

CAPACITY TO DEMAND JUSTICE REMEDIES

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OVERVIEW OF THE CHAPTER

This chapter deals with activities aimed at strengthening people's capacities to seek out and demand justice remedies. Such activities are referred to as "legal empowerment" strategies.¹

Legal empowerment of disadvantaged people is necessary to complement activities under the other two areas of the access to justice service line - normative protection and capacity to provide justice remedies (see Chapter 3 and 4). However, legal empowerment can also have a beneficial impact beyond access to justice. For example, when people have adequate capacities to seek justice, they are better able to hold government officials accountable for the implementation of the law, and to participate in governance processes.

Justice remedies are not always available, yet even when they are available, either formally or informally, people may not always make use of them. This section examines the critical capacities needed to seek a remedy through the justice system, focusing particularly on poor and disadvantaged people. Capacities needed include:

- Legal awareness, including effective access to legal information, and particularly government obligations to provide legal awareness.
- Legal aid and specific strategies to strengthen access to it, including improving legal education while expanding services for the poor, strengthening public defence systems, promoting pro bono lawyering, expanding paralegal activities, supporting alternative lawyering and developmental legal aid and expanding the concept of legal aid to include other necessary forms of financial and psycho-social support.
- Other necessary capacities to seek justice include the ability to overcome external obstacles at institutional and structural levels, as well as factors specific to poor and disadvantaged groups themselves.

¹ For an extensive overview of legal empowerment in development efforts see Golub, S. 2003. "Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative." Carnegie Endowment for International Peace Rule of Law Series 41: October. Legal empowerment is defined as the use of legal services and other related activities to increase disadvantaged populations' control over their lives.

5.1 LEGAL EMPOWERMENT

Legal empowerment² is central to people's ability to seek and demand remedies from the justice system. Different strategies can be adopted to ensure that people, especially those from disadvantaged groups, have the means to demand justice.

Empowering people by strengthening their capacity to demand justice remedies can have a substantial impact on poverty reduction and on overall institutional accountability.

Legal empowerment has the potential to not only reduce poverty and improve the material circumstances of poor and disadvantaged groups, but studies show that legal empowerment also impacts other important development issues. For example, legal empowerment can contribute to the reduction of domestic violence, the successful implementation of land reform programmes, and so on.

Legal empowerment helps to mobilize disadvantaged people's participation in development and decision-making processes. This in turn helps to improve responsiveness and accountability in the system. It is important, however, that access to justice strategies include legal empowerment-related components systematically, particularly when trying to strengthen accountability of institutions.

Key Actors

- Non-governmental organizations, including not only legal NGOs, but also other NGOs involved in development activities
- Community-based organizations
- Law universities
- The media
- Ministries of Justice, especially Departments of Public Defence
- Professional Bar Associations

Challenges to Enhancing Legal Empowerment

Improving people's capacity to seek a remedy

Education and training alone is not sufficient to develop effective capacities to demand justice remedies. Education must go hand-in-hand with other strategies, such as community development, advocacy, mediation and litigation. Education is an important component in legal empowerment and can increase awareness, but it needs to be part of a broader legal empowerment strategy.

Basic Assessment Checklist

- Legal protection of freedom of expression and right to information
- Mechanisms (procedures, policies and institutional capacities) for government dissemination of legal information
- Components present in legal infrastructure that provide for disadvantaged groups
- Quality and reach of professional legal education
- Ongoing development initiatives that could use legal empowerment to strengthen accountability/impact
- Profile of common victims of human rights violations
- Profile of prison population

Integrating legal empowerment strategies

Poor and disadvantaged people's capacity to seek remedies is affected by a number of factors that need to be addressed through an integrated approach. A legal awareness campaign that does not take into account the constraints of the formal legal system, or the difficulty of obtaining an institutional response, or the insecurity in which disadvantaged people live, is likely to have a very limited effect at best. Integration can be strengthened in two ways:

- Linking actors at different levels, from government institutions, non-governmental organizations, universities and communities;
- Building on existing development activities, such as micro-credit schemes, family planning or land reform.

Strengthening community-level capacity

Obstacles at the community level are the most immediate factors preventing people from seeking justice. They are also often the most critical obstacles and the ones most easily addressed by affected groups. For UNDP, decentralization provides an opportunity to engage local government in legal empowerment initiatives. Similarly, coordinating various actors' efforts at national and local levels can result in the greatest impact for community-led initiatives.

Sustaining legal empowerment initiatives

Legal empowerment initiatives are not easily sustainable (especially from an organizational point of view), but they can achieve sustainable impact. Legal empowerment strategies usually require a long-term perspective, but legal services

² The lessons and recommendations in this section are gathered from experiences of UNDP, the Asian Development Bank, the Ford Foundation, the International Council on Human Rights Policy, the Carnegie Endowment for International Peace, and other development agencies.

need continuous support and are difficult to sustain in the absence of funding. However, sustainability is not necessarily critical in all circumstances. Legal empowerment activities can take place in response to specific problems or in the context of ongoing development activities. They can also be oriented toward ensuring accountability in programme implementation, by enhancing people’s capacity to understand and act on their responsibilities under the programme and under relevant regulations and laws. Therefore, sustainability of impact may be achieved even in the absence of organizational sustainability.

The role of non-government actors is critical

Expanding legal infrastructure for disadvantaged people is an urgent need. Governments play a fundamental role in this regard (e.g., through public defence systems). However, non-government organizations, community-based groups and academic institutions also can be highly effective. NGO partnerships and NGO-Government cooperation can also produce significant impact.

Cross-cutting measures are necessary

The complexity of obstacles constraining the capacity of disadvantaged people to seek remedies requires different responses in different areas. Cross-practice development is necessary to ensure a meaningful and comprehensive legal empowerment effort. Further, legal empowerment strategies may impact on a wide range of non-legal development activities, and for this reason should be mainstreamed into ongoing development efforts.

Table 8 summarizes some of the obstacles affecting people’s capacity to seek remedies beyond legal aid and awareness:

Obstacles Affecting Poor and Disadvantaged People’s Capacities to Seek Remedies

Table 8: Obstacles Affecting Poor and Disadvantaged People’s Capacities to Seek Remedies Beyond Legal Aid and Awareness

EXTERNAL OBSTACLES		INTERNAL OBSTACLES
Institutional	Structural	
<ul style="list-style-type: none"> ■ Normative/institutional bias and discrimination 	<ul style="list-style-type: none"> ■ Growing inequalities, invisibility and disempowerment 	<ul style="list-style-type: none"> ■ Isolation
<ul style="list-style-type: none"> ■ Inadequacy of formal structures 	<ul style="list-style-type: none"> ■ Social discrimination 	<ul style="list-style-type: none"> ■ Illegality
<ul style="list-style-type: none"> ■ Weak accountability systems 	<ul style="list-style-type: none"> ■ Growing insecurity 	<ul style="list-style-type: none"> ■ Insecurity
<ul style="list-style-type: none"> ■ Technical and financial constraints 	<ul style="list-style-type: none"> ■ Culture of impunity 	<ul style="list-style-type: none"> ■ Weak organizational capacities
	<ul style="list-style-type: none"> ■ Corruption, patronage, nepotism 	

External Obstacles

External obstacles can be found at the institutional level or within the economic, social and political structures in which people and institutions operate. Distinguishing institutional obstacles from structural obstacles is often difficult, as they are closely related. Underlying both may be a lack of political will to address such problems.

Institutional Obstacles

- **Normative/institutional bias and discrimination.** Institutions and legal and policy frameworks may reflect the perspectives of powerful groups and may be inadequate for the specific needs and circumstances of disadvantaged people.
- **Inadequacy of formal structures.** Even when disadvantaged groups may be aware of their rights, they may be unwilling to claim them using formal structures. These structures may often seem alien and intimidating to them, as well as distant, corrupt and costly.
- **Weak accountability systems.** Accountability mechanisms within the justice system are sometimes weak or even on occasions, nonexistent. This lack of accountability may be aggravated by poor coordination among agencies and a culture of corruption, patronage or nepotism.

Structural Obstacles

- **Growing inequalities, invisibility and disempowerment.** Social, political and economic structures at national and international levels may favour the ‘better-off’ and neglect the disadvantaged, resulting in further disempowerment. Inequality reinforces disadvantaged people’s exclusion

from, or invisibility in, government programmes and activities and from the development process. They are often excluded from decision-making processes that impact on their lives, seen as “others,” or only paid lip service in participatory forums.³

- **Social discrimination.** Many people find themselves excluded from access to justice without necessarily being poor. They may be discriminated against for reasons that have more to do with the attitudes and beliefs of those around them – e.g., discrimination against people living with HIV/AIDS, or religious groups. Often, an effect of discrimination is to increase vulnerability to poverty.
- **Growing insecurity.** Since the 1990s, the world has experienced a concerning rise in threats to individual security and safety, such as the spread of HIV/AIDS, environmental hazards, terrorism, violent conflict and other threats to security. These prevent disadvantaged people from taking risks in seeking justice, while further eroding the already insecure contexts in which they live.
- **Culture of impunity.** A prevailing culture of impunity discourages poor and disadvantaged people from seeking justice. Sometimes a single conviction may be more effective than a large-scale training in obtaining attitudinal change within the system.
- **Corruption, patronage, nepotism.** Corruption may occur at any level of governance, justice or legal enforcement. Corruption within the justice system is a powerful impediment to people seeking remedies for grievances and further alienates those who do not have the resources or networks to engage in corruption and benefit from it. Patronage systems are another strong disincentive, as services that should be available to all as a matter of right are converted into “favours” based on kinship, personal networks, indebtedness or political affiliation.

Internal Obstacles

Sometimes the nature of their situation can prevent poor and disadvantaged groups from actively seeking justice, even when they may be aware of their right to do so. Internal obstacles reflect psycho-social factors and may include:

- **Internalization of public prejudice.** This internalization of discrimination towards one’s own community, with the resultant loss of confidence and self-esteem can prevent people from pursuing formal mechanisms.

- **Historical traditions of oppression and exclusion.** This alienates disadvantaged groups from the formal institutions of the State. Such groups may be reluctant to engage with the formal institutions of justice as a consequence of deep, long-established distrust.

- **Physical distance.** The majority of the poor live in rural areas at great distance and remoteness from justice remedies.

Other internal obstacles

- **Illegality.** Sometimes a contradiction exists between the ideal of the rule of law and the reality of poverty. As a result, poor and disadvantaged groups often find themselves in situations of “illegality,” for example, informal labour, immigration, indigenous practices, that alienate them further from the justice system. Illegality also makes them vulnerable to abuses in the context of campaigns to counter criminality and strengthen national security. This can, in turn, aggravate existing social conflicts, as poor and disadvantaged groups in developing countries may have a weak notion of the State and of the nation.

- **Insecurity.** Disadvantaged people often live in situations of high insecurity (physical, psychological, social and economic), in which they cannot afford to take risks or require immediate benefits when they do so. Insecurity also makes them vulnerable to risks resulting from asserting their rights, such as threats, job dismissal, lawsuits or deportation. Similarly, those living within politically oppressive systems or in situations of violent conflict may decide not to claim their rights, simply as a survival strategy.

- **Weak organizational capacities.** Because of historical oppression, disadvantaged groups may lack a culture of self-organization for collective claims. They may also mistrust outsiders and have low expectations of the benefits of participation. Although informal structures of self-organization may exist, these too may also be hampered by discrimination, patronage and nepotism. Lack of networking with other organizations at the local, national and meso-levels can limit organizational effectiveness as well.

- **Technical and financial constraints.** Technical and financial limitations are powerful impediments to seeking access to justice, and often result in denials of justice for those who do not understand or cannot afford long, costly, complex and cumbersome processes of justice.

³ International Council on Human Rights Policy (ICHRP). 2004. “Enhancing Access to Human Rights” Geneva, Switzerland.

Capacity Development Strategies to Facilitate Legal Empowerment

Ensure short-term benefits within long-term strategies

Risks are involved in seeking justice. Due to the insecurity in which disadvantaged people live, their ability to take risks is limited, and they require immediate benefits when they do so. Therefore, strategies aimed at strengthening their capacity to seek remedies also should deliver immediate and useful benefits for the communities concerned. Strategies that depend on taking cases to court, or engaging in processes of legal or institutional reform, are unlikely to attract the attention or the support of very poor communities, unless they are accompanied by actions that bring immediate, tangible results that increase the security of their lives.⁴

Build on collective organization and action

Poor and disadvantaged people may know their rights but remain powerless unless they work together to assert common interests or to protect members of their group. Organization is power, and acting as a group may be critical if they wish to assert their rights effectively and obtain a response from government. Building on community organization and partnership is an effective entry point for legal empowerment, once the group has achieved a certain degree of acceptance and cohesion in the community. Similarly, strengthening national and regional mobilization of government and non-government actors can help in the push for fundamental reforms.

Focus on justice systems preferred by poor and disadvantaged people

The capacity to seek justice remedies can be strengthened by allowing disadvantaged people to use their own preferred system of justice, if feasible. These systems may include those based on traditional or informal mechanisms. Litigation may be considered as a last resort for people distrustful of the justice system. Strategies, therefore, should include a combination of judicial and non-judicial forums (see Informal Justice Systems in Chapter 4).

Expand the role of non-lawyers

Lawyers' and their technical skills are important components of access to justice; however, non-professionals can also play a significant role. For example, the use of paralegals rather than lawyers can often improve cost effectiveness, quality of communication, and accessibility for disadvantaged people.

Allow programme innovation and experimentation

Assessments show there is no standard "best practice" for legal empowerment and that the most effective strategy depends on the specific needs of the group targeted. Therefore, the involvement of target groups in programme design and decision-making is critical for impact and success (see Chapters 1 and 2). Legal empowerment strategies are quite new for many development institutions and should ensure that they allow for experimentation and learning.

Analyze risks and costs involved in claiming rights

Social justice movements can be effective in seeking access to rights and remedies by disadvantaged people. At the same time, such movements can also provoke social turmoil which can result in retaliation by repressive regimes. Similarly, in contexts of patronage, people may not initially understand their needs in terms of rights. If they eventually do so, this can give rise to a reaction by their former "benefactors". Therefore, there is a need to examine the risks and costs of strengthening people's capacity to claim rights. A practical assessment of risks should be undertaken by poor and disadvantaged people themselves.

5.2 LEGAL AWARENESS

Legal awareness is critical to seeking justice. Poor and disadvantaged people often do not make use of laws, rights and government services because they simply do not know about them. This following section deals with strategies to expand legal awareness, and the responsibilities of government in expanding awareness.

Legal awareness is only one element of legal empowerment, but it is an important one. The degree of a person's legal awareness can affect their perception of the law and its relevance to them, as well as influencing their decisions on whether and how to claim their rights. Access to legal counsel and other forms of legal aid can increase an individual's legal awareness and assist them to make informed decisions and choices (see section on Legal Aid later in this chapter).

Lack of legal awareness is a powerful impediment to those seeking access to justice. Those who are subject to grievances cannot seek a remedy unless they are aware that such a remedy exists. For awareness to be present, sufficient information has to reach people in ways they can understand. Governments have an essential role to play in making this information available.

⁴ Garling, M. 2003. "Enhancing Access to Human Rights: Draft Report". International Council on Human Rights Policy.

Strategies to promote legal awareness may be undertaken by both government and non-government actors. In the case of government, ensuring timely access to legal information when it is sought is a fundamental duty of all agencies and departments at all levels (local, regional and national) and in all branches of government (legislative, executive and judicial). However, such a fundamental duty is often not defended at constitutional or legislative levels. In contrast, some institutions have specific mandates to promote awareness on laws and rights, for example, National Human Rights Institutions and electoral commissions, but sometimes these agencies have inadequate capacities to carry out their functions in this regard.

Non-government actors undertake legal awareness activities in different ways. They may establish legal clinics or legal aid centres, or they may conduct awareness raising campaigns at the community level, or through the use of mass media. Although they may be able to provide information targeted explicitly at disadvantaged groups, non-government actors face substantial obstacles such as uncoordinated efforts, dispersion, weak sustainability of initiatives, and limitations on large-scale impacts.

Challenges to Enhancing Legal Awareness

Lack of communications policies and procedures

A lack of sound communication policies and procedures within government agencies can be an obstacle that prevents citizens from understanding their entitlements regarding government services. It also reduces their awareness of new laws and legislation which may be relevant to them, and constrains their ability to monitor the Government's performance. There may also be an absence of normative provisions regarding access to information.

Reluctance to provide information

Governments may be reluctant to assist access to information on issues that they do not consider in the public interest or regard as sensitive information, for example, data on the jail population, HIV/AIDS and so forth.

Lack of outreach of legal awareness campaigns

If legal awareness campaigns stop at the middle level and do not reach down to the grassroots and community levels, they will be unable to reach the entire community especially the most disadvantaged. Awareness programmes should, therefore, be applied consistently, and with sufficient resources so as to reach all levels within the community.

Inadequacy of available information

Even when legal information is available, it may be inaccessible in physical or economic terms. It also may be incomprehensible to poor and disadvantaged people. Geographic distance, poverty and illiteracy pose serious obstacles for disadvantaged groups (see Chapter 6).

Capacity Development Strategies to Facilitate Legal Awareness

Enhance government communication policies, regulations and mechanisms

Developing guidelines for the implementation of legislative or constitutional provisions on access to information offers a valuable opportunity for change. Communication strategies should be responsive to the needs and aspirations of disadvantaged groups. Strategies may include employment of paralegals, production of information in user-friendly formats, proactive dissemination of information to those who face substantial physical or economic barriers to access, and establishment of information desks or kiosks.

Training of government officials

Even when laws and regulations on access to information exist, government officials may not be aware of them or may be reluctant to fully implement them. Training and sensitizing government officials will help to overcome resistance, and can also reveal obstacles officials may have in disseminating information to the public. Effective dissemination of information may require building government capacity to respond to new demands generated for legal awareness.

Adopt a demand-driven orientation

Assessing the specific information needs of people allows for better targeting and greater participation in legal awareness activities. In many cases, people need information on specific laws and regulations affecting them rather than general knowledge of international or constitutional human rights. Mapping legal awareness needs is critical for meaningful impact.

Produce and disseminate information that is accessible for disadvantaged groups

Language, culture and literacy factors require legal information to be tailored to the specific needs of disadvantaged groups. This may involve the use of popular education methodologies and other strategies, such as fliers and posters containing information about rights; school programmes for rights education; radio or television information shows; street theatre and role playing; self-help packages or kits for legal action without a lawyer; legal information kiosks; and website resource centres.

Involve non-lawyers in design and delivery of community education programmes

Good communications skills are often more important than specific legal expertise. The role of a non-lawyer in selecting, interpreting and packaging legal information for disadvantaged people can enhance the communication process if the individual has specialized understanding or experience of the needs of the affected group. Experience indicates that social scientists, community organizers, teachers and others with non-legal specialized skills can substantially contribute to legal dissemination efforts.

Use information and communications technology (ICT)

Strategies using ICT can be useful in assisting individuals with limited literacy, e.g., through the use of graphical and audio interfaces. For an effective strategy, combine ICT with more traditional means of accessing information. Community radio, for example, is particularly useful for reaching rural women, illiterate people, or physically impaired members of the community.

Encouraging community-level information

Explaining to people the importance of accessing information that directly affects their well-being (e.g., how to apply for a license or how to obtain a subsidy) is relatively easy. Communicating the importance of community-level information (e.g., information on the construction of sewers and public toilets, or the installation of water pumps) is much more difficult. It may take several months or perhaps longer, for community members to realize ownership of their communal services and press for their right to information about them. However, taking ownership of these public services is an important step in achieving political self-awareness and demanding accountability from the Government.

Use existing social networks to mobilize community members

Disseminating legal information among poor and disadvantaged groups is a significant challenge, as many are illiterate or politically marginalized. Using existing social networks such as saving groups or other community-based formal and informal networks is an effective entry point for larger community awareness and mobilization, as these groups already enjoy trust and familiarity among the community. Further, many of these groups are often comprised largely of women, which can facilitate women's active participation in legal awareness campaigns.

Lessons Learned from Access to Information Initiatives in India

UNDP's experience in India shows that preparing guidelines on how to implement provisions on access to information offers a valuable opportunity to mobilize change. Training government officials on access to information is also important for increasing understanding, overcoming resistance to new duties, and addressing resource deficiencies. Similarly, public hearings can be an effective means of demanding accountability, although these require a high level of technical preparation, and careful monitoring and conflict management at the actual hearing. UNDP's experience also shows that future access initiatives should adopt a more demand-driven orientation and focus on the information needs of people in order to achieve meaningful impact. Specific needs and obstacles of marginalized groups need to be considered explicitly. Quantitative and qualitative data that enables the targeting and monitoring of access to information initiatives are a critical component for success.

5.3 LEGAL AID AND COUNSEL

Legal awareness can help people understand they have a right to claim remedies against infringements of their rights – such as protection from forced evictions, not to be forced to work without pay, or not to be tortured. Yet, as discussed earlier in this chapter, people do not always know how to reach these remedies, or may require professional help to do so. When seeking remedies through the justice system, legal counsel may assist them in making informed decisions and choices. However, inability to pay for litigation costs, or to communicate effectively, or the risk of traumatic consequences are all critical concerns when navigating the legal process. Legal aid relates to all necessary capacities in this regard, including not only legal counsel, but also financial options and various forms of psycho-social support.

Challenges to Accessing Legal Aid and Counsel

Access is physically difficult

Legal aid services are usually concentrated in downtown/urban areas and are not easily accessible to those in suburban/rural areas (also see section on the Rural and Urban Poor in Chapter 6).

Lack of case-specific support

Pre-trial counselling and appropriate advice to avoid unnecessary processes are often lacking. Legal counsel also may be denied in the process of detention, often with impunity (see Chapter 4).

Strict eligibility criteria

Those who need legal aid services can find themselves denied support if they do not meet the court's criteria. Therefore, it is important that criteria are carefully established. Scarcity of resources requires applying certain restrictions for access.⁶ The specific combination and nature of the criteria used for eligibility can have a major impact on the communities and groups affected.

Unaffordable legal counsel

Alternatives to free, state-provided legal counsel are usually beyond reach of poor and disadvantaged people. The quality of legal assistance has traditionally been related to the payment of lawyers' fees, and legal fees increase with delays in justice.

Insufficient funding for legal aid services

Long-term, sustained, and permanent state funding for essential legal services for disadvantaged groups is necessary. While civil society organizations can provide additional legal aid services and can target specific disadvantaged groups, the State should be responsible for providing basic legal aid services to those who need it but cannot afford it.

Provision of legal aid services is obligatory only for criminal cases

Legal aid services take a specific rather than general approach, aiming to protect certain rights only. Under international law, free legal counsel is required only for criminal cases. The reality for poor and disadvantaged groups however, is that to access their rights, they require legal counsel to be expanded to other areas as well, from civil and commercial matters to administrative and labour relations. Many countries have expanded the scope of free legal counsel by constitutional law (see Chapter 3).

Complexity of the legal system and legal counsel is intimidating

The type of legal information and advice sought by most people is usually not complicated. Sometimes, however, legal practitioners overuse technical phrases and jargon making the justice system appear unnecessarily complex. This can be problematic for groups who do not understand the official language of the justice system. Clients may be reluctant to seek legal counsel for fear that lawyers will not understand them, or will not provide explanations in ways they can understand, or will even blame them for their situation.

Limited legal aid services

Legal aid should provide not only financial support but also other forms of support to navigate the legal process. Other support may include gaining exemptions for clients from legal and court fees, subsidies for bail, or provision of refuge and psycho-social support, such as in domestic violence cases. Such components of legal aid systems are often weaker than legal counsel services, placing an unnecessary burden on individual legal support providers.

Capacity Development Strategies to Enhance Legal Aid and Counsel

Capacity development strategies to address the obstacles described above can be classified into six groups:

- Improving professional education while expanding services for the poor
- Strengthening public defence systems
- Promoting pro bono lawyering
- Expanding paralegal activities
- Supporting alternative lawyering and developmental legal aid
- Enhancing professional bar associations
- Other legal aid components: financial and psycho-social support

For additional capacity development strategies within the formal and informal justice institutions see Chapter 4. For specific strategies relating to particular disadvantaged groups see Chapter 6.

Improving professional education while expanding services for the poor

Professional legal education may affect access to justice by poor and disadvantaged groups in a number of ways:

- **Quality of lawyers.** In many countries, formal legal education does not sufficiently address the type of legal knowledge and skills that disadvantaged clients require from lawyers, such as knowing how to deal with discrimination, human rights and poverty-related cases. Lawyers also may not have adequate practical skills to gain trust and understanding from clients.

⁶ There are generally three types of criteria that can be applied to provide free legal counsel: (i) the means test – free services are provided to individuals whose income falls below a certain level; ii) substantive restrictions – free legal assistance is available only for certain types of criminal and civil cases, and iii) budgetary restrictions – when demand goes beyond what the public budget can support, the Government establishes restrictive eligibility criteria, such as not granting legal aid to women in divorce cases when there are no children involved. Legal aid schemes may have a combination of all three types of criteria.

⁷ McCutcheon, A. 2000. "University Legal Aid Clinics: A Growing International Presence With Manifold Benefits." *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees around the World*. The Ford Foundation.

■ **Access to the legal profession.** Scarcity of education and law scholarships for disadvantaged people limit their access to the legal profession. Compulsory periods of apprenticeships for law graduates can improve the quality of lawyers; however, hiring for apprenticeships in some countries is subject to patronage, social privilege, and other forms of discrimination,⁷ blocking access by poor and disadvantaged groups to professional opportunities.

Improved legal education can have an impact on access to justice if it is translated into more and better services to those who cannot otherwise reach them. Strategies to simultaneously achieve both qualitative improvements in the legal profession and expanded services to the poor may include:

■ **Street and university law clinics.** Law clinics are university-based or affiliated centres, where law graduates receive a combination of classroom and lecture components with practical exercises and actual client service. Not all clinics seek to serve poor and disadvantaged groups; however, some target such groups explicitly. Clinics of this type have compelling potential to impact on access to justice, as not only do they provide free legal services to those who most need them, but they also encourage future work in pro bono and public interest lawyering. Further, they often generate broader social impact through policy advocacy and cooperation with NGOs.⁸

■ **Community services for law graduates and retired professionals.** Community service may be a means to obtain the necessary experience to enter the legal profession, to develop specific skills, or to continue working for access to justice after official retirement. For example, community service can be performed in local government, public defence systems, NGOs, neighbourhood committees, trade unions, human rights institutions and so forth. Support for community service may not only improve the legal profession and facilitate access to it, but also provide poor and disadvantaged groups with the experienced advice of senior and committed professionals. Incentives to community service, such as sufficient budget to conduct activities, fee deductions, training opportunities, learning credits and other merits, are necessary components of strategies in this field. Partnerships with universities and professional associations may help governments to expand legal services for poor and disadvantaged people.

■ **Legal research.** Research can foster access to justice by identifying issues in need of reform, uncovering injustices and providing concrete proposals for improvement. It also can contribute to drafting of legislation or reform of judicial proceedings. Legal research can provide a factual basis for litigation in specific cases. However, research does not always yield immediate results; its impact is often long-term and indirect, and it may depend on factors such as the existence of ‘champions’ at the highest levels, or mechanisms for continuous advocacy and technical support.⁹

Lessons and recommendations for improving professional education while expanding services for the poor

■ **Integrate legal aid programmes into law schools.** This can help to develop future legal professionals with a strong sensitivity to public interest and social justice and increase the availability of services for the poor.

■ **Education should be sensitive to social issues and students should be exposed to community realities.** Clinical legal education that includes topics related to discrimination, diversity and human rights can be better guided toward social justice goals. A community presence should be pursued to assist client access, while exposing students to a better understanding of the context of the problems.

■ **Maximize outreach and impact of law clinics by cooperating with community-based organizations and NGOs.** Some university clinics have increased their impact by concentrating on specific legal issues or population groups. Other clinics seek broad impact through class-action suits. Both non-governmental organizations and community based organizations can provide legal clinics with adequate knowledge on the challenges faced by poor and disadvantaged clients, as well as encourage the use of clinics among community members.

■ **Develop strategies for sustainability.** Law clinics can improve sustainability by tapping the resources and talents of the university, placing clinic instructors at the level of the law faculty, and developing a second tier of leadership for the clinic at early stages.

■ **Combine legal research with other strategies.** Legal research may have a minimal impact as a stand-alone strategy, but it can be a powerful tool for social change when combined with advocacy, litigation and other strategies.

⁸ For a detailed overview of university law clinics’ potential and strategic recommendations, see McCutcheon.

⁹ The potential of legal research is illustrated by a UNDP Philippines-supported study on gender bias in the court system, whose findings and recommendations formed the basis for the establishment by the Philippine Supreme Court of a Programme of Action to mainstream gender in the judiciary.

Strengthening the Legal Aid System in the People's Republic of China

In 1999, UNDP started cooperating with the Chinese Government to strengthen the legal aid system through a multi-pronged strategy that included professional training, public awareness raising, legislation and rule-making, and institutional development. In early 2001, only 21 per cent of counties had legal aid centres, with about 500 trained legal aid practitioners. By the end of June 2003, more than 80 per cent of counties had established legal aid offices. UNDP's assistance further contributed to the enactment of local regulations on legal aid services; the Government built on these regulations to establish national rules on legal aid.

Strengthening public defence systems

Public defence systems result from the State obligation to ensure legal assistance for those who cannot afford a lawyer. In developing countries, public systems often suffer from insufficient budget allocation, insufficient staff, high case loads and weak coordination with non-state-funded legal aid providers (pro bono attorneys, paralegals, university legal clinics), in a context of increased demand for services.

State-funded legal aid programmes may adopt a variety of models (see Table 9 for an overview of the different systems):

- **Salaried public defenders.** Public defenders are full-time state employees, usually under a Public Attorney's Office situated under the Department of Justice.
- **State-funded private lawyers (judicare system).** The State funds the private sector to provide services to individuals. Private attorneys apply to be placed with indigent defendants for a fixed fee. This system may be managed by the Department of Justice or directly by the courts.
- **Contracting.** The State subcontracts the provision of mass casework to a private law firm.
- **Mixed systems.** Mixed systems combine two or more of the above components. For example, they can consist of a combination of full-time state employees supervising and referring some cases (e.g., non-criminal matters) to private attorneys contracted to represent individual defendants.

Lesson and recommendations for strengthening public defence systems:

- **Develop adequate skills and competencies to meet needs of poor and disadvantaged groups.** Particularly focus on areas such as criminal, family and administrative law. Training in paralegal skills and alternative dispute resolution mechanisms should be strengthened.
- **Establish mechanisms for client feedback and improve communications strategies.** The creation of "report card" systems can help monitor the performance of public defence systems from the perspective of the clients. In addition, improving information on how to access legal services and the type of alternatives available can help increase efficiency in the system.
- **Decentralize services.** In countries undertaking decentralization processes, devolving direct legal service functions to local government may increase accessibility of services while allowing the national central offices to better plan, coordinate and monitor.
- **Establish low- or reduced-fee systems.** For those who cannot be considered "indigent" but who cannot otherwise afford to pay for private legal services.
- **Review compensation packages and strengthen performance-based systems.** Good compensation packages can facilitate recruitment and retention of quality lawyers; compensation packages should be coupled with performance-based systems. Adequate compensation packages may require granting higher degrees of fiscal autonomy so public defence systems are able to raise funds and accept donations.
- **Strengthen public-private partnerships.** Public defence systems can partner with private entities (law clinics, alternative law groups) in order to address the needs of disadvantaged people in particular areas.
- **Coordinate through intermediary bodies.** Setting up intermediary bodies between government and service providers can help manage legal aid systems in some contexts. These bodies can be called "legal services commissions," "legal aid boards," or be quasi-autonomous non-government organizations. They help to separate the Government from the defendants and the practitioners, and they provide a professional base for developing the provision of services.

Table 9: Advantages and Limitations of Public Defence Systems

	ADVANTAGES	LIMITATIONS
SALARIED PUBLIC DEFENDERS	<ul style="list-style-type: none"> ■ Potential for better-quality service due to higher commitment/orientation to public service; and for specialization in areas of concern to poor and disadvantaged groups (e.g., criminal law) ■ Good potential for quality control ■ Possibility for training and professional development ■ Greater likelihood of keeping statistics and ensuring accountability ■ Greater ease in planning future budgets and tracking expenses 	<ul style="list-style-type: none"> ■ Characterized by case overload, insufficient presence (especially in rural areas), and bureaucracy ■ Competition with private sector, combined with low pay, may cause high staff turnover ■ Traditionally limited to criminal matters – may lack capacities to deal with other areas (e.g., family law, administrative law), or alternative dispute resolution mechanisms ■ Guarantees for independence from prosecutors and courts are needed ■ Difficult to gain confidence of the client who may think that the court, prosecutor and public defender are connected
JUDICARE	<ul style="list-style-type: none"> ■ Access to skilled, experienced private attorneys ■ Possibility for allowing greater choice by the defendant 	<ul style="list-style-type: none"> ■ Difficulty of matching available legal skills with nature of cases ■ Potential to be very costly – competition with private sector ■ Difficulty in ensuring quality of services; does not allow for community feedback
CONTRACTING	<ul style="list-style-type: none"> ■ Low administrative and operational burden for the State ■ Some influence on quality of legal services and accountability (non-renewal of contracts), although evaluations show monitoring is often poor ■ Flexibility of advance planning for future budgets and expenses 	<ul style="list-style-type: none"> ■ Conflict of interests - risk of not pursuing vigorous client representation in some cases (e.g., administrative complaints) because of dependence on government contracts ■ Instability – difficult to find qualified attorneys to bid, as prices get increasingly higher
MIXED SYSTEMS	<ul style="list-style-type: none"> ■ Efficiency of a centrally managed system ■ Leverage of existing resources within private bar ■ Capacity for statistical analysis, transparency and budgetary planning ■ Possibility for training and quality control 	<ul style="list-style-type: none"> ■ Mixed systems are recent experiences and innovations seem promising but are yet to be evaluated

Promoting pro bono lawyering

Pro bono lawyering defines the provision of free legal services by private practitioners to clients who could not otherwise afford them. It is a key source of legal assistance for disadvantaged people in the absence of an adequately funded public defence system.

Clients of pro bono services may include individuals, groups and community organizations. Legal services may range from legal assistance and representation in courts to alternative dispute resolution mechanisms and community legal education.

Access to pro bono services by disadvantaged people may be limited by a series of factors:

- **Urban-rural divide.** Pro-bono work is usually concentrated in urban areas, and it is less affordable for small law firms typical of rural communities. Access to transportation, especially for the poor, is also an important issue.
- **Inadequacy of supply.** A mismatch exists between client needs on the one hand, and the supply (and accessibility) of pro bono legal services, on the other. Available pro bono expertise may be inadequate for many legal needs of poor and disadvantaged people, such as

criminal and family law, personal injury, or migration. Pro bono programmes also face difficulties in finding attorneys with similar language or cultural backgrounds to those of most disadvantaged clients.

- **Conflict of interests.** Firms' willingness to undertake matters in administrative law, an area where disadvantaged clients have significant needs and many firms do have expertise, can be diminished due to perceived "commercial conflicts of interest." For example, firms may worry there will be repercussions in securing government legal work in the future.
- **Weak monitoring systems.** The difficulty of monitoring pro bono work, to ensure it is provided to those who most need it, makes it vulnerable to inefficiency and abuse.

Lessons and recommendations to promote pro bono lawyering

- **Pro bono practice is not a substitute for state responsibility to provide legal aid.** Although it is a key source of assistance for the poor and disadvantaged, pro bono practice cannot and should not be a substitute for publicly funded services. It is essential to distinguish lawyers' professional/ethical obligation to do pro bono work from the Government's responsibility to provide adequate legal aid. However, given the high level of unmet legal need of poor and disadvantaged people, pro bono lawyering can be a key source of legal assistance in the absence of an adequately funded legal aid system.
- **Pro bono lawyering can be established by mandatory, voluntary and mixed systems.** Pro bono systems can be mandatory or voluntary, or a combination. Compulsory systems point to the wide gap between professional rhetoric and actual practice; they propose strategies such as mandatory internship programmes, a minimum number of pro bono cases per year to allow professional practice, and so forth. Critics of compulsory approaches believe that the cooperation of lawyers is key to the success and quality of pro bono work. Their suggestion is to ensure greater encouragement by professional bodies and to establish systems to facilitate referrals, matching client needs with adequate expertise. Mixed systems include both compulsory and voluntary approaches.
- **Responding to client needs requires systems that link skill and demand.** Design and provision of pro bono services should be driven by client needs, not by what lawyers can offer. Mapping client needs is necessary to

determine whether and where legal resources are available, and to recruit and/or equip lawyers with the necessary expertise and backup support. Systems that combine the available skills of pro bono lawyers with the demand for pro bono services are also necessary. For instance, the establishment of "clearing houses" and other systems at national, regional and local levels may facilitate adequate referrals, although flexibility should be allowed as this may otherwise result in unnecessary bureaucratic delays.

- **Ensure quality and ethical standards in the provision of services.** Pro bono clients should expect, and receive, the same high quality of service as all other clients – pro bono services should not be considered as "second-rate justice," or the exclusive domain of young lawyers. Professional associations need to clarify the ethical framework for pro bono legal work. Common problems that may inhibit or compromise the delivery of pro bono services, such as conflicts of interest, also need specific treatment.
- **Involvement of the judiciary is key to strengthening pro bono lawyering.** Involvement of the courts/judiciary is key to promoting and facilitating pro bono lawyering. Strategies may include:
 - Facilitating case handling to pro bono lawyers, for example, through court rules granting waivers of the filing and other court fees, accommodating pro bono cases first on the docket, and so forth;
 - Outreach activities, such as encouragement by the Supreme Court, training seminars for pro bono lawyers and awarding merits.
- **Governments play an essential role in ensuring quality and effectiveness in the system.** Governments can promote pro bono services by:
 - Assisting the judiciary in removing barriers such as court fees and translators;
 - Promoting a pro bono culture among professionals;
 - Improving outreach services and community education;
 - Providing tools and training to willing lawyers;
 - Providing "matchmaking" opportunities to enable skills and resources to be sent from wherever they are located to wherever they are most needed;

- Developing standards for professional practice;
- Facilitating partnership opportunities across different parts of the legal profession, as well as between lawyers and other professional groups (doctors etc.) and community organizations;
- Adequately regulating compulsory, voluntary or mixed systems.
- **Better sharing of information and closer ties with communities and community organizations.** This can improve the effectiveness of pro bono services and provide opportunities for joint advocacy through, for example, exemptions of court fees.
- **Inter-professional cooperation and tapping the expertise of paralegals can strengthen the quality of pro bono work.** By working with paralegals and other professionals such as doctors, accountants, engineers, etc., clients, especially those from disadvantaged groups, can be provided with all the different types of services they require.
- **Monitoring and accountability are needed in pro bono systems.** A common problem in the provision of pro bono work is the difficulty and cost of monitoring, even in the case of mandatory systems. When pro bono work is voluntary, effective rules or social or economic incentives are needed to ensure compliance. Transparent information and reporting to professional bodies is an option.

Expanding Paralegal Activities

Although lawyers' skills are fundamental to the process of formal justice (e.g., representation in court proceedings), they are not always adequate to deal with the everyday needs of poor or disadvantaged people. Disadvantaged groups frequently require advice and assistance that will avoid the need for cases to be tried, including alternative dispute resolution mechanisms and other informal settlements. They also may require advice on whether and where to reach a lawyer (see Chapter 4: Informal Justice Systems).

Such activities can be undertaken by paralegals. Paralegals are persons with specialized training who provide legal assistance to disadvantaged groups, and who often are members of these groups.¹⁰ The use of paralegals has been increasing in many areas of legal practice. Paralegals work together with public defenders, private lawyers or alternative law groups, and with government agencies, community-based organizations, NGOs

and other entities. When paralegals are themselves members of the community or groups whom they serve, they are more familiar with local concerns and able to enjoy the trust of the community.

The argument for expanding the role of paralegals in the provision of legal services is threefold – accessibility, quality of communication, and financial and non-financial costs. The majority of lawyers are inaccessible financially, culturally and geographically to a large number of disadvantaged people. Fortunately, many of the community's needs can be met by paralegals based in the communities themselves, at a much lower cost than professional lawyers. Quality of services may also be higher due to a deeper understanding of community problems, as well as adequate communication skills.

- **Supporting paralegals can widen access to legal education and the legal profession.** When paralegals are members of the community, it is easier for them to develop skills for creative mobilization of the community around issues that it considers important. They can also develop communication and advocacy skills to generate support for the community's effort.

Other capacity development strategies may include:

- **Using Group Legal Services (GLS).** As a form of cooperative movement to serve the interests of particular groups, such as trade unions, credit unions, community housing cooperatives, ethnic groups, neighbourhoods.
- **Involving paralegals in the activities of NGOs, local government, and human rights institutions** to strengthen outreach to disadvantaged groups in an adequate and cost-effective manner.
- **Including paralegal components in development activities.** In order to increase accountability and impact.

Lessons and recommendations to enhance paralegal activities

- **Specificity of training and organization.** Although knowledge of constitutional or international human rights law may be useful for some purposes, paralegals make more use of laws affecting them directly (such as land reform laws). Paralegals should be involved in ongoing development rather than single trainings; being in contact with NGOs, lawyers and law universities can enhance capacity development.

¹⁰ Golub, Stephen 2000. "Nonlawyers as Legal Resources for Their Communities" in *Many Roads to Justice: The Law Related Work of Ford Foundation Grantees Around the World*. McClymont, Mary and Stephen Golub, eds. February 2000. Ford Foundation, USA. [http://www.fordfound.org/publications/recent_articles/docs/manyroads.pdf]

- **Involve lawyers and all concerned stakeholders in the establishment of paralegal programmes.** Although private lawyers employ paralegals in many instances, they can also resist supporting paralegal work. Lawyers may perceive expansion of paralegal services as a threat to their income, or to the quality of legal advice unless they are involved and sensitized on the benefits of paralegals for access to justice. Wherever lawyers are sufficiently available and unemployed in the labour market, training and involving them in paralegal work may be another choice. Paralegals, on the other hand, will always need to have links with lawyers, as it is necessary to receive advice and opinions about legal options.
- **Paralegal activities should be combined with widespread legal awareness, community organizing, and development efforts.** The impact of paralegals' activities can be maximized when they respond to issues prioritized by the community (for example, landlord-tenant disputes, children's well-being), and are complemented by community organizing and livelihood activities.

Supporting alternative lawyering and developmental legal aid

Legal aid is usually divided into two types, "traditional" legal aid and so-called "alternative" lawyering. Whereas traditional legal aid seeks to assist people in the process of reaching a justice remedy; alternative lawyering, or developmental legal aid, tries to demystify the law by bringing it closer to people, and to empower disadvantaged groups to use justice remedies in defending their interests.

Alternative or developmental lawyering seeks to enable people to understand the rules they are told to respect, to abide by them when they seek to defend their fundamental rights, to participate in their modification if they exclude or threaten them, and to draft or participate in the drafting of these rules if they do not exist.¹¹ As alternative lawyering is fundamentally empowering, it may be particularly appropriate in the context of poverty reduction efforts.

Alternative law groups usually concentrate their efforts on three main areas:

- Human rights
- Sectoral assistance to specific disadvantaged groups
- Public interest or "social justice" issues

Alternative or developmental legal aid activities may include:

- Legal literacy or alternative legal education
- Paralegal formation
- Litigation support
- Policy work
- Research and publications
- Lobbying and advocacy
- Networking and coalition building
- Internships for law students

Lessons and recommendations for facilitating alternative/developmental lawyering

- **Alternative or developmental lawyering is helpful for poverty reduction because of its fundamentally empowering approach.** Not only does it help people to reach a justice remedy, but it also helps them to use justice remedies to achieve wider social justice goals. Developmental lawyering seeks to strengthen people's legal self-reliance (e.g., through building the capacity of community paralegals), in order to lessen their dependence on lawyers.
- **Alternative lawyering may be more appropriate to the needs and aspirations of poor and disadvantaged groups.** When it uses a combination of legal and meta-legal strategies, alternative lawyering may be more useful than more "formal" approaches.
- **Alternative lawyering can achieve wider social impacts by fostering legislative and policy reforms.**
- **Alternative law groups work best when they are linked to community-based or sectoral organizations.**

Enhancing professional bar associations

A professional bar association is a voluntary organization of lawyers admitted to the bar of a given country. It is devoted to improving the administration of justice, seeking uniformity of law, and maintaining high standards for the legal profession. It is often composed of different committees that deal with diverse legal topics such as the election law, legal education, legal aid for the indigent, maritime law, professional ethics, and the judicial system. Bar associations can be instrumental in promoting legal reform, justice and the rule of law; securing an independent legal profession with high standards, and safeguarding lawyers' interests and rights.

Professional bar associations can work to improve human rights and access to justice for poor and disadvantaged groups in society in the following ways:

¹¹ Agir le Droit. "View Law as Practiced by the People." [Retrieved from <http://www.agirledroit.org/en/droitsenmain.php>].

- **Increased awareness amongst practicing lawyers and authorities of obstacles to access to justice for poor.** Bar associations can increase awareness amongst their members of social issues and of the impact of lack of access to rights and justice on disadvantaged groups. They can also increase understanding of how laws, law practices and regulations contribute to preserving these existing inequalities. Bar associations can advocate for the removal of obstacles to rights and entitlements of vulnerable groups (e.g., through a designated work group/committee), and mobilize lawyers and authorities to improve the situation. Encouraging members to take up community services after retirement, advocating for the removal of court fees and working to improve information about court cases in relevant languages, are some of many activities that could be undertaken by bar associations.
- **Fee-limitations and oversight.** Members can report lawyers who commit malpractice, thereby helping to ensure that ethical norms and professional standards in the profession remain high. Bar associations issue a code of conduct to which their members must adhere to and can discipline members if they do not. For instance they monitor the fees set by members, and adjudicate over allegations of improper fee setting and charges. Expulsion from the bar association due to misconduct can seriously tarnish a lawyer's professional reputation.
- **Provide incentive systems that promote pro bono lawyering.** Bar associations can provide incentives to encourage pro bono lawyering, such as prizes or awards to the institution, lawyer or firm that has made an important contribution in this regard in the course of the year. Bar associations can also emphasize the 'duty' of individual lawyers and firms to contribute to the public interest.
- **Draw attention to laws that disadvantage vulnerable groups.** Bar associations are often considered an important partner and resource by authorities, law-making bodies and educational institutions and are often consulted and invited to hearings about legal reform. Bar associations can also lobby parliamentarians and other politicians to make them aware of

weaknesses in proposed laws and the judicial system, hence pushing for legal reform.

Lessons and recommendations for enhancing professional bar associations

In countries with weak judiciaries, bar associations often need support. In particular, it is necessary to ensure that they are engaged in issues of access to justice and realize their wider responsibilities to the community as well as to the members of their association. Involving bar associations in reform efforts is crucial for the sustainability of reform and for strengthening democratic institutional development efforts. If given a chance to work to eradicate inequalities and enhance access to justice for poor and vulnerable groups, professional bar associations will often rise to the occasion, but it requires an enabling environment. An enabling environment can be created through the following:

- **Capacity-building of bar associations.** Facilitate exchanges between bar associations from different countries in order to further legal reform and enhance the quality of legal representation.
- **Increased understanding of authorities of the role of bar associations.** It is important to work with authorities to increase their awareness of the important role that professional bar associations can play in promoting legal reform and in overseeing professional standards and ethics amongst legal professionals. Bar associations can also play an important role by keeping lawyers informed about new laws and regulations, for example, through meetings, debates/information on websites, and by regularly publishing and distributing journals to members.

Bar associations provide a permanent platform for advocacy and the promotion of legal reform and should not be overlooked as potential 'agents for change':

- **Sustainability.** Bar associations have the potential to become an important resource and channel for access to justice and reform efforts. Their members include most legal practitioners in a given country. Such wide membership gives them an authority which enhances their chances of successfully lobbying decision-makers.
- **A partner for rights-based legal education.** As an interest-organization, bar associations contribute to the shaping of the conditions in

which their members practice, and can also influence the development of the system in which they learn. One important way bar associations can use their influence in the legal education system is by encouraging the inclusion of access to justice issues and rights-based approaches throughout the legal curriculum. They can also provide support in terms of access to education by assisting poor and disadvantaged groups through scholarships and laws.

Partnering with Bar Associations

A useful and potential partner for UNDP country offices is the International Legal Resource Centre which was formed by the UNDP Legal Resource Centre and the American Bar Association in 1999, "...to support and promote good governance and the rule of law around the world..." It does this largely by assisting UNDP Country Offices to identify suitable legal expertise to undertake various projects in this field.

The International Bar Association (IBA) is a potential partner for reform activities and projects. The IBA is a global law organization for individual legal professionals, bar associations and law societies, and seeks to provide a unique platform for professional development and legal education, networking, and strategy for world law. The IBA's Human Rights Institute works across the Association, helping to promote, protect and enforce human rights under a just rule of law, and to preserve the independence of the judiciary and the legal profession worldwide.

Other legal aid components: financial and psycho-social support

Legal counsel is essential to strengthen people's capacity to navigate the justice system. However, the situation of poor and disadvantaged people may make legal counsel insufficient in the absence of financial and psycho-social support. Physical security may also be fundamental (e.g., through witness protection programmes).

Although financial support and psycho-social support during the legal process are elements of legal aid that do not derive directly from international obligations, they can be critical factors for seeking remedies through the justice system.

- **Costs of litigation.** Legal counsel may be insufficient when poor and disadvantaged clients are compelled to pay for a range of litigation costs, including bail, transcript and filing fees, service notices and pleadings. Together with these costs, other costs include transportation and loss of income for

attending the court as witnesses. Most legal aid systems include provisions exempting indigent litigants from paying some of these costs (e.g., filing fees) when assisted by public defenders. Such exemptions may not apply, however, to pro bono cases and usually do not cover important expenses such as court transcripts and expert witnesses.

- **Psycho-social support.** People with physical disabilities may be unable to communicate through the legal process, while persons with a mental disability may not be identified as such and risk being mistakenly imprisoned. For many litigants (e.g., victims of domestic violence or rape), the process of seeking a remedy may be traumatic and require additional psycho-social support such as counselling or shelter before they will be willing to take on the physical and emotional risks that such a process implies. Psycho-social support may be enhanced through strategies such as:
 - **Support to crisis centres.** Provide more linkages to, and support for, legal aid centres offering a combination of legal and psychological counsel.
 - **Enhancing coordination.** Between public defence/prosecution systems and government departments in charge of social welfare.
 - **Build linkages with legal NGOs and other CSOs working on psycho-social counselling and support.** Strengthening coordination between legal NGOs and other organizations providing psycho-social support can make it easier for clients seeking legal assistance to access the different types of services they need.

Although some strategies have been developed to address these issues, research and comparative analysis are still insufficient to provide a clear set of lessons and recommendations. Most experiences have so far been attempted by non-government organizations, for example, through the establishment of crisis centres.

Cross-practice interventions

Several strategies within UNDP's Access to Justice service line of good governance may serve to overcome some of the barriers highlighted above. However, most obstacles require capacity development strategies in other aspects of governance as well as in other UNDP practice areas, such as poverty reduction, gender equality, HIV/AIDS, conflict prevention or environmental

sustainability. This reveals the urgent need for cross-cutting development in the field of access to justice.

Some suggestions under UNDP’s access to justice service line include:

- **Bring the formal justice system closer to the people**, for example, through decentralization of courts, establishing justices of the peace in rural areas, making buildings accessible, limiting the use of legal jargon, improving communications with the media, and improving community-police relations.
- **Support community organization and networking.**
- **Apply broader criteria for standing in courts**, allowing organizations to represent individuals and accepting collective claims.

- **Support paralegal activities**, especially in countries where lawyers are scarce or unaffordable.
- **Strengthen developmental lawyering.**
- **Re-examine court fees and improve access to financial support for legal expenses**, for example, through micro-credit and micro-insurance schemes.
- **Strengthen accountability systems within the judiciary**, particularly with regard to discriminatory attitudes, corruption and nepotism, recklessness and negligence.
- **Strengthen interfaces between formal and informal systems**, in order to diminish pressure on formal systems, while ensuring discrimination and biases against disadvantaged groups within informal systems can be redressed.

Table 10: Strategies to Strengthen Legal Aid and Counsel

	ADVANTAGES	LIMITATIONS
LAW CLINICS AND LEGAL RESEARCH	<ul style="list-style-type: none"> ■ Clinical education can improve the quality of lawyers while expanding people’s access to legal assistance ■ Clinics also can provide paralegal services, legal literacy, policy research and advocacy ■ Clinics are most effective when partnered with NGOs and community-based organizations ■ Legal research can be useful when combined with advocacy, litigation or specific reform processes 	<ul style="list-style-type: none"> ■ Law clinics and community service ■ Concentration in urban areas ■ Tension between teaching and caseload management needs ■ Inconsistency in case handling due to student turnover ■ Lack of credibility in legal aid provided by students because of their age or experience ■ Legal research ■ Minimum impact as a stand-alone strategy
PUBLIC DEFENCE SYSTEMS	<ul style="list-style-type: none"> ■ Critical for poor people and consistent with state obligations ■ Possibility of reaching rural and remote areas ■ Adequate expertise in matters of concern to disadvantaged groups (e.g., criminal law) ■ Potential for monitoring quality and ensuring accountability 	<ul style="list-style-type: none"> ■ May be unable to cope with increasing caseload ■ Poor conditions of service may result in high staff turnover ■ May lack capacities in non-criminal matters or non-court procedures
PRO BONO LAWYERING	<ul style="list-style-type: none"> ■ Key source of assistance in the absence of an adequately funded public system; it also can contribute to personal fulfilment and development of professional expertise ■ Committed professionals with a sense of public service 	<ul style="list-style-type: none"> ■ Not a substitute for state obligations ■ Concentrated in urban areas ■ May result in loss of income for lawyers ■ Mismatch between client needs and availability and accessibility of services ■ Often the domain of young, inexperienced lawyers ■ Gap between professional rhetoric and actual practice ■ Difficult monitoring quality of services and accountability

	ADVANTAGES	LIMITATIONS
PARALEGALS	<ul style="list-style-type: none"> ■ Can provide the type of advice sought by most people, which is usually not complicated ■ Less costly than lawyers ■ When paralegals are members of the community they serve, they are able to perceive better the needs and provide explanations in ways clients can understand. ■ Paralegals also can explain what lawyers do, their fee scales, legal aid availability and whether it is worthwhile consulting a lawyer ■ They bring a different approach to legal problems, which is often more conducive to less traumatic resolution than the formal legal process. Paralegals commonly blend legal and extra-legal strategies ■ Paralegals are most effective when training is specific and they belong to a cohesive community group ■ Paralegals, lawyers and community education work best when they work together ■ Paralegal activities have greater effectiveness when combined with community mobilization or other development activities 	<ul style="list-style-type: none"> ■ Lack of uniform systems for training, certification and accreditation ■ They are not a complete substitute for attorneys or broader community education ■ May be resisted by lawyers ■ Not easily sustainable strategy
ALTERNATIVE LAWYERING AND DEVELOPMENTAL LEGAL AID	<ul style="list-style-type: none"> ■ Goes beyond ordinary legal and paralegal work by helping people not only to reach a remedy, but also to use it to achieve wider development goals ■ May produce wider impacts from individual cases ■ Greater effectiveness when combined with other development activities 	<ul style="list-style-type: none"> ■ Selective in the selection of cases (does not solve mismatch between available services and demand) ■ Not easily sustainable
OTHER LEGAL AID COMPONENTS: FINANCIAL AND PSYCHO-SOCIAL SUPPORT	<ul style="list-style-type: none"> ■ May be essential to ensure effectiveness of legal counsel, as these components determine people's capacity to take on the economic, physical and emotional risks involved in the process of seeking justice 	<ul style="list-style-type: none"> ■ May not be considered core components of legal aid systems

