

Provision of Legal Aid for Asylum-Seekers,
Refugees, and Others Forcibly Displaced in Asia

Country-Level Memorandum: Pakistan



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STATE FUNDED LEGAL AID

Eligibility, Nature and Scope

Eligibility of Asylum-Seekers, Refugees and Stateless Persons

Law

Under Article 25 of the Constitution of Pakistan (1973) (the “Constitution”), citizens are guaranteed equality before the law. Article 37(d) of the Constitution guarantees inexpensive and expeditious justice. Article 10(a) of the Constitution places the right to a fair trial as a fundamental right.

In *Sh. Riaz-ul-Haq v Federation of Pakistan*, it was held that the right of “access to justice to all” is a well-recognised inviolable right enshrined in Article 9 of the Constitution and is equally found in the doctrine of “due process of law”.

Access to justice was lauded as “an integral part of the rule of law in constitutional democracies” and a “hallmark of civilised society”.¹

Section 13 (l-a) of the Legal Practitioners and Bar Council Act, 1973 (the “Bar Council Act”) deals with the provision of legal aid.

The Legal Aid and Justice Authority Act 2020 (the “Legal Aid Act”) provides for legal, financial and added assistance for access to justice to the poor and vulnerable segments of society in criminal cases and for matters ancillary thereto. Under the Legal Aid Act, the Legal Aid and Justice Authority is required to make appropriate arrangements for the provision of legal aid, financial or other assistance to “any person who (i) makes an application for legal aid under [the Legal Aid Act] or on whose behalf such an application is made; or (ii) is of unsound mind or lunatic or minor”.² Official information regarding the Legal Aid and Justice Authority’s work and constitution is not currently available in a public forum, but press reports cite speeches from the Minister for Human Rights, Shireen Mazari, confirming that the authority has been established, that legal aid is being provided by it through pro bono lawyers and that the financial and funds rules for the authority have been sent to the Finance Division for approval.

Under the Legal Aid Act, each applicant for legal aid is to be means tested, with criteria designed to give preference to disadvantaged women and children, especially in relation to matters of sexual offences.³ No further guidance on the eligibility criteria or data

¹ *Ishtiaq Ahmed v Hon’ble Competent Authority*

² Articles 2(1)(a) and 9 of the Legal Aid Act.

³ Article 9 of the Legal Aid Act.

relating to applications has been published as at February 2022. Therefore, it is not possible to assess the impact that the Legal Aid Act has had on the Target Group.⁴

A private member's bill, the Legal Aid and Justice Authority (Amendment) Act 2020, has been laid before the National Assembly of Pakistan to amend the Legal Aid Act. Amendments include the widening of the definitions of "legal aid" and "applicants" to expressly include a more comprehensive definition of legal aid and, importantly, to expressly include a category of "vulnerable persons" that captures the Target Group. As at February 2022, this Act has not yet been passed.

Policy

The function of the Civil and Criminal Procedure Codes of Pakistan is to supplement the Pakistan penal code, by providing rules of procedure with a view to preventing offences and providing justice. For example, Section 340 of the Code of Criminal Procedure 1898 provides the right for any person accused of an offence, or against whom proceedings are instituted under this Code, to be defended by counsel, a principle from which the right to legal aid can be derived.

Furthermore, Order 33 of the Civil Procedure Code 1908 allows a "pauper" to institute civil proceedings without court fees and with the assistance of legal counsel provided by the government. To qualify, a person must have insufficient means to enable him or her to pay the fee prescribed by law for the relevant suit, or where there is no fee, that such person is not entitled to property worth one thousand Pakistani rupees ("PKR"). A formal application is required, which the court will then assess. Although this provision may apply to the Target Group, there is no available data as at February 2022 with regards to the frequency of applications and success of this provision. There are potential factors that may discourage applicants from this route – for instance, any unsuccessful application to sue as a "pauper" will act as a bar to future proceedings on the same matter unless the "pauper" first pays the costs incurred by the government and any other parties in the initial proceedings.⁵

The Destitute Litigant Fund Rules 1974 (the "Destitute Litigant Fund Rules") provide for legal assistance to destitute litigants charged with capital offences in the High Court. Assistance is provided by the Deputy Registrar (Judicial) on the application of the concerned party. Poverty is the only criteria for eligibility in these cases, so it would apply to members of the Target Group charged with such capital offences. However, while it is true that sometimes litigants that approach the court or accused persons (charged with death penalty crimes) are provided court appointed lawyers for the trial, this practice is reportedly *ad hoc* and does not necessarily guarantee that every person who approaches the court will receive access to a pro bono lawyer.

⁴ The Target Group consists of asylum-seekers, refugees and stateless persons.

⁵ Order 33 of the Civil Procedure Code, paragraph 15.

The Pakistan Bar Council established rules for the provision of legal aid in 1988 and revised the rules in 1999 (the “1999 Rules”). The 1999 Rules create legal aid committees at a national level, in each provincial bar council and in each bar council at the district level. The 1999 Rules do not refer to members of the Target Group by name, but they do apply to potentially overlapping categories of persons including those who are “deserving litigants” due to insufficient income resources to bear the expenses of engaging an advocate in legal proceedings.⁶ The 1999 Rules allow for legal aid to be provided to applicants in a wide range of criminal and civil cases, including accidents, succession issues, family law, ejection, illegal detention, abuse of power and authority by the police or other law enforcement agencies, neglect by government or local counsel and public interest litigation.⁷

Scope of State Funded Legal Aid

A 2013 United Nations report concluded that there was no institutionalised legal aid programme in Pakistan at the national level. This would cover asylum-related matters, and so has historically left it to non-governmental organisations (“NGOs”) to fill the gap. As discussed above, the Destitute Litigant Fund Rules, the Legal Aid Act and the 1999 Rules do potentially facilitate the Target Group’s access to free legal assistance at a national / state level, but there is insufficient data to measure how successful these rules have been in practice.

In addition, there are other reported sources of funds for free legal assistance. For example, the government established a PKR 1.5 billion Access to Justice Development Fund, with 13.5% of the total fund reserved for legal empowerment and legal aid (around US\$2.5 million). This Fund was established to address the issue of chronic budgetary constraints in the law and justice sector. Reports suggest that so far at least PKR 21,200,000 has been released to 106 District Legal Empowerment Committees in four provinces of Pakistan for the provision of free legal aid to “deserving litigants”. However, as indicated above, it is difficult to identify further detail on these funds and the applicants that have benefited from them.

Eligibility Criteria for State Funded Legal Aid

The 1999 Rules provide that their purpose is to establish a system to provide legal services to the poor, destitute, orphans, widows, indigent and other deserving litigants needing assistance due to insufficient income resources to bear the expenses of engaging an advocate in legal proceedings.

A destitute person is defined by the Destitute Litigant Fund Rules as a person who has no means to pay the court fee or other charges, but these rules only apply to capital offences before the High Court.

⁶ Article 2(2) of the 1999 Rules.

⁷ Article 3(a) of the 1999 Rules.

Under the Legal Aid Act, applicants are eligible if they are charged with a criminal offence and are unable to afford legal, financial or other assistance, representation and access to justice, in such a manner and to such extent as may be prescribed. The eligibility criteria have not yet been prescribed.

Structure and Procedures

Process for Obtaining State Funded Legal Aid

A person seeking free legal aid applies by submitting an application form to the appropriate committee. The application is then examined and processed.⁸ Applications are accepted at each registry of the Supreme Court. Provincial committees provide representation in the High Court and any provincial-level tribunal, while the district committees provide aid at district-level proceedings. The 1999 Rules provide a template application letter for those seeking legal aid.⁹

For an applicant to obtain aid from the Destitute Litigant fund, the Deputy Registrar has to conduct an inquiry into the matter to establish whether the applicant comes within the definition of “destitute”.

Successful applicants must sign a declaration confirming that the contents of their application are true and correct. The declaration also stipulates that if any of the particulars are found incorrect or false, they shall be liable to pay the Pakistan Bar Council all the expenses incurred by it for providing them with the free legal aid. The applicant must also, in these circumstances, undertake the cost awarded in their favour by the court.

Process for Providing State Funded Legal Aid

Legal aid is provided free of cost by a qualified lawyer either in an individual or organisational capacity through a legal aid firm or governmental department.¹⁰ As described above, the relevant state-funded legal aid rules appear to capture the Target Group indirectly, but largely do not refer to members of the Target Group expressly. There is no published data available on the categories of persons who have made applications under these rules nor the success of such applications. Attempts such as the Legal Aid and Justice Authority (Amendment) Act 2020 to expressly identify members of the Target Group would suggest that there is work to be done in ensuring state-funded legal aid is available to the Target Group.

⁸ Legal Aid in Pakistan, Ummer Ziauddin of the Daily Times (6 May 2019).

⁹ Pro Bono Practices and Opportunities in Pakistan by pbi and Latham & Watkins.

¹⁰ Legal Aid in Pakistan presentation by Justice Ali Baqar Najafi, Judge Lahore High Court, Lahore, Pakistan.

Funding of State Funded Legal Aid

With respect to legal aid provided under the 1999 Rules, funds are generated through allocation by the Pakistan Bar Council, with the grants being sanctioned by the government, local authority or voluntary contributions made.¹¹ A list of legal practitioners is maintained, who are then appointed on a case-to-case basis and paid a fixed sum for their services.¹² However, payments to practitioners under this mechanism are extremely minimal and there is often a significant delay between the provision of services and receipt of payment.

Under the Destitute Litigant Fund Rules, the government allocates funds for each High Court.

With respect to the Legal Aid Act, legal aid funding is kept in a Legal Aid and Justice Authority Fund.¹³ This is funded through a number of sources including grants from federal, provincial and local government as well as local, provincial and international authorities or agencies; contributions from statutory bodies, corporations and individuals; and income and earnings from the Legal Aid and Justice Authority's assets.¹⁴

Barriers

Availability of Interpretation/Translation Services

Urdu is the national language of Pakistan. Research has found that clients who are not native Urdu speakers often do not have the financial means to pay for translation and interpretation services.¹⁵

While Urdu is the national language, there are many different languages and dialects used across the country. This often means that court proceedings (at the first instance level) also take place in the native language of the area based on the geographic location of the court. There is no specified allocation for interpretation services within the existing provision of legal aid in Pakistan. Often clients are able to understand only their native language and depending on where their case is filed, this means they may have no ability to actively engage with legal proceedings.

Geographic Barriers

Under the Bar Council Act, each committee is obliged to maintain panels of lawyers within the area of its operation. However, in practice it is often very difficult to access

¹¹ Article 9 of the 1999 Rules.

¹² Legal Aid in Pakistan, Ummer Ziauddin of the Daily Times (6 May 2019).

¹³ Article 17(1) of the Legal Aid Act.

¹⁴ Article 17(2) of the Legal Aid Act.

¹⁵ Translating Official Documents, Roberto Mayoral Asensio (2003), page 23.

legal aid in rural areas. For example, in interior Sindh, presence of legal aid via the Bar Councils is not visible. However, independent lawyers in different communities will provide pro bono legal services where possible.

In addition, the cost of travel to and from the courts is barely covered and in some cases the amount allocated does not match actual expenses incurred. Similarly, the distance between courts and rural communities further exacerbates access to justice for poorer segments of society.

Other Barriers

A considerable section of the Pakistani population is unable to access the formal legal system for reasons such as lack of financial resources and lack of awareness of the law or their individual legal rights.¹⁶

Many different groups of people have claimed to face barriers to judicial access or other legal remedies including Afghan refugees who have cited harassment, arrests, detentions and evictions, pushing them to return to their native country; illegal child and bonded labourers; women and girls who suffer from domestic abuse and gender-based violence; and religious minority groups.¹⁷

Non-Afghan refugees are often at a greater risk of being identified if they try to approach the courts. Stateless communities and non-Afghan refugees have less access to justice and courts, due to their lack of legal identity and recognition in Pakistan. This makes it more complicated for such groups to venture out for legal aid and assistance.

Other issues and challenges include:

- a) a lack of a proper mechanism for legal aid;
- b) a lack of coordination and cooperation between providers;
- c) a lack of monitoring and reporting mechanisms;
- d) a lack of technical understanding and training on how to deal with refugee related cases, which knowledge is further restricted in the context of stateless communities or non-Afghan refugees in Pakistan;
- e) a high level of reliance placed on the voluntary services of lawyers; and
- f) a lack of awareness amongst the Pakistani public and lawyers.

¹⁶ Legal Aid in Pakistan presentation by Justice Ali Baqar Najafi, Judge Lahore High Court, Lahore, Pakistan.

¹⁷ Pro Bono Practices and Opportunities in Pakistan by pbi and Latham & Watkins.

NON-STATE FUNDED LEGAL AID

Eligibility, Nature and Scope

Eligibility of Asylum-Seekers, Refugees and Stateless Persons

The primary determinant of the Target Group's access to non-state funded legal aid is the capacity of NGOs and legal clinics to provide legal services to the Target Group, in addition to the level of awareness around the services offered. See "Scope of Non-State Funded Legal Aid" below.

The absence of a national refugee legal framework in Pakistan has facilitated a rise in non-state funded legal aid and services largely through NGOs and law societies aimed at offering legal advice for refugees and asylum-seekers. In most instances, the Target Group is largely dependent on humanitarian organisations and NGOs to meet their basic needs in a foreign country. Moreover, NGO and civil society organisations' ("CSOs") assistance is predominantly available for Afghan refugees in Pakistan. The same services are not extended/available to non-Afghan refugees or stateless communities in Pakistan.

Scope of Non-State Funded Legal Aid

Local NGOs are engaged in offering a range of legal aid services including conflict resolution and mediation mechanisms for asylum-related issues. This form of mediation tailors legal aid to asylum-seekers based on their specific cases through an individualised casework structure. Bar councils and law societies contribute by providing pro bono legal aid and representing Persons of Concern ("PoCs") before the District and High Courts at trial in the seven districts of Sindh. The Lahore Bar Association provides legal assistance for children's rights and aid to unaccompanied refugee children. Local NGOs, in partnership with the United Nations High Commissioner for Refugees ("UNHCR"), are also engaged in a direct manner through the establishment of Advice and Legal Aid Centers ("ALACs"), which are involved in developing outreach activities, educational legal camps and providing court representation. ALACs also take proactive steps to mitigate the risk of detention and arrest of PoCs through early intervention with law enforcement and in some instances representing PoCs in court. However, ALACs are available only to Afghan refugees in the country, and lack the legal knowledge and experience to effectively support non-Afghan refugees. Legal aid may also be sought for consumer rights issues, land and property disputes, housing issues and employment issues. In addition, NGOs and CSOs provide legal aid for women-related issues and crimes against women specifically.

The Target Group is able to access non-state funded legal aid for non-asylum related matters primarily through the UNHCR's ALACs. The accessibility of legal assistance extends to civil and family matters, in addition to sexual, gender-based or domestic violence, and in some instances calls for court intervention in matters related to divorce

and child custody. Legal aid, granted by lawyers who collaborate with ALACs and NGOs, is also offered to the Target Group in criminal cases where they have been falsely charged or in crimes that have been committed against them. ALACs also facilitate the verification of Proof of Registration (“PoR”) cards in coordination with the National Database & Registration Authority (the “NADRA”) in aiding the Target Group to open bank accounts, rent houses and obtain SIM cards,¹⁸ as well as offering assistance in obtaining personal status documents such as birth or divorce certificates. However, in practice very limited cases of divorce or other non-asylum related matters are brought forward. A majority of non-asylum matters are limited to false criminal charges, verification and renewal of PoR cards and assistance in documentation.

Eligibility Criteria

Access to legal aid is dependent on the legal status of the refugee. The UNHCR and its partnering NGOs can extend their legal services only to PoR cardholders. Accordingly, holders of an Afghan Citizen Card (“ACC”) and unregistered refugees lack access to non-state funded legal support.¹⁹

The UNHCR continues to work in cooperation with the government of Pakistan with the aim of re-issuing PoR cards and enhancing the living conditions and accessibility to legal aid for Afghan refugees in Pakistan.

There are also independent NGOs that provide limited pro bono legal services on a case-to-case basis for refugees and asylum-seekers (from Somalia, Syria, Bangladesh, etc). Such organisations are limited in number but do exist. These organisations are not part of the UNHCR partners.

Structure and Procedures

Process for Obtaining Non-State Funded Legal Aid

Access to support from NGOs and ALACs is available to refugees who are PoR cardholders. Advice on legal issues related to harassment, documentation, property, family and financial issues is exclusively reserved for registered refugees.²⁰ Furthermore, women face an additional burden as they are often dismissed by the formal justice system in cases of rape and divorce, which consequently is reflected in the manner in which female refugees interact with informal systems and NGOs, in both asylum-related and personal matters.

¹⁸ Pro Bono Practices and Opportunities in Pakistan by pbi and Latham & Watkins.

¹⁹ Pakistan Situation of Refugees, European Asylum Support Office (May 2020).

²⁰ Pakistan Situation of Refugees, European Asylum Support Office (May 2020).

https://coi.easo.europa.eu/administration/easo/PLib/05_2020_EASO_COI_Report_Pakistan_Situation_of_Afghan_Refugees.pdf

Eligible individuals (i.e., PoR cardholders and those carrying a UNHCR-issued Certificate for Asylum-Seekers) can contact any of the ALAC hotline numbers or directly visit one of the ALACs closest to them.

For those who are unable to reach ALACs, individuals may raise their issues during ALACs' regular community visits, door-to-door visits or through Shura meetings, with "Shura" being a form of dispute resolution that follows Islamic principles of arranging affairs in consultation with those affected by the decision.²¹

Funding Non-State Funded Legal Aid

NGOs receive funding from various external sources, including multilateral institutions or individual private donors and international organisations.

Barriers

Geographic Limitations

The geographies in which many members of the Target Group are located make access to non-state funded legal aid somewhat attainable. Nine ALACs operate in the main refugee hosting areas of Pakistan, which offer proximate access to legal aid. Eight of the centres, operated by the Society of Human Rights and Prisoners' Aid, are present in Khyber Pakhtunkhwa, Sindh, Punjab and Islamabad Capital Territory, while one centre operated by the Society of Empowering Human Resources is located in Balochistan.²² ALACs have increased in number in recent years; however, the geographic spread is not currently adequate to provide access to rural communities. Moreover, NGOs/CSOs are restricted in geographic spread due to unrest, violence, security and surveillance concerns in certain rural parts of the country.

Availability of Interpretation/Translation Services

Asylum-seekers are a particularly vulnerable group in a foreign country because they often lack familiarity with applicable national laws or the language of the country they have migrated to.

In particular, insufficient knowledge of the Urdu language creates a serious barrier for asylum-seekers to acquire information and establish contact with NGOs or other institutions that provide legal assistance. Communication barriers may also hinder the Target Group's ability to adequately narrate their story and/or understand the advice

²¹ UNHCR's Advice and Legal Aid Programme, Frequently Asked Questions.

²² Pakistan: Summary of Legal Assistance and Aid Programme 1 January – 31 October 2020, Reliefweb (30 November 2020).

given to them. Although certain NGOs may provide translators to the extent possible, this remains a hurdle in obtaining assistance.

Other Barriers

A lack of awareness about the Target Group's legal rights, obligations and options for seeking aid limits the way they may attempt to resolve an issue, seek legal assistance and understand their rights in the context of asylum procedure(s).

The Target Group is unable to effectively access NGOs/CSOs as little information is available on who provides assistance and services for non-Afghan registered refugees.

The Target Group is often reluctant to venture outside of their communities and therefore remain outside the formal justice system as they are often identified as outsiders and threats to the State (due to their undocumented nature).

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This document is part of a collaborative, multi-jurisdictional research project on the availability of legal aid to refugees in Asia for use by refugees, other displaced people, and the lawyers and organizations that work with them. It provides information on both state and non-state funded legal aid in Pakistan. We are grateful to Latham & Watkins for performing the legal research for this report.

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If you are an individual seeking further information and contact details about legal aid providers in Pakistan, please see the country page for Pakistan on Rights in Exile or UNHCR's Help platforms.

If you are an organization seeking to be matched with free legal assistance for your organization or your refugee clients, please click [here](#) to learn more about PILnet's Refugee Legal Assistance Matching Mechanism.