

# **Compendium of United Nations system Resolutions on or referring to access to legal aid in criminal justice systems**

## **An overview of important aspects**

This Compendium is a collection of Resolutions adopted by United Nations System bodies with a focus on access to legal aid in criminal justice systems, which is an essential element of a fair, humane, and efficient criminal justice system that is based on the rule of law.

Most Resolutions in this document mention legal aid explicitly. The document however also includes some Resolutions that refer to access to justice or access to legal representation in a broader sense, but which are nonetheless of essential importance to stress the need for ensuring that access to legal aid is guaranteed to all eligible persons without discrimination.



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## I. General Assembly Resolutions

### 1. Legal Aid (A/RES/2449 (XXIII)) – 1968

The General Assembly

**Para. 1a** “Recommends to Member States to guarantee the progressive development of comprehensive legal aid systems to those who need it in order to protect their fundamental human rights and freedoms, as well as devising standards for granting, in appropriate cases, legal assistance.”

The General Assembly further

**Para. 1c** “Recommends Member States consider ways and means of defraying expenses involved in providing such comprehensive legal aid systems and take all possible steps to simply legal procedures so as to reduce the burden on the financial and other resources of

*individuals who seek legal redress and encourages co-operation among appropriate bodies making available competent legal aid assistance.”*

It furthermore requests the United Nations to facilitate expert and other technical assistance to Member States on legal aid.

## 2. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) (A/RES/40/33) – 1985

The Beijing Rules affirm Member States' commitments to, *inter alia*,

**Part 1, General Principles, 1.2** *“endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.”*

They also provide that

**Part 1, General Principles, 1.3** *“sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law.”*

Particularly **Rules 1.1 to 1.3** point to the important role that a constructive social policy for juveniles will play, *inter alia*, in the prevention of juvenile crime and delinquency. Rule **1.4** defines juvenile justice as an integral part of social justice for juveniles, while rule 1.6 refers to the necessity of constantly improving juvenile justice, without falling behind the development of progressive social policy for juveniles in general and bearing in mind the need for consistent improvement of staff services.

### Important provisions on legal aid:

#### **Rule 15. Legal counsel, parents and guardians**

**15.1** *“Throughout the proceedings the juvenile shall have the right to be represented by a legal adviser or to apply for free legal aid where there is provision for such aid in the country.*

**15.2** *The parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.”*

#### **Commentary**

**Rule 15.1** “uses terminology similar to that found in rule 93 of the Standard Minimum Rules for the Treatment of Prisoners. Whereas legal counsel and free legal aid are needed to assure the juvenile legal assistance, the right of the parents or guardian to participate as stated in **Rule 15.2** should be viewed as general psychological and emotional assistance to the juvenile - a function extending throughout the procedure. The competent authority’s search for an adequate disposition of the case may profit, in particular, from the co-operation of the legal representatives of the juvenile (or, for that matter, some other personal assistant who the juvenile can and does really trust). Such concern can be thwarted if the presence of parents or guardians at the hearings plays a negative role, for instance, if they display a hostile attitude towards the juvenile, hence, the possibility of their exclusion must be provided for.”

### 3. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (A/RES/43/173) – 1988

These Principles cover the protection of all persons under any form of detention or imprisonment. They are based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment. The 39 principles provide guidance on all aspects of prison management, from admission and classification to the prohibition of torture and limits on solitary confinement. There is guidance on healthcare, legal assistance, prisoners’ rights, prison staff, as well as disciplinary sanctions.

While not explicitly mentioning legal aid, they refer to the right of prisoners to defend themselves or to be assisted by counsel:

#### **Principle 11**

“1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.”

### 4. United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) (A/RES/45/113) – 1990

The Rules establish minimum standards for the protection of juveniles deprived of their liberty in all forms, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and to fostering integration in society, to be applied impartially and without discrimination of any kind. The Rules are designed to serve as convenient standards of reference and to provide encouragement and guidance to professionals involved in the management of the juvenile justice system. Where appropriate, States should incorporate the Rules into their legislation or amend it accordingly and provide

effective remedies for their breach, including compensation when injuries are inflicted on juveniles. States should also monitor the application of the Rules.

Important provisions on legal aid:

**Rule 18**

*“The conditions under which an untried juvenile is detained should be consistent with the rules set out below, with additional specific provisions as are necessary and appropriate, given the requirements of the presumption of innocence, the duration of the detention and the legal status and circumstances of the juvenile. These provisions would include, but not necessarily be restricted to, the following:*

*(a) Juveniles should have the right of legal counsel and be enabled to apply for free legal aid, where such aid is available, and to communicate regularly with their legal advisers. Privacy and confidentiality shall be ensured for such communications.”*

[...]

**Rule 24**

*“On admission, all juveniles shall be given a copy of the rules governing the detention facility and a written description of their rights and obligations in a language they can understand, together with the address of the authorities competent to receive complaints, as well as the address of public or private agencies and organizations which provide legal assistance. For those juveniles who are illiterate or who cannot understand the language in the written form, the information should be conveyed in a manner enabling full comprehension.”*

**Rule 78**

*“Every juvenile should have the right to request assistance from family members, legal counsellors, humanitarian groups or others where possible, in order to make a complaint. Illiterate juveniles should be provided with assistance should they need to use the services of public or private agencies and organizations which provide legal counsel or which are competent to receive complaints.”*

## 5. Convention on the Rights of Persons with Disabilities (A/RES/61/106) – 2007

The purpose of the Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. The Convention on the Rights of Persons with Disabilities is the first international human rights instrument that enshrines an explicit right to access to justice. It calls for the elimination of obstacles and barriers faced by persons with disabilities in accessing justice on an equal basis with others and innovates on previous standards developed under international human rights law. The Convention not only clarifies what access to justice means for persons with disabilities, but also upholds equal and effective participation at all stages of and in every role within the justice system as a core element of the right to access to justice. The Convention thereby expands

this right beyond the notions of a fair trial and effective remedies which have been the principal features put forward by human rights instruments and their monitoring bodies.

While not explicitly mentioning legal aid, the Convention refers to access to justice for persons with disabilities, for which legal aid is a key measure:

**Article 13 Access to justice**

*“1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.*

*2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.”*

6. [United Nations Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders \(the Bangkok Rules\) \(A/RES/65/229\) – 2011](#)

The Standard Minimum Rules for the Treatment of Prisoners apply to all prisoners without discrimination; therefore, the specific needs and realities of all prisoners, including of women prisoners, should be taken into account in their application. The Rules, adopted more than 50 years ago, did not, however, draw sufficient attention to women’s particular needs. With the increase in the number of women prisoners worldwide, the need to bring more clarity to considerations that should apply to the treatment of women prisoners has acquired importance and urgency. These new Rules are inspired by principles contained in various United Nations conventions and declarations and are therefore consistent with the provisions of existing international law. They are addressed to prison authorities and criminal justice agencies (including policymakers, legislators, the prosecution service, the judiciary and the probation service) involved in the administration of non-custodial sanctions and community-based measures.

Important provisions on legal aid:

**Rule 2 (1)**

*“Adequate attention shall be paid to the admission procedures for women and children, due to their particular vulnerability at this time. Newly arrived women prisoners shall be provided with facilities to contact their relatives; access to legal advice; information about prison rules and regulations, the prison regime and where to seek help when in need in a language that they understand; and, in the case of foreign nationals, access to consular representatives as well.”*

**Rule 7 (1)**



*“If the existence of sexual abuse or other forms of violence before or during detention is diagnosed, the woman prisoner shall be informed of her right to seek recourse from judicial authorities. The woman prisoner should be fully informed of the procedures and steps involved. If the woman prisoner agrees to take legal action, appropriate staff shall be informed and immediately refer the case to the competent authority for investigation. Prison authorities shall help such women to access legal assistance.”*

**Rule 25**

*“1. Women prisoners who report abuse shall be provided immediate protection, support and counselling, and their claims shall be investigated by competent and independent authorities, with full respect for the principle of confidentiality. Protection measures shall take into account specifically the risks of retaliation.*

*2. Women prisoners who have been subjected to sexual abuse, and especially those who have become pregnant as a result, shall receive appropriate medical advice and counselling and shall be provided with the requisite physical and mental health care, support and legal aid.”*

[...]

**7. Strengthening crime prevention and criminal justice responses to violence against women: Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice (A/RES/65/228) – 2010**

Recalling the Bangkok Declaration and other important resolutions on the matter, the General Assembly adopts the Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice.

To ensure that all women, including immigrant women, trafficked women, refugee women, and stateless women subjected to violence have full access to the civil and criminal justice systems, including access to free legal aid, where appropriate, court support and interpretation services. The General Assembly urges Member States to establish, fund and coordinate a sustainable network of accessible facilities and services for emergency and temporary residential accommodation, health services, including counselling and psychological care, legal assistance and other basic needs for women and their children who are victims of violence or who are at risk of becoming victims of violence. The General Assembly also urges Member States to promote collaboration and coordination among relevant agencies and services, including through the establishment, where possible, of specialized units specifically trained to deal with the complexities and sensitivities of victims involved in cases of violence against women where victims can receive comprehensive assistance, protection and intervention services, including health and social services, legal advice and police assistance.

Important provision on legal aid:

**Para. 18 (h)**



*“Member States are urged, as appropriate and considering all relevant international legal instruments, in particular the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power:*

*To ensure that women subjected to violence have full access to the civil and criminal justice systems, including access to free legal aid, where appropriate, court support and interpretation services.”*

## 8. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (A/RES/67/187) – 2012

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems were developed on the basis of article 14 of the International Covenant on Civil and Political Rights (ICCPR), and while they further develop the content of the right to legal assistance, they also recognize the corresponding obligation of Member States to establish national legal aid systems that are accessible, effective, sustainable and credible. The UN Principles and Guidelines provide, for the first time, a detailed international normative framework for implementing measures to guarantee the right to legal aid, setting practical benchmarks for Member States in 14 Principles and 18 Guidelines.

The UN Principles and Guidelines set out that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. They provide that legal aid should be available to persons without sufficient means whenever the offence they are charged with is punishable by a term of imprisonment or the death penalty, or in other situations when the interests of justice so require – for example, when there is an urgent need for legal advice in police stations, and the person under investigation is unable to obtain a private lawyer. Thus, they expand the eligibility to legal aid and reflect the development of the concept of “interests of justice”. The UN Principles and Guidelines form part of the United Nations standards and norms in crime prevention and criminal justice, instruments adopted by the international community in more than sixty years, covering a wide variety of issues.

In line with the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa and the Lilongwe Plan of Action for the implementation of the Declaration, the Principles and Guidelines follow a broad concept of legal aid. For the purposes of the Principles and Guidelines, the term “legal aid” includes legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require. Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.

Highlighted below are some of the key provisions:

**Principle 1, para. 14** *“Recognizing that legal aid is an essential element of a functioning criminal justice system that is based on the rule of law, a foundation for the enjoyment of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the criminal justice*

process, 14 States should guarantee the right to legal aid in their national legal systems at the highest possible level, including, where applicable, in the constitution.”

**Principle 2, para. 15** “States should consider the provision of legal aid their duty and responsibility. To that end, they should consider, where appropriate, enacting specific legislation and regulations and ensure that a comprehensive legal aid system is in place that is accessible, effective, sustainable and credible. States should allocate the necessary human and financial resources to the legal aid system.”

**Principle 3, para. 20** “States should ensure that anyone who is detained, arrested, suspected of, or charged with a criminal offence punishable by a term of imprisonment or the death penalty is entitled to legal aid at all stages of the criminal justice process.”

**Principle 3, para. 23** “It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.”

**Principle 7, para. 28** “Effective legal aid includes, but is not limited to, unhindered access to legal aid providers for detained persons, confidentiality of communications, access to case files and adequate time and facilities to prepare their defence.”

**Principle 9, para. 31** “States should establish effective remedies and safeguards that apply if access to legal aid is undermined, delayed or denied.”

## 9. Updated Model Strategies and Practical Measures on the Elimination of Violence against Children in the field of Crime Prevention and Criminal Justice (A/RES/69/194) – 2014

The updated Model Strategies and Practical Measures have been prepared to help Member States to address the need for integrated strategies for violence prevention and child protection, thereby offering children the protection to which they have an unqualified right. They take into consideration the complementary roles of the justice system on the one hand, and the child protection, social welfare, health and education sectors on the other, in creating a protective environment and in preventing and responding to violence against children. They draw attention to the need for Member States to ensure that criminal law is used appropriately and effectively to criminalize various forms of violence against children, including forms of violence prohibited by international law.

They take into account the fact that children who are alleged as, accused of or recognized as having infringed criminal law, especially those who are deprived of their liberty, face a high risk of violence. Because special attention must be paid to the especially vulnerable situation of these children, the Model Strategies and Practical Measures are aimed at not only improving the effectiveness of the criminal justice system in preventing and responding to violence against children, but also at protecting children against any violence that may result from their contact with the justice system. The Model Strategies and Practical Measures are grouped into three broad categories: general prevention strategies to address violence against children as part of broader child protection and crime prevention initiatives; strategies and measures to improve

the ability of the criminal justice system to respond to crimes of violence against children and to protect child victims effectively; and strategies and measures to prevent and respond to violence against children in contact with the justice system.

Important provisions on legal aid:

**Para. 23 (f)**

*“To promote the establishment of specialized units specifically trained to deal with the complexities and sensitivities relating to child victims of violence, from which victims can receive comprehensive assistance, protection and intervention services, including health and social services, legal aid and police assistance and protection;”*

**Para. 24 (d)**

*“To ensure that child victims of violence, their parents or legal guardians and legal representatives, from the first contact with the justice system and throughout the judicial proceedings, are promptly and adequately informed of, inter alia, the rights of the child, the relevant procedures, available legal aid and the progress and disposition of the specific case;”*

**Para. 34 (f)**

*“To ensure that children are informed of their rights and have prompt access to legal aid during police interrogation and while in police detention, and that they may consult their legal representative freely and fully confidentially;”*

**Para. 35**

*(b) “To ensure that children have continued access to government-funded legal aid during all stages of the justice process;*

*(c) To ensure that children can exercise their right to appeal a sentence and obtain the legal aid necessary to do so;”*

**Para. 37 (d)**

*“To endeavour to reduce pretrial detention by, inter alia, adopting legislative and administrative measures and policies on its preconditions, limitations, duration and alternatives and by taking measures aimed at the implementation of existing legislation, as well as by ensuring access to justice and legal aid.”*

## 10. Transforming our world: the 2030 Agenda for Sustainable Development (A/RES/70/1) – 2015

Promoting the rule of law and ensuring access to justice for all is essential in criminal justice system reform to allow all groups in society to equally enjoy their rights, ranging from fundamental human rights, such as the right to life and the right to a fair trial, to rights deriving from national legal procedures. The important role that access to justice plays in building societies and allowing them to grow affects countries at all levels of development, is acknowledged in Sustainable Development Goal 16 of the 2030 Agenda for Sustainable Development, and its target 3. Ensuring equal access to a fair justice system includes the

provision of support to those who do not have the means to actively enforce and protect their rights.

While not explicitly mentioning legal aid, the Agenda recognizes the need to build peaceful, just and inclusive societies that provide equal access to justice and that are based on respect for human rights, on effective rule of law and good governance at all levels and on transparent, effective and accountable institutions. This is highlighted through Goal 16 of the 2030 Agenda, which refers to access to justice, for which legal aid is a key measure:

**Goal 16. Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.**

[...]

**Target 16.3** “Promote the rule of law at the national and international levels and ensure equal access to justice for all”

### 11. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (A/RES/70/175) – 2015

The Standard Minimum Rules for the Treatment of Prisoners, originally adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955<sup>1</sup>, constitute the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners, and have been of tremendous value and influence in the development of prison laws, policies, and practices in Member States all over the world. In December 2015, the UN General Assembly adopted the revised rules as the “United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)”. The Rules are based on an obligation to treat all prisoners with respect for their inherent dignity and value as human beings, and to prohibit torture and other forms of ill-treatment. The 122 Rules cover all aspects of prison management and outline the agreed minimum standards for the treatment of prisoners – whether pre-trial or convicted. They are supplemented by the UN Bangkok Rules on women prisoners, as well as the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. The Rules provide guidance on all aspects of prison management, from admission and classification to the prohibition of torture and limits on solitary confinement. There is further guidance on healthcare, recruitment, and training of prison staff, as well as disciplinary sanctions. Access to legal support including through legal aid was notably included as one of the additions to the original set of Rules.

#### Important provisions on legal aid:

**Rule 54**

“Upon admission, every prisoner shall be promptly provided with written information about:

[...]

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<sup>1</sup> See also previous resolutions A/RES/67/188, A/RES/68/190, A/RES/69/192.

*(b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;"*

*[...]*

#### **Rule 61**

*1. "Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff."*

*2. "In cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter."*

*3. "Prisoners should have access to effective legal aid."*

#### **Rule 120**

*1. "The entitlements and modalities governing the access of an untried prisoner to his or her legal adviser or legal aid provider for the purpose of his or her defence shall be governed by the same principles as outlined in rule 61."*

*2. "An untried prisoner shall, upon request, be provided with writing material for the preparation of documents related to his or her defence, including confidential instructions for his or her legal adviser or legal aid provider."*

## **12. Our Joint Commitment to Effectively Addressing and Countering the World Drug Problem (A/RES/S-30/1) – 2016**

The document is the outcome of the 30<sup>th</sup> special session of the General Assembly to review the progress in the implementation of the Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem (UNGASS), including an assessment of the achievements and challenges in countering the world drug problem, within the framework of the three international drug control conventions and other relevant United Nations instruments. Notably, for the first time, the importance of enabling access to justice, including through legal aid, is mentioned in the context of drug-related crimes.

### **Important reference to legal aid:**

***Operational recommendations on cross-cutting issues: drugs and human rights, youth, children, women and communities***

*Proportionate and effective policies and responses, as well as legal guarantees and safeguards pertaining to criminal justice proceedings and the justice sector*

**Para. 4 (o)** *“Promote and implement effective criminal justice responses to drug-related crimes to bring perpetrators to justice that ensure legal guarantees and due process safeguards pertaining to criminal justice proceedings, including practical measures to uphold the prohibition of arbitrary arrest and detention and of torture and other cruel, inhuman or degrading treatment or punishment and to eliminate impunity, in accordance with relevant and applicable international law and taking into account United Nations standards and norms on crime prevention and criminal justice, and ensure timely access to legal aid and the right to a fair trial.”*

### 13. Promoting the Practical Application of the United Nations Standard Minimum Rules for the Treatment of Prisoners (A/RES/67/188, A/RES/68/190, A/RES/69/192 and A/RES/72/193) – 2013, 2014, 2015, 2018

#### The General Assembly

**Para. 2** *“Encourages Member States to address overcrowding in detention facilities by taking effective measures, including through enhancing the availability and use of alternatives to pretrial detention and custodial sentences, bearing in mind the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), access to legal aid, mechanisms for crime prevention, early release and rehabilitation programmes and the efficiency as well as the capacity of the criminal justice system.”*

### 14. The Rule of Law, Crime Prevention, and Criminal Justice in the Context of the Sustainable Goals (A/RES/73/185) - 2019

The General Assembly reaffirms the importance of Resolution A/RES/70/1 entitled "Transforming our world: the 2030 Agenda for Sustainable Development", and the commitment to promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable, and inclusive institutions at all levels.

The General Assembly further urges Member States to adopt integrated and comprehensive responses to violence against women in order to reduce risks of gender-related killing through early intervention and risk assessment [...] ensure equal protection of women under the law and equal access to justice [...] and, to these ends, strive to achieve all relevant Sustainable Development Goals, including Goals 5 and 16.

### 15. Human Rights in the Administration of Justice Resolutions (A/RES/48/137), (A/RES/50/181), (A/RES/56/161), (A/RES/58/183), (A/RES/60/159), (A/RES/65/213), (A/RES/67/166), (A/RES/69/172), and (A/RES/75/185) - 2020

It is emphasized that the right to access to justice, as contained in applicable international human rights instruments, forms an important basis for strengthening the rule of law through the administration of justice. The General Assembly therefore appeals to Governments to include in their national development plans the administration of justice as an integral part of the



development process and to allocate adequate resources for the provision of legal aid services with a view to promoting and protecting human rights and invites the international community to respond favourably to requests for financial and technical assistance for the enhancement and strengthening of the administration of justice. Furthermore, the General Assembly encourages States to address overcrowding in detention facilities by taking effective measures, including through enhancing the use of alternatives to pretrial detention and custodial sentences where possible, access to legal aid and the efficiency as well as the capacity of the criminal justice system and its facilities.

## 16. Strengthening the United Nations Crime Prevention and Criminal Justice Programme, in Particular its Technical Cooperation Capacity (A/RES/72/196), (A/RES/74/177), (A/RES/75/196), (A/RES/78/229) - 2023

**Introduction** *“Taking note of Commission on Crime Prevention and Criminal Justice resolution 25/2 of 27 May 2016 on promoting legal aid, including through a network of legal aid providers, in which the Commission encouraged Member States to adopt or strengthen legislative or other measures to ensure that effective legal aid, including for victims of crime, is provided consistent with their domestic legislation and in line with the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, and which also contributes to the implementation of the 2030 Agenda,*

*Recognizing the important role of the United Nations Office on Drugs and Crime in providing assistance to Member States, upon request, in their use and application of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, adopted by the General Assembly in its resolution 67/187 of 20 December 2012,*

*Reaffirming its resolution 78/227 of 19 December 2023 on equal access to justice for all, in which Member States were encouraged to explore cross-sectoral, multidisciplinary, multi-stakeholder, holistic and integrated partnerships, strategies and approaches at the national level when developing measures to reduce inequities in the criminal justice system, and to advance equal access to justice and equal treatment before the law for all, including through restorative justice programmes,”*

### The General Assembly

**Para. 17** *“Encourages Member States, in accordance with their domestic law, to strengthen the capacity of their respective criminal justice systems to investigate, prosecute and punish crime, while supporting an accessible, effective, fair, humane, transparent and accountable criminal justice system and protecting the human rights and fundamental freedoms of defendants, as well as the rights and legitimate interests of victims and witnesses, and to adopt and reinforce measures to ensure access to effective legal aid in criminal justice systems, as called for in its resolution 78/227 on equal access to justice for all;”*

**Para. 45** *“Calls upon Member States to implement, when appropriate, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),*



*bearing in mind their spirit and purpose, and to intensify their efforts to address the challenge of prison overcrowding through appropriate criminal justice reforms, which should include, where appropriate, a review of penal policies and practical measures to reduce pretrial detention, to enhance the use of non-custodial sanctions and measures and to improve access to legal aid to the extent possible, bearing in mind the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, and requests the United Nations Office on Drugs and Crime to continue to provide technical assistance to Member States, upon request, in this respect;"*

## 17. Equal access to justice for all (A/RES/78/227) - 2023

This Resolution is the first ever General Assembly Resolution focusing explicitly on the topic of equal access to justice for all. In May 2023, the 32nd session of the UN Commission on Crime Prevention and Criminal Justice adopted draft resolution V. entitled "Equal access to justice for all" and recommended its adoption by the General Assembly.

This ground-breaking resolution establishes clear priorities for Member States to advance implementation of commitments under international human rights obligations, including non-discrimination, linking the Agenda for Sustainable Development with human rights and crime prevention and criminal justice. It also requests UNODC to 1) to convene a meeting of experts, nominated by Member States, during the intersessional period, with interpretation into all official languages of the United Nations, subject to the availability of extrabudgetary resources, with a view to sharing information on challenges, lessons learned, best practices and enabling factors needed to enhance the functioning of criminal justice systems to ensure equal access to justice for all; and 2) to continue developing technical tools and training material based on United Nations standards and norms in crime prevention and criminal justice and to provide technical and material assistance to Member States, upon request, to ensure access to justice.

### Important paragraphs on legal aid:

**Introduction** *"Recognizing that access to legal aid is an essential element of fair, humane and efficient criminal justice systems that are based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fairness and public trust in the criminal justice process and can contribute to the progressive realization of economic, social and cultural rights,"*

### The General Assembly

**Para. 2** *"Emphasizes the right of equal access to justice for all, including people in vulnerable situations, and the importance of awareness-raising concerning legal rights, and in this regard commits to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid;"*

**Para. 9** “Also encourages Member States to, as appropriate, employ different models of legal aid, and to consider effective ways to provide access to legal aid to ensure access to justice for all, without discrimination of any kind;

**Para. 10** Further encourages Member States, in accordance with their domestic law, to promote and implement policies aimed at guaranteeing access to justice for people in vulnerable situations without sufficient means, through timely, effective, adequately resourced and affordable and, whenever possible, free legal aid promoted by the State with the appropriate support of relevant academic institutions.”

## II. Economic and Social Council Resolutions

1. Safeguards guaranteeing protection of the rights of those facing death penalty RES 1984/50 – 1984 and Implementation of the safeguards guaranteeing protection of the rights of those facing death penalty (E/RES/1989/64) – 1989<sup>2</sup>

Capital punishment may only be carried out pursuant to a final judgment rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in Article 14 of the ICCPR, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings. While not specifically mentioning legal aid, this is an important resolution regarding the right to adequate support.

2. Administration of juvenile justice (E/RES/1997/30) – 1997, and Guidelines on justice in matters involving child victims and witnesses of crime (E/RES/2005/20) – 2005

These do not specifically mention legal aid but are important Resolutions on access to legal assistance. The Council urges that priority should be given to setting up agencies and programmes to provide legal and other assistance to children, if needed free of charge, such as interpretation services, and to ensure that the right of every child to have access to such assistance from the moment that the child is detained is respected in practice.

**IX. The right to effective assistance, para. 22** “Child victims and witnesses and, where appropriate, family members should have access to assistance provided by professionals who have received relevant training. This may include assistance and support services such as financial, legal, counselling, health, social and educational services, physical and psychological recovery services and other services necessary for the child’s reintegration. All such assistance should address the child’s needs and enable him or her to participate effectively at all stages of the justice process.”

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<sup>2</sup> See also E/RES/1984/50.

### 3. International Cooperation for the Improvement of Access to Legal Aid in Criminal Justice Systems, Particularly in Africa (E/RES/2007/24) – 2007

#### The Council

**Para. 4** *“Requests the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, in cooperation with relevant partners, to continue to provide advisory services and technical assistance to Member States, upon request, in the area of penal reform, including restorative justice, alternatives to imprisonment, the development of an integrated plan for the provision of legal assistance, including paralegals and similar alternative schemes to provide legal aid for persons in communities, including victims, defendants and suspects at all critical stages in criminal cases, and legislative reforms that guarantee legal representation in accordance with international standards and norms”*

and also

**Para. 5** *“Requests the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources and in cooperation with the African Institute for the Prevention of Crime and the Treatment of Offenders, to assist African States, upon request, in their efforts to apply the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa.”*

### 4. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (E/RES/2012/15) – 2012

This Resolution is the basis for the adoption of the instrument by the General Assembly in its resolution 67/187 later that same year.

### 5. Promoting and Encouraging the Implementation of Alternatives to Imprisonment as Part of Comprehensive Crime Prevention and Criminal Justice Policies (E/RES/2017/19) – 2017

Recalling several important instruments in the area of crime prevention and criminal justice, including the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, and mindful of the former in which stressing that legal aid could play an important role in facilitating diversion and the use of community-based sanctions and measures, including non-custodial measures, the Council:

**Para. 4** *“Encourages Member States to build capacity and provide adequate resources for the effective implementation of alternatives to imprisonment, taking into account the potential role of the community, civil society and the private sector, where appropriate, in the provision of legal aid and the treatment, social rehabilitation, reintegration and, as necessary, aftercare of offenders”*

### III. United Nations Congress on Crime Prevention and Criminal Justice Declarations

1. Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice (A/RES/60/177) – 2005

The General Assembly calls upon Member States:

**Para. 18** [...] to take steps, in accordance with their domestic laws, to promote access to justice, to consider the provision of legal aid to those who need it and to enable the effective assertion of their rights in the criminal justice system.

2. Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World (A/RES/65/230) – 2010

The General Assembly urges Member States to

**Para. 5** “ensure effective gender equality in crime prevention, access to justice and the protection offered by the criminal justice system. Legal aid is not explicitly mentioned.”

3. Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels, and Public Participation (A/RES/70/174) – 2015

In the Doha Declaration, Member States acknowledged

**Annex, Para. 4** “that sustainable development and the rule of law are closely interrelated and mutually reinforcing.”

They reaffirmed the

**Annex, Para. 2** “shared commitment to uphold the rule of law and to prevent and counter crime in all its forms and manifestations”,

and highlighted the importance of public participation in these efforts.

The Declaration also calls on States to make more effective use of globally agreed frameworks such as the United Nations Conventions in the area of crime and drug control, the universal legal instruments against terrorism and United Nations standards and norms on crime prevention and criminal justice, and to promote a culture of lawfulness and ensure

**Para. 3** “holistic and comprehensive approaches to countering crime, violence, corruption and terrorism in all their forms and manifestations.”

Important reference to legal aid:

**Para. 5** “We reaffirm our commitment and strong political will in support of effective, fair, humane and accountable criminal justice systems and the institutions comprising them, and encourage the effective participation and inclusion of all sectors of society, thus creating the conditions needed to advance the wider United Nations agenda, while respecting fully the principles of sovereignty and territorial integrity of States and recognizing the responsibility of Member States to uphold human dignity, all human rights and fundamental freedoms for all, in particular for those affected by crime and those who may be in contact with the criminal justice system, including vulnerable members of society, regardless of their status, who may be subject to multiple and aggravated forms of discrimination, and to prevent and counter crime motivated by intolerance or discrimination of any kind. To that end, we endeavour: [...]

(c) To review and reform legal aid policies for expansion of access to effective legal aid in criminal proceedings for those without sufficient means or when the interests of justice so require, including, when necessary, through the development of national plans in this field, and to build capacities to provide and ensure access to effective legal aid in all matters and in all its forms, taking into account the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems;  
[...]

(k) To intensify our efforts to address the challenge of prison overcrowding through appropriate criminal justice reforms, which should include, where appropriate, a review of penal policies and practical measures to reduce pretrial detention, to enhance the use of non-custodial sanctions and to improve access to legal aid to the extent possible;” [...]

**Para. 8** “We endeavour to strengthen international cooperation as a cornerstone of our efforts to enhance crime prevention and ensure that our criminal justice systems are effective, fair, humane and accountable, and ultimately to prevent and counter all crimes. We [...] therefore strive:

(a) To promote and strengthen international and regional cooperation to further develop the capacity of national criminal justice systems, including through efforts to modernize and strengthen national legislation, as appropriate, as well as joint training and upgrading of the skills of our criminal justice officials, in particular to foster the development of strong and effective central authorities for international cooperation in criminal matters, inter alia, in the areas of extradition, mutual legal assistance, transfer of criminal proceedings and transfer of sentenced persons, and to conclude, where appropriate, bilateral and regional cooperation agreements, and to continue the development of specialized networks of law enforcement authorities, central authorities, prosecutors, judges, defence lawyers and legal aid providers to exchange information and share good practices and expertise, including, where appropriate, by promoting a global virtual network to advance, where possible, direct contact among competent authorities to enhance information-sharing and mutual legal assistance, making the best possible use of information and communication platforms;” [...]

#### 4. Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: Towards the Achievement of the 2030 Agenda for Sustainable Development (A/CONF.234/16) – 2021

The 14th UN Congress on Crime Prevention and Criminal Justice was held in a hybrid format in March 2021 in Kyoto, Japan, with the theme of “Advancing crime prevention, criminal justice and the rule of law: towards the achievement of the 2030 Agenda”. Its Declaration contains specific mention of access to justice, as well as legal aid.

#### Important reference to legal aid:

##### ***Promoting the rule of law***

##### ***Access to justice and equal treatment before the law***

**Para. 48** “Ensure equal access to justice and application of the law to all, including vulnerable members of society, regardless of their status, including by taking appropriate measures to ensure treatment with respect and without discrimination or bias of any kind by criminal justice institutions.”

##### ***Access to legal aid***

**Para. 49** “Take measures to ensure access to timely, effective, adequately resourced and affordable legal aid for those without sufficient means or when the interests of justice so require, and raise awareness of the availability of such aid, including by promoting the practical application of relevant provisions of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 12 United Nations Office on Drugs and Crime tools on ensuring the quality of legal aid services in criminal justice processes and other related tools, by encouraging the development of guidance tools, as well as the collection and sharing of data on access to legal aid, and by developing a specialized network of legal aid providers to exchange information and best practices and to assist each other in carrying out their work; [...]”

#### IV. Commission on Crime Prevention and Criminal Justice Resolutions

##### 1. Promoting Legal Aid, Including Through a Network of Legal Aid Providers (RES 25/2) – 2016

#### The Commission

**Para. 3** “encourages Member States to adopt or strengthen legislative or other measures to ensure effective legal aid, including for victims of crime, consistent with their domestic legislation and in line with the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems.”

Further, it also

**Para. 4** “encourages Member States, in line with the recommendations in the Johannesburg Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and consistent with the Doha Declaration and their national legislation, to provide legal aid, where possible, to facilitate the sharing of information and best practices among legal aid providers, making the best possible use of existing information and communication platforms, and to share expertise on the development of national-level indicators for target 16.3 of the Sustainable Development Goals.”

The Commission invites Member States

**Para. 5** “to encourage, in collaboration with other relevant stakeholders as appropriate, the development of national, regional and international specialized networks of legal aid providers to exchange information and share good practices and expertise, including by considering, potential options for establishing a global virtual network to facilitate legal aid providers at the national, regional and international levels to establish contact.”

The Commission urges Member States, in line with the United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice and relevant and applicable international human rights instruments,

**Para. 7** “to ensure that children in contact with the justice system are informed of their rights and have prompt access to legal assistance and, where appropriate, legal aid, during police interrogation and while in police detention, and that they may consult their legal representative freely and fully confidentially.”

Additionally, reaffirming General Resolution 67/187, this Resolution 25/2 is another important document that strengthens the mandate of UNODC in the area of criminal legal aid, as it requests UNODC

**Para. 9** “to work closely with other United Nations agencies to continue to develop and disseminate, subject to the availability of extrabudgetary resources, relevant tools such as best practices, handbooks and training manuals, and to provide advisory services and technical assistance to Member States, upon request, in the area of legal aid, and to continue reporting at future sessions of the Commission on its efforts in this regard.”

## 2. [Mainstreaming a Gender Perspective into Crime Prevention and Criminal Justice Policies and Programmes and into Efforts to Prevent and Combat Transnational Organized Crime \(RES 26/3\) – 2017](#)

Recalling relevant United Nations standards and norms in crime prevention and criminal justice, the Commission



**Para. 12** “urges Member States, consistent with the Bangkok Rules, the Nelson Mandela Rules, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and Commission on Crime Prevention and Criminal Justice resolution 25/2 of 27 May 2016, to ensure that women in contact with the criminal justice system, particularly during police interrogation and while in police detention, are informed of their rights in criminal proceedings, and have access to legal aid, as appropriate, and in accordance with national laws.”

### 3. Strengthening the Engagement of All Members of Society in Crime Prevention (RES 28/1) – 2019

The Commission urges Member States, consistent with the Bangkok Rules, the Nelson Mandela Rules, the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems and Commission on Crime Prevention and Criminal Justice resolution 25/2 of 27 May 2016, to ensure that women in contact with the criminal justice system, particularly during police interrogation and while in police detention, are informed of their rights in criminal proceedings, and have access to legal aid, as appropriate, and in accordance with national laws.

The Commission further

**Para. 4** “calls upon Member States to adopt effective crime prevention strategies, policies and programmes for women, as well as children and other vulnerable members of society, which include measures against sexual assault, sexual exploitation, trafficking in persons and drug-related and other crimes, and to that end, to promote best practices, such as, inter alia, the use of technology to support the immediate recovery of lost children, the provision of legal aid and the protection of families against domestic violence.”

## V. Commission on Narcotic Drugs Resolution

Authorities in pursuing alternative measures to conviction or punishment for appropriate drug-related offences of a minor nature (RES 58/5) – 2015

The Commission recalls

**(Intro) Para. 3** “General Assembly Resolution 69/192 of 18 December 2014, in which the Assembly recommended that Member States continue to endeavour to reduce prison overcrowding and, where appropriate, resort to non-custodial measures as alternatives to pretrial detention, to promote increased access to justice and legal defence mechanisms, to reinforce alternatives to imprisonment and to support rehabilitation and reintegration programmes, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).”

While not mentioning legal aid specifically, it is an important resolution to incorporate the area of access to justice, of which legal aid is an integral part.

## VI. Human Rights Council Resolution

Human rights in the administration of justice, including juvenile justice (A/HRC/RES/36/16) – 2017<sup>3</sup>

The Council

**(Intro) Para. 10** “emphasizes that the right of access to justice for all, including access to legal aid, forms an important basis for strengthening the rule of law through the administration of justice, and acknowledges the contribution of other actors, including lawyers’ associations and civil society, in providing legal aid”

The Council

**Para. 5** “invites Governments to include in their efforts to implement the 2030 Agenda for Sustainable Development and their national development plans the administration of justice as an integral part of the development process, and to allocate adequate resources for fair and effective justice systems, including the provision of legal aid services with a view to promoting and protecting human rights, and to address gender inequality, and invites the international community to provide an increased level of both technical and financial assistance to States and to respond favourably to their requests for capacity-building, and enhancement and strengthening of institutions concerned with the administration of justice.”

The Council

**Para. 14** “encourages States to address overcrowding in detention facilities by taking effective measures, including by enhancing the availability and use of alternatives to pretrial detention and custodial sentences, access to legal aid, mechanisms for crime prevention, early release and rehabilitation programmes and the efficiency and capacity of the criminal justice system and its facilities, and to make use in this regard of, inter alia, the United Nations Office on Drugs and Crime Handbook on strategies to reduce overcrowding in prisons.”

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<sup>3</sup> See also A/HRC/RES/30/7.