

# “Legal Aid - Challenges and Ambitions”

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## **Legal Empowerment: Purpose, Progress, Challenges, and Ambitions**

“Legal aid is nearly as old as law itself. Legal systems are plagued by a founding contradiction: the law is meant to dispense fair judgments in disputes between parties who are, in many respects, unequal. And yet inequality — in money, power, status — has a way of seeping into the space from which it is barred. All people may be promised their day in court, but a party of wealth or strength will likely manage to improve its chances. Legal aid is one classic corrective to this fundamental tension: a way of bolstering the weak party’s hand.”

*Vivek Maru, Founder of Timap for Justice*

### ❖ **Abstract**

Legal Aid Jordan was founded as a non-profit organization in 2008 with the purpose of providing accessible legal assistance to the poor, marginalized, and underprivileged population in Jordan. It is registered as a charity in Jordan. At its foundation, Legal Aid Jordan sought to encourage corporate social responsibility amongst the private sector, enact lasting reform on Jordan’s judicial system, and foster an environment and a population capable of further development through legal empowerment. Major projects thus far have included significant work toward reforming Jordan’s criminal justice system and providing necessary legal aid and services to empower disadvantaged refugees.

This report serves to examine the history and theory of legal empowerment, which has resulted in legal aid, assistance, and access to be widely considered imperative to sustainable development. The focus of this paper is two-fold; first, to examine the theory of legal aid as a tool for development and, second, to serve as an analytical marker of the progress that Legal Aid Jordan has made in its five years of operation and the challenges it still faces on the path ahead.

### ❖ **From Legal Aid to Legal Empowerment**

The concept of legal aid can be traced back to the Roman period for widows, and orphans, through to 15<sup>th</sup> century Britain for the indigent and on into 19<sup>th</sup> century United States for fugitive slaves and freed Black citizens.<sup>i</sup> But in the past century the concept of legal aid has grown to encompass a more sustainable model of legal services tied with development, that is *legal empowerment*. Legal empowerment ties into a greater movement creating equal and just access to human rights services in a manner that provides legal aid to the indigent and instills through the service the tools of knowledge, agency, security, and self-worth with which to face such problems in the future.

The call for legal aid, accessibility, and assistance was long absent in an international arena that focused almost exclusively on effecting top-down governmental mechanism change. It came to be understood however that only reforming law on paper was not enough to change the reality of the local affected populations. While change on the international scale is essential for enacting societal development and progress, any top-down change with no increased access from the population creates a stagnant society. These societies are thus left with the means for change but no follow-through to affect it.

Without follow-through a population is caught up in trying to secure basic needs, such as health care, access to housing, autonomy, social security, and livelihood. Sociologist Manfred Max-Neef's critically acclaimed theory on fundamental human needs suggests that the deprivation of basic human needs on an individual level contributes to the greater "poverties" of the society at large.<sup>ii</sup> The imperative need for securing basic human needs is thus inextricably tied with long-term sustainable development and success of a society in general. A society without the apparatus for providing individual safeguarding is far from capable of sustaining effective development and progress on any real scale. Thus introduces the framework within the concept of legal empowerment was born.

#### ❖ A Tool for Development

Although legal aid in its broad and all-comprehensive sense is not recognized as a human right in itself, it is recognized by many international bodies and entities as an essential need that must be met in order to realize and protect other basic human rights. Thus, legal aid surfaces as a concept and a practice tied closely to human rights but is recognized as a development strategy. There is a limited recognition of legal representation as a right; however, Legal aid in the narrow sense that means legal representation in criminal cases is recognized by many state and non-state entities. Professor Simon Rice at the Australian National University College of law in Canberra asserts that legal aid in this strict sense was recognized as an implicit right necessary for fair trial in certain circumstances by national, regional, and international human rights instruments.<sup>iii</sup> He explains the concept of legal aid that goes beyond mere legal representation:

[L]egal aid as providing public access to law, to law that is preventive and protective, that brings change and hope, that relieves poverty and promotes prosperity.

We can think of legal aid as providing public access to legal information, to legal advice and to legal education and knowledge. None of this broad and bold conception of legal aid – legal aid beyond legal representation – is recognised as anyone’s by right.<sup>iv</sup>

Legal empowerment is based in the promotion and protection of human rights, and as established above, these human rights institutions do not operate within a vacuum. In civil societies the well being of one facet of society informs the strength of the society at large. In recent years legal empowerment was the focus of a well-renowned UN Report that asserted that over 4 billion people worldwide live outside of the law. The Report and additional studies have shown that working for legal empowerment and giving agency to the underprivileged in a society can contribute to a bolstered economy, increased political support, and development on an international scale.

If the legal infrastructure and mechanisms exist within a government but there is a gap that prevents a portion of society from fully benefitting from the aforementioned service then that portion of the population cannot realize its full potential. In most instances the demands from the underserved population fall into the categories of fundamental human rights laid out by Manfred Max-Neef such as access to healthcare, social welfare, or housing. It is important to note that the demands of the population are not usually outlandish but rather modest and often necessary attempts to better their everyday living situations.

The emergence of legal empowerment thus has a twofold goal, the first is to empower local populations and the second is to foster governments that respond to and are held accountable by these populations.<sup>v</sup>

The stakes of not engaging the underprivileged populations are high, and demonstrate greater risk to still-developing societies. The neglect of the underprivileged will result in political and developmental stagnation at best and in the worst-case scenario, structural and political collapse. If the state legal apparatus does not follow through it contributes to a breakdown in state credibility, contributing to widespread government wariness. Theories of governmental corruption will permeate the society and shadow mechanisms will be established outside of the control of the state. Steadily this can lead to a decay of an already disunited civil society, leaving no room for economic or industrial development and perhaps even spurring revolt. It thus becomes the best interest of all those involved in state-building to contribute to facilitating social and governmental accountability in the pursuit of justice.

There are a number of different organizations worldwide that have sought to provide legal assistance as a tool for development. One of these is an organization Namati, which has arms operating in many different countries including India, Sierra Leone, Nigeria and Uganda. In Sierra Leone they partnered with Timap for Justice, World Bank, and a number of civil society organizations in a national effort to sponsor basic justice services. They successfully doubled the number of paralegals available in Sierra Leone who can provide accessible legal aid and consultation.<sup>vi</sup> Groups like Advocates for International Development are dedicated to eradicating poverty through defending the human rights organizations themselves that face legal issues in their countries of operation.<sup>vii</sup> Additionally the United Nations Development Program has

dedicated a faction of its work to Access to Justice and Rule of Law. Needless to say, the role of legal aid, accessibility, and assistance with the goal of overall legal empowerment is a new but emerging field with great promise.

### ❖ **Legal Aid in Jordan**

At the beginning of the millennium, Jordan's government appeared to be ripe for reform. The signing and ratification of the International Covenant on Civil and Political Rights, the Convention Against Torture, and the Convention on the Rights of the Child set the initial framework for pursuing a respected and effective judicial system. Furthermore, the institutionalization of the National Centre for Human Rights demonstrated King Abdullah II's fostering of a new culture of human rights. In the last decade however, institutional obstacles and lack of implementation has resulted in the anticipated reform falling short of previously held expectations. The current judicial system in Jordan has yet to be reconciled with the international treaties that Jordan is a signatory to, resulting in gaps between international expectation, national capabilities, and population accessibility to pursuing justice within the current system.

As relevant to legal aid as meaning legal representation, according to Article 208 of Jordanian Criminal Procedural Law only those who are indigent and facing penalty of capital punishment, servitude or life imprisonment are eligible for state provided counsel. This has been the case because the loss of liberty in criminal cases is conceived to be much more significant than the risks and consequences in non-criminal cases.

However, this leaves vulnerable a significant portion of indigent right-bearers and defendants who go through trial without representation and often without the proper knowledge of court proceeding or their legal rights. Notably the clients who do not qualify under Article 208's stipulations are often from systematically marginalized populations such as women, juveniles, seniors, handicapped, and refugees. Thus, the need for legal aid is present in order to provide a large number of underprivileged people with protection against human rights violations and with remedies and to ensure equality before the law and in accessing the formal legal system and justice.

According to Article 100 of the Jordan Bar Association law of the year 1972, the authority rests with the President of the JBR to appoint lawyers to defend those who are proven to the President to be poor and unable to pay lawyer's fees. This authority rests with the President exclusively and is seldom made use of. The law does not explain the criteria or the standards according to which the decision is made. This also puts lawyers who would like to offer *pro bono* services independently from the Bar at risk of being questioned by JBR and disbarred. Under the same article, the President of the Bar has the authority to charge any lawyer, once a year, with other kinds of services like giving free awareness sessions or lectures, etc. This indicates the recognition of access to legal knowledge and legal literacy is an essential part of legal aid and empowerment. The President of the Bar has seldom exercised this authority to compel lawyers to conduct such activities.

In 2008, Legal Aid was established to address and respond to the pressing need for legal aid – for access to counsel and representation, and for legal knowledge as tools to mitigate poverty and marginalization, as well as to strengthen the rule of law and state and citizens'



accountability to each other. Legal Aid organization has played a significant role in the past five years in providing legal services to those who do not qualify for counsel provided by the state or the Bar and in providing the underprivileged and marginalized populations of Jordan with access to legal knowledge as way of protection and prevention of human rights violations. It should be noted that Legal Aid has provided individuals, Jordanian and non-Jordanians (migrants and refugees), with legal consultations and counsel in accordance with certain criteria to ensure the prevention of unequal competition between the organization and for-profit lawyers.

In the last two years and since 2010, Legal Aid concentrated its efforts and mainstreamed additional strategies of legal empowerment, like advocacy and awareness-raising in addition to legal consultations, mediation, and representation. In the last two years, Legal Aid has provided more than 2471 consultations. Of those consultations, it has litigated 126 cases in court, 56 of which ended in verdicts in favor of Legal Aid's clients. The consultations and representations responded to a variety of needs, the majority of which fall into the following categories: labor rights, rent disputes, quarrels between youth, financial grievances, divorce and *Iftida'* (*Khul'*), custody, alimony, affixing marriage and dissent.

In order to foster its relations with targeted communities and expand its outreach and beneficiary base, Legal Aid printed and disseminated 1150 leaflets and posters to beneficiaries directly as well as through partner CBOs and stakeholders. Leaflets aimed at both educating the public and raising their awareness about Legal Aid services. Additionally, as part of its advocacy efforts, Legal Aid sought to affect both the public opinion and decision makers through media appearances and interviews that raised the organization's and donors' visibility and brought up important issues at the heart of legal aid and the need for it.

The organization's lawyers participated in two TV interviews on the daily morning show on the Jordan National TV channel "New Day," as well as in two radio interviews on Amen FM channel. In the interviews, they introduced the organization, its mission and vision, and the services it provides through its different projects, especially the Legal Aid for Jordanians, project funded by the Netherlands embassy. They also spoke about the newly amended Shari'a (Personal Status) law in Jordan and its impact and dimensions. As another advocacy tool, Legal Aid has produced a documentary film about its work and the significant change it has affected in people's everyday lives, its successes and ambitions, and the need for legal aid and empowerment.

Legal Aid realizes that networking and cooperating with other actors is essential in order to reach empowerment and maximize impact and efficiency; for this reason, it has sought to strengthen its relations with other civil society actors to provide its beneficiaries with access to additional resources and services. The referral system it has established with different stakeholders is one way these efforts have translated. The output is a large number of cases referred to and from Legal Aid and thus a large number of beneficiaries accessing specialized services mitigating their marginalization and facilitating their empowerment. Since 2010, the estimated number of referred cases from Legal Aid to other partners and stakeholders (i.e., NGOs, CBOs, and governmental institutions like the Family Protection Department) has reached 65. The estimated number of cases referred to Legal Aid by other partners and stakeholders has reached 350 cases. Labor Watch, Family Protection Department, and Jordan Women Union, among other NGOs and CBOs represent the main actors with whom we have referral systems.

In order to systemize our work, we have worked to ground our efforts in theory and research; studies are also important as an advocacy tool to raise awareness and start dialogues about the issues we address in our work. They are important to document and demonstrate the changes in the Jordanian context and their effect as relevant to our work and to legal empowerment. In 2011 and 2012, Legal Aid has completed studies about 10 of the most discussed and relevant issues in Jordan. The studies tackled the 2011 constitutional amendments in Jordan and their legal impact, the restructuring of the salaries' issue and its legality and impact, the impact of the 2011 General Pardon Law, migrant labor and workers, comparative statistical study of registered cases before the different courts in 2010 and 2011, disability rights in the Jordanian law, the Jordanian labor law, women in the Personal Status Law in light of its development and amendments, and the concept of legal aid and its challenges and the ambitions of Legal Aid.

Awareness raising sessions and workshops represent a very important part of Legal Aid's advocacy strategy. In the last two years, it has held 13 legal awareness-raising sessions, drawing on the above-mentioned studies and researches it has conducted in the two years and before. Increasing communities' awareness of such issues and educating individuals and the society is essential to influence the public opinion and gain allies and popular support at the grassroots before addressing decision makers for legal reform. Besides lobbying, educating the marginalized of their legal rights and capabilities, as rights-holders, is very important to foster accountability and to be able to hold duty-bearers accountable, thus raising the cost of violations.

Through these educational activities, Legal Aid is contributing to a new generation of Jordanians who are aware of their capabilities and ways to exercise them in an empowering manner, thus contributing to fostering human rights culture and combating multi-dimensional poverty.

### ❖ **Challenges of Facilitating Legal Aid**

There are a number of challenges still faced by those seeking to provide and facilitate legal empowerment. The recent emergence of legal empowerment as a tool of development has resulted in little concrete empirical research regarding the successes and failures of legal services. This is particularly true in the Middle East region where Legal Aid Jordan is one of few pioneering legal aid organizations.<sup>viii</sup> For this reason, institutions working in providing legal services have often faced a recession of resources in a system that is hitherto unaware of the benefits legal aid would provide.

Most significantly the current status of the legal systems in countries which have not yet reached their development optimum are not conducive for facilitating collective reform. In Jordan in particular the lack of accountability, access, and transparency of the system extends even to the most qualified lawyers, and is thus impenetrable by the average citizen. Under Jordanian law, Legal Aid Jordan is only qualified to contribute to cases that are referred from the judicial apparatus itself; however, no court cases have been referred despite obvious demand.

An ongoing challenge is the restrictions faced due to limited resources. Finding willing and available lawyers who receive little compensation for their work is a constant struggle. This is especially true considering that for-pay lawyers have often considered Legal Aid competition. In reality, rather than taking away paying clients from for-pay lawyers Legal Aid provides assistance to clients who would otherwise go to court with no representation. Legal Aid Jordan is overwhelmed with the demand for legal aid and limited resources with which to work. For this reason it developed a selection process with which to deduce which clients are most qualified for the aid available. It is a priority of the organization to provide help to the best of ability so, in most cases, legal consultation is granted to whomever requests it. In an effort to make themselves accessible to even the most indigent population Legal Aid Jordan staff will often offer to meet clients out of the office if transportation fees are unavailable. The selection process goes through a number of different assessments including assessing the demonstrated need for aid, the legality of the charges of injustice, and the resources available to lawyers.

#### ❖ **Suggestions for Further Work**

Though a lot of progress has been made in the emergence of legal empowerment being seen and utilized as a tool for development, there is still a lot of work to be done especially in the systems' advocacy domain. For legal empowerment to be most successful all facets of civil society should be working in tandem to foster a legal environment and systems that are successful for all and conducive to justice and rule of law. The civil society in Jordan, including Legal Aid, has focused its efforts on individual and community advocacy and behavioral change. However, not many stakeholders realize the importance of taking this stage of advocacy to the

next level: to systems' change and advocacy and to lobbying for change in policy and laws and the very system that has fostered marginalization and denied the poor access to justice. The civil society needs to engage in an open dialogue with decision makers and stakeholders and exert pressure on them, along with local communities, to affect a sustainable change in the legal system as well as to overcome socio-economic and institutional obstacles.

This report has shown that it is in the best interest for all parties, populations, and governments to work towards having their civilians realize full potential but due to lack of information, misunderstanding, lack of resources and gaps in sufficient or effective advocacy there are still challenges ahead. In order for legal empowerment to be as viable as a development tool as possible, it is necessary for multiple facets of society to work towards creating and fostering a just legal system accessible for local populations.

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<sup>i</sup> Maru, V. "Allies Unknown: Social Accountability and Legal Empowerment." *Health and Human Rights*. 12.1 (2010): 83-93. Print.

<sup>ii</sup> Max-Neef, Manfred A, Antonio Elizalde, and Martín Hopenhayn. *Human Scale Development: Conception, Application and Further Reflections*. New York: The Apex Press, 1991. Print.

<sup>iii</sup> Rice, Simon. "A Human Right to Legal Aid." Available at SSRN: <http://ssrn.com/abstract=1061541> or <http://dx.doi.org/10.2139/ssrn.1061541>. 2009. Internet resource.

<sup>iv</sup> Ibid

<sup>v</sup> *Making the Law Work for Everyone*. New York: Commission on Legal Empowerment of the Poor, 2008. Internet resource.

<sup>vi</sup> <http://www.namati.org/work/legal-aid/>

<sup>vii</sup> <http://a4id.org/>

Available at SSRN: <http://ssrn.com/abstract=1061541> or <http://dx.doi.org/10.2139/ssrn.1061541>