

INTERNATIONAL BAR ASSOCIATION

ANNUAL CONFERENCE

CHICAGO

SEPTEMBER 2006

ACCESS TO JUSTICE COMMITTEE

SESSIONS:

BEST PRACTICES FOR DESIGN AND DELIVERY OF LEGAL AID

AND

BREAKING DOWN BARRIERS TO JUSTICE

Commemorating the 10th anniversary of the IBA statement related to securing access to justice for all, the Access to Justice Committee organized two-full-day sessions held at the 2006 Chicago Annual Conference addressing issues of public and professional interest for the international legal community.

During the first session, the speakers shared their experiences in the use of four different practices in legal aid to the poor.

Arising from this session the Committee has begun compiling a guide to Best Practices in the Design and Delivery of Legal Aid.

The Committee intends that upon completion such guide will be made available through a website for the benefit of the legal professions worldwide, for the public and for private institutions. In effect anybody concerned with the delivery of voluntary or mandatory pro bono services to the poor in any jurisdiction, whether on a regular basis or sporadically.

In the second session, *Breaking Down Barriers to Justice*, the speakers described their experiences in their own jurisdictions in the permanent quest to overcome obstacles which prevent or limit, access to justice.

Arising from this last session the Committee managed to call the audience's attention to the tireless efforts developed by our colleagues in jurisdictions where access to justice is limited or directly banned due to different motives.

The report that follows aims to provide a short summary of the excellent presentations delivered at both sessions, highlighting the most substantial messages.

Finally, we have taken leave to draw some conclusions which do not necessarily reflect the opinion of any of the speakers.

THURSDAY, SEPTEMBER 19TH

BEST PRACTICES FOR DESIGN AND DELIVERY OF LEGAL AID

1. Pro-bono work

1.1 Speakers

1.1.1 Bettina B. Plevan

Background

- Former Vice President of NY Bar Association
- Partner in Proskauer Rose LLP (NY Office, U.S.A.)
- Board member in the Legal Aid Society and NY Lawyers for public interests

Main ideas of her presentation

- ✚ Her presentation focused on pro-bono work in the U.S., and more specifically in the City of New York.
- ✚ In the U.S. there is no right to legal aid in civil cases, such right is only afforded in criminal cases.
- ✚ Governmental financial support for legal aid to the needy is insufficient. The support is channelled to organizations that provide legal services to the poor.
- ✚ Only 20% of the legal needs of the poor are covered by the referred legal services organizations or by pro-bono work.
- ✚ There is a strong culture of pro bono work among U.S. lawyers.
- ✚ The Code of Ethics does not establishes the lawyer's obligation to engage in pro bono work.
- ✚ The New York Bar Association has many initiatives to collaborate, directly and indirectly, with the provision of legal aid to the poor.
- ✚ NY Bar Association has 25 lawyers exclusively to provide legal aid to the poor. They also try to recruit NY lawyers to render pro bono services.

- ✚ To such end several mechanisms are used, e.g: a) providing free training seminars in different areas of the law (bankruptcy or family law), this represents a benefit for lawyers who, in general, must comply with continuing legal education requirements and who otherwise would need to enrol in paid seminars; b) offering pro-bono work to lawyers who are at a transition period (in between a former and a new work, for example prior to retirement), as an activity that will help palliating the proposed change.
- ✚ Another interesting initiative is the development of certain principles to be applied to pro bono work and law firms are invited to sign up to these principles.
- ✚ Some firms have already signed such principles, others not yet.
- ✚ Such principles, recognize that pro bono work ought to be carried out on the same ethical and professional terms as paid for work. They are as follows:
 - ✓ Firms must set forth the terms and conditions of pro bono work in writing.
 - ✓ The principles have failed to define the term “pro bono”, thus generating a problem for some law firms.
 - ✓ Firms must perform an average of 50 hours of pro bono work per lawyer annually.
 - ✓ The hours devoted to pro bono work must be afforded the same quality standards as that afforded to billable hours.
 - ✓ In sum, firms must treat pro bono work in the same manner and with the same seriousness as time spent on legal work for fee-paying clients.
 - ✓ Firms are requested to encourage pro bono by developing activities and awards for those who undertake pro bono work (e.g. reporting pro bono achievements in the firm’s web page). In some firms, this is mandatory.
 - ✓ Firms are called to encourage pro bono involvement not only among younger lawyers but also among senior lawyers.
 - ✓ Any profits obtained by firms in pro bono cases must be invested in developing more pro bono work.

1.1.2. Barry Levenstam

Background

- Partner in Jenner & Block (Chicago Office)
Chair of Pro-Bono Committee in his firm

Main ideas of his presentation

- ✚ In his presentation the speaker addressed the pro bono work undertaken by his law firm.
- ✚ His firm, as many other firms in the U.S., considers pro bono work as an activity of vital significance.
- ✚ How does his law firm encourage pro-bono work? Implementing the following decisions:
 - ✓ The firm has a pro bono committee composed of lawyers from the different offices of the firm (Chicago, Washington and New York); partners and associates.
 - ✓ Senior and leading lawyers of the firm are involved in pro bono work.
 - ✓ Pro bono services are provided in different fields of the law, i.e. criminal, civil, family matters, transactional and real estate matters.
 - ✓ The firm believes that an experienced partner in the specific field of the law should always be involved so as to supervise the lawyer actively and directly handling pro bono cases.
 - ✓ Young associates are taught to work in pro bono cases, they are encouraged to invest part of their time in pro bono legal work.
 - ✓ A lunch program has been launched to which outside pro bono lawyers or organizations are invited. The goal is for such invitees to transmit to both young and senior lawyers of the firm their own experiences in pro bono work, for the purpose of encouraging them to become actively involved in pro bono matters.
 - ✓ All lawyers of the firm are requested to monthly report the hours devoted to pro bono work.
 - ✓ The firm tries to encourage lawyers or employees to follow their instincts, getting involved in those matters in which they are most interested.

- ✓ The Illinois State Supreme Court requires members of its bar to report the number of hours they devoted to pro bono work on an annual basis; it is not mandatory to render pro bono services, but it is mandatory to report on such work.
- ✓ For associates in a law firm, pro bono work is a challenge; a way of learning and applying professional skills, but associates must be supervised.
- ✓ For senior lawyers and partners in a law firm, pro bono work is a chance to get to know and work alongside young lawyers.
- ✓ There are certain awards for those lawyers who have devoted many hours to doing exceptional work on pro bono matters, which serves as an incentive to motivate the lawyers (of the firm) to become involved in pro bono work.
- ✓ Some clients, before retaining the firm, pose an exhaustive questionnaire on the firm's pro bono activities.

1.1.3 Donald Deya

Background

- Chief Executive Officer of East Africa Law Society

Main ideas of his presentation

🚧 East Africa Law Society it is the largest organized Professional / Civil Society membership organization in the region with a strong mandate and interest in the professional development and practice of law as well as constitutionalism, democracy and good governance, the just rule of law and advancement, promotion and protection of all human rights of all people in East Africa and beyond.

🚧 Its membership is composed of approximately 7,000 individual members as well as the bar associations of Kenya, Tanganyika, Uganda and Zanzibar.

🚧 As to pro bono work, the following was mentioned:

- ✓ There are regions where it is mandatory to take on a case pro bono..
- ✓ The lawyers of the different regions that compose the Law Society, regardless of whether it is mandatory or not to undertake a case pro bono, believe that working pro bono is an ethical obligation.

- ✓ The several bar associations composing the Law Society have adopted different rules as regards pro bono legal services; however, all of them thrive to get lawyers skilled in the different areas of the law to conduct training seminars for younger lawyers.
- ✓ They organize legal work clinics so that lawyers working pro bono may organize their work and make it more effective.
- ✓ The Tanganyika bar association has a legal aid committee; lawyers working pro bono must file monthly reports on the results of their services and provide a final report of the outcome of the case.
- ✓ These reports provide statistics that are useful not only in quantitative terms but also in quality terms.

2. Community Clinics

2.1 Speakers

2.1.1 Professor Bolaji Owasanoye

Background

- Research Professor, Nigerian Institute of Advance Legal Studies, Executive Director Human Development Initiatives (NGO), Consulting Member at J.K.Gadzama San & Partners

Main Ideas of his presentation:

- ✚ His presentation addressed the situation in Lagos, Nigeria, where there are serious problems and challenges for the administration of justice.
- ✚ One of the most serious problems in Lagos, apart from poverty, social inequality, religious problems and inadequate infrastructure, is that people lacking resources do not have access to justice.
- ✚ As a consequence of the above, in 1999 the Directorate of Citizens Rights (DCR) was set up for the protection of human rights and the resolution of conflicts in general.
- ✚ DCR is composed of five units which collectively provide free legal advice to the poor. Such units cover the protection of human rights, the office of the official defender, the protection of consumer rights, information on legal news and a citizens' mediation centre.

- ✚ DCR receives funds directly from the Government and other organizations (e.g. UNICEF).
- ✚ The Citizens' Meditation Centre (CMC) is one of the most effective tools of the system.
- ✚ The creation of DCR has evidenced certain efficiency in dispute resolution, applying alternative dispute resolution mechanisms, helping to unburden courts.

2.1.2 Mary Meg Mc Carthy

Background

- Executive Director of the National Immigrant Justice Centre (Chicago, U.S.A.)

Main ideas of her presentation

- ✚ Her presentation addressed the actions carried out by the National Immigrant Justice Centre in hearing immigration law related cases involving aliens in the U.S.
- ✚ The Centre is composed of 15 lawyers and is also supported by law firms who render pro bono services.
- ✚ The demand for legal aid to alien refugees is very significant and as from September 2001 the Centre has become unable to meet consultation needs.
- ✚ The Centre attempts to provide information and legal aid to aliens with immigration problems.
- ✚ The Centre encounters significant problems as regards minors who enter the U.S. without protection. The Centre identifies the problems and tries to cause such problems to be solved by juvenile courts.
- ✚ To a large extent, the Centre identifies general problems, tries to find solutions, hold meetings with legislators, and proposes, when appropriate, changes in legislation.
- ✚ The Centre also works with different non-governmental organizations that collaborate in the equation of the community.
- ✚ The Centre also works with firms who provide pro-bono services. Accordingly, the Centre believes that lawyers who provide such services must be well prepared and guided to obtain successful results.

✚ There are certain barriers that conspire against the work at the Centre. One is social and the other one is structural. The first one is related to the lack of legal education in the authorities who must handle complex issues with individuals who are uninformed and ignorant of their rights. The second one is related to the lack of adequate premises for the system to house too many people, who are in many cases simply sent to jail merely for the sake of conducting a search of their antecedents.

✚ She ended her presentation with several practical pieces of advice:

- ✓ Anyone who is willing to provide aid to a person lacking means (with legal problems) must bear in mind that all persons are entitled to be defended and protected.
- ✓ Lawyers must be educated to understand that legal aid for the needy is an essential ethical obligation.
- ✓ Lawyers who take a case pro bono must be supervised and guided by a senior experienced lawyer in the relevant field of law.
- ✓ A clear and fluid lawyer-client communication must exist so that both of them are aware of the needs to be met and the issues in which the lawyer may collaborate.
- ✓ The use of technology is essential to provide legal aid to the poor.
- ✓ It is convenient to conduct audits on the pro bono work performed by lawyers.
- ✓ It is essential to organize documentation and information archives of the case taken pro bono.

3. Alternative Delivery Models

3.1 Speakers

3.1.1 Evlynn Gilvarry

Background

- Director of Representation and Law Reform
The Law Society of England and Wales

Main ideas of her presentation

- ✚ This presentation described three examples of best practice in the use of different approaches and mechanisms to provide legal aid to the poor in the U.K. The key factors to be taken into account are: Does the alternative approach enhance access to justice and does it represent good value for taxpayer's money.
- ✚ The three mechanisms addressed in her presentation were (a) the creation of a Community Justice Centre; (b) the use of technology and (c) Specialist Support for legal aid lawyers.
- ✚ The Community Justice Centre in question was created in September 2005 to address problems related to crime and anti-social behaviour in the North of Liverpool.
- ✚ The Centre aims to harness the involvement of the community in tackling crime and helping victims, witnesses and the accused themselves.
- ✚ The role of the court, sentencing powers of the judge and the active participation of the local community are essential for the success of this pioneering centre.
- ✚ Innovative approaches to criminal sentences e.g. that directly benefit the local community, are proving to be successful.
- ✚ The use of technology has allowed, through different mechanisms, a significant improvement of legal aid provided to residents of rural areas in England.
- ✚ A particularly successful mechanism has been the delivery of legal aid through "video links", placed at shops, kiosks, mobile libraries and supermarkets.
- ✚ The system works by means of pre-arranged interviews through one of the video outlets, with a lawyer. The client then returns to that outlet on the stated date and has a video conference with his/her advisor. The process is facilitated by use of other technology such as fax, telephone and e-mail.

- ✚ The system was established in 2001 and is producing very good results and high client satisfaction reports.
- ✚ As to the third alternative mechanism, the aim is to enable legal aid lawyers to tap into sources of higher expertise in fields of law.
- ✚ Through this scheme they are able to obtain specific legal aid in complex matters using telephone, or email.
- ✚ The specialist lawyers providing such services practise in law firms barristers' chambers and law centres throughout the UK.
- ✚ The system has been implemented as a pilot program during the period 2001-2003, and an evaluation has shown that it enhances access to justice and represents a very efficient use of scarce legal aid resources. .

4. Conclusions:

After hearing and analyzing the different presentations made in the Chicago Annual Conference, we have drawn the following conclusions:

- There remain very significant obstacles standing in the way of access to justice for some of the world's most vulnerable individuals..
- State support for legal aid is patchy, and in the poorer countries, often very rudimentary. Even in the wealthier countries there is severe downward pressure on State resources available for legal aid..
- There is a clear need for increasing pro bono efforts by lawyers to fill the gap left by inadequate state provision of legal aid.
- Lawyers as professionals committed to the defence of rights, are called upon increasingly to play a key role in this respect.
- It is evident that the capabilities of organisations, governmental or not, tend to achieve goals in a more rapid and efficient manner than individual efforts.
- The needs of those of limited means include, without limitation and in all jurisdictions:
 - ✓ Access to legal information in order to be aware of their rights and obligations, not only as regards legal matters but also as regards social security matters.

- ✓ Alternative dispute resolution methods (among individuals, individuals and corporations or individuals and the Government) which reduce costs, risks and time insumed in litigation.
 - ✓ Legal representation for the defence of rights at Court, when there is no other alternative.
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- Each jurisdiction, depending on its specific realities, needs and resources, has developed or tries to develop different methods of legal aid to the poor. In some cases such efforts are conducted by the government, in others by non-governmental organizations.
 - All the methods addressed by the speakers are attractive and have their advantages but none provides a complete answer to meeting the growing amount of unmet need for legal assistance.
 - Bar Associations in each jurisdiction have a major role to play in galvanising the efforts of their legal professions and also, applying pressure on the State to increase resources available for legal aid.
 - Accordingly, pro-bono work, community clinics, alternative dispute resolution methods, legal education of citizens and authorities and the use of technology, seem to be the most adequate practices to cover the needs of the different jurisdictions.

WEDNESDAY, SEPTEMBER 20TH

BREAKING DOWN BARRIERS TO JUSTICE

1.1 Speakers

1.1.1 Justice George Adesola Oguntade (Nigeria)

Background

- He is currently a member of the Supreme Court of Nigeria.
- Previously he held different offices in the Judiciary of Nigeria, after having been many years in private practice.

Main ideas of his presentation

- ✚ He addressed many problems concerning justice in Nigeria. He focused on two barriers to the operation of justice: corruption and congestion of the court system that partially result from Nigeria's turbulent history under prior military rule.
- ✚ He explained that Nigeria is currently undergoing serious social and economic difficulties. Such difficulties are reflected in the Judiciary and the consequent impossibility of delivering justice correctly in the majority of cases.
- ✚ Litigating in Nigeria often brings about losses to all the parties involved in the dispute. Lawsuits take years and frequently the litigants do not achieve what they were seeking.
- ✚ Even for the litigating lawyers handling the cases the situation is bad: they litigate for years and collect very low fees.
- ✚ Procedural law in Nigeria allows nearly all decisions to be subject to appeal to the Supreme Court of Justice. Thus, the Supreme Court has to hear a large docket resulting in heavy backlogs.
- ✚ The infrastructure of the Judiciary is poor and its condition is rudimentary. He mentioned that electrical power cuts are very common in the court houses.
- ✚ The police force, charged with the investigation of crimes committed in Nigeria, is ill-trained, poorly paid and does not perform its duties correctly, further contributing to an inefficient legal system.
- ✚ Finally, corruption is a scourge that undermines the correct operation of the Judiciary in Nigeria.

1.1.2 Graham E. Leung (Fiji)

Background

- Past President of Fiji Law Society
- Partner at Howards Lawyers (Fiji)

Main ideas of his presentation

- ✚ As an introduction he explained that Fiji is a member of the Commonwealth that gained independence in 1970. Fiji comprises 300 islands, and its population does not exceed one million people.
- ✚ The working class and indigenous members of Fiji, which account for more than 50% of its population, suffer daily problems related to lack of access to justice and lack of legal representation mainly due to lack of funds.
- ✚ The judicial system is three tiered, composed of first instance courts, appellate courts and the Supreme Court of Justice. Different from the case of Nigeria, in Fiji it is not easy to resort to the Appellate Courts or the Supreme Court since several formal requirements must be met to resort to such courts.
- ✚ Article 28 of the Fiji Constitution affords the right to legal representation for any person charged with a crime. This right is not extended to civil cases, and there is very little civil legal aid available.
- ✚ In 1996 Fiji enacted the Legal Aid Act.
- ✚ The Act established the Legal Aid Commission, which organizes and administers the legal aid.
- ✚ The Commission is composed of three lawyers (appointed by the Law Society), two non-lawyers (appointed by the minister), one of them representing the beneficiaries of the legal aid and one lawyer appointed by the Attorney-General.
- ✚ According to Article 6 the Commission shall provide, subject to the resources available to it, legal assistance to impoverished persons. An impoverished person is one who is unable to reasonably afford the cost of legal services.
- ✚ When the Commission receives a case it must carefully analyze the case to determine if the person making the application is entitled to receive legal aid.
- ✚ During 2005 the Commission received approximately 500 applications seeking legal assistance in criminal cases, 78 in family cases and 20 in civil cases.

- ✚ In Fiji obtaining funds to finance legal aid is a critical problem.
- ✚ The speaker noted that access to justice is a problem throughout the world, including in developed countries. The challenge should be to make the largest efforts to facilitate and ensure access to justice for the needy.
- ✚ Unfortunately, the Fijian Government, and many others, do not invest sufficient funds in legal aid, since (in general) they do not place legal aid among their top priorities.

1.1.3 Sudheer Shrestha (Nepal)

Background

- Member at Kusum Law firm in Katmandu.
- Executive Committee Member, Nepal Law Society

Main ideas of his presentation

- ✚ Nepal, located at the Himalayas, was the only Hindi kingdom in the world until it was declared a secular state on May 18, 2006. It is located in the centre-south of Asia, sharing borders with China and India.
- ✚ Despite being a small country, its population consists of approximately 28 million people.
- ✚ The speaker explained that delays and backlogs of cases are important barriers to justice in Nepal.
- ✚ The Government fails to allocate funds to change the current situation of the judicial system. Judges are often paid very low salaries in light of the responsibility that the state confers upon them.
- ✚ Corruption is another hurdle that prevents common citizens from obtaining fair judicial rulings in compliance with laws in force.
- ✚ Finally, he pointed out that conditions such as widespread illiteracy, extreme poverty and gender discrimination make it extremely difficult to obtain justice in Nepal.
- ✚ Several efforts have been conducted lately to correct the situation. The speaker gave as an example the United Nations Development Program. However, none of the efforts has been effective enough to change the overall situation.

1.1.4 J. Parker MacCarthy, Q.C. (Canada)

Background

- President of Canadian Bar Association
- Associated counsel with Ramsay Lampman Rhodes

Main ideas of his presentation

- ✚ In Canada, a country of a population of approximately 40,000,000 people, there are legal aid programs which are principally funded by the federal and the provincial governments.
- ✚ In general terms, the beneficiaries of such programs are those who lack funds to pay for appropriate legal assistance.
- ✚ In 2002, British Columbia, with a population of approximately 4,000,000 people, changed its provincial government, which effectively dismantled the legal aid system.
- ✚ In light of such action, the Canadian Bar Association resolved to intervene in defense of the maintenance of the legal aid program.
- ✚ First, it was resolved to analyze the matter from all possible perspectives. In order to obtain an independent analysis, a lawyer was retained to prepare a legal opinion on the feasibility of the claim.
- ✚ In accordance with the favorable legal opinion rendered by the retained lawyer, in 2005 the Canadian Bar Association brought a lawsuit against the province of British Columbia. Through this case, which is the first case of this kind for the bar association, a constitutional right to legal aid is sought to be established.
- ✚ Just prior to the date of this Conference, a court of the province of British Columbia ruled that it was lacking jurisdiction to hear the case. An appeal will be taken against such decision. The speaker expressed his frustration with government indifference to those litigants who cannot afford legal representation.
- ✚ Apart from this specific legal action, the Canadian Bar Association is constantly striving to meet regularly with lawmakers and authorities to obtain funding for legal aid programs.

1.1.5 Christian Ahlund (Sweden)

Background

- Since 2002, has been the Executive Director of the International Legal Assistance Consortium (ILAC).
- Prior to that his positions include serving as Chair of the Human Rights Committee of the Council of Bars and Law Societies in the European Union and, even earlier, as the Chair of the Human Rights Committee of the Swedish Bar.

Main ideas of his presentation

- ✚ Mr. Ahlund discussed ILAC's work in assisting troubled countries to develop or shore-up their legal infrastructures.
- ✚ He explained that ILAC's activities are required to be carried out in concert with local political authorities and with deference to the local environment.
- ✚ ILAC has done extensive work in this regard in many jurisdictions, including recent work in East Timor, Haiti and Iraq, which since 1923 has had a reasonably well-organized Bar Association.
- ✚ ILAC began its work in Iraq in 2003, under the auspices of the United Nations. Early on, ILAC had personnel and a facility in Iraq, but more recently was forced to abandon any physical presence there due to increasing levels of violence.
- ✚ Presently, ILAC's work in Iraq is focused on the judiciary. ILAC provides planes which transport Iraqi judges to venues outside the country where they receive training. However, this work, too, may soon have to be curtailed because of the escalating cost of insurance to cover flights into and out of Iraq. Moreover, there has been an exceedingly high rate of violence against these judges, once they are returned to Iraq, including a high rate of murder.
- ✚ Mr. Ahlund concluded his remarks by saying that his organization was originally optimistic that Iraq would eventually stabilize. Unfortunately, that view has now changed to grave pessimism as he sees "very little light at the end of the tunnel." He fears that Iraq may end up going the way of Yugoslavia due to the intensity of ethnic disputes and related issues separating the country.

1.1.6 Gervais Charles (Haiti)

Background

- President of Port-au-Prince Bar Association
- Vice-President of the Federation of the Bars of Haiti

Main ideas of his presentation

- ✚ The speaker discussed the problems of access to the judicial system in Haiti and the legal aid program of the Bar Association of Port-au-Prince.
- ✚ The current legal aid program of the Port-au-Prince Bar Association has been in operation for less than two years and is limited to the penal domain. The results have exceeded the expectation of the project initiators.
- ✚ This legal aid program must be examined in terms of the larger problem of access to justice in Haiti, which is not limited to the question of counsel representation. Structural problems related to the weakness of the judicial institutions, constitute significant barriers.
- ✚ In one decade, Haiti has faced two United Nations peacekeeping interventions. Violent conflicts, general poverty and close to half a century of catastrophic governance with a background of a ferocious dictatorship have weakened democratic institutions. The judicial system has lost its credibility and is largely perceived as inefficient and corrupt.
- ✚ The Bar Associations of Haiti have faced the same institutional regression and are a far cry from their past prestige. There is no national bar association. Each Civil Court jurisdiction has its own bar association.
- ✚ An exodus to the capital has drained the local bar associations of many influential members. While the Bar Association of the Port-au Prince has more than 700 lawyers, the other Bar Associations barely have more than ten members, with the exception of one local Bar that has 100 members. Nevertheless, the law practice in Haiti is the first success of decentralization in a republic where powers are very centralized in the Capital.
- ✚ The Bar Associations have always claimed that legal aid was their monopoly. The President of the Bar Association always designates a lawyer to assist the accused, but only at the time of the judgment. A real legal aid program for the criminal justice system should allow a defendant to be represented from the start of the process to the trial.

- ✚ The population of Haiti has increased considerably and passed the eight million mark. However the judicial institution only treats a very restricted number of cases during a normal judicial year, which is particularly alarming in the penal domain.
- ✚ The majority of the accused in preventive detention, do not have the resources to hire a lawyer.
- ✚ The United Nations now includes in its operations of peace keeping, measures to consolidate peace after the conflicts, including judicial reform, considered indispensable for the stability of the Republic of Haiti.
- ✚ The reform was launched in 1994 after the restoration of the constitutional order. However, of the general opinion, this reform of the judicial system was a failure. The main reason being that the government and the UN did not implicate the population and the civil society in the process. The reform was limited to the change of some actors, judges and district attorneys. The problems of access to justice have not been considered in a serious way.
- ✚ The Bar Association of Port-au-Prince launched its legal aid program to bring its contribution to the solutions of these problems and influence in a positive way the perception by the public of a seriously discredited profession.

- ✚ The results were substantial. Many accused have been freed at the level of the jurisdiction of instruction. The Criminal Court held close to 150 trials during the summer. The program has room for improvement. The detainees must be taken in charge from the outset until judgment and legal aid must be extended to other fields like family law and conflicts between landlords and lessees.
- ✚ The objective is to transform a program that limits itself to the penal domain to a more comprehensive legal aid program.

1.1.7 Abdullahi Ahmed An-Na`im

Background

- Charles Howard Candler Professor of Law, Emory University, Atlanta, Georgia, USA

Main ideas of his presentation

- ✚ He discussed the role of Shari`a in countries like Iran, Northern Nigeria, Pakistan, Saudi Arabia and Sudan where the state claims to enforce Shari`a through the coercive authority of its legal institutions.
- ✚ The term Shari`a refers to the totality of the normative system of Islam which Muslims are required to observe as a matter of religious obligation. It is therefore misleading to translate this term as “Islamic Law” because Shari`a has a much wider scope and different type of authority over Muslims than state law.
- ✚ This means that Shari`a principles cannot be enforced through the coercive institutional authority of the state. That is, when the state claims to enact and enforce a Shari`a principle, the outcome is the political will of the state and not the religious law of Islam.
- ✚ In relation to barriers to justice, it would be extremely difficult to overcome the above-mentioned problems among Muslims when they are believed to be mandated by the divine law of Islam, particularly in view of the diversity of opinion among Islamic scholars.
- ✚ The Maliki School view that a woman can be convicted of adultery on proof of pregnancy is not accepted by any other School of Islamic jurisprudence. Yet, when a woman is actually convicted and sentenced to death by stoning, as happened in the Amina Lawal and other cases in Northern Nigeria in 2002 and 2003, it was impossible for Muslims there to challenge the Maliki School view of the Shari`a rule.

- ✚ The harsh punishment in those cases was avoided on technical procedural grounds drawn from colonial English Common Law, and not Shari`a jurisprudence.
- ✚ The better and more sustainable solution is to emphasize the secular nature of all state law, and thereby permit Muslims to challenge it as such, instead of allowing the state to claim the sanctity of Islam for its secular and political actions.
- ✚ Space limitations do not permit further elaboration on this proposition, but reference can be made to a full book manuscript on the subject at www.law.emory.edu/fs.

2. Conclusions

- ✚ Access to justice must be ensured worldwide, regardless of the political system, ideology of the administration in office or the cultural, social or religions problems that may exist in each region.
- ✚ The problems faced by the poor and needy to have access to justice are varied and depend on the realities of each region.
- ✚ In general terms, governments do not place the implementation and development of legal aid programs as a top priority in their agendas.
- ✚ In light of such gap, the task of the bar associations in each region seems fundamental and non-waivable.
- ✚ The goals should be, *inter alia*:
 - ✓ To resort to the relevant authorities to attain an efficient judicial system for the population at large, obviously including those with fewer resources.
 - ✓ To support initiatives addressed at creating simple and cost effective dispute resolution mechanisms.
 - ✓ To create legal aid mechanisms within the bar associations to provide legal assistance to the poor and needy.
 - ✓ To actively intervene in the protection of legal aid programs funded by the governments, seeking the continuation and improvement of such programs in the future.

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