



Global Protection Cluster's Task Team on Law and Policy (TTLP) Legal aid in humanitarian settings Project

Survey Summary

Background

In January 2022, the GPC TTLP launched a project focused on legal aid in humanitarian settings aimed at:

- (i) improving the capacities of the Protection clusters and participating agencies, including development, human rights, humanitarian and peace international and national organizations, to understand and assess the legal aid needs in their countries of operation, address existing gaps and promote legal aid interventions so people affected by internal displacement and humanitarian crises have access to justice and can enjoy their rights;
- (ii) enhancing the GPC TTLP's ability to demonstrate the need to integrate legal aid in humanitarian response from the outset and
- (iii) developing knowledge products and tools for the protection clusters at field level to address legal aid needs collectively.

In this framework, a survey was developed to explore the following aspects of legal aid programming in crisis settings:

- ❖ *Coordination*: understand where legal aid sits in the existing international and national coordination structures at country level;
- ❖ *Partnership*: assess the level of partnership and collaboration between Protection Clusters, international legal aid organizations and national legal aid actors;
- ❖ *Funding*: understand funding streams of legal aid, mapping legal aid position and scope within main donors' portfolios;
- ❖ *Challenges and good practices*: map key difficulties and lessons learnt related to legal aid interventions;
- ❖ *Priority areas for support*: capture interest and potential support needs on legal aid programming and advocacy by Protection Clusters (co)coordinators, Area of Responsibility focal points, international and national legal aid actors.

This note summarizes main findings stemming from the survey, complemented by information obtained through a series of key informant interviews with relevant stakeholders including donors conducted between February and May 2022.

Methodology

The survey was shared with Protection Cluster (co)coordinators and field staff. A total of 100 responses were received representing a total of 31 countries, 25 countries affected by internal displacement and 5 refugee crisis.¹ Representatives from international non-governmental organizations, national legal aid civil society organizations and UN agencies replied to the survey;² development, humanitarian and human rights actors responded to the survey³. The results of the survey were shared and validated in a workshop with the members of the Legal aid Task Force, the project steering committee created under the TTLP, .⁴ Findings of the survey were subsequently presented and validated with (co-)coordinators and members of field protection clusters, GBV and HLP AoRs as well as Information Management Working Group attending a dedicated meeting of the TTLP in May 2022⁵. In addition, a series of key informant interviews donors' representatives supporting legal aid were conducted in May 2022 to further explore the support provided by donor States to legal aid (not just financial but also political / advocacy / partnerships).

Key findings and conclusions

■ Coordination

- Almost all the respondents of the survey indicated that legal aid is discussed within the Protection Cluster, one of its sub-groups and/or within UN-led *ad hoc* working groups created for that purpose. Many respondents indicated the existence of a **multiplicity of platforms** at country level where legal aid is discussed with little or no coordination and synergies among them.
- The main objectives of those coordination structures have been reported being **information sharing and coordinated or joint advocacy**. Other purposes include: development or strengthening of a national legal aid system, improve the quality of referrals, mobilize donor support, better identification of legal issues at community level, integration between legal aid and health, education, social protection, restorative justice intervention, specialized legal services for children and for GBV survivors.
- **National civil society organizations** engaged in the legal aid sector are reported as not being adequately represented in coordination spaces where legal aid and access to justice are discussed⁶. Many respondents have highlighted that **justice authorities** (both traditional and official) are often not part of international coordination forums where legal aid is discussed. The existing coordination structures are reported to be often distant from local realities and national systems' priorities.

¹ A total of 82 replies are from 25 countries where Protection Cluster is active (total of countries where PC is active is 32); 16 were respondents are from 5 countries affected by refugee crisis: Jordan, Lebanon, Greece, Peru, Liberia. The replies of organizations working in six countries represent more than 50% of the replies: Iraq (12 replies), Somalia (12), Niger (9), Lebanon (7), Libya (6) and Jordan (5). Two responses were provided by Regional Offices.

² Among UN agencies, 35 replies were received from UNDP, UNODC, UNFPA, OHCHR, UNHCR, IOM. Among INGOs, 38 replies were received by NRC, IRC, DRC, INTERSOS, ACTED, NCA, ILF and Concern Worldwide. A total of 27 replies were received from national legal aid civil society organizations.

³ A total of 85% of the respondents reported that their organization's strategy includes legal aid as a focus area of intervention.

⁴ Members of the Legal aid Task Force are global focal points for legal aid, protection, access to justice of the following INGOs and UN agencies working on legal aid: UNDP, UNHCR, UNODC, UNFPA, OHCHR, IRC, DRC, NRC.

⁵ More than 80 people attended the discussion. Participants included Protection Clusters (co)coordinators, Areas of Responsibility members, international development, humanitarian and human rights organizations.

⁶ A total of 20% of respondents reported that national civil society organizations specialized in legal aid are not members of the Protection clusters and 25% reported that national civil society organizations specialized in legal aid are not members of AoR, Legal aid Task Teams and working groups.

- Among the challenges related to coordination on legal aid, respondents have highlighted the **lack of coordination between rule of law and access to justice development actors and legal aid humanitarian actors**. A total of 25% of respondents have indicated not collaborating with development actors.

- **Partnerships**

- Legal aid is a sector where collaboration and **partnership with national actors** occurs very frequently but varies according to the country's legal and regulatory frameworks, the political context as well as existing capacities and responses. According to the survey findings, the main partners of both development and humanitarian legal aid actors are national civil society organizations engaged in the legal aid sector and national and local justice authorities (both official and traditional, religious, customary). Other actors mentioned in the survey are: Bar associations, private network of lawyers, lawyers funded by the state to provide legal aid, universities law clinics, national human rights institutions.
- A total of 70% of the respondents reported collaborating with **national legal aid civil society organizations** engaged in the legal aid sector. Main areas of partnership highlighted through the survey are: direct legal aid service provision, advocacy, capacity development to national legal aid actors, and technical assistance to duty bearers. Many respondents have indicated that civil society plays a key role in delivering legal aid and in advocating for the creation or strengthening of national legal aid systems.

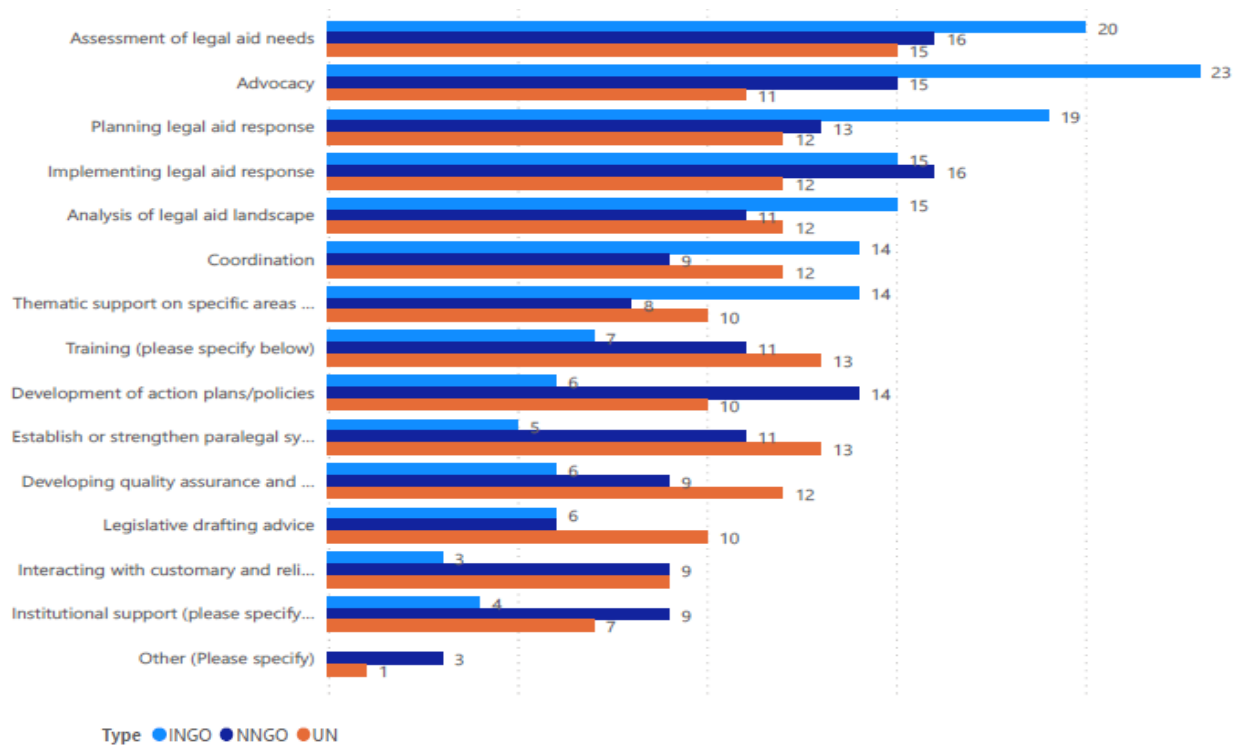
- **Funding**

- Legal aid is recognized as global priority by many donors. The majority of respondents have indicated the following donors as being the main ones supporting legal aid at country level: EU, UN, USA, Norway, Sweden, Germany. Legal aid is mainstreamed across different donors' departments and portfolios, the main ones being: Protection, Human Rights, Rule of Law, Peace, Security, Governance and social cohesion.
- As confirmed during the key informant interviews, legal aid is considered a fundamental means to access human rights and to achieve protection. Within the humanitarian portfolio, legal aid is often funded under the broader protection and human rights sectors. Areas of focus indicated by donors are: legal and civil documentation, housing, land and property rights, remedy for human rights violation, accountability for grave violations, protection of civilians.

Beyond direct **financial support** to specialized INGOs and UN agencies with sound institutional capacity on legal aid, donors have indicated **advocacy and multi-lateral diplomacy** as ways to profile legal aid at country level and to link it with efforts towards upholding international human rights standards.

- **Priority areas for support**

- When asked in which areas would their organization benefit from technical assistance, policy and programme support to strengthen the provision of legal aid in their country, respondents primarily selected the following areas: advocacy, assessment of legal aid needs, planning and implementing a legal aid response, assessment of the legal aid landscape. The table below details the support needs according to the nature of the respondent.



Challenges related to national legal aid systems

- **Lack of funding and political will for state-funded legal aid systems.** For a legal aid system to be accessible, affordable, efficient and sustainable, it is essential that States ensure adequate budget allocations for the administration and delivery of services. Many respondents indicated that state financial budgets are not sufficient to respond to the legal aid needs of the population, especially in crisis settings where the demand often exceeds the offer and justice systems are fragile.
- **Lack of data on legal aid needs.** The survey indicated that there is a significant gap in the availability of data on legal aid needs. Data and information is critical not only in identifying where barriers to justice are, but so that policymakers and organizations can develop evidence-based targeted policies and interventions.
- **Weak legal and policy framework.** Many respondents indicated that the legislative and regulatory frameworks related to legal aid are often not compliant with human rights standards, impacting the ability of national legal aid actors to deliver quality legal aid services in a transparent, independent and efficient way. Some respondents also highlighted how inconsistency in the application of the law across the territory impacts access to justice by the population in need.
- **Lack of trust to justice authorities and limited access to justice.** Additional challenges highlighted by the study are related to the lack of trust by the population towards the justice system (both the official and the traditional justice authorities) often perceived as corrupt, illegitimate and/or contributing to deepen inequality and discrimination practices. The study indicated how access to crisis-affected populations plays an important role in ensuring human rights protection in particular for some vulnerable and marginalized groups.
- **Weak judicial system.** Together with a general lack of political will to regulate and fund legal aid systems, many respondents also indicated how pre-existing shortcomings of the judicial system hampers access to legal aid in crisis settings. Among some of the most cited shortcomings, it is worth mentioning: long court processes, lack of transparency and independency, lack of technical capacities of judges, lawyers, weak enforcement of judicial decisions, lack of digitalized and user-friendly systems to file complaints and follow judicial processes.

- **Limited availability of specialized and complementary legal aid services.** The study has shown that there is limited availability of specialized and targeted legal aid provision for specific population groups, such as children, women, GBV survivors, refugees and people in mixed migratory flows mixed migrants. The latter group has been reported to be “*orphan of legal aid*” as the majority of the international agencies engaged in legal aid do not serve this population group. Many respondents highlighted how existing legal aid systems struggle to deal with particularly complex caseload resulting from the crisis. Many respondents from crisis affected countries and territories reported lack of complementary services to legal aid, such as psychological as well as mental health support to victims of violations.
- **Lack of public awareness and legal education.** Many respondents and donors identified lack of awareness of rights and of the right to legal aid as one of the top challenges facing countries affected by crises and called for integrating information dissemination and legal awareness strategies into humanitarian responses from the outset, including in disaster contexts.
- **Human rights abuses and lack of accountability.** In crisis settings, many respondents have indicated how ongoing human rights violations, such as arbitrary detentions, threats to lawyers, judges, human rights defenders together with protection risks for civil society organizations, further impact the ability of legal aid systems to ensure accountability of perpetrators, access to remedy and transparency of procedures.
- **Politicization of legal aid.** Some respondents have highlighted how legal aid is often used by authorities to discriminate a population group over another (for example, as a result of their perceived or real political affiliation); in some countries, respondents have indicated that few national civil society organizations are allowed to deliver legal aid thereby contributing to create or strengthen monopoly de facto and restricting the ability of international organizations to operate.

Challenges related to legal aid interventions

- **Lack of effective coordination on legal aid:** “*Legal aid is homeless*” and it is often perceived not to be adequately discussed within existing coordination structures. Respondents and donors indicated how duplication of coordination spaces hampers an effective division of labour and coordinated responses at country level. Key stakeholders confirmed the quantitative data emerging from the survey by highlighting the lack of participation of national and local authorities in existing coordination platforms as a key limitation to the design and implementation of sustainable legal aid interventions that take into account existing capacities and responses.
- **Lack of synergies between development and humanitarian interventions related to access to justice and legal aid.** Nearly all respondents emphasized a weak dialogue between humanitarian actors - focused on responding to immediate needs of the crisis affected population - and development rule of law and access to justice actors - committed to support justice structural long-term reforms. Another dimension of this challenge is reflected by the reported inability of legal aid and justice actors operating in development settings to adapt to humanitarian programming needs.
- **Lack of integration between legal aid and other sectors, including Protection:** Key donor representatives indicated that legal aid is often considered an “*isolated sector*” and very rarely well integrated within other sectors, including within the protection sector.
- **Limited use of strategic litigation:** key donors’ representatives reported that humanitarian actors often do not couple the direct provision of legal aid services to crisis affected population with advocacy through strategic litigation which can result key to tackle systemic justice problems.

- **Lack of analysis of legal framework related to justice and legal aid.** Many respondents and donors' representatives indicated that comprehensive analysis of the existing legal framework related to legal aid provision is a key element to be strengthened.
- **Lack of common terminology across different legal aid organizations, weak or inexistent joint monitoring systems and frameworks to monitor quality of legal aid services.** To those challenges, key donor representatives added the difficulties to measure impact of legal aid intervention, in particular, when legal aid is aimed at preventing a violation.
- **Limited opportunities for multi- year flexible funding for legal aid interventions.** The majority of respondents indicated how the limited duration of humanitarian projects hampers ability to influence longer-term processes.
- **Limited availability of specialized legal aid services for children and other population groups.** Many respondents stressed the importance of strengthening referral systems and articulate them, where possible, with existing social protection systems.
- **Weak collection of good practices on delivery legal aid services in humanitarian settings.** A collection of good experiences and lessons learned on delivery of legal aid services can help illustrate how countries address challenges in delivering legal aid services, what innovative methods have been used to improve access to and quality of legal aid services, as well as what approaches have been identified to ensure that marginalized groups receive targeted services.

Good practices related to legal aid programming

A wealth of good practices was shared by participants to the survey, and through the KIIs with donors and organizations. Some examples follow below:

- Establishment of common advocacy platforms with representatives of national authorities to identify entry points and incentives for reforms
- Creation of multi-disciplinary case management teams able to couple legal aid services with specialized and complementary interventions as well as good referral systems
- Creation or strengthening of networks of paralegal and customary authorities providing free legal aid services outside the official system
- Adoption of digital modalities for legal aid provision when access is limited
- Use of mobile legal aid clinics to reach people in remote areas
- Creation of networks of University law clinics, pro-bono lawyers and relevant ministries to provide wide range of legal services on all areas of law
- Coordination and exchange of best practices between legal aid providers and human rights and transitional justice actors and networks
- Creation of specialized Legal aid Task force for common advocacy
- The establishment of legal aid centers offering a variety of services, in coordination with a range of ministries and institutions
- Disability inclusion and mainstreaming in legal service provision
- Strategic litigation for collective cases (e.g. for ethnic or religious communities)
- Strategic and effective coordination and division of labor among development, humanitarian, human rights actors in the framework of a unique legal aid logical framework
- Community based dispute resolution mechanisms to prevent and solve intra-familial and inter-communities' conflicts

Recommendations:

- Enhance synergies between development, humanitarian and human rights actors working on legal aid through the use of common terminology related to legal aid, joint analysis of legal aid landscape and use of tools facilitating coordinated responses.
- Promote country level joint analysis of legal framework, including through the GPC TTLP Legal aid analysis toolbox, as a basis for humanitarian response and link it to Protection Analysis Framework, where relevant
- Advocate for multi-year flexible funding, to be able to respond to changing legal aid needs in the country, and to tackle systemic, long- term processes.
- Ensure that national legal aid actors are represented in the existing development, humanitarian and human rights coordination spaces to enhance joint understanding of existing national capacities and responses and ensure that their views are taken into account when planning and implementing activities.
- Integrate information dissemination and awareness on the right to legal aid as key components of humanitarian response, including in disaster preparedness and rapid response mechanism instruments.
- Foster integration between legal aid and other sectors, to ensure legal aid is instrumental to access and enjoy a broad range of rights.
- Ensure effective coordination around legal aid and access to justice and promote a more active participation of national legal actors in existing development and humanitarian coordination spaces.
- Ensure quality and effective legal aid services are delivered to those in need in line with international human rights standards avoiding any politicization or monopoly of legal aid provision.
- Identify good practices and lessons learned on delivering legal aid services, including through the development of national, regional and global specialized networks of legal aid providers.