

Kyiv Conference on Protection and Promotion of Human Rights through Provision of Legal Services: Best Practices in Africa, Asia and Eastern Europe

Day Two: Wednesday, 28 March 2007

Session Three: Rights-based approaches in delivery of legal aid services

Mr. Fergus Kerrigan, Senior Advisor at the Danish Institute of Human Rights, opened Wednesday's proceedings by introducing the panel for Session Three. First, Mr. Paul Malenga, from the Legal Resources Foundation (LRF) of Zambia, discussed his organization's efforts to secure the rights of defendants throughout the criminal process. Mr. Malenga emphasized the need to ensure legal representation and to preserve human rights in the criminal process early in the legal proceedings.

Next, Ms. Evelyn Battad of Free Legal Assistance Group (FLAG) discussed how the history of martial law in the Philippines has shaped basic notions of legal aid in her country. She emphasized that the law must be critically analyzed and must not be assumed to be just. This critical analysis, she insisted, must be the basis of any legal aid, supplemented with other more traditional assistance services. FLAG works to provide a spectrum of services including political lobbying, legal education, alternative dispute resolution and test case litigation.

Unlike the domestic practices of FLAG, the Redress Trust, represented by Ms. Carla Ferstmann, frequently faces the challenge of representing torture victims across borders and in international tribunals. Ms. Fertsman pointed out that torture victims are often wary of state-appointed representation because the state itself is often the perpetrator of the violation. Thus, it is necessary for NGOs and pro bono lawyers to provide representation.

To end the first session, Ms. Gulmira Shakiraliyeva of Legal Clinic Adilet, discussed issues facing representation of juvenile criminal defendants in Kyrgyzstan. Kyrgyzstan has a large population of orphaned children and a 42% poverty rate. This combination has swelled the ranks of detained children. Juveniles are incarcerated during investigation, and although the state must assign free legal representation, few children realize this right. Her organization is dedicated to serving the needs of these detained children.

Following the session, audience and panel members discussed issues raised during the presentations and possible applications of the information. Mr. Malenga stated that Zambian paralegals work alongside lawyers and provide legal information and possible solutions in the earliest stages of conflict. Abby Tebrahni of Indonesia and Ms. Battad both described how paralegals in their countries serve as community-based facilitators of legal access rather than in law offices.

In response to a question regarding the difficulty of access to police stations, Mr. Malenga asserted that LRF publishes a monthly newsletter to publicize jail conditions. He also mentioned that LRF has a reporting relationship

with high-ranking sympathetic police officers. Finally, he stated that by providing free legal aid to police officers, LRF was able to demonstrate its positive intentions.



Ms. Battad discusses legal aid in the Philippines.

Working Group One: Civil Law

Rudolph Jones, the Director of the South African NGO called Lawyers for Human Rights, led the discussion in the civil law working group, which began by focusing on recognizing and attaining socioeconomic rights such as housing and medical care but later expanded to address political rights as well. Several recurring themes emerged over the course of the discussion. One was the complexity of problems in the areas of civil law, requiring a systemic but incremental approach that combines a recognition that the law can only be a partial solution with a broader strategy that includes educational and advocacy components to supplement the public litigation. One of the complications of systemic civil litigation arises from separation of powers concerns, specifically the potential for serious consequences of litigation on state budgets, which may make judges and lawyers more cautious in their approach to public litigation issues. Another common theme that arose was the importance of working in cooperation with journalists in civil litigation and reform efforts. Other participants emphasized the need to change the mentality of legal aid clients such that they gain the confidence and independence necessary to understand and assert their own rights. Finally, the working group noted the need for civil lawyers to be mindful of the unique

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political and legal circumstances in their own country in devising a systemic approach to the problems.

Working Group Two: Criminal Law

Participants in the criminal law working group, led by Mr. Adam Stapleton of Penal Reform International, discussed problems in criminal justice in Ukraine and suggested approaches and possible solutions from other countries. Mr. Stapleton invited Ukrainian participants to present their opinions, as regards their country, on topics including the right to representation at post-detention interrogations, methods used to obtain confessions, attorney compensation in cases of indigent clients, the scarcity of local bar associations, reform of the legal framework, and the increasing role of NGOs in the protection of human rights. After the discussion of these issues, Professor David McQuoid-Mason of the University of South Africa stressed that successful advocacy for increased pay for appointed counsel would depend on comparison between Ukrainian rates with prevailing rates in other countries. Mr. Clifford Msiska of the Paralegal Advisory Service in Malawi spoke of his experiences in securing access to detained suspects during investigations, while Professor Tom Geraghty of Northwestern University School of Law presented alternate measures taken in Chicago, such as videotaping confessions, to prevent forced confessions and torture.



The afternoon panel discusses traditional dispute resolution.

Session Four: Redefining Access to Justice – Informal justice mechanisms and alternate dispute resolution forums

To begin the afternoon session, Mr. Msiska described the progress that the Paralegal Advisory Service has made in processing the cases of jailed Malawians. Paralegals relieve the overburdened criminal defense system by working in jails to help prisoners understand the laws and thus help themselves. The paralegals also help coordinate

information between the inmates, the police and the judiciary system. Since the program's creation, it has facilitated the release of 2,000 prisoners from illegal detainment while quadrupling the number of paralegals. Mr. Msiska stated that his program has served as a model for other African nations.

Mr. Abdul Basir Faizi reported on traditional alternative dispute resolution in Afghanistan. This community-based system, called *jurga*, is a form of mediation in which a problem is brought before the respected men of a community to establish a mutually satisfactory solution. He pointed out that *jurga* is the closest and cheapest method of conflict resolution for the majority of Afghan people. Mr. Faizi also stated that because it fosters dialogue between communities, *jurga* has helped rebuild the nation. However, he pointed out that *jurga* systems discriminate against women and many resolutions violate human rights norms.

Finally, Mr. Paul Dalton presented the research of Fazlul Huq, the Secretary of the Madaripur Legal Aid Association in Bangladesh. This Bangladeshi mediation system emphasizes participants' own responsibility for making decisions that affect their own lives. Although the Bangladeshi constitution incorporates international human rights standards, problems of distance to courts, cost, scarcity of lawyers and discrimination prevent people from utilizing this formalized system. Instead, Madaripur has developed a uniform educational system to train mediators to provide structured problem resolution within a culturally accepted shaleesh meeting. Mr. Dalton stated that the existing social contract in the village provides the cohesion for lasting resolutions.

Reporting Back to Plenum from the Working Groups

To close the day, the discussants and reporters described the proceedings of their respective working groups to the plenum. Additionally, Mr. Malenga added comments on changing police culture, and Mr. Kerrigan contributed remarks on reforming aid while transforming the structure of the legal system.