

WORKSHEET

BY

LEGAL AID

December 09, 2010

Strengthening the Specialized Legal Aid Role in the Field of Criminal Justice



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Introduction

Developing the criminal justice is a sublime goal and a broad field comprehensive of various interpositions, including the plain legal, professional and technical fields; where the partnership between the official entities and the civil society institutions represent a broad arena to meet the requirements of the intended development, through cooperation between the judiciary concerned institutions, such as the Judicial Council, Ministry of Justice and the Judicial Institute on one hand, and the Jordanian Bar Association and civil society organizations on the other hand. The international trend towards strengthening justice and the project on development thereof worldwide is a clear indicator of the consensus to adopt the notion of reform thereof, in line with political and economic developments, especially those related to the human rights. Legal Aid Association had adopted the pivot of direct provision of volunteer legal assistance to beneficiaries, as a contribution from it in the promotion of new trends in the field of criminal justice, since that achieving justice helps in building a society based on justice, equality and equal opportunities and contributes to the reduction of poverty and fosters democracy. We quote the writing of His Highness Prince Al-Hassan Bin Talal in his document "The Missing Link in Combating Abject Poverty: The legal empowerment of the poor can strengthen the worlds commitments towards realizing the UN millennium development goals, including the goal of eradication of poverty."

Legal Aid aims at providing legal consultancy, free representation before courts, and spreading the awareness on all legal aspects of interest to the beneficiaries; however, the Association detected an shortage of beneficiaries' interest in demanding service in criminal cases, particularly the major ones. According to a preliminary study conducted by the Association, the reasons thereof are attributed to the lack of qualified lawyers, experienced in the criminal area, the matter that resulted in the lack of the public trust in the possibility of providing free of charge service, or with nominal fees. Furthermore, the existence of prominent and limited names in the major cases field caused frustration to the novice lawyers and to those with medium expertise, and minimized their aspiration to engage in this field; and it is necessary not to overlook the high fees that the first class lawyers collect at taking on criminal cases, the matter that contribute to confining the beneficiaries to the solvents.

Therefore, the Association aims at establishing a special unit for the criminal justice, so to assume the responsibility of standardizing the efforts for the provision of a direct legal assistance free of or with nominal charge to the vulnerable and marginalized populations and those residing within the Jordanian territories, such as expatriate workers and refugees. In addition, it aims within the same context to provide the support that intends to cultivate the technical and professional skills of those working in the legal professions, such as lawyers, judges and public prosecutors, through focusing on the specialized criminal legal knowledge that assist them in there work and facilitate the realization of justice and people's access thereto.

Definitions

Legal Aid Association

A nongovernmental non for profit institution established in 2008, and registered with the Ministry of Social Development, aims to legally empower the society and individuals by means of providing specialized legal aid such as consultancy and legal representation before courts, and spreading the legal awareness related to the individual rights in particular, and the human rights in general to the poor, including Jordanians and residents within the territories of Jordan. Legal Aid Association, operating in its second capacity as a civil company registered with the Ministry of Industry and Trade works on promoting the social responsibility of the private sector, especially the corporate, for the realization of the charitable goals of the Association.

Principle of Free Legal Assistance

This is a modern trend to implement the principle of the right to litigate for all that is called for by the establishing and sponsoring human rights entities, and its include the legal services: such as legal consultations inclusive of all fields in the criminal, Sharia and rights cases, the State security cases, and administrative proceedings with the State's departments, in addition to the legal representation of the beneficiaries in all cases, whether for free or for nominal fees; it also provides assistance to the public out of framework of the legal offices and firms. Such type of assistance is carried out by the civil society organization as a service to the vulnerable, marginalized and less fortunate populations within the society. The concept of legal assistance extends to cover the legal awareness spreading by holding legal awareness courses and workshops in the less fortunate communities. The legal assistance services are provided either directly to the public or through a referral by the civil society organizations concerned in following up the right of everyone to have access to justice.

The dominant trend is that the institutions providing legal assistances receive their funding from abroad or from individual donors, where the role of the government in supporting and financing this legal service sector in all Arab states is absent comparing to its counterpart in Europe and America.

The term of legal assistance also includes the legal service provided by the state in accordance with its domestic laws, where the same is limited to the major criminal cases with the capital punishment, servitude, or life imprisonment, pursuant to Article 208 of the Jordanian Criminal Procedures Law, and which require the appointment of a defense lawyer for the accused at the trial stage; or as in some foreign countries where the seriousness of the crime and consequences thereof require the state to appoint a lawyer for the accused at the initial investigation stage of the trial.

Vulnerable Populations (Marginalized and Less Fortunate)

Vulnerable populations include: the poor, women, children, people with special needs (the handicapped), expatriate workers and refugees. These are the populations who acquired special attention by the UN Organization, as it had issued international treaties and agreements to protect them, and had immunized their rights with monitoring mechanisms to evaluate the extent of state compliance with the implementation of those agreements. Further, states are subject to accountability for the violations against the rights of the vulnerable populations in particular.

Specialized Legal Aid in Criminal Actions in Jordan

State of Affairs

Jordan had ratified most of the international agreements, and had put them into effect and became committed to the implementation thereof before the international community and its citizens, who became highly acquainted with their human rights due to the awareness campaign at both international and local levels. The progress and prosperity of states is now measured on the basis of their commitment to the principles and agreements on human rights, the extent of conformity of their laws therewith, and the implementation method on ground. And states endeavor to attain, even compete, advanced ranking in the classification the human development report that is annually prepared by the United Nations is evident.

An important agreement that Jordan had ratified, is the International Covenant on Civil and Political Rights, and the International Covenant on the Economic, Social and Cultural Rights, issued by the United Nations in 1966 and which became effective in 1976, in the same year of Jordan's ratification thereon.

As an entity that aims to adopt the principles of human rights under the slogan of Human Rights; From Theory to Practice, and whereas the vision thereof is focused on the principle of litigation as everyone's right, the Legal Aid Association focuses on the aspect of Jordan's commitment to the provisions of the International Covenant on Civil and Political Rights, which regulates the right to litigate and the right to a fair trial, as it considers them as the pillar for its human action and future plans to develop the pivot of criminal justice, since that both are deemed as applicable basic human rights worldwide, and both are recognized in the Universal Declaration of Human Rights, which was adopted by the governments of the globe more than sixty years ago, and which is still forms the cornerstone in the international human rights system.

Referring to the judiciary is a civil rights guaranteed by the Constitution of Jordan, in article 101/1 thereof, which provided for "**The courts shall be open to all and shall be free from any interference in their affairs**", while article 102 provided for "**The Civil Courts in the Hashemite Kingdom of Jordan shall have jurisdiction over all persons in all matters, civil and criminal, including cases brought by or against the Government, except those matters in respect of which jurisdiction is vested in Religious or Special Courts in accordance with the provisions of the present Constitution or any other legislation in force.**"

The litigation system in Jordan is based on the principle of equality of all Jordanians before the law, as article 6/ 1 of the Constitution provided for "**Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion.**"

As for the right to a fair trial, it had been regulated by the Criminal Procedural Law and the Penal Code. Since that the way the accused is treated with at appearance before the courts is an indicator on the extent of the state's respect of the individual human right. When a person is subject to torture or maltreatment by those in charge of law enforcement, when innocent people are convicted for crimes that they did not commit, or when the courts depart from justice, the judicial system loses its credibility¹.

The risk of being exposed to human rights violations starts when one is suspected by those in charge, and the risk continues to exist at the moment of arresting him and having him in custody before referring him to the court, and during the trial and all stages of appeal, until the imposition of whatever punishment upon him. The international community had set standards for fair trial which are established to identify the individual's rights and to protect them throughout all these stages. The international standards set forth in articles 9 and 14 of the International Covenant had stressed on the rights of the accused in criminal cases, which aim at evaluating the extent of the criminal trials or justice systems' adherence to the international standards.

Dealing with the criminal cases in Jordan is an important pivot and a fertile field for study and analysis, due to the continual increase in the crime rate, which is attributed to the social and economic circumstances; as the poverty and its consequences constitute a major factor in defining the crime rate, since it is a motive for committing some crimes, and serves as an indirect factor in committing other crimes.

¹ David Visbort, Fair Trials Guide, Amnesty International, P. 3.

Legal Aid Association decided to focus in presenting its vision on **the right to a counsel** at all stages of the criminal action, so to be a field for study and development, as it has studied the problem surrounding this basic right which is based on the equality between the litigation parties, and directly affects the right to defense and the assumption of innocence. Following is a summary on the initial outputs of the said analytic study:

Reasons for Deficiency

The problem, the subject matter of the study, is centered on the phenomenon of increasing rate of crime in the society, which led to increasing demand on specialized legal representation in criminal cases; however, it is evident that there are factors that prevent obtaining the legal support required for the accused from the poor and the marginalized populations, whether by the state and/ or various legal aid institutions; these can summarized as follows:

- ❖ Factor One: Legislative Deficiency Regarding the Appointment of A Defense Lawyer for the Accused

Article 208 of the Criminal Procedural Law regulates the right to appoint a lawyer for the accused by the State, as it confined the appointment to the crimes whose penalized by the capital death, servitude or life imprisonment. The legislator overlooked all other kinds of serious felonies which can be penalized by temporary servitude or imprisonment for a term up to 20 years and others. The Guide for Fair Trials, under the Title "**The Right to Assign A Defense counsel for the Accused and his/ her Right to Obtain Free Legal Assistance**"; this right is conditional upon the extent of the seriousness of the crime in the first place, and the serious possibilities resulting from the unavailability of a lawyer, including the possible ruling against the accused and the extent of the case complexity.

Accordingly, the problem is lays in the having the poor who cannot afford to appoint a lawyer, to who article 208 does not apply, beyond the framework of legal assistance regardless of the accusation they face, and they may not know even their simple rights, starting with their right to freedom, right to remain silent at interrogation by the law enforcement, before he public prosecution or before the court, and the right to cross examine the witnesses, experts and others.

❖ **Factor Two: Confining the Appointment of A Delegated Lawyer to the Trial Stage**

The common practice in courts is to appoint a lawyer within the context of article 208 during the trial stage; this constitutes a significant omission towards the rights of the accused in this type of cases; since that the appointment of a lawyer must take place from the initial investigation stage, where the inability to defining the crime's outlines or characterization thereof during the investigation stage by the law enforcement (initial investigation) or by the public prosecution (preliminary investigation) shall not be taken into consideration. Those in charge of the law enforcement and judiciary are experienced persons with shrewd legal view, and have broad expertise so that they are able to characterize the committed act and to expect the possible punishment. Additionally the accused is innocent till proven guilty and cannot be convicted but at the final session of the trial; as a lawyer may be appointed to a major case in which the accused is expected to be put to the capital punishment, then the evidence are established and is sentenced to be innocent. Therefore, the accused cannot pass the two stages before appearance at the court, without a competent lawyer that defends him, the matter that is considered as a simple rights thereof.

Article 63 of the Criminal Procedural Law provided for "**When the accused appear before the public prosecutor... he shall be examined and the prosecutor must notify him of his right not to answer but in the presence of a lawyer...**".

So what about the procedures on the appointment of a lawyer in the public prosecution stage in this article? While article 208/ 1 of the Criminal Procedural Law provided for "After filing the case docket with the court, the chief of the court or his delegated judge in the crimes penalized by capital punishment, life servitude or life imprisonment shall subpoena the accused and ask him if he has selected a defense lawyer; if not, and if his financial condition does not allow him for the same, the chief or his deputy shall appoint a lawyer for him."

❖ **Factor Three: Unsystematic Approach of the Courts in Appointing a Lawyer**

Deficiency is also surrounding the method of appointing a lawyer in courts, as this unsystematically takes place, and it may happen during the hearing as in the case of the sudden withdraw of the accused lawyer. Those in charge of the trials may slight that there are conditions on the appointment of a lawyer, the most important of which is to ask the accused about the lawyer that will represent him and give them sufficient time to prepare their defense, since that the relation between the lawyer and the accused is a direct one based on trust and satisfaction. And the lawyer may need to contemplate before accepting the engagement or the appointment proposed by the court, due to reason that may be related to work pressure or travel abroad.

The lawyer may also not accept to represent the accused because of his belief that he will not let the accused have its due share of defense due to his modest ability to takeover such case and for other motives. Some of the most important reasons that we will tackle later is the limited choices for judges with respect to the criminal lawyer due to the limited number and frequent faces of lawyers in the criminal courts.

❖ **Factor Four: Limited Representation in the Major Criminal Cases in First Class Lawyers**

It is noteworthy to indicate that the number of Jordanian practitioner lawyers registered with the Bar is 9113 till December 2010; yet the number of the first class lawyers that appear before the Major Criminal Court and plead before the tribunals thereof does not exceed 35 lawyers, including 3 female lawyers. Accordingly the percentage of the lawyers specialized in major criminal cases does not exceed 0.04% (i.e. 4 criminal lawyers/ 1000 lawyers). Therefore the limited available choices is governed by this limited number of lawyers in the court before the litigation tribunals. And for saving litigation time and effort, they are usually appointed by judges, where in many cases, the assigned lawyers use different excuses, and refuse the appointment in these cases, claiming that they have tight schedules and work pressure, while the truth behind it that is the fees allocated for the appointment, as Article 208/2 of the Criminal Procedural Law provided for "A lawyer appointed pursuant to the above Clause shall be paid the amount of ten Jordan Dinars for every session he attends provided that such fees are not less than two hundred Dinars and not exceeding five hundred Dinars to be paid from the Government Treasury."

❖ **Factor Five: Insufficient Number of Lawyers Qualified to Carry out Criminal Cases**

Legal Aid Association conducts a preliminary analytic study using a simple questionnaire to be filled by jurists, including advocates and training lawyers and law schools students, in order to figure out the reasons for lack of the criminal lawyers numbers, and to know the reason for their abstention of the specialization therein. The questions include those related to the tendency, training field, low income, long procedures, seriousness of the cases, lawyer's gender and others. The study is still in progress.

The qualified criminal lawyer is that who have the specialized legal aptitude, the methods of drafting and writing pleas and analysis of the relevant legal provisions and correlate them to the case facts; further, he has enough expertise to cross examine the witnesses and experts, and other qualifications.

❖ **Factor Six: Poor Role of the Bar and inactivation of Article 100 of the Bar Law of 1972 as amended**

The poor role that the Bar has in its commitment towards the activation of Article 100 of its law is considered a major obstacle in vulnerable populations access to justice, and in obtaining the free legal representation, especially in the criminal cases; as the Bar Association abstains from active participation in mitigating the lack in this area due to the poor monitoring of the performance of its members and their moral and human commitment to realize justice. The stance of the Bar towards the activation of Article 100 is considered as an important intervention to bridge the gap in the provision of this type of service, i.e. the activation of its role would be of positive effect in the development of the criminal justice and would prompt the aspiration of the civil legal institutions towards the organized and institutional execution.

Article 100 stipulates: "a. The Chief of the Bar Association may assign any lawyer to a professional service free of charge to be provided once a year, this free service shall be confined to carrying out any of the following: ... to defend a person whose poverty and inability to pay any fees to a lawyer is established by the Chief of the Bar; in such case the court shall rule on the imposition of the legal fees upon the litigant against his attorney, if it is proven that the litigant is unrightfull. b. Every lawyer that refuses, without reasonable grounds, to provide assistance after engaging him in the provision thereof or omits in the honest defense duty shall be subject to disciplinary penalties."

❖ **Factor Seven: Deprivation of the Vulnerable Populations from Obtaining Legal Assistant in the Criminal Cases Beyond the Context of Article 208 of the Criminal Procedural Law**

At the beginning of the this worksheet, we had defined the vulnerable populations as to be the most in need for the legal assistance free of charge or for nominal fee, and they include women, juveniles, seniors, handicapped and refugees, as these populations are deprived from the litigation rights for a social reason, or because of predominant culture in dealing with the rights of these populations such as marginalizing their role and basic rights. Woman may be deprived sometimes from the use of an attorney in the cases she is accused in, especially if she commits a crime that may upset the family, where she will be abandoned and ostracized to face her fate before the courts without a support. The case is not better as for the juvenile, since that the Jordanian Juvenile Law permits a parent or custodian to represent the juvenile, the matter that would render the case more complex especially if they do not have enough legal knowledge to defend him. The same applies to the seniors and the handicapped who are in need for special treatment due to their health or social conditions the matter that would make them deprived from a fair trial in which the parties thereto are equal.

Deficiency and deprivation is also available in the cases related to refugees and/ or expatriate workers, as the refuge conditions thereof may prevent them from enjoying their civil and political rights in full in the host country, particularly with respect to the violation of the residence and foreigners law, the thing that prevent them from referring to the judiciary for fear of deportation, or due to their material conditions as they cannot afford to appoint a suitable lawyer, and may be exposed to exploitation by lawyers who have no conscience who would compromise in return for representing them. This who is aware of the litigation process in Jordan will perceive the deprivation of the indicated populations from the right to a counsel especially in the criminal cases; on the other hand, the State did not pay special attention in its judicial procedures as to grant these vulnerable populations additional rights due to their human circumstances.

Role of the Legal Aid Association: Solutions and Proposals

Legal Aid Association renders its services, such as consultations and free of charge legal representation in various types of cases, where the Sharia cases constitute the highest percentage of its services, due to the increasing demand thereon by the community, especially the women. The civil rights cases and administrative proceedings come second, while the criminal legal services fall in the last rank. The reasons thereof are attributed to the omission in providing this service as we mentioned earlier.

Accordingly, the Legal Aid Association saves no effort to activate its role in the field of developing the Criminal Justice by means of focusing on the right to defend the accused from the vulnerable populations, whose conditions prevented them from receiving the free of charge criminal legal representation. In this regards, the Association has drawn up a strategic plan to be implemented through three pivots in order to achieve a long term goal: Establishing a specialized criminal unit approved for rendering the free legal representation services for the vulnerable populations.

The pivots are divided into:

- a. Efficacy strengthening in the field of criminal cases
- b. Establishing a national alliance that combines official and nonofficial entities to address the omission in providing legal assistance to marginalized populations.
- c. Radical solution.

a. Efficacy strengthening in the field of criminal cases

- ✓ Training novice lawyers and those with medium experience, attracting them to receive the specialized criminal knowledge by specialists in this field, and developing the legal skills thereof. Training includes:
 - Methods of preparation and drafting pleas in criminal cases.
 - Utilizing the legal information to improve the legal skills during arguments.
 - Methods of witnesses and experts cross-examination.
 - International standards of fair trials.
 - Use of human rights agreements binding upon Jordan in pleadings and arguments.
 - Any internationally approved means and techniques that suit the Association's potentials.
- ✓ Engaging judges, public prosecutors and other specialized legal professionals in seminars and symposiums on the criminal justice at the local, regional and international levels, also with the view to expertise exchange in this field.

b. Establishing a national alliance that combines official and nonofficial entities to address the omission in providing legal assistance to marginalized populations.

Action shall be taken to launch a campaign titled (My Right to Litigate) as to work towards gaining support by the official and nonofficial national institutions, in an unprecedented step towards activating the institutional role in provision legal aid to vulnerable populations in criminal cases; the campaign shall include gaining the support of institutions working all over the Kingdom, especially in the poverty pockets therein, up to combining the efforts and forming an alliance that plans and distributes the roles and follows up the work on providing the intended legal service.

c. Radical Solutions

Including:

✓ **Legislative Amendment**

Legal Aid, with the effort of the members to the alliance including official and nonofficial institutions and legal professionals shall submit recommendations on the expansion of coverage of the appointment in criminal cases provided for in Article 208 of the Criminal Procedural Law, so to include serious cases whose punishment is beyond the provision of the said article, as the seriousness of the crime shall be considered as a standard for appointing a lawyer delegated by the State.

✓ **Activation of the role of the Legal Aid Association and accrediting it as a reference for courts at appointing lawyers**

The Association shall train a group of lawyers members to the program on qualifying criminal lawyer, so to be the core for a list approved by the courts when they need to appoint a lawyer in the cases that are currently confined in Article 208 or in the other serious cases. The Legal Aid aspires to be accredited as a pioneering training body in the area of creating a generation of the legal competences.

✓ **Call for establishing a national fund for legal support that covers the costs of litigation in all cases for the vulnerable populations on a permanent basis.**

Legal Aid Team