

JUSTICE-ILAG
Legal aid newsletter
July and August 2009

Opening note

The next edition will be sent out at the beginning of November.

Roger Smith

JUSTICE

rsmith@justice.org.uk

1 July 2009

1. Theme of the Issue

A note this month on the remarkable work of the Open Society Justice Initiative which, though privately resourced, is rivalling major government funders in the field of access to justice around the world. On the news front, the usual mix of protests and cuts in common law countries facing the squeeze as well as more positive news from countries establishing legal aid schemes. Positive prize of the month goes to Bulgaria which has just increased its legal aid budget by a third – albeit from a low start: it is a country in which the Open Society Justice Initiative has been active.

Mixed reports from China where, on the one hand, there has been a crackdown on the legal aid organisation that assisted in such cases as those relating to the tainted milk litigation and, on the other hand, an initiative to send lawyers out into poor areas of the country.

Quote of the month goes to the Chinese official who said: 'Lawyers are a group with a strong sense of social responsibility ... Besides, they have earned enough money, and don't have to worry about giving up one or two years' income.'

2. Contributions

Exploring the limits of international philanthropy: the role of the Open Society Justice Initiative

The Open Society Justice Initiative (Justice Initiative) is an impressive trans-national funder and encourager of developments in legal aid. Its role can be favourably comparable to that of international bodies such as the European Union or even the World Bank. The Justice Initiative is part of a network of foundations – some thematic and some national - funded by the philanthropist, George Soros, since 1993. Like much of the network, the Justice Initiative began with a focus in Eastern Europe after the collapse of the Soviet Union. In this short note, Anna Ogorodova, a Justice Initiative legal officer, summarises its work in supporting criminal justice reform around the world—especially, now, in sub-Saharan Africa, Latin America and, historically, in Central and Eastern Europe.

In most countries, wealthy and poor alike, legal aid systems are typically under resourced and in a dire need for reform. But the problem and its consequences are much greater in the developing countries. Many developing countries have a dearth of trained lawyers. In Sierra Leone, for example, just seven lawyers work in the rural areas, where 80 percent of the country's six-million population lives. In other countries, for example in Central and Eastern Europe, there exist a sufficient number of legal professionals, but very few are genuinely motivated to provide legal aid services. State funding of legal aid for the poor is nominal. Little attention is paid to building institutions to support legal professionals working for the poor. Even less is being done to promote the *pro bono* culture of legal assistance.

For these reasons, the Justice Initiative chose promoting access to free and effective legal assistance for indigent criminal defendants as one of the priority areas of its criminal justice reform program. We started with an initiative aiming to effectuate a comprehensive reform of publicly funded legal services in Lithuania. Since then, governments in a number of countries of Central and Eastern Europe and former Soviet Union - Lithuania, Georgia, Bulgaria and Moldova – have entirely revamped their ineffective and erratic legal aid systems thanks to our advocacy and technical assistance work. New legal aid laws were adopted. New management institutions responsible for legal aid organization, management and delivery were created. Innovative and cost-effective models for the provision of legal aid – such as the public defender offices and legal clinics - were developed.

Since the program's inception we have been expanding our geographic and thematic reach. A bulk of our current activities, for example, is carried out in Africa. In the African region, we focus on enhancing access to paralegal services for poor detainees from the earliest moments of detention. For example, in Sierra Leone we work with a local NGO *Timap for Justice* to deploy paralegals to provide legal assistance to pre-trial detainees. The project was designed to respond to the most pressing problems of the Sierra Leonean criminal justice system: severe lack of legal assistance, excessively long pre-trial detention, and massive delays in case processing. Detainees accused of minor crimes, such as stealing a chicken or a cup of rice, may remain in jail for three or four years awaiting trial. Most delays occur because pre-trial detention hearings in courts are routinely postponed. There may be up to 70 adjournments in one case. Paralegals are helping to shorten detention periods and prevent delays in pre-trial proceedings. They attend police stations, assist remand prisoners at magistrates' courts, advise pre-trial detainees on their legal rights, help defendants communicate with their families, and facilitate defendants' release on bail. They also liaise with police, prisons and courts to help accelerate the pre-trial justice processes. Similar projects are now being developed in Malawi and Kenya.

For more information, see: http://www.soros.org/initiatives/justice/focus/criminal_justice.

3. News: Summaries and Links

These reports are largely compiled from news reports on the internet on the basis of a simple search under the words 'legal aid'. Readers must, just as buyers, beware of authenticity. The links worked at the time of writing but some will fail after a period of time.

Australia

Queensland opens family duty solicitor scheme:

<http://www.dailymercury.com.au/story/2009/07/03/free-family-court-legal-advice/>;

Law Council survey highlights problem of loss of lawyers in rural areas:

<http://www.news.com.au/adelaidenow/story/0,27574,25758291-2682,00.html>; Tasmania cuts

legal aid for most traffic offences:

http://www.themercury.com.au/article/2009/07/21/85691_tasmania-news.html;

Bulgaria: legal aid budget increased by one third:

http://www.novinite.com/view_news.php?id=106716;

Canada:

Ontario boycott of legally aided homicide cases grows: <http://www.tbnewswatch.com/News/?cid=60301>; 50 law professors deploy their 'moral authority' in support: <http://www.lawtimesnews.com/200907064979/Headline-News/Law-profs-back-lawyers-legal-aid-boycott>; duty counsel incompetence raises issue of whether Ontario should implement some form of quality assurance: <http://www.georginaadvocate.com/News/Vaughan/article/94634>; Boycott extends to prison duty lawyers – unnamed Crown official admits to embarrassment at being able to pay expert witnesses twice what they can get from the defence: <http://www.theglobeandmail.com/news/national/legal-aid-lawyers-for-indigent-prisoners-join-boycott/article1231123/>; First boycott case hits Thunder Bay – speculation on whether lawyers will hold out: <http://www.tbnewswatch.com/News/?cid=62546>; Crown Prosecutors and a judge support more funding for legal aid: <http://www.theglobeandmail.com/news/national/crown-prosecutors-call-for-legal-aid-reform/article1240165/>; Legal aid boycott delays trial: http://www.myfmradio.ca/887/wire/news/00421_Aug_5_Lawyer_Delay_100542.php; Ontario legal aid plan faces \$56m deficit: <http://www.theglobeandmail.com/news/national/ontario-legal-aid-plan-faces-56-million-deficit/article1256669/>; Ottawa lawyers join in murder and 'guns-and-gangs' boycott: <http://www.ottawacitizen.com/Area+defence+lawyers+poised+join+legal+boycott/1924274/story.html>;

China

Chinese legal aid organisation raided: http://www.nanyang100.com/asia_pacific/7479.html; Volunteer lawyers, many of them party members, hit deprived areas to provide assistance: http://news.xinhuanet.com/english/2009-07/31/content_11801650.htm; human rights legal activist behind Open Constitution Initiative (OCI) arrested: http://news.xinhuanet.com/english/2009-07/31/content_11801650.htm; Crackdown on OCI part of wider crackdown on human rights organisation and lawyers: <http://www.theaustralian.news.com.au/story/0,25197,25863131-25837,00.html>; China funds free legal aid for victims of Urumqi riot: http://news.xinhuanet.com/english/2009-08/08/content_11846494.htm; arrested legal aid/human rights activists released but may face tax charges: <http://www.google.com/hostednews/ap/article/ALEqM5hnJJutQi9HLMnQqcoK3ovm6AbHvAD9A90ET00>;

England and Wales:

Cap on legal aid for prisoners:

<http://business.timesonline.co.uk/tol/business/law/article6715157.ece>; protest at new rules limiting reimbursement of legal costs to legal aid levels for privately represented defendants:

<http://business.timesonline.co.uk/tol/business/law/article6717138.ece>;

Parliamentary committee opposes £12m cut to family legal aid:

<http://business.timesonline.co.uk/tol/business/law/article6717131.ece>; Criminal legal aid

auction proposes postponed until after election:

<http://www.independent.co.uk/news/uk/home-news/legal-aid-tendering-proposals-postponed-1754392.html>; Tendering for new civil contract also postponed:

<http://www.lawgazette.co.uk/news/civil-legal-aid-contracts-delayed-legal-services-commission>; Sixty years since Legal Aid Act passed in July 1947:

http://www.businesswire.com/portal/site/google/?ndmViewId=news_view&newsId=20090729006034&newsLang=en; West country advice agency finds 'advice deserts' in two year study:

http://www.wiltshiretimes.co.uk/news/4522773.CAB_finds_gaping_holes_in_legal_aid_provision/; Free training in business and finance for legal aid practitioners:

<http://www.lawgazette.co.uk/news/legal-aid-providers-offered-free-business-and-financial-management-training>; Major cuts to criminal legal aid proposed:

<http://timesonline.typepad.com/law/2009/08/defence-barristers-to-be-paid-the-same-as-prosecutors.html>; Veteran lawyer quits murder case when defendant moves from private

payment to legal aid: <http://news.therecord.com/News/Local/article/589174>;

Finland: National Research Institute for Legal Policy predicts rise in legal aid applications:

<http://www.helsinkitimes.fi/htimes/domestic-news/business/7400-ailing-economy-likely-to-boost-demand-for-legal-aid.html>;

Ghana:

Minister expresses support for legal aid: <http://www.ghanaiian-chronicle.com/thestory.asp?id=12787&title=%3Cb%3EGov%60%20would%20ensure%20equitable%20justices%20for%20all%20Ghanaians%20-Betty%20Iddrisu%3C/b%3E>;

Legal aid head argues that government should respect constitutional right to legal aid:

<http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=166838>;

India: Income limits doubled for free legal aid in Uttar Pradesh:

http://www.ptinews.com/news/197367_More-people-in-UP-to-get-free-of-cost-legal-aid;

Prison officials collaborate with Meghalaya Legal Aid Forum to empty gaols by documenting the number of remand prisoners held in custody because of their inability to afford lawyers:

<http://www.morungexpress.com/regional/29561.html>; Lawyer for Mumbai terrorist suspect Kasab gets agreement for augmented fee but payment is stalled:

<http://www.expressindia.com/latest-news/kasabs-lawyer-not-paid-legal-aid-fee/508823/>;

Indonesia: Jakarta Legal Aid Foundation protests at arrest of two legal aid lawyers:

<http://www.thejakartapost.com/news/2009/07/29/legal-aid-foundation-protests-over-public-lawyers039-arrest.html>;

Ireland: Wait for first appointment with legal aid now four months in Longford:

<http://www.longfordleader.ie/news/Four-month-waiting-time-for.5457779.jp>; Compulsory criminal means test under consideration in new legislation:

<http://www.irishtimes.com/newspaper/frontpage/2009/0825/1224253195824.html>;

Jamaica: legal aid lawyers threaten legal aid boycott over non-payment of \$8.5m fees – Ministry official blames ‘budgetary problems’:

http://www.jamaicaobserver.com/news/html/20090725T210000-0500_156091_OBS_LEGAL_AID_LAWYERS_OWED_M_SAY_THEY_LL_QUIT_PAN_EL_.asp;

Kenya: France-based Lawyers of the World, styling itself an international legal aid organisation, provides pro bono representation for Somali pirates, though joint Indian-US lawyer, Avi Singh:

http://www.int.iol.co.za/index.php?set_id=1&click_id=15&art_id=nw20090803200603354C398590;

Malaysia: legal aid lawyers protest arrest outside police station at inquiry:

<http://thestar.com.my/news/story.asp?file=/2009/8/16/nation/4531559&sec=nation>; Bar Council president supports the five lawyers arrested by police, saying that they were representing clients not demonstrating:

http://www.nst.com.my/Current_News/NST/articles/20090816181829/Article/index_html;

New Zealand:

‘Lawyers accused of legal aid rort’:

http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10582505; Defendant released on retrial after 13 years in prison will not have to repay part of his \$2.7m legal aid bill from interview receipts: <http://www.3news.co.nz/News/NationalNews/David-Bain-will-not->

[have-to-repay-legal-aid-from-interview-money/tabid/423/articleID/111621/cat/64/Default.aspx](http://www.odt.co.nz/news/dunedin/64667/bain-making-pre-trial-aid-repayments)

though he will have to repay legal aid for some hearings:

<http://www.odt.co.nz/news/dunedin/64667/bain-making-pre-trial-aid-repayments>; Row

continues over legal aid cuts: <http://www.lawfuel.co.nz/releases/release.asp?NewsID=1348>;

Pakistan: Decision to establish national network of public defenders: <http://www.geo.tv/7-28-2009/46669.htm>;

Philippines:

Supreme Court postpones requirement on practising lawyers to do 60 mandatory pro bono hours to 1 January 2010 to allow Bar to draft rules:

<http://www.tradingmarkets.com/.site/news/Stock%20News/2407488/>;

Rwanda: UNICEF programme to provide legal assistance for 618 juveniles currently in prison: <http://allafrica.com/stories/200907280026.html>; Juvenile scheme gets off the ground: <http://allafrica.com/stories/200908130021.html>;

South Africa: former multi-millionaire has a go at applying for legal aid in fraud case: http://www.int.iol.co.za/index.php?set_id=1&click_id=15&art_id=nw20090803200603354C398590; Praise for turnaround of legal aid in South Africa: <http://news.iafrica.com/sa/1617551.htm>; failure to produce transcripts of court judgements could lead to release of large numbers of convicted prisoners; Legal Aid South Africa seeks to negotiate difficult position on behalf of clients who might be benefit: http://www.int.iol.co.za/index.php?set_id=1&click_id=15&art_id=vn20090816064248589C780496;

Sri Lanka: commission to study improvement of legal aid as part of rule of law programme in wake of suppression of Tamil insurgency: <http://www.dailynews.lk/2009/08/04/news36.asp>;

United Arab Emirates: pressure for a civil legal aid scheme grows as recession bites: http://www.business24-7.ae/Articles/2009/8/Pages/08082009/08092009_5d4f22975be44963ab237d1db8500028.aspx;

United States:

Juvenile public defender scheme may sue over termination of contract and requirement to cut by 20 per cent and improve representation:

<http://www.freep.com/article/20090703/NEWS06/907030393/Legal+aid+group+may+sue+over+contract+fight+>; Demand for civil legal aid rockets in recession: <http://www.mcclatchydc.com/homepage/story/71580.html>; Michigan juvenile public defender sheds jobs as court declines to reconsider major funding cuts: <http://www.freep.com/article/20090710/NEWS06/90710043/1008/Mich.-Supreme-Court-declines-taking-part-in-contract-dispute>; Legal Services Corp makes it to 35 years old on 25th July: http://www.lsc.gov/press/pressrelease_detail_2009_T248_R20.php; But comes under attack for fiscal impropriety: <http://www.washingtontimes.com/news/2009/jul/28/exclusive-legal-aid-agency-hit-for-wasteful-spendi/?page=2>; and is applauded by President Obama: <http://www.clarksvilleonline.com/2009/07/31/president-obama-applauds-the-legal-aid-society-on-35th-anniversary/>;

4. Reports and Publications:

Canada, Alberta: annual report on legal aid:

<http://www.legalaid.ab.ca/about/Documents/2009%20LAA%20Annual%20Report.pdf>

England and Wales: Legal Services Commission (LSC) and Ministry of Justice set out joint proposals for reforming the legal aid rules to ensure that limited resources are focused on priority cases <http://www.justice.gov.uk/consultations/legal-aid-refocusing-priority-cases.htm> LSC's Statistical Information 2008/09 pack is now available online http://www.legalservices.gov.uk/docs/about_us_main/StatsPack0809.pdf ; Ministry of Justice release consultation paper seeking views on proposals to reform legal aid funding - <http://www.justice.gov.uk/consultations/legal-aid-funding-reforms.htm>

Hong Kong SAR: Legal Aid Services Council Interest Group consider the feasibility and practicality of expanding the scope of cases to be covered by Supplementary Legal Aid Fund <http://www.info.gov.hk/lasc/cm/IP%2009-15-19.pdf>

Northern Ireland: Northern Ireland Legal Service Commission (NILSC) outline proposals for the introduction of a Funding Code for Civil Legal Aid – <http://www.nilsc.org.uk/consultations.asp?on=consultations> ; NILSC publishes Business Plan 2009-2010 online – <http://www.nilsc.org.uk/uploads/newsroom/documents/NILSC%20Business%20Plan%205261.pdf>

United States:

Center for American Progress 'Prioritizing legal assistance during the great recession':
http://www.americanprogress.org/issues/2009/07/justice_for_all.html;

5. Research and Events

6. And Finally

This newsletter has been compiled by Roger Smith of JUSTICE with assistance from Collette Miller of the University of Strathclyde. If you would like to be taken off the circulation list; add someone or contribute some content: contact rsmith@justice.org.uk.

ILAG was established in 1992 as a way of bringing together academics, administrators and others interested in the development of legal aid. ILAG is constructing a website at www.ilagnet.org. JUSTICE is a UK-based human rights and law reform organisation dedicated to advancing human rights, access to justice and the rule of law. Its website is www.justice.org.uk.