
GLOBAL STRATEGY FOR THE LAW AND HEALTH INITIATIVE

OPEN SOCIETY INSTITUTE PUBLIC HEALTH PROGRAM JANUARY 2007

I. INTRODUCTION

The Law and Health Initiative (LAHI), a division of the Open Society Institute Public Health Program, supports collaborations between health and legal practitioners with a view to advancing mutually shared goals of human rights, human dignity, and open society. LAHI both builds the capacity of health providers to use the law to advance their advocacy objectives, and supports legal practitioners in expanding their remit to include public health. LAHI's priorities reflect strategic combinations of existing OSI work in the areas of public health (particularly HIV/AIDS, harm reduction, palliative care, Roma health, and sexual health) and the rule of law (particularly access to justice, freedom of information, clinical legal education, equality and citizenship, and budget transparency). By bringing together OSI's health and justice portfolios in a coordinated fashion, LAHI strives to contribute to a new movement for just and law-based approaches to health.

This global strategy is effective as of January 2007 and will govern LAHI's work until 2010. The five priorities identified by LAHI for this period are:

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| <ol style="list-style-type: none">1.0 Integrating legal and paralegal services into health services2.0 Promoting human rights in patient care3.0 Supporting human rights responses to HIV and AIDS4.0 Developing civil society capacity in law and health5.0 Using legal strategies in health monitoring |
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This strategy paper elaborates on each of these five priorities and provides examples of the types of operational and grant-making work LAHI will undertake in each area. The paper concludes a six-month period of consultation with OSI staff, Soros national foundations and outside experts, including an intensive two-day strategy meeting held in September 2006. Further elaboration of LAHI's priorities and programs can be found in the following documents:

- Synopsis of the Law and Health Initiative, February 2006
- Law and Health: Profile of a New Initiative: Powerpoint Presentation for the 2006 Public Health Partners' Meeting, May 2006
- Law and Health: Guidance for Soros Foundations Network, July 2006, June 2007
- Six Priorities for the Law and Health Initiative: Discussion Paper for the Law and Health Initiative Strategy Working Group Meeting, September 2006
- Report of the Law and Health Initiative Strategy Working Group Meeting, December 2006

II. OVERVIEW OF LAHI PRIORITIES

1.0 INTEGRATING LEGAL AND PARALEGAL SERVICES INTO HEALTH SERVICES

PHP's partners working with underserved and socially marginalized groups frequently express the desire to integrate legal services into the health and social services they provide to their clients. For populations such as people living with HIV and AIDS, people who use drugs, sex workers, survivors of gender-based violence, and people needing palliative care, legal services both fulfill a basic human need and also improve health outcomes by addressing human rights violations underlying poor health. OSI is in an ideal position to link legal services to health and social services, as it has extensive experience advocating for access to free legal aid. In addition, many of the partners who can potentially provide these legal services are already grantees of OSI's various human rights and rule of law programs. By bringing together legal service providers (including lawyers, paralegals, social advocates, and human rights advocates) with health providers (including hospitals, community-based organizations, peer outreach programs, and self-advocacy organizations), OSI can create innovative, integrated services that further both human rights and public health goals.

LAHI's five main objectives in the area of integrating legal and paralegal services into health services are:

- 1.1 To identify current best practices in the integration of legal and paralegal services into health services, and to conduct baseline assessments of access to health-related legal services in a variety of regions including Central and Eastern Europe and the former Soviet Union, sub-Saharan Africa, and China and Southeast Asia
- 1.2 To work with nongovernmental organizations to design and pilot health-related legal services in these regions, particularly through creating partnerships between lawyers, paralegals, and community-based health programs
- 1.3 To use integrated health and legal services as the basis for developing strategic litigation and law reform strategies, and to support community-based organizations and affected communities in pursuing these strategies in partnership with legal and human rights organizations
- 1.4 To document the experience of NGOs in providing health-related legal services, and to commission operational research demonstrating (a) the impact of providing legal services on the frequency of human rights abuses against target populations, and (b) the health impact of providing legal services to marginalized groups
- 1.5 To advocate for greater global attention to the importance of health-related legal services, and to leverage additional resources for such services from other foundations as well as from bilateral and multilateral donors

2.0 PROMOTING HUMAN RIGHTS IN PATIENT CARE

In every region where PHP works, patients and others seeking access to health care encounter abusive, unethical, and often life-threatening treatment within the very health systems that are expected to provide them with care and support. At the same time,

evidence-based health services such as substitution treatment, strong-acting opioids for palliative care, and needle-exchange programs remained restricted by laws or regulations in many countries. The result is that doctors and other health practitioners are often constrained in their ability to provide quality care to their patients, while also lacking practical knowledge on how to incorporate ethical and human rights norms into their work. There is an urgent need to support legal and administrative remedies for individual and systemic human rights abuse in health settings (e.g., medical malpractice litigation, hospital ombudspersons, professional discipline bodies, and patients' rights charters), and at the same time to establish non-punitive mechanisms of incorporating normative principles into patient care (e.g., ethical guidelines, human rights education in medical schools, and systems of medical licensing). This is especially true for priority populations of the PHP such as people living with HIV and AIDS, women and girls, people who use drugs, sex workers, lesbian, gay, bisexual, and transgender communities, Roma, and people in need of palliative care. Support for East-East and South-South exchanges between countries with systems of legal protection of patients and those countries lacking such systems is a critical part of this effort.

LAHI's five main objectives in the area of promoting human rights in patient care are:

- 2.1 To strengthen legal remedies for individual and systemic abuses of the rights of patients, through both the identification of existing remedies and support for strategic test-case litigation in the area of patient care
- 2.2 To develop guidelines for the incorporation of ethical and human rights principles into medical care, and to develop compliance mechanisms such as mandatory human rights education in medical schools and licensing courses
- 2.3 To support the training of health workers and medical students in the incorporation of ethical and human rights norms in the delivery of patient care, including through the development of concrete case studies in human rights-based care
- 2.4 To provide, as needed, advocacy support to relevant divisions of PHP in establishing a legal basis for evidence-based health services such as: needle-exchange programs, substitution treatment and overdose prevention for people who use drugs; opioid pain medication for palliative care; condom distribution, peer outreach, drop-in centers, and collectivization strategies for sex workers; and comprehensive HIV-prevention services for lesbian, gay, bisexual, and transgender populations.
- 2.5 To support mainstream human rights organizations in expanding their mandate to include issues of patient care, and conversely to build the capacity of health providers to investigate, monitor, document, and advocate against abuses of the rights of patients

3.0 SUPPORTING HUMAN RIGHTS RESPONSES TO HIV AND AIDS

It is widely acknowledged that the global epidemic of HIV and AIDS requires a human rights response in addition to a public health response. Widespread human rights violations continue to fuel HIV epidemics worldwide, while many governments continue to endorse coercive responses to HIV such as criminalization of HIV transmission and

forced HIV testing. Notwithstanding high-level commitments to “rights-based approaches” by numerous governments and multilateral agencies, few resources flow to human rights advocacy to address HIV/AIDS compared to biomedical interventions. NGOs struggling to defend the human rights of those at highest risk of HIV—women and girls, migrants and mobile populations, sex workers, gay and bisexual men, and people who inject drugs—survive on modest funding despite the billions of dollars devoted to global AIDS assistance each year. Human rights abuses driving the epidemic, meanwhile, remain widespread and severe. OSI is in an ideal position to address this gap, as it has extensive experience in both HIV/AIDS advocacy as well as in combating many of the underlying human rights abuses that drive the epidemic: gender inequality, police violence, over-incarceration, censorship, and restrictions on independent civil society.

LAHI’s five main objectives in the area of supporting human rights responses to HIV and AIDS are:

- 3.1 To provide core institutional support to nongovernmental organizations with a mandate and demonstrated capacity to advance human rights responses to HIV/AIDS through legal advocacy
- 3.2 To mobilize local and international technical assistance for these organizations, including by awarding grants to NGOs with an established track record of working at the intersection of HIV/AIDS and human rights
- 3.3 To establish regional and global networks of organizations dedicated to advancing human rights approaches to HIV/AIDS
- 3.4 To persuade governments, United Nations agencies, and multilateral donors including the Global Fund to Fight AIDS, Tuberculosis and Malaria to adopt a more human rights-centered response to the global AIDS epidemic
- 3.5 To undertake special advocacy projects and explore funding needs in specific areas related to HIV/AIDS and human rights, including women’s legal empowerment, routine HIV testing, and criminalization of HIV transmission

4.0 DEVELOPING CIVIL SOCIETY CAPACITY IN LAW AND HEALTH

The use of legal tools to promote public health requires a cadre of legal professionals who can combine their legal skills with an understanding of health issues and the challenges facing underserved and socially marginalized groups. Such professionals exist in few places, and few universities offer programs that would systematically cultivate this interest. Courses and clinics on human rights rarely include a comprehensive component on health, while health law courses tend to address technical issues of health law and medical malpractice rather than issues of direct concern to OSI and its partners. OSI is well placed to develop the practice and teaching of law and health, as it has supported schools of public health, law schools, medical academies, and clinical legal education programs in a number of countries. In addition, the OSI-supported Salzburg Medical Seminars provide an opportunity to develop law-and-health curricula that can subsequently be replicated at the national level. Finally, LAHI is dedicated to increasing law and health capacity within OSI and the Soros Foundations

Network, through providing training opportunities to staff and collaborating on follow-up training initiatives for current Foundation and Network grantees.

LAHI's five main objectives in the area of developing civil society capacity in law and health are:

- 4.1 To introduce law-and-health teaching into university curricula in countries where LAHI is active, through the integration of case studies into existing courses, the creation of new interdisciplinary courses and degree programs, and the sponsorship of visiting professorships, guest lectures, and faculty seminars
- 4.2 To integrate a health component into existing university-based clinical legal education programs supported by the Open Society Justice Initiative, and to explore the establishment of joint clinics between medical schools and law schools
- 4.3 To provide intensive training in health and human rights to OSI and Soros Foundation staff, and to work with colleagues on developing "spin-off" initiatives for their partners and grantees such as intensive regional courses and institutes in health and human rights
- 4.5 To support one-year and two-year fellowships for young advocates to obtain higher education in health and human rights, intern with leading health and human rights NGOs, and design law and health projects in collaboration with NGOs in their home countries
- 4.6 To develop an interdisciplinary research agenda for issues of priority concern to LAHI and create incentives (such as sabbaticals and visiting scholars programs) for university-based researchers to carry out this work

5.0 USING LEGAL STRATEGIES IN HEALTH MONITORING

Particularly as increased donor funding becomes available for global health initiatives, it is critical for civil society to monitor the development and implementation of national and multilateral health policies and programs. There are numerous opportunities to use legal tools and standards to assist these monitoring efforts and to promote greater transparency, accountability, and civil society participation in health budgeting and programming more broadly. Health monitoring may require particular expertise in the use of freedom-of-information (FOI) laws to gain access to public records related to health. OSI is particularly well positioned to support the use of FOI laws in the context of health monitoring, as it has a strong program on freedom of expression and information through the Open Society Justice Initiative as well as a burgeoning health monitoring initiative within PHP. Other legal activities that LAHI may support in the context of health monitoring include the analysis of legislation governing the appropriation of health budgets and the use of human rights standards and procedures to further advocacy objectives related to monitoring.

LAHI's five main objectives in the area of using legal strategies in health monitoring are:

- 5.1 To identify situations in which freedom of information laws are needed to gain access to public records for the purpose of health monitoring, and to support organizations engaged in health monitoring in the use of these strategies
- 5.2 To support organizations engaged in health monitoring in the use of international human rights standards and procedures in their research, analysis, and advocacy
- 5.3 To support health monitors in carrying out other legal activities, such as reviewing and analyzing appropriations legislation, and using legal strategies to increase civil society participation in the development of health budgets, policies, and programs
- 5.4 To engage mainstream human rights organizations in the issue of corruption and mismanagement of resources in health spending
- 5.5 To support health monitoring projects on issues of direct interest to LAHI, such as monitoring global spending on human rights approaches to HIV and AIDS

III. CONCLUSION

As the above priorities reflect, LAHI's work is guided by several principles: the collaboration of health and legal practitioners; the furthering of OSI's health priorities through legal advocacy; and the development of independent NGOs dedicated to law-based approaches to health. These three principles will serve to guide all of LAHI's grant-making and operational work in the years to come, even as additional program priorities may be proposed and adopted.

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