

Breaking through the Justice Wall for the Underprivileged People In Criminal Cases

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Abstract

The motto "*Justitia Non Est Neganda, Non Differenda*" ("Justice must not be denied and must not be delayed") should guide law enforcement in Indonesia. However, in reality, individuals from lower-middle or underprivileged socioeconomic backgrounds who are involved in criminal cases often encounter significant barriers to obtaining substantial justice. This study aims to assess the availability of access to justice for these vulnerable groups and to develop practical solutions to ensure equitable legal protection. Using empirical legal research supported by primary and secondary data, combined with legislative and case law approaches, the study employs descriptive and analytical techniques. The findings reveal that although the legal system guarantees equality before the law, structural, economic, and institutional constraints continue to hinder fair treatment. The novelty of this study lies in proposing a practical mechanism for resolving criminal cases that prioritizes the disadvantaged, thereby bridging the gap between legal norms and social realities. A strong commitment from law enforcement, along with implementable reforms, is essential to make justice accessible to all.

Keywords

Crime; Indonesia; Justice; Law Enforcement Officers; Underprivileged People;

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1. INTRODUCTION

Indonesia's population is expected to surpass 270 million by 2025, according to data released by the Central Statistics Agency (Statistik, 2025). Poverty is classified as approximately 9.03% of this figure (Statistik, 2024). This demographic condition reflects not only population growth but also widening social and economic inequality, which increasingly affects citizens' access to justice. According to the adage, "where there is society, there is law", conflict is an inevitable element of social life arising either between individuals or between individuals and the state.

As a result of this conflict, the law serves as a means to restore order and stabilize the situation (Romdoni et al., 2022). In this context, the law functions as a mechanism to restore order and ensure justice. However, this ideal is not fully realized in Indonesia, where access to justice remains unequal, particularly for economically underprivileged citizens involved in criminal cases.



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Roscoe Pound's theory positions law as a tool of social engineering aimed at shaping societal behaviour and preventing arbitrary actions. However, criminal acts, whether theft, murder, or rape, transcend social strata and encompass both white collar crimes and street-level offenses. Despite similar legal exposure, disparities in legal defense arise due to economic class, rendering the principle of equality before the law more normative than real.

Upper-class individuals implicated in crimes often retain their reputation through access to legal professionals and financial resources (Risdalina & Siregar, 2019). As previously mentioned, this is in stark contrast to the impoverished individuals who are entangled in criminal proceedings (Laksono, 2021). They commit crimes for various reasons. The bourgeoisie, on the other hand, commit crimes to accumulate wealth, while the underprivileged people are motivated by economic pressure to commit crimes to meet their primary needs. This fact is evident in several viral social media cases that illustrate this point.

Indonesia's constitution, in Article 27, paragraph (1), explicitly states that all citizens have equal standing before the law, and the government is obligated to uphold the law (Angga & Arifin, 2019). Thus, no individual, regardless of economic background, should be deprived of due legal process, nor should the law "be sharp toward the weak and blunt toward the powerful." (Sari et al., 2024). The government attempts to actualize this principle through Law Number 16 of 2011 concerning Legal Aid, which guarantees free legal services for those who cannot afford them. However, in practice, this statutory guarantee has not entirely translated into fair and accessible legal assistance.

To eliminate this negative stigma, the government has made efforts to assist the underprivileged people in criminal cases through Law Number 16 of 2011 concerning Legal Aid. Legally, legal aid is defined as legal services provided free of charge by legal aid providers (Handayani, 2015) to legal aid recipients, serving as a means of human rights protection (Sutiyoso et al., 2023). Legal aid providers are legal aid institutions determined by law, and legal aid recipients are individuals or groups of people who are financially underprivileged. This law is a crucial instrument in realizing equality before the law, but its implementation in practice remains problematic and inconsistent.

Despite this legal guarantee, practical implementation remains deeply problematic. Although recipients are legally entitled to free services, several legal aid providers reportedly impose unofficial "walk-in fees" during pre-adjudication, trial, or post-adjudication phases. This practice not only contradicts Article 4 of Law Number 16 of 2011, which mandates free legal aid, but also creates institutionalized injustice for the poor who are already socially and economically vulnerable. The practice of illegal levies is compounded by administrative burdens, such as the requirement for a Certificate of Inability to Pay (Surat Keterangan Tidak Mampu – SKTM), which often involves

complicated and time-consuming processes (Indonesia, 2020). As a result, underprivileged individuals are discouraged from seeking legal aid, normalizing resignation toward injustice. This reality reflects the marked inconsistency between legal doctrine and practice, as well as the state's failure to safeguard constitutional rights in criminal justice systems, which should uncover material truths impartially.

Given this situation, there is a critical need to evaluate the extent to which the implementation of Law Number 16 of 2011 has met constitutional ideals, particularly in local contexts such as Serang, Banten. The urgency of this research lies not only in assessing access to justice but also in proposing concrete alternatives for resolving criminal cases involving the underprivileged in ways that uphold fairness, efficiency, and constitutional integrity. Previous studies have examined legal aid from both normative and empirical perspectives; however, few have explored the systemic and operational failures in marginalized communities, nor have they connected these failures with broader issues of structural inequality in Indonesia's criminal justice system. By combining normative legal review with empirical fieldwork, this study offers a more comprehensive and context-sensitive analysis of unresolved justice gaps.

Several prior studies in Indonesia have examined the issue of legal aid and access to justice, particularly as it pertains to the underprivileged involved in criminal cases. These studies have generally focused on either normative legal analysis or empirical observations in specific regions. However, most existing research has yet to address the problem holistically using both normative and empirical methods. It has not sufficiently contextualized the findings within broader issues of legal system effectiveness, structural inequality, and institutional capacity.

Table 1.1 State of The Art and The Novelty

Reference	Year	Method			Topic of Study			Legal Consultation and Aid Institute
		Normative	Empiric	Normative + Empiric	Underprivileged Society	Case		
(Laksono, 2021)	2021	✓	✗	✗	✓	criminal	✓	
(Dasan et al., 2022)	2022	✗	✓	✗	✓	✗	✓	
(Nur et al., 2023)	2023	✓	✗	✗	✓	criminal	✓	
(Adnan et al., 2024)	2024	✗	✓	✗	✓	civil + criminal		✓
(Apriyani i et al., 2024)	2024	✓	✗	✗	✓	criminal	✓	

State of the art	✓	✓	✓	✓	✓	✓
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Based on the identified research gaps, this study makes two significant contributions. First, in terms of methodological innovation, the research employs a combination of normative legal analysis and empirical data collected from 45 respondents, including underprivileged citizens, law enforcement officers, and legal aid providers. This integrated approach offers a more comprehensive and contextual understanding of how Law Number 16 of 2011 concerning Legal Aid is implemented in practice. It also facilitates a more in-depth evaluation of legal effectiveness by utilizing established theoretical frameworks, such as Friedman's legal system model and Soerjono Soekanto's theory of legal effectiveness.

Second, the study's practical contribution lies in its proposal of a context-sensitive legal model for resolving criminal cases involving underprivileged individuals. The model emphasizes decentralized legal aid mechanisms, including the deployment of paralegal support, the development of digital legal aid platforms, and the strengthening of community-based advocacy. These strategies are designed to bridge the persistent gap between legal norms and social realities, thereby providing actionable and scalable solutions to enhance access to justice for marginalized communities across various regions of Indonesia.

2. METHODS

The issues raised in the introduction section certainly need to be resolved to prevent them from becoming protracted problems. Therefore, this research proposes government-provided legal aid counseling, as stipulated in Law Number 16 of 2011 concerning Legal Aid. This fact aligns with J. Rawls's essence of justice, which implies and compares justice in theory and practice in real-life situations (Said & Nurhayati, 2021). Once the public is aware of this service, it is hoped that they will be able to utilize the Legal Aid Institution's pro bono services. It can achieve our constitutional goal of equality before the law.

Legal research is a process of seeking scientific truth about law using scientific methods (ways) methodically, systematically, and logically to resolve legal problems or find the truth (answers) to legal events that occur both theoretically and practically in society (Hosnah et al., 2021). This study employs an empirical juridical method, supported by normative juridical analysis, which enables the research to reveal the discrepancy between legal norms and practice in the context of access to justice for underprivileged individuals.

The method employed required the use of both primary and secondary data. The primary data was collected directly from the underprivileged society and through interviews with law enforcement officials and legal aid institutions. A total of 45 respondents participated in this research, comprising 30

individuals from underprivileged communities, 10 law enforcement officers, and five representatives from legal aid institutions in the Banten region. The research object provided secondary data, which included primary legal materials (all forms of legislation), secondary legal materials (articles, books, etc.), and tertiary legal materials (encyclopaedias, legal dictionaries, etc.). The data was obtained indirectly. The collected data were analysed using a descriptive-qualitative approach, by systematically interpreting field findings and correlating them with relevant legal norms and theoretical frameworks.

The empirical component of the study was conducted through field research, involving structured interviews with 45 respondents: 30 individuals from underprivileged communities involved in criminal cases, 10 law enforcement officers (police, prosecutors, and judges), and five representatives from accredited legal aid institutions in the Serang region of Banten. Respondents were selected using purposive sampling, based on their experience with the legal aid system and their socioeconomic background. The interview questions focused on experiences in accessing legal aid, obstacles faced, and perceptions of legal institutions.

The normative component involved the analysis of primary legal materials (including the 1945 Constitution, Law No. 16 of 2011, and the Criminal Procedure Code), secondary materials (academic journals, legal books, and reports), and tertiary materials such as legal dictionaries and encyclopedias. This dual approach allowed the study to evaluate both the formal legal framework and its implementation in real social settings.

Data analysis was conducted using descriptive-qualitative techniques, wherein empirical findings from interviews were interpreted and categorized thematically, then correlated with normative legal standards and theoretical frameworks. Friedman's legal system theory (structure, substance, and culture) and Soerjono Soekanto's theory of legal effectiveness were adopted to evaluate the reality of legal aid implementation. These theories helped assess not only whether the law exists but also whether it functions effectively to uphold access to justice.

Regarding ethical considerations, all participants were informed of the study's purpose, and oral consent was obtained prior to the commencement of the interviews. The personal identities of respondents were anonymized to protect confidentiality, and the study adhered to ethical standards for social and legal research involving vulnerable populations.

Library research was also conducted to strengthen contextual understanding, involving the collection and review of literature related to legal aid, access to justice, and criminal law within Indonesia and globally. This combination of field research and library study ensures that the findings offer both doctrinal clarity and empirical grounding.

3. FINDINGS AND DISCUSSION

3.1. Analyzing the Three Dimensions of Legal Effectiveness: A Structural, Substantive, and Cultural Analysis of Free Legal Aid in Serang, Banten

The results of this study were obtained through a combination of field data (empirical juridical) and normative analysis of laws and regulations. The findings indicate that the implementation of Law Number 16 of 2011 concerning Legal Aid in the Serang area, Banten, still faces various obstacles. Although legally guaranteed, access to legal aid for the underprivileged remains limited due to structural, administrative, and institutional barriers. Interviews with underprivileged individuals facing criminal charges revealed that their access to legal aid remains severely limited.

These difficulties include the complicated administrative process for obtaining a Certificate of Inability, a lack of information regarding the right to legal aid, and the practice of extortion, which is prohibited by law, as legal aid is guaranteed free of charge. This reality highlights a significant disparity between legal norms and the actual experiences of legal subjects.

Limited Legal Aid Institution (LBH) resources—with case loads overwhelming staff and funding—create a discrepancy between legal standards and actual capacity, resulting in injustice and hindering the state's fulfillment of the binding guarantee of access to justice enshrined in ICCPR Article 14(1) (Nur et al., 2023). When viewed through Lawrence Friedman's framework of legal structure, substance, and culture, the research findings reveal weaknesses in all three areas. Structurally, the limited number of legal aid institutions results in uneven service delivery. Existing regulations are quite advanced, but they are not effectively implemented. Culturally, both the public and law enforcement officials often lack awareness that access to legal aid is a fundamental human right, not merely a courtesy extended by officials or advocates. Thus, legal justice in Indonesia remains largely formal and not fully substantive. (Lesmana, 2025)

Low public awareness and minimal outreach mean the poor are largely unaware of legal aid rights; worse, law enforcement officials undermine the law by delaying aid or charging illicit fees. (Gayo, 2020), (Togi, 2020). From a normative analysis, existing laws and regulations actually provide a strong legal basis. In addition to Law Number 16 of 2011, the guarantee of legal aid is also affirmed in the 1945 Constitution and the Criminal Procedure Code. Internationally, access to justice is a right of every individual, as stipulated in Article 26 of the ICCPR. This international covenant affirms the principle that all persons are equal before the law and the courts, and reinforces the provisions of the UDHR. This result means that the state's obligation to provide free legal aid is based not only on national law but also on binding international commitments. (Prameswari & Galinggig, 2025)

Various field findings in Serang reveal a significant disparity between national and international

legal norms and practices. Structural limitations, weak implementation of substance, and low legal awareness are the primary obstacles to achieving substantive access to justice for underprivileged individuals (Elisa & Handayani, 2025). The constitutional promise of equality remains a mere normative ideal because most underprivileged residents in Serang are unaware of free legal aid programs due to minimal outreach and limited distribution of Legal Aid Institutes, which are concentrated in city centers, severely restricting access in rural areas. (Togi, 2020). Interviews confirmed that budgetary issues are the primary obstacle to legal aid in Serang, as inadequate operational funding forces Legal Aid Institutes (LBH) to charge administrative fees, directly violating Law No. 16 of 2011 and preventing the full realization of the right to justice for people experiencing poverty.

To strengthen these findings, field data from 45 respondents in underprivileged communities in Serang were analyzed using Soerjono Soekanto's theory of legal effectiveness, which emphasizes that the success of law enforcement depends on the legal structure, legal substance, and legal culture. This theoretical lens helps explain why the implementation of legal aid in Serang remains ineffective despite the presence of adequate legal norms. The analysis revealed that weaknesses in legal structure and low public legal awareness are the primary factors reducing the effectiveness of legal aid programs. Strengthening institutional coordination and fostering a legal culture that supports equal access to justice are therefore essential to ensure that the law operates effectively in practice.

The legal aid system in Serang is limited by weak inter-institutional synchronization among government and law enforcement bodies, leading to fragmented services and bureaucratic delays; concurrently, low public legal literacy and distrust of officials create a social barrier, actively widening the gap between guaranteed legal norms and the reality of accessing justice (Marlina et al., 2024). The current situation reveals a discrepancy between the constitutional rule of law and actual legal practice, where the state fails to act as an active facilitator of justice; thus, Law No. 16 of 2011 remains a formality lacking substantive meaning without improved coordination, literacy, and oversight.

Beyond institutional and cultural factors, access to justice is severely hindered by budgetary politics, as the low prioritization and inadequate funding for legal aid reflect a lack of political commitment and sensitivity towards vulnerable communities, undermining the successful implementation of Law No. 16 of 2011 (YLBHI, 2013). The lack of legal aid widens disparities in the criminal justice system, jeopardizing the rights of underprivileged individuals to adequate defense and fair trials, thereby threatening to produce coerced confessions and unfair sentences that directly contradict international standards, particularly the ICCPR's guarantee of equal justice. (Ramadhan et al., 2025)

Due to the perceived complexity and financial risk of formal processes, some underprivileged people in Serang choose informal dispute resolution via community or family channels, demonstrating

the strong influence of living law and the weak penetration of state law, which stems from the state's failure to implement constitutional commitments like adequate budgets, strong institutions, and high public trust.

Additionally, comparative observations with other regions, such as Yogyakarta and Surabaya, show that more effective coordination and higher legal awareness among local officers can significantly improve access to justice. Such a comparison highlights that Serang's problem is not only structural but also rooted in weak institutional synergy and a lack of public trust. This finding suggests that policy implementation is significantly influenced by local governance capacity and the commitment of law enforcement agencies to uphold equality before the law. Therefore, replicating best practices from these regions could serve as a model to enhance the effectiveness of legal aid delivery in Serang.

3.2. Limited Access to Justice: The Contradictions of Free Legal Aid and the Realities of the Poor in Serang.

Indonesia's legal foundation, the 1945 Constitution, guarantees the inseparable principle of equality before the law, ensuring all citizens, including people with low incomes, have equal access to justice and legal protection (Paat et al., 2022). This principle is further operationalized through Law Number 16 of 2011 concerning Legal Aid, which mandates that legal aid must be provided free of charge to economically disadvantaged groups. The law reflects the state's constitutional and moral commitment to protect vulnerable populations and prevent the law from becoming a tool of inequality. (Nur et al., 2023)

However, empirical findings from this study reveal a significant gap between legal ideals and social realities. According to Rawls's concept of "justice as fairness," justice must be distributed equally, regardless of one's social or economic status. However, as found in Serang, Banten, access to legal aid remains limited for those living in poverty, especially due to a lack of awareness, institutional constraints, and bureaucratic obstacles (JDIH, 2025). The implementation of Law No. 16/2011 fails to benefit the poor due to the limited number of Legal Aid Institutions (LBH), weak oversight, and inadequate outreach, effectively limiting access to justice to those with financial means.

To address this, concrete steps are needed. First, the distribution of Legal Aid Institutions needs to be expanded to reach outlying and rural areas. Second, the Ministry of Law and Human Rights needs to strengthen its oversight function to prevent extortion practices that undermine the essence of free legal aid. Third, the pro bono obligation for advocates needs to be enforced institutionally, not merely ceremonially. Fourth, the government, along with legal aid institutes, needs to conduct intensive outreach to ensure that the underprivileged people understand their rights to legal aid. (Fitria & Rizanizarli, 2017)

This research is novel because it combines empirical and normative approaches, thus not only describing legal provisions in the abstract but also presenting the reality on the ground. This fact highlights that, as stated in the adage "*Justitiae Non Est Neganda, Non Differenda*," justice must not be denied or postponed. Thus, it still needs to be fought for seriously, especially for the underprivileged people who are most vulnerable to injustice. (Novemyanto & Nurafifah, 2024)

The issue of access to justice for underprivileged individuals also highlights the contradiction between Indonesia's adopted welfare state principles and its everyday practice. The state, which should play an active role in guaranteeing the fulfillment of its citizens' fundamental rights, including the right to legal aid, often adopts a passive attitude by handing over most of this responsibility to legal aid institutions and advocates. As a result, the implementation of Law Number 16 of 2011 remains constrained by the logic of "state minimalism," where the state appears less severe in ensuring access to justice. (Subhan et al., 2025)

Furthermore, the unequal distribution of Legal Aid Institutions between urban and rural areas further widens the gap of injustice (Apriyani et al., 2024; Arafat et al., 2025). Underprivileged people living in remote areas face dual barriers: limited information about their rights and the absence of legal aid institutions in their area. This result contradicts the spirit of equitable legal development as mandated by the constitution. Within Rawls's theoretical framework, this situation reflects the state's failure to apply the difference principle, which states that equality can only be justified if it benefits the most vulnerable groups.

Lack of oversight fuels extortion against people experiencing poverty, severely eroding public trust in legal aid and state officials, and reinforcing the stigma of biased justice (Huang, 2024). The problems that occurred in Serang suggest that the law has the potential to become an instrument of injustice if left without adequate oversight and evaluation. From the perspective of justice as fairness, this condition clearly contradicts the findings of Rodiah & Hamid (2025). Field facts actually show that an underprivileged society is often the object of exploitation by specific individuals, so that the main objective of Law Number 16 of 2011 is not achieved.

To strengthen the analysis, the findings should be linked to measurable indicators, such as the number of legal aid cases handled annually and the success rate of public outreach programs. Incorporating such quantitative evidence will support the conclusion that the implementation gaps persist despite formal guarantees. Moreover, integrating these indicators into future evaluations can help policymakers identify which aspects of legal aid delivery require the most urgent reform.

Legal aid for underprivileged people should also be viewed as part of fulfilling the human rights guaranteed by both national and international instruments (Krisnapani, 2018). Instruments such as the

International Covenant on Civil and Political Rights (ICCPR), ratified by Indonesia through Law Number 12 of 2005, expressly stipulate the right of every person to receive fair legal representation, particularly for those who are economically disadvantaged (Nurwati & Husna, 2025). Therefore, the state's failure to ensure access to legal aid constitutes not only a violation of constitutional principles but also a failure to fulfil its international obligations. This perspective broadens the dimensions of the problem, emphasizing that access to justice is not merely a technical issue within the national legal system but also concerns Indonesia's credibility within the global community.

Furthermore, the availability of effective legal aid has a direct impact on public trust in the legal system as a whole. Communities that perceive absolute protection from the state are more likely to develop a sense of compliance with the law. Conversely, disappointment and distrust will only breed social resistance. Therefore, strengthening legal aid for underprivileged individuals is not only an effort to achieve substantive justice but also a strategy to maintain social stability and legal legitimacy in the long term. (Suryandana et al., 2024)

To effectively implement Law Number 16 of 2011 in the Serang area, Banten, a more contextual approach is necessary, tailored to the specific needs of the local community. First, a legal aid mechanism must be established in a decentralized manner, not only centralized in the city but also reaching sub-districts and villages through paralegal posts that can be accessed directly by the community (NTB, 2025). This method enables rural communities to access legal information and receive initial assistance without the need to travel long distances. Second, community-based training and empowerment of paralegals drawn from the community itself is necessary. (Nugraha et al., 2025)

This approach will increase people's confidence and courage in accessing legal aid because they are assisted by figures they trust. Third, regulatory implementation must be accompanied by digitalization of services, such as the provision of an online platform that facilitates the submission of legal aid applications without complicated bureaucracy (Diastuti & Ayyustia, 2025). To ensure the adaptive, participative, and inclusive implementation of Law Number 16 of 2011, providing real and sustainable access to justice for Serang's underprivileged society, especially given the Legal Aid Institution's limited resources, cross-sectoral collaboration involving local governments, law schools, civil society organizations, and community leaders must be strengthened to address the social and cultural dimensions beyond formal legal aid.

Furthermore, the implementation of Law Number 16 of 2011 in Serang also requires strong political and legal support. Without political will from the regional and central governments, legal aid will remain a stagnant regulation (Atriani, 2024). Therefore, budgeting policies must prioritize legal aid, alongside other development programs targeting vulnerable groups. Empowering village and sub-district officials is also crucial, as they are the frontline workers who directly interact with the

underprivileged people. If village officials are equipped with an understanding of the procedures and rights to legal aid, administrative processes such as issuing SKTM (Certificate of Legal Aid) can be carried out more quickly, transparently, and free from extortion (Nata & Ifansyah, 2024). Furthermore, a community-based monitoring and evaluation mechanism needs to be implemented to minimize abuse in the provision of legal services. With this structural, cultural, and participatory strategy, the implementation of legal aid will be more tangible, measurable, and sustainable.

Based on the above description, it is clear that the implementation of Law Number 16 of 2011 concerning Legal Aid still faces serious challenges in terms of structure, substance, and culture. The gap between legal norms and social reality shows that the constitutional promise and international obligations regarding equality before the law have not been fully realized. To ensure that justice does not stop at the normative level, concrete steps are needed, including the equitable distribution of Legal Aid Institutions, strengthened oversight, enforcement of pro bono obligations, and intensive outreach to underprivileged people (Hadri, 2025). Ultimately, justice will only be meaningful if it is accessible to everyone, especially vulnerable groups, so that the law truly serves as an instrument of protection, not an instrument of injustice. (Fathanudien, 2025)

4. CONCLUSION

The implementation of Law Number 16 of 2011 concerning Legal Aid in Serang, Banten, continues to face various obstacles encompassing aspects of structure, substance, and legal culture. The limited number and distribution of Legal Aid Institutions, minimal budget support, the practice of extortion, convoluted bureaucracy in issuing SKTM (legal certificates), weak oversight, low public legal literacy, and the influence of living law are the main inhibiting factors. This condition highlights the disparity between legal norms that ensure universal justice and the discriminatory reality, while also reflecting the state's negligence in fulfilling its constitutional and international obligations to provide equal access to legal aid for all citizens.

For the effective implementation of the Legal Aid Law, a comprehensive strategy is needed, encompassing improvements to the institutional structure through equitable distribution of Legal Aid Institutions and paralegal posts, strengthening the legal substance through the implementation of pro bono obligations and the digitization of services, improving the culture through outreach and paralegal training, and enhancing public trust. Successful implementation depends heavily on political will, budgetary adequacy, cross-sector coordination, and active community involvement. With these concrete steps, access to legal aid can be realized as a fundamental right, enabling the law to serve as an instrument of protection and substantive justice for all levels of society, particularly vulnerable groups.

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