

LEGAL AID UKRAINE

LEGAL AID SYSTEM IN UKRAINE: AN OVERVIEW



Foreign Affairs, Trade and
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QUALITY AND ACCESSIBLE **LEGAL AID IN UKRAINE PROJECT**

LEGAL AID SYSTEM IN UKRAINE:
AN OVERVIEW

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This overview of the Ukrainian legal aid system was developed and published within the framework of the *Quality and Accessible Legal Aid in Ukraine* (QALA) Project, a Canadian-Ukrainian technical assistance project funded by the Government of Canada's Department of Foreign Affairs, Trade and Development and implemented by the Canadian Bureau for International Education in cooperation with the Coordination Centre for Legal Aid Provision under the Ministry of Justice of Ukraine.

The publication is the result of a collaborative partnership between the QALA Project team and the Coordination Centre for Legal Aid Provision. The overview document provides a snapshot of the dynamic and expanding legal aid system in Ukraine in an attempt to capture the operational essence and spirit of the new legal aid system in the fall of 2014.

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List of Acronyms

ARC	Autonomous Republic of Crimea
BALAP	Bar Association of Legal Aid Providers
BCU	Bar Council of Ukraine
CBIE	Canadian Bureau for International Education
CCLAP	Coordination Centre for Legal Aid Provision
CIAS	Complex Informational Analytical System
CMU	Cabinet of Ministers of Ukraine
CPC	Criminal Procedure Code
CPLR	Centre for Policy and Legal Reforms
CSO	Civil Society Organization
DFATD	Department of Foreign Affairs, Trade and Development
ECHR	European Court of Human Rights
FLA	Free Legal Aid
FPLA	Free Primary Legal Aid
FSLA	Free Secondary Legal Aid
FSLAC	Free Secondary Legal Aid Centre
HR	Human Resources
IRF	International Renaissance Foundation
IT	Information Technology
JJR	Juvenile Justice Reform Project
LA	Legal Aid
MDJ	Main Division of Justice in oblasts/regions of Ukraine
MIA	Ministry of Internal Affairs of Ukraine
MoJ	Ministry of Justice of Ukraine
MP	Member of Parliament, Deputy
NGO	Non Governmental Organization
NPM	National Preventing Mechanism against Torture
OPDAT	Overseas Prosecutorial Development, Assistance & Training, US Department of Justice
PPO	Public Prosecutor's Office
QALA	Quality and Accessible Legal Aid Project
QS	Quality Standards
RBC	Regional Bar Council
State Program	State Targeted Program for FLA System Development for 2013-2017
ToT	Training of Trainers
UHHRU	Ukrainian Helsinki Human Rights Union
ULAF	Ukrainian Legal Aid Foundation
UNBA	Ukrainian National Bar Association

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Introduction

Until very recently, all Ukrainian citizens were obliged to pay privately for legal advice and representation. For many Ukrainians, in particular marginalized and vulnerable populations, the requirement to pay-out-of-pocket for legal representation was onerous and often resulted in them having to do without. The situation perpetrated inequality and had a corrosive effect on citizens' confidence and trust in public institutions, in general, and the "fairness" of the justice system, in particular. Such confidence and trust are essential building blocks for effective democracies.

With the passing of The Law of Ukraine "On Free Legal Aid" in June 2011, the Government of Ukraine made an explicit domestic policy commitment to protect the rights of its marginalized citizens and to improve their access to justice through the provision of free legal aid. The Law calls for a phased implementation of the new legal aid system. To that end, free primary legal aid (i.e. legal advice) became available to all individuals under the jurisdiction of Ukraine as of July 2011. Next, in January 2013, free secondary legal aid (i.e. legal representation in criminal cases) became available to all incarcerated individuals under the jurisdiction of Ukraine. In line with the Law, it is expected that free secondary legal aid in non-criminal cases will become available to the most vulnerable in Ukraine's population in January 2015. Full-fledged implementation of the system is envisioned to be completed by January 2017.

The provision of free legal aid marks an important step in Ukraine respecting the protection of citizen rights in matters of the state. Until recently, Ukraine was criticized for moving in the wrong direction in regard to the rule of law and the protection of individual rights and freedoms. In 2011, Freedom House downgraded Ukraine's country freedom rating from 'free' to 'partly free', further noting a continued negative trend in its July 2012 publication *Sounding the Alarm Round 2: Protecting Democracy in Ukraine*¹. Transparency International's *Corruption Perceptions Index* for 2012 ranked Ukraine in 144th position out of 176 countries (tying Ukraine with Syria, Bangladesh, Cameroon and Congo Republic). Similarly, Reporters without Borders' *Press Freedom Index* for 2013, ranked Ukraine in 126th position out of 179 countries (a decline of ten places from its 2012 ranking). Such assessments point to the current challenges associated with the ongoing process of democratization in Ukraine.

The establishment of a free legal aid system in Ukraine presents a positive and constructive response by the Government of Ukraine to these internationally noted downward trends. More to the point, it signals a fresh and welcome approach to addressing the needs of vulnerable Ukrainian citizens, in particular women and men from marginalized groups.

However, despite strong political will and commitment to implement the new legal aid system, there is limited technical expertise, experience, and capacity for doing so. There is also limited public and stakeholder awareness of the new system and the services potentially available to them.

The overview of the Ukrainian legal aid system for the Quality and Accessible Legal Aid Ukraine (QALA) Project marks an attempt to capture the operational essence and spirit of the new free legal aid (FLA) system in Ukraine. Recognizing that the FLA system is in a nascent stage of development – having been in operation for nearly two years – the overview report seeks to provide a snapshot of a dynamic and

¹ Freedom House. 2012. A full version of the report is accessible at: <http://www.freedomhouse.org/sites/default/files/Ukraine%202012%20English%20FINAL.pdf>

expanding FLA system at present. Specifically, the report is intended to capture and analyze the existing capacities of the FLA system as they relate to the three intended programming components of the QALA Project, those of Human Resources Ability, Systems Capacity, and Outreach and Communications Capacity. Given the newness of the FLA system, the report also seeks to provide the reader with a detailed description of the FLA system and all of its component parts.

The overview report for the QALA Project is the result of collaborative partnership with the Coordinating Center for Legal Aid Provision. The Project management and advisory team wishes extend its sincere appreciation to the leadership of the CCLAP for its openness and collaborative approach in partnering with the Project team in undertaking and articulating this overview report and for affording the Project's management and advisory team with meaningful access to key system stakeholders throughout the drafting process. It is in a spirit of true collaboration that this overview report has been articulated as a foundational document for partnership within the framework of the Quality and Accessible Legal Aid Ukraine Project.

It is worth noting at the outset that it is planned that over the course of Project implementation, the overview report will be updated on an as needed basis in order to accurately reflect the dynamic and expanding FLA system in Ukraine at key intervals in the system's implementation.

1.0 OVERVIEW OF THE FREE LEGAL AID SYSTEM IN UKRAINE

1.1. Legal Framework

“Legal aid is a fundamental human right and an essential element of a fair, humane and efficient justice system that is based on the rule of law”. “It is a foundation for realisation of other rights, including the right to a fair trial, and an important safeguard that ensures fundamental fairness and public trust in the justice process”².

Constitution of Ukraine

According to Article 59 of the Constitution of Ukraine adopted by the Parliament (Verkhovna Rada) on June 28, 1996, “Everyone shall have the right to legal assistance. Such assistance shall be rendered free of charge in cases stipulated by law. Everyone shall be free to choose the defender of his rights. In Ukraine, the bar shall act to ensure the right to defence against prosecution and to provide legal assistance during the hearing of cases in courts and other state bodies”.

In line with the provisions of the Constitution, Ukraine ratified the *Convention for the Protection of Human Rights and Fundamental Freedoms* in 1997.

The Law of Ukraine "On Free Legal Aid"

The Law adopted by the Verkhovna Rada on June 2, 2011 defines the right to free legal aid, the types of legal aid, procedures for execution of the Law, the grounds and procedures for provision of free legal aid, and state guarantees with regards to the provision of free legal aid. Adoption of the Law allows for the provision of additional mechanisms for the protection of human rights, and serves as an impetus for the development of fair justice in Ukraine. Under the provisions of Article 1 of the Law, legal aid in Ukraine is guaranteed by the state and funded in full or in part by the state budget of Ukraine, local budgets and other sources. The Law distinguishes between two types of legal aid – *primary legal aid* (access to law) and *secondary legal aid* (access to justice). The key characteristics of each type of the legal aid are captured in the table below.

² Universal Declaration of Human Rights, Article 11, Paragraph 1.

Table 1. Key Characteristics of Free Primary and Secondary Legal Aid in Ukraine

	FREE PRIMARY LEGAL AID (Access to law)	FREE SECONDARY LEGAL AID (Access to justice)
Services	<ul style="list-style-type: none"> • Provision of legal information; • Consultation and explanation of legal issues; • Support in drafting requests, complaints and other legal documents (excluding procedural documents); • Support in access to secondary legal aid and mediation. 	<ul style="list-style-type: none"> • Defence against prosecution; • Representation of interests of persons in courts, other government and self-government bodies and against other persons; • Drafting procedural documents.
Clients	<ul style="list-style-type: none"> • All individuals under the jurisdiction of Ukraine (i.e. citizens of Ukraine, foreigners, refugees and stateless persons). 	CRIMINAL CASES³ (suspected, accused) <ul style="list-style-type: none"> • Individuals detained in administrative or criminal proceedings⁴ (limited to 72 hours from the point of detention); • Persons suspected of committing a crime, detained by inquiry and investigation bodies; Persons accused (charged with a criminal offence)⁵.
		CIVIL AND ADMINISTRATIVE CASES. VICTIMS AND WITNESSES in CRIMINAL CASES <ul style="list-style-type: none"> • Low-income individuals; • Disabled individuals; • Orphaned and homeless children; • Children as victims of family violence; • Veterans of war, victims of political repressions.⁶
Providers⁷	<ul style="list-style-type: none"> • Bodies of executive power; • Local self-government bodies. 	<ul style="list-style-type: none"> • Free secondary legal aid centers (FSLACs).

The Law “On Free Legal Aid” also clearly articulates a staged implementation for the free legal aid system in Ukraine.

³ Including misdemeanors

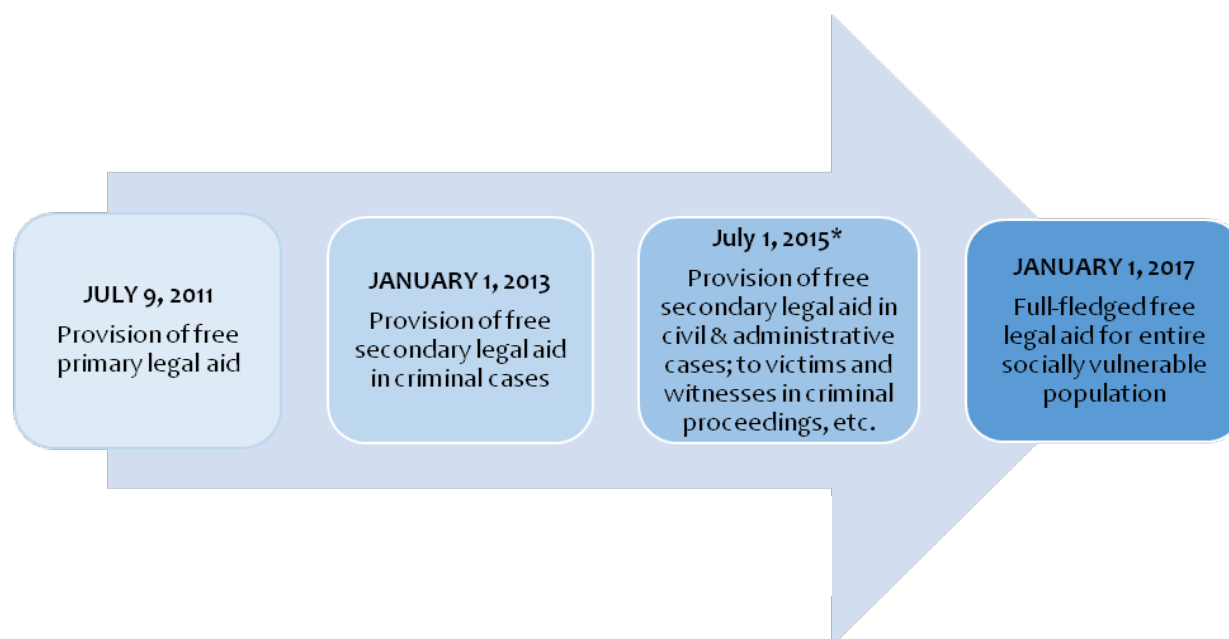
⁴ All these persons are eligible for free secondary legal aid regardless of their social/financial status.

⁵ Low-income individuals; in cases when participation of lawyer-attorney is obligatory

⁶ The right to free secondary legal aid shall be granted to citizens of the countries with which Ukraine has signed relevant international treaties on legal aid, ratified by the Verkhovna Rada of Ukraine, as well as foreigners and stateless citizens in accordance with international treaties to which is Ukraine is a party, if such treaties prescribe free legal aid to be provided by the participating states to certain categories of persons.

⁷ According to Ukrainian legislation, primary legal aid is provided by lawyers, and secondary legal aid is provided by lawyers-attorneys

Figure 1. Implementation Stages of the Free Legal Aid System



Regulation of the Cabinet of Ministers of Ukraine “On Coordination Center for Legal Aid Provision”

In line with the Law “On Free Legal Aid”, the Coordination Centre for Legal Aid Provision (CCLAP) was established within the system of the Ministry of Justice (CMU Regulation #504 date 6/6/2012) to implement the duties of the Ministry of Justice in the field of free legal aid. In July of 2012, 27 regional/oblast Free Secondary Legal Aid Centres (FSLACs) were created in the Autonomous Republic of Crimea, the oblasts, and the cities of Kyiv and Sevastopol (Ministry of Justice Order #968/5 as of 2/7/2012) as territorial branches of CCLAP.

The State Targeted Program for Establishing a System of Free Legal Aid for the Years 2013-2017

The State Targeted Program, adopted by the Cabinet of Ministers of Ukraine (CMU Regulation #394 dated 13/02/2013) is a strategic document outlining the key directions for developing and implementing a set of legal, organizational, and economic measures aimed at providing access to free legal aid. The main objectives of the Program are to:

- Improve the legislation regulating the operation of the free legal aid system;
- Conduct an information campaign for those who are eligible to obtain free legal aid encompassing lawyers-attorneys⁸, agencies authorized to detain, arrest or take individuals into custody, the local self-governments bodies and NGOs;

⁸ According to the Law on Bar and Lawyers-Attorneys Activities (# 5076 dated 5/7/2012), a lawyer-attorney is an individual who has a degree in law, is fluent in the state language, has a minimum of two (2) years of experience in practicing law, has passed a qualification exam and internship and received a certificate on the right to perform lawyers-attorneys activities. Lawyers-attorneys

- Establish an integrated (complex) information and analytical system to ensure the provision of free legal aid;
-
- Create and ensure the functioning of a network of centers for the provision of free secondary legal aid; and
-
- Introduce a mechanism for on-going training, including the professional education and development (i.e. upgrading of qualifications) of lawyers-attorneys involved in the provision of free legal aid and employees of the centers' providing free secondary legal aid.

Criminal Procedure Code

The new *Criminal Procedure Code* (CPC) was adopted in April 2012 and came into force in November 2012. The CPC is the key piece of legislation which regulates work of lawyers-attorneys providing free legal aid services to clients in criminal cases. The CPC establishes equal rights between defence and prosecution to provide evidence to court in a criminal trial; foresees optimization of preventive measures (detention in custody should be used only in exceptional cases); allows for the greater use of preventive measures that do not deprive liberty (bail, home detention); abolishes the possibility of sending a case back for further investigation by the court; and introduces the concepts of plea agreements and agreements on reconciliation between a victim and an offender.

The new *Criminal Procedure Code* replaced the document that had been adopted in 1960 which was highly criticized for its incompatibility with the standards of the Council of Europe guaranteed by the European Convention on Human Rights (ratified by Ukraine in 1997) and by the case-law of the European Court of Human Rights. Some statistical data suggests that the adoption of the new CPC has had a general positive impact on the humanization of criminal justice. For example, it is estimated that since the adoption of the CPC the number of criminal detentions decreased by 25%; the number of acquittals increased slightly (0,25% in 2012 and 0,4% in 2013, respectively); the number of persons released by the criminal court increased by almost 20%; the number of registered criminal proceedings increased by 35%; the number of persons in pre-trial detention centres ("SIZO") decreased by 45%; the number of investigators'/prosecutors' requests for detention in custody decreased by 25%; and the number of searches decreased by 25%.⁹.

Law "On Public Prosecutor's Office"

Law of Ukraine "On Public Prosecutor's Office" adopted by the Verkhovna Rada of Ukraine on October 14, 2014, introduces several important systemic changes to the Law of Ukraine "On Free Legal Aid" (sub-paragraph 64 of paragraph 5 of Chapter XII), a draft of which was developed by the Coordination Centre for Legal Aid Provision in 2013.

are the only lawyers who have the right to provide free secondary legal aid. In criminal proceedings, lawyers-attorneys perform the function of a defender (and may be called defence lawyers or defenders).

⁹ A monitoring report "Implementation of New Criminal Procedures Code in 2013" was produced by the Center for Political and Legal Reforms.

Changes related to the rights of detainees, suspects, accused and convicted:

- For all detainees and suspects for whom detention is chosen as a preventive measure, free legal aid is guaranteed not only for 72 hours from the moment of detention, as it is now, but continuously until the end of criminal proceedings. This will minimize the dependence of the right to protection upon an investigator.
- The ground for the appointment of a lawyer-attorney for a detainee is not only the official notification from an officer who is responsible for detention (detention officer), but also the direct appeal of a detainee or his/her relative to a centre for free secondary legal aid provision (FSLAC). This will allow to counteract to the "hidden detention" when, in fact, the police detains a person, but does not provide him/her a procedural status of a detainee.
- Sentenced to imprisonment persons are entitled to the right to protection and representation at state expense upon a direct address to the Coordination Centre for Legal Aid Provision or centres for free secondary legal aid provision (FLACs). This will allow to protect the rights of prisoners by providing them with free legal aid at the stages of appealing actions, decisions or lack of actions of public officials, of initiating proceedings review under new circumstances, of conditional pre-time release, matters of inheritance, divorce etc.

Changes related to the partial revocation of authorities of the public prosecutor's office to represent citizens' interests: It is envisaged that the most of the authorities to represent citizens' interests will be transferred from the prosecution system to the system of legal aid provision, and starting from July 1, 2015 free legal aid will be provided to all eligible law participants (clients), including in civil and administrative cases as well as to victims or witnesses in criminal proceedings, to full extent.

Institutional Changes:

- Coordination Centre for Legal Aid Provision is fixed in legislation as a central coordinating institution in the area of legal aid provision.
- A two-level system of centres for legal aid provision is introduced: regional centres (republican ARC, regional (oblast), Kyiv and Sevastopol cities) and local centres (rayon, inter-rayon, city/town, city-rayon, inter-district and district in cities).
- The centres for free secondary legal aid provision (FLACs) obtain the official status of territorial sub-units of the Coordination Centre for Legal Aid Provision at the legislation level (i.e. it is fixed in legislation now).
- The term/notion of legal aid system is introduced. It includes the Coordination Centre for Legal Aid Provision, free primary and secondary legal aid providers.
- The Unified Register of Lawyers-Attorneys providing free secondary legal aid is introduced to be administered by the Coordination Centre for Legal Aid Provision. This register substitutes 54 local registers administered by the Main Divisions of Justice in oblasts.
- Authorities to exclude lawyers-attorneys from the Register of Lawyers-Attorneys providing free secondary legal aid are transferred from the Main Divisions of Justice in oblasts to the Coordination Centre for Legal Aid Provision.

Other legislation in the area of free legal aid

There are a number of laws that also affect FLA provision, including the Code on Administrative Offences (# 8073 dated 07/12/1984), the Civil Code of Ukraine (# 435 dated 16/01/2003), the Civil Procedures Code (# 1618 dated 18/03/2004), the Administrative Judicature Code (# 2747 dated 6/07/2005); the Law On police (# 565 dated 20/12/1990); On the state border service of Ukraine (# 661 dated 3/04/2003); On refugees and individuals who need additional or temporary protection (# 3671 dated 8/07/2011); On psychiatric (mental) protection (# 1489 dated 22/02/2000); On rehabilitation of victims of political repression in Ukraine (# 962 dated 17/04/1991); On ensuring organizational and legal conditions for the protection of orphans, and children whose parents lost their parental rights (# 2342 dated 13/01/2005); On bodies and services on children affairs and special institutions for children (# 20 dated 24/01/1995); On preventing family violence (# 2789 dated 15/11/2001); On social work with families, children and youth (# 2558 dated 21/06/2001); and On the status of war veterans and their social protection (# 3551 dated 22/10/1993). In addition, there are several Ministry of Justice orders including: Ministry of Justice Order On Approval of Statute of Centers for Free Secondary Legal Aid Provision (#967/5 dated 02/07/2012); Ministry of Justice of Ukraine Order On Quality Standards for Provision of Free Secondary Legal Aid in Criminal Proceedings (# dated 25/02/2014)¹⁰, as well as Ministry of Justice Order On Approval of Procedure and Criteria for Involving by Self-Government Bodies Legal Entities of Private Law for the Provision of Free Primary Legal Aid (#891/5 dated 15/06/2012); Ministry of Justice Order On the approval of Standard Regulations on Specialized Institution on Free Primary Legal Aid Provision (#474/20787 dated 28/03/2012), etc.¹¹.

1.2 Institutional Structure of the Free Legal Aid System. Key Stakeholders

The institutional structure of the free primary and secondary legal aid system in Ukraine is presented in Figure 2 below. It should be noted that the scheme includes inter-rayon centers which, as envisioned in the Law, will be established in the future to provide free secondary legal aid in civil and administrative cases.

¹⁰ These standards were amended on 13/06/2014, by MoJ Order #920/5.

¹¹ For the full list of legislation please refer to Chapter 4 of the Report

Figure 2. Institutional Structure of the Free Legal Aid System

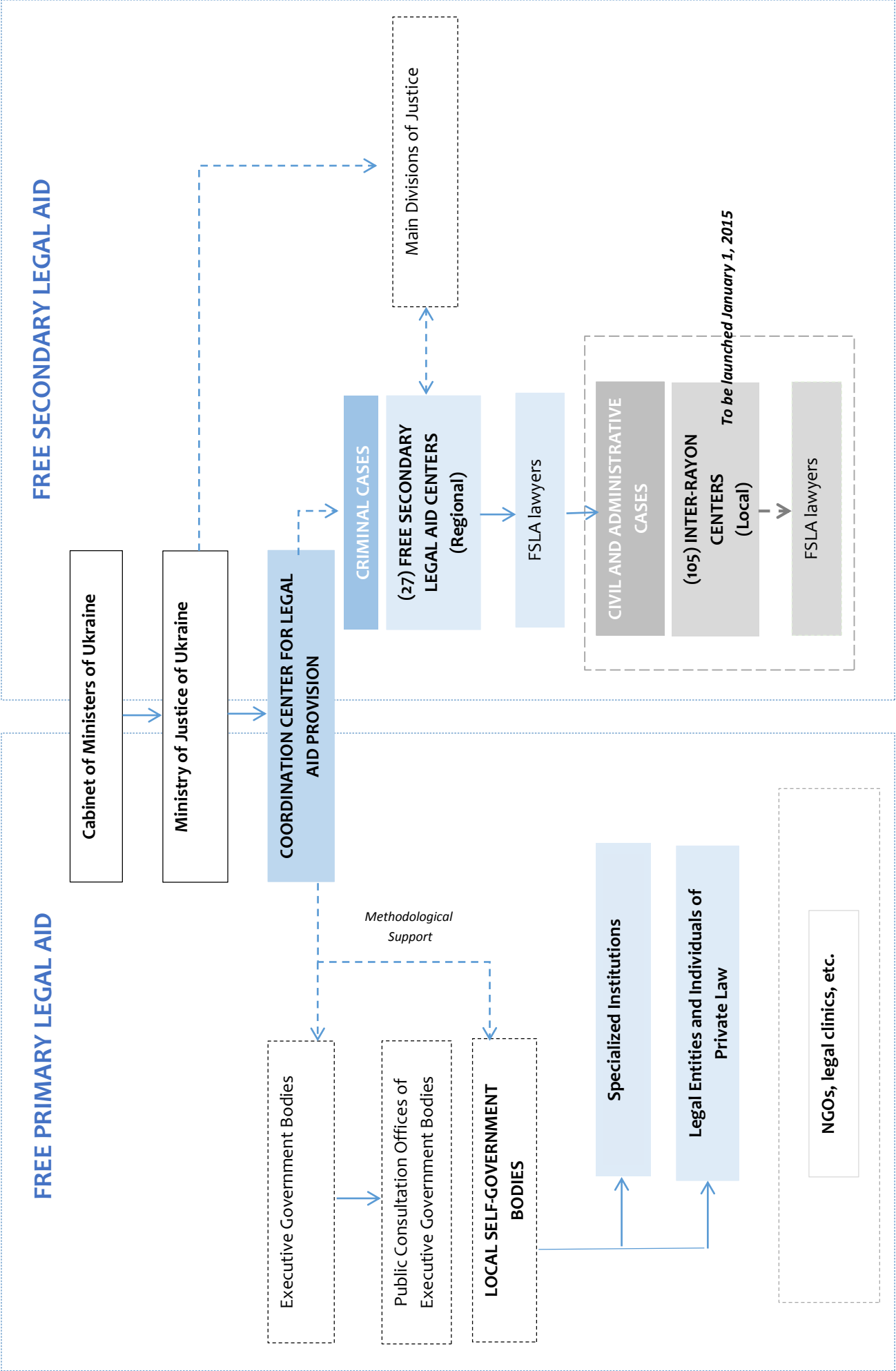


Table 2. Key Stakeholders of the FLA System

STAKEHOLDER	PRIMARY LEGAL AID	SECONDARY LEGAL AID
<p>The Cabinet of Ministers of Ukraine (CMU)</p>	<p>The CMU has the leading role in the creation of conditions for the development and functioning of the legal aid system.</p>	<p>The CMU has the leading role in the creation of conditions for the development and functioning of the legal aid system. The CMU approves regulations on the most essential issues regarding the free secondary legal aid system, including such regulations as:</p> <ul style="list-style-type: none"> ▪ the order¹²/rules and conditions for competitions for the selection of lawyers-attorneys and requirements with regard to lawyers-attorneys' professional qualifications for those to be engaged in secondary legal aid provision; ▪ the order/rules and conditions for the contracting of lawyers-attorneys who provide secondary legal aid; ▪ the order/rules on informing free secondary legal aid centres of the detention of a person; and ▪ the order/rules and the compensation for the lawyers-attorneys providing free legal aid services.
<p>The Ministry of Justice (MJ)</p>	<p>The MJ has a general managerial role in the establishment and operation of primary legal aid. The Ministry is also responsible for the provision of methodological support to executive bodies and local authorities regarding the provision of primary legal aid.</p>	<p>The MJ has a general managerial role in the establishment and operation of secondary legal aid. More specifically, it is responsible for:</p> <ul style="list-style-type: none"> ▪ the implementation and functioning of the system; ▪ cooperation with central executive government bodies; ▪ the provision of methodological support; approving (by its Orders¹³) service quality standards, regulation on the FSLA centres; ▪ the establishment of the FSLA centres; ▪ the approval of procedures for maintaining the local registers of lawyers-attorneys providing FSLA on a permanent/ regular basis and an ad hoc basis, etc.
<p>Coordination Center for Legal Aid Provision (CCLAP)*</p>	<p>The CCLAP performs the responsibilities of the Ministry of Justice in the field of free legal aid, in particular the development and implementation of an effective system of free legal aid in Ukraine, and ensuring its accessibility and quality. Key roles and responsibilities of the CCLAP include:</p> <ul style="list-style-type: none"> ▪ organizational, expert, analytical, informational, material and technical support; ▪ analysis of the implementation of the legislation on free legal aid; ▪ submission of proposals on public policy development and implementation in the mentioned field for the consideration of the Minister of Justice; etc. 	

¹² In this context, an order refers to a procedure, organizational rules, the process, etc. The CMU has the right to adopt regulations and resolutions.

¹³ The title of the decisions which are made by the MoJ are referred to as an order.

	The CCLAP is responsible for ensuring the provision of consultative and methodological assistance to local government bodies as providers of free primary legal aid.	The CCLAP coordinates provision of free secondary legal aid in Ukraine, including the appointment of FSLACs directors and deputy directors, the assessment of their performance; FSLACs budgets and the approval of centers' organizational structures, etc.
Regional Free Secondary Legal Aid Centers (FSLACs)*	N/A	In this context, CCLAP is also responsible for training and development support for FSLA lawyers-attorneys. There are a total of 27 regional Free Secondary Legal Aid Centers across Ukraine which act as territorial units of CCLAP to provide free secondary legal aid in criminal cases. The key role of FSLACs is to issue orders (warrants of authorities) to FSLA lawyers-attorneys to provide secondary legal aid in criminal cases.
Inter-rayon Free Secondary Legal Aid Centers*	N/A	The Inter-rayon centers will be established once the second stage of the FLA system is launched (currently it is scheduled for January 1, 2015). The inter-rayon centers, reporting to the CCLAP, will be providing free secondary legal aid in civil and administrative cases. It is envisioned that approximately 105 inter-rayon centers will be established across Ukraine.
Main Divisions of Justice	According to the Law On Legal Aid, every state authority has to provide primary legal aid to each person under the jurisdiction of Ukraine within the scope of their mandate. To this end, primary legal aid is provided by the Public Consultation Offices (i.e. a unit within a regional division) of each state authority ¹⁴ . Although no comprehensive assessment of the provision of primary legal aid has been conducted to date, some experts point to a number of shortcomings in the provision of FPLA by state authorities, such as poor quality of services, ineffective dissemination of information on FPLA, and limited accessibility of the public consultation offices.	Main Divisions of Justice are territorial units of the Ministry of Justice and perform supportive functions. They are responsible for the organization of competitions for FSLA lawyers-attorneys and the maintenance of regional registers of FSLA lawyers-attorneys. N/A
Regional Divisions of Central Executive Bodies, Local Executive Bodies	In line with the Law, all local self-government authorities ¹⁵ are required to provide primary legal aid within their territorial community. The Law identifies two mechanisms for doing so: 1) establishing Specialized (Communal) Institutions (to be funded from the local budget), or 2) contracting Eligible Legal Entities or Individuals of Private Law to	N/A

¹⁴ For example, according to data from 2010¹⁴, the Public Consultation Offices of the Main Divisions of Justice provided more than 170,000 consultations for the socially vulnerable population. The consultations were related to civil-legal issues (18%), social protection issues (10.6%), and land issues (8.7%).

¹⁵ At present, 24 oblast councils (regional level), 490 rayon councils (sub-regional level), 460 city council (municipal level) and 11, 062 village councils (municipal level) exist in Ukraine.

	<p>provide FPLA on behalf of the local self-government authorities.</p> <p>The principal task of these entities is to provide primary legal aid to people within their territorial community, including provision of legal information, consultations and explanations of legal issues, the preparation of applications, complaints and other documents of legal character (excluding procedural documents), and support in accessing free secondary legal aid.</p> <p>It should be noted, however, that the provision of free primary legal aid at the local level is very weak, primarily due to limited financial resources available at the local level to create FPLA community-based centers as well as a lack of knowledge on the part of the local authorities on mechanisms and best practices for primary legal aid provision. To date, only approximately 30 community-based primary legal aid centers have been created in Ukraine by local self-government bodies.</p>
<p>NGOs¹⁶</p>	<p>NGOs, including human rights organizations, think-tanks, centers for legal information and consultations, provide legal aid according to their statutes and areas of expertise (more detail on the role of Civil Society, Non Governmental Organizations, etc., is provided in section 1.7.4 of the overview report).</p>

* More details on the institutional profile of CCLAP and FSLACs and their functions are provided in section 2.3.

¹⁶ Some NGOs provide secondary legal aid *pro bono*.

1.3 Institutional Profile of CCLAP and its Territorial Units

1.3.1 Coordination Centre for Legal Aid Provision

The CCLAP was established within the system of the Ministry of Justice (CMU resolution #504, dated June 6, 2012) to implement the responsibilities of the Ministry in the field of free legal aid and more specifically, to develop and implement an effective system of free (primary and secondary) legal aid in Ukraine, and to ensure its accessibility and quality.

Figure 3. Organizational Structure of CCLAP

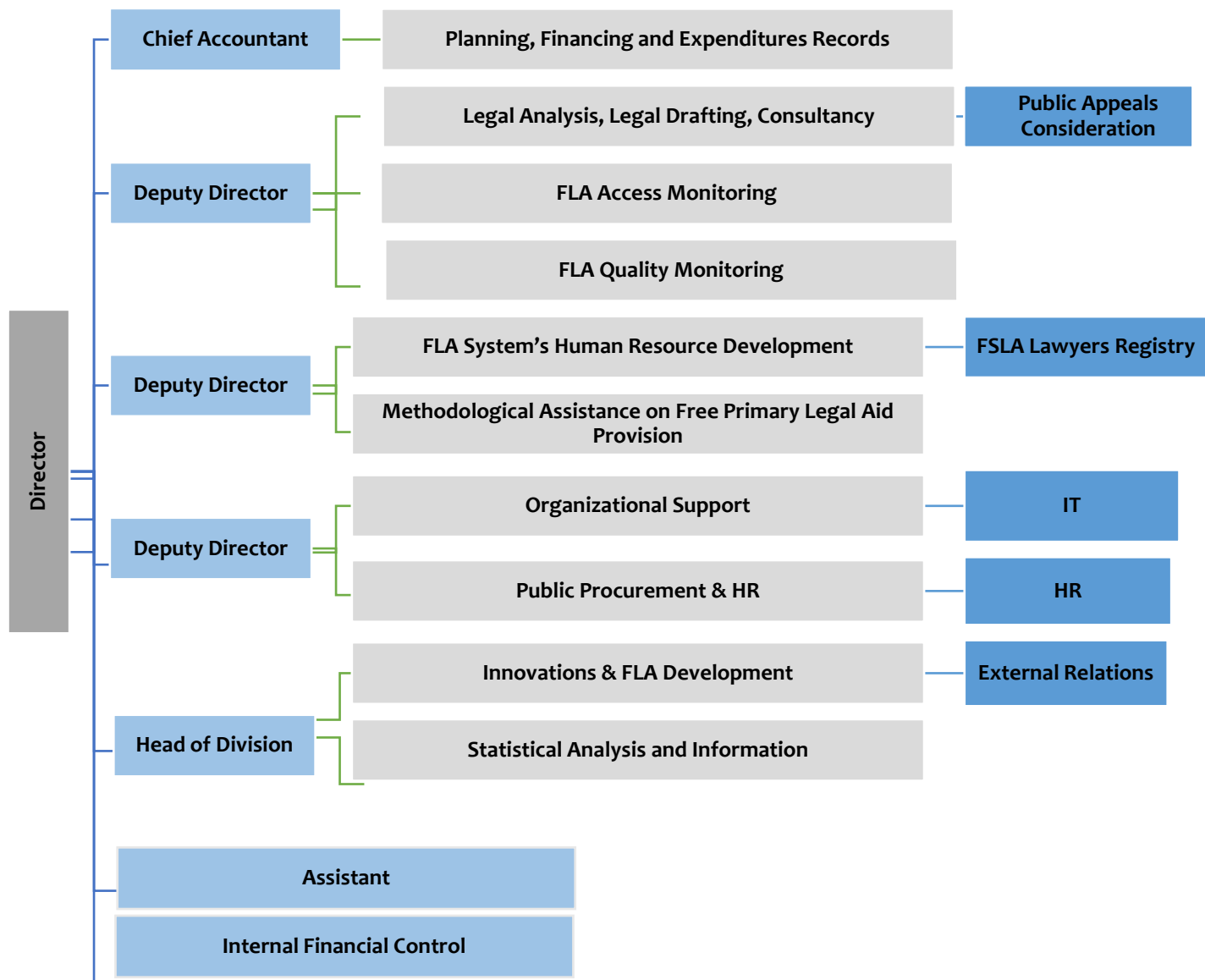


Figure 4. Composition of CCLAP Employees, by age

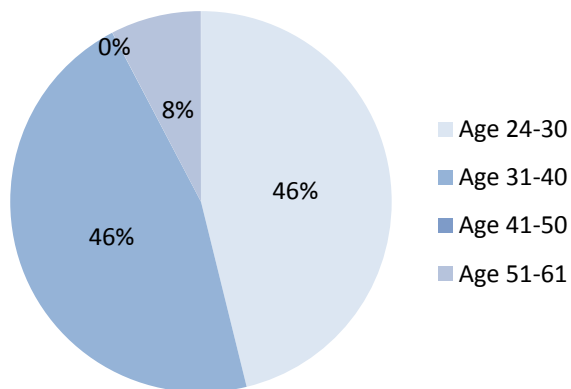


Figure 5. Composition of CCLAP Employees, by gender

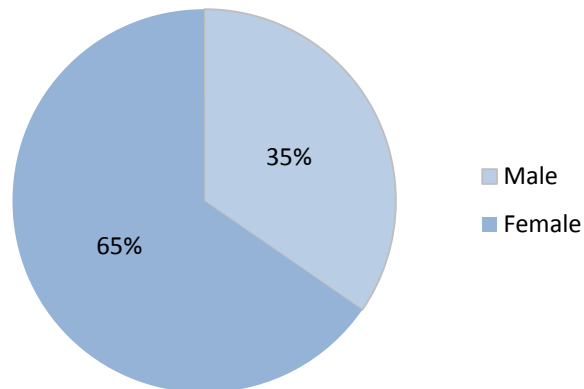
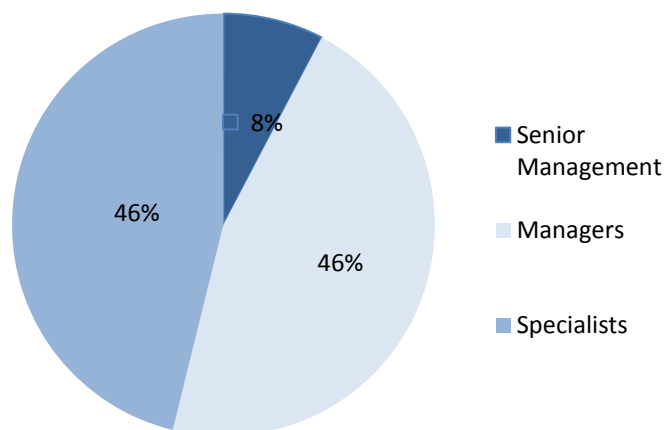


Figure 6. Composition of CCLAP Employees, by type of position.¹⁷



1.3.2 Regional Free Secondary Legal Aid Centers (FSLACs)

In July 2012, 27 regional Free Secondary Legal Aid Centers¹⁸ acting as territorial units of the CCLAP were established in the Autonomous Republic of Crimea, all regions of Ukraine, and the cities of Kyiv and Sevastopol to provide free secondary legal aid in criminal cases. These centers began operating on January 1, 2013.

The FSLACs play a key role in the organization of free secondary legal aid provision, bringing together FSLA clients and lawyers-attorneys. More specifically, the FSLACs are responsible for:

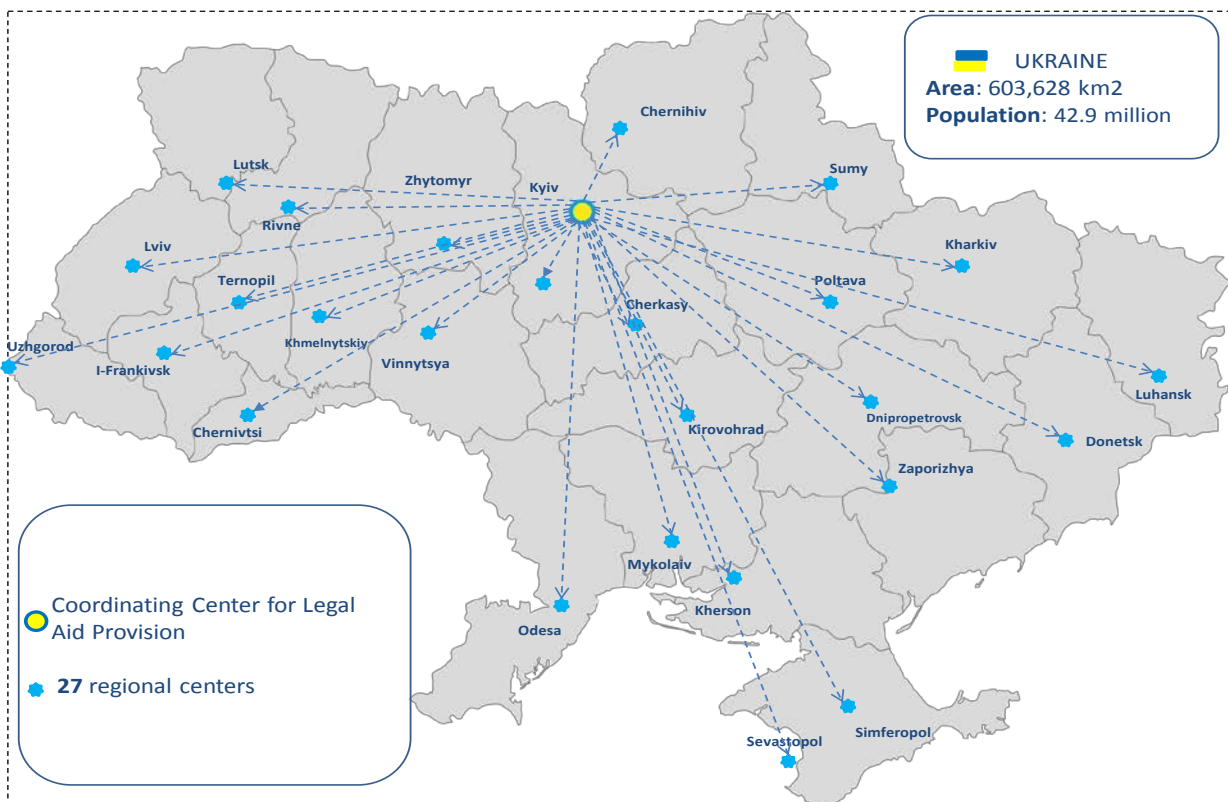
- The engagement of lawyers-attorneys on a permanent/regular and/or temporary basis;

¹⁷ The types of positions are set out in CCLAP's organizational structure.

¹⁸ Due to the current geo-political situation in Ukraine and the annexation of Crimea by the Russian Federation, two (2) centres in Crimea suspended their operation in early 2014.

- The replacement of lawyers-attorneys in cases permitted by the Law “On Free Legal Aid”;
- Ensuring the provision of FSLA in criminal cases (i.e. considering requests, making decisions on the provision or refusal of FSLA; ensuring engagement of a defender, providing assignments - warrants of authorities for lawyers for defence, etc.);
- The provision of compensation to lawyers-attorneys and the reimbursement of lawyers-attorneys’ expenditures; the verification of financial documentation provided by lawyers-attorneys;
- Ensuring regular needs assessment and a level of satisfaction of FSLA clients; monitoring the quality of FLA; and
- Cooperation with law enforcement bodies, courts, executive and self-government bodies, etc.

Figure 7. Map of Coverage and Distribution of FSLACs across Ukraine



Currently, the FSLACs engage a total of 287 staff (including 144 men and 143 women)¹⁹. A standard structure for a Free Secondary Legal Aid Centre is presented in Figure 8 below.

¹⁹ Data as of September 2014 and includes all 27 FSLACs (data related to the Crimean and Sevastopol FSLACs is as of March 2014).

Figure 8. Standard Organizational Structure for FSLA Centers (as of July 2014)

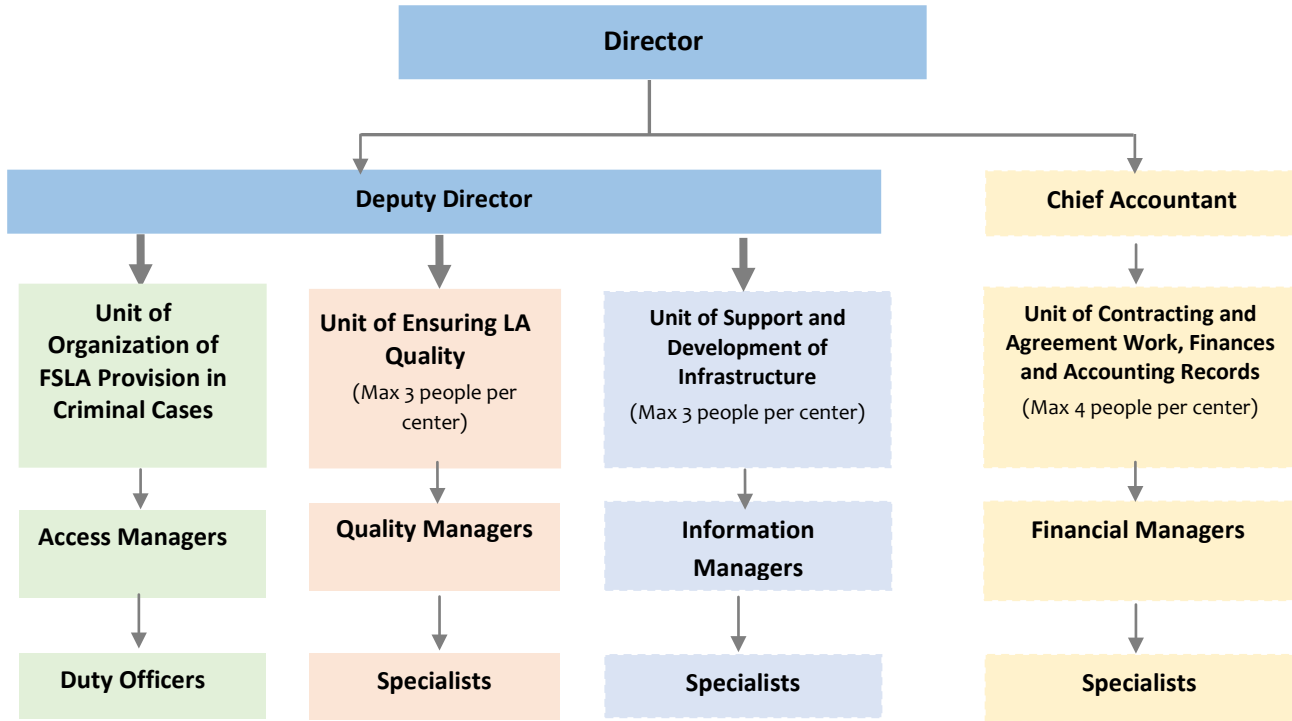


Figure 9. Composition of FSLACs employees, by position type

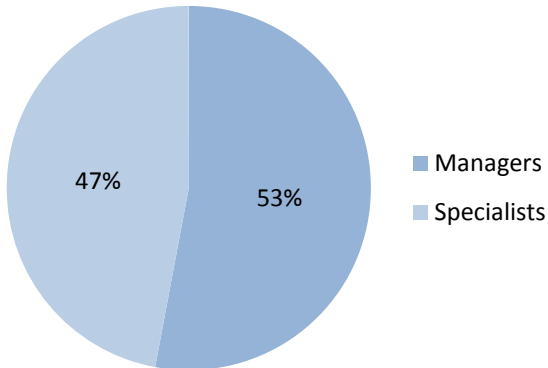


Figure 10. Composition of FSLACs Employees, by age

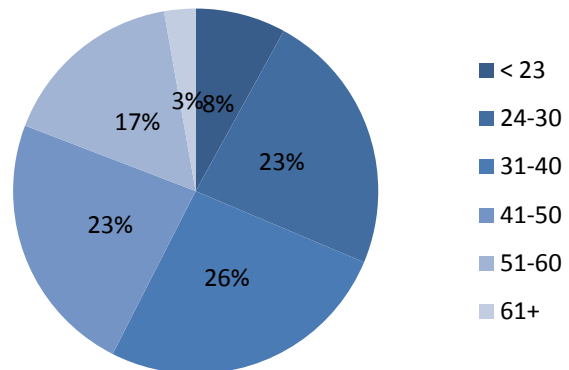
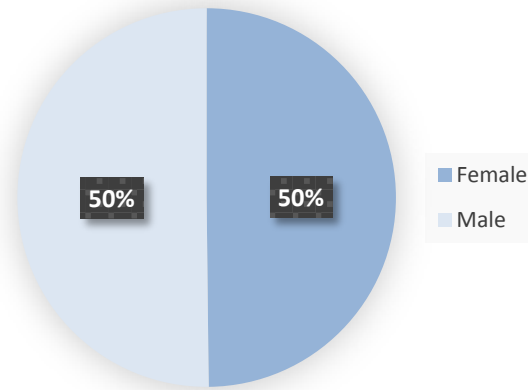


Figure 11. Composition of FSLACs Employees, by gender



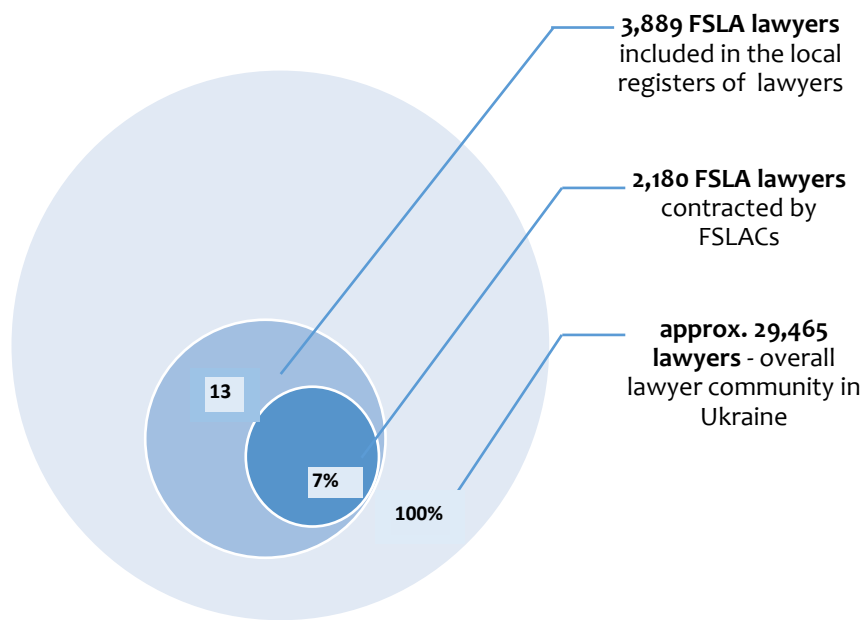
1.3.3 Inter-rayon Free Secondary Legal Aid Centers

In line with the *State Targeted Program for FLA System Establishment for 2013-2017*, approximately 105 inter-rayon centres will be created across Ukraine to provide legal aid in civil and administrative cases. It is envisioned that each centre will provide services to a group of clients ranging from 250,000 to 600,000 people. To this end, it is planned that the functions of regional and inter-rayon centres will be separated. More specifically, inter-rayon centres will process direct applications from individuals, analyze the eligibility of clients based upon their financial status, and ensure the representation of the interests of individuals in civil and administrative cases, while regional centres will focus on managing contracts with lawyers-attorneys, providing free legal aid in criminal proceedings and general financial management.

1.4 Free Legal Aid Lawyers-Attorneys

According to the Ukrainian National Bar Association, there are approximately 30,000 lawyers-attorneys in Ukraine. The Registeries of Free Secondary Legal Aid lawyers include a total of 3,889 lawyers who passed a competition for FSLA lawyers-attorneys and who qualify to provide legal aid assistance. As of September 2014, 2,180²⁰ lawyers-attorneys (i.e. 56% of those included in the Registry) have been engaged by the regional FSLACs to provide legal aid services in criminal cases. These lawyers-attorneys are not staff of legal aid centers rather private lawyers-attorneys contracted to provide legal aid on a permanent/regular and/or temporary basis. As such, they are subject to the same regulations and norms as all other lawyers-attorneys in Ukraine.

Figure 12. FLA Lawyers-Attorneys as Part of the Overall Lawyers-Attorneys Community in Ukraine

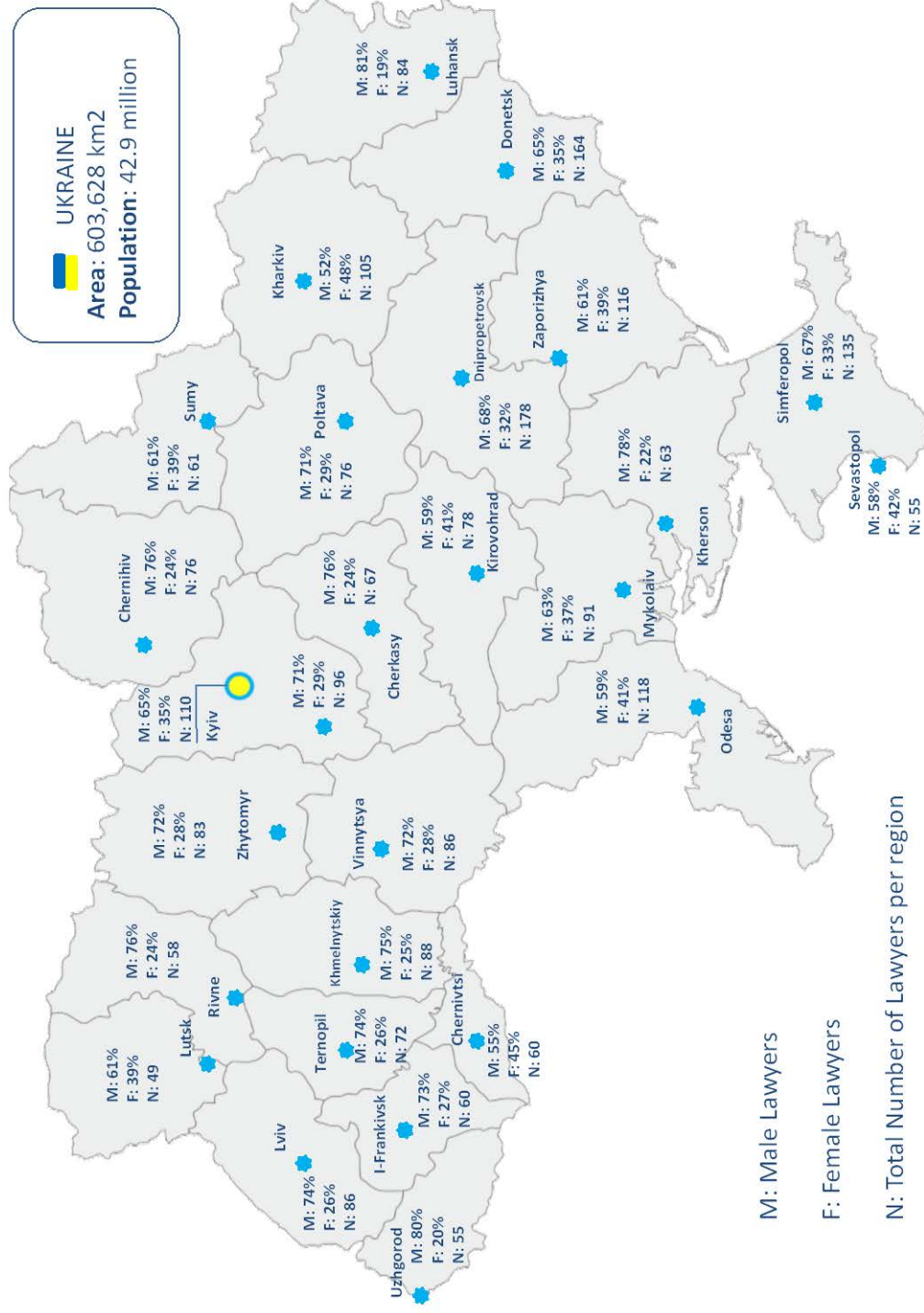


The Register of FSLA lawyers-attorneys also includes a pool of lawyers-attorneys who can be contracted for the provision of legal aid once the second stage of the FSLA system (i.e. civil and administrative cases) is launched. It is expected that at least 2,000 new lawyers-attorneys will need to be contracted by the system to meet the expected demand.

As illustrated in Figure 13, number of lawyers-attorneys per region varies greatly depending on size of the population in each region. The lowest number of FSLA lawyers-attorneys is presently in the Volyn region (i.e. 49 persons) with the highest in Dnipropetrovs'k (i.e. 178 persons). In terms of gender distribution, male lawyers-attorneys for the majority of the lawyers-attorneys in all regions of Ukraine. The region with the highest representation of female lawyers-attorneys is Kharkiv at 48%.

²⁰ Data does not include the ARC FSLAC and the FSLAC in Sevastopol. As of March 2014, there were 135 and 55 lawyers engaged by the Crimean and Sevastopol FSLACs, respectively.

Figure 13. Distribution of FSLA Lawyers-Attorneys (Providing FLA in Criminal Cases) by Region and by Gender.²¹



²¹ Data as of September 2014; data on Crimea – as of March 2014

1.5 Legal Aid Eligibility and Legal Aid Clients

Eligibility criteria for primary and secondary legal aid, as outlined in Ukrainian legislation, are described below.

Free primary legal aid: In compliance with the Constitution of Ukraine (article 59) and the Law “On Free Legal Aid”, the right to free primary legal aid is guaranteed to all individuals who are under the jurisdiction of Ukraine. This includes all citizens of Ukraine as well as foreigners, stateless persons, and refugees (regardless of their social/financial status).

Free secondary legal aid in criminal matters: The Law “On Free Legal Aid” guarantees access to free secondary legal aid in criminal cases to the following individuals (regardless of their social/financial status)²²:

- Individuals subject to administrative detention or administrative arrest;
- Detained individuals, suspected and accused persons;
- Individuals taken into custody as a preventive measure; and
- Persons within criminal proceedings where a defence lawyer is to be obligatorily appointed by request from an investigator, public prosecutor, investigative judge or the court according to the *Criminal Procedure Code of Ukraine* in order to provide defence by request or for the purpose of separate legal procedural actions.

Article 52 of the new *Criminal Procedure Code* sets up conditions for the mandatory participation of a defence (FSLA) lawyer-attorney in criminal proceedings related to crimes of a grave severity. In such cases, participation of a defence lawyer-attorney is ensured and obligatory from the time when a person is identified as a suspect. These cases apply to the following category of people:

- A person under 18 years and who is suspected or charged of a criminal offence;
- A person subject to compulsory remedial actions;
- A person who is unable to fully enjoy his/her rights as a result of mental or physical disabilities (i.e. deafness, blindness, etc.);
- A person who has no knowledge of the language in which criminal proceedings are conducted;
- A person subject to compulsory medical measures or where the application of such measures is considered – upon establishing that the person concerned is insane or other information giving ground to doubt the person’s criminal capacity; and
- In connection with the discharge of a deceased person.

Table 3, below, illustrates some detailed statistical data on the provision of free secondary legal aid in criminal cases since the launch of the system in January 2013.

²² The right to free secondary legal aid shall be granted to citizens of the countries with which Ukraine has signed the relevant international treaties on legal aid, ratified by the Verkhovna Rada of Ukraine, as well as foreigners and stateless citizens in accordance with international treaties to which is Ukraine is a party, if such treaties prescribe free legal aid to be provided by the participating states to certain categories of persons.

Table 3. Selected Statistical Data on Secondary Legal Aid Provision in 2013-2014

Type of legal aid access	2013	2014 ²³
Early access to legal aid for all detained/arrested individuals		
Crime Suspect Detention	22,498	12,893
Administrative Detention	9,935	5,702
Administrative Arrest	no data	4,616
Access to legal aid for suspected/accused individuals upon their request and/or decision of an investigator, public prosecutor, investigative judge or court		
Engagement of FSLA defence lawyers by appointment	42,261	28,501
Participation of FSLA defence lawyers in separate procedural action	2,184	1,921
Total	76,878	53,633

Free secondary legal aid in civil and administrative matters: Provision of free secondary legal aid in civil and administrative matters is expected to be launched on January 1, 2015. As it is in the majority of criminal cases, the FSLA in civil and administrative cases will be dedicated to the most vulnerable population of Ukraine which is estimated at 7.1 million people (i.e. approximately 16.5% of the total Ukrainian population²⁴). The list of groups (as identified in the Law “On Free Legal Aid”) eligible for FSLA in civil and administrative cases as well as the estimated number of potential clients per each group is provided below.

Table 4. FSLA Clients in Civil and Administrative Cases

Timeframe	Client category	Estimated number of people per category
January 2015 – onwards (gradual implementation to January 2017)	Individuals under the jurisdiction of Ukraine if the average monthly income of their families is lower than the minimum subsistence (i.e. less than 1218 UAH/month as of 2014);	5,100,000 ²⁵
	Disabled persons whose pension is less than two minimum subsistence levels for the disabled (i.e. less than 2 x 949 UAH/month as of 2014)	
	Orphaned children, children whose parents lost their parental rights, and children that may become or have become victims of family violence	100,000*
	Individuals related to the Law of Ukraine On <i>Refugees</i> (until a decision is made on granting them refugee status or the person appeals against a refugee status granting decision)	3,000*

²³ Data relates to the January to August 2014 period.

²⁴ As of June 2014, the Ukrainian population is estimated at 42,9 million people.

²⁵ This data and the estimation below are provided according to the State Statistic Service of Ukraine, “Social security of the people of Ukraine” statistical summary report for 2006-2014.

War veterans and individuals indicates in the Law On the Status of War Veterans and Guarantees of their Social Protection, individuals with special merits, those who have rendered special labour services to the country, and victims of Nazi persecution	1,800,00*
Individuals in relation to whom the court is considering restriction of one's civil capability , recognition of an individual as incapable, and recovery of person's civil capability	6,000**
Individuals in relation to whom the court is considering rendering forced psychiatric care	5,000**
Individuals rehabilitated in accordance with the legislation of Ukraine	1,100**
Total	7,100,000

*State Statistics Service data.

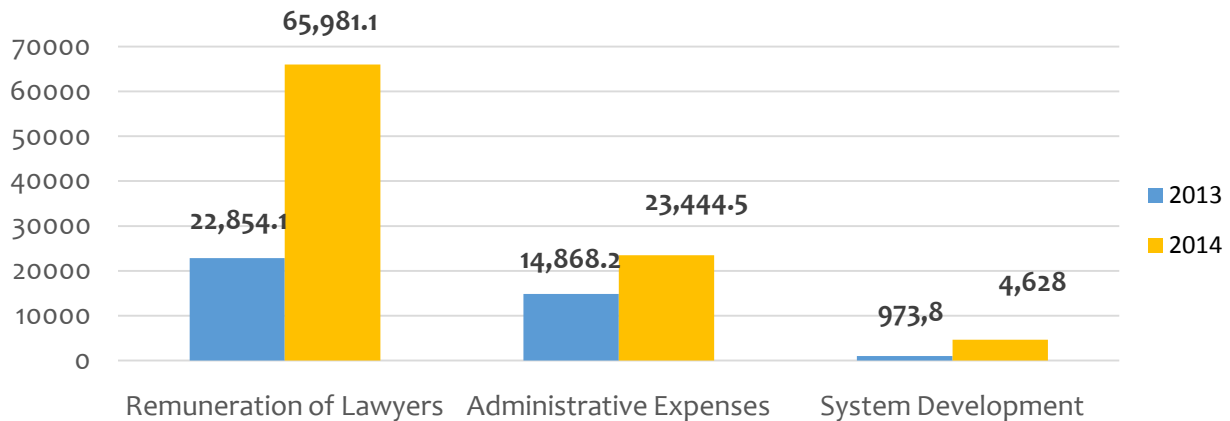
**Data was provided to CCLAP by relevant government authorities.

1.6 Funding of the FLA System

In efforts to implement the Law “On Free Legal Aid”, approximately 70 million UAH were allocated in the State Budget for development and implementation of the system in 2013 (i.e. the first year of the system’s operation), and approximately 94 million UAH for 2014. It should be noted, however, that in 2013 the FSLA system received 38.7 million UAH, which represented only 54% of the allocated funds. While it is still too early to assess what portion of funds allocated to the FSLA system for 2014 will be actually transferred from the State Budget, to date, the system has received already 49.8 million UAH representing 53% of funds allocated for 2014.

As shown in the chart below, there has been a noticeable increase in allocations for the remuneration of lawyers-attorneys in 2014 in comparison to 2013 (i.e. 67% increase).

Figure 14. Actual Expenditures of the FSLA System in 2013 and Projected Expenditures for 2014 (in thousand UAH)



It is important to note that in 2014 funds allocated to system development, including development of the complex information system (CIAS), have been drastically reduced in comparison to 2013. No new funds were received/spent on the complex information analytical system development in 2014. Funds allocated in the 2014 budget for CIAS were spent to cover expenses which were generated in 2013.

Moreover, in both the 2013 and 2014 budgets, no resources have been allocated towards promoting public awareness of the legal aid system, the training for lawyers-attorneys providing legal aid services and the development of CCLAP and FSLACs staff. During this period, some training needs and public awareness efforts have been covered with support from the international donor community.

Table 5. FSLA Budget for 2013 and 2014 (in thousand UAH)

Category of expenses	2013			2014		
	Allocated	Received/Spent	% of allocated budget	Allocated*	Received/Spent	% of allocated budget
Operation of the FLA System	41,884.8	15,842	38%	28,072.5	16,517.7	58.4%
Consumption (administrative) expenses	17,184.8	14,868.2	86.5%	23,444.5	13,534.2	57.7%
System Development (including CIAS)	24,700	973.8	3.9%	4,628	3,013.5	65.1%
Complex Information Analytical System (CIAS)	15,700	656.1	4.2%	3475.6	2,541.1 ²⁶	73.1%
Remuneration of lawyers-attorneys and reimbursement expenses	28,891.8	22,854.1	79.1%	65,981	33,336.5	50.5%
TOTAL	70,776.6	38,696.1	54.7%	94,053.6	49,854.2	53%

*These figures represent budgetary allocations for 2014 after the third round of revisions to the State Budget.

²⁶ Funds allocated for CIAS in 2014 were spent to cover expenses from 2013. No new funds were received/spent for CIAS in 2014.

1.7 External Stakeholders of the FLA System

1.7.1 Bar Associations

Ukrainian National Bar Association (UNBA): The UNBA is a non-governmental, non-profit professional organization aimed at ensuring the implementation of lawyers-attorneys' self-governance. Membership in the UNBA is mandatory for all certified Ukrainian lawyers-attorneys upon taking the oath of the lawyer-attorney.²⁷. According to its official register, the UNBA has approximately 30,000 registered members.

The UNBA is a legal entity, which acts through different forms of bar self-governance. The UNBA organises, coordinates and ensures activities of the bar's self-government bodies, identified in the Law "On Bar and Lawyers-Attorneys Activities"), which include:

- the Congress of Bar of Ukraine - the supreme self-governmental body of lawyers-attorneys of Ukraine, that gathers at least once every three years and make decisions on the chairpersonship and members of the Council of Ukraine, approves statute of UNBA, approves the rules of conduct, etc.;
- regional Bar conferences;
- Bar Council of Ukraine and Regional Bar Councils;
- Regional Qualification and Disciplinary Commissions of the Bar and the Supreme Qualification and Disciplinary Commission of the Bar;
- Regional Revision/ Audit Commissions of Bar and the Supreme Revision/ Audit Commission of the Bar.

Regional Qualification and Disciplinary Commission of the Bar reports and is accountable to the Bar Conference. The Commission evaluates the professional skills of persons seeking to acquire the right to become a lawyer-attorney and considers disciplinary issues related lawyers-attorneys.

The Supreme Qualification and Disciplinary Commission of the Bar is accountable to the Bar Congress. The Commission considers complaints regarding the decisions, actions or omissions of the qualification and disciplinary commissions of the bar.

Regional Revision/ Audit Commissions of Bar is accountable to Bar Conference. The Commission was created and acts with the purpose of controlling the financial and business activities of the regional bar council and the qualification and disciplinary commission of the bar.

The Supreme Revision/Audit Commission of the Bar of Ukraine is accountable to the Bar Congress. The Commission controls the financial and business activities of the UNBA, its bodies, the regional bar councils, the Bar Council of Ukraine, the qualification and disciplinary commissions of the bar, the High Qualification and Disciplinary Commission of the Bar, and activities of the regional audit commissions.

The Ministry of Justice of Ukraine and the UNBA have a Memorandum of Cooperation wherein the UNBA commits to share information; comply with guarantees of attorneys activities and the protection of their professional rights; develop and implement standards of quality for FLA provision; monitor and evaluate the quality of FLA provision; and the upgrading of qualifications (training and development) of lawyers-

²⁷ This requirement is set out in the Law "On Bar and Lawyers-Attorneys Activities" (#5076, dated July 5, 2012).

attorneys. The Bar Council of Ukraine, an implementing body of the UNBA, and CCLAP are responsible for the implementation of this Memorandum.

Bar Association of Legal Aid Providers (BALAP): The BALAP was established in May 2014 by a group of 29 lawyers-attorneys (representing all regions of Ukraine) currently providing free secondary legal aid and who are simultaneously acting as lawyers-trainers conducting trainings for the community of free legal aid lawyers-attorneys in Ukraine. As of September 2014, the BALAP is in the process of member registration, most of them FSLA lawyers-attorneys. The key objectives of the BALAP are: the development and dissemination of a culture of common values; promotion of the highest standards of professional ethics and quality of legal assistance; the sharing of European principles and best practices of legal aid; the promotion of transparency, fairness, mutual trust and the prevention of corruption within the legal aid system; the facilitation of increase in confidence and trust in the lawyer-attorney profession within society; the promotion and improvement of the quality standards for legal aid provision among lawyers-attorneys; the continuous professional development of lawyers-attorneys, regular experience sharing, and the formulation of joint defence strategies and tactics; the facilitation of effective primary legal aid provision by local self-governments; support in effective engagement with the Ukrainian National Bar Association, Bar Council of Ukraine (BCA), Regional Bar Councils (RBCs), the Ministry of Justice of Ukraine, the Coordination Center for Legal Aid Provision, the Free Secondary Legal Aid Centers; and the promotion of public legal awareness among Ukrainian citizens about their rights and the FLA available to them.

Beyond the above-noted organizations, other significant professional association available for membership to lawyers include: the Union of Lawyers of Ukraine, established in 1991; the Ukrainian Advocates Association, established in 2006; the Union of Advocates of Ukraine, established in 2006; and the Association of Lawyers of Ukraine called the Ukrainian Bar Association, established in 2004.

1.7.2 Law Enforcement Bodies

There are a number of bodies in Ukraine with a right to detain people. These include the police, prosecutors, as well as several state agencies, such as the Service of Security of Ukraine, and the State Border Services, etc. While it is essential for these bodies to comply with the law, they still tend to enforce a Soviet-style approach to criminal justice. The approach is often displayed through lack of understanding of basic human rights, limited accountability in cases of abuse of power, and misperception in what actually constitutes performance results.

As of March 2013, the total number of law enforcement personnel within the staff of the Ministry of Interior was estimated at 324,400, which translates into 786 police officers for every 100,000 population in Ukraine. According to UN statistics²⁸, in other countries with a similar political and economic situation, the number of internal affairs staff is two to three times smaller. While the previous leadership at the Ministry claimed the need to increase the number of investigators by up to 65% (i.e. from 15,000 in 2012 to up to 23,000 in 2013), independent experts in Ukraine advocate for substantially reducing this number. Also, some experts from the Centre for Political and Legal Reforms, one of the leading think-tanks in Ukraine, stress an

²⁸ International Statistics on Crime and Justice, UN Office on Crime and Drugs, and European Institute for Crime Prevention and Control Report, 2010.

importance to revise the training methodology for law enforcement bodies, particularly the police. Currently, the education and training of law enforcers is carried out by older investigators who still rely on Soviet-style practices, including the abuse of human rights and torture.

According to the new *Criminal Procedure Code*, one of the functions of the court is to ensure the protection of human rights and freedoms in the criminal process at the pre-trial stage. This function will be performed through the newly created position of investigative judge. It is envisioned that such position will be established in every court of the 1st instance and to be performed by the Head (or other judge upon the Head's decision) of the Appeal Courts within oblasts, Crimea, Kyiv and Sevastopol. The key role of the investigative judge will be to consider issues regarding the application, change or cancellation of measures of the criminal process (including preventive measures); oversee the compliance of the law in cases of detention and custody; make decisions to conduct separate investigative activities in a pre-trial period; consider complaints of the actions or inactions of investigators or prosecutors; decide on the placement of minors at a remand house and the sending of individuals to medical institutions for psychiatric evaluation.

1.7.3 Ukrainian Parliament Commissioner for Human Rights (Ombudsman)

The Ukrainian Parliament Commissioner for Human Rights (Ombudsman) is considered to be an independent player in the system of human rights protection, especially in the context of criminal proceedings and combating torture. The Ombudsman may oversee the activities of officials from all state authorities and local self-governments, as well as judges (i.e. violations of the terms of case consideration and compliance with procedural standards). The Ombudsman conducts inquiries and investigations (initiated either by the Ombudsman or according to petitions of Ukrainian citizens, foreigners, stateless persons and their representatives, MPs). According to the data available for 2012, a total number of 29,644 petitions were submitted to the Ombudsman in that year related to the violation of civil rights (54,7%), economic rights (14,4%), social rights (13,1%) and personal rights (12,6%).

A Memorandum of Cooperation has been signed between the CCLAP and the Ombudsman envisaging collaboration between the two institutions in monitoring FSLA, identifying systematic violations, its reasons and impacts; the drafting of proposals for executive and local-self-government bodies for the prevention of such cases; the drafting other laws and regulations in the field; cooperation with NGOs in the identification of best practices; the organization of joint events to increase public awareness on human rights and the right to FLA.

Under the Ombudsman, the **National Preventive Mechanism against Tortures (NPM) was established**²⁹. The Ombudsman manages and coordinates the NPM system. The Ombudsman has a representative – the head of a department within Ombudsman Secretariat - on the implementation of the national preventive mechanism. The NPM acts according to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The department conducts monitoring with respect to human rights in custodial settings³⁰, and organizes and conducts scheduled and ad hoc³¹ visits to

²⁹<https://www.facebook.com/NPMUkraine>

³⁰There are more than 6 thousands of custodial settings in Ukraine. They include not only prisons, but hospitals, orphanages, houses for elderlies – institutions which they inhabitants can't leave if they want. Ombudsmen representative stated, that

custodial settings for the prevention of ill-treatment. The department can engage nongovernmental organizations in these activities (currently there are 150 volunteers who went through relevant trainings and were engaged in monitoring). The department develops recommendations for the elimination of violations and drafts the Ombudsman's annual and special addresses to the Parliament of Ukraine, and prepares annual reports and other materials.

The Expert Council for National Preventive Mechanism Implementation was created under the Ombudsman to provide consultancy support, conduct research and develop proposals with regard to the National Preventive Mechanism against Tortures.³² The Expert Council includes representatives of NGOs with considerable experience in human rights monitoring in custodial settings. The Expert Council also engages experts of a number of international and inter-governmental organizations that monitor human rights to work as observers.

1.7.4 Civil Society and Non-Governmental Organizations

According to the state statistics on NGO's operating in Ukraine, there are 87,572 NGOs, including 1,857 dealing with vulnerable groups (i.e. children, women, veterans, etc.). The Civil Space³³ portal, a nongovernmental web initiative, alternatively, lists a total of 949 NGOs that focus on vulnerable groups. While the key field of work has not changed much over the course of the past decade, the number of NGOs dealing with social issues and human rights seems to be decreasing, overall.

The Ukrainian Legal Aid Foundation (ULAF): Since its creation in 2011, ULAF has implemented several projects to support FSLA development in cooperation with the CCLAP and with financial support from different donors. Said projects have included cascading trainings for lawyers-attorneys, inter-rayon seminars for quality managers and the development and publication of quality standards, guidelines, posters, booklets, stickers, video ads, media articles, etc. ULAF also cooperates with legal clinics in order to develop their network and strengthen their capacity, as well as improve their training approach and outreach. ULAF's project portfolio includes a project on Pro Bono development, the creation and provision of support to Ukrainian Pro Bono Clearing House (a communicative platform based on the website <http://pro-bono.in.ua/>)³⁴.

Centre for Political and Legal Reforms (CPLR): Created in 1996, CPLR is a think-tank that proactively promotes the implementation of the reform agenda in Ukraine in areas such as constitutional law, public administration, the judiciary, criminal justice, access to public information and e-government, combating corruption, and European integration. CPLR develops policy proposals, drafts legal acts and monitors their implementation; conducts research; produces publications; provides legal positions on the request of judges of the Constitutional Court of Ukraine and expert opinions on the request of ministries and others authorities; conducts public awareness activities and monitors the actions of authorities on compliance

unfortunately cruel attitude is not only about policemen; last year 30 isolators for temporary holding and 5 remand houses were closed because their conditions did not complied with legislation requirements.

³¹ Since the creation of the mechanism in 2012 monitoring visits could be conducted without prior notice.

³² <http://www.facebook.com/NPMUkraine>

³³ www.civilua.org

³⁴ www.ulaf.org.ua; <https://www.facebook.com/UkrainianLegalAidFoundation?fref=ts>

with the Constitution. CPLR's experts were engaged in drafting the new CPC and monitoring the implementation of the CPC implementation³⁵. In addition, they were engaged in the independent assessment of the functioning of the FSLA system (in cooperation with ULAF and UHHRU).

Public Association Ukrainian Helsinki Human Rights Union (UHHRU): The UHHRU, established in 2001, is the largest Ukrainian association for human rights protection comprised of 29 non-governmental human rights organizations, including the Kharkiv Human Rights Group (which is one of the founders of UHHRU). In cooperation with the CCLAP and ULAF, the UHHRU has piloted a peer review of FSLA lawyers-attorneys and participated in the independent assessment of the functioning of the FSLA system. The organization has legal consultation offices all over Ukraine (in 12 oblasts) which provide legal information and consultations as well as assistance in the drafting of legal documents, including appeals to the European Court of Human Rights. In some cases, the UHHRU provides a defence lawyer to intermediate the rights of a person in court.

Open Civic Platform on Development of the Ukrainian Free Legal Aid System (Civic Platform): In March 2014 the Civic Platform was created to bring together representatives of civil society with the aim of raising public awareness of legal aid; overseeing the development of the legal aid system, coordinating efforts of interested experts and organizations in sharing information; enabling learning on best practices; conducting research and disseminating information; maintaining a professional dialogue on legal aid challenges, and fostering the effective development of the FLA system.

Network of Centers for Legal Information and Consultations (CLIC): In 2009, a network of centers for legal information and consultations was established by heads of 8 CLICs to combine their efforts and develop a common approach in the provision of primary legal aid at the community level as well as to work on the standardization of processes and procedures, including the development of standards for primary legal aid provision.

Legal Clinics: According to some statistical data, there are approximately 100 legal clinics in Ukraine. Although many of them have existed since the mid-1990s, they operate outside of *The Law On Free Legal Aid*, and as such are not considered to be equal stakeholders of the system. The operations of legal clinics are regulated by the Ministry of Education (i.e. Typical Regulation on Legal Clinics, Ethical Code, etc.), but their activities are not standardized and many of them fall outside the system as not all of them represent a structural unit of relevant higher education institutions. The outreach of the clinics is rather limited and their activities are often interrupted due to summer breaks. Legal clinics do not collect data on the services they provide.

³⁵<http://www.en.pravo.org.ua/index.php/activities> ; <http://www.en.pravo.org.ua/index.php/criminal-justice>

2.0 HUMAN RESOURCES CAPACITY OF THE LEGAL AID SYSTEM

2.1 Legal Framework

One of the key objectives of the State Targeted Program for FLA System Development for 2013-2017 is to introduce a mechanism of ongoing training, professional education and development (upgrading of qualifications) for lawyers engaged in the provision of free legal aid as well as employees of the CCLAP and FSLACs. The Program identifies a number of activities intended to reach this objective, such as the development and improvement of relevant training programs, the organization of workshops focused on specific topics and in-service training, including training on management issues for all managers of the FSLACs.

The projected cost of providing training to FSLA lawyers as well as staff of the CCLAP and FSLACs, as outlined in the State Program, is 36 million UAH annually (from other sources, outside of the State Budget) and 2.6 million UAH (from the State Budget), respectively. No funds have been allocated in the State Budget for 2013 and 2014 to conduct the above-mentioned training. To date, contributions from the international donors have been the primary source of funding in support of the training for FSLA lawyers.

In line with the Law, the CCLAP has been tasked with providing training, methodological and consultative support to FSLA lawyers, the personnel of the regional FSLACs, employees of local self-government bodies and specialized entities providing primary legal aid, as well as organizing conferences and other information sharing events in the area of legal aid.

The *Law On the Bar and Lawyers' Activity*³⁶ obliges all lawyers to upgrade their professional qualifications on a regular basis. According to the procedure approved by the Bar Council of Ukraine³⁷, all lawyers in Ukraine are required to collect at least 30 points related to their participation in recognized training within a 3-year period (a minimum of 10 points within a year) and report on their training activities annually. In the event that these requirements are not met, lawyers risk the termination of their professional certificate respecting the right to perform the functions of a lawyer. There are a number of institutions and organizations (such as the UNBA), other professional associations of lawyers, and selected higher education institutions that provide training/workshops for lawyers.

As indicated previously in the overview report, the Memorandum of Cooperation between the Ministry of Justice and the UNBA facilitates cooperation between the two bodies with respect to the upgrading of qualifications for FSLA lawyers. More specifically, the parties have agreed that the CCLAP and FSLACs are considered to be certified organizers and providers of training to FSLA lawyers. This signifies that lawyers' participation in training events organized by the CCLAP and FSLACs counts towards the requirements for the upgrading of qualifications for lawyers. The Memorandum also stipulates that guidelines, methodological recommendations and other training materials for lawyers developed by one of the parties can be shared and published (at the institution's own expense and respecting copyright law).

³⁶ Law of Ukraine On the Bar and (Defence) Lawyers' Activity³⁶, #5076-VI, Article 21, dated July 5, 2012.

³⁷ Decision # 85 of the Bar Council of Ukraine, dated February 16, 2013 and amended by Decision #219, dated September 27, 2013 (*Procedure of Qualification Upgrade of Lawyers-Attorneys of Ukraine*).

Forty-three (43) FSLA trainers-lawyers were certified by the UNBA on CCLAP's request to serve as individual experts recognized by the UNBA to conduct trainings for all lawyers in Ukraine on criminal procedure matters. The UNBA regularly invites FSLA trainers-lawyers to conduct trainings organized by the UNBA.

2.2 Lawyers

The primary source of information on FSLA lawyers is the Registry of FSLA lawyers maintained by the CCLAP, at the central level, and by the Main Divisions of Justice, at the local level. According to the Registry, there are currently 3,889 lawyers who qualify to provide free legal aid (i.e. lawyers who have successfully passed a competition for FSLA lawyers). Out of this group, 2,180 lawyers have been formally engaged (contracted) by FSLACs to provide legal aid in criminal cases³⁸. It is expected that an additional group of at least 2,000 will be required to meet the expected demand associated with the launch of FSLA in civil and administrative cases.

Currently, the key recipients of training within the FLA system are lawyers providing FSLA in criminal cases. They participate in trainings and other learning events organized by the CCLAP on a voluntary basis and free of charge. Similarly, there are no limitations in place with regard to FSLA lawyers participating in training events organized by other stakeholders, such as the UNBA.

There are three mechanisms employed by the CCLAP to strengthen the capacity of FSLA lawyers:

- 1) Ad-hoc learning events;
- 2) Comprehensive training events (ToT and cascade trainings); and
- 3) Methodological and consultation support.

Ad-hoc Learning Events

Ad-hoc learning events are informal learning events that include trainings, workshops, roundtables, etc. These events usually have a limited scope and coverage. Table 6 below illustrates the local training events organized by the CCLAP to date.

³⁸ Data as of September 2014.

Table 6. Ad-hoc Learning Events for FSLA Lawyers-Attorneys

Event Details	Topic	Audience
<p>Series of trainings (4) organized in cooperation with the OSCE Project Co-ordinator in Ukraine (PCU) and MDJs</p> <p>October to November 2012</p>	<ul style="list-style-type: none"> Support to legal aid system development in Ukraine 	<p>FSLA lawyers from Donetsk oblast, ARC and Sevastopol, Odesa and L’viv oblasts</p>
<p>Series of round tables (10)</p> <p>May 2013</p>	<ul style="list-style-type: none"> “Implementation of the New Criminal Code based on free secondary legal aid provision practice” 	<p>Multi-stakeholder group (judges, lawyers, prosecutors and police) in different regions</p>
<p>Series of 2–day trainings (8) organized in cooperation with the American Bar Association Rule of Law Initiative with the support of 6 FSLACs</p> <p>April to May 2013</p>	<ul style="list-style-type: none"> “Effective Criminal Defence”, including sessions on: <ul style="list-style-type: none"> European Court practices in application of criminal proceedings principles; Defence as a party to criminal proceedings and amendments to the law of evidence; Actions to ensure criminal proceedings and challenge decisions, actions or omission thereof of investigators, public prosecutors or investigative judges; Certain investigative (detective), undercover investigative (detective) and court actions.³⁹ 	<p>270 FSLA lawyers from 6 regions of Ukraine (Poltava, Dnipropetrovs’k, Sumy, Kherson, Vinnytsia and Volyn’ oblasts)</p>
<p>2-day training (2) conducted by the OPDAT, US Embassy</p> <p>June 2014</p>	<ul style="list-style-type: none"> “Practical Aspects of Adversarial Criminal Proceedings”, including sessions on: <ul style="list-style-type: none"> Sources of interpretation of criminal law; Admissibility of evidence/general principles of admissibility, disclosure of convictions and exculpatory evidence; Standards of proof, preparation of witnesses; Direct examination of witnesses; Principles of successful cross examination. 	<p>37 FSLA lawyers, Prosecutors from 2 regions (L’viv and Cherkassy)</p>

Comprehensive Training Events – Cascade Training Model

Comprehensive training events are intended to cover all regions of Ukraine and capture the maximum possible number of FSLA lawyers. With no funds available from the State Budget to cover this type of training, an innovative approach was developed by the CCLAP in early 2013 which called for a creation of a pool (network) of FSLA lawyers, representing all regions of Ukraine, who would be trained to become trainers. Upon completion of their training, these lawyers-trainers would be responsible for delivering cascade trainings to FSLA lawyers across all regions of Ukraine.

In an effort to ensure that the pool of lawyers-trainers consisted of the most knowledgeable and skilled individuals (in terms of communication skills and expertise in criminal law), an open competition was

³⁹ The American Bar Association Rule of Law Initiative in cooperation with CCLAP is considering the possibility of developing a distance learning mechanism.

conducted by the CCLAP to select prospective trainers⁴⁰. As a result, a group of sixty (60) lawyers-trainers was selected capturing lawyers representing all regions of Ukraine (i.e. a minimum of two (2) lawyers-trainers per region).

Figure 15. Lawyers-Trainers, by gender

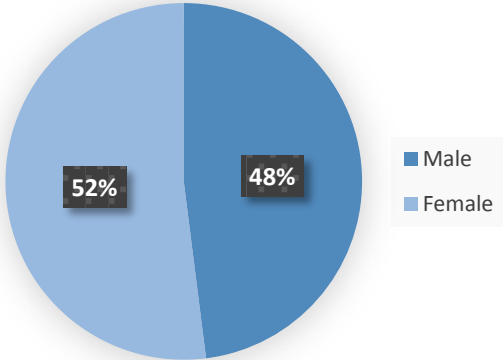
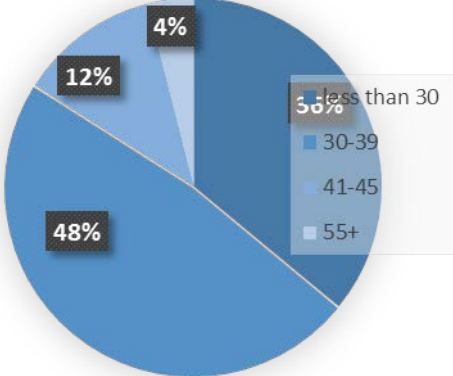


Figure 16. Lawyers-Trainers, by age



It is expected that once the second stage of the FSLA system is launched and an additional 2,000 lawyers are engaged to provide legal aid, particularly in civil and administrative cases, a new pool of at least 120 lawyers-trainers (who specialize in civil and administrative law) will need to be created.

To date, a total of seven (7) training-of-trainers (ToT) sessions for lawyers-trainers have been organized (with organizational and expert support from ULAF), with a consequent 159 cascade trainings having been delivered across Ukraine. It should be noted that while ToTs have been organized with financial support from international donors⁴¹, the majority of the cascade trainings were delivered without any financial support from either the State Budget or international donors.

Schedules and materials related to the ToT sessions and cascade trainings as well as the list of lawyers-trainers and brief reports on the trainings are available on the CCLAP website.⁴²

More details on topics and structure of the ToT sessions and the subsequent cascade trainings are provided in the Table 7 below.

⁴⁰ With support from Council of Europe.
⁴¹ The ToTs sessions for lawyers-trainers were organized with methodological and financial support from the Council of Europe Project “Support to the criminal justice reform”, ABA ROLI, European Union, International Renaissance Foundation (IRF), and Ukrainian Legal Aid Foundation (ULAF).
⁴² <http://legalaid.gov.ua/ua/merezha-obminu-dosvidom/materialy-treninhiv>.

Table 7. Cascade trainings for FSLA lawyers

ToT Sessions in Kyiv	Trainings in the Regions
<p>New Criminal Procedure Code of Ukraine: consideration and application in the light of the ECHR standards (June 6-8, 2013)</p>	<p>Topics:</p> <ul style="list-style-type: none"> • Actions of lawyers in case of detention of a person suspected of having committed a criminal offence • Actions of lawyers in selecting, extending, cancelling or changing preventive measures <p>73 trainings conducted (September to November 2013)</p> <p>1,203 participants</p>
<p>Training methodology: Planning and delivery of trainings on application of the new Criminal Procedure Code of Ukraine (July 5-6, 2013)</p>	
<p>Methodological recommendations for lawyers providing secondary legal aid (August 22, 2013)</p>	
<p>Psychology of interrogation (October 10-11, 2013)</p>	<p>A few pilot trainings were conducted at the oblast level, but later terminated.⁴³</p>
<p>Actions of lawyers in a trial (February 1-3 and March 1-2, 2014)</p>	<p>Same topic as the ToT session.</p> <p>50 trainings conducted (March to April 2014) 1,248 participants from 6 regions of Ukraine</p>
<p>Actions of lawyers regarding application of measures to ensure criminal proceedings, appeals against decision, actions or inactions of investigator, prosecutor and investigative judge; review of court decision (May 17-19 and June 21-22, 2014)</p>	<p>Same topics as the ToT session.</p> <p>38 trainings conducted (June to July 2014) 1,106 participants</p>
<p>Actions of lawyers in criminal proceedings based on agreement with application of separate measures of criminal and legal influence ensuring of access to appropriate medical support⁴⁴ (September 13-15 and 27-28, 2014)</p>	<p>Same topics as the ToT session.</p> <p>Regional trainings are planned for October 2014</p>

As evidenced in Table 7 above, the cascade trainings have almost exclusively targeted the content and procedural aspects of the implementation of the new *Criminal Procedure Code* in light of the case law of

⁴³Cascade training on this topic have been cancelled as it was found that the trainers need more knowledge and skills to deliver this type of training.

⁴⁴ In March 2014, ULAF in cooperation with IRF conducted training on Legal Empowerment of Vulnerable Groups for 35 lawyers from the city of Kyiv FSLAC. Materials for this training were incorporated into the ToT session in September 2014.

ECHR. There is no systematic approach to assessing the learning needs of FSLA lawyers and selecting relevant training topics.

More recently, in addition to the ToTs and cascade trainings, the CCLAP and FSLACs have organized 77 workshops to present quality standards (QS) for FSLA lawyers-attorneys across Ukraine. A total of 1,200 lawyers-attorneys have participated in the workshops to date. As a result of participation in these trainings, every FSLA lawyer is familiar with quality standards and how to apply them in their work. Prior to the workshops mentioned above, an initial workshop-training with quality managers was conducted in June of 2014 by CCLAP in cooperation with IRF and ULAF. Through the training, organizers sought to create a joint vision for QS implementation, to facilitate quality manager team building, to plan the work of quality managers for 2014, to develop different QS monitoring instruments, and to develop a common training deck to be employed for cascading workshops at the local level.

Finally, in August 2014 two FSLA lawyers participated in a 3-week study visit to the United States to explore the operation of the American legal aid system. This visit was organized and funded by the OPDAT Justice Reform Program.

During the Project's Inception Mission to Ukraine in July 2014, the need to conduct learning needs assessment of target audiences was identified by some FSLA lawyers. The lawyers reported limited knowledge on how to deal with various groups of clients, such as drug addicts, people with mental disabilities, people who are suicidal, minors, people with transmittable diseases (i.e. HIV/AIDS, tuberculosis), etc. Others, particularly lawyers-trainers, indicated the need to receive more training on "soft skills", such as training/facilitation skills; effective public speaking and listening skills; mediation skills, etc.

It was also identified that measurement and evaluation of training effectiveness is virtually non-existent. At the outset, post-training questionnaires were distributed among training participants, but since neither the CCLAP nor the FSLACs had human and/or financial capacity to collect and analyze the participants' feedback, this practice was eventually dropped.

Methodological and Consultation Support

In efforts to share best practices and to support the on-going training of FSLA lawyers, the CCLAP has decided to develop guidelines (methodological recommendations) for FSLA lawyers. The subject matter of the guidelines is aligned with the topics of the cascade trainings.

The CCLAP, in consultation with other stakeholders, has identified approximately 20 topics for new guidelines as relevant to the learning needs of the FSLA lawyers' community. The provisional list of subjects for guidelines is provided below in Table 8.

Table 8. Provisional List of Methodological Guidelines for FSLA Lawyers

Subject of the Methodological Guidelines
<i>Developed, published and disseminated</i> ⁴⁵
<ul style="list-style-type: none"> • Activities of a defence lawyer in the case of detention of a person suspected of having committed a criminal offence. • Actions of a defence lawyer in making a decision on choosing, extension, cancellation or change of the preventive measure.
<i>Developed and ready for publishing</i>
<ul style="list-style-type: none"> ▪ Introduction of a defence lawyer into a case: initial actions; ▪ Practice of keeping records by a defence lawyer; ▪ Actions of a defence lawyer in criminal proceedings for juveniles/ involving minors; ▪ Actions of a defence lawyer in a court proceeding in the court of 1st instance.
<i>Under consultation with FSLA lawyers</i>
<ul style="list-style-type: none"> ▪ Activities of a defence lawyer with regard to appeal on actions, decisions or inactions of prosecutors, investigators, investigative judges; ▪ Actions of a defence lawyer in the criminal process during the appeal and cassation process; ▪ Actions of a defence lawyer in the criminal process in the Supreme Court.
<i>Under development</i>
<ul style="list-style-type: none"> ▪ Actions of a defence lawyer on the application of the measures to ensure the criminal proceedings; ▪ Actions of a defence lawyer with respect to applying specific measures of criminal sanction, particularly application of compulsory medical measures and compulsory treatment; ▪ Actions of a defence lawyer on access to adequate health care; ▪ Actions of a defence lawyer in provision of proof on provision of evidence (adducing evidence) at different stages of criminal proceedings (the collection of evidence and advocate's investigation); ▪ Actions of a defence lawyer in criminal proceedings based on reconciliation agreements and plea bargains; ▪ Procedures for appeal to the European Court of Human Rights, eligibility criteria; ▪ Defence lawyer's safety (hygiene and psychology issues).
<i>Under planning</i>
<ul style="list-style-type: none"> • Actions of a defence lawyer in criminal proceedings with clients with substance addiction; • Application of the European Court on Human Rights' practices in the criminal process; • Actions of a defence lawyer in criminal proceedings related to property crimes; • Actions of a defence lawyer in criminal proceedings related to an offence against human life and health; • Actions of a defence lawyer in criminal proceedings related to sex crimes, etc.

As a complement to the above-noted guidelines, the CCLAP is active in providing consultation support to FSLA lawyers via social media. For instance, the CCLAP moderates a few groups on Facebook which serve not only as discussion forums, but also as a social Q&A tool on FLA-related issues. It is also worth noting

⁴⁵ Both guidelines have been developed by FSLA lawyers and published with financial support from the ULAF, IRF and the Council of Europe Project. They are available online (i.e. CCLAP and ULAF websites) and hard copies are disseminated among FSLA lawyers free of charge.

that, particularly at the onset of the FLA system's operation, some directors of the FSLACs (who are lawyers themselves) have been offering consultations to young FSLA lawyers on defence issues.

2.3 Coordination Center for Legal Aid Provision

As of September 2014, the CCLAP has had a total of 26 employees⁴⁶, including 5 senior management staff (the CCLAP Director, 3 Deputy Directors and a Chief Accountant).

The Project's front end assessment revealed that to date none of the CCLAP staff have received formal training in the area of FLA. However, senior management at the CCLAP has been exposed to some training through their participation (as observers) in selected ToT sessions for FSLA lawyers-trainers. Additionally, in August 2014, the director of the CCLAP, a deputy director and a head of division participated in a 3-week study visit to the United States to explore the American legal aid system in operation. The visit was organized and funded by the OPDAT Justice Reform Program. The program of the visit included such topics as budget planning, the development of quality standards, operation of public defenders' offices at federal, state and county levels, etc.

Following the mission to the US, the director of the CCLAP also participated in a one week mission to Ottawa, Canada organized by the QALA Project. The mission included meetings with selected Canadian stakeholders in the area of legal aid provision in order to explore areas of possible future cooperation between Canadian and Ukrainian key legal aid stakeholders within the framework of the QALA Project. The program of the visit to Canada included site visits to the Legal Aid Directorate at the Department of Justice, Legal Aid Ontario, the Ottawa Courthouse Duty Counsel, the County of Carleton Law Association and the Canadian Bar Association. The meetings exposed the director of the CCLAP to Canadian best practices in quality assurance, the advantages of harnessing of technology for legal aid plan management and service delivery as a means to generate substantial cost and service delivery efficiencies; and the need and commitment towards continuous investment in the professional development of legal aid service providers.

Also, during 2012-2014 period, CCLAP senior management participated in a number of international events, including: Roundtable of Legal Aid Reformers' Network (LARN; Tbilisi, Georgia May 14-15, 2013; which brought together policymakers, representatives of legal aid management institutions and legal practitioners from Georgia, Moldova, Lithuania, Bulgaria, and Ukraine); a round table in Kyrgyzstan and a regional workshop on Widening Access to Justice in Moldova (April 2014); a side event "Ensuring access to justice and protecting human rights in the pre-trial stage: launch of the new UNODC/UNDP handbook on early access to legal aid" (Vienna, Austria, May 12, 2014), and an International Conference on Access to Legal Aid in Criminal Justice Systems (Johannesburg, South Africa, June 2014).

⁴⁶ The institutional profile of the CCLAP is provided in section 2.3.1

2.4. Regional Free Secondary Legal Aid Centers (FSLACs)

There is a network of 27 regional Free Secondary Legal Aid Centers in Ukraine engaging a total of 287 people, including 110 on-duty officers.⁴⁷ As mentioned earlier, 2 regional FSLA centres (in Crimea and Sevastopol) suspended their operations in summer 2014 following the annexation of Crimea by the Russian Federation.

To date, only two groups of the FSLACs staff to some extent have been covered by training: FSLACs directors and quality standards managers.

FSLACs Directors

Directors of the FSLACs were the only targeted learning audience at the FSLACs in 2012-2013. The first learning event (a 3-day orientation training-seminar) for newly appointed FSLACs directors was conducted in November 2012 with the support of the IRF Rule of Law Program. Workshop included a team building session (conducted by Nordic Training Group); discussions of organizational and legal issues related to the establishment and operation of FSLACs; financial issues related to lawyers-attorneys remuneration; the procedure for FSLACs to inform about detention cases, etc. Representatives of the MoJ, the CCLAP, FSLACs as well as the Main Investigative Division, IRF and BCU (UNBA) participated in the event.

Following this training, a training-seminar for FSLACs directors was organized in December 2012 (with IRF support) and related to operation and organizational issues for FSLACs, as well as the sharing of some international experience. The event included presentations by the Head of the Public Defence Office, Los Angeles; and the Heads of the FLA Service in Georgia and Lithuania on the following topics: creation of an institution to provide FSLA in criminal cases, its mission and tasks; cooperation with law enforcement bodies, courts and other actors of the criminal justice system; interaction of central and local bodies within the system; the motivation of lawyers-attorneys to work in such organizations; ensuring the quality of LA, its monitoring and evaluation; and the verification of clients compliance with eligibility criterion. In addition, Michele Leering, the Head of the Center of Community Legal Aid in Ontario (Canada) talked about the role of information analytical systems in supporting FLA provision.

In June 2013, the CCLAP, in cooperation with ULAF and the EU-funded Project "Access to Justice through Free Legal Aid and High Quality Standards of Human Rights Protection", conducted a two-day workshop on "Defence guaranteed by the state: analysis of practice and future development" for the FSLACs directors in Bakhchisaraj, Crimea. Since that time, the CCLAP has conducted three (3) more meetings/seminars for the directors to discuss the centres' operational issues and the further development of the free legal aid system. A training on "Relations with the Media" for Directors of FSLACs was conducted by Ukrainian Legal Aid Foundation in the fall of 2013.

No additional training for the FSLACs directors has been conducted since then, primarily due to the fact that no funds have been allocated by the State Budget to train the FSLAC staff. FSLACs directors (including their deputies) and the CCLAP Director (and CCLAP deputy directors) have organized themselves into

⁴⁷ The institutional profile of a standard FSLAC is detailed in section 2.3.2.

network/group via Facebook in order to share common values and principles of activities, to coordinate policy regarding the FLA system, as well as to maintain regular knowledge/information sharing and communication.

According to data collected through focus groups⁴⁸, FSLAC directors expressed the need for training on human resources issues, interpersonal relationships, management, performance evaluation, etc. There was also an interest expressed in sharing best practices that would ensure maximum consistency in approaches and procedures in FSLACs across the country.

Quality Managers

The position of quality manager with FSLACs was introduced in 2014. The position is very unique not only for the FLA system, but for the Ukrainian government agencies in general. The key role of quality managers is to monitor the compliance of FSLA lawyers' activities on the basis of Quality Standards.

In June 2014, the CCLAP conducted a seminar-training for 25 quality managers of FSLACs. The sessions covered the history of the development of the free legal aid system in Ukraine; quality standards for free legal aid provision in criminal proceedings; procedures for the monitoring of quality standards; relations between quality managers and lawyers and their respective roles/mandates in the FSLACs. In the June to August 2014 period, quality managers are expected to conduct presentation of Quality Standards for all FSLA lawyers across the country.

Other FSLAC staff

Apart from the FSLAC directors and quality managers, no other group of FSLAC staff has received training to date. The only mechanism employed by the CCLAP to build the human resources capacity of the FSLACs is through consultation support. To this end, the CCLAP provides on-going consultations for information managers regarding their work with the information management system (CIAS) and for financial managers/accountants regarding financial procedures and analysis of financial reports from FSLA lawyers.

2.5 External Stakeholders of the FLA System

Although no formal mapping of the FLA system stakeholders has been conducted to date, there are a number of stakeholders who could be categorized as external players within the FLA system. These are: judges, prosecutors, the police, bar associations, NGOs, etc.

The Project's assessment revealed that building capacity of external stakeholders of the legal system in Ukraine has been primarily the domain of international donors.

The Council of Europe has been involved in the FLA system and the capacity building of main actors within the criminal justice system, i.e. investigators and judges. The Council of Europe has delivered lectures and

⁴⁸ The focus groups were conducted by IRF in 2013.

information sessions to law schools in Ukraine, as well as some general information sessions to the public and NGOs. A representative of the Council of Europe with whom the Project met in July 2014 pointed to prosecutors and investigators as the groups of stakeholders within the FLA system that continue to use an old style approach when working with the new system.

The OPDAT Justice Reform Program has focused its work on legislative reform, specifically the new *Criminal Procedural Code*, and has provided training on this subject to judges and prosecutors. Plans are underway to engage prosecutors (along with defence lawyers) in training for trial skills.

The FAIR Justice Project also focuses on the judiciary, specifically the development of legislation and regulations, the building of institutional capacity, legislative competence, working with civil society organizations that deal with the judiciary, supporting the work of other NGOs working in the field of free legal aid and supporting the work of over two hundred (200) law schools.

The EU Project "Support to Justice Sector Reforms in Ukraine" works with the Ukrainian National Bar Association. Their plans include a series of strategic planning workshops which would identify and set the stage for the implementation of legal and procedural measures that make penal proceedings more adversarial. The first series will exclusively target lawyers (in different regions of Ukraine) and will later expand to include judges and prosecutors.

The Juvenile Justice Reform (JJR) Project, funded by the Canadian Department of Foreign Affairs, Trade and Development, aims to develop a more effective system of justice for young people that have committed crimes in order to reduce crime levels amongst minors; better protect the rights of minors who come into conflict with the law; and when minors do get into trouble, to support their rehabilitation and reintegration into their communities. One of the components of the project is building capacity of the police units responsible for dealing with youth. The project also recognized the need to strengthen capacity of judges and lawyers dealing with vulnerable groups such as youth. The JJR Projects appears to be one of very few international technical assistance projects that include gender-specific training programs in their programming activities.

3.0 INSTITUTIONAL CAPACITY OF THE LEGAL AID SYSTEM

The present FLA system in Ukraine has been in existence and operation for almost two years. This section of the Report is intended to provide a present day snapshot of the FLA system's existing institutional capacity with a view to identifying priority areas for QALA intervention over the course of Project implementation. Systems have been put into place for the operationalization of the FLA system and legal aid service delivery in criminal cases for detained, suspected and accused individuals.

There is considerable groundwork to be laid over the next two to three years for the incremental expansion of the FLA system to cover civil and administrative cases⁴⁹ as well as criminal cases for victims and witnesses. Given the differences in coverage and eligibility requirements between legal aid provision in criminal matters, and civil and administrative matters – unique yet complementary elements of the FLA system will need to be developed to allow for the delivery of quality and accessible FLA services in a holistic and sustainable manner.

3.1 Legal Framework

There is a broad legal-normative framework in place surrounding the FLA system in Ukraine. The key legislative documents for the establishment and development of the FLA system are the *Concept for Establishing Free Legal Aid System in Ukraine*, approved by Decree of the President of Ukraine # 509 dated June 9, 2006, and the Law of Ukraine “*On Free Legal Aid*” (# 3460-VI) approved on June 2, 2011⁵⁰. Institutionally, the FLA system is regulated by the following legislative documents:

- Regulation of the Cabinet of Ministers of Ukraine “*On Creation of the Coordination Centre on Legal Aid Provision*” (# 504) dated June 6, 2012;
- Order of the Minister of Justice of Ukraine “*On Creation of the Free Secondary Legal Aid Centres*” (#968/5) dated July 2, 2012; and
- Order of the Minister of Justice of Ukraine “*On Approval of the Statute of the Free Secondary Legal Aid Centres*” (# 967/5) dated July 2, 2012.

The *Concept of the State Targeted Program for Free Legal Aid*, approved by the Resolution of the Cabinet of Ministers of Ukraine # 435 on July 4, 2012, articulates the parameters for the development of the FLA system and the potential scope of FLA clients. Operationally speaking, the *State Targeted Program for Free Legal Aid System Development for 2013-2017*, adopted by the Regulation of the Cabinet of Ministers of Ukraine #394 on February 13, 2013, serves as the strategic document which sets out the key programming activities, performance indicators, budgetary estimates and sources of funding for the programming period of 2013 to 2017.

⁴⁹ At present, it is planned that the FLA system will be incrementally broadened to provide FLA in civil and administrative cases as of January 1, 2015. It is anticipated that this broadening of service will likely be postponed to January 1, 2016 given fiscal and other considerations.

⁵⁰ Since the initial adoption of the Law of Ukraine “*On Free Legal Aid*”, six amendments have been introduced related to this legislation. Some of these amendments relate to the postponing of the introduction of FSLA in administrative and civil cases.

As noted above, the system of free legal aid provision in Ukraine was established during 2012 and started to operate on January 1, 2013. In the first place and at present, the FLA system provides access to legal aid services in criminal cases⁵¹. During this inaugural period, key policies and procedures have been developed and approved to establish the institutional structure for the FLA system. A network of regional FSLA centres were established and operationalized. Significant leadership effort within the FLA system has been devoted to:

- Ensuring a common approach to the implementation of the FLA system across the country;
- Establishing operational procedures, including the engagement of lawyers-attorneys;
- Development of quality standards for FSLA in criminal cases;
- Developing cooperation with key external stakeholders, including law-enforcement bodies, public prosecutor offices, courts, the Ombudsman, UNBA, among others; and
- Building collaborative working relationships with and among lawyers providing free secondary legal aid, including developing and piloting approaches to sharing experiences within the community, peer review, the development of common defence strategies, etc.

During this period, a series of significant legislative and regulatory documents were adopted to institutionalize the provision of FLA across Ukraine, including:

- Regulation of the Cabinet of Ministers of Ukraine “*On Remuneration for Employees of the Coordination Centre on Legal Aid Provision and Its Territorial Units*” #552 dated June 20, 2012;
- Regulation of the Cabinet of Ministers of Ukraine “*On Approval of the Procedure of Notifying the FSLA Centres on Facts of Individuals’ Detention*” #1363 (dated December 28, 2011) with amendments introduced by the Regulations of the Cabinet of Ministers of Ukraine #1172 (dated December 19, 2012) and #869 (dated November 27, 2013);
- Regulation of the Cabinet of Ministers of Ukraine “*On Approval of the Procedures, Terms of Competition and Qualification Requirements to Lawyers-Attorneys to Provide Free Secondary Legal Aid*” # 1362 (dated December 2, 2011) with amendments # 915 (dated October 10, 2012) and # 1214 dated (December 19, 2012);
- Regulation of the Cabinet of Ministers of Ukraine “*On Approval of the Procedure and Terms for Conclusion of Contracts with Lawyers-Attorneys Providing FSLA on a Permanent basis and Contract-Agreements with Lawyers-Attorneys Providing FSLA on an Ad Hoc Basis*” #8 (dated January 11, 2012);
- Regulation of the Cabinet of Ministers of Ukraine “*On Issues of Remuneration for Free Secondary Legal Aid Services Provided*” #305 (dated April 18, 2012);
- Regulation of the Cabinet of Ministers of Ukraine “*On Approval of the Procedure of Allocation of Funds to Reimburse the Services and Expenses of Lawyers-Attorneys Providing Free Secondary Legal Aid*” # 130 (dated March 4, 2013) with Amendments #192 (dated September 17, 2014);
- Order of the Ministry of Justice of Ukraine “*On Approval the Forms of Documents Used during the Competition for FSLA Lawyers-Attorneys Selection*” #1520/5 (dated October 15, 2012);
- Order of the Ministry of Justice of Ukraine “*On Approval the List of Questions for Testing Candidates during the Second Stage of Selection Lawyers-Attorneys to Provide FSLA*” #1582/5 (dated October 30, 2012);

⁵¹ <http://legalaid.gov.ua/ua/operatyvna-info/formuvannia-systemy>

- Order of the Ministry of Justice of Ukraine “On Amendments to the List of Questions for Testing Candidates during the Second Stage of Selection Lawyers-Attorneys to Provide FSLA” #1904/5 (dated September 10, 2013);
- Order of the Ministry of Justice of Ukraine “On Approval of the Procedure of Maintaining a Local Register of Lawyers-Attorneys Providing Free Secondary Legal Aid on a Permanent Basis According to Contracts and a Local Register of Lawyers-Attorneys on an Ad Hoc Basis According to Contract-Agreements with the Main Division of Justice in Crimea, Cities of Kyiv and Sevastopol, Oblasts” # 636/5 (dated April 24, 2012); and
- Order of the Ministry of Justice of Ukraine “On Approval of Free Secondary Legal Aid Quality Standards in Criminal Procedure” #368/5 (dated February 25, 2014; draft was approved by the Bar Council of Ukraine decision #267, dated December 17, 2013).

In addition, regulatory documents were put into place related to procedures for the provision of free primary legal aid procedures, in order to allow for the provision of free primary legal aid services in local communities across Ukraine, including:

- Order of the Ministry of Justice “On Approval the Procedure and Criteria for Involvement of Private Law Legal Entities by Local Self-Government Bodies to Provide Free Primary Legal Aid” #891/5 (dated June 15, 2012);
- Order of the Ministry of Justice “On Approval the Standard Statute of an Entity Providing Free Primary Legal Aid” # 483/5 (dated March 28, 2012); and
- Order of the Ministry of Justice “On Approval of the Procedure of a Public Consultation Office⁵² Providing Free Primary Legal Aid” # 3047/5 (dated September 21, 2011).

There are several other background legislative documents which provide broad instruction related to the establishment of the FLA system including the Constitution of Ukraine and the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by the Law of Ukraine “On Ratification of Convention for the Protection of Human Rights and Fundamental Freedoms 1950, of Convention’s First Protocol and Protocols #24711” (#475 dated July 17, 1997). Further, there are additional Laws of Ukraine which impact upon the functioning of the FSLA system, including:

- “On implementation of decision and application of European court of Human rights` practice” # 3477 dated February 23, 2006;
- “On Bar and Activities of Lawyers-Attorneys” # 5076 dated July 05, 2012;
- “Criminal Procedure Code”# 4651 dated April 13, 2012;
- “Code on Administrative Offences” # 8073 dated December 07, 1984;
- “Civil Code of Ukraine” # 435 dated January 16, 2003 with amendments;
- “Civil Procedure Code” # 1618 dated March 18, 2004;
- “Administrative Procedure Code” # 2747 dated July 6, 2005;
- “On Police” # 565 dated December 20, 1990;
- “On State Border Service of Ukraine” # 661 dated April 3, 2003;

⁵² Public consultation office refers to a unit created within a given executive government bodies of Crimea, territorial units of central executive government bodies and executive bodies of local government where appointed employees of the relevant body meet with the public according to set schedule and provide free primary legal aid within the scope of their respective bodies’ mandate.

- “On Refugees and Individuals who Need Additional or Temporary Protection” # 3671 dated July 8, 2011;
- “On Psychiatric (Mental) Protection” # 1489 dated February 22, 2000;
- “On Rehabilitation of Victims of Political Repressions in Ukraine” # 962 dated April 17, 1991;
- “On Ensuring of Organizational and Legal Conditions for the Protection of Orphans, Children whose Parents Were Deprived of Their Parental Rights” # 2342 dated January 13, 2005;
- “On Bodies and Services on Children’s Issues and Special Institutions for Children” # 20 dated January 24, 1995;
- “On Preventing Family Violence” # 2789 dated November 15, 2001;
- “On Social Work with Families, Children and Youth” # 2558 dated June 21, 2001; and
- “On Status of War Veterans and Their Social Protection” # 3551 dated October 22, 1993.

3.2 Process for Accessing Free Secondary Legal Aid

As noted in section 4.1, at present, the FLA system provides access to legal aid services in criminal cases. In cases, where an individual has been detained on a criminal matter, there are specific procedures that have been put into place for informing free secondary legal aid centers and triggering access to FLA services for that given individual. The *Law on Free Legal Aid* as well as the *Criminal Procedure Code* set a procedure for early access to lawyers-attorneys for detained and suspected persons. This early access to lawyers-attorneys in cases of detention is considered to be one of the most essential and significant positive elements of the Ukrainian FLA system to date in terms of ensuring equal access to justice. Any person who has been detained has the legal right to access FSLA through a lawyer-attorney within one hour of their detention (six hours in exceptional cases). Legal aid provision is guaranteed during the first 72 hours after detention.

The prescribed procedure on informing FSLA centres of detention is an essential and strong feature of the FLA in Ukraine as it:

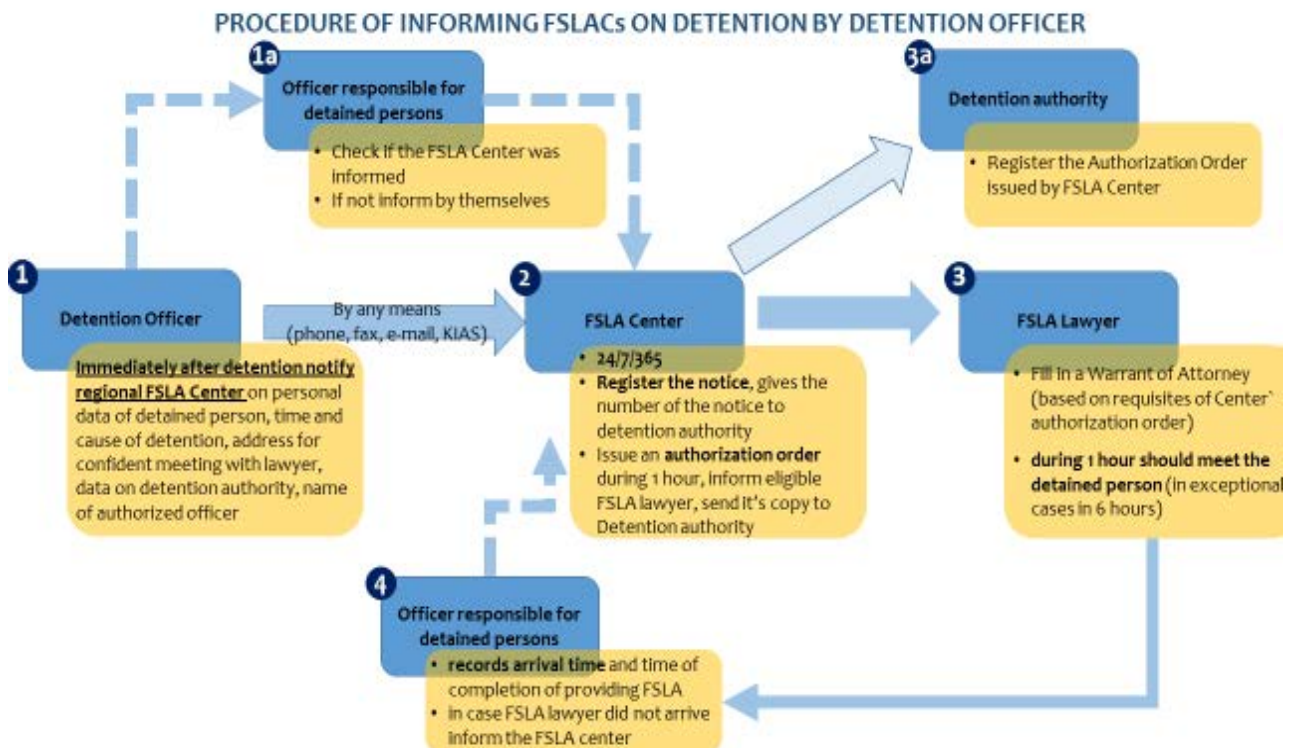
- Promotes equal and early access to justice for detained persons;
- Allows for the independent appointment/assignment of lawyers-attorneys to provide free secondary legal aid; and
- Eliminates institutional conflicts of interest between the between the public prosecution and public defence.

Lawyers-attorneys are engaged to provide FSLA by individual choice (details respecting the process for selecting lawyers-attorneys for FSLA service delivery are described below in section 4.3) on the basis of a contract between a lawyer-attorney and the FSLACs. This contract governs the lawyer-attorney’s workload and provides guarantees respecting the lawyer’s activity.

Individuals who have been detained are able to access free secondary legal from the moment that a given oblast free secondary legal aid center has been notified of a detention. At present, there are two mechanisms for notifying oblast FSLA centres of a person’s detention, namely:

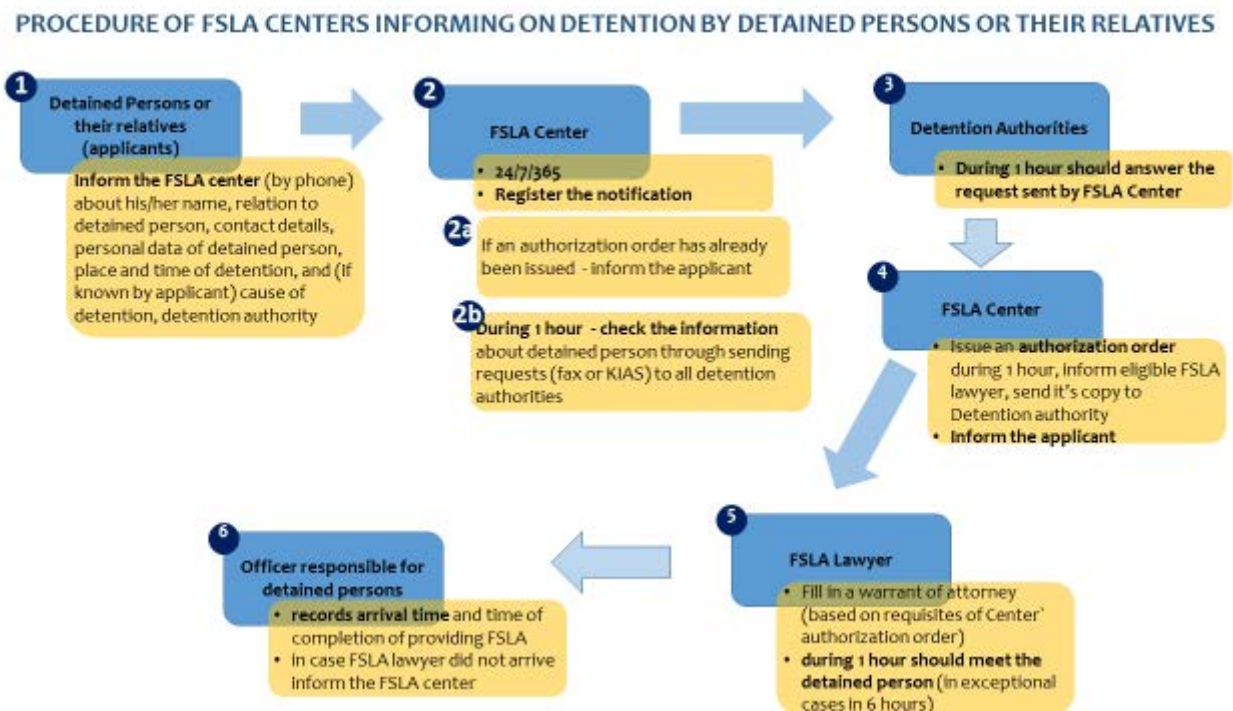
- A representative from the law-enforcement body that imposed a detention informs the FSLA center directly about the given detention. According to this procedure, detention officers must immediately, upon detention, inform by any means (phone, e-mail, fax, etc.) the respective free secondary legal aid centre of the detention, including the provision of personal data regarding the detained person, the time and reason for detention, the address where a FSLA lawyer may come for a confidential meeting with a client, data on the detention authority (type of authority (i.e. police, prosecution, border service, etc.) and physical address of the detention authority), and the name of the authorized officer (investigator). In response to the notification, a duty officer at the FSLA center then registers the notice, provides the notice number to the detention authority and assigns (appoints) an eligible FSLA lawyer-attorney within a one-hour period (by issuing an authorization order and sending a copy of the order to the detention authority). The assigned FSLA lawyer is required to fill in a Warrant of Attorney and is obliged to meet with the detained person within one hour (in exceptional cases, the lawyer-attorney has up to six hours for this meeting). A detained person has the right to refuse free legal aid, however, s/he is required to do so in the presence of a FSLA lawyer-attorney during this initial confidential meeting. The police employee, responsible for detained persons, is required to record the lawyer-attorney's arrival time and the time of completion of FSLA provision. In instances where a FSLA lawyer-attorney does not arrive, the responsible officer is required to inform the FSLA centre who will then assign another lawyer to the case.

Figure 17. Procedure of Informing FSLACs on Detention By Detention Officer



- The detained person (him/herself) or their family members or close relatives inform the FSLA center directly about the given detention. The overall informing procedure, adopted by CMU Regulation, has been amended to reflect this second procedure of informing. Now, when the Centre receives a phone call of detention directly from the detained person, members of his/her family, close relatives or other individuals, the duty officer in the FSLA center is required to register the message/application by making an entry in the corresponding register and to collect all required information about the detained person. The duty officer is immediately required to verify the information by sending an inquiry (by facsimile) to the corresponding agency responsible for the detention with a request to confirm or refute the detention information. In the event that a given law-enforcement body confirms the detention, the duty officer at the FSLA centre then employs the standard procedure for lawyer-attorney assignment for a given case.

Figure 18. Procedure of Informing FSLACs on Detention by Detained Persons or Their Relatives



It is worth noting that, at present, the second procedure for informing the FSLA Centre of detention in cases of detention is being piloted according to the Order of the Coordination Centre for Legal Aid Provision “*Certain Issues on Receipt and Processing by the Free Secondary Legal Aid Centres Notifications on Individuals’ Detentions*” #35 (dated August 30, 2013). The procedure of the direct informing of FSLACs was initiated by the CCLAP to mitigate against the potential for the violation of the rights of detained individuals and ensure early access to legal aid. The overall percentage of notifications of detention taking place on the basis of this second mechanism (wherein a detained person (him/herself) or their family members or close

relatives inform the FSLA center directly about a given detention) is quite low and presently represents just shy of one (1) % of all notifications.

In the case of civil and administrative matters, as it relates to the provision of free secondary legal aid, the process for accessing legal aid services has yet to be established and articulated. On the basis of CCLAP's preliminary assessment, expansion of the legal aid system to capture civil and administrative cases will likely require the establishment of approximately 105 inter-rayon centers which shall be tasked with providing legal services in civil and administrative cases as well as providing services for crime victims and witnesses, including the organization of initial face-to face meetings with clients, the provision of legal information and consultation, the processing of applications for legal services, the assessment of eligibility for access to legal aid services, etc. It will be necessary to develop a basket of relevant policies and procedures such as quality standards for the provision of free secondary legal aid in civil and administrative proceedings; standards for legal aid service provision for clients from vulnerable groups (including minors, people with mental health issues, etc.); quality standards for the provision of free secondary legal aid based upon the type of case; procedures on assessing clients' eligibility for legal aid services in civil and administrative cases, etc. There is a broad-based need to provide technical expertise and policy support to CCLAP as it moves forward in laying the groundwork for the broadening of the free legal aid system in civil and administrative matters, in particular, the operational institutional reality of establishing a network of approximately 105 inter-rayon service centers.

3.3 Procedure for the Selection of Lawyers-Attorneys

Lawyers-attorneys are engaged in the free secondary legal aid system on the basis of a competitive selection procedure. This procedure has been established and approved by the Cabinet of Ministers of Ukraine and is complimented by a series of Orders by the Ministry of Justice which further regulate the procedure in terms of required forms of documentation and other operational details. As of July 2014, about 3,889 FSLA lawyers-attorneys have been selected through competition (five competitions have taken place to date).

Competitions are initiated by the CCLAP based upon the Center's assessment of the emerging needs of the FLA system. CCLAP submits a request to the MJ providing rationale for the need for a given competition for the selection of lawyers, including a proposed schedule for the competition process. The MJ announces a competition⁵³ and approves the proposed list of questions for the written test, which is standardized for use across Ukraine and is kept confidential until the time of administration of the test. CCLAP provides prospective applications with access to sample test questions, from the previous competitions, on their website.

In each oblast, the Main Division of Justice (MDJ) publishes an announcement for the competition according to the approved schedule in local media no later than 30 days prior to application submission deadline and establishes a selection commission which is responsible for conducting the competition. The selection commission must consist of a minimum of 7 members, including the positions of head and

⁵³ A sixth competition for lawyers-attorneys was announced on September 15, 2014.

secretary (filled by representatives from the MDJ). Additional selection commission membership consists of representatives of the MJ, the CCLAP, representatives of bar, judges and NGOs/CSOs from relevant region/oblast. Aggregated data on composition of the selection commissions across oblasts is available on the CCLAP website. Commission members are engaged on a voluntary basis. Members of the commission are required to sign a statement certifying that there is no conflict of interest in them taking up their responsibility on the commission and, further they must sign a statement committing to the-non-disclosure of competition information.

Lawyers-attorneys submit their applications to MDJ (oblast/region level) and Division of Justice in rayons, cities, etc. (local level) who are required to forward the documents to the MDJ within 2 days of their receipt. The MDJ is required to register all applications and to conduct a preliminary document review to verify applicants' compliance with the competition qualification requirements.

Figure 19. Qualification Requirements for Prospective FLA Lawyers-Attorneys⁵⁴

- ✓ Possession of an Attorney's Certificate
- ✓ Knowledge of the Legislation on Human Rights
- ✓ Knowledge of the Procedural and Substantial Law
- ✓ Awareness of, and Abidance by, Legal Ethics
- ✓ Ability to Draft Procedural Documents
- ✓ Experience in the use of Legal Databases for Research
- ✓ Fluency in the Ukrainian Language
- ✓ Command of Foreign Languages or Languages of National Minorities
(not required, however, considered an asset)
- ✓ Work Experience in Provision of Legal Aid (not required, however, considered an asset)

A competition for the selection of lawyers-attorneys to provide FLA consists of three key stages of assessment: 1) document review, 2) an anonymous written test and 3) an interview.

Stage One: Document Review

During the first stage, the selection commission reviews the documents provided by the applicants (i.e. assesses relevant experience, legal specialization, and data regarding past complaints about a given lawyer's activity, if applicable). The commission has the authority to render ineligible given applicants in the competition in the event that falsified documents are provided to the commission as part of the application process. With the exception of said exclusions on the basis of ineligibility, all other candidates who meet the qualification requirements proceed into the second stage of the competition.

⁵⁴ CMU Regulation "On Approval of the Procedures, Terms of Competition and Qualification Requirements to Lawyers-Attorneys to Provide Free Secondary Legal Aid" # 1362 (dated December 2, 2011) with amendments # 915 (dated October 10, 2012) and # 1214 dated (December 19, 2012)

Stage Two: Written Test

The second stage consists of an anonymous written test. The formulation of the written test for the assessment of candidates has evolved based upon the experience of selection commissions and the emerging pool of qualified candidates since the first selection competition. For example, during the first round of competition, written questions largely related to testing knowledge of legislation. The most recent competition included a written test which included case-studies (hypothetical) questions.

There is a requirement that at least two-thirds of the selection commission be present during the administration of the written test. Test results must be signed by three (3) commission members. Key evaluation criterion at this stage of the competition relates to the accuracy and thoroughness of the answers. There are presently no guidelines as to where responsibility rests for evaluating the written test answers and, further, no guidelines as to the signing of test results by selection commission members.

Figure 20. Overall Criteria Set by CMU Regulations for the Selection of FLA Lawyers-Attorneys by Selection Commission

- ✓ Lawyer's Working Experience
- ✓ Lawyer's Specialization
- ✓ Presence/Absence of Complaints about Lawyer's Activity (disciplinary actions during last 3 years)
- ✓ Written Test Results
- ✓ Motivation to Provide FLA
- ✓ Communication Skills
- ✓ Emotional Stability
- ✓ Presentation Skills

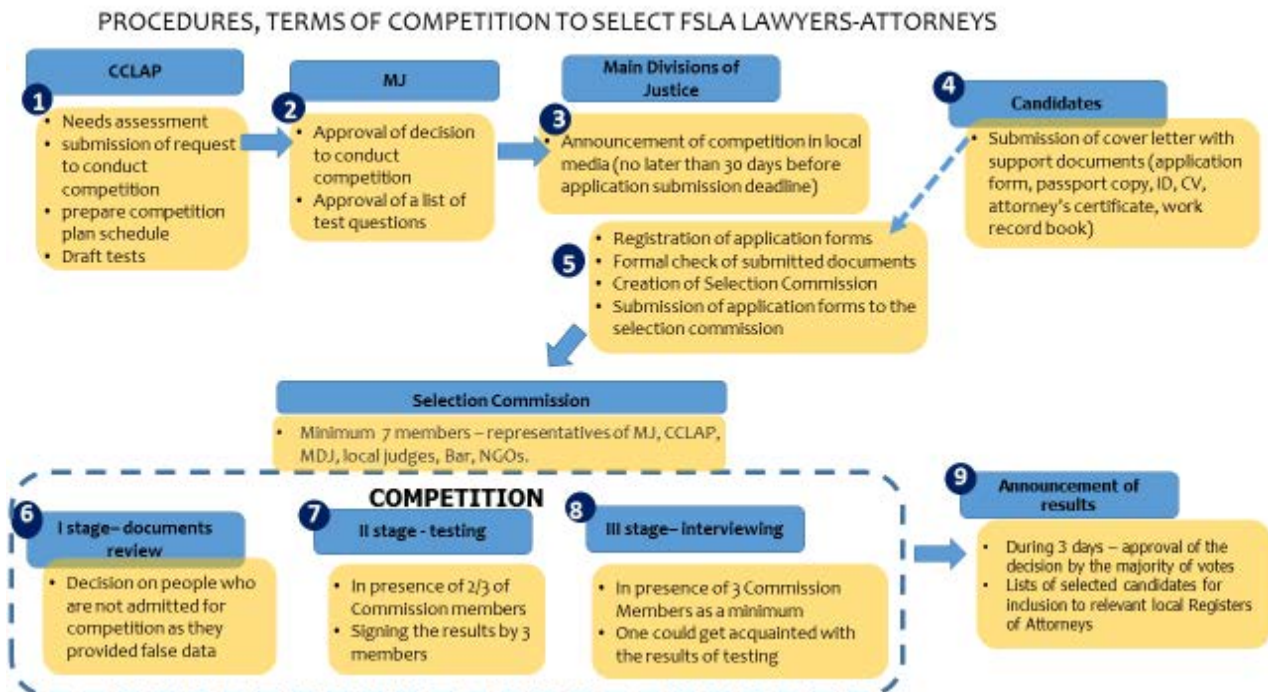
Stage Three: The Interview

The third stage of the competition consists of a face-to-face interview. The interview is conducted in the presence of at least three (3) commission members who assess the soft skills of candidates, including motivation, communication/interpersonal skills, emotional stability and presentation skills⁵⁵. The candidate's analytical skills, tactfulness, creativeness and sense of responsibility are also expected to be assessed at this stage. Prospective lawyers-attorneys have an opportunity to submit additional supporting documentation at this time for the commission's consideration which could serve to support the applicant's interview and overall application. There is no prescribed structure to the interview nor are there presently any guidelines related to the conducting of interviews. The results of an interview must be approved by a majority of votes, with relevant minutes documenting the interview's assessment signed by members within three working days from the date that the interview took place.

⁵⁵ According to the MJ Order (#1520/5 dated 15.12.2010), presentation skills - candidate's ability to give concrete examples of legal aid provision experience

Upon the completion of the third stage of the competition, a list of those candidates who achieved the required minimum score, overall, is compiled and must be submitted within a two (2) day period to the MDJ. Based upon the results of the competition, the MDJ is required to add the names of successful competition candidates into the local registry of FSLA lawyers within a one week time frame. This local registry of FSLA lawyers is then submitted to CCLAP. FSLA centres subsequently formalize the engagement of FSLA lawyers-attorneys through the signing the contracts and contracts-agreements with said lawyers. It is at the discretion of individual lawyers to determine whether they chose to provide FSLA on a permanent/regular or ad hoc basis going forward.

Figure 21. Procedures, Terms of Competition to Select Lawyers-Attorneys



To date, 5 competitions have been conducted to select lawyers-attorneys for the delivery of FSLA. The last two competitions sought to identify prospective lawyers-attorneys who have a specialization in civil and administrative matters. Approximately 80% of all candidates/applicants passed the competition. It should be noted that the minimum threshold (pass score) for each competition has been steadily increasing from competition to competition. For example, the minimum final score was 3.0 points the second round of competition, for the third - 3.5, and for the fourth and fifth rounds of competition - 3.6 points. 6th competition was announced recently (MJ Order #182/7 dated 9.09.2014). Minimal final score for sixth round of competition is 3.7.

3.4 Remuneration of Lawyers-Attorneys

As a general practice, CCLAP develops draft procedures and regulations for lawyer-attorney compensation in consultation with the Ministries of Finance, Social Policy, and Economic Development and Trade. Subsequently, the Ministry of Justice submits these procedures and regulations to the Cabinet of Ministers of Ukraine for approval. As of September 25, 2014, lawyers-attorneys remuneration procedures are regulated by the Regulation of the Cabinet of Ministers of Ukraine “On Issues of Remuneration for Free Secondary Legal Aid Services Provided” #305 (dated April 18, 2012). On September 17, 2014, a new Regulation of the Cabinet of Ministers of Ukraine “On Issues of Remuneration for Free Secondary Legal Aid Services Provided” #465 was adopted (comes into force on October 24, 2014).

It should be noted that for all reports submitted by lawyers after the coming into force of Regulation #465, remuneration issues are regulated by Regulation #465. Here is a brief comparison of current (#305) and newly-adopted (#465) Regulations.

In general, there are 3 groups of cases to be remunerated, including:

- a) administrative detention; earliest stage (detention) of a criminal case; and separate procedural action in criminal proceedings;
- b) defence on assignment in further stages of a criminal proceeding (pre-trial investigation, court of 1st instance, appeal court, cassation court); and
- c) administrative and civil cases.

The regulation currently in force (#305) provides remuneration mechanisms for groups (a) and (b), while the newly-adopted Regulation (#465) also specifies a mechanism for group (c).

Group (a) cases. In Regulation #305, the basis for payment for (a) group cases is calculated based upon the number of hours spent by the lawyer-attorney for the case, multiplied by 2,5% of the minimal salary (currently the minimal salary is about 100 USD, i.e. 1218 UAH). However, this formula does not take into account the complexity and other specificities of individual cases. This method of calculating remuneration was applied to all cases before 2013.

Regulation #465 specifies a formula-based approach for each type of group (a) case taking into account the complexity of an individual case and activities undertaken by a lawyer, simultaneously marking out additional particular cases (administrative arrest; proceedings concerning enforcement, prolongation or cancel of medical aid provision to person; actions on deportation).

Group (b) cases. Both Regulations provide the same mechanisms for remuneration in cases of defence on assignment. The basis for payment is the same - 2,5% of the minimal wage multiplied by 20 hours (estimated time spent by a lawyer-attorney for an separate stage of a criminal proceeding), and in addition, multiplied by three indexes: the particularities of criminal proceeding stage (completeness of lawyer’s participation in the criminal proceeding, termination of lawyer’s participation, etc.); complexity of a given case (gravity of offence, number of episodes, number of suspects, preventive measure, etc.) and special difficult cases

(appeals against actions or decisions). Each of the mentioned indices includes a dozen sub-indices. The formula for the calculation of remuneration allows for the consideration of a host of case characteristics.

Payment is calculated for each completed stage of a criminal case.

Regulation # 465 supplements this approach with an additional index taking into account 10 additional salary factors which will allow for a considerable increase in lawyers-attorneys' fees in case of a positive result in lawyers-attorneys' work for the client, including:

- refusal to meet the motion/plea on choosing of a restraint measure in the form of keeping in custody;
- change of a restraint measure in the form of keeping in custody;
- making the judgment of acquittal;
- closing of the proceeding based on rehabilitating grounds;
- reclassification of a crime from with greater severity to lower;
- decrease of a number of episodes; release from the punishment with the probation term;
- infliction of the least grave punishment envisaged with the penalty article or milder punishment envisaged with the law;
- infliction of minimal punishment.

In addition, increasing factors/indexes will be used to calculate lawyers-attorneys' fees:

- at a stage of pre-trial investigation – in case of prolongation of the pre-trial investigation period according to part 2 of Article 294 of Criminal Procedure Code, and in case when at preparatory court meeting a decision was made to return bill of indictment for correcting;
- at a stage of court of 1st instance – in case of special duration of criminal proceeding, when the number of completed court meetings is 10 and more.

Group (c) cases. Regulation #465 establishes the remuneration mechanism for civil and administrative cases. The approach is based upon a specified percentage of the minimal wage depending upon a lawyer's actions as follows:

- case analysis, facts collecting – 15%;
- suit or counterclaim, or appeal, or application for case review in the Supreme Court of Ukraine drafting – 20%;
- other procedural document drafting – 15%;
- participation in trial: within the district where the order was issued to lawyer – 10% per trial; out of the district where the order was issued to lawyer – 20% per trial; out of the region where the order was issued to lawyer – 60% per trial.

In addition, for all types of cases there is a special index for the provision of legal aid to clients who have an infection disease.

Compensation of expenses.

Regulation #305 provided transportation costs (public transport) and fuel for personal car (in case if public transport is unavailable) compensation. Additionally, regulation #465 provides for compensation of fuel for personal car in rural areas, and secondments outwards region of order issuing (fees, hotel).

All mentioned-above features are illustrated below.

Figure 22. Remuneration of lawyers-attorneys: comparative analysis of Regulation #305 and #465

Group (a) cases: administrative detention; earliest stage (detention) of criminal case; and separate procedural action in criminal proceeding	
# 305	$R = \text{Number of hours} \times 0,025 \times 1218$
# 465	$R = (2 \times \text{Number of visits} + 2 \times \text{Index1} \times \text{Index2} \times \text{IndexN}) \times 0,025 \times 1218$ <p>Formulas for:</p> <ul style="list-style-type: none"> administrative arrest; proceedings concerning enforcement, prolongation or cancel of medical aid provision to person; actions on deportation added.
Group (b) cases: defence on assignment in further stages of criminal proceeding (pre-trial investigation, court of 1st instance, appeal court, cassation court)	
# 305	$R = 20 \times 0,025 \times 1218 \times \text{Index1} \times \text{Index2} \times \text{Index3}$ <p>Index 1 – particularities of criminal proceeding stage (completeness of lawyer’s participation in the criminal proceeding, termination of lawyers participation etc.);</p> <p>Index 2 – case difficulty level (gravity of offence, number of episodes, number of suspects, prevention measure etc.);</p> <p>Index 3 – special difficult cases (appeals against actions or decisions)</p>
# 465	$R = 20 \times 0,025 \times 1218 \times \text{Index1} \times \text{Index2} \times \text{Index3} \times \text{Index4}$ <p>Index 1 – new factors are taken into account:</p> <ol style="list-style-type: none"> prolongation of the pre-trial investigation; when at preparatory court meeting a decision was made to return bill of indictment for correcting; at a stage of court of 1st instance – in case of special duration of criminal proceeding, when the number of completed court meetings is 10 and more <p>Index 4 provides 10 additional salary factors which in case of positive result of lawyer-attorneys’ work for the client.</p>

Group (c): administrative and civil cases	
# 305	Not a subject of regulation
# 465	<div style="display: flex; align-items: center;"> <div style="background-color: #90EE90; padding: 2px 5px; margin-right: 5px;">R</div> <div style="margin-right: 5px;">=</div> <div style="margin-right: 5px;">SUM OF</div> </div> <div style="display: flex; align-items: center; margin-bottom: 5px;"> <div style="background-color: #FFD700; padding: 2px 5px; margin-right: 5px;">0,15</div> <div style="margin-right: 5px;">×</div> <div style="background-color: #ADD8E6; padding: 2px 5px; margin-right: 5px;">1218</div> <div style="margin-left: 10px;">for each case analysis, facts collecting</div> </div> <div style="display: flex; align-items: center; margin-bottom: 5px;"> <div style="background-color: #FFD700; padding: 2px 5px; margin-right: 5px;">0,2</div> <div style="margin-right: 5px;">×</div> <div style="background-color: #ADD8E6; padding: 2px 5px; margin-right: 5px;">1218</div> <div style="margin-left: 10px;">for each suit or counterclaim, or appeal, or application for case review in Supreme Court of Ukraine drafting</div> </div> <div style="display: flex; align-items: center; margin-bottom: 5px;"> <div style="background-color: #FFD700; padding: 2px 5px; margin-right: 5px;">0,15</div> <div style="margin-right: 5px;">×</div> <div style="background-color: #ADD8E6; padding: 2px 5px; margin-right: 5px;">1218</div> <div style="margin-left: 10px;">for each other procedural document drafting</div> </div> <p>Participation in trial:</p> <div style="display: flex; align-items: center; margin-bottom: 5px;"> <div style="background-color: #FFD700; padding: 2px 5px; margin-right: 5px;">0,1</div> <div style="margin-right: 5px;">×</div> <div style="background-color: #ADD8E6; padding: 2px 5px; margin-right: 5px;">1218</div> <div style="margin-left: 10px;">within the district where the order was issued to lawyer</div> </div> <div style="display: flex; align-items: center; margin-bottom: 5px;"> <div style="background-color: #FFD700; padding: 2px 5px; margin-right: 5px;">0,2</div> <div style="margin-right: 5px;">×</div> <div style="background-color: #ADD8E6; padding: 2px 5px; margin-right: 5px;">1218</div> <div style="margin-left: 10px;">out of the district where the order was issued to lawyer</div> </div> <div style="display: flex; align-items: center;"> <div style="background-color: #FFD700; padding: 2px 5px; margin-right: 5px;">0,6</div> <div style="margin-right: 5px;">×</div> <div style="background-color: #ADD8E6; padding: 2px 5px; margin-right: 5px;">1218</div> <div style="margin-left: 10px;">out of the region where the order was issued to lawyer</div> </div>
Compensation of expenses	
# 305	<ul style="list-style-type: none"> ▪ transportation costs (public transport); ▪ fuel for personal car (in case if public transport is unavailable)
# 465	<p>Additional cases for compensation:</p> <ul style="list-style-type: none"> ▪ fuel for personal car in rural areas; ▪ secondments to regions outside of the territory of the issuing order (fees, hotel)

Payment is calculated and provided on a monthly basis for each completed stage of a criminal case. CCLAP has established recently a transparent policy for the weekly publication of information regarding remuneration received by FSLA lawyers on FSLACs' web-sites.

3.5 Legal Aid Quality Management System. Quality Standards of Free Secondary Legal Aid in Criminal Proceedings

It is planned that an internal quality monitoring system will be introduced within the FSLA. Recently, *Quality Standards for Provision of Free Secondary Legal Aid in Criminal Proceedings* were developed by the working group of lawyers from and outside of the free legal aid system. These Quality Standards (QS) in criminal proceedings were approved by the Ministry of Justice in early 2014⁵⁶ and came into force as of July 1, 2014. In line with a *Memorandum of Cooperation between UNBA and the Ministry of Justice*, the Bar Council of

⁵⁶ The Ministry of Justice of Ukraine Order "On Quality Standards for Provision of Free Secondary Legal Aid in Criminal Proceedings" (#368/5, dated February 25, 2014)

Ukraine approved draft Quality Standards for Provision of Free Secondary Legal Aid in Criminal Proceedings⁵⁷. In addition, according to this Memorandum both parties have agreed to cooperate in the development of quality standards on FSLA provision in civil and administrative cases going forward.

The aim of QS is to ensure the timely provision of secondary legal aid; to provide methodological support for lawyers and to enhance their professional skills; and, further, to ensure the maximally effective use of public funds. The standards include a list of actions a lawyer-attorney should follow at every stage of a criminal proceeding. This list is obligatory for FSLA lawyers. For all other lawyers-attorneys, the standards serve as a recommended practice. The standards are prescriptive and provide links to the relevant sources of law (in particular case law of the ECHR) and types of verification documents⁵⁸. Lawyers-attorneys are encouraged by CCLAP to provide their recommendations with regard to improvement of the QS.

The FSLACs are required to conduct quality monitoring of lawyers-attorneys activities. For the above mentioned purpose, quality monitoring units within FSLA centres were recently established. Quality manager (QM) positions have been established to lead the work of these quality monitoring units, and, at present, all FSLACs have staffed these positions. QMs have a dual accountability – both to their relevant FSLAC` Director as well as to the CCLAP. QMs are responsible for analyzing monitoring forms that are required to be completed by FSLA lawyers-attorneys and for providing methodological recommendations to FSLA lawyers-attorneys, on an as needed basis.

Quality managers were selected from the lawyer-attorney community, most of which have been providing legal aid services through the FSLA system. In order to avoid a conflict of interest, those lawyers-attorneys engaged in FSLA provision are obliged terminate their legal aid activities, but have a right to continue their private practice.

Functions of Quality Managers⁵⁹ include the following:

- Promotion/advocacy of quality standards, the provision of argumentation/explanation to FSLA lawyers-attorneys on how their work would benefit from complying with QS;
- Revision of relevant reporting documentation provided by FSLA lawyers-attorneys;
- Monitoring of lawyers to ensure compliance with Quality Standards by reviewing the monitoring forms filled out by lawyers-attorneys;
- Use other monitoring instruments, such as interviews with lawyers-attorneys and others; the observation of the activities of lawyers-attorneys during trials; the random verification of QS compliance as compared completed monitoring forms in some criminal proceedings;
- Promotion of experience sharing, the generalization and dissemination of best practices among lawyers-attorneys, and the provision of consultation and methodic support;
- Learning needs assessment of lawyers-attorneys, and the formulation of proposals on content for training events, including cascading trainings

⁵⁷ Bar Council of Ukraine Decision #267 (dated December 17, 2013)

⁵⁸ Sources of Law include the *Convention for the Protection of Human Rights and Fundamental Rights*, the *Criminal Procedure Code of Ukraine*, the Law of Ukraine “On Free Legal Aid”, the Law of Ukraine “On the Bar and Lawyers-Attorneys’ Activities”, and the European Court of Human Rights decisions.

⁵⁹ Quality managers functions are described in the *Roadmap on Implementation of FSLA Quality Standards in Criminal Proceedings*

- Analysis of lawyers-attorneys' LA workload, its equitable distribution and the provision of recommendations on distribution of assignments/cases among lawyers-attorneys based upon their track record in compliance with the standards, specialization, etc.;
- Provision of recommendations on the signing, extension or termination of contracts and contracts-agreements with lawyers providing FSLA;
- Collection and systematization (aggregation) of data on FSLA lawyers-attorneys' performance (chapter 5 of the monitoring form), as well as statistical data collection;
- Identification of success stories of FSLA lawyers-attorneys' performance (development of relevant information notes/products) to be presented on the FSLAC websites, in media, etc.;
- Consideration of complaints with regard to the quality of FSLA services (regarding compliance or noncompliance of lawyers work with established quality standards);
- Drafting of motions (applications) to Quality Commissions (commissions of assessment of the quality of FSLA, including the thoroughness of service provision and the timely of the delivery, established by relevant Bar Councils in a region; and
- Analysis of conclusions from a Quality Commission and provision of recommendations to a FSLAC Director based upon the findings of a given analysis.

In addition to QS implementation, CCLAP in cooperation with other stakeholders is working towards the introduction and effective operation of a new FSLA Quality Management System. The *Concept of FLA Quality Management System Establishment and Development* was developed by CCLAP, ULAF and IRF in May 2014. This Concept sets out a plan of action for the 2014 period. Consequently, the *Roadmap on Implementation of FSLA Quality Standards in Criminal Proceedings* was developed by CCLAP for Quality Managers in June 2014.

Milestones in the Development of the FLA Quality Management System:

- Consideration of Quality Standards by Bar Council of Ukraine Decision (Decision # 267 dated December 17, 2013) and approval by MJ (Order # 386/5 dated February 25, 2014).
- Introduction of new organizational structure for FSLACs - a unit on ensuring LA quality was created, with the position of a Quality Manager introduced on March 1, 2014. CCLAP subsequently developed a *Typical Job description for a QM* (setting qualification requirements) which was adopted by CCLAP Order # 2 dated March 14, 2014
- Selection of lawyers-attorneys for the position of QM (analysis of completed applications, interviews with prospective candidates; the provision of recommendations for FSLACs on the appointment of QMs (April to May 2014 period). The majority of QMs have been working since June 2014, with the staffing process completed September 1, 2014.
- Development of FSLA monitoring forms (with the support of IRF and ULAF) took place in April 2014
- Development of the *Concept of activities with regard to establishment and development of the FLA Quality Management System* by CCLAP, IRF and ULAF in May 2014. A Working Group on organisation of the monitoring of FSLA quality was created (CCLAP Order #26 dated June 26, 2014), involving representatives of CCLAP, IRF, ULAF and some FSLACs directors.
- Publication of QS. Development and publication of QS for lawyers-attorneys in the format of a notebook/diary to track practical aspects of QS application during the May to June 2014 period.

- Development and delivery of the *initial workshop-training* with QMs took place from June 7 to 10, 2014. This work was led by CCLAP in cooperation with IRF and ULAF. Through the training, organizers sought to create a joint vision for QS implementation, to facilitate QM team building, to plan the work of QMs for 2014, to develop different QS monitoring instrument, and to develop a common training deck to be employed for cascading workshops on QM to be conducted at the local level.
- Development of the *Roadmap on Implementation of FSLA Quality Standards in Criminal Proceedings* by CCLAP on the basis of inputs received from the initial workshop-training). This product was circulated through official correspondence from CCLAP to FSLAC Directors and QMs. In addition, it was posted to the LAQMus Facebook group⁶⁰.
- Delivery of cascading workshops on the implementation of QS at the local level. As of July 31, 2014, 77 workshops have conducted covering 1200 lawyers-attorneys.
- Monitoring of FSLA lawyers-attorneys activities with the established QS in the August to September 2014 period.

Key objectives for QMs for the second half of 2014, as set out in the Roadmap, include:

- Building relationships of trust and cooperation with FSLA lawyers-attorneys;
- Advocacy/promotion of the Quality Standards (compliance with QS; monitoring of QS implementation; training of FSLA lawyers-attorneys on application of QS and completion of monitoring forms).
- Piloting the implementation of QS monitoring instruments.
- Active participation in the drafting of the plan for the development of the FSLA Quality Management System in 2015.

3.6 Complex Informational Analytical System (CIAS)

The legal aid complex informational analytical system (CIAS/LIAIS) is an instrument intended to facilitate the operation and management of FLA system serving as the basis for all key processes and procedures, including the submission of requests for FSLA from authorised bodies, human resources management (including the contracting of lawyers-attorneys), the monitoring and distribution of cases and workload, the performance of lawyers-attorneys and compensation, etc. A properly functioning CIAS will enable transparency and accountability in the operation of the FSLA system, allow for effective service quality control and overall oversight by CCLAP, as well as timely and comprehensive public reporting.

The need for a legal aid complex informational analytical system is explicitly set out in the State Program for 2013-2017: “the complex information and analytical system with elements of electronic intelligence will allow consolidation of the centres providing free secondary legal aid into a unified network, ensure the automated processes for provision of free legal aid and rapid exchange of information between individuals (holders of right) entitled to free secondary legal aid, the competent bodies authorized to detain or arrest

⁶⁰ LAQMus – Legal Aid Quality Managers’ group on Facebook. This group was created by CCLAP as a networking and information sharing tool for Quality Managers.

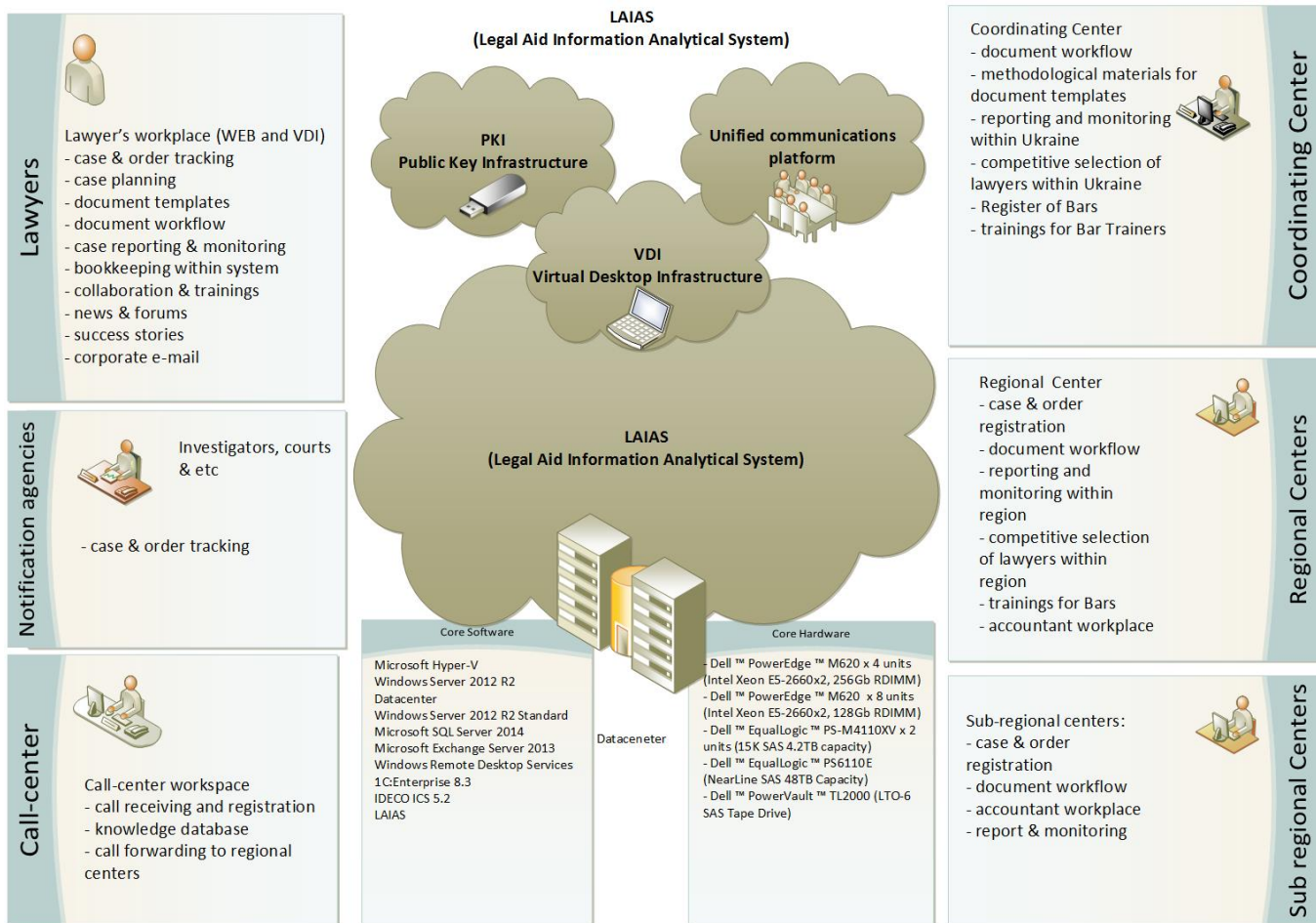
persons, the courts, the Main Division of Justice in the Autonomous Republic of Crimea, oblasts, and cities of Kyiv and Sevastopol, as well as will facilitate the aggregation and visualization of statistical information to process and analyse it in a time efficient manner”. In addition, the system has to support the development and maintenance of personalized databases of FSLA users, registers of centres’ employees and FSLA lawyers; and the development of databases for legal aid provision in administrative, criminal and civil cases.

A fully developed CIAS or LAIAS (legal aid informational analytical system) should automate majority of processes and procedures within legal aid system, allow for an effective cooperation between stakeholders involved in legal aid provision as well as serve as a key instrument to facilitate the effective and sustainable management and operation of the FLA system. The idea of CIAS/LAIAS proceeded from the main following preconditions:

- Significant number of stakeholders: CCLAP, 27 regional FSLACs (and about 105 inter-rayon (Local) centres to be established), about 4000 lawyers in legal aid registers, law enforcement bodies (police, pre-trial investigation, prosecution), courts, etc. whose activities in the provision of legal aid need to be coordinated in the most effective way;
- Tight procedural terms for the provision of legal aid (i.e., detention officers are required to immediately, upon detention, inform centres for FSLA about the fact of detention; centres for FSLA are required to appoint a lawyer within an hour after registering information on a given detention; appointed lawyer are required come to the detainee within an hour, etc.);
- A considerable volume of documents and phone calls need to be processed by the legal aid system (i.e., in 2013 more than 44,000 procedural documents and about 80,000 incoming phone calls were processed, with approximately 77,000 orders for lawyers issued. These figures are projected to increase considerably with the expansion of the legal aid system to civil and administrative cases);
- A vast service delivery territory (legal aid should be provided in every point of the state at any time. Factors such as the territorial dispersion of lawyers depending upon the region, different landscapes and conditions, and in some cases distances up to 200 km to travel to regional centres for FSLA to report the completion of orders issued by the centre etc., need to be captured and taken into consideration);
- The need for all types of requested statistic information on the functioning of the legal aid system in real-time to facilitate prompt management decision making.

The concept of CIAS/LAIAS is illustrated in the figure below.

Figure 23. Concept of the Complex Informational Analytical System (CIAS)



In 2012, 3.8 million UAH was spent from the State budget to develop CIAS/LAIAS with minimum functionality required for the launch of the legal aid system. This initial investment allow for the start-up of CIAS/LAIAS on January 1st, 2013 simultaneously with the launch of the overall legal aid system including the following features:

- A network of 165 automated workplaces (desktops/ laptops, 30 in CCLAP and 135 in regional centres for FSLA (5 per centre));
- A VoIP network (VoIP 2-units server with limited functionality, 165 phone systems and complementary software);
- Basic special software (case registration, order issuing and control, registers of lawyers providing legal aid, complimentary databases are enabled) and a web interface managed by a 2-unit server.

In 2013, it was planned that the following components of CIAS/LAIAS (with initial budget of 15,700.0 thousand UAH) would be developed:

- Creation of a data-centre to ensure centralised data processing and conservation using hardware and data duplication technologies;
- Creation of a hybrid telephony network SYSTEM covering all regional centres for FSLA;

- Modernization of data transfer networks;
- Introduction of 135 additional automated workplaces (5 per centre);
- Introduction of an identification system and eToken technology;
- Development and introduction of special software modules: “Lawyer’s workplace”; an analytical module for data processing, analysis and visualisation; the first stage of the e-document system; web-interface upgrading; and an authorisation and administration module.

Due to limited financial resources (only 656.1 thousand UAH received from the State budget in 2013, debt 2,541.1 thousand UAH paid off in 2014), only 12 high-productive blade servers needed for creation of fail-safe data-centre were purchased. These servers were not connected to CIAS/LAIAS. In 2014, no new resources for CIAS/LAIAS development were received from the State Budget. Given the current challenging fiscal and security situation in Ukraine, planned investments in the system have been put on hold due to an overall clawing back of budgets across central executive government bodies. There remains a significant need for investment in technical expertise in software development, as well as some hardware investments to connect the hardware investments previously acquired by CCLAP noted above.

The development of the Ukrainian legal aid system is premised upon an innovative and cost-effective approach which seeks to harness modern technologies in support of legal aid service delivery. The the lack of present financial resources for on-going development of CIAS/LAIAS has several limitations at present:

- Challenges associated with the processing of an increasing number of all-types of documentation and other incoming and outgoing information across the system;
- Instability in equipment providing main LAIAS functional features that could result in the loss of previously captured information in current databases as well as irregularities in the functioning of the network;
- Insufficient access to timely information to inform management decisions going forward
- Significant time spent in reporting and in supporting the professional development of lawyers.

Overall, there is a risk that the lack of financial resources for the on-going development of CIAS/LAIAS could impact negatively upon sustainable and effective operation and development of legal aid system in Ukraine.

3.7 Legal Aid Internal Monitoring System

CCLAP has introduced some elements of an internal monitoring system including the regular collection of data and the publishing of quarterly and yearly statistical reports (“informational notes”) publicly available on the CCLAP website. In addition, since September 2014 CCLAP and FSLACs collect and publish on their website information on lawyers-attorneys remuneration in every region (oblast), including lawyers’ fees and reimbursement costs on every assignment they received from relevant FSLAC.

The FSLA centres collect and provide data to CCLAP on a daily, monthly, quarterly and yearly basis. As of September 2014, there are approximately 300 data elements that are collected on a regular basis. However, not all information gathered is actually used or analysed. Procedure of data verification is not developed yet as well.

New statistical elements/indicators were introduced at the end of 2013 and new statistical forms developed. However, no discussions/consultations were held to date among FSLACs on effectiveness and efficiency of the data collection and no training were conducted on how to collect/aggregate or report on data for relevant FSLACs' staff.

Figure 24. List of Statistical Elements Presently Collected/Reported

<p>Access Indicators</p> <ul style="list-style-type: none">▪ Number of detained persons (monthly)▪ Number of persons subject to administrative detention (daily/monthly)▪ Number of cases of defence provided on request (daily/monthly)▪ Number of individual/separate legal procedural actions (daily/monthly) <p>Quality Indicators</p> <ul style="list-style-type: none">▪ Effectiveness of lawyers (monthly/quarterly)▪ Refusal of a defence lawyer (monthly) <p>System Indicators</p> <ul style="list-style-type: none">▪ FLA System's human resources by gender and age (quarterly)▪ FLA Clients by gender and age (monthly/yearly)▪ Financial issues related to lawyer-attorney compensation (monthly/quarterly)▪ Partnership/communication (monthly)

The process of data collection varies from centre to centre and statistics are often collected manually. In order to automate data collection processes, in 2012 CCLAP launched complex informational analytical system (CIAS), which currently works with limited functional capacity⁶¹ (i.e. duty officers are presently capturing system data in duplicate form – both in hard copy “notebooks” and within the CIAS being developed). There is a strong need to increase CIAS' capacity level to that of a full-fledged electronic information management system which would provide the means for obtaining statistical data in real time, aggregate data and report on data.

3.8 Independent External Monitoring of the Legal Aid System

There is a need for independent external monitoring of the legal aid system within Ukrainian civil society. In 2014, the Open Civic Platform on Development of the Ukrainian Free Legal Aid System (Civic Platform) was established. This Civic Platform captures a broad cross-section of non-governmental/civil society organizations, including the Centre for Political and Legal Reforms (CPLR), “EuroMaidanSOS”, the International Renaissance Foundation (IRF), the Ukrainian Helsinki Human Rights Union, the Ukrainian Legal Aid Foundation (ULAF), the UN Development Programme Project “No Borders” and independent lawyers. One of the goals of the Civic Platform is undertake public oversight of the functioning of the FLA

⁶¹ Limited CIAS functional capacity forced some FSLACs to use their own tools to collect data, which are not standardized across the system and have limited capabilities as well.

system. The Civic Platform is in a nascent stage of operation, as such, it is premature to comment as to the consortium's effectiveness in undertaking an independent external monitoring role of the FLA system.

The first independent assessment of the functioning of the FSLA system was conducted in 2013 by a number of NGOs (ULAF, UHHRU and CPLR), led and supported by the International Renaissance Foundation and partially financed by MATRA. The report was published in late September 2014. The assessment was conducted via analysis of relevant legislation and a survey of different stakeholders. It included: a survey on the level of awareness of people on the right to FLA conducted in 5 oblasts; focus groups with lawyers-attorneys engaged in FSLA; interviews with private lawyers-attorneys (outside the FSLA system); interviews with investigators and duty officers in police units, prosecutors and judges; pilot interviews with FSLA clients. A peer review by FSLA lawyers-attorneys was also piloted. Experts from the ULAF and the CPLR developed a report based on the surveys and analysis that was presented for consideration to the Civic Platform. Based on the feedback the final draft was prepared which includes several recommendations on how to enhance accessibility of the system, the quality of FSLA and strengthening the FSLA system management. The report will be publicly presented some time in fall 2014. It was recommended during a meeting of the Civic Platform that a similar survey/assessment should be conducted in a few years (taking into account the scope of the research, required resources and time to implement the recommendations). At the same time, it was noted that an overview of FSLA functioning in 2014 might be done by tracking the most essential indicators within the FLA system.

There were also some other external reports which included references to the free legal aid system, such as the CLPR Report on Implementation of New Criminal Procedure Code, the Report of the Council of Europe on EuroMajdan period/events, the UN Report on Human Rights in Ukraine, Ombudsman (NPM) reports, etc.

In 2014, the IRF is supporting a survey "Inside Police Custody" on protection of suspects' rights (also conducted in Georgia and Moldova), which would include consideration of the right to information, access to a lawyer, and legal aid; the right to silence, and interrogation; medical assistance; and protection for vulnerable suspects. This research would include desk analysis of available information and legislation, observations in police units (in 5 oblasts/cities), and some interviews. A few FSLA lawyers-attorneys are engaged in conducting this analysis.

In the framework of the Justice Reform Program (the FAIR Justice Project, USAID-funded), there is also work underway to conduct the monitoring of trials in September-December 2014. They plan to have 20 monitors in the courts assessing proceedings and with the report expected in January 2015.

4.0 OUTREACH AND COMMUNICATIONS CAPACITY OF THE LEGAL AID SYSTEM

4.1. Legal Framework

The State Targeted Program for Establishing Free Legal Aid System 2013-2017 identifies an information campaign targeted as those who are eligible to receive free legal aid, lawyers, agencies authorized to detain, arrest or take individuals into custody, the local self-government bodies and NGOs, as one of its key objectives.

The State Program further outlines specific aims of the information campaign, such as:

- Raising awareness of eligible individuals on free legal aid as well as lawyers, agencies authorised to detain, arrest or take individuals into custody, the local self-government bodies and NGOs on their respective roles and obligations vis-à-vis free legal aid system;
- Informing the above mentioned stakeholders about the general principles of the development and implementation of the free legal aid system; and
- Conducting training for representatives of NGOs working with individuals eligible to free legal aid, publishing books and brochures on free legal aid, etc.

Proposed activities to reach the mentioned objectives include publishing and distributing of a wide range of information materials (i.e. brochures, leaflets, stickers with legal aid toll-free number, posters, etc); conducting training for volunteers and NGOs; organizing round tables at the regional level to discuss the most pressing issues of FLA development, introducing kiosks with information of FLA provision, etc.

In line with the law, the CCLAP has been tasked with establishing print media, publishing and distributing books and other printed materials; producing and disseminating social advertisement, video and audio products.

The projected cost for development and implementation of the information campaign, as outlined in the State Program, is approximately 151.5 million UAH (including from the State budget – 139.1 million UAH and other sources – 12.4 million UAH), including 58.1 million UAH for 2013-2014. However, for the period of the 18 months of the FLA system operation (i.e. January 2013-June 2014), the funds from the State Budget for the system's information campaign have not been transferred at all. All funds received for this period (about 1 million UAH or 2% of total sum allocated in the State Programme) were provided via donors' support.

4.2 Branding

One of the first steps in launching the FLA information campaign was the development of a logo that would be recognizable and used in all promotional and advertisement materials. In early 2013 the logo and its colour scheme were developed and approved. The logo is intended to symbolize two features of the legal aid system: 1) a court process with prosecutor and defence on opposite sides, and 2) hands of a defence lawyer protecting its client. The inner space of the logo is associated with a cross symbolising help.

To date, the logo has been used extensively in all informational materials produced for the CCLAP and the FSLACS as well as an official logo of these institutions.

Figure 25. Official logo and colour scheme of the FLA system (in Ukrainian, English and Russian)



4.3 Public Outreach Activities

The overview report revealed that while a plethora of means of communication has been used to promote the free legal aid system, this has been done on ad hoc basis and without an overarching outreach strategy. The activities conducted to date have focused primarily on free secondary legal aid in criminal cases, while free primary legal aid seems to receive much less attention.

Mass media

While the free legal aid system in Ukraine was officially launched on January 1, 2013, first pieces of information about the system began to emerge in the Ukrainian broadcast media in early 2012. Since, at the time, the model of free legal aid in Ukraine was still very fresh and not fully moulded; the information was often quite fragmented.⁶²

⁶² According to CCLAP website, since 2012, there were 36 publications in central and local printed media related to legal aid issues.

At the onset of the system operation, the CCLAP senior management made several televised appearances on the national and regional TV channels to explain the rationale and merits of the legal aid system in Ukraine.⁶³ These broadcasted interviews were seen as a quick and convenient tool for sending a brief message about the new FLA system to a wide group of Ukrainian population. Currently, the regional TV channels continue to be frequently used by senior officials from the FSLACs. The national, non-specialized TV channels are used less frequently.

In mid-2013, within the framework of the USAID Fair Justice Project in Ukraine, two videos clips were produced featuring true stories of a man who died in custody and the other who was wrongfully imprisoned. Both videos were intended to highlight the need for free legal aid and encourage those who are in need of defender to call the legal aid hotline number. These videos were broadcasted free-of-charge by state-owned and regional TV channels approximately 53,000 times during the August 2013 to June 2014 period.

According to the recommendations of the National Interdepartmental Coordination and Methodological Council for Public Legal Education, video clips about the right to state-financed defence are to be broadcasted in TV programs produced with the participation and/or on the order of the Ministry of Internal Affairs.

Internet and Social Media

The Internet proves to be a great source of information on the FLA system in Ukraine. Details on the FLA system and instructions on how to access legal aid services could be found on the official websites of the Ministry of Justice, Regional Divisions of Justice, but also web resources of civil society organizations/NGOs, etc. Some on-line media, such as “Law and Business Magazine” (<http://zib.com.ua/>), provide updates on the FLA system on regular basis.

One of the most comprehensive on-line sources of information on the FLA system in Ukraine is the official website of the CCLAP. Since its launch in 2012, the website has continued to expand the amount and type of information available to the general public. Currently, the website contains not only comprehensive information on the legal aid system, including instructions on how to access FLA and updates on the latest developments in the area, but also a wealth of archived materials, such as FLA-related publications, audio-visual materials on FLA, etc.⁶⁴ The website is available in Ukrainian and English; however the content of the English site is rather limited due to the lack of resources available to support it.

In efforts to tailor the information on FLA delivery to needs of regional communities in Ukraine, the FSLACs across the country launched their own websites in August 2014. The websites are still in a nascent stage of development, but it is envisioned for all of them to have a common “look-feel”. Content of the FSLACs websites will be approved by respective FSLACs directors with overall content supervision provided by the CCLAP in Kyiv.

⁶³ According to CCLAP website, since 2012 there were 24 televised appearances of CCLAP officials at national level and 5 – at Kyiv; in addition there were 30 televised appearances of CCLAP and FSLACs’ officials at local level.

⁶⁴ <http://legalaid.gov.ua/ua/mediafiles>

Since February 2012, the CCLAP has maintained a Facebook account⁶⁵ which is actively supported by the CCLAP team and contains up-to-date information on free legal aid activities in Ukraine. There are also several Facebook groups related to the legal aid system. One of them is a large group of lawyers providing free legal aid; there are also Facebook groups of lawyers-trainers and quality managers.

In February 2013, the CCLAP has launched a YouTube channel⁶⁶ that includes a number of promotional videos on access to justice in Ukraine. Since July 2013, the CCLAP has been available on Google+ circles.⁶⁷

It is important to note, however, that while popularity of the Internet in Ukraine is growing exponentially, its accessibility across the country, particularly among the most vulnerable Ukraine's population, is very limited. As such, the Internet should be considered as a secondary mean of communication in the system's public outreach strategy at the ground level.

Printed materials

In 2013, with methodological and financial support from the USAID Fair Justice Project and the ULAF, an information campaign on free secondary legal aid in criminal cases was launched. The campaign focused primarily on the production and dissemination of printed materials (i.e. booklets, posters and stickers).

The topics and print runs of the booklets were as follows:

- *Detention on suspicion of committing a crime* (39,000 copies);
- *Types of preventive measures in criminal proceeding* (39,000 copies);
- *Plea bargain and its consequences* (39,000 copies);
- *Right to free legal aid in criminal proceedings* (90,000 copies with additional 72,000 copies printed with support of the Ukrainian Helsinki Human Rights Union)

In addition, approximately 3,500 posters with the information on FSLA and the free legal aid hotline number, and 60,000 stickers with basic information on FSLA were printed. A separate print run of 20,000 promotional posters was funded by the Embassy of France to Ukraine.

The booklets were distributed by the FSLA centres, offices of human rights organisations and NGOs, notary and offices of private lawyers, and FSLA lawyers providing legal aid services on permanent basis. The posters and stickers have been displayed in the police stations, offices of investigators, detention facilities, and transportation vehicles of detention facilities. Many of the posters, booklets and stickers were disseminated among protesters during the Maidan events.

Based on data received during the QALA Project inception mission in July 2014, a serious push back was received from bodies authorized to detain people to disseminate the promotional material and inform detainees on their right for FLA as stipulated by the legislation.

⁶⁵ <https://www.facebook.com/Centre.4.Legal.Aid>

⁶⁶ <https://www.youtube.com/channel/UClkNqoTCpHGTovo6GyXxWSw>

⁶⁷ <https://plus.google.com/113492411826641418250/posts>

In the report detailing efforts to distribute pamphlets, posters and stickers through the Ukrainian Legal Aid Foundation, the USAID estimated that, at a minimum, they should have had at least ten times more copies of the materials.

Maidan events

The events of Maidan (November 2013 - February 2014) proved to be an important test for the relevance of the free legal aid system in Ukraine as well as a unique opportunity to increase public awareness and trust in the system. The Maidan saw some of the worst examples of political repression against mass protesters in Ukraine in years. This included numerous violations of human rights, ill-treatment of detained individuals, inactions and politically motivated decisions of prosecutors and judges, etc. According to the report of the Council of Europe Commissioner for Human Rights *“these events have put in sharp focus the issues of policing of demonstrations and respect for human rights by the police in Ukraine, due to the numerous serious allegations of excessive use of force against demonstrators and the perceived lack of accountability for such violations”*⁶⁸.

While the role of lawyers providing free secondary legal aid under the circumstances was crucial, it was often questioned by the public if lawyers working within the state-funded legal aid system could actually act in the interest of their clients. To this end, a press-conference was organized by the Maidan communities where this issue was addressed and relatives of detained individuals, who had received legal services from the FSLA lawyers, spoke about their experience with FLA provision. This was seen as a critical turning point in terms of public attitude and trust towards the state legal aid system.

Recently (in August 2014), FSLA lawyers-attorneys from Zaporizhzhya FSLA center provided legal aid (defence) to soldiers which, according to media, were forced to cross the border with Russia (in order not to get caught by terrorists in anti-terrorist operation zone). Lawyers-attorneys succeeded to change the restraint measure suggested by a prosecutor (taking into custody). As result, 16 soldiers were released from custody based on their personal obligation.

Thus, the system demonstrated its political neutrality, high level of professionalism and capacity to provide services for all detainees in due time and to provide legal defence in proper manner.⁶⁹

4.4 Communication with Stakeholders of the FLA System

As evidenced in section 1.2, Figure 2 of the overview report, there is a host of internal and external stakeholders playing various roles and functions within the FLA system. Some anecdotal evidence suggests that although the FLA system has been in place for nearly two years now, some stakeholders are still not aware of (or simply resist to accept) their respective roles and obligations vis-à-vis the FLA system.

⁶⁸ Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe (following his visit to Ukraine from 4 to 10 February 2014)

⁶⁹ Despite numerous cases of the law enforcement bodies failing to inform, or failing to inform in a timely manner, about detention cases, the FSLACs were informed about the detention of 389 individuals in response to which FSLA lawyers were provided. Upon arrival of the FSLA lawyer, a total of 112 persons (29 % of the total number of cases) refused FLA services. The legal aid was provided to 277 detained Maidan protesters.

During interviews with FSLA lawyers conducted by the Ministry of Justice in May 2013 and aimed to collect their feedback on the first few months of the system operation, the lawyers identified a number of challenges encountered while performing their FSLA duties. More specifically, the identified challenges included: restrictions in gaining access to individuals kept in temporary detention facilities, particularly at night, on weekends and on holidays; restrictions in executing the right to a confidential meeting with FSLA clients and lack of appropriate premises to hold such meetings; cases of applying physical means and/or psychological pressure on detainees to make them decline legal aid that they are eligible for, or coerce them into providing incriminating information; cases of failing to provide details and information on the grounds for detention, right to defence, etc.

These cases could be interpreted as either negligence or limited awareness on part of some stakeholders (i.e. law enforcement bodies) with respect to the right of detained individuals to a legal defence guaranteed by the state. This also shows a pressing need to create a communication platform for the system stakeholders to increase their overall awareness of the FLA system and provide opportunity to discuss the implementation of FLA at the operational level.

To this end, a series of inter-regional round tables was conducted with ULAF support in May 2013 in 10 cities of Ukraine⁷⁰ to discuss the identified issues with the implementation of the FLA system. The round tables were attended by a total of 341 individuals including representatives of the High Specialised Court of Ukraine on Civil and Criminal Cases, the Commissioner of the Verkhovna Rada of Ukraine on Human Rights (Ombudsman), the Ministry of Justice, the CCLAP, FSLACs, representatives of courts, public prosecution offices, the police, other institutions of justice, FSLA lawyers, representatives of human rights organisations, and academics in the area of criminal law proceedings. As a result of the discussion, it was determined that during the January to May 2013 period the number of cases of violations of detainees' rights as well as the number of cases of the police failing to inform FSLACs on detention were reduced considerably (compared to the beginning of 2013). This underlines the importance of implementation of such on-going communication mechanism.

4.5 Engagement of External Stakeholders to Promote FLA

In order to establish an effective public outreach and communication strategy it is necessary to identify all possible mechanisms and stakeholders with a capacity to promote FLA. Since the launch of the FLA system in 2013, several external stakeholders introduced promotion of FLA into their agenda. There is, however, a larger group of external stakeholders whose capacity and potential to increase public awareness and trust in FLA has not been employed yet.

In December 2013, a Memorandum of Understanding between the Commissioner of the Verkhovna Rada of Ukraine on Human Rights (Ombudsman) and the CCLAP was signed. In the document, both parties agreed to join efforts in preventing violations of human rights and freedoms, including the rights of individuals to free secondary legal aid and facilitating exercise of the right of citizens to equal and free access to legal aid

⁷⁰ The round tables were organized in Vinnytsya, Kirovohrad, Kherson, Uzhgorod, Donetsk, Rivne, Ivano-Frankivsk, Kharkiv, Simferopol and Chernivtsi.

by the state in criminal proceedings. The document is based on the provision of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms and takes into account the provisions of the Constitution of Ukraine, laws of Ukraine “On the Verkhovna Rada Commissioner of Ukraine on Human Rights” and “On Free Legal Aid”. Another mechanism to establish sustainable cooperation in this area is the National Preventive Mechanism against Torture that allows the provision of support for citizens in custody (“sizo”).

One of the most vital communication and outreach initiatives has been initiated by the Open Platform. The organization brings together well-known public figures, such as Larysa Denysenko, a famous Ukrainian writer, lawyer, human rights activist and television anchor-man. The goals of the Platform with respect to FLA include the following:

- Raising public awareness of legal aid development;
- Coordinating activities and joining efforts of public figures and experts taking advantage of their intellectual, organizational and communication capabilities, particularly in information, research and education to raise public awareness of the right to free legal aid;
- Strengthening co-operation of the public, the state and advocacy around the issues of performing and developing legal aid delivery;
- Facilitating the most successful international practices in legal aid to be applied by the CCLAP and promoting the best Ukrainian legal aid delivery practices both nationally and internationally;
- Maintaining a professional dialogue on legal aid challenges and fostering its progressive principles and values;
- Public oversight of the legal aid system’s performance.

Also, one of the goals of the recently established Bar Association of Legal Aid Providers (BALAP) is to raise public awareness on citizen’s rights and how to use their rights.

In terms of dissemination of information on free primary legal aid, there are plenty of opportunities to collaborate with administrative-territorial units, such as the Association of Ukrainian Cities, the Association of Small Cities of Ukraine, the All-Ukrainian Association of Village and Settlement Councils would be critical in the promotion of free primary legal aid. Similarly, the Centres for the Administrative Services Provision, recently created at the central, regional and local levels of Ukraine, could be considered as a partner in dissemination of information on access to legal aid and, particularly in the area of primary legal aid provision.

It is equally important to establish cooperation with the Ministry of Education and Science of Ukraine as well as high schools (preferably with support of interested CSOs) to promote legal aid education among youth. One of the possible mechanisms could be to include a topic of legal aid in law courses in high schools or invite FSLA lawyers as speakers.

Finally, in effort to reach specific segments of the population, the outreach strategy could include collaboration with church groups, youth associations promoting citizenship, scouting movements, etc.