



4° International Conference on Access to Legal Aid in Criminal Justice Systems

SPECIAL CONVENING AMIDST COVID-19 TO
SUPPORT ACCESS TO JUSTICE FOR ALL

September 14-18, 2020



INTRODUCTION

Around the world, low-income and marginalized people are disproportionately arrested and detained. They have borne the brunt of COVID-19's negative impacts on justice systems, where overcrowding, court closures and emergency measures have critically endangered health, freedom and the right to a fair and speedy trial. Meanwhile, movements across the world to raise awareness of widespread discrimination have galvanized action against police violence and systemic racism, bringing the dire need for criminal justice reform to the international stage and sparking global debate.

On September 14-18, 2020, government and civil society experts and practitioners on access to justice and legal aid from around the world will convene to discuss unprecedented challenges in access to justice caused by COVID-19, and how legal aid can combat inequalities this pandemic has intensified. The program was interpreted in eight languages and focus on themes including: (1) Advocating for release and protecting the rights of people deprived of liberty; (2) Holistic representation and access to justice for vulnerable and marginalized groups, and (3) Combating systemic racism and discrimination based on ethnicity, gender, religion, or other status.

This year's conference was hosted virtually by the Public Defender's Office of the State of Rio de Janeiro, in partnership with the United Nations Office on Drugs and Crime (UNODC), the United Nations Development Programme (UNDP), Open Society Justice Initiative (OSJI) e International Legal Foundation (ILF). It was supported by the Center of Legal Studies (Centro de Estudos Jurídicos - CEJUR) and Foundation Superior School of Public Defender's Office of Rio de Janeiro (Fundação Escola Superior da Defensoria Pública do Estado do Rio de Janeiro - FESUDEPERJ).

The aim is to support Member States and individual experts in implementing the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, which call on every country to put in place a comprehensive legal aid system that is accessible and effective, has nationwide reach, and is available to all without discrimination. Past conferences have been held in Johannesburg, South Africa (2014), Buenos Aires, Argentina (2016), and Tbilisi, Georgia (2018).

"It is with great honor that the Public Defender's Office of the State of Rio de Janeiro has hosted the 4th International Conference on Access to Legal Aid in Criminal Justice Systems, discussed the access to legal aid in the context of the pandemic, with representatives from over 85 countries. It was a great opportunity to show how the Public Defender's Office of the State of Rio de Janeiro has reinvented itself in such unusual times so as to ensure the rights of the population most afflicted by the pandemic, which was only made possible by the State model of comprehensive access to legal aid"

Rodrigo Pacheco,
General Public Defender of the State of Rio de Janeiro



4^o International Conference on
**Access to Legal Aid in
Criminal Justice Systems**

International Conference on Access to Legal Aid in Criminal Justice Systems (4. : 2020 : Rio de Janeiro, RJ)

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In the following pages, we have outlined the main discussion points of each one of the panels held during the conference.

“Meeting this
Moment as Legal
Aid Providers
Amidst COVID-19”

Monday
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SEPTEMBER

In such difficult times, legal operators around the world have taken several important measures to guarantee access to justice for vulnerable persons, as well as other basic rights for those most affected by the pandemic. This was one of the several relevant topics discussed in the opening panel of the 4th International Conference on Access to Legal Aid in Criminal Justice Systems, that took place today (14). Organized by the Public Defender's Office of the State of Rio de Janeiro, the online event closes on Friday.

The moderator of this first day of debates was the Law Specialist Pedro Lenza, who pointed out that the event was attended by more than 800 people from 85 countries. In its fourth edition, the most important world forum on the subject seeks to move forward in the search for "equal access to justice for all", as envisaged by UN's 2030 Agenda.

NEW TECHNOLOGIES

General Public Defender of the State of Rio de Janeiro, Rodrigo Pacheco highlighted the importance of the event in the context of the pandemic. "The effects of Covid-19 are even more devastating in an extremely unequal country like Brazil, where access to the most basic rights, such as water and healthcare, have historically been denied to the most vulnerable."

The collective and strategic measures undertaken by the Brazilian Public Defender's Office was worth a mention, having achieved very positive results in such difficult times. The achievements include: (1) the Brazilian Supreme Court's ban on police operations in the slums; (2) averting overcrowding in minors detention units, initiative that reduced the



number of incarcerated youths in the state of Rio de Janeiro by half in comparison to data compiled before the pandemic; and (3) the decision of the State Court that obliges States and Municipalities to supply public school students with food despite the suspension of face-to-face classes.

Pacheco also affirmed that justice cannot turn a blind eye on technological advances, which are paramount to the expansion of legal aid services and to the democratization of legal information. In this context, he noted that within 20 days the Public Defender's Office of Rio de Janeiro will launch an Application that uses Artificial Intelligence to identify and address demands, ensuring greater celerity in service provision and more rational processes.

REINFORCEMENT OF EXCLUSION

South Africa, USA and Brazil share a structural racism culture and employ the criminal justice system to reinforce the exclusion of black people. That's the opinion of Gay McDougall, Human Rights activist who have worked in countries like Congo, Namibia, Cambodia, Bosnia and South Africa, where she took part in the electoral committee that supported the country's first elections, putting an end to the Apartheid regime. "In the numerous countries where I worked, I learned valuable lessons about the transformative power that access to legal aid has on people," she said.

McDougall explained that the USA, South Africa and Brazil also relegate certain segments of society to the base of the labor market, inadequate health care, low quality education, precarious housing and limited security mechanisms. South Africa has taken constitutional measures to protect the population, but in the US and Brazil, some communities have inherited a subordinate social status that continues to strip them of political power and legal resources in justice systems. "The United States has by far the largest prison population in the world. Brazil ranks third on that list."

Before finalizing her participation, the activist stressed that any changes to the legal system must be profound, and expressed concern about the prospect of the US government increasing the allocation of public funds for the military at the expense of health, housing, water treatment, etc. "There should also be accountability when it comes to the application of corrective measures at national and international levels."

NOBODY IS LEFT BEHIND

Elena Abbati, Resident Representative of the United Nations Office on Drugs and Crime (UNODC) in Brazil, stressed the fact that legal assistance receives more attention in certain countries than others, which is largely due to civil society partnerships. "One of the most important principles on the UN agenda is to leave no one behind, including the poorest and most marginalized."

She agrees that the pandemic has created unprecedented challenges for criminal justice systems; on the other hand, several measures have been taken and good practices identified. "One could mention, for instance, the reduction of the risk of COVID-19 contamination in detention centers, greater promotion of basic legal aid access to the population and assistance to victims of violence, including gender violence, which has greatly increased in the pandemic."

UNODC confirms its ongoing support to governments, civil society and other international efforts to ensure access to legal aid and basic social protection services for all. "May this conference serve as a forum for discussing good practices", she said.

Also representing the United Nations, Katyna Argueta, Resident Representative of UNDP Brazil, noted that the groups that faced challenges in the past now face even greater challenges. However, she sees difficulties as an opportunity for justice system innovation via digital transformation and business contingency plans. "Justice systems cannot go back to what they were before the pandemic. They have to promote relevant international discussion and cooperation."

STATE NEGATIONISM

Brazil was dramatically hit by the pandemic. Covid has already killed 132,000 people and infected over 4 million individuals tested positive, without taking into account the enormous underreporting. "Only 13 in every 1,000 Brazilians have access to appropriate testing. Experts believe that there are five, seven or 12 times more infected people who are not being tracked", notes Jurema Werneck, Founder of the NGO Criola and Director of Amnesty International - Brazil

The bleak scenario, according to her, can be attributed to state/governmental negativism, which has led the federal administration to fail to fulfill its duties to protect the population's right to healthcare. "The public healthcare system has been made precarious over the years and set aside by the government. There is no coordination, healthcare professionals have not been given what it takes to care adequately for people."

**equal
access
to justice
for all**

All this on top of the dramatic worsening of the financial conditions of the population, especially the most vulnerable. "There are entire families living on the streets, completely unattended. Self-employed and informal workers are on the sidelines due to Covid", argues Werneck.

She also laments the isolation of prisoners during the pandemic, who at times have been prevented from speaking to lawyers or family; police violence, and deliberate burning with the leniency of the authorities, which expose native people to the virus.

"The digital transition imposed by Covid is met by a population that does not have access to technology", summarizes Werneck, who suggests the creation of organizations and mechanisms to mediate access to justice and the reinforcement of affirmative actions.

Towards the end of the panel, Jennifer Smith, ILF's Executive Director, thanked the organizers, with special emphasis on the Public Defender's Office of the State of Rio de Janeiro. She stressed the importance of the event in the current context of crisis the challenges brought to legal aid. "COVID has exacerbated the problems that were already present in many criminal justice systems around the world: courts have been closed, and many of these systems are unable to cope with the urgent demands that arise, leaving thousands of people in correctional facilities without access to a fair trial. Because of overcrowding and unsanitary conditions, many have already died."

Smith also mentioned the recent protests in the United States and how they highlight the discrimination that exists today. After making a small retrospective of the biennial events held so far, she explained what their main objective is. "Our objective, in creating this forum, was to identify common challenges, good practices and innovations. But the conference has become much more than that. It has enabled us to create a global community of legal aid providers, a worldwide network of professionals committed to working together and willing to fight injustice."



“Advocating for
Release & Protecting
the Rights of People
Deprived of Liberty”

Tuesday
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SEPTEMBER

On Tuesday (15th), the 4th International Conference on Access to Legal Aid in Criminal Justice Systems discussed current conditions and measures implemented by national governments to protect the rights of criminal defendants amidst the pandemic. The debate was based on international law, which requires these individuals to have access to healthcare, but it is not always the case. In an attempt to change the situation, several countries have taken important steps to reduce, examine and treat incarcerated persons.

The second day of the forum featured three online panels, held at different time zones so that audiences from around the world could attend. The first panel brought together representatives from Asia, including countries such as Nepal, Afghanistan and India, as well as international organizations. The second session, focused on Africa, Europe and the Middle East, featured speakers from civil society, the UN and countries like Palestine, Tunisia and the Republic of Congo. Dedicated to the American continent, the third session of the day presented speakers from Honduras, Argentina and Brazil.

Panelists agreed that there is little transparency regarding COVID-19 data within prison systems, and that the actual figures are likely much higher than announced. The widespread lack of access to justice, even in wealthy economies, is a strong indication that many governments are not giving due importance to the matter, stressed New Zealand's Olivia Rope, from the Penal Reform International organization.

In general, it seems that several correctional institutions have chosen to restrict freedom of movement or simply isolate individuals allegedly infected by the virus, even though physical examinations are often relegated to security personnel. On the other hand, many countries have started to make greater use of technological solutions in order to facilitate meetings between detainees and their families and/or lawyers, although there is consensus that

when it comes to convening with an attorney, this type of solution should be temporary, as it would limit the adequate right of defense.

In Palestine, the government has declared a state of emergency (renewable monthly), a decision viewed with reserve by non-governmental organizations because it often implies in violation of human rights, said Ammar Dwaik, Director General of the Palestinian Independent Human Rights Commission. In Gaza and the West Bank, efforts have been made to reduce prison population by relieving sentences and granting liberty on bail for those convicted of less serious crimes.

It is worth noting that in the West Bank there were no cases of COVID-19 inside correctional facilities, and in Gaza, only six detainees were diagnosed with the disease. In the specific case of Palestine, as online hearings are not allowed, detainees leaving prison premises is seen as a threat to their own health, leading to unclear sentences, argues Dwaik.

In the Republic of Congo, hearings were suspended in January, informed Bruno Langhendries, at Lawyers Without Borders. In the capital Kinshasa, the daily death toll has reached alarming levels, a situation aggravated by corruption: in the prison system, bribery is widespread, granting visitation, audiences and so on, a practice that only got worse with the pandemic. However, good practices are also in place in the Republic of Congo due to previously experiences, such as the Ebola epidemic. Committees have been set up to monitor the progress of the disease in the prison system and preserve individual rights to adequate healthcare.

In Nepal, the supreme court recognized the seriousness of the crisis and issued guidelines to maintain custody hearings during social isolation so as to release children and the elderly, in particular. The collegiate also sought to relieve penalties due to prison overcrowding and inadequate sanitary conditions. In parallel, adds supreme court justice Sapana Malla, measures have been implemented to improve hygiene conditions in correctional centers. Since the decision was made, almost a thousand people have been released, but the number is expected to increase significantly from now on.

Nepalese authorities have been oriented by UN guidelines, as well as other countries' best practices. The same sources of "inspiration" are shared by the Indian government, said Madhurima Dhanuka, at the Commonwealth Human Rights Initiative. With the world's fifth largest prison population and overcrowded prisons, India's supreme court has also sought to facilitate the release of people belonging to high-risk groups, although there has not been general amnesty as seen in Afghanistan.

In March 2020, the Afghan government, in face of unsanitary conditions and overcrowding of prison units, decided to release detainees, specially critically-ill patients and individuals over 55 years of age. As a consequence of these and other initiatives, there are practically no more women in the country's prison system according to Hussain Ramoz, from the Attorney General's Office of the Islamic Republic of Afghanistan.

These efforts called for specific, faster procedures. At the height of the lockdown, legal operators worked on alternate days. The period was also marked by strong interlocation between the country's three main judiciary institutions - the supreme court, defense attorney's office and prosecutor's office - so that all relevant issues could be discussed in a timely manner. In addition, 50 prosecutors and a high-level executive were hired to conduct the efforts, including systematic, daily visits to detainees.

SPECIAL CONCERN

Amidst the chaotic scenario of the pandemic, there is special concern regarding the treatment of children and juveniles deprived of liberty, deemed particularly vulnerable to the virus and its indirect effects. After all, they may be more susceptible to diseases associated with difficult lives and drug abuse, which puts them at risk. The mental health of juveniles is also a matter of concern, especially when they are placed in isolation, which can lead to serious mental health issues.

According to Cedric Foussard, at the Terre des Hommes organization, some protective practices have been identified in different countries to address this specific group, including the release of those serving pre-trial detention or close to the end of prison sentence. Another initiative - one that is highly recommended by law operators - is to limit incarceration and invest in community services. In certain countries, detainees were given enhanced hygiene product kits and contact with the family (personally or virtually) was made easier.

EFFORTS IN LATIN AMERICA

In Brazil, "Justiça Presente" Program, an initiative of the National Justice Council (CNJ) and the United Nations Development Program (UNDP), has brought extremely positive results for the justice system, especially during the pandemic. Methodology diversification, reduction of prison population and the set up of an electronic system of sentence executions are some of the highlights cited by Luis Lanfredi, from CNJ.

Civil society agents have also mobilized to protect incarcerated women. There are currently 37,000 detained women in Brazil, almost 60% of them black, many without access to any type of health care, says Nathalie Fragoso, from the Human Rights Lawyers Collective. In order to protect the collective rights of these women, the Supreme Court (STF) admitted a collective habeas corpus on February 20, 2018, allowing them to be placed under house-arrest. The Supreme Court understood that if the abuse is collec-



tive, the solution must also be collective. Since then, several collective habeas corpus have been issued in Brazil to discipline different topics, from drug use to the right of sunbathing in prisons.

Torture and virtual hearings were also on the agenda of Latin American panelists, including Glenda Mejía, from the National Committee for the Prevention of Torture in Honduras. Police violence is common in the region, especially towards black and brown people. In Brazil, strong efforts have been made to eradicate this practice and denaturalize the culture of violence thanks to the free legal aid public system, argued Public Defender of Rio de Janeiro, Caroline Tessara. In this regard, custody hearings are seen as an effective instrument.

Tessara also spoke about the questionnaire applied to detainees and its importance for restraining and facing torture and ill-treatment. Through individual interviews conducted by public defenders themselves before custody hearings, the Defender's Office of Rio de Janeiro monitors arrests and identify patterns. Subsequently, the data are consolidated and published, subsidizing debates with civil society and generating media repercussion.

The importance of face-to-face hearings was stressed at the final stretch of today's debates by Mariano Maciel, Public Defender of Argentina. If, on the one hand, the tool enables decisions in moments of isolation, on the other hand, it brings difficulties such as the lack of evidence materiality, human contact and low bandwidth, among other problems.

Since it is a new tool, there is still a lack of adequate training for its use, putting at risk the liberty of individuals in favor of a learning process that is still in progress. Therefore, although it is feasible to have online audiences in some cases, it is necessary to make sure the defendant gets a fair trial. From now on, said the panel's moderator, Public Defender André Castro, there will undoubtedly be a lot of debate surrounding the use of such tool..

Tuesday
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“ Holistic Representation
& Access to Justice
for Vulnerable &
Marginalized Groups”

Wednesday

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On the third day of the 4th International Conference on Access to Legal Aid in Criminal Justice Systems (ILAC), legal aid for women were at the spotlight. It became clear that the effective integration of gender issues into all areas of activity of law operators effectively contributes to equal justice for all, as set forth by the 2030 Agenda of the United Nations.

Women have specific needs that require extra care when it comes to legal aid. After all, they are more exposed to poverty, abuse and lack of social protection. Studies show that they are also more likely to commit specific crimes, such as crimes against private property, as these are directly related to precarious social and economic conditions. Experts also point out that drugs trafficking and prostitution often constitutes, in many situations, attempts to escape an abusive home life.

In addition, in certain countries, women do not have access to family wealth, which can make it difficult to have adequate legal aid. As a result, understanding and "navigating" the judicial system becomes even harder. Illiteracy and insufficient knowledge of one's own rights also leads to increased vulnerability.



FREEDOM OR OPPRESSION

Opening today's discussions, Jose Manuel Diokno, Founding Dean, Faculty of Law at the University of La Salle (DLSU) and Chairman of the Free Legal Assistance Group (FLAG) in the Philippines, categorically stated that the law can be used either to free or to oppress people. "In the Philippines, the legal system generates much injustice, which is somewhat curious. We seek to understand why this is so in order to deal with the issue and alleviate social injustices."

He also highlights the important work carried out by his organization, which in addition to legal assistance, also encourages "meta legal" action, which consists of mobilizing individuals towards rights preservation. "The poor and oppressed can and must use the law to free themselves", he concluded.

DOMESTIC VIOLENCE

In the Fiji Islands, says Shahin R. Ali, Acting Director of the Legal Aid Commission and second panelist of the day, the pandemic has made the government more aware of the need to provide legal aid for the population, especially to marginalized groups, such as women and children.

As it is the case in other parts of the world, social isolation has contributed to the number of cases of domestic violence. Fortunately, however, women are more prone to reporting such incidents and making use of the country's justice system. All reports are investigated, even if the victim decides to drop charges. Such cases have also been classified as "urgent" during the pandemic.

Moreover, the government has invested in education and guidance for girls and women via social media networks. "We have come a long way in granting women access to legal aid. Empowering the most vulnerable is our responsibility", argues Ali.

MULTIDIMENSIONAL APPROACH

To Rea Abada Chiongson, Senior Legal Advisor on Gender, International Development Law Organization (IDLO), tackling gender discrimination requires a multidimensional approach that brings together gender, law and development so that comprehensive and long-lasting solutions may be achieved. Good laws, when well-implemented, are vital to women's access to legal aid; however, gender equality and empowerment are also crucial for these laws to be fully enjoyed by women and girls.

In the past, women have faced many injustices, a situation that only got worse with the pandemic: they are more isolated at home, sometimes with limited digital access, exposed to domestic violence and unable to access certain healthcare services. Fortunately, in some countries such as Mongolia, good practices have emerged, including the distribution of hygiene "COVID kits" to those who live in poorer neighborhoods. "It is difficult for women to access legal aid if they do not have basic hygiene care", notes Chiongson. She also draws attention to the establishment of multidisciplinary groups of law operators dedicated to discuss issues that are relevant to women.

REINTEGRATION

Nearly 30 years of civil war and Taliban rule ended up decimating Afghanistan's justice system, highlighting the urgency for reforms. In this context, ILF has represented more than 60,000 criminal cases to date, said M. Nabi Waqar, Director of the International Legal Foundation (ILF) - Afghanistan.

The pandemic, says Waqar, has changed every aspect of people's lives in Afghanistan and the world. But being imprisoned affects the individual even more, as it often interrupts one's educational progress, could originate or exacerbate psychological issues and alienates families - among other impacts - which is why legal aid is so important.

ILF has worked with female detainees in many ways: by providing them with cell phones to enable legal guidance or helping keep basic hygiene conditions within prisons. More importantly, however, is social reintegration, since they are subject to strong discrimination.



LAND GRABBING

Febi Yonesta, Head of Organizational Development, Indonesian Legal Aid Foundation (YLBHI), addressed land grabbing, one of the biggest problems in Southeast Asian countries. The practice is defined as a large-scale acquisition/possession of land (usually 200 hectares or more) by private investors or governments aimed at farming and extractivism. Such acquisitions undermine food security in these countries, making many people landless due mostly to the lack of legal property ownership. There are cases of people who have been removed by the State itself or with its approval.

In recent years, as land grabbing has scaled and become more systematic, the number of evictions skyrocketed. Long stretches of land have been confiscated and turned over to foreign or national investors, and laws have been changed to favor private interests. These "investors", in turn, seldom abide by any codes of conduct, exposing small farmers to the risk of poverty.

Indonesia's long history of gender discrimination and land litigation is largely due to major infrastructure works. "It is not in the government's interest to deal adequately with the issue. During the COVID-19 crisis, the problem has worsened and YLBHI has been working to help these people.

CAUTION IN SCANNING

On the second panel of the day, which focused on Africa, Europe and the Middle East, Deputy Minister of Justice of Ukraine, Valeriia Kolomiets, spoke about the changes implemented in the country's legal aid system in the past year, especially when it comes to logistics. Presently, there are about 500 service units that operate as close as possible to target communities. The pandemic also resulted in greater digitalization and use of mediation techniques in civil cases - in detriment of litigation - as it is cheaper and more effective.

Despite being a helpful tool in times of Coronavirus, remote hearings require caution, experts agree. Ilze Tralmaka, Legal Aid Policy Officer at Fair Trials reported different problems associated with the tool. In her opinion, these difficulties undermine the defendant's right of defense, as well as their prerogative to effectively understand the legal procedures.

She also points out that remote hearings impose time limitations and prevent personal access to a lawyer, access to material evidence and imprisonment conditions, especially by vulnerable groups. At the other end, the experience has also proved difficult for lawyers

and judges, who need to understand the defendant's vulnerabilities and address them properly. "Remote hearings are considered a cheap and fast solution for overcrowded systems, but fast and cheap should not be a reference. We must seek a fairer trial, not a faster one. For this reason, the adoption of the tool in a permanent way demands more careful consideration", says Tralmaka.

DRUGS AND WAR

Chinelo Elizabeth Uchendu, Lawyer and National Coordinator of Legal Advocacy and Response to Drugs Initiative (LARDI) in Nigeria, and Nadia Carine Fornel Poutou, President of the Association des Femmes Juristes Centrafricaines, closed the panel dealing with two sensitive issues: the fight against drugs and the impact of violence on vulnerable populations.

Uchendu explained that drug dealers are often seen as wealthy, but their reality is quite different. It is a very vulnerable group, she says. In Nigeria, since the advent of the pandemic, all legal procedures have been suspended. As a consequence, there have been human rights abuses in prison units and police stations, which are overcrowded. COVID-19 also caused drug testing centers to close, leaving many individuals with no prospect of trial. So far, attempts to digitize processes have not been effective, but Uchendu expects improvements in the future.

Nadia Poutou commented on the dire conditions experienced by her country, the Central African Republic, where civil war has had terrible consequences for the population, especially children and women. The legal system has serious operational problems, an issue that has been dealt with by international and local organizations, with a special focus on human rights and the right to justice for women. In this sense, she highlighted the work of the nine legal assistance clinics maintained by her organization with the support of volunteers, who have already made access to legal aid possible for 1,170 people.

WOMEN IN ARGENTINA AND BRAZIL

In the third panel of the day, dedicated to the American continent, the Public Defender of the State of Mato Grosso & Coordinator of the Public Defender's National Commission on Women's Rights in Brazil, Rosana Leite, discussed Law n. 11.340, also known as the "Maria da Penha" Law. The legislation was the first to recognize homo-affective unions in Brazil; in addition, it deals with domestic violence. "Maria da Penha is the third most important law in the world, allowing civil and criminal cases to be filed together."



According to the UN, 7 out of 10 women will be subject to violence throughout their lifetime. In Brazil, during the pandemic, while domestic violence statistics became less available, there was an increase in femicide rates. The main reason is when the perpetrator resorts to violence out of jealousy (or anger from an attempt) to separate. The second cause is frustration upon arriving home and not finding the arrangements he wished for.

"Women are killed inside the home; men, outside", asserts Leite, adding that during the lockdown, domestic violence cases could be reported and protective measures issued online. Women were also given priority in body examinations.

In Argentina, several steps were taken to allow access to legal aid during the pandemic, especially for women. One concern was to maintain protective measures, a request made by the Defender's Office to the House of Representatives. Notifications and reporting were also a concern during lockdown, and, as a solution, WhatsApp came into play. But the main issue, which was solved in a joint effort with Banco de la Nación, was maintenance payments continuity, claims Raquel Asensio, Coordinator of the Commission on Gender Issues of the Federal Public Defender's Office in Argentina. "We also changed the way cases could be reported, which can now be done by phone, app and email."

YOUTH AND IMMIGRANTS

The Montreal Community Legal Center (CCJM) works with immigrants, a very vulnerable group and traditionally one with hardest access to the Public Defender's Office. In the pandemic, explains Gilles Trudeau, the organization's Corporate Secretary, "we were able to convince the authorities to reduce detentions and expand access to legal aid". In order to ensure access to services, new technologies were used to facilitate communication with clients, including video conferences and a hotline. "We understand that conducting hearings over the phone was not ideal, but it was better than not having hearings at all."

Closing the day's panels, Fran Sherman, Professor and Director of the Juvenile Rights Advocacy Program at Boston College Law School, gave an interesting account of the holistic approach to youth care, which was severely hampered during the pandemic, as closure and physical contact is of fundamental importance when dealing with this public.

Wednesday

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The model has four pillars: the provision of legal and non-legal services to satisfy all client's needs; dynamic interdisciplinary communication; well-trained professionals in different areas of expertise, and a strong understanding and connection with community services. A survey carried out in the state of Louisiana revealed that 60% of adolescents were satisfied with the approach. Approval rates tend to increase in line with relationship duration with the team and case complexity.

**“Combating Systemic
Racial & Ethnic
Discrimination”**

Thursday
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SEPTEMBER

Panelists argue how racial, religious and gender discrimination can negatively affect the most vulnerable and what can be done to mitigate it

The 4th International Conference on Access to Legal Aid in Criminal Justice Systems (ILAC) arrived on its fourth and final day of panels - before the closing session this Friday (18) - with an important agenda: racial, gender, ethnic and religious types of discriminations and its impacts. Based on the guiding topic of "Combating Systemic Ethnic-Racial Discrimination", experts discussed the imprisonment of women, police violence and the importance of minorities representation through civil society entities, among other hot topics in Brazil and globally. Three different panels were held on the same subject at different time zones so as to better accommodate the needs of attendees worldwide.

VIOLENCE AND REPRESENTATIVENESS

The panel focused on the Americas began with the impressive testimony of Ana Paula de Oliveira, from the NGO "Mães de Manguinhos", whose 19-year-old son, Jonathan, was murdered by the police in 2014. She stressed the importance of the Manguinhos Social Forum (which brings together people who have experienced human rights violations), whether in providing psychological support or facilitating access to justice. "Most favela residents are not aware of their rights and do not know what to do when these are violated."

She noted that victims of police violence also tend not to press charges because they fear retaliation or arrest upon arrival at the police station, which ends up resulting in the lack of any criminal investigation. "Hence the importance of having a public defender at the po-



lice station to ensure our right to report a crime and be treated with respect." Finally, Ana Paula highlighted the importance of the so-called "APDF of the favelas" (Supreme Court Decision), which halted police operations in slum areas during the pandemic, resulting in a 73% reduction in the number of homicides.

Another episode of police violence addressed, this time by Masha Lisitsyna, Senior Manager Legal Officer of the Criminal Justice Cluster - the Open Society Justice Initiative, was what became known as "the red room". It involved the torture of young, black slum residents inside an army barracks. The case, which is still awaiting final trial, has gained notoriety and may change the way police violence is handled in Brazil.

The Black Public Defender Association, of which she is Co-founder and Chair, was the subject of April Frazier Camara's lecture. She underlined the importance of the organization for the black community in the USA, which has been subject to police violence for decades.

BAIL SYSTEM

Conference attendees had the opportunity to learn a little about the Philippine prison system, the most overcrowded in the world, with an occupancy rate of 350%. Raymund E Narag, Associate Professor at the University of Southern Illinois School of Justice and Security, blames it on excessive bureaucracy and widespread poverty, since 53% of prisoners could be released on bail (often of negligible value), but most simply cannot afford them.

Ill-advised public policies to combat drug abuse and smuggling also contribute to overcrowding given that drug-related crimes are responsible for 70% of arrests. Another relevant issue is the excessive use and length of pre-trial detention. "Pre-trial detainees remain in prison for 529 days on average but 20% stay for five years or more."

In general, the poorest and least educated tend to be detained for longer, as do women and LGBTQI compared to men and, interestingly, according to Narag, Muslims compared to Catholics. In order to deal with the situation of overcrowding and recidivism, the government plans to re-evaluate conditions for granting bails, enhance crime screening, facilitate payment conditions and offer post-release social assistance.

PERSECUTION OF ACTIVISTS AND MEDIA

The first panel of the day focused on militarization and conflicts involving ethnic or religious minorities, especially in the border areas of Asian countries, as reported by Patrick Burgess, Co-founder and President of Asia Justice and Rights (AJAR). "In certain regions of Thailand, the Philippines, Indonesia, Myanmar, among others, there is a lot of discrimination, which leads to conflicts and difficulty in obtaining legal assistance." The persecution of lawyers and activists and media censorship are also points of concern.

In some countries, there has been a return to militarism and totalitarianism, with government resorting to emergency powers to abuse human rights. In Thailand, for instance, committees have been set up to deal with the impacts of COVID-19, but these collegiate bodies are composed mainly of armed forces personnel, generally averse to disclosure and accountability.

To make matters worse, during the pandemic, refugee camps were closed to the outside world, making it virtually impossible to get information on residents or provide them with legal support. "With the pandemic, few eyes are turned to the developing world; progress that took us years to achieve is fading in a matter of months", says Burgess.

HAND IN HAND

Pornpen Khongkachonkiet, Director of The Cross Cultural Foundation (CrCF), spoke specifically about Thailand, a Buddhist country of 70 million inhabitants marked by conflicts with a Muslim minority of about 2 million living on the border with Malaysia.

She points out that the country is going through a very difficult democratization process, since it is being ruled by the military forces who "walk hand in hand with the monarchy" and exercise its powers to persecute opponents. The Supreme Court has declared martial law and has acted against minorities in the south. "The government started making arrests and committing abuses without any concern. Thousands of people have been killed since 2004."

To serve this minority group, a Muslim activism center was established in the southern border to bring together legal and psychological services. The idea, explains the activist, is to have a safe space for these people so they can have a little dignity.



GENERATIONAL TRAUMAS

Speaking of Aboriginal people, David Woodroffe, Principal Legal Officer at the Northern Australian Aboriginal Justice Agency (NAAJA), said they suffer from discrimination and difficulties to accessing justice. "They live in distant communities without any basic services."

In his opinion, the Australian judicial system should take aboriginal persons peculiarities into account when determining sentences and referring cases, which is not the case. There is, according to Woodroffe, generational trauma that originated in the colonization period and had perpetuated ever since. A consequence of this trauma and one of the main barriers to justice access at present is language, which also makes social integration harder.

Aboriginals suffer from over-incarceration and poor health conditions, leading to a higher incidence of disease and considerably lower life expectancies. Still, their well-being does not seem to be a government priority, according to the NAAJA representative. During the pandemic, the organization managed to protect basic legal aid rights for Aboriginal people. Other organizations have also devoted themselves to reduce over-incarceration and systemic discrimination toward this minority group.

CONDEMNED TO POVERTY

In India, the vast majority of detainees are members of ethnic, religious or less-favored minority groups. "There is structural prejudice in the Indian justice system that perpetuates itself", says Preeti Pratishruti Dash, Associate at Project 39A of the National Law University in New Delhi. She reports police violence and torture as well as the lack of basic information to defendants.

It is common for those accused of heinous crimes to hire private lawyers and, to that end, sell everything they own. Without resources and income alternatives, they end up condemning the whole family to poverty. Nevertheless, in many cases, these people will only meet their lawyer in the courtroom, and they often end up being sentenced to death. Families, in addition to financial losses, are left with enormous psychological damage.

The 39A organization offers free legal aid to vulnerable groups and seeks to gather statistical data on the prison system, forensics and torture, "a difficult task in most developing countries", asserts Dash.

ETHNIC DISCRIMINATION

In the second session of the day, focused on Europe, Africa and the Middle East, Bruno Min, Legal Director at Fair Trials, pointed out immigrants are blamed for all social woes experienced in the old continent. He cites the specific case of Roma, who live in Eastern Europe and suffer immense discrimination, especially in the Czech Republic and Bulgaria. "This is the kind of prejudice that is rarely recognized."

European governments have shown little interest in producing and disseminating hard data on these ethnic minority groups - as well as the discrimination towards them. According to Min, this is a way of denying the reality of discrimination on the continent, with obvious effects on access to justice systems. "There is also discrimination among lawyers themselves, who are reluctant to assist these individuals on the grounds that they are 'difficult to deal with' and may not be able to afford legal assistance."

At the end of his presentation, the expert took the opportunity to appeal to representatives of civil society to gather more efforts so as to better understand the reality of these groups.

STRIKING PAST

In South Africa, despite the changes brought by the end of the Apartheid regime, challenges related to racial hatred persist. "There is still evidence of clear segregation in the country", argue Dunstan Mlambo, Judge President of the Gauteng Division of the High Court of South Africa, adding that the pandemic only served to exacerbate these differences.

The Constitution ensures the right to equal treatment and human dignity, but that is not what happens in practice. "South African society still needs to get rid of the gears of Apartheid."

Examples of racial discrimination are everywhere: in police operations centered in black-majority neighborhoods as well as limited access to legal aid and better jobs. "Racism influences wages and even the likelihood of an individual getting a loan from the bank."

Fortunately, there are several initiatives in place to help the most vulnerable. In Mlambo's view, transformation is key. "It is necessary to change the mindset and the way business is conducted on a daily basis. We need to use our historical knowledge to make sure the same things won't happen again." But perhaps the biggest challenge, he says, is establishing a larger philanthropic network because structural racism is not going to be gone away overnight. "We need to raise our hands and get to work."



POLICE VIOLENCE

Police violence is a chronic problem on the African continent, a practice that was amplified during the Coronavirus pandemic in different countries. In Kenya, says Hussein Khalid, Executive Director of HAKI Africa, more than 50% of murders committed on the coast in that period may be attributed to the police. "We have insisted that the pandemic cannot serve to justify the abuse of individual rights under the Constitution, and that the police, in fact, have a duty to guarantee these rights."

Efforts are being made to make police officers accountable for their violent behavior, but they are yet to be punished. At the same time, Khalid sees in the government an attitude of protection of this wrongful behavior. He also calls attention to corruption in and outside the police force. "We often see financial resources being misused, depriving of help those who really need it."

NECESSARY WORK

Hanen Fathallah, Legal Director of the International Legal Foundation - Tunisia, emphasized the need to protect the most vulnerable groups from discrimination. In Tunisia, she recalls the arrest of a man in connection of a terrorist attack simply because he was a Muslim and wore a beard. The suspect was kept in prison for several days without even knowing why he was being held. "This is just an example of what happens here. Hence the importance for lawyers to take action as soon as possible."

Fathallah argues that such situations must be better understood so that rights can be protected. Likewise, Public Defender's Offices must be able to effectively act to protect minorities. The ILF has sought to raise awareness by organizing meetings with the most vulnerable to abuse, in addition to coordinating legal assistance. "We have come a long way, but there is still work to be done alongside the Ministry of Justice, civil society and other stakeholders to reduce injustices and discrimination in Tunisia."

FEMALE IMPRISONMENT

An innovative survey on the imprisonment of women in Sierra Leone revealed that 62% served pre-trial detention due to inflexible bail conditions. This is the main cause of prison overcrowding, which, combined with limited access to water and sanitation, contributes to the advancement of COVID-19.

Poverty is a determining factor for excessive female incarceration in the country: 71% of the interviewees stated that before going to prison they could only afford one or two meals a day. Almost half were the main provider of the family, and 88% cared for at least one child. 34% were detained for economic or petty crimes, often committed to ensure survival.

The study also shows that most incarcerated women have suffered sexual and/or gender violence. Almost half also reported having suffered from depression, and 40% of anxiety before incarceration. "These women are victims of a system that imprisons instead of treating them", says Sabrina Mahtani, Co-founder and Board Member of AdvocAid. The survey reveals, however, that the defendant's mental health is almost never considered by the judge.

Incarceration has a highly negative impact on the mental health of women, so much so that 54% reported a mental health condition starting or deteriorating while in detention. AdvocAid has appealed to the Sierra Leone government to release vulnerable and low-risk detainees awaiting trial. However, no one has been released to date.

“Closing Session
& Call to Action”

Friday

18

SEPTEMBER

On Friday (18), moderated by Lara Deramaix, Policy and Programme Specialist Rule of Law, Security and Human Right at UNDP, the closing session of the 4th International Conference on Legal Aid in Criminal Justice Systems gathered more than 800 participants from 89 countries, for the last time, to discuss outcomes and share the final document of the event. Deemed an absolute success, the conference sought to advance, within the context of COVID-19, in the implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, thus promoting the 2030 Agenda on Sustainable Development and its object "to leave no one behind".

On behalf of the Public Defender's Office of Rio de Janeiro, Public Defender André Castro thanked everyone for their participation and acknowledged the pivotal cooperative work of the organizations that helped make the event possible (<https://ilac2020.rj.def.br>). "The lack of access to legal aid is directly related to the inadequate planning of our justice systems. Public resources are being used to prosecute and judge, instead of protecting vulnerable populations", added Castro.

In a powerful speech, Diego García-Sayán, UN Special Rapporteur on the Independence of Judges and Lawyers, pointed out that the organizations represented at the meeting are extremely important. After all, he said, "legal assistance is not a form of public charity; it has to do with the fundamental rights of oppressed people who, through these organizations, are able to maintain such rights".

He said that defending the rule of law today is much more difficult, complex and challenging, since there has been an increase in poverty and exclusion in many parts of the world. Accordingly, he outlined a few priorities to be considered, such as making sure that judicial systems act independently, especially in face of vested interests of international organized crime and political power.



Sayán also addressed the need for immediate service rationalization in judicial systems, for example, by prioritizing important issues in fundamental cases over civil and economic ones. He also highlighted the abuse of authority and the need to remain vigilant so that the pandemic is not used as a justification for the violation of human rights.

Towards the end of his lecture, UN Special Rapporteur pointed out the importance of innovation and technological evolution to ensure the proper functioning of justice, which, in turn, requires financial resources and professional training. People deprived of liberty, who could have been released in the context of the pandemic, also deserve more attention, although many countries are doing very little in this regard. Remarks on the adequate funding for judicial systems and the fight against organized corruption at the transnational level concluded their participation.

Zaza Namoradze, Director of the Open Society Justice Initiative, and Dunstan Mlambo, Judge President of the Gauteng Division of the High Court of South Africa, presented the outcome document. Jennifer Smith, Executive Director of The International Legal Foundation (ILF), and Stella Maris Martinez, Public Defender General of Argentina, spoke of the importance of working collectively.

Smith and Martinez commented on the challenges and opportunities brought by the pandemic, such as the possibility of an event like this, for being virtual, to reach a much larger and geographically dispersed audience. From now on, it is necessary to reinforce cooperation between public defenders and legal operators in a permanent way, reinforces Martinez. "We need to walk with solidarity, expertise and support from each other." In this sense, the International Legal Aid Network (ILAN) should be made official in the near future.

OUTCOME DOCUMENT

Roadmap for Increasing Access to Justice Amidst the COVID-19 Pandemic

Amidst the COVID-19 pandemic, the organizers of the 4th International Conference on Legal Aid in Criminal Justice Systems held a special virtual convening from September 14-18, 2020. Stressing the continued importance of implementing the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and striving towards achieving the 2030 Agenda on Sustainable Development and its objective “to leave no one behind” and achieve equal access to justice for all, the event provided a forum for legal aid providers and justice stakeholders from around the world to exchange knowledge, practical strategies, and expertise on how to address the urgent justice challenges arising from COVID-19.

In recognition of the unprecedented impact of COVID-19 on criminal justice systems around the world and its disproportionate impact on vulnerable communities, over 800 people from over 75 countries joined this special virtual convening. Participants included legal aid providers and experts from public defender and legal aid offices, bar associations, civil society organizations and international organizations, and other justice and government stakeholders.

The week's sessions highlighted the importance of:

- Advocating for release and protecting the rights of people deprived of liberty
- Holistic representation and access to justice for vulnerable and marginalized groups
- Combating systemic racism and discrimination based on ethnicity, gender, religion, or other status

During nine panel sessions spread across three time zones, experts and practitioners shared their perspectives, lessons learned, and best practices on how to advance access to justice for all. They also shared specific ideas for how we can move forward together.

To address the impact of COVID-19 on people deprived of their liberty, expand access to justice, and combat discrimination, conference participants made the following call to action:

1. Legal aid providers should engage in action to expand government funding and support for legal aid in order to mitigate impacts of COVID-19 which exacerbated existing legal challenges and legal needs of people. Such action should be geared towards strengthening access to legal aid for all, promoting effective use of alternatives to imprisonment, and improving conditions and healthcare in detention facilities.
2. Legal aid providers and experts around the world should collaborate in the development of technical guides that share practical experience, legal strategies and best practices.

Specific recommendations include sharing of information and advice on the following:

- A. Ways in which implementation of safety measures to prevent the spreading of COVID-19 are violating the rights of persons deprived of their liberty, as defined in international human rights instruments and the Nelson Mandela Rules.

- B. Strategies and practical examples of what works in advocating and litigating for pretrial release and promoting more effective use of diversion and alternatives to imprisonment, both during the COVID-19 pandemic and over the long-term.
 - C. The impact of COVID-19 driven technology, including video conferencing and remote hearings on the rights of suspects and accused, fairness and access to justice.
 - D. Guidance for using strategic litigation and advocacy to address racial, ethnic, gender and other discrimination to advance equality in courts of law and public opinion.
3. Legal aid providers should consider adopting a more holistic, comprehensive and multidisciplinary approach to representation that is inclusive of the provision of social assistance, and engage in multiple forms of advocacy, not just litigation, but also policy reform and partnership with stakeholders, as well as consider the role of local, informal and community-based systems to address injustice and meet people's needs.
 4. Legal aid providers and justice stakeholders should evaluate the ways in which the gap in digital access may widen the access to justice gap during and after the COVID-19 pandemic, and seek alternative solutions and alternatives where necessary.
 5. Justice stakeholders and legal aid providers should consistently track data and engage in research and analysis to determine the systemic challenges and injustices that need to be addressed, and to advocate for meaningful reform.

Specific recommendations include a need to:

- A. Track what is happening to people who have benefited from COVID-19 related pretrial release and early prison release decisions to build a case that can support long-term efforts to reduce pretrial detention, eliminate cash bail, decriminalize petty offences, reform mandatory detention and reduce mass incarceration.
 - B. Track racial, ethnic, gender and other disparities in criminal justice systems around the world by disaggregating data at all stages of a criminal case with the goal to document the scope and nature of systemic and structural discrimination and to develop data-driven strategies to address these injustices.
6. Legal aid providers should center in their work the individuals, families, and communities directly impacted by criminal justice systems, including by engaging in legal empowerment and legal information initiatives; partnering with community-based paralegals, community-led organizations and movements; and by elevating the voices and experiences of impacted individuals, including formerly incarcerated persons, victims of gender and sexual-based violence, and victims of police violence and torture.



7. Legal aid providers and justice stakeholders should develop action plans to guide and track efforts to promote the racial, ethnic, gender and other diversity, equity and inclusion that they seek to secure in their communities, and promote their advancement in the leadership ranks of legal aid organizations and the overall criminal justice system.
8. Legal aid providers and justice stakeholders should receive implicit bias training to better understand how biases affect the decisions and actions of justice stakeholders in the system - such as police, prosecutors and judges, as well as legal aid providers themselves - which can enable them to service their clients in the best possible manner.
9. While not displacing the responsibility of the state to appropriately fund legal aid services, legal aid providers may consider advocating governments explore public-private partnerships with civil society, and/or the private sector to spur innovation to increase access to justice, including use of technology to span the digital divide.
10. Finally, participants agreed to work together to continue to strengthen cooperation with each other, including through the International Legal Aid Network established at the Second International Conference on Access to Legal Aid in Criminal Justice Systems, with the goal to achieve the following objectives:
 - A. Facilitate the sharing of best practices and practical legal strategies;
 - B. Strengthen collaboration of legal aid providers across borders to identify, understand and address broad patterns of human rights violations and injustice; and
 - C. Promote coalition-building and joint advocacy at the nation, regional and international level to strengthen legal aid systems and expand access to justice.

Individuals participating in this special virtual convening agreed to work together to advance these outcomes, improve collaboration and sharing of information and expertise, and continue to support the development of the International Legal Aid Network.

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4º International Conference on Access to Legal Aid in Criminal Justice Systems

SPECIAL CONVENING AMIDST COVID-19 TO
SUPPORT ACCESS TO JUSTICE FOR ALL

September 14-18, 2020



DEFENSORIA PÚBLICA
DO ESTADO DO RIO DE JANEIRO



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