

Promoting JUSTICE

A Practical Guide to
Strategic Human Rights Lawyering

Richard J. Wilson
Jennifer Rasmusen

Researched by Scott Codey

International Human Rights Law Group

Gay J. McDougall, Executive Director

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The International Human Rights Law Group is a nonprofit organization of human rights and legal professionals engaged in human rights advocacy, litigation and training around the world. Our mission is to support and empower advocates to expand the scope of human rights protection for men and women, and to promote broad participation in creating more effective human rights standards and procedures at the national, regional and international levels.

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PRINCIPAL FUNDING FOR THIS GUIDE WAS PROVIDED BY THE
UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.

TABLE OF CONTENTS

| | |
|--|----|
| Acknowledgments | i |
| Introduction | ii |
| Part I | |
| Human Rights Lawyering | 1 |
| Part II | |
| Human Rights Lawyering Organizations | 5 |
| A. Objectives | 5 |
| 1. Setting Objectives for a Human Rights Lawyering Organization | 5 |
| 2. Political Human Rights Lawyering | 9 |
| 3. Traditional Organizations: Means Based Analysis | 12 |
| 4. Group-Specific Organizations | 17 |
| 5. Single-Issue Organizations | 20 |
| 6. Procedural Approaches | 20 |
| B. Structures | 22 |
| 1. Government-Supported Human Rights Lawyering Organizations Compared to Non-governmental Human Rights Lawyering Organizations | 23 |
| 2. Resources, Funding and Financial Structures to Promote Sustainability | 26 |
| 3. Models for Delivery of Human Rights Lawyering | 31 |
| 4. Defining Scope of Services: Choice of Clients and Case Types | 41 |
| C. Services | 43 |
| D. Internal Factors Affecting Human Rights Lawyering Organizations | 47 |

| | |
|---|------------|
| Part III | |
| Contextual Strategy Development for Effective Human Rights Lawyering | 51 |
| A. Litigation Strategies | 60 |
| 1. The Politically Sensitive Client or Cause | 67 |
| 2. Other Aspects of Litigation Strategies | 69 |
| B. Non-Litigation Strategies | 73 |
| C. Raising Public Consciousness: Community Legal Education, Documentation Projects, and the Role of the Media | 78 |
| D. National and International Remedies for Human Rights Violations | 82 |
| E. Networking Nationally, Regionally or Globally | 89 |
| F. Special Issues for Human Rights Lawyers in Repressive, Transitional or Newly Democratic Regimes | 90 |
| G. External Factors that Define or Limit the Work of Human Rights Lawyering Organizations | 95 |
| H. Evaluation of Human Rights Lawyering Organizations | 100 |
| Part IV | |
| Conclusion: What We Know and What We Need to Find Out | 103 |
| Appendix | 107 |

ACKNOWLEDGMENTS

The International Human Rights Law Group (Law Group) would like to thank our partners the Asian Human Rights Commission; Law Centre at the Faculty of Law (Sarajevo); Legal Resources Centre of South Africa; and the Myrna Mack Foundation for their support and guidance during this project

Additional thanks go to Peggy Hicks, Stephen Bowen, Robert Spangenberg, Daniel Manning, Bongani Majola, Basil Fernando, Will O'Bryan, Dan Leader, Savima Sali-Terzic, Zelah Senior, Todd Freier, Rothira Duong, Ismene Zarifis, Abby Richardson, Fedra Idzakovic, Diana Sehic, Zana Jamakovic, Ariel Dulitzky, Alison Stewart, Mark Bromley, Kate McCann and Paul Simo. A special thanks to Jessica Ear and the numerous interns whose hard work and dedication helped bring this project to fruition. Any errors or omissions are the sole responsibility of the Law Group.

The Law Group gratefully acknowledges the support and assistance from an Anonymous Donor, The Asia Foundation, European Union's Conference, Workshop and Cultural Initiative Fund, The Ford Foundation, The John D. and Catherine T. MacArthur Foundation and The Charles Stewart Mott Foundation. Without the support of the United States Agency for International Development, this project and publication would not have been possible.

Finally, we would like to express our deepest gratitude to all the conference participants who traveled from near and far to share their views, problems, challenges, and hopes. In particular, we would like to thank those organizations that generously provided critical data, composed case studies, answered questionnaires and granted interviews. For those who prepared their reports and case studies in English, despite English not being their first language, we are particularly grateful for the effort. We look forward to working together in the continuing struggle for justice throughout the world.

International Human Rights Law Group

Working to make human rights real for individuals and communities around the world by building the capacity of local groups and strengthening human rights protections through advocacy, strategic lawyering and training.

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INTRODUCTION

**“JUSTICE IS NOT AVAILABLE ON A PLATTER,
BUT HAS TO BE FOUGHT FOR.”**

CHANDRA KANGASABI, SECRETARY GENERAL, HAKAM, MALAYSIA

During 1999 and 2000, through a series of regional conferences and select country surveys, the International Human Rights Law Group explored the strategic methods and practices employed by legal service organizations to promote and support democracy, human rights and access to justice. The project brought together leading human rights lawyers from throughout the world to share and critically analyze strategies for protecting rights and challenging injustice. Additionally, the project cultivated a dialogue between individuals and groups attempting to strengthen the institutional framework for the protection of human rights and identified effective strategies employed by these dynamic forces in different regions of the world.

Regional meetings were held in Southeast Asia and China with the Asian Human Rights Commission; in Central and Eastern Europe with the Law Centre at the Faculty of Law, Sarajevo; in Sub-Saharan Africa with the Legal Resources Centre of South Africa; and in Mexico and Central America with the Myrna Mack Foundation.

The regional meetings brought together more than 180 representatives from 125 legal and human rights organizations and more than 50 countries. In addition to the regional meetings themselves, the participants prepared status reports on their organizations and shared case studies on specific legal strategies. Several of the case studies were used to generate discussion at the regional meetings. All of the status reports, case studies, and country surveys were used in the compilation of this guide. The three main objectives of the fora were to:

1. Promote access to justice, equality before the law and protection of human rights by highlighting the role of lawyers in transformative change;

2. Improve the capacity of individual groups, lawyers and legal activists through sharing practical technical skills; and
3. Encourage networks of human rights lawyers to share effective strategies for promoting cooperation across the justice sector.

The project reconfirmed the value of human rights lawyering as one method of supporting rights through reform and for stabilizing a reformed system once it has been established. Human rights lawyers around the world face both familiar and new challenges. This guide will examine the critical ways that human rights lawyering operates to promote social justice, creates and supports a basis for governmental reform, and furthers the establishment of a system of justice.

- The focus of this guide is on the practical legal strategies used by lawyers. (It does not detail the political or economic contexts in which human rights lawyers operate, nor does it explore in depth the root causes of the challenges.)
- The guide is designed to be a resource for local human rights lawyers, and aims to spread the experiences of similar organizations around the globe working to combat injustice through law.
- The guide is intended to be a useful tool for donors interested in assessing the potential impact of legal service organizations, particularly when considering their value within the context of larger reform initiatives within the justice sector.
- The guide highlights the leading role many legal service organizations play in promoting a broad range of donor objectives, including the promotion of women's rights, minority rights and economic justice.

This guide seeks to explore the ways in which lawyers can promote and protect human rights through legal advocacy and to highlight the lessons learned by practicing human rights lawyers. Part I defines the term human rights lawyering, the main subject of

the guide. In Part II, the guide examines the various structures that legal service providers have adopted and how these structures affect and intersect with the goals and strategies that these organizations pursue. In Part III, the strategies that lawyers have employed, both in traditional realms of legal advice and assistance, and the newer, less conventional delivery methods for promoting legal rights. Finally, in Part IV, the guide presents the overall conclusions, including the key strategies for addressing the central themes.

PART I

HUMAN RIGHTS LAWYERING

As used in this guide, the term “human rights lawyering” is intended to convey a traditional concept of poverty lawyering as well as a modern conception of lawyering on behalf of universally recognized human rights. It describes a broad range of human rights lawyering for the poor, the powerless and other marginal populations. The action taken by human rights lawyers may be legal — including such actions as impact or test litigation, advice, counseling, referral, or legislative advocacy — but recognizes that many organizations, using a more holistic approach, include community service referrals, education programs, media and other extra-legal approaches in their strategies. “Human rights lawyering organizations” include traditional legal aid organizations providing legal assistance to those who cannot afford to hire private counsel or cannot access private counsel for political or other reasons, as well as human rights organizations employing specific legal strategies to promote human rights and justice. Under this definition, governmental and non-governmental organizations can be considered human rights lawyering organizations. The term thus includes, but is not limited to, organizations identified as legal aid organizations, public defender or public interest offices, human rights non-governmental organizations (NGOs), issue-focused NGOs, or NGOs representing a particular constituency.

It might be helpful to imagine what these groups look like and what their activities are by means of an organizational profile or composite that captures the character and makeup of the typical group represented at the regional fora:

Composite Profile of a Typical Human Rights Lawyering Organization

- A short institutional history: most organizations are less than 15 years old.

- Few lawyers on staff – less than 10 is typical – with low salaries and extensive volunteer cooperation from outside private attorneys or firms.
- Staff lawyers are idealistic, with strong motivation and commitment to social change and justice through legal or political means.
- Paralegal and other non-lawyer staff or volunteers often outnumber lawyers and play significant roles in advocacy and education programs.
- The organization is non-governmental, though a few governmental agencies provide funding for legal assistance to the indigent.
- Domestic government funding is rare and may be refused or taken reluctantly due to the perceived, potential or actual compromising of program operations or independence.
- Funding is precarious, variable and almost entirely reliant on foreign or domestic donors and foundations, foreign governments and donations from the legal community at home or abroad.
- A one-office organization, usually in the capital or a large urban area in order to reach the greatest number of people.
- Primary work is legal advice for, or representation of, poor people and other disadvantaged or marginalized populations.
- Lawyering includes litigation, legal advice and information, as well as non-litigative action such as community legal education, alternative dispute resolution services, human rights documentation, legislative advocacy and legal research on a range of issues.
- Lawyers often travel extensively in order to extend the range of program services to those in the rural areas.

- Legal literacy or community education is among the most frequent non-litigative activities of the lawyer and non-lawyer staff.
- The organization often does as much legal work for the protection of basic economic and social human rights, as with civil and political rights.
- The most common civil and political rights issues involve fair trials and protecting the rights of the criminal accused, whether for political or common crimes.
- The organization increasingly is involved in the protection of group and collective rights such as those of women, children, minorities, immigrants and indigenous peoples.

Human rights lawyering has become a critical force in working for social justice around the world. Lawyers are adapting and refining their legal skills and gaining new skills to meet the challenges of creating social change. The following chapters examine the strategies these lawyers employ and how they organize to meet the challenges.

PART II

HUMAN RIGHTS LAWYERING ORGANIZATIONS

A. OBJECTIVES

Human rights lawyering organizations having a narrowly defined set of objectives are more successful than organizations that do not. Although this conclusion is not surprising, organizational forces that encourage a broad scope and generalization are sometimes compelling. Participants noted a common tendency for organizations to take on all issues both because of a sense of responsibility, and because of a belief that a broad scope might increase their funding opportunities. Organizations frequently examined the scope of their service provision when deciding how to expend scarce resources. This section will attempt to articulate some of the major conclusions regarding effective ways to define organizational objectives.

1. SETTING OBJECTIVES FOR A HUMAN RIGHTS LAWYERING ORGANIZATION

- The most effective human rights lawyering organizations have a clearly stated objective or set of objectives, and have appropriate strategies to achieve them.
- Some organizations find that a narrow set of achievable objectives leads to more success than wide-ranging, comprehensive goals, even when clearly defined.
- The most successful human rights lawyering organizations think structurally and organizationally when setting their objectives, assessing where the greatest impact can be achieved with limited resources.

The Legal Resources Centre (LRC) in South Africa is a good example of an organization with a clearly articulated set of objectives. The LRC broadly defines its mission as “to use the law as an instrument of justice and to work for the development of a democratic society that functions in accordance with the principles of social justice and human rights.” Yet in his paper for the Southeast Asia and China forum, where he appeared as a speaker,

LRC National Director, Bongani Majola precisely set out the following as the current goals of the organization:

**Goals of the Legal Resources Centre
Johannesburg, South Africa**

- Ensuring that the principles, rights and responsibilities enshrined in the South African Constitution are respected, promoted, protected and fulfilled;
- Building respect for the rule of law and constitutional democracy;
- Enabling the vulnerable and marginalized to assert and develop their rights;
- Promoting gender and racial equality and opposing all forms of unfair discrimination;
- Contributing to the development of human rights jurisprudence; and
- Contributing to the social and economic transformation of society.

The LRC accomplishes its goals primarily through litigation strategies.

Long-time U.S. legal services expert Robert Spangenberg spoke at the Southeast Asia and China forum, urging all organizations to think structurally and organizationally in defining their objectives while maintaining representation of the poor as a priority. By appreciating the link between structure and organization, lawyers are better able to strengthen their effectiveness with limited resources.

The Myrna Mack Foundation in Guatemala is an excellent example of an organization with a single objective and careful structures to carry out that goal. The key goal of the Foundation's legal services is civic education. To meet that goal, the

organization is divided into two “groups”: the Training Group (Grupo de Formación) and the Litigation Group (Grupo de Seguimiento). Within the Training Group, the principal activity is training community advocates (promotores jurídicos). The training of legal promoters is divided into three distinct cycles:

**The Three Cycles in Training of Community
Advocates
Myrna Mack Foundation, Guatemala**

1. History of Guatemala, human rights, the State and its organization;
2. Family, the person, real and personal property and labor matters;
3. Crimes and punishments, environment, identity and rights of indigenous peoples.

The single objective of the organization is thus broken into components within components, each of which expresses an organizational objective. The organizational structure can be an expression of organizational objectives.

For example, Ulfa¹, a representative of Legal Aid of Surabaya, Indonesia, noted that her organization includes community representatives on its board as one means of ensuring that the organization’s goal of community service is met. By ensuring that stakeholders are not merely recipients of services but active participants in determining the structure and governance of those services, Legal Aid of Surabaya’s Board of Directors becomes a tool for achieving its goals.

One final organization deserves mention here. The Burma Lawyers’ Council, an organization of exiled Burmese attorneys with principal headquarters in Bangkok, Thailand, primarily uses non-litigative objectives in organizing its activities on behalf of reestablishment of the rule of law in Burma. As an exiled

¹ It is common for Indonesians to use only one name.

organization, the methodology and objective are shaped by its position outside of the country where the organization is seeking to create change. Its concrete objectives include:

**Program Objectives of the Burma Lawyers' Council
Bangkok, Thailand**

- Legal and human rights education within Burma;
- Provision of legal assistance to the democracy movement;
- Increasing awareness of the situation inside Burma; and,
- Delivery of legal aid assistance outside of Burma to women, refugees, and democracy activists from Burma.

The organization set objectives based on what it considers to be the most useful services it can provide to advance the return to democracy in Burma. The objectives are primarily non-litigation in nature. They are also fairly concrete and measurable, thus permitting the organization to determine if they have been met.

The East Timorese human rights lawyering group, Yayasan HAK, on the other hand, defines its goal quite narrowly as “the improvement of the grassroots community’s awareness of their legal rights and human rights as stipulated in the Universal Declaration of Human Rights.” By defining its goals more narrowly, the organization fosters its focus and is not distracted by the infinite other possibilities for activity, particularly in a country dealing with countless human rights issues. Yayasan HAK’s decision to limit its scope was greatly influenced by the lack of space available to human rights organizations operating in East Timor during the Indonesian occupation. Since the referendum on East Timor’s independence, Yayasan HAK has reevaluated its goal in the context of a nascent democracy and is reworking its objective.

For governmental human rights lawyers, organizational goals may be defined by statute or government decree. In Vietnam, the State Legal Aid Center of Cantho Province, headquartered in Cantho City, is a state-funded public defender organization with one central office and several branches, with a staff of over 40 lawyers. The only organizational objective authorized for the State Legal Aid Centers is representation of the poor in criminal and select civil matters. In providing that service, however, the Legal Aid Center also has been able to greatly expand grass-roots knowledge of other areas of law through explanation and publication of its services.

2. *POLITICAL HUMAN RIGHTS LAWYERING*

Some of the most sophisticated and well established of the human rights lawyering organizations arose out of a particular political perspective or theory about justice or law. These more philosophical perspectives tend to infuse the objectives of these organizations.

WHAT ARE SOME OF THE OBJECTIVES THAT UNDERLIE THE WORK OF HUMAN RIGHTS LAWYERING ORGANIZATIONS?

- Create an equitable society
 - Empower disadvantaged populations
 - Alter discriminatory power structures
 - Eliminate poverty
 - Encourage government accountability
 - Develop a human rights framework
 - Expand space for political debate
 - Mobilize civil society
-
- **Human rights lawyering organizations have been designed around political frameworks such as developmental legal aid, structural impact approaches, alternative legal services, feminist theory, development theory and the principles of universal human rights.**

During the regional meetings, a number of theories emerged as central to how some human rights lawyering organizations are organized. One of the best known and oldest of these approaches was that of developmental legal aid. First promoted in the late 1960s and early 1970s, developmental legal aid unified the Asian islands around a particular vision for poor people - empowerment and social justice. Developed first by Sen. Jose W. Diokno in the Philippines, its foremost proponents today include Free Legal Assistance Group (FLAG) and Alternative Law Research and Development (ALTERLAW), both headquartered in Manila. In Indonesia, structural or alternative legal aid, now carried on by the Indonesian Legal Aid Foundation (YLBHI), developed on a similar premise to developmental legal aid. Though there may be a variety of names for this political approach, these groups continue to animate programs it has inspired, as well as and others, in the region today.

This political approach exposed a perspective whereby poor people were treated as if they were powerless; not only in legal matters but also in social, economic and political matters as well. Traditional legal aid, the provision of services on a case-by-case basis to individuals qualifying on indigence grounds, “somehow or other always supports the status quo because of its own constraints,” Diokno has written.² Traditional legal aid assumes that law is structurally sound and just, and that the simple presentation of a claim will result in a fair outcome. Traditional legal aid is “the lawyer’s way of giving alms to the poor,”³ and as such, “carries within it the seeds of dependence that can prevent those it serves from evolving into self-reliant, inner-directed, creative and responsible persons who think for themselves and act on their own initiative.”⁴ Developmental or structural legal aid⁵

² Jose Diokno, “Developmental Law: Problems and Prospects,” *Rule of Law, Human Rights and Legal Aid in Southeast Asia and China* (Washington, D.C.: International Human Rights Law Group, 2000), 35-40.

³ Ibid.

⁴ Ibid.

⁵ See, Buyung Nasution, “The Legal Aid Movement in Indonesia: Towards the Implementation of the Structural Legal Aid Concept,” *ASEAN Perspectives on Human Rights and Democracy in International Relations* (Quezon City: University of the Philippines Center for Integrative and Development Studies and UP Press, 1995), 31-39.

looks at the underlying assumptions of law – the structures and systems that generate and perpetuate injustice.⁶

With this deeper perspective on the law and legal institutions, the organizations in the Philippines and Indonesia, and ultimately more widely in the region, began to examine how to change the structures that generate systematic injustice. The current Director of FLAG, Jose Diokno, son of Senator Jose Diokno, summarized the four principles that the organization follows in pursuit of poor people's empowerment through litigation:

**The Four Principles of Developmental Legal Aid
FLAG, Manila, Philippines**

1. Every law, policy and institution must respect, at least, both the individual rights and the collective rights of the people;
2. Laws, policies and institutions must have as their main objective the eradication of poverty, first in its most degrading forms and later in all its forms;
3. Laws, policies and institutions must be geared toward selection of a means to develop and use natural resources to achieve a self-directed, self-generated and self-sufficient economy; and
4. Laws, policies, and institutions must change those structures of relations between persons, groups, and communities that cause or perpetuate inequality.

Both Diokno's critique of traditional legal aid and his position in regard to empowering the impoverished resonate as strongly today as they did when they were conceived more than 30 years ago.

Another set of animating theories comes from more traditional, non-legal contexts such as feminist theory, development theory

⁶ A similar view was promoted in Latin America, during the same time, under the name "change-oriented" and "alternative" legal services for the poor. The Latin American Institute for Alternative Legal Services (ILSA), headquartered in Bogota, Colombia, was a primary proponent of the theory through its publications and training. See Fernando Rojas. 1988. A Comparison of Change-oriented Legal Services in Latin America with Legal Services in North America and Europe. *International Journal of the Sociology of Law* 16: 203-256.

and principles of international human rights. These theories appeared in various contexts throughout the regional meetings, and provided a firm foundation for the work of many of the organizations represented at the fora.

3. *TRADITIONAL ORGANIZATIONS: MEANS BASED ANALYSIS*

More typical among the organizations represented in the fora — and more representative in general of human rights lawyering organizations — were those that provide a range of services to a broad range of constituents. These services are sometimes offered on the basis of the client's inability to afford legal service. The theory underpinning means-based representation is that equal justice requires access to legal advice and assistance, which the state must provide when the individual cannot afford a private attorney. While the international basis for guaranteeing legal representation applies to all states, less developed states with a proportionally higher percentage of the population in poverty and a smaller legal community, makes means-based services even more burdensome.

Core services usually include litigation, particularly in high-impact or politically significant cases, as well as legal advice and referral. A core activity in almost all of the organizations includes community legal education. Some organizations also engage in legislative commentary. Others, including an Egyptian organization represented at the Africa forum, have various departments working on issues in all branches of government: executive, legislative and judicial. Many organizations also provide information and access to documents as part of their core mandate, and such services provide essential ties to NGO networks and friendly media sources, both domestic and international.

In the developing world, representation, and the provision of human rights lawyering is often linked to a broader goal of achieving policy or social change. Because the goal of legal advocacy aims to change the relationship between the government and the people, an advocacy organization rarely limits itself to the provision of criminal representation or to a determination of a client's ability to afford a lawyer. Rather, the organization often

examines the case of the client to determine how it fits into the overall strategy of the organization to achieve change.

- **General service organizations are more effective when they develop individual specialization or model approaches to common issues.**

Just as single-issue organizations gain expertise and focus by devoting themselves to a specialized area of the law and group-specific organizations focus on the specific needs of one community, general service organizations often find that they are able to provide more effective service if they specialize or adapt their structures to the requirements and character of the local legal priorities. For example, the Cambodian Defenders Project (CDP) developed several practices regarding criminal procedure that were based on particular local needs. Specifically, CDP developed a strategy of challenging all deposition testimony if a live witness was available. Under Cambodian law, the accused has the right to face his accusers. In practice, however, depositions were frequently admitted in place of testimony, seriously infringing on this right. By challenging the admission of depositions as evidence, CDP was able to educate the court on the importance of live testimony and encourage local police to produce witnesses to collaborate confessions, thereby helping to curb coerced confessions.

South Africa's Legal Resource Centre developed a successful campaign focusing on the death penalty, which was followed by similar campaigns on corporal punishment and civil imprisonment for debt. These specialized campaigns allowed the LRC to build on its expertise and take advantage of the legal space available following South Africa's adoption of its post-apartheid liberal constitution. Today, the LRC's special focus is on economic, social and cultural rights in response to the communities they serve.

In Central America, the Human Rights Institute of the Jose Simeon Cañas Central American University (IDHUCA) has long played a leading role in human rights defense in El Salvador and throughout the region. The Institute combines its strong reputation in documentation of human rights situations with direct legal

representation in both domestic and international tribunals and human rights bodies. Its location and close links with the academic community of the university add to the weight and credibility of the reports that IDHUCA produces.

- **While most general service organizations take cases based on a means test, there are several exceptions to the means requirement.**

Organizations may decide to forgo the means test in certain instances. At the conferences, examples of cases where means was not an issue included:

- Unpopular clients who are unable to find representation elsewhere;
- Important issues of equity are presented in a case;
- Constitutional values are at stake; or
- The case will be influential to popular opinion.

Organizations recognize that their means are limited and that they cannot serve the entire population. Therefore, most organizations rely on a means test to determine who is capable of achieving assistance, although not necessary legal representation, elsewhere. However, organizations usually want the flexibility to address issues of concern. It is important that each organization has a clear set of principles defining which individuals are eligible for legal representation in order to earn or maintain a reputation as equitable and transparent.

- **Governments have an obligation to assure effective legal assistance for those who cannot afford to hire a lawyer.**

Governments unquestionably have a legal and moral obligation to provide adequate financing of legal counsel for the impoverished. International treaties⁷ and the domestic laws of most countries

⁷ “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: [. . .] to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;” Art. 14(3)(d) International Covenant on Civil

include a right to counsel when state power seeks to deprive the accused in a criminal matter of life or liberty. That right to counsel extends to the poor as well as the rich by virtue of the guarantees of equality before the law and equality of representation, under the principles of fair trial and access to the courts. Principles of equality, as well as the prevailing norms of international and domestic law, make this more than an aspiration. Furthermore, associated costs should not be the responsibility of the individual lawyers, any more than free medical services are provided at doctors' personal expense. Principle Three of the UN Basic Principles on the Role of Lawyers, for example, provides that "[g]overnments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons." Historically, because of the large amount of resources required to meet this obligation, many states have interpreted it to apply only to criminal cases. There are instances of some states meeting the obligation only in capital or other extreme cases.

The UN basic principles are not limited to funding for criminal matters, but extend the funding obligation to civil legal aid as well, by virtue of the UN's general reference to "legal services to the poor," a sentiment echoed by other major entities. Similar state obligations can be found in other international standards. Article 95 of the UN Draft Declaration on the Independence of Justice (the "Singhvi Declaration") states that "[g]overnments shall be responsible for providing sufficient funding for appropriate legal service programs for those who cannot afford the expenses on their legitimate litigation." And the Draft Principles on the Independence of the Legal Profession (the "Noto Principles"), in Principle 31, provide that it is "the responsibility of governments, having regard to available resources, to provide sufficient funding for legal service programs."⁸

and Political Rights. See also, Art. 6(3)(c) European Convention on the Protection of Human Rights and Fundamental Freedoms and Its Nine Protocols; and Art. 7 African Charter on Human and Peoples' Rights.

⁸ Both of these sets of standards are included in a special issue of the Bulletin of the Center for the Independence of Judges and Lawyers, affiliated with the International Commission of Jurists. "The Independence of Judges and Lawyers: A Compilation of International Standards," *Bulletin of the Center for the Independence of Judges and Lawyers* (1989).

- **When the state does provide funding for legal protection for the poor, it is often limited to assistance in criminal matters despite the growing consensus that civil clients have the same guaranteed right to counsel under international law.**

International norms uniformly provide that counsel is to be assigned to the defendant by the state without cost to him or her, and is available in all cases, civil or criminal, in which the accused can prove indigence, and the “interests of justice” support the assignment. Many organizations, including several outside Europe, rely on the European Court of Human Rights case, Airey v. Ireland,⁹ to support the call for the government to supply legal assistance in civil cases.¹⁰ In Airey, the Court found that the obligation of states to make access to the courts possible and effective includes a right to free legal assistance in civil matters when the procedure involved is so complex as to require legal assistance in order to ensure access to the court. The Airey precedent, and decisions that followed it, have led to extensive reform of European domestic law in order to protect access to the courts for the indigent in civil legal matters.

Human rights lawyering organizations tend to focus on two broad categories of specialization. First are the issues of families, and particularly of women, who sustain the largest legal need due to dislocation of the family unit, domestic violence and other related issues, including inheritance rights. The second category regards the problems of provision of the essential core of economic, social and cultural rights; these being food, housing, an adequate standard of living, education, health and work. These issues drive the agendas of many of the general service providers that participated in the regional meetings.

Systematic exclusion from basic social, cultural and economic rights can determine the fate of entire communities. Legal representation to preserve those rights can be critical. For example, in Indonesia, several lawyers working in remote areas

⁹ Airey v. Ireland, 32 Eur. Ct. H.R. (ser. A) (1979). [2 EHRR 305.] On the web at: <http://www.hudoc.echr.coe.int/hudoc/>

¹⁰ The practice of using extra-regional judicial decisions highlights the important role regional bodies have in creating international standards.

cited the confiscation of land under state auspices, and the subsequent hardships their clients endured, as one of the most important types cases that their various organizations handled. In some instances, lawyers have educated local community members on their rights and the need for contracts and title; this knowledge placed the local population in a better bargaining position and assisted in deterring outright land grabbing.

At the regional meetings, there were several organizations that receive state funding to provide representation, including several that take civil as well as criminal cases. They include:

- Cantho Legal Aid Center, Cantho City, Vietnam (criminal and select civil cases)
- Bar Council Legal Aid Center, Kuala Lumpur, Malaysia (criminal and civil with a few exceptions)
- Defensoría Pública (Public Defender Office), San Jose, Costa Rica (civil and criminal)
- Instituto de la Defensa Pública Penal (Public Defense Institute), Guatemala City, Guatemala (civil and criminal)

4. GROUP-SPECIFIC ORGANIZATIONS

Group-specific organizations define their goals around the needs of individuals from a particular community or with a common characteristic. There were several types of group-specific organizations among the participants in the regional fora. The most common group-specific organizations focus on the rights of women. Other group-specific organizations covered segments of the population such as migrants or non-citizens, members of trade unions, indigenous peoples, children, the disappeared, the mentally or physically disabled, as well as racial, ethnic and religious minorities.

Cultural rights and the right to self-determination occupy a central place in the conflicted terrain of group protections, and a growing number of treaties address groups that have traditionally been left at the margins of human rights protection: indigenous peoples, children, refugees and women, among others. Because of the

common situation faced by these populations, a combined approach to the issues can help a broad range of individuals.

- **Issues regarding the human rights of women, although increasingly important in human rights lawyering, are too often addressed inadequately by governments and the courts.**

More than any of the other issues, the human rights of women were central to the themes and cases discussed and debated in the regional meetings. In Africa, organizations are grappling with the difficult conflict between customary or traditional law and the legal systems that were imposed by colonial powers. Customary law often places the woman in a subservient legal position, leaving her without the power to inherit, and the subject of both *de jure* and *de facto* discrimination before the law and in the tribal courts. She may be subject to traditional practices that include sexual slavery, female genital mutilation and other physically abusive traditions that violate international human rights norms.

The organizations for legal human rights of women (or with special focus on women) were so numerous that they cannot all be listed here. They included a regional organization, the Mekong Regional Law Center, founded to encourage women to help themselves throughout China, Burma, Cambodia, Laos, Thailand and Vietnam. A partial listing of other women's organizations at the meetings includes the following:

- The Center for Women's Law Studies and Legal Services, Beijing University, China
- Qianxi Women's Federation of Hebei Province, China
- Asia Pacific Forum on Women, Law and Development, Indonesia
- Women and Law Center, Banja Luka, Bosnia
- African Women's Lawyers Association, Ghana
- Association de Femmes Juristes du Benin
- The International Federation of Women Lawyers (FIDA) – Nigeria and Uganda
- Despacho de Atención Legal a Mujeres (Law Office for Legal Attention to Women), Mexico City, Mexico

- CEMUJER (Norma Virginia Guirola de Herrera Institute for Women's Studies), San Salvador, El Salvador
- CEFEMINA (Feminist Center for Information and Action), San Jose, Costa Rica

Some of these organizations targeted laws or practices that disproportionately effect women or single out women based on their gender. Others identified their clientele as women without regard to how their gender affected their case citing systematic, inherent discrimination. Throughout the world, the issue of violence against women, within both marriage and more generally, has received increasing and deserved attention.

- **Minority populations and the disenfranchised often require specialized legal assistance and expertise. By focusing on the rights of a limited population, lawyers can more comprehensively and effectively address the problems these marginalized groups face.**

Particular groups may face similar barriers to accessing justice and share a cultural definition of justice. Lawyers from these populations may be able to understand and appreciate these cultural differences more rapidly than lawyers from outside of the group. When there are no lawyers available from within a particular group, as is often the case in disadvantaged groups, having lawyers who concentrate on understanding the difficulties faced by these populations can lead to strategies that are more appropriate. Additionally, an organization that devotes its work to a specific population will generally have less difficulty earning the target population's trust.

Guatemala offered two examples of group-specific organizations working with marginalized individuals. Maya Defense (Defensoria Maya) works with indigenous peoples at the intersection of traditional Mayan law and official state law in Guatemala. Alliance House (Casa Alianza) works with children's issues, especially with those of the many street children in the nation's capital, Guatemala City.

- **NGOs devoted to a particular constituency may benefit from employing an in-house lawyer.**

The work of a solo lawyer within an NGO is, by its nature limited. However, a single lawyer can greatly enhance an organization's strategic planning, as well as the quality and responsiveness of the services offered. Such an arrangement can be particularly effective when there are few legal resources available to the community or when specialized knowledge of the issues the community faces are integral to the legal strategy.

5. *SINGLE-ISSUE ORGANIZATIONS*

Less common — and underrepresented at the fora — were organizations that defined their clientele as those suffering from a particular rights violation. This included such organizations as those focusing on environmental law or reproduction rights. These organizations tended to focus narrowly on a specific category of rights and were willing to take all cases related to that right without regard to the client's means or the exact charge. These organizations determine whether a case affects the right they had organized to protect. If a case passes their scrutiny, they offer representation. For example, a group committed to protecting freedom of expression would take the case of a destitute citizen charged with violating a signage ordinance in the course of protesting government corruption, or the case of a editor charged with authoring an editorial that endangers national security. At times, the distinction between group-specific organizations and single-issue groups is blurred, such as in the case of minority rights groups and anti-discrimination organizations. The primary difference is between the goal of the organization in promoting the broad rights of a group, or of preventing the infringement of a narrower right or series of rights.

6. *PROCEDURAL APPROACHES*

International human rights treaties and court cases have traditionally focused on individuals' rights and claims. Innovations such as the class action, common now in the United States as a procedural device for protection of large groups with similar, are a newer concept in many countries where jurisdictional limits or

strict standing requirements sometimes prevent group claims from being presented to the courts.

Today, groups are seeking collective protection of economic and social rights – the rights of the poor – in growing numbers. Jody Kollapen, who works with the South African Human Rights Commission, emphasized the importance of recognition of these rights by paraphrasing a Swedish activist: what good will be served if we succeed in saving someone's life from death by execution only to see that same person die as a result of hunger or disease that could have been avoided. Group claims can also make economic sense and spread the benefits of limited resources to a wider range of people. The expanded use of such practices will help ease resource limitations.

- **Public interest or social action litigation, begun as a procedural innovation in India and now extended into Sri Lanka and Pakistan, provides a useful model for open standing and resolution of group claims.**

The Indian judicial system has taken an innovative approach that permits group claims in cases known as public interest or social action litigation. The device arose during the 1980s as a means to address pressing social and economic issues that would not otherwise be susceptible to resolution in the courts. The courts there amended procedural rules in such a way as to permit relevant cases to be presented directly to the higher courts.

The key to the success of this approach lay in two procedural innovations. First, lawyers could present claims that affected large numbers of people to the courts through a single action. Under this procedure, the courts heard claims involving prison conditions, housing, health and labor rights, as litigation affecting large groups of people in a single action. Second, access to the courts was broadened easily through a device known as “epistolary jurisdiction.” This procedure permits an individual or group to present a claim directly to the high courts through a simple letter or similar writing. If interested in the claim, the court could order a study of the facts and law relating to the issue and return with its findings to the tribunal, thus bypassing the procedural

requirements of slow and burdensome trial court proceedings. These changes thus eliminated formalistic rules that had always worked to the disadvantage of the poor and the marginalized, replacing them with a simple and prompt procedure for vindication of rights.

Participants in the Southeast Asia and China forum noted that the ideas of public interest law have been adopted in both Sri Lanka and Pakistan. Sunil Cooray, of Vigil Lank, said that in Sri Lanka narrower standing rules permit the national bar association to present appropriate claims directly to the higher courts. Human rights NGOs held a conference in Bangladesh in 1992 to develop a strategic plan for increasing social action litigation in that country and beyond. As a result, conference participants have filed 45 important cases since 1994, involving such issues as “electoral fairness, industrial pollution, adulterated food, consumer product safety, labor rights” and others.¹¹ While this device is not a panacea for the problems of access to the courts, it is a strong signal that the courts can and will, in appropriate circumstances, hear important cases involving human rights violations affecting large groups.

B. STRUCTURES

The structures of human rights lawyering organizations are widely variable, but there are some organizational patterns that have proven to be highly effective.

WHAT FACTORS IN THE STRUCTURE OF HUMAN RIGHTS LAWYERING ORGANIZATIONS HAVE THE GREATEST EFFECT ON THEIR OPERATIONS?

- Whether the organization is a governmental or non-governmental organization;
- Scope of services of the organization, particularly the selection of targeted client populations or issues;
- Service delivery options, particularly whether the organization’s services extend beyond litigation and whether non-lawyer staff is used in the delivery of services;
- Geographic distribution of services and the ability to reach marginalized populations; and
- Amount and predictability of the operational budget.

At the fora, the role each of the above factors plays in determining the efficiency of the organization was examined.

1. GOVERNMENT-SUPPORTED HUMAN RIGHTS LAWYERING ORGANIZATIONS COMPARED TO NON-GOVERNMENTAL HUMAN RIGHTS LAWYERING ORGANIZATIONS

The following section explores the tensions in operation of a human rights lawyering organization when governmental funding is involved.

As noted above, states have provided significant resources to the provision of legal aid, although usually limited to criminal matters. In China, most human rights lawyering organizations are controlled by the state, with some operating through the university system as independent human rights lawyering organizations. Many Asian countries have some form of state sponsored human rights lawyering provision, although the service is often limited.

National public defender programs financed with state revenues have flourished throughout the Central and South American region, based in part on the success of the model adopted by Costa Rica. Another reason for this commitment by governments lies in the transformation of legal process in criminal matters to a more adversarial style. The public and adversarial trial of criminal matters, a style now widely adopted in Latin America under reforms implemented in the last two decades, requires a commitment of adequate resources to the defense as well as the prosecution.¹² Sometimes, these governmental organizations extend to civil matters as well, recognizing that poor people's legal needs can require assistance of counsel to resolve a wide array of legal problems.

¹² In civil law countries, some legal experts argue that an independent defense is less necessary since the system is not adversarial but an exercise in "truth finding" by the judge. This analysis ignores the role of the lawyer in actively developing a defense to counter the prosecution's arguments, and in ensuring that all of the relevant facts of the case are presented. The defense role becomes even more crucial in the transitional countries where judges are often overworked and underpaid, and the population may have little experience or understanding of judicial proceedings and may be reluctant to present important facts without guidance.

The state has long been involved in the provision of lawyers to the poor in both civil and criminal matters throughout the developed world, including the United States and Canada, Western Europe, Australia and Japan.¹³ Even in the most well funded systems, however, public programs are often overburdened by huge caseloads and frequently have too few lawyers or programs to address the needs of the poor for human rights lawyering.

- **Government human rights lawyering organizations are often narrowly defined as organizations that provide legal representation in the courts or before other administrative bodies; thereby negating the other, equally important, role lawyers and other legal actors can play in creating justice through public education, legislative advocacy and other means.**

Access to representation may not be sufficient to achieve justice. Government supported legal aid lawyers may be limited by resources or by which approaches they are able to take. Many of the strategies examined in this paper are not available to government legal aid providers, yet are important tools for creating a foundation for justice.

Traditional legal aid assumes that the law is just, that the justice system will adequately administer it and that the government has an interest in ensuring these two principles. In the developmental context, these premises may not be correct. Often the emergence of non-government legal aid signifies that the government is not responding to the people adequately. Non-governmental legal aid is often freer to challenge systematic government practices. The role of these non-governmental lawyers is instrumental to the development of the justice system and the legal profession within a country.

Working in conjunction with Malaysia's Centre for Orang Asli Concerns (COAC), Chandra Kanagasabai of HAKAM presented a case that highlights how government supported representation can

¹³ See Frederick H. Zemans, ed., *Perspectives on Legal Aid* (Westport: Greenwood Press, 1979) and Francis Regan and others, ed., *The Transformation of Legal Aid* (Oxford: Oxford University Press, 1999).

be problematic. In this case, nine aboriginal men were charged with manslaughter for the death of two Malays who had tried to drive them off their tribal land. The Department of Aboriginal Concerns had brought in a local lawyer to represent the accused, in addition to the lawyers supplied by HAKAM and COAC. Due to governmental pressures, the department tried to convince the men to plead guilty, refused to allow the non-government lawyers access to their clients, and appealed to the court to have the non-government lawyers dismissed. The Sessions Court Judge failed to inform the men of their right to choice of counsel under Malaysian law. After appealing to the High Court Judge, the defendants were given choice of counsel and chose the non-government lawyers. At the end of the Prosecution's case, the Judge acquitted and discharged the defendants without calling for the defense.

- **Government support and/or funding typically implies corresponding legislative restrictions, and may result in unwanted influence in important strategic decisions.**

Many non-governmental organizations providing legal representation consciously choose not to accept government funding because of the risk of losing independence in program operations and attorney-client autonomy. Independent organizations often have rules that prohibit them from accepting funding from their governments. This practice may arise from historic tradition or experience, from the known authoritarian nature of the government involved, or from a sense that acceptance of government funding creates among the population served an appearance of conflict of interest. Despite these concerns, governments are a potentially strong and stable source of program funding, and their human rights obligations include that of providing counsel or other legal assistance to indigent persons who would otherwise be denied access to the courts.

Robert Spangenberg spoke about the serious problems of intervention by governments into the operation of state-funded human rights lawyering organizations throughout the United States, Canada and Western Europe. Many speakers at the meetings decried governmental intrusion into lawyers' work for the poor. One participant from Bangladesh invoked an old saying

from her country: “[j]ust because I pay for my daughter’s wedding doesn’t mean I go on the honeymoon.” Others questioned whether they would be able to pursue their organizational objective of systematic change with funding from the system.

Even organizations that do not receive government funding often fear government intrusion in their work. Several organizations involved in the regional meetings identified ways in which other government requirements can inhibit their operations. In many countries, any organization must be registered with the government in order for it to operate in the public sphere – something akin to the requirement of registration imposed on not-for-profit corporations in the United States. Governments can manipulate the registration process to make registration difficult or impossible for NGOs that are perceived to be governmental opponents. Similar restrictions or limitations can be imposed through mandatory professional registration of lawyers, such as requiring membership in a state-controlled bar association, which may be open to political manipulation.

2. RESOURCES, FUNDING AND FINANCIAL STRUCTURES TO PROMOTE SUSTAINABILITY

Critical to all human rights lawyering organizations is the development of a financial support system that enables the lawyers to focus on legal representation rather than on fundraising and financial details.

- **Financing is the single most important factor in the ability of human rights lawyering organizations to effectively predict and meet program objectives.**

Without question, the issue that participants everywhere identified as the most important to their operations was the existence of a steady source of sufficient operating revenues. They identified both the *level* of funding and the *predictability or stability* of a budget as the critical factors contributing to their effective operation. In the context of legal assistance for the indigent, clients are not a significant source of funding.

- **The primary sources of funding for human rights lawyering organizations are some combination of international and national foundations; religious organizations; foreign government donors; lawyer or other private contributions; member dues; and court-ordered fees.**

Robert J. Rhudy, a U.S. lawyer who directs a legal services organization in Maryland, conducted a survey of funding sources for legal advocacy for the poor in developing countries.¹⁴ His study also included a number of other sources of funding that had not been previously identified. The survey received responses from 96 programs in 29 developing countries. He found that the most significant source of funding for such programs was international foundations. The Ford Foundation, for example, has played an extremely important role in funding human rights lawyering organizations throughout the developing world.¹⁵ Among the other most frequently identified sources of funding were the following: member dues, private donations from lawyers and non-lawyers, government subsidies and religious organizations. Consulting fees and other court-ordered payments also constitute a significant source of funds. Sources such as training programs and the sale of publications, often identified as potentially strong sources of funding, did not figure significantly in program budgets but did add some revenue.

In most cases, the budgets of human rights lawyering organizations come from multiple sources. A single source is simply insufficient to provide adequate resources for all programmatic objectives. As a result, program funding often includes “soft-money” grants that serve a particular program aim, and expire after a given period. These dedicated grants are extremely helpful to program operations but can result in some inefficiencies of operation because different programs must operate from different funding

¹⁴ Robert J. Rhudy, *Alternative Funding for Legal Advocacy in Developing Countries* (1999); published in Spanish in the Mexican and Central American forum as FINANCIACIÓN ALTERNATIVA PARA LA DEFENSA JURÍDICA EN PAÍSES EN VÍAS DE DESARROLLO.

¹⁵ See, Mary McClymont and Stephen Golub, eds., *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World* (New York: The Ford Foundation, 2000).

sources. Moreover, as noted above, budgets vary dramatically from year to year, thus contributing to instability among a program's staff and infrastructure.

- **Funding of human rights lawyering organizations requires constant exploration of new, innovative sources for funding, protection of current funding sources and levels, and creative extension of program resources through non-financial resources.**

Three particular experiences of participants are worthy of note here. First, in the case of the Malaysian Bar Council Legal Aid Center, a organization that is part of the structure of the Malaysian Bar, all costs of the Center are funded through a uniform levy on all practicing lawyers in the country. The annual fee of about \$26 for each lawyer yields a organizational budget of \$82,000¹⁶. This budget permits significant service in legal aid matters for the community.

Second, the United Democratic Front in South Africa used creative devices to protect its financing sources, which were under attack from the apartheid government. In the late 1980s, the government attempted to apply an obscure law called the Affected Organizations Act to the UDF. Under the law, "affected organizations" could be banned from receiving foreign financing. By mounting an open court challenge to the application of the law to them, the UDF was able to continue to receive the foreign financing during the two and a half years that it took for the legal issue to be resolved against them in the appellate courts. By contrast, however, the Legal Resources Centre, the largest human rights lawyering NGO in South Africa, found its foreign foundation sources seriously in jeopardy after the end of apartheid. Funders asked why they should continue to fund an organization in a country no longer in crisis, when there were new crises in neighboring countries like Rwanda, Burundi, and the Democratic Republic of Congo. The LRC was forced to re-articulate its agenda in such a way as to convince foreign foundations that the work they do now is as important as their work during the apartheid era.

¹⁶ As of 1999.

The final example comes from the Free Legal Assistance Group (FLAG), one of the largest and most effective human rights lawyering NGOs in the Philippines. Like UDF in South Africa, FLAG saw international funders, who had supported them before the transition process, turn their attention away from the organization following the election of a stable government in the Philippines.¹⁷ Having lost their major base of funding, the organization closed many offices and returned to its original methodology. While the organization was no longer able to produce extensive publications or monitor legislative action, it was able to continue what it determined mattered the most - litigation in high-impact cases. By reorganizing the operation of the organization from its own offices to the private offices of the more than 300 volunteer attorneys affiliated with the organization, they have been able to keep 15 active FLAG offices coordinating their litigation docket. Their cases continue to involve representation of the accused in a high percentage of alleged violations of national security laws and related offenses. While this is a wonderful example of creative restructuring in the face of resource scarcity, secure, long-term funding would have allowed FLAG to continue their programs in a more comprehensive manner.

- **Many countries now receive extensive “rule of law” related funds to which lawyering organizations might gain access.**

The World Bank and other international financial institutions such as the African Development Bank, Asian Development Bank and the Inter-American Development Bank also have begun to invest relatively large sums of money in programs to improve the “rule of law” in the developing world. Creative proposals to those entities, either with government collaboration¹⁸, might prove fruitful for additional resources.

- **Organizations can encourage the involvement of lawyers in human rights lawyering by covering professional costs, thus limiting financial obligations that can preclude portions of the legal population**

¹⁷ FLAG has since secured funding and renewed their larger mandate.

¹⁸ These institutions generally require government collaboration, although exceptions to that rule may exist depending on the institution.

from serving as counsel for the poor and disenfranchised.

Costs associated with being a lawyer may preclude some people from pursuing careers in human rights lawyering. School costs, taxes on services, bar fees and apprenticeship requirements may force those less privileged to join a more lucrative legal enterprise where these costs are covered directly or by a generous salary. For instance, the Bar Association of the Kingdom of Cambodia's annual fee is nearly equal to the average per capita income, making a lower paying legal position untenable and creating a high minimum wage for lawyers, relative to the economy, that human rights lawyering organizations must meet. Alternatively, organizations can pay these costs directly, but either option creates a financial burden on the human rights lawyering organization.

- **Reliance on volunteer or pro bono services is limited, but can be essential for developing broad-based support and educating a wider range of the population.**

Many organizations participating in the regional fora relied by necessity on volunteers, a rare commodity in many countries for reasons of economy and custom. Even when volunteers exist, they may be difficult to manage, have lower professional abilities, or have limited availability. In a country without a pro bono tradition, careful supervision may be necessary to ensure that no ulterior motives contrary to the organization's mandate influenced the volunteer's commitment.

Benefits of using volunteers, especially volunteer lawyers, include the potential for increasing understanding within the community about the needs and challenges facing the disadvantaged in society. In turn, non-legal volunteers can promote awareness of rights and rights education by bringing their experience outside the traditional legal realm into their daily lives.

- **Lawyers should use their legal skills to ensure that tax benefits, charity deductions, court cost structures, licensing regulations and other legislation with potential financial impact on human**

rights lawyering work is drafted to benefit the financial standing of human rights lawyers.

Caution and creativity are needed when reviewing draft laws that may affect the financial situation of human rights lawyering . Legislation or administrative policy, which creates financial burdens on users of the court, can be a serious barrier to accessing justice for the poor. When pro bono schemes are implemented, but are an unattractive alternative for practitioners, the human rights lawyering community should weigh whether foregoing the obvious financial benefit might prove more useful than reluctant representation.

- **Pro bono requirements or incentives, student lawyers, stage lawyer positions or similar apprenticeships and scholarships should be explored to expand the pool of resources available to human rights lawyers.**

While the merits and drawbacks of requiring pro bono work are debatable, especially in the developmental context, incentives to encourage pro bono work should be explored. Human rights lawyers should work actively with their bar association to explore different methods of increasing the legal community's representation of the disadvantaged. Legal systems that provide for, or mandate, apprentice periods should allow apprentices to work at human rights lawyering organizations. If possible, incentives for these positions should be provided.

3. MODELS FOR DELIVERY OF HUMAN RIGHTS LAWYERING

WHAT ARE SOME OF THE COMMON ISSUES THAT ARISE WHEN CHOOSING A MODEL FOR LEGAL SERVICE DELIVERY BY HUMAN RIGHTS LAWYERING ORGANIZATIONS?

- Is the program big enough to be divided into units or departments?
- Should the program organize around a constituency, an issue, or a class of persons?

- How many and what kind of staff attorneys should the program have?
- How many and what kind of other staff, legal and non-legal, should the program include?
- What is the range and level of service the program should provide?
- Where should the program be located: within government or outside, within an existing institution such as a bar association or law school?

- **The most common organizational structure in multiple-service organizations is through programs, units or thematic departments.**

While providing legal assistance or representation is the most common division within organizations, when additional approaches are undertaken they typically are organized around methodologies. One of the most typical structures of a human rights lawyering organization is that of the Workers' General Center, a union in Guatemala. While legal assistance for its members is the union's most important task, it also has several complementary programs:

Programs Complimenting Legal Assistance to Members

1. Training and education programs;
2. Training programs for delegates to joint commission on minimum wage agreements;
3. Conciliation panels;
4. Collective bargaining.

Each is a program of the Center, and each has a different structure and function. The division allows those with specialized skills to apply them to different substantive areas as appropriate.

Other groups divide their work, including litigation, substantively. The Hisham Mubarak Law Center, in Cairo, Egypt, is a human rights organization that primarily uses litigation to accomplish its objectives. Director Ahmed Seif noted that the organization originally focused on traditional legal aid as a form of charity work. Having discovered that the work was very limited in its effect on society, the Center reorganized with an eye toward the objective of impact litigation, and divided itself into five separate departments or programs:

The Five Departments of the Hisham Mubarak Law Center

1. Constitutional issues
2. Direct legal aid
3. Legal research
4. Executive branch watch
5. Legislative branch watch

By organizing itself in this fashion, the Center sharply defined the various areas of focus for its impact litigation. The five departments define five distinct elements of the program's litigation strategy.

Yayasan HAK Foundation, an East Timorese human rights lawyering organization, has four working divisions, as follows:

The Four Divisions of the Yayasan HAK Foundation

1. Case-Handling Division – handles both court and non-court matters
2. Advocacy Division – monitors, investigates and conducts public campaigns
3. Education and Organization Division – organizes and conducts legal and human rights education in grassroots communities
4. Research Division – conducts all research and studies, including proposals for the legislature or executive

This sensible organization of legal work permits efficient operation in focused and specialized components of the program.

Finally, some organizations, such as the Cambodian Defenders Project, divide their work both along substantive and methodological approaches:

The Five Divisions of the Cambodian Defenders Project

1. Legal Awareness Project- educational outreach to NGOs, police, and judicial officials
2. Legal Advocacy Project- draft law commentary and legal reform advocacy
3. Legal Representation (Criminal Law Unit/Civil Law Unit)
4. Women's Resource Centre- public awareness campaigns on domestic violence
5. Campaign Against Trafficking- combats trafficking in persons, including litigation

The Cambodian Defenders Project began with representation of the criminally accused and as the organization encountered new problems and challenges, they expanded the tools available to address issues more comprehensively.

- **Attorneys may be paid a salary, work on a fee-per-case basis, or act as volunteers, but independence, experience, and stability are the hallmarks of successful human rights organization lawyers.**

The lawyers who participated in all of the regional meetings shared one characteristic: passionate commitment on behalf of their clients. The lawyers who work in human rights lawyering NGOs often have low salaries, long hours and difficult working conditions. They spend a great deal of their time visiting and working with clients whose lives are marked by poverty, discrimination, limited education, poor health and unstable work or unemployment. Many lawyers from larger firms donate their personal time and energy, and that of their firms, to these difficult cases, where the reward is often not the thanks but the reproach of

governments. Often, these lawyers work at great personal risk to themselves and their families. Some suffer personal attacks, prosecution, detention, torture and even death in the service of justice.¹⁹ Yet these individuals continue to work, sometimes for the span of their careers, in the service of the highest ideals of the legal profession.

- **Trained paralegal and other trained non-legal staff or community leaders can be essential to provision of services, especially in isolated or rural communities.**

Paralegal and other non-lawyer staff are often the backbone of human rights lawyering organizations. In the Legal Aid of Cambodia program, for example, there are 15 staff lawyers and five legal assistants. The primary objectives of the organization include both legal assistance in criminal and civil cases, and increasing both knowledge and promotion of the legal system. Both aims can involve the use of paralegals. The Legal Resources Centre in South Africa has 34 attorneys, 17 candidate attorneys and 11 paralegals in its five regional offices. One of the Centre's successes was in the establishment of community-based advice offices run by members of the communities in which the LRC worked. They provided training of paralegals and other workers who could monitor violations, take statements, provide information to the greater program, and give free legal advice to the community in times of emergency. Yayasan HAK Foundation in East Timor operates with a staff of 23, only four of whom are licensed to practice law.

In many countries, law students can play the same roles as those of paralegals, and their use in legal clinics has permitted the university-based programs to provide services that are more comprehensive. In the legal clinics of the Central American University of Nicaragua, there are four faculty "area coordinators"

¹⁹ See, Mona Rishmawi, ed., *A Tax on Justice: The Harassment and Persecution of Judges and Lawyers* (Geneva: Center for the Independence of Judges and Lawyers, June 2000). The report catalogs attacks on more than 400 jurists around the world during the time in question, including 16 who were killed, 12 disappeared, and 79 prosecuted, arrested, detained, or tortured.

and eight instructors, seven of whom are law graduates and one who is still a law student.

At times, human rights lawyering organizations include the training of paralegals among their programs to encourage broad networks of service providers. Such is the case with ALTERLAW, an organization in the Philippines that has done this work since its founding in 1992. Other organizations may focus exclusively on the training of paralegals, such as the Paralegal Training Services Centre (PTSC) of the Philippines.

As a pragmatic matter, paralegals are also usually paid less than lawyers, and their training is shorter and less expensive. Paralegals can, however, perform many of the same functions as lawyers, particularly with regard to client interviewing and counseling, fact investigation, preparation of forms and simple court papers, community legal education and alternative dispute resolution. Rules on the use of paralegals vary from country to country, and some countries are more restrictive regarding the permitted activities of such legal workers. In general, however, paralegals and other legal professionals and activists permit human rights lawyering organizations to greatly expand their reach.

When restrictions do limit or eliminate the use of paralegals, human rights lawyering organizations should consider whether it would be useful to develop a strategy to challenge those restrictions. There are two common arguments against the use of paralegals that underlie the imposition of restrictions. The first is that paralegals lack necessary training and are therefore unqualified to provide legal services. The second and often unspoken argument is that allowing the use of paralegals erodes the monopoly lawyers have on providing services, and may therefore negatively affect lawyers' abilities to charge fees and retain clients. Lawyers who are interested in promoting the use of paralegals can address these issues. Training and supervision requirements should be appropriately addressed without creating undue burdens on either the potential paralegal or the supervising organization. In addition, organizations can promote the advantages of paralegals by emphasizing that by educating people on their legal rights, paralegals may actually create new clients, and that they certainly help to serve those who would otherwise be

unable to afford services. Even in environments where there are no restrictions on paralegals, human rights lawyering organizations that use them extensively may want to proactively work to alleviate the above concerns.

- **A growing number of organizations provide high-quality alternative dispute resolution services. However, care must be taken that use of community-based alternative dispute resolution does not reinforce existing inequalities, particularly with regard to women and minorities.**

A growing number of human rights lawyering organizations provide their clients with access to or representation in alternative dispute resolution mechanisms, such as mediation, conciliation services and arbitration. The Alliance of Costa Rican Women (Alianza de Mujeres Costarricense), one of the oldest human rights lawyering organizations in the region (founded in 1952), provides mediation services to an estimated 20 percent of its clients. Some offices provide the service themselves, as part of their internal structures. The Association of Democratic Jurists of Nicaragua (Asociación de Juristas Democráticas de Nicaragua), for example, requires mediation as a necessary step before litigation, “almost always with good results.”²⁰ In China, mediation is a deeply rooted cultural practice that provides a viable means for large numbers of persons to achieve some measure of access to justice. In Africa and some parts of Asia and Central America, traditional legal systems are grounded in alternative methods of dispute resolution that reflect community values and coherence. In many countries, alternative dispute resolution is a less expensive, less time-consuming, less confrontational alternative to the formal legal proceedings.

Some caution must be observed in considering alternative dispute resolution as a panacea for the poor. There is some risk that those who are disadvantaged and marginalized in the dominant and formal legal system will be even more so in an alternative system where no human rights framework is applied. There is a

²⁰ Ariel Dulitzky and Ismene Zarifis, *Legal Services Practitioner’s Forum in Central America and Mexico: Conference Report* (Washington, D.C.: International Human Rights Law Group, 2000).

significant risk that the poor will once again be left with a sense of “second class” justice. Historically, in Africa, colonial legal systems allowed a dual system to exist with traditional law taking precedence on matters considered outside of the public sphere. Consequently, issues effecting women and children were relegated to the traditional mechanisms that often re-exerted the powerless position of women in the decision making process. One cogent example is customary inheritance law in parts of Western Africa. Under traditional law, property and possessions of deceased males often reverted to the male’s family, leaving the widow and her children in poverty. Another example is village councils in parts of Southeast Asia, which may reprimand abused women for failing in their marital duties, rather than addressing the male violence. Moreover, when the dispute that is passed from the formal system of justice to an informal one, there is some evidence that pre-existing inequities between the parties will be carried over into the alternative system. If a landlord or large company is the party against which the poor tenant or consumer is proceeding, the poor and powerless person still remains at a substantial disadvantage in the new context.

- **Clinical programs in law schools can be a locus of opportunity to inculcate the values and skills necessary for service to poor and marginalized populations, and they can be a valuable source of legal assistance for such groups.**

There were a number of law school-based clinical programs represented in the regional fora. The greatest number came from the Central American region. Representatives from clinical programs active in law schools in Guatemala, Nicaragua, El Salvador, Costa Rica and Panama attended. Two speakers at the Mexico and Central America forum were part of a consortium of law schools from Argentina, Chile and Peru operating innovative public interest law programs in seven law schools there.²¹ In Asia, the Chinese participants included law school-based programs. In Africa, countries with human rights centers or clinical programs

²¹ See, Victor E. Abramovich, *La Enseñaza del Derecho en las Clínicas Legales de Interés Público, Materiales para una Agenda Temática [Law teaching in public interest legal clinics: materials for a thematic agenda]*, (2000); on file at the International Human Rights Law Group.

affiliated with law schools that participated included Kenya, Malawi and South Africa.

Given this variety of lawyering organizations based in law schools, there is some need to define exactly what a “clinical” program is and how it provides legal services to poor and marginalized persons. The Central and South American clinics follow a clinical model similar to that of the United States. Students are enrolled in a course of study in the law school for which they receive some academic credit. Unlike the U.S. law schools, some countries require completion of a clinical program as a condition of law school graduation. Working under the supervision of a faculty member who is a lawyer, law students provide legal services to indigent clients. Sometimes, the clinic’s caseload is limited to a specific number of clients. In the clinic of the San Carlos University Law School in Guatemala, for example, students must handle four civil cases, three labor cases and a simulated criminal case during their third and fourth years of a five-year curriculum. In some clinics, unfortunately, students are called upon to handle much higher caseloads. In such instances, the clinical program is generally attempting to fill the gap created by the absence of state-funded or bar-organized lawyering organizations.

In the Chinese law schools, by contrast, students do not receive credit for their participation in the clinical program. All are volunteers working under the supervision of law faculty and volunteer lawyers who provide all litigation services. Additionally, at the Chinese law schools the clientele may be limited to a distinct group such as women or the disabled. A similar arrangement occurs in some African countries, where either the structure of the organization or the limitations on student practice prevent law students from actually handling cases. The primary strengths of the Chinese organizations are their independence and their grounding in the academic community. The Center for the Protection of the Rights of Disadvantaged Citizens at Wuhan University, for example, was the first NGO in China when it was founded in 1992. Its four departments handle cases involving women, children, the elderly and the disabled. Similarly, the Beijing University Women’s Legal Service Center receives no government funding and has developed its own governing structure. The academic base of these organizations

gives them the ability to contribute to the coherent development of the Chinese legal system.

Clinical programs are becoming popular as a means to prepare law students to become effective practitioners through skills training while still in law school. The traditional formalism of law schools is giving way to modern pedagogical methods and innovative ways to better prepare tomorrow's lawyers. Experience in the U.S. and Latin America shows that students can be highly effective advocates for the poor, providing a much-needed additional resource. Such organizations, however, should not become a substitute for the state's fundamental obligation to provide adequately funded human rights lawyerings for the poor, nor should they become "case mills" for the poor, with inadequate or nonexistent supervision of student lawyers. Effective law school clinical programs must find a good balance between their pedagogical and service missions.

In addition to skills training, clinical legal education can inculcate lawyers with a sense of social responsibility. Out of these training grounds, students have the potential to develop into powerful advocates for the poor. Following their clinical experience, students may choose to enter a human rights law career. Even when students join more traditional law firms, their exposure to and understanding of the difficulties encountered by the poor can influence their work and create a base for professional support for human rights lawyering.

Links with universities can also be beneficial to human rights lawyering organizations as a source of potential volunteer assistance from students and as a resource or support institution for an organization's goals. In countries where apprenticeship periods are required for lawyers, human rights lawyering organizations may consider providing these opportunities. The costs associated with organizing and mentoring an apprenticeship program may be outweighed by the potential to build support within the bar for the disenfranchised and for the organization. As a resource, universities are often able to provide students to do substantial legal research that would otherwise drain the organization of valuable time. This can be particularly important when a human

rights lawyering organization is considering non-litigation strategies.

4. DEFINING SCOPE OF SERVICES: CHOICE OF CLIENTS AND CASE TYPES

Case selection is probably the single most important means of defining the work of a human rights lawyering organization. At the threshold, there are decisions about whether the organization will provide service in routine matters or focus on impact litigation. If routine legal services are provided on a case-by-case basis, what are the criteria that will limit the caseloads of attorneys to some reasonable number, as the number of potential clients will always outnumber the number of available lawyers? If impact litigation is the structure, what criteria will be used to select the most important potential issues in the legal system, and how is the organization most likely to find and commence such a case?

- **Control of the number of clients and type of cases handled is the most common way in which resources are managed and controlled in human rights lawyering organizations.**

The most significant limit on client selection is the criteria by which cases in the organization will be selected. By far the most common criterion is financial means or lack of funds with which to retain counsel. Organizations use varying criteria for indigence.

Common case selection criteria, other than financial means, are the following:

Common Case Selection Criteria for Human Rights Lawyering Organizations

- The prospective merit of the case (most widely used in England (Great Britain?) and Western Europe);
- The type of client (women, children, workers, refugees or immigrants);

- The type of case (criminal, civil, labor, death penalty could be imposed) ;
- Group rights versus individual rights cases; and
- Likely effect of the case (impact assessment).

- **Clients who seek assistance largely drive case selection, but human rights lawyers can find and recruit clients to advance a particular programmatic objective or issue.**

Many organizations decide to “recruit” clients or cases to advance a particular objective or to find a particularly helpful set of factual circumstances. Geoff Budlender of the Legal Resources Centre of South Africa emphasized the necessity of finding the right facts to bring forward a controversial case. Landmark decisions may be based in law but they are decided on facts and some clients’ situations make a more compelling case. For instance, in a case pushing for state sponsored healthcare, it may be easier for justices to deny coverage to a terminally ill, elderly man whose condition demands costly treatment, rather than to a child whose prospects for a healthy productive life will be determined by the provision of care. This use of impact and test litigation was so common among the participating organizations that little recognition was given to the difficulty of finding the right client in the right legal situation to be presented to the right judge. This may be a daunting task for offices that provide legal services to a limited population, but can be critical to the success of the case.

Even when the right client is located, it may be difficult to convince the client to go forward with the case. This was cited as a problem encountered by several lawyers. In Egypt, press cases are extremely controversial and plaintiffs often drop their claims before the appeals are exhausted. By taking several similar cases forward at the same time, the Hisham Mubarak Law Center improves the likelihood that one of the cases will reach the Supreme Court. Similarly in Bulgaria, the Helsinki Foundation was interested in finding a client to challenge a law that allowed

automatic incarceration for minor crimes without representation. Any challenge to the practice had to come from someone who had already served the sentence, most of whom wanted to avoid any future contact with the state system. The Helsinki Foundation believed that the practice merited expending resources to locate a client willing to pursue the case and spent considerable resources doing so. Instrumental to encouraging the reluctant client was explaining the overall strategy the Helsinki Foundation had devised to approach the problem, which took into account — and relied upon — Bulgaria’s desire to meet European standards.

Even among those organizations that choose to do impact litigation, there must be some recognition that cases are largely determined by who walks through the door of the office. Creative lawyering flourishes with the evolution of such relatively random cases into those cases that leave a broad and lasting impact. At the beginning of the prosecution of Gen. Augusto Pinochet in Spain for crimes against humanity committed on Chileans, there were few who believed the case would survive on jurisdictional grounds, let alone that an arrest would ever take place.²² Yet, that case evolved into one of the most important legal precedents in modern legal history.

C. SERVICES

Once a organization decides to take a case, what kind of legal service will it provide to its clients? The human rights lawyers at the regional fora represented groups that provide varying levels of service. Service delivery methods varied according to the needs of the community, the resources of the organization, and the goal of the organization. Before deciding how to deliver services, organizations must examine the advantages and disadvantages of each method as it relates to their objectives. Below is a catalog of the more common outreach methods.

²² Richard J. Wilson, “Prosecuting Pinochet in Spain,” *Human Rights Brief* 6, (1999): 3.

SOME METHODS FOR INCREASING THE REACH OF HUMAN RIGHTS LAWYERS

RESOURCES AND INFORMATION ABOUT LEGAL RIGHTS

- Flyers and posters containing information about rights
- Publications (newsletters, books, papers, e-mails) focusing on specific rights
- Web site resource centers
- School programs for rights education
- Radio or television legal information shows
- Street theater and role playing
- Self-help packages or kits for legal action without a lawyer
- Legal information kiosks at public events

RESOURCES AND INFORMATION ABOUT SERVICES

- Community based legal advice and referral offices
- Mobile human rights lawyers or paralegals for access to rural/remote areas
- Legal referral booths in or near the courts
- Alternative dispute services, both internal to the organization and external
- Recorded message services with basic referral information
- Call-in phone lines for advice or referral
- Hotlines for emergency access to essential human rights lawyers or law enforcement
- Web site detailing service provision
- Expanded operating hours to accommodate workers.

NETWORKING AND OUTREACH PROGRAMS

- Cooperation with religious institutions, service NGOs and hospitals
- Prison visits
- Public fora to discuss and examine specific cases or laws
- Media education programs on specific cases or laws
- Support groups for populations facing similar problems
- Informational programs for court personnel, including judges and prosecutors.

Most effective human rights lawyering organizations use a combination of the above methods and combine litigation with other programs such as legislative advocacy, international documentation and reporting, and media campaigns.

- **Service delivery must take into account the needs and abilities of the client and the context of the judicial system.**

It is immediately apparent that the decision on which method of delivery to employ is intricately linked to the local conditions including the needs and abilities of the population, and the implementation and enforcement of laws. When determining which option to employ, organizations must assess their community before embarking on a plan of action. All written information programs, for example, require a minimum level of functional literacy on the part of client populations served. Trial and appellate litigation options are only as good as the courts before which they are presented; a corrupt or compromised judiciary is unlikely to yield effective results from impact or test litigation.

- **Delivery options should incorporate the fundamental goal of client empowerment.**

Client empowerment cannot be overemphasized as an important goal of human rights lawyering. As an empowerment tool, the lawyer is not merely a facilitator for the people to achieve justice, but also transfers knowledge and skills the individual can use throughout their lifetime. The empowerment approach often expands the amount of time needed to provide service to an individual, but the understanding is that in the future such services may not be needed.

The Myrna Mack Foundation of Guatemala offered one of the strongest models of client empowerment. The Foundation grew out of a single tragic event, the murder of Myrna Mack, an anthropologist, by military agents in August 1991. Her sister, Helen Mack, began the Foundation as a response to the murder, and with the single initial goal of bringing to account those who were responsible for her sister's death. She was able to achieve

that goal, in large measure, through the conviction of the assassins. In struggling with the unresponsiveness of the legal and political system in the context of Myrna Mack's death, however, the foundation began to discover that its mission needed to be a more ambitious one, if that single murder was to provide any lessons over time. The Foundation began an aggressive program of training and civic education, creating a committed group of community advocates, as well as an office infrastructure that today makes it one of the leading sources in the region for human rights reporting, documentation and serious publications. Each of these successes arose from its commitment to training Guatemalans to take charge of their lives, to care enough to invest in their future, and to take measures to protect human rights.

Another way that human rights lawyering promote empowerment is by targeting the cause of the inequity. An example in ethnically torn Bosnia and Herzegovina is the Welcome Information Centers network, run by CARE International. The Centers offer legal and social service information and assistance, psychosocial support for reintegration and reconciliation, and economic assistance. Matters that should be simple and straightforward such as obtaining proper identity papers or restoring telephone, water or electrical services are bogged down in ethnic politics. Workers constantly encounter problems like that of a former cotton factory worker. The client had worked at the factory for 14 years before losing her job during the war. When she tried to get her job back, she was told that she could work for only three probationary months, and only on a part-time basis. After accepting the conditional employment, factory management told the client that there was no longer a vacancy; a relative of the factory director was given the position. The Welcome Information Center has filed a case on behalf of the client and is pursuing it through the system. Perhaps more importantly, the bridge-building they are doing between ethnic communities, primarily with women's and children's groups, creates important opportunities for legal remedies because it removes some of the barriers that are slowing down the legal process and creating the conflicts.

- **Human rights lawyering organizations have access to critical information about the needs of their**

clientele that can be essential for building a better justice system.

One of the key roles that human rights lawyers can fulfill is to collect and analyze information about the situations that their constituents face. While most lawyers can conduct a cursory overview of their constituent's needs and often are more than able to identify the critical issue, a more systematic approach to case information can better inform efforts to create change and ensure that all issues are identified. By creating even a simple data collection system, lawyers can have access to unique and valuable information. More systematically gathered information can then be used to track patterns within the justice system or the community that will need to be addressed either through legislative or judicial reform. Additionally, data that is quantitative is often more effective than qualitative data at influencing legislators, government officials, the media and other actors capable of assisting change.

D. INTERNAL FACTORS AFFECTING HUMAN RIGHTS LAWYERING

Many organizational factors determine the effectiveness and the capacity of human rights lawyering. Some of these factors are applicable generally to all NGOs and some are specific to legal organizations.²³

- **Casework must be balanced with continued development of professional legal skills and the time and resources needed to cultivate those skills.**

While this seems like an obvious conclusion, often in the short-term analysis, casework and client services take precedent over professional development. However, organizations that allowed staff the time and resources to seek continued legal education benefited from the time spent improving their skills and expertise.

²³Because there is a large resource base of material on NGO organizational issues, these will only be cited but not examined in detail. They include financial resources and management, governing bodies or Board of Directors, management practices and fundraising.

- **Ensuring sufficient funding for investigations and documentation can be extremely important to human rights lawyering organizations.**

Two types of material resources stand out as particularly important to human rights lawyering organizations: funding for investigations and funding for legal documentation. Investigation costs are a substantial portion of human rights lawyering organizations' operating expenses when litigation is the prime strategy. Availability of resources to conduct an investigation, in turn, can determine the outcome of a case. In criminal cases, human rights lawyering organizations may be functioning, in effect, as the police or prosecutor in their collection of evidence. In impact litigation cases, investigation costs can be disproportionately large.

Successful litigation also often depends on obtaining legal documentation, sometimes at a high cost. When decisions are not published, locating, copying and distributing them requires resources. Several organizations monitored legislative sessions because of the difficulty of obtaining draft legislation and laws. Other organizations, on their own initiative and with considerable expense, collected and distributed laws, case decisions and the similar documentation to fill a gap in available resources. With the development of the Internet, many international legal and human rights resources are available on line, but the cost of accessing those resources may be prohibitive in many countries.

- **Expanding services may dilute effectiveness.**

In a push to expand services to all communities, human rights lawyering organizations may dilute the quality of individual services and hamper the overall effectiveness of the organization. Alternatively, failure to reach all or most of the constituency may severely limit the benefits of the organization. The tension between quantity and quality of services was almost universal and often influenced or informed the development of the case intake strategies. Strategic goals beyond individual representation helped ensure quality representation and created, where politically possible, broader impact. Key to an organization's analysis of

their services is an appreciation of their capacity for quality representation in relation to expanded services.

- **Organizations should recognize that difficult cases and issues can create emotional or psychological stress among lawyers and may even put the lawyer in physical danger.**

It is essential that organizations recognize the work-related pressures taxing their employees. This is particularly relevant when organizations are pushing for political change or reform that results in pressure on individuals or the organization. Implicit in this recognition is an understanding that the organization will support their lawyers and employees by developing means to lessen the stress associated with the performance of their job. Some organizations have created generous professional development programs that increase skills and allow the employee to temporarily exit the immediate stress of casework and individual client concerns. Other organizations have detailed security plans that account for dangers to employees and their families. With limited resources, it is critical that organizations appreciate the stresses created by the working environment and take whatever measures possible to alleviate or lessen the stress.

Organizations should also be aware of the potential threat of physical danger to lawyers pursuing difficult cases.²⁴ When the lawyer's presence represents a threat to an opposing plaintiff or the case could lead to individual criminal prosecution, such as in domestic violence cases²⁵, lawyers may come under attack. In some countries, women seeking divorce are killed or threatened by their spouses or their spouse's families, and lawyers working with these women can be targeted as well.²⁶ Organizations should take

²⁴ See, International Commission of Jurists.

²⁵ Marcela Rodriguez, *Empowering Women: an Assessment of Legal Aid Under Ecuador's Judicial Reform Project* (Washington, D.C.: The International Bank for Reconstruction and Development/World Bank, 2000), 25.

²⁶ In Pakistan in 1999, lawyers at AGHS, a legal service NGO, were representing a married woman seeking a divorce from her abusive spouse. The woman's relative's had her murdered in her lawyer's office. After the attack, "[f]atwas [religious rulings] were issued against both women and head money was promised to anyone who killed them. In April 1999 Asma Jahangir lodged a [complaint] with police against those who had threatened her and her sister with

preventative measures to help secure the safety of their clients and for the lawyers working for them as well as recognize the psychological stress such threats produce.

- **There is often a social, economic, educational or identity gap between lawyers and their clientele that must be bridged.**

Appreciating the needs of the client is essential for effective human rights lawyering. Often those providing the service come from a different social or economic class than the recipients of that service. The educational level is sometimes substantially different and when the clientele is defined by membership in a minority group, identity itself may be an issue. If the empowerment model is to work, lawyers must recognize these differences and be educated on how to work with their clientele despite these differences. In South Africa, Boogie Khutsoane, a gender specialist, noted that simple acts such as conforming to local customs, which on their face may be contrary to your message, may be necessary in order to be heard. The lawyer must decide when such a compromise to culture or tradition should be adopted, as well as decide when such a measure infringes significantly on the message or on the lawyer's own rights.

Another important distinction that should be recognized is gender. Women are often treated differently by the law and by the community. While cultural discrimination may be more difficult for a lawyer imbued within the culture to identify, lawyers must be cognizant of how the justice system treats women differently and work to eradicate any discriminatory practices. In particular, lawyers should ask themselves whether practices treated as "private" by the law or society have a disproportionate effect on women. Rarely are the effects of law on "private" issues equal in their treatment of men and women. Lawyers have a responsibility to question the legal distinctions that establish disparate treatment of men and women, and whether such areas should be beyond the law.

death. Simultaneously, she called on the government to set up a judicial inquiry headed by a Supreme Court judge to investigate almost 300 cases of honour killings reported in 1998 in Pakistan." Shahzad Raza, "Domestic Violence and Honour Killings of Girls and Women"; On the web at: <http://www.telmedpak.com/ngoarticles.asp?a=1141>.

International Human Rights Law Group

Working to make human rights real for individuals and communities around the world by building the capacity of local groups and strengthening human rights protections through advocacy, strategic lawyering and training.

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Promoting JUSTICE

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Strategic Human Rights Lawyering

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The International Human Rights Law Group is a nonprofit organization of human rights and legal professionals engaged in human rights advocacy, litigation and training around the world. Our mission is to support and empower advocates to expand the scope of human rights protection for men and women, and to promote broad participation in creating more effective human rights standards and procedures at the national, regional and international levels.

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PRINCIPAL FUNDING FOR THIS GUIDE WAS PROVIDED BY THE
UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.

PART III

CONTEXTUAL STRATEGY DEVELOPMENT FOR EFFECTIVE HUMAN RIGHTS LAWYERING

To develop strategies that create social change and protect human rights, lawyers must first have a clear understanding of their objectives and the sectors of society that could contribute to achieving those objectives. In this chapter, we will examine contextual factors in determining action plans, elements of legal approaches, and techniques for developing and employing a strategy. The most significant step for a human rights lawyering organization's action plan is deciding on strategies to achieve the desired objectives. Identifying the area within the justice sphere most susceptible to change is crucial for creating an effective strategic plan. A corresponding analysis of which sector is most important to achieving the desired change should occur simultaneously. Both analyses may require an evaluation of the organization's strengths and capacity/willingness to expand certain skills if weaknesses are discovered.

Identifying which agents will nurture change is purely contextual. Our analysis merely highlights which sectors are important to consider and when. The following considerations in no way preclude the use of more than one sector when developing a strategy. Indeed, most successful reform movements involve at least two of the sectors in their strategy, and there is an argument that for sustainable change support must be gathered from a majority of — if not all — sectors.

GRASSROOTS SECTOR

Community/People Oriented Strategies are most effective when:

- The change involves an accepted social or cultural norm that is in conflict with international human rights principles;
- Popular support for change is high and the government is responsive to the people;
- Popular support for change is high and the government is under international pressure to reform;
- The population lacks faith in the judicial system or the government; or

- Religious or community institutions provide the dispute resolution arena, are instrumental in evidence gathering, or provide critical community guidance.

JUSTICE SECTOR

Judicial or Justice System Oriented Strategies are most effective when:

- Judicial personnel or police act out of ignorance or without proper motive;
- Judicial decisions are enforced and are valued by the community;
- The government is under pressure to establish an independent judiciary;
- The court's failure to act can be used to pressure the government;
- Legal standards need to be established; or
- Precedent will have a broad effect.

POLITICAL SECTOR

Government or Political Oriented Strategies are most effective when:

- The government expresses willingness for change;
- Administrative reform is needed;
- The law is insufficient or nonexistent; or
- Differences in competing political positions exist and can be leveraged.

INTERNATIONAL SECTOR

Internationally or Regionally Oriented Strategies are most effective when:

- The government is concerned about its international or regional reputation regarding a given issue;
- The organization or individuals working for change may be threatened;
- International financial institutions are willing to create loan conditions; or
- The international community is likely to be sympathetic to the cause.

Analyzing the context is essential to developing the strategy, and the factors listed above are only a sampling of considerations. Many of the factors cannot be taken individually, but must be considered within the larger context, and several factors may influence more than one sector.

Additionally, some goals inherently determine the essential change agents or sectors that need to be targeted. That does not mean, however, that those agents alone are necessarily ample to achieve the desired result. As a simplified example, the International Federation of Women Lawyers (FIDA) throughout Africa has been pushing for gender equality in inheritance issues. Typically, in many West African countries, when the male head of household dies, his property — even his children in some cases — revert to his family, leaving his widow destitute and homeless. Initially, lawyers for FIDA identified the problem as an absence of equal protection under the law. From this analysis, FIDA developed a strategy of pushing for legislative change to provide legal rights to equal protection. However, FIDA found that in countries where the laws were changed to be gender neutral, inequality persisted. FIDA then began examining the cultural foundations for this practice and realized that changing public opinion was as important, if not more important, than changing the law. Currently, FIDA has a number of community awareness and education campaigns designed to influence and change public opinion on the issue of women's inheritance, several of which involve local religious and community leaders. A similar example is the campaign to limit and eventually abolish female genital mutilation, a practice that persists despite legislative reform on the issue.

The above examples raise the issue of whether law can change public opinion, and if law can change public opinion, how it does so both positively and negatively. Traditionally, the laws of the community, whether codified or not, reflect shared social mores. Often when local actors seek to make local laws comply with international principles of human rights, especially on what are typically called private or family issues, they may be promoting legal change that is more progressive than cultural norms in that given locale. Such legislatively initiated social change may be met with resistance from the population on whom it is imposed,

delaying or undermining the effectiveness of the law. In extreme cases, such a scenario fosters public backlash or other negative consequences. To support legal change, community buy-in is usually essential. However, some practices such as slavery and honor killings are so abhorrent that it is imprudent to allow cultural bias to prevent their eradication. The difficulty lies in determining which practices require legislative change and enforcement despite their conflict with popular local mores and which would be better addressed through other means with legislative changes subsequent to the attitudinal change. Key to promoting change that lacks popular support is a contextual understanding for the popular sentiment. Understanding why a practice that violates human rights is supported is essential to identifying the most critical approach to deconstructing it, whether through legislative reform, shifting popular opinion or enforcing existing laws.

This issue was highlighted during the forum in Africa, where several innovative public awareness programs on women's rights have been developed. In formulating these programs, groups took special notice of the audience and their understanding of their cultural identity. In particular, the programs distinguished between audiences who either ignored culture or employed it only to deny women their rights, otherwise dismissing traditional approaches versus audiences who had been socialized completely to a traditional lifestyle. Individuals who ignored culture had, after participating in targeted educational programs, the least difficulty converting to views that were more respectful of rights. Efforts to change the views of individuals who employ cultural mores intermittently revolved around the inconsistencies in their arguments and encouraging them to view women and their potential as economically beneficial. For the people holding more traditional views, the lawyers employed teachings on the distinction between the scientific facts of gender and social construction of gender inequity effectively. By identifying constructions of gender, the program created an awareness of bias that allowed space for opinions to change. In these lawyers' strategy formulation, how their community identified with their culture and integrated it into their lives was an essential consideration and critical to the success of their message.

As the examples above highlight, strategic human rights lawyering often utilizes a legal advocacy approach that combines different methods including public awareness, litigation, lobbying and other tools, based on the organization's assessment of the objective and the identification of legal space. Beyond enforcing the law, legal advocacy means remedying injustice through a wide range of advocacy strategies. This often requires changing not only the law, but also the underlying social structures that cause injustice to develop or that sustain injustice.

WHAT ARE THE CONSIDERATIONS IN DETERMINING THE COMPONENTS OF AN EFFECTIVE STRATEGY (INCLUDING LITIGATION) TO ACHIEVE THE GOALS OF A HUMAN RIGHTS LAWYERING PROGRAM?

While the above examples have focused on the need for public awareness campaigns, for most lawyering organizations basic strategies will involve a heavy component of litigation. Before litigation is attempted, however, advocates must ask the following questions:

- What kind of action will more effectively push the goals of the organization: impact litigation, test litigation or volume service to individual clients? Or what combination of these strategies would be most effective?
- Will litigation empower the clients or group represented? Is that element of empowerment important even if litigation is likely to fail? Does litigation give the group or individual a "voice" they would not otherwise possess? Are alternative means of resolving the conflict available?
- How will the client or group be involved in the decision making process? How will they be involved in the litigation? Will their involvement in the litigation help them solve similar or related problems in the future?

- Will the organization accept politically sensitive or volatile cases that may put the organization or its leaders into organizational or personal danger? If yes, what are the most effective means to meet any potential risk?
- What might the organization gain in political impact or public education that it might justify the risks of losing a major legal challenge or defense in court?
- In countries where the courts are not an available or an effective avenue for redress, or where sufficient resources exist for other avenues than the courts, how might the organization achieve law reform and social change by means other than litigation?
- Should the organization raise public consciousness of human rights and violations of those rights by taking part in community human rights education, in the careful and factual documentation of human rights abuses, or in the cultivation and use of the media?
- What are the available national, regional and international enforcement mechanisms available to the organization and its client communities, and how do lawyers use them if necessary?
- Should the organization consider taking steps to develop networks of like-minded organizations at the national, regional, and international levels?
- How do factors such as the current government, judicial independence, economic situation, political space and other contextual information, influence the determination of the scope and profile of the organization?

The answers to these questions will help the human rights lawyer determine the most effective way to proceed. A crucial issue for the lawyer is establishing a program that considers the impact of litigation on the client both positively and negatively. The lawyer

must always ensure that the client has a voice in the process and understands all consequences of litigation. Next, we outline some of the key findings regarding the development of an effective strategy that emerged during this project.

- **One fundamental strategy to increase access to justice is the elimination of unnecessary barriers to the courts and of legal bureaucracy. These encourage the divide between achieving justice and the average citizen's capabilities.**

Ironically, one of the main goals of human rights lawyers is to increase access to justice through the elimination of formality (and even lawyers) whenever possible. Consequently, lawyers use their legal knowledge and expertise to analyze the system and encourage reform toward a more people-oriented process. While there are instances when legal training is required, there are proportionally more instances where bureaucratic regulations, geographical restrictions, or rudimentary educational barriers are what make a lawyer necessary. Human rights lawyers have been creative about designing systematic reform that meets the needs of the community and increases accessibility for the average citizen. However, such efforts are often met with resistance from the local governments and bar associations.

To supplement systematic or administrative reform, human rights lawyers often encourage legislative reform to permit paralegals or non-lawyers to advise and assist citizens. This too has been met with resistance. To assuage fears that such legislation will negatively impact the legal profession, human rights lawyers can point out that those who will benefit the most from such legislation are those whose current economic standards make hiring a private lawyer unlikely.

Another primary constraint to accessing justice is the cost associated with litigation. Presenting the findings of a study on access to justice conducted by the Inter-American Institute for Human Rights and the Inter-American Development Bank, Lorena Gonzalez stated that financial constraints were found to be the most inhibiting factor in using the courts. Throughout the world, the majority of the population cannot afford the costs associated

with litigation. The fees which lawyers charge are only a portion of the costs associated with litigation. Lost time from work, travel expenses, filing fees and other court related costs quickly add to the expense of hiring a lawyer.

Eliminating the barriers to justice empowers citizens to claim their rights. Whenever a human rights lawyer sees unnecessary restrictions to accessing the justice system, a strategy should be developed to eliminate the barriers. Access to justice should be a consideration during any judicial reform process. Legislative or policy reform, including the adoption of statutes allowing access to non-lawyers in the role of advisors where practical, as well as the simplification of complicated paperwork should be undertaken when appropriate. While these measures are rudimentary, they can be crucial to freeing up the human rights lawyers' time for more pressing issues that do require legal representation.

- **Lawyers interested in working for human rights protection and the public interest are usually a small minority within the bar, but those lawyers often can enlist active support from other areas of the bar and other sectors of civil society.**

It is worth noting that the number of lawyers, who are willing to forego the lure of a potentially lucrative law practice and devoting themselves to the quest for justice, is a very small percentage of the bar. Moreover, the list of strategic questions raised above is not one that is likely to endear human rights lawyers to the state or to powerful political and economic interests in their home countries, further limiting those to whom such work will appeal. As Olisa Agbakoba, the Director of Human Rights Law Services of Nigeria, noted in his remarks at the African forum:

“Nigeria probably has 50,000 lawyers and I do not think I can count 1,000 lawyers who take any interest in human rights work. ... I see in Nigeria a lack of willingness for new people to come in. ... One of the mistakes I see is that the human rights lawyer presents a toga of radicalism — the outcast. Human rights lawyers are seen as troublemakers. In one decision, the chief justice described us as ‘meddlesome interlopers.’”

Mr. Agbakoba spoke of his own struggle to get “silks,” meaning his efforts to have the Nigerian bar grant him the title of Senior Counsel. He was eventually successful, though not before presenting himself repeatedly. He attributes the delay to his role in the human rights struggles in Nigeria. He went on to say that human rights lawyers make a mistake in distancing themselves from the organized bar, and that bar associations, individual lawyers and other components of civil society will often warm to the appeals of a just cause.

- **Developing an effective strategy for difficult human rights situations often requires employing innovative legal techniques that combine litigation, other legal practices and advocacy efforts.**

When difficult problems arise, standard legal practices may be unable to effectively respond. Creative means may be more appropriate. Acting creatively in a judicial context requires the identification of innovative solutions and approaches to even common problems. These creative strategies are important in overcoming the difficulty of working against accepted norms. Throughout this guide, creative lawyering strategies are highlighted as an important tool in approaching human rights problems. Additionally, new strategies that incorporate flexible responses may be better able to address an insensitive justice system that is ignorant of social justice issues and inclined to legitimize the persistent state of impunity for human rights violations. New legal strategies can disrupt the normal practice, forcing perpetrators of injustice to reexamine the situation or, at a minimum, create a new response to a unique challenge. Searching for legal solutions, crafting new case strategies and developing legal interpretations that meet the needs of the disadvantaged are important roles of the human rights lawyer.

By adopting strategic approaches to recurrent problems and attacking problems at their root, human rights lawyers are more likely to achieve a long-term improvement in the human rights situation of society. Holistic strategies can be expanded, adapted and developed to meet the continually changing needs of society

and to push for the development of a culture that respects human rights.

A. LITIGATION STRATEGIES

While litigation strategies can vary widely, a significant number of the human rights lawyers surveyed use impact or test litigation as a primary strategy for attempting to achieve social change through legal means. Human rights lawyers practicing in common law countries emphasized the important role of setting precedent through test litigation can play in promoting human rights issues. The Legal Resources Centre (LRC) of South Africa, for example, currently concentrates its impact litigation strategy on socio-economic rights, given the new and greater recognition of such rights in the post-apartheid South African Constitution. Over the life of the organization, its impact litigation focus has shifted, depending on the current issues and the nature of the issue. During the apartheid era, the LRC handled impact litigation involving the notorious “pass laws” (laws requiring all adult blacks to carry an identification document with them at all times, which contained information about such items as where they could live, where they could work and whether they had paid taxes) and the forced removal of black populations to the townships. Later their cases shifted focus to the quality of prison conditions, the right to strike and inquests to prove police complicity in the murder of anti-apartheid activists. Today, with fewer resources, the LRC is picking its test cases very carefully to guarantee the highest possible impact.

Even in civil law countries, impact and test litigation can play an important role in setting standards. Several lawyers at the Eastern European forum cited their reliance on standards set by the European Court of Human Rights in court. In civil law countries, these cases, while not legal precedent as understood in common law systems, carry important weight in judicial determination where the possibility of appeal helps shape judges’ decisions.

Organizations must give serious thought to whether test or impact litigation is a strategy that develops client empowerment. There is a risk that such litigation, because of its complexity, becomes more lawyer-focused than client-focused, with the majority of the

attention on the law and lawyers and little on the client. Lawyers working in this field must constantly reflect on the difficult question of whose goals are being served.

When the competing goals of individual justice and a broader organizational goal exist, it may be prudent for lawyers to consider who decides which strategy to pursue. From when the case is first received, determining a strategy helps guide decision-making and encourages the lawyer to view the case within the broader social constructs. When designing a case strategy, the following questions should arise:

- What is the client's goal and how can the lawyer help the client clarify the goal(s)?
- What level of commitment does the client have to achieving the goals?
- Beyond litigation, are there are other methods of achieving the client's goal(s)? Are these more or less likely to be effective?
- What are the strengths and weaknesses of the client's case? What are the strengths and weaknesses of the opposition's position? What are the legal claims and how strong are those claims on the merits, within the system and in public opinion?
- Who are the opponents and what is the estimated level of commitment to that opposition? Who are their supporters?
- Who else has an interest in the issue and what are those interests? Will they support the client's position?
- Will those with an interest being willing to work together on reaching a solution? Are other actor's with a less defined interest able to support the issue?
- How difficult will it be to prove the case? How costly will it be?

- Is there an alternative or compromise that will meet the needs of both sides? Is exploration of other avenues an option?
- How likely is it that the court will look favorably on the action?
- What political repercussions will follow either a win or loss in court?
- Is the legal theory clear and simple, and is the remedy easy to implement?

The above questions can also be applicable to group claims when such claims are an option in the legal system. However, developing a strategy for a group claim is different than developing an individual strategy. Groups by their definition contain a larger number of people who, despite their common interest, may have different individual conceptions of what their goal is in bringing forward their claim. At the very least, working with groups requires developing a system that is cognizant of the number of individuals to whom the lawyer is responsible. Considerations include:

- Whether the interests of the individual members of the group are complimentary or conflicting?
- Whether there is a benefit to a group claim rather than multiple individual claims?
- Does the group have a recognized leader or procedures for making decisions as a whole? How are decisions for the group reached?
- Is the group complete? Are key members of the group missing? Why? Will their absence effect the claim?

After reviewing the answers to all of these questions, the lawyer can begin discussing with the client or clients the options for litigation or other remedies and developing a case strategy. Determining a case strategy can be particularly important when a

litigation strategy is expected to fail, but nevertheless considered important in highlighting an issue. In this situation, a second set of considerations should be examined:

- Should the lawyer encourage the client to continue the case despite a low likelihood of success?
- Will the client willingly sustain a long appeals process if this is necessary?
- Does sufficient financial support exist to see the case to conclusion?
- Can the case be appealed to a regional body?
- If the particular court is likely to be adverse is changing venue an option?
- Do the potential auxiliary benefits of a failure outweigh the burden of litigation the client faces?
- What extra-legal work can be done to support the case? Will such efforts undermine the judicial process? Will such efforts create a sustainable change in the situation?
- Does the lawyer have a duty to explain the overall strategy to the client regardless of whether it affects her case? Is it ethical to “fail to inform” of an auxiliary reason for the strategy? Is there ever a justifiable reason for a client to lack awareness of the strategy?

These questions require careful consideration. On general principle, clients should be involved in strategic considerations that affect their case. The more difficult question arises when the case affects a broader strategic goal but may be of little or no individual benefit. Because estimating the value of an individual case to an overall strategy is difficult, it is important that lawyers remain cognizant of the tension between the needs of the client and the overall goal, and the potential that these competing values might affect important decision-making.

- **A competent, independent, and impartial judiciary can be an important pre-condition to the success of strategies that rely on litigation alone.**

The Honorable Justice Michael Kirby, Chief Justice of the High Court of Australia, gave the closing address at the Southeast Asia and China forum. Drawing from the remarks of the participants, he noted, “Unless courts and tribunals are independent, the utility of representing an individual before them will be distinctly limited. If a decision is predetermined, the individual may have excellent representation and abundant legal aid, but it may lead nowhere because the proceedings in the court or tribunal are but a farce or a pretense of law and justice.”²⁷

His conclusion is no less true in impact litigation than it is in the most routine of cases. The integrity of the result in judicial proceedings is only as valuable as the integrity and credibility of the government to enforce such results. That is one of the reasons for the persistence of impact litigation in South Africa. Even in the most difficult days of apartheid, there was a general recognition that the decisions of some courts would be fair and just, and that the authorities would honor and enforce those decisions. Without the possibility of that integrity, using the strategy of litigation alone is limited and can even be a waste of time.

Litigation can also be used to highlight the lack of judicial independence and fairness. Presenting cases that are simple, straightforward, and easily understood by the average citizen can help underscore the inability of the judiciary to fairly address critical justice issues. Such a strategy can be useful when a group is pushing for judicial reform, but requires coordinating litigation with public outreach and media campaigns that focus on the role of judiciary and publicize the failure.

- **Limitations of the courts and the bias that exist within them should be taken into account when lawyers develop litigation strategies.**

²⁷ Hon. Justice Michael Kirby, “Seven Lessons of Bangkok,” *Rule of Law, Human Rights and Legal Aid in Southeast Asia and China* (Washington, D.C.: International Human Rights Law Group, 2000), 130.

When considering litigation strategies, human rights lawyering organizations benefit from having an indication of the court's leanings and if possible, a historical understanding of the court's past rulings.²⁸ Lawyers are better able to develop their case when they understand which factors would most likely influence the court. Within this knowledge base is an appreciation of the court's independence. For most lawyers, these are fundamental issues; the strategic element arises when the lawyer links the case's strengths or weaknesses with the court's inclination. This is particularly crucial when there is potential for setting an unhelpful precedent. Venue shopping or case hunting within a particular venue can be a valuable tool when the legal system allows for it.

Yet, there are times when taking a case to a court that is unfavorably inclined to your client is beneficial. Several NGOs cited their use of glaringly unjust decisions to mobilize broad-based community support when such cases were properly made available to the media. However, an unintended negative consequence of such a strategy may be the ultimately weakening of the justice system by overturning legally valid decisions through extra-judicial means. One supplementary strategy when groups challenge the court on a poor decision via community mobilization is to call for legitimate measures for monitoring the courts, such as independent ethics boards or a transparent and accessible appellate process.

- **Through the effective pursuit of an individual claim, litigation can have a broad legal and political impact regardless of the outcome of the case.**

Litigation can have political goals as well as legal goals. In addition to pushing important issues into the realm of public discourse, an effectively presented test case can be an opportunity for a public presentation of a reasoned view in opposition to government, corporate or other perspectives. Litigation can teach a great deal, whether the case is won or lost. In Chile, for example, the Vicariate of Solidarity filed thousands of petitions for the release of detained or disappeared persons during the Pinochet regime. Although the lawyers desired success in their petitions,

²⁸ This is true even in the civil law context, where despite the absence of precedent it may be useful to examine higher court decisions.

they did not approach the courts expecting to win release for the prisoners. Rather, they saw their strategy as a means by which to expose the compromised nature of the Chilean judiciary and to document the abuses of the military in a formal, public way. Their petitions later became the foundation on which the Chilean truth commission could build a factual, documented record of the practice of state terror during those years.

Elements of an individual case can also be important to a larger movement. This was the case of the trial of Nelson Mandela in South Africa in Pretoria in April of 1964. In that trial, his statement from the dock and his later conviction and incarceration became rallying cries in the anti-apartheid movement. By using the machinery of the government, Mandela's statement thwarted the efforts of the government to silence him and the anti-apartheid movement.

- **Resource limitations may require human rights lawyers to make critical decisions about which cases to bring forward. Such decisions should be related to an overall strategy for supporting systematic change.**

A greater focus on systemic change can be a gradual process of winnowing the important cases from the routine, as was the case of the Women and Law Center in Banja Luka, Bosnia and Herzegovina. The Center, founded in 1997, was created to provide legal support to women from urban and rural areas. It provides counseling, a hotline service and representation in the courts. Its goals include provision of services to as many women as possible. Between January 2000 and April 2000, the Center took approximately 40 new cases per month. However, because only one staff attorney can go to court, the organization began to set priorities for cases, using the following criteria:

Case Acceptance Criteria Women and Law Center

- Difficult cases;
- Cases in which there is a risk of harm to the client; or
- Cases where the facts can aid in lobbying efforts for changes in the law.

Realizing its staffing limitations, the Center decided to prioritize cases. This initial step is important in establishing a link between individual service to clients and broader work for systematic change.

1. THE POLITICALLY SENSITIVE CLIENT OR CAUSE

In some sense, any case that involves persons at the margins of the law has “political” elements. Poor people lack the resources and access to power that makes for a level playing field in the courts. Women and racial minorities often are seen as agitators or ingrates when they challenge the status quo. Women, in particular, may be accused of violating cultural norms when they push for their rights. The political activist accused of crimes against the state may be branded a terrorist, a hero of the people, or both. Many of the organizations participating in the fora, however, understood that many human rights-related cases have political dimensions, and all had some wisdom and insights to share from that experience.

- **While providing legal assistance to the disempowered opponents of a repressive regime may be an important aspect of the defense of human rights, the need for organizational survival dictates careful consideration of such actions and often requires development of strategies to lessen organizational risk.**

Repressive regimes typically are characterized by their control of government institutions and their ability to control a wide spectrum of civil society through a variety of techniques. Pursuing cases in courts controlled by repressive regimes is often of limited utility. Yayasan HAK, the human rights lawyering NGO in East Timor, found that the primary difficulty in representing political prisoners lay in the courts themselves. The Indonesian-controlled courts were not independent or transparent, and the state used the political prosecution as “a tool to legitimize state policy rather than in order to decide a case based on law.”²⁹ Thus, the lawyers, though they

²⁹ Aniceto Guterres Lopes, “Legal Assistance under an Occupied Force: East Timor before the Referendum,” *Rule of Law, Human Rights and Legal Aid in Southeast Asia and China* (Washington, D.C.: International Human Rights Law Group, 2000), 92.

appeared and defended, were skeptical of the possibility of justice and developed as many support systems as possible.

Another point of view came from Nigeria. Human Rights Law Services began working in the early 1980s and because human rights work was so dangerous at the time, the organization focused its litigation efforts on prisons, which were perceived as politically neutral subjects. The strategy was to introduce human rights concepts and norms into an area that would not produce governmental or public backlash. The strategy worked slowly, but it ultimately bore fruit in significant reform of detention practices in that country and the opening of space for lawyers to pursue other claims.

In Cambodia, one of the most politically volatile issues revolves around land grabbing by local government officials, especially with land formerly held by the Khmer Rouge along the border with Thailand. As the region becomes an important border crossing, casinos and other businesses have been eager to purchase the land. Local military and government officials with dubious title claims have displaced many families; these government agents then sell the land to business interests for a significant profit. Lawyers in the region have been reluctant to take the cases in part due to fear of reprisals, but also because litigation is considered futile in the local courts whose proximity to the land disputes is perceived as making them incapable of ruling against the interests of the local officials. To address this problem, the Cambodian Defenders Project began using a dual approach to these controversial and potentially dangerous cases. It worked with local NGOs on encouraging citizens' protests against the land seizures in the capital, a safe distance from the disputed area, to raise awareness of the issue. Secondly, CDP developed a legal strategy that allowed the cases to be heard in the appellate courts under judges who potentially were more neutral, physically distanced from the disputes, and less subject to intimidation. In several cases, affecting hundreds of families, this approach has been successful. It is difficult to ascertain whether the rulings have been rooted in legal findings, fear of further community disobedience, or in response to local power gambits. Regardless, both the citizens and the lawyers were protected. One question this example raises is the potential danger faced by protesting citizens, and whether the

organization would have pursued the cases without the citizen support. In other words, who determines the risks, organizationally and personally, that a lawyer and client take? While the ruling in the land case brought by CDP was enforced, a second question before pursuing this strategy is whether national courts have the political influence to enforce their decisions locally.

- **Politically sensitive cases may require creative lawyering to face the additional hurdles set by the government to thwart effective legal representation.**

One of the most innovative and successful responses to a sensitive case comes from Malaysia. There, the Malaysian Bar Council was faced with how to provide representation to protesters in mass demonstrations during political upheaval in the country. The demonstrations resulted in mass arrests in which a joint trial was ordered for 177 accused in one case and 126 accused in another. In order to suppress an effective defense, the government ordered that the trials proceed in one continuous hearing, without a break. Because the Bar Council relies on an all-volunteer program, no participating attorney was able to take the full two months to provide representation. Responding to the limitations imposed on them, the Bar Council devised a system of representation in shifts, with lawyers working on the cases for two to three days in a row then being relieved by a new lawyer. Of the first group of 177 accused, all but five were eventually acquitted. The director of the program, R. Kesavan, noted at the Southeast Asia and China forum that it was not the conventional way to provide defense in a criminal trial, but it was overwhelmingly successful. This kind of creative spirit infused the lawyering of all of the fora participants.

2. OTHER ASPECTS OF LITIGATION STRATEGIES

- **Incorporating religious or culturally based arguments into the litigation strategy may be the most effective way to begin challenging inequalities based on culture and religion.**

Lawyers who have successfully challenged religious or local customs frequently have relied on incorporating those values into

their arguments. In countries where Shariah is applied as law or is the source for aspects of it (such as family law), human rights lawyers have developed legal analyses that promote rights protection by offering progressive interpretations of Koranic text, or Hadith. For example, in Yemen, some lawyers encourage clients accused of adultery to opt for lashings over prison terms. These lawyers have been successful in establishing the symbolic nature of lashings and by relying on religious definitions, such as the size and type of whip, limited the application of the punishment. Often the judges, in frustration, forgo implementing the punishment. While this approach does not eradicate the problem of patriarchal interpretations of Muslim law which results in unequal treatment of men and women, the lawyers have begun redefining legal approaches which can be used to protect human rights by working within the Muslim context.

- **Any strategy that relies on litigation must also incorporate appropriate supportive strategies including NGO networks, media campaigns, international pressure, popular support, legislative reform and education.**

Obtaining a judgment does not always guarantee compliance with it. In the most practical terms, the ultimate value of good quality legal advice and representation is severely reduced if an individual with a hard-fought legal judgment lacks sufficient means to guarantee the enforcement of that judgment. In developing systems, one of the weakest links of the justice system is the enforcement of judicial decisions, sometimes due to inadequate resources or vague regulations. In Bosnia, participants at the forum emphasized that the rate of compliance with civil judgments, without resorting to some level of judicial intervention, was very low. In Romania, another problem with enforcement was the numerous special regulations that created confusion among judgment creditors and slowed down the enforcement process.

When judicial compliance is extremely low, lawyers have a responsibility to monitor enforcement and when possible include court enforcement procedures in their litigation strategy. One such strategy relies on civil or criminal penalties for failure to comply. These penalties can be useful when they are of sufficient weight.

However, when the fines are so low as to be preferable to compliance, often the case in Bosnia, they become a useless tool.

Litigation to ensure enforcement of a judicial decision is a quandary. Relying on the courts to obtain enforcement of a previous judgment may only highlight the courts' weakness and encourage future noncompliance. Therefore, any strategy that relies on litigation must also incorporate appropriate supportive strategies including NGO networks, media campaigns, international pressure, popular support, legislative reform and education.

- **Some legal systems allow for private prosecution when the state fails to take action. Litigating in the traditional role of the prosecutor can be an effective way to challenge problems the state chooses not to address, but efforts to encourage state prosecution may be more effective in the long term.**

In many French-based civil law systems, certain classes of victims may have standing to bring criminal charges against their abusers. Other systems allow private criminal actions by individuals when the case is in the public interest.³⁰ When the system allows for private criminal prosecution, lawyers should consider whether proceeding would be beneficial to the client or a broader cause. A further consideration is whether the prosecution could potentially set important precedent, such as a criminal conviction for serious assault or even attempted murder in a domestic violence case. Additionally, some victims may be entitled to civil damages. Since most justice systems require criminal conviction for civil damages to be sought, pursuit of criminal cases when the state fails to prosecute may be necessary. The lawyer should also consider whether it is possible to attach civil damages to the criminal trial, thereby lessening the trauma to the victim and conserving resources.

³⁰ In specific instances where NGOs can demonstrate a direct interest in the case, they may be allowed to bring an action. See, Human Rights Watch, *The Pinochet Case- A Wake-up Call to Tyrants and Victims Alike* (New York: Human Rights Watch, 2000).

Also at: <http://www.hrw.org/hrw/campaigns/chile98/precedent.htm>

Efforts to pursue private criminal prosecutions should recognize the reason the government failed to prosecute such as corruption, intimidation or failure to view the act as a crime. Understanding the reason for the government's failure will help assess the safety risks and target future advocacy work.

- **Litigation strategies may be particularly important to the protection of economic, social and cultural rights in the developmental context.**

In the haste to encourage economic development, the rights of the people often are compromised. In Indonesia, where business interests have maintained a growing prominence during the past several decades, various human rights lawyering organizations have developed programs to meet the special needs of the communities those interests have affected. By providing lawyers to fight property claims and to protect worker's rights, the communities have developed a stronger cooperative relationship with the business interests. Often, the possibility of litigation is enough to encourage the companies to respect human rights and to allow local communities the space to develop economically. Some of these groups, in an effort to ward off abusive practices and limit the need for litigation, have established a team of roving community educators. The educators provide information, including blank contracts establishing workers rights, to communities that may be approached by business interests.

A question that arose at several of the regional fora is the ability and role of human rights lawyering to measurably remedy poverty rates.³¹ Without a proper justice system that is accessible to the people and based on principles of fairness, there can be no equitable development. Human rights and equitable development are inextricably linked. It is critical that access to justice be seen as a key component to sustainable development. While more research is required, there is enough evidence to suggest that human rights lawyering should be included in the analysis when foreign investors explore the role of the justice system in poverty alleviation. Besides providing a direct link between the poor and justice, human rights lawyering plays an important role in

³¹ For a more in-depth review of this issue, see, Manning.

promoting a legal framework upon which economic prosperity is based and may be essential to equitable development.

- **Litigation may also be an effective tool to educate the community about rights, to empower the disenfranchised, to expose unjust law and discriminatory practices, and to challenge structures that generate injustice.**

When considering litigation as a strategy, the goal can be much broader than the resolution of an individual case or series of cases and can include the role and the effects of litigation outside of the courtroom. HAKAM, a legal NGO serving the aboriginal populations of Malaysia, cited a particularly successful case as a means to expose the aboriginal community to the potential for the justice system to promote and protect their communities. Additionally, groups such as the Surabaya Legal Aid Institute of Indonesia use litigation to educate the general population about rights, to demonstrate how rights should be applied and to help raise community expectations. By exploring the effect of litigation on the broader community, lawyers can reap the full benefit of their courtroom efforts.

- **Preparing for litigation can help avoid it.**

While this strategy is quite common in the developed world, it is less common in countries where the threat of litigation carries little negative consequence or negative consequences for the less powerful litigant only, often the client of the human rights lawyer. When drawbacks to litigation are few, this strategy is often reserved for promoting negotiation on issues that potentially will stir public debate or media attention about the litigation. In such cases, the potential for capitalizing on the auxiliary benefits of litigation must be weighed into any decision to settle before going to court.

B. NON-LITIGATION STRATEGIES

Effective human rights lawyers recognize the many avenues by which justice can be pursued and address the particular forum that is most relevant and likely to create change. The most effective

human rights lawyering organizations have developed a diversified set of legal methods including litigation but not limited to litigation. In particular, law is often interrelated or influenced by religion, and moral or social norms, and effective lawyers understand the interconnection of law, behavior, and community attitudes. One of the key roles of human rights lawyers is to explore the ways societal attitudes, which effect justice, can be influenced through legal and non-legal strategies.

Additionally, law does not exist in a vacuum but is created and determined by government powers and individuals that can be influenced and informed. Human rights lawyers can research legal issues, publish legal materials, dialogue with authorities and advocate for law reform in ways not available to other groups with more limited mandates. These activities have often been seen as the comparative advantage of human rights lawyering organizations- their ability to combine practical knowledge with broader legal work. Educating and informing the public about the law and its consequences when targeted can be a highly effective way of influencing change.

- **The most effective strategies for a particular goal often combine focused legal and non-legal strategies.**

Virtually all of the participating lawyers include advocacy in its many forms as well as legal representation in court as part of their methodology. Most organizations have recognized that work for the improvement of human rights must target at least two areas: the institutions of government and the broader civil society and population. Litigation and legislative advocacy can improve the operation of government institutions, but there must be a broader consciousness of human rights norms by the citizenry for long-term change to occur. As people are more aware of their rights, and as they are drawn into participation in the institutions of government, they will experience the empowerment that lies at the core of all human rights.

A Namibian case illustrates the role lawyers can play in using an integrated strategy that combines pressuring government institutions and encouraging community activism. The Namibian government had proposed a multi-million dollar hydropower

scheme that would have detrimentally affected many aspects of a marginalized rural community's way of life. The Legal Resources Foundation of Namibia worked with the community to surmount regulations that limited public meetings, to mobilize publicity about the case at the national and international level, to involve international donors in the dialogue, and to encourage community participation in important decision-making at the government level. The final settlement recognized the community's potential as a tourist site and the negative impact the hydropower development would have had on the community and on the tourist potential. The Legal Resources Foundation allowed community concerns to be recognized by establishing the legal right to air those concerns, connected the community with international actors influential in the decision making process, and negotiating with the government for a compromise solution. With the Legal Resources Foundation's help, the settlement became a court order. Litigation alone would have not achieved the desired goal and would have failed to engage and empower the community.

Equally important is the ability of legal NGOs to work together with other civil society actors in alliance for change. By sharing information gathered from their work, lawyers can help positively influence policy decisions, procedural mechanisms, and legislation. Many NGOs and lawyers voiced the need for modern lawyers to possess non-legal skills to meet the requirements of a more holistic advocacy strategy including negotiation skills, communication skills, and education methodology and advocacy skills. NGOs can be an important buttress to the work of the human rights lawyer and should be included in any overall strategy.

- **Coordinating efforts with NGOs can help human rights lawyers more effectively address the needs of the community.**

Vital to a campaign's efficiency is the ability of human rights lawyering organizations to work with other NGOs, legal and non-legal. NGO networking can be an essential strategic element that allows an NGO to capitalize on limited resources. Non-legal NGOs often possess advocacy skills and contacts that can enhance a human rights lawyering NGO's objectives. Additionally, an

individual client may benefit from a lawyer's NGO contacts, especially in traumatic cases such as trafficking or rape where social and/or psychological services may be required. By combining strengths, NGOs and lawyers can better meet the broad needs of their constituency.

Equally important is the NGO community's ability to help create public pressure for reform. Often in addition to litigation, strategies involve or should involve a more grassroots-oriented call for change. Most lawyers, including human rights lawyers unless creative in their efforts, have a limited clientele consisting of people educated enough to show an interest in pursuing justice through the formal system or those involuntarily engaged in the system. By definition, the constituencies of most human rights lawyers are those least able or likely to access the justice system, therefore human rights lawyering organizations' connections with NGOs helps to access the broader constituency.

There are several examples of how NGOs and human rights lawyers can work together to create change and better address the needs of the community. "In Bosnia, the Center of Legal Assistance for Women in Zenica [...] takes a practical, multi-disciplinary approach to helping clients solve their problems. When legal counseling is sufficient, such assistance is provided. More often the cases require a much more intensive intervention. As the Center's lawyers are going to court for a client they might also be assisting her in obtaining identity documents, filing a pension claim or working with other organizations to provide her with psychosocial assistance. [...] The goals of the project are to create a proper legal framework for dealing with violence against women, to establish a protocol for government institutions to implement the law and to foster cooperation among institutions to ensure protection and services to victim witnesses. In particular, the project seeks to support the NGO community to actually provide protection and services, to put pressure on political and governmental bodies to work against violence and to educate the community."³²

³² Dan Manning and Zelah Senior, *Provision of Civil Legal Services in Bosnia and Herzegovina* (Washington, D.C.: International Human Rights Law Group, 2000). Available upon request.

Five NGOs in Ecuador provide examples of a successful holistic approach. In 1996, the World Bank first incorporated human rights lawyering into its justice reform efforts by supporting a five-year project that provided funding for five legal service centers for poor women.³³ The NGOs did not limit their work to legal representation, but also assisted in addressing the social, psychological and emotional needs of their clients. Included in the terms of agreement between the World Bank and one of the NGOs was the objective to “[s]trengthen a legal aid network for women. A network was established with different services, organizations and professionals working on the issue to be able to provide integral services to women.”³⁴ By coordinating their work with other NGOs, the legal service providers were better able to effect the overall status of women in Ecuador in relation to the justice system.³⁵

Additionally, NGOs possess unique resources that have been honed and adapted to meet the needs of their constituencies at the grassroots level. Lawyers working in conjunction with NGOs are able to share resources, tap into the developed expertise NGOs possess, and help NGOs access government institutions.

- **Through their litigation work, lawyers have specialized knowledge about what type of legal reform is necessary to meet the needs of marginalized populations.**

Another important role of lawyers is identifying problems within the system that need to be addressed through legislative change. By examining the needs of their clients and the way the courts function, lawyers are in a unique position to comment on and recommend changes to existing laws. In addition to anecdotal evidence, data on casework can be instrumental to advocating for change. Human rights lawyers should be familiar with quality data collection systems and their interpretive tools.

³³ Rodriguez, 4.

³⁴ Ibid., 39.

³⁵ It is important to note that despite the challenges that the NGOs in Ecuador face including a justice system in transformation and “still sorely in need of other kinds of reform,” the World Bank evaluation determined that the projects had positive and concrete impacts on the communities which they served.

For example, corruption within the court system may be difficult to ascertain without first hand experience in the system. Working on a daily basis within the system allows lawyers to appreciate the necessary changes for the system to benefit the community equally. Lawyers can be instrumental in locating structural weaknesses in the justice system and then advocating for change.

C. RAISING PUBLIC CONSCIOUSNESS: COMMUNITY LEGAL EDUCATION, DOCUMENTATION PROJECTS, AND THE ROLE OF THE MEDIA

Raising public consciousness is often a central element of a human rights lawyering organization. Understanding how a community views its rights, the role of law and the work of lawyers are critical to identifying and developing a successful approach.

- **Non-litigation strategies such as community legal advice and education programs, legislative and policy advocacy, human rights reporting and media campaigns are often as effective as litigation in achieving deep and lasting social change through legal means.**

The non-litigation strategies of the majority of the organizations represented at the regional fora included some version of the these programmatic components:

Major Non-Litigation Components

- Community-based human rights and legal education
- Community-based advice and counseling centers including paralegals
- Alternative dispute resolution mechanisms (state and non-state sanctioned)
- Legislative advocacy or other non-litigation-based law reform
- Human rights documentation or reporting capacity
- Resource centers or legal libraries
- Research or data compilation on the law
- Media cultivation and public awareness campaigns

The most common non-litigation strategy is extensive popular education on human rights and legal rights. Many organizations have adopted some form of community-based education as a core part of their mission. Some have adopted the inclusion of education in human rights norms as part of school curricula, while others have developed their own versions of such training, which often involve the training of trainers or paralegals within communities to extend the reach of such programs. Moreover, a program in human rights education is sometimes combined with programs for documentation and reporting of human rights abuses, because the same activists who teach or learn about human rights in their communities are the best conduits for grassroots information to a central location.

Some human rights lawyers do not litigate at all but use other forms of advocacy. One such organization is Job 22, based in Sarajevo. Established during the war in Yugoslavia to assist refugees, Job 22 took its name from the Biblical book of Job. The organization offers free legal advice regardless of ethnicity or place of residence. When an inquiry comes to its offices, the question is answered by one of five Sarajevo High Court judges. The organization answered more than 12,000 inquiries since its inception to 1999, and the average response time was seven to 10 days. Job 22's goal is not to provide direct legal representation but to enable its clients to realize property and personal rights on their own by providing the necessary information. The organization maintains a web site (www.job22.org) which includes answers to some of the most frequently asked questions, and clients can use e-mail to submit questions directly through the site. Finally, Job 22 publishes a series of brochures on rights, and coordinates and edits a magazine that supports the work of other advocacy organizations, Law Magazine, published through the UN High Commissioner for Refugees office. This innovative collaboration of judges and activists, combined with effective use of new technologies, has made Job 22 one of the most creative organizations.

- **Media can be instrumental to disseminating legal information and developing community awareness.**

Outreach campaigns often use many avenues to reach the general population, the most successful in reaching large portions of the

population use the media. Media, by definition, specialize in disseminating information. There are two primary methods of utilizing the media: through cooperative association/direct access, and by becoming information providers. Although the more traditional role of information providers can be crucial to an overall campaign, because influencing the media has been outlined in more specialized resources, it will not be addressed here.³⁶

The usefulness of cooperative association with the media, however, should be emphasized. Many participants through their organization, or in cooperation with another NGO, provided legal information directly through media. One of the most common methods is weekly or bi-weekly radio programs. This format is popular for its ability to reach the illiterate, the geographic scope of coverage, and cost efficiency for the listener and the organization. Typically, shows will focus on one topic, identifying the relevant law, outlining the steps to enforce the law, and providing the contact information for those who are interested in getting individual advice. Radio shows enjoy the added possibility of being interactive. Television programs have been used by some NGOs, but tend to be costly, requiring significantly more resources to develop and produce. In countries where literacy is high, newspapers have been courted to provide space for legal rights information.

Aside from the obvious influence such mediums can have on the public's perception of human rights lawyering, by topical selection of issues lawyers can use the time to increase public pressure on key issues or to push for legislative reform. Because such mediums are typically available as an educational tool and thus considered neutral, care should be taken when developing and presenting a volatile issue.

³⁶ See Center for Community Change, *How to Tell and Sell Your Story: A Guide to Media for Community Groups and Other Nonprofits* (Washington D.C.: Center for Community Change, 1997) and Center for Community Change, *How to Tell and Sell Your Story: Part 2, A Guide to Developing Effective Messages and Good Stories about Your Work* (Washington D.C.: Center for Community Change, 1998).

- **Imparting negotiation skills, in conjunction with legal information, can help empower citizens to meet their own legal needs.**

When lawyers work with clients, it is important to recognize what is preventing the client from resolving the situation alone. Certain skills are often necessary to enforce one's legal rights, one example being the ability to negotiate. Teaching negotiation skills promotes public knowledge about how legal principles and rights are applied in practice. Theoretical knowledge about rights is not constructive without the tools to make those rights a reality. While litigation is one way to enforce and promote rights, more pertinent to the daily lives of most people are the skills needed to apply those rights at the local level. Negotiation skills are especially important in communities where harmony and social balance are valued and the adversarial approach is ineffective or undesirable.

- **Human rights lawyers often open or defend legal space.**

Lawyers can push to create space to operate for change within almost any legal system. An important demonstration of the use of legal space is the current movement in China. In the early 1990s, China began re-characterizing legal culture and encouraging a more formal system of legal service to begin developing. Creative lawyers have used this opportunity to begin pushing for broader protection of rights, especially of women and disadvantaged populations. In part, these lawyers have been successful because the central government supports the push for legal change. However, it is the local lawyers who have adapted and expanded that space to provide concrete benefits to the disadvantaged.

Nigerian Olisa Agbakoba noted that lawyers have a challenge, indeed a duty, to protect and defend the space in which law operates. This role is, perhaps, their most important strategic challenge. The role of law and the justice system in promoting and protecting human rights is dependent on the ability of lawyers to legally challenge inappropriate state action. Additionally, the law is often one of the key means for states to infringe on rights or curtail civil society's actions. Lawyers can be key to ensuring that regulations, case precedent, and other legal means do not close the

space available. Protection of the space is often not just a function of lawyers filing lawsuits, but of multiple strategies on multiple fronts.

D. NATIONAL AND INTERNATIONAL REMEDIES FOR HUMAN RIGHTS VIOLATIONS

Instruction about the use of international human rights law was a component of all of the regional meetings. For some organizations, the information was new. For others, it was already part of their overall litigation strategy. At the Central America and Mexico forum, most organizations were aware of the work of the Inter-American Commission on Human Rights and Inter-American Court of Human Rights, and several lawyers had incorporated these mechanisms into their strategies. African lawyers championed the continuing push to create a court for the Organization for African Unity. At the Eastern European forum, participants noted that the peace agreement incorporated the European Convention on Human Rights. Additionally, lawyers working in Eastern Europe are able to use the leverage of potential or fledgling membership in the European Community to encourage state compliance with European or regional norms. At the Southeast Asia and China forum, knowledge of the various regional mechanisms was at its lowest. Because Asia does not currently have any regional mechanism for the enforcement of human rights law, it is understandable that the lawyers found less utility in familiarizing themselves with other regional bodies. However, Asian NGOs are exploring the use of other sub-regional bodies to promote compliance with international norms such as Association for South East Asian Nations (ASEAN) and Asia-Pacific Economic Cooperation (APEC).

- **Regional bodies should be understood and utilized by human rights lawyers and incorporated into local strategies.**

While not all human rights lawyers have the ability to access regional bodies, all lawyers should be aware of these bodies' decisions, how such access could be achieved, and how to use the decisions of the regional bodies in local casework. At the Latin American forum, Pablo Saavedra discussed the important role of

the Inter-American Commission on Human Rights as a complimentary tool for the work of human rights lawyers at the national level. According to the Commission's 1999 report, Argentina, Peru and the United States were the three countries that had presented the greatest number of cases before the Commission. Meanwhile, countries with records of serious human rights abuses had presented a significantly lower number of cases. While generally it is assumed that the low number of cases reflects the difficulty in accessing these institutions. It may also mean that human rights lawyers are using these mechanisms as a new form of impact litigation, strategically selecting only very specific cases. In order for groups to achieve a greater impact both nationally and internationally, the report revealed the need to encourage civil society to use the Commission as a valid and efficient instrument for promoting human rights, nationally and regionally.

- **Human rights lawyers should be familiar with the function and use of national institutions such as ombudspersons, human rights commissions, truth commissions and judicial regulatory bodies whose functions can contribute to the domestic enforcement of human rights.**

Most of the countries represented at the regional meetings have some governmental entity whose responsibility it is at least to monitor, if not to enforce, human rights law. These entities include ombudspersons, human rights commissions, truth commissions and judicial regulatory bodies. The range of powers and authority for these various bodies is enormous, and human rights lawyering organizations should take full advantage of such entities to advance their own objectives for change.

The work of the South African Truth and Reconciliation Commission was recently completed. The Commission was widely acknowledged to have made a valuable contribution to South Africa's transition, despite concerns over the court's power to grant amnesty. As discussed further on in greater detail, Sierra Leone is establishing such a commission, while roughly 20 other countries have relied on some form of this process.

Jody Kollapen, of the South African Human Rights Commission, noted the extensive powers of the Commission, including the power to subpoena and the authority to litigate to enforce civil and human rights. The Commission has also used such devices as the public hearing and direct pressure on government ministries to accomplish its goals. It represents a good example of innovative use of human rights monitoring and enforcement powers by governments.

Finally, it should be noted that newer “hybrid” courts combining local and international criminal law are under consideration in Sierra Leone, East Timor and Cambodia. There, in an effort to create individual accountability for international crimes and crimes committed during internal armed conflict, these countries have committed, in principle, to the creation of criminal tribunals that would judge and convict perpetrators of such crimes. These countries have suffered major conflicts, but they do not fall within the jurisdiction of the ad hoc international tribunals judging international crimes in Rwanda and the former Yugoslavia, or the International Criminal Court, whose jurisdiction will not be retroactive. Changing times call for new mechanisms, and it is virtually certain that these new mechanisms are not the last innovations in international accountability. It is important that human rights lawyers ensure that the mechanisms establishing these courts and the courts’ functioning comply with international human rights standards.

- **Human rights lawyers working in civil law countries can benefit from test cases taken to regional bodies which require national recognition and conformation to their decisions.**

Despite the fact that civil law systems are not premised on the concept of precedent, creating precedent or standards at the regional level can be invaluable. The Helsinki Foundation in Bulgaria has been successful in bringing test cases forward to the European Court on Human Rights when faced with daunting human rights problems. Decisions by these courts, which are final and binding, do force state authorities to take direct action to change laws and policies that are found to breach human rights standards.

An example of how this works can be found in Bosnia and Herzegovina in the Yugoslav National Army (JNA) apartment cases. In 1992 the JNA sold off its apartments. After entry into force of the Dayton Peace Agreement in 1995, the Presidency of Bosnia and Herzegovina issued a decree that rendered all previously formed contracts for the purchase of JNA apartments void. A flood of applications relating to JNA purchase contracts soon reached the Human Rights Chamber, which, in its first decision (and in all decisions regarding such contracts) found violations of Article 1, Protocol 1 ECHR (protection of property) and Article 6 ECHR (right to a fair trial) and ordered the respondents (usually BiH and the Federation) to take action to render the 1995 decree ineffective. Legislative changes complying with this decision have now been made.

- **Human rights lawyers should know how to apply international human rights norms in domestic courts and how to pursue human rights violations by state and individual actors before international mechanisms and tribunals for the enforcement of human rights.**

Many of the countries involved in the regional meetings have ratified the leading human rights treaties of the world. Most of these treaties have an enforcement body, usually a committee of experts, to monitor compliance by States Parties with the terms of the treaty. Three of the treaty bodies — the Covenant on Civil and Political Rights, the Convention Against Torture and the Convention on Race Discrimination — have jurisdiction to hear individual complaints when the State Party agrees to that kind of review. In particular, the Human Rights Committee and the Committee Against Torture have established a credible body of interpretations regarding the obligations of states to individuals under those treaties.

In addition, there are the regional treaty bodies discussed in the introduction to this section, and non-treaty bodies – working groups, thematic procedures and special rapporteurs – operating within the UN's human rights enforcement powers. All of these bodies deal with the violations of human rights by states. There

are also new international criminal tribunals that can try and punish individuals for complicity in war crimes and other violations of international criminal law.

Participating NGOs have begun to learn the strengths and weaknesses of these international mechanisms. Several of the African women's organizations complained, for example, that their countries had adopted crippling reservations to the Convention on Elimination of Discrimination Against Women (CEDAW). Others noted that the CEDAW and the Economic, Social and Cultural Rights Committees have only recently been empowered to hear individual complaints under those treaties, and that such powers were too long in coming. On the other hand, organizations such as Casa Alianza, based in Guatemala, have filed several complaints in the Inter-American system for protection of human rights, and gained an important victory in the Inter-American Court of Human Rights last year in a case on street children in Guatemala. IDHUCA, the Human Rights Institute of the Central American University in San Salvador, El Salvador, has presented two cases to the Inter-American human rights system and expects responses soon.

In total, organizations are gradually learning about the most effective way to apply international human rights norms, both internationally and domestically. NGOs are in a process "constructing the standards" at the national level. In Ghana, FIDA found that the local population was more willing to accept international norms, such as these outlined in CEDAW, when they understood the process of state accession and how the norms fit in with the constitution, a national document. Building on this understanding, FIDA was then able to continue targeting certain practices that are abusive to women.

When economic, social and cultural rights are at stake, the interpretation and application of standards is even more challenging. Because international instruments, and often, national implementing legislation, provide for the progressive realization of these rights, lawyers must be cautious when trying to establish standards for these rights. South Africa's Legal Resources Centre (LRC) has been at the forefront of pushing to define the minimum content and threshold of these rights under international law and

the South African constitution. NGOs, such as the LRC, have been able to use the international standards set out in Maastricht Treaty and Limburg Principles to develop what the core content of a right is. To challenge a municipality's decision to cut the water supply to a poor community, LRC argued that the right to water is a basic and essential right. The minimum content of that right requires that the state take certain measures before infringing on the right. Furthermore, the right to water is so basic that it cannot be terminated entirely.

In Nigeria, the first efforts to import international human rights norms into the domestic courts required advocates to provide a structural framework from which to approach the issues. The first standards lawyers attempted to construct in Nigeria, for example, were those that related to the obligations of trial judges to comport with due process. Judges had restricted judicial review on warrants to exclude examining the merits of the case. This gave the police extensive powers that often violated an individual's human rights. Initially, lawyers established the right of judges to review the conditions of the warrant without regard to the merits. After a number of suspects were released because their warrants had been improperly executed, the courts became empowered to examine other aspects of laws dealing with due process and the laws compliance with international human rights standards. Until the judges appreciated their role and their ability to review the warrants, it was impossible to request that they enforce international principles on those laws effecting due process.

This process will happen in other countries with lawyers advocating the use of international standards on behalf of their clients in the local courts. Because the use of international mechanisms assumes that domestic resolution should be the primary locus for decision-making, human rights lawyers must be able to and willing to push for application of international standards at the domestic level. However, until domestic processes are strengthened, and education of human rights norms is extended, international mechanisms are an indispensable and sometimes unique opportunity for justice.

Another international tool for lawyers, in particular those dealing with widespread, systematic problems, is the United Nations

Special Rapporteurs and Representatives arrangement. Focusing on thematic issues or on specific countries, Special Rapporteurs and Representatives are in a unique position of being able to complete in-depth reviews of country practices. Lawyers can develop strategies to encourage a country to invite a Special Rapporteur to review their situation including providing information directly to the Special Rapporteur. After the visit, organizations can then use the report of the mission in their advocacy efforts. For example, activists in Pakistan concerned with the growing religious violence have begun providing information to the Special Rapporteur on Religious Intolerance in the hopes that a visit will encourage the government to take positive preventative action. In a similar example, the International Human Rights Law Group in coordination with U.S. NGOs, gathered data on the prison conditions for women that encouraged the Special Rapporteur on Violence Against Women to request an invitation from the United States to conduct a mission. Since the Rapporteur's visit, a report has been published and incorporated into a broader campaign for improving the situation of women in prison.

- **Human rights lawyering organizations should not overlook the potential benefits to be gained from the use of other, lesser-known human rights and trade-related human rights bodies.**

There are a few lesser known human rights bodies that lawyering NGOs should know and exploit, particularly because they often relate to the issues of greatest concern to their constituencies: socio-economic rights. These remedies include use of the mechanisms of the International Labor Organization (ILO); related mechanisms under the NAFTA regional trade accords; the World Bank's Inspection Panel; and remedies before the UN Economic, Social and Cultural Organization (UNESCO). Some of these combine issues of human rights with related issues that are seldom explored, such as workers' rights, the environment, trade and finance.

- **Human rights lawyers should consider advocating at global fora such as the United Nations World Conferences.**

On an ad hoc basis, the United Nations Member States will decide to hold a World Conference devoted to a subject of particular importance. These conferences can be critical for highlighting the issue at the international level, influencing government policy, and establishing greater international cooperation and coordination. World Conferences have been held on a variety of topics, including Children, Human Rights, Women, Social Development and the Environment.

For example, the upcoming World Conference Against Racism will focus on developing practical, action-oriented measures and strategies to combat contemporary forms of racism and intolerance. The World Conference Against Racism presents a unique opportunity for lawyers working on discrimination issues to push for change by presenting critical information on racism, advocating for particular government positions to combat discrimination, and establishing coalitions to address the issue after the World Conference concludes. For more information on how to participate in the World Conference, please consult Combating Racism Together: A Guide to Participating in the UN World Conference Against Racism.³⁷

E. NETWORKING NATIONALLY, REGIONALLY OR GLOBALLY

In one sense, the regional meetings themselves constituted a significant step toward regional and international networking. There have been few regional and international meetings of human rights lawyering NGOs. Some of the most exciting meetings of the NGO community, though not explicitly focused on lawyering organizations, have occurred in conjunction with the UN's global events on human rights, including the meetings on environment (Rio De Janeiro, Brazil), human rights (Vienna, Austria), women (Beijing, China), housing (Istanbul, Turkey), population and development (Cairo, Egypt), and social development (Copenhagen, Denmark). Parallel meetings by NGOs became institutions at these meetings. The NGO community has also played a similarly significant role in the drafting of the statute and rules of the International Criminal Court.

³⁷ The Guide is available in English and Spanish at the International Human Rights Law Group's web site: <http://www.hrlawgroup.org>. The Guide is also available by request in English, Spanish, French and Portuguese.

At the national level, many NGO communities have a regular exchange of information and strategies. In some countries, however, the number of NGOs has grown exponentially in recent years, and there have been few attempts to manage this growth to avoid duplication of effort and to ensure coordination of work. Often, because each organization has a distinct mandate or constituency to serve, communication is not natural, and such entities might co-exist in the same city for years without significant communication. As the results of this set of regional meetings demonstrate, the problems across regions are remarkably similar in many respects and the benefits of sharing strategies, information and techniques can help create sustainable change. Organizations should make every effort to learn about other lawyering organizations and nongovernmental organizations, even when the mandates or constituencies are distinct.

F. SPECIAL ISSUES FOR HUMAN RIGHTS LAWYERS IN REPRESSIVE, TRANSITIONAL OR NEWLY DEMOCRATIC REGIMES

Few of the NGO representatives at the regional meetings were from countries that could be described as a stable, developed democracy. Some of the countries represented at the fora, such as Sri Lanka, Sierra Leone and the Democratic Republic of Congo, are in the midst of prolonged wars. Burma, China and Vietnam are under authoritarian rule or severely restricted democracies. Many, such as East Timor, Rwanda, Bosnia and Herzegovina, Croatia, Burundi and Haiti, have only recently emerged from long civil strife, military governments or other forms of repression, and are just beginning the transition to democracy. Others, such as Mexico, Panama, Senegal, South Africa and the Philippines, have experienced relative stability for a period and have passed into second stage of democratic maturity.

Each of these political regimes calls for a different set of priorities by human rights advocates. Each phase in a country's development presents a vastly different array of issues for an effective human rights lawyering agenda. There is a good deal of experience with human rights lawyering in developed countries, but precious little has been documented about the work of such

lawyers in repressive, transitional or newly democratic political regimes.

Human rights lawyering in repressive or transitional regimes calls for an entirely different approach to legal issues and legal process. Often, the courts are so compromised as to be without value as a place to seek vindication of rights. Similarly, political institutions often see human rights lawyers as a voice for opposition, thereby requiring their silencing or outright elimination. Lawyering in such times calls for a particular brand of courage, ingenuity and perseverance on the part of these advocates.

- **When repressive regimes do not permit legal action in the courts, or when courts are corrupt or co-opted, human rights lawyering organizations often seek to make themselves less politically vulnerable by group action, international campaigns or affiliation with institutions perceived as unassailable, such as churches.**

A human rights lawyer often finds it difficult to continue work in a repressive regime without incurring risks to self or to the organization with which he or she is affiliated. Lawyers in the regional meetings offered some options. In Cambodia, for example, Sok Sam Oeun, director of the Cambodian Defenders Project, offered an effective strategy to deal with sensitive cases: the many legal aid and human rights organizations in the country created a “joint task force” to provide representation through a united organizational front. The task force enlisted international and media support and strove to keep the cases out of the political arena. In Chile, during the Pinochet dictatorship, an organization called the Vicariate of Solidarity provided legal defense and documentation services during the late 1970s, using the Catholic Church as a base of operations. By using the church as a form of protection, the Vicariate lawyers were able to continue their work while being protected from the worst abuses of the regime.³⁸

Human rights lawyers working against repressive or authoritarian regimes often find themselves caught on the horns of a dilemma.

³⁸ See, Hugo Fruhling, *Stages of Repression and Legal Strategy for the Defense of Human Rights in Chile: 1973-1980*, 5 Hum Rts. Q. 510 (1983).

On one hand, they can work within the legal system to accomplish goals for their clients through law. On the other, by doing so they may contribute to the legitimization of the regime itself by accepting the regime's own version of the rules. This struggle against legitimization troubles lawyers of conscience. Speaking before the 1999 referendum on autonomy, Aniceto Guterres Lopes, director of Yayasan HAK in East Timor, identified the risk that the Indonesian government would use political trials as "tools to legitimize state policy rather than in order to decide a case based on law."³⁹ This misuse of the law made work by lawyers at Yayasan HAK all the more difficult in a court system known for lack of transparency and independence.

- **Human rights lawyers working against repressive or authoritarian regimes can sometimes be forced to work outside of their home countries.**

During the struggle against apartheid, while most lawyers stayed in South Africa, some chose to organize and operate from exile rather than remain and risk almost certain detention, severe torture and death. One of the best present day examples of an organization operating in exile is the Burma Lawyers' Council (BLC). BLC has its main office in Bangkok with other offices in India and Australia. Some 25 lawyers are members of the BLC, with five full-time lawyers running the various offices. The lawyers, all exiles, work to educate the rest of the world about the legal situation in Burma. As U Aung Htoo, BLC's representative at the Southeast Asia and China forum, explained, there are no rules of law that will guarantee justice while this military junta is in power.⁴⁰

- **Human rights lawyering organizations can play an important leading role in the design of effective means, including appropriate legal mechanisms, to overcome impunity and promote accountability under principles of international human rights law for use during transitional regimes.**

³⁹ Guterres Lopes at 92.

⁴⁰ See, U Aung Htoo, "Lawyering in an Unjust System" *Rule of Law, Human Rights and Legal Aid in Southeast Asia and China* (Washington, D.C.: International Human Rights Law Group, 2000), 99-103.

Truth commissions, alone or combined with trials, have become a means to foster both truth and accountability and some measure of forgiveness.⁴¹ Such commissions have become increasingly complex as they have evolved in use, and human rights lawyers can play an important role in defining their role and powers. In Sierra Leone, for example, the Bar Association first formally opposed a blanket amnesty for abuses committed by Foday Sankoh and his soldiers of the Revolutionary United Front (RUF). When the government adopted a blanket amnesty in the Peace Agreement, the Bar Association worked to ensure that justice issues were addressed in the Truth and Reconciliation Commission. Abdul Tejan-Cole wrote a paper for distribution at the Africa conference on legal issues arising under the Lome Peace Agreement in his home country of Sierra Leone. The paper highlighted the important role lawyers play in ensuring that human rights principles are safeguarded during the transitional negotiations.

There are other legal strategies available during transitions as well. At the Eastern European forum, most of the agenda was devoted to issues of transition, particularly in the post-conflict countries of the former Yugoslavia. There, lawyers were involved in an array of legal issues, the most pressing of which was enforcing the right of internally displaced persons and refugees to return to their pre-war homes, a step that was essential to restoring the multi-ethnic character of Bosnia and Herzegovina and reversing the effects of ethnic cleansing. In addition to struggling with a host of legal problems resulting from the conflict, Bosnia and Herzegovina was also gripped by the challenge of its transition from the socialist Yugoslav legal system. Other problems in the post-war period were particularly severe for women, such as economic dependency on men coupled with high incidence of domestic violence. The UN High Commissioner for Refugees (UNHCR) has set up a network of more than 60 legal aid centers throughout Bosnia to deal with these and other issues occasioned by transition.

- **The most successful human rights lawyering groups redefine their mission, mandate and financing when**

⁴¹ See, Priscilla B. Hayner, *Unspeakable Truths: Confronting State Terror and Atrocity*, (New York: Routledge, 2000).

their agenda shifts from that of resisting oppressive governments to that of building a new democratic society with protection of a broad array of legal guarantees, support for a just society and the eradication of poverty.

Perhaps the most pressing issue after such transitions to democracy is that of what the next set of legal issues is for the country. Just as revolutionary fighters struggle with how to adjust to the task of governing at the end of a successful revolution, human rights lawyering organizations struggle to redefine their role and mission when they are no longer opposing an old regime, but supporting a new one.

Some organizations can make the changes necessary to fight *for* something after fighting so long against that very thing. Other organizations do not adjust; they simply disappear. One of the best examples of the former is the experience of the Center for Legal and Social Studies (Centro de Estudios Legales y Sociales, or CELS), in Argentina, now directed by Martin Abregu, one of the speakers at the Mexico and Central America forum. CELS was created in 1979 to obtain justice for those who had suffered under the military dictatorship that ruled Argentina from 1976 to 1983. Since that time, the NGO has redefined itself as one of the foremost promoters of economic, social and cultural rights in Argentina. Mr. Abregu summarized his group's effective perspective as one in which they "think politically and act legally."⁴²

A more recent example of the need to develop a shifting agenda, from confrontational to collaborative, is East Timor's Yayasan HAK. Formed and driven by the human rights abuses of the colonial power, Yayasan HAK has had to quickly readjust their role under the nascent government following the referendum on autonomy in August 1999. Since August, Yayasan HAK has taken an active role in the creation of a truth and reconciliation process. This effort is aimed at dealing with the violence following the

⁴² See, Martin Abregu, "Barricades or Obstacles: The Challenges of Access to Justice," a paper presented at the *World Bank Global Conference on Legal and Judicial Reform - Session III: Can Laws and Institutions Give Voice to the Poor?* (Washington, D.C., June 5-7, 2000).

referendum, and possibly other atrocities committed under Indonesian occupation. A further goal specific to Yayasan HAK is to reexamine its own role in the community. As is often the case in transitional countries, those who fought for the change are then drafted into servicing the new government. With time, East Timor may call upon the services of many of Yayasan HAK's staff. It remains to be seen on how the organization will respond to this new challenge.

The issue of how organizations sustain lawyers' involvement in human rights/social justice issues after the transition is crucial to the sustainability of a vibrant human rights legal framework. Most lawyers actively involved in the fight for social change will need to readjust their operating principles after the transition takes place. Many will join the government and begin assisting in the implementation of the changes for which they fought. However, there is still an important traditional role for human rights lawyers after a transition away from a repressive regime.

Groups such as Free Legal Assistance Group (FLAG) of the Philippines and the Helsinki Foundation in Eastern Europe have been successful in adapting their operations to fit the political reality following a transition. In the Philippines, despite a decrease in international concern following the transition, FLAG has been able to maintain its central importance to promoting justice by identifying weaknesses in the new government's approach to human rights and targeting those issues such as the death penalty. Helsinki Foundation has quickly grasped the critical ammunition available to human rights groups through the European system. By exploiting Bulgaria's desire to be included in Europe's regional system, lawyers have pushed forward critical human rights issues.

G. EXTERNAL FACTORS THAT DEFINE OR LIMIT THE WORK OF HUMAN RIGHTS LAWYERING ORGANIZATIONS

Each country has a unique history and structure that makes it more or less susceptible to the structures and strategies articulated here. The full range of legal and political strategies used to successfully attack apartheid in South Africa, for example, may not be replicable or appropriate to attack ethnic violence in Bosnia or religious suppression in China. The material in this guide can

provide a blueprint, but only local communities, aided by the work of human rights lawyers, can build the edifice of justice.

One of the goals of the fora was to allow lawyers the opportunity to explore the benefits or limitations of their methodology in relation to those used in neighboring states. By identifying the key elements of a strategy which make it successful, lawyers are better able to design and implement new strategies when similar elements are encountered. Despite the vast range of political and cultural contexts, many common themes emerged.

While there are many external factors that influence the work of human rights lawyering organizations, across the regions particular challenges were highlighted consistently. Among the external factors that affected the capacity of organizations to meet their goals were:

- Failure by the state to implement or enforce existing laws;
- Political, cultural, economical and other contextual considerations, especially corruption;
- Weaknesses or faults in the justice system, including judicial corruption;
- Lack of legally trained professionals;
- Barriers to accessing the courts; and
- Professional ethics.

- **Law on the books is not the same as law in action; neither the ratification of human rights treaties nor extensively codified domestic law is proof of compliance by a particular country with basic human rights principles.**

Government's often refer to a broad range of ratified human rights treaties, or of the adoption of legislation designed to protect human rights as evidence of their strong commitment to protection of human rights. These new protections are, however, only as good as the will of the government to respect, defend, promote, enforce, and protect them. Human rights lawyers must take their own legal

systems as they find them and this will often mean that their work includes making codified norms more relevant as living law.

When a government fails to implement or enforce existing law, human rights lawyers must identify where the failure occurs before developing their strategy. When “good” law exists, the stage for change moves from the legislature to the courts, the community, law enforcement or the political arena, depending on where the failure occurs. Organizations often found it useful to examine the genesis of a specific, inactive or ineffective law and then appeal to the sector that had worked to establish the law for assistance in getting it recognized and effectively implemented.

- **One of the most important, yet often unnoticed, demographic factors affecting human rights lawyering in any country is the ratio of the total number of interested lawyers to the total number of poor people.**

One factor that was only hinted at in the regional fora was the size of the bar in relationship to the population of a country. In Nigeria, the most populous country in Africa, the lawyer population is about 50,000, by one participant’s estimates. With a total Nigerian population of 123 million, that translates to a ratio of one lawyer for every 2,450 people. In Malawi, a country of more moderate population, there are only 400 lawyers in all, a vestige of colonial suppression of native lawyers. With a population of 11 million in Malawi, there is one lawyer for every 27,000 people.

In part, this wide disparity reflects differing roles for formalized law in people’s daily lives. Formal law may not be the primary or most important vehicle for resolving disputes in many countries. Many communities have traditional methods of solving disputes that rely heavily on mediation, emphasizing the role of religious or community leaders and the harmony of the community over adversarial processes. Several organizations, recognizing the important role these alternative dispute systems play in distributing justice, train lay people to advise or assist in these processes or emphasize education on rights.

A more critical analysis of the situation would determine the ratio of lawyers for the disadvantaged and poor in relation to lawyers available. Generally, the number of lawyers interested in providing services to the poor or disadvantaged is a small fraction of the total legal profession in any country. The model used to provide access to justice in any given country thus will be affected dramatically by the raw number of available lawyers per poor person.

- **Additional barriers to accessing justice are limited standing, high costs, and complicated or restrictive regulations.**

Lawyers for the poor are only one element in a range of possibilities for greater access to justice in the legal system. In Nigeria, for example, narrow standing rules prevented access to the court for an injured party even when counsel represented him. The trial judge rejected arguments that new international standards confer standing to sue on anyone concerned with good government and accountability.

Other common obstacles are court fees, such as a moderate cost for filing or service on an opponent, which can easily be more than a poor person can afford. As participants at the Central American and Mexico forum noted, "The majority of the indigent population lack the means to cover the costs of lengthy legal process." In many cases there are no fee waiver provisions and the human rights lawyering organization must include the costs of court fees as part of its already thin operating budget.

Another barrier to the availability of human rights lawyers is government regulations that discourage lawyers from providing service without payment. In Bosnia, outdated laws make all legal work, regardless of whether fees were charged, taxable. The law was initially enacted under the Communist regime to deter tax evasion through bartering for legal advice or representation. Because the law remains on the books, lawyers in Bosnia must pay taxes as if they were paid at the standard rate even if they work for free or at a reduced rate, making free provision of legal advice costly to those willing to provide it.

- **Corruption in the judiciary or government can create enormous problems for the success of human rights lawyering, and few groups are targeting corruption.**

The general public distrust in the judicial system, due to the prevalence of corruption in the system, created problems for a majority of the human rights lawyers attending the fora. In many countries within Asia, Latin America and Africa the population believes that many judicial decisions are affected by bribes that influence the outcome of cases. It is important that human rights lawyers provide input into judicial reforms so that issues such as corruption are adequately addressed. Lawyers can also encourage international financial institutions supporting judicial reform to consider the issue of corruption.

For human rights lawyers, corruption constitutes an obstacle to working effectively. Corruption is a significant factor when lawyers face cases involving powerful opponents, whether they be economical, political or military. Despite the critical nature of the problem, few human rights lawyering organizations make corruption a prime target. Because the elimination of corruption is essential to the guarantee of an efficient, transparent, independent and impartial justice system, lawyers should consider incorporating strategies to eliminate the practices supporting corruption.

- **Overlapping commitments to social or political causes and to the protection of individual human rights may sometimes create difficult choices for clients and human rights lawyers.**

Finally, the fact that a human rights lawyering organization has clearly stated objectives and a well-defined strategy does not mean that it will avoid the need to make difficult decisions. Human rights lawyers may face difficult choices in the tension between an individual client and a broader objective. For instance, in a criminal case, where fundamental rights have been infringed, a defendant may be willing to plead guilty in order to prevent the situation from being put into the public arena or causing further disruption in the client's life. The lawyer then is obliged to explain to the client the benefits of pleading guilty on a wrongfully

administered charge, which may be helpful individually but unhelpful or possibly detrimental to the larger goal of protecting the rights of the criminally accused. By continuing with the case, the client risks potential negative consequences associated with challenging the wrongful police action in addition to being found guilty but gains the possibility of drawing attention to the plight of many others in similar situations and potentially changing the system. This is a difficult dilemma and requires extensive consultation with the client to enable her to make an informed choice that meets her needs.

At the Southeast Asia and China forum, Salma Sobhan described the work on behalf of women's rights by her organization, Ain O Salish Kendra, based in Bangladesh. She posited a question that had caused debate among the Bangladeshi human rights community: Should the law be made stricter to protect women who suffer violence, even if fair trial rights, particularly procedural rights for the defendant, are diminished? Several Bangladeshi organizations questioned whether a man charged with rape could be held in jail for 90 days without the option of bond, or whether the burden of proof could be moved to the defendant in a rape trial in order to provide greater judicial protection to women. Does the protection of women from violence justify restrictions on the fair trial rights of men? Are there limits to the lawyer's service for the cause? "No go" areas? Or should the women's advocates use all means, even if they violate other established norms? The consensus of the participating lawyers at the Southeast Asia and China forum was that as a "cause lawyer" the relief that one seeks for a client must be consistent with human rights principles. The relief cannot go beyond the boundaries of human rights standards simply to get a better outcome for an individual client or to protect fragile rights.

H. EVALUATION OF HUMAN RIGHTS LAWYERING ORGANIZATIONS

Once an organization has set its priorities and developed a strategy for reaching its goals, it is critical that it periodically review its work to determine whether those goals are being met. The goals must be achievable, at least progressively, and more discrete or specific goals are generally easier to measure. In order to

determine whether the objectives of an organization are achievable and whether the methods employed are effective, criteria must be identified that can be tracked for indication of change. Some useful criteria are:

- Qualitative data: information gathered from cases, legislative review, public discussion; and
- Quantitative data: statistical or numerical information about the work of the organization or the clientele.

Such evaluative data must be examined to determine whether it is actually linked to achieving the objective.

- **Successful human rights lawyering organizations should engage in periodic review and evaluation.**

The importance of effective evaluation tools is often overshadowed by the difficulty in developing accurate statistical measures and other evaluation tools for judging the successfulness of social change strategies. The resources and skills needed for effective evaluation are often discounted in favor of service provision. Conventional measuring tools are often inappropriate for social change work.⁴³ Even in judging human rights lawyerings in the United States, where the system is more stable and less a factor in the evaluation, evaluating services is extremely difficult.

Often participants cited successes in terms that are difficult to quantify or understand outside of their context. The failure to focus on evaluation techniques may also demonstrate that such evaluation is not an important aspect of the organization's work, or that the donors to such organizations do not require effective evaluation, even where relatively large sums of money are involved. However, despite the lack of sophisticated analysis, all organizations relied on some informal method of interpreting the results of strategies, many on a continual basis, and using that information to inform their new efforts.

⁴³ Human rights organizations often rely on incremental shifts in perceptions or public attitude over a long period of time to create change, or on the use of short-term failures to create future success. Measuring these methodologies presents unique challenges.

- **Public and private international donors should build into their grants to human rights lawyering organizations sufficient resources and time to permit periodic evaluation of organizations.**

In his article on developmental legal services, Han-Jurgen Brandt notes that international foundations finance many human rights lawyering organizations and that such organizations are seldom evaluated as a condition of their funding.⁴⁴ While this has begun to change, one reason for this previous gap in evaluation may be related to the most common pattern of international foundation funding, which provides start-up funds for a limited period, usually a few years, followed by termination of funding. The expectation of the funder is that it will not be involved in long-term programmatic funding and operation, and that innovative and effective lawyering organizations will be able to find their own funding through other sources.

To the extent that international or local donors are involved in longer-term operational funding, as this report suggests is appropriate, their closer attention to program evaluation and adjustment is entirely appropriate and necessary. No matter how busy, every organization needs time for reflection and evaluation of program goals, structures and strategies. To the extent that organizations do not include an evaluation component in their operational structure, such a component is strongly encouraged.

⁴⁴ Han-Jurgen Brandt, "Human Rights, Legal Services and Development: Theory and Practice", *Law, Human Rights and Legal Services: A Neglected Field of Development Cooperation* (Königswinter: Friedrich Naumann Foundation, 1988), 17-44.

PART IV

CONCLUSION: WHAT WE KNOW AND WHAT WE NEED TO FIND OUT

- 1) The most effective way to achieve progress on promoting human rights and create sustainable transformative change combines litigation and advocacy techniques in a holistic manner. This often requires that lawyers acquire skills not typically associated with litigation including education methodology, legislative drafting skills and other advocacy techniques. Human rights lawyers should equip themselves with a wide variety of advocacy skills to enhance their court work. It also may require the incorporation of non-lawyers into the organization.
- 2) Human rights lawyering provides poor people and other disadvantaged groups with essential and necessary legal representation. An equally important role of such organizations is in elevating citizen participation in the development of the country by providing information about the justice system, advising about rights, supporting economic parity and enabling marginalized groups to access the justice system.
- 3) Human rights lawyers are essential to the health and development of any functioning democracy. Until a country develops a strong economic base and is able to guarantee adequate support for such services, the international community should support such organizations both financially and through an advisory role on the development of effective, independent legal service framework.
- 4) Groups that strategically limit their legal work to specific rights or issues are typically more effective at achieving a greater impact on society. Given limited resources, greater value must be placed on the strategic selection of cases that could have a significant impact on society, while considering at the same time the enormous need that exists for basic legal representation for the general public.

Organizations that are able to identify critical cases and expend sufficient resources to pursue them are often more effective than general service organizations that try to meet the needs of all citizens.

Some of the key strategies for addressing these central themes included in this guide are:

- A. With the continuing importance of economic, social and cultural rights, human rights lawyers should begin to examine the use and development of approaches to support these rights.
- B. Supporting common strategies on global or regional problems — particularly on trans-border issues such as trafficking in persons, customary gender-based human rights violations, and minority rights — and inserting international human rights norms that address these global concerns into domestic legal practice, are effective means to advance human rights protections at the local and regional levels.
- C. Group claims or comprehensive standing rights are often instrumental in ensuring equal justice, as they magnify the potential impact of human rights lawyers operating with relatively scarce resources. As many countries' legal systems do not permit such claims, legislative advocacy in support of such mechanisms can be critically important.
- D. As globalization continues to expand and influence domestic legal institutions, local lawyers must have a greater understanding of the principles of justice that are being advanced in the global arena. Organizations would benefit from training on the use of international legal precedent in local courts, including training on unique aspects of litigating international claims.
- E. Networking and information sharing greatly enhance a human rights lawyering organization's ability to combat human rights violations, as it allows groups to compare experiences with human rights advocates in other regions,

thereby building international pressure around common needs. Acquiring and using existing technology could facilitate this level of exchange.

- F. Human rights lawyering organizations have an important role to play in working for legislative or judicial reform. This is due, at least in part, to the tensions created by resource limitations. Broad-based reform, either through administrative fiat or through legislative action, will have a greater impact on society by simply reaching a greater number of people. Lawyers are often in a unique position to identify the weaknesses in existing systems and promote sound legal reforms.
- G. Most countries lack the financial resources to provide sufficient legal aid. Civil society, including individual lawyers and non-legal NGOs, are an important factor in filling the gaps in legal representation and often can play a more effective role in pushing for broader transformative change. Additionally, lowering common barriers to accessing the justice system such as expanding the role of paralegals and simplifying procedures can be important factors in lessening the economic burden.
- H. Law schools also represent critical institutions that play important, if under appreciated, roles in promoting human rights lawyering. Often this is accomplished by introducing or reinforcing human rights values, by encouraging students to assist human rights lawyering organizations and by providing research for critical cases.

APPENDIX

List of Human Rights Lawyering Organizations and Experts Consulted

ALBANIA

Kalo and Associates

ARGENTINA

Centro de Estudios Legales y Sociales

BANGLADESH

Ain O Salish Kendra

Bangladesh Manabadhikar Bastabayan Shangstha (BMBS)

Bangladesh Society for the Enforcement of Human Rights

BENIN

Association des Femmes Juristes du Benin

BOSNIA AND HERZEGOVINA

ABA/Central and East European Law Initiative (ABA/CEELI)

American Refugee Committee and Legal Aid Center

Benefits Commission for Legal Aid in BiH

BiH Council of Ministers

Bosnian Committee for Help (BOSPO)

Buducnost

Cantonal Court Bihac

CARE International, (CARE Welcome Centers in Derventa, Mostar and Stolac)

Center for Affirmation of Human Rights and Liberties (CARL)

Center for Legal Assistance for Women

Constitutional Court of Federation BiH

Democratic Alternative Forum

European Community's Humanitarian Aid Office (ECHO)

European Commission

Federation Ministry of Justice

Federation Government

Helsinki Committee for Human Rights in BiH

Human Rights Chamber for BiH

International Confederation of Free Trade Unions

Job 22

Lara

Law Center, University of Sarajevo, Law Faculty

League of Women Voters

Legal Assistance Coordination Group

Lex International

Office of the United Nations High Commissioner for Human Rights

Office of the High Representative for BiH (OHR)

Ombudsman Institution of the Federation BiH

Organization for Security and Co-operation in Europe (OSCE) Democratization
Department

Organization for Security and Co-operation in Europe (OSCE) Human Rights

Republika Srpska Ministry of Internal Affairs

Stope Nade

Supreme Court of the Federation of Bosnia and Herzegovina

United Nations Mission in Bosnia and Herzegovina (UNMIBH/JSAP)

United Nations High Commissioner of Refugees (UNHCR)

United Women Association

Zena BiH

BULGARIA

Bulgarian Helsinki Committee

BURMA

Burma Lawyers Council

BURUNDI

Avocat au Barreau

Ligue Burundaise des Droits de l'Homme (ITEKA)

CAMBODIA

Bar Association of the Kingdom of Cambodia

Cambodia Office for the High Commissioner for Human Rights (United Nations)

Cambodian Defenders Project (IHRLG/CDP)

Cambodian Human Rights and Development (ADHOC)

Cambodian League for the Protection and Promotion of Human Rights (LICADHO)

Cambodian Women's Crisis Center (CWCC)

Legal Aid of Cambodia (LAC)

CAMEROON

Private Practitioner

CANADA

International Center for Criminal Law Reform and Criminal Justice Policy

CENTRAL AFRICAN REPUBLIC

Central African League on Human Rights

CHILE

Universidad Diego Portales, Facultad de Derecho

CHINA

Center for Woman's Law Studies and Legal Services of Peking University

Huadong Institute of Law and Politics, Fudan University

International Law Department, Central South University of Political Science and Law

Qianxi Women's Federation/ Qianxi County Women's Law Service Center

COSTA RICA

Alianza de Mujeres Costarricenses

Centro Feminista de Información y Acción Apdo (CEFEMINA)

Defensoría Pública

Instituto Interamericana de Derechos Humanos

CROATIA

Croatian Law Center

DEMOCRATIC REPUBLIC OF CONGO⁴⁵

Les Amis de la Prison

Association Africaine de Défense des Droits de l'Homme (ASADHO)

Association Chrésiennes des Veuves du Congo (ACVC)

Association des Femmes Magistrats du Congo (AFEMAC)

Avocats sans Frontières

Bureau International Catholique de l'Enfance (BICE)

Centre d'Assistance Judiciaire et d'Education Juridique (CAJEJ)

Comité des Observateurs des Droits de l'Homme (CODHO)

Comité pour la Democratie et les Droits de l'Homme (CDDH)

Conseil National des Droits de l'Homme en Islam (CONADHI)

Femmes Chrétiennes pour la Democratie et le Développement (FCDD)

Justice Sans Frontières

LIBERTE

Réseau des Droits Humains au Congo (REDHUC)

La Societe Humaine

Toges Noires

La Voix des Sans Voix (VSV)

⁴⁵ For a more in-depth examination of the legal aid scheme in Democratic Republic of Congo, see, Dan Leader, *Access to Justice for the Poor of Kinshasa, Democratic Republic of Congo: The State of Play and Options for the Future* (Kinshasa, D.R.C.: International Human Rights Law Group, 2001).

EAST TIMOR

East Timorese Lawyers Association

Fokupers

Public Defenders Office

United Nations Transitional Administration in East Timor (UNTAET) Judicial Affairs

Yayasan HAK (Baucau)

Yayasan HAK (Dili)

EGYPT

Center for Human Rights Legal Aid (CHRLA)

Hisham Mubarak Law Center

EL SALVADOR

Fundación de Estudios para la Aplicación del Derecho (FESPAD)

Instituto de Derechos Humanos de la UCA (IDHUCA Consultorio Jurídico)

Instituto de Estudios de la Mujer (CEMUJER)

FRANCE

Council of Europe

GHANA

African Society for International and Comparative Law

African Women's Lawyers Association

GUATEMALA

Asociación Guatemalteca de Juristas

Bufete Popular U.R.L.

Bufete Popular U.S.A.C.

Casa Alianza

Central General de Trabajadores de Guatemala

Centro para Acción Legal en Derechos Humanos (CALDH)

Centro de Acción Legal de los Derechos Defensoría Maya

Fundación Myrna Mack

Instituto Comparado de Ciencias Penales de Guatemala

Instituto de la Defensa Pública Penal

Oficina de Derechos Humanos del Arzobispado

Oficina de la Pastoral social de Huehuetenango

Oficina de Paz y Reconciliación Santa Cruz

HAITI

Plataforma de las Organizaciones Haitianas de Derechos Humanos

HONDURAS

Comité para la Defensa de los Derechos Humanos en Honduras (CODEH)

Consultorio Jurídico Popular

Organizacion de Desarrollo Ethico Comunitaro (ODECO)

HONG KONG

Asian Legal Resource Center (ALRC)/ Asian Human Rights Commission (AHRC)

HUNGARY

Hungarian Constitutional Court

INDONESIA

Asia Pacific Forum on Women Law and Development

Indonesian Legal Aid Foundation

Institute for Policy Research and Advocacy (ELSAM)

KONTRAS

Legal Aid of Surabaya

Suara Nurani Foundation

KENYA

Centre for Legal Education and Aid Networks (CLEAN)

Public Law Initiative

MACEDONIA

Law Office & Patent Bureau

MALAWI

University of Malawi Law Department, Chancellor College

MALAYSIA

Bar Council Legal Aid Center

Human Rights Society of Malaysia (HAKAM)

Suara Rakyat Malaysia (SUARAM)

SUMBER DAYA GUAMAN RAKYAT (DAGRA)

MEXICO

Centro de Derechos Humanos Miguel Agustín Pro Juárez

Comisión Mexicana de Defensa y Promoción de los Derechos Humanos

Despacho de Atención Legal a Mujeres

Private Practitioner

MONTENEGRO

Center for Democracy and Human Rights (CEDEM)

NAMIBIA

Legal Assistance Centre

NICARAGUA

Asociación Juristas Democraticos

Bufete Popular de la UCA

Nicaragüense Pro-Derechos Humanos (ANPDH)

Vice Decano BICU

NIGERIA

Human Rights Legal Services (HURLAWS)

International Federation of Women Lawyers (FIDA/ Kaduna Branch)

PANAMA

Centro de Asistencia Legal Popular (CEALP)

Centro de Capacitación Social

PHILIPPINES

Alternative Law Research and Development (ALTERLAW)

Ataneo Human Rights Center

Center for Development Management of the Asian Institute of Management

Free Legal Assistance Group (FLAG)

Office of Legal Aid, University of the Philippines (UP-OLA)

Philippines Alliance of Human Rights Advocates

Philippine Human Rights Information Center (Philrights)

Structural Alternative Legal Assistance for Grassroots (SALAG)

Task Force Detainees of the Philippines (TFDP)

RWANDA
LIPROHDOR

SENEGAL
Recontre African pour la De'fense des Droits de L'Homme (RADDHO)

SIERRA LEONE
Sierra Leone Bar Association

SINGAPORE
Legal Aid Bureau

Singapore Legal Services

SOUTH AFRICA
Black Sash

Centre for Applied Legal Studies

Community Law and Rural Development Centre

Democracy Centre

Human Rights Committee

Human Rights Institute of South Africa

Legal Resources Centre

Public Defenders Office

South Africa Human Rights Commission

University of Natal, Campus Law Clinic

SOUTH KOREA

Korea Legal Aid Center for Family Relations

SRI LANKA

International Centre for Ethnic Studies

Vigil Lanka Movement

SWITZERLAND

International Commission of Jurists

TANZANIA

Legal and Human Rights Centre

THAILAND

The Asia Foundation

Asia Pacific Forum on Women, Law and Development

Education Means Protection of Women Engaged in Recreation

Mekong Regional Law Center

UGANDA

International Federation of Women Lawyers (FIDA/Uganda)

Uganda Law Society

Uganda Legal Resources Center

UNITED KINGDOM

Advice Services Alliance

Department for International Development (DFID)

UNITED STATES

American University, Washington College of Law

Columbia University, School of Law

The Ford Foundation

Greater Boston Legal Services

Harvard University, School of Law

The Spangenberg Group

United States Agency for International Development (USAID)

VIETNAM

Can Tho Legal Aid Center

ZAMBIA

Private Practitioner

ZIMBABWE

Legal Resources Foundation

Zimrights

ABOUT THE REGIONAL FORA

For more information about the four regional fora, the following reports are available upon request:

Central America and Mexico

Ariel Dulitzky and Ismene Zarifis, *Legal Services Practitioners' Forum in Central America and Mexico: Conference Report* (Washington, D.C.: International Human Rights Law Group, 2000).

Eastern Europe

Sevima Sali-Terzic and Zelah Senior, *Enhancing Legal Services and Enforcing Judgments: Practitioners' Forum* (Washington, D.C.: International Human Rights Law Group, 1999).

Southeast Asia and China

International Human Rights Law Group, *Rule of Law, Human Rights and Legal Aid in Southeast Asia and China* (Washington, D.C.: International Human Rights Law Group, 2000).

Sub-Saharan Africa

International Human Rights Law Group, *Strategic Human Rights Lawyering in Africa* (Washington, D.C.: International Human Rights Law Group, 2000).

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International Human Rights Law Group

Working to make human rights real for individuals and communities around the world by building the capacity of local groups and strengthening human rights protections through advocacy, strategic lawyering and training.

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