Drugs and Crime and
the International Legal Foundation cordially invite the Head of Delegation to:

**A High-Level Breakfast Meeting on
ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS**

**26 September 2012
8:15 – 9:45am**

Permanent Mission of the Republic of South Africa
333 East 38th Street, 9th Floor
New York, NY

In the event that the Head of Delegation is unable to attend, this invitation is transferable.

PROGRAM

Hosted by the Republic of South Africa

Opening Remarks:

Minister of Justice and Constitutional Development, Republic of South Africa

Hon. Jeffrey Radebe

Introductory Remarks:

Under-Secretary-General, Executive Director, UNODC

Mr. Yury Fedotov

Deputy Foreign Minister, Georgia

Mr. Sergi Kapanadze

Executive Director, International Legal Foundation

Ms. Natalie Rea

Keynote Speaker:

Acting Associate Attorney General, United States of America

Hon. Tony West

Please refer to the attached concept paper for additional information.

RSVP

Delegations are encouraged to confirm their participation at the earliest possible occasion, and no later than 20 September 2012.

To RSVP, or for further information, please contact
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CONCEPT NOTE

A High-Level Breakfast Meeting on ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS

**26 September 2012
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1. Overview

The aim of the meeting is to focus attention on the need to develop effective strategies to meet the criminal legal aid service needs of the poor. The organizers of this event hope to provide an interactive forum about the various strategies that have been developed for effectively delivering legal aid. Participants are encouraged to learn from each other and use shared experiences to improve their own legal aid systems in a manner that is consistent with their unique legal systems.

2. The Right to Legal Aid for Poor Persons Accused of Crimes

The right to legal aid for poor persons accused of crimes is a widely accepted principle of law that is essential to the right to a fair trial, and a foundation for a fair and effective criminal justice system. The vast majority of states have enacted laws that guarantee the right to counsel for poor persons accused of crimes, consistent with article 14 of the International Covenant on Civil and Political Rights. Yet, states at all income levels face challenges in implementing the right to legal aid and there is an urgent need to address this issue.

Despite broad acceptance of the principle of legal aid and its numerous benefits, millions of poor people around the world who are accused of crimes are denied access to effective legal representation. As a result, they are vulnerable to arbitrary and excessive pretrial detention, torture, coerced confessions, false convictions, and other abuses. Access to legal aid services is crucial to ensure the equality of all persons before the law and promote the rule of law.

3. UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

The event will also be highlighting the *UN Principles and Guidelines on Access to Justice in Criminal Justice Systems*, which the twenty-first United Nations Commission on Crime Prevention and Criminal Justice adopted by consensus, and which the Economic and Social Council has recommended for adoption by the General Assembly. E/RES/2012/15.

Recognizing that legal aid “is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law,” the Commission on Crime Prevention and Criminal Justice adopted the first international instrument on legal aid on April 27, 2012. The Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems are aimed at ensuring that suspects, detainees, and accused and imprisoned persons have access to effective legal aid services at all stages of the criminal justice system. Importantly, it provides useful, practical guidance to states on strengthening and growing criminal legal aid systems, while taking into consideration the fact that “states employ different models for the provision of legal aid.”

4. Objective of the Meeting and Issues for Consideration

This meeting seeks to enable high-level participation and dialogue on how to address common challenges in providing the poor with access to effective criminal legal aid services, including:

- **Effective delivery models:** Although states employ different models for the provision of legal aid, they share the challenge to provide effective legal aid services to all those who are eligible with limited resources. By sharing experiences from diverse legal systems, participants will explore innovative, cost-effective approaches for delivering criminal legal aid services that could be adapted to improve their own systems.
- **Providing early access to counsel:** One of the keys to providing effective legal aid is ensuring access to counsel early in the criminal justice process. However, barriers often exist, such as administrative restrictions and lack of information that prevent detainees from accessing legal aid providers at this critical stage. The meeting will aim to identify common barriers to early access to counsel, and highlight effective mechanisms for providing detainees with access to criminal defense services promptly after arrest or detention.
- **Ensuring quality of representation:** Around the world, criminal legal aid providers are underfunded and understaffed. Too often, when legal representation is available to the poor, it is rendered ineffective by insufficient resources, inexperienced and poorly trained lawyers, and inadequate oversight. The meeting will highlight initiatives aimed at improving the quality of representation available to the poor, including setting standards for quality representation, and providing necessary training and supervision of legal aid providers.

Legal Aid Pledges

At the first ever high-level meeting of the UN General Assembly on Rule of Law, scheduled to take place on September 24, 2012, Member States will have the opportunity to make pledges to take concrete actions to strengthen the rule of law. Member States are encouraged to consider pledges as a way to improve access to counsel for the poor and vulnerable and underline their commitment to principles of equality and the right to fair trial. The model pledges attached with this concept note could serve as guidance and inspiration for Member States wishing to commit to strengthening access to legal aid for poor persons accused of crimes. For more details on the voluntary pledge process, visit the Rule of Law Unit website at: http://www.unrol.org/article.aspx?article_id=170.

Briefing Paper

Model Pledges on Strengthening Access to Criminal Legal Aid

I. Summary

This briefing paper provides background information on the model pledges on legal aid drafted by the International Legal Foundation (ILF). These model pledges are intended to assist Member States implement their own laws, ensuring that poor men, women and children accused of a crime have early access to competent legal representation. The vast majority of states have enacted laws that guarantee the right to counsel for poor persons accused of crimes, consistent with article 14 of the International Covenant on Civil and Political Rights. Yet, countries in the Global North and South—regardless of income level—struggle to provide legal aid, particularly at the early stages of the criminal process.

The proposed pledges enable states to improve access to legal aid by committing to: (1) take measures to implement article 14 of the ICCPR; (2) support the adoption of the Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems in the General Assembly; and/or (3) conduct a review of their justice systems to determine any impediments or barriers to the right to counsel. Additionally, donor states are encouraged to pledge to improve balance and coordination in justice sector funding and ensure a more proportionate share of aid is allocated to indigent defense.

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II. Importance of Legal Aid to Rule of Law

Legal aid is an essential element of a functioning criminal justice system that ensures fundamental fairness and public trust in the criminal justice process, and is vital to the realization of other core basic rights, amongst which include the right to a fair trial. Of all the rights that an accused person has, the right to legal aid is the most fundamental, as it affects his or her ability to assert any other right. Over the past decade, the ILF has demonstrated that the most effective means of reducing pretrial detention and its related abuses is to provide accused persons with access to competent defense lawyers at the earliest possible stage of the criminal justice process. Lawyers uphold due process of law by ensuring the accused understands the nature of the allegations being made and enabling the accused to present evidence in his or her defense. Most importantly, a lawyer guarantees an accused person's right to fair trial.

III. Explanation of Model Pledges

Pledge 1 – The Government of _____, pledges to take appropriate measures at the domestic level, prior to _____, to improve implementation/promote the right to legal aid for persons arrested, detained, suspected of or charged with a criminal offense, in compliance with article 14 of the International Covenant on Civil and Political Rights [and taking note of the UN Principle and Guidelines on Access to Legal Aid in Criminal Justice Systems].

The International Covenant on Civil and Political Rights states that the right to a fair trial includes: the right to “legal assistance,” without payment if the suspect is indigent and as the “interests of justice so require,” as well as the right to “adequate time and facilities for the preparation of [the suspect’s] defense and to communicate with counsel.” [Article 14, Section 3] Pledge 1 enables countries that have ratified or acceded to the ICCPR to recommit to implement these rights. States have generally aligned their national laws with the ICCPR; however, barriers to full implementation of these laws often exist.

Pledge 2 – The Government of _____, pledges to support the adoption of the resolution on United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems in the upcoming General Assembly.

Recognizing that legal aid “is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law,” the United Nations Commission on Crime Prevention and Criminal Justice (the UN Crime Commission) adopted the first international instrument on legal aid on April 27, 2012. The Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (“Principles and Guidelines”) are aimed at ensuring that suspects, detainees, and accused and imprisoned persons have access to effective legal aid services at all stages of the criminal justice system. Importantly, it provides useful, practical guidance to states on strengthening and growing criminal legal aid systems, while taking into consideration the fact that “states employ different models for the provision of legal aid.”

The Principles and Guidelines are now before the UN Economic and Social Council for approval before being submitted to the UN General Assembly for consideration later this year. Pledge 2 enables governments to demonstrate their commitment to access to legal aid by publicly supporting the adoption of the Principles and Guidelines in the General Assembly.

Pledge 3 – The Government of _____ pledges, [over the next _____,] to conduct a [review/assessment] of its justice system to identify any impediments to the right to counsel [including, *inter alia*, lack of mechanisms to access available services, barriers to early access to counsel and/or a shortage of lawyers] and make recommendations for ways to ensure that all those arrested, detained, suspected or accused of, or charged with a criminal offense, in particular women, children and groups with special needs, receive prompt and effective legal counsel.

(OR)

The Government of _____ pledges, [over the next _____,] to conduct a [review/assessment] of its justice system, and engage with relevant government agencies, justice sector institutions, legal aid providers, bar associations and civil society to promote dialogue and recommend ways to eliminate

barriers to prompt and effective legal counsel for all those arrested, detained, suspected or accused of, or charged with a criminal offense.

Despite the broad acceptance of the principle of legal aid and its numerous benefits, millions of poor people around the world who are accused of crimes are denied access to effective legal representation. Pledge 3 encourages governments to conduct a review or assessment of their justice systems to identify the quality and availability of criminal defense services to the poor and to make recommendations for ways to improve access to legal representation. Acknowledging that some groups may face particular challenges in accessing legal representation, pledge 3 invites governments to make further commitments regarding women, children, and other vulnerable groups.

Most states have already passed legislation on the right to counsel. Nonetheless, the mere enactment of new laws will not effect change if the implementation of these laws, especially as applied to the poor, remains incomplete. Instead, governments must commit to addressing the practical challenges to full implementation of legal aid, ranging from the lack of resources or institutional capacity to administrative barriers resulting in delayed or insufficient access to legal counsel. Often, impediments are administrative, not financial, and the consequences are not obvious. A frequent impediment that exists in many countries is the lack of an effective mechanism to access available criminal defense services promptly after arrest or detention. Other common barriers to early access to counsel include inflexible visitation schedules or advance permission requirements for counsel to consult with clients in detention, and policies requiring juveniles to get parental consent before receiving counsel.

Additional Pledge for Bilateral Donors:

The Government of _____ pledges, [over the next _____] to conduct a [review/assessment] of [donor/funding] goals and strategies and recommend ways to ensure donors coordinate and take a balanced approach to justice reform that ensures adequate human and financial resources are allocated to develop and strengthen legal aid systems that ensure that all those arrested, detained, suspected of or charged with a criminal offense receive prompt and effective legal counsel [recalling the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and other relevant international standards].

Historically, the vast majority of donor funding for justice sector reform has focused on strengthening the judiciary and security sectors. Adequate funding is rarely allocated to indigent defense reform. This pledge is an acknowledgement of this problem, and a commitment to work to redress this imbalance by allocating a proportionate share of justice sector funding to indigent defense.

July 2, 2012

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About the International Legal Foundation: Created in 2001, the ILF is an international nongovernmental organization that assists post-conflict and transitional countries in establishing public defender systems that provide free, quality criminal defense services for the poor. To date, the ILF has established public defender programs in Afghanistan, Nepal and the West Bank.