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**Assessment report on quality assurance of legal aid provision in Georgia
for project “Enhanced Access to Legal Aid Services for Marginalised
Population”**

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The opinions expressed in this document are the responsibility of the author(s) and do not necessarily reflect the official policy of the Council of Europe.

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Abbreviations

ABA	American Bar Association
ASEAN	Association of Southeast Asian Nations
CPD	Continuous Professional Development
CoE	Council of Europe
CEPEJ	Council of Europe European Commission for the Efficiency of Justice
Et al.	Et alia
Etc.	Et cetera
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
GYLA	Georgian Young Lawyers' Association
LEPL	Legal Entity under Public Law (LEPL)
MoJ	Ministry of Justice
NGO	Non-governmental organization
NSW	New South Wales
OHCHR	United Nations Human Rights Office of the High Commissioner
QALA	Quality and Accessible Legal Aid in Ukraine
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Program
UNODC	United Nations Office on Drugs and Crime
UNFPA	United Nations Population Fund
USAID	United States Agency for International Development

Part I: Introduction

A. Purpose of report

In 2013, the UN Special Rapporteur on the independence of judges and lawyers warned that governments need to develop and sustain an effective legal aid system as an essential component of a fair and efficient justice system founded on the rule of law.¹ Legal problems left unaddressed can severely impact people's livelihood. Many countries have therefore developed legal aid programmes to allow people to more easily exercise their rights, make them aware of their rights and assist them to resolve their legal disputes. Legal aid can help people to have their voices heard, defend their rights and close the justice gap between those who can afford to pay for a lawyer and those who cannot. Hence, legal aid should be of high standard in all aspects such as knowledge among all people that legal aid is available to them, the ability of legal professionals to provide quality legal aid in a short timeframe, and how well providers of legal aid - individuals and institutions - are networked in order to refer people to the right legal professional to allow people to use legal processes as intended before their legal situation worsens and burdens courts.

In Georgia, particularly vulnerable and marginalized groups, as this report will show, encounter many obstacles when exercising their right to legal aid. The purpose of this assessment report is therefore to explore how to ensure a good quality service for all people in the country, particularly in the context of the (Draft) 'Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service' (thereinafter 'the Standards'). The report is divided into four parts. Part I outlines the purpose of this report, and the terminology and methodology used for it. Part II presents an overview of the state of play of legal aid provision in Georgia. Part III analyses how the Standards assess and raise the quality of legal aid provision and looks at good examples of practice of legal aid of other CoE member states and countries of other regions relevant to the Georgian context. Those examples are not presented as 'models' but as alternative and interesting ways to ensure a high standard of service. The report concludes with a set of clear and specific recommendations (Part IV).

B. Terminology

Throughout this document, various terms are used which may have a different meaning depending on the context of their usage. In the context of this report,

- **"Applicant"** refers to the person applying for legal aid.
- **"Legal aid"** refers to legal advice, assistance and/or representation to the person entitled to it.²

¹ UN Special Rapporteur on the independence of judges and lawyers (2013) 'Legal aid, a right in itself'. *OHCHR*. <https://www.ohchr.org/en/press-releases/2013/05/legal-aid-right-itself-un-special-rapporteur>.

² CoE Guidelines (2021), definition 9(g).

- “**Legal aid provider**” or “**Provider**” refers to any person (legal or natural, and whether professionally qualified in law or not) involved in the delivery of legal aid, whether it be provided on a full-time, part-time or case-by-case basis.³
- “**One-stop shop**” refers to a single location where different legal services are provided by governmental or non-governmental bodies.⁴
- “**Paralegals**” refer to people with non-university legal education.
- “**Primary legal aid**” refers to legal aid to cover the costs related to legal information, initial legal advice and information about legal aid. It does not include legal representation before the courts.⁵
- “**Secondary legal aid**” refers to legal aid to cover the costs related to the legal representation before courts.⁶
- “**the Standards**” refers to the (Draft) ‘Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service’.
- “**Vulnerable group**” refers to a particular group of people who due to adverse social, economic, cultural and practices present in society are marginalized.⁷

C. Methodology and limitations

This report uses data collection and analysis to generate concrete evidence to substantiate findings. Data for this report was collected via a wide-ranging desk review, answers received from questionnaires and stakeholder interviews.

Primary and secondary resources on legal aid provision and the situation of vulnerable and marginalized groups were reviewed, including: national legislative frameworks of legal aid and relevant policies, international treaties, existing CoE and other international guidelines and recommendations, expert reports, academic articles, and assessments of other legal aid systems. The findings of the desk-based review were verified through questionnaires and interviews with stakeholders that are key to Georgia’s legal aid system and are familiar with the needs of vulnerable and marginalized communities. A total of seven stakeholders including the national legal aid authority, professional bodies, NGOs and international development agencies replied to the consultation. Over a period of two months, questionnaires were answered by the Legal Aid Service (LAS), the Mediators Association of Georgia, the Georgian Young Lawyers’ Association (GYLA), Rights Georgia and the Human Rights Centre.⁸ Additionally, interviews were held with UNDP and USAID.⁹ Each questionnaire

³ CoE Guidelines (2021), definition 9(h).

⁴ CoE Guidelines (2021), definition 9(l).

⁵ CoE Guidelines (2021), definition 9(o).

⁶ CoE Guidelines (2021), definition 9(q).

⁷ OHCHR (2021) ‘Non-discrimination: groups in vulnerable situations’. OHCHR. <https://www.ohchr.org/EN/Issues/Health/Pages/GroupsInVulnerableSituations.aspx>.

⁸ Replies to questionnaires were received from: LAS (reply received on 21 April 2023); Human Rights Centre (reply received on 13 April 2023); GYLA (reply received on 19 April 2023); Rights Georgia (reply received on 19 April 2023); Mediators Association of Georgia (reply received on 20 April 2023).

⁹ Interviews were held with UNDP on 12 May 2022 and with USAID on 22 May 2023.

and interview followed the same set of questions. The questionnaire addressed questions around the visibility of Georgia’s legal aid service, the effective coordination between national, regional and local legal aid providers, the conditions to obtain legal aid, and the quality of legal aid provision to vulnerable and marginalized groups in Georgia, containing closed-ended and open-ended questions to allow for discussion. The interviews were timed for one hour. The report also incorporates answers of an interview held with LAS to questions related to the (Draft) ‘Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service’.¹⁰

While this report aims to be comprehensive, it is not exhaustive. Limitations to the report include a lack of availability of some stakeholders for interview and a lack of overall statistics on legal aid provision, particularly on the legal needs of vulnerable and marginalized groups. Thus, this report does not attempt to provide a complete picture of the individual needs of each vulnerable and marginalized group in Georgia, but rather seeks to provide recommendations for all vulnerable and marginalized groups as a whole.

¹⁰ The interview with LAS was held on 29 May 2023.

Part II: State of play of legal aid provision in Georgia

A. Introduction

Part II of this report identifies the gaps and challenges people encounter when exercising their right to legal aid in Georgia. Key to a functioning legal aid system is that its services are accessible to all people, including vulnerable and marginalized groups who may experience difficulties in accessing them and require specific care, attention or assistance to do so.¹¹ This means that governments need to have in place a legal aid system that makes it easier for every person to access information about legal aid and that raises awareness that legal aid is available to them.¹² There are various measures and policies that may assist governments to help people access legal aid services, such as having a simple and straightforward procedure to apply for legal aid in place, a sufficient minimum number of providers - individuals and institutions - rendering legal aid services to people, legal aid providers being spread evenly across a country, sufficiently informing the public that legal aid is available to them, and providing information about legal aid in a manner that is clear and understandable for all people.¹³ In other words, people should exactly know where to go if they have a legal issue, what kind of support is offered to them and, if needed, where further information can be obtained.

In practice, however, many national legal aid systems fail vulnerable and marginalized groups by overlooking or not sufficiently addressing their specific needs.¹⁴ The term ‘vulnerable groups’ refers to a particular group of people who due to adverse social, economic, cultural and practices present in society are marginalized (for example, people with disabilities, women, the LGBTQI+ community, migrants, ethnic and religious minorities).¹⁵ Against this backdrop, various international and regional legal documents promote the right to equal access to justice for all - many of which also apply to Georgia. After joining the CoE in 1999, Georgia ratified the European Convention on Human Rights (ECHR), thereby becoming a member of the European Court of Human Rights (ECtHR).¹⁶ Article 6 of the ECHR guarantees every person’s right to a fair trial to which the right to legal aid is key. The requirement to pay fees should not hinder a person’s access to court if they are unable to pay for them.¹⁷ The Council of Europe (CoE) Guidelines on the Efficiency and Effectiveness of Legal Aid Schemes in the Areas of Civil and Administrative Law (hereinafter: the ‘Guidelines’) outline more detail about legal aid provision and the quality of service.¹⁸ Particularly, they highlight the vital role of legal aid in giving access to justice to all people equally and encourage states to follow the

¹¹ CoE Guidelines (2021), p. 7, 8 and 11.

¹² See, for example, UN International Principles and Guidelines on Access to Justice for Persons with Disabilities (2020), principle 6.

¹³ See, for example, CoE Guidelines (2021), p. 11 and 16.

¹⁴ Stefanie Lemke (2022) The Role of Legal Technology to Strengthen the Access to Justice for Disadvantaged Groups: An Overview of Best Practices from Asia and Europe, in: Association for Monitoring Equal Rights (ed.), *International Conference on Access to Justice: Strengthening Access to Justice for Disadvantaged Groups* (Ankara, Association for Monitoring Equal Rights). p. 3.

¹⁵ OHCHR (2021) ‘Non-discrimination: groups in vulnerable situations’. OHCHR. <https://www.ohchr.org/EN/Issues/Health/Pages/GroupsInVulnerableSituations.aspx>; UN ‘Vulnerable Groups: Who are They?’. UN. <https://www.un.org/en/fight-racism/vulnerable-groups>.

¹⁶ CoE (2023) ‘Georgia’. CoE. <https://www.coe.int/en/web/portal/georgia>.

¹⁷ ECtHR, *Kreuz v. Poland*, Application no. 28249/95, 19 June 2001, paras 60-67.

¹⁸ CoE (2021) *Guidelines on the efficiency and effectiveness of legal aid systems in areas of civil and administrative law* (Strasbourg, CoE).

vision of a “just, equitable, tolerant, open and socially inclusive world in which the needs of the most vulnerable are met”.¹⁹

B. Organization and administration of legal aid

Georgia has a population of 3,7 million people and is considered an Orthodox Christian-majority country, with several religious minority communities including Muslims and high levels of migration.²⁰ Ethnic groups make up more than 12 percent of the country’s population and include Azerbaijanis, Armenians, Russians, Ossetians, Yezidis, Greeks, Kists, Ukrainians and Assyrians.²¹

Georgia’s court system has three main levels: district (city) courts, courts of appeal, and the Supreme Court as the final level of appeal.²² The constitutionality of legal acts is reviewed by the Constitutional Court.²³ The Constitution provides for the right to a fair and public trial.²⁴ In regards legal aid, the most relevant sources are the Law of Georgia on Legal Aid, the Statute of the Legal Aid Service (LAS) and the LAS Internal Labour Regulations that contain specific rules on the organization and administration of legal aid. Primary and secondary legal aid delivery is administered by LAS in Tbilisi, which is an independent, legal entity of public law.²⁵ LAS’ regional presence is facilitated by its 14 legal aid bureaus²⁶ and 38 consultation centres²⁷ that are spread throughout the country, including in regions with linguistic minorities.

Legal aid is granted upon application and available for civil, criminal and administrative proceedings. Primary legal aid, i.e. the provision of legal consultations, is not linked to any conditions, except that consultations should not exceed one hour. Lawyers and non-lawyers alike can provide primary legal aid services. Secondary legal aid covers the drafting of legal documents and representation in court. Legal assistance in court is limited to lawyers while legal documents may be drafted by legal consultants as well. Eligible for secondary legal aid are citizens of Georgia, stateless persons and foreign nationals. Legal aid may be granted to people in criminal proceedings who lack the financial means to pay for legal fees.²⁸ In addition, people who belong to one of the following groups of beneficiaries are eligible for legal aid: young adults aged 18 to 21 who need assistance in criminal cases if they are not represented by a private lawyer, persons with disabilities, potential victims of domestic violence and cases involving violence against women²⁹, people with a long-term physical, mental or intellectual

¹⁹ CoE Guidelines (2021), p. 5, 8, 10, 11, 16.

²⁰ UNFPA (2022) *World Population Dashboard*, <https://www.unfpa.org/data/world-population/GE>.

²¹ Minority Rights Group International (2022) *World Directory of Minorities and Indigenous Peoples: Georgia*, <https://minorityrights.org/country/georgia/>.

²² Organic Law of Georgia on General Courts of 4 December 2009, LHG, 41, 08/12/2009, articles 14, 22 and 27.

²³ Organic Law of Georgia on the Constitutional Court of Georgia of 11 November 1997, No. 10594 December 2009, article 1.

²⁴ Constitution (1995), articles 18, 31 and 42.

²⁵ Statute of LAS, article 1(1).

²⁶ Law of Georgia on Legal Aid, article 16(1). Legal Aid Bureaus exist in Tbilisi, Kutaisi, Batumi, Zestaphoni, Akhaltsikhe, Gori, Zugdidi, Telavi, Mtskheta, Ozurgeti, Rustavi, Sighnaghi and Poti.

²⁷ Law of Georgia on Legal Aid, article 17. Mestia, Sachkhere, Akhalkalaki, Tsalki, Marneuli, Dmanisi, Duis, Dusheti, Kvareli, Lagodekhi, Shuakhevi, Khulo, Kobuleti, Tsalenjikhi, Abashi, Chkhorotsku, Senaki, Martvil, Khobi, Baghdati, Tskaltubo, Chiaturi, Kedi, Tsageri, Lentekhi, Oni, Khashuri, Akhmeta, Dedoplistskaro, Kharagauli, Gurjaani, Tkibuli, Samtredia, Khoni, Vani, Lanchkhuti and Adigeni.

²⁸ Drafting legal documents is not covered for this group of beneficiaries.

²⁹ Legal representation in criminal proceedings and before administrative institutions is not covered for this group of beneficiaries.

impairment that limits major life activities and people who seek recognition for such status in court³⁰, as well as asylum seekers and refugees if they do not speak the language of the court^{31,32}. Usually people do not need to submit additional documentation to verify their eligibility for legal aid if they are registered in the unified database of ‘socially vulnerable’ people. Applications for secondary legal aid provision can be submitted in person, by post, phone, electronically through the LAS website and app. Assignments to a lawyer are administered by LAS. The state budget allocated to legal aid (0.52 Euros per capita) is low compared to other European countries, where the median was 3.08 Euros per capita for 2020.³³

A distinctive feature of Georgia’s legal aid system is its mixed system of primary legal aid delivery. In practice, public and private providers such as NGOs render services. NGOs, however, provide services independently, meaning in their own capacity and without supervision of LAS. Providers include, in addition to LAS legal aid bureaus and consultation centres, the ‘Municipal Centre of Legal Aid and Community Engagement’ (‘My Lawyer’) as well as NGOs and individual lawyers, both contracted by LAS. Currently, one-stop shops are run permanently by LAS and temporarily by NGOs. The NGOs GYLA, Human Rights Centre and ‘Rights Georgia’ run several offices in the capital and other regions³⁴, but rely on outside funding to offer such a service and usually do not have the capacity to serve a large number of people. The one-stop shops offer legal services on the spot (on a walk-in basis or by prior appointment), by phone and electronically. One-stop shops run by NGOs may have different organizational arrangements in place, such as guidelines to sensitize staff to the specific needs of vulnerable and marginalized groups (such as Human Rights Centre).

Recurring legal issues because of which people seek advice include family matters (child allowance), domestic violence, inheritance, debt and review of decisions by public authorities. Legal issues that need urgent action include arrests of protesters, domestic violence, children’s rights, employment and pension matters. The public is informed of legal aid through permanent and mobile in-person services, websites of LAS and other legal aid stakeholders, helplines, tv programmes, published material like flyers and brochures, and social media (Facebook and Twitter). LAS provides consultations to up to 40,000 people and handles up to 20,000 cases in per year.

C. Accessibility of the legal aid service

³⁰ Legal representation in criminal proceedings and before administrative institutions is not covered for this group of beneficiaries. For a list of the kinds of groups of people covered by legal aid, see Minister of Labor, Health and Social Protection of Georgia, dated February 15, 2013, according to the order No. 01-6/N, and Resolution on the approval of the state health protection programs of the Government of Georgia. In addition, the applicant must not be a member of a family registered in the unified database of socially vulnerable families.

³¹ Code of Criminal Procedure, Article 45b. Legal representation in criminal proceedings and before administrative institutions, however, is not covered for this group of beneficiaries.

³² Law of Georgia on Legal Aid, articles 4.1. and 5.

³³ CEPEJ (2020) ‘Dynamic database of European judicial systems: Georgia’. CoE. <https://public.tableau.com/app/profile/cepej/viz/OverviewEN/Overview>.

³⁴ GYLA has nine offices in Tbilisi, Kutaisi, Gori, Zugdidi, Batumi, Telavi, Ozurgeti, Rustavi and Dusheti. Rights Georgia runs five offices in Tbilisi, Telavi, Chiatura, Ambrolauri and Akhaltsikhe. The Human Rights Centre provides services in Tbilisi, Gurjaani and Gori.

Legal aid services need to be accessible for people to ensure access to justice. In Georgia, however, it remains a real challenge for vulnerable and marginalized groups such as linguistic minorities and people with disabilities to access legal aid services. They are neither aware that legal aid is available to them nor that providers exist offering such aid to them. ‘Word of mouth’, LAS mobile teams, the bar association and NGOs are the most common ways to find out about legal aid. The goal of the LAS mobile teams is to inform the population of the existence of the service, its mandate and the application form for legal aid. Additionally, some one-shop stops are not physically accessible. They have no lift and can be reached only by climbing a number of stairs.

While the distinction between primary and secondary legal aid services is clear, referrals to other legal aid providers that could provide specialist support to vulnerable and marginalized groups as well as to people who do not have the means to pay for a lawyer but are not eligible for legal aid (for example, victim support organizations and mediation services) are rare. Collaboration between different legal aid providers and other organizations (for example, LAS, lawyers, NGOs) used to be good but vanished with the start of the Covid-19 pandemic and donor withdrawal. This lack of collaboration was also discussed during a meeting with USAID and UNDP in late June 2023, which are planning to revive the referral network. Currently, a positive example are GYLA and the Human Rights Centre that refer 23,000 and 4,000 people annually, respectively.

Though regular meetings have been held with vulnerable groups including linguistic minorities, disabled people and people living in ‘pre-conflict zones’ since 2021, it appears that particularly people with disabilities and those who live in a remote or border region are still not aware of existing services. Communication tools used to reach them are not sufficient. Another issue is that there is a shortage of lawyers and access to a lawyer is very limited in highland and border regions, such as in the townlet of Mestia. It is difficult for lawyers to make a living in rural areas which is why they offer their services mainly in the capital. Additionally, lawyers are unwilling to see clients living in remote areas. This is because travelling to such places is very time-consuming and remuneration is low. This, however, could change in future as LAS is planning to give more minibuses to providers to encourage them to see more disabled clients and those living in highland areas. There are also initiatives like mobile teams and third and fourth year law students being trained as paralegals to increase LAS’ reach in the region (for example, in the Adjara region which was funded by USAID).

D. Beneficiaries of legal aid

There are several challenges with regards the scope of services and recipients of legal aid. The current financial eligibility threshold to apply for legal aid is too strict, leaving many people who are in need of the service without legal assistance. In the Netherlands³⁵, for example, people’s eligibility for legal aid is assessed by looking at their income and assets like immovable property that were available two years prior to their application for legal aid. The reason for using that year’s data is that it usually has been found to be correct and is hence final. The information about people’s income and assets is provided by the tax authority. The

³⁵ Het Juridisch Loket (2021) ‘Ik kan de mediator of advocaat niet betalen. Krijg ik een toevoeging?’ <https://www.juridischloket.nl/hoewerken/advocaat-nodig/toevoeging-advocaat/>.

United Kingdom follows a similar approach, checking both the applicant's capital (for example, savings) and her/his gross and disposable income. Partners' assets count as well as is family size.³⁶ In Ukraine, legal aid is available to 13 "vulnerable groups" prescribed by law including children, victims of domestic violence, people with disabilities and people with a 'low income' that is linked to the minimum wage and that is established by parliament annually.³⁷ Additionally, it was shared during stakeholder consultations that the current legislation fails vulnerable and marginalized groups such as victims of domestic violence and disabled people because legal aid is not granted for all types of proceedings. Providers are also left in the dark about what is included into the scope of legal aid and what is not. Particularly, there is some confusion as to what type of service is covered by each category of beneficiaries. Additionally, the law does not include information about the kind of proof that is needed to be granted legal aid and does not refer explicitly to other important categories of vulnerable groups like linguistic and religious minorities. During stakeholder consultations, it was also indicated that particularly victims of domestic violence feel challenged by being required to submit additional documentation to prove their eligibility for legal aid. They are not in the position to gather such information on their own. They do not know where to go to get such information and, if so, might not receive the help they need.

E. Providers of legal aid

There is a lack of systematic data collection in the justice sector which makes it difficult to assess the quality of service of all providers like non-state providers in Georgia. Standardized guidance for legal aid providers other than the Code of Ethics for lawyers is missing. The quality of service varies greatly across Georgia. People are more likely to receive a good quality service in the capital than in the regions. In that regard, NGOs have developed some guidance, but such guidance is usually not available for external providers. In order to be allowed to work on legal aid cases, lawyers need to pass a bar exam. The Law of Georgia on Legal Aid does not require lawyers to be specialized and does not set out criteria against which their performance is checked. The Legal Aid Board, however, is in the position to approve rules and criteria for assessing the quality of service. In addition, client satisfaction surveys and on-site visits are used to assess the quality of providers' performance (for example, in the form of telephone interviews with clients). LAS also offers up to 50 trainings to providers each year. Topics are chosen based on findings of a survey that is circulated annually among providers. Such training is also organized by the bar. Lawyers have been specializing in children's rights for which they can obtain certificates. Yet findings of stakeholder consultations show that the quality of service offered by them is still low. They also revealed that lawyers stay up-to-date with latest legal developments mainly by following the news.

The provision of legal representation is limited to lawyers by law. Lawyers act either as 'public lawyers' who have a contract with LAS or 'invited lawyers' for LAS who have a service agreement with LAS. Legal aid cases are allocated via a case management system ('case bank') to lawyers. They are assigned to cases based mainly on their availability. While in previous years, cases were assigned irrespective the providers' competence or specialisation, LAS launched in 2023 the Legal Aid Bureau for specialized cases that handles cases involving, among others, minors, asylum seekers and plea agreements. Yet, in practice, this may still

³⁶ <https://www.gov.uk/legal-aid/eligibility>

³⁷ <https://www.legalaid.gov.ua/>

result in some vulnerable people being assigned to a lawyer who does not know how to deal with their needs. (for example, the specific needs of women and religious minorities). This, however, could change in future as LAS has set up a psychological support service and a mentorship programme for lawyers to assist them in such situations. It was shared during stakeholder consultations that legal aid applicants approach lawyers too late and lawyers are overwhelmed by their number and their needs, especially with regards the specific needs of vulnerable and marginalized groups. Findings of stakeholder consultations also show that lawyers feel stressed and experience anxiety; furthermore, that they are not motivated to work on such cases as there are language barriers with regards linguistic minorities and they experience difficulties in claiming expenses for such cases (for example, reimbursement of costs for translating documents and for medical examination of clients). Additionally, lawyers are assigned to far too many cases and have no clear instructions by LAS on how to deal with vulnerable and marginalized groups. During interviews with stakeholders, it was shared that lawyers do not possess the necessary legal and communication skills to give qualified advice to them. It was also shared that particularly services run by LAS do not know how to serve their community; furthermore, that female clients avoid getting in touch with male lawyers because they fear that men would have little understanding for their situation. The bar does offer continuing professional development but not on vulnerable and marginalized groups. Donor-funded training programmes to sensitise lawyers to the needs of vulnerable and marginalized groups exist and are also offered by LAS. But such programmes are not mandatory and stakeholder consultations revealed that they appear to be little known among lawyers and other providers. NGOs like the Human Rights Centre have started offering training on vulnerable and marginalized groups. But such offer is limited to members of staff and beneficiaries whose cases qualify for strategic litigation.

Part III: Analysis

1. Introduction

This section is about how to ensure a good quality service in Georgia that is effective and efficient, supports and empowers vulnerable groups, and values the experience of people using the legal aid service.

Experiences of other countries show that requiring providers to adhere to quality standards including guidelines for service provision that apply to all actors, mandatory, periodic training, and regular assessment of the performance of providers can strengthen their ability to assist people and increase the public's confidence in the quality of service.³⁸ Ideal quality standards should be easily understood for providers, requiring them to understand the law relating to the cases they work on, to exercise due care in advising and representing legal aid clients, to only take on cases they have the experience, skills and capacity for, and to recognize the issues facing vulnerable and marginalized groups.

In Georgia, LAS has developed the (Draft) 'Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service' (hereinafter 'the Standards'), which have undoubtedly introduced significant changes to ensure the quality of service. The Standards are divided into three parts: an introduction to international and regional legal aid standards and the role of lawyer in the delivery of legal aid services (Title I), practice standards (Title II), and a set of rules to assess a provider's performance (Title III). The Standards provide providers with a comprehensive document that applies to both consultants and lawyers, covering administrative, civil and criminal legal aid.³⁹ They refer to a number of measures and mechanisms – objective and subjective quality indicators - that are key to ensure the quality of service (for example, requirements for approval as provider, audits, client satisfaction surveys, self-assessment, a mentorship programme, the possibility to file a complaint against a provider). Yet the Standards do not provide a robust quality assurance mechanism which would allow to ensure a consistent service throughout Georgia and increase the public's confidence in the quality of service. Substantial issues that affect providers and clients alike include that the Standards do not outline, for example, clear criteria for the appointment of providers, largely ignore the specific needs of vulnerable and marginalized groups, and lack a sound assessment of providers' performance. In the following, this report looks at some of the Standards' key shortcomings. It is first looked at matters that concern the entire document and thereafter it is looked more closely at specific rules of the Standards. Each section begins with a brief analysis followed by best practices of other countries, how they could be relevant to the Georgian context and recommendations for LAS.

2. General comments

a) Terminology

³⁸ UNODC (2016) *Global study on legal aid: Global report* (Vienna, UNODC). p. 107, 114.

³⁹ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter II, Rule 2.

The Standards should be easily understood. This includes to give providers a clear idea of the terms and formulations used in the document to allow them to exactly know which conduct to adopt to comply with the document. The Standards, however, use a number of vague concepts to describe providers' responsibilities to clients. This concerns, for example, the terms and formulations used to describe the time limits that providers should observe when rendering services (for example, 'a reasonable period of time', 'immediately', 'within reasonable time', 'request time to adequately communicate with the client and/or to adequately review the case file', 'reasonable intervals', 'periodically').⁴⁰ An exhaustive list clarifying their meaning does not exist, making it difficult for providers to understand how they could comply with the Standards. Providers are also left in the dark about a number of other terms. For instance, the Standards do not define the following notions and formulations:

- 'non-binding guidelines'⁴¹;
- 'the procedure established by the present chapter'⁴²;
- 'electronic means'⁴³;
- 'other important issue related to the case'⁴⁴;
- 'frequent communication'⁴⁵;
- 'extremely exceptional circumstances'⁴⁶;
- 'proactive use' of circumstances of the case and legal knowledge⁴⁷;
- no obligation to share 'irrelevant or insignificant information with the client'⁴⁸;
- 'child-friendly environment'⁴⁹;
- grounds that lead to a membership in the bar to be suspended or terminated⁵⁰;
- 'substantial violation of the law'⁵¹;
- 'relevance' of a case⁵²;

⁴⁰ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter V, Standard 1, Rules 2.1, 2.2, 2.5; 4.1; Chapter VI, Standard 2, Rules 4.4 and 4.5.

⁴¹ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter IV, Standard 1, Rule 3.

⁴² Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter V, Standard 1, Rule 2.4.

⁴³ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter V, Standard 1, Rule 3.1.

⁴⁴ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter V, Standard 1, Rule 4.6, lit. d.

⁴⁵ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter V, Standard 1, Rules 4.2 and 4.3.

⁴⁶ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter VI, Standard 2, Rule 2.3.

⁴⁷ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter VI, Standard 2, Rule 4.1.

⁴⁸ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter VI, Standard 2, Rule 7.1.

⁴⁹ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter VI, Standard 2, Rule 8.2.

⁵⁰ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter VI, Standard 2, Rule 26.

⁵¹ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter X, Standard 6, Rules 7, 8 and 10.

⁵² Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title III, Chapter 3, Rule 6.4.

- case that is 'complex and complicated'⁵³;
- 'minor inconsistencies or small deviations'⁵⁴;
- 'general conclusion/recommendation' by assessor⁵⁵;
- 'gross disregard' of the principles⁵⁶;
- mentor's 'guidelines'⁵⁷.

While it may not always be possible to provide a precise definition for each term, the Standards do not foresee any further guidance, for example in the form of a terminology section or a glossary of terms that could be included in the beginning of the document. Given that the purpose of the Standards is to make providers aware of their role and responsibilities to ensure a good quality service, the document should enable providers to exactly know which conduct to adopt to comply with its rules. In Australia (New South Wales)⁵⁸ and the UK (England and Wales⁵⁹ and Scotland⁶⁰), for example, quality standards list terms used in documents in 'Definitions and Interpretations' sections and, in the United States, terms that require further explanation are followed by an asterisk to signal that the term can be looked up in the terminology section.⁶¹ Another option could be to include, in the annex of the Standards, a commentary that could be used as a supplementary tool of interpretation. The commentary could summarize key cases and/or referring to relevant jurisprudence of national courts, the ECtHR European Court and other regional and international human rights bodies to support providers in situations where the rules of the Standards are not clear.

***Recommendation 1:** It is recommended to clarify the terms and formulations used in the Standards to describe a provider's responsibilities to clients (for example, by including a terminology section or a commentary that could be used as a supplementary tool of interpretation in the Standards). This would allow providers to better understand the rules of the Standards and help them to know which conduct to adopt to comply with them.*

b) Reference to other legislation

The Standards refer to a number of other existing and future provisions, laws and guidelines, without providing their full-text version.⁶² To make the document more accessible and make

⁵³ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title III, Chapter 3, Rule 8.4.

⁵⁴ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title III, Chapter 3, Rule 7.5.

⁵⁵ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title III, Chapter 3, Rule 7.6.

⁵⁶ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title III, Chapter III, Rule 7.4.

⁵⁷ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title III, Chapter IV, Rule 1.2.

⁵⁸ NSW Legal Aid (2022) Quality Standards, Definitions.

⁵⁹ Legal Aid Agency (2022) *Specialist Quality Mark Auditing Services Agreement 2022* (London, LAA). p. 4-11.

⁶⁰ The Scottish Government (2009) *Scottish National Standards for Information and Advice Providers: a quality assurance framework* (Edinburgh, The Scottish Government). p. 6-8

⁶¹ See, for example, ABA (2011) *Terminology ABA Model Code of Judicial Conduct*. p. 3. https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011_mjc_preamble_scope_terminology.pdf.

⁶² See, for example, Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title I, Chapter I; Title II, Chapter V, Standards 1, Rule 1; Chapter VII, Standard 3, Rule 1.

it easier for providers to align their behaviour with the Standards, it is advisable to include, in the annex of the Standards, a section that lists the full-text version of each legislation referred to in the Standards. Alternatively, it should be considered, adding links to the Standards wherever it is referred to another legal document. This could be done by adding a link to the respective rule of the Standards like in Australia (New South Wales)⁶³ and Ukraine⁶⁴, or adding a footnote to each rule that refers to another legal document. In the footnote, a link could be included directing providers to the relevant legal document.

***Recommendation 2:** Including, in the annex of the Standards, a section that lists the full-text version of each legal document referred to in the Standards or, alternatively, adding a link to each rule of the Standards that refers to another piece of legislation to direct providers to other provisions, laws and guidelines would ensure that they are familiar with the legislation referred to in the Standards and have the necessary knowledge to comply with them.*

c) Types of legal aid

The Standards cover administrative, civil and criminal legal aid⁶⁵, but they mainly set out rules for providers dealing with criminal cases.⁶⁶ Additionally, while comprehensive, the document is far too long and not easy to follow. It would be useful to structure the Standards in a manner that makes them more accessible and include more rules specifying the role and responsibilities of providers in cases other than criminal cases (for example, family cases). This may include, like in New Zealand, adding a table of content to the document and clearly outlining the general responsibilities that apply to all legal aid clients. In a separate chapter, the Standards could outline the providers' responsibilities that apply only to a particular area of law (for example, criminal matters, family matters).⁶⁷ To keep the document short and to the point, it could also be considered, like in the quality standards of Australia (New South Wales)⁶⁸, including links that direct providers to existing acts and standards that are relevant to the Standards.

***Recommendation 3:** It is recommended to restructure the document around general and specific responsibilities of providers to more clearly set out the requirements with which all providers should comply. It would also be advisable to add a table of content to the Standards and include in the document links directing to existing legal acts and other legal documents.*

d) Definition of secondary legal aid

In Georgia, it is not entirely clear what is covered by secondary legal aid, who shall deliver the service and to whom it shall be provided because such information is scattered over several

⁶³ NSW Legal Aid (2022) Quality Standards, https://www.legalaid.nsw.gov.au/data/assets/pdf_file/0012/41511/Legal-Aid-NSW-Quality-Standards.pdf.

⁶⁴ QALA (2014) *Legal Aid System in Ukraine: An Overview* (Kyiv, QALA). p. 60.

⁶⁵ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter II, Standard 2, Rule 2.

⁶⁶ See, for example, Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter XI, Standard 7; Chapter XII, Standard 8.

⁶⁷ MoJ (2017) *Legal Aid Practice Standards*, <https://www.justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/quality-assurance-framework/legal-aid-practice-standards/>.

⁶⁸ NSW Legal Aid (2022) Quality Standards, https://www.legalaid.nsw.gov.au/data/assets/pdf_file/0012/41511/Legal-Aid-NSW-Quality-Standards.pdf.

legislative acts and other documents. Providers, however, should exactly know who, for example, is covered by legal aid (for example, the types of vulnerable groups covered by the law and if they may be required, for example, like victims of domestic violence to submit additional documentation to apply for legal aid). Given the purpose of the Standards to provide more guidance to providers; it would be advisable to add a rule to the document that summarizes the types of services covered by secondary legal aid and the person who shall benefit from it. Such a rule could also include a link directing providers to a checklist that lists the services covered for each group of beneficiaries and gives specific examples for each group of beneficiaries.

***Recommendation 4:** It is recommended to revise the Standards and include a summary of the groups of beneficiaries of secondary legal aid provision to allow providers to better identify potential applicants for legal aid (for instance, in the form of a checklist for providers).*

3. Comments on specific rules

a) Entry requirements

An important facet of a good quality service is that providers need approval to be allowed to provide services. Many jurisdictions require providers to prove that they have the necessary knowledge, skills and experience to carry out their work and foresee additional requirements for handling cases that involve vulnerable and marginalized groups. This is because vulnerable and marginalized groups are more likely to need more guidance and specific assistance when seeking help for a legal issue.⁶⁹ The Standards, however, do not foresee specific requirements for any such cases. Providers are asked to have ‘knowledge of the substantive and procedural laws relevant to their area of legal practice’⁷⁰ and are allowed to handle legal aid cases even when they do not possess the necessary knowledge to do so. In that case, they are asked to obtain the knowledge they lack (for example, by studying a book).⁷¹

In other jurisdictions, quality standards clearly outline that providers need to fulfil experience and competence criteria to take on legal aid cases. In New Zealand, for example, the quality assurance framework allows providers to handle cases only if they have sufficient experience and meet certain competence criteria.⁷² For each area of law, different requirements apply. The quality assurance framework also includes a step-by-step guide that helps providers to see whether they fulfil the necessary criteria to take on a case. The experience and competence that providers need to gain for each area of law are clearly outlined in an ‘experience and competence criteria table’.⁷³ The table is split into four columns, listing, for

⁶⁹ Lemke Stefanie (2022) ‘The Role of Legal Technology to Strengthen the Access to Justice for Disadvantaged Groups: An Overview of Best Practices from Asia and Europe’. In: Association for Monitoring Equal Rights (ed.), *International Conference on Access to Justice: Strengthening Access to Justice for Disadvantaged Groups* (Ankara, Association for Monitoring Equal Rights).

⁷⁰ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter VI, Standard 2, Rule 4.2.

⁷¹ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter VI, Standard 2, Rule 4.5.1.

⁷² MoJ (2023) *Quality assurance framework*, <https://www.justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/quality-assurance-framework/>; Schedule to Legal Services (Quality Assurance) Regulations 2011, Regulation 6(1) and (2).

⁷³ MoJ (2021) *Applying to be a legal aid provider: Step-by-step guide* (Wellington, MoJ). p. 3.

each area of law, the minimum period of recent experience, minimum number of cases or proceedings, indicative number of cases or proceedings (the level of necessary practical experience at which approval as provider is likely to be given), and other requirements (for example, participation in a specific training course). Areas of law / practice covered by the table include civil cases, criminal law, police detention, family law, mental health, employment, cases involving refugees, and cases at special tribunals. For instance, becoming a provider for cases involving refugees requires to have worked on cases involving refugees for at least 18 months, as well as having handled at least five cases at the immigration authority and at least one case before the immigration tribunal. In Australia (New South Wales), the quality standards also set out experience and competence criteria for each area of law, specifying at least the minimum number of years lawyers need to be admitted to the bar to be considered as provider. Additional requirements apply to cases involving vulnerable and marginalized groups to ensure that providers are sensitized to their specific needs. For instance, for cases involving children, providers are asked to prove that they have a five years' experience in children's rights, a specialist accreditation in children's rights, clearance to work with children, having successfully completed training programmes by the legal aid authority on topics such as representation of children and parental responsibilities, and providing a reference to confirm the provider's five years' experience and comment on the provider's written abilities and advocacy skills.⁷⁴ In Lithuania, lawyers need to be a member of the bar and pass a special entry exam to be allowed to provide legal aid services on a continuous basis.⁷⁵ In Ireland, there is a training requirement for lawyers to work on legal aid cases. For lawyers with an interest in legal aid cases involving vulnerable adults, for example, the legal aid authority runs, over a period of three months, a 'Coffee and Learn / Lunch and Learn' training series that prepares lawyers for working on such cases. Lawyers attending at least 75% of the events of the series meet the training element of the criteria for entry as legal aid provider for vulnerable adults. Legal aid work in other areas of law (for example, asylum law) requires lawyers to attend at least one (induction) training programme that is organized by the Legal Aid Board and is free of charge for them.⁷⁶

***Recommendation 5:** It is recommended to specify the minimum criteria for becoming a legal aid provider for certain areas of law / practice to ensure that the provider is competent to take on cases (for example, by requiring a minimum number of years of legal practice for each field of law). Alternatively, a table could be added to the Standards, clearly outlining the experience and competence criteria that need to be met to handle cases for certain areas of law. Cases involving vulnerable and marginalized groups should be allocated solely to providers who fulfil additional requirements to ensure that providers are sensitized to their specific needs (for example, proof of successful completion of a specific training programme organized by LAS).*

b) Training

Regular training is essential to ensure that providers understand how to serve their community and stay up-to-date with latest developments in their field of practice. It can help changing providers' way of thinking and equip them to be able to better deal with the needs

⁷⁴ NSW Legal Aid (2022) Quality Standards, Rules 42.8.-42.14.

⁷⁵ Order of Ministry of Justice of 17 June 2020, No. 1R-169, Articles 2 and 3.

⁷⁶ Legal Aid Board (2023) *International Protection: Solicitors Panel*, <https://www.legalaidboard.ie/en/lawyers-and-experts/legal-professionals-in-civil-cases/international-protection/>.

of vulnerable and marginalized groups. While LAS and partners offer already a range of training programmes (including training on the needs of vulnerable and marginalized groups); in the Standards, training plays only a minor role to become a provider and, once admitted to the service, to extend experience and skills. This should be changed. According to the Standards, training plays a role when evaluating a provider's performance and is considered necessary after a provider was found not to satisfy the rules set out in the Standards.⁷⁷ The Standards also ask lawyers to undertake the 'necessary training for the development of legal knowledge and professional skills' and 'periodically familiarize' themselves with changes in the legislative field.⁷⁸ But they do not require providers to give proof of participation in training to be approved as provider or to be assigned to a legal aid case (for example, when being assigned to a case that involves victims of torture, children, people with a disability, clients who self-harm⁷⁹). The Standards also fail to specify how regularly such training to update knowledge and skills should be attended.

Particularly, no specific training is foreseen in the Standards to address the specific needs of vulnerable and marginalized groups. In other CoE jurisdictions and countries of other regions, providers need to meet certain criteria relating to training to join the legal aid service and show that they stay up-to-date with latest development in their field of practice. In Australia (New South Wales), for example, the Quality Standards require providers to invest in continuous professional development (CPD) to extend their knowledge and skills. CPD is mandatory for providers practicing in areas of law that involve vulnerable groups like children. They are required to attend a certain number of CPD activities per year.⁸⁰ Ways to meet CPD requirements include educational activities such as seminars, workshops, lectures, conferences, discussion groups and multimedia or web-based programmes.⁸¹ For all other providers, the Quality Standards foresee that they have to undertake training as required by the legal aid authority, which may involve specialist training.⁸² A similar system exists in Lithuania where lawyers need to collect a certain number of credits per year (for example, through participation in seminars, conferences, round table discussions or other legal events).⁸³ In Ireland, lawyers are required to attend learning events and other training programmes organized by the Irish Legal Aid Board or their professional organization to be allowed to take on and continue to work on legal aid cases that involve children, vulnerable adults and other vulnerable groups.⁸⁴ In Ukraine, participating in accredited training courses on substantive law and skills-based topics, which is co-organized by the Coordination Centre for Legal Aid Provision, the bar association and partner NGOs, is compulsory for providers and, in Vietnam, training for providers particularly focusses on strengthening their ability to

⁷⁷ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title III, Chapter II, Rules 1.1, 1.9 and 2.5; Chapter III, Rule 3.

⁷⁸ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter VI, Standard 2, Rules 4.4 and 4.5.

⁷⁹ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter VI, Standard 1, Rule, 4.7; Standard 2, Rules 1.3, 1.5-1.8, 16 and, 20; Chapter X, Standard 6, Rule 4.

⁸⁰ NSW Legal Aid New South Wales (2022) Quality Standards, Rule 20.

⁸¹ Legal Profession Uniform Continuing Professional Development (Solicitors) Rules 2015, Rule 8.

⁸² Legal Aid New South Wales (2022) Quality Standards, Rule 21.

⁸³ Anzelika Baneviciene (2023) *National Report: Lithuania* (Glasgow, ILAG).

⁸⁴ Legal Aid Board (2023) *Assisted Decision Making Solicitors Panel*, <https://www.legalaidboard.ie/en/lawyers-and-experts/assisted-decision-making-capacity-act-and-legal-aid/assisted%20decision%20making%20solicitors%20panel/>.

give support to victims of domestic violence and raise awareness of that domestic violence is not a “private issue”.⁸⁵

***Recommendation 6:** It is recommended to specify the criteria relating to training to build capacity and educate providers, ease the burden on them and build trust, particularly with vulnerable and marginalized clients.*

c) Audits

Evaluation mechanisms like audits are key to quality assurance, ensuring that everyone accessing legal aid services receives a consistent level of service. They ensure that action is taken when providers have breached their obligations and allow them to enhance their performance through guidance and clarification. Audits involve an examination of providers’ files to check they are providing a good quality, cost effective service to their clients. The Standards, however, do not provide a sound mechanism to audit providers. It is positive that all providers are audited once per year and that assessors select cases randomly, but may prioritise cases that involve vulnerable and marginalized groups like people with a disability.⁸⁶ The Standards also specify the time period for the audit, which is one month, at which end a recommendation is issued. A recommendation is based on information available about the provider in the online case management system (case bank), a self-assessment form, a client communication questionnaire filled out by the provider, a client satisfaction survey, monitoring the provider’s performance during court hearings, and information provided by judges and authorities familiar with selected cases.⁸⁷ Yet the scope and methodology of the audit are unclear. It is not outlined how an assessor’s conflict of interest who is an employee of LAS is avoided and based on which criteria a recommendation is issued. Additionally, it is questionable how effective an audit is if providers themselves are allowed to select the cases for audit⁸⁸ and it is also relied on self-assessment⁸⁹ where some providers may claim to be uniformly excellent and more modest lawyers may find themselves at risk of being penalized for their honesty.⁹⁰ Moreover, the audit process lacks transparency because currently the Standards do not define the criteria on which assessors should focus in their assessment and no rating system exists to determine whether audit findings are serious.

In New Zealand, for example, an external evaluation in the form of periodic peer reviews is used to assess providers’ performance. Services provided to legal aid clients are evaluated against specified criteria and levels of performance by independent experts who are highly qualified practicing lawyers.⁹¹ The audit’s purpose is to see how well providers communicate

⁸⁵ UNODC (2019) *Handbook on ensuring quality of legal aid services in criminal justice processes: practical guidance and promising practices*. (Vienna, UNODC). p. 67.

⁸⁶ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title III, Chapter III, Rule 6.4.

⁸⁷ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title III, Chapter II, Rule 1.

⁸⁸ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title III, Chapter III, Rule 4.5.

⁸⁹ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title III, Chapter III, Rule 8.1.

⁹⁰ Paterson Alan and Avrom Sherr (2017) *Peer Review and Cultural Change: Quality Assurance, Legal Aid and the Legal Profession* (Glasgow, International Legal Aid Group). p. 6.

⁹¹ MoJ (2023) *Audits*, <https://www.justice.govt.nz/about/lawyers-and-service-providers/legal-aid-lawyers/quality-assurance-framework/audits-and-checks/>.

with their clients to ensure clients understand and can actively participate in decision-making related to their case, whether providers adequately advocate for clients in court, that providers follow the client's instructions in court, whether providers are well prepared for client meetings or hearings, and whether providers conduct themselves with professionalism. Providers are selected for audit based on their risk profile (for example, number of complaints received, poor performance in previous audit) or are randomly selected. Files selected for audit include a range of case types and recent activities undertaken by the provider which provides a reasonable spread of the provider's activity. First, an interview is conducted with the provider. This is followed by a review of selected files by an auditor who stays anonymous to verify and validate the case management process the provider has outlined during the interview. The audit content focuses on three main topics: service quality, administrative obligations and invoicing. Evidence of good quality services include, for example, records of legal research and hearing preparation, frequent contact with the client (using letters, emails or texts), sound written advice, and detailed file notes about each court event. Administrative obligations are assessed by looking at how well the provider complies file-keeping obligations set out in the quality standards. The touchstone for compliance is that another provider should be able to pick up the file and quickly identify the status of the case and its history. Good file keeping is also relevant for evaluating a provider's invoicing. In this context, auditors compare the level of work completed by the provider and the fees and time charged to the legal aid authority. In most cases, providers' invoices will be supported by their files. Each of the three main topics is awarded a rating, ranging from 1 (excellent) to 5 (poor). Following the assessment of the provider's case management, the auditor prepares a letter for the provider, the audit report, that advises on how to perform good work, detailing the overall rating and key findings and observations highlighting strengths and areas of good practice. It may also include recommendations for improvement (in case of less serious audit findings), corrective actions that must be implemented by the provider within a specified timeframe (in case of serious audit findings) and matters requiring immediate action (for example, private payment, fraud) that may lead to issuing a default notice or ending the contract with the provider.⁹² Providers are referred to a Performance Review Committee if they fail to complete the corrective action within the required timeframe or to the legal aid authority's satisfaction. Different audit tools exist for criminal and family cases.

In order to ensure a high quality and objectivity of peer review, in the UK (England and Wales), for example, auditors are consultants who are independent from the legal aid authority and are appointed through an open selection process. They are experienced legal aid practitioners who have to meet a number of minimum requirements (for example, minimum number of post qualification casework experience, legal aid contract experience, previous experience as supervisor). Auditors assess random samples of a provider's case files (the file sample is generated by a randomisation tool that has been developed in Excel). Performance of providers is checked against a set of clear and objective criteria (for example, observance of client care standards, case management, participation in training events, the number of complaints made against a provider).⁹³ To ensure consistent evaluation by the auditors, auditor use handbooks (the 'Peer Review Criteria and Guidance' and 'Quality Guides') provided to them by the legal aid authority as well as a rating system (ranging from 'Excellence

⁹² MoJ (2023) *Legal aid full audit methodology* (Wellington, MoJ). p. 11

⁹³ See, for example, Avrom Sherr et al. (1994) *Lawyers: The Quality Agenda* (London, The Legal Aid Board).

(1)' to 'Failure in Performance (5)') for their assessment.⁹⁴ There are different sets of review criteria for each category of law (criminal, civil, asylum, mental health). Auditors write a detailed report containing their findings, including positive areas, areas for improvement and the overall quality rating. In Scotland, legal aid providers have their work periodically reviewed by a peer reviewer, who is another solicitor trained to do quality assurance reviews. Different peer review systems exist for criminal cases and cases involving children.⁹⁵

Peer reviews are also used in other CoE countries like in the Netherlands where lawyers need to participate once a year in a peer review. Peer reviews are conducted in the area of asylum law. This is because it is likely to be difficult for asylum seekers to make a complaint against their lawyer due to language and other barriers. Peers are lawyers selected by the bar association. They are tasked with regularly checking the files of lawyers who work on asylum cases, attending their court hearings and evaluating the work of new asylum lawyers.⁹⁶ In Belgium where peer reviews are performed by fellow lawyers who assess whether the legal aid assignment has been carried out properly (quality control) or has not been carried out at all (effectiveness). Additionally, there is a 'cross-check' by a group of auditors, composed of Flemish and Walloon lawyers, who review a certain number of completed assignments according to their field of specialisation. If the auditors disagree about a case, the president of the Flemish or Walloon legal aid office will take the final decision on it.⁹⁷

***Recommendation 7:** It is recommended to clarify the scope and methodology of the procedure that is used to audit providers (for example, by setting out clear and objective assessment criteria and introducing a rating system). It is also advisable to allow highly qualified, external assessors to participate in audits to ensure a greater level of independence and impartiality of assessors.*

d) Mentorship programme

It is welcome that the Standards foresee that providers, after a negative audit, are encouraged to improve their knowledge and skills by being assigned to a mentor for a period of at least three months. This period may be extended for another three months if needed. While many other countries such as Australia (Victoria)⁹⁸ and New Zealand⁹⁹ also use education as the primary method of improving quality and compliance (for example, through increasing support through mentoring from another provider, good practice templates, support material), it is questionable if Georgia's mentorship programme can achieve this goal. This is because considerable discretion is currently given to the individual mentor to determine the content and organization of the mentorship (for example, the number of meetings between mentor and provider, the number of trainings the provider should attend, grounds for extension of the mentorship of another three months).¹⁰⁰ While the 'mentor's guidelines'

⁹⁴ Legal Aid Agency (2021) *Independent Peer Review Process Document* (London, LAA). p. 6

⁹⁵ Scottish Legal Aid Board (2023) *Quality Assurance Scheme*, <https://www.slab.org.uk/solicitors/quality-assurance-scheme/>.

⁹⁶ Femke van der Lans et al. (2023) *National Report: The Netherlands* (Glasgow, ILAG). p. 17.

⁹⁷ CoE Committee European Committee on Legal Co-operation (2021) *Guidelines on the efficiency and effectiveness of legal aid systems in areas of civil and administrative law* (Strasbourg, CoE). p. 20

⁹⁸ Victoria Legal Aid (2023) *Quality Assurance: Maintaining the quality of our services*, <https://www.legalaid.vic.gov.au/quality-assurance#the-quality-assurance-review-process>.

⁹⁹ MoJ (2023) Part 2: Audit and monitoring (Wellington, MoJ). p. 12.

¹⁰⁰ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title III, Chapter IV, Rule 1.2.

must be approved by LAS, the Standards do not specify their content. The Standards, however, should clearly define the scope of the mentor-mentee relationship to ensure a basic level of quality and that both parties' expectations are aligned; hence, the Standards should outline minimum criteria the mentor's guidelines should fulfil (for example, the purpose and expectations of mentorship, role and responsibilities of mentor and provider, issues in cases, avoidance of conflict of interest, regular monitoring and evaluation of the mentor's and mentees tasks). In other jurisdictions, such one-on-one mentoring requires to clarify, at the outset of the mentoring relationship, the scope of the mentoring relationship. In Canada (Ontario), mentors are provided with a checklist to meet the expectations of mentor and mentees. This includes determining the mentee's goals of mentorship, the duration, frequency and methods of consulting (for example, in person, by phone or email), and clarifying the mentor's and the mentee's role and responsibilities.¹⁰¹ The Standards should also foresee rules when providers do not meet expectations or fail to comply with the mentor's guidelines (for example, issuing a warning, cancelling or modifying a provider's approval to provide legal aid services, suspending contract work for a specified period), which are currently missing.

It should also be considered to admit trusted, external mentors to the mentorship programme as mentors selected from the legal aid bureaus might not be able to devote their full attention to the mentee. They have other job duties in addition to giving legal assistance and therefore might not have the time that is necessary to ensure the success of the mentorship programme. Admission criteria to become a mentor, such as experience, capacity, expertise, specialisation and number of legal aid cases handled could ensure a minimum level of quality. To motivate external mentors to apply for the mentorship scheme, they should receive a remuneration for their participation in it. Both, internal and external mentors, should also receive appropriate training (for example, in the form of an introductory course organized by LAS and a handbook that clearly outlines their role and responsibilities and includes the details of a contact mentors could approach if they have questions about their function).

***Recommendation 8:** It is recommended to clarify the organization and content of the mentorship to ensure that providers receive appropriate support during the mentorship (for example, outlining the minimum criteria the mentor's guidelines should fulfil regarding the scope of the mentoring relationship). The Standards should also clearly outline the consequences for providers for failure to comply with the mentor's guidelines. Additionally, it should be considered admitting external mentors to the mentorship programme to contribute to a culture of continuing improvement among providers. All mentors should fulfil certain minimum criteria and receive appropriate training on their role and responsibilities (for example, through development of a manual).*

e) Other issues

(1) Incentives

In addition to the above mentioned quality assurance tools, putting in place incentives for providers may also help to improve the quality of service in Georgia in the long-term. Such

¹⁰¹ Legal Aid Ontario, One-on-one mentoring, <https://www.legalaid.on.ca/lawyers-legal-professionals/mentoring-opportunities-at-legal-aid-ontario/one-on-one-mentoring/>.

incentives may include appropriate remuneration including that all (travel and other) expenses are paid and setting up an accountable and transparent performance appraisal system that gives rewards for good results (for example, bonus pay, faster promotion, additional leave).¹⁰² As a consequence, providers might be more motivated to do their job and more willing to see clients in highland and other remote areas.¹⁰³ In the Philippines, for example, the number of criminal legal aid lawyers working with the public attorney's office has quadrupled since salaries and other benefits have been increased for lawyers who have good results in terms of 'effective performance'.¹⁰⁴ In CoE jurisdictions like France and the UK (England and Wales), the commitment of legal professionals who help people gain access to justice is also rewarded (for example, in the form of an annual award).¹⁰⁵

***Recommendation 9:** It is recommended to put in place incentives to increase the number of legal aid providers in hard-to-reach communities.*

(2) Vulnerable and marginalized clients

Providers' handling of cases involving vulnerable and marginalized groups is currently a great concern in Georgia. It would therefore be advisable to include, in addition to the above quality assurance tools, a chapter in the Standards that pays attention to their particular needs. Currently, rules that refer, for example, to 'clients at risk' in the Standards do not specify the action lawyers could take to assist their clients in such a situation (for example how does a lawyer assess that the client is 'in the kind of environment where s/he is not subjected to violence or his/her will is not influenced in any way and it is possible to ensure confidentiality of the communication'¹⁰⁶?).

In Australia (New South Wales), for example, the quality standards give clear instructions to providers on how to address the specific needs of people who are considered vulnerable like victims of domestic violence and clients with a culturally and linguistically diverse background, and allow providers to take on such cases only if they fulfil additional requirements (for example, training). For example, the quality standards instruct providers not to put clients' safety at risk by putting their address on the front of a file, ask the client when it is safe to call, communicate to clients in a sensitive and trauma-informed way and make referrals to support services for them.¹⁰⁷ For each vulnerable group, the quality standards set out different requirements all of which can be found under the heading 'Priority clients'. To keep the document short but yet provide providers with the information they need, the quality standards include links directing providers to documents that inform in more detail about best practice standards relating to a particular group (for example, how to represent children,

¹⁰² ASEAN Intergovernmental Commission on Human Rights (2019) *Thematic study on legal aid* (Jakarta, ASEAN Secretariat). p. 23; New Zealand Law Society (2018) *Legal aid: the problems and issues*, <https://www.lawsociety.org.nz/news/publications/lawtalk/issue-923/legal-aid-the-problems-and-issues/>.

¹⁰³ UNODC (2019) *Handbook on ensuring quality of legal aid services in criminal justice processes: practical guidance and promising practices*. (Vienna, UNODC). p. 21, 53.

¹⁰⁴ ASEAN Intergovernmental Commission on Human Rights (2019) *Thematic study on legal aid* (Jakarta, ASEAN Secretariat). p. 23.

¹⁰⁵ Fr France: <https://www.barreausolidarite.org/nos-actions/actualites.html>. For the UK (England and Wales), <https://www.lawworks.org.uk/solicitors-and-volunteers/get-involved/lawworks-pro-bono-awards-2021>.

¹⁰⁶ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter V, Standard 1, Rule 3.1.

¹⁰⁷ For example, Quality Standards (2022), principles 9 -10; 41-45.

people belonging to an ethnic minority).¹⁰⁸ This also includes links to checklists to see what kind of steps providers could take if they are unsure whether they are competent to handle cases involving vulnerable or marginalized groups (for example, a link to a manual published by the bar association on how to deal with a client whose mental capacity is in doubt).¹⁰⁹ Other jurisdictions like New Zealand and the UK (Scotland) follow a similar approach, outlining particular practice standards for cases that involve, for example, children and victims of domestic violence.¹¹⁰ In Ireland, the Legal Aid Board has developed ‘Best Practice Guidelines’ for lawyers for legal aid work in family law, childcare, asylum matter and at mental health tribunals. They outline lawyers’ duties and practical information (for example, how to obtain a GP report for their client). If practitioners cannot follow the guidelines, they must give specific reasons for not doing so. Such reasons need to be noted in writing on the client’s file.¹¹¹ ‘Best Practice Guidelines’ also exist for domestic violence cases. They provide lawyers with a step-by-step guide on how to best assist their clients during each stage of proceedings: the initial consultation and legal advice stage, post consultation and pre-hearing stage, court proceedings, enforcement of domestic violence order and the file closure.¹¹²

Additionally, the Standards should ensure that clients receive the ‘right’ support; hence, that they require providers to know about each other’s services and know where to refer a ‘case’ if they are unable to help a client or further support for their clients is needed (for example, if the provider is in need of an expert or specialist¹¹³). Broad cooperation between different legal aid providers allows people, particularly vulnerable and marginalized groups, to have access to the service they really need. People’s willingness to seek help for their legal problem, however, is likely to diminish, the more times they are being re-referred. In Georgia, various providers of legal aid exist but currently only some providers like GYLA and the Human Rights Centre cooperate with other legal aid stakeholders. In addition, LAS is planning to revive its pre-pandemic referral network. At present, most providers appear to have little or no knowledge of the services offered by other legal aid actors anymore. As a consequence, people in Georgia are likely not to receive the support they need and may go through multiple referrals (if any). Experiences of other countries show that an effective coordination between providers of legal aid is essential to ensure that people receive the support they need for their legal or other problem. This includes the coordination between providers of primary legal aid to identify the legal problem, between primary legal aid providers and providers of other services (for example, mediation services, psychological assistance, women shelters), and between primary legal aid providers and secondary legal aid providers if the legal problem cannot be solved by the primary legal aid provider (for example, the problem is too complex). Therefore, the Standards should also require providers, like, for example, in Australia (New South Wales)¹¹⁴, to liaise with social services and other support networks to ensure that

¹⁰⁸ Quality Standards (2022), principles 5.2 and 6.1.

¹⁰⁹ Quality Standards (2022), principle 2.10.

¹¹⁰ For New Zealand: Practice Standards for Legal Aid Providers (2017), principles 20 and 21. For the UK (Scotland): Scottish Legal Aid Board (2023) *Children’s quality assurance*, <https://www.slab.org.uk/solicitors/quality-assurance-scheme/childrens-qa/>.

¹¹¹ Legal Aid Board (2023) Best Practice Guidelines, <https://www.legalaidboard.ie/en/lawyers-and-experts/legal-professionals-in-civil-cases/international-protection/best-practice-guidelines/>.

¹¹² Legal Aid Board (2023) *District Court Best Practice Guidelines*, <https://www.legalaidboard.ie/en/lawyers-and-experts/legal-professionals-in-civil-cases/district-court-private-family-law-matters/district-court-best-practice-guidelines/>.

¹¹³ Rules and Criteria for the Assessment of Quality of Legal Consultation and Legal Aid provided by the LEPL Legal Aid Service, Title II, Chapter VI, Standard 2, Rule 1.4.

¹¹⁴ For example, Quality Standards (2022), principle 9.6.

clients receive the help they really need (for example, referring a client to a mediation service if they are not eligible for legal aid). Referrers would need to receive appropriate training. In a number of countries, handbooks are available to referrers providing them with guidance on how to make a referral.¹¹⁵ They teach referrers how to fill in a referral form and cover topics such as how to identify legal and non-legal issues, generalist or specialist support, urgency of enquiry and vulnerability of people. In Ukraine, providers also receive training to better identify cases for mediation. The training is delivered by mediators, together with the NGO “Institute for peace and common ground”, where participants learn how to refer a case to a mediator. In Malaysia, the bar association’s legal aid centre works closely with NGOs providing support to vulnerable groups. They give assistance in cases where lawyers lack the necessary expertise. NGOs collaborating with the bar include, for example, several women’s rights and faith-based organizations¹¹⁶.

Recommendation 10: It is recommended to add a chapter to the Standards that clearly outlines the role and responsibilities of providers when dealing with vulnerable and marginalized groups (for example, training requirements). Such a chapter may also include links directing providers to best practice standards that were developed by LAS and other trusted legal aid stakeholders such as the Georgian Bar Association.

Recommendation 11: It is recommended to revive Georgia’s referral system to ensure that people receive appropriate legal and non-legal support. Particular attention should be paid to the needs of vulnerable and marginalized groups which may require more assistance. The Standards should therefore be reviewed and require providers to know about other services and know where to refer a client if they are unable to help or further assistance is needed. Referrers should receive appropriate training on how to make a referral to another provider (for example, through development of a manual that outlines how to fill in a referral sheet, how to identify the vulnerability of a person, etc.). The Standards could include a link directing providers to such a document.

¹¹⁵ See, for example, Kingsford Legal Centre (2006) ‘Referral workbook’ (Sydney, Kingsford Legal Centre). https://www.klc.unsw.edu.au/sites/default/files/documents/Referral_Roundabout.pdf.

¹¹⁶ Like ‘All Women’s Action Society’ (<https://www.awam.org.my/>), ‘Women’s Aid Organization’ (<https://wao.org.my/>) and ‘Sisters in Islam’ (<https://sistersinislam.org/>).

Part IV: Recommendations

Recommendation 1: *It is recommended to clarify the terms and formulations used in the Standards to describe a provider's responsibilities to clients (for example, by including a terminology section or a commentary that could be used as a supplementary tool of interpretation in the Standards). This would allow providers to better understand the rules of the Standards and help them to know which conduct to adopt to comply with them.*

Recommendation 2: *Including, in the annex of the Standards, a section that lists the full-text version of each legal document referred to in the Standards or, alternatively, adding a link to each rule of the Standards that refers to another piece of legislation to direct providers to other provisions, laws and guidelines would ensure that they are familiar with the legislation referred to in the Standards and have the necessary knowledge to comply with them.*

Recommendation 3: *It is recommended to restructure the document around general and specific responsibilities of providers to more clearly set out the requirements with which all providers should comply. It would also be advisable to add a table of content to the Standards and include in the document links directing to existing legal acts and other legal documents.*

Recommendation 4: *It is recommended to revise the Standards and include a summary of the groups of beneficiaries of secondary legal aid provision to allow providers to better identify potential applicants for legal aid (for instance, in the form of a checklist for providers).*

Recommendation 5: *It is recommended to specify the minimum criteria for becoming a legal aid provider for certain areas of law / practice to ensure that the provider is competent to take on cases (for example, by requiring a minimum number of years of legal practice for each field of law). Alternatively, a table could be added to the Standards, clearly outlining the experience and competence criteria that need to be met to handle cases for certain areas of law. Cases involving vulnerable and marginalized groups should be allocated solely to providers who fulfil additional requirements to ensure that providers are sensitized to their specific needs (for example, proof of successful completion of a specific training programme organized by LAS).*

Recommendation 6: *It is recommended to specify the criteria relating to training to build capacity and educate providers, ease the burden on them and build trust, particularly with vulnerable and marginalized clients.*

Recommendation 7: *It is recommended to clarify the scope and methodology of the procedure that is used to audit providers (for example, by setting out clear and objective assessment criteria and introducing a rating system). It is also advisable to allow highly qualified, external assessors to participate in audits to ensure a greater level of independence and impartiality of assessors.*

Recommendation 8: It is recommended to clarify the organization and content of the mentorship to ensure that providers receive appropriate support during the mentorship (for example, outlining the minimum criteria the mentor's guidelines should fulfil regarding the scope of the mentoring relationship). The Standards should also clearly outline the consequences for providers for failure to comply with the mentor's guidelines. Additionally, it should be considered admitting external mentors to the mentorship programme to contribute to a culture of continuing improvement among providers. All mentors should fulfil certain minimum criteria and receive appropriate training on their role and responsibilities (for example, through development of a manual).

Recommendation 9: It is recommended to put in place incentives to increase the number of legal aid providers in hard-to-reach communities.

Recommendation 10: It is recommended to add a chapter to the Standards that clearly outlines the role and responsibilities of providers when dealing with vulnerable and marginalized groups (for example, training requirements). Such a chapter may also include links directing providers to best practice standards that were developed by LAS and other trusted legal aid stakeholders such as the Georgian Bar Association.

Recommendation 11: It is recommended to revive Georgia's referral system to ensure that people receive appropriate legal and non-legal support. Particular attention should be paid to the needs of vulnerable and marginalized groups which may require more assistance. The Standards should therefore be reviewed and require providers to know about other services and know where to refer a client if they are unable to help or further assistance is needed. Referrers should receive appropriate training on how to make a referral to another provider (for example, through development of a manual that outlines how to fill in a referral sheet, how to identify the vulnerability of a person, etc.). The Standards could include a link directing providers to such a document.

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