



THE ROLE OF LEGAL SERVICES ORGANIZATIONS IN ATTACKING POVERTY

September 1999



The Role of Legal Services Organizations in Attacking Poverty

September 1999

Daniel S. Manning, of the *Greater Boston Legal Services* and *Global Citizens Circle*, initially prepared this paper as a contribution to the WB World Development Report for the year 2000/01. The French Version of Manning's Paper has been translated by Ibrahima Yansané and edited by Elizabeth Morris-Hughes, Senior Operations Officer and Francesco Tornieri, Institutional Development Specialist of the World Bank Gender and Law Reform Program of the Africa Region. Both the English and French versions of the papers are available in hard copy and will be available on the World Bank External Website (<http://www.worldbank.org/gender/>) as part of the information service to be provided by the Bank's Gender and Law Thematic Group, and on the section devoted to the background papers to the WDR 2000/01 (<http://www.worldbank.org/poverty/wdrpoverty/background/index.htm>).

The findings, interpretations and conclusions expressed in this information sheet are entirely those of the author and should not be attributed to the World Bank.

INTRODUCTION	5
I. FRAMEWORK	6
A. Law, Development and Poverty	6
B. The Nature and Role of Legal Advocacy Organizations	10
1. Client Loyalty	11
2. Independence	12
3. Skill	13
4. Range of Services	14
II. CURRENT EXPERIENCES OF LEGAL SERVICES ORGANIZATIONS	16
A. South Africa	16
B. Bangladesh	22
C. Cambodia	41
D. Ecuador	47
E. Francophone Sub-Saharan Africa	49
F. China	51
G. Croatia	53
III. LESSONS LEARNED	54
A. The High Demand for Legal Advice and Representation is Strong Evidence of the Value of Legal Advocacy Organizations	55
B. The Supply Side Is Increasingly Recognizing the Value of Legal Services	56
C. The Services Provided by Legal Advocacy NGOs Do In Fact Promote Change	60
IV. THE WAY FORWARD	63
CONCLUSION	67
BIBLIOGRAPHY	68

INTRODUCTION

In February 1998 the World Bank issued a report “reaffirming the central importance of poverty reduction and the urgent need to narrow the wide disparities between rich and poor... Despite huge strides in reducing poverty over the past 40 years, 1.3 billion people live on less than \$1 a day and almost 3 billion live on less than \$2 a day... Bringing these people into the socioeconomic mainstream is the key to achieving sustainable growth in developing countries. ‘This challenge of inclusion – promoting equitable access to economic and social benefits of development regardless of nationality, race or gender – is the key development challenge today,’ says James D. Wolfensohn, President of the World Bank.”¹

In furtherance of this vision the Draft Outline of “Attacking Poverty”, World Development Report 2000/1:

proposes an attack on poverty on three fronts: (i) ensuring empowerment of the poor by increasing their voice and participation in decision making, and managing the growth of inequalities, (ii) providing security against shocks at the individual and national levels, and for those left behind by rapid change, and (iii) creating opportunity for the poor by putting in place the conditions for sustainable economic expansion, to provide the material basis for poverty reduction.²

The primary theme in these statements is that in order for development to be efficient and effective it also must be equitable and participatory. The challenge, to take Mr. Wolfensohn’s proposition one step further, is to create strategies and mechanisms which promote equity and participation. This paper puts forward the argument that law reform and legal advocacy are necessary components of any strategy to bring the poor into the development process as true partners. More specifically it attempts to make the case that independent legal organizations, whose primary mission is to educate, advise and represent the poor, provide the most effective means to use the law as part of a strategy to promote development.

¹ *World Bank Reaffirms Central Goal of Poverty Reduction, Stressing Need to Include Poor in Solutions*, The World Bank Group, News Release No. 98/1621/S, February 2, 1998

² *Attacking Poverty: World Development Report 2000/1, Chapter Level Messages/Propositions/Hypotheses – A Very First Cut*, January 1999.

These legal organizations – legal services organization, legal advocacy NGOs or legal aid organizations – provide basic services to poor people to deal with housing, employment, immigration, family, health, education and welfare issues. They provide services by running legal literacy programs, operating legal advice clinics, representing individuals in court, engaging in legislative lobbying, participating in administrative rule making proceedings, conducting class action and public interest litigation, and representing poor people’s organizations. Because of their institutional commitment to their clients, their independence, and their ability to operate effectively in a wide variety of arenas, these organizations are able help poor people have their voices heard so that development in fact becomes more equitable.

I. FRAMEWORK

A. Law, Development and Poverty

Addressing a conference on judicial reform in Latin America a senior World Bank official commented that, “although the quintessential role of law in development is not new, it has taken the world a long time to recognize it. In fact, it has taken failures of governance in Africa, the collapse of dictatorships in Latin America, and the profound transformation in Central and Eastern Europe to manifest that without an independent and honest judiciary, economic and social development risk collapse.” Another speaker asserted that “respect for and observance of the rule of law is the basic, essential foundation on which a sound economy may be built.”³

Similarly the Asian Development Bank has recognized the importance of “good governance”, which it defines to include: “accountability – making public officials answerable; participation – access to and representation of people, as ‘agents of development’ in institutions that promote and administer development; predictability – the need for laws to regulate society and for the fair and consistent application of such laws; and transparency – the availability of information to the general public.”⁴

³ Rowat, Malik, and Dakolias, *Judicial Reform in Latin America and the Caribbean: Proceedings of a World Bank Conference*, World Bank Technical Paper Number 280, 1995

⁴ *Law and Development at the Asian Development Bank*, http://www.adb.org/Work/Law_Dev/

Law provides the link between development and participation. The United Nations Development Programme has identified several critical attributes of the development process: “Development must be people-centered... Development must be participatory... Development must work to eliminate all forms of discrimination against women and cultural, ethnic or other groups through processes which provide affirmative measures to address the historic effects of such discrimination... Development must respect and protect cultures and cultural diversity... Development must promote democratic systems of governance...[and] Development must promote the rule of law designed to secure the above principle... [by] measures to: empower courts or other tribunals to enforce the appropriate rules... provide effective processes for mediating group grievances and remedying harms or threatened harms to distinct groups [and] provide legal resources, in cases of need, to such groups.”⁵

Judicial reform is a major element of efforts to promote development. The impetus for judicial reform comes from the need for fair and independent enforcement of objective rules through processes that are timely, efficient and affordable. This is especially the case as governments move more toward to the role of market regulators for the private sector. Reforms in the area of public utilities, private property law, financial transactions, corporate law, and bankruptcy all ultimately depend on proper enforcement through the judiciary.⁶

However, the judicial reform movement is not simply about creating a stable business environment. Courts are seen as a public service which must be available to all members of society. Access to justice is “essential for providing basic services to society” and to meeting the goals of “democratization and institutionalization and redefining the relationship between society and the state.”⁷ This “requires functioning legal and judicial institutions to accomplish the interrelated goals of promoting private sector development, encouraging development of all other societal institutions and

⁵ Dias, *Human Rights-Based Approach to Development*, United Nations Development Programme Occasional Paper 21, at 5-6.

⁶ Rowat, *supra*, at 13 – 17.

⁷ Dakolias, *The Judicial Sector in Latin America and the Caribbean: Elements of Reform*, World Bank Technical Paper Number 319, 1996, at 36.

alleviating poverty.”⁸ An ideal judiciary is one which “applies and interprets the laws equitably and efficiently which means that there must be: (a) predictability in the outcome of cases; (b) accessibility to the courts by the population regardless of income level; (c) reasonable times to disposition; and (d) adequate court-provided remedies.”⁹

The relationship between law, development and poverty is especially striking with respect to women’s economic issues. While focusing on Sub-Saharan Africa (SSA), the description by Blackden and Morris-Hughes of legal and customary constraints faced by women applies, with variations, to many parts of the world:

One key instrument of social policy which has received renewed attention in recent years, in part through concern with “governance”, is the legal and regulatory framework and its linkages with development effectiveness. Many African countries have dual (or indeed multiple) legal systems, which reflect colonial policy to develop modern statutory laws and regulations in the public sphere to govern business, economic and commercial relationships, while deliberately avoiding the development of personal law, such as marriage, property and land tenure, succession and inheritance, i.e., those areas in the “private” sphere which are of particular significance for women. This dualism in the legal and regulatory framework corresponds to the “inside/outside” dichotomy highlighted in gender studies, where men have “public sphere” responsibilities outside the home (predominantly governed by statutory law), while women have “private sphere” responsibilities (predominantly governed by customary law or custom). Analysis of legal and customary constraints affecting women in SSA shows that in many societies laws and customs impede women to a greater extent than men in obtaining credit, productive inputs, education, training, information, and medical care.¹⁰

The barriers faced by women are extensive and formidable. In regard to physical resources, the “historical legal constraints women face to access, control and exploitation of property include the following: (a) marriage, inheritance, and property laws, which deny women equal rights with men to own, manage, and utilize property; (b) laws which deny women equal rights with men to defend their rights in property; (c) lack of fundamental legal guarantees of equal treatment; (d) dual legal systems which contain conflicting rights based on gender; (e) lack of integrity in the hierarchy of laws so that

⁸ *Id.* at xi.

⁹ *Id.* at 4.

¹⁰ Blackden and Morris-Hughes, *Paradigm Postponed: Gender and Economic Adjustment in Sub-Saharan Africa*, Gender Team, Human Resources and Poverty Division, Technical Department, Africa Region, The World Bank, August, 1993, Part IV. Para. 2.1. (citation omitted)

discriminatory lower level laws or custom may override higher level laws; and (f) disregard of laws which provide women rights in property.”¹¹

In regard to human resources the constraints include: “(a) lack of an efficient regulatory framework to counter biased customs constraining the right to travel or the right to medical services; (b) lack of legal guarantees against sex discrimination in employment and education; (c) lack of integrity to the rule of law; and (d) lack of affirmative laws to promote equality in fact where a history of discrimination exists in access to employment, education and training opportunities.”¹²

With regard to financial resources they include: “(a) marital conventions which give the husband the right to control his wife’s income; (b) marriage laws which deprive wives of the right to contract in their own names; (c) laws which place a higher tax burden on married women (including widows and women separated from their husbands) than on married men; and (d) inheritance, marriage and property laws which deny women equal rights with men in property.”¹³

All of these constraints are exacerbated by lack of access to dispute resolution mechanisms and lack of representation in political and policy forums. For example, there are “procedural barriers both legal and bureaucratic in nature which effectively deny women in Benin access to law...” due to high levels of illiteracy and lack of legal standing in traditional customary law. These factors prevent women from using law even when they have rights.¹⁴ In addition the barriers include high court costs, complex procedures for filing papers, lack of counsel for indigent and illiterate women, personal prejudice and bias of judges and court personnel, and legal illiteracy.¹⁵

Reform of the law to address gender inequity has significant implications for general efforts to improve economic conditions and requires basic changes in legal systems: “In order for countries to successfully implement fundamental policy changes

¹¹ Martin and Hashi, *Law as an Institutional Barrier to the Economic Empowerment of Women*, Working Paper No. 2, Poverty and Social Policy Division, Technical Department, Africa Region, The World Bank, June, 1992, at 3.

¹² *Id.* at 3.

¹³ *Id.* at 3.

¹⁴ Tornieri, *Review On: Gender and Law In Benin*, The World Bank, 1997, at Part III, para. 5.

¹⁵ *Id.* at para. 6 and 7.

in the economic sphere, promoting the equal access to economic and financial resources for women, they often need to undertake equally fundamental reforms in the legal and institutional frameworks. The proper functioning of these frameworks is a requirement for sustainable economic growth, in that they ensure predictability and protect against the arbitrary and discretionary power of the state, its agents, or specific social groups. Conversely, the legal and institutional system can be a barrier to development and an instrument in the perpetuation of vulnerability and disempowerment of specific social groups, such as women.¹⁶

If legal systems are to sustain rather than impede growth there must be fundamental changes. The laws themselves must be changed. Mechanisms for applying the law – police, civil bureaucracies, regulatory agencies - and resolving disputes – courts and other adjudicatory bodies – must be fair and accessible. Poor people must be able to know, create and enforce rights. Poor people must be partners in the process of change. To do this they need access to skilled, independent legal services.

B. The Nature and Role of Legal Advocacy Organizations

There are many legal services organization in operation throughout the world. Some are devoted exclusively to representing poor people in civil legal matters. Others provide a wide range of social services in addition to legal advocacy. Legal representation is provided through labor, human rights, women's rights and government organizations. In some countries several organizations work in collaboration on programs ranging from legal literacy and community legal education to public interest litigation, high court appeals, and legislative lobbying. Law schools frequently use clinical legal education programs both to train students and advance the interests of disadvantaged groups. Funding comes from national governments, international development agencies, foundations, court user fees, law societies and private contributions. Services are provided by paid staff, volunteer attorneys, government attorneys, lawyers who are reimbursed by the government for their services, paralegal workers, and community advocates. There is no single model for providing legal

¹⁶ *The World Bank: Gender-Sensitive Legal and Institutional Reforms in Francophone Sub-Saharan Africa*, at I.1.

assistance for poor people in regard to civil law issues. This paper focuses on the work of legal advocacy NGOs as a component of systems to meet the legal needs of the poor.

The day-to-day work of legal advocacy NGOs is quite basic. They keep people from being evicted. They protect workers from discrimination. They enable pensioners to collect benefits. Women are helped with divorces, child custody, and claims for maintenance. These organizations get court orders to protect women from domestic violence. Working with groups they prevent communities from being dispossessed. They help people get water, electricity, health care, education and other basic services. More abstractly they enable people to think differently about themselves in relation to their spouses, landlords, employers, and the government agencies that have power over their lives. They help create a culture of rights. They help change the rules, whether embodied in constitutions, statutes, regulations, municipal ordinances, leases or the myriad of other codes that determine what happens to poor people. They change the way the rules are applied by judges, bureaucrats and the police. They work with and for their clients. They collaborate with other organizations to meet their clients basic needs. In the long run change is the essence of the work they do – at the very least change for a particular individual on an immediate problem and whenever possible lasting change that empowers people to control their own lives.

In order to be effective a legal advocacy NGO must have certain core values and attributes: loyalty to clients, independence, skill and the ability to offer a range of services.

1. Client Loyalty

Client loyalty is a relatively straightforward concept. It simply means the lawyer is obligated to zealously pursue the client's objective. If the lawyer cannot do that, whether because of personal reasons or conflicting obligations to other clients, he or she must not take the case or withdraw if such circumstances arise during the course of representation. It does not mean the lawyer blindly does the client's bidding. The

objectives and means of representation must be lawful.¹⁷ The legal system must not be wrongfully used to the disadvantage of others. But within those limits it is the lawyer's job to conscientiously advise the client, to present the client's case forcefully and effectively and to resolve the matter on the terms the client sets. In providing representation lawyers are obligated to maintain confidentiality regarding matters disclosed by the client. The ability to give proper legal advice depends on the client being able to tell the lawyer everything, without fear of disclosure.

While ethical rules are intended to control the relationship between individual clients and lawyers, they must also represent organizational values. Poor people must be able to rely on the fact that they will get advice and representation that is guided by their interests when they seek help from a legal services organization. Without that assurance, real problems cannot be brought to the organization and real solutions cannot be developed.

2. Independence

Client loyalty in turn requires independence. People who can afford lawyers are in effect paying for loyalty. For poor people who cannot pay lawyers the dynamic is different. Inevitably whoever pays for free legal assistance for the poor has an influence over who the clients are and what is done for them. To the extent that the existing legal order is oppressive and must be challenged, there is an inherent contradiction in having the powers-that-be – the government – pay for legal services to enable the poor to change the rules.¹⁸ There is no easy answer to this dilemma. Poor people themselves simply cannot pay. While some labor organizations are able to raise money for lawyers and there are isolated instances of communities coming up with money for legal

¹⁷ The concept of lawfulness in this context does not simply mean in compliance with existing law. It encompasses the idea of challenges to existing law based on higher law, including fundamental human rights principles.

¹⁸ An epic struggle, which will not be described in any detail, has taken place over publicly-funded legal services in the United States over the last twenty years. Originally funded as part of Lyndon Johnson's War on Poverty, legal services was explicitly designed to take on state and local powers. From the Reagan Administration (1991) to the Gingrich Congress (1994), there were relentless efforts to stop legal services lawyers from challenging the existing order. Ultimately Congress succeeded in severely limiting who the federally funded organizations could represent and what they could do. Organizations in wealthier communities such as Boston withdrew from the federal program to avoid these restrictions.

representation, in the overwhelming majority of cases the money must come from outside.

This is not an argument against government funding for legal services. To the contrary, there is a strong case to be made that government provision of legal services is one of the hallmarks of a mature democracy. In one form or another the majority of developed countries provide civil legal assistance for the poor. The recent US experience notwithstanding, there are in fact ways to provide government funding without compromising client loyalty and organizational independence to any significant degree. But if stable democracies in developed countries cannot resist limiting what legal services lawyers do, the problems are significantly worse in developing countries.¹⁹ It is simply unrealistic to expect that a government with very little money to pay for basic services would pay for lawyers to sue the government. It is not an all-or-nothing situation however. A government-funded system can pay for basic legal services on routine matters while NGOs with other funding can address more systemic issues. Whatever the arrangement, the lesson from experience is that truly independent advocacy is necessary for real change.

3. Skill

Skill is the third necessary attribute of effective legal services organizations. It is not simply a question of legal expertise. Knowledge of the law and advocacy skills are of course necessary, but much more is required. Skill encompasses the ability to communicate effectively with clients and to have a deep understanding of the issues they face. This requires language skills and the ability to understand a client's culture, religion, ethnic identity and economic circumstances. Ideally this means the lawyers speak the language and come from the community. Often that is not the case, but there are ways to compensate for gaps between lawyers and clients through training of community investigators and advocates, appropriate use of translators and the investment of time to learn about a client's background and circumstances. It requires that lawyers and other

¹⁹ The Legal Resources Centre in South Africa (described below) has about as much political support as an advocacy organization could expect. Nelson Mandela is featured in their annual report and attended key organizational events. Nonetheless the LRC does not currently accept any significant government funds out of a concern that independence would be compromised. (Interview with Bongani Majola, Executive Director of the LRC, January 21, 1999.)

advocates from the legal services organization be present in the communities where their clients live on a regular basis.

Skill also includes the ability to deal with the institutions and organizations which have an impact on the lives of poor people and advocate in the forums which can provide remedies. Thus, the legal services organizations must understand who has power and how it is exercised, whether by government, employers, landlords, religious institutions, or the myriad of other powerful entities which determine the allocation of resources within the society. They must have a sophisticated understanding of how to actually get redress for their clients, whether that is through the courts, the media, legislative bodies, the administrative rule making process, institution building, negotiations or any number of other means.

Beyond providing advice and representation to individuals, a legal services organization must have the skill to provide counsel and representation to groups. While such work requires the same basic set of legal skills that go into effective individual work, it also requires more. It requires respect for poor people and their ability to act collectively in their own interests. It requires an understanding of the dynamics of groups, both as they are forming and as they take action. It requires an understanding that pursuing legal claims in certain ways – pursuit of class action litigation being a typical example – can empower lawyers and disempower the group because it puts the lawyer in control of strategy, not the group.²⁰ While advocacy on behalf of an individuals can produce fundamental systemic change, for the most part it is group work the enables legal services organization to really help make a difference.

4. Range of Services

No single legal strategy or form of assistance can make a lasting difference. Legal literacy can inform people of their rights but offers no guarantee that those rights will be protected or enforced. On the other end of the spectrum, ringing pronouncements of constitutional courts do not change daily life for poor people without political and

²⁰ Much has been written on this topic in the US. The essential point is that lawyers sometimes have a tendency to take over when working with poor people's groups in ways that stifle the development of the group. This is not, however, an argument against doing class actions for groups, only that the lawyer must carefully advise the group of the possible downsides of such a strategy.

practical support for their enforcement. Individual cases can produce major changes for the immediate beneficiaries, but helping a thousand people out of a million does not necessarily alter the lives of the poor. Reformed courts do not, in and of themselves, ensure that oppressed communities get sanitation, clean water, electricity or jobs.

In order for legal advocacy to make a difference the entire range of strategies must be available for use by poor people and their communities. The strategies build on one another. Literacy promotes access. People who pursue their cases with legal aid lawyers in reformed courts can educate judges and break new ground for the unrepresented people who follow. Groups acting with legal advice change laws that have an impact on all poor people. Communities that win victories that ensure their survival go on to build schools, health centers and businesses that create jobs. Retribution is converted to reconstruction when legitimate claims are resolved through advocacy. Collaboration between legal advocacy organizations and service providers enables people to survive while they vindicate their rights.

It is not necessary or often even feasible for a single organization to provide the entire range of legal services required to make a difference. However, it is critical that any system include organizations which embody the core values of client loyalty, independence and skill. NGOs are best situated to promote those values. With proper support they can develop the required expertise, adopt a philosophy that puts clients at the center of all work, and take measures to insulate the organization from undue influence by outside forces. Government funded legal aid can serve these same purposes, but only with proper protection from political influence. Even without those protections it can provide useful services. Similarly, law school clinics, pro bono services and public education campaigns can extend the reach of core legal services programs.

In the end, however, there is no substitute for organizations that have a clear mission to represent the poor in whatever way is required, the expertise to do so, institutional credibility with the communities they serve, the capacity to engage in sustained advocacy efforts and the ability to take on powerful foes. Legal advocacy NGOs with these attributes can make a lasting difference for their clients in the following ways:

- They help the poor speak for themselves on matters of critical importance by educating them about their rights and supporting them in the assertion of those rights.
- They represent poor people in courts, legislatures and other government and private arenas where significant decisions are made.
- They advance the cause of judicial reform by pushing to open the courts to all members of society.
- They promote gender equity.
- They facilitate reconstruction and redevelopment following major conflicts.
- Overall they advance the social and economic well-being of society generally and the poor in particular by addressing core issues of housing, income, family, health, and education.

II. CURRENT EXPERIENCES OF LEGAL SERVICES ORGANIZATIONS

Although some form of legal aid has existed in many parts of the world for years, in the last twenty years or so more comprehensive legal advocacy NGOs have emerged to play a vital role in developing countries. The following examples provide an illustration of the range of work underway today.

A. *South Africa*

The Legal Resources Centre (LRC) is a national organization²¹ committed to serving the interests of the poor:

The Legal Resources Centre is an independent, client based, non-profit public interest law centre which uses law as an instrument of justice. It works for the development of a fully democratic society based on the principle of substantive equality, by providing legal services for the vulnerable and marginalised, including the poor, homeless and landless people and communities of South Africa who suffer discrimination by reason of race, class, gender, disability or by reason of social, economic and historical circumstances.

Inspired by our history, the Constitution and international human rights standards, the Legal Resources Centre, both for itself, and its work is committed to:

- Ensuring that the principles, rights and responsibilities enshrined in our National Constitution are respected, promoted, protected and fulfilled;
- Building respect for the rule of law and constitutional democracy;
- Enabling the vulnerable and marginalised 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;
- Contributing to the social and economic transformation of society.

²¹ The LRC is the largest and oldest non-profit public interest law organization in South Africa, with regional offices in Cape Town, Durban, Grahamstown, Pretoria and Johannesburg.

To achieve these aims the Legal Resources Centre seeks creative and effective solutions by using a range of strategies including impact litigation, law reform, participation in partnerships and development processes, education and networking within and outside South Africa.²²

The Legal Resources Centre began operations in 1979. Over the past twenty years there have been three distinct phases of the organizations work: the apartheid era (1979-1990), the transition to democracy and the dismantling of apartheid (1990-1994), and the era of constitutional democracy (1994-present). The LRC was one of many civil society organizations in South Africa that opposed apartheid. The LRC's unique contribution is that it took on the apartheid government by pointing out the contradictions and lunacy of its own legal edifice – and they did it by using the law itself.²³

In some of the most successful early efforts the LRC worked closely with residents of communities threatened with forced removals. For example, in the mid-1980's thousands of residents of Oukasie, a black township on the border of a white community near Pretoria, were faced with the threatened “disestablishment of the settlement and removal to a ‘homeland’” 20 kilometers away. The community organized itself and began a concerted campaign to remain in and upgrade their homes. At several key stages of the struggle the LRC obtained court orders invalidating actions by the local white government. The court orders themselves did not win the fight, but they did enable the community to continue its political campaign. However, throughout the long battle LRC lawyers consistently worked with the community members to develop a negotiation strategy and advise them of their legal claims and vulnerabilities.^{24 25}

In the end the community of Oukasie not only survived, it thrived. In 1991 the Oukasie Development Trust, which included an LRC lawyer, was established for the purpose of redeveloping what had been a very dilapidated settlement. By 1997 funds had

²² *Legal Resources Centre, Mission Statement*, May 6, 1998.

²³ Abel, *Politics by Other Means: Law in the Struggle Against Apartheid, 1980 – 1994*, Routledge, New York, 1995, at X. See also, foreword by Nelson Mandela.

²⁴ *Id.* at Chapter 12.

been obtained to develop 2050 sites for housing and a clinic and maternity wing, electricity service had been obtained, two schools and a community hall had been built, a day care center established, subsidies for 600 additional houses had been secured, a road constructed and a sports field built. Programs for economic development are underway, with a focus on sand mining, development of a plant to crush and utilize stone from a nearby mine, an eco-tourism project and several other ventures involving recycling and agriculture.^{26 27}

The end of apartheid and the advent of democracy has, of course, brought profound changes to South African society. The government is no longer the enemy of the people. To the contrary, there is a massive effort underway to improve the lives of all South African citizens. The LRC has been very much a part of this change. Key staff members work with the negotiating parties formulate the new constitution, which is the most progressive in the world in terms of protecting and promoting human rights. Some of the organizations most talented and experienced lawyers joined the new government in 1994 – as judges (Constitutional Court, High Court, Land Claims Court, etc.), as top civil servants at all levels of government, and as special change agents in entities including the world-renowned Truth and Reconciliation Commission.

In order to continue its vital role in building a new democratic society the LRC reorganized itself to focus on two major areas: 1) constitutional law; and 2) land, housing and development. The new Constitution and the Bill of Rights create significant opportunities for real change. As Mr. Justice Arthur Chaskalson, President of the Constitutional Court²⁸ said recently, the role of the LRC is “as important as it has ever been. Under the new constitutional order, it is able to function within a legal framework which enables it to do more for the poor and downtrodden people of our country, and ignorant of their rights than ever before. It is able to apply its skills to give substance to

²⁵ For an analysis of the role played by LRC lawyers in working with communities opposing forced removals see White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 Wisconsin Law Review 699.

²⁶ *Oukasie Development Trust: The Year of Transformation and Delivery*, Annual Report January – December 1997.

²⁷ *Voices from Oukasie: From Resistance to Development*, The LRC Review, No. 1, 1995.

²⁸ An LRC founder and former National Director

the provisions of the Bill of Rights, and to the upholding of the rule of law, which is a foundational value of our new democracy.”²⁹

The new Constitution is, however, just that – new. It will only be meaningful to the poor if it is tested early and profoundly, to give the widest possible interpretation of rights in order to benefit present and future generations of South Africans. The LRC is taking a strategic approach to constitutional advocacy so that the high aspirations enshrined in the document become real for ordinary people by improving the environment, assuring rights to land and water, improving health care and education, among other basic needs.³⁰

With regard to land, housing and development work, the LRC had years of experience in the apartheid era learning about land dispossession, forced housing removals, and the devastating effects of apartheid planning on rural and urban development. Under the new order, the LRC converted that knowledge into specialized areas of work focussing on rural and urban restitution of land rights, tenure security, housing, land law reform, and urban and rural land development. Once the LRC helps people obtain land, it does not abandon its clients. It continues to work for the provision of basic services such as water, electricity, housing, sewerage, schools and clinics. Legal services are required sometimes to establish frameworks for communal access to land and natural resources. It would be impossible to unravel the complex legal mess which apartheid bequeathed on South Africa in terms of land and property relations without the kind of work the LRC is doing. Their work has come full circle from the apartheid era – from resisting forced removals to facilitating socio-economic development in poor communities.

A review of recent cases done by the organization demonstrates the wide scope of its work:

Land Restitution: The LRC successfully represented the Makuleke community in its land restitution claim. In the late 1960’s the community was dispossessed at gunpoint from a

²⁹ *Legal Resources Centre Document*, April 1999 (On file with author)

³⁰ *Legal Resources Centre: The Outcomes of Strategic Planning: 1997/98*, 9 April 1998 (On file with author)

tract of land bordering Mozambique and Zimbabwe. When the land reform process started in 1996, a claim was filed for 20,000 hectares of land incorporated into the Kruger National Park. This was one of the first claims against South Africa's extensive national parks system, all of which had been carved out of land of indigenous peoples over the past century.

The Makuleke Community filed a joint claim for the return of the land (rather than as individuals.) Instead of seeking restitution of their original land, however, the community sought an alternative form of redress; commercial rights to their part of the national park. As a result, a huge community will now have access to financial resources that will bring about development in the form of new schools, clinics and roads and the supply of basic needs such as water, electricity and employment. The land, over 25,000 hectares, will be transferred to the community of over 2,500 families, and will be jointly managed by the Makuleke Communal Property Association (created by the LRC) and the SA National Parks. It will create employment opportunities, eco-tourism, and revenue for socio-economic development of the community. This was the first of six land claims against the National Parks, and was hailed as a model legal settlement because it satisfied the interests of all parties.³¹

Housing Quality: The LRC achieved a major breakthrough in the settlement of a housing case in the Meadowlands, a township located in Soweto outside Johannesburg. Corruption within the municipality and the development company had resulted in the construction and sale of houses of poor quality. Soon after the residents took possession some of the houses started leaking, while cracks appeared in the walls and foundations of others. In terms of the settlement, a trust has been established into which both the banks and the municipality will contribute funds for repair of the damage and improvement of the houses.

Hostels: One of the major legacies of apartheid is the hostels housing thousands of workers. They have been neglected for decades, resulting in squalid housing conditions for residents. Hostels have also been recruitment sites for armed vigilante groups

³¹ This and other case examples are taken from interviews with LRC staff and the *Legal Resources Centre Annual Report for the year ended March 1998*. (On file with author)

affiliated with political parties. Violent clashes between hostel dwellers and other township residents have been among the consequences.

Seeking means to curb the violence that raged in KwaZulu-Natal, the LRC was instrumental in launching the Hlanganani Hostels Development Project. The office assisted the two opposing hostels associations to establish a company to facilitate the maintenance, administration, upgrading and development of hostels throughout the province. “Hlanganani” is a Zulu word which means “come together or unite”. Thousands of hostel dwellers will benefit from this project.

General Rights Work: Other cases were brought to restore water service terminated because residents were too poor to pay, to protect the land rights of an aboriginal community during the process of privatizing a diamond mine, on behalf of deaf children to preserve their right to education in the public national school system and on for pensioners whose pensions had been stopped.

The LRC Gender Programme coordinates work throughout the organization to challenge practices that discriminate against women and to promote the rights of women. This is done through conducting workshops on issues including the role of women in development, the right to maintenance, protection from domestic violence and land tenure rights. Community education materials were developed on gender rights under the constitution, rights with respect to customary and Muslim marriages, and rights under the “Termination of Pregnancy Act”.

Cases were brought to challenge discriminatory employment practices which required women to retire at a younger age than men, to prevent evictions in reliance on legal protections for households headed by women with children, and to challenge customary laws which transfer property to the eldest male heirs of someone who dies without a will. In an important gender rights test case, the Gender Programme filed suit on behalf of a woman who married under Muslim rites and was divorced by her husband through unilateral repudiation. When he sought to eject her from the home the LRC obtained a judgment given her a right to retroactive maintenance and payments based on obligations in the marriage contract.

The LRC also seeks to extend its reach by running an advice office program called the Access to Justice Project. The objectives of the program are to facilitate access to justice at a grassroots level by extending legal knowledge and legal resources to as many people in the community as possible, to identify issues of importance to the community which require legal input, and to strengthen advice offices. LRC attorneys and paralegals work in support of the extensive network of advice offices all across South Africa in making the legal system available to the poor and disadvantaged. Workshops are conducted for the paralegals who work in advice offices on employment law, human rights, social welfare and pension law and general legal skills such as interviewing and drafting statements.

The total staff of the LRC is just over 100 people, yet, because of the type of work they do and the way in which they do it, they have been able to have an impact far beyond their numbers.³² While the organization does a substantial amount of work on behalf of individuals, they take cases which will have a strategic impact in terms of defining or shaping rights and affect large numbers of people or communities. There is a great emphasis on working with community groups in a way that helps those groups develop their own skills and make enduring changes.

The LRC attorneys and paralegals use their expertise to help shape the law by drafting legislation and helping lobby it through parliament. Beyond that they work to implement the laws and further refine them to accomplish their purpose. This has been especially noteworthy regarding land legislation. They serve as a resource for countless other organizations by doing training and collaborating on projects. In one way or another the LRC is heavily involved in most of the urgent social and economic issues facing poor South Africans.

B. Bangladesh

The legal community in Bangladesh has established a number of skilled and sophisticated legal advocacy organizations. This report covers, in brief, four of those organizations: Ain O Salish Kendra (ASK), the Bangladesh Legal Aid and Services Trust

³² The total LRC budget is R24 million (approximately US \$4 million), 90% of which is derived from foreign sources. This places the LRC in a very precarious situation in terms of future sustainability.

(BLAST), the Bangladesh National Women Lawyers Association (BNWLA) and the Madaripur Legal Aid Association (MLAA).³³ Together they offer a wide range of legal services to thousands of poor people in Bangladesh and reach countless others through their community education and public policy work. They help establish and enforce legal remedies to deal with domestic violence, trafficking in women and children, discrimination against women in matters of family law, slum evictions, hazardous conditions in garment factories, and abuses of the protective power of the state. While it is clear that much remains to be done, these organizations have made great strides in giving the poor of Bangladesh a voice in the ongoing process of development and democratization.

Each of the four organizations has its own focus, but there is also collaboration on matters of common concern. ASK and the BNWLA give emphasis to women's issues. BLAST has as its core mission access to the judicial system for redress of grievances. MLAA emphasizes use and improvement of traditional mediation mechanisms. The goals, structures and activities of the organizations are:

Ain O Salish Kendra

ASK, which is based in Dhaka, was established in 1986 to assist the disenfranchised through legal literacy training, mediation, legal counsel and activism. It advocates for social justice and human rights in national policy. It seeks to reform the law through its representation of poor women and children and organized groups of workers, the rural poor and slum dwellers. It currently has a staff of over 100 people, organized into what are called Action, Advocacy and Support Programmes.³⁴

ASK provides legal aid – meaning direct legal advice and representation for individuals - primarily on family matters including marital disputes, polygamy, violence against women, guardianship, inheritance, maintenance, custody, child support and dower. It does this through informal and alternative methods of dispute resolution.

³³ There are a number of other noteworthy organizations doing legal advocacy in Bangladesh, including the Bangladesh Environmental Lawyers Association and Banchte Shekha. The organizations reviewed here do, however, illustrate the range of legal services available to the poor in Bangladesh.

³⁴ Unit descriptions are based on an interviews with Barrister Salma Sobhan, the Executive Director, Dr. Hameeda Hossain, Dr. Faustina Pereira and other members of the ASK staff and material from ASK including the *ASK Annual Report: 1997* (On file with author)

Litigation on behalf of victims is undertaken in criminal cases such as rape, murder, violence, trafficking etc. and preventive detention, - where mediation is not permissible and also when basic legal rights are violated. Social support services, such as access to shelter, jobs and medical care are also offered.

Beyond its basic legal aid services ASK engages in a variety of activities to make people aware of their rights, to change oppressive laws, to create new legal remedies and to enforce current laws. It does this through offering theatrical presentations on legal issues, by publishing popular education materials, and by convening community discussions on fundamental legal issues. ASK investigates and monitors violations of law and human rights including police torture, murder after rape, and deaths in garment factories. It monitors police stations to collect information on violence against women and children and to track cases reported at the station.

A research unit conducts research and prepares reports in issues including a uniform family code, labor migration, gender violence in urban areas, housing rights and oral histories of women victims of violence in the war. An advocacy unit attempts to build consensus among concerned groups and individuals at the grass roots level and in civil society for an alternative ethic for law and policy formulation, based on the criteria of gender equality and justice, protection of human rights and provisioning of basic needs. This is done through a legislative advocacy program carried out jointly with BLAST and MLAA. Issues taken up for advocacy include housing rights, local government, and the Human Rights Commission. Advocacy is carried out through preparation of background position papers and articles.

A children's rights unit provides direct education, recreation and health services for children, as well as legal aid on issues such as unlawful arrest and physical torture and it holds education sessions for parents and employers on issues such as family law, recruitment of young children for work, and the right to education, rest and security.

A documentation unit collects information on violence against women by type of crime – attempted rape, rape, gang rape, raped by military/police, deaths after rape, all by

age; domestic violence, Fatwa³⁵ related violence; dowry related violence, acid burns, other forms of violence.

Bangladesh Legal Aid and Services Trust

BLAST was established in 1993 to provide legal aid through the judicial system and offer related services including mediation. The primary goal of the organization is to open up the judicial system to the disadvantaged of Bangladesh society. Beyond providing legal aid to support litigation, BLAST engages in public interest litigation (PIL), operates a rural mediation program, does legislative advocacy, conducts research on marriage and divorce, and advocates for the legal and economic rights of women workers. It also runs training programs, seminars and workshops on a wide range of legal issues.

Although it has been operating only a few years, BLAST has a staff of about 150 in 14 legal aid offices, 3 mediation programs and 3 clinical offices. Over 4,000 cases were handled in 1998 utilizing the services of over 700 private lawyers. The process of providing legal aid starts when someone approaches one of the BLAST offices or is referred by NGOs, local lawyers or local elected officials. A personal interview is conducted to obtain basic information. The coordinators of the BLAST offices, who are experienced lawyers, many of whom have been leaders in local Bar Associations, review the cases to determine if they have merit. Remarkably, fewer than 20% of the cases are turned away, mostly because procedural problems. In other words, almost all the people seeking assistance from BLAST have meritorious cases.

If the case is accepted the client is referred to a local private attorney using a process which is overseen by a volunteer management committee of prominent attorneys. As a general rule only attorneys with 5 or more years experience are included on the panels for referral of cases. The attorneys who take the cases are paid a fee. Often, the staff coordinating attorneys or the volunteer management committee attorneys assist or supervise complicated cases with out any fee. During the life of BLAST's legal aid

³⁵ "Fatwa: An opinion of an Islamic jurist (Mufti). In Bangladesh, village Imams and other members of the religious elite have misused this to issue edicts to incite stoning, flogging or death of women. The *fatwa* is not part of the judicial system of Bangladesh." *Human Rights in Bangladesh: 1997*, The University Press Limited, Dhaka, 1998 at viii.

program as many of 20% of the eligible practicing attorneys in Bangladesh have participated.

BLAST handles a full range of both civil and criminal cases, with the majority of civil cases involving family matters. Over 80% of the clients are women. While most cases are handled through litigation, mediation is attempted where appropriate. Cases are done at all levels of the court system.

Bangladesh National Women Lawyers Association

The BNWLA was founded in 1979 with the mission to “enable deprived women to become self confident, aware of their legal rights and make them productive members of a society founded on justice.”³⁶ BNWLA provides legal aid through 24 clinics, trains paralegals, does research and investigation to promote the reform of existing laws, publishes legal awareness materials, conducts legal training for government officials, NGOs and community residents, participates in PIL and operates a shelter home for women and children.

Since 1991 BNWLA has engaged in substantial efforts to combat trafficking of women and children through research, awareness training, information dissemination, networking, legal action, repatriation, rehabilitation and reintegration of victims. BNWLA works with women and girls who have been sold or forced into prostitution by poverty. In recognition of the fundamental economic problems of Bangladeshi women, the organization does advocacy to enforce and expand the legal rights of women working in the informal sector.³⁷ BNWLA runs regular legal aid clinics in the offices of the Bangladesh Independent Garment Workers Union Federation (BIGUF) to address the legal problems of the women working in that industry. In collaboration with its sister organizations, BNWLA works to promote reforms in family law and procedures.

Madaripur Legal Aid Association

³⁶ BNWLA report on file with author.

³⁷ See, for example: *Existing Laws on Informal Sector for Women in Bangladesh*, April 1998, published by the BNWLA.

The MLAA was established in 1978 “with the purpose to make people aware and empower them to participate meaningfully in the sustainable development process of the society.”³⁸ The target groups served by MLAA are disadvantaged women, orphans, landless farmers, laborers, NGO activists, students, teachers, guardians and village leaders. Serving a predominantly rural constituency, the organization offers free legal aid, supports dispute resolution through mediation, runs a worker’s rights project, provides training to NGO workers and others, offers internships to law graduates and publishes materials on a range of legal topics.

Approximately half of MLAA’s litigation support through legal aid involves family matters, illegal dowry demands, failure to pay maintenance, second marriages and abuse of women. The second largest category of litigation is land disputes followed by a wide range of matters covering money disputes, labor issues, contracts, etc. Of the over 7,000 requests for assistance received per year, about ten percent are handled through litigation, the remainder are referred for mediation.

1. Circumstances in Bangladesh

“Bangladesh has made remarkable progress on human development, on a liberalized economy for rapid, outward-oriented growth, and on innovative models of development led by non-governmental organizations (NGOs), that are being replicated worldwide. But Bangladesh continues to face a monumental challenge in reducing poverty.”³⁹ While poverty rates have been declining in the 90’s, as of 1996 over 35% of the urban population and 56% of the rural population were poor and of those, 35% overall nationally were “very poor”.⁴⁰ The UN’s 1999 Human Development Report ranks Bangladesh 150 out of 173 countries on its index of human development indicators.⁴¹

Women bear a disproportionate share of the burden of poverty in Bangladesh, as they do elsewhere in the world. Women are faced with “social customs and traditions which accentuate gender subordination” and subject them to “insecurity and

³⁸ *Annual Activity Report 1996-97*, Madaripur Legal Aid Association

³⁹ *The World Bank and Bangladesh – Building Better Lives*, World Bank Bangladesh Website, <http://wbln0018.worldbank.org/lo+web+sites/bangladesh>, pg. 2.

⁴⁰ *Bangladesh: From Counting the Poor to Making the Poor Count*, Poverty Reduction and Economic Management Network, South Asia Region, The World Bank, April 29, 1998, Table 1.2.

⁴¹ *Human Development Report 1999*, United Nations Development Programme, July 1999, at 136.

dependence...⁴² These practices and customs relating to marriage, divorce, custody of children, maintenance, and inheritance exacerbate discriminatory rules embodied in laws which apply based on religion. Many women are regularly subjected to violent abuse. The practice of demanding dowry, long illegal, continues. Girls are forced to marry at very young ages because their parents fear economic insecurity and abuse. Men enter into multiple marriages and neglect and abuse their wives and children. Women are divorced or denied divorce without any economic protection. Traditional mediation mechanisms – *salish* – are used to subject women to illegal punishments.

The barriers to eliminating poverty are graphically illustrated by a non-scientific survey of acts of repression against women reported in daily newspapers between November 1996 and June 1997, recognizing that not all stories of abuse of women are reported: “During these eight months, 770 women related criminal acts have been recorded. Out of the total 227 women were raped, 203 killed by men, 23 were murdered for dowry, 71 committed suicide, 63 kidnapped, 69 burnt with acid and 25 tortured for dowry.”⁴³ Any effort to address the economic issues faced by women, must also deal with the pervasive violence.

As outlined by the World Bank: “The challenge for government in Bangladesh is not just to reform public administration and privatize state enterprises, but also: to rehabilitate and modernize the judiciary, restructure banks and other financial institutions, to create viable and representative local government, to improve services in the cities; to strengthen law and order; and to foster an effective civil society.”⁴⁴ Legal advocacy NGOs have a key role to play in meeting most of these challenges.

2. The Advocacy Work

The work done by ASK, BNWLA, BLAST and MLAA is significant both because of the substance of what they do – work on basic issues for poor women, slum dwellers, landless farmers and other disenfranchised people – and because of the way they do it; which includes legal awareness training, discussion groups, mediation,

⁴² *Id.* at 26.

⁴³ *Prostitution: Women, Society State and Law* Bangladesh National Women Lawyers Association at 3.

⁴⁴ *The World Bank and Bangladesh: Building Better Lives*; *supra.* at 7.

individual court cases, administrative and legislative lobbying, group representation, and public interest litigation. What follows is simply an illustration of some of that work.

Women's Issues

In Bangladesh people belonging to different religious communities are governed by different sets of personal laws derived from their own religious prescriptions. Although the Bangladesh Constitution prohibits the state from discriminating on the basis of gender and provides that “Women shall have equal rights with men in all spheres of the State and of public life”⁴⁵, there is no constitutional assurance of equal rights under laws pertaining to matters defined as personal.

To address this situation ASK and BNWLA have done extensive research to prepare a charter of rights for women based on concepts of gender equality and recognition of universal human rights for all women and men regardless of their personal faith. The research concentrated on the laws applicable to the Muslim, Hindu and Christian communities in the areas of marriage, divorce, guardianship and custody of children, maintenance of wives during marriage and after divorce, restitution of conjugal rights, and inheritance.

A series of workshops were held with people concerned about legal reforms. Working groups reviewed the laws for each community and drafted a set of documents synthesizing the findings. Out of this a set of principles for a Uniform Family Code was developed. These principles include; equal rights in marriage, registration of all marriages under a common civil law, banning polygamy, banning child marriage, maintenance based on financial status, recognition of both parents as natural guardians, shared responsibility for children, equal right to divorce, equal division of property on divorce, equal inheritance rights, and creation of more powerful and accessible family courts.⁴⁶ Advocates for a uniform code see it as a means of bringing much needed

⁴⁵ Article 28(2), emphasis added.

⁴⁶ *Papers on Gender Inequality and Personal Laws in Bangladesh*, Ain O Salish Kendra, July 1995.

protection against pervasive discrimination and creating a more egalitarian and universal legal system.⁴⁷

Without compromising their goal of fundamental reform, the advocacy organizations are also urging modifications of the existing laws and procedures. BNWLA has published studies and made recommendations for reform of both Muslim and Hindu Family Laws.⁴⁸ Both studies document abuses of the current system and make recommendations for legal awareness campaigns, extension of legal aid, enhancement of the status of family courts, improvements to procedures and substantive changes in the laws.

Reform is also being promoted through the Supreme Court. ASK and its sister organizations have put forward legal arguments supporting a woman's right to alimony following divorce. "Within the judicial arena a matter of crucial importance today for Muslim women around the world and in Bangladesh is the question of Muslim women's entitlement to maintenance from their husbands after their divorce." Relying on a complex analysis of the Qur'an, judicial precedent from other Muslim countries and the statutory law of Bangladesh, the advocate from ASK developed a strong case for extending maintenance beyond the three month period allowed under current interpretation of the law. Such a decision would expand the trend already begun to "add to and complement, rather than take away, rights of women in order for them to live as complete, independent individuals as understood by the Constitution of Bangladesh and various human rights instruments..."⁴⁹

Two of the biggest issues, often related, facing women in Bangladesh are trafficking and prostitution. Poverty, lack of skills, illiteracy and discrimination make many women easy prey to traffickers and procurers who deceive or force them into brothels or households where they work as virtual captive slaves. BNWLA and ASK

⁴⁷ *Round Table Consultation of Personal Law Reforms in Relation to Women in Bangladesh and Assessing the Feasibility of a Uniform Personal Code – Key Note Paper*, Dr. Faustina Pereira, ASK Advocacy Coordinator, October 27, 1998.

⁴⁸ *A Study on the Possible Reforms in the Existing Muslim Family Law & Procedure and Hindu Family Law – An Action Study on Proposed Reform of Hindu Family Law*, BNWLA

⁴⁹ *The Independent*, December 18, 1998. Although the particular case on appeal was resolved without a final determination of the right to post-divorce maintenance, the legal arguments have been fully developed

have been at the forefront of efforts to fight this problem. They have done extensive work to document and publicize the plight of women and children who are victims of trafficking.⁵⁰ Similar work has been done with regard to prostitution.⁵¹

BNWLA in particular takes a very comprehensive approach to the issue of trafficking. Since 1991 it has had a specialized unit devoted entirely to this issue. Members of the unit go out to the villages identified in research as likely areas of trafficking and conduct education programs to alert people to the methods used by traffickers. When they receive information about a possible victim they engage direct advocacy to locate and repatriate the child or woman. They offer shelter where that is needed and training and support to find work. There are continuous efforts to engage policy makers in efforts to enforce existing laws and root out the corruption that makes the system work.

Work with Slum Residents in Dhaka

In 1993 ASK undertook a comprehensive examination of its legal literacy and legal aid work in four slums in Dhaka. The observations and conclusions contained in the report which was issued provide an excellent illustration of the organization's approach to its work and its recognition of the strengths and limitations of the law as a tool to improve the lives of the poor.

The investigation undertaken by ASK was "action oriented research".⁵² The objectives were to "investigate the application of laws and legal procedures relating to the rights of squatters and slum dwellers to shelter, rights relating to freedom of occupation or trade, women's personal rights; examine the need for social and legal protection for women slum dwellers in their personal lives and different occupations; develop materials

and will be used in future cases. (Author's interview with Dr. Faustina Periera, ASK Advocacy Coordinator.)

⁵⁰ See, for example: *Across the Borders of Despair – Trafficking in Women and Children in Bangladesh*, Saira Rahman, ASK, and, *Survey in the Area of Child and Women Trafficking – July to December of 1997*, BNWLA. (On file with author.)

⁵¹ *Prostitution: Women, Society, State and Law*, BNWLA. (On file with author.)

⁵² The description of this project is based on a report prepared by ASK: Hossain, *Negotiating for Rights*, Ain O Salish Kendra, Dhaka, 1993. (On file with author)

for legal literacy...; [and] explore alternative strategies for settlement of disputes.” ASK’s goals were to involve the participants in examining their situations, identify problems based on personal, intra-family, community and occupational relationships, recognize the systemic problems of the urban poor, and engage in a process of solving problems through an awareness of legal rights.⁵³

On the face of it, the legal framework for dealing with the issues faced by *basti* residents appears substantial. The Bangladesh Constitution expresses commitment to democracy, human rights, individual freedom, participation by women in all spheres of life, state responsibility for providing the basic necessities of life and effective measures to remove illiteracy, raise the level of nutrition and ensure equal opportunity. In practice these are no more than aspirations which are not justiciable, and which have been eroded by interpretation and amended.⁵⁴

The *basti* residents are considered squatters under law. Their settlements are illegal, subjecting them to forcible eviction and deprivation of basic amenities. Payment of rent does not guarantee any security of tenure. Many of the residents who make their living as hawkers have no assurance of any job protection because municipal governments do not issue licenses, subjecting them to harassment and extortion.

In the middle of all this abuse and misery *basti* residents have been subjected to sudden, brutal forced mass evictions. Urban development in Dhaka in the late 1980’s focused on infrastructure improvements intended to attract foreign investors and promote middle and upper class life styles. When *bastis* impinged on these efforts they became

⁵³ In order to understand the study it is necessary to understand the context. By the early 1990’s Dhaka had a population of 7 million. The city’s poor lived (and still do) in *bastis* (slums) in tin sheds or straw shacks. About 1.7 million people lived in over 1,000 slums and squatter settlements throughout the city. The land they occupied was owned by the government or private interests, but there was no authorization for the residents to live there. There was no entitlement to basic services such as water, sanitation facilities, gas, or electricity. Control over the land was maintained by *mastans* (“armed toughs”).

Residents of the *bastis* are generally employed in the informal sector as day laborers, rickshaw pullers, taxi drivers, domestic workers, doing piece work in the garment industry or chipping bricks. The jobs are unreliable, low paid and irregular. Children work as garbage pickers, shoe polishers and flower sellers. There is a high rate of injury, disease, sexual harassment, pollution and violence in the workplaces. Children do not, for the most part, take part in formal education. There is an occupational underworld of trade in drugs, arms and sex.

⁵⁴ *Id.* at 21-22.

the target of removals. In one of the most egregious evictions the private owners of a parcel of land adjacent to Gushan Taltola Park, without advance notice and accompanied by 200 police officers, began demolishing the resident's shacks with two bulldozers. In one of the shacks a six year old boy was crushed to death by a bulldozer.⁵⁵

The residents approached ASK to challenge the eviction in court and to pursue criminal charges against the municipal authorities who had authorized the action. A petition was filed alleging that the residents fundamental rights to adequate shelter with sanitation, hygiene and a healthy environment had been violated, that eviction without notice was illegal, that residents were being deprived of their right to a livelihood, and that basic human rights, especially with the death of the boy, had been transgressed. While a judge issued an order stopping the evictions the case was not pursued further, apparently because the plaintiff was threatened with retaliation.⁵⁶

In another slum eviction case, five bulldozers and six truck loads of police arrived at the Agargaon *basti* on August 9,1990 and began demolishing huts in a bazaar area. A women's group running a credit program based on the Grameen model approach ASK to stop the evictions. Three members of the group became petitioners in the court case. One was a hawker, another sold firewood and the third worked in a garment factory. The basic argument put forward in the case was that demolishing their homes would have the effect of depriving them of a livelihood in violation of fundamental constitutional guarantees. In addition they argued that the eviction would deprive them of the right to life by denying them access to institutional loans for self employment, to health and nutritional programs, to skill development, education and employment opportunities in the informal sector. The court issued an order stopping the eviction. At that point the Attorney General assured the court that no further action would be taken.⁵⁷

While the litigation to stop evictions was the most dramatic work done by ASK for the slum dwellers, the work to advance women's rights was more pervasive. A large number of complaints made by women arose from their economic dependence. Regardless of the status of their marriage, these women were primarily concerned about

⁵⁵ Id. at 43.

⁵⁶ Id. at 44.

⁵⁷ Id. at 47.

financial insecurity. Typically the amount of money they were getting from their husbands or ex-husbands, if they got any at all, was nominal. Although the arrangements were clearly illegal, few women were prepared to endure the difficulties of going to court. Mediation was often found to be the safer and more effective strategy.

As part of its response to the wide range of problems encountered among *basti* residents, ASK developed a program of “legal literacy discourse.” Discussions were held with groups of women – 20-25 in a group – to assess the need for legal literacy and to identify issues of concern. Women were encouraged to share their experiences of living conditions, work, personal life and violence. Out of this material for nine discourses was developed covering: visions of the ideal *basti*, *basti* eviction, consent to marriage, age of marriage, polygamy, divorce custody and maintenance, dowry, violence and rape. The goal was to create awareness about legal rights, customary practice, the violation of rights and procedures to establish rights.

The discourse on age of consent to marriage illustrates the challenges and value of the discussions. The minimum age for women to marry is 18. Many of the women participating in the discussion criticized the value of a national law which could not be enforced because of economic and social conditions. They saw a contradiction between the economic need to have their young daughters work and their exposure to sexual harassment and the social pressure the daughter’s chastity. Rather than challenge these statements the ASK lawyers and the group facilitator engaged the women in a discussion on how to relate rights to prevailing social concepts.

Following the legal literacy sessions ASK started legal clinics for the participants and other women who felt encouraged to come forward to seek individual advice. While problems relating to marriage were presented in different forms, the most common underlying issue was the women’s economic dependence. Frequently the advice sessions led to mediation or negotiation of a financial settlement. Because of the success of the legal clinics they were expanded to two other *bastis* the following year.

Finally, as part of the project under study, ASK convened workshops that included *basti* residents and representative of groups working with them. Discussions focused on strategies for problem solving through sustained interaction between local

families and groups. The topics included the harassment faced by single, deserted women, monetary extortion from residents, terrorizing of garment workers and other sources of community conflict. The strategies proposed for addressing problems were: increased community involvement in problem solving, making women and men aware of the laws, discussions of rights that included the whole family, not just women, and developing linkages with other support groups.

In the ensuing meetings there was regular information sharing to create awareness of issues. News items were highlighted to draw attention to the violation of rights. “Reports on *salish* indictments of women... in the presence of imams, huzoors, or rich elderly men were used as discussion subjects to elicit analyses of the contradictions between law and social practice. This form of discussion not only was an effective method for creating awareness, but it also encouraged a politicisation of women’s concepts.”⁵⁸

ASK leaders drew a number of conclusions from these experiences:

⁵⁸ Id. at 58-59.

Advocates of legal aid are confronted with constraints in working with laws which may themselves reflect social and political inequality. Because of such structural limitations legal remedies may not themselves facilitate social change. It was in the belief that legal strategies, in defence of the disenfranchised, should be a process to alter the structure of domination, that ASK was prompted to enlarge its legal support beyond litigation. Its goals were more involved: to make the members of a community aware of their relationships in terms of rights and responsibilities, and to enable them to evolve their own alternatives. Recognising the limits of the law or social parameters was necessary, but the support had to move beyond to enable them to evolve rational alternatives. Supporting disputes in court were only a part of the strategy and in fact a limited part. ASK's legal literacy created information which involved the community in the process of dispute resolution. This could lead to settlement based on rational negotiations which promote greater awareness in the community. Each strategy for dispute resolution through the courts, legal literacy, mediation and social action needs to be analysed from the perspective of its constraints and options for the defence of the disenfranchised.

Social recognition of both the limitations and rights in law is a precondition for articulating more equitable and non-discriminatory social and work relations. ASK's strategies for legal aid are to be seen as part of this shared experience and not as finite activities in themselves. Its dynamics will require ongoing involvement and interaction with collective groups and individuals engaged in the struggle for distributive justice and social equality.⁵⁹

The call to ongoing involvement is especially critical considering projected growth in urban areas. A report prepared by the Centre for Advanced Studies and the World Bank says that by 2020 the number of people living in urban areas in Bangladesh will grow to 80 million from 30 million today.⁶⁰ In recent conference on urban strategy the World Bank Country Director for Bangladesh commented that while the Bank shares the government's concern about urban law and order and the living conditions in the slums, bulldozing them and rendering slum dwellers homeless does not address the problems: "Forcible eviction without relocation simply shifts poor people from some slums to others, inflicting suffering on them by disrupting their lives and livelihood and worsening, rather than improving their living condition. It also undermines efforts, almost all of which have been initiated with the government's approval, to provide

⁵⁹ *Id.* at 62-65.

education, health, job training and micro-credit to the hard-to-reach urban poor. We agree with the High Court Division of the Bangladesh Supreme Court that relocations from slums should only be done in a phased manner involving rehabilitation.”⁶¹ It will take continued advocacy by ASK and others to vindicate the promise of the High Court judgment and promote the kind of stability needed for development.

Public Interest Litigation

Public Interest Litigation (PIL) has become a powerful tool for securing social and economic rights throughout South Asia. First developed in India, its use has grown substantially in Bangladesh since an October, 1992 conference run by ASK and MLAA.⁶² A recent survey published by the Grameen Poverty Research Newsletter reviewed 45 significant PIL cases filed since 1994. They involve electoral fairness, industrial pollution, adulterated food, consumer product safety, labor rights, disposition of public land, trafficking of women and children, jail conditions, so-called “safety custody” (a highly abusive practice in which women and children are held in jail under horrible conditions, ostensibly for their own protection.), slum evictions, garment factory safety, use of *fatwa* (see note 32 above) to prevent women from voting, employee benefits and post-divorce maintenance (discussed above) among others.⁶³

PIL seeks “to establish the state’s responsibility for its positive acts resulting in violation of constitutional rights... [and] to impute responsibility for the consequences of state inaction...PIL has addressed a wide-ranging set of civil society concerns, relating to both individual rights and the broader development agenda...PIL has itself become a part of the struggle to institutionalize democracy...”⁶⁴ PIL provides a means by which disenfranchised people can make their voices heard on matters of public policy, both in its formulation and implementation.

⁶⁰ *Bulldozing Slums Won’t Solve Problems: World Bank* The Daily Star, Dhaka, August 29, 1999

⁶¹ *Id.*

⁶² *Public Interest Litigation in South Asia – Rights in Search of Remedies*, Hossain, Malik and Musa, The University Press Limited, Dhaka, 1997.

⁶³ *Grameen Poverty Research*, Vol. 5, No. 1, April 1999, pg 19.

⁶⁴ *Public Interest Litigation in Bangladesh: Recent Trends*, Hossain and Hassan, *Grameen Poverty Research*, supra. at 4.

While PIL is clearly a strong tool it is not a panacea. There are limits to the power of the law and the institutional power of courts. It takes substantial effort on the part of advocates and their clients to make it work. Obtaining a court judgment is often just the start of the process of change. Nonetheless, when used in conjunction with other advocacy tools, it is often PIL that makes the decisive difference. In the space of just a few years the Bangladeshi legal advocacy organizations have shown they have the sophistication to understand both the strengths and limitations of PIL and to use it effectively on behalf of their clients.

Mediation

*Shalish*⁶⁵, the traditional means of dispute resolution, is used for a wide range of issues. It has great legitimacy, especially in rural Bangladesh, in part because the courts are considered inaccessible and insensitive. “While having no legal authority, the *shalish* plays an extremely important role in ensuring acquiescence to prevailing moral codes... In fact the *shalish* is effectively used to ‘discipline’ individuals and groups so that the prevailing structure of power is not challenged. The system of *shalish*... often reflects very closely the existing class and gender hierarchy in rural society. In conflicts between the rich and the poor, or on issues reflecting gender subordination, judgements are usually made in favor of dominant groups.”⁶⁶

It is this system that MLAA, ASK and other NGOs are seeking to transform to meet, among other things, the needs of poor women for relief from the abuse and neglect of their husbands and their husband’s families. While several organizations are doing this work, MLAA is considered to have taken the lead, both in development and training of new *shalish* committees and the spreading the reform movement to other parts of the country.⁶⁷ MLAA employs village level mediation workers who serve as the contact

⁶⁵ Alternately spelled *salish*.

⁶⁶ *Quest for Local Level Justice: Transforming the Shalish in Rural Bangladesh*, Hashemi and Hayat, *Grameen Poverty Research*, supra, at 17.

⁶⁷ This and most of the subsequent information about the use of mediation is based on the author’s interview of Stephen Golub, Project Director of the Ford Foundation’s Global Law Programs Learning Initiative, an effort to derive and disseminate lessons flowing from the Foundation’s support for law-oriented work around the world. Mr. Golub teaches International Development Law and Policy at the Boalt Hall School of Law, University of California at Berkeley. He has conducted an extensive review of legal advocacy work in Bangladesh.

point for people seeking to resolve disputes. After an assessment, the worker, if the case is appropriate, attempts to organize a *shalish*. These are often community events at which many people offer opinions about the situation.

The challenge for MLAA has been to strike a balance between eliminating the deep seated gender bias in the system and keeping the support of powerful members of the community in order to preserve it as a forum for women who realistically have no where else to go. While progress has been slow, change is taking place. MLAA has trained over 500 mediation committees with over 5,000 members in the districts and villages where it works. The members come from a cross section of society and, in break with tradition, include a significant, albeit still small, number of women.⁶⁸ At least one survey has indicated that a substantial percentage of women who have taken part in a *shalish* initiated by one of the NGOs has been satisfied with the result. MLAA and the other NGOs play a significant role in making the system work. “The inclusion of women and poor people within the *shalish* committee is dependent on organized groups of the poor and the support of local NGOs. Legal aid training provides an understanding of existing state laws to eliminate clear violations of pro-women and pro-poor laws. Of course what ultimately inhibits such violations is the capacity of local NGOs to take offending parties to court.”⁶⁹

Litigation

All of the legal advocacy organizations discussed here provide direct representation in court as a basic client service. BLAST, in particular, focuses primarily on litigation which it views as “part of a wider social welfare scheme that goes toward empowering the marginalised by making the legal system fair and accessible...[and] the creation of a cohesive, stable and democratic society, based on the rule of law.”⁷⁰ BLAST’s goal is to translate the lofty abstractions of empowerment and democracy into a living reality for the poorest people. By its own admission, the “legal victories are often

⁶⁸ *MLAA Annual Activity Report, 1996-97*, pg. 18. As of 1997 739 of the 4392 village level and 170 of the 814 central level mediation committee members were women.

⁶⁹ *Quest for Local Level Justice, supra.* at 17.

⁷⁰ *Annual Report 1998, Bangladesh Legal Aid and Services Trust*, pg. 5.

small – a few thousand taka of maintenance from a wayward husband or ex-husband; defending the accused in petty theft or assault; getting them out on bail; suits for unpaid wages or illegal termination; some relief for false promise of marriage and resultant pregnancy; endless hours of trying to mediate disputes between husbands and wives, and so forth.”⁷¹

Yet it is precisely these small victories that not only make the crucial difference for the immediate clients, but also make it possible for wider change. The legal awareness and mediation work done by BLAST and the other organization is effective, in part, because of a growing belief that redress is available if matters cannot be settled without litigation. Similarly, policy advocacy, whether through legislative or administrative lobbying or public interest litigation, is often based on patterns of abusive conduct identified through the cases of hundreds of individual clients. Groups of poor people are emboldened to take action on their own behalf if they have confidence that legal representation is available to protect members from retaliation.

To really make a difference, of course, individual legal aid must be more widely available. BLAST has expanded considerably in the short space of 5 years. It has been able to do this because of active involvement of leading members of the bar and a reputation for high quality work and a real commitment to clients.⁷² But it is clear that for BLAST, MLAA, BNWLA and ASK cannot meet the substantial need for direct individual representation without increased and stable financial support.

Some recent comments about NGOs in a World Bank report, while directed at some of the best known organizations, apply with equal force to the legal advocacy NGO's: “Bangladesh's NGOs are a unique, vital resource for faster poverty reduction, and more needs to be done to support partnerships with them. Bangladesh is a world leader in innovative NGO programs.”⁷³

⁷¹ *Id.* at 56.

⁷² Interview with Stephen Golub.

⁷³ *Bangladesh: From Counting the Poor*, *supra*. at para. 9.

C. Cambodia

The task of creating a justice system in Cambodia is overwhelming. Under the Khmer Rouge approximately 80% of all the people who worked in the justice system were killed.⁷⁴ Of the 545 judges in the country in 1975 all but 4 died under the regime.⁷⁵ Law books were destroyed and the buildings that housed the courts and law school were put to other uses. There was virtually no one and nothing left of the legal system.

While the current Cambodian constitution establishes a liberal democratic structure, the justice system does not function as an independent force for the rule of law. The very concept of an independent judiciary is not well understood. Lack of legal training for judges, corruption and lack of trained lawyers make the situation worse.⁷⁶ The 1997 coup jeopardized what progress had been made. “To combat the potential of the courts becoming solely political weapons and to overcome inadequacies of the legal system, strong advocates are necessary. Human rights groups have identified abuses that require access to civil (non-criminal) remedies in court as an area of need. The continuing availability of advocates specializing in civil law is essential to strengthen the ability of Cambodia’s legal system to respond effectively and provide equal protection of the law.”⁷⁷

In the mid-1990’s several organizations were established to respond to the need for vigorous advocacy for the poor and disenfranchised in Cambodia.

⁷⁴ *International Human Rights Law Group’s Cambodia Defenders Project*, pg. 1 (On file with author)

⁷⁵ *In the Killing Fields, Even the Future Died: The Khmer Rouge Legacy*, New York Times, January 10, 1999.

⁷⁶ At present there are only about 150 practicing lawyers in the country, of whom about 80 are in Phnom Penh. Eight of the country’s 22 provinces have no lawyers at all. There are about 160 judges and prosecutors. Interview with Ang Eng Thong, President, Bar Association of the Kingdom of Cambodia.

⁷⁷ *Cambodia Defenders Project*, supra. at 2.

Cambodia Defenders Project

The Cambodia Defenders Project (CDP)⁷⁸ was established in 1994 with the “strategic objective to strengthen respect for human rights and rule of law in Cambodia by representing the poor and vulnerable in legal proceedings, raising legal awareness in the community and advocating for sound legislation.”⁷⁹ While initially focusing on criminal defense, the organization began expanding in 1996 to become involved with community legal education and to work with civil society groups, particularly human rights NGOs.

Through its work the CDP recognized the significant obstacles encountered by women in cases related to land disputes, contracts, and divorce. The vast majority of litigants, a substantial number of whom are women, are not able to pay for legal services. In response the CDP established the Women’s Resource Centre (WRC) to educate women about their legal rights, to work in collaboration with other NGOs to provide services and to represent women in court, especially on domestic violence cases. CDP lawyers were successful in obtaining the first ever restraining order to prevent a battering husband from selling his wife’s property.

CDP now has 28 trained lawyers providing free legal assistance to indigent Cambodians. There are 5 offices around the country. CDP lawyers run training programs, provide legal education for prisoners, handle cases in the Appeals Court and Supreme Court, advocate for and comment on draft laws, conduct legal literacy programs, participate in community mobilization and work with civil society groups to explore legal tools to influence government. The guiding theme for all of CDP’s work is creation of an open, democratic civil society and nation based on the rule of law.

Legal Aid of Cambodia

“The Legal Aid Society of Cambodia (“LAC”) is a non-profit, non-governmental Khmer-administered association of lawyers dedicated to serving the legal needs of Cambodia’s

⁷⁸ The CDP is a project of the International Human Rights Law Group.

⁷⁹ Id. at 1 and interviews with Sok Sam Oeun, Executive Director and colleagues.

poor in all types of civil and criminal matters. Founded in 1995, LAC's mission is to assist in the construction of a more civil society and a more just legal system based on respect for human rights, equal justice and the rule of law, and to ensure that high quality legal services are made available to the most vulnerable segments of Cambodian society.”⁸⁰

LAC employs a staff of 57 in its 8 provincial and Phnom Penh offices. In 1998 over 1500 cases were handled by LAC lawyers and staff. They represent the women, children, labor workers, the poor and disenfranchised. Their aims are to:

- Offer high quality legal services in criminal and civil cases to indigent individuals at no financial charge;
- Make legal services available throughout Cambodia with a focus on rural communities where over 70% of the population reside;
- Promote and facilitate the establishment of a legal system which guarantees equal access to legal representation for all persons regardless of their economic or social condition;
- Increase public understanding of and respect for the law, the legal process, and the role of the legal profession;
- Work constructively with judges, prosecutors, the Ministry of Justice, the Cambodian Bar Association, police and prison officials.

LAC is in the process of forming specialized units to deal with women's rights, children's rights, labor workers rights, prisoner's rights, a unit to combat the burgeoning trafficking in women and commercial sex workers, AIDS and HIV. “Cambodia is basically beginning from ground zero. This poses simultaneously, both overwhelming problems and tremendous opportunities and challenges to get in at the ground level and implement legal and social change at the most basic level.”⁸¹

⁸⁰ *About Legal Aid of Cambodia*, <http://www.laoc.org/about.htm> and interview with Chhoeun Sokha, Director.

⁸¹ *Id.*

Circumstances in Cambodia

It is far beyond the scope of this paper to give a description of the political, economic and social circumstances of Cambodia, but for purposes of examining the role of legal advocacy NGOs, a brief mention of several pervasive problems is necessary. Violence, particularly against women, is widespread and, as described in a highly regarded 1994 study, “the intensity of violence perpetrated against many women in breathtaking... Women suffer severe and unrelenting beatings, including punching, kicking, hair pulling, whipping with ropes, bamboo canes, metal rods and cords, immolation, rape, stabbing and gunshots.”⁸²

Pervasive corruption often leaves victims of violence with no place to go for protection. In a recent case the family of the 15 year old victim of gang rape sought help from the police. Instead of prosecuting, the police and the local chief competed to see who could “settle” the case. The result was the perpetrators – sons of powerful local officials – paid about 200 dollars US, half of which went to the police, some to the chief and a small amount to the family. There was no prosecution and the young men went on to rape again.⁸³

Land ownership is a serious and worsening problem. “Land disputes are prevalent in rural areas. Land title, deeds, and documentation were all lost during the Khmer Rouge period because all forms of private ownership and property were abolished. With the steady influx of foreign investment, the rural poor who have been working the land for years now occupy valuable real estate. Foreign property developers in conjunction with corrupt local authorities are conspiring to relocate entire communities.”⁸⁴

These are only a few of the problems Cambodians are facing as they try to rebuild their society, but they demonstrate that some of the most significant economic and social

⁸² *Plates In A Basket Will Rattle – Domestic Violence in Cambodia*, Zimmerman and Sar, Project Against Domestic Violence, 1994.

⁸³ Interview with Eva Galabrau, Director, Cambodian League for the Protection and Defense of Human Rights (Known as LICHADE – its acronym in French.)

⁸⁴ *About Legal Aid of Cambodia*, Interview with LAC Lawyer, Ms. Yim Simene, <http://www.laoc.org/interviews.htm>

problems are exacerbated by the lack of proper laws and the means to enforce those laws. On the positive side, these problems have received a substantial amount of attention from emerging civil society organizations. The Project Against Domestic Violence provides education for government departments, NGOs, the police and school teachers, does general awareness training through leaflets, programs and street theater and offers direct service to victims.⁸⁵ The Cambodia Land Study Project has organized over 20 groups to develop land reform legislation.⁸⁶ The Cambodian Human Rights Task Force, in conjunction with member groups including LICHADO (see note 78), conducts awareness programs, trains advocates and supports legal assistance to victims.⁸⁷ The Women's Economic and Legal Rights Program works with poor women seeking to negotiate the complex, government-regulated market system in Phnom Penh in order to support their families by selling vegetables.⁸⁸ The Urban Sector Group works with squatter communities on issues of education, sanitation, savings and credit programs, public safety and participation in development.⁸⁹

More generally Cambodians are engaged in a valiant struggle to bring law back into society. As just one indication of that, the Community Law and Democracy Project, run by the University of San Francisco offers rigorous courses in constitutional law, contracts, property law, labor law, disability rights and the law of marriage and the family. Although it is not a degree program, and requires hard work by the students, most of whom work full time, the courses are all fully enrolled. In fact the school is regularly adding courses and sessions.⁹⁰ People want to know the law and make it something real in daily life. In the words of Ang Eng Thong, President of the Bar Association of the Kingdom of Cambodia, people are "thirsty for justice."

⁸⁵ Interview with Sar Samen, Director

⁸⁶ *Where Has All the Land Gone? – Land Rights and Access in Cambodia, Vol. 1*, Oxfam, Great Britain, 1999, pg 27.

⁸⁷ Interview with In Vuthy, Director and Sun Sothy, Program Trainer.

⁸⁸ Interview with Sin Kim Sean, Program Officer.

⁸⁹ Interview with Chan Monnyrath, Program Officer

⁹⁰ Interview with Janet King, Program Director and colleagues.

The Challenges Ahead

LAC and CDP are emerging organizations operating in extremely difficult circumstances. Not only do they have to develop their own organizations, train lawyers in basic skills and develop a secure funding base, they must take on extremely serious problems for their clients in an often corrupt and hostile environment where the law is inadequate and the legal system unresponsive. Nonetheless, they are making a critical contribution to the effort to bring the rule of law back to Cambodia.

None of the major reform efforts currently underway – land reform, stopping domestic violence, reducing corruption, improvement of slum conditions, opening employment opportunities in markets, improving safety for garment factory workers – will succeed without the creation of just laws and a legal system with the capacity to enforce those laws. CDP and LAC operate at the very center of legal reform. They see the clients. They are in the courts. They know what is wrong with current laws. They know the shortcomings of the judicial system. They have the capacity to formulate new answers to complex problems.

For example, both organizations are heavily involved in representing clients who have been dispossessed from their land. They have been involved in court cases securing the rights of thousands of poor families threatened by powerful interests. Most importantly, they have gone beyond that by taking that experience and applying it to the work of the Cambodia Land Study Project to develop a new land law for the country. While success is not assured, an unprecedented coalition of government and civil society actors is actively considering adoption of a reform proposal developed, in part, on the basis of the legal work done by CDP and LAC.⁹¹

Similarly, while law alone cannot eliminate domestic violence, the legal system is an essential element of any remedy. “Divorce is the most prevalent official form of relief sought by women attempting to escape violent marriage. Non-governmental, as well as government organizations have noted that women request legal assistance more often than any other type of help, including shelter, health or financial aid.”⁹² While the

⁹¹ Interview with Shaun Williams, Director, Cambodia Land Study Project.

⁹² *Divorce and Domestic Violence in Cambodia*, Project Against Domestic Violence, 1998, pg. 1.

Project Against Domestic Violence takes the lead in offering direct services and developing policy, the legal support for their work comes from CDP and LAC.

Both organizations are undergoing a process through which they become more fully Cambodian directed and managed organizations. Each has a long term plan for improving and expanding services. Each has a management development plan. While it will take more time for them to reach the level achieved by their counterparts in Bangladesh and South Africa, they have made considerable progress in creating organizations that can fulfill the desire of the Cambodian people for justice.

D. Ecuador

As of the early 1990's thirty-five percent of the Ecuadorian population was living in poverty and another seventeen percent were marginally above the poverty line. While the government developed a number of social programs to improve the quality and access to basic services, lack of strong economic growth and weak public institutions limited the effectiveness of programs. In an effort to modernize the economy through private sector development a number of public sector structural reforms were undertaken, among them reforms to strengthen the legal and judicial system. The objectives of the judicial reform effort were to: 1) increase efficiency, effectiveness and transparency of the judicial process; 2) improve the infrastructure; 3) expand the use of ADR within the court system; 4) improve access to justice by the public and women in particular; and 5) improve court reform and research and legal education. The long range goal is to create an effective and efficient judiciary which will contribute to both economic growth by facilitating private sector activity and to social welfare by guaranteeing the basic rights of all citizens.⁹³

One clear goal of the reform project is to improve the economic circumstances of women. "As in most countries the burdens of poverty in Ecuador are borne most pervasively and with the greatest negative effects by single women with children... Their security is threatened daily, never being sure that their needs for food, clothing and shelter will be met Such desperate lives make every day life a manifest struggle. The

⁹³ *Staff Appraisal Report: Ecuador Judicial Reform Project*, World Bank Report No. 15385 EC, June 24, 1996 at 1-3.

need to care for their children frequently makes gainful employment by them impossible... Opportunities for education, training and other means of advancement are few... In some cases when these women are entitled to support from the fathers of their children there are no means of securing these entitlements. The law that exists to protect these women and their offspring is rarely accessed by them because they do not have the economic means to secure their legal rights. There is no well-developed, specialist legal service that responds to the real social, economic, personal and legal needs of this segment of the population.”⁹⁴

In response to these problems Legal Services Pilots for Indigent Women were established to provide legal and other complementary services to women and their children to help them secure legal entitlements and to begin to take action to improve their socio-economic positions. A very comprehensive program was developed for these pilots. They are intended to: Assist women in using the law to obtain financial support from their children’s fathers, to maintain physical and economic security, to secure food, shelter and clothing, to resolve employment related disputes and to obtain redress from government agencies; gather data on conditions of women applying for legal representation; engage in legal and socio-legal research aimed at better representing indigent women; disseminate the results of research through publications, workshops, seminars and other means; establish a network of private practitioners available to provide free legal services; work closely with other service providers and women’s groups; participate in legal and court reform efforts; and, develop a model for similar legal services organizations.⁹⁵ Clinics are now operating in Quito and Guayaquil. During the short time they have been in operation the two clinics have received a heavy demand for services. In a six month period over six thousand people got the benefit of legal services. Assistance was provided regarding family matters, protection from violence against women and children, worker’s rights and government benefits. Other forms of assistance, including psychological counseling, were offered and activities were coordinated with other agencies. Investigations were conducted. Legal education programs were offered to community groups and broadcast on radio and television.

⁹⁴ Id. at Annex 11 at 97.

⁹⁵ Id. at Annex 11 at 98.

Based on the success of these offices plans are underway for establishing two more clinics.⁹⁶

E. Francophone Sub-Saharan Africa

In March 1998 the Association of Women Jurists of Benin, with substantial support from the World Bank, convened a conference on gender discrimination in Francophone Sub-Saharan Africa.⁹⁷ Participants emphasized that gender discrimination is still the social norm, especially in education, health, nutrition as well as social, political and economic spheres. This discrimination is rooted in law, religion and custom. As an example of the degree to which women were disenfranchised by law, one speaker cited the 1931 Customary of Dahomey – the former organic constitutional law – which in article 127 referred to the fact that: “A woman has no legal rights. Only in practice is she given some importance. She is often in charge of the administration of the household and can create some savings through the sale of her items. She is part of a man’s property and heritage.”⁹⁸

The problems highlighted by the Togolese delegation were representative of those identified in most of the countries represented at the conference. “1. Women and their rights. In spite of the progress so far in implementing gender-responsive legislation and the promotion of women’s rights, there are still many obstacles, i.e. forced and early marriages for women, especially in the rural areas, customary marriages, impunity of the husband due to negligence of his responsibilities to the family, and the husband’s right to oppose his wife’s professional choice. 2. At the professional level, despite the constitutional provision of equal work opportunities, there are numerous acts of discrimination against women. In the civil service, the man-woman ratio is 3:1. The situation is even worse in the para-public and private sectors. 3. Women and power. Women are poorly represented in political and decision making spheres at both national

⁹⁶ Interview with Maria Dakolias, Project Manager, Ecuador Judicial Reform Project.

⁹⁷ Participants came from 12 countries: Benin, Burundi, Burkina Faso, Cameroon, Cote d’Ivoire, Guinea-Conarky, Mali, Niger, Rwanda, Senegal and Togo. *Gender Discrimination in Francophone Sub-Saharan Africa: Women’s Status at the Dawn of the XXIst Century*, Cotonou, March 1998, World Bank (On file with author)

⁹⁸ *Id.* at 5.

and local levels. 4. Women and education. The general crisis in the educational sector has worsened the condition of women, with a poor rate of school enrollment for girls/women in both formal and professional/vocational training. 5. Women and productions factors. According to the tradition, the woman has no access to land or property. They can only cultivate land belonging to men. In addition, women do not have easy access to bank loans due to their poor creditworthiness. Loans granted to them by NGOs and cooperatives are grossly inadequate.”⁹⁹

Each of the 12 countries was assessed on a number of dimensions related to the legal status of women, including the need to draft gender-responsive legislation and/or amend existing legislation, the need to promote legal literacy initiatives and the need for strengthening strategic alliances between governments and NGOs to implement and coordinate initiatives to improve the social status of women. In almost all countries there was a high need to take action in each of these areas.

For example, the Association of Women Jurists of Burkina Faso is carrying out or proposing literacy and public information programs aimed at promoting the Personal and Family Code, programs for legal advice to individual women, training programs for legal technicians and the establishment of judicial information centers and the opening of Legal Aid and Information Centers.¹⁰⁰

Conference participants identified legal literacy as one of the major strategies to be used to implement changed legal norms, address socio-cultural discrimination and the effects of religion and tradition, and promote health, education and participation in the economy. Legal literacy was seen as key for problems ranging from early marriage, forced marriage, and female genital mutilation to those involving men preventing women from working, barriers to access to land and availability of credit. Establishment of legal aid clinics, including mobile clinics to serve rural areas, in association with legal and para-legal experts, was also described as an important method for advancing women’s rights.¹⁰¹

⁹⁹ Id. at Section 2. a.

¹⁰⁰ Id. at Section 2. a.

¹⁰¹ Id. at Section 3.

The use of legal aid clinics has its origins in a project conducted by the Justice Department of Canada starting in 1991. From the beginning the legal clinic project recognized the importance of combining legal advice with economic and social support and especially the importance of promoting empowerment and transformation by actively involving women from the community in the work of the clinics.¹⁰² Building on these efforts and carrying forward the recommendations of the conference in Benin, the World Bank has provided grants for institutional reform projects in Mali and Togo which, among other things, support legal literacy and legal aid program.¹⁰³ Funds under the Mali project are being provided to the Legal Aid Clinic in Bamako and to establish new clinics in Kayes and Sikasso.

The need to provide additional support for legal aid clinics is clear. Wherever they have operated, whether in urban areas or as mobile rural clinics, there has always been a heavy demand for their services. Yet the very existence of these clinics is depends heavily on the substantial volunteer efforts of a new generation of women lawyers operating with the financial and moral support, direction and encouragement of their more senior colleagues. While volunteerism is a critical part of legal services everywhere, the organizations will not be able to realize their true potential without more assistance from the international community. In recognition of the need to provide more legal help to poor women and building on the work that has been done thus far, plans are underway to conduct projects similar to the ones in Mali and Togo throughout Francophone Sub-Saharan Africa.¹⁰⁴

F. China

There has been a dramatic expansion of legal services in China in the last eight years or so. The concept of free legal services has existed for a long time, but idea of a

¹⁰² *Network of Legal Aid Clinics for Women in Francophone Africa*, Information Sheet Number 3, Gender Team, Africa Region, The World Bank, June 1993.

¹⁰³ *Institutional Strengthening of the Women Gender Unit – Togo – Request for IDF Financing and Institutional development of the Ministry for the Advancement of Women , Children and the Family and collaborating NGOs in promoting legal reform and legal literacy – Mali – Request for IDF Financing* (On file with author)

¹⁰⁴ Interviews with Elizabeth Morris-Hughes and Francesco Tornieri, World Bank .

formal legal aid system is relatively new. The number of legal aid centers¹⁰⁵ quadrupled between 1997 and 1998 to 180 centers.¹⁰⁶ “A number of policies and goals appear to be responsible for the Ministry of Justice’s sudden embrace of legal aid. Expanding legal aid meshes with recent central government attempts to address income inequalities... The growth of legal aid programs is consistent with efforts to boost the importance of law in Chinese society, and in particular with efforts to pressure local government to obey national laws. Ministry of Justice officials also view legal aid as a characteristic of most developed legal systems.”¹⁰⁷

Quite apart from the new formal legal aid system, China has an extensive network of “basic legal services workers (*jiceng falu fuhuzhe*, also referred to in English as “rice-roots legal workers”). China has more than 120,000 of these workers operating out of more than 35,000 legal services offices, mostly in rural areas townships. Approximately 4,000 of these workers are lawyers, the rest are non-lawyers with very little legal training... In 1996, basic legal services workers reported representing parties in 491,700 civil cases, as well as in 1.1 million civil disputes that did not involve litigation. Additionally...workers reported providing legal consultation in more than 6,000,000 matters in 1996.”¹⁰⁸

Chinese legal aid clinics based in universities have begun to engage in public interest law or “cause lawyering”¹⁰⁹ The Beijing University and Wuhan University clinics have filed class action lawsuits and suits against government agencies. The Center for Women’s Law Studies and Legal Services has represented women in difficult and high-profile cases with the explicit goal of calling attention to problems with the laws and their enforcement. The cases done by these clinics include matters such as back pay

¹⁰⁵ Unlike the other organizations discussed in this paper, the Chinese legal services programs are not NGOs. They are included to illustrate that important legal advocacy can be done even where there are greater limits imposed by government.

¹⁰⁶ *A Proposal to Convene a Practitioners Forum: The Rule of Law, Human Rights and Legal Aid in Southeast Asia and China*, The International Human Rights Law Group and the Asian Human Rights Commission at 2. (On file with author)

¹⁰⁷ Liebman, *Lawyers, Legal Aid, and Legitimacy in China* at 7. (Unpublished paper on file with author)

¹⁰⁸ *id.* at 15-16. (footnotes omitted)

¹⁰⁹ “Cause lawyering”, a term not universally accepted by lawyers involved in public interest work, has been defined as “lawyers’ work that is directed at altering some aspect of the social, economic and political status quo.” *Id.* at fn. 49 citing Ellman, *Cause Lawyering in the Third World in Cause Lawyering* (1998)

for female migrant workers, challenges on behalf of women forced into early retirement and disputes between women and local officials carrying out China's one-child policy.¹¹⁰

The cases done by the university-based clinics have been done in a public way linked to broader calls for change. They have sought press coverage. They have issued reports criticizing courts and government agencies for corruption, inefficiency and violations of human rights. In doing so, they have taken care not to go too far and have not challenged central government. Their ability to do what they have done stems in part from the availability of foreign funding and ties to western scholars and lawyers.¹¹¹ While both these centers and those funded directly by government are limited in what they can do, they "at the very least... even when not challenging the status quo create the foundations of a protective apparatus for the poor and disenfranchised within the constraints of the current Chinese justice system."¹¹²

G. Croatia

Human rights and legal services organizations in Croatia are working to alleviate the poverty, suffering and stress following the cataclysmic war from 1991-1994. Five organizations provide, among other things, legal services to individuals in an effort to rebuild the country. They are: the Centre for Peace, Non-Violence and Human Rights – Osijek, the Serbian Democratic Forum, the Dalmatian Solidarity Council, the Centre for Peace, Legal Advice and Psycho-Social Assistance, and the Association for Peace and Human Rights in Baranja.

The work of the advice center in Vukovar provides a good illustration of the type of work done by these organizations. At a critical stage of the process of peaceful reintegration of different regions into the Republic of Croatia the office advised thousands of clients on matters of status rights, identification papers, birth certificates, citizenship documents, and diplomas. Many people needed advice regarding pension rights. Workers were assisted with problems of unemployment, back pay, re-employment rights and employment contracts. Those unable to work sought help regarding procedures for obtaining rights to public welfare. People who had been

¹¹⁰ *Id.* at 27.

¹¹¹ *Id.* at 27-31.

displaced or had left their homes were advised on property issues including rights of property return, mortgages, reconstruction programs, legal status of property, tenancy rights, inheritance rights and procedures for resolving disputes about property.¹¹³

Similarly, the Centre for Peace, Non-Violence and Human Rights provides “legal advice and aid, mediation, campaigns and education for citizens on human rights, freedoms and democracy. The legal service is, through office and field work, involved in the process of peaceful integration of Baranja, Eastern Slavonia and Western Sirmium – providing legal aid in realisation of status, gained and proprietary civil rights, and in the realisation of the right to return and reconstruction.”¹¹⁴ Each organization has similar purposes and goals to those of the Dalmatian Solidarity Council (DOS): “promotion and protection of human rights by providing legal services and support to individuals and groups in the Republic of Croatia regardless of their nationality, religious, gender or other belongings. Through its activity DOS contributes to the development of democracy and strengthening the legal state.”¹¹⁵

III. Lessons Learned

The overall lesson from these experiences is that legal advocacy organizations make a difference in the fight to alleviate poverty. The claim is not, of course, that legal action alone ends poverty, but rather that people can obtain a greater base of stability in their lives and new opportunities can be created. The *basti* residents in Dhaka were better able to pursue a livelihood, take part in training and send their children to school because they stopped their forced removal through legal action. Women who obtain protection from harm and maintenance payments not only have better lives themselves, they have the chance to raise their children free from the crippling effects of violence to become educated, productive members of society. People who gain title to land are in a better position to contribute to the agricultural economy. Consumers who understand they can seek redress in small claims court are less likely to be further impoverished by unscrupulous merchants. Factory workers who have the wherewithal to force

¹¹² *Proposal to Convene a Practitioners Forum*, *supra*, at 2.

¹¹³ *Bulletin: August '97 – August '98*, Centre for Peace, Legal Advice and Psycho-Social Assistance, Vukovar, September 1998 at 4. (On file with author)

¹¹⁴ *Annual Report '97*, Centre for Peace, Non-Violence and Human Rights, Osijek 1998 at 10.

¹¹⁵ *Dalmatinski Odbor Solidarnosti Fact Sheet* (On file with author)

government agencies to enforce health and safety regulations reduce the risk of death and debilitating injuries, thereby improving their own lives and avoiding the social cost of caring for the disabled.

The question is not whether legal education and advocacy make a difference, but rather how to enable poor people to establish and assert rights. The answer is that almost any form of legal assistance is of value, but comprehensive services from independent organizations are best. Real change requires skilled advocacy. Whether that advocacy is done by the poor themselves or by those acting with them or for them, it takes knowledge of rights and the skill to marshal the facts and present legal claims. Change requires an understanding of the existing power structures and culture. Change requires the ability to recognize points of leverage. Poor people are ultimately the only ones who can change their own lives, but change can come sooner with assistance from people and organizations willing to work to achieve the aspirations of the poor themselves.

The importance of legal advocacy organizations is shown by the high demand for their services, increasing support from the donor community and, ultimately, by the results of their work.

A. The High Demand for Legal Advice and Representation is Strong Evidence of the Value of Legal Advocacy Organizations

One good answer to the question of whether civil legal services organizations make a difference is that poor people certainly think they do. All legal services organizations are faced with demand that far exceeds their capacity. Whether it is the hundreds of people lined up at eight o'clock in the morning outside the Johannesburg Legal Aid Bureau or the thousands who call Greater Boston Legal Services¹¹⁶, the crowds seeking help from the Bamako Legal Aid Clinic¹¹⁷ or the heavy demand for services from the Legal Services Pilot Programs in Quito and Guayaquil, there is abundant evidence that individual poor people will go to great lengths to get legal advice. They know it makes a difference in their income, their housing, in protecting them from abuse, in access to credit, ability to get free of bad marriages, ability to get redress from unfair

¹¹⁶ Authors personal observations.

¹¹⁷ Interview with Francesco Tornieri, World Bank.

trade practices, to get relief from debt and countless other matters of fundamental importance.¹¹⁸

B. The Supply Side Is Increasingly Recognizing the Value of Legal Services

In 1992 an assessment was done of rule of law programs in Argentina, Columbia, Honduras, the Philippines, Sri Lanka and Uruguay. The study was conducted over an 18 month period and involved extensive and intensive review of the work in each country. The purpose of the project was to assess donor experience with rule of law programs, develop criteria for initiating such programs and to propose a strategic framework for setting priorities and designing programs. The core question was whether rule of law programs produced “better justice”; described as a justice system with the following attributes: legitimacy in the perception of citizens; accountability; constant attention to due process; particularly in the area of human rights; autonomy from control or manipulation; equity or fairness for all citizens; and effectiveness.

The report examined several strategies for promoting the rule of law including “access creation”, i.e. opening up the justice system to everyone.¹¹⁹ Better access is critical “because poorer people lack knowledge of the law, resources to hire lawyers, and personal connections to the upper strata, they essentially are excluded from the from the justice system and are helpless in fighting eviction proceedings, arbitrary arrests and the like.”¹²⁰ This is especially the case with rural and low income urban populations.

¹¹⁸ Perhaps the most common challenge facing legal services organizations is setting priorities in the face of heavy demand. This is both a matter of substance and decisions about the type of service to provide. As the review of work above indicates, the range of civil legal problems is vast. While housing and family matters are often at the core of legal services work, issues like employment, disability, social welfare benefits, education, immigration, health care access and other basic needs are also strong contenders for organizational time and energy. No matter how narrow the focus of a legal organization it still must decide what services to provide to the always overwhelming number of people who seek help. The choices range from general community legal education (legal literacy), brief advice and short term intervention through representation in court to broader reform efforts such as long term group representation and class action or test case litigation. Legal services organizations face a constant challenge in deciding what service to provide to what individuals.; the point being that in all likelihood there has never been a legal services organization with a shortage of clients. People vote with their feet – they know law matters.

¹¹⁹ *Weighing in on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs*: USAID Program and Operations Assessment Report No. 7, February, 1994. at 1 and 11-12.

¹²⁰ *Id.* at 35.

The report concluded that while legal literacy programs, paralegal programs and traditional individual legal aid were all helpful, legal advocacy NGOs were the most effective at promoting access. “At the proactive end of the spectrum, the final access strategy involves providing assistance to legal advocacy NGOs representing groups such as ethnic or tribal minorities, bonded labor, urban squatters, or agricultural tenants, who have traditionally operated from a position of weakness in defending their legal rights. Advocacy NGOs frequently use lawyers who seek out and engage in class action, public-interest suits and test cases on behalf of groups who suffer from common infringement of their rights. In addition these NGOs sponsor legal literacy and paralegal programs, which demystify the law and create self-reliant legal capabilities with the communities to reduce their dependency on outside legal expertise... legal advocacy strategies differ in kind rather than degree from other access activities. Legal advocacy strategies are proactive in that lawyers frequently take the initiative to identify disadvantaged communities or groups experiencing a common injustice and pressuring for redress through existing laws or, if needed, through lobbying to change or add new laws.”^{121 122}

The overall conclusion was that “legal advocacy NGOs represent perhaps the most promising variant of all the access strategies. Not only do they aggressively use the law to assist disadvantaged groups, their advocacy and lobbying activities also make them an important constituency for reform in general. In this sense, legal advocacy NGOs frequently serve a dual purpose of straddling access and constituency building strategies... they assist coconut and sugar sharecroppers, urban squatters, and hill people seeking to protect their rights in ancestral lands... A range of advantages and benefits sets legal advocacy apart from other access strategies... Legal advocacy NGOs can be highly effective in: extending benefits widely... achieving structural change... effecting targeted outreach... pursuing integrated strategies... empowering citizens...building constituencies...[and] enforcing accountability.”¹²³

¹²¹ *Id.* at 37.

¹²² The Philippines was cited as having the widest range of access strategies. With Ford Foundation and Asia Foundation funding the activities included training paralegals, conducting legal literacy campaigns, providing legal aid through law students and young attorneys working on a pro bono basis and supporting legal advocacy NGOs. In addition there was significant support for ADR programs. *id.* at 37-38.

¹²³ *Id.* at 40-41.

Current judicial reform projects supported by the World Bank include funding for legal advocacy organizations to promote access to justice. In addition to the project in Ecuador already discussed, two major World Bank projects in Guatemala and Bangladesh are in the advanced stages of planning. Similarly USAID has committed to a judicial and legal capacity building project in Bangladesh which includes significant support of legal advocacy NGOs.

The Guatemalan Judicial Reform Project supports important objectives of the 1996 Peace Accords to enable Guatemala to make the transition from 36 years of war to peace. “It builds on the new consensus among the civil society, the Government, the Supreme Court of Justice and other sector institutions, that judicial reform is essential to promote post-conflict reconstruction, social stability and economic growth... The development objective of the proposed project is to create a more *effective, accessible* and *credible* judicial system that would foster public trust and confidence in it and improve consistency and equity in the application of the law.”¹²⁴

The project is intended to “promote the establishment of social peace and economic development, strengthen the rule of law and democratic institutions, improve citizen security, improve respect for cultural and human rights...[and] enhance access to justice for marginalized segments of society including women, children, small businesses and other groups in the interior of the country.”¹²⁵ Among the means to accomplish these goals, the project includes a component to promote “partnerships with donors, non-governmental organizations and other participants, for developing broader participation in access to justice programs such as free legal assistance for the poor, access to justice for young people and women, analysis of costs of litigation and other related activities that will promote social reconstruction and trust in post war conflict areas.”¹²⁶

The World Bank project under development in Bangladesh is intended to overhaul the country’s legal framework for commercial activity and its civil justice system in recognition of the significance of a well-functioning legal and judicial system

¹²⁴ *Project Appraisal Document on a Proposed Loan in the Amount of US\$33 Million to the Republic of Guatemala for a Judicial Reform Project*, Report N. GU-18404, September 28, 1998 at 2.

¹²⁵ *Id.* at 8.

¹²⁶ *Id.* at Annex 2, pg. 6.

to the financial, commercial and industrial life of the nation.¹²⁷ This project gives particular emphasis to the need to improve access to justice for women through legal literacy and legal services programs. “Empowerment of women must be accompanied by the development of proactive institutions of the State. So far as the legal and judicial system is concerned, this is pivotal in advancing the legal rights of the underprivileged, including women... With empowerment, especially through the availability of micro-credit facilities women are taking to ‘non-traditional’ forms of economic activity. As their socio-economic position improves, they are likely to aspire to a better status, both within and outside the family. To achieve this, they will lean more heavily on the available legal instruments and use these to enhance their legal status. As they enter public life, their interaction with the judicial system will increase and will extend more and more to domains outside the family. The judiciary will therefore play a vital role in the empowerment process.”¹²⁸

To address the issues of women’s access to justice, the Bangladesh project will provide gender sensitivity training, promote affirmative action to increase the number of women lawyers and judges, reduce court access costs, reform discriminatory legislation, expand and improve ADR mechanisms, support legal literacy and public awareness programs and work to significantly expand the availability of legal aid. On the last point, the project will build on the work of Ain O Salish Kendra and its sister organizations to move from a more traditional type individual legal aid to even more of a legal advocacy NGO model. Support will be provided to enable more use of advocacy to obtain landmark court rulings on behalf of women, to use class action and public interest litigation for systemic change, to provide training for legal aid lawyers, and to establish legal aid research facilities and expand libraries. In addition the state-sponsored legal aid scheme will be revised and expanded.¹²⁹

USAID is also funding several projects in Bangladesh to enhance participation in local decision making¹³⁰ and for judicial and legal capacity building.¹³¹ Both of these

¹²⁷ *Bangladesh: A Program of Legal and Judicial Capacity Building*, World Bank Document, at 1.01.

¹²⁸ *Id.* at 102.

¹²⁹ *Id.* at 102-108.

¹³⁰ USAID PROJECT: *Broadened Participation in Local Decision Making and More Equitable Justice, Especially for Women*, Project Number 388-SO03, USAID Congressional Presentation, FY1999.

projects include substantial support for legal services activities. The participation project included a specific focus on public interest litigation., resulting in the filing of 15 class-action suits in the first year of the project. One of these cases established that a public interest organization may represent a class action lawsuit, thereby significantly expanding access to justice for the poor.¹³² At the same time the project encourages NGOs to provide legal awareness training on family law, marriage law, and property/inheritance law. The goal of these projects is to enable the approximately 50 million socially and economically disadvantaged poor Bangladeshis to exert their influence over public policy decisions and the allocation of public resources through understanding of their rights and increased access to redress.¹³³

C. The Services Provided by Legal Advocacy NGOs Do In Fact Promote Change

Ultimately the question is whether the services actually provided by legal advocacy organizations make a real and lasting difference in the lives of poor people. They do.

- *Legal Advocacy NGOs Provide Significant Support to Efforts to Promote Socio-Economic Rights*

Legal advocacy NGOs deal with basic issues: family relations, income, employment, housing, health, safety, and education. They start with the interests of poor people as defined by poor people. They deal with the problems individually and systemically. By going about their work in this way they are able to help make lasting and significant social and economic changes. The sum total of their work is far greater than the number of evictions they stop or the amount of maintenance payments they obtain for poor women. They help create a culture of rights in which community standards are raised, so that it is no longer acceptable for a man to unilaterally declare an oral divorce and leave his wife and children with nothing, where a municipal government cannot bulldoze a shanty town with impunity, where factory owners cannot assume government safety officials will simply ignore hazardous workplace conditions, and where poor people begin to believe that rights are not just something that exist for others.

¹³¹ USAID PROJECT: *Bangladesh-Judicial and Legal Capacity Building*, Project Number BDPE44810, February 18, 1997.

¹³² *Broadened Participation*, *supra*. at 1-2.

¹³³ *Id.* at 3.

- *Legal Advocacy NGOs Provide Poor People with the Information, Advice and Representation They Need to Have a Voice in the Development Process*

The development process is complex. Decisions often involve multiple bureaucracies, elaborate legal procedures and protracted negotiations with a bewildering array of lenders and funders. Legal advice and representation assists poor communities so they know who makes decisions, how they are made and what can be done to influence the process. The experience of the residents of Oukasie – the South African township that was threatened with forced removal at the start and has now become a thriving community with schools, health care and jobs – is an excellent example of how legal services organizations can assist poor people in becoming true partners in development.

- *Legal Advocacy NGOs Assist Women in Reforming the Law to Remove Barriers to Their Full Participation in Economic Development*

That the law plays a major role in oppressing women is beyond debate. Recognition of that fact has been far too slow in coming, but it is now quite widespread. There is also recognition that women can use the law to change their circumstances, not only to get relief from discriminatory provisions of the law, but from customs and practices – religious and otherwise – which have been used to deny them fundamental human rights. Change in the laws and enforcement of new laws are, of course, not enough, but they are necessary. Legal services organizations are a critical part of any strategy to make lasting change.

Legal literacy campaigns are used to enable women to know their rights. Support, through groups and community institutions, is offered to protect women from retaliation when they do assert their rights. The institutions which enforce oppressive laws – whether community elders using traditional dispute resolution practices or the police or the courts – are challenged to adapt their ways to conform to basic principles of fairness and protection of fundamental rights. Substantive laws are eliminated, adapted or replaced through lobbying or public interest litigation. Oppressive practices are challenged through mobilizing communities through legal education or court class action litigation.

- *Provision of Legal Services Promotes Access to Justice as a Means to More Equitable Economic Development*

Achieving the goal of improved access for poor people, women, linguistic and cultural minorities and others facing barriers is not simply a matter of changing the courts. It requires educating people about their rights and providing them with the wherewithal to assert those rights. Legal services organizations address these issues not only by providing or supporting legal education, counseling individuals about their rights and representing some people directly, they also provide a force for changing the courts. They do this by educating the courts about the legal issues affecting the poor, challenging restrictive rulings of the lower courts and lobbying for improved procedures and substantive rules. Through this work they are, as concluded by the USAID study, the most effective tool for improving access and promoting the rule of law.

- *Legal Advocacy NGOs Provide Assistance in Countries Emerging from Conflict to Enable Redevelopment to Occur*

In at least four of the countries discussed above – South Africa, Cambodia, Guatemala and Croatia¹³⁴ – efforts are underway to rebuild and integrate societies following prolonged, deep, traumatic and lethal conflicts. In a very profound sense there is a need for justice to enable people to move beyond the horrors of the past. One way to provide justice is to create or restore civil society. It is regard to these efforts that legal services organizations have an important role to play.

Croatia provides one example of the type of work needed to be done. There are many basic legal claims to be resolved. Who has what rights to what housing? Are there rights to re-employment or unemployment compensation? Does the state have an obligation to pay a pension? On the face of it these seemly garden-variety legal questions may be important only to those directly affected. On a deeper level they must be resolved in a way that is just, and is seen to be just, to promote healing of deep rifts within society.

¹³⁴ Although Rwanda was simply listed as one of the Francophone Sub-Saharan African countries which are taking part in gender law reform efforts, there are programs underway in Rwanda that would justify including it on this list.

In Guatemala 36 years of war has left indigenous communities and other displaced people excluded from the economic and legal systems. Bringing those people into the mainstream of society requires a justice system that is effective, credible and accessible. The challenge is especially great given the linguistic and ethnic divisions in the country.¹³⁵ In Cambodia the genocide committed by the Khmer Rouge destroyed the legal system entirely. A system for enforcing human rights must be built from the ground up.

The LRC in South Africa demonstrates the crucial role legal services organizations can play in dealing with the complex legal messes left behind by authoritarian regimes. The organization worked on drafting the new constitution, sent staff to serve on the Truth and Reconciliation Commission, is testing the new rights through vigorous advocacy, provided expertise to the new government, is working to re-establish the rule of law, and is using its skills and experience to create a new policy framework for basic issues such land, housing, employment and education. At the same time they are working to counter the backlash against human rights that can occur in new democracies as a result of escalating levels of crime. Their work has had an impact beyond their borders, particularly in efforts to promote democracy throughout southern Africa.

In all of these situations it is imperative that the full range of strategies to promote development and the rule of law be used. Legal services organizations are especially well suited to the enormous task at hand because they start with the interests of the poor, both individually and collectively and utilize a wide panoply of techniques to promote lasting systemic change.

IV. The Way Forward

Poor people can use law to make a real difference in their lives, but only if they know about the law and have some capacity to change and use the law. Relatively small legal advocacy organizations can make a difference far out of proportion to their size, but

¹³⁵ The recent rejection of proposed constitutional changes which would have enhanced the rights of indigenous communities makes the need for access to justice within existing structures even greater.

they cannot do it without more support than is currently provided. Some practical steps are needed:

- *International Organizations Should Share the Experiences They Already Have With Supporting Legal Advocacy Organizations*

This paper has given a brief overview of a few examples of work being done by legal advocacy NGOs. Similar work is underway throughout the world supported by the World Bank, the Asian Development Bank and other regional development institutions, European, Canadian, Japanese, and American development agencies, the Ford Foundation, The Asia Foundation and other private donor organizations. Some support for legal services is provided as part of programs to promote gender equity, some is provided through the access to justice components of judicial reform projects, some is under post-conflict reconstruction efforts and some under the general heading of human rights. Even though there are many common elements to the legal services work being done in different places for somewhat different reasons, there does not appear to any coordinated exchange of information among donors regarding best practices, impact, scalability or the other factors which influence whether to support particular types of activities. Given the demonstrated value of legal advocacy for the poor, it would be beneficial to develop a repository of information.

- *Poverty Assessments and Country Assistance Strategies Should Address Legal Issues*

There is ample evidence that legal barriers impede equitable economic development. The work done by World Bank staff in Sub-Saharan Africa is but one example of how a thorough assessment can identify the role of law in preventing poor people – women in particular – from realizing their potential to contribute to social and economic development. As international donors are working with developing countries to assess poverty and develop strategies they should include an analysis of the barriers poor people face to controlling land, accessing credit, obtaining secure residential tenure, seeking redress through the court system, or participating in civic life without discrimination based on gender, religion, ethnicity or social status.

This analysis should not be limited to law-related projects such as judicial reform. For example, according to a recent report on the impact of natural disasters on developing

countries upwards of one billion people now live in “unplanned shantytowns”.¹³⁶ Projects that respond to the needs of people living in these unstable situations should not just address basic public health issues, they should assess the need for the type of assistance provided by Ain O Salish Kendra in the *bastis* in Dhaka. Bringing law to these communities helps promote the stability needed to deal with fundamental issues of clean water, sewage, health care and education. In the same way that environmental assessments have become a standard part of project development, legal assessments should be at least considered where relevant.

- *Communication Between Legal Advocacy NGOs Should Be Improved*

The World Wide Web and e-mail create the real possibility for legal advocacy NGOs to share information, discuss common problems and compare strategies. While every country’s legal system is different there are many similar elements. Even with vastly different systems, basic techniques for legal education, interviewing, counseling, negotiating and advocating for change are useful in most situations. Communication is of course already taking place to some degree. For example, the International Human Rights Law Group just conducted a meeting for legal advocacy organizations from China and 11 Southeast Asian countries to share information and develop skills. A similar event is being considered for Africa later this year.

Effective communication among such organizations, however, requires more than access to technology. Someone has to organize it. Participants must be recruited. Language issues must be addressed. Agendas need to be set. A modest amount of resources to address these issues could go a long way toward getting more and better legal services to poor people.

- *Standards for the Provision of Legal Services Should be Developed*

Experienced organizations such as Ain O Salish Kendra and the Legal Resources Centre have developed standards for how they conduct their programs, how they relate to clients, how they do their advocacy, how they train and supervise their staff members, how they raise money, and how they relate to other organizations, government agencies

¹³⁶ New York Times, June 24, 1999, pg. A11.

and courts. While these standards cannot be transferred in their entirety, particularly to newer, smaller organizations, they can provide a model. If more such organizations were in communication with one another, it would be possible to develop aspirational standards which would help set a direction for both the organizations themselves and guidance for those who provide support.

- *A Network of Support for Legal Services Organizations Should be Established*

Better communications and creation of standards should be seen as ways to establish an international support network for legal services organizations. At present there is no structured way for newer legal services organizations to learn from established organizations and there is no forum to develop substantive, strategic and management expertise. While the ideal would be to create new institutions to serve those purposes, perhaps modeled on those existing in developed countries, it would also be possible, with more modest assistance, to pool existing resources to develop training programs, develop information banks on common topics and create mechanisms by which the leaders of legal advocacy organizations provide peer support.

- *More Money Must Be Provided for Civil Legal Services Organizations*

Constitutional democracy is critical to economic prosperity and development. Sustainable development must be equitable, which requires that the poor be true partners and participants in the process. Legal services organizations have a critical role to play in creating and sustaining democratic institutions and in making sure that poor people are in fact key actors in development. While the international community has certainly provided support for efforts to provide legal assistance, much more needs to be done. It must be done in a way that allows organizations to operate independently, take direction from the poor themselves, and provide high quality services.

- *A Vision of Civil Society Which Includes Institutions Committed to Supporting Poor People in the Struggle for Justice Must be Created*

Effective legal services organizations are a vital component of civil society. They must be established and nurtured as community institutions. It is not simply a question of providing particular services – legal literacy programs, advice clinics, public interest litigation – but rather a question of developing the capacity to provide a range of legal

assistance to the poor so that poor people themselves can use the law. In the same way that effective schools are not simply the sum total of the courses they offer, but are institutions that are grounded in the highest values and aspirations of the communities they serve, legal services organizations must be capable of advancing the aspirations of the poor through practical advocacy. They must become institutions which are woven into the fabric of democratic societies everywhere.

Conclusion

Although the test for determining whether there should be more support for legal services organizations must include an assessment of the ultimate economic impact of their work, the sustaining vision is one of universal human rights. “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services... ’ (Universal Declaration of Human Rights) These principles of universalism and human rights acknowledge the equal rights of everyone – women, men and children – without discrimination. They demand governance that ensures that all have enough to eat, that no child goes without education, that no human being is denied access to health care, safe water and basic sanitation and that all people can develop their potential capabilities to the full extent. Strong public action is needed to meet these goals... It means [among other things] institutions and legal frameworks that secure people’s rights to housing, to common property, to credit.”¹³⁷ Securing rights is the core function of legal advocacy NGOs.

¹³⁷ *Human Development Report 1998*, United Nations Development Programme, Oxford University Press, New York, 1998 at 8-9.

BIBLIOGRAPHY

- Abel, Richard. 1995. *Politics by Other Means: Law in the Struggle Against Apartheid, 1980–1994*, Routledge, New York.
- Ain O Salish Kendra. 1995. *Papers on Gender Inequality and Personal Laws in Bangladesh*
- Ain O Salish Kendra. 1997. *ASK Annual Report: 1997*
- Ain O Salish Kendra. 1998. *Human Rights in Bangladesh: 1997*, The University Press Limited, Dhaka
- Asian Development Bank. *Law and Development at the Asian Development Bank*, http://www.adb.org/Work/Law_Devt/
- Bangladesh Legal Aid and Services Trust. *Annual Report 1998*
- Bangladesh National Women Lawyers Association. *Prostitution: Women, Society, State and Law*,
- Bangladesh National Women Lawyers Association. *Survey in the Area of Child and Women Trafficking – July to December of 1997*
- Bangladesh National Women Lawyers Association. 1998. *Existing Laws on Informal Sector for Women in Bangladesh*
- Bangladesh National Women Lawyers Association *A Study on the Possible Reforms in the Existing Muslim Family Law & Procedure*
- Bangladesh National Women Lawyers Association. *Hindu Family Law – An Action Study on Proposed Reform of Hindu Family Law*
- Blackden, C. Mark and Morris-Hughes, Elizabeth. 1993. *Paradigm Postponed: Gender and Economic Adjustment in Sub-Saharan Africa*, Gender Team, Human Resources and Poverty Division, Technical Department, Africa Region
- Centre for Peace, Legal Advice and Psycho-Social Assistance. 1998. *Bulletin: August '97 – August '98*, , Vukovar.
- Centre for Peace, Non-Violence and Human Rights. 1998. *Annual Report '97*. Osijek.
- Dakolias, Maria. 1996. *The Judicial Sector in Latin America and the Caribbean: Elements of Reform*, World Bank Technical Paper Number 319
- Dalmation Solidarity Council. *Dalmatinski Odbor Solidarnosti Fact Sheet*
- Dias, Clarence. *Human Rights-Based Approach to Development*, United Nations Development Programme Occasional Paper 21
- Ellman, Stephen. 1998. *Cause Lawyering in the Third World*
- Hashemi and Hayat. *Quest for Local Level Justice: Transforming the Shalish in Rural Bangladesh*, *Grameen Poverty Research*, Vol. 5, No. 1, April 1999
- Hossain, Hameeda. 1993. *Negotiating for Rights*, Ain O Salish Kendra, Dhaka
- Hossain, Malik and Musa 1997 *Public Interest Litigation in South Asia – Rights in Search of Remedies*, , The University Press Limited, Dhaka

International Human Rights Law Group and the Asian Human Rights Commission. 1998 *A Proposal to Convene a Practitioners Forum: The Rule of Law, Human Rights and Legal Aid in Southeast Asia and China*.

International Human Rights Law Group. *International Human Rights Law Group's Cambodia Defenders Project*

Legal Aid of Cambodia. *About Legal Aid of Cambodia*, <http://www.laoc.org/about.htm>

Legal Resources Centre. 1995. *Voices from Oukasie: From Resistance to Development*, The LRC Review, No. 1.

Legal Resources Centre. 1997. *Legal Resources Centre: Issues Document*

Legal Resources Centre. 1998. *Legal Resources Centre Annual Report for the year ended March 1998*.

Legal Resources Centre. 1998. *Legal Resources Centre, Mission Statement*

Legal Resources Centre. 1998. *Legal Resources Centre: The Outcomes of Strategic Planning: 1997/98*

Liebman, Benjamin L. *Lawyers, Legal Aid, and Legitimacy in China*

Madaripur Legal Aid Association. *Annual Activity Report 1996-97*

Martin, Doris M. and Hashi, Fatima Omar. 1992. *Law as an Institutional Barrier to the Economic Empowerment of Women*, Working Paper No. 2, Poverty and Social Policy Division, Technical Department, Africa Region, The World Bank

New York Times, *Increasing Disasters Threaten Poorer Countries*. June 24, 1999

New York Times. *In the Killing Fields, Even the Future Died: The Khmer Rouge Legacy*, January 10, 1999.

Oukasie Development Trust. 1997. *Oukasie Development Trust: The Year of Transformation and Delivery*, Annual Report January – December 1997.

Oxfam *Where Has All the Land Gone? – Land Rights and Access in Cambodia, Vol. 1*, 1999. Great Britain

Pereira, Faustina. 1998. *Round Table Consultation of Personal Law Reforms in Relation to Women in Bangladesh and Assessing the Feasibility of a Uniform Personal Code – Key Note Paper*

Project Against Domestic Violence. 1998. *Divorce and Domestic Violence in Cambodia*

Project Against Domestic Violence. *Prostitution: Women, Society State and Law*

Rahman, Saira. *Across the Borders of Despair – Trafficking in Women and Children in Bangladesh*, ASK,

Rowat, Malcom et. al. 1995. *Judicial Reform in Latin America and the Caribbean: Proceedings of a World Bank Conference*, World Bank Technical Paper Number 280

The Daily Star, Dhaka, August 29, 1999

The Independent, December 18, 1998

The Independent, December 18, 1998.

The Independent, July 31, 1998

The Independent, March 12, 1999.

Tornieri, Francesco. 1997. *Review On: Gender and Law In Benin*, The World Bank

United Nations Development Programme. 1999 *Human Development Report 1999*.

United Nations Development Programme. 1998. *Human Development Report 1998* , Oxford University Press, New York

United States Agency for International Development. 1994. *Weighing in on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs: USAID Program and Operations Assessment Report No. 7*.

United States Agency for International Development. 1997. USAID PROJECT: *Bangladesh -Judicial and Legal Capacity Building*, Project Number BDPE44810

United States Agency for International Development. 1998. USAID PROJECT: *Broadened Participation in Local Decision Making and More Equitable Justice, Especially for Women*, Project Number 388-SO03, USAID Congressional Presentation, FY1999.

White, Lucy. 1988. *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 Wisconsin Law Review 699.

World Bank. 1998. *Project Appraisal Document on a Proposed Loan in the Amount of US\$33 Million to the Republic of Guatemala for a Judicial Reform Project*, Report N. GU-18404

World Bank. 1993. *Network of Legal Aid Clinics for Women in Francophone Africa*, Information Sheet Number 3, Gender Team, Africa Region

World Bank. 1996. *Staff Appraisal Report: Ecuador Judicial Reform Project*, World Bank Report No. 15385 EC

World Bank. 1998. *Gender Discrimination in Francophone Sub-Saharan Africa: Women's Status at the Dawn of the XXIst Century*, Cotonou

World Bank. 1998. *World Bank Reaffirms Central Goal of Poverty Reduction, Stressing Need to Include Poor in Solutions*. News Release No. 98/1621/S

World Bank. 1999. *Attacking Poverty: World Development Report 2000/1, Chapter Level Messages/Propositions/Hypotheses – A Very First Cut*.

World Bank. 1999. *Bangladesh: A Program of Legal and Judicial Capacity Building*.

World Bank. 1998. *Bangladesh: From Counting the Poor to Making the Poor Count*, Poverty Reduction and Economic Management Network, South Asia Region

World Bank. *Institutional development of the Ministry for the Advancement of Women , Children and the Family and collaborating NGOs in promoting legal reform and legal literacy – Mali – Request for IDF Financing*

World Bank. *Institutional Strengthening of the Women Gender Unit – Togo – Request for IDF Financing*

World Bank. *The World Bank and Bangladesh – Building Better Lives*, World Bank Bangladesh Website, <http://wbln0018.worldbank.org/lo+web+sites/bangladesh>,

World Bank. *The World Bank: Gender-Sensitive Legal and Institutional Reforms in Francophone Sub-Saharan Africa*

Zimmerman and Sar. 1994. Plates In A Basket Will Rattle – Domestic Violence in Cambodia, , Project
Against Domestic Violence