

Boosting the effectiveness of asylum systems: the impact of legal advice and representation

Outcome Report

2 October 2024, 15:30-17:00 CET

Online Format

Introduction

The third technical meeting of the Asylum Capacity Support Group (ACSG) Dialogue Platform was held on 2 October 2024 on the topic "[Boosting the effectiveness of asylum systems: the impact of legal advice and representation](#)". The session was co-moderated by the Refugee Consortium of Kenya and the ACSG Secretariat.¹ The meeting brought together 148 participants representing States (national asylum authorities and Geneva-based Permanent Missions), regional entities, civil-society organizations, academics and UNHCR.

The discussion highlighted the importance of legal advice and representation in enhancing the effectiveness of asylum systems and the benefits of providing legal assistance at early stages in the decision-making process, with various organizations sharing their experiences and best practices. During the discussion, States and legal aid partners highlighted promising practices, focusing on essential features of a legal aid system, as well as associated challenges, lessons, and strategies for improving State funded legal aid systems. Presentations were delivered by representatives of the Netherlands Legal Aid Board, Danish Refugee Council, the International Protection Directorate of the Ministry of Foreign Affairs, Ecuador and the State Secretariat for Migration SEM, Switzerland. The co-moderator further highlighted the experiences of providing legal aid in Kenya during the opening remarks. The following were some of the key takeaways and recommendations from the discussion:

Background: Importance of legal advice and representation in enhancing the effectiveness of asylum systems

The co-facilitators highlighted that while legal advice and representation is widely acknowledged for its crucial role in enhancing the fairness and overall quality of asylum procedures, its impact on the efficiency of these processes is often less recognized. Effective legal advice and representation not only helps asylum-seekers to understand the process, but also enhances the quality of information provided to asylum authorities, resulting in shortened adjudication timelines and fewer appeals and reapplications. Additionally, legal advice and representation is equally critical for rejected asylum-seekers, as it helps explain the reasons for rejection and assist in reopening cases if mistakes were made or if circumstances have changed.

Despite these benefits, many asylum-seekers globally still lack access to legal assistance. While some States offer free legal aid to asylum-seekers similar to what is available to their nationals, others offer targeted legal advice to specific groups or stages of the asylum process. In contrast, some States require asylum-seekers to arrange and fund their own legal representation. Without State funded free legal aid,

¹ The ACSG activities are coordinated by the ACSG Secretariat, established in UNHCR's Division of International Protection. For information on the coordination role of the Secretariat, see the [ACSG Guide to Working Modalities](#).

asylum-seekers, especially those with specific needs like unaccompanied children, may struggle to navigate the asylum system and have little chance of success. Legal aid is crucial for helping them understand complex procedures, engage in the process, and make informed decisions.

Providers of legal assistance such as non-governmental organizations as well as private law firms have been actively engaging in asylum procedures, offering a range of services including information provision, counselling, and legal representation for some time. Beyond this, they have also engaged more broadly in strengthening national asylum systems. Examples identified include supporting the development and streamlining of rules of procedure for appeal, training of personnel of asylum institutions, technical advice on implementation of procedures, engagement of stakeholders in consultative forums, information campaigns, including information-education-communication materials, and empowerment exercises for community members and end-users on asylum procedures.

Improving legal advice and representation: Key features and considerations

This report highlights key elements and considerations brought forward by the presenters, co-facilitators and participants during the question-and-answer session.

Impact

- The discussion highlighted the critical role of legal aid providers in empowering asylum-seekers to engage in the process, understand complex procedures which are often not straightforward, comprehend the proceedings, and make informed decisions. It was stressed that the objective of legal aid is for asylum-seekers to have sufficient information to make their own decisions, rather than being directed by legal aid providers on what to do.
- Practitioners and national asylum authorities confirmed the impact of legal advice and representation on the effectiveness of asylum procedures. Placing legal aid from the early stages of the asylum decision making process has resulted in a reduction of the number of appeals and the percentage of all contestable decisions that remain legally unchanged has increased. Legal aid has improved the information available for decision-making, ensuring that asylum-seekers are better informed about procedures and their chances at appeal.
- Participants highlighted the unique challenges faced by asylum-seekers with special needs, particularly unaccompanied and separated children to navigate the asylum or immigration system and make the legal claims. Research from the United States demonstrates that immigration judges are 100 times more likely to grant relief to an unaccompanied child with legal representation compared to those without.

Legal aid organization and administration

- The implementation of legal aid varies significantly based on the administrative and legal context in countries. However, regardless of the context there is a substantial and growing need for legal aid and representation in asylum procedures.
- The legal framework, refugee law but also more general human rights provisions enshrined in the constitutions provide the foundation for legal aid, including the provision of State funded assistance for asylum-seekers with limited or no financial means to receive necessary legal support in the same manner as similarly situated nationals in the country.

- The organization of legal aid provision varies across States, but often includes the establishment of dedicated public bodies tasked with organizing legal aid and collaboration with non-governmental organizations. This impacts the responsibility of organizing the legal aid between the national asylum institutions, the organizations set up to provide legal advice and asylum-seekers. Public bodies tasked to organize legal aid assign lawyers, ensure quality assurance and facilitate payments. Legal aid providers can include private lawyers registered to provide services to asylum-seekers and contracted per case or lawyers engaged with organizations providing legal aid.
- Provision of legal aid from an early stage in the process was highlighted to have the most impact. It helps asylum-seekers understand the procedure better, prepare for interviews, and frame their reasons for seeking asylum. This requires the lawyer to engage asylum-seekers before the start of the asylum procedure and throughout the procedure during alternating moments with the national asylum institution. The consistency of the legal aid provider throughout the process was further highlighted to extend the trust relationship. In addition to procedural changes some States have made geographic adjustments to facilitate legal aid to enhance efficiency by bringing all procedures in one location. Within this approach, asylum, reception, and legal aid services are based in a single location to facilitate timely processing of asylum applications including efficiently matching asylum-seekers with lawyers.
- A constructive spirit and aspects relating to culture were highlighted as important factors to foster successful collaboration between asylum authorities and legal representatives. It was observed that asylum authorities and legal representatives work towards common goals such as implementing fast, correct and fair asylum procedures through the establishment of relevant facts completely and on time rather than a tendency of legal aid providers and the asylum administration to oppose each other. In order to guide this constructive spirit, some States have developed guidelines for successful collaboration setting out binding rules based on the principles of common sense and good faith, including advancing principles of non-contentious administrative proceedings, respect for each other's roles and work, appropriate behavior, transmission of information required to complete tasks as quickly as possible and in accordance with established processes, regular meetings to address major issues.

Role of legal aid providers

- The diversity of roles legal aid providers have in asylum systems was highlighted. Legal aid providers assist with application for asylum, also assist with other forms of protection, humanitarian permits, and family reunification ensuring asylum-seekers understand all available options. Legal aid extends beyond asylum procedures to include access to employment, education, healthcare, and other associated rights. Legal aid is provided in a variety of locations including for individuals in immigration detention or regular prisons, or at borders.
- Legal aid providers have been providing legal services to asylum-seekers as well as engaging in activities aimed at enhancing the overall legal aid framework.
- Legal aid roles and services differ per country but could include:
 - o information and awareness raising about the asylum process, rights and obligation, and legal advice. Particularly as the procedures were considered as complex and not easily understood.

- preparation and participations in interviews during which aid providers ensure a complete and accurate statement of facts, a complete and accurate case file, and clarify legal issues early.
 - provide legal guidance and country of origin information critical for the making of a correct decision.
 - act as a focal point for communication between the asylum institutions and the asylum-seekers.
 - legal counseling is also critical for rejected asylum-seekers to explain the reasons for rejection in order to understand and respect decisions, but also to challenge incorrect or flawed decisions.
 - assist in reopening cases if mistakes were made or circumstances have changed.
 - collaboration with reintegration partners in home countries for the rejected asylum seekers who accept the decision and wish to return to their home country.
 - Overall, legal aid is considered to facilitate between lawyers, immigration services, clients, translators and reception service.
- In addition, legal aid providers support improvements in asylum systems and procedures based on issues identified through practical work. Interventions include advocacy and law and policy engagement by assessing and commenting on new legislation and drafting position papers. Legal aid providers maintain close contact with authorities and address issues in specific cases and suggest changes that do not necessarily require new laws. Networks with other civil society organizations help to strengthen the overall support system for asylum-seekers. Legal aid providers further engage in strategic litigation picking up legal cases that can set important precedents to drive systemic change when necessary. Finally, legal aid providers can support training and capacity strengthening activities for different stakeholders involved in the asylum process.

Quality control in the legal aid system

- The importance of quality control in the provision of legal aid was highlighted and in particular, monitoring of the quality of services when lawyers are appointed for asylum-seekers to maintain high standards of legal assistance.
- One approach to maintaining quality is by setting specific criteria for lawyers participating in the legal aid system, e.g. that lawyers be bar association members, registered with the authorized legal aid entity, complete specialized asylum law courses, stay updated on asylum law developments, handle a minimum number of cases per year to maintain their experience and participate in expert meetings to share knowledge and best practices. Peer reviews of quality has been a further approach implemented to ensure quality of services.
- In addition, relevant legal aid authorities have provided resources and tools containing best practices and guidelines that set out clear expectations and standards for lawyers e.g. on professional ethics, first contact between a lawyer and client, interview techniques, handling ethical dilemmas etc. Similarly, guidance can also be made available for asylum-seekers on what to expect from a lawyer at different stages of the procedure, covering both legal and non-legal skills. Such guidelines can form the framework for peer review and complaint procedures, ensuring continuous quality control and accountability.

- Establishing a robust complaints and redressal mechanism to enable asylum-seekers share feedback and file complaints about the quality of legal services provided and performance of appointed lawyers was also highlighted. This ensures that lawyers are held accountable through reviews conducted by a complaints committee, which can advise the legal aid entity on their continued participation in the system, thereby maintaining high standards of legal representation.
- Another way to ensure quality is to have a legal aid system that adapts to the increase in the number of asylum applications. Having a minimum number of lawyers engaged and ensuring that they take up a minimum number of cases per year to participate in the legal aid system will ensure that no asylum-seeker is left without legal aid.

Asylum Capacity Support Group Secretariat, November 2024