



## **Forum Notes**

# Foreword

Thank you to all who participated at the 2014 WANA Forum on Legal Empowerment. We greatly appreciate your time investment. Over the past two weeks we have received overwhelming positive feedback including stories of new partnerships that were forged, that discussions have inspired new approaches, and that the training vested practitioners with new skills they will use to enhance the impact of programming. We have great confidence that your efforts will translate into enhanced access to justice for the people of WANA.

We want to provide you with a short summary of the key themes, discussion points and good practices that came out of the conference. For ease of reference, we have divided these into 13 thematic areas. These are not by any means comprehensive accounts of the discussion, nor do they constitute best practices.

WANA will deliberately not be issuing a conference report. The papers presented, speeches delivered and discussions yielded an enormous amount of important information. We will be developing this into a legal empowerment resource kit, comprising case studies, good practices, analysis and policy recommendations. We hope to launch this learning resource by the end of September.

WANA is also in the process of developing a new strategic outlook and work plan for the 2015-2020 period. Based on the outcomes of this year's Forum, we are likely to include social justice as one of WANA's permanent pillars. We are committed to transforming WANA into a thriving community of practice, geared towards enhancing dialogue, trust and cooperation in the region. We hope that you will join us on this journey as a core member of the WANA stakeholder community.

Thank you again for your support and commitment to a more just and inclusive world.

A handwritten signature in black ink, appearing to read "Erica Harper".

Dr Erica Harper  
Executive Director  
West-Asia North-Africa Forum

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# The disempowered

Broadly speaking, marginalised and vulnerable groups have more difficulty accessing justice. In the WANA region these include: women, children, migrant workers, refugees, people with disabilities and people affected by certain diseases such as HIV/AIDS. Across WANA, advocacy has led to the reform of discriminatory laws. Organisations now exist to assist these groups better understand their rights and how to uphold them, and how to gain better access to facilities and social resources. These marginalised and vulnerable populations still, however, face many obstacles.

## Obstacles

- Institutionalised factors such as gender discrimination at both the civil and state levels including laws that prevent access to the justice system for certain groups;
- The stigma associated with reporting violations or going to court;
- Economic obstacles such as high lawyer fees vis-à-vis low incomes;
- Lack of legal awareness regarding laws and procedures;

- The duration of the judicial process creates disincentives and opportunity costs;
- Variation between laws and their application.

## Challenges for specific groups

### Children

**Violence:** 68% of children in Jordan suffer from physical violence committed by parents, which can be explained by Article 62 of the Constitution, which upholds the right of parents to beat their children.

**Sexual violence:** perpetrators of sexual violence can sometimes avoid punishment by marrying the victim. In many cases, the victim is forced into the marriage due to a lack of legal protection.

**Stigma:** there is a social stigma attached to violence against children, which can prevent access to justice. Parents are often unwilling to initiate legal proceedings to avoid this stigma.

**Child labour:** the WANA region encourages a child to leave school early; there are no legal ramifications for parents if they withdraw their children from school.

**Nationality:** the Nationality code in Jordan does not allow children to obtain their mother's nationality.

**Child marriage:** particularly in Syrian families, marriage of

daughters under the age of 18 is a growing problem. As Syrians aren't allowed to work in Jordan, additional children can be seen as a financial burden promoting under-age marriage.

### Migrant workers

**Laws:** migrant workers are both outside the protection of the law and face the bias of existing laws, which often results in significant wage and conditions inequality. Jordan, for example, must recognise that there is a gap between the law and its implementation.

**Stigma:** migrant workers are looked down upon by officials, employers and the community.

**Language barrier:** migrant workers rarely know Arabic. It is very difficult for them to get access to a translator even though Jordan has ratified this service for their specific use.

**Freedom of movement:** withholding of a migrant worker's passport is a tactic used by employers to control the terms and duration of their stay, as well as their wages. In Jordan, migrant workers cannot leave the country without the approval of their employer.



Image 1: Hauwa Ibrahim – Chair of the session “Examining the specific challenges of vulnerable and legally marginalised groups”.

## Good practices & recommendations

### Women

**Religious leaders and customs:** encourage dialogue with local religious leaders to mitigate negative traditions and customs. Failure to do so ignores the fact that engaging these stakeholders is essential to initiating positive change. In Lebanon, Jordan and Iraq, for example, religious leaders assume the responsibility to empower women to access justice. It is also important to develop religious interpretations of the Quran from a gender perspective.

**Awareness raising:** work with the courts to improve court services, complemented by advocacy campaigns that raise the awareness of both rights holders and rights providers. Centres can be created to promote women's legal awareness at establishments such as hospitals and prisons.

**Training:** provide training for female paralegals and train judges on women's rights and human rights more broadly.

### Children

**CEDAW:** The Universal Periodic Revision is an opportunity to push the rights of children forward. Jordan discussed its report in May with the committee and will issue its recommendations soon.

### Migrant workers

**Local efforts:** empowering workers must start in their original country through better counseling and contracts before they leave.

**Support services:** build the capacities of health workers, police, and judges to know how and when to assist migrant workers.

**Media:** workshops to train journalists on the issues and law surrounding migrant workers so they can successfully cover cases involving rights violations to further promote the issue and help to change society's view towards migrant workers.

# Legal aid and clinics

Under the International Covenant on Civil and Political Rights, the state has a responsibility to provide legal assistance and counsel to all people appearing before a court or tribunal. Legal aid programs, legal counseling and representation services targeting poor and marginalised populations might be provided for free, at low cost or on a sliding scale through means-testing.

Access to justice is particularly difficult for marginalised groups including children, women, migrant workers and people with disabilities. Where there is no system of legal aid, coupled with a lack of financial means, it often results in no dispute resolution or drives dispute resolution towards customary systems.

## Country snap shot: Jordan

Data suggests that 68% of criminal cases reviewed are not represented in court, 83% are unrepresented during pre-trial, and 99% are unrepresented at the police station.

An independent legal aid institution should guarantee access to justice for all, provide monitoring for quality control, have a code of conduct, and provide continuous learning programs.

## Good legal aid systems will:

- Provide early access to representation.
- Have quality control processes in place, such as bar association rules; minimum standards and guidelines; institutionalised continuous learning and training programs for lawyers; guaranteed
- Include legal clinics, which can be extremely helpful, especially for marginalised groups like unmarried women and orphans. The clinics can encourage legal students to assume responsibility for the vulnerable and to learn more about their situations and cases.
- Independent, monitoring systems; and a code of conduct.
- Sustain the right to representation: it is not enough to provide a service for one or two days, this must be sustained throughout the course of a dispute or trial.
- Combine with other forms of legal empowerment, especially rights awareness-raising activities. While many are aware of

their rights, they don't know how to access them.

- Connect clients to other important services such as psychological and economic assistance.
- Promote outreach for legal clinics through community advocacy and social media.

## Advice when lobbying for legal aid and clinics

- Understand and document the current situation through data collection.
- Make a cost-benefit analysis by looking at the period of litigation and detention (and their expense). A move to legal aid is generally easier when it presents cost-savings.
- Bring other (public and non-governmental) stakeholders such as police, corrections and public health officials into the conversation.
- Research independent studies that document the impact that a lack of legal aid or no legal aid has on the general public. Show proof that legal aid helps development and economic growth.
- Explore cost effective options and different models of funding. If the state can't finance legal aid, present other models such as mixed payment, donor-funded, cost-pay scales, and even revenue generating models.

- Prioritise your affected stakeholders, such as juveniles, and criminal matters in your planned activities, and consider the appropriate timing of these activities – a functioning legal system ideally comes before an institutionalised legal aid system.
- Understand the complexities of legal clinics based in universities; they can be problematic when the priority is less on the clients and more on the students' learning experience. There may be people with enormous need, but they are not chosen because their cases lack 'excitement'.
- Promote a culture of volunteerism in the WANA region; people should be encouraged and recognised for the voluntary work they do in the community.

## Suggested eligibility criteria

- Financial capability and family income;
- Prioritised cases, e.g. gender crimes;
- Prioritised groups, e.g. migrant workers, refugees, people with disability;
- Distinguish between those who can't afford legal representation, versus those who can but are unsure of the process;
- The right to counsel is not negotiable. When considering representation of repeat



offenders such as murderers, rapists, child molesters, the protection of the community is not higher than the constitutional right to counsel. Having a lawyer is not just about protecting the right of the defendant; it's about protecting the integrity of the justice process.

## Considerations for state-financed programs

- Should the state provide the institutional service or just the finance?
- Is the state competent to administer the service?
- What happens when a case is filed against the state?
- For politicised cases involving property, for example, should alternate funding be sought from donors or NGOs?

## Other models and good practice

- In Libya, the state provides legal aid because all lawyers are government employees. Libya provides legal aid for free, supplemented by judges who provide legal consultation.

- In Jordan, the Bar Association is responsible for monitoring the quality of legal aid.
- The US has a public defender system, whereby defenders are public employees.
- In Lebanon, the state doesn't provide a free legal aid service. It is instead provided by civil society organisations.
- In Palestine, the Al-Quds University Law School enables law students to give legal advice supervised by professors, while at Herat University fourth-year criminal defence students provide legal aid, but do not have the right to represent clients. A curriculum that includes basic rights of citizens is also being introduced.



Image 2: Hadeel Abdel Aziz Legal aid in Jordan: creating a sustainable response.

- In Iraq, students visit the courts one per week to understand the litigation processes and undertake extra training. They also visit poor communities to get a better understanding of the clients they will assist.
- Government-non-Government models are when legal aid is privately provided with

governmental funding – the idea is that the system is independent, but funded by the taxpayer.

- Mixed models have public defenders supported by paralegals and legal clinics.

# Strategic litigation

Strategic litigation aims to bring about significant changes in the law, practice or public awareness by taking carefully-selected cases to court. Strategic litigation is considered a type of advocacy for enhancing certain kinds of freedoms, not only for an individual but for the general public, with implications for legal empowerment and changing policies. Strategic litigation is a gradual process of using individual cases to achieve broader, more systematic, positive change in the legal system. Strategic litigation is important in both criminal and non-criminal law, and especially in constitutional law as a method of ensuring that defendants' rights are protected. Strategic litigation is a gradual process. It is the repetition that brings the desired change.

## The aims of strategic litigation

### Increase access to justice

Strategic litigation holds individuals in the judicial system, such as judges and prosecutors, accountable for implementing the law properly and increasing individuals' access to justice.

### Increase confidence in justice system

Ensuring that defendants have greater access to justice and that the judicial system will work for them and treat them appropriately.

### Legislative reform

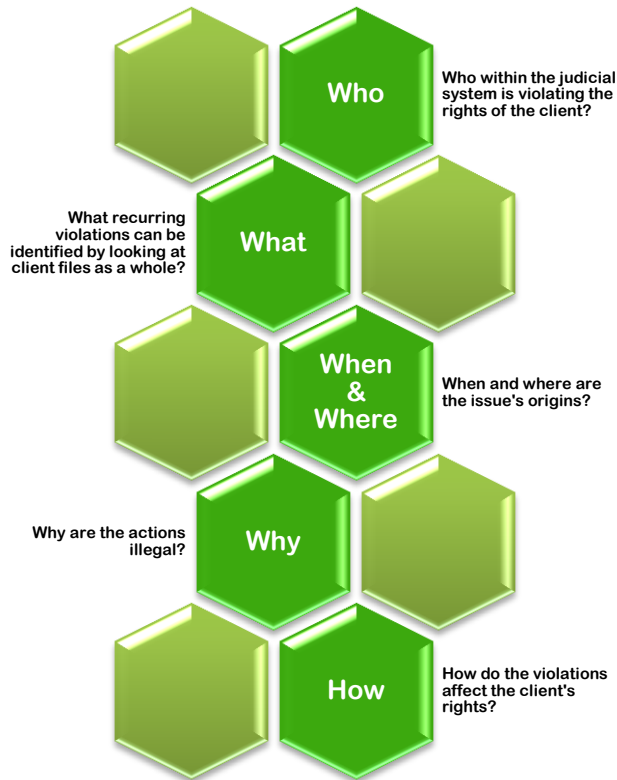
Laws can at times be very narrow. In these cases, strategic litigation is about moving from the black letter of the law to a broader analysis that ensures justice. The more cases that are brought to court, the more the legislature is forced to look at the law.

When undertaking a case in a strategic litigation context, there is a potential risk that a lost case will have a negative result for the client. Winning is not the important thing; it's bringing the issues to court consistently and continually. Building client confidence in the justice system is about ensuring that, even if the client loses, he or she still feels like the system worked properly. Even if a case exactly fits your organisation's strategic litigation profile, if your client does not want to appeal, you must agree.

## Challenges

- Reconciling strategic litigation with the right to a "speedy" trial.
- Political agendas can greatly influence legal decisions.
- Client absences during court proceeding.

## Gathering the facts



The **why** question requires thorough research, beginning with the constitution and the code of penal procedure. International law is also a good source because it tells the judiciary that the issue is not isolated, but is part of a global push for rights.

When considering the **how** question, think broadly. Illegal detention, for example, is about more than the client spending a number days in jail unnecessarily. These people may lose their jobs, be expelled from school, etc.

### Case study: right to speedy trial and liberty

In Palestine, the International Legal Foundation (ILF) was managing several cases where police witnesses refused to come to court, causing an obstacle to the client's right to a fair and speedy trial. ILF looked into how many cases were affected by a police witness's absence in court, as well as legal articles and precedent. There was no precedent for subpoenaing a police officer, so instead they moved on to looking at the fundamental right to a fair and speedy trial. From this aspect, they found that the judge was legally able to issue a police subpoena, or else impose a fine of 15 JOD. The courts began to apply their suggestions and in Jenin, most of the courts began issuing subpoenas to the police officers.

In another case, the prosecution was failing to turn over the investigative paperwork done on a case. Hence, while the state was building its case, the defense could not do the same. Every time ILF received an empty case file, they filed a motion arguing that their clients had a right to be informed, a right to counsel, and a right to a meaningful defense. The goal of this was not just to get the court to rule to turn over the paperwork, but to develop legislation on the subject. In this particular case they were able to get the court to issue a judicial order where previously there was no law on it.

## Key activities for successful strategic litigation

- **Research:** investigate previous instances of the issue being raised, previous court rulings, reasons for the rulings, and differences between previous cases and your own.
- **Record:** for strategic litigation to work, you must be consistent in filing motions and appeals; a system of tracking cases is useful to this end.
- **Determine the goal:** proper strategic litigation requires delineation of specific goals. Sometimes the goals are narrow (e.g. require lawyers be present at police stations, or that court judges ask clients if they want lawyers) but they must be clear so that they can be expanded upon and can be related back to clients' rights such as the right to access, the right to counsel, etc. It is important to decide these goals at the beginning, because once you file those motions, they cannot be reversed.
- **Use the media:** strategic litigation does not exist in a vacuum, but in global, regional, local, and individual contexts. Media campaigns can be useful to this end.
- **Think broadly:** strategic litigation is most successful when it takes into account

crosscutting issues within a legal empowerment context.

- **Collaborate and consult:** government authorities may not want strategic litigation to succeed. It is therefore pertinent to include a broad range of people to understand the potential benefit involved in the strategic litigation goals. Undertake community advocacy, either through the media or with the local or international community.



Image 3: Bassam Karajeh, Jerusalem Legal Aid and Human Rights Center, Palestine and Tariq Abdel-al Ali Al-Sayyed, Egyptian Initiative for Personal Rights, Egypt.

# Paralegals

A paralegal can be any community member (teacher, health worker etc.) who is trained in substantive and customary laws, the functions of government, and problem-solving skills. Paralegals can be specialist paralegals trained on specific topics (citizenship, health accountability, land ownership) or generalist, who can handle any issue regarded as a justice problem. Paralegals can be connected to an NGO or exist within communities, and are recruited from within their community because they understand the specific culture and traditions.

The notion of paralegals is controversial in many WANA countries. Many participants felt that paralegals were not appropriate for the region and in many cases illegal. For some, paralegals can only raise awareness or assist a lawyer with tasks such as preparing a case file. By the end of the Forum, however, there was a general consensus regarding the rationale of paralegals as supports for lawyers. Most were interested to hear more about new paralegal models and to explore how such mechanisms could be used, especially where there are a very limited number of lawyers.

## By country

**Morocco:** paralegals existed in Morocco until 1968, when all paralegals were permitted to obtain law licenses and could register as lawyers.

**Palestine:** paralegals are considered very important and the first diploma in paralegalism has just commenced.

**Pakistan:** paralegals are very successful and have existed for decades.

**Egypt, Tunisia and Lebanon:** paralegals are used, but mainly for the purpose of awareness raising.

**Jordan:** paralegalism is illegal under the rules of the Jordanian Bar Association.

**Afghanistan:** paralegals are not used.

### Advantages

- Cost effective,
- Paralegals can straddle the customary and formal systems and hence have more flexibility to negotiate solutions,
- Lawyers are more restricted in which laws they can avail of and seldom know the customary law content.

### Challenges

- Tensions can develop between paralegals and lawyers. For example, in Tunisia such tensions make it hard for both groups to attend the same training sessions.
- Resistance to women acting as paralegals in communities.

- Some laws impose barriers on the work of paralegals. For example, in Palestine the law requires a confidentiality clause making it illegal for paralegals to view the case information.
- There is an attitude in the WANA region that lawyers are the only professionals capable of providing legal advice.
- A lack of acceptance of paralegals in the WANA region especially from lawyers or tribal leaders.
- Concerns exist that paralegals should not bridge the customary-formal gap and should only work in the formal sector.
- As paralegals are sourced from the local community, they can be susceptible to pressure from influential community members.

## Building good paralegal models

- Paralegals need thorough training and ongoing support for continuous learning, and should be supervised and mentored by a lawyer.
- Accreditation programs should be in place for both paralegals and institutions that work with paralegals.
- Systems must be in place for monitoring of paralegal activities and outcomes. This involves collecting data and tracking solutions

to better equip advocacy efforts for systemic legal reform.

- Arrangements should be set in place to refer difficult cases or cases that cannot be resolved to the formal legal system.

### Country focus: Sierra Leone

In Sierra Leone, there were few lawyers in the country, with most based in the capital and working only within the formal legal system. Corruption, failed state institutions, poor social infrastructure, high poverty and illiteracy rates, as well as a dualist legal system were issues that confronted paralegals, but also fostered a need for them. Paralegals began work in 2003, first piloted in five chiefdoms with 11 paralegals and a lawyer from a local NGO, Timap for Justice. Paralegals lived in the communities in which they worked and also serviced outlying areas through periodic outreach. The paralegals provided information, mediation, education and advocacy services. In 2009 the project in Sierra Leone expanded to 25 chiefdoms covering an estimated 38% of the country's population. Sierra Leone now has a law that formally recognises paralegals as legal aid providers and the government has committed to providing at least one paralegal in every chiefdom.

## Information resources required

1. Mediation codes of conduct and legislation on reconciliation/mediation (particularly from Egypt)
2. What is a paralegal
3. Paralegal accreditation
4. Avoiding conflicts with the Bar
5. How to work with village/ religious/ other leaders undertaking dispute resolution
6. Supervision and support of paralegals and volunteers
7. How to turn settlements into a binding commitment

WANA is on the case! These resources will be coming soon.



# Customary justice systems

Customary justice systems can provide access to justice for poor and marginalised communities that may have no option to access the formal justice system. These systems include indigenous, informal, and religious legal orders; alternative dispute resolution mechanisms; and popular justice fora. Customary and religious systems are frequently associated with deep flaws. They can discriminate against women and minorities, and can be inconsistent with established criminal justice standards and human rights norms. However, neither gender discrimination nor lack of due process is peculiar to customary justice. Moreover, in many of the countries where customary systems operate, such flaws also exist within the state system.

In Palestine, Pakistan, Yemen and Afghanistan an estimated 70-90% of disputes are resolved customarily.

## Challenges

- Customary law is inappropriate for the resolution of criminal cases;

- There is no formal accountability mechanism for these systems;
- Traditional and tribal laws in WANA countries often discriminate against the vulnerable and contradict law or human rights.

### Country focus: Pakistan

Customary law forms part of the legal system along with Shari'ah and state law in Pakistan. The Pakistani government is working to strengthen the justice system so it is aligned with community justice systems. Traditionally, strong local mediators such as tribal chiefs and religious leaders have addressed cases, however, decisions have often contradicted basic human rights.

## Why do people use customary systems?

- The process of using official courts can take many years;
- Cost and bribes in the formal system impose a strong financial barrier;
- There is a lack of confidence in the formal justice system;
- Protracted conflicts can disrupt or destroy formal justice systems and people turn to local alternatives to resolve disputes, such as the case in Afghanistan.

## Entry points

- In Afghanistan, projects are being implemented to link customary and formal justice systems. For example, universities in Herat utilise professors and religious leaders to spread information about how formal and informal justice systems can work together:
- In Palestine, UNDP is working to reduce the gap between formal and tribal law by enabling the representatives of tribal law to present to the judiciary. Through this process, both formal and tribal law representatives have become more committed to working together. Tribal law is now used to transfer cases to the formal judiciary. It is important to note that this was only successful because there was political will to support it;
- Adequate training for tribal leaders is necessary so they are cognisant of human rights law and processes; this will reduce mistakes and discriminatory rulings;
- Providing information to people on both legal systems – formal and customary – as mechanisms for mediating disputes, will empower them to make the most strategic choice for their own situation.



Image 4: Mona Abed Al Aziz - Working with customary justice systems to promote access to justice.

# Promoting confidence in the justice system

In a culture of rights apathy, people are often unaware of their rights or falsely believe they cannot create change. Mistrust of legal institutions can affect the rule of law and lead people to find alternative ways of claiming access to justice, either through customary systems or violent means. We have an obligation to raise a generation that knows its rights and how to claim them – this is an important component of legal empowerment.

## Challenges

Loss of confidence works both ways – when people lose confidence in the government and justice system they do not go to court, they resort to violence, and they refuse to participate in public life. The state's loss of confidence in its citizens can result in dictatorship.

When people believe they have no means of accessing justice they tend to release their

frustration by making the wrong choices. For example, those who use Israeli courts despite living in the Occupied Territory work against the cause they are actually fighting for.

Marginalised and vulnerable sectors often think of litigation in a negative way. Perceptions of poor quality lawyers, expensive legal fees, biased judges, and prejudice against women and children discourage people from using the justice system.

On the other hand, misunderstandings on the part of judges and lawyers about their roles in the justice systems compound the problem. Judges should be concerned about public impressions in order to raise people's confidence in the justice system. Judges in the region are, in general, very conservative and are not open to collaboration with civil society.



Image 5: Judge Somoud Damiri - The supply side of confidence building: examining entry points for judicial institutional reform.

## Causes

- Low levels of knowledge regarding the justice system among the populace, e.g. people may not understand the concept of evidence.
- Economic barriers to accessing the justice system erode confidence in the system and force people to seek alternatives.
- People observe competition between different judicial branches and view this as concerning.
- Current understanding of the rule of law is contradictory to people's expectations of what it should be.
- The media is motivated to focus on unimportant cases to attract ratings in ways that don't promote confidence in justice system.

## Entry points & recommendations

**Legal education:** This does not simply apply to those who don't know their rights, but also refers to people in positions of power.

**Simplification:** Rules and procedures must be simplified and legal jargon reduced to ensure more people are cognisant of their rights and responsibilities.

**Participation:** People must have the ability to participate in the justice system, as participation creates confidence. Breaking down the barriers that prevent participation (costs, awareness, education) will allow for this.

**The role of judges and lawyers:** Judges and lawyers' codes of conduct must emphasise their role in providing access to justice and building confidence in the legal system. They must begin to find ways of being less intimidating and seek to work together with the public.

**Resources:** Justice systems need more resources, so they can begin to develop new mechanisms and alternative solutions that better deliver on people's expectations of the justice system.

**Data and accountability:** Research data should be collected to survey the work of the courts and criteria must be developed to measure the quality of their work. In turn, accountability measures and independent monitoring of the judicial system can be implemented using this data.

**Media:** Rather than promoting uncertainty, the media should play an important role as an awareness-raiser of legal education and rights.

# Advocacy for legal empowerment

Advocacy is the development and sustainment of a dialogue with ‘change makers’ in support of a particular point of view, policy or action. The aim of advocacy is to make a single party, powerful institution, or community aware of an issue and to encourage action, with a view to changing policies and/or practices. Advocacy can also be about changing discourses, attitudes and behaviours. Advocacy can take place at a variety of levels and can be carried out by various actors, from local communities to international institutions. Advocacy activities might include: written advocacy, discussion-based advocacy, lobbying, media work, and popular campaigning. Advocacy activities are aimed at affecting change, which can take many forms including: discursive, attitudinal, behavioural, legislative, procedural or policy change. Advocacy for policy change is crucial as it embeds change within the legal system. A closely related entry point is collective action in the form of demonstrations, class actions, petitions, and community pressure or dialogue groups.

## Process for building an advocacy campaign



## Building a winning advocacy strategy

### Know your stuff

The importance of facts and research cannot be underestimated. Only with this can you critique the status quo. ‘Killer facts’ are critical – they can win over stakeholder groups and be used to strongly

argue your case. If you are fighting something, know what it is you are fighting for.

### **Harness the power of grassroots organisations**

Civil society has a wealth of information, can encourage change from the ground up as they understand attitudes, and can often identify patterns and trends, as well as strategies to break them.

### **Be aware of vested interests**

Try to uncover stakeholders with hidden agendas that can hijack an advocacy group's message to suit their own demands.

### **Be realistic**

Changing a law can take several years of advocacy. Clarification of an existing law can be a more successful means of legal empowerment, particularly in the short run, e.g. advocacy for regulations clarifying refugee status in Jordan.

### **Work together and share initiatives**

Being opportunistic when it comes to advocacy will mean you can coordinate with like-minded organisations to save you both time and resources, and usually results in a more powerful impact. In Qatar, advocacy groups banded together to create an effective advocacy campaign regarding labour

rights. They used the media scrutiny of the 2022 World Cup to launch an advocacy campaign to lift the requirement that migrant workers no longer need their employer's authority in order to leave the country.

### **Use the media to your advantage**

Target influential newspapers and take part in as many public events as possible. Rather than producing reams of press releases, foster relationships with individual journalists to garner independent coverage and media support. Remember though, most policy changes occur behind closed doors. You may need to convene with policy makers informally, outside of the media spotlight, to help persuade them.



**Image 6: Ibrahim Abu-Shammalah - Promoting confidence in judicial processes.**

### **Understand the power of language**

This can be a useful tool, however it is wise to be aware of those around you also using the same tactic. Language can be used as a means of both masking violations (e.g. Australia's removal of the term 'illegal' in reference to settlements in Palestine) and promoting attitudinal change (e.g. John Kerry's use of the word 'apartheid' in relation to Palestine).

### **Adopt a policy of exposure**

To influence policy creation, take politicians to field sites to foster direct links between the state and citizens; this makes change more people orientated.

Advocate for obligatory round tables with civil societies in parliament, or promote civil society groups to take on legal advisory roles to represent NGOs and civil society opinions.

### **Think beyond legislation**

Advocacy does not end when a law is passed. If wins are achieved, be sure to educate people on the legal changes. Law on sexual harassment in India passed, but peoples' attitudes did not change and the problem persisted.

# Transitional justice

Transitional justice refers to the legal mechanisms that deal with the legacy of large-scale human rights abuses, such as truth commissions, reparations, and institutional reform. Typical issues that arise in post-conflict, or transitional states, include: sexual gender-based violence, domestic violence, internally displaced people, and land and property disputes.

The WANA region has been slower to adopt transitional justice approaches following conflict. This is somewhat connected to the scarce number of democratic transitions in WANA. It's important to note that transition movements can provide opportunities for legal empowerment – justice sectors and processes need to be rebuilt, donors are more open to pragmatic concessions that allow empowerment, and demand for reform is often coupled with weak state capacity to resist change.

Transitional justice and legal empowerment share goals such as increased accountability, conflict prevention and improved trust. Increasingly, transitional justice is informed by people's wishes. Transitional justice is, historically, a top-down process so it's important to consider how

empowerment techniques can drive transitional processes to make them more legitimate and sustainable.

Priority areas include restoring justice and security, as well as increasing confidence and trust between citizens, the state and society. An essential part of this effort is ensuring that the law works for everyone and that there is access to justice.



Image 7: Lars Waldorf - The role of legal empowerment in transitional justice.

## Building transitional justice systems

- Lawyers possess huge potential to take part in transition and rebuilding processes, and an especially important role in terms of providing legal aid.



- In post-conflict contexts, the state may not have the capacity to establish and maintain legal aid services; other actors need to contribute to this process. Civil society has an important role in ensuring the provision of such services.
- Strategic litigation and awareness raising are among the most important steps to create a dialogue on transitional justice and gender.
- Move away from instruments of transitional justice that may be perceived as revenge seeking and vindictive and towards mechanisms that promote social cohesion.

#### **Case study: Syrian Lawyers Initiative**

ARDD, in partnership with Oxfam GB, implemented a capacity-building program targeting 60 Syrian lawyer refugees in Jordan, aimed at enabling these lawyers to contribute to the protection of refugees in Jordan and serve as active players in the development of Syrian civil society. Training targets include: humanitarian principles; gender mainstreaming, legal aid, Jordanian laws, negotiations and some organisational skills, and housing, land and property issues.

## **Challenges**

- Legal service providers from one side of the conflict may find it difficult to provide services to members of other groups.
- A fear exists in the region that civil society organisations are only human rights organisations, and thus are solely concerned with establishing and defending human rights. For this reason, governments tend to create barriers for them.
- There is a high cost associated with transitional justice to states in transition and transitional governments tend to offload their legal obligations onto civil society organisations.

## **Entry points**

- Preparations for transition and rehabilitation need to take place before the conflict ends. Draw upon available information about issues that commonly arise in transitional countries, as well as information from displaced stakeholders and diaspora.
- Increase the capacity of displaced lawyers so they are able to contribute to the establishment of legal aid organisations in post-conflict society. International organisations play an important role in

providing capacity-building and funds for such efforts.

- Look at existing 'human capital' as early as possible – refugees can provide information on the role of law in the society experiencing conflict, state of legal aid, marginalisation, and the conflict issues they might experience upon their return. Likewise, refugee lawyers can be trained as rule of law advocates, transitional justice experts and in legal aid in specific areas.

- Truth commissions have a lot of potential for contributing to legal empowerment aims such as raising legal awareness and outreach.
- Reparations needs to be explored as a transitional justice approach with empowerment ends: reparations enable victims to regain their status as equal citizens. Moreover, a successful program of reparations requires legal empowerment. Victims need to be provided with awareness, information and skills to set out and claim their rights, and be empowered to use the law.

# Informal economy

The informal economy does not refer to illegitimate means of work such as drug trafficking or prostitution, but rather those working in the informal sector. Examples include those who are self-employed, employed in a family business, or who receive fees and salaries from unofficial institutions. These businesses are often not registered and workers are employed without enforceable contracts. Overall, the informal economy makes up 60% of the Arab workforce.

Legal empowerment requires an enabling framework of laws and administrative processes that promotes entrepreneurialism, protects investment, encourages the formalisation of business practices and removes barriers that limit economic opportunity.

## Employers and managers

Operating outside of the law, the managers of informal enterprises are vulnerable to corruption and petty rent seeking. They cannot buy insurance and are highly vulnerable to shocks. They have few

means of mediating disputes apart from bribes or violence. They are also more likely to rely on personal networks or the informal market for credit, which exposes them to high interest rates and risk.

## Employees

Employees are equally vulnerable. They cannot avail of the protection of labor laws such as minimum wages, are exposed to unsafe working conditions, suffer from labor insecurity, and cannot benefit from social security, insurance or pension systems. They rarely enjoy the right to unionise to protect themselves and promote their needs. Overall the informal economy leads to a reduction of the average income and productivity of workers.



Image 8: Dr. Majed Sbeih – The informal economy.

## Women

Women are more likely to work in the informal sector, receive lower wages and operate under poorer working conditions than men and, for a host of reasons, face more barriers in lobbying for and upholding their rights when compared to men.

## Poor and marginalised

Often, the poor and marginalised are not technically excluded from the formal economy. Rather, because the formal system works to their detriment, they make a rational decision not to enter. The costs of entry into the formal market (costs of business registration, bribes, tax regimes, compulsory social security payments, etc.) outweigh the benefits. In other situations, people choose not to interact with state institutions because of perceptions of corruption and/or bureaucracy.

To prevent this cycle from continuing, the costs of formalization (including taxes and business registration) should be affordable. Burdensome regulations that impose transaction costs on small business should be minimised, systems to confront corruption and bribery should be established, and processes should be uncomplicated and accessible. Basic incentives might also be set in place such as micro-credit, tax breaks and subsidies.

## Key action areas

- Advocacy to obtain the right for informal workers to organise a union so they can defend themselves and strengthen their rights.
- Advocacy for the right of recognition of certain underprivileged groups of workers such as street vendors.
- Integration of the formal and informal economies in mutually beneficial and protective ways through productive cooperation – look for reconciliation between the government, the employer, and the employees.

## Challenges

- Situations where the law prevents unionization or does not support the right to organise.
- Laws that penalize or limit striking or forms of public organisation.
- Systemic rights violations: even in the formal sector there can be rights encroachment such as inability to unionise or organise, get health insurance, receive minimum wages, social security etc.
- Politicians who hijack the work of the unions, for example decision makers agree to reforms, but with a view to collecting taxes.

## Success stories

### Palestine

The number of irregular or informal businesses in Palestine is around 93,000 – mostly in the agriculture industry. According to 2008 data, 60 percent of people work in the informal economy in Palestine. However, the right to unionise is safeguarded by the Palestinian constitution. Recently, taxi drivers struck in Gaza and hindered the movement of the entire city. The Government was forced to take notice and meet with the taxi union to discuss their concerns.

### Egypt

In Said, the majority of people work on the land in small villages. In 2001, these workers were integrated into the formal labor market. The Governor attempted to triple tax revenue by targeting the employer, employee and products, as well as through tax-rate increases. Through legal awareness initiatives targeted at workers, they became aware of these changes and began a campaign to stop the tax increases. In 2009, the workers decided to strike. It was the first time in Said that a demonstration like this had occurred. It was a peaceful protest.

# Accountability

Holding the state and related institutions accountable provides the potential for communities to become self-helping and resilient. Accountability is not just about enhancing knowledge about rights, but also the comprehension of the rights-providers. There are two aspects of accountability: first is the actual act of monitoring government and institutions, and the second is building public awareness around how the institutions should perform, thereby increasing their ability to call out bad behaviour. There needs to be clear rules outlining responsibilities and rights in order for accountability to actually occur.

## Priority areas in the WANA region

- Military
- Religious institutions
- Justice systems

## Advantages

- Increased transparency
- Reduced corruption
- Greater public awareness of good practices

## Challenges

- Difficulties of access to information or the judicial system, e.g. In Israel, courts impose a high guarantee fee that must be paid before a case can proceed.
- Accountability is intrinsically linked to other freedoms, such as the right to access information and freedom of expression. Where these rights are either not enshrined in law, or are not enforced, it makes holding state institutions accountable very difficult.
- Laws that work against the concept of accountability and create legal obstacles, e.g. in Israel, Amendment 8 entails that if any damage has taken place as a result of military operations the Israeli government cannot be held responsible and victims are denied reimbursement.



Image 9: Masood UI Mulk – Accountability and equitable access to essential services.

## Entry points

- International legal mechanisms and anti-corruption committees.
  - The media can act as a watchdog and help to spread awareness.
  - Civil society can form partnerships with governments on this topic.
  - Demonstrate the relevance of social accountability to communities and include everyone in the decision making process of how it will be achieved.
- Social mobilization and accountability champions help to give the community a collective voice.
  - Build accountability into other programs and projects, e.g. in a community paralegal program, social accountability can be integrated through meetings between government officials and communities who work together on their ideas.
  - Provide more information on the right to access to information to countries in the WANA region.

# Legal identity

Lack of legal identity has a direct effect on the opportunities for full participation in social, political, and economic life. Legal identity allows people to enjoy the legal system's protection and to enforce their rights or demand redress for violations by accessing state institutions such as courts and law enforcement agencies. Access to national identity cards is of vital concern because they allow access to school, social welfare, and even electricity. Throughout the WANA region, there are significantly large groups of people who lack access to legal identity. These include refugees, divorced women and stateless individuals.

## Challenges

- Where poor people are not able to afford national identity cards, NGOs stepping in to purchase them can facilitate the continuation of an unfair system that discriminates against the poor.
- Divorced women are often registered as divorced on their ID card, exposing them to discrimination.

- Life can “literally stop” for women who are separated from their husbands, but who are not divorced. While their case is pending in court, they cannot access humanitarian services or enroll in university without their husband's identity card.
- In much of WANA, registration offices are located far from rural communities.

### Case study: Syrian and Palestinian refugees

Many Palestinian and Syrian refugees live without official documentation. For the majority, they fled their countries without documents or they were lost in transit to their host country. Often there are no official protocols to replace such documents. Another category of undocumented persons is children born from unregistered refugees in the host country. This causes ongoing problems for these groups of refugees. In Jordan, for example, identity documentation is needed to stay at a hotel or rent an apartment. There is also a significant problem related to identification in the Gaza Strip, due to the Israeli government's policy between 1993 and 2005 to not issue identity cards without approval. Many Palestinians must now obtain a visa to enter Gaza on a foreign passport because they have no proof that they are Palestinian.



### Case study: assisting to provide legal documents

The Council of Minorities paralegal programmes help communities in Bangladesh obtain legal documents, such as passports. They have managed to obtain seven passports for the community and provide information and counsel to empower the communities to initiate such processes themselves.

After the Pakistani earthquake in 2005, the government sponsored reconstruction efforts, however many tenants did not know where to seek support. The main task of the Sarhad Rural Support Program (SRSP) was providing legal aid to people who needed to obtain national identity cards in order to receive government support.

SRSP programmes look at the importance of sustainability and consider ways in which the community can ultimately become self-sufficient. SRSP is grounded in the belief that communities always have the capacity to help themselves and only need resources and catalyst organisations.

## Recommendations

- Web access to ID services to allow remote and rural communities access to registration services without travel;
- Paralegals to facilitate the process of working with government officials;
- Awareness-raising sessions to change perceptions of government officials and enhance legal literacy;
- Ask local religious leaders to explain minority rights in Islam.

# Mediation

Mediation is composed of three pillars:

1. Voluntary consent
2. Neutrality
3. Confidentiality

These pillars set mediation apart from arbitration, reconciliation, and court procedures.

Understanding the purposes behind people's positions, or each party's interest, is key to arriving at a solution. The mediator should work to move from dealing with positions, to uncovering each party's interest, and transitioning to a focus on a common goal.

## Advantages of mediation

- Fast compared to the courts
- Cost effective
- Prevents individual disputes from becoming communal conflicts
- Can be a good entry point where the court system is biased against a party or group
- Properly conducted, mediation can solve deeper underlying issues and causes that might be left unsaid in normal court proceedings

- At the community level, parties are more willing to respect decisions
- Mediators can be more creative in finding resolutions in comparison to a judge.

## Entry points and good practices

- Build local referral networks that can handle complicated cases or cases that cannot be resolved.
- Where there is lack of trust or cultural constraints that prevent programming on certain types of disputes, build trust by working on non-sensitive issues such as personal documentation or access to services.
- Using verses from the Quran that support reconciliation.
- Symbolic cultural rituals in mediation sessions can solidify an agreement, such as sharing food or a public apology.
- Certification programmes for mediators.
- Providing referrals to psycho-social support for parties.
- Awareness raising sessions about basic legal rights, especially where traditional mediation practices do not follow human rights procedures.

## FAQs

### Who makes a good mediator?

Lawyers do not always make good mediators because they tend to only see one client's side. While they can often be resisted as mediators due to stereotyping, women are often more successful mediators. They can be more active listeners and better at forging solutions, especially in cases that involve child custody and women's issues. In Pakistan, the vast majority of cases are mediated by highly respected community members like doctors, teachers, and mosque imams. In Palestine, mediators are government employees and legal representatives under the municipality.

### Are criminal cases appropriate for mediation?

One perspective is that mediators should not work with criminal cases. Yet the reality is that criminal cases are often settled by mediation or through customary systems. Also note that mediation might be necessary in cases of incest, inheritance, and sexual relationships outside of cultural norms, where people will not go to a judge because of shame, social consequences, or the dissolution of the family.

### Should a lawyer present in the drafting of a mediation agreement?

Lawyers lead to higher fees for participants and interrupt the key tenants of mediation, but can make the agreement more binding.

### What are the key skills of a mediator?

- The ability to see issues from different perspectives
- To be empathetic to how each person views the dispute
- Culturally appropriate body language and communication
- Active listening – this is key to uncovering the perspectives and motivations of the parties as, often, the most important information is left unsaid.
- Ability to maintain neutrality.



Image 10: Daniel Sesay - Paralegal models for legal empowerment.

## Eight steps of mediation

### 1. First meeting with Party A

- a. Listen and record the issue, build rapport with the client.
- b. Explain the process of mediation, making sure to clarify the three pillars.
- c. Request consent from Party A to proceed with mediation.

### 2. Contact with Party B

- a. Mediator informs Party B of the complaint (mail or in person).
- b. The mediator repeats Step 1 with Party B, paying specific attention to winning Party B's confidence that the mediator is neutral.

### 3. Preparation

- a. The mediator studies the issue and decides who should attend the mediation to clarify the situation and provide more information. Their consent must also be obtained.
- b. Background research on the human rights and legal issues involved.
- c. The mediator confirms a date, time, and venue for the mediation.

### 4. Opening

- a. Mediator explains the mediation process and ground rules, especially

confidentiality, neutrality, and the voluntary nature of mediation.

- b. Each party retells their story. The mediator should note changes to the stories and think why it might change in the presence of others.
- c. The mediator summarizes what has been said, identifying either side's key claims and confirming she or he understands correctly.
- d. The mediator encourages each party to acknowledge the perspective of the other side and describe their reactions to what they have learned.

### 5. Caucus

- a. Individual discussions with mediator who uses active listening and questioning skills to explore the hidden interests and clarify assumptions.
- b. The mediator looks for common ground and encourages parties to consider the other's position.

### 6. Finding common ground

- a. Mediator keeps the focus on solutions.

### 7. Settlement

- a. A joint meeting in which the agreement (as simple as possible) is constructed. The mediator ensures

- compliance with human rights and other laws.
- b. The mediator lists all the obligations on all sides and confirms that the agreement satisfies the needs and interests of each party.
  - c. The mediator checks that all agree.
  - d. The acceptable settlements are written up according to a standard template and signed by the parties, witnesses, and the mediator. Each

party is given a copy of the settlement and one copy is kept on file at the office.

## 8. Post-Mediation

- a. After an agreed period, the mediator visits parties to check and monitor whether the settlement is proceeding well.

# The post-2015 development agenda

Justice must play a prominent role in the post-2015 development agenda. If the new framework fails to empower people to understand and use the law, billions will be left behind. The new development framework offers an opportunity to scale up civil society legal empowerment efforts. If justice is not included as a Sustainable Development Goal (SDG), it should be incorporated into the other goals, so as to facilitate the enforcement of justice.

## The way forward

- Organisations and individuals should endorse the open letter to the UN, stating that justice, the rule of law and legal empowerment are essential principles in the global development framework.
- Draft a national open letter or civil society-led advocacy campaign encouraging governments to support the inclusion of

justice in the post-2015 agenda and the prioritisation of justice in national development agendas.

- Develop a social media advocacy campaign that incorporates the creation of a video illustrating the positive benefits to accrue following the inclusion of a justice goal. The campaign should call on all citizens to demand that their leaders include justice in the post-2015 agenda.
- Explore regional initiatives and identify possible regional partners, such as the Arab League, WANA, ESCWA, and the Arab Thought Forum. By reaching out and engaging these organisations, we can collect more signatures and together develop a stronger voice for the WANA region.
- Identify allies, including high profile people, who take an interest in the SDG process as a whole and understand the press in each local market who can act as advocates and ambassadors.

- Capture and record good practices from WANA countries on matters such as good governance and the promotion of social justice to support and inform the advocacy message; having facts will help to win over decision makers.
- WANA Forum will document a collective understanding of what empowerment means in the WANA region, and identify the key issues and priorities, based on the thematic research it has undertaken and the proceedings of the Forum.

## Critical dates

**20 June 2014:** Session 7 of the New York Working Group

**17 July 2014:** International Day of Justice

**December 2014:** End of session occurring in New York

**2015:** Regional consultations for the World Humanitarian Summit

**2016:** World Humanitarian Summit, Istanbul – it is critical to lobby for the role of justice as part of any humanitarian response.