



Economic and Social Council

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Resolution adopted by the Economic and Social Council

*[on the recommendation of the Commission on Crime Prevention
and Criminal Justice (E/2012/30 and Corr.1 and 2)]*

2012/15. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

The Economic and Social Council

Recommends to the General Assembly the adoption of the following draft resolution:

The General Assembly,

Recalling the Universal Declaration of Human Rights,¹ which enshrines the key principles of equality before the law and the presumption of innocence, as well as the right to a fair and public hearing by an independent and impartial tribunal, along with all the guarantees necessary for the defence of anyone charged with a penal offence, other minimum guarantees and the entitlement to be tried without undue delay,

Recalling also the International Covenant on Civil and Political Rights,² in particular article 14 thereof, which states that everyone charged with a criminal offence shall be entitled to be tried in his or her presence and to defend himself or herself in person or through legal assistance of his or her own choosing or assigned to him or her where the interests of justice so require, in a fair and public hearing by a competent, independent and impartial tribunal established by law,

Bearing in mind the Standard Minimum Rules for the Treatment of Prisoners,³ approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957 and extended by the Council by its resolution 2076 (LXII) of 13 May 1977, according to which an untried prisoner, for the purposes of his or her defence, shall be allowed to receive visits from his or her legal adviser,

¹ General Assembly resolution 217 A (III).

² See General Assembly resolution 2200 A (XXI), annex.

³ *Human Rights: A Compilation of International Instruments*, Volume I (First Part), *Universal Instruments* (United Nations publication, Sales No. E.02.XIV.4 (Vol. I, Part 1)), sect. J, No. 34.



Bearing in mind also the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,⁴ principle 11 of which states that a detained person shall have the right to defend himself or herself or to be assisted by counsel as prescribed by law,

Bearing in mind further the Basic Principles on the Role of Lawyers,⁵ in particular principle 6 thereof, which states that any persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services,

Recalling the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice,⁶ especially paragraph 18 thereof, in which Member States are called upon to take steps, in accordance with their domestic laws, to promote access to justice, to consider the provision of legal aid to those who need it and to enable the effective assertion of their rights in the criminal justice system,

Recalling also the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,⁷ especially paragraph 52 thereof, in which it is recommended that Member States endeavour to reduce pretrial detention, where appropriate, and promote increased access to justice and legal defence mechanisms,

Recalling further Economic and Social Council resolution 2007/24 of 26 July 2007 on international cooperation for the improvement of access to legal aid in criminal justice systems, particularly in Africa,

Recognizing that legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law and that it is a foundation for the enjoyment of other rights, including the right to a fair trial, as a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process,

Recognizing also that the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, annexed to the present resolution, can be applied by Member States, taking into account the great variety of legal systems and socioeconomic conditions in the world,

1. *Notes with appreciation* the work of the open-ended intergovernmental expert group on strengthening access to legal aid in criminal justice systems, at its meeting held in Vienna from 16 to 18 November 2011, to develop a set of principles and guidelines on access to legal aid in criminal justice systems;

⁴ General Assembly resolution 43/173, annex.

⁵ *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August–7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex.

⁶ General Assembly resolution 60/177, annex.

⁷ General Assembly resolution 65/230, annex.

2. *Adopts* the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, annexed to the present resolution, as a useful framework to guide Member States on the principles on which a legal aid system in criminal justice should be based, taking into account the content of the present resolution and the fact that all elements of the annex will be applied in accordance with national legislation;

3. *Invites* Member States, consistent with their national legislation, to adopt and strengthen measures to ensure that effective legal aid is provided, in accordance with the spirit of the Principles and Guidelines, bearing in mind the diversity of criminal justice systems among different countries and regions around the world and the fact that legal aid is developed in accordance with the overall balance of the criminal justice system, as well as the circumstances of countries and regions;

4. *Encourages* Member States to consider, where appropriate, the provision of legal aid and to provide such aid to the maximum extent possible;

5. *Also encourages* Member States to draw upon the Principles and Guidelines, as appropriate, and in accordance with national law, in undertaking national efforts and measures to strengthen access to legal aid in criminal justice systems;

6. *Requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to continue to provide advisory services and technical assistance to Member States, upon request, in the area of criminal justice reform, including restorative justice, alternatives to imprisonment and the development of integrated plans for the provision of legal aid;

7. *Also requests* the United Nations Office on Drugs and Crime, subject to the availability of extrabudgetary resources, to make the Principles and Guidelines widely available, including through the development of relevant tools such as handbooks and training manuals;

8. *Invites* Member States and other donors to provide extrabudgetary resources for the purposes described above, in accordance with the rules and procedures of the United Nations;

9. *Requests* the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its twenty-third session on the implementation of the present resolution.

Annex

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

[For the text, see *Official Records of the Economic and Social Council, 2012, Supplement No. 10* (E/2012/30 and Corr.1 and 2), chap. I, sect. A, draft resolution III; the text will be reproduced in full at the stage of consideration by the General Assembly.]

*46th plenary meeting
26 July 2012*