



Global Protection Cluster Task Team on Law and Policy (TTLP)

Concept Note

Webinar: Engaging with informal justice to respond to legal aid and justice needs in humanitarian settings

Date: Thursday 9th November 2023, at 13:00 (Geneva time)

The positive role played by informal justice¹ systems and institutions in advancing access to justice for all, including for vulnerable, marginalized and conflict affected populations, is widely acknowledged. In recent years practitioners, academics and policy makers have highlighted the complementarities between informal and formal justice systems and institutions and the need to include them in any approaches aiming at improving access to justice. The [Declaration and Joint Action Plan on Equal Access to Justice for All by 2030](#) adopted by the Ministerial Roundtable on Access to Justice in 2019 calls to improve the quality of the justice journey by “*empowering people to understand, use and shape the law, while offering them fair informal and formal justice processes that meet their needs in terms of both procedures and outcomes*”. Legal aid and access to justice interventions should therefore understand and support both systems where relevant with the aim of enabling the achievement of justice outcomes that are the best in terms of rights protection by (i) supporting individuals in navigating complex justice systems towards the best justice outcomes and by (ii) strengthening existing capacities and responses to provide legal aid that is non-discriminatory and rights protective. All legal aid and access to justice interventions should be built in existing structures and systems instead of creating ad hoc ones.

A common denominator in countries where formal and informal systems co-exist is legal pluralism. Legal pluralism -meaning the existence of multiple legal systems within one geographical area- is inherent to countries with strong informal systems. In many instances the state recognizes customary and religious institutions as part of the legal statutory framework. In others, informal systems are not enshrined in the legal statutes but are the preferred avenue to access justice by communities².

There are many good reasons to analyze, understand and eventually support informal justice systems. Formal justice systems may be malfunctioning due to corruption or discrimination, or simply they cannot reach the entire population of a country due to lack of resources, discrimination or political reasons. But most importantly, formal justice systems often fail to respond to the needs and social imperatives of many communities in the way that customary systems do.³ Informal systems -customary institutions in particular- are perceived to be cheaper, closer, faster, more participatory, and culturally appropriate to the traditions of the communities they serve. Customary law is familiar, tied to the identity and history of a community, and operates independently of outside resources. Informal systems imply the resolution of disputes and the regulation of conduct by adjudication or the assistance of a neutral third party that is not a part of the judiciary as established by law and/or whose substantive, procedural

¹ “Informal” justice systems and mechanisms may mean customary, traditional, religious, family-based, more often a combination of those, thereof hybrid systems. Legal Aid Conceptual Framework Legal aid in humanitarian settings, Global Protection Cluster Task Team on Law and Policy Advanced Version May 2022.

² A consistent finding of legal needs surveys has been that “the formal judicial system is marginal to the experience of justice”. See OECD, OSF, Legal needs survey and access to justice, 2019.

³ Customary justice: from programme design to evaluation, IDLO 2011.



or structural foundation is not primarily based on statutory law; they are often focused on restorative justice and contributing to reconciliation⁴.

On the other hand, interaction with informal systems requires an in-depth understanding of the legal aid and justice context given that, frequently, rules followed or decisions made may be inconsistent with human rights standards, particularly with respect to the rights of women, children and minority groups. Procedural fairness and enforcement capabilities may be entirely lacking and if decisions are not recognized within the national legal framework, resolutions achieved within informal systems may not be sustainable especially in situations where laws and rules may be at conflict with each other and decisions may be subsequently superseded by newly created institutions creating tensions among individuals and communities.⁵ Informal justice systems may also be susceptible to domination by the local elite and a lack of accountability.⁶ Yet, in many contexts, formal legal systems are also affected by these very same problems.

Informal justice in humanitarian contexts

In humanitarian settings⁷, the ability of both formal and informal justice systems to address and resolve justice problems is *equally* compromised. Conflicts, public health emergencies and disasters brought by natural hazards - often resulting in population displacement - create major challenges for the State, straining governments resources and disrupting continuity and quality of government systems and services. The capacity of informal justice systems to resolve conflict between communities may also be influenced by changes in power dynamics and population demography. In some contexts, displaced communities may use informal justice systems which are not aligned with the justice system of the host community; in others, the informal justice system of host communities may discriminate or not know how to address disputes with or within a displaced population group⁸. In post-conflict settings, customary law has a particular role to play in restoring the social, political, and economic fabric because of the moral/religious/traditional authority it brings to the establishment of order.

Legal aid and access to justice programs actively engage with informal justice systems in crisis settings. Approaches include: (i) capacity strengthening (training, mentoring, coaching) of existing dispute resolutions mechanisms or bodies; (ii) establishing and capacity developing of new dispute resolutions mechanisms or bodies, in consultation

⁴ Customary leaders may be engaged in dispute resolution for the community either as a first step in a dispute resolution process or as the exclusive arbiters when it comes to issues of access to community resources. There are other sorts of dispute resolution processes that are informal, but not customary, such as mediations carried out by specialists in alternative dispute resolution.

⁵ *Legal Aid Conceptual Framework Legal aid in humanitarian settings*, Global Protection Cluster Task Team on Law and Policy Advanced Version May 2022.

⁶ *Legal Aid Conceptual Framework Legal aid in humanitarian settings*, Global Protection Cluster Task Team on Law and Policy Advanced Version May 2022.

⁷ “Humanitarian settings” are defined based on the criteria outlined in the Sphere Standards, which describe humanitarian action as taking place in “a range of situations including natural disasters, conflict, slow- and rapid-onset events, rural and urban environments, and complex political emergencies in all countries”.

⁸ www.nrc.no/resources/reports/dispute-resolution-structures-and-hlp-issues-in-north-east-nigeria



with community; (iii) creation of community networks, such as paralegals, that can act as 'first responders' on legal issues supporting the resolution of justice problems; (iv) direct representation of parties to a dispute⁹.

This webinar is part of learning events aimed to inform a collection of good practices on legal aid in humanitarian settings, particularly focusing on three aspects deserving attention which were highlighted in a field survey conducted by the GPC TTLP last year:¹⁰

- a. enhance synergies between development, humanitarian, human rights and peace actors in the design and implementation of access to justice and legal aid interventions in humanitarian contexts;
- b. build sustainable partnerships with national legal aid actors (civil society, private sector, duty bearers) for more sustainable access to justice and legal aid interventions in humanitarian contexts;
- c. design and implement legal aid and access to justice interventions aimed at addressing and resolving legal aid needs of hard-to-reach populations.

The webinar aims at discussing the following guiding questions:

- ✓ **Coordination:** *How have humanitarian, development, human rights and peace actors coordinated their efforts to design and implement more effective, collaborative and joint legal aid interventions aimed at ensuring a coordinated engagement with informal justice systems in humanitarian settings?*
- ✓ **Partnership:** *How have protection actors enhanced the sustainability of their legal aid and access to justice interventions with informal justice systems and mechanisms? Which forms of partnership have been designed and implemented to ensure ownership of access to justice strategies? What are the specific concerns that arise when engaging with informal justice systems to advance the rights of displaced persons?*
- ✓ **Access to hard-to-reach population:** *has the engagement with informal justice system proven to be able to address and respond to the needs of hard-to-reach population? If yes, how?*
- ✓ **Overall:** *What are some of the most **common challenges, key lessons learnt and good practices** that can be shared in all these areas? What tools are available to support those interested to do more in this area?*

⁹ For example, a legal aid actor can act as a mediator in a dispute between a landlord (member of the host community) and tenant (displaced person) to help them resolving a dispute.

¹⁰ The field 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. The survey was complemented by a series of KII with donors' representatives. The Study Report as all other tools produced in the framework of the Project are available at: <https://www.globalprotectioncluster.org/Legal-Aid-in-Humanitarian-Settings> .