

A Study on Quality Assurance for Criminal Legal Aid Systems in Common Law Jurisdictions

Kyu Kyu Aung, Akio KAMIKO

Abstract

In the field of legal aid, the quality of the service is always a main concern as it uses the public funding. The legal aid authorities are often criticized for unsatisfactory performance especially in the developing countries because of the lack of service quality and sometimes, ineffective use of expenses from the state. According to the national legal aid legislation of Myanmar, the effective mechanism of quality assurance of the legal aid does not yet exist. Since it is difficult to ensure the quality of legal aid, there should be standards for quality assistance and a mechanism or system of the control for the competency of legal aid lawyers for quality assurance. To be successful quality implementation of legal aid in Myanmar, it is necessary to understand the contemporary implementation practices on how they adopt the applicable standards and mechanisms for the quality assurance especially the practices in common law jurisdictions where the provision of right to counsel and delivery of legal aid are emphasized primarily in relation to criminal law proceedings. This study of quality assurance practices with focus areas on Australia, Canada, United States and South Africa aims to contribute the development effort of Myanmar in attaining quality implementation of criminal legal aid system. The findings of this study confirm that ensuring the quality of legal aid lies on legal aid authority and accordingly, efforts to establish quality standards and quality assurance mechanism for service providers to guarantee the appropriate quality of legal aid are needed.

Keywords: Legal aid, quality implementation, quality assurance mechanism

1. Introduction

Myanmar has been making persistent and dedicated efforts for legal and judicial reform to be able to serve the best for the interest of public. Legal aid is an essential component of fair and efficient mechanism to ensure the access to justice. The Constitution of the Republic of the Union of Myanmar provides the basic right of an accused to defend in accordance with existing laws.¹ In Myanmar, *the Legal Aid Law* was enacted in 2016. Before the enactment of the law, there was no provision for state-sponsored legal aid except in capital cases.² Under this law, Supreme Court of the Union becomes the institution to oversee the country's legal aid system. According to the basic principles of the law, legal aid for the criminal justice is spotlighted in *the Legal Aid Law*.³ Most countries generally target the criminal legal aid towards the poorer population, and the criteria used to provide the legal aid in criminal cases are less strict than in civil cases. The main component of expenditure also goes to criminal legal aid.

Legal aid is an essential component of a fair and efficient justice system founded on the rule of law and access to justice. Therefore, Myanmar has enacted "*The Legal Aid Law*" to promote and protect basic human rights, to

strengthen the rule of law, and to ensure access to justice for the public in January 2016. This Law is a positive indicator of Myanmar's commitment to these objectives. It is consistent with *"The Model Law for Legal Aid"* which has been provided by the UN Convention held in 2012 and in line with the obligation of nations under *Goal 16 of the United Nations Sustainable Development Goals*, which is dedicated to the promotion of peace, justice and strong institutions.

The law, which aims to establish Myanmar's first state-sponsored legal aid system and expand the right to counsel, was drafted by members of Myanmar's Parliament who participated in the first International Conference on Access to Legal Aid in Criminal Justice Systems. After the conference, members of Myanmar's Parliament, members of Myanmar's government and civil society drafted legal aid bill which was adopted as law in January 2016. Before this Law, there was no comprehensive legal aid law in Myanmar except present mechanism run by Union Attorney General Office. Under this Mechanism, limited government-provided legal aid is only available to the criminal suspects who are accused of an offence punishable with death.

The new law is dramatically expanding its applicable area wider than the old mechanism. It extends the definition of legal aid claimant and recognizes the role of non-government legal aid providers including civil society legal aid organizations. Under the new legislation, the Union Legal Aid Board becomes the focal institution to fund and constitute the whole legal aid system which targets to provide legal aid to the poor, needy and vulnerable people including suspects, detainees, victims and witnesses. The Union Legal Aid Board is required to set up an entirely new model to provide the public with the necessary legal aid in line with the framework provided in this Law.

Although the Legal Aid Law has already been enacted, there are a lot of implementation works for the legal aid service delivery to the public. To fulfill these requirements, Union Supreme Court drafted the *"Legal Aid Rules"* and it was enacted in December 2016. The rules provide procedures for making board or committee appointment, asking legal aid, training for legal aid providers, budgets, bylaws, setting criteria for the ethics, conduct and duties of legal aid providers and other necessary mechanisms. However, State-guaranteed legal aid standards and monitoring mechanism for the qualification and quality assurance of legal aid providers are still lacking.

In order to understand how quality can be achieved in national jurisdictions, it is essential to look at the specifics of the legal system in which legal aid is delivered.⁴ Myanmar inherited a common law system from Great Britain since it was implemented during the colonial period. Myanmar gained independence from Britain on January 4, 1948. After the independence, the judicial system was set up according to the 1947 Constitution and Union Judiciary Act, 1948. At the present day, the judicial system was established under the 2008 Constitution and the Union Judiciary Law, 2010. Formation of the Courts at different levels in line with the administrative levels of government is made under the Union Judiciary Law. Likewise, Legal Aid Bodies at the different levels of administration have been formed under the Union Legal Aid Law, 2016 and also the suitable and qualified members have been selected for those Bodies according to the Legal Aid Rules, 2017. As the Union Legal Aid Board is an independent entity, it has the power to make the necessary rules, regulations and procedures for setting up the legal aid system. Union Legal Aid Board authorities are responsible for identifying the deficiencies to be able to make the necessary amendment to this law. They need to hold the necessary meetings, workshops and seminars for competency of service providers as well as educating and awareness campaigns to the stakeholders and the public.

In practice, the full implementation of the law is not possible immediately after the enactment. For example, prescribing to provide the legal aid to all types of criminal cases at the outset is not realistic. However, the most important works for Myanmar are to discuss to identify the quality standards for the implementation of this law focusing on the creating of adequately funded, well-administered criminal legal aid system.

2. Literature Review

2.1. Quality Assurance Mechanism

Quality assurance is obviously pertinent to all kinds of services. It is increasingly necessary for publicly-funded institutions to demonstrate accountability and provide confirmation that they are delivering the services for which they are funded, thus ensuring that they are providing value for money.⁵ As a framework for discussing quality of legal aid services, some quality assurance approaches or mechanisms employ self-assessment methods, others require external evaluation. Underlying most approaches however are broad themes that suggest quality assurance is widely thought of as a function of inputs, processes and outcomes (Bimrose et al., 2006). Also, the four main groups of indicators: input, structure, process and outcome have been used for the purpose of measuring quality (Paterson & Sherr, 2008). That is the “peer review” model⁶ which is a comprehensive assessment of the activities of an individual legal aid service provider (lawyer) by independent experts. As a rule, individual legal aid providers are audited by their colleagues (peer). The audit involves assessing the lawyers file in accordance with established criteria and the rating system in order to determine the quality of legal advice and legal representation in a particular field of lawyer’s work (Nikartas and Limanté, 2018). Peer review is defined as “the evaluation of the service provided against specified criteria and levels of performance by an independent person with significant current or recent particle experience in the areas being reviewed”.⁷ Paterson and Sherr (2008) clarified that assessing input or structural measures is normally relatively easy although issues of judgement e.g., how to measure “experience” or what constitutes “adequate supervision” can present themselves, however, process and outcome measures are less easy. Legal aid providers use detailed checklists to confirm whether all the steps that would normally be taken in particular kind of case, have been taken or whether all the matters which one would expect to see on a case file of client were actually present. Such an approach can perform a useful audit function, still, its major weakness lies in the fact that the assessor is not qualified to conclude whether the advice given to the client or the tactical and strategic decisions taken in the case fall within the range which a fellow professional would consider to be acceptable.

In Australia and Canada, the lawyers being assessed have been asked to complete a *self-assessment* of their own performance. This has not proved to be a particularly helpful weapon in the quality assurance service. Either the lawyers claim to be uniformly excellent, or the more modest or honest lawyers find themselves penalized by their sincerity. In this case, if self-assessment is not trustworthy enough, external assessors and observers might be used (Paterson & Sherr, 2008).

Paterson and Sherr further elaborated the peer review as; the role of assessor for criminal legal aid lawyers takes the evidence from interviews with judges as to the quality of legal aid lawyers’ performance that was augmented by interviews with police and prosecutors. The interviewees are subjective in their own approaches and are likely to be operating with different concepts of quality as the respondents had not been trained in assessment criteria nor monitored for consistency in their assessments. Moreover, they had not had access to the client’s file and therefore were not aware of the client’s instructions to the attorney. A relatively common third-party measure of process and outcome is the use of client satisfaction questionnaires or surveys. These rely on clients’ perceptions of the quality of service that they have received. However, the necessary gap in expertise between the lawyer and the client creates information asymmetry between them. Lay clients can tell about their lawyers’ attention and treatment are adequate to them, but they often cannot judge how good the outcome the lawyer achieved for them. This is because legal services are generally difficult for a lay client to evaluate. Therefore, the use of client satisfaction surveys to assess

quality is not completely enough. Hence, in a recent global study of the legal aid by United Nations⁸, a range of countries claimed to operate a quality assurance scheme of their providers. Where the complaints are made by knowledgeable third parties (e.g., judges or other lawyers), these can assess a lawyer's quality. Finally, complaints suffer from a weakness as measures for quality. It seems then that experience has shown that to conduct such assessments fairly and effectively entails the development of a set of agreed criteria (agreed both by the reviewers and the relevant stakeholders in the legal field in question) and a marking scheme, and rigorous training to enhance marker consistency.

The above complexities and the challenges in measuring the quality of legal services have led scholars to the conclusion that to assess the quality of the service provided by a lawyer requires a professional peer review. When peer review was implemented in England and Wales and in Scotland over ten years ago, it was implemented as the principal quality assurance vehicle. However, in South Africa, peer review is augmented by client satisfaction surveys by phone. In United States, peer review is extended by external audits conducted by non-lawyers, using a detailed checklist. The public defenders also complete a self-assessment that is inspected by the peer reviewer along with any complaints against the public defender. This approach therefore takes a bunch of quality assurance measures to produce a report on the competency of public defender (Paterson & Sherr, 2008).

2.2. The responsibility of States for the Quality Assurance in Criminal Legal Aid

Quality assurance in legal aid services is considered and addressed from the concepts from the researches on the fields of public services such as healthcare systems, and from the social and behavioral sciences. Quality assurance generally refers to an ongoing process of evaluating (including assessing, monitoring, guaranteeing, maintaining and improving) the quality of a system, programme, or service provider (Vlasceanu, Grunberg and Parlea, 2007).

The body administering legal aid has an important role to provide information to the government, parliament and the public that will assist in ensuring the efficiency of the system as a whole. This includes information on where the system fails to provide access to justice. The administrative body should also have an effective system to measure the quality of work. Guideline 16 of the *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (UNPG) calls upon governments "to set quality standards for legal aid"; "to establish monitoring and evaluation mechanisms to ensure the quality of legal aid services, in particular those provided with no cost"; and "to work with all legal aid service providers to increase outreach, quality and impact..." *Model Law on Legal Aid in Criminal Justice Systems* (2016) by United Nations Office on Drugs and Crime encodes a number of the baseline quality expectations for a high-functioning criminal legal aid system, including independence; equality with private counsel; and early access to counsel.

According to UNPG which was adopted in 2012 as the first international instrument, the principles and guidelines for quality assurance mechanism are set out for the member countries. UNPG recommends that member states implement the following quality assurance measures for legal aid: Criteria for accreditation of providers; Quality Standards for providers; Adequate training and supervision by qualified lawyers; Monitoring and evaluation mechanisms to ensure the quality of legal aid; Mechanisms to track, monitor and evaluate legal aid to continually strive to improve the provision of legal aid.⁹

Based on it, the highlight for the provisions of quality assurance can be distinguished:

- (a) Standards and criteria for the legal aid providers – a set of standards assuring a high quality of legal aid service;
- (b) Training and supervision – providing necessary trainings for getting skills and experience of legal aid providers

and supervision by the experienced and qualified lawyers as to competence and accountability of them; and
(c) Monitoring and evaluation mechanisms for individual providers and provision of legal aid – indicating monitoring and evaluation mechanisms should be implemented in the national systems in order to ensure high quality legal aid.

Highlighting the need for quality implementation of legal aid in the member states of United Nations, this study constructs the framework for quality assurance mechanisms as shown in the Figure 1.

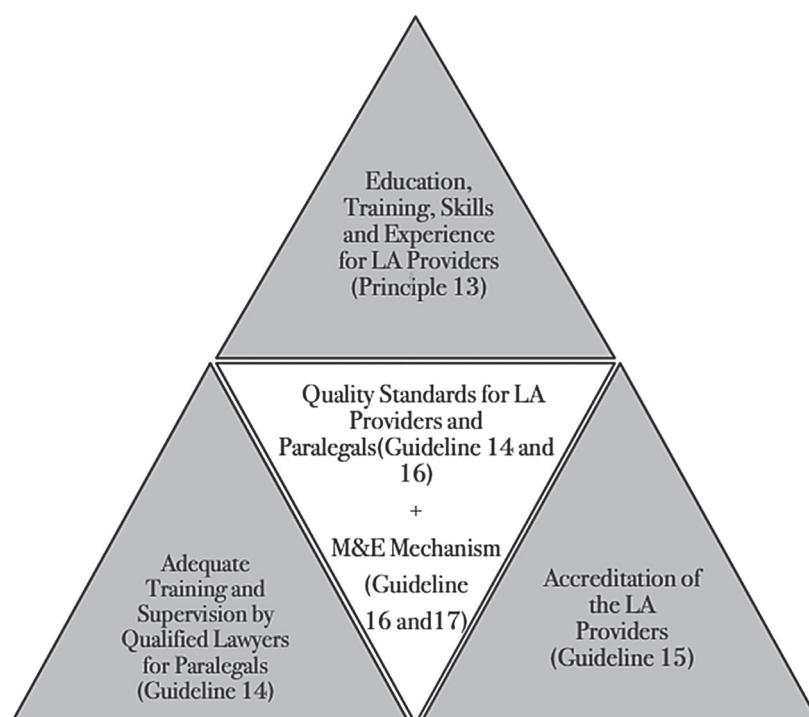


Figure 1. Quality Assurance Framework for Legal Aid

Source: Adapted from United Nations Principles and Guidelines on Criminal Legal Aid (UNPG)

3. Methodology

This paper mainly adopted two research traditions: document analysis and case study research. The purpose of this paper is to contribute to the discussions about quality assurance for legal aid in Myanmar. As the quality assurance principles are designed to ensure technical quality for consumers, Myanmar, as a country of legal aid practice in the commencing stage, it is necessary to understand the experience of other countries in the implementation of services without sacrificing quality. This article explores methods of comparing and understanding different approaches to quality assurance mechanism for the legal aid service providers. The motivation is to examine the practices of common law jurisdictions which the system attains quality. However, the aim behind this study is to identify not only critical instances but also to investigate the skills and knowledge underpinning the schemes. Details of the procedure are provided below.

This article examines the general principles for implementation of the quality legal aid that are described as international standards. After explaining international standards and guidelines, the article explains the most advanced quality assurance mechanism, the "peer review". The article then review and compare the international

practices of quality assurance in common law jurisdictions such as Australia, Canada, United States and South Africa. The article concludes with discussions and findings for the contribution to the development actors in legal aid implementation process in Myanmar.

3.1. Study Selection

Many previous studies highlighted the importance of quality assurance mechanism. The future of legal services is the adoption of a wide range of new systems with built-in quality control mechanisms (Wayne Moore, 2013). Legal aid serves as either a primary or secondary form of service. Primary legal aid provides consultation with general information, legal advice, preparation of documents in proceedings, etc. Secondary legal aid includes representation before court, drafting documents in court proceedings and amicable settlements during the trial. In the area of legal aid, countries with Common Law System and Civil Law System take different approaches in criminal proceedings. Common law procedure is usually called "adversarial" that the best way to get to the truth of a matter is through a competitive process to determine the facts¹⁰, application of the law accurately and the trial is focused on protecting the accused's interest¹¹, while Civil law procedure is usually called "inquisitorial" as an official inquiry to ascertain the truth and grants more power to the judge who oversees the process¹². To contribute to the quality implementation discussion of legal aid in Myanmar which would affect the functioning advice network, it is necessary to understand the contemporary implementation practices of the countries with the same legal system on how they adopt the applicable mechanisms and expenses for the quality assurance.

3.2. Case Studies Area

The study includes the following areas for case studies:

- three countries with well-developed decentralized administration of legal aid, i.e., Australia, Canada, United States
- one country with centralized administration and also coordinated networking in legal aid, i.e., South Africa

The descriptions of the above countries provide a context of their long history of practice in legal aid, and administrative systems which can also affect the impact on legislation, regulation and management aspects representing widely differentiated environments for implementation.

4. Results

4.1. Comparison on Administrative Structure and Legal Aid Authority

In Australia, there are eight independent legal aid commissions (LACs) as the country is a federation. There are one in each of the eight States and Territories. Those LACs are the main providers of legal assistance services. The directors of the LACs combine at a national level to form National Legal Aid (NLA). One of the Directors chairs NLA on an annual basis.¹³ Legal aid services in both civil and criminal cases are organized through public defender institutions, panel appointments, the bar association, the legal aid commission of a particular state or territory, and through pro bono schemes. Legal services are also delivered through civil society organizations for civil cases.¹⁴ However in Canada, there is no national level legal aid system since the country exercises the federal government system. Instead, the provision of legal aid is administered by the provinces and territories. Each jurisdiction has its own legal aid authority called 'the Legal Aid Board/ Commission' and is responsible for the management and

delivery of criminal and civil legal aid services, following its legislation. The Legislative Assembly, the Executives and the Canadian Bar Association jointly appoint the members of the Legal Aid Boards. The composition and method of appointment of the various boards of directors of the legal aid entities vary by jurisdiction. Also, there is no central legal aid administration in United States of America pursuant to its federal government system. Each jurisdiction manages its legal aid system. Criminal legal aid is organized through the administrative office of the United States' Defender Services Office and services are provided through these institutions by using panel appointments such as ex officio and contract lawyers mixed system. The Legal Services Corporation (LSC)¹⁵ provide the civil legal aid. The independent self-governing board called "Legal Aid South Africa" is the authority for the management of legal aid since the unitary government system is being exercised. Criminal legal aid services are organized through this legal aid board. The board works in parallel to State-funded private lawyers, University law clinics and paralegals. Remunerations are provided to them by the State. Legal aid providers are listed in order and appointed by using the computerized system. The majority of legal aid providers are full-time salaried employees of the legal aid administration. The administrative system of a country defines how the management, budget allocation and funding arrangement are placed for the implementation services for legal aid.

4.2. Comparison on Funding Allocation and Arrangement

To be a successful quality implementation of legal aid, it is also necessary to understand the funding arrangement that underpins the whole system. In Australia's case, financial contribution to legal assistance goes to States and Territories from the Commonwealth funding. The fixed and limited sums of money considered upon population are allocated. However, "Commonwealth-State divide" which requires commonwealth funding to be used on Commonwealth law types was applied to Legal Aid Commissions (LACs) in 1997. The divide was relaxed in July 2010 when the National Partnership Agreement on Legal Assistance Services 2010-2015 between Commonwealth and all States and Territories was started. Under *the National Partnership Agreement on Legal Assistance Services 2015-2020*, the Commonwealth-State divide has not been imposed on community legal centers. For LACs, 95% or more of legal representation services are delivered to people experiencing financial disadvantage. The change of legal aid funding arrangement of Canada in 1995, transition away from a funding formula that matched federal dollars to those actually spent by the province, to a "no strings" funding mechanism, under the Canada Social Transfer (CST). Under CST, provinces have autonomy to dispense the funds received as they see fit. According to the federal government's announcement in June 2016, an additional \$88 million dollars will be added over five years to support the provision of criminal legal aid in Canada. In United States, there is no separate criminal legal aid budget in the annual federal justice budget because of the non-centralized nature of the US Justice System. The administrative office of the United States Defender Services Office oversees the funding of federal public defender offices across the United States. Each State determines its own budget for criminal legal aid in consultation with the criminal legal aid administration at the state level and each state decide its own payment system to service providers. The lifting of Commonwealth-State divide in Australia and the "no-string" funding mechanism of Canada reveals the government's encouragement to autonomous power of the states on legal aid management while every state in US has full power to determines its budget for criminal legal aid. The funding for Legal Aid South Africa is primarily funded by the national fiscus. Funding allocations are provided as part of the medium-term expenditure framework which covers a period of three years. The expenditure of Legal Aid South Africa over the five-year Strategic Plan period 2015-2020 is focused on the delivery of legal services and it is more than 70% of the total budget. However, slow economic growth and recession of the country has impacted on government revenue and

expenditure. Budget constraint is the challenge for legal assistance service to match its rising demand. Nevertheless, South Africa's quality assurance scheme is functioned both by legal aid South Africa and legal aid quality assurance units based in audit offices.

4.3. Comparison on Standards and Quality Assurance Mechanisms for Legal Aid Providers

The initial step to quality assurance is the training that indicates the input as a measure for quality. The selection and training of the legal aid lawyers are subject to the measures of input and structure. Monitoring and evaluation is taken out for the structure and process measures. Court observations also offer greater potential for the assessment of lawyers' performances. According to United States' ABA Standards¹⁶ for the Monitoring and Evaluation of Providers of Legal Services to the Poor (2002), the quality standards are based on the many factors such as principle of rule of law, legitimacy, independence of advocacy activities, confidentiality, avoidance of conflicts of interest, dominance of client's interests, corruption prevention, competence, and integrity in the performance of the defense lawyer's duties. However, the quality standards can also be criticized. It could be said that the quality standards and compliance with the quality standards will put their clients at a disadvantage because police, public prosecutors and judges do not appreciate a very pro-active attitude on the part of defense lawyers. In South Africa, comprehensive quality monitoring and intervention program has been developed over the years. The quality assessors have access to the case files, the clients and also to audiotapes of the lawyer's work in court. All practitioners are required to review all files that they have closed on various aspects of their legal representation, including the quality of their preparation for the case, their consultation and communications with the client, their performance in court, etc. These measures are monitored by the justice center executives when they sign the file closure certificates and also when they have to conduct the quarterly quality review for each practitioner. This intervention therefore forces practitioners to be sensitive to the quality requirements for all aspects of all cases that they conduct. As an additional measure, Legal Quality Assurance Unit are established and based in Internal Audit Department. The Unit conducts its own independent assessments and the main tasks of the unit are:

- To monitor the lawyers' compliance to the quality standards;
- To assure the arrangement of continuous training for lawyers;
- To analyze and spread the best practices of legal profession;

Legal aid quality standards in South Africa is set by different entities such as Bar Association, Ministry of Justice and the Legal Aid Board based on different schemes while monitoring and intervention program for quality and legal quality assurance unit have been working. The most advanced method of assessing the process and outcome aspects of legal aid cases in South Africa is by the examination of the lawyers' files. It is a recognition of "the necessity of an external independent monitoring of free legal aid system's functioning and development in order to achieve transparency, prevent corruption; stressing at the same time the necessity to respect the principle of independence of legal practice and to preserve lawyer-client privilege". The peer review, in this regard, confirmed the impossibility of evaluating the quality of legal aid in criminal matters without a thorough study of lawyers' files". However, as a matter of a little disadvantage in the "peer review" mechanism, client confidentiality is the issue and it is to be seen as the property of the client and not to the lawyer which is in line with consumer rights. Moreover, lawyers throughout the world are expected to adhere to client confidentiality in order to protect their clients. All in all, the comparison in this study of national quality standards and monitoring and evaluation mechanism of legal aid systems in the four selected countries, i.e., Australia, Canada, United States of America and South Africa can be seen in the table 1 below.

Table 1. Comparison of Research Areas in terms of Quality Assurance Scheme

Category	Australia	Canada	United States	South Africa
Structure of the Legal Aid System	Federal System (Decentralized)	Federal System (Decentralized)	Federal System (Decentralized)	Centralized System
Legal Aid Authority	National Ministry of Justice (Most civil at the national level) and State/Territorial Legal Aid Commissions (LACs) (Most criminal legal aid)	Legal Aid Boards and Commissions at Provincial and Territorial Levels (No federal level administration)	Administrative office of the United States' Defender Services Office for Criminal Legal Aid, Legal Services Corporation for Civil Legal Aid (No central administration at the federal level)	Legal Aid South Africa (Criminal matters and Civil proceedings involved with Child if substantial injustice would otherwise result)
Funding Arrangement	Commonwealth Government entered into Separate Legal Aid Funding Agreements with Each State and Territory	The State provides separate funding to cover the cost of specialized legal services	Government funding but each state determines its own budget for criminal legal aid	More than 80% of legal aid budget from the State goes for Criminal
Standards of Quality	Australian National Framework for Public Legal Assistance	National Benchmarks for Public Legal Assistance Services, 2016 (Six National Benchmarks)	Ten Principles of a Public Defense Delivery System, 2002 by American Bar Association	Different Standards set by the Bar Association, Ministry of Justice and Legal Aid Board
Quality Assurance Mechanism for Legal Aid Providers	Quality and performance standards and ethical rules established by the Bar Association	Vary by Jurisdiction	ABA Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor	Comprehensive quality monitoring and intervention program by Legal Aid South Africa+ Legal Aid Quality Assurance Unit

Source: Adapted from Country Reports to ILAG and Country Profiles of Global Study in Legal Aid by UNODC

4.4. Discussion on the Adaptability of Quality Assurance Mechanism to Myanmar

Legal aid in the countries all over the world are in their ways of development contexts. Because of the diversity of legal systems and traditions across the world, it is a complex task to identify as commonly applicable mechanism of legal aid implementation. However, it is necessary to understand the experience of implementation practices from the other countries which have been practicing the system for a long time. There are some opportunities to check and determine the workable practices in Myanmar from studying experienced countries' practices on how they adopt the applicable standards and mechanisms for the quality assurance especially the practices in common law jurisdictions where the provision of right to counsel and delivery of legal aid are emphasized primarily in relation to criminal law proceedings. It has the strong possibility to adaptability where the practices are from the countries with the same legal system. However, it is still needed to adjust it to be in line with the socioeconomic conditions of Myanmar.

At present, the people who are in need of legal assistance in Myanmar have the right to claim the service from the state-sponsored legal aid bodies at different levels which have been formed under the Legal Aid Regulations, 2017. Moreover, they can claim the legal aid from other providers such as *pro bono* lawyers¹⁷ and foreign donors funded services offered by dedicated legal aid law firms. Legal Aid Law and Legal Aid regulations in Myanmar do not restrict the legal assistance run by the individual lawyers or the legal aid service providers firms. It is essential that the State allocate an adequate budget not only to meet the demand for legal aid but also to enhance and improve the provision of legal aid services because the availability of financial resources influences the organizational objectives and approaches. However, Myanmar is still in the economically struggling stage and has priorities for the country's development. In that case, ensuring quality for the legal aid implementation can cost to some more extent than the current legal aid budget since it has the cost of the training, supervising and monitoring functions.

Nevertheless, quality assurance is also needed to implement once legal aid services are provided in criminal cases throughout the country. In this situation, the desire and strategy to enhance and improve the implementation of the system is fundamental for Myanmar.

The other point is human resource development. In the legal aid field, legal aid providers can be lawyers, law students and paralegals. In Myanmar, the State-funded legal aid providers work for the criminal matters, and other service providers assist in civil, criminal and administrative matters. Lawyers are classified in Myanmar as two types: "Advocates" and "Higher-grade Pleaders." The advocates have the rights to perform his profession in all courts, and Higher-grade Pleaders can only stand and act in the cases of district or township courts. According to the 2014 study by UNDP, there are approximately 9,000 licensed advocates and 40,000 licensed higher-grade pleaders (HGP). Most are not in active practice, and only 2,000 licensed advocates and 15,000 HGPs indicate current active practice. For the effective implementation of legal aid, providing the necessary training for those in-house legal aid lawyers and individual lawyers become essential so that the assessment for legal aid lawyers in practice can be workable by using the quality assurance mechanism. Which is why the government of Myanmar needs to implement the critical step towards compliance of international standards for legal aid implementation that is to say establishing the quality assurance mechanism by strengthening the human resource development for legal aid with the strong political will.

5. Conclusion

The interest of this study is the quality implementation of state-sponsored legal aid system and precisely, the quality standards and assurance mechanisms implemented in four common law countries, namely, Australia, Canada, United States of America and South Africa, where the provision of right to counsel and delivery of legal aid are emphasized primarily in relation to criminal law proceedings. The findings of the research can be summarized as follows:

1. The present implementation practices of quality assurance mechanism in the field of legal aid setting are the national standards of performance and quality assurance mechanism to determine if standards have been met by the service providers.
2. Good quality implementation practices are created by providing adequate training, supervision, and monitoring and evaluation for both individual and government service providers according to international standards and guidelines, and quality is being ensured to guarantee the competency of service providers, and ultimately, effective implementation of the legal aid system.
3. Although arrangement of utilizing the funding from national and local governments are related to and differ from the country's administrative system, it is important to have quality service so that there is no waste of public funding.

It can be said that quality implementation is provided when the service provider follows the professional standards with sufficient efficiency, professional skills, knowledge and experience. It is the duty of a country, in line with UNPG, to guarantee the appropriate quality of legal aid and accordingly, efforts of the country's legal aid authority to establish quality standards and quality assurance mechanism for service providers are needed. The funding arrangements also need to be applicable enough for the effective implementation of the legal aid service. In the absence of such arrangements by legal aid authority, quality implementation would not be guaranteed.

Since all four countries in this study are Common Law countries, they have the system with some similarity in

primary emphasis on the criminal legal aid. However, in some aspect, as to be mentioned, they have differences, too. By examining reasons why they are different, applicability of each system to Myanmar will become clear.

Notes

- ¹ Section 347 and 375 of the *Constitution of the Union of Myanmar*.
- ² Section 36(1) of the *Attorney-General of the Union Law*, 2010.
- ³ Section 4 of the *Legal Aid Law*, 2016.
- ⁴ UNODC *Handbook on Ensuring Quality of Legal Aid Service in Criminal Justice Processes* (2019), p. 14.
- ⁵ www.qualityresearchinternational.com (as cited in Trude & Gibbs, 2010: *Review of quality issues in legal advice: measuring and costing quality in asylum work*)
- ⁶ The peer review was developed and in the late 1990's and it is being used for many years as a tool for quality assurance assessment of legal aid lawyers in United Kingdom.
- ⁷ Nikartas S. and Limantė A. stated the definition of "Peer Review" in their manual "*Tools and Criteria for Measuring Legal Aid Quality: Guidelines for EU Member States*".
- ⁸ United Nations Development Program (UNDP) and United Nations of Drugs and Crime (UNODC) undertook the *Global Study on Legal Aid* and the report was published in 2016.
- ⁹ *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, adopted by the General Assembly in December 2012 in Resolution 67/187
- ¹⁰ UNODC, Education for Justice (E4J) initiative University Module Series: *Organized Crime Module 9: Prosecution Strategies* at <https://www.unodc.org/e4j/en/organized-crime/module-9/key-issues/adversarial-vs-inquisitorial-legal-systems.html>. as cited in supra, p. 14.
- ¹¹ Cape, Ed (2018), '*Defence Rights, Duties, Norms, and Practices in Common Law and Civil Law Jurisdictions*,' in Brown, D., Turner, J. and Weisser, B., *Oxford Handbook of Criminal Process* (Oxford: Oxford University Press, forthcoming). Quoted in the *Module on Access to Legal Aid in Criminal Proceedings*, UNODC, E4J initiative University Module Series at <https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-3/index.html>. as cited in supra, p. 14.
- ¹² UNODC, E4J University Module Series: *Organized Crime Module 9: Prosecution Strategies* at <https://www.unodc.org/e4j/en/organized-crime/module-9/key-issues/adversarial-vs-inquisitorial-legal-systems.html>, referring to Dammer and Albanese, 2014; Reichel, 2017. as cited in supra, p.15.
- ¹³ *Country Report of Australia* which was submitted to International Legal Aid Group Conference in Johannesburg, South Africa in 2017.
- ¹⁴ United Nations of Drugs and Crime's publication of *Global Study on Legal Aid*, 2016 provides legal aid information of the countries all over the world.
- ¹⁵ The largest funder of civil legal aid that contributes more than 90 percent of its total federal appropriation to 134 independent non-profit legal aid programs.
- ¹⁶ ABA Standards stands for American Bar Association.
- ¹⁷ pro bono lawyers provide legal aid free of charge as part of their work.

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