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Equal justice remains elusive for the poor

Lack of access to counsel is a growing problem for U.S. legal system

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by [Lauren Carasik](#) @LCarasik

On June 8 the Human Rights Policy Center at the University of North Carolina issued [a report](#) (PDF) on the state of access to legal representation in the United States. The report confirmed what many others have long argued: Equal justice remains elusive for millions of poor and low-income Americans. And the failure to provide meaningful access to representation runs afoul of regional and international human rights norms and core democratic principles.

The United States' adversarial system is premised on the assumption that litigants operate on a level playing field. Despite perceptions of an overabundance of lawyers, most low-income litigants cannot obtain counsel. They are often unfamiliar with the complex web of procedural and substantive rules they must navigate. Even more challenging, many lack basic literacy skills or language proficiency. And courts can be stressful, chaotic and intimidating places. Since unrepresented litigants fare worse than those with representation, the shortage of affordable lawyers creates a widening justice gap.

Depriving those with limited resources of a fair and accessible legal system further entrenches poverty and marginalization. Those who end up in court are often in the midst of a dispute threatening their livelihood, safety or housing. By contrast, those with resources can afford legal representation to vindicate their rights. The two-tiered system of justice erodes the legitimacy of the U.S. legal system.

The stakes are high. Losing housing to foreclosure or eviction can lead to loss of employment, a change of school districts for children and can even affect custody determinations. For a tenant who cannot afford rent, a lawyer can

sometimes negotiate time to find suitable housing or even rental debt forgiveness. An attorney can empower a domestic violence victim who would otherwise find the court process daunting or help maintain income by enforcing workplace rights.

And the consequences for lack of legal representation are graver in deportation proceedings, which lack even the most basic procedural safeguards, thanks to an [artificial distinction](#) between the civil and criminal systems. The criminalization of some civil offenses, such as immigration violations, blurs the distinction even further. Yet in Chicago [immigration courts](#), for example, fewer than 14 percent of female asylum seekers with children had a lawyer, and unaccompanied minors are particularly vulnerable.

The right to counsel in civil cases often receives less attention than its more celebrated criminal analog. But it remains critical when basic human needs — such as housing, domestic abuse, child custody, employment, deportation and [civil forfeiture](#) — are at risk. And inadequate funding [disproportionately affects](#) women and minorities. That's why advocates are [increasingly demanding](#) a right to representation in civil courts, though the Supreme Court has declined to find such a right. Admittedly, the right to counsel in the criminal arena, where indigent defense is constitutionally mandated, offers a cautionary tale. The public defender system is overburdened and underfunded, even though individual liberty is at stake. But the failures only serve to reinforce the need for reform.

The most marginalized and disempowered deserve fair treatment in the legal system, which requires meaningful access to lawyers. Indeed, our democracy depends on it.

The U.S. has long recognized that the poor need access to counsel. In 1974, President Richard Nixon created the Legal Services Corp. (LSC), a nonprofit that provides grants for civil legal assistance to low-income Americans, as part of his administration's war on poverty. The LSC now supports 134 programs

nationwide. But the agency is woefully underfunded, and 4 out of 5 low-income people cannot afford a lawyer.

At the LSC's inception, only 12 percent of Americans were eligible for its assistance. In 2013 nearly 20 percent of Americans, or [64 million people](#), had annual incomes below the LSC limit — less than \$15,000 for an individual and \$30,000 for a family of four. Yet the LSC has been hamstrung by politically targeted budget cuts and restrictions, such as prohibitions on class action lawsuits, lobbying and representing ineligible aliens, which impede lawyers' ability to advocate on behalf of their poor clients. LSC funding has decreased in real dollars since the program's inception, even as the need for lawyers has increased.

Investing in civil legal services for the poor makes good fiscal sense. Funding legal aid is cost effective. In 2014 a [Boston Bar Association](#) task force found that for each extra dollar spent providing civil legal aid to combat homelessness and domestic violence, Massachusetts saved two dollars. Some municipalities are embracing the concept. For example, New York City is considering providing attorneys for [tenants in housing court](#), where 90 percent of tenants are unrepresented and nearly 98 percent of landlords have counsel.

Many civil justice advocates believe full and unrestricted LSC funding is politically and economically unlikely. Instead, they are developing a range of proposals to fill the gap. These include [reforming the civil justice system](#) in so-called poor people's courts, where the vast majority of domestic disputes are heard, in order to dismantle the impediments to both procedural and substantive justice. Other proposals include the use of [mediators](#), expanded authority for nonlawyers to represent clients, unbundled and [targeted representation](#), which would open a middle ground between an absolute right to counsel in civil cases and an individualized need assessment. Mandatory pro bono service for attorneys and leveraging the labor of recent graduates or retired lawyers are other widely discussed options. And states are increasingly stepping up with [commissions](#) to address access to justice. While some of these proposals are promising, each

one should be weighed with an eye to the perception of fairness they create and the justice they actually deliver.

Ultimately, a lack of political will and depleted coffers should not excuse Washington from ensuring equal justice under law as a matter of right, not hollow aspirations. The most marginalized and disempowered deserve fair treatment in the legal system, which requires meaningful access to lawyers. Our democracy depends on it.

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The views expressed in this article are the author's own and do not necessarily reflect Al Jazeera America's editorial policy.