 **CHRI’S QUESTIONNAIRE ON IMPROVING LEGAL AID**

This questionnaire is divided into three parts. The first part poses questions on access to legal aid at the police station, the second on the existing legal aid framework and the third on the modalities of a public defender model. Kindly also share good practices that you have come across in India and other jurisdictions. Please refer to the glossary at the end for description of the terms used. We request you to kindly share your responses/comments/suggestions by this Sunday, 26th June 2016.

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| **PART I: QUESTIONS ON EARLY ACCESS TO LEGAL AID AT THE POLICE STATION** | |
| **1.** | **What should be the mode of legal aid delivery in police stations for any person in need of legal representation at the time of questioning/arrest? *(please select the one which you think is most appropriate and give reasons) –***     * 1. A legal aid cell at the police station with DLSA appointed and trained **lawyers** **who are stationed on rotational basis 24x7** for the purpose of providing basic legal advice and representation   **Reasons:**   * 1. A legal aid cell at the police station with DLSA appointed and trained **paralegal volunteers** who are stationed on rotational basis 24x7 **mandated to inform the legal services authority and/or call the lawyer/public defender upon request**   **Reasons:**   * 1. There should not be a legal aid cell in the police station. However, **the police must inform the nearest legal aid authority and immediate assistance must reach the person in custody**   **Reasons:**   * 1. There should not be a legal aid cell in the police station. However, a DLSA appointed and trained **lawyers/ public defenders, on rotational basis, must make daily visit/s to the police station. Their daily visits should be:**  1. Twice a day 2. More frequently   **Reasons:**   * 1. There should not be a legal aid cell in the police station. However, DLSA appointed and trained **paralegal volunteers, on rotational basis, must make daily visit/s to the police station and must inform the legal services authority and/or call the lawyer/public defender in all cases where person is unrepresented. Their daily visits should be:**  1. Twice a day 2. More frequently   **Reasons:**   * 1. Legal representation at the police station could be provided by *(please write your suggestions)*: |
| **2.** | **The role of legal aid lawyer who provides legal assistance to the suspect at the police station prior to first production should be to *(please select the one which you think is most appropriate and give reasons)* –**   * 1. continue to represent the person/suspect till first production before the magistrate   2. assist the person/suspect only at the police station and another legal aid lawyer be at the court to represent the accused at first production and later   3. continue to represent the accused all through police remand   4. represent the accused during the entire remand period till the chargesheet is filed   5. represent the accused till the conclusion of the trial   **Reasons:** |
| **3.** | **Please elaborate how the following elements can ensure accountability and effectiveness of lawyers and paralegals in police custody?**   |  |  |  | | --- | --- | --- | | **Elements** | **Paralegals** | **Lawyers** | | 1. Where should they be drawn from? |  |  | | 1. What should be their tenure? |  |  | | 1. How should they be trained? |  |  | | 1. What should be their remuneration/incentives? |  |  | | 1. What should be the consequences of non-appearance? |  |  | | 1. How to document the work/ what registers to be maintained? |  |  | | 1. What should be the reporting structure (to whom, mode, frequency) |  |  | | 1. What role can technology play? |  |  | | 1. Any other |  |  | |
| **4.** | **What safeguards need to be put in place to resolve the following anticipated obstacles that may hinder legal aid in police station/custody? *Please write your suggestions for resolving each obstacle.***     1. ‘Arrangements’/Nexus between the police and lawyers/ paralegals – 2. Resistance by police – 3. Difficulty in ensuring timely presence of a lawyer – 4. Intentional delay in bringing the person to the police station – 5. Lack of publicly visible information in the police station on rights of person in police custody – 6. Lackadaisical attitude of the lawyers – 7. Political interference – 8. Other obstacles and the safeguards – |
| **5.** | **Please elaborate how legal aid services at police station should be monitored by –**   1. A monitoring committee (composition, mandate) – 2. A grievance redressal mechanism (process, powers) – 3. Visits (oversight actors, frequency, mandate) – 4. Other – |
| **6.** | **Please write any other recommendations/concerns/suggestions for legal aid at the police station/custody?** |
| **PART II: QUESTIONS RELATING TO THE EXISTING LEGAL AID FRAMEWORK**  **(Legal Aid in Judicial Custody)** | |
| **7.** | **When a person who cannot afford a private lawyer reaches prison *(please select the one which you think is most appropriate and give reasons) –***  **Who should draft the application for legal aid on behalf of the accused or get Form I of the NALSA 2010 Regulations duly filled in?**  Prison staff  Jail visiting lawyer  Prisoner paralegal volunteer  Other –  **Reasons:**  **Who should send the application from the prison to the legal services institutions?**  Prison staff  Jail visiting lawyer  Prisoner paralegal volunteer  Other –  **Reasons:**  **What should be the reasonable time period by which the application for legal aid reaches the legal services institutions?**  Within one day of accused entering the prison even if there is a holiday  Within two days of accused entering the prison even if there is a holiday/weekend  Within one week of accused entering the prison  Other –  **Reasons:**  **What should be the reasonable time period for promptly providing legal aid from the date of receipt of application by the legal services institutions?**  Within 24 hours  2 days  One week  Two weeks  Other –  **Reasons:** |
| **8.** | **How can one ensure that the representing lawyer obtains client instructions before every hearing? Please write your suggestions.** |
| **9.** | **Should remand hours in court be fixed to ensure appearance of lawyer in the presence of accused during the hearing? If yes, please elaborate on how this could be done. If no, any other suggestion.** |
| **10.** | **Legal aid schemes usually seek mandatory reporting & documenting from legal aid lawyers as a prerequisite to releasing payment. However, often both reporting and payments are suspended or payment is made without reporting. Please suggest how to ensure compliance.** |
| **11.** | **Should feedback from magistrate, client/client’s family be an integral part of review of performance/performance appraisals? If yes, how often? What standards ought to be considered?** |
| **12.** | **What should be the method/procedure for payment of honorarium to legal aid lawyer? *(please select the one which you think is most appropriate and give reasons)***   1. After very hearing 2. After each stage - First production, Framing of charges, Completion of taking evidence, Conclusion of trial 3. Monthly   **Reasons:** |
| **13.** | **To ensure compliance of NALSA/SLSA schemes, what features should the legal services institutions include in their functioning? Please elaborate with reasons:**   1. appoint a nodal officer at each SLSA mandated only to conduct monthly reviews of implementation of schemes and submit regular reports to NALSA 2. theme- wise segregation of legal aid work at SLSA/DLSA level 3. use technological tools   **Reasons:** |
| **PART III: QUESTIONS ON THE PRINCIPLES AND MODALITIES OF THE PUBLIC DEFENDER MODEL** | |
| **14.** | **What features should be incorporated into the existing legal aid system for a public defender system to work better than the existing system with regard to early access, effective representation and monitoring? Please give reasons in support of your answer:**   1. **Selection/appointment of public defenders should be:** 2. Exclusively cadre based through a civil service examination and salary like the public prosecution services 3. Exclusively panel and expertise based through a committee comprising of representatives of the bar, bench and legal aid 4. Mixed model of cadre and empanelment 5. Initially mixed model for first 5 years and henceforth cadre based 6. Cadre based for some levels of public defenders and panel based for others 7. Others   **Reasons:**   1. **Which institution should be responsible for establishing and managing the public defender system :** 2. Ministry of Justice 3. Ministry of Home Affairs 4. Legal Services Authority 5. State Bar Association/Council 6. Other   **Reasons:**   1. **What infrastructural facilities will enable the public defender to work towards the level of efficiency and effectiveness expected? *(please elaborate under each head)*** 2. Basic Infrastructure  for office, meeting and research purposes 3. Support Staff 4. Technology 5. Systems  & Structures (Case load tracker, Monitoring & Reporting trackers) 6. **Caseload Management of public defenders should be regulated by:** 7. Number of public defender appointed based on the quantum of cases in the court 8. Allotment of cases to be based on the expertise/ years of experience/ competence 9. Availability of a pool of back up lawyers 10. Availability of a pool of expert lawyers appointed for specific cases 11. Mixed Model 12. Others   **Reasons:**   1. **Monitoring & Reporting of public defenders should be** : 2. After every hearing 3. Monthly 4. Quarterly 5. Bi-annually 6. Annually 7. Other   **Reasons:**   1. **Performance evaluation should be done by :** 2. Legal aid bodies 3. Magistrate/Judge 4. A board of senior public defenders 5. Monitoring committee (existing) 6. Client and client’s family 7. Others   **Reasons:** |
| **15.** | **What obligations should be on the following stakeholders to ensure effective functioning of a public defenders/system? *(please elaborate under each head)***   1. Judiciary 2. Bar 3. Police 4. Legal Services Institutions 5. Prison 6. Any Other |

**GLOSSARY**

**Remand Lawyer:** Remand lawyers are assigned to each magistrate court to oppose remand, apply for bail and move miscellaneous applications for those who are in custody.

**Public Defender Lawyer:**Public Defenders, as salaried employees, operate like public prosecutors and have the assistance of paralegals and experts to assist with the defence of the criminally accused client.

**Jail Visiting Lawyer:** Jail visiting lawyers are lawyers appointed by the legal services institution to visit jail legal aid clinics frequently. They are mandated to provide legal advice, draft applications, letters and petitions for inmates inside the jail.

**Paralegal Volunteer:** Community paralegal volunteers are appointed by the legal services institution to maintain legal aid clinics, give legal advice, resolve disputes through lok adalats, implement various schemes of the State Legal Services Authority (SLSA), and other activities.

**Paralegal Volunteer:** Prison paralegal volunteers are long-term convicts nominated by the prison department and appointed by the legal services institution. They are mandated to manage the jail legal aid clinic; draft bail applications, appeals, parole and other applications; and maintain the records and registers.

**Monitoring Committee:** Monitoring committees are set up by every legal services institution to monitor the progress of the court-based legal services rendered by the panel lawyers in legal aid cases. The committee for the district or taluka legal services institution shall be constituted by the Executive Chairman of the SLSA and shall consist of a) the senior-most member of the higher judicial services in the district, b) member secretary or secretary of the legal service institution and c) a legal practitioner with more than 15 years’ experience at the local bar, to be nominated in consultation with the president of the local bar association.