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Legal and Judicial Development: The Role of Civil Society in the Reform Process

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Abstract

While many governments are undertaking reforms that aim to improve judicial and legal systems, there is a growing realization that civil society plays a vital and even necessary role in these efforts. Civil society is critical in these, as well as the reform efforts which are outside of government-initiated programs. Drawing on a few selected examples, this Paper aims to show why civil society is a key player in such reform activities and how civil society has participated in the reform process in selected countries. Specifically, many of these examples are supported by projects financed by the World Bank. The World Bank, as well as other international development institutions, has made legal and judicial development a priority in the development agenda and is continually seeking ways to work effectively with civil society.

LEGAL AND JUDICIAL DEVELOPMENT: THE ROLE OF CIVIL SOCIETY IN THE REFORM PROCESS

*Maria Dakolias**

INTRODUCTION

While many governments are undertaking reforms that aim to improve judicial and legal systems, there is a growing realization that civil society plays a vital and even necessary role in these efforts. Civil society is critical in these, as well as the reform, efforts which are outside of government-initiated programs. Drawing on a few selected examples, this Paper aims to show why civil society is a key player in such reform activities and how civil society has participated in the reform process in selected countries. Specifically, many of these examples are supported by projects financed by the World Bank. The World Bank, as well as other international development institutions, has made legal and judicial development a priority in the development agenda and is continually seeking ways to work effectively with civil society.

I. LEGAL AND JUDICIAL REFORM

Many countries are implementing legal and judicial reforms as part of their overall development programs. There is a strong realization that economic reform requires an up-dated legal framework and a well-functioning judiciary that can interpret and enforce the laws in an equitable and efficient manner.¹ Much of the same can be said regarding poverty alleviation: laws and legal systems need to be responsive to the needs of the poor, with the resulting economic benefits flowing to both the disadvantaged and society as a whole. A well-functioning judiciary

* The author would like to thank Shana Lee for her research assistance, and Beth Dabak and Steve Golub for their invaluable comments. Please note that the opinions expressed here are those of the author and not necessarily those of the institution for which she works.

1. See Robert M. Sherwood et al., *Judicial Systems and Economic Performance*, 34 Q. REV OF ECON. & FIN. 101 (1994) (on file with the author) (examining hypothesis that effective judicial systems are requisite to optimal market functioning). The authors estimate that a country that attempts economic liberalization under a weak judicial system suffers "at least a 15 % penalty in their growth momentum." *Id.* at 113.

should provide predictability and resolve cases in reasonable periods of time. It also should be accessible to the public. Many developing countries find, however, that their judiciary is not consistent in its conflict resolution and that it carries a large backlog of cases, causing the erosion of individual and property rights. Delays affect both the fairness and the efficiency of the system. They impede access to the courts by the public.

To solve these problems, governments across the world are launching legal and judicial reforms. Their aim is to improve access to justice by increasing the quality, efficiency, and transparency of dispute resolution. This is part of economic and social development—to achieve a judicial system which is efficient and transparent and provides quality decisions and access to the public. In this way, the overall objective is to create trust in a judicial system that is both independent and accountable.

One way to improve access to justice is through the participation of civil society in designing and monitoring the reform process. Civil society can then contribute to the implementation of the activities in a reform program. "Civil society" is broadly defined as all organizational activity that falls outside the orbits of the government or for-profit sector.² Civil society is a tremendously diverse entity that is made up of civic associations with widely differing objectives, memberships, institutional forms, and organizational cultures. It is, therefore, difficult to generalize about civil society, and the term should not be equated only with nongovernmental organizations (or "NGOs"). Some of the forms that civil society takes include: NGOs, trade unions, business associations, religious bodies, academic institutions, student organizations, professional organizations, ethnic lobbies, community groups, etc.

This process of change formulates a legal and judicial reform program for the long-term. While countries that undertake such processes are responding to calls for legal and judicial reform, modernization cannot be completed in one five-year project.³ Reform requires both a cultural change and a systematic change in the delivery of justice,⁴ and countries need to de-

2. WORLD BANK, SOCIAL DEVELOPMENT PAPER NO. 28, *THE BANK'S RELATIONS WITH NGOS: ISSUES AND DIRECTIONS* 3 (1998).

3. MARIA DAKOLIAS, WORLD BANK, *THE JUDICIAL SECTOR IN LATIN AMERICA AND THE CARIBBEAN: ELEMENTS OF REFORM* (1996) (on file with the author).

4. See John Henry Merryman et al., *Law and Social Change in Mediterranean Europe*

velop a program with stages for the reform process.

Another way to improve access to justice is through civil society participation in undertaking formal legal and judicial reform programs; that is, using law to promote social change through legal information, legal education, legal assistance, and law reform. (Of course, as illustrated later in this Paper, many and even most civil society actors also carry out law-oriented work completely independent of any formal government-initiated programs.) Finally, both the process and formal programs can benefit from greater interconnection among groups within civil society; thus sharing experiences and making their voices heard even more.

A. Inclusion of Actors in the Process of Reform

There are many different actors designing and monitoring the reform process: the judiciary, the executive and legislative branches of government, the legal profession, bar associations, academia, the business community, and civil society, among others. Each actor is important. Very often, the assumption is that the judiciary is the main actor in the reform of justice. For complementary legal reform, however, the legislature is crucial. In addition, the legislature can play an active role in supporting judicial reform. In Ecuador, for example, Congress was instrumental in asserting the importance of judicial reform and joining to support the need for financing the reforms.

In this same way, civil society is just as important to the process of reform as the judiciary itself. There is a need to facilitate different voices to be heard, especially from the weaker groups. Diagnosis of the judicial sector by the various actors allows an open dialogue among the actors and helps to make the government aware of voices from the weaker parts of society.

Tension among different actors may appear in various instances. It is common between civil society and the government and the executive and judiciary. Balancing these actors is crucial, and coordination among them is key to ensuring commitment and ownership in the programs. Building coordination among the appropriate actors allows for greater participation in the reform process. It is this participation that is key to achieve

be up front where they can help. In addition, coordination is crucial to avoid duplication of efforts since resources are scarce.

The process of building coordination and involving the appropriate actors also ensures commitment and ownership of reforms. More and more governments are realizing that participation is key to achieving consensus on reforms and that such consensus provides greater ownership and a higher probability of success. In addition, participation by civil society in the reform process, especially in the development of an overall plan, may improve law and justice equally among society and specifically take into account the poor.

Participation in the planning process requires not only the government but also a vibrant civil society; ownership and commitment are needed from both in order to make the process legitimate. Although such inclusion may require lengthy preparation time in order to reach an effective level of cooperation, in the long run such a process may protect the reforms from reversing. In some countries, government reforms occur on the basis of a presidential decree. Although this may be quicker and more effective in the short-term, in the long-term it may have higher social costs and may mean that the voices of the citizens, especially the poor, are not taken into account.

In many countries, there is a weak public trust in the judiciary, but civil society's ties to the communities can help to strengthen the public's confidence. Civil society also has provided a voice to different perspectives and experiences and often helps to bring to the surface the more difficult issues. As a group, civil society can make governments listen and can help secure greater sustainability in the reform process by promoting the participatory approach.

Successful partnerships demand effective communication, especially during the reform process. Legal and judicial reform is a long-term undertaking which requires a consistent and constructive exchange of ideas. Systematic dialogue also has contributed to overcoming communities' deep-rooted mistrust of both non-governmental organizations and government agencies in some projects. Addressing questions and issues as they are raised, as well as having direct access to middle and senior-level managers, contributes to effective working relationships and problem solving.

Another pressing issue is that many aspects of judicial reform are contentious and need pressure from actors outside the governmental realm. Many of the judicial reforms being launched across different regions attempt to make judicial procedures more efficient and transparent, in part by redistributing responsibilities. They also seek to improve access, efficiency, and quality of the delivery of justice.¹⁰

Where there is an entrenched network of corruption, the players will clearly oppose such reforms: judges or staff members may resent losing control over procedures that are a source of illicit income.¹¹ These players could slow reform by openly opposing it or by interfering in a more covert way.¹² As a result, civil society has an ever-increasing role in ensuring accountability and transparency in information and practices.

Scholars have argued that corruption slows reform by providing band-aid solutions for the private entities that through choice or coercion rely on it and takes away from the urgency of fixing the underlying structural problems.¹³ If companies are able to effectively bribe their way through certain procedures, they will have less of an incentive to lobby for change. Corruption then becomes an obstacle to reform at a time when governments across the region are busily trying to mend or re-conceive their judicial systems.¹⁴ Moreover, corruption also hurts the poor to a far greater degree. The poor may be able to voice their concerns more effectively through civil-society participation.

Legal and judicial reform activities have benefited from the assets of civil society.¹⁵ For example, Judicial Sector Assessments

10. See generally DAKOLIAS, *supra* note 3; MARIA DAKOLIAS, WORLD BANK, COURT PERFORMANCE AROUND THE WORLD: A COMPARATIVE PERSPECTIVE (1996).

11. See Edgardo Buscaglia, *Obstáculos de la Reforma Judicial en América Latina*, in *LA ECONOMÍA POLÍTICA DE LA REFORMA JUDICIAL* 42-43 (Edmundo Jarquín & Fernando Carrillo eds., 1997).

12. See DAKOLIAS, *supra* note 3 (stating that experience has shown when individuals implicated in a reform effort do not support that effort, success is less likely).

13. See generally ROBIN THEOBALD, CORRUPTION, DEVELOPMENT AND UNDERDEVELOPMENT (1990).

14. See Jorge Correa Sutil, *Modernización, Democratización y Sistemas Judiciales*, in *LA ECONOMÍA POLÍTICA DE LA REFORMA JUDICIAL* 174 (Edmundo Jarquín & Fernando Carrillo eds., 1997). Jorge Correa wrote that at no other time in history have there been so many efforts to reform judicial systems. *Id.*

15. See ANIL CHITRAKAR, WORKING WITH NGOS (1996). See also Lawrence et al., *Interactions Between Nongovernmental Organizations, Governments and the World Bank: Evi-*

impose arbitrary rules.⁷ Civil society increases government accountability and contributes to good governance. Government institutions which serve or distribute entitlements to citizens can be held accountable for discriminatory or arbitrary distribution. In order to ensure that such institutions are held accountable, there is a need for a strong civil society. It is common that civil society may be heard more loudly in a democratic process.

While there is a growing sense of identity among civil society organizations which transcend international boundaries, one must realize that a specific country's circumstances may result in considerable differences in the prominence and roles that civil society plays.⁸ Therefore, the relationships between the different sectors of civil society and the government become more important.⁹ Such relationships should be taken into account during a reform process to determine the type of role that civil society can play. In some cases, it will be merely to educate; while in others, it could be a more active role.

C. Legal and Judicial Reform Plan—Ownership and Commitment from the Judiciary and Civil Society

Ownership and commitment is not only needed from the government, but also from civil society in order to make the process legitimate. Vested interests will often prevent reforms of a structural nature from happening. If the judiciary is left by itself, it might limit reforms to infrastructure and information systems, which only provide band-aid solutions, especially when corruption is prevalent. Civil society and other actors can help press for the more difficult structural reforms.

Developmental reform requires long-term planning to ensure that a holistic approach is followed. This necessarily leads to coordination among stakeholders as well as donors, particularly since there are many different actors/stakeholders and, in some cases, as many donors in the field. Such coordination allows governments to organize the programs and allows donors to

7. See Ann Marie Clark et al., *The Sovereign Limits of Global Civil Society*, *WORLD POLITICS*, Oct. 1998, at 2.

8. See *WORLD BANK*, *supra* note 2, at 3. For instance, some countries still have relatively little non-governmental organization ("NGO") activity and other sectors of civil society are more prominent, such as community groups, labor movements, or religious organizations. In other places, NGOs are more prominent. *Id.*

9. See *id.*

consensus on reforms and provide a greater probability of success.

This is a long-term process that requires building support among stakeholders and taking into account vested interests which run counter to reform. These programs often include, among other things, the following characteristics: court modernization; legal reform; an increase in alternative dispute resolution mechanisms; training for judges, court personnel, lawyers, students, and civil society; and improvement in access to justice. Judges and lawyers, due to their traditional culture, are often not accustomed to change and seldom initiate reform themselves.⁵ The process of reform includes, therefore, different actors busy pushing for judicial reform. Only by collective action will the more difficult reforms take place.

Coordination, in addition to respect for governance structures, is important during any reform process, particularly when the actors include international and bilateral development organizations that are financing part of the reform process. If such structures are known for a lack of independence, there is greater concern that reforms will not be on solid ground.⁶

B. *Civil Society Groups: Key Actors in Reform*

Citizens are the users of the legal and judicial system, and they rely on the system to enforce their property and individual rights. It is, therefore, imperative that civil society groups are key actors in judicial reform, as it can act as a voice for the concerns of the public.

A well-developed civil society can potentially influence the government in two ways: (1) by enhancing political responsiveness by gathering and expressing the public's wishes through nongovernmental forms of association, and (2) by safeguarding the public's freedom by the limiting the government's ability to

5. See John W. Kennedy Jr., *Personality Type and Judicial Decision Making*, 37 No. 3 JUDGE'S J., at 4, 6-7 (1998) (on file with the author). One study shows that the majority of judges resist change and working in committees. However, women judges acted as leaders for change while male judges are resistant to change. *Id.*

6. See LAWYERS' COMMITTEE FOR HUMAN RIGHTS, BUILDING ON QUICKSAND: THE COLLAPSE OF THE WORLD BANK'S JUDICIAL REFORM PROJECT IN PERU (2000). One example is Peru. *Id.*

are often conducted in borrowing countries when there is interest in judicial reform by a combination of academics, researchers, government staff, and NGO staff. These assessments permit greater dialogue with the government on the issues involved and may bring up matters that had not previously been considered. In one such case, the Ecuador Sector Assessment, conducted by the World Bank, the issue of domestic violence was raised by women's organizations and resulted in the inclusion of a special activity in the project to provide legal aid for poor women. The strong grassroots links and language skills that such organizations often have make them valuable partners in this work.

In addition, developing National Judicial Reform Action Plans also benefit from NGO involvement. These plans set the stage, as discussed previously, in describing the long-term goals of legal and judicial reform with respect to priorities as well as donor involvement. Here, NGO participation ranges from consultation in identifying problem areas, obstacles, and strategies to actually preparing the entire plans themselves, as mentioned in the case of Ecuador.

D. *Building Civil-Society Participation in the Process*¹⁶

NGOs can play an important role in the judicial reform process, and one region where they have been particularly active is Latin America. Until the mid-1960s, NGO activities in Latin America were largely limited to charitable welfare with the intention of helping to relieve suffering until the development efforts of official agencies could improve conditions. In the 1970s, NGO activity became highly politicized, and NGOs became committed to strengthening civil society, styling themselves as a bulwark against the political and economic oppression perpetrated by the state. In the 1980s, the growing democratization process in Latin America led to more community-based organizations (or "CBOs") and social movements promoting the interests of ethnic minority groups, women, and ecology and also broadened the scope of participation and issue-consciousness.

dence from Bank Projects, in *NONGOVERNMENTAL ORGANIZATIONS AND THE WORLD BANK: COOPERATION AND DEVELOPMENT* 95 (Samuel Paul et al. eds., 1991).

16. David C. Korten, *The Role of Nongovernmental Organizations in Development: Changing Patterns and Perspectives*, in *NONGOVERNMENTAL ORGANIZATIONS AND THE WORLD BANK: COOPERATION FOR DEVELOPMENT* 26-29 (Samuel Paul et al. eds., 1991).

Although there is often some stress in the relationship between NGOs and the government, which has been overcome only gradually, cooperative initiatives have become relatively common. Latin American NGOs demonstrate a growing interest in forming national and international networks through which they can coordinate their efforts in support of social transformation. This collective commitment of NGOs towards pluralism and the strengthening of civil society is an important theme, which can lead to improved governance.

One area where NGO participation has increased in recent years is in the administration of justice. With the increased democratization of Latin America, NGOs have been created to participate in the reform process and push for more difficult reforms. This effort has broadened both the scope of participation in the region as well as the scope of the reforms themselves.

Citizens, especially the poor, have less access to information, and collective action can be difficult, though the efforts of NGOs voicing their concerns can be heard more effectively. Individually, and sometimes collectively, citizens may fear reprisals from voicing their concerns, particularly when it concerns issues of law and justice related to judges, lawyers, or the police. Although these important issues go to the very heart of their individual and property rights, harassment by the police can be a reality. Consequently, when the voices of the poor are not heard, governments may not be likely to place their concerns as top priorities.

There has been an emergence of NGOs in Latin America which focus on the area of legal and judicial reform, broadly defined here to embrace work that improves the equity and responsiveness of the legal system even outside of the formal reform programs this Paper addresses. Activities by these NGOs focus on such issues as improving access to justice and legal aid programs, strengthening alternative dispute resolution and mediation facilities, enhancing professional development and training, increasing the awareness of legal and judicial reform issues, improving technical and management assistance, and conducting research on the issues and practices in the field. It probably is most common for organizations to address a number of needs. For instance, organizations train people to know their rights and understand the judicial system, as well as provide legal aid services and mediation mechanisms.

II. SOME EXAMPLES OF CIVIL SOCIETY INVOLVEMENT IN LEGAL AND JUDICIAL REFORM PROGRAMS

One of the key objectives of legal and judicial reform is improving access to justice—that is, to use law to improve conditions and promote equality.¹⁷ One way to improve access to justice is to use the law to promote social change through legal information, education, legal assistance, and legal reform. Legal aid can take many forms, including private attorneys providing *pro bono* services, a system of judicare which entitles eligible people (based on income) to use a private lawyer; legal insurance or prepaid legal services for eligible parties; staff attorneys who specialize in public interest law; law school clinics; and non-governmental public interest organizations to protect the legal rights of groups or causes.

Public interest organizations work to use law to change public opinion, to advocate law reform, and to litigate cases. Public interest litigation sometimes is an integral part of the holistic social change that also includes community mobilization, leadership, media outreach, policy analysis, and empirical research.¹⁸ This approach has been used in many countries through assistance from the Ford Foundation (“Ford”),¹⁹ as well as the United States Agency for International Development (“USAID”)²⁰ and other donors during the 1990s. One example is the program financed in Chile by Ford.

17. See FORD FOUNDATION, *MANY ROADS TO JUSTICE: THE LAW RELATED WORK OF FORD FOUNDATION GRANTEES AROUND THE WORLD* 89 (Mary McClymont & Stephen Golub eds., 2000) (discussing public interest litigation in the United States).

18. See *id.* at 90.

19. See Ford Foundation (visited July 31, 2000) <<http://fordfound.org>> (on file with the *Fordham International Law Journal*). The Ford Foundation is an independent, nonprofit, NGO which provides grants and loans to strengthen organizations and networks that facilitate the creation of “political, economic and social systems that promote peace, human welfare and the sustainability of the environment on which life depends.” *Id.*

20. See U.S. Aid for International Development (“USAID”) (visited July 31, 2000) <<http://www.usaid.gov>> (on file with the *Fordham International Law Journal*). “The U.S. Agency for International Development is the U.S. federal government agency that implements America’s foreign economic and humanitarian assistance programs . . . [and] has been the principal U.S. agency to extend assistance to countries recovering from disaster, trying to escape poverty, and engaging in democratic reforms.” *Id.*

A. *Legal Assistance Programs in Chile*²¹

Corporation for University Promotion ("CPU") is a non-profit organization founded in 1968, which has conducted numerous studies related to education and legal reforms. CPU received a grant in 1989 from USAID to conduct research in the general area of legal modernization, including judicial reform, penal code revision, and legal assistance. It found that 57% of those interviewed believed access to legal assistance was either difficult or impossible, and 83% expressed a negative opinion about the justice system in general, frequently referring to its discriminatory character.

New legal assistance theories emerged in the 1980s in Chile and the rest of Latin America. New methodological approaches, adopted by many grassroots organizations, focused on addressing the larger social and economic needs of marginalized groups rather than on the specific legal problems or representation needs of each client. Various private legal aid groups resulted from this movement, including the Center for Juridical Development and Studies ("QUERCOM"),²² the Women's Institute, the Institute for Juridical Formation ("FORJA"),²³ and the Center for Syndicate Assistance ("CIASI").²⁴ Other private groups include the Program for Work and Economics ("PET"),²⁵ which provides technical and legal assistance to microenterprises, and the Corporation for Youth Development ("JUNDEP"), which trains and offers legal assistance to leaders of communities, federations, and other associations. In addition, the Catholic Church is one of the most active private social assistance groups. Hogar de Cristo ("House of Christ") employs lawyers who make rounds at social service centers and runs a center devoted to juvenile criminal cases and rehabilitation.

21. Michael A. Samway, *Access to Justice: Legal Assistance Programs in Santiago, Chile* 6 DUKE J. COMP. & INT'L L. 347 (1996) (surveying public legal assistance programs in Santiago). Most of the NGOs it mentions seem to focus on access to justice and legal aid programs. *Id.*

22. The Law and Justice Fund partially finances the Center for Juridical Development and Studies ("QUERCOM") to promote and support this type of activity.

23. The Law and Justice Fund partially finances the Institute for Juridical Formation ("FORJA") to promote and support this type of activity.

24. The Law and Justice Fund partially finances the Center for Syndicate Assistance ("CIASI") to promote and support this type of activity.

25. The Law and Justice Fund partially finances the Program for Work and Economics ("PET") to promote and support this type of activity.

B. *Legal Aid in the Ecuador Legal & Judicial Reform Program*

The World Bank is a relatively new participant in legal and judicial reform. It began its activities in the early 1990s, and during this time its strategy has evolved with a broad spectrum of activities in different countries. In the beginning, the World Bank expressed its strategy as being focused on commercial law and judicial reform aimed at resolving commercial disputes.

In the mid-1990s, however, a project in Ecuador was prepared to address some issues related to access to justice. The Ecuador project significantly differs from some other, earlier World Bank-supported legal projects in that it funds access to justice and specifically funds NGOs to undertake access to justice work. This project is still under implementation—the early results are positive and may serve as a basis of discussion as to how future programs will be developed. At the very least, the legal aid activities financed under the Ecuador judicial reform project show a need to work in parallel with the judiciary and civil society.

The World Bank's legal and judicial reform projects have evolved over time and the World Bank is learning how to better include the various actors in legal and judicial reform. Several organizations representing civil society are involved in the reformation and modernization process of Ecuador's judicial sector. Those organizations have promoted many initiatives designed to facilitate access to justice for unprivileged social sectors.

This came at a time when there was more NGO involvement in World Bank projects generally. Popular participation is increasingly recognized as an essential ingredient to achieve effective and sustainable development. NGOs have played an important role in promoting participatory approaches in World Bank-financed projects.

The World Bank defines NGOs²⁶ as "private organizations

26. There are many different types of NGOs, varying in size, capabilities, and focus. The term generally applies to any organization which is independent of any government and is not operated for profit. The World Bank makes further distinctions between national and international organizations and local grassroots or community-based organizations ("CBOs"), and also between advocacy versus operational NGOs, though this distinction is more blurred.

International organizations are usually based in a developed country and carry out operations in more than one developing country. *National organizations* operate in individual developing countries. These types of NGOs are usually formed to serve others,

that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development."²⁷ While there had been some involvement by NGOs in World Bank projects during the 1970s, official relations did not begin until 1981 when the World Bank adopted its first "Operational Policy Note on NGOs" and the NGO-World Bank Committee was established to discuss ways that the Bank could increase NGO involvement in World Bank-financed projects.²⁸

In the mid-1980s, advocacy NGOs concerned with poverty, and the environment became vocally critical of the World Bank. Many urged for increased World Bank collaboration with developing country NGOs in operational work. This led the World

and are intermediary participants in the development process between the CBOs and institutions such as the World Bank or government. They would typically be contracted to design projects, deliver services, or conduct research. They often work in partnership with CBOs by either channeling resources to them or providing technical assistance or other services.

Community-based organizations generally serve a specific population in a local area; they are usually formed by individuals working together to further their own interests (i.e. women's groups, cooperatives, credit circles, youth clubs, etc.). CBOs are likely to be the beneficiaries of project goods and services and may be consulted during the design phase of projects to ensure that beneficiaries' interests are being met. They may also undertake community-level project implementation and become responsible for the ongoing operation and maintenance of such works. They also may be given funds to design and execute sub-projects.

There is technically a distinction made between advocacy and operational NGOs. The main purpose of advocacy NGOs is to defend or promote a specific cause and who seek to influence the policies and practices of the World Bank. The primary purpose of operational NGOs is the design and implementation of development-related projects. However, more and more, that distinction is blurred, as many large operational NGOs have a growing advocacy component, and most international advocacy groups have partnerships with developing-country organizations which are at least partially operational.

27. WORLD BANK OPERATIONAL DIRECTIVE 14.70, (1989), replaced by GOOD PRACTICE (GP) 14.70 (1997).

28. Dialogue was pioneered by a group of industrial-country NGOs with operations in developing countries who hoped that the World Bank would be a new source of funding. The NGO-World Bank Committee formalized the discussions, and they were also pursued by a series of country-level "trilateral" (government-NGO-World Bank) meetings. Developing country NGOs played a growing role in these discussions. Since 1983 the World Bank's evolving work with NGOs has been described in an "Annual Report on Cooperation between the World Bank and NGOs," and since 1986 these reports have been sent to the Board for information. Samuel Paul, *Nongovernmental Organizations and the World Bank: An Overview*, in *NONGOVERNMENTAL ORGANIZATIONS AND THE WORLD BANK: COOPERATION FOR DEVELOPMENT* 5 (Samuel Paul et al. eds., 1991).

Bank to establish an institution-wide effort to expand its work with NGOs,²⁹ and, in 1989, Operational Directive 14.70 on collaboration with NGOs was introduced.³⁰ Its purpose was to set out a framework for involving NGOs in World Bank-supported projects.³¹ Since then, NGO participation in World Bank-financed projects has increased steadily.³²

Consistent with such increasing participation, the Ecuador project finances a Law and Justice Fund ("Projustice") to promote and support initiatives aimed at assisting those Ecuadorian social sectors that suffer obstacles and hindrances over access to justice. For that purpose, NGOs, universities, and foundations involved in legal aid have participated from all around the country. This demand-driven fund was created to allow innovation among civil society in the areas of access to justice, legal information, and research. This fund has allowed greater geographic participation, more diversity, and piloting of different ideas and has encouraged the grassroots level to design solutions to the problem of achieving greater access to reliable and fair dispute resolution, whether it is in the formal judiciary or community mediation.

The programs have varied from mediation centers to legal aid for poor women to professional development for law professors. Where there are four public defenders in a city with a population of 2,000,000 and a requirement to be represented by a lawyer, there are serious impediments to accessing justice. The legal services for poor women is a program that was developed for Quito and Guayaquil originally and then was expanded to Cuenca and to the Province of Guayas, particularly in the sectors

29. *See id.*

30. *See* WORLD BANK OPERATIONAL DIRECTIVE, *supra* note 27.

31. Lawrence F. Shalman & Paige Eaves, *Interactions Between Nongovernmental Organizations, Governments and the World Bank: Evidence from Bank Projects*, in *NONGOVERNMENTAL ORGANIZATIONS AND THE WORLD BANK: COOPERATION AND DEVELOPMENT* 95 (Samuel Paul et al. eds., 1991). *See* WORLD BANK OPERATIONAL DIRECTIVE, *supra* note 27.

32. Between 1973 and 1988, only six percent of the World Bank-financed projects involved NGOs. In 1993 over one third of all approved projects included some form of NGO involvement, and in 1994 this percentage increased to one half. In 1997-98, 47% (112 of 241) of the projects approved by the NGO-World Bank Committee had involved or would involve NGOs to some degree. In 1997-98, the 82% of the projects involving NGOs involved local NGOs, 79% included newly-created or existing CBOs, up from 66% in 1996-97. In an effort to expand participation, in 1997-98, 59% of projects with NGO involvement incorporated both CBOs and either national or international NGOs, up from 49% the previous year.

of Duale and Santa Elena which are remote and with a poor population. NGOs coordinate their activities with governmental and nongovernmental organizations. The general objective of the activities is to defend the rights of unprivileged population through a service rendered with efficacy and efficiency.

The women's legal service centers in Quito and Guayaquil provide the essential service of ensuring access to the judiciary and dispute resolution proceedings.³³ The centers offer legal aid to women, especially women in crisis, as well as psychological counseling and medical advice. The centers include staff lawyers, psychologists, and medical assistants, all of whom provide the lawyers with the support services needed by the lawyers to establish their clients' cases and to provide professional services to women resorting to the centers. Medical and psychological support is provided to deal with related difficulties. The experience of the women's legal services centers demonstrates that clients often need other services in order to effectively access justice and address their problems.

In Quito during the last trimester, there have been 344 consultations which resulted in 100 new cases handled by the center. Since several studies have stated that over 70% of marriages or partnerships include domestic violence, it is not surprising that the majority of the cases involve violence within the family, as well as cases related to children and more generally family issues.³⁴ Lawyers assist women in hearings before the judiciary, as well as convened mediation sessions. There were 272 consultations with psychologists and 408 with the medical assistants. Overall, the center in Quito provided legal services to 641 women during this period.

In addition to the legal service centers for women funded in Quito and Guayaquil, there are two new women's centers which

33. Centro Ecuatoriano de Apoyo a la Mujer ("CEPAM").

34. Although it was not the objective of the centers to assist in prosecuting penal cases, the very function vested in them requires engaging in such prosecution in a variety of cases. In addition, there is a need for legal assistance during this penal process in Ecuador, since victims are also required to be represented by lawyers. The limited experience in Ecuador thus far clearly demonstrates that attending to the issues of family violence and the related adverse effect on both women and their children is an indispensable prerequisite to any efforts to enable these women to enter the work force, provide proper care for their children, and, in general, improve their economic status. It also is vital for both the mental and physical health of the children and for the provision of a stable environment enabling them to continue their education.

have been opened by an NGO in two *zonas urbanas* within Duale and Santa Elena. These centers provide legal services for poor women and, due to excessive delays in the formal judiciary, have improved the efficiency and accessibility by women to the courts. Each center includes two lawyers, two psychologists, and two social workers, plus fourteen available mediators shared between the centers.

They provide services to an average of thirty women per day out of a population of 80,000 and 100,000. The majority of the cases handled by these centers deals with child support (since women rarely ask for support for themselves), child custody, domestic violence, and sexual violence against children. In the past, it was not unusual to find child support cases that lasted sixteen years; today, these centers are pleased to report that most child support cases are resolved within twenty days to two months and child custody cases within forty-eight hours. These shorter periods may be due to the fact that the centers provide effective, dedicated advocates, as opposed to less competent and indifferent attorneys that women otherwise would resort to (if they could even afford representation to begin with). It could be argued, therefore, that access to justice work is a way of decreasing court delay.

The centers also conduct mediation in child support cases and separation of material goods, as well as determining who retains possession of the dwelling. However, when there is a written agreement resulting from the mediation, some judges do not give them full legal force, which is inconsistent with the law of mediation. It was agreed that Projustice will discuss the matter with the Chief Judge of the Superior Court in an effort to assist the court.

The women are referred to the centers by word of mouth, at the insistence of a friend or family member, or through knowledge from conferences or television. They come to the centers because they value the idea of a holistic service center which can provide complete legal service rather than one service-specialized area. Thus, the fact that the centers provide more than legal assistance increases the number of women who access that assistance, because this assistance increases their ability to make use of the law. Accessing the law can often hinge on receiving other services. Such complete service centers, perhaps, can im-

prove knowledge and skills that can effect attitudinal change.³⁵ The centers follow through and walk the women through the legal process. They take cases that, perhaps, other lawyers could not. For instance, one woman was married to an influential senator and, therefore, was not ensured that a friendly judge would receive her case. The center was able to challenge this and provide the necessary support and independence.

The centers also provide shelter and educate women on the laws, which many women feel is important knowledge that they lack. The centers provide a service which women say is lacking in the courts and with other lawyers. They also trust the centers and those that work in them. Some women come after being frustrated by other lawyers working on their case—at the center they were treated better and were represented by the lawyers provided. Such NGO services which are specialized seem to provide an important contribution to making the legal system more efficient, equitable, and responsive to the needs of disadvantaged population. An argument can also be made that NGO services are a critical complement to the private bar which does not specialize in issues relating to women and the disadvantaged.

In the provision of legal services, there also is a simultaneous need to assist in changing the attitudes and sexual stereotypes judges have. Although this was not initially included in the project, it was later added to address this needed attitudinal change. In a time of economic crisis, family law cases increase due to economic instability. In Cuenca, the average income level of women being serviced is between \$4-20 per month. The women are dependent on improving their economic condition through the legal process. A detailed study of this, however, is not available currently.

These centers also provide training in the prevention of domestic violence, and violence in general, to families, citizens, religious groups, students of all ages, and those using the service of the centers. They also disseminate the laws that are against family violence. These laws were passed in 1995 and gave abused or otherwise unjustly wronged women the right to file a case against their husbands. In addition, other organizations promote *una vida sin violencia* ("life without violence") by helping to protect

35. See FORD FOUNDATION, *supra* note 17, at 14.

aggrieved women, promote affirmative action regarding gender violence, and encourage female participation in society.

Other activities financed by the Ecuador project include several law schools which offer legal orientation for economically underprivileged people in order to ease their access to justice. The schools' programs include legal aid centers where law students will complete their training and use mediation.³⁶ Other legal aid clinics include mediation and legal aid services.³⁷

These clinics provide students with practical training, rather than purely theoretical training. The main objective of this activity is to create, in society, a culture of conciliation, by means of bolstering the desirability to use alternative dispute resolution ("ADR") among students and the community at large. The activity's methodology includes coordinating ADR with a legal-aid program, training students, and counseling the public. Law school legal aid clinics offer essential legal services to the poor, provide students with practical skills, expose them to the public service profession, and perhaps encourage students to follow this professional path.³⁸ The main objective, however, is to train students and prepare the next generation for public service.

Mediation also is being promoted in areas which are remote from any formal judicial system.³⁹ One NGO offers mediation services in the Azuay province. The program, in the Tarqui, Quingeo, and Cumbre zones, trains mediators in areas where the population is mostly indigenous and women. The objective is to create a culture of dialogue and consensus building, and the program includes practical training for community mediators in diagnosis, coordination, evaluation, promotion, and training of other mediators.

Using mediation with women should be carefully done. In some places like Bangladesh, NGO mediation, although adopted to better address the needs of women and the disadvantaged, rarely treats women equally.⁴⁰ Despite an 80% dispute resolu-

36. Facultad de Ciencias Jurídicas de la Universidad del Azuay and Universidad Católica de Santiago de Guayaquil.

37. The Universidad Católica de Santiago de Guayaquil and Pontificia Universidad Católica del Ecuador – Sede Ibarra – y Centro Sobre Derecho y Sociedad – CIDES.

38. See FORD FOUNDATION, *supra* note 17, at 13.

39. Corporación de Educación y Promoción Popular – CAUSAI Implementación de Servicios Comunitarios de Mediación de Conflictos.

40. Method is known as Shalish. FORD FOUNDATION, *supra* note 17, at 136-38.

tion rate, the program is tainted by gender bias and legal ignorance.⁴¹ NGOs in Bangladesh, nevertheless, employ mediation because it often is preferable to similarly biased court procedures and certainly is preferable to traditional dispute resolution that can be gender biased. They also go this route because they employ mediation to educate communities about the law, and because they back mediation with litigation where necessary. However, most recognize that mediation and other legal services alone are not enough to advance women's issues.⁴² Legal assistance works best when coupled with other social and economic development services engaging women and other disadvantaged groups.

Providing legal information is another form of legal aid. Often people do not have the knowledge of, or trust in, the legal process, and, therefore, they need to be better educated about the system. One example is legal training and assistance for prisoners' organizations and prisoners' relatives.⁴³ The objective of the activity is to encourage prisoners' relatives to participate in resolving prisoners' legal conflicts and to understand the judicial process and the process of rehabilitation.

Training also is provided for NGOs and public officials to help them relate to prisoners' problems, to establish a prisoners' relatives association, and to involve judges and court personnel in prisons' problems. Other legal information includes creating awareness among children, their parents, and teachers about the rights that the new Ecuadorian Constitution recognizes for children.⁴⁴

In the United States, there is a view that the law should be an active force for social change and with that came an increased emphasis on civil rights litigation.⁴⁵ Court decisions, however, should be balanced with public communications to frame public debate and prevent reversal of progress.⁴⁶ Public education, also

41. *Id.* at 139.

42. *Id.* at 141.

43. Instituto Ecuatoriano de Antropología y Geografía Activity: Capacitación Legal y Fortalecimiento de las Organizaciones de Prisioneros y Familiares de Prisioneros.

44. The Fundación Jóvenes por la Solidaridad offers training and counseling in legal matters to young people and organizations related with youth assistance. Centro Psicológico de Atención Comunitaria, CEPsidAC Activity: Justicia por el Bienestar de los Niños.

45. See FORD FOUNDATION, *supra* note 17, at 91.

46. *Id.* at 112.

an essential component, together with educating the next generation of lawyers, is important for social change.⁴⁷ One example is the education of at-risk groups (*i.e.* the indigenous population, the poor, and women) on their constitutional rights.⁴⁸

In parallel, the activity includes information for practitioners, judges, and NGOs on their role in constitutional protection, as well as the provision of legal assistance and representation at the Constitutional Court and the dissemination of the results. In Bangladesh, an NGO funded by Ford involves judges in its seminars which made the NGO less of an alien presence in court and ensured that its arguments in court were heard on their merits and not from a legal periphery.⁴⁹ This levels the playing field without crossing the line of undue influence, and such an activity was included during the implementation of the Ecuador project.⁵⁰ Another example is research about access to justice for indigenous sectors.⁵¹ This aims to facilitate an understanding about those indigenous customs, to disseminate knowledge about the indigenous ways of administering justice in the *quichua*⁵² communities of Sierra and Amazonia and in the *shuar*⁵³ community of Amazonia, and its diffusion within the legal community and the legal education system. Training also is provided in applying traditional justice methods with ordinary justice.⁵⁴

C. Replication Possibilities

In many countries, public-interest litigation has used the litigation process to document injustice and expose inequities, which has fostered the development of new jurisprudence.⁵⁵ It is yet to be seen how jurisprudence will be affected by the efforts

47. *Id.* at 113.

48. Fundación Regional de Asesoría en Derechos Humanos Activity.

49. See WORLD BANK OPERATIONAL DIRECTIVE, *supra* note 27, at 135.

50. See *id.* (stating that established lawyers have professional familiarity with appellate judges).

51. Facultad Latino Americana de Ciencias Sociales, FLACSO – Sede Quito – FLACSO.

52. Indian-language speaking ethnic group located throughout Ecuador.

53. Indian-language speaking ethnic group located in parts of Ecuador.

54. Federación Nacional de Organizaciones Campesinas, Indígenas y Negras ("FENOCIN") Activity: Investigación y Capacitación sobre la Administración de la Justicia Indígena en el Ecuador.

55. See WORLD BANK OPERATIONAL DIRECTIVE, *supra* note 27, at 13.

in Ecuador. It is one of the first experiences for the World Bank, and there is a need for further research and time to study the real impact of legal aid under the project.

Public interest litigation can be one means to educate the judiciary, and training seminars can raise awareness as a complement to other formal judicial training that is done.⁵⁶ The early signals show that it has had some positive effect, especially in women's cases argued before a judge. An impact study is being done to assist in the replication of these legal services for women in other countries. Replication also can be assisted with lessons from other countries and donors. One important lesson from Ford's review is to select test cases that can inspire attention from the press and the public as well as provide access to vulnerable groups.⁵⁷ In Ecuador, training has been given to journalists so that they may report more accurately on judicial reform issues, and it is hoped that they will monitor these cases. This is an activity which has been more widely included in other legal and judicial reform projects financed by the World Bank.

The issue of sustainability is always an issue for legal aid activities, which coincides with the fact that many NGO weaknesses stem from their typically low levels of financial resources and lack of financial independence. Large national NGOs tend to be dependent on foreign contributions, many of which are project-based.⁵⁸ In Bangladesh, Ford found that multiple donor support was positive for legal services.

Like in Ecuador, each donor funded different aspects of the women's integrated legal services, including health, education community mobilization, and other programs.⁵⁹ The shared funding enabled the donors to share the risk when legal aid may have been controversial.⁶⁰ Since Ford found it unreasonable to expect most public interest law groups to become self-supporting,⁶¹ such cooperation among donors is vital to continued exis-

56. *Id.* at 82.

57. *Id.* at 75.

58. Some of the large international NGOs do have well-established mechanisms through which they raise a significant amount of their funds from diverse sources. Most NGOs are limited by the irregular project-based funding they receive and are not able to develop their administrative capabilities beyond basic levels as most of their finances are used for operations.

59. See FORD FOUNDATION, *supra* note 17, at 134.

60. *Id.* at 134.

61. *Id.* at 118.

tence of legal aid.

Although these activities were financed in Ecuador, it does not mean that such activities are automatically appropriate for other countries—but they certainly should be considered. Consistent with Ford, strategies can and should vary depending on the time, place, and organization.⁶² Other examples of legal aid could include support for the Ombudsmen's Office, which helps citizens to investigate, mediate, and resolve complaints against public officials. Such an office is supported in Peru by the World Bank through an Institutional Development Fund Grant. Whatever the model for legal aid is, it should be effective, efficient, affordable, independent, and trusted by the clients.

One of the most important benefits of civil society's involvement in this area is that it can provide an essential complement to other legal aid activities in a particular country. Such involvement, in whatever form, can provide greater accountability, transparency, and better information to the public, all of which are integral to the process of legal and judicial reform.⁶³ While the most common World Bank-NGO operational collaboration is at the implementation stage, as in the case of the activities described above, many NGOs offer experience in participatory project design and possess skills in areas such as participatory research, community mobilization, facilitation techniques, and group dynamics.⁶⁴ Since NGOs come in so many different shapes and sizes, it is vital to research and thoroughly assess potential partner-NGOs to find the ones most suitable for a given project.

National and international NGOs also can make long-term commitments to the communities they serve and be a source of stability and sustainability, particularly where governments are weak or prone to change. NGOs in Ecuador also have provided a mechanism to voice the issues related to the poor and their lack of access to effective and efficient resolution of disputes.

62. *Id.* at 15.

63. See CHITRAKAR, *supra* note 15, at 19-23; WORLD BANK, *supra* note 2, at 9-10.

64. The World Bank is often asked why it does not lend directly to NGOs. The World Bank works directly with governments or with a guarantee from the government. As a result the entity receiving financing must be credit worthy of World Bank financing with the ability to repay the loan. Most NGOs do not qualify, and thus member countries would not guarantee such financing. The loans pose exchange rate risk which most NGOs cannot manage since it may mean that they would pay more than they actually receive in the loan amount.

NGOs and CBOs which generally serve a specific population in a local area and are usually formed by individuals working together to further their own interests (*i.e.* women's groups, cooperatives, credit circles, youth clubs, etc.), have proven to be effective and sometimes are the only institutional link to some of the poorest and most disadvantaged members of society, who are very often the most difficult to reach. Often these groups live in remote places or transient situations beyond the sphere of public service networks and formal judiciary structure; NGOs have played a key role in establishing contact with some of these high-risk groups. NGO and CBO networks are particularly effective in situations where they are able to penetrate large numbers of dispersed communities.

NGOs can help further by giving a more complete and balanced view of the issues at hand and by offering another perspective differing from that of the government or private sector. (In the case of Ecuador, the NGOs expressed that the obstacles to a efficient and effective justice system were not solely related to the lack of infrastructure and technology in the judiciary.) They are particularly effective in drawing attention to issues or groups that may otherwise be overlooked or whose political voice is the weakest. Women, ethnic minorities, and other groups who do not always enjoy equitable representation in formal institutions often form NGOs in order to make their voices heard. Working through these groups, in the case of Ecuador, helped to ensure that important issues are not overlooked in the development of legal and judicial reform.

NGOs also can provide learning and innovational experiences in both the design and implementation process. Because of their smaller size and more flexible nature, NGOs are better able to develop and experiment with new approaches and innovative practices in development. It is not unusual for World Bank-financed projects to incorporate or scale-up successful NGO innovations or for NGOs to be vehicles to test or pilot new strategies. In the Ecuador project, NGOs designed the proposals which were financed.⁶⁵

With all of the strengths and benefits of NGO participation, it is important to realize, however, that NGOs have several weak-

65. Still only about half of the World Bank financed projects approved with NGO involvement have them participate at the project design stage.

nesses and features that also should be considered. For instance, some NGOs have their own agendas, whether local or international; some do not have technical expertise; some are not legitimate among their peers; and, in an advocacy role, some may create tension with governments. For this reason, it is beneficial that such groups are consistently nonpartisan.⁶⁶ One should further be aware of where their funding comes from, particularly in cases where the financial backers are international groups with separate agendas. In addition, the following limitations may be present: limited financial, analytical, and management expertise; limited institutional capacity; gaps between the stated mission and actual operational achievement; low levels of self-sustainability; lack of inter-organizational communication or coordination; and limited expertise in broader economic, social, or development issues.⁶⁷ Then again, many of these same problems plague government agencies as well.

D. *Networks of NGOs*

Every Latin American country is now interlaced with a thickening web of grassroots organizations.⁶⁸ As we know, NGOs and grassroots organizations come in all different shapes and sizes, but, in general, organization has become a relatively constant concept in Latin America in the past thirty years or so. The current dynamism is due to a few different factors: 1) there has been a great spread of ideas in the region, such as liberation, theology, feminism, cooperativism, etc.; 2) the social characteristics of the poor are changing as they become better educated, healthier, and have better access to information and services; 3) there is both a greater outside presence, in terms of the exchange of ideas and financing; and 4) democratic processes are deepening throughout the region.

There is as a growing number of organizations that deal with common concerns. As these small organizations begin to expand or multiply, however, they are often faced with obstacles that are beyond their control or capacity. In these cases, these small grassroots organizations will often join forces with kindred

66. See FORD FOUNDATION, *supra* note 17, at 82.

67. See Shalman & Eaves, *supra* note 31, at 128.

68. Sheldon Annis, *Can Small-Scale Development be a Large-scale Policy? The Case of Latin America*, in WORLD DEVELOPMENT REPORT 129-34 (1987).

organizations which may have strengths in other areas, such as lobbying and/or technical power. So each group brings its own resources, strengths, or interests into the partnership, improving the outcome of the relationship, and they in time also may join with other groups to work together towards a common end, eventually creating an interlocked web of organizations.

In poorer countries, while community-based organizations do exist, the opportunities for linking up with a network of groups are much more limited. One of the main limitations of functioning independently is the lack of information. The growth in technology has contributed to the expansion of networks, particularly through cross-boundary linkages. Internet user groups, bulletin boards, and websites have created a new arena where political and social issues are proposed and debated, and where experience in working on these issues is shared. Internet communication creates a community of informed activists who are unbounded by hierarchy or territory and that are based on common values, interests and objectives.⁶⁹

As networks, groups have greater strength lobbying for change, and, therefore, they increase their effectiveness. The increase in technology allowed for an expansion of networks to promote change and keep a healthy watch on the reform activities being sponsored by both the government and international organizations. This oversight can help to ensure that reforms are not transplants and that they are indeed owned by civil society. At the same time, we should remain aware that despite all of the exciting opportunities offered by technology, impoverished communities typically have little or no access to computers, telephones, or electricity.

One example of a network is the growth in women's organizations and their effort to make causes, such as violence against women, universal rather than country-specific issues. By creating a universal term for what may have different names in different countries, they have given important issues global recognition. Working together under an international campaign rather than isolated national movements, permits their voices and influences to be stronger and even more effective. One example of such a coalition is the number of women's NGOs which have partici-

69. Julie Mertus, *From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society*, 14 AM. U. INT'L L. REV. 1335 (1999).

pated in the World Conferences on Women and in the United Nations process by providing their expertise in the area of concern, lobbying their governmental delegates, and representing the citizen's voice.⁷⁰ By joining in international conferences and coalitions, these organizations make their voices significant on a global level.

Zonta International⁷¹ is a worldwide service organization that has brought together many different organizations, associations, and government agencies to work together, in recognition that violence against women is an international issue that affects all of humankind. Their activities range from promoting education on women's rights and gender equality, to advocating and monitoring legislation, to providing social, emotional, financial, health, and environmental support for the well-being and empowerment of women. It takes participation from all levels and types of organization to sustain such a broad range of activities, which are greatly benefited by these coalitions and networks of organizations.

Transparency International is an international-NGO dedicated to increasing government accountability and curbing both international and national corruption.⁷² Through the formation of national chapters, Transparency International has brought together a coalition of people in civil society, business, and government to be independent, supportive, yet critical partners in pursuing the implementation of laws, policies, and anti-corruption programs. The various national chapters participate by lobbying their governments, informing the media, and bringing together people who are concerned about corruption. By forming a coalition of independent, yet supportive, international organizations, Transparency International is able to have a powerful role and voice in defining and implementing an international agenda against corruption. While individually these smaller groups may not have much chance of having their voice heard or having a significant effect, as a group they can draw on each

70. See NGO Pavilion (visited July 10, 2000) <<http://www.igc.org/beijing/ngo/ngo.html>> (on file with the *Fordham International Law Journal*).

71. See ZISVAV ("Zonta International Strategies to Eradicate Violence Against Women and Children") (visited July 10, 2000) <<http://www.zisvaw.org>> (on file with the *Fordham International Law Journal*).

72. Transparency International (visited July 10, 2000) <<http://www.transparency.de/index.html>> (on file with *Fordham International Law Journal*).

others' experiences and work together as a strong, united front to really make a difference.

NGO involvement in policy making has increased, especially in the area of environmental law. While states have traditionally been the dominant actors in the creation and maintenance of conventional international law, recent changes have enabled NGOs to have a greater opportunity for participation in international environmental law.⁷³ NGOs are now major actors in the formulation, implementation, and enforcement of international environmental law. While there are no formal guarantees of access across the board yet, NGO participation has been formally mandated or permitted in a number of recent international legal instruments. NGOs also have played a major role in the negotiation of these conventions as well.

NGOs are further involved in the International Law of Development ("ILD"), a growing body of legal instruments created by the U.N. system.⁷⁴ NGOs have played a vital role in building the ILD and are a powerful force behind it; the ILD legitimizes its demands for more participation and has increased its role at the national and local levels. By mandating NGO participation at local, national, and international levels, the ILD also seems to mandate its more active role in the development of international law in all spheres related to development. The future of the ILD is linked to the future strength of NGO networks as well as the increased activity of the NGOs in development processes.

III. *INTER-AMERICAN JUDICIAL REFORM NETWORK*

Legal and judicial reform programs have been launched in a number of countries throughout the region. As part of this process, but even more often independently of it, NGOs have filled the gap left by governments by providing needed activities to foster legal aid, public education on the legal system, research, legislative drafting, and court reforms. This increased involvement by NGOs has an added benefit of providing a monitoring mechanism of judicial performance, an increased public

73. Kal Raustiala, *The 'Participatory Revolution' in International Environmental Law*, 21 HARV. ENVTL. L. REV. 537 (1997).

74. James C. N. Paul, *The United Nations Family: Challenges of Law and Development: The United Nations and the Creation of an International Law of Development*, 36 HARV. INT'L L.J. 307 (1995).

awareness of the adverse effects of inefficiency, and an increased understanding of the imperative for independence and integrity of the judicial system. In this way, the NGOs in Latin America, working on judicial reform have been an integral part of the process to strengthen the rule of law in the region.

The Inter-American Judicial Reform Network was established to coordinate various organizations that are participating in judicial reform in Latin American countries. Since a well-functioning judiciary is an integral part of good governance, organizations seeking and engaging in reforms to strengthen the judicial process in their countries can gain much insight and support from similar organizations in both their own countries and other countries. It also is important that there exists some structure that independently examines the reform process, disseminates information about it, and organizes active participation.

Good governance requires information, transparency, and participation. This means that the courts, together with other groups, will participate in the reform process. NGOs involved in judicial reform serve as vehicles through which public participation, dissemination, and review might take place. The relationship of the NGOs during this process can influence the public's perception of the court system and can help the legislative and the executive as well as the judiciary place reform issues in a broader perspective.

An exchange of ideas, experiences, and insights between and amongst these groups is an invaluable tool in countries that are currently strengthening governance. Often, well-reasoned approaches to a particular problem can be better developed by exchanging experiences with others. In this regard, these groups have experience at the local and national level in areas of access, alternative dispute resolution mechanisms, court administration, judicial training, legal reform, and others. Those NGOs, in judicial reform, as well as the World Bank, can benefit from these important experiences.

IV. HOW LEGAL AND JUDICIAL REFORM NETWORKS CAN IMPROVE PARTICIPATION IN THE JUDICIAL REFORM PROCESS

Such networks can improve the information available and

the coordination among both civil society, donor agencies, and governments. They will improve access to knowledge and skills. They will allow donor agencies to develop effective partnerships with civil society. This means that the NGOs involved should have credibility (acceptable to relevant stakeholders on development objectives), competence (relevant skills, experience, and track record), *local* knowledge (proven high-level understanding of country context), representativeness (community ties, accountability to members/beneficiaries, and gender and minority group sensitivity), and institutional capacity (sufficient scale of operations, human resources, and facilities).

Working in networks will allow for greater consultation with NGOs on draft reform agendas as well as provide a mechanism for greater disclosure. It will also allow the World Bank to better understand funding needs and issues so that NGOs can make valuable contributions within their means and capacity. Additionally, this would permit the NGOs to build their capacity by learning what others are doing and spreading the responsibilities among a group of networks. This approach utilizes the multiple sources of energy available and promotes greater pluralism in society by encouraging networks of NGOs to create linkages and collaborative arrangements. There also is a need for an interlocking network of complementary institutions—lawyers, grassroots community activity, and academic think tanks.⁷⁵ For example, there is much to gain from greater interaction among the organizations working on legal aid.⁷⁶

As legal and judicial reforms advance in many countries, it is clear that there is a parallel need for attention to the poor and access to justice. It is not enough to train judges, create new case management tools, and pass new laws. Different legal aid models can be tested and evaluated simultaneously during this reform process. Civil society can play an important role in advocating change in the legal framework and in the judiciary so as to promote greater access to justice. One of the mechanisms that we have seen is the development of local NGOs specializing in justice issues. As these NGOs grow in numbers and competence, they will most likely get more respect and trust. In other words, they would have a more active role in the initiation, design, and

75. See Paul, *supra* note 28, at 118.

76. *Id.* at 133.

implementation of projects so as to ensure that a complementary approach between the judiciary and civil society is being followed in legal and judicial reform.