**SUBMISSION ON LEGAL EMPOWERMENT**

Gill H. Boehringer

Honorary Senior Research Fellow, Macquarie University Law School

On behalf of the International Association of People’s Lawyers

**LEGAL EQUALITY AND LEGAL ASSISTANCE: A HUMAN RIGHT**

Since the time of Max Weber’s work in the sociology of law it has been clearly demonstrated by a vast array of research studies that under liberal democratic regimes there are two levels of law accessed by citizens according to their position in the economic structure. The most well off economically have access to the rule of law as it is portrayed in the narrative of liberal democracy. The least well off get something less.

In non-liberal democracies and authoritarian regimes such a schism in the delivery of access to law is replicated but there are additional problems, including ideological (the Other, no matter how wealthy, may be targeted for “special treatment” i.e. as not deserving legal protection, or relegated to the lowestr level of legal access if at all) and political (critics, dissidents may be labelled as enemies of the state or today, terrorists, and they too given “special treatment” often amounting to no effective legal access.)

**Recommendations**

**Legal aid** should therefore be recognised as a human right as in practice it is often necessary for the enjoyment of other rights, including equal treatment under the law and even the right to life. It should be funded by the state through an Independent Legal Assistance Commission.

(This is sometimes the case in liberal democracies but the funding is not guaranteed to be at an adequate level. Indeed today the funds are being cut across the world. Many Bar Associations and Law Societies have been fighting desperately to resist such ill-advised cuts.)

**Sanctions**

In non-liberal democracies the picture is dire. The lack of legal assistance in such countries should be the basis for imposing international sanctions upon government personnel and public shaming by the international community.

**Role of the UN**

As part of its mandate, the UN Special Rapporteur on the Independence of Lawyers and Judges should more closely monitor whether the right to legal aid is being respected, or violated, and take appropriate action when necessary.

The Special Rapporteur should investigate and report such countries to the UN Human Rights Council so that it can be included in the Periodic Review of such countries.

**Community legal centres** should be funded by governments adequately to operate at a level whereby communities may have their legal needs addressed. There should be legislation fixing the budget so that governments cannot easily punish those centres that are seen to be critical of or oppositionist to the government.

The budget should be fixed (and indexed for inflation)) (1) at a per capita basis, (2) and reserving the budgetary amounts to areas qualifying on the basis of low incomes, lack of employment, and experiencing homelessness.

**International role**

In “under-developed” countries where the budget is not available for such Centres, there should be an International Fund for Support for Community Law Centres.

**COMMISSION ON HUMAN RIGHTS**

An independent Commission on Human Rights can be a significant institution for supporting the rule of law and exposing government human rights abuse, including the barriers that governments use to deny justice in the courts and access to justice.

An example is the CHR in the Philippines, especially under the government of President Duterte. It also exemplifies the need for budgetary guarantees, i.e. considered unacceptably critical of the government, its budget was cut several years ago to “peanuts”. Fortunately on that occasion public reaction was sufficient to have its budget increased to a sensible level.

**Recommendation**

CHRs should be recognised internationally as a valuable institution in the battery of those that are important to the protection of human rights, and countries encouraged to institute a CHR.

It would be important to produce research on their work and to produce guidelines for implementation/operating such institutions.

**PEOPLE’S TRIBUNALS**

People’s Tribunals have been active for many decades and have provided an important alternative when states at national, and down to local government levels, have failed to provide justice to their citizens. They are increasingly being relied upon around the world as people find their governments unresponsive to even a measure of justice for their people.

People’s Tribunals (PT) come in many different forms e.g. the state standing PT in India; independent e.g. international as with the Permanent People’s Tribunal based in Rome for about 50 years; non-permanent PTs responding to a particular problem; or ad hoc Local People’s Tribunals; and with different names e.g. People’s Tribunal, Citizen’s Inquiry, Fact Finding Mission/Investigation**,** and at different levels such as in a local community, state, national, or international.

These Tribunals can contribute to access to justice and contribute to ending what I refer to as the “structured access to injustice” in several ways.

First, Tribunals have often been referred to as “opinion forming” institutions. By the thorough and independent consideration of issues brought to them they can expose state policies and legislation that deny access to justice, and through the socio-economic structures, deny social justice to section(s) of their population (usually a poor working class, minorities and designated Others within their culture).

Second, by exposing the lack of access to justice in a jurisdiction(s) and/or the structured access to injustice, they can bring pressure on governments at all levels, as well as international institutions, to take responsibility for action to eliminate or mitigate the problems of justice revealed by the Judgment or Opinion of the Tribunal.

Third, Tribunals can provide the impetus for researchers to follow up and produce further evidence of state-and corporate-barriers to justice.

Fourth, they can bring together and encourage activists and others to take a step forward together toward bringing reforms to eliminate or at least mitigate the problems revealed. The media must play a role in publishing the results in order to get significant public, and government, attention.

**Recommendations**

The U N should formally recognize the importance of such Tribunals.

The Judgments and Opinions of Tribunals should be recognised by legal professionals as a part of the customary law of International Law.

**COMPENSATION AND SANCTIONS FOR ILLEGALITY BY STATE AGENTS IN THE JUSTICE SYSTEM**

One significant barrier to justice and the imposition of injustice is the use of trumped up charges and detention often, as in the case of former CHR Chair and Senator Leila De Lima in the Philippines for six years.

There are numerous other abuses of the legal process which impinge negatively on the victim. The elimination of such practices by police and prosecutors especially but, in general, the state justice system would increase the capacity of citizens to speak and act freely and not fear accessing the justice system.

**Recommendation**

An independent agency should be established to award compensation in such cases.

State agents guilty of such rights violations should be sanctioned, as the award of compensation is rarely a deterrent to future abusive behaviour. Sanctions would likely have a negative impact on the career of the perpetrator, including dismissal and criminal charges.

Victims should not have to litigate these matters.

**ALTERNATIVES FOR ACCESS TO JUSTICE**

Under conditions of repression and widespread serious human rights violations by state forces and/or pro- state paramilitaries operating with impunity, communities facing such circumstances have a right to self-determination They also have a right to life, as individuals and as Peoples, therefore a right to resist existential threats (including genocide). (See e.g. the **Universal Declaration of the Rights of Peoples; the UN Declaration of the Right to Development**).

In such circumstances communities often turn to **alternatives for access to justice** in reaction to authoritarian governments and their legal systems which deny them justice. Sometimes, but not always, this occurs during an internal conflict or Emergency/Martial Law.

Whatever the specific context, state oppression “under color of law” can inspire activists to seek and develop new methods of achieving justice as alternatives to the state system and traditional lawyering, or even to go beyond what is sometimes called “social justice” lawyering within a traditional liberal framework .

In circumstances of comprehensive justice denial and widespread human rights abuse less severe than an existential threat, communities will also seek alternatives for justice.

**Some examples from my experience and research.**

**Northern Ireland**

During the 1960s and early 1970s the Roman Catholic minority, seen as the Other and massively discriminated against in order to drive them out of the North, arose once again. This resistance was met by military and police repression. The situation of civil war in Belfast was particularly difficult for the Republican, largely Catholic minority who lived in what were essentially urban ghettoes. In several of these, Ardoyne and Andersonstown in Belfast and also in Republican areas of Derry, resistance took on a political aspect. As they had formed No-Go areas, keeping the police out and meeting occasional military inroads with various forms of resistance, there were social issues that needed to be dealt with, including crime, largely minor, but unacceptable in a community.

To fill the need for local governance, a People’s Movement with wide support developed with a view to establish People’s Assemblies, Community Courts and Community Policing.

The demise of this transformative community movement was due to a combination of pressure from external forces active in the armed conflict (military, police and paramilitaries) and those within the Andrsonstown community (and some academic “revolution theorists” from Queens University Belfast) who desired a traditional armed resistance to state oppression.

**Turkey**

**Kurds develop their own Justice System**

For a very long time the Kurds have been been comprehensively discriminated against and, in recent decades, heavily oppressed by the military in the eastern part of the country.. Denied access to justice in the country’s legal system, the Kurds developed a movement for justice as a part of their “Democratic Confederalism” program.

In the Kurd’s main city, Diyarbakir, I was able to interview one of the Kurds who was involved in developing their new community based justice system. He made apoint of describing two important aspects of what they were doing.

First, it would be a justice system, not a legal system. Their experience under the state system had not been one of justice.

Second, that it was being built up from the bottom, not top down. As he explained, that meant that it would not be Shariah law which was from the top down. Of course it would be infused with Islamic values, but it would also have a diverse range of influences from the various ethnic communities with which the Kurds had good historical relations. It included, of course, elements of customary practices of Kurdish culture.

I understand from various sources these ideas have been implemented in Rojava ,but I have not been able to ascertain what is happening in Diyarbakir and the rest of eastern Turkey where the situation remains dire.

**Progressive lawyers**

In Istanbul I met with members of the Halkin Hukuk Burosu (HHB), the People’s Law Office. (There was a second HHB that I visited in Ankara). These politically progressive lawyers formed a collective, the core of which lives and works together in the same house, located in a working class district of the city, not far from the major court building.

The HHB was part of a militant People’s Front which is made up of students and youth more generally; other lawyers; artists and others from the cultural sector; and many other individuals and organizations. Members of HHB are committed to a truly socialist society. They mainly take on cases involving trade union struggles and working class people more generally. Interestingly, they did take on some traditional cases in order to obtain finances sufficient to buy the house and provide a living wage for their members.

They have no leader and a rotating chairperson. Decisions about their work and other responsibilities are made collectively, by consensus.

They also had a substantial general (non law ) library in the top floor common room where their reading group convened each week to discuss a set text. They develop together their theoretical analysis of the conditions in their country, and internationally, as it affects their specific work for their clients and their general strategy in resisting state oppression under “color of law”.

Under the Erdogan government there are many lawyers, including many from the HHBs, in prison.

**Brazil**

Some years ago landless peasants were able to occupy land that lay vacant, and was therefore unproductive. This was under Brazilian law and a progressive government. However, this initiative caused enormousresentment within the semi-feudal landlord class.

These peasants proceeded to form an internal government system including “departments” for education, health, justice and, as a priority a security force to protect their community and the land they had been able to occupy. Experience of others had shown that they would come under physical attack sooner or later. The communities established earlier in the process also reached out to nearby groups that had preceded them for support, advice, resources.

They hadn’t long to wait before they were under attack from the landlords. Indeed a few months after I interviewed a group of occupying peasants, one of them was killed by a landlord’s private army thugs.

I understand that the peasants movement has been rolled back, and state control (on behalf of the landlords) re-established over the occupied lands, especially under the Bolsonaro government.

**Philippines**

In the past fifty years since President Marco Sr. declared Martial law, there have been at least 218 lawyers (Attorneys, Judges and Prosecutors) killed**.** Several dozen paralegals have also been murdered. Many of these were working closely with the lawyers-for-the- people groups. (See below)

The number of killings and other attacks has differed greatly under different Presidents and the negative impact of this slaughter has varied and is difficult to measure. But it is clear that access to justice has been seriously impacted. For example, during the murderous drug war of President Duterte, there were incidents in which lawyer groups publicly announced their refusal to take up drug cases. (In India and Pakistan, when lawyers have been attacked, widespread lawyer strikes often follow attacks on their professional colleagues.. It appears that in the Philippines there are voices calling for similar actions.

At least two groups in India have lawyers in prison, the Indian branch of the IAPL, and the Law Collective. See on the work of the latter <https://en.wikipedia.org/wiki/Lawyers_Collective>

What seems to be unique about some of the killings in the Philippines, about 20 although it could be more, is that the victims belonged to groups that serve the poor, trade unionists, peasants, indigenous peoples, human rights and environmental defenders.

Former Congressman for Bayan Muna (People First) party, and Co-founder of the NUPL, Attorney Neri Colmenares has explained their work and strategy which he calls a “people’s counter-offensive” which I will paraphrase:

1. Support for political representation at all levels of government to create, through law, space for people’s organizations to operate effectively, asserting their rights to freedom of speech, assembly, organization etc.;
2. Legal work in courts, tribunals Commission on Human Rights, Ombudsman and other government agencies as well as using international law and agencies to seek justice for the people;
3. Close connection to the organizations of the people in order to keep the pressure of the masses on the government, and corporations, to bring about the elimination of oppression and the emergence of a regime committed and actively pursuing social justice.

Much of the success of organizations such as the NUPL comes from the backing of the of the people in the streets. Therefore an important part of their work is education for the people through workshops, conferences, pamphlets and other means of disseminating information about the rights of the people and their organizations. And how those rights are violated.

Often, they are also critics of government policies, e.g the murderous drug war imposed by the Duterte regime. Consequentially they are labelled as Communists or Communist supporters, “red tagged” as it is called there, and are killed by state forces or pro-state paramilitaries.

Two of these organizations are: the Free Legal Assistance Group (attacked especially in the Marcos era with leading figures jailed under Martial Law); and the National Union of People’s Lawyers under the past three Presidents since its founding in 2007.

While the killing of lawyers falls under the warrant of the Special Rapporteurs and has been the subject of international concern, the **targeted attacks on lawyers- for- the- people** in a number of countries (including the Philippines, Turkey, and India where they generally have been imprisoned) requires special measures for their protection.

**Recommendation**

The mandate of the Special Rapporteur should be seen to include an investigation and report on the need to:

protect the alternative initiatives being made by communities to achieve the justice from which they have been excluded;

develop special protective measures for the lawyers-for-the-peoples groups, and the paralegals working closely with them, that come under attack from the state and other entities.