Pursuing the Public Interest

A Handbook for Legal Professionals and Activists

Public Interest Law Initiative

Columbia Law School

Pursuing the Public Interest

A Handbook for Legal Professionals and Activists

EDITED BY

Edwin Rekosh

Kyra A. Buchko

Vessela Terzieva

Public Interest Law Initiative

in Transitional Societies

COLUMBIA LAW SCHOOL • NEW YORK

Now known as  PILnet The Global Network for Public Interest Law

ISBN: 0-9662725-3-6

Price: USD 29.95

Public Interest Law Initiative
In Transitional Societies

Columbia Law School, Mail Code 3525
435 West 116th Street
New York, NY 10027
USA
Tel: (1 212) 851 1060; Fax: (1 212) 851 1064
E-mail: pili@law.columbia.edu; Web: www.pili.org

Cover design: Richard Mantel, Jessica Weber Design, Inc.
Book design: Jennifer Ann Daddio
Copy editing: Richard Slovak

Printed in Canada

ACKNOWLEDGMENTS

This handbook is the outcome of an ongoing collaboration over several years with a multitude of contributors. It was originally conceived at the Symposium on Public Interest Law in Eastern Europe and Russia, which was held in 1997 in Durban, South Africa, and sponsored by the Ford Foundation and the Constitutional and Legal Policy Institute. The structure and overall approach of the handbook were worked out by a steering committee, which met in Warsaw in 1998. Members of the steering committee, many of whom also made their own individual contributions to the handbook, were: Arie Bloed, Judit Fridli, Sándor Fülöp, Jan Hrubala, Irina Jurna, David McQuoid-Mason, Zaza Namoradze, Urszula Nowakowska, Marek Nowicki, Wiktor Osiatynski, Dimitrina Petrova, Victor Pronkin, Joseph Schull, Maria Szewczyk, and Eleonora Zielinska. The Public Interest Law Initiative in Transitional Societies (PILI) is indebted to these individuals for inspiring the handbook, shaping its contents, and providing invaluable advice along the way.

A small army of PILI staff and consultants contributed to the production of the handbook; however, the lion's share of credit for putting together all of the pieces must go to Consultant Kyra Buchko. Without her extraordinary effort and skill, this publication might not ever have seen the light of day. Other PILI staff members and consultants who have contributed long hours to managing the arduous process of publishing this handbook include Executive Director Edwin Rekosh, Consultant Karin Kunstler Goldman, Associate Legal Officer Vessela Terzieva, Program Coordinators Julie Heaner Plavsic and Erika Solyom, Administrative Manager Caryn Gilbert-Nikolaou, Administrative Assistants Erin DeOrnellas and Dina Pavloudakis, and Intern Marina Kozlik. PILI was also fortunate to have the services of a dedicated and impeccably thorough copy editor, Richard Slovak.

Each chapter of the handbook was drafted in a unique, collaborative manner. As a result, shared credit for authorship must be acknowledged on a chapter-by-chapter basis.

Chapter 1: Setting Up a Public Interest Law Organization

This chapter is based on material originally drafted by Sándor Fülöp and Maria McElroy of the Environmental Management and Law Association (EMLA). Additional material was

provided by Zdravka Kalaydjieva of Bulgarian Lawyers for Human Rights. Kyra Buchko also made a substantial contribution.

Chapter 2: Monitoring for the Public Interest: Guidelines for Effective Investigation and Documentation

The primary authors of this chapter are Marek Nowicki, Zuzana Fialova, Jacqueline Kacprzak, and Anna Rutkowska, all of the Helsinki Foundation for Human Rights in Poland. Kyra Buchko also made substantial contributions, and helpful additions and comments were provided by Ivan Fiser, Amnesty International, and Dimitrina Petrova, European Roma Rights Center (ERRC). In addition, a significant portion of this chapter is adapted with permission from *Women's Human Rights Step by Step*, a publication of Women, Law & Development International and Human Rights Watch.

Chapter 3: Strategic Litigation: Bringing Lawsuits in the Public Interest

This chapter combines materials originally drafted by Zdravka Kalaydjieva of Bulgarian Lawyers for Human Rights and PILI Consultant Karin Kunstler Goldman, as well as by Sándor Fülöp and Maria McElroy, both of EMLA.

Chapter 4: Campaigning for the Public Interest

The primary author of this chapter is Consultant Ina Zoon, working, in part, with material provided by Rosa de la Vega of the Advocacy Institute. Substantial contributions were also made by Kyra Buchko.

Chapter 5: NGO Advocacy before International Governmental Organizations

The first section of this chapter is based on materials provided by Maggie Nicholson of the Council of Europe. The second section is authored by PILI Associate Legal Officer Vessela Terzieva. Professor Jose Alvarez of Columbia University School of Law, Professor Alice Miller of the Columbia University Mailman School of Public Health, and Borislav Petranov of INTERIGHTS all provided helpful comments and additions.

Chapter 6: Access to Justice: Legal Aid for the Underrepresented

The primary author of this chapter is Vessela Terzieva. Daniel Manning of Greater Boston Legal Services provided substantial additions.

Chapter 7: Clinical Legal Education: Forming the Next Generation of Lawyers

The primary contributors to this chapter include PILI Associate Director Marcia Levy, Professor Maria Szewczyk of Jagiellonian University Faculty of Law, and PILI Legal Officer Valerie Wattenberg. PILI Fellow Romanita Iordache and Jagiellonian Clinic Development Officer Garrett Rothman also made helpful contributions.

Chapter 8: Public Education about Human Rights, Law, and Democracy: The Street Law™ Model

The primary contributors to this chapter are Professor David McQuoid-Mason of the University of Natal in South Africa, Edward O'Brien of Street Law, Inc. in the United States, and Professor Monika Platek of Warsaw University Faculty of Law. Professor Victor Pronkin of St. Petersburg Prince Oldenburgsky Institute of Law provided a helpful contribution and extensive comments.

In addition, many colleagues from around the world have generously contributed their expertise and knowledge, including George Bermann, Lukasz Bojarski, Reed Brody, Barbora Bukovska, Maureen Burke, Olga Chepeleva, Bebs Chorak, David Cohen, Adrian Coman, Savelina Danova, James Goldston, Hanna Gorska, Daniel Greenberg, Jack Greenberg, Yonko Grosev, Nikolai Gughinski, Tsvetana Kamenova, Lydia Kolucka, Peter Komives, Grazyna Kopinska, Antti Korkeakivi, Maria Lukic, Nicolas Mansfield, Dana Marekova, Merja Muilu, Adam Pyrek, Donald Reisig, Richard Roe, Linas Sesickas, Dima Shabelnikov, Tanya Smith, Robert Spangenberg, Manuela Stefanescu, Veronika Szente, Felisa Tibbitts, Nancy Ward, and Pavol Zilincik. Jan Hrubala, David McQuoid-Mason, and Borislav Petranov provided particularly extensive comments.

Thanks go to all of the PILI Fellows, some of whom have been acknowledged individually, but all of whom shared valuable insights during their time in New York and afterward. Many thanks also go to Columbia law students who contributed important research assistance, including Monica Brookman, Heather Colon, Memduh Karakullukcu, Samantha Klein, Essence McGill, Katherine Negrin, Jonathan Sacks, and Wendy Waldron. In Washington, D.C., research associates Penelope Fidas, Ella Krainsky, and Lisette Alvarez provided research, drafting, and editorial assistance ably and enthusiastically. Thanks also go to Jennifer Ann Daddio for her book design.

There have been so many contributors to this publication over such a long period of time, it is likely that some have gone unnamed. We offer our sincerest apologies for any such omission. Further, while this publication reflects an extremely fruitful collaboration with a broad and diverse group of contributors, in the end, only a small team could form a unitary text out of the disparate elements. The ultimate responsibility for any errors of fact or judgment must therefore lie with the Public Interest Law Initiative and the editors.

Finally, the Public Interest Law Initiative is grateful to the Ford Foundation and the Constitutional and Legal Policy Institute for the funding that made this handbook possible.

Summary of Contents

Contents

FOREWORD

Public interest law in Central and Eastern Europe is conditioned by the region's communist past and limited by its post-communist present. For public interest law to be effective in this region, it must reflect the unique local political and legal circumstances. How, then, does a handbook like this one, encapsulating lessons from the United States and other distant places, make sense to Central and Eastern Europeans? Some critics say that the United States is a post–civil rights society and that it is time to bid farewell to the old-fashioned public interest organizations. So why invest in transplanting some of their main achievements in the so very different soil of Central and Eastern Europe? Furthermore, inside the post-communist region, public interest law projects have been around for some time, and their number is growing. Some might say that this handbook is coming too late.

The justification for publishing it does not need to be based on a grand narrative of historical progress—be it that of liberal democracy or of civil rights. It was a simple empirical discovery of many activists and lawyers in Central and Eastern Europe, who had started public interest law projects (without calling them so, of course) in the early 1990s, that there were analogies, messages, lessons, and warnings. These people found themselves jumping over similar hurdles when searching for answers to some of the same eternal questions that worried U.S. civil rights lawyers of a preceding generation—questions about the meaning and relevance of law and about the role of legal service in improving society. At a minimum, this publication will be useful as a transfer of discursive knowledge and strategic insights through geographic and cultural space, a transfer that has the potential of benefiting large groups of people.

Although it may seem that at this point in time there is a large community of public interest lawyers in Central and Eastern Europe and the ex-Soviet space, it is my view that the public interest law "sector" is but a tiny fraction of what it ought to be, if rights are ever to be taken seriously here. New public interest law organizations and projects are starting, and many more will be needed in the

future. Young lawyers for whom communism is only a childhood memory are already being faced with similar puzzles to those that older colleagues boast to have solved. For example, if the Russian police abuse immigrants of Caucasian background, and the victims do not trust lawyers to bring actions—indeed, do not even report cases to human rights monitors—is there no experience that can be shared with them? Recently, a Russian Romani activist was describing to me the seemingly unbreakable vicious cycle of police violence, including a presumption of guilt, the ensuing police abuse, the bribing of police by the victims, and the cementing of the conspiracy of silence to avoid further "problems." He was positive that nothing could be done—and equally firm that something must be done urgently. I always think of this ambivalence as beautiful: it signals that a breakthrough is imminent. Is it too much to hope that at least some elements of the successful legal strategies challenging police brutality that were developed in countries such as Bulgaria and Hungary in the last seven or eight years might also be applicable to parts of Russia? Enlargement of the field of public interest law inside the region is very welcome, and this handbook also serves the purpose of transfer of knowledge and strategies inside the region, toward a new generation, while fully respecting the internal regional and country specificities.

Not only will the network of current public interest law initiatives expand in the region, but—at least in the realm of the possible—new public interest law concerns are looming. Strategic litigation to defend social rights, for example, is in order. There is a strong tendency in Europe, including in the European Union member states, to develop "social policy," to promote "social protection," or to overcome "social exclusion," while there is very little litigation to defend "social rights." Another exciting prospect in strategic litigation is to challenge systemic and indirect discrimination through the courts, an endeavor that would require utilizing, in creative ways, the new possibilities opened by recent developments in antidiscrimination law in Europe. In any case, the public interest law "sector" has an eventful future ahead of it.

On the other hand, effective access to justice is still pie in the sky for most members of disadvantaged groups in Central and Eastern European societies. Ignorance, forbidding costs, ineffective counsel, inadequate legal standing, and weak remedies all render judicially enforceable rights utopian. While law is one of the forms in which domination in society is established and reproduced, law also establishes and reproduces the limits

to domination. Although the legal system is a normative and process-oriented legitimation of power, and legal representation is a service to be bought by the powerful, it nonetheless can also protect the weak and the powerless. Unlike the work of profit-oriented law firms, public interest law strives to protect those who are weaker, and thus it is all about justice.

In post-communist societies, public interest lawyers, by the very fact of their existence, continue the fundamental reform toward a culture of democracy. Their work continues to destroy the equation of public with state interest. Their emblematic presence among us opens new horizons before the self-organization of civil society. Let us hope that this collection will be useful to those who have already reinvented for themselves the law of the public interest, and even more useful to those who, in the years to come, will keep reinventing it.

Dimitrina Petrova
Executive Director,
European Roma Rights Center
Budapest, September 2001

Pursuing the Public Interest

A Handbook for Legal Professionals and Activists

Introduction

"Public interest law" is a term that became widely adopted in the United States during and after the social turmoil of the 1960s. It built on a tradition exemplified by Louis Brandeis, who before becoming a U.S. Supreme Court justice incorporated advocacy for the interests of the general public into his legal practice. In a celebrated 1905 speech, Brandeis decried the legal profession, complaining that "able lawyers have to a large extent allowed themselves to become adjuncts of great corporations and have neglected their obligation to use their powers for the protection of the people."

In the late 1960s and 1970s, large numbers of American law school graduates began to seek "relevance" in their work—wishing to have an impact on the social issues that were so visibly and hotly debated within American society at that time. They defined themselves as public interest lawyers in order to distinguish themselves from the "corporate adjuncts" referred to by Brandeis.

Public interest law does not describe a body of law or a legal field; the term was adopted to describe *whom* the public interest lawyers were representing, rather than *what* matters they would work on. Instead of representing powerful economic interests, they chose to be advocates for otherwise underrepresented individuals. Consequently, a significant current in public interest lawyering has always emphasized the need to provide legal services to those living in poverty. The term has grown, however, to encompass a broader range of activities of lawyers and nonlawyers working toward a multitude of objectives, including civil rights, civil liberties, women's rights, consumer rights, environmental protection, and so on. Nevertheless, a common denominator for public interest lawyers in the United States remains the ethic of "fighting for the little guy"—that is, representing the underrepresented and vulnerable segments of society.

Today, in the United States, the notion of "public interest law" is institutionalized. Nongovernmental organizations (NGOs) that work to promote and protect human rights using the U.S. legal system, or fight to protect the environment, or advocate on behalf of consumers, call

themselves public interest law organizations. A large community of lawyers practices public interest law in the form of providing legal assistance free of charge to those who cannot afford to pay for it. Clinical legal education, which is well established in the United States, provides opportunities for law students to do practical legal work on basic legal matters as well as more complex public interest issues, such as women's rights, antidiscrimination law, constitutional rights, and environmental protection, among others. Some law schools have public interest law centers, which advise law students interested in pursuing public interest law careers. *Pro bono* programs at bar associations and law firms provide opportunities for commercial lawyers to donate time to public interest law activities.

In the 1980s and 1990s, the term "public interest law" came into use in many other countries as well. There is a strong public interest law community in South Africa, for example, which formed as part of the antiapartheid movement. And there are public interest law centers, communities, networks, and movements in many other parts of the world, in countries as diverse as the United Kingdom, India, Bangladesh, the Philippines, Australia, Chile, and Argentina. Regardless of the differing connotations in each context and the wide variety of activities accomplished in its name, "public interest law" tends to refer to a consistent set of principles, values, and objectives, similar to those that inspired Louis Brandeis. It relies on notions of social justice and a desire to see law become a tool for social change.

In the post-socialist countries, there is another aspect of "public interest law" that is critical to understanding how the term has come to be used in the region. The notion of public interest law assumes the existence of a "public sphere," as understood by thinkers such as Jürgen Habermas, or—to use the term popularized by Vaclav Havel—"civil society." The essence of this idea is that society includes a variety of formal and informal, interlinked, self-organized associations that somehow connect the private and public spheres. The idea that private organizations should take active part in public discourse and processes sounds unremarkable to Western ears, but it stands in marked contrast to the socialist legal order, in which the public sphere was coextensive with the state.

Yet the concept of "public interest" was by no means absent from socialist legal thought. As a theoretical matter, the *prokuratura*'s chief function was to protect the public interest, armed with both criminal and civil sanctions. The difference between the public interest of socialist legality and the liberal understanding of

the term, however, turns on this notion of the public sphere. Socialist legal theory had no place for alternative voices competing to be heard in the discursive process imagined by Habermas. To the extent that public interests were taken into account, they were determined at the top of the official political hierarchy, according to a nondemocratic process, implemented in a strongly controlled manner by executive authorities, and enforced in the courts by the all-powerful *prokuratura*.

The legacy of this approach continues to be evident in the limitations of *language itself* in formerly socialist countries. It has been a common understanding in many countries in the region that "public interest" is synonymous with "state interest," and the vocabulary to distinguish the two is only beginning to develop.

But the distinction is vitally important to those working within the emerging field of public interest law in post-socialist countries. Whether calling themselves human rights advocates, women's rights activists, or environmental lawyers, they are united by a common theme. Concerned less with some immutable, state-defined set of goals, they are actively engaged in developing diverse, law-based, broadly participatory means for *pursuing the public interest*.

This handbook represents an attempt to synthesize a wide-ranging body of knowledge and experience regarding the diverse set of activities that have been adopted by public interest advocates in the formerly socialist countries (as elsewhere). It is intended to provide basic information regarding the practical aspects of these activities for those unfamiliar with them, as well as to build on the lessons learned in the initial, disparate efforts of a growing number of individuals and organizations. The Public Interest Law Initiative in Transitional Societies (PILI) undertook the project of publishing *Pursuing the Public Interest* in furtherance of its core mission, which is to advance human rights principles by assisting the development of a public interest law infrastructure in the countries of Central and Eastern Europe, Russia, and Central Asia.

The handbook, like PILI itself, is the product of a consultative process initiated by the Ford Foundation, which organized two symposia on public interest law in Eastern Europe and Russia in collaboration with the Open Society Institute's Constitutional and Legal Policy Institute (COLPI). The first symposium took place in 1996 in Oxford, England, and the second one took place in 1997 in Durban, South Africa. The symposia brought together NGO leaders and professionals from a variety of fields to explore two main themes:

1. The relationship between law and society, from the practical point of view of activists and advocates in the region.
2. The potential relevance of activities and strategies that have been undertaken in the name of public interest law in other parts of the world, with a view toward enhancing the effectiveness of participants' common efforts.

In the course of these meetings, participants discovered a large number of common issues and innovative ideas, and they developed many new initiatives. Among the needs they identified was the publication of a handbook that would enable wider dissemination of the knowledge they were collectively acquiring and encourage others by documenting some of their successes. The issues that emerged during the symposia have helped to define the contents of *Pursuing the Public Interest*.

Among the conclusions emanating from the discussions at the 1997 Durban symposium were the following:

Access to justice is an important common point of interest among public interest law practitioners. The availability of legal representation for those who cannot afford to pay for it is grossly inadequate in the region, and there has been little attention focused on the issue thus far.

Clinical legal education is an area of great interest both to legal educators and to NGOs in the region. Clinical legal education fills the need for providing future lawyers with practical skills, which are increasingly in demand, while also cultivating among them a public interest orientation. It also helps to fill the gap in access to justice for underrepresented individuals, groups, and issues, and it provides NGOs with the opportunity to recruit and train future generations of staff lawyers.

Street Law™ programs, which have also begun to develop in the region, hold the promise of helping to demystify the law, enhance awareness of public interest law issues, and encourage the use of educational methods that promote critical thinking. Paralegal programs, such as those found in South Africa, are also promising means for enhancing legal literacy, especially for extremely underrepresented populations such as Roma.

Public interest litigators in the region need to enhance their effectiveness in a number of areas, including strategic planning and priority-setting, case identification, case management, evidence gathering, and innovative legal argumentation concerning standing issues and other procedural matters. Although some obstacles to effective

strategic litigation in the region derive from features of the respective legal systems, there is also growing evidence that creativity and resourcefulness can overcome many of them.

Campaigning is a vital part of any public interest law strategy. Public interest law practitioners in the region would benefit from a more systematic approach to campaigning, media relations, and legislative advocacy. In particular, it is important for public interest law practitioners to develop strategic planning skills with respect to campaigning and for NGOs to continue to build their relationships with journalists in order to improve media coverage of public interest law issues.

Women's rights issues, such as domestic violence, require action by broad coalitions. NGOs with wider human rights mandates can make an important contribution by integrating women's rights into their work. Women's rights organizations can also enhance their effectiveness by undertaking to educate officials, journalists, and others.

International advocacy strategies in the region need to be developed further. For instance, underutilized United Nations mechanisms may produce worthwhile results in some cases. In addition, there is a need for greater coordination and information sharing regarding litigation before the European Court of Human Rights.

Many of the themes covered in this handbook were also present at a groundbreaking International Public Interest Law Symposium organized by the preeminent U.S. civil rights organization, the NAACP–Legal Defense Fund, at Columbia University in 1991. The report from that symposium—which brought together public interest organizations from around the world, especially from Africa, Asia, Latin America, and the United States—breaks down public interest law activities into three basic strategies represented by the collective activities of symposium participants:

- **Public interest law as access to justice**, in which organizations try to broaden access of the population or a particular segment of the population to the justice system.
- **Public interest law as law reform**, in which public interest lawyers attempt to change the rules and institutions of the legal system through test cases or cases with an impact on large numbers of people.
- **Public interest law as political empowerment**, in which the focus shifts from expanding access to the legal system or changing it through

law reform to directly empowering the parties who are interacting with the state.

Post-socialist countries—the intended audience for this handbook—were not well represented at that symposium. Nevertheless, while these countries have their own particularities, the above strategies are framed broadly enough to be relevant for them as well. Indeed, the handbook's contents largely follow the logic of the three strategies.

This handbook is intended to assist and encourage individuals and organizations who are inspired by the same principles and values to which Justice Brandeis—and so many others all around the world—devoted their lives. Another U.S. Supreme Court justice, Thurgood Marshall, made the following tribute to public interest lawyers in a speech to the American Bar Association in 1975:

> *{T}hey have made our legal process work better. They have broadened the flow of information to decision makers. They have made it possible for administrators, legislators and judges to assess the impact of their decisions in terms of all affected interests and minorities. And, by helping to open the doors to our legal system, they have moved us a little closer to the ideal of equal justice for all.*

What Justice Marshall said in a different context at a different time undoubtedly applies with equal force to the generation of lawyers and others who have been pursuing the public interest in post-socialist countries in the 1990s, and who will continue to do so into the twenty-first century.

RESOURCES

Readings

Brandeis, L., "The Opportunity in the Law," 39 *American Law Rev.*, 55–63 (1905).

Halpern, C., "Public Interest Law: Its Past and Future," 58 *Judicature*, 118–126 (October 1974).

Langer, V., "Public Interest in Civil Law, Socialist Law, and Common Law Systems: The Role of the Public Prosecutor," 36 *American Journal of Comparative Law*, 279–305 (1988).

Marshall, T., "Financing the Public Interest Law Practice: The Role of the Organized Bar," 61 *American Bar Association Journal*, 1487–91 (1975).

NAACP–Legal Defense Fund, *Public Interest Law around the World: Report of a Symposium Held at Columbia University in May 1991 with Descriptions of Participating Legal Organizations from Twenty Countries*, Columbia Human Rights Law Review, 1992, New York.

"New Public Interest Lawyers, The," 79 *Yale Law Journal*, 1069–1152 (May 1970).

Public Interest Law Initiative in Transitional Societies, Columbia Law School, *Durban Symposium on Public Interest Law in Eastern Europe and Russia*, 1997, New York.

Rogovin, M., "Public Interest Law: A Response to Societal Problems," in Robert L. Ellis, ed., *Taking Ideas Seriously: The Case of a Lawyers' Public Interest Movement*, Equal Justice Foundation, 1981, Washington, D.C., 99–106.

One

Setting Up a Public Interest Law Organization

This chapter explains:

- the concept of a public interest law organization
- issues to consider in establishing a public interest law organization
- roles and responsibilities of a board of directors
- the importance of mission and strategic planning
- supervision and training techniques
- factors in accepting clients and cases
- budgeting, accounting, and filing matters
- strategies for fundraising
- how two organizations have handled specific management issues

1. What is a public interest law organization?

The public interest law organization is a relatively new concept in the history of law, and its role is broader than that of a traditional law office or legal practice. Traditionally, the role of a law office is to advocate for and defend the interests of its clients. Lawyers are trained to defend clients charged with violations of the law and to make claims on behalf of their clients when the clients are engaged in disputes with third parties. While still engaging in the defense and representation of their clients, public interest law organizations are established to promote social change by applying and challenging existing laws and advocating changes in legislation.

During the last decade, throughout Central and Eastern Europe, new organizations have emerged that are conducting

a variety of activities designed to promote social change by using and challenging existing laws and promoting new pieces of legislation that serve the public interest. These organizations engage in activities such as human rights monitoring (see chapter 2, "Monitoring for the Public Interest: Guidelines for Effective Investigation and Documentation"), strategic litigation (see chapter 3, "Strategic Litigation: Bringing Lawsuits in the Public Interest"), advocacy in support and defense of specific interests such as environmental causes or the rights of a particular minority group (see chapter 4, "Campaigning for the Public Interest"), advocacy for public interest issues before regional bodies and international tribunals (see chapter 5, "NGO Advocacy before International Governmental Organizations"), representation of individuals who cannot afford to hire an attorney (see chapter 6, "Access to Justice: Legal Aid for the Underrepresented"), clinical legal education (see chapter 7, "Clinical Legal Education: Forming the Next Generation of Lawyers"), and public education programs (see chapter 8, "Public Education about Human Rights, Law, and Democracy: The Street Law™ Model"). The lawyers working for public interest organizations may be involved in some or all of these activities and others.

Public interest law organizations epitomize the highest societal values and strengthen democracy. Lawyers and other staff members, board members, and other volunteers become involved because of the mission of their organization. The ongoing growth and success of these organizations depend on public confidence and support. Moreover, the critical role of public interest organizations in democratic societies underscores the importance of knowledge about how to form, govern, and manage these organizations. The growth and progress of the public interest law sector depend on developing and improving this knowledge.

No two organizations are alike, and each has its own particular goals, policies, and needs. This chapter describes some of the issues to be considered when establishing and managing a public interest law organization. For purposes of this chapter, the term "public interest law organization" will be used throughout, even where the discussion may apply more broadly to nongovernmental organizations (NGOs) in general.

2. Establishing the Public Interest Law Organization

2.1 Mission and goals

A public interest law organization is founded to work for the benefit of the

public and operates to accomplish a well-defined, articulated mission. Its services and programs should work effectively and efficiently toward achieving that mission while the organization is committed to continuous quality improvement. Based on the values of quality, responsibility, and accountability, board members, employees, and volunteers all should act in the best interest of achieving the organization's mission at all times.

Mission statements should be short enough so that they can be easily understood and even memorized by board members, staff, and others. Some organizations even use three or four key words on their stationery. A good mission statement is whatever helps people focus their thinking and actions on what distinguishes a particular organization from others. It should not so much describe an organization but rather define the results it seeks to achieve. From the mission flow specific goals and objectives that are included in a strategic plan.

A public interest law organization should periodically reexamine its mission to determine if the need for its services continues to exist. The organization should evaluate whether the mission needs to be modified to reflect societal changes, whether the organization's current programs should be revised or discontinued in light of the existing or newly defined mission, or whether new services need to be developed. The organization should also establish defined procedures for evaluating (both qualitatively and quantitatively) its processes and results in relation to its mission. Such procedures should address the efficiency and effectiveness of processes and outcomes.

Without a clear mission statement, good strategic planning is impossible. Strategic planning, and ongoing strategic thinking, must always be connected to the organization's purpose. Such strategic activities are discussed further in section 4, below.

2.2 Selecting an organizational structure

The laws of each state or country set forth the options regarding legal status and organizational structure that public interest law organizations may adopt. There are a number of factors that should be considered, including (1) the types of organizations authorized by law, (2) the type of organization that would receive the most beneficial tax treatment for both the organization and its donors, (3) the relative advantages of creating a new, independent organization or initiating a new program within an established organization, and (4) the appropriate structure for governing the organization. Depending on the laws of a particular country, certain

governmental approvals of the organization can result in privileges of exemption from income, sales, or property taxes, for example, or a tax deduction for the organization's local donors.

In addition to mission and organizational purpose, issues such as ownership, legal name, authority, structure, and procedures for dissolution, among others, are defined in the "organizational charter" or similar governing document. The next document, called the "bylaws," sets forth the rules and procedures for governing the organization. The bylaws define in detail the job descriptions of officers and directors and the process for their election; procedures for conducting all meetings; annual operations, including fiscal activities; the process for amending the bylaws; and similar matters. In combination, these documents establish the distribution of governing authority and operational responsibility of founders, members, directors, and officers in the ownership and operation of the organization.

3. Governing the Organization

3.1 Board of directors

The board of directors of a public interest law organization is the policy-setting, governing body that bears legal responsibility for the organization that it serves. Whether elected or appointed, such boards of directors are committed to the organization's mission and leadership. With the leadership of the executive director or the chairperson, the board helps determine the mission, strategic direction, and future programming of the organization. It is responsible for ensuring adequate human and financial resources and for evaluating the organization's executive director, as well as service and financial results. Board members approve broad policies to ensure achievement of the mission of the organization and to prevent perceived, potential, or actual conflicts of interest.

3.1.1 Choosing board members. In selecting a board of directors, board of advisers, or other supporters and managing bodies of the organization, founders should give consideration to those individuals who will assist the organization by securing funding, selecting new cases and projects, identifying and managing resources, and promoting the work of the organization. Also helpful are board members who can offer a particular expertise, such as accounting, public relations, or management skills. All board members should be personally committed to the organizational mission, willing to

volunteer sufficient time and resources to help achieve the mission of the organization, and able to understand and fulfill their responsibilities.

3.1.2 Board composition. Since the board is responsible for overseeing the work of the staff, employees of the organization generally do not serve on the board, though boards sometimes include the executive director. While the number of board members can vary widely, usually a minimum number of members is established by law. It is a good practice to include a sufficient number to guarantee diversity of opinion, background, and expertise, but not so many as to impede discussion and decision making. It is also advisable to institute rotating terms for board members so that the organization has a mechanism to ensure fresh ideas and renewed energy in the longer term. The frequency of board meetings will depend on the needs of the organization, but many boards of directors strive to meet at least quarterly.

3.1.3 Compensation and conflicts of interest. Board members generally do not receive compensation for their board

FUNDAMENTAL ROLES OF A BOARD OF DIRECTORS

In the United States, the National Center for Nonprofit Boards cites the following functions, which can serve as a checklist for clarifying the roles of an organization's board of directors:

1. Determine and review the organization's mission and purposes.
2. Select, support, and evaluate the executive director.
3. Ensure adequate resources and manage them effectively.
4. Ensure effective organizational planning.
5. Determine, monitor, and strengthen the organization's programs and services.
6. Serve as final arbiter of any internal conflict.
7. Enhance the organization's public standing.
8. Ensure legal and ethical integrity and maintain accountability.
9. Conduct periodic self-assessment.

service, other than reimbursement for expenses directly related to board duties. Many countries require that NGOs have a voluntary board of directors in order to qualify for certain tax advantages provided to not-for-profit entities.

The board should establish conflict-of-interest policies regarding board, staff, volunteers, contractors, and organizational partners or allies and adhere to these policies in all dealings. The policies should include an obligation that each board member disclose all material facts and relationships and refrain from voting on any matter when there is a conflict of interest.

3.2 Guidelines for governing

The most misunderstood principle of governance is the requirement for group action. Policies should not be set by individual board members who feel strongly about something and voice their opinions to the executive director. Rather, the entire board sets policy in close consultation with the staff. Both board members and staff must understand this principle in order to avoid confusion and conflict that can interfere with board effectiveness.

In most organizations, the board looks to the staff to implement its policy determinations. Board members expect the staff to act within policy limits, and they are interested in reports about how the policy is being carried out. Some organizations with a small staff are fortunate to have board members who may assist on particular projects. Most depend heavily on board members to organize and participate in program events, enlist other volunteers, raise funds, work with the media, write articles, and more. In these roles, board members are helping the executive director and staff to complete tasks that fulfill the organization's mission. Board members must avoid the temptation of trying to run the program or service simply because they are board members.

4. Strategic planning

An organization must ask continually: "What is our purpose?" "Whom are we serving?" "How are we doing?" "Where are we going?" Strategic planning is a way to sort out these questions. But strategic planning is difficult. It requires time, resources, patience, conflict resolution, persistence, and controversial choices. Most view strategic planning as the complicated, arduous task of producing a long document that often gets put on a shelf and has little meaning. But planning is not merely a product; it is a process that demands the attention and involvement of the organization, its board, and its staff.

ENCOURAGING STRATEGIC THINKING

A formal planning process will encourage strategic thinking by the leadership of an organization. Such thinking must be learned and reinforced so that it becomes the mode of thinking about all aspects of the organization. Sometimes it is encouraging for the board and staff to dream about what they would like to happen, without regard to cost, effort, or outcome. Staff can be asked to develop, individually and as a group, five-year "dream sheets." Often, much of what you envision actually becomes a reality after several years because people apply their hearts and minds to fulfilling those dreams.

Sometimes strategic thinking is spontaneous: an idea that comes to mind while cooking dinner, or a thought jotted down while riding the bus. When the board and staff of an organization are committed to an attitude of thinking strategically, new ideas that may seem unrelated often come together in support of the mission and major goals of the organization. The benefits of a dynamic and flexible planning process will far outweigh the time, effort, and resources invested.

It has been said that "mission is everything." Until there is agreement and passion about a clear mission, strategic planning can be a waste of time. Together with a strong and purposeful mission, strategic planning is vital to any organization for several reasons:

Surviving. There is no guarantee of survival, no matter how compelling an organization's mission. When key parties doubt its viability, the organization must initiate a planning process to address the critical questions.

Achieving the mission. All organizations tend to digress from their stated missions, taking on new programs and responding to new constituencies because money is available or new leaders want to do different things. Sometimes the mission statement is indistinguishable from those of other organizations, or it may be referred to infrequently in decision making. It is crucial that the staff and board remain focused on the mission, and strategic planning helps to make that happen.

Keeping current. Old methods and techniques may not respond to the needs of today. An organization that drifts

along, assuming that problems of participation, funding, or program effectiveness will resolve themselves, is headed for disaster. Strategic planning can identify issues that must be addressed sooner rather than later.

Attaining consensus and involvement. It is not only the executive director who must have a clear picture of where the organization is going. The board, staff, and constituencies must also understand and agree on the organization's strategic direction. Achieving consensus requires effective communication and consultation with a variety of people about how well the organization is doing and what it should be doing next.

Retaining focus and effectiveness. Even with a good mission statement and organizational successes, most organizations should from time to time review which actions achieve the best results, which activities are no longer significant, and where the majority of resources should be directed. With limited resources, choosing the best among the good is hard, and it demands regular, conscious strategic thinking.

Evaluating leadership. Organizations often hesitate to address the tricky issue of whether and when a change in leadership is necessary to meet future challenges. All organizations go through cycles, each handled best by a leader who fulfills the needs of a particular time. Strategic planning can help an organization determine those needs and how to meet them.

One product of strategic planning should be a fairly short list of major ideals approved by the board. This document should consist of long-range policies dealing with mission and results. It should not be a detailed, comprehensive plan including specific actions that might require periodic adjustment. The planning process should generate specific goals, objectives, and tasks for the staff that go beyond the major board-approved goals.

5. Public interest law organization services and activities

5.1 Litigation activities

The kinds of services, programs, and other activities that public interest law organizations may undertake are as varied as the organizations themselves. For many such organizations, the mainstay of their work is litigation, that is, representing individuals or groups in cases before courts or administrative agencies on issues affecting

the public interest. The organization might have a policy of providing particular types of legal assistance to target groups, or it might take a strategic approach to litigation. With respect to strategic litigation, lawyers working with the organization not only must be knowledgeable about applicable domestic and international law and standards, but also must understand the larger legal or social issues related to the strategic litigation goal. A public interest lawyer should be able to use available legal remedies creatively, and having information about relevant experiences in other countries can be extremely useful. For a more detailed discussion about how public interest law organizations can pursue strategic litigation successfully, see chapter 3, "Strategic Litigation: Bringing Lawsuits in the Public Interest."

5.2 Expert consulting services

Public interest law organizations with experience and expertise in a particular field of law may be asked to advise businesses, governmental agencies, legislatures, scholars, or others on a specific legal issue. Such advice may include the preparation of written opinions or reports, or participation in a meeting or proceeding where the organization's role is more limited than full legal representation on a matter. Organizations often welcome such work, not only because it reinforces recognition of the group, but also because it may constitute a good source of revenue, helping to meet the organization's fundraising needs.

5.3 Legislative advocacy

Many public interest law organizations take up cases that challenge existing laws, and sometimes the mission of these organizations can be best furthered by advocating for and even drafting new legislation or opposing unfavorable legislation (see chapter 4, "Campaigning for the Public Interest"). Organizations may also provide analysis or opinion on legal instruments being considered by international bodies. Even a public interest lawyer who is not an expert in international law can argue a case quite successfully simply by using field experience and by applying basic principles of law. International organizations need to be aware of the legal situation in different countries, and public interest law groups can make their research and expertise available to help identify inconsistencies between domestic and international law.

5.4 Training programs and publications

Training is a key issue in the development of a civil society, both in terms of build-

ing capacity for individual public interest organizations and in terms of raising public awareness. Many organizations develop their own training programs and publications that address specific issues and target specific groups, such as NGOs, businesses, governmental agencies, potential volunteers, and the general public. The best known among these organizations often send speakers to various types of training programs at the request of the sponsoring group. In some cases the organization might be less than enthusiastic about the topics addressed at outside sessions; even so, it may be able to use such invitations in order to participate in the development of the sessions. In any case, it is the organization's responsibility to determine whether specific training programs fall within their mission.

5.5 Teaching and other work with law students

Public interest lawyers are sometimes asked to share their skills by teaching future lawyers. Such activities might include teaching a course for a law faculty, becoming involved in clinical legal education programs, serving as a supervisor or mentor for a student intern working at the public interest law organization itself, or participating in other educational programs. Public interest lawyers can derive great personal benefit from such involvement with students, and it may also help the organization to attract new staff who have acquired practical experience before completing law school. As with all other activities, serious consideration must be given to the time and resources involved and whether such activity will further the mission of the organization.

6. Internal management

The executive director and others on the management team of the organization are responsible for ensuring that the day-to-day activities of the organization are conducted responsibly and efficiently and that its procedures and policies allow the organization to fulfill its mission. Such procedures assist the public interest law organization in conducting effective decision-making, case management, and supervision practices.

6.1 Recruiting and hiring staff

A successful organization creates staffing policies that are fair, establish clear expectations, and provide for meaningful and effective performance evaluation. Hiring competent, loyal, and professional staff is one of the most important things an executive

director can do to make it possible for the organization to achieve its goals and mission. The time invested in creating fair and effective hiring procedures is well worth it.

New staff members and other volunteers should receive clear orientation regarding the mission of the organization, its policies and procedures, job definitions and expectations, and a defined work space. The core of written communication to employees should be an employee handbook, which is distributed to every staff member and contains important information in an easily read format. The handbook can incorporate, by reference, other documents where additional detail is provided.

Many public interest law organizations choose to start small, hiring just a few staff members or lawyers, and then expand with experience and fundraising, so there is a reasonable expectation that the budget can be supported in the long run. If an organization is too ambitious at first, the staff may end up spending most of its time raising funds to support salaries rather than accomplishing the mission of the organization.

Recruiting public interest lawyers

Public interest lawyers are not merely people with legal training; they are most often individuals with a strong personal commitment to the missions and goals of the organizations and to the individuals they represent. No one can provide a formula for selection of a public interest lawyer, but there are some important issues that should be taken into consideration.

Hiring beginners may not always be the best choice. A fresh graduate may be enthusiastic, have the highest grades in law school, have done years of foreign study, receive the warmest letters of support from professors, and have put in years of active work in a law clinic. Still, a fresh graduate is a beginner. Unless time and resources are available to train a new lawyer, an experienced professional may better serve the interests of the organization.

A public interest lawyer must have experience in procedural law. Therefore, a scholar might not be an appropriate person to hire, even if he or she has handled

one or two cases per year within the framework of a law clinic. A better choice might be a former judge or prosecutor or a private attorney with significant procedural practice.

Lawyers from all practice areas and experience can be successfully attracted to work for a public interest organization. People of high professional caliber can decide to make career changes, and considerations more important than money may play a decisive role in this process. Large courts or prosecutorial offices usually involve very specialized and structured work relations. In contrast, public interest organizations offer the opportunity for lawyers to make independent decisions and to work in a challenging territory of law. Many lawyers committed to using their skills to accomplish meaningful social changes will be attracted to positions within public interest organizations.

Even though some public interest law organizations often end up having only one lawyer, there is always room for other professionals to join in, and there is no harm in the second or third lawyer of the office being slightly less qualified than the main attorney. In such cases, the more experienced partner can gradually bring the others up to the necessary level of expertise.

6.2 Supervision and training

Effective supervision starts and ends with good communication. Ideally, policies and procedures should be set forth in the employee handbook, including listing the types of conduct that management finds unacceptable and which types of misconduct are likely to result in disciplinary action, including immediate termination. In addition to providing feedback on individual assignments, supervisors should make every effort to have regularly scheduled performance evaluation meetings with the staff they supervise.

An effective way to conduct the evaluation is to provide written comments in advance, following standardized criteria, and to discuss the evaluation after the staff member has had a chance to review it privately. In addition, it is useful for the supervisor to identify several goals for future improvement, in consultation with

the staff member. This kind of system can help avoid morale problems within the organization in the event it becomes necessary to take disciplinary action with respect to a staff member. It is important to clearly communicate any performance deficiencies well in advance of the point at which a crisis may develop, in order to reduce conflict that may be counterproductive.

Frequently, supervisors rationalize their failure to effectively supervise their employees and maintain sufficient and accurate personnel records. There is often a laxity in supervisory practices or administration of personnel records, due in part to a reluctance to criticize employees engaged in helping to attain the organization's goals and in part to the press of day-to-day operations, which may be exacerbated by understaffing.

Staff members should also be given opportunities to develop their knowledge and professional skills. Public interest organizations should consider organizing regular professional roundtables that serve the dual purpose of increasing the flow of information and building potential coalitions. Staff also should attend informative lectures by knowledgeable practitioners and keep up-to-date with information in relevant journals and on the Internet.

7. Case selection, client relations, and conflicts of interest

Each public interest law organization will develop its own criteria for selecting cases and clients. Selection criteria are determined based on the mission of the organization, its resources, and the need to strike a balance between new cases and cases already on the docket of the organization. Typically, clients of a public interest organization fall into the following categories: professional NGOs, grassroots NGOs, groups of citizens, and individuals.

A client's educational and cultural background, interest, and involvement may affect the outcome of a case to a great extent. The level of the client's awareness of the strategic problem and his or her personal participation and willingness to cooperate are very important. Some legal steps cannot be undertaken without the client's involvement and/or consent. Moreover, as an ethical matter, clients should always be well informed about the steps being taken in their behalf and should be in agreement with them. In some situations, only the client is authorized to request and receive personal information or documents, or provide contact with key witnesses. The client's timely and responsible cooperation is vital for the

gathering of evidence and for the outcome of the case in general.

Although a public interest law organization may be very attractive to potential clients because it can offer free legal assistance, this factor alone should not be the sole motivation for the client's acceptance of such help. The strategic aims of a public interest organization can sometimes conflict with the narrower interests of a client. For example, a client who has been beaten by the police may prefer to negotiate a small cash settlement from the government, while a public interest group seeking police reform may prefer to litigate the case even when the likelihood of receiving a monetary judgment from a court is low. It is extremely important for public interest law organizations to ensure that their clients are comfortable with and agree to the strategic priority of the organization before undertaking the case. Otherwise, the organization will risk either wasting its resources on a case that no longer meets its priorities or violating its ethical obligations to the client.

Public interest law activities may result in clients facing some difficult choices or situations. These include publicity and interference with the privacy of the client, potentially negative media coverage of the case, efforts by authorities to intimidate or pressure the client to drop the case or to stop making wider strategic use of it, or isolation of the client from his or her community and/or family.

However, not all clients may be relied on or reasonably expected to provide a high level of cooperation; some may not be able to comprehend the importance of the steps they need to take, or they may be afraid of revealing their intentions before authorities. The public interest organization should determine whether a particu-

Client relations: Special issues in strategic litigation

Sometimes the burdens associated with strategic litigation are too serious or too many for one individual client to bear alone. It is the responsibility of the public interest organization, therefore, to be in constant contact with its clients, to provide moral support for them and, if necessary, for their families, and to develop strategies to counteract the negative consequences of strategic litigation. To this end, the organization might deploy strategies such as the following:

- rallying public expressions of support and understanding for the client and the cause
- raising awareness in the community and, as appropriate, the family of the client
- assisting with public and media relations for the client
- maintaining frequent contact with the client and, if necessary, with his or her family

Of all interested parties, the position of the victim is the most vulnerable one. Failing to assist, protect, and support a particular client not only might harm the interests of the strategic case, but may violate ethical obligations, as well as damage the image of the public interest group or lawyer. Lack of support might alienate the client, rendering him or her uncooperative, and could eventually result in the client's complete withdrawal from the case.

lar client is willing to cooperate and should offer assistance to make it easier for the client to cooperate.

The best relationships between public interest lawyers and their clients develop when both parties have a clear understanding of their legal responsibilities. Often public interest lawyers and clients sign a contract that spells out those responsibilities.

Garé and Dorog incinerator cases: How EMLA handled a conflict of interest

In 1995, the Environmental Management and Law Association (EMLA), together with its clients, took action against a hazardous-waste incinerator plan in Garé, located in southwestern Hungary. As many as 62,000 barrels of unstable chlorine-content hazardous waste were being stored in Garé. The owner of the waste wanted to set up a high-tech French incinerator on the site, which would have turned a good profit in time: the waste stored in Garé would have been burned in as little as

two years, after which the incinerator would start accepting external waste from across Europe.

The only problem was that the nearby wine-growing and spa villages, such as Harkány, were very likely to go bankrupt as soon as the incinerator started to operate, or even earlier, since their reputation would be damaged by the news that a waste incinerator was expected to operate nearby. Together with the concerned municipalities and dwellers' groups, EMLA challenged the environmental and building permits issued at various levels to the owner of the waste. After three years, the case was still active and the incinerator investor was growing less sure of the chances for success of the whole undertaking.

The investor started to consider an alternative to the local burning of the waste, suggesting that it be carried north to the already existing Dorog incinerator. However, Dorog was already a polluted city, and it also had a strong and active environmental NGO with more than 400 members. Together with the Dorog NGO, EMLA submitted a criminal complaint when the owner of the waste tried to bring the first shipment from Garé to Dorog without having a proper permit. EMLA also challenged the public investment procedure, and the manner in which the government announced the tender for the disposal of the Garé waste.

Some expressed the opinion that EMLA should not take up the second case, because the investor's decision to move the waste and locate the incinerator in Dorog was arguably in the best interests of the Garé municipal authorities who had joined in the first action. However, EMLA decided that once the representatives of a region accepted (at least silently) a solution harmful to another region, EMLA needed to intervene. Moreover, a number of experts stated that incineration would not be a good solution for either Garé or Dorog.

After this case, EMLA decided that in similar circumstances it would provide assistance again. EMLA decided that it would represent, for instance, the residents of several streets who all want to cut down on the level of traffic in their neighborhoods, because the solution is to mitigate traffic for everyone, not to transfer traffic from one location to another.

For more information, please contact the Environmental Management and Law Association (EMLA), Garay utca 29-31 I/1, 1076 Budapest, Hungary; tel: (36 1) 322 8462; fax: (36 1) 352 9925; E-mail: emla@emla.hu, info@emla.hu; Web: www.emla.hu.

8. Financial and Administrative Management

It is critical that public interest law organizations establish and implement sound financial management, as well as comply with a complex array of legal and generally accepted accounting principles in a timely manner. Each organization should maintain accurate financial records and ensure that its financial resources are used solely in furtherance of its mission. Well-established organizations maintain financial reports on a timely (at least quarterly) basis, accurately reflecting the financial activity of the organization, including the comparison of actual to budgeted revenues and expenses. Quarterly financial statements are generally provided to the board of directors. The statements identify and explain any significant variation between actual and budgeted revenues and expenses.

8.1 Budgeting

Budgeting is the process of planning for the receipt and use of future resources. Unlike accounting, which focuses on the past and involves more quantitative reporting, budgeting looks toward the future of the organization and reflects planned results. Budgeting is essential to the successful management of a public interest law organization and is carried out in three ways: planning, programming, and control.

Planning means setting forth the goals and objectives of an organization, often by writing out specific targets, dates, and methods to be followed. Usually the budget covers the same period of time as the account—twelve months—but longer or shorter periods are not uncommon.

Programming means executing the plans set forth in the planning phase. Participatory budgeting, a management style in which directives are developed in close collaboration with the staff responsible for implementation, has proved most advantageous in this stage. Working collaboratively will ensure realistic estimates, improve morale, and encourage compliance with budget targets. In planning programs, the organization should focus on the desired results if proposed funds were received; the fundraising team can then use these projections to solicit funds.

Control means comparing actual performance to planned goals and objectives. One way to control is to analyze budget variances. If the difference between planned and actual performance is significant, reasons are investigated and changes made to encourage more positive variances (cost savings) or discourage more negative ones (cost overruns).

In order for a budget to function, everyone involved in the organization must agree with it. Administrators and the board should support the budget and make clear to the staff that they are behind it. Administrators and the board should also avoid "padding" the budget, on the assumption that donors will automatically respond to revenue requests in part by cutting estimated expenses. Padding the budget will create distrust, which is ultimately more likely to cause donors to reduce requested grants.

8.2 Accounting issues

It is a good practice for a public interest organization to account for its resources and expenses, and to make this information easily accessible and comprehensible to the public, especially if part of its revenue comes from the general public. Such public access may also be required by law. If a donor has given funds to be used for a particular project, organizations generally segregate those resources and report separately on their expenditure. This separate accounting for limited resources is called fund accounting.

Fund accounting is a common form of organizational accounting, because it assures donors that their contributions are being utilized properly. However, because funds are separated according to their use (and not merely by assets and liabilities), overall financial reports can be confusing. It is the duty of the executive director, along with the chief financial officer, to ensure that financial statements are easily comprehensible, include all activities of the organization, and are prepared on a timely basis. In order to put the accounts into perspective, the organization should have a basis for comparison, such as the corresponding period of the previous year.

In order to avoid financial problems, the current accounts should be regularly compared with the chosen basis of comparison. Organizations should watch especially for any trend that indicates possible future shortfalls. If the accounts do indicate a shortage of funds or serious financial problems, some of the ways to respond include seeking increased contributions and revenue, raising fees for services, reducing expenses, or borrowing. In extreme circumstances, an organization should consider whether the needs of the beneficiaries would be better met by other organizations that have greater financial resources. If so, it might decide to merge or close down and transfer all its obligations to another, similar organization.

A knowledgeable and responsible person should be hired as the organization bookkeeper. If funds are available, it is highly desirable that a professional bookkeeper be hired, as a good bookkeeper can

save money and the time of other staff and volunteers. However, if funds are not available or the organization feels there is no need for a full-time bookkeeper, there are other options, such as hiring someone on a part-time basis.

To the extent that other staff members or others have access to or control over assets, the public interest law organization must install effective internal controls in order to avoid misappropriation of funds. If any discrepancies between the budget and accounts are promptly and carefully examined by the executive director or chief financial officer, the probability of a large misappropriation taking place is considerably lower. In addition to controlling expenditures, there must be effective controls over receipts of grants and other donations.

8.3 Filing systems and documentation

The filing systems of organizations generally evolve over several years, and each system is as individual as each organization. Various factors should be considered in setting up a filing system. First, keep files of the organization's internal operations separate from other files. For example, keep the files related to the organization's budget, tax status, office leases, insurance, membership, articles of incorporation, mailing lists, and the like in a different place from files about general political or policy issues, or program activities. An organization should always have correspondence files, one for "incoming" and one for "outgoing" correspondence. External files can include subject matter related to the mission of the organization. However, "internal" files will be similar from organization to organization. Typical internal files include ones for annual reports, bank statements or records, board meeting agendas, board meeting minutes, bookkeeping, brochures, budgets, bylaws, computer purchase and maintenance records, expenses, financial reports, grants, mailing lists, newsletters, office equipment, organizational charters, payroll, personnel, photographs, postal service, press clippings, a press mailing list, press releases, printing, publications, special projects, speeches and testimony, taxes, tax-exempt status, and a Web site.

9. Fundraising for the Public Interest Law Organization

Fundraising requires the public interest law organization to be actively engaged in a team effort. It is linked closely to the confidence and trust that staff, board, and volunteers have in the organization and their collaborative efforts to help it achieve its

mission. Success is measured not in how many donors are involved or in how much money is raised, but in the organizational results achieved with the funding.

The most essential component of successful fund development is a well-founded and well-documented strategic plan for the organization. The organization that has carefully evaluated its present abilities, measured its capacity against unmet public needs, and defined how it can address these needs successfully provides the best reason for donors to join the effort, because the organization knows and can document its purpose and can explain exactly how it will use their money. Without this essential plan, fundraising is only about asking for money and can never achieve much above "seed money" or "pocket change" from those asked to contribute. Truthfulness, donor confidentiality, and responsible stewardship are the foundations of organizational fundraising. The fundraising practices of a public interest law organization must be consistent with and respectful of the intent of current and prospective donors, as well as its mission and organizational capacity.

9.1 Fundraising strategies and methods

There are many techniques for fundraising, and many organizations engage in one or more active forms of fundraising each year. These annual programs usually have two main objectives: to ask for money needed to support the most important priorities in the current operating budget, and to find and retain more donors whose continued contributions will fund future programs with reliability. This type of fundraising serves as the core of fund development, because it is designed to produce predictable amounts of donor revenues year after year. Sources for annual gifts include foundations, governments, associations and societies, corporations, and individuals. Management of annual giving requires careful coordination of all methods, whether during a single year or as part of a multiyear effort, and is critical to improving results year after year.

Annual giving, whether through grants from foundations or contributions from individuals, is the chief means of building relationships between donors and public interest law organizations. Attracting new donors is the product of a yearly investment of time and effort; their value increases in direct proportion to the care and attention that they receive over time. This also means that donor relations programs should be an integral part of every annual fundraising activity. Such attention will help ensure that each donor's interest and support are main-

tained and that the commitment to the organization grows and continues to produce reliable contributions for the future.

Public interest law organizations can use one or more of the following annual giving methods during the year: (1) response to Requests for Proposals (RFPs) or offers to submit grant applications to annual or established financing programs focused on supporting the work of the public interest law group and similar organizations; (2) submission of unsolicited proposals to other foundations, associations, or funding organizations likely to have an interest in the organization's mission; (3) affiliate or membership development, if appropriate; (4) special benefit events; (5) volunteer solicitation committees; and (6) direct solicitation of contributions from individuals, including through the media, telephone, or mail. The goal of each option should be to acquire contributions from the same donors each year, or more frequently within a particular year, if possible. Such donors can become long-term supporters of the organization in the future, provided that the fund development strategy is designed with this in mind, instead of focusing only on a specific funding need within a single year.

To build on a solid base of annual giving, a public interest law organization can engage in more complex types of fund solicitation for significantly greater support, in size as well as in donor involvement and participation. The fundraising techniques used for the development of larger donations and grants are often defined within the context of a special campaign, such as building an endowment, which is usually more successful following a substantial number of years of annual giving.

9.2 Donor relations

Donors and prospects, whether individuals or institutions, require attention and consideration. Relations with donors remain important for reasons other than securing the next contribution. As with friendships, time and effort are required of both parties to maintain contact, show honest interest, share ideals and goals, and work together as appropriate. Thus, the true purpose of the fund development process is to unite people with the purposes of the public interest law organization. Relationships take time—often much time—to develop. They can be built, as with any relationship, through active communication: face-to-face meetings, telephone calls, and frequent correspondence. Many organizations develop mailing lists to ensure that donors regularly receive the organization's publications and updates about its activities. But

it is also important to ensure that there is a good channel of communication for receiving feedback from the donors. The most effective donor relationships are based on active dialogue.

9.3 Public accountability

Board members, lawyers, staff, and donors all become involved with a public interest law organization because of its public benefit mission. In turn, an organization should be transparent and make information about its mission, program activities, and finances available to its constituencies. It is a good practice for an organization to publish information about its mission, service activities, and basic financial data in an annual report made available to the public. The report should also identify the names of the organization's board of directors and staff. Personal information on individual clients, employees, and others must be kept confidential unless permission to release information has been obtained.

In addition to instilling public confidence in the work of the organization, another aim of these communications is to reach and encourage donors and volunteers, whether for financial support, time, expertise, or all of these. Of course, not everyone who receives information or even a service from the public interest law organization is able to help. However, it is important to remember that those whom you serve also may be able to serve you in the future.

Because no two organizations are alike, no two management systems are alike. The following examples from two public interest organizations illustrate various issues related to the management of public interest law organizations.

CLIENTS & CASES: EMLA'S LESSONS LEARNED

The Environmental Management and Law Association (EMLA) was founded in 1992 as an association of eighty Hungarian experts in the fields of science, law, journalism, and engineering. The original idea of the organization was to give those experts the opportunity to share and deepen their knowledge, while also serving as a resource for a wider audience with whom they could share their expertise. In 1994, EMLA identified a need for a professional legal advisory service for the not-for-profit environmental community. Today, EMLA works in both areas to ensure that

the "voice of the environment" is heard. Over the years, EMLA has developed certain guidelines that it follows when accepting cases. EMLA clients include organizations that can be placed in one of several groups.

Traditional NGOs have a well-developed structure (board, active membership, professional staff, community recognition). Despite their high level of professionalism, these NGOs in the region can rarely afford to employ their own attorneys who are experts in different aspects of public interest law (environmental law, human rights, constitutional law, and so on). Traditional NGOs, therefore, often seek EMLA's expertise in environmental law. The experts and the sophisticated organizational structures of traditional NGOs promote smooth relations and facilitate collaboration. However, such NGOs can be bureaucratic and slow in their decision making, and they may make ideologically driven decisions, which sometimes interfere with achieving practical results.

The Clean Air Action Group faces tough choices

The large French multinational company Auchan was planning to build a shopping center in Budaörs, a sleepy, picturesque village near Budapest. The Auchan shopping center was projected to result in up to thirty times more traffic in the quiet village. The Clean Air Action Group (CAAG), a national umbrella organization for smaller NGOs, engages in public interest representation. CAAG asked EMLA to challenge the building permit for the supermarket. EMLA's challenge was successful, and Auchan's building permit was revoked. Auchan soon faced a difficult situation: the race to construct shopping malls was at its peak in Hungary, and the company feared that any delays would put it in a disadvantageous position. In violation of the court's injunction, building on the Auchan site continued.

A top manager from Auchan flew from Paris to Budapest and knocked

on the door of CAAG. CAAG had consulted with EMLA and learned that the case might be lost at the second level of court review. Because of this, EMLA suggested that CAAG try to extract as many advantages for the environment as it could while it still had negotiating leverage. In order to do this, it would have to reach an agreement with Auchan. CAAG leaders declined, arguing that their original aim was still valid, that is, preventing the shopping mall from being built in Budaörs. They also argued that any compromise with their adversaries would destroy their reputation in the green community. The case was lost at the second level, but not before fourteen of the fifteen plaintiffs in the case dropped out after having individual conversations with Auchan representatives.

Grassroots NGOs have a less extensive organizational structure: few or no full-time officers, a changing group of core participants, and a loose association life and hierarchy. Grassroots NGOs often identify problems quickly, come up with creative solutions, and are frequently very tenacious and hardworking. However, grassroots activists sometimes are inexperienced in dealing with authorities and using the legal remedies available to them.

ZsMTE EXERCISES ITS RIGHT TO INFORMATION

Some lower- and mid-level environmental authorities in Hungary maintain good professional relationships with EMLA. One day the head of the Budapest Environmental Inspectorate invited one of EMLA's attorneys to visit his office. When the attorney arrived, the director waved a letter in front of him and asked, "What shall I do with this?" In the letter, ZsMTE, a small but active local environmental NGO, was requesting information in a very assertive manner. Invoking the Act on Access to Public Information,

ZsMTE demanded all the environmental records of a particular company. The Inspectorate classified the request as "unreasonable" because, in effect, it asked the agency to search through a vast amount of materials in order to properly answer ZsMTE's request. Had it identified more precisely what it wanted, ZsMTE would have obtained some relevant information.

Community groups include loose associations formed to promote particular interests of small communities. Some of these groups are ephemeral, while others become quite strong and well organized. It has been EMLA's experience that such groups make good partners, provided that it can determine from the outset who the leader of the association is, who is likely to represent the group in the future, whether the group is disciplined enough to follow outside legal advice, and, ultimately, whether the leaders represent anyone else apart from themselves.

The Zirc Citizens' Group takes action

In a pristine valley of the Bakony Mountains in Hungary there is a small town, Zirc, whose most important centers of activity consisted for many years of a natural science museum and a religious training center. When the management of an incinerator project realized that Zirc was the area closest to its consumers, it decided to begin construction of the facility there, right away. The citizens of Zirc organized themselves very quickly; they set up protest marches, posted placards, and made their case in the local media. The management of the incinerator sued them for slander and won. Construction on the site continued, even though the management did not have a valid building permit.

The citizens turned to EMLA. The community association called the EMLA offices every week, brought documents for review, and kept track of

the latest developments. A group of approximately fifteen remained the core of the association, though some of the faces in this core changed during the three years of legal battles. Two slander cases and one lawsuit challenging the construction of the incinerator were actively pursued at various levels of the court system. Finally, the incinerator was built with added filtering and smoke-washing systems. The citizens association continues to take samples of air pollution in the Zirc area.

It is sometimes difficult to estimate at first glance which cases serve the public interest or to assess all the possible ramifications of a particular case in order to determine whether it falls within the EMLA mission. It is also impossible to take up all cases that come to the attention of the organization, as EMLA attorneys have neither the financial resources nor the time to do that. Therefore, EMLA has devised the "never say no to everything" principle for dealing with cases that come to its attention. Following this principle, EMLA has identified different types of potential clients and the kind of service the organization can provide:

A listening ear. A potential client calls EMLA and explains his or her entire life story in several minutes. Usually, such people are satisfied to have someone listen to their problem or story, and they require no more than a listening ear.

Suggestions for action. Same contact as above, but EMLA might suggest some steps for the client to take. This scenario has the beginnings of a legal case, but no real legal measures are necessary yet. EMLA might advise the caller to form a loose association or register an NGO instead of fighting the battle alone, to turn to an already existing NGO for help, or to publicize the issue in the media.

Basic legal advice. The client definitely has a case, but it is quite simple. EMLA advises the client as to where he or she should go and what kind of forms must be completed.

Legal analysis and counsel. A potential client has a rather complicated case, and EMLA needs to analyze details in the file. EMLA may then decide to write pro-

posals and draft letters addressed to other NGOs, authorities, and others. From this point on, the client will be able to handle the case.

Comprehensive representation. The same as above, but this time EMLA represents the client based on a proxy and sends letters, official requests, or court complaints and does other necessary work.

The "one pine tree" case

One EMLA client was sued by his neighbor because of the "pollution" coming from a pine tree near his house: the neighbor claimed that she was forced to sweep the falling pine needles constantly; she also alleged that the roots of the tree pushed into the walls of her house and caused them to crack. Before he came to EMLA, the client had lost the case at the first and second levels and even on the extraordinary review level of the Supreme Court. The executory phase of the process had already started: the EMLA client had just received an official letter from the state civil law executor.

EMLA never regretted taking up what appeared at first sight to be one pine tree and a definitely lost case. The court ordered a technical expert to offer an opinion, and the expert did a fairly thorough job. He dug ditches, made calculations and drawings, and reached conclusions. He concluded that the pine tree was not responsible for the cracks to the neighbor's walls, but he reported that he found a root that grew out diagonally. Although this root was short and weak, the expert said, one day it would grow bigger and longer and might threaten the solidity of the neighbor's wall. The court consequently ordered that the tree be cut down as a preventive measure.

EMLA consulted an elementary school picture book called *Know Your Surroundings*, which shows several pictures of trees, including roots and their aboveground portions. The two parts have similar forms, indicating that the pine tree could not have roots growing diagonally. Professor Dezső Radó of the Horticultural Faculty of Saint Stephan University underscored this basic

rule at EMLA's request and added that the pine tree in dispute was worth more than the equivalent of USD 2,500—a significant sum of money in the region.

EMLA suggested that, instead of cutting down the pine tree, the client offer a large amount of insurance money in the event that the tree should rebel against its evolutionary history and grow diagonal roots that would harm the plaintiff's house. This solution might work even in the executory phase, provided that EMLA goes through some special procedural motions.

In this case, EMLA relearned an old rule: never give up when a case first appears to be lost. EMLA also learned that the value of a living tree (estimated sometimes through the price of firewood) is a less well known fact in our society, and natural living beings need the protection of the law too. Finally, EMLA realized that changes need to be made in the enforcement of criminal law: as of this writing, police handle tree-stealing cases as petty offenses, even though the actual financial value can be quite high. These are rich conclusions from a case that EMLA was initially reluctant to take up.

CLIENTS & CASES: BLHR'S DECISION-MAKING PROCESSES

Bulgarian Lawyers for Human Rights (BLHR) is a professional nonpartisan group of practicing lawyers. BLHR was established in 1993 to promote respect for human rights and legal standards in Bulgaria's young democracy. BLHR's initial activities focused on providing legal assistance and litigating on behalf of NGOs and victims of human rights violations in Bulgaria. In addition to litigating before national and international tribunals, BLHR provides training in human rights law and practice for the general public and the Bulgarian legal community.

BLHR members are established practicing lawyers who are members of the Bulgarian bar and have private practices in criminal, civil, and administrative law. Managing and coordinating the activities of a group of practicing lawyers are hard-

ly easy tasks. BLHR members have busy schedules, and their commitments to private practice sometimes take priority; this makes it difficult to find convenient times for staff meetings to discuss and agree on issues requiring group decisions. BLHR tries to be flexible and constantly reevaluates its experience in order to develop an optimal operational model; still, years after its founding, BLHR has yet to establish a definitive procedure for decision making.

Selecting cases

Initially, BLHR's major concern was how to make sure that the cases the organization takes up represent typical and repeated patterns of human rights violations. BLHR researched the annual reports of national and international human rights organizations and other institutions, such as the Bulgarian Helsinki Committee, Amnesty International, and the U.S. State Department, to become familiar with current and common concerns in the area of human rights.

Having identified the important issues, BLHR needed to know where to find cases that would allow these issues to be addressed through litigation. The answer to this problem was easier. Members of the bar face a prohibition on advertising their services to potential clients in Bulgaria, but BLHR receives referrals from Bulgarian human rights organizations, which are always looking for lawyers willing to help victims of human rights abuses. Some of the cases even came straight out of the individual practices of BLHR members, who were called on to defend minority religious groups, prisoners subjected to abuse, and similar cases.

After becoming well known as attorneys who represent individuals facing violations and unlawful restrictions of their rights and freedoms, BLHR members engaged in the difficult process of selecting among potential clients. The relatively small number of BLHR members and the lack of sufficient funding made it impossible to handle all cases of a similar nature. By spreading their resources too thinly, BLHR attorneys risked jeopardizing the interests of those in real need of help and advice. Consequently, BLHR developed the following criteria for the selection of cases:

- frequency of the alleged violation
- availability of domestic and international remedies
- probability of success in the Bulgarian system of justice
- probability of success before the European Court of Human Rights
- financial need of the client
- availability of transportation and other logistical aspects

BLHR's aim is to take up those cases that promise to challenge and change the existing law and practice, while providing effective help to those who need it most. The selection process requires knowledge of the human rights situation in the country and expertise in domestic and international law and practice. Some decisions require research and help from experts in international law.

Lawyers are expected to help those in need who turn to them, and the institution of a selection process may produce ethical issues. Yet the projects and funding of BLHR were not aimed at providing legal services to all. Still, BLHR attorneys found themselves providing help and advice in more cases than planned, and some of these cases clearly duplicated previous BLHR work. This overload, however, became useful to the strategy of the organization; the sheer number of similar cases works to emphasize the repetitive nature of certain human rights violations and to strengthen the impact of individual cases. On the other hand, each case typically represents only some aspects of the strategic issue, and in taking fewer cases BLHR may better address the problem as a whole.

Involving lawyers

One of the difficulties in public interest activities is finding lawyers willing to work for a cause. BLHR was founded on the illusion that it would be possible to motivate a large number of lawyers to participate in nontraditional professional activities. BLHR eventually found itself in a position to rely on already motivated colleagues known for their independence from the authorities and for the nondiscriminating way in which they provided their expertise to individuals in need of defense. Some

of BLHR's initial five members had represented dissidents in the authoritarian past. Others were qualified in international human rights law and were interested in activities to promote changes in law and practices to comply with the international treaties ratified by Bulgaria. Having the responsible task of challenging the legal status quo, BLHR preferred to work with well-known, established lawyers. This choice had three advantages: the victims benefited from their attorneys' high levels of specialized expertise, the cases themselves and organization benefited from the high profile of its attorneys, and the attorneys did not risk losing their solid base of private clients.

Expanding the group

Being under a prohibition to advertise, BLHR relied entirely on its activities to present the group itself and to inspire other colleagues to join in the practice of public interest law. At first, these activities looked so exotic to the traditional legal mind that they gave rise to ironic remarks, rather than admiration.

However, as the cases and issues taken up by BLHR came to be better known, lawyers who were dissatisfied with the domestic legal system began to contact the organization for information on available international remedies. Some of these colleagues remained in contact with BLHR and have benefited from the organization's research and expertise on a regular basis. Others joined BLHR after finding out more about its work and realizing that public interest law is interesting and challenging from a professional point of view.

BLHR's initial efforts to provide information and education for the legal community were not very effective. However, after the first Bulgarian cases before the European Court of Human Rights became known to the public, members of the bar and the judiciary found it necessary to learn more about the applicable international law. Consequently, BLHR's training activities became more and more popular and are now one of the important means by which BLHR attracts new attorneys to the field of public interest law.

In 2001, BLHR has fifteen active members and a large number of collaborators who benefit from the research and technical expertise of the organization.

For more information, please contact Bulgarian Lawyers for Human Rights (BLHR), 49A Gurko St., 4th Floor, Entr. 3, 3rd floor, #23, Sofia 1000, Bulgaria; tel: (359 2) 980 3967; fax: (359 2) 980 6203; E-mail: hrlawyer@sf.icn.bg.

RESOURCES

Readings

Alexander, S., *A Handbook of Practical Strategies for Local Human Rights Groups*, The Human Rights Program of the Fund for Peace and The Jacob Blaustein Institute for the Advancement of Human Rights, 1999, New York.

Reviews some practical strategies for overcoming the challenges that human rights groups working locally face worldwide. Based on interviews with local human rights organizations.

Center for Sustainable Human Rights Action, *Human Rights Institution-Building: A Handbook on Establishing and Sustaining Human Rights Organizations*, 1994, New York.

Compiled from the experience of activists worldwide, this manual offers an overview of the organizational issues that human rights groups have faced during various stages of development.

Center for Sustainable Human Rights Action, *A Quick Guide to Funding Sources for Human Rights Organizations*, 1995, New York.

Center for Sustainable Human Rights Action, *Generating Local Resources: Case Histories and Methods for Supporting Human Rights Organizations In-Country*, 1996, New York.

Council of Europe, *A Guide to the Role and Functioning of Non-Governmental Human Rights Organizations*, Council of Europe Publishing, 1995, Strasbourg.

Report from an international conference for nongovernmental human rights organizations from Central and Eastern Europe. Addresses such issues as cooperating with international human rights organizations and securing financial resources, among others.

Council of Europe Directorate of Youth and Sport, *Organisation Management Training Kit*, Council of Europe Publishing, 2000, Strasbourg. <http://www.coe.int/Youth/english/Partnership/t-kits/t-kit1.pdf> (last accessed on July 26, 2001).

Includes a discussion of organizational culture, adult learning, and staff management.

Grobman, G., *The Nonprofit Handbook*, White Hat Communications, 1999, Harrisburg, Pennsylvania.

Provides a reference tool covering issues that face the modern not-for-profit organization in the United States. Offers practical advice on running a not-for-profit, including chapters on communications, fundraising, lobbying, personnel, fiscal management, and organizational ethics.

International Center for Not-for-Profit Law (ICNL), *Integrity, Good Governance, and Transparency, Rules for Self-Regulation*, 1998, Washington, D.C. <http://www.icnl.org/gendocs/selfreq.htm> (last accessed on July 26, 2001).

A paper by ICNL on the legal and voluntary rules regarding transparency and good self-governance of NGOs.

Mediterranean Information Office for Environment, Culture and Sustainable Development, *A Guide to Successful NGO Funding*, Athens. <http://www.mio-ecsde.org/Publications/Other/funding.htm> (last accessed on July 26, 2001).

Muskin, J., *NGOs in Development*, School for International Training, World Learning, 2001, Brattleboro, Vermont. <http://www.sit.edu/publications/#ngos> (last accessed on July 26, 2001).

Material on the structural and institutional framework for participation in civil society; opportunities for providing basic education, capacity-building, training, and exchange.

Ryan, T., and K. Stanowski, *How to Write a Proposal*, Foundation for Education for Democracy, 1996, Warsaw. <http://www.human-rights.net/fed/proposal.htm> (last accessed on July 26, 2001).

Includes practical tips for drafting a proposal and organizing fundraising efforts specific to an organization.

Organizations

Center for Civil Society International
2929 Northeast Blakeley Street
Seattle, WA 98105, USA
Tel: (1 206) 523 4755
Fax: (1 206) 523 1974
E-mail: ccsi@u.washington.edu
Web: www.friends-partners.org/ccsi

Promotes relationships between U.S. voluntary sector agencies and civil society organizations in the former Soviet Union. Maintains a directory of civil society organizations in Eurasia and Western organizations with projects in the region.

Center for Civil Society Studies/ Johns Hopkins Institute for Policy Studies
The Johns Hopkins University
3400 North Charles Street
Baltimore, MD 21218, USA
Tel: (1 410) 516 5463
Fax: (1 410) 516 7818
E-mail: ccss@jhu.edu
Web: www.jhu.edu/~ccss

Provides research, training, and information sharing on not-for-profit sector and civil society issues, both in the United States and throughout the world.

Charities Aid Foundation
Kings Hill, West Malling
Kent ME19 4TA
United Kingdom
Tel: (44 1732) 520000
Fax: (44 1732) 520001
E-mail: enquiries@caf.charitynet.org
Web: www.cafonline.org

Provides both charitable and financial services for U.K. NGOs. Maintains a Web site containing resources for NGOs.

Charities Aid Foundation Russia (CAF–Russia)
Ulitsa Sadovnichaskaya 57
Office 4
Moscow 113035
Russia
Tel/Fax: (7 095) 792 5929
E-mail: legal@cafrussia.ru
Web: www.cafonline.org/cafrussia

Offers free consultations to NGOs on legal and financial problems, fundraising, and the development of civil society and an NGO school. Maintains a resource-providing Russian-language Web site.

CIVICUS, Worldwide Alliance for Citizen Participation
919 18th Street, NW
3rd Floor
Washington, DC 20006, USA
Tel: (1 202) 331 8518
Fax: (1 202) 331 8774
E-mail: donald@civicus.org
Web: www.civicus.org

Promotes citizen action throughout the world, especially in areas where participatory democracy and freedom of association of citizens are threatened.

Democracy Net/National Endowment for Democracy (NED)
1101 15th Street, NW
Suite 700
Washington, DC 20005, USA
Tel: (1 202) 293 9072
Fax: (1 202) 223 6042
E-mail: NED: info@ned.org; Democracy Resource Center: drc@ned.org
Web: www.ned.org

Makes grants each year to support pro-democracy groups around the world, including those in Central and Eastern Europe and the former Soviet Union.

EU Phare Programme
Phare and Tacis Information Centre
19, rue Montoyer
B-1000 Brussels
Belgium
Tel: (32 2) 545 90 10
Fax: (32 2) 545 90 11
E-mail: phare-tacis@cec.eu.int
Web: europa.eu.int/comm/enlargement/pas/phare/index.htm

Main channel for the European Union's financial and technical cooperation with the countries of Central and Eastern Europe. The EU Phare Programme provides support for legislative frameworks and administrative structures, as well as for projects promoting democratization and civil society, and for investment in infrastructure, including cross-border cooperation.

European Foundation Center (EFC)
Brussels Office:
51, rue de la Concorde
1050 Brussels
Belgium
Tel: (32 2) 512 8938
Fax: (32 2) 512 3265
E-mail: egc@efc.be
Web: www.efc.be

Warsaw Office:
Jaracza 3/39
00-378 Warsaw
Poland
Tel/Fax: (48 22) 827 22 27
E-mail: eric@efc.be
Web: www.efc.be

Promotes and supports the work of foundations and corporate funders operating in and with Europe. Its Web site includes a directory of funders active in Central and Eastern Europe.

Foundation Center
79 Fifth Avenue
New York, NY 10003, USA
Tel: (1 212) 620 4230 or (1 800) 424 9836
Fax: (1 212) 807 3677
E-mail: library@fdncenter.org
Web: fdncenter.org

Collects, organizes, and communicates information on U.S. philanthropy; conducts and facilitates research on trends in the field; provides education and training on the grant-seeking process; and ensures public access to information and services through its Web site and printed materials. Its Web site includes a useful database of U.S. funders.

International Center for Not-for-Profit Law (ICNL)
733 15th Street, NW
Suite 420
Washington, DC 20005, USA
Tel: (1 202) 624 0766
Fax: (1 202) 624 0767
E-mail: infoicnl@icnl.org
Web: www.icnl.org

Assists the creation and improvement of laws that encourage the not-for-profit sector in countries around the world.

Management Assistance Program for Nonprofits
2233 University Avenue West
Suite 360
St. Paul, MN 55114, USA
Tel: (1 651) 647 1216
Fax: (1 651) 647 1369
Web: www.mapnp.org

Provides an online library with resources on management for not-for-profit organizations.

Partners for Democratic Change
11 John Street
Suite 811
New York, NY 10038, USA
Tel: (1 212) 766 8806
Fax: (1 212) 766 8669
E-mail: pdci@ix.netcom.com
Web: www.partners-intl.org

Conducts training for leaders from NGOs, local governments, and private sectors in effective communication, negotiation, facilitation, mediation, and advanced change management skills. Has centers in many Central and Eastern European countries.

Two

MONITORING FOR THE PUBLIC INTEREST: GUIDELINES FOR EFFECTIVE INVESTIGATION AND DOCUMENTATION

This chapter explains:

- what monitoring is and its purpose and importance
- factors for preliminary consideration
- how to prepare a monitoring project
- steps in conducting an investigation
- methods of analyzing data gathered
- procedures for documentation
- how to present project findings effectively

1. WHAT IS MONITORING?

Monitoring is a broad term, used in many contexts, that describes various stages of collection, verification, and analysis by nongovernmental organizations (NGOs) of information concerning public interest issues, including civil, political, social, and economic rights. Monitoring, sometimes called fact-finding, encompasses two principal elements: investigation and documentation. Generally, human rights monitoring involves investigating incidents or government practices by gathering evidentiary material to identify and document the types, prevalence, and causes of human rights violations in an entire country, in a particular region where there has been conflict, or at the site of an individual incident.

There are a variety of methods for conducting monitoring activities. Investigation can occur, for example, through interviews with victims and witnesses of human rights violations; observation of events such as trials, elections, and demonstrations; or the use of more scientific survey techniques. It can also involve visits to relevant sites, including refugee camps or prisons. Documentation of the information and evidence gathered can take the form of a written, printed report or an open letter, or it may serve as the basis for a public meeting. Selecting the appropriate monitoring methods and forms depends not only on the objectives of the public interest organization, but also on a myriad of external and internal factors, described in more detail below.

One cannot overemphasize how critical it is that the information gathered is accurate and reliable, and that it is presented in as timely a manner as possible. In the context of human rights advocacy, challenges to the accuracy of the monitoring process and its results can undermine an entire campaign effort. All human rights advocacy activities, from the submission of complaints before national, regional, or international bodies to legislative initiatives and public education efforts, rely on the veracity and thoroughness of the underlying investigations and documentation. Regardless of the strategy or activity, accurate information concerning the violation(s) in question will always be necessary. An effective public interest campaign thus depends on following certain fundamental steps to investigate and document the actions or violations on which it is based.

2. Why investigate and document?

Monitoring is important for many reasons. Monitoring exposes human rights abuses or other public interest problems, providing a vital public education tool by helping to dispel the myth that such problems do not occur or that they are rare. With respect to human rights issues, not only can such exposure compel recalcitrant governments to cease violations or decrease their numbers; it pressures other states and human rights organizations to act as well. In addition, monitoring assists in securing effective legal recourse and other remedies.

Most relevant to the immediate concerns of public interest advocates, monitoring is vital to developing effective advocacy strategies, as it allows advocates to become fully informed of the nature and extent of human rights abuses or violations of other rights. Through monitoring, for example, an advocate is able to

discern whether a specific violation is an isolated event or falls within a larger pattern of abuse. Once an advocate is knowledgeable about the facts concerning a public interest issue and understands what requires attention and reform, the advocate can devise an appropriate plan of action. Such a plan may include efforts to change the law (for example, to improve poorly written or harmful legal provisions), its interpretation (for example, to correct mistaken or overly narrow interpretations of the law), or the practice of a state entity (for example, to stop one individual's abusive conduct or general practices that violate rights), or it might include a larger-scale plan to mobilize public opinion.

3. Preliminary Considerations

Preparation is a major component of any monitoring project. Even before such preparation begins, however, advocates should examine several issues. Preliminary considerations should include, but are not limited to, the purpose of the monitoring project, the intended use of project findings, the political situation in the country, region, or locality where the monitoring is to take place, and some important ethical issues.

3.1 Purpose of the monitoring project

At all stages of both strategic and short-term planning, it is extremely important to state with the greatest possible precision the actual goals that the organization intends to achieve, both through the public interest campaign as a whole and at each consecutive stage. The most common mistake is to define the goals too broadly, potentially weakening further stages of planning and the effects of monitoring. Planning should start with a careful selection of the aims of those activities, that is, with identification of what the organization intends to change. Moreover, advocates should assess the scope of their purpose in conducting a monitoring project in relation to the broader goals of the public interest organization. Selecting monitoring as an immediate priority of project activity depends on, among other issues, the possibilities for action, the severity of the problem, the number of people affected, and the realistic chances of bringing about change in that area within a reasonable period of time.

The choice of monitoring also depends on the availability of sufficient human and financial resources. An organization must carefully evaluate the manpower needed to conduct a monitoring project, as well as realistically assess its budget

with respect to the organization's entire scope of activities. The resources needed to conduct a monitoring project may affect the project's purpose in view of an organization's overall plan of action. For more detailed discussion of resource evaluation, allocation, and management, see chapter 1, "Setting Up a Public Interest Law Organization," and chapter 4, "Campaigning for the Public Interest."

The choice is further influenced by such factors as popular attitudes, the number and impact of potential allies, the response by state officials and other decision makers, and the political needs of the group in power. Other considerations may include whether the state under observation is nearing any deadlines for submission of reports on the implementation of international agreements; whether there are announced visits by any international missions; and, more generally, whether the state is under international scrutiny because of a public interest issue.

3.2 Intended use of findings

Monitoring is part of a broader spectrum of advocacy activities aimed at changing the status quo; it is not an aim in and of itself. The intended use of a monitoring project's findings affects the construction of the particular project. When findings are intended for use in a legal proceeding, the project must be planned somewhat differently from one designed for other purposes. For example, an organization may seek to challenge in domestic court the constitutionality of a selected legal provision, or it may bring an action before an international tribunal to prove that state's violation of a convention or treaty provision. If advocates intend that project findings will lead to litigation, the project must emphasize the need to uncover a violation or pattern of violations that will satisfy the organization's criteria for selecting the best test case.

Where advocates plan to use findings in support of public education activities, the monitoring project should be tailored accordingly. For example, if findings are to be revealed at a public meeting for informational purposes, the impact will be greater if such findings are presented in a more direct, tangible manner. Or the project might seek to identify victims of human rights violations who would be able and willing to appear in public and share their experiences with people, and whom the public would find credible. Likewise, the project should endeavor to identify sympathetic victims if the findings will appear as part of a press campaign. Of course, advocates should be careful not to pressure a victim to appear publicly if they believe there is a risk of negative consequences from publicizing that person's particular situation

(see section 3.4 below). In contrast, where monitoring results are compiled in government or shadow reports or counter-reports, and submitted to legislatures or institutions such as the United Nations or the Council of Europe, the monitoring project should try to gather statistics and figures, to the extent possible.

3.3 Effects of political climate

Another important factor to consider as a preliminary matter is the political climate. The manner in which human rights monitoring, particularly investigation, occurs depends on the political environment or circumstances existing in the country or region to be monitored. In a state where civil society is well developed and relations between governmental and nongovernmental actors are good, local governmental institutions and agencies may prove to be reliable sources of assistance. On the other hand, where this is not the case, government officials are unlikely to provide assistance, forcing a monitoring project to conduct its own independent, sometimes secret, investigations. A state's willingness or likelihood of providing assistance is not solely a matter of political circumstances, but may also hinge on other issues such as the perceived need for reform, the level of bureaucratic formalities, and the extent to which time and resources are available to provide such aid.

3.4 Importance of ethical issues

Ethical considerations constitute another vital aspect of the preliminary factors that must be examined. Those involved in monitoring human rights violations must remember that their ultimate duty is to ensure the rights and interests of the victims of human rights abuses whom the monitoring project is meant to serve. This means keeping in mind the security and welfare of the people who provide information. Advocates should consider whether the dissemination of certain information will cause any victims further harm. People likely to be affected by the monitoring process should be consulted on matters that may affect them as a result of the project. The security of monitors and all other people responsible for the execution of the monitoring project must also be considered carefully. Such risks should be kept at a minimum. Other ethical issues are addressed later in the chapter (see section 5.1).

4. Preparing a Monitoring Project

Careful planning and preparation are essential to the success of any monitoring

project. Although unexpected difficulties may always arise, thorough preparation contributes to the efficacy of the investigation and helps to ensure that the project's objectives are accomplished. The following steps are general guidelines for preparing a monitoring project:

4.1 Set investigation objectives
4.2 Specify the issue
4.3 Identify key actors
4.4 Determine informational needs
4.5 Analyze the law
4.6 Select research tools and techniques
4.7 Assemble and train monitoring team(s)
4.8 Make logistical and other arrangements

4.1 Set investigation objectives

Determining what the monitoring project will investigate and document clarifies the direction that the organization has chosen in its campaign and specifies the type and amount of human and financial resources necessary to accomplish project aims. Setting objectives also provides a better understanding of the size and scope of the project itself. Although the objectives may change as the inquiry progresses, it is best to begin with a clear idea of what issues are to be investigated, what the monitoring seeks to achieve, and what advocacy strategies might emerge from the findings of the investigation.

In identifying the initial focus of the investigation, it is critical to consult with those likely to be affected by it. Consultation should involve, at a minimum, discussion with victims and survivors of human rights violations, as well as any other groups already working on the issue. This type of advance consultation helps clarify the investigation's objectives and lays the groundwork for further cooperation.

Since the goal of a particular investigation or advocacy campaign may be very specific or very broad, an organization must tailor the investigation procedures accordingly. A narrower objective is usually easier to achieve than one that is more extensive, but a limited monitoring effort can still bring attention to broader issues. For example, an investigation into instances of a specific human rights abuse, such as a highly politicized trial, may shed light on broader defects in the judicial system as a whole. Yet sometimes a narrower focus is neither possible nor expedient. Generally, the broader the goal, the more expansive the investigation must be. The breadth of the inquiry will in turn affect the time allocated for the effort, the human and financial resources necessary, and the ability to articulate a clear and achievable remedy.

What rights can be monitored?

An organization may choose from a broad scope of objectives for its monitoring project, which can evaluate a state's status in protecting and promoting

- **one specific right in a specific geographic area,** such as the right to personal integrity, the right to a fair trial, the right to privacy, or the right to freedom of speech;
- **any or all rights of subjects of various open or closed institutions,** such as correction facilities, hospitals, military units, or welfare homes;
- **rights of members of social minorities,** such as national, ethnic, or religious minorities, indigenous peoples, refugees, migrant workers, homeless people, people with physical or mental disabilities, people infected with the HIV virus, or people addicted to drugs and alcohol;
- **rights of people in incidental contact with state institutions,** such as the search or arrest of a person by police, seizure of property by a court officer, or participation in litigation;
- **rights of people in incidental contact with quasi-governmental officials,** such as private investigators, bodyguards, restaurant, shop, and club guards, or ticket collectors in public transportation vehicles;
- **rights relating to measures undertaken or supervised by state institutions,** such as elections, or activities aimed at stifling social protests;
- **compliance with human rights standards through the promulgation of laws,** including laws enacted by legislative and executive government at all levels;
- **implementation of newly enacted laws addressing the protection of human rights,** such as a mental health act, a labor code, or a penal code.

To initiate public discussion on a broad issue, such as the operation of the court system or practices of local police, and advocate significant changes, it is

often sufficient to focus on a relatively small number of incidents. A project's success in relation to one important aspect of its objective may bring about success on other levels. Consider, for example, that police officers who respect the right to privacy or the right to have a lawyer present during questioning are unlikely to behave brutally during arrest or detention. Thus, in aiming to improve human rights observance by a state institution, it is not always necessary to include all spheres of that institution's activity in the monitoring. Improvements in a few but well-chosen areas often lead to reform of the entire institution.

Furthermore, an organization can formulate specific tasks within the overall objective of the investigation, in order to structure and focus investigation efforts. For example, if the monitoring project's objective is identifying and removing the causes of widespread rights violations by the police, the project can divide its investigation into tasks such as examination of police brutality, observance of the right to privacy during searches and seizures, and compliance with existing procedures related to arrest. With regard to the last two tasks, monitors may ask, for example, whether detained people were allowed to contact a lawyer and notify their family or someone else as to their whereabouts. If a medical examination was necessary, monitors may ask whether the detainees were permitted to be examined by a doctor of their choice. If the investigation objective is identifying and removing the causes of violations of the right to a fair trial, tasks may include examination of the length of proceedings, an assessment of the impartiality and independence of the court, analysis of the procedural correctness of proceedings, and observance of the right of access to courts for underprivileged people.

4.2 Specify the issue

It is often more difficult than it seems to identify the issue that will come under investigation. For example, international human rights law generally binds the state, but not individuals. For a specific violation to constitute a human rights abuse, the monitoring findings must therefore connect the violation to some form of state action or inaction. Investigations must show either that the state, through its officials or other representatives, is committing human rights violations or that private individuals are committing violations while the state is consistently failing to respond to those violations. Thus, in cases of domestic violence, for instance, the actual violation is not only the domestic abuse itself but also the state's failure to prevent or punish

such abuse. Defining the nature of the violation at an early stage can help advocates formulate appropriate questions and be alert for information that either confirms or refutes that initial definition.

4.3 Identify key actors

The process of setting objectives, including advance consultation with potential sources of information, will help to identify key actors in the situation. Relevant actors should be identified as soon as possible. Waiting until after the investigation has begun may add needless time and pressure to the process and thus may lead to a less complete investigation. Determining the players in advance also helps with resource allocation and selection of interviewers. Key actors will generally include victims and survivors of human rights violations, their families or representatives, other advocates working on the issue, individuals or entities suspected of perpetrating such violations, and people with direct knowledge of the violations or with responsibility for addressing them.

Identifying the alleged perpetrator(s) is also critical to the planning process. Governments may be directly accountable for particular issues or indirectly responsible as a result of their failure to act in preventing human rights violations or punishing private actors. Different types of information may be needed and a variety of people must be interviewed, depending on the particular situation and relationship of the perpetrator to the state. Demonstrating state responsibility often requires a broad range of interviews to support the contention that a given violation was not an isolated incident but part of a pattern of behavior for which the government is directly or indirectly responsible.

4.4 Determine informational needs

Determining what kind of information should be gathered is often easier than determining from whom the information can be acquired. Yet in every investigation, some likely sources of information are readily apparent. Generally, potential sources of information include individuals who provide information through interviews or surveys, observations of events by monitors, and official documents collected from and by institutions, such as court files and records maintained by a prison administration or other relevant agency. Other sources may include human rights organizations and other groups in the locality or country that may already have documentation based on preliminary or local investigations, and lawyers, courts, or government officials who may have

information about applicable laws and state actions or responses to the violations. The more clearly and specifically they can be identified in advance, the more effectively investigators can utilize their time during the actual investigation.

Investigation checklist

Although it may be impossible to anticipate all of the information that investigators will need to obtain, having a strong sense of the goals of the investigation, the violations to be investigated, and the main players involved can help determine informational needs.

Most investigations must include certain fact-finding aspects, including the following:

- the nature of the violation
- whether the violation is an isolated incident or part of a pattern of abuse
- the violator(s)
- any actions taken by those affected by the violation
- government action or response
- actions taken by any third-party governments or institutions

As factual information is obtained, other informational needs become apparent, including the following:

- relevant laws, regulations, and procedures, both local and national
- the common practice with respect to those laws, regulations, and procedures
- relevant international law
- the government's obligation, if any, under the law

Many investigators and advocacy organizations develop checklists of the kinds of information that investigators are most likely to need. This helps to guide investigators in planning the investigation and in managing their time, by helping them

to remain focused as they gather information, thereby increasing the likelihood of obtaining useful results and reducing the need for follow-up work, which can be quite costly.

Adapted from *Women's Human Rights Step by Step: A Practical Guide to Using International Human Rights Law and Mechanisms to Defend Women's Human Rights*, Women, Law & Development International and Human Rights Watch, 1997, Washington, D.C., chapter 6.

4.5 Analyze the law

The analysis of relevant law begins during the preparation stages of a monitoring project and continues through the completion of the project. In accordance with the hierarchy of sources of law, analysis of the law for monitoring purposes should include both international and domestic law.

Who should conduct the analysis of the law is frequently a concern of advocates involved in a monitoring project. Legally trained professionals, of course, are essential to a comprehensive understanding of the relevant legal provisions. It is equally important, however, for others with specialized knowledge about the particular matter being monitored to be involved. Legal analysis should be a cooperative interdisciplinary effort, in order to maximize knowledge of the law as well as of the relevant social, political, and economic situation.

4.6 Select research tools and techniques

Choosing among a broad range of investigative tools depends on almost as many factors as does the initial decision to conduct a monitoring project. Selecting such tools not only depends on what the project intends to investigate and examine but also hinges on such factors as political conditions in which the monitoring project will operate; the size of the community, country, or region; the level of attention to the issues being investigated; safety issues involved in conducting an investigation; and even the need for translators.

Analyzing such factors to determine the most appropriate research tools and techniques is critical to preparing an investigation. Research tools and techniques should ensure not only that all necessary information is gathered, but also that it is collected in a way that is appro-

Three principles of research tool selection

1. **Ensure the impartiality of investigators.** To the extent possible, the chosen technique(s) should reveal all facts and make certain that all relevant parties are heard. An investigation that appears unbalanced can lead to conclusions that are unsupported and thus readily challenged or dismissed.
2. **Check and recheck facts.** The strength of any advocacy campaign depends on the facts on which it is based. Investigators should agree on a research method that promises accuracy by incorporating the steps and time needed to guarantee it. Thus, any reliable research tool should include questions or some other means of testing the veracity of both the monitor and the individual providing information. One incorrect piece of information could undermine the credibility of the entire investigation.
3. **Seek specificity.** The more specific an investigation's findings, the more useful they will be. Advocates should employ research tools that enable the investigation team to target and gather data that is detailed enough and that can be directly relevant to the particular human rights violation.

priate to the circumstances. Thus, choosing research techniques is a series of strategic decisions based on an informed assessment of what needs to be accomplished and of the most effective way to accomplish it. Choosing the order in which interviews will occur, for example, can make all the difference in the effectiveness of the investigation. Speaking to relevant government officials before interviewing those most affected by the abuse may result in missing key questions that should have been asked of the officials.

4.6.1 Uniformity in documentation and presentation. The success of the investigation will ultimately depend on the effectiveness of the effort to document and present research findings. Advocates must therefore be careful to select tools, such as mailed or in-person questionnaires, surveys, and specialized instruc-

tion for monitoring teams, that will maximize the results of the research. The selection and consistent use of a particular research tool will also have consequences regarding what method of analysis can be employed and whether the information obtained will be comparable for purposes of determining patterns.

It may be helpful to utilize research tools such as diagrams or charts to categorize information obtained from official documents, which can state precisely what type of information is obtained from what documents or parts thereof, as well as the principles of classification of such information. A standardized form describing important traits of examined documents, such as the timeliness in receiving the document or the physical characteristics of the document that may imply the frequency of its use, can also be useful. Most importantly, monitoring teams that utilize the same research tools consistently are able to more easily compile and analyze their findings. With this aim, several regional networks, such as the European Coordination Committee for Human Rights Documentation, provide NGOs with basic tools for information handling and documentation control.

An organization of particular note is the Human Rights Information and Documentation Systems, International (HURIDOCS). HURIDOCS seeks not only to improve access to and dissemination of human rights information through effective information-handling techniques, but also to help establish the infrastructure necessary to organizations investigating and documenting human rights information. This network provides basic tools, including directories, standard formats for recording various types of information, and standardized terminology, in addition to expert advice on technical, organizational, and managerial practices. HURIDOCS also sponsors meetings, seminars, consultations, and even training courses.

4.6.2 **Interviews.** Information obtained from individuals may be gathered in the course of an interview. Generally, there are three forms of interviews: (1) the unstructured interview, in which the monitor and the individual have free-flowing conversation on a specified subject; (2) the semi-structured interview, in which the monitor and the individual engage in dialogue that follows a general pattern decided in advance; and (3) the structured interview, in which the monitor asks the individual previously written questions in a specific order.

Monitors can decide how many interviews to conduct based on statistical methods chosen in advance or on the principle of saturation. Under the principle of

saturation, monitors interview many different individuals until they find that several of the individuals in succession fail to augment the already-obtained information. Monitors may choose to select whom to interview on the basis of the snowball principle, whereby the monitor asks each individual during the interview to name other individuals whose information or opinion could assist the investigation and who may be willing to participate in an interview.

When planning interviews, monitors should decide in advance how to document the information obtained. For example, the monitor could choose to take notes during the interview or to conduct the interview while another monitor takes notes. Interviews could also be recorded, though monitors should be aware that this form of documentation often contributes to an individual's reluctance to speak freely or is simply rejected by the individual to be interviewed. In the event that monitors cannot document an interview in any form while it is conducted, the information obtained should be documented as soon thereafter as possible. Waiting to reconstruct the details of the information obtained in an interview, particularly if monitors delay doing so until after other interviews have been conducted, could sacrifice accuracy and precision in documentation. A related factor in planning interviews is the location of the interview. Monitors should make sure the location is safe and allows the interviewed individual to feel comfortable. Interviewers should endeavor to talk to individuals in private, or at least outside the presence of any actors involved in the subject under discussion.

Monitors should seek to interview witnesses of events, as they are often good sources of information. When interviewing a witness to an event, monitors might consider asking the witness for a written and signed statement describing that event. On the other hand, if the individual could potentially suffer negative consequences from his or her testimony, being asked to put such a statement in writing may discourage the witness from providing information.

4.6.3 Consent and confidentiality. Monitors must make many important decisions regarding confidentiality. They need to decide what information will be made public, through the publication of a report or otherwise, and what information will be kept confidential. This decision applies not only to particulars of an institution under investigation but also to individual data. The decision to make certain information public must involve consultation with and consent of all sources of

that information. In order to obtain consent, monitors will need to explain to their sources both the organization's need or desire to make the relevant information public and the potential effects of doing so. Monitors will face the difficulty of balancing the need to obtain more information against the possible effects of publicly naming a person, group, or institution with a record of rights violations. Decisions regarding confidentiality should be made as early as possible in the monitoring process so that they can be applied consistently throughout the process.

Sources should be informed prior to being interviewed what degree of confidentiality is being promised (for example, the information will not be made public, or the information will be made public but the name of the source will be withheld). Once the information is obtained from a source on the basis of a particular understanding, it should never be used in a different manner without obtaining the express consent of the person who provided it. Doing otherwise would be unethical and would potentially undermine the organization's ability to obtain sensitive information in the future.

It is particularly important for monitors conducting a secret investigation to inform each individual being interviewed how they intend to use the information they gather; whether they intend to disclose the source of the information, such as the identity of the individual; and how and to what extent they are able to guarantee the safety of the individual. Monitors involved in a project in which a risk of retaliation exists assume responsibility for these actions.

4.6.4 **Observation.** The observation of events by monitors is another research technique. Observation as a monitoring technique can be either "external" or "participatory." Monitors conduct external observation when they want to investigate the work of state officials in a public setting, such as a judge's implementation of the due process principle in the courts or police conduct during street demonstrations. During external observation, monitors usually use an observation sheet prepared in advance, specifying what is to be observed, noted, and documented, and the form the documentation should take, such as photography, video recording, or sound recording. Monitors should select the subjects of observation with utmost care.

Participatory observation involves the monitors' direct participation in the event being observed. When conducting participatory observation, a monitor plays the role of a person who would ordinarily attend the event being observed. For

example, a monitor investigating police conduct during a demonstration or sporting event would assume the role of a protester or sports enthusiast. Monitors should be careful to look inconspicuous, not to stand out among the other participants or spectators at the event. A monitor's task would then be to regularly take notes on data specified in advance. Participatory observation requires more flexibility in that it involves looking for different things or occurrences and requires different levels of analysis and less recording.

Monitoring police conduct: Berkeley, California's Copwatch

Copwatch is a community organization whose stated purpose is "to reduce police harassment and brutality" and "to uphold Berkeley's tradition of tolerance and diversity." Established in 1990, its main activities are monitoring police conduct through personal observation, recording and publicizing incidents of abuse and harassment, and working with Berkeley's civilian review board, the Police Review Commission.

Copwatch sends teams of volunteers into the community on three-hour shifts. Each team is equipped with a flashlight, tape recorder, camera, "incident" forms, and Copwatch handbooks that describe the organization's nonviolent tactics, relevant laws, court decisions, police policies, and the actions that citizens should take in an emergency. At the end of a shift, the volunteers return their completed forms to the Copwatch office. If they have witnessed a harassment incident, they call one of the organization's cooperating lawyers, who follows up on the incident.

Copwatch holds weekly meetings, and its activists attend public hearings of the Police Review Commission. It publishes a quarterly newsletter, *Copwatch Report*, which features a "Cop Blotter" column describing examples of alleged police misconduct gleaned from Copwatch incident reports.

Although the group's impact has not yet been studied independently, Copwatch activists are convinced that their monitoring activities deter and thus reduce harassment and abuse.

COPWATCH INCIDENT REPORT FORM

Date_____ Time_____ Place_____
Officers (names & numbers)_____
Police Car License No._____
Arrestee/Victim's Name_____
Other information_____
Suspected charge_____
Witnesses (names & phone numbers)_____
Injuries?_____ If yes, describe_____
_____
_____
Photos or tapes?_____
Does arrestee need a lawyer?_____
Description of incident _____
_____
_____
Name of Copwatcher_____

For more information, please contact Copwatch, 2022 Blake St., Berkeley, CA 94704, USA; tel: (1 510) 548 0425; E-mail: berkeleycopwatch@yahoo.com; Web: copwatch.home.sprynet.com.

Investigators examining police conduct can obtain further information by (1) monitoring admissions of victims of police actions to hospitals, as well as medical help rendered to such people by emergency departments; (2) determining under what circumstances the police summoned ambulances; (3) visiting police stations where arrested people are brought; and (4) attending proceedings at penal administrative commissions or courts.

4.7 Assemble and train monitoring team(s)

Another important activity in planning a monitoring project is assembling one or more monitoring teams for the investigation. In addition to carrying out the proj-

ect objectives, the monitoring team(s) will be seen as representatives of the organization conducting the investigation and will interact with other advocates, victims, government officials, and anyone else who is involved. A successful investigation relies on the ability of such monitors to carry out an investigation in a knowledgeable, directed, and respectful manner. It is also critical that monitors use information gathered during the investigation only for the purposes of the investigation and do not make independent use of that information without prior consent from the monitoring project leaders.

4.7.1 **Assembling teams.** Monitoring is often carried out by several teams that work independently from one another but within the framework of a single project. Individual monitors should possess not only the necessary professional qualifications, but also strong interpersonal skills and the ability to work well as part of a team. It is important that all team members be able to trust and respect one another. Thus, individual members of a monitoring team should be chosen strategically and should not be replaced during the project unless absolutely necessary. Equally important, the nature of the investigation will shape the composition of the monitoring team(s). While all individual monitors in a team should possess objectivity, impartiality, and training in interviewing and data collection, the team as a whole should include a diversity of skills, knowledge, and backgrounds.

For example, a team investigating prison conditions would ideally include a lawyer, a physician, and someone who is familiar with the internal workings of a prison, such as an expert in prison administration, a former prison guard, or a former inmate. A team investigating child labor would ideally include not only a lawyer and a physician, but also a child psychologist or specialist; in addition, that team should include someone who is familiar with company practices regarding children who are subject to forced labor, such as a parent, former company officer, or former victim of forced labor.

It is also important that a team include individuals who are well prepared to deal with people or places that the team will likely encounter. A team investigating public demonstrations, for example, should not include a monitor who fears large crowds or seeing physical violence. Likewise, a team investigating psychiatric hospitals should not include a monitor who is uneasy with or unable to handle situations involving mentally ill people.

Each monitoring team should appoint a team leader responsible for coordinating the team's activities and for making decisions, particularly in unexpected situa-

tions. In dangerous communities or under threats by police or other officials, for example, teams often confront certain difficulties or disagreements. A team leader is indispensable to and responsible for resolving such problems between the team and others or among team members themselves in a safe and efficient manner.

4.7.2 **Training teams.** A project should spare no time or energy in training its monitors. The quality of an investigation's results, and thus of the project itself, greatly depends on the preparedness of the monitoring teams. Monitors should understand the purpose of the monitoring effort and how it relates to an organization's project goals and overall mission. Monitors must understand the objective(s) of the investigation, and who and what are subjects of the inquiry. They should receive appropriate instruction and training for utilizing the selected research tools so that each team's results are comparable to those of another team. Monitors should also be acquainted with relevant law, including international law as well as pertinent domestic provisions. For example, a team investigating state institutions should understand, among other issues, the institution's internal documentation procedures and terminology. Team members should conduct themselves with the utmost professionalism, so that the institution's staff members treat the monitors appropriately and seriously. A team investigating specific social or geographic communities, such as ethnic minorities, should acquire some knowledge of community-specific customs.

4.7.3 **Conducting pilot surveys.** In large-scale and elaborate monitoring projects, monitors may conduct a pilot survey prior to dispatching the monitoring teams to conduct the actual investigation. A pilot survey is a survey conducted by a team to test the utility and effectiveness of the selected research tools and techniques. Those who developed the selected research tools should participate in the pilot survey, along with people who did not have a direct role in the project's planning and preparation. The latter group can provide an objective perspective in appraising the use of specific research tools. A pilot survey is beneficial in that it can reveal difficulties that may not have been foreseen during project planning, and it also tests the rationality of the time period and amount of funds allocated to carry out the project.

Pilot survey findings should be analyzed with the aim of confirming or fine-tuning the selected methodology for the investigation. In many cases, pilot survey results demonstrate flaws in research tools and intended methods of analysis. Project

participants can then make any necessary changes to research tools, techniques, or methods of data analysis, and they may even reappraise scheduling and budget considerations accordingly.

4.8 Make logistical and other arrangements

An organization must also examine in some detail the financial and technical resources required for investigators' travel, lodging, and other expenses related to gathering data and other information. Project leaders, in consultation with monitors, must determine what equipment and other things will be needed to properly obtain information, such as paper, postage fees, recording devices, and the like. Assessing travel needs is yet another consideration. Once these and other expense-related questions are posed, advocates can decide whether additional funding is required and, if so, make plans to secure such funding.

Because language skills are critical to the accuracy of interviewing and of gathering other information, a monitoring project in another country, and even in some communities in the same country, must often select interpreters. The key issues in the selection of an interpreter are whether he or she can elicit honest and complete information from the individual being interviewed, will remain objective, and is willing to follow the monitor's instructions carefully. Interpreters must be carefully instructed to translate everything that the monitor and interviewee say, literally and completely. This ensures that the monitor, and not the interpreter, will be able to judge the relevance of the information provided and the proper sequence of the questions.

5. Conducting the Investigation

Preparing a monitoring project can be a substantial undertaking. The real substance of a monitoring project, however, lies in conducting the actual investigation. Conducting interviews, observing events, visiting sites, and gathering secondary information form the essence of human rights monitoring. Each of these steps, however, must take into account relevant ethical concerns and security precautions.

Generally, monitors must observe two principles in the course of conducting an investigation. First, monitors must distinguish facts from opinions, suspicions, and hypotheses. Information without a reliable basis can undermine the final report and compromise the efforts of the entire monitoring project. Second, and

related to the selection of proper research tools, monitors need to maintain impartiality. Monitors cannot allow themselves to become emotionally involved. Fellow monitors and team leaders need to be alert to this possibility and consider removing a monitor who experiences this problem.

5.1 Balancing ethical concerns

Monitors often face ethical problems in the course of monitoring. For example, a monitor who has learned from a victim that a state functionary has committed a serious offense must decide whether to reveal that information to the appropriate authorities against the wishes of the victim. In many countries, social organizations have an obligation to report offenses they discover in the course of their activities. Enforcement of this obligation, however, is practically nonexistent.

Making such a decision is most difficult in cases where the monitor, in disclosing the information, has to reveal the identity of the source, thereby exposing that person to the risk of repression and even physical harm. Aside from concerns for the safety of a victim, monitors also may have to weigh the need for in-depth inquiry—for example, into homosexual rape in prison—against the desire to minimize any interference with a victim's privacy.

Arguably, even the source's consent to disclose information that he or she has provided is not the final word on the issue. A monitor may still need to further evaluate the ethics of disclosure. Ultimately, decisions such as these have to be based on a balanced appraisal of each particular situation.

How monitors resolve certain ethical problems may also depend on the political circumstances in which they are operating. Monitors sometimes encounter difficulties in obtaining court or other legal documents, for example. They must assess the need for the information contained in such documents, and then decide whether to obtain them through illegal means if necessary. Such a decision clearly depends on each specific case. In a totalitarian regime, where human rights allegedly are violated on a mass scale, monitors may decide it is morally justified to take such action. In a democratic regime, monitors should consider taking such action only if there is a legitimate public interest in doing so and if disclosure of the information is consistent with human rights guarantees, including the right to privacy. Sometimes monitors withhold portions of the information they obtain, such as individual identities, if disclosure would interfere with privacy rights or put individuals at risk.

5.2 Taking security precautions

Project leaders should reassure monitors that they will take all possible measures to guarantee their safety, a particular concern during difficult interviews, such as ones with severely mentally disabled people or dangerous criminals, and during projects carried out in communities experiencing violent social conflict. Security precautions should be a key component of any investigation, and it may be necessary to implement a check-in procedure, for participants in the monitoring project to contact colleagues or family members on a regular basis, or to create a mechanism for protecting notes and other documents. Monitors and their families should have recourse to all legal, economic, and medical assistance available in the event that they fall victim to repression by authorities.

Where safety concerns prohibit field visits or where the government denies entry to foreign monitors, testimony may still be gathered from displaced people, refugees, or others who have left the country. Methods for obtaining information under such circumstances, though less reliable than in-person testimony, include telephone calls and signed statements of witnesses and victims. Here again, protecting the identity of a source of information, should that be necessary, is another essential security measure.

5.3 Conducting interviews

Conducting interviews is one of the most crucial stages of the monitoring process. It is important that the monitors conducting the interviews are well prepared and that the individuals being interviewed are fully informed about the process. Moreover, interviewing is a skill that benefits from experience and extensive practice. Each monitor conducting an interview, in addition to adhering to fundamental principles of consent, confidentiality, impartiality, and security, should consider several guidelines and tailor them to his or her own skills and judgment.

When the objective of a monitoring project is to investigate the functioning of a state institution such as a court, children's home, or prison, there are some special issues to consider in conducting interviews. First, monitors must obtain the necessary consent from the proper authorities to interview subjects and staff at the institution. Interviews with state staff members should include inquiries into their safety, the conditions of their work, the relationships with their superiors, and the like. If the investigation seeks to examine the observance of students' rights or prisoners' rights, for example, monitors

may be unable to rely on the cooperation of staff members, as they may tend to misrepresent the conditions and other aspects of the institution for which they work.

GUIDELINES FOR CONDUCTING INVESTIGATION INTERVIEWS

1. Be clear about who the interviewers are and what they are doing.

- Explain in advance the nature and purpose of the monitoring project.
- Provide information on the NGO(s) conducting the investigation.
- Clarify whether and how the project's findings will be made available.
- Detail whom the information obtained in the interview will be disclosed to, unless nondisclosure is requested.

2. Seek affirmative agreement to conduct interviews, with as much privacy as possible, one at a time.
3. Guarantee that the interview is confidential and that no information will be shared without express consent. Ask individuals being interviewed whether they wish to remain anonymous. Explain that anonymity will preclude the individual's participation in legal actions in which the state requires complainants to be named.
4. Reassure individuals that they are safe with interviewers.
5. Determine whether photography or recording devices may intimidate individuals, encroach on their cultural norms, or otherwise interfere with obtaining the most accurate information possible.
6. Use a series of open (not leading) questions when interviewing witnesses, including "What happened?" and "What happened next?" Ask questions beginning with "who," "what," "where," "when," "why," and "how."
7. Use leading questions, which suggest an answer, only when interviewing witnesses likely to provide information opposing the monitoring project's objectives, including "Isn't it true that . . . ?" and "Are you denying that . . . ?"

8. Use directing questions—such as "Could you describe more about . . . ?" and "Can you explain what is important about . . . ?"—when interviewing witnesses who are nervous, lack verbal skills, or have difficulty remembering details; however, do not provide answers for them to affirm or deny.
9. Take careful notes, including general impressions of an individual's demeanor and credibility, as well as the circumstances in which the interview is conducted.
10. Maintain a list of sources and contact information.
11. Create a tracking or cross-referencing system to compare the comments of several individuals regarding the same incident, in order to assess the credibility and reliability of information obtained.
12. Maintain a list of additional information to collect, and request documents necessary to substantiate gathered information.
13. Utilize interview protocols included in monitoring instructions to sustain focus.
14. Do not share information on or given by one individual with another individual, and determine when to withhold information that may jeopardize the safety or well-being of an individual being interviewed or a third party.
15. End each interview by thanking the individual for participating in the investigation and asking if there is anything that he or she would like to add to the information.

Adapted from *Women's Human Rights Step by Step: A Practical Guide to Using International Human Rights Law and Mechanisms to Defend Women's Human Rights*, Women, Law & Development International and Human Rights Watch, 1997, Washington, D.C., chapter 6.

Monitors should consider simultaneously investigating the violation of the rights of all people who fall under the framework of the state institution, rather than investigating the staff and subjects of the institution separately.

Monitors investigating a state institution, such as a corrective facility or a mili-

tary unit, confront an ethical dilemma in addition to those regularly encountered. Even though monitors may have specific and quite limited information they need to obtain, and therefore would need to conduct only a rather narrow inquiry, authorities may condition their consent to an investigation on terms that would impede the ability of monitors to obtain the necessary information. However, monitors should not simply accept terms that hamper their investigation, but rather should negotiate assertively with the authorities.

Whatever may be the objective of the investigation, the testimony of the victim(s) of abuse is crucial. Such direct testimony usually must be gathered in some detail, and other firsthand testimony of witnesses is also relevant. Investigating a representative number of cases can demonstrate the seriousness of the problem. Even in circumstances where monitors are not attempting to show a pattern or practice of abuse, direct testimony about similar cases can help strengthen the advocacy argument and highlight the need for remedial action.

5.4 Obtaining secondary data and corroborative evidence

The gathering of secondary data is another important, yet often overlooked, step in conducting an investigation. After conducting interviews and completing all other research tasks, monitors should obtain information needed to supplement any gaps that may have been left while accumulating direct evidence. Monitors should carefully document evidence from all sides, verify facts, and corroborate stories so that charges of abuse are well founded and a strong basis for the overall advocacy effort exists. Credible reports of other governmental organizations and NGOs, interviews with other witnesses, complaints by other individuals or entities about similar violations, and evidence of physical abuse are all sources of corroborative evidence. The investigation should represent only what can be verified. In circumstances where it is hard to arrive at solid conclusions, it is important to state this and explain why.

Secondary information can also be obtained through depositions and subpoenas. Other supporting evidence may be identified in medical records and reports, public records, court cases, and statistical documents. Less formal sources of secondary data also include newspaper articles, reports from local organizations, and similar documents.

If the opportunity arises, it can also be helpful to conduct additional or follow-up interviews as a way to obtain corroborative evidence. Monitors should keep in mind, however, that they initially determined the number of interviews to be conducted based

on the scope of the investigation during project preparation. It is thus important for monitors to have a clear sense of when they have obtained all the information possible from their interviews, to avoid inadvertently broadening the scope of the investigation, duplicating their investigative efforts, or expending additional resources unwisely.

Fact-finding inquiries by the Romanian Helsinki Committee

Since 1990, the Association for the Defense of Human Rights in Romania–Helsinki Committee (APADOR-CH), otherwise known as the Romanian Helsinki Committee, has conducted monitoring activities and engaged in dialogue with governmental authorities in order to (1) modify existing civil rights and other relevant legislation, (2) promote new legislation on freedom of information, (3) provide legal assistance to victims of alleged human rights abuses, and (4) raise public awareness on human rights issues. APADOR activities focus primarily on the right to privacy, the right to a fair trial, and the rights of minorities.

Generally, APADOR follows certain internal procedures for investigating a complaint and making relevant inquiries. Such procedures follow the form and substance of the initial information that APADOR receives. A complaint brought in person to APADOR by an alleged victim usually prompts an APADOR representative to conduct a discussion meant to clarify the complaint by tactfully questioning the person, repeatedly summarizing information, and obtaining names of potential witnesses. Whether or not an alleged victim has filed an official complaint with an authority, the APADOR representative limits assistance to providing advice on legal rights and procedures, possible courses of action, and potential outcomes. An APADOR representative examining information received by mail about an alleged violation is limited to the contents of the letter in deciding whether to conduct a fact-finding mission. In each of these situations, APADOR seeks to obtain an initial objective and impartial assessment of an alleged human rights violation.

In order to achieve a balance between an alleged victim's common tendency to exaggerate claims and events and the authorities' tendency to deny them, APADOR

aims to compare and corroborate versions of the allegation(s) through the following: extensive knowledge of the relevant laws and procedures; on-site investigation of the place of the alleged abuse(s); thorough discussion with the alleged victim, family members, local authorities, and any other available witnesses; and collection of any physical evidence. Information that authorities provide and any evidence collected, such as medical certificates and photographs, is critical to support contradictions and inconsistencies. APADOR emphasizes the need to obtain as much solid evidence as possible before deciding whether and how to move forward with a case.

For example, as a result of photographs presented to it and certain media reports, APADOR took on a case in 1997 that involved the alleged torture of a ten-year-old boy by municipal police. APADOR had to reconcile differing accounts of the alleged violation given by the boy, his mother, and members of the prosecutor's office. After several failed attempts to contact the heads of the municipal police department involved in the case, APADOR opted to publish a report delineating its conclusions: that the boy had been a victim of torture; that such action was illegal under Romanian constitutional and criminal law, as well as under several international and regional instruments; that the police should have notified the boy's parents of his whereabouts; that the failure of the police to do so and the subjection of the boy to brutality reflected insufficient training; and that cases in which the victims are children should be adjudicated by prosecutors specialized in child psychology.

The report received much publicity, prompting the prosecutor's office to bring four police officers and guards to trial that same year. APADOR hired a lawyer to represent the boy and his mother. Several hearings were held, and four of the defendants were each sentenced to one to two years' imprisonment; however, the sentences were later suspended. The court awarded the boy and his mother 10 million lei in compensation (approximately USD 400), but the APADOR lawyer is seeking additional compensation on appeal.

This case is considered a success, in the sense that the original report prompted such a quick and active response by the authorities. Although the court decided in favor of the boy, APADOR has continued follow-up activity and appealed the decision to obtain appropriate recompense, particularly in light of the defendants' suspended sentences. Of course, advocates should be aware that governments do not

always, if at all, take swift and prompt action, and whether they do is often a matter of political circumstances.

For more information about this case and APADOR's activities, please contact APADOR-CH, Romanian Helsinki Committee, 8 Nicolae Tonitza Str., 704012 Bucharest, Romania; tel: (4 01) 312 4528, 312 3711; fax: (4 01) 310 2178; E-mail: apador@dnt.ro; Web: apador.ong.ro.

6. Evaluating the findings

A successful investigation will usually challenge and refine initial premises developed about the violations during the planning stages. A post-investigation analysis can provide for much more precise, reliable, and defensible conclusions regarding the premises made about the nature of the abuse, the alleged perpetrator(s), and the relevant governmental entity or entities accountable and responsible for a remedy.

The aim of post-investigation analysis is to carefully examine the facts gathered in order to demonstrate that a violation of human rights has occurred; assert that the state, whether by commission or omission, is accountable for the abuse; and make clear all required or recommended remedies. Clear and convincing arguments here will greatly assist the overall advocacy effort.

With regard to human rights issues, advocates should show that the investigated abuses violate a right that the relevant government is bound to uphold under national or international human rights law. Where regional or international instruments guarantee the protected right, advocates must demonstrate that the involved state has ratified the instruments and is legally bound to uphold them. If several rights are involved, advocates must indicate each respective violation and show that the state was under an obligation in each case.

7. Presenting the findings

A central aspect of any public interest advocacy strategy is determining how best to present the findings of a given investigation. This decision will depend on the overall goals of the advocacy strategy and the audience that the findings are intended to inform. Several forms of presentation exist, including public meetings in which advocates

inform attendees of the project's findings, either verbally or through the distribution of printed materials; written reports delineating the findings and recommending potential solutions; memoranda, informal written notes, records, or statements that may contain selected information, such as legal arguments based on the project's finding; open letters; and newspaper articles.

7.1 Preparing written reports

A report is the most common form of presenting investigation findings. In a report, clear arguments asserting any violations of domestic violence or international law should be made based on a careful analysis of the facts and the state's legal obligations. These arguments should be well defended using authoritative sources such as local court decisions, government position papers or statements, and international instruments. Linked to specific international obligations, the arguments can lead to recommendations to the government(s) responsible for the violations and to the international community. In designing recommendations, advocates should seek to make them as specific as possible, and efforts should be made to identify remedial steps that are firmly grounded in national or international law and capable of implementation and success.

TIPS FOR PREPARING MONITORING REPORTS

1. **Decide** who will participate in the writing, editing, and publication of the report.
2. **Note** any disagreements among the participants as to findings or recommendations.
3. **Describe** the following: objective(s) of the investigation, circumstances surrounding the gathering of evidence, research techniques utilized by the monitors, and methods applied and sources used to verify the monitoring findings.
4. **Support** descriptions of violations, where possible, by direct quotations from individuals who provided an account during an interview.
5. **Include** varied sources of evidence, if possible, and specify each source unless a confidentiality or anonymity agreement was made.

Moreover, a report should detail any government response or lack thereof. Related to this point, advocates might consider advancing a copy of the report to the relevant state agency, providing the opportunity for comment before the publication of the final report. In some instances, however, doing so would be unwise because of a likelihood that the government would attempt to suppress the report or discredit it before it were even published. Finally, the project should distribute copies of the report to individuals who provided information, either through interviews or otherwise, or their representatives; relevant national, regional, and international governmental institutions and organizations; other NGOs that may have cooperated with the project's efforts; the media; and any other interested or implicated governments.

Frequently, advocates must tailor the presentation of findings to appeal to and influence a narrower audience, such as decision-making institutions. This involves making determinations regarding, among other things, the structure used to present the findings, the terminology and syntax of the content, and the languages in which the report should be printed.

7.1.1 Structure and terminology. An international organization may require the contents of a report to be set out in a specific manner, and advocates should make sure their report is written in accordance with those specifications. If there are no such requirements, of course, organizations are free to design their report as they see fit. Depending on the focus that advocates choose, a report can take a variety of forms, structures, and arrangements. For example, some advocates choose to arrange findings that demonstrate violations of rights contained in international instruments, such as the Universal Declaration of Human Rights and the European Convention on Human Rights, according to the order in which those rights appear in the relevant instruments.

As to terminology and syntax, the contents of a report should be written to conform to the target recipient's use and definition of certain words and legal terms. A report prepared for the media may contain so-called buzzwords: words or phrases that journalists frequently use to describe a particular person, event, or phenomenon. A report prepared for officials should usually be persuasive but neutral—in other words, unemotional—and not contain any personally inflammatory remarks. Basing a report on accurate, reliable data and presenting it in a rational yet compelling manner will maximize its effectiveness and potential impact. Reports intended to elicit broad public support, however, may emphasize

more emotional and human interest aspects.

7.1.2 **Languages.** Reports should be printed in the language(s) of the intended recipient(s). When a report is submitted to an official organization, tribunal, or other institution at the international level, advocates should print the report in the institution's official languages. An organization may want to print its report in several languages even if it is not required, in order to maximize the number of people who can read and learn from it.

7.2 Working with the media

The media is an effective implement for any monitoring project. Both broadcast and print media can be used as forums to disseminate the findings of an investigation. A project can choose to make its findings public through press conferences, press releases, and other media-related forums, using them as an alternative to other forms of presentation. A project can also use media coverage to supplement and broaden exposure of its efforts, discoveries, and conclusions as a way to bolster the presentation of its findings and generate public pressure in favor of its recommendations.

In dealing with the media, advocates should focus on identifying, and clearly and concisely communicating, the main message of the organization and of the project. They should explicitly detail what information is official or unofficial, distinguishing between information that is "on the record" and "off the record."

ATTRACTING MEDIA COVERAGE

1. **Identify** potentially interested journalists early in the planning process.
2. **Encourage** journalists to cover the investigation by informing them about the issues under examination and the organization's commitment to its project and human rights generally.
3. **Send** key journalists advance copies of the report or other documents drafted by the project that include information on the investigation.
4. **Maintain** contact with journalists and follow up with telephone calls to prompt coverage or spur an independent media investigation.

5. **Draft and distribute** press releases on the progress of the investigation and, if a final report is published, summarize key findings, conclusions, and recommendations of the project.
6. **Hold** a press conference or other event to mark the completion of the investigation.

Of course, the aim of a monitoring project is not merely to prepare and disseminate findings, whether in a report or by other means. In certain cases, such as where the victims and witnesses are at risk, however rare, the monitoring report may best be left unpublished. Most importantly, monitoring is an element of a broader public campaign directed at improving respect for individual rights and freedoms, and sometimes even respect for monitoring itself. The role of monitoring in such campaigns is discussed further in chapter 4, "Campaigning for the Public Interest." Moreover, monitoring findings and reports can serve to support public interest litigation activities. See chapter 3, "Strategic Litigation: Bringing Lawsuits in the Public Interest." No matter how monitoring findings are utilized, ultimately the fact that public scrutiny is focused on a certain problem is one of the effective techniques used to improve the overall human rights situation.

RESOURCES

Readings

Asian Human Rights Commission, *Human Rights Monitoring and Fact-Finding*, 2000, Hong Kong. <http://www.hrschool.org/modules/lesson6.htm> (last accessed on July 26, 2001).

Discusses the basic elements of human rights monitoring and fact-finding.

Centre for Human Rights, *Manual on Human Rights Reporting: Under Six Major UN International Human Rights Instruments*, UN Doc. HR/PUB/91/1, 70–125, 1991, Geneva.

English, K., and A. Stapleton, *The Human Rights Handbook: A Practical Guide to Monitoring Human Rights*, Human Rights Centre, University of Essex, 1995, Colchester, United Kingdom.

Giffard, C., *The Torture Reporting Handbook: How to Document and Respond to Allegations of Torture within the International System for the Protection of Human Rights*, Human Rights Centre, University of Essex, 2000, Colchester, United Kingdom. <http://www.essex.ac.uk/

torturehandbook/index.htm> (last accessed on July 26, 2001).

A reference guide on taking action in response to allegations of torture or ill-treatment.

Guzman, M., and H. Verstappen, *What Is Monitoring*, Human Rights Information and Documentation Systems, International (HURIDOCS), 2001, Versoix, Switzerland. <http://www.huridocs.org/basdocen.htm> (last accessed on July 26, 2001).

A practical guide on documenting human rights violations, seeking information, producing and acquiring documents, and related matters.

Lawyers Committee for Human Rights, *What Is a Fair Trial? A Basic Guide to Legal Standards and Practice*, 2000, New York. <http://www.lchr.org/pubs/fairtrialcontents.htm> (last accessed on July 26, 2001).

Deals with the basic legal standards that should be used in evaluating the fairness of a trial, and with how a trial observation mission should be prepared and carried out in practice.

Mendes, E., J. Zuckerberg, S. Lecorre, A. Gabriel, and J. Clarck, eds., *Democratic Policing and Accountability: Global Perspectives*, Ashgate, 1999, Aldershot, United Kingdom.

Offers different perspectives on the accountability of police conduct in a liberal democracy.

Minnesota Advocates for Human Rights, *Handbook on Human Rights in Situations of Conflict*, 1997, Minneapolis.

For use in monitoring, reporting, advocating, and reacting to human rights violations during, before, or after armed conflict.

Office for Democratic Institutions and Human Rights (ODIHR), *Election Observation Handbook*, ODIHR/Organization for Security and Cooperation in Europe (OSCE), 1999, Warsaw. <http://www.osce.org/odihr/documents/guidelines/election_handbook/index.htm> (last accessed on July 26, 2001).

Outlines the general methodology of election observation under the umbrella of the Organization for Security and Cooperation in Europe (OSCE).

Office of the UN High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 2001, Geneva. <http://erc.hrea.org/Library/medical_personnel/ohchr01.html> (last accessed on July 26, 2001).

Contains a description of documentation methods, which are also applicable to other contexts. Includes annexes with principles of effective investigation and documentation, diagnostic tests, and guidelines for the medical evaluation of torture.

Orentlicher, D., "Bearing Witness: The Art and Science of Human Rights Fact-Finding," 3 *Harv. Hum. Rts. J.* 83 (1990).

Provides a comprehensive analysis of the professional standards and institutional imperatives of international NGOs. Part I discusses the importance of human rights fact-finding. Part II addresses the manner in which an NGO must confront official skepticism and

shifting standards of credibility. Part III describes methods of obtaining evidence, interviewing witnesses, and establishing responsibility for human rights violations.

Spirer, H., and L. Spirer, *Data Analysis for Monitoring Human Rights*, American Association for the Advancement of Science and HURIDOCS, 1997, Washington, D.C., and Geneva. <http://erc.hrea.org/Library/monitoring/analyse/index.html> (last accessed on July 26, 2001).

A book on the use of statistics for monitoring and reporting human rights violations. In French.

Women, Law & Development International and Human Rights Watch, *Women's Human Rights Step by Step: A Practical Guide to Using International Human Rights Law and Mechanisms to Defend Women's Human Rights*, 1997, Washington, D.C.

Designed as a basic guide to the operation of human rights mechanisms and strategies at national, regional, and international levels, the manual explains why and how to use these strategies and mechanisms to protect and promote women's human rights.

Organizations

Canada-U.S. Human Rights Information and Documentation Network (CUSHRID Net)
Secretariat, AAAS Science and Human Rights Program
1200 New York Avenue, NW
Washington, DC 20005, USA
Tel/Fax: (1 202) 326 6787
E-mail: cushrid@aaas.org
Web: shr.aaas.org/cushrid.htm

Provides information on human rights documentation and other human rights issues, as well as training.

Human Rights Information and Documentation Systems, International (HURIDOCS)
48, chemin du Grand-Montfleury
CH-1290 Versoix
Switzerland
Tel: (41 22) 755 5252
Fax: (41 22) 755 5260
E-mail: huridocs@comlink.org
Web: www.huridocs.org

A network of human rights organizations providing assistance and training on human rights information handling and other relevant human rights activities.

Human Rights Internet
8 York Street
Suite 302
Ottawa, Ontario K1N 5S6
Canada
Tel: (1 613) 789 7407
Fax: (1 613) 789 7414
E-mail: hri@hri.ca
Web: www.hri.ca

Provides a database of information related to human rights, including directories of human rights organizations, funding organizations, human rights publications, and human rights education programs.

International Helsinki Federation for Human Rights
Wickenburgg 14/7
A-1080 Vienna
Austria
Tel: (43 1) 408 8822
Fax: (43 1) 408 882250
E-mail: office@ihf-hr.org
Web: www.ihf-hr.org

Monitors compliance with the human rights provisions of the Helsinki Final Act and its follow-up documents. Offers training and technical assistance to human rights NGOs in the region covered by the Organization for Security and Cooperation in Europe (OSCE).

Women, Law & Development International
1350 Connecticut Avenue, NW
Suite 407
Washington, DC 20036-1701, USA
Tel: (1 202) 463 7477
Fax: (1 202) 463 7480
E-mail: wld@wld.org
Web: www.wld.org

Provides information and resources on women's human rights and conducts projects to empower women around the world.

Three

STRATEGIC LITIGATION: BRINGING LAWSUITS IN THE PUBLIC INTEREST

This chapter explains:

- reasons to engage in strategic litigation
- how to determine if litigation will best serve public interest goals
- how to select a test case
- guidelines for developing and presenting a strong case
- the potential impact of strategic litigation
- the role of litigation in a comprehensive advocacy campaign

1. WHAT IS STRATEGIC LITIGATION?

Traditionally, lawyers are trained to represent the best interests of their client in a particular case or proceeding. When undertaking a case in their everyday practice, lawyers analyze the applicable law and pursue procedures that will best promote those interests. Certain lawyers, however, engage in litigation designed to reach beyond the immediate case and the individual client. Through litigation, these advocates seek to change the law or how it is applied, in a way that will affect society as a whole.

One such lawyer is Professor Jack Greenberg, a preeminent civil rights litigator and Columbia University professor of law. Professor Greenberg explains two uses that public interest litigation makes of the judicial system. First, public interest litigation persuades the judicial system to interpret the law; public interest litigation urges courts to substantiate or redefine rights in constitutions, statutes, and treaties to better address the wrongdoings of government and society and to help those who suffer from them. In addition, public interest litigation influences courts to apply existing, favorable rules or

laws that are otherwise underutilized or ignored.

This explanation draws on the experience of public interest lawyers in the United States. But it also comes close to describing the work of European advocates and organizations that pursue similar objectives through mechanisms such as the European Court of Human Rights and national constitutional courts. Individual advocates and nongovernmental organizations in Central and Eastern Europe face problems and challenges similar to those that American lawyers have been facing over the course of the past century, such as discrimination against minority groups, abuse of authority by police, encroachments on freedom of expression, and destruction of the environment. Although these problems persist in the United States, the efforts of public interest groups have resulted in laws and institutions that more effectively protect the fundamental rights of the population.

Today, public interest activists may examine the approaches and strategies used by advocates in the United States and other countries in order to determine whether and how such uses of the judicial system may be helpful to their causes and purposes. This chapter outlines how advocates in Central and Eastern Europe may address problems in their own countries through litigation aimed at legal and social change, often referred to as "strategic litigation." Strategic litigation is but one of a number of terms used to refer to the type of activity described. Terms such as "impact litigation" and "test case litigation" are sometimes used interchangeably with strategic litigation.

Strategic litigation is also sometimes called "public interest litigation," although the latter term is also used to refer to other types of litigation for public interest purposes, such as the activity described in chapter 6, "Access to Justice: Legal Aid for the Underrepresented."

2. Role of Public Interest Organizations

In addition to bringing actual cases before domestic and international courts, strategic litigation involves raising awareness of public interest issues and inspiring pressure for change among the general public. Litigation in the public interest illustrates how society and law interact and influence each other. On the one hand, a pressing need for legal reform in the public interest stimulates strategic litigation. On the other hand, legal actions themselves prompt public reaction, inspiring public demands, protests, and support that ultimately can bring about social and legislative changes.

In countries with active civil societies, the interests of individuals or groups of individuals are often represented by specialized not-for-profit, professional, or other organizations that address the problems of individuals in the context of their own strategic aims. Some organizations address one particular social or legal problem, such as contamination of the environment in a region, resulting in a specific disease, or the production and sale of a dangerous product, causing injuries to children. Other organizations address the social and legal problems that affect the rights of a particular minority or interest group, such as Roma, women, children, or gays and lesbians. Still other organizations address broader societal issues, such as the establishment of the rule of law or the protection of human rights, and pursue specific goals, such as the promotion of international standards through the legal defense of victims of human rights violations.

By taking a strategic case to court, a public interest organization is often at the forefront of efforts to achieve social change. It is important to note, however, that it is rare for the success or failure of a public interest campaign to hinge on a single case or decision. A negative result in a case, for example, may reaffirm an unfavorable law or practice and thereby deepen the social problem, making it more difficult to address the issue successfully in the future. On the other hand, an unfavorable result in a particular case may, in retrospect, serve as an unfortunate but necessary step in a longer-term process to achieve lasting social reform. As a result, most successful public interest groups adopt a comprehensive approach in pursuing their goals, and litigation is just one element of a wide range of options available to activists.

3. Why litigation?

The public interest law movement employs a variety of methods and strategies in fighting for social change. Public interest activists may lobby legislators, confront local officials or government agencies, harness public opinion, inform the press, and so on. Such advocacy activities are discussed in more detail in chapter 4, "Campaigning for the Public Interest." In situations where there is a clear dispute, advocates may choose to resolve it through mediation rather than pursuing adversarial means. Litigation, however, remains one of the strongest tools for achieving systemic change. While other methods involve mass action or a strategy of cooperation among groups and individuals, including governmental authorities, litigation of strategic cases

accesses the power of the judiciary in the struggle for social change. This is particularly important in countries where the judiciary is reasonably independent and therefore relatively insulated from the direct influence of political interests. Even in countries where the judiciary is only marginally independent, strategic litigation engages the judicial process and can raise public awareness about a particular issue. Such test cases may serve as a catalyst for reform of the judicial system itself.

Strategic litigation can sometimes compel resistant governmental authorities, agencies, or public institutions to take action. It can enforce existing laws and regulations, even when those responsible for their implementation would rather ignore them. Litigation can extend rights to otherwise disenfranchised groups through the enforcement of constitutional guarantees. By obtaining favorable judicial decisions, strategic litigation can lead to the reform of public institutions charged with serving children, prisoners, the physically or mentally impaired, and other specific populations. Ultimately, strategic litigation serves to empower disadvantaged groups.

Strategic litigation can also provide a community with a way to prevent a proposed project from going forward, such as the construction of a hazardous-waste disposal site, or the building of a housing complex that would destroy forest or park land. A court case can mobilize citizens and consolidate organizational efforts by bringing together concerned parties. In addition, strategic litigation plays a critical educational function by raising awareness of issues, potentially changing public opinion and thereby making possible progress toward a more just society.

One well-known, early public interest litigation campaign in the United States addressed the segregation of, and discrimination against, black people in education. Lawyers for the National Association for the Advancement of Colored People (NAACP) and its Legal Defense Fund (LDF) initiated the campaign in the 1930s. One of the most recognized NGOs in the United States, the NAACP-LDF has been at the forefront of the U.S. civil rights movement for many years. Its lawyers faced many of the problems currently facing public interest activists in Central and Eastern Europe: the courts' resistance to handling controversial "political" cases; inexperience in ordering nontraditional remedies; and an unwillingness to accept statistical evidence. In an effort to persuade the courts to declare

segregation in education unconstitutional, the NAACP-LDF convinced many people to pursue their rights in the courts and held training sessions for their lawyers. Beginning with lawsuits to admit black students to all-white state law schools in 1938, the campaign paved the way for the famous U.S. Supreme Court cases of *Brown v. Board of Education*, decided sixteen years later.

Brown v. Board of Education: An example of strategic litigation in the United States

Prior to 1954, public schools in many states of the United States were segregated according to race, and separate schools were maintained for black and white students. In several of those states, lawyers from all over the United States challenged the law. With the help of public interest organizations, a network of committed lawyers, and other public interest activists, the attorneys brought claims to the courts in several states. They asserted that separate schools instilled in black children a sense of inferiority, impeded their development, and subjected them to further discrimination. Those cases were combined into one, *Brown v. Board of Education of Topeka, Kansas*, 347 U.S. 483 (1954), supplemented 349 U.S. 294 (1955), in which the U.S. Supreme Court rejected its earlier doctrine of "separate but equal" and ordered that the schools become racially integrated.

The issue in the case was whether public school segregation based solely on race might deprive minority group children of equal educational opportunities, even though the physical facilities and other tangible factors may be equivalent. The Court firmly stated: "We believe it does." While the decision was an enormous victory, it soon became clear that its implementation—the elimination of segregated schools—would be extremely difficult, in light of the history of segregation and the negative attitude of many whites toward integration. Therefore, in 1955, a second *Brown* decision recognized that "the viability of these constitutional principles cannot be allowed to yield simply because of disagreement with them." The Court then mandated that the affected schools develop policies and procedures to implement desegregation with "all deliberate speed."

Although the effects of *Brown v. Board of Education* were broad and far-reaching, the process of change took time—in this case, decades—and has been characterized as an erosion of adverse precedent, step by step. Having learned from the success of some of the early strategic litigation campaigns, today's public interest lawyers attempt to maintain a degree of control and planning over their activities. Such activities can be controlled only so far, however, and advocates should be aware of inherent limitations in trying to direct the pace and progress of test cases.

Initiating a strategic litigation campaign is clearly no simple task; not all causes of action aimed at producing social change are well thought out or part of a grander strategy or mission. Test cases are not always planned as such in advance. Many public interest litigation efforts emerge as a result of unplanned or fortuitous events.

So, how does an advocate determine when litigation is the best strategy for achieving public interest goals? As mentioned earlier and discussed below, most successful public interest efforts use a comprehensive approach, and litigation is but one of a number of components of the campaign. Questions to ask when deciding whether to pursue litigation in the public interest include the following:

- Is there a law or regulation on the books that is not being applied or enforced?
- Has the application of a certain law by the courts or government officials been evenhanded, or has the application been arbitrary and inconsistent?
- Have there been significant or pervasive legal restrictions on the exercise of individual rights and freedoms?
- Do international standards exist that could be used to influence state action?
- What is the likelihood that further clarification of the law(s) in question would have negative effects on the public interest problem?
- What resources (human, financial, political) are necessary to accomplish the public interest aims?

The question of resources is a fundamental one, an issue that underlies every case, campaign, and the overall mission of a public interest organization. Adequacy of resources and their appropriate allocation must be considered carefully in determining whether and how strategic litigation fits into the larger picture of public interest goals. For a more detailed discussion of resources, see chapter 1, "Setting Up a Public Interest Law Organization."

4. Selecting a test case

Strategic litigation cases may be referred from a wide variety of sources, including legal services organizations, private attorneys, state or local agencies, community organizers, and social workers. Many clients approach public interest groups by mail or telephone or in person. In order to determine whether a specific cause of action should or could be brought before the court as a test case, most lawyers and organizations use some type of screening process. In reviewing potential cases, lawyers and NGO staff must consider the relative merits of the case as well as tactical questions, including the following:

- What types of local resources are available?
- What are the costs involved?
- What is the reputation of the court or judge who would hear the case?
- What is the potential for media coverage and other publicity about the case?
- Is there an alternative recourse or access to other legal services for the applicant or petitioner?

The answers to some of these questions may lead an individual attorney or public interest group to decide that, on balance, litigation is not the appropriate course of action at that particular time. It may be too costly, or the venue may make a favorable result extremely unlikely. Or there may be another organization or individual better suited to represent the client's and the public's interests. If a decision is made to engage in strategic litigation as the best chance to achieve the public interest goals, some of the same questions may be posed again in the context of litigation strategy and tactics.

5. Developing and presenting the test case

Once a public interest organization chooses its role—for example, decides what issue(s) it wants to address and/or what group(s) it wants to assist—and decides that strategic litigation would best suit its efforts and the interests of the test case client, the organization should carefully examine its approach to the presentation and actual litigation of the case. An organization should consider the following in order to maximize the potential success of a test case:

5.1 Define the litigation goal
5.2 Choose the right defendant
5.3 Select the proper forum
5.4 Make creative use of legal arguments

5.5 Educate the court
5.6 Use outside experts and analysis
5.7 Work with NGOs
5.8 Rely on constitutional and international law
5.9 Consult specialized legal resource centers
5.10 Apply precedents
5.11 Access international courts

5.1 Define the litigation goal

Advocates should clearly define the goal for each case or proceeding before making any other decisions about strategy, tactics, resources, and so on. Developing a list of possible outcomes of the case, including results that may be partially favorable and partially unfavorable, may help in designing case strategy. Doing so will also assist in evaluating how the goals of a particular case fit into the overall public interest campaign. An organization should have a vision and articulate a mission, and every public interest campaign should be closely related to the organization's mission. Each public interest campaign should also have its own set of tangible objectives. Furthermore, it may be helpful to articulate intermediate or shorter-term goals that can provide markers of progress along the way.

5.2 Choose the right defendant

Selecting the proper defendant in a public interest lawsuit is not always easy. This is especially true in cases that try to hold the state liable for a wrong committed by state officials. For example, who should be sued for wrongful behavior of the police in a particular case: the Ministry of Interior, a subdivision of it, a local police precinct, or individual officers? The substance of the legal provisions in question, the procedural require-

BULGARIAN HUMAN RIGHTS PROJECT WINS CASE; POLICE PUNISHED FOR BRUTALITY AGAINST ROMA

In 1995, the district court in Pazardzhik, Bulgaria, ordered the Ministry of Interior to pay Kiril Yordanov, a twenty-four-year-old Rom, 10,000 leva as reparation for bodily injury caused by police officers during an unauthorized police operation in the Romani neighborhood in Pazardzhik. The case began in 1992, when the police conducted what the Human Rights Project called a punitive

expedition against the local Roma under the pretext of passport checks and arms searches. Yordanov was one of dozens of Roma who were beaten and otherwise mistreated as revenge for the alleged criminal activity of a Rom. The court's decision, which became effective in 1996, was a result of three and a half years of work by Ilko Dimitrov, a senior cooperating attorney working with the Sofia-based Human Rights Project.

Dimitrov's strategy was to sue the ministry as a whole, since the individuals who committed the brutality could not be identified because they had been wearing woolen face masks during the unauthorized operation. Although the amount of money awarded was very small (the equivalent of less than USD 45 at September 1996 exchange rates), the symbolism of the case was far greater. The case represented the first victory for a Rom who had been beaten by the police, and the decision sent abusers the message that the Bulgarian court would not condone such brutality.

For more information, please contact the Human Rights Project, 23 Solunska St., 6th Floor, Sofia 1000, Bulgaria; tel: (359 2) 981 5066; fax: (359 2) 986 3546; E-mail: hrproject@mbox.cit.bg.

ments of the case, the likelihood of success of the litigation, and the potential impact of a positive decision are some of the factors that must be considered when identifying the defendant(s). For example, in an environmental context, damages may have been suffered as a result of private or state action (or inaction), or some combination thereof.

5.3 Select the proper forum

In some cases there is a choice of forum, and the likelihood of success may be greater in one forum than another. Although there are no guarantees about how a particular judge will rule in a particular case, it is important to select the forum that will maximize the likelihood of success and minimize the danger of a negative precedent. For instance, where there are similar cases in different geographic locations, one particular district or municipality may offer a better chance of success. In addition, administrative courts and ordinary courts may overlap in their jurisdictions but offer very different potentials for victory.

RUSSIAN NGOS CHALLENGE NATIONAL *PROPISKA* SYSTEM IN DISTRICT COURTS

In 1993 the Russian Federation adopted a law requesting that every resident notify local law enforcement authorities upon establishing either temporary or permanent residence within a particular locality. Residents then received a special stamp from the police in their passports to this effect. In many localities, authorities interpreted this request to notify as a requirement to obtain official permission in order to live in a given city or region, or before moving to a new residence. This passport registration, or *propiska*, became a prerequisite for access to various housing, education, and health care services. Moreover, residents who did not obtain the proper *propiska* stamp risked being fined. The bases for acquiring the stamp were quite limited, and they required that the resident demonstrate close ties with the city through family relationships or other "legitimate" connections. According to reports of human rights activists, the *propiska* scheme frequently was administered in an arbitrary and discriminatory manner.

A number of legal challenges to *propiska* regulations ensued. In 1996 a case before the Constitutional Court challenged the registration rules of the city of Moscow and several other regions. In determining the registration rules to be unconstitutional, the Court found that each of the regional administrative authorities had effectively altered the purpose of residence registration, from giving notification to seeking permission from local authorities; such alterations constituted inadmissible restrictions on the freedom of movement. Despite this ruling, none of the administrations implicated changed its regulations as a result of the Court's decision.

In 1998 the Court again ruled that residence registration rules were an unlawful restriction on the freedom of movement, and it declared the *propiska* scheme unconstitutional. The Court specifically stated that, in accordance with its ruling, any analogous provisions in all regional and federal laws must be abolished. As with the 1996 ruling, however, the Constitutional Court's 1998 decision had no serious immediate effect on regional authorities. In fact, as military activity in Chechnya intensified during 1999, enforcement of the *propiska* system grew.

Following the 1998 Constitutional Court decision, the Moscow-based NGO

Grazhdanskoe sodeistvie (Civil Cooperation) initiated a campaign to overturn the *propiska* law. As NGOs were not permitted to challenge the law directly, the group chose a different strategy. The organization agreed to represent individuals who had not been allowed to enjoy their rights or people who had been fined because they lacked a *propiska*. *Grazhdanskoe sodeistvie* brought these cases before courts of common jurisdiction and argued on behalf of individual clients for the application of the Constitutional Court's decision. *Grazhdanskoe sodeistvie* won more than half of all cases they brought to challenge the *propiska* law that year. Thus, despite the previous failure to implement Constitutional Court decisions, *Grazhdanskoe sodeistvie* director Svetlana Ganushkina reported that after February 1998, lower courts decided practically all individual cases on the basis of the Constitutional Court's rulings. By growing a critical mass of individual cases challenging the *propiska* system, *Grazhdanskoe sodeistvie* and other NGOs around the country were creating significant public pressure on authorities to take action to remedy an untenable situation.

A 1999 law gave NGOs standing to challenge laws in courts of common jurisdiction if such laws allegedly violate citizens' rights. *Grazhdanskoe sodeistvie* immediately filed suit in a Moscow district court challenging the constitutionality of the *propiska* law. In December 2000, that district court declared the *propiska* law unconstitutional and void. Unfortunately, the Moscow administration did not inform its *propiska* officials of the decision, so that individuals who were denied registration were compelled to show newspaper articles about the decision to local authorities in order to have it enforced.

Despite these difficulties, the case is important for Russia's human rights community, because it reflects both the increasing independence of the Russian judiciary and the growing professionalism of Russian human rights activists. Although an appeal of this decision is currently pending before the Supreme Court of the Russian Federation, lawyers and human rights activists report that restoration of the *propiska* scheme as it has existed is extremely unlikely.

For more information, please contact Grazhdanskoe sodeistvie, Dolgorukovskaia Str., Dom 33, Stroenie 6, Moscow 103030, Russia; tel: (7 095) 973 5474; fax: (7 095) 251 5319; E-mail: komitet@refugee.ru; Web: www.refugee.ru.

5.4 Make creative use of legal arguments

Finding grounds for holding the state, or one of its divisions, liable may require creative use of law, including legal arguments that cite constitutional and international legal principles in jurisdictions where this might not be an established practice. Procedures that may be used by NGOs to formally enter proceedings or to find new bases for liability—such as discrimination, freedom of information, rights of public participation, or the right to enjoy a healthful environment—should be explored. This strategy has proven effective in both pursuing domestic remedies and litigating before international bodies.

The European Roma Rights Center (ERRC), an NGO that investigates and litigates cases of discrimination against Roma, provides an example. In April 2000, the ERRC filed a complaint with the European Court of Human Rights alleging that the practice in the Czech Republic of placing Romani children in special schools for mentally handicapped children violates several provisions of the European Convention on Human Rights. In particular, the ERRC claimed that the applicants, Romani children placed in such schools in the district of Ostrava, have been subject to (1) racial segregation and discrimination amounting to inhuman and degrading treatment, (2) discrimination in conjunction with their right to education, (3) denial of their right to education, and (4) denial of their right to a fair trial for determination of their civil rights.

In seeking to persuade the Court, the ERRC made several innovative arguments. First, it asserted that racial discrimination per se constitutes inhuman or degrading treatment. To support this argument, the ERRC synthesized arguments based on the Court's jurisprudence with comparative and international law provisions. The ERRC maintained that the principle of antidiscrimination remains at the core of the Council of Europe, as all member states have adopted constitutional bans on racial and ethnic discrimination. Then, the ERRC claimed that the prohibition on racial discrimination has evolved to constitute *jus cogens*, a peremptory norm of international law from which no derogation is permitted. To support this claim, the ERRC cited a number of norms of international law strictly prohibiting discrimination.

Furthermore, the ERRC made reference to the positive obligation of the states parties to the European Convention to ensure that no inhuman or degrading treatment takes place. To prove that the applicants have been segregated into special schools because of their ethnicity, the ERRC used data on the number and eth-

nicity of the children attending regular and special schools in the district of Ostrava. The data showed that while less than 2 percent of Romani children attend regular schools, the number of Romani children in these special schools is more than 75 percent.

After these arguments proved unsuccessful at the level of the Czech Constitutional Court, the ERRC filed an application concerning the case to the European Court of Human Rights, where it hopes to eventually achieve a litigation victory.

"Racially motivated" crimes: Legal definitions of "race" in Slovakia

In November 1996, several members of a skinhead group attacked Ivan Mako, a Slovak Rom. Mako was beaten and called names including "nigger" and "filthy Gypsy." As a result of this attack, Mako suffered injuries that prevented him from reporting to work for eighteen days. At the trial, the charge that defendants had inflicted "bodily harm" on the victim was not contested. However, the section of the Slovak Criminal Code that provides for a more severe punishment for a crime that is racially motivated (a crime in which "bodily harm [is] caused to a person because of his political conviction, national origin, race, religion, or other conviction") was found to be inapplicable in this case. The trial court stated that Roma did not constitute a nation or ethnicity separate from ethnic Slovaks.

In cooperation with the European Roma Rights Center (ERRC) in Budapest, the Center for Environmental Public Advocacy (CEPA) took over the case in 1998 on behalf of the aggrieved party. CEPA and the ERRC aimed to utilize the case as a precedent in order to persuade the Slovak courts to consider the attacks on Roma as racially motivated. The argument was based on a broad but principled interpretation of race: "If a criminal offense is motivated by hatred against a group that is manifestly different, it is to be considered as an attack against human equality."

Under the Slovak Code of Criminal Procedure, only the prosecutor has the power to appeal criminal court decisions with respect to the legal qualification of the criminal act. In this case, the prosecutor appealed twice, and each time the appellate

court returned the verdict to the lower court for reconsideration. Taking advantage of the fact that the prosecutor appealed the court's decision, CEPA submitted a statement to accompany the petition for reconsideration because the prosecutor's appeal failed to include racial motivation of the attack as grounds for the appeal.

In contrast to the court of first instance, the appellate court responded to CEPA's efforts to focus attention on the racial motivation of the crime. When it returned the case to the lower court, the higher court issued a binding legal opinion using CEPA's arguments from its statement accompanying the rehearing petition. The final decision of the lower court reflected this opinion, and that court applied the Criminal Code section providing for a more severe punishment for a racially motivated crime. The court acknowledged that Mako had been attacked for being evidently different and referred to the International Convention on the Elimination of All Forms of Racial Discrimination. The use of a broader anthropological interpretation of "race and ethnicity" has the potential of fundamentally changing certain practices of investigating authorities and courts in Slovakia.

For more information, please contact the Center for Environmental Public Advocacy (CEPA), Ponicka Huta 65, 97633 Poniky, Slovakia; tel/fax: (421 48) 419 3426; E-mail: cepa@changenet.sk; Web: www.changenet.sk/cepa.

5.5 Educate the court

Judges may not be aware of the relevant international law or the comparative constitutional jurisprudence that may prove decisive in a particular case. In addition, when making creative use of law or procedures, judges may need guidance. In countries where information on applicable international law is scarce, providing judges with copies of the applicable decisions and treaties may go far in advancing a client's position. For instance, in an environmental case in Russia, an NGO met with judges from a district court in order to convince them to accept a case involving 183 plaintiffs. Although legal procedures clearly allowed such cases to be brought before the district court, the judges resisted

accepting the complaint because no such action had ever come before the court in the past.

5.6 Use outside experts and analysis

Outside expertise can help to educate judges. Sometimes expert witnesses can be called to testify or written expert analysis can be introduced in court. This is an especially important technique in environmental cases, where scientific issues are common. Procedures for admitting expert testimony in court can also be used as a means to introduce analyses of international law and comparative law by specialized NGOs.

HUNGARIAN WINS JUSTICE FOR HUSBAND WHO DIED FROM CHERNOBYL RADIATION

In a case brought by the Environmental Management and Law Association (EMLA) on behalf of the widow of a truck driver, the Budapest city court found in 1998 that there was a causal connection between the truck driver's job and his death from radiation escaping from the Chernobyl nuclear reactor. The victim's employer, a Hungarian company, was found liable for damages because the employee had been assigned to the Chernobyl fallout area only two months after the explosion, but he had not received protective gear or any warning as to the potential dangers he was facing.

This case marked the first time that a Hungarian court has ruled that there is a direct causal relationship between a death and the Chernobyl radiation. In addition, the case represents one of very few cases in which a Hungarian court has accepted a challenge to the opinion of the Medical Science Council, which found no causal relationship. Instead, the court accepted evidence from the man's personal doctor, the coroner, tissue and radiation experts from SOTE Medical University, the Social Security Directorate, and the State Medical Expert Institute. The case was sent back to the Labor Court for determination of the amount of damages to be awarded to the victim's wife and teenage daughter.

5.7 Work with NGOs

Nongovernmental organizations and citizen groups can be valuable sources of data and other information for those involved in strategic litigation. Many NGOs gather information on specific issues, such as domestic or international human rights, environmental matters, and ethnic issues, and they may have information that will assist in the development of a strategic case in their areas of expertise.

5.8 Rely on constitutional and international law

The key to obtaining positive results in certain types of public interest litigation in Central and Eastern Europe is to present legal arguments based on constitutional law and/or international law. In the region, conventional domestic law is often underdeveloped, underutilized, or rapidly changing. Constitutional law, supplemented by international law, may be a

The role of the Cradle Foundation in the Chernobyl case

The case of a Hungarian truck driver who died from exposure to radiation from the Chernobyl nuclear reactor demonstrates how an NGO may make an invaluable contribution to the development of a strategic case. In this case, the Environmental Management and Law Association (EMLA) worked with the Cradle Foundation, a Budapest-based NGO whose mission is to bring children from Ukraine to Hungary for medical treatment. The foundation was able to amass data and other assistance for the case, including information on the accident itself, its history, and the total number of victims. The Cradle Foundation obtained medical data from the region, including the number of casualties, the number of patients, radiation levels, and scientific information on the state of the environment. In addition, the foundation provided contact information for several Hungarian medical experts, one of whom testified in the case. Also of great value was information about the official position of the Ukrainian government as to how radiation affects human health, which was compared to official positions of the Hungarian government after April 1986, when the accident took place.

more reliable means for protecting the public interest. In most civil law systems, where judges are reluctant to exercise a great deal of discretion in interpreting domestic norms, providing constitutional and international law standards for judicial consideration can be an effective tactic for achieving a favorable interpretation of the existing law. Of particular interest to NGOs working in the human rights area is the European Convention on Human Rights, which individuals and groups in Central and Eastern Europe are increasingly relying on to promote effective application of national laws. For further discussion of the Convention, see chapter 5, "NGO Advocacy before International Governmental Organizations."

Assenov and Others v. Bulgaria: Right to effective investigation of arguable human rights violations

Anton Assenov, a fourteen-year-old Rom, complained to the police that he had been forcibly arrested, handcuffed, and beaten by police officers for illegal gambling at the market square in Shoumen in September 1992. He also requested that the prosecutor institute criminal proceedings and investigate the alleged beating. Following a brief preliminary procedure, the police and an investigating officer concluded that the boy's own father had beaten him. After reviewing the medical certificate, prosecutors determined that even if the police officers had administered blows that caused the injuries, their conduct constituted a lawful use of force necessary to overcome the boy's disobedience. The decision not to prosecute the officers was upheld at all levels of the Bulgarian courts. In 1995, Assenov was detained again, this time on robbery charges, and he was kept in detention until 1997, without judicial review of the arrest order. Subsequently, Assenov brought his grievances to the European Court of Human Rights.

The European Court of Human Rights delivered its judgment in Strasbourg on October 28, 1998. The Court held for the first time that a prompt and objective investigation is a part of the procedural guarantees of freedom from torture. Further, the Court found that a refusal by authorities to investigate an arguable claim of police brutality itself constitutes a violation of the right to freedom from torture,

guaranteed under Article 3 of the European Convention on Human Rights. The Court also declared that Bulgarian law failed to provide effective domestic remedies for victims of such violations.

In detailing the violations of the right to release or trial within a reasonable period of time, the Court pointed to the length and circumstances surrounding Assenov's detention. It found that two years of pretrial detention, most of which were spent in appalling conditions while proceedings effectively stopped for extensive periods of time, violated Article 5.3 of the Convention. The fact that Bulgarian law provides no requirement for the accused to be brought in person before an independent judicial officer in order to determine the necessity of bail or detention was also found to violate Article 5.3. These conclusions apply to all detainees in Bulgaria, and they suggest the need for a revision of the law.

The judgment is a landmark case of the Court in setting a higher European standard for the protection of freedom from torture as well as from inhuman and degrading treatment. As such, the Court has relied on the *Assenov* judgment in other cases, involving not only Bulgaria but other Central and Eastern European countries as well. The case has also affected Bulgarian law; the country's Criminal Procedure Code was amended to limit the discretion of prosecutors in several areas, including giving judges the authority to make decisions regarding detention or bail. The code was also amended to establish a maximum time for pretrial detention.

The full text of the judgment may be found at http://www.dhcour.coe.int/.

5.9 Consult specialized legal resource centers

There are a myriad of organizations, such as INTERIGHTS, the European Roma Rights Center (ERRC), the International Helsinki Federation for Human Rights, the Environmental Law Alliance Worldwide (E-LAW), Amnesty International, and the Regional Environmental Center (REC) in Hungary, that serve as valuable resources for groups engaged in public interest litigation. Lawyers from such organizations offer current and specific information on relevant international law provisions and the standards for their implementation. They may

also assist in the preparation of cases, offer their representation, or prepare *amicus curiae* ("friend of the court") briefs for the courts.

E-LAW, for example, provides environmental lawyers around the world with access to statutory and regulatory models from the United States and case precedents from U.S. courts, as well as American legal scholarship and jurisprudence. In addition, E-LAW offers to provide advocates with scientific resources that can assist in case preparation, including access to American scientists' expertise, scientific journals, and even basic scientific equipment such as water quality monitors.

5.10 Apply precedents

Once a creative argument or innovative strategy succeeds, it paves the way for similar decisions in the future. Even if the decision has no legal effect on subsequent cases, as is usually the case in civil law systems, the precedent may inspire other judges to issue similar decisions. For example, a favorable decision in an untested area of the law rendered by a respected judge in a district or regional court may have some influence on judges in other parts of the country if a similar case is brought before them. There may also be a role for precedent as constitutional courts in the region begin to issue judgments in human rights cases and other cases of broad public interest. Where new or reforming judicial systems are emerging, the lack of court experience with public interest matters may provide a unique opportunity for advocates to argue successfully for the value of looking to past decisions for guidance in certain cases. Moreover, in a few civil law jurisdictions, judges are increasingly willing to look to past decisions for guidance and exercise more discretion in decision making.

With respect to decisions of regional and international bodies, the judgments of the European Court of Human Rights are binding for those states that accept its jurisdiction. The Court has been critical of some states' compliance (or lack thereof) with the requirements of the European Convention on Human Rights. Such judgments have caused the subject states to take steps to comply with the law by introducing legislative amendments in response to the Court's findings.

In some cases, states that were not direct respondents have also modified their legislation to comply with the developing standards and requirements of the Convention. States parties to the Convention are obliged, and often volunteer, to take such preventive measures, in order to avoid the embarrassment of addi-

tional cases alleging similar violations before an international body. Although the Court will not instruct the state on how a change in local law ought to be made, member states, upon request by the Council of Europe, must provide an explanation of the manner in which its domestic law ensures the effective implementation of any Convention provisions. States also take such action to avoid payment of compensation to other victims of similar violations. Following a first successful case, other victims may pursue their own cases, with very good chances for success.

5.11 Access international courts

Advocates should also always consider the possibility of bringing a case before a regional or international court. The ability of individuals or groups to utilize such judicial mechanisms usually requires that potential applicants exhaust all available domestic remedies before seeking redress at the international level. For NGOs and individuals in Central and Eastern Europe who have utilized all means available to them within their country, the European Court of Human Rights may be the most appropriate international mechanism for resolving claims of human rights violations. The following outlines the procedures for bringing a complaint before the European Court of Human Rights. For further discussion of regional and international mechanisms for the protection of human rights, see chapter 5, "NGO Advocacy before International Governmental Organizations."

PROCEDURES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

The 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms—now the European Convention on Human Rights (Convention)—and its Protocols are powerful legal instruments in human rights law. The European Court of Human Rights (Court) was established to create an international forum for individual claims of violations of human rights and to ensure that states would afford to their citizens the rights and freedoms guaranteed by the Convention. Judgments of the Court are legally binding on member states. They establish the standards for and meaning of the rights and freedoms guaranteed by the Convention. The Court consists of a number of judges equal to the number of

states parties. The Parliamentary Assembly of the Council of Europe elects the judges, and they act in their independent and individual capacities.

A judgment of the European Court resolves claims by victims of violations of their rights under the Convention. The Committee of Ministers of the Council of Europe supervises the implementation of the judgments and ensures compliance therewith. The Committee of Ministers may impose ultimate sanctions, including suspension or expulsion of a state from the Council of Europe, though it has refrained from doing so to date. Following the implementation of Protocol 11 in November 1998, the Court has acted as a permanent body to which individuals have direct access. The process for accessing the Court is described briefly below.

Bringing a complaint before the European Court of Human Rights

1. An individual complaint is

   Addressed to The Registry of the European Court of Human Rights, Council of Europe, F-67075 Strasbourg Cedex, France; tel: (33 3) 88 41 20 18; fax: (33 3) 88 41 27 30.

   On behalf of a victim. A victim is a person, NGO, or group of individuals or people closely related to them, claiming to be directly affected by a violation of a Convention right. NGOs may not complain on behalf of, or represent, victims.

   Against the state. The Convention provides no protection against the acts of private people or entities. However, in some cases the state may be held responsible for its failure to implement sufficient safeguards against actions by individuals.

   Within a time limit of six months. The complaint must be brought within six months of the final domestic judicial decision rejecting the applicant's claim for redress of the alleged violation. A continuing violation, such as the continuing threat of penal sanctions in violation of a Convention

right, does not fall within this requirement. An initial letter of complaint is sufficient to satisfy the restrictions of the time limit.

After the exhaustion of effective domestic remedies. As in other international procedures, the national authorities first should have had the opportunity to address the substantive issues raised by the applicant. Exhaustion of domestic remedies involves a normal use of procedures, likely to be adequate and to provide redress for the alleged wrong. When there are no domestic remedies at all, or the remedies are not effective or unduly prolonged, this requirement may be waived. The Court's procedures place on the applicant the burden of proof that domestic remedies have been exhausted or are ineffective.

2. Complaints before the Court typically concern

Acts that violate rights guaranteed by the Convention. Violations of other rights not guaranteed by the Convention do not fall within the jurisdiction of the Court. Therefore, basic knowledge of the scope and content of the guaranteed rights is essential to determine whether a complaint falls within the scope of the Convention.

Acts within the territory of a state party, but also acts of official representatives of the state acting in this capacity outside the country.

Acts effected after the ratification of the Convention.

3. Complaints should not be

Anonymous. The application must be signed.

Substantially the same as a matter already examined or submitted to another procedure or international investigation.

An abuse of the right to petition.

Manifestly ill-founded.

4. A case may be struck from the docket if the applicant does not intend to pursue the application, the matter has been resolved,

or continuation of the examination of the application is no longer warranted.

Representation

Legal representation for filing an application is not formally required. However, it is advisable to consult with NGOs and legal experts with knowledge and experience in Convention case law and procedures. Applicants may be represented by a lawyer admitted to practice in one of the states parties to the Convention or by an expert in international law. In certain circumstances, the Court will meet some of the cost of legal representation under its own scheme for legal aid to applicants.

An initial letter describing the events and complaints of a victim is sufficient for the procedures to be initiated. An application form is then sent to the applicant to be completed, or may be sent by the applicant as an initial complaint. The application should address all important issues and legal analysis regarding the alleged violation and should contain all required personal and formal data. The application form is not considered a necessary part of the procedures—complaints that contain all necessary data may be registered even without it.

A committee of three judges considers the applications and, by unanimous vote, may declare an application inadmissible. Such a decision may be made without further examination. This decision is final and puts an end to proceedings.

A chamber of seven judges further considers the cases that have not been declared inadmissible by a three-judge committee. A summary of the facts and complaints is prepared and sent to the respondent government for its observations, and the applicant is given an opportunity to reply to them. Typically, the chamber decides on the admissibility and the merits separately.

Friendly settlement

After declaring the case admissible, the Court places itself at the disposal of the parties for a possible friendly settlement within a prescribed time limit set after the admissibility decision. Confidentiality is mandated in proceedings aimed at achiev-

ing a settlement. A settlement must be based on the principles of human rights and is subject to approval by the Court. A settlement often includes agreements concerning the introduction of legislative amendments, and/or payment of compensation and expenses to the applicant. A settlement puts an end to the proceedings.

Examination on the merits

If the application is declared admissible and a settlement is not reached or approved, the Court, together with the parties' representatives, pursues the examination of the case on the merits. The parties are invited to answer questions and exchange written observations on the merits. The Court may undertake an investigation, and the state concerned must furnish all necessary information to the Court. The parties prepare written memoranda and, in certain infrequent cases, present their pleadings at a hearing before the Court. The Court may also invite any person who is not the applicant to submit written comments or take part in the proceedings. International human rights organizations may be permitted to file *amicus curiae* briefs in important cases.

The Court decides the case on the merits by issuing a judgment. If it finds that there was a violation of the Convention, the Court may afford just satisfaction to the injured party.

The judgment

Within three months following a judgment of a chamber, any of the parties may request that a case be referred to the Grand Chamber. The judgment of a chamber becomes final when (1) the parties declare they will not request that the case be referred to the Grand Chamber, (2) the parties did not request the case to be referred within three months after the judgment, or (3) a panel of the Grand Chamber rejects the request to refer the case.

Unless one of the parties objects, the chamber may, prior to rendering a judgment, relinquish its jurisdiction to the Grand Chamber in cases raising serious questions affecting the interpretation of the Convention or possibly resulting in a judgment inconsistent with a judgment previously delivered by the Court.

The Grand Chamber of the Court

The Grand Chamber makes determinations of individual complaints relinquished by a chamber prior to rendering judgment or referred by one of the parties after the judgment. A five-member panel of the Grand Chamber determines whether to accept the relinquished case or referral. However, the Grand Chamber will exercise this procedure only in exceptional cases raising serious questions affecting the interpretation or application of the Convention, or a serious issue of general importance. At the request of the Committee of Ministers, the Grand Chamber also gives advisory opinions on legal questions concerning the interpretation of the Convention.

The judgment of the Grand Chamber is final.

Evidence

Although there are no strict rules on the admission of evidence, it is advisable to prepare, and secure in advance, evidence in support of all submissions. Such support may be found not only in the traditional statements of witnesses as well as medical certificates, statistics, and other documents, but also in domestic case law and statements from lawyers concerning the practice of domestic courts.

Official languages

English and French are the official languages of the Court. Applications may be drafted in any of the official languages of the member states. Once the application has been declared admissible, one of the Court's official languages must be used, unless the president of the chamber or Grand Chamber authorizes the continued use of the language of application.

Execution of decisions

Under the Convention, the states parties "undertake to abide by the final judgment of the Court in any case to which they are parties." This undertaking entails very

specific legal obligations, such as paying a sum awarded to the applicant as just satisfaction. It may also require the state to take some unspecified individual measures, designed to rectify the applicant's situation, or some unspecified general measures aimed at preventing future violations from happening. The Court cannot order the respondent state to take specific individual or general measures, however; states are free to choose the means for implementation of individual or general measures. This freedom nonetheless goes hand in hand with supervision by the Committee of Ministers, which is required to ensure that the chosen means are appropriate and effectively permit achievement of the result desired by the judgment of the Court.

For more information, please contact Council of Europe, F-67075 Strasbourg Cedex, France; tel: (33 3) 88 41 20 24; fax: (33 3) 88 41 27 04; E-mail: HumanRights.Info@coe.int; Web: www.coe.int or www.humanrights.coe.int for specific human rights information.

6. Effects of strategic litigation

The ultimate goal of strategic litigation is social and legal reform in the public interest. Successful litigation may lead to the enforcement of existing laws or fulfillment of governmental responsibilities. Successful litigation may also result in changes in the practice and interpretation of certain laws by all judicial bodies in a country. Decisions of constitutional and supreme courts, for example, play a leading role in the interpretation of existing law, and some are explicitly binding on other courts. In some instances, successful litigation may lead to the improvement or restructuring of institutions providing public services, such as hospitals and schools. In other cases, the impact of successful litigation is on the legislative process or on public opinion, which can greatly influence legal and social reform.

Nan Aron, founder of Alliance for Justice, an association of public interest organizations throughout the United States, divides the results that public interest advocates can obtain through court action into four categories:

6.1 Enforcing the law
6.2 Applying and interpreting the law
6.3 Reforming public institutions
6.4 Inspiring social and political change

6.1 Enforcing the law

A great many strategic cases are brought to court simply to enforce existing laws that are being ignored or inadequately enforced. Human rights lawsuits are often filed to compel government agencies to fulfill their duties to individual citizens and the community. Environmental and consumer rights cases address everyday issues such as monitoring public health regulations and preventing fraudulent business practices. Such cases are critical to the success of public policy and legislative campaigns. Without public interest activists representing concerned citizens who are willing to go to court, strong environmental legislation and other laws enacted by parliaments and government would be rendered meaningless. In fact, making agencies do their jobs has been called the most important role of environmental litigation. For example, Green Action, an environmental organization in Croatia, has initiated numerous legal actions in response to damage to property surrounding the Ivanec Quarry near Zagreb. Its efforts have been successful in ensuring that state agencies and local authorities stop issuing mining permits to companies whose quarries are destroying property. Viewed another way, to ignore such deficiencies in the enforcement of laws would render meaningless the efforts of activists and others to reform existing legislation.

6.2 Applying and interpreting the law

In systems of common law, legislative bodies often enact laws that are essentially broad policies, and it becomes the judiciary's responsibility to interpret and apply the law in the context of specific circumstances. But to a lesser degree, the courts in civil law systems also have a role to play in interpreting how general legal provisions and constitutional protections apply to particular circumstances. The judgments or opinions of the Supreme Court, the Constitutional Court, or an international tribunal have a binding force on the rest of the legal, executive, and legislative establishment and may influence the interpretation of the law by all courts in a country. When a strategic case is successfully brought before such a body, it is likely to have an impact on the general problem presented in the case. Thus, the case law of supreme and constitutional courts is closely followed by and binding on the rest of the judicial system.

Moreover, a case that challenges an abusive practice may ultimately be resolved in an international tribunal such as the European Court of Human Rights. The impact of a judgment of this tribunal may

reach far beyond a specific country and affect similar problems in other countries. When such cases address the compatibility of domestic law with international standards, a judgment may bring direct changes in the law of the state involved.

6.3 Reforming public institutions

Especially in the United States, courts may issue decisions that focus on changes in institutions such as prisons, schools, hospitals, and mental health facilities, often with detailed instructions about how to implement such changes. Some judges are willing to utilize the full power of the judiciary to secure the compliance of public officials and institutions with the judicial decisions. For example, some U.S. courts have ordered changes in policies and operations of mental health facilities in response to evidence of dangerous conditions. In addition, as a result of lawsuits presenting evidence of cruel and dangerous prison conditions, judges in the United States have mandated an end to many practices that perpetuate the problem of prison overcrowding.

6.4 Inspiring social and political change

While court decrees directing substantial and comprehensive changes have accomplished much, the ability of judges to implement and enforce such orders is limited, especially in countries with civil law systems, as the courts have neither the police power of the executive nor the budgetary authority of the legislature. As discussed above, a strategic case is brought to court to influence and change the views of society as expressed through the law. Once in court, proponents of change strive to draw the public's and judiciary's attention to a particular issue in order to influence the court's practice, the law, and society in general.

In certain circumstances, public interest litigation serves to complement the legislative process. Judicial decisions that follow the adoption of a law frequently provide interpretation of its provisions. Even when unsuccessful, a case may highlight problems or injustices in existing legislation, thus prompting legislators to reexamine public policy and enact measures to address the needs demonstrated by the public interest proceeding. For example, the WOLF Forest Protection Movement, in its case against the Slovak Ministry of Agriculture, was unsuccessful in attempting to become a party to administrative proceedings being conducted on forest management plans. Although the Supreme Court rejected its complaint, the case helped confirm an expansive interpretation of the criteria for

obtaining status as a party in administrative proceedings in Slovakia. WOLF hopes this will encourage other NGOs to participate in similar proceedings.

Regardless of the success of the case in court, pressure on the system resulting from public education may be sufficient to achieve the necessary legislative changes. Public interest litigation not only raises social issues, but it also highlights facts in a case and encourages and informs public discussion and debate on the issue. In the case of Dimitar Djevizov, for example, the Bulgarian Helsinki Committee (BHC) claimed that the owner of a private café in the town of Plovdiv should be held liable for allegedly refusing service to Romani people, and that the municipality should also be held liable for failing to sanction the owner. Although the case remains pending and its chances for success in court are fading, the BHC has achieved a public interest purpose insofar as the café is now serving all patrons regardless of their ethnicity.

Public interest advocates can often uncover information that the ordinary citizen would have greater difficulty in obtaining, such as documents from government agencies, information revealed through interviews with public officials, and records of actions taken by parties to the proceedings. Through the discovery and disclosure of such information, a pending case can raise interest and support in the community, adding to the pressure for change. Thus, merely raising legal issues of strategic importance frequently draws attention to the underlying problem and inspires public discussion, creating an increased awareness of the need for change. Public interest organizations may conduct activities in support of the litigation and play an important role in educating the public, drawing attention to the social issues addressed by the case, and initiating a discussion that contributes to the process of change.

7. Litigation as part of a comprehensive strategy

Complete victories in the courtroom are certainly cause for celebration. However, it may be unrealistic to expect a complete victory as a result of a single favorable decision. A ruling may have some aspects that advance the public interest cause but contain other elements that impede progress toward a public interest goal. Yet even partial victories are steps in the right direction and will eventually contribute to positive change. A long-term perspective is critical in public interest work, but deferring a declaration of vic-

tory until the achievement of complete success can be both counterproductive and demoralizing.

Moreover, winning litigation is not a panacea. Positive results may remain socially ineffective unless other activities accompany the legal efforts. As described in more detail elsewhere in these chapters, such activities may include grassroots campaigns, lobbying, monitoring, public education, or a combination of these activities. In the United States, for example, the *Brown* cases alone did not bring about extensive social change. In fact, the decisions were met with strong resistance; desegregation plans were ultimately abandoned in many school districts where they were first implemented. The implementation of the *Brown* decisions required great effort, resources, and tenacity, in a struggle that continues to this day.

In some cases, the impact of a victory in the courtroom is lessened or delayed if litigation is not accompanied by other strategies to form a comprehensive solution to social problems. For example, advocates for deinstitutionalization in the United States gained impressive legal victories in the 1970s in obtaining the release of many mentally impaired patients from prisonlike institutions. Ironically, without sufficient community-based care facilities, many of the former patients went untreated and experienced relapses, sometimes with severe consequences. While the public interest movement played a major part in releasing people who did not need to remain in an institution, the challenge to establish adequate community services, including residential facilities, case management, job training programs, and crisis services, had not yet been met.

Perhaps the greatest frustration of litigation for those who practice public interest law is that successes, once achieved, require constant follow-up and monitoring so that they do not become paper victories resulting in little long-term change. There is a common feeling among public interest lawyers that they are constantly fighting battles they thought were over.

Nevertheless, although litigation can be expensive and complex, and sometimes achieving the desired goal can be elusive, taking a case to court may be the best or only tactic available. Most public interest lawyers would agree that often there is no realistic alternative to litigation if real progress is to be made, or if gains made in the past are to be defended. In most cases, litigation functions as a critical component of a comprehensive strategy for action to achieve meaningful changes for the betterment of society as a whole.

RESOURCES

Readings

Amnesty International, *Fair Trials Manual*, 1998, London. <http://www.amnesty.org/ailib/intcam/fairtrial/fairtria.htm> (last accessed on July 26, 2001).

A guide to the international and regional standards that protect the right to a fair trial. Covers pretrial rights, rights at trial and during appeal, and special cases including death penalty trials, cases involving children, and fair trial rights during armed conflict.

Aron, N., *Liberty and Justice for All: Public Interest Law in the 1980's and Beyond*, Westview Press, 1989, Boulder, Colorado.

This book examines the history and role of public interest law in the United States and reviews its current status in the context of a 1983–84 survey of public interest law groups in the United States. A separate chapter discusses different litigation strategies and critiques litigation. The book also contains recommendations to the different actors in the public interest law movement: foundations, government, private bar, law schools, and public interest law centers.

Council of Europe, *A Single Court of Human Rights in Strasbourg: November 1998*, 1997, Strasbourg; available in English and French.

Council of Europe, *Short Guide to the European Convention on Human Rights*, 2nd edition, 1998, Strasbourg; available in English and French; also available in Albanian, Bulgarian, Croatian, Czech, Estonian, Hungarian, Latvian, Lithuanian, Macedonian, Polish, Romanian, Russian, Slovak, Slovenian, and Ukrainian.

Epp, C., *The Rights Revolution: Lawyers, Activists and Supreme Courts in Comparative Perspective*, The University of Chicago Press, 1998, Chicago.

A comparative analysis of the growth of civil rights, examining the high courts of the United States, Britain, Canada, and India within their specific constitutional and cultural contexts.

Harris, D., M. O'Boyle, and C. Warbrick, *Law of the European Convention on Human Rights*, Butterworths, 1995, London.

Provides a comprehensive account of the case law of the European Court of Human Rights and its principles, and explores the extent of the European Convention's influence on the legal developments of the contracting states. Provides a thorough analysis of each Convention article.

Public Interest Law Initiative in Transitional Societies, Columbia Law School, *Durban Symposium on Public Interest Law in Eastern Europe and Russia*, 1997, New York. <http://www.pili.org/publications/durban/index.html> (last accessed on July 26, 2001).

Report of the Symposium on Public Interest Law in Eastern Europe held in Durban, South Africa, in July 1997. Topics include management of public interest law organizations, access to justice and legal services, development of new institutions, street law and public education, clinical legal educa-

tion, domestic campaigning and lobbying for women's rights, and environmental litigation.

Public Interest Law Initiative in Transitional Societies, Columbia Law School, *Legal Defense of Roma (Gypsies) in Central and Eastern Europe*, 1998, New York. <http://www.pili.org/publications/roma/index.html> (last accessed on July 26, 2001).

Report of the Workshop on Legal Defense of the Roma in Central and Eastern Europe held in November 1997. Contains an annotated bibliography of academic articles, studies, and research publications about Roma generally and Roma in Eastern Europe.

Wilson, R., and J. Rasmussen, *Promoting Justice: A Practical Guide to Strategic Human Rights Lawyering*, International Human Rights Law Group, 2001, Washington, D.C.

A guide to practical legal strategies designed for local human rights lawyers. Examines the various structures of legal services organizations and highlights useful experiences of human rights lawyers from around the world. The publication can also be used as a tool for donors interested in assessing the potential impact of legal services organizations.

Organizations

Center for Reproductive Law and Policy (CRLP)
120 Wall Street
New York, NY 10005, USA
Tel: (1 917) 637 3600
Fax: (1 917) 637 3666
E-mail: info@crlp.org
Web: www.crlp.org

Web site contains information about laws, legal analysis, and legal developments related to the rights of women worldwide.

Centre for Advice on Individual Rights in Europe (AIRE)
74 Eurolink Business Centre
49 Effra Road
London SW2 1BZ
United Kingdom
Tel: (44 207) 924 9233 (administration only)
Fax: (44 207) 733 6786
Advice Line: (44 207) 924 0927
Web: www.airecentre.org

Provides legal assistance on a case-by-case basis to individuals, or to the lawyers who represent them before international tribunals, as well as resources and teaching materials on international human rights law.

Environmental Law Alliance Worldwide (E-LAW)
1877 Garden Avenue
Eugene, OR 97403, USA
Tel: (1 541) 687 8454
Fax: (1 541) 687 0535
E-mail: elawus@elaw.org
Web: www.elaw.org

Provides public interest lawyers with resources to protect the environment through legal activities.

European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France

Tel: (33 3) 88 41 20 18
Fax: (33 3) 88 41 27 30
Web: www.echr.coe.int

European Roma Rights Center (ERRC)
1386 Budapest 62
P.O. Box 906/62
Hungary
Tel: (36 1) 4282 351
Fax: (36 1) 4282 356
E-mail: Info@errc.org
Web: www.errc.org

Defends the human rights of the Roma throughout Europe and serves as a legal resource center for advocates working in this field.

INTERIGHTS
Lancaster House
33 Islington High Street
London N1 9LH
United Kingdom
Tel: (44 207) 278 3230
Fax: (44 207) 278 4334
E-mail: ir@interights.org
Web: www.interights.org

Supports and promotes the development of legal protection for human rights and freedoms worldwide through the effective use of international and comparative human rights law. Its Web site has a comprehensive database containing summaries of international human rights decisions, including the jurisprudence of the European Court of Human Rights.

Four

CAMPAIGNING FOR THE PUBLIC INTEREST

This chapter explains:

- the purposes and advantages of public interest campaigns
- how to prepare for a campaign
- specific campaigning techniques
- how coalitions can help achieve campaign goals
- the international dimension of campaigning
- a case study of a campaign to achieve legislative change

1. CAMPAIGNING TO ACHIEVE PUBLIC INTEREST GOALS

Broadly defined, a campaign is any sustained effort to focus attention on an issue or message in order to persuade people to change their views or to take certain actions. The purposes of campaigns are as varied as the causes they promote. Campaigning can seek to achieve specific legislative change, such as the adoption of an environmental protection law, or to raise public awareness about an important social issue, such as gender discrimination. NGOs and others working on behalf of public interest issues should understand how campaigning works so that they can harness its power to achieve the goals of their organizations.

Lobbying can be a significant part of a public interest campaign. For purposes of this handbook, public interest lobbying refers to direct contact with decision makers on a particular issue in order to influence pending legislation or to introduce new laws that support public interest goals. Such decision makers may include, for example, politicians, members of a parliament (MPs), government officials, mayors, governors, and members of local councils. Lobbying, sometimes referred to as legislative advocacy, can mean discussing an issue with a leg-

islator before a formal vote is taken, but it can also refer to urging a bureaucrat to take a particular action. Lobbying can also include providing basic information or analysis about an issue to a decision maker—without seeking a particular decision on a piece of legislation—though some exclude this activity from a definition of lobbying.

While public interest campaigns often include lobbying, campaigning also refers to wider efforts to mobilize the public in support of a public interest objective, through activities such as press conferences, citizen demonstrations, community meetings, petition drives, and negotiations. Ultimately, a campaign may serve to complement one or more other approaches that organizations utilize to accomplish their aims, including monitoring (see chapter 2, "Monitoring for the Public Interest: Guidelines for Effective Investigation and Documentation"), strategic litigation (see chapter 3, "Strategic Litigation: Bringing Lawsuits in the Public Interest"), and international advocacy (see chapter 5, "NGO Advocacy before International Governmental Organizations"). More often than not, a combination of complementary approaches is the key to a winning strategy in pursuing the public interest.

Successful public interest campaigning can result in the creation, adoption, and implementation of better laws and regulations, as well as improved distribution of public funds addressing a more diverse set of needs. It ensures public policies that respond to the needs of their beneficiaries. Public interest campaigning also contributes to the strengthening of the democratic process. It educates both the citizens and their leaders, promotes transparency and accountability, and gives voice to the concerns of constituencies. Public interest campaigns also contribute to the cohesion of civil society by strengthening coalitions and networks and by fostering collaboration among organizations.

Most campaigns evolve over time—frequently, over long periods of time. Campaign strategies are often adjusted as campaigners achieve partial victories. NGOs engaged in campaigns should also remember to declare small victories gained on the way to the final goal. Even relatively modest objectives, such as the adoption of a single provision or piece of legislation, can suffer setbacks or obtain incomplete results. Thus, it is important to define incremental steps that can be considered meaningful successes once achieved. Otherwise, a campaign may lose critical momentum, making it difficult to sustain interest and motivate campaign supporters.

BHC targets Parliament in challenge to Bulgaria's libel law

The Bulgarian Criminal Code provides criminal penalties for libel against a public official. Further, penalties are far more severe for libel against a public official than in cases where the victim is a private person.

To remedy the situation, the Bulgarian Helsinki Committee (BHC) launched a campaign in 1997 to challenge the procedures and penalties contained in the country's libel law. BHC's goals were to bring about a reform of this law by lobbying the Bulgarian legislature to amend the relevant provisions and by finding a way to challenge their constitutionality before the Bulgarian Constitutional Court. The campaign began with BHC monitoring cases of criminal libel prosecutions and bringing particular cases to the attention of Parliament, journalists, and the Bulgarian public. The organization also met with numerous MPs to encourage them to focus on the issue.

To stimulate additional support, BHC invited journalists, prosecutors, investigative officials, MPs, and NGO representatives to two conferences on criminal libel. Both conferences generated considerable media publicity. In response to an official appeal to Parliament produced by the second conference, MPs introduced a moratorium on imprisonment for criminal libel. Although the moratorium proposal was rejected, the issue had received enough publicity to spark significant parliamentary debate.

In turn, BHC modified its approach to emphasize a litigation strategy, as support for legislative change continued to waver. BHC, together with other human rights NGOs and professional organizations of journalists, initiated a campaign to collect a sufficient number of signatures of MPs to bring a petition to the Constitutional Court. Subsequently, in 1998, fifty-five MPs requested the Court to rule on the constitutionality of the Criminal Code's libel provisions and their compatibility with the international treaties ratified by Bulgaria. The Court agreed to rule on the case. BHC was permitted to file an *amicus curiae* ("friend of the court") brief as a human rights organization, and it also secured approval for international NGOs to submit legal briefs on the issue.

In July 1998, the Constitutional Court ruled against BHC on both issues, using arguments based on the constitutional principle of protection of privacy and individual honor, dignity, and reputation, and citing a decision of the German Constitutional Court on a similar issue. However, the Bulgarian court recognized the need to scrutinize libel laws as they apply to public figures and the importance of a system of punishment proportional to the crime. These acknowledgments represented a partial victory for BHC, despite the negative ruling on the primary issues.

Despite this generally discouraging decision, BHC continued its efforts to build public awareness about the deficiencies of the libel law. Probably as a result of the intensive pressure within the country and also from international organizations, Parliament amended the Criminal Code in 1999 to abolish the punishment of deprivation of liberty for libel and instead imposed fines. BHC's efforts thus established a process for raising awareness about an issue, bringing a case before the Constitutional Court, and enabling NGOs to submit briefs on the issue. Over a two-year period, the lobbying efforts, conferences, and publicity resulted in a partial improvement of the law.

For more information, please contact the Bulgarian Helsinki Committee, 7 Varbitsa St., Sofia 1504, Bulgaria; tel/fax: (359 2) 943 4876, (359 2) 465 525, or (359 2) 467 501; E-mail: bhc@bghelsinki.org; Web: www.bghelsinki.org.

2. Preparing for public interest campaigns

Becoming involved for the first time with campaigning can be intimidating. From determining the campaign goal and message to choosing campaigning techniques and building coalitions, the tasks in building a campaign may seem overwhelming. However, almost every NGO has certain campaigning experience, even if it has not been labeled as such. Activities such as fact-finding missions and documentation of cases; meetings with public officials at national and international levels; contacts with mass media; discussions on legislative procedures and the substance or implementation of laws; and monitoring of MP positions on issues are all examples of effective campaign elements.

Whether to initiate a particular cam-

paign is an important decision for any NGO. Such a decision requires the recognition and acceptance of an NGO's limitations and strengths, as well as a realistic evaluation of available resources. An NGO lacking expertise, reputation, and strong allies has little chance to exert effective political pressure. If one or more of these elements are missing, campaigning efforts may need to be postponed in favor of building a stronger organization.

2.1 Assessing organizational strengths and limitations

The likelihood of success of any public interest campaign is greatly enhanced if an NGO has a realistic view of its assets as well as an understanding of the areas where it is weak. Specifically, the organization should candidly appraise its strengths and shortcomings with respect to its ability to influence the relevant constituency or decision makers.

Geography can play an important role in determining whether and how to conduct a particular campaign. An organization located in the capital city can usually follow parliamentary debate and governmental activity more readily than one in a remote community. An NGO operating in a particular region of the country (for example, an area where minority problems are especially acute, or where there is a serious environmental problem) may have an advantage in gaining local support and focusing attention on a regional issue. The same NGO may face difficulty in generating similar support for a national issue.

An NGO should evaluate its size, membership, and expertise relative to the campaign it is considering. A small group with very specific competencies or the participation of a few accomplished professionals might choose to focus on a single or distinct issue or aspect of a problem. In contrast, a grassroots organization that may rely on the involvement and commitment of a large membership may be able to address an issue from a broader perspective or implement a more comprehensive approach than would a smaller group. Regardless of the scope of the campaign, it can be important to secure the involvement of capable professionals. For example, the participation of skilled lawyers ensures the accuracy of legal representations; physicians can attest to physical aspects of the consequences of torture, police abuse, and domestic violence; economists can evaluate the financial implications of certain legislative proposals; and scientists can prepare environmental analyses.

An organization may also evaluate its strength by examining the extent of its potential influence. NGOs that have con-

nections and support from other organizations in the country (or regional or international groups) may be able to draw on these relationships in promoting and furthering its campaign efforts. Some NGOs are led by noted activists, public intellectuals, highly respected leaders, or other influential individuals. The public and private interventions of such people are often well regarded by the general public and officials.

Equally important to an NGO's campaigning opportunities are the financial and other resources available to the campaign. If the NGO finds its organizational strengths and weaknesses to be compatible with the campaign objective, the NGO should next evaluate the scope and quality of such resources.

2.2 Analyzing available resources

Any public interest campaign requires people, money, and organizational infrastructure, each in proportion to the magnitude of the particular project. Before tapping into these assets, an organization must examine the existing and potential resources that can be directed toward the campaign. The NGO should examine its human, informational, and financial resources to determine its campaigning capacity.

Human resources consist of both paid staff and volunteers. An NGO should evaluate its human resources in terms of the number of people as well as the time they have available to devote to a campaign, based on current and future workloads. The availability of human resources is paramount to any public interest campaign, as the campaigning efforts of an organization are only as good as the individuals behind it. The question of whether there is enough "human capital" for a particular campaign is of course part of a broader inquiry about the overall sufficiency of an NGO's human resources. Many NGOs are understaffed, and the notion of volunteerism (as well as its practicality, given economic realities) is still in its early stages in many countries.

Informational resources are vital for any campaign seeking to affect legislation. A library of legal materials or ready access to such materials, along with Internet access and contacts with specialized national or international bodies, can be helpful. Access to telephone, fax, E-mail, computers, printers, and photocopiers as means of communication is essential. The availability of a separate room or dedicated work space with desks and filing cabinets is also useful.

Financial resources are certainly fundamental, and they are often linked closely to the adequacy of an organization's

human and material assets. NGOs in Central and Eastern Europe face serious challenges in raising funds for public interest campaigns, as virtually all funding comes from foreign sources. Some donors, such as those based in the United States, may be subject to legal restrictions prohibiting funding to be used for lobbying in its narrowest sense. These restrictions, however, are narrowly drawn. Most campaigning activities are protected forms of freedom of expression and are not subject to regulation.

2.3 Conducting preliminary research

Prior to initiating a campaign, NGOs may find it useful to conduct preparatory research in several areas. An organization should gather the facts and data that will allow it to accurately gauge public perception about the issue and to develop a detailed understanding of the issue and its background. Where legislative change is one of the objectives, organizations should acquire substantial knowledge of the legislative framework, applicable laws, and any relevant case law.

2.3.1 Public perception. To evaluate public perception about the proposed campaign, an organization can determine whether the issue is popular, politically sensitive, or both. Inquiries regarding public opinion on the issue may be conducted informally or through polling, and they can reveal whether there is a segment of the population that is directly interested in the issue. If such a group exists, an NGO should investigate how well organized and/or influential it is. Finally, the organization should examine whether the subject of the potential campaign is one that could attract the attention of the mass media. A campaign strategy will be directly affected by existing public opinion, level of public support, and general perceptions about an issue.

Thus, because of public perceptions, a campaign aimed at improving prison conditions is likely to be dramatically different from a campaign on freedom of expression or one focused on environmental protection. A campaign on behalf of homosexual rights may require different tactics from a children's rights campaign.

2.3.2 Background information. First, an organization should determine whether the issue is new or has already been addressed by the media, decision makers, or other organizations. If the issue has been previously addressed, the organization should learn what were the main arguments in support of the issue, as well as those in opposition, and what has been written already in the press about the issue. NGOs

should identify influential people who would be aligned with their organization's position, and those who are its strongest opponents. In addition, the NGO should examine the results of any actions taken previously by authorities or other NGOs.

2.3.3 Legislative framework. NGOs should obtain up-to-date information on the content of the laws and regulations related to the issue, as well as any relevant legislative history. If the organization has no staff attorneys, or elements of the campaign issue fall outside the scope of staff expertise, an NGO should consider obtaining the assistance of outside experts. Such experts can assist advocates to better understand the provisions and requirements of particular legislation in order to target specific provisions to achieve organizational goals. Lawyers or academics who specialize in constitutional or international law in particular may have knowledge that is useful in formulating the campaign.

3. Developing a Campaign Strategy

It is critical for an NGO to develop and articulate an overall strategy for the campaign, based on the campaign objectives and an analysis of the NGO's own capabilities as described above. NGOs should keep in mind that they may need to refine and modify the strategy as the campaign proceeds, in response to unexpected challenges and partial victories along the way.

Initially, the organization should determine the basic objective of the campaign, whether it is legislative change, increased public awareness, or some other goal. If the goal is to effect legislative change, the issue of whether the NGO is seeking to influence existing laws or initiate new legislation will affect the strategy selected. Similarly, raising public awareness might mean mobilizing public support and citizen action, or it could involve informing people about their legal rights as citizens. Identifying specific objectives helps NGOs consider whom the campaign should target, as well as how the message should be defined.

Identifying the audience is a next important step in developing a campaign strategy. Whenever possible, advocates should direct their campaign efforts at the people or institutions where they will have the most impact. As a rule, when the goal is legislative change, the focus should be on the parliament and relevant ministries, especially when legislation has not yet been introduced. The decision about whom to target depends on a variety of factors, including whether the goal of the campaign is to change or repeal existing

law, or where in the legislative process a particular piece of legislation may be pending. Certain campaigns focus on political or social groups that may be most interested in the campaign issue, as well as willing to take action to support it. For campaigns to raise public awareness, the target audience may be the media and, directly or indirectly, the general public.

Another key element in developing strategy is articulating the main message of the campaign. An organization's message should be as simple and clear as possible. When using numbers and statistics, it is important to give clear examples to help the target audience better grasp the extent of the problem. Very often numbers, especially larger numbers, are difficult to comprehend, and the human side of statistics can be lost. One way to clarify the organization's message is through dramatic images. For example, when UNICEF wanted to make clear that 35,000 children die needlessly every day, it brought this statistic to life by stating that it was analogous to 100 jumbo jets, each with 350 children aboard, crashing each day. This example made both the large number and the senselessness of the deaths easier to relate to and understand.

Equally important, the campaign message must always be accurate and credible. This means providing information to support an NGO's claims and presenting it in a believable way. Facts, statistics, and other supporting data can convince the intended audience that the organization's message is genuine. However, too many details may confuse and overwhelm the audience. An NGO should evaluate available information and present only the most important background data.

Creating the campaign message

It is critical for an organization to decide exactly what message the NGO wants to convey and then to tailor that message to a defined audience. In developing a clear and accurate core message, organizations should articulate a problem, a solution, and an action.

Problem. The organizational mission statement can give an NGO a starting point for its campaign message, since the mission helps a group define what types of problems it is trying to address. For example, if the mission of an NGO is to pre-

vent torture and stop unlawful imprisonment, its message might use specific facts to describe the extent of the particular problem. The message might begin with a statement such as, "Every day at least two people are illegally imprisoned and tortured in this country."

Solution. For every problem, there is at least one solution, and part of the work in creating a message is identifying such a solution. The solution helps the audience recognize practical ways to solve a challenging problem. In the prior example, perhaps the parliament is considering legislation that would expand oversight of the police and supervision of prisons. One solution might be, "Parliament must take action and pass the law on oversight of law enforcement personnel."

Action. Finally, the message must present a way for the audience to act on the solution. This often involves urging people to vote, attend a demonstration, or contact government representatives. An NGO might encourage its audience, "Contact your MP to express your support of this legislation to help stop human rights abuses against our people."

Adapted from Center for Sustainable Human Rights Action, *Making the Most of the Media: Tools for Human Rights Groups Worldwide*, 2001, New York.

4. Choosing campaigning techniques

For a campaign to be most effective, organizational leaders should choose among a variety of campaigning techniques and select methods that best fit with the goal and overall campaign strategy. As with the campaign itself, advocates must establish a realistic objective for each technique they select. Techniques may vary, depending on the target audience, but there are several methods that NGOs can use particularly effectively when the goal is legislative change. In addition to face-to-face meetings with individual MPs and political parties, organizations can provide position papers and other research to legislators, or seek permission to address a parliamentary committee. Advocates may also work with the media, or mobilize public support through letter-writing

campaigns, mass demonstrations and protests, community meetings, and other public education programs.

4.1 Providing information to the parliament and government

4.1.1 No existing legislation. If the campaign goal is to adopt or amend a law and there is no draft yet, several options might be considered. If targeting the parliament, an NGO should push to have a legislative proposal initiated by a group of MPs or through a citizens' legislative initiative if appropriate. In addition to researching background information for MPs, advocates can even draft a model provision or law and provide it to the relevant legislators. NGOs should determine whether any influential members of the government oppose the change, and whether such opposition is strong or the forces are divided. If there are significant political forces or individual MPs within the parliament ready to support the initiative, they should be identified.

In Central and Eastern Europe, most legislation is introduced into the parliament by the government. As a result, the relevant ministry or executive department is a good place to start, provided the administration is not clearly against the proposed change. Another option is to start by addressing the international community. This strategy can be effective if public authorities are sensitive to international criticism and pressure, especially if international law or international public opinion is relevant to the issue.

ROMANIAN NGOS CAMPAIGN FOR A MORE OPEN PARLIAMENT

Efforts to increase the "transparency" of the Romanian Parliament were initiated by the Romanian Helsinki Committee in early 1993. Other Romanian NGOs, such as League for the Defense of Human Rights (LADO), Pro-Democracy, and the Bucharest office of the International Foundation for Election Systems (IFES), joined in what became a multifaceted transparency campaign.

In the early 1990s, these groups became interested in advancing their agendas on human rights and civic education by engaging in the legislative process. However, the closed nature of political institutions in Romania extended to

Parliament as well. They had difficulty obtaining copies of draft bills, determining which committees were working on particular pieces of legislation, or learning the calendar for legislative action. Increasing parliamentary transparency would help facilitate their legislative advocacy efforts, which were crucial to their overall agendas. In addition, these organizations saw the transparency issue as one component of their larger democratization goals, as a more transparent Parliament would be more accessible and accountable to all citizens and would be a positive example for other state institutions.

The Romanian groups formed a coalition of interested NGOs to coordinate a campaign, which included

- a major conference devoted to transparency, initially drawing attention to the issue, with the participation of parliamentary leaders, NGOs, and other public figures;
- the development and expansion of a coalition of interested NGOs, including regular meetings to coordinate activities;
- a petition drive;
- publication of a newsletter to report new developments in the transparency campaign;
- work with journalists to increase media coverage about transparency issues;
- meetings with individual MPs and parliamentary staff to encourage specific procedural changes.

In 1994, the coalition formally requested that an NGO information office be established in Parliament. While Parliament ultimately denied the request for an information office, it did act to increase its own transparency, including making draft bills easier to obtain and permitting NGO representatives to attend some committee meetings.

Adapted with permission from Carothers, T., *Assessing Democracy Assistance: Case of Romania*, The Carnegie Endowment for International Peace, 1996, Washington, D.C.

4.1.2 **Existing drafts or proposals.** If the government has already drafted a proposal but has not sent it to the parliament, the NGO normally focuses on opening the dialogue with the relevant ministry. However, if direct cooperation is not possible, NGOs might consider working with individual experts from the ministry's legislative council, influential people from other ministries, the office of the prime minister, and, if useful, the office of the president. Even if dialogue with the government appears very difficult, almost any possibility is worth exploring. NGO intervention only at a later stage—for example, during parliamentary committee debates—might be much less effective.

If the legislation concerned is already the subject of parliamentary debate (submitted by the government or initiated by MPs), the main focus is normally on MPs. However, the role of the government should not be ignored. Government representatives, even if they have already submitted their version, might be persuaded to add or give up certain provisions, or to otherwise adjust the text to take into consideration new arguments. The same can be said about parliamentary committee members.

4.1.3 **Legislative staffing.** The majority of MPs do not have their own staff to assist them. This lack of support has two important consequences. First, between committee meetings and floor sessions, responding to constituencies, party politics, and their own private lives, very little time remains for research and documentation. Therefore, most MPs need and appreciate reliable information and sound, logical legal arguments offered by NGOs. Furthermore, without assistants or secretaries around them, access to a Central and Eastern European legislator is relatively easy. Once an NGO is admitted inside the parliament building—which sometimes requires a great deal of effort in itself—an advocate often may reach an MP directly and immediately. Such an arrangement, which results from a lack of resources, actually facilitates the development of relationships with legislators and frequently encourages mutual cooperation.

LITHUANIAN NGOS PARTICIPATE IN PARLIAMENTARY HEARINGS

The Seimas, the parliamentary body in Lithuania, held its first formal Open Hearing in December 1998, as part of the "Program on Open Legislative Process." Six

representatives of prominent NGOs testified before the Committee on Budget and Finance and the Committee on Social Security and Labor concerning draft amendments to the Law on Charity and Sponsorship. These NGO leaders presented written and oral statements and answered questions from Seimas members (MPs) before an audience of more than 100 government officials, journalists, and other interested groups. Prior to the hearing, MPs and government officials met to discuss the importance and benefits of citizen access to the legislature, as well as procedures implemented by various democratic countries to promote legislative transparency and public input.

NGO participation was facilitated by the NGO–Information and Support Center in Vilnius (NISC). In addition to distributing the draft amendments to 1,500 NGOs throughout Lithuania, NISC had publicized the program at several events, such as the annual NGO Forum, and placed announcements in the newspaper with the largest daily circulation. NISC sponsored three special sessions for NGO representatives to inform them about the Open Hearing as well as provide training concerning effective written and oral advocacy. Subsequently, six NGO representatives, including two experts on the legislative drafting group, agreed to testify at the hearing.

Before this initiative began, Seimas committee meetings were not completely closed; sometimes MPs allowed comments from experts and other informed parties. However, such input occurred on an *ad hoc* basis, without mechanisms for participation by civil society and business representatives. Now, for the first time, the Seimas prepared and disseminated formal hearing guidelines; accepted written statements from all interested parties; publicly invited NGO leaders to speak; applied time limits to statements and question-and-answer periods; opened the event to citizens and the media; and published a full hearing transcript, including written statements.

As a result of the program, the Seimas has approved statutory amendments that provide for greater use of open committee hearings and more public input. MPs, staff, and other Seimas officials have learned how to hold open hearings, and NGO leaders have learned how to testify before Seimas committees. With open hearings being held at the Seimas on a regular basis, a sustainable constituency for legislative

transparency has been identified and empowered. The Seimas has also taken other measures to improve transparency, such as making draft laws available via the Internet and accepting electronic comments.

Adapted with permission from Segal, M., "Lithuanian NGOs Testify to Parliamentary Committee Hearing," 2/1 *Social Economy and Law Bulletin (SEAL)* (Spring 1999).

4.2 Working with the media

The media can be an important ally for advocates by disseminating information to the public and decision makers. However, NGOs must recognize the needs and goals of journalists in order to establish a mutually beneficial relationship with the media.

NGOs often have friendly relations with some individual journalists, but other journalists may treat NGOs with skepticism. Indeed, some journalists are mistrustful of NGOs and view them as biased and overly emotional. Journalists may be skeptical of "facts" presented to them by NGOs, and even when journalists verify the factual research of a particular NGO, they will not necessarily come to the same conclusion as the NGO regarding the appropriate solution. NGOs may hold press conferences, providing the media with concise packages of information. Most journalists, however, are not looking for pre-written stories; they want hard facts.

Given the conflicting goals of journalists and advocates, it may be difficult to establish a good NGO-media relationship. The key is to develop more effective ways to present information to the media. Advocates should focus on the issue at hand, not on their organizations or specific programs. Journalists want to describe a situation, not to serve as promoters for an NGO. Furthermore, journalism is a business, and the media want stories that will capture the attention of their audience. Thus, NGOs should focus on the relevance of the issue and establish that it is timely and important. Advocates should emphasize the "human interest" aspect of the issue. For example, journalists will be interested in interviewing the people affected by the issue. Stories about individuals are inherently more interesting than abstract statements or statistics, and presenting an issue as it affects individual lives is often attractive to the media. The public wants to read the story of an individual, and journalists will want to print such a story.

In presenting data to the media, NGOs should offer balanced information and be ready to argue their point against opposing data. Because journalists recognize that advocates have an agenda, advocates should be honest about their perspective. NGOs should not respond to questions to which they do not know the answer, as it is much more credible to admit not knowing than to provide a journalist with inaccurate information. Finally, advocates should be succinct, remembering that journalists have deadlines and practical limits to the amount of attention they can give to an issue.

Anatomy of a press release

A press release should be written to answer the questions who, what, when, where, why, and how. The most effective releases are one page long, easy to read, and include

- the **date;**
- a **headline** that reflects the main message;
- a **subhead** that adds a second, forward-looking theme;
- **contacts** for further information from the organization and those quoted;
- a **lead paragraph** that explains the problem and gives the most important information;
- a **background paragraph** that gives context to the problem;
- at least two **quotations**, one from a well-known person, if possible;
- a suggested **solution** and a call for action;
- a brief **organizational description** (a mini–mission statement) of no more than about thirty words.

Adapted with permission from Center for Sustainable Human Rights Action, *Making the Most of the Media: Tools for Human Rights Groups Worldwide*, 2001, New York, based on an unpublished paper: Thomas R. Lansner, "Press Releases for Advocacy—A Brief Summary."

4.3 Mobilizing public support

Almost every type of public interest campaign relies on, or can benefit greatly from, raising public awareness and generating public support in order to achieve the ultimate campaign goal. Sometimes raising public awareness is itself the main goal of a campaign; in other cases, public support can be a powerful catalyst for legislative or policy changes. NGOs can choose from a variety of techniques that can be very effective in reaching and involving large segments of the population in their country or region. These campaign methods may include letter-writing initiatives, such as B.a.B.e.'s effort in Croatia to raise awareness about domestic violence.

Be aware, Be emancipated: 16 Days of Activism against Gender Violence

The Croatian women's human rights group Be active, Be emancipated (B.a.B.e.) organized an event called 16 Days of Activism against Gender Violence to bring the issue of violence against women to the attention of the public and Croatian and world leaders. The program was first publicized by a B.a.B.e. leader on the television program *Good Morning Croatia*. This program helped to inform the public and media of the issues that the NGO hoped to target and the events and programs that would occur during the upcoming sixteen days.

As part of the effort to raise awareness, B.a.B.e. organized a postcard campaign. The NGO distributed postcards addressed to Croatian ministers and international representatives listing concerns and questions about women's human rights. B.a.B.e. asked people to sign the cards and mail them. The campaign became very popular, as the postcards encouraged discussion, and the public was enthusiastic about participating in the distribution. The campaign was also advertised on posters displayed throughout the country.

The NGO also publicized the campaign by commissioning a rap music song and video based on its posters. Funding was limited, so the NGO produced only fifty CDs and distributed these to radio stations. The video was aired on Croatian television. All of this publicity culminated in a candlelight vigil entitled Women

Lighting the Way. The vigil, held on the fiftieth anniversary of the Universal Declaration of Human Rights, was widely attended and attracted extensive media coverage.

B.a.B.e. considers the event a great success. Combined with extensive lobbying, 16 Days of Activism ultimately contributed to significant changes in family law in Croatia. Committing violence against family members is now illegal. Equally important, the event raised awareness about violence against women in Croatia and the international community.

For more information, please contact B.a.B.e. (Be active, Be emancipated) Women's Human Rights Group, Vlaška 79/III, 10000 Zagreb, Croatia; tel/fax: (385 1) 4611 686; E-mail: babe@zamir.net; Web: www.babe.hr.

Petitions and citizen demonstrations can be particularly effective in generating public awareness and support for campaigns, whether the issue concerns the entire citizenry or affects a smaller segment of the population. Even if the problem identified by the campaign is not completely resolved in the short term, mass demonstrations and similar events are not quickly forgotten. Often the impact of citizen involvement in such activities increases over time, with the high-profile (and hopefully well-publicized) event serving as a catalyst for longer-term activism.

Defending freedom of conscience in Russia

In September 1997, the Russian government passed a law that greatly restricted the rights of religious minorities to freely practice their religion. The law was widely considered to be unconstitutional and was strongly criticized by observers in the West. Immediately after its passage, the Institute for Religion and Law, the Christian Legal Center (now the Slavic Center for Law and Justice), and the Christian Social Movement joined together to organize opposition to the law. These groups decided that for any action to be successful, it must

- attract wide media coverage, nationally and internationally;
- educate religious minorities and the public about the violations that were taking place and international standards of religious freedom;
- demonstrate the political power of the affected class and sympathizers, as well as the unity of religious minorities in Russia;
- motivate religious minorities to organize and take action at a grassroots level.

With those goals in mind, the organizers decided that a public protest would most effectively accomplish their goals. The protest would have to be organized quickly and held in a prominent public place so as to attract the most media attention. The event would draw together a large number of people from various denominations to demonstrate unity and strength.

The development of the program was successful in a number of respects. First, religious leaders had the opportunity to take part in deciding which leaders from various faiths would speak and what issues would be discussed. The leaders agreed that the speakers would address the issue of religious freedom and not advocate for any particular religion. The participants also emphasized the need for unity to ensure the demonstration's success; because of the seriousness of their common problems, the organizing of the demonstration turned opponents into allies. Moreover, because the event had the support of religious leaders, organizers were able to draw on a vast array of congregation members for the expertise and professional help they needed.

The Meeting in Defense of Freedom of Conscience was held in Gorky Park on 7 October 1997, less than three weeks after Boris Yeltsin, the Russian president at the time, signed the legislation. More than 3,500 individuals participated. At the end of the demonstration, the organizers drafted a resolution to Yeltsin declaring the fundamental nature of freedom of conscience and explaining why the Russian law violated the Russian Constitution. Although the law has yet to be repealed, the demonstration contributed significantly to the main objective of the campaign, which was to challenge the law in the Constitutional Court.

In May 1999, Oleg Mironov, human rights ombudsman of the Russian Duma, suggested that the current law must be "brought into accordance with principles and standards of the international law." The Institute for Religion and Law brought a petition before the Russian Constitutional Court on behalf of an aggrieved religious organization. In November 1999, the Constitutional Court decided the case in favor of the petitioner by prohibiting the application of certain provisions of the law to organizations created prior to its enactment.

The demonstration also garnered international attention. A panel commissioned by the United States recommended that President Vladimir Putin "be pressed to reverse a new amendment to the law on religion requiring dissolution of churches that fail to register with the government by the end of December 2000." Finally, the unity of event organizers has strengthened, as they continue to work for the repeal of the law.

For more information, please contact the Slavic Center for Law and Justice, 20 Leninski prospect, Entr. 5, Moscow 117071, Russia; tel: (7 095) 795 3979; fax: (7 095) 954 9255; E-mail: irlaw@online.ru; Web: www.rlinfo.ru.

5. Building coalitions and other collaboration

Advocates know instinctively that they need to work together to create strength in numbers, in order to build lasting change. However, many are wary of the inevitable challenges inherent in working in coalitions and other forms of collaboration. Collaboration may be formal or informal, temporary or permanent. Such collaboration may be called a coalition, network, alliance, campaign, or federation, among other names. The meaning and use of each name will vary from country to country.

The Advocacy Institute in Washington, D.C., describes what it calls the "collaboration spectrum," with "networks" at one end of the spectrum and "coalitions" at the other. At one end, networks exist to share information, ideas, and support. A common interest may be the only membership requirement, allowing space for other differences to exist. A network's structure is often informal, with members investing relatively little, while being free to benefit, contribute, or discontinue their membership whenever they wish.

Coalitions are at the other end of the spectrum, and they exist for joint action. To

The collaboration spectrum

Networks	*Coalitions*
Information sharing	Joint action
Temporary	Possibly permanent
Informal	Formal
Limited structure	Structure needed
Full autonomy	Shared decision making and resources
	Coordinated activities

reach a specific goal, members invest significant resources, share decision-making authority, and coordinate their strategies, messages, and action plans. Beyond a common interest, coalition members must share a high level of trust. A coalition's structure tends to be more formal, and skilled leadership is required to guide members through their differences so the coalition can function. When a coalition's goal is achieved (or impeded), members must decide whether to disband or continue working together toward another goal.

In order to assess the potential of working within coalitions or in other collaborative ways, NGOs should consider the benefits and risks involved, taking into consideration the organization's own strengths and limitations, as well as the nature and scope of the particular campaign. If an advocate or NGO is hesitant to work within a coalition without a compelling reason, then it probably is not worth the investment of time, energy, and other resources. Alternatives to joining a coalition include sharing information in an informal network or working collaboratively on a short-term event or single campaign.

Benefits of working in a coalition

Strength in numbers. Working together can create pressure on decision makers and legitimacy for the issue, and it also can increase the ability of individuals to take calculated risks with the group.

Power in diversity. A wide variety of perspectives and constituents creates a broader, more comprehensive picture of the issue, enhances problem solving, strengthens outreach and impact, and increases credibility.

Shared workload and resources. A diversity of talents, work styles, and resources is needed to carry out a multifaceted action plan, as well as reduce the burden on any one organization.

Solidarity and cohesion. Shared values, goals, and experiences help advocates overcome isolation and build confidence that change is possible.

Creation of a model of a just society. Coalitions provide the opportunity to practice on a smaller level the skills and attitudes necessary for a strong democracy, such as respect, transparency, accountability, equality, and commitment to working with diverse groups of people.

Adapted from Cohen, D., R. de la Vega, and G. Watson, *Advocacy for Social Justice: A Global Action and Reflection Guide*, Kumarian Press, 2001, Bloomfield, Connecticut.

6. International Campaigning

NGOs that form alliances or coalitions can have an extraordinary impact on social change. This is particularly true when the issues they address cross national borders. The power of such cooperation was clearly demonstrated by the activities of the International Campaign to Ban Landmines, a coalition of more than 1,300 organizations whose success merited the Nobel Prize for Peace in 1997. The efforts of the Coalition for an International Criminal Court are further proof of how NGOs from around the world can form alliances that have a much greater effect than the actions of individual organizations.

6.1 International Campaign to Ban Landmines (ICBL)

In December 1997, in Ottawa, Canada, 120 countries signed an international treaty to ban the production and use of land mines, a landmark step on the road to disarmament. Other countries continue to add their names to the growing list of signatories, which as of September 2001 totaled 141 countries, with 120 countries having ratified the treaty. That historic

treaty had its origins in an international coalition of NGOs created in 1992 that became the International Campaign to Ban Landmines, which in 2001 represented more than 1,300 NGOs of all sizes and interests. Participants in the international campaign were active at all levels, from engaging in grassroots educational projects to working with representatives of government to draft treaty language, participating in plenary sessions and smaller meetings of the drafters, and acting with governments to build support for the treaty.

The campaign participated in the 1996 International Strategy Conference, convened by Canada and attended by representatives of more than seventy states. The plan of action and procedures adopted at the conference recognized the important role that NGOs could play in achieving a goal shared by a growing number of states. A core group of countries (Austria, Canada, Norway, and South Africa) promoted the agenda, and NGOs in more than 100 countries carried the campaign's message to their constituents. Cooperation among NGOs, particularly in forming the ICBL, encouraged the development of a broad base of support while working toward a common goal. Rather than merely criticizing states for their land mine policies, as they had done in the past, NGOs began to take a more active role in promoting change, including working closely with some governments. This new approach resulted in a partnership among NGOs, governments, and international organizations. NGOs then became directly involved in the development of the land mine treaty.

The success of the campaign resulted from five years of cooperative efforts by NGOs throughout the world. Although individual governments had discussed the possibility of banning land mines, it took the campaign's rallying of support to move governments to action and make the treaty a reality. Combining their resources to bring about a common goal, the participating NGOs had the capacity to accomplish far more than what could have been achieved if they focused solely within their own national borders.

The ICBL actively continues to monitor and advocate on behalf of the campaign's cause. In May 2000, the ICBL sent a letter to President Vladimir Putin regarding Russia's planned use of antipersonnel mines on its border with Georgia. In September 2000, the ICBL issued the *Landmine Monitor Report 2000*, which contains information on production, trade, stockpiling, humanitarian demining, and mine survivor assistance in every country in the world. This report is due to be translated into several languages and is available on the ICBL Web site or by request.

Lessons learned from the ICBL

The experience of the land mine campaign provides some valuable lessons for any NGO involved in an issue campaign, particularly one that has ramifications across national borders.

- Creating inclusive and broad coalitions that involve all or most organizations working on an issue strengthens a campaign by enabling it to exert far more political pressure than each organization acting individually could.
- International coalitions of interest groups with varied purposes and activities can join together successfully to promote an issue that crosses organizational lines.
- A flexible coalition structure allows each NGO to do what it believes to be most effective.
- A simple, understandable campaign message (such as "ban land mines") can maximize impact.
- Highlighting moral and emotional aspects of an issue can be very effective.
- Communication should be a priority of international coalitions. E-mail is particularly helpful, and it is very important to make sure information is distributed regularly to everyone within the coalition.
- Work at the national and local levels, even in an international campaign, is critical. NGOs know what works most effectively in their country. For example, methods that may succeed in one country may not be appropriate in another because of differences in history, tradition, and the roles of NGOs.
- Leadership is extremely important. In working with a coalition, leaders must focus on the common goal rather than on the individual interests of the participating NGOs.
- Involvement of NGOs in governmental negotiations is a worthy preliminary goal, as it allows coalition members to increase their participation in the process.

For more information, please contact the International Campaign to Ban Landmines, 110 Maryland Ave., NE, Box 6, Suite 509, Washington, DC 20002, USA; tel: (1 202) 547 2667; fax: (1 202) 547 2687; E-mail: icbl@icbl.org; Web: www.icbl.org.

6.2 Coalition for an International Criminal Court (ICC Coalition)

The NGO Coalition for an International Criminal Court (ICC Coalition) is a network of more than 1,000 civil society organizations from around the world, including those focused on human rights, international law, humanitarian issues, rights of women and children, religious freedom, and other matters. Committed to the establishment of an International Criminal Court, the coalition has a number of national and regional networks in Africa, Latin America, the Middle East, Asia, Europe, and North America.

The International Criminal Court is intended to be a permanent court to investigate and bring to justice individuals who commit the most serious violations of international humanitarian law, namely, war crimes, crimes against humanity, genocide, and, once defined, aggression. Unlike the International Court of Justice in The Hague, whose jurisdiction is restricted to states, the ICC would have the capacity to indict individuals. Creation of the ICC would be on the basis of the Rome Statute, a treaty adopted in July 1998 in Rome at the UN Diplomatic Conference of Plenipotentiaries. The ICC Coalition's presence and efforts at the Rome Conference greatly influenced the passage of the treaty and participating countries' support for the cause.

Once 60 states have both signed and ratified the Rome Statute, the International Criminal Court will be established. As of September 2001, 139 countries had signed the statute, and 38 had ratified it. The ICC Coalition and like-minded governments are seeking to put this into force as quickly as reasonably possible. In order to achieve this goal, the ICC Coalition will continue its organizational and communication efforts, focusing on three main tasks: (1) launching a major global awareness campaign to educate the public, national leaders, media, parliamentarians, and others about the Rome Statute; (2) supporting the Preparatory Commission in completing its mandate, include the drafting of the ICC's procedural and evidentiary rules, and involving civil society in the process; and (3) coordinating technical assistance pro-

grams for governments that decide to ratify the statute. Ongoing will be the ICC Coalition's efforts to decentralize the campaign to the greatest extent possible by further developing regional and national networks.

Building the ICC Coalition

The Coalition for an International Criminal Court was launched in February 1995 when a small group of NGOs met in New York while monitoring the United Nations' debate on the International Law Commission's draft statute for an international criminal court. From this group of participating NGOs, an informal steering committee was created, which included Amnesty International, Fédération internationale des ligues des droits de l'homme, Human Rights Watch, International Commission of Jurists, Lawyers Committee for Human Rights, No Peace Without Justice, Parliamentarians for Global Action, and the World Federalist Movement.

The ICC Coalition works through sector caucuses, regional and national groupings, and issue working groups. Sector caucuses and working groups include the Women's Caucus for Gender Justice, the Victim's Rights Working Group, the Faith Based Caucus, the Children's Rights Caucus, and the Peace Caucus. Some of the regional and national groupings are the Brussels Network, the U.K. Network, the Canadian Network, the French Coalition, the Polish Network, and the Spanish Platform for an ICC. The coalition has also convened regional caucuses, including a highly effective tri-continental alliance composed of groups from Africa, Asia, and Latin America. Other activities aimed at communication and organization within the coalition include

- maintaining a Web site and E-mail lists to facilitate exchange of NGO and expert documentation and information concerning the ICC negotiations and *ad hoc* tribunals;
- promoting discussion and debate among members about substantive issues through electronic communication;
- facilitating meetings between the coalition and representatives of governments, UN officials, and others involved in the ICC negotiations;

- fostering education and awareness of the ICC negotiations at relevant public and professional proceedings, including UN conferences, commissions, and committee and preparatory meetings;
- producing newsletters, bulletins, media advisories, reviews, and papers on all aspects of efforts to establish the ICC.

For more information, please contact NGO Coalition for an International Criminal Court, c/o WFM/IGP, 777 UN Plaza, New York, NY 10017, USA; tel: (1 212) 687 2176; fax: (1 212) 599 1332; E-mail: cicc@iccnow.org; Web: www.iccnow.org.

Constructing a campaign: Tolerance Foundation's efforts to amend the Czech Citizenship Law

The Czech Parliament passed a citizenship law in 1992 that limited access of the country's Romani population to Czech citizenship and, in the long term, made it possible to exclude them from Czech territory. Thousands of Roma, an already marginalized and vulnerable group, lost their right to vote, work, and receive social benefits. Without identification documents, most were at risk of expulsion at any moment.

The ultimate goal of the Tolerance Foundation (TF) was to amend the law to guarantee that all people who were residents of the Czech lands at the moment of the dissolution of the Czechoslovak Federation would have the unconditional right to opt for Czech citizenship. Such an amendment would eliminate the "clean criminal record" requirement and liberalize the standard of proof for permanent residence, requirements that TF considered discriminate against Czech Roma.

Choosing lobbying targets

TF ruled out the use of litigation in either the Constitutional Court or the European Court of Human Rights. Instead, it chose to emphasize legislative advocacy. TF then

had to determine the lobbying target on the national level: Parliament or the government. The decision to target the government was based on a study of the Czech Parliament in 1993: out of sixty-three bills submitted by the government to Parliament during that year, all sixty-three were adopted. On the other hand, of the twenty-four bills the MPs (individuals or groups, majority or opposition representatives) submitted, only 67 percent of them were adopted. It is significant that in all cases where bills were initiated by MPs but the government did not agree with the bill or recommended that it not be adopted, ultimately the bill did not pass. Consequently, TF concluded that the best way to ensure the success of a bill was to have it initiated by the government.

But how could TF convince the Ministry of Interior, which had drafted the law, to amend it? How could TF erode the ministry's hard-line position into a negotiating posture? The ministry's decision to submit a restrictive draft to Parliament had been a political decision based on the certainty that the Czech majority would agree with any measure aimed at excluding the Roma from the Czech lands. Therefore, to address the executive branch directly would have been a waste of energy and resources. Further, the Ministry of Interior did not have a history of engaging in dialogue with human rights groups. So TF attempted to convince international organizations, including the Council of Europe (CoE), European Union (EU), United Nations, UN High Commissioner for Refugees (UNHCR), Organization for Security and Cooperation in Europe (OSCE), and U.S. Helsinki Commission, to urge the Czech government to amend the law.

Designing a fact-finding strategy

TF's best strategy was to prove that the law had a clear and systematic discriminatory effect on Roma, and that the law created *de jure* and *de facto* statelessness. In addition, they needed to analyze the manner in which the law was implemented, to identify the problems, and to formulate recommendations. One good case was not enough; not even a dozen cases would suffice. It would take hundreds of cases from all over the country, cases that were clear, well documented, and analyzed. TF could not afford to wait for individuals to bring their cases, but rather it had to go out and actively look for them.

Gathering and disseminating information

A network of Roma and non-Roma human rights activists and social workers was created. More then forty fact-finding missions were carried out by the Prague staff, including visits to more than twenty orphanages and virtually all prisons in the Czech Republic. After ten months, TF documented approximately 1,000 individual cases. TF published its first report, *The Effect of the Citizenship Law on the Czech Republic's Roma Community*, in mid-1994. Before completing the final version and determining the report release date, TF reviewed the mandates of several international organizations, in order to present the information in a way that would garner the attention of the international groups.

At the 1994 Human Dimension Seminar on Roma in Warsaw, TF distributed copies of the report, and TF staff members contacted selected Western decision makers to present them with details on the effects of citizenship law and the goals of the advocacy campaign. Staff members used every opportunity offered by breakfasts, lunches, dinners, and receptions to communicate TF's message to representatives of the U.S. Helsinki Commission, CoE, and others. These organizations, in turn, began to urge the Czech government to consider the negative impact of the citizenship law and to make appropriate changes.

Pressing Czech officials

International criticism eroded the rigid position of the Czech government. For the first time, officials of the Ministry of Interior agreed to meet representatives of NGOs and to discuss some of their findings and arguments. However, even officials who accepted that implementation of the law negatively affected a segment of the population emphasized the need to improve the procedures but rejected the idea of legislative change. TF then decided to gather more significant individual cases and to examine the relationship between denials of citizenship applications and legal provisions and procedures. The goal was to prove that adults and children with genuine links to the Czech lands rather than to

Slovak territory were deemed by law Slovaks and, regardless of internal instruction or guidelines, lack access to citizenship of their country unless the law itself is modified.

Conducting follow-up research

In November 1994, a second report analyzed 99 citizenship cases, focusing on length of residence, criminal activity, and relevant family circumstances. The results were quite convincing: 50 percent of those who were denied Czech citizenship had been born in the Czech Republic, 4 percent of them lived there for more than thirty-four years, 11 percent of them lived there for more than twenty-four years, 14 percent lived there for more than fourteen years, and so on. The 99 (Slovak) adults whom TF interviewed had a total of 202 children, and only half of these children had Czech citizenship. The conclusion was that implementation of the law led to an unacceptable differentiation between the legal status of parents and children or minor brothers and sisters. Furthermore, within the Romani community, in every family there was at least one "foreigner" or, even worse, an undocumented foreigner in his or her own country.

The campaign gained momentum, and within a few months the Council of Europe appointed a group of experts from its Committee on Nationality to conduct a review of citizenship regulations in the Czech Republic and Slovakia. In addition to meeting with Czech authorities, the experts met with representatives of human rights NGOs and Romani associations. TF prepared a special report documenting 255 individual cases and provided a detailed analysis of how the "clean criminal record" requirement undermined the rights of Roma. In April 1996, after many consultations with the Czech and Slovak governments, the CoE published its report, which among other points recommended that Czech authorities "consider the abolition of, or reduction in, the relevant period in the requirement for a clean criminal record in respect to Slovak nationals who had their habitual residence in the Czech Republic on 1 January 1993."

UNHCR also conducted fact-finding missions in the Czech and Slovak

republics. A report released in March 1995 included the following general findings: (1) the Czech citizenship law derogates from international norms related to citizenship, particularly in the context of state succession; (2) the implementation of the law created situations of *de jure* and *de facto* statelessness of an undetermined dimension; (3) the law's negative impact increased the risk of irregular cross-border movements; and (4) practical solutions are urgently needed. Further, UNHCR initiated a six-month consultation on statelessness in 1995 and published a report in August 1996.

Collaborating with international groups

TF worked very closely with UNHCR to provide information on a regular basis, briefing the consultation coordinator and making individual cases available to UNHCR staff. In February 1995, TF published *Notes on the Background of the Citizenship Law*, which described events, political declarations, and the circumstances under which the law was drafted. In July of that year, TF prepared a memorandum addressed to the Czech Ministry of Interior that recommended changes concerning the implementation of the law, set forth urgently needed measures, and suggested language for the amendment of the law.

In early 1996 the executive branch relented. The Ministry of Interior agreed to support an amendment that would introduce a waiver of the clean criminal requirement in the case of Slovak citizens who were residents of the Czech Republic before the dissolution of the Czechoslovak Federation. Supported by the government and introduced by the chairman of the Foreign Affairs Committee (who was a member of the ruling party), the bill was passed in April 1996 by a vote of 130 to 5. UNHCR's Prague Office and the Helsinki Citizens' Assembly worked intensively with Parliament to ensure that the amendment would be adopted in the best possible form.

Adapted from Zoon, I., *Legislative Change through Public Advocacy: Czech Citizenship Law*, Background Reading I, Durban Symposium on Public Interest Law in Eastern Europe and Russia, Ford Foundation, 1997, New York.

RESOURCES

Readings

American Civil Liberties Union, *Tips for Writing to Your Elected Officials*. <http://www.aclu.org/action/tips.html> (last accessed on July 26, 2001).

A brief summary of advice on how to lobby elected officials in the U.S. context.

Center for Sustainable Human Rights Action, *Making the Most of the Media: Tools for Human Rights Groups Worldwide*, Human Rights Institution-Building Handbook Series, 2001, New York.

Based on the experiences of human rights activists and journalists from around the world, this guide addresses strategies for building and maintaining long-term productive relationships with the media.

Cohen, D., R. de la Vega, and G. Watson, *Advocacy for Social Justice: A Global Action and Reflection Guide*, Kumarian Press, 2001, Bloomfield, Connecticut.

This book explores the elements of advocacy and offers tools for taking action, case studies, and a number of resources. Consists of three parts—understanding of advocacy within the reader's own context, advocacy skills, and advocacy case studies—and an advocacy resources directory.

Fund for Peace, *Human Rights Capacity-Building and Advocacy Work*, Center for Sustainable Human Rights Action, 1997, New York. <http://www.sit.edu/global_capacity/gpdocs/methodology/human_rights.html> (last accessed on July 26, 2001).

Report of a capacity-building project in Ethiopia, Eritrea, Djibouti, and Somaliland, with a discussion of how human rights NGOs, women's interest groups, and others can develop effective advocacy strategies using domestic and international human rights standards.

Independent Sector, *Ten Reasons to Lobby for Your Cause*, Washington, D.C. <http://www.independentsector.org/clpi/get_started.html> (last accessed on July 26, 2001).

A training tool explaining the purposes of lobbying.

Regional Environmental Center for Central and Eastern Europe, *Manual on Public Participation in Environmental Decisionmaking*, 1994, Budapest.

Reviews the ways in which citizens can organize themselves in groups and obtain information from the state administration. The handbook further explores the possibilities for public participation in Central and Eastern Europe in a historical, political, and legal context and outlines the forms of participation existing at the time of publication in ten Central and Eastern European countries.

Rekosh, E., ed., *In the Public Eye: Parliamentary Transparency in Europe and North America*, International Human Rights Law Group, 1995, Washington, D.C.

A tool for locally based NGOs seeking to involve themselves in the legislative reform efforts of their respective countries.

Seimas of the Republic of Lithuania, the United States Agency for International Development and World Learning, Inc., Lithuania, *Program on Open Legislative Process*, 1998, Vilnius.

A compilation of reports, articles, laws, and other comparative materials concerning parliamentary transparency and citizens' participation in legislative committees' hearings.

Sharma, R., *An Introduction to Advocacy: Training Guide*, Academy for International Development, School for International Training, Washington, D.C. <http://www.sit.edu/global_capacity/gpdocs/training/advocacy_sara.html> (last accessed on July 26, 2001).

A training guide on basic advocacy skills.

Smucker, B., *The Nonprofit Lobbying Guide*, 2nd edition, Charity Lobbying in Public Interest, 1999, Washington, D.C. <http://www.indepsec.org/clpi> (last accessed on July 26, 2001).

A guide to the ways in which not-for-profits can use lobbying to advance their causes in a legislature, in the U.S. context.

Organizations

Advocacy Institute
1629 K Street, NW
Suite 200
Washington, DC 20006-1629, USA
Tel: (1 202) 777 7575
Fax: (1 202) 777 7577
E-mail: info@advocacy.org
Web: www.advocacy.org

A U.S.-based organization working to strengthen the capacity of political, social, and economic justice advocates to influence and change public policy.

Alliance for Justice
11 Dupont Circle, NW
2nd Floor
Washington, DC 20036, USA
Tel: (1 202) 822 6070
Fax: (1 202) 822 6068
E-mail: alliance@afj.org
Web: www.afj.org

A U.S. association of environmental, civil rights, mental health, women's, children's, and consumer advocacy organizations working to support the public interest community's ability to influence public policy, as well as to foster the next generation of advocates.

Center for Sustainable Human Rights Action (CeSHRA)
122 West 27th Street
10th floor
New York, NY 10001, USA
Tel: (1 212) 691 8020
Fax: (1 253) 390 0781
E-mail: ceshra@ceshra.org
Web: www.ceshra.org

International Campaign to Ban Landmines (ICBL)
110 Maryland Avenue, NE
Box 6, Suite 509
Washington, DC 20002, USA
Tel: (1 202) 547 2667
Fax: (1 202) 547 2687
E-mail: icbl@icbl.org
Web: www.icbl.org

A coalition of more than 1,300 human rights, humanitarian, medical, and other groups campaigning for the elimination of land mines.

NGO Coalition for an International Criminal Court
c/o WFM/IGP
777 UN Plaza
New York, NY 10017, USA
Tel: (1 212) 687 2176
Fax: (1 212) 599 1332
E-mail: cicc@iccnow.org
Web: www.iccnow.org

A coalition of more than 1,000 NGOs advocating for the creation of an effective, just, and independent International Criminal Court.

Regional Environmental Center for Central and Eastern Europe
Ady Endre út 9–11
2000 Szentendre
Hungary
Tel: (36 26) 504 000
Fax: (36 26) 311 294
E-mail: info@rec.org
Web: www.rec.org

Provides resources about citizens' participation in decision-making processes on environmental issues.

Five

NGO Advocacy before International Governmental Organizations

In the aftermath of World War II, the protection of human rights emerged as a matter of grave international concern. The international community, acting regionally as well as globally, created a sophisticated system of international and regional treaties and other mechanisms to promote and protect the rights of people under the jurisdictions of states. The United Nations (UN) was founded in 1945 by 51 countries with the goal of preserving peace through international cooperation and collective security. With a membership of 189 states, the UN is now the largest international organization devoted to international cooperation and the protection of human rights. The Council of Europe (CoE), established in 1949 by 11 Western European nations, seeks to achieve greater unity among its members in safeguarding their common ideals and principles. In addition to facilitating economic and social progress, the CoE evolved into the most effective regional organization for protection of human rights. With a membership of 43 countries, including almost all of the countries in Central and Eastern Europe, the CoE has become a major catalyst for improving the human rights situation in these countries, during a period of political, economic, and social transformation.

The possibilities for NGO involvement and potential influence through international advocacy before regional and international bodies have never been greater. As the efforts of these organizations continue to grow, it is vital for nongovernmental organizations to understand the opportunities presented by the UN and the CoE for involvement by NGOs in protecting human rights in their countries and throughout the region. For many of the mechanisms cre-

ated by these organizations, individuals and NGOs must first exhaust all effective domestic remedies before taking action or seeking redress in the international arena. With that in mind, there is a myriad of opportunities for NGOs that are interested in, and prepared to engage in, such advocacy. With an understanding of charters, treaties, conventions, and requisite state responsibilities, NGOs can play an important part in holding states accountable for complying with human rights and other agreement provisions and treaty obligations.

The first section of this chapter is devoted to the Council of Europe. It provides an overview of the structure and political and judicial mechanisms in place for the protection of human rights. Each mechanism is described briefly, including a discussion of the role of NGOs in utilizing the mechanism. The second section of this chapter focuses on the United Nations, offering an overview of the significant Charter-based and treaty-based mechanisms of the UN human rights system. This section also discusses opportunities for NGO participation, and it provides useful guidance by presenting examples of how particular NGOs have engaged in advocacy activities before UN bodies.

Of course, there are important similarities and distinctions between the regional and international organizations, as well as among the mechanisms within a particular organization. Advocates must examine the relative advantages and disadvantages of each mechanism or instrument to determine which tool can best serve their goals. Ultimately, where possible, NGOs should examine carefully where and how these mechanisms have been used and consider the experience of other NGOs or individuals who have utilized such mechanisms or engaged in the advocacy process. This chapter will also provide information on the factors to consider in determining the best mechanism for a particular case or issue.

NGOs and the European human rights system

This section explains:

- CoE legal and political mechanisms for the protection of human rights
- how NGOs can utilize such mechanisms to promote human rights protection
- procedures for CoE admission and human rights monitoring by the CoE
- the role of NGOs in promoting CoE protection and providing information and training

1. Council of Europe mechanisms for human rights protection

The Council of Europe plays a strong and central role in the protection and promotion of human rights throughout Europe. The organization was founded in 1949, in the wake of the horrors of World War II, and its primary purpose was—and is—to safeguard and promote certain common ideals and principles among its members. In this sense, Article 3 of its Statute requires that "[e]very member of the Council of Europe must accept the principle of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms." Within the Council of Europe, which has its headquarters in Strasbourg, a number of different bodies carry out efforts to protect human rights. Although the best known of these, the European Court of Human Rights (ECtHR), operates in the judicial field, it is also important to understand the political framework of the organization, as well as other mechanisms available to protect the rights of vulnerable groups. Therefore, both legal and political mechanisms are described below, with indications of how NGOs working in the field of human rights protection can use each.

Today, the membership of the Council of Europe is no longer limited to a small number of European states. As of May 2001, the 43 member states include all Western European nations and the following Central and Eastern European countries (with accession dates): Albania (1995), Armenia (2001), Azerbaijan (2001), Bulgaria (1992), Croatia (1996), the Czech Republic (1993), Estonia (1993), Georgia (1999), Hungary (1990), Latvia (1995), Lithuania (1993), Moldova (1995), Poland (1991), Romania (1993), the Russian Federation (1996), Slovakia (1993), Slovenia (1993), the former Yugoslav Republic of Macedonia (1995), and Ukraine (1995).

2. Legal mechanisms within the CoE

2.1 European Convention on Human Rights (1950)

The European Convention for the Protection of Human Rights and Fundamental Freedoms, now known as the European Convention on Human Rights (ECHR), is undoubtedly the best known and arguably the most effective of the regional treaties in the human rights field. New member states are each obliged to sign the Convention upon becoming a member of the Council of Europe and to ratify it

within the following year. By ratifying, states undertake to secure to anyone within their jurisdiction the civil and political rights and freedoms set out in the Convention. Subsequent protocols have extended the initial list of rights, and the case law of the European Court of Human Rights has reinforced and developed them still further.

All of the CoE member states, with the exception of Ireland, have now incorporated the Convention into their own domestic law, enabling the domestic judiciary to take full account of its provisions when considering a grievance. Once domestic judicial remedies have been exhausted, an individual may seek redress in Strasbourg for an alleged breach of the Convention by a member state.

All applicants alleging a violation of their individual rights under the Convention have direct access to the European Court of Human Rights, which meets full-time in Strasbourg. As of 1 November 1998—in response to the rapidly increasing number of states parties and a need to reduce delays in cases being heard—a single, permanent European Court of Human Rights was established to replace the previous two-tier system of a commission and a court. The right of individual application is mandatory for each state party (previously it was, at least in theory, optional). Any cases that are clearly unfounded are eliminated at an early stage by being declared inadmissible by a committee of three judges.

Of the more than 60,000 individual applications registered since the Convention came into force, most have been declared inadmissible, generally because they were manifestly ill-founded; concerned matters not covered by the Convention; had been brought against states that are not a party to the Convention; or did not demonstrate an exhaustion of domestic remedies. Nevertheless, through 2000, some 5,960 applications had been declared admissible. For a description of the procedures for bringing a complaint before the European Court, please see chapter 3, "Strategic Litigation: Bringing Lawsuits in the Public Interest." Court rules may also be found at http://www.echr.coe.int.

Role of NGOs. A nongovernmental organization may bring a complaint alleging a violation of the European Convention on Human Rights *only* if that NGO itself can claim to be a victim of the alleged violation (Article 34 of the Convention). Thus, such cases have often involved questions of freedom of expression, association, or assembly.

However, NGOs can provide extremely useful advice or even legal representation for individuals or groups of individu-

als who wish to bring complaints. They often assist applicants in drawing up their original petitions, and then may work with them through the various stages of the proceedings. It is still fairly rare for NGOs to represent applicants directly; more often they will appoint an independent lawyer to do so. Quite often, a case will have been brought to Strasbourg on the initiative of an NGO when national remedies have proved ineffective on an important human rights issue. Such assistance is often extremely important in helping to reduce the inequality of parties to proceedings. As Marek Antoni Nowicki, a Polish lawyer and former member of the European Commission of Human Rights, has observed, "Not many applicants can match the battery of specially trained legal experts a state generally has at its disposal."

Although it is still fairly rare for NGO staff lawyers to provide direct legal representation to ECtHR applicants, there are a growing number of exceptions. One example is the Bulgarian Helsinki Committee, whose staff lawyers filed forty-one applications with the Strasbourg court between 1996 and 2001. NGOs also play an invaluable role in providing training in international human rights law, as described in section 6 below, resulting in an increasing number of lawyers available to work with ECtHR applicants.

From time to time, the Court has permitted NGOs to file *amicus curiae* briefs that provide information contributing to the analysis of issues raised. Individuals or groups have had to show that they have a discernible interest in the case, and also that their intervention is in the interest of the proper administration of justice. Article 36(2) of the Convention now explicitly provides for third-party interventions, written and oral, from "any person concerned who is not the applicant" at the invitation of the president of the Court.

NGO INTERVENTIONS IN ECtHR PROCEEDINGS

Over the last fifteen years, NGOs have made interventions in more than forty cases in the European Courts of Human Rights, including

Amnesty International in the case of ***Chahal vs U.K.*** **(1996)**. This case concerned a Sikh activist whom the government of the United Kingdom wished

to deport to India. The government maintained that he had been involved in terrorist activities and posed a risk to the national security of the United Kingdom. He claimed that he faced a real risk of being tortured or killed if deported.

Where several NGOs can come together to file a joint brief, this can make their case stronger and more persuasive. Examples of this practice include

Article 19 and **INTERIGHTS** in ***Otto-Preminger-Institut v. Austria*** (1994), a case involving a satirical film found to be blasphemous, and **Goodwin v. U.K.** (1996), a case concerning the right of journalists to protect their sources of information.

Liberty, INTERIGHTS, and the **Committee on the Administration of Justice** in the case of ***Brannigan and McBride v. U.K.*** (1993), concerning derogation, by a state during an emergency situation, of procedural guarantees necessary for the protection of detainees.

Liberty, the **Centre for Advice on Individual Rights in Europe (AIRE),** and the **Joint Council for the Welfare of Immigrants** in relation to the ***Chahal*** case, mentioned above.

In their intercessions as *amici curiae*, NGOs have provided much useful information, particularly regarding comparative law, to which the Court would not otherwise have had access. There is reason to believe that their information and arguments have played an important role in the Court's deliberations. For example:

European Roma Rights Center (ERRC) submitted a brief in the case of ***Assenov and Others v. Bulgaria*** (1998). The brief argued that Article 3, read in conjunction with states' obligation under Article 1 of the Convention to secure the Convention's rights to everyone, should be interpreted so as to require an effective investigation in cases of allegations of torture. The ERRC supported its brief with factual information about police ill-treatment of Roma in Bulgaria and the extent to which the law enforcement offices had provided a remedy in these cases, as well as with arguments based on the Convention and other international case law. The Court accepted this argument and held that where an individual "raises an arguable claim that he has

been seriously ill-treated by the police . . . Article 3 read in conjunction with the State's general duty under Article 1 requires by implication that there should be an effective official investigation."

NGOs also can serve an important role after the Court's judgments become final. This involvement is particularly significant in cases where a violation of the Convention results from specific domestic legislation. In such cases, NGOs may direct the media to the Court's decision, disseminate copies of the decision among legislators, and initiate or participate in a campaign to amend the law in question. Violations that result from domestic courts' interpretation of Convention provisions require a change in the case law of domestic courts. In these circumstances, NGOs can be extremely helpful in publishing the decision of the Court and distributing it widely among judges, prosecutors, and lawyers. NGOs can also work to ensure that the legal community in their country is well acquainted with the standards of the European Court of Human Rights.

2.2 European Social Charter (1961)

The European Social Charter (ESCh) was signed by member states of the Council of Europe in 1961. Three protocols were added to the Charter in 1988, 1991, and 1995. Finally, in 1996, the Revised European Social Charter was opened to signature, and it entered into force in July 1999. The Revised Charter is the most comprehensive of the instruments and will progressively replace the Charter of 1961.

The Charter is the counterpart of the European Convention on Human Rights in the economic and social field. It protects fundamental social rights related to housing, health, education, employment, and social protection. In addition, the nondiscrimination principle is applied to each right belonging to any of these five categories. The application of the rights guaranteed by the European Social Charter is monitored through two different channels: a traditional reporting system and a more innovative mechanism, the collective complaints procedure.

2.2.1 Reporting system. A reporting system defined in the Charter and modified by a Protocol of 1991, already applied though not yet formally in force, ensures

the application of the Charter. It provides for the monitoring of the Charter by the European Committee of Social Rights. This committee is composed of nine experts who have recognized competence in international social questions. Upon receipt of reports that states parties are required to submit at regular intervals on selected articles, the committee decides, from a legal point of view, on the conformity of domestic law and practice with the provisions of the Charter. Its conclusions are then forwarded to the Governmental Committee, which selects among negative conclusions those that should be the subject of a recommendation by the Committee of Ministers (CM).

2.2.2 Collective complaints procedure. Since the entry into force, on 1 July 1998, of the Additional Protocol providing for a system of collective complaints, European as well as national trade unions, along with organizations of employers and certain international nongovernmental organizations, may lodge complaints against states parties alleging violations of the Charter. The European Committee of Social Rights examines the admissibility and merits of the complaints, then transmits its decision to the Committee of Ministers for adoption of a recommendation in cases where a violation of the Charter has been found. As of May 2001, this procedure had been accepted by nine member states and ten complaints had already been registered.

Role of NGOs. Nongovernmental organizations can contribute to the supervision of the European Social Charter by providing information directly to the European Committee of Social Rights. Under the reporting system, all NGOs have the opportunity to submit information on specific country situations related to one of the rights guaranteed by the Charter, or to provide comments on the national reports found on the Web site of the European Social Charter (www.humanrights.coe.int/cseweb). Such reports may also be requested from the Secretariat of the European Social Charter. In addition, under Article 27(2) of the Charter, the Governmental Committee may consult NGOs on issues in which they have particular competence. Unfortunately, in practice these opportunities have to date remained underutilized.

The text of the Additional Protocol providing for a system of collective complaints assigns a specific role to NGOs in the operation of the complaints procedure. International NGOs that have consultative status with the Council of Europe are allowed to file complaints alleging that states have failed to comply with one or more provisions of the Charter. Domestic

NGOs may also file such complaints, provided that the state has made a declaration to this effect. More generally, NGOs may use the norms of the European Social Charter in order to raise awareness about social rights as human rights and lobby their governments to fully respect their international commitments.

The collective complaint procedure of the European Social Charter

In 1998, the International Commission of Jurists (ICJ), a nongovernmental organization based in Geneva, brought a complaint against Portugal alleging that Portugal had violated Article 7, para. 1, of the European Social Charter, which prohibits children under the age of fifteen from working. In *International Commission of Jurists v. Portugal*, the ICJ argued that despite the adoption of some provisions prohibiting child labor, a large number of children under fifteen continued to work illegally in many economic sectors in Portugal. The ICJ also argued that the Labor Inspectorate, the principal body for supervising the enforcement of the legislation prohibiting child labor, was not carrying out its duties effectively. The ICJ presented evidence that included the report of an NGO published a few years earlier, which estimated that at that time 200,000 children under the age of fifteen worked in poor conditions, adversely affecting their health.

In response, the Portuguese government relied on another statistical survey, showing that the number of working children is significantly lower. The government also argued that the majority of children under the age of fifteen who work do so on an unpaid basis for their own families. The European Committee of Social Rights rejected the government's arguments, however, and stated that the prohibition of child labor applies to all economic sectors, including family businesses, and to all forms of work, paid or not. With regard to the complaint of the lack of effectiveness of the Labor Inspectorate, the committee stated that the Charter protects not only theoretical rights but rights that are effective in fact. In the light of this interpretation of the Charter, the committee analyzed the number of visits of the Labor Inspectorate and the number of violations it had found, which were both substantially below the results of the survey the government had presented. The committee concluded that the situation in Portugal violated Article 7, para. 1, of the European Social Charter.

2.3 European Convention for the Prevention of Torture (1987)

In recent years, the Council of Europe's efforts to guarantee human rights have placed increasing emphasis on preventing violations from occurring. Article 3 of the European Convention on Human Rights provides, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." The idea behind the drafting of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was to prevent such ill-treatment of people deprived of their liberty. As of May 2001, the European Convention for the Prevention of Torture had been ratified by forty-one CoE member states (and signed by forty-two).

The Convention provides nonjudicial preventive machinery to protect detainees. It is based on a system of visits by members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The CPT is charged with examining the treatment of people deprived of their liberty, with a view to strengthening their protection against torture and inhuman or degrading treatment or punishment. To this end, the committee is entitled to visit any place within the jurisdiction of the states parties to the Convention where people are deprived of their liberty by a public authority. This includes not just prisons but also police stations, psychiatric institutions, detention areas at military barracks, holding centers for foreigners, and youth detention centers. The committee has been functioning for more than ten years and by May 2001 had carried out 119 visits, visiting forty-one states parties.

Through detailed recommendations to relevant authorities in the contracting states, the CPT has been moving toward the development of a corpus of standards against which detention conditions can be judged. These cover such matters as legal safeguards against ill-treatment for people in police custody; material conditions and regime of activities in prisons; and mechanisms to prevent immigration detainees from being returned to countries where they face a risk of torture or ill-treatment.

The CPT has two guiding principles: cooperation and confidentiality. Cooperation with national authorities is at the heart of the Convention; the aim is to protect detainees rather than to condemn states for abuses. The committee meets in private, and its reports are strictly confidential. Nevertheless, if a country refuses to cooperate or fails to improve the situation in the light of the committee's recommendations, the CPT may decide to issue a public statement. Of course, the state itself may request publication of the

committee's report, together with its comments. As of May 2001, more than sixty reports had been published in this way. In addition, the CPT's annual report to the Committee of Ministers is made available as a public document. All of these materials can be found on the Web site of the CPT at www.cpt.coe.int.

Role of NGOs. Nongovernmental organizations regularly send information about conditions of detention and imprisonment to the CPT. The committee has made at least one visit to all but the newest member state, and many of the reports of its visits have been made public by the governments concerned. As a consequence, NGOs—especially those focusing on detention issues—are in a position to follow up the committee's recommendations and monitor their impact at the national level. There remains a good deal to be done to raise awareness about the work of the CPT and the body of standards it has developed. NGOs, national as well as international, have a vital role to play in this respect.

2.4 Framework Convention for the Protection of National Minorities (1995)

Although not the first instrument to be developed within the Council of Europe for the protection of national minorities (the European Charter for Regional or Minority Languages was adopted in 1992), the Framework Convention for the Protection of National Minorities (FCNM) is certainly the most comprehensive document in this area. It is also the first legally binding multilateral instrument ever devoted to the protection of national minorities in general. The Convention entered into force on 1 February 1998.

The Convention covers a wide range of issues, including promotion of effective equality; promotion of the conditions necessary for the preservation and development of culture and preservation of religion, language, and traditions; freedom of assembly, association, expression, thought, conscience, and religion; access to and use of the media; linguistic freedoms; education; transfrontier contacts; participation in economic, cultural, and social life; participation in public life; and prohibition of forced assimilation. Unlike other texts adopted in this area, it recognizes the right of each individual, not just the collective, to these freedoms. As of May 2001, thirty-two CoE member states and two (as yet) nonmember states had ratified or acceded to the Framework Convention, while a further seven member states had signed it (Andorra, Belgium, France, and Turkey had not).

By its nature, a framework convention is different from a "normal" convention. Although it is a convention in the sense that it is a legally binding instrument under international law, the word "framework" indicates that the substantive principles it enshrines are not directly applicable in the domestic legal orders of the states parties, but must be implemented through national legislation and appropriate government policies. In the elaboration of the substantive principles, therefore, special emphasis was given to provisions of a "program" type. These define certain objectives that the states parties undertake to pursue through legislation and appropriate government policies at the national level.

States parties are required to file reports—within one year of entry into force and thereafter every five years, or as requested—containing full information on legislative and other measures taken to give effect to the principles in the Convention. The Committee of Ministers then must evaluate the adequacy of states parties' implementation of the Convention, with the assistance of an Advisory Committee of eighteen members, all of whom are expected to be independent and impartial and to have recognized expertise in the field of protection of national minorities.

The Advisory Committee held its first meeting at the end of June 1998, among other things to draft its rules of procedure and an outline for state reports. By May 2001, twenty-two reports had been received. Following initial analysis by the Advisory Committee of a report, a study visit may be undertaken to the state concerned, at the request of the government. As of June 2001, such visits had been made to twelve countries: Finland, Hungary, the Slovak Republic, Denmark, Romania, the Czech Republic, Croatia, Cyprus, Italy, Estonia, the United Kingdom, and Germany.

The Advisory Committee may then adopt country-specific opinions to forward to the Committee of Ministers, which might then adopt conclusions or recommendations regarding a particular state. The opinions of the Advisory Committee are to be made public at the same time as the conclusions and recommendations of the Committee of Ministers, unless the Committee of Ministers decides otherwise in a specific case.

Role of NGOs. When examining state reports, the Advisory Committee may receive information from a variety of other sources, including nongovernmental organizations. To date, such reports have been submitted by the Bulgarian Helsinki Committee, the Hungarian Helsinki Committee, and other NGOs active in Central and Eastern Europe. As

Minority Rights Group International (MRG), an NGO whose purpose is to promote the rights of minorities worldwide, has observed, these submissions need to be of high quality. The NGOs' reports should therefore be detailed and factual, with all sources cited. It is also important that NGOs collect information about the situation of the minorities in their country on a regular basis. Information about the deadlines for future state reports, as well as the texts of state reports already submitted to the Advisory Committee, is available on the Web site of the Council of Europe, on the page on national minorities (http://www.humanrights.coe.int/Minorities).

2.5 European Charter for Regional or Minority Languages (1992)

The European Charter for Regional or Minority Languages (EChRML) was adopted by the Committee of Ministers in 1992 and entered into force on 1 March 1998. Without granting specific collective rights to the minorities themselves, the principal aim of the Charter is to guarantee the use of regional or minority languages.

The protection provided for in the Charter is twofold. Part II (Article 7) sets forth general objectives and principles for states to follow, including: the principle of nondiscrimination; recognition of the regional or minority language as an attribute of a community; respect for the geographic area in which each language is spoken; facilitation of the written and oral use of these languages in public, social, and economic life; and the teaching and study of the regional or minority languages at all appropriate stages.

Part III of the Charter translates the above-mentioned principles and objectives into precise provisions requiring states to take positive concrete measures. Because of the variety of linguistic situations existing in the different states of Europe, a two-step process emerged. First, each state must choose the languages that Part III is to cover; then, for each of the languages to which the state accepts that the Charter shall apply, it can determine the provisions in Part III. This protection is provided for in the fields of education (Article 8), judicial authorities (Article 9), administrative authorities and public services (Article 10), media (Article 11), cultural activities and facilities (Article 12), economic and social life (Article 13), and transfrontier exchanges (Article 14).

The application of the European Charter for Regional or Minority Languages is monitored by an independent Committee of Experts. Each state party is required to

present a report every three years on the measures taken and policies adapted in application of Parts II and III of the Charter. The first of these reports is due one year after the entry into force of the Charter with respect to the state party concerned. All of these periodic reports are made public.

An important element in the monitoring mechanism is the "on the spot mission" by a delegation of the committee, which visits a state and meets with the authorities, as well as with bodies and associations legally established by the state, on a consultative basis in order to obtain information relevant to their work. On the basis of this procedure, the Committee of Experts prepares a report for the Committee of Ministers, with suggested recommendations.

Role of NGOs. Nongovernmental organizations are very important to the work of the Committee of Experts. Their active support and supply of well-documented information to the committee allows a clear overview of the real situation to be established.

It is notable that several of these principles are already covered by the European Convention on Human Rights. However, besides adding to the comprehensive nature of the Framework Convention, their inclusion is particularly important since the treaty is open to signature by nonmember states, at the invitation of the Committee of Ministers.

2.6 European Convention on Nationality (1997)

The European Convention on Nationality was adopted by the Committee of Ministers in May 1997 and opened for signature by states in November 1997. The Convention embodies principles and rules applying to all aspects of nationality. It is designed to make easier the acquisition of a new nationality and recovery of a former one. It seeks to ensure that nationality is lost only for good reason and that it cannot be arbitrarily withdrawn. The Convention also guarantees that the procedures governing applications for nationality are just, fair, and open to appeal. It seeks to regulate the situation of people in danger of being left stateless as a result of state succession. The Convention also covers multiple nationality, military obligations, and cooperation between states parties.

The text represents a synthesis of recent thinking on the nationality question in domestic and international law and is the first international text to do so. It reflects the demographic and demo-

cratic changes, in particular migration and state succession, that have occurred in Central and Eastern Europe since 1989.

The Convention is particularly significant in that it is open to signature not only by CoE member states but also by other states that took part in its preparation (including Armenia, Azerbaijan, Bosnia and Herzegovina, Canada, Kyrgyzstan, and the United States). Meanwhile, some states that recently adopted new laws on nationality (for example, Bosnia and Herzegovina) have already based them on the content of this Convention, while others (including Ukraine) are planning to do so.

Where the Convention is in force, the competent authorities in each state party are required to provide information to the secretary general of the Council of Europe about matters related to nationality, including instances of statelessness and multiple nationality, as well as about developments concerning the application of the Convention. The secretary general then sends all relevant information to all the states parties.

In fact, much information has already been received and can be found in the Council of Europe's European Documentation Centre on Nationality (EURODOC), which centralizes nationality information and documentation for nearly all European states.

3. Political mechanisms within the CoE

3.1 Parliamentary Assembly of the Council of Europe (PACE)

The Parliamentary Assembly of the Council of Europe (PACE) is composed of delegations of parliamentarians from each of the CoE member states and includes representatives from all parts of the political party spectrum. It provides a forum for debate for members of parliaments from throughout Europe. PACE meets for one week four times a year in plenary session (generally in January, April, June, and September) to address long-term issues as well as matters of immediate concern.

The groundwork of the Parliamentary Assembly is carried out by fourteen committees. These include the Committee on Legal Affairs and Human Rights, the Monitoring Committee, and the Committee on Equality of Opportunities for Women and Men, among others. Following detailed work by these committees, the Assembly can take action in any or all of four ways. The Assembly may (1) adopt a recommendation to be submitted to the Committee of Ministers for its action; (2) address a resolution directly to governments, enlisting the support of national parliaments; (3) frame an opinion on an

issue referred to it by the Committee of Ministers; or (4) give instructions to its subsidiary bodies, or to the Secretariat, in the form of an order.

PACE has been particularly active in the human rights field, adopting recommendations and resolutions in recent years on such matters, among others, as the establishment of an international court to judge war crimes; sects and new religious movements; the rights of minorities; the situation of lesbians and gays; further protection of the rights of asylum seekers; children's rights; AIDS and human rights; and traffic in children and other forms of child exploitation. It has been instrumental in facilitating the passage of a number of conventions, agreements, resolutions, and recommendations through the Committee of Ministers. Its proposals on the abolition of the death penalty in times of peace, a convention to prevent torture and inhuman or degrading treatment or punishment, and a convention for the protection of national minorities were all eventually taken up by the Committee of Ministers and turned into legal instruments. Foremost among its current human rights concerns, PACE continues to call for total abolition of the death penalty.

The Parliamentary Assembly is also a forum for discussing specific country situations. In this context, it has addressed the massive and flagrant violations of human rights in the territory of former Yugoslavia, the situation of human rights in Turkey, the Russian law on religion, the conflict in Chechnya, executions in Ukraine, and the crisis in relation to Kosovo, among other issues. Whenever appropriate, the respective Assembly committees will appoint rapporteurs to look into and report on such issues.

Role of NGOs. Nongovernmental organizations holding consultative status with the Council of Europe may be consulted by the Parliamentary Assembly and its committees and receive its agenda and public documents. They also have a range of other opportunities for bringing their views to the attention of the Assembly in writing or orally to an Assembly committee. Several of the committees have close links with NGOs, whose representatives attend meetings and contribute actively in the preparation of reports. All maintain relations with at least some of the NGOs in their field of interest, supplying them with papers and inviting them to participate when matters of particular relevance are under discussion.

NGO CONSULTATIVE STATUS

The committees of governmental experts and other bodies of the Committee of Ministers, the committees of the Parliamentary Assembly, the committees of the Congress of Local and Regional Authorities of Europe, and the CoE secretary general may "consult" with NGOs that have consultative status, on questions of mutual interest. To qualify for this status, organizations must be *international*, demonstrating substantial membership from each of a number of Council of Europe member states.

National and local NGOs often may be affiliated with one of a number of larger, international groups (for example, Amnesty International, the International Helsinki Federation for Human Rights, and the International Federation of Human Rights Leagues) and through them have at least indirect access to the Council of Europe. Nevertheless, it is not only through formal status, or through a physical presence in Strasbourg, that nongovernmental organizations can and do work in partnership with the Council of Europe in the human rights field. As discussed in detail in this chapter, the CoE works in a variety of ways with an increasing number of both international and national NGOs for the promotion and protection of human rights.

3.2 Committee of Ministers

The Committee of Ministers is the decision-making organ of the Council of Europe through which "agreements and common action" by states are adopted and pursued. It is composed of the ministers of foreign affairs of the forty-three member states, who meet (together with the four observer states: Canada, Japan, Mexico, and the United States) at least twice a year. Throughout the rest of the year, their permanent representatives (ambassadors) based in Strasbourg meet as often as necessary. The Committee of Ministers agrees on an annual program of intergovernmental activities (prepared by the Secretariat on the basis of government experts' proposals). It sets the budget of the organization, and thus its program priorities. It decides on any and all applications for membership or observer status with the Council of Europe. It also decides on applications for consultative

status from nongovernmental organizations. Its meetings are confidential and not open to participation by NGOs.

The Committee of Ministers has the power to adopt conventions and agreements, which are binding on the states that ratify them. It also makes recommendations and adopts resolutions and declarations. These are texts containing policy statements or proposals for action to be taken by the governments of member states. They can have significant influence at the national level.

Most of the preparatory work on such texts is delegated by the Committee of Ministers to one of the intergovernmental expert committees established to deal with specific areas of concern. Many member states send national specialists to participate in these committees, while others are represented by their local Strasbourg representatives. These committees include the Steering Committee on Human Rights (CDDH), the Steering Committee for Equality between Women and Men (CDEG), the Steering Committee on the Mass Media (CDMM), and the European Committee on Crime Problems (CDPC), among others.

NGOs and the Committee of Ministers. Three NGOs—Amnesty International, the International Commission of Jurists, and the International Federation of Human Rights Leagues—have special observer status with the Steering Committee on Human Rights. This enables them to participate in its discussions on the development of new standards and procedures in the human rights field, and to provide oral and written contributions to the process. Other NGOs have been granted observer status on an *ad hoc* basis with particular expert committees in relation to subjects on which they have a special competence. For example, four NGOs have observer status with the European Committee on Migration and some twelve with the European Committee on Crime Problems. NGOs holding consultative status with the CoE and interested in equality issues have created a special interest group, the chairperson of which represents them in an observer capacity at all meetings of the Steering Committee for Equality between Women and Men.

From time to time, committees may conduct "oral hearings" to avail themselves of the expertise of NGOs or specially qualified individuals. In 1998 the Steering Committee on Human Rights (CDDH), for example, invited representatives of the Quaker Council for European Affairs, the European Bureau for Conscientious Objection, the Conference of European Churches, and War

Resisters International to a meeting of its Group of Specialists on Conscientious Objection to Military Service. In preparation for a Ministerial Conference held in November 2000 to mark the fiftieth anniversary of the European Convention on Human Rights, the CDDH called for the establishment of a forum of key NGOs to put forward proposals for consideration in the planning process for the conference.

With these exceptions, the deliberations of these committees and subcommittees are generally closed, as are the meetings of the Committee of Ministers itself. Nevertheless, as with other intergovernmental forums, NGOs can often have the most substantial impact by concentrating efforts in advance on the national level, lobbying relevant government departments in their capital cities on issues of concern in Europe.

Once the Committee of Ministers has adopted recommendations, NGOs play an equally important role in continuing to bring these to the attention of their governments and overseeing their implementation at the national level. The recent development of the Web site of the Council of Europe (www.coe.int/cm) should greatly facilitate NGOs' access to and dissemination of such texts.

4. Admission process and human rights monitoring within the CoE

4.1 Admission process and monitoring by the Parliamentary Assembly

The Parliamentary Assembly plays a key role in the procedure for admission of new members to the Council of Europe, and in assistance to applicant states to meet the basic requirements for such membership. It is on the favorable recommendation of the Parliamentary Assembly that the Committee of Ministers may accept a state's application to join.

In order to ensure that all applicant states accept the CoE's statutory principles, the Assembly conducts a complex examination of the countries concerned, which may sometimes take a few years to complete. PACE requests selected experts to make an assessment of national human rights legislation and its implementation. As part of this process, fact-finding and observer delegations visit the country and meet with representatives of human rights NGOs, the media, trade unions, religious and other groups, and government officials. Included in these delegation are so-called "eminent lawyers": former members of the European Commission of Human

Rights and judges of the European Court of Human Rights acting in their personal capacities. Throughout the examination process, PACE welcomes reports and publications, as well as other information about the human rights situation, from various groups. Assembly delegations prepare reports, which in general are subsequently made public.

In a second stage, PACE provides the Committee of Ministers with its formal opinion on a candidate state's readiness for membership. As a general rule, this formal opinion will include a series of specific commitments that the state is willing to honor in relation to the basic principles of the Council of Europe, in particular to guarantee the protection of human rights. These have included undertakings to ratify the key human rights instruments of the Council of Europe and their Protocols, within a specified period of time; to impose an immediate moratorium on executions; to introduce laws and policies aimed at guaranteeing freedom of the media; and to ensure the independence of the judiciary.

Once a state is admitted to membership, the Parliamentary Assembly then monitors the extent to which the state honors the commitments it has undertaken. A special Monitoring Committee was established for this purpose in 1997. An application to initiate a monitoring procedure may come from a committee of the Assembly or from not less than ten members of the Assembly representing at least two national delegations and two political groups. PACE may penalize persistent failure to honor obligations and commitments, and lack of cooperation in its monitoring process, by adopting a resolution and/or a recommendation, or by not ratifying, or annulling, the credentials of a national parliamentary delegation. Should the member state continue not to respect its commitments, the Assembly may address a recommendation to the Committee of Ministers requesting it to take appropriate action.

Resolution 1123 (1997), on the honoring of obligations and commitments by Romania, is one example of this process. In this resolution, while considering that Romania had honored its most important obligations, the Assembly earnestly requested the Romanian authorities to, among other things, amend without delay the provisions of the Penal Code and Judiciary Act that were contrary to the rights guaranteed by the European Convention on Human Rights; improve conditions of imprisonment; improve legal and physical care of abandoned children; promote a campaign against racism and intolerance; and take all appropriate measures for the social integration of the Romani population.

PACE confirmed at its January 1998

session that this monitoring encompasses social rights as well as civil and political rights, and it charged its Social, Health, and Family Affairs Committee to oversee compliance with the former.

Role of NGOs. In practice, a range of organizations active in the field of human rights protection submit pertinent information to the different committees as well as to individual parliamentarians. For example, Memorial, a Moscow-based NGO, was invited to a special hearing in September 1996 on the situation in Chechnya (before becoming the first NGO from the Commonwealth of Independent States to be granted consultative status, in early 1998). Memorial had addressed the members of PACE on a number of occasions, expressing its concerns about the human rights situation in Chechnya. Memorial's submissions and public statements were often cited in debates in the Parliamentary Assembly on the situation in the Russian Federation. Many other NGOs provided written information on matters of particular concern to them, such as the executions that took place in Russia and Ukraine in spite of the moratorium required as a condition for admission to the Council of Europe.

Thus, information from NGOs working in the area of human rights protection continues to influence the Assembly throughout the process of membership application and follow-up monitoring. In turn, the reports, recommendations, and opinions of the Parliamentary Assembly are important for the work of nongovernmental organizations, particularly insofar as they concretely specify the obligations and commitments entered into by a state in order to be admitted to the Council of Europe. The Web sites of the Assembly (http://stars.coe.int) and of the Council of Europe (http://www.coe.int) provide easy access for NGOs to such texts.

4.2 Monitoring by the Committee of Ministers

In order to strengthen the monitoring activities of the Council of Europe, the Committee of Ministers established a special procedure at the highest level for monitoring compliance by member states with commitments arising from their membership in the organization. In November 1994, the committee issued a declaration indicating that it would consider questions concerning the situation of democracy, human rights, and the rule of law in any member state if they were referred to the committee by a member state, by the secretary general, or on a recommendation from the Parliamentary Assembly. The declaration states that the

Committee of Ministers will take account of all relevant information available from different sources. It will consider in a constructive manner the matters brought to its attention, encouraging member states, through dialogue and cooperation, to take all appropriate steps to conform with the principles of the organization's statute. In cases requiring specific action, the Committee of Ministers may take any or all of the following actions: (1) request the secretary general to make contacts, collect information, or furnish advice; (2) issue an opinion or recommendations; (3) forward a communication to the Parliamentary Assembly; or (4) make any other decision within its statutory powers, including expelling a member state from the Council of Europe.

In order to complement the monitoring carried out by other parts of the organization, the Committee of Ministers chose in the first place to go about its work by selecting specific themes or "areas of concern" to be the focus of monitoring throughout the member states. Since the procedure was put into operation in 1996, the following six themes have been addressed: freedom of expression and information, the functioning and protection of democratic institutions, the functioning of the judicial system, local democracy, capital punishment, and police and security forces.

On each of these themes, a country-by-country overview is first prepared. This is followed by a debate within the Committee of Ministers on compliance with commitments entered into, which ends with a set of conclusions on which the committee agrees. In a final stage, the committee initiates any necessary follow-up or specific actions. Although this monitoring takes a confidential as well as nondiscriminatory approach, human rights NGOs have the opportunity to present their concerns to the Committee of Ministers, through the secretary general or the Parliamentary Assembly.

5. European Commission against Racism and Intolerance (1993)

The European Commission against Racism and Intolerance (ECRI) was created following the first Summit of Heads of State and Government of the Council of Europe, held in October 1993. Its primary task is to assess the effectiveness of the range of legal, policy, and other measures that member states take to combat racism, xenophobia, anti-Semitism, and other forms of intolerance, and to recommend further action as necessary. Member states each have one representative on ECRI, who is nominated by the government on

the basis of his or her recognized expertise in the subject. ECRI may be "seized directly by nongovernmental organizations on any questions covered by it."

Since the problems of racism and intolerance differ from one country to another, ECRI conducts an analysis of the situation in each of the member states, which is then made public. The information for these country studies comes from both governmental and nongovernmental sources. NGOs are therefore encouraged to send relevant information, on a regular basis, to the ECRI Secretariat. In addition, ECRI's rapporteurs visit each country when undertaking a new analysis, to meet with NGOs as well as governmental authorities and other interested parties. ECRI also formulates general policy recommendations to governments and publishes information on such topics as good practices in combating racism.

ERRC informs ECRI report on Macedonian citizenship law

In June 1998, the European Roma Rights Center (ERRC) submitted written comments to ECRI concerning the former Yugoslav Republic of Macedonia, in connection with the first round of reports on member states that ECRI prepared. Among its comments, the ERRC criticized the Macedonian citizenship law. According to the law, people who had Macedonian citizenship before the dissolution of Yugoslavia would receive Macedonian citizenship automatically. The other citizens of the former Yugoslavia permanently residing in Macedonia at the time of independence could apply for Macedonian citizenship, provided they met certain requirements. These included proof of a permanent source of income, a fifteen-year cumulative Macedonian residency, and payment of a application fee equivalent to USD 50.

In its submission, the ERRC argued that this law disproportionately affected the Romani people, because most of them would not qualify directly for Macedonian citizenship. Further, the ERRC argued that many Roma could not satisfy the requirement of a permanent source of income, given the high rate of unemployment among Roma and widespread discrimination against them. The high fee and the lack of adequate publicity about naturalization procedures were also obstacles that disproportionately affected the Roma.

ECRI adopted the arguments made by the ERRC, producing a report on Macedonia that expressed similar concerns. The commission stated that the citizenship requirements, which had been "strongly criticized both by members of minority groups and international observers for their restrictive nature, have had an indirect discriminatory effect on the acquisition of Macedonian citizenship by some segments of the population of the country, particularly some ethnic Albanians and Roma/Gypsies." ECRI stressed that "the requirements related to living facilities and the administrative fee could also contribute to render acquisition of citizenship more difficult for certain parts of the population, notably ethnic Albanians and Roma/Gypsies."

Since the protection of human rights and action against racism must above all be undertaken at the national level, ECRI seeks to cooperate with national NGOs, particularly in disseminating information about its recommendations to governments, as well as in monitoring their implementation. In order to improve contacts, ECRI organizes occasional multilateral or bilateral meetings with NGOs. ECRI members are also willing to participate in NGO conferences, seminars, and meetings that focus on combating racism and intolerance.

Communication and information sharing are essential to combating racism and intolerance effectively. With this in mind, in October 1997 ECRI launched its own Web site, at www.ecri.coe.int. The site makes available ECRI's own publications and documentation, provides information on relevant action by other Council of Europe bodies, and lists other intergovernmental or nongovernmental organizations involved in combating racism. In addition, by asking to be added to ECRI's mailing list, NGOs can also receive documentation issued by ECRI in hard copy on a periodic basis.

6. NGO/CoE COOPERATION IN PROMOTION, INFORMATION, AND TRAINING

Every member state of the Council of Europe needs a corpus of lawyers and nongovernmental organizations fully conversant with the Strasbourg case law and the standards of the other CoE documents. Undoubtedly the most important role

that NGOs play is to make known all the human rights instruments available to the peoples of the European states. NGOs are in a unique position to promote awareness and understanding about them among the general population; to advise citizens, lawyers, judges, and government officials on how they should be applied; and to be vigilant that they are applied in practice. The Council of Europe relies heavily on the nongovernmental sector to fulfill this role, which it can perform itself only to a limited extent.

Cooperation extends to the production of documentation and information in the various languages of Europe, including visual materials and accompanying teaching aids; the organization of consultations, workshops, and training sessions; the exchange of expertise; and the promotion of campaigns. A special effort has been made to publicize neglected subjects, such as social rights, and to reach geographic areas that such information does not generally reach. Particular attention is also given to the needs of especially vulnerable groups, such as refugees and Roma.

Professional groups, such as judges, lawyers, and law enforcement personnel, are among the primary targets of these programs, as well as partners in them. In this context, a comprehensive program, "Police and Human Rights 1997–2000," was launched in 1997, involving police services and associations, government authorities, intergovernmental organizations, and NGOs throughout the member states. Several NGOs, national and international, have been involved in initiatives under this program. Their contribution has been essential to many of the discussions, as well as in the production of materials.

Role of the European Union (EU) in the protection of human rights

The European Union (EU) emerged as a result of the integration processes that began in the early 1950s in Western Europe in reaction to World War II. The EU is an international organization that aims to promote economic stability and the adoption of common economic, social, and foreign policies among its members. Although the EU was established for mostly economic purposes, it plays an important role in strengthening the protection of human rights within its member states

and within the countries wishing to join the European Union. As of May 2001, ten countries from Central and Eastern Europe (Hungary, Poland, Romania, Slovakia, Latvia, Estonia, Lithuania, Bulgaria, the Czech Republic, and Slovenia) have applied for membership in the EU. The European Commission, the executive body of the European Union, monitors the countries' progress toward accession and releases periodic reports with its findings.

There are three criteria that countries wishing to join the EU must meet. These criteria were defined by the European Council, a body composed of the heads of state or government of all member states of the EU, at its summit in Copenhagen in 1993, and so they are also known as the Copenhagen criteria.

First, the countries wishing to join the EU must meet the political criterion, which concerns "the stability of the institutions guaranteeing democracy, the rule of law, human rights, and protection of minorities." Under this criterion, the European Commission evaluates the efficiency of each country's parliamentary system; the executive branch, including laws governing administration; the efficiency and the independence of the judicial system; and anticorruption measures.

A special factor under this political criterion is the human rights record of the country. Here, the Commission considers what international human rights treaties the country has ratified (ratification of the European Convention on Human Rights is an absolute precondition for initiating the accession process) and evaluates the current situation with regard to civil and political rights as well as economic, social, and cultural rights. The Commission may also consider in its annual reports some particular cases of drastic human rights violations and underline the fields in which the most serious human rights violations occur.

The Commission pays close attention to the treatment of minorities and what has been done to improve the situation of some particularly disadvantaged groups. For example, in its *Regular Annual Report for the Year 2000 on Hungary's Progress towards Accession*, the European Commission called attention to the situation of Roma in the country, and specifically to discrimination in education and other fields of social life. The Commission emphasized the fact that "less than 46 percent [of the Roma people] completed their primary education and only 0.24 percent obtained a

university or a college degree." The report further criticized the practice of placing the majority of Romani children in special schools (this proportion being 94 percent in some parts of the country), as "a sign of institutional prejudice and the failure of the public education system." The practice of placing Romani children in special schools was also highlighted in the European Commission's annual report on the Czech Republic for the year 2000. That report cited the activities of NGOs such as the ERRC to legally challenge this *de facto* discrimination in education, and it noted that "further efforts are needed, in particular to combat anti-Roma prejudice and to strengthen the protection provided by the police and the courts."

Second, the European Commission considers the progress of the country under the economic criterion, which requires the existence of a functioning market economy and the candidate's capacity to cope with economic competition within the EU.

Under the third criterion, the European Commission assesses whether the countries are able to adopt the body of laws of the European Union (the *"acquis communautaire"*). An example of one of these *acquis* is the *Directive of the European Council Implementing the Principle of Equal Treatment*, adopted in June 2000. Among other things, this directive requires the member states to adopt special legislation to implement the directive at the domestic level, to establish special bodies for monitoring the implementation of the directive, and to amend the laws that are incompatible with it. Meeting the requirements of the third criterion for joining the EU also requires the candidate states to implement the race directive, among other provisions, in their domestic legislation.

The protection of human rights and, especially, the protection against discrimination are values of great importance for the policies of the European Union. The process of accession of Central and Eastern European countries to the EU may generate the political will necessary in these countries to adopt laws that embody higher standards of human rights. NGOs can serve as catalysts in this process by informing the EU about the specifics of human rights problems in their countries. By submitting reports and preparing appeals to the EU delegations in their countries, NGOs can effectively bring these issues to the attention of the European Union during the accession process.

Role of the Organization for Security and Cooperation in Europe (OSCE) in the protection of human rights

Another international organization active in the field of protection of human rights and promotion of democracy in Central and Eastern Europe is the Organization for Security and Cooperation in Europe (OSCE).

The OSCE is a political organization originally built on the ongoing process of political negotiations and agreements between the Western European states, Canada, and the United States on one hand and the former Soviet Union and its then allies in Eastern Europe on the other. Known initially as the Conference for Security and Cooperation in Europe (CSCE), this process started in the 1960s and served as the main forum for political dialogue between the West and the East during the Cold War. In 1975, after years of negotiations, thirty-five states covering a region spreading from Vancouver to Vladivostok signed the Final Act of the Conference for Security and Cooperation in Europe, also known as the "Helsinki Accord." Under the Helsinki Accord, the Western nations agreed to accept the post–World War II borders in Europe. In exchange, the Soviet Union and its allies agreed to respect the fundamental human rights recognized by the Universal Declaration of Human Rights and other international human rights treaties (termed the "human dimension" by the CSCE). The agreement also covered some international trade issues.

Although this agreement was not legally binding, it unexpectedly became important for the process of democratization in Eastern Europe. After the accords were signed, a group of Russian dissidents spontaneously formed the Moscow Helsinki Group, the first human rights NGO to become active in the Eastern bloc. In order to demand that their government abide by the Helsinki commitments, Western Helsinki committees soon formed to support the Moscow Helsinki Group, and the Helsinki movement was thus launched. For the first time, nations in the East made specific commitments to respect human rights; as a result, human rights became a legitimate subject of discussion between the two sides. In addition, a forum for communication and political dialogue between the East and the West was established.

Following the end of the Cold War, the CSCE institutionalized itself as the OSCE. The transformation allowed for the creation of new institutions and mechanisms devoted to promotion of the states' compliance with their human dimension commitments. Thus, since 1990, the CSCE/OSCE has established the High Commissioner on National Minorities, the Office for Democratic Institutions and Human Rights in Warsaw, the Representative on Freedom of the Media, and the Contact Point on Roma and Sinti, as well as OSCE field missions.

The post of the High Commissioner on National Minorities was established in 1992, with its purpose being to identify and seek early resolutions of ethnic conflicts threatening the peace, stability, and security of, or friendly relations between, the states participating in the OSCE. The High Commissioner on National Minorities operates independently of the parties involved in the conflict. His mandate includes powers to conduct on-site missions and to engage in preventive diplomacy at the earliest stages of a potential conflict. The High Commissioner's mandate explicitly excludes individual cases of violation of rights of people belonging to national minorities.

In 1990 the Office for Free Elections was established in Warsaw to facilitate contacts and exchange information about elections taking place in the OSCE countries. In 1992 its mandate was extended to include assistance to the OSCE states in the implementation of their human dimension commitments, and its name was changed to the Office for Democratic Institutions and Human Rights (ODIHR). Currently the ODIHR has four sections, focusing on the following: elections, democratization, monitoring, and Roma and Sinti issues. The election section is involved in observing elections and providing election training and assistance to the OSCE states.

The democratization section of the ODIHR implements practical projects designed to promote democracy, rule of law, and civil society. Such projects include training and technical assistance to national human rights institutions, human rights education projects, combat against trafficking in human beings, establishment of networks of communication among NGOs and between NGOs and government, gender equality projects, and activities to combat torture and to promote religious freedom.

The purpose of the monitoring section is to collect information on how the

OSCE states implement their human dimension commitments domestically, which the OSCE institutions use in making decisions on ODIHR policies and projects. Information about human rights violations is considered at the OSCE Human Dimension Implementation Meetings in Warsaw every year and at the supplementary meetings on specific human dimension topics held in Vienna.

The fourth division of the ODIHR, the Contact Point on Roma and Sinti, provides advice to OSCE states on policy making on Roma and Sinti, by encouraging capacity building, networking, and participation of Roma and Sinti in policy-making bodies. In addition, the Contact Point collects information about Roma and Sinti and documents and analyzes the situation of these ethnic groups in crisis.

In 1997 the post of Representative on Freedom of the Media was established to assist the OSCE states in fostering independent and pluralistic media. The Representative is authorized to observe relevant media developments in the OSCE countries and react quickly to instances of serious violations of the principles related to freedom of expression and freedom of the media. In cases of serious violation of freedom of expression rights, the Representative can seek direct contacts with the state concerned.

Finally, in 1998, the posts of Gender Adviser in the Secretariat and in the OSCE were created, with the purpose of developing a consistent approach to gender equality through projects in the field and integrating gender issues into other ODIHR activities. In this field, ODIHR activities include research projects and workshops to promote respect for women's human rights and women's participation in politics and in conflict resolution.

Role of NGOs. The OSCE provides many opportunities for NGOs to be involved in the process of securing states' compliance with their human dimension commitments. NGOs can contribute to the monitoring process of the ODIHR. They can send reports, and any other information documenting a state's compliance with its human dimension commitments, to the monitoring section of the ODIHR. In addition, NGOs can attend the annual Human Dimension Implementation

Meetings organized by the ODIHR in Warsaw and make oral interventions in discussions on a particular country or on a particular type of violation. Amnesty International, the International Helsinki Federation for Human Rights, and other NGOs regularly attend the annual meetings. In the annual meeting in 2000, for example, Amnesty International and other NGOs severely criticized the United States for continuing to apply the death penalty.

As part of these annual conferences, the ODIHR can also host side meetings on specific issues. As the delegates to the Human Dimension Implementation Meetings are encouraged to attend these meetings as well, the side meetings can become an important political platform for NGOs. During the annual Human Dimension Implementation Meeting in 2000, for example, the Coalition for an International Criminal Court, an NGO coalition with the purpose of pressing states for ratification of the statute of the International Criminal Court, gave a presentation in one such side meeting. Its presentation was well attended and was an important step in the process of promoting ratification of the ICC treaty by the OSCE states. NGOs attending these meetings can also take the opportunity to meet informally with official delegates to advocate on behalf of particular issues. This form of lobbying has proved particularly effective.

Other mechanisms within the OSCE that are suitable for work with NGOs are the Contact Point for Roma and Sinti and the Representative on Freedom of the Media. Both mechanisms can receive information about the states' compliance with their human dimension commitments in the respective fields, and both are open to information from all bona fide sources, including reports and other materials from NGOs. The ODIHR's gender activities constitute another area of possible cooperation between OSCE and NGOs, since the NGOs' expertise and training experience can contribute to the OSCE's efforts for gender mainstreaming.

EXAMPLES OF NGO ACTIVITIES BEFORE INTERNATIONAL ORGANIZATIONS

ACTIVITY	COUNCIL OF EUROPE								
	Judicial and Quasi-Judicial Mechanisms					*Political Mechanisms*			
	ECHR	**ESCh**	**CPT**	**FCNM**	**EChRML**	**PACE**	**CM**	**ECRI**	
File shadow reports		X	X	X	X	X		X	
Attend meetings/hearings	X	X				X	X		
Meet with the body during on-site visits			X	X	X	X		X	
Assist applicants in individual complaint procedures	X								
File *amicus* briefs	X	X							
File collective complaints		X							

For all international mechanisms listed above, NGOs can do the following:

- Document particular violations
- Monitor state compliance with recommendations of the international body
- Publish and disseminate educational materials about the standards of the mechanism
- Conduct training workshops for police officers, prosecutors, judges, lawyers, high school teachers, and other groups
- Develop media strategies to publicize standards of the body
- Raise legal arguments domestically based on principles established by the international mechanism

ECHR European Convention on Human Rights
ESCh European Social Charter
CPT Convention for the Prevention of Torture
FCNM Framework Convention for the Protection of National Minorities
EChRML European Charter for Regional or Minority Languages
PACE Parliamentary Assembly of the Council of Europe
CM Committee of Ministers of the Council of Europe
ECRI European Commission against Racism and Intolerance

UNITED NATIONS								
	Charter-based Mechanisms		*Treaty-based Mechanisms*					
	1503	**Rapporteurs**	**ICCPR**	**ICESCR**	**CERD**	**CEDAW**	**CAT**	**CRC**
		X	X	X	X	X	X	X
			X	X	X	X	X	X
		X				X	X	
			X		X	X	X	
			X		X	X	X	

1503	UN 1503 Procedure for consideration of gross and systematic violations of human rights
Rapporteurs	UN Special and Country Rapporteurs
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CAT	Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child

X	Yes
	No

For up-to-date status of ratifications of the Council of Europe treaties, please visit:
<http://conventions.coe.int>
For up-to-date status of ratifications of the UN treaties, please visit:
<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/chapterIV.asp>

NGOs and the human rights system of the United Nations

This section explains:

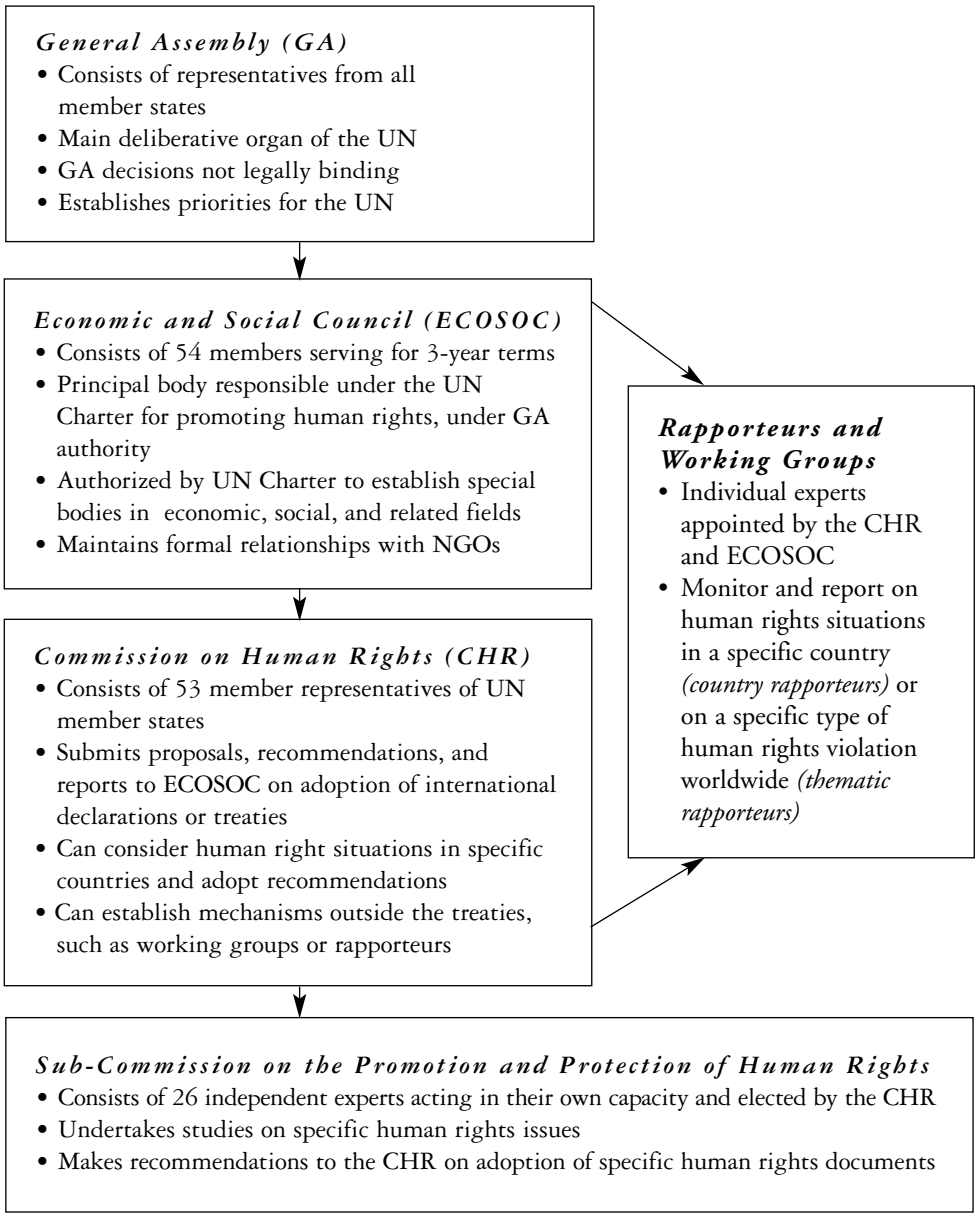
- UN Charter–based and treaty-based mechanisms for the protection of human rights
- what NGOs can do to promote implementation of international human rights treaties by individual states
- what NGOs can do to make more effective the work of UN bodies with mandates to enforce human rights
- how NGOs can work within the UN system to strengthen international human rights standards

The current UN system for protection of human rights is built on the formal agreements of governments to be bound by multinational agreements. The United Nations itself is founded on states' acceptance of the organization's Charter, which provides for the protection of fundamental rights and liberties as one of its primary goals. Moreover, the many human rights activities of the UN are based either on the Charter itself or on the series of treaties that have followed and expanded on the Universal Declaration of Human Rights, adopted by the General Assembly of the UN in 1948.

Charter-based mechanisms are created by resolutions of the UN Economic and Social Council (ECOSOC) or other UN bodies acting within their mandates determined by the UN Charter. These mechanisms can contribute toward the elaboration of existing international law in specific contexts, such as applying standards of arbitrary detention or the right to education, for example, or they can suggest new areas of standards to be set.

Treaty-based mechanisms are established by international treaties, also known as conventions or covenants, which are multilateral agreements signed and ratified by member states of the United Nations. In the area of human rights, they build on and elucidate the general, nonbinding standards of the Universal Declaration of Human Rights. These treaties impose on states specific obligations to respect particular human rights and establish procedures for monitoring states' compliance. The rest of this chapter will briefly examine some of the more commonly used Charter-based and treaty-based mechanisms and discuss possible roles that human rights organizations can play within the system of the United Nations.

UN Charter–Based Bodies with a Mandate to Promote and Protect Human Rights



(Note: Arrow indicates appointment/election process)

1. United Nations Charter–based mechanisms

1.1 Resolution 1235: Public debate on specific country situations

In 1967 the UN Economic and Social Council adopted Resolution 1235, one of the first legal documents to give the UN Commission on Human Rights (CHR) a mandate to investigate human rights violations. Resolution 1235 authorizes the CHR and the Sub-Commission on the Promotion and Protection of Human Rights (until 1999 known as the Sub-Commission on Prevention of Discrimination and Protection of Minorities) to "examine information relevant to gross violations of human rights and fundamental freedoms" and to make a thorough study of situations that reveal "a consistent pattern of human rights violations." On the basis of Resolution 1235, the CHR and the Sub-Commission may hold public debates at their annual meetings on the human rights record of individual countries. These meetings are public and thus a good opportunity for NGOs to bring their findings of gross human rights violations in a specific country to the attention of the UN bodies. After the debates, the CHR or the Sub-Commission may adopt a resolution expressing concern about the human rights situation in that country, or it may appoint a special rapporteur or other mechanism for further investigation of the situation. Resolution 1235 is an important mechanism for mobilizing the attention of the international community around a particular human rights problem and for creating political impetus for further actions of the UN on this specific issue.

1.2 Resolution 1503: Confidential investigation procedure

One of the oldest of the human rights mechanisms, the 1503 Procedure was established in 1970 by Resolution 1503 of the UN Economic and Social Council. This procedure authorizes the Commission on Human Rights, following a review by its Sub-Commission on the Promotion and Protection of Human Rights, to consider complaints based on a "consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms." The rights protected by this procedure are the rights defined by the UN General Assembly in its resolutions, including the Universal Declaration of Human Rights, to the extent that these rights are considered

customary international law. Gross violations of human rights considered under this procedure thus include—but are not limited to—torture, extrajudicial killings, other arbitrary or summary executions, and prolonged detention. Any individual, group of individuals, or nongovernmental organization may file a complaint. There is no requirement that the petitioner be affected directly by the alleged violation. The CHR, however, will consider only complaints revealing a consistent pattern of gross human rights violations. Individual violations generally are not considered under this procedure.

Once the Sub-Commission has made a referral, the CHR must determine whether the complaint is well founded. If so, the CHR may initiate a thorough study and submit a report to ECOSOC containing recommendations for addressing the situation. The consent of the state concerned is not always necessary for the study to commence. In addition, the CHR may appoint an *ad hoc* committee to conduct further investigation if all national remedies have been exhausted. For such investigations, however, the consent of the state is necessary. Although the CHR discloses the names of the countries examined after the procedure is completed, the results of any 1503 Procedure are strictly confidential. In practice, however, several country situations have been made publicly available as a result of the CHR's decisions. As the procedure is limited by the threshold of gross and systematic abuses, and because it is confidential and subject to the political control of the commission, the 1503 Procedure is often not the most effective mechanism for NGOs to rely on.

1.3 Special rapporteurs

Special rapporteurs are independent experts appointed mainly by the Commission on Human Rights to investigate and report publicly either on a specific type of human rights violation, no matter where such violations occur, or on country-specific situations of rights abuse. Experts referred to as thematic rapporteurs may focus, for example, on particular issues, such as torture, violence against women, the right to education, and arbitrary detention, among others. The country-specific experts are known as country rapporteurs. In both cases, the CHR establishes the focus and scope of the rapporteur's examination by open vote on resolutions at its sessions. Subsequently, the CHR names individuals or, in the case of expert working groups, groups of individuals to fulfill these mandates.

These rapporteurs may conduct general analyses, examining the scope of the human rights practices that fall within

their mandate and commenting on the compatibility of national laws and practices with international human rights standards. They may also solicit or receive information about individual human rights violations from individuals, groups of individuals, or NGOs. If a rapporteur decides to further investigate the complaint, he or she may write to the government involved, requesting a comment on the matter. In urgent situations, rapporteurs may send appeals requesting that a government refrain from a specific action until the situation can be clarified, or that the state take immediate action to preserve a situation. Rapporteurs may travel to the country to collect on-site information about a particular human rights situation, but only at the invitation of the government.

The rapporteurs submit annual reports about their activities to the CHR and sometimes to the UN General Assembly. These reports detail the incidents of human rights violations investigated, the responses of the governments concerned, and what measures the governments have adopted in order to implement the rapporteur's prior recommendations. For example, in a 1999 report to the CHR, the special rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance discussed the measures adopted by the French government following his visit to France in 1995. After the special rapporteur's 1995 visit and in accordance with his recommendations, the French government revised its immigration laws to enhance the guarantees of rights of foreigners. It also eased restrictions on the issuance of short-term visas to people from countries that are potential sources of immigration and amended the procedure for handling the cases of detainees.

2. United Nations Treaty-Based Mechanisms

The human rights treaties adopted within the UN system establish concrete legal obligations for states to protect individual rights as defined in the treaties. They also create special procedures and bodies for monitoring how states respect their obligations. Common to all of the human rights treaties is the reporting procedure, which allows a body established by the treaty to consider reports that states must submit periodically on the measures they have adopted to implement treaty provisions. After reviewing such reports, the bodies adopt concluding comments or general recommendations, which address key points of progress and existing barriers to promotion of rights. These concluding comments often note laws and prac-

tices that the state should abandon and suggest areas where the state should revise or adopt laws and policies that would better meet the obligations contained in the treaties.

Four of the UN treaty bodies provide for an individual complaint procedure that allows the treaty-monitoring body to consider cases of individual rights violations in a quasi-judicial proceeding. In addition, under two of the treaty bodies, an inquiry procedure is available that provides for further investigation of allegations of widespread or systematic violations.

Another commonality among the treaty-based mechanisms is the possibility of complaints by one state against another. Unfortunately, this mechanism has never been used, as states are extremely reluctant to rely on the quasi-judicial mechanisms established by treaties to hold one another accountable, preferring to employ diplomatic and political condemnation within the General Assembly and the Commission on Human Rights. Finally, all of the treaty bodies have the power to adopt general comments on the interpretation of specific provisions of the treaty.

The final reports of all the treaty bodies are public documents, made available to the CHR, the Economic and Social Council, and the General Assembly, as well as the governments concerned. Increasingly, treaty committees are encouraging governments to publicize the committees' reports and comments domestically. Although some governments are reluctant or may even block efforts to do so, various agencies such as UNDP, UNICEF, and UNIFEM are helping to translate documents and disseminate them.

2.1 International Covenant on Civil and Political Rights (ICCPR)

In force since March 1976, the International Covenant on Civil and Political Rights (ICCPR) is one of the documents, together with the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), that constitute the international bill of rights. The ICCPR obliges every state party "to respect and to ensure to all individuals within its territory and subject to its jurisdiction" the rights recognized in this covenant. Among the Covenant's guarantees are the rights of the individual to life, liberty, and security. Protected freedoms include those of expression, religion, privacy, assembly, and association, as well as freedom from torture. The ICCPR protects the right of prisoners to humane

treatment and the right of the accused to a fair trial. The Covenant outlaws discrimination on the basis of race, sex, and religion, among other grounds. It also promotes equality between men and women, as well as equality within the family, and establishes the right of people of ethnic, religious, and linguistic minorities to enjoy their culture, religion, and language.

The ICCPR established the Human Rights Committee (HRC), a body of experts nominated by the member states but acting in their own capacity to monitor states' compliance with the Covenant. Among its powers, the HRC reviews states' reports on the measures they have adopted to give effect to the provisions of the Covenant, as well as the difficulties they have encountered in the implementation process. Through the reporting procedure, the HRC considers all available information on the country, including reports submitted by NGOs. The HRC holds open hearings, where its members may question states' representatives and sometimes representatives of NGOs who have submitted additional information. The HRC then adopts concluding comments, which are recommendations addressed to the state and supposed to be made available to the citizenry of a particular state. These recommendations may criticize some state practices and/or support the adoption of others.

The First Optional Protocol to the ICCPR authorizes the HRC to accept communications from individuals whose rights under the Covenant have been violated. The HRC reviews the complaint in a quasi-judicial proceeding that has several informal stages. Initially, it will consider whether the complaint is admissible by determining whether the applicant has exhausted all available domestic remedies, as well as whether the same matter has been considered previously in another international proceeding. The HRC will not consider communications that are anonymous or that it determines to be an abuse of the right to individual complaint or to be incompatible with the provisions of the Covenant.

After finding a communication admissible, the HRC will request that the government concerned provide its comments or explanations regarding the matter. If the government has not provided its statement by the deadline for submission, the HRC can consider the communication without the statement of the government. After reviewing all the documents, the HRC adopts a "view," or decision, in which it may or may not find a violation of the Covenant and, if so, may recommend that the state take measures to remedy the violation. Though not legally binding, the views of the HRC are respected by states, and generally states comply with an HRC view.

The HRC has strengthened its role in follow-up activities by deciding to publish its views and to appoint one of its members to monitor a state's compliance with the HRC view. The views of the HRC are an authoritative source of interpretation of the ICCPR and thus an important mechanism for the development of international human rights law. This is also true for the general comments that the HRC adopts on the interpretation of some provisions of the Covenant. These interpretations can be altered, however, by the reservations, understandings, and declarations of treaty signatories.

2.2 International Covenant on Economic, Social, and Cultural Rights (ICESCR)

In force since 1976, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) further develops the protection of the economic, social, and cultural rights set forth by the Universal Declaration of Human Rights. The ICESCR has obligations of immediate effect, such as the obligation not to discriminate in the protection of these rights, and obligations of progressive implementation, requiring states to "take steps to the maximum of their available resources" in order to "achieve progressively the full realization of the rights protected by the Covenant." Over the last ten years in particular, the committee that monitors the ICESCR has emphasized through both its concluding comments and its general comments that the fulfillment of such obligations is not merely an aspirational goal, but rather is subject to committee review and evaluation. Consequently, there is no doubt as to the legally binding nature of such obligations.

The ICESCR protects the right to work and to favorable work conditions, the right to form trade unions, and the right to education. Also protected are rights within the family, the right to "enjoyment of the highest attainable standards of physical and mental health," and the right to participate in cultural life, among other guarantees.

The Committee on Economic, Social, and Cultural Rights (CESCR), the body created to monitor compliance with the ICESCR, was established by a resolution of the Economic and Social Council in 1985. The committee is composed of experts elected by ECOSOC, all of whom serve in their personal capacity. There is no individual complaint procedure, although one is currently being drafted. Reporting is therefore the mechanism for monitoring states' compliance. As with other treaty bodies, states parties must submit periodic reports to the CESCR on

the implementation of the Covenant. Following public hearings, the CESCR issues its concluding comments to the country.

2.3 International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

Often referred to as the Convention Against Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) entered into force in 1969. Despite overwhelming support for the treaty and widespread ratification (157 states parties as of 18 May 2001), the Race Convention remains underutilized as an instrument for the protection of international human rights, at least with respect to its complaint procedure. At the same time, the attention of the Committee on the Elimination of Racial Discrimination (CERD) to early warning procedures, coupled with the 2001 World Conference Against Racism, is expected to renew recognition of the importance of the treaty.

The Race Convention defines racial discrimination to include discrimination based on ethnicity, color, or caste, and it obliges states parties to condemn racial discrimination and amend or nullify any laws or regulations that effectively create or perpetuate such discrimination. This definition covers both *de jure* and *de facto* discrimination in all aspects of the public sphere. Public life includes such realms as commerce, employment, housing, and health care, as well as the political sphere. The Convention also requires states parties to take affirmative steps in social, economic, cultural, and other spheres to ensure the adequate development and protection of certain racial groups "when the circumstances so warrant." The Convention bans any propaganda on racial supremacy and explicitly prohibits discrimination in the enjoyment of certain civil and political rights, as well as economic and social rights. These include the rights to housing, education, and access to places and services offered to the general public such as theaters, hotels, restaurants, and transportation.

Created for monitoring states' compliance with the Race Convention, CERD is composed of independent experts nominated by states but serving in their personal capacity. Similar to the other treaty-based bodies, CERD can review periodic reports submitted by the states as well as complaints between states. If the state concerned has declared that it recognizes the competence of CERD, that committee may hear individual complaints regarding violations of the Convention. Thus far, CERD has been most active in reviewing

reports. It receives periodic reports from states parties on the measures they have adopted to implement the provisions of the Convention. Following an open session, CERD provides comments and recommendations to reporting states.

CERD also may adopt general thematic recommendations on the interpretation of the Convention or on violations common to more than one state. Most recently it has adopted general recommendations on issues such as states' responsibility to enforce obligations domestically, including prevention of discrimination by private actors, especially those carrying out functions required by the state. CERD has also issued a recommendation on the gender-based aspects of race discrimination.

CERD URGES STATES TO PROTECT ROMA

On 16 August 2000, the Committee on the Elimination of Racial Discrimination (CERD) adopted its General Recommendation No. 27 on Discrimination against Roma. The General Recommendation resulted from information gathered from reviews of periodic country reports indicating that Roma are victims of discrimination in many countries, and that certain provisions of the Convention on the Elimination of All Forms of Racial Discrimination are violated directly and consistently by many member states with respect to Roma. Domestic and international NGOs played an important role in the adoption of the thematic recommendation. The European Roma Rights Center (ERRC), based in Budapest; Minority Rights Group International; Médecins du Monde; the Greek Helsinki Monitor; and the Romanian Roma Center for Public Policies were some of the groups involved in the process. These NGOs submitted statements regarding the status of Romani people and participated in the hearings before CERD. Many of the issues raised by the NGOs were subsequently included in the CERD General Recommendation.

For example, in its statement presented to CERD, the ERRC recommended actions that governments should take to eliminate discrimination against Roma. ERRC recommendations included ensuring involvement of Romani people in designing and implementing policies to combat discrimination; enacting legislation against racially motivated violence; and providing civil and criminal remedies against discrimination in such areas as education, housing, health care, and social

services. The ERRC also recommended that governments act to enforce the laws against discrimination, which may include training of police and other public officers, disciplinary measures, and other actions. In addition, the organization recommended that the governments take positive steps to ensure equality in employment practices and to establish special bodies to deal with incidents of racial discrimination.

CERD appears to have taken this advice into account in formulating its recommendations. For example, it urged member states to adopt legislation to eliminate all forms of racial discrimination against Roma and to secure effective legal remedies for members of Romani communities in cases concerning violations of their rights and freedoms. CERD also recommended the adoption of national strategies and programs to improve the situation of Roma in society. It called on states to adopt measures to protect Roma from violence; take action to prevent discrimination in such areas as education, health care, housing, and employment; and approve measures to eliminate messages of racial superiority disseminated through the media. CERD also recommended that states act to improve Romani participation in political life, including taking specific steps to secure equal opportunities for participation of Romani minorities in all local and central governmental bodies.

2.4 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), in force since 1981, obliges states parties to take legislative, administrative, and judicial measures to incorporate Convention provisions and principles into domestic legal systems. CEDAW provides a definition of discrimination very similar to that of the Race Convention, in that it covers both direct and indirect discrimination and includes the acts of any person, so that the state is responsible for ending discrimination by non-state actors as well. It is broader than the Race Convention in that it reaches into private life to include activities such as subordination within the family. CEDAW also requires member states to use appropriate measures to modify social and cultural patterns of conduct that create prejudice against women. The Convention then

explicitly prohibits discrimination in the exercise of civil and political rights, such as the rights to vote, participate in public life, and acquire citizenship. The Convention further bans gender-based discrimination in the areas of education, employment, health care, and aspects of family law such as inheritance and divorce. CEDAW's focus on nondiscrimination is meant to ensure *de facto*, not merely legal, equality. Like the Race Convention, CEDAW provides for temporary special measures to remedy past discrimination.

The body monitoring the implementation of the Convention is the Committee on the Elimination of Discrimination Against Women (CEDAW Committee). The CEDAW Committee examines states parties' reports, together with any other relevant information that it may have received from alternative sources, and then provides its comments and recommendations. The CEDAW Committee submits annual reports about its activities, including suggestions and recommendations, to the UN General Assembly. Increasingly, this committee accepts information from NGOs in written form and, during its open sessions, considers oral comments from NGOs working in states that are reporting during that particular session.

In March 1999, the UN Commission on the Status of Women adopted an Optional Protocol to CEDAW. This Protocol authorizes the CEDAW Committee to consider communications from individuals or groups regarding violations of the Convention. The Optional Protocol to CEDAW also authorizes the CEDAW Committee to initiate inquiries into grave or systematic violations of women's rights. The Protocol entered into force on 22 December 2000, three months after the date when the tenth instrument of ratification was deposited with the UN secretary-general. The Protocol is critical to the development of an understanding, across a variety of countries and cultures, of the meaning of sex-based discrimination in all its forms.

2.5 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment requires states parties to take effective legislative, administrative, judicial, or other action to prevent acts of torture within their jurisdiction, criminalize any act of torture, and ensure that effective investigative systems exist to respond to any complaints alleging acts of torture. The Convention prohibits the return of people to another state where there are substantial grounds for

believing that such people will be tortured (the *non-refoulement* principle). It also requires the training of all officials and numerous other steps to end cruel, inhuman, or degrading treatment or punishment.

The Committee Against Torture (CAT) is the body established by the Convention to monitor states parties' compliance with the provisions of the Convention. CAT examines reports submitted by states parties and adopts recommendations for the country. If it receives reliable information about the systematic practice of torture by a member state, CAT may initiate a confidential inquiry on the issue, which may include on-site visits. CAT can also examine information from other sources, including reports prepared by NGOs. The inquiry is confidential, but CAT may incorporate a summary of the inquiry in its annual report, following consultations with the state concerned. If a state has made a declaration to this effect, CAT can examine individual communications for violations of the Convention. A procedure for complaints between states also exists.

The Committee Against Torture (CAT) and the Committee for the Prevention of Torture (CPT)

Although created with the same goal—namely, to secure that states will not practice torture—the Committee Against Torture and the Committee for the Prevention of Torture are two different bodies with very different functions. The Committee Against Torture (CAT) is a body created by the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and it has the typical powers of a UN treaty-monitoring body. CAT examines state reports on the implementation of the Convention and adopts general recommendations for the country; it decides on individual complaints of torture; and it may also decide on complaints between states. In addition, CAT may initiate an inquiry about the situation in a particular country if it has received reliable information about systematic acts of torture occurring there.

The Committee for the Prevention of Torture (CPT) is established by the Convention for the Prevention of Torture, a treaty in the system of the Council of

Europe, whose purpose is to examine the treatment of prisoners and to strengthen the protection against torture in places of detention. The CPT is not a judicial or quasi-judicial body, and it does not respond to individual complaints. Instead, the CPT organizes unannounced visits to member states in order to monitor the treatment of prisoners, psychiatric patients, and other detainees in a particular country. Member states are obliged to provide full access to any prison, psychiatric hospital, or other place of detention that CPT members would like to observe. Following the on-site visit, the CPT prepares and adopts a report containing very specific recommendations to the government, which may concern the situation in a particular prison or even of a particular individual. All CPT reports remain confidential.

Both CAT and the CPT consider the situation in a country in the light of all available information. NGOs can provide these bodies with their reports and other relevant statements. During their on-site visits, CPT members can meet and talk personally with representatives of NGOs.

2.6 Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC), in force since 1990, requires states parties to ensure to every child within their jurisdiction the enjoyment of a wide range of economic, civil, cultural, political, and social rights. It also obliges states to respect certain rights unique to children, including a child's right not to be separated from his or her parents (absent special circumstances and the fulfillment of specific requirements); the right of disabled children to enjoy a full and decent life with participation in their communities; special protections for children deprived of their family environment; adoption procedures that will best guarantee the child's interests; and other rights. The core principles underlying the CRC are the child's right to survival, the principle of nondiscrimination, the evolving capacity of the child to participate in and make decisions related to his or her livelihood, and attention to the best interests of the child.

The Convention also establishes a Committee on the Rights of the Child to examine reports submitted by states parties on the implementation of the Convention in their domestic systems. Similar to the other UN treaty bodies, this committee may provide its comments

and recommendations after examining states parties' reports and other sources of information, if available. A variety of NGOs were actively involved in a committee that advised governments on the drafting of the CRC. As a result of the participation of such groups as Defense for Children International and the Quaker UN office, among others, the CRC was created with more NGO input than any other UN treaty. In addition, the treaty itself authorizes the formal involvement of NGOs, currently coordinated on a state-by-state basis by the NGO Coalition for the Convention on the Rights of the Child. States parties to the CRC have recently adopted two new protocols, on child soldiers and on the sale of children and child pornography.

3. Methods and Strategies for NGO Intervention

There are many ways for NGOs to become involved in the UN human rights system. NGOs can use UN mechanisms to criticize states for not complying with their international human rights obligations, to assist victims of human rights violations, to strengthen existing human rights standards, or to raise a new question for debate in the international community. The methods and strategies for NGO intervention vary depending on the specific human rights violation that the organization seeks to address, the geopolitical context of the particular country, and the differences among mechanisms for protection of human rights. These roles are discussed in more detail below.

3.1 Contributions by NGOs to the work of rapporteurs

Working through rapporteurs is an effective way to raise a particular human rights concern with the Commission on Human Rights and other UN Charter–based bodies. Cooperation between NGOs and special rapporteurs can be extremely beneficial for both sides. As a result of their monitoring efforts, legal defense and other NGOs usually have a thorough understanding of the degree and specific nature of the human rights problems in the country or countries where they are active. They are often able to identify for rapporteurs the most serious human rights problems, including those that, however serious, may not be readily apparent to outside observers. NGOs often have detailed information about a human rights violation that otherwise may reach the UN when it is too late to take action, or not at all.

In some cases, NGOs can help the rap-

porteur consider and analyze a particular human rights problem in a different way. For example, in working with Radhika Coomersawamy, special rapporteur on violence against women, NGOs provided information that highlighted barriers to the ability of women to participate equally in the economies of transitional countries. This information, coupled with evidence of stereotyping in roles for women and men, contributed to her analysis of the issue and the relationship between economic rights and other human rights violations. Moreover, NGOs may find that their involvement in a particular inquiry or visit benefits their organization as well. For example, the special rapporteur on violence against women visited Poland in 1996 and reported on "human trafficking" from Poland to a number of other countries in Western Europe and the United States. Trafficking refers to situations where girls and young women are moved by coercion or deception into exploitative work situations, such as forced prostitution. Polish NGOs participated in the visit by sharing information with the special rapporteur and contributing to her analysis. These NGOs have since used the recommendations resulting from the report to strengthen their own efforts to promote legal reform and secure resources for their work.

Rapporteurs are generally interested in the reports and statements of NGOs, and they will often meet with representatives of NGOs during their on-site visits to discuss the human rights situation in the country. Country visits are a good opportunity for NGOs to present reports or other information they may have that is relevant to the mandate of the rapporteurs. For example, when Nigel Rodley, special rapporteur on torture, visited the Russian Federation in 1994, he spent part of his time meeting with representatives of several NGOs concerned with the prohibition of torture. These NGOs included the Moscow Center for Prison Reform, the Moscow Research Center for Human Rights, the Society "Right to Life" against the Death Penalty and Torture, Human Rights Watch/Helsinki, and other groups. As a result of their efforts, the special rapporteur also met with former detainees, family members of current detainees alleging serious violations of human rights, and attorneys representing criminal defendants. Although it may be difficult to determine exactly how the special rapporteur's interaction with NGOs influenced his recommendations to Russia, the subsequent report clearly reflected issues of concern to NGOs, such as reform of the Code of Criminal Procedure. The recommendations called for substantial changes to provisions governing pretrial detention and release on bail, the physical conditions of detention, and others.

3.2 NGO involvement in treaty implementation

3.2.1 Shadow reports. The state reporting procedures are the core of the implementation machinery of the UN human rights treaties. All human rights treaties adopted within the system of the UN require states parties to submit periodic reports to the treaty-monitoring body, describing the measures they have adopted in order to implement the treaty's provisions. Some treaty-monitoring bodies have indicated that these reports should be as detailed as possible and should provide information not only about the laws, but also about administrative or judicial practices.

The treaty-monitoring bodies consider state reports in the light of all available information about the country. NGOs can prepare "shadow reports" pointing to laws and practices that are incompatible with the provisions of the treaties. Some treaty-monitoring bodies, such as the Human Rights Committee, may also ask NGO representatives to attend oral hearings and respond to questions from that committee on the information provided in the shadow reports. Following the hearings and after considering the reports, the treaty-monitoring bodies adopt concluding comments or general recommendations on the country.

Frequently, NGOs have managed to draw attention to some of the problems that states may be likely to ignore. In June 2000, the Counseling Center for Citizenship/Civil and Human Rights from the Czech Republic submitted a shadow report to CERD on the report submitted by the Czech government. The shadow report criticized some discriminatory practices against Roma, such as segregation in housing and schooling, and the lack of effective remedies for victims of discrimination, all of which were omitted from the official state report.

NGO SHADOW REPORT INFLUENCES HRC REPORT ON ABORTION AND GENDER DISCRIMINATION IN POLAND

In 1999, the Federation for Women and Family Planning in Poland submitted a shadow report to the Human Rights Committee (HRC) of the International Covenant on Civil and Political Rights (ICCPR), to highlight some examples of

gender discrimination. Specifically, the report criticized a Polish antiabortion law adopted in 1998 that prohibits what the law calls "abortion on social grounds." Under the previous law, a woman "in hard life conditions or difficult personal situation" was permitted to have an abortion until the twelfth week of pregnancy. The report also criticized the adoption of policies and regulations limiting access to family planning services; the law removing sex education from school curricula; and the lack of adequate policies and measures to prevent violence against women. The report further highlighted existing discrimination against women in the labor market, such as the requirement of a pregnancy test for women applicants as part of a medical checkup.

In its concluding comments on Poland, adopted in July 1999, the HRC accepted and affirmed most of the criticism by the Federation for Women and Family Planning. The HRC expressed its concern about the adoption of the antiabortion law and the limited accessibility to family planning, and it required Poland to reintroduce sex education in public schools. The HRC also required that Poland take measures to counteract gender discrimination in employment practices, specifically pregnancy testing by employers. In addition, the HRC urged Poland to adopt legislation and administrative measures to guarantee remedies against domestic violence in civil courts and to provide sufficient numbers of hostels and shelters for family members suffering from domestic violence.

Concluding comments in state reports do not have the binding force of court decisions. Nevertheless, the reporting procedure can be an effective instrument for incorporating international human rights principles into domestic law, and NGOs should not underestimate it. Governments generally tend to comply with the treaty-monitoring body's recommendations, because of the threat of isolation from the international community, possible embarrassment or shame, or concern that these reports may be considered by other international bodies making decisions that affect the economic and financial well-being of the country.

Treaty-monitoring bodies regularly publish lists of dates when state reports are due, as well as of the states they will consider in their next sessions. This schedule is available at the Web site of the Office of the UN High Commissioner for

Human Rights (http://www.unhchr.ch/tbs/doc.nsf). Although states frequently miss the deadlines for their reports, NGOs can readily obtain information about the due dates for the reports of their countries and the approximate time when they will be considered.

3.2.2 Contributions to general comments. As discussed above, general comments (or, in the case of CERD and CEDAW, general recommendations) have become increasingly critical to understanding the protections contained within the treaty bodies. They are authoritative sources of interpretation, and they allow the treaty bodies to become engaged dynamically with new facts and new concerns while remaining within the formally adopted principles of the treaty language. NGOs can help to clarify the meaning of guarantees under the treaties through their fact-finding and other communications that place the treaty guarantees in context in a particular country or situation. Increasingly, NGOs have played key roles in providing analytical and factual information supporting these interpretive statements, such as HRC General Comment No. 18, on nondiscrimination; CESCR General Comment No. 24, on health; and CEDAW General Recommendation No. 19, on violence against women.

3.2.3 Proceedings before domestic courts and international bodies. NGOs can play an important role in implementing the norms of international treaties into domestic laws and court practices, by litigating individual cases of human rights violations. In Central and Eastern European countries, duly ratified international treaties are generally part of domestic law. NGOs can strengthen the implementation of international human rights treaty standards domestically by providing legal assistance in proceedings before domestic courts to individuals whose rights have been violated. In domestic courts, NGOs can make persuasive arguments based on international human rights treaties and on the jurisprudence of the treaty-monitoring bodies, and they can ask such courts to enforce them. In this way, NGOs can promote greater understanding of the international human rights standards by domestic legal communities and keep domestic jurisprudence up-to-date with international human rights law developments. Moreover, in some circumstances, cases can be brought on the basis of a human rights treaty alone, as was the case in a Spanish prosecutor's indictment of former Chilean dictator Augusto Pinochet.

In situations where domestic laws or practices violate the norms of UN human rights treaties, NGOs may, after exhaust-

ing all effective domestic remedies, raise the issue before the relevant UN committee through the individual complaint procedure provided for by the particular treaty. Though not legally binding, the decisions of these bodies are an authoritative source of interpretation of UN human rights law and are usually respected by the states.

Often there may be a choice regarding which treaty-monitoring body is most appropriate for addressing a particular human rights violation. For example, some of the rights protected by the ICCPR are also protected by the Race Convention or by the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Important factors in deciding where to submit a communication include how a particular treaty-monitoring body has decided similar cases and what it has done to strengthen the protection of treaty norms and to ensure states' compliance with its decisions, as well as the speed of its decision making.

Some rights protected by UN treaties are also protected on a regional level by the human rights system of the Council of Europe. Many similarities exist between the European Convention on Human Rights and the ICCPR. In general, the European system is stronger, because of the incorporation of the European Convention into domestic law, the binding force of the decisions of the European Court of Human Rights, and the political power inherent in the process of European integration. However, the UN treaty system may in certain circumstances offer better protection of some rights.

Certain rights are protected by the Covenant but not by the regional mechanisms. For example, unlike the European Convention—which until Protocol 12 enters into force will not recognize discrimination alone as a human rights violation—the ICCPR prohibits any discriminatory treatment, even if it is not related to another protected right. The ICCPR also provides for a broader protection of some minority rights. Set against this, of course, is the legally binding nature of the judgments of the European Court of Human Rights, which can provide substantial compensation to the applicant and force governments to amend key legislation and policy. As described more fully in the section of this chapter on the Council of Europe, the Committee of Ministers follows the process closely to ensure the proper execution of the Court's decisions.

3.3 Promoting compliance with UN body recommendations

Unfortunately, the UN treaties do not provide for monitoring and oversight of

states' compliance with the decisions of their bodies. There are no executive mechanisms to enforce the recommendations of treaty-monitoring bodies and special rapporteurs. Moreover, budgetary constraints limit the ability of UN human rights bodies to conduct many follow-up activities. To try to compensate for this, most treaty bodies have recently requested follow-up information from states regarding what measures have been taken to give effect to the treaty generally, as well as to how specific decisions are being implemented. Although political and diplomatic factors are probably foremost in determining states' compliance with the decisions and recommendations of the UN bodies, NGOs can also play an important role in implementing committee actions and recommendations.

NGOs can monitor whether states comply with the recommendations or views of different UN bodies in response to individual complaints. NGOs can also initiate campaigns to encourage states' compliance, calling attention to a state's lack of implementation of a particular recommendation. In so doing, NGOs may encourage public debate on the issue or create societal pressure that may force government action to implement the recommendations. Thus, in 1998, a coalition of Croatian NGOs led by Be Active, Be Emancipated (B.a.b.e.) compiled a shadow report and attended the CEDAW Committee session to consider the reports of several states parties, including Croatia. Among other recommendations, the CEDAW Committee advised Croatia to expand the participation of women's NGOs in its policy-making processes.

Following the session, the coalition received promises from the government to publicize the concluding comments of CEDAW. However, the government did not fulfill its promises. B.a.b.e. and the other NGOs obtained copies of the concluding comments, translated them into Croatian, and distributed copies to the press as well as to members of Parliament. As public pressure grew, the government eventually sent a delegate to a press conference in Zagreb hosted by an NGO coalition and began to take steps to fulfill promises to invite NGOs to attend meetings of the State Commission for Equality.

Amnesty International is also deeply involved in these types of follow-up activities. When criticizing governments for violating human rights, the organization also has criticized them for not complying with the recommendations of UN treaty-monitoring bodies. In its annual report on Romania for the year 2000, for example, Amnesty International strongly criticized the Romanian government for excessive use of firearms and called for compliance with the recommendations of the Human

Rights Committee regarding the use of firearms by police.

3.4 Working with the Commission on Human Rights

Using the opportunities provided by Resolution 1235, NGOs may bring specific human rights violations to the attention of UN bodies. NGOs with consultative status with the Economic and Social Council can submit their statements on a specific situation to the Commission on Human Rights or the Sub-Commission at their annual meetings and can call for adoption of a resolution or for other reaction of the international community to that particular situation. Through this framework, NGOs can also encourage adoption by the CHR of mandates, as well as a renewal of mandates for special rapporteurs on country or thematic situations. Groups such as Human Rights Watch and Amnesty International utilized this procedure in 2000 to call the attention of the international community to the situation in Chechnya.

OBTAINING CONSULTATIVE STATUS WITH THE UN ECONOMIC AND SOCIAL COUNCIL (ECOSOC)

Article 71 of the UN Charter provides for the Economic and Social Council "to make suitable arrangements for consultation with nongovernmental organizations, which are concerned with matters within its competence." This provision and ECOSOC Resolution 1996/31 provide the legal basis for NGOs to obtain a special, consultative status with ECOSOC. To date, more than 2,000 NGOs have attained such consultative status.

NGOs in consultative status may attend meetings of ECOSOC and its subsidiary bodies and can make oral presentations and submit their written statements to these bodies. Thus, human rights NGOs can bring matters to the attention of the UN political bodies concerned with the protection of human rights, such as the Commission on Human Rights (CHR) and the Sub-Commission on the Promotion and Protection of Human Rights. NGOs in consultative status may also propose new items for consideration by ECOSOC and may attend international conferences called by the UN.

In order to obtain consultative status, the NGO must engage in activities rele-

vant to the work of ECOSOC. The NGO must also have had a democratic decision-making mechanism in place for at least two years. The full lists of requirements are set forth in ECOSOC Resolution 1996/31.

ECOSOC grants consultative status to an NGO on the recommendation of ECOSOC's Committee on NGOs. This committee is composed of nineteen UN member states and meets every year. Applications received before 1 June of the current year will be considered by the committee meeting the following year.

Detailed information on how to obtain consultative status, including the application form, is available at the Web site of the UN Department of Economic and Social Affairs (DESA), NGO section, at http://www.un.org/esa/coordination/ngo/.

3.5 Pressing for higher standards

The modern system for international protection of human rights is a dynamic phenomenon. The first modern international documents that laid the basis of the international system for the protection of human rights, the UN Charter and the Universal Declaration of Human Rights, were adopted more than fifty years ago as the world emerged from the gross human rights violations committed in the course of World War II. States agreed that the protection of human rights could no longer be only a matter of domestic affairs. Since then, the system of international human rights protection has evolved to include a number of treaties designed to provide better protection against specific types of human rights violations and to include new aspects of human rights. Thus, the International Bill of Human Rights was followed by the Convention Against Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and most recently the Convention on the Rights of the Child.

Treaty bodies have further strengthened international standards through broader interpretation of treaty provisions to reflect changes in societal norms. Implementation of international human rights law also improved with increased use of the right to individual complaint (as a result of the adoption of the First Optional Protocol to the ICCPR and other mechanisms) and through follow-up activities of UN bodies.

NGOs continue to play an important

role in these processes. Organizations such as Amnesty International were closely involved in drafting the Second Optional Protocol for the Abolition of the Death Penalty and campaigned actively for its adoption by states parties to the ICCPR. The adoption of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment was also influenced by NGO efforts. NGOs, including Save the Children International, played an especially important role in the drafting of the Convention on the Rights of the Child. NGOs were instrumental in the adoption of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, first in lobbying for the adoption of the Protocol through the world conference processes, and then in the actual drafting. The International Human Rights Law Group, for example, helped to convene a group of experts that produced a key preliminary document setting out the basic elements of an Optional Protocol, and IWRAW–Asia Pacific and others have been leading the campaign for ratification of the Protocol.

Through their everyday activities, advocacy for the victims of human rights violations, close scrutiny of national human rights policies, and public education on human rights, NGOs are gradually but consistently raising human rights consciousness within their countries and around the world. Such awareness ultimately will lead to the improvement of international human rights standards around the world.

WORLD CONFERENCES ENCOURAGE POLITICAL COMMITMENTS AND PROMOTE NEED FOR NEW STANDARDS

During the last several years, NGOs have expanded their participation in UN-sponsored world conferences. Though primarily focused on governmental commitments, these meetings have enabled NGOs to play key roles in focusing the world's attention on new issues and bringing political pressure to bear on the need for further standards.

UN World Conference on Human Rights (Vienna, 1993). Attended by representatives of almost all member states of the UN and more than 800 NGOs, the

conference made a substantial impact on the development of the UN human rights machinery. Combining the efforts of diplomatic and NGO forums, it played a crucial role in the establishment of a new thematic mechanism, the special rapporteur on violence against women. The Vienna conference also called for the establishment of the post of UN High Commissioner for Human Rights, which was created two years later by a resolution of the UN General Assembly.

World Conference on Women (Beijing, 1995). This conference was the result of successful collaboration between government representatives and NGOs. Participants supported the adoption of an Optional Protocol to the Women's Convention establishing the right to individual complaints for violations of the Convention. This Protocol was opened for ratification in the spring of 1999, and by December 2000 it had already entered into force.

World Conference Against Racism (Durban, 2001). This conference provided another possibility for NGOs to raise their concerns with UN bodies. Regional NGOs met in anticipation of the world conference to adopt recommendations addressing the NGOs' concerns regarding the current international system for protection against discrimination. The regional meeting of NGOs from Central and Eastern Europe called for, among other things, reform of the UN system to strengthen the role of mechanisms for legal protection against discrimination and to establish standards for international responses to occurrences of state-sanctioned racism.

RESOURCES

Readings

Bayefsky, A., *The UN Human Rights Treaty System: Universality at the Crossroads*, Transnational Publishers, 2001, New York.

Examines some deficiencies of the current UN human rights treaty system and suggests a number of reforms, most of which can be accomplished without formal amendment of the system. The study addresses such problems as overdue reports, insufficient reports, treaty body visits to states parties, and documentation, among others.

Columbia Law School Human and Constitutional Rights: <http://www.hrcr.org>.

Contains country reports, comparative

laws and court decisions, international treaties, documents of international organizations, and links to other Internet resources on these topics.

Council of Europe, *Short Guide to the European Social Charter*, Strasbourg; available in English and French.

Council of Europe, CD-ROM, *Combating Racism and Intolerance*, 1997, Strasbourg.

Reproduces the contents of the Web site of the European Commission against Racism and Intolerance (www.ecri.coe.int) as of October 1997 (including international legal texts, summaries of relevant national legislation, "good practices" in policy measures in member states, guidance on conducting campaigns, and initiatives in education and the media).

Council of Europe, *NGO Action Pack, European Social Charter*, Council of Europe 1999, Strasbourg.

Council of Europe, *Basic Human Rights Documents of the Council of Europe available in Central and Eastern European languages*, 2000, Strasbourg.

Council of Europe Web sites:

The case law of the European Convention on Human Rights and details of cases pending before the European Court of Human Rights are available on the Internet in English and in French, as is information about the other human rights activities of the Council of Europe, at the following sites:

- http://www.echr.coe.int (European Court of Human Rights)
- http://www.echr.coe.int/hudoc (Case Law of the European Court of Human Rights)
- http://www.humanrights.coe.int/cseweb (European Social Charter)
- http://www.cpt.coe.int (Committee for the Prevention of Torture)
- http://www.ecri.coe.int (European Commission against Racism and Intolerance)
- http://www.humanrights.coe.int/Minorities (protection of national minorities)
- http://www.coe.int/cm (Committee of Ministers)
- http://www.humanrights.coe.int/media (media)
- http://www.humanrights.coe.int/police (police and human rights)
- http://conventions.coe.int (Council of Europe treaties and agreements)

Diana: An Online Human Rights Archive at Yale Law School: <http://diana.law.yale.edu>.

Contains decisions, resolutions, and additional documents of international human rights bodies and other human rights resources.

Hannum, H., ed., *Guide to International Human Rights Practice*, 3rd edition, Transnational Publishers Inc., 1999, New York.

Reviews in detail international and regional mechanisms for protection of human rights and evaluates their effectiveness.

Human Rights Web: <http://www.hrweb.org>.

Contains a basic introduction to human

rights, international human rights treaties, and historical documents with significance for human rights, as well as useful links to human rights organizations worldwide.

International Human Rights Internship Program and Asian Forum for Human Rights and Development, *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource*, International Human Rights Internship Program, 2000, New York.

A manual for training human rights activists and development workers regarding economic, social, and cultural rights, and a tool for introducing the concept of economic, social, and cultural rights to policy makers, media, academics, lawyers, and other professional groups.

International Movement against All Forms of Discrimination and Racism (IMADR) and Minority Rights Group International (MRG), *The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs*, 2001, London. <http://www.minorityrights.org> (last accessed on July 26, 2001).

Kenny, T., *Securing Social Rights across Europe: How NGOs Can Make Use of the European Social Charter*, Council of Europe, revised November 1998, Strasbourg; available in English, French, German, Greek, Russian, and Turkish.

Lawyers Committee for Human Rights, *The Human Rights Committee: A Guide for NGOs*, 1997, New York. <http://www.lchr.org/ngo/ngoguide/final.htm> (last accessed on July 26, 2001).

Provides nongovernmental organizations with a basic and practical understanding of the work of the Human Rights Committee.

Long, S., *Making the Mountain Move: An Activist's Guide to How International Human Rights Mechanisms Can Work for You*, International Gay and Lesbian Human Rights Commission, 2000, New York. <http://www.iglhrc.org/news/factsheets/unguide.html> (last accessed on July 26, 2001).

A guide to accessing and using the UN and regional systems of human rights protection.

Minority Rights Group International, *The Council of Europe's Framework Convention for the Protection of National Minorities: Analysis and Observation on the Monitoring Mechanisms*, 1998, London. <http://www.minorityrights.org> (last accessed on July 26, 2001).

Nowicki, M., "NGOs before the European Commission and the Court of Human Rights," 14/3 *Netherlands Quarterly of Human Rights* (1996), 289–302, Strasbourg; available in English; Russian version available from the Directorate General of Human Rights, Council of Europe, Strasbourg.

Office of the United Nations High Commissioner for Human Rights, *Human Rights: A Basic Handbook for the UN Staff*, 2000, Geneva. <http://www.unhchr.ch/html/menu6/handbook.pdf> (last accessed on July 26, 2001).

Provides an overview of the UN human rights mechanisms and developments and the role of the UN bodies for the protection and promotion of human rights.

Shuster, G., I. Martinez, and J. Madore, *Between Their Stories and Our Realities: A Manual for Seminars and Workshops on CEDAW*, The People's Decade of Human Rights Education (PDHRE), 1999, New York. <http://erc.hrea.org/Library/women/cedaw/index.html> (last accessed on July 26, 2001).

A manual on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), designed to accompany eight videos ("Women Hold Up the Sky") that illustrate different types of discrimination and human rights violations against women around the world.

Symonides, J., and V. Volodin, *Human Rights of Women: A Collection of International and Regional Normative Instruments*, UNESCO, 1998, Paris. <http://www.unesco.org/human_rights/wcontent.htm> (last accessed on July 26, 2001).

Contains international conventions, declarations, and recommendations regarding women's human rights that have been adopted by the United Nations, the Council of Europe, or the Organization of American States.

Taubina, N., *Guide to How NGOs Can Work with the Council of Europe to Protect Human Rights*, Moscow Research Centre for Human Rights, 1997, Moscow.

Available in Azeri, English, and Russian (from the Directorate General of Human Rights, Council of Europe, and the United Nations High Commissioner for Refugees office, Baku, Azerbaijan)

United Nations Development Fund for Women (UNIFEM), *Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women*, 1998, New York. <http://www.unifem.undp.org/cedaw/indexen.htm> (last accessed on July 26, 2001).

Provides examples of implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) domestically in different countries around the world and discusses some obstacles to implementation in a constitutional, legislative, or judicial context.

UNIFEM and UNICEF, *CEDAW Advocacy Kit*, 1995. <http://gopher://gopher.undp.org/11/unifem/poli-eco/poli/whr/cedaw/cedawkit> (last accessed on July 26, 2001).

Includes information on gender violence and girls' rights, as well as a summary of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), all of which can be incorporated into lesson materials.

United Nations High Commissioner for Human Rights Web sites:

The texts of the United Nations human rights treaties, the decisions of the treaty-monitoring bodies, the reports of the states parties, and the resolutions of the UN Charter–based mechanisms relevant to human rights are available at the following sites:

- http://www.unhchr.ch/html/intlinst.htm (UN human rights treaties)
- http://www.unhchr.ch/tbs/doc.nsf (UN treaty bodies database)

- http://www.unhchr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset (Charter-based bodies database)
- http://www.unhchr.ch/html/menu2/2/chr.htm (Commission on Human Rights)
- http://www.unhchr.ch/html/menu2/xtraconv.htm (Country and thematic rapporteurs)
- http://www.unhchr.ch/html/menu2/hrissues.htm (Human rights issues)
- http://www.unhchr.ch/html/menu5/wchr.htm (World conferences on human rights)
- http://www.unhchr.ch/html/menu2/techcoop.htm (Technical cooperation)

International Organizations

Council of Europe
F-67075 Strasbourg Cedex
France
Tel: (33 3) 88 41 20 24
Fax: (33 3) 88 41 27 04
E-mail: HumanRights.Info@coe.int
Web: www.coe.int
Or www.humanrights.coe.int (for specific human rights information)

Human Rights Information Centre
Council of Europe
F-67075 Strasbourg Cedex
France
Tel: (33 3) 88 41 20 24
Fax: (33 3) 88 41 27 04
E-mail: HumanRights.Info@coe.int
Web: www.coe.int

Office for Democratic Institutions and Human Rights (ODIHR)
OSCE
Aleje Ujazdowskie 19
00-557 Warsaw
Poland
Tel: (48 22) 520 06 00
Fax: (48 22) 520 06 05
E-mail: office@odihr.osce.waw.pl
Web: www.osce.org/odihr

Office of the United Nations High Commissioner for Human Rights
8–14 Avenue de la Paix
1211 Geneva 10
Switzerland
Tel: (41 22) 917 9000
Fax: (41 22) 917 9016
Web: www.unhchr.ch

Organization for Security and Cooperation in Europe (OSCE)
Secretariat
Kaerntnerring 5–7
4th Floor
A-1010 Vienna
Austria
Tel: (43 1) 514 36 0
Fax: (43 1) 514 36 96
E-mail: pm@osce.org
Web: www.osce.or

International Nongovernmental Organizations

Amnesty International
99–119 Rosebery Avenue
London EC1R 4RE
United Kingdom
Tel: (44 207) 814 6200
Fax: (44 207) 833 1510
E-mail: amnestyis@amnesty.org
Web: www.amnesty.org

An NGO that campaigns for the rights of prisoners of conscience; the right to fair and prompt trials for political prisoners; abolition of the death penalty and of torture and other cruel treatment of prisoners; and an end to political killings and "disappearances." Maintains an extensive library collection with reports on human rights issues in specific countries and documents of international bodies.

Human Rights Watch
350 Fifth Avenue
34th Floor
New York, NY 10118-3299, USA
Tel: (1 212) 290 4700
Fax: (1 212) 736 1300
E-mail: hrwnyc@hrw.org
Web: www.hrw.org

Investigates human rights abuses around the world, publishes reports on human rights violations, and mobilizes media attention to put pressure on governments to stop human rights violations.

International Commission of Jurists (ICJ)
81A, avenue de Châtelaine
P.O. Box 216
CH-1219 Châtelaine/Geneva
Switzerland
Tel: (41 22) 979 38 00
Fax: (41 22) 979 38 01 or 04
E-mail: info@icj.org
Web: www.icj.org

Engages in advocacy before the UN human rights bodies, training, fact-finding missions, and trial observation.

International Human Rights Law Group
1200 18th Street, NW
Suite 602
Washington, DC 20036, USA
Tel: (1 202) 822 4600
Fax: (1 202) 822 4606
E-mail: HumanRights@HRLawGroup.org
Web: www.hrlawgroup.org

Active in human rights advocacy, human rights litigation, and training around the world, with the purpose of empowering local human rights groups.

International League for Human Rights
823 UN Plaza
Suite 717
New York, NY 10017, USA
Tel: (1 212) 661 0480
Fax: (1 212) 661 0416
E-mail: info@ilgh.org
Web: www.ilhr.org

Raises human rights issues and cases before the United Nations and other intergovernmental regional organizations, in partnership with NGOs from other countries, and coordinates strategies for effective human

rights protection. Maintains advocacy projects in Africa, Europe, the former Soviet Union, the Middle East, and Asia.

International Women's Rights Action Watch
Hubert Humphrey Institute of Public Affairs
University of Minnesota
301 19th Avenue South
Minneapolis, MN 55455, USA
Tel: (1 612) 625 5093
Fax: (1 612) 624 0068
E-mail: iwraw@hhh.umn.edu
Web: www.igc.org/iwraw

A network of activists and organizations that monitors and publicizes the work of the UN Committee on the Elimination of Discrimination Against Women (CEDAW), provides resources on women's human rights issues, and organizes international meetings on women's rights.

Lawyers Committee for Human Rights
333 Seventh Avenue
13th Floor
New York, NY 10001, USA
Tel: (1 212) 845 5200
Fax: (1 212) 845 5299
E-mail: lchrbin@lchr.org
Web: www.lchr.org

Active in the protection of human rights advocates, refugees, and asylum seekers; international criminal law; workers' rights; fair trial issues; and other related fields.

Five

NGO Advocacy before International Governmental Organizations

In the aftermath of World War II, the protection of human rights emerged as a matter of grave international concern. The international community, acting regionally as well as globally, created a sophisticated system of international and regional treaties and other mechanisms to promote and protect the rights of people under the jurisdictions of states. The United Nations (UN) was founded in 1945 by 51 countries with the goal of preserving peace through international cooperation and collective security. With a membership of 189 states, the UN is now the largest international organization devoted to international cooperation and the protection of human rights. The Council of Europe (CoE), established in 1949 by 11 Western European nations, seeks to achieve greater unity among its members in safeguarding their common ideals and principles. In addition to facilitating economic and social progress, the CoE evolved into the most effective regional organization for protection of human rights. With a membership of 43 countries, including almost all of the countries in Central and Eastern Europe, the CoE has become a major catalyst for improving the human rights situation in these countries, during a period of political, economic, and social transformation.

The possibilities for NGO involvement and potential influence through international advocacy before regional and international bodies have never been greater. As the efforts of these organizations continue to grow, it is vital for nongovernmental organizations to understand the opportunities presented by the UN and the CoE for involvement by NGOs in protecting human rights in their countries and throughout the region. For many of the mechanisms cre-

ated by these organizations, individuals and NGOs must first exhaust all effective domestic remedies before taking action or seeking redress in the international arena. With that in mind, there is a myriad of opportunities for NGOs that are interested in, and prepared to engage in, such advocacy. With an understanding of charters, treaties, conventions, and requisite state responsibilities, NGOs can play an important part in holding states accountable for complying with human rights and other agreement provisions and treaty obligations.

The first section of this chapter is devoted to the Council of Europe. It provides an overview of the structure and political and judicial mechanisms in place for the protection of human rights. Each mechanism is described briefly, including a discussion of the role of NGOs in utilizing the mechanism. The second section of this chapter focuses on the United Nations, offering an overview of the significant Charter-based and treaty-based mechanisms of the UN human rights system. This section also discusses opportunities for NGO participation, and it provides useful guidance by presenting examples of how particular NGOs have engaged in advocacy activities before UN bodies.

Of course, there are important similarities and distinctions between the regional and international organizations, as well as among the mechanisms within a particular organization. Advocates must examine the relative advantages and disadvantages of each mechanism or instrument to determine which tool can best serve their goals. Ultimately, where possible, NGOs should examine carefully where and how these mechanisms have been used and consider the experience of other NGOs or individuals who have utilized such mechanisms or engaged in the advocacy process. This chapter will also provide information on the factors to consider in determining the best mechanism for a particular case or issue.

NGOs and the European human rights system

This section explains:

- CoE legal and political mechanisms for the protection of human rights
- how NGOs can utilize such mechanisms to promote human rights protection
- procedures for CoE admission and human rights monitoring by the CoE
- the role of NGOs in promoting CoE protection and providing information and training

1. Council of Europe mechanisms for human rights protection

The Council of Europe plays a strong and central role in the protection and promotion of human rights throughout Europe. The organization was founded in 1949, in the wake of the horrors of World War II, and its primary purpose was—and is—to safeguard and promote certain common ideals and principles among its members. In this sense, Article 3 of its Statute requires that "[e]very member of the Council of Europe must accept the principle of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms." Within the Council of Europe, which has its headquarters in Strasbourg, a number of different bodies carry out efforts to protect human rights. Although the best known of these, the European Court of Human Rights (ECtHR), operates in the judicial field, it is also important to understand the political framework of the organization, as well as other mechanisms available to protect the rights of vulnerable groups. Therefore, both legal and political mechanisms are described below, with indications of how NGOs working in the field of human rights protection can use each.

Today, the membership of the Council of Europe is no longer limited to a small number of European states. As of May 2001, the 43 member states include all Western European nations and the following Central and Eastern European countries (with accession dates): Albania (1995), Armenia (2001), Azerbaijan (2001), Bulgaria (1992), Croatia (1996), the Czech Republic (1993), Estonia (1993), Georgia (1999), Hungary (1990), Latvia (1995), Lithuania (1993), Moldova (1995), Poland (1991), Romania (1993), the Russian Federation (1996), Slovakia (1993), Slovenia (1993), the former Yugoslav Republic of Macedonia (1995), and Ukraine (1995).

2. Legal mechanisms within the CoE

2.1 European Convention on Human Rights (1950)

The European Convention for the Protection of Human Rights and Fundamental Freedoms, now known as the European Convention on Human Rights (ECHR), is undoubtedly the best known and arguably the most effective of the regional treaties in the human rights field. New member states are each obliged to sign the Convention upon becoming a member of the Council of Europe and to ratify it

within the following year. By ratifying, states undertake to secure to anyone within their jurisdiction the civil and political rights and freedoms set out in the Convention. Subsequent protocols have extended the initial list of rights, and the case law of the European Court of Human Rights has reinforced and developed them still further.

All of the CoE member states, with the exception of Ireland, have now incorporated the Convention into their own domestic law, enabling the domestic judiciary to take full account of its provisions when considering a grievance. Once domestic judicial remedies have been exhausted, an individual may seek redress in Strasbourg for an alleged breach of the Convention by a member state.

All applicants alleging a violation of their individual rights under the Convention have direct access to the European Court of Human Rights, which meets full-time in Strasbourg. As of 1 November 1998—in response to the rapidly increasing number of states parties and a need to reduce delays in cases being heard—a single, permanent European Court of Human Rights was established to replace the previous two-tier system of a commission and a court. The right of individual application is mandatory for each state party (previously it was, at least in theory, optional). Any cases that are clearly unfounded are eliminated at an early stage by being declared inadmissible by a committee of three judges.

Of the more than 60,000 individual applications registered since the Convention came into force, most have been declared inadmissible, generally because they were manifestly ill-founded; concerned matters not covered by the Convention; had been brought against states that are not a party to the Convention; or did not demonstrate an exhaustion of domestic remedies. Nevertheless, through 2000, some 5,960 applications had been declared admissible. For a description of the procedures for bringing a complaint before the European Court, please see chapter 3, "Strategic Litigation: Bringing Lawsuits in the Public Interest." Court rules may also be found at http://www.echr.coe.int.

Role of NGOs. A nongovernmental organization may bring a complaint alleging a violation of the European Convention on Human Rights *only* if that NGO itself can claim to be a victim of the alleged violation (Article 34 of the Convention). Thus, such cases have often involved questions of freedom of expression, association, or assembly.

However, NGOs can provide extremely useful advice or even legal representation for individuals or groups of individu-

als who wish to bring complaints. They often assist applicants in drawing up their original petitions, and then may work with them through the various stages of the proceedings. It is still fairly rare for NGOs to represent applicants directly; more often they will appoint an independent lawyer to do so. Quite often, a case will have been brought to Strasbourg on the initiative of an NGO when national remedies have proved ineffective on an important human rights issue. Such assistance is often extremely important in helping to reduce the inequality of parties to proceedings. As Marek Antoni Nowicki, a Polish lawyer and former member of the European Commission of Human Rights, has observed, "Not many applicants can match the battery of specially trained legal experts a state generally has at its disposal."

Although it is still fairly rare for NGO staff lawyers to provide direct legal representation to ECtHR applicants, there are a growing number of exceptions. One example is the Bulgarian Helsinki Committee, whose staff lawyers filed forty-one applications with the Strasbourg court between 1996 and 2001. NGOs also play an invaluable role in providing training in international human rights law, as described in section 6 below, resulting in an increasing number of lawyers available to work with ECtHR applicants.

From time to time, the Court has permitted NGOs to file *amicus curiae* briefs that provide information contributing to the analysis of issues raised. Individuals or groups have had to show that they have a discernible interest in the case, and also that their intervention is in the interest of the proper administration of justice. Article 36(2) of the Convention now explicitly provides for third-party interventions, written and oral, from "any person concerned who is not the applicant" at the invitation of the president of the Court.

NGO INTERVENTIONS IN ECtHR PROCEEDINGS

Over the last fifteen years, NGOs have made interventions in more than forty cases in the European Courts of Human Rights, including

Amnesty International in the case of ***Chahal vs U.K.*** **(1996)**. This case concerned a Sikh activist whom the government of the United Kingdom wished

to deport to India. The government maintained that he had been involved in terrorist activities and posed a risk to the national security of the United Kingdom. He claimed that he faced a real risk of being tortured or killed if deported.

Where several NGOs can come together to file a joint brief, this can make their case stronger and more persuasive. Examples of this practice include

Article 19 and **INTERIGHTS** in ***Otto-Preminger-Institut v. Austria*** (1994), a case involving a satirical film found to be blasphemous, and **Goodwin v. U.K.** (1996), a case concerning the right of journalists to protect their sources of information.

Liberty, INTERIGHTS, and the **Committee on the Administration of Justice** in the case of ***Brannigan and McBride v. U.K.*** (1993), concerning derogation, by a state during an emergency situation, of procedural guarantees necessary for the protection of detainees.

Liberty, the **Centre for Advice on Individual Rights in Europe (AIRE),** and the **Joint Council for the Welfare of Immigrants** in relation to the ***Chahal*** case, mentioned above.

In their intercessions as *amici curiae*, NGOs have provided much useful information, particularly regarding comparative law, to which the Court would not otherwise have had access. There is reason to believe that their information and arguments have played an important role in the Court's deliberations. For example:

European Roma Rights Center (ERRC) submitted a brief in the case of ***Assenov and Others v. Bulgaria*** (1998). The brief argued that Article 3, read in conjunction with states' obligation under Article 1 of the Convention to secure the Convention's rights to everyone, should be interpreted so as to require an effective investigation in cases of allegations of torture. The ERRC supported its brief with factual information about police ill-treatment of Roma in Bulgaria and the extent to which the law enforcement offices had provided a remedy in these cases, as well as with arguments based on the Convention and other international case law. The Court accepted this argument and held that where an individual "raises an arguable claim that he has

been seriously ill-treated by the police . . . Article 3 read in conjunction with the State's general duty under Article 1 requires by implication that there should be an effective official investigation."

NGOs also can serve an important role after the Court's judgments become final. This involvement is particularly significant in cases where a violation of the Convention results from specific domestic legislation. In such cases, NGOs may direct the media to the Court's decision, disseminate copies of the decision among legislators, and initiate or participate in a campaign to amend the law in question. Violations that result from domestic courts' interpretation of Convention provisions require a change in the case law of domestic courts. In these circumstances, NGOs can be extremely helpful in publishing the decision of the Court and distributing it widely among judges, prosecutors, and lawyers. NGOs can also work to ensure that the legal community in their country is well acquainted with the standards of the European Court of Human Rights.

2.2 European Social Charter (1961)

The European Social Charter (ESCh) was signed by member states of the Council of Europe in 1961. Three protocols were added to the Charter in 1988, 1991, and 1995. Finally, in 1996, the Revised European Social Charter was opened to signature, and it entered into force in July 1999. The Revised Charter is the most comprehensive of the instruments and will progressively replace the Charter of 1961.

The Charter is the counterpart of the European Convention on Human Rights in the economic and social field. It protects fundamental social rights related to housing, health, education, employment, and social protection. In addition, the nondiscrimination principle is applied to each right belonging to any of these five categories. The application of the rights guaranteed by the European Social Charter is monitored through two different channels: a traditional reporting system and a more innovative mechanism, the collective complaints procedure.

2.2.1 Reporting system. A reporting system defined in the Charter and modified by a Protocol of 1991, already applied though not yet formally in force, ensures

the application of the Charter. It provides for the monitoring of the Charter by the European Committee of Social Rights. This committee is composed of nine experts who have recognized competence in international social questions. Upon receipt of reports that states parties are required to submit at regular intervals on selected articles, the committee decides, from a legal point of view, on the conformity of domestic law and practice with the provisions of the Charter. Its conclusions are then forwarded to the Governmental Committee, which selects among negative conclusions those that should be the subject of a recommendation by the Committee of Ministers (CM).

2.2.2 Collective complaints procedure. Since the entry into force, on 1 July 1998, of the Additional Protocol providing for a system of collective complaints, European as well as national trade unions, along with organizations of employers and certain international nongovernmental organizations, may lodge complaints against states parties alleging violations of the Charter. The European Committee of Social Rights examines the admissibility and merits of the complaints, then transmits its decision to the Committee of Ministers for adoption of a recommendation in cases where a violation of the Charter has been found. As of May 2001, this procedure had been accepted by nine member states and ten complaints had already been registered.

Role of NGOs. Nongovernmental organizations can contribute to the supervision of the European Social Charter by providing information directly to the European Committee of Social Rights. Under the reporting system, all NGOs have the opportunity to submit information on specific country situations related to one of the rights guaranteed by the Charter, or to provide comments on the national reports found on the Web site of the European Social Charter (www.humanrights.coe.int/cseweb). Such reports may also be requested from the Secretariat of the European Social Charter. In addition, under Article 27(2) of the Charter, the Governmental Committee may consult NGOs on issues in which they have particular competence. Unfortunately, in practice these opportunities have to date remained underutilized.

The text of the Additional Protocol providing for a system of collective complaints assigns a specific role to NGOs in the operation of the complaints procedure. International NGOs that have consultative status with the Council of Europe are allowed to file complaints alleging that states have failed to comply with one or more provisions of the Charter. Domestic

NGOs may also file such complaints, provided that the state has made a declaration to this effect. More generally, NGOs may use the norms of the European Social Charter in order to raise awareness about social rights as human rights and lobby their governments to fully respect their international commitments.

The collective complaint procedure of the European Social Charter

In 1998, the International Commission of Jurists (ICJ), a nongovernmental organization based in Geneva, brought a complaint against Portugal alleging that Portugal had violated Article 7, para. 1, of the European Social Charter, which prohibits children under the age of fifteen from working. In *International Commission of Jurists v. Portugal*, the ICJ argued that despite the adoption of some provisions prohibiting child labor, a large number of children under fifteen continued to work illegally in many economic sectors in Portugal. The ICJ also argued that the Labor Inspectorate, the principal body for supervising the enforcement of the legislation prohibiting child labor, was not carrying out its duties effectively. The ICJ presented evidence that included the report of an NGO published a few years earlier, which estimated that at that time 200,000 children under the age of fifteen worked in poor conditions, adversely affecting their health.

In response, the Portuguese government relied on another statistical survey, showing that the number of working children is significantly lower. The government also argued that the majority of children under the age of fifteen who work do so on an unpaid basis for their own families. The European Committee of Social Rights rejected the government's arguments, however, and stated that the prohibition of child labor applies to all economic sectors, including family businesses, and to all forms of work, paid or not. With regard to the complaint of the lack of effectiveness of the Labor Inspectorate, the committee stated that the Charter protects not only theoretical rights but rights that are effective in fact. In the light of this interpretation of the Charter, the committee analyzed the number of visits of the Labor Inspectorate and the number of violations it had found, which were both substantially below the results of the survey the government had presented. The committee concluded that the situation in Portugal violated Article 7, para. 1, of the European Social Charter.

2.3 European Convention for the Prevention of Torture (1987)

In recent years, the Council of Europe's efforts to guarantee human rights have placed increasing emphasis on preventing violations from occurring. Article 3 of the European Convention on Human Rights provides, "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." The idea behind the drafting of the 1987 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was to prevent such ill-treatment of people deprived of their liberty. As of May 2001, the European Convention for the Prevention of Torture had been ratified by forty-one CoE member states (and signed by forty-two).

The Convention provides nonjudicial preventive machinery to protect detainees. It is based on a system of visits by members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The CPT is charged with examining the treatment of people deprived of their liberty, with a view to strengthening their protection against torture and inhuman or degrading treatment or punishment. To this end, the committee is entitled to visit any place within the jurisdiction of the states parties to the Convention where people are deprived of their liberty by a public authority. This includes not just prisons but also police stations, psychiatric institutions, detention areas at military barracks, holding centers for foreigners, and youth detention centers. The committee has been functioning for more than ten years and by May 2001 had carried out 119 visits, visiting forty-one states parties.

Through detailed recommendations to relevant authorities in the contracting states, the CPT has been moving toward the development of a corpus of standards against which detention conditions can be judged. These cover such matters as legal safeguards against ill-treatment for people in police custody; material conditions and regime of activities in prisons; and mechanisms to prevent immigration detainees from being returned to countries where they face a risk of torture or ill-treatment.

The CPT has two guiding principles: cooperation and confidentiality. Cooperation with national authorities is at the heart of the Convention; the aim is to protect detainees rather than to condemn states for abuses. The committee meets in private, and its reports are strictly confidential. Nevertheless, if a country refuses to cooperate or fails to improve the situation in the light of the committee's recommendations, the CPT may decide to issue a public statement. Of course, the state itself may request publication of the

committee's report, together with its comments. As of May 2001, more than sixty reports had been published in this way. In addition, the CPT's annual report to the Committee of Ministers is made available as a public document. All of these materials can be found on the Web site of the CPT at www.cpt.coe.int.

Role of NGOs. Nongovernmental organizations regularly send information about conditions of detention and imprisonment to the CPT. The committee has made at least one visit to all but the newest member state, and many of the reports of its visits have been made public by the governments concerned. As a consequence, NGOs—especially those focusing on detention issues—are in a position to follow up the committee's recommendations and monitor their impact at the national level. There remains a good deal to be done to raise awareness about the work of the CPT and the body of standards it has developed. NGOs, national as well as international, have a vital role to play in this respect.

2.4 Framework Convention for the Protection of National Minorities (1995)

Although not the first instrument to be developed within the Council of Europe for the protection of national minorities (the European Charter for Regional or Minority Languages was adopted in 1992), the Framework Convention for the Protection of National Minorities (FCNM) is certainly the most comprehensive document in this area. It is also the first legally binding multilateral instrument ever devoted to the protection of national minorities in general. The Convention entered into force on 1 February 1998.

The Convention covers a wide range of issues, including promotion of effective equality; promotion of the conditions necessary for the preservation and development of culture and preservation of religion, language, and traditions; freedom of assembly, association, expression, thought, conscience, and religion; access to and use of the media; linguistic freedoms; education; transfrontier contacts; participation in economic, cultural, and social life; participation in public life; and prohibition of forced assimilation. Unlike other texts adopted in this area, it recognizes the right of each individual, not just the collective, to these freedoms. As of May 2001, thirty-two CoE member states and two (as yet) nonmember states had ratified or acceded to the Framework Convention, while a further seven member states had signed it (Andorra, Belgium, France, and Turkey had not).

By its nature, a framework convention is different from a "normal" convention. Although it is a convention in the sense that it is a legally binding instrument under international law, the word "framework" indicates that the substantive principles it enshrines are not directly applicable in the domestic legal orders of the states parties, but must be implemented through national legislation and appropriate government policies. In the elaboration of the substantive principles, therefore, special emphasis was given to provisions of a "program" type. These define certain objectives that the states parties undertake to pursue through legislation and appropriate government policies at the national level.

States parties are required to file reports—within one year of entry into force and thereafter every five years, or as requested—containing full information on legislative and other measures taken to give effect to the principles in the Convention. The Committee of Ministers then must evaluate the adequacy of states parties' implementation of the Convention, with the assistance of an Advisory Committee of eighteen members, all of whom are expected to be independent and impartial and to have recognized expertise in the field of protection of national minorities.

The Advisory Committee held its first meeting at the end of June 1998, among other things to draft its rules of procedure and an outline for state reports. By May 2001, twenty-two reports had been received. Following initial analysis by the Advisory Committee of a report, a study visit may be undertaken to the state concerned, at the request of the government. As of June 2001, such visits had been made to twelve countries: Finland, Hungary, the Slovak Republic, Denmark, Romania, the Czech Republic, Croatia, Cyprus, Italy, Estonia, the United Kingdom, and Germany.

The Advisory Committee may then adopt country-specific opinions to forward to the Committee of Ministers, which might then adopt conclusions or recommendations regarding a particular state. The opinions of the Advisory Committee are to be made public at the same time as the conclusions and recommendations of the Committee of Ministers, unless the Committee of Ministers decides otherwise in a specific case.

Role of NGOs. When examining state reports, the Advisory Committee may receive information from a variety of other sources, including nongovernmental organizations. To date, such reports have been submitted by the Bulgarian Helsinki Committee, the Hungarian Helsinki Committee, and other NGOs active in Central and Eastern Europe. As

Minority Rights Group International (MRG), an NGO whose purpose is to promote the rights of minorities worldwide, has observed, these submissions need to be of high quality. The NGOs' reports should therefore be detailed and factual, with all sources cited. It is also important that NGOs collect information about the situation of the minorities in their country on a regular basis. Information about the deadlines for future state reports, as well as the texts of state reports already submitted to the Advisory Committee, is available on the Web site of the Council of Europe, on the page on national minorities (http://www.humanrights.coe.int/Minorities).

2.5 European Charter for Regional or Minority Languages (1992)

The European Charter for Regional or Minority Languages (EChRML) was adopted by the Committee of Ministers in 1992 and entered into force on 1 March 1998. Without granting specific collective rights to the minorities themselves, the principal aim of the Charter is to guarantee the use of regional or minority languages.

The protection provided for in the Charter is twofold. Part II (Article 7) sets forth general objectives and principles for states to follow, including: the principle of nondiscrimination; recognition of the regional or minority language as an attribute of a community; respect for the geographic area in which each language is spoken; facilitation of the written and oral use of these languages in public, social, and economic life; and the teaching and study of the regional or minority languages at all appropriate stages.

Part III of the Charter translates the above-mentioned principles and objectives into precise provisions requiring states to take positive concrete measures. Because of the variety of linguistic situations existing in the different states of Europe, a two-step process emerged. First, each state must choose the languages that Part III is to cover; then, for each of the languages to which the state accepts that the Charter shall apply, it can determine the provisions in Part III. This protection is provided for in the fields of education (Article 8), judicial authorities (Article 9), administrative authorities and public services (Article 10), media (Article 11), cultural activities and facilities (Article 12), economic and social life (Article 13), and transfrontier exchanges (Article 14).

The application of the European Charter for Regional or Minority Languages is monitored by an independent Committee of Experts. Each state party is required to

present a report every three years on the measures taken and policies adapted in application of Parts II and III of the Charter. The first of these reports is due one year after the entry into force of the Charter with respect to the state party concerned. All of these periodic reports are made public.

An important element in the monitoring mechanism is the "on the spot mission" by a delegation of the committee, which visits a state and meets with the authorities, as well as with bodies and associations legally established by the state, on a consultative basis in order to obtain information relevant to their work. On the basis of this procedure, the Committee of Experts prepares a report for the Committee of Ministers, with suggested recommendations.

Role of NGOs. Nongovernmental organizations are very important to the work of the Committee of Experts. Their active support and supply of well-documented information to the committee allows a clear overview of the real situation to be established.

It is notable that several of these principles are already covered by the European Convention on Human Rights. However, besides adding to the comprehensive nature of the Framework Convention, their inclusion is particularly important since the treaty is open to signature by nonmember states, at the invitation of the Committee of Ministers.

2.6 European Convention on Nationality (1997)

The European Convention on Nationality was adopted by the Committee of Ministers in May 1997 and opened for signature by states in November 1997. The Convention embodies principles and rules applying to all aspects of nationality. It is designed to make easier the acquisition of a new nationality and recovery of a former one. It seeks to ensure that nationality is lost only for good reason and that it cannot be arbitrarily withdrawn. The Convention also guarantees that the procedures governing applications for nationality are just, fair, and open to appeal. It seeks to regulate the situation of people in danger of being left stateless as a result of state succession. The Convention also covers multiple nationality, military obligations, and cooperation between states parties.

The text represents a synthesis of recent thinking on the nationality question in domestic and international law and is the first international text to do so. It reflects the demographic and demo-

cratic changes, in particular migration and state succession, that have occurred in Central and Eastern Europe since 1989.

The Convention is particularly significant in that it is open to signature not only by CoE member states but also by other states that took part in its preparation (including Armenia, Azerbaijan, Bosnia and Herzegovina, Canada, Kyrgyzstan, and the United States). Meanwhile, some states that recently adopted new laws on nationality (for example, Bosnia and Herzegovina) have already based them on the content of this Convention, while others (including Ukraine) are planning to do so.

Where the Convention is in force, the competent authorities in each state party are required to provide information to the secretary general of the Council of Europe about matters related to nationality, including instances of statelessness and multiple nationality, as well as about developments concerning the application of the Convention. The secretary general then sends all relevant information to all the states parties.

In fact, much information has already been received and can be found in the Council of Europe's European Documentation Centre on Nationality (EURODOC), which centralizes nationality information and documentation for nearly all European states.

3. Political mechanisms within the CoE

3.1 Parliamentary Assembly of the Council of Europe (PACE)

The Parliamentary Assembly of the Council of Europe (PACE) is composed of delegations of parliamentarians from each of the CoE member states and includes representatives from all parts of the political party spectrum. It provides a forum for debate for members of parliaments from throughout Europe. PACE meets for one week four times a year in plenary session (generally in January, April, June, and September) to address long-term issues as well as matters of immediate concern.

The groundwork of the Parliamentary Assembly is carried out by fourteen committees. These include the Committee on Legal Affairs and Human Rights, the Monitoring Committee, and the Committee on Equality of Opportunities for Women and Men, among others. Following detailed work by these committees, the Assembly can take action in any or all of four ways. The Assembly may (1) adopt a recommendation to be submitted to the Committee of Ministers for its action; (2) address a resolution directly to governments, enlisting the support of national parliaments; (3) frame an opinion on an

issue referred to it by the Committee of Ministers; or (4) give instructions to its subsidiary bodies, or to the Secretariat, in the form of an order.

PACE has been particularly active in the human rights field, adopting recommendations and resolutions in recent years on such matters, among others, as the establishment of an international court to judge war crimes; sects and new religious movements; the rights of minorities; the situation of lesbians and gays; further protection of the rights of asylum seekers; children's rights; AIDS and human rights; and traffic in children and other forms of child exploitation. It has been instrumental in facilitating the passage of a number of conventions, agreements, resolutions, and recommendations through the Committee of Ministers. Its proposals on the abolition of the death penalty in times of peace, a convention to prevent torture and inhuman or degrading treatment or punishment, and a convention for the protection of national minorities were all eventually taken up by the Committee of Ministers and turned into legal instruments. Foremost among its current human rights concerns, PACE continues to call for total abolition of the death penalty.

The Parliamentary Assembly is also a forum for discussing specific country situations. In this context, it has addressed the massive and flagrant violations of human rights in the territory of former Yugoslavia, the situation of human rights in Turkey, the Russian law on religion, the conflict in Chechnya, executions in Ukraine, and the crisis in relation to Kosovo, among other issues. Whenever appropriate, the respective Assembly committees will appoint rapporteurs to look into and report on such issues.

Role of NGOs. Nongovernmental organizations holding consultative status with the Council of Europe may be consulted by the Parliamentary Assembly and its committees and receive its agenda and public documents. They also have a range of other opportunities for bringing their views to the attention of the Assembly in writing or orally to an Assembly committee. Several of the committees have close links with NGOs, whose representatives attend meetings and contribute actively in the preparation of reports. All maintain relations with at least some of the NGOs in their field of interest, supplying them with papers and inviting them to participate when matters of particular relevance are under discussion.

NGO CONSULTATIVE STATUS

The committees of governmental experts and other bodies of the Committee of Ministers, the committees of the Parliamentary Assembly, the committees of the Congress of Local and Regional Authorities of Europe, and the CoE secretary general may "consult" with NGOs that have consultative status, on questions of mutual interest. To qualify for this status, organizations must be *international*, demonstrating substantial membership from each of a number of Council of Europe member states.

National and local NGOs often may be affiliated with one of a number of larger, international groups (for example, Amnesty International, the International Helsinki Federation for Human Rights, and the International Federation of Human Rights Leagues) and through them have at least indirect access to the Council of Europe. Nevertheless, it is not only through formal status, or through a physical presence in Strasbourg, that nongovernmental organizations can and do work in partnership with the Council of Europe in the human rights field. As discussed in detail in this chapter, the CoE works in a variety of ways with an increasing number of both international and national NGOs for the promotion and protection of human rights.

3.2 Committee of Ministers

The Committee of Ministers is the decision-making organ of the Council of Europe through which "agreements and common action" by states are adopted and pursued. It is composed of the ministers of foreign affairs of the forty-three member states, who meet (together with the four observer states: Canada, Japan, Mexico, and the United States) at least twice a year. Throughout the rest of the year, their permanent representatives (ambassadors) based in Strasbourg meet as often as necessary. The Committee of Ministers agrees on an annual program of intergovernmental activities (prepared by the Secretariat on the basis of government experts' proposals). It sets the budget of the organization, and thus its program priorities. It decides on any and all applications for membership or observer status with the Council of Europe. It also decides on applications for consultative

status from nongovernmental organizations. Its meetings are confidential and not open to participation by NGOs.

The Committee of Ministers has the power to adopt conventions and agreements, which are binding on the states that ratify them. It also makes recommendations and adopts resolutions and declarations. These are texts containing policy statements or proposals for action to be taken by the governments of member states. They can have significant influence at the national level.

Most of the preparatory work on such texts is delegated by the Committee of Ministers to one of the intergovernmental expert committees established to deal with specific areas of concern. Many member states send national specialists to participate in these committees, while others are represented by their local Strasbourg representatives. These committees include the Steering Committee on Human Rights (CDDH), the Steering Committee for Equality between Women and Men (CDEG), the Steering Committee on the Mass Media (CDMM), and the European Committee on Crime Problems (CDPC), among others.

NGOs and the Committee of Ministers. Three NGOs—Amnesty International, the International Commission of Jurists, and the International Federation of Human Rights Leagues—have special observer status with the Steering Committee on Human Rights. This enables them to participate in its discussions on the development of new standards and procedures in the human rights field, and to provide oral and written contributions to the process. Other NGOs have been granted observer status on an *ad hoc* basis with particular expert committees in relation to subjects on which they have a special competence. For example, four NGOs have observer status with the European Committee on Migration and some twelve with the European Committee on Crime Problems. NGOs holding consultative status with the CoE and interested in equality issues have created a special interest group, the chairperson of which represents them in an observer capacity at all meetings of the Steering Committee for Equality between Women and Men.

From time to time, committees may conduct "oral hearings" to avail themselves of the expertise of NGOs or specially qualified individuals. In 1998 the Steering Committee on Human Rights (CDDH), for example, invited representatives of the Quaker Council for European Affairs, the European Bureau for Conscientious Objection, the Conference of European Churches, and War

Resisters International to a meeting of its Group of Specialists on Conscientious Objection to Military Service. In preparation for a Ministerial Conference held in November 2000 to mark the fiftieth anniversary of the European Convention on Human Rights, the CDDH called for the establishment of a forum of key NGOs to put forward proposals for consideration in the planning process for the conference.

With these exceptions, the deliberations of these committees and subcommittees are generally closed, as are the meetings of the Committee of Ministers itself. Nevertheless, as with other intergovernmental forums, NGOs can often have the most substantial impact by concentrating efforts in advance on the national level, lobbying relevant government departments in their capital cities on issues of concern in Europe.

Once the Committee of Ministers has adopted recommendations, NGOs play an equally important role in continuing to bring these to the attention of their governments and overseeing their implementation at the national level. The recent development of the Web site of the Council of Europe (www.coe.int/cm) should greatly facilitate NGOs' access to and dissemination of such texts.

4. Admission process and human rights monitoring within the CoE

4.1 Admission process and monitoring by the Parliamentary Assembly

The Parliamentary Assembly plays a key role in the procedure for admission of new members to the Council of Europe, and in assistance to applicant states to meet the basic requirements for such membership. It is on the favorable recommendation of the Parliamentary Assembly that the Committee of Ministers may accept a state's application to join.

In order to ensure that all applicant states accept the CoE's statutory principles, the Assembly conducts a complex examination of the countries concerned, which may sometimes take a few years to complete. PACE requests selected experts to make an assessment of national human rights legislation and its implementation. As part of this process, fact-finding and observer delegations visit the country and meet with representatives of human rights NGOs, the media, trade unions, religious and other groups, and government officials. Included in these delegation are so-called "eminent lawyers": former members of the European Commission of Human

Rights and judges of the European Court of Human Rights acting in their personal capacities. Throughout the examination process, PACE welcomes reports and publications, as well as other information about the human rights situation, from various groups. Assembly delegations prepare reports, which in general are subsequently made public.

In a second stage, PACE provides the Committee of Ministers with its formal opinion on a candidate state's readiness for membership. As a general rule, this formal opinion will include a series of specific commitments that the state is willing to honor in relation to the basic principles of the Council of Europe, in particular to guarantee the protection of human rights. These have included undertakings to ratify the key human rights instruments of the Council of Europe and their Protocols, within a specified period of time; to impose an immediate moratorium on executions; to introduce laws and policies aimed at guaranteeing freedom of the media; and to ensure the independence of the judiciary.

Once a state is admitted to membership, the Parliamentary Assembly then monitors the extent to which the state honors the commitments it has undertaken. A special Monitoring Committee was established for this purpose in 1997. An application to initiate a monitoring procedure may come from a committee of the Assembly or from not less than ten members of the Assembly representing at least two national delegations and two political groups. PACE may penalize persistent failure to honor obligations and commitments, and lack of cooperation in its monitoring process, by adopting a resolution and/or a recommendation, or by not ratifying, or annulling, the credentials of a national parliamentary delegation. Should the member state continue not to respect its commitments, the Assembly may address a recommendation to the Committee of Ministers requesting it to take appropriate action.

Resolution 1123 (1997), on the honoring of obligations and commitments by Romania, is one example of this process. In this resolution, while considering that Romania had honored its most important obligations, the Assembly earnestly requested the Romanian authorities to, among other things, amend without delay the provisions of the Penal Code and Judiciary Act that were contrary to the rights guaranteed by the European Convention on Human Rights; improve conditions of imprisonment; improve legal and physical care of abandoned children; promote a campaign against racism and intolerance; and take all appropriate measures for the social integration of the Romani population.

PACE confirmed at its January 1998

session that this monitoring encompasses social rights as well as civil and political rights, and it charged its Social, Health, and Family Affairs Committee to oversee compliance with the former.

Role of NGOs. In practice, a range of organizations active in the field of human rights protection submit pertinent information to the different committees as well as to individual parliamentarians. For example, Memorial, a Moscow-based NGO, was invited to a special hearing in September 1996 on the situation in Chechnya (before becoming the first NGO from the Commonwealth of Independent States to be granted consultative status, in early 1998). Memorial had addressed the members of PACE on a number of occasions, expressing its concerns about the human rights situation in Chechnya. Memorial's submissions and public statements were often cited in debates in the Parliamentary Assembly on the situation in the Russian Federation. Many other NGOs provided written information on matters of particular concern to them, such as the executions that took place in Russia and Ukraine in spite of the moratorium required as a condition for admission to the Council of Europe.

Thus, information from NGOs working in the area of human rights protection continues to influence the Assembly throughout the process of membership application and follow-up monitoring. In turn, the reports, recommendations, and opinions of the Parliamentary Assembly are important for the work of nongovernmental organizations, particularly insofar as they concretely specify the obligations and commitments entered into by a state in order to be admitted to the Council of Europe. The Web sites of the Assembly (http://stars.coe.int) and of the Council of Europe (http://www.coe.int) provide easy access for NGOs to such texts.

4.2 Monitoring by the Committee of Ministers

In order to strengthen the monitoring activities of the Council of Europe, the Committee of Ministers established a special procedure at the highest level for monitoring compliance by member states with commitments arising from their membership in the organization. In November 1994, the committee issued a declaration indicating that it would consider questions concerning the situation of democracy, human rights, and the rule of law in any member state if they were referred to the committee by a member state, by the secretary general, or on a recommendation from the Parliamentary Assembly. The declaration states that the

Committee of Ministers will take account of all relevant information available from different sources. It will consider in a constructive manner the matters brought to its attention, encouraging member states, through dialogue and cooperation, to take all appropriate steps to conform with the principles of the organization's statute. In cases requiring specific action, the Committee of Ministers may take any or all of the following actions: (1) request the secretary general to make contacts, collect information, or furnish advice; (2) issue an opinion or recommendations; (3) forward a communication to the Parliamentary Assembly; or (4) make any other decision within its statutory powers, including expelling a member state from the Council of Europe.

In order to complement the monitoring carried out by other parts of the organization, the Committee of Ministers chose in the first place to go about its work by selecting specific themes or "areas of concern" to be the focus of monitoring throughout the member states. Since the procedure was put into operation in 1996, the following six themes have been addressed: freedom of expression and information, the functioning and protection of democratic institutions, the functioning of the judicial system, local democracy, capital punishment, and police and security forces.

On each of these themes, a country-by-country overview is first prepared. This is followed by a debate within the Committee of Ministers on compliance with commitments entered into, which ends with a set of conclusions on which the committee agrees. In a final stage, the committee initiates any necessary follow-up or specific actions. Although this monitoring takes a confidential as well as nondiscriminatory approach, human rights NGOs have the opportunity to present their concerns to the Committee of Ministers, through the secretary general or the Parliamentary Assembly.

5. European Commission against Racism and Intolerance (1993)

The European Commission against Racism and Intolerance (ECRI) was created following the first Summit of Heads of State and Government of the Council of Europe, held in October 1993. Its primary task is to assess the effectiveness of the range of legal, policy, and other measures that member states take to combat racism, xenophobia, anti-Semitism, and other forms of intolerance, and to recommend further action as necessary. Member states each have one representative on ECRI, who is nominated by the government on

the basis of his or her recognized expertise in the subject. ECRI may be "seized directly by nongovernmental organizations on any questions covered by it."

Since the problems of racism and intolerance differ from one country to another, ECRI conducts an analysis of the situation in each of the member states, which is then made public. The information for these country studies comes from both governmental and nongovernmental sources. NGOs are therefore encouraged to send relevant information, on a regular basis, to the ECRI Secretariat. In addition, ECRI's rapporteurs visit each country when undertaking a new analysis, to meet with NGOs as well as governmental authorities and other interested parties. ECRI also formulates general policy recommendations to governments and publishes information on such topics as good practices in combating racism.

ERRC informs ECRI report on Macedonian citizenship law

In June 1998, the European Roma Rights Center (ERRC) submitted written comments to ECRI concerning the former Yugoslav Republic of Macedonia, in connection with the first round of reports on member states that ECRI prepared. Among its comments, the ERRC criticized the Macedonian citizenship law. According to the law, people who had Macedonian citizenship before the dissolution of Yugoslavia would receive Macedonian citizenship automatically. The other citizens of the former Yugoslavia permanently residing in Macedonia at the time of independence could apply for Macedonian citizenship, provided they met certain requirements. These included proof of a permanent source of income, a fifteen-year cumulative Macedonian residency, and payment of a application fee equivalent to USD 50.

In its submission, the ERRC argued that this law disproportionately affected the Romani people, because most of them would not qualify directly for Macedonian citizenship. Further, the ERRC argued that many Roma could not satisfy the requirement of a permanent source of income, given the high rate of unemployment among Roma and widespread discrimination against them. The high fee and the lack of adequate publicity about naturalization procedures were also obstacles that disproportionately affected the Roma.

ECRI adopted the arguments made by the ERRC, producing a report on Macedonia that expressed similar concerns. The commission stated that the citizenship requirements, which had been "strongly criticized both by members of minority groups and international observers for their restrictive nature, have had an indirect discriminatory effect on the acquisition of Macedonian citizenship by some segments of the population of the country, particularly some ethnic Albanians and Roma/Gypsies." ECRI stressed that "the requirements related to living facilities and the administrative fee could also contribute to render acquisition of citizenship more difficult for certain parts of the population, notably ethnic Albanians and Roma/Gypsies."

Since the protection of human rights and action against racism must above all be undertaken at the national level, ECRI seeks to cooperate with national NGOs, particularly in disseminating information about its recommendations to governments, as well as in monitoring their implementation. In order to improve contacts, ECRI organizes occasional multilateral or bilateral meetings with NGOs. ECRI members are also willing to participate in NGO conferences, seminars, and meetings that focus on combating racism and intolerance.

Communication and information sharing are essential to combating racism and intolerance effectively. With this in mind, in October 1997 ECRI launched its own Web site, at www.ecri.coe.int. The site makes available ECRI's own publications and documentation, provides information on relevant action by other Council of Europe bodies, and lists other intergovernmental or nongovernmental organizations involved in combating racism. In addition, by asking to be added to ECRI's mailing list, NGOs can also receive documentation issued by ECRI in hard copy on a periodic basis.

6. NGO/CoE COOPERATION IN PROMOTION, INFORMATION, AND TRAINING

Every member state of the Council of Europe needs a corpus of lawyers and nongovernmental organizations fully conversant with the Strasbourg case law and the standards of the other CoE documents. Undoubtedly the most important role

that NGOs play is to make known all the human rights instruments available to the peoples of the European states. NGOs are in a unique position to promote awareness and understanding about them among the general population; to advise citizens, lawyers, judges, and government officials on how they should be applied; and to be vigilant that they are applied in practice. The Council of Europe relies heavily on the nongovernmental sector to fulfill this role, which it can perform itself only to a limited extent.

Cooperation extends to the production of documentation and information in the various languages of Europe, including visual materials and accompanying teaching aids; the organization of consultations, workshops, and training sessions; the exchange of expertise; and the promotion of campaigns. A special effort has been made to publicize neglected subjects, such as social rights, and to reach geographic areas that such information does not generally reach. Particular attention is also given to the needs of especially vulnerable groups, such as refugees and Roma.

Professional groups, such as judges, lawyers, and law enforcement personnel, are among the primary targets of these programs, as well as partners in them. In this context, a comprehensive program, "Police and Human Rights 1997–2000," was launched in 1997, involving police services and associations, government authorities, intergovernmental organizations, and NGOs throughout the member states. Several NGOs, national and international, have been involved in initiatives under this program. Their contribution has been essential to many of the discussions, as well as in the production of materials.

Role of the European Union (EU) in the protection of human rights

The European Union (EU) emerged as a result of the integration processes that began in the early 1950s in Western Europe in reaction to World War II. The EU is an international organization that aims to promote economic stability and the adoption of common economic, social, and foreign policies among its members. Although the EU was established for mostly economic purposes, it plays an important role in strengthening the protection of human rights within its member states

and within the countries wishing to join the European Union. As of May 2001, ten countries from Central and Eastern Europe (Hungary, Poland, Romania, Slovakia, Latvia, Estonia, Lithuania, Bulgaria, the Czech Republic, and Slovenia) have applied for membership in the EU. The European Commission, the executive body of the European Union, monitors the countries' progress toward accession and releases periodic reports with its findings.

There are three criteria that countries wishing to join the EU must meet. These criteria were defined by the European Council, a body composed of the heads of state or government of all member states of the EU, at its summit in Copenhagen in 1993, and so they are also known as the Copenhagen criteria.

First, the countries wishing to join the EU must meet the political criterion, which concerns "the stability of the institutions guaranteeing democracy, the rule of law, human rights, and protection of minorities." Under this criterion, the European Commission evaluates the efficiency of each country's parliamentary system; the executive branch, including laws governing administration; the efficiency and the independence of the judicial system; and anticorruption measures.

A special factor under this political criterion is the human rights record of the country. Here, the Commission considers what international human rights treaties the country has ratified (ratification of the European Convention on Human Rights is an absolute precondition for initiating the accession process) and evaluates the current situation with regard to civil and political rights as well as economic, social, and cultural rights. The Commission may also consider in its annual reports some particular cases of drastic human rights violations and underline the fields in which the most serious human rights violations occur.

The Commission pays close attention to the treatment of minorities and what has been done to improve the situation of some particularly disadvantaged groups. For example, in its *Regular Annual Report for the Year 2000 on Hungary's Progress towards Accession*, the European Commission called attention to the situation of Roma in the country, and specifically to discrimination in education and other fields of social life. The Commission emphasized the fact that "less than 46 percent [of the Roma people] completed their primary education and only 0.24 percent obtained a

university or a college degree." The report further criticized the practice of placing the majority of Romani children in special schools (this proportion being 94 percent in some parts of the country), as "a sign of institutional prejudice and the failure of the public education system." The practice of placing Romani children in special schools was also highlighted in the European Commission's annual report on the Czech Republic for the year 2000. That report cited the activities of NGOs such as the ERRC to legally challenge this *de facto* discrimination in education, and it noted that "further efforts are needed, in particular to combat anti-Roma prejudice and to strengthen the protection provided by the police and the courts."

Second, the European Commission considers the progress of the country under the economic criterion, which requires the existence of a functioning market economy and the candidate's capacity to cope with economic competition within the EU.

Under the third criterion, the European Commission assesses whether the countries are able to adopt the body of laws of the European Union (the *"acquis communautaire"*). An example of one of these *acquis* is the *Directive of the European Council Implementing the Principle of Equal Treatment*, adopted in June 2000. Among other things, this directive requires the member states to adopt special legislation to implement the directive at the domestic level, to establish special bodies for monitoring the implementation of the directive, and to amend the laws that are incompatible with it. Meeting the requirements of the third criterion for joining the EU also requires the candidate states to implement the race directive, among other provisions, in their domestic legislation.

The protection of human rights and, especially, the protection against discrimination are values of great importance for the policies of the European Union. The process of accession of Central and Eastern European countries to the EU may generate the political will necessary in these countries to adopt laws that embody higher standards of human rights. NGOs can serve as catalysts in this process by informing the EU about the specifics of human rights problems in their countries. By submitting reports and preparing appeals to the EU delegations in their countries, NGOs can effectively bring these issues to the attention of the European Union during the accession process.

Role of the Organization for Security and Cooperation in Europe (OSCE) in the protection of human rights

Another international organization active in the field of protection of human rights and promotion of democracy in Central and Eastern Europe is the Organization for Security and Cooperation in Europe (OSCE).

The OSCE is a political organization originally built on the ongoing process of political negotiations and agreements between the Western European states, Canada, and the United States on one hand and the former Soviet Union and its then allies in Eastern Europe on the other. Known initially as the Conference for Security and Cooperation in Europe (CSCE), this process started in the 1960s and served as the main forum for political dialogue between the West and the East during the Cold War. In 1975, after years of negotiations, thirty-five states covering a region spreading from Vancouver to Vladivostok signed the Final Act of the Conference for Security and Cooperation in Europe, also known as the "Helsinki Accord." Under the Helsinki Accord, the Western nations agreed to accept the post–World War II borders in Europe. In exchange, the Soviet Union and its allies agreed to respect the fundamental human rights recognized by the Universal Declaration of Human Rights and other international human rights treaties (termed the "human dimension" by the CSCE). The agreement also covered some international trade issues.

Although this agreement was not legally binding, it unexpectedly became important for the process of democratization in Eastern Europe. After the accords were signed, a group of Russian dissidents spontaneously formed the Moscow Helsinki Group, the first human rights NGO to become active in the Eastern bloc. In order to demand that their government abide by the Helsinki commitments, Western Helsinki committees soon formed to support the Moscow Helsinki Group, and the Helsinki movement was thus launched. For the first time, nations in the East made specific commitments to respect human rights; as a result, human rights became a legitimate subject of discussion between the two sides. In addition, a forum for communication and political dialogue between the East and the West was established.

Following the end of the Cold War, the CSCE institutionalized itself as the OSCE. The transformation allowed for the creation of new institutions and mechanisms devoted to promotion of the states' compliance with their human dimension commitments. Thus, since 1990, the CSCE/OSCE has established the High Commissioner on National Minorities, the Office for Democratic Institutions and Human Rights in Warsaw, the Representative on Freedom of the Media, and the Contact Point on Roma and Sinti, as well as OSCE field missions.

The post of the High Commissioner on National Minorities was established in 1992, with its purpose being to identify and seek early resolutions of ethnic conflicts threatening the peace, stability, and security of, or friendly relations between, the states participating in the OSCE. The High Commissioner on National Minorities operates independently of the parties involved in the conflict. His mandate includes powers to conduct on-site missions and to engage in preventive diplomacy at the earliest stages of a potential conflict. The High Commissioner's mandate explicitly excludes individual cases of violation of rights of people belonging to national minorities.

In 1990 the Office for Free Elections was established in Warsaw to facilitate contacts and exchange information about elections taking place in the OSCE countries. In 1992 its mandate was extended to include assistance to the OSCE states in the implementation of their human dimension commitments, and its name was changed to the Office for Democratic Institutions and Human Rights (ODIHR). Currently the ODIHR has four sections, focusing on the following: elections, democratization, monitoring, and Roma and Sinti issues. The election section is involved in observing elections and providing election training and assistance to the OSCE states.

The democratization section of the ODIHR implements practical projects designed to promote democracy, rule of law, and civil society. Such projects include training and technical assistance to national human rights institutions, human rights education projects, combat against trafficking in human beings, establishment of networks of communication among NGOs and between NGOs and government, gender equality projects, and activities to combat torture and to promote religious freedom.

The purpose of the monitoring section is to collect information on how the

OSCE states implement their human dimension commitments domestically, which the OSCE institutions use in making decisions on ODIHR policies and projects. Information about human rights violations is considered at the OSCE Human Dimension Implementation Meetings in Warsaw every year and at the supplementary meetings on specific human dimension topics held in Vienna.

The fourth division of the ODIHR, the Contact Point on Roma and Sinti, provides advice to OSCE states on policy making on Roma and Sinti, by encouraging capacity building, networking, and participation of Roma and Sinti in policy-making bodies. In addition, the Contact Point collects information about Roma and Sinti and documents and analyzes the situation of these ethnic groups in crisis.

In 1997 the post of Representative on Freedom of the Media was established to assist the OSCE states in fostering independent and pluralistic media. The Representative is authorized to observe relevant media developments in the OSCE countries and react quickly to instances of serious violations of the principles related to freedom of expression and freedom of the media. In cases of serious violation of freedom of expression rights, the Representative can seek direct contacts with the state concerned.

Finally, in 1998, the posts of Gender Adviser in the Secretariat and in the OSCE were created, with the purpose of developing a consistent approach to gender equality through projects in the field and integrating gender issues into other ODIHR activities. In this field, ODIHR activities include research projects and workshops to promote respect for women's human rights and women's participation in politics and in conflict resolution.

Role of NGOs. The OSCE provides many opportunities for NGOs to be involved in the process of securing states' compliance with their human dimension commitments. NGOs can contribute to the monitoring process of the ODIHR. They can send reports, and any other information documenting a state's compliance with its human dimension commitments, to the monitoring section of the ODIHR. In addition, NGOs can attend the annual Human Dimension Implementation

Meetings organized by the ODIHR in Warsaw and make oral interventions in discussions on a particular country or on a particular type of violation. Amnesty International, the International Helsinki Federation for Human Rights, and other NGOs regularly attend the annual meetings. In the annual meeting in 2000, for example, Amnesty International and other NGOs severely criticized the United States for continuing to apply the death penalty.

As part of these annual conferences, the ODIHR can also host side meetings on specific issues. As the delegates to the Human Dimension Implementation Meetings are encouraged to attend these meetings as well, the side meetings can become an important political platform for NGOs. During the annual Human Dimension Implementation Meeting in 2000, for example, the Coalition for an International Criminal Court, an NGO coalition with the purpose of pressing states for ratification of the statute of the International Criminal Court, gave a presentation in one such side meeting. Its presentation was well attended and was an important step in the process of promoting ratification of the ICC treaty by the OSCE states. NGOs attending these meetings can also take the opportunity to meet informally with official delegates to advocate on behalf of particular issues. This form of lobbying has proved particularly effective.

Other mechanisms within the OSCE that are suitable for work with NGOs are the Contact Point for Roma and Sinti and the Representative on Freedom of the Media. Both mechanisms can receive information about the states' compliance with their human dimension commitments in the respective fields, and both are open to information from all bona fide sources, including reports and other materials from NGOs. The ODIHR's gender activities constitute another area of possible cooperation between OSCE and NGOs, since the NGOs' expertise and training experience can contribute to the OSCE's efforts for gender mainstreaming.

EXAMPLES OF NGO ACTIVITIES BEFORE INTERNATIONAL ORGANIZATIONS

ACTIVITY	COUNCIL OF EUROPE								
	Judicial and Quasi-Judicial Mechanisms					*Political Mechanisms*			
	ECHR	**ESCh**	**CPT**	**FCNM**	**EChRML**	**PACE**	**CM**	**ECRI**	
File shadow reports		X	X	X	X	X		X	
Attend meetings/hearings	X	X				X	X		
Meet with the body during on-site visits			X	X	X	X		X	
Assist applicants in individual complaint procedures	X								
File *amicus* briefs	X	X							
File collective complaints		X							

For all international mechanisms listed above, NGOs can do the following:

- Document particular violations
- Monitor state compliance with recommendations of the international body
- Publish and disseminate educational materials about the standards of the mechanism
- Conduct training workshops for police officers, prosecutors, judges, lawyers, high school teachers, and other groups
- Develop media strategies to publicize standards of the body
- Raise legal arguments domestically based on principles established by the international mechanism

ECHR European Convention on Human Rights
ESCh European Social Charter
CPT Convention for the Prevention of Torture
FCNM Framework Convention for the Protection of National Minorities
EChRML European Charter for Regional or Minority Languages
PACE Parliamentary Assembly of the Council of Europe
CM Committee of Ministers of the Council of Europe
ECRI European Commission against Racism and Intolerance

UNITED NATIONS								
	Charter-based Mechanisms		*Treaty-based Mechanisms*					
	1503	**Rapporteurs**	**ICCPR**	**ICESCR**	**CERD**	**CEDAW**	**CAT**	**CRC**
		X	X	X	X	X	X	X
			X	X	X	X	X	X
		X				X	X	
			X		X	X	X	
			X		X	X	X	

1503	UN 1503 Procedure for consideration of gross and systematic violations of human rights
Rapporteurs	UN Special and Country Rapporteurs
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CAT	Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child

X	Yes
	No

For up-to-date status of ratifications of the Council of Europe treaties, please visit:
<http://conventions.coe.int>
For up-to-date status of ratifications of the UN treaties, please visit:
<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterIV/chapterIV.asp>

NGOs and the human rights system of the United Nations

This section explains:

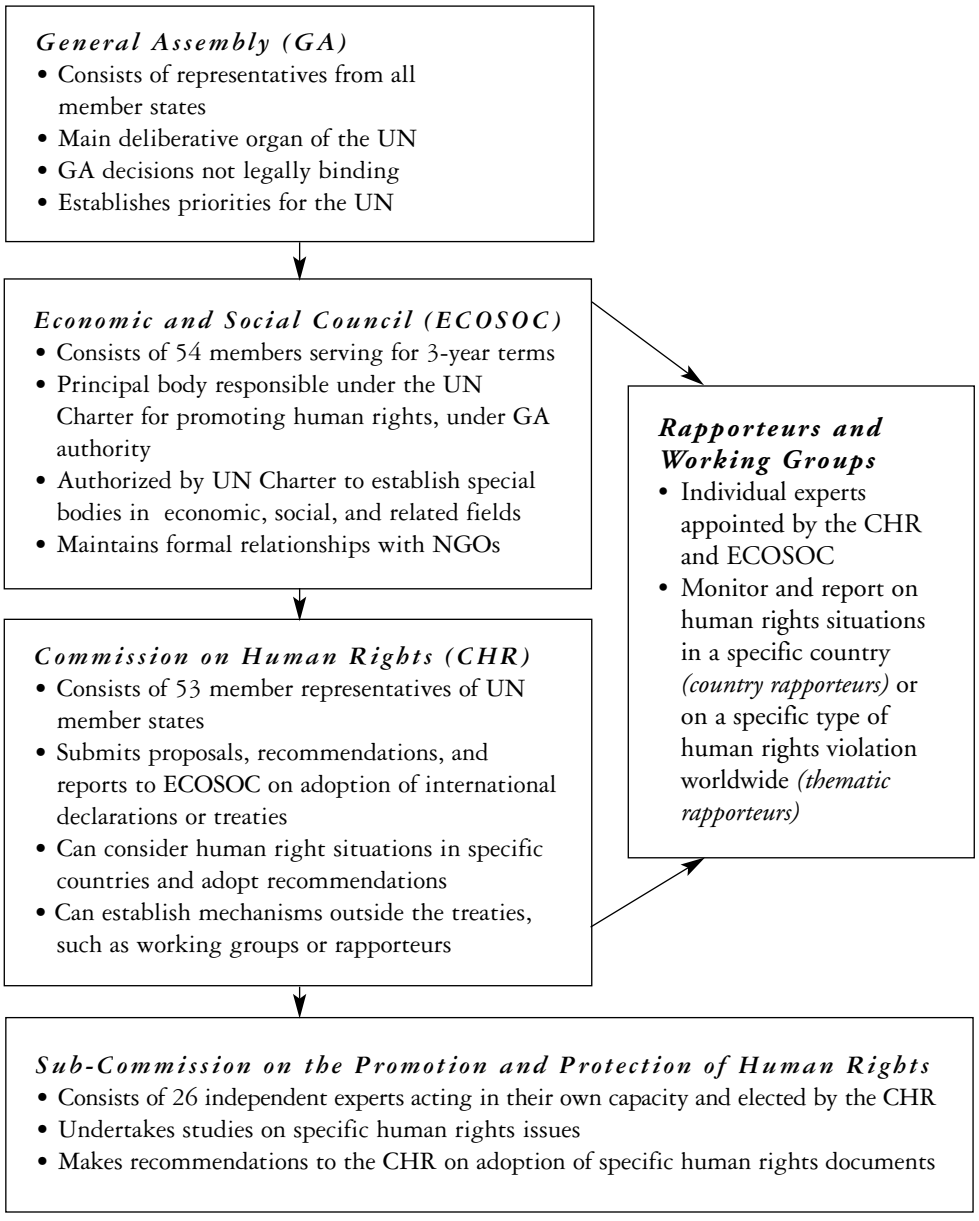
- UN Charter–based and treaty-based mechanisms for the protection of human rights
- what NGOs can do to promote implementation of international human rights treaties by individual states
- what NGOs can do to make more effective the work of UN bodies with mandates to enforce human rights
- how NGOs can work within the UN system to strengthen international human rights standards

The current UN system for protection of human rights is built on the formal agreements of governments to be bound by multinational agreements. The United Nations itself is founded on states' acceptance of the organization's Charter, which provides for the protection of fundamental rights and liberties as one of its primary goals. Moreover, the many human rights activities of the UN are based either on the Charter itself or on the series of treaties that have followed and expanded on the Universal Declaration of Human Rights, adopted by the General Assembly of the UN in 1948.

Charter-based mechanisms are created by resolutions of the UN Economic and Social Council (ECOSOC) or other UN bodies acting within their mandates determined by the UN Charter. These mechanisms can contribute toward the elaboration of existing international law in specific contexts, such as applying standards of arbitrary detention or the right to education, for example, or they can suggest new areas of standards to be set.

Treaty-based mechanisms are established by international treaties, also known as conventions or covenants, which are multilateral agreements signed and ratified by member states of the United Nations. In the area of human rights, they build on and elucidate the general, nonbinding standards of the Universal Declaration of Human Rights. These treaties impose on states specific obligations to respect particular human rights and establish procedures for monitoring states' compliance. The rest of this chapter will briefly examine some of the more commonly used Charter-based and treaty-based mechanisms and discuss possible roles that human rights organizations can play within the system of the United Nations.

UN Charter–Based Bodies with a Mandate to Promote and Protect Human Rights



(Note: Arrow indicates appointment/election process)

1. United Nations Charter–based mechanisms

1.1 Resolution 1235: Public debate on specific country situations

In 1967 the UN Economic and Social Council adopted Resolution 1235, one of the first legal documents to give the UN Commission on Human Rights (CHR) a mandate to investigate human rights violations. Resolution 1235 authorizes the CHR and the Sub-Commission on the Promotion and Protection of Human Rights (until 1999 known as the Sub-Commission on Prevention of Discrimination and Protection of Minorities) to "examine information relevant to gross violations of human rights and fundamental freedoms" and to make a thorough study of situations that reveal "a consistent pattern of human rights violations." On the basis of Resolution 1235, the CHR and the Sub-Commission may hold public debates at their annual meetings on the human rights record of individual countries. These meetings are public and thus a good opportunity for NGOs to bring their findings of gross human rights violations in a specific country to the attention of the UN bodies. After the debates, the CHR or the Sub-Commission may adopt a resolution expressing concern about the human rights situation in that country, or it may appoint a special rapporteur or other mechanism for further investigation of the situation. Resolution 1235 is an important mechanism for mobilizing the attention of the international community around a particular human rights problem and for creating political impetus for further actions of the UN on this specific issue.

1.2 Resolution 1503: Confidential investigation procedure

One of the oldest of the human rights mechanisms, the 1503 Procedure was established in 1970 by Resolution 1503 of the UN Economic and Social Council. This procedure authorizes the Commission on Human Rights, following a review by its Sub-Commission on the Promotion and Protection of Human Rights, to consider complaints based on a "consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms." The rights protected by this procedure are the rights defined by the UN General Assembly in its resolutions, including the Universal Declaration of Human Rights, to the extent that these rights are considered

customary international law. Gross violations of human rights considered under this procedure thus include—but are not limited to—torture, extrajudicial killings, other arbitrary or summary executions, and prolonged detention. Any individual, group of individuals, or nongovernmental organization may file a complaint. There is no requirement that the petitioner be affected directly by the alleged violation. The CHR, however, will consider only complaints revealing a consistent pattern of gross human rights violations. Individual violations generally are not considered under this procedure.

Once the Sub-Commission has made a referral, the CHR must determine whether the complaint is well founded. If so, the CHR may initiate a thorough study and submit a report to ECOSOC containing recommendations for addressing the situation. The consent of the state concerned is not always necessary for the study to commence. In addition, the CHR may appoint an *ad hoc* committee to conduct further investigation if all national remedies have been exhausted. For such investigations, however, the consent of the state is necessary. Although the CHR discloses the names of the countries examined after the procedure is completed, the results of any 1503 Procedure are strictly confidential. In practice, however, several country situations have been made publicly available as a result of the CHR's decisions. As the procedure is limited by the threshold of gross and systematic abuses, and because it is confidential and subject to the political control of the commission, the 1503 Procedure is often not the most effective mechanism for NGOs to rely on.

1.3 Special rapporteurs

Special rapporteurs are independent experts appointed mainly by the Commission on Human Rights to investigate and report publicly either on a specific type of human rights violation, no matter where such violations occur, or on country-specific situations of rights abuse. Experts referred to as thematic rapporteurs may focus, for example, on particular issues, such as torture, violence against women, the right to education, and arbitrary detention, among others. The country-specific experts are known as country rapporteurs. In both cases, the CHR establishes the focus and scope of the rapporteur's examination by open vote on resolutions at its sessions. Subsequently, the CHR names individuals or, in the case of expert working groups, groups of individuals to fulfill these mandates.

These rapporteurs may conduct general analyses, examining the scope of the human rights practices that fall within

their mandate and commenting on the compatibility of national laws and practices with international human rights standards. They may also solicit or receive information about individual human rights violations from individuals, groups of individuals, or NGOs. If a rapporteur decides to further investigate the complaint, he or she may write to the government involved, requesting a comment on the matter. In urgent situations, rapporteurs may send appeals requesting that a government refrain from a specific action until the situation can be clarified, or that the state take immediate action to preserve a situation. Rapporteurs may travel to the country to collect on-site information about a particular human rights situation, but only at the invitation of the government.

The rapporteurs submit annual reports about their activities to the CHR and sometimes to the UN General Assembly. These reports detail the incidents of human rights violations investigated, the responses of the governments concerned, and what measures the governments have adopted in order to implement the rapporteur's prior recommendations. For example, in a 1999 report to the CHR, the special rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance discussed the measures adopted by the French government following his visit to France in 1995. After the special rapporteur's 1995 visit and in accordance with his recommendations, the French government revised its immigration laws to enhance the guarantees of rights of foreigners. It also eased restrictions on the issuance of short-term visas to people from countries that are potential sources of immigration and amended the procedure for handling the cases of detainees.

2. United Nations Treaty-Based Mechanisms

The human rights treaties adopted within the UN system establish concrete legal obligations for states to protect individual rights as defined in the treaties. They also create special procedures and bodies for monitoring how states respect their obligations. Common to all of the human rights treaties is the reporting procedure, which allows a body established by the treaty to consider reports that states must submit periodically on the measures they have adopted to implement treaty provisions. After reviewing such reports, the bodies adopt concluding comments or general recommendations, which address key points of progress and existing barriers to promotion of rights. These concluding comments often note laws and prac-

tices that the state should abandon and suggest areas where the state should revise or adopt laws and policies that would better meet the obligations contained in the treaties.

Four of the UN treaty bodies provide for an individual complaint procedure that allows the treaty-monitoring body to consider cases of individual rights violations in a quasi-judicial proceeding. In addition, under two of the treaty bodies, an inquiry procedure is available that provides for further investigation of allegations of widespread or systematic violations.

Another commonality among the treaty-based mechanisms is the possibility of complaints by one state against another. Unfortunately, this mechanism has never been used, as states are extremely reluctant to rely on the quasi-judicial mechanisms established by treaties to hold one another accountable, preferring to employ diplomatic and political condemnation within the General Assembly and the Commission on Human Rights. Finally, all of the treaty bodies have the power to adopt general comments on the interpretation of specific provisions of the treaty.

The final reports of all the treaty bodies are public documents, made available to the CHR, the Economic and Social Council, and the General Assembly, as well as the governments concerned. Increasingly, treaty committees are encouraging governments to publicize the committees' reports and comments domestically. Although some governments are reluctant or may even block efforts to do so, various agencies such as UNDP, UNICEF, and UNIFEM are helping to translate documents and disseminate them.

2.1 International Covenant on Civil and Political Rights (ICCPR)

In force since March 1976, the International Covenant on Civil and Political Rights (ICCPR) is one of the documents, together with the Universal Declaration of Human Rights and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), that constitute the international bill of rights. The ICCPR obliges every state party "to respect and to ensure to all individuals within its territory and subject to its jurisdiction" the rights recognized in this covenant. Among the Covenant's guarantees are the rights of the individual to life, liberty, and security. Protected freedoms include those of expression, religion, privacy, assembly, and association, as well as freedom from torture. The ICCPR protects the right of prisoners to humane

treatment and the right of the accused to a fair trial. The Covenant outlaws discrimination on the basis of race, sex, and religion, among other grounds. It also promotes equality between men and women, as well as equality within the family, and establishes the right of people of ethnic, religious, and linguistic minorities to enjoy their culture, religion, and language.

The ICCPR established the Human Rights Committee (HRC), a body of experts nominated by the member states but acting in their own capacity to monitor states' compliance with the Covenant. Among its powers, the HRC reviews states' reports on the measures they have adopted to give effect to the provisions of the Covenant, as well as the difficulties they have encountered in the implementation process. Through the reporting procedure, the HRC considers all available information on the country, including reports submitted by NGOs. The HRC holds open hearings, where its members may question states' representatives and sometimes representatives of NGOs who have submitted additional information. The HRC then adopts concluding comments, which are recommendations addressed to the state and supposed to be made available to the citizenry of a particular state. These recommendations may criticize some state practices and/or support the adoption of others.

The First Optional Protocol to the ICCPR authorizes the HRC to accept communications from individuals whose rights under the Covenant have been violated. The HRC reviews the complaint in a quasi-judicial proceeding that has several informal stages. Initially, it will consider whether the complaint is admissible by determining whether the applicant has exhausted all available domestic remedies, as well as whether the same matter has been considered previously in another international proceeding. The HRC will not consider communications that are anonymous or that it determines to be an abuse of the right to individual complaint or to be incompatible with the provisions of the Covenant.

After finding a communication admissible, the HRC will request that the government concerned provide its comments or explanations regarding the matter. If the government has not provided its statement by the deadline for submission, the HRC can consider the communication without the statement of the government. After reviewing all the documents, the HRC adopts a "view," or decision, in which it may or may not find a violation of the Covenant and, if so, may recommend that the state take measures to remedy the violation. Though not legally binding, the views of the HRC are respected by states, and generally states comply with an HRC view.

The HRC has strengthened its role in follow-up activities by deciding to publish its views and to appoint one of its members to monitor a state's compliance with the HRC view. The views of the HRC are an authoritative source of interpretation of the ICCPR and thus an important mechanism for the development of international human rights law. This is also true for the general comments that the HRC adopts on the interpretation of some provisions of the Covenant. These interpretations can be altered, however, by the reservations, understandings, and declarations of treaty signatories.

2.2 International Covenant on Economic, Social, and Cultural Rights (ICESCR)

In force since 1976, the International Covenant on Economic, Social, and Cultural Rights (ICESCR) further develops the protection of the economic, social, and cultural rights set forth by the Universal Declaration of Human Rights. The ICESCR has obligations of immediate effect, such as the obligation not to discriminate in the protection of these rights, and obligations of progressive implementation, requiring states to "take steps to the maximum of their available resources" in order to "achieve progressively the full realization of the rights protected by the Covenant." Over the last ten years in particular, the committee that monitors the ICESCR has emphasized through both its concluding comments and its general comments that the fulfillment of such obligations is not merely an aspirational goal, but rather is subject to committee review and evaluation. Consequently, there is no doubt as to the legally binding nature of such obligations.

The ICESCR protects the right to work and to favorable work conditions, the right to form trade unions, and the right to education. Also protected are rights within the family, the right to "enjoyment of the highest attainable standards of physical and mental health," and the right to participate in cultural life, among other guarantees.

The Committee on Economic, Social, and Cultural Rights (CESCR), the body created to monitor compliance with the ICESCR, was established by a resolution of the Economic and Social Council in 1985. The committee is composed of experts elected by ECOSOC, all of whom serve in their personal capacity. There is no individual complaint procedure, although one is currently being drafted. Reporting is therefore the mechanism for monitoring states' compliance. As with other treaty bodies, states parties must submit periodic reports to the CESCR on

the implementation of the Covenant. Following public hearings, the CESCR issues its concluding comments to the country.

2.3 International Convention on the Elimination of All Forms of Racial Discrimination (CERD)

Often referred to as the Convention Against Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) entered into force in 1969. Despite overwhelming support for the treaty and widespread ratification (157 states parties as of 18 May 2001), the Race Convention remains underutilized as an instrument for the protection of international human rights, at least with respect to its complaint procedure. At the same time, the attention of the Committee on the Elimination of Racial Discrimination (CERD) to early warning procedures, coupled with the 2001 World Conference Against Racism, is expected to renew recognition of the importance of the treaty.

The Race Convention defines racial discrimination to include discrimination based on ethnicity, color, or caste, and it obliges states parties to condemn racial discrimination and amend or nullify any laws or regulations that effectively create or perpetuate such discrimination. This definition covers both *de jure* and *de facto* discrimination in all aspects of the public sphere. Public life includes such realms as commerce, employment, housing, and health care, as well as the political sphere. The Convention also requires states parties to take affirmative steps in social, economic, cultural, and other spheres to ensure the adequate development and protection of certain racial groups "when the circumstances so warrant." The Convention bans any propaganda on racial supremacy and explicitly prohibits discrimination in the enjoyment of certain civil and political rights, as well as economic and social rights. These include the rights to housing, education, and access to places and services offered to the general public such as theaters, hotels, restaurants, and transportation.

Created for monitoring states' compliance with the Race Convention, CERD is composed of independent experts nominated by states but serving in their personal capacity. Similar to the other treaty-based bodies, CERD can review periodic reports submitted by the states as well as complaints between states. If the state concerned has declared that it recognizes the competence of CERD, that committee may hear individual complaints regarding violations of the Convention. Thus far, CERD has been most active in reviewing

reports. It receives periodic reports from states parties on the measures they have adopted to implement the provisions of the Convention. Following an open session, CERD provides comments and recommendations to reporting states.

CERD also may adopt general thematic recommendations on the interpretation of the Convention or on violations common to more than one state. Most recently it has adopted general recommendations on issues such as states' responsibility to enforce obligations domestically, including prevention of discrimination by private actors, especially those carrying out functions required by the state. CERD has also issued a recommendation on the gender-based aspects of race discrimination.

CERD URGES STATES TO PROTECT ROMA

On 16 August 2000, the Committee on the Elimination of Racial Discrimination (CERD) adopted its General Recommendation No. 27 on Discrimination against Roma. The General Recommendation resulted from information gathered from reviews of periodic country reports indicating that Roma are victims of discrimination in many countries, and that certain provisions of the Convention on the Elimination of All Forms of Racial Discrimination are violated directly and consistently by many member states with respect to Roma. Domestic and international NGOs played an important role in the adoption of the thematic recommendation. The European Roma Rights Center (ERRC), based in Budapest; Minority Rights Group International; Médecins du Monde; the Greek Helsinki Monitor; and the Romanian Roma Center for Public Policies were some of the groups involved in the process. These NGOs submitted statements regarding the status of Romani people and participated in the hearings before CERD. Many of the issues raised by the NGOs were subsequently included in the CERD General Recommendation.

For example, in its statement presented to CERD, the ERRC recommended actions that governments should take to eliminate discrimination against Roma. ERRC recommendations included ensuring involvement of Romani people in designing and implementing policies to combat discrimination; enacting legislation against racially motivated violence; and providing civil and criminal remedies against discrimination in such areas as education, housing, health care, and social

services. The ERRC also recommended that governments act to enforce the laws against discrimination, which may include training of police and other public officers, disciplinary measures, and other actions. In addition, the organization recommended that the governments take positive steps to ensure equality in employment practices and to establish special bodies to deal with incidents of racial discrimination.

CERD appears to have taken this advice into account in formulating its recommendations. For example, it urged member states to adopt legislation to eliminate all forms of racial discrimination against Roma and to secure effective legal remedies for members of Romani communities in cases concerning violations of their rights and freedoms. CERD also recommended the adoption of national strategies and programs to improve the situation of Roma in society. It called on states to adopt measures to protect Roma from violence; take action to prevent discrimination in such areas as education, health care, housing, and employment; and approve measures to eliminate messages of racial superiority disseminated through the media. CERD also recommended that states act to improve Romani participation in political life, including taking specific steps to secure equal opportunities for participation of Romani minorities in all local and central governmental bodies.

2.4 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), in force since 1981, obliges states parties to take legislative, administrative, and judicial measures to incorporate Convention provisions and principles into domestic legal systems. CEDAW provides a definition of discrimination very similar to that of the Race Convention, in that it covers both direct and indirect discrimination and includes the acts of any person, so that the state is responsible for ending discrimination by non-state actors as well. It is broader than the Race Convention in that it reaches into private life to include activities such as subordination within the family. CEDAW also requires member states to use appropriate measures to modify social and cultural patterns of conduct that create prejudice against women. The Convention then

explicitly prohibits discrimination in the exercise of civil and political rights, such as the rights to vote, participate in public life, and acquire citizenship. The Convention further bans gender-based discrimination in the areas of education, employment, health care, and aspects of family law such as inheritance and divorce. CEDAW's focus on nondiscrimination is meant to ensure *de facto*, not merely legal, equality. Like the Race Convention, CEDAW provides for temporary special measures to remedy past discrimination.

The body monitoring the implementation of the Convention is the Committee on the Elimination of Discrimination Against Women (CEDAW Committee). The CEDAW Committee examines states parties' reports, together with any other relevant information that it may have received from alternative sources, and then provides its comments and recommendations. The CEDAW Committee submits annual reports about its activities, including suggestions and recommendations, to the UN General Assembly. Increasingly, this committee accepts information from NGOs in written form and, during its open sessions, considers oral comments from NGOs working in states that are reporting during that particular session.

In March 1999, the UN Commission on the Status of Women adopted an Optional Protocol to CEDAW. This Protocol authorizes the CEDAW Committee to consider communications from individuals or groups regarding violations of the Convention. The Optional Protocol to CEDAW also authorizes the CEDAW Committee to initiate inquiries into grave or systematic violations of women's rights. The Protocol entered into force on 22 December 2000, three months after the date when the tenth instrument of ratification was deposited with the UN secretary-general. The Protocol is critical to the development of an understanding, across a variety of countries and cultures, of the meaning of sex-based discrimination in all its forms.

2.5 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment requires states parties to take effective legislative, administrative, judicial, or other action to prevent acts of torture within their jurisdiction, criminalize any act of torture, and ensure that effective investigative systems exist to respond to any complaints alleging acts of torture. The Convention prohibits the return of people to another state where there are substantial grounds for

believing that such people will be tortured (the *non-refoulement* principle). It also requires the training of all officials and numerous other steps to end cruel, inhuman, or degrading treatment or punishment.

The Committee Against Torture (CAT) is the body established by the Convention to monitor states parties' compliance with the provisions of the Convention. CAT examines reports submitted by states parties and adopts recommendations for the country. If it receives reliable information about the systematic practice of torture by a member state, CAT may initiate a confidential inquiry on the issue, which may include on-site visits. CAT can also examine information from other sources, including reports prepared by NGOs. The inquiry is confidential, but CAT may incorporate a summary of the inquiry in its annual report, following consultations with the state concerned. If a state has made a declaration to this effect, CAT can examine individual communications for violations of the Convention. A procedure for complaints between states also exists.

The Committee Against Torture (CAT) and the Committee for the Prevention of Torture (CPT)

Although created with the same goal—namely, to secure that states will not practice torture—the Committee Against Torture and the Committee for the Prevention of Torture are two different bodies with very different functions. The Committee Against Torture (CAT) is a body created by the UN Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and it has the typical powers of a UN treaty-monitoring body. CAT examines state reports on the implementation of the Convention and adopts general recommendations for the country; it decides on individual complaints of torture; and it may also decide on complaints between states. In addition, CAT may initiate an inquiry about the situation in a particular country if it has received reliable information about systematic acts of torture occurring there.

The Committee for the Prevention of Torture (CPT) is established by the Convention for the Prevention of Torture, a treaty in the system of the Council of

Europe, whose purpose is to examine the treatment of prisoners and to strengthen the protection against torture in places of detention. The CPT is not a judicial or quasi-judicial body, and it does not respond to individual complaints. Instead, the CPT organizes unannounced visits to member states in order to monitor the treatment of prisoners, psychiatric patients, and other detainees in a particular country. Member states are obliged to provide full access to any prison, psychiatric hospital, or other place of detention that CPT members would like to observe. Following the on-site visit, the CPT prepares and adopts a report containing very specific recommendations to the government, which may concern the situation in a particular prison or even of a particular individual. All CPT reports remain confidential.

Both CAT and the CPT consider the situation in a country in the light of all available information. NGOs can provide these bodies with their reports and other relevant statements. During their on-site visits, CPT members can meet and talk personally with representatives of NGOs.

2.6 Convention on the Rights of the Child (CRC)

The Convention on the Rights of the Child (CRC), in force since 1990, requires states parties to ensure to every child within their jurisdiction the enjoyment of a wide range of economic, civil, cultural, political, and social rights. It also obliges states to respect certain rights unique to children, including a child's right not to be separated from his or her parents (absent special circumstances and the fulfillment of specific requirements); the right of disabled children to enjoy a full and decent life with participation in their communities; special protections for children deprived of their family environment; adoption procedures that will best guarantee the child's interests; and other rights. The core principles underlying the CRC are the child's right to survival, the principle of nondiscrimination, the evolving capacity of the child to participate in and make decisions related to his or her livelihood, and attention to the best interests of the child.

The Convention also establishes a Committee on the Rights of the Child to examine reports submitted by states parties on the implementation of the Convention in their domestic systems. Similar to the other UN treaty bodies, this committee may provide its comments

and recommendations after examining states parties' reports and other sources of information, if available. A variety of NGOs were actively involved in a committee that advised governments on the drafting of the CRC. As a result of the participation of such groups as Defense for Children International and the Quaker UN office, among others, the CRC was created with more NGO input than any other UN treaty. In addition, the treaty itself authorizes the formal involvement of NGOs, currently coordinated on a state-by-state basis by the NGO Coalition for the Convention on the Rights of the Child. States parties to the CRC have recently adopted two new protocols, on child soldiers and on the sale of children and child pornography.

3. Methods and Strategies for NGO Intervention

There are many ways for NGOs to become involved in the UN human rights system. NGOs can use UN mechanisms to criticize states for not complying with their international human rights obligations, to assist victims of human rights violations, to strengthen existing human rights standards, or to raise a new question for debate in the international community. The methods and strategies for NGO intervention vary depending on the specific human rights violation that the organization seeks to address, the geopolitical context of the particular country, and the differences among mechanisms for protection of human rights. These roles are discussed in more detail below.

3.1 Contributions by NGOs to the work of rapporteurs

Working through rapporteurs is an effective way to raise a particular human rights concern with the Commission on Human Rights and other UN Charter–based bodies. Cooperation between NGOs and special rapporteurs can be extremely beneficial for both sides. As a result of their monitoring efforts, legal defense and other NGOs usually have a thorough understanding of the degree and specific nature of the human rights problems in the country or countries where they are active. They are often able to identify for rapporteurs the most serious human rights problems, including those that, however serious, may not be readily apparent to outside observers. NGOs often have detailed information about a human rights violation that otherwise may reach the UN when it is too late to take action, or not at all.

In some cases, NGOs can help the rap-

porteur consider and analyze a particular human rights problem in a different way. For example, in working with Radhika Coomersawamy, special rapporteur on violence against women, NGOs provided information that highlighted barriers to the ability of women to participate equally in the economies of transitional countries. This information, coupled with evidence of stereotyping in roles for women and men, contributed to her analysis of the issue and the relationship between economic rights and other human rights violations. Moreover, NGOs may find that their involvement in a particular inquiry or visit benefits their organization as well. For example, the special rapporteur on violence against women visited Poland in 1996 and reported on "human trafficking" from Poland to a number of other countries in Western Europe and the United States. Trafficking refers to situations where girls and young women are moved by coercion or deception into exploitative work situations, such as forced prostitution. Polish NGOs participated in the visit by sharing information with the special rapporteur and contributing to her analysis. These NGOs have since used the recommendations resulting from the report to strengthen their own efforts to promote legal reform and secure resources for their work.

Rapporteurs are generally interested in the reports and statements of NGOs, and they will often meet with representatives of NGOs during their on-site visits to discuss the human rights situation in the country. Country visits are a good opportunity for NGOs to present reports or other information they may have that is relevant to the mandate of the rapporteurs. For example, when Nigel Rodley, special rapporteur on torture, visited the Russian Federation in 1994, he spent part of his time meeting with representatives of several NGOs concerned with the prohibition of torture. These NGOs included the Moscow Center for Prison Reform, the Moscow Research Center for Human Rights, the Society "Right to Life" against the Death Penalty and Torture, Human Rights Watch/Helsinki, and other groups. As a result of their efforts, the special rapporteur also met with former detainees, family members of current detainees alleging serious violations of human rights, and attorneys representing criminal defendants. Although it may be difficult to determine exactly how the special rapporteur's interaction with NGOs influenced his recommendations to Russia, the subsequent report clearly reflected issues of concern to NGOs, such as reform of the Code of Criminal Procedure. The recommendations called for substantial changes to provisions governing pretrial detention and release on bail, the physical conditions of detention, and others.

3.2 NGO involvement in treaty implementation

3.2.1 Shadow reports. The state reporting procedures are the core of the implementation machinery of the UN human rights treaties. All human rights treaties adopted within the system of the UN require states parties to submit periodic reports to the treaty-monitoring body, describing the measures they have adopted in order to implement the treaty's provisions. Some treaty-monitoring bodies have indicated that these reports should be as detailed as possible and should provide information not only about the laws, but also about administrative or judicial practices.

The treaty-monitoring bodies consider state reports in the light of all available information about the country. NGOs can prepare "shadow reports" pointing to laws and practices that are incompatible with the provisions of the treaties. Some treaty-monitoring bodies, such as the Human Rights Committee, may also ask NGO representatives to attend oral hearings and respond to questions from that committee on the information provided in the shadow reports. Following the hearings and after considering the reports, the treaty-monitoring bodies adopt concluding comments or general recommendations on the country.

Frequently, NGOs have managed to draw attention to some of the problems that states may be likely to ignore. In June 2000, the Counseling Center for Citizenship/Civil and Human Rights from the Czech Republic submitted a shadow report to CERD on the report submitted by the Czech government. The shadow report criticized some discriminatory practices against Roma, such as segregation in housing and schooling, and the lack of effective remedies for victims of discrimination, all of which were omitted from the official state report.

NGO SHADOW REPORT INFLUENCES HRC REPORT ON ABORTION AND GENDER DISCRIMINATION IN POLAND

In 1999, the Federation for Women and Family Planning in Poland submitted a shadow report to the Human Rights Committee (HRC) of the International Covenant on Civil and Political Rights (ICCPR), to highlight some examples of

gender discrimination. Specifically, the report criticized a Polish antiabortion law adopted in 1998 that prohibits what the law calls "abortion on social grounds." Under the previous law, a woman "in hard life conditions or difficult personal situation" was permitted to have an abortion until the twelfth week of pregnancy. The report also criticized the adoption of policies and regulations limiting access to family planning services; the law removing sex education from school curricula; and the lack of adequate policies and measures to prevent violence against women. The report further highlighted existing discrimination against women in the labor market, such as the requirement of a pregnancy test for women applicants as part of a medical checkup.

In its concluding comments on Poland, adopted in July 1999, the HRC accepted and affirmed most of the criticism by the Federation for Women and Family Planning. The HRC expressed its concern about the adoption of the antiabortion law and the limited accessibility to family planning, and it required Poland to reintroduce sex education in public schools. The HRC also required that Poland take measures to counteract gender discrimination in employment practices, specifically pregnancy testing by employers. In addition, the HRC urged Poland to adopt legislation and administrative measures to guarantee remedies against domestic violence in civil courts and to provide sufficient numbers of hostels and shelters for family members suffering from domestic violence.

Concluding comments in state reports do not have the binding force of court decisions. Nevertheless, the reporting procedure can be an effective instrument for incorporating international human rights principles into domestic law, and NGOs should not underestimate it. Governments generally tend to comply with the treaty-monitoring body's recommendations, because of the threat of isolation from the international community, possible embarrassment or shame, or concern that these reports may be considered by other international bodies making decisions that affect the economic and financial well-being of the country.

Treaty-monitoring bodies regularly publish lists of dates when state reports are due, as well as of the states they will consider in their next sessions. This schedule is available at the Web site of the Office of the UN High Commissioner for

Human Rights (http://www.unhchr.ch/tbs/doc.nsf). Although states frequently miss the deadlines for their reports, NGOs can readily obtain information about the due dates for the reports of their countries and the approximate time when they will be considered.

3.2.2 Contributions to general comments. As discussed above, general comments (or, in the case of CERD and CEDAW, general recommendations) have become increasingly critical to understanding the protections contained within the treaty bodies. They are authoritative sources of interpretation, and they allow the treaty bodies to become engaged dynamically with new facts and new concerns while remaining within the formally adopted principles of the treaty language. NGOs can help to clarify the meaning of guarantees under the treaties through their fact-finding and other communications that place the treaty guarantees in context in a particular country or situation. Increasingly, NGOs have played key roles in providing analytical and factual information supporting these interpretive statements, such as HRC General Comment No. 18, on nondiscrimination; CESCR General Comment No. 24, on health; and CEDAW General Recommendation No. 19, on violence against women.

3.2.3 Proceedings before domestic courts and international bodies. NGOs can play an important role in implementing the norms of international treaties into domestic laws and court practices, by litigating individual cases of human rights violations. In Central and Eastern European countries, duly ratified international treaties are generally part of domestic law. NGOs can strengthen the implementation of international human rights treaty standards domestically by providing legal assistance in proceedings before domestic courts to individuals whose rights have been violated. In domestic courts, NGOs can make persuasive arguments based on international human rights treaties and on the jurisprudence of the treaty-monitoring bodies, and they can ask such courts to enforce them. In this way, NGOs can promote greater understanding of the international human rights standards by domestic legal communities and keep domestic jurisprudence up-to-date with international human rights law developments. Moreover, in some circumstances, cases can be brought on the basis of a human rights treaty alone, as was the case in a Spanish prosecutor's indictment of former Chilean dictator Augusto Pinochet.

In situations where domestic laws or practices violate the norms of UN human rights treaties, NGOs may, after exhaust-

ing all effective domestic remedies, raise the issue before the relevant UN committee through the individual complaint procedure provided for by the particular treaty. Though not legally binding, the decisions of these bodies are an authoritative source of interpretation of UN human rights law and are usually respected by the states.

Often there may be a choice regarding which treaty-monitoring body is most appropriate for addressing a particular human rights violation. For example, some of the rights protected by the ICCPR are also protected by the Race Convention or by the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. Important factors in deciding where to submit a communication include how a particular treaty-monitoring body has decided similar cases and what it has done to strengthen the protection of treaty norms and to ensure states' compliance with its decisions, as well as the speed of its decision making.

Some rights protected by UN treaties are also protected on a regional level by the human rights system of the Council of Europe. Many similarities exist between the European Convention on Human Rights and the ICCPR. In general, the European system is stronger, because of the incorporation of the European Convention into domestic law, the binding force of the decisions of the European Court of Human Rights, and the political power inherent in the process of European integration. However, the UN treaty system may in certain circumstances offer better protection of some rights.

Certain rights are protected by the Covenant but not by the regional mechanisms. For example, unlike the European Convention—which until Protocol 12 enters into force will not recognize discrimination alone as a human rights violation—the ICCPR prohibits any discriminatory treatment, even if it is not related to another protected right. The ICCPR also provides for a broader protection of some minority rights. Set against this, of course, is the legally binding nature of the judgments of the European Court of Human Rights, which can provide substantial compensation to the applicant and force governments to amend key legislation and policy. As described more fully in the section of this chapter on the Council of Europe, the Committee of Ministers follows the process closely to ensure the proper execution of the Court's decisions.

3.3 Promoting compliance with UN body recommendations

Unfortunately, the UN treaties do not provide for monitoring and oversight of

states' compliance with the decisions of their bodies. There are no executive mechanisms to enforce the recommendations of treaty-monitoring bodies and special rapporteurs. Moreover, budgetary constraints limit the ability of UN human rights bodies to conduct many follow-up activities. To try to compensate for this, most treaty bodies have recently requested follow-up information from states regarding what measures have been taken to give effect to the treaty generally, as well as to how specific decisions are being implemented. Although political and diplomatic factors are probably foremost in determining states' compliance with the decisions and recommendations of the UN bodies, NGOs can also play an important role in implementing committee actions and recommendations.

NGOs can monitor whether states comply with the recommendations or views of different UN bodies in response to individual complaints. NGOs can also initiate campaigns to encourage states' compliance, calling attention to a state's lack of implementation of a particular recommendation. In so doing, NGOs may encourage public debate on the issue or create societal pressure that may force government action to implement the recommendations. Thus, in 1998, a coalition of Croatian NGOs led by Be Active, Be Emancipated (B.a.b.e.) compiled a shadow report and attended the CEDAW Committee session to consider the reports of several states parties, including Croatia. Among other recommendations, the CEDAW Committee advised Croatia to expand the participation of women's NGOs in its policy-making processes.

Following the session, the coalition received promises from the government to publicize the concluding comments of CEDAW. However, the government did not fulfill its promises. B.a.b.e. and the other NGOs obtained copies of the concluding comments, translated them into Croatian, and distributed copies to the press as well as to members of Parliament. As public pressure grew, the government eventually sent a delegate to a press conference in Zagreb hosted by an NGO coalition and began to take steps to fulfill promises to invite NGOs to attend meetings of the State Commission for Equality.

Amnesty International is also deeply involved in these types of follow-up activities. When criticizing governments for violating human rights, the organization also has criticized them for not complying with the recommendations of UN treaty-monitoring bodies. In its annual report on Romania for the year 2000, for example, Amnesty International strongly criticized the Romanian government for excessive use of firearms and called for compliance with the recommendations of the Human

Rights Committee regarding the use of firearms by police.

3.4 Working with the Commission on Human Rights

Using the opportunities provided by Resolution 1235, NGOs may bring specific human rights violations to the attention of UN bodies. NGOs with consultative status with the Economic and Social Council can submit their statements on a specific situation to the Commission on Human Rights or the Sub-Commission at their annual meetings and can call for adoption of a resolution or for other reaction of the international community to that particular situation. Through this framework, NGOs can also encourage adoption by the CHR of mandates, as well as a renewal of mandates for special rapporteurs on country or thematic situations. Groups such as Human Rights Watch and Amnesty International utilized this procedure in 2000 to call the attention of the international community to the situation in Chechnya.

OBTAINING CONSULTATIVE STATUS WITH THE UN ECONOMIC AND SOCIAL COUNCIL (ECOSOC)

Article 71 of the UN Charter provides for the Economic and Social Council "to make suitable arrangements for consultation with nongovernmental organizations, which are concerned with matters within its competence." This provision and ECOSOC Resolution 1996/31 provide the legal basis for NGOs to obtain a special, consultative status with ECOSOC. To date, more than 2,000 NGOs have attained such consultative status.

NGOs in consultative status may attend meetings of ECOSOC and its subsidiary bodies and can make oral presentations and submit their written statements to these bodies. Thus, human rights NGOs can bring matters to the attention of the UN political bodies concerned with the protection of human rights, such as the Commission on Human Rights (CHR) and the Sub-Commission on the Promotion and Protection of Human Rights. NGOs in consultative status may also propose new items for consideration by ECOSOC and may attend international conferences called by the UN.

In order to obtain consultative status, the NGO must engage in activities rele-

vant to the work of ECOSOC. The NGO must also have had a democratic decision-making mechanism in place for at least two years. The full lists of requirements are set forth in ECOSOC Resolution 1996/31.

ECOSOC grants consultative status to an NGO on the recommendation of ECOSOC's Committee on NGOs. This committee is composed of nineteen UN member states and meets every year. Applications received before 1 June of the current year will be considered by the committee meeting the following year.

Detailed information on how to obtain consultative status, including the application form, is available at the Web site of the UN Department of Economic and Social Affairs (DESA), NGO section, at http://www.un.org/esa/coordination/ngo/.

3.5 Pressing for higher standards

The modern system for international protection of human rights is a dynamic phenomenon. The first modern international documents that laid the basis of the international system for the protection of human rights, the UN Charter and the Universal Declaration of Human Rights, were adopted more than fifty years ago as the world emerged from the gross human rights violations committed in the course of World War II. States agreed that the protection of human rights could no longer be only a matter of domestic affairs. Since then, the system of international human rights protection has evolved to include a number of treaties designed to provide better protection against specific types of human rights violations and to include new aspects of human rights. Thus, the International Bill of Human Rights was followed by the Convention Against Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, and most recently the Convention on the Rights of the Child.

Treaty bodies have further strengthened international standards through broader interpretation of treaty provisions to reflect changes in societal norms. Implementation of international human rights law also improved with increased use of the right to individual complaint (as a result of the adoption of the First Optional Protocol to the ICCPR and other mechanisms) and through follow-up activities of UN bodies.

NGOs continue to play an important

role in these processes. Organizations such as Amnesty International were closely involved in drafting the Second Optional Protocol for the Abolition of the Death Penalty and campaigned actively for its adoption by states parties to the ICCPR. The adoption of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment was also influenced by NGO efforts. NGOs, including Save the Children International, played an especially important role in the drafting of the Convention on the Rights of the Child. NGOs were instrumental in the adoption of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, first in lobbying for the adoption of the Protocol through the world conference processes, and then in the actual drafting. The International Human Rights Law Group, for example, helped to convene a group of experts that produced a key preliminary document setting out the basic elements of an Optional Protocol, and IWRAW–Asia Pacific and others have been leading the campaign for ratification of the Protocol.

Through their everyday activities, advocacy for the victims of human rights violations, close scrutiny of national human rights policies, and public education on human rights, NGOs are gradually but consistently raising human rights consciousness within their countries and around the world. Such awareness ultimately will lead to the improvement of international human rights standards around the world.

WORLD CONFERENCES ENCOURAGE POLITICAL COMMITMENTS AND PROMOTE NEED FOR NEW STANDARDS

During the last several years, NGOs have expanded their participation in UN-sponsored world conferences. Though primarily focused on governmental commitments, these meetings have enabled NGOs to play key roles in focusing the world's attention on new issues and bringing political pressure to bear on the need for further standards.

UN World Conference on Human Rights (Vienna, 1993). Attended by representatives of almost all member states of the UN and more than 800 NGOs, the

conference made a substantial impact on the development of the UN human rights machinery. Combining the efforts of diplomatic and NGO forums, it played a crucial role in the establishment of a new thematic mechanism, the special rapporteur on violence against women. The Vienna conference also called for the establishment of the post of UN High Commissioner for Human Rights, which was created two years later by a resolution of the UN General Assembly.

World Conference on Women (Beijing, 1995). This conference was the result of successful collaboration between government representatives and NGOs. Participants supported the adoption of an Optional Protocol to the Women's Convention establishing the right to individual complaints for violations of the Convention. This Protocol was opened for ratification in the spring of 1999, and by December 2000 it had already entered into force.

World Conference Against Racism (Durban, 2001). This conference provided another possibility for NGOs to raise their concerns with UN bodies. Regional NGOs met in anticipation of the world conference to adopt recommendations addressing the NGOs' concerns regarding the current international system for protection against discrimination. The regional meeting of NGOs from Central and Eastern Europe called for, among other things, reform of the UN system to strengthen the role of mechanisms for legal protection against discrimination and to establish standards for international responses to occurrences of state-sanctioned racism.

RESOURCES

Readings

Bayefsky, A., *The UN Human Rights Treaty System: Universality at the Crossroads*, Transnational Publishers, 2001, New York.

Examines some deficiencies of the current UN human rights treaty system and suggests a number of reforms, most of which can be accomplished without formal amendment of the system. The study addresses such problems as overdue reports, insufficient reports, treaty body visits to states parties, and documentation, among others.

Columbia Law School Human and Constitutional Rights: <http://www.hrcr.org>.

Contains country reports, comparative

laws and court decisions, international treaties, documents of international organizations, and links to other Internet resources on these topics.

Council of Europe, *Short Guide to the European Social Charter*, Strasbourg; available in English and French.

Council of Europe, CD-ROM, *Combating Racism and Intolerance*, 1997, Strasbourg.

Reproduces the contents of the Web site of the European Commission against Racism and Intolerance (www.ecri.coe.int) as of October 1997 (including international legal texts, summaries of relevant national legislation, "good practices" in policy measures in member states, guidance on conducting campaigns, and initiatives in education and the media).

Council of Europe, *NGO Action Pack, European Social Charter*, Council of Europe 1999, Strasbourg.

Council of Europe, *Basic Human Rights Documents of the Council of Europe available in Central and Eastern European languages*, 2000, Strasbourg.

Council of Europe Web sites:

The case law of the European Convention on Human Rights and details of cases pending before the European Court of Human Rights are available on the Internet in English and in French, as is information about the other human rights activities of the Council of Europe, at the following sites:

- http://www.echr.coe.int (European Court of Human Rights)
- http://www.echr.coe.int/hudoc (Case Law of the European Court of Human Rights)
- http://www.humanrights.coe.int/cseweb (European Social Charter)
- http://www.cpt.coe.int (Committee for the Prevention of Torture)
- http://www.ecri.coe.int (European Commission against Racism and Intolerance)
- http://www.humanrights.coe.int/Minorities (protection of national minorities)
- http://www.coe.int/cm (Committee of Ministers)
- http://www.humanrights.coe.int/media (media)
- http://www.humanrights.coe.int/police (police and human rights)
- http://conventions.coe.int (Council of Europe treaties and agreements)

Diana: An Online Human Rights Archive at Yale Law School: <http://diana.law.yale.edu>.

Contains decisions, resolutions, and additional documents of international human rights bodies and other human rights resources.

Hannum, H., ed., *Guide to International Human Rights Practice*, 3rd edition, Transnational Publishers Inc., 1999, New York.

Reviews in detail international and regional mechanisms for protection of human rights and evaluates their effectiveness.

Human Rights Web: <http://www.hrweb.org>.

Contains a basic introduction to human

rights, international human rights treaties, and historical documents with significance for human rights, as well as useful links to human rights organizations worldwide.

International Human Rights Internship Program and Asian Forum for Human Rights and Development, *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource*, International Human Rights Internship Program, 2000, New York.

A manual for training human rights activists and development workers regarding economic, social, and cultural rights, and a tool for introducing the concept of economic, social, and cultural rights to policy makers, media, academics, lawyers, and other professional groups.

International Movement against All Forms of Discrimination and Racism (IMADR) and Minority Rights Group International (MRG), *The International Convention on the Elimination of All Forms of Racial Discrimination: A Guide for NGOs*, 2001, London. <http://www.minorityrights.org> (last accessed on July 26, 2001).

Kenny, T., *Securing Social Rights across Europe: How NGOs Can Make Use of the European Social Charter*, Council of Europe, revised November 1998, Strasbourg; available in English, French, German, Greek, Russian, and Turkish.

Lawyers Committee for Human Rights, *The Human Rights Committee: A Guide for NGOs*, 1997, New York. <http://www.lchr.org/ngo/ngoguide/final.htm> (last accessed on July 26, 2001).

Provides nongovernmental organizations with a basic and practical understanding of the work of the Human Rights Committee.

Long, S., *Making the Mountain Move: An Activist's Guide to How International Human Rights Mechanisms Can Work for You*, International Gay and Lesbian Human Rights Commission, 2000, New York. <http://www.iglhrc.org/news/factsheets/unguide.html> (last accessed on July 26, 2001).

A guide to accessing and using the UN and regional systems of human rights protection.

Minority Rights Group International, *The Council of Europe's Framework Convention for the Protection of National Minorities: Analysis and Observation on the Monitoring Mechanisms*, 1998, London. <http://www.minorityrights.org> (last accessed on July 26, 2001).

Nowicki, M., "NGOs before the European Commission and the Court of Human Rights," 14/3 *Netherlands Quarterly of Human Rights* (1996), 289–302, Strasbourg; available in English; Russian version available from the Directorate General of Human Rights, Council of Europe, Strasbourg.

Office of the United Nations High Commissioner for Human Rights, *Human Rights: A Basic Handbook for the UN Staff*, 2000, Geneva. <http://www.unhchr.ch/html/menu6/handbook.pdf> (last accessed on July 26, 2001).

Provides an overview of the UN human rights mechanisms and developments and the role of the UN bodies for the protection and promotion of human rights.

Shuster, G., I. Martinez, and J. Madore, *Between Their Stories and Our Realities: A Manual for Seminars and Workshops on CEDAW*, The People's Decade of Human Rights Education (PDHRE), 1999, New York. <http://erc.hrea.org/Library/women/cedaw/index.html> (last accessed on July 26, 2001).

A manual on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), designed to accompany eight videos ("Women Hold Up the Sky") that illustrate different types of discrimination and human rights violations against women around the world.

Symonides, J., and V. Volodin, *Human Rights of Women: A Collection of International and Regional Normative Instruments*, UNESCO, 1998, Paris. <http://www.unesco.org/human_rights/wcontent.htm> (last accessed on July 26, 2001).

Contains international conventions, declarations, and recommendations regarding women's human rights that have been adopted by the United Nations, the Council of Europe, or the Organization of American States.

Taubina, N., *Guide to How NGOs Can Work with the Council of Europe to Protect Human Rights*, Moscow Research Centre for Human Rights, 1997, Moscow.

Available in Azeri, English, and Russian (from the Directorate General of Human Rights, Council of Europe, and the United Nations High Commissioner for Refugees office, Baku, Azerbaijan)

United Nations Development Fund for Women (UNIFEM), *Bringing Equality Home: Implementing the Convention on the Elimination of All Forms of Discrimination Against Women*, 1998, New York. <http://www.unifem.undp.org/cedaw/indexen.htm> (last accessed on July 26, 2001).

Provides examples of implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) domestically in different countries around the world and discusses some obstacles to implementation in a constitutional, legislative, or judicial context.

UNIFEM and UNICEF, *CEDAW Advocacy Kit*, 1995. <http://gopher://gopher.undp.org/11/unifem/poli-eco/poli/whr/cedaw/cedawkit> (last accessed on July 26, 2001).

Includes information on gender violence and girls' rights, as well as a summary of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), all of which can be incorporated into lesson materials.

United Nations High Commissioner for Human Rights Web sites:

The texts of the United Nations human rights treaties, the decisions of the treaty-monitoring bodies, the reports of the states parties, and the resolutions of the UN Charter–based mechanisms relevant to human rights are available at the following sites:

- http://www.unhchr.ch/html/intlinst.htm (UN human rights treaties)
- http://www.unhchr.ch/tbs/doc.nsf (UN treaty bodies database)

- http://www.unhchr.ch/huridocda/huridoca.nsf/Documents?OpenFrameset (Charter-based bodies database)
- http://www.unhchr.ch/html/menu2/2/chr.htm (Commission on Human Rights)
- http://www.unhchr.ch/html/menu2/xtraconv.htm (Country and thematic rapporteurs)
- http://www.unhchr.ch/html/menu2/hrissues.htm (Human rights issues)
- http://www.unhchr.ch/html/menu5/wchr.htm (World conferences on human rights)
- http://www.unhchr.ch/html/menu2/techcoop.htm (Technical cooperation)

International Organizations

Council of Europe
F-67075 Strasbourg Cedex
France
Tel: (33 3) 88 41 20 24
Fax: (33 3) 88 41 27 04
E-mail: HumanRights.Info@coe.int
Web: www.coe.int
Or www.humanrights.coe.int (for specific human rights information)

Human Rights Information Centre
Council of Europe
F-67075 Strasbourg Cedex
France
Tel: (33 3) 88 41 20 24
Fax: (33 3) 88 41 27 04
E-mail: HumanRights.Info@coe.int
Web: www.coe.int

Office for Democratic Institutions and Human Rights (ODIHR)
OSCE
Aleje Ujazdowskie 19
00-557 Warsaw
Poland
Tel: (48 22) 520 06 00
Fax: (48 22) 520 06 05
E-mail: office@odihr.osce.waw.pl
Web: www.osce.org/odihr

Office of the United Nations High Commissioner for Human Rights
8–14 Avenue de la Paix
1211 Geneva 10
Switzerland
Tel: (41 22) 917 9000
Fax: (41 22) 917 9016
Web: www.unhchr.ch

Organization for Security and Cooperation in Europe (OSCE)
Secretariat
Kaerntnerring 5–7
4th Floor
A-1010 Vienna
Austria
Tel: (43 1) 514 36 0
Fax: (43 1) 514 36 96
E-mail: pm@osce.org
Web: www.osce.or

International Nongovernmental Organizations

Amnesty International
99–119 Rosebery Avenue
London EC1R 4RE
United Kingdom
Tel: (44 207) 814 6200
Fax: (44 207) 833 1510
E-mail: amnestyis@amnesty.org
Web: www.amnesty.org

An NGO that campaigns for the rights of prisoners of conscience; the right to fair and prompt trials for political prisoners; abolition of the death penalty and of torture and other cruel treatment of prisoners; and an end to political killings and "disappearances." Maintains an extensive library collection with reports on human rights issues in specific countries and documents of international bodies.

Human Rights Watch
350 Fifth Avenue
34th Floor
New York, NY 10118-3299, USA
Tel: (1 212) 290 4700
Fax: (1 212) 736 1300
E-mail: hrwnyc@hrw.org
Web: www.hrw.org

Investigates human rights abuses around the world, publishes reports on human rights violations, and mobilizes media attention to put pressure on governments to stop human rights violations.

International Commission of Jurists (ICJ)
81A, avenue de Châtelaine
P.O. Box 216
CH-1219 Châtelaine/Geneva
Switzerland
Tel: (41 22) 979 38 00
Fax: (41 22) 979 38 01 or 04
E-mail: info@icj.org
Web: www.icj.org

Engages in advocacy before the UN human rights bodies, training, fact-finding missions, and trial observation.

International Human Rights Law Group
1200 18th Street, NW
Suite 602
Washington, DC 20036, USA
Tel: (1 202) 822 4600
Fax: (1 202) 822 4606
E-mail: HumanRights@HRLawGroup.org
Web: www.hrlawgroup.org

Active in human rights advocacy, human rights litigation, and training around the world, with the purpose of empowering local human rights groups.

International League for Human Rights
823 UN Plaza
Suite 717
New York, NY 10017, USA
Tel: (1 212) 661 0480
Fax: (1 212) 661 0416
E-mail: info@ilgh.org
Web: www.ilhr.org

Raises human rights issues and cases before the United Nations and other intergovernmental regional organizations, in partnership with NGOs from other countries, and coordinates strategies for effective human

rights protection. Maintains advocacy projects in Africa, Europe, the former Soviet Union, the Middle East, and Asia.

International Women's Rights Action Watch
Hubert Humphrey Institute of Public Affairs
University of Minnesota
301 19th Avenue South
Minneapolis, MN 55455, USA
Tel: (1 612) 625 5093
Fax: (1 612) 624 0068
E-mail: iwraw@hhh.umn.edu
Web: www.igc.org/iwraw

A network of activists and organizations that monitors and publicizes the work of the UN Committee on the Elimination of Discrimination Against Women (CEDAW), provides resources on women's human rights issues, and organizes international meetings on women's rights.

Lawyers Committee for Human Rights
333 Seventh Avenue
13th Floor
New York, NY 10001, USA
Tel: (1 212) 845 5200
Fax: (1 212) 845 5299
E-mail: lchrbin@lchr.org
Web: www.lchr.org

Active in the protection of human rights advocates, refugees, and asylum seekers; international criminal law; workers' rights; fair trial issues; and other related fields.

Six

Access to Justice: Legal Aid for the Underrepresented

This chapter explains:

- the concept of access to justice and its importance
- the status of Central and Eastern European laws on legal aid
- standards of international human rights treaties regarding access to justice
- selected countries' legal aid systems
- mechanisms for delivering legal services to the underrepresented
- strategies for reforming legal aid systems

1. Problem of Unequal Access

Surveys conducted in 1999 in Bulgarian and Lithuanian prisons reveal that 20 percent (Lithuania) to 40 percent (Bulgaria) of those convicted had not been represented by a lawyer at trial. Furthermore, the Bulgarian survey reveals that a significant majority of those convicted without a lawyer are members of the main ethnic minorities in Bulgaria—Roma and Turks—even though the majority of the prisoners surveyed are ethnically Bulgarian. And an especially disturbing finding of the Bulgarian survey is that most of the defendants who complained of police brutality during their detention were not represented by a lawyer in the criminal proceedings.

Such surveys illustrate some of the problems that the criminal justice systems in Central and Eastern Europe are currently facing. Can trials be considered "fair" if large numbers of defendants lack legal representation and thus cannot participate at trial on an equal footing with the prosecution? Are citizens treated equally before the law when some individuals obtain the expertise of experienced defense lawyers while others may rely only on the good

intentions of the prosecution and the court? Any society based on the rule of law must be attentive to these issues.

There are also widespread problems of access to justice for people with civil legal problems. As NGOs in Central and Eastern Europe and other countries have documented, large numbers of people face problems with housing, labor, family matters, property, welfare and social security benefits, immigration, and other such basic concerns. As a result of the economic and social transformation under way in these countries, many of these individuals cannot afford to pay for the services of a lawyer.

The provision of equal access to the benefits and protection of the law is one of the most consistently elusive challenges to democratic legal systems around the globe. How can a government faced with competing social welfare demands and increasingly meager public coffers meet the legal needs of all its citizens?

What makes the problem even more difficult is that the poor are usually excluded from the political process. Impoverished populations are largely underrepresented in the government and insufficiently integrated into the economic mainstream of their societies. Moreover, the legal interests of low-income groups often compete awkwardly in the social agenda with limited governmental funds to cover such acute social needs as medical care, public schooling, and housing assistance, to name only a few.

In fact, access to justice is a very broad notion. The right to access to justice guarantees that every person has access to an independent and impartial court and the opportunity to receive a fair and just trial when that individual's liberty or property is at stake. Impediments to such access can be numerous, including high court costs, restrictive jurisdictional rules, overly complex regulations, ineffective enforcement mechanisms, and corruption. Access to justice is also linked to judicial independence and legal literacy. But few would contest the idea that the basic availability of a competent lawyer's services is a crucial element of access to justice, especially when the state has marshaled its legal resources to accuse an individual of a crime, and the defendant risks losing his or her personal liberty if convicted. As discussed in more detail later in this chapter, international treaties recognize a right to legal representation in criminal cases for precisely this reason.

This chapter will suggest some possible approaches to the challenges of access to justice. First, the chapter will examine the current status of legal aid in Central and Eastern Europe and analyze it in the light of applicable international and comparative standards. Then it will describe briefly a number of legal aid systems around the world. Finally, the chapter will

present some possible mechanisms for improving the situation and discuss some of the practical issues that may arise in the process of organizing a legal aid system.

2. Laws on legal services in Central and Eastern Europe

The new constitutions of the emerging democracies in Central and Eastern Europe recognize an individual's right to legal representation in litigation before courts and administrative agencies. But these provisions only oblige state authorities not to interfere with the exercise of the rights to counsel, rather than require them to secure legal representation for the indigent when necessary. The constitutions of both the Czech Republic and Slovakia, for instance, envisage in some circumstances the possibility of free legal aid. Because of the lack of further legal regulation, however, proceeding authorities rarely appoint *ex officio* attorneys to criminal defendants whose cases fall outside the category of mandatory defense or to indigent parties in civil cases.

2.1 Criminal cases

At present, there is no uniform rule in Central and Eastern Europe recognizing indigence alone as a ground for free legal assistance. Legal systems currently distinguish between cases of mandatory defense, in which proceeding authorities are under obligation to appoint a lawyer for defendants, and other cases. For the latter cases, in some countries a lawyer must be appointed to represent a defendant who is indigent, while in others the decision is left to the discretion of the proceeding authorities.

2.1.1 Mandatory defense. In these cases, participation of counsel for the defendant is an absolute condition for the validity of the proceedings. Failing to appoint *ex officio* counsel may lead to a reversal of the conviction on appeal. Although the grounds for mandatory legal representation vary from country to country, the severity of the potential sentence is one of the grounds recognized throughout the region. As to the specific length of the sentence, the laws vary considerably. While in several Central and Eastern European countries representation is mandatory if the defendant faces a sentence of five years' imprisonment or more, in Bulgaria a defendant is entitled to legal representation only if the crime alleged carries a minimum punishment of ten years' imprisonment.

Moreover, the laws in most of the countries in Central and Eastern Europe require only that the lower limit of the

punishment be equal to or above the minimum required for mandatory defense. If the lower limit of the punishment is below the minimum required for mandatory defense, the defendant will not qualify for mandatory assistance even if the upper limit of the punishment is above that minimum. Thus, if the minimum sentence required to trigger the right to mandatory defense is five years and a defendant is charged with a crime punishable by imprisonment of three to eight years, this person would not qualify for mandatory assistance even if he or she could be sentenced to more than five years of imprisonment.

Other criteria for determining if legal representation is mandatory include the defendant's mental or physical condition, age, and ability to speak the official language used in court, whether the defendant was subject to pretrial detention, and whether the trial is *in absentia.* When an *ex officio* counsel is appointed in mandatory defense cases, the financial status of the defendant is irrelevant, at least in theory. It is necessary only that the case fall into one of the categories that triggers mandatory defense. In practice, though, it is mainly indigent defendants who rely on the *ex officio* provision, because those who can afford the attorney's fees are likely to hire a lawyer on their own.

Selected criteria triggering mandatory defense in some Central and Eastern European countries

	Lower limit of potential sentence	*Pretrial detention*
Poland	3 years' imprisonment (serious crimes)	YES
Czech Republic	5 years' imprisonment	YES
Hungary	5 years' imprisonment	YES
Romania	5 years' imprisonment	YES
Slovakia	5 years' imprisonment	YES
Bulgaria	10 years' imprisonment	NO

2.1.2 Other cases. Defendants whose cases do not fall within the scope of mandatory defense can also apply for free legal assistance. Their chances of success in obtaining no-cost representation, however, vary from country to country. In Central and Eastern Europe, Polish defendants who are indigent may have the greatest likelihood of securing such assistance. Under the Polish Code of Criminal Procedure, defendants can apply for the appointment of *ex officio* counsel if they are charged with any criminal offense and if they lack the means to hire an attorney. The defendant must prove lack of sufficient means on the basis of salary and other income. Once the defendant has satisfied this requirement, the court must appoint an *ex officio* lawyer. In practice, however, no objective indigence test has been established or applied by the courts. According to Polish lawyers and human rights activists, there have been cases in which courts have refused to appoint a lawyer because of the alleged luxurious lifestyle of the accused prior to trial, without examining whether that person can afford a lawyer at the time of trial.

Laws and practices in other countries also envisage appointment of *ex officio* counsel in some cases not included in the scope of mandatory defense provisions. However, the inherent discretion in these provisions and accompanying procedures provides no guarantee of representation for defendants. In some countries, such as the Czech Republic and Romania, the proceeding authorities have no legal obligation to appoint *ex officio* counsel. Defendants are referred to the local bar association; the decision whether to appoint a lawyer and the procedures for appointment are left to the laws governing the legal profession. In Hungary the final decision whether to appoint counsel is left to the discretion of the relevant officials. They may decide to appoint an *ex officio* lawyer but are not obliged to do so, as Hungarian law does not explicitly recognize the right to free legal representation in other than mandatory defense cases.

The Bulgarian Code of Criminal Procedure was amended in 1999 to require proceeding authorities to appoint *ex officio* counsel to indigent defendants upon the defendant's request, if the interests of justice require the appointment of such counsel. While the amendment adopts specific language from the European Convention on Human Rights, the provision remains inadequate. In the absence of any concrete legislative or judicial guidelines, what constitutes the "interests of justice" is left to officials who are unlikely to be familiar with the case law of the European Court of Human Rights. In the end, the standard

remains unclear and the decision whether to appoint a counsel for an indigent defendant is left again to the discretion of the proceeding authorities.

Attorney's fees in cases of mandatory defense or in the other cases in which *ex officio* counsel is appointed are generally covered by the country's judicial budget. In most countries, however, the appointment of *ex officio* counsel does not relieve defendants from their obligation to pay attorney's fees. Rather, the obligation is merely postponed. If the defendant is found guilty, the state can enforce against the convicted person its claim for all costs and expenses incurred during trial, including the *ex officio* attorney's fees. Moreover, in many countries the budget for *ex officio* attorneys' fees is combined with the general operating budget of the courts, creating powerful disincentives to the discretionary authorization of such fees.

2.2 Civil cases

The provision of legal aid in civil cases in Central and Eastern Europe is regulated almost entirely by the individual countries' laws on the bar. Generally, individuals unable to secure legal representation on their own under these laws may request that the bar appoint a lawyer who will represent them on a *pro bono* basis. These laws, however, do not adequately specify the requirements and procedures for appointing a lawyer, so the provisions are widely underused. Moreover, the budgets of bars contain no special funds to compensate appointed lawyers. Since infringements of the provisions of the laws on bar associations are not considered formal procedural violations, potentially annulling a final judgment, these laws generally have much less influence than the codes of criminal procedure or the codes of civil procedure. The laws on the bar thus hardly provide a sufficient guarantee to the right to free legal assistance.

Another approach to legal aid in civil cases in Central and Eastern Europe is to exempt indigent litigants from courts' fees for certain categories of cases such as alimony, labor lawsuits, and family matters. The final decision regarding fees in such cases is left to the courts.

2.3 Appointment of ex officio *lawyers and quality of the legal services*

In cases of mandatory legal representation, authorities are obliged to appoint a lawyer for the accused, but there are no clear rules regarding who can be appointed in these cases. In fact, virtually any lawyer can be appointed no matter what his or her field of specialization, practice, or experience is. The proceeding authori-

ties may either directly appoint a lawyer from a list provided by the local bar or refer the case to the local bar, leaving bar officials to designate the attorney. In either case, once the lawyer has been chosen, no mechanisms exist for initial or ongoing supervision of the attorney.

Under these circumstances, it is not surprising that the quality of services of the *ex officio* appointed counsels is frequently considered unsatisfactory. In 1996 the Hungarian Helsinki Committee and the Constitutional and Legislative Policy Institute conducted a jail-monitoring program in Hungary to examine the efficiency of the appointed counsel system. The program included 400 people detained pending trial, 60 percent of whom had *ex officio* appointed counsel, while the rest employed lawyers on their own. According to the results of the monitoring, 20 percent of all questioned reported having had contact with their lawyers immediately after their detention. Of those with immediate contact, 90 percent had privately hired lawyers while only 5.2 percent had counsel appointed for them. Nearly 44 percent of the defendants with *ex officio* appointed counsel reported that at the time of the inquiry they had not yet met their lawyers, while approximately 8 percent of the defendants with privately hired lawyers had yet to meet with counsel.

While informal inquiries among lawyers indicate that the quality of services of *ex officio* appointed lawyers is often unsatisfactory, Central and Eastern European countries currently collect no official statistical information as to the number of *ex officio* lawyers and the quality of their services. This lack of any data regarding how the appointed counsel system functions is one major obstacle to reforming legal aid systems. Insufficient statistical information makes it difficult to ascertain the extent of the ongoing problem of access to justice and to evaluate future needs.

2.4 Need for standards

The legal systems in Central and Eastern Europe do not appear to provide adequate access to legal services for all citizens. Mandatory defense provisions are generally limited to relatively narrow categories of cases and are not based on the defendant's financial status. For the vast majority of people whose cases do not "qualify" for mandatory defense, no right to legal aid exists even though these defendants face possible imprisonment.

Given that the relevant authorities have an obligation to appoint *ex officio* counsel only in a narrow category of cases, with vague standards regarding the rest, and that the Central and Eastern European

countries are emerging from economic devastation, the lack of more comprehensive legal aid systems is not surprising. Yet officials and the public must press for improvement by clarifying the standards for appointing *ex officio* counsel in other than mandatory defense cases and by devising workable systems for managing the provision of legal aid.

3. Sources of law relating to legal aid

3.1 International treaties and organizations

The right to legal assistance free of charge for indigent criminal defendants is one of the fundamental guarantees associated with the right to a fair trial embodied in international human rights treaties. The right to free legal assistance is explicitly protected by Article 14.3(d) of the International Covenant on Civil and Political Rights and by Article 6.3(c) of the European Convention on Human Rights.

3.1.1 International Covenant on Civil and Political Rights (ICCPR). Article 14.3(d) of the ICCPR states that "in the determination of any criminal charge against him, everyone shall be entitled . . . to have legal assistance assigned to him in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it."

In practical terms, universal human rights treaties like the ICCPR have provided a limited basis for legislative reform on a regional level. Regional treaties such as the European Convention on Human Rights have proved to be more effective in shaping legislation in Central and Eastern Europe so as to comply with established human rights standards. Ratification of the Convention, as well as compliance with its norms, is a requirement for admission to the Council of Europe and an important criterion for accession to the European Union.

3.1.2 European Convention on Human Rights (ECHR). Article 6.3(c) of the ECHR states that every person charged with a criminal offense has, among other rights, the minimum right "to defend himself in person or through legal assistance of his own choosing or, if he has no sufficient means to pay for legal assistance, to be given it for free if the interests of justice so require." The European Court of Human Rights (ECtHR), through its interpretation of this provision, has asserted that a state party's obligation to provide free legal assistance is based on two types of requirements: those involving financial

status and those based on the "interests of justice."

First, a state is under the obligation to provide free legal assistance to a person charged with a criminal offense only if that person lacks sufficient means to retain a lawyer independently. Neither the Convention nor the Court's jurisprudence indicates a specific monetary figure to define what constitutes sufficient means. While the ECtHR uses certain criteria to determine whether a person falls within this requirement (including the specific circumstances of the case, the person's background, and the economic situation in the country involved), the burden of proof to demonstrate lack of sufficient means falls on the person charged with the offense. This burden, however, is substantially lower than the standard of proof for criminal cases and may be satisfied by a signed declaration of the person charged.

Second, a state is required to provide free legal assistance to an accused person who lacks sufficient means to hire an attorney only if it is also necessary in the interests of justice. The severity of the potential sentence, or what is "at stake" for the defendant, is one of the factors that can trigger a state's obligation to provide free legal assistance. In a recent case against the United Kingdom, the ECtHR asserted that the potential deprivation of liberty alone constituted grounds on which to require a state to provide legal aid. The Court may take other factors into consideration, including the complexity of the case as a matter of law and as a matter of fact, the public importance of the issue, the ability of the accused to understand the case, and the accused's ability to provide his or her own legal defense.

The Convention does not explicitly provide for the right to free legal assistance in civil cases. However, the European Court held in *Airey v. Ireland* (Series A no. 32, 1979) that in some circumstances the ECHR may require legal aid for indigent litigants in civil disputes (see *Airey v. Ireland*, para. 26). Under Article 6.1, states are required to guarantee to every individual an "effective right" to access to court in determination of his or her "civil rights and obligations." States may select the method of securing this right, whether by simplifying procedural requirements, by providing legal aid in civil cases, or through other means. The Court indicated that in addition to cases in which domestic law makes legal representation compulsory, legal aid might be required where there are complex legal or procedural issues. In *Airey*, the applicant was seeking legal aid in order to obtain a judicial separation from her abusive husband in a relatively complicated legal procedure.

ECHR CRITERIA FOR LEGAL AID IN CRIMINAL CASES

The European Convention on Human Rights (ECHR) requires states parties to provide free legal assistance to criminal defendants who meet certain eligibility requirements:

Financial criterion

- insufficient means to afford representation (defendant must establish)

"Interests of justice" criterion

- what is "at stake" for the defendant, such as length of imprisonment or severity of the sentence otherwise
- legal and factual complexity of the case
- ability of the defendant to defend himself or herself personally

The European Court of Human Rights may hold a state liable if it determines that the state has failed to provide legal aid to a defendant who has demonstrated financial need and fulfills one or more elements of the "interests of justice" criterion.

ECtHR CASE LAW ON THE RIGHT TO FREE LEGAL ASSISTANCE

The following cases include opinions of the European Court of Human Rights on the right to free legal representation protected by Article 6.3(c) of the European Convention on Human Rights. The cases are categorized according to the principal issue presented, though some cases may address several issues of relevance.

General state obligation to ensure access to justice

***Artico v. Italy,* decision of 13 May 1980, Series A no. 37.** (1) Whether the lack of legal assistance has prejudiced the actual proceedings is irrelevant for finding a violation of Article 6.3(c); (2) states parties are required to take steps to ensure that defendants enjoy effectively the right to free legal assistance.

Quality of legal services provided by the state

***Goddi v. Italy,* decision of 9 April 1983, Series A no. 76.** Not providing enough time and facilities for the officially appointed lawyer to prepare for the case violates a state's obligation to ensure effective right to free legal assistance.

Reimbursement

***Croissant v. Germany,* decision of 25 September 1992, Series A no. 237-B.** The requirement to reimburse the state for the fees for the *ex officio* appointed defense counsel does not by itself violate Article 6.3(c). The enforcement proceedings generally follow the criminal proceedings and cannot affect their fairness. The question of post-conviction reimbursement of the attorney's fees by indigent defendants was not decided.

Financial criterion

***Pakelli v. FRG,* decision of 25 April 1983, Series A no. 64.** Applicant is not required to prove lack of sufficient means beyond all doubt; an offer to prove the lack of means in the absence of clear indications to the contrary satisfies the means test of Article 6.3(c).

"Interests of justice" criterion

***Quaranta v. Switzerland,* decision of 23 April 1991, Series A no. 205.** Interests of justice require consideration of the seriousness of the offense, the complexity of the case, and the ability of the defendant to provide his own representation. Free legal assistance should be granted even if there is little likelihood that the three-year maximum potential sentence will be imposed.

***Benham v. U.K.,* decision of 10 June 1996, Reports 1996-III.** Where deprivation of liberty is at stake, the interests of justice mandate legal representation. A potential sentence of three months' imprisonment, along with the legal complexity of the case, triggers the state's obligation to provide free legal assistance.

***Perks and others v. U.K.,* decision of 12 October 1999,** *not published at time of writing (available on the Internet, at http://www.echr.coe.int/Eng/Judgments.htm).* Potential sentence of imprisonment, taken together with relatively complex applicable law, requires free legal assistance to be granted.

Stages of the proceedings to which the obligation to provide legal assistance applies

***Granger v. U.K.,* decision of 28 March 1990, Series A no. 174.** Whether the interests of justice require legal aid depends on the case as a whole—not only the facts known when the application for legal aid has been filed—but also the facts known at the time of appeal.

***Boner v. U.K.,* decision of 28 October 1994, Series A no. 300-B.** The right to legal aid applies to appellate proceedings. Factors to consider in determining whether the interests of justice require free legal assistance on appeal include the nature of the proceedings, the powers of the appellate court, the capacity of an unrepresented appellant to present a legal argument, and the importance of the issue at stake in view of the severity of the sentence.

***Pham Hoang v. France,* decision of 25 September 1992, Series A no. 243.** The right to free legal assistance applies to proceedings before the Court of Cassation if the defendant wishes to appeal the conviction and, if unrepresented, is unable to raise complex issues on appeal.

***Twalib v. Greece,* decision of 9 June 1998, Reports 1998-IV.** The right to free legal assistance generally applies to proceedings before the Court of Cassation. Important factors to consider are the complexity of the Cassation Court proceedings, the powers of the court, and the ability of the defendant to raise alone the complex legal and factual issues on appeal.

Legal aid in civil cases

***Airey v. Ireland,* decision of 11 September 1979, Series A no. 32.** Although the ECHR contains no provision on legal aid for civil disputes, Article 6, para. 1, may compel states to provide legal assistance when such assistance proves indispensable for effective access to the courts, either because legal representation is mandatory under domestic law or because of the complexity of procedure or the case.

3.1.3 European Union (EU). Since the 1990s, expansion of the EU has emerged as an influential factor in advancing the institutional protection of human rights in Europe. As part of the expansion process, the EU has adopted a number of broadly framed accession criteria for candidate states. Under the political criterion, the EU evaluates the stability of state institutions guaranteeing democracy, rule of law, and the protection of human rights. Although the accession agreements between the EU and candidate countries do not explicitly refer to access to justice, the extent of the candidate country's legal aid system is certainly one question that the EU considers in assessing the political criterion. In its 1998 report on Bulgaria's progress toward accession, for instance, the European Commission notes that "further efforts will be needed to . . . increase opportunities for legal aid and reduce pretrial detention time to international standards."

Furthermore, current EU laws and policies emphasize access to justice in

cross-border cases between current member states. At its October 1999 meeting in Tampere, Finland, for example, the European Council urged member states to adopt measures to make their legal systems easily accessible for all individuals within the EU and to secure legal aid in cross-border cases. Joining the EU probably will require candidate states to meet these requirements and to adopt legal aid systems compatible with the systems of the current member states. The process of accession could therefore be a political tool for improving the legal aid standards. (See also chapter 5, "NGO Advocacy before International Governmental Organizations.")

3.2 Constitutional standards

The right to free legal assistance is a subject of special constitutional or other legislative protection in many legal systems around the world. The Sixth Amendment to the United States Constitution states: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense." The U.S. Supreme Court has interpreted this provision to require that counsel be provided for accused people unable to obtain representation themselves. In the landmark case *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Court ruled that this provision—and thus the requirement to provide legal counsel—applies to all criminal cases in both federal and state courts. Article 35(2)(c) of the South African Constitution of 1993 requires that every detained person have the right "to have a legal practitioner assigned to the detained person by the state, and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly." The term "substantial injustice" has been interpreted by the South African Constitutional Court in essentially the same way that the European Court of Human Rights has interpreted the words "in the interests of justice."

The constitutions of many developed countries guarantee the right to free legal representation not only to indigent criminal defendants but also to indigent litigants in civil cases. The Constitution of the Netherlands, for instance, explicitly requires in Article 18 that Parliament establish rules concerning the provision of legal aid to people of limited means without restricting such aid to criminal defendants. Similarly, the Italian Constitution, in Article 24(3), entitles indigent people to a proper defense in all court proceedings. Article 29 of the Constitution of Switzerland of 1999 provides indigents with the right to free legal assistance in civil cases unless the case is without merit.

3.3 Legislation

Most constitutions do not explicitly recognize the right to legal aid in civil cases. However, such assistance is often guaranteed by other legal norms, such as special laws passed by the legislature or broad court interpretations of indirectly related constitutional provisions.

Justice Earl Johnson Jr., an American judge on the California Court of Appeals, recently described the results of research he began nearly thirty years ago on legal aid systems throughout the world. He found that most Western European countries adopted legislation several decades ago guaranteeing the right to counsel in civil cases, and some legal provisions to this effect have been in place for more than a century. France and Germany enacted such a law in 1851 and 1877, respectively. The Scandinavian countries and most other northern European nations did so in the early twentieth century. Austria, Greece, Italy, and Spain each enacted a statutory right to counsel in the late nineteenth or early twentieth century. Hong Kong, New Zealand, and some Australian states and Canadian provinces adopted similar provisions in the 1960s and 1970s.

In a 2000 *Fordham International Law Journal* article, Justice Johnson noted that the interpretations U.S. courts have accorded constitutional due process and equal protection guarantees stand in sharp contrast to how high courts in other countries have treated similar constitutional language. For example, in 1937 the Supreme Court of Switzerland considered whether indigent Swiss citizens have a right to free counsel in civil cases. The Swiss Constitution provides that "all Swiss are equal before the law," similar to the U.S. Constitution's guarantee that its citizens will enjoy "equal protection of the laws." The Swiss Court concluded that poor people could not be "equal before the law" in the regular courts unless they were represented by lawyers like the rest of the citizenry. Thus, the governments of the Swiss cantons were required to provide lawyers at no cost to indigent litigants in all civil cases requiring "knowledge of the law."

4. Selected National Legal Aid Systems

Current legal aid systems in various countries offer a vast range of different services. Some countries provide assistance only in criminal cases, some provide both criminal and civil legal aid under a single system, and others use independent systems for criminal and civil matters. No system is ideal. Each country's experience,

however, can help inform the decisions of those seeking to reform legal aid. The information below is based on research, current at the time of publication, on the legislation of Australia, England and Wales, Finland, the Netherlands, Scotland, South Africa, and the United States.

4.1 Legal aid authorities

In some legal systems, such as in the United Kingdom, the courts decide whether to grant legal aid in criminal cases. In others, such as South Africa and the Netherlands, the decision is made by a special governmental agency established to manage the provision of legal aid. In the United States there are two systems: courts make the decision in criminal cases, and not-for-profit legal aid organizations, operating under government guidelines, decide in civil matters.

Special governmental agencies, such as the Legal Aid Commission in Australia and Legal Aid Board in South Africa, the Netherlands, and Scotland, usually are staffed by government attorneys and may also refer cases to private lawyers. The powers of these agencies vary from country to country. Generally, an agency is responsible for the overall management of the legal aid system, the organization of its budget, the adoption of quality standards for the legal assistance that the lawyers provide, and the decisions on granting free legal assistance. Many legal aid agencies publish periodic reports about their activities, though in some countries, such as Scotland, agency activities are subject to parliamentary control.

Although the grounds for granting legal aid vary from country to country, the criteria used in most legal systems fall into two general categories: financial and legal. To be eligible for free legal assistance, a person must lack sufficient means to hire an attorney. Relevant factors here are the person's income and property as well as, in some countries, the income of any partners and the size of the person's family. Eligibility for legal aid can be established by a financial statement or declaration of the person, as in the United States; revenue documents and bank statements, as in Scotland; salary slips, as in South Africa; or even documents issued by the municipality, as in the Netherlands. In Finland an applicant for legal aid must submit a form detailing his or her financial situation. The form must be accompanied by evidence of the applicant's income, his or her spouse's or partner's income, taxes, child care payments, and other related information, and validated by the financial office in the applicant's municipality.

In some countries, legal aid may be

granted in whole or in part. There are several categories of legal aid in Finland. People whose incomes fall below a certain level are granted legal assistance at no cost. Those whose incomes are higher yet insufficient to cover all of the costs are granted partial legal aid and required to cover from 25 to 90 percent of the cost of legal services. Similarly, the Netherlands uses a sliding scale whereby the more money a person earns in wages, the more he or she contributes to the payment of lawyer's fees.

Under legal criteria, the principal factor is the nature of the case. Generally, legal aid is granted to defendants in all criminal cases where the interests of justice so require, with the exception of certain criminal infractions punishable by fine. In many countries legal aid is also granted in civil cases. In South Africa and Finland, for instance, legal aid is granted in cases involving divorce, alimony, employment disputes, administrative matters, and pensions.

4.2 Legal aid service mechanisms for criminal cases

Countries have adopted different models for dispensing legal aid services to their citizens accused of crimes. Legal aid experts Robert Spangenberg and Marea Beeman of the Spangenberg Group have identified three basic models of organization of the provision of legal aid in the United States: lawyers acting as *ex officio* assigned counsel, lawyers contracted to provide legal services, and lawyers employed as public defenders. Similar models have been established in other countries. A country may create a model utilizing one or more of these mechanisms. In addition, certain legal services offered by law school clinics can supplement the representation provided by more comprehensive legal aid schemes.

4.2.1 *Ex officio* assigned counsel system. Probably the oldest of all systems, the *ex officio* assigned counsel system has been adopted today in many countries around the world, including Australia, most of Europe, South Africa, and the United States, though few of these countries have organized their legal aid systems exclusively on this model. Under this model, the courts, the bar, or other respective legal aid agency appoints counsel for indigent defendants, and attorney's fees are covered by state funds specifically allocated for such purpose.

Under the traditional *ex officio* system, the court or the bar appoints an *ex officio* counsel who can be any member of the bar, with no further requirements. In the United States, legal aid lawyers report

that the decision to appoint a lawyer sometimes may be based merely on that lawyer's presence in the courtroom at the time of the defendant's first appearance. This factor, in conjunction with relatively low reimbursement rates for *ex officio* appointed lawyers, may explain why this system is often criticized as providing indigents with "marginally competent lawyers" to represent them. Critics of the *ex officio* model point to its lack of control over the qualifications of the appointed lawyers and the quality of services.

The traditional version of the *ex officio* system now has limited significance. Many countries have adopted more refined *ex officio* models, under which attorneys are assigned on a rotational basis in accordance with their experience, their expertise, and the complexity of the case. In most countries, the enhanced *ex officio* systems require that attorneys meet certain minimum qualification criteria and provide for some form of attorney supervision and professional training. Commentators in the United States contend that the traditional *ad hoc ex officio* system poses a risk that lawyers may become economically dependent on the goodwill of the courts, but that this risk is significantly diminished under the coordinated, rotational model. The procedure for appointing counsel in these cases is strictly regulated by legal aid legislation.

Ex officio assigned counsel system

Pros:

- easy management
- limited administrative burden
- quick appointment procedure

Cons:

- lack of control over appointments
- limited supervision or quality controls
- minimal opportunities for training and professional development
- difficulty in preparing accurate budgets for future
- in some countries, risk of compromise to vigorous client representation due to reliance on the court for appointments

- usually greater expense per case than salaried lawyer or contract lawyer models
- lack of specialization in criminal matters

4.2.2 Contracting system. The contracting system was recently adopted in the United Kingdom. Many states in the United States also have organized their legal aid systems partly or exclusively based on this model. Under the contracting system, the legal aid board, state, county, or municipality enters into a contract with a law firm, a local bar association, an NGO, or sometimes an individual attorney to provide legal assistance in a certain number of cases for a fixed fee per case. Under such contracts, attorneys may provide legal representation for all criminal cases in a given jurisdiction, as in Scotland, or for a specific category of cases, such as cases involving minors or cases that public defender's offices cannot take because of a conflict of interest. The contracts are for specific periods of time, usually one or two years, after which the firm must promptly designate a replacement firm so as to ensure that legal aid recipients continue to have access to assistance in the area. Any law firm or NGO may apply to represent indigent people in a given jurisdiction. In practice, the legal aid board or the municipality uses bidding procedures to select the contracting law firm on the basis of the law firm's fees, the volume of cases it can handle, and other factors.

The contracts usually contain special clauses guaranteeing the quality of the legal services provided. In 1990 the American Bar Association adopted a regulation requiring that quality control clauses be included in all contracts for free legal assistance in the United States. Similarly, in England the contracts for legal representation of indigent people, negotiated between the Legal Services Commission (formerly the Legal Aid Board) and law firms, should contain certain clauses for quality of services and mechanisms for supervision. In Scotland, in order to qualify for a contract with the Legal Aid Board, a law firm must be registered in advance with the board. To be registered, a law firm must have complied with the standards of the code of professional practice, fulfilling requirements of conduct, files and records maintenance, accountability, and the like.

Legal aid contracting system

Pros:

- degree of control over appointments
- some influence on quality of legal services and accountability
- feasibility of advance planning for future budgets and expenses

Cons:

- greater expense than public defender system
- risk of compromise to vigorous client representation due to dependence on government contracts

4.2.3 Public defender system. Under this system, the legal representation of indigent people is provided by a governmental agency established specifically for this purpose and staffed by full-time lawyers. This system is widely adopted around the world. The first Central or Eastern European country to launch a pilot public defender program was Lithuania in 2000. South Africa introduced a pilot public defender project in 1992, and Scotland launched its pilot public defender program in 1998. In some countries, the public defender system is integrated with the Legal Aid Board, as in South Africa. Legislatures often play a role in supervising the system, as in Scotland, where the activities of the Legal Aid Board are subject to parliamentary oversight. Regardless of the organizational structure or oversight mechanism, ethical rules and the codes of ethics applied to private attorneys usually are binding on the staff of public defender offices as well.

Both the South African and Scottish public defender projects have provided legal services to a large number of indigent defendants. In South Africa, approximately 200 cases were assigned per defender, so that the ten public defenders handled about 2,000 cases during the first year. In Scotland, the number of cases envisaged for the first year per public defender was around 500. Moreover, the experience of South Africa indicates that the average cost per criminal case in the public defender system is significantly lower than the aver-

age cost in the *ex officio* assignment system. Public defender projects must be careful, however, to ensure that the number of cases handled per defender does not exceed a level that would adversely affect the quality of representation and attention to individual clients.

The South African Constitution gives all detained or arrested people the right to consult with a legal practitioner. As a result, the Legal Aid Board has set up a toll-free telephone number at all police stations and prisons to enable detained and arrested people to consult with lawyers. Yet the South African board estimates that it does not have enough funds to provide legal aid to all those who require it. At one point, the South African board was considering establishing a subscription telephone legal advice service to raise sufficient funds to pay for its operation costs, but the scheme was never introduced.

To guard against conflicts of interest that may arise, the American Bar Association has urged U.S. state governments to consider organizing their legal aid services based on a combination of models, and not to rely exclusively on the public defender system.

PUBLIC DEFENDER SYSTEM

Pros:

- legal assistance provided by well-qualified lawyers
- good potential for quality control
- possibility of training and professional development
- lower "maintenance" costs
- greater ease in planning future budgets and tracking expenses
- greater likelihood of keeping statistics and ensuring accountability

Cons:

- heavy caseload for staff attorneys
- risk of taking a routine approach in dealing with similar cases
- perception of public defenders as part of the state's legal apparatus

4.3 Legal aid service mechanisms for civil matters

Legal aid in civil matters often involves a variety of services that may include legal information and referral services, community legal education, counseling and advice for individuals, and mediation services. Such services also include representation in court, public interest litigation on issues affecting many people, and legislative and appellate court advocacy. While sometimes services are provided directly by government agencies, more typically they are provided by NGOs or private attorneys. In many countries, publicly funded services are supplemented with those provided by private charitable organizations. There is a strong and growing emphasis on use of paralegal staff and lay advocates in order to reach as many people as possible.

Ensuring that legal aid and similar social services are provided to the poor, children, victims of violence, and others is a task for an entire community, not legal aid agencies alone. Community organizations are a valuable resource that can be called on to provide advocacy services, emergency housing, food, child care, and counseling, as well as assistance with personal protection orders and the criminal justice process. Such organizations may have particular expertise and knowledge concerning the needs of a client group, such as abused women, the elderly, the disabled, and others. A legal aid society or a lawyer may utilize the resources of these organizations or, if necessary, refer clients to them. In addition, since many legal aid agencies are limited in their actions by the governments that fund them or by a narrowly specialized set of priorities, community organizations can perform a valuable role in identifying and advocating solutions on behalf of the community.

A good example of how organizations connect legal aid to other social services is the New York Legal Aid Society (NYLAS). Established in 1876, NYLAS has changed its role significantly over the years. First launched to provide legal assistance to German immigrants, the organization extended its services to legal consultations to the poor in the early 1900s. Today, NYLAS is one of the largest not-for-profit public interest law firms in the United States. Its staff of 900 lawyers provides much more than legal advice to more than 300,000 individuals with pressing social needs and is an important force for empowering the underprivileged communities in New York City.

There are many models for providing civil legal services, most of which can be grouped into one of three categories: advice offices and "hot lines," staff attorney programs, and private attorney programs.

4.3.1 Advice offices and hot lines. Following World War II, the United Kingdom led the way with the creation of Citizens Advice Bureaux in England, Wales, and Northern Ireland. They were established to provide people with advice and practical assistance on a wide range of problems. Although they were not initially created as legal advice offices, these centers began to provide a substantial amount of advice to people about their rights because so many basic problems, including housing, employment, and family relations, have important legal aspects. The Citizens Advice Bureaux regularly work in collaboration with community legal organizations (see section 4.3.2). Similar organizations called Community Action Programs, which also work closely with local legal services organizations, were established in the 1960s in the United States.

In 1996, the first Citizens Advice Bureaux were established in Poland (Biuro Porad Obywatelskich, or BPO), based on the British model. Currently there are 17 locations (approximately 2,000 operate in the United Kingdom) and plans to establish more offices. BPO activities are supported and coordinated by the Union of Associations of Citizens Advice Bureaux in Warsaw. A similar operation, also modeled after the British Citizens Advice Bureaux, operates in the Czech Republic.

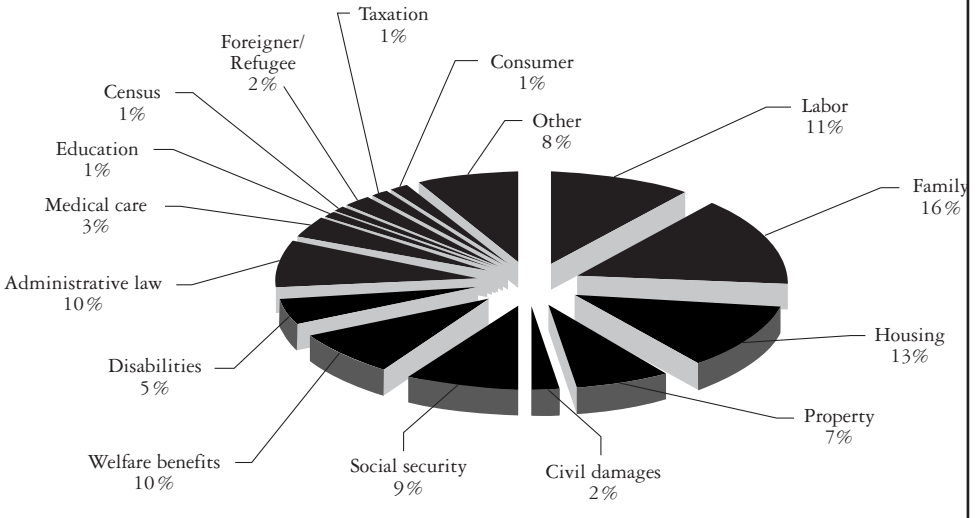
The principal functions of the BPOs include collecting and disseminating information, conducting educational activities, and encouraging community and individual action. For example, BPOs work to inform citizens about services of local and national institutions and NGOs, maintain an updated information system on citizens' rights, and disseminate material and data published by regional governments, other public institutions, and NGOs.

The Polish BPOs work effectively to broaden citizens' awareness by educating individuals about their rights and responsibilities as citizens (for example, explaining housing benefits and procedures). BPOs may also conduct programs or prepare materials that explain certain procedures for asserting individual rights (for example, clarifying rules for submitting official documents or regulations concerning social bene-

fits). BPOs offer citizen advice services to provide support and encouragement to those dealing with issues individually as well as problems common to groups.

The BPO philosophy is that citizens must be fully aware of their rights in order to resolve their legal problems. However, BPO advisers do not make decisions on behalf of their clients; rather, they help clarify a range of possible solutions as well as the consequences

Categories of client matters handled by BPOs during 2000 (based on data from 13 Polish Citizens Advice Bureaux)



For more information, please contact Union of Associations of Citizens Advice Bureaux, Zwiazek Stowarzyszen Biur Porad Obywatelskich, ul. Lwowska 15, VI p, 00-660 Warsaw, Poland; tel: (48 22) 622 55 53; fax: (48 22) 622 55 54; E-mail: zsbpo@zsbpo.org.pl.

of each option. While encouraging the local community to be more active, BPOs also serve the community by equipping individuals with basic knowledge and necessary information. Thus BPOs teach citizens how to solve local problems through social involvement and collaboration. The chart on page 236 illustrates the wide variety of matters handled by thirteen Polish BPOs during 2000.

Legal "hot lines" have emerged as a major component of the civil legal services system over the years, especially in the United States. These organizations offer basic advice and counsel and referral services by telephone. In many cases they also conduct eligibility screening for staff attorney programs (see section 4.3.2). These hot line programs tend to be NGOs operating with funding provided by the government. Under attorneys' supervision, paralegals, law students, or lay volunteers provide advice to clients. In some cases, attorneys give the advice directly. Most advice is limited to one phone call based on the information that the caller provides, without any investigation or agreement to contact third parties. Many hot lines also send written materials by mail. If the caller requires more services, the staff member will make a referral where possible.

Advice offices and hot lines

Pros:

- easy access for many people
- coverage of a wide variety of issues
- offers of advice and practical assistance
- good referrals to other services
- no eligibility limits

Cons:

- limited advice in scope and depth
- no representation in court
- no "systemic" legal advocacy

4.3.2 Staff attorney programs. The primary mechanism for providing civil legal services in the United States is through staff attorney programs. These are private, not-for-profit organizations established for the explicit purpose of providing representation to low-income people on basic issues of family law, housing, employment, government benefits, and consumer and other economic matters. The organizations are often called neighborhood or community legal services, as a reflection of their goal of having close ties to the client communities they serve. Local boards of directors composed of attorneys and clients govern them. Most of the staff attorney programs are supported financially by the federally funded Legal Services Corporation, which imposes strict limits on client eligibility and other limits on the type of work the organizations can do. As a result of substantial changes in the federal program several years ago, a sizable number of organizations decided to forgo the funding from the Legal Services Corporation and rely instead on funding from state governments and other public and private sources.

Staff attorney programs are often organized by specialty, such as housing or family law. The primary work of the organizations is to represent individual clients by providing the type of assistance best suited to solving their problems. This often involves holding brief advice sessions, writing a letter, or making a few telephone calls. Such

Staff attorney programs

Pros:

- strong mechanism for determining local priorities
- visibility in community
- wide range of services
- effective strategic advocacy on major issues
- base for fundraising

Cons:

- less flexibility than private attorney mechanism
- tendency in the start-up phase to have less-experienced staff
- heavy caseloads for individual attorneys

programs focus most of their efforts on providing representation in court or before government agencies, for which the lawyer is committed to seeing the problem through to the end. Many legal services programs also place a great deal of emphasis on advocacy that affects a large number of people. This kind of advocacy may include filing class action lawsuits, handling appeals on significant points of law, drafting legislation, advocating for changes in government regulations, and collaborating with other kinds of organizations working on behalf of the poor.

Organizations similar to U.S. staff attorney programs exist in the United Kingdom, Canada, Australia, and South Africa, among other countries. Funding may be through national governments, local governments, or private donors. The Legal Resources Centre (LRC) in South Africa is an example of an organization that began advocating for civil and political rights during the apartheid era and later shifted its work to encompass economic issues, such as housing and employment, and personal rights issues, including domestic violence. LRC has led the way in demonstrating the value of providing high-quality legal services on civil matters in South Africa, leading to a decision by the Legal Aid Board to approve funding for a network of justice centers that do similar work.

4.3.3 **Private attorney programs.** In a number of countries, private attorneys are compensated under government programs to provide civil legal aid. Until recently the United Kingdom provided the prime example of the traditional form of this model. Under this system, the Legal Aid Board evaluated the request of any person seeking no-cost legal assistance, based on individual income and the type of case involved. Once approved, the person obtained representation from a private attorney in the same way as individuals who paid for their services. The Legal Aid Board then paid the selected attorney a fee. In the United Kingdom the program operated as an entitlement, meaning that any financially eligible person who had a qualifying legal problem could receive legal aid. This provided widespread access to legal assistance so long as the problem was one that private lawyers traditionally handled. Many Commonwealth countries such as South Africa have modeled their systems after the U.K. approach, which is often referred to as "Judicare."

In April 2000 the U.K. Legal Aid Board was replaced with a Legal Services Commission, which created a new civil legal aid scheme. The new system uses a contracting model similar to that described above for criminal cases. For civil cases, the Community Legal Service (CLS) provides no-cost legal representation to people who qualify for it based on

their financial circumstances and the nature of their case. The CLS also assists eligible clients with a variety of legal issues, including divorce and other family law matters, advice on welfare benefits, problems with credit or debt, landlord-tenant disputes, and immigration and nationality issues. Other CLS matters may include challenges to decisions of governmental and other public bodies and challenges to police misconduct.

In addition to government-funded legal aid programs, private attorneys provide civil legal assistance to indigent clients on a voluntary basis. In the United States some legal aid funds are used to pay not-for-profit legal organizations to screen clients and refer them to attorneys who handle *pro bono* cases. Individual states such as Wisconsin and Pennsylvania operate variations of Judicare programs. Such programs also recruit volunteer attorneys, provide them with training on special legal issues affecting the poor, and conduct certain activities to ensure the quality of services. This structured approach has led to a significant expansion of volunteer services. At the same time, many bar associations and courts responsible for regulating the conduct of attorneys have strongly encouraged attorneys to offer a certain amount of *pro bono* services, which has also resulted in more legal services being provided on a voluntary basis.

Private attorney programs/Judicare system

Pros:

- access to skilled, experienced private attorneys
- encouragement of support by the legal community for legal services for the poor
- more choices for clients in obtaining representation

Cons:

- potential to be very costly
- difficulty of ensuring quality of services
- tendency to emphasize litigation over other methods of dispute resolution
- traditionally does not allow for community priority setting

4.4 Legal clinics and Street Law™ programs

In addition to the main mechanisms for disseminating legal aid services, some countries support other approaches to providing legal aid to indigents, such as legal clinics and Street Law programs. Although no country has organized its system exclusively on the basis of these additional approaches, both can serve as supplementary means for providing legal aid.

Legal clinics are a component of legal education through which law students, under the supervision of a law professor or a practicing lawyer or both, work on real cases with individual clients. Legal clinics serve two primary purposes: to train students in fundamental lawyering skills by exposing them to practical experience, and to provide competent advice to indigent people who are otherwise unable to consult with a lawyer.

South Africa has had an interesting experience in integrating legal clinics into the legal aid system. Like many Central and Eastern European countries, South African law graduates who wish to become lawyers must complete internships with private lawyers after graduating from law school. Also like many Central and Eastern European countries, in the past there was a shortage of placement for such internships. In 1993 this internship requirement was changed to allow law graduates to complete a community service internship with a law clinic or a public interest law firm as an alternative to an internship with a private lawyer. This greatly increased the number of placements available to new graduates. Participating clinics must employ a practicing attorney with sufficient experience to supervise the work of the graduates. These clinics are funded directly by the Legal Aid Board and act as public defender offices for the district courts.

Although legal clinics are important in training students in critical lawyering skills and exposing them to legal aid work, they cannot be more than a partial solution to the problem of access to justice. With the exception of the community service law clinics in South Africa, these clinics are generally not an efficient mechanism for providing legal representation, since they must balance the needs of legal aid clients with the program's educational goals. For further discussion of university-sponsored legal clinics, see chapter 7, "Clinical Legal Education: Forming the Next Generation of Lawyers."

Another means for promoting access to justice for indigents is through Street Law programs. Street Law is a form of education for secondary school students and other

audiences focused on explaining how the legal system works and providing some basic knowledge on a variety of legal issues that may affect them in everyday life. Street Law programs often function as university-based clinics in which law student instructors are trained to educate their audiences on issues related to criminal law, juvenile law, housing, welfare, and other matters. At the Warsaw University Faculty of Law, for example, Street Law program participants prepare written materials on citizens' rights, which are distributed to many legal aid clients. Street Law programs are a valuable complement to law clinics, as they educate participants about their individual rights and how to obtain legal assistance. See chapter 8, "Public Education about Human Rights, Law, and Democracy: The Street Law™ Model."

4.5 Funding

Generally, legal aid systems are funded by the national budget. In federal systems, the obligation to provide funding to legal aid systems is shared between the central and the local governments. As government funding may often be insufficient, legal aid programs in many countries must seek funding from alternative sources. One important model for funding legal aid systems is the Interest on Lawyers' Trust Accounts (IOLTA) program. IOLTA programs are now in place in Australia, Canada, New Zealand, and the United States. Through IOLTA, attorneys deposit funds, held in escrow for clients, into interest-bearing bank accounts. The interest generated by IOLTA accounts is given to foundations that provide legal services for indigent clients. Currently all of the IOLTA programs in the United States together generate approximately USD 100 million each year to provide basic legal services to 1.7 million low-income Americans. In South Africa the equivalent of IOLTA funds is used to support legal education and training and accredited university legal aid clinics.

Some states in the United States have adopted other approaches to fund their legal aid systems. In Alabama, for example, a special Fair Trial Tax Fund has been established to cover the costs of representation for indigent defendants. In Arkansas, a USD 5 fee is imposed in all civil and criminal cases in addition to funding from the state and county for legal aid in both criminal and civil cases. In Kentucky, all people who receive legal aid in criminal cases are required to pay a USD 40 administrative fee, though this fee may be waived for people who are unable to afford it or for people who are detained pending trial. Furthermore, all

COMPARATIVE CIVIL LEGAL SERVICES INVESTMENTS

Country	*Total government investment in civil legal services (in millions of USD)*	*Per capita civil legal services investment (USD)*	*Civil legal services investment per USD 10,000 of GNP*
United States (1998)	USD 600 (pop. = 270 million)	USD 2.25	USD 0.70
Germany (1996)	USD 390 (pop. = 80 million)	USD 4.86	USD 1.90
France (1994)	USD 270 (pop. = 59 million)	USD 4.50	USD 1.90
Netherlands (1998)	USD 150 (pop. = 15.5 million)	USD 9.70	USD 4.20
England (1999)	USD 1,350 (pop.= 53 million	USD 26.00	USD 12.00

Adapted from National Equal Justice Library, International Legal Aid Collection (visited 13 June 2001), <http://www.equaljusticeupdate.org/comparativestatistics.htm>, cited in Johnson Jr., Justice E. "Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies," 24 *Fordham Int'l L.J.* S83 (2000) S95.

people convicted of drunken driving are required to pay a service fee of USD 200, USD 50 of which goes to a legal aid fund. In Montana, funds for legal aid in criminal cases come from a portion of the motor vehicle registration fee.

5. PROMOTING EFFECTIVE LEGAL REPRESENTATION FOR ALL

Securing effective legal service to the underrepresented remains a critical issue

for Central and Eastern European countries. However, there are reasons for optimism about the future of legal aid in the region. In many ways, the campaign to establish better access to standards of justice and create a working legal aid system may not be quite as daunting and difficult as first imagined.

5.1 Strengthening "fair trial" standards through strategic litigation

Currently, most Central and Eastern European criminal procedure codes do not explicitly recognize indigence as a ground for granting free legal assistance. Although criminal procedure codes have established mechanisms for assigning counsel to defendants in certain categories of cases, a vast number of defendants facing possible imprisonment do not fall into any of these categories and thus have no guaranteed right to free legal assistance.

This situation seems overtly contrary to international human rights standards. Recent case law of the European Court of Human Rights indicates that the failure to provide free legal assistance to defendants facing imprisonment may itself constitute a violation of the right to a fair trial. By bringing alleged violations of a defendant's right to free legal assistance before domestic courts and by using arguments based on ECtHR case law, as well as litigating cases before the European Court, advocates may help promote domestic legislation that complies with the law of the European Convention on Human Rights, thus improving domestic access to justice standards. See also chapter 3, "Strategic Litigation: Bringing Lawsuits in the Public Interest."

5.2 Determining needs through surveys and pilot projects

In most of the Central and Eastern European countries, statistics currently available are insufficient to reveal the actual scope of problems involving access to justice. This makes it difficult not only to assess the current needs of indigent defendants but also to decide on the most appropriate measures for reforming the system. Surveys and pilot projects can be useful tools for determining practical needs. Surveys and pilot projects can also play an important role for lobbying legislators and campaigning more widely for legal reform. In South Africa, surveys and pilot projects played an extremely im-

portant role in reforming the legal aid system.

5.2.1 Surveys. Surveys can be a powerful tool for reforming legal aid systems. Scientifically devised studies with carefully compiled empirical results can help persuade a government to support a new legal aid system and can offer the government solid empirical support should its decision to overhaul the legal aid system face strong criticism. NGOs in both Poland and Bulgaria have undertaken ambitious system-wide surveys designed to reveal flaws in the current system and point to potential remedies.

BULGARIAN PRISON SURVEY ON LEGAL REPRESENTATION

In 1998 the Bulgarian Helsinki Committee launched a project to establish a Legal Aid Commission. The project included a study of the current state of legal assistance and its effect on the criminal process in Bulgaria. To conduct the survey, the committee distributed a standardized questionnaire in January and February 1999 among 993 male and female prisoners constituting a representative sample of all detainees. The questionnaire was distributed in the form of interviews conducted by psychologists in the system of the Penitentiary Administration on behalf of the Bulgarian Helsinki Committee.

Table 1
Participation of defense counsel at different stages of criminal proceedings
(Percentage of respondents answering "no" to question of whether they had a lawyer)

During the preliminary investigation	54
Before the first instance court	40
During the appeal (excluding answers "there was no appeal")	43

Table 2
Incidence of torture/ill-treatment during preliminary proceedings
(Percentage of respondents answering "yes" to question of whether physical force was used against them)

	With a lawyer present	*Without a lawyer present*
During arrest	46	56
Inside police station	48	57
During preliminary investigation	29	42

Table 3
Interethnic differences with respect to counsel's participation in criminal proceedings
(Percentage of respondents answering "no" to question of whether they had a lawyer in the different stages of criminal proceedings)

	Bulgarians	*Turks*	*Roma*
During the preliminary investigation	48	58	64
Before the first instance court	35	48	48
During the appeal (excluding answers "there was no appeal")	36	51	51

For more information, please contact the Bulgarian Helsinki Committee, 7 Varbitsa St., Sofia 1504, Bulgaria; tel/fax: (359 2) 943 4876, (359 2) 465 525, or (359 2) 467 501; E-mail: bhc@bghelsinki.org; Web: www.bghelsinki.org.

5.2.2 Pilot projects. In some countries, advocates of legal aid reform are initiating pilot projects to test and analyze various approaches to reform. In fact, many pilot projects have proved successful in initiating legal reform because they allow communities to experience the benefits of new institutions at an earlier stage

than they would otherwise, providing the opportunity for proponents to mobilize public and political support. At the same time, pilot projects may serve as "legislative laboratories" for exploring the possible disadvantages of a particular program and thereby minimizing the potential negative effects.

Lithuanian legal aid pilot project

In April 1999 the Free Legal Assistance Program was launched in Lithuania to create a system for providing legal assistance at no cost to indigent people. The first step of the project was to evaluate the existing laws on legal assistance and the need for legislative reform. Then an assessment of the current situation in Lithuania was conducted, based on a survey similar to the one conducted by the Bulgarian Helsinki Committee. The third stage of the project was the establishment of a Public Attorney Office.

On 28 March 2000 the Lithuanian Parliament adopted the Law on State Guaranteed Legal Aid. The law entered into force on 1 January 2001. Under the new law, people whose annual income and property are below the limits set by the Government of Lithuania and people who are eligible for free legal assistance under international law are entitled to free legal representation. Legal aid is provided in criminal, civil, and administrative cases when required by the interests of justice. The state covers the cost of legal assistance on a sliding scale, depending on the person's income.

Free legal service is provided by private attorneys after a referral by a local government office. Public institutions such as the Public Attorney Office or a legal clinic may also provide legal assistance in a procedure approved by the Ministry of Justice. These public institutions are funded by donations in accordance with the law on charity and donations and by in-kind or cash contributions from state and local governments. The funding available for the first year of operation of the new legal aid system is expected to be around 8 million Litas, or USD 200,000. It is likely that additional funds will be necessary to implement the program on a permanent basis.

A pilot Public Attorney Office supported by the Open Society Fund–Lithuania and the Constitutional and Legal Policy Institute was launched in March 2000 in

the city of Siauliai, with five staff attorneys. The results of the first eight months of operation of the Siauliai Public Attorney Office were extremely encouraging. At the trial stage, the five staff attorneys handled approximately 50 percent of cases where legal representation is required. The other 50 percent were handled by thirty-four private attorneys appointed *ex officio*. During the preliminary investigation, the Siauliai Public Attorney Office represented approximately 80 percent of the parties requiring legal defense.

The Public Attorney Office is a new concept for Lithuanian law and an institution without precedent in the legal traditions of Central and Eastern Europe. Despite its unfamiliarity to many, it seems that the Public Attorney Office quickly has become an indispensable part of the law enforcement system in Siauliai. According to interviews with judges, prosecutors, and police investigators in Siauliai, conducted after the first eight months of the program, most of them responded that they could not imagine returning to the old system and were looking forward to further program developments.

For more information, please contact Open Society Fund–Lithuania, Didzioji St. 5, Vilnius LT-2001, Lithuania; tel: (370 2) 685 511; fax: (370 2) 685 512; E-mail: fondas@osf.lt; Web: www.osf.lt/.

5.3 Toward a new system of legal aid

Effective implementation of the right to free legal assistance for indigent criminal defendants, as required by international human rights treaties, will likely increase substantially the number of people who rely on a system of state-assigned counsels. Furthermore, the right to legal assistance is a right to *effective* legal assistance; compliance with international human rights standards will require adoption of some mechanisms that will guarantee efficiency and quality of services provided by appointed lawyers.

The existing procedures for appointing counsel in cases of mandatory defense may be inadequate to handle the increased workload or to provide sufficient control over the quality of the legal services. Adoption of new forms of organizing the provision of legal aid probably will be an inevitable consequence of the overall

changes in the legal system. Choices concerning the most appropriate forms of organization and management of the legal aid system and how to finance such a system will depend on the particular circumstances in a country. There are some common questions, however, that many activists for legal aid reform will encounter.

5.3.1 Establishing indigence. One issue that is central to the existence and continued support of legal services programs is the ability of organizations to provide objective documentation of clients' indigence. In the austere economic climate of the region, it will be difficult for a legal aid system to support its existence at government expense if it is vulnerable to claims that it squanders its labor and other resources on clients who are not needy. To that end, legal aid programs should consider how to preempt such attacks by requiring some indication of the client's income (1) demonstrating a likelihood that the client is indeed indigent, and (2) reflecting an effort by the program to ensure that it provides its services to those who need them most.

5.3.2 Choosing a model. Establishing a new or modified system of organization of legal aid will require the coordinated efforts of different organizations: the Ministry of Justice, the organized bar, the Ministry of Finance or relevant financial state agency, and nongovernmental organizations. The views of these actors may differ considerably, but the success of any legal aid reform will depend on the involvement of all of them.

In order to make an informed, balanced determination regarding which legal aid system may be the most appropriate for a given community, decision makers may wish to consider the following issues:

- the expected number of cases that the legal aid system will manage per year
- the likely budget for the legal aid system
- the type of organizational forms that will be most effective given the particular needs and budget
- existing legal traditions and expectations of citizens regarding access to justice
- legislative amendments necessary to make the new system workable
- procedures for accountability and control over the legal aid system

In countries where most people traditionally have not enjoyed the benefits and protections of the laws, whether because of poverty or because of the arbitrary exercise of power, law has little meaning.

Legal services can empower disaffected people and enhance the position and impact of law on society by asserting the benefits of law on behalf of individual clients. Legal aid lawyers must work diligently for their clients by clearly explaining the laws and their protections and by putting pressure on legal, administrative, and judicial systems to recognize and safeguard individual rights and freedoms.

No amount of legal aid by itself will suffice to bridge the gap between society and legal structures. But it can make a dramatic contribution to reducing the widespread social alienation that breeds contempt for government and law.

Promoting access to justice in Central and Eastern Europe

In 2000, four NGOs active in Eastern Europe—the Bulgarian Helsinki Committee, the Helsinki Foundation for Human Rights in Poland, INTERIGHTS, and the Public Interest Law Initiative in Transitional Societies (PILI) at Columbia Law School—joined forces to launch a region-wide project to promote legal aid reform and access to justice. In two pilot countries, Poland and Bulgaria, the project partners are undertaking empirical studies and holding national forums of stakeholders, to be followed by a regional conference. As a result of the project's activities, a coalition of human rights lawyers, judges, bar association leaders, and justice ministry officials devoted to strengthening legal aid is beginning to emerge in the region.

As part of the access to justice project and in cooperation with the Association of the Bar of the City of New York, PILI administers a Web-based forum on access to justice that offers several distinct features for public interest lawyers, scholars, and activists from around the world. The Access to Justice Web Forum consists of a resource bank—a virtual, decentralized archive where materials can be freely posted and retrieved—and an on-line discussion section, where members can exchange information about new developments and consult one another regarding issues related to legal aid and other aspects of access to justice.

For more information about the project on access to justice in Central and Eastern Europe, please contact Public Interest Law Initiative, Columbia Law School, 435 West 116th St., MC 3525, New York, NY 10027, USA; tel: (1 212) 851 1060; fax: (1 212) 851 1064; E-mail: pili@law.columbia.edu; Web: www.pili.org. To enter the Access to Justice Web Forum, please go to www.pili.org/access.

RESOURCES

Readings

Access to Justice Web Forum: <www.pili.org/access>.

An electronic meeting place consisting of a resource bank, where materials related to access to justice issues can be freely posted and retrieved. And an on-line discussion section where members can exchange information about new developments.

"Access to Legal Aid for Indigent Criminal Defendants in Central and Eastern Europe," 5/1–2 *Parker School Journal of East European Law*, Columbia University (1998), New York.

Contains five country reports on access to legal aid in criminal cases in Central and Eastern Europe, a paper on the jurisprudence of the European Court of Human Rights on access to justice, and a paper overview of the obstacles to access to justice in a broader international context. This issue is available on request from the Public Interest Law Initiative.

Basic Principles on the Role of Lawyers, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. <http://www.pili.org/library/access/basic_principles_on_the_role_of_lawyers.htm> (last accessed on July 26, 2001).

Berggren, B., and P. Pigou, *Access to Justice in South Africa: Legal Aid Transformation and the Paralegal Movement*, The Community Agency for Social Enquiry, 2000, Johannesburg. <http://www.case.org.za/htm/legal3.htm> (last accessed on July 26, 2001).

Brayne, H., "Is Legal Aid a Human Right?," *The Law Society Gazette* 25 (January 1989).
An article on the case law of the European Court of Human Rights regarding access to legal aid.

Bulgarian Helsinki Committee, *Legal Defense of Defendants in the Criminal Process and Its Effect*, 1999, Sofia. <http://www.pili.org/library/access/bhc_survey.html> (last accessed on July 26, 2001).

Analysis of the results of a survey of 1,000 detained people, conducted to establish the proportion of defendants convicted without a lawyer, the reasons for the absence of a lawyer, and how this absence reflects other factors in the criminal justice process.

Council of Europe, Committee of Ministers, Resolution (78) 8 on Legal Aid and Advice, adopted by the Committee of Ministers on 2 March 1978. <http://www.pili.org/library/access/resolution_78_8.htm> (last accessed on July 26, 2001).

Eleventh Annual Philip D. Reed Memorial Issue Symposium, "Partnership across Borders: A Global Forum on Access to Justice," 24 *Fordham Int'l L.J.* (2000), New York.

Summary of the proceedings of the conference, organized by the Association of the Bar of the City of New York on April 6–8, 2000, in New York. The papers presented at this conference focus on access to justice in civil cases in several regions around the world.

Equal Justice Network: <http://www.equaljustice.org>.

An on-line information source and contact mechanism for lawyers and other advocates involved in efforts to provide civil legal assistance to low-income people in the United States.

Genn, H., *Paths to Justice: What People Do and Think about Going to Law*, Hart Publishing, 1999, Oxford, United Kingdom.

A survey of public attitudes toward the civil justice system. Identifies structural factors, such as costs and procedures or lack of knowledge, that prevent access to the legal system.

Huls, N., *Developments in the Netherlands: From Public Defenders to Financed Legal Aid*, a conference paper for the International Legal Aid Conference, Edinburgh, June 1997. <http://www.pili.org/library/access/reflections_on_the_future.htm> (last accessed on July 26, 2001).

A paper, presented at an International Legal Aid Conference held in Edinburgh, analyzing the system of provision of legal aid in the Netherlands.

Johnson Jr., Justice E., "Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies," 24 *Fordham Int'l L.J.*, S83–S111 (2000), New York.

Lord Chancellor's Department, *Striking the Balance: The Future of Legal Aid in England and Wales*, presented to Parliament by the Lord High Chancellor in June 1996. <http://www.pili.org/library/access/striking_the_balance.htm> (last accessed on July 26, 2001).

Analysis of the laws and practices existing at the time of publication, and a summary of the suggested changes in the legal aid system of England and Wales.

Manning, D., *The Role of Legal Services Organizations in Attacking Poverty*, background paper for World Bank World Development Report 2000/1.

McQuoid-Mason, D., "Access to Justice in South Africa," 17 *Windsor Yearbook of Access to Justice*, 230–251 (1999).

Discusses the structure and functioning of the legal aid system in South Africa.

National Legal Aid and Defender Association and Standing Committee on Legal Aid and Indigent Defendants, American Bar Association, *Legal Aid Handbook: How to*

Operate and Organize a Legal Aid Office, American Bar Center, 1971, Chicago.

Public Interest Law Initiative, Access to Justice Library: <http://www.pili.org/library/access/index.html>.

Contains articles about legal aid developments in many countries around the world, documents of international organizations concerning access to justice, and practical surveys on the efficiency and quality of legal aid.

Regan, F., A. Paterson, T. Goriely, and D. Fleming, eds., *The Transformation of Legal Aid, Comparative and Historical Studies*, Oxford University Press, 1999, New York.

Contains essays analyzing the development of legal aid services after World War II in several industrialized countries, comparative analyses of some contemporary legal aid systems, and essays analyzing issues that are likely to influence future developments in legal aid.

Scott, R., *Initiatives in Scotland*, a conference paper for the International Legal Aid Conference, Edinburgh, June 1997.

A paper, presented at an International Legal Aid Conference held in Edinburgh, summarizing recent amendments regarding the legal aid system in Scotland.

Sesickas, L., "Access to Justice in Lithuania," 24 *Fordham Int'l L.J.*, S159–S182 (2000), New York.

Discusses the laws affecting access to justice for the indigent criminal defendants in Lithuania, and recent legislative developments that are likely to bring a change in the provision of legal aid in Lithuania.

Spangenberg, R., and M. Beeman, "Indigent Defense System in the United States," 58/1 *Law and Contemporary Problems, School of Law, Duke University* (Winter 1995). <http://www.pili.org/library/access/law_and_contemporary_problems.htm> (last accessed on July 26, 2001).

Analyzes the models for provision of legal aid adopted in the United States and discusses possible mechanisms for funding of legal aid.

Trustees of Boston University, "Case Comment: Philips v. Washington Legal Foundation: The Future of IOLTA," 79 *B.U.L. Rev.* 1277 (1999).

Focuses on functioning of the IOLTA (Interest on Lawyers' Trust Accounts) system in the United States.

World Bank, *Access to Justice*, Public Sector, the World Bank. <http://www1.worldbank.org/publicsector/legal/access.htm> (last accessed on July 26, 2001).

A paper on the evolution of the concept of access to justice and its place in the context of reforming judicial institutions.

Young, R., and D. Wall, eds., *Access to Criminal Justice: Legal Aid, Lawyers and Defence of Liberty*, Blackstone Press, 1998, London.

A book, consisting of writings by sixteen different authors, that discusses the limits and the potential of legal aid for achieving criminal justice for defendants in the United Kingdom.

Organizations

Bulgarian Helsinki Committee
7 Varbitsa Street
Sofia 1504
Bulgaria
Tel/Fax: (359 2) 943 4876, (359 2) 465 525, or (359 2) 467 501
E-mail: bhc@bghelsinki.org
Web: www.bghelsinki.org

Promotes respect for human rights and stimulates legislative reform to bring Bulgarian legislation in line with international human rights standards. The Bulgarian Helsinki Committee is a partner in the project on Access to Justice in Eastern Europe, which seeks to promote legal aid reform.

Equal Justice Update/National Equal Justice Library
Washington College of Law
American University
4801 Massachusetts Avenue, NW
Washington, DC 20016, USA
Tel: (1 202) 274 4320
Fax: (1 202) 274 4365
E-mail: nejl@wcl.american.edu
Web: www.equaljusticeupdate.org

Contains materials about legal aid and related issues in the United States and around the world.

Helsinki Foundation for Human Rights in Poland
ul. Bracka 18 m. 62
00-028 Warsaw
Tel: (48 22) 828 10 08
Fax: (48 22) 828 69 96
E-mail: mailto:hfhr@hfhrpol.waw.pl
Web: www.hfhrpol.waw.pl

Promotes respect for human rights and encourages legislative reform of international human rights standards. The Helsinki Foundation for Human Rights in Poland is a partner in the project on access to justice in Eastern Europe, which seeks to promote legal aid reform.

INTERIGHTS
Lancaster House
33 Islington High Street
London N1 9LH
United Kingdom
Tel: (44 207) 278 3230
Fax: (44 207) 278 4334
E-mail: ir@interights.org
Web: www.interights.org

Supports and promotes the development of legal protection for human rights and freedoms worldwide through the effective use of international and comparative human rights law. INTERIGHTS is a partner in the project on access to justice in Eastern Europe, which seeks to promote legal aid reform.

Legal Aid Board in South Africa
Joubert Street
Sunnyside
Private Bag X163
Pretoria 0001
South Africa
Tel: (27 12) 481 2700
Fax: (27 12) 341 8747

Legal Services Commission Board of England and Wales
Legal Services Research Centre
85 Gray's Inn Road,
London WC1X 8TX
United Kingdom
Tel: (44 207) 759 0000
Web: www.legal-aid.gov.uk

An executive nondepartmental public body created under the Access to Justice Act of 1999 to replace the Legal Aid Board in England and Wales. It is responsible for the development and administration of the criminal and the civil legal aid schemes in England and Wales.

Lord Chancellor's Department of England and Wales
Selborne House
54–60 Victoria Street
London SW1E 6QW
United Kingdom
Tel: (44 207) 210 8500
E-mail: general.queries@lcdhq.gsi.gov.uk
Web: www.lcd.gov.uk/index.htm

The Lord Chancellor's main departmental role is to secure the efficient administration of justice in England and Wales. The Web page on access to justice contains laws and regulations on legal aid in England and Wales.

Zwiazek Stowarzyszen Biur Porad Obywatelskich
(Union of Associations of Citizens Advice Bureaux)
ul. Lwowska 15, VI p
00-660 Warsaw
Poland
Tel: (48 22) 622 55 53
Fax: (48 22) 622 55 54
E-mail: zsbpo@zsbpo.org.pl

Network of offices that collect and disseminate information, conduct educational activities, and encourage community and individual action. Similar programs exist in Armenia, the Czech Republic, and Ukraine.

Seven

Clinical Legal Education: Forming the Next Generation of Lawyers

This chapter explains:

- the concept, history, and forms of clinical legal education
- benefits to society from clinical legal education
- educational goals of clinical legal education
- clinical legal education curriculum and teaching methodology
- strategies for supervision and for evaluation and feedback
- how legal clinics can serve the underrepresented in society
- how to establish a clinical legal education program
- issues to consider in setting up and operating a legal clinic
- how one Central European university runs its legal clinic

1. Concept, history, and forms of clinical legal education

1.1 What is clinical legal education?

Entering the workforce as a new lawyer can be a daunting prospect for any law graduate in any country. From society's perspective, it can be risky for society to place responsibility for protecting the rule of law in the hands of untrained lawyers. Although law school education immerses students in legal principles, laws, codes, and regulations, applying this knowledge correctly and confidently requires an entirely different set of skills from those required to excel in classes and examinations.

Clinical legal education is an interactive method of teaching law students the legal skills they will need in order to become competent, conscientious, and

ethical lawyers. Most consider clinical legal education to have two main purposes. One primary goal is to teach practice skills and professional responsibility to law students, generally by having them represent real clients under the watchful eye of professors who supervise the students' work. The other main goal is to provide legal services to meet the needs of the poor and underrepresented. In the process of addressing those needs, students must consider the practical, ethical, social, and moral considerations concerning law and the legal process. The relative significance of these objectives will depend on the country and the environment in which the clinical legal education program operates.

Clinical legal education is different from the traditional method of legal education. In traditional law school teaching methodology, professors lecture law students about legal principles, laws, codes, and regulations. In legal clinics, students usually represent real clients while being supervised by professors who generally are or have been practitioners themselves. These instructors teach the students practice skills such as how to conduct interviews, counsel clients, conduct negotiations, and advocate ethically on behalf of their clients.

Participation in legal clinics helps students learn about law through application, practice, and reflection. Clinic students learn how to listen to and communicate effectively with clients, witnesses, experts, adversaries, prosecutors, judges, and other players in the legal process. Their research and writing skills are enhanced, and students develop critical thinking skills and a contextual understanding of the legal process.

Clinic teachers prepare the students for working with real clients in a variety of ways. Typically, there is a classroom component in which interactive teaching methods are used to teach the students core skills including interviewing, client counseling, case analysis, negotiation, legal analysis and writing, oral advocacy, and professional responsibility. The classroom component may also focus on the substantive area of law that is the subject of the client representation. A disability rights clinic, for example, might have a classroom component that includes several sessions devoted to learning about the rules and regulations applicable to people seeking government assistance.

In addition to the classroom component, students have many opportunities to consult with their supervising professor in order to prepare for real interviews, engage in case analysis, anticipate problem areas, and brainstorm possible remedies. When students engage in actual

advocacy on behalf of a real client, their supervisor is available to provide expertise. Feedback is an essential part of the learning process.

Real cases, live clients: Clinical experience raises issues faced by practicing lawyers

"What should I do if my client asks me to do something that is not in her best interest?" asks Anna, a student who has been in the refugee law clinic for the past year, of her supervising clinical professor. "How do I help my client if she believes that my help will put her in a position she considers contrary to her interests?"

"How did Anna know what questions to ask or how to act?" asks Barbara, a new student in the refugee law clinic, after her first client interview. "How did she know the refugee law that applies to this situation?"

Barbara and Anna have just interviewed Wassal, a woman applying for refugee status on behalf of her entire family of five: herself; her husband, Usuf; and their three children, ages three, four, and seven years. Wassal and her family fled their country soon after a civil war erupted there. Her husband was supporting the opposition party. After the war started, the family was threatened several times by pro-government troops. Wassal came alone with her children to the law school refugee clinic, because Usuf was too busy that day to accompany them.

While interviewing Wassal, Anna noticed that the woman and her children had some bruises and scars on their arms, legs, and faces. Anna suspected that they had been abused and asked Wassal about the bruises. Initially, Wassal refused to explain the origin of her wounds, but later she admitted that Usuf beats them when he is in a bad mood. Wassal asked Anna not to tell anybody about this. Usuf had told her that if she complains about being beaten, she will never obtain refugee status and will be deported back to their country, where the government forces will kill her.

Anna explained to Wassal that the law is favorable to her in her situation. Wassal can apply on her own for refugee status on behalf of herself and the children, and her chances of success will be no different than if the application is on behalf of the entire family. Anna gave Wassal the addresses of some humanitarian organizations that can

provide food and temporary shelter for her and her children while her status is being resolved. Anna further explained to Wassal that where she is living now, beating family members is a serious crime. Students from the criminal law clinic can help her to initiate criminal proceedings against Usuf. If she wants to get a divorce, the students from the family law clinic can explain the law to her and can assist her in the proceedings.

Wassal said she would agree to start the refugee proceedings for herself and her children if the clinic would also take the refugee application of Usuf. She said she would think about filing a criminal complaint and starting divorce proceedings and may contact the clinic later.

Applying the law in this case is not difficult for Anna. She has spent nearly a year in the refugee clinic and worked on several complicated refugee cases. The real problem for her is how to solve the ethical questions she encountered: How should she react in this situation? Was she correct to ask Wassal about the bruises? Was she correct to advise her to file a criminal complaint and to seek a divorce? Should the clinic accept the refugee application of Usuf? Anna certainly wants to discuss these questions with the clinical professor and with the rest of the class.

For Barbara, the interview was very difficult. She was unsure which questions to ask and was uncertain about the law. She never would have thought about the ethical questions that Anna has raised.

While their other law school classes teach Anna and Barbara what the law is, only in the clinic will they learn and practice the skills needed to be competent attorneys. In the clinic they will develop the critical thinking needed to be able to act conscientiously and ethically on behalf of clients.

A year ago Anna might not have recognized these issues of ethics and professionalism. Like Barbara, her focus would have been on learning the basic skills of lawyering, such as interviewing, case analysis, legal research, and client counseling. She would have prepared for her first client interview in the classroom by learning the goals of interviewing and perhaps even role-playing a simulated interview, and by meeting with her supervising clinical teacher prior to the interview to discuss the questions she would be asking the client. Her preparation would have included some preliminary research on asylum law. She would have learned that her supervisor or

another clinic student would be present with her at the interview, and that she would receive feedback after the interview on what she did well and what she could have done differently.

A year in the clinic not only has taught Anna the skills of lawyering, but has given her the confidence of knowing that she understands her responsibilities to the client, the court, and the profession. Meeting clients from diverse social and cultural backgrounds has helped Anna better understand cultural and ethnic differences. Applying the law to real people in real situations made her think about whether these laws offer fair and just solutions to the problems they are designed to solve. She has also become more sensitive to social issues. Barbara looks forward to developing the same confidence and is excited to know that this will occur within the context of representing underserved communities.

1.2 History of clinical legal education

Clinical legal education emerged out of a recognition that while a traditional academic curriculum could teach legal principles, it took practical experience to know how to apply those principles correctly and with confidence. The legal clinic concept was first discussed at the turn of the twentieth century by two professors as a variant of the medical clinic model. Russian professor Alexander I. Lyublinsky in 1901, quoting an article in a German journal, and American professor William Rowe, in a 1917 article, each wrote about the concept of a "legal clinic." Both professors associated it with the medical profession's tradition of requiring medical students to train in functioning clinics ministering to real patients under the supervision of experienced physicians.

This call for a clinical component to legal education was not an attempt to replicate the apprenticeship system that already existed in many countries, in which students worked outside the law school under the supervision of an experienced practitioner. Instead, it was a call for a new type of education that would offer students the opportunity to experience the realities of legal practice and the context in which laws develop, within the structured laboratory of legal education.

Although some legal clinics were operating in the United States in the early to mid-twentieth century, the clinical legal education concept did not take hold

in U.S. law schools on a large scale until the 1960s. Law schools in Russia and Central and Eastern Europe seriously began to consider clinical legal education in the 1990s. One reason for the development of clinical legal education in the 1960s was the general societal focus at that time on civil rights and an antipoverty agenda. Law students were demanding a "relevant" legal education, one that would give them the opportunity to learn how to address the unmet legal needs of poor people in the communities in which they were studying law. The Ford Foundation saw the value of clinical legal education and funded clinics in their initial phases through the Council on Legal Education for Professional Responsibility (CLEPR). CLEPR grants enabled legal clinics to flourish, and once law faculties, students, and administrators saw the virtues of clinical legal education, law schools began to fund them from their general budgets.

Over the past three decades, law clinics in U.S. law schools have evolved from an elective component within a handful of curricula into an integral part of legal education. Most U.S. law schools have clinics, clinical law professors generally have some kind of long-term status within the law school, and students earn academic credit for their participation.

Parallel to these developments, clinical law school programs have developed in South Africa, the United Kingdom, and other Commonwealth countries. Countries in Latin America, Asia, and Africa have also developed clinical programs designed to meet their societies' dual needs for improved legal representation of those who cannot afford to pay for legal services and for more practically oriented legal education. For example, in South Africa in 1983, there were only two university legal aid clinics; by 1992, sixteen of the twenty-one law schools had legal aid clinics. Meanwhile, in Central and Eastern Europe and Russia, the clinical movement has spread from several experimental programs in the mid-1990s to more than sixty law schools in 2001.

Clinical legal education is so well entrenched in some countries that there are associations of clinical teachers which meet on a regular basis to discuss many of the issues this chapter raises. In the United States there is the clinical section of the Association of American Law Schools (AALS), the Clinical Legal Education Association (CLEA), and the Society of American Law Teachers (SALT). In the United Kingdom there is the Clinical

Legal Education Organization (CLEO), and in South Africa the Association of University Legal Aid Institutions. In addition, the Global Alliance for Justice Education (GAJE) was started in 1996 to promote socially relevant legal education by forming an internationally active network for the exchange of information and ideas on justice education. The inaugural GAJE international conference was held in India in December 1999, with the second conference scheduled for December 2001 in South Africa.

1.3 Forms of clinical legal education

Clinical legal education may take a variety of forms. Selecting the most appropriate type of program to establish will depend on a number of factors, including the degree of support for clinical legal education within the law school administration. Also important are state policies on legal education, rules concerning the legal representation of individuals, and the needs of the community where the clinic will operate.

Legal clinics are often defined by where they are physically located. University-based clinics are housed at a university law faculty. The teachers in the clinic are professors at the university, and the students usually receive academic credit for their work with the clinic. Clients come to the university to see their student-lawyers. Community-based clinics often operate out of an NGO. The teachers are actual practitioners who supervise law students from one or more law faculties as they work with their clients. In many cases, law schools offer such clinics as "externships," in which professors also perform

BASIC CLINICAL PROGRAM MODELS

Over the years, several clinical legal education "models" have emerged, reflecting a variety of settings and emphases:

University-based or "in-house" clinic. The clinic is physically located at the law school.

Community-based clinic. The clinic is physically located within the community served.

Live-client clinic. Students represent actual clients.

Simulation clinic. Students do not represent actual clients, but instead work on case files that simulate all the issues of a real case.

Externship program. Students work on real cases outside the law school with practitioners who supervise their work, often based at NGOs. A professor from the law school provides supervision to ensure that the students have a meaningful educational experience.

Although each of these models has unique characteristics, they all share certain features, including the following:

- use of interactive teaching methodology
- focus on developing skills such as interviewing, counseling, negotiating, and oral advocacy
- emphasis on ethical dimensions of legal practice
- close supervision by a clinical instructor who has experience as a practitioner
- extensive evaluation and feedback
- work on real or simulated cases
- a fostered spirit of public service

a supervisory role to ensure that students have a meaningful educational experience.

Some clinics are known as live-client clinics, meaning that the students represent real clients. Others are simulation clinics, which means that the students work on fact patterns that are based on real cases, but they do not represent actual clients.

2. Goals of Clinical Legal Education Programs

The highly respected and often-cited MacCrate Report of the American Bar Association, published in 1992, describes the skills and values of a competent and responsible lawyer as developing along a continuum. This continuum begins prior to

law school, reaches its most formative and intensive stage during the legal education experience, and continues throughout a lawyer's professional career. Clinical legal education can make a significant contribution during this continuum, as it provides law students with the necessary practical skills to become competent and conscientious lawyers. From a societal perspective, legal clinics serve a second purpose by meeting the legal needs of the poor and underrepresented. These two main functions are often intertwined, mostly complementary, but sometimes competing. Both purposes, however, fall under a broader set of goals: reforming the legal system, enforcing the rule of law, and shaping the attitudes of future generations of legal professionals.

WHAT CAN CLINICAL LEGAL EDUCATION PROGRAMS DO?

- Provide professional skills instruction in areas such as interviewing, counseling, and fact investigation.
- Teach methods of learning from experience.
- Instruct students in professional responsibility by exposing them directly to the ethics of the profession.
- Expose students to the demands and methods of acting in the role of attorney.
- Provide opportunities for collaborative learning.
- Impart the obligation of service to clients, information about how to engage in such representation, and knowledge about the impact of the legal system on poor people.
- Provide opportunities to examine the impact of doctrine in real life and provide a laboratory where students and faculty study particular areas of law.
- Critique the capacities and limitations of lawyers and the legal system.

Adapted from a 1992 report of the Association of American Law Schools (AALS) Committee on the Future of the In-House Clinic.

2.1 Benefits of clinical legal education to society

In every society some portion of the population cannot afford professional legal representation, though they desperately need the advocacy of a good lawyer. Clinic students can make a significant, if only partial, contribution to filling this gap. Lawyers in many Central and Eastern European countries are overwhelmed by demand for their services and unable to devote proper attention to clients who cannot pay for their services.

Legal clinics can contribute to meeting this need, particularly in those cases that do not present a level of complexity requiring an experienced lawyer. Moreover, legal clinics can often do more for their indigent clients than law firms can. People often go there to seek legal advice about a problem that may be a result of a number of other social and legal problems that clients may not even want to acknowledge. Students learn to deal with some of the other needs of their clients and provide them with more than just the legal advice sought. Wassal, the client described near the start of this chapter, came to the refugee law clinic to seek help with her refugee application. As a result of her visit to the clinic, Wassal may file for divorce and start criminal proceedings against her husband for domestic violence. The students can also help her find an organization that provides support for battered women and their children.

Clinic students are able to directly assist only a small portion of all those individuals who might need free legal services. However, as is borne out from the experience of clinics in many countries, students who have been able to use their knowledge of law to help those in need often choose to continue to work for the public good. Clinics often produce a pool of young lawyers who will directly address society's need for free or low-cost legal consultation and representation.

In many of the emerging democracies in the region, where a majority of people live in poverty, it is tempting for clinic administrators to look to clinics as a means of meeting a significant portion of the population's need for legal services. Nevertheless, university legal clinics will always have to balance the interest of serving underrepresented clients with the educational goals of the clinic. This balancing will often mean taking fewer cases in order to have sufficient time to provide the supervision, evaluation, and feedback that clinical legal education requires.

2.1.1 Sensitizing students to social issues. In a profession that lures young lawyers toward lucrative careers, clinics

show students the tangible advantages of legal careers devoted to empowering poorer members of society and bringing the benefits and protections of the law to those who traditionally have had little access to them.

Perhaps one of the most valuable products of clinical education is that young lawyers-to-be feel the deep satisfaction that results from providing free legal assistance to people in need. Clinic students learn not only about the law, but also about its impact on life. By bringing law to life through the experience of clients in need, law clinics can be a crucial force in the improvement of human rights and the development of the rule of law.

Clinical legal education programs are a mechanism for training law students and helping them to understand the ethical, professional, and practical problems faced by practicing lawyers. Exposing law students to real-world experiences, within the context of a clinical legal education program, can result in a future talent pool for the public interest legal community.

2.1.2 Assisting practicing lawyers and legal organizations. Legal clinics can also help the practicing bar by relieving attorneys of cases that demand too much time for too little reward. Student lawyers can learn from these cases. Likewise, clinics might take on a small number of less-complicated cases referred by human rights groups, leaving those groups the time and resources to focus on cases whose outcomes might affect larger policy issues.

In many countries with clinical legal education programs, practitioners choose to become involved in clinical legal education programs by providing an "internship" or apprenticeship opportunity with their organization or firm. They can also directly supervise students in a university-based clinic or serve as outside mentors whom the students can consult regarding specific issues. In such situations, students profit from a practitioner's expertise and perspective, which may be different from that of the clinical professor. In turn, the experienced attorney or public interest organization receives low-cost labor and may benefit from being able to influence and educate bright young students who will later join the ranks of legal professionals better prepared for practice.

2.1.3 Enhancing the legal reform process. In the societies of Central and Eastern Europe, many viewed laws under the socialist legal order as tools of arbitrary power. Large portions of the populations of the region felt alienated and cut off from the benefits and protections of their own laws, even though they could be punished or restricted by those laws. As a result, to

this day a pervasive attitude of fear, estrangement, and mistrust toward the legal system discourages many citizens from seeking the legal help they need.

By assisting individuals in their relationships with state and local administration, clinics improve the legal consciousness of administrators, bureaucrats, and citizens alike. Students' assistance and advice encourage citizens to pursue their rights through administrative procedures. Students' involvement in facilitating communication between citizens and governmental entities also functions as a type of civil control over the administration and encourages officials to apply the laws in good faith.

Clinical legal education may also play a valuable role in promoting legal reform and furthering respect for the rule of law. Clinical students spend time studying particular legal provisions, applying such provisions in specific cases, and communicating with administrative agencies and law enforcement offices. The students' experience may bring to the attention of academia some of the discrepancies between theory and practice or shortcomings of the law that might otherwise go unnoticed. Stimulating professors' interest in these issues may also trigger academic discussion and encourage efforts to change judicial or administrative practices, or even to achieve legislative reform.

2.2 Educational objectives of clinical legal education

The educational objectives of clinical legal education are often described as teaching lawyering skills (such as interviewing, counseling, and negotiation) and written and oral advocacy and analytical skills (such as problem solving, decision making, hypothesis formulation, and testing). These skills are often neglected in the traditional law school curriculum. The educational objectives contribute to the overall goal of preparing law students to become competent and ethical advocates. Clinical legal education achieves these objectives through the types of cases handled and the choice of curriculum, teaching methods, supervision techniques, and evaluation and feedback provided.

2.2.1 Types of cases. The area of law or types of cases on which a clinic chooses to focus will be influenced by a variety of factors, including community needs, expertise of the clinical teacher, laws about what kind of cases students can handle, and the educational value of certain types of cases. For example, in a community facing environmental threats, the clinic might choose to work on environmental issues. In an area where there is high unemployment, labor issues or social benefits might be the sub-

ject matter of the clinic. If the background of the clinical teacher is in criminal law, the clinic may focus on criminal law issues.

Some clinics choose to work on very simple legal matters, so that students can easily learn the law and start to handle the matters without substantial supervision. Other clinics choose lengthier, more complex legal matters, but fewer of them, to expose the students to many legal skills during the course of one case.

2.2.2 Clinic curriculum. Most law faculties that have a legal clinic require the clinic students to participate in a certain amount of classroom time each week in which they learn the practical skills involved in being a lawyer. Classes usually focus on development of the following skills:

- legal analysis
- drafting of legal documents
- interviewing
- client counseling
- case analysis
- negotiation
- examination of witnesses
- oral advocacy

The clinic seminar generally focuses on those skills that students will utilize in their work in the clinic, as well as in their legal practice after graduation.

While all clinics focus on the substance of the law applicable to the subject matter of the clinic, each may do so in different ways. In a civil law clinic, for example, students may be exposed to a variety of subject matter in their clinic cases, such as family, disability, housing, and consumer matters. The clinic instructor may choose not to devote time to substance in the weekly seminar, but rather to teach the law as it arises in each particular case.

Some clinics incorporate materials on the substance of the law applicable to the subject area of the clinic as part of the classroom component. Other clinics require that the students complete some prerequisite courses before they can enroll in the clinic. For example, at the Jagiellonian University Faculty of Law, students who want to enroll in its Human Rights Clinic are required to take a yearlong seminar on human rights and refugee law prior to participating in the clinic. Although not all students who take the seminar enroll in the clinic, those who do are already knowledgeable about refugee law and the European Convention on Human Rights.

What is most important is that the individual instructor devise a classroom component with opportunities to learn the basic skills and analytical thinking necessary to provide quality legal services.

2.2.3 Methodology of clinical legal education teaching. The most fundamental characteristic of clinical legal education is the methodology of teaching. The teaching method requires students to confront problem situations very similar to those that lawyers confront in practice, handle such problems in the role of a lawyer, interact with others in attempts to identify and solve the problems, and receive intensive critical review of their performances. Clinical legal education is primarily an interactive method of teaching, in which the students "learn by doing." This learning process is sometimes described by the following sequence: "plan, do, reflect."

Clinical teachers use a variety of methodological approaches to stress the lawyering skills they see as fundamental. Most university-based law school clinics are structured around teaching techniques such as the following:

- use of written materials
- classroom discussions of case-specific fact patterns
- games
- brainstorming techniques to analyze the good and bad facts of the case
- classroom role-playing exercises based on real cases
- use of videotaping to enable the students to watch others and themselves perform a particular skill
- individual counseling and training of students by faculty and practitioner supervisor(s)
- provision of direct legal services to clients: advising, drafting documents for, and representing clients in court proceedings, including administrative hearings and/or trials

For example, interviewing is one of the most important skills to teach students in a legal clinic. It is a skill they will use in the clinic and throughout their careers, whatever their area of specialization. In addition to the traditional lecture method, the teaching methodologies that might be utilized to teach interviewing include the following:

Use of written materials. Students may be given written materials describing the goals of interviewing and the potential obstacles to effective interviewing, to be read prior to coming to class.

Classroom discussion. In class, students might discuss the goals and obstacles, as well as techniques they can use to reach their goals. Use of a case-specific fact pattern will enable the students to understand better how to prepare for an interview.

Teaching techniques: Use of games

Instructors may conduct various exercises or games in which students can practice and improve their ability to ask relevant and precise questions. For example:

Student A and Student B are asked to sit in chairs in front of the class. They are each given a bag of wooden blocks; each bag has the same content in terms of number, shape, and size of blocks. Student A is asked to build something with her blocks. Student B cannot see what Student A has built, but the other students can see.

When Student A is finished, Student B is told she must try to build the exact structure that Student A built—without ever seeing that structure. All she can do is ask questions about the structure in order to try to replicate it.

Student B is forced to think about what questions to ask first, how to follow up, and which form of a question should be used at any particular point in the interview. Student A must think about what and how much information to give in response to each question.

The students in the audience observe the effect of certain types of questions in eliciting information that is helpful to building an identical structure. They observe whether Student B listens carefully to what Student A has said and follows up on each answer. They see the importance of having a common language of communication. For example, if both Student A and Student B were architects, they could probably use some terms that would make the descriptive process easier. But if only one is an architect or neither is, they must use words they both understand.

The instructor can take examples from this situation and use them to teach about the general goals of interviewing and the types of questions that can be used at various points in the interview in order to elicit information. The professor can explain that in an initial interview of a client, the client has information the lawyer needs to obtain. The professor can also explain how the lawyer needs to utilize a combination of "open" and "closed" questions in order to elicit the facts. The lawyer must listen carefully, follow up on information, be empathetic, and use language the client can readily understand.

Brainstorming. Rather than tell the students what they should have learned about interviewing from the game described in the previous box, the instructor could use the brainstorming technique instead, asking the students to say what they think are the goals of interviewing. The instructor could write all of the students' responses on a "flip chart" or blackboard, then go through the information on the chart with the students and decide which are the most important goals. The instructor would add goals that had not been mentioned or emphasize those that had not been discussed sufficiently. The students could also brainstorm obstacles to a good interview, such as client fears about dealing with a lawyer, revealing secrets, or handling the cost of representation.

Role-playing. The instructor could distribute a hypothetical fact pattern to half of the students, and give the other half a brief synopsis of the law that applies to that fact pattern. The students who received the fact pattern play the client. The other students play the lawyer. In turn, each student "lawyer" interviews a student "client" in front of the class. The student is then evaluated or critiqued on interviewing techniques by the instructor and other students, including the "client." In this way, the students can "learn by doing," as well as by observing. The students also experience what it is like to be a client, and how it feels to be interviewed.

Videotape. One method of teaching lawyering skills is the use of videotaped role-playing of a client interview in the classroom. After showing the video, instructors lead the students in critiquing a flawed interview. They can also ask the students to demonstrate a better one, perhaps videotaping it so that it can be critiqued together with the first video afterward. Finally, teachers can accomplish similar goals without a video, simply asking students to simulate interviews in pairs and relying on memory or notes to critique them afterward.

Small groups. The student who is preparing for a real client interview can tell the instructor or supervisor what questions he or she plans to ask the client. The instructor might also role-play with the student, to practice how the interview will be conducted.

Real client interview. The instructor or supervisor can observe the interview, taking notes, and then meet with the student after the interview to analyze it and give feedback.

For other teaching techniques useful in a clinic setting, see chapter 8, "Public Education about Human Rights, Law, and Democracy: The Street Law™ Model."

Lawyering skills	*Example of clinical method*
Legal reasoning and strategy	
Identify legal issues and relevant facts in a particular case.	Students lead a classroom discussion of case studies or fact patterns.
Devise legal strategies likely to result in the outcome the client wants, or that is in the best interests of the client under the circumstances.	Teams of students conduct case strategy sessions, followed by critiques; brainstorm the good and bad facts of the case.
Legal research, writing, and documentation	
Obtain and marshal all relevant facts to the client's case, to be prepared to counter opposition arguments and to maximize the likelihood of the best possible outcome.	Conduct a real client interview; meet with any relevant state agency or other official; investigate and conduct follow-up research with witnesses and any relevant offices; draft a legal memorandum outlining facts, legal issues, and potential outcomes.
Draft and structure pleadings and correspondence for courts or administrative agencies.	Directly represent the client before courts or administrative bodies, under a practitioner's supervision; drafts of work product critiqued prior to submission.
Organize and maintain case files, documents, information, investigation results, and other materials, so as to ensure their safety from loss or inappropriate disclosure.	Participate in externship with law office, court, agency, or public interest organization.

Lawyering skills	*Example of clinical method*
Lawyer-client relations	
Establish a working relationship with the client based on trust and open communication.	Conduct an intake interview and client meetings, with a supervisor or alone, followed by a critique and possible input from the client.
Discuss with the client all possible approaches to resolving the legal problem(s) and allow the client to make fundamental nonstrategic decisions affecting the case.	Role-play lawyer and client roles in a classroom setting based on a hypothetical case; obtain advice through class discussion and critique.
Legal argument	
Argue persuasively, providing bases for each argument likely to effect the best possible outcome for the client.	Participate in a mock trial or moot court competition.
Recognize indicators of how a client, witness, administrative official, opposing lawyer, or interlocutor is reacting to arguments, and respond and adapt to that reaction.	Conduct a critique of arguments by practitioners or "guest experts" (such as a judge or official) and role-play various responses.

2.2.4 **Supervision.** One of the most important elements of clinical legal education is supervision. Sometimes the supervisor will be a professor, and sometimes the supervisor will be a practicing lawyer who does not teach full-time. In either case, law faculties should be concerned about ensuring proper supervision of students who are representing real clients. The importance of supervision is that it ensures that the student is working effectively, efficiently, and ethically on

behalf of a client. It gives the student and supervisor opportunities to interact directly with each other to discuss the case, prepare for specific tasks, analyze student questions, and stimulate critical thinking. A supervisor's task is to help students to learn by doing, thereby acquiring the knowledge and skills necessary to become capable and effective lawyers.

Clinical law teachers often state that the student is "practicing on my license," and therefore they view supervision as essential to their own ethical and professional responsibility to the client. In many cases, laws or rules on student practice make this connection explicit. Sometimes the supervision style is "directive," which means that the clinician provides detailed information to students about what they should do on a case and is always present when the student performs any task. Other clinicians take a "nondirective" approach, focusing instead on being available and teaching essential skills but allowing students to make many of their own decisions.

Professor Peter Hoffman, in his article "The Stages of the Clinical Supervisory Relationship," maintains that students pass though several predictable stages while engaging in this process. The supervisor's challenge is to maximize the opportunities during this progression in order to make the students' learning experience as efficient and beneficial as possible, but the form of supervision evolves from directive to nondirective as the student moves from one stage to another. Thus, in the "beginning stage," the student has a working knowledge of the law but does not know how to apply it (similar to Barbara in the initial case study in this chapter). The clinical teacher is "didactic and directive" and "concerned with the students' knowledge and performance of specific tasks, orientation to the supervisory relationship, and reduction of their anxiety" about representing real clients. The teacher will give instructions to the student, explain the rationale for each instruction, and make decisions about particular courses of action. Barbara, the student described in the opening situation, would meet with her supervisor prior to the interview, alone or with Anna, to discuss the goals of the initial client interview, what questions to ask, how to ask the questions, and how to be an empathetic listener. In addition, they might role-play a portion of the interview. They would meet again after the interview to discuss the facts of the case, possible ways of framing the case, and the law that may apply.

During the "middle stage," the student becomes more capable of making decisions about cases. The student knows

how to ask for help. The approach to the case is more collaborative, with the student and teacher "defining the legal problem to be solved, developing procedures for solving the problem, evaluating the effectiveness of the solution and implementing it." The teacher "stimulates and guides" the student, who begins to make his or her own decisions.

In the "final stage," the student develops skills and an understanding of the legal process and his or her responsibility (similar to Anna in the initial case study). The student is able to make decisions independently. The supervisor may disagree with the student's decision, but as long as "reasonable minds" might differ, the student's decision will be respected. The supervisor's role is that of "confirmer and guider; a safeguard against serious error."

Whether directive or nondirective, the key is that the clinician is available to consult with the student, observe the student's interaction with clients and others, and provide feedback and ask questions, all of which will help the students analyze the case. This supervision can take place in the classroom, in small groups, in one-on-one meetings, or in interactions with clients, witnesses, opposing counsel, or court. The task of the clinical instructor is to supervise closely enough to provide guidance when the case requires and to monitor the student's work sufficiently to prevent harm to the client's interest.

Plan, do, reflect: Steps in the clinical supervisory process

1. **Planning.** The faculty member discusses with the student how the student is thinking about the case and the actions that the student wants to take in the case.
2. **Student performance.** The student takes action in the case (for example, interviews a client or conducts a hearing). This performance is often observed by the supervisor. Most student practice rules require that a supervisor be present for court appearances.
3. **Evaluation/critique.** The supervisor and student review the actions taken, assess those actions in light of the consequences that have occurred, and identify what has been learned in the process.

2.2.5 Evaluation and feedback. Another key element of clinical legal education is that the instructor/supervisor takes time to give feedback to the student on everything that the student does in the clinic. The feedback is meant to be constructive, to enable the student to understand what he or she did, why something different should have been done, the rationale for the difference in approach, and ideas on how to do it differently. The feedback is always two-way; the instructor/supervisor will listen to the student's perspective and try whenever possible to affirm the student's thinking about the case.

During the evaluation and critique process, a student's performance is subject to intensive and rigorous review. With the instructor/supervisor and other students, the student under review will analyze critically every step of the planning, decision making, and action. This can be done by replaying videotapes or audiotapes of the performance, or by reviewing notes and memoranda made during the performance or while engaged in a lawyering activity for an actual case. This type of review can be used to analyze any experience, such as a meeting with a client, a negotiation with another lawyer, a conference with a state official, a trial, or the closure of a case, in order to draw from the experience the lessons learned that it can provide.

Barbara, from the opening case study, would meet with her supervisor after the initial interview. Her supervisor would have information on the interview from hearing or reading Barbara's self-assessment about it, from having observed it, or from watching a videotape of it. The supervisor would respond to Barbara's self-assessment with specific comments. If the clinician had the opportunity to observe the interview live or on videotape, he could give Barbara specific examples of questions she asked, the client's answers and how Barbara responded or should have responded, facts that Barbara should have elicited, or other feedback that would help Barbara develop stronger interviewing skills.

With Anna, the clinician would discuss the ethical issues raised by the interview, how Anna dealt with those issues during and after the interview, and what options are available to her in dealing with this potential client.

Feedback is a critical part of supervision in that it is the technique that enables students to learn from their mistakes, think in ways that may not come naturally or be obvious to them, and develop their confidence and effectiveness as a lawyer.

Art of critique: Be helpful by being specific

1. Tell the student what you are going to evaluate. "I want to talk to you about using open-ended questions during an interview."
2. Tell the student what he or she did, using the student's own words as closely as possible. Be specific. Take careful notes. "When you sat down to interview the client you said, 'I know that you are seeking asylum for you and your family, isn't that right?'"
3. Give the student specific examples, with reasons, of how he or she could ask questions differently. "The question you asked called for a 'yes' or 'no' answer. If you had said, 'I understand that you and your family are seeking asylum; please tell me why you are seeking asylum?' you would get a better explanation of why the family is seeking asylum."
4. Explain why the student would want to use your suggestion, and why the student's method did not work. "An open-ended question usually begins with the words who, what, where, when, why, describe, explain. The reason for using open-ended questions is that it requires the person being questioned to give more than a 'yes' or 'no' answer. Therefore, you will get more information and you will have a chance to see how the person tells the story, how the person feels about it, and what is important to him or her. Open-ended questions are good to use at the beginning of the interview or at the beginning of discrete areas of questioning."

Based on the critiquing technique taught to faculty trained by the National Institute of Trial Advocacy, South Bend, Indiana, USA.

2.3 Additional benefits of clinical legal education

2.3.1 Teaching ethics and professional responsibility. Working as a lawyer in the protected environment of the university-based clinic helps students to understand the implications of being practicing lawyers. The clinic serves as a forum for exploring and resolving ethical

dilemmas under the supervision of teaching faculty, after which students are better equipped to make difficult decisions and live with the consequences. Clinics thus infuse legal education with a strong sense of responsibility and professional ethics.

As students handle their cases from beginning to end, they see the results of their decision making and work. Through clinical training, students assume responsibility for matters of great importance to their clients, and they gain the opportunity to incorporate the legal profession's ethical standards into their practice routine during its formative stages. Working with the law in real-world situations allows students to discover the values critical to effective legal systems, and it encourages their commitment to the rule of law, justice, fairness, and high ethical standards. Indeed, learning about ethics on the basis of actual cases is far more effective than learning the abstract principles alone. Over the long term, clinics can help to develop students' understanding and appreciation of strategic considerations with the interrelationship of issues of professional responsibility and ethics.

Probably as a result of her almost yearlong experience in the refugee clinic, Anna can now better handle complicated ethical situations. She has learned how to identify who her client is, what is in her client's best interest, and how to avoid conflicts of interests. For example, in the case of Wassal, Anna quickly understood that the interests of Wassal and her children and the interests of Usuf, though similar, are ultimately different. Indeed, it is still difficult for Anna to answer whether there would be a conflict of interest if the refugee clinic takes the case of Usuf, and on the other hand whether it would be fair not to take his case if he is in danger and needs legal assistance. But after a year at the clinic, Anna is able to identify potential ethical problems and to analyze the situations more professionally.

2.3.2 Improving the system of legal education. Clinical legal education may have a positive impact on the quality of education in the law school generally. Meeting real clients and discussing real problems can stimulate students' interest in legal issues, encouraging them to become more proactive and to pursue their studies more diligently. Trying to solve real cases instead of simply memorizing legal rules helps develop students' critical thinking, a skill that they will use in their other law school courses. For example, in the scenario at the beginning of this chapter, after speaking to Wassal about her problems, Anna appeared eager to consult her textbooks and her class notes about the laws on domestic violence. Anna wanted to know how she

could help Wassal file her complaint, the chances that Wassal would have her case heard in court, and her chances of eventually winning.

Clinical legal education can also bring the practical experience of students under the supervision of law school professors. The *praktikum* system currently in place in Central and Eastern Europe provides an opportunity for students to work with practicing lawyers in the community prior to or just after graduating from the university. The system is widely criticized as inefficient because it places all responsibility for instructing and supervising students on practicing lawyers, judges, or prosecutors, who are most often overburdened with other work. The law schools play an insignificant role, or none at all. Introducing legal clinics into the law school curriculum offers an alternative form of instruction by providing practical education designed and implemented by law school professors to meet the needs of their students.

Finally, clinical education affords students an opportunity to consider the kind of legal work they would like to undertake in the future—or even whether they want to be a lawyer at all—at a point in their education that allows them to adjust their studies accordingly. In putting their education to the test in a clinic setting, they discover their strengths and weaknesses before finishing their legal studies. Consequently, students are able to work with their teachers on converting those weaknesses into strengths. The understanding of their professional qualities versus the demands of the profession aids students in determining which areas of legal practice suit them best before they commit themselves to a specific field of law.

3. Establishing a Clinical Legal Education Program

3.1 Whose support is needed to start a legal clinic

Depending on the country where the legal clinic might operate, there will be differing issues regarding the approvals necessary in order to establish a legal clinic. In some places, approval of ministry officials is required; in most places, university support is necessary. Although it is often helpful to have the support of the judiciary and practicing lawyers in the community, this is not always possible, at least at the inception of the clinic. If the university or legal profession is not supportive, marshaling student and commu-

nity support will be key issues for success. Legal clinics frequently begin with the support of a few members of the faculty who are willing to donate time, enthusiastic students, and a base of clients in need.

3.2 Deciding which financial issues to consider when starting a clinic

Clinical legal education is often more expensive than traditional legal education. While a traditional law professor may be able to teach 150 students in one class section, the clinic student/teacher ratio is much smaller, often comprising less than 10 students per instructor, because of the time-intensive and individualized nature of clinical teaching methods. Clinics also take up more physical space within the law school, requiring interview space, conference and student work space, office space for professors, and space for computers and related technology.

A key issue is how the clinical instructors will be paid. Sometimes they are not paid at all and must teach in the clinics in addition to their regular teaching duties. In some law schools, the regular teaching workload of clinical teachers is adjusted in order to allow them to teach in the clinic. In others, clinical teachers are paid a supplemental salary from foundation grants. Other paid positions required by a clinic might include part-time practicing lawyers working as supervisors and an administrative assistant to run the clinic office. Sometimes students are hired to be part-time office managers.

Foundation grants may be available for some new clinics to cover a portion of these costs, but often a clinic must be able to show that it will be sustainable into the future once the grant period terminates.

3.3 Choosing the subject matter of the clinic

When choosing the subject matter of a clinic, the following issues should be taken into consideration:

- the availability of instructors to set up and teach in the new clinical law program
- the areas of law in which the best teachers specialize
- the most common legal issues affecting the poor in the community
- the kinds of cases that will allow students the greatest range of practice
- the legal subjects that students have been exposed to in their substantive classes

Legal clinic practice areas in Central and Eastern Europe, Russia, and Central Asia

Law schools in the region's democracies have chosen from a variety of legal specializations as vehicles for teaching lawyering skills. Among the most popular are the following:

Civil law practice (including marital and family law, wills, estates and inheritance, and property disputes). Due to the breadth of this area, clinics usually select subsections of the civil law on which to focus. The services provided by these clinics include advising and representing clients in divorce cases, custody determinations, distribution of marital property, and related matters; advising, assisting, and representing in matters arising out of wills, or the absence of wills after a party's death, disappearance, or incapacity; and advising and representing in matters related to familial property, demarcation of property between neighbors, property privatization practices, dissolution of partnerships, and collectives.

Refugee and asylum law. Serving the legal needs of internally displaced people, refugees and asylum-seekers.

Human rights (often combined with refugee and asylum law clinics). Assisting clients in disputes with state administration and filing applications to the European Court of Human Rights for violations of human rights protected by the European Convention on Human Rights, such as the right to fair trial or the right to freedom of expression.

Criminal law and procedure. Advising and representing clients charged with less-serious criminal offenses.

Environmental law. Representing individuals and organizations who are seeking to protect the environment.

Administrative law. Providing representation in matters concerning official permissions, licenses, and other legal issues that involve interactions with and hearings before administrative agencies.

Not-for-profit law. Providing legal advice and assistance to NGOs on formation, registration, taxation, and transactional issues.

Street Law (teaching). Training students to teach law in secondary schools and other institutions.

3.4 Instructors for the legal clinic

Clinic teaching is different from academic law teaching in that it involves knowledge about the practice of law, not just theory. Sometimes clinic teachers or supervisors are practitioners who have never taught before. In such situations, teacher training in the interactive methods and pedagogy of clinical teaching are crucial to the effective operation of the clinic. On the other hand, clinic teachers may be professors who have never worked on a real case. Under such circumstances, the clinic instructor may be paired with a practitioner who agrees to work with the clinic. In any event, the background of the teacher who is chosen to teach in the clinic will greatly influence the choice of the type of clinic and its subject matter.

3.5 Policies on student selection and type of credit awarded

Student selection policies differ from clinic to clinic; what is important is that there is a policy regarding the number of students who will be allowed to participate in the clinic in each academic year or semester, the required background of the students, and the academic prerequisites to taking the clinic.

Each of the universities that offer clinical legal education has chosen its own strategy for introducing the concept into its particular system of legal education. Some law school clinics fulfill the university *praktikum* requirement. Other universities offer "legal clinic" as one of the total number of courses required for graduation. Still others allow the clinical course in a particular subject area to substitute for advanced-level lecture courses in that subject area.

3.6 Determining the scope of student practice

Laws of Central and Eastern Europe, Russia, and Central Asia vary significantly as to what responsibilities nonlawyers can undertake. In some coun-

tries, the civil procedure codes allow defendants and parties in civil suits to represent themselves or to allow another individual (a nonlawyer) to represent them. Under such a provision, a client could authorize a student to represent the client in court (in conjunction with the supervision of an experienced attorney) by a power of attorney (notarial act). Many nations' procedural codes establish types of cases in which only licensed advocates may represent a party in court.

Some aspiring legal clinicians have addressed the issue of authorization to appear in court on behalf of clients by campaigning for affirmative legislative approval of student practice. Another approach might be to convince specific judges and prosecutors to allow limited student argument or witness questioning in court on an experimental basis as a matter of their discretion. However, it is important from an ethical perspective that clients understand they will be represented by students, and that they give their written consent to this representation.

The value of a student's practical experience, however, does not hinge on appearing in court. Students can perform a tremendous range of vital legal tasks for a client without entering a courtroom. Students can engage in pre-litigation or other activities on behalf of the client, investigate law and fact, draft memoranda recommending legal actions, interview and prepare witnesses for court testimony, and prepare complaints or pleadings for either a client's or a licensed attorney's signature.

3.7 Developing policies and procedures relating to student work

It is vital to develop clear policies and procedures for students regarding all aspects of the organization and administration of the clinic, including the number of hours students must spend working on clinical matters, their responsibilities in the clinic, record keeping, and ethical matters. Every clinic should have a set of policies and procedures so that the students know their responsibilities in all areas, including record keeping, ethics, classroom work, interaction with clients, the keeping of time records, and so on. New legal clinics will find that by preparing a policies and procedures manual, they will resolve all of the most important issues in setting up their clinic, from the organizational structure to practices regarding supervision.

Creating a policies and procedures manual

The following is a partial table of contents for a sample policies and procedures manual, developed through collaborative efforts by American and Russian clinical legal educators.

Section One: The Concept

1. The Organization
    - Mission Statement (Goals)
    - Organizational Structure

2. The Work
    - In the Classroom: Course Description
    - In the Clinic: Types of Cases

3. The Students
    - Student Selection Process
    - List of Minimum Requirements
    - Application Process
    - Role and Responsibilities of Student Lawyers
    - Hours of Work Required
    - Professional Responsibility Requirements
    - Student Practice Rules
    - Supervision and Evaluation Policies and Procedures
    - Grading

Section Two: Management

1. Administration
    - Clinic Site Information
    - Personnel

Time Management
Docket Calendar Procedure
Time Logs
Tickler System
Safety and Security
Record Keeping
Confidentiality
Conflicts of Interest

Section Three: Practice

1. Case Selection Policy and Intake Procedure

2. Case Handling
   Opening a File
   Contacting Clients
   Interviews
   Client Counseling
   Documentation
   Court Appearances
   Transfer of Files
   Closing Files

Adapted from Douglass, P., "A Guide to Organizing a Pro Bono Clinic: A Practice and Procedures Model Manual," in American Bar Association Central and East European Law Initiative, *Legal Clinic: Lessons in the Practical Training of Lawyers*, Ravena, 1999, St. Petersburg, Russia.

3.8 Case selection and client relations

Every clinical legal education program that includes a live-client clinic must develop policies and procedures for dealing with clients, from deciding how the clinic will attract clients in the first place to determining whether the clinic will undertake a particular case. A clinic must

also determine how many days or times per week it will receive clients.

Applications to the clinic may come through formal and informal contacts, walk-ins, referrals by partner NGOs, and arrangements with local bar associations. Important factors to consider when taking a case include whether the case falls within the scope of the clinic, what the educational value of the case is, whether the case addresses a particularly acute social problem, what services the clinic can offer to the client, and any possible conflicts of interest. The clinic caseload should be structured so as to ensure not only sufficient preparation of client cases, but also some time for student analysis and reflection.

3.9 Determining eligibility for services

When applying for legal assistance, potential clients may be asked to complete a form with their identification data, contact information, and a basic description of the case. Clients should also provide copies of relevant documents to the clinic. The clinic should ask clients to sign a declaration that they do not have sufficient financial means to hire a private attorney themselves. It is a good practice for a clinic to require clients to sign an agreement to receive legal assistance from a student-run clinic, acknowledging the scope and the limits of the clinic's activities.

3.10 Supervision and ethical issues

Clients must clearly understand that law students rather than legal professionals are representing them. Although faculty and supervising attorneys are responsible for ensuring that students uphold a certain standard of excellence, there may be occasional missteps, and services may be rendered at a more deliberate pace. One way to guarantee that a client receives competent advice is to create and implement a carefully devised supervision plan designed to discover any weaknesses of the student practitioners before such limitations affect a client's case.

Some of the issues to consider in developing such a supervision plan to ensure that the clinic will maintain high ethical standards include

- measures necessary to ensure client confidentiality;
- procedures to ensure that students provide the court and other state institutions with necessary documentation in a timely manner;
- how the clinic will guard against both real and perceived conflicts of interests;

- the optimal number of students involved in each area so that the clinic instructors can monitor their activities appropriately;
- the number and type of clinic instructors needed to properly supervise students' activities (for example, whether any postgraduate students or assistants are suitable for this role);
- the qualifications, experience, and outlook of lawyers who will teach the clinic;
- procedures for monitoring whether students follow established ethical standards.

3.11 Administrative and management issues

Once the law school has determined the best areas of assistance to offer based on the factors described above, clinical legal education program administrators must address a variety of administrative and management issues.

3.11.1 Administrative matters. One of the most important issues to determine is the physical space needed and available for the clinic to operate. In deciding where the clinic is to be housed, organizers must think about the space necessary for students to work outside the classroom. There should be private space for interviewing clients and sufficient space for the clinic filing system. Clinic organizers must also realistically assess the clinic's projected equipment needs (such as telephones, copy machines, fax, computers, and Internet access).

3.11.2 Case management and documentation. Early in the process of setting up the clinic, supervisors should determine and develop a range of documents and/or forms that the clinic will use in its daily operation, such as the following:

- pamphlets advertising and explaining the clinic
- intake questionnaire/client information form
- student declaration regarding confidentiality
- case acceptance and refusal forms
- income and financial assessment to determine eligibility
- retainer agreement acknowledging the student-run nature of the clinic
- policies on cost, expenses, and fees
- case-closing form
- office policy and procedures manual

The clinic should also determine what kinds of records will be required or otherwise maintained to promote effective clinic operations. Such records may include one or more of the following:

- appointment books/log
- journal of accepted and rejected cases
- weekly caseload
- files for each client
- student journal of activities
- conflicts database

Checklist of issues in constructing a clinic

What are the goals of the proposed clinic?

- Ideally, what goals should be pursued?
- Which of these goals might have to be scaled back because of limited resources?

What should be the composition of the clinic's teaching staff?

- How many teachers should the clinic have?
- What qualifications should each such teacher bring to the job?
- What relationships of authority or collegial collaboration should be encouraged among the clinic's teachers?

On what types of cases or projects should the clinic work?

- Should the clinic specialize in a limited number of legal subjects?
- Should the cases be large, complex cases or smaller, simpler cases?
- If the clinic is going to specialize, on what particular subjects should students work?

How should students be credited for their work?

- What should be the duration of the clinic?
- How much academic credit should be awarded for a student's participation?
- How many cases should a student handle while in the clinic?
- How will the students be evaluated on their work?
- Should the students work individually or in teams?

How should teachers be credited for their work?

- Should their other teaching obligations be reduced?
- Should they receive additional compensation?

What should be the relationship between students and the tribunals in which they appear?

What methods should the clinic use to select its students?

What training should clinic instructors have before beginning to supervise students?

What methods should be used to supervise students?

What teaching materials should be used?

What are the requirements for work space, equipment, and support staff?

What forms will the clinic use?

- client intake forms
- case transfer forms
- court calendar system
- tickler system

What will be the classroom component of the clinic?

Adapted from Schrag, P., "Constructing a Clinic," 3 *Clinical L. Rev*. 175 (1996).

4. Putting it all together

Clinical legal education is a dynamic and interactive way of teaching law students the methodology for good practice, the critical thinking required to analyze all legal matters, the ethical issues essential to act professionally, and the spirit of public service needed to represent the underrepresented.

Barbara—from the scenario at the outset of this chapter—entered law school believing that she would practice in the private sector. She may still pursue this path, but she will do so with much more confidence in her skills and her ability to think creatively and critically. She knows that her exposure to representing the poor is something she will never forget. She suspects that she will use the sensitivity she developed in some way, even if it is as a volunteer member of the board of directors of an NGO.

Anna always wanted to represent the underserved, and the clinic experience has confirmed that this is where she will be most satisfied in her work as a lawyer. The clinic has made her realize she is capable of being an effective, competent lawyer. She is excited that she will soon be graduating and can begin to use these skills as a practicing lawyer.

Clinical legal education program at Jagiellonian University

Jagiellonian University in Kraków, Poland, launched its clinical legal education program in October 1997. The Jagiellonian clinic is composed of four sections: civil, criminal, labor and social insurance, and human rights. Students participating in the yearlong clinic receive academic credit equal to a regular law school seminar.

Each section of the clinic is run by a law professor and a practicing lawyer. The faculty member teaches the students how to interpret and apply the laws while the practitioner explains to the students what the "traps" of the legal profession are, how to secure clients' confidentiality, and how to work and communicate with clients, judges, prosecutors, and experts.

Clinic classes start with a one-month orientation and training of new students. The training begins with a lecture on the goals of clinical legal education, followed by a session on the rules and procedures of the clinic. The students are taught how to prepare and maintain files, how to use word-processing programs, and how to conduct Internet research. The next session is on legal writing, which is not otherwise emphasized in the law school curriculum. Students are taught how to draft legal documents, specifically how to construct a written opinion for a client that they must provide at the end of the case. There is also a session on fundamental lawyer-

ing skills, usually taught by the practitioners involved in the clinic. Orientation concludes with a session on professional responsibility led by the president of the Kraków Bar Association.

The work during the year consists of individual or team efforts with clients and weekly seminar sessions during which the clinical class discusses issues that students have encountered while working on their cases. One of the sections of the clinic asks the students to meet with clients and work on the case in teams of two, while the others encourage individual work. Experience shows that teamwork may have some additional benefits for the students; they benefit from sharing ideas with colleagues, learning how to work collaboratively, and deciding how to divide responsibility. Teamwork also is a useful approach in situations in which one case affects issues relevant to the work of several sections of the clinic.

The Jagiellonian clinic often uses simulations. Students prepare simulated trials or, in the case of the human rights clinic, simulated interviews with asylum seekers. After the presentations, the students have individual meetings with the professor and the legal practitioner supervising the clinic to discuss each student's presentation and to make any recommendations regarding the student's decisions and strategies.

The range of services that the students provide to the clients is limited by law. In most cases, Polish students are prohibited from representing clients directly in court. Nevertheless, students can assist clients in several other ways. Students can inform clients about their different options under the law, conduct legal research for the client's case, prepare and submit briefs on behalf of clients, and prepare clients for court hearings. Moreover, if appointed by the court as a curator or guardian, students may represent their client in court. In addition, they are permitted to represent clients before administrative boards dealing with minor offenses.

At the conclusion of every case, students are required to prepare a written statement regarding the outcome. One copy of this statement is provided to the client personally, and another copy is kept in the clinic's files. The statement offers clients a clear assessment of their case, to which they can refer at any time in the future; it also minimizes the possibility of misinterpreting students' advice.

One of the problems the Jagiellonian clinic has faced is how to handle case selection. The clinic evaluates every potential case based on the following criteria: the scope of the

services the students can provide, given legal limitations; the educational value of the case; and whether the case can be completed within the course of the academic year. The Jagiellonian clinic accepts only cases presented by people unable to afford professional legal advice on their own. It is quite difficult to determine the income or net worth of prospective clients with much certainty. However, the Jagiellonian clinic has found that absent an obvious lack of credibility based on the client's circumstances, requiring clients to sign a declaration that they are unable to afford the services of a private lawyer is sufficient. Although students are encouraged to give their opinion, the final decision whether the clinic will take the case is made by the clinic's supervisors.

The clinic receives many applications from students interested in participating. Prerequisites for taking the clinic are courses on substantive and procedural laws relevant to the clinic's subject matter and, for the human rights clinic, knowledge of a foreign language sufficient to interview refugees. Students are selected for the clinic after personal interviews to assess their maturity, commitment to clinical work, and other factors.

The Jagiellonian clinic has its own space shared by all sections. The office is located at the law school and is equipped with several computers with Internet access, a copier, phone and fax machine, and a small library with legal texts and case files. In addition to attending clinic seminars, students can use classroom space to meet with clients and for the seminar classes. The clinic's administration has adopted certain security precautions to ensure the confidentiality of client files.

The clinic holds office hours for client intake and other appointments. Many clients come for immediate legal assistance, but they are directed to fill in application forms and follow the application procedure.

Part of the success of the Jagiellonian clinic is due to effective cooperation with the law faculty. The continued involvement of well-respected faculty members has helped the clinic to gain the acceptance of the faculty and attract the best and most dedicated students.

For more information, please contact Jagiellonian University Human Rights Center (JUHRC), Plac Inwalidow 4, 30-033 Kraków, Poland; tel/fax: (48 12) 633 3796; E-mail: ujhrc@cicero.law.uj.edu.pl.

RESOURCES

Readings

American Bar Association Central and East European Law Initiative (ABA CEELI), *Legal Clinic: Lessons in the Practical Training of Lawyers*, Ravena, 1999, St. Petersburg, Russia; available in English and Russian.

Includes "A Guide to Organizing a Pro Bono Clinic: A Practice and Procedures Model Manual," by Patricia Douglass. This manual discusses the concept, experience, and future of clinical training for lawyers. Offers advice on establishing, organizing, and managing legal clinics. Includes descriptions of civil and criminal proceedings in Russia.

American Bar Association Central and East European Law Initiative (ABA CEELI), *Clinical Legal Education: A Textbook for Students and Teachers* (authored by Russian clinicians), 2001, Moscow; available in Russian and English.

Amsterdam, A., "Clinical Legal Education as a 21st Century Experience," 34/4 *Journal of Legal Education* (December 1984). <http://www.pili.org/library/cle/clinical_legal_education_as_a_21st_century_experience.htm> (last accessed on July 26, 2001).

Briefly reviews the benefits of clinical legal education and basic components of the clinical methodology.

Barry, M., J. Dubin, and P. Joy, "The Third Wave: Clinical Legal Education for This Millennium," 7 *Clinical L. Rev*. 1 (2000).

An article that examines the continuing transformation of clinical legal education through a discussion of several topics: creation of clinical methodology and establishment of clinical programs, integration of clinical education into the law school curricula, current challenges for clinical education, and possible future changes in clinical education.

Brayne, H., N. Duncan, and R. Grimes, *Clinical Legal Education: Active Learning in Your Law School*, Blackstone Press Ltd., 1998, London.

Designed for both law students and professors as a useful tool for legal clinics. It explains the concept of clinical legal education and the need for it, and it explores different clinical teaching methods, including actual client interviews and simulations. It also examines issues of ethics and professional responsibility.

Hoffman, P., "The Stages of the Clinical Supervisory Relationship," 4 *Antioch L.J*. 301 (1986).

An article that briefly outlines different methods of clinical supervision and discusses which methods would be the most appropriate in the beginning, middle, and final stages of the student's clinical education.

Lyublinsky, A., "About Legal Clinics," *Journal of Ministry of Justice* (Russia) (January 1901), 175–181.

Madhava Menon, N. R., ed., *Clinical Legal Education*, Eastern Cook Company, 1998, Lucknow, India.

A handbook based on the experiences of several law professors teaching in clinics around the world. It explores the goals and the values of clinical legal education and the methods of developing different practical skills such as interviewing, counseling, negotiating, mediating, and planning.

Mizanur, R., ed., *Human Rights: Summer School Manual*, Human Rights Summer School and Community Law Reform, 2000, Dhaka, Bangladesh.

Designed as a tool for a human rights summer school, and consisting of two parts: articles and a compilation of international human rights instruments. The articles deal with a broad range of issues such as ethics in the legal profession, the teaching of ethics in a legal clinic, clinical methodology, arbitration, alternative dispute resolution, and trial advocacy, as well as issues concerning the intersection between legal education and human rights.

Niec, H., "Evolutionary Supervision," *Klinika, Journal of Jagiellonian University Faculty of Law*, Nr. 1 (2)/2000, 259–267.

The author, director of the Human Rights Clinic of the Jagiellonian University, discusses the stages of supervision, the roles of the clinical lawyer and the student assistant as quasi supervisors, and her experience in supervising students.

Public Interest Law Initiative, Clinical Legal Education: <http://www.pili.org/library/cle/index.html>.

Contains articles by authors from around the world, discussing the concept of clinical legal education, its goals, the clinical teaching methodology, and some samples of a clinical mission statement and syllabus.

Rachwal, A., "Conflict of Interest," *Klinika, Journal of Jagiellonian University Faculty of Law*, Nr. 1 (2)/2000, 109–117.

Explores potential conflicts of interest in the attorney-client relationship and in the relationship between an attorney and several clients in the context of U.S. law.

Rekosh, E., *Possibilities for Clinical Legal Education in Central and Eastern Europe*, a paper presented at a conference in Budapest, April 1997. <http://www.pili.org/library/cle/possibilities_for_clinical_legal_education_in_central_and_eastern_europe.htm> (last accessed on July 26, 2001).

Briefly reviews the history of clinical legal education in the United States, explores the need for clinical education in Central and Eastern Europe, and examines the factors necessary for its success and the potential obstacles in the process of its development.

Rowe, W., "Legal Clinics and Better Trained Lawyers—A Necessity," 11 *Ga. Law Review* 591 (1917).

An early article on the need for practical training for lawyers.

Schrag, P., "Constructing a Clinic," 3 *Clinical L. Rev.* 175 (1996).

Addresses some basic structural questions in setting up a new clinical program, such as goals of the clinic and qualifications, numbers, and relationships among the teaching staff. Discusses some clinical teaching methods and

methods for supervision, as well as analyzes the classroom component.

Szewczyk, M., "The Concept of Students Legal Clinic," *Klinika, Journal of Jagiellonian University Faculty of Law*, Nr. 1 (1)/1999, 19–23.

Explores the place of clinical legal education in the law school curricula in Poland, its importance, and potential hurdles to its development.

Wilson, R., *Clinical Legal Education as a Means to Improve Access to Justice in Developing and Newly Democratic Countries*, a paper presented at the Human Rights Seminar of the Human Rights Institute, International Bar Association, Berlin, October 1996. <http://www.pili.org/library/cle/clinical_legal_education_as_a_means_to_improve_access_to_justice.htm>.

A paper that discusses the concept of clinical legal education programs as a contribution to access to justice. Describes the clinical legal education program at the American University in the United States, discusses some successful clinical programs in Chile, and addresses some of the challenges that clinical legal education faces throughout the world.

Wortham, L., "Teaching Professional Responsibility in Legal Clinics around the World," *Klinika, Journal of Jagiellonian University Faculty of Law*, Nr. 1 (2)/2000, 195–218.

Discusses the meaning of legal ethics, professional responsibility, and laws regulating lawyers in the U.S. context, explores the difference between "normal ethics" and "lawyers' ethics," and then describes some methods for teaching professional responsibility in a legal clinic.

Organizations

American Bar Association Central and East European Law Initiative (ABA CEELI)
740 15th Street, NW
Washington, DC 20005-1022, USA
Tel: (1 202) 662 1950
Fax: (1 202) 662 1597
E-mail: ceeli@abanet.org
Web: www.abanet.org/ceeli

Supports the legal reform process in Central and Eastern Europe and the former Soviet Union. Established in 1990, its legal assistance programs focus on constitutional law, judicial restructuring, criminal law, media, commercial, not-for-profit, and environmental law, and clinical legal education. ABA CEELI maintains offices in most of the countries of Central and Eastern Europe and the former Soviet Union.

Association of American Law Schools (AALS)
1201 Connecticut Avenue, NW
Suite 800
Washington, DC 20036, USA
Tel: (1 202) 296 8851
Fax: (1 202) 296 8869
E-mail: aals@aals.org
Web: www.aals.org

A not-for-profit association of 164 law schools in the United States, established with the purpose of improving the legal profession through legal education. Organizes conferences and meetings on clinical education and

publishes law journals, including clinical legal education publications.

Association of University Legal Aid Institutions
c/o Campus Law Clinic
University of Natal
Durban 4041
South Africa
Tel: (27 31) 260 2446
Fax: (27 31) 260 2741
E-mail: ramgobina@mtb.und.ac.za

Clinical Legal Education Association (CLEA)
6020 South University Avenue
Chicago, IL 60637, USA
Tel: (1 773) 702 9611
Fax: (1 773) 702 2063
E-mail: seibel@mail.law.cuny.edu
Web: clinic.law.cuny.edu/clea/clea.html

An association of clinical professors, adjunct teachers, U.S. law schools, and legal faculty from countries around the world, founded to support clinical legal education.

Clinical Legal Education Organization (CLEO)
c/o Law Clinic
Sheffield Hallam University
53 Broomgrove Road
Sheffield S10 2NA
United Kingdom
Tel: (44 114) 253 3703
Fax: (44 114) 225 2430
E-mail: law-clinic@shu.ac.uk
Web: www.shu.ac.uk/schools/ssl/lawclinic.html/lchandbook.html

A center for legal education based in the United Kingdom, created to promote the development of learning and teaching in legal education at both the academic and vocational training stages. Organizes conferences and workshops, and produces publications concerning legal education.

Constitutional and Legal Policy Institute (COLPI)
Nador u. 11
4th Floor
1051 Budapest
Hungary
Tel: (36 1) 327 3102
Fax: (36 1) 327 3103
E-mail: colpi@osi.hu
Web: www.osi/hu/colpi

COLPI's activities are designed to assist in the development of the legal infrastructure in the countries in Central and Eastern Europe and Central Asia, including legislation, the judiciary, prosecutors, legal aid actors, penitentiary system, psychiatric hospitals, the media, and democratic armed forces, as well as legal education institutions (broadly defined). Among many other activities, COLPI assists and funds the development of clinical legal education programs in collaboration with the Public Interest Law Initiative.

Global Alliance for Justice Education (GAJE)
Address for membership:
Frank Bloch
Vanderbilt University Law School
131 21st Avenue South
Nashville, TN 37203-1181, USA
Fax: (1 615) 343 6562

E-mail: owner-gaje@list.vanderbilt.edu
Web: ls.wustl.edu/Academics/Faculty/Activities/Global

A global alliance of people committed to achieving justice through education. Works for the advancement of clinical legal education around the world, and for the education of practicing lawyers, judges, nongovernmental organizations, and the lay public.

Public Interest Law Initiative in Transitional Societies (PILI)
Columbia Law School
435 West 116th Street,
Mail Code 3525
New York, NY 10025, USA
Tel: (1 212) 851 1060
Fax: (1 212) 851 1064
E-mail: pili@law.columbia.edu
Web: www.pili.org

PILI assists the development of a public interest law infrastructure in the countries of Central and Eastern Europe, in Russia, and in Central Asia. PILI provides capacity-building assistance to clinical legal education programs in collaboration with the Constitutional and Legal Policy Institute (COLPI).

Journals

Clinical Law Review
A Journal of Lawyering and Legal Education
c/o Professor Randy Hertz
New York University School of Law
249 Sullivan Street
New York, NY 10012, USA
Tel: (1 212) 988 6434
Fax: (1 212) 995 4031
E-mail: randy.hertz@nyu.edu
Web: www.law.nyu.edu/clr

International Journal of Clinical Legal Education
School of Law
University of Northumbria at Newcastle
Sutherland Bldg., Northumbria Rd.
Newcastle upon Tyne, NE1 8ST
United Kingdom
E-mail: Cathsylvester@unnac.uk

Journal of Legal Education
Vanderbilt University Law School
131 21st Avenue South
Suite 207
Nashville, TN 37203-1181, USA
Tel: (1 615) 322 2617
Fax: (1 615) 343 1266
E-mail: jle@law.vanderbilt.edu
Web: law.vanderbilt.edu/publications

Klinika
Journal of Jagiellonian University Faculty of Law
ul. Olszewskiego 2
31-007 Kraków
Poland
Tel/Fax: (48 12) 422 1033 ext. 1392
E-mail: ujhrc@cicero.law.uj.edu.pl

Eight

PUBLIC EDUCATION ABOUT HUMAN RIGHTS, LAW, AND DEMOCRACY: THE STREET LAW™ MODEL

This chapter explains:

- the nature and purpose of Street Law programs
- key elements of a successful Street Law program
- issues to consider in starting a Street Law program
- participatory teaching methodology and teaching exercises
- development of Street Law program course materials
- preparation of Street Law program teachers manuals

1. WHAT IS STREET LAW?

A wide variety of programs in a number of different countries aim to educate the public about the law and legal issues. Some of the most innovative law-oriented education programs have been developed in the United States and other countries under the name "Street Law." The name first came into use a few decades ago in the United States to describe educational programs that addressed the practical application of law to one's daily life. In more recent years, Street Law programs have expanded to include broader issues related to such areas as public policy, human rights, and democracy.

Street Law programs developed in the United States in the early 1970s, in South Africa in the mid-1980s, in Latin America in the early 1990s, and in Central and Eastern Europe in the mid-1990s. These programs take place in secondary schools in the United States, South Africa, Poland, Russia, and Nigeria; prisons in the United States, Bolivia, South Africa, and Poland;

and local community centers in South Africa, Kenya, and Nigeria. Regardless of the country, the overall emphasis of Street Law programs is to make legal principles and practical legal knowledge understandable and more meaningful to secondary school students and other nonspecialists. This instruction is based on everyday situations, such as what to do when stopped by the police, when denied housing or employment, or when unwittingly purchasing defective items.

Street Law programs are generally distinguishable from other kinds of law or human rights education programs in that they almost always involve law students, legal professionals, and schoolteachers. The law student or legal professional may help design and write the curriculum, help train teachers, co-teach with an instructor, or make occasional appearances in classes to assist with activities such as mock trials. Where law students actually teach in the classroom, there is an ancillary benefit to such programs in that they provide the law students with exposure, through their teaching experience, to problems related to how law is applied in practice. Although Street Law programs enable law students and lawyers to be involved in public education, classroom teachers must also be trained to teach Street Law, in order to reach the maximum number of students.

Street Law courses are part of a growing number of methods by which students and ordinary citizens are learning about their country's legal system and how laws affect their daily lives. Other types of public education programs, such as those developed by Amnesty International and the Netherlands Helsinki Committee, have focused primarily on working with schoolteachers and incorporating human rights education into the ordinary school curriculum, especially at the primary school level. Still other public education programs, such as the Wallet Card Project of the Constitutional and Legal Policy Institute, provide plain-language written information regarding the application of human rights principles in practical settings.

KNOWING YOUR RIGHTS: COLPI'S WALLET CARD PROJECT

Lack of knowledge regarding basic citizen rights has been a problem for the emerging democracies of Central and Eastern Europe since the demise of communism.

During the mid-1990s, the Constitutional and Legal Policy Institute (COLPI) of the Soros Foundation, an affiliate of the Open Society Institute, initiated a regional project to raise the general population's awareness of an individual's civil rights upon arrest. The project was designed to achieve this goal by advertising a selected portion of these rights in high-circulation newspapers and by creating a wallet-sized information card for distribution primarily to those most likely to be arrested—in other words, males between the ages of fifteen and thirty-five.

COLPI implemented the Wallet Card Project in thirteen countries, in cooperation with the national Soros Foundation in each country. For each country, an expert on criminal procedure was identified to draft the text for the card. A number of lawyers and legal scholars then reviewed the draft to ensure accuracy. Editors selected an appropriate format for the wallet card, based on the particular country or target group. Approximately 200,000 cards per country were produced, on average. The focus of distribution was on making the cards available at events and venues likely to attract the target audience of younger men, such as soccer matches, rock concerts, subway stations, bus stops, and gas stations. To complement and reinforce these efforts, the project also placed a series of advertisements, explaining a citizen's basic rights upon arrest, in local and national newspapers with wide circulation.

The following countries participated in the project: Bulgaria, Croatia, the Czech Republic, Hungary, Latvia, Lithuania, Macedonia, Poland, Romania, Russia, Slovakia, Slovenia, and Ukraine. Based on the large numbers of people who personally received or were exposed to the information contained in the wallet cards, COLPI and the national Soros Foundations were satisfied with the results of their efforts. Years later, requests for the cards continue, and there is a sense in many countries that raising awareness of rights has been very important in improving relations between police officers and citizens and changing the way people view the law.

For more information, please contact Constitutional and Legal Policy Institute (COLPI), Nádor u. 11, 4th Floor, 1051 Budapest, Hungary; tel: (36 1) 327 3102; fax: (36 1) 327 3103; E-mail: colpi@osi.hu; Web: www.osi.hu/colpi.

"Street Law" is a name that does not always translate well into other languages. In Poland, for example, programs based on the Street Law model have been developed under the name "Law in Everyday Practice." In Russia, "Living Law" has been used to describe similar programs. These terms will be used interchangeably throughout this chapter. Although each Street Law or human rights education program has unique elements, there are many areas of overlap; collectively, they constitute a category of activity that this handbook refers to as public education about human rights, law, and democracy.

This chapter includes contributions by founders of law-related public education programs in the United States, Russia, South Africa, and Poland. American educator Edward O'Brien describes the beginnings of Street Law in the United States, as well as its philosophy, the benefits to those involved, and the steps necessary to establish a Street Law program. Victor Pronkin, rector of St. Petersburg Prince Oldenburgsky Institute of Law, explains the development of the Living Law program in Russia. Professor David McQuoid-Mason of the University of Natal details the teaching methods of the Street Law program in South Africa. Polish law professor Monika Platek of Warsaw University Faculty of Law offers her perspective on developing a successful Street Law program, as well as guidance in the use of teachers manuals.

2. The Street Law movement: The U.S. perspective

Through Street Law programs, law school students and teachers have the opportunity to teach practical law courses in schools, prisons, and community centers. Such programs challenge law students to develop legal knowledge and skills as they instruct nonlawyers on how the law affects their daily lives. As a result, law students increase their legal knowledge and lawyering skills, develop new perspectives, and enrich their law school experience. At the same time, members of the community, children and adults alike, learn valuable lessons in how to identify and assert their legal rights. Such programs also encourage the public to see lawyers in a positive light, creating more trust of the legal community and respect for the rule of law. Street Law programs share many of the same goals as clinical legal education, and Street Law "clinics" are sometimes incorporated into a law school's clinical program. See chapter 7, "Clinical Legal Education: Forming the Next Generation of Lawyers."

Street Law's beginnings

Edward O'Brien is the cofounder of the Street Law program in the United States and executive director of Street Law, Inc. (USA). He offers the following observations on the development of Street Law in the United States:

I was fortunate enough to have been involved from the inception of Street Law twenty-nine years ago, when I was a student at Georgetown University Law Center in Washington, D.C. From the beginning, the term "Street Law" has referred to education of nonlawyers. At first the focus was on secondary school students, but since then prison inmates, juveniles in detention, youth and adults in community settings, and many other groups have become recipients of Street Law education.

Over the years, it has become clear that it is inadequate to teach the practical aspects of law without analyzing policy issues and discussing what alternatives might exist for changing the law or the way it operates. Students of Street Law now look at such issues as the process for complaining about police brutality and whether a small claims court is needed to handle consumer complaints. They also discuss and debate important societal issues such as gun control, the death penalty, abortion, and discrimination against minorities. From the beginning it was clear that Street Law programs must involve the controversial issues of society and elicit arguments on both sides of the issues.

In recent years, my work in South Africa has confirmed the idea that Street Law in the United States needed an infusion of human rights education. This led to the adaptation and publication of a South African text, *Human Rights for All*, in the United States and the inclusion of human rights sections in each chapter of the latest (sixth) edition of the *Street Law* textbook. We in the United States tend to view the violation of human rights as something that occurs in other countries, not in the United States. In the future we hope students will look at domestic problems, such as homelessness, as human rights issues and discuss what, for example, the human right to housing means in the context of American society. Thus the work of Street Law, Inc. is not just about sharing Street Law experiences in the United States with

colleagues from other countries; it is also about learning from other countries and bringing new ideas to educational programs in the United States.

For more information, please contact Street Law, Inc., 1600 K St., NW, Suite 602, Washington, DC 20006-2801, USA; tel: (1 202) 293 0088; fax: (1 202) 293 0089; E-mail: eobrien@streetlaw.org; Web: www.streetlaw.org.

2.1 Practical legal content

Although many topics may be taught as part of Street Law, there are certain key topics that must be addressed in any successful Street Law program. The content of Street Law programs must be practical yet able to incorporate larger public policy issues. There is always a danger that law professors, lawyers, and law students will teach law in a way that is too abstract, philosophical, or theoretical. This type of education can be important and valuable, but it is not the primary thrust of a Street Law course.

Whether they are secondary school students, prisoners, or others, students of Street Law courses—with few exceptions—state that they desire to learn about practical matters rather than abstract ideas. Although it is true that all students of law, even nonlawyers, need to understand some legal theory, the majority of Street Law instruction is designed to meet the needs expressed by the students.

The name "Street Law" conveys the idea of providing students with knowledge about legal problems related to their everyday lives on the street. The term derives in part from the American expression "to be street smart," that is, to have intelligence stemming from practical knowledge rather than learning from books. Abstract legal principles will not be enough to assist a person in dealing with a landlord who is not providing adequate heat, a person who has been unfairly arrested and sent to prison, or a child who has been physically abused. Such people need practical information on what steps to take to solve their legal problems and obtain justice.

One of the principal goals and key characteristics of Street Law programs is the "empowerment" of students, by instilling in them the attitude that they are not helpless when confronted with the law or a legal problem. Knowledge is power, and educating people about laws designed to govern and protect them is

part of an empowerment process. Providing knowledge about how to change the law and legal system when necessary is also part of the empowerment mission of Street Law programs.

2.2 Participatory teaching methodology

Perhaps the most important characteristic of a successful Street Law program is the use of participatory or interactive teaching methodology by the instructors. Street Law's goal is to help create active citizens who vote, critically examine the legal system, debate issues, and work for change when necessary. This is unlikely to occur if Street Law classes are filled with lengthy, dull lectures. There is, of course, a proper place for good, concise lectures, but most successful Street Law classes are filled with discussion and debate about real cases and problems from the community. This is combined with such features as small groups, open-ended questioning, mock trials, and other role-playing or simulation-type activities.

It is not necessary to lecture about sentencing procedures for a convicted criminal when a mock sentencing hearing can be conducted in class. It is not necessary to lecture about the shortcomings of dictatorship when students can act out in the classroom a situation illustrating the workings of an authoritarian regime. And there is no need for a lecture about how to complain about faulty automobile repair when students can role-play the complaint process. This is called "learning by doing," and experience shows that students enjoy this method and learn from it more than they would from a lecture. These techniques are similar to those employed in clinical legal education programs more generally, discussed in chapter 7, "Clinical Legal Education: Forming the Next Generation of Lawyers."

Educational research also indicates that students learn more when interactive methods are used. The term used for these types of classes is "student-centered," as opposed to the traditional "teacher-centered" approach to education, in which students are viewed as vessels to be filled with information coming from the teacher. In Street Law programs, instructors are more like facilitators or referees, and sometimes they learn as much from the students as the students learn from them.

2.3 Law students and legal professionals as instructors

The first instructors of Street Law in the United States were law students who went into local secondary schools and then into prisons to teach law. Like their

predecessors nearly three decades ago, law students today benefit from such programs by accumulating important practical experience. Secondary school students, prisoners, and others in these programs benefit in turn by interacting with a legal professional-to-be, who may be less intimidating than practicing lawyers, prosecutors, or judges. Sometimes law students teach alone, sometimes they teach in teams of two, and sometimes they work collaboratively with secondary school teachers. This latter formula may be the best, because it gives law students the benefit of learning from the teachers' experience in education, while the teachers can learn from the law school students' knowledge of the law. In the United States it has become clear that even though forty law schools involve law students in teaching Street Law, there are many thousands of children who will never benefit from Street Law unless their schoolteachers are also trained. Consequently, programs have been developed to train teachers across the United States, and volunteer lawyers are sometimes recruited to teach when law students are not available.

In many countries, when a Street Law program is initiated, law schools are reluctant to treat Street Law as part of the official law school curriculum, making it difficult to attract law students. Instead, young judges, lawyers, and law students are recruited and paid a small amount or asked to volunteer to co-teach with schoolteachers. Pairing law students with schoolteachers is a useful model that has worked successfully in many places, including St. Petersburg, Russia; Bratislava, Slovakia; and Santiago, Chile. Law student volunteers can also work well, but they never have as much time to devote to the program as law students enrolled in a Street Law course. Street Law program participants usually receive a grade for their work and can be held to a higher level of accountability for their responsibilities to the class.

In conjunction with the Open Society Institute and with support from the Ford Foundation, Street Law, Inc. has initiated a Street Law Network program that works with organizations and law schools in many countries to establish courses in which law students receive academic credit for teaching. COLPI and other organizations, such as the American Bar Association's Central and East European Law Initiative (ABA CEELI), the United States Agency for International Development (USAID), and the U.S. State Department's Bureau for Culture and Education (formerly the U.S. Information Agency), have also made a strong effort in this regard in Central and Eastern Europe.

3. Benefits of Street Law to law students and others

Countless educators in virtually all disciplines would agree that there is no better way to learn something than to teach it. Street Law is no exception. At a 1998 conference in Poland on Street Law programs in law schools, a Polish law student said that "teaching law brings together all the different areas of law I have been studying in a way my law school classes never did before." Law students must also learn and understand practical aspects of the laws of their country and localities, an issue that is rarely emphasized in law school classes. Street Law programs teach students to communicate in a logical, concise manner, to think quickly and respond effectively, and to recognize the value of preparation—all skills they will use extensively in practicing law. Their attitudes are shaped by the experience as they become sensitized to the problems of secondary school students, prisoners, and the poor. For many law students, participation in Street Law affects them in a dramatic and fundamental way by altering their life goals and career paths. Declaring that Street Law was the best experience they had in law school, many students recognize that after participating in Street Law, they are forever changed.

In addition to the positive effects on law student teachers, Street Law can have a major impact on beneficiaries of the educational programs, who may be secondary school students, other members of the community, or perhaps prisoners. In many countries, young people are not exposed to practical knowledge in school. Through the Street Law program, many realize for the first time that school can be relevant to their lives and that education can be interesting, even fun. Research in the United States and South Africa has also affirmed that as students gain knowledge of the law, they change their attitudes about law and their own legal system. Street Law can even reduce factors that have been found to contribute to juvenile delinquency; students enrolled in Street Law classes in the United States have been found to commit fewer crimes than similar students who did not participate in such classes.

Street Law also can influence teachers who previously have taught only in a theoretical, conceptual, and authoritarian way. They learn the advantage of teaching practical content in an engaging manner. Techniques such as case studies, role-playing, small groups, and debates have been known to affect the methods of instruction that these teachers use in their other classes as well.

Knowledge, skills, experience: Street Law offers them all

Street Law programs provide certain benefits to all who are involved. Where law students serve as instructors, they gain the following:

Substantive knowledge of the law. Law students are offered a unique and powerful opportunity for professional development. While preparing for and teaching classes, they must master topics in the substantive area in which they are teaching.

Practical skills. Law students learn skills they will use in their everyday practice as a lawyer, and they gain insight into the legal process through the development of role-playing, mock trials, and simulated legislative hearings.

Communication skills. Teaching requires students to organize their thoughts, think quickly, and develop public speaking skills.

Analytical ability. Teaching requires the development of analytical skills in deciding what materials to teach, what methods to use, and how to explain complex material to people unfamiliar with the law.

Time management and organizational skills. Law students must learn how to budget their time, organize their material, and handle other teaching responsibilities, all of which require effective time management and good organization.

Experience to enhance attorney-client relationships. There are many parallels in the relationship between an attorney and a client and that of a teacher and a student, including the need to establish trust, clearly explain complicated issues and concepts, and set appropriate limits. Street Law program participants are well prepared to forge honest and productive relationships with their clients in the future.

Knowledge about human rights and democratic values. Law students who teach about human rights and the democratic system on which a legal system should be based become more knowledgeable in these areas.

Awareness of the impact of laws on individuals and their community. Street Law provides the opportunity for participants to appreciate the very real human ele-

ment of law in society. Street Law instructors learn about the impact that law has on the lives of their students. This experience sensitizes law students to crucial policy issues and encourages some of them to consider a career path focused on achieving social justice.

Exposure to a range of career opportunities. Street Law programs can introduce students to a broad variety of job opportunities not usually represented at law schools.

4. Developing Street Law programs

Those interested in creating Street Law programs are usually more successful if they begin on a smaller scale in order to develop a solid foundation on which the program can grow. Convening a planning team is an important first step. Members of the team might include a law school administrator, a law school professor, and a group of law students and representative(s) of the school or community center where the program will take place. There are a myriad of issues that the team must investigate; a good way to begin is by addressing the following who, what, how, where, when, and can questions:

Who

- must approve the creation of the program?
- will direct the program?
- will teach the classroom component?
- are the intended beneficiaries of the program (such as secondary school students, prison inmates, other citizens)?

What

- are the purposes of the program?
- program model(s) should be adopted?
- types of supervision will be provided?
- staff resources are required?
- will be the costs for the program?
- are the likely sources of funding?

How

- long will the Street Law program course be (for example, one or two semesters)?
- many students will participate each year?
- will law students be selected to participate in the program?
- will law students be trained?
- will Street Law instructors (such as law professors) be trained?
- will law students be evaluated?

Where

- will the law student teaching take place?
- will the classroom component for law students take place?
- can other course-related activities occur?

When

- can the Street Law program course begin?
- will the law student teaching take place, and how often?
- will the classroom component occur, and how often?

Can

- Street Law be taught as a component of, or integrated into, an existing course?
- a new course on practical law be added to the curriculum?
- appropriate curricular materials be readily obtained, or are they already available?
- the law school and secondary school academic calendars be coordinated appropriately?

Based on the answers to these questions, team members may create a realistic picture of the feasibility and interest in moving forward, and they can compile a list of things that must be done or questions that must be answered in order to initiate a Street Law program. If possible, the team should consult with other groups or individuals who have been through the process of establishing a Street Law program. Such groups have gained invaluable experience and can provide useful insight on how best to handle the challenges and problems that are inherent in introducing and developing innovative educational programs.

Russia's Living Law project

Since its founding in 1992, St. Petersburg Prince Oldenburgsky Institute of Law, a private educational institution, has made the introduction of innovative, interactive teaching methods an integral part of its educational mission. In 1993 the law school began developing a practical law course for secondary school students. The following recommendations are part of a strategy that has led to the success of the Living Law project, St. Petersburg Institute of Law's Street Law program. These steps are

important to keep in mind when starting and developing Street Law programs or other public interest law projects.

Take a personal interest and become directly involved in the project in order to attract others

Victor Pronkin, rector of St. Petersburg Institute of Law, met Edward O'Brien, director of Street Law, Inc. (USA), in 1995 and became personally involved in the Street Law/Living Law project, which began as a result of that meeting. "By demonstrating a strong personal commitment to Street Law or other public interest law projects, you enhance your credibility in attracting other law professors and law students to your program," Pronkin remarked. Arkady Gutnikov, a St. Petersburg alumnus and now the law school's deputy rector, was inspired by the educational approach of the Living Law project, and he has become one of its most influential proponents and a strong supporter of civic education in Russia and abroad. Through extensive training efforts and the dissemination of information, the number of lawyers and educators interested in Street Law programs and skills training continues to grow.

Design a strategy for developing the project, and identify who may help you and how

Today, St. Petersburg Institute of Law has many partners and supporters: Street Law, Inc., National Endowment for Democracy, Ford Foundation, Open Society Institute (New York), COLPI, American Federation of Teachers, American Bar Association, CIVITAS International, Russian Association for Civic Education, St. Petersburg Conflict Resolution Center, and other international and national educational organizations and foundations. These relationships have been nurtured and strengthened over time. Such organizations' assistance, advice, consultation, and other support are crucial, especially at the beginning of a Street Law program. Find out which organizations in your country and elsewhere have experience in running Street Law programs or have provided support to projects focused on public education in the law.

Determine whether and how these groups could assist you in initiating a program in your country, such as through funding, training, development of materials, administrative guidance, or other assistance. Cooperation with other organizations establishes vital relationships and creates unique opportunities for the development of your project. In addition, you may find that your project becomes the model for others who are starting Street Law programs.

Focus on the training of personnel

Through the Living Law project, law school staff have participated in national and international workshops and seminars, where they were trained to be instructors, authors, and program managers. Experienced trainers, consultants, and other Street Law experts served as faculty at those seminars and workshops. Now St. Petersburg Institute of Law staff are being invited to serve as trainers for different seminars not only in Russia, but in other countries as well. In Street Law, as in almost any other discipline, the most effective training method is learning by doing. This principle applies equally to the concept of "training the trainers." It is crucial that the Street Law program faculty receive continuing education regarding training and instructional techniques, for the benefit of their law students as well as their own professional development. In addition to participating in ongoing training, the law school itself hosts seminars and workshops, as well as study visits for Russian and other NGO activists, law students, law professors, and educators from Central and Eastern Europe and the former Soviet Union. Some programs may be more successful than others, but the St. Petersburg Institute of Law team never stops learning.

Apply ideas creatively

The Living Law project began with St. Petersburg Institute of Law working in secondary schools. The Living Law textbooks were designed mainly to accompany a course for high school students. At the same time, the law school team began to absorb many other ideas in the fields of law, education, and social science. Today, the Living Law project includes the following components:

- a Living Law course (or its elements) in secondary schools and juvenile correction facilities
- extracurricular activity in secondary schools, such as mock trial competitions, Olympics-style legal competitions, clubs of young lawyers, social projects (including student government and a school conflict resolution center), and work with local government and the community (including the Citizen, Civil Forum, and Dialogue projects, among others)
- a Living Law course (or its elements) in law schools and other pedagogical institutions, as an introduction to law and the legal system as well as to interactive methods of teaching
- a Living Law clinic for law school students, police academy students, and students at other pedagogical institutions who are working with young people, in order to train them in legal, pedagogical, and communication skills
- a program for developing the teaching skills of students of pedagogical institutions, as well as schoolteachers and university professors

Encourage the application of Street Law principles to legal education generally, at home and abroad

The Street Law/Living Law project, which emphasizes practical, interactive education oriented to public interest practice, has affected the law school itself in many ways. St. Petersburg Institute of Law trains its professors to teach relevant, practical skills and substance, based on a variety of Street Law strategies. Using a textbook, teachers manual, and tested seminar materials developed specifically for the faculty training program, St. Petersburg offers young faculty members a chance to develop their skills devoted to legal/human rights and public interest law education.

St. Petersburg has also changed the law school curriculum to include several practical and public interest law courses and programs: introduction to law, the legal

system and legal profession, negotiation and mediation, interviewing and counseling, legal ethics, mock trials, legal clinics, social practice, and others. The law school became a training center in interactive teaching methods, public education about rights and law (civic education), and practical legal education (for legal clinics and NGO activists), among other things. Now St. Petersburg Institute of Law can be considered an "incubator and training center of new strategies in law, education, and social services."

For more information, please contact St. Petersburg Institute of Law, Living Law Project, 34 Maly prospect, V.O., St. Petersburg 199178, Russia; tel: (7 812) 327 7314; fax: (7 812) 324 8827; E-mail: street@mail.rcom.ru; Web: www.livinglaw.spb.ru.

5. Methods of teaching human rights, law, and democracy: The South African perspective

In order to exercise their basic rights, citizens must be able to recognize them and be equipped to secure them. For individuals living in emerging democracies, such fundamental rights are newly created, or if they existed previously, they were theoretical and largely unenforced. It is thus imperative that citizens acquire the information they need to protect their rights and freedoms, and such education depends greatly on using effective instructional methods.

Many teaching strategies can be used when teaching human rights, law, and democracy to a wide variety of people. With the use of various methods, participants remain interested and learn better; research has shown that individuals have different learning styles, so each teaching method results in better learning for certain students. In addition, the participatory methods involve students in a more engaging way, which mirrors democratic participation. This section describes a number of those methods. Of course, instructors should be flexible and adapt their teaching methods to their subject and their students.

The following teaching methods are described in this section:

5.1 Brainstorming
5.2 Case studies
5.3 Hypotheticals
5.4 Debates

5.5 Opinion polls
5.6 Group discussions
5.7 Open-ended stimulus
5.8 Question-and-answer session
5.9 Ranking exercises
5.10 Values clarification
5.11 Mock trials
5.12 Role-playing
5.13 Simulations
5.14 Participant presentations
5.15 Use of community resource people
5.16 Site visits
5.17 Visual aids

Included in this section are some examples of exercises illustrating many of the described teaching techniques. The examples are adapted from two texts that have been widely used in South Africa: *Human Rights for All* (1995) and *Street Law: Introduction to South African Law and the Legal System, Teacher's Manual* (1995).

5.1 Brainstorming

During brainstorming, the teacher invites participants to think of as many different suggestions as they can, then records all suggestions even if some of them might appear to be wrong or inappropriate. If the answers seem to indicate that the question is not clear, the question should be rephrased. Instructors should not worry about ideological conflicts and should accept everything that is suggested. Thereafter, key areas can be selected and priorities set for further discussion or analysis.

5.2 Case studies

When using case studies, instructors should invite different participants to read the facts of the case and then identify the problem or issue involved. Participants should be asked to prepare arguments for both sides concerning the particular problem or issue, and then to reach a decision or to make a judgment on the merits of the arguments.

Case studies can usually be conducted with the entire classroom by dividing participants into two or three groups and inviting them to consider suitable arguments or solutions. A variation might be for one group or set of groups to argue for one side, another group or set of groups to argue for the other side, and a third group or set of groups to give a decision or judgment on the arguments.

Case studies are often based on real incidents or cases, but they can also be based on hypothetical situations. The advantage of case studies is that they help students develop decision-making and critical thinking skills, as well as the ability to think logically. A disadvantage is that sometimes it is difficult for partici-

pants to separate important facts from those that are less important, and to separate fact from opinion.

5.3 Hypotheticals

Hypotheticals are similar to case studies, except that they are often based on fictitious situations. They are more useful than case studies in the sense that a particular problem can be constructed specifically for the purposes of the lesson. Furthermore, they are sometimes based on an actual event, although appropriate changes can be made depending on the purposes of the exercise. Hypotheticals are particularly useful when teaching about rights in an environment hostile to human rights. Reference does not have to be made directly to the host country, and hypotheticals from foreign jurisdictions can be used. As with case studies, participants working with hypotheticals should be required to argue both sides of the case and then reach a decision.

5.4 Debates

It is important to confront controversial issues in the classroom, as this allows students to reason together and address the gap between democratic ideals and societal realities. In fact, it is believed that students who discuss controversial issues in class will be more likely to take an active role in civic life, trust other students and adults in their schools, develop an interest in politics and government, think deeply and critically about important societal issues, and understand the reasoning of those who hold opposing views. For a debate, the teacher should choose a controversial issue, such as abortion, prostitution, or capital punishment. Participants could be divided into two opposing groups, or small discussion groups. The groups can then be used to assist the people on each side who are chosen to lead the debate. The debate should be conducted in such a manner that the participants have an opportunity to listen to the debate, and thereafter to vote in favor of or against the particular proposition.

5.5 Opinion polls

Opinion polls provide participants with an opportunity to record their private views. After the participants have recorded their views, they can be asked to share them with the rest of the group, and the instructor can draw up a class composite indicating the views of the group as a whole. For example, participants might be asked who is in favor and

who is against the death penalty. Many opinion polls allow participants to express their values, beliefs, and attitudes about the topic of study. This is often called "taking a stand" on an issue, and here the expression can be taken literally: participants with one view are asked to stand on one side of the room, and those with the opposite view stand on the other side of the room. They should then be asked to justify their opinions and listen to opposing viewpoints. Following the discussion, participants who have changed their minds about the issue may move to the opposite side of the room. Very often, opinion polls can be followed by case studies or group discussions.

Human Rights for All example: Taking a stand

1. Where do you stand on the issue of the death penalty? Locate yourself in the appropriate group below:
   a. Strongly in favor of the death penalty for serious crimes such as murder.
   b. In favor.
   c. Undecided.
   d. Opposed.
   e. Strongly opposed to the death penalty for any crimes.

2. Think about reasons on both sides. Give two reasons "in favor" and "opposed."

3. Clarify your position. Decide if the stand you took in question 1 above would change if any of the following people and situations were involved:
   a. A person who has committed twenty brutal murders.
   b. A fifteen-year-old mentally retarded person who has killed a store owner in a robbery.
   c. A member of a religious minority, which has been persecuted by the government, who has blown up a church where 200 members of the religious majority were worshiping.

d. A sixteen-year-old political activist who threw a rock and killed a policeman who was beating up the activist's brother unjustifiably.
e. A corrupt leader who has ordered the killing of many people who have criticized him and his government.
f. A man who murdered his unfaithful wife's lover when he found them together, after she had left him and their children.
g. A woman who was part of a mob that angrily stoned to death someone accused of being an informer for an oppressive government. The woman did not hurt the informer but encouraged others to do so.

5.6 Group discussions

A group discussion is a planned interaction among participants. It should be conducted in such a manner as to ensure that no participant dominates the discussion and everyone has a fair opportunity to comment. Small group discussions enable all students to become involved in sharing their views. Often students will speak more freely in small groups than large ones. The ideal size of a small group is five people or less. The responsibility of the teacher is to set tasks and manage the activity in the group, so that all participants have an opportunity to make a contribution.

When conducting a discussion, the instructor should link the main points together in order to extract the important principles and then draw the discussion to an end by emphasizing the original main points. One method of doing this is to devise key questions, which should then be answered during the discussion.

5.7 Open-ended stimulus

Open-ended stimulus exercises require participants to complete unfinished sentences such as "If I were the president I would . . ." or "My advice to the minister of justice would be. . . ." Another method of using an open-ended stimulus is to provide participants with an untitled photograph or cartoon and require them to write a caption. A third method would be to provide participants with an unfinished story and ask them to act out its conclusion.

Street Law example: A case of spousal abuse

Late one night you hear screams and loud banging and crashing. You look out and see your neighbor Mrs. Swart being slapped and punched by her husband as she tries to walk out of the door. Before she can run away, Mr. Swart pulls her back into the house and slams the door. You hear breaking glass, more screams, and the sound of people running. You know that Mr. Swart has a drinking problem and that this is not the first time he has beaten up his wife.

1. If you were the neighbor, what would you do? Would you call the police? If you called the police, what would you tell them? If you would not call the police, explain why not.
2. Suppose you are a police officer and you receive a call that Mr. Swart is beating up his wife. When you and a fellow officer arrive at the Swarts' residence, you find that Mrs. Swart is cut, bruised, and beaten up. Role-play the interaction between you and your colleague and the Swarts.
3. Acting as the police, decide what you would do in this situation. Would you question the couple? Would you arrest Mr. Swart? Would you take Mrs. Swart out of the house?
4. Acting as Mr. Swart, decide how you would react to the police in this situation. Acting as Mrs. Swart, decide how you would react. Would you file charges against your husband? Would you stay in the house? Would you do something else?
5. Suppose you are the magistrate dealing with the Swart case. Would you send Mr. Swart to jail? Would you take some other action?
6. What programs are available in your community to help abused women? Are there places where abused women can go if they decide to leave home?

5.8 Question-and-answer session

When using a question-and-answer technique, instructors should wait for at least five seconds after asking the question in order to give participants an opportunity to think before answering. The questions should be planned to elicit the information necessary for the lesson. The question-and-answer technique can be used instead of lecturing, and a checklist of questions should be prepared to ensure that all aspects of the topic have been covered by the end of the lesson. Teachers should be careful to ensure that more confident participants do not dominate the question-and-answer session.

5.9 Ranking exercises

The instructor should give participants a list of items to rank (for example, five to ten different items). After ranking competing alternatives, participants would then (1) justify their rankings, (2) listen to people who disagree with them, and (3) reevaluate their rankings in light of the views of the other participants. Thus, in teaching human rights, participants might be asked to make a list of what they think are the most important human rights and then to rank them.

5.10 Values clarification

Values clarification exercises encourage expression and examination of one's own values, attitudes, and opinions, as well as those held by others. This exercise gives participants an opportunity to examine their attitudes and beliefs; at the same time they are asked to consider other points of view. This exercise thus promotes communication skills and empathy for others. The instructor should ask participants to (1) express and clarify their opinions, (2) give reasons for their opinions, and (3) reevaluate their opinions after hearing the opinions of others.

5.11 Mock trials

Mock trials are an experiential way of learning that enables participants to overcome fear of the courts and presiding officers and to understand court procedures. Mock trials can be conducted with just a few students or many more than that. A mock trial could involve, for example, thirty-two participants: eight judges, eight prosecutors, eight defense lawyers, six witnesses, and two court officials (court orderly and timekeeper). Participants can be taught how judges, prosecutors, and lawyers ask questions, how prosecutors and lawyers make opening and closing state-

ments, and how judges reach and give judgments. Participants can play the roles of judges, prosecutors, lawyers, witnesses, and court officials.

Mock trials provide an opportunity to expose participants to real judges, who can be involved as presiding officers together with student judges, or as resource people to debrief the mock trial participants after the student judges have delivered their verdict. In countries where human rights have been at risk, the use of the judiciary in mock trials by NGOs has provided these groups with the necessary status and protection to ensure that their programs are not banned by authorities hostile to human rights. Mock trial manuals have been developed for use in both common law and civil law systems. Such manuals are available from Street Law, Inc. and other organizations teaching Street Law concepts through mock trials.

5.12 Role-playing

During role-playing, participants are asked to act in specified roles in a particular situation (for example, as a police officer arresting someone). Usually role-playing takes the form of requesting participants to make a decision, resolve a conflict, or act out a conclusion. Participants should act out the role as they understand it, and they can make up their actions as they wish. They should be given an open-ended situation, with an opportunity to act out the scenario and reveal themselves in the process. Although the instructor sets the atmosphere, he or she should accept what the participants do. Role-playing often provides information about the participant's experiences as a story in itself. Observers and participants should be required to analyze the role-playing and to discuss what happened during it.

5.13 Simulations

During simulations, participants are asked to act out the role of somebody else by following a given script. Simulations are generally not open-ended like role-playing, and they are tightly controlled in order to ensure that the instructor's objectives are achieved. Simulations encourage participants to understand other points of view, particularly if they have to act as a person they do not like, or as someone who has principles with which they disagree. Simulations often require more preparation by teachers, because it is necessary to ensure that participants follow the script. Difficulties arise if participants have different reading skills, and it may be necessary to ensure that the simulation is audible, visible,

and situated in a space where everyone can view the exercise.

Often it is useful for the instructor to tell participants about the person whose actions they are simulating before they act out the scenario, so that they can correctly interpret the actions of the particular person. This may require a short rehearsal before the simulation is presented. Simulations can be conducted so that they involve everyone. For example, when the simulation takes the form of a mock trial, up to twenty-four or thirty-two participants can be involved, or if there is a large group of participants, they can be divided into small groups and each small group can carry out the simulation. How the simulation is conducted will depend on the number and nature of participants. The simulations should be designed so that they challenge participants without making them feel so uncomfortable that the learning experience is undermined.

5.14 Participant presentations

Participants can be given a topic to prepare for presentation. They can be asked to research the topic formally (for example, by consulting books, magazines, or journal articles on the subject) or informally (for example, by asking their parents what they did in the period leading up to a political transition in a particular country). The instructor may then call on participants to make a presentation to the group as a whole, after which the presentations can be discussed.

5.15 Use of community resource people

The involvement of community resource people in the classroom provides a realistic and relevant experience for participants. Instructors should identify experts or other people trained in the particular field under discussion (such as judges, lawyers, community leaders, politicians, police officers, clergy, and prison officials, among others). People who are victims of abuse of power can also be used as resource people; they can usually be identified by NGOs, members of religious communities, or women's and youth groups.

Resource people should be briefed prior to their presentation, and participants should be briefed on what to ask and observe. The resource person can then co-teach with the instructor. A useful technique is to ask participants to role-play an interview with a resource person (for example, portraying a judge during a radio interview). Another method is for resource people and participants to engage in a simulation, after which the resource people evaluate participants on their performance. An example might be

to allow a police officer to observe students simulating an arrest and then ask the officer to provide instructive comments about the exercise. Resource people are very valuable because as experts in their fields they can provide experience and knowledge not found in textbooks.

5.16 Site visits

Site visits are useful because instructors can choose both interesting and relevant places for participants to visit (such as courts, prisons, retirement homes, police stations, hospitals, and urban, poor, and rural communities). Participants should be instructed before the visit to watch for specific things. They should also be asked to record their reactions on an "observation sheet," which would be prepared beforehand, so that the records can form the basis of a discussion when they return from the field trip.

5.17 Visual aids

Visual aids take the form of photographs, cartoons, pictures, posters, videos, and films. Very often they can be found in textbooks, newspapers, magazines, and similar sources. Videos and films are usually available in libraries and resource centers.

The instructor may use visual aids to elicit interest, recall early experiences, reinforce learning, enrich reading skills, develop powers of observation, stimulate critical thinking, and encourage value clarification. Participants can be required to describe and analyze what they see, and to apply the visual aid to other situations through questioning. Visual aids can also be supplemented by books, pamphlets, and speakers.

Visual aids help to clarify beliefs when students are asked to deal with such issues as "Do you agree or disagree with the artist's point of view?" or "What should be done about the problem in the picture?" A good example of a visual aid is the cover of the South African book *Street Law: Criminal Law and Juvenile Justice*, by David McQuoid-Mason, which is a cartoon illustrating ten different crimes. Students can be asked to see how many crimes they can find in the picture and to describe the elements of the crimes identified by them.

A wide variety of teaching techniques are available to Street Law instructors and other educators, providing many choices beyond the lecture method. Lectures may certainly be included in a successful course, but the lecture is most effective where it is combined with a visual presentation and kept to a maximum of ten minutes in length. The most successful teach-

ing techniques, however, involve interactive exercises, especially those that rely on experiential learning. The most effective way to teach about human rights, law, and democracy is to draw on the experiences of the participants and to relate their experiences to the national, regional, and international laws available to protect them. This not only will help them appreciate the importance of these issues, but also will enable them to understand their practical application.

For more information about teaching methodology for Street Law programs, please contact Street Law South Africa, Centre for Socio-Legal Studies, University of Natal, Durban 4041, South Africa; tel: (27 31) 260 1291; fax: (27 31) 260 1540; E-mail: scott@law.und.ac.za; Web: www.csls.org.za.

6. Developing Street Law course materials

Creating curricula and written materials for a Street Law course or other public education program is a very challenging task that can take many months, and that requires ongoing refinement and improvement over time. Street Law, Inc. uses a comprehensive text for class participants called *Street Law*, as well as a teachers manual for use by law students as the basis for many of its programs. Seven smaller South African Street Law books and teachers manuals, including *Human Rights for All* and *Democracy for All*, are texts that have been used widely in South Africa. Four similarly sized Street Law textbooks were published in Slovakia during the period 1998–2000. Poland produced a Street Law text in 1997 titled *A Handshake with the Law*, while Kazakhstan published its *Human Rights for All* in 1999. During 2000, Street Law texts were published in Kyrgyzstan, Russia, and Belarus.

It is important to note that the more recently developed texts are not merely translated versions of curricula originally written in the United States, South Africa, or other countries with a longer history of Street Law programs. Rather, these course books have been adapted or in many cases rewritten to meet the unique needs of the country where the texts will be used. People who live and work in that country clearly have been in the best position to do this. The guidelines described in this section and the next one may be useful for individuals working on a new country-based curriculum to read and discuss, and to refer back to frequently to achieve the desired results. For the purposes of sections 6 and 7 of this chapter, the term "teacher" refers to the law student instructor who conducts Street Law course lessons; the term "stu-

dent" refers to the Street Law course participants; and the term "instructor" refers to the law professor or other educator who develops materials and supervises law student teachers.

6.1 Deciding on the curriculum goal

A goal is a broad statement of the purpose of the Street Law program; it should be compatible with the educational goals of a democratic society (for example, support for human rights and the rule of law). Pose the questions "Why are we writing this curriculum?" and "What do we expect to happen as a result of this curriculum?" The goal of the course, for example, may be to provide class participants with the knowledge, skills, and attitudes necessary for effective participation in a democratic society.

SELECTING KNOWLEDGE, SKILLS, AND ATTITUDES

Course developers should brainstorm about what knowledge, skills, and attitudes Street Law program participants will develop or acquire as a result of using the curriculum. These may include the following:

Knowledge

- the structure and function of government (Why do we need government?)
- an overview of law (Why do we have laws?)
- consumer laws (What kind of laws do we need?)
- important documents (Constitution, Universal Declaration of Human Rights)

Skills for problem solving

- thinking abstractly
- reflecting
- developing alternatives
- predicting consequences
- making reasoned decisions

Civility

- communicating
- listening
- participating socially
- demonstrating empathy
- having a sense of humor
- working in groups
- thinking before acting
- resolving conflict peacefully

Attitudes

- belief in ideals of democracy and the rule of law
- commitment to the ideals of democracy
- a sense that justice can be obtained
- belief in participation
- tolerance of diversity
- belief in the need for protection of human rights by government and individuals
- a sense of self-worth
- a notion of efficacy ("I can make a difference!")

6.2 Identifying student outcomes

An outcome is something that happens as a result of the curriculum. Ask the questions "What measurable changes in students' knowledge, skills, and attitudes can be achieved?" and "How can one measure each outcome?" For example, as a result of the curriculum, students will be able to

- develop, defend, and evaluate a position on a specific issue of freedom of speech,
- identify alternative positions on a local controversial issue,
- identify consequences from those alternative positions.

6.3 Formulating the action plan

The action plan should state what steps are necessary to reach the curriculum

goal(s). Each step of the plan should be clear, possible to achieve, and measurable. How will you know when you have reached your goal? When do you expect to have made a difference? How will you determine that your program made this difference?

It is useful here to develop concrete outcomes for the course. First, list each topic that is to be included in the text. Establish at least one outcome for the topic that supports the particular curriculum goal and the desired results. Once all the important topics have been selected, it may be clear that there are too many topics and the list should be shorter. Topics should be both of interest to students and clearly relevant to their lives. To help determine whether to include a topic, imagine a student asking, "Why do I need to know this?" Topics and outcomes should address all the knowledge, skills, and attitudes included on the topic list. It may help to select topics and activities while identifying outcomes.

6.4 Including essential components

Central to the philosophy and methodology of Street Law programs is of course an emphasis on participation and interaction in the classroom. Through active participation and discussion of important life situations, students develop a commitment to the ideals and principles of democracy. Here is a sample of pedagogical methods that help to achieve these results:

- Discuss any laws that apply to or address the topic. (The current law is . . . or the proposed law is . . .)
- Analyze the public policy questions surrounding the topic. (Is this law a good law? What should the law be?)
- Examine and identify any conflicting values. (In many situations there are good values or ideas that conflict. For example, a new factory in a town brings new jobs, but the resulting pollution endangers wildlife.)
- Apply the law to the students' lives. (What are the students' rights and responsibilities under the law? What is the impact on their lives? For example, ask students: "Where do you go to vote?" "How do you register?" "Does it cost money to register?" "When are elections?")

6.5 Developing lessons

For each lesson topic, decide how to apply one or more of the components listed above. Every component does not have to be used in every lesson, but every component should be included in the larger unit

or chapter. Presentation of the law alone usually fails to engage the student in critical thinking and challenging intellectual activity. Students learn what they experience. There should be an interactive component for every lesson. The following suggestions may help in writing effective Street Law lessons:

Make lessons relevant to students.

- Use simple language geared toward specific educational levels.
- Use content on law, democracy, human rights, and conflict resolution that is applicable to students' daily lives.
- Use fact patterns or situations taken from actual cases or real life.

Use interactive teaching methods.

- Do not fill text with rote-memory lessons.
- Provide a content base before the activity, so that it is not just a "game." (What knowledge and skills must the student have in order to do this activity?)
- Provide information to allow students to construct their own knowledge framework. This means that students should discover answers and make decisions on their own.
- Integrate interactive activities throughout the text.
- Use a variety of methodologies for the activities so students will not become bored.
- Use activities that provide practice for the skills identified in the outcomes.
- Select problems, case studies, and hypothetical situations that include controversial issues (for example, what should be done about immigration).
- Select problems with more than one right answer. Students need to practice using their decision-making skills on more complex problems. To enhance lessons, they might include case studies or hypotheticals followed by open-ended questions.

Balance information on all topics.

- Select problems involving conflicting good values.
- Ask students to examine all sides of the issues for all problems, activities, and case studies.
- Provide information on all sides of issues. Avoid providing right or wrong answers.

Provide sufficient quality and quantity of instruction.

- Use materials that address all the outcomes.
- Know that sometimes it is better to thoroughly cover less material than to

try to cover too much material at once.

- Plan sufficient time for lessons and materials in order to reach outcomes. Do not move too quickly through lessons.

Because Street Law is the practical application of law to daily living, texts for the classroom should contain topics and issues that one may encounter on any given day and that address the legal system's values and principles. A discussion of controversial issues is often an effective way to foster debate about a system's strengths and weaknesses. Texts that include exercises and problems posing questions about the fairness or effectiveness of a law or legal system allow students to test their own skills and knowledge about the law and about citizens' rights and responsibilities. Students will therefore not only learn substantive information about laws but also understand their own rights and responsibilities and how those interact.

7. Creating teachers manuals

A good teachers manual should reiterate some of the items addressed in training sessions, such as determining what is the overall goal of teaching a Street Law course, how to provide a positive learning environment, and how to select teaching supplies. Most importantly, a teachers manual must include clear, comprehensive lesson plans or agendas and related exercises and problems that correspond to the text. Basically, each lesson plan should set forth the general goal(s) of the lesson and the methods a teacher may utilize to teach the lesson. The goal(s) should be divisible into smaller objectives so that a teacher can tailor the lesson according to the size of the group and the amount of time available, taking a step-by-step approach. A lesson plan should also include a list of teaching aids or additional materials the teacher could use for the lesson.

The substance of a teachers manual should lie in the exercises and problems to be introduced in the classroom. Such exercises and problems should promote interaction between the teacher and students and among the students themselves, encourage critical thinking and communication skills, and develop the desire and ability to participate in public life. The manual should indicate the amount of time recommended to complete each exercise or problem and the objective or part of the general goal(s) that the exercise

or problem addresses. It should also include a series of follow-up points or questions with which a teacher can end the lesson.

STANDARDS FOR TEACHERS MANUALS

The outcome of a lesson should be

- stated clearly, addressing both content and skill;
- worth learning, something citizens should know or be able to do.

Assessment tools can include

- suggestions for testing or assessment (for example, a test, presentation, product, or performance to be produced by the student);
- a method by which the teacher can know that students have achieved the outcome.

Elements of a good lesson include

- focus—ideas to spark student interest in the lesson or to review previous, related material;
- outcomes—clearly stated so that the teacher can help students understand what they will learn, what is expected of them, and why it is important;
- input—background information, suggestions, and alternative approaches provided for the teacher when helpful;
- interactivity—each activity has an intellectual purpose directly related to outcomes, with steps in conducting the lesson outlined, including tips for classroom management.

Closure or debriefing can include

- questions to allow many possible responses;
- suggested answers;
- information sufficient for the teacher to sum up how the activity and background relate to anticipated outcomes for students.

Each university or institution establishing a Street Law program must design a curriculum and accompanying teaching materials that are unique and relevant to the needs of the students and participants in that program. In Poland, for example, where the Polish Association of Legal Education (PSEP) has developed and supported university-based Street Law programs, teaching materials have evolved over time to meet the needs of participants, whether they be secondary school students, inmates, prison officials, or other groups. Although no two course books or curricula are alike, the Polish approach to lesson development and teachers manuals may be useful for those beginning to develop their own programs. This chapter ends with an excerpt from the teachers manual for *A Handshake with the Law*, the principal text used in the Street Law program at Warsaw University Faculty of Law.

Polish Street Law programs reach varied audiences, promote justice-oriented education

When Warsaw University Faculty of Law initiated its Street Law program in 1995, it was offered as an elective or optional course comprising two different groups: one group prepared to teach in secondary schools, while the other group taught in the prisons. One of the unique aspects of the Warsaw University program was that it was nurtured and largely directed by an independent NGO, the Polish Association of Legal Education, whose Polish acronym is PSEP. As PSEP—led by a Warsaw University law professor—worked closely with the university to create an effective practical skills training course, the Street Law program became a natural vehicle to support more justice-oriented activities for students. Students who completed the Street Law course often were eager to continue putting into practice what they had learned. With PSEP's assistance, they designed a variety of courses for particular groups in the community. Since 1998, courses have also been offered to victims of domestic violence, homeless people, unemployed, correction officers, prison administration, and others. PSEP has also served as a catalyst for the development of Street Law programs at other universities, including the law faculties in Bialystok, Kraków, Poznan, and Szczecin. With approximately 100 law school students participating in

Street Law courses each year, instruction on practical legal information is reaching more than 2,000 students in secondary schools and about 250 prisoners annually.

For more information, please contact Polish Association of Legal Education, Krakowskie Przedmiescie 12/10, 00-325 Warsaw, Poland; tel: (48 22) 827 7878; fax: (48 22) 828 4698; E-mail: psep@free.ngo.pl, psep@warman.com.pl.

POLISH LESSON GUIDE ON CITIZENS' RIGHTS AND THE POLICE

Lesson goals

Upon completion of the lesson, students will acquire the following:

Knowledge, by learning

- the main goals of police work.
- proper police procedures for examining documents, apprehending individuals, and conducting interviews.
- how to react when police action is illegal.
- the differences in Russian and Polish law—with the assistance of an outside expert (for example, a St. Petersburg police officer invited to participate in the class)—regarding rules regulating contact between the police and citizens.

Skills, by learning

- how to behave in accordance with the law while in contact with police during document examination, while being apprehended, or during a police interview.
- how to file a complaint about illegal actions committed by police.

- practical ways of cooperating with police and to whom they should speak regarding crime prevention in their local communities.

Values, by understanding

- what are false stereotypes about police and police work. The recognition that stereotypes about police have a negative effect on society will enable students to make more informed judgments about police and police work.
- that people are not helpless. Knowing and using the law allows individuals to affect their own situations. Understanding and exercising citizens' rights and duties while in contact with police helps develop self-assertiveness and strengthen self-esteem.
- that to a certain degree they alone can have some power over the level of safety and security in their community.

Methods

- brainstorming
- role-playing
- small group activity
- debriefing of role-playing by an expert (for example, a policeman)
- puzzle

Checking that goals have been reached

- Repeat role-playing, according to relevant provisions of Polish and Russian law.
- Put the law puzzle together.
- Review elements that should be included in a complaint about illegal apprehension by police.

Teaching materials

- Platek, M., and L. Bojarski, *Z Prawem na Ty* (A Handshake with the Law), 3rd edition, Zakamycze, 1999, Kraków; chapter 10, "Konkurenci

Aniola Stróza czyli prawa obywatela wobec policji" (The Rivals of the Guardian Angels: Citizens' Rights and the Police).
- flip charts, markers, paper, blackboard, chalk, and so on.
- example of the written complaint on police apprehension.
- law on police, from 6.IV.1990 (Dz.U.nr 30 poz.179 z pózn.zm.); State Council Ordinance, from 17.IX.1990, on examination of documents, apprehension procedures, personal control, and baggage-checking procedures (Dz.U.nr 70 poz.409).
- Polish criminal code, procedural code, and civil code.
- relevant Russian rules.

Checklist

1. Make sure that the meeting room is prepared appropriately for the lesson. Students in the class should sit in a circle. If there are tables in the room, they should be set up in the shape of a horseshoe, leaving a large amount of space in the middle so that there is room for the role-playing.
2. Prepare in advance all the required schemes and handouts, and have sufficient copies of role-playing and legal materials from Poland and Russia in both English and Russian.
3. Prior to the lesson, use a flip chart to write out the goals of the lesson, dividing them into didactic goals (about knowledge and skills), educational goals (concerning values), and methodological goals (explaining the Street Law concept in the methods).
4. Before the meeting starts, list basic police duties, according to Polish law, on the flip chart.
5. Have available, for every participant who needs them, copies of Russian law on rules governing police conduct in the examination of documents, police interviewing, and apprehension of citizens.
6. Make sure the expert or resource person is prepared and understands his or her role in the classroom.
7. Brief all instructors regarding their responsibilities during the lesson, and review the time allocations for the elements of the lesson.

Steps of the lesson (45 minutes)

1. Introduction (3 min.)

First, inform participants about the goals of the lesson and introduce the invited expert. Considering the expert's presence and, for many, the sensitivity of the subject, ask participants to be honest and frank but not antagonistic. Ask participants not to interrupt, and to speak briefly so as to allow one another a chance to talk.

2. Brainstorming (Present rules—2 min. Brainstorm—4 min. Debrief—6 min.)

Explain the rules of the brainstorming session. For example, participants should briefly state their opinions, feelings, and/or questions. Participants should not interrupt or comment on colleagues' statements. The goal is to collect as many ideas as possible and to obtain as complete a picture as possible regarding the collective knowledge of the group.

Conduct the brainstorming session. Ask students to fill in this sentence: "A police officer's duty is _____." Students should offer examples of what they believe the police should do, as well as what they consider police responsibilities to be. Have a student assistant write down participants' responses.

Discuss the results of the brainstorming activity. At this point, bring out the sheet prepared earlier that lists the basic tasks of the police, according to Polish law. Compare the students' statement with provisions of the law. Participants will likely have identified many if not all of the elements of the law. Here one may emphasize how often students know exactly what police roles and responsibilities are. At the same time, expect discrepancies between students' opinions and the letter of the law. Try to conduct the debriefing in such a way so as to present fully the obligations of police under law.

This activity should serve to refute many stereotypes regarding police. According to these stereotypes, police obligations to the state override police respon-

sibility to protect its citizenry. And citizens are treated as suspects without a proper level of suspicion. As the old saying goes: Give me the man to condemn, and I will give you the law. It is also useful to ask the invited expert for an opinion on what the most important responsibilities of the police are. This exercise can serve well to create more informed and balanced opinions about the police.

3. Small group work: role-playing (Organize groups—1 min. Review role-playing and assign roles—2 min. Act out scenes—3 min. Debrief—14 min.)

The goal of this activity is to inform participants about proper procedures for document examination, police apprehension of citizens, and police interviews. Following the activity, students will know their rights and responsibilities when stopped by police. The invited expert (such as a Russian police officer) will explain the differences between Russian and Polish rules regulating police behavior while in contact with a citizen.

Organize groups. Divide the students into groups of four, with participants counting off from one to four. Ask the groups to gather in the four corners of the room, reserving space for one group in the center of the room. Explain the goal of the activity and ask the students to apply their own life experiences to the roles they are playing, as well as knowledge gained through the brainstorming activity.

Review role-playing and assign roles. Give each group a scene to be acted out. The teacher can assign roles or let the participants divide the roles among themselves.

Act out scenes. Ask participants to play the roles, as they would imagine police and citizen behavior to be under the given circumstances.

Role-playing No. 1. On the street, a policeman stops a man resembling a suspect the police are looking for. "K." is suspected of murder and illegal possession of

weapons. Because of this, the police want to check the man's identification documents. They also want to search him for weapons. The man believed to be K. resists the police, claiming that he has nothing to do with the wanted man, and that he is looking for his lost dog.

Role-playing No. 2. Policemen patrolling a neighborhood notice two men walking in front of a store. There had been a robbery committed recently at a nearby store, which is now shut down. Then a third man, dressed all in black with a cap covering his face, joins the two men. At that point the policemen walk up to the three men and order them to show identification. Despite the fact that they are uniformed officers, the third man asks the policemen to show their documents first, and to explain why they want to check the three men's documents. The third man also states that although he has no identification, his companions can certify that his name is Zorro.

Role-playing No. 3. A telephone call comes in to the police department. A faltering voice gives an address and reports that next door someone is desperately calling for help. The caller also states that there are banging noises as if people are fighting, and he can hear his neighbor using abusive language and scolding the man's wife. The noise is so loud it can be heard over the telephone. According to law, the police are required to act.

Role-playing No. 4. Staring in each other's eyes and arm in arm, fifteen-year-old Romeo and seventeen-year-old Julia are walking down the street late at night. Suddenly, from behind a tree, two policemen emerge, and a police car stops in front of them with a third policeman inside. Neither of the young people has identification documents, but Julia has a cell phone.

Debriefing and discussion. Invite people who played the roles of the policemen to the front of the class. Ask them to share their impressions, briefly present the situation in which they found themselves, and explain what they did. Instructors should ask students how they felt while they were playing their roles. Did they actually know what they should do? Instructors should also ask the following questions, and invite the expert police officer to participate in the discussion:

- When does a policeman have the right to stop and check a person's identification or to arrest that person?
- If the policeman is allowed to stop a person, what procedures must he follow in checking identification or other documents?
- Does a citizen have the right to demand identification from the policeman?
- Is a citizen required to carry identification at all times?
- Under what circumstances are police officers obliged to take action?

In analyzing the role-playing, ask students to evaluate what was done in violation of the law, and how it could be changed so that the action would be in accordance with the law and proper procedures. In addition to naming improper police actions (not presenting identification, refusing to give the reason for checking identification, acting rudely or arrogantly), instructors can inform participants about the right of citizens to seek redress and/or compensation for an unlawful detention and arrest (as provided in the Code of Criminal Procedure and the civil code).

Instructors may also ask how other "actors" felt in their roles. Were there any differences in acting out the part of a policeman and that of a suspect? If so, have students describe those differences. It may be interesting to ask if any participant has personally experienced or witnessed an identification check by police. What was it like?

Hand out information to participants about how the law regulates the matters we are discussing (Polish and Russian laws and regulations). Read aloud Article 224.1 of the Polish Code of Criminal Procedure, which sets forth procedures for arrest. [Editor's note: The excerpt does not include the text of the Polish and Russian laws.] Briefly go over with participants the rules police must follow when verifying identification or making arrests.

4. Debriefing. (Replay scenes—2.5 min. Put puzzle together—2.5 min.)

The aim of this activity is to verify that the desired didactic and educational goals were reached.

Replay the scenes once more. Ask participants to act out the scenes once more, this time in accordance with the legal standards discussed. Remind participants that Poland and Russia are obliged to uphold the European Convention on Human Rights. The Convention guarantees, among other rights, an individual's right to liberty and security (which includes the freedom from unlawful detention or arrest—Article 5); the right to fair trial (a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law—Article 6), and the right to receive due process under law (Article 7).

Put the puzzle together. Another method of checking whether educational goals are met is to play a game. Divide participants into two groups. Hand out to each group strips of paper with words from the law discussed (Article 224.1 of the Code of Criminal Procedure) written on them. The first group to put the words together in a logical sequence is the winner. Be sure to congratulate all students for their participation.

5. Evaluating the methodology of the lesson. (Learning pyramid—2 min. Discuss value of interactive methods and rationale for inviting community resource people to the classroom—3 min.)

The learning pyramid. Discuss with participants all possible methods of learning, with a view to selecting the most effective. During a short brainstorming activity, write all proposed methods on the flip chart. Next, present and explain the learning pyramid prepared earlier. Discuss which learning methods are most effective, and why. Here instructors may comment about the way the brain works. It is important to remember that students learn best in a relaxed atmosphere, in conditions that allow both parts of the brain (right side: visualization, imagination; left side: organization of facts and data) to work.

Value of interactive methods. During conversations with students, it is useful to discuss how interactive methods can assist in reaching educational goals. Ask participants to name the advantages and strengths of these types of educational activities, and to think about what else can be done better.

Finally, thank everyone for participating in the lesson and for working together. Hopefully, students will take from the lesson knowledge and information they can use in everyday life, with the desire and ability to help improve legal standards and protections in all of our countries.

RESOURCES

Readings

Amnesty International, *First Steps: A Manual for Starting Human Rights Education*, 1997, London. <http://erc.hrea.org/Library/First_Steps/index_eng.html> (last accessed on July 26, 2001).

A practical manual for teaching human rights to young people. Contains a basic introduction to human rights, advice on methodology, and some sample exercises and questions for a classroom discussion.

Arbetman, L., et al., *Street Law: A Course in Practical Law*, 6th edition, Glencoe/McGraw-Hill, 1999, New York.

Used throughout the United States, this book is the basis for similiar courses around the world. The text covers criminal, consumer, family, and housing law, intellectual property issues, and individual rights. The student edition features case studies, role playing, advocacy skill-building, and human rights issues in the United States.

Bracha, E., *The Law in School*, Foundation for Education for Democracy. <http://www.human-rights.net/fed/lekc_iia.htm> (last accessed on July 26, 2001).

Familiarizes students with the basic regulations governing schools, and develops the ability to analyze legal documents and the law in everyday life.

Claude, R., *Popular Education for Human Rights*, Human Rights Education Associates (HREA), 2000, Cambridge, Massachusetts.

A trainers guide designed for informal teaching of human rights. Contains exercises aimed at developing sensitivity to humanity, human dignity, tolerance, equality, fairness, and other human rights values.

Council of Europe, *All Different, All Equal Education Pack*, Council of Europe, 1996, Strasbourg. <http://www.ecri.coe.int/en/sommaire.htm> (last accessed on July 26, 2001).

Materials for students fourteen and older, intended as a learning tool for the reader and a resource for organizing activities and lessons.

Gutnikov, A., V. Pronkin, and N. Eliasberg, *Living Law: Teacher's Manual*, St. Petersburg Institute of Law, 2000, St. Petersburg; in Russian.

Contains a description of the Living Law project and recommendations about the use of the manual in different environments such as high schools, universities, nongovernmental organizations, and public authorities. The

book describes different interactive methodologies for teaching Living Law and provides suggestions for a syllabus and sample lesson plans for teaching living law.

Jaan Tonisson Institute, *It's About Me and Human Rights*, 1997, Netherlands Helsinki Committee and Jaan Tonisson Institute, Tallinn. <http://erc.hrea.org/Library/Jaan_Tonisson/aboutme/index.html> (last accessed on July 26, 2001).

A student textbook for an optional human rights course for grades six and seven.

McQuoid-Mason, D., *Street Law: Introduction to South African Law and the Legal System, Teacher's Manual*, 1995, South Africa.

McQuoid-Mason, D., "Methods of Teaching Human Rights," in Lalaine Sadiwa, ed., *Human Rights Theories and Practices*, HURISA Publications, 1997.

McQuoid-Mason, D., et al., *Democracy for All*, Juta & Company, 1994, Kenwyn, South Africa.

A book for students and young people designed to explain what a democracy is according to the international community, how a democratic government works, the role of human rights in a democracy, and other issues. Based on real and fictitious case studies and other exercises aimed at stimulating students' analytical thinking.

O'Brien, E., et al., *Human Rights for All*, Glencoe/McGraw-Hill, 1995, New York.

Designed to teach secondary school students and adults about the Universal Declaration of Human Rights and democratic principles. A teachers manual is also available.

Platek, M., and L. Bojarski, *A Handshake with the Law*, 3rd edition, Zakamycze, 1999, Kraków; in Polish.

Pronkin, V., and A. Gutnikov, *Living Law: Student's Textbook*, St. Petersburg Institute of Law, 2000, St. Petersburg; in Russian.

A well-illustrated book that explains complicated legal notions in a language easy for high school students to understand, and gives additional information about the history, philosophy, and sociology of the law. Also contains practical advice, a sample of legal documents, and a glossary of legal terms.

Stanowski, K., *Fundamental Democratic Rights*, Foundation for Education for Democracy. <http://www.human-rights.net/fed/lekc_ia.htm> (last accessed on July 26, 2001).

An introduction to the study of democratic government structures, local governments, and human rights.

Tibbitts, F., *Manual on Street Law–Type Teaching Clinics at Law Faculties,* Constitutional and Legal Policy Institute (COLPI), 2001, Budapest.

Organizations

Constitutional and Legal Policy Institute (COLPI)
Nador u. 11
4th Floor
1051 Budapest
Hungary

Tel: (36 1) 327 3102
Fax: (36 1) 327 3103
E-mail: colpi@osi.hu
Web: www.osi/hu/colpi

COLPI's activities are designed to assist in the development of the legal infrastructure in the countries in Central and Eastern Europe and Central Asia, including legislation, the judiciary, prosecutors, legal aid actors, penitentiary system, psychiatric hospitals, the media, and democratic armed forces, as well as legal education institutions (broadly defined). Among many other activities, COLPI assists and funds the development of Street Law programs.

Electronic Resource Centre for Human Rights Education–
Human Rights Education Associates (HREA)
Netherlands Office:
Postbus 59225
1040 KE Amsterdam
The Netherlands
Tel: (31 20) 524 1404
Fax: (31 20) 524 1498
E-mail: info@hrea.nl

USA Office:
P.O. Box 382396
Cambridge, MA 02238, USA
Tel: (1 617) 625 0278
Fax: (1 617) 249 0278
E-mail: info@hrea.org
Web: www.hrea.org
An on-line repository of human rights education and training materials, listings of training courses, databases, and links to other organizations and resources.

Polish Association of Legal Education
Krakowskie Przedmiescie 12/10
00-325 Warsaw
Poland
Tel: (48 22) 827 7878
Fax: (48 22) 828 4698
E-mail: psep@free.ngo.pl;
psep@warman.com.pl

St. Petersburg Prince Oldenburgsky Institute of Law
Living Law Project
34 Maly prospect, V.O.
St. Petersburg 199178
Russia
Tel: (7 812) 327 7314
Fax: (7 812) 324 8827
E-mail: street@mail.rcom.ru
Web: www.livinglaw.spb.ru

Street Law, Inc.
1600 K Street, NW
Suite 602
Washington, DC 20006-2801, USA
Tel: (1 202) 293 0088
Fax: (1 202) 293 0089
E-mail: eobrien@streetlaw.org
Web: www.streetlaw.org

Street Law South Africa
Centre for Socio-Legal Studies
University of Natal
Durban 4041
South Africa
Tel: (27 31) 260 1291
Fax: (27 31) 260 1540
E-mail: scott@law.und.ac.za
Web: www.csls.org.za

GLOSSARY

Accountability: The degree to which an individual, organization, or state honors the obligation to accept responsibility for its actions.

Adjudicate: To settle an issue through judicial authority.

Advisory opinion: A nonbinding statement by a court of its interpretation of the law on a matter submitted for that purpose. Advisory opinions are rendered by the International Court of Justice, at the request of the United Nations General Assembly or Security Council, or by various bodies in the Inter-American and European human rights systems.

Advocacy organization: A local, national, regional, or international organization that works to promote a particular position on an issue of public concern through various means, including campaigning, litigation, and education.

Advocate: 1. v. To plead in favor of, support, or urge by argument; recommend publicly. 2. n. A person who purports to represent the public at large in matters of public concern; a person who defends, vindicates, or espouses a cause by argument; a defender. Sometimes used more narrowly in Central and Eastern Europe to refer to a lawyer who has been admitted to the bar.

Affidavit: A voluntary declaration of facts written down and sworn to by the declarant before an authorized officer. *Poverty affidavit* or *pauper's affidavit*: An affidavit made by an indigent person seeking public assistance, appointment of counsel, waiver of court fees, or other free public services.

Alternative dispute resolution (ADR): A procedure for settling a dispute by means other than litigation, such as arbitration, mediation, or negotiation.

***Amicus curiae* brief:** A legal brief filed in court by a person who is not a party to a lawsuit but has a strong interest in the subject matter of the lawsuit. *Amicus curiae* briefs are often filed by human rights organizations and other nongovernmental organizations (NGOs).

Appeal: 1. n. A proceeding to examine a decision of a lower court or agency by a higher court for review and possible reversal. 2. v. To seek review; to challenge a decision by bringing it to a higher authority. An appeal is often filed by a losing party in an attempt to persuade a higher court to overturn or reverse the decision unfavorable to that party.

Arbitration: A method of dispute resolution involving one or more neutral third parties, the arbitrator(s), who render a binding decision—with the assent of the parties—after a hearing at which the disputing parties have an opportunity to present arguments in support of their positions. The decision to assent to arbitration is voluntary, but the decision of the arbitrator is binding on disputing parties. *See also* Mediation.

Attorney: A person who is licensed by the state to practice law, whether litigating in a court or providing legal counsel.

Attorney-client privilege: The right and duty to refuse to disclose, and to prevent any other person from disclosing, confidential communications between the client and his or her attorney. Attorneys have an ethical—and sometimes legal—duty to refrain from disclosing privileged communications. A client can voluntarily consent to disclosure of such communications.

Boycott: A concerted refusal by an individual or group to do business with, buy a product of, or participate in an event or activity of a party in order to express disapproval of that party's practices, usually as part of a wider boycott campaign.

Brainstorming: An open, informal discussion designed to elicit a wide variety of new and alternative ideas. Typically, all ideas are welcomed during a brainstorming discussion and are critiqued only after the brainstorming is completed.

Campaign: A course of action that seeks to mobilize public support or otherwise influence political decision making to achieve a particular goal of public concern. Campaigning is used here to cover a variety of methods such as lobbying, work with the media, letter-writing campaigns, and public demonstrations.

Case study: A written account of particular facts used to illustrate the application of a law or concept in a particular context.

Caseload: The volume of cases handled by a legal clinic or assigned to a given court, agency, or individual judge or other officer.

Class action lawsuit: A particular kind of lawsuit, most common in the United States, in which an individual or a small group of people represents by litigation the interests of all those who have suffered similar harm from the same cause(s). The remedy in a class action extends to the entire "class," that is, all individuals who are similarly situated.

Classroom component: The part of an educational program conducted in a classroom setting, with a group of students led by an instructor.

Client intake: A lawyer's or law office's process of registering or establishing initial contact with potential clients. The purpose of the initial contact is to ascertain basic information about potential clients and their eligibility for legal services, and to either engage them as clients or provide them with referrals in the event that the lawyer or law office cannot represent the particular clients.

Clinical legal education: A teaching method, used in higher legal education and designed to combine theory with practice, whereby law students learn lawyering skills by engaging actively in the legal process. Clinical legal education also serves to enhance access to justice by providing legal services to indigent or underrepresented clients.

Complaint: In a civil action, the initial pleading that states the grounds for the court's jurisdiction, the plaintiff's claim, and the proposed remedy; in criminal law, an individual's application to the police to take action regarding a crime, which could lead to an indictment, or formal charge, accusing a person of a criminal offense. In the European Court of Human Rights system, a complaint regarding a violation of the European Court of Human Rights is called an "application."

Confidentiality: Secrecy; the state of having the dissemination of certain information restricted; sometimes refers to the duty of an attorney to a client or between spouses not to disseminate certain information such as attorney-client communications, including documents pertaining to a case provided by the client.

Conflict of interest: A real or apparent incompatibility between or among one's private interests and one's public or fiduciary duties; or, in particular, refers to the potentially competing interests of two of a lawyer's clients, such that the lawyer or law office may be disqualified from representing both clients if the dual represen-

tation would adversely affect either client, unless the clients consent.

Constituency: A group of people who delegate authority to another to act on their behalf; a group of people represented by a given legislator or other elected official; the audience that is targeted by a particular activity or campaign.

Consultative status: A special status conferred on an NGO by a specially authorized body, for example, in the system of the United Nations or in the system of the Council of Europe. Such a status enables the NGO to attend meetings of some of the political bodies of the respective organization, make oral interventions, and submit written statements.

Corroborate: To verify facts by consulting with numerous, varied sources (such as individuals, reports, books, and newspapers).

Council of the European Union: An institution of the European Union (EU) composed of one representative at the ministerial level from each EU member state who has the authority to commit his government. Under the treaty on the European Community (EC), the Council is the EC's legislative body, together with the European Parliament. The Council coordinates the general economic policies of the member states, concludes international treaties on behalf of the EC, and together with the European Parliament is also the budgetary authority. Under the treaty on the EU, the Council defines the common foreign and security policy, coordinates the activities of the member states, and adopts measures in the field of police and judicial cooperation in criminal matters. It should not be confused with the Council of Europe (CoE), a separate international organization based in Strasbourg, France, which also has its own Committee of Ministers.

Court of Cassation: In some countries with civil law systems, the court of highest instance, competent to review matter(s) of law, but not of fact. In other civil law countries, the court of highest instance in matters arising exclusively from administrative decisions.

Demonstration: A peaceful public protest, outcry, or other expression of opposition, such as a march or picketing.

Domestic violence: Acts of violence that occur within the family or within the home and result in, or are likely to result in, physical, sexual, or psychological harm. While most often referring to abuse inflicted on women by their male partner

(whether a spouse or other intimate partner), it also encompasses violence directed at other family members, particularly children or elders. Although domestic violence affects the lives of thousands of women, public officials, including law enforcement officials, often fail to respond adequately to prevent or punish it because of inadequate legal frameworks and because it happens in the home and requires rethinking traditional and highly gendered constructions of privacy. Under the United Nations treaties and standards (made most explicit in the UN Declaration against Violence against Women), states have an obligation to take steps to end violence against women, whether it occurs in public or private.

European Commission: A body of the European Union (EU) whose members are appointed by EU member states after approval of the European Parliament, but who are sworn to act independently of the appointing state and fully in the interest of the European Community (EC). The European Commission acts as the EU's executive body. Its functions include initiating draft legislation and presenting legislative proposals to the European Parliament and the Council of the European Union; implementing the legislation, budget, and programs adopted by the European Parliament and the Council; ensuring that EC law is properly applied; and representing the EU in international negotiations, primarily in trade and cooperation. The European Commission also monitors the progress of the countries that are in the process of accession to the EU and releases annual reports on their individual progress toward accession.

European Council: A body—meeting once every six months—comprising the heads of state or government of the fifteen member states of the European Union (EU) and the president of the European Commission. Although not formally an institution of the EU, the European Council (not to be confused with the Council of Europe) has a major political role in its decision making. Among other roles, the European Council has set out the criteria and conditions for states' accession to the EU.

European Court of Human Rights: The multilateral judicial body of the Council of Europe established to adjudicate compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms, now the European Convention on Human Rights.

European Court of Justice: Located in Luxembourg, it is the judicial branch of the European Union (EU). It reviews the

legality of acts of the European institutions and of member states' governments. However, the Court does not have the power to annul the domestic laws of member states. The Court typically hears cases involving disputes between member states over trade, antitrust, and environmental issues, as well as issues raised by private parties, such as compensation for damages, among others. For the latter purpose, the Court receives preliminary references from member state courts and issues preliminary rulings in response.

European Parliament: A body of the European Union (EU) elected every five years by direct universal suffrage of the citizens of all member states. The European Parliament has three essential functions: (1) sharing with the European Council the power to legislate, (2) sharing budgetary authority with the Council, and (3) exercising supervision over the European Commission. It approves the nomination of commissioners and has the right to censure the Commission. The European Parliament also exercises political supervision over all the institutions of the EU.

European Union: The European Union (EU) consists of the European Community (formerly European Economic Community) and a framework for unified action by member countries in security and foreign policy and for cooperation in police and justice matters. The European Union was created by the Maastricht Treaty (1 November 1993).

Evaluation: The act of measuring the successes and failures of a project, program, or institution or of an individual's performance and, by careful appraisal or study, assessing the causes of such results.

Ex officio: The description given to a power, privilege, or duty that one has only because he or she holds a particular office.

***Ex officio* assigned counsel:** An attorney assigned by the court or bar to represent an indigent person; in the United States, referred to as a court-appointed attorney.

Externship: Sometimes used interchangeably with "internship," a short-term professional engagement of a student by an organization, governmental institution, or law firm. The student's educational institution terms the engagement an "externship" because it takes place outside that institution, while the engaging entity terms the engagement an "internship" because it takes place within that entity's workplace. University-accredited externships generally include a

classroom component in addition to the engagement itself.

Fact-finding mission: On-site research conducted to gather, investigate, and report facts concerning some event or situation.

Feedback: Information given to a person on the quality of his or her contribution or work; in the context of clinical legal education, the process by which the instructor, teacher, professor, or supervisor conveys comments, advice, or concerns to students on an assignment, project, or other performance, often as part of an evaluation process.

Felony: A serious or major crime, usually punishable by imprisonment for more than one year, such as murder, rape, burglary, or arson. *See also* Misdemeanor.

Field trip: A visit (as to a courthouse, work site, or museum) made, often by a group of students and a teacher, for purposes of firsthand observation of activities.

Fundraising: Seeking revenue by soliciting an individual, a foundation, or corporate or government donors. For nonindividual donors, fundraising typically includes submitting a written proposal to prospective donors, containing a summary of the activities for which financial support is sought and a budget indicating associated costs.

Grassroots organization: An organization that is closely tied to a local community.

Human rights monitoring: The process of investigating and documenting human rights violations; the various stages of collection, verification, and analysis by governmental and nongovernmental organizations of information concerning human rights; the investigation by NGOs of incidents or government practices, by gathering evidentiary material to identify and document the types, prevalence, and causes of human rights violations within a state, region, or locality. May include fact-finding missions.

Hypothetical: A learning device in which a detailed but imagined situation is presented to students, who are then asked to answer questions based on the situation.

Impact litigation: Strategic litigation; the initiation of legal proceedings designed to reach beyond the immediate case for the purpose of changing the law or its application in a way that will affect society as a whole.

Indicators: Objective criteria by which one can evaluate how well or poorly an

organization program or project is achieving its goal(s).

Indigent: Destitute; poor. In a legal context, a person who is unable to pay for legal representation.

Intake interview: Introductory meeting with a potential client in order to provide the client with information on the objectives of the clinic or public interest law office and its practice, as well as the conditions for representation; to determine whether the client is eligible for its services; and to obtain key facts from the client in order to identify the legal problem and determine the subsequent steps in the representation, such as obtaining documents for further investigation. *See also* Client intake.

Interactive teaching methodology: Instructional methods that involve engaging the students actively in group-oriented or participatory activities.

Interest on Lawyers' Trust Accounts (IOLTA) program: A program that requires a lawyer or law firm to temporarily deposit a client's retained funds into an interest-bearing account that designates the interest payments for charitable, law-related purposes, such as providing legal aid to indigent defendants.

Interests of justice: A criterion, established by the International Covenant on Civil and Political Rights and the European Convention on Human Rights, triggering a state's obligation to provide free legal assistance to indigent defendants. Under the Convention, the interests of justice criterion requires the court to make an assessment of the defendant's stake in the case (in other words, what the defendant has to lose), the factual and legal complexity of the case, and the capability of the defendant to represent himself or herself in person.

International Court of Justice: Popularly known as the "World Court," it is the principal judicial organ of the United Nations. The Court's decisions are binding, and its broad jurisdiction encompasses "all cases that the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force." Only states, not individuals, can bring a claim to the World Court. By formal declaration, states may accept the compulsory jurisdiction of the Court in specified categories of disputes. The Court may give advisory opinions at the request of the UN General Assembly or the UN Security Council, or at the request of other organs and specialized agencies authorized by the UN General Assembly.

The seat of the Court is the Peace Palace at The Hague.

International Criminal Court (ICC): A permanent institution, agreed to under a 1998 treaty adopted within the framework of the United Nations, that once established will have jurisdiction over individuals for the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. Its jurisdiction will be complementary to national criminal jurisdictions. As of September 2001, the Statute of the International Criminal Court had been signed by 139 states and ratified by 38 of them. It will enter into force on ratification by 60 states.

Judicial review: A court's power to review the actions of other branches or levels of government, especially the court's power to invalidate legislative and executive actions as being unconstitutional; a court's review of a lower court's or administrative body's factual or legal findings.

Jurisdiction: A court's competence, or authority, to decide a case or issue a decree; a geographic area within which political or judicial authority may be exercised.

Jus cogens: Norms accepted and recognized by the international community of states as a whole, from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. Examples include prohibition of trade in slaves, of piracy, of genocide, and of criminal acts under international law, the observance of human rights, the equality of states, and the law of the UN Charter concerning prohibition of the use of force.

Lawsuit: Any proceeding by a party or parties against another in a court of law. Also sometimes described as a legal action.

Lawyer referral: The act of recommending and sending a potential case to a lawyer.

Legal aid: Free or partially subsidized legal advice and/or representation.

Legal clinic: An organization that provides legal services to the public. Law schools often run legal clinics that offer services to poor and other underrepresented people as part of a practical legal educational program designed to train future lawyers by serving actual clients and handling their cases.

Legal opinion: A court's written statement explaining its decision in a given

case, including statements of fact and interpretations of law.

Letter-writing campaign: An attempt to achieve a desired political decision by organizing a large number of people—often constituents of the decision maker(s)—to write letters demanding such a decision.

Libel: A false publication, expressed by print, writing, pictures, or signs, that is injurious to the reputation of another.

Litigation: The initiation of legal proceedings; the process of carrying on a lawsuit or the lawsuit itself.

Lobbying: Attempting to influence a legislator, or other public official or decision maker, through direct communication or other activity, toward a desired action such as support of or opposition to a measure. Lobbying is often undertaken in pursuit of commercial interests or for private pecuniary advantage. Lobbying to pursue noncommercial and nonpecuniary interests is often referred to as public interest lobbying.

Mediation: A method of dispute resolution involving a neutral third party, the mediator, who tries to help the disputing parties reach a mutually agreeable solution. A mediator, sometimes referred to as a facilitator, has no authority to impose a decision on the parties. The mediator controls the process, while the parties control the outcome. *See also* Arbitration.

Misdemeanor: A crime less serious than a felony and usually punishable by fine or confinement in a place other than prison; a minor crime. *See also* Felony.

Mock trial: A fictitious trial organized to allow law students, or sometimes lawyers, to practice the techniques of trial advocacy by asking questions as judges, prosecutors, and lawyers, and by arguing moot or hypothetical cases. Mock trials, or moot courts, are designed to enable students to experience how lawyers prepare and advance arguments on both sides of a case and how judges reach their decisions.

Moot court: *See* Mock trial.

Moratorium: A voluntary cessation of an official action permitted by law. Often used in connection with the death penalty.

Motion: A written or oral application requesting a court to make a specified ruling or order; in a deliberative body, a proposal made under formal parliamentary procedure.

Negotiation: A method of dispute resolution in which discussions are conducted between two or more parties or their representatives for the purpose of reaching a common understanding.

Networking: The process of making contacts with other individuals, groups, or institutions to exchange information or services.

Nongovernmental organization (NGO): Any organization that is not affiliated with any government.

Paralegal: A person who has legal skills but is not a lawyer, and who works under the supervision of a lawyer or is otherwise authorized by law to use those legal skills.

Petition drive: An effort to draft and distribute a formal, written demand with the object of obtaining the signatures of as many supporters as possible. The resulting petition is then presented to an official or organization that has the power to grant the request.

Pleading: A formal legal statement submitted either by the plaintiff regarding the cause of action or by the defendant regarding the grounds of defense. Pleadings may be statements of fact to support each argument, or they may be points of law.

Plenary session: A full meeting of the entire membership of a legislature or other deliberative body.

Press conference: The gathering, by invitation of an organization or individual, of representatives of the media to announce to them and discuss an event, issue, or position.

Pro bono: Legal assistance provided without compensation, performed for "the public good."

Promulgate: To make public, or otherwise known, the terms (of a proposed law); to put (a law) into action or force; to declare.

Public defender's office: In the United States, an office staffed by full-time lawyers providing legal representation to indigent criminal defendants. A public defender's office can be a state agency or an independent organization funded by state and/or private sources.

Rapporteurs: Within the context of the United Nations, "special rapporteurs" are established by the UN Commission on Human Rights and the UN Economic and Social Council as part of the human rights system of the United Nations. They are individual experts, selected by

UN committees but acting in their own capacity, who examine, monitor, and publicly report on human rights situations in specific countries or territories (country rapporteurs) or on specific human rights violations worldwide (thematic rapporteurs). In the context of a conference or workshop, a rapporteur is the person designated to take notes for later reporting back to participants, either orally or in writing.

Remedy: The legal means to recover a right or to prevent or obtain redress for a legal wrong.

Retainer: A client's authorization for the lawyer to act in a case; a fee paid to the lawyer to secure legal representation.

Role-playing: An activity involving a fictitious situation, in which students or other individuals are assigned roles that must be acted out as if the situation was actually occurring. In the context of clinical legal education, this exercise is meant to improve the student's legal practice skills. Examples of role-playing include mock trials and mock client interviews.

Shadow report: A report on a state's compliance with its obligations under an international human rights treaty, submitted by an NGO to the body set up either by the international treaty or by a resolution of a United Nations body to monitor the state party's compliance.

Simulation: A teaching technique that uses hypothetical situations to allow students to act out different roles (such as lawyer, client, witness, or judge). Simulations help the students to think about the lawyering skills they need in order to represent their clients. *See also* Mock trial; Role-playing.

Standard-setting: Adoption of formal international standards (in the form of treaties, declarations, resolutions, or guidelines) that further develop the existing norms and principles of international human rights law.

Standing: The rules that determine whether a person or group is entitled to take a particular legal action; sometimes referred to by the Latin *locus standi*.

Strategic case: A legal case that has the potential to affect legislation or the interpretation thereof, or to progress in support of a particular cause. *See also* Test case.

Strategic litigation: Litigation designed to reach beyond the immediate case and the individual client in order to change the law or how it is applied in a way that

will affect society as a whole. *See also* Impact litigation.

Street Law: Legal information about citizens' rights and responsibilities, presented in such a way as to be readily understood by the average person. The term "Street Law" was introduced in the 1970s in the United States to refer to citizen education programs about rights and responsibilities under the law, which were taught using interactive methods and relying on community resources. Street Law programs often refer to classes taught by law students, lawyers, and schoolteachers to secondary school students and/or community members, including prison populations. Similar programs have been undertaken under different names in other countries.

Test case: A case that tests a legal principle or legislation not previously examined in detail by a court. *See also* Strategic case.

Testimony: A formal statement by a witness, usually under oath, in response to questioning by a lawyer or authorized public official. It is usually oral. In some countries, witnesses are not required to swear an oath or affirmation before giving evidence, but they are also subject to criminal liability for false testimony.

Tickler system: A filing system in which documents are filed chronologically by relevant deadline to ensure that deadlines are not missed.

Trial: A formal first instance court hearing in which a judicial officer examines the facts of the case by listening to the evidence and testimony of witnesses and makes a decision based on the relevant evidence and legal principles involved.

Volunteerism: The will to give one's time, without compensation, to a cause.

Waiver: The voluntary renunciation of some known right. In general, this relinquishment results from an express agreement or is inferred from the circumstances.

Witness: One who provides, often under oath, information and facts regarding a case to a court.