**Designing a Strategic Legal Empowerment Program**

**CASE STUDY EXERCISE**

**Kim McQuay, Managing Director, Program Specialists Group,**

**The Asia Foundation (kim.mcquay@asiafoundation.org)**

*Since we had limited time in the Tuesday afternoon session on Designing a Strategic Legal Empowerment Program to discuss the fictional case study and questions, several participants asked if I would share some illustrative responses to and reflections on the two sets of questions. There are no right or wrong answers to the questions posed, and the case study poses a scenario that will support a variety of strategic program interventions. I hope that the illustrative responses will be useful, and will be happy to follow up or stay engaged with individual participants if I can be helpful.*

Pinogrigia is a country in transition from least developed nation status to a lower middle income ranking. A combination of development challenges spanning poverty, resource depletion, disaster risk, and the health consequences of environmental pollution are exacerbated by a high incidence of violence in Pinogrigian society. Violence is rooted in criminality, bitter political divisions, competition for scarce resources, and traditional social and cultural norms and gender biases. Existing data, while limited and largely anecdotal, suggests that violence is most prevalent in the poorest regions of the country and that women and ethnic and religious minority communities are especially vulnerable to violence and intimidation. Women and girls face domestic violence in the home and a broader threat of violence in the workplace and community at large, which limits their mobility, economic opportunities, and engagement in community affairs.

Pinogrigia’s formal legal system has historically offered women and girls little protection from actual or threatened violence. In the absence of robust empirical data, anecdotal evidence and observation suggest that women place little confidence in the legal system or the individual agencies and officials who administer it. It is believed that most incidents of gender-based violence (GBV), including those that persist over time, go unreported. This reflects a combination of factors, including traditional social values and stigmas in a patriarchal society that discourage women from reporting domestic violence; limited understanding among women and other marginalized populations of the concept of individual and collective rights, the legal system, and the limited formal and informal support mechanisms available to them; and lack of financial resources or time to spare from the pressures of daily obligations to seek formal legal protection or redress. Furthermore, few reported cases of GBV are investigated by the Pinogrigia National Police, referred to the criminal justice system, or successfully prosecuted in the courts. While Pinogrigia has a long tradition of community-based dispute resolution that offers a time- and cost-efficient alternative to the chronically slow formal justice system, predominantly male community mediators routinely accept cases involving domestic and other acts of violence that should properly be referred to the criminal justice system—reportedly accepting bribes from the perpetrators in many cases. Mediation therefore offers little relief for women who are victims of GBV and who must return to their homes and workplaces to face continued violence and intimidation.

In response to combined domestic civil society and international pressure, the Government of Pinogrigia recently passed the *Protection of Women and Girls Act, 2018* (PWGA)*.* The milestone law introduces dedicated judicial tribunals staffed by specially trained judges to expedite the prosecution of cases of violence against women and girls. The PWGA calls for legal aid support for victims and underlines the value of improved coordination and collaboration among the several government ministries, agencies, and departments that have prescribed roles to play in addressing GBV. These include police, public prosecutors, PWGA tribunal judges, counselors attached to the Ministry of Women’s and Children’s Affairs, and others whose independent roles in the application of the PWGA would be enhanced through collaboration. In practice, there is little communication among government officials, and even less between government officials, civil society, academic specialists in GBV, and the print and broadcast media.

The Pinogrigia National Police have an important role to play in applying and enforcing the PWGA by identifying cases of violence and investigating situations where there is an apprehension of violence. In practice, the police seldom engage, and women are in turn reluctant to bring cases to the police, conscious of social stigma in reporting violence and concerned about biased treatment by police. A leading national newspaper recently reported off-the-record remarks by a senior police official based in the capital of Pinogrigia who insisted that the PWGA undermines traditional societal values and norms that have served nation and community well for generations and that domestic violence is a reality of life that requires no intervention. He reportedly added that his own views are mild compared to those of police officers posted at the district level, many of whom are determined to ignore the PWGA or work to undermine its effect. One of his colleagues, Pinogrigia’s highest ranking female police officer, responded angrily to these comments, noting that the institutional culture of the police must change if the objectives of the PWGA are to be met and affirming her personal support for the new law and its implementation.

The Pinogrigia Bar Association operates a modest legal aid program, but no lawyers have been assigned yet to guide victims of violence in PWGA tribunal proceedings. Legal aid work is typically taken up by young lawyers, who receive a modest fee for their work, with their more significant paid work taking precedence. Several established civil society organizations provide legal awareness raising and counseling services through paralegals, with a few NGOs (non-governmental organizations) taking interest in the PWGA and beginning to reflect on program opportunities. These NGOs are overstretched in their work and seldom share information or coordinate their respective efforts. Some have a specialty focus on basic legal awareness raising; others provide counseling services delivered by modestly-trained paralegals; while others provide legal aid services to guide clients in court cases. A handful of NGOs engage in advocacy activities, including calls for the introduction of the regulations required to fully operationalize the PWGA. The majority of NGOs undertake a combination of multiple, overlapping functions with little coordination among them—resulting in competition for geographic space and resources in certain regions of Pinogrigia, while other parts of the country are poorly served.

With the basic PWGA in place, the Government has yet to pass the associated regulations that are referenced in the new law and intended to guide its implementation. No training programs have been introduced for tribunal judges and administrative staff; no records systems have been established to track and manage cases; no government agencies have undertaken public information campaigns to raise awareness of the PWGA; and the mandated quarterly meetings of stakeholder agencies have yet to convene. Tribunals have begun to operate in the capital and a few secondary cities but have not been appointed in smaller communities across the country.

Women Now, an NGO specializing in the legal protection of women, works primarily at the national level, with limited geographic presence outside its base in the capital of Pinogrigia. Its current program includes a combination of awareness raising on the general rights and legal protection of women and girls; a paralegal support program that provides legal counseling services for women and refers clients to legal aid agencies; a mediation program that refines the traditional community model through the appointment of trained women mediators; and select national law reform advocacy efforts focused on the improved legal protection of women. Women Now conducts activities directly in a few neighborhoods of the capital and in select communities at the sub-national level, but its broader work is conducted through an informal network of smaller NGOs that operate in specific communities, to which it passes modest resources. This network includes dedicated legal service NGOs and others that conduct legal service programs as a complement to broader development mandates that focus on the social, economic, and political advancement of women. The program activities and administrative operations of Women Now are largely supported by a like-minded international development agency. The donor is supportive of Women Now’s interest in scaling-up its work focus on the PWGA but has signaled that its financial resources are limited and encourages Women Now to secure additional financial support to take its existing and planned work to scale.

Within Women Now, there is a debate among senior officers and board members regarding the appropriate focus of its future work in the context of the PWGA. All are agreed that work should be extended to a country-wide scale under a unifying theme of legal empowerment, but views diverge on the appropriate focus. Some would prefer to concentrate on a national awareness campaign; others would prefer to provide expanded support to victims of GBV through community dispute resolution and legal counseling and legal aid referrals; while others wish to focus on national advocacy efforts that aim to fully operationalize the PWGA through the passage of regulations, training of tribunal judges, and facilitation of dialogue among stakeholders from government and civil society. Women Now has limited engagement with the Pinogrigia National Police, judiciary, and public prosecutors. While it enjoys trust relations with members of the communities in which it presently works, including women victims of GBV, local government officials, and prominent male and female members of the communities, these relationships have taken time and effort to nurture and maintain. Women Now is ably led by its charismatic but aging founding executive director and a team of veteran senior officers but faces difficulty in attracting young lawyers to assume entry-level and mid-tier program positions. Most of its work is focused on hands-on legal service delivery, with few of its programs grounded in empirical research or supported by comprehensive monitoring and evaluation mechanisms. Its core donor does not insist on rigorous reporting or monitoring and evaluation systems.

**WORKING GROUP SESSION 1: DEFINING THE PROBLEM TO BE ADDRESSED BY A LEGAL EMPOWERMENT PROGRAM/PROGRAM ENVIRONMENT/ INSTITUTIONAL CONTEXT OF THE IMPLEMENTING ORGANIZATION**

Questions for Group Discussion

1. **In planning its response to gender-based violence in Pinogrigian society and the successful implementation of the *Protection of Women and Girls Act* (PWGA), can Women Now reduce the challenges to be addressed to a single, consolidating core issue?**

The case study deliberately combines a combination of program context and institutional issues and considerations. The advice to participants was that, to inform strategic choices among issues and programmatic responses, and the sequence of program activities to be undertaken, it is often useful to distill the challenges down to as precise an articulation as possible—short of lowest common denominator. Given the combination of issues facing Pinogrigia and the choice of strategic program options from which Women Now may choose, I would suggest that the core issues include:

* The vulnerability of women and girls (and particularly those living in isolated communities) to gender-based violence.
* The introduction of the milestone PWGA legislation, which aims to expedite formal justice protection of women and girls who experience GBV or are at risk.
* The combination of issues that affect the successful implementation of the PWGA, from which Women Now will ultimately chose select areas of focus, including:
	+ lack of national and local-level public awareness campaigns;
	+ the absence of regulatory provisions that will enhance the application of the PWGA, including training of specialized tribunal judges, the introduction of efficient case management systems and records, public awareness campaigns, and the introduction of quarterly meetings of government agencies and officials that have a role to play in the successful implementation of the new law.
	+ an apprehension that male police officer may not be supportive of the new law and fail to investigate cases of GBV and support women victims
	+ limited geographic coverage of civil society support for the PWGA
	+ limited legal aid support for women and girls who wish to avail of the protection of the PWGA
	+ the risk that GBV cases will continue to be inappropriately referred to community mediation rather than the criminal justice system
	+ limited high-level advocacy calls for the implementation of the PWGA.
1. **How significant is the fact that understanding of the security and experience of women and girls in remote communities of Pinogrigia is based largely on anecdotal information? What tools could be utilized to achieve a deeper understanding of circumstances as experienced by women and girls in remote communities of the country?**

While there is limited statistical and other research-based data on the nature and extent of GBV in Pinogrigia, in the circumstances we should have reasonable confidence in the anecdotal evidence that women and girls are at high risk of violence. That is, while empirical evidence adds credibility and rigor to a program plan and may serve as a baseline from which to measure progress over time, the absence of empirical evidence should not affect Women Now’s commitment to design and implement a legal empowerment program.

That said, although data or other evidence is not essential for legal empowerment program design and implementation, it is very useful in: (i) understanding the circumstances of a vulnerable population; (ii) narrowing the strategic focus of the program to a manageable set of priority issues; and/or (iii) establishing a baseline from which realistic milestones can be set, progress monitored, activities refined, and goals and objectives confirmed.

If time and resources permit, Women Now’s legal empowerment program design would ideally include preparatory research and data generation to sharpen its understanding of the program environment. The program design could include a data collection activity. Alternatively, existing research and resources compiled by academic specialists or other actors can also be usefully studied and drawn on to inform the strategy. There is often considerably more empirical evidence available from existing sources than a legal empowerment organization is aware of.

1. **Reflecting on the notion of lower, middle, and higher-order constraints to legal empowerment as experienced by women and girls, what combination of constraints should Women Now take account of in developing a legal empowerment strategy to support the successful implementation of the PWGA? Are certain constraints more significant or challenging than others?**

From the background information provided, we know that the PWGA has been introduced in a program environment that includes lower, middle, and higher-order constraints to the security of women and girls:

Lower-order contraints include:

* Low understanding of the concepts of rights and security among vulnerable women and youth
* Lack of confidence in the criminal justice and broader legal system

Middle-order contraints include:

* Lack of specialty knowledge among judges appointed to serve on special tribunals
* Shortage of legal aid lawyer designated by the professional bar to support PWGA cases
* GBV cases are routinely being heard by community mediation panels rather than being properly referred to the criminal justice system.

Higher-order constraints include:

* The failure of the Government to pass regulations that will give teeth to the PWGA through a combination of public awareness raising, training of judges appointed to the special tribunals, case management systems, and quarterly meetings of various stakeholders.
* A conservative culture within the police that may oppose the implementation of the PWGA at the national and, in particular, the community level.
1. **Among government agencies and officials, which are most likely to support the PWGA and which are likely to oppose and potentially undermine its implementation? Should a legal empowerment strategy take account of this tension? How can champions of the PWGA be supported and the effects of spoilers be minimized? Are there incentives that could motivate the spoilers to change their view?**

From the information provided, we know that Pinogrigia’s highest ranking woman police officer is supportive of the PWGA and seemingly prepared to work to instill a culture of GBV sensitivity within the police, in response to the comments attributed to a high-ranking male police officer. National advocacy and awareness-raising strategies will do well to cooperate with the woman police official to the extent that she can engage in her formal capacity.

From the information provided, we know very little about the attitude of judges appointed to serve on the PWGA tribunals—only a few of which are operational at this time. If the judges are appropriately trained and sensitized to the objectives of the PWGA, they should in principle be supportive, with national advocacy efforts reaching out to them—while recognizing that judges are limited in their ability to assume a public voice. If there is a senior-ranking PWGA tribunal judge, he or she would be a potential ally.

From the information provided, there may be support for the PWGA among counselors serving with the Ministry of Women’s and Children’s Affairs. These and other administrative officials with roles and functions to play in the implementation of the PWGA are potential public supporters of the milestone law.

From the comments attributable to the high-ranking male police officer, we know that he is opposed to the PWGA and its objectives, and believes that domestic violence is an acceptable element of Pinogrigian society. If his further observations regarding even stronger views held by community-based male police officers are correct, we can expect direct and indirect opposition to the practical application of the PWGA by police serving in communities, and that women victims and those at risk of GBV may not receive the investigative and case filing support of local police.

1. **Given the present institutional context and focus of Women Now, can and should it scale-up its role and work to support the PWGA? How can it take optimal advantage of its existing partner network? How should it best go about establishing trust relationships with the Pinogrigia National Police, judges of PWGA special tribunals, public prosecutors, and other stakeholders?**

Scaling-Up

From the information provided, we know that Women Now is at least modestly involved in addressing several of the issues and contraints associated with the PWGA. It conducts awareness campaigns on women’s rights and non-PWGA specific legal services; works in the informal justice system through community mediation; and conducts national advocacy campaigns on certain issues related to the rights and security of women. We do not know whether Women Now contributed to advocacy efforts that let the Government to introduce the PWGA.

We further know that Women now has a program footprint in select communities and that it engages more broadly on women’s rights and legal support through a network of civil society organizations that include dedicated legal service providers and broader development NGOs that have an interest in women’s rights and security.

Among the several program areas in which Women Now works, we do not know whether it has a significant competency in one of the three areas. Women now should carefully reflect on these competencies and the implications of moving into new program areas.

Finally, we know that the senior leadership of Women Now and board members are interested in supporting the successful implementation of the PWGA but that there are divisions of view in terms of where the organization should focus. Some officers and board members believe that Women Now should focus on general awareness raising; others believe that it should engage in a combination of legal aid and mediation; while others believe that it should engage in national policy advocacy. Some may believe that Women Now is positioned to work at all three levels.

Women Now has one loyal, like-minded donor, but that donor has indicated that it lacks the financial resources to support a large-scale expansion of Women Now’s program work.

Women Now’s existing network of dedicated legal service providers and broader development organizations holds potential as a platform for expansion, but resource considerations should figure prominently in any strategic program decisions.

Trust Relations

Depending on the priority program directions to which Women Now commits, it is potentially positioned to establish trust relations with police at the local and national level; with counselors and other officers of the Ministry of Women’s and Children’s Affairs; with select judges of the special PWGA tribunals; with public prosecutors; and with national law and policy makers who are tasked with drafting and passing operational regulations of the PWGA.

**WORKING GROUP SESSION 2—PLANNING THE LEGAL EMPOWERMENT PROGRAM RESPONSE/ADDITIONAL CONSIDERATIONS**

Questions for Group Discussion

1. **In reflecting on the concept of low, middle, and high-level legal empowerment interventions, what program activities would you recommend Women Now to take in supporting implementation of the *Protection of Women and Girls Act* (PWGA)? Would you recommend that it focus on a single intervention and, if so, at what level? Alternatively, would you encourage Women Now to undertake a series of interventions? Should these interventions be sequenced or can they be undertaken concurrently?**

Given the combination of known and unknown information, there is considerable subjective scope among the strategic program options that Women Now may follow.

With its existing network of NGO partners, Women now could seemingly undertake a combination of awareness raising at the community and national level; monitor community mediation panels to ensure that GBV cases that are inappropriately referred to mediation are redirected to the police, public prosecutors, and PWGA tribunals (the appropriate division of jurisdiction contributes to the efficiency of the formal and informal justice systems); and engage in national advocacy efforts to press for the drafting of PWGA regulations and the convening of multistakeholder dialogues among the several agencies that have responsibilities under the PWGA—as well as potentially facilitating these dialogues, and connecting government agencies and officials with civil society organizations that are working to support the successful application of the PWGA.

The decisions that Women Now must take regarding the scale and potential sequencing of legal empowerment activities should take account of a variety of factors, including institutional capacity; the strength of the existing partner networks through which it operates; what it learns about the plans of other organizations working in this program space and whether there is scope for a practical division of labor; and available resources.

The decision of whether to sequence program activities or undertake several program activities concurrently depends on a combination of the preceding considerations, as well as the program environment—in particular the pace at which the Government of Pinogrigia can bring the institutional elements of PWGA implementation online. We know that the regulations required to implement the PWGA have yet to be formalized, that the special tribunals have yet to convene outside of the capital and major urban centers, that quarterly stakeholder meetings have yet to be convened, and that public information campaigns have yet to be launched. With these consideration in mind, there may be scope to Women Now to plan a sequence of program activities that will parallel the steps to be taken to bring the PWGA fully into effect. On the other hand, Women Now may determine that it is more strategically sound to bring a series of program activities online concurrently.

1. **Given what is known about the present legal rights understanding of women and girls in remote areas of Pinogrigia, and of broader societal awareness of the PWGA and its purpose, what awareness raising strategies would you suggest that Women Now undertake? What role can paralegals play in the efforts of Women Now to support the successful implementation of the PWGA? While the PWGA is primarily focused on the creation of specialized judicial tribunals, what role can community-based dispute resolution play in advancing the new law?**

Awareness-Raising Strategies

There may be scope for a combination of awareness-raising strategies to be undertaken. At the grassroots, where women and girls are especially vulnerable to domestic and other forms of violence, knowledge limitations are far deeper than knowledge that the PWGA has been introduced. Women and girls have little understanding of the concept of legal rights and remedies and the working of the formal and informal justice system and have low expectations with regard to the police and other formal legal structures and officials. One element of an awareness raising strategy should target audiences with limited knowledge, drawing on communication tools that best reach and resonate with them. Is there television and radio coverage in the most remote areas? Teashop posters? Street theater of the kind used in Cambodia, to which I referred in my presentation.

Another level and sophistication of messaging could target individuals living in the capital or larger urban areas who have a greater foundation of knowledge and awareness of legal rights and remedies but will benefit from information on the workings of the PWGA. Messaging of this kind may be able to take advantage of non-conventional media, including social media or messaging in partnership with commercial advertisers.

Finally, it is important to include government officials among the potential targets of information campaigns. Police officers, public prosecutors, and officials of the several government ministries and agencies that have formal roles to play in the seamless implementation of the PWGA will benefit from information. You may recall my reference to a set of cartoon videos that Asia Foundation produced in Thailand on the use of forensic science in rights and security investigations and cases were intended for young audiences but were actually embraced by the Royal Thai Police, which lacked teaching tools.

Paralegals

Current Women Now programming includes work with paralegals, who can play a variety of roles in a PWGA-focused legal empowerment project. They can serve as conduits of information, provide guidance to women, girls, families, and local officials at the grassroots, monitor the implementation of the PWGA, including the role and responsibilities of local police, and guide women victims of violence in the home, work place, and community at large in seeking the protection of the PWGA.

Community Mediation

Women Now’s existing community mediation program can serve as a check on the practice of referring GBV cases to informal dispute resolution. While mediation has a tremendously important role in legal empowerment strategies, in the case of GBB Women Now would like to see cases referred to the special judicial tribunals as the PWGA intends. In addition to resolving conflicts that are appropriate for informal dispute resolution, Women Now’s mediation program can keep watch for GBV violence cases and redirect them to the criminal justice system under the PWGA.

1. **How can Women Now effectively work with PWGA tribunals, the Pinogrigia National Police, public prosecutors, and the other public agencies and officials tasked with different roles and functions in relation to the PWGA? Is there a potential role for Women Now in convening multi-stakeholder dialogue and cooperation?**

As part of a middle and higher-order legal empowerment strategy, a capable civil society organization can play an important interlocutor role in working collaboratively with government agencies and officials. In an ideal world, a legal empowerment organization should be positioned to play a combination of roles, taking a tough stance on rights violations that sometime pit it against criminal justice agencies and officials that fail to perform their duty when circumstances require, while at the same time working collaboratively with public agencies and officials where circumstances permit. As discussed in our session, relationships of the latter kind are founded on trust relations that my take time to establish and require a degree of flexibility and occasional compromise on the part of all stakeholders. Women Now may be positioned to provide frank information to government agencies and officials on the realities of PWGA implementation on the ground—what is working, what is problematic, and how challenges can be addressed and resolved. From a practical perspective, collaborative working relations may be especially important in securing required government concurrence or “no objection” if formal approval is required to work in this program space or to receive and expend resources received from an international development partner.

There are some excellent examples from Thailand and other countries of a domestic civil society organization assuming a convening role in facilitating stakeholder dialogue among government agencies and officials, academic specialists, civil society, and/or the private sector. Trust relations are again important, but Women Now is potentially well placed to facilitate dialogue among agencies that have roles to play in implementing the PWGA. Engagement of this kind could potentially help to lay the groundwork for the quarterly stakeholder meetings under the PWGA that have yet to be convened.

1. **How should financial resource considerations factor in Women Now’s planning of a legal empowerment program? Do sustainability considerations factor in Women Now’s present leadership structure? How can Women Now engage young lawyers in its work?**

With just one loyal donor partner, which has signaled limited support capacity and urged Women Now to seek additional financial support for expanded work, Women Now should give careful consideration to sustainability in planning an expanded, PWGA-focused legal empowerment project. This reflection should encompass what is possible with existing resources; how long an expanded program of work can be undertaken with available and prospective resource commitments; and the steps taken to ensure that program activities can continue beyond the term of donor funding.

Sustainability considerations span program work and the institutional structure and governance of a legal empower organization. We know that Women Now’s senior leadership are in the latter stages of the professional career—still very capable and committed but perhaps approaching retirement age, and that the organization has faced some challenges in attracting young people to pursue careers in community legal service delivery. Laying the groundwork for a new generation of legal empowerment champions is an important part of the strategic calculus facing Women Now. Are there opportunities to engage law students in the work of the organization, to expose them to the work of civil society organizations and provide experience that may influence their professional career choices.

1. **Can a legal empowerment program focused on the PWGA be adequately captured in a conventional strategic articulation of goals, objectives, activities, outputs, and outcomes? Alternatively, should Women Now pursue bolder innovation in defining the outcomes of a legal empowerment program and the tools it will use to monitor progress, analyze results, and iteratively refine the program in taking account of experience and lessons learned as the program proceeds?**

There is not strict answer to this question, save for the value that lies in the rigor of crafting a clear, concise, and articulate program strategy that will guide program implementation and set a series of goals, objectives, outputs, and outcomes (or theory of change) that will guide program implementation, monitoring, and review and the refinement of the program as implementation proceeds. I will share some resources on innovative adaptive management tools that have been applied in law and justice programming. Given the unique nature of legal empowerment work and how we measure and evaluate its impact, I would encourage participants to invest as much time as they can capturing strategies in some detail. The rigor of the exercise will sharpen the program strategy, create systems and tools to measure progress and refine approaches, and yield experience and learning that can be documented and shared with other legal empowerment practitioners.