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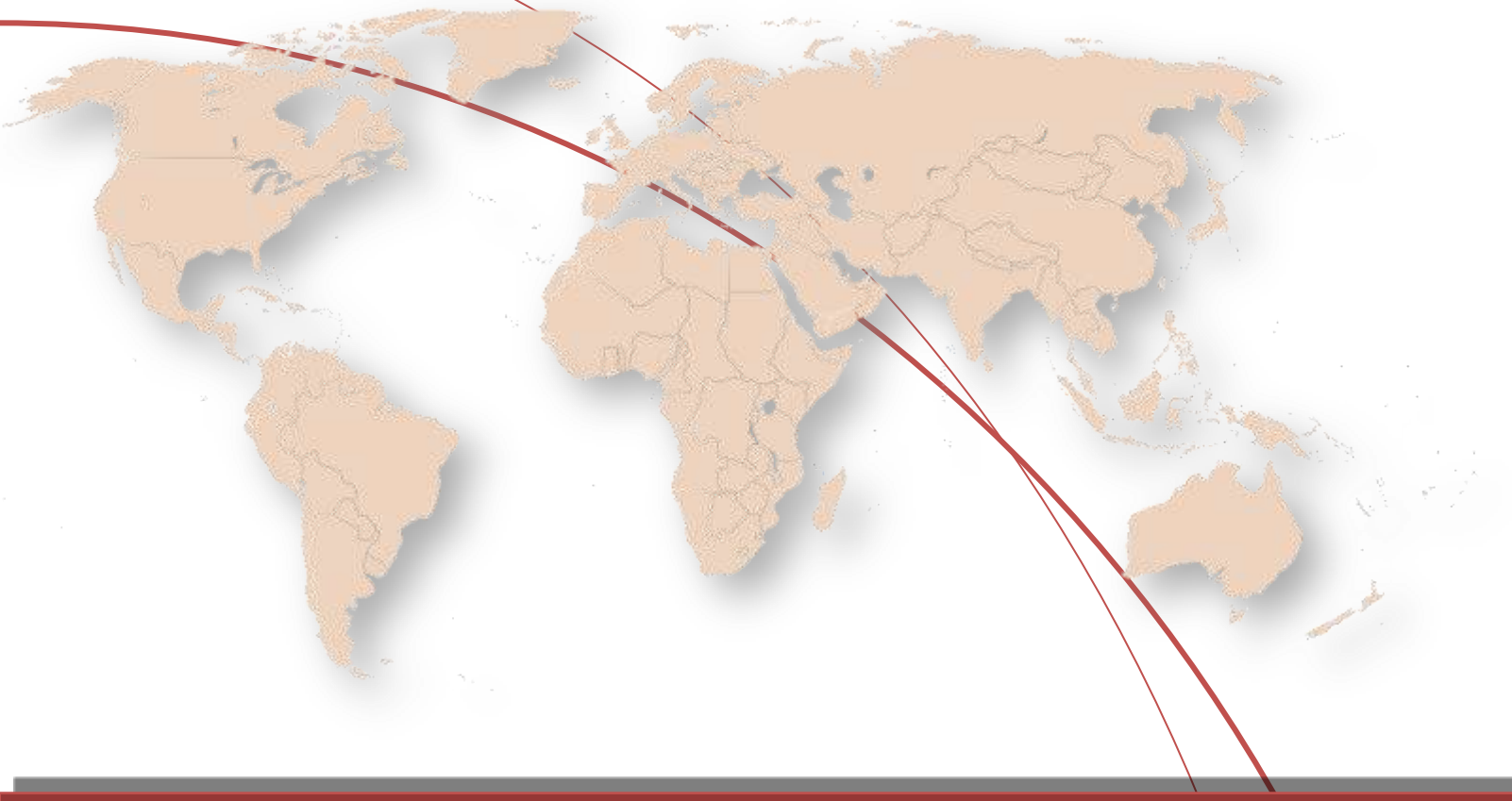

Good Practices Handbook

Free Access to Law
Is it Here to Stay?

Free Access to Law – Is it Here to Stay?" Research Team

Research Director – Chaire en information juridique:	Daniel Poulin
Research Coordinator – Chaire en information juridique:	Isabelle Moncion
Project Leader – Lexum:	Ivan Mokanov
Regional Coordinator – Centre for Internet and Society:	Rebecca Schild
Regional Coordinator – AfricaLII:	Mariya Badeva-Bright
Free Access to Law Consultant:	Tom Bruce

Local Researchers:	
Burkina Faso:	Nikiema Kouliga
Hong Kong:	Tao Zhongyi
India:	Prashant Iyengar
Indonesia:	Aria Suyudi
Kenya:	Esther Nyaiyaki Onchana
Mali:	Somah Doumbia
Niger:	Ousmane Pouye
Philippines:	Michael Vernon Guerrero Mendiola
Uganda:	Robert Kirunda

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Foreword

This current good practices guide is part of the “Free Access to Law – Is it Here to Stay?” research project launched in 2009.

The project was originally led by LexUM (University of Montréal), SAFLII (The South African Legal Information Institute) and the Centre for Internet and Society (India), with funding from the International Development Research Centre and the Open Society Institute.

Within the course of the project, LexUM became a private corporation, Lexum Inc., while the newly created Chair in Legal Information at the University of Montreal, took over the coordination of the project. The Montreal research team remained largely unchanged. Structural changes within SAFLII led to the project being passed on to AfricanLII, but again the research team for Southern Africa remained largely unchanged.

Today, the Chair in Legal Information, the Centre for Internet and Society and AfricanLII are proud to present case studies from eleven countries across Asia and Africa looking into the sustainability of Free Access to Law (FAL) initiatives.

One of the first recorded Free Access to Law (FAL) initiatives is the Cornell Legal Information Institute (LII), launched in 1992. This LII, the original Legal Information Institute, started publishing then – and continues to publish today – legislation, court decisions and other legal documents, available to anyone with Internet access. The LII model of FAL initiatives quickly inspired similar initiatives in Canada (LexUM, then CanLII), Australia (AustLII), and elsewhere around the world. In October 2002, the Montreal Declaration on Free Access to Law was signed by eight LII and other FAL initiatives. Today, over 30 initiatives subscribe to the principles of the Montreal Declaration and are formal members of FAL. Indeed, initiatives that aim to deliver access to law at no charge have been carried out by various types of organisations – LIIs, of course, but also governments, judiciaries, academia, law societies, NGOs, and more. The Montreal Declaration outlines the vision and goals of the FAL Movement (FALM) stating, amongst other principles, that "Public legal information from all countries and international institutions is part of the common heritage of humanity. Maximizing access to this information promotes justice and the rule of law." (Montreal, 2002)

The “Free Access to Law – Is it Here to Stay?” project aims to respond to a need to study what are the impacts of these initiatives and to explore the factors contributing to their sustainability.

The outputs of the project are:

- A research methodology guide;
- An environmental scan report;
- A collection of case studies;
- This present Good Practices Handbook;

- The Free Access to Law online library providing access to a number of papers on the topic.

Introduction

After over a year of field research, the results are in and include a rich collection of case studies on Free Access to Law initiatives. These case studies look into the "why", "who", "what" and "how" of free access to law past and present operations. This Good Practices Handbook is a compilation of the good practices identifiable through these case studies and seeks to assist those interested in FAL initiatives in maximising their chances of sustainability.

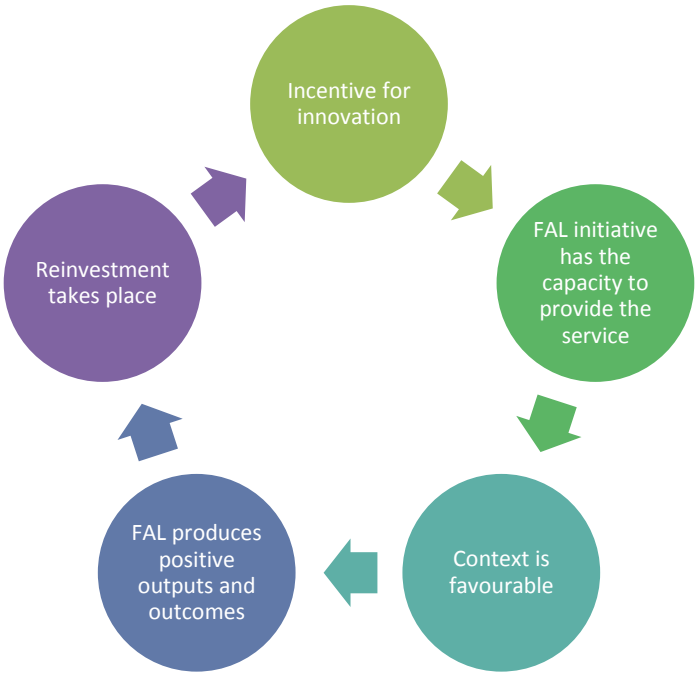
First, we'll look back at the original research hypothesis formulated in March 2010 Methodology Guide.

Next, we'll briefly discuss the challenges faced by country researchers in conducting their research to see what may be the impact of these challenges on the findings.

Last, but most definitely not least, we offer series of principals for sustainability identified through the case studies.

Research hypothesis

The research hypothesis took the form of a sustainability chain in which we expected different components to interact with one another in such a fashion that sustainability would, if not be ensured, be at least promoted. The graphic below depicts this chain.



Without spending too much time describing each component of the chain (a comprehensive description is available in the Local Researcher's Methodology Guide, 2010) we can summarize these components as follows:

1) *Incentive for innovation*: a FAL initiative will be created, and sustain if capable of innovating, providing a service not elsewhere available, finding creative ways to respond to otherwise unaddressed problems. We looked into what were the incentives for such innovation.

2) *FAL initiative has the capacity to provide the service*: A FAL initiative should have capacity (read organisational, technical, financial etc.) to make its innovative ideas a reality.

3) *Context is favourable*: a FAL initiative should benefit from external factors facilitating the production of its outputs and outcomes. It is not hurt by a State with a close access policy, or by limited ICT infrastructure for example.

4) *FAL produces positive outputs and outcomes*: a FAL initiative should deliver on its innovative ideas (outputs). These deliverables should change for the better the environment in which they operated (outcomes).

5) *Reinvestment takes place*: Someone, somewhere will seek to contribute and support the livelihood of the FAL initiative once the outputs and outcomes are made clear.

… and FAL initiative continues to innovate to satisfy users' new, different or increasingly sophisticated needs, meaning sustainability is achieved, at least until the next loop around the chain components is completed.

The good news is, as a whole, this hypothesis ended up being very close to what we found in our case studies. Incentives for innovation are multiple: whether it be the result of a new collaboration permitting to fill the gap in legal information accessibility or a computer scientist's question with regards to data relations, there are a number of reasons why individuals and groups have had the opportunity to develop an new service, and innovation continues to be fostered when the other elements of the sustainability chain are also positive.

Where the chain may not be as close to reality as we had originally thought is with respect to the *context*. Factors outside of the FAL initiatives control, or seemingly outside its control have a determining impact on the FAL's sustainability, maybe even more than any of the other components as far as the initial loop around the sustainability chain is concerned.

There may be a team with a brilliant idea, with access to the skills and tools they need to turn that idea into reality, but if they have no collaboration from the data sources, or even with collaboration, if the data sources don't have the means to provide the initiative with the data (we can think here of the case of a remote Court, far from where the FAL initiative is located, with no

internet access to send over the decisions), or if internet access is so expensive users prefer waiting for a paper copy to be mailed then logging on, then the FAL initiative has limited power to produce positive outputs and outcomes.

But if the context is not entirely favourable, if the context comes with its challenges (in reality, many few don't), not all is lost. FAL initiatives have found creative ways to respond to these and other external challenges.

Project challenges

It is not surprising that conducting a global study across 7 African and 4 Asian countries, with coordinators in Canada, India and South Africa comes with a number of challenges.

For the purpose of these good practices, the most noteworthy challenge has been accessing interview subjects. Lawyers are notoriously busy, and they being the most often primary audience of the FAL initiative studied, had a considerable impact on the capacity of researchers to conduct their study within the provided time, but also on their capacity to speak to individuals corresponding to the Methodology Guide's criteria (sex, age, location, etc.). This fact should therefore be considered when going through the case studies (which take the time to describe the individual challenges faced by each one of them) in addition to going through these good practices, based on the case studies' findings.

Good Practices for Sustainable Free Access to Law Initiatives

Far from being a comprehensive list of rules to be strictly followed, the good practices described below aim to tell the case study stories from a different angle with the hopes of inspiring Free Access to Law initiatives when it comes to developing strategies and solutions for sustainability. There are organised around the 5 components of the sustainability chain.

INNOVATION

1. The FAL initiative should establish clear objectives

Before doing anything, the FAL initiative should decide what it is exactly it's setting out to do. Objectives should be practical. Although all FAL initiatives hope to reinforce the rule of law and increase access to justice, such objectives are little help when it comes to developing strategies for achieving these goals. Objectives such as content selection, targeted audience, expected reach, search functionalities and other website features help determine priorities and evaluate capacity to achieve these objectives.

2. How to be small and do big things

Most FAL initiatives studied as part of this project were formed of quite small teams (often less than 5 individuals) working to get the law online for free. If, prima facie, this would appear to be a risk for sustainability (difficulty in insuring organisational memory, for example, or not having access to a wide enough range of skills for what is required to publish the law online for free), we saw a number of ways that small teams are working with what they have precisely to promote the initiative's sustainability.

One of the most recognized fosterers of innovation within organisations has actually been small teams (Curral et al., 2001). Small teams have tended to mean clearer objectives, increased flexibility and capacity to adapt to changes, facilitated consensus all the while facilitating dissent within the group - dissent having been recognized as an indicator of innovation (De Dreu, 2001). Dissent occurs often when new, untested, untried or controversial ideas are proposed. Similar environments stimulate innovation.

Many of this project's case studies demonstrated that quite small teams were capable of building FAL initiatives in contexts where alternatives were non-existent.

In Hong Kong, HKLII is currently run by a team of two, composed of the project manager and a programmer. Similar observations for JuriBurkina (Burkina Faso) and JuriNiger (Niger), where a project manager and editor work together to run the site. In the case of IndiaKanoon (India), the entire initiative rests upon a single software engineer. Interested in studying how data could interrelate, this engineer turned to judgments. This curiosity evolved into a highly visited free access to law site offering access not only to judgments but to laws and journals with a navigation facilitating the compression of legal information by non-experts.

In our study, more often than not, FAL initiatives have been launched by small teams. However, as much as small teams have been at the *source* of innovative FAL initiatives, they may also pose a risk in the medium to long term. For one, small teams pose a risk as far as institutional memory is concerned, which in turn poses a risk for any organizations sustainability. A FAL initiative should have the capacity to continue providing outputs and outcomes throughout changes in staff.

SAFLII is one of the larger teams studied, but it does provide inside into how one might ensure knowledge is not lost when individuals leave the team.

In 2010 SAFLII was faced with a severe funding crisis that lead to the departure of four of its senior staff members. The remaining staff, with the part-time support of an experienced law librarian who consulted for SAFLII since inception, carried uncompromised, albeit only core publishing, operations for a full year until a new manager was appointed in February 2011. The significance of this is reinforced further by the fact that all of SAFLII's remaining staff, save the consultant, commenced employment at SAFLII as interns with no prior background in electronic legal publication and, save for one, without any work experience either. This shows that it is important to build redundancy and transfer knowledge to ensure continuity even on tight budgets. Having a meaningful internship programme with intense mentoring covering the two core skill areas of IT and content management, coupled with good documentation, could contribute enormously to the viability of the FAL initiative.

Legalitas (Indonesia) is currently at a cross roads. The site relies heavily on the personal implication of the Project Manager meaning the future of this site depends on a single individual. If this individual runs out of time, or changes jobs or any other variable impacting his capacity to work on the site, there are limited options for continuing operations. In Mali, a single individual on an internship at the Human Right Association of Mali launched the FAL initiative. When the internship came to an end, so did the service. IndiaKanoon is also a single individual working to put the law online for free. At the 2011 Law Via the Internet Conference, a panellist speaking for LII of India mentioned they were in talks with IndiaKanoon to build a partnership. Such a partnership could help ensure IndiaKanoon is less reliable on a single person.

As a good practice then, small teams are great to spark ideas in the beginning of the initiative, but should not forget that processes and procedures for sustainability must be looked into once this spark begins to materialize.

CAPACITY

3. FAL initiatives should seek to have access to expertise in both IT and legal information

Launching a FAL initiative eventually requires expertise in both IT and legal information management. Legal information management experts understand how the law is applied, how different texts and part of texts interact with one another, and how these documents are used in day to day situations. IT experts can imagine a variety of ways to address these needs through less or more sophisticated means depending on available resources. Without access to legal

expertise, a FAL initiative may be greatly reducing its pool of potential users by reducing its understanding of users' needs. This good practice hand book recommends the solicitation of legal expertise for increased capacity when it comes to content selection, search and navigation criteria. Similarly, without IT expertise a FAL initiative will have a limited understanding of the available technical solutions. A FAL initiative would greatly reduce its capacity to produce meaningful results if it was to be completely deprived of one or the other expertise.

If this expertise is not available within the team of the initiative, the team should seek to have access to the required expertise elsewhere.

The Free Access to Law Movement constitutes a rich source of expertise in these and other related fields and has proven to be a venue fostering collaboration between established and emerging FAL initiatives. In our case studies, we saw that SAFLII, AustLII and Lexum have had the opportunity to provide new FAL initiatives with technology, training or even personnel for certain periods of time. Such collaborations have often been instrumental in the launch of FAL initiative. These collaborations must have, right from the start, a clear plan for how the partnership will shape in the long term. Partnering institutions should establish the goals and terms of the collaboration well in advance to provide for capacity building and sustainability.

Universities have also proven to be a rich source of expertise and talent for FAL. Researchers, professors and students in both law and IT work relatively side by side in universities facilitating access to key individuals. In addition, large pools of potential and future users, and therefore potential and future stakeholders, are found within universities. FAL initiatives can also benefit from the involvement of the users in the initiative. ULII (Uganda), for example, has enlisted the help of three law student volunteers to work on scanning and uploading documents.

4. FAL initiatives should know where they are headed (but not too far ahead)

The life purpose of a FAL initiative, most simply put, is to provide easy and free access to the law online. To do this, the FAL initiative must itself have access to the data to be used for publication. FAL initiatives should develop processes and procedures for on-going access to data. An opportunity may present itself such as the permission to scan a rich collection of historical decisions, and so systems are put in place to publish the law online for free – but how will content be accessed then after? In what format are the decisions to be published? How will they be sent to the FAL initiative? These processes and procedures need not be complex but targeted methods for effective content dissemination. Clear processes support quality and lead to reliability.

At HKLII, legislation and other sources are obtained directly from the website of the data providers. HKLII then works to make these documents more accessible through varied presentations and search functions. See the HKLII case study for a further description of a judiciary supported workflow.

At Kenya Law Reports (KLR), the National Council for Law Reporting uses a web based document management system to collect data from sources. Due to limited human resources at

the High Court Stations, the Council chose to post collection agents in all these Stations across the country. These agents are responsible for collecting and forwarding of the source documents to KLR through the document management system.

In addition to knowing how data will be acquired, FAL initiatives should spend a certain amount of time on establishing internal processes and procedures. Again, the goal is not to end up with an organisation weighed down by heavy organisational procedures but rather to develop targeted strategies which ensure staff members know exactly what they are to do and how to do it. For HKLII, such structure has greatly facilitated the team's capacity to move along with user demand. For JuriBurkina, a more formal structure comes with many of the downsides with few of the advantages of bureaucratic organisations (which could include streamlined practices, increased access to a wide pool of expertise or stable funding sources, for example). The team must wait for Council meetings before any changes or new ideas can be approved, which can take considerable time.

No matter how small the team, determining a certain set of specific operational procedures for staple tasks facilitates operations in the medium to long term.

CONTEXT

As mentioned when discussing the research hypothesis, context plays a much larger role in a project's sustainability then the sustainability chain may lead to believe. Context plays an important role both as a source of potential risk but also a source of opportunities. As a contextual risk rises, internal capacity must be stronger. Examples of contextual factors which should be considered by FAL initiatives include:

- ICT infrastructure from data source to end user
    - Do the data sources have access to computers, editing software, internet, scanners
    - Do the end users have access to the internet?
    - How do end users access the internet? (mobiles/computers, work/home/other)
- Access to information policies and government interest in public access and transparency
    - Does the legal framework favour or impede FAL publication? What is the IP regime applicable to the various documents requiring to be published?
    - Does the government or other relevant institutions have policies impeding or facilitating FAL publication?
    - Does the government publish raw data online which can be accessed by the FAL initiative?

- Demographic composition
    - Do the end users have sufficient level of education to access the published content (literacy rates, language in which the data is published, etc.)
    - How is the legal profession structured? Are there sufficient legal professionals to support the FAL initiative as users, as stakeholders? If not, what are possible alternatives?
    - Are there legal and IT professionals available to the FAL initiative?
- Legal information market
    - How accessible is legal information without the FAL initiative?
- Others (see the Environmental Scan Report for papers on contextual factors impacting FAL initiatives)

Such factors can on their own have sufficient impact on the FAL initiative to greatly hurt its chances of sustainability. FAL initiatives should look into contextual factors and consider how these will be addressed.

5. FAL initiatives should work with the ICT infrastructure in place

FAL initiatives, as understood in this study, rely on internet access. There is no FAL without internet.

But internet access hugely varies throughout the studied countries, and within each of these countries. FAL initiatives should be aware of how stakeholders and users are accessing the internet and develop their service accordingly.

When looking into how users accessed their site, Kenya Law Reports discovered large numbers of users accessing through their mobile devises. KLR is now looking into mobile friendly websites. SAFLII has also implemented a mobile version of its site as a result, in part, of user feedback.

In Niger, the courts do not have internet access. The editor goes from court to court with an external hard drive collecting the judgments. This requires that the judges and registries have access to computers.

The intermittent internet connectivity in certain parts of Africa serviced by SAFLII, lead the team to develop a CD/DVD version of the databases. Most notably, and very popular, was the Zimbabwe collection where the Zimbabwe Law Society and the Zimbabwe Legal Resources Foundation sent specific requests to SAFLII for delivery of updated versions of the CDs for distribution to their members. Flexibility in choosing the distribution channels is a good practice to follow.

Depending on the ICT infrastructure, the FAL initiatives' objectives can change. Where softcopies are simply not available, the initiative could have the first objective of scanning the collections and publishing image versions online when there is nothing else available; the objective being to first make the law available at all. Conversion into format permitting full text search could be a phase 2 project.

FAL initiatives should have a good understanding on the ICT infrastructure in which they are working in order to develop a functional service corresponding to regional realities.

6. FAL initiatives should use open source software

There is simply no more obvious match for FAL, a movement rooted in promoting justice and sharing knowledge through open, free access to information than the IT tools developed in a similar spirit, **open source software** (OSS).

Open source software is software made available in source code form. This means the software license permits its users to add, modify, adapt and share to build on the existing code. In addition, many open source applications are available for free and have a wise and ready-to-help support and development community. FAL initiatives should maximise their use of open source software, not only because it's an economical solution, but it fosters capacity building within the FAL team. "While it may seem like a Herculian task", notes IndiaKanoon's founder, "it's actually not that bad. There is a lot of stuff already out there, you just need to pick up the pieces and combine together and move on." (Iyengar, March 2010)

All FAL initiatives use some level of OSS and most use a lot of it. Without the Apache, PostgreSQL, Linux and all the others OSS software tools there would likely be no FAL. A large definition of FAL initiatives however, one that includes government initiatives, will show a more varied picture since many government are still cautious toward OSS.

See Poulin D, Mowbray A and Lemyre P (2007) "Free Access to Law and Open Source Software" in Handbook of Research on Open Source Software St. Amant & Still (Eds) Information Science Reference, Hershey - New York 2007

7. FAL initiatives should be sensitive to culture

The *Good Practices for the implementation of technological solutions in justice administration* prepared by IIJusticia states that "The development and implementation of technological solutions should be shaped respecting contextual and local features and differences". We could go as far as saying that in the case of FAL initiatives, it is relevant to capitalize on local features and differences.

FAL initiatives rely on communities of users and stakeholders. Capitalizing on culture can help build this community through user focused services.

The national Bar associations of Mali, Burkina Faso and Niger, group less than 500 members all together. This could appear as a risk: there is a very limited market able to contribution or to pay

to support free access to legal information. However, taking advantage of affordable technologies in combination with providing user specific services may be sufficient to turn these users into stakeholders. Being such small communities, these lawyers know one another generally quite well. They collaborate, share documentation, see each other in conferences and at other Bar events. They also frequently query on one another's expertise to do their job. A FAL initiative with Web 2.0 tools could harness this already existing community to promote open access to legal information.

Legalitas would also like to develop an online open forum. Allowing users to contribute to content can also mean more content for lower cost.

OUTCOMES AND OUTPUTS

8. Find your users, match their needs

This is perhaps the *best* practice of our good practices, and it's something all too few FAL initiatives have done.

Goals, and strategies to successfully achieve these goals should be based on a FAL's comprehension of their users' needs. The sustainability chain suggests that when positive outputs and outcomes are produced, stakeholders will reinvest to ensure the initiative can continue to operate. The case studies have confirmed this: when users benefit through outputs and outcomes, people take note.

Users can then become stakeholders, and stakeholders, champions. SAFLII engaged with such key figures in the Judiciary and legal profession - and besides promoting the ideals of FAL, it also helped with receipt of content, navigating the local context, and sometimes even bringing funding as these champions spread the word of FAL in ever growing circles of potential stakeholders. A SAFLII user also said in her interview that the buy-in that SAFLII has created is so enormous that it has created a culture where people expect and would demand that free access to legal material be provided to them: this goes a long way to ensuring the continued supply of legal information to the service - hence sustainability of the organization and also financial as people such as Department of Justice are asked to support.

In Malawi, the service is struggling to publish current judgments on time. One of the judges interviewed remarked that he feels there is a need for larger consultations with the Judiciary - the aspect of advocacy and engagement was not sufficiently developed and has led to lessened access to legal material now that the project is hosted locally than that was available when content was sourced through South Africa.

In Canada, CanLII services have successfully produced outputs and outcomes for lawyers and is now funded by the Federation of Law Societies of Canada. By offering a service to lawyers that has now become part of their professional routine, CanLII manages to be funded by lawyers but offer free access to all.

IndiaKanoon targets non-professionals and has adapted its content accordingly. JuriBurkina, an initiative facing challenges with regards to content update, was originally developed as a tool for Burkinabe lawyers, but website statistics are now showing that the vast majority of users are actually outside the country. There may be need here for JuriBurkina, a FAL initiative which has not been kept up to date in recent years, to target a different audience than the one originally planned for. HKLII benefited from AustLII's search technology which greatly facilitated HKLII's launch. Aware of its users' needs, HKLII is now adapting the search technology for Chinese. In addition, the Community Legal Information Centre (Hong Kong) offers material for non-experts, widening FAL's users and stakeholders. In Indonesia, Legalitas started off offering an innovative service in an environment where there were no other alternatives for accessing legal information for free online. Its success led to interest by the government which has decided to make this service part of its responsibility. A duplicate site was launch, greatly hurting Legalitas popularity. Now Legalitas is looking into offering new ways to facilitate access to legal information, namely, disseminating local government regulations.

These and other examples from the case study show that identifying your users, and being aware of their needs is one of the best ways to secure reinvestment.

REINVESTMENT

9. Free Access to Law initiatives should diversify funding sources

This may be easier said than done, but once users are benefiting from the outputs and outcomes, securing reinvestment tends to be facilitated.

Reinvestment, however, is in general the most difficult task for FAL initiatives. Donor-based projects benefit from sufficient funding for project launches, but are hugely at risk when that funding runs out. Partnerships with other FAL initiatives and Legal Information Institutes are at risk of similar fates: launching is facilitated, but long term service delivery is harder to ensure.

Possible funding sources identified throughout the study include:

- Advertising on the FAL website
- Government
- International Development Agencies
- Judiciary
- Law societies
- NGOs, or members of civil society with similar missions
- Private donations from users
- Selling parallel value added services to subsidize the FAL portion of the initiative

- University grants

But identifying actual potential sources of funding should be preceded by developing objectives and identifying users accordingly. If users are international, family law firms may be less interested in advertising for example, but transnational firms might be easier to solicit. If users are primarily non-experts, this may appeal to a wider range of NGOs working in access to justice than if the service is only used by a select group of individuals considered the elite in that environment.

Furthermore, case studied show that when it came to reinvestment, key individuals can make a huge difference. In Uganda, the involvement of the Chief Justice was essential and when the Chief Justice moved away, the difference was noticeable. In Burkina Faso, a newly involved individual is not convinced of the utility of FAL, and JuriBurkina has also in this case noticed the change from the previous individual who was highly dedicated to the initiative.

Whatever the case, all sources of funding in all contexts may eventually dry up but a well thought-out combination of sources can reduce risk and increase chances of sustainability.