

A SHORT HISTORY OF THE AMERICAN BAR ASSOCIATION RULE OF LAW INITIATIVE'S TECHNICAL ASSISTANCE APPROACH

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With the fall of the Berlin Wall, a renaissance in international legal reform emerged within Eastern Europe and the soon-to-be former Soviet Union. Similar to the international assistance that states transitioning to independence received in the 1960s and 1970s, the initial effort targeted laws and institutions- drafting constitutions, writing legislation, crafting regulations for restructuring justice sector institutions, and building local capacity and institutions. Most of these efforts relied heavily on imported external legal expertise. Many members of the American legal profession were eager to assist in this process by providing comparative law resources and technical legal assistance, often on a *pro bono* basis, but at the time, few nongovernment organizations dedicated themselves solely to providing technical assistance on legal issues abroad. At the American Bar Association (ABA), which has historically supported public service efforts in the United States, expanding assistance to these transitioning countries became a growing priority and promoting rule of law around the world became and remains one of core goals of the organization.¹

As the largest voluntary professional organization in the world, with nearly 400,000 members, the ABA has long had a broad goal to advance the rule of law in the United States and abroad.² In 1990, the

* The statements and views presented in this paper are solely those of the author, and have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and do not represent the position or policy of the American Bar Association of the American Bar Association Rule of Law Initiative.

¹ In August 1990, the ABA added two new goals to its mission, including Goal VIII – to advance the rule of law in the world.

² Currently, the ABA has four goals, including Goal IV: Advance the Rule of Law. Objectives:

ABA established the Central and Eastern European Law Initiative,³ better known as CEELI,⁴ and opened its first overseas office in Sofia, Bulgaria in 1991. The CEELI model relied extensively on the placement of *pro bono* American lawyers,⁵ willing to leave their legal practice for a period of time, to provide one-on-one assistance to governments, the bar, or others in the justice sector.⁶ In its nascent stage, CEELI had great success in finding high caliber legal professionals willing to volunteer for short periods – usually a year or less – overseas. However, CEELI often had a limited understanding of some of the challenges these *pro bono* lawyers would face on the ground, particularly when the work progressed from developing legislation to successfully implementing laws, building the capacity of justice sector personnel and institutions, and developing public trust in the state's ability to deliver justice. As CEELI became more adept at providing technical legal assistance, it became clear that some guiding principles were needed to address issues that arose and to provide a more uniformed approach to its efforts to advance rule of law. These principles included:

employing a highly consultative approach that responds to the requests and priorities of the local partners with whom the ABA worked;

employing a comparative approach, with the U.S. legal system providing just one of several models that host country reformers could draw upon;

providing technical assistance that is neutral and apolitical;

a commitment to building local capacity by strengthening institutions in both government and non-government sectors; and

Increase public understanding of and respect for the rule of law, the legal process, and the role of the legal profession at home and throughout the world.

Hold governments accountable under law.

Work for just laws, including human rights, and a fair legal process.

Assure meaningful access to justice for all persons.

Preserve the independence of the legal profession and the judiciary.

³ Also known as the Central Europe and Eurasia Initiative.

⁴ While many individuals at the ABA collaborated to establish CEELI, three individuals played a leadership role: then ABA President-Elect Talbot “Sandy” D’Alemberte, Homer Moyer and U.S. Supreme Court Justice Sandra Day O’Connor.

⁵ Former Attorney General Janet Reno described CEELI as “the worthiest *pro bono* project that American lawyers have ever undertaken.”

⁶ From 1990–2005, more than \$180 million worth of *pro bono* assistance was donated to ABA overseas programs.

a commitment to providing “thought leadership” in the field of rule of law promotion.⁷

For the next decade, CEELI focused on the technical legal needs of Central Europe and Eurasia even as others within the ABA began to look outside the region. In late 1998, in an effort to better coordinate the organization’s expanding international activities in Asia, the ABA established the Asia Law Initiative. Initially the Asia Law Initiative was governed by a ten-member Council comprised of a distinguished group of American attorneys- many with experience in Asia. Roberta Cooper Ramo, the first women President of the ABA, chaired the Council, and U.S. Supreme Court Justice Anthony M. Kennedy,⁸ also a Council member, played a foundational role in establishing the ABA’s work in Asia.

Beginning with financial support from the Ford Foundation to explore public interest law in the region, the ABA’s Asia programs quickly developed technical assistance programs in China, Cambodia, the Philippines, and Thailand as well as a number of shorter-term interventions in other Asia countries.⁹ This growth was possible, despite the unique nature of the work as compared to the ABA’s more traditional activities, largely because of the depth and wealth of legal resources the organization held and had access to within the legal community. At the same time the field of international technical assistance on legal issues became increasingly crowded, the ABA’s investment in overseas technical assistance programs produced clear benefits to justice sectors around the world.

Technical assistance by its nature requires specific human resource capacity; it requires not only being able to analyze and address legal problems, but – more importantly – the ability to establish relationships and credibility with the legal and judicial professionals the programs aim to serve. By the early 2000s, the technical legal assistance field became professionalized, and sole reliance on *pro bono* attorneys became less tenable.¹⁰ In 2007, recognizing the need for dedicated

⁷ *Our Origins & Principles*, ABA, http://www.americanbar.org/advocacy/rule_of_law/about/origin_principles.html (last visited Feb. 17, 2014).

⁸ Justice Kennedy remains involved as a Special Advisor.

⁹ Currently, the ABA’s efforts in Asia are primarily supported by U.S. Government funds.

¹⁰ Discussions with staff at ABA ROLI confirmed that as overseas development work professionalized, there was an increased demand from donors to identify specialists with

international development staff and stronger internal support systems, the ABA merged its four regional programs (CEELI, Africa, Asia, and Latin America and the Caribbean) as well as the newly formed Middle East and North Africa program under the umbrella of the ABA Rule of Law Initiative or ABA ROLI. Even with the professionalization of the field, ABA members continued to volunteer their expertise for the programs and/or provide advice and guidance to the programming.

In 2008, ABA Asia Council and Asia staff underwent a strategic planning process that analyzed a range of issues impacting the legal systems in the region. Through that process, the ABA identified two priority needs in Asia: access to justice and human rights – particularly the use of public interest law, a long-standing staple of the ABA programs in Asia, and rule of law and economic development. In addition, the Council decided that two cross-cutting themes – women’s rights/gender and anti-corruption efforts – should be incorporated into all programming.

I. ACCESS TO JUSTICE AND HUMAN RIGHTS: PUBLIC INTEREST LAW

While the concept of public interest law has been a staple of Western legal systems for several decades, it remains a fairly novel concept throughout much of Asia, with some notable exceptions (e.g., India and the Philippines¹¹). Interest in public interest law among Asian lawyers continues to grow and ABA ROLI staff is frequently approached to provide guidance with the development of case strategies or tactics for public interest cases.¹² Additionally, while the practice of bringing public interest cases is emerging, Asian lawyers have limited access to viable means of sharing information on these cases or best practices in the field.

overseas experience. Often these individuals, whose livelihood was based on consultancy engagements, required a fee for their services.

¹¹ See Jose Diokno, *Developmental Law: Problems and Prospects*, in RULE OF LAW, HUMAN RIGHTS AND LEGAL AID IN SOUTHEAST ASIA AND CHINA 35, (1999), Sarabani Sen, PUBLIC INTEREST LITIGATION IN INDIA: IMPLICATIONS FOR LAW AND DEVELOPMENT (2012), and Romeo T. Capulong, President, Pub. Interest Law Ctr. & Chairman, Nat’l Union of Peoples’ Lawyers (Phil.), Keynote Speech #3 at the 5th Conference of Lawyers in Asia-Pacific: Public Interest Litigation in the Philippines: Challenges, Problems, and Prospects (Sept. 18–19, 2010), for more information on the public interest law movements in India and the Philippines.

¹² As the Director for Asia and the Pacific, I frequently get requests—in person and via email—from lawyers in the region for assistance with a range of legal issues. Our staff based overseas get similar requests.

Seeing a need and being well positioned to promote regional networking, ABA ROLI began to explore specific access to justice and human rights with our local partners and building legal skills to effectively address human rights issues emerging in the region, including: freedom of information, trafficking in persons, the impact of natural resource exploitation, and combatting impunity.¹³ Furthermore, ABA ROLI believed that its unique relationships with many Asian bar associations would assist with promoting acceptance of this nascent practice among the profession in Asia, and in advancing the concept of professional responsibility through service to the most vulnerable populations.

One example of support for public interest law is the efforts of ABA ROLI in Cambodia.¹⁴ In Cambodia, ABA ROLI initially worked with the Community Legal Education Center, a local non-governmental organization (NGO), to support the public interest legal advocacy project (PILAP). PILAP aims to use the legal system to assert and protect citizens' rights, and to encourage government and private sector transparency and accountability. It takes cases with a strong potential to generate publicity and debate as well as cases that demand broader accountability and respect for legal norms. PILAP's "class action" and public interest approach to human rights violations is novel in Cambodia. PILAP's involvement in time-sensitive and high profile cases and legal consultations earned significant attention from the media as well as the international legal development community.

One case that exemplifies PILAP's work is the representation of seventy-eight families who lived on the island of Koh Pich in their effort to receive fair and just compensation¹⁵ in connection with a proposed redevelopment of their land. Koh Pich is directly offshore from downtown Phnom Penh, where there is substantial development potential, and the case was widely covered by the Cambodian media. Following extensive negotiations with City Hall, the development companies, and its client base, PILAP settled this case for all but a few families in November 2005. The highly publicized, high-impact

¹³ AM. BAR ASS'N RULE OF LAW INITIATIVE, PROMOTING THE RULE OF LAW (2010); AM. BAR ASS'N RULE OF LAW INITIATIVE, PROMOTING THE RULE OF LAW (2011); AM. BAR ASS'N RULE OF LAW INITIATIVE, PROMOTING THE RULE OF LAW (2012); AM. BAR ASS'N RULE OF LAW INITIATIVE, PROMOTING JUSTICE, ECONOMIC OPPORTUNITY AND HUMAN DIGNITY (2013).

¹⁴ ABA ROLI's work in Cambodia was supported through a subgrant from the East West Management Institute, which received a grant from the United States Agency for International Development.

¹⁵ As provided under the Cambodian Constitution and the Land Law of 2001.

approach is one of the first collective legal actions in Cambodia to help a community assert its legal rights to land. As one PILAP attorney, Vineath Chou, put it:

By asserting these farmers' legal right to "fair and just compensation," PILAP successfully facilitated negotiations and settlements with government officials and private developers—parties who were only recently attempting to evict our clients from the island. We hope that this example, here in the heart of the capital, can set an example of how responsible development should occur in Cambodia.¹⁶

Throughout the 2000s, PILAP achieved remarkable successes including a three million dollars compensation settlement for an urban community prior to the expropriation of its land, and the ongoing defense of the land rights of an indigenous community whose land was illegally acquired by a minister's sister.¹⁷ By providing legal analysis and advocacy, combine with an aggressive media and outreach strategy, PILAP demonstrate the legal system's viability to generate greater transparency and respect for the rule of law.

Building on the success of the public interest cases in Cambodia, ABA ROLI worked with several PILAP lawyers to establish the first ever Cambodian public interest law firm- Samreth Law Group.¹⁸ The lawyers work to bridge the gap between the Community Legal Education Center and private legal organizations. Other efforts include improving relations with the Bar Association of the Kingdom of Cambodia and undertaking more effective advocacy by building relationships with reform-minded pockets within the government. Initial case selection focused on those cases that could prove the firm's capabilities and value to the government as well as to private firms, NGOs, and local communities. Through such foundational steps, the lawyers believe they will strengthen their long-term ability to undertake the complex and controversial advocacy that Cambodia so desperately needs.

¹⁶ KATE ALEXANDER, ABA ROLI, FINAL REPORT: PROGRAM ON RIGHTS AND JUSTICE II (2012).

¹⁷ *Lawyers Continue to Defend Villagers in Cambodian Land Case*, ABA (Feb. 2009), http://www.americanbar.org/advocacy/rule_of_law/where_we_work/asia/cambodia/news/news_cambodia_lawyers_defend_land_case.html.

¹⁸ See SAMRETH L. GROUP, <http://www.samrethlawgroup.com/> (last visited Feb. 17, 2014), for more information.

II. ACCESS TO JUSTICE: RULE OF LAW AND ECONOMIC DEVELOPMENT

As the global economic crisis reverberated across the world, the need for stronger financial regulations, more equitable distribution of resources through legal regulations, more efficient legal practices to encourage economic development, and access to effective remedies for those with financial disputes were seen as a pressing priority.¹⁹ Throughout the region, ABA ROLI routinely receives requests from lawyers, bars, and government officials for information on laws and practices (e.g., insolvency, small claims, antitrust, alternative dispute resolution, and corporate governance). Now and in the foreseeable future, economic development and the laws regulating it will continue to be areas where technical legal assistance is welcomed. In addition to this being a topic of interest, addressing the intersection of economic development and the law presents the opportunity to develop strong relationships with lawyers working in countries where other areas of rule of law are more controversial and under closer government scrutiny. Finally, by strengthening the rule of law on commercial issues, the entire legal framework benefits through the development of more educated legal professionals, better informed citizenry who established trust in the legal system, and more efficient judicial administrative practices.

In the Philippines, ABA ROLI's work focuses on enhancing rule of law to encourage economic investment, including through the establishment of small claims courts.²⁰ While much of this work primarily benefits commercial interests, an example of a compelling first-hand account is the story of Gloria Magpali, a mother of three and a devoted public school teacher of twenty-three years in a suburb north of Manila. Gloria struggled to support the growing needs of her family, including her paralyzed father. Due to the hardships of life, increasing costs of tuition fees, hospital bills, and medicine, she lived a hand-to-mouth existence with mounting loans and repeated demands for payment from creditors caused distress in her household. Gloria was the defendant

¹⁹ See generally *United Nations Conference at the Highest Level on the World Financial and Economic Crisis and Its Impact on Development*, UNITED NATIONS (June 1–3, 2009), <http://www.un.org/ga/president/63/interactive/uneconference.shtml>.

²⁰ The Philippines' small claims court program is supported by a grant from the United States Agency for International Development (USAID). USAID is the primary donor for the ABA's work in the Philippines. AusAID also supports the ABA's work to increase access to justice for persons with disabilities and to combat extrajudicial killings in the Philippines.

in a small claims case, but with the court's assistance, she and Melanie, her creditor, were able to agree on a manageable repayment scheme. "I do acknowledge that it is my obligation to pay back the loan and now with the help of the small claims court I am able to do so," stated Gloria.²¹

The pilot small claims courts were designed in large part to increase judicial efficiency and access to justice for Gloria and other Filipinos who cannot afford an attorney to address their legal problems. However, as the pilot program evolved, other positive effects were realized; debtors engaged with creditors instead of hiding from them, micro-finance lenders stated that they were more willing to provide loans because of the availability of a cost-effective and speedy court process, and long-simmering disputes between neighbors were resolved.²² "I have learned not to fear the justice system," stated Gloria, "it is a place where people like me can go for help and find relief from our problems."²³

The pilot small claims court program is a vital effort to promote efficient, affordable, and meaningful remedies to the poor and disadvantaged populace. The first pilot small claims dockets were launched in forty-four lower level trial courts in select urban areas of the Philippines in October 2008. The pilot targeted individuals with small money claims up to two thousand dollars and cost an average of thirty dollars per case in court fees and legal expenses. The small claims courts stripped away many of the excessive formal and expensive legal procedures and provided easier and affordable access to the formal justice system. As a result, more individuals filed cases on small money claims and the courts were able to dispose of cases rapidly.²⁴ Due to the short filing to decision time period, small claims cases under the new rules relieved the pressure on the court system by not adding to the case backlogs.

One of the primary goals of the pilot project was to decrease the current average filing to completion time period thereby facilitating the resolution of incoming civil cases of minor money disputes. The current

²¹ ABA RULE OF LAW INITIATIVE – ASIA DIV. PHIL., ABA ROLI PHILIPPINES PROGRAM BROCHURE (2011).

²² ABA ROLI, FINAL REPORT: ENHANCED GOVERNANCE THROUGH JUDICIAL SECTOR REFORM IN THE PHILIPPINES/

INCREASING JUDICIAL EFFICIENCY TO PROMOTE ECONOMIC DEVELOPMENT IN THE PHILIPPINES (2012).

²³ ABA RULE OF LAW INITIATIVE – ASIA DIV. PHIL., *supra* note 21.

²⁴ KATE ALEXANDER, ABA ROLI, *supra* note 16.

average filing to completion time period was three to four years.²⁵ Under the pilot small claims courts, incoming cases often were resolved within just four to six months after filing. For example, the forty-four pilot courts decided 3,547 out of the 5,713 small claims cases filed during the initial nine month pilot period, with the remaining undecided cases set for decision within the next few months. This accomplishment was due to the rules that required judges to issue decisions within twenty-four hours and forbid litigants from asking for time extensions. The significance of this improvement was not lost on key decision makers of the Philippines judiciary. In November 2009, the Supreme Court issued the amended Rule of Procedure on Small Claims Cases which enabled nationwide implementation, and created an entirely new court system in the Philippines devoted to providing meaningful justice services to all citizens regardless of income.²⁶

III. CONCLUSION

Since its inception as CEELI, the ABA undertook programs in more than 90 countries.²⁷ This broad geographic reach afforded ABA ROLI the opportunity to be exposed to a wide range of legal systems, challenges within legal systems at different stages of development, and cross-country experiential learning. Throughout its existence, ABA ROLI provided high quality legal development and technical assistance. As a result of the strengths of the ABA, ABA ROLI became a leader in the field of international rule of law development. By promoting the development of rule of law around the world, ABA is enhancing individuals' ability to access justice.

²⁵ ABA ROLI, *supra* note 22.

²⁶ See *Philippines*, ABA, http://www.americanbar.org/advocacy/rule_of_law/where_we_work/asia/philippines.html (last visited Feb. 17, 2014), for more information about ABA ROLI's current work in the Philippines.

²⁷ ABA ROLI, ABA ROLI PROGRAM BOOK (2013).

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