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Canada

Grassroots Legal Empowerment: Challenges and Strategies in Southeast Asia





Canada

Grassroots Legal Empowerment: Challenges and Strategies in Southeast Asia

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Published by:

The Alternative Law Groups, Inc.

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The **Stories from the field: Overcoming access to justice barriers through grassroots communities' participation and collective action** project aims to generate knowledge and evidence on key legal empowerment approaches and their contribution to empowering and strengthening grassroots communities' participation and collective action to bridge access to justice gaps.

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ISBN 978-621-8130-17-3

This work was carried out with the aid of a grant from the International Development Research Centre, Ottawa, Canada. The views expressed herein do not necessarily represent those of IDRC or its Board of Governors.

Foreword

International Development Research Centre

Over the last 3 years, ALG and IDRC collaborated to work with a network of organizations to capture experiences, learnings and strategies to improve safe participation of community voices in their future. This book emerges from this initiative to develop knowledge and strategies to strengthen civic space. A key element of these efforts was to support communities in producing the knowledge that they want. The result contributes knowledge that transcend geographic contexts and speak to challenges faced by communities working to improve access to justice in Southeast Asia, West Africa, and East and South Africa. The book captures experiences of practitioners from different stages of public engagements, as they navigate risks and strategies to represent their communities on issues like forced migration, climate justice, and indigenous rights, for example. The contributions within this volume foster the exchange of knowledge regarding evidence and practices beneficial to community-based organizations and legal empowerment initiatives focused on enhancing community participation.

Access to justice is a fundamental right that underpins the rule of law and democratic governance. Yet, for many identities and grassroots communities, the path to justice is fraught with obstacles. “Pathways to Justice: Overcoming Barriers to Access to Justice through Grassroots Action” sheds light on this pressing issue by exploring the vital role of legal empowerment practice and grassroots movements in dismantling the barriers that obstruct equitable justice and the rule of law.

This action research is a testament to the Alternative Law Groups’ (ALG) work and how it has remained steadfast in upholding access to justice, learning with grassroots communities, and inspiring change for more than three decades. It is rooted in the principles of developmental law/alternative lawyering which centers on ALG’s dual work of empowering the poor and the marginalized, and effecting justice system reforms. By emphasizing the voices and experiences of those directly affected, this research illustrates the profound difference that grassroots initiatives can make in bridging the access to justice gap.

The research is a valuable resource for policymakers, legal practitioners, and advocates. The findings presented in this report reveal not only the existing systemic challenges but also the innovative strategies and solutions that community-led efforts can offer. From awareness-building, campaigns to grassroots actions, they have the power to ignite change, empower individuals, and ultimately transform the justice landscape. This research highlights that when communities come together, they can create pathways to justice that are inclusive, responsive, and effective.

I invite you to engage with the insights and recommendations in this report and to consider how each of us can contribute to overcoming the barriers to justice. Through concerted efforts at the grassroots level, we can create a more just and equitable society for all. Our utmost gratitude to all the respondents, ALG member organizations, researchers, partners from the Grassroots Justice Network, and the International Development Research Centre (IDRC) for all the hard work in making this possible.

Maraming salamat!



Sheila Grace Formento

National Coordinator
Alternative Law Groups-Secretariat

Table of Contents

4	Chapter I: Introduction
7	Chapter II: Access to Justice: Country Context
	Philippines
	Malaysia
	Indonesia
	Thailand
12	Chapter III: Sectoral Legal Issues
	Philippines - Marginalized and Vulnerable Groups
	Malaysia - Stateless People
	Indonesia - Women in Conflict with the Law
	Thailand - Mining and Dam Projects
18	Chapter IV: Legal Empowerment Approaches
	Policy Reform
	Challenges
	Strategies
	Strategic Litigation
	Challenges
	Strategies
	Paralegal Development
	Challenges
	Strategies
38	Chapter V: Conclusion and Recommendations

Chapter I

Introduction

This report is based on the country reports commissioned by Alternative Law Group (ALG) through a grant from the International Development Research Centre (IDRC) on legal empowerment approaches of development law groups in Southeast Asia. The Philippines report was prepared by ALG; the Indonesia report, by the Indonesia Judicial Research Society (IJRS); the Malaysia report, by the Development of Human Resources for Rural Areas Malaysia (DHRRA); and for the Thailand case studies, by researchers Dr. Darunee Phaisarnpanitkul and Kornkanok Wattanapoom.



This regional report brings together the country contexts in terms of access to justice, the sectoral legal issues, and the country challenges and strategies for legal empowerment. Finally, it offers key recommendations for bolstering legal empowerment across the world.

Access to justice, in broad terms, is the access to courts and other mechanisms, in line with principles of human rights (UNDP, 2004). While access has little issue in terms of definitions, justice as a concept is more complex. Black's Law Dictionary (n.d.) defines justice as "protecting rights and punishing wrongs using fairness. It is possible to have unjust laws, even with fair and proper administration of the law of the land as a way for all legal systems to uphold this ideal."

In modern and egalitarian legal systems, access to justice has been recognized as a fundamental human right critical in the achievement of legal rights. Importantly, affirmative action is now required of states to ensure the enjoyment of access to justice. (Cappelletti, M. and Garth, B., 1978 in IJRS, 2024).

For the UN Commission on the Legal Empowerment of the Poor (CLEP 2008, in DHRRA, 2024) the legal empowerment of poor and marginalized sectors is anchored in their access to a functioning legal system. A legal empowerment framework is composed of four pillars: access to justice and the rule of law; property rights; labour rights; and business rights (CLEP 2008, in DHRRA, 2024). Access to justice is central because it guarantees all these other rights.

Poor people's legal empowerment through access to justice plays a role in achieving inclusivity and equality (United Nations, 2009, in ALG, 2024). Access to justice has social, economic, and political dimensions. Legal empowerment of the poor through access to justice contributes to broader development efforts by promoting social inclusion and reducing inequality (United Nations, 2009). Access to justice has social, economic, and political underpinnings.

Access to justice in Southeast Asia varies significantly across different countries, with several common challenges including judicial corruption, political interference, limited legal aid, and lack of awareness about legal rights (UNDP 2019). Many countries in Southeast Asia struggle with judicial independence where judicial systems are often subject to political influence, undermining the rule of law and public confidence in the justice system. Access to legal aid is limited in many Southeast Asian countries. Poor and marginalized communities often lack adequate representation, making it difficult for them to navigate the legal system and seek justice. Awareness of legal rights is generally low, particularly among vulnerable populations. Human rights abuses, including arbitrary detention and lack of due process, are reported in several countries.

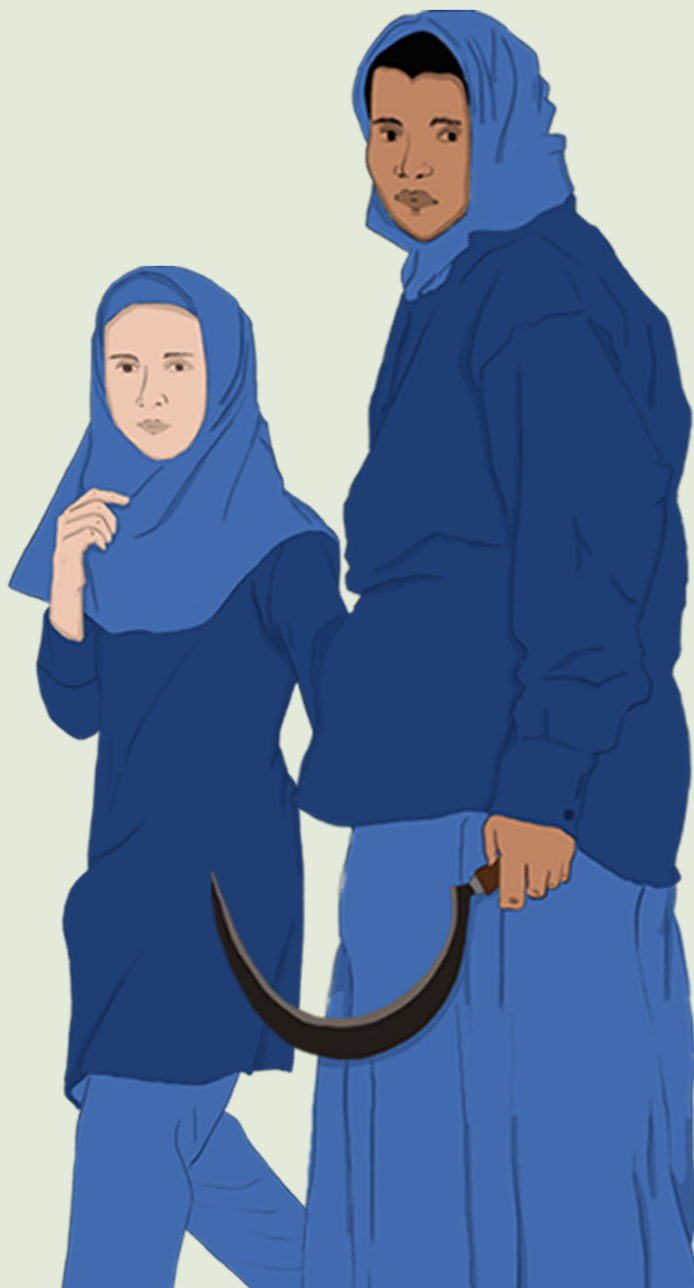
This report is based on research conducted by different legal empowerment organizations in the Philippines, Indonesia, Malaysia and Thailand, using qualitative approach. Each of the country research team followed the participatory approach, emphasizing direct engagement of local priorities and perspectives (Vaughn and Jacquez 2020; Cornwall and Jewkes 1995), employing key informant interviews (KIIs) and focused group discussions (FGDs). The approach is crucial to explore the experiences of the community in organizing legal empowerment approaches. Review of literature supported the contextual understanding of the issues. Each country research team independently identified sectoral focus to highlight legal empowerment challenges and innovations particular to their country. Selection of participants was by purposive sampling, particularly critical case sampling or the collection of data from cases that will provide the most information (Patton 1990). Critical case sampling is particularly relevant where time and mobility may be constrained as was the case during the global COVID19 lockdown, during which significant portions of the data gathering were conducted. A limitation of the sampling is that it cannot permit for a broad generalization of all possible cases. The multi-country studies aimed to generate knowledge and evidence on empowering and strengthening grassroots communities' participation and collective action in bridging access to justice issues. The report, by taking sectoral examples, expounds on various dimensions as marginalized and vulnerable groups grapple with struggles originating in systemic oppression.

In the Philippines, vulnerable and marginalized sectors provide a broad exposition of sectoral challenges in accessing justice (they include indigenous peoples, farmers and peasants, fisherfolk, women, children, migrants, and the LGBT community). In Indonesia and Malaysia, focus is given to particular sectors to highlight both particular and common themes—women's situation and the factors that impede their access to justice are in focus in Indonesia, especially contextualized in the country's social and cultural structures. In Malaysia, a country ranking high among southeast Asian with stateless individuals, the situation of stateless individuals and how they can and cannot access justice is brought to fore. And in Thailand, a case study on communities' bid for environmental protection provides a highlight on their access to justice story.

Chapter II

Access to Justice: Country Contexts

Primarily a qualitative study, the research drew largely from the data and stories gathered by and among ALG's member-organizations, their stakeholders, and the grassroots communities served by the coalition and workforce. Following a participatory approach, it emphasized direct engagement of local priorities and perspectives (Vaughn & Jacquez, 2020; Cornwall & Jewkes, 1995).



PHILIPPINES

Access to justice in the Philippines faces several barriers. Those living in rural or isolated places face challenges in availing legal services (UNDP, 2020, as cited in ALG, 2024). Rural residents find it difficult to access legal services, which are typically concentrated in urban areas. Especially poor Filipinos, who comprise majority of the population, legal fees and expenses can be expensive (IBP, 2020, as cited in ALG, 2024). They are unable to access legal aid services, which provide free or low-cost legal assistance (World Bank, 2017, as cited in ALG, 2024). The Philippine legal system can often be confusing and difficult to understand (UNDP, 2020, as cited in ALG, 2024). Without legal representation, individuals have challenges in navigating the legal system, resulting to unequal results. These barriers to justice can be made worse by long and delayed court proceedings and case settlements (IBP, 2020, as cited in ALG, 2024).

Many Filipinos are not cognizant of their rights and the legal remedies at their disposal (UNDP, 2020, as cited in ALG, 2024). More legal literacy programs are needed for the public to be apprised of their rights and avail legal assistance (IBP, 2020, as cited in ALG, 2024). As a result, marginalized sectors are socially excluded and hindered from accessing justice (UNDP, 2004, as cited in ALG 2024).

The Philippine judicial system is saddled by a significant backlog and inordinate delays in the resolution of disputes (Supreme Court of the Philippines, 2021, as cited in ALG 2024). In the World Justice Project Rule of Law Index (2021), the Philippines ranked 97th out of 139 countries globally. The country also was 105th of 139 countries in terms of the effectiveness of checks and balances, which encompasses judicial independence and the protection of fundamental rights.

INDONESIA

The experience of women in terms of access to justice has an additional layer of vulnerability using intersectionality as a lens (Crenshaw, 1998, as cited in IJRS, 2023). Compared to educated and affluent women, poor or low-educated women face more challenges in terms of access to justice (IJRS, 2023). Ethnic and racial minorities, migrants, indigenous peoples, the elderly, children, persons with disabilities are in a similar position (Indonesia, 1999, as cited in IJRS, 2023).

The Indonesian Constitution guarantees that everyone has the right to recognition, guarantees, protection, fairness, and equal treatment before the law (Indonesian Constitution, 1945, as cited in IJRS, 2023). Provisions in the Constitution of Indonesia are aligned with global frameworks, including Goal 16 of the Sustainable Development Goals (SDGs) of the United Nations, which promotes creating effective, accountable, and inclusive institutions at all levels (United Nations, 2017 as cited in ALG, 2024).

Widespread discrimination is a barrier for accessing justice (Bingham Centre for the Rule of Law, 2014, as cited in IJRS, 2023). Discrimination affects all aspects of access to justice—from the appreciation of legal rights, access to legal counsel and dispute resolution mechanisms, to achieving fair and enforceable solutions. Although de jure discrimination can be repealed through laws, eliminating de facto discrimination requires additional positive strategies (IJRS, 2023).

Indonesia has a significant issue with gender-based violence, including domestic violence, sexual harassment, and human trafficking. Ensuring women have access to justice is essential for protecting their rights and addressing these abuses (National Commission on Violence Against Women, 2020). Women in Indonesia face numerous legal and institutional barriers when seeking justice. These include discriminatory laws, lack of legal aid, and inadequate responses from law enforcement (UN Women, 2020). Deeply rooted cultural and social norms often discourage women from seeking justice. Stigma, fear of retaliation, and societal pressure can prevent women from reporting crimes and pursuing legal action (ICJ, 2018). Moreover, many women in Indonesia are economically dependent on their abusers, which makes it difficult for them to seek justice and leave abusive situations. Access to justice includes providing support systems that empower women economically (ADB, 2016).

The 2019 Access to Justice Index in Indonesia found that 46 percent of people experiencing problems related to gender-based discrimination and violence chose to do nothing about the issues they faced. Additionally, 52 percent of women were reluctant to take legal action to resolve their problems. 60 percent of women did not seek legal assistance when facing legal issues because they feared the problems would become more complicated if they sought legal aid. These data points highlight why legal empowerment is essential for women through three pillars of individual and community action: knowing the law, using the law, and shaping the law (Dio Ashar Wicaksana, et al., 2019, as cited in IJRS, 2023).

MALAYSIA

A review of access to justice in Malaysia shows that legal recognition of the right to access to justice in the country is still not well-defined, though constitutional scholars typically rely on Article 5 and Article 8 of the Federal Constitution to assert this right (Faridah Abdul Jalil, 2015, as cited in DHRRA, 2024). Article 8(1) stipulates that all individuals are equal before the law and entitled to equal protection, while Article 5(3) ensures that everyone possesses the right to legal representation within the court system. Despite this constitutional framework, access to justice remains uneven in the country (Malaysia Constitution, as cited in DHRRA, 2024).

In the 2022 World Justice Project (WJP) Rule of Law Index, Malaysia was 55th in 140 countries with a 1.7 decline in the overall rule of law score (Murugiah, 2022, as cited in DHRRA, 2024).

More particularly in the case of stateless persons, lacking basic legal status severely limits their access to justice, healthcare, education, and employment. This leaves them vulnerable to exploitation and abuse without legal recourse. Stateless individuals often face human rights violations, including arbitrary detention, lack of due process, and discrimination. (UNHCR, 2019). Without legal status, they cannot seek protection or justice from the authorities (Amnesty International, 2019). The presence of a large stateless population can pose national security concerns. Providing legal status and access to justice helps integrate these individuals into society, promoting stability and reducing the risk of criminal exploitation (Institute for Policy Studies, 2017).

Research respondents in DHARRA's study say that there is an absence or severe lack of access to justice for stateless people in Malaysia (DHARRA, 2024). For respondents, access to justice goes beyond legal services, encompassing the conditions for a life with dignity for stateless persons, which includes healthcare, education, work, marriage registration, citizenship, among others. (DHARRA, 2024).

THAILAND

The case of Thailand provides an example where a working and viable access to justice mechanism can actually serve to protect people and the environment. Thailand has recognized the rights of individuals and communities in managing and preserving the environment, exemplified by a landmark court decision on a record number of industrial projects which had been found to not have complied with environmental impact assessment (ADB, 2012).

The Environmental Democracy Initiative has found that Thailand has strong transparency laws where the government is mandated to proactively provide information. (Access Initiative, n.d.).

Public participation is required for most environmental decision making, but the government is not required to take account of comments from the public. Thai laws have appeal process for denials of information requests and allows the public broad standing to file claims, but court decisions on the environment are not enforced promptly. (Access Initiative, n.d.) The Supreme Court of Thailand has established environmental divisions (or green benches) at the supreme court, the appellate court, and the trial court level (ADB, 2012).

Chapter III

Sectoral Legal Issues

The Alternative Law Groups (ALG) is a large network of public interest law groups working with marginalized groups, including indigenous peoples, farmers and peasants, fisherfolk, women, children, migrants, and the LGBT community. In the Philippines country report, ALG (2024) looked at these various sectors and their access to justice issues.



Among the salient issues found were: The state and legal mechanisms are not always compatible with indigenous people's customary laws. They have been thrust into state processes but without the capacity to navigate these. In many cases, both large corporations and government agencies themselves violated laws. Numerous cases of harassment against environmental human rights defenders (EHRDs) have been recorded amid a culture of impunity.

Farmers faced issues around land conversion, land grabbing and evictions, and ownership and other issues under agrarian reform.

Violations or gaps in the implementation of policies is prevalent in the extractives sector such as metallic mining, coal mining, coal-fired thermal plants, agribusiness plantations, and energy projects. Affected communities often report issues on procedure and consent, and with benefits failing to accrue to them.

In coastal resources, illegal commercial activities, law violations and displacement of fisherfolk communities were noted.

Violence against women and children (VAWC), trafficking, cyber pornography, prostitution, and exploitation were identified in the area of gender and women's and children's rights. Discrimination was highlighted in LGBT issues, including the challenging of duty bearers to introduce more inclusive procedural rules.

INDONESIA

The Indonesia Country Report cites data from the Access to Justice Index for the country in 2019 where women were identified as being one of the groups vulnerable to legal issues (Wicaksana, 2019, as cited in IJRS, 2023), and given focus in this report.

Women's most common problems concern family and children: divorce accounted for 57% of cases; social security, 57%; and population registration issues, 52%. Remarkably, the study found that 52% of women, 34% of which are homemakers, typically do not pursue legal remedies when confronted with legal problems (Wicaksana, 2019, as cited in IJRS, 2023).

The National Commission on Violence Against Women (Komnas Perempuan) discovered a total of 421 policies/regulations from 2000 to 2016 that still exhibited discriminatory practices towards women. (Wicaksana, 2019, as cited in IJRS, 2023)

Women struggle with rights claiming, including around healthcare, higher education, economic opportunities, public participation, and weak access to justice. At the same time, there numerous cases of VAWC, trafficking, harassment and a lack of protection for women and children. (National Law Development Agency, 2006, as cited in IJRS, 2023).

The Indonesia country report cites an indexing report which found that 99.5% of victims of sexual violence identified in court judgements are female, with 72.1 percent of them being children aged 6-18 years old (IJRS, 2022, as cited in IJRS, 2023). This reinforces the idea that the root cause of sexual violence is the patriarchal culture, which still positions women as the vulnerable party, and the state's protection, especially for children, needs to be ramped up.

In 2021, there were 338,506 cases of gender-based violence, a marked increase from the 226,062 cases in 2020. (Komnas Perempuan, 2023, as cited in IJRS, 2023)

An organization also monitored cases of femicide and found 237 cases with various motives, including revenge, rape, jealousy, theft, unwanted pregnancy, and other reasons. (Komnas Perempuan 2023, as cited in IJRS, 2023). These femicides were predominantly committed by husbands, boyfriends, and neighbors of the victims. Meanwhile, according to the Gender Equality Barometer Study in 2020, out of seven respondents, five had experienced sexual violence against themselves, their family members, or people they knew, with the majority being women (Dio Ashar Wicaksana, et al., as cited in IJRS, 2023).

Most respondents who experienced sexual violence did not report their cases due to fear (33.5 percent) and not knowing where to report (23.5 percent). As a result, most respondents did not find a resolution to their issues (Dio Ashar Wicaksana, et al., as cited in IJRS, 2023).

The neglect of women from justice can be both a cause and a consequence of violence and conflict, poverty, inequality, and marginalization or exclusion (The Task Force on Justice, Justice for Women, p. 36., as cited in IJRS, 2023).

MALAYSIA

Statelessness continues to be an enduring issue in Malaysia, originating in historical migration patterns, discriminatory policies, legal and administrative barriers, among others. Home to diverse groups of stateless people, Malaysia nevertheless denies stateless people (DHRRA, 2024).

Briefly in 2019, there appeared a glimmer of promise when Muhyiddin Yassin, then a senior government official, acknowledged at a UN meeting the stigmatization and precarious living conditions of stateless people. However, when this official rose to become prime minister, no policies developed (Malaysiakini, 2019, as cited in DHRRA, 2024).

The following are the major issues of stateless people in accessing justice.

→ *Lack of Legal Recognition*

Since Malaysia does not officially recognize stateless people, there are no available data or statistics.

The Malaysian national law has not adopted the internationally accepted definition of statelessness as contained in Article 1 of the 1954 Convention Relating to the Status of Stateless Persons, nor has any legal definition of stateless individuals (Kanageswary Tie & Mohd Yusoff, 2022, as cited in DHRRA, 2024). Often, the stateless individual is lumped with citizens who don't hold identification documents as 'non-citizen'.

Stateless people do not enjoy legal recognition and protection because the government has not ratified accords such as aforementioned 1954 Convention, the 1961 Convention on the Reduction of Statelessness, and the Convention relating to the Status of Refugees (DHRRA, 2024).

→ *Challenges in Acquiring Citizenship*

The Federal Constitution is the basis for nationality law, which rests on a combination of jus soli and jus sanguinis principles. There are three pathways for acquiring Malaysian citizenship: automatic acquisition through operation of law, registration or naturalization. However, there are huddles, including gaps in nationality law, strict and unclear administrative procedures, and complicated application processes (DHRRA, 2024).

→ *Lack of access to marriage registration*

Marriage registration and statelessness reinforce each other. Children born out of legal marriages cannot acquire Malaysian nationality despite being born in Malaysia to a Malaysian father, while individuals without valid identity documents face have difficulty registering their marriages. More cases of children becoming stateless when the Law Reform (Marriage & Divorce) Act 1976 took effect on March 1, 1982. This law, applicable only to non-Muslims, rendered unregistered customary or cultural marriages, as well as those conducted according to Chinese or Hindu rites after March 1, 1982, invalid (DHRRA, 2024).

→ *Lack of access to health care*

Again as they lack valid documents, stateless people have difficulty accessing subsidized health care and social security. In fact, stateless people must pay the Foreigner's Rate for healthcare services (DHRRA & ALG, 2024). High costs, lack of transportation, fear of arrest are some of the challenges in accessing private healthcare services. High costs of treatment are

an additional burden and deter stateless individuals from seeking healthcare (DHRRA, 2024).

During the COVID-19 pandemic, foreign nationals who contracted or came into contact with patients with the virus were supposed to have been exempt of outpatients fees, examination and treatment in government facilities. But it was found that stateless individuals hesitated undergoing testing or seeking treatment, fearful of arrest (DHRRA, 2020, as cited in DHRRA, 2024).

→ *Lack of access to education*

Stateless children face layers of barriers in accessing education. Levy fees are required for entry to government schools, parents are expected to bear school expenses, and proof of pending application for citizenship is required. Sitting for public examination is impossible for children without documents for identification, and stateless students are not accepted into most higher education institutions. They are not entitled to government loans. They also face discrimination and stigmatization on top of the psychosocial challenges they are already experiencing (DHRRA, 2024).

→ *Lack of access to employment opportunities*

Legal employment is not an option for stateless people, unable to fulfill essential employment documents, such as opening a bank account. Their lack of formal education limits their prospects. Most stateless persons are daily wage earners from odd jobs. They lack legal protection and vulnerable to exploitation, such as trafficking, forced labor, abuse, and sexual exploitation (DHRRA, 2024).

→ *Risk of arrest, deportation, or detention*

The Malaysian Immigration Act 1959/63 does not differentiate people who have no valid documentation, putting stateless people at the same risk for arrest, detention and deportation. Since stateless people have no country of origin, they can be detained indefinitely. The Movement Control Order in 2020, in a bid to control the spread of COVID-19, lead to a massive arrest of illegal immigrants, without any effort to differentiate them from stateless persons (DHRRA, 2024).

THAILAND

It is in the realm of tenurial rights in connection to natural resources which they have used and conserved is the central preoccupation of indigenous peoples in Thailand (IWGIA, 2023). The State tends to prioritize and use conservation to the exclusion and disadvantage

of indigenous peoples' customary land rights (IWGIA, 2023).

The centralized policies of the country have resulted in indigenous communities' lands being seized for conservation and tourism and the erosion of their cultural heritage.

In the few references to their legal rights it is relegated mainly to user rights, resulting in the criminalization of communities which carry out traditional resource uses. (IWGIA, 2023).

1,502 cases were reported from January to December 2022 (DNP, 2023, as cited in IWGIA 2023).

29,350 cases of indigenous peoples and community members were brought to court over 136,576 hectares of farmlands being 'reclaimed' by national parks. Thailand's approach to biodiversity conservation relies on increased militarized means which results in conflict, prosecution, displacement and violence (Wongnithisathaporn, P. and Worsdell, T., 2021).

Chapter IV

Legal Empowerment Approaches

This comparative study looks at three legal empowerment approaches and the challenges and strategies of grassroots communities under each approach. The three approaches are strategic litigation, policy reform, and paralegal development. Each approach is defined briefly before the challenges and strategies are described.



STRATEGIC LITIGATION

Strategic litigation has come to mean using the law to set precedent that transforms the fortunes of marginalized and vulnerable communities.

Strategic or 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 (Chayes, 1976, as cited in ALG, 2024). This political strategy is born of the failure of parliaments to attend to issues raised by civil society. Strategic litigation legitimizes and raises the profile of a cause (Buckel et al., 2023, as cited in ALG 2024).

There are generally two types of strategic litigation, also known as impact litigation or cause lawyering: (1) planned impact litigation (PIL) for cases that are planned by civil society actors from the onset and (2) unplanned impact litigation for cases that graduate into strategic cases as they unfold (Center for Human Rights and Humanitarian Law, 2016, as cited in ALG 2024).

For grassroots communities, strategic litigation has an organizing function: it helps to consolidate movements by mobilizing individuals and communities concerned with the issue, or to provide space or momentum for new or stigmatized movements or sectors (Open Society Foundations, 2016, as cited in ALG, 2024).

CHALLENGES

→ *Justice system*

In the Philippines, the main challenge with the justice system is with the slow adjudication of cases. For example, one case took nine years, only for it to be dismissed. The justice system is insensitive to the condition of survivors. Remoteness of communities needing assistance was also identified as a barrier, servicing an island province of still many rough terrain (ALG, 2024).

Bureaucratic malaise and weak governance are another challenge; duty-bearers are not aware of marginalized peoples' rights or fail to act on issues. Referral systems are unclear for VAWC cases, and there is no central database especially in child rights efforts. Existing laws are also poorly implemented (ALG, 2024).

In Indonesia, in the realm of family law, 40% of women experience legal problems in cases of domestic violence, and 75% of women deal with child support issues (Task Force on Justice,

2020, as cited in IJRS, 2023). In many cases, men drop divorce suits upon learning the huge costs of alimony and refuse to pay child support (Nahuddin, 2002, as cited in IJRS, 2023).

But, in fact, the problem runs deeper: 9 in 10 women of poor female-headed households cannot access the country's court system because of the high costs of litigation and transportation (Akhmadi, et. Al, 2011, as cited in IJRS, 2023).

The Indonesia report cites a study by OECD which found that access to justice issues affect family relations and employment, and ultimately diminishes confidence in the justice system (OECD and Open Society Foundations, 2016, as cited in IJRS, 2023).

→ *Enforcement*

In Indonesia, in pursuing cases related to domestic violence, survivors' reluctance to file cases can be due to the following: 1) shame from knowing their disgrace becomes public and fear of victim-blaming; 2) dependence of survivors on perpetrators (husbands); and 3) law enforcers believing that domestic violence is a private matter. The assurance of protection from law enforcers from perpetrators upon the return of the survivor to the home is also a barrier. (Sulistiyowati Irianto dan L.I. Nurtjahyo, 2014, as cited in IJRS, 2023).

→ *Community capacity*

In the Philippines, communities' own lack of capacity is also a barrier where many of them are not aware of their rights. Many communities, fearing reprisals, are hesitant to file cases, especially regarding environmental cases (ALG, 2024).

Social and economic barriers also exist; pursuing cases can disrupt work in Indonesia (IJRS, 2023).

→ *Legal fees and civil society capacity*

In Malaysia, funding is also an issue for pursuing strategic litigation, with many organizations reluctant to support. While some lawyers offer their services pro bono, there are of course those who require payment (DHRRA, 2024).

A high turnover rate of public interest lawyers is also a factor in the Philippines (ALG, 2024).

→ *Reprisals*

In the Philippines, threats to community abound. Strategic lawsuits against public participation (SLAPP) cases are plentiful, and the consequences for rejecting the renewal of

so-called development projects are dire, with community members being massacred in one of the areas (ALG, 2024).

In Indonesia, women are hesitant to report cases, for fear of reprisals, and for being criminalized when seeking abortion in cases of pregnancies from rape. (Komnas, HAM, Jakarta, n.d., as cited in IJRS, 2023).

In Malaysia, mental health and wellbeing is another challenge. DHRRA provides psychosocial support for litigants and community members. The most common issues are depression, issues between couples, parent-child relationship issues, domestic violence, addiction, interpersonal communication, divorce, among others (DHRRA, 2024).

In Thailand, a corporation used SLAPP suits against a mining-affected community. In 2020 the law (the Regulation of the Department of Forestry on Permission to Benefit or Reside in National Forest) which covers community participation was amended to exclude local participation or inputs. This is a major stumbling block for communities which have used the same law to allow them to engage in the mining project approvals process. Litigation against conservation advocates also had a chilling effect on the villagers (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

To illustrate the challenges of communities vis-à-vis litigation, a case study about a community resisting a large-scale gold mine in Amphur Wangsapung, Loei Province, is instructive. The gold mining corporation filed a series of cases, most of them SLAPP suits, against the community (Phaisarnpanitkul, D. and Wattanapoom, K., 2024). The following cases were filed:

- A defamation suit by the company against community members for hanging a sign that says “The community does not want this mine” at the entrance of the mining site. The judge dismissed the case, ruling that the defendants had merely exercised their rights and that their action did constitute bad faith nor tort against the company. The Court of Appeals affirmed the decision. A follow-up lawsuit for tort was similarly dismissed by the court.
- The police filed a case against the community for allegedly blocking members of the local council meeting to discuss the renewal of plots for the mining project. The court dismissed the case, arguing that the community merely set up and stayed in tents outside the meeting venue. The judge also ruled that the community, having suffered from the effects of the mining project, was expressing opinion. The Court of Appeals affirmed the verdict.
- A suit against the third construction of a roadblock—the “Wall of Heart”—the community constructed at the entrance of the mine. While the judge dispensed a the

guilty verdict, he released them on parole for one year. He said that the community acted in the spirit of public interest, not their own, and had blocked not traffic but just the entrance.

- A trespassing case filed by the company against community members that held a protest outside the entrance. The local court dismissed this, ruling that the company did not have “the right of the possession of the land.”
- A defamation suit against Miss Ploy, a fourteen-year-old citizen journalist who wrote about the negative impacts of the mine. Both the police and the provincial government did not process the suit because Miss Ploy was a minor.

With the help of civil society, the community faced these suits — winning these cases. The next section details the strategies of this community and civil society partner is using the rule of law to uphold their rights.

The Thailand case study zeroed in a strategic litigation around the Xayaburi Hydro-electric Dam to be constructed in Lao PDR, along the Mekong River. Communities from eight provinces in Thailand which would be impacted by the Xayaburi Dam worked with civil society to file an administrative lawsuit against the Electricity Generating Authority of Thailand (EGAT), a government agency, which facilitated the Power Purchase Agreement (PPA) between the government of Lao PDR and Xayaburi Power Co., Ltd. (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

Because the dam was in Lao PDR and the case stemmed from fears of impacts on Thai communities living along the Mekong River in Thailand, the case was the First Extraterritorial Environmental Case (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

37 complainants filed the case, supported by 1,000 villagers, filed the case where the EGAT is the first respondent, along with other respondents such as National Energy Policy Committee (the second respondent); the Ministry of Natural Resources and Environment, Mekong River Basin Committee Member (the third respondent), the Ministry of Energy, a regulator of the EGAT, (the fourth respondent); and the Cabinet of the Ministers (the fifth respondent). On 17 August 2022, the Supreme Court dismissed the case, ruling that the negative impacts could not be attributed to the PPA. The negative impacts occurred outside the territory of Thailand and arose from the dam itself, but not the PPA (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

→ COVID-19

Restrictions from the COVID-19 pandemic were also noted in the Philippines and Malaysia (ALG, 2024; DHRRA, 2024).

→ *Cultural barriers*

In the Philippines, cultural and social attitudes have an impact where indigenous youth have turned their backs on their heritage and seek waged work given the dire situation of their people. Patriarchal attitudes, multiple burdens, and a lack of education prevent women from participating (ALG, 2024).

In Indonesia, additional witnesses are asked of them to corroborate their testimony and prove resistance as evidence for coercion. Women are often blamed for sexual violence (USAID & E2J The Asia Foundation, 2015, as cited in IJRS, 2023).

Shame or trauma prevent survivors from participating in trials and lack of witnesses or evidence complicate legal proceedings (Kejaksaan RI and IJRS, 2021, as cited in IJRS, 2023).

In Indonesia, JIP (Jaringan Indonesia Positif) shared that women survivors are uncomfortable with and therefore cannot fully share their stories with non-cisgender female companions and cisgender male and transgender individuals (IJRS, 2023).

STRATEGIC LITIGATION: STRATEGIES

→ *Community countersuits*

After facing and starting down a series of suits filed by the gold mine, the community in Thailand learned to use the rule of law to their advantage: They filed cases against and countersued the company. The company inadvertently opened the doors to the community to the power of courts (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

It was after winning the defamation suit that the villagers shifted from being defendants to plaintiffs. As one villager said, "I want to test if justice exists. Here, [the mining company] use the law and public prosecutor against villagers. Villagers faced dozens of litigation as defendants. I want to know what it is like if we sue the company?" (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

The first case the community brought was a countersuit to the defamation case filed against community members. The court ruled in their favor, awarding them with 170,000 baht each and attorney's fees of 30,000 baht. Another case was a lawsuit demanding for rehabilitation and compensation for damages from health impacts on the villagers. The court awarded compensation to some villagers and ruled for the mining company to rehabilitate and restore the area to "a state where it can be used and consumed according to official standards." (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

The Thailand case study showed community and civil society strategies under strategic litigation.

From having been defendants and working with civil society in exploring the use of the law in furthering their welfare, they became the “co-party of law enforcement.” In their experience as defendants, where the court affirmed their right to freedom of expression, and as plaintiffs, where the court recognized their right to compensation and the mining company’s duty of environmental rehabilitation, they saw that the justice system was working. The countersuit is rare in Thailand, according to one research respondent; this has far-reaching ripple effects for human and environmental rights in the country (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

Bringing cases to court also leads to enhancing the knowledge of the court itself, from judges to prosecutors to court officials. The struggles of the communities are brought to the fore and context is established. That the court decided on the side leniency for community members committing violations augurs well for community-led action made in the spirit of public interest and environmental conservation. According to the report, people in courts had a change in behavior to the community members, from a lack of understanding to taking a more amiable disposition toward them (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

There were two strategic litigation wins. The very scope of defamation was clarified: villagers expressing their stance against the mine was not defamatory, and company had acted on bad faith and merely weaponized the law for their own benefit. The case involving rehabilitation marked the first time were villagers could participate in the rehabilitation process (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

➔ *Parallel advocacy*

This was the same experience in the Philippines where civil society found that strategic litigation and advocacy have a mutually beneficial and reinforcing relationship (ALG, 2024). In Malaysia, advocacy is necessary to support strategic litigation. DHRRA organizes awareness raising activities to spotlight the issues of stateless people in the media, ultimately reaching policymakers. According to one respondent, there are over 2000 media articles on the issue as of this writing (DHRRA, 2024).

➔ *Community support*

Similar to Thailand, litigation must also be based on community support in the Philippines; survivors themselves become effective spokespersons or so-called experiential advocates of causes. Local campaigning to support national advocacy is critical and the continuing

education of communities of their rights is important (ALG, 2024). In Indonesia, the CSO worked to ensure that the perpetrator of rape (a father) was prosecuted and convicted. This was considered to be a significant victory since it shines a light on the power dynamic that gives perpetrators a sense of entitlement over women and girls in cases of domestic violence (Aisyah, N., 2023, as cited in IJRS, 2023).

→ *Different forms of legal aid and litigation*

The above experiences can best be crystalized by the experience of communities in Indonesia, where civil society have supported communities' legal empowerment through the strategies of "knowing" and "using" the law to achieve a gender-just legal empowerment. Knowing the law involves legal education and counseling while using the law covers litigation and advocacy, such as offering legal assistance to resolve disputes. One organization handles cases related to domestic violence, sexual violence, divorce, and legal identity issues (IJRS, 2023).

One organization in Indonesia provides four types of legal aid, which illustrates the creativity and flexibility of the strategic litigation being implemented (IJRS, 2023):

Lawyering

Providing comprehensive legal representation both inside and outside the court.

Shadow Lawyer

Providing shadow assistance, especially outside the court, aimed at empowering community groups, or families seeking legal aid.

Consultation

Offering legal advice to those seeking legal aid without direct involvement in the ongoing legal process.

Referral

Offering suggestions to those seeking legal aid to consult further or directly meet with parties or institutions with greater authority in addressing the issues they are facing.

→ *Paralegal development*

Strategies which have proved successful in the Philippines and Indonesia are built upon robust and continuing paralegal development. In fact, where there are paralegals embedded in the community, it is less dependent on lawyers (ALG, 2024). In Indonesia, the strategies

include networking with fellow paralegals, training paralegals, counseling and actual legal assistance. Best practices are Legal Clinic on Wheels for legal education, and the 'kongkow paralegal' (paralegal hangout) sessions, where community members and paralegals meet every month to share ideas. Another practice is supporting PWDs to accompany co-PWDs who have legal cases. Another is "peer counseling" which covers both legal and psychological counseling (IJRS, 2023).

→ *Working together*

CSO networks are important for raising awareness and funds in the Philippines, Malaysia and Indonesia (ALG, 2024; DHRRA, 2024; IJRS, 2023).

→ *Institutional engagement*

Good rapport with government officials has also been identified as necessary for the achievement of justice in Malaysia and the Philippines (DHRRA, 2024; ALG, 2024). In Malaysia, there are officials who are sympathetic to the causes of stateless individuals. Processing time of applications can be reduced if the official sympathetic (DHRRA, 2024).

→ *Legal frameworks*

In the Philippines, existing legal frameworks and mechanisms can be harnessed for promoting legal rights; for example, the country's law on mental health has been used to advance LGBT rights. Alternative dispute resolution (ADR) has a place to diminish the burden on individuals; administrative remedies available in schools or companies can help the LGBTQIA community, for example (ALG, 2024). This was also true in Indonesia: non-litigation routes are also explored, as they facilitate a speedier resolution of issues faced by female survivors. Mediation or summoning are favored, for instance, in date violence, to warn the perpetrator (IJRS, 2023).

→ *Capacity building*

For another organization in Indonesia, it is important to walk survivors of domestic violence, particularly those with HIV/AIDS who are more vulnerable to sexual violence, through the legal process (IJRS, 2023).

→ *Online assistance*

In Indonesia, Case assistance has now harnessed online and social media platforms such as Zoom, Twitter and Instagram. One organization provides online consultations to address human resource constraints. Another maintains a directory of various experts, from psychologists to lawyers to police officers who are open to collaborative work (IJRS, 2023).

POLICY REFORM

Policy reform constitutes a major policy change that may or may not result in change (Cerna 2013, as cited in DHRRA, 2024). The Commission on Legal Empowerment of the Poor (CLEP, 2008, pg.18, as cited in DHRRA, 2024) warns that 'reforms that that are imposed, no matter how well intended, rarely take root in society' (CLEP, 2008, pg.18, as cited in DHRRA, 2024). As such, communities must be active in policy reform initiatives, which must respond to their own needs and aspirations (DHRRA, 2024). Reforms become successful when they have some support from the community; most governments typically embrace reform during crises (Lindquist, 2011, as cited in ALG, 2024).

Policies can be categorized as follows: substantive, regulation, distribution, and redistribution (Pepperdine, 2023, as cited in ALG, 2024). Substantive policies are those meant to respond to social issues, while regulation covers compliance by industries. Distribution mandates the fair enjoyment of co-benefits, and redistribution is concerned with the allocation of resources, such as taxes (ALG, 2024).

CHALLENGES

→ *National laws*

In Malaysia, the principal challenge revolves around citizenship for stateless people. The first particular barrier is with gaps in the nationality law itself. This has resulted in different categories of stateless individuals e.g. those born before Malaysian Independence Day; those who, because of gender-biased clauses in the nationality law, have become stateless; children or foundlings whose link to the country could not be determined; and adopted stateless children (DHRRA, 2024).

In Indonesia, policy changes which are not comprehensive also impact the lives of marginalized communities. CSO human resources are also a factor. Finally, enacted policies are not disseminated widely, failing to reach the very communities for whom they were created (IJRS, 2023).

In the case of the experience of the Khon Rak Ban Kerd conservation group in Thailand, the community and civil society organizations found a gap in the country's mining law, which does not contain a provision on the rehabilitation of the environment at the end of a mining project. They thus filed a lawsuit to ultimately amend the mining law, to now include rehabilitation (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

→ *Institutional gaps*

In Malaysia, another barrier involves gaps in the administrative procedures of the National Registration Department, which is under the Ministry of Home Affairs. Citizenship applications is a slow process, varying from case to case, with some decisions taking as long as four years. This opacity is not helpful for applicants reapplying. The government also does not make public standard operating procedures for applications (DHRRA, 2024).

Finally, procedures at various levels of the NRD are not standardized (DHRRA, 2024).

In Indonesia, government passivity is also a challenge (IJRS, 2023).

Policy reform faces considerable challenges in the Philippines. Institutional issues such as the failure to accommodate community voices, discordant policies, bureaucracy and a lack of recognition of rights are prevalent. Government consultations are not always inclusive. Glaringly, approved policies either take too long to implement, or not implemented at all. There were also specific policies which negatively impacted various marginalized sectors. The government is also not proactive in handling violations, for example, in the agrarian sector. Government functionaries' capacity also needs to be improved as well referral systems for children's issues (ALG, 2024).

→ *Community capacity*

In Malaysia, stateless people participation in policy reform presents their own challenges stemming from stateless persons' lack of understanding of their statelessness. Generational statelessness is normalizing. They also have a fear of reprisals and a fear of their applications becoming rejected, resulting in reticence in participating in advocacy efforts. Stateless people lack awareness of platforms which can address their issues. They also suffer from stigmatization and xenophobia, which makes advocating for their rights difficult. The government also considers statelessness a security issue, fueling the anxiety of stateless people (DHRRA, 2024).

Community participation is also limited in crafting policies in Indonesia (IJRS, 2023).

The interest of young people in environmental advocacy has waned, and the capacity of community members need to be built or sustained in the Philippines (ALG, 2024).

→ *Civil society issues*

In Indonesia, challenges around policy reform have come from civil society itself. CSOs with a conservative streak blocked one bill because of its stance on consent within relationships.

While the bill was eventually enacted into law, there are gaps in implementation, which is prevalent in other bills. It was difficult to consolidate survivors, to allow them to input to proposed laws. National and regional advocacy should be aligned. (IJRS, 2023). Internal issues within organizations is also an issue in the Philippines (ALG, 2024).

→ *Cultural barriers*

In Indonesia, public rejection of policies is also a real barrier. For example, the public subscribes to the idea of domestic violence as a private issue to be settled between husband and wife. Gender issues in the main are considered sensitive topics, largely because they problematize religious doctrines. Religious texts may be weaponized to combat policy reform (IJRS, 2023).

A patriarchal paradigm pervades Philippine society, and cultural mores are not tolerant of LGBTQIA+ rights (ALG, 2024).

Political dynamics also play a role where the interests of politicians and interest groups hold sway over policies in the Philippines (ALG, 2024).

→ *Funding*

In Indonesia, donor agencies' preference for funding, which impacts local CSO autonomy, as well as issues with co-funding could also affect advocacy (IJRS, 2023). Funding and access to data are also a challenge in the Philippines (ALG, 2024).

→ *Reprisals*

A culture of impunity exists and penalties for human rights violations are low. Reprisals were reported in the Philippines (ALG, 2024).

→ *COVID-19*

Restrictions because of the COVID-19 pandemic encumbered the mandates of organizations in the Philippines (ALG, 2024).

→ *Particular challenges in women-centered advocacy: A snapshot*

In terms of legal advocacy around the VAWC work, the Women’s Legal Bureau from the Philippines identified several challenges that speak to the gender-differentiated dimensions of pursuing advocacy (ALG, 2024):

Lack of financial capability and support to sustain participation

Negative relationship between the community women and barangay leaders

Excessive workload of the VAWC desk officers and volunteers

Difficulties in recruiting younger people to join their groups and become women legal advocates

COVID-19 lockdown preventing women from holding activities

COVID-19 lockdown hindering women legal advocates from gathering or updating information and monitoring cases of VAWC (i.e., the lower number of reported cases does not mean fewer cases of VAWC, it could mean that people were just being silenced, especially during the pandemic)

Care responsibilities of women/female children

Natural calamities (e.g., Marikina and Quezon are disaster-prone areas)

POLICY REFORM: STRATEGIES

→ *Public campaigning*

In Malaysia, strategies around policy reform are manifold. One successful method is story sharing by stateless people of their experience on social media, which is effective and cost-efficient. This is rooted in allowing or amplifying community voices to surface their own issues, building their confidence and leadership in advocacy itself. Working with experienced organizations such as DHARRA is helpful in handling complex cases for newly formed organizations. Sharing and contextualizing the issue locally has been effective for grassroots awareness and solidarity. Media coverage has been helpful in spotlighting the plight of stateless people (DHARRA, 2024).

In Indonesia, mezzo advocacy or engaging in CSO networks to work together on advocacies, including the delivery of services, has been found effective, especially in building political support. Campaign materials are also helpful (IJRS, 2023).

➔ *Evidence building*

In Indonesia, CSOs engage in data collection to build evidence for policy reform. One success has been data collection of survivor experiences which resulted in robust government policing of electronic-based sexual violence (E-BSV). Another effective tactic is to overlay issues onto draft, existing and new laws to map out issues. CSO-government collaboration is also effective (IJRS, 2023).

In the Philippines, community members prepared a resource map which helped pass a law on municipal fisheries and marine protection (ALG, 2024).

➔ *Institutional engagement*

In Indonesia, the crafting of memorandum of understanding between government and CSOs as well the establishment of technical working groups (TWGs), lobbying and meetings — the range of tactics under institutional engagement is critical for success (IJRS, 2023).

In the Philippines, collaboration between government and stakeholders resulted in successful outcomes; the government itself supported capacity building (ALG, 2024). In fact, government support for advocacy was important to its success.

In the Philippines, communities taking part in institutional mechanisms and government decision making was a key strategy. Legal frameworks and quasi-judicial mechanisms have a role to play in the safeguarding communities and giving them a platform to voice their concerns. In fact, some community members sit on technical working groups (TWGs) which facilitated the passage of progressive local ordinances. Local laws that echo the calls of national laws were instrumental for policy reform. The knowledge of communities of these mechanisms and laws was important in the achievement of reforms. The formation of local councils where community members can be a part of was important in implementing national laws at the local level (ALG, 2024).

➔ *Support from civil society and the public*

In the Philippines, support from civil society to communities was important. Solidarity and networking were essential for building pressure for policy reform (ALG, 2024).

Activating the Filipino diaspora was important for campaigning; in the report, technical experts from overseas (the US) helped with the environmental impact assessment for a coal project (ALG, 2024).

→ *Litigation and policy reform*

In Thailand, a mining-affected community used litigation to address and ultimately reform the law on rehabilitation for mining sites (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

In the case of the experience of the Khon Rak Baan Kerd in Thailand, they and civil society organizations found a gap in the country's mining law, which does not contain a provision on the rehabilitation of the environment at the end of a mining project. They thus filed a lawsuit to ultimately amend the mining law, to now include rehabilitation sites (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

Their lawsuit against the community participating in a public meeting regarding the gold mining project in Amphur Wangsapung, Loei Province, Thailand, facilitated the change in policy itself regarding assemblies. The court ruled that the community gathering outside the meeting was not considered as an assembly, and that the community members present at the meeting had a right to be there, following an invitation from the government. This ultimately changes the Thailand's 2015 Public Assembly Act, creating space for community negotiation sites (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

PARALEGAL DEVELOPMENT

The institution of paralegal as one that "maintains a focus on achieving concrete solutions to people's justice problems" (Maru, 2006, p. 428, as cited in ALG, 2024) and is "oriented towards empowerment" (Maru, 2006, p. 280, as cited in ALG, 2024). It complements formal legal aid by directly assisting ordinary people, especially those who live in poverty, whose access to justice is restricted by the limitations of the formal legal institutions. Paralegal development aims to increase the capacity of the poor to understand and utilize the legal system and institutions to uphold their rights, pursue justice (Franco, et al., 2014), and bolster human agency overall (Maru, 2010, as cited in ALG, 2024).

The paralegal approach has advantages and disadvantages (Maru & Gauri, 2018; Maru, 2006, as cited in ALG 2024). For advantages, paralegal approach empowers individuals and communities, as they "aspire to cultivate the knowledge and power of the people with whom they work" (Maru & Gauri, 2018, p. 5, as cited in ALG 2024).

Community paralegals are able to contribute more and directly to the empowerment of their own communities due to their proximity (both in terms of physical location and relationships) to the people they work with. They use mixed methods, employing several strategies, such as advocacy, mediation, organizing, and education to solve problems of injustice. They also have the freedom to be creative about institutions, as they do not rely on the formal justice system alone. They pursue remedies everywhere including customary or traditional justice

system. As insiders, community paralegals are often closer to the community they serve and are more capable than lawyers (who are outsiders) at straddling dualist legal systems. Their familiarity with the ways of the community allows them to have access to traditional methods of mediation and reconciliation. Community paralegals can be more cost-effective than lawyers because they are more available and accessible, as they live within the community and have a wider reach in terms of providing primary justice services to all (ALG, 2024).

CHALLENGES

→ *Resource constraints*

Funding and high turnover of paralegals were identified in the Indonesia and Philippines reports (ALG, 2024; IJRS, 2023). Lack of social security and incentives for facilitators were identified in Indonesia.

Poverty and structural factors impinge on the ability of paralegals to deliver their work in the Philippines. Lack of resources constrained them from implementing programs and tasks such as case building and documentation. That paralegal programs are not institutionalized in government has resulted in funding gaps. (ALG, 2024).

→ *Stigmatization*

The stigmatization of survivor-assistants or paralegals was noted in Indonesia (IJRS, 2023).

→ *COVID-19 restrictions*

Restrictions arising from the pandemic were identified in Indonesia, Malaysia and the Philippines (IJRS, 2023; DHRRA, 2024; ALG, 2024). In the Philippines, COVID-19 restrictions also hampered paralegal work, VAWC desk officers became health response team members. Transportations costs doubled, affecting the filing of cases or attendance at court hearings (ALG, 2024).

In Malaysia, the COVID-19 pandemic made paralegal work – and the lives of stateless people — more difficult. The shift to online processing of applications required identification information which stateless people do not possess. This lack of identification also hindered them from accessing government aid. Heightened protocols hampered employment opportunities and there was no access to healthcare (DHRRA, 2024).

→ *Government capacity and regulations*

Gender-blind or -insensitive government regulations, capacity of law enforcement officers (APH), and corruption were identified in Indonesia. One particular difficulty of paralegals is divorce cases where the husbands are police officers (IJRS, 2023).

In the Philippines, government inaction is another factor; the slow resolution or inaction affects the resources and wellbeing of paralegals. The failure of the government to enforce local laws has also diminished the trust of the community in the justice system. The government is also remiss in providing compensation for paralegals performing government service as well as in logistical support for paralegal activities. Finally, the government itself has wronged the communities. Here the government has sanctioned the occupation of ancestral lands and communities that oppose so-called development projects are harassed by the military (ALG, 2024).

In Malaysia, one civil society organization has an expressed engagement strategy with authorities in terms of its paralegal work. This engagement has its own set of challenges. Bureaucracy and red tape complicate the engagement, with officials in the same agency offering different or inconsistent information. Some officials show a lack of awareness of issues, failing to distinguish between a refugee and a stateless individual, for instance. Government functionaries of the NRD in different districts within one state do not have a uniform understanding of the application process. Paralegals are often expected by the community to resolve citizenship issues. What's worse, officials ignore to issues brought forward by paralegals. But the worst off are fledgling or new CSOs, which are not recognized by authorities (DHRRA, 2024).

→ *Culture*

In Indonesia, the number of cases of domestic violence can also be hard to report since some stakeholders cover up incidents to keep appearances up (IJRS, 2023).

→ *Psychosocial issues*

In the Philippines, paralegals are exposed to a high level of stress stemming from threats to their lives and property, and experience burnout from excessive workload, internal conflicts and delays in resolution of cases. They are often red-tagged and face SLAPP suits (ALG, 2024).

→ *Paralegal capacity*

In the Philippines, the low capacity of paralegals was another factor, as this easily intimidates them. There is also a dearth of second-liners; paralegals are typically old as young people

prioritize securing jobs outside their communities, in part to support their families. Female paralegals are constrained by time and care work, or are limited by social expectations in terms of the activities they can take part in (ALG, 2024).

➔ *Community support and issues*

In the Philippines, community members, especially in VAWC cases, stand in the way of paralegals and women's rights education. Tragically, OSAEC has been viewed as a means to earn income, and community members see the work of paralegals as a threat to their abusive practices (ALG, 2024).

In Malaysia, outside of the institutional challenges, community concerns arise which add to the responsibilities of paralegals, including financial woes. Communities are not fully aware of the citizenship process and therefore have unrealistic expectations of the speed of decisions on applications. The paralegals themselves need to catch up to developments in the application process and shifting terrain of statelessness. Paralegals are also caught in the middle of disputes between the government and communities (DHRRA, 2024).

STRATEGIES

➔ *Working together*

In Indonesia, to augment funding, CSOs fundraise through partnerships with funders and holding networking activities. To bolster human resources, organizations 'share' human resources with others (IJRS, 2023).

In the Philippines, networking enriches knowledge of members, broadens the base for advocacy targets, and encourages network members to embrace paralegalism itself if they have not (ALG, 2024).

➔ *Digital capacity*

In Indonesia, in addressing issues related to the migration of online activities, organizations have built the digital capacity of the community (IJRS, 2023). In the Philippines, the use of online platforms in the developing paralegals was noted (ALG, 2024).

➔ *Institutional reforms*

In Indonesia, in responding to challenges related to corruption, CSOs employ both formal and informal approaches (IJRS, 2023). For the formal, they report to the Division of Professionalism and Security under the Indonesian National Police incidents of torture,

bribery, and other violations collected by paralegals every six months. Complaints can also be filed at the Ombudsman. Informal efforts involve the public dissemination of cases of torture or corruption (IJRS, 2023).

→ *Case handling*

In Indonesia, to improve case handling, which is related to deep familiarity with policies, other institutions from the same network train paralegals. There is also an effort to diversify the pool of paralegals, to match the particular needs of marginalized sectors, for example, PWDs (IJRS, 2023).

→ *Community capacity building*

The Philippines report highlighted the role of capacity building for communities to be apprised of their rights and to build their capacity to advance their and other peoples' rights. Capacity building takes three forms: formal, experiential and mentoring. Community organizing or partnerships creates and supports a core group of legal advocates to promote and uphold human rights on the ground. In one case study, it was found that when a community is not organized, the pursuit of a case is impaired since the community is more fearful and lack the knowledge to act (ALG, 2024).

In Thailand, the community that had to fight SLAPP suits from a mining company ended up embracing paralegalism. The community could now file complaints at government agencies, follow up on the progress, monitor the status of litigation and coordinate with the court (Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

→ *Advocacy efforts*

Advocacy is also part and parcel of paralegal work. Paralegals were capacitated both in terms of content as well as the ability to speak and engage with institutions.

The Philippines report highlighted the following best practices and innovative approaches: development of survivors as experiential advocates (in the case of child survivors of abuse); development of para-scientists where paralegals are steeped in marine science, for example, expanding their competence (ALG, 2024).

→ *Evidence-based advocacy*

DHRRRA undertook a massive mapping and registration project to have a big-picture assessment of the extent of statelessness in Malaysia, from its drivers to its consequences. 12,350 stateless individuals were registered and paralegals at the same time conducted awareness raising on nationality law and application procedures (DHRRRA, 2024).

→ *Case management*

In Malaysia, case management remained a core strategy, to cover as much cases as possible, elevating complex cases to lawyers. A call center that provides free legal advice to communities was set up, which remains functional today (DHRRA, 2024).

→ *Gender-sensitive monitoring*

In Malaysia, paralegals were also equipped to monitor the role of gender inequality in statelessness (DHRRA, 2024).

→ *Crisis management*

In Malaysia, paralegals are trained to respond to crisis as in the COVID-19 pandemic, providing links to aid, for example (DHRRA, 2024).

Chapter V

Conclusions

“Justice means that everyone has the same thing, nothing lacking, there is no advantage or disadvantages. I mean, if they are stateless, if they are human beings living anywhere, justice means they are equal to each other, nothing should be lacking. The stateless lack recognition in terms of citizenship, so here we need to ensure that justice is fair.”

- Research respondent in DHRRA’s focus group discussions.



In the Malaysia report, DHRRA (2024) cite one respondent who defines justice as “everything that is available to everybody who is residing in a country.” It is not determined by color, educational background, etc. This aligns with John Rawls’ conception of justice as fairness (Parnami, 2019, as cited in DHRRA, 2024), providing equal rights and opportunities and therefore correcting inequalities experienced by marginalized and vulnerable groups.

In the Philippines, ALG (2024) found that communities define justice as equality before the law, the protection of rights, and the provision of basic services. Justice is not merely the application of the law but freedom from oppression, from the abuse of power and from the systemic denial of rights. In this light, oppression is the result of hierarchical injustice which victimizes groups with a perceived lower status (Chen 2017, as cited in ALG, 2024).

Legal empowerment therefore has a significant role in the achievement of justice.

The framework of citizenship can help deepen the understanding of legal empowerment. There are two modes of citizenship: the republican and the liberal. Individual rights are guaranteed by state obligations in liberal citizenship, while collective rights and participation are emphasized by the republican model (Honohan, 2017, as cited in ALG, 2024).

Finally, legal empowerment can be situated within a historical spectrum. Retributive justice focuses on punishment; restorative justice corrects both the injustice and the broken relationship. But in transformative justice, systemic issues are addressed; it best explains and protests systemic oppression based on the categories of class, gender, etc. (ALG, 2024)

The legal empowerment of marginalized and vulnerable groups sits within this overarching framework of and aspiration for transformative justice.

The country reports highlight various strategies that, for example, in Indonesia, encompass the spectrum of knowing the law to using the law to shaping the law (IJRS, 2023). In Malaysia, four types of lawyering emerged: lawyering, shadow lawyering, consultation, and referral (DHRRA, 2024). In all four countries, as communities filed cases so too did they pursue metalegal tactics, from awareness raising to lobbying, from signature campaigns to long protest marches (IJRS, 2023; DHRRA, 2024; ALG, 2024; Phaisarnpanitkul, D. and Wattanapoom, K., 2024).

In the Philippines, communities took the legislative track to plant the seeds of new ideas and legal mechanisms. The reforms ranged from the substantive rights to beneficial sharing from projects to better safeguards. These comprise social accountability, which, when paired with strategic litigation, prove successful (ALG, 2024).

ALG (2024) considers this a ‘creative use of the law’, which allows groups to access to justice in a state, for example, such as the Philippines’ controlled by the elite.

The creative use of the law, alternative lawyering, developmental lawyering—there are as many names as there are strategies for the legal empowerment of marginalized and vulnerable groups.

This constitutes a ‘new way of doing politics’ which gives them a voice and consolidates them as a group to reshape public policies and practices. (Noble, 1998, p.216, as cited in ALG 2024)

This new paradigm for politics ultimately supports transformative justice, which traces the roots of injustice to systemic oppression. Legal empowerment supports their aspirations toward changing the structures which prevent them from enjoying a life with dignity.

Part VI

Recommendations



PHILIPPINES

→ *Strategic Litigation*

Establish multi-stakeholder platforms where government and civil society can work together and ensure the enforcement of policies.

Revisit relevant policies and enact enabling policies for national laws.

Set up strategically located satellite courts and offices and desks for marginalized peoples.

Establish an institutional body for consistent paralegal training and community empowerment with ongoing resource allocation and proactive outreach initiatives.

For civil society to:

Develop second liners and capacitate them and communities on new laws and climate change for CSOs. Capacitate duty bearers.

Enable immediate access to local lawyers, especially for emergency cases in the environmental sector. Partner with LGU for subsidizing volunteer lawyers and organize regular conferences for lawyers.

Focus on test cases for organizations.

→ *Policy Reform*

For the government to:

Establish multi-stakeholder platforms where government and civil society can work together and ensure adherence to mandates. Hold dialogues with communities on issues, including benefit sharing.

Hold public seminars when cascading new policies and provide mechanisms where communities can suggest or critique policies, as well as access funds and support services.

Set up desks in concerned agencies for specific issues, e.g. IP rights.

→ *Paralegal development*

Capacity building for paralegals

Establish, strengthen, and expand networks of paralegals across the country. Provide psychosocial support, safety and security support, including support for women's organizing (considering women's care responsibilities).

Work toward local government recognizing paralegals and institutionalize paralegalism in the government.

Hold seminars and dialogues on issues.

MALAYSIA

→ *Temporary IDs for Stateless People*

A temporary ID would allow stateless people to access essential services, including access to livelihood opportunities, in Malaysia. Respondents said that this ID need not even be tied to applications or decisions on citizenship but can a stopgap measure to allow stateless people to pursue work and education, and live a life with dignity.

→ *Community-informed policy reform*

Policies must respond to the needs of marginalized and vulnerable communities. The government must also communicate with stateless people in a language they understand.

→ *Safe spaces*

Stateless people fear reprisals from speaking up. Safe spaces must be created to encourage them to share their experiences without fear. Trust is important to build. Many are wary of stigma; advocacy efforts must ensure that their protection.

→ *Collective action*

CSOs working together is more powerful than individual efforts. Collaborative efforts have more impact, reaching more authorities and a wider audience.

→ *Better policy enforcement*

The failure to adequately implement policies leads to misuse of power and miscommunication, which affect stateless people. Strong and consistent enforcement will prevent these issues from cropping up.

→ *Stronger political will*

Even if stateless people cannot vote and therefore have no leverage with politicians, political will is necessary to improve the situation of stateless individuals. Legal frameworks can only go so far.

→ *Public awareness*

Awareness of the issues confronting stateless individuals will build public empathy. Institutionalizing awareness programs in schools is one strategy for amplifying the issue of statelessness.

INDONESIA

→ *Responsive policies*

The government must work with communities to institutionalize policies which meet the needs and aspirations of the communities.

→ *Monitoring*

The government must also monitor and review the implementation of policies, to assess how responsive they are to communities. This also minimizes risk and informs future iterations of the implementation.

→ *Capacity building*

Civil society must work toward building the capacity of the government and law enforcement, to facilitate a change in mindset necessary for responding to the needs to marginalized and vulnerable groups.

→ *Second-liners*

Civil society must build the next generation of paralegals, as well as work with them to develop creative and digital approaches to solving the issues of marginalized groups.

→ *Monitoring*

Civil society can work together to monitor and evaluate the progress of policy implementation.

Continue to promote evidence-based advocacy.

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