

CHAPTER 2

Situation Analysis

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A situation analysis is a process for understanding the needs of specific audiences in a specific setting. Conducting a situation analysis is a critical step in determining whether to establish a paralegal program, and if so, what services the program should offer. Gathering and analyzing data about the communities to be served and their needs will help you to make choices about your program. This chapter outlines how to conduct a situation analysis specific to paralegal work. It provides an overview of both data collection options and key areas to explore in your analysis. Depending upon the resources available to you, this analysis can be more or less formal, but all assessments will involve interaction with potential beneficiaries and stakeholders.

By reaching into communities through interviews, surveys, observations, and casual conversations, you will come to understand the most pressing needs of those you will serve and be able to design your program accordingly. Your situation analysis should seek to accomplish the following:

- Reveal justice problems that arise between individuals, such as domestic violence, or between the individual and the state, such as government misappro-

Community Problems, Program Priorities

In South Africa, program leaders went to tribal authorities, explained who they were and the role of paralegals, and asked about community problems and whether paralegals might be of help. Information was gathered through these conversations as well as through community workshops. They discovered that people were having massive problems with their pension payments, which were not arriving or were insufficient, in part due to corruption. The subject of pensions became the initial focus of the paralegal work of the Community Law and Rural Development Centre.

In Mongolia, the paralegal program developers held meetings with government officials at three levels—provincial, district courts, and local subdistricts—as well as with bar associations and NGOs involved in human rights work. They also asked local governors to organize community meetings and “home visits” so they could speak directly with members of the community. The program developers discovered a great deal of consistency in the kinds of problems mentioned by government officials and community members.

priation of private land, and help you to prioritize which populations and issues to focus on.

- Reveal where people usually go in order to solve these problems.
- Map the landscape for your paralegal work, including the overall legal environment of your country, organizations with interests and activities similar to yours, and the pool of potential paralegals.
- Help you justify the establishment of a paralegal program, outline its contours, and plan the initial training.
- Enable community members to clarify their own situation and participate with you in the planning process.
- Introduce you to existing services and organizations with shared concerns or related skills, making the assessment process an important first step in developing institutional alliances to support the program.

Many organizations use a situation analysis as the basis for program development. One tool for conducting a situational analysis is called SWOT (Strengths, Weaknesses, Opportunities, and Threats). The SWOT analysis classifies the internal aspects of an organization’s strengths or weaknesses and external factors such as opportunities or threats. (For more information about strategic planning tools, visit the Free Management Library at www.managementhelp.org/plan_dec/str_plan/str_plan.htm.)

2.1 The Data Collection Process

For anyone considering starting a paralegal program, the goal of the situation analysis is to identify justice problems in the community that are unmet and that could potentially be addressed by a paralegal. This is called a “gap analysis.” Based on this gap analysis, you can prioritize the populations you will work with, anticipate the key legal problems you will address and confirm the range of strategies that your paralegals will be trained to use in meeting them.

Assessing a community’s legal needs can be carried out by the program developer or the management team through consultation with community members and leaders. Several data collection techniques are used in a needs assessment, including:

- Direct observation
- Questionnaires
- Consultation with persons in key positions or persons with specific knowledge
- Review of relevant literature
- Interviews
- Focus groups

In selecting your methodology, you will need to consider which techniques are most practical and likely to provide reliable and valid information. One of the most basic methods of data collection is direct communication and dialogue with community members. This technique can help lay the foundation for an effective collaboration between your program and the community. If you do not have sufficient personnel to carry out the data collection by yourself, you might enlist local NGOs or law school students (e.g., through internships) to assist you.

One of the simplest ways of obtaining information is to interview people. You can do this through individual interviews, focus groups, or the administration of in-person questionnaires. Information can also be gathered in community meetings or workshops. Interviews carried out with a range of populations will help to establish the reliability of the information you collect. Through this process of investigation, you can develop a sense of the problems that people have and the potential solutions a paralegal program might offer them. In addition to being a source of information for you, these case studies can be used in future trainings. Also, later in your program, you might carry out a similar investigation in order to see if your paralegals have been able to address previously identified problems.

You can use volunteer law students in legal clinics to conduct needs assessments and prepare reports on their findings. For example, law students at the legal clinic Ateneo de Manila Human Rights Center in the Philippines carry out a community needs assessment during their period of “immersion” in a poor rural community.

You might also look for government records or documentation that could inform program development. In most countries, available statistics are insufficient to reveal the actual scope of problems involving access to justice. However, you may be able to find indirect evidence of the legal needs of community members by documenting population totals, the number of lawyers available, the average length of time before a case is heard before the court, and similar factors.

Moldova: Needs Assessment Survey of Rural Communities

In order to carry out an assessment of the primary legal needs of rural communities in Moldova, representatives from 11 villages were interviewed. These interviews used two different sets of questions: one for regular citizens and the other for community leaders most likely to know the legal needs of the population, including mayors, school teachers, police inspectors, NGO leaders, priests, social workers, and doctors. These interview questions were developed by a group of lawyers, then reviewed by a sociologist, adapted for use in interviews, and field tested. The needs assessment ultimately involved interviews with 136 citizens and 47 community leaders.

The interview questions were designed to elicit information on:

- Legal situations and legal problems that citizens confront
- Means by which citizens try to solve their legal problems
- Satisfaction with the results obtained
- Reasons for a problem not being solved, if such a situation existed
- Perceptions about the best way to approach legal situations
- Background information on the interviewee (e.g., personal data, location)

Source:

Open Society Institute–Moldova (2005).

Finding Ways to Provide Access

In Hungary, a paralegal program was initiated by Eötvös Loránd University (ELTE) to address the legal needs of the Roma, an ethnic group historically discriminated against in the country. The factors contributing to their situation included:

- Geographical distance from legal aid offices and little means of transportation
- A high requirement for paperwork, which deterred applications for administrative procedures
- Reluctance among the Roma to address private matters with non-Roma
- An overall low level of legal awareness

These factors were taken into account when the paralegal program was designed.

Carefully designed research studies can help establish the need for legal assistance. For instance, standardized questionnaires can be administered to a representative sample of prisoners, asking about the presence of legal representation at the different stages of criminal proceedings as well as incidents of mistreatment; the study can include an analysis of interethnic differences with respect to legal representation at different stages in criminal proceedings. If you anticipate carrying out an impact evaluation of your program, you should collect baseline information for your community. If resources allow, you might collect baseline and follow-up data in a similar, “comparison” community in which your paralegal organization is not operating in order to compare the results.

In Moldova, a needs assessment was carried out through a survey administered to citizens as well as local authorities in 11 rural villages (*see sidebar*). The research was sponsored by the Soros Foundation–Moldova, which subsequently helped to launch a paralegal program.

2.2 Vulnerable Populations and Their Needs

In some countries, large segments of the population could be considered “vulnerable” in the sense that they would benefit from an array of social and legal services. Faced with such overwhelming need, you may choose to prioritize those whose needs are most acute.

In many countries, the most disadvantaged are the urban and rural poor and members of a minority group that is subject to exclusion or discrimination. These groups almost always have difficulty obtaining lawyers for civil legal problems yet often face the greatest problems with housing, employment, family members, property, welfare, social security benefits, and immigration. They may also be unaware of the legal remedies available to them. Members of these groups often experience police brutality and other human rights abuses. To help such groups, you must also decide whether your paralegal program will need to maintain strict independence from the government. See Chapter 3, “Setting Up a Paralegal Program.”

Poverty is a nearly universal characteristic of the populations that justice-oriented paralegal programs serve. In rural areas especially, there are many conditions that make it difficult to access lawyers, including the cost of a lawyer, the shortage of lawyers in general, and in particular, the shortage of lawyers willing to work with poor communities. Communication problems can include language, distance, and lack of technology.

A needs assessment will reveal not only the legal needs of vulnerable communities but also the most pressing problems that those communities are facing. In some cases, what may be seen exclusively as a social problem (e.g., lack of access to health care) can become part of a new discourse (e.g., the right to health care). In other cases, what has been treated as a legal problem (e.g., domestic abuse) might be addressed through administrative agencies, the police, local government, education, community pressure, the media, or other non-judicial approaches.

A needs assessment should also help you in identifying the problem-solving approaches—administrative, legal, counseling, educational, etc.—that your paralegals should be ready to undertake. If your assessment reveals the need for systematic reforms, your paralegal program may also need to include public interest cases or strategic litigation in its work. These considerations—target population, key problems, and approaches—will be the defining characteristics of your paralegal program.

Some paralegal programs focus exclusively on a specific issue, such as domestic violence and family problems. However, most community-based programs are flexible in both the problems that are accepted by the paralegals and the kinds of strategies that are used to solve those problems. The wider the range of topics and problem-solving approaches that your paralegals engage with, the more highly-trained those paralegals will need to be.

2.3 The Legal and Judicial Environment

One element of a comprehensive needs assessment is an environmental assessment, which should be conducted to identify the different features of the legal environment in which the program will operate and which will influence the roles that you assign paralegals. The environmental assessment should examine:

- The existing framework for legal assistance
- Availability of lawyers and legal aid
- Functionality of the formal justice system
- Willingness of the legal community to accept paralegals
- Existence of formal and customary legal systems
- Non-legal alternatives such as counseling or mediation
- Legal framework for paralegal work

Cambodia: Findings from a Needs Assessment

In Cambodia, the needs assessment involved conversations with NGOs working in communities. Interviewers asked what problems NGO staff were finding in the communities, how paralegals might address these, and what kind of training and resources would be necessary to develop such a program. Based on this needs assessment, the program's leadership identified 6 to 10 issues for the program's paralegals to work on and then put together an advisory committee to give advice on the program and review materials. The Khmer Institute for Democracy described the need this way:

“The main and most serious problems that people face in the course of their daily lives are land and housing disputes, sexual assault, divorce, domestic violence, breach of contract, and defamation, sometimes involving local military and civil authorities. More than 60 percent of Cambodian people are poor and illiterate and do not know how to face the above mentioned problems. Most of them seek assistance from the village chief or commune chief, but the reality is that it still often requires bribes to get complaints considered. Some cases should be dealt with by the courts but the victims do not have enough

money to pursue them beyond the commune authority level. They prefer their cases to be solved or reconciled by the village or commune chief. The most vulnerable are women who are the subjects of beatings, sexual harassment, and even killings.”

Source:
Khmer Institute for Democracy, 2004.

2.3.1 The Legal Framework for Legal Assistance

You should explore the nature of legal assistance within your country, including which offenses require mandatory legal representation (e.g., criminal cases involving serious offenses) and who is eligible for free mandatory legal representation (e.g., minors, those with mental disabilities, indigents).

Several models exist for legal aid: Lawyers can act as *ex officio* assigned counsel. Lawyers can be contracted to provide legal services or employed as public defenders. Lawyers can work in legal aid centers. Legal services provided by paralegals can supplement these other services. In criminal cases, paralegals can refer cases to lawyers within the program’s legal network. Paralegals can become directly involved in civil cases involving, for example, labor issues and social protection laws. In many countries, paralegals are able to appear in administrative tribunals with the consent of the presiding officers.

2.3.2 Availability of Lawyers and Legal Aid

Even if you already know that there is a lack of access to legal assistance within your country, it is important to try to document this lack of access. Determining the supply and distribution of lawyers will put you in contact with various institutions and agencies. This networking could help to lay the groundwork for a future network of supportive lawyers, and help you to gauge the reaction of the legal profession to the idea of a paralegal program.

In South Africa, for example, lawyers are listed by province and town in publicly accessible databases. Thus it was possible not only to determine the number of lawyers who were available for the population but also to invite them to become part of the network of lawyers supporting the paralegal work.

In some countries, legal aid services have been legislated by the government. However, these services may be offered at very minimal levels, poorly implemented, or underutilized, because citizens don’t know they exist or can’t access them due to their location or associated costs. In a country that has legal aid legislation, your situation analysis might probe for gaps between need and delivery, and opportunities for paralegals to help fill these gaps.

You will want to develop a strategy for associating lawyers with your program, because paralegals cannot litigate. Moreover, you will want to establish a collaborative relationship with your bar association in order to offset potential opposition to your paralegals.

The term *pro bono* refers to legal or other professional work undertaken voluntarily, and without payment, as a public service. In Kenya, for example, practicing lawyers are actually required to provide pro bono services in order to renew their licenses. Both pro bono practices, and a supportive bar association, will help ensure that your paralegal program has access to the lawyers it needs.

In Mongolia, the environmental assessment showed that there were members of the bar association in every major town and *aimag* (province). The paralegal program included a bar association member on each of its advisory committees. This not only helped to make available legal assistance but also prevented the emergence of an adversarial relationship between the paralegals and the lawyers.

In South Africa, the creation of a “ladder system” gave paralegals entrance into the legal system, with paralegal work providing credits toward a law degree. Lawyers expressing resistance to this idea were concerned that the ladder system would lead to a legal profession consisting of paralegals who remained at the bottom of the ladder. These fears were largely dispelled, and the South African Qualifications Authority enabled people with a paralegal diploma to obtain credits toward the LLB degree.

2.3.3 Functionality of the Formal and Informal Justice Systems

When trying to solve problems, there are two different approaches that the paralegal can use: formal legal methods and less formal methods grounded in community norms. Legal methods use the law and courts to solve problems. Sometimes they can bring timely results for people if a case goes before a court quickly. On the other hand, you may learn that the courts are overburdened, slow-moving, and rife with corruption. This situation creates a greater incentive for paralegals to solve community problems through non-legal or informal methods.

Your situation analysis should include an assessment of the use of the formal legal system as well as traditional approaches to justice, including customary laws that are carried out by local chieftains or other leaders. In Sierra Leone, for example, “customary” courts based on traditional approaches to justice coexist at the local level with common law courts modeled after the British system. In Malawi, paralegals help to divert cases involving minor crimes away from the formal justice system to the traditional courts that operate in rural communities.

The status of customary law in each country, and its relevance to the work of the paralegals, will require some investigation. Although processes for engaging with customary law may be easier for rural populations due to greater accessibility, customary laws may conflict with human rights principles or be applied unfairly. For example, in

Assessment of Pluralist Legal System: Sierra Leone

In Sierra Leone, a formal legal system modeled on British law coexists with a “customary” system based on traditional approaches to justice. The formal system is heavily concentrated in the capital. Out of a total of only 100 practicing lawyers in the country, 90 live in Freetown. Of a total of 12 high court judges, 10 sit in Freetown while 2 cover the provinces. The vast majority of Sierra Leoneans rely on the customary system for the majority of their legal and justice problems. And yet law and development interventions by the government, donors, and NGOs have focused almost exclusively on the formal institutions.

After assessing community needs and the socio-legal context, the directors of the Timap for Justice paralegal program determined that the program would straddle the divide between the customary and formal systems. Paralegals would engage both sets of institutions depending on the needs of a given case, and seek to reform and improve both systems. Although this determination certainly informed the initial paralegal training, much of the details of how paralegals could effectively work within and across the two systems only emerged through practical experimentation by paralegals and directors in the field.

Source: Author correspondence with Vivek Maru, September 2007.

South Africa the customary law provisions that do not recognize the right of women to inherit have been held by the courts to be in violation of the “equality provisions” of the constitution.

Your assessment of the justice systems currently operating in your community, and of alternative solutions that paralegals will most likely use in their work, will be critical in defining the trainings, resources, and support that your paralegals will need.

2.3.4 Non-judicial Alternatives to Problem-solving

Non-judicial methods include counseling, negotiation, mediation, community mobilization, use of media, direct appeals to government contacts, and administrative procedures on a case-by-case basis. Longer term solutions involving the whole community might involve public education or advocacy campaigns to improve access to public services or to decriminalize petty crimes. Educational activities can be directed toward community members, but also toward civil servants, chieftains, the police, and lawyers. This is the model that has been used in South Africa and Mongolia.

Your needs assessment should explore how community members are already solving problems (or not, as the case may be) in ways other than going to court. Information related to a lack of problem-solving mechanisms or existing alternative techniques will be important for designing a paralegal program.

2.3.5 The Legal Framework for Paralegal Work

Typically there is a broad range of actions at the disposal of paralegals working on civil cases. A paralegal may provide legal information and referral services, community legal education, counseling and advice for individuals, and mediation services. Such services may also include representation in court, public interest litigation, and legislative and appellate court advocacy.

In some Central and Eastern European countries, paralegals are able to go to court on civil matters, because this is an option presented to ordinary citizens. However, under these circumstances, paralegals have to be clear that they are not lawyers and that they are not receiving any pay for this service. (See Chapter 3 for an example of a paralegal code of ethics that every program should establish.)

In the Philippines, paralegals can represent their fellow farmers or union members in quasi-judicial tribunals administered by the Department of Agrarian Reform and the Department of Labor and Employment. This approach constitutes a cost-effective method for securing representation for farmers and workers. If particularly thorny prob-

lems arise, the paralegals can refer questions or even representation to the Alternative Law Group attorneys who trained them and with whom they remain in contact.

Sometimes lawyers are concerned that paralegals will take away their clients. This fear is often misplaced because paralegals can actually bring cases to lawyers that they would otherwise not know about. In some countries, however, where paralegals can appear in court under certain circumstances, such as dealing with bail applications, some lawyers may find this problematic, especially in small towns where there is limited work for them. Clients may also seek out paralegals over lawyers because they believe paralegals who hail from their own communities will represent them with more zeal, and more honesty. At the end of the day, lawyers' concerns about lost clients may be legitimate in some contexts and not in others. However, often the issue of competition between paralegals and lawyers is moot, as many of those receiving paralegal help would not have been able to afford lawyers in the first place.

2.4 Human and Physical Resources for Building a Program

In establishing a community-based paralegal program, you should look closely at the organizations already working with your target population, and consider the legal, mediation, counseling, education and/or advocacy services offered by those organizations. You may find that an existing organization offers some of these services, but that they lack a legal component. You could consider beginning a paralegal program that extends the work of an existing NGO, a strategy that was adopted in Cambodia (*see sidebar*).

Many countries have community-based paralegal programs without realizing it. Citizen advice officers or bureaus located in community settings actually serve a paralegal function when they give legal advice and education to community members. For example, NGOs that work on women's issues and domestic violence in particular, often have paralegal capacities in-house. If your situation analysis uncovers organizations that are already doing paralegal work, you will have to consider how any program you develop will combine with or complement this other work. Moreover, other organizations in your country with paralegal-type experience should be a very helpful resource in designing your program or could become part of your referral network.

Your assessment may also reveal that there are organizations already offering legal services, but that these NGOs or legal clinics are located in urban areas, and that

Working through an NGO Partner: Khmer Institute of Democracy, Cambodia

In Cambodia, Bruce Lasky, founder of Paññasastra University's clinical legal education program, initially tried to get a coalition of NGOs to work together on a paralegal program to serve poor Cambodians, but in-fighting prevented this. Thus, he looked for one NGO whose work was most similar to that of a paralegal program, and identified the Khmer Institute for Democracy. The institute, founded in 1993, was a well-established NGO with a positive reputation. Its citizen advisors were already doing something akin to offering paralegal advice in certain communities. The institute was also not seen as a "political" organization, an image that might have prevented Lasky's university from working with them.

He approached the institute to hear what its leadership thought about strengthening the paralegal skills of their staff in the field. He also provided some initial incentives for them to give feedback on the paralegal program idea, for example, promising them training and resource materials regardless of whether they ended up the lead NGO on this new initiative. The Khmer Institute for Democracy was eager to cooperate.

Source: Author correspondence with Bruce Lasky, October 2007.

Linking Paralegal Training to Roma Civil Rights: The ELTE Case

Aladar Horuath is the director of the Roma Civil Rights Foundation and a leader in the Roma civil rights movement. One goal of the Roma civil rights movement is to develop within the local Roma community the legal know-how that will assist them in carrying out their advocacy and activism. The proposed paralegal training program dovetailed with this national strategy.

Horuath saw as a key target group the 4,800 Roma self-government representatives who had been elected at the local and provincial levels but who were—to his mind—largely ineffective in actually promoting the rights of Roma people. Rather, such representatives were seen as being “co-opted” by their new status, implementing policies that did not seek to change the underlying conditions that forced the Roma to remain poor and segregated. It was important to turn this situation around and make the representatives understand that they represent the “public interest.”

As the Roma Civil Rights Foundation already had a national network of organizations under its umbrella, there was a ready-made opportunity for paralegal training that could feed into a broader national movement.

there is a great unmet need for such assistance in rural areas. Moreover, these legal service centers might only use a formal legal approach that relies on lawyers, overlooking other possible strategies for serving community needs, such as mediation or education. In such a case, a paralegal program could make an important contribution to resolving people’s justice problems.

You may discover, as was the case in Mongolia, that a government agency has staff whose responsibilities include duties related to community paralegalism, and that there is political will to strengthen this capacity. Your key implementing partner might then be a government institution.

Your situation analysis will also look at the broader context for carrying out paralegal work. In countries with failed institutional infrastructures, such as postwar Sierra Leone, or where institutional corruption and indifference are pervasive, it is not necessarily realistic to look to administrative and legal solutions for community problems. Incompetence, corruption, and a lack of motivation within government agencies that are supposed to deliver services or administer justice may prove formidable barriers to working through formal channels. In such a scenario, the paralegal’s tools of community education and mediation may be especially valuable.

2.5 Potential Paralegals

In South Africa, the needs assessment looked at the availability of people who could be paralegals, identifying a potential pool of educated candidates, including schoolteachers, who were currently unemployed. In countries where unemployment is high and many educated people are without jobs, a ready pool of potential paralegals exists. Many programs use part-time staff, so you may also be able to tap into personnel who are working at other jobs in their communities and thus have valuable connections and experience. However, you will have to judge whether part-time staff or volunteers will allow you to fulfill the mission you envision for your paralegal program.

If you will be working with staff from an existing NGO, law school, or government agency, you will need to determine their current capabilities and the skill and knowledge areas that will need to be developed. You should also ensure that the staff members have other qualities necessary to be a successful paralegal. These qualifications are discussed in Chapter 3, “Establishing a Paralegal Program.”

One qualification that cannot be underestimated in paralegals is the desire to make a positive difference in their community. Effective paralegals working within a

human rights framework will be dedicated to the empowerment of the populations they work with. Their dedication may eventually lead them out of the paralegal office into public education and advocacy. The Hungarian example (*see sidebar*) illustrates how a paralegal program can be explicitly designed to support a human rights movement for a marginalized group in a country.

Within individual communities, paralegal training could support minority representatives so that they would not only improve their ability to refer their Roma constituents to services or authorities to address their needs, but could actually demand improved services when they are not available, insufficient, or unsound. Ultimately, Horuath hoped that these minority representatives would become genuine activists in a growing network demanding new policies to eliminate discrimination and poverty for the Roma.

Source: Tibbitts, 2005.