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ESSAYS

FACT-FINDING AS A LAWMAKING TOOL FOR ADVANCING WOMEN'S HUMAN RIGHTS

TAMAR EZER* & SUSAN DELLER ROSS**

INTRODUCTION

Georgetown's International Women's Human Rights Clinic and its transnational NGO partners—LAWA-Ghana, LAW-Uganda, WLAC-Tanzania and Swaziland's SWAGAA¹—celebrate with this volume five years of joint fact-finding projects in support of proposed legislation to advance women's human rights. Clinic students, faculty, and transnational partners use the fact-finding information to write comprehensive human rights reports. They also expand on the traditional report model, however, by drafting proposed legislation to address identified problems. After the semester ends, Clinic partners continue to refine the legislation through meetings with sister NGOs and government staff. They can then use the report and bill to lobby for legislative change that will implement their country's human rights commitments.

Since legislative change comes slowly, the Clinic and its partners also build on legislative proposals by developing test-case human rights litigation for domestic courts. Partner attorneys then finalize, file, and argue these cases. Should both legislative and judicial approaches fail, our partners will have laid the groundwork for turning to regional or international human rights bodies. In this way, the Clinic and its partners maximize the chances of domesticating treaty commitments, the major task if international human rights are to become a reality.

We present in this volume four human rights reports and bills, featuring a project from each of our fact-finding trips from 2002-2005 in Tanzania, Ghana, and Uganda. They address egregiously discriminatory laws—laws that deprive women of their dignity and sentence them to a life of subordination and poverty. Marriage laws allow fathers to marry young daughters to older men, denying the

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1. Our partner attorneys for this volume founded or work with the following non-governmental organizations (NGOs): Law and Advocacy for Women—Uganda (LAW-Uganda); Leadership and Advocacy for Women in Africa—Ghana Alumnae, Inc. (LAWA-Ghana); and the Women's Legal Aid Centre in Tanzania (WLAC-Tanzania). Each article in this volume identifies all participating NGO attorneys working on the project in question. During the period March 5-11, 2006, the Clinic worked with the Swaziland Action Group Against Abuse (SWAGAA) and two Swazi attorneys to conduct a fact-finding mission about discriminatory marriage and divorce laws. The human rights report and bill will be completed in mid-May 2006, after this issue goes to press.

girls an education and condemning them to early childbirth and its injuries. In marriage, women have virtually no rights, and certainly no legal protection from domestic violence. When husbands die, discriminatory inheritance laws deny women property, control, and custody of their own children, and subject them to the whims of a designated male guardian.

While these projects involve Tanzanian, Ghanaian, and Ugandan laws, similar provisions can be found in developing nations around the world. Indeed, they were once common in the United States, Great Britain, and Europe. Just as nineteenth- and twentieth-century Northern activists succeeded in their effort to change their laws to grant married women equal rights with married men and to protect them from domestic violence,² so too can twenty-first-century Southern activists newly armed with human rights law. North-South alliances like that of the Clinic and its partners enable the sharing of experiences and can help speed up the process of change by bringing the North's resources—rich libraries, dedicated student and faculty time—to add to the South's knowledge, local expertise, courage, and activism.

This volume also includes three essays by Clinic faculty, partners, and students describing this new kind of human rights fact-finding project from several vantage points. In this first essay, we bring the faculty perspective on its benefits. Esther Kisaakye's essay provides the views of a Ugandan attorney who helped supervise the discriminatory inheritance projects in Tanzania and Uganda.³ Lisa Vollendorf Martin adds three other viewpoints—first as Clinic student investigating domestic violence in Ghana, later as a Clinic alumna supervising the student fact-finding mission about FGM/FGC (female genital mutilation/cutting) in Uganda, and currently as a policy attorney with WEAVE (Women Empowered against Violence), where she

2. Barbara Allen Babcock et al. describe in detail the early common law governing the legal status of wives and the legal changes made to grant wives equal rights in marriage. BARBARA ALLEN BABCOCK ET AL., *SEX DISCRIMINATION AND THE LAW: HISTORY, PRACTICE, AND THEORY* 17-24 (1996). At common law, a wife could not "enter into contracts, write wills, or sue or be sued in her own right . . . [Nor could she] legally manage or retain the fruits of her real property or acquire or keep personal property—these were the prerogatives of her husband." *Id.* at 21. He also owned her labor and had the right to "give his wife moderate correction." *Id.* Starting in the mid-1800s, states began enacting Married Women's Property Acts granting wives the right to hold and manage their own property. *Id.* at 24. New laws enacted in the late 1800s and into the early 1900s finally gave women ownership of their own labor. *Id.* In 1971, the United States Supreme Court began finding unconstitutional laws granting wives unequal rights with husbands as a violation of their right to the equal protection of the laws. *Reed v. Reed*, 404 U.S. 71 (1971) (striking down state law preferring the father to the mother as administrator of a child's estate); *Kirchberg v. Feenstra*, 450 U.S. 455, 457 n.1 (1981) (striking down the last state law making the husband the "head and master" of the couple's marital property, with the power to administer, control, and sell it without his wife's consent). The Court has also upheld the use of both criminal and civil law to protect victims of domestic violence. *United States v. Dixon*, 509 U.S. 688 (1993).

3. Ms. Kisaakye is a Lecturer of Law at the Human Rights & Peace Centre at Makerere University, Kampala, Uganda. She is also the Executive Director of the Uganda Network on Law, Ethics & HIV/AIDS (UGANET), a Ugandan NGO working on issues of HIV/AIDS, human rights, and the law. In 2002, she was a Clinic Visiting Scholar and helped supervise the Tanzania inheritance project. In 2004, she helped supervise the Uganda fact-finding mission on the same subject.

works on domestic violence issues in Washington, D.C.⁴

I. CLINIC FACT-FINDING: ORIGINS AND DESCRIPTION

The International Women's Human Rights Clinic opened its doors in January 1999 with an initial focus on test case litigation and legislation designed to address widespread violations of women's human rights.⁵ It added a new dimension to its legislative work in 2002: human rights fact-finding trips.⁶ During a spring-break week of intensive interviews, students grapple with various issues affecting the fundamental human rights of women. They then draw on their findings to write human rights reports that also support proposed legislative solutions.

The Clinic has partnered with local NGOs to conduct fact-finding projects in Tanzania (2002, 2005), Ghana (2003), Uganda (2004), and Swaziland (2006). These partnerships naturally developed out of interactions with NGO attorneys studying at Georgetown for an LL.M. focused on women's human rights. All our partner attorneys come from countries that recently adopted constitutions and ratified international human rights conventions ensuring women's equality.⁷

4. Lisa Vollendorf Martin was a Spring 2003 semester Clinic student who graduated and came back as an attorney to help supervise the Uganda fact-finding on FGM/FGC in the Spring 2004 semester.

5. For legislative projects, the core student work product consisted of a proposed bill and supporting memorandum using international, regional, and national human rights law, supplemented by trends or models identified from comparative law research. For litigation, students developed a complaint and supporting brief using the same human rights law sources.

6. In 2001, the Clinic also conducted a fact-finding mission in Poland under the supervision of Johanna Bond, a Visiting Associate Professor. The Clinic projects, however, were two traditional human rights reports on domestic violence and sexual harassment. They recommended legislative changes but did not develop proposed bills to implement the recommendations. *See* the final reports: Kristina Aberg, Johanna Bond, Anne Daugherty-Leiter, Jean Norton, Robin Phillips, & Rachel Taylor, *A Report on Domestic Violence in Poland* (Minnesota Advocates for Human Rights; Women's Rights Center, Warsaw, Poland; GULC International Women's Human Rights Clinic 2002); and Johanna Bond, Mary Ellingen, Sameera Hafiz, Robin Phillips, Meredith Rathbone, Malinda Schmiechen, & Anna Wilkowska, *A Report on Sexual Harassment and Employment Discrimination in Poland* (Minnesota Advocates for Human Rights; Women's Rights Center, Warsaw, Poland; GULC International Women's Human Rights Clinic 2002).

7. All countries ratified without reservation CEDAW, ICCPR, ICESCR, CRC, and the African Charter. Convention on the Elimination of All Forms of Discrimination Against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981, *available at* <http://www.unhcr.ch/html/menu3/b/e1cedaw.htm> International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, *available at* http://www.unhcr.ch/html/menu3/b/a_ccpr.htm International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, *available at* http://www.unhcr.ch/html/menu3/b/a_cesrcr.htm Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990, *available at* <http://www.unhcr.ch/html/menu3/b/k2crc.htm> African [Banjul] Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986, *available at* <http://www1.umn.edu/humanrts/instree/z1afchar.htm>.

As of November 25, 2005, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, specifically addressing the concerns of African women, provides women

Progressive constitutions and conventions, however, remain at odds with discriminatory statutes still in force. For instance, in Tanzania, “The widow has no share of the inheritance if the deceased left relatives of his clan. Her share is to be cared for by her children.”⁸ By contrast, a widower assumes full ownership of his wife’s property. Daughters also suffer rank discrimination: the oldest son takes the most, followed by all other sons, and the youngest son inherits more than the oldest daughter.⁹ Discrimination in inheritance is compounded by guardianship laws that permit men to inherit women upon the death of their husbands and assume control over their children, property, and activities.

A similar example comes from Tanzanian marriage laws. Girls can marry as young as fourteen under the Law of Marriage Act, as young as puberty under customary law, and as young as nine under the Islamic Restatement Act. Laws permitting child marriage have drastic consequences for girls. Besides violating many of their rights (for instance, to equality, dignity, physical integrity, childhood, education, and development), such marriages lead to young girls bearing children, which can kill both the child wives and their infants.¹⁰

Such laws dramatically illustrate the need for change. The Clinic and its partners have embarked on the exciting work of updating legislation to give “teeth” to the new constitutions and international conventions. By doing so, they hope to secure women’s most basic rights.

Accordingly, Clinic fact-finding trips are geared towards collecting data useful both for legislative reform and for compelling human rights reports. Students engage in intense preparation for this task long beforehand. They must first

additional protections. Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, adopted by the 2nd Ord. Sess., OAU, Maputo (Aug. 13, 2003), available at <http://www1.umn.edu/humanrts/africa/protocol-women2003.html>.

8. Local Customary Law (Declaration) (No. 4) Order, Government Notice (GN) 436/1963, Schedule 2, Laws on Inheritance [Sheria za Urithi], in *Judicature and Application of Laws Act, TANZ. LAWS SUBSIDIARY LEGIS.* [CAP 358 R.E. 2002], Rule 27.

9. Rule 30, *id.*, provides an example to illustrate how the oldest brother inherits most, followed by all other brothers, and then all daughters. In this example, the inheritance consists of twenty-four heads of cattle. The 23-year-old son inherits nine heads; the 20-year-old brother, five heads; the 14-year-old-brother [youngest sibling], four heads; the 25-year-old-daughter [oldest sibling], three heads; the 22-year-old-daughter, two heads; and the 18-year-old daughter, one head. Similarly, Rule 31 permits a male child without siblings to inherit all property with full ownership rights while a comparable female child can only use it without selling it.

10. According to a UNICEF (United Nations Children’s Fund) report, pregnancy-related death is the leading cause of mortality for 15 to 19-year-old girls. UNICEF/Innocenti Research Centre, *Early Marriage: Child Spouses*, INNOCENTI DIGEST, Mar. 2001, at 11, available at <http://www.unicef-icdc.org/publications/pdf/digest7e.pdf>. Girls aged 10-14 are five times more likely to die in pregnancy or childbirth than women aged 20-24, while girls aged 15-19 are twice as likely to die. *Id.* at 18. The effects are similarly disastrous for their children. If a mother is under eighteen, her baby’s chance of dying in the first year of life is sixty percent higher than that of a baby born to a mother older than nineteen. *Id.* at 11. When young girls give birth, many are left with life-long injuries such as fistulas. As explained by the Fistula Foundation, <http://www.fistulafoundation.org> fistulas occur “when blood supply to the tissues of the vagina and the bladder (and/or rectum) is cut off during prolonged obstructed labor. The tissues die and a hole forms through which urine and/or feces pass uncontrollably.” Families and friends ostracize affected girls and women because it leaves them with very unpleasant body odors.

master the relevant substantive law—domestic, comparative, regional, and international. All Clinic students complete an independent course in International and Comparative Law on the Rights of Women.¹¹ Here, they study the international human rights law that has been, or could be, used to advance women's rights. They also explore comparative legal approaches to problems such as violence against women and their economic disempowerment.

In the Clinic seminar, students closely study the basic governmental structure and legal system of the project country and relevant domestic law, including the Constitution, statutes, and court decisions. They further deepen their knowledge of the international and comparative law on their topics. By researching the legislation of other countries, they explore various approaches and policy considerations and can begin to develop potential solutions. Before leaving for the fact-finding trip, students write a draft (the first of many) report and proposed bill.

To further prepare for the fact-finding, students study good interviewing techniques and participate in simulated interviews. Lawyers studying for an L.L.M. at Georgetown frequently role-play the individuals students will actually interview. For example, before the Swaziland trip in March 2006, the students interviewed lawyers from Swaziland and South Africa¹² in roles as a woman in a polygamous marriage, a divorced woman, a Member of Parliament, a High Court judge, and a domestic violence counselor. The graduate lawyers then provide feedback concerning substance, skills, and cultural sensitivity. The Clinic videotapes the interviews and faculty then meet with each student to review content and skills. The students also prepare by identifying potential interviewees and the topics to cover with each category (e.g., judge, divorced woman). Faculty review and help students refine this information.

In country, students conduct interviews in teams of two, accompanied by both an American and a partner attorney supervisor. Supervisors provide advance help in structuring the interview, follow-up questions during interviews (both for the purpose of gaining the information and modeling effective interview questions and approaches), feedback, and suggestions for improvement.

When they return to Georgetown, students revise the report and bill to reflect their enhanced understanding of the laws in place, those laws' impact on women, and community reactions to the proposed legislation. Both before and after the trip, students regularly consult with partners on strategy, policy, and language through email exchanges of their drafts and biweekly teleconferences. By the end of the semester, they will have completed the fifth and final draft—the package

11. Many of the Clinic's partner attorneys have also completed this course as part of their Georgetown L.L.M. Professor Ross teaches this course and has developed a casebook from the course materials, SUSAN DELLER ROSS, *WOMEN'S HUMAN RIGHTS: INTERNATIONAL AND COMPARATIVE LAW* (forthcoming 2006).

12. The attorneys were Mushahida Adhikari (South Africa), and Sindile Kubheka and Bongekile Nxumalo (Swaziland).

they send to their partners. Partners then fine-tune the proposed statutes in consultation with other NGOs and government officials, hold public education sessions with the community, and lobby the government to enact and enforce the new law.

II. FACT-FINDING AS AN EDUCATIONAL AND LAWMAKING TOOL

The addition of a fact-finding component to legislative projects greatly enhanced both students' substantive learning and their lawyering skills. This resulted in a higher quality product, more helpful to our partners.

It is only through speaking with a broad range of people that students can gain a real understanding of the existing legal framework and problems and generate creative and workable solutions. For our 2005 Tanzania fact-finding mission, for example, the Clinic interviewed over 100 people, ranging from parliament members, government ministers, attorneys, and judges to villagers, doctors, and customary and religious leaders. Students recounted, "The fact-finding allowed us to have a much better understanding of how the laws practically impacted the people and what types of changes were desirable and feasible," and "[I]t made the law come alive [W]e could ask people how the law does or does not function."¹³ The students could thus develop a more sophisticated understanding of the nature of the problems and how the law works in practice.

In-country interviews enable students to understand the different legal structures in place in a very concrete way. They can interview judges at different levels and compare their interpretations of legal provisions. Students see first hand how judges really resolve the difficult conflict of law questions that arise under the multiple family-law systems common in these countries.¹⁴ Interviews with NGO groups reveal the frustrations of helping women in the lowest-level local courts where legal representation is forbidden and the decision-makers have no legal training. Government attorneys administering the intestate succession laws help them understand the role of settlements in the system. Without such deep understanding, it would be difficult to fashion realistic legal solutions. With better legislative solutions, fact-finding serves as an important tool for effecting change and protecting women's rights.

Fact-finding as a component of legislative reform also enables students to enter into a dialogue with local citizens on that subject. Coming with the outlines of a

13. These quotations come from student comments on supplemental evaluation forms passed out on the last day of class for the Spring 2005 Clinic. Johanna Bond further describes how relying solely on secondary sources stymies students' creativity and effectiveness. It both "makes it difficult for them to assess alternative answers or come to any conclusion on their own," and leads students to "feel crippled by their unfamiliarity with the system" "even when presented with a question they can answer based on their limited knowledge." Johanna Bond, *Public Interest Law: Improving Access to Justice: The Global Classroom: International Human Rights Fact-Finding as Clinical Method*, 28 WM. MITCHELL L. REV. 317, 338 (2001).

14. Project countries typically offer different family law rules for different groups of people based on their religion, ethnicity, and mode of life.

bill, students can seek the opinions of community members, lawmakers, and enforcers and thus check on the feasibility and popularity of suggested reforms. The interviews thus enable students to incorporate and give content to the ideas and convictions of citizens and advocates when they return home and resume work on the legislative proposals. For example, during the weeks before the Spring 2002 fact finding in Tanzania students developed with their partners the outlines of a proposed intestate succession bill that would grant a surviving spouse of either sex ownership and control of the marital home¹⁵ and fifty percent of the estate; the other fifty percent would be inherited by the children in equal percentages. In interviews students described this outline and asked whether the interviewee approved, did not approve, or suggested changes in this model. The interviewees were virtually unanimous that the idea was a good one. Many suggested, however, that a small percentage should be set aside for elderly parents; the students then incorporated this finding in their report and modified the bill accordingly.¹⁶

Contacts made during the trips can also lead to a very direct impact on government institutions, as demonstrated by the 2004 fact-finding mission to Uganda on discriminatory inheritance laws. The team interviewed the Chairman of the Law Reform Commission and its legal staff.¹⁷ While the Commission had earlier recommended changes to the intestate succession laws,¹⁸ it had just begun the bill drafting process and accordingly was very interested in the students' work product. Two months later it requested that the students send their proposed bill and a summary report to be used in the Commission's two-day meeting to consider draft language. To the partners' delight, the Commission reported that it had "integrated the two proposals" and that the student work "greatly enriched the debate."¹⁹

Fact-finding also plays an important role in raising human rights awareness for proposed legislation. Through the interviews, students have the opportunity to meet with diverse government officials and community members. They can ask judges, parliament members, and other legal professionals for their views about

15. For the majority of Tanzanian citizens who are very poor, the marital home is a couple's most significant economic asset and, therefore, the most important gain for the widow.

16. Ironically, after WLAC-Tanzania held meetings with sister NGO groups and government staff, they returned to the original student model. Compare the two bills in Appendices A and B of *Inheritance Law in Tanzania: the Impoverishment of Widows and Daughters*. The first is the student version and the second is the revised version prepared by local NGOs working together. See Tamar Ezer, *Inheritance Law in Tanzania: the Impoverishment of Widows and Daughters*, 7 GEO. J. GENDER & L. 599 (2006).

17. On March 9, 2004, the team members interviewed Professor Joseph Kakooza, the Law Reform Commission Chairman, and his staff. On March 11, 2004, they interviewed two Law Reform Commission attorneys, Peter Edopu and Florence Ochago.

18. UGANDA LAW REFORM COMMISSION, A STUDY REPORT ON THE REFORM OF THE LAW OF DOMESTIC RELATIONS 243-306 (2000).

19. E-mail from Peter Edopu, Attorney, Law Reform Commission, to Susan Deller Ross, Professor of Law and Director, International Women's Human Rights Clinic, Georgetown University Law Center (May 9, 2004) (on file with author).

how the country's Constitution and international human rights commitments should affect domestic law on specific issues. For instance, does the right to freedom from cruel treatment require the government to take effective legislative steps to stop FGM?

NGO partners build on these education efforts after the fact-finding trip and submission of the final report and bill. They share information gathered and recommendations for change both with other civil society members and the government to bring about legal reform. Facts uncovered in these missions can be crucial in persuading others that action is needed. Partners also draw on invaluable contacts made during the fact finding mission—*e.g.*, with victims of discrimination and violence, members of parliament, women's rights NGOs—in fine-tuning and lobbying for proposed legislation.

Besides the increase in substantive knowledge and understanding, fact-finding provides students with an intense experience in interviewing and data analysis, building important lawyering skills. Human rights clinicians have earlier described how participating in fact-finding aids students in developing empathy with clients, confronting issues of difference and privilege, working collaboratively, and integrating interdisciplinary approaches to legal problems.²⁰ Students also learn important investigation skills—how to identify areas for questions, who to interview, how to elicit useful information—and analytical skills—how to synthesize and sort data in logical ways. This synthesis entails organizing data to draw out themes and patterns and extracting testimony to illustrate most vividly the violations the proposed statutes aim to address.

For instance, students have analyzed data to determine citizens' views on investigated issues. During the Spring 2005 fact-finding mission on Tanzanian polygamy laws, students systematically asked each person they interviewed whether polygamy had benefits and whether it had harms. If yes, they asked the interviewee to describe those benefits or harms. A spreadsheet analysis revealed some interesting finds. After crunching the numbers, the students realized that

20. Bond, *supra* note 13, at 327-39. Johanna Bond taught in Georgetown's International Women's Human Rights Clinic from 1998 to 2003, first as a Clinic Attorney-Fellow and later as a Visiting Associate Professor; she is now an Associate Professor of Law at the University of Wyoming Law School. Deena Hurwitz, the Director of the International Human Rights Law Clinic at the University of Virginia School of Law (who formerly taught at the Lowenstein International Human Rights Law Clinic at Yale Law School), further points out that human rights clinics that engage in fact-finding have "been able to apply the objectives of direct services clinical education to a human rights context—through client contact, interview techniques, and a writing project that is both descriptive and client-oriented." Deena R. Hurwitz, *Lawyering for Justice and the Inevitability of International Human Rights Clinics*, 28 YALE J. INT'L L. 505, 534 (2003). These objective encompass emphasis on "issues of difference and privilege," "inter-disciplinary and comparative approaches to legal problems," "fundamental concern for social justice," and the development of student skill "in putting laws, facts, and values together." *Id.* at 527-28. She additionally explains that human rights clinics can teach students "to develop and apply legal theories to real situations impacting real people, and to use the legal system to seek social change. Indeed, with international human rights law, students have the opportunity to help create new norms and laws . . ." *Id.* at 529. All of these lessons are very much applicable to students participating in Georgetown's International Women's Human Rights Clinic.

only 13% of those queried (92 interviewees) could see any benefits, while 99% could see harms.²¹ Further analysis showed that the most-cited harms were unequal asset distribution among the wives and children (45/90), and the fact that polygamous men were too poor to support more than one wife and her children (43/90).²² These statistics strongly reinforced the anecdotal evidence of such harms and helped support the proposition that ordinary citizens opposed polygamy.²³ Moreover, the cited harms closely mirror those described by the CEDAW Committee, which has ruled that polygamy causes “such serious emotional and financial consequences for [the wife] and her dependents” that it should be prohibited.²⁴

III. LEGISLATION AND LITIGATION: A JOINT APPROACH

In addition, facts uncovered during investigative missions can help develop litigation used in conjunction with legislative efforts to effect change.²⁵ Working for legal reform through legislation is essential to government recognition of the human rights of all individuals. However, legislative change takes years. There may be initial support in government. But if a new minister arrives with differing views, or elections bring a new government, advocates must start all over again. Or, the government may voice support but refuse to make it a top priority. Thus, following up legislative work with litigation may serve as an effective strategy to increase the pressure on government and protect the fundamental rights of women. Strategic litigation

21. Anne Heavey Scheinfeldt & Ryan Keith Tindall, *Marriage Matters: The Plight of Women in Polygamous Unions in Tanzania 2* (2005) (unpublished report, on file with International Women’s Human Rights Clinic, Georgetown University Law Center). The Clinic supervisor was Professor Susan Deller Ross, and the WLAC supervisors were attorneys Alphonse Katemi and Jane Magigita. The Spring 2005 fact-finding team also included the following participants: Clinic attorneys Tamar Ezer and Nancy Stafford; Steptoe & Johnson LLP attorney Meredith Rathbone (a Clinic alumna); WLAC Director Scholastica Jullu, WLAC attorneys Magdalena Acquilin, Safina Hassan, Rehema Kerefu-Sameji, Mary Njau, and Jane Salomo; and WLAC interning law student Hery Saburi.

22. *Id.* at 2-3.

23. When asked whether future law should permit polygamy, both monogamy and polygamy, or monogamy alone, 65% (39/60) preferred the “monogamy alone” option. Muslim views differed little, as 59% (10/17) said the law should only permit monogamy. *Id.* at 5.

24. “Polygamous marriage contravenes a woman’s right to equality with men, and can have such serious emotional and financial consequences for her and her dependants that such marriages ought to be discouraged and prohibited.” Committee on the Elimination of Discrimination Against Women, *General Recommendation No. 21, Equality in Marriage and Family Relations*, ¶ 14 (13th Sess., 1992), U.N. Doc. A/49/38, at 1 (1994), *reprinted in* *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6, at 250 (2003), *available at* <http://www1.umn.edu/humanrts/gencomm/generl21.htm>

25. As Stuart Scheingold sets out in his essay on cause lawyering, “[P]olitically engaged cause lawyers do not see political and legal strategies as mutually exclusive.” Stuart A. Scheingold, *Cause Lawyering and Democracy in Transnational Perspective: A Postscript*, in *CAUSE LAWYERING AND DEMOCRACY* 382, 387 (Austin Sarat & Stuart Scheingold, eds. 2001). Thus, it is advantageous to incorporate both the political work needed to insure enactment of legislation and the legal strategies that can be deployed in courts.

further stimulates support within the judiciary and establishes a body of law that recognizes and respects women's rights.

The Clinic-NGO experience suggests that combining legislative advocacy with litigation can produce dramatic results in protecting women's equality. In one case, after years of empty government promises to repeal discriminatory employment laws, it was LAWA-Ghana's test-case litigation challenging the ban on women's night work²⁶ that actually led to negotiations with the Attorney General and to concrete government support for repeal. Just a year and a half after LAWA-Ghana filed its lawsuit, Parliament enacted a new Labour Act removing the ban on women's nighttime employment.²⁷

LAW-Uganda has had similar success with test case litigation. In March 2004, LAW-Uganda won a challenge to a discriminatory divorce law that permitted a married man, but not a married woman, to divorce his spouse for adultery and to obtain the spouse's personal property as part of the divorce relief.²⁸ Although NGOs had spent years lobbying for a new law,²⁹ it was the Constitutional Court that actually gave women an equal right to divorce adulterous husbands.

Adding litigation to advocacy efforts further has the advantage of building case law protective of women's rights and enabling recourse to international human rights bodies after exhausting domestic remedies. LAW-Uganda's victory was the first time the Ugandan Constitutional Court recognized an equal protection violation on the basis of sex.³⁰ In his landmark lead opinion, Justice Twinomujuni explained that it is "glaringly impossible to reconcile the impugned provisions of the Divorce Act with our modern concepts of equality and non-discrimination

26. In the Spring 2000 semester, the Clinic and LAWA-Ghana produced both test-case litigation challenging the night work ban and proposed legislation to eliminate the bans on women working at night or in mines. Clinic students Katie Gillespie and Laura Sheridan worked on the litigation project, while Royce Bernstein and Kathryn O'Neil worked on the legislation project, all under the supervision of Clinic Attorney-Fellow Johanna Bond and LAWA-Ghana attorneys Fitnat Adjetey and Sheila Minkah-Premo. LAWA-Ghana filed the lawsuit in Ghana's Supreme Court in December 2001.

27. Labour Act, 2003 (Act 651), § 177(1) (Ghana) (repealing The Labour Decree, 1967 (NLDC 157), of which § 41 prohibited women's underground mining work and night work in industrial undertakings).

28. *Uganda Ass'n of Women Lawyers v. Attorney General*, Constitutional Petition No. 2 (Uganda Const. Ct. Mar. 10, 2004). This case was developed during the Fall 2001 semester by Clinic students La Tanya James and Mary Ellen Shuttleworth under the supervision of Professor Susan Deller Ross and Esther Kisaakye, a LAW-Uganda member. Ms. Kisaakye began the semester in Uganda and then continued supervision when she arrived at the Clinic in mid-November as a Visiting Scholar. After she returned home in December 2002, she worked with LAW-U attorneys and lawyers in the Strategic Litigation Coalition sponsored by LAW-U to revise the petition. The attorneys filed the case in January 2003 and the Court decided it in March 2004.

29. A government study indicates that legislative work on this topic started in 1994. UGANDA LAW REFORM COMMISSION, A STUDY REPORT ON THE REFORM OF THE LAWS OF DOMESTIC RELATIONS 14 (2000). In 2000, the Commission proposed a new Domestic Relations Bill that would, among other things, have provided for divorce based on the irretrievable breakdown of a marriage. Not until December 2003 did the government table the bill in Parliament, and as of April 1, 2006, Parliament had still taken no action.

30. *Uganda Ass'n of Women Lawyers* could play the same role in Uganda as *Reed v. Reed* did in the United States.

between the sexes enshrined in our 1995 Constitution.”³¹ In her concurring opinion, Justice Mpagi-Bahigeine noted that the Constitution was the most progressive concerning women’s rights in sub-Saharan Africa, and that it was “fully in consonance with the International and Regional Instruments relating to gender issues.”³² Decisions like this not only set an important precedent in their own country but also in courts throughout Africa and other commonwealth jurisdictions, thereby giving “teeth” to guarantees of women’s equality and human rights. Media campaigns can further inform the general public about these legal victories, spreading awareness of women’s rights.³³ Finally, even if the court case is unsuccessful, the state can be held accountable for violations. After exhausting domestic remedies, our NGO partners can work with the Clinic to appeal to international bodies and bring to bear the pressure of the international community on the government.

In this Journal issue, you will read human rights reports and proposed legislation dealing with intestate succession in Tanzania and Uganda. Together, they demonstrate the need for litigation when the government “drags its feet” in responding to violations. In Tanzania, the Spring 2002 Clinic project with WLAC formed the core bill used in NGO and government discussions the following summer. WLAC also held separate workshops with many key constituencies, including attorneys, NGOs, parliament members, local leaders, and the media. The resulting final bill received substantial public support and was submitted to the Minister of Justice and Constitutional Affairs. Work came to a halt in early 2004, however, as the government decided to wait until after the 2005 elections. By the Fall 2004 semester, WLAC attorneys wanted to take the next step to maintain pressure on the government. They asked the Clinic to help develop a test case challenging the Tanzanian laws limiting or denying women’s inheritance on the basis of their gender.³⁴ WLAC then worked in collaboration with strategic litigation

31. *Uganda Ass’n of Women Lawyers*, at 24 (Twinomujuni opinion). The Chief Justice further noted that the Divorce Act, brought in through colonial legislation, reflected “the Englishman’s pre-twentieth-century perceptions that a man was a superior being to a woman and they could not be treated as equals in marriage.” *Id.*

32. *Id.* at 8 (Mpagi-Bahigeine opinion).

33. Although legal victories are hardly the end of the road in bringing real change and ensuring the protection of women’s rights, they are a crucial part of the process. As Esther Kisaakye, a longtime advocate for women’s rights in Uganda, explains, “[I]t is always easier to assert a right that has been legally defined than to claim a right where none exists.” Esther N. Mayambala [Kisaakye], *Changing the Terms of the Debate: Polygamy and the Rights of Women in Kenya and Uganda*, 3 E. AFR. J. PEACE & HUM. RTS. 200, 239 (1997). It is thus easier to educate around a concrete law or legal decision. Moreover, discrimination that has been legally recognized will have to be legally outlawed, and the state must send out “a very clear and unequivocal message” that it will not be tolerated. *Id.* at 232.

34. Clinic students Pamela Egleston and Daniel McLaughlin developed the case under the supervision of the Clinic Attorney-Fellow Tamar Ezer and WLAC attorney Athanasia Soka in the Fall 2004 semester. WLAC and its strategic litigation partners filed in September 2005, challenging the inheritance laws for violating women’s fundamental rights to equality and an adequate standard of living. Stephen & Charles v. Attorney General, Petition No. 82 (Tanz. High Ct. 2005) (filed Sept. 16, 2005).

attorneys to file the case in September 2005. The case is set for argument in April 2006.

In Uganda, a similar governmental slow-down led to litigation. The Spring 2004 semester fact-finding resulted in proposed legislation to provide equal inheritance rights to women in Uganda. Although the proposal met with excitement by Uganda's Law Reform Commission, Uganda's executive branch and legislature failed to act, citing the need to wait until after the 2005 elections. Thus, LAW-Uganda also decided to start litigation while continuing to lobby for change. Accordingly, in the Fall 2004 semester, LAW-Uganda worked with the Clinic to develop a litigation challenge to discriminatory inheritance laws. A year later, LAW-Uganda filed the case in the same Constitutional Court that had found the divorce adultery law unconstitutional.³⁵ As this Journal goes to press, LAW-Uganda awaits further proceedings. We hope these combined legislative and judicial pressures will help finally rectify discriminatory inheritance laws, thereby ensuring fundamental protections to women and their access to economic resources.³⁶

The International Women's Human Rights Clinic and its partners have developed what we believe to be a new model—fact-finding missions that support both a compelling human rights report and a proposed legislative remedy. They provide powerful arguments for change and the means to make it happen. If others continue along this path, international human rights can indeed become a reality for many women around the globe.

35. Clinic students Cora Guffey and Meghan Rhoad developed the case under the supervision of Clinic Attorney-Fellow Tamar Ezer and LAW-Uganda attorney Regina Mutyaba in the Fall 2004 semester. The team was further assisted by Law-Uganda attorneys, Zamu Kaboneke and Dora Mirembe, and by Tatjana Eres, an attorney and Clinic alumna then interning at LAW-Uganda. In her Clinic work, Ms. Eres had worked on the Uganda intestate succession legislation and fact-finding project the previous spring. LAW-Uganda filed the case in March 2006. *Law and Advocacy for Women in Uganda v. Attorney General*, Constitutional Petition No. 05 of 2006 (filed March 9, 2006).

36. In Nepal, NGOs used a similar strategy to deal with discriminatory inheritance laws that gave sons a share of family property at birth, but denied daughters a share "until they reached the age of 35 without having married," and further required that they return the property upon marriage. NGOs both filed a successful case in the Supreme Court of Nepal, *Dhungana v. Nepal*, Writ No. 3392 of 1993 (Aug. 2, 1995), and drafted a bill to revise inheritance law, which would give daughters inheritance rights at birth and grant spouses the right to half of each other's property. United Nations Development Fund for Women, *Bringing Equality Home: Implementing CEDAW 22* (Ilana Landsberg-Lewis ed. 1998).