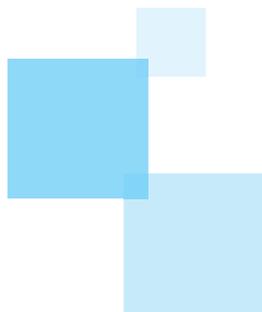
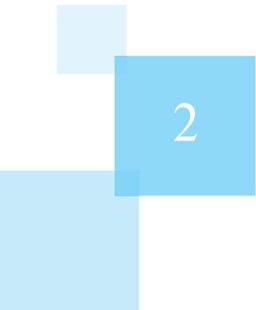
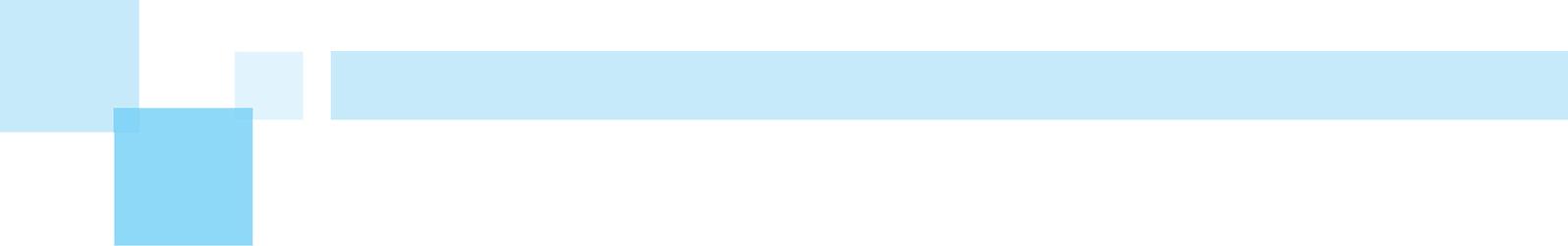


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Foreword



*The Danish Institute
for Human Rights*

REDRESS

Seeking Reparation for Torture Survivors



*Kherson Regional Charity
and Health Foundation*

Almost 120 delegates from twenty-five countries, among them Government representatives, legal aid practitioners, academics, and representatives from human rights, legal advocacy, and legal and justice sector reform organisations, met in Kyiv, Ukraine, between 27-30 March, 2007, to discuss and identify best practices in the protection and promotion of human rights through the provision of legal services.

This publication serves as the official record of the proceedings of that conference, documents the Kyiv Declaration on the Right to Legal Aid adopted by the conference participants at the conference's conclusion, and gathers together some of the opening and keynote statements delivered by the conference organizers and invited guests.

A second publication, to follow in 2008, will bring together articles by the conference speakers and others, addressing the conference's six central themes: public legal aid service providers; private and community-based programs; rights-based approaches in delivery of legal aid services; informal justice mechanisms and alternate dispute resolution forums; the role of the legal profession; and holistic approaches to legal aid service delivery.

There exists a large body of work on the design, management and activities of legal aid programmes, and on the importance of legal information and legal services as a critical element in efforts towards poverty reduction and sustainable development. Our hope is that the Kyiv Conference and the subsequent publications will make a contribution towards understanding of the nexus between legal services and the promotion and protection of human rights. During the conference proceedings, we were struck time and again by the commonality of issues raised by the conference participants, despite differences in language, geography and culture. The challenges facing legal aid lawyers assisting black indigent criminal de-

“ **Our hope is that the Kyiv Conference and the subsequent publications will make a contribution towards understanding of the nexus between legal services and the promotion and protection of human rights.** ”

pendants in Southern USA were remarkably similar to those faced by legal aid organisations in Southern Africa. Many of the countries represented were undergoing or had in recent years undergone the same legal aid reform process as was currently taking place in Ukraine.

We would like to express our sincere gratitude to the organisations which supported the conference financially: to Canadian International Development Agency (CIDA), DANIDA, the American Bar Association's Central and Eastern European Law Initiative (ABA CEELI), and the International Renaissance Foundation, Ukraine. The Ministry of Justice of Ukraine actively supported the conference and provided valuable assistance in the conference planning. We are also most grateful to the Director and students from the Bluhm Legal Clinic at Northwestern University School of Law, who freely offered their services as conference rapporteurs, and who drafted this report.



Mrs. Alla Tyutyunnyk
President, Kherson Regional
Charity and Health Foundation



Ms. Carla Ferstmann
Director,
Redress



Mr. Paul Dalton
Project Manager,
Access to Justice, Danish
Institute for Human Rights

Conference Report¹

Conference on Protection and Promotion of Human Rights through Provision of Legal Services

Best Practices from Africa, Asia and Eastern Europe
Kyiv
27th-30th March, 2007

Tuesday,
27 March

Opening Remarks

To open the conference, the Deputy Prime Minister of Justice of Ukraine, Ms. Inna Yemelianova, welcomed the participants to Kyiv and stressed the importance of sharing experiences and problem solving strategies among legal aid providers from around the world. Ms. Yemelianova stated that the information shared at the conference would be crucial to Ukraine because it is in the process of creating a national legal aid system. She divided Ukraine's goals for legal aid reform into two categories: reform of the legal advocate system and the creation, formalization and establishment of constitutional

legal aid. In order to fulfill its commitments to both the European convention and to meet the dictates of President Viktor Yushchenko's 2006 Decree mandating the creation of a nationwide legal aid network, Ukraine must successfully implement an effective framework. She remarked that the exchange of information at the conference would allow her Ukrainian colleagues to create the best possible framework for Ukraine's unique experiences while learning from the shared experiences of the participants.

Following the remarks by Ms. Yemelianova, Mrs. Alla



Ms. Inna Yemelianova
Deputy Prime Minister
of Justice of Ukraine

¹ This Conference Report was prepared by David Perry, Charles Majinge, Galina Samaras, Matthew Wernz, and Elizabeth Zeratsky, law students from the Bluhm Legal Clinic at the Northwestern University School of Law, Chicago, IL, USA.



Mrs. Alla Tyutyunyk
President, Kherson Regional
Charity and Health Foundation

Tyutyunyk, President of the Kherson Regional Charity and Health Foundation, spoke about the unique challenges facing Ukraine in its first attempt to create a national legal aid framework. She stated that in Ukraine there are 11 million people who have a right to free legal aid. However, until now a system for obtaining free legal aid has not been available. Mrs. Tyutyunyk remarked that in Ukraine there has been a real lack of shared knowledge regarding international systems of human rights. She recounted that after she had spoken with individuals from the Helsinki Human Rights Group, she realized that there were great ideas available from other countries, which would allow Ukraine to work toward its goal of providing a feasible system of legal aid. Ms. Tyutyunyk believes that now is a great time to address the legal aid problems because the current administration and legislative branch of the Ukrainian government have taken an interest and are committed to the creation of a legal aid system. Therefore, she was particularly grateful that the conference was being held in Kyiv. She concluded her remarks by thanking all of the organizations that provided support to the conference both financially, morally, and logistically. In particular she thanked the Ukrainian Ministry of Justice, Canadian International Development Agency (CIDA), REDRESS, and the American Bar Association, as well as US AID and the International Renaissance Foundation.



Mr. Nathan L. Taylor

Mr. Nathan L. Taylor from the Embassy of Canada spoke next about the nexus between legal aid and the Canadian government's goals of eliminating poverty and pro-

moting democracy worldwide. He commented that CIDA supports programs that promote effective judicial institutions and economic growth. The establishment of an independent judicial system provides greater freedom for the individual, supports a stable economy, and fosters democratic government. He recounted that CIDA has helped Bangladeshi NGOs provide access to justice in the areas of child protection and alternative dispute resolution. In China, it has helped establish due process and legal aid for marginalized groups. As a final example, Mr. Taylor discussed how CIDA has been supporting the rule of law in Ukraine since 1992. One particular success has been the establishment of model courts at the rayon (regional) level. He stated that despite the current successes, there are still many human rights violations and lack of public services, particularly in relation to women. Mr. Taylor emphasized that Canada believes that democratic institutions are best situated to protect rule of law and human rights, and thus must be protected and nurtured.

Ms. Carla Ferstmann continued the opening remarks by discussing the need for cooperation between international legal aid organizations. Ms. Ferstmann is the Director of Redress, a group that provides legal services to the survivors of torture and related international crimes. Moreover, it aids these individuals in seeking remedies and damages. She stated that legal aid is a critical component of this package of redressing wrongs. Ms. Ferstmann urged that legal aid is the primary way to address human rights violations and that it is a way to foster good governance, democracy, and independent institutions.

She concluded by stating that the range of experts from around the world and the experiences that these individuals bring to the forum will be enriching to all of the participants.

Mr. Paul Dalton provided the final remarks of the opening session by summarizing the goals of the conference and by providing a broad definition of legal aid. Mr. Dalton stated that the most basic goal of legal aid is securing recognition of the individual before the law. He believes that there is a broad spectrum of services, ranging from raising awareness to representation in court, which can be used to achieve this goal. However, he cautioned, the nexus between the different types of services is not clear. He suggested that the participants explore the connection between the two ends of the spectrum.

Mr. Dalton pointed out that legal aid must look beyond formal legal remedies. When mechanisms for dispute resolution are dysfunctional or not in accordance with international

human rights norms, organizations must try to provide an alternative dispute resolution. He stated that the participants must analyze the way the service organizations are formed and must go beyond the organization and look at the way legal aid monitoring is performed. He also cautioned that legal aid must look closely at the laws themselves.

While it is important that laws are in accordance with international standards, legal aid organizations must also ensure effective application of the laws. Mr. Dalton stressed that the process of legislation is just as important as the creation of the rights themselves. He noted that while a state itself has the primary responsibility for providing human rights protection, a mixed model of private/public legal aid in which the individual can choose between various options is the optimal model. Mr. Dalton concluded by encouraging the participants to be active in the discussions and to share their experiences with their international colleagues.



Ms. Carla Ferstmann
Director of Redress



Mr. Paul Dalton

Opening Presentation

Mr. Simon Rice, Senior Lecturer at Macquarie University, Sydney, Australia, presented an argument that legal aid should be seen as a human right in and of itself. Although Mr. Rice acknowledged that this position was an argument in principle rather than one in practice, he set forth the framework for establishing legal aid as a recognized international human right. He stated that currently the right to legal representation is implicit in many state and international in-

stitutions and in various human rights instruments. However, he commented that generally the right to legal aid is established by inference, rather than by an explicit statement based on constitutional rights to fair trial and due process. He demonstrated this by discussing the constitutions of the United States of America, South Africa, and the European Union.

Mr. Rice stated that in the USA, legal aid is only guar-



Mr. Simon Rice,
Senior Lecturer at Macquarie
University, Sydney

anted by the 6th Amendment in federal criminal matters. However, if it is read together with the right to due process, it can be assumed to be guaranteed in all criminal matters. However, both situations are limited to cases in which there is the threat of a prison sentence. Mr. Rice noted that the right to legal aid in the USA is largely derived from the notion of a right to a fair trial, and thus excludes many individuals from what the nevermind - ok consider to be their inherent rights to more generalized legal aid. This fixation on criminal representation, he argued, likely derives from a lopsided emphasis on the right to physical liberty over all other interests.

Much like the US, Australia limits the rights of its citizens to legal representation. Australians are guaranteed representation in court, in a criminal trial, and when a prison sentence is a possibility. Mr. Rice reported that Australian courts have repeatedly denied the right to non-criminal representation. He argued that the result of this limitation is that often one party has lopsided access to legal resources. A particularly significant problem is that the party with the greatest access to the resources is often the state. Mr. Rice argued that it is unsustainable for states to continue to treat civil matters as less serious than criminal matters. He pointed to the Land Claims Courts in South Africa as an example of a critical advancement in providing legal aid to citizens with pressing civil legal matters.

Mr. Rice continued by discussing the basis for legal aid as a human right and the problems with state-based claims to legal aid. He remarked that so long as rights arise in the con-

text of a state system, it will remain difficult to provide transnational legal aid. If the right to representation is tied to a state's procedures, it can modify the right, redefine it, and even deny it. Instead, he stated, the source of human rights is inherent in the person, not in the state. They derive from each person from birth by virtue of being human. Those who do not enjoy their rights are not without them, but simply are deprived of the exercise of their rights.

Although there is very little in the Universal Declaration on Human rights and the International Covenants that speaks directly to the relationship between the person and the law (the ICCPR §14 – only states that there must be legal representation where the law so requires), not all human rights are clearly set forth in existing covenants and many have not been articulated. Simon Rice stated that legal aid is one of these rights. He argued that because of the rules-based nature of human societies, it is imperative for individuals to understand the rules that they are governed by. He stated, “we cannot be human with dignity if we face sanctions because of inability to understand the law.”

It remains critical that individuals be able to understand the law, to gain its protection, and to participate. To accomplish these three inherent human rights, Mr. Rice proposed that states could implement programs such as public training and information sessions, as well as simplified compliance procedures. He suggested that these measures would allow states to provide basic access to justice without creating programs that would be prohibitively expen-

sive. In conclusion, Mr. Rice suggested that by establishing legal aid as a basic human right, it would create a standard by which each state's system could be measured and challenged.

Following his presentation Mr. Rice was asked about the potential ramifications of incorporating legal aid as an international human right. In particular he was asked whether such a broad definition would undermine the idea of human rights. Mr. Rice responded that although the recognition of a new and broad human right would certainly be practically challenging, it is important to offer new goals toward which states should aspire. He stated that tensions must be addressed between the obligations that come with a right and the

implementation of a protection of the right. He emphasized that participants must be mindful that his argument was one of principles rather than a suggestion for implementation of the right. Mr. Rice was also asked about the role of civil society in providing legal aid as a human right. Mr. Rice proposed that responsibility starts with the state. It is first and foremost a state responsibility. However, he added, no state has the capacity to provide for all human rights protections. Therefore it is important to create private/public partnerships. He concluded by stating that states and private institutions must work together for a common goal rather than as atomized providers of isolated services that are not coordinated with the main state goals or with other NGO roles.

“ So long as rights arise in the context of a state system, it will remain difficult to provide transnational legal aid.

Simon Rice

Session One: Legal Services Provision from the Perspective of Public Authorities

In the first panel session of the conference, Mr. Avrom Sherr from the Institute of Advanced Legal Studies in London, moderated a panel that focused on the role of government organizations in providing legal aid to citizens. He introduced the panel by stating that no country has succeeded in establishing a perfect system of legal aid. Moreover, he expressed concern at what seems to be an international retreat from “welfareism,” causing many nations to minimize or abandon legal aid services. Therefore, he expressed enthusiasm for the opportunity to discuss methods for

expanding legal services around the world.

Mr. Bruno Kalemba, Chief Legal Aid Advocate for the Office of Legal Aid in the Ministry of Justice of Malawi provided the prospective of the Malawi public authority. He informed the participants that Malawi has had a legal aid program since the country attained independence in 1964 (which was promulgated by the Legal Aid Act). At that time, there were many restrictions on the types of legal aid that could be provided, especially in criminal law. However, he stated, in



Mr. Avrom Sherr,
Institute of Advanced Legal
Studies in London



Mr. Bruno Kalembe,
Chief Legal Aid Advocate for
the Office of Legal Aid in the
Ministry of Justice of Malawi

“The only way to create a sustainable legal aid program is to use tax revenues. Government cannot be fully committed to legal aid services when it is reliant on outside sources.

Bruno Kalembe

the 1990's when process of democracy began to take hold, the legal system began to rapidly change. The concept of legal aid was broadened to include more than just legal representation in court. He reported that the definition now includes other areas such as legal education and civic education.

However, although the definition of “legal aid” expanded, the service providers remained the same, Mr. Kalembe remarked. The Malawi government is currently pioneering a pilot system of providing legal services. The highlight of the new system is a network of paralegals. He noted that most lawyers are in the wealthy private sector, and there aren't enough lawyers in the country. He reported that paralegals have begun to provide some of the services that lawyers were unable to provide. Financial problems, however, still remain.

Mr. Kalembe noted that Malawi is currently bombarded with health issues and thus does not have as many resources for legal services. While some private donors have supplemented government resources, private funds do not meet the long term planning needs of a country. He suggested that the only way to create a sustainable legal aid program is to use tax revenues. Mr. Kalembe declared that a government cannot be fully committed to legal aid services when it is reliant on outside sources. Currently there are a lot of bureaucratic limitations to accepting private money. For example, he noted that civil servants may not receive their salaries from private money. He recounted that for six years Malawi had a successful and well-financed homicide backlog

program. At the end of six years, however, there was drought in Malawi, the private money was transferred to food relief and the homicide program was discontinued. Therefore, Mr. Kalembe stated that it was crucial to establish long term government support.

Currently, Mr. Kalembe reported, there is hybrid system between government and civil society. The goal is to receive funding from government to create sustainability, but to keep the paralegal system operating as a civil society-managed initiative. He believes that it would be advantageous for any participant country to strive for a sustainable hybrid system.

The next panelist, Ms. Ta Thi Minh Ly, Director of the Vietnam National Legal Aid Agency, discussed the nature of legal aid services in Vietnam, the possibility for creatively spreading legal information to rural citizens, and the current hybrid funding system used by her organization. Ms. Ly first discussed the current status of legal aid in Vietnam. She reported that in 1997 there were only six centers for legal aid in the whole country, now there are 64 centers, one in each province. She stated that Vietnam does not have a national Bar Association and there are only two associations that are linked to cities. However, much of the legal aid is provided in the districts, and there are currently 938 branches of at District Level. She noted that this district system provides a huge network of aid to the population. She stated that this network is particularly important because Vietnam is dealing with a large number of human aid issues (including violence toward women, AIDS, and human trafficking). Despite the

rampant problems, only 1-2% of the population is able to obtain the services of private lawyer. However, she stated, individuals in need can obtain free legal services either by coming directly to the district aid offices or through a reference from a public forum.

Ms. Ly stated that the Vietnamese legal aid programs provide services in all legal areas, including criminal, civil, labor, land and administrative law. This definition of legal aid is particularly expansive. She noted that one particularly innovative approach her organization has taken has been to educate the public about available services. Rather than rely on television ads, the radio or newspapers, individuals can get information about legal aid through loudspeakers in communes and mass organizational meetings. By using these methods, Ms. Ly remarked, those individuals who do not have access to technology or who cannot read will still be able to exercise their rights.

Despite the large network of district offices, Ms. Ly pointed out that there is still a severe shortage of legal professionals to provide free services. Currently there is only one lawyer for every 20,000 citizens. She noted that private lawyers are currently not under a legal obligation to take legal aid cases. Ms Ly was optimistic that once a national Bar Association is established, it will provide a forum to encourage private lawyers to respond to public needs.

Much like Malawi, Vietnam has a hybrid funding system. 60% of the \$1,700,000 budget comes from the government, while 40% comes

from foreign aid (SIDA (Sweden), Novib (Holland), SDC (Switzerland), SCS (Sweden), and DIHR, (Denmark)). By balancing government funding with private international funding, her program has a base of stability and also has access to additional resources that the government is unable to provide. Ms. Ly concluded by suggesting that the Vietnamese legal aid system has three main challenges: monitoring the quality of services, improving capacity of legal aid offices, and improving the professional ethics of lawyers.



Ms. Ta Thi Minh Ly,
Director of the Vietnam
National Legal Aid Agency

“ **Rather than rely on television ads, the radio or newspapers, individuals can get information about legal aid through loudspeakers in communes and mass organizational meetings. By using these methods those individuals who do not have access to technology or who cannot read will still be able to exercise their rights.**

Ta Thi Minh Ly

Ms. Valentina Subotenko, Head of the Centre for Legal Reform and Legislative Review in Ministry of Justice of Ukraine, provided an update on the initial stages of the creation of a nationwide legal aid program. She informed the participants that Ukraine is only in the first steps of the formation of a free legal aid program. Ms. Subotenko stated that there are two main factors required for the creation of a free legal aid system: to meet international standards and to meet the guarantees promised by the government.

Ukraine entered into a large number of international agreements before and after the

“**Citizens’ protections against violations of the state must come from the citizens themselves.**”

Valentina Subotenko



Ms. Valentina Subotenko,
Head of the Centre for Legal Reform and Legislative Review
in Ministry of Justice of Ukraine

break up of the Soviet Union. According to the Law on Legal Inheritance, Ukraine must still fulfill the obligations under the Soviet system. Ms. Subotenko said that Ukraine is a nation bound by Article 20, and therefore it must ensure that all citizens have at least basic legal protections if one of their enumerated rights is violated. Additionally, if officials have violated an individual’s human rights, the state must have an official mechanism for protecting citizens. Ms. Subotenko commented that citizens’ protections against violations of the state must come from the citizens themselves. According to Article 14, the government must ensure that all citizens under Ukrainian jurisdiction can personally protect themselves. Ms. Subotenko stated that if a person doesn’t have any method to pay for legal services, the services should be provided for free. She added that Ukraine is also a member of the European Convention on Human Rights, by virtue of which Ukrainian citizens can apply to the European Court of Human Rights in cases where it is alleged that the Ukrainian state violated its obligations. This Convention creates a new forum for redress. Ms. Subotenko remarked that generally Ukraine must fulfill its international obligations and may not rely on national law that is contrary to its international obligations.

Ms. Subotenko went on to talk about Ukraine’s obligations to refugees. Under its international obligations, Ukraine must provide the same rights to refugees as it gives to its own citizens (even legal aid). Currently it is not meeting these obligations, said Ms. Subotenko. According to bilateral

legal aid treaties, it must give rights to citizens of other contracting states, and it must provide legal aid to non-nationals at the same level it would give to its own nationals. Article 16 of the Ukrainian Constitution mandates a system of legal aid, but distinguishes between cases when aid must be given and when it need not be given. She stated that these rights are unconditional according to Article 24, and no other laws may narrow this right to legal aid even in the case of war.

Ms. Subotenko next discussed the current state of the fledgling legal aid system. She stated that currently free legal aid is only provided in criminal proceedings. In any type of proceeding any person has a right to choose their lawyer. However under the penal code, there are only a limited number of cases in which a lawyer must be assigned to a defendant (e.g. mental disability, potential life sentence). However Ms. Subotenko lamented that despite the constitutional guarantees there still is not a legally mandated legal aid system. She outlined that first the government must provide legal aid centers. So far it has created only two pilot programs and is still waiting for different organizational plans to be approved.

The final panelist in the first session was Ms. Hatla Thelle, Senior Researcher in the China Programme of the Danish Institute for Human Rights, who discussed public legal aid in China. Her presentation focused on the establishment of a publicly funded legal aid system in China and included a discussion of mediation as an alternative dispute resolution mechanism Ms. Thelle stated that

China has established a National Legal Aid Center and set up a Legal Aid Foundation, which solicited funding from Chinese business and individuals.

Ms. Thelle commented that the methods of petitioning the government and public mediation are quite developed. These are traditional forums for resolving disputes, which are still in place. Transition to a market economy in China began in 1980 and has created substantive stable economic growth but also social insecurity and rising crime. As social unrest has increased, it has awakened the government to the need to stabilize society. Fortunately, she remarked, it has seen legal aid as one method to do so. In 2003, the State Council passed regulations that are now the current framework for the legal aid system. Although the framework is not composed of laws but of administrative regulations, it provides a strong impetus for local government to set up legal aid institutions.

Ms. Thelle stated that all levels of regional government are obliged to establish and fund legal aid centers. Local government must set aside part of its budget for legal aid centers which are then under its control. Legal aid workers' salaries are paid for by the local government. She remarked that this brings into question the independence of the advocates. Another problem is that the regulations do not state how much funding must be set aside. Legal aid staff members are often not lawyers, but instead they have undergone legal training courses and been certified by the government. By contacting the Bar Association, the legal aid centers find lawyers to take on

the specific cases. Lawyers are required by law to accept cases.

Ms. Thelle described that legal aid centers can accept criminal, civil as well as administrative cases. In order to receive free legal advice for civil matters individuals must provide documentary evidence to show that they are poor. Additionally, they must have an ID showing a valid residence in the place that they are asking for help; they must seek help in their own region. Finally an individual must prove by documentation that his or her rights have been violated. Ms. Thelle remarked that this is a somewhat difficult requirement. For criminal cases, the court will ask the legal aid centers to appoint a lawyer in certain cases (e.g., when defendant is a minor, deaf, mute, or where the person faces a death penalty charge). She stated that in all other cases a court does not have to appoint a lawyer. Chinese citizens do not have a right to a lawyer in all criminal cases.

Ms. Thelle noted that although many legal aid centers have been established in China, there are not nearly enough to meet the needs of China's population. Moreover, legal aid centers have particularly large work loads because they have the duty to coordinate all legal aid functions in their locality. This coordinating function allows them to form a nexus between public and private aid in an area. She noted that coordination was a particularly positive feature of the centers. However, she noted that the centers still face many problems. In particular she identified that many of the centers were inadequately funded, that the criterion for getting legal aid excludes most people, and the quality of lawyers is a problem.



Ms. Hatla Thelle,
Senior Researcher in the
China Programme of the
Danish Institute for Human
Rights

“ **All levels of regional government are obliged to establish and fund legal aid centers. Local government must set aside part of its budget for legal aid centers which are then under its control.**

Hatla Thelle

Following the presentations, many of the participants asked questions regarding the progress of the Ukrainian legal aid pilot programs. Ms. Subotenko was asked whether the Ministry of Justice must solely bear the responsibility for providing aid or whether it could be in the realm of NGOs. She responded that the Ministry of Justice is the main organ for providing legal aid but that NGOs should also be supported by the state if they are pursuing the same goal. She added that while Ministry of Justice develops all laws regarding free legal aid, after the laws are created, they will be open to critique by national and international organizations and NGOs as well as individuals.

In response to a question about possible tensions between the need for thorough paralegal training and the system's inability to handle the large workload

that paralegals can help with, Mr. Kalemba agreed that the amount of training necessary to qualify individuals as paralegals is an important and a difficult question. He stated that paralegal training currently varies as widely as a one week program in some circumstances to a six month program in others. He agreed that proper training is crucial, but he also reiterated that because most lawyers work in urban areas and focus on civil and commercial law, there is a tremendous need for paralegal services to address the unmet needs of criminal defendants. Mr. Kalemba suggested that paralegal training is an area that needs to be emphasized, and that paralegal services should be focused especially on providing those pre-trial services which are rarely if ever provided at present and where fully-trained lawyers are not necessarily required. .

Session Two: Provision of Services by Private and Community-Based Organizations

Mrs. Alla Tyutyunnyk, President of the Kherson Regional Charity and Health Foundation (KRCHF), began the second session by discussing the progress of Ukrainian NGOs in creating a new system of free legal aid. Mrs. Tyutyunnyk posited that a person must know their rights in order to protect them. She told the participants that until recently there was no mechanism to protect human rights in Ukraine. Human rights were not even taught to law students. She stated that 27% or more of Ukrainians live below the poverty level and thus can-

not afford to pay for a lawyer. Significantly, 80% of Ukrainians do not know their rights or how to access them. Even according to the official data of the State Courts Administration, the Ministry of Labor and Social Politics, and the Ministry of Health Protection 11 million Ukrainian citizens are entitled to receive free legal aid from the government – these are the people whose rights are specifically recognized in various legal documents. Mrs. Tyutyunnyk remarked that this number does not include those excluded from the study; for example those in

prison, people without a permanent place of residence, as well as 20 million Ukrainian children. However, none of these people receive free legal aid from the government at present since a national legal aid system is yet to be established.

Mrs. Tyutyunnyk mentioned that in 2005-2006, the President of Ukraine approved a Plan of Activities for fulfilling Ukraine's duties and obligations as a member state of the Council of Europe. At this time, an All Ukrainian Forum of private organisation providing legal aid was held, and a Concept was developed and subsequently approved by the President for establishing a national free legal aid system.

With the support of International Renaissance Foundation, Legal Initiative of the Open Society and the Ministry of Justice of Ukraine, pilot legal aid offices were established in Kharkiv and Bila Tserkva in order to provide assistance to indigent criminal defendants. Until now, these offices have focused solely on providing legal aid in criminal cases.

With respect to civil matters, the Ministry of Justice has entrusted its regional offices to establish public assistance centres. However, no funds were allocated to regional offices to carry out this new task, and it is therefore not surprising that the offices have not yet been established in practice, despite their existence on paper. Another problem has been that state officials are not ready to provide high level legal assistance to citizens to assist them to resolve dispute with state agencies and / or to secure protection of their human rights.

Mrs. Tyutyunnyk also stated that according to the Law on Prosecutors, a prosecutor has the power to bring a civil action to protect persons with low income. However, as a rule, prosecutors refuse to provide this kind of legal assistance, arguing that the persons concerned can bring the case themselves. Furthermore, prosecutors often do not appear at court hearings for these kinds of civil matters, since they are not interested in doing so. But where an NGO, protecting the interests of poor citizens, approaches the prosecutor's office, the results are quite often positive – the prosecutors agree to take on the case. Mrs. Tyutyunnyk mentioned that the Ukrainian law on administrative courts envisages that citizens should receive assistance by the staff of the court in preparing appeal papers. However, the law on administrative courts has not yet become operational: the courts are still in the process of being established. During elections, political parties open citizen's advice centres but the purpose of such centres is primarily to publicize the political party rather than to provide quality legal assistance. Furthermore, the centres only remain open during the election period.

Mrs. Tyutyunnyk stated that NGOs bear the brunt of providing legal aid and information in Ukraine. In Ukraine there are dozens of NGO networks, representing hundreds of legal aid service providers - publishing educational literature, conducting seminars, providing consultations, mediation services, representing clients in court, making appeals to the European Court and other international organizations. Most NGO's engaged in rights protection also provide information services

“ **27% or more of Ukrainians live below the poverty level and thus cannot afford to pay for a lawyer. Significantly, 80% of Ukrainians do not know their rights or how to access them.**

Alla Tyutyunnyk

“ Goal of KRCHF to not only provide legal services in the villages, but also to identify active people in each region who will be able to provide information about an area to KRCHF. KRCHF helps these activists to establish consultation centres in villages, stays in touch with them, and receives regular information from them about local developments.

Alla Tyutyunnyk

– they maintain data bases about state agencies, local self-governance bodies and NGOs providing social and legal services, inform citizens, publish booklets and brochures. None of the Ukrainian state agencies provides such services. However, state agencies have not taken advantage of these potentially powerful resources as a tool for assessing legal needs and how those needs are currently being met. This is surprising because many other countries have networks composed of aid bureaus to foster open communication and create information guides. So far, there has not been a significant amount of information dissemination to state agencies in Ukraine.

Mrs. Tyutyunnyk believes that in order to create a fully functional network for providing legal aid it is necessary to:

- develop a common strategy;
- develop common quality standards;
- create a common vocabulary for the network;
- equip public offices according to common standards;
- develop corresponding computer programs;
- develop rules of communication, regulations and instructions to guide the network's activities;
- develop a functioning system of controlling the level of legal aid;
- provide training for personnel; and
- build office and personal management structures

Mrs. Tyutyunnyk said that the Ukrainian civil sector has the necessary human and intellectual resources to create an effective network for provision of free legal aid, but it is

impossible to do so at present due to the existing legal framework and the lack of support from the state. It is not even necessary for government to invest public resources - there are enough examples in the world illustrating how governments can encourage businessmen to fund social programs, providing them with various tax privileges. There is also another way to support community-based legal aid programmes – to exempt them from paying taxes, and to allow them to earn money, as has been done in a number of European countries. At present, Ukrainian NGOs can only dream about changes of this kind being made in Ukraine, mentioned Mrs. Tyutyunnyk.

Mrs. Tyutyunnyk spoke about the work of KRCHF's public advice centres, including the mobile ones. She stated that it is a goal of KRCHF to not only provide legal services in the villages, but also to identify active people in each region who will be able to provide information about an area to KRCHF. KRCHF helps these activists to establish consultation centres in villages, stays in touch with them, and receives regular information from them about local developments. There are also some examples of positive collaboration with local government agencies. In Kherson, for example, KRCHF made an agreement with the mayor's office that all complainants of a certain type would be referred to KRCHR for assistance. For its part, the local government provides space and consultations to KRCHF's rights defenders.

Remaining independent from state control is a primary concern for KRCHF, said Mrs. Tyutyunnyk. The Foundation

refuses to accept state money in order to retain its independence, and thereby to be in a position to act effectively to defend the rights of citizens in disputes with the state. Mrs. Tyutyunnyk remains optimistic. She believes that an independent network of legal aid centers will be able to expand more rapidly than state programs, and will hopefully also be able to attract highly motivated and qualified lawyers. She also believes that more laws more favourable to the work of NGOs will be adopted, and that the government believes that laws more favorable for NGOs will be adopted, and that the government will

Become better at utilizing the skills and experience of NGOs than they have been up till now. This is the only way in which the problem of providing free legal services for the more than 11 million citizens entitled to them can be satisfactorily addressed. In view of the fact that Ukraine is actively seeking EU membership, it must take steps to ensure that all its citizens have access to law and to legal remedies.

Ms. Seehaam Samaai, the Director of the University of the Western Cape Legal Clinic was the second speaker on the panel. Ms. Samaai discussed the types of legal aid providers in South Africa, the effectiveness of using a clustering system of organization, and the important role university legal clinics play in fostering an ethos of public duty. She began by describing that in South Africa there are six main mechanisms to provide legal aid to the poor. Individuals in need can get help through public interest law firms, private firms' pro bono work, community-based paralegals, NGOs, legal insur-

ance plans, and independently funded university law clinics.

University law clinics have played an important historic role in South Africa, said Ms. Samaai. They were first formed by student initiative during the apartheid years to serve disenfranchised communities. The clinics continued to serve in this capacity through the 1990s at which point they obtained licenses to operate as law firms.

After 1994, the clinics wanted to expand their reach and provide access to legal services for individuals who had been victims of human rights violations. However, Ms. Samaai remarked, the Legal Aid Board was in crisis and didn't have enough staffing or funding to provide enough services to increase the caseload. Because clinics had begun to take on bigger and more cases, they were becoming increasingly dependent on donor funds. To solve this problem the Legal Aid Board restructured and started forming justice centers.

These centers became more focused on operations and services in order to reduce overheads and best distribute the limited university funding that they had.

Ms. Samaai stated that the result of the reformed system was a cluster-based system of legal aid centers. Together they form a coordinated network of legal service centers that each provide services directed at protecting a specific type of right. Although each center is specific to a region and a type of legal service, the networks are highly integrated and extremely well suited for sharing information.

The Legal Aid Board not only forms a network among the



Ms. Seehaam Samaai,
Director of the University of the
Western Cape Legal Clinic



Mr. Huang Jinrong,
Senior Researcher at the
Institute of Law, Chinese
Academy of Social Sciences

“As more citizens are able to read and hear about legal human rights challenges, Mr. Huang argues, more people will become interested in learning about their own rights and investigating how to protect them.

Huang Jinrong

centers, but is linked to university legal clinics, said Ms. Samaai. She remarked that legal aid clinics have been capacitating the Legal Aid Board and have been a major source for recruiting competent and dedicated lawyers. Ms. Samaai felt strongly that universities must start concentrating on clinical legal education within a social justice setting. She emphasized that it is critical to foster an ethos such that lawyers feel a sense of duty to fight injustice, and university clinics play an important and central role in exposing students to contributing to social justice.

Mr. Huang Jinrong, Senior Researcher at the Institute of Law, Chinese Academy of Social Sciences, was the next speaker. He addressed issues of providing legal aid in the particularly challenging climate of the Chinese state. Mr. Huang stated that the formal legal aid system focuses on citizens who cannot afford legal aid. However, the idea of using legal education to transform the practice of legal aid is new in China. He lamented that the number of lawyers providing legal aid services is not proportionate to the growing number of private sector lawyers. However, despite the small number of legal aid lawyers, Mr. Huang feels that current conditions are ideal for improving legal aid services.

He noted that Chinese society has increasingly accepted the idea of rule of law. Even the Communist Party has shown an increasing interest in the value of law. As an example, he pointed to the 1999 Amendment to the Constitution which set forth the goal of obtaining the rule of law. Perhaps most importantly, the Chinese people are increasingly

become conscious of national laws. Unfortunately, he added, legal aid service providers face many restrictions. Mr. Huang stated that China has a wonderful but impossible constitution. There is a widely held opinion in the legal profession, especially among judges, that the Constitution cannot actually be applied to individuals. Therefore, there is no effective system of constitutional review and no mechanism to ensure uniformity of law. He also noted that resolutions adopted by local people's congresses can prevail over laws passed by the National People's Congress. According to the Constitution, any national law overrides local laws, but in practice this does not really occur. Mr. Huang noted that the superiority of local laws really restricts the independence of legal aid practitioners. Finally, he stated that there is no real independence in the Chinese legal system. The image of law has not changed in recent years despite the reforms.

Mr. Huang noted that the Chinese government's concern about possible political instability has made it reluctant to address individual rights. However, Chinese legal advocates are persistent and creative in using legal means to protect human rights. He pointed out that legal aid advocates must be very careful to avoid being classified as dissidents and thus must remain within the bounds of the law while pressing for reforms, particularly if the legal challenge has political ramifications. The most effective tools for human rights reform are impact litigation and the legal petition.

Mr. Huang stated that petitions can be used to address the National People's Congress

regarding local laws that are in conflict with national laws or the Constitution. This type of reform activity is not regarded as politically charged and thus is accepted. Impact litigation serves a number of functions. Mr. Huang pointed out that not only does it provide a challenge through a formal legal framework; it also allows issues to be discussed in the State-owned media. The State media would not be allowed to cover a street protest for human rights, but it can safely discuss a lawsuit being brought against a local government. As more citizens are able to read and hear about legal human rights challenges, Mr. Huang argues, more people will become interested in learning about their own rights and investigating how to protect them. He stated that many practitioners consider the media to be the most powerful tool in using advocacy for political change. In conclusion, Mr. Huang stated that public interest litigation has become an increasingly powerful tool to bring attention to problems that would likely otherwise remain unaddressed.

To conclude the first day of the conference Mr. Abby Tabrani, Vice Chairperson of Board of Directors of the Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia/YLBHI), spoke about geographic, funding and legislative challenges to providing legal aid in Indonesia. The YLBHI was founded in the 1970s in response to the need to provide legal protection to citizens who were still under military regime. Mr. Tabrani noted that since that time, many NGOs and university clinics have been established and are providing services all over Indonesia.

Indonesia faces many geographical challenges in providing legal aid to its population. Mr. Tabrani mentioned that the distance between the five large islands and the many smaller islands makes providing a comprehensive system very difficult. The Indonesian government's low level of understanding in regard to providing legal aid provides another difficult hurdle. Finally, legal aid in Indonesia faces a problem funding its programs. He explained that legal aid services are provided almost exclusively by civil society and there is a heavy reliance on private donor funds to provide support for legal aid programmes.

To combat the funding problems, Mr. Tabrani stated that the YLBHI prioritizes their cases to keep costs down. The YLBHI first takes cases regarding large human rights violations or constitutional violations and structural cases. Both of these types of cases have the potential to help a broad segment of society and not just the individuals immediately affected. Only occasionally does the YLBHI take on individual cases. It additionally has addressed its geographic challenges by setting up mobile legal aid clinics that can reach a much larger segment of the Indonesian population.

Finally, Mr. Tabrani discussed the methods the YLBHI uses to ensure that quality services are provided by his organization. He stated that each year the YLBHI publishes a report on the work of the organization, which is then reviewed by donors and the Board of Trustees. To ensure maintenance of a high standard of services there is a mandatory training within the organization for each lawyer. In conclusion, Mr. Tabrani



Mr. Abby Tabrani,
Vice Chairperson of Board of Directors of the Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia/YLBHI)

remarked that the YLBHI has established networks with other legal aid providers and NGOs to share information and thus potentially standardize the quality of services provided throughout the country.

Following the second session, Mr. Tabrani was asked whether YLBHI uses computer software to share information within its legal aid network. He responded that although Indonesia does not use software to network, there is a current initiative to go online. He stated that one problem is that many Indonesian provinces don't have the infrastructure necessary to use internet networking. A participant added that South Africa currently has a system in which networks of legal aid providers send precedents and new case law to one another so that all providers are up to date.

Mr. Huang was asked how China monitors the quality of services provided by pro bono attorneys. He answered that it is difficult to maintain control over the quality of mandatory services. He noted that public litigators are very well trained, but there are no formal mechanisms for ensuring quality. In theory, the Bar Association should carry out quality assurance activities. However, the cases are not controlled or monitored by any formal procedures. Mr. Huang added that the quality of service

can be very different from case to case and there are complaints that lawyers do not put enough work into the cases.

Ms. Samaai stated that in South Africa a monitoring and quality checking system has been established for all legal aid providers. Every case is monitored. The monitoring agency randomly checks cases and monitors every lawyer on a quarterly basis. If quality standards are not met, the offending lawyer is penalized. Additionally, private lawyers are required to invest 24 hours of their time each year in pro bono work. If they do not meet quality standards, the NGO that supervises the case will not sign the documents required to gain professional credit for their time.

Ms. Samaai also addressed a question regarding the creation of sustainable funding. She stated that each time a donor plan is created; the organization has a back-up plan in case the donation is not provided in reality. The legal aid networks must be sustainable. Therefore they can not simply concentrate on donor or government funding. Instead they must look at alternative resources and capacity pooling. She stated that small communities should take responsibility for funding. This fundraising could be as simple as a cake sale, or could come from contributions by local businesses.

Wednesday,
28 March

Session Three: Rights-Based Approaches to Legal Aid Delivery

Day Two of the conference began with a plenary session on rights-based approaches to legal aid delivery. Mr. Fergus Kerrigan, Senior Advisor at the Danish Institute of Human Rights, moderated the session and introduced the panelists: Mr. Paul Mulenga, from the Legal Resource Foundation (LRF) of Zambia, Ms. Evelyn Battad of Free Legal Assistance Group (FLAG) in the Philippines, Ms. Carla Ferstmann, with the Redress Trust in London, and Ms. Gulmira Shakiraliyeva, of the Legal Clinic Adilet in Kyrgyzstan.

Mr. Mulenga presented first, discussing his organization's efforts to secure the rights of defendants in Zambia throughout the criminal process. LRF was created to supplement the government-funded legal aid system, which at the time was unable to provide effective assistance to those in need. Mr. Mulenga explained that since its inception, LRF has created and maintained legal advice centers in each of the nine provinces

in Zambia. These centers are largely run by paralegals, who work directly with criminal defendants to ensure that they understand and exercise their rights.

After describing the goals and structure of LRF, Mr. Mulenga took a few minutes to list some of the more important rights that criminal defendants in Zambia are supposed to be guaranteed. These include the presumption of innocence, an early and understandable explanation of the nature of the charges, a public trial within a reasonable period of time after the charges have been brought, an interpreter if necessary, legal representation, an opportunity to call and confer with witnesses, freedom from double jeopardy, an opportunity to appeal, and sentencing within a reasonable time after conviction.

Mr. Mulenga also emphasized the crucial importance of ensuring access to legal representation at an early stage in the legal proceedings. He noted



Mr. Paul Mulenga,
Legal Resource Foundation
(LRF) of Zambia



Ms. Evelyn Battad,
Free Legal Assistance Group
(FLAG) in the Philippines

“The law must be critically analyzed for aspects of the legal and social systems that are in need of fundamental change.”

Evelyn Battad

that while securing legal rights at the trial and post-trial stage are necessary, a criminal defendant whose pre-trial rights are not respected may have his or her fate sealed by the time the trial begins. In an effort to secure these pre-trial rights for criminal defendants, LRF has launched a campaign to inform and sensitize police officers to the rights of suspects, published monthly newsletters highlighting human rights issues, investigated jail conditions, implemented programs to provide legal advice at defendants' first time of contact with the criminal justice system, and represented victims of police brutality and illegal police searches before the Supreme Court.

The next panelist was Ms. Evelyn Battad with FLAG, who argued the need for a more holistic approach to legal aid than most traditional legal aid systems offer. Whereas traditional legal aid models assume the justness of the legal system and seek to enforce the law, Ms. Battad stressed that the law must be critically analyzed for aspects of the legal and social systems that are in need of a fundamental change. The Developmental Legal Advocacy (DLA) model of legal aid grew out of the history of martial law in the Philippines and seeks to use this type of critical analysis to empower marginalized populations to determine the society they want, and achieve the fundamental reforms necessary to create that society.

FLAG was formed in 1974 by a small group of lawyers seeking to use the DLA model to provide this power of self-determination to Filipinos. Unlike the traditional legal aid model, in which law-

yers are the primary actors, FLAG's vision is for the people to be the main actors, and the lawyer's role is simply to support the people in achieving the goals they set. FLAG employs a two-part strategy to empower its marginalized clients. First, one must confront the government regarding the harmful effects of its policies. This should be done through direct litigation and by highlighting the discrepancies between the relevant international standards and the government's rhetoric on the one hand, and the reality of human rights abuses on the other. The second part of the strategy is to help marginalized sectors increase their awareness of the causes of their problems and the potential for improvement, and to involve them directly in pursuing and claiming the solutions.

Using the DLA model, FLAG does much more than provide traditional individual legal representation. The organization also engages in political lobbying, legal education and advocacy, networking, alternative dispute resolution and test case litigation. It is this combination of legal and meta-legal processes that is necessary to put pressure on the authorities, foster concerted action by marginalized populations, and ultimately eliminate the types of human rights abuses that have been so pervasive in recent decades.

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. Ferstmann noted that although torture victims are often reluc-

tant to bring legal challenges, there are many benefits to doing so and many forms the challenges can take. In addition to the individual remedies for their abuse and access to the courts, legal challenges can also serve to recognize the suffering of the victims and foster institutional reforms to prevent further abuses from occurring. Challenges may be structured as criminal complaints, civil claims, constitutional challenges, or administrative actions.

Ms. Fertsman noted several structural impediments to access to justice for torture victims. First and foremost at the national level is the lack of public funding, which limits access directly and also exacerbates the ramifications of negative cost awards against claimants, their legal representatives or NGOs supporting the legal action. In addition, NGO providers of legal aid to torture victims must frequently deal with state opposition which can take the form of intimidation and harassment against the lawyers individually or the NGO as a group. Another challenge is 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 take on an even greater role in providing representation.

At the international level, the European Court of Human Rights is the only public body that provides funding for legal representation of torture victims, but even this funding is limited to certain situations and certain stages of litigation, thus limiting the reliability and effectiveness of the funding source. The International

Criminal Court is another potential avenue for justice for torture victims, but unlike criminal defendants, torture victims are not guaranteed legal representation, but must meet strict means-testing criteria by certifying their indigence. Furthermore, while victims who qualify can participate in the investigative stage, many victims will often be so widely geographically dispersed and possessed of such limited literacy skills that their accessibility and usefulness is often limited as a result.

In conclusion, Ms. Fertsman highlighted the significant limitations on access to justice for torture victims caused by a lack of state funding for representation. She acknowledged the importance of NGOs in providing this representation, but stressed the need for greater involvement by national governments to provide systematic as opposed to ad hoc redress, and she noted the similarities in challenges at the national and international levels.

To end the first session, Ms. Gulmira Shakiraliyeva, of Legal Clinic Adilet, discussed issues facing representation of juvenile criminal defendants in Kyrgyzstan. She noted that while legal aid is not guaranteed in civil rights cases, free legal aid is provided for refugees, female victims of domestic violence, and juveniles in criminal proceedings. Recognizing that juveniles require special protection, Kyrgyzstan has just passed legislation in 2006 setting the standards for the rights, remedies, and protections for juveniles in criminal proceedings. Kyrgyzstan has a large population of orphaned children, up to 15,000 in one city alone according to some estimates, and



Ms. Carla Ferstmann,
Redress Trust in London



Gulmira Shakiraliyeva,
Legal Clinic Adilet in
Kyrgyzstan.

a 42% poverty rate. This combination has swelled the ranks of detained children, and Ms. Shakiraliyeva's organization is dedicated to serving the needs of these detained children.

Although in theory, juvenile defendants are guaranteed the right to free legal representation, in practice few children benefit from this right. In many cases, the state provides inadequate money for representation, leading lawyers who are appointed to exert less effort and be less effective in their representation. Furthermore, legal aid to juveniles is usually only available at the trial level rather than at both trial and appellate stages. Contrary to international standards, juveniles in Kyrgyzstan are incarcerated during the investigation stage. Ms. Shakiraliyeva described her organization's efforts to intervene early by visiting juveniles in detention during the investigation stage, and that they are working to reform the overall juvenile justice system in Kyrgyzstan, but that many challenges lie ahead and the process will take time.

Following the session, audience and panel members discussed issues raised during the presentations and possible applications of the information. Ms. Battad responded to a question about gender issues in the Philippines, by stating that FLAG sees more problems among women as a result of inequities in the legal system in areas such as property rights. With regard to the issue of Muslim Mindanao, FLAG is ultimately committed to the concept of self-determination, and that the same strategies are used in promoting human rights regardless of religion or gender. She also noted that some

FLAG lawyers have received serious threats, including death threats, for their work and that on occasions some lawyers have quit their work as a result, but that FLAG is committed to its cause, and they will continue to serve the population in spite of the intimidation tactics of opponents.

The audience and panelists discussed several different models for state funding of legal aid, including salaried government lawyers in Zambia, a combination of salaried public defenders and capped hourly rates for private attorneys in Canada, extremely small payments to private attorneys in the Philippines, and flat per-case rates in other countries that may allow for easier monitoring of attorney quality.

There was also considerable discussion surrounding the role of paralegals in providing legal aid to the poor. Mr. Mulenga stated that Zambian paralegals work alongside lawyers and provide legal information and possible solutions in the earliest stages of conflict at a lower cost and with fewer resources than lawyers would require. Mr. Abby Tabrani of Indonesia and Ms. Battad both described how paralegals in their countries serve as community-based facilitators of legal access who can serve as trouble-shooters for simpler disputes capable of early resolution. Several audience members and panelists stressed that paralegals do not enjoy the protections afforded by attorney-client relationships, but that paralegals can serve valuable roles in providing access to justice.

In response to a question regarding the difficulty of gain-

ing access to police stations, Mr. Mulenga 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 offi-

cers. Finally, he stated that by providing free legal aid to police officers, LRF was able to demonstrate its positive intentions and foster good will between LRF and the police force.

Civil Law Working Group

Mr. Rudolph Jansen, the Director of the South African NGO Lawyers for Human Rights, led the discussion in the civil law working group, which began by focusing on the recognition and attainment of socio-economic rights such as housing and medical care but later expanded to address environmental and political rights as well. Mr. Jansen noted that one major impact of granting socio-economic rights would be serious financial consequences arising from the creation of many positive duties for the state, whereas most political rights, or first generation rights, such as freedom of speech and freedom of religion, are negative rights that don't have as great an impact on state budgets.

Civil Litigation aimed at changing the law and society must be approached very cautiously. It must happen within a well structured litigation strategy that is appropriate for the specific country. It is essential that such a strategy have a long time horizon. It is further essential that the lawyers involved have the necessary skills to perform the high level legal work required for the successful implementation.

Several recurring themes emerged over the course of the discussion. One was the com-

plexity 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, within a broader strategy that includes educational and advocacy components to supplement public interest litigation. To deal with this complexity, Ms. Battad described how her organization in the Philippines uses a matrix to pinpoint obligations of the state that can provide goals for enforcement. FLAG then checks off those obligations that the state is already meeting, analyzes which areas are most suitable for success, and prioritizes resources accordingly. In South Africa, legal aid providers employed a dual litigation and advocacy strategy to achieve the national roll of treatment that prevents mother to child transmission of HIV. . Litigation was successful in obtaining a court order, but it took a sustained advocacy campaign by community organizers and social movements to force the government to actually follow the court order.

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



Mr. Rudolph Jansen,
Director of the South African
NGO Lawyers for Human
Rights

“One of the complications of systemic civil litigation arises from “separation of powers” concerns.

approach to public litigation issues. For example, in South Africa, litigation seeking a right to HIV treatment, cases with relatively small budget implications, such as treatment for pregnant women to reduce mother to child transmission of HIV, have been successful, while attorneys have been unwilling to bring a broader case seeking a right to HIV treatment for the general South African population.

Another common theme discussed was the importance of working in cooperation with journalists in civil litigation and reform efforts. For example, several participants noted the rampant corruption in Ukrainian courts. In response, Ukrainian legal aid providers had be-

gun bringing journalists to court to document the corruption, and even when journalists were expelled from the courts, the journalists were able to expose the problems to the public and put pressure on the government to address the issue.

Other participants emphasized the need to change the mentality of legal aid clients so that they gain the necessary confidence and independence to understand and assert their own rights. Finally, the working group stressed the need for civil lawyers to be mindful of the unique political and legal circumstances in their own country in devising a systemic approach to the problems.

Criminal Law Working Group

The criminal law session was moderated by Mr. Adam Stapleton, of Penal Reform International in Malawi, and covered the problems faced by providers of legal aid in Ukraine, the best practices of criminal law legal aid lawyers from several countries, and how those practices might be applied to Ukraine.

Mr. Stapleton opened the session and framed the discussion for the participants. He described the challenge of providing legal aid throughout the criminal justice process, which begins at detention. The challenge is, according to Mr. Stapleton, to provide effective legal aid before detention in local communities, where education and the dissemination of information are possible. After detention, problems in criminal

justice process persist: police and prosecutors rely on false confessions, prisons are overcrowded, and criminal defendants are routinely left unrepresented.

First, several Ukrainian lawyers raised issues regarding provision of legal aid to criminal defendants. One of the primary issues raised was that attorneys are discouraged from providing legal aid to criminal defendants by the extremely low pay for such work. Lawyers repeatedly asserted that the standard 15 hryvnia payment was insufficient when compared to the hours of interviews and investigation that went in to defending such a case. Moreover, lawyers cited the manifold and Byzantine administrative steps necessary to receive compensation for such work



Mr. Adam Stapleton,
Penal Reform International
in Malawi

Another problem discussed during the session was that although criminal defendants supposedly have the right to legal representation at the time of arrest and during the investigative process, such a right is rarely enforced in reality. The reasons for the discord between reality and theory include the lack of political will to enforce such rights, the antagonism of law enforcement officials to legal aid providers, the self-interest of the law enforcement agencies in obtaining convictions rather than enforcing the rights of detainees, and the lack of a framework for the protection of the right to legal assistance. Whatever the reason for the lack of enforcement of the right to legal aid, there is a fundamental disconnect between attorneys and law enforcement personnel.

Finally, attorneys cited the lack of local Bar Associations as a shortcoming in the provision of legal aid. Because of the lack of local bar associations, no appointment process can be established to ensure that detainees receive adequate and timely representation.

In response to the issues raised, several attorneys offered solutions and best practices. Professor David McQuoid Mason, of the University of Kwa-Zulu-Natal in South Africa, offered that a legal system must

first determine what its budget will be for paying legal aid providers. Mr. McQuoid-Mason then offered examples of budgets in several other countries. On the topic of the reformation of police culture, Mr. Clifford Msiska, National Director of the Paralegal Advisory Service in Malawi, emphasized that the development of individual relationships between law enforcement and attorneys is often the local key to ameliorate the disconnect between the two.

Mr. Tom Geraghty, from Northwestern University in Chicago, Illinois, described the history of police brutality and torture locally, especially in the face of a constitutional framework that nominally protects the rights of criminal defendants. One solution to ensure legal representation during the investigative stage is the creation of local associations of pro bono lawyers. Another solution is the mandatory videotaping of confessions.

Finally, Mr. Abdul Faizi echoed the ideas of Mr. Msiska and Mr. Geraghty. Mr. Faizi described the implementation of recent constitutional amendments in Afghanistan. Specifically, he discussed how relationships with local law enforcement personnel have been forged and how local bar associations have been created.

“ **The challenge is, according to Mr. Stapleton, to provide effective legal aid before detention in local communities, where education and the dissemination of information are possible.**

Adam Stapleton

Session Four: Redefining Access to Justice: Informal Justice Mechanisms and Alternate Dispute Resolution Forums



Mr. Clifford Msiska,
National Director of the
Paralegal Advisory Service
(PAS) in Malawi

The final session of Day Two focused on informal justice and alternate dispute resolution models. To begin the session, Mr. Clifford Msiska, National Director of the Paralegal Advisory Service (PAS) in Malawi, described the progress that the PAS has made in processing the cases of jailed Malawians. He began with the premise that no country should be able to use its high poverty rates or shortage of lawyers, or any other excuse for that matter, as a justification for inadequate protection of human rights. Mr. Msiska then described how his organization came up with a plan in the late 1990s to use paralegals to address some of these challenges and improve access to justice for criminal defendants in Malawi, and particularly for incarcerated juveniles.

Paralegals relieve the overburdened criminal defense system by working in jails to help prisoners understand the laws and thus help themselves. For example, paralegals can educate the prisoners through Paralegal Aid Clinics (PLCs) about the difference between crimes such as manslaughter and murder so that prisoners can use their limited meeting time with their attorneys more effectively and make the appropriate argument to the judge in the event he or she does not have access to a defense attorney. The paralegals also help coordinate information between the inmates, the police and the judiciary system. By 2004, PAS had recruited and trained 38 paralegals, who

were operating daily PLCs in four main prisons. Since the program's creation, it has facilitated the release of 2,000 prisoners from illegal detention and educating over 30,000 prisoners over the same time period. Mr. Msiska noted that the program continues to expand and has served as a model for other African nations trying to address similar problems.

The next panelist, Mr. Abdul Basir Faizi, reported on the main form of traditional alternative dispute resolution practiced in Afghanistan, called *jurga*. This community-based institution is an informal mediation system in which a problem is brought before a group of respected men in a community to establish a mutually satisfactory solution. Mr. Faizi noted that although the Afghan constitution provides the framework for a national legal aid system, problems such as corruption, economic difficulties, and drug trafficking have prevented state-funded legal aid from being widespread or effective. As a result, many communities continue to rely on *jurga* as the primary conduit for the provision of legal aid to marginalized groups who would not otherwise have access to justice.

He pointed out that *jurga* is the most accessible and the 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 na-

tion. However, he pointed out that jurga systems discriminate against women in that all decisions are made by men in the community, there is no role for criminal defense attorneys, and many jurga resolutions violate international human rights norms.

Mr. Faizi stated that looking to the future, it will be crucial to enable jurgas to coexist with state-sponsored legal aid. Because the jurga system currently has the trust of the community, it is a valuable tool for dispute resolution. At the same time, the discriminatory and anti-human rights elements of jurga need to be reformed. Mr. Faizi suggested that religious leaders who are active in the jurga system could play an important role in disseminating legal information to allow a formal court system to operate effectively. Finally, Mr. Faizi stressed the importance of international support in any attempt to create a functional civil society with the capacity to sustain a national legal aid system.

Finally, Mr. Paul Dalton of the Danish Institute for Human Rights presented the research of Mr. Fazlul Huq, the Secretary of the Madaripur Legal Aid Association (MLAA) in Bangladesh, who was unable to attend the conference. Mr. Huq's research examines the Bangladeshi mediation system known as shaleesh, which employs a self-empowerment model that emphasizes participants' own responsibility for making decisions that affect their own lives. Similar to the jurga system in Afghanistan, shaleesh uses male village elites as de facto judges, and the system is enforced by social contract, not by any formal authoritarian sys-

tem. Shaleesh sessions are often quite animated, with parties frequently yelling at each other in a way that helps the parties and the communities heal. Over time, though, shaleesh suffered from problems of corruption, and the challenge for MLAA when they began their work in the late 1970s was to restore the benefits of the traditional shaleesh system while incorporating fundamental human rights standards and respecting marginalized groups, particularly women.

Although the Bangladeshi Constitution incorporates international human rights standards, problems of distance to courts, limited resources, scarcity of lawyers and gender discrimination prevent many people from accessing the benefits of this formalized system. To compensate, MLAA has developed a uniform educational system to train mediators to provide structured problem resolution within a culturally accepted shaleesh meeting. The existing social contract in the village provides the cohesion for lasting resolutions. According to Mr. Huq's research, shaleesh also provides a good forum for educating communities about the traditional legal process and how to access justice.

MLAA has identified three requirements for an effective traditional mediation process: 1) active participation of the local community; 2) a structure that ensures participation and input not just for the dominant members of society, but also for the marginalized groups; and 3) a process that prevents outdated stereotypes from reinstating inequality. Madaripur's work has become so well-regarded that they have



Mr. Paul Dalton

of the Danish Institute for Human Rights presented the research of Mr. Fazlul Huq, the Secretary of the Madaripur Legal Aid Association (MLAA) in Bangladesh, who was unable to attend the conference

“ Three requirements for an effective traditional mediation process: 1) active participation of the local community; 2) a structure that ensures participation and input not just for the dominant members of society, but also for the marginalized groups; and 3) a process that prevents outdated stereotypes from reinstating inequality.

established a training center in which individuals and NGOs can learn the components of an effective mediation system and then return to their respective parts of the country and implement the system there. MLAA has contributed to the resolution of more than 5,000 disputes per year through application of a rights-friendly version of the shaleesh method.

Mr. Dalton concluded by citing the need for implementing quality control and monitoring measures, noting that as the Madaripur model expands in scope and importance as a method of dispute resolution, the integrity of the process will be its key feature.

Following the presentations, audience members followed up on several issues raised by the panelists. Numerous audience members expressed uncertainty whether alternate dispute resolution models such as jurgas or shaleesh would translate well into new countries and new cultures. In response, Mr. Dalton noted that there are community-based traditional mediation systems similar to jurga in many African and Southeast Asian villages, as well as in Western society in the form of trade union negotiations and the like. Similarly, Mr. Faizi noted that jurga has been successful in Afghanistan despite the presence of many different ethnic groups.

In response to a question

about what role paralegals might play in mediation, Mr. Msiska suggested that paralegals could help mediators at the community level, but that he would not recommend paralegals taking on a dual role as mediator and advocate or educator. Mr. Dalton agreed with this analysis, noting the danger of a conflict of interest in such situations. Mr. McQuoid-Mason, however, suggested that in Africa, at least, paralegals do play substantial roles in the mediation process: 1) mediating between the officials and the parties, and 2) actually mediating disputes, provided that they do not give legal advice to either party. Mr. Msiska suggested that paralegals can play a large role in policing human rights violations by prison officials. Paralegals' primary role in that process is to observe prison conditions to increase the likelihood of catching perpetrators, and when they do observe violations, they can hand the matter over to an independent commission to ensure that an appropriate remedy is provided.

Wrapping up the discussion, Mr. Dalton emphasized that because the majority of the world's population does not have access to formal courts and licensed lawyers, informal methods of legal assistance and dispute resolution such as those found in Malawi, Afghanistan, and Bangladesh are crucial to providing access to justice and these types of systems should be explored, utilized, improved, and expanded accordingly.

Thursday,
29 March

Special Session: Ukrainian Experiences, Current Challenges and Possible Solutions

The Special Session brought together several Ukrainian legal aid providers to discuss their experiences, challenges, and possible solutions. The session was moderated by Ms. Lyudmyla Klochko, Director of the Legal Aid Clinic at the Kharkiv Human Rights Protection Group.

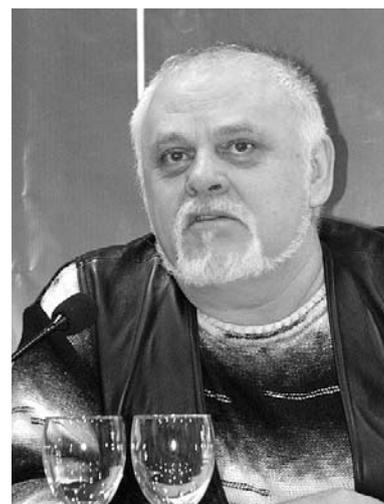
The first speaker was Mr. Oleksandr Bukalov from the Human Rights Protection Organization “Memorial Donetsk.” Mr. Bukalov explained the difficulty in obtaining legal aid for imprisoned persons: while there is a right to obtain legal aid, relatives and lawyers are not allowed to visit prisoners. According to Mr. Bukalov, the best ways to remedy this problem are by easing the restrictions on lawyer access to prisoners and by getting information to prison libraries so that prisoners can educate themselves.

Another problem identified by Mr. Bukalov is obtaining access to detainees during the investigative stage. While

pilot programs have been established to improve legal aid at this crucial pretrial stage, access is still a major problem. Of particular importance is reducing the delay in access to legal aid providers by detainees; it is in the first hours of detention that the greatest risk of human rights violations occurs.

In response to these problems, Mr. Bukalov suggested three solutions. First, he recommended further legislation to mandate legal aid for all categories of detainees, starting from the moment of detention. Second, Mr. Bukalov asserted that, in order to adequately provide legal aid in compliance with legislative mandates, decent resources must be allocated to its delivery. Finally, following the models of other countries, including South Africa, Mr. Bukalov suggested that law students could assist in providing legal aid.

The second presenter was Ms. Olha Shatova, from the Free Legal Aid Pilot Project in



Mr. Oleksandr Bukalov,
Human Rights Protection
Organization “Memorial
Donetsk”



Ms. Olha Shatova,
Free Legal Aid Pilot Project
in Kharkiv

Kharkiv. Ms. Shatova spoke of the difficulty of delivering free legal aid, despite the constitutional guarantee of a right to legal aid. This difficulty is caused by inadequate compensation for lawyers, delays in providing legal aid, and delays in contacting local legal aid providers after a suspect's initial detention. In response to these difficulties, a pilot project was established in Kharkiv to more effectively deliver legal aid to detainees. The pilot project obtained an agreement with local police to ensure that a representative of the pilot project would be contacted regarding all detentions. Despite this success in bridging the gap between legal aid providers and law enforcement officials, Ms. Shatova described ongoing difficulties in the local provision of legal aid. These difficulties stem primarily from a deficit of financial resources and poor relations with local judges.



Mr. Viktor Kikkas,
Project Director of the second
office of the Free Legal Aid
Project, in Bila Tserkva

The next speaker was Mr. Viktor Kikkas, Project Director of the second office of the Free Legal Aid Project, in Bila Tserkva. Mr. Kikkas explained that one of the largest problems in providing legal aid in Ukraine lies in the lack of information. His organization lacks information on how many legal aid attorneys and financial resources are necessary, and where they are needed. Moreover, the judicial branch is insufficiently independent from law enforcement, which prejudices criminal trials and impairs the ability of criminal defendants to have adequate access to justice. Finally, investigators engage in unethical behavior with respect to suspects, including persuading detainees that they do not need attorneys. The new office of the Free Legal Aid Project was established, according to Mr. Kikkas, in or-

der to ensure that law enforcement agencies inform his office regarding all detentions. Mr. Kikkas remained optimistic, explaining that the new office had largely been successful in ensuring detainee representation from the moment of arrest. One particular practice that Mr. Kikkas mentioned was matching call logs at the local police station and the local legal aid office. The logs allowed legal aid lawyers to more effectively monitor for abuses and failures.

Mr. Serhiy Lozan, of the international charity organization "Ecology-Justice-Man," in Lviv, addressed the conference next. Mr. Lozan spoke of his organization's efforts to provide representation, education, and advice for legal ecological issues. He also detailed the efforts of the network ECOPRAVO, an alliance of Ukrainian organizations that provide legal aid to those with ecological-legal problems. Ukrainian ecological-legal organizations were mostly created in the 1990's and have come of age in the last decade. Through the efforts of ECOPRAVO, legal aid providers can more effectively address clients' ecological needs through legal channels. Mr. Lozan's organization pursues a range of practices with manifold aims. Practices include mass litigation, individual cases, and lobbying. These practices aim to protect reserve areas and to ensure clean water standards. Mr. Lozan emphasized, in the later discussion, his organization's reliance on the participation of law school professors and students in the effective pursuit of these claims.

Finally, Ms. Larysa Zalyvna, of the Lughansk Regional Human Rights Organization for

Women, spoke. Ms. Zalyvna's organization addresses the legal needs of miners, whose legal problems are generally left unaddressed by legal aid attorneys who work in larger cities. Like in many other countries represented at the conference, legal aid services in Ukraine are markedly less available in rural areas, where miners tend to live and work. Ms. Zalyvna explained that the problems facing her clients are manifold. First, national and local governments tend to disfavor miners in enforcing laws, instead favoring the mine owners. Second, mine owners do not necessarily comply with existing laws and push miners to work longer hours, thereby violating labor laws and illegally risking machinery malfunction. Finally, mine owners claim bankruptcy artificially in order to avoid liability to mine workers.

The discussion that followed the special session focused on several additional problems in the experience of providing legal aid in Ukraine. There was extensive discussion of an incident in which one of the non-Ukrainian conference participants was harassed and interrogated by local law enforcement officials.

Several participants spoke about legal aid in civil cases, which is still largely unavailable. Mr. Kikkas responded that legal aid is provided in stages. The first stage is the provision of legal aid in criminal cases, in order to comply with international human rights norms. The provision of legal aid services in civil cases is a future aspiration, according to Mr. Kikkas.

One participant spoke about the limitations on pretrial discovery. Criminal defendants

often do not have access to the same documents, including confessions and affidavits, that the prosecution produces at trial. Moreover, given the wholly inadequate compensation of legal aid attorneys, attorneys are generally unable to conduct pretrial investigation of witnesses and crime scenes. Ms. Shatova explained that pretrial discovery in criminal cases is guaranteed by legislation, but is often unavailable in practice.

Finally, in response to Mr. Kikkas' presentation, a participant spoke about the impairment in the provision of legal aid resulting from limited technology. Without consistent and widely available internet access, neither legal aid providers nor those in need of legal aid can take advantage of resources such as discussion boards, chat rooms, and other resource-sharing over the internet. Thus, the largest stakeholders in the legal aid systems, legal aid attorneys and those in need of legal aid, are unable to communicate via effective channels of communication.

In addition to suggestions for further legislation to ensure the implementation of an effective national legal aid system, one speaker recommended the creation of a council on the provision of free legal aid in Ukraine. Such a council would address many of the concerns expressed by previous speakers while allowing for the creation of technological infrastructure for rapid and effective dissemination of information. Finally, a council could more adequately address larger institutional concerns, such as the lack of mandatory attorney contact after initial detention, which legal aid attorneys are incapable of addressing on their own.



Mr. Serhiy Lozan,
International charity
organization "Ecology-Justice-
Man," in Lviv

Session Five: The Role of the Legal Profession



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causes as
functions.

Mr. Sergan Cengiz,
Human Rights Foundation
of Turkey



Mr. Anton Burkov,
NGO Sutyajnik,
in Ekaterinburg

Professor Tom Geraghty, of the Northwestern University School of Law in Chicago, Illinois, moderated and introduced the panelists for the plenary session on the role of the legal profession in providing legal aid services. First, Mr. Sergan Cengiz, of the Human Rights Foundation of Turkey, spoke on the application of European precedent and international agreements to establish and enforce the right to legal aid. Mr. Cengiz outlined a criminal defendant's various rights at the pre-trial stage. These rights include due process rights and the implied right to a lawyer in order to properly assert due process rights. Mr. Cengiz then explained how litigation in the European Court of Human Rights has led to binding precedent placing limits on the length of detention of criminal defendants and mandating that detainees be allowed access to a lawyer. Mr. Cengiz acknowledged that litigation in the European Court can only be pursued after other domestic litigation and negotiation remedies have been exhausted.

Second, Mr. Anton Burkov, an attorney from the NGO Sutyajnik, in Ekaterinburg, Russia, discussed the right to legal aid in civil cases in the Russian Federation. According to a 2002 law passed by the Duma, every person below the poverty line in Russia has the right to free legal aid in certain civil cases, including alimony, pension, and veterans cases. Despite the existence of the statute, Mr. Burkov explained that it is difficult to prove

that a person is below the poverty line and thus entitled to legal aid. Moreover, regional law often blocks the application of federal laws that provide free legal aid. While these statutes are unconstitutional, it is expensive to challenge them. The necessities of compliance with codes of civil procedure further complicate obtaining free legal aid, imposing a hurdle for many indigents in need of legal representation. Finally, the legal aid offices suffer from problems of a lack of independence from local government and a lack of resources.

Despite these difficulties, Mr. Burkov detailed several best practices used to more effectively provide legal aid. His organization holds special training sessions at universities to teach students about the organization's experiences in providing legal aid and regarding best practices. Additionally, Mr. Burkov works to publish law journal articles and books that allow lawyers across Russia to access information about his organization's experiences and practices. His organization conducts public relations campaigns, using media where possible. It has created a website regarding the European Convention on Human Rights in order to better inform Russian lawyers. Finally, and as a last resort if other strategies are unsuccessful, his organization will also pursue litigation in the European Court of Human Rights.

Ms. Elinor Chemonges of Uganda was the third presenter and elaborated upon the use

of paralegals in Uganda. Ms. Chemonges emphasized that paralegals were a means to provide vulnerable groups with access to justice, with justice itself being the end goal. In Uganda, the scarcity of lawyers, especially in rural areas, endangers the ability of Ugandans to access justice. Specifically, the scarcity of lawyers disproportionately affects women, juveniles, the poor, the elderly, and the terminally ill. Consequently, these vulnerable groups are unable to use the institutions of justice to resolve ordinary conflicts, to protest abuses, or to claim constitutionally guaranteed rights.

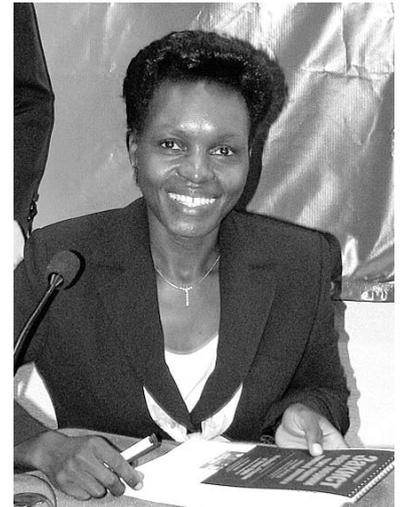
Ms. Chemonges explained that Uganda's reform efforts face crises both on the supply and demand side. On the supply side, there are several problems. Uganda has few courts or lawyers in rural areas. In the courts that do exist, prosecutors have congested dockets that place strains on the legal system and delay and prejudice criminal defendants. Finally, Ugandan prisons are severely overcrowded, which causes severe delays in the administration of justice and creates very poor living conditions for detainees. On the demand side, detainees and criminal defendants are often too intimidated to claim their guaranteed rights.

One solution, according to Ms. Chemonges, is for non-lawyer paralegals to encourage prisoners to claim their rights. Uganda's Paralegal Advisory Services (PAS) parallels the Malawi system. It aspires to provide aid to suspects from the first interaction with the criminal justice system and seeks to stem the flow of individuals into the criminal justice system. PAS achieves this through in-

creased visibility in the criminal justice system, thus leading to greater demand for services, and through greater synergy between agencies, thus bringing indigent criminal detainees to PAS' attention earlier in the process. Further, by working in prisons and other places of detention to provide basic legal advice and representation, PAS workers expedite access to justice for detained persons and for the poor. These efforts, in turn, alleviate the supply side crises of overcrowding and prosecutorial backlog. Thus, PAS links the problems of the supply and demand sides in access to justice, and serves to relieve both.

Ms. Anna Ogorodova, of the Open Society Justice Initiative in Hungary, presented next. She noted that legal aid offices in Eastern Europe are a relatively new phenomenon. The Open Society Justice Initiative specifically works on advocacy, research and capacity building on an international level. Its goal is to ensure that the rights of criminal defendants to a real and effective defense are guaranteed worldwide. According to Ms. Ogorodova, the problem can be characterized as one of quantity and quality: not enough criminal defendants have a lawyer at any stage of criminal proceedings and those that do have access receive extremely low quality services. Other problems include lack of preparation by lawyers, lack of independence by lawyers, and lack of institutional backing for lawyers through local bar associations.

Ms. Ogorodova offered a few solutions to these problems. The first was the establishment of public defender offices with a common mission, uniform standards, and a client-centered



Ms. Elinor Chemonges



Ms. Anna Ogorodova,
Open Society Justice
Initiative in Hungary



Ms. Sarah Geraghty,
Southern Center Human
Rights in Atlanta

practice. She stated that pilot programs, particularly those in Bulgaria, have increased the quantity and quality of services being provided while at the same time exerting positive pressure on private lawyers to also improve the quality of their services.

Ms. Sarah Geraghty of the Southern Center Human Rights in Atlanta, Georgia, concluded session five by describing her organization's representation of detainees sentenced to the death penalty and of detainees subject to intolerable prison conditions. Such representation is difficult in a politically conservative environment in which prisoners do not attract public sympathy and in which states are not very interested in committing resources to improve the living conditions of prisoners.

Ms. Geraghty emphasized that an effective strategy in such mass litigation is to find a sympathetic person whose ex-

perience best illustrates the experiences of the rest of the class and whose story becomes more influential on repetition. Ms. Geraghty also emphasized that a mixture of litigation, community organizing, and legislative lobbying is more likely to produce effective results than any one component taken alone. Finally, Ms. Geraghty explained how the use of media is important in any comprehensive effort for legal change.

Following the conclusion of the presentations, Mr. Fergus Kerrigan and Mr. Tom Geraghty discussed European and American case law that establishes standards for the effective assistance of counsel. In Europe, the failure of counsel is a violation of human rights by the state. By contrast, in the United States, the ineffective assistance of counsel is a failure of due process that violates the defendant's due process rights.

Closing Session:

Holistic Approaches to Delivery of Legal Aid Services

The closing session of the Conference was moderated by Mr. Adam Stapleton of Penal Reform International in Malawi, and focused on holistic approaches to legal aid services. Mr. Stapleton introduced Professor David McQuoid-Mason, who described the Legal Aid Board (LAB) in South Africa and the efforts to provide more effective legal representation despite strains on the LAB's resources.

According to Mr. McQuoid-Mason, South Africa's 1994 Constitution guarantees the right to counsel unless sub-

stantial injustice would result from the representation. This was a somewhat unique and crucial development: the constitutional guarantee of right to counsel is a manifestation of the political will coinciding with the end of apartheid and the rewriting of the constitution.

While the text of the guarantee is clear, the implementation of a system to enforce this right has been uneven and has evolved through several steps. First, a *judicare* system was established in which those in need of legal aid were referred to private lawyers.

Modeled on the English system, *judicare* offered high-quality legal services to indigents. Unfortunately, the program was too expensive and consequently limited the effectiveness of the LAB. Another alternative was the public defender programs, in which attorneys were employed specifically to represent criminal defendants. Such a program was less popular among criminal defendants, because the quality of the representation was seen to have been compromised. Nevertheless, the public defender programs cost fifty percent less than the *judicare* system.

The current South African model, according to Mr. McQuoid-Mason, is a partnership between the LAB and several other organizations. First, the LAB offers apprenticeships in small rural private firms to encourage future lawyers to stay in small towns. As in many of the countries represented at the conference, access to justice is most problematic in rural areas, where there are proportionately fewer attorneys. Eventually, the apprenticeships will increase access to justice in rural areas, thus ameliorating one of the primary difficulties – geographical access – in providing legal aid. Second, LAB established a two-year pilot project partnership with university law clinics for students to provide legal aid as interim public defendants. Finally, LAB created “One-Stop Shop” Justice Centers, where clients are provided a full range of services from paralegal advice to high court actions. These partnerships increase the effectiveness of the representation, the number of attorneys and paralegals available, and the range of services available.

Mr. McQuoid-Mason concluded by explaining that fi-

nancial resources, political will, and the method of delivery determine the effectiveness of legal aid. The first two are often scarce in developing countries, while the third is open to many variations.

Second, Professor Simon Rice, from Macquarie University, Sydney, Australia, described the Co-operative Legal Service Delivery Program (CLSDP), which provides coordinated legal services in rural areas of New South Wales, Australia. CLSDP aims to target economically and socially disadvantaged clients, to allocate resources according to legal need and equity, and to deliver coordinated and cooperative services. Mr. Rice pointed out that responsibility for meeting legal needs is generally met by a variety of different organizations: private legal services, legal aid, community legal services, and other agencies. These organizations, rather than cooperating, tend to compete for clients. Mr. Rice emphasized that such a system was neither inevitable nor desirable. Organizations could be reorganized to cooperate, rather than to compete. Moreover, once in cooperation, legal services organizations are able to more effectively serve those in need of legal representation, both as individual institutions and collectively. Rather than competing, CLSDP allows organizations to coordinate services around a central legal aid organization. The central legal aid organization is supported by regional coalitions that then allocate aid among cooperating organizations.

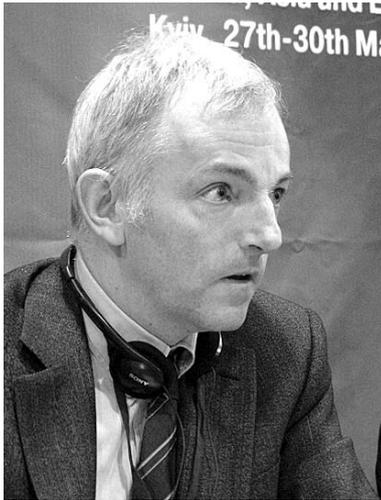
The cooperative model has several benefits. Resources previously allocated toward competition can be redirected toward serving clients. Cooperation allows for transparency,



Mr. David McQuoid-Mason

“Financial resources, political will, and the method of delivery determine the effectiveness of legal aid.

*David
McQuoid-Mason*



Mr. Fergus Kerrigan

which encourages data collection that enables evidence-based planning. Finally, and most importantly, the specialization of services will foster greater responsiveness to the legal needs of the community.

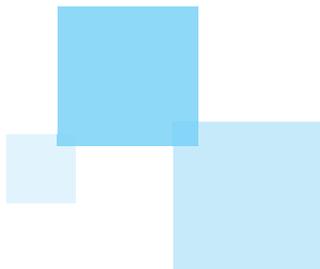
The final speaker was Mr. Fergus Kerrigan, who addressed the conference on the issues of judicial defenders in Rwanda. Judicial defenders played a crucial role in post-genocide justice in Rwanda. Judicial defenders were essentially a secondary legal profession, so designated not because of their formal qualifications, but because of short-term law degrees, work as paralegals, and work for magistrates. Supported by Lawyers without Borders, but opposed by the Bar, the judicial defenders played a crucial role in representing defendants in the first instance. Over the past decade, judicial defenders have developed into an institution, with similar structure and rules of professional responsibility to the bar, and with an expanding role in the provision of legal services.

The discussion that followed the final session focused

on whether the proliferation of non-lawyer alternatives risked a corresponding drop in quality control. When law students and other paralegals that do not have full legal training are allowed to provide legal services, clients may receive less than adequate representation. As Mr. Kerrigan pointed out, however, in many developing countries, access to justice is so limited that there is a dire need to provide services, even if the providers are not fully trained attorneys. Further, as Mr. Kerrigan described specifically in the context of Rwanda, the argument that paralegals and other alternatives to traditional lawyers inadequately serve those in need of legal aid is the same argument advanced by attorneys seeking to safeguard the privilege of their profession (rather than to assure quality legal aid services to those in need). Especially given the extreme shortage of lawyers, paralegals, and other legal service providers in African nations, several contributors believed that the focus should be on developing and expanding the non-lawyer alternatives, rather than on setting strict quality control standards.

Conference Declaration

After the special session, a presentation was made of the draft Kyiv Declaration on the Right to Legal Aid, which had been developed by a group of conference participants. The aim was to create a document that accurately expressed the topics discussed at the conference and provided recommendations for future action. The draft declaration was read out paragraph by paragraph and amendments were made to the draft text before it was adopted by consensus by the conference participants. The text of the declaration is reproduced on the following pages.



The Kyiv Declaration on the Right to Legal Aid

Conference on Protection and Promotion of Human Rights through Provision of Legal Services

Best Practices from Africa, Asia and Eastern Europe
Kyiv
27th-30th March, 2007

115 delegates from twenty-five countries, among them Government representatives, legal aid practitioners, academics, and representatives from human rights, legal advocacy, and legal and justice sector reform organisations, met in Kyiv, Ukraine, between 27-30 March, 2007, to discuss and identify best practices in the protection and promotion of human rights through the provision of legal services. The Kyiv Declaration on the Right to Legal Aid, set forth below, was adopted by consensus at the conclusion of the conference, with a request that it be forwarded to national governments, to legal aid bodies and organisations, public and private, at national level, and to relevant national and multilateral bodies engaged in developing or implementing policies and programmes addressing legal aid, access to justice and rule of law.

Preamble

Recalling that governments have the primary responsibility to recognise and give effect to international human rights standards;

Recognising that many governments fall short of these standards;

Bearing in mind that access to justice in criminal, civil, administrative and other fields of law depends on the recognition of and compliance with international human rights standards;

Noting that in many countries the government and law enforcement agencies are feared and mistrusted;

Recognising that people in the legal systems of many states are denied access to justice and are ignorant about their human and legal rights and procedures;

Considering that a legal aid system is a public good that is the common property of all members of society, that the promise of justice for all can

“ **A legal aid program must include legal advice and assistance at all stages of the criminal, civil and administrative process.** ”

only be realised when its rules and operation are understandable and accessible to all, and that the provision of legal aid is a vital element in this regard;

Aware that the provision of legal aid will promote access to justice;

Noting that legal aid achieves societal benefits including the elimination of unnecessary detention, speedy processing of cases, fair and impartial trials and dispute resolution, the reduction of prison populations, the lowering of appeal rates, decreased reliance on a range of social services, the advancement of social and economic rights, and greater social harmony;

Understanding that legal aid encompasses the provision to a person, group or community, by or at the instigation of state or non-state actors, of legal information, education, advice, assistance, representation and advocacy and mechanisms for alternative dispute resolution;

Mindful of the UN Basic Principles on the Role of Lawyers;

Welcoming the practical measures to realise access to justice through the provision of legal aid that have been taken in many countries;

Respecting governments' need to ration and allocate available resources according to need, and that each country has its own capabilities and needs when consideration is given to what kind of legal aid systems to employ;

Noting the growing incidence of partnerships among governments, nongovernmental organisations, civil society organisations, business corporations and the international community in developing legal aid programs;

Observing that in many

countries there are not enough lawyers, resources and mechanisms to provide the legal aid services required to ensure access to justice;

Acknowledging that traditional and community-based alternatives to formal legal processes have the potential to resolve disputes without acrimony, to restore social cohesion within the community, and to develop self-reliance within communities;

The Participants of the Conference on the Protection and Promotion of Human Rights through Provision of Legal Services – Best Practices from Africa, Asia and Eastern Europe, Kyiv, Ukraine 27-30 March 2007, hereby declare the importance of:

1. Recognising and supporting the right to legal aid in the justice system

Legal aid is a right and governments are obliged to implement sustainable, quality controlled, legal aid programs that deliver legal aid services without discrimination to all people in their jurisdictions, subject only to a transparent and reviewable assessment of need, and with special attention to women and vulnerable groups, such as indigent people, children, young people, the elderly, persons with disabilities, persons living with HIV/AIDS, the mentally and seriously ill, asylum seekers, refugees, internally displaced persons, stateless persons, foreign nationals, prisoners, and other persons deprived of their liberty.

2. Providing legal aid at all stages of the justice process

A legal aid program must include legal advice and assistance at all stages of the crimi-

nal, civil and administrative process.

3. Sensitising all government officials

Governments are obliged to make public officials aware of the crucial role that legal aid plays in both ensuring access to justice and achieving desirable societal goals, and to educate and train them in procedures necessary to ensure that the right to legal aid is provided at all stages of criminal, civil and administrative proceedings.

4. Viewing legal aid as one means of ensuring a justice system that is accessible and available to all

Governments are obliged to ensure that legal information is available regarding administrative, civil and criminal matters and to this end public servants are obliged to inform and explain substantive and procedural aspects of legal matters to all members of the public.

5. Cooperating with other stakeholders and the public

Governments should establish cooperative arrangements with a wide range of stakeholders – such as non-governmental organisations, community-based organisations, religious and non-religious charitable organisations, professional bodies and associations and academic institutions – and ensure effective public participation in the formulation of legal aid policies, programs and legislation.

6. Recognising the right to redress for violations of human rights

Legal aid should be available to all people without discrimination who seek legal redress for violation of their hu-

man rights, including for violations by any organ of state.

7. Recognising the role of non-formal means of conflict resolution

Governments and all stakeholders should recognise the significance of traditional and community-based alternatives to formal legal processes, and should provide support for such mechanisms provided that they conform to human rights norms.

8. Diversifying legal aid delivery systems

Governments should consider a variety of service delivery options such as government funded public defender offices, judicare programmes, justice centres, law clinics, as well as partnerships with civil society and faith-based organisations.

9. Diversifying legal aid service providers

Governments should consider appropriate alternatives to the use of lawyers through the provision of complementary legal and related services by non-lawyers such as lay advocates, law students, paralegals, legal assistants, and other service providers.

10. Encouraging pro-bono provision of legal aid by lawyers

Support for and involvement in the provision of legal aid should be recognised as an important duty of the legal profession which should, through the organised bar and law schools, provide moral, ethical, professional and logistical support to those providing legal aid, especially through pro-bono legal aid services. Governments should promote an enabling environment for private practitioners to provide pro-bono

“ **Legal aid should be available to all people without discrimination who seek legal redress for violation of their human rights, including for violations by any organ of state.** ”

services and ensure competitive rates of remuneration.

11. Guaranteeing sustainability of legal aid

Governments should make appropriate fiscal, budgetary and operational arrangements for a sustainable legal aid program, including for the provision of a broad range of legal aid services, establishment of infrastructure, an independent, cost-effective, professional and quality driven case management system, and with the ability to satisfy the needs of the community in the long term.

12. Promoting legal literacy through legal education and advocacy

Governments should ensure that human rights education and legal literacy programmes are conducted in educational institutions and in non-formal sectors of society, particularly for vulnerable groups such as children, young people, and the urban and rural poor. Governments are encouraged to ensure that human rights and legal documents are translated and

made widely available. International and regional bodies are encouraged to make available human rights documentation in relevant languages.

13. Ensuring access to justice in programmes of assistance to justice systems in developing and transitional countries

Governments and multilateral donors should ensure that programmes of assistance to justice systems in developing and transitional countries include the provision of legal aid information and other measures to further access to justice, particularly among the poor and vulnerable, in a sustainable way.

14. Guaranteeing a secure environment for the provision of legal aid

Governments should ensure that there is an enabling environment for the provision of legal aid services, including protection for lawyers and all other service providers from harassment, intimidation and other threats to their safety and security.

A HUMAN RIGHT TO LEGAL AID

Keynote Address by Mr. Simon Rice, Senior Lecturer in Law, Macquarie University, Sydney, Australia

Introduction

Legal aid programs are wide-spread, and spreading wider. They are part and parcel of the rule of law, and where the rule of law is, or is being developed, so legal aid programs are, or are being developed.

Nowhere, however, is legal aid a right, except within closely defined circumstances.

My purpose today is to propose legal aid as a human right.

If legal aid means nothing more than legal representation in court, then to that extent there is a right to legal aid, although of limited availability.

Think of legal aid beyond that. Legal aid that is public access to law, public access to law that is preventive and protective, law that brings change and hope, law that relieves poverty and promotes prosperity. Think of legal aid that is public access to legal information, to legal advice and education and knowledge. None of this legal aid is anyone's by right.

A right to legal aid is, in practice, a right to only one part of all that legal aid is: legal

representation. It is a right that has been found to be implicit, in various legal systems and in human rights instruments. To have established that right is a significant achievement. In a criminal trial the state is at its most powerful, and the liberty of a person is most at risk. Because of a right to legal representation, countless thousands of people are represented and defended where they would not have been otherwise.

But countless more could be offered something more in their engagement with law; a right to legal aid could mean so much more than a limited right to legal representation.

Legal aid beyond legal representation is not a right, and is provided for a range of reasons – Roger Smith has suggested six: charity, poverty reduction, efficiency in the legal system, rule of law, lawyers' self-interest and human rights.² Such legal aid is discretionary, provided – or not – by the state or by non-state actors, as they can or as they wish. Indeed, some aspects of the full scope



Mr. Simon Rice,
Senior Lecturer in Law,
Macquarie University, Sydney

Roger Smith, 'Legal Aid as a Policy', discussion paper to London School of Economic seminar Legal aid: a human right or a mere luxury, 28 January 2007, unpublished.

of what legal aid could be would never be provided willingly by the state; it is quite simply not in the state's interest to encourage the aggressive use of law as a force for change.³

Today I will set out an argument for legal aid in its broadest sense as a fundamental right for all people. The key to establishing a right to a broader idea of legal aid lies in a different understanding of the role of the state. The different understanding we are looking for is offered by the theory of human rights.

My talk is in two parts. I

will look first at the cases and the human rights treaties that describe that part of legal aid – legal representation – that is recognized as a right in criminal and non-criminal trials, and I will conclude that even that right is available only in limited circumstances.

In light of this not-very-encouraging situation, I will then outline a new argument for a fundamental human right not only to legal representation, but to legal aid.

First, the right to representation.

The right to legal representation

A right to legal representation is rarely explicit. Rather, it is established by inference from the systems and institutions of the state. Superior courts and learned writers around the world have found an effective right to legal representation in some circumstances, by implication in constitutional guarantees of equality, and fair trial,.

I will outline how courts have found a right to representation to be implied by the right to fair trial in five different jurisdictions: the USA, Australia, Canada, South Africa and Europe.

In the USA, an explicit Constitutional right to legal representation is limited to Federal criminal matters (Sixth Amendment). By reading this right with a separate Constitutional right to due process (Fourteenth Amendment), the Supreme

Court in *Gideon v Wainwright*⁴ was able to infer a right to legal representation in all criminal matters. But what a court gives a court can take away, and the Court subsequently limited the right to cases when a gaol sentence is possible.⁵ The right to representation, already limited to criminal matters, is then subject to the state's discretion as to when a gaol sentence is possible.

The Australian High Court in *Dietrich*⁶, narrowed the right even further. The Court said that in a serious criminal matter a trial would be unfair if the accused was unrepresented. This obliged the state to provide legal representation, but only in criminal matters that are serious. Again the right to representation, already limited to criminal matters, is subject to the state's discretion, this time

³ See eg Richard Abel, 'Law Without Politics: Legal Aid under Advanced Capitalism' (1985) 32 UCLA L. Rev. 474 at 528-9.

⁴ 372 U.S. 335 (1963).

⁵ *Lassiter v. Department of Social Services* 452 U.S. 18 (1981).

⁶ *Dietrich v. The Queen* (1992) 177 CLR 292; [1992] HCA 57.

as to whether a criminal matter is classified as serious.

These two cases are examples of the widely accepted right to legal representation as a dimension of the right to a fair trial in criminal matters, at least for serious matters when gaol is a possibility.

Because *Gideon v Wainwright* and *Dietrich* found a right to representation implied in other general rights – due process and fair trial – they have been the basis for persistent, and persistently unsuccessful, calls for a similar right to representation to be recognized for non-criminal matters. A significant obstacle has been the refusal by courts and policy makers to treat the needs of a party in a non-criminal case as deserving the same right to representation that an accused has.⁷

There is certainly an inequality of arms when an accused faces the state in a criminal trial. But the same inequality of arms occurs in many non-criminal matters that involve very well resourced parties on one side of a case. Sometimes that well resourced party is the state. Luban says – and I agree – that there is a “top-sided emphasis on physical liberty over all other interests”.⁸ We cannot measure the relative seriousness of one person being gaoled for a year with another losing their home or family or means to earn a living. The demarcation is crude and unsustainable on any rational basis.

There have been some moves to recognize a right to representation in non-criminal matters, but the occasions when the right is available have always been heavily circumscribed.

The state was a party in a non-criminal matter in *New Brunswick*⁹, where the Community Services Minister wanted to take a woman’s children into care. The Canadian Supreme Court agreed that a right to fair trial in a non-criminal matter could require the state to provide legal representation, but only when legal representation was required by the seriousness of the interests at stake, the complexity of the proceedings, and the capacities of the parties.

Similarly in *Nkuzi*¹⁰, the Land Claims Court of South Africa said an effective right to a fair hearing obliged the state to provide legal representation, but only when it was required by the complexity and seriousness of the matter, and the limited capacity of the applicant, and the risk of “substantial injustice”.

Perhaps the best known effort to establish a right to representation in non-criminal matters is the decision of the European Court of Human Rights in *Airey*¹¹, and more recently in *Steel and Morris*¹². The court agreed that for an effective right to a fair hearing in non-criminal matters, the state was obliged to provide legal representation in the circumstances of that case. The Court emphasized that legal representation would not

“ There is certainly an inequality of arms when an accused faces the state in a criminal trial. But the same inequality of arms occurs in many non-criminal matters that involve very well resourced parties on one side of a case.

⁷ See eg Lassiter note 5 above.

⁸ David Luban, ‘The Right to Legal Services’ in Alan Paterson and Tamara Goriely (eds) *Resourcing Civil Justice*, OUP 1996 at 59

⁹ *New Brunswick (Minister of Health and Community Services) v G (J)* [1999] 3 SCR 46; 1999 CanLII 653 (SCC).

¹⁰ *Nkuzi Development Association v South Africa*; see generally J Perelman ‘The Way Ahead? Access to Justice, Public Interest Lawyering, and the Right to Legal Aid in South Africa: The Nkuzi Case’ (2005) 41 *Stanford Journal of International Law* 357.

¹¹ *Airey v Ireland* (1979) 2 ECHR Rep (Series A) 305.

¹² *Steel and Morris v. the United Kingdom*, No. 68416/01; CEDH/ECHR 2005-II, 15 May 2005.

“ Right to representation is derived from a particular context, most usually a constitutional right, or common law right, or human right, to fair trial. It is often implied in criminal matters, and sometimes in non-criminal matters.

always be necessary to achieve a fair hearing, and that other measures may suffice.

This is what the cases tell us: a right to representation is derived from a particular context, most usually a constitutional right, or common law right, or human right, to fair trial. It is often implied in criminal matters, and sometimes in non-criminal matters.

Academic arguments for a right to legal representation adopt the same approach of finding a right by implication in a particular context. They have made the case for the right in non-criminal as well as criminal matters, and have looked beyond ‘fair trial’ as a source for the right, to contexts as local as the terms of a provincial constitution¹³, or as broad as a democratic political system generally.¹⁴ When David Luban argues for a right to representation based on the US guarantee of equality before the law, he makes a point that defines the real limitation of any right that is derived from a specific context.

He recognizes that his argument is context specific, and so he disavows any claim to be articulating a right to representation beyond the scope of the US system of law and politics.¹⁵ Indeed, Luban doubts whether any transnational claim can be made, precisely because of the differing politico-legal contexts from one state to another.

I think Luban was right, for as long the source for a right to representation is inferred from the processes and institutions of a state. The right to representation that we have been describing is always one that arises in a

particular context, as part of a particular system.

What Luban didn’t see in 1988 was that the type of processes and institutions in which he and others were finding a right to representation is widespread, and spreading rapidly more widely. The ‘rule of law’, with its associated democratic process, right to fair trial and guarantee of equality before law, is being exported and transplanted around the world, in particular through conditions attached to developmental aid funds and membership of economic and political communities.¹⁶ By force of the wide establishment of this particular legal system, a right to legal representation is becoming widely established.

This is an achievement, but one that must be kept in perspective. The right to representation is not a right to all that legal aid could be. It is a right that is available only in very defined circumstances. Most importantly, it is not a right that stands on its own. It is derived from processes and institutions of the state. Because the right is tied to the state’s procedures, the state has the lawful power to define it, to modify it, to interpret it, and even to deny it. It is always open to the state to define what is fair in a trial, and to redefine the circumstances in which the courts say the right arises.

Spelling out the circumstantial nature of the right to representation does not undermine its importance. But it does highlight that even this most prominent component of legal aid has failed to establish itself

¹³ D Perluss, ‘Washington’s Constitutional Right to Counsel in Civil Cases: Access to Justice v Fundamental Interest’ (2003-4) 2 *Seattle Journal of Social Justice* 571.

¹⁴ F Zemans, ‘Recent Trends in the Organization of Legal Services’ (1986) 11 *Queen’s Law Journal* 26.

¹⁵ David Luban, ‘The Right to Legal Services’ in Alan Paterson and Tamara Goriely (eds) *Resourcing Civil Justice*, OUP 1996 at 47-48.

¹⁶ See eg Roger Smith, ‘Old Wine in new Bottles: Legal Aid and the New Europe’ (2005) 2 *Justice Journal*

as a secure and broadly available right within the structures of the state.

If the right to legal representation is of such limited availability, then it is fanciful to think that courts will imply a more general right to legal aid in any circumstances.

And the one constitutional statement of an explicit “right to legal aid” is not all it seems. When the European Union’s Charter of Fundamental Rights says that “legal aid shall be made available to those who lack sufficient resources” (Article 47), it does so in the context of a right to a fair trial and the right to be advised, defended and rep-

resented. The term ‘legal aid’ is used there not in any broad sense, but only to mean state-sponsored legal representation. That is only the same right to legal representation that we know already is implicit in a right to a fair hearing.

What is needed is a way of freeing a rights claim of its limited circumstances, and conceiving of it in universal terms. The idea of a right’s universality takes us to the modern conception of human rights, and my argument that a broad concept of legal aid can be properly conceived of as a universal human right.

A universal right

The source of a human right is not the state or any particular system, it is the person. This is the key to its universality. A human right is a right that every person has; it inheres in the person, it is with each of us from birth, it is ours because we are human, and it is necessary to our living with dignity, to the exercise of our reason and conscience.¹⁷

Those who do not enjoy their rights are not without them – they are deprived of their enjoyment of them. Impoverished people under a cruel and oppressive state have their human rights, but are deprived of their enjoyment. I remind you of this because the case I am arguing here is for the recognition in principle of a human right to legal aid; whether and how that right can in fact be enjoyed is a necessary but further issue.

So a human rights analysis begins not with the state or its in-

stitutions, but with the person. We do not ask what rights follow from the needs or operation or nature of a particular state at a particular time, but what rights are inherent in our being human?

Clearly this is a guided search – we are asking a ‘law’ question of human rights. But we are not starting with the preconceived idea of legal aid, looking for a human right rationale for it. We want to understand whether and how the idea of a human right speaks to the relationship between the person and law. We do not know where that will take us.

The first answer to the question ‘what are the rights that inhere in our being human?’ is the positive statement of human rights in the Universal Declaration of Human Rights and the related International Covenants on Civil and Political Rights, and Economic Social and Cultural Rights. We find little there

¹⁷ Article 1, Universal Declaration of Human Rights

“ Human rights analysis begins not with the state or its institutions, but with the person. We do not ask what rights follow from the needs or operation or nature of a particular state at a particular time, but what rights are inherent in our being human?”

that speaks directly to the relationship between the person and law. There is the ICCPR Article 14 guarantee of legal representation in criminal cases “where the interests of justice so require”, and that’s it.

But that is not the end of our search of what human rights have to say about law.

The positive list of fundamental rights is neither closed nor immutable. It is always the subject of exposition, debate, refinement and the pursuit of better understanding.

The rights are interpreted, particularized and augmented. Identifying a new right is not remarkable.

Few would deny, for example, a human right to a clean and healthy environment, although no such right is clearly set out in the Universal Declaration or any related treaty. Such a human right is argued for from first principles, and is supported by interpretation of existing rights such as the right to health. A form of it now appears in the European Union’s Charter of Fundamental Rights (Article 37).

So we are entitled to explore the possibility of a new human right. Not its creation, but its realization; a right that might exist, but has so far not been identified and articulated.

The source of human rights is human beings as people – not as abstractions or specimens, but as people in society, exercising reason and conscience. Human rights are those rights and freedoms necessary to function with dignity in society. In any society. In whatever circumstances and, importantly, whatever state, a person is.

At its most fundamental, people’s social relationship with each other gives rise to practices and expectations, to rules of be-

haviour. These become vastly magnified in their number and complexity as society becomes larger and more complex. Human life, in society, is universally rule-based.

The universally rule-based nature of our social existence gives rise to a fundamental right to effectively know the rules of society. These rules – I will call them law – may be oppressive or beneficial, setting limits or permitting conduct, denying remedies or enabling claims. Law in some form is, universally, a part of a person’s environment. ‘

Whatever polity is built on the rules, whatever system of laws develops, it is universally so that people’s opportunity to live with dignity, and to fulfill their human potential, depends on their engagement with rules that govern their relationships with each other, and with whatever constitutes the social authority – what for us is the state.

We cannot live with dignity, exercising reason and conscience, if we do not know these rules, if we cannot comply with these rules, if we cannot use these rules. Just as we must be able to express ourselves, to associate with others, to have access to education, so must we know, and be able to abide by and use, the rules of our society.

This is fundamental. We cannot be human with dignity if, through ignorance of the state’s rules, we face censure and sanction; if, through inability to use rules, we face loss and damage; if, through confusion about rules, we lose opportunity.

A similar right is recognized in the right to vote – Article 25 of the ICCPR guarantees the right “to take part in the conduct of public affairs”, which the Human Rights Committee says is a right “to an effective opportunity to enjoy the

rights it protects . . . whatever form of constitution or government is in force”.¹⁸

That is a recognized human right for people to participate, and participate effectively, in the political system of which they are a part. It is no less fundamental that people be entitled to participate, and participate effectively, in the system of rules – let’s call it a legal system – of which they are a part.

This right to know, and be able to abide by and use, the rules of society, needs a name. Our shorthand for the ‘right to take part in the conduct of public affairs’ is the ‘right to vote’. I suggest that our shorthand for the ‘right to take part in the legal system’ is the ‘right of access to law’.

As a fundamental human right, the right of access to law is held by everyone. It is a right that all people have at all times. It does not have to be searched for and inferred from a constitution or a legal system. It is not peculiar to criminal matters or unavailable in non-criminal matters. There is no room for a state to argue away the fundamental right, and there is a presumptive position that the right will be effectively available. Unlike rights created within and by the state, the state does not have the power to create, or to deny, a human right.

The content of this ‘access to law’ right is not a right to a lawyer, any more than a right to free expression is a right to make a radio broadcast, or a right to education is a right to private tutoring. Access to law means a right to be told the told

the law, to be given the opportunity to know and understand the law, to use it, to gain its benefit and protection.

How any human right is realized is a separate and eternally vexed question. There is cost and complexity in giving effect to a human right, and there are inevitable limitations on the extent to which the right can be realized in a state. European jurisprudence recognizes a “margin of appreciation” – a tolerance for local conditions.

But the prospect of difficulties in implementation cannot undermine the idea of the right. Difficulty in achieving and maintaining respect for human rights is never a reason to not recognize the right in the first place.

The range of steps a state might take to give effect to a fundamental right of access to law is limited only by imagination: from wide publication of plain language legislation to transparent judicial appointments; from public training, education and information to simplified compliance and legal procedures. There are manageable and affordable steps any state can take.

All around the world are example of imaginative bold and effective initiatives to promote access to law: the long history of Community Advice Bureaux in the UK, the extensive use in Africa of paralegals¹⁹ and traditional law systems,²⁰ the established networks of community law centres in Canada and Australia, the internet-led revolution in accessible legislation,²¹

“ **As a fundamental human right, the right of access to law is held by everyone. It is a right that all people have at all times.**

¹⁸ General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service CCPR/C/21/Rev.1/Add.7.

¹⁹ See eg Vivek Maru, ‘Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide’ (2006) 31 Yale LJ 427.

²⁰ Penal Reform International ‘Access to Justice in Africa and beyond: Making the Rule of Law a reality’ PRI, 2006.

²¹ See eg Carol Harlow, ‘Access to Justice as a Human Right: The European Convention and the European Union’ in Philip Alston (ed) *The EU and Human Rights*, OUP 1999, 187 at 209.

and didactic television drama in Armenia²² are only a very few.

These measures have often been taken apart from or in spite of the state, and have been motivated by a social justice ethos, a sense simply of what is necessary to be fair. A human right of access to law is a single comprehensive concept that underpins these measures.

Legal representation continues to be one measure to achieve access to law and, as cases like *Airey* and *Nkuzi* show, there will be times when legal representation is exactly the measure that is necessary. But in such cases legal representation is not necessary because there happens to be a right to fair trial in that system; it will be necessary because in any court in any place at any time, there is a human right of effective access to law.

This human right will make a difference. A human right of access to law is a new and stronger starting point for practical debates about policy and expenditure. It offers a universal and independent rationale for sustaining measures

that do exist, and for advocating for measures that do not.

A human right of access to law gives legal aid a pre-eminent place in social policy. Legal aid – with all its variety of measures – is the state program through which the fundamental human right of access to law is realised.

A human right of access to law gives new meaning to a requirement to establish a legal aid system, as required for example by the Copenhagen criteria for EU accession.²³ The right both obliges and enables a state to consider a wide range of measures that will promote access to law in the particular circumstances of that state.

A human right of access to law gives us a universal standard by which the adequacy of any legal aid system can be judged.

I know that you must all go home to many challenges in achieving access to law in your countries. I hope that this attempt to characterize your legal aid work as not only in pursuit of human rights, but as implementing a human right itself, will sustain you in your noble cause.

²² See Klaus Decker, Caroline Sage and Milena Stefanova, 'Law or Justice: Building Equitable Legal Institutions', World Bank (2005) accessible at <http://go.worldbank.org/ID1AJ9UAX0>.

²³ See Roger Smith, above note 11.

Opening statement

Mr Nathan A. Taylor, First Secretary, Canadian Embassy, Kyiv

On behalf of the Government of Canada, I would like to take this opportunity to welcome you to the “Protection and Promotion of Human Rights through the Provision of Legal Services Conference”. We are pleased to see a wide range of delegates from throughout Ukraine and from around the world. The Government of Canada, through the Canadian International Development Agency (CIDA), is pleased to be supporting this conference through the provision of CAD\$49,000 in partnership funding.

It is increasingly evident that the existence of open, democratic and responsible political systems, and respect for human rights, represent key determinants for sustainable economic and social development. In CIDA, we refer to this as “democratic governance”. CIDA’s work in democratic governance aims to make states more effective in tackling poverty by enhancing the degree to which all people, particularly the poor and the marginalized, can influence policy and improve their livelihoods. For CIDA, strengthening democratic governance means working on several mutually reinforcing fronts, including human rights, rule of law, freedom and democracy and ac-

countable public institutions.

Democratic governance requires a predictable legal system with fair, accessible, and effective judicial institutions. This ensures that human rights are respected through independent and non-discriminatory judicial institutions. It also supports economic growth by ensuring a reliable, stable, and predictable system of laws and regulations that can protect investments, contracts, and other business interactions.

CIDA’s goal in rule-of-law programming is to ensure that just laws and independent, as well as effective legal, judicial, and enforcement institutions contribute to greater security of the individual, to economic development, to environmental protection, and to social justice. CIDA’s rule-of-law work concentrates on support for legal/judicial reform with a focus on institutions, including strengthening the judiciary, bar associations, and legal aid systems. Together with our partners around the world, we have achieved a great deal towards the achievement of our collective goals in supporting the rule-of-law.

For example, in Bangladesh, CIDA supported the strengthening of the formal system of justice while simultane-



Mr. Nathan A. Taylor,
First Secretary,
Canadian Embassy, Kyiv

“ Democratic governance requires a predictable legal system with fair, accessible, and effective judicial institutions. This ensures that human rights are respected through independent and non-discriminatory judicial institutions.

*Mr Nathan
A. Taylor*

ously working with non-governmental and community-based organizations to improve access to justice of the most marginalized, with a focus on child protection and juvenile justice, legal aid, and alternative dispute resolution.

In the People’s Republic of China, CIDA has supported the improvements in trial procedures, due process and judicial training, as well as supporting the development of a legal-aid system for marginalized groups.

In Peru, CIDA has helped increase the ability of the Defensoria del Pueblo to monitor the rule of law, promote and protect human rights and promote the use of alternative conflict-resolution mechanisms, while improving the responsiveness of public services.

Here in Ukraine, Canada has been supporting rule-of-law programming since 1992. Over CAD 18,000,000 has been committed to projects in this sector. One particular success story was the establishment of “model courts” at the local rayon level. These courts are demonstrating leadership in efficient court procedures, improved judicial impartiality and ethical standards. Rule of law has been identified as one of the priority areas for the next five years of CIDA programming in Ukraine, with a continued focus on improving legal / judicial administration, processes and procedures.

Despite these successes, conflict, corruption, lack of respect for human rights (especially for women), and inadequate public services continue to challenge many countries. It is for this reason that your discussions over the next four days are so critical, as it is our hope

that the lessons learned and best practices garnered from this conference will provide the catalyst for the development of rights-based legal aid systems here in Ukraine and beyond, which will ultimately support the continued emergence of democratic governance.

Democratic governance will continue to be a cornerstone of the work that CIDA supports throughout the world. Canada believes that countries with democratic institutions cherish freedom, the rule of law and human rights. These values are held in strong regard in Canada and CIDA will continue to support these values in collaboration with a wide range of partners.

In closing, I would like to extend my thanks to the Ministry of Justice of Ukraine, as well as to the conference organizers, REDRESS, the Danish Institute for Human Rights and Kherson Regional Health and Charity Foundation. Without your support, dedication and partnership, this event would not be possible. I would also like to extend a particular thanks to the funding partners, including the Danish International Development Agency, the American Bar Association / Eastern European Law Initiative, the Renaissance Foundation and the United Nations office in Kyiv. Joint partnership of this level is a powerful demonstration of our mutual commitment to the Paris Declaration on Aid Effectiveness.

May I wish all participants from Ukraine and abroad the best of success and let today represent the beginning for many new and mutually beneficial partnerships.

Mrs Alla Tyutyunnyk, President, Kherson Regional Charity and Health Foundation

Dear friends!

The team of the Kherson's Regional Charity and Health Foundation and I welcome you on the conference that is devoted to the issue of current importance in Ukraine – secure of the human rights through promoting of the legal assistance.

We want to thank all guests from different countries that they have found such opportunity to visit us and to share with us their experience and in such way to help Ukraine in this so difficult period – the period of the formation of the legal assistance system.

This event is really very important because there are more than 11 millions of people who have the right on the legal assistance, but in real life our Government doesn't give them such opportunity (according to the Government legal organization, Ministry of Labor and Social Policy and Ministry of Health Protection).

During 17 years we give legal assistance to poor people, children, and people with disabilities, orphans and retirees. We help people who need it because Government did them harm. Nowadays only a few hundreds of private firms give social support to such people.

As for the legal support in the criminal cases, each year

Ukrainian Government drafts a few millions of grivnas, but it is useless because we haven't the system of the legal assistance.

Only during last 2-3 years the President of Ukraine, Government and private organizations combined their efforts for making the legal assistance system in Ukraine and for it to work.

Today the experience of other countries is very important, countries that have decided similar problem and which try to find the solution of this problem.

Also it is very important to gather the experience of the Ukrainian private firms. We want to say a great thanks Ukrainian colleagues from different parts of Ukraine. Thank you that you have found the time to take part in this conference.

Special gratitude to the organizers of this conference - the Kherson's Regional Charity and Health Foundation and Danish Institute for Human Rights, they support us morally, technically and financially, I mean Ministry of Justice of Ukraine, Canadian International Development Agency (CIDA), REDRESS (UK), American Bar Association / Central European and Eurasian Law Initiative (ABA/CEELI), they are financed by USAID by International Renaissance



Mrs. Alla Tyutyunnyk
President, Kherson Regional
Charity and Health Foundation

Foundation.

We hope that this conference “Secure of the human rights through promoting of the legal assistance” will be interesting for you. And the experi-

ence of Africa, Asia and Eastern Europe will be the next step for Ukraine to become a legal country. It is very important that Ukraine fulfils her obligations in human rights sphere.

Paul Dalton, Danish Institute for Human Rights



Mr. Paul Dalton,
Danish Institute for Human Rights

First and foremost, I would like to welcome you all to the conference from myself and my colleagues here from Danish Institute for Human Rights.

Our sincere thanks go to the two conference co-organizers, Kherson Regional Charity and Health Foundation and Redress. Both have made very valuable contributions to the preparations for the conference. We can truly say that it would have been possible to arrange a conference such as this one without their specific contributions, hard work, persistence and vision.

Thank you also to all those other organizations that have made the conference possible, through valuable financial, logistical, practical and / or moral support: to the Ministry of Justice of Ukraine, Canadian International Development Aid, Danish International Development Aid, American Bar Association’s Central and Eastern European Law Initiative, the International Renaissance Foundation, and Northwestern University.

The purpose of the con-

ference is to bring together legal service providers from Ukraine and from countries in Africa, Asia and Eastern Europe, to discuss the ways in which legal aid programs are helping to promote, protect and to realize human rights.

The emphasis is on identifying best strategies, methods, and practices being utilized by legal aid practitioners and others – be they from the public or private sector, working within the framework of the existing legal systems in their country or seeking to supplement the traditional access to justice framework by building links between formal and informal justice systems.

The conference’s Objectives are four-fold:

- To gather, discuss and document experiences of legal service providers, academics and practitioners in the promotion and implementation of human rights through legal advice and assistance programs;
- To increase possibilities for exchange of information and experiences between legal aid

service providers from Africa, Asia, Eastern Europe and Central Asia in the implementation of human rights through legal aid services;

- To support current developments in Ukraine towards the establishment of a national legal aid system which is capable of providing diverse, accessible and high-quality legal aid that meets the needs of Ukrainian society; and

- To promote partnerships, in particular public-private partnerships in legal services delivery, both here in Ukraine, and elsewhere around the world.

It is often assumed that any legal aid program will, by definition, secure process, and, ultimately, also substantive human rights on behalf of beneficiaries.

At the level of first principles, the provision of legal services, in whatever form, is an affirmation of and an action in furtherance of the right of all persons to recognition by and equality before the law.

In the classical legal aid scenario, the provision of legal representation for an accused person in criminal proceedings, the timely intervention of the legal aid lawyer will in many cases be instrumental in securing for his or her client fair trial guarantees.

Legal aid programs addressing the needs of vulnerable groups: e.g. juveniles in conflict with the law, or women in abusive relationships, will also, by their nature, be likely to have a significant beneficial impact on clients' well-being of clients, and, will, in many cases, be instrumental in securing the protection or realization of a specific human freedom or right on the client's behalf.

In many cases, however,

the nexus between provision of legal services - on a spectrum running from awareness raising and dissemination of legal information to personal representation by a lawyer in court proceedings - and the realization of human rights will be considerably less clear.

Where court systems or mechanisms for the execution of judgements are dysfunctional, or where customary or other informal dispute resolution mechanisms are either inoperative or in conflict with international human rights norms, alternative legal assistance strategies may be called for.

Starting at the unitary level, the conference seeks to consider the way in which organizations and programs are designed, the types of strategies and policy choices that inform the services offered, and the mechanisms that exist to monitor and assess quality of services and results obtained: what implications will a rights-based approach to legal aid services delivery have on each of these phases in the organizational cycle?

Human rights implementation means more than the mere formal harmonisation of national laws and international standards; but also those legislative, administrative, judicial and other systems and structures that are in place to ensure its effective application.

For DIHR human rights implementation has as much to do with process as to the content of the rights themselves. A human rights approach requires that certain fundamental principles be integrated into the structures, the operating procedures and the activities of those agencies and institutions exercising State powers, at all levels of Government.

“ **Human rights implementation means more than the mere formal harmonisation of national laws and international standards; but also those legislative, administrative, judicial and other systems and structures that are in place to ensure its effective application.**

Mr Paul Dalton

At the inter-organisational level, consideration needs to be given to relationships – as they currently exist and as they could develop over time - between actors in the public and private sectors. An out-and-out rights-based strategy for legal aid programs has most commonly been pursued by private or community-based rather than State-funded or managed programs, but given that it is the State itself which bears the obligation to promote, protect and facilitate the enjoyment of individuals, it is also prima facie in the interests of all Governments to develop such programmes or to link its efforts to those of others who are doing so.

Experience from many countries suggests that the most effective legal aid systems take an holistic approach; in other words, a mixed model for delivery of free or subsidised legal services is adopted where the client can choose for themselves which of the ‘offers’ of assistance available are best suited to addressing his or her particular problem.

A holistic system may also be better positioned to be able to respond to the specific situation of the individual as the rights-bearer; that is, the person whose rights may have been violated by the State and / or are not being addressed by the State in its policy and programming. In this regard, experience from many countries across conti-

nents points towards a need for more active co-operation and resource-sharing between State and civil society initiatives, based on a foundation of common values, goals and objectives derived from the principles of the Universal Declaration and the International Covenants on Civil and Political, and Economic, Social and Cultural Rights, as those documents have been interpreted and applied by the treaty bodies and mechanisms and by regional and domestic courts around the world.

We hope that the conference will meet the needs and interests of all, or at least the very large majority, of the participants. I encourage you to participate actively: to take the opportunity to comment on the presentations made in plenary and during the working groups, to meet informally with other conference participants during the breaks, and to add to the richness of the proceedings by relating your own experiences and study into the nexus between legal services and the four fundamental principles of human rights law and practice: accountability, non-discrimination, participation, and transparency. Your experience and views will be captured in the conference report, and may well serve to inform and inspire others who do not have the opportunity to be here in Kyiv during these days.

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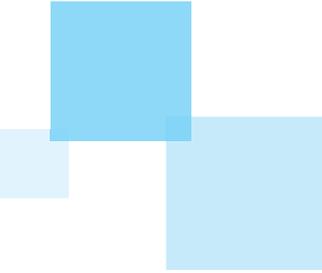
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Conference programme

Conference on Protection and Promotion of Human Rights through Provision of Legal Services

Best Practices from Africa, Asia and Eastern Europe
Kyiv
27th-30th March, 2007

Tuesday 27 March

10:00 Registration

10:30 Welcome and Opening Addresses

The Honourable Deputy Minister of Justice of the Republic of Ukraine, Ms. Inna Yemelianova
Mr. Nathan L. Taylor, First Secretary (Development), Embassy of Canada
Mrs. Alla Tyuytyunnyk, President, Kherson Regional Charity and Health Foundation
Ms. Carla Ferstmann, Director, Redress
Mr. Paul Dalton, Senior Project Manager, Access to Justice, Danish Institute for Human Rights

10:50 Opening Presentation

“Legal Aid - a Human Right?”

Mr. Simon Rice, OAM, Senior Lecturer, Department of Law, Macquarie University, Sydney, Australia

Discussion

11:30 – 12:00 Coffee Break

12:00 Session One (Plenary): Legal Services Provision from the Perspective of Public Authorities

Issues for consideration:

- State-provided / funded legal services and professional independence
- Reform of legal aid systems
- Indicators and quality standards for service delivery

Moderator: Mr. Avrom Sherr, Institute of Advanced Legal Studies, London, United Kingdom

Panelists:

1. Mr. Bruno Kalemba, Chief Legal Aid Advocate; Office of Legal Aid, Ministry of Justice of Malawi
2. Ms. Ta Thi Minh Ly, Director, National Legal Aid Agency, Vietnam
3. Ms. Valentina Subotenko, Head of Centre for Legal Reform and Legislative Review, Ministry of Justice of Ukraine
4. Ms. Hatla Thelle, Senior Researcher, China Programme, Danish Institute for Human Rights

14:00 – 15:00 LUNCH

15:00 Session Two (Plenary): Provision of services by private and community-based organizations

Issues for consideration:

- Challenges in the establishment and operation of legal aid networks
- Strategies for developing a program of services – prioritizing different types of assistance.
- Monitoring and reporting activities
- Indicators and quality standards for service delivery

Moderator: Ms. Shelley R. Wieck, Country Director, American Bar Association / Central and Eastern European Law Initiative, Kyiv, Ukraine

Panelists:

1. Mrs. Alla Tyutyunnyk, President, Kherson Regional Charity and Health Foundation
2. Ms. Seehaam Samaai, Director, University of the Western Cape Legal Clinic, South Africa
3. Mr. Huang Jinrong, Senior Researcher, Institute of Law, Chinese Academy of Social Sciences, Beijing, China
4. Mr. Abby Tabrani, Vice Chairperson of Board of Directors of the Indonesian Legal Aid Foundation (Yayasan Lembaga Bantuan Hukum Indonesia/YLBHI)

Discussion

17:00 Close of Session Two

19:00 – 21:00 Reception:

Keynote Speaker: Mr. Mykola Poludionnyi, Advisor to the President of Ukraine Mr Viktor Yushchenko, and Head of the Presidential Secretariat's Main Service for legal policies

Wednesday 28 March

9:30 Session Three: (Plenary): Rights-based approaches in delivery

of legal aid services

Issues:

- Developmental Legal Aid
- Legal Empowerment strategies
- Strategies for pursuing human rights advocacy through a legal services program
- Preventative legal aid: strategies for promoting legal and structural change at local and national level.

Moderator: Mr. Fergus Kerrigan, Senior Advisor, Danish Institute for Human Rights

Panelists:

1. Ms. Evelyn D. Battad, Free Legal Assistance Group (FLAG), Philippines
2. Mr. Paul Mulenga, Attorney, Legal Resource Foundation, Zambia
3. Ms. Carla Ferstmann, Director, Redress Trust, London, UK
4. Ms. Gulmira Shakiraliyeva, Legal Clinic “Adilet”, Kyrgyzstan

Discussion

11:30 – 12:00 Coffee Break

12:00 – 13:30 Working Groups

Working Group One: Civil Law

Issues – Access to health, education and other social services, legal services for the homeless, realization of social and economic rights, labour rights, land disputes, succession

Discussant: Mr. Rudolph Jansen, National Director, Lawyers for Human Rights, South Africa

Working Group Two: Criminal Law

Issues – Rights issues in the criminal justice process; ensuring that process guarantees are respected in practice; providing legal and related support for clients in custody; ameliorating the effects of pre-trial detention, assisting clients in custody to file and pursue complaints or to seek remedies

Discussant: Mr. Adam Stapleton, Penal Reform International, Malawi

13:30 – 15:00 LUNCH

15:00 – 15:50 Reporting Back to Plenum from the Working Groups

Moderator: Mr. Fergus Kerrigan, Senior Advisor, Danish Institute for Human Rights

Discussion

15:50 – 16:10 Coffee Break

16:10 – 18:00 Session Four: (Plenary): Redefining Access to Justice – Informal justice mechanisms and alternate dispute resolution forums

Issues: Role of traditional justice systems; examples of the incorporation of rights-based approaches into existing structures; application of alternate dispute resolution techniques as a means to reduce the number of cases entering the formal system.

Moderator: Mr. David McQuoid-Mason, Professor of Law, Centre for Socio-Legal Studies
Howard College School of Law, University of KwaZulu-Natal, Durban, South Africa

Panelists:

1. Mr. Clifford Msiska, National Director, Paralegal Advisory Service, Malawi
2. Mr. Abdul Basir Faizi, Legal Aid Lawyer, Kabul, Afghanistan
3. Mr. Paul Dalton, Senior Project Manager, Danish Institute for Human Rights

Discussion

19:00 DINNER

20:30 Evening Film and Discussion

Film: 'Freedom Behind the Walls' (55 minutes), Penal Reform International (2005)

Film introduced by Mr. Clifford Msiska, National Director, Paralegal Advisory Service, Malawi.

Discussion

Finish: 22:00

Thursday 29 March

10:00 – 11:30 a.m. Special Session: (Plenary): Ukrainian experiences, current challenges and possible solutions

Moderator: Ms. Lyudmyla Klochko, Director of the Legal Aid Clinic, Kharkiv Human Rights Protection Group.

Issues:

- Practical experiences of legal aid services and implementation of human rights standards in Ukraine
- What are the current problems? Why do these problems exist? What are the possible solutions from a practical and theoretical point of view?
- How can we ensure that they are effectively addressed in the current law reform process?

Panelists:

1. Mr. Oleksandr Bukalov, the Human Rights Protection Organization “Memorial Donetsk”, Donetsk
2. Ms. Olha Shatova, Free Legal Aid Pilot Project, Kharkiv
3. Mr. Viktor Kikkas, “Free Legal Aid Pilot Project”, Project Director for the city of Bila Tserkva, Bila Tserkva
4. Mr. Serhiy Lozan, the International Charity Organization “Ecology-Justice-Man”, Lviv
5. Ms. Larysa Zalyvna, Lughansk Regional Human Rights Organization for Women “Chayka”, Luhansk

11:30 – 12:00 Coffee Break

12:00 – 14:00 Session Five: (Plenary): The Role of the Legal Profession

Issues:

- Respective roles of Lawyers, paralegals and non-lawyers
- What are the trends at national level? How can best use be made of the relatively small number of qualified lawyers who are able or willing to assist in legal aid programs? What does the future hold for the participation of paralegals and non-lawyers participation in legal services programs?

Moderator: Mr. Tom Geraghty, Professor of Law, Northwestern University, Chicago, USA

Panelists:

1. Mr. Sergan Cengiz, Lawyer, Izmir Representation, Human Rights Foundation of Turkey
2. Mr. Anton Burkov, Attorney, Legal NGO ‘Sutyajnik’, Ekaterinburg, Russia
3. Ms. Elinor Wanyama Chemonges, Foundation for Human Rights Initiative, Uganda
4. Ms. Anna Ogorodova, Legal Aid Expert, Open Society Institute Justice Initiative, Budapest, Hungary
5. Ms. Sarah Geraghty, Attorney, Southern Center for Human Rights, Atlanta, USA

Discussion

14:00 – 15:00 LUNCH

15:00 – 17:00 Closing Session: (Plenary): Holistic approaches to delivery of legal aid services

- Holistic approaches seen both ‘internally’ (the organization of the organization); ‘externally’ (within a network of legal aid service providers), and with respect to the service-providers approach to the client.
- Building bridges between public and community-based service providers

Moderator: Mr. Adam Stapleton, Penal Reform International, Lilongwe, Malawi

Panelists:

1. Mr. David McQuoid-Mason, Professor of Law, Centre for Socio-Legal Studies
Howard College School of Law, University of KwaZulu-Natal, Durban, South Africa
2. Mr. Simon Rice, OAM, Senior Lecturer, Department of Law, Macquarie University, Sydney, Australia
3. Mr. Fergus Kerrigan, Senior Advisor, Access to Justice, Danish Institute for Human Rights

Discussion

Presentation, discussion and adoption of the Kyiv Declaration on the Right to Legal Aid

Moderators: Ms. Lyudmyla Klochko and Mr David McQuoid-Mason

Closing Speeches: Representatives from Kherson Regional Charity and Health Foundation and Danish Institute for Human Rights

17:30 Close of Conference

19:00 Farewell Dinner – Ukrainian Evening

Friday 30 March (Optional)

8:30 – 13:00 Visits programme to selected legal aid and justice sector institutions

A half-day programme will be arranged for those participants who are interested in visiting and meeting with representatives from organisations within the Ukrainian justice sector or who have an interest in the current legal reform process in Ukraine.

9:00 Visit to the Ministry of Justice

Briefings by staff from relevant Departments within the Ministry on the Ukrainian legal system and the legal aid reform process.

10:30 Visit to the Kyiv representation of American Bar Association (Central and Eastern European Law Initiative)

Presentation of ABA CEELI's activities in Ukraine, its programme in support of legal aid agencies in various parts of the country, and perspectives on the legal aid reform process.

12:00 Visit to the Legal Clinic of the Kyiv-Mohyla University

Presentation by staff of the work of the clinic and subsequent discussion.

End of Conference

Conference photographs











Conference photographs





Conference photographs

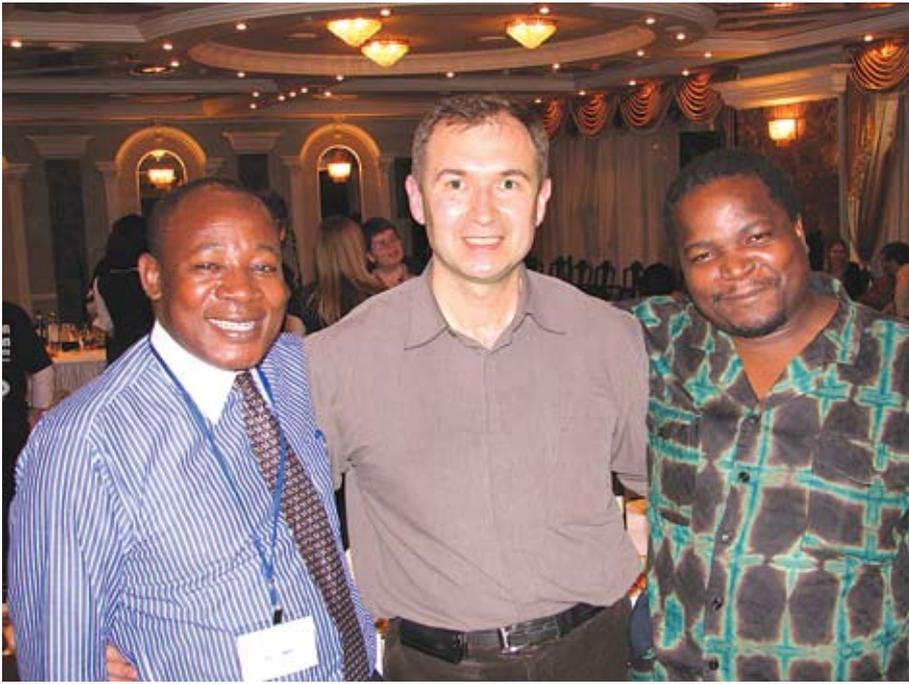












Conference photographs

