



Background Note for Establishing a Media Lawyers' Association¹

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I. Introduction

In March 2007, when Pakistan's then-President Pervez Musharraf attempted to sack the Chief Justice in violation of the constitution, the country's lawyers responded swiftly. Decrying the dismissal as an attack on judicial independence, Pakistan's lawyers, led by the Supreme Court Bar Association of Pakistan, staged demonstrations across the country. Despite violent crackdowns, the movement snowballed into a broader protest against Musharraf's dictatorial rule and, ultimately, forced him from office and into exile.²

Around the world, lawyers and lawyers' associations can be a tremendous force for the promotion and protection of human rights and democratic values. Although Pakistan's mass protest movements are a particularly dramatic example of this, lawyers' associations in many countries play an important role by advancing test cases on important human rights issues, lobbying for the passage of progressive legislation or speaking out publicly against problematic laws or policies. For example, in 2010 Canada's Supreme Court recognised the right to information as a constitutional right as a result of a court challenge brought by the country's Criminal Lawyers' Association (CLA).³

As custodians of the law, lawyers are an important stakeholder group in Myanmar's democratic transition. A strong legal community is essential to establishing respect for the rule of law. Media lawyers, due to the nexus between their practice area and freedom of expression, a fundamental human right, have a particularly vital role to play. This Background Note, prepared in support of the establishment of a media lawyers' association for Myanmar, outlines issues to be considered regarding the mandate for such a network as well as key structural and governance issues. In doing so, it draws on the experience of other comparable lawyers' associations around the world.

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² "Lawyers, Arise!", *Economist*, 4 March 2009. Available at: <http://www.economist.com/node/13216124>.

³ *Ontario (Public Safety and Security) v. Criminal Lawyers' Association*, 2010 SCC 23, [2010] 1 S.C.R. 815.

II. Possible Functions of a Media Lawyers' Association

Lawyers are more than mere technical experts; in a society governed by the rule of law, lawyers play a key mediation role between individuals and the State as well as between and among individuals. Property rights, for example, depend on the ability of individuals to obtain redress for items which are wrongfully taken or damaged. A media lawyers' association can help promote the ability of lawyers to play a number of important roles in society. For an association of lawyers working in an area which involves human rights, the importance of maximising their impact is further amplified.

An important role for most lawyers' associations is to provide benefits in terms of **knowledge and expertise to their members**. This can enhance the overall quality of legal services on offer, including the wider ability of members to promote the goals of the association (in this case, freedom of the media). Some of the specific activities here might include:

- Serving generally as hubs for networking and discussion.
- Providing continuing legal education opportunities, such as through conferences, workshops or expert talks.
- Publishing journals or newsletters.
- Translating and distributing international publications of significance to the legal community.
- Directly carrying out research into key issues in its subject area.
- Providing a central repository of key documents and resources relating to the their respective fields, for example via their websites.

Around the world, nearly all lawyers' associations carry out these core functions. For example, the American Immigration Lawyers' Association (AILA) lists one of its chief strategic goals as to "[i]ncrease the level of knowledge and professionalism, and foster the professional responsibility, of our members".⁴ In a related vein, Lawyers' associations can help to recruit new talent into a given practice area, for example by carrying out outreach programmes with law schools. Many lawyers' associations sponsor scholarships, writing contests or competitive "moot courts", which promote the study of their practice area and build connections with promising young minds.

However, a media lawyers' association has a considerably more important public interest role to play in promoting freedom of expression. For example, the website of the Canadian Media Lawyers' Association (CMLA) states that it "consists of practising attorneys who are dedicated to the protection of [freedom of expression and freedom of the press]. The CMLA's goal is to reaffirm every day, in every court in our country, the importance of these freedoms. It also shares best practices from every jurisdiction, in order to better protect freedom of expression across Canada."⁵ The potential breadth of this is illustrated well by the Bangladesh National Woman Lawyers' Association, whose activities include awareness raising events at the grassroots and national level, capacity building for stakeholders (including law enforcement and the judiciary), policy level advocacy, research and publications on violence against women, media advocacy, legal

⁴ See www.aila.org/content/default.aspx?docid=12130.

⁵ See www.adidem.org/About_Us.

referrals and legal service provision, community advisory, investigative services, rescue services and witness protection.⁶

Given their particular expertise in terms of freedom of expression, a media lawyers' association should consider getting engaged in **legal and policy advocacy** to support freedom of the media. This can involve a number of ways of engaging in key legislative or policy processes that impact on free speech. Specific activities here might include providing commentary or background research on legislative or policy proposals, participating in consultative forums, such as meetings hosted by government or hearings before the legislature, and engaging in public advocacy, for example by publishing views on legislative proposals in the media. A media lawyers' association can also play a role in terms of supporting and encouraging other groups to engage in these consultations. This can involve both providing technical expertise to other groups – for example journalists' associations – to help them better engage with officials on media law and policy reform, and encouraging groups to participate in these consultative processes in the first place.

This is a role played by many media or human rights lawyers' associations. One of AILA's stated objectives is to "[i]ncrease member participation in advocacy before Congress, the Judiciary, the Federal Agencies, and the media, for immigration-related interests of our clients and society."⁷ Zimbabwe Lawyers for Human Rights (ZLHR) maintains a "Legal Watch" on their website, which tracks relevant legislation as well as judgments as they are published.⁸ CMLA maintains a similar list of "Bills of Interest" on their website. Promoting freedom of expression more broadly, and enhancing public understanding of the value and importance of this right, should also be considered part of a media lawyers' association's broader mandate.

Lawyers' associations can also impact the development of laws by supporting **public interest litigation**. Lawyers' associations are in a unique position to advance public interest litigation due to their concentration of relevant expertise, allowing for the pooling of resources and mutual support. This can be done in different ways. In some cases, media lawyers' associations get directly involved in public interest litigation, either bringing cases on their own behalf or providing *amicus curiae* briefs in ongoing cases. The CLA case mentioned in the introduction is a good example of a legal association bringing a public interest case. In other cases, the association can help the lawyers representing the party defending freedom of expression with relevant expertise. Associations can also make public comments on ongoing legal cases and raise awareness among the general public about the issues involved.

Another possible role for a media lawyers' association is to engage in **wider public awareness raising efforts** regarding freedom of expression. This can be targeted at specific groups – for example in the form of workshops for members of parliament – or at the wider public, for example through blogging and publishing articles in the media about media law issues. Given the nexus between freedom of expression and the right to information (RTI), a media lawyers' association could engage in awareness raising and promotional activity around this right as well, including on the benefits and potential

⁶ See www.bnwlabd.org/pg.php?id=9.

⁷ *Supra* note 3.

⁸ Available at: www.zlhr.org.zw/index.php?option=com_content&view=article&id=19&Itemid=23.

value of an RTI law and, if and when a law is adopted, on how the public can exercise this right.

Another possible role is in terms of more formal **capacity building programmes for relevant sectors**, including law enforcement officials and the judiciary. These bodies impact directly on the practical exercise of freedom of expression and raising their awareness about freedom of expression issues can impact in important ways on respect for this key human right. This can take the form of providing formal training for law enforcement officials (i.e. police and prosecutors), workshops with judges or providing forums for the exchange of ideas about issues which are a matter of public debate. Given that responsibility among journalists and the media sector more generally is a key goal in legislation impacting on freedom of expression, and that irresponsible conduct is often used to justify reactionary or overbroad restrictions, a media lawyers' association can also work to promote ethical and responsible journalism, such as by carrying out training sessions or publishing easy guides for journalists on issues such as defamation.

A media lawyers' association can also provide a range of other services to members of the public. It might, for example, operate a **referral service for individuals or media outlets looking for legal advice** or professional services. It might also facilitate the provision of **pro bono services** from its members in such cases. This might extend to providing legal advice at the community level, operating an advice hotline for individuals facing imminent problems (for example for journalists who are facing arrest or harassment), and even providing investigation services into important freedom of expression cases or issues.

In pursuing many of these goals, a media lawyers' association will share common interests with other NGOs in Myanmar, such as other lawyers' associations, journalists' associations, human rights groups and so on. Consequently, **networking and the provision of mutual support** should also be seen as a part of the organisation's mandate. There is no reason why this should end at Myanmar's borders and networking with lawyers' associations from other countries, particularly within the region, can provide many benefits. These include broader sharing of experiences, facilitating the global spread of good practices and support in lobbying efforts against a problematic laws or policies.

III. Structure, Membership and Funding

A. Governance and Structure

In establishing a Media Lawyers' Association, one of the most important challenges to consider is its governance structure. This requires balancing the competing, and often conflicting, values of democratic accountability, inclusive decision-making, professional and expert oversight, and responsive and effective leadership. Around the world, lawyers' associations have adopted a variety of different governance structures. These typically involve three elements: an oversight board, an executive committee or perhaps director, and a secretariat or staff.

In a member-driven organisation, as most lawyers' associations are, it is important to institute some form of democratic structure. Commonly, this consists of an oversight body or board which is elected, usually as part of an Annual General Meeting (AGM). In some cases, these are elected annually, although it provides more stability and perhaps efficiency to have longer terms. The constitution of the Corporate Lawyers Association of South Africa (CLASA)⁹ places governance responsibilities in the hands of a voluntary six-member Board of Directors who are elected annually by the membership. The United Kingdom Environmental Lawyers Association (UKELA) follows a similar structure, with responsibility placed in the hands of a twenty-member council, elected annually.¹⁰

Some lawyers' associations have mechanisms to guarantee **diverse representation** among the leadership. For example, the United Kingdom's Human Rights Lawyers Association (HRLA) is governed by an Executive Committee, which is mostly composed of elected members. However, there are also several spots reserved for "co-opted" members, selected by the Executive Committee to represent particular groups, including two law students, for the purpose of "ensuring that the constitution of the Committee reflects the membership of the Association".¹¹ In countries where there are sharp regional or ethnic divisions, it may be advisable to ensure that this diversity is reflected among the leadership, for example by reserving particular places for candidates from a particular minorities or regions.

Many lawyers' associations also have some sort of **executive**, usually in the form of a smaller committee. The size of the executive depends largely on the size and scope of the association. The executive can be directly elected from the membership but it is often chosen by the board. In larger lawyers' associations, the executive will usually be full-time, paid positions, while in smaller, and especially younger, associations these positions are often voluntary. Board positions tend to be voluntary as they do not require the same day-to-day commitment, with quarterly meetings being typical.

In terms of responsibilities, the precise division of powers between the board and executive varies. Some associations explicitly delineate the powers of the executive in their constitution, while others allocate all governance and management functions to the board and then include a clause allowing the board to delegate responsibilities to the executive. As a general matter, the board will be charged with overseeing the executive and playing a broader governance role, including approval of the budget and other financial matters, as well as broader questions of policy and strategic focus. The executive, on the other hand, is responsible for managing day-to-day operations.

Some lawyers' associations allow for a degree of **direct democracy** over key decisions, in addition to elections, often including amending constitutional documents. For example, the ASEAN Law Association holds a General Assembly every three years, where the membership has broad powers including determining general policies, amending the constitution, changing the by-laws and any other "acts or things as it may

⁹ Available at: www.clasa.co.za/clasa-constitution/.

¹⁰ See <http://www.ukela.org/content/page/958/Handbook%20Final%20July%202013.pdf>.

¹¹ HRLA's constitution is available at: www.hrla.org.uk/about-us/our-constitution/. A full list of their Executive Committee, including the groups from who the co-opted members were chosen to represent, is available at: www.hrla.org.uk/about-us/executive-committee-patrons/.

deem appropriate and necessary to promote, protect and preserve the interests of the Association.”¹²

In addition to these leadership bodies, most lawyers’ associations have some sort of ‘office’ or secretariat which provides logistical support, runs programmes and provides other support to members and the association. The size and complexity of this depends on the size of the organisation.

B. Membership

An important question for any membership body is who is eligible for membership. Although some lawyers’ associations limit membership to **practising lawyers**, most extend membership to the **legal profession more broadly**. For example, the ASEAN Law Association extends membership eligibility to any member of the legal profession or a graduate of a recognised law school.¹³ Membership in the International Association of Democratic Lawyers is open to “[a]ny person who accepts the aims of the Association and by profession or appointment exercises a judicial function or who devotes himself to the study, practice, or teaching of law.”¹⁴

The admission of **students** is another question that merits consideration. Many associations, such as the Canadian Bar Association (CBA), a voluntary association, welcome students. Outreach to students is an important part of a lawyers’ association’s mandate, as a way of bringing new blood into the practice area. Student members will also diversify the association, allowing for a younger perspective to be heard.

Some associations admit **members beyond the legal profession** entirely. Australia’s Communications and Media Law Association (CAMLA) admits lawyers, journalists, broadcasters, members of the telecommunications industry, politicians, publishers, academics and public servants.¹⁵ CLASA’s constitution includes several categories of eligibility. For example, any individual who is not a lawyer, but who nonetheless has a “bona fide interest in the association” through their employment, may apply as an associate member, and there are also corporate members, which may apply to any legal entity which employs corporate lawyers and which has a “sound reputation committed to ethical business practices”.¹⁶

CLASA’s constitution also allows for **honorary membership**, which may be awarded by the Board to anyone who “has made a significant contribution to the attainment of the objects of the association”. Similarly, the ASEAN Law Association allows for honorary membership to be bestowed on any individual who “has distinguished himself in the field of law or who has made a significant contribution to the objectives of the Association.”¹⁷

¹² See: www.aseanlawassociation.org/structure.html.

¹³ See www.aseanlawassociation.org/membership.html.

¹⁴ The constitution of the International Association of Democratic Lawyers’ is available at: www.iadllaw.org/en/about/constitution.

¹⁵ See www.camla.org.au/membership/.

¹⁶ *Supra* note 8.

¹⁷ See www.aseanlawassociation.org/membership.html.

Where an association's membership extends beyond legal professionals, consideration should be given to deciding who is or is not eligible to be a voting member. For example, students and non-legal professionals may be admitted as associate members, without voting rights. Otherwise, these members may overwhelm the organisation, subverting its proper goals and orientation. For example, CLASA's constitution includes complex rules relating to the rights accorded to each tier of membership. Importantly, associate members, honorary members and corporate members are not accorded the right to vote or be elected to the Board.

C. Funding

Associations with strong human rights mandate, especially in developing countries, often derive most of their funding from grants and donations. For example, ZLHR's supporters include HIVOS, Australian Aid, NORAD, PACT, Trocaire, OSISA, Danida, NED, Amnesty International and Frontline. They also receive direct funding from several donor governments and embassies. Due to the potential positive impact that a Myanmar media lawyers' association could have in promoting and protecting freedom of expression, it is probable that outside funding could be secured to support the organisation's establishment.

As noted in Section II, an effective media lawyers' association will provide valuable direct benefits to its membership. These include networking and other career advancement opportunities but also services with more of a quantifiable value, such as organising workshops or seminars for continuing legal education. Obviously, there is a cost to setting up these events, in addition to the overhead costs which all organisations face.

In order to cover these costs, and to ensure at least a minimum degree of commitment from their members, many lawyers' associations impose membership fees. Often these are levied on a sliding scale, particularly by organisations which include different membership categories. A year's membership in the Canadian Bar Association (CBA) ranges from CAD775 for a practising lawyer to CAD20 for a law student, with a range of options in between depending on professional status and region. A standard membership to CAMLA costs AUD130, with student or new lawyer memberships costing AUD45. HRLA charges a more modest GBP30 for lawyers with more than five years of experience and just GBP15 for those with less experience. Students are offered membership in HRLA for free.

Beyond membership fees, some lawyers' associations expect other contributions from their members. For example, membership in IMLA includes an expectation that members will assist their colleagues by responding to requests for comparative expertise and participating in exchanges of information through their online forum, by contributing to the Association's website, by assisting in organising visits by international and regional media law experts, by providing expert opinions on draft legislation and litigation strategies upon request, and by supporting the advocacy efforts of members or free expression groups that are consistent with the goals of the association.¹⁸ Setting out these types of responsibilities within an association's founding

¹⁸ See: www.internationalmedialawyers.org/html/objectives.htm.

documents or by-laws can help to instil a sense of shared purpose and mutual support among the membership, and support the organisation's ability to pursue its mandate. These obligations should not be so onerous as to deter lawyers from joining, although it is worth recalling the maxim that "many hands make light work". In a large and diverse organisation, small contributions from every member will provide a tremendous boost to overall capacity.

IV. Moving Toward Establishment and Adoption of a Constitution

As the preceding section indicates, there is no single correct formula for the structure of an effective lawyers' association. Where there is consensus on moving forward with the establishment of an association, a process for moving forward and adopting constitutional documents will need to be put in place. Although core documents should ultimately be adopted by a wider group, for developmental purposes it will be necessary to identify a relatively small core of lawyers to lead on issues such as drafting constitutional documents and putting in place membership mechanisms.

One way of doing this is to design a small group of individuals to prepare draft documents and then to have a wider core group of aspirant members, such as those people who have been involved in early meetings, approve those documents. An initial membership, again drawn mainly from those who were involved in early meetings, can then appoint an interim leadership or executive who can get the organisation going and accept new members, followed by a more comprehensive, constitutionally based process after a period of time, say one year. Consideration also needs to be given in the early phase to the establishment of a small secretariat to provide logistical and other core support as the process moves forward.

There is a foundational need for any lawyers' association to adequately reflect the values and goals of the community it purports to represent. For a media lawyers' association, these should include a commitment to freedom of expression, as well as to principles of equality and justice. This is important for practical as well as principled reasons, since it is unrealistic to expect Myanmar's media lawyers to sign onto an organisation whose goals and principles they disagree with. Such a statement of values or mission statement should be included in the constitutional documents alongside rules on governance and membership. For example, the Bangladesh Environmental Lawyers' Association states that it "believes in and follows a rights-based approach to not only the environment but development in general; believes in and upholds principles of equity; and strives to attain women's rights and entitlements in environmental justice."¹⁹

V. Conclusion

In March 2014, representatives from Myanmar's legal community, as well as several international NGOs, announced the formation of a Steering Committee which would

¹⁹ See www.belabangla.org/who-we-do/.

move to establish the country's first independent national bar association.²⁰ The development is, according to the reported words of one delegate, something Myanmar's lawyers "have been waiting 30 years for".²¹

With momentum gathering behind the push for greater autonomy and organisation among Myanmar's legal community, the proposed media lawyers' association has a critical role to play in the country's democratic transition. Specifically, it could play a key role in safeguarding the emergence of a vibrant and healthy media sector, in ensuring greater respect for freedom of expression and in building a professional and knowledgeable core of media lawyers in Myanmar. The project to establish such an association thus represents an exciting opportunity for media lawyers in the country.

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²⁰ "Myanmar's legal profession moves to establish a national bar association", International Bar Association, 3 March 2014. Available at: <http://www.ibanet.org/Article/Detail.aspx?ArticleUId=4670e898-428b-440d-b986-52b35593d40d>.

²¹ *Ibid.*