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Community-Based Paralegalism in the Philippines

From Social Movements to Democratization

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1. INTRODUCTION

In recent years, the challenge of expanding access to justice for the poor has received increasing attention from the international development community. Promoting justice in settings where state legal and judicial institutions and the rule of law are weak or compromised is a difficult proposition. Today, many societies, despite formal recognition of the legal rights of poorer citizens, fall short of full and effective realization of those rights in practice. In many countries, civil society spaces and organizations oriented toward legal empowerment of the poor may also be inadequate or nonexistent, and thus still limited in their potential contribution to expanding access to justice for the poor.

Deepening interest in the problem of access to justice has emerged within a broader emphasis on judicial and rule of law reform as a necessary prerequisite to development more generally. Efforts to address weak state legal and judicial institutions have often focused on interventions defined in terms of creating and/or reforming the relevant rules and procedures, often based on idealized understandings of what constitutes a well-functioning system of law and justice. At the same time, more attention is being paid to increasing legal assistance to the poor in order to increase their capacity to effectively use state law and institutions in the pursuit of justice.¹ Legal assistance has involved diverse interpretations ranging from “legal aid” to “legal empowerment.”² Taken together, such efforts reflect changing understandings of the processes and obstacles involved as citizens attempt to get their justice concerns met. It is no longer enough to address formal legal institutions

¹ Another type of response has involved revaluing and drawing on more localized, “non-state” types of indigenous and customary practices in social regulation and in determining and dispensing justice as an additional means to expand access to justice for the poor. However, this type of innovation is not the subject of the present study.

² Legal aid usually focuses on the state’s obligation to provide legal services for the poor, while legal empowerment stresses the process by which the poor use the law to make a claim on their entitlements and hold governments more accountable to their rights.

(such as the judiciary and ministries of justice) alone; as important are: (i) how formal legal institutions actually operate in real societies, (ii) whether and how different members of a given society experience and use law in their pursuit of justice, and (iii) which strategies and practices have what effects in terms of law reform and justice.

One strategy involves community-based paralegals. In the Philippines, community-based paralegals have existed for decades,³ with a practice that spans a variety of local circumstances and is largely assumed to contribute to poor people “getting justice.” The conditions under which community-based paralegals emerge and operate in the Philippines and the impacts they may have remain unclear, not least because although community paralegals are often cited as important, in fact, “there has been little systematic study of the workings of paralegal programs” in that country.⁴ The question thus remains whether and to what extent community-based paralegalism is a socially relevant and empowering innovation for Filipino society.

II. METHODOLOGY

To begin addressing this question, a broad scan was taken of the Philippines’ contemporary paralegal movement. Because the country has a long and extensive experience in using state law to defend and deepen people’s rights – an approach Filipino activists refer to as “developmental legal aid” or “alternative law”⁵ – this study involved casting the net wide and deep to gather insights from a diversity of actors working in the field. The analytical approach used can be described as *historical, institutional, and process oriented*.

The approach is *historical* in order to capture changes that affect the practice or direction of community-based paralegalism over time, including, among other factors: (i) the nature of the overall political-legal framework that may either recognize community-based paralegalism or not; (ii) the degree of the presence and reach of alternative lawyering networks that can facilitate the growth of community-based paralegalism; and (iii) the degree of attention given by key actors involved in cultivating paralegalism to assessing the social and political impacts of their work.

The approach is *institutional* in that it gives attention to how formal and informal institutions shape the power and activity of paralegals over time, as well as other

³ Paralegals are understood here as community-based in the broad sense of being based in or catering to a grassroots-level organization, whether workplace, neighborhood, parish, school, or some other basic social-institutional setting. This concept is elaborated in Section 4.1.

⁴ Vivek Maru and Varun Gauri, “BNPP Concept Note,” World Bank Justice for the Poor Program, December 2009.

⁵ The terms *developmental legal aid*, *alternative lawyering*, and *public interest lawyering* are all used interchangeably. They all denote the use of the law by the poor with the assistance of legal service nongovernmental organizations (NGOs) or lawyers, so that the ends of justice may be fully served and the poor’s rights and entitlements fully realized. See Box 3.1 for a definition of “developmental legal aid.”

actors that may affect their activity and practice. For example, the state judicial and quasi-judicial dispute tribunals (such as agrarian adjudication boards or labor relations tribunals) can affect paralegal practice and activity and the standing of individual practitioners by according formal recognition (or not).⁶ Entrenched political patronage networks can also influence and constrain community paralegals both inside the courtroom and in the differentiated and stratified communities where they work.

But institutions alone do not determine outcomes, and thus the approach used here is also *process oriented*, emphasizing human actors and their actions and interactions in order to better detect the role of perception, interpretation, and choice regarding particular laws or legal provisions in relevant interactions over time and in specific situations.

The main analytical point is that no law, policy, program, or project is “self-implementing”; rather, laws and policies are interpreted and implemented by real people.⁷ Oftentimes this involves conflicting parties with different political and/or legal standing and the need to bring different interpretative frames to bear in interactions. The implementation of laws and policies is therefore to a certain extent open ended and contingent upon the actions and interactions of numerous competing actors embedded in diverse power relations and structures. Many of the actors involved in making law *in a broader sociological sense* – that is, beyond the mere formal legal processes of making and implementing laws and policies to include the more fundamental processes of making laws and policies actually *authoritative in society* – are themselves embedded in social structures that are not necessarily coterminous with the state. This includes an array of actors from municipal judges, public attorneys, and local police commanders who may be part of broader local kinship or regional political networks, to private lawyers, corporations, landlords, public interest attorneys, civil rights advocates and rights advocacy networks, and social and political change activists – each with his or her own organizational interests and sources of authority.

A. Study Participants

The study included a variety of actors operationalizing diverse concepts and perspectives on the issue of community-based paralegalism. The first set of informants came from nongovernmental organizations (NGOs) that train, mentor, and/or deploy paralegals. Twelve organizations were selected that help to illustrate (albeit

⁶ In the Philippines, the term *courts* is utilized to refer to dispute tribunals located within the judicial branch, while the term *quasi-judicial* agencies is usually used to refer to dispute-resolution offices located within the executive branch.

⁷ Jennifer C. Franco, “Making Land Rights Accessible: Social Movements and Political-Legal Innovation in the Rural Philippines,” *The Journal of Development Studies* 44, no. 7 (2008): 991–1022, doi: 10.1080/00220380802150763.

partially) the breadth of paralegal practice covering a range of issue areas, including, for example: civil and political rights; environmental protection; agrarian reform; and the rights of indigenous peoples, children, women, and migrants. Ten of the twelve organizations are members of the Alternative Law Groups (ALG), a civil society network founded in the early 1990s and anchored by lawyers dedicated to the practice of law to aid social justice. The selection of the ten ALG members (out of the total nineteen members) considered the range of paralegal practice in diverse areas such as the environment, women, and agrarian reform. The selection also took into account the representation of the various major island groups of the country, which means the locations of Luzon, Visayas, and Mindanao.

The remaining two NGOs are not ALG members, but the nature of their work qualifies them as practitioners of alternative law. Taken together, the twelve organizations constitute a critical mass of civil society groups and localized networks that engage in paralegalism and for which paralegalism is more or less institutionalized as part of their overall work.⁸ For this set of participants, we conducted key interviews and focus group discussions with paralegal officers and/or trained paralegals.

All of the organizations covered in this study are specialized in one or two distinct issue areas and sets of associated law. Four of them work on agrarian issues (Balay Alternative Legal Advocates for Development in Mindanaw, Inc. [BALAOD], Solidarity toward Agrarian Reform and Rural Development [KAISAHAN], the Rural Poor Institute for Land and Human Rights Services [RIGHTS], and the Alternative Legal Assistance Center [SALIGAN]). Two work on labor issues (SALIGAN and the Center for Migrant Workers [KANLUNGAN]), with one of these specializing in migrant labor issues (KANLUNGAN). Two work on different aspects of women's rights (KANLUNGAN and the Women's Legal and Human Rights Bureau, Inc. [WLB]), and one works on children's rights issues (the Children's Legal Bureau, Inc. [CLB]). Two others work mainly on environmental issues (the Environmental Legal Assistance Center [ELAC] and Defense of Nature [TK]), and one works on the rights of indigenous persons (the Legal Assistance Center for Indigenous Filipinos [PANLIPI]). The Free Legal Assistance Group (FLAG) continues to work on civil and political rights violations, while the Ateneo Human Rights Center (AHRC), a law school-based actor, works mainly on human rights education.

Several of the civil society groups invited to participate in the study saw its potential value as a contribution to the historical record, but expressed various degrees of concern about participating in a project initiated by the World Bank. Indeed, one ALG member refused outright to participate in any World Bank-related activity, including this one. Some were particularly concerned about how the World Bank would use the data, especially on issues where the World Bank's advocacy and activities in the country were seen as deeply at odds with their own, particularly the

⁸ A list of these twelve organizations can be found in Annex B.

promotion of large-scale mining, but also other far-reaching economic activities perceived as having intolerable negative social and environmental impacts. In the end, some of the groups that initially expressed reservations did agree to participate, in the belief that it would be important to register their experience in any study on community-based paralegals. In order to protect those informants who currently work under extremely hostile conditions in local areas adversely affected by large-scale economic activities (by trying to stop those activities), it was determined that all informants would remain anonymous.

In addition to participants from the nongovernmental sector, a second set of informants was selected that included officials from several government branches and agencies at different levels (national, regional, municipal). Those from the government sector came from the local judiciary as well as the Supreme Court, the Department of Justice, and the Public Attorney's Office. Finally, a smaller, third set of informants was drawn from the Integrated Bar of the Philippines (IBP), more specifically the director for legal aid, as well as the Asia Foundation, an important funder of paralegal programs in the Philippines historically. The IBP could be viewed as a somewhat curious institution, in that it is a professional organization of lawyers but has been created by mandate of the supervisory powers of the Supreme Court. It receives no funding from the state, only from membership contributions, giving it the character of a quasi-government institution.

All these informants were selected on the basis of the role that their institutions play in influencing and defining paralegalism in theory and in practice. In the end, a total of eighteen interviews and nineteen focus group discussions (composed of three to five individuals each) were conducted, with a fifty-fifty gender balance overall. In addition, most of the informants were from areas outside of Metropolitan Manila, namely the provinces of Zambales and Quezon on the island of Luzon, and the provinces of Cebu, Misamis Oriental, and Palawan.

B. Study Goal

The main purpose of this study was to describe the state of community-based paralegal work in the Philippines. By definition, the study was not designed to assess the impact of paralegal work in various facets of social justice, for example, the improvement of the skills of the poor over time, or the responsiveness of state institutions to paralegal engagement. The study does point out that monitoring and evaluation work in the area of paralegal work remains a substantial challenge. Thus, it is hoped that this chapter will provide the framework needed to evaluate the impact of paralegal work much more rigorously in the future.

III. BACKGROUND

Contemporary paralegal work in the Philippines is not a new phenomenon. Rather, there is precedent for paralegal work in lawyering for the poor that dates back to the early 1930s, when agrarian and labor unrest arose in response to deteriorating social and economic conditions, mainly in central and southern Luzon.⁹ Demands over land tenure and labor issues both shaped and were shaped by political-legal support received from individual local lawyers who sympathized with these movements and their aspirations. The experience launched a tradition of lawyering for the poor and other marginalized groups, which continued into the ensuing decades, when new generations of workers' and peasants' organizations arose in response to still unfulfilled demands for better working terms and conditions and the recognition of land and tenure rights. When President Ferdinand Marcos imposed martial law in 1972, all opposition was suppressed, the press was muzzled, and the national legislature was shut down. Activists were rounded up by the hundreds, detained, and in many instances, tortured and summarily executed, prompting the establishment of FLAG in 1974 by the late Senator Jose W. Diokno.¹⁰ Led by a small core of lawyers and non-lawyers, the organization pioneered a strategy of training and deploying paralegals to take up human rights cases during martial law.¹¹ FLAG's efforts amid repression and adversity served as a training ground for future generations of lawyers, inspiring

BOX 3.1: WHAT IS DEVELOPMENTAL LEGAL AID?

Jose Diokno encapsulates the concept of alternative lawyering or developmental legal aid as follows:

Traditional legal aid is in fact the lawyer's way of giving alms to the poor. Like alms which provide temporary relief to the poor but do not touch the social structures that keep the poor poor, traditional legal aid redresses particular instances of injustice, but does not fundamentally change the structures that generate and sustain injustice . . .

So development requires a different type of legal aid, one that will not supplant traditional legal aid but supplement it, concentrating on public rather than on private issues, intent on changing instead of merely upholding

⁹ See Benedict Kkerkvliet, *The Huk Rebellion: A Study of Peasant Revolt in the Philippines* (Berkeley: University of California Press, 1977); Harlan R. Crippen, "Philippine Agrarian Unrest: Historical Backgrounds," *Science & Society* 10, no. 4 (1946): 337–60.

¹⁰ See Box 3.1.

¹¹ A short description of providing free legal assistance for martial law victims can be found in Franco's *Elections and Democratization in the Philippines*. Jennifer C. Franco, *Elections and Democratization in the Philippines* (New York: Routledge, 2001), 117.

BOX 3.1: (Cont.)

existing law and social structures, particularly the distribution of power within society . . .

This new type of legal aid is needed because development is more than just feeding, clothing, curing, teaching and housing people. Many prisons do as much. Development is above all the people deciding what food, clothes, medical care, education, and housing they need, and how to provide them . . .

In ASEAN countries and, indeed, in all developing countries, then a new type of legal aid would rest on firm legal ground: the right of the people to development. Efforts to practice this new type of legal aid which for want of a better name I shall call *developmental legal aid*, have begun in ASEAN countries. Lawyers who had been imprisoned, or had practiced traditional legal aid became convinced that, under conditions in their country, something more was needed. If the rights of the poor and the oppressed were to be vindicated and just and human development achieved, the job of developmental legal aid had to be done. (Emphasis supplied)¹²

many to later set up their own institutions to expand upon its example. During this time, other similar organizations such as the Protestant Lawyers' League (PLL) and the Movement of Attorneys for Brotherhood, Integrity and Nationalism, Inc. (MABINI) also followed the FLAG model of addressing human rights abuses.

The collapse of the Marcos dictatorship in 1986 and the promulgation of a new national constitution in 1987 led to an unprecedented proliferation of "sectoral" organizations and "cause-oriented" movements, often with competing political visions and strategies for change, but similarly intent on influencing the pace and direction of national social, political, and economic reform after Marcos. This included numerous nongovernmental legal services organizations, some of which (but not all) would coalesce under the formal banner of the ALG. A new generation of activist lawyers likewise sought to take advantage of the new political space that opened up after the dictatorship, and to use the associated political-legal institutions to bring a more democratic law within the reach of everyone. The post-dictatorship constitution enshrined a whole host of new rights and provisions, positively addressing key social and political rights and justice concerns of the poor and other marginalized groups, including in relation to environmental protection and the use of natural resources. These provisions became crucial reference points for alternative law activism and paralegal efforts, partly because in the Philippines, "good" law has never by itself guaranteed "good" legal outcomes.¹³ The alternative

¹² Jose W. Diokno, "Developmental Legal Aid in Rural ASEAN: Problems and Prospects," in *Rural Development and Human Rights in South East Asia: Report of a Seminar* (Geneva: International Commission of Jurists, Penang: Consumers' Association of Penang, 1982).

¹³ Franco, "Making Land Rights Accessible," 992 (see n. 7).

law and paralegal activism approach thus gained significant new social relevance in the post-Marcos era.

Political openings at the national level, however, did not guarantee a similar change below it, and indeed since that time, subnational democratization has proceeded unevenly and in many places not at all.¹⁴ Political structures at the local level are still largely controlled by established dynasties (whose power is rooted in control of land, labor, and other key factors of production), many of which operate in conjunction with private armies and within a strong culture of impunity. In many parts of the Philippines, journalists, activists, judges and lawyers, and others who attempt to challenge an undemocratic and repressive status quo are routinely harassed and even killed, often without any sign that justice will ever be meted out to the perpetrators. A gross example of this phenomenon was the November 2009 Maguindanao Massacre, wherein fifty-eight persons (thirty-four of them journalists) were killed by the hired assailants of a prominent local politician at the height of the political campaign for local electoral posts.

IV. PARALEGALS TODAY: DEFINITION, WORK, TOOLS, AND TRAINING

A. Definition

The word *paralegal* has been used in the legal-activism literature on development-oriented legal assistance for the past thirty years. For example, Senator Diokno wrote about “paralegals or barefoot lawyers,” as he called them, in 1982.¹⁵ In development work today, the term refers to a variety of situations, some community based, others not, but all sharing a broadly similar community-oriented, grassroots perspective. In general, paralegals are not lawyers by definition, although they do have some legal training and can include those who are the products of law schools, namely, law students or law graduates who have not yet taken or passed the bar examination. But in the Philippines, the term refers primarily to a layperson who claims some knowledge of the law and the workings of government, has had some training in these fields, and practices her/his paralegal skills *in the name of some organization*, whether state or non-state. It is important to note here the clear distinction between a paralegal and an *abogadillo* (or “little lawyer”). The term *abogadillo* refers to any layperson who offers legal advice and services in his/her own name in exchange for money – a practice considered illegitimate by alternative law activists due to a perceived lack of accountability to any greater authority. This practice is also clearly “unauthorized practice of law” and is considered illegal by the IBP and the Supreme Court. Although interesting (to the extent that it reflects a demand for such

¹⁴ Franco, *Elections and Democratization* (see n. 11).

¹⁵ Diokno, “Developmental Legal Aid in Rural ASEAN” (see n. 12). See Box 3.2.

BOX 3.2: DIOKNO ON COMMUNITY PARALEGALS

“To overcome the manpower problem, developmental legal aid groups have trained paralegals or ‘barefoot lawyers’ in the basic concepts of law, legal procedure, tactics and counter tactics, and in the skills needed to do routine, repetitive, or preliminary jobs and carry out simple investigations, such as interviewing witnesses, and taking down their statements, getting copies of public records, preserving physical evidence, filling out standard government forms, etc. Paralegals are chosen from among promising students of law and social sciences who agree to do field work with poor communities between school terms; representatives of depressed communities who are recommended by civic organizations working with them; and trade union members recommended by their unions. Paralegal training has produced several benefits. Lawyers have had more time to devote to the creative aspects of their job: counseling, negotiating, drafting, advocacy. Some law students were motivated by their experiences as paralegals to join legal aid groups after the bar. And paralegals have equipped the communities they live in with a knowledge of how law works and how they use law to assert or defend their rights.”¹⁶

services), the *abogado* phenomenon is not the focus of the present study, nor is the type of paralegal found in mainstream law offices (e.g., those whose objective is more commercial and profit-making in nature).

B. Substance of Work and Underlying Legislation

Paralegals in the Philippines today engage in: (i) *education* on human rights, constitutional rights and provisions, and legal rights and procedures; (ii) *legal research/investigation/documentation* or casework proper; (iii) *mediation* in conflict-resolution or dispute-processing venues, especially the village-level *barangay justice system* (BJS);¹⁷ (iv) *representation* in certain quasi-judicial dispute resolution tribunals; (v) *law enforcement* as *bantay gubat* (forest guards) and *bantay dagat* (municipal water guards); (vi) *policy advocacy* around local ordinances and national laws, policies, and programs; and (vii) *organization* and mobilization of people to more effectively address their justice concerns by making claims based on legal rights.

¹⁶ Diokno, “Developmental Legal Aid in Rural ASEAN” (see n. 12).

¹⁷ The *barangay justice system* (Katarungang Pambarangay) is a state-mandated mechanism that aims to complement courts in the settlement of small disputes. Under the Local Government Code, it is compulsory for disputing parties to refer petty matters to the *barangay justice system* before proceeding to courts. See Maricel Vigo and Marlon Manuel, *Katarungang Pambarangay: A Handbook* (Quezon City: SALIGAN, Pasig City: LGSP, 2004), 20–32.

As noted, a large number and wide range of new (and still evolving) legal rights became available after 1986, and in turn, have become key tools for people seeking justice. This includes new laws and policies regarding, among others: (i) land rights – the Comprehensive Agrarian Reform Program (CARP) (1980) and the Comprehensive Agrarian Reform Extension with Reforms (CARPER) (2009);¹⁸ (ii) ancestral domain – the Indigenous Peoples Rights Act (IPRA) (1997);¹⁹ (iii) women’s rights – Violence against Women and Children Act (VAWC) (2004);²⁰ (iv) children’s rights – Juvenile Justice and Welfare Act (JJWA) (2006);²¹ (v) rights of sustenance fisher folk – the Local Government Code (LGC) (1992); (vi) coastal marine resource protection – the Philippine Fisheries Code (Fisheries Code) (1998);²² (vii) environmental protection – the National Integrated Protected Areas System (NIPAS) Law (1991);²³ (viii) the writ of *kalikasan*²⁴ (2010); (ix) human rights – writ of *amparo* (2007);²⁵ (x) the writ of habeas data (Habeas Data) (2008);²⁶ and (xi) the rights of migrant workers and overseas Filipinos (Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipinos Act of 1995).²⁷

C. Affiliation and Accountability

Examining the question of paralegal accountability is useful in making some further distinctions. Paralegals are understood in the Philippines as community based in the broad sense of being a part of or catering to a grassroots-level organization, whether from the workplace, neighborhood, parish, school, or some other basic social-

¹⁸ Republic Act No. 6657; Republic Act No. 9700. ¹⁹ Republic Act No. 8371.

²⁰ Republic Act No. 9262. ²¹ Republic Act No. 9344. ²² Republic Act No. 8550.

²³ Republic Act No. 7586.

²⁴ “The writ is a remedy available to any natural or juridical person, entity authorized by law, people’s organization, NGO, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice to life, health or property of inhabitants in two or more cities or provinces.” This remedy has been provided in the recently promulgated Rules for Environmental Courts. RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. No. 09-6-8-SC, http://philja.judiciary.gov.ph/assets/files/pdf/learning_materials/A.m.No.09-6-8-SC_Rules_of_Procedure_for_Env_Cases.pdf.

²⁵ “The writ is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission of a public official or employee, or of a private individual or entity. The writ shall cover extralegal killings and enforced disappearances or threats thereof.” For the full text of the procedure governing the writ of *amparo*, see *Navia V. Pardico*, G.R. No. 184467 (S.C., June 19, 2012) (Phil), <http://hrlibrary.umn.edu/research/Philippines/The%20Rule%20On%20The%20Writ%20Of%20Amparo.pdf>.

²⁶ “The writ is a remedy available to any person whose right to privacy in life, liberty or security is violated or threatened by an unlawful act or omission of a public official or employee, or of a private individual or entity engaged in the gathering, collecting or storing of data or information regarding the person, family, home and correspondence of the aggrieved party.” For the full text, see *The Rule on the Writ of Habeas Data*, A.M. No. 08-1-16 (S.C., Jan. 22, 2008).

²⁷ Republic Act No. 8042.

institutional setting. In practice, however, this affiliation turns out to have various meanings in terms of the paralegals' relationship with the state.

For instance, for paralegals who are strictly "PO based" – that is, embedded in a "people's organization" (PO) as a member, their accountability is to that organization.²⁸ Other paralegals, by contrast, are best understood as "LGU based," in that their standing as paralegals comes from being connected to and recognized by a given local government unit (LGU), usually the *barangay* (village), and their accountability is largely to the local government. Still other paralegals attempt to establish a standing in both spheres, that is, as both PO member and as member of the local development council (LDC) or *barangay* development council (BDC), for example. The study also encountered paralegals who are not based in any grassroots community-level organization, but can and do (cl)aim to serve a particular group or category of people whose justice concerns revolve around their standing as members of a particular grassroots community. This latter mode of paralegalism is more often based in an NGO (and is thus NGO based), although there are also those who are based in a government institution, such as the Department of Agrarian Reform (DAR), which launched its own paralegal program in the 1990s in order to hasten agrarian reform implementation.

In all these cases, a defining feature is that the paralegal explicitly endeavors to serve a particular group or category of people who are perceived as inadequately recognized as rights holders, and/or whose human rights are deemed insufficiently defined, guaranteed, or fulfilled by the state in practice. This should not be surprising, given that historically in the Philippines (see Section III), the main anchor of paralegalism has been the broad movement for social change, which, despite some important internal differences, reflects a basic consensus about the key problems besetting Philippine society. These include: (i) the highly skewed and uneven distribution of wealth and power, which produces chronic poverty and drives many Filipinos (including children) into precarious and unfavorable work situations at home and abroad; (ii) the continued emphasis on a development model that relies on large-scale, destructive extraction and use of natural resources (land, water, minerals, forest), which in turn intensifies conflicts over natural resource and territorial ownership and control and at the same time deepens the need for environmental protection; (iii) an entrenched sociopolitical culture that supports gender and ethnic injustice and gives rise to violence and human rights violations against women and indigenous peoples; and (iv) a deep-rooted political culture that tolerates both repression and impunity and depends on maintaining a gap between rights on paper and rights in reality, even as the number of rights available on paper continues to expand.

²⁸ The term *people's organization* refers to an association composed mainly of members of basic sectors, such as peasants, fisher folk, indigenous peoples, or slum dwellers, while *nongovernmental organization* usually refers to professionals who are working for the benefit of the basic sectors. See John Farrington and David J. Lewis, *Non-governmental Organizations and the State in Asia: Rethinking Roles in Sustainable Agricultural Development* (New York: Routledge, 1993).

D. Recognition and Training

Within the state, post-Marcos political-institutional change has unfolded only partially and unevenly, creating some openings for paralegalism in the process. Community-based paralegals are now recognized and encouraged in some quasi-judicial tribunals – for example, in the DAR Adjudication Board that handles agrarian reform-related disputes, and in the National Labor Relations Commission that handles disputes between employers and employees – but not yet formally recognized by the judiciary.²⁹

Today's community-based paralegalism has also been shaped by state-led reform measures and associated peoples' initiatives. For example, when the constitution mandated the right of the people to a clean and healthy environment, this spawned various legislative proposals on the fisheries code, solid waste management, clean air, hazardous wastes disposal, the integrated protected areas system, and the like. The abundance of new environmental legislation in turn prompted the Supreme Court to designate new environmental courts with primary jurisdiction and to enhance the rules of redress in environmental cases. All of these actions have created a pressing need for specialized public information campaigns about the new legal opportunities available, both in terms of legal content and of procedures of redress. The more progressive legal provisions that are promulgated, the more there is a need for paralegal training and education. Looking back, much of the new legislation originated in the active engagement of environmental groups, rural development groups, and so on, and thus can also be seen in part as an outcome of active lobbying efforts of groups pushing for social change.

Even as alternative law organizations and paralegal programs tend to specialize and thus revolve around distinct issue areas and laws, they share a broadly similar approach in training and “forming” paralegals. This reflects the legacy they share as offspring of the earlier generation of alternative law activists. Groups such as FLAG and the PLL generated a training methodology and practical paralegal tools with enduring relevance, establishing standards adopted by later paralegal programs. The earlier wave of paralegalism created prototype modules on human rights, human rights situation analysis, and paralegal skills building and practice. As a result, standard paralegal training today includes: (i) analysis of the situation in which participants find themselves in human rights and sociopolitical terms; (ii) introduction to the philosophy of developmental legal advocacy (DLA) or legal

²⁹ Under the Law Student Practice Rule, senior law students are allowed to appear in court under the supervision of a competent lawyer. See Bar Matter No. 730 (June 13, 1997), www.lawphil.net/courts/bm/bm_730_1997.html. And as already mentioned, in DAR, a contractual position called paralegal has also been created, but this is purely to help the adjudicators to decide on cases and finish the backlogs, and involves non-lawyers and law graduates who have not (yet) passed the bar exam. See DAR Opinion No. 109-96, www.lis.dar.gov.ph/documents/998. This is paralegal work in a more restricted conventional sense (an assistant to a lawyer), but is also unique in the sense that this also indirectly contributes to the resolution of cases of farmers and landowners.

empowerment defined as the use of the law to creatively empower people, reform laws, assert rights, and hold the state or corporations accountable; and (iii) instruction in the specific human rights norms and legal principles that have application to participants' situations, in basic paralegal skills such as gathering evidence and making affidavits, and in advanced paralegal skills focusing on particular issue areas (e.g., collective bargaining, lobbying local government).³⁰

V. TYPES OF PARALEGALS

This study uncovered numerous types of paralegals, which have been "captured" in the typology outlined in Box 3.3.

BOX 3.3: BASIC PARALEGAL TYPOLOGY

Type A: Grassroots Organization Paralegal. Member of a grassroots organization, usually labor (factory based) or agrarian (landholding based), who is deployed by the organization as a paralegal. Grassroots organizations are associations of the poor themselves (e.g., workers, peasants, or fisher folk) and whose members and leaders come from this sector. Grassroots organization paralegals are typically supported by a rights advocacy group, an NGO composed of professionals rendering services for the poor. Rights advocacy groups include KAISAHAN, SALIGAN, BALAOD, RIGHTS, WLB, and CLB. KAISAHAN, for example, has social science graduates and lawyers among its staff, and is dedicated to rural development, agrarian reform, and local governance issues.

Type B: Roving (Territorial) Leader-Organizer Paralegal. Member of a people's organization (PO) or network with a regional scope, for instance, an indigenous community with ancestral domain claims spread across numerous villages and municipalities, or a human rights advocate's network covering several provinces, or grassroots leaders deputized to enforce specific environmental laws, in a particular ecological zone spread across several municipalities (ELAC, PANLIPI, TK, FLAG).

Type C: Law Student Paralegal. Volunteer students who perform community legal education, election monitoring, case build-up, and legal advice and assistance (AHRC).

Type D: Office-Based/Hired Paralegal. NGO staff members who document cases, provide legal information, and assist lawyers (KANLUNGAN, PALIPI).

³⁰ See Annex A.

BOX 3.3: (Cont.)

Type E: Mainstreamed Community Paralegal. Community members who are trained by NGOs (or local officials themselves trained by NGOs) and based in a local government unit (LGU) while performing paralegal functions for the benefit of affected community members (KANLUNGAN, WLB, CLB).

Type F: Law Enforcement Paralegal. Community members or members of grassroots organizations who have been entrusted by the local or the national government agencies with some form of law enforcement functions. The two most common types of these paralegals are the forest guards (*bantay gubat*) and municipal water guards (*bantay dagat*).

Among our respondents, the Type A paralegal was the most prevalent, which coincides with the availability of a state-mandated forum for the practice of paralegalism.³¹

Incidence of Paralegals by Type of Organization							
SECTOR/ ISSUE	NGO	TYPE OF PARALEGAL					
		Grassroots Leaders/ Paralegals	Roving Paralegal	Law Student Paralegal	Office Based Paralegal	Main- streaming LGU	Law Enforcement
Agrarian Reform/ Peasants	Balaod Mindanaw						
	KAISAHAN						
	RIGHTSnet						
Children	CLB						
Environment	ELAC						
	TK						
Gender	WLB						
HRE	AHRC						
HRV	FLAG						
IP	PANLIPI						
Labor	SALIGAN						
Migrants	Kanlungan						

FIGURE 3.1 Incidence of paralegals by type of organization

³¹ See Figure 3.1, “Incidence of Paralegals by Type of Organization.”

VI. FACILITATING AND HINDERING CIRCUMSTANCES

A number of factors have helped to promote the paralegal system in the Philippines. There is a scarcity of public interest lawyers, for example, which creates a substantial need for paralegals to fill in the gap. At the same time, despite the successful emergence and development of the work of paralegals, a number of factors continue to impede their efforts (like continuity of funding). This section examines both sets of factors, those that facilitate paralegalism in the Philippines and those that often impede its effective advancement.

A. Facilitating Circumstances

1. Public Interest Lawyers

One factor identified as facilitating the emergence of paralegalism is the *scarcity of public interest lawyers*. Relatively few lawyers choose to go into public interest law in the Philippines because of a combination of low pay and potential danger. This trend resonates with the experience in the United States, where only 6.7 percent of law graduates took on public interest jobs in 2010.³²

Entry-level positions for public interest lawyers at NGOs typically pay US\$500 to US\$900 per month. This is quite low, as compared to the entry-level salary of lawyers who work as public attorneys in the government service, who would earn typically US\$1,400 per month, including their allowances, such as transportation. The entry-level salary of lawyers in the law firms would be similar to that of public interest lawyers; however, many lawyers are attracted to the firms because of their bonuses and profit-sharing schemes, which augment the basic salary significantly.

New lawyers often have school loans to pay off or other pressing personal financial obligations, which militates against taking such low-paying jobs. Moreover, doing public interest law in the Philippines can expose one to the same hostile forces and sociopolitical environments that confront the lawyers' clients. Lawyers are not immune from harassment or death threats, and the threat is often severe enough to keep many away. The scarcity of public interest lawyers means that it is necessary to mobilize non-lawyers to help fill the gaps.

Yet the scarcity also means that the networks of persons who do become public interest lawyers become all the more important, as they are the ones who provide the training, legal "clinic-ing," and mentoring needed to support a paralegal movement. This, then, is the second factor seen as facilitating

³² Sally Kane, "Public Interest Law: A Guide to Legal Public Service Careers," *The Balance*, last modified September 15, 2016, www.thebalance.com/public-interest-law-2164664.

paralegalism, which perhaps ironically directly contradicts the first: despite their small number, a strong *network of public interest lawyers exists nonetheless, capable of anchoring and guiding paralegal programs*. The country's long tradition of public interest lawyering, reinvigorated during the dictatorship and carried on in later decades, is a contributing factor here. Some of the study's informants went further by saying that without lawyers to train and guide paralegals, there can be no paralegal movement – a stronger formulation that reflects growing concern that the traditional alternative law movement may be losing and not gaining momentum, in part because fewer lawyers are joining its ranks and in part because of the dwindling funds for existing paralegal programs and operations (a hindering factor discussed later in this chapter).

2. Institutional Support

This also points to a deeper issue: to what extent paralegal work, anchored and guided by public interest lawyers, is institutionalized within both the government and the nongovernmental spheres (for more discussion, see Section VI.C). *Institutionalization* is clearly seen as facilitating and sustaining paralegalism. The underlying assertion is that both public interest lawyers and paralegals are expanding access to justice to previously excluded groups, and thus both need to be incorporated into more formal institutional structures and in this way sustained in order for paralegal formation programs to survive. Institutionalization is not automatic or fixed over time, but must be continuously cultivated, particularly as there is concern among some informants that traditional sources of funding for paralegal programs are drying up. In practical terms, institutionalization refers to several things: (i) the existence of civil society organizations (CSOs) that can absorb and deploy public interest lawyers as paralegal program anchors; (ii) the existence of real opportunities and recognized venues for paralegals to operate and practice their skills; and (iii) the existence of what one informant called “institutional sustaining mechanisms” that can ensure the survival of paralegal programs, including (if not especially) institutional (versus piecemeal project) funds for the CSOs that host and midwife paralegal programs and work.

The institutional, programmatic, and operational sustainability of paralegal work since the collapse of the Marcos dictatorship is closely tied to *long-term donor support for the ALG network*. This refers particularly to funding from numerous foreign agencies, especially the Ford Foundation and the Asia Foundation, the Dutch funding agencies – the Catholic Organization for Relief and Development Aid (CORDAID) and the Netherlands Organization for International Assistance (NOVIB) – and the German funding agency – the German Catholic Bishops' Organisation for Development Cooperation (MISEREOR). The Paralegal Education Skills Advancement and Networking

Technology (PESANTEch) paralegal program (1994–2006), for example, an initiative of ALG members engaged in agrarian reform work, was made possible through such long-term funding. Meanwhile, the creation of a fund dedicated to legal defense work is another mechanism that serves to sustain paralegal work, as in the ALG’s Environmental Defense Program or “EnDefense,” which provides funds for legal defense in environmental cases.³³ The extent that paralegal work threatens to upset an unjust status quo, increase claim-making, and facilitate social justice activism often provokes legal offensives by entrenched elites (as a form of harassment), making it necessary to divert scarce financial resources away from the social change work itself and into legal defense. Having a dedicated legal defense fund can ease this problem to some extent.

In sum, the institutionalization of paralegal programs in the governmental and nongovernmental spheres could be a sustaining mechanism; however, and especially for the nongovernment sector, the process of institutionalization is dependent on whether these groups have adequate funding in the future.

3. Community Organizing

Also seen as a crucial factor facilitating paralegal programs and work is *community organizing and PO building work*. The essential notion that strong (well-organized and active) grassroots or POs facilitate community-based paralegal efforts makes sense intuitively. The very kind of paralegals this study is concerned with are those who explicitly endeavor to serve a particular group or category of people who are perceived as inadequately recognized as rights holders and/or whose human rights are deemed insufficiently defined, guaranteed, or fulfilled by the state in practice. An important political resource for people in this situation is their capacity to organize and mobilize social pressure. This is particularly critical in settings where “good law” exists, and the next challenge of making law and legal rights actually *authoritative in society* requires a struggle against powerful, entrenched interests.³⁴ In the Philippines, the mixed, uneven, and often hostile sociopolitical setting has given rise to community-based paralegal formation as part of a broader political strategy. The ALG network members refer to this strategy as “legal-metalegal,”³⁵

³³ For more information about this program, see “EnDefense,” Alternative Law Groups, Inc. <http://alternativelawgroups.ph/index.php/projects/curent-projects/endefense>.

³⁴ See Franco, “Making Land Rights Accessible,” 998 (see n. 7).

³⁵ Legal-metalegal strategies involve a combination of purely legal work with actions that are lawful but not traditionally considered legal work. For example, when lawyers are debating a heated proposal in Congress, their supporters could hold a public rally or demonstration outside, or even silently drop a banner in the gallery to support a certain advocacy. Alternative Law Groups, Inc., *Final Output Report – Alternative Law Groups, Inc. National Paralegal Conference: Collecting Stories, Exchanging Models* (Quezon City: GOP-UNDP, 2006), 26.

a concept that emphasizes the limitations of a purely legal strategy and the need for organized, “metalegal” collective action as well. Other groups (such as RIGHTS) have framed this kind of strategy as “rightful resistance.”³⁶

Different groups have different understandings of what “strong” organization means in practice. There is likely general agreement that the ideal situation involves: (i) well-trained and accountable paralegals; (ii) well-organized and dynamic communities at the grassroots; and (iii) a mutually reinforcing relationship between the two. Beyond this there appears to be a diversity of ideas on how this ideal is to be achieved and sustained. One issue involves the question of who should do what – for example, who should do the organizing or who should do the paralegal formation and mentoring work. The theory within the ALG is that a legal NGO (that is, the member organizations of the ALG) should partner with other organizations that specialize in and can take charge of the community organizing work. The idea is to achieve a synergy and complementarity of work, for example, with one NGO partner doing the community organizing work and the other doing the legal work and paralegal formation. In practice, however, problems can arise for whatever reason; the community organizing work is not sustained and the legal NGO ends up left alone to address the legal work/paralegal formation *and* the community organizing/PO-building work. Several study informants have found themselves in such a situation, which they described as a dilemma and a source of debate within the legal NGO as well as within the ALG network more broadly (see also the discussion of decreased funding in Section VI.B.1).

4. Responsive Local Officials

A final set of facilitating factors involves *state structures and government officials*, especially at more local levels. Respondents spoke of the importance to their work of open, friendly, and approachable local government officials, especially at the *barangay* (village) level. Beyond personal politics with government officials, they placed value in *barangay*-level structures and strategies, where the paralegals trained through NGO formation programs could be embedded, such as the *barangay* development councils and the *barangay* justice system structures. These are venues where they can voice the objectives of their advocacy efforts, such as the need for a dedicated committee on violence against women, as advocated by paralegals in Marikina City on the island of Luzon. Part of the logic has to do with the fact that

³⁶ See Kevin J. O'Brien and Lianjiang Li, *Rightful Resistance in Rural China* (Cambridge: Cambridge University Press, 2006) (providing an explanation of the concept). See Saturnino M. Borras Jr. and Jennifer C. Franco, “Struggles for Land and Livelihood: Redistributive Reform in Agribusiness Plantations in the Philippines,” *Critical Asian Studies* 37, no. 3 (2005): 331–61, doi: 10.1080/14672710500200383 (applying the concept to the Philippines' case).

barangay units, led by the *barangay* captain (the elected village head), have the authority to issue ordinances or orders to regulate everyday social relations in a village on a whole range of matters. For example, among other directives, *barangay* captains can issue a *barangay* protection order (BPO) in cases of violence against women or children, ordering the offender to desist from committing or threatening harm to the victim (woman or child). Having a good relationship with local officials enables one to have a potentially positive influence on how local officials respond to injustice.

If local officials are open and friendly, paralegals are: (i) better able to maximize localized opportunities to deepen and extend their rights education work; (ii) better able to efficiently and effectively respond to serious incidents requiring “first aid legal aid”; and (iii) potentially able to gain access to sustaining resources for their work, at least in the medium term (that is, under the current government administration), such as a physical base for their practice or financial support to cover operational expenses. Such “closeness” to a given *barangay* administration does not come without its own risks, however; most obviously, if that official does not get reelected, there is a possibility that such benefits will be lost (e.g., and transferred to someone else).

Recognition by officials in relevant government agencies and units is likewise perceived as a facilitating factor, despite potential pitfalls. An interesting distinction here can be made between official and unofficial recognition. In one case, for instance, paralegals who must frequently interact with local court employees and officials engage in what they call “alliance work” in order to befriend them and win their respect, so that even without official recognition of their work as paralegals, eventually they are given unofficial recognition as representatives of their organizations, which in their experience serves them well. In other cases, more formal types of state recognition are perceived as essential for their work, including: (i) official recognition relative to dispute tribunals under DAR and the Department of Labor and Employment (DOLE), respectively; and (ii) official deputization by law enforcement agencies such as the Bureau of Fisheries and Aquatic Resources (BFAR) and the Department of Environment and Natural Resources (DENR) for *bantay gubat* (community-based forest guards) and *bantay dagat* (community-based coast guards). These forest or coast guards deputized by the state agencies recognize the difficulty of law enforcement in very wide areas such as hard-to-reach forests and expansive coastal areas in an archipelagic country such as the Philippines. The informants expressed limited success in these areas, and more extensive cooperation between the paralegals and government law enforcement agencies is required.

For other participants, more crucial (and more acceptable) than official state recognition is unofficial but formal recognition in the form of identification cards issued by legal NGOs to those they train as paralegals.

B. Hindering Circumstances

1. Low Capacity and Declining Funding

Numerous factors were viewed as hindrances to the successful practice of paralegalism. One is the *low capacity of CSOs to absorb the public interest lawyers* needed to anchor and guide paralegal practice and programs, a problem linked to *decreased funding for public interest law work* in general. In the Philippines, CSOs primarily provide the platform upon which the public interest lawyers are able to do their work. Although there has been long-term donor support in this area, many traditional sources of funding for both alternative law activism and paralegal formation programs in the Philippines have been shifting away from such work.

This situation is further compounded by the lack of resources (time and money) legal NGOs devote to paralegal monitoring and evaluation (M&E) systems. M&E systems have been given a low priority by legal NGO leaders and paralegal program funders alike, according to study informants, who also cite limited resources as the reason for this (e.g., given limited funds, priority should be given to training over M&E). There is a basic consensus as well that M&E is unnecessary and a waste of time and resources. As one respondent said, “why devote time, effort, and funds to monitoring and evaluation, when we already know that paralegal work contributes to access to justice?” Since the paralegal work is not properly documented and evaluated, it becomes harder for the NGOs to provide evidence to funders that such types of paralegal activities work and are effective.

2. Corrupt or Indifferent Local Officials

Another hindering factor is the phenomenon of *erring local government officials*, who, instead of upholding and fulfilling state law, violate it. Seeing government officials violate the law has an immediate “chilling” effect on paralegal work. This point was emphasized by an informant who provides legal and paralegal support to impoverished and marginalized rural communities struggling against local government-sanctioned large- and small-scale mining operations that have been ravaging fragile ecosystems, livelihoods, and the health of local populations across a huge area. Such scenes are replicated in remote communities across the Philippines and are thus not rare.

Paralegals commonly encounter local officials who are not aware of certain new provisions of the law. For example, in the Fisheries Code, the local government is now in charge of declaring marine protected areas for coastal management.³⁷ Typically, the paralegals engage local governments and try to

³⁷ Republic Act No. 8550.

convince them to enforce this new legislation for the common good. But when the local officials themselves sanction illegal practices, such as unauthorized small-scale mining, then the local government officials themselves become hindering factors.

Less dramatic but perhaps more common are local government officials who are “unsympathetic” to a given cause in which paralegals have become active, even when the latter are “in the right” in legal terms. One example is the case of farmers who were threatened by their former landowners with dispossession despite possessing Certificate of Land Ownership Awards (CLOA) issued by the national government under the agrarian reform program.

A related hindering factor is the *lack of support in the communities for specific initiatives in paralegalism*. This point was raised especially by a group of women paralegals working at the *barangay* level on issues of violence against women, who felt that their efforts were not supported enough by the *barangay* officials. Despite the existence of a government policy mandating that 5 percent of the local government budget go toward financing gender and development work, such as local anti-VAWC efforts, the *barangay* officials in these paralegals’ area of work had yet to release any funds. Unwilling or unable to force local officials to release the money, the paralegals could continue their work only by tapping into their own respective personal household finances. Although this example points specifically to the gap between official policy on paper and realities on the ground, it also may suggest a need to combine localized pressure politics with more “scaled-up” advocacy, since it is likely a problem facing paralegals who are trying to “engender *barangay* justice” elsewhere in the country.

3. Physical and Legal Threats

The phenomenon of “erring officials” reflects the partial and uneven way in which post-Marcos democratization has proceeded below the national level. In many villages, it is still regional authoritarian elites, backed by private armies and commanding extensive patronage networks, who determine which “law” rules in reality.³⁸ This kind of setting is behind the next factor seen as a major hindrance to paralegal work, namely, *physical and legal harassment*, which arises especially in cases where paralegals are involved in struggles against a prevailing status quo perceived as unjust, if not unlawful. Examples include: (i) cases where members of a grassroots organization – including its paralegals – get slapped with criminal charges in the course of

³⁸ See Franco, “Making Land Rights Accessible,” 996 (see n. 7); Jennifer C. Franco, “Peripheral Justice? Rethinking Justice Sector in the Philippines,” *World Development* 36, no. 10 (2008): 1858–73, <http://dx.doi.org/10.1016/j.worlddev.2007.10.011>.

trying to push forward the implementation of the government's agrarian reform law; or (ii) cases where *bantay gubat* face criminal charges after attempting to carry out their duties as government-deputized forest guards by confiscating the profits of illegal logging activity. In cases such as these, the filing of criminal charges by an entrenched power holder who feels threatened is just one side of the coin; the other side is the use of coercion and violence.³⁹ In some cases, the agents of such violence are neither state actors nor corporate elites, but the anti-state New People's Army.⁴⁰

4. Skepticism of Paralegals' Abilities

In a different vein, the paralegal movement has also been hindered by the persistence of a "lawyer-centered" *legal consciousness* among ordinary citizens, including paralegals themselves, which leads them to doubt their own capacity to study and practice law. Some paralegals interviewed for the study framed the problem as: they are not lawyers but are dealing with the law, so they have to be cautious, otherwise they might find themselves in an awkward position (*ma-alanganin*). A lawyer-centered legal consciousness is prevalent among government officials as well. The strong perception that only lawyers can know and should practice law makes it difficult for paralegals to gain effective recognition, whether formally or informally, even in venues where they are officially recognized by law, such as the quasi-judicial labor tribunals. As one labor paralegal said, "The [labor] arbiters look down on paralegals" (*Mababa ang pagtingin sa mga paralegal ng mga arbirer*). Labor arbiters who "look down" on union and migrant labor paralegals sometimes harass them by creating technical obstacles, such as asking for additional authorization from the union or the union board. There is skepticism and suspicion of paralegals in the regular court system also, as seen in the Supreme Court's effort to limit the range of paralegal work and the prohibition against the "unauthorized practice of law" – a decision issued in the context of the Access to Justice Project funded by the European Union.⁴¹

³⁹ The long list of names of all those who have been killed – even just in the past five years – while trying to hold powerful elites or companies accountable by mobilizing existing state law is proof of how real this threat is.

⁴⁰ See Borras and Franco, "Struggles for Land and Livelihood" (see n. 36).

⁴¹ The Access to Justice Project is a joint undertaking between the Government of the Philippines and the European Union. The Financing Agreement was signed in August 2004. The implementing agency from the Philippine government was supposed to be the Supreme Court. However, in the decision cited later, the Supreme Court has ruled that it was not the proper institution to handle the project, considering the separation of powers theory. In the course of handing out the decision, it also made a comment on the role of paralegals in the information centers as contained in the project design. A.M. No. 05-2-01-SC dated February 15, 2005. See Box 3.5.

BOX 3.4: SUPREME COURT POSITION ON PARALEGALS

A.M. No. 05-2-01-SC dated Feb. 15, 2005

RE: SC ACCESS TO JUSTICE FOR THE POOR PROJECT

Training and Employment of Paralegals in Various Aspects of the Project Violates Existing Jurisprudence

It bears noting that the implementation of the Project relies heavily on paralegals as an essential component of the Project. Necessarily, these paralegals would engage in the practice of law which this Court in *Cayetano v. Monsod*,^[14] defined as “any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience.”^[15] But the use of paralegals may be improper since under Philippine law, a person who has not been admitted as an attorney cannot practice law for the proper administration of justice cannot be hindered by the unwarranted intrusion of an unauthorized and unskilled person into the practice of law.^[16] As the OCA_t (Office of the Court Attorney) astutely points out:

The TAPS (Technical and Administrative Provisions) mentions the training of paralegals that shall be fielded in the implementation of the Project. Paralegals are not a common breed in this country. Although the Court has supported approval by the Commission on Higher Education of the proposal of the Manuel L. Quezon University to offer the course of Bachelor of Science in Paralegals, such support is circumscribed by the requirement that the course shall be a pre-law course. Authorizing the practice of paralegals in the country is still being studied by the Committee on Legal Education and Bar Matters because of the need to regulate their practice in much the same way that the practice of the members of the Integrated Bar of the Philippines is subject to the Court’s rule-making authority.^[17] Parenthetically, if the Project were to be properly implemented, the participation of the IBP is necessary.

The Office concurs with the position of the OCA_t that the Committee on Legal Education and Bar Matters (CLEBM) is still studying the prospect of certifying paralegals. Taking into account this development, the utilization of the paralegals in the implementation of the Project could be held in abeyance pending proper sanction from the CLEBM. We also acknowledge that the participation of the Integrated Bar of the Philippines in this Project is necessary.⁴² (Note: Emphasis and underscoring supplied, internal citations omitted.)

5. Weak Grassroots Organizations

Meanwhile, whereas strong (well-organized and active) *grassroots* or *POs* are seen as facilitating community-based paralegal efforts, conversely, the absence of such

⁴² A.M. No. 05-2-01-SC dated February 15, 2005.

grassroots efforts is seen as creating sociopolitical dynamics that can undermine paralegal work. This can be from a lack of active involvement by the whole organization or community, to a lack of accountability and legitimacy on the part of the paralegal. When community organizing work and organizational strengthening efforts are not sustained in conjunction with paralegal practice, problems can result. For instance, in areas where labor unions are becoming weaker, there is increasing pressure on the legal NGOs doing paralegal formation work to do some of the organizing work also, thereby diverting attention and resources away from the paralegal formation work proper. On the agrarian reform front, a similar problem is emerging, as it is increasingly difficult to find one partner who can do the community organizing effort in conjunction with another partner doing the paralegal formation work. Stalled progress on one front can impact the other negatively, launching a downward spiral that is difficult to stop or reverse.

C. Selected Issues for Debate

In sorting through which factors facilitate and which hinder the emergence and growth of paralegalism, two issues emerged as key points of difference, disagreement, and/or debate, and therefore deserve special mention.

The first point has to do with the merits of *linking paralegal work to local government unit structures*, particularly official *barangay* structures. Two groups participating in the study, especially those addressing the rights and welfare of women or children (including migrant women and their children), have adopted a strategy of forging such linkages, framed as “mainstreaming” by one or “engendering” by another. This strategy was seen as logically flowing from the fact that when the rights of women and children are violated, the first responders tend to be *barangay* officials, who are traditionally and still oftentimes men and may not be sensitive or knowledgeable in their handling of such cases. Paralegals armed with specialized training are therefore urgently needed, both to intervene in cases arising on a day-to-day basis and to help influence and change the entrenched patriarchal culture that still largely determines local official response, especially in cases of VAWC.

In some cases, paralegal formation is oriented to lead directly into official community-based law enforcement structures (e.g., *bantay gubat*, *bantay dagat*) that emerged as a result of new environmental protection legislation. In the context of rampant violations of environmental protection laws and the persistence of an array of illegal economic activities harmful to local ecosystems, livelihoods, and community health, these new localized law enforcement structures were viewed as opportunities that had to be seized by people in the affected communities.

Here, it might be noted that paralegal formation can also become bound up with “unofficial” community-based law enforcement initiatives (such as “*bantay*

CADT”⁴³). Such initiatives can emerge “from below” in a more spontaneous manner, often in response to those occasions when violations of environmental law are ignored (or facilitated) by local state law enforcement agents. The community-based initiatives thus operate in what might be called “the shadow of the law,”⁴⁴ that is, they are socially acceptable forms of collective regulatory action and may embody the spirit of the law, but they are not necessarily legitimate in a narrow formal-legal sense.

Unsurprisingly, many respondents expressed concerns about linking (or linking too closely) with local governments. This concern was expressed in several ways. Most common was the observation that electoral politics can “make or break” one’s paralegal practice, depending on “whose side you’re on” in an election. This is because in practice, local government structures themselves down to the village level are closely tied to election-fueled patronage networks. Indeed, in the Philippines, the capacity to engage with local government officials often has more to do with one’s political and personal affiliations than the social relevance of the paralegal program; consequently, your strength can also become your weakness if the network you are affiliated with loses in the next election.

In sum, linking with local government units offers a lot of potential for paralegal work. The obvious advantage is the cloak of authority that the local government can provide, especially when such work (protecting women and children, environmental law enforcement) is within the remit of such local authority. But together with this advantage comes the limitations of working with such a structure, such as the change in the local officialdom every three years, and the instability that this can generate in the continuity of the work.

A second point of debate has to do with *whether and how the state should intervene and be involved in the certification and regulation of all paralegals*. This is an especially thorny issue that touches upon core elements of community-based paralegalism. Arguments in favor of state intervention through certification and regulation include: (i) the legitimizing effects that state certification can have on the activities and efforts of paralegals, especially when facing resistance from local elites; and (ii) the salutary effects that state regulation can have on paralegal practice through the setting of performance standards. Here, state intervention is seen as a potential safeguard against poor quality or corrupt practices. Arguments against state intervention include: (i) that it can also be used to filter out perceived “undesirables” based on social or political biases; and (ii) that it can end up filtering out the very kinds of people (e.g., from the poor and marginalized groups) that community-based paralegalism tries to tap and mobilize. As an alternative,

⁴³ CADT stands for Certificate of Ancestral Domain Title, which is a tenurial instrument, a land title issued by the government under the Indigenous People’s Right Act (IPRA) in order to secure the land rights of indigenous peoples.

⁴⁴ Marc Galanter, “Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law,” *Journal of Legal Pluralism and Unofficial Law* 13, no. 19 (1981): 1–47, doi: 10.1080/07329113.1981.10756257.

some respondents suggest either relying on CSO-led certification and regulation or courting state intervention through the governmental Commission on Human Rights.

VII. THE WORK OF PARALEGALS: THREE DIMENSIONS

The conventional notion of a paralegal in the context of Western legal practice is as an assistant to a lawyer. Even the initial discourse of Diokno on the role of the paralegal carries that sense of saving time for human rights lawyers to do more of the “creative aspects of their job.”⁴⁵ But since then, in the context of developmental legal practice in contemporary times, the work that community paralegals have undertaken and continue to undertake has encompassed and moved beyond these traditional notions. The work of a paralegal today can be categorized along three dimensions: (a) building rights awareness; (b) settling private disputes; and (c) increasing state and corporate accountability.

A. Building Rights Awareness

The most elemental task of paralegals is building awareness of the rights of the poor and other marginalized groups. The term *rights* is understood in a multifaceted fashion. Prior to 1986, internationally accepted human rights standards were invoked in the Philippines to counteract the restrictive and oppressive rules laid down by the martial law regime (e.g., the issue of arrest search and seizure orders [ASSO] used against those identified as “enemies of the state”). After 1986, in the context of struggles for democratization and democratic deepening, rights awareness work could now cite the new constitution and various new laws (or their progressive provisions and elements) that ongoing social pressure helped to shape. Campaigns to make “ordinary people” more aware of their human and legal rights now increasingly include a new dimension as well: struggles to use state law to claim and enforce rights. Paralegal training today makes a clear distinction between legal literacy (know your rights) and skills training (taking action to enforce and implement your rights). A typical training for paralegals would include: (i) a “situationer” on the specific sector (or population) of concern (e.g., the national and local situation on the state of indigenous peoples); (ii) the human rights and legal rights pertinent to that sector; and (iii) the skills that may be needed in order to enforce those rights.⁴⁶

The martial law era modules on paralegal training typically contained skills building on how to preserve evidence, how to make an affidavit based on what one has personally witnessed (e.g., very useful when someone has been arrested by the military), and which government agencies to approach in cases of human rights

⁴⁵ See Box 3.2; Diokno, “Developmental Legal Aid in Rural ASEAN,” (see n. 12). ⁴⁶ See Annex A.

violations. Today, with the various arenas that new legislation has opened to public interest lawyers and paralegals, this aspect of training is more elaborate. Next is a sampling of the various “how to” elements (such as skills) taught in paralegal training programs today:

- How to secure a protection order from the village chieftain based on a complaint of a woman who has been abused by her husband;
- How to make a citizen’s arrest of fishermen involved in dynamite or cyanide fishing;
- How to lobby the LGUs (specifically the municipal government) to declare a certain body of water as a protected area;
- How to follow through with the government for the issuance of agrarian reform land titles, from the identification of the beneficiaries and the valuation of the property to the final issuance of title;
- How to represent farmers or workers in the agrarian or labor tribunals, respectively, and argue their case to its successful conclusion; and
- How to lobby and advocate for a change in the laws and regulations at the national and local government levels.

The increased awareness of community groups and their ability to act on such awareness was noted in an evaluative study done by the Filipino NGO Social Weather Stations:

- **Knowledge of the Law.** In the battery of knowledge questions, generally, more survey respondents in the ALG target areas got the correct answers to the questions ranging from general concept of rights, to specific provisions on sectoral issues, such as women’s rights, environment, labor and people living with HIV/AIDS.
- **Ability to Translate Knowledge to Action.** There is a marked difference between ALG partners and non-ALG partners’ ability to assess and act on a legal problem. The ALG partners say they are fairly knowledgeable, and find it not too difficult to act. This is likely a result of education campaigns and paralegal trainings; paralegals and trainees score even higher.⁴⁷

Although important, this first dimension of work can achieve only so much on its own, since even if paralegals are well armed with rights awareness and legal skills knowledge, *access* to justice often remains problematic. Experience suggests that gaining knowledge does not automatically lead to success; as one informant put it, “paralegal knowledge is very useful, but implementation is the problem.” Among the informants there was a perception too that increased rights awareness and

⁴⁷ Social Weather Stations, *Research on the Poor Accessing Justice and the ALG as Justice Reform Advocate*. Inroads: ALG Study Series (Social Weather Stations, Inc., Alternative Law Groups, Inc., 2008), 82–83.

paralegal skills can lead to frustration and inaction in the absence of successful outcomes, especially the more one's understanding grows of how conflicts actually get processed. As one of our respondents said: "paralegal training is great in terms of legal literacy, but doesn't help much in achieving real results in actuality because it all gets derailed in the process; government agencies that ought to implement don't, and citizens feel that they are the ones who have to implement." As this shows, many political factors are perceived as beyond the control of paralegals, no matter how well trained. The skills training part of paralegal instruction and formation today does emphasize the need for collective action on the part of citizens in the enforcement of rights and the implementation of programs, but in the end, what matters to the affected people are the results of any legal-metalegal action. Any attempt to look more closely at whether, when, and how paralegalism is actually effective in expanding access to justice would thus have to delve into the relationship between legal and legalegal action.

Meanwhile, paralegal formation efforts, including the rights awareness-building aspect, can lead to important but unexpectedly finite results. For example, with regard to paralegal work on the agrarian reform front, one of our respondents pointed out that in her experience, once the land title is issued by DAR, there is a tendency for the community-based paralegal, who, as a member of a farmers organization is likewise a beneficiary of the agrarian reform program, to become inactive since the most immediate outcome of the farmers' campaign has been achieved. In the Philippines, land reform campaigns take more effort and time than is usually anticipated, exhausting the members of the farmers' organizations and their resources in the process, thus giving rise to a kind of "battle fatigue." When the struggle for the land has been finally "won," there may be a tendency for the farmers' organizations and their paralegals to demobilize to focus on more immediate household-level concerns, even if the next immediate challenge (such as to make the land productive) or subsequent other challenges (e.g., such as to put a stop to illegal fishing, if the agrarian reform community is also partly a fishing village) remain. Some advocates argue that this kind of situation requires creative interaction between the paralegal, the community organizers, and the legal NGO workers supporting the paralegals to devise sustaining strategies for the continued involvement of paralegals in the area. Others would say that it is up to the organizations' leaders and members to determine the next moves and whether or how paralegal work might fit in.

B. Settling Private Disputes

A second area of work is the settling of private disputes. In the Philippine context, the settlement of private disputes is not a high priority for the kind of paralegals studied here. Because paralegalism in the Philippines historically has been tied to social change-oriented, social movement actors, it tends to address issues affecting

traditionally marginalized segments of the population (such as farmers, fisher folk, women, indigenous communities, political detainees), or broad public interest issues that can affect the entire population or an entire community (including environmental issues such as clean air and water and other pollution concerns, illegal logging and dynamite fishing, and so on). This is not to say that Filipino paralegals are not involved in settling private disputes at all, as they are in fact. For instance, one participant explained that due to his reputation as a paralegal and labor leader, he is often asked by people in his neighborhood, which is also home to many other members of his labor union, to mediate family disputes.

One factor that competes with paralegal intervention in private dispute settlement is the presence of formal and informal structures of mediation at the community level, which rely on customary methods of conciliation. Notable here is the BJS (*katarungang pambarangay*), which was introduced during the Marcos dictatorship in 1978 as a compulsory venue for certain kinds of disputes, and was later reiterated in the Local Government Code of 1991.⁴⁸ The BJS has reported an uptake of more than 6 million cases from 1980 to 2008, of which 79 percent were settled, 6 percent went to the courts, and the rest had varied outcomes.⁴⁹

Many observers agree that the BJS has some advantages over the regular courts as a venue for dispute processing and that it is gaining acceptance as a dispute-resolution forum. But there are also concerns about the “double-edged” nature of the “traditions” upon which BJS is based – especially clientelist politics and gender bias.⁵⁰ In many remote rural villages and indigenous communities, village leaders often serve as conduits for mediation and conciliation even in criminal matters such as murder and rape.⁵¹ One problem here may be competing ideas of what constitutes a just outcome in such cases; another underlying problem is power. As Nader has put it: “If there is any single generalization that has ensued from the anthropological research on disputing processes . . . it is that mediation and negotiation require conditions of relatively equal power.”⁵² In the Philippines, as elsewhere, such conditions may hold sometimes, but certainly not always.

Another factor that can dampen demand for paralegal services is the parallel phenomenon, cited earlier, of the “privatization of paralegal services” through an

⁴⁸ See Vigo and Manuel, *Katarungang Pambarangay: A Handbook* (see n. 17), http://accessfacility.org/sites/default/files/Katarungang%20Pambarangay%20Handbook_o.pdf.

⁴⁹ Barraca, Delorino, Duman, Dumlaio, Grepo, Ocampo, Reyes, and Salazar, *Understanding the Katarungang Pambarangay: Justice at the Grassroots* (Guanzon: University of the Philippines – College of Law, 2009), 11, www.slideshare.net/nehruvalera/21200493-understandingthekatarungangpambarangay.

⁵⁰ See Stephen Golub, “Non-state Justice Systems in Bangladesh and the Philippines” (paper presented for the UK Department for International Development, London, January 2003), 13–14.

⁵¹ Franco, “Making Land Rights Accessible” (see n. 7).

⁵² Laura Nader, “The Underside of Conflict Management – in Africa and Elsewhere,” *IDS Bulletin* 32, no. 1 (2009): 22.

abogado. A Spanish term that means a “small lawyer,” it is also used pejoratively to refer to persons who claim to be knowledgeable in the law and charge money for their services (often unreasonable amounts), but who produce outcomes that may or may not be legitimate. Sometimes, paralegal trainees who are the products of NGO-led paralegal formation programs end up breaking away from their base organizations to go into “practice” on their own. To illustrate, one of the paralegals from Quezon province cited an incident where an *abogado* was charging 5,000 pesos (roughly US\$120) to secure an order from DAR that is in fact a public document and available free of charge. This phenomenon has caused concern within the alternative law movement because of the perceived lack of accountability and quality control, although there are few actual reports of this type of problem to date.

Meanwhile, what constitutes a “private dispute” may itself be a shifting, socially constructed category determined in part by the historical-institutional context and in part by the perceptions and interpretations of any number of parties. For example, some respondents identified the following as qualifying as private dispute settlement: (i) mediating farmer-to-farmer disputes over allocation of land within a certain estate or landholding; (ii) mediating land disputes using indigenous customary law systems in tribal communities; or (iii) settling family disputes between spouses and children in urban poor communities. However, at different moments and under different political conditions, each of these issues could also be conceived not as strictly private disputes, but rather as disputes that can and perhaps should be addressed as a matter of public interest as well, especially in light of the relatively new laws governing land property rights and relations and violence against women and children, for example.

Finally, some respondents from the judicial sector highlighted a need to attend to the more commonplace legal concerns of the unorganized poor, especially in far-flung communities. Because public interest law NGOs focus on organized groups and the Public Attorney’s Offices (an adjunct of the Department of Justice [DOJ]) focus on indigent litigants, this leaves a gap in addressing the legal needs of the unorganized poor.⁵³ One trial court judge in a poor municipality in Mindanao said that she often found herself having to advise poor litigants on their legal rights and responsibilities. The unorganized poor usually have little or no access to legal services in cases such as death benefits claims, discrepancies in the records of birth, marriage, or death, and issues of registration during election time, among other matters. One top official of the DOJ recalls participating in joint legal and medical missions in rural poor

⁵³ More often than not, indigent litigants have access to legal services because they belong to organized communities and therefore know of their right to seek legal support when necessary. The unorganized poor however do not have the capacity or awareness to participate in decisions affecting them because “they are objectively and subjectively powerless.” Asian Development Bank, *Law and Policy Reform at the Asian Development Bank* (Asian Development Bank, 2001), 77.

villages where the queues for those seeking legal assistance were longer than for those seeking medical assistance, indicating to him, rather unexpectedly, a real unmet need for basic legal services.

C. Increasing State and Corporate Accountability

1. State Accountability

Increasing awareness of human and legal rights is intertwined with a third dimension of paralegal work hinging on a human rights law framework. In this framework, the state is the primary “duty bearer” in relation to citizens as “rights holders,” especially those who are poor, disadvantaged, and marginalized. Since states have the moral and legal responsibility to protect, defend, and fulfill the human rights of their citizens, much paralegal practice in the Philippines today revolves around working to increase state accountability, especially to poor and marginalized citizens in this sense.

Some of this state accountability work is international in character and involves mobilizing to push the Philippine government to carry out its obligations under international human rights law to protect, defend, and fulfill the human rights of its citizens. A good example is the rape case of Karen Vertido, which was brought to the attention of the Committee for the Elimination of Discrimination against Women (CEDAW) of the United Nations in 2007 and decided in July 2010.⁵⁴ In this case, CEDAW found that the trial court in the Philippines fell short of adhering to human rights principles when it dismissed the case in 1996, and recommended that the Philippine government provide “appropriate compensation commensurate with the gravity of the violations of her rights.”⁵⁵ The decision also recommended that the government adopt structural changes in order to prevent rape and to improve the handling of rape cases.

By contrast, some of the state accountability work that Filipino paralegals are involved in is more national in character, revolving around the passage and meaningful implementation of national laws and associated policies and programs (e.g., the various national laws on agrarian reform and the rights of workers, women, children, migrants, indigenous peoples). In some cases, this can mean calling attention to situations in which state actors and agents of state law are involved as rights violators, such as when local officials are engaged in illegal economic activities, or the police or military units are involved in illegal detention

⁵⁴ Under the Optional Protocol to CEDAW, a decision of a local court could be reviewed by CEDAW if the decision fails to conform to internationally accepted principles protecting the rights of women. The case was originally brought to the attention of CEDAW by the Women’s Legal Bureau, a member organization of the ALG.

⁵⁵ For the full story of this case, see Jerrie Abella, “UN Women’s Committee Faults RP for Junking Rape Case,” *GMA News.tv*, September 24, 2010, www.gmanetwork.com/news/story/201848/news/nation/un-women-s-committee-faults-rp-for-junking-rape-case.

and “salvaging,”⁵⁶ to name a few examples. Some of the legal tools that paralegals work with include the writ of *amparo*, the writ of *kalikasan*, and *barangay* protection orders, which are intended to protect a specific woman against domestic violence.⁵⁷

A good example here is the now twenty-year-old struggle to implement the government’s agrarian reform law and program. The first landmark legislation, the Comprehensive Agrarian Reform Law (CARL), was passed in 1988. Comprehensive land reform was mandated to take place within ten years, and soon after the law was passed, public interest lawyers and paralegals joined other rural reform activists as well as a broad coalition of peasant movements to work for its implementation. Intense social pressure from below was combined with pro-reform efforts from within DAR to distribute a significant amount of land and provide support services to many farmers.⁵⁸ Further mobilizations of social pressure served to ensure that the law was extended in 1998 for another ten years, and in 2008, another intensive campaign succeeded in securing a further extension of the program, this time from 2009 to 2014, or a period of five years. The work of paralegals was instrumental in providing the much-needed evidence of the weaknesses and shortcomings of the law as crafted. For example, landowners in the coconut-producing areas used criminal statutes in order to circumvent the intent of the law, and this practice was corrected in subsequent legislation. This long-standing national-level struggle for the launch and continuation of a state-led agrarian reform program and legislation can be seen as an example of paralegals’ involvement in larger efforts to hold the state accountable for promises made in the constitution.

Finally, some state measures can be implemented only at the local level. For example, the declaration of marine protected areas for the regeneration of coral reefs and fish stock can be done only at the level of the municipality. Environmental NGOs and their paralegals must lobby at the local level for this safeguard, and the same is true with law enforcement in the form of *bantay gubat* and *bantay dagat*, a community-based type of paralegal mentioned earlier. Paralegals play a role in efforts to hold local officials accountable through various means, such as monitoring the utilization of the local budgets, attending the meetings of local special bodies (local development councils, peace and order councils, and so on), and if needed, filing cases with national government heads, or the Ombudsman in cases of graft and corruption or malversation. Some of our respondents report that in instances where local DENR officials are known to be involved in illegal logging, cases have to be

⁵⁶ *Salvaging* is a colloquial term in the Philippines that means extrajudicial killing or execution.

⁵⁷ The writ of *amparo* and the writ of *kalikasan* are explained in section 4.2. A *barangay* protection order is a preventive order issued by the village chieftain in order to protect a woman from acts of violence, usually by her husband. This order is authorized under the VAWC law.

⁵⁸ See Saturnino M. Borras Jr., *The Bitingka Strategy in Land Reform Implementation: Autonomous Peasant Movements and State Reformists in the Philippines* (Quezon City: Institute for Popular Democracy, 1998).

filed with the courts in order to hold them accountable for their misdeeds. As this suggests, working to increase state accountability at the local level is a double-edged sword for many paralegals. Sympathetic local government officials can be allies in the fight against poverty and lawlessness, but they can also be the worst of enemies if they themselves are involved in corrupt practices in their locality. Many paralegals end up adopting a strategy of “critical collaboration”; as one informant put it, “when we need to fight, we fight; when we can be friends, we are friends, but in the majority of our areas, the local governments still need to be oriented.” Concretely, this means that the local officials have to be won over to the side of the paralegals, provided with the legal basis for their action, and a program for collaborative implementation has to be established with the consent of such officials.

2. Corporate Accountability

Finally, paralegals are also involved in efforts to increase corporate accountability. Here the work ranges from documenting violations and gathering evidence, to persuading victims to pursue and sustain cases, to trying to activate relevant and appropriate state bodies and agencies to mobilize and decide in favor of the groups and communities harmed by corporate activities. A good example of a major campaign in which ALG-supported paralegals have been involved is the ongoing effort to ban aerial spraying of pesticides in commercial banana plantations around Davao City. The effort has received not only broad public support but also the support of the Davao City local government. Another example is the problem of pollution through mine tailings, where some of the study’s paralegal respondents have been active in gathering evidence (water samples) for examination for the presence of pollutants, in preparation for filing complaints with the DENR and its pollution adjudication board.

There are in fact numerous examples of paralegal involvement in efforts to hold large corporate entities (both foreign and domestic) accountable for either civil and political rights violations and/or social and environmental harms caused by their activities, especially mining, logging, fishing, and commercial farming, but also including illegal recruitment of migrant workers, unfair labor practices, and human trafficking. Many of the informants for this study have once been or currently are still involved in such struggles. Perhaps in part because of the difficult and sensitive nature of participating in challenges to the power of economic elites, who are often supported by powerful political elites, most participants referred to the cases in general terms and without mentioning details. Experience suggests, however, that securing accountability from corporate entities is especially difficult in the context of big power imbalances both inside and outside relevant state dispute-processing structures.

Some of the key problems and challenges for paralegal engagement on this dimension include: “window-dressing”-type official local decision-making and oversight bodies, and weak state regulatory and law enforcement functions. Even in the example of the campaign against aerial spraying (mentioned earlier), and despite solid support

from local government, the legal case has been stymied in the courts, and as of this writing, there has been no final and enforceable ruling on the issue. More frequently, paralegals have to contend with uncooperative local government officials, corrupt regulatory offices, and armed resistance directed against those who try to expose and oppose their activities. As one of the paralegal informants said: “The problem is implementation at the ground level. The paralegals work hard to gather evidence, follow the law, policies, procedures etc. But the problem is in the difference between what is said at higher levels and what actually happens when you get to where we live.”

VIII. CONCLUSION

The paralegal movement in the Philippines is dynamic and deeply embedded in an evolving socioeconomic and political-legal landscape. Paralegal practice was born out of the need for social mobilization of the poor and marginalized to creatively engage the state in favor of the defense and protection of their human and legal rights. Its diversity in application is partly attributable to the country’s fragmented legal system, with its various segmented channels of legal entitlement, fragmented approach to dispensing justice, and multiple levels of dispute resolution. Some organs of the state have expressly recognized paralegals, including community-based paralegals, while others maintain that paralegals have to be constrained and regulated to ensure that they do not encroach upon the “real” practice of law. Despite this official skepticism and suspicion toward community-oriented paralegals, they remain a key part of the Philippines’ social movement terrain, embedded in or tied to various types of grassroots organizations and supported by alternative law-oriented civil society groups, as well as in local government structures and some line agencies of the government.

The very notion of community-based paralegals is based on the hypothesis that they are an important positive factor in struggles for social justice. Therefore, whether or to what extent they actually fulfill this expectation in a given society is an important but complex empirical question. As explained at the outset of this chapter, the present study aimed more modestly to explore and examine the actually existing landscape of paralegalism in the Philippines, rather than to assess the actual impact of paralegal practice on access to justice. In leaving the systematic tracing of the outcomes and impacts of community paralegals for future study, some key issues are laid out here for consideration.

A. Issues for Consideration

1. *Accountability and Sustainability: Locating Paralegals in CSOs and LGUs*
In theory, paralegals embedded especially within grassroots membership organizations are subject to internal mechanisms (formal and informal) that may allow

organizational members to hold them accountable. Within legal NGOs, the system of accountability, mentoring, follow-up, and quality control may be quite robust. But civil society groups, and grassroots membership organizations especially, are often poorly financed, and it is an ongoing challenge to sustain them over time. Meanwhile, paralegal operations that are mainstreamed within LGUs – as in the case of VAWC committees within the *barangay*, or *bantay dagat* or *bantay gubat* members coming from the POs who are deputized by the local government – may gain an advantage in terms of sustainability, at least in the medium term. For example, the VAWC committees may receive some logistical support as well as office space within the *barangay* hall. However, the paralegal risks becoming primarily accountable to the local government official who supervises his or her work, such as the *barangay* captain in the case of the VAWC committees, rather than to the disadvantaged population they aim to serve. In this way, they remain vulnerable to the vagaries of patronage politics and three-year electoral cycles, and to the rent-seeking activities of some local officials. If the local government is supportive of paralegals' social justice efforts, this augurs well for a continuation of their work; if the political situation changes, their work could be severely compromised.

2. Recognition and Certification of Paralegals by the State

Another sensitive issue is the relationship of the paralegal to the state. One extreme position is that of the Supreme Court, which states that paralegals by definition are engaged in the practice of law, and therefore it is improper for them to participate in the Access to Justice Project, since the practice of law is limited to court-accredited attorneys. A middle ground of sorts is the practice of some quasi-judicial agencies to allow paralegals to appear on behalf of their fellow farmers or workers. This practice has provided a state-sanctioned venue where the paralegals can practice their craft and a built-in structure for developing their knowledge and skills in this area. On the other extreme are paralegals who are beyond the shadow of the law, so to speak, who operate below the "legal radar" within the confines of their respective organizations but who also provide essential services to their constituents, in spite of any formal recognition from the state. In the 2006 National Paralegal Conference hosted by the ALG, the 100 or so paralegal participants passed a resolution that they brought to the attention of the Court:

Formal recognition of the role of paralegals by the courts and quasi-judicial agencies.

Given the quantity of cases that we face and the lack of alternative lawyers that are willing to assist us, it is due time that the Supreme Court recognize our knowledge, skills, and capacity to represent ourselves and our organizations and communities.⁵⁹

The sentiment expressed by the participants echoes the continuing problem of the shortage of public interest lawyers who defend the poor and marginalized in various

⁵⁹ Alternative Law Groups, Inc., *Final Output Report*, 18 (see n. 35).

tribunals, and hence the need for paralegals to act on their own, learn the law, and represent themselves. How this recognition will take place, however, is still a subject of discussion among public interest lawyers. If the state is the accrediting mechanism, which organ of the state should play this role? Should it be the Supreme Court or the specialized agencies of government like DAR or the National Labor Relations Commission (NLRC)? There is a genuine concern that even as some may pass, the accreditation process could be used to weed out the “dissenters” and the “trouble-makers,” making such a process discriminatory. The proponents of accreditation who participated in the study (mostly from the government sector) also talked about the need for certain standards, such as educational qualifications. But the fear is that disadvantaged groups may be further marginalized and that an elite group of paralegals may be created who will not have any organic connection to their constituencies over the long run. Should there be just one type of recognition, a “one-size-fits-all” approach? Some participants in the validation workshop argued that paralegals engaged in the enforcement of environmental laws, for example, should undergo a more stringent type of “accreditation” or “deputization,” as opposed to those whose work is more about building awareness of human and legal rights.

3. Monitoring and Evaluation of the Impact of Paralegals

Despite the long history of paralegalism in the country, little has been done to measure the impact of such efforts on access to justice. The possible exception to this general statement is the evaluative study done by the Social Weather Stations.⁶⁰ The NGOs interviewed do not routinely track the outcome of the cases that have been handled by the paralegals to determine whether they have succeeded or to analyze what kinds of impacts they have made on the communities they serve. Little has also been done to track systematically the status of the many paralegals trained over the years – that is, where are they now, are they still active, how have they maintained their interest, and why did some of them become inactive? These are some of the issues that would be useful to know in order to improve the implementation of the paralegal programs. Monitoring and evaluation systems for paralegals do not seem a priority in light of the seemingly more urgent concerns of training paralegals and immediately making them work on issues facing the community. The issue of scarce resources definitely comes into play, as limited funds are used more for training and actual dispute resolution rather than for trying to monitor the outcomes of these efforts. This issue merits serious consideration. The paralegal movement cannot simply rely over the long haul on a presumption that paralegalism contributes to increased access to justice. Although this may seem obvious, more rigorous and systematic inquiry is needed to determine empirically the actual impact(s) of community-based paralegals on the lives of the poor.

⁶⁰ Social Weather Stations, *Research on the Poor* (see n. 47).

4. Funding as a Sustaining Mechanism

A few respondents emphasized that many law students have demonstrated their ability and commitment to take up a public interest law career, but that there are too few “takers” of fresh law graduates among the public interest law NGOs. The anemic “uptake” of recent law graduates by CSOs, due mainly to inadequate funds for sustaining public interest lawyers, has an impact on the quality of the training, maintenance, and monitoring of community-based paralegals. Many informants have highlighted the problem of inadequate funding for alternative lawyering as a problem for sustained paralegal formation and operation.

5. Looking at Paralegals in the Long Term

Aside from the institutional problem of financial sustainability, community-based paralegals face enormous obstacles in trying to work out legal assistance schemes at the grassroots, in the context of increased legislation and rights, as well as increased rights consciousness but weak implementation. This can be a problem especially in areas far from the reach of the central government and the national and independent media. In such settings, an inability or delay in making progress in paralegal work in specific cases can be seen as a failure to achieve success and a failure of the paralegal strategy in general. The cumulative effects can be demoralization, demobilization, or a turn toward violence. Meanwhile, poverty and impunity can make communities, grassroots organizations, and their paralegals vulnerable to adverse incorporation into the very kinds of illegal or destructive economic activities that they hope to stop. For example, they can become vulnerable to the initial enticements of mining or logging companies (in the form of local support and assistance) or to the immediate relief offered through clientelist relationships with elites, where they give up their civil and political rights and freedoms in exchange for access to social and economic benefits. In the Philippines, such responses to a very difficult situation can undermine paralegal formation, practice, and strategy.

6. Special Issues for Women and Children

As more and more paralegals become engaged in work with women and children, this sector requires a deeper understanding of the dynamics involved in order to make the work of the paralegal more effective. Experience shows that women who suffer domestic violence, for example, including rape, are unlikely to challenge their attackers without strong support from the community, and as a result, paralegals may need to engage in organizing such support as well. This could take the form of community forums on violence against women, the rights and remedies available to women, and so on. Another area that warrants close scrutiny is whether and to what extent patriarchy can interpret cases of violence against women as “petty” disputes, and push such cases into the village justice system for mediation by village leaders. While the BJS is not mandated to handle criminal cases in the first place, once there, appropriate and just outcomes for women cannot be guaranteed, and women may

be forced to settle for unjust and disadvantageous results. Hence, public law work may need to give extra focus to “engendering” LGUs, most especially the people who are implementing the *barangay* justice procedures.

B. Recommendations

In spite of the challenges and obstacles, the paralegal movement in the Philippines will continue to be buoyed by factors and circumstances that heighten the urgent need of ordinary people at the grassroots to know the law and their rights and how these can be protected and promoted. Given the unlikelihood that the number of public interest lawyers will increase substantially in the future, the need for paralegals to reach out to the poorest of the poor will continue to exist. The legal opportunities created by new legislation will also continue to make paralegal services relevant in communities suffering from various kinds and degrees of social injustice. This chapter concludes with a number of recommendations for CSOs (including legal service NGOs) and state actors concerned about and involved in struggles for social justice and justice reform.

- 1) Locating the accountability of paralegals remains a key issue for the future. The ramifications of mainstreaming paralegals in LGUs must be carefully examined, especially its effects on both accountability and sustainability. For paralegals embedded in CSOs, accountability mechanisms must also be reviewed and strengthened to safeguard against the phenomenon of *abogadillos*.
- 2) The recognition of paralegals by the state is also an important area for further study and critical review. Where such recognition is deemed necessary, care should be taken that the standards imposed do not serve as a filtering or excluding mechanism, which would undermine the vibrancy and dynamism of the paralegal and alternative law movement. State recognition need not adopt a “one-size-fits-all” approach; instead, various paralegal roles (e.g., deputization of fishermen engaged in law enforcement) may merit more stringent accreditation measures than others.
- 3) CSOs should take a closer look at monitoring and evaluation schemes for paralegals in the future. These systems could be highly instructive for internal strengthening purposes, and also serve as a benchmark for future funding.
- 4) The justice concerns and legal needs of remote communities should be looked into more closely by the state and in any justice reform programming. Among other responses, a state-led paralegal program should be considered, in conjunction with the public attorney’s program and the BJS. However, a state-led paralegal program should not be taken as the only solution to the justice concerns and legal needs of the poor and marginalized. Any state-led justice

reform initiatives must address their justice concerns and legal needs, and paralegals can play a key role in deepening understanding toward more relevant solutions.

- 5) The government as well as the donor community should put more emphasis on the funding of paralegal programs as good value for money in the crusade to improve access to justice by the poor. Partnerships between committed public interest lawyers and community-based or oriented paralegals may be one (but not the only) key to improving access to justice, and at the same time, maintaining an optimal use of scarce resources.

C. Concluding Remarks

This study has taken a historical perspective on the work of paralegals in the Philippines. It has also examined the institutional constraints and opportunities that hinder or allow paralegals to do their work productively. This chapter concludes by going back to the paralegals themselves, who were asked what it takes to be a paralegal. Numerous interesting responses from various key informants have been collated. It is hoped that this collection of responses usefully illustrates the motivations and goals of those who opt to become paralegals in the Philippines today (see Box 3.5).

BOX 3.5: WHO CAN BE A PARALEGAL?

ANYBODY CAN BE A PARALEGAL IF . . .

- One will take time to know and study the law (student paralegal)
- One has inner strength and believes in one's ability (farmer leader and paralegal)
- One has a deep understanding and knowledge of the culture and lifeways of the indigenous peoples (indigenous peoples' leader and paralegal)
- One has a strong love and reverence for the sea and the environment (community based-coast guard volunteers)
- One has a strong sense of service and not expecting anything in return (labor leader and paralegal)
- One has the courage to defend the rights of the people (environmental paralegal)
- One has a balanced perspective on the problems and legal rights (labor leader and paralegal)
- One could open their eyes, their ears and their minds (student paralegal)⁶¹

⁶¹ These quotes have been selected from the responses of informants in the focus group discussion in various places.

ANNEX A ANATOMY OF A TYPICAL PARALEGAL TRAINING

<i>PART 1</i>	
Module 1	Overview of the Human Rights Situation (sector/issue) in the country (region/area/community)
Module 2	Basic Human Rights Universal Declaration of Human Rights <i>If applicable with special attention/focus to:</i> <ul style="list-style-type: none"> • <i>Convention of the Rights of a Child (UNCRC)</i> • <i>Convention on the Elimination of All forms of Discrimination against Women (CEDAW)</i> • <i>United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)</i>
Module 3	Developmental Legal Framework
Module 4	The Philippine Legal System
<i>PART 2</i>	
Module 5	Issue or Sector Specific Relevant Laws Agrarian Reform: <i>RA 9700 CARP Extension with Reforms</i> <ul style="list-style-type: none"> • <i>MC 15 s2004 Affirming Role of Farmer Paralegal</i> Children: <ul style="list-style-type: none"> • <i>RA 9344 Juvenile Justice and Welfare Act of 2006</i> • <i>RA 7610 Special Protection of Children against Abuse, Exploitation and Discrimination Act</i> Environment: <ul style="list-style-type: none"> • <i>PD 705 Forestry Code</i> • <i>RA 8550 Fisheries Code</i> • <i>RA 7586 National Integrated Protected Areas System</i> • <i>RA 9003 Ecological Solid Waste Management Act</i> • <i>RA 8749 Clean Air Act</i> Human Rights Violations: <ul style="list-style-type: none"> • <i>Revised Penal Code</i> • <i>Writ of Amparo</i> • <i>Writ of Habeas Data</i> • <i>RA9745 Anti-Torture Law</i> Indigenous Peoples: <ul style="list-style-type: none"> • <i>RA 8371 Indigenous Peoples Rights Act</i> Labor: <ul style="list-style-type: none"> • <i>PD 442 As Amended LABOR CODE</i> • <i>RULEBOOK Labor Relations</i> • <i>ART. 279 Security of Tenure</i> Women: <ul style="list-style-type: none"> • <i>RA8353 The Anti-rape Law of 1997</i> • <i>RA9262 Violence against Women & Their Children Act</i> • <i>RA9710 Magna Carta of Women</i>
<i>PART 3</i>	
Module 5	Basic Legal Forms
Module 6	Evidence Gathering and/or Arrest, Search, Seizure, and Detention
Module 7	Introduction to Philippine Court System/Procedural Laws
Module 8	Metalegal Remedies

FIGURE 3.2 ANNEX A: Anatomy of a typical paralegal training

ANNEX B LIST OF ORGANIZATIONS PARTICIPATING IN THE STUDY

Ateneo Human Rights Center

Ateneo Professional Schools Building, 20 Rockwell Drive
Rockwell Center, 1200, Makati City

Balay Alternative Legal Advocates for Development in Mindanaw (BALAOD-Mindanaw)

2nd Floor, Belsar Bldg., Brgy. 19, Capistrano-Del Pilar Sts.,
9000 Cagayan de Oro City

Children's Legal Bureau

No. 10 Queen's Road, Caputhaw, 6000, Cebu City

Environmental Legal Assistance Center, Inc.

Carlos Sayang Compound, Mitra Road, Sta. Monica Puerto Preincesa, Palawan

Free Legal Assistance Group

Alumni Center, University of the Philippines, Diliman, Quezon City

KAISAHAN Tungo sa Kaunlaran ng Kanayunan at Repormang Pansakahan

No. 3 Mahabagin St., Teacher's Village West, Diliman, Quezon City

Kanlungan Center Foundation, Inc.

KANLUNGAN

No. 77-K 10th St., Kamias, 1102 Quezon City

Tanggapang Panligal ng Katutubong Pilipino PANLIPI

Unit 303 JGS Bldg., #30 Scout Tuazon cor. Dr. Lascano
Brgy. Laging Handa, Quezon City

RIGHTSNET

79C Bignay St., Brgy. Quirino 2A, Project 2, Quezon City

Sentrong Alternatibong Lingap Panligal SALIGAN

G/F Cardinal Hoffner Building, Social Development Complex,
Ateneo de Manila University, Loyola Heights Quezon City

Tanggol Kalikasan

Room M-01, CRM Building III, 106 Kamias Road,
1102 Quezon City

Women's Legal Bureau

Room 305, CSWCD Building, Magsaysay Avenue,
U.P. Diliman, Quezon City

Program Management Office, Supreme Court of the Philippines

7th Floor, Centennial Building, Padre Faura St., Manila

Department of Justice

Padre Faura St., Manila

Public Attorney's Office

4th Floor DOJ Agencies Building, NIA Road cor. EDSA, Quezon City

Integrated Bar of the Philippines

IBP Building, Julia Vargas St., Ortigas Center,
Pasig City

The Asia Foundation

36 Lapu Lapu St. Magallanes Village, Makati, Metro Manila

FIGURE 3.3 ANNEX B: List of organizations participating in the study

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