



'Scottish Legal Aid System 'Needs Urgent Overhaul' – Law Society of Scotland

**International
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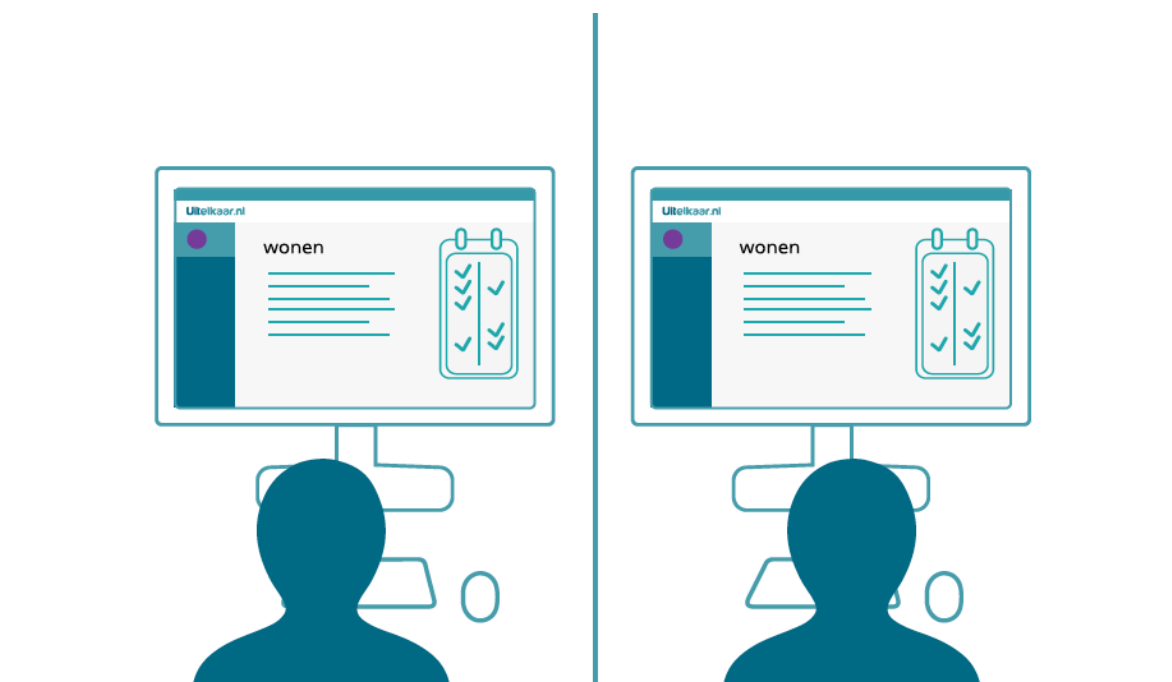
Uitelkaar.nl - Justice42's Relaunch of Rechtwijzer

Laura Kistemaker, Kaspar Scheltema, Michiel Scheltema

End of March 2017 the Dutch Legal Aid Board, [HiiL](#) and Modria announced that the online conflict resolution platform Rechtwijzer would be discontinued. Subsequently, Justice42 was set up as a spin-out of HiiL with the aim to find a way to continue the innovative concept of Rechtwijzer.

During the years that Rechtwijzer was up and running, clients consistently showed their appreciation of this new divorce procedure. Many lessons were learned about what elements of the process clients liked and what they missed, and about what is needed to back up the platform with a viable business model. To us, as the team behind Justice42, it seemed too big of a loss not to take these insights and turn them into a restart of the platform. People going through a separation, one of the most difficult periods in their live, deserve all the support they can get.

We have been invited to share with you an update on where we stand.



New Partnership and Activities

Like Rechtwijzer, the new online platform offers parties a structured and supported procedure leading to a finalised divorce plan. Its aim is to contribute to access to good and affordable online justice by stimulating self-reliance of divorcing couples. In the Netherlands, it will be marketed under the brand name and url uitelkaar.nl. The Dutch Legal Aid Board has developed a set of quality standards, which Justice42 was able to meet. As a result, uitelkaar.nl will continue to be presented on the Dutch Legal Aid Board's website [Rechtwijzer uit elkaar](http://Rechtwijzer.uitelkaar.nl). Also, people eligible for legal aid will be offered lower prices for the services on uitelkaar.nl. We have opted for a clear focus for the coming years on the topic of divorce and with a focus on the Netherlands. Together with HiiL, Justice42 is defining a roadmap for expansion to other jurisdictions and topics for the coming years.

In the past months, an agreement has been reached with two social impact investors: [SI2 Fund](#) and Jaap van der Zwan. This partnership has enabled the building of a new IT infrastructure and the setting up of the company's operations. Jointly, we have embarked on defining the impact measurement framework through which the 'social return on investment' (SROI) of the new platform for its stakeholders will be systematically assessed. We will finalise the initial study of such an SROI-analysis by the beginning of 2018.

Uitelkaar.nl

Status of Platform Development and Implementation

After 6 months of building and testing the new platform, it went live on 8 September. For a large part, the new platform follows the flow and procedure of Rechtwijzer. In addition, we were able to implement a number of new features that build on experiences and points of feedback, which were gathered with Rechtwijzer. These adjustments include: a better case overview and notification centre, the introduction of additional services on the platform and a filtering system for assessing what cases are suitable to follow this procedure.

At the time of writing – mid-November 2017 – we already have reached the mark of 100 cases, of which 4 are finalised (meaning that the divorce plan of the spouses have been reviewed and sent to court). 1 couple even has received the official notification that the marriage has been dissolved. More importantly users rate *uitelkaar.nl* an 8 out of 10 in the customer satisfaction surveys. The platform is continuously being improved both in collaboration with our IT-partner and through adjustments we are able to implement ourselves.

The user tests and the first user feedback, have strengthened our belief that *uitelkaar.nl* will prove to be a qualitative, empowering and de-escalating alternative to other ways of organising a divorce in the Netherlands. The network of lawyers that guide users in the final stages of their efforts to reach agreements on *uitelkaar.nl* as well as the other stakeholders, including the Dutch Legal Aid Board, continue to show their dedication to support this innovation. We are very keen to follow our first users the coming weeks to see how they experience *uitelkaar.nl*!

If you are interested in being kept up to date on further developments, please send an email to: laura.kistemaker@uitelkaar.nl.

4th China – EU Legal Aid Policy Dialogue

Dr Lindsay Montgomery, Visiting Professor, University of Strathclyde and Vice Chair, ILAG

The 4th (and final) China-EU Legal Aid Policy Dialogue took place in Beijing in June 2017.

This was the final event in what has been a substantial engagement programme between China and the EU. It has involved 4 high level policy events, four visits by the Chinese to various European jurisdictions; the involvement of European experts from several jurisdictions including the Netherlands, Scotland, England, Georgia, Portugal, France and others. As well as the policy dialogue events the European experts were involved in various pilots, events and programmes in some of the regions in China.

This final event included several of the usual ILAG suspects who have been involved in different aspects of the programme – Alan Paterson, Peter Van Den Biggelaar, Steven Gibens and your reporter for this article. The other European experts

for this final event were Olaf Halvorsen Ronning, University of Oslo, Carlos M.G. de Melo Marinho, Court of Appeal Judge, Portugal, Dirk Hinne, German Federal Bar Association, Ruth Whyte, Principal Legal Adviser Legal Aid Agency of England and Wales and Monica Mayrhofer, Boltzmann Institute Vienna. The sessions involved Chinese and European contributors and we heard interesting presentations from a number of academics from Chinese institutions as well as from Chinese legal aid leaders and legal aid practitioners. The audience included representatives from across China involved in developing and providing legal aid services.

The title of the final event was “Legal Aid – Facing the Future”. It was an excellent opportunity to share the substantial progress and investment being made on legal aid in China as well as looking at approaches from across Europe. All the experts were impressed by the enthusiasm and determination of the delegates from around China to further develop and broaden their legal aid system. There is much emphasis on providing legal aid services to hard to reach groups and some of the approaches being developed in China would bear looking at by other jurisdictions.

The Chinese legal aid leadership has indicated its decision to roll out UK style Legal Aid Peer Review Quality Assurance Programmes across the country – clearly a huge undertaking. Alan Paterson and Avrom Sherr worked on this with Chinese colleagues, with 4 different training events in three years, as part of the programme.

There will be a final report on the programme, which will be published in due course and it will be interesting to see this. However, as a participant I have no doubt that it has been successful in sharing knowledge, experience and ideas (in both directions).

The programme management was done by the excellent British Council staff, led

Dutch Comments on International Legal Aid Group – Conference Johannesburg - June 2017

Susanne Peters, Legal Aid Board, The Netherlands

From a Dutch perspective, we have collected some interesting and important issues that were presented at the 2017 conference.

The International Legal Aid Group was primarily a group from ‘western’ countries with good developed Legal Aid systems. However, more and more ILAG also covers countries with Legal Aid systems that have recently been developed or are still being developed. The expansion to a worldwide scope emphasizes, more than before, the issue of human rights. In many countries there still is a lot to gain in that perspective.

On the one hand, countries with less developed Legal Aid systems encounter

by Paul Dalton who have worked tirelessly to make this a success.

Although this programme is now at an end the Chinese leadership in legal aid wish to continue dialogue with others including ILAG.

For our part we would also like to see the Chinese sharing with other jurisdictions their experiences and success in developing and expanding legal aid provision. There is much to be gained from continued sharing of ideas and experiences, cooperation and engagement. It has been a pleasure to have been a part of this interesting and valuable programme. We wish our Chinese colleagues every success in the future

different problems and challenges. On the other hand, however, they share challenges equal to those of countries with more developed Legal Aid systems. Problems and/or challenges that are presented at the 2017 conference, are the following: inadequate budgets and budget cuts, availability of legal aid in sparsely populated and remote areas, too much bureaucracy, lack of confidence in traditional dispute resolution mechanisms (the delegates agree that more can be done in the preliminary phase, outside of courts), the use of paralegals, and the collaboration with other social and/or welfare organizations.

Most delegates agree that a good system of Legal Aid is a responsibility of governments. However, in many countries that have recently started with Legal Aid NGOs take care of the Legal Aid. Those countries are, in fact, more flexible in the organization of Legal Aid, because they have just started developing it. These countries have to make do with the money

and resources they are given, and often employ paralegals. And that is something other countries, with good developed systems, would like to consider as a possible alternative do as well.

The 'Fear of Change' of Lawyers and the Changes they Prevent

“Try to convince lawyers to embrace changes and new developments”

One of the returning subjects of the conference is the idea that lawyers try to prevent certain developments to take place; there seems to be resistance within the profession and it seems that a bigger part of the members of the profession does not want to change. Many delegates, however, feel that change is necessary, like more deployment of paralegals, the settlement of cases outside of courts and digital help. The general belief is that quite a lot of lawyers are worrying about the financial consequences of system changes and that they are scared to lose work (and thus money). This is to a certain extent understandable. Lawyers are believed to want consistency and predictability and to avoid uncertainty. Another idea is that of 'guild protectionism' (Rebecca Sandefur): lawyers want to keep doing what they do, and do not want to forfeit work.

One of the quotes was: “The system has been hijacked”: which means that it is not the client that counts most, but the turnover of the profession. No profession should have too much power; but if there are no alternatives, that is what you get. In the countries with new developed systems that is not (yet) the case: there is less money, lawyers are not yet interested in Legal Aid, and thus paralegals are deployed.

“The legal sector has been fundamentally unchanged for hundreds of years” and our legal systems are based upon that sector. But in our society many sectors change (for example the digitization of the travel

sector). Internet has changed a big part of our society, while the legal sector holds on to old ideas and ways of doing: fear of change. Defining problems in juridical terms and thinking only lawyers are able to solve them puts lawyers in position. Thus they are used to be in the centre of attention → How do they change? How do they learn to be part of a holistic system?

Possible ways to solve that problem: a) by stimulating (forcing?) the profession to cooperate (by governments) b) by making change attractive to them because they benefit from it themselves c) by simplifying the law, so that clients need lawyers to a lesser extent d) by outlining the future to them and how they benefit from it and using avant-garde lawyers to convince the profession.

Other than Legal Aid and Client Centered

The primary help is: legal guidance, legal empowerment and legal assistance. Often this is enough and the court is not needed. The general view is that more problems can and should be settled in the preliminary phase, outside of the courts. The *output* of a case is the result of that case. The *outcome* of a case is the answer to the question whether the clients circumstances have actually improved → did the client really get what he needed?

Previously the problem was the central focus of attention, nowadays more and more the client should be the focus of attention. On that account, the work of social workers becomes more important; they focus primarily more on the person of the client, while many lawyers still focus on the problem. This is another way of looking at the situation, which uncovers other solutions. See also the dissertation of Steven Gibens (Belgium, finished at the end of 2017).

Ab Currie presents a 'legal aid health check': to identify people who will possibly need

legal aid in the near future. This tool can be used preventatively and can be used by other organizations that try to reach a part of the population that is hard to reach. Cooperation between Legal Aid and other social organizations is a long journey that needs patience.

Paralegals

Only a few countries with developed legal aid systems manage to deploy paralegals. In countries with recently developed legal aid systems this is much more common and sometimes the only option.

A fruitful place to start with paralegals could be the duty solicitor schemes. In this area a lot of work can be done by paralegals. And how can you be a 24/7 duty solicitor and at the same time do all your other work as well, like getting to trial? In Fiji there already are duty-paralegals.

In the Netherlands many duty solicitors complain about the payment and some threaten to quit the scheme. However, the scheme presented by Vicky Kemp shows that the pay in the Netherlands is higher than in other countries. Vicky presented some interesting research about legal aid at the police station and introduced an app that informs suspects at the police station about their rights. This app should empower suspects.

Rechtwijzer

Some delegates talked about the ‘failure’ of Rechtwijzer. Roger Smith suggests that Rechtwijzer failed because the transition from 1.0 to 2.0 was too soon. But the separation platform will continue, supported by private investors. Lose or win? Should the role of the government and the legal aid board be to stimulate these kinds of innovations coming from the market? Like ODR and mediation it is a way to settle cases outside of the courts and that

is what people actually want, according to Maurits Barendrecht. But besides the Netherlands and British Columbia many countries were reluctant. Waiting for these two countries to build the future on their own?

Technology: “Waken Up to the Future”

What is the future of digital help via websites? And what is the future of digital courts? Mark Benton presents Canada’s (British Columbia) success story, which is based upon Rechtwijzer 1.0.

Quality and Peer Review

Alan Paterson has been doing research into quality assurance and peer review for many years. He admits that is very hard to measure quality. Everything that can be measured are just little pieces of the puzzle: satisfaction of the client, outcome for the client, complaints about lawyers, etc. According to Alan (and his colleague Avrom Sherr), peer review is the best tool we have to measure and enhance quality. A quality committee reviews the scores of the different reviewers to create some kind of objective, hard data. These reviews have led to a small number of lawyers (n = 20) in Scotland that have been asked to leave the system. But the outcome of peer review is much more than that – its aim is to drive up standards and to encourage a process of continuous improvement.

According to Alan peer reviewers should always be part-time peer reviewers. That way they keep in touch with the practice of lawyers and actually stay ‘peers’ and are respected for that.

In China (where they are trained by Alan and Avrom) they use peer review also to try to change the culture of the profession: by using criteria, which focus on the client, the external assessment by independent peer reviewers encourages lawyers

automatically to become more client centered.

A subject that is spoken of more than once is the **cost-benefit-analysis**: what does it cost and what is the output? People often wait a long time before they seek help.

Early intervention can present cheaper options and prevents high costs in a later stage. Innovation is needed to work in a more cost-effective way. Anne Barlow told us about legal aid moving to the private

sector in de Nordic welfare states. More and more people need to have an insurance or membership to receive help.

What is the Technology Needed for Access to Justice?

Roger Smith

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Mary Juetten, an American expert on the use of technology in the law and CEO of Evolve Law has written a piece intriguingly headed 'What is the Technology needed for Access to Justice' in the ABA Journal. It is a good title: and follows a companion piece entitled 'How can technology solve our access to justice crisis?'. How would we answer this question from a domestic English and Welsh perspective?

The obvious response, of which Ms Juetten is obviously aware, is that the questions have a logical flaw. Technology, by itself, is not an answer to anything – certainly not access to justice. Indeed, those who suffer exclusion from justice may well not express any desire for technology at all. They might just want a walking, talking, breathing lawyer like everyone else. Witness the dislike of defendants for video connections to courts: they want to be where the action is, not isolated in a small booth miles away. Similarly, the most sophisticated chatbot is not much use as the bailiffs break down the door to your rented flat and put your stuff out on the pavement (sidewalk, for American readers). Technology is particularly bad at dealing with inherent power imbalances between parties.

England and Wales has a different history from the US in relation to legal aid but it has arrived at very much the same place. Eligibility for civil legal aid has been cut in terms both of scope and financial qualification. By 2008, the percentage of households eligible for legal aid on financial grounds was 29 per cent, roughly equivalent to the percentage of households in receipt of means-tested benefits (Universal Credit is expected to go to 7m households in 2018 when the total number of households is estimated to be just under 25 million: legal aid eligibility is likely to have fallen since 2008). Centrally funded legal advice has been largely withdrawn for social welfare (poverty) law since cuts implemented by the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The number of not for profit legal advice has reduced by more than a half – from 3226 in 2005 to 1462 in 2015. Legal aid was withdrawn without replacement in relation to most matrimonial cases. Largely as a

consequence of that cut, legal aid private practice providers have fallen by 20 per cent in five years – from 2393.

So, we are a jurisdiction, which knows from the experience of our recent past exactly where our 'justice gaps' are. They are: those, largely women on low incomes, who used to receive assistance in matrimonial cases; those with cases relating to matters like housing disrepair and social security failures who used to be helped under the legal advice scheme; those on low incomes with a range of legal problems, including small businesses, for which legal aid was never available; those now reduced to litigating in person in civil cases; and those, from the most marginalised communities, who have always fallen through the net of available provision for reasons of lack of language, cognitive or other skills. The government has been consistently criticised, not least by the Justice Select Committee of the House of Commons for refusing to research the numbers affected by the recent cuts – though it has now agreed to undertake some study.

Technology is evidently no answer on its own to helping these excluded groups. For a start, the digital divide will extend the communities excluded by the haphazard and limited provision of services – by adding to them those who cannot effectively access digital communication.

But, there are at least four ways in which technology can help to extend the reach and leverage the use of such services as do exist by supplementing – and not replacing – physical provision. First, technology can help bring down the cost of commercially provided services to representatives of Richard Susskind's 'latent legal market', those who would buy services if they were cheap enough. And that could happen through greater investment and development of case support services specifically designed for low cost areas where much of the administration would be done through technology in the form of pre-consultation questionnaires; consultation/post consultation prompts; and user-completed forms supervised by practitioners.

Second, technology can do much of the heavy lifting in terms of the provision of legal information, education and simple advice. We are on the cusp of a revolution in the digital provision of information where we move from traditional linear provision as exemplified by the Citizens Advice site to the interactive possibilities first exemplified by the Rechtwijzer and now to found in sites like MyLawBC.com. This is based on guided pathways that take you to information tailored for your particular problem rather than setting it all out in one screed like a textbook.

Third, technology can help litigants in person. We know this from the Royal Courts of Justice CourtNav programme and also the legacy of the Rechtwijzer, which showed how a litigant in person could receive both advice, mediation and adjudication through the net. We also have the example of the Civil Resolution Tribunal in British Columbia and its innovative Solution Explorer which seeks to bridge the gap between information, advice and the court. And, finally, we stand on the brink of a general revolution in digital communication with the animation possible through developments like chatbots, ultimately boosted by artificial intelligence. Until recently, it looked as if the Australian Disability Insurance Agency might take the lead with its development of Nadia, a chatbot voiced by Cate Blanchett which would answer queries put to it by the public about the new benefit. Alas, it seems that the supporting technology, which is IBM Watson, is too slow; the cost may be too high; and development is currently stalled. Nevertheless, as we get used to Siri and other voice activated assistants, the

potential to shift the interface with a computer to the oral from a keyboard will not only revolutionise our use of home shopping and central heating: it has fantastic possibilities for a quantum leap in the use of net to answer legal questions. And you can also see this foreshadowed in developments like the much-hyped chatbot DoNotPay programme and its derivatives.

So, can technology solve what has become widely known as the justice gap on both sides of the Atlantic? No, it can't. But, can technology help alleviate the justice gap? Yes, it can. No one should minimise the problems or shorten the time frame. Pathfinder programmes like Nadia and the Rechtwijzer have hit the buffers – at least temporarily. But, that is what we have to continue to work for – if only because in England and Wales, the days of full legal aid coverage are not coming back and in the US they are never going to arrive.

News

The news items shown below are largely compiled from articles on the internet, found on the basis of a simple search for terms such as 'legal aid', 'access to justice' and 'pro bono'. Therefore, readers must, just as buyers, beware of authenticity. The links worked at the time of writing but some will obviously fail after a period of time.

Paul Ferrie, who is ILAG's Researcher and Online Editor, collates these news items.

Paul, a graduate of the University of Strathclyde Law School, is also an Associate with Scottish firm, Stirling & Mair.

If you would like to suggest or write an article for inclusion in this newsletter or the ILAG website, please contact Paul by emailing psferrie@gmail.com. Paul can also be contacted via Twitter (@psferrie) – and LinkedIn (<http://goo.gl/19cmNd>). Please note, Paul's work with ILAG is undertaken on a part time basis and he will revert to you as soon as practicable.

Australia

[Don't fear robo-justice. Algorithms could help more people access legal advice](#) – The Conversation.com

[LCA calls for funding to support lawyers' 'staggering' pro bono efforts](#) – Lawyers Weekly

[Legal aid services in WA 'at crisis point' without more funding](#) - ABC News

[Out-of-hours legal help a hit in SA](#) – Lawyers Weekly

[South Australia launches 24/7 digital legal service](#) – Australasian Lawyer

Canada

[Access to justice pilot project highlights need to inform Ontarians of language rights](#) – Lawyer's Daily

[Alberta Justice officials say people have wrong idea about legal-aid fee](#) - CBC News

[First Canadian legal clinic for investors opens at Osgoode Hall](#) – The Lawyer's Daily

[Lack of legal aid hinders quest for justice](#) – Times Colonist

[Lack of legal aid leaves too many defendants to represent themselves: top judge](#) – CBC News

[Manitoba judges visit Indigenous leaders to try to boost access to justice](#) – National Post
[One-of-a-kind mobile app puts you in touch with legal help](#) – Digital Journal
[Ottawa provides \\$7.1 million for LAO refugee services](#) – Canadian Lawyer
[Sydney church launches weekly 'Info Cafe' to provide job, debt, legal advice](#) – CBC News

China

[China's Legal Community Reflects on 'Lawyers for All' Trial Run](#) – Sixth Tone

England & Wales

[Conclude legal aid review quickly, MPs urge government](#) – Law Society Gazette
[Domestic violence victims still waiting for legal aid reform, says Labour](#) – The Guardian
[Justice Secretary reveals legal aid review is on its way — just one day after government confirms further cuts](#) – Legal Cheek
[Legal aid cuts creating two-tier justice system, says Amnesty](#) – The Guardian
[Legal aid cuts 'may have stopped Grenfell tenants pursuing safety concerns'](#) – The Guardian
[Legal aid reforms must be reversed to restore public access to justice](#) – The Sunday Times
[Legal aid cuts leave thousands in England and Wales unable to defend their rights, report finds](#)
 – Independent
[Senior judge warns over 'shaming' impact of legal aid cuts](#) – The Guardian
[Young Legal Aid Lawyers: We cannot argue working in legal aid isn't difficult, but don't quit](#) – Legal Cheek

India

[Free legal aid to needy may become a key criterion for lawyers' entry into judiciary](#) – The Economic Times
[India's legal logjam](#) - Deccan Chronicle
[India's Robin Hood Lawyer Wins Alternative Nobel for Path-Breaking Legal Work!](#) – The Better India
[Need to provide legal aid to BPL families, says Gogoi](#) – The Tribune

Malaysia

[Chief Justice: Judicial reforms successful thus far, but far from over](#) – Malay Mail Online
[Empower people through legal reform, says human rights lawyer](#) – Malaysian Insight
[Fundamental right of access to justice](#) – Free Malaysia Today

New Zealand

[Community Law delivers real return on investment](#) – Scoop NZ
[Give us Access to Justice](#) – Scoop NZ
[New Zealand family law advances could benefit Australians](#) – Scoop NZ

[Positive feedback for draft legal aid application form - Voxy](#)

Northern Ireland

[Cost of legal aid remains static despite fall in number of cases](#) – The Irish News

[Decline in legal aid claims for Crown Court cases](#) – Irish Legal News

Pakistan

[CJP hints at promoting 'non-traditional ways' for speedy justice](#) – Dawn

[Justice hurried is justice buried](#) – The Nation

[Sindh govt establishing free legal aid centres](#) – Pakistan Today

The Philippines

[SC: New lawyers must provide free legal service](#) – Inquirer

[Volunteer lawyers eyed for legal aid mission](#) – Sun Star

Republic of Ireland

[Law Society leads criticism of legal aid funding in Budget 2018](#) – Irish Legal News

[It's time citizens had real access to justice](#) – Independent.ie

[Report on public access to barristers submitted to Flanagan](#) – Irish Legal News

Singapore

[More young lawyers in Singapore giving free legal services](#) – Yahoo

[Smu Pro Bono Centre's New Premises Officially Unveiled](#) - SMU

Scotland

[BDO report underlines importance of tech to legal sector](#) – The Herald

[Law Society of Scotland raises concerns that UK Government broadband commitment is not universal](#) – Holyrood

[Legal walkers take small steps in the name of access to justice](#) – The Herald

[New rules introduced for applications for expenses out of the Legal Aid Fund](#) – Scottish Legal News

[Professor Alan Paterson to advise the Scottish government on legal aid](#) – Scottish Legal News

[Scottish legal aid system 'needs urgent overhaul'](#) – Law Society of Scotland

[Society launches survey on impact of legal aid](#) – Law Society of Scotland

[Urgent investment needed to secure long term future of legal aid](#) – Law Society of Scotland

United States

Every year, millions try to navigate US courts without a lawyer – Salon
Facing High Legal Fees, Immigrants Are Using Web Tools to Apply for Green Cards – The Vice
Legal aid clinic to focus on debt relief – Wate.com
Nonprofit, LU law school partner on legal clinic for clients in need – News Advance
Legal Hotline for Natural Disaster Survivors in Texas – LSC
Oneida County expands legal aid to veterans – Observer Dispatch
The Justice Gap - America’s unfulfilled promise of “equal justice under law” – Harvard
Magazine
UMass, legal aid group land \$195K for medical-legal partnership – WBJournal

For more information about the work of the *International Legal Aid Group*, please visit our website which can be found at <http://www.internationallegalaidgroup.org>.