

## Questionable proposals for legal aid reform in the UK mean that government's promises of justice for all ring hollow.

*The controversial Legal Aid, Punishment and Sentencing of Offenders Bill has had a baptism of fire since it was leaked earlier this summer and recent moves by the UN and Amnesty International will do nothing to quell the flames. [Avery Hancock](#) writes that this bill will serve only to create an uphill battle for human rights.*



The Legal Aid, Punishment and Sentencing of Offenders Bill ([Lapso](#)) has been controversial ever since it was accidentally [leaked](#) in June 2011. Much of the debate over the Bill has focused on sentencing arrangements for [youths wielding knives](#), drink driving, in the [wake of the London riots](#), and on the firestorm that erupted when the Justice Secretary, Ken Clarke, suggested that [some rapes were less serious](#) than others.

However, there has been a simultaneously steady barrage of [criticism](#) on the legal aid reform aspects of the Bill from legal societies, [the non-profit legal advice sector](#), the [NHS](#), and legal rights organisations in the UK, all concerned that cuts to legal aid will restrict poorer people's access to justice.

But now, as the Bill has reached the [report stage](#) in Parliament an unexpected protest has erupted from [Amnesty International](#) and even the United Nations, who warn that changes to the way litigation costs are recovered will allow UK companies to get away with violating human rights overseas. As it reads now, the bill will eliminate the 'no win/ no fee' arrangements, which are typical of the complex human rights cases that lawyers take up on behalf of victims of corporate abuse (legal aid is not available in the majority of cases involving foreign claimants).

The [Trafigura case](#) is just such an example. The multinational company chartered a ship out of its London office which knowingly dumped toxic waste off the coast of Ivory Coast in 2006. 16 people died and thousands of Ivorians [fell ill](#) from the chemical waste. Over a thousand people sued the company, which settled with the Ivorian government for £160 million in 2009. The company did not accept liability, however, and the case continued when the High Court in London awarded damages to 30,000 claimants represented by UK law firm Leigh Day & Co. [The firm claim](#) they never could have taken on a multi-billion dollar company on behalf of thousands of impoverished people had the no win/ no fee arrangement not been available.

The Justice Secretary, however, believes that the move will [reduce litigation costs](#) and bring down the number of frivolous claims brought before court. Currently lawyers in no-win cases claim 'success fees' from the defendant that are up to twice their normal rate and claimants are entitled to keep all of the damages. In an effort to 'shift the burden' across both parties success fees will be capped at 25 per cent and will come out of the claimant's damages; the ceiling on damages will be raised 10 per cent, ostensibly to compensate for the payout. This is just one of the 'interlocking reforms' that Lord Justice Jackson proposed in his hard-line [Review of Civil Litigation Costs](#), a report which all but eclipsed the government's official legal aid reform [consultation](#). The disproportionately high cost of litigation, the report argues, impedes access to justice.

Harvard Professor John Ruggie, who is the United Nation's special representative for business and human rights, couldn't agree less. In a [letter](#) to Justice Minister Jonathan Djanogly (whose role in the Lapso reform process has been [stripped down](#) after an inquiry into his personal interests in claims management) he warns that successful claimants, if not discouraged from taking action at all, could potentially walk out of court in cases no better off than they were at the start, and that the financial disincentives will shrink the already small pool of lawyers willing on human rights cases against multinationals. In June, the UK government



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officially endorsed the UN Protect, Respect, and Remedy Framework endorsed by Professor Ruggie, after the parliamentary [joint committee on human rights](#) recognised the difficulty alleged victims have in bringing UK companies to court, due to funding difficulties, complex corporate structures and other barriers. Now it seems that victims of pollution, [trading of conflict minerals](#), and other corporate ills will have an even steeper uphill battle for justice.

The Ministry of Justice is, of course, under enormous pressure to cut almost a quarter of its £9 billion budget, and frivolous litigation does drive up the cost of the legal system ([spurious comparisons](#) to other countries' legal bills aside). But as the government erects more barriers for overseas victims of human rights abuses to gain compensation, the promise of ensuring access to justice rings even more hollow.