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PILnet

ASIA PRO BONO FORUM

BALI, INDONESIA

30 AUGUST 2016

TWENTY BIG IDEAS ON PRO BONO LAWYERING: BORING, BOLD & BRAVE

The Hon. Michael Kirby AC CMG

(Australia)

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JUSTICE NEEDS ADVOCATES

It is a privilege for me to offer closing remarks for this outstanding Forum in Bali, Indonesia, organised by PILnet, the global network for public interest law.

It is a special privilege to share the concluding session with Todung Mulya Lubis, a hero of public interest litigation in this exciting and challenging country. A mark of the huge respect that he has earned from his fellow citizens is the fact that he reportedly has 400,000 followers on Twitter. When we first met in 1980 the internet was in its infancy and social networks did not exist. I am still being dragged, reluctantly, into the vortex. A person claiming to be a friend established an account for me with Twitter. So far, I have not made a single tweet. A mere 12,000 "followers" are waiting with bated breath for me to send

[*] Text on which was based the author's closing remarks at 2016 Asia Pro Bono Forum, Sanur, Bali, Indonesia, 30 August 2016.

[**] Justice of the High Court of Australia (1996-2009); President of the International Commission of Jurists (1995-8); Australian Human Rights Medal, 1991; Laureate of the UNESCO Prize for Human Rights Education, 1998.

my first message to the world. Perhaps it should be one of hope that I can cash in on my renewed proximity to Advocate Lubis. Perhaps he will lend me 100,000 or so followers so I can climb into his stratospheric tweeting heights.

I thank him for his historical review of public interest litigation in Indonesia. It gives us a background and hope for our reflections on where we are at in PIL in Asia today. His commitments speak for justice. All of us can learn from him.

As a young lawyer practising in Sydney, Australia, I became heavily involved in pro bono legal representation, although it was not called such back in the 1950s and 60s. The cases rushed to my desk from the Students' Council of my university and from the Council for Civil Liberties. Acting in such cases exposed me to the injustices of those days in Australia. The disrespect for, and discrimination against, the Aboriginal and other indigenous peoples. The cruelty and injustice of the White Australia Policy. The deprivation of rights suffered by women when compared to men. The injustices inflicted on communists;[1] conscientious objectors for military service;[2] and those subject to security surveillance.[3] Yet no one in those days, in Australia, spoke up for the LGBTI minority. Including myself. They were a hidden minority, covered with silence and shame.

My work on Public Interest Litigation (PIL) cases as a young legal practitioner, helped to prepare me for my later duties as inaugural

[1] *Australian Communist Party v The Commonwealth* (1951) 53 CLR 1.
[2] *Ex Parte White; R v District Court of Sydney* (1966) 116 CLR 644; *Ex Parte Thompson; R v District Court* (1967) 118 CLR 488.
[3] Meredith Burgmann, *Dirty Secrets: Our ASIO Files* (New South Books, 2014).

Chairman of the Australian Law Reform Commission[4] and as a judge of various courts.[5] Within the Australian judiciary (indeed throughout the common law world) there was a long-standing hostility towards PIL. Hostility demonstrated by the law of standing; by the approach to interveners and *amici curiae*; and costs orders.[6] Although some aspects of that hostility have improved, impediments remain. It is here that pro bono lawyering can play an important role in improving many lives, beyond those of the parties to litigation. Yet justice sometimes involves the life of a single individual. His or her story is a parable on the attitude of the community to justice for all. Franz Kafka taught us (and Seth Gurgela of PILnet China reminded us) that parables teach us grand lessons in law and life.

Nothing brings the central lesson home more powerfully than to be involved personally in a case where, unconsciously, someone concerned for justice becomes the instrument of injustice. That can happen even to a conscientious and vigilant judge, as I hope I was. It happened to me.

Soon after my appointment to the High Court of Australia in 1996, I participated in an application by a prisoner, Shayne Mallard, for special leave to appeal against his conviction of murder. He had been found guilty by a jury at trial and the verdict and sentence of life imprisonment were upheld on appeal.[7] In Australia, an application for special leave to appeal presents the gateway, for access to the final court of the nation. I

[4] As inaugural Chairman of the Australian Law Reform Commission (1975-84).
[5] In several Australian courts and in the Court of Appeal of Solomon Islands.
[6] M.D. Kirby, "Deconstructing the Law's Hostility to Public Interest Litigation" (2011) 127 *Law Quarterly Review* 537.
[7] *Mallard v The Queen* (2005) 224 CLR 125; [2005] HCA 68 where the history is explained. Special leave had been refused against the first appeal decision in *Mallard v The Queen* (24 October 1997), noted (1997) 191 CLR 646.

was one of the three justices who heard, and dismissed, Mr Mallard's application. Substantially, it was based at that time on a complaint that the trial judge had rejected an application, propounded by him, that he should be subjected to a polygraph (lie detector) test to demonstrate that he was not guilty of the charge. Whereas such technology is sometimes permitted in the United States of America, it is not in Australia. So the dismissal of his application was unsurprising.

However, a small group of citizens remained convinced of Mr Mallard's innocence. They were supported by an investigative journalist. Eventually, pro bono lawyers agreed to take over the case. A petition to the Governor of Western Australia to reopen the matter was referred to the Court of Appeal of the State. This produced a negative outcome. Once again an application was lodged in the High Court of Australia for special leave to appeal. It was heard by a differently constituted bench. This time, special leave was granted. The appeal was returned. Reading the papers, I recognised the case. The parties did not ask me to stand aside. And I joined in the unanimous conclusion that the conviction should be quashed.

The brilliant representation of the accused man was conducted by senior barristers briefed by a major Australian law firm, Clayton Utz. Like other national and international firms, they had established a dedicated pro bono practice. The new arguments abandoned the polygraph contention. Instead, by a meticulous examination of the evidence, they demonstrated that Mr Mallard could not have been at the murder scene. They also showed serious defects in the fairness of the presentation of the prosecution case. A later judicial inquiry exonerated Mr Mallard. He was released and granted substantial financial compensation.

Of course, nothing could restore his decade of lost liberty. But justice, in the end prevailed. I was released from the unintended outcome of being a perpetrator of injustice instead of a guardian. This is a nightmare that haunts every judge. Without excellence in pro bono lawyering, Mr Mallard would probably still be in prison. Yet how many cases of a similar kind have been missed by the legal system? How many prisoners stare at the walls of their cells and rage against the injustice of their situation? This is what motivates pro bono lawyers. By bringing justice to Mr Mallard, they helped to reaffirm the commitment of the whole legal system to that end. They reminded prosecutors everywhere of their duty of fairness. They demonstrated once again that, in good lawyering, the devil is usually hiding in the detail, awaiting to be uncovered.

TWENTY BIG IDEAS

1. The secret of pro bono lawyering

During the course of this Forum I have noted 20 big ideas that have been presented to us. Everyone will have their own list. By stating mine, I hope to concentrate the mind on extracting from the presentations some of the main lessons we will take away from this meeting. I thank PILnet and all those who have contributed to making such a fruitful conference possible.

The first idea was packaged as a “secret”. This is how it was described by Garth Meintjes, the President of PILnet. In his opening remarks, he asked what was the “secret” that lay behind the growth of pro bono

lawyering, especially in public interest litigation. He said that the secret could be easily unveiled. It was that many lawyers *desire* to perform at least some pro bono work. Especially if it helps to secure justice for the litigant and to the community.

They want to do this because the rule of law extends beyond the law of rules.[8] It is inevitably concerned with the attainment of justice according to law. Whilst this may sometimes be an elusive and disputable objective, it is not insubstantial or illusory. Often it is what originally attracted a lawyer to pursue a vocation in law: a desire to be concerned in the ethical function of helping society to come at justice. What pro bono lawyering must do is tap into this rich seam of motivation and aspiration. For some it will be less significant that for others. But for many, it is a deep desire to reach into the potential nobility of legal professionalism.

2. *Embracing unpopular causes*

Also in the opening session, we were privileged to hear an address by a hero of pro bono lawyering, Asma Jahangir (Pakistan). Her country has faced many severe crises that have engaged courts, the Bar and the community. Some of these cases are reported in the international media.[9] Asma Jahangir, in addition to her important international work for human rights, has been a leader of the struggle for justice in her own country. As President of the Bar in Pakistan she has literally put her own life on the line.

[8] M.D. Kirby, "The Rule of Law Beyond the Law of Rules" (2010) 33 *Australian Bar Review* 195.
[9] See e.g. *The Economist*, 2 July 2016, 82 "Blasphemy"; *The Economist*, 23 July 2016, 44 "Honour Killings".

In her remarks for us, she instated that pro bono lawyering is tested when it is called for in cases that are unpopular with the general public or even sometimes with sections of the legal profession. Tackling such cases and upholding the rights to fair trial, even of the 'devil', is when the system of justice is truly tested. Pro bono lawyers will not confine their efforts to popular cases. They will face personal risks in taking up matters that sometimes enliven hostility and even risk.

3. *Success is not mecessarily guaranteed*

Asma Jahangir also shared with us a further big idea. It was that pro bono lawyers, however brilliant and attentive, cannot necessarily guarantee success. The proved facts may be unsuitable for a good outcome. The law may be unjust but clear. The judges may be, or seem, biased against interpretations of a constitution or of laws that will advance the interests of justice. The pro bono lawyer should remember the wise saying: we cannot cure every injustice in this world. But neither are we released from the obligation to try. Defeatism is anathema to a pro bono lawyer in a public interest case. But a naïve belief that every case can be won ignores the inherent difficulties of pushing the boundaries in public interest litigation, which is what many of the biggest challenges do.

4. *Pro bono activity an essential duty*

The Governor of Bali sent his representative to speak at the opening of the Forum. He told us of the important law that has been adopted in

Indonesia[10] that mandates the obligation of every advocate to undertake a specified number of hours of pro bono lawyering. This is an idea that sounds right in theory. But can it work in practice? Can it be spread from large and prosperous international firms into small and impecunious regional or local partnerships? What sanctions can apply to force reluctant, inexperienced or disengaged lawyers to ensure that they fulfil the national statutory target? At least the objective of the law, and the endorsement of such an engagement by the national legislature, seems a good notion. But unless it is backed up with practical means of enforcement, as through the supervision of legal professional bodies, it will often be an empty gesture. It will not translate into reality and beneficial outcomes.

5. *Repairing discrimination against populations*

The Governor of Bali's representative concluded his words of welcome with an invocation of the lawyer's duty: "Let us not discriminate against any population in the nation". This principle of equality and non-discrimination is a central idea of modern constitutionalism. In many countries, it is expressed directly and explicitly in the national constitutional instrument itself. In others, it is an implied assumption, on the basis of which the Constitution and the laws have been made.

The idea proclaimed by the Governor is one specially congenial to pro bono lawyers. Upholding the idea and affording remedies to those who suffer injustice and discrimination is an essential part of the search that preoccupies lawyers engaged in PIL. Every society has minorities who are discriminated against in the law. In my own country, Australia, the

[10] Indonesian Law Number 16, 2011.

law often discriminated against Aboriginals, women, people of different races, refugee applicants and members of the lesbian, gay, bisexual, transgender and intersex minorities (LGBTI). In Indonesia, recent media reports have identified similar minorities who have been targeted. It is inevitable that this will be the territory in which much of the work of pro bono lawyering in the public interest will be undertaken.

6. *Ensuring sufficiency of lawyers*

In his introductory remark for the excellent plenary session on the business case for pro bono activity in Asia, Nicholas Booth (UNDP) described the Asian region as "under-lawyered". The truth of this assertion was borne out by the statistics later explained in another session of the Forum. Despite the huge population of Indonesia, more than ten times that of Australia, the aggregate number of lawyers across the entire archipelago is fewer than the total number of lawyers in practice in Australia. This is a critical statistic. Delivering the product of PIL depends upon having adequate numbers who can squeeze into their busy lives some measure of work for the causes of justice and upholding the rule of law.

To the extent that there are insufficient lawyers to go around, there will be insufficient leeway to bring to bear in the provision of professional activities that help civil society in the attainment of justice. It was right that this highly practical point was made at the beginning of the Forum. It was essential that those who seek to advance pro bono lawyering should address themselves to legal education and to the availability of well-trained lawyers who can perform PIL with skill and professionalism.

7. *Tackling the basic causes of injustice*

In the first plenary session, a number of the participants, including Melli Darsa, emphasised the need for pro bono lawyers to work more closely with civil society organisations. If their legal background has been corporate law, they will find many differences in the values and modes of operation of non-governmental organisations. Yet the individual case may point up a cause of injustice that produces many cases. Looking beyond the individual to the underlying causes of illegality, corruption or injustice will be an essential challenge for pro bono lawyers worthy of that name.

8. *Need for motivation and idealism*

In the plenary panel, Nicholas Patrick explained the pro bono program of DLA Piper, an international legal firm. In part, this program is designed to encourage the retention of talented and highly motivated young lawyers. But to ensure retention of young talent, the work must be more than nominally pro bono. Drafting constitutions for charitable organisations is worthy. But getting down into the engine room of the law, where the hands get dirty with the actualities of oppression, misuse of power and injustice will be the stuff of inspiration and attraction. Making sure that pro bono work takes on unpopular causes and sometimes distasteful clients will be the test for the extent that pro bono lawyering is succeeding in its objectives.

9. *Overcoming the closed shop*

In the same panel, Su-Ann Cheah explained that in most of the countries of Asia, closed shop arrangements prevent international firms from giving legal advice. That entitlement is quite often restricted to nationals of the country concerned. This difficulty in securing a right of audience before the courts, providing individual advice is bound up in the restrictive practices sometimes strongly defended by local professional bodies. Supporters of pro bono lawyering need to work with professional bodies to find new guidelines and, where appropriate, open up the availability of advice and break down the closed shop that discourages client assistance and proper measures of professional competition.[11]

10. *The vital role of professional organisations*

Another speaker in the plenary panel was Tanguy Lim of the Law Society of Singapore. He described the strong and effective way in which that society had established its own pro bono facility for supporting PIL. This is a model that PIL lawyers need to study. It is no means common, given that most professional bodies see their role as representing and defending solely the interests of local lawyers.

Mr Lim explained the vital role that professional bodies can play in advancing and affording pro bono assistance. He mentioned the fact that, in Singapore, in judging the professional advancement of advocates to the rank of senior advocate, the extent of their involvement

[11] S. Star (ed.) *Australia and India: A Comparative Overview of the Law and Legal Practice* (Universal, New Delhi, 2016). Chapter on International Commercial Arbitration by D. Jones.

in pro bono activities was now one of the criteria that would be taken into account in evaluating claims for this promotion. Likewise, in many jurisdictions, including Australia, governments that play an important part in the appointment of judges, will now sometimes take into account the extent to which advocates, aspiring to judicial office, have earlier shown that degree of commitment to public interest that can be evident in pro bono lawyering.

11. *Limits and potential of pro bono*

At this stage in the conference, I slipped away to two workshops, for it was not possible to attend them all. The first was the workshop that examined initiatives that had been taken in my own country, Australia. and the way pro bono had evolved there.

John Corker of the Australian Pro Bono Centre sought to meet directly the criticism, frequently raised, that governments are wrongfully opting out of their own constitutional obligations to provide proper public funding for deserving cases of legal aid. He acknowledged that unreasonable impositions on the private legal profession had the potential to cause injustice. In the State of Victoria, lawyers, angered by the recent reduction of public funding for serious criminal cases have even protested, threatening to withdraw their services.[12] But as John Corker has pointed out, the pro bono lawyer is not designed as a full alternative to the public obligation to establish and fund proper institutions of legal aid to render the rule of law an actuality for persons in need. Yet, this said, the fact remains that, whilst pro bono engagement by private practitioners can never be a full answer to the

[12] "Budget cuts will have an impact on legal industry", *Lawyers Weekly* (Australia) July 2016, 7.

unmet legal needs in society, a lot can still be done by a relatively small number of dedicated lawyers, taking on selected cases, establishing precedents and striving to address some of the major causes of injustice. In this way, much can be achieved. Governments and professional bodies have the obligation to promote the symbolism and actuality of the commitment of lawyers everywhere (including in-house counsel) to helping the attainment of justice and the rule of law.

12. *Overcoming conflicts of interest*

In the same session on the Australian experience David Hillard, who happens to be from Clayton Utz, who were engaged pro bono in the Mallard case, explained a problem pro bono lawyering and for potential solutions that had been found in Australia. The problem is that legal firms are basically organised to return an income for the lawyers and other staff on the payroll. They cannot devote themselves exclusviely to pro bono lawyering. They must pursue profit. Sometimes they will have a legitimate concern that engaging with pro bono clients could present dangers to their relationship with a fee-paying client, such as banks, insurers and other large corporations. David Hillard explained the techniques that have been developed in Australia to overcome the risks of conflict as between pro bono litigation and fee paying clients. Rarely indeed to such clients protest about pro bono activities. To the contrary, many clients will nowadays enquire about the pro bono commitments of large legal firms and their work for human rights and particularly for upholding corporate responsibilities for basic rights. Immunising the pro bono practice from the dangers of conflict can be achieved.

The experience of Australian pro bono lawyers in this regard may carry lessons for professional colleagues in other countries. To the extent that this concern can be overcome, it will assist the spread of pro bono lawyering. This is not to deny that, especially in remote and rural districts, engagement in pro bono lawyering may sometimes be difficult because of the intimate nature of a small society and the suspicions that they can occasionally engender.

13. *Enlisting retired judges in pro bono*

In her contribution to the Australian session, Fiona McLeay of Justice Connect in Victoria described the way in which retired judges can sometimes be engaged to support and encourage young lawyers, keen to grapple with significant cases of pro bono PIL. One such case, in Victoria, that came before me in the High Court of Australia.[13] It was concerned with an Aboriginal prisoner who protested about the constitutional invalidity of a law that purported to disenfranchise all prisoners from their right to cast a vote in the federal elections. The law to that effect had been enacted by Federal Parliament. But it was challenged in the High Court of Australia. The leading advocate in the challenge was a retired Federal Court judge. He had returned to the Bar and, in this as in other cases, he advanced the arguments with a skill and experience of years on the Bench. Not only did this bring success in the particular case. The offending law was declared partially invalid. The engagement of young lawyers to work with experienced older lawyers is a marvellous way to share knowledge of PIL and to pass it on from one generation to another.

[13] *Roach v Electoral Commissioner* (2007) 233 CLR 162; [2007] HCA 43.

14. Distinguishing boldness and bravery

In her remarks in the Australian workshop, Fiona McLeay also drew a distinction important for pro bono lawyers. Reflecting on the courageous work of Asma Jahangir in Pakistan and of pro bono lawyers in many of the countries of Asia, she drew a distinction between performing such activities with boldness and imagination and doing so in the face of risk to life and liberty. She acknowledged the limitations of the lessons to be derived from the Australian experience where courage and strong creative lawyering will almost always be performed without personal risk. Rarely indeed would the lawyer be at risk of damage to life, limb or reputation. This is not the case in every country on the mainland of Asia. In many jurisdictions there are grave risks. That adds a dimension of PIL that is not necessarily present in analogies to be drawn from the Australian situation. It demands assessment of the risks in each individual case and in each country. It would be unrealistic for lawyers needlessly to expose themselves to dangerous or avoidable retaliation because of the performance of professional duties pro bono.

15. *Supporting newly 'cool' causes*

A lawyer from the Republic of Korea asked how it was that a pursuit of cases by pro bono lawyers in Australia, in defence of LGBTI rights, could be mounted.[14] Such a cause would still find difficulties in attracting legal practitioners in many countries of Asia, even countries that have no criminal laws against LGBTI citizens. The questioner explained that when he had asked United States, British and Australian lawyers as to

[14] Such as *Appellant S395/2002 v Minister for Immigration and Multicultural Affairs* (2003) 216 CLR 473; [2003] HCA 71 (LGBT refugee applicants from Bangladesh).

how lawyers could be attracted to these cases, he was told that it happened because pursuit of such litigation was often now regarded within the local legal profession as 'cool'. It was attractive to many pro bono lawyers.

How to change the culture to make it so in the countries of the Third World? Only leadership, example and demonstration of the truth were likely to produce such outcomes. It is easy to challenge laws that are commonly unpopular. The true test comes when pro bono lawyers opens new vistas of attitude and values. Yet often that will confront the greatest injustices.

16. Courage and solidarity

A number of participants in the Round Table on enlarging pro bono in Indonesia identified particular projects of PIL in Indonesia that had involved risks to life and limb. What should then be the response of legal colleagues? In China, a number of lawyers involved in PIL have recently been arrested. What should lawyers in other countries do in such instances to show solidarity? Several participants in the Forum urged that professional engagement and expressions of support for courageous colleagues in other countries was a moral obligation. Supporting one another, like learning from one another, is a privilege of working at the cutting edge of social and legal challenges. Often, they are the same in different jurisdictions. It is imperative that experience be shared.

17. Being boring has a place

One of the participants in the Indonesian Round Table on pro bono, Erwina Tobing, made an important point concerning the special role that corporate lawyers can play. Many corporate lawyers revel in technical issues that require fastidious attention to legal details. Sometimes these problems can seen boring. Indeed, sometimes such lawyers can be boring. They may feel alien to the environment of civil society NGOs who wish to raise PIL concerns.

Nevertheless, my own experience in many years as a judge is that the more difficult the case, the more important it is to have the 'big guns' from private legal practice. Being empathetic and emotional about a cause can sometimes get in the way of presenting legal issues in the most effective, dispassionate manner. This is why pro bono lawyering must seek out and engage with technical lawyers. Even if sometimes they seem boring and less exciting than friends from civil society.

18. *Unity and practical targets*

Other participants in the Round Table of Indonesian pro bono lawyers made many remarkable and important suggestions. They included Rivai Kusumanegara, Alvon Kurnia Palma, Wayan Purwita and Ahmad Fikri Assegaf, the last of whom chaired the Round Table. Sugeng Teguh Santoso, a veteran lawyer, lamented the divisions in the organised legal professional associations. He urged that unity was strength. He stressed the importance of upholding the requirement of minimum hours pro bono work as essential to the expansion of this activity in Indonesia. Many of the participants in this session emphasised the value and

importance of appointing managers for the pro bono side to a practice. When this is done experience has taught that pro bono expands to respond to the then known needs.[15] The session witnessed a strong commitment to the achievement of unity in the Indonesian legal associations presently divided.

19. *Lawyering beyond court rooms*

In the lunchtime *Spark Talks*, the Forum was privileged to hear from two fine lawyers. The first, Maria Cecilia Flores-Oebanda explained how her activism had resulted in her arrest and detention during the Marcos era in her country, The Philippines. Not only was she detained but also her husband, father and children. This was a reality check for dedication to pro bone engagement.

An important point made by her related to the venue for her pro bono lawyering. She urged, as others had done, the importance of pro bono lawyers becoming actively involved in the civil society organisations that were advancing PIL causes. Not all pro bono lawyering is performed in courts and tribunals. Often, the most cost effective engagement of lawyers is with civil society leaders. It helps to address the root causes of issues. Legal skills include a talent in analysis and identifying underlying issues that must be tackled. Sometimes, the best legal skill will help advocates to avoid the highest courts and to discover solutions of a non-litigious character.

[15] Jane Southward, "What is best practice Pro Bono", *Law Society Journal (NSW)* August 2015, 34 at 36 ("10 key elements of the pro bono best practice guide").

20. *Giving back – including internationally*

The other *Spark Talk* given the Forum was by Professor Vitit Muntarbhorn of Thailand. He recounted his own life experience and his conviction that 'giving back' for the many privileges that lawyers enjoy in society was an attitude to be fostered. Not only to give back within one's own community or nation – and not only in money terms. But also to contribute to the advancement of important causes worldwide. Increasingly today those worldwide causes will be shared across national borders. Vitit challenged the imagery of what it is to be an accomplished lawyer. Promoting the notion that success is measured by the number of automobiles owned by the lawyer was quite wrong. Contributing, including on a regional and global scale, is an objective that PIL pro bono lawyers should aspire to.

21. *Growing young with PIL*

Although I have recounted the twenty big ideas that stand out for me from this Forum, everyone will have their own list and their own experiences. Mine is limited by the workshops I could attend and the talks I could hear. One extra bonus was a point of importance not expressed in an open session. In the margins of our Forum was Hia Ko, a veteran lawyer from Myanmar/Burma, whose country is now in the process of a remarkable evolution and change. He had attended an earlier pro bono conference where he dedicated himself to pursue the cause of pro bono activity in place of financial profit. He shared with me his secret that, since this epiphany, he had mysteriously reversed the aging process. He is now growing younger because of pro bono lawyering. If we can get this message over to lawyers everywhere, it will

increase the ranks of PIL. By engagement with justice and pursuit of good causes, a lawyer returns to the youthful optimism of earlier times. And engages with younger and more enthusiastic proponents of change and human rights.

ADVOCATES AND JUSTICE

In the final session of the Forum we have been privileged to hear the views of one of the finest pro bono advocates of Indonesia, Todun Mulya Lubis. His address reminded us of a lesson expressed in one of our workshops. This was that the founders of the Indonesian state had not worked for 'billable hours'. They had worked pro bono and wholeheartedly for important values and basic rights which they had helped to enshrine in the Constitution. So it has been with our brother Lubis.

Engagement with pro bono causes will sometimes be unpopular with the general public. But this teaches the lesson that pro bono PIL lawyering is not a popularity contest. It is an activity of principles that speak to justice and power, often for minorities. Their causes have been woven through this Forum, in all of its sessions:

* *Trafficking and forced labour:*

  Although it is a sensitive topic, several sessions addressed the issue of human trafficking and forced labour that confront many countries of Asia, including Indonesia. The issues were explored explicitly and transparently. No one attempted to stop the speakers. No one challenged or threatened them. Everyone listened in order to learn.

* *Religious minorities:*

Todung Lubis reminded us, as several other participants had done, of the need for pro bono lawyers to defend religious freedoms expressed in the Indonesian Constitution. Divisions exist within the majority religion and as between that faith and the other religions that exist in Indonesia, with the protection of law. Standing up for minority religions can often be specially unpopular and even dangerous. Yet this is when the commitment of lawyers to justice for all is tested. It is not specially tested when they are asked to defend popular people and popular causes.

* *Papua/West Irian*:

In one session, a speaker from Papua spoke about the uncertainties of the law and the dangers that he had witnessed in his homeland. No one rushed to silence him. He was listened to with close attention. Suggestions were made as to how his concerns could be tackled. Contact was invited. This is an admirable feature traditional to Indonesia. In such a society pro bono lawyers can have an especially important role to play.

* *The crisis of 1955-6:*

The fact that Todung Lubis has accepted a role in relation to the Peoples Tribunal into the killings that took place in Indonesia in the middle of the 1950s, resulting in many deaths, demonstrates his ongoing fidelity to the principle of justice for all. No country, including

my own, can be truly at peace with itself whilst unrequited complaints of grave wrongdoing are left unredressed. In this and other issues, our brother Lubis has given us the lead.

∗ *LGBT minority:*

There is one other minority that I know well, and that I have left to the end. It too was included in the collection of sensitive issues that Todung Mulya Lubis commended to us from his own legal engagements, for our attention. It requires attention across many borders. And especially today in Indonesia where there have been serious reports of violence and threats to the LGBTI minority.[16] But also challenges in the courts where the finest lawyering will be essential if universal human rights are to be preserved.[17]

When my own pro bono career began in Australia, I was quickly exposed to minorities who suffered great disadvantages in society and its laws. I took part in legal cases that arose from attempts to remove the stain of racial discrimination against Australia's Indigenous people. I participated with fellow students in leading protests that encouraged the political changes which, in 1966, began dismantling the White Australia policy.[18] I look on cases for prisoners and for people with mental health concerns.[19] And cases that challenged the excessive censorship laws of those days.[20] Yet one cause that touched me most closely and

[16] Human Rights Watch, "Indonesia: LGBT Crisis", https://www.hrw.org/news/2016/08/10/indoensia-lgbt-crisis-exposed-official-bias; N. Rayda, "Indonesia says 'no room' for gay community amid violence fears", *The Australian*, 12 August 2016, 8.
[17] On 23 August 2016, a week before the Forum, a proceeding was before the Constitutional Court of Indonesia in which applicants were seeking inclusion in the Penal Code of a criminal law against LGBTI persons. The proceeding is continuing.
[18] *Pacific Islanders Labourers Act* 1901 (Aust); cf *Migration Act* 1958 (Aust).
[19] *Ex Parte Corbishley; Re Locke* [1967] 237 CLR 2 NSWR 547 (CA).
[20] *Crowe v Graham* (1968) 121 CLR 375.

personally was never mentioned. I never raised it myself. I refer to the cause of the fundamental human dignity and equality of LGBTI people. I was silent, although this was my cause. That was how things were in those days.

Now it is important to be silent no longer. By being silent as to their identity, LGBTI people conspire in their own oppression. The only way oppression changes is by showing its impact to fellow citizens and fellow human beings. This is how White Australia came crumbling down, when we came to know neighbours, co-workers, friends who were of a different ethnicity. It is the way in which pro bono lawyering will encourage the change in Indonesia and elsewhere in Asia that empowers and respects the LGBTI minority.

My brother Lubis, in his contribution, referred to this cause. I thank him for doing so and for his own efforts in this matter. This is needed in Indonesia today as never before. I thank him for his actions and for his courage. It is consonant with the words of the representative of the Governor of Bali, at the beginning of this Forum. "Let us not discriminate against one population." The experience of humanity is that it is easy and painless to discriminate against the unknown. Harder to discriminate when you have to put a face and a name to the persons involved. And if we discriminate against one, and are silent, we discriminate against all minorities.

We will depart from Bali. We will all take away our memories of this beautiful place and of this Forum. We will remember the repeated challenge that justice needs advocates. We will be advocates for justice in strong and practical ways. We will occasionally be *boring*, because

that is sometimes the necessity of technical legal work. We will often be *bold*, because that involves an imagination that conceives of a world that is just and that rights the wrongs of today. And where necessary, we will be *brave*. Because it is by courage that the greatest advances of freedom and justice are attained. Pro bono lawyers have a vital role to hasten the days of freedom and justice for all. This is what the Forum in Bali has once again taught us.