

A photograph showing a woman on the left, wearing a purple jacket and a striped skirt, shaking hands with a man on the right who is wearing a tan suit. They are standing in front of a wooden building with a blue door. A woman in a patterned dress stands between them, looking on. The man is holding a black bag and a folder. The scene is outdoors with a dirt ground and some greenery in the background.

**JUSTICE PROGRAMS FOR PUBLIC HEALTH**  
A GOOD PRACTICE GUIDE



# JUSTICE PROGRAMS FOR PUBLIC HEALTH

## A GOOD PRACTICE GUIDE



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C O V E R A palliative care nurse named Mercy Owiti and a lawyer named Johnson, both with Nyeri Hospice in Nyeri, Kenya, greet Susan, a woman whose husband is dying of cancer.

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# SUMMARY

**A**CCCESS TO JUSTICE is integral to improving public health and achieving broader development goals. Socially excluded people, in particular, experience human rights violations that harm their health and well-being. These violations include police harassment, sexual violence, unlawful discrimination, land dispossession, forced medical interventions, and denial of essential services. Access to justice programs can—and should—play a critical role in addressing and deterring these abuses.

Since 2007, the Open Society Public Health Program has experimented with a variety of approaches to improve access to justice for socially excluded groups, with a focus on health. These approaches regard such groups as vital actors in the justice system, rather than as its victims or passive beneficiaries. This Good Practice Guide reflects key lessons that we and our partners have learned. While it draws on our work with sex workers, people who use drugs, people living with HIV, people in need of palliative care, Roma, and people with intellectual or psychosocial disabilities, many of its lessons apply more broadly. This Guide builds on our 2013 publication *Bringing Justice to Health: The Impact of Legal Empowerment Projects on Public Health* [<http://osf.to/182yEwY>]. It is complemented by a virtual toolkit [<http://namati.org/resources/justice-programs-public-health-virtual-toolkit/>] that offers a wide range of resources for implementers and donors working to advance the health and human rights of socially excluded groups.

LEFT Roma paralegal Romina Kajtazova (right) talks with Ljutvia, a mother of eight, during European Immunization Week in Vinica, Macedonia. Romina works for the Association for Emancipation, Solidarity and Equality of Women (ESE).

Standard approaches to legal aid typically rely on external professionals who tend to monopolize legal expertise and lack incentives to transfer knowledge or decision-making to their clients. Our vision of access to justice operates within a framework of participation and social inclusion, relying on partnership between legal service providers and socially excluded groups. Together with our partners we have developed a number of approaches that fulfill this vision and reach these populations:

- community-based paralegals—training members of socially excluded groups to offer basic legal support to their peers and connect them to further legal and medical assistance;
- lawyering for the marginalized—deploying lawyers who are committed to working with socially excluded groups and meeting them where they are at, working outside regular office hours and in settings such as street-based locations, harm reduction sites, and detention centers;
- integrating legal services into trusted community health care—fostering collaborations between medical and legal professionals to provide legal services that improve the health of socially excluded groups;
- virtual legal aid—providing web-based legal advice to socially excluded groups, their families, and others that work with them; and
- partnering with customary justice structures to strengthen human rights protections—promoting the resolution of disputes, often through mediation, by community leaders with human rights training.

Each of these approaches transcends common conceptions of legal services and supports socially excluded groups to both understand the law and use it to their benefit.

This Good Practice Guide begins by setting out the chief health and human rights concerns of our six focus populations, and then defines the contours of the five

approaches noted above. The next four chapters—Laying the Groundwork, Justice Services, Monitoring, and Advocacy—canvas all aspects of access to justice programming through the lens of these approaches. We offer examples of programs that have used these approaches successfully in a series of textboxes throughout the Guide.

## 12 key lessons from this Guide

1. It is important to partner with socially excluded groups by involving them in the design, delivery, and evaluation of access to justice programs intended to support and benefit them. This ethos of partnership helps ensure the work responds to the needs and priorities of these groups. It is also a key marker of a human rights-based approach.
2. Raising rights awareness among members of socially excluded groups is often a prerequisite to effective access to justice programming, enabling these populations to take advantage of the services and tools available to them. This training works best when it is interactive and participatory, drawing first on participants' personal experiences, and then proceeding to make connections with the relevant legal framework.
3. Offering human rights education to duty bearers—such as law enforcement agents, government ministers, health care providers, social workers, and community decision-makers—helps foster an environment in which access to justice programs can operate effectively. Programs should work toward integrating this training into these professionals' pre-service or in-service curricula, with the aim of encouraging their partnership with socially excluded groups.
4. Paralegals recruited from the communities they will serve are effective at reaching out to their peers. They are particularly well placed to deliver rights education, respond quickly to rights violations, and connect their peers to further legal support and health care services. Training for community-based paralegals should help

- them cultivate the skills needed to carry out their work in addition to covering the substantive law.
5. Lawyers working with socially excluded groups are most effective when they are committed to learning about these groups' needs and gaining their trust. This "lawyering for the marginalized" approach requires working outside regular office hours and meeting these populations where they are at, including at street-based locations, harm reduction sites, and detention centers.
  6. Integrating legal services into trusted community health services is a good approach when trying to promote access to justice for populations already accessing such services. This integration can help patients address the underlying determinants of their health and can help health care providers deliver more holistic care. Often, the legal services introduced can build on the resources and infrastructure of the existing health care services, making this a cost-effective model.
  7. Virtual legal aid can expand the reach of lawyers who are dedicated to working with socially excluded groups. In large part, this involves providing legal information and advice over the Internet to these populations and their friends and family members, offering confidentiality and the ease of connecting with a lawyer from wherever they may have Internet access. This approach can also be used to offer legal information and advice to NGOs, health care providers, and state actors. It often works well to integrate this approach into broader access to justice programs.
  8. It can be valuable to partner with customary justice structures—such as village chiefs and councils of elders—so that these local decision-making bodies can help advance human rights protections. Customary justice structures are often less expensive, more accessible, and less adversarial than courts, and they are often community members' first stop when resolving disputes. Close engagement with these decision-makers helps ensure they operate within a human rights framework and resolve disputes in keeping with the law.
  9. Access to justice programs require not only funding but also the development of technical expertise and organizational readiness to carry out their work. It works well to facilitate peer learning between programs that have a similar focus but differing levels of experience. Donors should offer fora where this peer learning can take place, in addition to providing support for peer exchanges.
  10. Effective referral networks help access to justice programs focus on what they do best and enable their clients to attend to the underlying determinants of their health. Referral systems are helpful for both non-legal services—like health care and psychosocial and financial support—and further legal support. To ensure a program's referrals work well, it is important to develop guidelines for front-line staff and feedback processes that loop back from receiving agencies.
  11. Monitoring activities—including case management procedures, evaluations of program operations, and the documentation of human rights abuses—can help a program strengthen its services and identify trends around which to build advocacy. Monitoring can yield evidence with which programs can persuade governments and donors of the need for funding. In health and human rights work, it is good to use a blend of quantitative and qualitative markers of progress, and to link human rights protections to health outcomes.
  12. Advocacy activities—including engagement with treaty bodies, strategic litigation, and communications and media strategies—are an important complement to access to justice work that focuses on the day-to-day legal needs of socially excluded groups. Individual-level legal services lay the groundwork for addressing systemic abuses by helping to identify critical issues for broader advocacy. In undertaking advocacy, community mobilization by socially excluded groups plays an important role, as do coalitions with supportive lawyers, civil society organizations, and international partners.









# INTRODUCTION

**T**HERE IS COMPELLING EVIDENCE that justice interventions have a positive impact on public health, beyond their many other benefits.<sup>1</sup> There is also a robust basis in international law for promoting access to justice to advance health and human rights together.<sup>2</sup> As the World Health Organization (WHO) explains, we should understand health not merely as the absence of disease or infirmity, but as a state of complete mental, physical, and social well-being.<sup>3</sup> In this sense, the law can serve as a healing tool.

This is all the more true for socially excluded groups subject to discrimination and violence, impeding their access to health care and compromising the underlying determinants of their health. These groups include

- populations whose criminalized status gives rise to acute legal concerns, impedes their access to health care services, and further compromises their health;
- populations whose very health conditions—and the stigma surrounding these conditions—may make it difficult for them to claim their health and human rights; and
- populations whose ethnic origin is a target of entrenched discrimination, both harming their health and obstructing their access to health care services.

LEFT Mercy, a nurse from Nyeri Hospice in Nyeri, Kenya, greets the granddaughters of a patient with cancer who wants to ensure they can inherit her property.



The criminal penalties and criminalized status imposed on sex workers and people who use drugs bear negatively on their health and its underlying determinants.<sup>4</sup> Members of these populations suffer adverse health effects from incarceration as well as from abuse and harassment by law enforcement agents within and outside custodial settings. The criminalization of sex work and drug use also gives rise to broader public stigma. This shows itself in the barriers faced by sex workers and people who use drugs in accessing health care, social services, and formal employment.

For other populations, denial of access to health care or legal support stems from pervasive stigma concerning their health condition or ethnic identity. People living with HIV, Roma, and people with intellectual and psychosocial disabilities typically fall beyond the purview of law enforcement systems, but they too are often mistreated or ignored by state actors and health care providers. Patients with life-limiting illness, for their part, are often

abandoned as a result of pervasive taboos surrounding death, as well as state failure to integrate palliative care into health care delivery systems. This leaves them unable to maintain a meaningful quality of life.

Justice interventions focusing broadly on people living in poverty often fail to reach and adequately meet the needs of these groups. This signals the need for further programs that partner with these populations, cultivate their trust, and work to eliminate stigma against them. These programs can then help individuals and communities counter the abuses they suffer and address the underlying determinants of their health. Key outcomes that such programs can achieve include

- reducing law enforcement–related abuses;
- removing barriers to health care access;
- securing the provision of holistic and accessible care; and
- improving access to land and economic resources.

### The history, scope, and purpose of this Guide

Since 2007, the Open Society Public Health Program, led by the Law and Health Initiative, has supported more than 30 access to justice programs in ten countries. In this work, we have collaborated closely with other Open Society Foundations (OSF) entities, including national and regional foundations in Eastern and Southern Africa, Central and Eastern Europe, and Central Asia, and the Open Society Justice Initiative.

Our 2013 publication *Bringing Justice to Health: The Impact of Legal Empowerment Projects on Public Health* showcases 11 of the access to justice programs noted above. This Good Practice Guide goes a step

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Since 2007, the Open Society Public Health Program, led by the Law and Health Initiative, has supported more than 30 access to justice programs in ten countries.

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further and integrates reflections on the entirety of this work to date. It draws on the experiences of OSF staff and our partners in implementing these programs on the ground, canvassing all aspects of design and delivery in justice programming for socially excluded groups. Complementing this Guide is a Virtual Toolkit, which includes all sources used in preparing the Guide as well as further readings and additional practical resources from the field, such as videos, paralegal training manuals, forms and templates for case management and documenting human rights abuses, and sample baseline and advocacy reports. Readers can consult this virtual toolkit at [<http://namati.org/resources/justice-programs-public-health-virtual-toolkit/>].

This Guide sets out a range of approaches to promoting access to justice with an emphasis on health. We have found that in certain contexts, it works well to support community-based programs that use paralegals to connect their peers to medical and legal support. This is often carried out in parallel with lawyers committed to working directly with socially excluded groups. Other settings might call for engaging with customary justice structures that resonate with the surrounding community, integrating legal services and medical care in a one-stop shop, or providing web-based resources that tailor legal information to the concerns of socially excluded groups.

In this Guide, we aim to integrate and share the lessons learned from these approaches. Specifically, we reinforce the importance of key strategies that help advance the health and human rights of socially excluded groups. These strategies include

- partnering with socially excluded populations to enable them to understand and claim their health and human rights;

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We define the success of our programs and the good practices they embody by whether their intended beneficiaries are able to access the legal services available and what they are able to do as a result of these services.

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- encouraging law enforcement bodies and other state actors to account for these groups' health and rights concerns; and
- equipping health care providers to recognize, and resolve or refer, their patients' legal problems.

We hope the Guide will be helpful for both implementers and donors interested in supporting programs that advance the health and human rights of socially excluded groups. While the following chapters draw on our experience with the six populations noted above, its lessons are applicable to programmatic responses to any population faced with human rights violations that bear negatively on their health.

## Methodology: identifying and validating good practices

We identified and validated the good practices in this Guide through a multi-step process. This included

- a comprehensive desk review of materials prepared by OSF and our partners, as well as other donors and international agencies (e.g., academic papers, project proposals and evaluations, needs assessments, training materials, fact sheets and concept notes, and site visit reports);
- facilitated reflective discussions with OSF staff and our partners, including a three-day meeting on access to justice for socially excluded populations held in Nairobi in October 2013;
- reaching out to specific partners with questions about their work, and drawing out their lessons and reflections; and
- an intensive review process, in which the Guide was vetted by more than 40 partners and external experts, including our implementing partners, other donors, and representatives of international agencies.

We define the success of our programs and the good practices they embody by whether their intended beneficiaries are able to access the legal services available and what they are able to do as a result of these services. Our key indicators include

- the increased capacity of beneficiaries to identify rights violations and take steps to address them;
- improved accountability for health and human rights abuses; and
- an improved policy environment in which socially excluded groups can realize their health and human rights.

The sources used in preparation of this Guide are grouped at the end in a Bibliography, supplemented by select endnote references. In addition to these sources, we developed the content for this Guide using internal documents and consultations with partners and reviewers, as noted above.

## A GUIDE TO THIS GUIDE

THE NEXT CHAPTER OF THIS GUIDE, entitled **Background: Populations Targeted**, addresses each of the socially excluded groups we have supported. The chapter explains the rights abuses these groups face most often and how these violations compromise their health. It also offers preliminary indications of effective strategies for working with these groups.

A chapter on **Access to Justice Approaches** follows, with descriptions of five approaches to promoting access to justice among socially excluded groups: community-based paralegals; lawyering for the marginalized; integrating legal services into health care settings; virtual legal aid; and human rights engagement with customary justice structures. The chapter also addresses an emerging branch of this work—the pairing of social accountability tools with legal empowerment approaches.

Next is a chapter entitled **Laying the Groundwork**. This chapter canvases issues that implementers and donors may find useful to consider both before developing or supporting a new program, and upon revisiting an existing program's processes and outcomes. It includes sections addressing needs assessments, educational activities, safety considerations, and capacity building.

The following chapter addresses the main **Justice Services** delivered by access to justice programs. This chapter begins with a short section on core justice services—namely, legal representation and assistance with documentation. It proceeds with more detailed sections on alternative dispute resolution (ADR) methods and referrals and partnerships.

Chapters on **Monitoring** and **Advocacy** follow next. The Monitoring chapter includes sections on case management, evaluations, and documenting human rights abuses. The Advocacy chapter covers international and regional advocacy, strategic litigation, and communications and media strategies.

The Guide's **Conclusion** focuses on providing guidance relevant to program scale-up, which implementers and donors will find helpful when revisiting their approaches and planning for the future.







# BACKGROUND: POPULATIONS TARGETED

**T**HIS CHAPTER PROVIDES background information on the populations that OSF's Public Health Program has targeted in its access to justice work: sex workers, people who use drugs, people living with HIV, people in need of palliative care, Roma, and people with intellectual or psychosocial disabilities. Cutting across these groups is their common treatment by state actors, health care providers, and segments of the broader public as unworthy of recognition and undeserving of human rights protections. Most lessons from our work with these groups are applicable to other socially excluded populations and, as such, the remainder of this Guide is organized thematically rather than by population.

The following sections of this chapter explore the concerns of these populations in greater detail. They provide

- an overview of the most prominent forms of abuse carried out against these groups;
- an explanation of the impact of these abuses on the health of these groups; and
- an indication of which strategies work best when partnering with these groups to advance their health and human rights. These strategies are expanded on in later chapters.

LEFT Neumisa Sonandi, a sex worker paralegal, poses with her children at the hostel where she lives near Cape Town, South Africa. Neumisa works for the Women's Legal Centre.

## Sex Workers

### The criminalization of sex work

The criminalization of sex work refers to the application of criminal law against sex work or certain of its aspects. Some countries designate the making or the receipt of a payment for sexual services as a criminal act in itself. However, many countries use the criminal law to prohibit activities *related to* sex work. These activities can include soliciting, keeping a brothel, living off the earnings of sex work, procuring sexual services or communicating for that purpose, and facilitating prostitution by providing information or assistance. The criminal law may be used to target sex workers themselves, their clients or managers, the owners of the brothels where they work, their family members, or other third parties.

The application of criminal law to sex work is often accompanied by the use of administrative law to arrest or fine sex workers. In some countries, sex workers are arrested more frequently under non-criminal statutes such as municipal bylaws than under the criminal law. These statutes can cover offenses such as loitering, vagrancy, impeding the flow of traffic, public indecency, disorderly behavior, or congregating for the purposes of prostitution. Although administrative offenses typically do not entail prison sentences, they may carry heavy fines and other non-custodial penalties.

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***Sex workers*** are male, female, or transgender adults who receive money or goods in exchange for consensual sexual services, either regularly or occasionally.

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The criminalization of sex work has been shown to be one of the key drivers of HIV infection among female sex workers. An extensive study published in 2014 concluded that decriminalizing sex work could avert up to 46 percent of new HIV infections among female sex workers over the next decade.<sup>5</sup>

### Policing, violence, harassment, and their health effects

Criminalization results in egregious human rights violations against sex workers, with harmful effects on their health. The policing of sex work often involves profiling which can result in arbitrary detention, as when sex workers are arrested based only on their style of dress or where they are at a certain time of night. Also, in countries as diverse as Russia, the United States, and Zimbabwe, police routinely confiscate condoms as criminal evidence of engaging in sex work. These forms of harassment deter many sex workers from seeking police assistance. As a result, crimes are often committed against them with impunity.

Police raids of street-based locations and brothels often lead to the unlawful detention of sex workers, where they must endure the health effects of overcrowding, substandard conditions, and inadequate health care services. Many sex workers suffer rape, beatings, and intrusive body searches at the hands of law enforcement officers. They experience other degrading treatment as well, such as being forced to perform chores at officers' houses or to wash cells while in lock-up. When they are finally released, this is often the result of paying a fine and pleading guilty to the offense charged. This pattern of detention and arrest of sex workers involves far more than extending their criminal records. It subjects them to a host of abuses and deprives them of valuable work time needed to support themselves and their families.

Upon their initial detention, sex workers are often forced to pay bribes or perform sexual services for officers. Over time, this generates an entrenched cycle of payment and sexual abuse on regular schedules, both within and outside custodial settings. In many countries, sex workers are also forced to undergo mandatory HIV testing while in detention. This violates their rights to consent and confidentiality and exposes sex workers living with HIV to charges of intentional HIV transmission, where such laws exist.

Violence more generally—whether perpetrated by police, persons posing as clients, or other third parties—has been shown to increase the risk of HIV infection among sex workers. Eliminating this violence could avert as many as 20 percent of new HIV infections among female sex workers and their clients over the next ten years.<sup>6</sup>

### The broader health impacts of criminalization

Criminalization also contributes to environments that limit sex workers' ability to negotiate safer sex with clients. This has implications for the health of both sex workers and their clients and partners. Laws against keeping a brothel, and the enforcement of zoning rules intended to eliminate sex work from certain areas, often force sex workers to work in secluded locations. There, sex workers are more vulnerable to abuse and less able to set the terms of their transactions with clients. Furthermore, laws that prohibit communicating about paid sexual services restrict sex workers' ability to warn each other about dangerous clients.

The criminalization of sex work also gives rise to broader stigma that compromises sex workers' health. While sex worker-friendly services exist in some countries, many health care providers are unwelcoming to sex workers

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Distributing safer sex supplies, such as condoms, cannot alone ensure better health outcomes among sex worker communities.

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and obstruct their access to the medical assistance they need to stay healthy. In some cases, health care providers incorrectly assume that they are breaking the law by treating sex workers or by providing them with safer sex supplies.

Across sub-Saharan Africa, sex workers are routinely turned away from antiretroviral treatment services and other basic health and STI care. This is a result of physicians, nurses, and frontline medical staff who fail to understand their health problems, consider them vectors of disease, and deride them with judgmental remarks. Sex workers in Central Asia are often denied emergency care, forcibly tested for HIV, and threatened with arrest or deportation by health care providers who are their only source of prevention and treatment services. Migrant sex workers in the border areas of China and Central Asia, moreover, are denied access to mandatory health insurance schemes. This bars their access to critical health care services and deters them from efforts to maintain and improve their health outcomes.

### Developing legal support that works for sex workers

Simply distributing safer sex supplies, such as condoms, cannot alone ensure better health outcomes among sex worker communities. Indeed, the violations described

above signal the dire need in many countries for comprehensive legal services that benefit sex workers. This is important not only in order to contend against criminalization and push for legislative change, but also to address the everyday abuses carried out against sex workers by police, health care providers, their clients, and the broader public. Addressing such abuses will ultimately help protect sex workers' health.

Justice interventions for sex workers are most effective when they involve sex workers in their design and delivery, responding to their concerns and ensuring their trust. Often, this involves transforming common approaches to service delivery, such as by employing sex worker paralegals. It also involves offering learning opportunities, skills development, and safe spaces where sex workers can meet and talk. Rights training workshops are critical to enable sex workers to identify the abuses they suffer and when and why redress is warranted. In addition, programs that foster solidarity among sex worker communities have been found to increase sex workers' reporting of abuses. Such programs are an effective and community-driven way of reducing health and human rights violations.

## People Who Use Drugs

### Punitive approaches to drug use: barriers to prevention and treatment

People who use drugs are another population whose criminalization results in rampant human rights abuses harmful to their health. Public health evidence has long confirmed the effectiveness of needle and syringe

programs, opiate substitution therapy, and other harm reduction approaches in reducing HIV-related harm among people who use drugs. But the punitive approaches to drug control applied in many countries stunt these health-promoting efforts. Law enforcement practices deprive people who use drugs of life-saving information, impede their access to health care services, result in arbitrary and disproportionate sentencing, and expose them to cruel, inhuman and degrading treatment at the hands of police and health care providers.

The criminalization of drug use, or of the possession of drugs, needles and syringes, facilitates the abuse and unlawful arrest of people who use drugs. Widespread violations include physical and psychological abuse, the fabrication of evidence by police, and the extraction of false confessions from people who use drugs while they suffer from painful withdrawal symptoms. Even where charges are not formally laid, these abuses often lead to the extrajudicial detention of people who use drugs. In many detention centers, people who use drugs are forced to undergo detoxification with no medical support, in addition to their subjection to beatings and verbal abuse in the name of so-called rehabilitation.

### The health consequences of detention and incarceration

Custodial settings expose detainees to myriad health risks that cycle out to the broader public upon their release. Many prisons and detention centers where people who use drugs are held are overcrowded, unhygienic, and violent environments. While drug use and sexual activity are common in these settings, means of protection such as sterile injection equipment and condoms are often unavailable. In addition, insufficient infection control and limited treatment services result in the frequent transmission of tuberculosis.

There is often a lack of medical personnel suited to treating people who use drugs in custodial settings. Moreover, restrictive policies or gaps in practice can result in the interruption of antiretroviral or opiate substitution treatment that detainees may have been undertaking before their arrest. Compounding these problems, many detention centers and prisons hold detainees in wretched conditions, depriving them of fresh air and adequate food and sanitation facilities. This exacerbates the health risks to which people who use drugs are already vulnerable.

### The widespread rights abuses stemming from criminalization

The effects of criminalization on people who use drugs run far beyond the concrete abuse perpetrated by law enforcement agents and the inadequate conditions in which they are often held. In countries such as Ukraine, drug-related convictions can entail the forfeiture of apartments owned by the incarcerated, particularly if the offense is deemed to have taken place there. Furthermore, many people who use drugs are coerced by their relatives into signing away their property rights, often while they undergo withdrawal in detention settings.

Common requirements that people who use drugs register with the state following arrest, detention, or imprisonment—or even as a precondition to treatment access—also have far-reaching consequences. These range from the denial of child custody rights or driver’s licenses to the near-impossibility of securing employment. The stigma reinforced by drug registration systems and the difficulty in getting removed from these lists discourage many people who use drugs from seeking treatment from the few harm reduction programs available to them.

Even in countries where physicians can legally provide medication-assisted therapy for drug dependence,

admission to outpatient programs is often tightly restricted. Typically, only individuals who have shown a history of attempts at abstinence-based treatment can access these services. More broadly, general health care practitioners routinely deny medical treatment to people who use drugs. These providers can also prove careless in disclosing the health status or risk behaviors of people who use drugs to their colleagues, other patients, and law enforcement agents, violating their rights to consent and confidentiality. This deters people who use drugs from seeking medical assistance. It also reinforces their internalization of the stigma surrounding drug use.

### Legal services for people who use drugs: meeting them where they are at

Harm reduction services for people who use drugs should be complemented with legal support. This is a critical intervention needed to counter the discrimination, police violence, and other abuses perpetrated against them. It is important to acknowledge that many people who use drugs are reluctant to seek out legal assistance because of hostility they have faced from professional service providers and authority figures. In many cases, people who use drugs find it easier to pay bribes to police officers in an effort to secure their release than to contest the charges laid against them or to file complaints against individual officers.

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Many people who use drugs are reluctant to seek out legal assistance because of hostility they have faced from professional service providers.

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Effective access to justice programs for people who use drugs thus need to cultivate their trust and involve them in program design and delivery. This can be done by using peer paralegals with access to and understanding of the community. As later chapters of this Guide explain, legal services for people who use drugs must also be provided at times and places convenient to them. In short, these services must meet people who use drugs where they are at.

## People Living with HIV

### Stigma, discrimination, and human rights abuses: undermining responses to HIV/AIDS

Much progress has been made in the fight against HIV/AIDS, and states the world over have committed to scaling up efforts to provide HIV prevention and treatment to all those in need. However, inadequate attention to the human rights issues related to HIV limits the effectiveness of these efforts. It also contributes to the pervasive stigma and discrimination that people living with HIV face in many settings.

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It is crucial to address HIV as it affects members of socially excluded groups.

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HIV-related stigma stems from misinformation about the condition and prejudices concerning specific social behaviors, which may be reinforced by discriminatory laws and policies. On a local level, this stigma shows itself in the exclusion of people living with HIV from family and community life, and in their denial of access to education, employment, and health care services. Countries that criminalize HIV transmission or that impose travel restrictions on people living with HIV reinforce this stigma on a national level. Within health care settings, people living with HIV may also experience the violation of their rights to consent and confidentiality. While these measures are purportedly taken to prevent the spread of HIV, in fact they deter individuals from learning their status voluntarily and from accessing the services they need to stay healthy.

### The vulnerability of socially excluded groups to HIV: structural factors

The 30 years of the HIV/AIDS epidemic have shed light on the social and structural conditions shaping HIV vulnerability. For many, HIV infection is linked to particular social, economic, and cultural forces that constrain individuals' ability to make independent choices.

It is crucial to address HIV as it affects members of socially excluded groups. The criminalization of same-sex relations in many countries reinforces discriminatory cultural norms against LGBTI minorities. This leads state officials either to exclude consideration of sexual minorities in their health planning initiatives or, on the contrary, to over-identify them with HIV. Both of these alternatives inhibit the promotion of HIV testing and treatment among these populations, and men who have sex with men (MSM) and trans women continue to bear a disproportionate HIV burden.

Widespread criminalization of drug use and sex work also heightens the vulnerability of people who use drugs and sex workers to HIV infection. Because they are frequently harassed by law enforcement agents, members of these populations often decide not to carry sterile needles and condoms on their person, for fear these will be used as evidence against them. Furthermore, when they are detained or arrested, medical support that people who use drugs and sex workers may already have been receiving may be interrupted, and they are exposed to further infection risks while in custody.

### A disproportionate impact on women's health: HIV in sub-Saharan Africa

Across sub-Saharan Africa, women are disproportionately affected by HIV as a result of disparities they already experience in the protection of their rights. Many countries' statutory and customary laws continue to discriminate against women in areas of daily life including property and inheritance, marriage and child custody, and access to credit. The pervasive social, economic, and legal dependence of women on their male family members directs much of the burden of HIV infection toward them. In addition, economic insecurity makes it more difficult for women living with HIV to cope with illness.

In countries restricting their property rights, women lack security of tenure upon the death of, or separation from, their husbands. This heightens their vulnerability to HIV, in part by leading them to endure abusive relationships and polygamous marriages. Moreover, upon their husbands' death from AIDS, many women are evicted from their homes, their children taken from them and their property stolen by relatives. Often, these women are forced to migrate to urban centers where they sometimes work in dangerous conditions to meet their basic needs.

Women are also more susceptible to a number of HIV-related abuses in health care settings, which they tend to come in contact with more frequently than their male relatives. Health care providers who violate their patients' confidentiality expose these women to violence, ostracism, and neglect by their partners and families. This triggers the property and economic insecurities just noted. Economic dependence and fear of abandonment or violence cause many women to withhold from disclosing their HIV status, which in turn impedes their access to treatment and other services. Women who test positive for HIV may also be sterilized without their knowledge or consent, sometimes as a precondition to further health care services.

### Legal service responses to HIV: socially excluded groups playing key roles

HIV-related legal services around the world remain mostly small-scale, fragmented, and narrow in focus. Even countries with a good track record in responding to HIV often fail to attend to the legal and human rights implications of the epidemic, especially as these concern socially excluded groups. It is critical to expand the reach of these services and to enable them to respond to the full range of health and rights concerns of people living with HIV.

For many reasons, people living with HIV are often afraid to—or cannot afford to—access mainstream legal services where these exist. When they do, they often face the same stigma and discrimination as in other areas of life. Just as medical clinics can tailor their care to the specific health needs of patients living with HIV, HIV-specific legal services housed in such clinics can foster the provision of more holistic care in a climate of trust and respect.

Legal information and advice can help people living with HIV and their loved ones contend with threats to their

jobs, homes, social security entitlements, physical security, and privacy. They can also counteract discriminatory and illegal treatment against populations vulnerable to HIV by state actors, health care providers, and the general public. This is pivotal not only to protecting the rights of these groups, but also to ensuring good public health and development outcomes. Indeed, well-designed legal services are a key tool for supporting universal access to HIV prevention and treatment services.

The structural factors that heighten the vulnerability of women and socially excluded groups to HIV signal that these populations must play key roles in health and human rights responses to the epidemic. In some countries, networks of people living with HIV already offer community support systems capable of responding to legal and other challenges faced by their members in accessing HIV-related information and services. It is important to partner with these communities in designing and delivering services that respond to the problems they face.

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Dealing with legal problems that arise among patients with life-limiting illness and their families is a critical but often neglected element of palliative care.

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## People in Need of Palliative Care

### Palliative care as a human right

Palliative care uses a holistic approach to improve quality of life for patients with life-limiting illness and their families. It is highly effective in alleviating pain and other physical symptoms and can help improve adherence to medications. The physical elements of palliative care are also inexpensive—moderate to severe pain can be managed effectively with oral morphine, which is not protected by patent and can be produced cheaply. Palliative care goes much further than physical care, however, and aims to improve overall well-being by offering psychosocial and spiritual support to patients and their families. Addressing legal and human rights issues that arise among patients and their families is thus a natural part of this approach.

The palliative care approach covers a continuum of care from the moment of diagnosis onward through disease treatment and bereavement. It can also be applied alongside curative treatment. As a result, palliative care—including legal support—can be provided across all care settings, including hospitals, outpatient clinics, residential hospices, nursing homes, community health centers, and at home.

The provision of palliative care is closely linked to the human rights to the highest attainable standard of physical and mental health and to freedom from torture and cruel, inhuman or degrading treatment. Indeed, the minimum core content of the right to the highest attainable standard of health includes access to “essential drugs, as defined by the WHO Action Programme on Essential Drugs,”<sup>7</sup> and the WHO Model Lists of Essential Medicines include 14 palliative care medications. The UN Special Rapporteur on Torture and Cruel, Inhuman or

Degrading Treatment or Punishment has stated that “the *de facto* denial of access to pain relief, if it causes severe pain and suffering, constitutes cruel, inhuman or degrading treatment or punishment.”<sup>8</sup> At its core, palliative care—like the human rights framework as a whole—is about protecting human dignity.

## Barriers to universal access to palliative care

A host of factors limits the full implementation of the right to access palliative care across the world. This holds true whether access is construed in terms of location, affordability, the cultural acceptability of services offered, or the availability of trained staff, essential medications, supplies, and services.

Governments the world over have often neglected their citizens’ palliative care needs. In 2008, the WHO estimated that 80 percent of the world’s population has insufficient or no access to treatment for moderate to severe pain.<sup>9</sup> This problem is especially dire in low- and middle-income countries which, together, account for only 6 percent of worldwide morphine use<sup>10</sup> although 72 percent of all cancer deaths in 2008<sup>11</sup> and more than 80 percent of new HIV infections in 2012<sup>12</sup> arose within their borders. Most countries have yet to integrate palliative care into their health plans and policies, and basic training in palliative care and pain management is often unavailable.<sup>13</sup> Moreover, many palliative care medications are regulated by the International Narcotics Control Board, and countries must annually request the amount of medications they need. At present, many countries request inadequate supplies.

Compounding these problems, the attempts of many countries to control the illegal drug market have led to laws and regulations that severely restrict or prohibit the

use of opioid analgesics for pain relief. Regulatory barriers include limitations on the dose and duration of prescriptions, the need for multiple levels of approval and licenses, and criminal sanctions for misuse. Several countries continue to restrict prescribing powers to physicians no matter their shortage in numbers, particularly in rural settings. As a result, many health care providers are unable to prescribe opioids for pain management, and patients are left unaware of medications that can relieve their pain.

## Enhancing legal protections for palliative care patients

Dealing with legal problems that arise among patients with life-limiting illness and their families is a critical but often neglected element of palliative care. Such patients often deal with difficult legal questions related to their children’s future, property disposition, debt management, and access to social benefits. Access to justice programs can play a critical role in helping resolve these issues, providing patients and their families with greater peace of mind and supporting their overall health and well-being.

Integrating legal services into palliative care settings is a key intervention that enables holistic care and offers access to justice to patients and their families. This integration can be achieved in a number of ways:

- a partnership between a palliative care provider (e.g., a hospice) and a human rights NGO;
- a partnership between a palliative care provider and a university legal clinic;
- a palliative care provider hiring a lawyer to address patients’ legal needs;
- a partnership between a palliative care provider and a law firm with trained pro bono lawyers who are dedicated to cases involving individuals with life-limiting illness;



- training palliative care staff as paralegals who can identify legal issues among their patients, dispense basic information and advice, and make referrals to legal support when needed; or
- developing guidance and templates for families on their rights and on will writing and assigning power of attorney.

As discussed later in this Guide, palliative care staff can play an important role in linking patients and families to the legal support they need. Sick patients and overstretched families are especially vulnerable, and palliative care providers can help them advocate for their needs and recover control over their lives.

Lawyers can also be important partners for palliative care providers, patients, and their families in advocating for palliative care. Key strategies on which lawyers can offer their specialized support include the following:

- developing a national strategic plan to set benchmarks and address obstacles to palliative care access;
- supporting the integration of palliative care into the public health care system, by advocating for its inclusion in national and local legislation and policies;
- combating regulatory barriers that inhibit the availability of and access to essential palliative care medicines, especially oral morphine;
- advocating for and participating in the integration of palliative care into legal education curricula; and
- developing rights-based palliative care policies and interventions.

The Advocacy chapter of this Guide sets out further strategies and complementary work suitable for lawyers working at the national and international levels.

## Roma

### Europe's largest and most neglected minority

Roma communities across Europe face marginalization and suffer discrimination in all areas of their lives. Life expectancy among Roma is up to ten years below average, and Roma infant mortality rates are unacceptably high.<sup>14</sup> Although there are increasing numbers of young educated Roma, many Roma communities remain marked by high levels of poverty and illiteracy. This limits both their prospects of formal employment and their access to basic services.

Vast numbers of Roma live in informal settlements where everyday living conditions are precarious. What is more, they often lack critical identity documentation, such as birth certificates, that is necessary to access health care and other measures of social protection. Deep-rooted hostility and prejudices on the part of majority populations perpetuate Roma powerlessness and exclusion by giving rise to various forms of abuse, and sometimes violence.

### Social exclusion laid bare in health care settings

Discrimination against Roma is often striking in health care contexts. Roma experience a vast array of rights violations in these settings, including the outright denial of medical services and the provision of substandard health care. Roma patients' rights to medical information, privacy, and informed consent are routinely violated, and they frequently experience degrading treatment. In Macedonia, for instance, Roma are forced to pay for free services and are detained or have their documents confiscated if they prove unable to do so. In Romania, Roma

patients are often segregated in hospital settings and placed in rooms that are unclean or lack proper beds.

Medical personnel routinely insult Roma, making abusive references to Roma culture, hygiene, and reproduction. At times, this rises to the level of physical violence: a number of Roma patients, including pregnant women, report being pushed and slapped by health care professionals. This hostile and humiliating treatment deters Roma patients from visiting health care facilities unless their medical conditions have become very serious.

### The gap between legal protections and their implementation

There do exist legal frameworks that can be used to address the violations just noted, including European and international human rights instruments. In addition, the multinational initiative Decade of Roma Inclusion has worked since 2005 to address the barriers Roma face to full integration and equality in health, education, employment, and housing. The European Union, for its part, takes the situation of Roma into account in monitoring the progress of Southern and Eastern European countries toward EU accession.

While these instruments and processes have helped promote the recognition of abuse against Roma, big gaps remain between their standards and their implementation. A 2009 survey conducted in Romania, for instance, found that as many as 86 percent of Roma could not name a single institution where they could bring complaints of discrimination.<sup>15</sup> Access to justice programs can play a role in bridging these gaps.

### Improving Roma health through legal services and advocacy

Legal services form a critical part of the holistic approach that must be taken to improving Roma health. We have supported a number of programs where paralegals recruited from Roma communities promote rights awareness, facilitate access to legal remedies, and help community members navigate complex bureaucratic processes related to health insurance or personal identification documents. Several Roma NGOs are also engaged in creative activism, radio talk shows, and multimedia exhibits to help bring life to the stories of Roma community members.

The community-based programs described above can be linked with—and often give rise to—broader advocacy efforts to address barriers to health care access among Roma, and to increase accountability for the abuses they suffer in health care contexts. Indeed, recent years have seen major accomplishments on the part of Roma civil society in these areas. Coupling the approaches noted above, strategic litigation has sometimes been effective in highlighting health-related inequalities between Roma and non-Roma populations, obtaining compensation for human rights abuses perpetrated in health care settings, and forcing governments to amend discriminatory laws.

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As many as 86 percent of Roma could not name a single institution where they could bring complaints of discrimination.

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# People with Intellectual and Psychosocial Disabilities

## Distinguishing between intellectual disability and psychosocial disability

Although some individuals are diagnosed with both intellectual and psychosocial disabilities, there are significant differences between the two. Intellectual disability refers to a lifelong condition characterized by lower-than-average intellectual ability and limitations in learning and understanding. Psychosocial disability refers to a broad range of mental and emotional conditions, including anxiety, depression, and schizophrenia, that affect the way a person feels or behaves. In many countries, people with both kinds of disabilities face similar problems and suffer serious human rights abuses that stem from widespread stigma about their condition.

People with intellectual and psychosocial disabilities are a more recent population of focus for OSF's Public Health Program. The remainder of this profile focuses on the abuses they face in two main geographic areas: (i) Central and Eastern Europe; and (ii) sub-Saharan Africa.

## Institutionalization and abuse of guardianship: the social exclusion of people with intellectual and psychosocial disabilities in Central and Eastern Europe

In Central and Eastern Europe, the coerced segregation of people with intellectual and psychosocial disabilities in long-stay institutions is the norm. These institutions include psychiatric hospitals, social care homes, and

orphanages, and they are often situated in remote rural areas. This means that residents rarely receive visitors and have little or no communication with the outside world, in many cases for the rest of their lives. Long-stay institutions in this region are also marked by unacceptably poor conditions. Several reports have found that their residents are subjected to serious and ongoing human rights violations, including inadequate food, heating and clothing, the unmodified use of electroconvulsive therapy, detainment in cage beds, regular subjection to physical and pharmaceutical restraints, sexual abuse, forced sterilization, and other forms of nonconsensual and dubious treatment.

The unjustified segregation of people with intellectual and psychosocial disabilities is a human rights abuse in itself. It places severe restrictions on the rights of residents, barring them from access to education and employment and denying them fundamental choices about where and how they wish to live and those with whom they wish to associate. Institutionalization also reinforces broader public stigma and prejudices against people with intellectual and psychosocial disabilities, perpetuating the misconception that they are incapable or unworthy of participating in community life.

Serious human rights violations against people with intellectual and psychosocial disabilities can also arise through guardianship, where a court appoints a guardian to make decisions on behalf of a person held to be incapable of making decisions for her- or himself. Guardians generally have wide-ranging powers, such as control over the person's finances and where they live, with few or no safeguards for the ward. Often, the ward no longer has the right to marry, vote, or work. In many countries, guardianship is routinely used to circumvent laws governing admission to institutions, with the guardian agreeing to the admission regardless of the ward's views or objections.

## Beyond institutions: the social exclusion of people with intellectual and psychosocial disabilities in sub-Saharan Africa

Although there are few long-stay institutions in sub-Saharan Africa, the social exclusion of people with intellectual and psychosocial disabilities remains a critical problem in the region. The lack of community-based services tailored to these individuals results in a lack of support to help them participate in community life. In countries such as Kenya, people with intellectual or psychosocial disabilities are often kept at home by their families, either to protect them from potential abuse or to avoid bringing shame upon their relatives because of the deep-seated social prejudice against them. Often, these individuals are left alone at home while their carers are at work. This creates opportunities for sexual and physical abuse on the part of family members or other members of the community who offer to care for them.

In many cases, police are often the source of violence against people with intellectual and psychosocial disabilities, making it difficult to approach them for redress. Furthermore, in many cases there is an utter lack of forensic evidence supporting claims of sexual abuse, as cases are often brought well after the fact, such as when a victim becomes pregnant. Statutory references to people with intellectual and psychosocial disabilities as “idiots,” “imbeciles,” and “lunatics” not only discourage the prompt reporting of these violations but also result in overly lenient sentences for convicted abusers. The stigma that these practices and provisions reinforce worsens the silence surrounding the abuse suffered by people with intellectual and psychosocial disabilities.

## Integrating legal support into broader efforts to advance the health and human rights of people with intellectual and psychosocial disabilities

People with intellectual and psychosocial disabilities have plenty to teach and many stories to tell. Programs aiming to lessen the abuses they suffer—whether these relate to long-term institutionalization or to sexual violence in the community—must listen to their needs, no matter how these are expressed.

It is critical to develop community-based programs where people with intellectual and psychosocial disabilities can live as citizens with equal rights and adequate access to health care. This includes providing legal support to facilitate access to essential services and redress for abuse. A number of programs have found success by integrating this legal support into an NGO or community-based program already working with people with intellectual and psychosocial disabilities.

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People with intellectual and psychosocial disabilities have plenty to teach and many stories to tell.

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**COUNSELING  
IN PROGRESS  
DO NOT DISTURB!**





# ACCESS TO JUSTICE APPROACHES

**T** HIS CHAPTER EXPLORES the various forms of legal services that we have used to support socially excluded populations. Working with these groups often requires an openness to transforming orthodox conceptions of legal services, and offering these services in settings well beyond lawyers' offices and courtrooms. As the preceding chapter explains, legal services are sorely needed in street- or outreach-based community settings, within health care service points, and at all stages of contact with the law enforcement system.

Deciding which approach to legal services will work in a particular context requires an understanding of the needs and concerns expressed by the socially excluded group in question. This understanding can be reached by soliciting the input of its members and promoting their involvement in program design, delivery, and evaluation. In our years of experience, a number of approaches to justice interventions have surfaced and proven effective. These include

- the use of community-based paralegals—training members of socially excluded groups to offer basic legal assistance to their peers and connect them to further legal and medical assistance;

LEFT Mercy Owiti, a palliative care nurse and legal aid worker, speaks with a client about inheritance laws and processes in Nyeri, Kenya. Mercy works for Nyeri Hospice.

- lawyering for the marginalized—deploying lawyers who are committed to working with socially excluded groups and meeting them where they are at;
- integrating legal services into community health care—fostering collaborations between medical and legal professionals to provide legal services that aim to improve health;
- virtual legal aid—providing web-based legal advice to members of socially excluded groups; and
- human rights engagement with customary justice structures—promoting the resolution of disputes, often through mediation, by community leaders with human rights training.

We have piloted each of these approaches in isolation, and also combined them to respond contextually to the needs of a given population. While doing so, we have learned much about what works, and what does not work, for a specific group in a specific environment. The first section of this chapter provides general guidance applicable to all the approaches noted above. Subsequent sections and the chapters that follow offer more detail about these approaches and how to design and deliver programs in keeping with them. Throughout, we offer specific programmatic examples that reflect these approaches, in a series of textboxes complementing the main text of this Guide.

# Principles of Program Design

## From need to demand: raising rights consciousness

It is important to recognize that *need* for legal services and *demand* for legal services do not always coincide. This is because members of socially excluded groups often do not know what rights they have or the opportunities to obtain redress for their violation. Sometimes, these populations come to believe they have no rights because of the stigma they have come to internalize. For instance, a 2008 needs assessment performed in Kenya found that although sex work was not against the law *per se*, most sex workers interviewed believed it was illegal because of how they are targeted under certain municipal bylaws.<sup>16</sup> In other cases, group members may be well aware of their rights but unwilling to address the abuses they suffer because of a sense that the legal system does not work for them.

One way to support socially excluded groups in bringing legal claims is by raising rights consciousness alongside the provision of legal and other support. Indeed, health and human rights education can serve as a key strategy to increase demand for these services. It is important to give careful thought to the most appropriate way of providing this education. A 2010 baseline assessment conducted in Macedonia, Romania, and Serbia found that high levels of illiteracy among Roma made it ineffective to simply distribute printed information. The report proposed instead a range of different rights awareness strategies that have proven to work well, including door-to-door information campaigns and legal information sessions held at community centers.<sup>17</sup>

It is also important to promote rights consciousness among those whose decisions commonly affect the lives of socially excluded groups. These actors can include law enforcement authorities, health care providers, and members of the broader public. Sensitizing these actors to the health and human rights violations faced by socially excluded populations is an important first step toward lessening these abuses. It can also help in beginning to develop productive working relationships with them. In the short term, this contributes to the success of the access to justice program. In the long term, it contributes to fostering a rights-respecting rapport among all parties involved.

## Respect for human rights: both an end and a means

We have advanced rights awareness and increased demand for legal services in part by weaving a human rights-based approach through the planning, design, delivery, and evaluation of the programs we support. This means we try to ensure these four processes exemplify the respect for human rights they aim to bring about. Far from a simple matter of ethical consistency, our experience suggests this is a strategy critical to the effectiveness and sustainability of any access to justice program.

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Members of socially excluded groups often do not know what rights they have or the opportunities to obtain redress.

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It is important to secure the participation of socially excluded groups in program design, delivery, and evaluation whenever possible. While at times this may seem inefficient or inexpedient, we have learned that this involvement makes legal services more fully responsive to the needs of their beneficiaries. It ensures that members of socially excluded groups feel at ease when using these services, and it helps advance the protection of their health and human rights in concrete and enduring ways.

Whichever form of justice intervention is pursued, it is helpful to draw upon the following six elements of human rights-based programming:<sup>18</sup>

- *participation*: Does the activity include participation by all stakeholders, including affected communities, civil society, and marginalized, disadvantaged or excluded groups? Is it situated in close proximity to its intended beneficiaries? Is participation both a means and a goal of the program?
- *accountability*: Does the activity identify both the entitlements of claim-holders and the obligations of duty-bearers? Does it create mechanisms of accountability for violations of rights? Are all actors involved held accountable for their actions? Are both outcomes and processes monitored and evaluated?
- *non-discrimination*: Does the activity identify who is most vulnerable, marginalized and excluded? Does it pay particular attention to the needs of vulnerable groups such as women, minorities, indigenous peoples, disabled persons, and prisoners?
- *empowerment*: Does the activity give its rights-holders the power, capacity, and access to bring about a change in their own lives? Does it place them at the center of the process rather than treating them as objects of charity?

- *linkage to rights*: Does the activity define its objectives in terms of legally enforceable rights, with links to international, regional, and national laws? Does it address the full range of civil, political, economic, social, and cultural rights?
- *sustainability*: Is the development process of the activity locally owned? Does it aim to reduce disparity? Does it include both top-down and bottom-up approaches? Does it identify immediate, underlying and root causes of problems? Does it include measurable goals and targets? Does it develop and strengthen strategic partnerships among stakeholders?

## Community-based Paralegals

### Paralegals drawn from the community

Recent years have seen the rising prominence of paralegal programs as a means of providing access to justice to under-served communities, particularly in settings where there is a shortage of lawyers. We have taken this model a step further, finding that one of the best ways to foster access to justice among socially excluded groups is to train and deploy paralegals recruited from these communities.

Paralegals drawn from the communities they serve have the trust of their peers and a deep understanding of their needs and challenges. As one sex worker paralegal puts it, “We speak the same language.” This trust and understanding help paralegals act as a bridge between the lawyers that support them and the community itself. In

so doing, they move the provision of legal services beyond a traditional provider-client relationship toward one that equips community members to use the law to their benefit. The work of community-based paralegals can thus be understood as legal empowerment.\*

Community-based paralegals are particularly well suited to explaining legal concepts and rules to their peers in simple terms. They are also adept at community organizing, enabling them and their peers to address systemic barriers to justice on a grassroots level. Also, like all paralegals they require a number of key skills, including

- basic knowledge of the legal and regulatory systems and procedures (related to criminal justice or health care systems, for instance);
- training in alternative dispute resolution methods, including mediation, conflict resolution, and negotiation; and
- the communication skills needed to develop working relationships with local authorities and service delivery agencies.

## Preliminary considerations for community-based paralegal programs

Community-based paralegal programs should be designed to account for those services paralegals are permitted to provide in a given setting. While some countries allow paralegals to represent clients in minor court proceedings, in others there is little or no formal recognition of their work. This can limit the range of services they can offer. To be effective, community-based paralegals need adequate clarity about the scope and limits of their role, in

addition to the knowledge necessary to carry out their work.

It is important that paralegals have access to lawyers who can provide more comprehensive legal support and assist them in interactions with the justice system. For this reason, community-based paralegal programs often partner with lawyers who can undertake tasks that paralegals cannot, and who take referrals of complex legal problems encountered in the field. Where state officials or health care providers resist paralegal interventions, a supporting lawyer can facilitate their first few interactions until these authorities come to respect paralegals and their work.

Efforts to enhance the legal status of paralegal work can help them offer a wider range of services to their peers. Formal recognition can also promote acceptance of paralegals by bar associations, law enforcement agencies, and other government institutions. In South Africa, a national accreditation system sets uniform standards for paralegal training and the quality of their fieldwork. This approach can support the development of national paralegal networks, in which different paralegal programs can draw on each other's resources, experience, and support.

Overly formalized paralegal programs, however, can lose their flexibility and connection to the community they serve. Particularly where paralegals are drawn from criminalized populations, a formal accreditation process may limit the flexibility they need to reach out to their peers because of how it frames what work they are allowed to do. The accreditation process itself may even prove too rigid, and risk alienating potential paralegals from participating.

## What community-based paralegals can do

Community-based paralegals typically do not have law degrees, but with appropriate training and supervision they

\* In our 2013 publication *Bringing Justice to Health: The Impact of Legal Empowerment Projects on Public Health*, we define legal empowerment as “the transfer of power from the usual gatekeepers of the law—lawyers, judges, police, and state officials—to ordinary people who make the law meaningful on a local level and enhance the agency of disadvantaged populations.”

can provide members of socially excluded groups with a wide range of legal and other services. They are particularly effective in these roles as a result of their connection to community members, but also because their knowledge of local customs and forms of justice helps make their legal training more relevant to their peers. To ensure that trainees know what is involved in serving their communities, it helps to provide them with a clear orientation setting out the mission of the program, their job expectations, and the skills they require for their work.

Many programs have found that equipping community-based paralegals with some form of identification, such as a badge or a vest, helps ensure they are trusted by their peers and respected by relevant authorities.

Community-based paralegals can provide their peers with many different forms of assistance. For example, they can

- provide legal education, both individually and in groups;
- assist community members in navigating the justice and health care systems, as well as other governmental agencies;
- mediate a wide range of disputes;
- help draft important documents, such as wills and health insurance forms;
- document rights violations on a local level; and
- mobilize community members by leading roundtable discussions and know-your-rights campaigns.

In many programs, community-based paralegals have proven effective at performing legal first aid, or the prompt response to human rights violations or urgent legal needs. Sex worker paralegals in South Africa have been able to persuade prosecutors to withdraw charges

#### AN ALTERNATIVE MODEL—HEALTH CARE PROVIDERS AS PARALEGALS: **KENYA HOSPICES AND PALLIATIVE CARE ASSOCIATION (KEHPCA)**

Health care providers working with socially excluded populations can also be trained as paralegals. This model is especially apt for patients with life-limiting illness who are already accessing health care services tailored to their needs. These patients are typically in too vulnerable a state to seek justice on their own.

The Kenya Hospices and Palliative Care Association (KEHPCA) realized that many palliative care providers felt ill-equipped to help their patients with their legal problems, and uncertain about their professional responsibilities concerning pain management, consent, and confidentiality. As a result, KEHPCA began training these providers to become paralegals who could provide patients with basic legal assistance and referrals, addressing common issues such as debt management, will writing, and child care planning.

KEHPCA has recently finalized a palliative care resource manual in both English and Swahili for distribution throughout Kenya. This manual will assist in the training of palliative care providers and community caregivers, as well as lawyers, on the legal issues faced by the country's palliative care patients. It also serves as a key tool in Kenyan medical school curricula, which now cover palliative care as a result of KEHPCA's advocacy over the years.

even in the absence of the accused person. In Indonesia, paralegals responding to raids on people who use drugs often follow the arresting officers' vehicle to the police station, where they help negotiate access to life-saving medications. Many programs have found that equipping community-based paralegals with some form of identification, such as a badge or a vest, helps ensure they are trusted by their peers and respected by relevant authorities. Being closely connected to a lawyer further strengthens paralegals' standing.

## Recruiting community-based paralegals

Identifying appropriate community members to train as paralegals requires care. Community-based paralegals need to be effective in reaching out to their peers, and willing to undertake skills development necessary for their duties. In many cases, community-based paralegals also require a certain level of literacy in order to perform aspects of their work, such as case documentation and follow-up.

It is important that paralegal recruitment not lessen individuals' sense of attachment to the community from which they are drawn. To be effective, paralegals need to maintain the respect of their peers, stay attuned to their concerns, and be passionate in their desire to serve. In particular, paralegals working with criminalized populations must remain non-judgmental in their service provision, regardless of whether they continue to engage in illicit activities themselves. Finding and accepting where their peers are at can help ensure that clients remain engaged in the legal services available.

Existing outreach workers or peer educators are often great candidates for paralegal training. Another strategy is to train key community members identified during

## KEY LESSONS LEARNED

- Recruit paralegals from the community they are intended to serve, so that they can act as a bridge between that community and the legal services available.
- Be sure to take account of what services paralegals are legally permitted to perform in the country where your program is situated, and ensure that paralegals are made aware of the scope and limits of their role. Supervising lawyers are well placed to undertake tasks that paralegals cannot, and to take referrals of complex legal problems encountered in the field.
- Consider developing paralegal ID badges to help foster paralegals' trust among their peers and to enable them to work effectively with police and health care providers. Work with paralegals to identify other useful items designating their official status, such as vests, hats, or bags.
- Ensure community-based paralegals receive continuous training from lawyers. This should cover the substantive law and government structures as well as practical skills, including case management procedures. Training should begin with an intensive orientation, followed by ongoing, systematized training that is flexible enough to respond to emerging needs. Ongoing training can take the form of refresher workshops, supervisory meetings, and periodic accompaniment by supervisors on outreach visits.
- Engage community-based paralegals in periodic evaluations, including self-evaluations, in consultation with their supervisors. It works well to carry out these evaluations every three months.



focus group discussions for a needs assessment performed prior to introducing the paralegal program. A call for applications listing the skills and responsibilities associated with the position can also be posted in a medical clinic, hospice, or harm reduction center that community members are known to use often.

It is critical that paralegals be willing to serve the full spectrum of community members, including subgroups that are marginalized on other fronts and those with differing political views. To this end, implementers may find it helpful to integrate specific training on non-discrimination into their paralegal training programs. It is ideal, however, that paralegal trainees be already committed to combating all forms of discrimination from the start.

### Training and supervising community-based paralegals

Community-based paralegal development includes participatory legal training as well as on-the-job practical training. Trainees need to learn about the substantive

law and government structures in addition to developing practical skills, including

- communication skills required for teaching, leading roundtable discussions, and interviewing clients;
- mediation and negotiation skills needed to resolve conflicts amicably;
- technical skills required to complete official documents and administrative forms; and
- other office-related skills and practices, particularly for trainees with limited experience in formal employment.

Training should also cover any case management procedures that paralegals will be expected to observe. This may include completing human rights questionnaires in the field, which are then returned to the

\* For more detailed information about training paralegals, see Open Society Justice Initiative, *Community-based Paralegals: A Practitioner's Guide* (New York: Open Society Institute, 2010) at Chapters 4 and 5.

### ***Payment of community-based paralegals***

Whether they work full-time or part-time, community-based paralegals provide a valuable service that deserves remuneration. Compensating paralegals generally results in higher-quality services and greater accountability for their work.

Depending on the demands on the paralegal, compensation can be monetary or in-kind. Where it is monetary, program managers should pay paralegals in keeping with the country's current wage levels. At a bare minimum, community-based paralegals should be compensated for any transportation costs and other direct expenses they incur, as well as for any training workshops they conduct or attend.

program's head office for processing and use in advocacy and fundraising efforts.\*

While an initial intensive orientation is needed, paralegal training should be ongoing. This continuous training should be systematized but flexible enough to respond to the needs paralegals identify in their fieldwork. Regular refresher workshops can ensure paralegals remain up to date with the law and are equipped to deal with emerging issues. In addition, regular supervisory meetings with paralegals are critical for refining skills and providing targeted guidance. Program managers or supervising lawyers can provide further support and verify work quality by accompanying paralegals periodically on outreach visits.

Performance evaluations are a key component of effective paralegal supervision. These evaluations can take many forms, but it works well to carry them out every three months. Supervisors can also encourage paralegals to engage in self-evaluation and to provide them with feedback on their training and management efforts. These self-evaluations and feedback promote paralegals' ownership in the program and ensure that supervisors learn from their paralegals, and not only the other way around. The comments and scores on these evaluations should be agreed upon by paralegals and their supervisors—including goals set for the future—and stored in their employee files.\*

## KEY THINGS TO AVOID

- Do not impose one-way didactic training or evaluations on community-based paralegals. They have much to teach their supervisors too, and they will feel a greater sense of ownership in their roles if their input is solicited at every step of the way.
- Do not assume that community-based paralegals will—or should—work for free. Both their work and their time are valuable, and they should be compensated appropriately.

\* For more detailed information about supervising and evaluating paralegals, see Open Society Justice Initiative, *Community-based Paralegals: A Practitioner's Guide* (New York: Open Society Institute, 2010) at Chapter 7.

## SEX WORKER PARALEGALS FOSTERING ACCESS TO JUSTICE IN SOUTH AFRICA: WOMEN'S LEGAL CENTRE (WLC)

### Introduction to WLC and its partners

The Women's Legal Centre (WLC) works with the South African sex worker community to document human rights abuses by police, health care providers, clients, and the broader public. Central to WLC's work is a program supporting sex workers to become paralegals and providing human rights training to the wider sex worker community. WLC works closely with the Sex Workers Education and Advocacy Taskforce (SWEAT) and Sisonke, a national network of sex workers that aims to improve living and working conditions and fight for equal rights. SWEAT also documents abuses against sex workers, and it works with Sisonke members on media campaigns against sexual and physical violence by police.

### Learning how to recruit community-based paralegals

WLC's lawyer initially hosted a weekly legal clinic at SWEAT's office, but few sex workers came for legal services. As a result, she began going on outreach with SWEAT's peer educators, meeting sex workers where they were at and building their trust. WLC has since trained several peer educators and other sex workers as paralegals, and it employs them as paid full-time members of its legal aid program. The peer educators and paralegals go on outreach together, and they undertake rights training workshops jointly with Sisonke.

The formal employment and integration that WLC provides its paralegals offers them the support

they need, as it is often the first time they are engaged in formal employment. To help paralegals understand their roles and responsibilities, WLC emphasizes the usefulness of written agreements in professionalizing the position and setting appropriate boundaries. It couples these agreements with regular assessments to monitor paralegals' progress.

### The main activities of WLC's paralegals

WLC's paralegals provide their sex worker peers with legal information and advice, accompany them to medical clinics and court to offer them support, and help secure their release from police custody. Their regular contact with police helps them mediate disputes between individual officers and sex workers, and both police and security personnel occasionally contact the paralegals directly when they have concerns about their peers' behavior in a certain area. The paralegals also take on cases referred by the SWEAT Helpline, a toll-free 24-hour national helpline staffed entirely by trained sex worker counselors. When the helpline receives a call related to human rights abuses, it asks the WLC paralegal team to respond to the client by telephone or in person.

In addition to providing direct assistance, WLC's paralegals carry out legal advocacy geared toward the decriminalization of sex work. They do this by reporting on data they have collected in meetings with partner organizations, parliamentarians, and unions. At these meetings, the paralegals are able to report directly on the questionnaire data they have collected from sex workers, with a view to highlighting the kinds and extent of abuse they experience. WLC's lawyer draws on this same evidence in identifying trends and compiling evidence for use in strategic litigation.

### Training WLC's paralegals

WLC's paralegals undergo an initial training with the help of the Paralegal Manual developed by its lawyers (<http://www.wlce.co.za/images/paralegalmanual.pdf>). They then participate in monthly training on more specialized topics that emerge as training needs. WLC has learned the importance of building teamwork among sex worker paralegals, particularly because they often work outside the context of an office environment. Indeed, training paralegals to collaborate effectively can be just as important as teaching them what constitutes abuse and when redress is warranted. Often, this requires that the paralegals feel at ease breaking down their own experiences of abuse in a group setting, so that they can then feel confident in assisting their peers.

### Supervising WLC's paralegals

WLC has learned a lot about planning for the daily management and supervision of its paralegals, including the need to budget for necessary human resources and administration from the inception of such a program. WLC's management meets regularly to iron out interpersonal issues among its staff, and it holds weekly debriefings with its paralegals, both on their own and with SWEAT's peer educators and the Sisonke community.

WLC's paralegals are supported by two attorneys: a junior attorney who supervises and trains the paralegals, oversees the advice they provide, and appears in court when they require assistance; and a senior attorney who manages the junior attorney, implements WLC's advocacy and litigation strategy, and engages in efforts to replicate the project in other settings.

Every three months, WLC's paralegals undergo a performance assessment. WLC explains that these evaluations help them review and clarify

the roles and responsibilities of all staff members as the program grows. They are currently working to further develop the paralegals'

self-evaluation skills and ensure they complete their evaluations in full and on time.

## COORDINATING A ROMA PARALEGAL PROGRAM ACROSS THREE PARTNER ORGANIZATIONS: **ASSOCIATION FOR EMANCIPATION, SOLIDARITY AND EQUALITY OF WOMEN (ESE)**

### **ESE as coordinator of a paralegal program involving CDRIM, KHAM Delcevo, and RRC**

Since 2010, the Association for Emancipation, Solidarity and Equality of Women (ESE) has led a paralegal program aimed at enhancing the health rights of Roma in Macedonia. One of ESE's roles in this project involves strengthening the capacity of three partner Roma organizations to provide paralegal assistance to Roma communities in Delcevo and Shuto Orizari. These partner organizations are

- the Centre for Democratic Development and Initiatives (CDRIM);
- the Humanitarian and Charitable Association of Roma Delcevo (KHAM Delcevo); and
- the Roma Resource Centre (RRC).

Altogether, ESE has trained six paralegals from these partner organizations, all of them young Roma from the local community.

In its coordinating role, ESE has learned the importance of clearly dividing roles and responsibilities between itself and its partners, and of consulting its partners about all aspects of operations and paralegal development.

### **What Roma paralegals do, and what they've learned and accomplished**

Paralegals working for CDRIM, KHAM Delcevo, and RRC provide members of Roma communities with direct individual assistance. For instance, they help their clients fill out legal documents, accompany them to government institutions, and refer them to more comprehensive legal assistance as needed. They also engage in community education efforts by holding rights education roundtables, distributing flyers and posters, and hosting local radio shows. Lastly, these paralegals collaborate with their supervising lawyers

on lawsuits, and with medical experts on cases involving malpractice or health rights violations.

### **Institutional recognition of ESE's paralegal program**

Whether its paralegals are making door-to-door home visits or facilitating meetings with state actors and health care officials, ESE has learned that Roma are far less likely to suffer rights violations when they have the support of a paralegal. To be sure, institutions such as primary health care centers, regional units of the Health Insurance Fund, and local government were initially suspicious of paralegal interventions. A few meetings with the paralegals' supervising lawyers, however, helped them understand the role of paralegals in the community—and even as an extension of these institutions themselves. Now, these local and regional actors regularly call on the paralegals for help in overcoming language barriers and documentation issues.



## COMMUNITY-BASED PARALEGALS FACILITATING ACCESS TO JUSTICE FOR PEOPLE WHO USE DRUGS:

### **LEMBAGA BANTUAN HUKUM MASYARAKAT (LBHM)**

#### **Introduction to LBHM**

Based in Jakarta, Lembaga Bantuan Hukum Masyarakat (LBHM) has developed a paralegal program that addresses human rights abuses committed by law enforcement authorities against people who use drugs. This program trains the very community members vulnerable to these abuses to perform legal first aid and carry out community education initiatives. LBHM's paralegals also document individual cases of rights violations, with the aim of negotiating detainees' way out of the law enforcement system.

#### **The main activities of LBHM's paralegals**

Central to the role of LBHM's paralegals are visits to people who use drugs at the initial stages of their detention. A typical paralegal intervention following a police raid on people who use drugs might involve following the officers' car to the police station, negotiating conditions of detention or release, and contacting families if money is needed for bail. These paralegals address the health concerns of many detainees by performing functions their families cannot, such as delivering antiretroviral medications or taking testimony from those whose families may not know of their HIV infection or drug use.

LBHM's paralegals consult regularly with lawyers who can represent detainees in court. They

also complement their paralegal assistance by holding community education workshops on Indonesian law at meetings held by local AIDS and harm reduction organizations. These educational efforts help humanize people who use drugs to the broader Indonesian public and help people who use drugs overcome any stigma they have come to internalize.

#### **Why use paralegals drawn from the community?**

LBHM's initial vision was to recruit lawyers across Indonesia who could provide legal services to people who use drugs. However, it soon found that widespread stigma against drug use both deterred lawyers from serving this population and made people who use drugs highly skeptical of lawyers. Furthermore, high levels of corruption among police and the judiciary often prevented the few lawyers willing to work with people who use drugs from working effectively. Often, a lawyer's intervention in the initial stages following arrest would signal to police officers and prison wardens that a detainee's family had money, and might therefore be easily extorted.

LBHM became inspired to take a different approach after many months of outreach work among communities of people who use drugs. Specifically, it had come to realize that it was easier to build the capacity of people who use drugs than to build the sensitivity of lawyers to work with them. Today, the recruitment, training, and deployment of paralegals drawn from communities of people who use drugs remain the cornerstone of LBHM's efforts to secure respect for their human rights.

#### **Recruiting LBHM's paralegals**

LBHM has learned some key lessons about identifying potential paralegals among communities of people who use drugs in Indonesia. In particular, it emphasizes the importance of selecting paralegals who are well respected by their peers but who do not necessarily exhibit qualities of headstrong leadership. This factor helps ensure that the culture of the paralegal program remains non-hierarchical, and it helps LBHM's paralegals and their supervising lawyers focus on their outreach and community education efforts rather than on internal management issues.

#### **Training and supervising LBHM's paralegals**

LBHM requires its paralegals to complete a rigorous training program. Trainees gather for a series of intensive courses on Indonesian law and due process, and only those who pass an examination testing their accuracy of understanding proceed to work as paralegals. This classroom-based training is supplemented by an exposure to outreach work in key locations, where paralegal trainees begin putting their skills into practice under the supervision of the project's lawyers.

LBHM ensures the ongoing training of its paralegals by holding monthly meetings where they can learn about legislative developments, share their successes, and strategize around the challenges they have faced. The project's directors also hold biannual discussions about the program as a whole, including team-building exercises that allow participants to express broader concerns and help the directors plan for the future.

# Lawyering for the Marginalized

## What lawyers can do for socially excluded groups

The community-based paralegal programs described earlier in this chapter are made stronger when they have the ongoing support of a dedicated lawyer who can provide legal representation and expertise in challenging cases. However, having a lawyer work directly with socially excluded populations is also a programmatic response that can stand on its own. This model is particularly effective in countries where lawyers are plentiful, or where paralegals are prevented by law from providing even basic legal services.

Simply holding a law degree permits lawyers to undertake tasks for their clients that paralegals cannot. Moreover, the authority and prestige associated with law degrees assist these lawyers in developing a rapport with law enforcement agents and health care officials, who accept their authority more easily as a result. Attending closely to the context in which a justice intervention is to be introduced will help implementers determine which blend of legal and paralegal services will be most effective.

Lawyers working with socially excluded groups can

- mediate between community members and law enforcement agents or health care providers;
- intervene when community members have been arrested or detained;
- provide legal representation in court or at administrative agencies;

- collect affidavits and testimony about police abuses or health care violations for advocacy purposes;
- devise and execute a strategic litigation plan, including by mobilizing community members to articulate and pursue collective grievances; and
- refer community members to the non-legal services they need.

## What is “lawyering for the marginalized”?

We have coined the term “lawyering for the marginalized” to refer to a particular approach to connecting lawyers with socially excluded groups. As with the community-based paralegals approach profiled earlier, lawyering for the marginalized represents an important shift in the provision of legal services. This sub-section illustrates how lawyering for the marginalized works in action. The next two sub-sections offer guidance applicable to all programs connecting lawyers with socially excluded groups.

Lawyers for the marginalized go beyond their formal legal training and make efforts to learn about their clients’ lives and gain their trust. This requires them to move

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The context in which a justice intervention is to be introduced will help implementers determine which blend of legal and paralegal services will be most effective.

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outside offices and courtrooms and to work in specific locations where members of socially excluded groups may be readily found, including street-based locations, harm reduction sites, and detention centers. Often, lawyers for the marginalized integrate their legal support into a broader set of services required to meet client needs. For instance, a lawyer conducting an outreach mission might equip herself with harm reduction supplies or food, which her clients can use or consume before airing their legal problems. In other settings, a lawyer's services may become integrated into the health care services provided at a medical clinic, hospice, or harm reduction center.

## Finding the right lawyers to connect with socially excluded groups

A great many models exist for connecting lawyers with socially excluded groups.<sup>19</sup> Two models that work well in our experience are

- a partnership between a community group and a legal organization; and
- a community group hiring a lawyer who works full-time or part-time, depending on case volume.

This fusion of strengths helps ensure the socially excluded group in question has the regular and committed legal

### ***Psychosocial support: an important complement to legal services***

Lawyers working with socially excluded groups often need to play the role of a social worker for their clients. This includes offering them moral support when cases are lost or charges are laid. The wide-ranging roles these lawyers play can sometimes leave them feeling overburdened. Connecting them with social workers, psychologists, doctors, and case workers can help them complement their legal services while mitigating their risk of burnout.

Coupling legal services with psychosocial support

- helps lawyers focus on providing legal services;
- promotes the fostering of trust between lawyers and the communities they serve;
- encourages clients to remain involved in their cases, even if this involves resisting police pressure and contending with threats to their safety; and
- helps community members address their health and legal problems at the same time.

In Macedonia, the Healthy Options Project Skopje (HOPS) couples its legal support with the services of social workers and psychologists, among others. This psychosocial support has added value to HOPS's work with sex workers and people who use drugs. The social workers help facilitate clients' interactions with lawyers, help motivate them to bring cases, and accompany them to court. Sessions with psychologists provide HOPS's clients with support in advance of court hearings and before and after verdicts are delivered. This support is essential, as testifying in court often forces clients to relive their traumatic experiences.

### ***Key tips for lawyers working with socially excluded groups***

- Remain as available to your clients as possible. Many of them are used to being ignored by service professionals.
- It may be useful to distribute your contact information among members of socially excluded groups, so they can show it to police or health care providers when their rights are under threat. This enables you to convey to these actors that their actions will be subject to scrutiny, making them less likely to carry out health-endangering abuses against community members.
- Be patient with clients who are not used to expressing their concerns in a straightforward way. Ask open questions to get at the heart of their legal and non-legal problems, and take cues from their answers about how they wish to be approached.
- If your client's problem is not a legal problem, tell them you might not have the answer but will try your best. Give them an explanation if you cannot help them. If you are referring a client to another set of services, aim to accompany them to their first appointment. Follow up on your referrals to make sure they have been effective.
- Avoid working alone—ask for help. Partner with others within your organization to prevent silos and to ensure an integrated response to client needs.
- Partner with non-legal organizations and individuals that can share the burden and better handle certain issues for clients—these include doctors, social workers, and psychologists. Connect your clients to local services wherever possible.
- Maintain good relations with appropriate referral points. The trust your client has in these agencies will then be transferred to you more easily. Keep reflecting on why your interactions with some fellow professionals make you feel good, and why those with others do not.
- Devote a space to debriefing. Keep reflecting on why you do the work you do. Celebrate successes both big and small—these include the victories in the failures, and any successful steps along the way (e.g., coalition building). When you are angry or frustrated, use it to invigorate you.
- Maintain client data, and develop reporting protocols to ensure client confidentiality. This data serves as critical evidence for advocacy initiatives, even if these are undertaken by other actors.

support they need. It is especially important for meeting the needs of clients whose legal disputes may take years to resolve, and who require consistent support to ensure they do not give up.

Sometimes, it can also work to partner with private firms that offer pro bono or low-cost services on an as-needed

basis. Before considering pro bono services, however, it is important to scrutinize them for factors that may limit their accessibility, such as rigidity in scheduling requirements. Pro bono services work particularly well when the law firm's management is supportive and an arrangement can be made with specific lawyers dedicated to

## KEY LESSONS LEARNED

- Recognize the complementarity of paralegal and formal legal services. The legal, political, and geographic context in which a justice intervention is to be introduced will help determine which blend of paralegal and legal services is appropriate.
- Couple legal services with psychosocial support, by connecting lawyers with social workers, psychologists, doctors, and case workers. Psychosocial support helps ensure that clients remain confident in pursuing their cases, and it helps lawyers focus on providing legal services.
- Recognize that when working with socially excluded groups, a lawyer's formal legal expertise may not be as important as their capacity for empathy and willingness to play many roles for their clients.
- Pair up experienced lawyers with junior lawyers, who can complete more basic legal tasks and develop the experience needed to carry the work into the future.
- Support national, regional, and international gatherings of lawyers working with socially excluded groups. These gatherings are often the only fora where these lawyers can exchange their skills and experiences.

working with socially excluded groups and building this expertise. In these cases, providing opportunities to deepen the lawyers' knowledge can both improve the quality of their work and strengthen their commitment.

It is also good to be flexible and offer pro bono lawyers a menu of tasks from which they can select those that match their skills. Time-bound, discrete tasks such as drafting a will or contract often work quite well. Implementers regularly in need of pro bono legal services may wish to develop a database of pro bono lawyers organized by specialty, which they can draw upon as needed.

### Training and sustaining lawyers working with socially excluded groups

Lawyers working with socially excluded groups may require special training, whether they are fully integrated staff members or simply offer their services on an as-needed basis. Even lawyers committed to serving these populations may nonetheless need training in health and human rights and in the legislation and redress mechanisms relevant to community members. Specifically, implementers can train these lawyers to identify legal and administrative provisions that impede community members' ability to claim their rights, or that may offer them real or potential rights protections.

Lawyers also need to learn the utility and risks of certain legal arguments. While they must bear their client's wishes in mind, it is important that they consider the potential precedent set by a given verdict. For instance, there has been justifiable wariness about the use of gender-based arguments to promote the criminalization of sex work clients rather than of sex workers themselves. These arguments continue to foster the criminalization of sex work in general. What is more, they may worsen harm to sex



workers' health and rights, as a result of clients forcing them into secluded and potentially dangerous areas.

It is also important to consider how best to sustain the efforts of lawyers working with socially excluded groups. To avoid lawyer burnout, it is good practice to couple a lawyer with a junior lawyer who can complete the more basic legal tasks required of their clients. At the same time, the junior lawyer can develop the knowledge and skills necessary to carry the work forward.

It is critical to create peer support opportunities where lawyers working with socially excluded groups can share their experiences. Many such lawyers work without the benefit of traditional colleagues but have much to learn from one another. In 2011, OSF hosted the first Lawyering on the Margins conference in Copenhagen, bringing together lawyers from 15 countries for three days to exchange strategies for working with communities of sex workers, people who use drugs, and LGBTI persons. Based on partner demand, this has become an annual meeting, providing a space for lawyers to exchange ideas and strategize creatively. One Lawyering on the Margins meeting, for instance, led to the development of the first paralegal program for people who use drugs in Russia, offering access to justice to this community in a difficult environment.

## KEY THINGS TO AVOID

- Avoid rigidity in location and scheduling when offering a lawyer's services to socially excluded groups. Instead, lawyers should be open to advising clients when they need them, and meeting clients where it is convenient for them.
- Do not assume that contracting a lawyer on an as-needed basis will suffice to meet the legal needs of a socially excluded community. Generally, a strong partnership between a community group and a legal organization, or a lawyer hired by a community group, works far better to address the full range of the community's concerns.
- When pro bono or low-cost legal services are retained from a private firm, do not expect the lawyers providing them to be capable of the commitment you might expect from an in-house lawyer working in a community group. Be flexible in what you ask of pro bono lawyers, such as by offering them a menu of tasks from which they can select those that match their skills.

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It is critical to create peer support opportunities where lawyers working with socially excluded groups can share their experiences.

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## DELIVERING LEGAL SUPPORT TO STREET-BASED SEX WORKERS AND PEOPLE WHO USE DRUGS: **GADEJURISTEN**

An exciting form of street lawyering has emerged in Denmark. Since 1999, Gadejuristen—or the Danish Street Lawyers—has offered legal services to people who use drugs and sex workers at sites where they can be found. Today, Gadejuristen serves upwards of 6,000 clients per year. Its lawyers represent 10 percent of these clients in nearly 1,300 cases each year, on issues including access to treatment, housing, social benefits, child custody, and police brutality. A three-year documentary study published in 2011 found that Gadejuristen enjoys a 70 percent success rate in these cases.\*

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\* See [www.gadejuristen.dk/artikler](http://www.gadejuristen.dk/artikler) [available in Danish only].

Gadejuristen designs and carries out its work in collaboration with street-based sex workers and people who use drugs in Denmark. Outreach work is pivotal to Gadejuristen’s mission. It enables staff to gain the trust of these populations, learn what sorts of problems they are facing, and observe trends in police and other authorities’ practices. Working with criminalized populations where they are at also helps Gadejuristen determine the sorts of legal and political efforts needed to change legislation, practice, and more general attitudes toward these groups.

Gadejuristen’s outreach work is oriented around a café bike staffed by lawyers and law students. In response to client requests, its lawyers and law students serve food and beverages, and offer basic harm reduction equipment, basic hygiene items, umbrellas, and warm gloves in the winter. This helps ensure that the people Gadejuristen works with can first meet their most immediate needs, which is often necessary before they can feel comfortable airing their legal problems.

Through its outreach work, Gadejuristen has learned the importance of flexibility in handling legal cases, letting its clients choose which approach or solution is most desirable. As Denmark’s legal system can be marked by bureaucratic barriers and long delays, Gadejuristen often tries to negotiate with state authorities on behalf of its clients, and initiates legal proceedings only when these do not work. Throughout this process, Gadejuristen’s staff maintain close contact with their clients and help address their practical problems along the way, including by covering their meal and travel costs when they meet with municipal authorities.

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Gadejuristen’s outreach work is oriented around a café bike staffed by lawyers and law students. In response to client requests, its lawyers and law students serve food and beverages, and offer basic harm reduction equipment, basic hygiene items, umbrellas, and warm gloves in the winter.

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## SERVING ROMA COMMUNITIES THROUGH A BLEND OF OFFICE-BASED LEGAL SUPPORT AND OUTREACH WORK: ROMA S.O.S.

### Introduction to Roma S.O.S.

Since 2011, the Macedonian NGO Roma S.O.S. has provided legal support and representation to the Roma communities in Prilep and Bitola. Roma S.O.S. employs one full-time lawyer, who advises clients referred to her by two legal assistants as well as those who come directly to the office themselves. She also takes on legal referrals from other Roma organizations in Macedonia. Roma S.O.S.'s lawyer uses her case-work not only to advance the health and human rights of individual clients, but also as a source of documentation for her advocacy work before Macedonian health authorities.

### Balancing office-based work with outreach

Roma S.O.S.'s lawyer works primarily at the organization's Prilep office, conducting outreach herself only when clients are not mobile. This is because many of her clients come straight to the office, and for them she must be available in a space suitable for confidential communications. However, outreach work is still pivotal to Roma S.O.S.'s work. Supporting the services of its lawyer are two legal assistants who work primarily in the field and seek out cases that require her legal expertise.

The outreach performed by Roma S.O.S.'s legal assistants takes many forms. These include holding rights awareness workshops and public debates, distributing educational materials, making home visits, and providing assistance with

administrative documents. The legal assistants also perform a range of mediation services between Roma clients and health care providers. As part of this service, the legal assistants provide community members with their contact cards so they can be called when health care services are denied or delivered inappropriately. These cards also serve as proof to a health care institution that Roma S.O.S. is aware of the case and can get involved if necessary.

This outreach has had a transformative impact on both the Roma communities in Prilep and Bitola and Roma S.O.S.'s work more generally. Now, a number of health care institutions report difficult cases directly to Roma S.O.S., and they also ask for help in identifying Roma patients who lack health insurance and related documentation.

Another change is that while Roma S.O.S. continues to file complaints of abuse on behalf of their clients, more and more Roma are submitting complaints themselves to the institution where they suffered the violation, or to agencies mandated to protect patients' rights.

### Coupling moral support with legal support

Roma S.O.S.'s lawyer and her legal assistants consider moral support to be one of the key services they offer. This is important because Roma in Macedonia often have very low confidence in the country's health care and administrative systems. For the Roma S.O.S. team, moral support involves an openness to discussing all aspects of their clients' lives with them. This is not only a means of securing their trust in Roma S.O.S. It also helps Roma S.O.S. identify further legal problems that were not initially reported to them, as well as strategies for resolving them that were not already clear.

Roma S.O.S. would like to work closely with a psychologist dedicated to providing the moral support its clients need. In addition to addressing the health needs of its clients, a psychologist's assistance would help Roma S.O.S.'s lawyer work more effectively and focus on the legal problems at hand.

### Taking on investigatory roles

Roma S.O.S.'s lawyer and her legal assistants sometimes take on the role of private investigators in order to collect evidence of health-related rights violations against Roma. By documenting these abuses, Roma S.O.S. becomes better placed to identify the appropriate grounds on which to launch legal actions.

For instance, Roma S.O.S. staff might visit health care facilities and initiate discussions with health care providers after a client has reported a case to them. They might also submit requests for access to a client's medical file under the *Law on Protection of Patients' Rights* in cases where the client lacks the documentation to support their claim. As an alternative, Roma S.O.S. can request that the regional ombudsperson inspect any relevant documents in the health care facility in question and inform its lawyer about the findings.

## Integrating Legal Services into Community Health Care Settings

### Holistic care for socially excluded populations

Another model for providing justice services to socially excluded groups involves integrating legal services into health care settings. This approach helps offer access to justice to patients who are unlikely to make their way to lawyers' offices or stand-alone legal clinics because of their limited finances, poor health, or stigmatized status. Health care providers working with socially excluded populations are most effective when they incorporate a rights-based approach into their service delivery. The impact of this approach is strengthened when health care providers are connected to legal services that can address

a host of rights violations that bear negatively on their patients' health.

Integrated legal and health care services have the advantage of a one-stop shop where members of socially excluded groups can access critical health care services as well as legal support. The care provided to these patients is holistic. The legal assistance they receive helps them address the underlying determinants of their health, and health care providers who have been sensitized to human rights considerations are better equipped to deliver care that responds to the full spectrum of their patients' concerns. It is also a cost-effective model, in that the legal services introduced can build on the resources and infrastructure of the health care services already in place.

There are many approaches to integrating legal and health care services, some of which overlap with approaches described in the preceding sections of this chapter. Examples include

- a formal partnership between a health NGO and a legal NGO, where health care providers refer their patients to in-house lawyers. The lawyer helps the

### ***The National Center for Medical-Legal Partnership***

The National Center for Medical-Legal Partnership was established in 1993 as an initiative targeting children in Boston. Today, the initiative is much broader in mandate, and boasts upwards of 200 facilities across the United States and Canada. The model involves training health care providers to identify their patients' legal problems and refer them to lawyers, who meet their individual legal needs and conduct broader advocacy initiatives.

These Partnerships use legal services to address the social and economic problems expressed by patients. However, health care providers also perform legal check-ups and take steps to resolve minor issues before they become serious problems. This latter approach is borrowed from the preventive approach to health care. It helps ensure the underlying determinants of health are addressed in as timely and thorough a way as possible.

The most common legal problems addressed by these Partnerships concern housing, disability benefits, family law, education, and immigration.

## ***Integrating legal and health care services for criminalized populations***

The integration of legal and health care services can be critical in advancing the health and human rights of criminalized populations, such as people who use drugs and sex workers.

A 2008 assessment of the need for legal services for people who use drugs in Ukraine found it worked well to situate these services in drop-in centers, where prospective clients can simply stop by and spend time.<sup>20</sup> This model has the advantage of letting community members gradually become familiar with the lawyer on staff. This way, they can decide for themselves when they are comfortable raising their legal issues. It is important that the size and layout of these centers provide sufficient space for confidential consultations.

Other service provision points suitable for lawyers working with people who use drugs or sex workers include mobile clinics offering HIV and other STI testing, and substitution treatment and needle exchange centers. These settings promote the advancement of health and legal well-being at the same time. New clients who come to access one set of services can feel readily comfortable staying for the other set. Moreover, situating lawyers at harm reduction sites has been shown to protect doctors and other clinical staff, who may suffer police harassment because of the nature of their work.

patient with their legal concerns, and refers them back to the health care center for psychosocial support.

- a health NGO hiring a lawyer, and/or training health care providers as paralegals. Where a lawyer is hired, they should work in-house and be as available as possible to patients. Where health care providers are trained as paralegals, they should be connected to legal professionals to whom they can refer patients with complex legal problems.
- community-based paralegals providing basic legal assistance as part of harm reduction services. Again, paralegals should be supported and supervised by lawyers who can take their referrals of complex legal problems.

Whatever the model adopted, it must be kept in mind that many people do not expect to find legal services

offered at a health care service point. This makes it important to advertise these legal services in their own right, and not to subsume this advertising into the broader publicity strategy of the health care setting.

### **An inspiration, a point of departure: the National Center for Medical-Legal Partnership**

The integration of legal services into health care was pioneered by the National Center for Medical-Legal Partnership in the United States. Indeed, it was the National Center which first advanced the idea that lawyers and doctors could be partners in addressing health and its underlying determinants.



## KEY LESSONS LEARNED

- Remain aware of the range of possibilities for integrating legal services into community health care service points. This integration can take the form of a health NGO partnering with a legal NGO or hiring a dedicated lawyer. It can also involve a health NGO training health care providers as paralegals.
- When integrating legal services into a health care setting, aim to build on the resources and infrastructure of the health care service point. This includes the health care facility's case management procedures and referral networks.
- Advertise legal services offered in a health care setting in their own right. Many people would not expect to find legal services offered in a health care setting. This makes it important not to subsume this advertising into the broader publicity strategy of the health care facility.
- Provide health care providers regularly treating members of socially excluded groups with training on the legal and sociocultural aspects of marginalization. While providers may be well aware of certain rights violations often committed against their patients, training will help sensitize them to the full range of their patients' needs and better equip them to provide holistic care.

There are key differences, however, between the model developed by the National Center and the models contemplated here. First, the programs documented in this section have a human rights framework, in contrast with the National Center's poverty and needs-based framework. Second, the National Center's Partnerships are designed primarily for low-income families, while the programs covered here aim to address the concerns of individuals whose social exclusion sometimes forecloses the support of a strong family unit. It is also notable that the National Center developed in the context of the United States and Canada, both of which have well-developed justice and health care systems. In countries where these systems are less developed, there is a need for greater creativity and flexibility in program planning, design, and delivery.

### Who benefits from a one-stop shop?

Integrating legal services into health care service points is ideal when aiming to promote access to justice among a population that is already accessing health care services in the first place. Programs offering legal services to people living with HIV or people who use drugs, for instance, do not need to seek out potential clients if these services are woven into existing health care or harm reduction services.

Integrated legal and health care services are a good model for populations whose social exclusion stems specifically from their health condition. These groups include people living with HIV, palliative care patients, and people with intellectual or psychosocial disabilities. Unlike certain criminalized groups, the populations just noted are less likely to form discrete and cohesive communities. This makes them hard to reach through legal services unless these are integrated into the specialized health care services they require.

The legal concerns of people living with HIV are well addressed where legal services are integrated into specialized health care centers. The pervasive stigma surrounding HIV/AIDS continues to deter many patients from accessing the health care they need from large medical institutions or general practitioners. Just as specialized medical clinics can tailor their care to the specific health needs of patients living with HIV, HIV-specific legal services housed in these clinics can tailor their own offerings to the needs of their clients. In particular, these legal services can build on the climate of trust and respect already fostered at the health care service point.

Palliative care patients are also well served by integrated legal services wherever they receive care, such as in hospitals, hospices, or in-patient units, or by legal assistance complementing the health care they receive at home. This approach is particularly effective in view of the difficulties patients with life-limiting illness may experience in making their way to separate locations in order to draft their wills or resolve inheritance and property disputes.

The situation is much the same for people with intellectual or psychosocial disabilities. It generally works best to integrate legal support into community-based programs focused on advancing human rights and health care access for people with disabilities.

### Training considerations for legal service and health care providers

As with any access to justice program, training must be provided to those who regularly serve members of socially excluded groups. Legal service providers need to understand the health conditions and concerns of their clients in order to advise them effectively. Likewise, health care providers can be trained to learn to use the law to advocate for their patients. This can be done by

offering human rights training which these health care providers can incorporate into their work, to ensure they respect principles of patient consent, confidentiality, and non-discrimination. Health care providers also benefit from basic legal knowledge that enables them to identify legal issues and refer their patients to other services addressing the underlying determinants of their health.

It is important not to restrict the training just described to physicians and nurses. Often, social workers and community health workers are patients' first point of contact with the health care system. These frontline service providers also need to be adequately sensitized to the concerns of socially excluded groups, and to learn how to identify and refer common legal problems.

### KEY THINGS TO AVOID

- Do not assume that physicians and nurses are the only health care providers that should be trained to respect and promote their patients' rights. Often, social workers and community health workers are these patients' first point of contact with the health care system. It is important to ensure these frontline service providers are adequately sensitized to the concerns of socially excluded groups.

## INTEGRATING LEGAL SUPPORT INTO HIV-SPECIFIC HEALTH CARE: **CHRISTIAN HEALTH ASSOCIATION OF KENYA (CHAK)**

### Introduction to CHAK

The Christian Health Association of Kenya (CHAK) is a membership organization comprising 575 health care facilities across Kenya, including 25 hospitals. CHAK offers comprehensive HIV care and support in 20 of these hospitals, including prevention of mother-to-child transmission (PMTCT), voluntary counseling and testing, palliative home-based care, management of opportunistic infections, and antiretroviral treatment. It also provides PMTCT services in 70 of its member health care facilities.

In 2007, CHAK reported that its health care workers often dealt with cases of women who had suffered disinheritance, rape, and domestic violence once their husbands or families had learned of their HIV status. They tried referring these patients to the police, the Nairobi Women's

Hospital, and traditional and religious authorities in the community. However, many patients explained that these outlets were too expensive to travel to, too complicated or commercially driven, or simply too difficult to find.

Today, CHAK has integrated HIV-related legal services and human rights awareness in 20 of its facilities. These services have provided countless patients with legal recourses they may never have been able to access otherwise. CHAK employs one full-time lawyer who travels regularly to all 20 sites, coordinates their human rights training efforts, and oversees their legal aid clinics for people living with HIV. These clinics are offered by CHAK's partner legal aid organizations and pro bono lawyers drawn from private practice.

### **CHAK's human rights training: support groups and community outreach**

As part of its integrated legal services, CHAK trains health care providers and 'point people'

living with HIV to incorporate human rights sessions into their support groups and community outreach. Each of its sites hosts a monthly support group with an average of 20–30 participants living with HIV. The Federation of Women Lawyers (FIDA)—Kenya and other legal NGOs have partnered with CHAK to take on cases emerging from these support groups that cannot be resolved informally and that reflect systemic abuse. Complementing this legal support, the health care providers and 'point people' trained by CHAK conduct community outreach targeting the clergy, provincial officials, and community gatekeepers.

As part of these efforts, CHAK has developed two comprehensive training curricula—one for health care providers, and one for patients keen to act as 'point people' in the community. These curricula cover international human rights instruments, the Kenyan constitution, gender, family law, successions and property law, criminal law, confidentiality and consent in testing and treatment, and stigma and discrimination.

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Today, CHAK has integrated HIV-related legal services and human rights awareness in 20 of its facilities. These services have provided countless patients with legal recourses they may never have been able to access otherwise.

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## ATTENDING TO THE LEGAL ASPECTS OF PALLIATIVE CARE: **KENYA HOSPICES AND PALLIATIVE CARE ASSOCIATION (KEHPCA)**

The Kenya Hospices and Palliative Care Association (KEHPCA) promotes the provision of accessible and affordable palliative care across Kenya. The organization is also a powerful model of integrated legal and health care services. This integration was designed following a convening of lawyers and doctors mandated to identify the legal issues faced most often by palliative care patients. Participants designed an action plan

to promote access to justice among patients and their families, and KEHPCA has taken up this work ever since. Through its Legal Aspects Program, it offers assistance with problems concerning property disposition, family planning, access to social benefits programs, domestic violence, will writing, sales agreements, and assigning power of attorney.

KEHPCA's Legal Aspects Program works with over 40 hospices and palliative care centers across Kenya. This program trains health care providers as paralegals who can identify legal issues among their patients, dispense basic legal advice and information, and provide referrals

to pro bono lawyers. At Nyeri Hospice, trained health care providers then work closely with these lawyers to offer legal aid clinics and workshops on topics such as writing wills and the law of successions. An average of 20 palliative care patients and their relatives attend these monthly gatherings, and participating lawyers offer individual legal counseling to attendees after each meeting. While Nyeri Hospice is the first to integrate legal aid clinics into its on-site medical services, paralegals trained by KEHPCA but based at other hospices now offer their patients referrals to pro bono lawyers on a case-by-case basis.

## ADDRESSING GENDER-BASED VIOLENCE AGAINST WOMEN AND GIRLS WITH INTELLECTUAL AND PSYCHOSOCIAL DISABILITIES: **COALITION ON VIOLENCE AGAINST WOMEN (COVAW)**

### Introduction to COVAW's partnership with KAIH

The Coalition on Violence Against Women (COVAW) is a Kenyan NGO with legal expertise in addressing gender-based violence. In 2013, COVAW partnered with the Kenya Association of the Intellectually Handicapped (KAIH) to promote access to justice for women and girls with intellectual or psychosocial disabilities who have suffered violence at the hands of their families or other community members. As part of this project, COVAW provides legal assistance to clients referred to it from the gender-based violence recovery centers housed at Kenyatta National

Hospital and Mbagathi National Hospital, as well as from three other local health care facilities.

COVAW and KAIH complement their integration of legal and health care services by leading training workshops for law enforcement agents and health care providers, and by encouraging members of the broader public to respect the rights of people with intellectual and psychosocial disabilities and report abuses carried out against them.

### COVAW's training workshops for health care providers

By June 2013, COVAW had trained 34 health care providers from five government hospitals to handle cases involving people with intellectual or psychosocial disabilities who have survived sexual violence. These hospitals work in close partnership with COVAW, and their nurses, counselors, social workers, and community health workers provide psychosocial support and treatment

to complement COVAW's legal assistance. Before the training, only 11% of participants could identify people with intellectual or psychosocial disabilities—this figure rose to 85% by the end of the training.

COVAW's training focused first on sensitizing health care providers to the vulnerability of women and girls with intellectual or psychosocial disabilities, and teaching them to preserve important forensic evidence. During the workshop, trainees agreed that they should begin disaggregating data about sexual violence cases involving people with intellectual or psychosocial disabilities. Impressively, two training participants followed up on the workshop by forming a support group for survivors of sexual violence and their families, including those with intellectual or psychosocial disabilities.

## Virtual Legal Aid

### What is virtual legal aid?

A fourth approach to promoting access to justice for socially excluded populations is to offer virtual legal aid, or the provision of legal information and advice over the Internet. This is a fast and cost-effective model of legal service delivery, and it can be integrated into broader access to justice programs. In settings where affordable and appropriate lawyers are scarce, this approach increases access to legal expertise and enables individuals to take action and represent themselves.

Websites offering virtual legal aid can host anonymous online consultations and e-seminars, where members of socially excluded groups and their friends and families can ask legal questions and receive answers from a lawyer in real time. These websites can also archive answers to frequently asked questions (FAQ) in order to allow

individual users to search them and receive basic legal assistance within minutes. Publishing the answer to a legal question thus benefits not only the person who asked it, but countless individuals facing similar situations.

The applications of virtual legal aid, however, are not limited to providing legal information and advice to individuals from socially excluded groups. Legal questions can also be submitted by those whose decisions affect these populations. For example, virtual legal aid can be used to

- share critical legal and human rights information with law enforcement agents and government officials;
- help health care providers incorporate legal and human rights norms into their work; and
- help NGOs exchange strategies for documenting rights violations and advocating for policy change.

What matters is that the website be framed clearly so that its intended users can easily find what they seek.

### ***Advertising virtual legal aid services***

Virtual legal aid is helpful only to those who know it is available. What follows are various strategies used by providers to make sure socially excluded communities—and those who work with them—learn of their services:

- promoting the website's position within search engines;
- asking partner NGOs and appropriate government agencies to include a link on their own websites;
- including the website's URL on all publications (e.g., country reports, training manuals) and other materials (e.g., notebooks, pens, stationery, posters, calendars);
- devoting a social networking profile to the website (e.g., on Facebook, Twitter, etc.);
- mentioning the website during all presentations delivered by the broader access to justice program (e.g., training workshops, press conferences, TV and radio interviews); and
- advertising the website in newspapers, including by inserting bookmarks into individual copies.



## Keeping it simple, accurate, and consistent

The effectiveness of virtual legal aid depends on a number of key practices. It is important to provide online legal information in simple, accessible terms, using examples and images where helpful. Answers to legal questions should be thorough, beginning with the most important information. They should also use concise sentences, short paragraphs, and subdivisions in the text so that they are easy to follow.

In answering legal questions online, it works well to provide step-by-step explanations of what a person must do to defend their rights. Depending on the level of detail requested in a given question, legal practitioners can also point out

- any differences between what a law says and how it is applied;
- where some key legal term is not defined in legislation; and
- any conflicts between different levels of legislation.

It is also important to offer the website user any useful contact persons or links to further information, in case they need to learn more.

Virtual legal aid approaches call for special care in ensuring that the information provided is up to date. All information published on the website can be marked by date so that website visitors and administrators alike have a sense of its ongoing accuracy and relevance. In addition, website administrators should regularly monitor judicial and legislative developments and any media coverage relevant to the populations they work with. This is especially important in countries where legislation changes quickly and often, preventing the average person from knowing the state of the law at any given time.

## KEY LESSONS LEARNED

- Use virtual legal aid to offer online consultations and e-seminars to members of socially excluded groups and their friends and families.
- Archive answers to frequently asked questions (FAQ) so that website visitors can search them and receive basic legal information within minutes.
- Provide online legal information in simple, accessible terms, using illustrative examples and step-by-step instructions where helpful.
- Mark online legal information by date, so that website visitors and administrators alike have a sense of its ongoing accuracy and relevance.
- Make efforts to assess who is accessing virtual legal aid services. This can be done by tracking numbers of website visits, questions asked and answered, and the most popular downloads. Website administrators can also ask their visitors to complete a survey about the usefulness of the site and whether they identify themselves as a member of a socially excluded group targeted by the service.
- Aim to answer every question received. If you do not know the answer to a certain question, provide the website user with the contact information of someone who might. Follow up on these referrals from time to time to ensure they are effective.
- Consider integrating virtual legal aid into broader access to justice programs. Soliciting legal problems online can help programs identify systemic violations and refine their advocacy goals. In addition, broader programs may be better placed to connect website users to lawyers who can offer them more in-depth assistance in person.

## Maintaining and assessing demand

It is important that virtual legal aid providers respond to every question they receive. If a question is not pertinent to the website's subject matter or mandate, its administrators can offer the user the contact information of someone who can help them. Where such referrals are made often, it is important to follow up with the receiving agencies from time to time in order to ensure they are effective.

Virtual legal aid websites sometimes ask their visitors to complete a survey about the usefulness of the site and its materials. For instance, website users can be asked to indicate

- the quality of resource materials on the website;
- the quality of consultations provided, or of answers received;
- the information that interests them most; and
- their suggestions for improving the website.

Such feedback is especially important because most users of virtual legal aid services are unlikely to follow up with website administrators to inform them of the actions taken and whether these were effective.

Virtual legal aid providers should also try to assess who is—and who is not—accessing their services. At a minimum, websites offering legal aid can maintain quantitative data capturing how widely the site is used, how many questions are received and answered, and which downloads are most popular. Virtual legal aid providers may also strive to determine what proportion of their website visitors are members of a socially excluded group that is intended to benefit from the legal services provided. These efforts can be integrated into the surveys described above.

While virtual legal aid can play a powerful role in increasing access to justice, it is important to remember that Internet access is not easily available to everyone. For this reason, virtual legal aid strategies work best as part of broader access to justice initiatives. This integration has further benefits as well. The online solicitation of legal problems can help broader programs identify systemic rights violations and their root causes, enabling them to refine their advocacy goals and strategies in turn. Broader access to justice programs may also be better placed to refer website users to dedicated lawyers who can offer them more in-depth assistance.

## KEY THINGS TO AVOID

- Do not restrict virtual legal aid to the socially excluded groups it aims to benefit. These services can also offer evidence-based and practical information about health and human rights to health care providers, NGOs, law enforcement agents, state officials, and the general public.

## OFFERING ONLINE LEGAL SUPPORT TO PEOPLE WHO USE DRUGS IN RUSSIA: THE **INSTITUTE FOR HUMAN RIGHTS (IHR)** AND **HAND-HELP.RU**

### Introduction to IHR and Hand-Help.ru

The Institute for Human Rights (IHR) is a Russian NGO dedicated to human rights research and education, especially as concerns the country's repressive drug policy. Since 2007, IHR has operated Hand-Help.ru, a website offering anonymous legal consultations to people who use drugs. This virtual legal aid service promotes the legal literacy of people who use drugs and facilitates their self-representation in court when they are prosecuted.

However, the website is also widely consulted by lawyers, law students, law enforcement officials, and journalists seeking to develop a human rights perspective on developments in drug policy. Indeed, Hand-Help.ru has become an important source of independent information about state-sanctioned injustices for the broader Russian public. Whereas the website began by receiving 300 hits per day, today it receives 3,000 hits per day and features first in search engine results for "drugs" in Russia.

### Virtual legal aid in action

Hand-Help.ru's main activities involve answering questions from website visitors, be they people who use drugs, their relatives or friends, or health care providers. Typically, the site's administrators will answer 180 questions per month, including 60–70 that require extensive research. Questions that have been answered previously are archived into thematic sections covering

- drug purchase and use;
- police interrogation;
- timing of parole eligibility and appeals; and
- referrals for medical examination.

This ease of navigation helps visitors quickly find the information they need, and they can then ask clarifying questions about its pertinence to their situation.

Hand-Help.ru's project manager is also the sole author of news published on the website. He monitors legislative and judicial developments on a weekly basis and determines which materials are worth publishing on the site. To ensure visitors receive up-to-date information, he archives answers that are no longer valid.

### Referring and reaching out: connecting website visitors with in-person assistance

Hand-Help.ru often receives requests for referrals to lawyers suited to advising people who use drugs. While there are many lawyers in Russia that the website is confident in recommending, most of its visitors cannot afford their services. Hand-Help.ru's administrators have worked for years to develop a network of committed lawyers across the country, but the cases it refers to them are so complicated that this system is often stalled.

When Hand-Help.ru is able to offer its visitors more comprehensive legal assistance, it selects cases according to their likelihood of success and potential to set a precedent. Impressively, the site's main legal consultant has filed 19 drug-related rights complaints to the European Court of Human Rights since April 2012.

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This virtual legal aid service promotes the legal literacy of people who use drugs and facilitates their self-representation in court when they are prosecuted.

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## INTEGRATING A VIRTUAL LEGAL AID PROJECT INTO A BROADER ACCESS TO JUSTICE PROGRAM: **HUNGARIAN CIVIL LIBERTIES UNION (HCLU)**

The Hungarian Civil Liberties Union (HCLU) has developed a project that shows how virtual legal aid can be effectively integrated into a broader access to justice program. Indeed, the HCLU's virtual legal aid project is but one pillar of its Roma Program, which also includes community organizing, human rights and other legal training, legal representation and strategic litigation, monitoring efforts, and media engagement.

Between 2010 and 2012, the HCLU set up more than two dozen legal support stations, known as Tazsponts, in impoverished villages and settlements in northeastern Hungary. At each Tazspont, a local Roma activist identified through HCLU's community organizing efforts acts as an operator and is equipped with a computer, a scanner, a webcam, and a printer. Individual members of the local Roma community come to the Tazspont with their legal concerns, and the operator connects them directly to a pro bono attorney stationed in Budapest by Skype. The client can scan and send relevant documents directly to the lawyer, who can offer them advice as well as sample letters, petitions, and appeals in response. Lawyers working for HCLU offer legal representation in difficult cases, and undertake strategic litigation where a case holds the potential to effect broader change. To this end, the HCLU also monitors legislation, law enforcement practices, and broader public attitudes in collaboration with other Hungarian and international legal defense organizations as well as intergovernmental organizations.

The Tazspont operators meet twice a month with each other and with HCLU's advocacy experts, and they also undergo regular legal training facilitated by the HCLU. This ongoing contact and training helps them strengthen their leadership positions in the community, as well as in the eyes of authorities and the non-Roma public. Fieldworkers from HCLU also visit the operators twice a month to discuss challenging cases and, at times, to initiate negotiations with local authorities. Often, a cameraperson accompanies the fieldworkers to help document their work. The resulting films and video messages are published on the HCLU website, inviting journalists, academics, and other professionals to accompany the fieldworkers on their visits.

## ADVANCING HUMAN RIGHTS IN PATIENT CARE: AN INTERNATIONAL COLLABORATION BETWEEN NGOS IN EASTERN EUROPE AND CENTRAL ASIA

As part of an initiative to advance human rights in patient care, NGOs in seven Eastern European and Central Asian countries have developed websites to help them share resources and offer online legal consultations in this area. The NGOs each have country-specific websites—covering Armenia, Georgia, Kazakhstan, Kyrgyzstan, Macedonia, Russia, and Ukraine—and each of these sites is linked to an international home page at [www.health-rights.org](http://www.health-rights.org), available in both English and Russian.

These websites help connect lawyers, health care providers, and patients concerned about human rights in patient care. They also offer a number of resources for lawyers, including health- and human rights-related laws and regulations, case law, tools and sample forms, and practical tips. Many of them also offer online legal consultations, mainly intended for patients. Questions cover a wide spectrum of health-related legal issues, including

- access to medical care, health insurance, and disability benefits;
- patients' rights to consent and confidentiality;
- health care providers' labor rights;
- assigning power of attorney; and
- the patient-provider contract.

The Macedonian chapter of this project is housed at the Association for Emancipation, Solidarity and Equality of Women (ESE), whose work is profiled elsewhere in this Guide. This is an example of the effective integration of virtual legal aid into a broader access to justice program. Complementing its website, ESE has developed a series of patient-friendly guides—one that is general in scope, and others that are targeted specifically at Roma, people who use drugs, and people with intellectual disabilities. These guides offer short and simple information on patients' rights and responsibilities, along with practical examples and potential remedies of situations often faced by members of socially excluded groups.

# Human Rights Engagement with Customary Justice Structures

## Resolving disputes at the community level

Formal court systems cannot adequately ensure the fulfilment of the range of social and economic rights. Their often complex and costly procedures, narrow jurisdiction over legal disputes, and concentration in urban centers prevent the rural and urban poor from engaging them for dispute resolution. Access to justice programs can help address these deficiencies through the paralegal and legal services outlined in the first two sections of this chapter, as well as by using alternative dispute resolution (ADR) mechanisms to promote the swift and conciliatory resolution of certain types of disputes. These mechanisms include mediation and counseling, and are treated in greater detail later in this Guide.

In certain countries, access to justice programs can optimize their ADR capacity by engaging with customary justice structures. Councils of elders, village chiefs, and other community decision-makers in many urban and rural settings play a critical role in maintaining social cohesion and resolving disputes. Sometimes, these structures are formally integrated into local government processes or play a hybrid role, with some level of state oversight. A 2008 assessment of the need for HIV-related legal services in Uganda, for example, found that customary justice structures commonly served as a first point of contact with the government. The formal courts in Uganda

regularly asked parties to prove that these structures had been consulted first.<sup>21</sup> Across a variety of contexts, customary justice structures are often the first avenue for redress in resolving disputes. Efforts to advance access to justice must include efforts to understand and account for these mechanisms where they are present.

Customary justice structures promote access to justice by furnishing timely, inexpensive, and culturally relevant dispute resolution services. For much of the population, these structures' procedures are often easier to understand than those of formal courts. This familiarity helps motivate disputing parties to seek out solutions that satisfy them both. Indeed, the proceedings themselves are structured as mediations or arbitrations whose goal is to find common ground and achieve reconciliation, rather than as adversarial proceedings adjudicated by a judge. This approach to conflict resolution can be critical for community-level claims involving land, inheritance, and other property rights, whose effective enforcement requires community cooperation.

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Councils of elders, village chiefs, and other community decision-makers in many urban and rural settings play a critical role in maintaining social cohesion and resolving disputes.

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Engaging with customary justice structures can also serve broader aims. Social norms prevailing in a given community can greatly limit the ability of members of socially excluded groups to improve their health and obtain redress for abuse. Addressing the health and human rights concerns of these groups in consultations with community leaders can help a program secure tangible improvements in the lives of their members. In some cases, promoting equitable and accountable decision-making at the local level can also inform broader policy reform at the national level.

## Training considerations: human rights principles and the formal law

It is critical to ensure that customary justice structures do not apply discriminatory norms against women or socially excluded populations. Often, this requires discussion with their leaders about health and human rights issues to ensure they become sensitive to these groups' concerns. This discussion and any training workshops carried out should emphasize the importance of ensuring that legal norms are applied fairly to both genders, as well as halting the application of rules unfair to women.

A 2007 needs assessment concerning HIV-related legal services in Kenya found that traditional justice systems in that country were ill-equipped to serve people affected by HIV. Key problems identified on the part of elders and chiefs included widespread gender bias, discriminatory practices, and lack of knowledge about HIV/AIDS issues. However, an interview with the Deputy Secretary General of the Luo Council of Elders revealed that many elders were interested in learning more about human rights, gender, and HIV/AIDS. He explained that some council members had already undergone awareness training, though more was needed. In his view, interpretations of customary law could be developed over time so as to be consistent with human rights principles.<sup>22</sup>

Programs working with community decision-makers can also help ensure they are well versed in the formal legal framework, both domestically and internationally. This is important because the full resolution of many disputes depends on a coupling of customary and formal tools. For instance, a widow disinherited by her inlaws following her husband's death may benefit from having a council of elders mediate her dispute, but she may still need to file for formal recognition of her title to ensure their decision is enforceable. In this light, enhancing awareness among elders and chiefs about women's statutory rights

## KEY LESSONS LEARNED

- Recognize that customary justice structures often play a primary role in resolving community-level disputes, including those involving land, inheritance, and property claims.
- Before engaging with customary justice structures, strive to understand the kinds of disputes they tend to deal with, how they function procedurally, and how they are generally perceived in the community.
- Facilitate discussion on human rights among community decision-makers, and offer human rights training to them as well as to those you expect to be the main beneficiaries of these services.
- Ensure community decision-makers have an understanding of the formal legal framework, as customary law and formal law often interact in complex ways.
- Explore strategies to improve the capacity of women to participate in customary justice structures.

## PARTNERING WITH CUSTOMARY JUSTICE STRUCTURES TO ADVANCE THE RIGHTS OF WOMEN AND CHILDREN AFFECTED BY HIV: **KELIN**

### Introduction to KELIN

Based in Nairobi, KELIN is an NGO focused on the legal, ethical, and human rights concerns related to health and HIV/AIDS. One of KELIN's projects is called "Working with Cultural Structures to Facilitate Access to Justice by Widows and Orphans." This project involves working with community elders in the Kenyan counties of Homabay and Kisumu to help address the disinheritance of women and children whose husbands or fathers have died of AIDS.

By working with local elders, KELIN facilitates informal mediation between disputing parties, providing a safe space for ironing out family property disagreements. None of the widows it has worked with has suffered a repeat eviction, and over time KELIN has observed a greater number of women taking up roles as community elders. Between April 2009 and October 2014, KELIN helped resolve 217 property disputes in favor of HIV-affected widows and orphans.

### Taking steps to ensure respect for human rights

KELIN's project is the product of years of community engagement. Its staff recognized early on the significance of community-based courts and mediation barazas, and decided that reconstructing these structures to be respectful of human

rights would help offer concrete, accessible, and just solutions for their clients.

KELIN first held community dialogue fora with elders, widows, and government officials to get their buy-in on the project. Soon, it began offering separate training workshops for elders, widows, and children to help them understand human rights and property rights. These workshops were the subject of an evaluation performed by KELIN, and they are covered in further detail in the Evaluations section of this Guide's Monitoring chapter.

### Strengthening community ties: customary justice structures in action

KELIN typically learns of the land and property disputes it takes on through support groups for widows and orphans living with HIV. Its field officers and volunteers capture the relevant case details on a standard form, and refer the dispute to the nearest council of elders. Most cases take between four and six months to complete.

The dispute resolution services that KELIN facilitates protect their clients from the unwanted publicity of formal court proceedings. Only the elders and aggrieved family members are involved in the mediation process, and all parties must consent to the presence of any other community members. This responds to the privacy concerns of many widows and orphans in a context where the stigma surrounding HIV status continues to cause considerable violence.

To help ensure their decisions are enforced, the elders follow up with the families whose disputes they have mediated. However, KELIN is also working with the elders to explore the possibility of filing certain decisions in the formal courts to make them officially binding.

### Taking stock and sharing lessons

When asked what it would have done differently, KELIN says that it would have established partnerships earlier on with housing rights and economic support organizations. Even when its clients' property disputes are resolved in their favor, they often lack the support they need to build basic housing structures on their land. KELIN has helped build dozens of structures for especially vulnerable widows. There is much greater demand for this support than it can meet, however, as KELIN's current funders do not support construction costs.

In 2010, KELIN developed a toolkit of step-by-step guidelines to help other access to justice programs engage customary justice structures in their own initiatives. The toolkit offers an outline of the steps KELIN took to ensure that its own project heeded the rights principles it wanted to see reflected in the resolution of community-level disputes. It can be accessed at <http://kelinkenya.org/wp-content/uploads/2010/10/Working-with-Cultural-Structures-A4FINAL.pdf>.

to hold property—and the formal procedures required to protect these rights—can be a critical intervention. Moreover, encouraging them to develop a body of social and legal precedents over time can contribute to the consistent resolution of disputes and the development of local practices that incorporate human rights norms.

Program staff should extend similar training to the expected beneficiaries of these services, such as widows affected by HIV/AIDS. This training should address the types of rights they can claim, as well as how to identify and report violations, thereby building the capacity of women to engage with customary justice structures. Raising awareness on these issues can also enable the broader community to play a monitoring role and help ensure customary justice structures comply with human rights standards.

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Transparency and participation in decisions made about health-related laws, policies, resource allocation, and implementation can help advance efforts to hold governments and service providers accountable.

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## An Emerging Issue: Social Accountability and Legal Empowerment

### Social accountability and health care delivery

Promoting and protecting the right to health is widely recognized as the responsibility of the state. However, many governments fail to meet their obligations in this area. Increased transparency and participation in decisions made about health-related laws, policies, resource allocation, and implementation can help advance efforts to hold government and service providers accountable to their communities.

Social accountability approaches rely on the participation of citizens to demand accountability from public officials and service providers. Generally, these approaches combine rights education and information about service delivery with collective action for change. Social accountability practitioners have developed a variety of tools and mechanisms to promote accountability in health care contexts. These include

- community monitoring tools and mechanisms (e.g., community scorecards, citizen report cards, social audits)—these equip citizens to document and advocate for improvements in the availability, accessibility, acceptability, and quality of public health care services, based on specific standards and policy commitments; and
- applied budget work tools and mechanisms—these involve monitoring government plans for raising and

## ***Social accountability and legal empowerment approaches: potential complementarity***

Legal empowerment techniques can enhance social accountability approaches by

- opening new avenues for advocacy and action;
- providing concrete redress mechanisms for rights violations; and
- setting precedents and standards that can then be reflected in law, policy, and practice.

Social accountability techniques can enhance legal empowerment approaches by

- focusing on systemic problems in service delivery, including resource distribution;
- providing mechanisms for community participation in the initiation, development, and implementation of policy;
- promoting the identification of patterns of human rights violations in health care settings; and
- highlighting state failures in the realm of socioeconomic rights.

spending public resources, by collecting complex budget information and translating it into accessible terms. Then, citizens advocate for adequate budgeting and the effective and responsible use of resources that better fulfill their right to health.

Many social accountability projects around the world have shown that a citizenry engaged in monitoring and advocacy for improved services contributes to fostering more responsive governments and improving service availability and quality. Key improvements have included

- reducing absenteeism of health care providers;
- reducing shortages or stockouts of essential medicines;
- better infrastructure and quality of medical equipment in health care centers;

- addressing petty corruption and other misuse of resources; and
- better resource allocation.

Despite registering a number of positive changes at local levels, social accountability interventions have struggled to sustain these developments. In some cases, social accountability practitioners feel they lack the necessary traction they need to oblige public officials and service providers to respond and commit to addressing systemic issues in health care policy and delivery in a comprehensive way. Practitioners have also observed that instances of specific and gross human rights violations—such as discrimination in health care delivery, forced sterilization, and death or disability resulting from medical malpractice—are less amenable to redress through social accountability interventions alone.

## COMBINING SOCIAL ACCOUNTABILITY AND LEGAL EMPOWERMENT APPROACHES: **CENTER FOR THE STUDY OF EQUITY AND GOVERNANCE IN HEALTH SYSTEMS (CEGSS)**

Since 2008, the Center for the Study of Equity and Governance in Health Systems (CEGSS) has worked with indigenous communities in Guatemala to advance their health and human rights using social accountability approaches. Within Guatemala's legal framework, CEGSS facilitated the formation of citizens' health councils at municipal levels and trained them to monitor the implementation of government health commitments in indigenous communities. In their first three years of monitoring, these councils were able to

- improve trust and communication between local health care authorities and indigenous communities;
- institute the effective participation of indigenous persons in local health care services, including some decision-making about resource allocation; and
- begin addressing gaps in local health care service delivery, including the discriminatory treatment of indigenous patients by health care providers.

Despite observing improved responsiveness on the part of health care providers in certain regions, CEGSS noted the continued pervasiveness of discrimination and mistreatment toward indigenous communities in a number of health care contexts. Its research found that despite a strong national framework for combating discrimination, this last had not yet extended to creating

functional complaint mechanisms for redressing these problems in a timely and effective manner. What is more, serious communication gaps persisted between rural indigenous communities and Guatemala's public human rights institutions, including the Human Rights Ombudsman, the Presidential Commission against Racism and Discrimination, and the Defender for Indigenous Women. Typically, these organizations provided support only on cases that could be brought to court, which greatly limited the number and types of complaints they addressed.

CEGSS initiated a comprehensive, multi-pronged intervention in 2013 to help remedy these gaps and address the structural conditions that shape public service delivery at the local level. This strategy has included

- developing an SMS-based crowd-sourcing platform that collects 17 different types of complaints related to health rights violations in rural indigenous communities;
- seeking official letters of understanding from the public human rights bodies listed above that they will receive and investigate reports generated through the crowd-sourcing platform;
- recruiting human rights lawyers and developing a cadre of community-based paralegals who offer human rights and other legal training to indigenous communities, gather evidence about violations of the right to health in their communities, identify complaints that amount to gross human rights violations, and provide advice on appropriate redress mechanisms; and

- implementing accountability and advocacy activities related to the municipal, provincial, and national government.

These measures are challenging for both CEGSS and the indigenous communities it works with, as they involve confronting state power head on. However, they seem to be starting to pay off. First, the Vice-President of Guatemala has ordered a commission involving the Ministry of Health, CEGSS, and representatives of rural indigenous communities to discuss how improvements might be achieved. Second, CEGSS is in the process of negotiating a letter of understanding between the Human Rights Ombudsman, representatives of rural indigenous communities, and CEGSS itself concerning the investigation of complaints and the provision of legal representation in cases of violations. Although these advances have not fully resolved the problems noted above, they represent a step forward in their engagement with different levels of government and in facilitating broader community mobilization.



## Coupling social accountability and legal empowerment approaches

OSF and our implementing partners have begun exploring potential synergies between social accountability tools and legal empowerment approaches. In our 2013 publication *Bringing Justice to Health: The Impact of Legal Empowerment Projects on Public Health*, we define legal empowerment as the transfer of power from the usual gatekeepers of the law—lawyers, judges, police, and state officials—to ordinary people who make the law meaningful on a local level and enhance the agency of disadvantaged populations. The community-based paralegals approach profiled earlier in this chapter is an example of legal empowerment in action.

We believe that fusing legal empowerment approaches with social accountability tools may help bring about more sustainable shifts in power dynamics between citizens and the public actors responsible for health care delivery. To be sure, social accountability and legal empowerment initiatives share a variety of common aims. These include

- promoting the realization of human rights and social justice;
- fostering grassroots education and mobilization;
- providing tools and skills that enable individuals and communities to take action and seek solutions;
- transforming relationships between citizens and state actors to bring about improvements in service delivery; and
- using media advocacy as a complementary strategy to reach intended audiences.

In particular, legal empowerment programs can learn from social accountability practitioners' use of aggregate data as a catalyst for community action. Social accountability techniques can also serve as an important additional source for legal cases, surfacing community-level injustices that individual clients may not raise and calling attention to state failure in enforcing social and economic rights. Meanwhile, legal empowerment strategies can address individual grievances as well as challenge policies and set new precedents and standards against which future social accountability efforts can take place. Legal empowerment's connection with lawyers also adds 'teeth' to the advocacy efforts of social accountability practitioners.

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# LAYING THE GROUNDWORK

**T**HIS CHAPTER CANVASES a range of considerations and activities that implementers and donors should undertake to support the establishment or scale-up of an access to justice program. The first section covers needs assessments, a tool that can help ensure a program is tailored to the needs of its beneficiaries. Next follows a section on educational activities, which sets out good practices for conducting legal and human rights education with both socially excluded groups and those who regularly interact with these populations.

The chapter then proceeds with a short section on general safety considerations, which aims to help program staff and beneficiaries stay safe in settings of violence and political repression. Concluding the chapter is a section on capacity building, which sets out good practices related to skills sharing and development.

LEFT Max Malyshev (center left), an outreach worker, and Misha Golichenko (center right), a lawyer, talk with harm reduction activists during a day of action in Moscow, Russia. Max works for Moscow Outreach, and Misha works for the Canadian HIV/AIDS Legal Network.

# Assessing the Need

## The role of needs assessments

Needs assessments can be a helpful tool for determining which types of services should be provided to socially excluded groups, and how these services can be provided most effectively in a particular setting. They clarify both the problems to be addressed and the context in which a program will operate.

Specifically, needs assessments can help implementers and donors better understand

- the priorities expressed by a program's intended beneficiaries;
- key gaps and challenges in law, policy, and practice as these bear on program beneficiaries;
- past successes and current strengths in the relevant legal and policy frameworks or in other access to justice and health interventions; and
- how to leverage key partnerships and referral networks.

Additionally, the needs assessment process is a good opportunity to ensure the involvement of socially excluded groups in program design. This can help a program foster the trust of its intended beneficiaries.

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Needs assessments clarify both the problems to be addressed and the context in which a program will operate.

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A needs assessment can also serve as a baseline that implementers and donors can use to measure a program's impact.<sup>23</sup> Follow-up impact assessments can then be carried out as needed to identify further unmet needs and scale-up prospects.

Needs assessments vary in size and scope, and the time and costs they require can be limited by narrowing their focus. When other NGOs or donors have performed their own needs assessments, it is possible to build on their findings, and new research may be unnecessary.

## General research considerations

It is important to use and/or develop reliable sources of information about the experiences of socially excluded populations when undertaking a needs assessment. In addition to statistical data, needs assessments benefit greatly from qualitative data drawn from key informant interviews, focus group discussions, and community surveys. Both quantitative and qualitative methods can be used to develop indicators of progress that will signal success in the future. Examples of these indicators include

- increased capacity of socially excluded groups to identify and address rights violations;
- increased use of the legal system or other dispute resolution fora by socially excluded groups;
- broader media coverage of the health and human rights concerns facing socially excluded groups;
- improved accountability for health and human rights abuses; and
- an improved policy environment in which socially excluded groups can realize their health and human rights.

## ***Roma health rights: a baseline assessment***

In June 2013, the Open Society Public Health Program published *Roma Health Rights in Macedonia, Romania, and Serbia: A Baseline for Legal Advocacy*. This report is an example of a baseline assessment of legal advocacy efforts for Roma health rights in three countries. Its aim was to establish a point of reference and an evaluation framework for a future impact assessment.

The consultant performing the assessment began by researching socioeconomic factors underlying poor health in Roma communities, as well as patterns of rights violations against Roma in health care settings. Because of a lack of official statistics and other quantitative data, the assessment employed more qualitative sources. These included interviews with regional NGOs and community surveys conducted with Roma families.

The state of legal advocacy for Roma health in Macedonia, Romania, and Serbia was assessed using the following four focus points:

- legal empowerment of Roma communities;
- human rights documentation and advocacy;
- media advocacy; and
- strategic litigation.

For each of these focus points, the baseline assessment analyzed

- the capacity of Roma NGOs to carry out legal advocacy;
- the level of accountability in place for Roma rights violations;
- any changes in law or policy resulting from legal advocacy; and
- any changes in Roma communities following legal advocacy efforts.

The impact of OSF support on Roma health rights will be measured by comparing this baseline assessment with the outcomes of an impact assessment to be performed in 2015. These findings will help OSF revise its strategic objectives for supporting legal advocacy for Roma health rights.

Researchers conducting a needs assessment should bear in mind that socially excluded groups are not monolithic. Special efforts may be needed to ensure the experiences of subgroups within them are also reflected. A 2009 assessment of the need for legal services for sex workers in Southern Africa, for instance, found that the experiences of male and transgender sex workers had rarely been acknowledged.<sup>24</sup> The report began rectifying this

by disaggregating information about its interviewees to ensure it reflected the fullest possible range of sex workers' experiences.

It is important that researchers draw clear links between the abuses suffered by socially excluded groups and the impact of these abuses on their health. An example of such a link is where police routinely confiscate condoms



from sex workers, or use them as grounds for their arrest. These practices create an incentive for sex workers not to carry condoms at all, which directly heightens risks to their health. Drawing out the health effects of abuses helps bolster a program's calls for change in law, policy, and practice.

## KEY LESSONS LEARNED

- Consider performing a needs assessment in order to determine which types of services should be provided and how. A needs assessment can also serve as a baseline against which to measure a program's progress over time.
- When conducting a needs assessment, review the legal and policy frameworks relevant to socially excluded groups in order to identify the rights they are entitled to enjoy. Analyze the effectiveness of existing legal complaint and redress mechanisms, in order to determine the types of legal services needed.
- Ensure the involvement of socially excluded groups in the needs assessment process. Their participation is critical to the accuracy and usefulness of the assessment. Community members can be asked about the abuses they commonly experience, as well as whether and how they typically access legal services. Interview participants drawn from socially excluded groups can also serve as key players in developing the program further and ensuring it responds to their needs.
- Consult with actors who regularly make decisions affecting socially excluded groups, including NGOs already working with the community, health care providers, and law enforcement agents. All of these actors may later serve as valuable partners or referral points.

## Components of a needs assessment

Many needs assessments begin with an analysis of how the legal and policy frameworks of a given country bear on socially excluded groups. This analysis identifies which rights are guaranteed to socially excluded groups under national and international law. Crucially, it also explains how these rights are violated in practice by health care providers, law enforcement and other state officials, and members of the broader public.

The assessment's analysis of legal and policy frameworks can cover

- national laws and policies affecting socially excluded groups (e.g., laws assuring the right to palliative care, laws criminalizing HIV transmission);
- international human rights instruments ratified by the country in question;
- municipal laws and bylaws commonly affecting socially excluded groups (e.g., laws against loitering or drunken behavior, which are used to target sex workers in settings where sex work itself is not illegal); and
- private law rules that help account for specific abuses (e.g., the law of successions and its link to the disinheritance of widows whose husbands have died of AIDS).

This review typically concludes with an evaluation of existing legal complaint and redress mechanisms for responding to health and human rights abuses. These mechanisms may include the different levels of the country's court system as well as ombudspersons, ministries of health, malpractice commissions, access-to-information bodies, and medical ethics agencies. This helps implementers determine the range of legal recourses already available to socially excluded groups, so that these can be expanded if necessary.

The next stage of a needs assessment involves interviews and focus group discussions with members of the socially excluded group that is intended to benefit from the access to justice program. This component is crucial to the accuracy and usefulness of the needs assessment. Community members can be asked both about their first-hand experiences of abuse and whether and how they have accessed legal services or taken other steps for redress. Interview participants drawn from socially excluded groups may also serve well as key players in designing and implementing the access to justice program.

This section of the needs assessment should also reflect researchers' consultations with those who work closely with socially excluded groups, or whose jobs involve making decisions that affect them. These actors include

- NGOs already working with socially excluded groups;
- health care practitioners and other service providers; and
- law enforcement agents and other state officials.

Early involvement with these actors encourages them to become partners with the access to justice program, and to act as key referral points for its clients.

A needs assessment often concludes with a list of recommendations to donors, national and local governments, and NGOs already working in the region. These recommendations can be framed to encourage these actors to reorient the programs they operate or support. Even if they are not taken up, they serve as evidence-based markers of the needs of socially excluded groups, and can help guide the design and delivery of a program's services.

## KEY THINGS TO AVOID

- Do not assume that a thorough needs assessment is called for in all contexts. It may not be necessary where existing research offers current and reliable evidence of the need for legal services tailored to socially excluded groups.

### APPLYING PARTNERS' WORK TO A NEW CONTEXT: **AFRICAN PALLIATIVE CARE ASSOCIATION** (APCA)

In 2010, the African Palliative Care Association (APCA) published *Assessment of Legal Needs for Patients and Palliative Care Providers: A Case Study in Uganda*. This report was inspired by the successful work carried out by the Hospice Palliative Care Association of South Africa. It sought to document access to palliative care

services in Uganda and to assess the legal needs of patients, families, and health care providers. The assessment's methodology consisted of a literature review, focus group discussions with 384 patients, and key informant interviews with legal officers, doctors, nurses, pharmacists, sociologists, and members of the National Drug Authority.

APCA's assessment addressed various types of issues faced by patients and palliative care

providers. These included legal and human rights awareness, family participation, preparation for death, and drug procurement and distribution practices. Each category of challenges concluded with a set of recommendations to guide the Ugandan government and other state actors to improve the accessibility and quality of palliative care in the country.

## Educational Activities

### Raising rights awareness: spreading the word

An important prerequisite to many access to justice programs involves raising rights consciousness among socially excluded groups and those whose everyday decisions affect them. These latter actors include health care professionals, social workers, and community health workers, as well as state officials such as police, prosecutors, judges, and government ministers. The Principles of Program Design section of the preceding chapter sets out the rationale for raising rights consciousness among all these actors.

In addition to the training workshops described below, programs may consider devoting resources to the production of pamphlets, posters, and documentaries that further rights awareness. These materials can cover

- common violations experienced by socially excluded groups, and their connection to human rights standards and the relevant legal framework;
- the avenues of redress that are available; and
- the services offered by the access to justice program itself.

For example, in Ukraine a host of booklets and other literature have been produced and distributed with the aim of informing people who use drugs about their rights. These materials cover topics such as administrative

### ASSESSING NEEDS AS THEY GO ALONG: COVAW AND KAIH'S BASELINE STUDY

The Coalition on Violence Against Women (COVAW) and the Kenya Association of the Intellectually Handicapped (KAIH) have published a baseline study concerning the prevalence and public awareness of sexual violence against women and girls with intellectual or psychosocial disabilities. This report has helped COVAW and KAIH assess how they are meeting the needs of people with intellectual or psychosocial disabilities who are survivors of sexual violence, and has enabled them to make changes to the services they provide. It will also facilitate their advocacy for gender-based violence prevention programs that take intellectual and psychosocial disabilities into account.

Above all, COVAW and KAIH made sure to involve women and girls with intellectual and psychosocial disabilities in conducting this study. Successful fora for getting their input included focus group discussions and in-depth interviews where they could share their experiences and challenges.

Some of COVAW and KAIH's key findings included the following:

- Stigma, fear and mistrust of police, and familial pressure are common reasons for the underreporting of sexual violence against women and girls with intellectual or psychosocial disabilities.
- Most perpetrators of sexual violence against women and girls with intellectual or psychosocial disabilities are close family members.

Often, the abuse takes place over a long period of time, and other family members find out only when the victim becomes pregnant.

- A specific vulnerability of women and girls with intellectual and psychosocial disabilities is that they are often left at home alone while their caregivers go out to work. There is a pressing need for a daycare center where people with intellectual and psychosocial disabilities can meet and interact.
- Many health care providers continue to use derogatory terms like "imbecile" and "idiot" when referring to people with intellectual or psychosocial disabilities.

arrest, court protection of patients' rights, descriptions of rights violations and crimes relevant to people who use drugs, labor rights, housing rights and services, and the importance of certain documentation such as passports.<sup>25</sup>

It is important to give careful thought to how and where these materials are distributed, so that they are accessible and easy to use for their intended audience. Where literacy rates are low among a given community, a program can focus its educational efforts on training workshops carried out with socially excluded groups and those whose decisions regularly affect them. Rights education provided through radio programs can also be effective.

### Training members of socially excluded groups

In addition to raising rights awareness, training workshops conducted with socially excluded groups can teach them about the formal and informal legal systems in the country, and give them practical guidance on how and where they can claim their rights. For instance, members of socially excluded groups may benefit from learning how to represent themselves in minor court proceedings or before administrative authorities.

Training workshops harbor a number of benefits for socially excluded populations, as well as for access to justice programs themselves. For instance, clients who have been provided with basic legal training can help spread this knowledge among their peers. This can take place on an informal basis, or by training key community members as paralegals who act as bridges between the access to justice program and its intended beneficiaries. Indeed, community-based paralegals are well placed to offer rights training to their peers in the context of a workshop. This peer-based learning also helps generate awareness of, and demand for, the legal services offered by the program.

### Training health care providers and legal service providers

It is also important to sensitize health care providers and legal service providers to the rights concerns of socially excluded groups, in order to ensure they provide high-quality services to these populations and are equipped with necessary skills to that end. Training workshops can also equip health care providers to recognize—and resolve or refer—their patients' legal problems. As an alternative to stand-alone workshops, programs may wish to introduce a human rights component to the pre-service or in-service training undertaken by nurses, doctors, and medical technicians.

Where an access to justice program takes the form of legal services integrated into a health care setting, it is also important to conduct training activities with support staff, who commonly act as a first point of contact with these services. These support staff include community health workers and social workers, and they are often responsible for making critical referrals to the medical and legal professionals noted above.

In particular, support staff playing a frontline role at these institutions can be trained to

- encourage clients to take legal action, where necessary;
- monitor legal cases as they progress;
- foster clients' trust in the system;
- advise clients of the potential consequences of their actions or decisions; and
- help solve basic legal problems.

## Engaging key state actors and other duty-bearers

Many access to justice programs also lead human rights and legal education workshops with key state actors and other duty-bearers whose mandate bears on socially excluded groups. These actors include police, prosecutors, judges, and government officials, including representatives of public health institutions. Where community

members consider customary justice structures the ideal forum for dispute resolution, training may also be provided to their key decision-makers. Workshops with all these actors can also serve a preventive function, reducing human rights violations and promoting rights-respecting relationships between duty-bearers and members of socially excluded groups. Sometimes, they can even spur the formation of community watchdog groups that regularly monitor violations and work to address and prevent them.

In Ukraine, training has been provided to judges and prosecutors about the effects of incarceration on people who use drugs, and particularly those suffering from withdrawal symptoms or from illness related to HIV or hepatitis. This training also exposed participants to the community services already in place for people who use drugs in Ukraine.<sup>26</sup> Another example is a police focus group conducted in Kenya. Part of this focus group involved questioning officers' understanding of the term "living on the earnings of prostitution" in a context where sex work is not illegal *per se*. Participants were asked

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Workshops can serve a preventive function, reducing human rights violations and promoting rights-respecting relationships between duty-bearers and members of socially excluded groups.

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### THE **KEEPING ALIVE SOCIETIES' HOPE** (KASH) POLICE TRAINING PROGRAM

In 2006, the Kenyan NGO Keeping Alive Societies' Hope (KASH) launched a partnership with police leaders in the Nyanza Province. The aim of this partnership was to reduce police violence against sex workers. Trainers organized a pilot series of workshops where police officers and sex workers could come together and learn about human rights, due process, and the legal aspects of sex work.

Over time, KASH's training has been embraced by the regional police training center, and this is a critical factor underlying its success. Indeed, KASH has reported a marked reduction in police violence against sex workers. Not only have sex workers learned to ask for bond release in order to avoid detention, but many trained officers have committed to helping negotiate their release from custody. Now, officers provide local sex workers with their mobile telephone numbers, which they can use when clients become violent or refuse to pay, or when post-rape or post-assault centers improperly demand advance payment from them.

Today, officers' consistent involvement with KASH's police training program is considered favorably when weighing the grounds for their promotion. KASH's current plans include increasing training frequency from four to eight sessions per year, as well as expanding this work to other regions in Kenya.



whether they thought the dependants of sex workers, and even the government (i.e., through the collection of sales tax revenues), could be considered as living off such earnings. Trainers tried further to complicate this determination by describing situations where sex workers themselves have additional occupations.<sup>27</sup>

### Designing and implementing a training program: good practices

A number of good practices apply to the full range of educational workshops discussed above. The most general of these is that it is less effective to hold a single, one-time training session than to provide ongoing opportunities for education and skills improvement. In addition, participatory learning approaches work better than lecture-style teaching methods. Both of these practices help ensure that workshop participants actively engage with and internalize new information.

Sometimes, a trickle-down method may be efficient, where those who have participated in training workshops proceed to train their peers or colleagues. It is important to consider this method very carefully, however, to ensure training content does not get diluted or distorted as it spreads outward. One effective strategy is to offer training in teaching methods to select individuals so that they can offer training to their colleagues and broader communities. Where this is done, it works well to engage trainers in follow-up sessions covering more detailed topics—for instance, the importance of consent and confidentiality for people living with HIV. These follow-up sessions can function in part as a feedback mechanism to ensure trainers can effectively share what they have learned.

Many trainers offering health and human rights education to socially excluded groups, and to those whose

## KEY LESSONS LEARNED

- Offer human rights and legal education workshops to members of socially excluded groups. This training enables community members to share knowledge and skills with their peers, and it increases demand for legal services.
- Train health care providers to recognize—and resolve or refer—the legal problems faced by their patients. Devote special attention to the importance of non-stigmatizing behavior and language, the right to confidentiality, and key referral points for other services.
- Engage state actors—such as police, prosecutors, and government officials—in human rights training relevant to socially excluded populations. Aim to integrate this training into these actors' on-the-job curriculum to counter the effects of staff turnover.
- When training health care providers, legal practitioners, or state actors, invite key members of socially excluded groups to share their experience of health and human rights violations. Ensure they feel safe and well prepared to do so.
- Evaluate training activities periodically to determine how they can be made more effective or scaled up to broader reach.

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Community members must feel safe when discussing their personal issues, which may involve disclosing their health status or certain risk behaviors.

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decisions affect them, find it important to include an exchange of social attitudes. It is critical to involve members of socially excluded groups as leaders in discussions about these attitudes. Many training programs invite community members to share their experiences, with a view to sensitizing trainees to their health and human rights concerns. However, community members must feel safe when discussing their personal issues, which may involve disclosing their health status or certain risk behaviors. For this reason, they may benefit from special preparation in advance of their presentations.

#### DEVELOPING TRAINING MATERIALS: **HOSPICE PALLIATIVE CARE ASSOCIATION OF SOUTH AFRICA (HPCA)**

An access to justice program can formalize its training activities by developing a manual that trainers and participants can draw upon in their workshops. In 2007, the Hospice Palliative Care Association of South Africa (HPCA) began compiling resources related to common challenges faced by palliative care patients. This initiative resulted in the manual *Legal Aspects of Palliative Care*, and its updated edition was published in 2012. The manual helps hospice staff and home-based carers gather information from their patients in order to identify their legal concerns early on. It also helps legal practitioners improve their understanding of the needs of those with life-limiting illness.

The first three chapters of *Legal Aspects of Palliative Care* address the ethos behind palliative care, practising palliative care using a rights-based approach, and the ethical issues involved. The remainder of the manual covers a range of legal and practical issues relevant to palliative care workers and lawyers working with these patients. These include

- the legal requirements for registration of palliative care organizations under South African law;
- challenges related to access to care and medication;
- challenges posed by poverty and debt;
- palliative care in the context of children, older persons, and marginalized groups;

- the role and status of community caregivers in South Africa;
- estate planning, and what happens when someone dies without a will; and
- the palliative care perspective on death and dying.

HPCA's manual situates palliative care within the broader South African context. For instance, it devotes specific sections to the role of traditional healers in the country, and the traditional roles of women as carers and men as decision-makers. This manual has also served as a helpful model for training initiatives led by other palliative care organizations across Africa, including the African Palliative Care Association (APCA) and the Kenya Hospices and Palliative Care Association (KEHPCA).

For state officials like police, as well as with medical and legal professionals, it is good practice to work toward integrating human rights and legal education into these actors' on-the-job curriculum. This requires an awareness of workplace hierarchy as well as of the importance of having the support of senior officials or other leaders. Institutionalizing this training helps ensure its enduring impact even in cases of high staff turnover.

Training programs can also benefit from the evaluation processes outlined later in this Guide, with the aim of assuring their effectiveness and efficiency. One helpful technique is to set up focus groups of trained clients and service providers, and comparing their skill levels and understanding to those of untrained control groups.

## KEY THINGS TO AVOID

- Avoid one-time training sessions and strictly lecture-style teaching methods. Instead, try to provide training workshops at regular intervals, and use dynamic teaching methods that call for active participation.
- Do not overlook the training needs of support staff, such as community health workers and social workers. These individuals may require training to ensure they do not discriminate against patients or clients.
- Be cautious about encouraging trainees to train their peers and colleagues on their own. To ensure training content remains of consistent quality, offer training in teaching methods and more specialized topics. This helps confirm trainees' understanding of what they have learned and stimulates their ongoing skills development.

### COORDINATED PARALEGAL TRAINING FOR THREE PARTNER ROMA ORGANIZATIONS: **ESE**

The Association for Emancipation, Solidarity and Equality of Women (ESE) provides Roma paralegals from its three partner organizations with continuous training on health rights and non-discrimination. This ongoing and centralized training is especially important because of the frequent changes to Macedonian legislation bearing on health, as these changes affect the type of support requested of the paralegals. It also saves

resources and ensures consistent paralegal development across the partner organizations.

In September 2012, paralegals and their coordinators began a series of three training sessions led by ESE. The first of these focused on the concept of paralegal assistance and basic information about the right to health, health insurance, and patients' rights. The second training session focused on labor rights, and the third focused on protection against discrimination, all while reinforcing knowledge and skills from the initial session.

ESE has found it works best to couple lecture-style information with hands-on practical activities. These have included drafting a submission to the Commission for Protection of Patients' Rights, preparing content for flyers and posters to be distributed in Roma communities, and sharing results from work carried out so far. These substantive paralegal training sessions are complemented by practical briefing sessions on leading educational activities, referring legal problems, and carrying out case management procedures.

# Safety Considerations

## Keeping program staff safe

In some settings, providing legal services to socially excluded groups involves serious risks. In Malawi and Uganda, for instance, paralegals and lawyers working with sex workers and LGBTI communities contend with regular threats to their life and security. These threats can arise independent of whether sex work or same-sex behavior is criminalized in itself. They often extend to the families of program staff, obliging them to bear some of the burden and risk involved.

In these settings, programs working with populations whose behaviors are criminalized may have to devise strategies to reach the intended beneficiaries of their services while disguising what they do. Often, they cannot advertise or speak openly about their work, and they may not even be able to register their services under an official name and address. One successful strategy is to form coalitions with like-minded professionals, and to host these at universities. These coalitions are much harder to shut down than NGOs. They also afford their constituent partners the protection and strength of a group.

Some lawyers mitigate the dangers associated with their work by promoting only general human rights awareness on radio and TV. They make sure to ground the conversation in topics like the universality of human rights, discrimination against minority groups, and women's rights. When carried out with care and tact, these strategies can help attract the intended beneficiaries of the legal services offered. They may also inspire like-minded individuals or organizations to propose strategic partnerships on human rights issues.

## Addressing the safety of program beneficiaries

Receiving legal support can also involve risks for individuals whose health status, ethnic identity, or social behavior is stigmatized. Program staff need to be able to assess whether assisting a client to press charges may put them at risk of violent retaliation on the part of the defendant. Clients drawn from criminalized populations in particular might experience difficulty in accessing government-run witness protection programs, where these exist at all.

A number of reports have singled out corruption as a source of entrenched systems of bribery in interactions

## KEY LESSONS LEARNED

- Be aware that providing legal and health-related support to socially excluded groups can involve risks for both providers and beneficiaries. In some cases, program staff may not be able to advertise their services or location openly.
- Where there are concerns about staff safety, promote program services and human rights awareness only in general terms. If this is done with care and tact, the intended beneficiaries of the program will be drawn to its services.
- Equip program staff to assess whether encouraging a client to press charges may put her at risk of retaliation on the part of the defendant.

between law enforcement agents or health care providers and socially excluded populations. Members of criminalized groups such as sex workers and people who use drugs have explained that it was more expedient for them to pay bribes in exchange for their release than to risk facing trumped-up charges in court, losing valuable work time, or enduring painful withdrawal symptoms while in custody.<sup>28</sup> Similarly, Roma are often forced to pay health care providers for services that are supposed to be free in order to be released from hospital or to avoid having their identity documents confiscated. Providing legal support to these populations can help rectify this dynamic, as can broader reform efforts conducted with law enforcement agencies and health care providers. However, care must be taken so that these interactions do not worsen in general for individuals lacking direct access to a lawyer.

## KEY THINGS TO AVOID

- Do not overlook rights-violating but functional relationships (e.g., entrenched systems of bribery) that socially excluded populations may have with police or health care providers. Legal support and broader reform efforts can help rectify this type of dynamic, but both must be carried out with care.

### MITIGATING THE RISKS OF GOVERNMENT RESISTANCE: **IHR** AND **HAND-HELP.RU**

The Russian NGO Institute for Human Rights (IHR) operates Hand-Help.ru, a website offering anonymous legal consultations to people who use drugs. The country's repressive political climate makes it critical that Hand-Help.ru not be seen as promoting drug use or legalization. Instead, the website's administrators frame its content as an evaluation of state policy.

Hand-Help.ru's project manager scrutinizes every word posted on the site to ensure the language used is legally accurate, non-accusatory, and politically correct. Indeed, up to 20 questions received every month must be answered by email because their content is too risky to post online. The site's administrators also refrain from publicizing their efforts on social networking websites. Their inability to control the content of posts in such fora could place both them and their visitors in danger.

To their credit, Hand-Help.ru and its administrators have been unable to find criticisms of the site elsewhere on the Internet, and they have not received a single accusation of propaganda or promoting drug consumption from law enforcement officials. One positive result of this cautious approach to language and tone is that many readers who are ambivalent or simply curious about Russian drug policy have come to trust Hand-Help.ru for its expert in-depth knowledge on the subject.



# Capacity Building

## The role of capacity building

In addition to funding, access to justice programs require capacity building, or the development of technical expertise and organizational readiness, to help them carry out their work.

Technical assistance, or the development of specific project-related skills, may include support in some or all of the following areas:

- conducting a needs assessment;
- using legal frameworks and human rights norms and mechanisms;
- facilitating training workshops;
- supervising paralegals;
- monitoring and evaluations;
- connecting documentation to advocacy;
- communicating compellingly; and
- engaging with media, including social media tools.

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It is also important to bear in mind that organizational development is not always linear, and factors beyond an organization's control may intervene. Good communication with the organization is thus critical.

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Organizational development focuses on building an organization's core functions without reference to a particular project. These functions include governance, strategic planning, administrative procedures, and fundraising. Nascent organizations in particular require institutional support in order to work effectively.

## How should capacity building be provided?

Technical assistance may be long- or short-term, depending on need and the type of skills being developed. However, organizational development is typically a longer-term engagement carried out with key partners.

There are various formats in which capacity building can be provided, including

- grants providing support for capacity-building activities;
- one-on-one coaching and mentorship;
- peer exchanges and study tours;
- workshops and courses; and
- conference participation that fosters broader engagement in a given field.

Capacity-building support can be delivered by external consultants, donors with the necessary expertise, or other implementers. Peer exchanges and cross-learning between organizations involved in access to justice work with socially excluded groups can be particularly effective. Indeed, capacity building can take place horizontally and is not necessarily vertical, and donors can help support and create fora for these exchanges.

It is critical that capacity-building support be based on trust and in line with the organization's mission and desires. If capacity-building processes are not well

coordinated, they risk overwhelming an organization. A guided self-assessment can be a useful tool for identifying needs and developing a plan to address them. This plan should describe the capacity-building process, set a timeline with clear benchmarks and outcomes, and be periodically reviewed along with an assessment of progress made.

It is also important to bear in mind that organizational development is not always linear, and factors beyond an organization's control may intervene. Good communication with the organization is thus critical.

## KEY LESSONS LEARNED

- Recognize that organizations require not only funding but also capacity building in order to carry out their work effectively. While technical assistance may be long- or short-term, organizational development is typically a longer-term process reserved for key partners.
- Ensure that implementers and donors can collaborate in a trusting way to develop a plan for capacity-building support. A guided self-assessment can help identify capacity-building needs and offer an opportunity to develop a plan.

## KEY THINGS TO AVOID

- Do not restrict capacity-building efforts to those provided by donors themselves or their consultants. Often, peer learning can help implementers build each other's knowledge and capacity.
- Do not get frustrated if capacity building seems to take a lot of time. Ongoing communication between implementers and donors can help both parties gauge their progress and work through intervening factors.



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# JUSTICE SERVICES

**T**HIS CHAPTER CANVASES the various forms of justice services that access to justice programs offer. Legal representation and assistance with documentation typically form the core of justice services. However, these topics are treated here only briefly, as this chapter is intended to be read in conjunction with other chapters in this Guide:

- Access to Justice Approaches (especially the sections on Community-based Paralegals and Lawyering on the Margins);
- Monitoring (especially the section on Case Management); and
- Advocacy (especially the section on Strategic Litigation).

The chapter proceeds with lengthier sections on alternative dispute resolution (ADR) methods, and referrals and partnerships. These sections offer advice about designing and delivering justice services in contexts where legal resources are almost always limited. ADR techniques are valuable tools that help resolve a wide range of disputes quickly and inexpensively, without need for formal legal representation and without resort

LEFT William Mulindwa, a paralegal and local head teacher living with HIV, speaks with residents of Gayaza, Uganda about the rights of people living with HIV. William works for the Uganda Network on Law, Ethics and HIV/AIDS.

to the court system. Referrals and partnerships, for their part, help a program optimize its resources, focus on the work it does best, and achieve greater visibility and recognition in the broader community.

With these core elements of justice services in place, programs can better carry out the monitoring and advocacy activities described in the next two chapters of this Guide.



# Core Justice Services

## Legal representation

Often, the clients of justice services require only simple assistance, such as basic information about their rights and how to vindicate them. Legal professionals and paralegals can often provide this kind of help at limited energy and expense. At times, however, lawyers working with access to justice programs must go beyond the provision of information and advice and provide their clients with formal representation. This individual-level legal representation should be distinguished from strategic litigation, which aims for broader impact on law, policy, practice, or social discourse. However, it is important to note that many strategic litigation projects emerge directly from individual cases.

Formal legal representation is particularly necessary when a client has suffered a serious human rights violation. However, it can take many forms. Clients may require a defense attorney in the criminal justice context, or they may need formal representation in filing a lawsuit or complaint against a public service provider. Legal representation also runs far beyond litigation in courts, tribunals, and administrative agencies. In many cases, simply having a lawyer send a demand letter on a client's behalf can make a potential defendant aware that she has access to legal support, and that further action may be taken if the situation does not improve. While this strategy still requires formal action on the part of a lawyer, it can help defuse or resolve a wide range of conflicts without need for extensive investment.

## KEY LESSONS LEARNED

- Recognize the range of legal support that members of socially excluded groups may require. This can include basic information about their rights, formal representation in a criminal justice context or in filing a lawsuit or complaint against a public service provider, or the preparation of a demand letter to signal to a potential defendant that a client has the support of a lawyer. Support with navigating government bureaucracy and filing important documentation may also be critical.

## KEY THINGS TO AVOID

- Do not assume that all core justice services require the assistance of a lawyer. Community-based paralegals are well placed to offer basic rights information to their peers; paralegals, social workers, and community health workers can assist clients in completing and submitting important documents.

## Assistance with documentation

Members of socially excluded groups also require support in clearing a variety of legal and administrative hurdles. Members of Roma communities in Central and Eastern Europe often require assistance with documents that ensure their access to health insurance. People with life-limiting illness are typically too weak, and their families too overwhelmed, to prepare wills and make arrangements related to child care and trusteeship. Furthermore, members of criminalized populations, including people who use drugs and sex workers, often require help with obtaining identity documents following their release from detention settings.

A lawyer's assistance may be needed to draft important documents and appeals to send to prosecutors' offices, courts, public health and social protection agencies, and local authorities. However, assistance with many other important documents does not always require the specific skills or qualifications of a lawyer. This help can be delivered instead by paralegals, social workers, community health workers, or other program staff members. It is important to provide members of socially excluded groups with support in completing and filing this documentation, as they can often be daunted by the institutions to which these documents are linked. Without the support of legal professionals, paralegals, and other program staff, they may go uncompleted. What is more, providing these basic justice services opens the door for access to justice programs to address broader, more systemic problems.

## Alternative Dispute Resolution Methods

### The importance of alternative dispute resolution

Alternative dispute resolution (ADR) is often a key component of access to justice programs. Depending on the context, ADR can include mediation, arbitration, counseling, and other non-judicial means of resolving disputes. It can also include the use of customary justice structures, as covered earlier in this Guide. However, the ADR processes facilitated by program staff themselves have a much wider scope. The vast majority of disputes and legal concerns expressed by clients can be resolved without resort to the formal court system.

Compared to litigation, ADR methods are often less costly, less time-consuming, less acrimonious, and more conducive to reconciliation between the parties involved. These strategies are particularly helpful where research shows that the formal court system in a given country is untrustworthy or inaccessible to members of socially excluded groups. Members of these groups may be reluctant to bring forward their concerns if they believe their resolution will require a stressful and lengthy process that risks reinforcing broader public stigma against them. Making ADR central to a program's justice services can encourage these clients to bring their claims forward and result in their swift and conciliatory resolution.

However, ADR techniques are also helpful tools even where the formal court system is functional and effective. Members of socially excluded groups often feel poorly served or unduly targeted by state actors, including law enforcement agents. As a result, they may be wary of the prospects of realizing justice in the courts for the abuses they have suffered because of their impression that all state actors are hostile toward them. Again, promoting ADR within access to justice programs can help lessen these concerns, and increase clients' confidence in bringing forward their claims.

### Factors to consider when offering ADR services

It is important that access to justice program staff observe certain procedural requirements when carrying out ADR processes such as mediation. The first of these is that the informed consent of all parties to the dispute must be obtained in advance. This requires that they receive a detailed explanation of the mediation process.

Program staff should also give careful thought to how the agreements it mediates will be enforced. In some

cases, respected community members can be recruited as signing witnesses. It is also helpful to develop a plan to follow up with both parties at pre-determined intervals. Regardless of the strategy taken, it is important that program staff carefully consider how mediation agreements are drafted. This will help ensure they are enforceable in court if such a need arises. Many programs offering ADR services have developed an agreement template for this purpose. The template states clearly that either party may undertake formal legal action should the agreement be breached.

Procedural issues aside, mediation and other ADR techniques can have a powerful impact beyond the resolution of individual disputes. The simple indication that a client has the support of an access to justice program—for instance, through a non-judicial letter of support—can motivate disputing parties to be more conciliatory in their approach. This reduces the need for formal legal action.

### Limits on the use and effectiveness of ADR methods

Mediation and related ADR processes have their limitations. These limitations show themselves most when there are clear imbalances in power and information between disputing parties, such as where one party is a child. In addition, when one party to the dispute is a state actor, they may see little incentive to participate in the mediation process, and may even deny the existence of the dispute.

Sometimes, disputes concern violations that are poorly suited to resolution by a settlement halfway between the positions of both parties. For instance, ADR techniques are typically inappropriate altogether for criminal cases, which are best handled by the formal state processes available. One general rule is that the higher the stakes

## KEY LESSONS LEARNED

- Integrate mediation, counseling, and other ADR methods into a program's legal services. These tools help clients resolve their disputes quickly, inexpensively, and without resort to the formal legal system.
- Ensure the parties involved understand and consent to the mediation process. Take the time to explain the reasoning behind the methods used and the importance of respecting the agreement reached.
- Take measures to ensure mediated agreements can and will be enforced. Helpful strategies include involving witnesses who are respected by both parties in the mediation process, making plans to follow up with the parties at a later date, and developing an agreement template that sets out the consequences of breaching the agreement.

## KEY THINGS TO AVOID

- Avoid using ADR where there are clear power or informational imbalances between the parties, or where the dispute is poorly suited to a settlement halfway between their positions. These situations include disputes involving criminal offenses, and those where one party is a child or a state official.

of the dispute, the greater the need for strong procedural safeguards that the formal court system can provide. However, in these cases access to justice programs can still support clients by encouraging them to report abuses to police and helping them access relevant social protections.

## Referrals and Partnerships

### Making effective referrals

Referrals involve connecting a client to services that an access to justice program may not be able to provide on its own. When they work well, referrals help improve clients' well-being and allow program staff to use their resources in a focused way.

Program staff should be equipped to make a range of non-legal referrals, including referrals to psychosocial or financial support. Referrals to government authorities, customary structures for dispute resolution, and health-related services can help address the underlying determinants of clients' health. Many programs also refer their clients to other legal services when they cannot take on a client's case for lack of expertise or funds.

As a program's referrals system develops, it is good to develop thorough referral guidelines for use by its frontline service providers, such as community health workers or

social workers. These guidelines help promote the accurate and timely identification of rights violations, and they help connect individual clients to appropriate health and legal services without undue delay.

### Referrals systems tailored to socially excluded groups

Referrals are not simply a matter of directing a client to another service point. Members of socially excluded groups may be reluctant to follow up with formal or informal duty-bearers, such as police or village chiefs, because of real or perceived corruption among them. When these referrals do not work well, it can help to engage their relevant actors in training and other capacity-building efforts.

Program staff may also wish to advocate for special accommodations at referral service points. For example, receiving organizations can be encouraged to assign dedicated service times or special entry points to members of a socially excluded group. This strategy is not necessary in all contexts, but it can sometimes shield individuals from mistreatment by others waiting in line for the same services.

### USING ADR IN INHERITANCE AND SUCCESSIONS DISPUTES: **CHAK**

The Christian Health Association of Kenya (CHAK) has woven ADR processes into the legal services it provides at 20 of its member health care facilities. CHAK's legal officer finds ADR to be well suited to resolving its clients' inheritance and successions disputes. To this end, it has trained village elders, church leaders, hospital

representatives, and individuals from legal clinics to help them recognize and use ADR tools in these cases.

One case CHAK helped resolve concerned a patient living with HIV who had been disinherited by her stepsons following the death of her husband. The patient had appealed to the village chief and assistant chief, but they refused to help her because she had previously engaged in sex work. To

help this woman recover her property, CHAK's legal officer wrote a demand letter to her stepsons, with a copy sent to the village chief, explaining that legal action would be taken if they did not cooperate. As a result, her stepsons signed an agreement in the presence of the village chief, both restoring the woman's property to her and committing to support her financially.

In rural settings, there is often a shortage of suitable referral points for legal and non-legal services. These contexts call for the cultivation of relationships—even if informal or temporary—with key local leaders who may have the resources to help out. For instance, a female elder might be identified as someone who can offer shelter to a client who has just been evicted or dispossessed.

### Looping back to the source: feedback processes

It is important to integrate an effective feedback system into a program's referrals system. Feedback on referrals helps ensure they are both helpful and working properly. They also enable staff to follow up with referred clients to make sure their needs have been met. Often, program staff are the only link their clients have to key developments in their cases.

NGOs such as the Coalition on Violence Against Women have developed referrals forms that encourage receiving organizations to return them, indicating what actions have been taken on the client's part. A copy of such forms should be kept on file with program staff so they can update it as the case proceeds. It is also helpful to develop a database of referral points, including their location and contact information, so that all staff have them on hand and can track their effectiveness.

Sometimes, members of socially excluded groups are reluctant to follow through on referrals because of the sensitivity of their case. The Sex Workers Education and Advocacy Taskforce (SWEAT) found that some of the sex workers it had referred to HIV treatment services never made it to the receiving clinic, so it developed a referrals feedback system to determine whether and when these clients do follow up. Now, it offers to accompany clients to their first appointments at receiving agencies—an effort made easier by SWEAT's mobile outreach services.

The collection and analysis of data reflecting the effectiveness of a program's referrals can be woven into its overall case management system. This will facilitate its monitoring and advocacy efforts, which are outlined in the next two chapters of this Guide.

### Formalizing the relationship: referrals networks and partnerships

In due course, an access to justice program's referrals system can develop into a steady and stable referrals network, with standardized communication and follow-up procedures. In formalizing this network, it is helpful to draft Memoranda of Understanding with receiving and referring organizations. The network will work most effectively where each partner clearly understands their respective mandates and shared expectations.

Where possible, it is helpful to develop long-term partnerships with similar, or simply supportive, organizations. Partnerships help ensure an individual program's resources are deployed most effectively, and they afford

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Referrals help improve clients' well-being and allow program staff to use their resources in a focused way.

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## KEY LESSONS LEARNED

- Ensure program staff refer clients to non-legal support that helps address the underlying determinants of their health. This may include psychosocial support, financial support, or a variety of health-related services.
- Refer clients to other legal services in cases where your program lacks the expertise, funds, time, or other resources to address their problems adequately.
- Develop clear referral guidelines for use by the program's frontline staff in identifying and referring clients to other services.
- Provide referred clients with referral forms to take with them to the receiving organization. This helps ensure they will be welcomed and well served. It also encourages the receiving organization to report back on any actions taken.
- Ensure that program staff follow up with their clients to see whether they acted on the referral, and whether their problem was resolved as a result.
- Encourage referrals partners to formalize their relationship using Memoranda of Understanding. This will make clear to each partner their respective mandates and shared expectations.
- Support the development of partnerships between different programs having different expertise and different connections to socially excluded groups. Partner organizations can exchange knowledge and other resources, and ensure their advocacy efforts are well coordinated.

programs the trust of community members affiliated with partner organizations. They also assist in justifying the need for services and scale-up to both current and prospective funders. SWEAT has exemplified this spirit of partnership for years in two significant ways:

- partnering with the Women's Legal Centre (WLC), which offers legal assistance to sex workers and employs sex worker paralegals recruited from SWEAT's group of peer educators; and
- partnering with Sisonke, South Africa's national sex worker movement, and the African Sex Worker Alliance to ensure well-coordinated advocacy activities.

Formalized partnerships between like-minded organizations can be especially helpful in collaborative efforts such as strategic litigation, communications and media strategies, and capacity building. A partnership can also involve coordinating and consolidating paralegal or other justice services in the same region. In Macedonia, the Association for Emancipation, Solidarity and Equality of Women (ESE) has done precisely this with three Roma organizations in Delcevo and Shuto Orizari. Tight-knit collaborations of this sort can help streamline the use of resources and ensure consistent service delivery. It is important, however, that staff members from each partner program believe that joining together will strengthen their work and its impact.

When funding programs involved in formal partnerships, it works well to have them submit joint proposals and separate budgets. This helps ensure partners can effectively coordinate their activities while maintaining any independence desired as a result of their differing mandates.

## Government partners: collaborators or adversaries?

It can also be helpful to develop relationships with organs of the state, such as regional police centers, judicial training institutes, media broadcasting councils, or public health departments. The Kenya Hospices and Palliative Care Association (KEHPCA), for instance, has made efforts to collaborate with the country's Ministry of Health. As a result, the Ministry has endorsed KEHPCA's materials on the legal aspects of palliative care and is helping with their dissemination. In addition, KEHPCA's advocacy with the Kenyan government has led to the inclusion of palliative care as a health right under the National Patients' Charter.

While similar collaborations may not be possible for programs working with criminalized populations, relationships with government can generally serve as an important step toward encouraging state actors to account for socially excluded groups in future legal and policy change.

### KEY THINGS TO AVOID

- Do not assume that referrals are a simple matter of directing a client elsewhere. It is important to ensure that receiving organizations are equipped to work with members of socially excluded groups. It may be necessary to conduct training workshops with key staff at these service points.
- Do not construe a partnership between two organizations as making them a single organization. While partners can be encouraged to submit joint proposals that reflect their coordination of activities, they should be assured the independence they need to pursue their respective mandates. This can be facilitated by assigning them separate budgets.
- Do not assume that partnerships necessarily involve formal relationships between similar NGOs. Efforts to collaborate with appropriate government agencies can go a long way to promoting broader respect for the health and human rights of socially excluded groups.

## A PEER-BASED PARTNERSHIP: **KEHPCA AND KELIN**

The Kenya Hospices and Palliative Care Association (KEHPCA) has partnered with KELIN (Kenya Legal and Ethical Issues Network on HIV and AIDS) in coordinating their materials development and training efforts.

KEHPCA and KELIN have jointly developed community-level resources explaining the rights of people living with HIV/AIDS, and addressing the

legal concerns of those with life-limiting illness. KELIN shares these resources when carrying out its Legal Aid Days in the community, which include a monthly session at KEHPCA's Nyeri Hospice. In addition, KELIN has helped KEHPCA refine its Legal Aspects of Palliative Care manual by reviewing it for legal accuracy.

Together, KEHPCA and KELIN also train palliative care providers from each of KEHPCA's hospices to identify legal issues among their patients and provide them with basic legal advice. KELIN

monitors the work of KEHPCA's paralegals following this training, and it connects them to other local legal aid organizations for further support.

## DEVELOPING AN EFFECTIVE REFERRALS SYSTEM FOR PATIENTS LIVING WITH HIV: **CHAK**

The Christian Health Association of Kenya (CHAK) offers comprehensive HIV care and support in 20 of its member hospitals. Typically, patients first access these services through CHAK's social workers and community health workers. These frontline staff offer patients a wide range of referrals, both legal and non-legal, making sure to record them on CHAK's client intake forms.

In civil cases, CHAK's makes legal referrals to village elders, church leaders, and individuals from legal clinics. To ensure these referrals are effective, CHAK provides these actors with training on HIV/AIDS and human rights, as well

as alternative dispute resolution methods. This training has helped motivate CHAK's patients to follow up on these referrals. Although each session lasts only one day, CHAK conducts follow-up meetings with community leaders to assess how they apply what they have learned.

In criminal cases, CHAK refers its patients to committed individual lawyers and partner legal aid organizations. These include the Federation of Women Lawyers (FIDA)—Kenya, Christian Legal Education Aid and Research (CLEAR), and Kituo cha Sheria. These partners are critical because CHAK has only one legal officer for its 20 sites offering integrated legal services. While CHAK has not entered into a contractual agreement with these organizations, its patients often bring

along a letter of support from CHAK to submit upon arrival.

CHAK follows up with the patients it has referred, and it exchanges letters with its partner organizations about the progress of their cases. It now plans to formalize its referral feedback mechanisms to facilitate case tracking. One possibility it is exploring involves a monthly email report, whereby the receiving organization writes to CHAK about all referred clients indicating when they were received, what solutions were reached, and what further support is needed.

## FORGING PARTNERSHIPS WITH STATE ACTORS: **ROMA S.O.S.** AND THE REGIONAL OMBUDSPERSON

There are many possibilities for collaboration between access to justice programs and state actors. For Roma S.O.S., a committed partner has emerged in the form of the regional ombudsperson responsible for Prilep and the surrounding region in Macedonia.

Roma S.O.S. began filing complaints with the ombudsperson about rights violations committed

against Roma in 2010. Within a year, the ombudsperson declared his willingness to partner with Roma S.O.S. in offering training workshops and taking on parallel legal tasks on its clients' cases. This partnership runs both ways, as both Roma S.O.S. and the ombudsperson benefit from increasing the number of community members who use the ombudsperson's mechanism to protect their rights.

Today, when Roma S.O.S. receives a case involving a rights violation, it requests an opinion from the ombudsperson on the most appropriate legal

action to take, and asks whether and how he can help. In turn, the ombudsperson helps Roma S.O.S. apply pressure on other state bodies to heed its recommendations.

This partnership is an example of a dynamic set of exchanges struck between civil society and government. It helps Roma S.O.S. more concretely and quickly advance the health and human rights of the Roma community.







# MONITORING

**T** HIS CHAPTER CANVASES monitoring tools and applications that implementers and donors may wish to include in their program strategies. By monitoring, we refer to processes of collecting and using program-level information to strengthen service delivery and evaluate program impact. Monitoring processes can help an access to justice program develop the evidence base it needs to effect broader change, as well as persuade donors of the need for support and the concrete impact of services provided.

This chapter begins with a section on case management procedures, which help a program assess its internal operations and effectiveness. Through feedback loops and mentoring, case management procedures can help foster a culture of self-improvement among staff and other stakeholders. The chapter continues with sections covering evaluations of program impact and the documentation of human rights abuses.

LEFT Roma paralegal Romina Kajtazova leads a monitoring workshop on health insurance and patients' rights in Crnik, Macedonia.

## ***Developing appropriate indicators: the need for both qualitative and quantitative markers***

Donors should allow implementers some flexibility in devising their own indicators to monitor the impact of their programs. It is important not only to track how many clients have been helped and how, but also to account for any factors influencing the social and legal environment in which a program operates. For instance, an indicator centered on the number of condoms distributed to local sex workers may be misleading on its own if the condoms are routinely confiscated by the police officers they encounter.

It generally works well to develop a blend of qualitative and quantitative indicators in order to identify advances or shortfalls in human rights protections, and the resulting health effects. Qualitative indicators can include

- improved knowledge of the law on the part of a socially excluded group, and greater willingness to take action as a result of this knowledge;
- improved responsiveness of health care institutions, and lessened discrimination in service delivery; or
- the ability of members of socially excluded groups to exercise the rights they have vindicated in court or through customary justice structures (e.g., a widow's use of land that was misappropriated by her husband's relatives).

## **Case Management**

### **Assessing internal operations and effectiveness**

Case management tools enable programs to record important case and demographic information and to track referrals and case outcomes. Efficient and effective recordkeeping is critical to ensuring high-quality services and adequate follow-up and resolution. Data collected through service provision can also help implementers

- organize and prioritize their client selection (e.g., distinguishing cases that require a lawyer's assistance from those that can be resolved by paralegals or other staff);

- assess the effectiveness of their operations in meeting their goals;
- identify where the program can be improved, including by shifting how resources are allocated; and
- develop broader policy goals based on the impact of services, barriers to participation, and the need for reform.

Just as there are several approaches to promoting access to justice with a focus on health, there is no single or optimal way to monitor the effectiveness of these approaches. Indeed, the technology to be used for case management can vary. Computer software such as client databases may well facilitate data analysis in the aggregate—something which can be very difficult and time-consuming otherwise. However, any information technology used

must be simple and user-friendly enough in the context in which the program operates.

It is important to provide all staff with the training and support they need to ensure they know what data to collect and how to record it effectively. Often, it can be helpful to provide staff with a template form that they can adapt according to their needs. Programs that integrate legal services into community health care service points may also benefit from building on the case management tools used by their partner health care providers, including client databases.

### Tracking individual clients and their cases

Programs that offer individual-level services should develop client intake and case forms. These should capture

- individual clients' demographic information, as necessary and relevant;
- case histories, including any issues or challenges that arise over the course of a case;
- the tools used by paralegals or lawyers to resolve the case and to address any issues or challenges; and
- the outcomes reached and any follow-up action pending or taken already.

The information collected in client intake and case forms can then be disaggregated by age, gender, location, and health status, where relevant and appropriate. This helps implementers monitor their service provision and track who is—and who is not—accessing the program's services.

Program staff should take great care in maintaining client information in order to protect their confidentiality. It is also important to ensure the security of the entire data management system. This is especially critical when

working with criminalized populations or those whose health condition is stigmatized. Staff can be trained to discuss the risks related to confidential information in their initial meetings with clients. Each client can be provided with a confidentiality form, and all client data can be kept safely in a centralized location. Programs can also develop feedback forms to allow clients to express their level of satisfaction with the services they have received.

It is important that the trends emerging from case management data be fed back to a program's frontline workers so that they can make any necessary changes to their service delivery approach. Moreover, all data gathered through a program's case management system should be maintained for further use in program evaluations, as discussed in the next section of this chapter. This will help programs review their annual work and overall design as well as set targets to optimize their use of resources in the future.

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Just as there are several approaches to promoting access to justice with a focus on health, there is no single or optimal way to monitor the effectiveness of these approaches.

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## ESE SUPPORTS CASE MANAGEMENT PROCESSES ACROSS THREE PARTNER ORGANIZATIONS

The Association for Emancipation, Solidarity and Equality of Women (ESE) coordinates three Roma organizations that provide paralegal assistance to Roma communities in Macedonia. These partner organizations are

- the Centre for Democratic Development and Initiatives (CDRIM);
- the Humanitarian and Charitable Association of Roma Delcevo (KHAM Delcevo); and
- the Roma Resource Centre (RRC).

Part of ESE's role involves ensuring its partner organizations observe consistent case management processes in serving clients. To this end, ESE has developed an electronic database to reflect the monthly reports submitted by each partner's paralegals, as well as the quarterly reports submitted by their coordinators. Although

CDRIM, KHAM Delcevo, and RRC all use the same system, the database is set up so that they can access only the cases they have worked on themselves.

ESE's partners complete their regular reports using data collected from two types of forms. When a paralegal serves a client for the first time, they use an initial template form to capture relevant information, such as

- how the client heard about the paralegal assistance program;
- client data, including age, gender, level of education completed, and health condition;
- whether the client has health insurance or the grounds to obtain it;
- what the client has done so far, and any action the paralegal plans to take; and
- the time, date, and location of a future follow-up meeting.

When the paralegal meets with the client again, they use a follow-up template form to indicate

- relevant information about the client and previous meetings;
- developments since the last meeting, including action taken by the client and/or the paralegal; and
- any action that remains to be taken.

The information collected on these forms helps CDRIM, KHAM Delcevo, and RRC convey the types of abuses suffered most often by Roma in the community, and which strategies are most effective in addressing them. It also helps ESE identify further training needs among its partners, offers it evidence for use in advocacy efforts, and allows it to develop referrals systems that work well among its partners.

## KEY LESSONS LEARNED

- Ensure the development of case management procedures that help a program strengthen its internal operations and overall effectiveness.
- Develop and use client intake and case forms. These forms help programs organize their client selection, track their effectiveness over time, and identify areas for improvement.
- Develop feedback forms to enable clients to weigh in on the quality of services they have received. This will help the program assess its accessibility and effectiveness.
- Ensure that case management data is fed back to a program's frontline staff and that it informs the program's ongoing design.

## KEY THINGS TO AVOID

- Do not assume that program staff will automatically keep adequate records. Often, staff require training and support to ensure they know what data to collect, and how to process it in a way that protects clients' confidentiality.
- Do not think that case management necessarily requires a sophisticated client database. Any software used by program staff must be user-friendly enough in the context in which a program works. While legal services integrated into health care settings can often build on their partner providers' case management system, other approaches may benefit from a simple template form that can be adapted according to program needs.
- Do not collect client data without also disaggregating this information according to age, gender, and other relevant distinctions. This helps staff determine who is—and who is not—accessing a program's services.



# Evaluations

## The role and nature of program evaluations

Donors and program staff and beneficiaries all have a vested interest in program evaluation. It is important to carry out periodic evaluations of program effectiveness using data collected through case management and other monitoring processes. Evaluations allow program staff to assess the impact of their legal services on the health and human rights outcomes of socially excluded groups. They may also help justify proposals for sustained financial support.

### KEY LESSONS LEARNED

- Encourage the performance of program evaluations. Evaluations help justify proposals for financial support. They also help staff members assess the impact of their legal services on the health and human rights outcomes of program beneficiaries.
- When undertaking program evaluations, circle back to any performance indicators defined at the inception of the program or in earlier evaluations. These indicators define the data that program staff regularly collect, and they serve as benchmarks for assessing progress.
- Use program evaluations as an opportunity to revisit a program's performance indicators. Evaluators may find that shifting these indicators is necessary in light of changing program objectives, or simply that these shifts will improve assessments of the program's operations and impact.

The health and human rights indicators identified at the inception of an access to justice program can help determine whether it is making progress toward its desired outcomes. Typically, these indicators define the kinds of data that program staff collect regularly, and they may need revising in light of any changes in program objectives. An evaluation of the program as a whole, or simply one or more aspects of its operations, is a good opportunity for revisiting these indicators. Evaluators may also wish to assess whether further indicators should be developed in order to better track the program's progress over time.

Whatever their scope, evaluations should begin with a synthesis of the data collected by staff in the preceding time period. This data can be compared with the results of previous evaluations or the findings of an earlier baseline assessment, where these are available. This will allow program staff to identify progress made, lessons learned, changing circumstances, remaining gaps, and newly emerging needs. Implementers will be better able to refocus their programs in light of evaluation results.

Participatory evaluations are a valuable tool for programs working with socially excluded groups and a key marker of a human rights-based approach. The participation of members of socially excluded groups can enhance the accuracy and relevance of data collected, as well as generate greater client and community ownership in the program. One way this participation can be achieved is by assembling focus groups of program staff and beneficiaries.

### Tailoring the approach

It is sometimes worthwhile to evaluate the whole of a program's operations or impact. However, comprehensive evaluations can be time-intensive and costly. When they are carried out, evaluators should assess the following four elements in turn:

- **structure:** the financial, human, technical, and information resources directed into the project;
- **process:** the means by which the program delivers its legal services and conducts its other activities;
- **outcomes:** the quantity and quality of tangible goods and services produced, or activities carried out, by the program (e.g., number and types of educational materials produced, number of staff hired and trained, number and types of successful referrals made, speed of response to client requests); and
- **impact:** a function of the first three elements, including qualitative determinations about whether members of socially excluded groups are better able to claim their rights, and whether duty-bearers are better placed to fulfill their obligations.

One alternative to comprehensive evaluations involves assessing one aspect of a program's operations at a time. These smaller-scale evaluations can focus on the effectiveness of training workshops, ADR mechanisms, or even the case management procedures that are used for monitoring purposes. The narrower the focus of the evaluation, the better placed program staff are to undertake it without need for outside support.

## KEY THINGS TO AVOID

- Do not carry out program evaluations without the direct involvement of the socially excluded groups you work with. Community involvement helps ensure a program heeds a human rights-based approach, and it tends to result in more accurate and relevant data.
- Do not assume that every program requires a comprehensive evaluation of its activities and processes. These evaluations can be very expensive and time-consuming. Consider conducting evaluations of individual aspects of program operations, such as training efforts or referrals processes.

## ***Evaluating three legal integration programs in Kenya***

In 2011, an evaluation of three Kenyan NGOs working with people living with HIV was carried out by the Program on International Health and Human Rights at the Harvard School of Public Health and by Patricia Kameri-Mbote (University of Nairobi, Strathmore University). The NGOs evaluated were

- the Christian Health Association of Kenya (CHAK);
- the Coalition on Violence Against Women (COVAW); and
- the Legal Aid Centre of Eldoret (LACE).

These NGOs are distinctive for their integration of legal services into health care service points. The relative novelty of this approach to access to justice in resource-poor settings signaled the importance of evaluating its impact on the health and human rights of people living with HIV. While many findings of this evaluation have been integrated into this Guide, it is worth explaining here the approaches taken by the researchers who performed it.

In consultation with the three NGOs, evaluators designed a conceptual logic model to guide efforts to answer research questions, using both quantitative and qualitative methods. The structure components of the model reflected the resources used by the programs, while the process and outcome components reflected commonly defined activities and objectives. Evaluators made sure to anchor the logic model in human rights principles, namely participation, accountability, non-discrimination, empowerment, and linkage to other rights. Furthermore, each component of the logic model was framed to reflect the centrality of specific rights to the NGOs' work. These are the rights to health, information, education, an adequate standard of living, justice, and security of the person. The right to health in particular was framed in terms of the availability, accessibility, acceptability, and quality of goods and services delivered.

Evaluators then identified appropriate indicators for the structure, process, and outcome components of the logic model, and coded them for the human rights principles they reflect. Staff at all three NGOs independently completed questionnaires about their financial, human, technical, and information resources, while quantitative data was collected using program records. Furthermore, each program's legal officer completed a qualitative case review worksheet, assessing representative cases they had worked on and their rights implications.

This evaluation ensured the central participation of these NGOs' clients and service providers. Evaluators carried out semi-structured interviews and focus group discussions with them in English or Swahili. In many cases, focus group and interview data was collected from both trained clients and providers and their untrained counterparts.

The findings of this evaluation were grouped according to its central areas of inquiry. These were

- the nature of the interventions (i.e., each NGO's training, legal aid, and referral practices); and
- the effects of the interventions (i.e., improved human rights awareness, satisfaction with services, and improvements in legal protection and redress).

## EVALUATING THE EFFECTIVENESS OF TRAINING WORKSHOPS: **KELIN**

In October 2012, KELIN performed an evaluation of three capacity-building workshops it had held with elders, widows, and children earlier that year. These workshops offered training in human rights and property law, with a focus on their application to women, children, and people living with HIV/AIDS. KELIN's evaluation sought to assess the effectiveness of these workshops in promoting the enjoyment of inheritance rights among widows and orphans.

KELIN's evaluation methods consisted of

- a desk review of its project proposal, training reports, project progress reports, and online publications;
- key informant interviews with KELIN's Regional Project Coordinator and the County Gender and Social Development Officers for Homabay and Kisumu; and

- focus group discussions and individual interviews with workshop participants.

One of KELIN's workshops trained 21 elders to handle cases involving women and children affected by HIV/AIDS. Participating elders reported feeling more confident arbitrating on issues concerning women's and children's rights to inherit and own property. KELIN's evaluation noted that the workshop's interactive methods were instrumental in securing the elders' active participation.

KELIN's workshop for widows covered much of the same content, but aimed specifically at enhancing participants' assertiveness in claiming their rights. This workshop also linked the widows to state agencies like the Department of Gender and Social Development, which provides financing activities for women to undertake income-generating activities. Workshop leaders supported the widows in overcoming self-stigma concerning their HIV status. As a result, many participants reported that the session had dispelled their anxiety about

taking antiretroviral medications out in the open, and about joining support groups to help them lead healthy lives.

KELIN's workshop for children addressed their rights under international and domestic law, as well as healthy choices in HIV and reproductive health. Workshop leaders placed special emphasis on child protection mechanisms and strategies for reaching out to other youth. Following the training, many participants developed health- and rights-themed poetry, music, and theater to share with their peers.

While KELIN noted a spike in its number of reported cases following these workshops, its evaluation noted that it would take time to assess progress stemming directly from them. The evaluation recommended that more resources be devoted to supporting trainees beyond these workshops, especially in teaching other community members about human rights and the elders' dispute resolution processes.

# Documenting Human Rights Abuses

## Stretching beyond individual service provision

In addition to services providing access to justice to individual clients, programs may wish to document systemic patterns of abuse as a springboard to broader advocacy. Members of socially excluded groups can play an important role in this form of monitoring. For instance, community-based paralegals and outreach workers can be equipped with questionnaires that allow them to capture information about violations they encounter in the field.

Program lawyers can supplement this documentation by tracking whether or how the justice system addresses these abuses in law, policy, and practice.

## Identify the change you wish to see

Before undertaking documentation, it is important to have a clear understanding of the changes that a program aims to bring about. An advocacy plan should thus precede the design of any documentation strategy.

Advocacy goals need to be realistic, and they can include interim goals or markers that represent meaningful advances toward ending systemic abuse. These goals should also be well defined, designed to respond to particular problems, and targeted at specific actors capable of intervening. Goals such as “creating a historical record of abuse” or “increasing public awareness” are unlikely to succeed in securing concrete health- and rights-related results. Examples of more successful goals include the following:

- government officials acknowledge and take responsibility for how they treat a certain population;
- victims of human rights violations have compelling and reliable evidence to support a legal claim in court;
- other NGOs are persuaded to take up a cause and engage in joint advocacy; and
- media reports more frequently and/or effectively on a certain issue.

## KEY LESSONS LEARNED

- Support the documentation of human rights abuses, and the laws, policies, and practices that facilitate them. Community-based paralegals and outreach workers are well placed to capture information about specific abuses they encounter in the field. Lawyers may be better suited to tracking how the justice system addresses these abuses and any relevant gaps.
- Target a program’s long-term goals toward particular actors capable of intervening, and draw clear links between these desired outcomes and the monitoring techniques you deploy.



Once implementers have identified the particular problems they wish to solve, and the outcomes they wish to reach, they are well placed to design the documentation methodology. Often, it is helpful to combine statistical data and an analysis of broader trends with personal stories that offer an emotional impact.

## KEY THINGS TO AVOID

- Do not undertake the documentation of human rights abuses and their underlying causes as an end in itself. Work always with reference to specific advocacy outcomes you hope to achieve in generating this data. This will help when it comes time to develop advocacy efforts that build on this documentation.

### LINKING HUMAN RIGHTS DOCUMENTATION TO ADVOCACY: **SEX WORKER RIGHTS ADVOCATES' COMMUNITY OF LEARNING**

The Sex Worker Rights Advocates' Community of Learning (<http://www.sexworkersrightscommunity.org>) offers a forum for community-based and civil society organizations working with sex workers around the world. This website links 11 member groups drawn from Eastern and Southern Africa, Central and Eastern Europe, and Central Asia. It allows them to share strategies for documenting abuses against sex workers and advocating for legal and policy change that better protects their health and human rights.

Among the website's features are a series of documentation tools. These include

- questionnaires, enabling activists to engage with sex workers respectfully and effectively;
- 'know your rights' tools, such as training manuals for sex worker paralegals, guides linking common abuses with relevant provisions of human rights treaties, and interactive exercises for gatherings of sex workers and their advocates; and
- resource guides, including a collection of software tools that organizations can use to transform data about rights violations into charts, maps, diagrams, and other visual tools.

The website also features a section on advocacy tactics used successfully by members of the

Community of Learning. These cover a range of approaches to sex worker rights advocacy, including

- country reports, documenting abuses against sex workers for submission to national governments or international agencies;
- letter campaigns, informing government officials of the abuses faced by sex workers and calling for investigation or policy change;
- media sensitization and police sensitization, encouraging journalists and law enforcement agents to respect the health and human rights of sex workers;
- strategic litigation; and
- video advocacy.





# ADVOCACY

**T** HIS CHAPTER EXPLORES various forms of advocacy that access to justice programs can undertake or support. Often, advocacy efforts are an important complement to the individual-level legal services covered earlier in this Guide. Achieving long-term impact in health and human rights generally requires efforts to effect systemic change in addition to addressing the day-to-day legal concerns of socially excluded groups. Providing individual-level legal services can shed light on the systemic issues that a program or its partners may wish to pursue in their advocacy efforts.

We define advocacy broadly, as covering any effort to advance the welfare of socially excluded groups by changing laws, policies, practices, or attitudes that have a negative impact on them. This change is accomplished in part by presenting evidence and arguments for why it is needed, but it often also requires forging a strong emotional connection with one's target audience. Advocacy can be both (i) vertical, engaging people who hold the power to make appropriate changes; and (ii) horizontal, engaging peers who can in turn exert pressure on decision-makers or advance social discourse on a particular issue.

The following sections of this chapter focus on three specific forms of advocacy: international and regional advocacy, strategic litigation, and communications and media.

LEFT A rights workshop for sex workers at the offices of the Sex Workers Education and Advocacy Taskforce in Cape Town, South Africa.

## CONNECTING OUTREACH WORK TO ADVOCACY AT THE NATIONAL LEVEL: **GADEJURISTEN**

Gadejuristen—or the Danish Street Lawyers—provides street-based legal services to people who use drugs and sex workers in Denmark. It is also, however, heavily involved in advocacy aimed at advancing the health and human rights of criminalized populations in more systemic ways.

Gadejuristen's advocacy work often stems directly from the individual cases it learns about on outreach and its collaborations with other Danish organizations that work with people who use drugs and sex workers. Together, Gadejuristen and its partners advocate for specific legal protections benefiting these populations. These have included

- improving accessibility and quality of treatment;
- increasing accountability for misconduct by police or health care providers;
- legalizing heroin prescription and drug consumption rooms;
- decriminalizing the procurement of sexual services; and
- decriminalizing the possession of drugs for personal use.

A number of successes have resulted from Gadejuristen's advocacy work with its partners. For instance, in 2007 a majority of the Danish Parliament voted in favor of legalizing heroin prescriptions, and a legislative amendment to that end was passed the following year. The heroin prescription program is now available across Denmark, having begun in five major cities in March 2010. Further examples include the lift on no-go zones in 2011, and the establishment of Denmark's first safe injection site that same year. Another result of Gadejuristen's advocacy was the Danish Parliament's 2012 vote in favor of drug consumption rooms. Less than a year later, five drug consumption rooms were opened in three major cities, with at least one more to come in Copenhagen.

However, Gadejuristen maintains that the fight for the health and human rights of criminalized populations is not over. A recent mapping of needle and syringe programs found that while nearly two-thirds of Danish municipalities offer these

programs, only three of them offer the full range of necessary services. In addition, in certain parts of the country it is not possible to obtain a methadone prescription, and opioid-dependent patients are prescribed buprenorphine regardless of how they respond to it. People who use drugs in Denmark also continue to be arrested, interrogated, and brought to court while they undergo severe withdrawal symptoms without medical support.

As Gadejuristen turns toward these further advocacy efforts, it aims to initiate or sustain constructive dialogue with social workers, drug treatment counselors, medical doctors, police, municipal and other state officials, health care providers, the academic community, and civil society. Reaching out to these actors is important, Gadejuristen says, because many sectors that interact with criminalized groups still do not understand the impacts of stigma and social exclusion.

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**Many sectors that interact with criminalized groups still do not understand the impacts of stigma and social exclusion.**

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## ***Working with communities and partners: building a movement***

The mobilization of socially excluded groups into a strong community movement can enhance the impact of related advocacy efforts. This is because advocacy messages are strengthened and less easily dismissed the more voices they have behind them. It is important to try to reach out to the full range of community members affected by a certain problem, even if they are not in need of immediate legal or health assistance. This will be easier the more the program involves these members in program design and delivery.

Access to justice programs should also aim to form coalitions with local lawyers, civil society organizations, and international partners. Coalitions are particularly helpful where advocacy centers around sensitive or taboo issues. Furthermore, coalitions formed around a specific advocacy target can serve as an opportunity to establish a more formal network of like-minded organizations and individuals. Advice on developing these partnerships in general can be found in the Referrals and Partnerships section of this Guide's Justice Services chapter.

For the purposes of advocacy initiatives, it is important to have well-defined roles for each collaborator. For instance, where the advocacy target is an organ of the state, some coalition members can take an 'outsider' strategy, challenging the government through litigation or other means. Meanwhile, other members can take a more 'insider' strategy, and engage in negotiations with relevant officials. This coupling of strategies is effective in forcing a key issue onto the agenda of the advocacy target.

International partners on advocacy projects are useful for amplifying the issue on a global scale, as well as for strengthening and streamlining a program's strategies. However, it is often appropriate for international partners to stay in the background when it comes to in-country advocacy efforts, in which local leadership and ownership should be prominent. More visible work with international partners may be better directed to engaging with the United Nations and other international agencies.

## **International and Regional Advocacy**

### **The international and regional human rights system**

Engaging with international and regional human rights mechanisms can be a great complement to domestic advocacy. Access to justice programs should examine

the full range of international and regional human rights treaties ratified by their respective countries and that bear on the health and human rights of the groups they work with. Governments are bound by the treaties they have ratified, and each human rights treaty is linked to a treaty body, an enforcement mechanism to ensure states comply with their obligations. The enforcement of international and regional human rights obligations largely takes place through periodic government reports, individual complaints, and inquiries into grave and systemic violations.



Most treaty bodies require governments to submit periodic reports on their progress in implementing a treaty. These bodies also accept reports from NGOs in their assessments of a state's treaty compliance. Following dialogue with the state in question, treaty bodies issue Concluding Observations that include recommendations to its government on any actions to be taken. States must then report on the progress they have made in light of these recommendations at their next review. In addition, mechanisms such as the Human Rights Committee

and the European Court of Human Rights function as courts and hear individual complaints. Certain treaty bodies, such as the Committee on the Elimination of Discrimination against Women, conduct further investigations and country visits in cases of grave and systemic human rights violations.

The Human Rights Council is another important United Nations entity responsible for strengthening the promotion and protection of human rights. Unlike treaty bodies, which are composed of experts, the Human Rights Council is composed of state representatives. It carries out its mandate in part through the Universal Periodic Review (UPR), a process in which each member state's entire human rights record is peer reviewed once every four years.

International and regional human rights advocacy can also involve engaging with the UN's Special Procedures and other thematic or regional mechanisms. These include Special Rapporteurs, Working Groups, and Independent Experts who are mandated to receive complaints and act on the basis of communications disclosing human rights violations. For instance, in 2010 the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health examined the relationship between the right to health and the criminalization of same-sex conduct, sexual orientation, sex work, and HIV transmission.<sup>29</sup>

### Stretching beyond domestic advocacy: what programs can do

Access to justice programs can engage in international and regional advocacy in two major ways. The first is by raising human rights arguments and referring to treaty obligations in national-level court cases, and potentially appealing to international and regional human rights

## KEY LESSONS LEARNED

- Consider the full range of international and regional human rights treaties ratified by the country where you are situated and that bear on the health and human rights of the populations you work with.
- Engage in international and regional advocacy by making human rights arguments and referring to treaty obligations in domestic and international court cases, and by engaging in state reviews through shadow reports and letters.
- Where domestic governments or courts are slow to recognize human rights instruments, aim to translate and disseminate relevant treaties, as well as decisions and Concluding Observations by human rights bodies, so that judges, parliamentarians, prosecutors, and health care officials are made aware of them.

bodies when domestic remedies have been exhausted. The second is by engaging in state reviews before international human rights bodies. One way to do so is to highlight specific issues in shadow reports and letters. Human rights bodies often draw on these reports when issuing their Concluding Observations to individual governments. Programs need to integrate the recommendations made in these Concluding Observations into their country-level advocacy efforts in order to make them meaningful.

One example of international human rights advocacy concerns a case involving the sterilization of FS, a Chilean woman living with HIV, without her informed consent. When FS's complaint against the operating surgeon was dismissed, the NGOs Center for Reproductive Rights and Vivo Positivo filed a lawsuit before the Inter-American Commission on Human Rights on her behalf. The same NGOs also provided input to the Committee on the Elimination of Discrimination against Women (CEDAW) in its periodic review of Chile. While the lawsuit is still ongoing, CEDAW issued Concluding Observations in 2012 urging the Chilean government to ensure that fully informed consent "is systematically sought by medical personnel before sterilizations are performed, that practitioners performing sterilizations without such consent are sanctioned and that redress and financial compensation are available for women victims of non-consensual sterilization."<sup>30</sup>

In some countries, governments and courts may be slow to recognize international or regional human rights bodies. Programs operating in these contexts may wish to translate and disseminate relevant treaties, as well as decisions and Concluding Observations by human rights bodies, so that judges, parliamentarians, prosecutors, and health care officials are made aware of them.

## KEY THINGS TO AVOID

- Do not undertake international and regional advocacy without a plan for integrating its fruits into further country-level advocacy. The recommendations issued by international human rights bodies are made meaningful only when connected to advocacy on the national level.

## Strategic Litigation

### Deciding whether to undertake strategic litigation

Some access to justice programs complement their individual-level legal support with strategic litigation. This is litigation whose intended impact runs beyond redressing an individual grievance, toward achieving broader change at the level of law, policy, practice, or social discourse. As

limited resources prevent programs from providing access to justice to all individual clients, strategic litigation can be an important means of helping multiple beneficiaries and pushing dialogue with government.

Strategic litigation is typically a resource-intensive and long-term investment, and cases can take years to pass through the court system. It also requires specific expertise. For these reasons, some access to justice programs prefer to focus on individual-level legal services and to partner with others in carrying out strategic litigation and other advocacy. Again, individual-level legal services can

### ***Selecting strategic litigation cases: factors to consider***

In selecting cases for strategic litigation, many programs find it important to weigh the following factors:

- *the nature of the problem*: How severe and widespread is the problem? Does the community affected by the problem view it as a priority issue?
- *the likelihood of success*: Is the case strong enough? Is there an appropriate client who can act as the plaintiff? Is the current state of the law supportive enough? Does the court have the capacity, independence, and impartiality needed to adjudicate the case properly? Is there an opportunity to broaden support for the cause or to reframe the debate?
- *the anticipated impact of success or loss*: Would winning this case have an impact on international or national law development? If the case is lost, what negative impact might this have in the country, the region, or the world, or on other rights? Is there a risk of backlash if the case is won or if it is lost? Are there opportunities or concerns related to media coverage of the case? Could success in this case have a negative impact on human rights protections elsewhere?
- *the opportunity to collaborate*: Will we be able to collaborate with legal professionals and advocates across the region? Do our potential partners have the commitment and capacity to work with us on this case? Is there a chance for support from other key constituencies (e.g., medical, scientific, religious)? Might we acquire new clients, allies, or perspectives over the course of this case?
- *resource implications*: How much time is expected to be needed? Do we have enough time? What are the cost implications? Is the role we would be playing an appropriate use of our limited resources?
- *how the case aligns with the program's focus and expertise*: Could our program bring real value to the case? Are there other organizations better placed to take on this case, or with whom we could usefully collaborate? How connected is this case to our other advocacy efforts?

be an important entry point for identifying broad trends and sourcing cases for strategic litigation.

### Making strategic litigation ‘strategic’

What is strategic in the context of one case may not be so in other contexts. In some circumstances, it works better to pursue incremental litigation, where successive cases build on each other to effect broader change over time. It may also be strategic to seize on and draw widespread attention to existing cases, rather than waiting for the ideal case to arise.

Careful planning is critical to successful strategic litigation. A fact-finding report drafted prior to litigation can help establish patterns of abuse, and offer a forum in which different perspectives can help define the remedy to be sought. Additionally, it can be helpful to solicit declarations or *amicus curiae* briefs from medical associations or United Nations Special Rapporteurs, as these can be persuasive with courts.

Programs involved in strategic litigation have also found it crucial to clearly define the population in need of protection, the relevant duty-bearers, the remedy sought, and the resources required to implement this remedy. Remedies that require a court to remain engaged in the outcome of the case can help ensure that its decision is meaningfully implemented.

## KEY LESSONS LEARNED

- Plan carefully when undertaking strategic litigation. Consider drafting a fact-finding report to help establish patterns of abuse, networking with medical associations that might provide supportive declarations, and soliciting *amicus curiae* briefs from Special Rapporteurs of the United Nations.
- When selecting strategic litigation cases, consider the following factors: the severity and widespread nature of the problem, the likelihood of success, the anticipated impact of success or loss, the opportunity to collaborate with legal or medical partners and other allies, the time and money needed for the case, and how well the case aligns with your program’s focus and expertise.
- Recognize that strategic litigation is most effective when connected to community mobilization and other advocacy. Populations affected by the abuse at issue can help document its widespread or systemic nature, motivate litigants and offer them psychosocial support, and band together to create a pressure point around a strategic litigation case.
- Integrate strategic litigation into your program’s monitoring and other advocacy efforts. This can be done by monitoring the implementation of favorable rulings both in medical and law enforcement practices and in subsequent court cases in the jurisdiction.

## Strategic litigation with socially excluded groups: a consultative process

When contemplating strategic litigation, it is important to assess the connection between a client's individual wishes and the potential impact of their case on the broader community. Program lawyers contemplating strategic litigation should be clear with their client that the case would be pursued in service of a broader aim, and be sure they consent to this. A client with strong privacy concerns, in particular, may be more inclined to accept a settlement for individual benefit or to shy away from media attention. This has the potential to diminish the legal and social impact of the litigation project.

Because strategic litigation aims to serve the goals of a broad group of people, it is generally most effective when

connected to community mobilization and other advocacy efforts. These include the communications and media strategies addressed in the next section of this chapter. Social movements tend to have greater bargaining power than individual litigants, and both strategic litigation and its media coverage can offer focus to public discourse on a given issue.

Strategic litigation itself can also help foster mobilization. Court cases can be events around which socially excluded groups can band together, creating a pressure point and a coalition for political change. Grassroots groups can also

- help document violations and show their systemic nature before a case is undertaken;
- ensure that those individuals working directly on the case do not lose sight of the broader health and human rights issues at hand;

### BANDING TOGETHER TO ADDRESS THE FORCED STERILIZATION OF WOMEN LIVING WITH HIV: LESSONS FROM NAMIBIA

In Namibia, the Southern African Litigation Centre (SALC) and the Legal Assistance Centre—Namibia (LACN) have led a successful case addressing the forced sterilization of women living with HIV. Representing three plaintiffs, these organizations' work on this case culminated in a favorable decision from the Supreme Court of Namibia in 2014.

As part of their litigation strategy, SALC and LACN collaborated with the Namibian Women's Health Network (NWHN), which helped mobilize

people living with HIV from across the country to show up to each hearing. Community members packed the courtroom, wearing t-shirts and holding banners with key advocacy messages in support of the three plaintiffs. SALC, LACN, and NWHN also organized a petition addressed to the Ministry of Health and Social Services and set up a website to allow community members to email the Ministry directly and persuade the Namibian government to take the issue seriously.

As SALC, LACN, and NWHN report, community mobilization can help highlight the public interest aspects of strategic litigation cases. This is important because the litigation itself is often highly focused on the individual plaintiffs and the specific facts of the violations they have suffered.

Working with community members and grassroots organizations can also help increase the capacity of ordinary people to understand the legal issues at play and, going forward, to claim their rights from an informed vantage point.

SALC, LACN, and NWHN emphasize the importance of ensuring strong lines of communication between the lawyers working on the case and the community members and grassroots organizations that focus on generating advocacy momentum. Good communication can help ensure that all parties involved are able to build on the key advocacy moments that arise.



- help motivate litigants and provide them with psychosocial support; and
- provide pressure to ensure a favorable court decision is implemented.

It is important to recall that strategic litigation often takes place during times of crisis. Programs working with socially excluded groups on strategic cases need to be flexible and responsive to setbacks and opportunities as these arise, while continuing to plan carefully for the next steps to be taken.

### Assessing the effectiveness of strategic litigation

The impact of strategic litigation does not always hinge on its judicial result. Even cases that are lost can entail important steps toward the realization of health and human rights. Whether a case is won or lost, it can still contribute to

- raising awareness about human rights violations;
- empowering and restoring dignity to a plaintiff or a community;
- fostering coalitions among committed partners; and
- motivating other branches of government to take action.

It is important that a program's strategic litigation efforts be integrated into its monitoring and other advocacy activities. For instance, community-based paralegals and lawyers can help monitor the implementation of favorable decisions both in medical and law enforcement practices and in subsequent court cases in the jurisdiction. Whether cases are won or lost, programs should take account of how health- and rights-related law and policy develop as a consequence of their efforts.

### KEY THINGS TO AVOID

- Do not overlook that strategic litigation is almost always a resource-intensive and long-term investment. Programs wishing to focus instead on individual-level legal services may still wish to partner with other organizations on their strategic litigation cases.
- Do not undertake litigation where it conflicts with the individual wishes of a plaintiff client. Where a client is uncomfortable pursuing a case for the primary benefit of the broader community, they are not the right client for strategic litigation. In addition, a client whose privacy concerns may prompt them to accept a settlement for individual gain or to shy away from media attention may risk derailing the litigation strategy and diminishing its legal or social impact.
- Do not hinge the impact of strategic litigation solely on its judicial result. Whether a case is won or lost, it can still contribute to raising awareness about human rights abuses, fostering coalitions among committed partners, and motivating other branches of government to take action.

## SEX WORKER LITIGATION IN SOUTH AFRICA: **WLC** AND **SWEAT**

### **WLC and SWEAT's litigation strategy**

South Africa enjoys a strong tradition of social justice litigation, owing to its progressive constitution. Since 2000, a number of civil society campaigns have translated into important legal victories in health and housing policy. The sex worker movement in South Africa has built on this momentum, using strategic litigation to address systemic human rights violations linked to the country's criminalization of sex work. The Women's Legal Centre (WLC) and the Sex Workers Education and Advocacy Taskforce (SWEAT) are two leaders in this movement. They have partnered in filing cases to target specific injustices and abuses perpetrated against sex workers, so that their rights might be recognized increasingly as precedent builds over time.

WLC and SWEAT's step-by-step approach is particularly strategic given the 2002 decision *S v Jordan and Others* by the Constitutional Court. In that case, sex worker advocates sought to use South Africa's interim constitution to decriminalize sex work on the grounds of human dignity, economic activity, privacy, and gender equality. The Court's majority judgment dismissed the appellants' claims. It found that the abuses faced by sex workers stemmed from their engagement in a prohibited activity, and not from the criminalization of the activity itself. Following *Jordan*, sex worker allies including WLC and SWEAT recognized that their litigation strategy would have to focus on specific rights that had not been pleaded in that case.

### ***Kylie v Commission for Conciliation, Mediation and Arbitration and Others* (2010)**

The *Kylie* case was a major step forward for WLC, SWEAT, and their partners, as it assured sex workers standing to have their labor disputes heard at the Commission of Conciliation, Mediation and Arbitration (CCMA). The appellant in this case had been dismissed from employment at a massage parlor, and the CCMA had ruled that it had no jurisdiction over unlawful employment and thus could not hear her case. At the Labour Court, Cheadle AJ found that although the definition of employee in the *Labour Relations Act 66 (LRA)* could likely cover someone whose employment was unenforceable at common law, according sex workers protection under the *LRA* would be contrary to the common law principle that courts should not sanction or encourage illegal activity.

WLC's appeal to the Labour Appeal Court was an important victory. There, Davis JA adopted a broad approach to the right to fair labor practices. Using the minority judgment in *Jordan*, he found that sex workers were entitled to treatment with dignity by their clients, and extended this requirement with respect to the employers of sex workers. Moreover, Davis JA found that South African courts had been flexible in many cases involving illegal contracts or transactions, where providing relief was necessary to prevent injustice or to satisfy public policy. In his view, both the *LRA* and the constitution had the aims of protecting vulnerable parties in employer–employee relationships.

While *Kylie* granted standing to sex workers before the CCMA upon their dismissal from employment, it did not secure them access to all

remedies under the *LRA*. The case was nonetheless a watershed moment for South Africa's sex worker movement. Most important, Davis JA's ruling opened up space for sex worker advocates to develop the law in areas like damages claims for loss of dignity owing to police abuse.

### **The Interdict case: *SWEAT v The Minister of Safety and Security and Others* (2009)**

The *Interdict* case was also a significant gain for South Africa's sex worker movement and WLC and SWEAT's litigation strategy. In this case, SWEAT applied to the Western Cape High Court for an order preventing police from detaining sex workers without charge or arresting them for purposes of intimidation and harassment. In support of their claim, SWEAT submitted affidavits from several current and former sex workers, explaining how they were detained overnight and then released with no attempt by police to prosecute a charge.

In his judgment, Fourie J found that police officers in the Cape Metropolitan area were arresting sex workers with full knowledge that prosecutions were unlikely to follow, and that these arrests were unlawful. He ordered that police be interdicted from arresting sex workers for purposes other than to bring them before a court of law, and that the Minister of Safety and Security take all reasonably necessary steps to prevent police from breaching his order. The *Interdict* case thus recognized the rights of South African sex workers to dignified treatment by police officers, marking an important advance for WLC, SWEAT, and the broader sex worker community.

### Integrating strategic litigation into a broader advocacy strategy

Despite their victories in *Kylie* and the *Interdict* case, WLC and SWEAT found that human rights violations against sex workers were continuing. In many cases, police officers seemed to disregard the interdict altogether. This signaled that WLC and SWEAT would have to integrate their strategic litigation efforts into a much broader advocacy campaign. Going forward, the partners committed to informing sex workers of the legal victories achieved and generating rights awareness among them. In large part, WLC and SWEAT have achieved these goals through the paralegal and peer educator programs covered earlier in this Guide.

One of WLC and SWEAT's priorities was to gather further documentation of the police abuses stemming from the criminalization of sex work. As a result, evidence gathered by WLC's paralegals in five South African cities between 2009 and 2011 was compiled in a 2012 report titled "Stop Harassing Us! Tackle Real Crime." Drawing on evidence of abuse from more than 300 sex workers, the report found that

- 1 in 6 had been sexually or physically assaulted;
- 1 in 3 had been harassed by police;
- 45% had been arrested, and more than 85% of these arrests were made by officers not wearing proper identification;
- 50% of sex workers arrested had been held beyond the 48-hour limit permitted by law; and

- 50% of sex workers arrested had been placed in cells with unsanitary conditions.

WLC and SWEAT have used this evidence to push for changes in police practices and to garner political support for the decriminalization of sex work. Impressively, the South African Deputy Minister of Police, upon meeting with 200 sex workers at SWEAT's office, committed to police training on sex workers' rights and a zero-tolerance policy toward misconduct against the sex worker community. For their part, the MEC for Health in the Western Cape and the head of the Cape Town Vice Squad agreed to stop profiling sex workers and to stop confiscating or destroying their condoms. Moreover, letters submitted by WLC to the UN Special Rapporteur on Violence against Women and South Africa's Commission for Gender Equality have led these agencies to apply pressure on the South African government and to recommend decriminalization, respectively.

The advocacy victories won by WLC, SWEAT, and their partners are an important backdrop to their litigation strategy, as well as to the growing national debate about decriminalization. As WLC and SWEAT explain, if *Jordan* is ever overturned it will be because of their strategic change in course since that case—both etching out legal victories for sex workers in specific areas, and empowering sex workers to speak out against abuses.

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**The advocacy victories won by WLC, SWEAT, and their partners are an important backdrop to their litigation strategy, as well as to the growing national debate about decriminalization.**

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## Communications and Media

### The importance and applications of communications and media strategies

The other advocacy tactics covered in this chapter are generally made stronger when programs couple them with a communications and media strategy. This strategy can also enhance a program's overall impact in a far-reaching, cost-effective manner. Programs should consider integrating communications and media

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In South Africa, the Sex Workers Education and Advocacy Taskforce (SWEAT) has collaborated with Sisonke, a sex worker-led movement, to publicize cases of sexual and physical violence against sex workers by police.

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strategies into their proposals, and implementers and donors should decide together whether some portion of funding should be allocated to media training.

One use of communications and media strategies is to disseminate legal information to socially excluded groups. This information can cover specific laws and policies affecting the group in question, how they can advocate for themselves, and where they can go for help. It is important to select the medium for this dissemination based on the media habits and preferences of the population it aims to reach.

Where literacy rates are high among a given community, a program may wish to fund a lawyer to write a monthly legal advice column featured in periodicals or on websites already consulted widely by their intended audience. Where literacy rates are low, a better strategy might involve hosting a radio talk show. Paralegals working with the Humanitarian and Charitable Association of Roma Delcevo (KHAM Delcevo) conduct one such show, both offering human rights information to local Roma and explaining how to access the services available to them. Where both print and radio are unlikely to reach a certain population, it may be necessary to stage live events in the community. In this case, partnering with local organizations will be critical in mobilizing attendance.

#### IN PRINT AND ON SCREEN: CHAK'S COMMUNICATIONS STRATEGY

The Christian Health Association of Kenya (CHAK) publishes a quarterly newsletter called *The CHAK Times*, which publicizes its legal information

program and covers HIV-related health and human rights stories. This newsletter is distributed to all of CHAK's member health care facilities and partner organizations across Kenya. In 2013, CHAK finalized a video documentary about human rights violations and its success stories

in rectifying them. Both this documentary and *The CHAK Times* are posted on CHAK's website (<http://www.chak.or.ke/fin/>).

Media strategies can also be harnessed to promote accountability among state actors. Government officials may need to be persuaded to take action on an injustice they are aware of but lack the impetus to act on. Bringing public attention to such injustices through media reports can help spur public officials into taking action. In South Africa, the Sex Workers Education and Advocacy Taskforce (SWEAT) has collaborated with Sisonke, a sex worker-led movement, to publicize cases of sexual and physical violence against sex workers by police. One sex worker in Johannesburg worked with a local television program in 2005 to expose police misconduct, using hidden cameras placed in key spots. This led to the arrest of a number of officers.<sup>31</sup> This form of collaboration with journalists is the result of careful relationship building.

Successful media campaigns can also help reduce the stigma surrounding a specific population, and promote greater sensitivity by persuading members of the public to be more empathetic toward a certain group. The

Kenya-based NGO Keeping Alive Societies' Hope (KASH) has used radio programming to try to influence the views of the general public about sex work, including efforts to reach out to the clients of sex workers.

### Tailoring strategies and seizing opportunities

It is important to tailor a program's communications and media strategy to the context in which it operates. In some settings, it works well to direct key advocacy messages toward mainstream media outlets. However, where these outlets are tightly controlled, programs may find other communications tactics more effective. These can include public demonstrations, social media pages, and video documentaries. What is important is that media engagement for advocacy purposes be done sensitively. It is critical to take care in discussing behaviors and health conditions that are highly stigmatized, and to ensure individuals are not identified publicly without their informed consent.

#### REACHING OUT IN ALL DIRECTIONS: KEHPCA'S COMPREHENSIVE COMMUNICATIONS AND MEDIA STRATEGY

The Kenya Hospices and Palliative Care Association (KEHPCA) uses as many communications and media channels as it can to advocate for palliative care and promote legal services tailored to patients with life-limiting illness. To do this, KEHPCA employs a full-time communications officer mandated to promote the organization's visibility.

Among the virtual tools KEHPCA uses are Facebook, Twitter, eHospice, and its own website (<http://www.kehpca.org>). To ensure it reaches patients and providers lacking ready access to the Internet, KEHPCA also promotes palliative care and its legal services through newspaper and magazine coverage, and posters displayed in hospices and clinics. These publicity strategies complement KEHPCA's efforts to raise rights awareness among palliative care patients. These efforts include the development of easy-to-use brochures offering guidance on making a will, as-signing power of attorney, and pain management.

With its partner organizations, KEHPCA works to raise national and regional awareness about palliative care issues during World Hospice and Palliative Care Day. In 2014, KEHPCA launched its own Palliative Care Week to promote national awareness about the legal aspects of palliative care.



## KEY LESSONS LEARNED

- Encourage programs to develop a coordinated communications and media strategy, and consider allocating a portion of funding to media training. A communications and media strategy can both strengthen a program's other advocacy efforts and enhance its overall impact.
- Use a variety of communications and media techniques to provide legal information to socially excluded groups, help promote the accountability of state actors, and sensitize the broader public to the concerns of socially excluded groups. Examples include mainstream print and news media, social media, video documentaries, and radio talk shows.
- Seize on political and legislative developments in the country as an opportunity to highlight the experiences of socially excluded groups. These 'news hooks' are especially important for getting the attention of journalists.
- Foster relationships with local journalists and media outlets in order to draw attention to widespread health and human rights abuses.
- Engage journalists in training workshops that improve their understanding of socially excluded groups and their health and human rights concerns. This training can emphasize the importance of reducing stigma and sensationalism in media coverage, and can also reinforce journalists' professional responsibilities.

The NGO Healthy Options Project Skopje (HOPS) has produced three short documentary videos about a highly intrusive 2008 police raid on sex workers in Macedonia.\* These documentaries encourage their viewers to consider the rights of sex workers and how they were violated during the raid, without disclosing the identities of those sex workers who were arrested. Today, HOPS uses these videos in training workshops with police officers, social workers, and the sex worker community, as well as to encourage journalists across the country to cover health and human rights issues.

It is also key to seize on opportune moments, whether they are news stories involving members of socially excluded groups or broader legislative developments. These 'news hooks' are especially important for getting the attention of journalists. Many Kenya-based programs, for instance, have found it helpful to seize on the country's broader context, and particularly the 2010 Constitution of Kenya, to build on the emerging discourse on human rights. Whatever the strategy taken, it is helpful to remember that advocacy is not always a linear process. Access to justice programs need to be prepared to deal with opportunities and setbacks as they arise.

\* These videos can be found at <https://www.youtube.com/watch?v=P6eFmnn-Fys>; [https://www.youtube.com/watch?v=hrqwZ\\_Lsbbk](https://www.youtube.com/watch?v=hrqwZ_Lsbbk); and <https://www.youtube.com/watch?v=eoi80HrXQSo>.

## Strategizing around risks, working with local journalists, and using digital media

It is critical to assess any risks involved in using communications and media strategies to advance the health and human rights of socially excluded populations. There may be a lack of interest—and even hostility—among the general public about issues concerning these groups. The situation is even worse when members of the mainstream media harbor their own prejudices. In some cases, the only media coverage of a given group may perpetuate stereotyped and one-sided portrayals of its members. These portrayals inevitably fail to provide adequate information on the barriers these groups face in claiming their health and human rights.

In light of the above, many access to justice programs focus their media strategy on fostering productive relationships with local journalists. Building these relationships increases the likelihood of appropriate news coverage, and it requires that programs provide these journalists with accurate, timely, and newsworthy information on an ongoing basis. It can also help to hold training workshops that

- offer journalists information on the human rights issues faced by socially excluded groups;
- enhance their understanding of the health issues faced by these groups (e.g., explaining the science behind addiction and drug treatment);

### CONTENDING WITH A DIFFICULT MEDIA ENVIRONMENT: ROMA S.O.S.'S MEDIA STRATEGY

Forging a good rapport with key journalists is especially important in countries where media is tightly controlled by the state. In Macedonia, the NGO Roma S.O.S. found that many media channels distanced themselves from Roma-related programs, and that journalists faced resistance when they tried to present balanced coverage of Roma issues.

A media consultant hired in early 2013 quickly managed to get Roma S.O.S. covered 42 times in a six-month period, through a blend of print media, radio, TV, and the Internet. The consultant achieved this by first starting to simply promote Roma S.O.S.'s work in general among

individual supportive journalists. Soon enough, these journalists began requesting more detailed stories from Roma S.O.S. about its successes and challenges.

In one instance, Roma S.O.S. was working on a case involving two Roma women with the same identity documents, which prevented one of them from accessing social assistance. In July 2013, Roma S.O.S. contacted local journalists from two national TV stations. These stations ran a news story explaining the problem and calling on Macedonia's Ministry of Labor and Social Policy to act on the case. The next day, the Ministry's municipal division took steps to confirm the woman's identity, change her identity documents, and enable her to receive social assistance.

The following month, one of these same journalists contacted Roma S.O.S. to request further stories. At the time, Roma S.O.S. was working with five clients whose births had gone unregistered, and who required DNA analysis as a result. The journalist ran a story on the administrative barriers preventing Roma children born at home from realizing their basic human rights. Again, the Ministry of Labor and Social Policy followed up the next day, requesting information on the cases from Roma S.O.S. and initiating procedures to support the DNA analyses.

Roma S.O.S.'s experience shows that even in a challenging media environment, it is possible to forge productive relationships with key journalists interested in and sensitive to the health and human rights concerns of socially excluded groups.

- encourage them to mitigate the stigma and sensationalism surrounding media coverage of these groups; and
- reinforce their professional responsibilities and obligations.

## KEY THINGS TO AVOID

- Do not undertake media advocacy hastily, especially where it concerns taboo issues. Ensure that behaviors and health conditions that are highly stigmatized are discussed with care, and that individuals are not identified without their informed consent.
- Do not be dismayed by unexpected setbacks in advocacy strategies, such as unfavorable news coverage concerning socially excluded groups. Advocacy is not always linear, and programs must be flexible in responding to setbacks and opportunities as these arise.
- Where media outlets are tightly controlled or highly sensational, do not depend on them to account fairly for the lived realities of socially excluded groups. Focus instead on engaging with local journalists interested in covering health and human rights issues, and foster the development of alternative media directed toward these groups.

These tactics can be carried out in part by observing the guidance provided earlier in this Guide on educational activities. One approach used by the Coalition on Violence Against Women is to hold social breakfasts for the Kenyan media in order to share information about its work and encourage journalists to cover relevant stories.

Where media outlets are tightly controlled or sensational, access to justice programs should make efforts to expand the reach of digital media directed toward socially excluded groups. Programs can use social media pages or their own websites, for instance, to provide the general public with balanced information and teach socially excluded groups about their health and human rights.

## USING COMMUNICATIONS TECHNOLOGY TO CONNECT CRIMINALIZED GROUPS WITH PARALEGALS: **KASH** AND FRONTLINE SMS

Keeping Alive Societies' Hope (KASH), a Kenyan NGO operating in Kisumu, learned early on that distributing condoms and offering health education to sex workers were inadequate in the face of rampant police abuses. Its staff realized that a quick response time for assisting sex workers in a potentially violent situation was critical to their personal safety.

For these reasons, KASH introduced an emergency mobile phone alert system called Frontline SMS. This service links sex workers

in Kisumu to paralegals and other sources of immediate support, including police officers who have undergone training on sex workers' rights. KASH invites individual sex workers to send text messages whenever they experience or observe abuse. It also uses Frontline SMS to send out vital human rights information and to inquire about the types and levels of abuse occurring in the community. To increase the response rate, KASH asks yes-or-no questions and encourages respondents to call in with more thorough explanations.

Frontline SMS allows KASH to receive regular updates on the lived realities of sex workers, and to design programs and advocacy that reflect their needs. KASH staff regularly compile and

analyze incoming texts for use in their advocacy planning sessions, which are attended by police officers, sex workers, and lawyers. The technology is also used to foster alliances between different groups working to protect the human rights of sex workers throughout Kenya.

The use of telephone text messaging has contributed to a dramatic reduction in rights violations against sex workers in Kisumu. This strategy has caught on quickly. The sex worker rights organization Bar Hostess Empowerment and Support Programme (BHESP), and its legal partner Centre for Rights Education and Awareness (CREAW), have begun implementing a similar program in Nairobi.

A man is seen from behind, wearing a yellow t-shirt. The t-shirt has the word "Paralegal" printed in large blue letters, and below it, the phrase "For Effective Legal Responses to HIV" in red and blue letters. He is standing in a room with several other people seated in the background. The room has large windows with metal grates and a framed poster on the wall.

**Paralegal**

**“For Effective Legal  
Responses to HIV”**



# CONCLUSION

**T**HE PRECEDING CHAPTERS of this Guide have aimed to share good practices that promote the sustainability of programs working to advance the health and human rights of socially excluded groups. However, there are still too few such programs and, where they do exist, they rarely reach more than a small proportion of individuals in need of support.

By sharing the lessons from our work, we hope to make it easier for implementers and donors to both develop and scale up access to justice programs that partner with socially excluded populations. The remainder of this conclusion focuses on considerations relevant to program scale-up, including guidance on securing further financial, material, and technical support.

LEFT William Mulindwa, a paralegal with the Uganda Network on Law, Ethics and HIV/AIDS, leads a workshop for families at a health clinic in Kampala, Uganda.



## KEY LESSONS LEARNED

- Recognize that scale-up can take many forms. It can involve hiring additional staff, elaborating on successful partnerships, delivering services in new locations, or expanding services to meet the needs of other socially excluded groups.
- Note that programs benefiting populations with specific health conditions can be potential candidates for government support. These groups include people living with HIV/AIDS, palliative care patients, and people with intellectual and psychosocial disabilities.
- Consider the prospect of government integration for one or more aspects of a program's operations. Examples include the introduction of health and human rights training into national curricula for health care providers, the integration of human rights training into police academies, or the provision of free legal services.
- Where either government support or integration is an option, ensure that it will not jeopardize a program's ability to advance health and human rights in holistic ways, and that it will not compromise a program's independence and ability to push for the accountability of state officials.

## Scaling up an access to justice program

Program scale-up need not involve the expansion of the entirety of its operations and services. Rather, scale-up can concern simply one or a few of a program's aspects. Examples include

- the hiring of additional staff;
- the elaboration of successful partnerships (e.g., one partner organization hires and manages its own paralegals, while another partner organization offers technical assistance, training, and supervision);
- the delivery of similar services in new locations; and
- the development of work that cuts across to other socially excluded groups and other health- and rights-related issues.

Before committing to scale-up, it is important to ensure a pilot program works well and that any necessary lessons are drawn and services improved before an expansion occurs.

It is particularly important to avoid scale-up measures that threaten to undermine a program's close connection to the populations it works with. Feedback mechanisms integrated into scale-up efforts can help ensure a program retains the trust of community members and remains faithful to the human rights principles it has advanced throughout its pilot phase.

Program expansion often involves heavier burdens for supervision, quality control, and fundraising. Where these changes threaten to compromise service quality, programs should consider alternatives to scale-up, such as partnering with other NGOs to offer similar justice services to socially excluded groups.

## The prospect of government support or integration

In some contexts, government support may be an option for access to justice programs serving socially excluded groups. Ministries of health can be a potential source of support for access to justice programs in the context of HIV, palliative care, and intellectual or psychosocial disability. In addition, state-funded legal aid schemes for criminal or civil cases can address some legal needs, but it is critical to invest in standards development, training, and monitoring to ensure these programs operate within a human rights framework. When accepting government funding, steps must be taken to ensure programs continue to advance the health and human rights of socially excluded groups in holistic ways.

In some cases, governments may also be willing to take on a component of service provision, enabling greater reach and sustainability. This can include introducing a training component on health and human rights as part of a national curriculum for health care providers, integrating human rights training into police academies, or providing free legal services. Access to justice programs seeking either government support or government integration should take care to ensure these measures will not compromise their independence and ability to push for state accountability.

### KEY THINGS TO AVOID

- Avoid scale-up efforts that threaten to jeopardize the trust and close connections that a program has fostered with the socially excluded groups it works with. Feedback mechanisms integrated into scale-up efforts can help ensure a program retains the trust of community members and continues to embody the human rights principles it advances.
- Do not overlook that program scale-up often entails heavier burdens for supervision, quality control, and fundraising. Be sure to consider alternatives, such as encouraging other local organizations to provide similar services to socially excluded groups.

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## ENDNOTES

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