

V. INTERNATIONAL LEGAL AID MODELS

A. Introduction

Numerous models for legal aid exist around the world. Although a full comparative review of various approaches is beyond the scope of this paper, this section will profile the systems in place in the Netherlands, the United States and Singapore. All three countries provide some degree of civil and criminal legal aid to their citizens. However, the types of assistance provided and the sources of assistance vary widely between the three nations. The Netherlands case study examines recent reforms to the civil legal aid system, which overhauled the divide between government-provided and privately-provided legal assistance. The U.S. case study similarly focuses on the public/private divide, addressing both the U.S. government's approach to civil and criminal legal assistance and the leading role of civil society and academia facilitating access to justice. Singapore provides a third example of the division of legal services between the government and private providers.

The Netherlands, the U.S, and Singapore all face similar challenges regarding the funding and staffing of legal aid services, and the quality of the services provided. All three countries also demonstrate useful and practical approaches to these challenges. The Netherlands case study is perhaps most informative as an example of a successful government-driven approach to reform, while the U.S. exemplifies creativity outside the government in addressing legal aid needs. Lastly, Singapore demonstrates a rapidly-evolving approach to the challenges faced by a changing society.

Following the three country case studies, this section will discuss community mediation, an alternative dispute resolution "ADR" mechanism that has been utilized successfully to provided legal aid in many regions and countries.

B. The Netherlands

1. Introduction

The Netherlands is a small, densely populated, wealthy country that traditionally provides substantial civil and criminal legal aid to its citizens.ⁱ Like other European constitutions, the Dutch Constitution enshrines the principles that all citizens should have access to justice and legal representation.ⁱⁱ Criminal defendants in the Netherlands are guaranteed legal representation when they face the possibility of imprisonment, extradition or confinement to a mental institution.ⁱⁱⁱ The Dutch civil legal aid system provides advice regarding a range of topics – employment, family, tax, housing and consumer rights law – to clients who, based upon their financial status, meet the system's criteria.^{iv}

This case study focuses on the 2004 reform of the Dutch civil legal aid system, in which the Dutch government restructured the provision of civil legal assistance to low-income clients, seeking a more transparent and efficient provision of services. The Dutch legal aid system presents a useful case study of successful government-driven reform efforts.

2. Civil Legal Aid

a. The government's provision of civil legal aid

Prior to 2004, the Dutch legal aid system consisted of five regional Legal Aid Boards, functioning under the control of the Ministry of Justice, and funded by a combination of government donations and *pro rata* client contributions.^v Under this system, approximately 45 percent of the Dutch population was eligible to receive subsidized assistance.^{vi} Legal aid took two basic forms: initial, free-of-charge consultations with a legal professional and extended assistance, potentially including the complete resolution of a client's problem.

The Dutch legal aid system has historically taken a "preventive" approach, operating on the principle that legal problems should be tackled at an early stage, with the hope of minimizing costs down the road. The initial consultation plays an important role in this process and, therefore, is meant to be well-publicized, providing all eligible persons with easy access to the legal system. During the initial consultation, a legal aid lawyer assesses whether the client presented legal problems falling within the statutory criteria for eligibility for legal assistance, and if so, which service providers would best be able to solve the client's problems. At this stage, clients also obtained information about the costs and chances of success for a lawsuit. On this basis they could decide whether and how they wished to proceed with their case. Prior to 2004, initial consultations were provided by publicly funded Legal Aid and Advice Centers ("LAAC"), which provided free 30-minute client consultations.^{vii}

b. The public and private approach to civil legal aid

Pre-2004, if a legal problem could not be resolved by an initial consultation, the client was referred to an extended consultation, where, for a fee of approximately US\$18, LAAC staff would provide three additional hours of legal assistance. If this time was not sufficient to resolve the issue, the client could apply for further legal aid. In such an instance, the legal aid lawyer would complete standard forms explaining the legal problem, and the client would disclose information regarding his or her financial situation. This data would then be sent to one of the country's five regional Legal Aid Boards, which would assess whether the legal problem and the client's financial status fulfilled the statutory criteria, and if so, what reduced amount the client should pay. Legal Aid Boards also determined whether the referring attorney was qualified to assist the client. LAAC staff attorneys were, at times, assigned to cases accepted by the Legal Aid Boards, but the vast majority of legal aid work was intended to be completed by attorneys in private practice.

3. Reforming Civil Legal Aid

a. Addressing the shortcomings of the civil legal aid system

In 2000, the Legal Aid Boards conducted an extensive study, looking at both supply and demand, to determine the Netherlands' legal aid services needs. Reflecting a problem that also affects legal aid providers in the United States and Singapore, the study found that more than 50 percent of persons eligible for legal aid were unaware

of its availability and that the demand for legal aid was likely to increase in the coming years. The study also determined that the LAACs were increasingly focused on providing extended legal assistance rather than initial consultations. This was a troubling trend, as free initial consultations were considered the hallmark of the Dutch legal aid system.

Further, some LAACs had started providing extended legal assistance to a number of paying clients, contrary to the Legal Aid Act. Doing so undercut private attorneys, because the LAACs could operate with lower overheads than their market competitors. The study found that the initial consultations enabled LAAC lawyers to siphon off interesting cases for themselves. As a result of these problems, the study found that the Dutch legal aid system was in need of greater transparency and accountability.

In addition to reporting these troubling trends, the 2000 study made several proposals for changes to the Dutch legal aid system. The proposals included three major components: (1) introducing Legal Services Counters to increase accessibility and transparency, (2) introducing greater quality-control measures, and (3) introducing demand-driven control of the legal aid system. All three changes are discussed below, as they represent a significant overhaul to the Dutch legal aid system.

b. Legal Services Counters

Following the 2000 study, the Dutch State Secretary for Justice appointed an independent committee to weigh the advantages and disadvantages of the creation of Legal Services Counters (“LSCs”).^{viii} After its review, the committee echoed the study’s endorsement of LSCs, encouraging their use to conduct brief initial consultations (less than one hour), after which clients in need of more in-depth counselling would be referred to private attorneys. To address the growing problem of competition between public and private legal services providers, the LSCs would be expressly public, with extended legal assistance handled exclusively by the private sector.^{ix} Further, the committee proposed significantly raising the existing three-hour consultation fee, to discourage frivolous aid requests. Lastly the committee called on the Dutch government to ensure the availability of qualified legal aid staff, through training, support and growth opportunities. As discussed below, the committee’s recommendations regarding LSCs were implemented in 2004.

In November 2003, Parliament granted permission to the Ministry of Justice to replace the existing LAACs with LSCs. The first LSCs opened in 2004, and there are now currently 30 functioning LSCs throughout the country.^x In 2005, these LSCs helped approximately 300,000 citizens.^{xi} The US\$26 million cost of converting the LAACs to LSCs was financed out of the Ministry of Justice and Legal Aid Boards’ budgets. LAAC employees were given a choice between working for the new LSCs or turning their LAACs into private firms. A survey of the first two functioning LSCs found that over 60 percent of the legal aid consultations provided were conducted by phone and one percent via the internet, with the balance occurring in person.^{xii} Client satisfaction surveys conducted for these first two LSCs found that over 90 percent of persons who received consultations ranked the services provided by the LSCs as “good” or “very good.”^{xiii}

c. Quality and auditing

In the wake of the 2000 study, measures have been taken to increase the quality of Dutch legal aid. In 2002, an agreement was concluded between the Dutch Bar, the Legal Aid Boards and the State Secretary for Justice, for the payment of merit allowances for proven quality. The Ministry of Justice, in conjunction with several other organizations, introduced a quality audit. Law offices that pass the audit are entitled to carry a special quality hallmark.^{xiv} This quality hallmark was first assigned to five law offices in April 2003, and, since 2004, the Legal Aid Boards have only admitted audited attorneys to the legal aid system.^{xv}

d. Demand-driven approach

The initial plan for a demand-driven approach was to have the LSCs provide legal aid vouchers, which litigants could use as payment with the private attorneys of their choice. However, as of 2004, this approach was not yet considered feasible. Instead, LSCs were charged with increasing demand for legal aid. Currently, the LSCs register potential litigants (to track demand) and refer them to audited private legal aid providers.

4. Future Challenges

The introduction of LSCs was intended to improve the provision of legal aid in the Netherlands in several ways. Regarding initial consultations, LSCs have increased the time of sessions from one-half hour to a full hour and are available “virtually” by phone and on-line. LSCs have also eliminated the internal link between initial consultations and LAAC-provided extended assistance. Furthermore, since 2005, a potential litigant’s financial means are determined on the basis of data supplied by the tax authorities, which streamlines the process of aid applications.^{xvi}

Prior to the 2004 reforms, LAACs could compete with and undercut commercial legal services. This problem was addressed via the LSCs’ sharp distinction between its public services and the services provided by private firms. The practice of referring clients only to audited attorneys is also intended to control the quality of legal aid provided. Further, the LSCs are intended to be able to refer clients not only to attorneys, but also to other types of services providers, such as mediators, debt counsellors, legal aid lawyers and social workers.

Critics charged that the disappearance of the extended consultation service was a great loss. However, under the 2004 changes, it was replaced by an analogous consultation with a private attorney (upon referral from an LSC), which would be much more widely available, since all private attorneys who participate in the Dutch legal aid system could offer this service. The client’s own monetary contribution to the consultation will be increased, obliging a potential litigant to make a careful assessment of his/her position in light of potential expenses. Doubts have also been expressed regarding the quality of the staffing of the new LSCs, as they rely more heavily on the services of paralegals than did the LAACs.^{xvii} However, there is no reason to suppose that lawyers or legally trained staff will not be able to provide the LSCs with quality staffing, especially since extensive legal representation is not part of the function of the LSCs.^{xviii}

Despite the improvements since 2004, there are still problems with the new Dutch legal aid system that remain to be addressed. Surveys reveal that 37 percent of the persons who were referred to a private attorney following their LSC consultation did not choose to consult the attorney, frequently for financial reasons.^{xxix} This high percentage of persons who choose not to continue seeking a resolution to their claims may indicate that many are slipping through the cracks of the new legal aid system.

Additionally, the Netherlands' expanding Muslim community (approximately 5 percent of the Dutch population is Muslim^{xxx}) has created unique challenges relating to legal aid. The Dutch legal aid system's treatment of mediation and divorce differ considerably from traditional Middle Eastern approaches to these subjects. Legal aid services in the Netherlands provide less of a mediation-focused approach to these issues than may be expected or desired by those of Arab origin, and treat divorce as more of an individual, rather than collective, concern.^{xxxi}

Finally, there are still concerns regarding public awareness of the availability of legal aid, as well as the transparency of law firm audits.^{xxii} Thus, while the recent changes to the Dutch legal aid system have alleviated some concerns, there are still shortfalls in terms of the quality and quantity of assistance provide to the Dutch public. As the next two case studies demonstrate, similar problems exist in both the United States and the Netherlands.

C. The United States

1. Introduction

While the Dutch case study demonstrates an organized, top-down reform effort focusing on the provision of civil legal aid, the situation in the United States is much more diverse. This case study provides an overview of the U.S. approach to both civil and criminal legal aid, highlighting the varied local approaches to legal aid in the United States. While the Netherlands has a structured divide between the provision of legal aid by public and private sources, the U.S. evinces a much more mixed approach. Further, civil and criminal legal aid in the U.S. is not always overseen by the federal government; rather, it is provided by a mix of sources. This situation has the advantage of producing a wide range of innovative approaches to legal aid, but, unlike in the Netherlands, there are few uniform guarantees of quality throughout the U.S. and many jurisdictions suffer serious financial shortcomings.

2. Civil Legal Aid

a. The federal government's provision of civil legal aid

Unlike the Dutch Constitution, the U.S. Constitution does not establish a right to counsel in most civil cases.^{xxiii} Nor is there any statutory guarantee of such a right in most jurisdictions. A significant portion of the funding for the provision of civil legal services in the United States comes from the federally-funded Legal Services Corporation ("LSC"), but this represents only part of the country's civil legal aid services.^{xxiv} Supplementing LSC money, many private and government funding sources contribute to legal aid programs offering legal services to low-income

Americans.^{xxv} Approximately 60 percent of the country's legal aid lawyers work for LSC-funded programs, while the rest provide legal assistance through non-LSC programs.^{xxvi}

The LSC is a statutory, private, non-profit corporation, established in 1974, and funded by the United States Congress.^{xxvii} In 2005, the LSC supported 140 legal aid programs throughout the United States.^{xxviii} However, these 140 programs receive only part of their funding from the U.S. government; private donations and state and local tax dollars make up the balance of their operating budgets.^{xxix} LSC programs devote the majority of their efforts to resolving housing issues (*i.e.*, landlord-tenant conflicts, foreclosures, *etc.*), domestic relations cases (*i.e.*, domestic violence and child custody), health care matters and consumer affairs cases.^{xxx} For instance, the LSC-funded Legal Services for New York City program provides legal assistance concerning a variety of civil law concerns, and also runs hotlines and workshops to educate the public.^{xxxi} Most of the cases that LSC program employees address can be resolved through advice or referrals; in 2006, only 13 percent of the LSC's approximately 1,000,000 cases actually required court action.^{xxxii}

b. Local and private approaches to civil legal aid

A further difference exists between the U.S. and the Netherlands regarding the control of legal aid services. While Dutch legal aid is government-funded, with decisions regarding the provision of aid (*e.g.*, eligibility of cases for legal assistance) made by the government, this is not the case in the United States.^{xxxiii} Since legal aid in the United States is heavily funded by private sources, and in many cases private individuals, such as lawyers donating their services *pro bono*, it is the private providers of aid who make many key decisions regarding who receives legal aid and under what circumstances.

Of course, the large amount of legal aid providers who receive some LSC funding are subject to statutory restrictions on the types of legal services they are permitted to provide, as well as restrictions on the recipients of such legal services. For instance, eligibility for LSC-sponsored legal aid is limited to individuals residing in households with incomes of less than 125 percent of the federally-determined poverty level.^{xxxiv} Additionally, legal aid offices receiving LSC funds are prohibited from representing undocumented immigrants, prisoners, and anyone facing housing problems resulting from being charged with a drug offense.

As a consequence of these funding restrictions, NGOs have begun to establish alternate legal aid offices that do not receive LSC funds to try to provide for the unmet legal needs of the lower income population.^{xxxv} As discussed above, the approximately 40 percent of legal aid services provided outside of LSC programming enjoy a large amount of autonomy regarding the type of aid they provide and who receives it. For instance, many of the small, non-governmental legal aid providers specialize in particular types of legal assistance (*e.g.*, hotlines or representation before specific administrative entities) or particular areas of the law (*e.g.*, housing and landlord-tenant disputes).^{xxxvi}

Low-income U.S. residents are also aided by *pro bono* programs, whereby private attorneys donate their time and resources to help underserved clients.^{xxxvii}

c. Future challenges in the provision of civil legal aid

Unfortunately, the public and private legal aid providers in the U.S. are not able to fully meet the demand for civil legal aid services. A 2005 survey revealed that the LSC was unable to serve one-half of those persons who requested assistance, because of a lack of resources.^{xxxviii} As reflected in a similar study in the Netherlands, the survey also reported that potential clients were frequently unaware of the availability of legal services, and thus did not even contact legal aid providers.^{xxxix} Frequently, low-income residents were not even aware that there was a legal component to the problems they faced.^{xl} As a result of this lack of awareness and funding, only a small percentage of lower-income persons' legal issues are resolved with the help of a legal aid provider.^{xli}

The LSC was established with the goal of providing services such that for every 5,000 low-income persons, there would be one legal aid attorney. In 2005, that ratio was in fact 6,861 to one.^{xlii} Additionally, LSC funding has not kept pace with inflation or increasing demand in the decades since it was created, though some of the funding gaps have been filled via state and private funding. LSC funding peaked in 1981, when the program received the equivalent of US\$687 million (adjusted for inflation) in federal funding. In contrast, LSC programming in 2005 received only US\$330 million. At the same time, however, state and private funding of LSC programs has increased threefold, compensating for the lack of federal government resources.^{xliii} As demonstrated in the next section, criminal legal aid providers in the U.S. face similar funding shortfalls, and must also meet these challenges through local, grassroots efforts.

3. Criminal Legal Aid

a. The government's provision of criminal legal aid

The Sixth Amendment of the U.S. Constitution establishes the right to counsel regarding federal criminal cases.^{xliv} However, in the U.S., most crimes are prosecuted by state governments, not federal governments.^{xlv} The right to effective legal aid in state criminal cases was established in the twentieth century through a series of U.S. Supreme Court cases.^{xlvi} In 1963, *Gideon v. Wainwright*^{xlvii} established the right to counsel for persons charged with felonies in state courts. The 1967 decision of *In re Gault* extended this right to juveniles.^{xlviii} In 1972, *Argersinger v. Hamlin* extended the right to counsel to all criminal prosecutions that carry a potential prison sentence.^{xlix} Thus, in the United States, all criminal defendants facing the threat of imprisonment, regardless of the period of time involved, are entitled to defense counsel. This right extends to multiple stages in criminal proceedings, including post-arrest interrogation, preliminary hearings and plea bargain negotiations.^l Additionally, the right to counsel continues through and after appeal, during sentencing proceedings, and, in some cases, even during probation proceedings.^{li} The right to counsel can also extend to certain non-criminal cases where the defendant is threatened with a loss of liberty, such as extradition proceedings or mental competency and commitment proceedings.^{lii}

b. Diverse local approaches to criminal legal aid

As with the provision of civil legal aid in the United States, the provision of criminal legal aid is organized on a local level; within the 3,000 U.S. counties (sub-units of regional self-government within states) there exists a wide variety of programs designed to provide for public defense services. The result is a range of different legal services programs, including some innovative approaches to the provision of legal services. The various processes by which criminal legal assistance is granted across the United States include: (1) public defender offices, wherein local and state governments employ staff attorneys to represent indigent defendants; (2) court appointments of private attorneys, compensated by the government, to handle the cases of indigent defendants; (3) contracts between state or local governments and private attorneys and firms for the provision of legal services for a predetermined price and set amount of cases; and (4) attorneys employed by non-profit corporations to provide public defense.^{liii} Most local U.S. governments meet their criminal legal aid needs by employing a hybrid of these processes. Funding for these various programs is mostly the responsibility of city, county and/or state governments, the product of revenues generated by court fees, or a combination of these sources.^{liv}

c. Innovative approaches to the provision of criminal legal aid services

One of the more successful examples of a criminal legal aid program in the United States can be found in the state of Indiana. There, the state government has taken several steps to ensure that indigent defense meets high standards while maintaining some local autonomy. A state-wide commission reimburses county governments for 40 percent of their legal aid expenses in non-capital punishment criminal cases, provided that the counties develop “a comprehensive plan to provide indigent defense services.”^{lv} Moreover, counties receiving state funding must comply with state quality standards.

The diversity of legal aid programming in the United States can also produce creative local solutions to legal assistance challenges. In the state of Rhode Island, local governments have combined the provision of legal services with social services, allowing public defender attorneys to collaborate with social workers to develop “assessments and alternatives to incarceration” for defendants.^{lvi} In the state of Washington, the NGO TeamChild “works to train public defenders, probation officers, judges, and others involved in the justice system to identify the issues underlying a young person's problem behavior and to increase awareness of the success of community-based services to meet these needs.”^{lvii}

Even more so than with civil legal aid, there are significant obstacles to overcome in order to reform criminal legal aid systems. The persons who stand to benefit from such reforms, in addition to being poor and marginalized, also tend to evoke little sympathy, as they have been accused of committing crimes.^{lviii} Despite this fact, several positive examples of criminal legal aid reform emerge from various U.S. states.^{lix} In contrast with recent legal aid reforms in the Netherlands, it is interesting to note that much of the impetus behind reforms in these various states came from outside the government, through organizations such as state bar associations, newspapers and non-profit charities.

One such example of successful reform comes from the state of Georgia, which overhauled its criminal legal aid system in 2003, creating a state-level oversight committee to enact and enforce state-wide standards.^{lx} Replacing separate local systems of criminal legal aid with state-wide systems is one way to combat the problem of uneven funding among counties with widely disparate income levels. In 2001 and 2004 respectively, the states of Texas and Virginia both established similar systems for statewide oversight of criminal legal aid.^{lxi}

While the current U.S. system of criminal legal aid certainly gives rise to concerns over oversight, it suffers equally from a lack of resources. Several states have acted to confront this challenge as well. As part of its 2001 reforms, Texas began contributing funds to indigent defense for the first time. In 2003, New York increased compensation for private lawyers assigned to represent indigent defendants, following the settlement of a law suit against the state that challenged the constitutionality of the former payment scheme.^{lxii} As these state efforts demonstrate, legal aid solutions may come from a variety of sources, in addition to the Dutch model of top-down government reforms.

d. Future challenges in the provision of criminal legal aid

As with U.S. civil legal aid, there is not a great deal of uniformity in the provision of federal and state criminal legal aid. Predictably, this has resulted in a lack of uniform oversight at the state and national level.^{lxiii} While the LSC regulates the provision of a significant percent of civil legal aid services in the U.S., there is no such body overseeing criminal legal aid. Instead, private organizations have attempted to fill the gap, creating standards for the performance of public defenders. In 2002, the American Bar Association attempted to condense all the various private standards for the provision of criminal legal aid into ten succinct principles. In summary, these principles mandate that:

- The selection and funding of public defenders be independent of political or judicial supervision.
- Defense counsel must be competent, and should be provided with sufficient time and confidential access to the client to establish a defense. Counsel's workload should permit thorough attention to each assigned case and counsel must be permitted to continuously represent his or her client through the duration of the case.
- There should be parity between the defense and prosecution in resources and treatment by the legal system.
- Defense counsel's performance should be reviewed according to established standards, and defense counsel should be required to receive continuing education.^{lxiv}

Several major challenges are presented by the current U.S. system of criminal legal aid. As with U.S. civil legal aid, there are concerns over a lack of adequate funding of the various public and private legal aid services. Per capita, indigent defendants in the U.S. enjoy less than one-third of the spending that defendants in the United Kingdom receive.^{lxv} There are also concerns regarding the frequent funding of U.S. criminal legal aid on the county level; in some states, "varying levels of local [county] funding

for indigent defense have led to disparities in the quality of representation.”^{lxvi}
Predictably, insufficient funding results in further shortcomings in the U.S. criminal legal aid system, including an imbalance in the resources of the prosecution and defense, and inadequate legal representation.^{lxvii}

D. Singapore

1. Introduction

Singapore is a small, wealthy South Asian nation, with a population of approximately 4.5 million persons, of which nearly 15 percent are Muslims.^{lxviii} Aside from its smaller size, Singapore differs from both the Netherlands and the United States in several key ways. The country gained its independence recently, in 1965, and, in many respects, its legal system is a reflection of the English common law tradition (the British controlled Singapore, in one fashion or another, for nearly 150 years).^{lxix} Singapore, which first established a Sharia court in 1968, also incorporates elements of Islamic law into its legal system.^{lxx} As in the Netherlands and the United States, Singapore's legal aid services are a hybrid, featuring both publicly and privately funded assistance.

The Singaporean judiciary does not differ significantly from its Dutch or U.S. counterparts, though Singapore's judiciary is not entirely free from political influence by other branches of government.^{lxxi} Singapore's judicial processes generally adhere to international standards of due process: in most instances, arrest warrants are necessary before persons may be detained and, in general practice, detained persons are informed of the charges against them, presumed innocent, granted the right to question opposing witnesses and guaranteed public trials.^{lxxii}

Low-income persons who face criminal charges or who need the services of an attorney in a civil law matter are generally able to rely on the services of Singapore's legal aid systems. However, unlike the U.S. practice of government-guaranteed criminal legal aid, the Singaporean government focuses more heavily on the provision of civil legal aid, with much of the country's criminal legal aid provided by non-governmental sources. The Singapore Ministry of Law operates the country's Legal Aid Bureau ("LAB"), a government-funded and operated entity that provides civil legal assistance.^{lxxiii} Singapore's national bar association, the Law Society of Singapore ("Law Society"), compliments the LAB's services by providing legal aid to criminal defendants.^{lxxiv}

As in the U.S., the provision of legal aid in Singapore is not the exclusive purview of one or two organizations. Instead, Singapore's Supreme Court provides attorneys for defendants in capital punishment cases, while other programs sponsored by the Singaporean government provide legal information and mediation services via separate government entities.^{lxxv} Lastly, the country also has a number of additional free legal clinics, operated by NGOs, which provide a variety of legal services.^{lxxvi} This case study will focus mainly on the two largest sources of legal aid in Singapore - the LAB and the Law Society - as well as the interplay between the government and the private supply of legal aid in the country.

2. Civil Legal Aid

a. The government's provision of civil legal aid

The LAB was first established in 1956, via the Legal Aid and Advice Act.^{lxxvii} Initially, the LAB was modeled on the British and New South Wales (Australia) legal aid systems, though it has grown and evolved over time to reflect Singapore's changing legal and economic situation.^{lxxviii} The LAB currently provides a range of services, similar to the diverse offering of Dutch legal aid services and some U.S. legal aid programs. The LAB offers advice, assistance in the preparation of legal documents (including domestic relations documents and wills), and representation in civil court proceedings. Assistance covers a range of civil legal subjects, also similar to the civil legal aid provided by the U.S. and Dutch governments: domestic relations, wrongful dismissals, landlord-tenant disputes, traffic accidents and industrial accident claims.^{lxxix}

b. LAB funding

Funding for the LAB comes almost entirely from the government, though *pro rata* client contributions also play a role. The determination of whether a Singaporean citizen or permanent resident is eligible for LAB assistance, and what amount he/she will contribute to the representation, is determined by a statutory "means test,"^{lxxx} which is updated every few years, to reflect Singapore's evolving economy.^{lxxxi} The current means test requires that an individual's "income for the past 12 months before the date of application for legal aid and after deducting prescribed allowances must not exceed [US\$6,900]," with disposable capital for that period not exceeding US\$6,900.^{lxxxii}

This test is the result of changes made in March 2007 (with an effective date of July 1, 2007), which adjusted the means test criteria by (1) raising the disposable capital ceiling by US\$2,000, and (2) increasing both the personal and dependent deductibles (which are subtracted in calculating a potential aid recipient's income) by US\$1,000.^{lxxxiii} The new means test also increased coverage from the 30th percentile of Singaporean households (based upon income) to the 40th percentile.^{lxxxiv} Additionally, the LAB director was "given greater discretion to extend help to exceptional hardship cases which do not satisfy the means test."^{lxxxv}

One further aspect of the Minister for Law's recent plans is the establishment of one or more legal clinics throughout the country.^{lxxxvi} The LAB has one location, with no other outlets in Singapore. Given Singapore's small size, this situation is adequate, though the addition of several satellite offices would be beneficial, since Singapore is nearly 700 square kilometers in area.^{lxxxvii} The LAB currently operates with a 55-person staff, handling approximately 8,000 cases a year with the assistance of volunteer attorneys.^{lxxxviii} The LAB relies on about 500 attorneys who donate their services to handle approximately 35 percent of the annual caseload.^{lxxxix} The LAB also depends upon donations to further supplement its operating budget.^{xc} Of the 8,000 cases that are presented to the LAB every year, approximately 90 percent qualify for assistance.^{xci}

c. Quality control

As occurs in the Netherlands, Singapore's LAB monitors the quality of the services it provides on a national level. The government uses International Standard Organization standards as the benchmark for measuring the LAB's success. To date, LAB programming has achieved two of the country's quality certifications: Singapore Quality Class and Singapore Service Class.^{xcii} Additionally, LAB employees are required to undergo a set amount of training each year, and they are sent to other jurisdictions on study visits to learn international best practices. They also continually stay apprised of recent developments in legal aid services in other countries.^{xciii} With such a small organization, the LAB is able to schedule monthly staff meetings to obtain feedback, as well as hold annual staff retreats.^{xciv} One main difference emerges regarding quality control in a country as small as Singapore versus the Netherlands or the United States: there is little need for concern regarding the uniformity of legal aid provided in Singapore, since there is only one major legal aid provider – the LAB.

d. Private approaches to civil legal aid

Several other legal aid programs exist to serve Singapore's lower income residents. Some organizations work in conjunction with LAB programming, and some function independently, sponsored by NGOs. The Singaporean Catholic Lawyers Guild operates two-hour long legal clinics twice monthly, offering legal advice, but not legal drafting or representation before courts.^{xcv} The Tanjong Pagar Family Service Centre ("FSC") participates in the LAB's "Give Another Lifeline" program, which combines LAB counseling with social services for individuals seeking legal assistance on domestic relations related issues.^{xcvi} The LAB offers persons presenting domestic relations complaints the opportunity to receive counseling from the FSC.^{xcvii}

The Lay Assistant Scheme is another *pro bono* program, conducted by Singapore's Family Court and the law faculty at the National University of Singapore.^{xcviii} This pilot program offers non-lawyer assistants (student volunteers) to persons appearing in Singapore's family courts who either do not qualify for LAB legal aid or do not wish to utilize a LAB lawyer.^{xcix} While a lay assistant cannot represent a person in court as a lawyer would, or provide legal advice, the assistant can help in preparing paperwork and may be present at court proceedings.^c As these programs demonstrate, Singapore is similar to the U.S. in that its legal aid services represent a mix of public and private programming.

3. Criminal Legal Aid

a. The government's provision of criminal legal aid

The Singaporean government provides defense counsel to all persons charged with capital crimes, without need for any means test.^{ci} However, the government's support for criminal legal aid programming outside the realm of capital cases is limited. Unlike the situation in the Netherlands and the U.S., criminal defendants are not guaranteed legal aid by the Singaporean government. The non-profit Law Society of Singapore (1967) created the Criminal Legal Aid Scheme ("CLAS") to fill that void, and it now provides legal representation for many of Singapore's indigent defendants.^{cii}

b. Private approaches to criminal legal aid

When CLAS began its legal aid programming in 1985, it was only able to offer assistance to persons charged with theft.^{ciii} CLAS quickly expanded programming to include several other categories of crimes. Legal aid is currently provided for persons charged with offenses under a range of statutes, including those relating to vandalism, weapons, explosives and drugs.^{civ} As of December 31, 2006, CLAS reported that 10,961 applications for criminal legal aid had been received, of which 2,436 applications were accepted and received volunteer lawyer assignments.^{cv} Of these 2,436 applicants, 234 were either acquitted or had their charges withdrawn based upon representations made by the assigned volunteer lawyers.^{cvi}

Today, CLAS operates with a four-person staff, managing legal aid applications and responding to public inquiries.^{cvii} The CLAS budget last year was approximately US\$85,740, with the majority of funding from the judiciary, corporations and private attorneys, and through corporate sponsorships, fundraisers, and donations.^{cviii} Given its limited resources, CLAS depends upon the services of volunteer attorneys to provide the balance of the assistance it offers.^{cix}

Given its financial limitations, CLAS provides assistance in limited circumstances. For example, CLAS provides legal aid for accused persons only when they choose to go to trial, unless the accused is mentally ill, in which case they are provided counsel regardless of their plea.^{cx} Despite these limitations, CLAS staff members retain the discretion to provide legal aid in other instances.^{cxii} And, in January 2007, CLAS began to provide assistance in Singapore's bail courts.^{cxiii} Clients who qualify for CLAS aid receive legal services free of charge (those who do not qualify can appeal the denial of services).^{cxiiii} As with the provision of civil legal aid in Singapore, criminal defendants are subject to a means test. As of September 2005, single applicants were required to have a monthly income no more than US\$855 and married applicants no more than US\$1,180.^{cxiv}

As demonstrated by its fundraising practices and as emphasized by Malathi Das, Vice-President of the Council of The Law Society of Singapore, CLAS relies upon cooperation between the public and private sectors.^{cxv} To supplement its funded programming, CLAS utilizes volunteer attorneys and translators.^{cxvi} Since the Law Society depends upon the services of private volunteer attorneys, it is also active in providing those volunteers with training to ensure their ability to handle criminal matters. When CLAS was launched in 1985, staff conducted trainings to educate volunteer lawyers on criminal law practice and procedures.^{cxvii} The Law Society also involves private attorneys in the legal aid system by soliciting feedback from them via regularly conducted surveys.^{cxviii} From 1987-2005, CLAS published a monthly journal to keep volunteers up-to-date on CLAS and recent developments in criminal law (since 2005, that information has been included in The Law Society of Singapore's monthly magazine).^{cxix}

4. Future Challenges

More than in the United States and the Netherlands, the evolution of legal aid in Singapore in the last half-century has been affected by substantial changes in the country's economic landscape.^{cxx} As a result, legal aid services in Singapore continue

to expand. Criminal legal aid is a relatively new service, and receives far less financial support than criminal legal services in the United States or the Netherlands. Singapore's civil legal aid network is more comprehensive, but also constantly evolving, with an expansion of the means test in 1995, 2001 and 2007, continually increasing the number of persons who qualify for legal aid.^{cxxi}

Singaporeans have concerns regarding the provision of legal assistance similar to those of their Dutch and U.S. counterparts. Echoing a problem found in both the United States and the Netherlands, Singapore's legal professionals emphasize the need for greater public awareness of legal aid services.^{cxxii} Similarly, judicial and legal professionals must be educated regarding their potential to contribute to Singapore's legal aid system.^{cxxiii} Doing so is crucial because Singapore's legal aid system depends heavily on the contributions of volunteer lawyers. In Singapore, more so than in the United States or the Netherlands, *pro bono* representation by private attorneys is the backbone of indigent legal services. As in the Netherlands, Singapore's legal aid providers find that the services they provide are best served when their performance is regularly reviewed.^{cxxiv}

E. Community Mediation

Alternative Dispute Resolution (“ADR”) mechanisms form part of what is commonly referred to as the informal justice system. ADR includes arbitration, negotiation, conciliation and mediation. This section will specifically focus on one type of mediation – community mediation.

The ABA defines mediation as “a process in which an impartial third party facilitates communication and negotiation and promotes voluntary decision making by the parties to the dispute.”^{cxxv} The U.S. National Association for Community Mediation (“NAFCM”) characterizes community mediation as:

1. The use of trained community volunteers as the primary providers of mediation services; volunteers are not required to have academic or professional credentials;
2. A private non-profit or public agency, or program thereof, with a governing/advisory board;
3. Mediators, staff and governing/advisory board are representative of the diversity of the community served;
4. Providing direct access of mediation to the public through self referral and striving to reduce barriers to service including physical, linguistic, cultural, programmatic and economic;
5. Providing service to clients regardless of their ability to pay;
6. Initiating, facilitating and educating for collaborative community relationships to effect positive systemic change;
7. Engaging in public awareness and educational activities about the values and practices of mediation;
8. Providing a forum for dispute resolution at the early stages of the conflict; and
9. Providing an alternative to the judicial system at any stage of the conflict.^{cxxvi}

ADR can play an important role in promoting access to justice, though it cannot completely replace the formal court system. As explained by UNDP, “access to

justice, especially for the poor and disadvantaged, is facilitated through ADR mechanisms as it addresses key obstacles facing these groups and is more accessible than formal courts.”^{cxxxvii} ADR has certain advantages when applied to access to justice: relatively quick resolutions, lower cost and less formality than court litigation, a basis in traditional informal mediation practices, and reduced court caseloads.^{cxxxviii} ADR methods are also personally empowering and focus on finding “win-win” solutions. These attributes are especially relevant in small communities, where disputing parties must continue to live, work and socialize together.

There are also some disadvantages to using ADR, which should be considered:^{cxxxix}

1. Enforcement: Mediation cases generally cannot be enforced under the law, thus if one party does not uphold the mediation agreement, the other party’s only recourse is to bring the entire dispute to court.
2. Predictability: Since mediation decisions are based entirely on the facts of the case and focus on achieving an outcome that satisfies both parties, there is very little predictability in the system. Additionally, mediation training and the background of mediators can vary greatly.
3. Impartiality: Because mediators come from the community, issues of bias and corruption can be a concern.
4. Standards and Guidelines: Mediations are not always compliant with international standards, especially when dealing with human or women’s rights.

UNDP, in its guide to programming for access to justice, elaborates on capacity development strategies to enhance access to justice with community mediation and other ADR mechanisms. It recommends “increasing public awareness and confidence in community mediation; obtaining political and financial support from government; improving referral mechanisms to mediation boards and increase caseloads at mediation boards; training in community mediation; avoiding conflict roles; community involvement; and using ADR to complement the formal justice system” as actions that can lead to the successful establishment of new community mediation programs.^{cxxx}

1. Community Mediation in the United States

In the United States, community mediation is common. According to NAFCM, there are approximately 550 community mediation programs in the U.S., over 19,500 active volunteer community mediators, and over 76,000 citizens trained by community mediation programs per year.^{cxxxxi} Over 97,500 cases are referred to community mediation programs annually, with more than 45,500 of those cases mediated.^{cxxxii} On average, typical U.S. community mediation programs are small, with approximately 1.5 staff members, 30 active mediators and an annual budget of US\$40,000.^{cxxxiii} They receive approximately 150 referrals per year and mediate 70 of those cases.^{cxxxiv} In the U.S., community mediation programs mainly address neighborhood and community disputes, family/custody conflicts, juvenile and school issues, and victim/offender matters, which arise from referrals from the courts and other parts of the legal system.^{cxxxv}

While the popularity of community mediation has grown tremendously in the U.S. during the past decades, evaluating the quality of justice delivered by community mediation remains a concern to program directors and policy makers. The U.S. Department of Justice, in a 1997 review of community mediation in the U.S., described different means of evaluating the quality of justice rendered by community mediation programs, such as “disputants’ satisfaction with the process and with community mediators; disputants’ perceptions about the fairness of the process; disputants’ satisfaction with the terms of the agreement; and the stability of dispute settlement over time.”^{cxv} Using these factors and others, studies often have found that “community mediation programs achieve superior outcomes when compared with adjudication for the types of matters handled by the programs . . . particularly . . . for measures of disputant perceptions of the process and agreements, perceived fairness, and related perceptions.”^{cxvii}

2. Community Mediation around the World

Community mediation has also been used throughout the world, especially by disadvantaged groups. UNDP explains how such programs are established;

Community mediation boards can be established through legislative acts and commissions can be set up to monitor their activities. They are often free of charge to the users and mediation boards generally meet once a week to discuss cases in public. Community mediators are typically local volunteers who are trained to resolve conflicts and are not required to have academic or professional credentials but generally represent the diversity of the community served. They are often individuals with some standing and moral authority within that community who are well respected and are likely to be accepted by those coming before them with disputes. Most community mediators are retired teachers and civil servants living within the community, religious leaders, or volunteers.^{cxviii}

A number of developing countries have also begun using community mediation, and have even enacted legislation that specifically facilitates its use. Sri Lanka, for example, in its ADR legislation, states that the purpose of mediation is to “divert such matters away from Courts, for settlement if possible in an atmosphere which is both free of the fetters and rigors of court procedure and which is conducive to the amicable settlement of disputes the nature of which does not justify the applicability of technical legal concepts.”^{cxix}

Along with this legislation, the Sri Lankan Ministry of Justice established community Mediation Boards to “reduce court backlog and facilitate access to justice for disadvantaged groups.”^{cx} Mediators are nominated by NGOs, religious leaders, school heads and government officials, and are assessed for their “suitability and aptitude to be a mediator.”^{cxli} If selected, they must follow a statutorily mandated training program on mediation skills and techniques.^{cxlii}

There are 282 Mediation Boards in Sri Lanka, with 6,930 mediators providing voluntary services.^{cxliii} In a 2005 review of these Boards, the Ministry found that they had successfully resolved approximately 782,124 of 1,442,025 (54 percent) disputes mediated since the start of the mediation program in 1991.^{cxliv} Mediation has been so

successful that Sri Lanka is now establishing programs to serve schools, commercial disputes, and issues arising out of the December 2005 tsunami.^{cxlv}

In Nepal, a community mediation project was launched in 2001 in order to make “justice accessible to poor, women, and marginalised groups of people through local mediation services [by resolving] minor disputes locally before they escalate into major conflicts.”^{cxlvi} The project, initiated specifically in response to disadvantaged persons’ lack of access to and participation in the Nepali judicial system, addresses disputes concerning property rights, other rights (marriage and divorce, establishing kinship, wages employments, etc.), certain civil/criminal cases (minor fights, looting, forgery and verbal insult), and minor household disputes.^{cxlvii} Over a two-year period (July 2001 – June 2003), Nepali community mediation proved to be extremely successful, achieving a 94 percent settlement rate (668 out of 707 registered cases were settled).^{cxlviii}

A form of community mediation, *shalish*,^{cxlix} has been adapted and used by the Madaripur Legal Aid Association (“MLAA”) of Bangladesh since 1983 to address issues of access to justice resulting from the cost and delays associated with the courts. The MLAA mediation system is village or town based, and mainly serves women in marriage-related disputes or low-income farmers with land-related disputes.^{cl} The *shalish* session is guided by a village-based mediation committee, formed of respected community leaders trained in mediations skills, and includes opposing parties as well as relatives and friends, who all congregate in a chosen public space.^{cli} According to the MLAA, 80 percent of the *shalish* proceedings result in successful resolution of the dispute.^{clii}

While community mediation has been successfully used in other parts of the world, and though there are some ongoing MENA court-annexed and commercial mediation initiatives,^{cliii} community mediation remains largely unknown and unused in the region. The benefits of mediation, and especially community mediation, for social cohesion, empowerment and conflict resolution, and its impact on increasing access to justice at a relatively low cost, present benefits that should not be overlooked.

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^{ciii} The Law Society of Singapore, *CLAS, Introduction*.

^{civ} The Law Society of Singapore, *CLAS, Introduction*; The Law Society of Singapore *CLAS, FAQ*, available at: http://www.lawsociety.org.sg/pro_bono/clas_faq.asp#2 (listing offenses CLAS covers).

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^{cxix} Singapore Ministry of Law, *Minlore: A Quarterly Newsletter*, May 2007, at 3; Singh, *Legal Aid in Singapore: Case Study*, at 1.

^{cxix} ACJLS Policy Dialogue I Report, at 5.

^{cxix} ACJLS Policy Dialogue I Report, at 5.

^{cxix} Malathi Das, *Legal Aid in Singapore, a Private-Public Partnership*, Powerpoint presentation.

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<http://www.abanet.org/dispute/news/ModelStandardsOfConductforMediatorsfinal05.pdf>

^{cxix} National Association for Community Mediation (“NAFCM”), Overview of Community Mediation, History. Available at: <http://www.nafcm.org/pg5.cfm>

^{cxix} UNDP, *Programming for Justice: Access for All*, at 98.

^{cxix} UNDP, *Programming for Justice: Access for All*, at 98.

^{cxix} UNDP, *Programming for Justice: Access for All*, at 98-99.

^{cxix} UNDP, *Programming for Justice: Access for All*, at 99-100.

^{cxix} NAFCM, Overview of Community Mediation, Community Mediation Program Statistics.

Available at: <http://www.nafcm.org/pg5.cfm#Community%20Mediation%20Program%20Statistics>

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^{cxix} Sri Lankan Mediation Boards Act No. 72 (1988), as amended by Mediation Boards Act No. 15 (1997), Disputes which can be referred to mediation. Available at:

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- ^{cxlviii} Chhetri and Kattel, *Dispute Resolution in Nepal: A Socio-cultural Perspective*, at 37.
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- ^{cli} Golub, “From the Village to the University: Legal Activism in Bangladesh,” at 137-8.
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