

# Kyiv Conference on Protection and Promotion of Human Rights through Provision of Legal Services: Best Practices in Africa, Asia and Eastern Europe

## Day One: Tuesday, 27 March 2007

### *Welcome*

The Conference on the Protection and Promotion of Human Rights through the Provision of Legal Services opened yesterday with an address by Inna Yemelianova, the Honourable Deputy Minister of Justice of Ukraine. Ms. Yemelianova imparted the importance of the Conference in developing legal aid services in Ukraine. Ms. Alla Tyuytynnyk, the President of Kherson Regional Charity and Health Foundation, then underscored the necessity of learning about legal aid practices in other countries to develop legal aid in Ukraine. In his welcoming remarks, Mr. Nathan Taylor, representing the Canadian Embassy, then expressed his government's pleasure at providing financial support for the conference. Ms. Carla Ferstmann, the Director of Redress, next emphasized the importance of legal services to Redress, which seeks remedies for victims of torture and other international crimes. Finally, Mr. Paul Dalton, on behalf of the Danish Institute on Human Rights, outlined the objectives of the Conference, which included information exchange between legal services providers, an analysis of the experiences of legal service providers, the support of the development of legal aid in Ukraine; and the promotion of public-private partnerships in legal aid.

### ***Opening Address – 'Legal Aid – A Human Right?'***

Mr. Simon Rice, a Senior Lecturer at Macquarie University, gave the opening address of the Conference. Mr. Rice defined legal aid broadly, encompassing all aspects of public access to the law, with legal representation constituting but one part. Mr. Rice summarized how countries recognize the right to legal representation, but only in closely defined circumstances. To overcome such limitations, access to legal aid must be a human right independent of the state. According to Mr. Rice, human dignity depends on the ability to understand the rules by which society is governed and, in turn, on humans' right to engage in their legal system. The human right to access to law means the right "to be told the law, to be given the opportunity to know and understand the law, and to be able to use it, to gain its benefit and protection." Finally, Mr. Rice asserted that the right of access to law gives new meaning to human rights instruments and provides a universal standard by which the adequacy of legal aid can be judged.



*The welcome panel opens the Conference.*

### ***Session One: Legal Services Provision from the Perspective of Public Authorities***

In Session One, a distinguished panel discussed the provision of legal services from the perspective of public authorities. Bruno Kalemba, the Chief Legal Aid Advocate in the Malawi Ministry of Justice, detailed the expansion of legal aid services from a narrow focus on direct criminal representation in the 1960s to a broader view that includes civic and legal education today. Malawi is currently pioneering a hybrid system of legal aid that relies on a public-private partnership, although Mr. Kalemba also emphasized the danger of relying on private financing. In an effort to compensate for a shortage of lawyers, particularly in rural areas, Malawi has begun to use trained paralegals to allow legal aid to reach more of the country's unserved population.

Ms. Ta Thi Minh Ly, Director of the National Legal Aid Agency in Vietnam's Ministry of Justice, discussed the successes and challenges her country has experienced in developing its legal aid system over a short period of time. Since the program started just 10 years ago, Vietnam has successfully employed public and private financing and an innovative advertising system that includes the use of radio, loudspeakers, and newspapers, to serve more than 150,000 citizens last year through nearly 1,000 legal aid branch offices. The legal aid system serves clients for free in all areas of law other than commercial matters. Current challenges to the system include handling a rapid caseload expansion while maintaining a high standard for quality control, lawyer ethics, as well as low attorney pay.

Ms. Valentina Subotenko, the Head of Centre for Legal Reform and Legislative Review, Ministry of Justice of Ukraine, discussed the initial steps toward the creation of a system of free legal aid in Ukraine.

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Ms. Subotenko mentioned the contradictory provisions in the Constitution regarding mandated legal aid services. As Ukraine forms its framework for providing legal aid, it must meet both its historic international human rights commitments as well as its new international obligations since independence. She noted that it must resolve its obligations to provide free legal services to refugees while still creating a feasible framework designed to protect its own citizens. Finally, Ms. Subotenko summarized the progress of the pilot legal aid programs.

The final panelist in Session One was Ms. Hatla Thelle, Senior Researcher for the China Program at the Danish Institute for Human Rights. Ms. Thelle began by discussing the recent importance of petitioning and mediation as methods of legal redress in China. She stated that in response to concerns about social unrest, the Chinese government has become invested in establishing the rule of law and promoting legal aid. It has established and funded regional legal aid centers and mandated that the centers appoint bar members of the Bar to represent criminal defendants. Ms. Thelle concluded that although legal aid services are growing as a result of government support, their involvement creates problems of independence and local protectionism.



Ms. Subotenko takes part in a lively discussion.

### ***Session Two: Provision of Services by Private and Community Based Organizations***

In the afternoon session, panelists shared their diverse experiences and challenges in the private and community-based provision of legal services. Ms. Seehaam Samaai, the Director of University of the Western Cape Legal Clinic, explained that legal aid in South Africa is mostly provided in criminal rather than civil matters, mainly because of the severity and urgency of the matter. As Ms. Samaai described, university clinics are the main purveyors of legal aid,

using student assistance and funding from the Legal Aid Board and other external donors.

Abby Tebrahni, Vice Chairperson of the Board of the Indonesian Legal Aid Foundation, highlighted problems facing legal aid in his country. The most significant problem is the Indonesian government's lack of understanding of the relationship between legal aid and the establishment of a successful government. Consequently, the government has committed insufficient resources to the provision of legal services. Also, geographical complexities have made it difficult to assist those residing in rural areas.

Next, Madame President Tyuytunnyk lauded the strides that her organization has made in providing legal services to the Ukrainian people, but decried the prevalent poverty and inadequacy of the protection of human rights. Most Ukrainians are not aware of their rights and thus are unable report human rights violations to authorities or legal aid organizations. Like her fellow panelists, Ms. Tyuytunnyk noted the problem of funding. In Ukraine, legal aid projects depend on donor generosity and thus cannot be self-sustaining once donor funding is withdrawn. Ms. Tyuytunnyk highlighted the need for a strong private-public partnership to further democracy and human rights while improving citizens' welfare.

Finally, Mr. Huang Jinrong, a Senior Researcher at the Institute of Law at the Chinese Academy of Social Sciences, was optimistic about the Chinese government's strides in legal aid. He explained that, for many years, the government addressed economic and social rights at the expense of civil and political rights. Recent constitutional amendments reflect the government's new desire to build a society premised on the rule of law. While still politically restrictive, the government has begun to appreciate the need to promote individual liberties. Finally, thanks to the growing influence of the media, legal practitioners are able to more effectively agitate for legal change.