



# From the Grassroots: The Justice Reform Agenda of the Poor and Marginalized

Alternative Law Groups, Inc. (ALG)

From the Grassroots: The Justice Reform Agenda of the Poor and Marginalized.

Published by the Alternative Law Groups, Inc., Quezon City, Philippines, February 2004.

ISBN 971-92929-03

The publication of this material was undertaken with the financial support of the Government of Canada provided through the Canadian International Development Agency (CIDA).

This publication is part of the Justice Reform Initiatives Support (JURIS) Project, a project supported by the Canadian International Development Agency (CIDA) through the National Judicial Institute (NJI) of Canada.

## **Contents**

Foreword	5
part 1	
Introduction	8
part 2	
Popularizing Justice Reform	16
Supreme Court's APJR	19
Problems	
Recommendations	27
General Recommendations	35
Distrust in the System, Hope for Reforms	37
part 3	
The ALGs' Institutional Framework for Judicial Reform	า 40
The ALG and the Poor	40
The ALG and Judicial Reform	42
Values and Principles	43
Key Reform Issues	44
Strategies	46
Prospects	47

## part 4 Litigation as an Advocacy Tool in Alternative Lawyering 50 Introduction...... 50 Public Interest Litigation3 ...... 53 Conceptual Framework of ALG Litigation ...... 54 The Case Studies ...... 55 Public Interest Litigation in the Philippines .......... 86 Conclusions and Recommendations......89 part 5 Findings: Baseline Study on the Initiatives of the ALG ..... 92 Rationale and Objectives.......93 Overview of the Study .......95 The Current Capacity of ALG Member-Institutions99 Conclusion ...... 107 part 6 Lawyering With The Poor ......110

#### **Foreword**

To illustrate how viewpoints vary with one's standpoint, the story of the three frogs in a well is oft-told. Briefly, the story is about the three frogs, who have lived all their lives inside a well, arguing what the world outside of the well looks like. All their bickering and the story ended when one of the frogs went out of the well to discover that the world is all but not everything that each of its companions said.

This publication is a modest account of our attempt to make the stories, viewpoints and voices of the grassroots conjoin with the justice reform agenda of the Davide Watch. It also compiles our experience in public interest litigation as a tool for making justice accessible to its claimholders. At the minimum, we hope that the readers, similar to the frog in the fable, would understand that the concept of justice is all but everything that each of us yearns for. Upon this realization, we further hope that the standpoint of the grassroots, including those not presented in this publication, in the discourse of access to justice would materialize into concrete reforms to make our justice system apposite to their realities.

Indeed, just as access to justice remains elusive to many of those who are in the margins of our society, so is the concept of justice thoroughly abused by discourse. We are thankful to the people's organizations and our participants in the consultations for being properly unapologetic and candid in the sharing of their realities and recommendations to make our systems of governance be facilitative to the administration of justice. This would not have been possible, of course, without the support of the Canadian International Development Agency (CIDA) and the Supreme

#### Foreword (cont'd)

Court who were constantly present and actively listening in our country-wide consultations. Together with all the movers of the JURIS Project, they deserve commendation.

It is written somewhere that "the one thing we desire and choose is what is most conducive to the end for which we were created." We hope that we are not mistaken in desiring and choosing to work on the alternatives in and for the legal system.

ANNA ZITA B. ABUDA Executive Director, Women's Legal Bureau Convenor, Alternative Law Groups, Inc. 2003 - 2004



## Introduction

The Philippine Supreme Court has embarked on an ambitious six-year judicial reform program known as the "Action Program for Judicial Reform 2001-2006" (APJR). The APJR initially had a four-pronged program of reforms on: (1) judicial systems and procedures; (2) institutions development; (3) human resource development; and (4) reform support systems. Under a supplementary document, the Supreme Court included two important issues: (1) institutional integrity development; and (2) access to justice by the poor.

Independent of the Supreme Court's APJR, the Alternative Law Groups, Inc. (ALG), a coalition of non-governmental organizations engaged in alternative lawyering, has been working, both as a network and through individual members, for the empowerment of the poor and marginalized groups of Philippine society through developmental or alternative legal work. ALG members' operations cover a wide area of concerns involving justice issues of the poor and marginalized groups in the Philippines. These include issues on women, labor, peasants, fisherfolk, children, urban poor, indigenous peoples, persons living with HIV-AIDS, local governance, and the environment.

#### The JURIS Project

In support of the APJR, the Canadian International Development Agency (CIDA) has approved a five-year "Justice Reform Initiatives Support Project in the Philippines" (JURIS). JURIS aims to address those aspects of the APJR that focuses on strengthening the capacity of the Philippine judicial system to provide quality judicial services and access to justice to Filipinos, particularly to the poor and

marginalized groups. CIDA has contracted the National Judicial Institute (NJI), a Canadian non-profit organization engaged in judicial education, to be the Canadian Executing Agency (CEA) that will be in charge of overseeing the implementation of JURIS. For the direct implementation of the project, CIDA and NJI have identified two major project partners: (1) the Philippine Judicial Academy (PHILJA), an attached agency of the Supreme Court whose principal task is legal and judicial education; and (2) the Alternative Law Groups.

The goal of the JURIS project is to contribute to Philippine efforts to improve the quality of judicial services and access to justice, particularly by poor and marginalized groups and identities. In addressing this project goal, JURIS has three project purposes: Judicial Education, Mediation/ADR Strengthening, and Reform Advocacy.

The Judicial Education component seeks to strengthen the capacity of the Philippine Judicial Academy (PHILJA) to plan, design and deliver educational programs for judges and court personnel relating primarily to court-based and court-annexed mediation and other forms of Alternative Dispute Resolution. The Mediation/ADR Strengthening component aims to promote a range of sustainable, demonstrably effective and equitable court-based and court-annexed ADR methods of fairly, expeditiously and affordably handling cases.

The Reform Advocacy component seeks to strengthen the capacity of the Alternative Law Groups to engage government and other institutions in cooperative advocacy efforts to improve the quality of judicial services and access to justice, and to empower poor and marginalized groups to make use of judicial and quasi-judicial services and other advocacy venues. This will be in line with that part of the reform support system component of the APJR, which seeks to strengthen support for access to justice reforms and catalyze supportive reform through engaging internal and external governmental and non-governmental stakeholders in cooperative advocacy efforts.

From the ALGs' perspective, the JURIS project presents a very good opportunity to bring to the policy arena, the reform agenda of the poor and marginalized groups. First, the JURIS project includes a component on legal and judicial education. Based on the members' experience in case handling, the ALG has observed a certain degree of bias among some judges and justices against the marginalized sectors' interests. If the ALG can influence, and be part of, the education of judges and justices, then, it is hoped that the ALG can contribute in helping the members of the judiciary better understand the issues concerning the poor and marginalized groups and use the law to address these issues. Second, the JURIS project includes activities towards strengthening of alternative dispute resolution mechanisms. This is also one of the ALG's major programs. The ALG sees alternative dispute resolution mechanisms, especially community-based and indigenous mechanisms, as a way not only to unclog the courts' dockets but more importantly to provide the poor an effective and inexpensive mechanism for seeking immediate and fair resolution of their justice issues.

#### First Year of JURIS

The ALG devoted the first year of the JURIS project to the consolidation of the justice reform agenda of the poor and marginalized groups. This entails two major components. The first component focuses on the formulation of a concrete agenda for justice reform from the interests and advocacies of the poor and marginalized groups. The second component aims to prepare and strengthen the coalition to enable it to act effectively as a catalyst for reform.

The ALG decided to embark on integrated and coalition-wide initiatives designed to define and sharpen the ALG's strategic direction for its justice system reform advocacy. The road towards consolidating the justice reform agenda demands the inter-action of several components and strategies, which were identified by the ALG as follows:

Popularizing justice reform.

This component seeks to disseminate information on the current justice reform efforts, and encourage the poor and marginalized groups to voice out their opinion on the justice system in general and on justice reform in particular.

Sharpening the justice reform agenda.

This component aims to deepen the ALG's analysis of the problems plaguing the justice system and sharpen the ALG's capacity to seek solutions to these problems.

Planning for sustainability.

This component involves the ALG's preparatory efforts for ensuring the sustainability of the ALG's work, both in terms of financial and human resources.

- Setting the strategic direction for the agenda.

  This activity will define and set the direction of
  - This activity will define and set the direction of the ALG's engagement in justice reform advocacy for the next four years under the JURIS project and beyond.
- Presentation and validation of the agenda.

This involves the presentation of the justice reform agenda and the strategic plan to the ALG's partner grassroots organizations and communities, and to various stakeholders of the justice reform efforts.

#### **Activities Conducted**

From July 2003 to February 2004<sup>1</sup>, the following activities were undertaken:

- Popularizing justice reform. Six sectoral and regional consultation conferences were conducted where the ALG members met with their partner organizations and communities and other stakeholders to discuss the problems of the justice system and the ongoing justice reform efforts.
  - The ALG published a primer on justice reform in English and in four (4) major Philippine dialects, namely, Tagalog, Cebuano, Ilonggo, and Ilokano. The primers were distributed during the consultation conferences.
- Sharpening the justice reform agenda. The activities under this component aim to assist the ALG in analytically looking at the different angles of judicial and justice reform by embarking on the following studies:
  - 1. Review of literature on gender and justice in the Philippines;
  - 2. Baseline study on special access to justice issues, namely, informal sector, people living with HIV/AIDS and children in conflict with the law:
  - 3. Study on environmental advocacy;
  - 4. Study on the integration of human rights framework in the work of the ALG; and
  - 5. Baseline study on the capacity of the ALG.

The study on the capacity of the ALG has been finished. The other studies will be completed by March 2004. An initial presentation of the research findings was conducted in November 2003.

On October 3, 2003, the ALG held a conference on test case litigation. This activity served as a sharing and discussion session among ALG members on their past experiences

on test case litigation and on how the coalition can maximize opportunities for this type of advocacy in the future.

- Planning for sustainability. Sustainability is being pursued from two fronts - financial and human resources. Towards this end, the following activities were initiated:
  - 1. Study on ALG financial sustainability, which looks into possible sources of funds for direct alternative legal assistance;
  - 2. Internship program, which takes off from the existing program of the ALG but was expanded to include a wider area of coverage and a more liberalized entry/access for law students into the program. Also, a study on curriculum development for law courses shall be undertaken as part of this program.
- Equipped with adequate information from the activities mentioned above, the ALG conducted a fruitful strategic assessment and planning session in the first week of November 2003. During this activity, the ALG discussed the direction of the ALG's engagement in justice reform advocacy for the next years. This can be considered as a crucial point in the ALG's efforts to consolidate and refine the justice system reform agenda of the poor and marginalized groups.

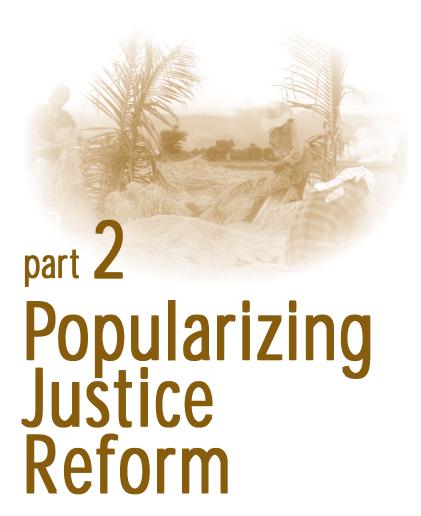
Having crafted an enhanced justice reform agenda with a medium-term strategic plan, the ALG presented the agenda and strategic plan for validation by its partner grassroots organizations and communities. Six validation sessions were held in January and February 2004 in the same areas where the consultation conferences were conducted.

After the validation sessions, the justice reform agenda and the strategic plan were presented in a multi-stakeholders' forum that was held on 20 February 2004. The forum gathered government officials in the executive, legislative and judicial branches, representatives from civil society, members of the academe, members of the donor community, representatives from media and representatives of the ALG's partner organizations and communities.

#### **Vital Documents**

This book is a compilation of the relevant documents that were produced from the various ALG activities that were conducted during the first year of the JURIS project. It contains the consolidated presentation of the results of the six regional consultation conferences that were conducted last year. It also contains the ALG's framework for engagement in judicial reform efforts, a document that took more than a year to finalize. There is also a presentation of the cases that were discussed at the test case litigation conference and the results of the baseline study on the capacity of the ALG.

The ALG hopes that this publication accurately captures the interests and aspirations of the poor and marginalized on the issue of justice system reform. May this book be a fitting marker for their active involvement in the reform efforts.



## Popularizing Justice Reform

As part of the Reform Advocacy activities for the first project year of the Justice Reform Initiatives Support Project (JURIS), the Alternative Law Groups (ALG) conducted six (6) regional consultation conferences throughout the country. The over-all objective of the regional consultations is to popularize justice reform, by bringing down information on justice reform efforts to the grassroots, and raising up the perspectives and involvement of the poor and marginalized groups on justice reform into the policy arena.

Specifically, the regional consultations had the following major purposes:

- Disseminate information about the Action Program for Judicial Reform (APJR) and the ongoing reform efforts;
- Involve the poor and marginalized groups in discussions concerning the problems of the justice system and the reform efforts;
- Identify specific problems concerning the justice system that directly affect the poor and marginalized groups; and
- Identify concrete policy recommendations to address the problems and concerns of the poor and marginalized groups relating to access to justice.

Each regional consultation conference focused on at least two sectoral concerns. Gender is a theme that cuts across all the consultation conferences, and issues concerning women and girl-children were discussed. The following conferences were conducted:

- Central/Eastern Visayas Regional Consultation (Cebu City, September 2-3, 2003) focusing on children and the environment;
- Western Visayas Regional Consultation (Bacolod City, September 11-12, 2003) focusing on the peasant sector and the environment;
- North Mindanao Regional Consultation (Cagayan De Oro City, September 23-24, 2003) focusing on peasants and fisherfolk;
- South Mindanao Regional Consultation (Davao City, September 25-26, 2003) focusing on indigenous peoples and the environment;
- Northern Luzon Regional Consultation (Baguio City, September 29-30, 2003) focusing on indigenous peoples and the environment; and
- National Capital Region/Central and Southern Luzon Regional Consultation (Quezon City, October 1-2, 2003) focusing on labor (formal, informal, and migrant workers), urban poor, persons living with HIV/AIDS, children and the environment.

Most of the participants of the regional conferences were representatives of people's and non-governmental organizations. Some government officials, including judges, also attended the conferences. There were also law students, practicing lawyers, members of the academe, and representatives of media who attended some of the regional conferences.

The consultation conferences are expected to have an impact on raising awareness about the Supreme Court's Action Program for Judicial Reform (APJR) and possibly call wider public interest and attention to the ongoing reform efforts under the APJR. By engaging marginalized groups and communities in discussions about justice reform, the ALG aims to encourage the active participation of the coalition's partner organizations and communities in the reform efforts. Equally important, these activities will provide the ALG the strong foundation for the justice reform agenda that will guide its actions and the solid credibility for its advocacy for policy reforms.

The regional conferences provided venues for the discussion of current justice reform efforts and generated interest on the reform initiatives being undertaken by the ALG and the Supreme Court among the broad base of nongovernmental organizations (NGO's) and people's organizations (PO's), government officials and other stakeholders in the justice system.

The Supreme Court, through the Program Management Office, had the opportunity to present the Supreme Court's Action Program for Judicial Reform (APJR) and to hear the comments of the representatives of the poor and marginalized groups. Government officials who attended the conferences, especially the judges, had the rare chance to interact with the people and to listen to their concerns about the judicial system.

The following questions were generally used in the consultation conferences to elicit inputs and comments both from resource persons and participants:

- On the Supreme Court's APJR
  - 1. Do you think the Supreme Court's judicial reform program can adequately address the problems of the judiciary and the justice system?

- 2. What priority problem areas should be the focus of the reform efforts?
- On problems experienced
  - 1. What problems relating to the justice system, in general, and the judiciary, in particular, have you experienced?
  - 2. What specific gender issues have you encountered in your engagement with the judiciary? With the justice system?
  - 3. What concrete solutions do you recommend (if any), to address the problems and issues that you have identified?

#### Supreme Court's APJR

Most of the participant representatives of people's and non-governmental organizations heard about the reform efforts under the Action Program for Judicial Reform for the first time during the conferences. Surprisingly, some of the judges who participated in the conferences likewise stated that they heard about the reform efforts for the first time.

There were mixed reactions about the APJR from the participants. Some expressed doubts that the APJR would be able to achieve its expected results. They pointed out that the APJR was too general and that the details on how the reforms will be effected were not clear. Some categorically stated that the judicial reform program could not adequately address the problems of the judiciary and the justice system. Some of the participants noted that they have not seen any positive changes despite the implementation of the APJR since 2001.

Other participants were more optimistic, and expressed confidence that the reform efforts under the APJR would somehow make a difference. These optimists were quick to add, however, that the APJR can only be effective if the Supreme Court would be sincere in implementing the re-

form efforts and would be ready to start the reform process in the Supreme Court itself. Furthermore, the participants pointed out that in order to have an effective implementation and institutionalization of reforms, the Supreme Court should open the APJR to the views and participation of the poor and marginalized groups.

Some participants raised very interesting questions about the APJR. One participant asked why the country had to resort to borrowings in order to finance the reform program. Another asked whether the allocation of funds that would be devoted to the reform efforts would reduce the funds available for basic services.

As regards the priority areas for the reform efforts, the participants were unanimous in pointing out that justice reform should be geared more towards enhancing access to justice. In this connection, the participants raised the importance of having a continuous link between the judiciary and the poor and marginalized groups throughout the reform process. The participants also highlighted the issue of graft and corruption not only within the judiciary but also in other agencies involved in the administration of justice.

#### **Problems**

Asked about the concrete problems that they experienced with the justice system, in general, and the judiciary, in particular, the participants identified problems that revolve around the following major themes:

- Lack of access to legal education by the poor and marginalized groups who are generally not aware of their rights and the procedure for remedying violations of such rights.
- Lack of information on the part of judges and other administrators of the justice system (like prosecutors and police officers) about the issues concerning

the poor and marginalized groups and the special laws governing them.

- Lack of adequate legal representation before the courts and other tribunals.
- Lack of support mechanisms for the poor and members of marginalized groups who are involved in cases.
- Issuance and implementation of anti-poor policies and decisions.
- General discrimination against the poor and marginalized groups within the judiciary and the justice system.
- Structural and systemic problems within the judiciary and the justice system that impedes the poor and marginalized groups' access to justice.
- Gender insensitivity and bias of the courts and other government offices involved in the administration of justice.

#### Lack of Access to Legal Education

There is a general lack of knowledge among members of communities about their rights, the laws governing their rights, and the judicial system's operations. Among the most notable problems reported are the following:

- Lack of information on the part of children and their communities on the rights of children, as well as on the prevention, reporting and filing of cases of violations of these rights.
- Lack of information on the part of members of indigenous communities concerning the possession and protection of rights over their ancestral domain.
- General lack of knowledge among community members about how the judicial system works.

4. General lack of awareness on gender sensitivity at the grassroots level.

#### Lack of Information on the Part of the Administrators of Justice

Compounding the lack of legal knowledge of the poor and marginalized groups is the lack of information on the part of judges and other administrators of justice on the concerns of the poor and marginalized sectors and the special laws governing them. The specific problems concerning this lack of knowledge among adjudicators and other officers involved in the justice system include the following:

- 1. Limited knowledge on the part of many judges and prosecutors on environmental laws.
- 2. Inadequate knowledge among judges and prosecutors on agrarian reform laws and fishery laws.
- 3. Lack of knowledge on the rights of persons living with HIV-AIDS and the provisions of Republic Act 8504, among concerned government officials.
- 4. Low level of understanding among judges of the laws concerning the urban poor.
- 5. Lack of understanding of judges on the indigenous communities' tribal laws and customary practices.
- 6. Lack of information or training on the part of judges, local government officials, police officers, and prosecutors on existing laws, rules and regulations related to child abuse.
- 7. General lack of understanding among judges and other officials on the issue of commercial sexual exploitation of children.

8. Inadequate knowledge among judges and prosecutors on gender and development.

#### Lack of Adequate Legal Representation

The problem of lack of adequate legal representation for the poor and marginalized groups was clearly identified in all six regional conferences. Various concerns about this problem include the following:

- Limited number of lawyers who are willing to handle cases for the poor and marginalized groups.
- 2. Expensive fees for lawyers' services that the poor cannot afford.
- Non-recognition of paralegals from communities who are not given the opportunity to assist in cases, or, worse, sometimes branded as fixers or subversives.
- 4. General public perception that government lawyers are not competent and efficient in handling cases involving the poor and marginalized groups, and sometimes favor the poor litigants' adversaries.
- 5. Prohibitive costs of court litigation, including direct and indirect expenses.
- 6. Inaction or erroneous advice of labor attaches or embassy officials in cases involving migrant workers.
- 7. Lack of funds to hire the services of lawyers on-site (country of work) in cases involving distressed migrant workers.

#### Lack of Support Mechanisms

The participants of the regional conferences also pointed out the difficulties of sustaining the prosecution or litigation of a case in court. They lament the lack of support mechanisms for the poor and marginalized groups who are involved in pending cases. Some of the specific problems identified are the following:

- 1. Inadequate protection for child witnesses.
- 2. Hesitation of personnel of the Department of Social Welfare and Development to put children under protective custody for fear of cases that can be filed against them.
- 3. Lack of support system (financial, psychological, emotional) for women victims of violence.
- Lack of financial support for pauper litigants, especially in criminal cases where they are required to post bail bonds for their temporary liberty.
- 5. Lack of effective witness protection program at the trial courts in rural areas.

#### **Insensitivity and Discrimination**

Many participants cited examples of insensitivity of some judges and other officials to the plight of the poor and marginalized groups. Some of the reported cases were clear acts of abuse or discrimination against these vulnerable persons. Among these are the following:

- 1. Sexual and/or physical abuse of children in conflict with the law.
- 2. Poor facilities in rehabilitation centers and jails for children in conflict with the law, including non-segregation of child offenders from adult detainees.
- 3. Non-child friendly conditions and procedures in police precincts, prosecution offices, and courts.

- 4. Emphasis on punitive measures rather than rehabilitation and diversion for children in conflict with the law.
- 5. Discriminatory treatment of litigants who are members of indigenous cultural communities.
- Lack of mechanisms of concerned agencies to ensure the right to confidentiality of persons living with HIV-AIDS.
- 7. Non-recognition of the rights of informal sector workers.

#### Structural and Systemic Problems

Some of the problems identified pertain to certain structures, systems and processes in the judiciary and the justice system, which obstruct the poor and marginalized groups' access to justice. These problems include the following:

- Non-availability of appeals due to double jeopardy for child abuse cases where the accused is acquitted.
- 2. Difficulty of proving the age of minors who are not registered, in cases where the age of the child is material.
- 3. Inadequacy of grievance machinery against erring judges.
- 4. Hostile atmosphere in courts that alienates poor litigants.
- Delayed resolution of cases in courts and in quasi-judicial agencies like the National Labor Relations Commission.
- 6. Absence of community participation in the selection of judges.
- 7. Lack of judges and prosecutors, particularly in remote areas.
- 8. Lack of enforcers of fisheries laws.

- Very stringent requirements for petitions before the Supreme Court and dismissal of cases due to technicality, especially in labor cases.
- 10. Too many layers of appeal in labor cases.
- 11. Corruption and incompetence of adjudicators in labor cases.
- 12. The use of English instead of the local dialects in court proceedings.
- 13. Conflict between indigenous people's customary laws and the justice system, and the general non-recognition by the justice system of the indigenous people's tribal laws.
- 14. Problems related to the low budget allocation for the judiciary.

#### **Anti-poor Policies and Decisions**

Many participants complained about the issuance and implementation of policies and decisions that violate their rights and are detrimental to their interests. Some of the specific cases mentioned are the following:

- 1. Judges' assumption of jurisdiction over agrarian-reform related cases even if these are outside the jurisdiction of regular courts.
- 2. Many conflicting laws or conflicting interpretations of laws, especially laws on fisheries and the environment.
- 3. Unjust cancellation of Certificate of Land Ownership Awards (CLOAs) of farmer beneficiaries.
- 4. Issuance of temporary restraining orders even against farmer beneficiaries who have been installed in the land awarded to them.

- Anti-child decisions of prosecutors and judges (e.g.,., erroneous downgrading or outright dismissal of charges in child abuse cases).
- 6. Issuance of temporary restraining orders and injunctive writs that impede the workers' exercise of their constitutional rights.

#### **Gender Insensitivity and Bias**

Participants of the consultation conferences also articulated their concerns about the low level of gender sensitivity in the courts and in the justice system, and the prevailing bias against women. Some of the problems identified include the following:

- 1. Harassment of women litigants (complainants, accused, or witnesses), by lawyers, prosecutors, and even judges, especially in cases involving sexual abuses.
- 2. Low level of gender sensitivity even among judges who are assigned to special family courts handling cases of women and children.
- 3. Lack of intervention of law enforcers in domestic violence cases, which are treated as family affairs.
- 4. Lack of women lawyers and women judges.

#### Recommendations

After identifying the problems that they have experienced in their engagement with the judiciary and the justice system, the participants of the regional conferences then identified recommendations that will address these problems. Among the most notable recommendations are the following:

#### Women

1. There must be gender sensitivity trainings and orientation sessions on violence against

- women for judges and other officials involved in handling cases of violence against women.
- 2. Gender and development must be included in the curriculum for judges and law students.
- 3. Women's desks must be established in courts.
- 4. There must be enhancement of knowledge and skills of women paralegals.
- 5. There must be effective compliance with the Gender and Development (GAD) budget in the judiciary.

#### **Indigenous Peoples**

- 1. There must be an interface between the indigenous legal system and the prevailing legal system in the country.
- 2. There must be separate courts for indigenous peoples ("tribal courts").
- Officers of the court like judges and prosecutors must be educated about tribal laws and systems.
- 4. Law schools in areas where there are indigenous cultural communities must include in their curriculum customary laws and systems.
- 5. Judicial reform efforts must give special attention to customary laws and practices of indigenous cultural communities.

#### **Environment**

- 1. There must be special courts for environment-related cases.
- 2. There should be continuous environmental education for judges and other key players.
- 3. Administrative penalties must complement the filing of cases in court.

- Coastal law enforcement must be adopted by local government units within a certain district to address common coastal issues.
- Environmental crimes must be recognized as affecting private offended parties and this should allow communities to secure the services of counsel to prosecute environmental offenses.
- 6. There must be deputization of special prosecutors for environment crimes especially for areas that do not have prosecutors.
- Local government units must allocate a portion of their Internal Revenue Allotment for the prosecution of environmental crimes.
- 8. Fines collected for the commission of environmental crimes should form a "litigation fund" for use in subsequent prosecution of similar cases.

#### Children

- There should be continuing education on the rights of children and on child sensitivity, including the realities of commercial sexual exploitation of children, for communities, judges, and concerned government officers.
- 2. The protection of child witnesses must start from the time the child is rescued or executes a statement against the offender.
- Alternate means of establishing the age of the victims (such as medical or dental records) should be allowed in court proceedings without any need to establish the lack of birth certificates.
- Court preparation programs must be available for child witnesses to prepare them for the proceedings.

- 5. There must be adequate legal support for personnel of the Department of Social Welfare and Development (DSWD) and other government agencies who may face harassment cases for helping children.
- 6. The judge's child sensitivity must be taken in consideration in the designation of judges for special family courts.
- 7. There must be special prosecutors for child abuse cases.
- 8. The atmosphere in courts, prosecution offices, and precincts must be child friendly.
- The Supreme Court must conduct strict monitoring of cases involving child abuse where the accused is acquitted. The Department of Justice must likewise monitor decisions of prosecutors.
- 10. The Supreme Court must reexamine the application of the rule on double jeopardy to cases involving child abuse where the accused is wrongfully acquitted.

#### **Farmers**

- 1. Farmer paralegals should be recognized by the courts, and must be allowed to participate in cases.
- 2. Judges and prosecutors, especially those in rural areas, must be educated on agrarian reform laws and other social legislation, and on how to treat civil and criminal cases that are essentially agrarian disputes.
- Farmers who had been issued Certificate of Land Ownership Awards (CLOAs) should be immediately installed in their lands. CLOAs that had been issued but remained undistributed must be distributed as soon as

- possible and the farmers given possession of the lands.
- 4. The courts must respect the indefeasibility of farmers' CLOAs.
- 5. There must be financial support for lawyers who handle cases of poor farmers.
- 6. The Department of Agrarian Reform must immediately conduct a review of leaseback contracts that are in violation of the clear intent of the agrarian reform program.
- The Department of Agrarian Reform and the Department of Environment and Natural Resources must expedite the coverage and distribution of untitled public agricultural lands (UPALs).
- 8. Farmers involved in agrarian reform related cases must be exempt from the payment of bail bonds.
- The Farmland as Collateral bill must be shelved.

#### **Fisherfolk**

- Local government units must prioritize the enactment and enforcement of fishery ordinances specifically prohibiting the use of compressors in fishing activities.
- The Bureau of Fisheries and Aquatic Resources and the local governments must conduct trainings on fish examination for deputized fish wardens and bantay-dagat.
- 3. The Department of Environment and Natural Resources and other concerned government agencies must investigate and cancel titles issued to mangrove areas.

- 4. There must be full legal and financial support for the prosecution of commercial fishing in municipal waters.
- 5. The government must provide benefits to bantay-dagat.
- 6. There must be education activities for judges, prosecutors, and other concerned officials on fishery laws.
- Government agencies involved in the implementation of fisheries laws must harmonize their conflicting interpretations.
- 8. There must be a clarification of the rules on the delineation of municipal waters and its applicability to bays.

#### **Urban Poor**

- There must be community-based paralegals and legal resource centers in urban poor communities.
- There must be orientation sessions for urban poor communities on the justice system and judicial processes. Local government units and national government agencies must allocate funds for legal orientation for communities.
- 3. Government agencies involved in the implementation of laws relating to the urban poor must have adequate education on those laws, and must have enhanced capacity to implement laws for the urban poor.
- 4. There must be comprehensive reforms in the existing land titling and management system.

#### **Workers: Formal Labor**

- 1. There must be amendments to the Labor Code to strengthen workers' rights.
- Decisions of the National Labor Relations Commission (NLRC) must be reviewed by the Supreme Court and must not go through the Court of Appeals.
- 3. Decisions of the NLRC must be published and evaluated.
- 4. The NLRC must be abolished and replaced with a one-stop shop center for conciliation and arbitration.
- The National Conciliation and Mediation Board must also be integrated into this onestop shop. In the meantime, the knowledge and skills of conciliators must be enhanced.
- 6. The Supreme Court must address the problem of judicial legislation in many labor cases.
- 7. The Supreme Court must reduce the requirements and the costs for filing petitions before the Supreme Court.
- 8. There must be an internal affairs department for labor officials whose task is to weed out corrupt, inefficient, and inept officials.
- 9. Labor leaders must be deputized as labor law compliance inspectors.

#### **Workers: Informal Labor**

- 1. There must be full compliance with Executive Order 452 concerning vendors.
- 2. The Human Rights Commission should also focus on economic, social and cultural rights.

- 3. There must be genuine representation of the sector at the local government level.
- 4. There must be a law concerning the rights of informal sector workers.

#### **Migrant Workers**

- 1. There must be a massive information drive about the basic rights of migrant workers.
- 2. There must be information materials in the local dialects on the processes for cases that can be filed by migrant workers or their families.
- 3. Lawyers and officials from concerned government agencies must have continuing education on migrant cases and issues.
- 4. There must be support for lawyers handling migrant workers' cases.
- 5. Sections 29 and 30 of Republic Act 8042 (deregulation provisions of the Migrant Workers Act) must be repealed.

#### Persons Living With HIV-AIDS

- 1. There must be rules of procedures for courts that will ensure respect for the right to confidentiality and privacy of persons living with HIV-AIDS.
- 2. There should be more efficient and greater coordination among government agencies involved in programs related to HIV-AIDS.
- 3. Human rights framework must be adopted in seminars on HIV-AIDS and R.A. 8504.

#### **General Recommendations**

In addition to the sector specific recommendations stated above, the participants also gave general recommendations on the judiciary and the justice system. Among these recommendations are the following:

- 1. There must be education programs for communities on the judiciary and the justice system.
- 2. There must be proportionate representation of Moro and Lumad in the Supreme Court
- 3. The Supreme Court must establish islandwide offices (Luzon, Visayas, and Mindanao)
- 4. Marginalized sectors should be involved in the appointment of judges and justices.
- 5. Appointment of judges and justices must be based on merit instead of on endorsements or recommendations.
- 6. There must be an appraisal and performance evaluation system in the judiciary.
- 7. Publication of laws must also be done in tabloids and in the vernacular.
- 8. There must be legal and financial support, as well as protection, to witnesses to crimes, corruption and anomalies in the judiciary.
- 9. There must be more adequate mechanisms that will support pauper litigants, especially in criminal cases.
- 10. The Barangay Justice System must be strengthened through the education of barangay officials.
- 11. The training of community paralegals must be promoted and supported financially.

Parallel to the major problem areas identified by the participants, their recommendations can be summarized as follows:

- Legal education for the poor and marginalized groups on their rights and the procedure for remedying violations of such rights.
- 2. Education for judges and other administrators of the justice system about the issues concerning the poor and marginalized groups and the special laws governing them.
- 3. Adequate legal representation before the courts and other tribunals for the poor and marginalized groups.
- 4. Provision of support mechanisms for the poor and members of marginalized groups who are involved in cases.
- Issuance and implementation of progressive policies and decisions that protect the rights and interests of the poor and marginalized groups.
- 6. Elimination of all forms of discrimination against the poor and marginalized groups within the judiciary and the justice system.
- 7. Resolution of structural and systemic problems within the judiciary and the justice system that impedes the poor and marginalized groups' access to justice.
- 8. Improving the level of gender sensitivity of the courts and other government offices involved in the administration of justice.

### Distrust in the System, Hope for Reforms

One common observation unequivocally expressed by the participants in the consultation conferences was the general distrust in the justice system among the ranks of the poor and marginalized groups. Despite this distrust in the system, however, the conference participants manifested their keen interest on addressing the problems plaguing the system and their hope in the success of the reform efforts. More importantly, their expression of willingness to participate in the reform efforts highlighted their important roles as active stakeholders and advocates, rather than passive beneficiaries or recipients, of the reform process.

The problems that surfaced at the consultation conferences are by no means comprehensive. Neither is the list of recommendations exhaustive. The conduct of the regional consultation conferences was a good start, however, in harnessing the voice and strength from the grassroots and making them the solid foundation of the justice reform efforts.



## The ALG's Institutional Framework for Justice Reform

## The Alternative Law Groups' Institutional Framework for Judicial Reform

### The ALG and the Poor

The Alternative Law Groups or ALG is a coalition of non-government organizations with legal program components that adhere to the principles and values of alternative or developmental law. These organizations have distinct programs for developmental legal assistance that is primarily concerned with the pursuit of public interest, respect for human rights and promotion of social justice. At the heart of developmental law is the empowerment of the poor and the marginalized through advancing a critique of law and use of the law by the poor to enforce and protect their rights.

During the martial law period, the focus of the first alternative law organizations was primarily on civil and political rights. Advocates defended detainees, filed cases of habeas corpus for those who have disappeared, and sought redress for basic human rights abuses by the State. With the emergence of a myriad of cause-oriented groups and non-governmental organizations after the 1986 EDSA

Written for the ALG, Inc. by Carolina S. Ruiz-Austria , Executive Director, WOMENLEAD Foundation, Inc.; Magistrado A. Mendoza, Jr., Executive Director, KAISAHAN; and Marlon J. Manuel, Executive Director, SALIGAN.

Revolution, a host of legal advocacy groups likewise emerged. During this time, alternative lawyers and legal advocates began to focus on enforcing and defending the rights of the basic sectors.

The practice of alternative or developmental law looks at conditions, incidents and other legal matters or issues from a structural perspective. In a sense, it merges law and the social sciences because the law is viewed as an inseparable part of the social context within which it operates. It is participative and evocative. Conscious effort is made to actively involve the client partners in seeking solutions to their legal problems. Alternative law groups are issue-oriented and serve sectors rather than individuals, promoting alternative and supplementary dispute resolution mechanisms in addition to traditional legal procedures.

Developmental legal assistance involves, among others, activities such as capacity building of basic sectors, formation of paralegals, networking with like-minded organizations, agencies and individuals, policy research and advocacy within the three departments of government as well as handling of cases of the poor especially those that present novel issues.

The ALG further developed their issue-orientation through the years and also continued to enrich the theoretical bases of its structural analysis and approaches. Through the years, ALG participated in justice and law reform and policy development even as it continues to advance and hone its critique of the Philippine legal system. By doing so, the ALG strives to fulfill the aspiration that those who have less in life shall have more in law.

### The ALG and Judicial Reform

Under the 1987 Constitution, judicial power is vested in the Supreme Court. Such power involves settling actual controversies involving rights which are legally demandable and enforceable, and determining whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government (Section 1, Article VIII, 1987 Constitution). The last phrase of the provision emphasizes the importance of the function of the judiciary as the last bulwark of the rule of law and justice. Through the Court, the State performs its function of ensuring that justice prevails in society and basic human rights of its citizens are recognized, protected and upheld. Good governance is brought about under a judicial system that enjoys a high level of public confidence and ensures access to justice especially by the disadvantaged.

The Philippine judicial system, however, does not enjoy such public confidence although it fares well compared with the other two major departments of government. This condition is brought about by corruption, delays in the resolution of cases, political influence in the selection of judges and justices, inaccessibility of judicial and legal services by the poor, as well as inefficient systems in the judiciary.

The current efforts of the Supreme Court to implement reforms in the administration of justice as contained in its Action Program for Judicial Reform (2002-2006) is a welcome and positive development for law reforms in the Philippines. The program may not entail much complementary reforms outside the judiciary or other agencies involved in the administration of justice but may serve as jumpstart for reforms within the latter. For the ALG, however, it is an opportunity for complementation of efforts towards law reform and empowerment of the poor for greater access to justice. The terms of the ALG's engagement in such reform program shall be guided by the framework that will be discussed below.

### Values and Principles

The ALG's involvement in judicial and justice system reform efforts will be guided by the following fundamental principles:

- Judicial reform must be holistic in approach.
  - Reforms in the judiciary must necessarily be complemented by reforms in the other departments of government that are involved in the administration of justice;
- Judicial reform should address the issue of empowering the poor and marginalized groups.
  - Effective administration of justice is not only made possible by those who deliver it but also by those who demand for it. Reform efforts must also focus on building the capacities of those who have difficulties in accessing justice.
- Reform efforts must be participatory.
  - All stakeholders in the reform process should be involved in the formulation of goals and objectives of reform, implementation, and monitoring and evaluation to exact transparency and accountability. The active participation of the people, especially the poor and marginalized groups, is indispensable in ensuring that the reform efforts will result in meaningful gains towards effectively addressing the justice issues of the vulnerable groups.

- Reforms must be based on a larger effort to address the bigger and fundamental justice issues in society. It must follow, and must be subsumed under a comprehensive social reform program that will ensure the elimination of unjust laws, policies, systems, and structures in Philippine society.
- Reforms must be gender responsive.
  It must recognize that the system has the capacity to either help promote gender equality, or perpetuate gender inequalities and discrimination against women.

### **Key Reform Issues**

The regional consultation conferences that were conducted last year provided venues for the discussion of current justice reform efforts and generated interest on the reform initiatives being undertaken by the ALG and the Supreme Court among the broad base of non-governmental and people's organizations, government officials and other stakeholders in the justice system.

From the regional conferences and other related discussion sessions, the ALG identified the following major issues that the reform efforts must address:

- Inaccessibility of courts and lack of legal representation for the poor and marginalized groups.
  - This includes, among others, lack of special courts to address issues of marginalized groups, lack of courts in far flung areas, lack of adequate and sustainable legal representation of the poor in judicial and quasi judicial fora, and discriminatory treatment of marginalized groups (in the language, procedures, and processes of courts and other tribunals.)
- Lack of capacity of the poor and marginalized groups to access and avail of judicial, quasi-judicial and other mechanisms for addressing their issues and concerns.

This includes lack of access to legal education, lack of community paralegals, and lack of participation in the shaping and reshaping of laws and policies.

Lack of legal education on the part of members of the bar and the bench, and other stakeholders, on issues affecting the marginalized groups.

There is a need to address the general lack of awareness of members of the legal profession (lawyers, judges and justices) and law students on issues affecting the poor and marginalized groups, and the special laws concerning these issues.

Lack of recognition for alternative dispute resolution mechanisms.

This includes the lack of skills and knowledge of mediators and conciliators (especially under the Katarungang Pambarangay), and their lack of awareness or respect for customary practices of dispute resolution. This also includes the lack of recognition for indigenous dispute resolution mechanisms.

Unfavorable policy formulation and implementation that undermine the rights of the poor and marginalized groups.

This encompasses policies from the executive, legislative and judicial departments of the government.

Lack of transparency and accountability of the judiciary and the justice system in general.

This includes the issues of politics and patronage in the appointment of members of the judiciary, corruption in the courts, quasi-judicial bodies, and other offices involved in the administration of justice, and independence of the judiciary. This is also related to the issue of the low priority given to the judiciary in the national budget, the inadequacy of courts and court facilities, and other issues related to the lack of efficiency and effectiveness of the judiciary.

### **Strategies**

Considering the key reform issues and the fundamental principles for engaging in reform efforts, the following are the major components of the ALG's general reform strategy:

Empowering the marginalized groups.

This component will address the need to increase the capacity of the poor and marginalized groups to access and use judicial, quasi-judicial and other mechanisms for addressing their issues and concerns. Legal education for the poor and marginalized groups will be an important aspect of this component.

Legal education.

This component is an academic reform program that targets the curriculum of law schools and the continuing education programs for lawyers and members of the judiciary. The main challenge is to make legal education truly relevant to social justice.

Policy advocacy.

This component covers policy formulation in the executive, legislative and judiciary, handling of precedent setting cases, and strengthening the capacities of partner organizations and communities in advocating for their issues and concerns.

Strengthening ADR mechanisms.

This component will give special emphasis on promoting respect and recognition for traditional indigenous practices for settling disputes.

Transparency and Accountability of the judiciary.

This component will focus on the need to exact accountability from members of the judiciary and other officials who are tasked to administer justice. This includes the general efficiency and effectiveness of the judiciary to fulfill its mandate of administering justice, especially to the underprivileged.

Institutional Capacity Building.

This component addresses the need to strengthen the ALG as a network and to enhance its capacity as a catalyst for reform, performing the dual work of empowering the poor and marginalized groups and effecting justice system reforms. This includes solidarity and networking with other organizations or networks, both here and abroad, that are engaged in similar justice reform efforts.

### **Prospects**

The ALG's advocacy for justice system reform precedes the Supreme Court's APJR. With this Judicial Reform Program, however, the ALG sees a significant opening for the ALG to mainstream the reform agenda of the poor and marginalized groups. While most of the components of the APJR address the supply side – judicial institution, systems and procedures - the work of the ALG focuses on the demand side of the reform program by empowering the poor and marginalized sectors of society, thereby improving their access to the legal institutions and other advocacy venues.

Reform efforts have started in many areas of the judiciary. Efforts to reform the bigger justice system are also being undertaken by different groups. There are no false hopes that the reforms can be accomplished easily, given the complex problems of the justice system and society in general. It is expected, however, that the reform efforts that are being started today will somehow make a difference, and will serve as important foundations for bolder reform efforts that can be done in the future.

The ALG prepares itself to act effectively as a catalyst for social change, in its dual work of empowering the poor and marginalized groups, and effecting justice system reforms.



# Litigation as an Advocacy Tool in Alternative Lawyering

## Litigation as an Advocacy Tool in Alternative Lawyering

ATTY, GLENDA T. LITONG

### Introduction

Allow us to invite you, our reader, to take some time to do a popular education activity called "Connecting the Dots." In Figure 1A below are nine dots. The objective of the activity is to connect all the dots in a single line following two simple rules: Draw the line without lifting your hand from the paper and without overlapping any line.

### FIGURE 1A. CONNECTING THE DOTS

• • •

• • •

• • •

The activity is usually given to would-be paralegals involved in the works of the alternative law groups which are legal resource institutions engaged in alternative or developmental legal assistance. Alternative or developmental lawyering is more popularly known as public interest lawyering. Alternative lawyers engage the courts or quasi-judicial bodies through public interest or test case litigation.

The writer is the former Executive Director of ALTERLAW. She is currently the Project National Coordinator of ALG's JURIS Project.

More often than not, people trying to solve the activity tend to limit themselves to the box, which the dots seem to present. The activity emphasizes the typical response of any individual in addressing a problem, i.e., confining one-self within the box or within one's comfort zone. Normally, one does not see the space beyond the dots, despite the absence of a rule prohibiting the same; nor understands the meaning of the rules provided in the activity.

Now, refer to page 48 to see the solution to the activity. Typically responding to a legal problem, lawyers normally confine themselves to what the law provides and turn to the courts for relief and remedy. In the bigger societal context, however, the judiciary or quasi-judicial bodies are merely components thereof. Just like in the activity, lawyers do not normally go beyond the adjudicating bodies to seek relief, nor are they creative or innovative enough to seek solutions, not necessarily legal or judicial, to legal problems. Further, lawyers do not normally see the courts or other adjudicative bodies as venues where advocacy can be pursued on specific legal issues, particularly the promotion and protection of human rights.

Here lies the difference between these lawyers and the alternative or developmental lawyers.

In the realm of human rights, where the societal and statutory contexts do not normally favor the rights, needs

and aspirations of the poor and marginalized, the Alternative Law Groups, Inc., (ALG) and its member-institutions<sup>2</sup>, have realized that confining the solutions to the multifarious, ever dynamic and highly contested legal problems of the poor and marginalized within the same comfort zone will not bring about the necessary structural changes needed to ensure the human rights, particularly access to justice, of the poor and marginalized. Litigating, contrary to the popular notion, is not simply winning the case; it is an advocacy venue for the full promotion and protection of human rights, where the main actor in the process is not the lawyer but the client, who is seen more of a partner, actively participating in the case management, rather than a mere beneficiary.

This article will discuss the output of a conference held by the Alternative Law Groups, Inc., on October 3, 2003, aimed at (1) revisiting or redefining the theoretical framework for pursuing test case litigation or public interest litigation; (2) sharing and studying of case law trends on sectoral issues; and (3) gaining insights and lessons from the test cases relating to the processes and substantive issues therein involved. A digest of the cases studies shall be presented, followed by insights and lessons learned from the cases handled and recommendations for future action.

The ALG has been in existence and has engaged in test case litigation or public interest litigation for more than ten years. It is opportune to look back on these experiences to understand the dynamics of the relationship of

FIGURE 1B. SOLUTION TO THE "CONNECTING DOTS" ACTIVITY



the legal and judicial system vis-à-vis the societal context, within which the greater struggles of the poor and marginalized must be understood.

### Public Interest Litigation<sup>3</sup>

The origins of public interest litigation can be traced back in the United States of America to the case of *Brown v. Board of Education* <sup>4</sup>, where the US Supreme Court declared unconstitutional a state's segregation of public school students by race. Public interest litigation has been defined as the practice of lawyers seeking to precipitate social change through court-ordered decrees that reform legal rules, enforce existing laws, and articulate public norms.<sup>5</sup> It is said to have the following features: (1) the defendant was a public institution, (2) the claimants comprised a self-constituted group with membership that changed over time, (3) relief was prospective, seeking to reform future action by government agents, and (4) the judge played a leadership role, complemented by the parties' efforts at negotiation.

A category of public interest litigation, called test case litigation, challenges the legality of existing laws and regulations or attempts to give new meaning to existing laws. A test case may involve an individual complainant or plaintiff but the decision will be a legal precedent in other lawsuits filed by other individuals.

Public interest litigation is not new in the Philippines although there is no existing literature that has looked into its evolution and framework as it is practiced in the country. The expanded concept of judicial review and extensive demands of social justice engender public interest litigation in case of violations, interpretations and defense of the entitlements guaranteed under the 1987 Constitution.

The practice of public interest or test case litigation<sup>6</sup> must contend with elementary rules of procedure relating to the requirements of judicial review. A test case, to be

the subject of judicial cognizance, must present a controversy, which is actual and ripe for adjudication. *Locus standi* or standing must also be shown. Questioning the constitutionality of laws or acts of any of the branches of government may be pursued through a taxpayer's suit. The Supreme Court has in some instances acted on test cases despite the absence of standing in instances of "transcendental importance" or "paramount interest."

In the experience of the ALG, public interest or test case litigation on issues that pertain to the interpretation of human rights, justiciability and enforceability, presents difficulties which oftentimes are insurmountable for the poor and marginalized; this on top of the inherent ills faced by the legal system relating to the administration of justice. Aside from the usual problems of delay in the resolution of cases and high cost of litigation, test case litigation for the poor and marginalized has to contend with problems relating to lack of interested parties to pursue a constitutional or human rights questions, access to legal services which are capacitated to handle sectoral concerns and legal problems, and the conservatism of the courts in developing socially relevant and responsive jurisprudence.

### Conceptual Framework of ALG Litigation

ALG work proceeds from the basic tenets of developmental legal assistance. It departs from private practice and traditional legal aid by seeing clients as partners in development, and seeking to empower them to develop their own legal and political strategies. Social justice is an objective in resolving the problems of the poor and the marginalized.

"To be alternative, developmental or feminist lawyer means to view law as an indispensable weave in our social fabric. It is to practice law fundamentally for individuals, communities and sectors that have been historically, culturally and economically marginalized and disenfranchised. It is to engage in this practice systematically, under the umbrella of sustainable organizations that foster dynamic and creative individuals. The mark of such practice is that it seeks not only to create ripples of public impact from individual cases but also that it empowers in the process. To be an alternative lawyer means a clear professional commitment that the use of the law is not the sole domain of those that have passed the bar and taken the oath, but could and should be shared with the individuals, communities and sectors which it affects." 8

Litigation, within the framework of developmental legal assistance, is merely one of the tools or processes used in protecting the human rights of the poor and the marginalized groups and is seen more in the context of their eventual empowerment. On the other hand, litigation is also an advocacy tool - an opportunity to engage the State, in its performance of governance and obligations under international human rights instruments, to make case law on the meaning and effect of human rights. The articulation of causes of action and human rights of the poor particularly its normative content and corresponding State obligations, enforceability and "justiciability." Exposure to litigation is also an opportunity to enable the partner-beneficiaries to learn and understand the limitations of purely legal or litigation-oriented practices.

The outputs of the conference will further detail the nuances and development of test case litigation as being practiced by the ALG. It is by no means comprehensive but is an initial insight into ALG processes and advocacies that form part and parcel of developmental legal assistance.

### The Case Studies

The following case studies provide a preliminary view of the scope and extent of sectoral involvement of the ALG, processes involved and insights gained in handling test cases. Direct legal services is an essential component of ALG work, although litigation is not the only means or end-result of

this component. As mentioned above, litigation is resorted to mainly to achieve the ultimate goal of empowering the poor and marginalized.

### Feminist Lawyering and Advocacy

Feminist lawyering is specifically focused on ensuring that the laws and the legal system are sensitive, responsive and relevant to the context, concerns and human rights of women whose gender is a major issue. Towards this end, suits have been initiated to strike down legal structures or actions that disempower women, and hence, are violative of human rights.

### Challenging the Vagrancy Law9

Between 1994-1996, women streetwalkers were rounded up along the streets of Quezon City and were charged with vagrancy under article 202, par. 2 of the Revised Penal Code. Said article provides:

"Article 202. Vagrants and prostitutes - Penalty. - The following are vagrants:

Any person found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support;

Any person found guilty of any of the offenses covered by this article shall be punished by *arresto menor* or a fine not exceeding P200 pesos, and in case of recidivism, by *arresto mayor* in its medium period to *prision correccional* in its minimum period or a fine ranging from P200 to P2,000 pesos, or both, in the discretion of the court.

The challenge to the vagrancy law stems from the provision's vagueness and over breadth thereby violating due process and its proscription of a "status criminality" which in turn violates the equal protection clause of the Constitution.

In 1994, 13 women streetwalkers were rounded up by the QC police (from Station 10) and charged with vagrancy. The women were convicted and sentenced to imprisonment for 2 months and 1 day. The Women's Legal Bureau, Inc. (WLB) visited the women in Camp Bagong Diwa where they were taken to serve sentence. WLB filed a habeas corpus case with MTC, where the petitioners were WLB and five other women's groups, raising the constitutionality of the above-mentioned penal provision. The habeas corpus case was rendered moot when women were released after service of sentence.

In 1995, the women were arrested anew and were charged based on the same violation. One woman pursued the constitutional question. A Motion to Dismiss was filed in the criminal case before the Metropolitan Trial Court of Quezon City, which was denied. WLB raised the matter to the Supreme Court under a Petition for Certiorari and prohibition with prayer for preliminary injunction and/or temporary restraining order, which however referred the matter to the Regional Trial Court (RTC). RTC declared that inferior courts have jurisdiction over cases involving constitutionality question and declared the vagrancy law unconstitutional. The RTC ruled:

"There cannot be malice by mere loitering or tramping or wandering about without visible means of support because the only person affected thereby or prejudiced or injured by such circumstances would be the person himself and not other third parties. There is nothing to protect society from by these acts and it is this precisely which is repugnant because it impinges on the individual's right of freedom of expression and freedom of locomotion, as guaranteed by the Bill of Rights. We cannot see how the lack of visible means of support should be punishable unless it affects other persons or prejudices them. We don't see how poverty should be a criminal act. As this law to the mind of the Court encroaches on the very rights of a person living in a democratic society such as ours; as long as a person does not injure anybody by overt acts, the State cannot, by the exercise of its police power, punish by imprisonment or fine any person found loitering, tramping or wandering about without visible means of support. In fact, the very thought of punishment of a person because of poverty smacks of elitism and a violation of the equal protection of the law clause of the Constitution." 10

Due to the inability of the Office of the Solicitor General to seek extension of time to file petition for review, the decision became "final and executory."

In 1996, the city continued its arrests of women. This time, the RTC decision was invoked in particular cases.

Despite the non-precedent binding nature of the decision, as it binds only the parties in the case and, at most, cases that may occur in Quezon City, it is nevertheless groundbreaking and can be used for future action.

The delay and slow process of the judicial system affects the effective use of the decision. Beyond press releases, no campaign was undertaken on the issue of women streetwalkers and women, particularly the streetwalkers were not organized around the issue. The RTC decision was not popularized and no follow-up activity was undertaken to push the issue.

To be more strategic in ensuring the rights of women, it is recommended to reconnect with groups and women on their situation and needs.

### Protecting the Child Against Prostitution<sup>11</sup>

The Children's Legal Bureau, Inc., (CLB) shared the case of Jane, a minor brought from Isabela province, who, after having been recruited to work as a waitress, was instead brought to the Flaming Nights Cocktail Lounge to work as a sexy dancer. Eventually, Jane escaped from the bar. When she was caught for jaywalking, the City Attorney's Office referred the matter to CLB. The lawyer of the Department of Social Welfare and Development (DSWD) and CLB conducted an investigation on the bar after Jane manifested her intent to file a case against the owner of the bar. CLB contacted the police for a planned rescue of the other minors employed in the bar and was able to secure a search warrant.

Immediately prior to the rescue, a policeman, DSWD lawyer, CLB paralegal, and the media entered Flaming Nights posing as customers. After sometime, the search warrant was served on the owner, and the prostituted children and women were brought to DSWD office under protective custody.

A case for violation of section 5, paragraph (c), article III of Republic Act No. 7610 was filed against the owners of the bar. Said provision states that:

"Section 5. Child prostitution and other Sexual Abuse.-Children, whether male or female who for money or profit or any other consideration or due to coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

- (a) x x x
- (b) x x x
- (c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

One significant order that was issued in the course of the criminal proceedings is the Order dated May 4, 1998 denying the Motion to Quash Search Warrant. The judge ruled that:

"In the crime of prostitution, especially involving minor children, the bar owners, customers and abusers treat children as "chattels" or "things" as cited in the paper by Panudda Boonpala, ILO/IPEC presented during the World Congress on Commercial Sexual Exploitation of Children, Stockholm, Sweden, 27-31 August 1996 (quoted from the Opposition of Prosecution).

The inclusion of minor girls during the search therefore, has been warranted since in every prosecution for child prostitution, what is material and indispensable is the submission of proof of the sale or trade of minor girls for sex. Under this circumstance, the inclusion of minor girls in the questioned search should not be regarded in violation of the rule that only personal properties are "subjects" of a search warrant. And besides, to rule otherwise would be to limit the application of the questioned search warrant to the end that exploited children cannot be afforded utmost protection from inhuman and evil abuses. Thus, it may result in an intolerable situation whereby violators or abusers may successfully trample upon the law for the simple reason of technicality."

Unfortunately, the owners of the club were acquitted of the crime charged by the trial court holding that: "...accused Constancio Uy and Annaliza Garcia cannot be held responsible for Violation of Sec. 5 Art. III of Rep. Act No. 7610. Consequently, both accused are ACQUITTED for utter failure of the prosecution to prove their guilt beyond reasonable doubt." <sup>12</sup> The trial court ruled that the owners were of the honest belief that Jane was already 19 years old when she was brought to the club by her recruiters. Prostitution was negated by the facts that Jane herself testified that she freely and voluntarily went out with customers to have sex; nor was there proof that prostitution actually took place in the club.

CLB is not totally disheartened by the turn of events. The rescue generated enough interest to educate or raise the awareness of the growing and grave problem of child prostitution in Cebu City not only among the general public through the use of media but also among the duty holders who participated therein (i.e., police and other law enforces, DSWD) about their roles in the promotion and protection of human rights of prostituted children. The duty holders were sensitized to the issue that children were the victims not the offenders in the crime of prostitution. The case was an opportunity to engage the courts to interpret

the meaning of child prostitution, and the rights of the child.

It was realized that the case is just like any other case of child abuse where a multi-disciplinary approach must be pursued involving rehabilitation, continuous therapy and counseling for the child victim. All duty-holders involved in the criminal justice system, from the community up to the judiciary, including lawyers representing the child, must be sensitized and informed of the rights of the child, RA 7610 provisions on child prostitution, and the approach in managing a case of child abuse. Rescue can be expensive, hence, the duty to undertake the same should be with the State, not with the support NGOs.

Confronting Legal Impediments to Reproductive Freedom<sup>13</sup>

After the Bureau of Food and Drugs approved the registration of Postinor (Levonorgestrel, 750 mcg) in 2000, the same was withdrawn in the next year by the Department of Health in Memorandum Circular No. 18, after Abayfamilya filed a petition contending that the registration of Postinor is in violation of the constitutional provision that protects the life of the unborn from "conception", allegedly starting from fertilization.

The petition of Abayfamilya was heard without notice to NGOs working in reproductive health services and advocacy women's rights advocacy. Upon knowledge of said petition, the Reproductive Health Advocacy Network (RHAN) represented by Women Legal Advocacy and Defense Foundation, Inc. (WomenLEAD), filed a Petition to open the said case for lack of due process and exclusion to participate of the reproductive health and women's NGO community.

The case involves a constitutional issue particularly Section 12, Article II, namely:

SECTION 12. The State recognizes the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution. It shall equally protect the life

of the mother and the life of the unborn from conception. The natural and primary right and duty of parents in the rearing of the youth for civic efficiency and the development of moral character shall receive the support of the Government.

The petitioner, Abayfamilya, which sought to ban Postinor, argues that the same is an abortifacient. It quotes the following excerpt from Bernas as the main basis or its argument as directly quoted by the BFAD /DOH Resolution:

"The intention is to protect life from its beginning, and the assumption is that human life begins at conception, that conception takes place at fertilization."

In arguing against the ban of Postinor, WomenLEAD posits that BFAD's legal mandate is to ensure the safety and the good quality of food, drug and cosmetic, and regulate production, sale and traffic of the same to protect the health of the people. In the performance of this regulatory power, the BFAD's recommendation banning Postinor has no legal basis since there is no finding on the unsafe, inefficacious or doubtful therapeutic value of Postinor on women. On the contrary, the World Health Organization and other leading authorities overwhelmingly affirm that Postinor is not an abortifacient.

WomenLEAD further argues that BFAD's authority must not encroach on judicial interpretation of the Constitution of the above-mentioned provision. In supporting its ban, the BFAD recommendation opined that conception was fixed at fertilization, as contended by Abayfamilya. The recommendation is a misinterpretation of the Constitution. Based on the Constitutional Commission Debates on section 12, it clearly shows that there is no constitutional intent to establish conception at fertilization. Even the Bernas interpretation of the said constitutional provision was incompletely quoted. The rest of the paragraph reads:

"There is however no attempt to pinpoint the exact moment when conception takes place. But while the provision does not assert with certainty when precisely human life begins, it reflects the view that, in dealing with the protection of life, it is necessary to take the safer approach." <sup>14</sup>

WomenLEAD further finds support in arguing against the ban on Postinor in human rights principles in the context of women's rights advocacy. Access by women to Postinor as a legal, safe and effective emergency contraceptive method complies with Philippine human rights instruments, particularly the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) guaranteeing equality rights of women on health including safeguarding the reproductive function and General Recommendation No. 24 on Women and Health directing States to implement a comprehensive national strategy to promote women's health, including universal access for all women to a full range of high-quality and affordable health care, e.g., sexual and reproductive health services. Access to family planning services entails upholding women's right to be informed of such choices. These mandates are reflected in the National Family Planning policy of the Department of Health. Under General Comment No. 14, the right to health is legally enforceable and justiciable.

The intervention by the women's health group, through WomenLEAD, is still pending before the BFAD. Despite a final pronouncement on the matter by the Supreme Court, the said intervention addresses two issues: (a) the practical and (b) the advocacy or ideological issue.

The case is strategic in addressing the immediate danger of a possible banning of birth control drugs containing levonorgestrel in the absence of an opposition thereto, thereby impacting on women's free exercise of reproduction health options.

The State, through the DOH and BFAD, is being made to account for its action as being violative of women's basic human rights, thereby bringing the case to the level of a discourse on human rights, not merely on the issue of legal justiciability but also as ethical standards, which are integral to human dignity. Aside from these issues is the continuing contest between women's reproductive health rights and religious freedom. The case is therefore an opportu-

nity to define the limits and scope of religious freedom visa-vis women's dignity and rights, where religious freedom is a cornerstone of human rights but within the principles of non-establishment and non-religion. <sup>15</sup>

Questioning the Constitutionality of the Mining Act<sup>16</sup>

The right to development, as a justiciable issue, is a difficult legal question. The Legal Rights and Natural Resources Center- Kasama sa Kalikasan, Inc. (LRC) took on this challenge in 1997 when it assisted the B'laan communities in questioning the constitutionality of the Republic Act No. 7942 or the Philippine Mining Act of 1995, and its implementing rules, allowing foreign-owned companies to conduct large-scale mineral resource exploration and extraction activities in the Philippines through the financial or technical assistance agreements. Entitled "La Bugal Tribal Association, Inc., et al, v. "Victor O Ramos, Department of Environment and Natural Resources, et al," (G.R. No. 127882), the petitioners included indigenous peoples' organizations, local residents, supporters, prominent national personalities, indigenous peoples' rights advocacy groups and five (5) members of ALG. 17

Even before the effectivity of the mining act, a Financial and Technical Assistance Agreement (FTAA) was entered into by and between the Australian-owned Western Mining Corporation Philippines, Inc. (WMC) and then President Fidel V. Ramos on March 22, 1995. Its purpose was for the large-scale exploration, development and commercial exploitation of possible mineral deposits in the initial contract area of 99,387 hectares located in South Cotabato, Sultan Kudarat, Davao del Sur and North Cotabato. It has an initial term of 25 years, subject to renewal.

The FTAA covers ancestral territories of B'laan communities, Salnaong, Lam-alis and other communities with the La Bugal Tribal Association, Inc., a municipal-wide indigenous peoples (IP) organization, based in Columbio, Sultan

Kudarat. The Tribal Councils of Lam-alis and Salnaong refused to sign principal agreements with the mining company and opposed the entry of mining operations in their ancestral domains as early as the 1990s when copper and gold deposits were discovered in the area.

The B'laan community filed the petition to check on the impact of the present mineral resource utilization policy of the State on upland communities especially on communities of indigenous peoples (IP). The State should exercise full control and supervision over the development, use and exploration of natural mineral resources, priority being given to indigenous and other marginalized Filipino community to use and enjoy the same, enabling them to fully and genuinely participate in politically determining the direction of the economy as mandated by the Constitution.

Beyond the petition is its social context. Even before and especially after the passage of the Mining Act and its Implementing Rules, transnational mining corporations filed a number of FTAA applications, which reached a hundred by the end of 1996. This covered millions of hectares of mainly tribal lands, remote and classified as upland forests and protected areas despite the fact that large-scale mining would result in the dislocation of indigenous communities and adverse environmental effects.

It is obvious that the plans of government are oriented towards international opportunities rather than local development priorities, thereby neglecting the rights of indigenous people to their ancestral domains.

To the affected B'laan communities in Sultan Kudarat and their support groups, the petition is one of the activities in a campaign to stop the entry of mining operations in their ancestral territories. Continuous capability building and information dissemination efforts were undertaken to ensure community participation in both legal and metalegal strategies to achieve the said goal.

One has to take note of the fact that mining companies have also shifted their approaches to achieve their economic objectives. On one hand, they have resorted to information dissemination to promote the importance and interests of mining. On the other hand, more aggressive approaches have been resorted to, which pose threats to the local community, from name-calling and labeling, to restricting access to areas where support groups work to allegations of criminal activities through rumors circulated locally. Military and other law enforcement operations protect mining in most communities and usually result in human rights violations against local leaders and community residents. Several military operations in Sultan Kudarat FTAA area have been documented and reported to concerned government agencies including the Commission on Human Rights. These incidents were also reported to the United Nations Special Rapporteur on Indigenous Affairs during the December 2000 visit. Also, the deployment of community relation personnel by mining companies, which are mobile and have access to more resources, challenges local organizing. Community leaders and local support groups are also under pressure to provide livelihood support to counter the "financial assistance" mining supporters is getting from mining companies.

WMC Philippines, Inc. wrapped up its exploration activities within the Columbio FTAA area towards the end of the year 2000 blaming the move to low prices of minerals in the world market, the unfavorable and unpredictable policy environment brought about by the petition on mining lodged at the Supreme Court, and the passage of the Indigenous Peoples Rights Act of 1997. However, it was reluctant to admit that local community opposition and its failure to secure consent from other host communities were part of the reasons for its closure.

Against this scenario, the advocacy to protect the human rights of the indigenous peoples must continue towards strengthening community organizing and capability

building efforts thus: (1) monitor, document and prosecute incidents of human rights violations in communities targeted or hosting mining operations, (2) attract media attention to community issues and concerns, address the issues raised by the mining industry campaign, (3) reject the proposed national mineral policy which fully supports large-scale mining as a solution to poverty without addressing the issues raised by the communities and advocates for indigenous peoples and the environment, and (4) bring the local issues into the national arena.

Recently, the Supreme Court ruled that FTAA is unconstitutional and rendered several provisions in the mining act unconstitutional<sup>18</sup>. While triumph has been achieved in the judicial arena, and perhaps despite the decision, indigenous peoples, advocates and support groups will not rest and will continue with the struggle against dislocation and disempowerment of indigenous peoples caused by highly powerful and resource-rich entities in the name of development, given the existing societal context.

### In Defense of Human Rights

The ALG also rise to defend human rights in the face of challenges that render inutile or defeat the people's fight for social justice.

### Defending Indigenous Peoples' Human Rights<sup>19</sup>

In 1997, Republic Act No. 8371 or the Indigenous Peoples Rights Act (IPRA), was enacted to recognize and promote all the rights of Indigenous Cultural Communities/Indigenous Peoples<sup>20</sup>. In 1998, a constitutional challenge was raised against the said law filed by former Supreme Court Justice Isagani Cruz and lawyer Cesar Europa on the following grounds<sup>21</sup>:

1. IPRA's provisions on ancestral lands and domains (secs. 3 (a) & (b), 5-8, 57-58) are unconstitutional, insofar as they conflict with

- the Regalian Doctrine of State ownership of all lands of the public domain and natural resources, and may deprive landowners of their private rights to their lands;
- 2. The powers of the National Commission on Indigenous Peoples (NCIP), the governmental agency primarily tasked with implementing IPRA, and the use of customary laws in the settlement of disputes would amount to a deprivation of due process as to non-indigenous peoples (secs. 51-53, 63, 65-66);
- 3. IPRA's implementing rules are unconstitutional insofar as it characterizes the relationship of the NCIP to the Office of the President as "lateral but autonomous" (NCIP Administrative Order No. 1 (1998), Rule VII. Part II, sec. 1).

The respondents were directed to submit their comments; the Chairman and Commissioners of the NCIP, assisted by the Ateneo Human Rights Center (AHRC) defended the constitutionality of the IPRA while the Secretaries of Environment and Natural Resources and Budget and Management, represented by the Solicitor General, agreed in part with the petitioners respecting the unconstitutionality of the law insofar as it grants ownership over natural resources to indigenous peoples.

Three groups of intervenors were allowed to intercede,  $namely^{22}$ :

1. Around a hundred representatives of indigenous peoples communities, together with Sen. Juan Flavier, 1986 Constitutional Commissioner, Prof. Ponciano Bennagen and other indigenous peoples' support groups, assisted by the Legal Rights and Resource Center, Inc. (LRC), defending the constitutionality of the law, and stating, among others, that the Constitution allows ownership of

- ancestral lands and domains, including all natural resources therein.
- 2. The Commission on Human Rights, which also moved to act as Amicus Curiae, asserting that the IPRA is an expression of the principle of parens patriae, and that the State has the responsibility to protect and guarantee the rights of those who are at a serious disadvantage like the indigenous peoples.
- 3. The Ikalahan Indigenous People and the Haribon Foundation for the Conservation of Natural Resources, Inc., (Haribon) stating that the IPRA is consistent with the Constitution.

Three members of the ALG assisted the public respondents and the indigenous peoples who were intervenors: AHRC, LRC and Tanggol Kalikasan, which was the legal arm of Haribon.

The constitutionality of the IPRA was upheld in view of the failure of the Court en banc to gain the needed majority to hold it unconstitutional with an equal 7 (to dismiss petition) -7 (to grant petition) voting.

Against the constitutional attacks, and while it may vary with each other in small degree, the ALG arguments proved to be consistent in defending the human rights of the indigenous peoples and posited well-articulated doctrines of law to support the constitutionality of the IPRA, particularly on the nature and legal bases of ancestral domains, grounded principally on the Cariño doctrine, wherein the Supreme Court has ruled that ancestral domains are land areas held since time immemorial by indigenous peoples and are therefore not part of the public domain<sup>23</sup>. *Table 1* and *2* on page 70-71 portray a matrix of the ALG comparative positions.

On the other hand, the Supreme Court, though divided, had the opportunity to elaborate and discuss the contested

Table 1. ALG comparative positions: substantive aspects.

Substantive Aspects		AHRC/NCIP	LRC	IKALAHAN/ HARIBON
1.	Sec. 3(a) - Ancestral Domain (AD) Sec. 3(b) - Ancestral Lands (AL)	CARINO	CARINO (ownership sui generis)	CARINO
2.	Sec. 5 in relation to Sec. 3(a) - ADs are private, but community property of IPs	CARINO	CARINO	CARINO
3.	Sec. 6 in relation to Secs. 3(a) & (b) - composition of ADs & ALs	CARINO	CARINO	CARINO
4.	Sec. 7 - IP rights over ADs	CARINO (not NCC) A12, S.5	CARINO (not NCC) A12, S.5	CARINO (not NCC) A12, S.5
5.	Sec. 8 - IP rights over ALs	CARINO	CARINO	CARINO
6.	Sec. 57 - Priority rights of IPs in development & exploration of natural resources within ADs	(HARMONIZE) BALANCING OF INTERESTS	IP with vested rights over natural resources	PREFERENTIAL RIGHTS (consult IPs)
7.	Sec. 58 - Responsibility of IPs to conserve ADs		PART OF ECOSYSTEM	

TABLE 2. ALG COMPARATIVE POSITIONS: PROCEDURAL ASPECTS.

Pro	ocedural Aspects	AHRC/NCIP	LRC	IKALAHAN/ HARIBON
1.	Secs. 51-53 & 59 - NCIP to delineate & recognize ADs & ALs	VALID WITH DUE PROCESS	VALID PRIVATE PROPERTY PROTECTED	VALID
2.	Sec. 52(i) - termination of jurisdiction of DENR, DILG, DOJ, NDC upon NCIP certification of AD	NO INFRINGEMENT	VALID	
3.	Sec. 63 - customary law & IP practices & traditions to be applied first in settlement of land disputes	VALID	VALID USE OF CUSTOMARY LAW	VALID
4.	Sec. 65 - customary laws & practices for resolution of disputes	VALID	VALID	VALID
5.	Sec. 66 - NCIP has jurisdiction over all claims & disputes involving IP rights			

issues of ancestral domain and ownership of natural resources in favor of the indigenous peoples as articulated in the IPRA. Noteworthy are the legal ratiocination of Justice Puno and Kapunan. *Table 3* (see insert) is a matrix of the comparative positions of selected justices.

The case was an opportunity to articulate human rights concepts and principles in the light of the prevailing social context of the indigenous peoples and highlights the significance of strategic researches on public interest law concerns, which ALG may share and promote among the different stakeholders for a deeper understanding of the context and content of human rights of sectors. Further, networking and linkages must include the justice system, to reach out to judges and justices who are willing to learn and listen to ALG arguments, particularly on human rights.

#### Defending Public Participation Against SLAPP Suits<sup>24</sup>

SLAPP, or Strategic Litigation Against Public Participation, is not new in the Philippines. Anti-SLAPP provisions have been recently included in two laws: the Clean Air Act and the Solid Waste Management Act. It is not yet considered, under procedural rules, as a ground for a Motion to Dismiss. It has been used even before to prevent and curtail the full participation of grassroots communities in asserting their rights.

SLAPP has been defined as (1) a civil complaint or counterclaim (for monetary damages and/or an injunction); (2) filed against non-governmental individuals and/or groups; (3) because of their communications to a government body, official, or the electorate; and (4) on an issue of some public interest or concern.<sup>25</sup> SLAPP suits are meritless actions, filed by private interests to stop citizens from exercising their political rights or punish them for having done so. Its main objective is to remove parties from the political arena where decision making are involved and force them into the judicial arena where only effects of the dispute are adjudicated, thereby creating a "chilling effect" not only

upon the SLAPP defendant, but also upon the other members of the community. Two cases being handled by LRC, pending before the courts, best explain the nature of SLAPP.

In Quezon, small landowner-farmers were made to sign a Right of Way Agreement, where, in exchange for a small amount of money, they would allow a certain power company to pass transmission lines over their lands. Later, due to organizing and capacity building efforts, the small landowners began to understand the adverse effects that a coal-fired power plant would have on the environment. Hence, they protested its construction and the passing of transmission lines over their land.

The power company filed cases for specific performance, which were withdrawn, and in its stead, expropriation proceedings were instituted which was granted. Even after the full construction of the power plant, the power company continued to file suits, this time for damages, against the small landowners who participated in the protest actions and to those who defended against the expropriation suits. These suits were filed not in Mauban, but in Makati, which is the residence of the power company. The damages being sought from the landowners run in the million of pesos (e.g., 17,353,000.00 against one defendant), which comprise mainly of attorney's fees.

The effect of the cases upon the small landowners cannot be belittled. It is beyond all comprehension and sensibilities that a small landowner, whose sole means of subsistence is farming, will be hailed to court to answer for a million-peso suit merely because it has asserted its right to protect his or her habitation. Further, the case has exerted a heavy toll on the organizing and capacity building efforts for the poor and marginalized farmers.

In another case, a case for declaratory relief, damages, and injunction was filed against LRC community partners in Oriental Mindoro, a water district sought to enjoin barangay captains and other "John Does" from opposing

the construction and operation of a new well in one barangay. The communities protested the project because the construction of the new well would greatly affect its use of the water resources. The communities assert that they should retain control of their traditional sources of water, protect the aquifer from saltwater intrusion and contamination, and preserve the good quality of their water in accordance with the Water Code. The water district, the sole provider of water services to 21 urban barangays, is known for its poor services and poor water quality.

The water district alleged in its complaint that members of the community members threatened bodily harm on the workers, thus the contractor could not proceed out of fear of reprise. The threat is proven by placards/posters on the trees and the camp set up near the well. The water district sought damages in the amount of Php 620,000.00 and an order of injunction restraining the community from further opposing the construction of the well and its operation. The trial court issued the writ of preliminary injunction. The case has been submitted for decision.

To put up the necessary defense against the suit, some of the barangay captains were forced to shell out a huge sum in order to secure the services of private lawyers. The "chilling effect" was apparent in the decline of participation of community members in the protest actions.

While SLAPP suits are essentially without merit, its mere filing is enough to discourage community members from further opposing the development projects which did not allow the participation of the community in its formulation and implementation.

On the other hand, victory in SLAPP suits is also pyrrhic; winning the SLAPP suits, for instance, will not halt the construction of the project and defending it will result in diverted efforts and resources.

SLAPP is essentially denying the poor and marginalized access to justice because its main goal is to destroy the capacities and resources of communities and its support groups in asserting their human rights, by taking advantage of the inherent weaknesses of the judicial system.

The limited recognition of SLAPP suits in the laws provide an opportunity for advocates, including ALG, to articulate its nuances and dynamics to decision and policy makers, especially taking into account the social context aspect of this kind of suits. Further, legislation must define what SLAPP suits are as differentiated from legitimate suits. Since the goal of any SLAPP suit is to silence the critics, then the processes must consider resolution thereof with dispatch to avoid further dissipation of community capacities and resources.

#### Defending in the Context of a People-Led Campaign<sup>26</sup>

The case of the MAPALAD farmers from San Vicente, Sumilao, Bukidnon, highlights the inability of the legal system to free the farmers from their bondage to the land they till as mere tenants and to bring about social justice for the farmers. Despite the award by the Department of Agrarian Reform (DAR) of Certificates of Land Ownership and Acquisition (CLOA) covering the 144 hectares of agricultural property owned by the Norberto Quisumbing Sr. Management and Development Corporation (NQSMDC), the MAPALAD farmers did not become owners thereof. In 1990, the DAR served a Notice of Coverage on the NQSMDC involving the above-mentioned property in Bgy. San Vicente, Sumilao, Bukidnon. NQSMDC opposed actions by the DAR and succeeded in suspending the proceedings until the expiration of the lease contract with Del Monte Philippines, Inc. On 7 January 1993, the Bukidnon Provincial Development Council (PDC) passed 3 Resolutions, which adopted the proposed Bukidnon Agro-Industrial Development Area. The Sangguniang Bayan of Sumilao, Bukidnon passed a Resolution "converting" the above-mentioned property from agricultural to industrial/insitutional, which action was affirmed by the Sangguniang Panlalawigan of Bukidnon. On 11 December 1992, the BAIDA filed an application for conversion of the subject landholding. DAR denied the same because the above-mentioned properties were covered lands which were non-negotiable for conversion under DAR Administrative Order 20, s. of 1992. The decision was affirmed by DAR Secretary Ernesto Garilao.

On 12 October 1993, the Provincial Development Council of Bukidnon approved the proposed project of NQSMDC.

On 13 October 1995, the DAR proceeded with its actions, culminating in the registration of a CLOA in favor of the members of the MAPALAD multi-purpose cooperative in the Register of Deeds of Bukidnon. Gov. Carlos Fortich of Bukidnon wrote a letter to then Executive Secretary Ruben Torres who promulgated a Decision which reversed the denial by the DAR Secretary. DAR filed a Motion for Reconsideration but this was dismissed by the Office of the President for having been filed six days beyond time.

In the meantime, NQSMDC filed a case before the Regional Trial Court for cancellation of CLOA of the MAPALAD farmers. Some of the MAPALAD farmers who became part of the paralegal formation program known today as the PESANTEch program, which is co-implemented by BALAOD Mindanaw (Balay Alternative Legal Advocates for Development in Mindanaw), KAISAHAN Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan and SALIGAN (Sentrong Alternatibong Lingap Panlegal), reported said case filed against them and their fellow farmers to their ALG partners. A campaign led by the farmers was initiated to realize the farmers' ownership of the land they till in the face of powerful forces that work to render nugatory their legally vested rights.

An attempt to occupy the land by virtue of the CLOA was made by the farmers in May 1997, but they were forci-

bly driven away by the NQSMDC security. The farmers, who are members of the Higaonon tribe of Bukidnon, thereafter waged simultaneous hunger strikes or "lugol" before the DAR office in Quezon City and in downtown Cagayan de Oro City. "Lugol", a high form of protest of the Higaonon culture, was the natural choice for the MAPALAD farmers and became the key element of the campaign. By reason of the "lugol", attention and support was generated from various sectors of society - the urban poor groups, labor unions, women's organizations, and other sectoral formation, politicians, actors, clerics, the laity, the youth and the elderly.

The campaign could not be ignored and on 7 November 1997, then President Fidel Ramos issued his Win-Win Resolution, ordering a modification of the Torres Resolution, whereby the 144 hectare land was divided into two parcels measuring 44 and 100 hectares. The first parcel was for the proposed conversion and development by NQSMDC while the larger parcel was to be awarded to MAPALAD.

The resolution was acceptable to the farmers but not to the Quisumbings and Fortich, who then turned to the Supreme Court (SC), questioning the Win-Win Resolution. Initially, the Court dismissed the case but was reinstated upon a Motion for Reconsideration by Fortich, et al. The petition was crafted to highlight the supposed issues of local autonomy and the Constitutionality of farm workers owning land. The Court's First Division vacated the Win-Win Resolution of the President and reinstated the Decision of the Executive Secretary. The Court did not rule on the more substantial issues relating to autonomy, non-negotiability for conversion, farmworkers and their rights, etc. Instead, the Court grounded its decision on a technicality, i.e., inasmuch as the DAR's Motion for Reconsideration before the OP was filed out of time, the subsequent modification by President Ramos through the Win-Win Resolution was therefore a nullity.

The farmers, on the other hand, fought for the right to intervene in the said case, considering that they are proper parties, who shall be greatly prejudiced by the decision. This time, the farmers carried their struggle to the SC by setting up camps outside the building, staged rallies, and appealed for letters of support The High Court responded by banning rallies and mass actions within a 200 meter radius of any court. The Court eventually denied the intervention by the farmers and reconsideration of the decision.

The case of the MAPALAD farmers draws to the fore how justice treats the cause of the poor and marginalized and how the legal structures are being used by the powerful to impinge upon social justice.

First, the Court inhibited itself from substantial and fundamental issues that impact on social justice and access to justice concerns of the poor and marginalized, e.g. local autonomy, agrarian reform, the jurisdiction of courts, the land registration system, etc. Whatever happened to "relaxing technical rules in the interest of substantial justice?" One has to take note that the Court has chosen to overlook serious technical breaches on the part of Fortich: the supposed reclassification of the land was done through a Resolution and not an Ordinance as required by RA 7160; Fortich a non-party to the application for conversion, appealed the denial of the application for conversion to the Office of the President; the appeal was made through a letter; and, the SC reinstated Fortich's Petition (which it had earlier dismissed) in the interest of substantial justice.

Secondly, "the humanity of judges and justices seeps through the veneer of dispassionate adjudication" where the court's reaction to the exercise of freedom of expression, its remaining weapon in parrying the injustice being perpetrated upon it, is to curtail the same. Judges and justice more than being impartial, must use their humanity to advance not only justice but social justice as well, rather than frustrate it for they too are duty-holders in the pro-

motion and protection of human rights of the poor and marginalized.

Finally, the MAPALAD case focuses the ever-growing complaint of the poor and marginalized on the capacity of the judiciary to understand their concerns and issues. The instant case revealed that judges and justices have to learn agrarian reform law (and most likely other social justice legislation). A Court of Appeals Justice who heard arguments on the propriety of the issuance of a TRO, even asked "Why, can cooperatives now be agrarian reform beneficiaries? I thought this law is only for tenants in rice and corn lands?" obviously referring to an old agrarian reform law passed in 1972. Also, the Regional Trial Court said that cancellation of CLOA is within their general jurisdiction, the document being a title, despite the cause of action being an agrarian dispute, which is within the exclusive jurisdiction of the DARAB.

But more than the failure with the SC, the MAPALAD case is a success on a different front. The campaign of the MAPALAD farmers proves that mass-based and grassroots initiatives work. The MAPALAD case began not because of lawyers and formal legal institutions, but by the organization's paralegals entrusted with the task of finding a solution to the legal problem at hand. In this campaign, paralegals were at the forefront. They gathered evidence, interviewed persons, strategized with the organization, drafted documents, etc. The campaign was undertaken and decisions made, including the conduct of the "lugol", under the leadership of the farmers.

Multi-sectoral involvement creates a genuine network, needed to develop the critical base that would convince and influence policy and decision makers, in the enforceability of sectoral human rights.

The campaign reaffirms the principle that legal and meta-legal tactics go hand in hand. The cause advanced by the farmers has solid legal grounding, enough to influence the president to issue Win-Win resolution, buttressed by the overwhelming support and participation of the its constituents.

The campaign's effect has rippled - some of the MAPALAD farmers were eventually awarded land in a 66-hectare property known as the Carlos Estate, a law was enacted extending the implementation of CARP, with the corresponding budget. Other farmer groups started their own campaigns on the coverage and distribution of big landholdings in the Philippines, and even adopted the name of MAPALAD in their campaign.

What was the impact of the SC decision? The MAPALAD farmers celebrated their 1997 hunger strike anniversary with great abundance of crops and produce from their farmland, "a testament to the willingness, capability and sincerity of the farmers to be deserving beneficiaries," right beside the land that was denied them by reason of a technicality. The land is undeveloped and barren, with few structures sporadically erected, without any economic activity which was supposed to create the jobs "for the people of Bukidnon", and surrounded by a barbed-wire fence- a grim reminder of another case of social injustice.

Accessing International Human Rights Redress Mechanisms<sup>27</sup>

The actions of the Philippines, which amounts to a violation of civil and political rights can be raised before the Committee on Human Rights (UNCHR) of the United Nations under the system of individual complaints, since it is a signatory to the International Covenant on Civil and Political Rights and its Optional Protocol. In two cases concerning death penalty convicts, the Free Legal Assistance Group has availed of this mechanism after it exhausted national remedies.

The first case is Piandong, Morallos and Bulan, v. Philippines under Communication No. 869/1999<sup>28</sup>. The imposition of death penalty upon Piandong, et. al., was affirmed

by the Supreme Court. After the finality of the decision, counsels for Piandong sought clemency from the President of the Philippines, which was denied. Having exhausted all national remedies, counsels for Piandong, et. al., brought the matter to the attention of the UNCHR. Immediately after receipt of the communication from Piandong's counsel under the Optional Protocol, the UNCHR transmitted a communication to the Philippines requesting for information and observations respecting the case of Piandong, et.al., and further requested that, under Rule 86 of the Committee's Rules of procedure, the death sentence not be carried out against Piandong, et. al., while their case was under consideration by the Committee. Despite the request, a warrant for the execution of Piandong, et. al., was sued. Also, despite representations made by the Committee with the appropriate governmental agencies, the death sentence by lethal injection on Piandong, et.al., was carried out in the afternoon of 8 July 1999.

The Committee's resolution, known as Views, after having considered the admissibility of the communication, refrained from ruling on the claims by Piandong, et.al, that there was violation of due process relating to the identification of the accused in a line-up as well as in-court identification, ill-treatment upon arrest, evidence presented and credibility of eyewitnesses, as well as on the issue of the constitutionality of the death penalty vis-à-vis the State's obligation under the involved covenant. Rather, it focused its attention on the grave breach of obligations committed by the Philippines under the Protocol by putting the alleged victims to death before the Committee had concluded its consideration of the communication at hand. It states that:

" x x x Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual. x x x  $\times$ 

Quite apart, then, from any violation of the Covenant charged to a State party in a communication, a State party commits grave breaches of its obligations under the Optional Protocol if it acts to prevent or frustrate consideration by the Committee of a communication alleging a violation of the Covenant, or to render examination by the Committee moot and the expression of its Views nugatory and futile. x x x"

Carpo vs. Philippines, Communication No. 1077/2002<sup>29</sup>, also involves a communication with the UNCHR seeking a finding that the Philippines violated its obligations under the covenant.

The communication was sent by the accused themselves, Jose Carpo, Oscar Ibao, Warlito Ibao and Roche Ibao, assisted by counsel. They argue that the re-imposition of the death penalty and its application to them is inconsistent with the first sentence of article 6, par. 2 of the CCPR, permitting the imposition of the death penalty on States "which have not abolished the death penalty."

The Committee did not squarely rule on the arguments propounded by the authors of the communication. It however declared that the mandatory imposition of the death penalty constitutes arbitrary deprivation of life, in violation of article 6, paragraph 1 of the CCPR in specified circumstances. The Views held that:

"xxx The Committee notes that the offence of murder in the State party's laws entails a very broad definition, requiring simply the killing of another individual. In the present case, the Committee observes that the Supreme Court considered the case to be governed by article 48 of the Revised Penal Code, according to which, if a single act constitutes at once two crimes, the maximum penalty for the more serious crime must be applied. The crime committed by a single act being three murders and an attempted murder, the maximum possible penalty for murder - the death penalty - was imposed automatically by operation of the provisions of the article 48. The Committee refers to its jurisprudence that mandatory imposition of the death penalty constitutes arbitrary deprivation of life, in violation of article 6, paragraph 1, of the Covenant, in circumstances where the death penalty is

imposed without regard being able to be paid to the defendant's personal circumstances or the circumstances of the particular offense. It follows that the automatic imposition of the death penalty upon the authors by virtue of the Revised Penal Code violated under article 6, paragraph 1 of the Covenant. xxx"

The Committee further held that "(i)n accordance with article 2, paragraph 3 (a) of the Covenant, the State party is under and obligation to provide the authors with an effective and appropriate remedy, including commutation. The State party is under an obligation to avoid similar violations in the future."

Resort to the mechanism of individual complaints, particularly in the case of Carpo, et.al, has resulted in the stay of execution. Communication to the UNCHR is simple, inexpensive and speedy. A form is provided and the same can be sent by ordinary mail.

The Views of the UNCHR are a public declaration of breach committed by the Philippines. The Views propound on the application of human rights articulated in the covenants, which would contribute to a deeper understanding of the meaning of human rights as applied to a particular context. While some would argue that Views have no binding effect on domestic decision making, it has a persuasive effect at the very least, and thus can be used to incorporate international human rights jurisprudence into local case law.

Further, the mechanism provides an opportunity to show gross and systematic violations of human rights under the CCPR to secure more drastic measures from the Committee. It is a pressure tool on the part of the communities to consider.

Finding an Alternative to Judicial Litigation through Administrative Adjudication by the LGUs in Coastal Environment Cases<sup>30</sup>

Judicial adjudication, while it supposedly provides the coercive force to deter offenses for violations of fishing laws, may prove ineffectual in the light of very practical considerations that confront far-flung areas, like the Calamianes Group of Islands in the northern portion of Palawan, where the fishing grounds have been described as in a state of severe depletion. The Environmental Legal Assistance Center, Inc. (ELAC) monitored and studied the difficulties and weaknesses of pursuing the offenders of laws on cyanide and dynamite fishing before the courts in said area between the years 1999-2002.

Based on an estimated 225,983 cyanide and dynamite fishing incidents from 1999-2002, only 14,037 were detected by the law enforcers and the communities, due to the lack of equipment and personnel to effect the monitoring as well as the lack of coordination and poor prioritization among enforcement agencies. Of the 14,037 detected incidents, only 40 arrests were made (28 percent), again due to lack of equipment (e.g. lack of patrol boats and an efficient communication system); the absence of civil support as reasons for their inability to actually arrest the violator; and the unavailability of free legal defense against harassment suits. The data on the arrest is however suspect, since corruption is a factor that has to be considered.

Only 34 cases were filed out of the 40 arrests conducted (85 percent) due to the unavailability of MCTC judge to conduct inquest or preliminary investigation, since the judge hold multi-salas; and the difficulty of filing cases with Office of the Provincial Prosecutor in Puerto Princesa City, which is on the southern side of Palawan. Of the 34 cases filed, only 21 cases reached the court due to poorly prepared complaints and incompetent public prosecutors. Finally, of the 21 cases filed, there were only 5 convictions, all of which did not entail jail time. The identified reasons were high rate of cases being archived, overburdened courts

which result either in undue haste in the resolution of the cases of protracted litigation, the lack of experience of Chiefs of Police in litigation, who take over the job of the absent public prosecutor and waning interest of complainants and witnesses due to the delay in the proceedings.

The above scenario typically portrays the inherent ills of judicial dispensation of justice. At the same time, the impracticality and ineffectiveness of the punishment provided by the law facilitate, rather than deter, violations of the fishing code. The penalties imposed do not pose a deterrence to illegal fishing. The net enforcement disincentive is negative where the net expected value of penalty per trip for an illegal fisher is only Php 461.00 compared to the expected net income from cyanide and dynamite fishing per trip, which is about Php 4,084.00 and Php 2,973.00, respectively. This factor militates in favor of the illegal fisher to avail of plea bargaining to mere possession of illegal fishing paraphernalia or availing of probation.

The foregoing considerations constrain one to look at other venues, which are cost effective, efficient, swift and fair than the judicial system to contribute to the enforcement of fishing laws. Administrative adjudication by the local government units is an alternative that is being proposed which is not meant to supplant the judicial course of action. RA 7160 allows LGUs to pass "...ordinances for the protection of coastal and marine resources and imposition of appropriate penalties for dynamite fishing and other activities which result to...ecological imbalance." The provision necessarily includes the establishment of an administrative mechanism to mete out penalties in cases of violations of ordinances that protect the environment.

The challenge to the LGUs is to formulate creative and innovative enforcement mechanisms having in mind the limits provided under the present legal system such as the inability of the LGUs to assign jail time penalties in cases of administrative proceedings, the constitutional requirement of "due process", appointment of local experts or

members of society whose probity are beyond reproach, establishment of technical laboratories to immediately provide the needed evidence, and issue of political jurisdiction, among others. The LGUs, as a forum for administrative remedies, are the more accessible and visible mechanism than the courts and quasi-judicial bodies. The task, however, lies in capacitating the LGUs in its role as a potent and crucial body in adjudication and provision of legal support and redress mechanisms to address environmental concerns.

Provision of legal advice to the poor and marginalized is not circumscribed within the traditional concept of a lawyer-client relationship. Experiences of alternative lawyers, in general, validate the significance of organizational unity and capacity building in pursuing justice, to enable the lawyer and the partner arrive at mutual understanding, influencing and management of the case. In this sense, organizing becomes a crucial aspect of ALG direct legal services. The organized strength of the poor and marginalized enables them to put pressure on local agencies to implement and enforce the laws as well as safeguard their victories. Furthermore, networking with other people's organizations brings about common and deeper understanding of each other's plight as marginalized groups under the current legal system.

#### **Public Interest Litigation in the Philippines**

From a strategic point of view, the public interest litigation experience in the Philippines embodies most of the features from the US public interest litigation experience described in the early part of this article. The cause of action normally relates to the official actions of public servants challenged as being violative of the Constitution and other laws, to change future actions of said public servants.

While in the US experience, the court is seen as a leader in the greater context of attaining justice for the benefit

of the public, the Philippine public interest litigation views the court, as well as quasi-judicial bodies, as actors in a bigger social reform advocacy for the poor and marginalized, the judiciary being held accountable in the context of governance. The courts and quasi-judicial bodies are seen as venues to engage the judiciary and the executive in human rights discourse, to popularize and advocate for the human rights of the poor and marginalized.

The case studies reveal that the ALG and other developmental lawyers approach legal problems and issues in an integrated manner, again in the realm of reform and empowerment. Litigation is a strategy which addresses the ideological and advocacy purpose.

In the vagrancy law, the attack on the constitutionality of the provision on vagrancy was raised to the court to question the illegal arrests on women streetwalkers, an action by the law enforcement agencies that impinge on women's rights.

A case for child prostitution under RA 7610 was filed for the first time to generate the needed public interest on the problem and to raise awareness on the rights of the child

The Postinor case was filed to check on the actions of the regulatory body on the access of women to safe and efficient birth control drugs, in relation to women's right to health

Intervention in the IPRA case was undertaken to ensure that the entitlements guaranteed the indigenous peoples in the law would be protected, after years of struggle for the recognition of their rights, particularly their right to ancestral domains.

Involvement in suits filed against individuals who assert their rights is a necessary and direct result of the capacity building efforts on communities.

Intervention by the peasants in the MAPALAD case brought to the level of the courts the issues of agrarian reform and the rights of farmers.

The direct attack on the constitutionality of the mining act was made imperative by the imminent dislocation of indigenous peoples and the havoc on the environment brought about by large-scale mining, and directly questions the developmental direction of the State.

Availing of international mechanisms for redress brings the local human right issues to an international forum, and serves as a check on State action in relation to their international human rights obligations and commitments.

Public interest litigation is not seen as an end in itself. It is part of a bigger empowerment and development campaign for the poor and marginalized where the role of the people is the crucial component in influencing State political, economic and social directions. Hence, the client-partner community is capacitated to take on the task of bringing its societal context and human rights to the attention of the duty-holders, i.e., the State actors, through organizing, education and advocacy initiatives.

A deeper understanding of human rights in the local context is enabled in the articulation of human rights principles and norms before the courts and quasi-judicial bodies, despite the conservatism of courts to use international human rights law and jurisprudence to the legal problems of the poor and the marginalized.

Lastly, public interest litigation in the Philippines seeks to contribute to the reform efforts on access to justice through monitoring progress of cases and the factors that impact on the administration of justice. The Cyanide and Dynamite case monitoring demonstrates the need to pursue alternative approaches to issues concerning the environment, and not to rely exclusively on the courts and administrative bodies to adjudicate controversies.

To summarize, public interest litigation in the Philippines, particularly in the context of the ALG experience, is pursued to address three purposes: (1) the strategic or practical, (2) ideological or advocacy, and (3) structural or system reform-oriented.

#### **Conclusions and Recommendations**

Public interest litigation must and should be pursued from a developmental perspective, towards the empowerment of the people and attainment of structural reform. The case studies reveal that it is high time to look at antiquated laws in the light of prevailing legal norms of human rights. Human rights principles, norms and even legalese must be mainstreamed in the local laws and jurisprudence, particularly the consideration of societal context in the interpretation and enforcement of laws. The rule of law, as zealously upheld by the courts, must include international human rights principles.

To further enrich the discourse on public interest litigation, more research must be undertaken to gain deeper understanding of its evolution and framework within the Philippine experience. Popularization of initiatives and successes relating to public interest litigation must be undertaken, to bring to the popular arena the larger role of adjudicative bodies in the bigger realm of social reform. Stakeholders must be involved in the development of public interest litigation in the Philippines to ensure access to justice of the poor and marginalized.

For so long as people continue to be poor and marginalized, the strategic role of public interest or test case litigation will not wane, and in fact, will gain greater significance in the light of continuing violation of human rights. The ALG continues to be an actor and a stakeholder in the realization and strengthening of human rights, development and democracy in the Philippines.



# Findings: Baseline Study on ALG Initiatives

# Findings: Baseline Study on the Initiatives of the ALG

JOEVEN D. DELLOSA

The Alternative Law Groups, Inc., in consolidating the justice reform agenda of the poor and the marginalized, addresses two broad fronts—formulating a concrete agenda for justice reform from the interests and advocacies of the poor and the marginalized on the one hand, and preparing and strengthening the coalition to better respond to the challenges of its justice reform advocacy on the other hand. Towards the end of sharpening its justice system reform advocacy, ALG embarked on studies that will enable it to view the various facets of legal and judicial reform. This includes the baseline study on the capacity of the Alternative Law Groups, Inc. that looked into the various initiatives of ALG and its member-institutions.

This article reports on the result of the *Baseline Study* on the *Initiatives of ALG and its Member-Institutions*, a survey undertaken by the Project Support Team of ALG under the JURIS Project.<sup>1</sup> The study was conducted by the Project Support Team of the ALG-JURIS Project between August and November 2003.<sup>2</sup>

The writer is a second year student of the Faculty of Civil Law of the University of Sto. Tomas. He is the legal researcher of the ALG-JURIS Project.

#### Rationale and Objectives

During the past fourteen years, the Alternative Law Groups, Inc. undertook initiatives aimed at strengthening its capacity as a coalition of legal resource centers engaged in developmental legal assistance or alternative practice of legal aid. The network-wide activities involved the articulation and promotion of human rights, alternative lawyering and sectoral issues and concerns as well as the implementation of network-specific issues such as sustainability and development of public interest lawyering. Individual member-institutions also embarked on strategic interventions in relation to their specific and distinct programs that addressed sectoral issues and concerns in partnership with their communities. A study on the current capacities of ALG as a network is deemed opportune as it establishes a baseline data on the competencies of ALG as a network which can very well rationalize its interventions under the JURIS project. In addition, quantifying the capacity of the ALG in direct legal services, education, research and publication, law and policy reform, internship as well as in organizational management, aids in the setting of strategic goals of Alternative Law Groups in enhancing its faculty to advance the interests of the poor and the marginalized.

The study pursues the following objectives:

- Determine the current profile of ALG member-institutions;
- Determine the current capacities of ALG, Inc.;
- 3. Identify key result areas that are determinant of the capacities of ALG and its member-institutions; and
- Create a database on ALG's and memberinstitutions' strategic interventions on access to justice-related issues and concerns of the poor and marginalized groups.

Prior to this study, there already existed initial data on the profile of the Alternative Law Groups and its memberinstitutions.

In April 2003, Prof. Marvic M. V. F. Leonen, former Executive Director of the Legal Rights and Natural Resources Center Inc.-Kasama sa Kalikasan/Friends of the Earth-Philippines (LRC-KSK/FoE-Phils.), executed a brief initial profiling of the Alternative Law Groups and the individual member-institutions of the network.

Prof. Leonen's paper outlined the history of ALG, Inc. and chronicled its initiatives and interventions in protecting and promoting public interest and human rights of specific marginalized sectors. It also presented a compendium of policy advocacies of ALG in the executive, legislative and judicial branches of the government as of April 2003. The data was collated using survey forms distributed to organizations which were filled in by the Executive Directors of the various institutions.

Likewise, the study presented an individual profile of the institutions belonging to the ALG Network. These profiles detailed the programs and initiatives of each organization in specific sectors. It also identified the perceived strengths and weaknesses of the institution.

#### Overview of the Study

To achieve the set goals of the study, the Project Support Team conducted initial brainstorming sessions in order to identify the key result areas that will be looked into in the survey.

The following components of ALG work were identified as key result areas wherein the capacity of the network can be empirically measured: Direct Legal Services, Education, Law and Policy Reform Advocacies, Research and Publication, Internship, Networking and Organizational Matters.

The identified indicators in each component include the presence (or absence) of services and activities in each area, integration of gender concerns in the provision of each program, the existence (or lack) of a system of monitoring and evaluation of services offered, and the extent of participation of the institutions' partners in the various activities in the identified areas, among others.

An initial survey to determine the current profile of the members was subsequently conducted. The result of the survey was used as a springboard to enumerate particular indicators and key determinants of capacity. The exhaustive list was used in the formulation of a second set of survey instrument for the quantitative study.

The second survey (quantitative phase) was conducted between October 14 and 25, 2003. A set of self-administered questionnaire was sent to sample respondents and the results were tabulated and analyzed.

The target sample was one hundred (100) respondents, this, in order to yield a margin of error of + 10%. The actual sample size was seventy-seven, with a margin of error of + 11%.

Simple random sampling was employed. Fourteen out of seventeen organizations were represented and the tar-

get sample of 100 was distributed proportionately. Proportionate distribution means that the bigger the organization is, i.e., the greater the membership is, the more respondents are chosen from the organization. The Executive Directors were given priority in the selection of the respondents. This is based on the premise that the Executive Directors are the best respondents since they are presumed to be more knowledgeable of the activities and programs of the institution.

Three major questions were asked of the respondents. First, they were asked to rate the importance of identified indicators of an effective ALG member-institution. Second, using a scale of 1 to 10, the latter being excellent and the former being poor, the respondents were asked to rate the capacity of their institution with respect to the enumerated indicators that they gave "importance rating" to in the first section. Finally, the respondents were asked to give an over-all rating on the capacity of their institution in relation to the identified indicators of capacity.

The results were then plotted in quadrants. The attributes that were given a high importance rating and high capacity rating fell under the first quadrant or the "performs well" quadrant. The attributes that were given high important rating and low capacity score fell under the second quadrant, the "concentrate here" quadrant. These attributes were identified as high priority areas. Meanwhile, those attributes that were identified to be of low importance and low capacity rating fell under the third quadrant—the "low priority area." The attributes identified to be of low importance but were given high capacity ratings by the respondents fell under the fourth quadrant or the "plus factor" quadrant. (Figure 1a)

## Figure 1a. Capacity of ALG member-institutions - direct legal services Base: Total interviews (n=77)

	More Im	portant	
	II-CONCENTRATE HERE	PERFORMS WELL – I	
	high importance weak image need to improve on these	high importance s trong image ma intain s trong image	
Weak Image	low importance weak image need to improve but not a priority	low importance strong image icing on the cake /plus factor	Strong Image
	III - LOW PRIOR ITY	POSSIBLE OVERKILL - IV	

Less Important

#### The Sample

The target sample for this study was 100 respondents but only 77 returned the questionnaires that were distributed by the research team. Out of the actual sample of 77 respondents, 43 or 55.8% were females and 34 or 44.2% were males. Majority of the respondents belong to the younger age bracket (61.1% were between 19 to 35 years old) and the positions are well represented. *Table 1* presents the demographic profile of the respondents.

A great proportion of these respondents came from the National Capital Region. *Table 2* shows the location of institutions and the number of respondents drawn from each area.

TABLE 1. DEMOGRAPHIC PROFILE OF RESPONDENTS.

Base: Total interviews (n=77)

		Count	Col %
Gender	Male	34	44.2
	Female	43	55.8
Age Group	19 to 29 years old	24	31.2
	30 to 35 years old	23	29.9
	36 to 45 years old	21	27.3
	46 to 59 years old	9	11.7
Position	Executive Director	13	16.9
	Program Director	14	18.2
	Lawyer	18	23.4
	Paralegal	7	9.1
	Others	25	32.5

TABLE 2. LOCATION BY INSTITUTIONS.

Base: Total interviews (n=77)

		Count	Col %
Total NCR		35	45.5
	PANLIPI	7	9.1
	LRC	6	7.8
	KAISAHAN	5	6.5
	SALIGAN	4	5.2
	WomenLEAD	4	5.2
	AHRC	4	5.2
	WLB	2	2.6
	TK	2	2.6
	ALTERLAW	1	1.3
Total Luzon		10	13.0
	PANLIPI	5	6.5
	SALIGAN	3	3.9
	TK	2	2.6
Total Visayas		23	29.9
	ELAC	8	10.4
	Free Lava	7	9.1
	PROCESS Panay	6	7.8
	CLB	2	2.6
Total Mindanao		9	11.7
	BALAOD-Mindanaw	5	6.5
	LRC	3	3.9
	PANLIPI	1	1.3

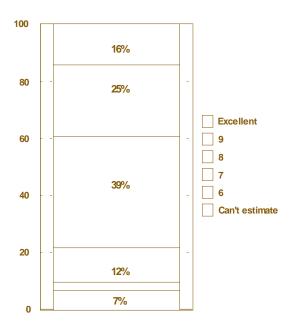
#### The Current Capacity of ALG Member-Institutions

A positive view on the capacity of ALG member-institutions in identified indicators was reflected by the survey. Using a range of 1 to 10, 10 being excellent and 1 being poor, the respondents were asked to rate the capacity of their organization in identified measures of capacity. 16% gave a rating of excellent to their organization while 64% rated the capacity of their organization between 7 and 9. Seven percent did not give any answer. (Figure 1b)

#### **Direct Legal Services (DLS)**

This component of ALG work contemplates the provision of legal services to partners such as counseling, legal representation and litigation, among others. The ALG institutions offer legal aid in order to protect and promote the rights of the poor and the marginalized groups. In this study, the areas that were looked into in the direct legal services

Figure 1B. Overall rating of "capacities" of ALG member-institutions. Base: Total interviews (n=77)



component of ALG work include the following: handling of cases, involvement of partners in DLS, integration of gender concerns in DLS and sustainability.

The survey bares that the ALG as a network performs well in providing counseling services, preparing pleadings, handling of cases involving the poor and the marginalized sectors, involving full time lawyers in DLS, and in involving paralegals in providing direct legal services.

The survey likewise reveals that the network is exceptionally good in handling precedent-setting cases, providing legal representation to other advocacy organizations and in preparing opinions.

The areas that must be given priority include the following: engagement in network- or cluster-wide handling of cases, strengthening its referral mechanisms with ALG members and other institutions and increasing the number of volunteer lawyers.

As regards the integration of gender concerns in this component, the study shows that ALG members view the following as low-priority attributes: disaggregating gender data, providing gender sensitivity training to legal service providers, and regularly analyzing gender impact. It is however strong in engaging female lawyers in DLS.

In accepting cases to be handled, the respondents say that ALG is well-capacitated in handling cases that are relevant to the institution's work as well as cases that have impact policy advocacy, organizing activities, and cases that have sectoral impact. It is also strong in handling test cases.

The survey likewise shows that ALG member institutions actively involve its partners in the various stages of case handling, i.e., strategizing, evidence-gathering, monitoring and evaluation, and in decision -making in relation to case handling. ALG also has existing mechanisms in ensuring the participation of their partners in the various stages of case handling.

Similarly, it is performing well in securing funding from grants, counterpart funds and in allocating a determinate percentage of its budget in providing direct legal services.

This shows that on the over-all, the ALG is performing well in the direct legal services component of its work.

#### **Education**

Education is a major component of ALG members' program. Member-institutions embark on education activities that seek to equip the poor and members of the marginalized groups with the necessary knowledge about the laws that affect their rights and interests. This is based on the realization that the poor can best defend their rights and protect their interests if they know the laws and legal processes that govern these rights and interests. A major component of ALG's education program is paralegal formation. The objective of the program is to develop pools of paralegals within organizations or communities of the marginalized groups who will have the knowledge and capacity that will enable them to respond to the legal needs of their organizations and communities.<sup>33</sup>

In this component, the survey measured the capacity of ALG members in providing trainings, seminars, module development and paralegal formation.

The study reveals that ALG performs well in conducting development seminars, paralegal trainings, and popular education. It is also performing well in involving lawyers as well as paralegals in providing educational activities. It is able to ensure the participation of its partners in these activities especially in training needs assessment, and evaluation of the activities conducted.

As regards the institutions' modules, the study reveals that ALG has a strong capacity to develop and provide modules on the issues concerning the poor and the marginalized, local governance, and human rights in general.

The institution also shows a strong capacity in allocating a determinate portion of its budget for educational activities. It performs well in securing funding from program grants and counterpart funds from its partners although it has to improve on its capacity to secure funding from donations.

Nonetheless, the survey shows that the members of ALG should give more focus in providing gender sensitivity training as well as in providing management and organizational skills seminars to its partners. It should also improve on its capacity to monitor and evaluate the educational activities it conducts.

#### Law and Policy Reform Advocacy

In general, the ALG as a network has a strong capacity in law and policy reform advocacy (LPR). This component of ALG work pertains to advocacy activities of the member-institutions geared towards the improvement of existing laws, the repeal of unjust ones, and the passage of new progressive laws. The various institutions work with legislators and officers of executive agencies, participate in policy discussions, and even assist in the actual drafting of proposed laws. A critical portion of law and policy reform work of ALG members is their assistance to the marginalized groups in the formulation of legislative and executive policy agenda, both for the local and national governments. Law and Policy Reform advocacy also contemplates the active efforts of the institutions to work with their partner people's and non-governmental organizations in crafting the people's agenda and in planning and pursuing advocacy activities for these policy agenda.34

The survey says that ALG performs well in proposing amendments to existing laws, holding press and policy conferences and engagement in dialogues and consultations. It is able to integrate gender concerns in its LPR advocacy and has a strong capacity to engage in law and policy re-

form advocacy in various units of the government—starting from the local government units up to the three major branches of the government in the national level.

Moreover, the survey reveals that ALG performs well in formulating policy recommendations in issues concerning the poor and the marginalized, local government and human rights. It also has a strong capacity to respond to environmental concerns.

The ALG, as revealed by the survey, performs well in involving its partners in various stages and activities under the Law and Policy Reform advocacy: It is able to ensure its partners' participation in researching, strategizing and in actual advocacy work. It should however improve on its capacity to ensure their involvement through direct service provider orientation.

ALG institutions allocate a minimum percentage of their budget for law and policy reform advocacy and have strong capacity to source out funds from program grants and counterpart funds from partners.

#### Research and Publication

The ALG undertakes research and publication in support of their other activities. The various member-institutions publish training materials that are used in their education activities. They also issue primers and other materials to popularize important laws, executive issuances, and court decisions. Complementing their policy work, they publish policy papers, research papers and other materials that serve as venues for the discussion of relevant policy issues. Research and publication are also pursued to popularize the agenda of the poor and the marginalized.

The survey results show that the ALG Network has a strong capacity in this component. It has the competence to conduct researches in laws, jurisprudence, situational analysis and legal issues. It also has a strong capacity to

conduct surveys and baseline studies, issue newsletters, primers, modules, manuals, journals, manuscripts and monographs. Member-institutions also have the capacity to publish books and other publications. The research outputs are being used in updating training modules, program development, and law and policy reform work. At the network level, and even at the level of individual member-institutions, ALG has the capacity to conduct researches and publish books and other materials at least once in a year.

#### **Internship Program**

The internship program of the members of the ALG ensures the sustainability of the work of the institution at justice reform through the formation and training of students in law schools around the country, particularly those with legal aid units. The active involvement of ALG member-institutions in the continuing guidance, formation and training from lawyers engaged in the practice of alternative lawyering will benefit the ALG as it strengthens their capacities and enhance the sustainability of their work, since many law students will be encouraged to join the ranks of alternative lawyers and work with the ALG's. 35

The study shows that the ALG is well capacitated in its internship program. The results show that the organizations offer internship among law students in order to promote alternative lawyering, recruit interested students and expose the interns in the developmental practice of law. Most organizations disseminate information on internship by inviting students and most applicants who show interest in alternative lawyering are accepted as interns.

The survey likewise reveals that organizations have a defined internship curriculum and institutions involve their interns in curriculum development, activities in direct legal services, education, research and publication as well as in law and policy reform advocacy.

The institutions also, have committees that directly manage the program. A system for monitoring and evaluating internship activities is well in place. A certain percentage of the organization's funds is allocated for the program. Other sources of funds for internship include program grants and counterpart funding from partners.

Gender concerns are integrated in the program through balancing the number of female and male interns, conducting gender sensitivity trainings and through regular analysis of gender impact.

#### **Networking and Organizational Concerns**

This study also looked into the capacity of the network in networking activities and in managing organizational concerns.

Internal capacity development indicators such as resource management and mobilization, service delivery and human resources were looked into. In addition, external legitimacy development vis-à-vis networking or linkage with other institutions, both within and outside of the ALG network, as measured by ALG's capacity to exchange services, resources and information with other institutions was studied.

The respondents gave a high capacity rating to the institution with regards to networking. Organizations link with other institutions outside the ALG network. The institution, or at least its member is an officer of networks other than ALG. Member-institutions perform well in coordinating with other networks in litigation, education, law and policy reform advocacy, research and publication and community organizing.

In organizational matters, the survey shows that the member-institutions have governing bodies that function in accordance with its mandate. The members of these governing bodies, who serve for a fixed term, are selected through election by the General Assembly.

The study likewise reveals that the General Assembly makes the major decisions, alongside with the Executive Director and the other program staff.

The member-institutions also provide incentives to its personnel such as loans, study leaves and medical pre-need insurance. Staff development activities like personnel assessment activities, trainings, and seminars as well as popular education seminars are also conducted. Gender sensitivity trainings are also carried out and management courses for officers are offered. Regular personnel evaluation however must be given attention.

The network is also pro-active in the promotion of alternative lawyering through paralegal formation, orientation of students and community/ sector organizing. The personnel are recruited through a defined and institutionalized recruitment process.

As regards resource management, the institutions have fiscal controls that are in place and other funds are secured through partner's contribution and other diversified sources.

While there are aspects in organizational management that must be improved, the research shows that ALG member-institutions generally have strong capacity in organizational administration.

#### Conclusion

This study draws a baseline on the current initiatives and capacities of the Alternative Law Groups as a network. It creates a database on ALG's and its member-institutions' strategic interventions on efforts to improve the access to justice of the poor and the marginalized sectors. The result of the study rationalizes, on an empirical level, ALG's active involvement in the Judicial Reform Program of the Supreme Court. As the results indicate, the coalition is performing well in the major areas of its work. This warrants the conclusion that the network is well-braced to pursue its dual task of empowering the poor and marginalized groups, and effecting societal change.



# Lawyering with the poor

## Lawyering With The Poor

ATTY. MARLON J. MANUEL

To fully understand and appreciate the nature and work of the Alternative Law Groups (ALG) as a coalition of legal resource non-governmental organizations, it is essential to start with the concept of "alternative lawyering." But this is the same as answering a difficult question by attempting to explain a more complex problem. Attempting to explain alternative lawyering using theoretical concepts is like teaching swimming lessons out of water. Clarifying some concepts may be helpful, however, to dispel some misconceptions, to ease doubts and, more importantly, to encourage immersion.

This is an attempt to respond to some basic questions about alternative lawyering. The objective is not really to teach swimming, but to encourage dipping into the water.

#### Why is it "lawyering"?

Alternative lawyering is "lawyering" because of a number of reasons. A few can be cited. First, it employs legal knowledge and legal skills. Second, it works its way through the legal system and through legal processes. Third, it employs the law as a tool.

The author is the Executive Director of Sentro ng Alternatibong Lingap Panligal (SALIGAN), an ALG member organization. He is currently the Project Director of the ALG's JURIS Project.

#### Why is it "alternative"?

It is "alternative" in many ways. It is alternative because it works on issues that are not the common concerns of typical lawyering. In fact, the issues of concerns are not popular fields of legal practice. Related to this, there is also a different group of clientele. (Again, the not so popular type.) It is also alternative in the sense that it employs creative strategies that are not characteristic of ordinary law practice. The "alternative" nature of alternative lawyering can also be seen from its critical view of the legal system itself and of the legal profession. It is part of the system, it works within the system, and, yet, it seeks to change the system. But before the discussion goes to more profound things, other "alternative" aspects can be identified. Those who practice alternative lawyering tend to live an alternative lifestyle. Partly because they identify with their clients, and partly because they are forced to do so because of their "alternative" compensation scheme.

#### Is it legal aid?

The answer is yes and no. It is legal aid because it involves the provision of legal services to those who need such services. It is not legal aid, however, because it is not simply concerned with the provision of legal services to those who are needy. The provision of legal services is only part of a bigger strategy. In fact, one major component of such strategy is to minimize the need for "legal aid" from lawyers.

#### Is it public interest lawyering?

Again, the answer should be yes and no. Yes, because alternative lawyering involves working for the public interest. No, because public interest lawyering usually focuses on litigation as a major strategy. Alternative lawyering has no such preference for litigation. Furthermore, while alternative lawyering works for issues involving the public interest, the work focuses on issues of the poor and marginalized, not simply any public interest concern.

#### Is it human rights lawyering?

The answer must again be qualified. If human rights lawyering is understood in its limited and traditional concept, which is working for political detainees and victims of the State's violation of civil and political rights of citizens, then alternative lawyering will probably not qualify as human rights lawyering. Alternative lawyering defends human rights. It is focused, however, on economic, social and cultural rights rather than civil and political rights.

#### What is it then?

Three closely interrelated propositions can be offered.

First, alternative lawyering is lawyering for social justice. It works on social issues and social relations. Its involvement in the justice system is not simply to look for simple resolutions to simple disputes between parties. Its main objective is to contribute to the correction or elimination of deeply rooted unjust social structures and relations.

Second, alternative lawyering is lawyering for social change. It seeks to effect societal change and, in doing this, uses the law as a tool for change. The irony, however, is that, from the perspective of alternative lawyering, the law itself becomes a target for change. The explanation is simple. In our society, or in any society for that matter, the

law is likewise used as a tool to cause injustice. The law is seen, therefore, as an instrument that can perpetrate and perpetuate injustices, unless changed.

Third, alternative lawyering is lawyering for social development. The final objective is to work for the holistic, sustainable development of persons and communities, in a society that is more just, more peaceful, and more humane.

#### Alternative lawyering is simply lawyering for the poor, right?

Totally erroneous. Alternative lawyering is lawyering WITH the poor. Those who engage in alternative lawyering do not work FOR the poor. Not as their representatives, and, definitely, not as their liberators. Those who engage in alternative lawyering work WITH the poor as partners in a struggle. They work WITH the poor and in solidarity with them. They work WITH the poor and side by side with them.

In the ultimate analysis, alternative lawyering is not the work of lawyers or law groups. The highest form of alternative lawyering is realized when the poor and marginalized who are not lawyers by profession or training, and who are alienated by the law and the legal system, become lawyers themselves and engage in law practice in its original and noble sense. When the poor and marginalized are empowered to become lawyers, when they see the law and use it as it should be – as a tool to promote justice, as a catalyst for social transformation – only then can alternative lawyering truly achieve its objectives.

#### What is the role then of the Alternative Law Groups?

Now, back to the first question. The Alternative Law Groups is a group of swimmers, swimming against the tide. They test the water, they dip into the water, and they swim. And while swimming, they call others to join them, even those who cannot swim, or rather, *especially* those who

cannot swim. They continue to swim, they continue to call others, and they fervently hope (dream) that, with enough swimmers in the water, they can turn the tide.

If this discussion further confuses, and raises additional questions about alternative lawyering, then, it has achieved its purpose. As stated in the beginning, the objective of this discussion is not really to teach swimming, but to simply encourage dipping into the water.

### **Endnotes**

- 1 The JURIS project year starts in April. For the first year, however, implementation started in July 2003.
- 2 At present, there are 17 active members in the network, covering a wide range of legal and advocacy services, which responds to the legal issues and concerns of the poor and marginalized sectors and groups.
- 3 Based on the presentation made by Atty. Marlon J. Manuel, Executive Director, Sentro ng Alternatibong Lingap Panligal (SALIGAN).
  - 4 347 US 483 (1954).
- 5 Professor Abram Chayes, Harvard Law School, The Role of the Judge in Public Law Litigation (1976).
- 6 Public interest litigation shall be interchangeably used with test case litigation.
- 7 Stephen Golub, "Participatory Justice in the Philippines", *Many Roads to Justice*, \_\_\_\_.
- 8 Marvic Leonen, "Orientation on the Conference and Introduction of the Alternative Law Group Network," *Lawyering for the Public Interest: 1st Alternative Law Conference*, 2000.
- 9 Based on the presentation made by Atty. Evalyn G. Ursua, Board Member, WLB.
- 10 Decision dated 28 August 1996, Civil Case No. Q-96-26153, RTC-Br. 215, Quezon City, pp. 6-7.
- 11 Based on the paper submitted by Atty. Joan Saniel, Executive Director, CLB, CLB Flaming Nights Rescue Study.
- 12 Decision dated April 22, 2003, People v. Uy, Crim Case No. CBU-46615.
- 13 Based on the presentation made by Atty. Claire Lucson, Staff Lawyer, Women Lead, and Intervenors Position Paper, In re: Withdrawal of Registration and Prohibition of Importation and Distribution of Postinor through Memorandum circular no. 18 series of 7 December 2001.

14 Bernas, J., The 1987 Constitution of the Republic of the Philippines, Manila: 1996 ed.

15 Based on the comments submitted by Atty. Carolina S. Ruiz-Austria, Executive Director, Womenlead, 29 January 2004.

16 Based on the paper submitted by Mario Jose B. Talja, Field Paralegal-Davao Office, LRC.

17 LRC, ELAC, KAISAHAN, SALIGAN and WLB.

18 La Bugal B'laan, et. al. v. Ramos, et. al., GR No. 127882, 27 January 2004.

19 Based on the presentation made by Atty. Sedfrey Candelaria, Associate Dean for Student Affairs of Ateneo Law School; lawyer, AHRC.

20 Section 2, RA 8371.

21 LRC, Divided Court: Case Materials from the Constitutional Challenge to the Indigenous Peoples Rights Act of 1997, 2001,p. 3.

22 Ibid, p. 4.

23 Carino v. Insular Government, 8 Phil 150.

24 Based on the paper submitted by Atty. Emily L. Manuel, Staff Lawyer, LRC, "Strategic Lawsuits Against Public Participation (SLAPP): Case of Mauban, Quezon and Calapan, Oriental Mindoro."

25 George W. Pring, Professor of Law, University of Denver, cited in the paper of Atty. Manuel.

26 Based on the paper submitted by Atty. Arlene Bag-Ao, (Executive Director of BALAOD-MINDANAW), and Atty. Vicente Festin (National Coordinator, Peasantech Program), "MAPALAD: Gains and Pains of a People-Led Campaign."

27 Based on the presentation made by Atty. Ricardo B. Sunga, III, Deputy Coordinator, NCR Region, Free Legal Assistance Group, Inc.

28 Views, UNCHR, CCPR/C/70/D/869/1999, 19 October 2000.

29 Views, UNCHR, CCPR/C/77/D/1077/2002.

30 Based on the paper submitted by Dante Dalabajan, (Policy Specialist, ELAC), "Administrative Adjudication by LGUs as an Alternative to Judicial Litigation: The Case of Cyanide and Dyna-

mite Fishing Violations in the Calamianes Groups of Islands, Palawan, Philippines."

31 JURIS is a five-year project supported by the Canadian International Development Agency (CIDA). JURIS focuses on strengthening the capacity of the Philippine judicial system to provide quality judicial services and access to justice to Filipinos, particularly to the poor and marginalized groups. CIDA has contracted the National Judicial Institute (NJI), a Canadian non-profit organization engaged in judicial education, to be the Canadian Executing Agency (CEA) that will be in charge of overseeing the implementation of JURIS. For the direct implementation of the project, CIDA and NJI have identified two major project partners: (1) the Philippine Judicial Academy (PHILJA), an attached agency of the Supreme Court whose principal task is legal and judicial education; and (2) the Alternative Law Groups, Inc. (ALG Inc.).

32 The Project Support Team (PST) serves as the Secretariat for the ALG-JURIS Project. It assists in project development as well as in pursuance of set goals, objectives and target outputs of the project, among others. The PST is in charge of developing and managing specific activities under the approved plan of action by the General Assembly, which involves the participation of the seventeen (17) member-institutions of the ALG Network. Its members include Atty. Marlon J. Manuel, ALG-JURIS Project Director, Atty. Glenda T. Litong, Project National Coordinator, Joeven D. Dellosa, legal researcher, Estella A. Solis-Arellano, documentor and Leonora D. Caiz, statistician.

33 JUSTICE REFORM: Reforming the System for Justice. (Cagayan de Oro: 2003), pp. 18 -19.

34 ibid., p. 19.

35 "Formation of Law Students in Law Schools Towards Alternative Lawyering." Project Proposal submitted by AHRC to the Project Management Committee, ALG-JURIS.



#### **ALG** member organizations:

Albert Schweitzer Association, Phils. (ASAP)

Alternative Law Research & Development Center, Inc. (ALTERLAW)

Ateneo Human Rights Center (AHRC)

Balay Alternative Legal Advocates for Development in Mindanaw, Inc. (BALAOD-MINDANAW)

Children's Legal Bureau Inc. (CLB)

Environmental Legal Assistance Center, Inc. (ELAC)

Free Rehabilitation, Economic, Education and Legal Assistance Volunteers Association, Inc. (FREELAVA)

Kaisahan Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan (KAISAHAN)

Legal Rights and Natural Resources Center, Inc. - Kasama sa Kalikasan/ Friends of the Earth - Philippines (LRC-KSK/FOEI-Phils.)

Paglilingkod Batas Pangkapatiran Foundation (PBPF)

Participatory Research Organization of Communities and Education Towards Struggle for Self-Reliance (PROCESS) Foundation - Panay, Inc.

Pilipina Legal Resources Center (PLRC)

Sentro ng Alternatibong Lingap Panligal (SALIGAN)

Tanggapang Panligal ng Katutubong Pilipino (PANLIPI)

Tanggol Kalikasan (TK)

Women's Legal Bureau (WLB)

Women's Legal Education, Advocacy & Defense Foundation, Inc. (WOMENLEAD)

#### ALG office address:

Rm. 215, Institute of Social Order, Social Development Complex Ateneo de Manila University, Loyola Heights, Quezon City Tel. Nos. (63 2) 426 8569 / 426 6001 ext. 4865 Email: algiuris@saligan.org