PERMANENT COUNCIL OF THE
ORGANIZATION OF AMERICAN STATES

COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

SPECIAL MEETING ON THE EXCHANGE OF BEST PRACTICES AND EXPERIENCES WITH PUBLIC DEFENDERS AS A GUARANTEE OF ACCESS TO JUSTICE FOR PERSONS IN SITUATIONS OF VULNERABILITY [AG/RES. 2714 (XLII-O/12)]
March 7, 2013 – 9:00 a.m. to 12:00 p.m.
Padilha Vidal Room
OAS Headquarters, Washington, D.C.

REMARKS OF THE REPRESENTATIVE FROM THE UNITED STATES OF AMERICA
MAHA JWEIED, SENIOR COUNSEL, U.S. DEPARTMENT OF JUSTICE - ACCESS TO JUSTICE INITIATIVE
No. 18-B


The Permanent Mission of the United States avails itself of this opportunity to renew to the Secretariat for the Permanent Council the assurances of its highest consideration and esteem.

Enclosure:

As stated.

General Secretariat to the

Organization of American States,
[AG/RES. 2714 (XLII-0/12)]

Thursday, March 7, 2013 – 9:00am – 12:00pm
Padilha Vidal Room, OAS Headquarters, Washington, DC

Remarks of the Representative from the United States of America
Maha Jweied, Senior Counsel, U.S. Department of Justice – Access to Justice Initiative

Delivered remarks were a summary of the attached document submitted by the United States in January 2013 in response to the OAS questionnaire to Member States on the compilation of best practices on access to justice and official public defenders in the region (In fulfillment of General Assembly Resolution AG/RES.2714 (XLII-0/12)).

We would also like to note that the U.S. Department of Justice recently launched the following website to commemorate the 50th anniversary of the U.S. Supreme Court’s decision in Gideon v. Wainwright, the landmark case that unanimously held that defendants facing serious criminal charges have a right to counsel at state expense if they cannot afford one: www.justice.gov/ati/gideon. The website captures recent efforts by the federal government to support the right to counsel in criminal proceedings.
Questionnaire to OAS to the Member States:
Compilation of best practices on access to justice and official public defenders in the region
(In fulfillment of General Assembly Resolution AG/RES.2714 (XLII-0/12))

Response of the United States of America

1. Does your State have the institution of official public defenders or cost-free legal counsel services?
   - Yes  ○ No

2. In case that your State does not yet have the institution of free legal counsel, has it considered the possibility of establishing it within the framework of your legal system?
   Not applicable.

3. If the answer to the previous question is affirmative, please describe any advances that have occurred in the creation of that institution.
   Not applicable.

4. Has your State supported any actions to foster international cooperation opportunities for sharing experience and best practices in this field? Please describe them.
   - In January 2011, the U.S. Department of Justice sponsored an Expert Working Group on International Perspectives on Indigent Defense. The purpose of the workshop was to identify both domestic and international best practices for representing low-income defendants and to devise a research agenda on indigent defense in the United States. The 40-person working group consisted of leading experts from nine countries drawn from multidisciplinary communities, including domestic and international practitioners, researchers, advocates, and government officials. A report summarizing the workshop and the expert working group’s recommendations—Expert Working Group Report: International Perspectives on Indigent Defense—was issued in September 2011 and is available on the Department’s website (https://ncjrs.gov/pdffiles1/nij/236022.pdf). The report has been shared with various domestic and international groups, including official international visiting delegations to the United States and the International Legal Aid Group (described next).
• The International Legal Aid Group (ILAG) is a network of legal aid specialists, including chief executives and managers from legal aid commissions, high ranking civil servants, and leading academics in over two dozen, mostly Western European and Commonwealth countries. Its mission is to improve evidence-based policy-making in the field of poverty legal services through discussion and dialogue relating to international developments in policy and research. The U.S. Government participated in ILAG’s 2011 biannual meeting to help ensure that U.S. best practices are shared on the global stage and international best practices are identified for potential transfer to the United States.

• The United States supports the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems—the first international principles and guidelines on indigent defense currently pending before the UN General Assembly for possible adoption this session. The United States was one of 16 co-sponsors of the UN Commission on Crime Prevention and Criminal Justice’s resolution that adopted the document and referred it to the UN Economic and Social Council for adoption by the General Assembly.

• Unlike the U.S. Department of Justice, the federal indigent defense program does not have a specialized unit that focuses on international rule of law activities. However, the Judicial Conference of the United States has an International Judicial Relations Committee staffed by personnel in the Administrative Office of the U.S. Courts (AO). As the federal indigent defender services program is located organizationally within the judiciary, requests for international rule of law assistance in the area of indigent defense are processed through the collaborative efforts of the AO’s Office of Defender Services, the administrative body for the federal indigent defense program, and the AO personnel staffing the International Judicial Relations Committee. Staff from both federal public defender organizations and the AO’s Office of Defender Services participate several times a year in international training and consultation efforts, both abroad and in presentations to foreign delegations visiting the United States.

5. Has your State supported the work of the Inter-American Association of Public Defender Offices (AIDEF) in strengthening public defender services in your country? If your answer is affirmative, please explain how this work has been done.

At the International Legal Aid Group’s 2011 biannual meeting, a representative from the U.S. Department of Justice met representatives from AIDEF and discussed AIDEF’s efforts to recruit U.S. defenders. Following that meeting, an offer was made to connect AIDEF to the National Legal Aid and Defender Association.

Several years ago, the Assistant Director of the AO’s Office of Defender Services attended an AIDEF Conference. Otherwise, interaction or collaboration with AIDEF has been minimal.
6. Which steps has your State taken to ensure that official public defenders operate with independence and operational autonomy?

A variety of public defender systems exist in the federal, state, and local courts of the United States, with varying levels of independence and operational autonomy.

The Sixth Amendment to the United States Constitution guarantees an accused the right to representation by counsel in serious criminal prosecutions. The responsibility for appointing counsel in federal criminal proceedings for those unable to bear the cost of representation has historically rested in the federal judiciary. In 1964, the Criminal Justice Act (CJA) was enacted to establish a comprehensive system for appointing and compensating lawyers to represent defendants financially unable to retain counsel in federal criminal proceedings. The CJA authorized reimbursement of reasonable out-of-pocket expenses and payment of expert and investigative services necessary for an adequate defense.

In 1970, the CJA was amended to authorize districts to establish federal defender organizations as counterparts to federal prosecutors in U.S. Attorneys Offices and an institutional resource for providing defense counsel in those districts (or combinations of adjacent districts) where at least 200 persons annually require appointment of counsel. Today there are 80 authorized federal defender organizations, approximately 60 Federal Public Defender Organizations (FPDOs), which are federal offices with federal employees, and 20 Federal Community Defender Organizations (FCDOs), which are non-profit organizations that receive federal grants from the AO, but operate functionally very similarly to FPDOs. Ninety-one of the 94 federal judicial districts are served by federal defender organizations. To maximize independence of the FPDOs, the heads of those offices are selected by the federal circuit court of appeals for the respective district rather than the district (trial) court. FCDO entities are selected by the district court, and the FCDOs Board of Directors hires the director of the district FCDO. Federal public defender organizations have their own budgets for both staffing and expert and other services, and so are independent of their respective courts for funding purposes. Federal CJA panel attorneys are somewhat less independent as they appointed by the U.S. District Courts to individual cases, and must obtain court approval for investigative and other services. The 80 federal defender organizations employ more than 3,300 lawyers, investigators, paralegals, and support personnel. Federal defender organizations, together with the more than 10,000 private "panel attorneys" who accept CJA assignments annually, represent the vast majority of individuals who are prosecuted in the nation's federal courts.

The AO of the United States Courts oversees the expenditure of funds appropriated by Congress; administers the federal defender and panel attorney program on a national basis; is responsible for training related to furnishing representation under the CJA; and provides legal, policy, management, and fiscal advice to the Judicial Conference and its committees, judges, defenders and their staffs, and panel attorneys. Program support for the CJA is provided by the Office of Defender Services of the AO.

While state and local indigent defense programs are organized under different branches of government that provide more or less independence depending on the jurisdiction,
some states and counties have set up independent state public defender agencies or offices to provide funding and oversight to local public defender offices around the state. These state public defender agencies are responsible for providing legal representation to the vast majority of indigent persons accused of state and local crimes in state court and operate at a high level of autonomy and independence.

Since the 1963 U.S. Supreme Court decision of *Gideon v. Wainwright*, which extended the U.S. Constitution's Sixth Amendment's right to counsel in criminal cases to indigent defendants accused of felonies in state courts, there have been numerous efforts to establish principles and standards for the effective delivery of public defender services. These efforts have been led by non-governmental organizations—including the National Legal Aid and Defender Association and the American Bar Association—and supported by the U.S. Department of Justice under different administrations.

One of the more recent efforts, *The ABA Ten Principles of a Public Defense Delivery System*, which was approved by the American Bar Association House of Delegates in February 2002, call for independence and autonomy of public defenders, stating: “The public defense function, including the selection, funding, and payment of defense counsel, is independent.” The U.S. Department of Justice has taken the position that these principles are the fundamental “building blocks” for implementing quality legal representation and has initiated efforts to strengthen public defender offices based on them. For example, earlier this year, the Department’s Bureau of Justice Assistance issued a grant solicitation based on the principles and awarded grants totaling $1.4 million to fund projects at the state and local levels that are based on bringing defender offices into better compliance with these principles.

7. **How has your State supported the work being done by official public defenders?**

Official public defenders work in three different types of legal proceedings in the United States: federal, state/local, and tribal. The federal government provides support in each setting. Federal public defenders and CJA panel attorneys represent indigent defendants charged with violating federal law or who have been sentenced to death by a state court and are appealing the conviction to a federal court; state and county-level defenders represent indigent defendants charged with breaking state law; and tribal public defenders represent indigent defendants accused of breaking tribal law on Native American reservations.

Federal public defenders receive support through the AO’s Office of Defender Services, which receives its funding through Congressional appropriations, including assistance with personnel, office space, management and administration, policy issues and training. Training and other substantive resource support is provided to federal public defender staff and CJA panel attorneys through the Office of Defender Services’ Training Branch. The Training Branch provides federal public defenders and CJA panel attorneys an array of support services, including national trainings located around the country, informational materials focused on developments in federal criminal law (including those on its website, www.fd.org), and a hotline that defenders can call to receive answers to questions about criminal law or procedure. It also provides a National Litigation Support Team, which focuses on the use of technology in litigation, and National Sentencing
Resource Counsel to support the needs of federal defenders and CJA panel attorneys throughout the country.

State and local public defenders are supported at the state and local levels of government and, in some instances, are also supported by the federal government, primarily through the activities of the U.S. Department of Justice. The Edward Byrne Memorial Justice Assistance Grant (JAG) Program, the largest grant program administered by the Department, provides federal funding for states and localities to promote effective strategies across the criminal justice system. States and localities have latitude to use JAG grants for a wide range of program areas, including law enforcement, prosecution and court programs, corrections and community corrections, drug treatment and enforcement, crime victim and witness initiatives, planning, evaluation, and technology improvement programs. Since 2010, indigent defense has been identified by the Department as one of several key priority areas for maximizing the effectiveness of this funding.

State and local public defenders can also turn to resources offered by the U.S. Department of Justice’s Bureau of Justice Assistance (BJA), including the BJA Center for Program Evaluation and Performance Management (https://www.bja.gov/evaluation/index.html), which provides online tools for defender offices to evaluate their performance and to plan and implement improvements. Additionally, the BJA funds projects to improve state and local indigent defense delivery, for example, funding projects in three different states to strengthen defender systems based on the American Bar Association’s Ten Principles of a Public Defense Delivery System in 2012. The Department funds a variety of data gathering efforts and other studies of public defense through its Bureau of Justice Statistics and is currently updating a National Survey of Indigent Defense Systems. The Department also funds evidence-based research on the problems in indigent defense and their solutions through its National Institute of Justice (NIJ). Most recently, in 2012, NIJ awarded $1.6 million in grants to support research to examine indigent criminal defense services, policies, and practices. A compilation of indigent defense related reports, projects, and research funded by the Department of Justice since 1975 can be found on this website: http://www.justice.gov/ati/idp/.

Tribal public defenders receive support from tribal governments and at the federal level from the U.S. Department of the Interior’s Bureau of Indian Affairs Office of Tribal Justice Support, which focuses on developing, operating, and enhancing tribal justice systems.

Additionally, all types of public defenders receive support from the U.S. Department of Justice’s Access to Justice Initiative, which seeks to increase access to legal assistance and counsel and improve justice delivery systems for those too poor to afford lawyers. The Initiative aids public defenders by working with the aforementioned components of the U.S. Department of Justice and U.S. Department of the Interior to increase opportunities for funding of defender offices, expanding research on indigent defense, and training and technical assistance for defenders.
8. Has your State promoted agreements regarding courses and training for official public defenders? If your answer is affirmative, please describe the scope of these conventions and their objectives.

Yes. The United States provides national and local training to indigent defenders working in federal, state, and tribal courts through a range of national and local training programs, training materials, and webinars aimed to help public defenders confronting different areas of the law.

For federal indigent defense, the CJA authorizes appropriated funds for persons providing representational services under that act. The AO’s Office of Defender Services (ODS) Training Branch provides training to federal public defenders and CJA panel attorneys on a variety of topics and issues, which its seven principal functions being:

- Providing substantive information on federal criminal law and procedure, publications, training materials and other online resources to CJA panel attorneys and FDO staff through the Training Branch websites, www.fd.org and www.capdefnet.org.
- Designing, implementing and teaching at national and local training programs for CJA panel attorneys and FDO attorneys, paralegals, and investigators.
- Delivering training programs to FDO attorneys, paralegals and investigators through an interagency agreement with the Federal Judicial Center (FJC) and assisting in the design of those programs.
- Working with contractors on the planning and implementation of federal death penalty and federal capital habeas corpus training for FDO staff and CJA panel attorneys.
- Providing guidance and information to members of the CJA panel and FDO staff on CJA cases regarding all aspects of criminal law and procedure through our hotline (800-788-9908).
- Implementing the Supreme Court Advocacy Program, which arranges moots, performs legal research, provides substantive and strategic advice, or editing and writing drafts of merits briefs, to CJA panel members and FDO attorneys representing CJA-eligible defendants in the United States Supreme Court.
- Providing advice and consultation on litigation support tools, services and processes to federal courts, federal defender organizations, and CJA panel attorneys.

The Department of Justice’s Bureau of Justice Assistance likewise supports training programs for state criminal justice stakeholders, including through a grant to the American Bar Association enabling the Association to create and deliver regional trainings for indigent defenders and to administer a public defender fellowship program. The U.S. Department of the Interior’s Bureau of Indian Affairs Office of Tribal Justice Support and the Department of Justice’s Access to Justice Initiative have launched a Tribal Court Trial Advocacy Training Program, which offers free three-day courses aimed to help individuals who appear in tribal courts improve their lawyering skills. Currently, there is ongoing collaboration and outreach efforts by the ODS Training Branch and DOJ to provide enhanced training and support to tribal public defenders.