

THE

INSTITUTIONAL

FRAMEWORK

FOR

LEGAL

AID

SYSTEMS

A COMPARATIVE ANALYSIS AND TYPOLOGY

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I. INTRODUCTION

Governmental and juridical institutions play a major role in protecting human rights, ensuring access to justice, and securing the rule of law. To meet these goals, institutions involved in the legal aid system must organise and facilitate assistance from legal professionals and recourse to the court system. Furthermore, legal services must be made available to a wide range of individuals who require assistance, regardless of their financial resources or social status.

Only when institutional roles, responsibilities, and relationships are soundly structured and effectively managed can there be meaningful access to justice through a legal aid system. Therefore, the institutional arrangements for the legal aid system must be a priority for government officials, the judiciary, legal professionals, and civil society. In addition, these institutional arrangements require and must be complemented by a sound legal framework, sufficient financial and human resources, effective mechanisms for delivering legal services, equitable criteria for determining eligibility, and strong oversight and quality control

This paper takes a comparative approach to institutional arrangements for legal aid systems. It presents a typology for categorising institutional arrangements, and then applies this typology to select countries, using a series of charts. The typology and charts are original work, and will be developed and improved over time. Because of the difficulties of summarising a legal aid system in a single chart, commentary is welcome and revisions are expected.

The objective of this paper is to develop a more global perspective and a comprehensive approach to legal aid systems. Far too often, legal aid systems develop in an *ad hoc* manner over time, influenced by historical and legal traditions, governmental and institutional interests, the structure and work of legal professionals, etc. As a result, reforms are carried out piecemeal, without considering the big picture. In order to coherently analyse and consistently improve legal aid systems, it is necessary to adopt a systematic and comparative approach.

II. WHAT ARE THE KEY INSTITUTIONS IN LEGAL AID SYSTEMS, AND WHAT ARE THEIR ROLES?

The institutional framework for legal aid systems is characterised by the roles and responsibilities of the key actors and the nature of their inter-relationships.

The following parties are customarily involved in the establishment and operation of legal aid systems:

- The Ministry of Justice. The Ministry of Justice can operate, manage, fund, and/or oversee a legal aid system. This can be done via: a) a department in the ministry, b) a dependent institution, c) a separate Legal Aid Authority under the authority of the ministry, or d) cooperation with the courts, Prosecution Service, and Bar Association (or Associations). The Ministry of Justice can work with the Ministry of Finance on funding and financial accountability. It can also cooperate with a ministry having responsibility for social affairs regarding eligibility requirements and related issues.
- A Legal Aid Authority. A special institution can be established to manage the legal aid system, and arrange for the delivery of legal services. Delivery can be accomplished: a) directly by staff lawyers, b) indirectly through other organisations such as public

defenders or clinics, or c) indirectly through appointed lawyers. A Legal Aid Authority can also be involved in making payments, monitoring, and quality control.

- A Court Management Body. A Court Service or Judicial Council which manages the court system can: a) administer a legal aid fund, b) pay for legal services, c) cooperate with the Bar Association in the designation of lawyers, and d) cover court fees and litigation expenses in legal aid cases.
- Court Presidents and Judges. Court Presidents and Judges can: a) ensure that defendants and litigants have required legal services at all stages of trial, b) cooperate with the Bar Association and prosecution in the appointment of counsel, c) monitor legal services, and d) facilitate coverage of court fees and litigation expenses in legal aid cases.
- The Prosecution Service. The Prosecution Service or (Office of Attorney General) and individual Prosecutors can: a) ensure that the right to legal aid is respected in penal cases, b) establish and enforce ethical obligations pertaining to legal aid, and c) provide training and information.
- The Bar Association. The Bar Association (or Associations in certain jurisdictions) can: a) manage the delivery of legal services, b) maintain lists of lawyers who are able/eligible and available to take legal aid cases, c) work with Judges and Prosecutors to ensure the appointment of lawyers, d) finance legal aid, e) organise and arrange the delivery of *Pro Bono Publico* legal services, f) establish and enforce ethical obligations for lawyers, g) provide training and information for lawyers on substantive and ethical issues, and h) engage in public outreach and awareness raising.
- Civil Society. Civil Society Organisations (CSOs herein, but also known as Non-Governmental Organisations or NGOs) can: a) deliver legal services in their particular areas of expertise, b) provide information concerning their work and results, c) raise public awareness concerning human rights and legal aid, d) cooperate with and support juridical institutions and courts, e) monitor and report on the protection of human rights and access to justice issues. CSOs are often financed by charitable contributions.
- Law Faculties. Law Faculties and professors can: a) organise clinical programmes which both deliver legal aid services and train young lawyers, and b) support reforms that strengthen the legal aid system.

In addition, international organisations and donors can play an important role in developing countries and countries in transition. This includes public and private international bodies, multi-lateral and bi-lateral donors, and diplomatic missions. These institutions can a) fund legal services through official mechanisms or Civil Society Organisations, b) provide technical assistance for the development and modernisation of juridical institutions, c) support the formation of legal professionals, and d) supply expertise and information concerning international standards and best practices.

The above listing of institutional actors and their possible roles highlights significant variability. In different countries, comparable institutions can play very different roles. Inter-relationships between institutions also vary greatly. This makes it even more important to take a comparative approach and systematically look at how different legal aid systems work in practice.

III. WHAT ARE THE MAIN CRITERIA AND PARAMETERS FOR THE INSTITUTIONAL FRAMEWORK?

The institutional framework for legal aid systems incorporates, integrates, and balances the roles and responsibilities of each of the key parties. As a result, it also sets the stage for their inter-relationships. Only if the institutional framework is coherent, and key parties are able to effectively carry out their obligations, can the legal aid system properly provide legal services and protect important human rights.

The institutional framework and management procedures for legal aid systems should be settled in the legal framework and in the organic documents of key parties. Many countries address these issues in comprehensive legislation. However, there may be both laws and regulations. Further, institutions may have subsidiary legal instruments. For example, Bar Associations usually have Statutes or By-laws, plus a Code of Ethics. And Legal Aid Authorities often establish and enforce performance standards.

For each institution involved in the legal aid system, it is necessary to establish and define:

1. The scope of powers and authority
2. Obligations with respect to the delivery and oversight of legal services
3. Sources of funding, and requirements for financial documentation and accountability
4. Management (of departments, assets, human resources, information resources, etc.)
5. Relationships with other juridical bodies
6. Outreach, information dissemination, and public relations

The handling of these issues can greatly affect many different aspects of governance and the legal system. These include:

1. The separation of powers (particularly between the executive branch and judicial branch)
2. Governmental operations and the relationship between authorities and the populace
3. Public finances and financial obligations
4. The work of legal professionals (Judges, Prosecutors, and Lawyers)
5. The status of private institutions (such as Bar Association and Civil Society Organisations)

Uncertainty in any of these respects can compromise the foundation and operation of the legal aid system, and complicates or even impede the delivery of legal services.

In order to promote clarity and avoid uncertainty, it is important and useful to have a typology of the institutional characteristics of legal aid systems. Unfortunately, this subject is rarely analysed in a systematic and truly comparative fashion. Instead of using typologies, most information about legal aid systems is in the form of articles which are descriptive, long, detailed, and focused on delivery and eligibility (to inform potential clients). Information presented in this format does not lend itself to comparisons.

To facilitate a truly comparative approach, the following ten-point typology sets forth key characteristics and alternatives for legal aid systems. This enables and facilitates both categorisation and analysis.

TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK OF LEGAL AID SYSTEMS				
	CRITERIA	PARAMETERS		
1	Jurisdiction	A. National System		B. Federal System
		Covers entire country or national territory, except for exclusive powers of local or municipal authorities		Administered by distinct regional units (such as States or Provinces), although central government may retain some responsibilities
2	Case Coverage	A. Unified		B. Differentiated
		Single institution or delivery mechanism for penal and civil cases		Separate systems, institutions, and/or delivery mechanisms for penal and civil cases
3	Management	A. Direct	B. Delegated	C. Autonomous
		Run by Governmental Authority, such as Ministry of Justice	Run by Legal Aid Authority, Board, or specialised institution	No central management. Actors such as Courts, Bar, CSOs have defined roles.
4	Funding	A. Public		B. Private
		State Budget (General Revenues)	Public Funds (Client co-pay, case fees, special charges)	Pro Bono support from the Bar and lawyers, CSO services, insurance coverage for legal fees, donations, cost awards, contingent fees
5	Legal Services Delivery Mechanisms	A. Private Lawyers	B. Contracted Lawyers	C. Employed Lawyers
		Lawyers handle only designated cases, in their private capacity, <i>ex officio</i>	Lawyers retained through institutional contracts, for specified cases or clients	Full time or staff lawyers, possibly civil servants or public defenders
6	Role of Court System (Judges)	A. Primary		B. Secondary
		Judiciary Management Bodies and Judges play a key role in arranging and securing legal aid, designating counsel		Judiciary Management Bodies and Judges not directly involved in legal aid, but oversee cases, prevent/redress violations
7	Role of Bar Association	A. Primary		B. Secondary
		Bar Association plays a major role in assigning and providing counsel, delivering and monitoring services		Bar Association not directly involved in delivering services. May provide lists of lawyers and exercise ethical/quality control.
8	Role of Independent Institutions, Civil Society	A. Primary		B. Secondary
		Independent bodies play a key role in delivering legal services, based on subject matter, type of client, or location		Independent bodies play a subsidiary role in the delivery of legal services, under specific or limited circumstances
9	Types of Legal Services	A. Comprehensive		B. Functional
		Single delivery system or lawyer for primary and secondary legal services		Multiple delivery systems or lawyers for primary and secondary legal services
10	Client Coverage	A. Universal		B. Restricted
		System covers a wide range of clients, and legal aid is seen as a social service		System only covers specific target groups, who must meet all requirements

Each of these criteria will be explained and summarised. Afterwards, it will be possible to apply the typology and criteria to different countries.

1. Jurisdiction: (A) National or (B) Federal

“Jurisdiction” in this context refers exclusively to the *territorial scope of institutional authority*. It concerns the number of levels of government which play a role in the legal aid system.

The main factor affecting jurisdiction is whether the governmental system is national (unitary) or federal. In countries with a national system this issue is not usually emphasised, since the mandate of central government institutions generally extends throughout the territory. However, there are always limits. First of all, certain powers and activities may be reserved to local or municipal authorities, by law, practice, or custom. Second, there may be treaty obligations or requirements established by international and transnational bodies (such as the Council of Europe and European Court of Human Rights). Third, certain areas of law may be handled separately, through traditional forms of justice or by religious authorities.

In federal systems, powers are shared between national and regional institutions and authorities. The general trend is to devolve powers regarding the legal aid system. It is not considered a national priority (such as defense or monetary policy), it does not absolutely require uniform national treatment, and it should respond to local reality. This is the case in Germany, Australia, and Canada, where the Länder, States, and Provinces operate devolved systems. However, even in federal systems, central government institutions have jurisdiction over certain matters and influence over others, through the Constitution and national legislation. In the United States, the federal government exercises influence through funding for legal services, and the oversight and reporting requirements which accompany it.

It should be pointed out that even in a unitary system, certain institutions operate locally. For example, the Ministry of Justice or a Legal Aid Authority can have regional branches or operate local legal aid offices. In addition, Bar Associations can be organised in the form of local chapters, which are united into a national/umbrella group. These are not considered features of a federal system, since the local units, while individually managed, operate under uniform standards or as parts of a single authority.

Most countries fall under Category 1 (A), with a unitary national legal aid system.

2. Case Coverage: (A) Unified or (B) Differentiated

“Case Coverage” refers to whether and how the legal aid system distinguishes between different categories of cases, usually penal and civil cases. Administrative cases are also relevant, since they may be included with civil cases or handled separately.

Some countries cover both penal and civil cases under a single institutional structure, in a unified fashion. Under this model, individuals seek legal services from a single source or set of sources, regardless of the nature of their problem. In the Netherlands, for example, the Legal Aid Board operates a system of Legal Aid Counters and *Ex Officio* private lawyers, which handles both penal and civil cases in exactly the same fashion. In Belgium and Turkey, the Bar Association provides services through legal aid offices regardless of whether the case is penal or civil.

However, the right to counsel is stronger in penal cases, and should be obligatory when there *may* be a deprivation of liberty. Thus, there can be separate and specialised institutional mechanisms for penal cases. Or, in the alternative, the official legal aid system may exclusively handle penal cases (as in Egypt, Jordan, and Palestine). Some countries recognise the importance of resolving issues affecting social welfare, and establish separate mechanisms for civil and administrative cases. All of these systems are denominated *differentiated*.

Differentiation between penal and civil cases can occur at different institutional levels. Ireland has two completely separate systems. In penal cases legal aid is provided through the courts, whereas in civil cases it is provided through a Legal Aid Board and localised Legal Aid Centres. In Israel, the Ministry of Justice operates two differentiated schemes, through a Public Defender Office and a Civil Legal Aid Office. In the United Kingdom, under the previous system which is now being modified, it was the Legal Services Commission under the Ministry of Justice which differentiated, through a Criminal Defense Service and a separate Community Legal Service.

The key difference is that in unified legal aid systems, it does not matter what type of problem clients have, since the same institutional mechanisms provide legal services. In differentiated systems, the nature and source of legal services depends first and foremost on the type of case.

Most countries fall under Category 2 (B), with differentiated systems for penal and civil cases. However, there is considerable variability concerning the institutional structure for the differentiation, and the level at which it takes place.

3. “Management”: (A) Direct, (B) Delegated, or (C) Autonomous

“Management” refers to administrative and operational authority/responsibility for the legal aid system. It concerns the distribution of power, and decision-making regarding policies, procedures, delivery mechanisms, eligibility, and substantive rights.

Direct Management occurs when a governmental authority, usually the Ministry of Justice, controls the legal aid system. For example, the Ministry of Justice in Finland directly operates Legal Aid Offices and Public Defenders. The Ministry of Justice in Israel also has direct control over the Civil Legal Aid Office, although the Public Defender Office has some autonomy. The Legal Services Agency in New Zealand and the Legal Services Commission in the United Kingdom are also under challenge from executive branch institutions.

Delegated Management uses an intermediary institution to insulate and limit governmental authority over the legal aid system. This is particularly important in penal cases. There is a definite *appearance* of partiality, and very possibly partiality *in fact*, when governmental authorities prosecute defendants and at the same time finance or arrange for their defense. The customary institution for Delegated Management is a Legal Aid Authority. Such institutions come under many names: the Legal Aid Board in South Africa and Scotland, the Legal Services Commission in the United Kingdom, the Legal Aid Administrative Authority in Latvia, the Commission des Services Juridiques in Quebec, the Legal Aid Commissions in Australia, etc. Such institutions are common in Europe.

A Legal Aid Authority can manage the system, select and contract parties to provide legal services, exercise oversight, and even provide legal services directly. Its powers may be political, operational, or consultative. The level of autonomy of the Legal Aid Authority is also crucial.

The institution(s) which nominate its Board Members and provide its funding may, in practice, exert considerable influence.

Autonomous Management occurs when there is no central governmental authority. In many Arab countries, the courts and Bar Association are heavily involved in the appointment and remuneration of counsel, particularly in penal cases. This is carried out according to their institutional mandate, determined by law and statute. The term Autonomous Administration emphasises the functional nature of their role, which is not determined by any centralised authority.

The current trend, particularly in Europe, is to establish Legal Aid Authorities, under Category 3 (B). However their level of independence, powers, funding sources, operational structures, and delivery mechanisms vary greatly. And many countries are actually moving in the opposite direction.

4. Funding: (A) Public or (B) Private

Funding for legal aid is one of the most difficult issues to resolve. Developed countries consider public funding obligatory for indigent defendants in penal cases, since it is a violation of well-established rights to incarcerate someone without legal representation. On the other hand, public funding in civil cases is not considered an absolute right under international law. In any event, there are always budgetary constraints. This makes it necessary to consider alternatives. Accordingly, funding is usually obtained from both public and private sources. However, one may be dominant.

There are two possible sources of public funding. First is the State budget, from general revenues, usually administered through the Ministry of Finance and/or Ministry of Justice. This is the model in most European countries. In the United States, funding for legal aid in civil cases is delivered locally, but partially funded by grants from the federal government, through the Legal Services Corporation. Second, there are a number of innovative sources of public funding. In many countries, clients are required to make co-payments for legal aid, or repay costs if they lose the case or are found guilty. (This is considered a public source of funds, since it goes into and through the public system). Some countries impose fees or stamp taxes for filing lawsuits. In the United States, funding for legal aid is also obtained from a) Interest on Lawyer Trust Accounts (funds lawyers hold for clients in a special bank account), b) surcharges on fines and traffic tickets, and c) other taxes and charges.

*Private funding is often supplied by Bar Associations, CSOs, and donors. Bar Associations may require lawyers to make mandatory contributions (in the form of dues, legal services, or both). They also usually organise and deliver *Pro Bono* services. In the United States, it is estimated that 25% of legal aid in civil cases is *Pro Bono*. CSOs traditionally receive support from charitable contributions, either from individuals, institutions, or international sources. Some countries use private insurance to cover legal services, such as Finland, Sweden, the Netherlands, and Germany. Legal aid may also be provided by trade unions and professional associations (to their members). In the United States, contingency fees (payment to lawyers of a percentage of the award in successful cases) provide an incentive to represent indigent clients. Awards of legal costs to successful litigants can serve a similar function. Third party payment mechanisms are now being tried in many jurisdictions.*

Many countries rely upon a combination of public and private funding. In developed countries, public funding tends to be the primary or largest source, under Category 4 (A). In developing countries, private funding tends to be the primary or largest source, under Category 4 (B).

5. Legal Services Delivery Mechanisms: (A) Private Lawyers, (B) Contracted Lawyers, or (C) Employed Lawyers

There are three principle means for delivering legal services to clients who cannot afford the costs. Many countries rely upon a combination, but usually one is predominant. The delivery mechanism is important for clients, and also directly affects institutional structures and responsibilities.

A. Private Lawyers. Under this model, legal services are provided by individual lawyers working in their private capacity, Ex Officio, on designated cases. This is sometimes called “Judicare”. The lawyer could be selected by a Judge, the Bar Association, or a Legal Aid Office. In some countries, such as Belgium, France, and the Netherlands, clients have a choice. Bar Associations prepare a list of lawyers who are qualified and available. Payment is made by a Ministry, Legal Aid Authority, the courts, or the Bar Association. Payment is made on a per-case or per activity basis, according to predetermined standards or a fee schedule, which at least partially reflects the amount of work performed.

B. Contracted Lawyers. Under this model, lawyers handle cases through designated institutions. The body responsible for organising and funding legal aid contracts other institutions to deliver services. Sometimes, as in the United Kingdom, providers can pre-qualify. Providers can be law firms, CSOs, or the Bar Association. The contract usually requires a fixed quantity of legal services, or handling a fixed number of cases, over a designated period of time, for a set fee. The contract can cover certain kinds of cases, certain categories of clients, or certain geographical areas. The contract approach is optimal for securing specialised expertise, and for outreach to isolated locations. In a certain sense, international organisations and donors are using this model when they provide funding to CSOs.

C. Employed Lawyers. Under this model, legal services are provided by full-time lawyers working for a governmental, semi-independent, or non-profit institution established for this purpose. Funding can be provided by the State (as in Finland) or through a Legal Aid Authority (as in the United Kingdom and the Netherlands). Public Defender Offices can handle penal cases (as in Israel and Lithuania), while Legal Aid Bureaux handle civil cases (as in Ireland). In the United States, Public Defenders are a major source of counsel for indigent defendants. Employed lawyers can have civil servant status (as in Finland and Israel). Employed Lawyers can handle a large number of cases, and develop expertise regarding legal aid issues and client needs. However, their impartiality must be protected, and their case loads must be manageable.

It is sound and common practice to combine different models, and develop variations. Indeed, few countries rely upon a single delivery mechanism. In South Africa, for example, the Legal Aid Board is reported to have used Private Lawyers, Contracted Lawyers working in specialised and rural law firms, Employed Lawyers in law clinics, and State-funded justice centres. Most States in the United States use different combinations of each of the three models.

The choice of model (or combination of models) should be based upon what is authorised by the legal framework, what works best for key institutions, what is acceptable to the legal profession, and what is feasible on the ground. Therefore, no two countries have the same delivery system.

Most countries use a combination of delivery mechanisms. Employed Lawyers under Category 5 (C) are generally limited to countries with sophisticated governmental institutions and sufficient funding. Developing countries often rely on Private Lawyers under Category 5 (A). Contracted Lawyers under Category 5 (B) are only found in certain countries, and account for a smaller percentage of cases.

6. Role of the Court System and Judges: (A) Primary or (B) Secondary

The court system has a crucial overall role to play in promoting access to justice. Judges are at the front line when it comes to ensuring that the legal rights and human rights of defendants and litigants are respected in practice. Indeed, Judges often have a constitutional, legal, and ethical duty to determine whether defendants have been represented by counsel. If the right to counsel has not been respected, Judges can delay proceedings and/or restrict the prosecution. Under egregious circumstances, it may be necessary to dismiss the case, and set a future precedent.

However, the specific roles and obligations of Judges and the courts vary. For present purposes, their role will be categorised as either primary or secondary.

Judges have primary responsibility when they pro-actively determine whether there is counsel, assess eligibility for legal aid, secure the appointment of counsel, and set the honoraria to be paid. Judges in penal cases in Ireland, Finland, and Palestine have most of these responsibilities. When Judges are required to appoint counsel, they usually do so from a list prepared by the Bar Association. They may even consult the Bar Association concerning an appropriate choice. Finally, Judges may decide whether clients in legal aid cases are exempt from court fees, and/or entitled to support for litigation expenses (Belgium). Generally speaking, Judges are more likely to have greater prerogatives and responsibilities when Management is Autonomous, under Category 3 (C).

Judges have secondary responsibility when other institutions secure and remunerate counsel, and they are limited to correcting rare problems and making sure that counsel performs competently/ethically. In countries where Legal Aid Offices provide primary services, such as the Netherlands, most issues regarding representation are addressed long before cases reach the courts. In Israel, creation of the Office of Public Defender in 1996 relieved Judges from responsibility for appointing counsel.

Judges in many countries have important responsibilities in legal aid cases, under Category 6 (A). However, the trend is towards assigning primary responsibility to other parties, under Category 6 (B), especially when there is centralised management of the legal aid system or a Legal Aid Authority.

7. Role of the Bar Association: (A) Primary or (B) Secondary

The Bar Association usually plays an important role in legal aid systems. It has overall responsibility for the legal profession, including licensing and setting professional standards. In some countries, the Bar Association has statutory authority, governed by special legislation in addition to its own By-laws or Statutes.

The Bar Association has a primary role in the legal aid system when it appoints counsel, organises and delivers legal aid, and remunerates lawyers (albeit with public funds). In Belgium

and Turkey, the Bar Association has all of these functions, and local branches manage Legal Aid Offices. The Bar Association also plays a major role in France. Sometimes the role of the Bar Association varies according to the type of case. In Italy, for example, the Bar has a more prominent role in civil cases.

The Bar Association has a *secondary role* in the legal aid system when it does not manage the delivery of legal services in legal aid cases. Even when it has a secondary role, the Bar Association can still be an important player. First, it can require and organise *Pro Bono* legal services, under Category 4 (B). (The distinction is that *Pro Bono* cases are handled on a purely voluntary and informal basis, whereas legal aid cases provide some remuneration through a formal system). Second, the Bar Association is often charged with preparing lists of eligible lawyers who are willing to handle legal aid cases, and identifying their areas of specialisation. Third, the Bar Association is always responsible for setting ethical standards for lawyers and handling complaints. Fourth, the Bar Association almost always provides education and training designed to elevate professional qualifications. Because these functions are standard, they do not elevate the role of the Bar Association to primary status.

There is a trend to limit the role of Bar Associations in some countries. As with courts, Bar Associations have a smaller role if the legal aid system is centrally managed, or there is a Legal Aid Authority. In the United Kingdom, for example, the role of the Law Society was reduced when the first Legal Aid Board was set up in 1988. And in Ontario, the responsibilities of the Bar Association were transferred to Legal Aid Ontario by the Legal Aid Services Act of 1998.

In certain select countries the Bar Association retains a primary role in the legal aid system, beyond its customary functions, under Category 7 (A). However, the role of the Bar Association tends to be reduced, under Category 7 (B), when the legal aid system is centrally managed.

8. Role of Independent Institutions and Civil Society: (A) Primary or (B) Secondary

Independent Institutions can provide a wide range of legal aid services. They can focus on: a) specific types of cases, b) specific categories of clients, or c) specific geographical areas. There are many different kinds of Independent Institutions, including Civil Society Organisations (foundations and associations), educational bodies (such as law faculties), legal clinics, and municipal offices (such as citizens' advice bureaux). They have an array of innovative means for providing services, including electronic communication, hotlines, and mobile clinics.

Independent Institutions have a *primary role* in the legal aid system when they actively offer different types of legal services to different categories of clients in different geographic locations. In such cases, Independent Institutions help fund the legal aid system, under Category 4 (B). Independent Institutions usually deliver services via Contracted Lawyers, under Category 5 (B). Thus, Independent Institutions affect and are affected by the institutional framework.

Patrons for Independent Institutions include:

- a) Governmental bodies or Legal Aid Authorities, which issue contracts or grants using public funds. The Legal Services Commission in the United Kingdom and the Legal Aid Board in South Africa contract for services from independent institutions.
- b) International bodies and donors sponsoring priority causes (mostly in developing countries)

- c) Individuals and corporations making charitable contributions (particularly important in civil cases in the United States)

It is important to note that Independent Institutions can play an important role in the legal aid system in developed countries, even when the State provides support through official channels. This is more likely to be the case in countries which have a vibrant civil society.

Independent Institutions have a *secondary role* in the legal aid system when official institutions, the courts, and/or the Bar Association assume most responsibilities. Generally speaking, Independent Institutions fill gaps in the provision of legal aid by official institutions. If the State provides comprehensive legal services, such as in Finland and the Netherlands, there is less of a role for Independent Institutions, and they are more likely to focus on other areas.

Independent institutions tend to play a larger role, under Category 8 (A), in developing countries, in countries where there is a vibrant civil society, and in countries where Contracted Lawyers are utilised. Independent institutions tend to play a smaller role, under Category 8 (B), when official institutions (plus the courts and Bar Association) take charge of funding and delivering legal aid, and utilise Private Lawyers and Employed Lawyers.

9. Types of Legal Services: (A) Comprehensive or (B) Functional

There are four kinds of legal services, which can be divided into two categories:

- Primary Services. This includes a) Legal Information (general information unrelated to the client's circumstances) and b) Legal Advice (counselling which addresses the specific case).
- Secondary Services. This includes a) Legal Assistance (actions to advance the case short of court proceedings) and b) Legal Representation (recourse to litigation and the courts).

In some countries, Legal Assistance is considered a Primary Service, and Legal Representation (in court) is considered the exclusive form of Secondary Service.

Comprehensive Legal Services refers to the provision of both Primary Services and Secondary Services through a single series of institutions or providers. Penal cases in Turkey and Palestine are likely to be handled by a single lawyer from beginning to end.

Functional Legal Services refers to separate institutions or providers for Primary Services and Secondary Services. Legal Services Counters in the Netherlands and Legal Assistance Commissions in Belgium are strictly limited to providing Primary Services, and refer clients to other lawyers for Secondary Services. In Israel, Employed Lawyers at the Civil Legal Aid Office refer clients to Private Lawyers for court representation. The rationale for Functional Legal Services is that it expands access to Primary Services, while controlling access to Secondary Services.

The choice between Comprehensive Legal Services under Category 9 (A) and Functional Legal Services under Category 9 (B) depends upon the roles assigned to different institutions, the means for securing services from the legal profession, and the approach to Category 10 below.

10. Client Coverage: (A) Universal or (B) Restricted

Eligibility requirements receive a great deal of attention, particularly from parties which fund legal aid, seek services, or wish to limit the quantity of services being provided. Category 10 does not enter into details regarding standards for qualification. Instead, it focuses on the overall approach to service provision, which directly impacts the institutional framework.

Universal Coverage seeks to provide basic legal services to most individuals who might have a legal problem. The idea is that overall societal welfare is improved if Primary Services are readily available. Primary Services serve as a simple and effective filter, directing people who don't require a lawyer to alternative means for solving their problems, while providing referrals for people who do need a lawyer. In systems which provide Universal Coverage, such as Finland and the Netherlands, means tests for an initial consultation are simple, and can be performed on the spot. The guiding philosophy of the Legal Aid Board in South Africa is that assistance from counsel in penal and civil cases is a basic right, integral to the "fair public hearing" required under the Constitution.

Restricted Coverage refers to strict eligibility standards, which are meant to limit the number of clients and cases which qualify for legal aid, and control costs. Countries which restrict legal aid coverage do not usually have local Legal Aid Offices, and require individuals to prove their eligibility before receiving any legal aid services.

Restricted Coverage is the general practice, under Category 10 (B). However, certain countries continue to prefer Universal Coverage, and are willing to invest in Primary Services.

Having analyzed each of the ten criteria, we can now apply the typology to different countries.

IV. HOW CAN THIS TYPOLOGY BE APPLIED TO DIFFERENT COUNTRIES?

By using the typology presented above, it is possible to characterise the institutional framework for any legal aid system by answering ten questions. In addition, it is possible to establish or restructure a legal aid system by developing the answers to these ten questions.

Before applying this typology to different countries, it is necessary to frankly consider some limitations. All legal systems are different, and thus all legal aid systems are different. Legal aid systems always combine different institutional arrangements, policies, and procedures, along a continuum. Further, institutional arrangements for legal aid do not exist in a vacuum. To a certain extent, they are country and context specific. They depend upon historical factors, the nature of the legal system, jurisprudence, the working methods of the legal profession, and traditions and customs. Therefore, categorisation is not and can never be pure science.

Nonetheless, key practices can be grouped into distinct patterns. And answers to common issues faced by all countries can be categorised. Therefore, despite some imperfections, typologies are the best and perhaps only way to facilitate comparisons between different legal aid systems.

To apply the typology, diagrams of the institutional arrangements for different legal aid systems have been prepared. They are attached in the Appendices. These charts have been created for the express purpose of applying the typology. It should be understood that they are not official or juridical documents, and they have not been approved by any authorities. The charts are for

illustrative purposes only, to help visualise institutional frameworks, and analyse them in a comparative fashion. Further, the placement of institutions within a diagram, using boxes and arrows and bullet points, is subject to interpretation and nuance. Attention should be placed on the big picture, not the small details.

The following countries are covered (in alphabetical order): Belgium, Egypt, Finland, France, Ireland, Israel, Jordan, Lebanon, the Netherlands, Palestine, Turkey, and the United Kingdom. These countries have been selected to provide a cross-section of systems. Additional countries may be added later. Contributions are welcome.

Each Appendix presents a diagram of the institutional framework for legal aid, plus a completed typology with answers to the ten questions. This demonstrates how the typology can be applied.

V. CONCLUSION

The institutional framework is the backbone of a legal aid system. It incorporates, integrates, and balances the roles and responsibilities of all key parties. And it is a crucial factor in securing legal services, and protecting human rights in a sound, viable, practical, effective, and efficient manner.

When reforming or designing a legal aid system, the institutional structure is the key issue to address. The legal framework should codify optimal institutional arrangements, and the delivery of services should be carried out in accordance with institutional roles and responsibilities.

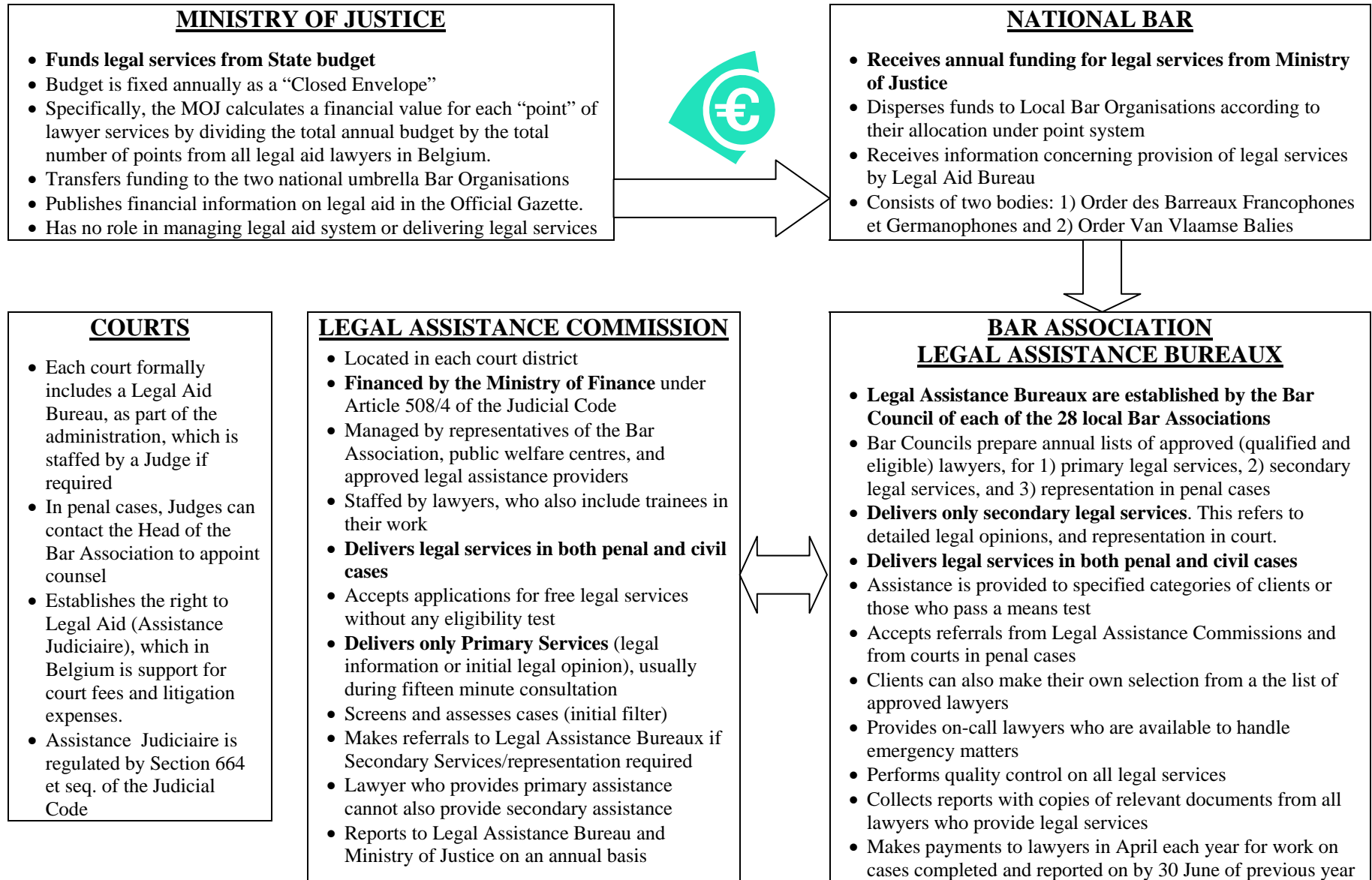
This briefing paper presents a strictly comparative approach to the institutional arrangements for legal aid systems. Instead of a series of country descriptions, there is a completely novel ten-point comparative typology, which is applied to original charts depicting select legal aid systems. This makes it possible to critically analyse the roles and responsibilities of key institutions, and their relationships. It also makes it possible to explore links between different criteria.

Application of the typology highlights the variable nature of legal aid systems. Institutional structures differ, and similar institutions can have different functions in different countries. Efforts to account for these differences focus on the legal system, historical developments, socio-political conditions, and the traditional roles of different legal professionals. However, none of these factors is determinative. Completely new institutions, like Legal Aid Authorities, can be introduced *de novo* in very different countries. Also, institutional arrangements for legal aid systems are dynamic, and subject to regular modification and even transformation.

While these circumstances impose challenges for comparative analysis, they also make it more crucial. Otherwise, institutional arrangements will be unsystematic, unplanned, and possibly even *ad hoc*. Therefore, it is necessary to consider a) the full range of parameters and choices, b) their advantages and disadvantages, and c) best practices, in the light of national laws and circumstances. What works in one country can serve as guidance, but can not and should not be considered automatically applicable elsewhere. Differences in legal systems, laws, institutional frameworks, management practices, professional working techniques, and traditions need to be considered. This is the only way to design and put in place practical and implementable mechanisms for enhancing access to justice and protecting human rights.

End

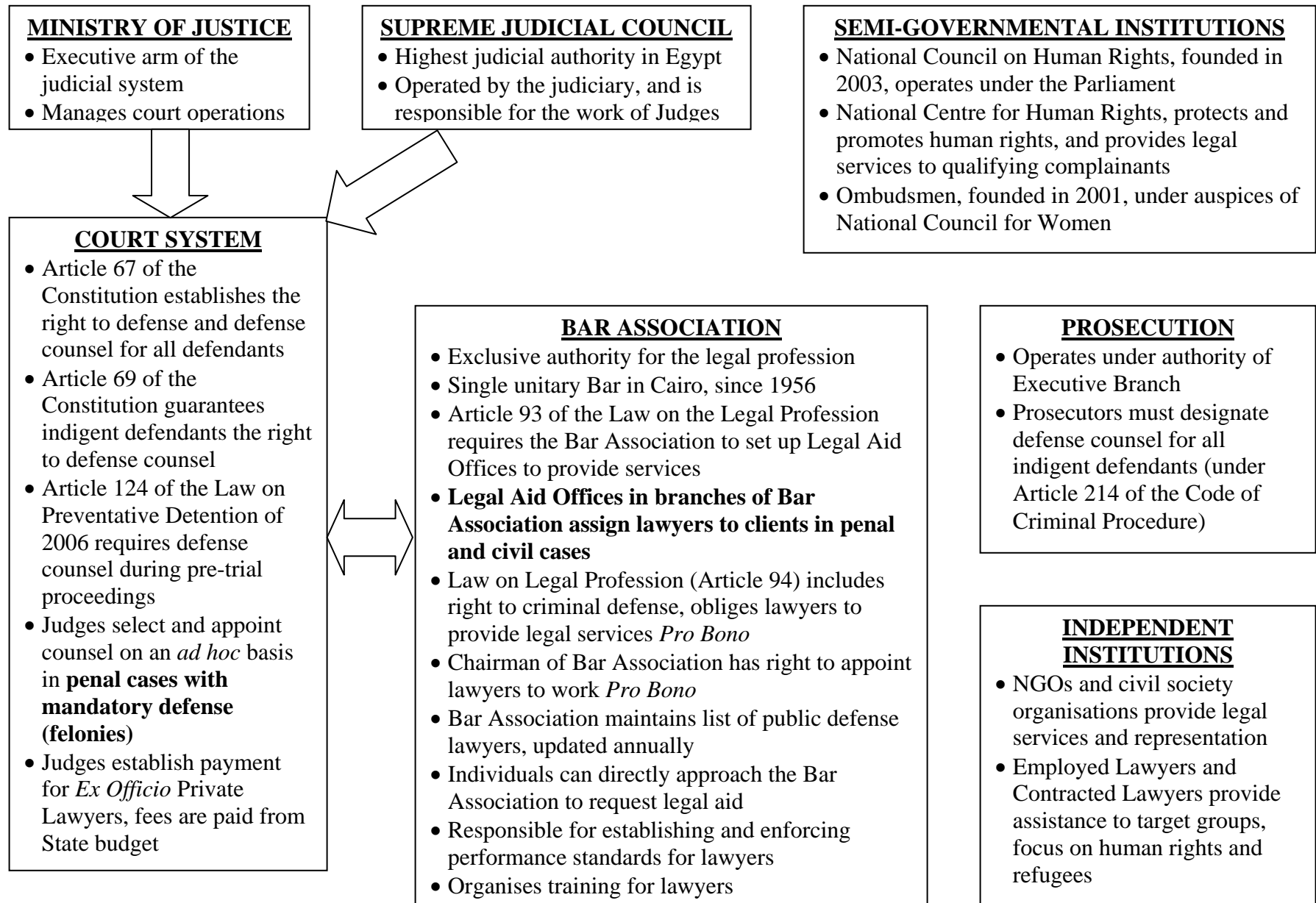
APPENDIX “A”: LEGAL AID IN BELGIUM (JUDICIAL CODE)



TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN BELGIUM

	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. However, the operation of the National Bar and other aspects of the legal aid system differentiate between the three territorial jurisdictions, namely Flanders, Wallonia and Brussels.
2	Case Coverage	A. Unified. The Legal Assistance Bureaux and Legal Assistance Commissions handle both penal and criminal cases, without distinction.
3	Management	C. Autonomous. The Bar Association and Legal Assistance Commissions play leading roles in the legal aid system, while the Ministry of Justice is limited to providing funding.
4	Funding	A. Public. Funding for the work of legal aid lawyers is provided by the Ministry of Justice.
5	Legal Services Delivery Mechanisms	A. Private Lawyers. Most legal aid is delivered by Private Lawyers in an <i>Ex Officio</i> capacity, through Legal Assistance Bureau of the Bar Association and Legal Assistance Commissions.
6	Role of Courts	B. Secondary. Courts have a Legal Aid Bureau to secure representation if necessary, and Judges decide whether to cover litigation expenses, but the Bar Association plays major role.
7	Role of Bar Association	A. Primary. Bar Association arranges and delivers Secondary Services in penal and civil cases, supervises performance of lawyers, and makes payments for legal aid services.
8	Role of Independent Institutions	B. Secondary. The legal aid system is based upon cooperation between the Bar Association and the courts. Independent institutions play a secondary role.
9	Types of Services	B. Functional. Primary Services are provided through the Legal Assistance Commissions, while Secondary Services are provided through the Bar Association. Lawyers who provide Primary Services are not allowed to provide Secondary Services on the same case.
10	Client Coverage	A. Universal. Clients are encouraged to consult lawyers at the Legal Assistance Commissions, and can also select their own lawyer (who can determine their eligibility for legal aid and help process their request).

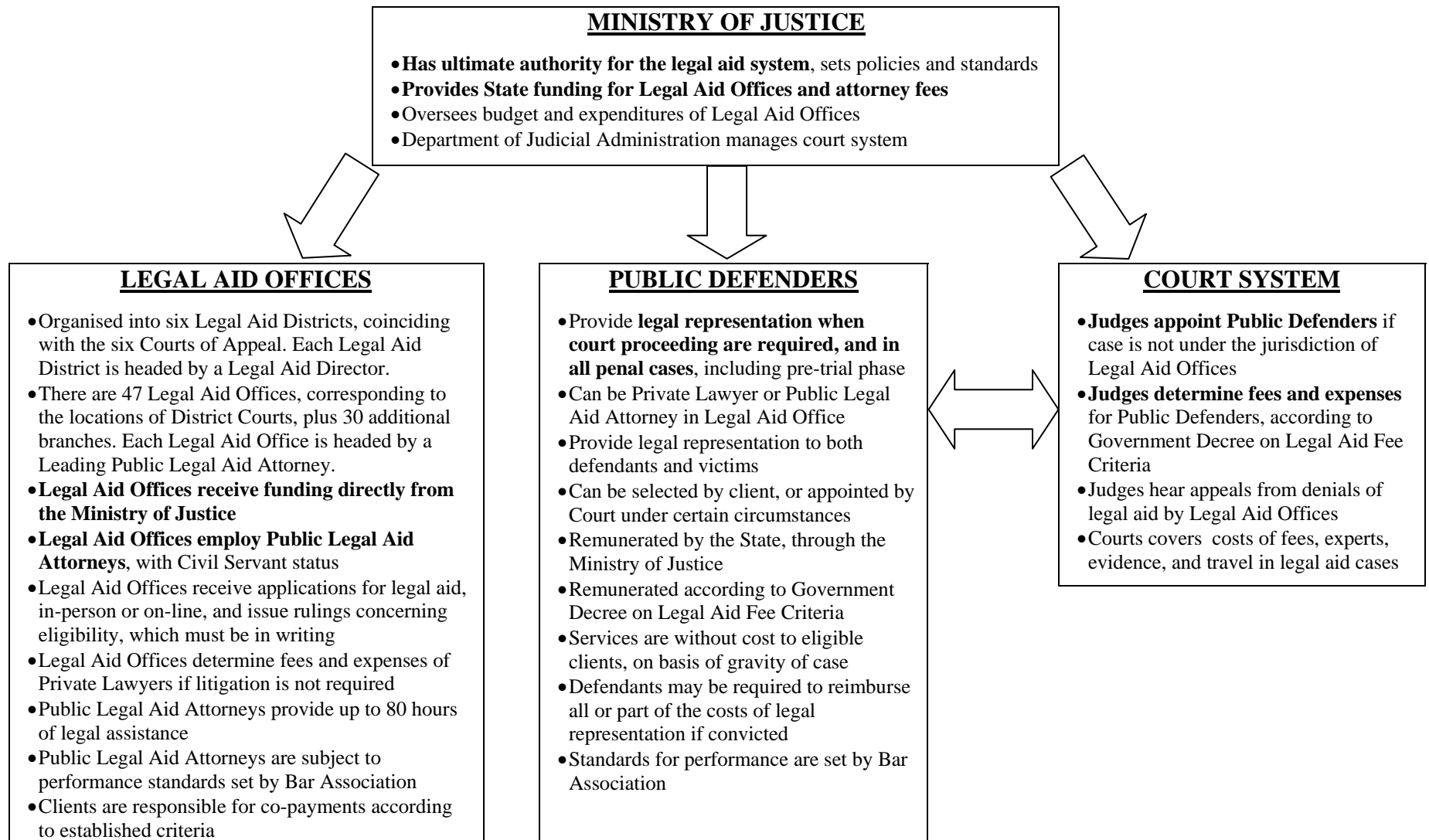
APPENDIX “B”: LEGAL AID IN EGYPT



TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN EGYPT

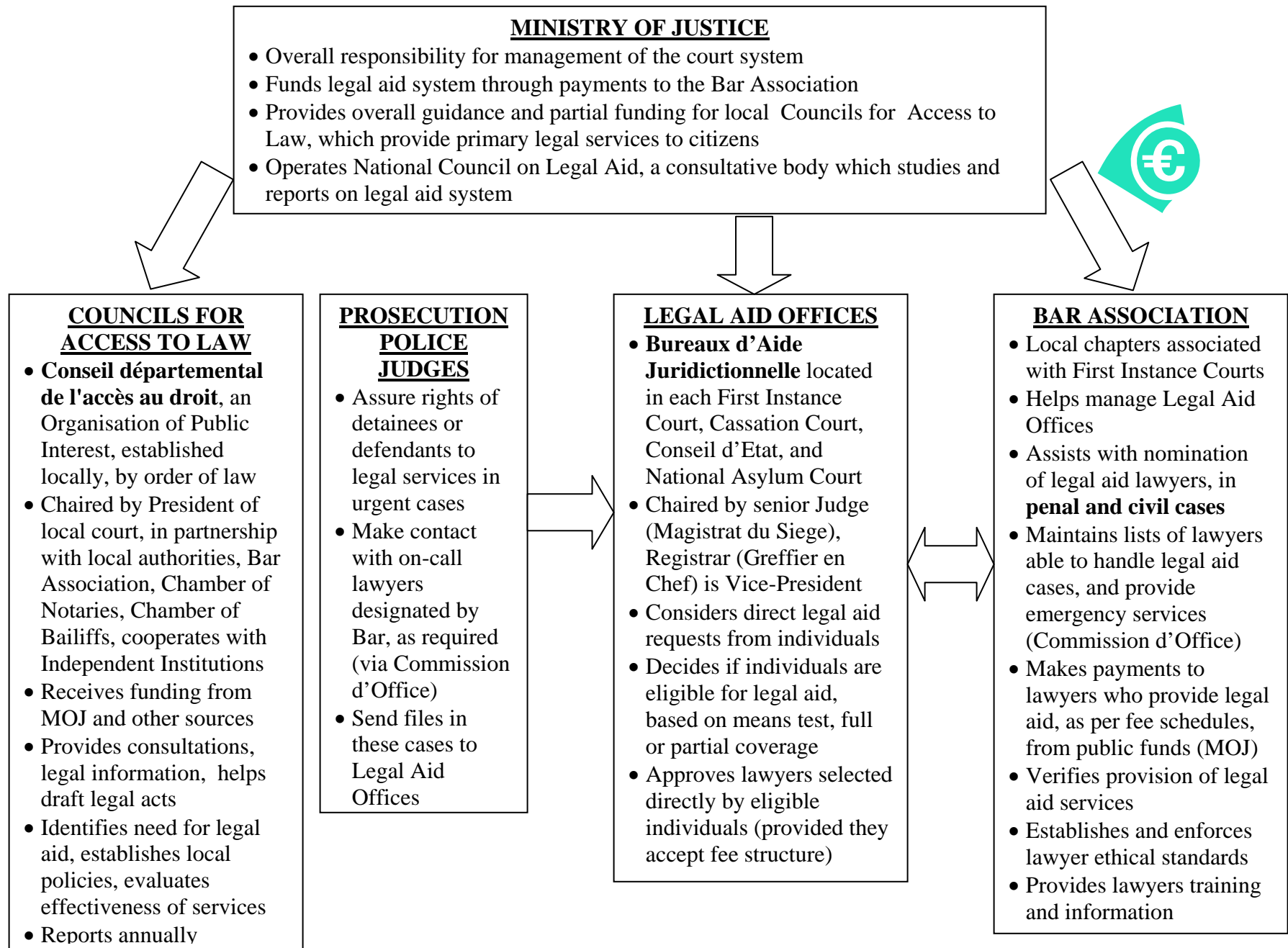
	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. Covers the entire territory of Egypt.
2	Case Coverage	B. Differentiated. The public legal aid system covers only penal cases, under the Code of Criminal Procedure.
3	Management	C. Autonomous. The Executive Branch is not involved in the provision of legal aid, and there is no Legal Aid Authority.
4	Funding	A and B. Public and Private. There is public coverage for legal aid through Private Lawyers working <i>Ex Officio</i> in penal cases. Legal aid in civil cases is financed privately and provided through Independent Institutions.
5	Legal Services Delivery Mechanisms	B. Contracted Lawyers. Most legal aid is delivered by Contracted Lawyers working for Independent Institutions. Legal aid in penal cases is provided by Private Lawyers appointed by the Courts or the Bar Association.
6	Role of Courts	A. Primary. The courts play an important role in the provision of legal aid, in penal cases only.
7	Role of Bar Association	B. Secondary. The Bar Association provides <i>Pro Bono</i> services, but is not significantly involved in the provision of legal aid.
8	Role of Independent Institutions	A. Primary. Independent Institutions are a major source of legal aid in Egypt, particularly in civil cases.
9	Types of Services	A. Comprehensive. Independent Institutions and Private Lawyers do not differentiate between Primary Services and Secondary Services.
10	Client Coverage	B. Restricted. The public legal aid system is restrictive, and applies exclusively to penal cases. Independent Institutions provide coverage in civil cases for specific target groups.

APPENDIX “C”: LEGAL AID IN FINLAND (LEGAL AID ACT OF 2002)



TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN FINLAND		
	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. Covers the entire country.
2	Case Coverage	B. Differentiated. The Ministry of Justice manages Public Defenders for penal cases and Legal Aid Offices for civil cases.
3	Management	A. Direct. The Ministry of Justice manages Public Defenders and 47 Legal Aid Offices directly, without an intermediate Legal Aid Authority.
4	Funding	A. Public. The Ministry of Justice funds the Public Defenders, Legal Aid Attorneys, and Private Lawyers.
5	Legal Services Delivery Mechanisms	A and C. Private Lawyers and Employed Lawyers. Private Lawyers can be retained <i>Ex Officio</i> in penal and civil cases. Public Legal Aid Attorneys are employees, with civil servant status.
6	Role of Courts	B. Secondary. Legal representation is normally secured before cases reach the courts. Judges have secondary responsibilities when a case is not under the jurisdiction of Legal Aid Offices, and set fees according to Government Decree.
7	Role of Bar Association	B. Secondary. The Bar Association is not directly involved in the provision of legal aid.
8	Role of Independent Institutions	B. Secondary. The State managed and funded legal aid system is designed to provide extensive coverage, without significant input of services from independent institutions
9	Types of Services	B. Functional. Private Lawyers often handle cases when court representation is required, and in penal cases.
10	Client Coverage	A. Universal. The State managed and funded legal aid system is designed to provide comprehensive and extensive services, according to expansive criteria for qualification.

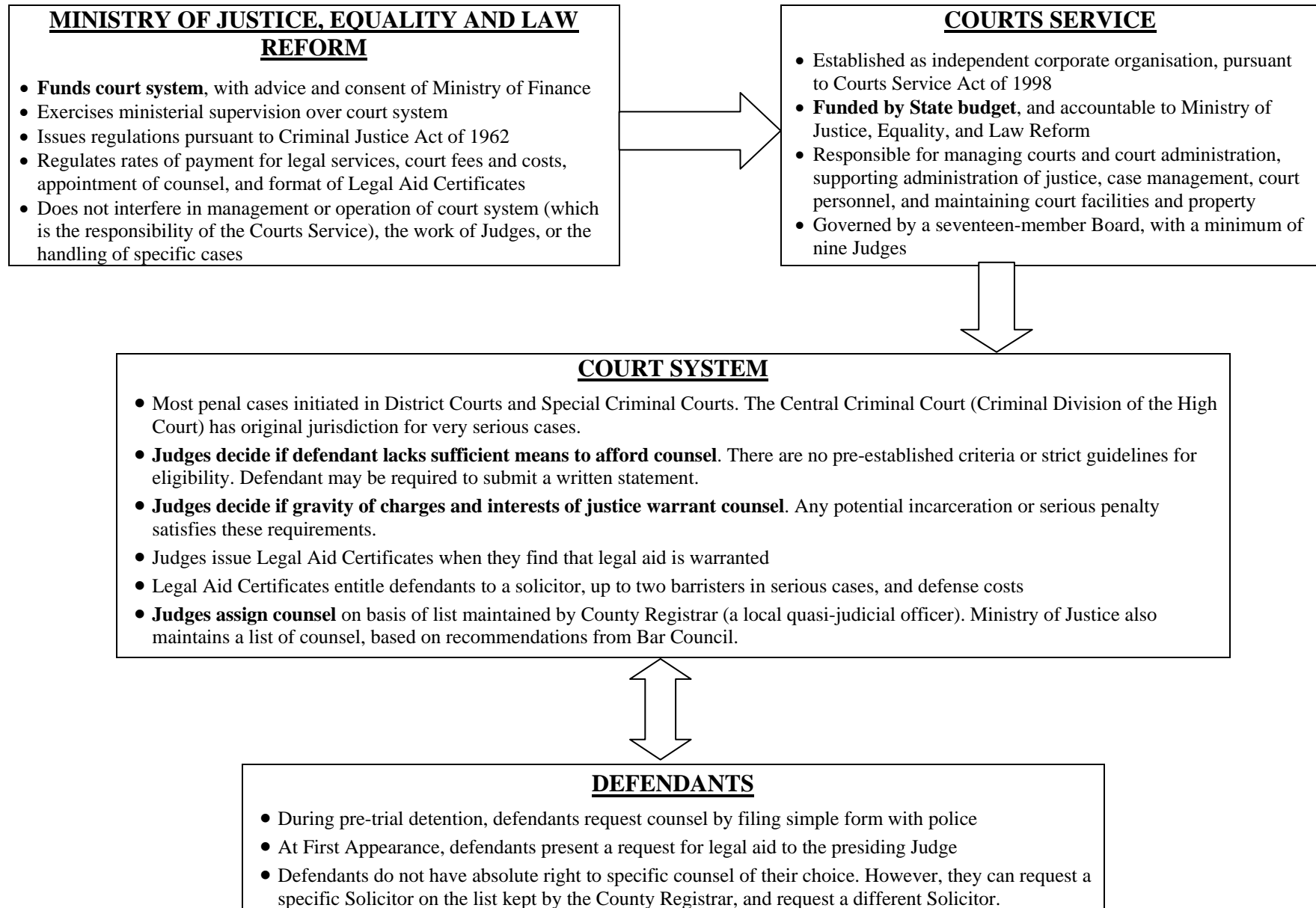
APPENDIX “D”: LEGAL AID IN FRANCE (Legal Aid Act 91-647 of 10 July 1991)



TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN FRANCE

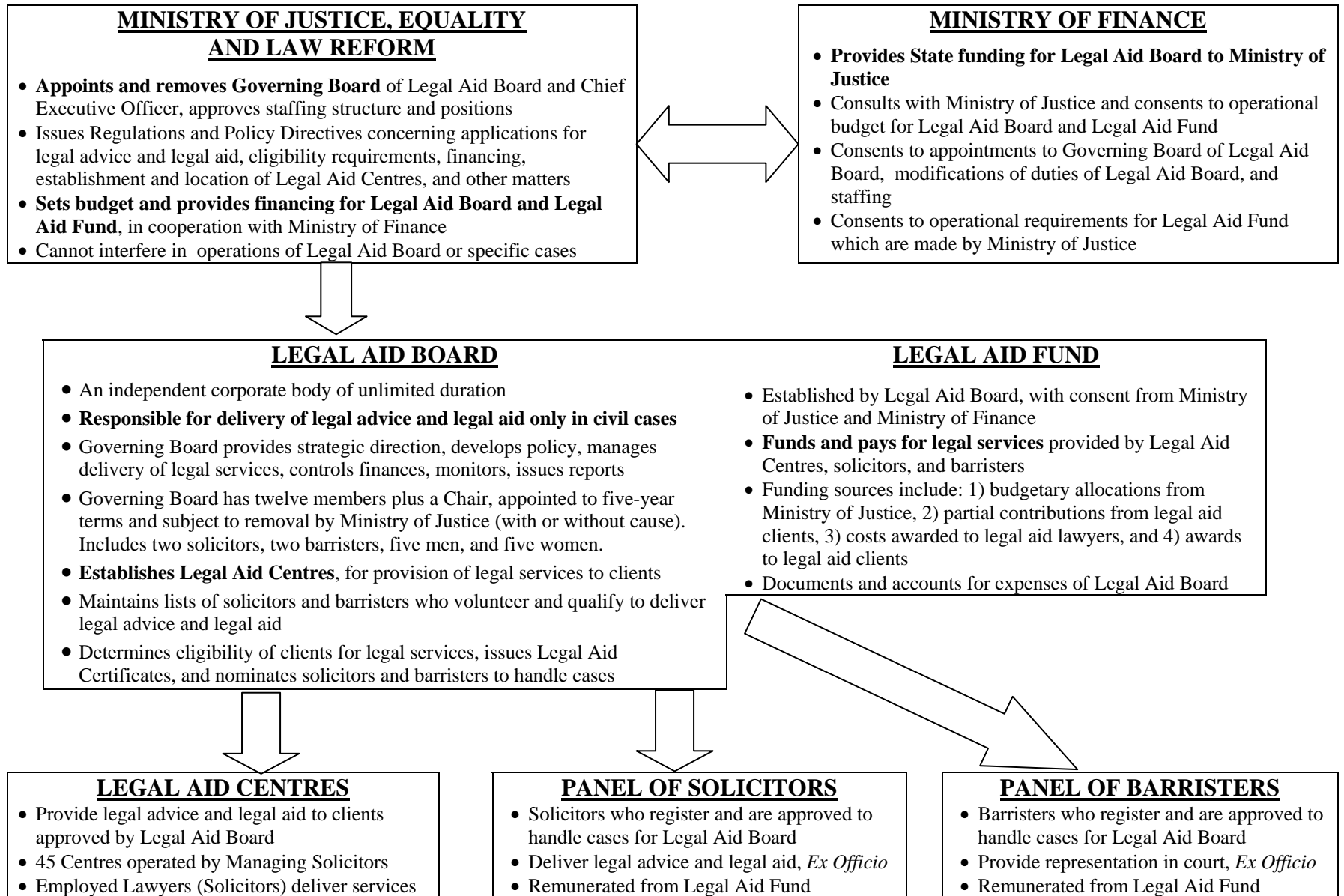
	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. Covers entire territory of France
2	Case Coverage	A. Unified. Covers penal, civil, and administrative cases, without distinction.
3	Management	B. Delegated. The Legal Aid Bureaux, located in each court, determines if eligibility criteria are met. The appointment of lawyers is overseen by the branches of the Bar Association.
4	Funding	A. Public. Funding for the work of legal aid lawyers is provided by the State budget.
5	Legal Services Delivery Mechanisms	A. Private Lawyers. Most legal aid is delivered by Private Lawyers in an <i>Ex Officio</i> capacity, through Legal Aid Bureaux and the Bar Association.
6	Role of Courts	A. Primary. Courts host and chair the Legal Aid Bureaux, appoint lawyers using list from Bar Association in cases of urgency, and can assess costs against losing parties.
7	Role of Bar Association	A. Primary. Bar Association arranges for provision of legal services, prepares lists of available lawyers, supervises their performance, and makes payments from public funding.
8	Role of Independent Institutions	B. Secondary. The legal aid system is based upon cooperation between the Legal Aid Bureaux and the Bar Association. Independent institutions play a secondary role.
9	Types of Services	B. Functional. Primary Services are provided by Departmental Councils on Access to Law. Representation is provided through the legal aid system.
10	Client Coverage	A. Universal. Clients must qualify for legal representation. However, defendants are provided with counsel through the listing of on-call attorneys in cases of urgency. Further, a wide range of primary services are available through alternatives to the official legal aid system.

APPENDIX “E”: LEGAL AID IN IRELAND IN PENAL CASES (CRIMINAL JUSTICE ACT OF 1962)



TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN IRELAND (PENAL CASES ONLY)		
	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. Covers the entire Republic of Ireland
2	Case Coverage	B. Differentiated. Completely separate systems for penal and civil cases.
3	Management	C. Autonomous. No centralised authority over legal aid system. Judges and courts have major responsibilities.
4	Funding	A. Public. Funding comes from the State budget and other public sources, such as client co-payments, awards to legal aid lawyers, and awards clients.
5	Legal Services Delivery Mechanisms	A. Private Lawyers. Solicitors and Barristers handle cases <i>Ex Officio</i> on appointment by the court.
6	Role of Courts	A. Primary. Judges assess eligibility for legal aid, issue Legal Aid Certificates, and assist with assignment of counsel.
7	Role of Bar Association	B. Secondary. Professional bodies for Solicitors and Barristers are not directly involved in providing legal aid.
8	Role of Independent Institutions	B. Secondary. Independent institutions do not play a significant role in providing legal aid in penal cases.
9	Types of Services	B. Functional. Following the British model, the Irish legal system takes a functional approach to legal services, by having both Solicitors and Barristers.
10	Client Coverage	B. Restricted. Clients must obtain approval from the Judge in order to obtain a Legal Aid Certificate and secure legal aid services.

APPENDIX “F”: LEGAL AID IN IRELAND IN CIVIL CASES (CIVIL LEGAL AID ACT OF 1995)



TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN IRELAND (CIVIL CASES ONLY)		
	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. Covers the entire Republic of Ireland.
2	Case Coverage	B. Differentiated. Completely separate systems for penal and civil cases.
3	Management	B. Delegated. The Ministry of Justice, Equality and Law Reform delegates authority to a Legal Aid Board, which manages a Legal Aid Fund.
4	Funding	A. Public. Funding comes from the State budget and other public sources, such as client co-payments, awards to legal aid lawyers, and awards clients.
5	Legal Services Delivery Mechanisms	A and C. Private Lawyers and Employed Lawyers. Solicitors and Barristers handle cases <i>Ex Officio</i> for the Legal Aid Board. Employed Lawyers work for the Legal Aid Centres.
6	Role of Courts	B. Secondary. Legal aid services are usually organised and delivered before cases reach the courts.
7	Role of Bar Association	B. Secondary. Professional bodies for Solicitors and Barristers are not directly involved in providing legal aid.
8	Role of Independent Institutions	B. Secondary. While some independent institutions provide legal services, the Legal Aid Board, Legal Aid Centres, and Panels of Solicitors and Barristers offer significant coverage.
9	Types of Services	B. Functional. While the powers of Solicitors have been expanded in recent years, the Irish legal system follows its British roots by taking a functional approach to the responsibilities of Solicitors and Barristers.
10	Client Coverage	B. Restricted. Only clients who are approved by the Legal Aid Board are eligible for legal aid services.

APPENDIX “G”: LEGAL AID IN ISRAEL

MINISTRY OF JUSTICE

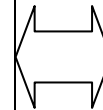
- Responsible for managing the court system, Public Prosecutor’s Office, and legal aid system
- **Operates Civil Legal Aid Office according to Civil Legal Aid Statute of 1972**
- **Oversees Public Defender Office according to Public Defender Statute of 1995**
- Sets overall policies for Civil Legal Aid Office and Public Defender Office
- **Sets annual budgets and funds Civil Legal Aid Office and Public Defender Office**
- Nominates presiding member of Board of Public Defender Office
- Receives and reviews annual reports from the National Public Defender

PUBLIC DEFENDER OFFICE

- Established in 1996, pursuant to Public Defender Statute of 1995. Replaced ad hoc system under courts.
- Under Ministry of Justice, with limited autonomy
- **Administers legal aid system in penal cases**
- Governed by five-member Board of Public Defenders. Chaired by nominee of MOJ. Includes a retired Supreme Court Judge, a criminal lawyer appointed by Council of the Bar, a criminal lawyer appointed by MOJ with consent of President of Bar, and a criminal law professor appointed by Deans of law faculties.
- Board appoints and removes National Public Defender (NPD) for a renewable five-year term
- NPD administers legal aid system for penal cases, sets delivery policies, submits annual report to Board
- District Offices of PDO have District Public Defender
- Staff lawyers (employees), who are civil servants subject to Civil Service Statute of 1970, handle cases allotted by NPD and supervise work of outside lawyers
- Private lawyers on eligibility list maintained by NPD are retained *Ex Officio* to handle specific cases, and remunerated according to statutory scale
- Contracted Lawyers handle set number of cases for specified fee
- Cases are referred by Judges, duty counsel at courts, police, and probation officers
- Promulgates/enforces Guidelines for handling legal aid cases

CIVIL LEGAL AID OFFICE

- **Manages delivery of legal aid in civil cases**
- Operates as Department of Ministry of Justice
- Applies Legal Aid Regulations of 1973
- Divided into five Regional Offices
- Each Regional Office headed by Executive Director
- Staff assess eligibility of clients and determine whether cases have sufficient merit
- Staff lawyers (employees), civil servants subject to Civil Service Statute of 1970, provide legal services
- Private Lawyers, retained *Ex Officio*, provide legal representation in court cases



OFFICIAL INSTITUTIONS

- Ministry of Immigrant Absorption provides legal services
- Municipal authorities provide and/or facilitate legal services

BAR ASSOCIATION

- Founded 1961, Autonomous Statutory Entity
- Provides *Pro Bono* services in **civil cases**, since 2002
- Schar Mitzvah *Pro Bono* Programme under Section 3(2) of Bar Association Law
- Operates 43 Legal Aid Centres
- 2000 lawyers involved
- District Committee assesses client eligibility for legal services
- Regional Coordinator nominates lawyers for approved civil cases
- Refers eligible clients to Civil Legal Aid Office
- Receives contributions through dedicated Donations Fund
- Establishes/enforces ethical standards for lawyers, handles complaints
- Monitors performance of lawyers in legal aid cases
- Operates legal aid Hotline

INDEPENDENT INSTITUTIONS

- Civil society and CSOs. Many independent institutions provide information and legal services in civil cases, in areas of expertise, often without charge
- Universities. Bar Ilan University operates Israeli Society for Legal Aid, with 55 consulting Centres in 27 cities. Tel Aviv Faculty of Law operates legal clinics.
- Trade Unions (like Histadrut). Provide legal services only for members.
- International organisations. Provide and/or fund legal services for select target groups.

TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN ISRAEL		
	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. Covers the entire country. Numerous local service providers.
2	Case Coverage	B. Differentiated. The Ministry of Justice oversees a Public Defender Office for penal cases, and administers a Civil Legal Aid Office for civil cases.
3	Management	A. Direct. The Ministry of Justice is directly responsible for the public legal aid system. However, the Bar Association and Independent Institutions also provide significant services.
4	Funding	A and B. Public and Private. Significant resources are provided to the legal aid system from both public and private sources.
5	Legal Services Delivery Mechanisms	A, B, and C. Private Lawyers, Contracted Lawyers, and Employed Lawyers. The public sector relies heavily upon Contracted Lawyers, who are civil servants, and also uses <i>Ex Officio</i> Private Lawyers. The private sector uses Private Lawyers, and also Contracted Lawyers..
6	Role of Courts	B. Secondary. Legal aid services are usually organised and delivered before cases reach the courts.
7	Role of Bar Association	B. Secondary. The Bar Association does not play a primary role in the delivery of legal services, considering the significant public system operated by the Ministry of Justice. However, the Bar Association does play an extremely important role, particularly with respect to the provision of <i>Pro Bono</i> services, through its Legal Aid Centres.
8	Role of Independent Institutions	A. Primary. A wide range of institutions, including law faculties and CSOs, provide legal services to many target groups, through national networks of facilities.
9	Types of Services	B. Functional. The public legal aid system tends to distinguish between Primary Services and Secondary Services. However, the private legal aid system does not.
10	Client Coverage	A. Universal. While it is necessary to qualify for public legal aid services, the large number of providers combined with extensive geographical outreach establish general coverage.

APPENDIX “H”: LEGAL AID IN JORDAN

MINISTRY OF JUSTICE

- Executive arm of the Jordanian judiciary, established in 1921
- Administers the courts and employs court staff
- Operates Judicial Institute of Jordan, responsible for training Judges

HIGH JUDICIAL COUNCIL

- Highest judicial authority in Jordan
- Responsible for Judges in courts of general jurisdiction

SEMI-GOVERNMENTAL INSTITUTIONS

- Ombudsmen provides legal protection in administrative cases
- National Centre for Human Rights protects and promotes human rights, and provides legal services to qualifying complainants

COURT SYSTEM

- Established under Article 27 of the Constitution, consists of three-tiered courts of general jurisdiction, plus Sharia Courts and special courts
- Article 6 of the Constitution requires equality before the law
- Under Article 208 of the Code of Criminal Procedure (Law 9 of 1961), there is **mandatory defense only** in cases which can result in capital punishment, life imprisonment, or hard labour
- Judges select and appoint counsel on an *ad hoc* basis in cases of mandatory defense only
- Mandatory defense counsel is paid from the treasury
- Judges set payment for mandatory defense counsel. The range is 200 – 500 Jordanian Dinars.

BAR ASSOCIATION

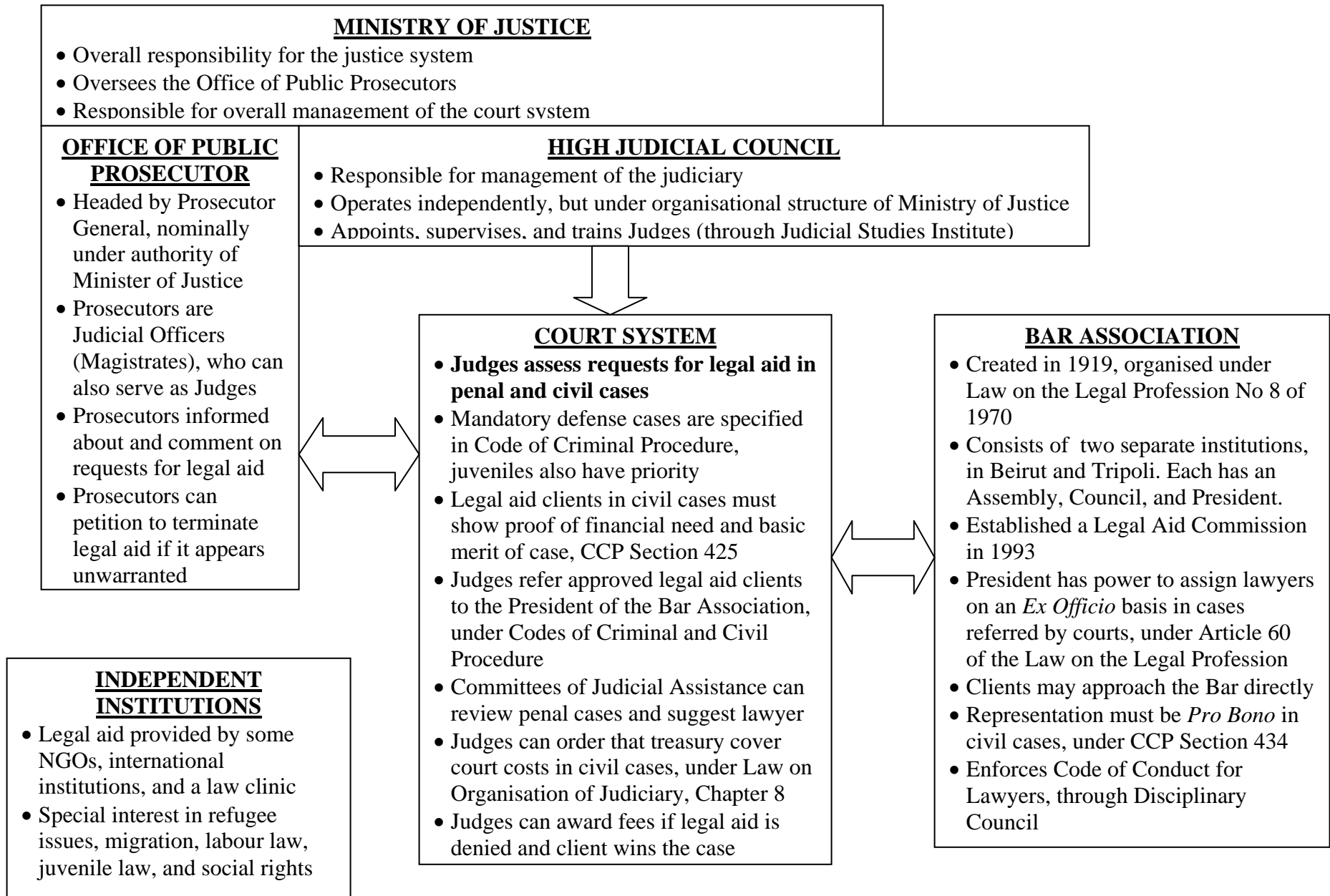
- Exclusive authority for the legal profession
- Chairman has right to appoint lawyers to work *Pro Bono* under Articles 201 and 202 of the Law on the Legal Profession
- Individuals can approach the Bar Association to request legal assistance
- Responsible for establishing and enforcing performance standards for lawyers
- Organises training for lawyers

INDEPENDENT INSTITUTIONS

- A wide array of NGOs and civil society organisations provide legal services and legal representation
- Employed Lawyers and Contracted Lawyers provide assistance to specific target groups

TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN JORDAN		
	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. Covers the entire territory of Jordan.
2	Case Coverage	B. Differentiated. Covers only penal cases, under Article 208 of the Code of Criminal Procedure. Covers only mandatory defense, where the death penalty, life imprisonment, or hard labour may be imposed.
3	Management	C. Autonomous. The executive branch is not involved in the provision of legal aid, and there is no Legal Aid Authority.
4	Funding	A and B. Public and Private. The treasury pays a nominal fee for mandatory defense counsel in penal cases. However, the majority of funding for legal aid, and all of the funding in civil cases, comes from private sources and international donors.
5	Legal Services Delivery Mechanisms	B. Contracted Lawyers. Most legal aid is delivered by Contracted Lawyers working for independent institutions (some of whom work full-time). Legal aid in mandatory defense cases is provided by Private Lawyers appointed by the Courts.
6	Role of Courts	A. Primary. The courts play a major role in the provision of legal aid in mandatory defense cases. However, the overall role of the courts in the provision of legal aid is extremely limited.
7	Role of Bar Association	B. Secondary. The Bar Association provides <i>Pro Bono</i> services, but is not significantly involved in the provision of legal aid.
8	Role of Independent Institutions	A. Primary. Independent institutions are the source of almost all of the legal aid provided in Jordan, particularly in civil cases.
9	Types of Services	A. Comprehensive. Independent institutions do not differentiate between Primary Services and Secondary Services.
10	Client Coverage	B. Restricted. The public legal aid system is extremely restricted, and applies exclusively to mandatory defense in the most serious penal cases. Independent institutions provide greater coverage, but only for specific target groups.

APPENDIX “T”: LEGAL AID IN LEBANON



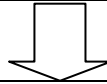
TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN LEBANON

	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. Covers Lebanon. But the Bar Association is divided into two distinct entities, based in Beirut and Tripoli, under Decree 655 of 1921 and Article 4 of Law on the Legal Profession.
2	Case Coverage	A. Unified. Legal Aid is provided in penal and civil cases, according to the Code of Criminal Procedure and Code of Civil Procedure.
3	Management	C. Autonomous. The Ministry of Justice is not directly involved in managing the legal aid system. Eligibility for legal aid is determined by the courts, and services are delivered by the Bar Association.
4	Funding	B. Private. Legal aid services are delivered <i>Pro Bono</i> , authorised by the Legal Aid Commission of the Bar Association or through CSOs. The only State support is coverage of court fees.
5	Legal Services Delivery Mechanisms	A. Private Lawyers. The legal aid system utilises Private Lawyers, appointed by the courts and/or the Bar Association. Employed Lawyers are not used. Independent Institutions utilise Contracted Lawyers.
6	Role of Courts	A. Primary. The Courts are responsible for assessing requests for legal aid, and assist with appointment of counsel by the Bar Association. Judges can waive court costs.
7	Role of Bar Association	A. Primary. The Bar Association cooperates with the courts and oversees the provision of legal aid services. It organises and delivers <i>Pro Bono</i> legal aid services, mostly in penal cases.
8	Role of Independent Institutions	A. Primary. Non-Governmental Organisations and various international institutions play a role in the provision of counsel, in both penal and civil cases.
9	Types of Services	A. Comprehensive. Legal aid, when provided, focuses on representation. There are no specialised institutions providing Primary Services.
10	Client Coverage	B. Restricted. Defendants and litigants must meet strict qualifications for legal aid.

APPENDIX “J”: LEGAL AID IN THE NETHERLANDS (LEGAL AID ACT OF 1994)

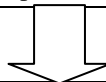
MINISTRY OF JUSTICE

- **Has ultimate authority for legal aid system**, under the Legal Aid Act of 1994
- Sets policies and standards for legal aid in both penal and civil cases
- **Provides State funding for Legal Aid Board**
- Oversees budget and expenditures of Legal Aid Board
- Appoints Governing Board of Legal Aid Board (Section 7 of Legal Aid Act)
- Receives reports from Legal Aid Board



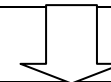
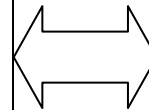
LEGAL AID BOARD

- **Organises and administers legal aid system.** Responsible for administration, supervision, and payments.
- **Organises delivery of legal services relating to penal and civil cases**, without distinction
- Consists of a Central Office and five Regional Offices, working together as unitary structure
- Finances legal aid system, through 1) State funding from Ministry of Justice, and 2) client contributions
- **Funds Legal Services Counters** (personnel and operational expenses)
- **Remunerates Private Lawyers** providing legal aid, based on fee schedules and client contributions
- Issues Legal Aid Certificates when clients qualify, on basis of 1) income and assets (verified through tax records), 2) merits of case, and 3) importance of legal questions raised
- Assigns lawyers if this is not done by Legal Services Counters
- Responsible for quality control and record keeping (in 2008, for 7,100 lawyers and 420,000 cases)
- Issues reports, and accounts for expenditures to Ministry of Justice



LEGAL SERVICES COUNTERS

- **Provide primary legal advice, exclusively, on a front line basis**
- Includes thirty offices conveniently located around the Netherlands
- **Legal Services Counters are funded by Legal Aid Board**
- Employed Lawyers (at least six per office) provide legal services
- Offer one-hour consultations on basis of simple means test, up to three hours of services without Legal Aid Certificate
- Refer cases to Legal Aid Board for Legal Aid Certificates if required
- **Refer clients to private lawyers when legal aid (representation) required**, using specialised software and electronic communication
- Have Websites and call centres to provide additional services to clients who do not come in person

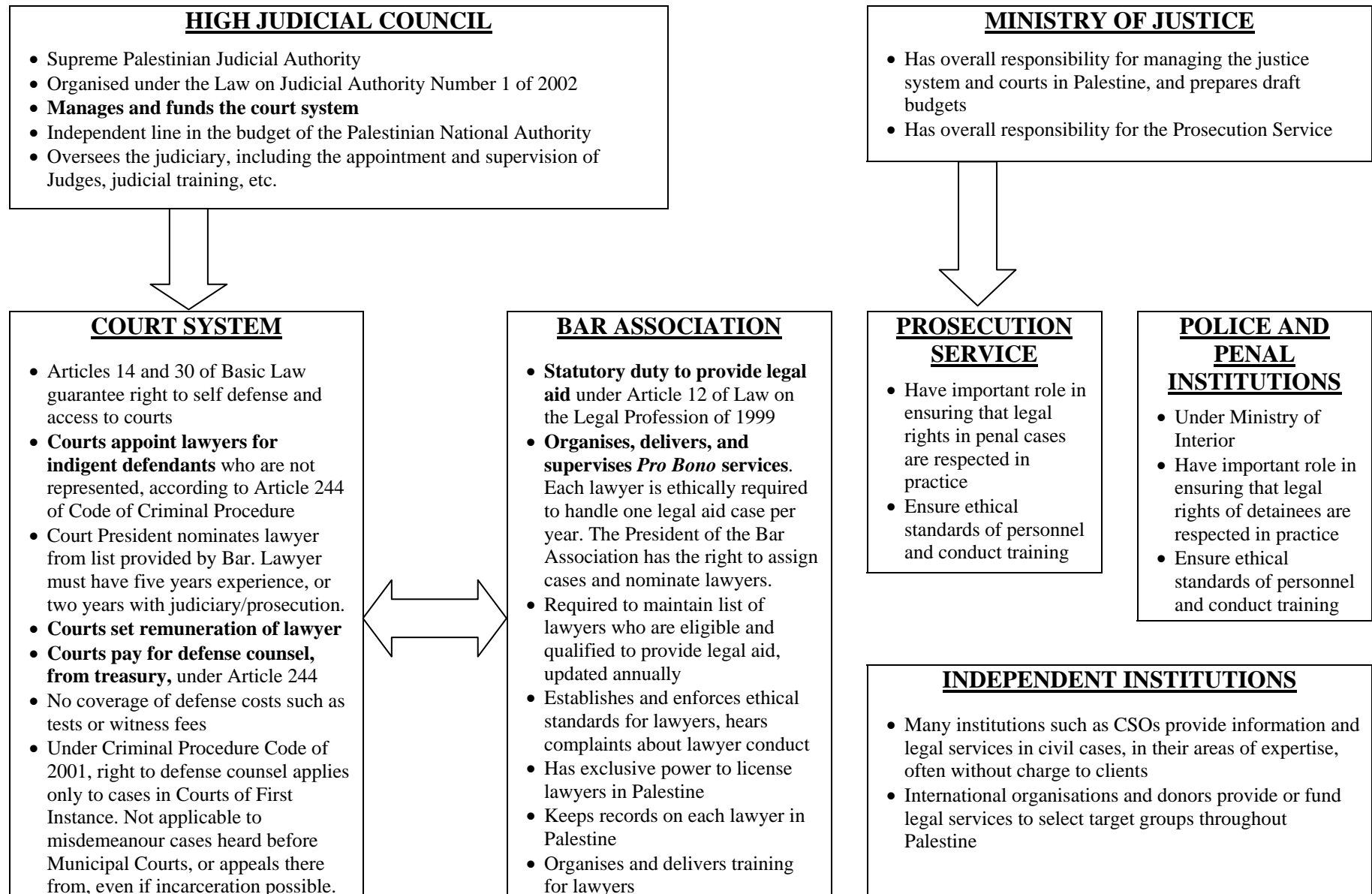


PRIVATE LAWYERS

- **Provide private legal aid on a second line basis for more complicated and difficult cases (exclusively)**
- Private lawyers and mediators must register with Legal Aid Board, qualify, and comply with quality standards. Half of lawyers register.
- Can be appointed by Legal Aid Board, if client qualifies for legal aid
- Can receive references from Legal Services Counters
- Can be approached directly by clients, in which case they can provide up to three hours of services without applying for Legal Aid Certificate
- Must apply to Legal Aid Board for a Legal Aid Certificate if case requires more than three hours of work
- Receive remuneration from Legal Aid Board

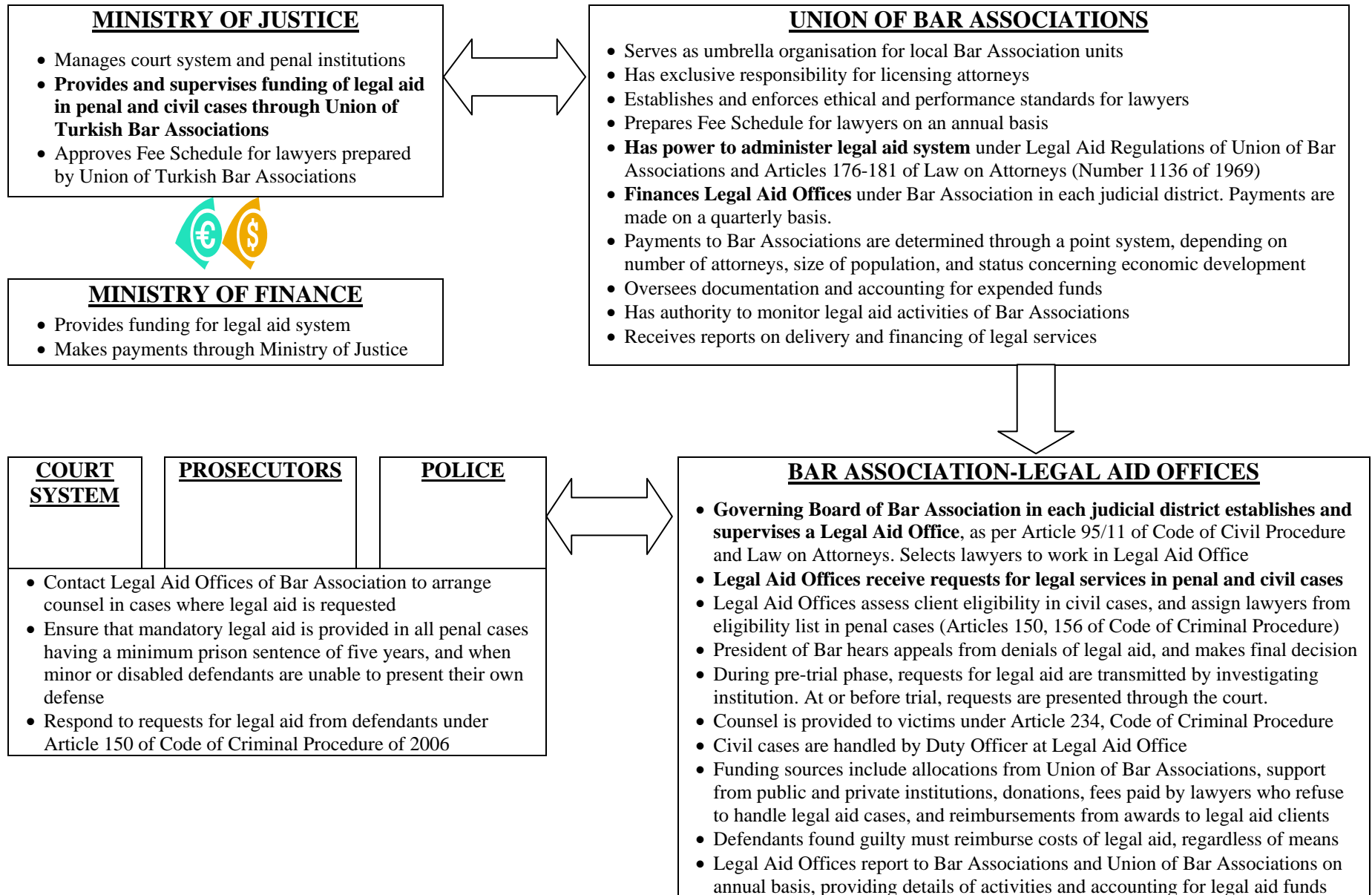
TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN THE NETHERLANDS		
	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. Covers the entire country.
2	Case Coverage	A. Unified. The Legal Aid Board organises legal aid services in both penal and civil cases. The Legal Services Counters cover both penal and civil cases.
3	Management	B. Delegated. The Legal Aid Board manages and operates the legal aid system, with significant autonomy from the Ministry of Justice.
4	Funding	A. Public. The Ministry of Justice funds the legal aid system, from the State budget.
5	Legal Services Delivery Mechanisms	A and C. Private Lawyers and Employed Lawyers. Private Lawyers handle cases on referral from Legal Services Counters, and can be approached directly by clients. Legal Services Counters utilise Employed Lawyers.
6	Role of Courts	B. Secondary. Legal aid services are usually organised and delivered before cases reach the courts.
7	Role of Bar Association	B. Secondary. The Bar Association is not significantly involved in the provision of legal aid services by the Legal Services Counters and Private Lawyers.
8	Role of Independent Institutions	B. Secondary. While a number of Independent Institutions provide social services, the public legal aid system is designed to deliver legal aid to those in need.
9	Types of Services	B. Functional. The Legal Services Counters provide Primary Services, and refer eligible clients to Private Lawyers for Secondary Services. Private Lawyers can provide Primary Services when directly approached by clients.
10	Client Coverage	A. Universal. The Legal Services Counters can provide an initial consultation on the basis of a simple means test, and potentially eligible clients can approach lawyers directly.

APPENDIX “K”: LEGAL AID IN PALESTINE IN PENAL CASES



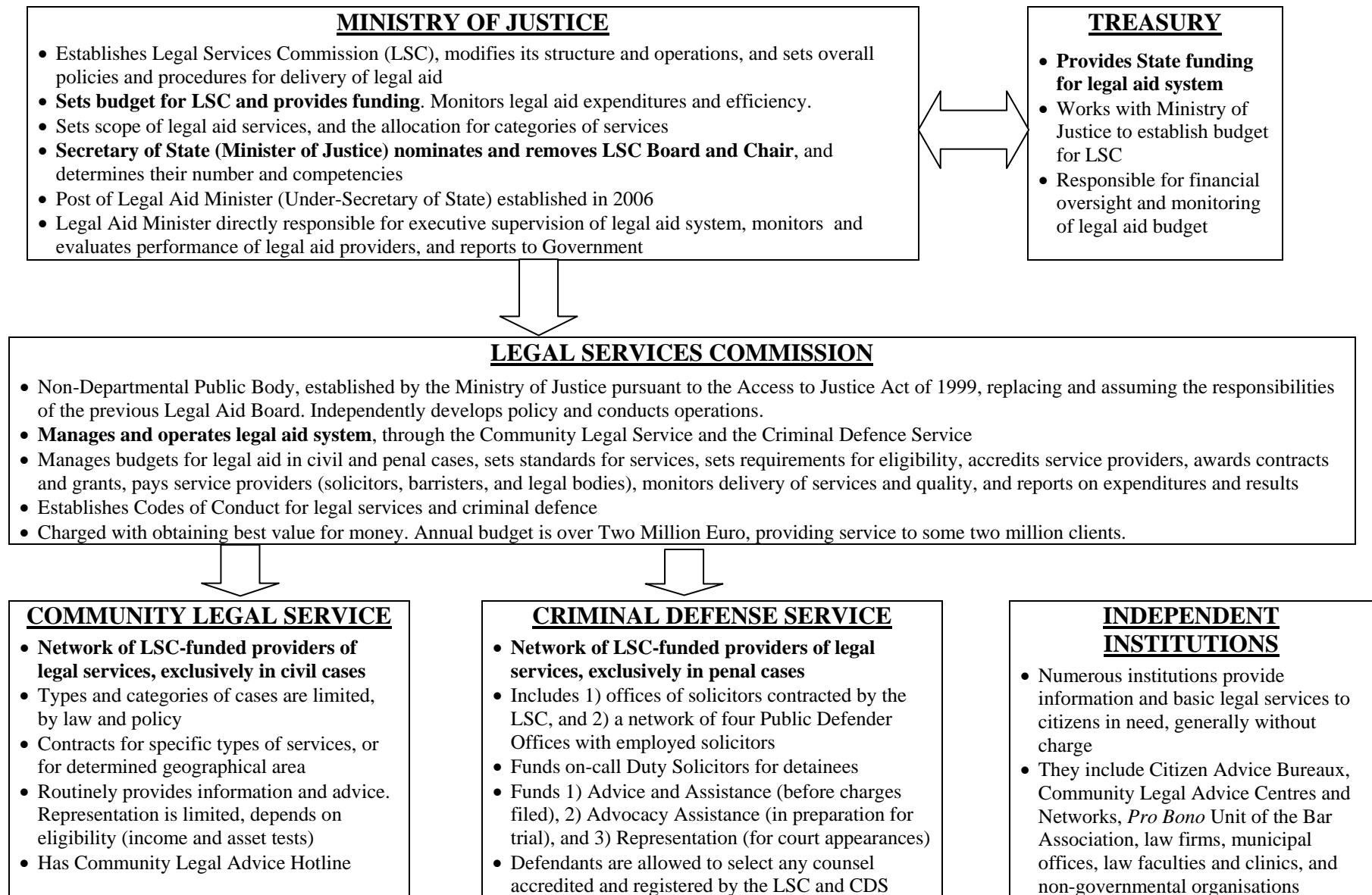
TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN PALESTINE (PENAL CASES ONLY)		
	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. Covers Palestine.
2	Case Coverage	B. Differentiated. Legal Aid is only provided in penal cases, according to the Penal Code. There is no publicly funded legal aid in civil cases.
3	Management	C. Autonomous. The Ministry of Justice is not directly involved in managing the legal aid system. Legal aid in penal cases is arranged, delivered, and financed by the High Judicial Council, the courts and Judges, and the Bar Association.
4	Funding	A. Public. Funding for legal aid in penal cases is provided by the High Judicial Council, from its own budget line. There is no publicly funded legal aid in civil cases.
5	Legal Services Delivery Mechanisms	A. Private Lawyers. The public legal aid system for penal cases utilises Private Lawyers, appointed by the courts in cooperation with the Bar Association. Employed Lawyers are not used. Independent Institutions utilise Contracted Lawyers.
6	Role of Courts	A. Primary. The Courts are responsible for appointing lawyers for indigent defendants (in cases before the Courts of First Instance), establishing the level of remuneration for legal services, and making payments.
7	Role of Bar Association	A. Primary. The Bar Association cooperates with the courts and oversees the provision of legal aid services. In addition, it organises and delivers <i>Pro Bono</i> legal aid services.
8	Role of Independent Institutions	A. Primary. Non-Governmental Organisations and various international institutions play a significant role in the provision of counsel in civil cases, and also participate in the delivery of legal aid services in penal cases.
9	Types of Services	A. Comprehensive. Legal aid, when provided, usually covers both Primary and Secondary Services. There are no specialised institutions providing Primary Services and making referrals.
10	Client Coverage	B. Restricted. Defendants must meet strict qualifications for publicly funded legal aid in penal cases, and the case must be eligible as well.

APPENDIX “L”: LEGAL AID IN TURKEY



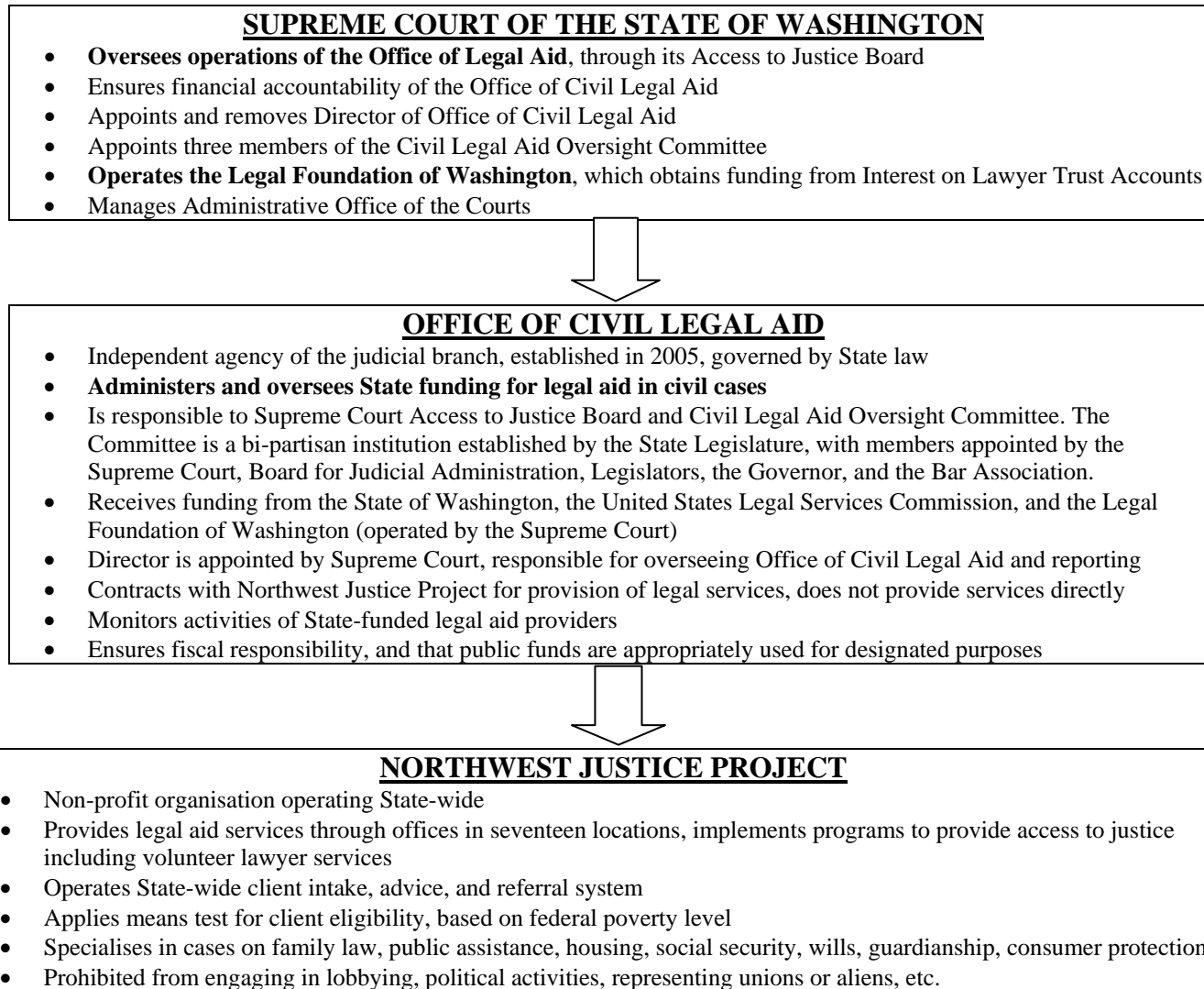
TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN TURKEY		
	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. Covers the entire country.
2	Case Coverage	A. Unified. Legal Aid Offices under local branches of Bar Association handle both penal and civil cases.
3	Management	C. Autonomous. Legal aid system is managed by Bar Association, in cooperation with the courts, without involvement from government institutions.
4	Funding	A. Public. Ministry of Justice provides and oversees funding for legal aid system, via transfer to the Union of Bar Associations.
5	Legal Services Delivery Mechanisms	A. Private Lawyers. Lawyers are assigned by the Legal Aid Offices on the basis of a list, or cases may be handled by the Duty Officer.
6	Role of Courts	B. Secondary. Legal aid services are usually organised and delivered before cases reach the courts. However, the courts refer clients to the Bar Association when necessary, especially in cases of mandatory defense.
7	Role of Bar Association	A. Primary. Bar Association arranges and delivers legal aid in penal and civil cases, supervises performance of lawyers, and makes payments for legal aid services.
8	Role of Independent Institutions	A. Primary. Independent Institutions play a significant role in the provision of legal aid, since the Bar Association is not able to meet all of the demand for services
9	Types of Services	A. Comprehensive. Lawyers handling cases under the auspices of the Bar Association Legal Aid Offices can provide both Primary and Secondary services.
10	Client Coverage	B. Restricted. The system appears to be designed to handle a significant number of cases. However, the conditions for mandatory defense are strict, and reports indicate that overall coverage is limited.

APPENDIX “M”: LEGAL AID IN THE UNITED KINGDOM (ENGLAND AND WALES)
(ACCESS TO JUSTICE ACT OF 1999, AS AMENDED IN 2006, NOW REVISED)



TYPOLOGY FOR THE INSTITUTIONAL FRAMEWORK IN THE UNITED KINGDOM (ENGLAND AND WALES ONLY)		
	CRITERIA	PARAMETERS
1	Jurisdiction	A. National System. But covers only England and Wales. Scotland and Northern Ireland have devolved legal aid systems.
2	Case Coverage	B. Differentiated. The Legal Services Commission distinguishes between penal cases (which are handled by the Criminal Defense Service) and civil cases (which are handled by the Community Legal Service).
3	Management	B. Delegated. The Ministry of Justice has delegated authority to the Legal Services Commission, but still retains significant overall powers. This may change in 2010.
4	Funding	A and B. Public and Private. Both public and private sources provide significant funding for legal aid.
5	Legal Services Delivery Mechanisms	A, B, and C. Private Lawyers, Contracted Lawyers, and Employed Lawyers are all utilised.
6	Role of Courts	B. Secondary. Legal aid services are usually organised and delivered before cases reach the courts.
7	Role of Bar Association	B. Secondary. Professional bodies for Solicitors and Barristers are not directly involved in providing legal aid.
8	Role of Independent Institutions	A. Primary. Although there is very significant official support for legal aid through the Legal Services Commission, a large variety of independent institutions offer legal aid services.
9	Types of Services	B. Functional. Although the powers of Solicitors have been expanded in recent years, making it possible for them to handle all aspects of certain cases, the British legal system traditionally takes a functional approach to legal services, by having both Solicitors and Barristers.
10	Client Coverage	A. Universal. While there are eligibility requirements for publicly sponsored legal aid services, the system (including public and private sources) provides high volume of services.

APPENDIX “N”: PARTIAL DESCRIPTION OF LEGAL AID FOR CIVIL CASES IN WASHINGTON STATE, USA



NB: This partial chart for the legal aid system in the State of Washington demonstrates how the Judiciary can operate a Legal Aid Authority which arranges for the provision of legal aid in civil cases through an Independent Institution