



# Legal Aid in Lebanon: Barriers to Developing an Inclusive Legal Aid Program

A study by the Lebanese Center for Human Rights (CLDH) on the legal support programs available in Lebanon and the barriers to developing an inclusive legal aid program, particularly financial and legal barriers.

## **Table of Contents**

List of Data Tables

Executive Summary

Background and Context

Methodology

First: General Framework for Inclusive Legal Aid

- 1- Legal Framework
- 2- Target Group and Needs Assessment Criteria

Second: The Reality of Legal Aid in Lebanon

- 1- At the level of the Bar Associations
- 2- At the level of Non-governmental Organizations (NGOs)
- 3- Individual Initiatives

Third: Financial Costs of Litigation

- 1- Lawsuits (Civil and Criminal)
- 2- Civil and Commercial Lawsuits Filed Before Civil Courts
- 3- Courts of Appeal
- 4- Court of Cassation
- 5- Criminal Justice
- 6- Execution Department
- 7- Power of Attorney Registration Fee

Fourth: Military Judiciary – A Further Problematic Issue

Fifth: Conclusions

## Sixth: Recommendations

### List of Data Tables

Table (1): Files received by the Legal Aid Committee in Beirut

Table (2): Distribution of penal files covered by the Beirut Bar Association based on region between 2017 and 2018

Table (3): Distribution of criminal files covered by the Beirut Bar Association based on the types of crimes between 2017 and 2018

Table (4): Distribution of civil files in Beirut based on the subject-matter between 2017 and 2018

Table (5): Files covered by the Tripoli Bar Association

## **Executive Summary**

The only form of legal aid enshrined in the Lebanese Law is the “legal assistance” provided by the Tripoli and Beirut Bar Associations. While these two bar associations represent the sole official bodies that provide legal aid in Lebanon, legal assistance in the Law regulating the Legal Profession is only referred to in Articles 60 and 66 thereof, which list the cases in which a lawyer is appointed to plead for a defendant by the President of the Bar Association in their capacity as the representative of the Bar, one of these cases being “granting legal assistance.” In fact, in Lebanon, legal aid can be accessed through three main forms:

- Legal assistance provided by the Tripoli and Beirut Bar Associations
- Non-governmental organizations through broad and specific legal aid programs
- Individual initiatives by lawyers in smaller departments and in response to exceptional circumstances.

As for the State, the only form of legal aid it provides is by exempting beneficiaries of legal assistance from paying relevant judicial fees. Yet such exemptions do not apply to individual initiatives which do not receive any governmental support. Therefore, it appears that the State is concerned with facilitating access to legal assistance exclusively before the judiciary and according to a specific criterion requiring potential beneficiaries to provide proof of their poverty. The State makes no regard to providing assistance in terms of legal consultations or the administrative procedures regarding access to basic rights. This is due to the lack of governmental legal clinics, or, in other words, the lack of an inclusive, goal-oriented public policy at the level of the State.

The absence of a unified legal assistance program has led to evident disparities in terms of the problems or issues faced by each party, thus widening the gaps and resulting in overlapping efforts, rather than cumulative ones. Most importantly, this has also led to the lack of unified criteria governing the conditions of legal assistance provision, as well as to gaps in terms of the quality and type of service and difficulties in determining the costs of providing legal aid and the financial barriers to developing inclusive legal aid programs.

## **Background and Context**

International Law provides an important ground for defining the concept of inclusive legal aid; however, legal aid services alone do not guarantee the right to remedy and access to justice. The presence of a legal system that prevents discrimination and guarantees the rights of individuals is fundamental in this regard, whereas the role of legal aid services is to effect change through judicial discretion or to instill practices that serve the same purpose. Taking this into account, one can then look into the criteria of inclusivity in terms of legal assistance, the impediments thereto and its impact on achieving justice, particularly the relevant financial costs and the criteria adopted to determine those eligible for legal aid.

This study highlights the problems faced by legal aid providers and beneficiaries in an attempt to uncover the underlying gaps at the social, economic, financial and organizational levels. It also helps in improving the current reality of legal aid and developing a public, inclusive system that does justice to the notion of legal aid.

The primary research question discusses the role of the bodies concerned with legal aid provision in Lebanon in order to identify the flaws and gaps that must be addressed to pave the way for developing an inclusive legal aid program.

## **Methodology**

This study follows a mixed-method approach to address the main research questions. It refers to previous studies, legal texts and available information on the official sites of relevant authorities, as well as the responses given by participants in interviews. The study also relies on the available data and statistics to support its claims and enrich its analysis, in order to offer recommendations on developing an inclusive legal aid program.

The study reaches out to concerned authorities with a set of relevant questions that discuss the nature of their role with regards to legal aid by holding meetings with the persons in charge of legal assistance at the Beirut and Tripoli Bar Associations and conducting questionnaires with NGOs that play a key role in the provision of legal aid.

The questions and various readings will highlight the underlying gaps in legal aid programs and the challenges they face, particularly financial challenges, in order to clearly identify the costs, fees and charges required to provide inclusive legal aid. This will also serve to conduct a critical analysis of the adopted texts and mechanisms as well as to offer suggestions and recommendations that support concerned authorities in this field.

The research adopts an analytical approach, while also reflecting on previous years in order to examine the reality of legal assistance. The research faced several obstacles in terms of access to all the intended data and bodies, primarily due to the exceptional circumstances the entire world, including Lebanon, is going through in light of the COVID-19 pandemic and the lockdown of both governmental institutions and non-governmental organizations.

## **First: General Framework for Inclusive Legal Aid**

The general framework for inclusive legal aid can be defined by the relevant domestic and international legal texts on the one hand and by the criteria adopted to provide legal aid on the other. The inclusivity of a legal aid program can thus be determined based on these two elements.

### **1- Legal Framework**

Access to legal aid represents one of the basic rights enshrined in domestic laws. It is a reflection of the State's commitment to and compliance with international agreements.

#### **A- Domestic Legal Framework in Lebanon**

The Constitution takes precedence over other legal texts in the Lebanese system. It stresses Lebanon's commitment to the United Nations covenants, particularly the International Bill of Human Rights and the principle of equality, especially among Lebanese citizens with regard to their civil and political rights. Article 20 of the Constitution states that the "necessary guarantees" for litigants are provided for by the Law regulating the Judiciary. With respect to civil cases, Chapter 7 of the Code of Civil Procedure provides for legal assistance (i.e. legal aid), which is granted to financially distressed persons (Article 425), and stipulates that "legal aid shall be granted to natural persons of Lebanese nationality, as well as to foreigners regularly residing in Lebanon and on the condition of reciprocity" (Article 426).

Legal aid may be requested in order to initiate or to defend against first instance actions, as well as to appeal a court decision even if it was previously requested during the first-instance trial proceedings (Article 427). The person applying for legal aid must provide proof of their state of distress (Article 429), given that the applicant's financial condition represents the main criterion for seeking legal aid, along with other criteria that must be met, namely the gravity of the claim (Article 430).

The Law stipulates that the court's decision regarding the application for legal assistance shall not be subject to appeal. This is in contradiction with the UN principles on access to legal aid as well as with a constitutional principle enshrined by the Constitutional Council in Decision No. 5/2000, which declares unconstitutional any restriction of the right to appeal. This is also the same judicial precedent adopted by the Council of Cases at the State Consultative Council. Its

most prominent decision in this regard is the decision issued on the case of Ambassador Elias Ghosn.<sup>1</sup>

The decision on granting legal aid shall be notified to one of the presidents of the Bar Associations (either Beirut or Tripoli, based on the territorial jurisdiction of the court referring the said decision). The President of the Bar Association shall, in turn, appoint a lawyer to defend the interests of the beneficiary (Article 433). The legal assistance offered by the lawyer shall be free of charge (Article 434). All court registry procedures related to the beneficiary shall also be free of charge, and all the expenses incurred from the necessary measures pertaining to the investigation shall fall upon the State Treasury (pursuant to Article 435). However, the court may require the other litigant to bear the relevant attorney fees if they lose the case, in the event that it did not grant legal aid. Finally, the head of the Execution Department may grant legal aid for the execution of the judgment in accordance with the same abovementioned rules.

With respect to criminal cases, Article 47 of the Code of Criminal Procedure stipulates that the defendant or the detainee shall have the right to call and meet with a lawyer they appoint by a statement written in the record. Article 76 of the Code of Criminal Procedure holds the investigating judge responsible for informing the suspect of their right to appoint a lawyer, otherwise the investigation shall be deemed null. The investigating judge shall not be required to appoint a lawyer for the suspect if the latter refuses. However, if the suspect requests a lawyer and is incapable of hiring one, the investigating judge shall appoint a lawyer for them or resort to the provision of legal aid pursuant to Article 78 of the Code of Criminal Procedure. Moreover, Article 238 of the Code of Criminal Procedure states that the accused shall have the right to appoint a lawyer and that they must be asked whether or not they have appointed a lawyer during the preliminary questioning. If the accused has not appointed a lawyer, the president of the court or the delegated advisor shall request the President of the Bar Association to appoint a lawyer within twenty-four hours of the time of notification, otherwise the president or the delegated advisor shall appoint a lawyer themselves. Legal assistance is mandatory pursuant to the Law on the Protection of Juveniles in Conflict with the Law or at Risk (Law No. 422), whereby Article 42 thereof states that “the presence of a lawyer alongside the juvenile is mandatory in criminal trial proceedings as well as other trials. If the family of the juvenile or the persons concerned with their affairs do not appoint a lawyer, the court itself shall appoint a lawyer or request the President of the Bar Association to do so.”

## **B- International Legal Framework Applicable in Lebanon**

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<sup>1</sup> The Constitutional Council, Decision No. 5 of 2000, the Constitutional Council’s official website.



Legal aid programs are based on the principle of equality, which is enshrined in the International Bill of Human Rights. Equality, in this context is related to the right to remedy and access justice. In reality, the possibility of achieving equality at these levels increases through more inclusive legal aid programs. In addition, the International Bill of Human Rights provides for the principle of equality before the law and the right to equal legal protection without discrimination. Similarly, the Universal Declaration of Human Rights states that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to them by the constitution or by law. It also provides the right to a fair and public hearing by an independent and impartial tribunal, as well as the right to be presumed innocent until proven guilty, and encourages states to take the necessary measures to ensure that individuals have all the guarantees of self-defense, provided that they enjoy these rights with no unjustified delay and on the basis of equality,<sup>2</sup> including foreigners' right to receive translation.

Pursuant to the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, the term "legal aid" refers to the legal consultation, assistance and representation of persons detained, arrested, imprisoned, suspected or accused of committing crimes, as well as to the victims and witnesses in criminal justice proceedings. Such aid shall be provided without imposing any costs on those who are financially distressed or where the interests of justice so requires. Moreover, "legal aid" shall entail the concepts of legal education and access to legal information and other services provided to people through alternative dispute resolution mechanisms and restorative justice procedures.

The Principles for the Protection of All Persons under Any Form of Detention or Imprisonment adopted by the UN General Assembly by virtue of resolution No. 43/173 of 9 December 1988 set specific criteria to ensure the right to defense, the right to remedy and the right to a fair trial, including the right of a detained person to defend themselves or to be assisted by a lawyer as prescribed by Law. The competent authorities must inform a detained person of their right to legal representation promptly after their arrest. If the detained person does not have a lawyer of their own choice, they shall be entitled to have a lawyer assigned to them by the judicial authority in all cases where the interests of justice so requires. This right shall be exercised without delay or censorship and in full confidentiality.

The abovementioned legal instruments highlight the types of basic services that must be provided so as to ensure that individuals' basic rights are not violated in order to provide an inclusive legal aid program. These services entail legal representation of all people without discrimination, along with all relevant rights to access medical services and protection from

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<sup>2</sup> Articles 7, 8, 10 and 11 of the Universal Declaration of Human Rights

torture on the one hand, and, on the other, the right to be provided with translation for people who do not speak the official language used in the court.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems provides for the right to additional protection for specific groups that are more vulnerable when engaging with the criminal justice system. These principles and guidelines also include specific provisions on women, children and persons with special needs. They are primarily concerned with the right to access legal aid as a right distinct from the right to access legal assistance as prescribed by International Law. The guidelines also stipulate principles governing the provision of legal aid, in particular principles of non-discrimination and equal access to legal aid.

With respect to the groups entitled to legal, they are determined based on two main criteria. The first criterion is related to the person's ability to appoint a lawyer. This criterion is concerned with the economic situation of the person involved in terms of their ability to cover the costs of access to effective remedy, particularly the attorney fees. The second criterion is related to the social situation of the person involved, which looks into the needs of specific groups, namely children, women, immigrants, people with disabilities, sick persons, the elderly and the poor, based on indicators of poverty and extreme poverty.

## **2- Target Group and Needs Assessment Criteria**

### **A- The Economic Criterion**

Although international agreements haven't mentioned the economic dimension per se, it can be easily recognized through the application of these agreements in practice. However, the indicators used to apply this criterion and link it to the type of service to be provided must be specified by an inclusive legal aid program. The economic criterion is not restricted to the condition of poverty of the potential beneficiary; it is rather based on other, flexible criteria and is applied differently according to the case at hand. It is exclusively concerned with the person's ability to benefit from the necessary guarantees of a fair trial in terms of their legal representation based on the costs of the case itself.

As such, Lebanese legislators established the Legal Aid Institution so that access to justice is not limited to those who can afford it and financial distress no longer impedes the administration of justice. Legislators overlooked society's characterization of "poverty" and, contrary to several foreign legislations, deemed that being financially distressed would suffice.<sup>3</sup>

Pursuant to the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, states must ensure that the criteria used in the means test are widely disseminated.

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<sup>3</sup> Afif Chamseddine and John Azzi, *مصارفات الدعوى القضائية- الرسوم والنفقات والمعونة القضائية* (Judicial Proceedings – Fees, Expenses and Legal Assistance), Beirut, 2009.

States should also ensure the provision of legal aid to all persons without discrimination, including discrimination on the basis of their properties. Initial legal aid must be provided to persons urgently requiring such aid at police stations, detention centers or courts until their eligibility to legal aid is decided. Children shall always be exempted from the means test. The means test determining a person's eligibility to legal aid must not exclude persons whose means exceed the limits of the means test but who cannot afford, or do not have access to, a lawyer in situations where legal aid would have otherwise been granted or where it is in the interest of justice to provide such aid. If the means test is calculated on the basis of the household income but individual family members are in conflict with each other or do not have equal access to the household income, only the income of the person applying for legal aid is calculated for the purpose of the means test. In all cases, persons who are denied legal aid on the basis of the means test have the right to appeal that decision.

### **B- The Social Criterion (Social Groups)**

Legal assistance must include every financially distressed person based on certain conditions, mechanisms and rules and within a framework that doesn't allow for procrastination or fraud and that ensures inevitable protection and guarantees if necessary; for no protection is deemed permissible and justifiable in the absence of the need for such protection.

The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems state that special measures should be taken to ensure meaningful access to legal aid for women, children and groups with special needs, including the elderly, minorities, persons with disabilities, persons with mental illnesses, persons living with HIV/AIDS and other serious infectious diseases, drug abusers, stateless persons, asylum-seekers, foreign citizens, immigrants, migrant workers, refugees and internally displaced persons. Such measures should address the special needs of those groups, including gender-sensitive and age-appropriate measures. States should also ensure that legal aid is provided to persons living in rural, remote and economically and socially disadvantaged areas and persons who are members of economically and socially disadvantaged groups. Within the framework of the legal aid program established by the Lebanese Center for Human Rights since 2009, it was noted that the second most important factor for considering a person more marginalized and more desperate for financial aid is the fact that they are a foreigner, as more than half of the program's beneficiaries were foreigners.

It was also noted that the Convention on the Elimination of All Forms of Discrimination against Women addresses the need to ensure that women have access to protection without discrimination, by providing legal aid to further ensure this right.<sup>4</sup> The Convention on the Rights

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<sup>4</sup> Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women

of Persons with Disabilities<sup>5</sup> also urges states parties to ensure effective access to justice for persons with disabilities on an equal basis with others.

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<sup>5</sup> Article 13 of the Convention on the Rights of Persons with Disabilities

## **Second: The Reality of Legal Aid in Lebanon**

In Lebanon, legal aid is mainly delivered through the Bar Associations (in Beirut and Tripoli), NGOs, and local initiatives by lawyers that later made way for the establishment of committees for legal aid in exceptional circumstances.<sup>6</sup>

### **1- At the level of the Bar Associations**

The Beirut and Tripoli Bar Associations play a crucial role in providing legal aid services, particularly by offering legal representation to financially distressed persons before the judiciary. Despite the undeniable importance of both Associations in this field, they offer legal aid in different ways with respect to financial coverage, mechanisms for monitoring legal cases and strategic planning.

#### **A- Legal Aid by the Beirut Bar Association**

The number of lawyers registered on the roll of lawyers providing legal aid at the Beirut Bar Association is equally divided between trainee lawyers and appeal lawyers. According to the president of the Legal Aid Committee, lawyer Georges Fiani, the number of cases assigned to each lawyer is specified based on the lawyer's capacities and productivity. In other words, if the lawyer closes their cases quickly, they can be assigned new cases, but if they takes years to close the case, they cannot be assigned new cases.

Since 2014, several improvements in legal aid in Beirut have been made. The financial coverage for one case has been increased (from 150,000 LBP to 600,000 LBP) and three offices within the Legal Aid Committee have been established for the purpose of improving the quality of legal aid provided. The first office receives, organizes and studies legal aid applications, while the second office monitors the performance of legal aid lawyers and organizes their schedule. The third office is responsible for "investing in aid," i.e. obtaining the financial resources necessary for legal aid.<sup>7</sup>

Based on a statistical report issued by the Legal Aid Committee in Beirut, it appears that the number of legal aid applications has decreased from 765 files in the year 2000 to 410 files in 2011. However, with the increase in the number of legal aid lawyers, this number rose to 1,000 files in 2019. These files include males and females from different nationalities, primarily Lebanese, Syrian and Palestinian nationals.

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<sup>6</sup> Such as the Lawyers' Committee to Defend Protesters, the Committee to Defend Depositors and the committee concerned with defending laid-off workers established after October 2019.

<sup>7</sup> Nermine Sibai: "Legal Aid at the Beirut Bar Association: Allocating higher funds for lawyers and establishing offices for effective monitoring", the Legal Agenda, 16/6/2014.

#### A.1- Services provided by the Legal Aid Committee in Beirut

The Beirut Bar Association provides consultation services directly to any person who requests such services at the legal aid center. Given their disorganized nature, these services cannot be properly counted. Legal aid at the BBA mainly entails legal representation and mediation.

In 2014, the BBA established a department specifically for mediation services at the legal aid center. It works with experts from the Professional Mediation Center at Saint Joseph University (USJ). Whether a lawsuit has already been filed or has not yet been initiated, the lawyers resort to mediation with the purpose of saving time and expenses before the judiciary.

#### A.2- Cases covered by the Legal Aid Committee at the Beirut Bar Association:

The BBA assigns lawyers to represent people seeking aid in various situations ranging from civil law to criminal law. However, there is a significant disparity between the number of civil cases and criminal cases, which indicates that the pivotal role played by the Beirut Bar Association is evidently more related to securing the access justice for those arrested and accused of criminal offenses, particularly cases in which it is not permissible by Law to proceed without having a lawyer represent the accused (Table 1). In this context (felonies), the BBA plays a prominent role in the various regions that fall within its jurisdiction (Table 2), not to mention that both the civil and criminal files covered by legal aid are diverse in nature (Tables 3 and 4).

**Table (1): Files received by the Legal Aid Committee in Beirut**

<b>2018</b>	<b>Administrative Court</b>	<b>Confessional Courts</b>	<b>Investigating Judge</b>	<b>Civil Appeals</b>	<b>Summary Justice</b>
	3	17	22	24	40
	<b>Cassation</b>	<b>Civil</b>	<b>Military</b>	<b>Criminal</b>	<b>Total</b>
	43	50	356	378	933
<b>2017</b>	<b>Administrative Court</b>	<b>Confessional Courts</b>	<b>Investigating Judge</b>	<b>Civil Appeals</b>	<b>Summary Justice</b>
	1	20	32	34	18
	<b>Cassation</b>	<b>Civil</b>	<b>Military</b>	<b>Criminal</b>	<b>Total</b>
	14	57	352	347	875



**Table (2): Distribution of criminal files covered by the Beirut Bar Association based on region**

Region	South	Bekaa	Nabatieh	Mount Lebanon	Beirut	Total
2018	14	27	31	86	212	370
2017	13	15	14	84	198	324

**Table (3): Distribution of criminal files based on the types of crime**

Criminal Offense	Human Trafficking	Fraud	Murder	Terrorism	Drugs	Theft	Total
2018	3	15	109	125	152	168	572
2017	5	16	153	67	137	172	550

**Table (4): Distribution of civil files in Beirut based on subject-matter**

Subject-matter	Rent	Personal Status	Real-estate	Implementation	Financial	Total
2017	23	20	17	11	4	75
2018	21	20	4	15	3	63

### A.3- Beneficiaries' Access to Legal Aid at the Beirut Bar Association

Most legal aid applications related to criminal cases are referred by courts (90%), while only a few cases are submitted directly by the litigants to the Legal Aid Committee (10%). In one instance, the Bar Association distributed a guide to inform people about legal aid; however, there are no current advertisements, publications or instructions pertaining to this matter.<sup>8</sup>

In an interview with Atty. Fiani, he made it clear that not much has changed in this regard, as “the Legal Aid Committee does not follow fixed criteria to determine who benefits from legal aid due to the fact that, most of the time, it focuses on implementing a judicial decision rather than looking into the person’s entitlement to legal aid.”

Based on Atty. Fiani’s observations with respect to the criteria for entitlement to legal aid, particularly in civil cases, and the need to submit proof of poverty, if the person applying for legal aid has a job, they do not fit the said criteria and are thus denied legal aid. However, judicial fees are still considered high for low-income persons to afford.

<sup>8</sup> Nermine Sibai, the Legal Agenda, *ibid*.



As for the other means of receiving legal aid, one can resort directly to the Legal Aid Committee or file an application from the prison where they are being detained. Fiani points out that the BBA does not receive any referrals from prisons regarding legal aid. Nonetheless, the Bar Association's initiative in prisons at the beginning of 2020 revealed the widespread need for legal aid. According to Fiani, "around 1,000 detainees in prisons do not have legal representation and follow-up." The initiative mainly targets "any detainee without a lawyer, detainees who have been in prison for a long time and with no follow-up from their lawyers, detainees incapable of paying the bail fees, detainees arrested with fines, detainees facing several charges and in need of a merger of charges, as well as other detainees based on gender, disability and age."

The initiative is also concerned with detainees who have been in prison for a long time and whose assigned lawyers have ceased to follow up on their case because attorney fees were not paid.

"There are several bounced check cases where the detainee has been imprisoned for more than two years and the check is worth 2,000 U.S. dollars, for example, while the lawyer set their fees at 10,000 U.S. dollars. The lawyer thus stopped following up on the case because their fees were not paid but did not officially withdraw from the case, which is considered a violation to the principles of the profession."

Lawyer Mazen Hoteit

Failure to abide by legal texts also prevents access to legal aid through the Legal Aid Committee. The data provided by the Bar Association shows that the number of files referred by investigating judges is the lowest. In 2017, the Committee received only 32 files from investigating judges requesting lawyers to be appointed to the cases; while in 2018, this number dropped even lower to 22 files only.

Similarly, a few referrals, not exceeding 20 files per year, were received from prisons. According to Fiani, this is due to the fact that prison wardens neglect to inform prisoners of the legal aid application forms provided by the Bar Association, as well as the long, complicated administrative process that the applications go through to be approved by several authorities (the prison, the Directorate of Prisons at the Ministry of Justice, the Public Prosecution and finally the Bar Association), which takes up to one month to complete.

#### **A.4- Legal Aid Funding and Challenges Thereto**

The legal Aid Committee mainly secures its funds from the Bar Association fund. The Bar Association pays around 600,000 U.S. dollars annually to cover legal aid cases, without taking into account the "profit lost from exempting beneficiaries from PoA registration fees." The Committee also receives 25,000 U.S. dollars annually from the European Union.

According to Atty. Fiani, the number of lawyers registered on the roll of legal aid is on the rise. By the end of 2019, 800 lawyers had registered. Fiani links this increase, on the one hand, to the

increasing financial cost of lawsuits, and, on the other hand, to the decline in economic conditions as well as the impact this has had on lawyers in general.

Atty. Fiani also stated that the Legal Aid Committee looks forward to improving its financial coverage by adopting a points-based system that specifies the amount to be allocated for a certain case based on the different costs associated with each file. For instance, notices require large sums of money in civil cases, and the same goes for the fees of forensic doctors in criminal cases.

“I was assigned more than 50 legal aid files during my internship, and I believe that my experience started from there. However, I did not pursue my legal aid cases in order to make way for others to benefit from the opportunities and experience I gained while I was a trainee.”

Lawyer Hala Hamza

Despite increasing the legal aid coverage by the Beirut Bar Association, some lawyers prefer to provide legal aid individually, rather than doing so in return for the small sum given by the Bar Association:

“I have not handled legal aid cases because I am capable of providing legal aid free of charge. By accepting legal aid files, I would be receiving money for my services, when in reality the amount I receive does not cover any of my fees. If there were a legal aid institution (at the State level) in which the annual or monthly income covers attorney fees, then at least I would be providing legal aid while at the same time securing an income.”

Lawyer Mazen Hoteit

Fiani believes that the role of the judiciary with respect to providing legal aid to an individual (in civil cases) entails a conflict of interest, because offering legal aid means fewer funds received by the Judges’ Mutual Fund, which is fed through judicial fees. In addition, courts are generally reluctant to appoint experts in legal aid cases, due to the fact that the State covers expenses in such cases, according to Fiani.

#### **A.5- Observations on Legal Aid**

Despite the significant role played by the Beirut Bar Association in terms of legal aid provision, the mechanisms it adopts in its work, their effectiveness in dealing with the cases assigned, as well as the Bar’s cooperation with the lawyers who provide legal aid but are not registered on the roll of legal aid lawyers, are all pivotal issues according to the lawyers who were interviewed to discuss the legal aid system in Lebanon.

“Legal aid in Lebanon is subject to complicated procedures, starting from the referral of a case from the court to the Bar Association, to assigning a lawyer, to the latter reviewing the file and finally beginning their work.”

One of the pivotal observations made is related to the effectiveness of the legal aid system in monitoring the progress of the case.

“I have noticed that some lawyers who have been assigned a legal aid file attend court sessions without even previously reviewing the file details. The real problem here lies in the fact that the files referred to legal aid committee are mostly criminal files that require expertise and rigorous follow-up on the part of the lawyer, but, in reality, they are assigned to trainees who do not have enough experience to see the case through.”

Hala Hamza

In this regard, Fiani clarifies that the Legal Aid Center receives complaints by phone or through a visit from the concerned person. He also points out that the sum of money allocated for a file is fully paid only after the lawyer submits the necessary reports on the case assigned to them.

The head of the Legal Department at the Lebanese Center for Human Rights considers that the aforementioned monitoring mechanism is not sufficient: “Legal aid requires follow-up to assess the lawyer’s work. As such, reviewing the file after the case is settled by those responsible in the Legal Aid Committee of the Bar Association is futile, given that monitoring should take place during the proceedings, not after the case is closed.”

## **B- The Tripoli Bar Association**

The Tripoli Bar Association amended its bylaws in May 2018 so as to permit the President of the Bar Association to establish centers within the Bar upon the approval of its General Assembly. Based on the said amendment, 4 centers were established in the Tripoli Bar Association: the Mediation and Arbitration Center, the Training and Internship Center, the Human Rights Center and the Legal Assistance and Legal Aid Center.

The President of the Legal Aid Center in Tripoli, lawyer Fehmi Karami, points out that these amendments were made to support “legal assistance and legal aid” and to provide a solution for the long-lasting problem lawyers have been facing with regards to changing cost criteria whenever a new president of the Bar Association is elected. At present, 53 male and female lawyers are listed in the roll of legal aid lawyers, half of whom were added to the roll since October 17<sup>th</sup> and most of whom are already listed in the general roll. The legal aid files are distributed based on the roll and on the principle of rotation.

### **B.1- Legal Aid Funding and Challenges Thereto**

A small part of the legal aid budget is secured by the Bar Association fund, while the primary funding of the legal aid center comes from donations through projects carried out with local and international NGOs.

Legal aid funding was previously limited to a small amount provided by the Bar Association fund (about 15 million LBP only), enough to follow up on a limited number of files for almost a year. As the sources of funding increased to include projects and donations from several organizations (both local and international), the Legal Aid Committee also expanded the scope of its work and the number of files receiving legal aid increased.

The center currently works with a budget amounting to approximately 80,000 U.S. dollars, which is about eight times more than the previous budget. This has positively affected the role of the Bar Association in providing legal aid services through the additional financial resources and the center's independence in the provision of these services.

The Bar Association believes that expanding the legal aid services of the center not only helped ensure the rights of detainees, but also supported lawyers financially in light of the dire circumstances the country is facing. Atty. Karami states that lawyers' capabilities in the North are far different from other regions in Lebanon due to the narrow geographical scope and the nature of their work. Thus, the attorney fees that lawyers charge reflect the circumstances prevalent in North Lebanon, where a large portion of the population suffers from financial and economic difficulties.

Nonetheless, financial barriers still exist, particularly with respect to the additional costs incurred as the criminal case progresses, which might include, for instance, a forensic doctor's report or additional expertise. As such, the center still is not capable of covering all the costs and often asks litigants to cover them. As for civil cases, which are much fewer in number than criminal cases, the center covers the additional costs that incur until the sentence is issued, provided that the beneficiary pledges to return the costs incurred in the event that they receive a compensation larger than the amount paid by the center. The administrative committee at the Bar decides on this matter by studying each case separately.

## **B.2- Cases covered by the Legal Aid Center at the Tripoli Bar Association**

The legal aid center mainly handles penal lawsuits and criminal cases assigned by courts, in addition to personal status and rent cases. However, the center faced some difficulties when dealing with judges of the civil chambers, who considered the cases assigned to the Bar Association valid exclusively before criminal courts. Regardless, the Bar insisted on the general notion of defending or representing every person who does not have the financial ability to access legal services pursuant to the Law regulating the Legal Profession.

A review of the Bar Association’s documentation of assigned files by subject-matter reveals that it does not adopt a clear documentation methodology that can be used to reach findings and conclusions. This urges us to question the extent to which the Bar Association adopts methods and tools that ensure the development of legal aid based on a clear strategy. The reality of legal aid documentation at the Tripoli center is a clear example of the difficulties faced in the present study to access more accurate data by contacting the competent persons at the legal aid center. Table (5) below shows the distribution of legal aid files in criminal courts, which reflects a wide variety in their subject-matter. Thus, it can be concluded that the subject-matter of criminal cases does not affect its coverage by the Legal Aid Center, regardless of whether the case was referred by judicial authorities or by the concerned litigants themselves and, therefore, it is not possible to draw a decisive conclusion regarding the criteria. Table (6) shows the distribution of legal aid files in civil courts, which appears less diverse and is limited to specific subject-matters, while Table (7) shows the distribution of legal aid files in competent courts, which is also limited to specific subject-matters. In general, the three tables clearly reveal that the Legal Aid Center in Tripoli mainly focuses on the field of criminal justice.

**Table (5): Criminal Files covered by the Legal Aid Center (since 16/10/2019 until 17/6/2020)**

<b>Type of Crime</b>	<b>Number of Files</b>
Drugs	106
Sexual Defilement and Use of Narcotics	3
Attempting to commit an indecent act	36
Harassment of a minor	60
Harassment	79
Rape	92
Kidnap and theft	50
Battery and theft	88
Theft, vandalism and seizure of an apartment	33
Theft attempt	34
Theft	94
Suspicion of theft	73
International theft crimes	1

Forgery and fraudulent use	98
Posting anti-state pictures on social media	22
Attempted murder	94
Murder	92
Arms possession	56
Use of firearms	70
Road blockage and use of firearms	58
Road blockage	107
Attempt of assaulting and beating the Army	25
Terrorism	87
Defamation and threatening	62
Breaking and entering	1
Criminal cases	12
Investigating judge (interrogation)	21
Pending claims before the Public Prosecution at the Court of Appeal in the North	24
Inflicting damage	39
Merger of charges	43
Assisting criminals to evade justice	100
<b>Total</b>	<b>1760</b>

**Table (6): Civil Files covered by the Legal Aid Center (since 16/10/2019 until 17/6/2020)**

<b>Type of Case</b>	<b>Number of Files</b>
Infringement on funds	11
Implementation claims	18

Employment – arbitrary lay-off	101
Financial compensations	2
Rent	1
Commercial cases (Baabda) – Former lawyers	17
<b>Total</b>	<b>150</b>

**Table (7): Personal Status Files covered by the Legal Aid Center (since 16/10/2019 until 17/6/2020)**

<b>Type of Case</b>	<b>Number of Files</b>
Proof of kinship	20
Sharia (Ja’afari) cases	10
Separation	98
Annulment of marriage	90
Alimony/child support	1
<b>Total</b>	<b>219</b>

### **B.3- Services provided by the Legal Aid Center in Tripoli**

According to Atty. Karami, the Legal Aid Center has received 185 files since last October, which is more than the number of files received in previous years. This is due to the hotline that was set up since October 17<sup>th</sup> 2019 by the Bar Association to receive calls in support of the popular movements and in response to the exceptional circumstances the country is going through. The financier of this project even encouraged the Bar Association to take the initiative by providing an additional 5,000 U.S. dollars to the project’s budget in support of the hotline specifically.

Every lawyer assigned a legal aid case receives 500,000 LBP. However, the scope of legal aid at the Bar Association has been expanded since October 17<sup>th</sup> to include three forms:

- Following up on cases of detainees at the places of detention, i.e. entering police stations pursuant to Article 47 of the Code of Criminal Procedure, which grants every detainee the

right to meet with a lawyer upon their arrest. The Center pays 100,000 LBP to each lawyer who provides such follow-up services;

- Attending court sessions in the event that the detainees are referred to a military court or investigating judges, whereby each lawyer is paid 300,000 LBP for attending court sessions with each detainee;
- Following up on a file until it goes to trial, which is the traditional follow-up provided by the center and for which each lawyer is paid 500,000 LBP.

#### **B.4- Beneficiaries' Access to Legal Aid and the Source of Referral**

The primary criterion for providing legal aid to beneficiaries is financial distress regardless of nationality and as long as the person is residing in Lebanon even if their residency has expired.

As for the sources of referral to the Legal Aid Center, these primarily include: files referred by judges, applications filed directly at the center, and applications made through the hotline.

No applications have been referred by Lebanese prisons, and a very small number of applications have been referred by investigating judges. This exposes a clear violation of the law, as the Code of Criminal Procedure requires the investigating judge to ask the litigant if they want to appoint a lawyer and if the litigant expresses their inability to do so, the request shall be referred directly to the Legal Aid Center at the Bar Association.

No referrals have been made by associations, but there are associations that have contracted with the Tripoli Bar Association, such as the Lebanese Center for Human Rights, which refers cases to three pre-appointed lawyers, as well as the Intersos organization, which refers cases to 12 pre-appointed lawyers at the Bar.

One of the goals of the Legal Aid Center is to create a network of specialists to follow up on cases, each within their jurisdiction. According to Atty. Karami, the cases should be distributed based on the experience of each lawyer and the associations that work on projects targeting a specific group of beneficiaries. For instance, there are specific ways to deal with children based on each situation, especially before the judiciary. Therefore, the Legal Aid Center considers it necessary to cooperate in all forms and types of files and lawsuits in order to reach the desired outcomes.

#### **B.5- Observations on Legal Aid**

At present, there is no specific mechanism for receiving complaints. However, the Legal Aid Center seeks to launch a monitoring and follow-up mechanism for legal assistance and legal aid files. This mechanism constitutes a "Beneficiary Satisfaction Form" to measure beneficiaries' satisfaction, with the purpose of constantly improving the center's performance.

The Center currently requires each appointed lawyer to submit a report every two months on the progress of the case, in addition to randomly following up on the files at court registries in



order to ensure the effectiveness and productivity of the follow-up. This shows the center's keenness on providing quality services, which go beyond ensuring the right to a defense attorney or legal representation in general.

The Center seeks to expand the concept of litigant support in terms of how legal consultation is provided and following up on the file, by explaining each step and providing support when necessary.

Some of the observations on legal aid are related to human resources at the Bar Association in North Lebanon. According to Atty. Karami, these observations are related to a number of challenges, including: The shortage of employees at the Tripoli Bar Association and the failure to assign lawyers to fully devote themselves to the Legal Aid Center, which requires a number of employees to ensure the smooth progress of work. The Center needs at least four employees: the first is responsible for receiving new applications, the second for cooperating with lawyers, the third for receiving complaints and the fourth for accounting. However, the Bar Association budget does not allow for any increase in the number of employees, not to mention that funds are allocated to fixed-term projects and it is not possible to hire new employees for every project.

## **2- At the level of Non-governmental Organizations**

NGOs play a crucial role in providing legal aid in Lebanon. However, there are some shortcomings in the policies of international organizations with regards to the methods of identifying cases and disbursing funds allocated to legal aid programs. This includes the criteria for determining persons entitled to legal aid based on the type of service required, specifically for persons deprived of their freedom.

### **A- Types of Legal Aid Provided by NGOs:**

The Lebanese Observatory for the Rights of Workers and Employees provides legal consultation on the Labor Law and the relevant decrees and laws, as well as the Social Security Law. The Observatory also follows up on situations in which cases are filed before labor councils. Last but not least, it intervenes in negotiations with employers upon the request of the beneficiary.

As for the Frontiers "Ruwad" Association, it provides legal consultation services regarding the legal status of individuals as well as permanent solutions stipulated by law. It also provides legal representation services before courts and concerned departments.

On another note, Legal Action provides information in a comprehensive manner, but limits its consultation and legal representation services to cases of gender-based violence and the registration of incidents at the civil registry.

At the CLDH, lawyers are responsible for defending and representing beneficiaries before courts, filing legal appeals, visiting prisons and following up on the cases of detainees before courts of

all degrees, as well as following up on cases related to merging and reducing penalties and paying bails. In this sense, the Center's legal aid program is most similar to the legal aid provided by the Bar Association with respect to the types of cases it addresses.

The Legal Agenda files strategic litigation cases with the aim of effecting a specific legal change (for example: how to apply and interpret the law to fill a specific legislative vacuum). Legal Agenda lawyers also provide legal consultation on some issues of public interest.

### **B- Criteria for Determining Legal Aid Beneficiaries**

Along with the economic and social criteria, NGOs often add other criteria related to the subject-matter of the case.

With respect to the social and economic criteria, legal aid is provided to persons living in poverty or in socially vulnerable situations (such as single mothers, abandoned children, mothers who are the sole providers for their household, etc.).

As for the subject-matter criteria, associations take on legal aid files for beneficiaries based on the case's subject-matter. For instance, the Frontiers "Ruwad" Association exclusively deals with cases of stateless persons and refugees, including specific cases of Palestinian refugees with no identification papers.

There are also other criteria that differ from one association to another. For example, with respect to criminal files, the CLDH prioritizes persons involved in one lawsuit only.

### **C- Access to Legal Aid**

The survey conducted with associations providing legal aid shows that it is easier for the latter to continuously access to prisons than for the Bar Association. In this regard, Atty. Fiani expressed that prisons fall more under the responsibility of associations rather than the Bar Association itself, based on the progress of legal aid cases. According to the CLDH, the prison visits conducted by the legal team are facilitated by competent authorities. Associations also receive case referrals from international organizations working within the prisons or case referrals from prison wardens. In this case, referral takes place through direct communication, whereby the prison warden contacts the lawyer in charge at the association in situations where detainees have not received follow-up for a while.

As for the provision of services not related to prisons, associations adopt similar mechanisms to reach beneficiaries, which entail setting up a hotline specifically for receiving legal assistance applications, directly receiving persons seeking help at their offices, and handling referrals between associations.

Referral of cases between associations takes place for different reasons. Legal Action, for example, takes into account the geographic criterion, whereby it refers cases that are related to the nature of its work but fall within the jurisdiction of courts located outside its area of work to other associations located in that area.

Regarding referrals, the Legal Agenda describes the difficulty it faces in specifying which competent authority to refer the cases to: “We refer files upon request and if necessary. However, we find it hard to specify which competent authority to refer the cases to, especially given that most associations follow specific conditions for legal aid provision which may change based on the financier and the program, as well as over time (nationality, subject-matter...).”

Regarding cooperation with the Bar Associations, Frontiers “Ruwad” Association stated that it cooperates more with the Tripoli Bar Association, while the CLDH stated that it commits to an official cooperation agreement with the Beirut Bar Association with respect to specific cases.

#### **D- Financial Difficulties Faced by NGOs**

The survey conducted with associations providing legal aid shows that the expenses related to legal aid programs are divided into two main parts: “administrative and logistical expenses” and transaction expenses, part of which is publicly known, while the other is classified under “petty expenses.”

Administrative expenses include salaries, the costs of contracts signed with lawyers, and the logistical expenses of offices, while transaction fees include the amounts stipulated by law, such as lawsuit fees, administrative fees, stamp duty, bails, and petty expenses incurred from photocopying documents, transferring files as well as other unofficial expenses imposed by courts and official administrations.

Lawyer Hady Nakhoul gives an example of the expenses assumed by associations in relation to a case filed by a migrant worker subjected to violence. The detailed expenses include: “stamp fees amounting to 25,000 LBP, notices amounting to 100,000 to 200,000 LBP, and a forensic doctor to examine the survivor at a cost ranging between 300,000 and 400,000 LBP, in addition to other fees including food, housing, as well as PoA registration fees and other relevant expenses.”

With regard to the cost of release from prison, the CLDH points out that associations cover bails amounting to a maximum of 500,000 LBP and might also cover the costs of release jointly with the detainee’s family.

In addition to the above, it is evident that associations face many financial difficulties in order to provide beneficiaries with the necessary access to legal aid. These difficulties include the following:

- There is a lack of sufficient funding programs allocated for legal support.

- Legal support programs rely on short-term financing, while the duration of lawsuits exceeds program terms. Thus, the financial resources may not be sufficient to follow up on the case or cover its expenses – i.e. non-inclusive programs.
- Some programs do not cover the lawsuit expenses but only cover attorney fees, not to mention that attorney fees are often high.
- The case-related expenses cannot be pre-determined by associations since the incurred fees might differ based on the case's progress and sometimes based on the court's decision (the cost of an expert, the costs of transferring a court clerk...).
- Legal support may require initiating several lawsuits (for example, domestic violence cases may require filing lawsuits before religious courts: divorce and alimony/child support are criminal lawsuits, which are also filed before the Court of Urgent Matters to obtain restraining orders), which greatly increases the costs of cases.
- Attorney fees provided within these programs are considered low when measured against the efforts made by the lawyers, particularly in the provision of legal support to marginalized groups that suffer from great difficulties in accessing justice, which often results in several complications during legal proceedings.
- The undocumented costs cannot be covered by financiers, and invisible (petty) expenses are also not covered by the association due to its adopted its principles and policies.

### **3- Individual Initiatives**

Interviews with lawyers clearly revealed their preference for providing legal aid individually over providing it through the legal assistance centers at Bar Associations. They also adopt certain techniques to balance between their provision of legal services and their ability to cover the financial expenses, which is determined based on the beneficiary's social and economic situation on the one hand, and on the case's subject-matter on the other.

In general, the lawyer's relationship with the beneficiary of legal aid in such cases depends on their circle of acquaintances, and the subject-matter is generally related to criminal cases, particularly labor cases. When implementing the said initiatives, lawyers often exempt low-income persons from paying attorney fees or charge only a percentage of their fees.

"I do not ask for attorney fees if the litigant is demanding the fulfillment of unpaid wages. The same goes for the moral compensation ruled by the criminal judge in favor of the litigant. Only if the judge rules with providing a civil compensation to the litigant may I deduct attorney fees therefrom."

Hady Nakhoul

The individual work of lawyers at the level of legal aid has paved the way for mobilizing their expertise and efforts to address specific events or exceptional circumstances. For instance, the Lawyers' Committee to Defend Protestors was formed to assist the protestors arrested during the 2015 movement in response to the waste crisis. In light of the 2019 uprising, the Committee was further developed and continued its work.

“Legal aid services provided by the Lawyers’ Committee in 2015 were provided by lawyers free of charge. The only difference was that they wouldn’t have to pay the fees incurred from the case when they were assigned by the President of the Bar Association.”

Farouk Al Maghribi, member of the Lawyers’ Committee to Defend Protestors

Several committees have been formed to address different types of cases, including the Committee to Defend Small Depositors and the committee concerned with defending laid-off workers in light of the economic decline and the financial crisis Lebanon is facing. It is worth noting that most of these initiatives made way for the pivotal involvement of non-governmental organizations active in the field of legal support in the work of these committees. For example, after October 17<sup>th</sup>, a group of lawyers came together and volunteered to defend the rights of laid-off workers. These individual initiatives, which are transforming into collective initiatives, are facing several difficulties that make it hard for them to survive amid the deteriorating economic conditions, despite the support they receive from non-governmental organizations.

“Lawyers today are facing great financial hardships in addition to a growing workload. For instance, the Committee to Defend Protestors has filed about 1,000 cases. If 600 cases go to trial, we will have to provide follow-up too. We can’t handle all this pressure.”

Lawyer Mazen Hoteit

### **Third: Financial Costs of Litigation**

According to lawyers and NGOs, Lebanon is one of the most expensive countries in the world in terms of the ability to litigate. Most prefer to resort to reconciliation due to the slow transactions and high fees. The financial costs not only include the sums prescribed by Law, but also increase due to administrative corruption. Therefore, there no clear idea about the cost of litigation. For example, in personal status cases, the case-related costs are high, especially when it comes to proof of kinship or divorce cases. The costs per file are not fixed, according to the CLDH.

#### **1- Lawsuits (Criminal and Civil)**

The fees and costs mentioned herein are in accordance with the Legal Fees Law of 10/10/1950, as amended by Law No. 91/89 and by virtue of Law No. 710/98 of 5/11/1998, by virtue of which the legal fees have been determined and judicial securities have been organized.

The abovementioned Law shall be used for the division of courts and judicial authorities presented below and for determining the fees, with the purpose of addressing the financial challenges faced by litigants.

- Civil Courts:

### 1- Courts of First Instance Fees

Registry Fees: This includes registration fees that differ based on the costs of the case and the fees of each document filed with the case, the initiation of lawsuit fee, which is based on the number of plaintiffs and defendants, the notice of trial fee, and the fees on copies.

Initiation of Lawsuit Fee:

Legal fees imposed on lawsuits are divided into two types:

- The percentage fee: This fee amounts to 2.5% of the value of applications filed, whether original, additional, urgent or counter applications. One fifth of the said fee is granted to the Judges' Mutual Fund pursuant to Article 5 of the law regulating the said fund (which amounts to 0.5%).  
The total sum of the percentage fee thus amounts to 3%, one-quarter of which must be paid upon initiating the lawsuit, while the remaining sum becomes due after the judgment is issued and the value thereof is determined. The fee is calculated based on this value after the judgment is issued.
- Lump-sum fees: With respect to lawsuits that cannot be estimated (i.e. lawsuits of unspecified values), a lump-sum fee of 25,000 LBP shall be paid in full upon initiating the lawsuit before the courts of first instance, in addition to 5,000 LBP for the Mutual Fund.

If the lawsuit's subject-matter includes two types of petitions, then two types of fees shall be paid based on the nature of the petitions.

Final Judgment Fees and Payment Method: In addition to the cases in which the percentage fee is either reimbursed or not, an additional fee shall be imposed on the judgments that result in an estimated amount of money that shall be subject to the percentage fee paid to the Judges' Mutual Fund and the Bars of Association pursuant to Article 14 of Law No. 18/78 of 18/12/1978 as follows:

\*Paid to the Beirut and Tripoli Bar Associations:

Degree of Judgments	Subject to Percentage Fees	Subject to Lump-sum Fees
First-instance Judgment	¼ (25%) of the judgment value with a minimum of 50,000 LBP	50,000 LBP
Appeal Judgment	75,000 LBP	75,000 LBP

A decision issued by the Court of Cassation or the State Consultative Council	100,000 LBP	100,000 LBP
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\*Paid to the Judges' Mutual Fund, half of the lump-sum amount in addition to the previously defined fee:

Degree of Judgments	Fee Value
First-instance Judgment	1/8 of the value with a minimum of 25,000 LBP
Appeal Judgment	37,500 LBP
A decision issued by the Court of Cassation of the State Council	50,000 LBP

In addition to the above, the fees imposed on final judgments made by the court shall be calculated as follows:

1. For cases subject to percentage fees, the fee shall amount to 2.5% of the value decided by the court granted to the State Treasury.
2. For cases subject to lump-sum fees, the fees imposed shall only be granted to the Bar Associations or the Mutual Fund as specified above.
3. If the final judgment includes two values, one of which can be estimated and the other cannot, the percentage fee shall be imposed on the first and the lump-sum fee on the second.

It must be noted that the law specifies certain cases in which litigants can retrieve the percentage fee paid and other cases in which it is not permissible to do so.

## 2- Courts of Appeal

### A- Court of Appeal Security:

In addition to the due fees and the sums specified below, the appellant in administrative and civil cases shall pay an appeal security amounting to:

Nature of the Lawsuit	Value of the Security
Does not exceed 500,000 LBP	25,000 LBP

Exceeds 500,000 LBP	50,000 LBP
Unspecified value	50,000 LBP
Disciplinary cases issued by the Council of Associations	50,000 LBP

The security shall be refunded to the appellant once the appeal is accepted in substance.

#### 1. Appeal Fee:

The previously specified registry fees shall be paid before Courts of Appeal.

The lump-sum fee before Courts of Appeal shall amount to 35,000 LBP paid to the State Treasury and 7,000 LBP paid to the Judges' Mutual Fund.

Regarding the fees to be paid before the Courts of Appeal, they amount to:

<b>Nature or Result of the Appeal</b>	<b>Fee Calculation Method</b>
If the value original or urgent appeal cannot estimated i.e. the value is unspecified	Lump-sum fee amounting to 35,000 LBP paid to the State Treasury and 7,000 LBP paid to the Judges' Mutual Fund
If the appeal is rejected in form	Lump-sum fee amounting to 35,000 LBP paid to the State Treasury and 7,000 LBP paid to the Judges' Mutual Fund
If the appeal judgment is revoked and the case is referred back to the Court of First Instance	Lump-sum fee amounting to 35,000 LBP paid to the State Treasury and 7,000 LBP paid to the Judges' Mutual Fund
If the value of the original or urgent appeal can be estimated i.e. the value is specified	The percentage fee is calculated as a percentage of the estimated or specified value of the appeal. A percentage fee of 2.5% shall be paid to the State Treasury, of which ¼ (25%) must be paid in advance upon initiating the appeal. A percentage fee of 0.5% shall be paid to the Judges' Mutual Fund. The remaining amount of the percentage fee shall be calculated and paid after the appeal judgment is issued and based upon the amount set by the court. If the Court of Appeal



	decides to increase the amount, the fee shall be paid on the basis of this increase.
If the appeal aims at increasing the initial sentence	<ul style="list-style-type: none"> <li>- If the court refuses the increase, the case is considered to be dismissed in substance and a lump-sum fee of 35,000 LBP shall be paid</li> <li>- No amount of the paid fee shall be refunded pursuant to Article 25 of the Decree Law</li> </ul>
If the Court of Appeal issues an acquittal of the convicted person, or reduces or amends the initial sentence	The percentage fee shall be calculated based on the value of the appeal judgement, i.e. 2.5% to the State Treasury and 0.5% to the Judges' Mutual Fund
Appeals against disciplinary decisions and decisions issued by the Council of Associations	As prescribed by Law

**3- Court of Cassation**

A- Court of Cassation Security

The Court of Cassation Security is set at 250,000 LBP for civil cases filed before the Court of Cassation and 200,000 LBP for criminal cases filed before the Court. The security shall be refunded once the Cassation filed is accepted in substance.

The value of the security that shall be paid upon submitting the review before the General Assembly of the Court of Cassation is the same as the security specified before the Civil Court of Cassation, which amounts to 250,000 LBP.

In addition to the Cassation security, a lump-sum fee shall be imposed before the Court of Cassation in the following cases:

- The request to transfer the civil case from one court to another is subject to a lump-sum fee of 50,000 LBP
- Cases filed before the General Assembly of the Court are subject to a lump-sum of 50,000 LBP
- The request to appoint a civil authority before the General Assembly is subject to a lump-sum fee of 50,000 LBP

No percentage fees shall be imposed before the General Assembly of the Court of Cassation.

## B- Legal Fees

To avoid repetition, all fees required by the Court of Cassation shall be calculated on the basis of the aforementioned rules before both the Courts of First Instance and the Courts of Appeal.

### 4- Criminal Justice:

#### 1) Costs and Judicial Fees

Criminal Justice fees are divided into three categories:

##### a. Registry fee:

It consists of the aforementioned fees, including registration, regular copies (this fee is collected in the form of a stamp), and a copy of judgments awarding personal compensation, based on the percentage stamp fee, that is 2.5% of the compensation sum awarded to the State Treasury, and 0.5% of the compensation awarded to the Judges' Mutual Fund. Neither of the litigants can receive a certified copy of judgments awarding compensation valid for implementation until after paying the percentage fee, as well as the original and additional share of the Judges' Mutual Fund and the Bar Association's share, as previously outlined.

The convicted person shall be exempted from the percentage fee, whether in criminal or misdemeanor cases, if they wish to appeal the verdict before the Court of Cassation. In that case, the copy of the judgment will include a note indicating that it can only be used for this purpose. Should the convicted person request a merged or judgements, they will not be exempted from any fee.

##### b. Criminal Justice Securities:

- 1) Court of Cassation Security: Set at 200,000 Lebanese pounds, this fee covers appeal requests for criminal judgments or appeal judgments on misdemeanors and infractions, as well as retrial requests, whereas the Law on Judicial Fees exempted retrial requests from any securities.

The convicted individual and personal plaintiff in criminal cases and requests to determine the penal authority are exempted from the Court of Cassation securities, provided that they present a Poverty Certificate. Securities are refundable, should the applicant withdraw the appeal, although the court may choose to confiscate them.

Criminal decisions and judgments are also subject to a fee ranging from 1,000 to 10,000 Lebanese Pounds.

- 2) Advance Criminal Justice Securities:

- Upon resorting to review mechanisms, i.e., the aforementioned Cassation security.

- Upon presenting the lawsuit to the relevant criminal authority.

If the case is brought before an investigating judge, the latter may choose to order the plaintiff to make an advance payment on judicial fees and expenses, provided that it does not exceed 1% of the lawsuit value. Where the plaintiff is a foreign national, the investigating judge shall order them to provide a cash or real-estate guarantee. Failure to do so will result in the dismissal of the case in form.

Where the offense is a misdemeanor, the investigating judge may exempt the plaintiff from the advance payment. The judge may also choose to exempt foreign plaintiffs from the said fees on grounds of their financial status, by virtue of a justified decision.

If the criminal case is brought before a Single Judge, the same abovementioned rules shall apply.

As for the advance payment or guarantee, it shall be securely deposited in a safety box under the owner's name and used to cover expenses when needed. The advance or guarantee, or the remainder thereof, shall be returned to the personal plaintiff if their lawsuit ultimately proves to be rightful. If the plaintiff is ordered to cover the lawsuit fees and expenses, the guarantee will not be refunded or may be partially refunded after deducting the due fees and expenses.

For cases brought before the Judicial Council, the provisions on Criminal Court Fees shall apply.

For cases brought before the Publications Court, the provisions on Single Judge fees shall apply, provided that an advance security is provided, according to what the court deems appropriate.

For cases brought before the Court of Appeal, the provisions on Single Judge fees shall apply, without the need for any advance security, payment, or guarantee.

#### c. Judicial Expenses of Criminal Cases

The judicial expenses of criminal cases are divided into two categories:

First Category: Expenses collected by the Treasury from the convicted person at a later stage.

These include:

1. Remuneration for judges, legal assistants, experts, and members of the armed forces, in the event they conduct an investigation.
2. Remuneration, transportation and accommodation fees for witnesses/
3. Experts' fees.
4. Medical treatment expenses for victims injured as a result of criminal offenses.
5. Safeguarding, storage, and stamping fees.
6. All expenses related to carrying out an inspection or an investigation to prove the offense.
7. Enforcement fees.

Second Category: Expenses borne entirely by the Treasury. These include:

1. Correspondence and mailing fees.
2. Confiscated items transportation fee.
3. The detainees' transportation and subsistence expenses.
4. Any other similar expenses required by the lawsuit.

5. **PoA Registration Fee**

1. Beirut Bar Association

Every Power of Attorney (PoA) granted to an attorney registered at the Beirut Bar Association shall be submitted to Lebanese Courts for a fee of 75,000 LBP for each PoA.

As for the annual registration fee of a PoA for a company attorney in the Commercial Register, it is set at 150,000 LBP.

2. Tripoli Bar Association

For Attorneys registered at the Tripoli Bar Association, the litigant shall pay the PoA registration fee to the Association, in addition to an advance on the attorney's fees, according to the provisions of the Attorney Fees Advance Regulation in the North Lebanon Bar Association No. 27, issued by the Bar Association's Council on 20/10/2004, amended by virtue of Decision No. 23/2 of 20/08/2019: "An advance payment by no means entails fixing the attorney's fees. It is only an advance on the account. The total sum of fees is subject to freedom of Contract."

In line with Article (6) of the said regulation, advance payment requirements depend on the case's subject-matter, actions taken, degree of the competent court, and the party represented by the attorney.

#### **Fourth: Military Judiciary – A Further Problematic Issue**

According to the CLDH, several obstacles hamper the access of accused persons to legal aid, as individuals taken into custody by security agencies affiliated with the army are often subjected to disappearance for around one week.

Detainees have to go through the Public Prosecutor's Office and the investigating judge before appearing before the court, where they are asked whether or not they would like to appoint a lawyer. Should they express their wish to do so, the trial is adjourned until an attorney is appointed. Cases are usually adjourned for six months between hearings.

The second difficulty is related to lawyers' inability to access files that are not assigned to them. As such, we cannot determine in advance whether the accused is eligible for legal assistance or not. In such cases, a meeting is usually scheduled with the accused in his/her place of detention.

“At the Military Court, all litigants suffer from the lack of legal consultation services, despite the Court’s organized administrative process. However, the inability to review the files without a PoA deprives the litigant of legal consultations that guarantee that he/she understands the accusations made against them”.

Hala Hamza

With respect to the fees of Military Court cases, Hamza details them as follows:

- Appointing a lawyer: 75,000 to 100,000 LBP to draft a PoA at the Notary Public’s Office, and an additional 75,000 LBP to register the PoA at the Bar Association, along with another 5,000 LBP in stamps, and a 1,000 LBP stamp on each annexed document, amounting to a total of 200,000 Lebanese Pounds for the appointment alone.
- Expert and witness related expenses, including but not limited to: Transportation fees for witnesses at the Military Court, amounting to 200,000 LBP. Most cases have several witnesses, but the Court refuses to cover these fees under the pretext of lack of liquidity. Moreover, a forensic doctor’s fees are no less than 500,000 LBPs, to be covered by the defendant. Likewise, the cost of providing any expert service at the Military Court, from interpretation to weapons, is extremely high. It ranges from one million to ten million Lebanese Pounds.

#### **Fifth: Conclusions**

Legal aid in Lebanon is based on a number of initiatives that seem to be disorganized and uncoordinated. This is the first obstacle to a comprehensive legal aid program. The issue is

exacerbated by the absence of any government policy that enables people to enjoy the right of access to justice. The burden is entirely placed on the Bar Associations.

This responsibility was assigned to the two Bar Associations under the law. However, this is illogical, given the fact that a bar association is gathering of self-employed professionals and is not a state actor. As such, the entity responsible for providing legal assistance does not have the authority to determine the judicial fees and the cost of the right to remedy. This increased burden carried by the Bar Associations is due to the lack of adequate legislations adopted by Parliament. The associations are using portions of their budgets to provide legal support to a growing number of people. The higher the judicial fees, the less people are able to afford them individually.

The main purpose of judicial fees and expenses is to feed the State Treasury and the Judges' Mutual Fund. Therefore, settling these fees and expenses ensures proper functioning of public institutions and is one of the basic conditions for cases to be accepted before Lebanese courts. The aim is to establish a prerequisite for litigants before going to court in order to reduce the overcrowding of courts, thereby allowing them to focus on more serious cases. That way, fees and expenses become a compulsory public service to ensure the proper administration of justice. The State intervenes to determine the persons entitled to litigation through its executive and judicial authorities. It does not provide any financial coverage or support for legal aid budgets, and its role is limited to providing facilities, namely exemption from fees. However, transaction delays due to administrative bureaucracy lead to the extension of the detention period, which encourages beneficiaries to move forward with the case without legal representation rather than wait for a lawyer to be appointed to them whenever they have the option.

There are also shortcomings on the part of State bodies regarding legal aid, particularly with respect to the role of prison officials and their cooperation with the legal aid centers of the Bar Associations. State bodies also fail to pay experts' dues in legal aid cases, which makes judges reluctant in asking for legal aid, thereby resulting in a loss of means of proof and evidence.

One of the most profound effects of the working mechanisms of State institutions on the right of access to justice on the one hand, and on the adequacy of legal assistance programs on the other, are invisible expenses, i.e. petty expenses. This term only serves to mask the administrative corruption that takes the form of systematic bribery in official departments and registries in the absence of effective oversight mechanisms.

As crucial as the role the two Associations play in legal assistance might be, there is a clear difference in program management in both Associations and their prospects for development. The main difference between the two is financial in nature and related to the budget dedicated to legal assistance. While assistance in Beirut is offered through the Bar Association's fund, Tripoli's Bar Association focuses on securing international financing sources to offer legal assistance services. There are also differences in the effect of legal assistance cases on lawyers, as the Tripoli Bar Association insists on securing a good income for the lawyer, given the region's

economic conditions. The Beirut Bar Association, on the other hand, does not count assistance as a source of income for the lawyer, but only as a means of support for its beneficiaries.

Non-governmental organizations do fill the gaps caused by the withdrawal of State institutions from legal assistance. However, there are no unified criteria that determine the target groups, the type of services provided and how urgently they are needed, in order to cover the widest possible range of people in need. If NGOs adopt strict criteria for potential beneficiaries, large segments of society would be excluded from the provision of legal assistance. For example, if a legal assistance program only targets women beneficiaries, girls would be excluded from its services. The criterion of the subject-matter of the case seems more feasible in this area. The fact that organizations have taken on different types of cases, without specializing in specific fields, creates additional setbacks in their ability to function and determine the difficulties particular to each type of case, and complicates the access of beneficiaries to specialized institutions.

In terms of the services provided by legal assistance programs, they are unstable and do not meet a clear standard. One common trend is that legal consultations are becoming less and less important, despite the fact that they could have a large impact on the extent of the need for legal representation, by anticipating problems related to legal assistance before the case is filed, so that citizens become aware of their rights.

## Sixth: Recommendations

- At the official level:
  - A radical adjustment of legal aid programs, by assigning this responsibility to the Ministry of Justice.
  - The establishment of a center for legal assistance directly affiliated with the State, which contracts lawyers to work with clients, such as state attorneys.
  - The appointment of district lawyers in governorates to provide consultations, particularly with respect to personal status affairs and civil registration for newborns.
  - The establishment of exclusive legal advice clinics.
  - The removal of all obstacles hindering the right to litigation, particularly the condition of legal residency for foreigners.
  - The amendment of laws, particularly with regard to fees.
  - The issuance of a law that grants citizens the right to be represented by a lawyer when questioned by the Judicial Police. In case they cannot afford a lawyer, they shall be assigned one free of charge by the Bar Association to represent them during their interrogation at the Judicial Police centers.
  
- At the NGO Level:
  - The consolidation of services and specialization, i.e. the specialization of each association in a specific type of assistance and in specific topics.
  - Encouraging beneficiaries to assume responsibility for their transactions and only provide consultation and financial support in this area.
  - The development of a unified working mechanism for legal assistance programs.
  
- At the Bar Association Level
  - The appointment of a lawyer monitored by the legal aid center to each court who has sufficient experience to keep track of costs before the court.
  - File monitoring through a follow-up mechanism by the Association and legal aid officials (lawyers experienced in the laws and customs of the Military Court), and through the adoption of written pleadings to ensure that serious follow-up is undertaken despite the delay of the sentence until the next day.
  - A training course for interns and transferring files exclusively to trained lawyers. That way, the Bar Association ensures effective follow-up on cases in order to make effective requests, ensure access to litigation at the required level as well as assign lawyers to follow up on legal aid files taken on by interns.



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Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

International Convention on the Rights of All Migrant workers and their Families

Convention on the Rights of Persons with Disabilities

Convention on the Rights of the Child

United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

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# Table of Contents

List of Data Tables

Executive Summary

Background and Context

Methodology

First: General Framework for Inclusive Legal Aid

- 1- Legal Framework
  - a. Domestic Legal Framework in Lebanon
  - b. International Framework Applicable in Lebanon
- 2- Target Group and Needs Assessment Criteria
  - a. The Economic Criterion
  - b. The Social Criterion (Social Groups)

Second: The Reality of Legal Aid in Lebanon

At the level of the Bar Associations

- a. Legal Assistance Provided by the Beirut Bar Association
  - i. Services Provided by the Legal Aid Committee in Beirut
  - ii. Cases Covered by the Legal Air Committee at the Beirut Bar Association
  - iii. Beneficiaries' Access to Legal Aid at the Beirut Bar Association
  - iv. Legal Aid Funding and Challenges Thereto
  - v. Observations on Legal Aid
- b. The Tripoli Bar Association
  - i. Legal Aid Funding and Challenges Thereto
  - ii. Cases Covered by the Legal Air Center at the Tripoli Bar Association
  - iii. Services Provided by the Legal Aid Center in Tripoli
  - iv. Beneficiaries' Access to Legal Aid and the Source of Referral
  - v. Observations on Legal Aid

At the level of Non-Governmental Organizations

- a. Types of Legal Aid Provided by NGOs
- b. Criteria for Determining Legal Aid Beneficiaries
- c. Access to Legal Aid
- d. Financial Difficulties Faced by NGOs

3- Individual Initiatives

Third: Financial Costs of Litigation

1- Lawsuits (Civil and Criminal)

2- Courts of Appeal

a. Court of Appeal Security

3- Court of Cassation

4- Criminal Justice

5- Execution Department

Fifth: Conclusions

Sixth: Recommendations

References

Table of Contents