

Justice Initiatives

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Legal Empowerment

Four billion people around the world live without the protections of the law, vulnerable to exploitation and violence, and often mired in poverty. Legal empowerment has the potential to change this: to reduce poverty, further the rule of law, and help people realize their rights. This issue of *Justice Initiatives* looks at the promise and the practice of legal empowerment. It is published in support of the Global Legal Empowerment Initiative, a platform for interested donors and practitioners to build the field of legal empowerment.

FOREWORD

Legal Empowerment, Justice, and Development

George Soros

This edition of *Justice Initiatives* provides insights into legal empowerment, which is the process of increasing the capacity of ordinary people to exercise their human and civil rights as individuals or as members of a community.

This process is crucial for people who are deeply impoverished or belong to marginalized communities. Today too many people enjoy none of the benefits of the rule of law. They live in countries or regions where there are no functioning, uncorrupted court systems or law enforcement agencies. When they find themselves under arrest, often arbitrarily, they do not enjoy the benefit of defense counsel. When they are cheated by an employer or have had their land seized by government-connected thugs, they cannot seek redress through a civil suit or criminal proceeding. When they have suffered acts of criminal violence, they cannot turn to the police with any confidence of finding help. Millions of such people have no birth certificates or national identification cards, the documents required to obtain health-care benefits, to exercise the right to vote, to obtain identification documents for their children, or to hold title to land and secure their rightful inheritance.



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How can developmental aid and foreign investment benefit deeply impoverished people in places where they do not enjoy the rule of law or have access to judicial institutions or law enforcement agencies? How can the sanctity of even the crudest contract exist under such conditions? The answers to these questions are obvious. Without access to justice, extreme poverty cannot be conquered for these billions of people.

So can legal empowerment programs backed by external financial and technical support succeed in securing access to justice for ordinary people? This book presents diverse accounts of how programs to promote legal empowerment have had a positive impact on impoverished communities both in terms of human rights and on economic development. In India, local people are taking the lead in monitoring compliance with environmental laws. In post-conflict Liberia and South Africa, civil society and government programs provide free legal advice to help poor mothers secure child support and access the state education system. In various countries, paralegals are helping people overcome corruption in order to secure government entitlements.

This news could not have come at a better time. Almost a decade and a half ago, the United Nations, its member-states, and international and civil society organizations launched a campaign to eliminate extreme poverty around the world by the year 2015. The United Nations unanimously adopted a set of eight specific goals, the Millennium Development Goals, to provide this campaign with clear direction as well as benchmarks to measure its progress in efforts to increase access to food and potable water, provide primary education for all children, and improve maternal health.

The campaign has not achieved its major targets, and its benefits have not been spread evenly across the developing countries. But it has nevertheless become the most successful global anti-poverty effort in history. The percentage of people in the world surviving on less than the equivalent of \$1 per day in 2010, for example, was about half of the percentage in 1990. More girls are attending school. Fewer women are dying in childbirth. More than two billion people have improved access to potable water.

These successes strongly suggest that extreme poverty—once thought to be ineradicable—can be reduced even further with the adoption of a new and better set of development goals and with persistent and better coordinated work toward achieving them.

In the autumn of 2013, the United Nations General Assembly will open a two-year debate on the set of shared development objectives to replace the Millennium Development Goals for the period from 2015 to 2030. In preparation for this debate, the Secretary-General's High Level Panel of Eminent Persons drew up a set of recommendations for a new shared development framework, which will guide development aid. These recommendations affirmed that justice, human rights, and the rule of law must be at the center of the international community's efforts to eradicate extreme poverty.

Legal empowerment programs can be effective. This is a message the leaders of the member-states of the General Assembly need to hear.

George Soros
Founder and Chairman
of the Open Society Foundations

PREFACE

Why Support Legal Empowerment

Justine Greening MP*, UK Secretary of State for International Development

It is my pleasure to help introduce *Justice Initiatives: Legal Empowerment*.

Many of us take for granted the fact that we can participate in politics, hold government to account, and protect our property. But up to four billion people around the world don't have these basic rights and freedoms. They lack one of the key building blocks they need to build a safe, secure, and prosperous future.

Legal empowerment helps tackle the causes of poverty, not just its symptoms. It is central to what David Cameron calls "the golden thread" of conditions that all successful economies around the world share: the rule of law, the absence of conflict and corruption, and the presence of property rights and strong institutions. Legal empowerment can help people take control of their own destiny and build a future free from poverty.

It gives citizens the tools to push for law reform, address grievances without recourse to violence, protect women and girls, and seize opportunities to drive economic growth. It can also result in improved delivery of basic services: when citizens are aware of their rights to health and education services, they are more likely to access them. Legal empowerment approaches engage the full range of leadership in society, from governments to traditional village leaders, helping them to promote and adopt positive changes.

This volume demonstrates the diverse ways in which legal empowerment can

reduce poverty and vulnerability by helping poor people use laws and rights to gain greater control over their own lives.

The UK Government's approach to legal empowerment is to tackle the everyday obstacles facing poor people across the world. In Sierra Leone, we are helping to develop a network of paralegals and community mediators. These are ordinary people based in the community, who are given a basic schooling in the law and conflict resolution. They, in turn, help others understand their rights, resolve potentially violent disputes, and address both individual and community-wide problems. This work has a particular focus on addressing violence against women and girls.

In Bangladesh, the UK's investment in community legal services between 2003 and 2009 helped poor people (80 percent of them women) resolve disputes over land, inheritance and dowries, and secure or recover assets estimated at £1.5 million. Through our support for the Global Legal Empowerment Initiative, the UK is helping to pilot a greater range of options, share lessons, and identify solutions that represent real value for money.

Around the world, governments are beginning to recognize the potential of legal empowerment to deliver justice, promote economic growth, and encourage long-term social change. It is my aspiration that others will join Britain in supporting the kind of work taking place in this exciting, evolving field.

Note

* The Rt. Hon. Justine Greening MP is the Secretary of State for International Development at the UK's Department for International Development. She is the Conservative MP for Putney, Roehampton, and Southfields.

INTRODUCTION

Legal Empowerment's Approaches and Importance

Stephen Golub* sketches an overview of legal empowerment as a concept and draws lessons from its practice.

Around the world, nearly four billion people live without any legal protection, left without recourse for the injustices they face daily. Denied access to legal advice or courts, often plagued by poverty and discrimination, they have no means to exercise their rights. Legal empowerment has the potential to change this—to realize, for these four billion people, the promise of the rule of law.

This volume addresses two key questions: How does legal empowerment operate, and why is legal empowerment important? The chapters that follow address these questions in different ways and to different degrees. But taken together, they paint an insightful portrait of an evolving, expanding field.

This introduction provides a brief overview of the concept of legal empowerment. It then summarizes and comments on key elements of the subsequent papers. It concludes by drawing together some common themes and lessons running through the volume.

A Brief Overview of the Concept

Various experts—including those represented in this book—define legal empowerment in varying ways. However, these experts would likely agree that legal empowerment can be characterized as the use of rights and laws specifically to increase disadvantaged

populations' control over their lives. To sketch what each of these component terms means:

- “Rights” includes international human rights standards, but in legal empowerment work more typically involves people’s entitlements declared or implied by national or local legislation, regulations, administrative rules, or court decisions.
- “Laws” includes those adopted by legislatures, but also includes administrative regulations and processes as well as traditional justice systems.
- “Specifically” conveys legal empowerment’s emphasis on rights, laws, services, advocacy, and processes that focus directly on benefiting the disadvantaged (improving their control over land or protecting them against physical abuse, for instance) as opposed to reforms that may do so indirectly (such as strengthening judicial administration or business investment rules).
- “Disadvantaged populations” mainly comprise the poor, but also include women, minorities, and other groups suffering abuse, discrimination, persecution, or repression.
- “Increase...control over their lives” includes elevating or protecting people’s income and assets, but also involves such attributes as strengthening their physical security; effective access to health, education, and other services; input into

family, community, and governmental decision-making; and building their capacities and power to pursue these goals on their own.

Much of legal empowerment reflects Nobel-winning economist Amartya Sen's notion of "development as freedom." It involves increasing people's freedom to improve and live their lives, unburdened by unjust constraints.

The concept is partly defined by having a legal element. Thus, where there is a legal dimension in, say, women's or economic empowerment, it is one and the same as legal empowerment. But as this volume illustrates, often it is power even more than law that is the key component of legal empowerment.

Legal empowerment is both a process and a goal. The process involves the disadvantaged (and/or their allies) seeking to increase their control over their lives. Achieving such enhanced control constitutes the goal.

Chapter Summaries

In "You Place the Old Mat with the New Mat": Legal Empowerment, Equitable Dispute Resolution and Social Cohesion in Post-Conflict Liberia," Peter Chapman and Chelsea Payne describe how a community-based paralegal initiative carried out by international and national nongovernmental organizations (NGOs) serves manifold justice needs in a post-conflict society. In the development context, paralegals are nonlawyers, sometimes from the very communities they serve and often trained by nongovernmental organizations, who employ their legal knowledge to educate, advise, represent, or otherwise assist people

regarding their rights. They constitute a growing, cost-effective justice mechanism in many countries.

Launched in 2007 by the United States-based Carter Center in partnership with the Catholic Justice and Peace Commission (Liberia's leading human rights organization), the Community Justice Advisor program (CJA) addresses issues that Liberian government institutions handle poorly if at all, not least the lack of accountability and responsiveness by those very institutions. For example, CJA paralegals successfully pressed a corrupt magistrate to return funds he stole from a plaintiff. They similarly persuaded a prosecutor to arrest and secure the conviction of a dangerous criminal who had brutalized a woman. The organization has proven instrumental in helping clients obtain enforcement of a 2003 law that granted women inheritance rights; otherwise, like so much legislation in Liberia and elsewhere, to a great extent this law would not be implemented. Initiatives such as CJA help reduce the injustice that can fuel instability and frustrate development

The authors illuminate other ways in which CJA and like-minded efforts elsewhere help ameliorate the impetus for renewed war in Liberia and new conflict elsewhere. They describe, for example, instances of CJA engagement that prevent ethnic and other hostilities in communities. They assert that administrative law processes that paralegals handle—including those tainted by corrupt officials' conduct—affect more people than do criminal justice matters that international aid has tended to prioritize in Liberia. And they note the elite-oriented nature of the country's legal profession, which often ignores or acts to the detriment of the poor.

More generally, Chapman and Payne make the case for CJA and other civil society legal empowerment initiatives in Liberia to serve as both a complement and alternative to the predominant “top-down” approach to justice issues taken by a post-conflict United Nations international assistance mission and other donors in that country. That approach has emphasized building courthouses, judicial officials’ capacities, and other state institutional capabilities. In contrast, the authors point to empirical studies demonstrating that most Liberians pursue justice through community-based, traditional, or hybrid justice forums and that Liberians see these forums as more affordable, accessible, comprehensible, honest, and transparent than state institutions. But the authors do not denigrate aid to state institutions; rather, they stress greater relative attention to the many everyday ways in which paralegals can advance justice and preserve social stability by working with older structures rooted in the society. Hence, they favor a more balanced focus on both types of work, placing “the old mat with the new mat.”

Ward Berenschot’s and Taufik Rinaldi’s “Within and Around the Law: Paralegals and Legal Empowerment in Indonesia” complements the Liberia paper by presenting a granular case study of paralegals spearheading a rural community’s struggle to retain its land in the face of corrupt, powerful opposition. In the process, the chapter illuminates numerous important features of legal empowerment.

Though paralegals have a relatively limited presence in Indonesia, a landmark legal aid law adopted in late 2011 included provisions for strengthening and expanding their roles. Those roles can reach far beyond legal

aid, however. As implied by the chapter’s title, paralegals can work within and around the law by using a combination of legal skills, political acumen, and community mobilization. A key feature of the article is how it plumbs the complex depths of the society in which the paralegals work, where police pay their superiors in order to be in position to engage in graft, where far more people trust informal systems than the judiciary to do justice, and where a combination of ignorance and powerlessness can deprive the poor of their land and livelihoods.

The authors explore the contours of these conditions via an ethnographic study (backed by more quantitative research) largely concerning how a corrupt local leader and other officials capitalized on legal ambiguities and farmers’ lack of legal knowledge to extract payments from them. The payments enabled the farmers to temporarily stay on their land, even though the corrupt individuals still threatened to expel them from it. Two paralegals in particular helped halt these practices and even got the leader jailed. But nearly a decade down the line in this saga, the community’s land tenure remains tenuous. The authors further note, however, that the World Bank and U.N. Development Programme projects that promoted and studied Indonesian paralegal development were too short in duration to insure effective engagement with and services for many communities they aimed to benefit.

Most of all, however, Berenschot and Rinaldi come down in favor of recognizing the inevitably political nature of much paralegal work (and by extension legal empowerment) in addressing power disparities in many instances of injustice. They accordingly suggest that, in addition to legal train-

ing, paralegal programs should often seek to develop such skills as negotiating with politicians and government officials, community organizing, and use of media.

Approaching paralegals from a different programmatic angle, Rachael Knight reaches similarly supportive conclusions as the two preceding sets of authors. Her “Legal Empowerment for the Protection of Community Land Rights: Findings from the Community Land Titling Initiative, 2009–2011” discusses the findings of a three-country study of pilot projects implemented by the Rome-based International Development Law Organization in cooperation with NGOs in three African nations. Knight notes the realities of African governments granting huge land concessions to foreign investors and the very weak implementation of laws designed to protect citizens’ land rights and concomitant livelihoods, social systems, and cultures. She argues that against this backdrop, it is essential to document communities’ customary land claims in a widespread, proactive manner.

With that goal in mind, the study employed randomized control trials, focus groups, and observation of community discussions to compare populations that received four different levels of assistance from the NGOs in documenting their land claims: “control communities,” which received only basic, written legal information; “education-only communities,” which also received monthly training; “paralegal-assisted communities,” which were further aided by community-based paralegals, with some back-up from legal and technical professionals; and “full-service communities,” in which those professionals carried out more comprehensive documentation services for

the communities (and in which paralegals were not active).

Among its many findings, the study concluded that the full-service communities performed worse than the paralegal-assisted groups across a range of indicators. These results must be viewed very cautiously. Still, Knight hypothesizes that communities that developed the capacities and responsibility to take on key tasks on their own accordingly took on more ownership over completing the processes involved and overcoming obstacles. She tentatively concludes that the most empowering model of service provision for land documentation may be to train and assist communities themselves to do as much as they can, with attorneys and other professionals stepping in when legal, technical, or political obstacles stymie the communities’ efforts.

In “Legal Empowerment and Public Administration: A Map of the Landscape, and Three Emerging Insights,” Vivek Maru and Abigail Moy carve out an important part of the legal empowerment pie for analysis. Echoing elements of an argument by Chapman and Payne concerning Liberia, Maru and Moy make a strong case that many people with legal problems are more likely to find redress through administrative agencies, officials, and regulations than they are through the courts.

As part of this case, the authors point out that administrative mechanisms can be crucial for an HIV-positive South African woman denied disability benefits (and her daughter who then misses school to care for her ill mother and siblings), an impoverished Buenos Aires community initiating action to be connected to the city’s water supply, and Filipino farmers fighting eviction from their land by defending their cer-

tificates of ownership before a quasi-judicial agrarian reform board. More likely than not, in these and many similar cases people turn to such administrative processes rather than the courts in order to seek redress. This is because such processes have legal jurisdiction over such issues and they may be easier to work through.

The authors go on from there to argue for an increased focus on three administrative mechanisms that can make a significant difference in people's lives: clearly written and easily accessible statements of administrative regulations, paralegals who can help their fellow citizens understand and get the regulations implemented, and feedback channels whereby citizens can air grievances not only to seek redress but to improve administrative rules and practices. In the process, they show how legal empowerment can be one and the same with other approaches to helping the disadvantaged become aware of and act on their rights: legal aid, social accountability, and deliberative governance. Throughout their analysis, Maru and Moy assert a fundamental fact about legal empowerment, which is that it represents a practical, problem-solving approach to integrating law and development by focusing on the injustices the poor encounter and engaging the institutions necessary to provide relevant services or relief.

Debra Ladner and Kim McQuay document the challenges of and lessons learned from integrating legal empowerment components into large projects supported by a multilateral financial institution (MFI) in "The Legal Empowerment for Women and Disadvantaged Groups Program: Innovations in Project Design, Monitoring, and Evaluation." The chapter discusses modest pilot projects and research conducted

by the Asia Foundation and partner NGOs for the Asian Development Bank (ADB) in three Asian countries. These initiatives examined the experimental inclusion of legal empowerment elements in three major socioeconomic projects funded by ADB loans. The pilots involved strengthening citizen awareness of and citizen committees' input into services regarding water management in Bangladesh, urban infrastructure in Indonesia, and health care in Pakistan. Of course, much legal empowerment work entails integration (often spearheaded by NGOs) of legal and socioeconomic activities. The foundation's research, as reflected in its 2009 report that this chapter summarizes, differs in its focus on such integration in the context of MFI loans.

The authors commendably acknowledge factors constraining the research. These included the short time frame (less than a year) for the pilot components, when in fact legal empowerment (like most development work) is a long-term process. There also were various flaws in the ADB projects that the legal empowerment components were integrated into. These ranged from the delayed construction of water-specific infrastructure in Bangladesh (which in turn impinged on the pilot legal empowerment work) to the virtual nonexistence of many health monitoring committees essential to the legal empowerment component in Pakistan.

Nevertheless, a number of insights and indications of impact emerge from the Ladner-McQuay paper. The positive experience of partner NGOs carrying out the pilot components confirmed that while legal skills are useful, it is important to be politically savvy and not necessarily legalistic in eliciting cooperation from government officials. The

paper further notes how knowledge about matters ranging from nonformal education to community organizing to livelihood development can be crucial in building legal empowerment. Finally, the research found improvements in various kinds of knowledge, attitudes, confidence, and beliefs about gender-equity as they pertained to the ADB-funded projects and related matters, even given the limited duration of these initiatives.

The governance aspect of legal empowerment is highlighted in “Transparency International’s Advocacy and Legal Advice Centres: Citizen Empowerment against Corruption,” by Conrad F. Zellmann. The paper discusses the expanding work of the ALACs, which were first launched in three nations in Southeastern Europe in 2003 as simply toll-free hotlines. Now found in roughly 50 of the over 100 countries where Transparency International (TI) has independent but affiliated national chapters, and coordinated by those chapters, the centers have become considerably more sophisticated over the past decade. Well over 100,000 people have contacted them in person, by phone, via community outreach activities and, increasingly, online.

ALACs serve two main, entwined functions. First, their paralegals, attorneys, and other personnel provide advice and assistance (though usually not representation) for witnesses, victims, and whistleblowers concerning corruption. Help from the centers varies from place to place and issue to issue, but can include referring people to the appropriate government offices, other civil society organizations, and even the media to report problems and seek redress. On a more systemic level, ALACs employ the data flowing from the compilation of in-

dividual cases to educate sympathetic government officials about the severity of some problems; where such officials take corruption seriously, such data can be persuasive. The centers also belong to coalitions that press for institutional, policy, and legal reforms, including greater transparency in governmental operations and punishment for corrupt officials. While not naïve about the obstacles it faces in many societies, TI feels that a blend of statistics, pressure, and cooperation serves the ALACs best in getting governments to take action.

The paper offers indications of impact benefitting individuals or spurring reforms. The former include enabling a small business owner in Azerbaijan to open a shop despite refusing to pay a bribe demanded by authorities; a similar case in Armenia, whereby market vendors successfully refused to pay off corrupt tax officials; and a community in Rwanda that prevailed against a dishonest (and eventually jailed) cooperative president who had forged documents to assert his ownership of a gold mine. The reforms include increased access to official information in Croatia and the Czech Republic; steps against smuggling along the Mexican-Guatemalan border that was harming legitimate local businesses; action against traffic officials’ bribe-taking in Ghana; and increased media and donor attention to large-scale abuses of property rights in Georgia.

Focusing on a nation whose experience spans much of the legal empowerment spectrum, in “Legal Aid Approaches in South Africa and their Impact on Poverty Reduction and Service Delivery,” David McQuoid-Mason illuminates the multi-faceted “how” and “why” of legal aid in his country—that is, the many ways in which it operates and

the many benefits it yields. Reaching beyond the narrow notion of legal aid as limited to court assistance for criminal defendants, McQuoid-Mason characterizes the concept as involving a broad array of approaches pertaining to criminal and civil issues alike, so that the concept is essentially equivalent to legal empowerment.

Supported by a combination of non-state sources and a key government-funded organization, Legal Aid South Africa (LASA), these approaches include information dissemination, training, advice, representation, law reform advocacy, and public interest litigation. These activities are carried out by: well over 100 LASA justice centers, private attorneys' pro bono and state-compensated services, paralegals, university-based law clinics, recent law graduates working toward completing their professional credentials, public interest law firms, community-based organizations, public education programs, and national and local NGOs (including those that train and employ paralegals, carry out public interest litigation, or blend legal aid with other development activities). While legal aid in South Africa is far from flawless—McQuoid-Mason notes, for instance, how government agencies have frustrated funding of certain worthwhile initiatives—it nevertheless represents one of the most comprehensive, integrated systems in the world.

The benefits of these legal aid efforts are equally multi-faceted, as they advance poverty alleviation, government service delivery and accountability, and implementation of constitutional and other rights. For instance, over the past several years paralegal NGOs have secured several millions of (U.S.) dollars of payments for government benefits due clients, as well as providing manifold

other services. Public interest litigation by other NGOs has yielded vital precedent-setting decisions regarding access to housing, water, social security, and health services. For example, one crucial court decision ensured the provision of antiretroviral drugs to pregnant mothers and their babies, preventing HIV transmission and thus saving thousands of lives, obviating other severe suffering and reducing long-term health care costs.

In “Sustaining the Process of Legal Empowerment,” Robin Nielsen nicely completes this volume by offering insights on an issue that permeates international development, as well as on some important related matters. Consistent with the characterization of legal empowerment offered in this Introduction, her description of empowerment in general may be summed up as involving both a process and an outcome that involves the capacity of an individual or group to make effective choices so as to create desired results. She further illuminates the concept by describing how the “process continually loops back on itself as empowerment grows.” Thus, nearly 20 years ago a Namibian NGO launched a program to combat domestic violence, subsequently helped draft and advocate for a 2003 law addressing this problem, and continues to undertake multi-faceted work to get that law implemented. Many NGOs and civil society coalitions in many countries similarly effectuate such cycles.

Nielsen goes on to address numerous other issues affecting the sustainability of legal empowerment. She warns against short-term monitoring and evaluation methodologies suited to very different development programs, in that these may fail to capture the complex dynamics and

extended time frames necessary to sustain legal empowerment progress. At the same time, she argues for additional research to build on the growing evidence of legal empowerment impact. Nielsen discusses how programs that integrate legal empowerment into broader development initiatives can prove beneficial and perhaps politically and financially sustainable; she cites the example of a Kenyan HIV/AIDS program that initiated a legal clinic to help individuals stricken by the disease to combat discrimination, secure public assistance benefits, and undertake succession planning in the event of their passing away. Nielsen also highlights: how context-specific information about context-specific problems people encounter is much more useful to them than general information about rights and laws; how building community monitoring mechanisms into NGO and government legal empowerment programs alike can sustain the viability and accountability of such initiatives; the greater effectiveness of collective action organized around common interests, as opposed to persons seeking individual relief; and the value of building local capacity through paralegals and other programs.

Her analysis concludes by offering observations and key recommendations regarding the effectiveness and financial sustainability of legal empowerment. She highlights the value of development agencies and other sources providing sustained core funding (covering salaries, office rental, and other institutional expenses) for NGOs conducting legal empowerment work. She addresses the advantages (in terms of sustained, effective support in some contexts) and disadvantages (regarding political and bureaucratic obstacles) of government

funding for such work. Nielsen also illuminates the fact that sometimes a key consideration is not sustainability of a legal empowerment initiative but of its impact—that whether a given organization lasts for decades can be less important than whether significant numbers of people, policies, or legal reforms benefit from its operations. With these considerations in mind, she suggests that donors accept the value of sustained support for national and global legal empowerment organizations and networks, as well as the establishment of multi-donor basket funds to fund this work.

Themes and Lessons

- *Paralegals.* Perhaps the most prevalent theme permeating this volume is the manifold functions and value of paralegals. This book does not paint a complete picture of the approaches to and impact of paralegal work. Still, simply drawing on the chapters here, their roles include being an integral part of a national legal aid structure in South Africa, conducting dispute resolution and protecting community rights in post-conflict Liberia, organizing and advocating for farmers in Indonesia, and administrative justice and anti-corruption activism across the globe. They merit increased political and financial support as a multi-faceted, cost-effective mechanism for making justice a reality in the lives of the disadvantaged.

- *Legal implementation.* A related but even broader theme regards the crucial importance of legal implementation—that is, insuring that laws and rights that exist on paper are enforced on the ground. Much attention in the general field of law-and-development focuses on legal reform, which features pro-

moting positive changes in laws and legal institutions. But especially when it comes to the disadvantaged, such changes mean little unless there are pieces in place to get them enforced. Whether it involves paralegals, media, integration with other development efforts, community organization and mobilization, education, litigation, or negotiation, legal empowerment is substantially about legal implementation.

- *Not just bottom-up: legal empowerment as legal reform.* The centrality of legal implementation notwithstanding, legal empowerment also achieves important legal, administrative, policy, and institutional reforms. In this volume, two broad types of examples involve a range of health, housing, and other issues in South Africa and a number of anti-corruption initiatives across the globe.

- *The cycle of implementation and reform.* Those South African and anti-corruption examples are also noteworthy because they are consistent with Nielson’s description of how a Namibian NGO’s work on violence against women “loops back” to constitute a cycle of implementation, reform, and (again) implementation. In all of these instances (and many more in other countries), civil society groups engage in efforts to get (decent) laws implemented and rights protected. These very efforts help make them experts on legal and other reforms that need to be adopted, so as to better benefit the disadvantaged. The result is often a cycle of implementation fueling reform, and vice versa.

- *Core support: building legal empowerment differs from building roads.* Through their monitoring and evaluation systems and general orientations, development agencies

sometimes aim for rigid targets in the projects they fund—X miles of roads built, for example. But as demonstrated throughout this volume, building legal empowerment (or democracy, or better governance, or gender equity) is not the same as building roads. Nielson’s call for core operational support for legal empowerment NGOs and basket funds for the field reflects the reality that they must respond to emerging needs, priorities and obstacles, rather than indicators and targets that a project design locks into place five years in advance. Responding to partner populations is not just a matter of development principle, however; it also is crucial for cost-effective development practice. Major aid agencies lavish large sums on expensive consultants and projects that advise governments on reforming and implementing their laws. By virtue of drawing on less expensive and more responsive services from within a society (and of course documenting their impact along the way) legal empowerment NGOs can deliver more efficient and effective results.

- *Civil society.* Certainly, as Maru and Moy and other authors illustrate, government can play a role in legal empowerment. In fact, ideally governments would fund and conduct many programs in this field, as is done in South Africa. But as Chapman and Payne, and Berenschot and Rinaldi demonstrate, legal empowerment work by civil society groups often is necessary precisely because of governmental corruption, repression, or bureaucracy. Even in South Africa, state institutions can stymie support for legal empowerment work, and there is an ongoing need for independent civil society voices to press for legal implementation and reform. The need is even greater in most other nations, including those with

relatively progressive governments (such as Indonesia and Liberia) that lack modern South Africa's more positive legal culture. Thus, the ideal of state assumption of most legal empowerment work should not cloud the reality that sustained support for civil society is necessary to carry out this work.

■ *Incubation by international NGOs.* In a related vein, international NGOs can play a vital role in incubating legal empowerment programs where domestic civil society is not yet strong or sophisticated enough to do so on its own. The Carter Center proved pivotal in launching the Liberia paralegal program, just as the Open Society Justice Initiative did in starting a Sierra Leone initiative (later an NGO) on which the Liberia effort is partly based. (That Sierra Leone program was in turn partly modeled on NGO experience from South Africa.) Similarly, though not a focus in this book, Penal Reform International was instrumental in the founding of a program and eventual NGO that aids prisoners in Malawi (and which has been a model for similar efforts elsewhere); the Asia Foundation's use of bilateral agency funding has helped build legal empowerment NGOs and networks in the Philippines and other countries; ActionAid has carried out and supported local legal empowerment initiatives around the world; and the new inter-

national legal empowerment NGO Namati is fortifying the field and relevant networks. These kinds of international NGOs merit support to expand their respective roles.

■ *The future of legal empowerment.* The future of legal empowerment could and should involve a combination of features highlighted in this book: cognizance of the political and power dimensions, as in Indonesia; attention to dispute resolution on individual and community levels, as in Liberia; expanded investments in applied research; appreciation of the importance of administrative processes; contributions to battling corruption; core support, basket funds and other devices that recognize that legal empowerment's impact on implementation and reform merits sustained donor investment; growing roles of paralegals; and a broad diversity of approaches, as demonstrated by South Africa. But perhaps the single respect in which the field may well grow involves the integration of legal empowerment into other development fields, such as health, housing, education, and governance. It simply makes sense for cost-effective efficacy of development initiatives if people know and can act on their rights, so as to increase control over their lives. How and why they do so is what this book is all about.

Note

* Stephen Golub is an international development scholar and consultant with experience in 40 countries. He coined the term "legal empowerment" in 2001 and has helped pioneer the concept since then. In addition to teaching courses at Berkeley Law School and Central European University, he has worked with many major development agencies, policy institutes, NGOs, and foundations.

“You Place the Old Mat with the New Mat”: Legal Empowerment, Equitable Dispute Resolution, and Social Cohesion in Post-Conflict Liberia

Peter Chapman* and Chelsea Payne* examine how legal empowerment programs in Liberia can provide an effective, community-based complement to more centralized, top-down efforts to reform the justice sector.

Introduction

Promoting good governance in Liberia remains a critical challenge and reform of the justice sector has proven particularly difficult. Many Liberian citizens view the formal justice system with mistrust, believing that it responds to and perpetuates elite interests. Historically, appointments within the justice sector, like elsewhere in government, were regularly distributed as patronage, as elites manipulated institutions of justice for personal and political gain.¹ The pre-1980 Liberian regime, Samuel Doe’s government, and the regime of Charles Taylor all used the formal justice system as a tool to advance their narrow interests.²

An economic assessment from 1966, for example, concluded that “[t]he overriding goal of Liberian authority remains what it has been for the past 150 years: to retain political control among a small group of families of settler descent and to share any material of economic growth among its own members.”³ Liberia’s 2008 Poverty Reduction Strategy suggested that failures of governance and limited opportunities for

participation in governance processes were significant causes of the country’s civil wars of 1989–96 and 1999–2003.⁴ The Liberian Truth and Reconciliation Commission also pointed to the failure of the justice sector as a factor in driving and sustaining the conflict.⁵

In the period following the signing of the Accra Peace Accords in 2003, donors and government viewed (re)creating a Liberian justice sector as a centralized initiative, to be imposed from the top down, and from the capital to the countryside. Various actors envisioned a functioning justice sector, modeled on “best practices,” believing capacity building, technical assistance, and financial support could make it attainable.⁶ The United Nations Security Council authorized the United Nations Mission in Liberia to “reestablish...national authority throughout the country” and develop “a strategy to consolidate governmental institutions,” including the justice sector.⁷ This exercise began with basic infrastructure improvements, such as county-level circuit courts, and the training and deployment of county attorneys. Such an approach necessarily directed the vast majority of justice sector investment to state institutions, including the Ministry of Justice and the Liberia National Police, the judiciary, and Liberia’s only law school at the University of Liberia.

However, empirical studies reveal that, in contrast to the top-down approach taken by the United Nations mission, most Liberians pursue justice through community-based, non-state, or hybrid justice forums.⁸ A 2008–2009 survey by the Centre for the Study of African Economies at the University of Oxford, for example, found that of roughly 5,000 disputes, less than four percent went to the formal court system. Half of all disputes did not go to *any* forum for resolution.⁹ A 2010 national household survey found that 91 percent of respondents nationwide said they had little or no knowledge of the formal court system.¹⁰

A 2009 study by the United States Institute for Peace (USIP) found that even when they could use the formal system, Liberians often prefer a justice system that is locally relevant and consistent with community norms.¹¹ The USIP study highlighted several features of the community-based systems that aggrieved parties seem to prefer, including:

- lower direct court costs and lower transaction costs;
- physical accessibility of community leaders;
- use of local dialects and absence of legal terminology;
- perceived lower susceptibility to undue influence; and
- overall transparency.

Given these preferences, it is likely that the normative approaches of the customary system will remain relevant, even as the Western-modeled formal system slowly expands its reach. Indeed, reformers should seek to support contextually specific strategies that account for Liberian expectations and aspirations in the short and near term.

Legal empowerment requires engaging with, and supporting, a variety of dispute resolution forums that address the challenges poor and marginalized communities face. Such an approach seeks to deliver more tangible, immediate gains than offered by capacity building at the highest levels of the state system. While certain categories of disputes depend on high-level state legal institutions, justice reform efforts also need to respond to the challenges average Liberians confront daily. Such challenges include disputes over rights and entitlements at the local level, access to resources, accountability of local officials, legal identity, and civil disputes.

It is reasonable to question whether post-conflict justice reform to date has served to consolidate peace and address legitimate grievances. Prioritizing the construction of a centralized justice sector immediately following the conflict—without corresponding support to community-based structures and civil society organizations—overlooks the problems that the Liberian population had with exclusionary and unrepresentative state justice systems in the past. Developing a new compact between citizens and the state requires citizen oversight of, and engagement with, state institutions—a process that centralized capacity building alone cannot achieve.

Amartya Sen defines poverty as a lack of freedom or control over the decisions shaping one's life.¹² Issues of justice and equality cut across development and profoundly affect this control. Reform should focus on empowering citizens to exert control over their lives. Equipping communities and individuals with the capacity and tools to promote accountability, resolve disputes, and prevent recourse to violence is a critical

first step in re-establishing justice services. Over the longer term, such community engagement and empowerment can work to ensure the development of a justice sector that reflects and responds to the aspirations, and meets the needs, of average Liberian citizens. This paper seeks to map rule of law reform in Liberia and document how legal empowerment approaches positively affect this landscape. We argue that legal empowerment-focused paralegal projects in Liberia, including the Catholic Justice and Peace Commission and The Carter Center’s Community Justice Advisor Program (hereinafter the “CJA program”), present an opportunity to promote locally-driven processes of change. This change may support peaceful and equitable outcomes in the near term by expanding Liberians’ control over their own lives, while simultaneously encouraging a process of community empowerment which will enable citizens to influence institutional structures. Prioritizing sustained support to legal empowerment programs represents a clear alternative to the supply-side “solutions” to rule of law reform that have dominated efforts to date in Liberia.

Rule of Law Orthodoxy in Liberia —A Mission of State Building¹³

The series of crises that besieged the Liberian nation over the last quarter century—from war and mismanagement to human rights abuses and deepening poverty—can be blamed largely on poor governance and disrespect for the rule of law.

Republic of Liberia,
Poverty Reduction Strategy, 2008

Promoting the rule of law is held up as a cure for a host of development problems, from societal fragility to poverty.¹⁴ Historically two theories have been used to rationalize support for the rule of law: the belief that economic development depends on it, and the belief that state building and consolidation depend on it.¹⁵ The second theory has largely dominated the international community’s approach to post-conflict Liberia. This approach prioritizes a strong central government with accountable state dispute resolution processes that can manage conflict and promote law and order.¹⁶

The condition of Liberia’s justice and security sector following the conflict required an emphasis on police and security services, as well as the criminal justice system. With the support of the United Nations Mission in Liberia, United Nations Development Programme, the United States Agency for International Development, the World Bank, and others, Liberia built or refurbished courts and police stations and hired attorneys as prosecutors to deploy to counties across the country.¹⁷

These actors rightly viewed the dual nature of Liberia’s legal system, codified in 1949 through the *Rules and Regulations Governing the Hinterland of Liberia* (or “Hinterland Regulations”), as a legacy of exclusion of indigenous Liberians. The Hinterland Regulations were largely a system of indirect rule over rural Liberia, and “traditional” or indigenous communities essentially managed their own dispute resolution—without full adherence to Western notions of due process or equal protection.¹⁸ The Hinterland Regulations sanctioned the Ministry of Internal Affairs (MIA), located in the executive branch of government, to

license “ordeal doctors” who could use trials by ordeal “of a minor nature and which do not endanger the life of the individual” to ascertain guilt.¹⁹ The MIA had general oversight over the chieftaincy system of dispute resolution established by the Hinterland Regulations and cases could be appealed right up to the president of Liberia. Post-war reformers sought to abandon this system, but did not always sufficiently engage with existing community-based dispute resolution forums in the process.

Reform efforts’ main way of engaging with chiefs and community-based dispute resolution was through “sensitization” on the content of statutory law. By 2006, the International Crisis Group reported emergent discussions at the University of Liberia about eliminating recognition of community dispute resolution under the dual justice system.²⁰ This approach seemingly presumed that a Western-modeled formal justice system could secure rights for all Liberians in the short term. But most Liberians currently operate outside the reach of formal legal structures, working and living in places with no formal legal operations, or only thin ones.²¹ Indeed, the evidence suggests that most Liberians utilize community-based solutions for nearly all of their dispute resolution needs. Reformers have largely overlooked the individuals and community-based institutions that will enforce rights and resolve disputes (equitably or inequitably) for most Liberians for the foreseeable future.

Challenging Asymmetries of Power —A Role for Legal Empowerment

A culture of participation by all citizens and partnership with government is critical to increasing transparency and accountability, reducing corruption and improving governance.

Republic of Liberia,
Poverty Reduction Strategy, 2008

Building an equitable justice system in Liberia is a long-term endeavor, but our experiences with the CJA program demonstrate that legal empowerment initiatives have a significant role to play in developing such a system in Liberia. New, more equitable arrangements and institutions can emerge from justice reform that builds on existing capacities and promotes cooperation between existing dispute resolution systems. In the words of one rural Liberian, justice reform should “place the old mat with the new mat” by simultaneously supporting traditional community-based approaches and the formal justice system. Simply put, many Liberians cannot wait for the formal system to arrive—even if it delivers the type of justice they seek. We believe that iterative strategies will prove most effective—both politically and economically—in delivering justice to most Liberians.

Legal empowerment initiatives like the CJA program represent one such iterative approach. Similar projects in Liberia include the Norwegian Refugee Council,²² Prison Fellowship Liberia,²³ the Sustainable Development Institute,²⁴ and the Foundation for International Dignity. These internationally-funded legal empowerment programs support adaptive processes that improve the quality of dispute resolution fo-

runs at the local level by working with existing actors while simultaneously providing an important alternative avenue towards accountability. Legal empowerment programs can promote dialogue among the variety of dispute resolution mechanisms present and build momentum for the development of systemic and empirically-based approaches to reform.

The Community Justice Advisor Program of the Catholic Justice and Peace Commission and The Carter Center

The Catholic Justice and Peace Commission (JPC), Liberia's leading human rights organization, in partnership with The Carter Center (TCC) began the CJA program in 2007. (See below for a map of the program as of February 2012). The CJA program grew out of TCC's civic education work with local civil society organizations around the 2005 national election.²⁵ In response to an increasing number of requests for assistance with the resolution of specific disputes outside Monrovia, the CJA program started in Liberia's most remote counties in the Southeast, where access to services and information continues to be most limited.²⁶ By early 2012, some 45 Community Justice Advisors (CJAs) operated across seven of Liberia's 15 counties.²⁷ CJAs blend legal education with assisting clients (on a free and confidential basis) to navigate the various state, non-state, and hybrid means of settling disputes available to them. CJAs regularly employ education, negotiation, organizing, advocacy and, perhaps most importantly, mediation to assist their clients. Identifiable by their JPC-branded vests and motorbikes, CJAs staff JPC offices in larger towns and travel regularly to remote communities to conduct structured mobile

clinics. TCC supports JPC by providing program staff, including lawyers, in three offices nationwide. These lawyers both mentor CJAs and monitor them through quarterly trainings covering basic legal knowledge, mediation, and organizational skills. The lawyers also assist with work plan preparation, conducting regular monitoring visits, and case review. While the JPC is part of the Catholic Church in Liberia, the organization includes members of all faiths and works to address social, economic, political, and religious justice and human rights.

Between January 2008 and December 2011, CJAs opened over 4,749 cases and concluded 3,404 cases.²⁸ Cases are never solicited; the prospective clients must approach the CJA with their issues and request assistance. CJAs hear a wide variety of matters including:

- civil cases, such as land and property disputes (31 percent of cases);
- family disputes, such as child abandonment or neglect (31 percent of cases);
- individual violence cases, including domestic violence and assault (15 percent of cases);
- cases of abuse and corruption by state authorities and local officials (11 percent of cases); and
- social infrastructure and development cases in which a community or individual asks a CJA for assistance with a socioeconomic concern such as the need for a new roof for the town school building (almost 4 percent of cases).

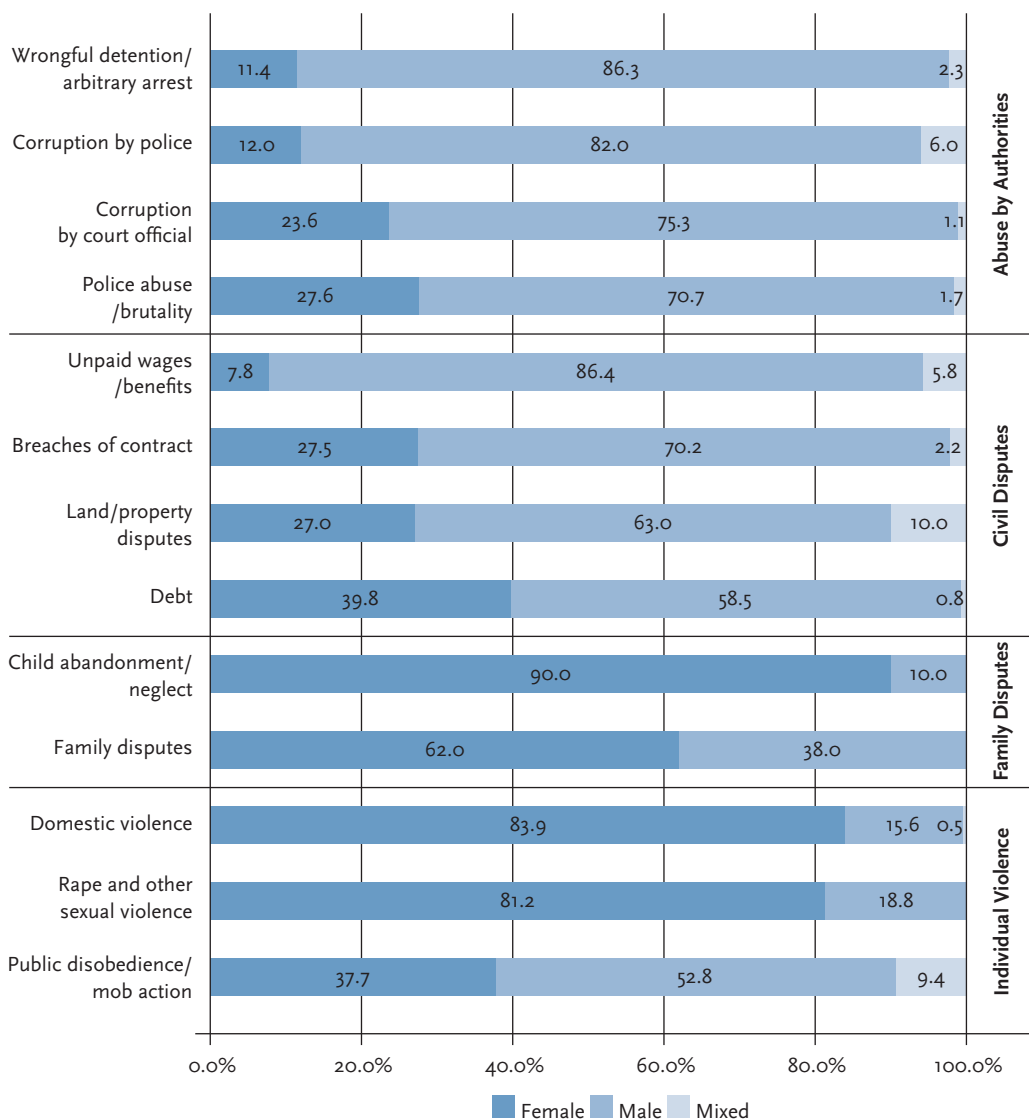
Female clients bring approximately half of all cases, including 90 percent of child abandonment cases, 84 percent of domestic violence matters, and 81 percent of rape and

sexual violence complaints. Male clients bring 81 percent of wrongful detention cases, 86 percent of unpaid wages complaints, and 82 percent of police corruption cases. Figure 1 provides a complete chart of common case type by gender.

The Need for Immediate Dispute Resolution

The transition from fragility and conflict to peace and stability requires conflict resolution processes that build confidence between and across groups. Numerous orga-

Figure 1: Types of Cases by Gender 2008–2011



nizations acknowledge the essential need to support peaceful dispute resolution services immediately following conflict, to build what the World Bank calls “trust between groups of citizens who have been divided by violence, [and] between citizens and the state.”²⁹ Because the conflict in Liberia severely weakened or eroded what reach and capacity state institutions had, promoting immediate, peaceful dispute resolution and accountability services invariably must incorporate a variety of approaches—including state, hybrid, and community-based approaches.³⁰

The Liberian government and international community face significant challenges in meeting Liberians’ immediate and near term dispute resolution needs. Today, a decade after the conflict ended, and even with improvements in the security situation, crime and violence remain challenges to stability. In a recent national household survey conducted by the Human Rights Center at University of California, Berkeley, one in four Liberians surveyed reported feeling unsafe or not very safe.³¹ A recent study by Innovations for Poverty Action suggested that land disputes continue to be “endemic throughout rural Liberia.”³² The 2011 Small Arms Survey reported that from mid-2009 to mid-2010, nearly one in seven households nationwide had a member who was a victim of crime or violence.³³ Since 2003, several high profile instances of violence threatened to ignite wider conflict. In 2008, violence over the border between Margibi and Grand Bassa Counties killed 15 people. In 2010, four were killed and scores injured in Lofa County in a conflict widely reported as being between Mandingo and Lorma ethnic groups (which were mobilized against each other during the war) over the myste-

rious death of a young woman.³⁴ There continue to be reports of insecurity along the Cote d’Ivoire border.³⁵ A protest in which alleged police violence resulted in at least two deaths marred the 2011 presidential elections. All these incidents highlight the dramatic need for avenues to mediate and manage all levels of disputes.

At a primary level, the CJA program meets this near-term need for dispute resolution assistance in communities lacking an accessible, affordable, or trusted justice system. As an independent third party, CJAs can help disputants to improve their relationship and mend their conflict themselves: for example, when Helen,³⁶ of Lorma ethnicity, met with a CJA in Bong County, the death of her young son while in the care of her boyfriend’s parents, who are of Mandingo ethnic origin, had turned her world upside down. Helen’s parents and family viewed the circumstances of the death as “fishy” and as the CJA explains, “that suspicion was leading to ethnic tension in the community, which would have undermined the peace.” The CJA convened a conference of both parties, and then arranged to meet with a medical doctor at the hospital in Gbarnga, along with representatives of the two families. The doctor, who had been on duty when the child was brought in, explained that the boy suffered cardiac arrest resulting from severe malaria. The CJA helped the families acquire and decipher a copy of the medical certificate and ultimately a traditional ceremony brought together both families and restored the relationship.³⁷ A potential crisis was averted.

Other times, parties will engage a CJA after learning of rights or entitlements through civic education. CJAs help these parties better understand and enforce such

rights. Hauwa, a mother of four children, considered taking their father to court when he stopped supporting the children and she found herself unable to cover the cost of living. Faced with the fear of high court fees and uncertainty about her legal position, Hauwa instead approached a CJA. The CJA described the options available to Hauwa under the law, and she eventually asked the CJA to mediate for her. The CJA explained to her partner his legal responsibilities concerning child support and the seriousness of a charge of “persistent non-support” in the courts. He now provides food and the means to send the children to school. The CJA changed her life and the lives of her four children for the better.³⁸

In 2008, the Centre for the Study of African Economies (CSAE) commenced an impact study of the CJA program in Liberia, measuring both individual and community level impact of CJA legal empowerment services to people like Helen and Hauwa. Preliminary results in 2012 indicate high client satisfaction with these types of services. Clients regarded the CJA’s assistance as “helpful” in 87 percent of cases, and people who take disputes to CJAs report being better off than those who do not. Notably, the CSAE also found evidence that paralegals have an impact on improving community relations and social cohesion: clients said their relationship with the other disputant had improved in 70 percent of cases and described the relationship with other members of the community as “better off” in 77 percent of cases.³⁹

Moving Justice Reform beyond Elite Interests

The formal justice sector in Liberia is a contested, political space dominated by vested interests. While there is a cadre of dedicat-

ed personnel, shifting the status quo of the justice sector has been difficult to date. Interest groups, organizations, and individuals all compete over justice sector resources and defend against perceived attempts to weaken their influence. Indeed, members of the legal profession largely continue to maintain a lucrative monopoly over legal services. This monopoly is evident in Liberia’s refusal to consider the admission of foreign lawyers; the predominance of a single law school’s graduates in the group; the rotation of key legal positions in the country amongst a select few; the continuance of highly formalized rules of procedure; the reluctance of the establishment to formally accept a role for non-lawyers in the provision of even basic legal services; and a fealty by the profession to the Monrovia-elite who can make use of, and afford, its services.⁴⁰ A Taskforce on Non-Lawyers, initiated in 2008 as a joint judicial and executive venture to stipulate the permissible realms of paralegal operation, has yet to approve its own terms of reference. There is apparent agreement that the construction of a centralized justice system, starting with institutions in Monrovia, should get the majority of funding.

From the 2005 election onward, national and international reformers prioritized capacity building, technical assistance, and infrastructure support to the central justice system. When reform did move beyond the formal institutions of Monrovia, it typically involved trying to extend the reach of Monrovia-trained lawyers or marginally decentralized security services.

Liberians would no doubt benefit from an effective nationwide criminal justice system, but the approach currently supported in Liberia ignores the population’s mistrust

of, and legitimate grievances with, the state and its justice institutions. Furthermore, prioritizing the criminal justice system, as opposed to other issues such as administrative law, ignores civil challenges, such as securing government services without paying bribes, obtaining legal identity, and resolving minor but frequent civil disputes. Rapidly increasing concessions at the local level make up an increasing source of grievance.⁴¹ Providing justice for major criminal cases is but one of the important roles justice institutions should play at the local level.

Prioritizing funding of the state security system without simultaneously supporting structures of community oversight builds little confidence amongst Liberian communities in the short term. Indeed, six years into the state-centered reform effort, only a third of Liberians voiced trust in the state system in the Berkeley study.⁴² While this justifies measures to improve the formal justice system, it also offers a warning against expanding the reach of the system without ensuring community acquiescence and engagement. The CJA program plays an essential role in this process and the program provides a clear opportunity to move beyond political paralysis and elite control of the justice system.

The JPC, an independent civil society organization, provides an important forum for dispute resolution that is not characterized by the same legacies as the formal justice system. While civil society-led efforts may be difficult to sustain, the realities of many fragile and conflict-affected states dictate that donor funding will likely play a key role in the justice sector for some years to come. The CJA program provides an important alternative avenue for dispute resolution that

responds to the realities of capacity and corruption at the local level in both the formal justice system and the customary system. By offering free and impartial mediation services, the CJA program secures just outcomes for those who choose to engage with a CJA. Indeed, 43 percent of cases closed between 2008 and 2011 utilized mediation, which demonstrates a strong demand for alternative justice forums.⁴³

The CJA program plays an important role in empowering citizens to enforce rights and entitlements. In partnership with civil society groups that conduct community drama and awareness on legal issues, the program expands understanding of rights and entitlements, and provides the tools to secure them. This is particularly important for marginalized groups such as women and youth. A new law passed in 2003, for example, extends inheritance rights to women but, like countless other laws on the books in Liberia, would likely have had limited effect at the local level.⁴⁴ There was no comprehensive strategy for implementation and such progressive provisions frequently have little impact on the lives of citizens. However, through civil education, advocacy, and mediation, the CJA program is giving effect to the law. From 2008 to 2011, female clients brought 84 percent of disputes concerning inheritance rights.⁴⁵ When a CJA receives such an inheritance case, he or she will walk the client through potential options to enforce his or her right and then provide concrete assistance in exercising it—thus making real a right that might otherwise exist only in law books.

The CJA program also plays an important role in improving performance within Liberia's *existing* systems—either through strengthening extant institutions, be they

state or community-based, or by providing important alternative avenues. While state justice systems are emerging at the local level, their personnel frequently avoid accountability to the public. Similarly, citizens complain of the “big men” who often control the customary system—frequently with little regard for the rights of women or youth. The CJA program plays a critical oversight function which helps to (re)build the social compact between citizens and justice providers. Through advocacy, education, and other tools, CJAs enhance the position of citizens interacting with state and community authorities, and organize communities to demand more equitable services.

One example is the case of David, an elderly man in River Gee County who was left virtually penniless when someone stole 875 Liberian Dollars from his backpack. The perpetrator was apprehended, taken to the police, and imprisoned by the local magistrate until he could pay back the money. When David saw the man free in the town and heard rumors that the magistrate had stolen the repaid money, he called a CJA. The CJA arranged a meeting between David and the magistrate and David recovered his savings and received an apology from the justice official. Without the CJA, David likely would have had nowhere to turn to enforce his rights. Instead, this case provided an important example of accountability for the community.

Musu’s case presents another example of accountability achieved through a CJA: her boyfriend threw acid over her, burning her face and upper torso. The police arrested and charged him, but due to a lengthy pre-trial wait and incomplete case file, eventually released him. Musu, fearing for her life, brought the case to the JPC. Linda, a CJA,

used her psychosocial counseling skills to counsel Musu, explained how the criminal justice system operates, and assisted her in meeting with the county attorney. The boyfriend was re-apprehended and—with Musu testifying against him—successfully convicted. Through the CJA’s assistance, Musu utilized the formal court system to obtain justice for herself and for society more broadly.

Some 18 percent of successfully resolved cases from 2008 to 2011 led to action by formal authorities. CJAs frequently inform the public about services provided by the state, or act as a liaison or advocate in navigating state services, assisting clients through state bureaucracies and ensuring they receive fair treatment. In this role, CJAs improve the integrity of the state system and empower individuals and communities to reestablish their relationship with state officials for the better.

CJAs also work to extend accountability in existing chieftaincy systems. In a small village outside of Fishtown, an old woman was accused of using witchcraft to cause a young boy to fall from a palm tree, injuring himself badly. The old woman was beaten and jailed in the bathroom of the paramount chief’s house. After managing to escape, she fled to town to find the county attorney, who promptly referred her to the JPC CJAs. The local CJAs contacted the county inspector, an MIA official who is often responsible for these types of “mysterious” cases. He accompanied them to the village. At first the townspeople threatened to expel the CJAs and the inspector, but the CJAs talked with them and the paramount chief and advocated on the woman’s behalf. The CJAs explained the necessary legal process if they believed the woman had caused

someone harm. The community eventually agreed that there was no proof the woman had caused the child to fall from the tree and today—through the trust gained by this intervention—the people who wanted to expel the CJAs now call them for help on other issues.

From 2008 to 2011, approximately 11 percent of CJA cases were categorized as “abuse by authority,” which includes wrongful detention or arbitrary arrest, corruption by government officials, police abuse or brutality, and corruption or abuse by traditional authorities. The most common form of abuse within this category was wrongful or arbitrary detention, which accounted for 175 cases over the four-year period. CJAs were able to secure release from detention in 54 percent of these cases, and another 22 percent were otherwise successfully resolved. CJAs resolved 66 percent of all abuse by authority cases by helping to link the case to the nascent formal government institutions for assistance, thus playing the go-between role of advocate and watchdog and improving the performance of state institutions.

Conclusion —Empowering Liberians for the Future

Liberians demand dispute resolution that is locally relevant and responds to their aspirations of what justice entails in a given case. Multiple community-based, often non-state or hybrid justice forums continue to play significant roles in dispute resolution in Liberia. To deliver more equitable and durable justice outcomes, reformers should base strategies—and indeed justice services—on community aspirations and practice as opposed to legal theories. Legal empowerment programs best respond to community per-

ceptions and aspirations by presenting a variety of options for redress and encouraging parties to seek the most appropriate forum.

CJAs carry out their work in a way that responds to community sensibilities. CJAs come from, and live in, the areas in which they work and know the local dialect and customs. The CJA program uses a schedule of community entry and community awareness raising visits through which a CJA will visit a community to talk to community leaders, including both chiefs and justice sector officials, and then inform community members of the available service.⁴⁶ CJAs thus identify themselves simultaneously as resources for, and monitors of, official and unofficial actors in dispute resolution. Circuit court judges have been known to ask CJAs for access to pieces of legislation, and town chiefs have occasionally sought advice on dispute resolution or referred cases to CJAs for mediation and assistance navigating the formal justice system.

Support for legal empowerment programs represents an important complementary approach to post-conflict justice reform. Legal empowerment initiatives can quickly and effectively respond to community needs. They can also help establish mechanisms to ensure that the justice reform process incorporates and responds to community imperatives. In Liberia, legal empowerment programs provide critical third party dispute resolution services and improve individual outcomes, while also increasing accountability within the various dispute resolution forums that make up a justice system.

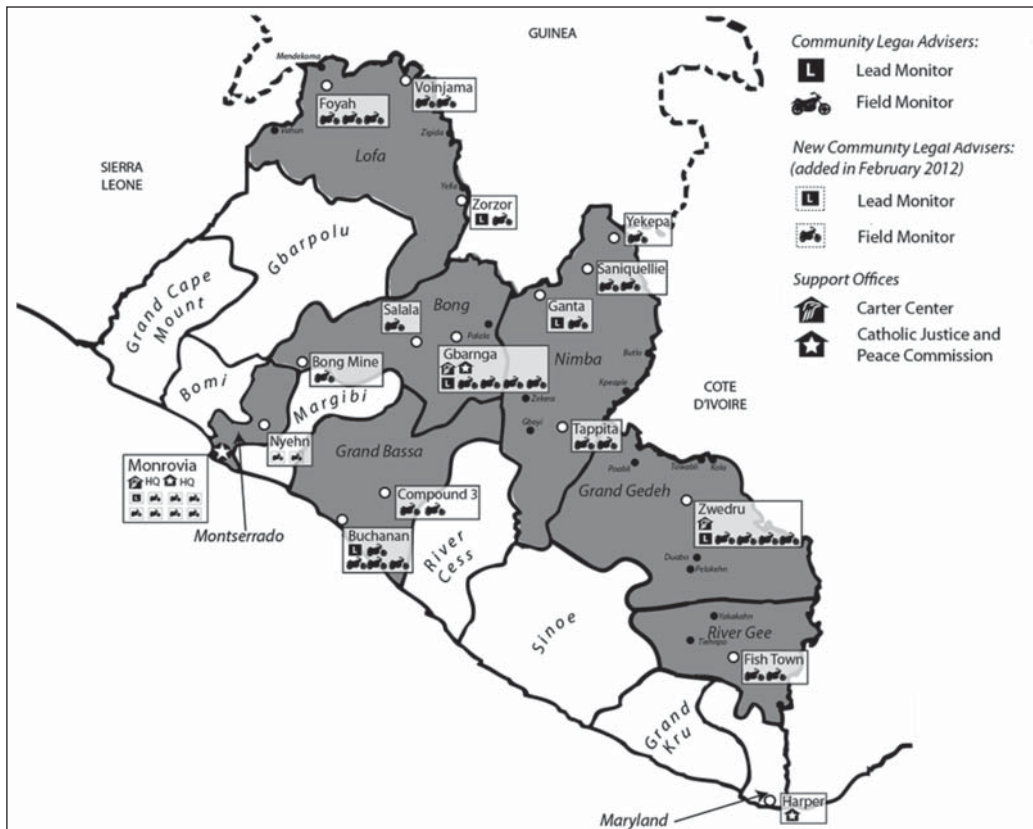
Research on the Liberian justice system and Liberians’ attitudes toward it reveals both a lack of service from the formal justice system and a lack of confidence in it.

Yet donor resources continue to be funneled overwhelmingly into infrastructure and capacity building for formal justice and security institutions. Building up the state's justice sector is important, of course, but so is meeting the immediate justice needs of the many Liberians who currently live beyond the reach of the still nascent formal system.

Legal empowerment can promote locally-driven processes of change capable of supporting peaceful and equitable outcomes in the near term, while simultaneously enabling citizens to influence insti-

tutional structures. Prioritizing support for legal empowerment represents an alternative and complement to the supply-side paradigm that is currently dominant in Liberia. Rather than taking a top-down, Monrovia-centered approach, supporting legal empowerment can provide a means to incorporate community aspirations into justice reform. Such an approach can help Liberians address their day-to-day justice needs in the short term, while helping to shape the process of justice system reform in the long term.

Figure 2: Distribution of Catholic Justice and Peace Commission Community Justice Advisors⁴⁷



Notes

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1. See Stephen Ellis, *The Mask of Anarchy: The Destruction of Liberia and the Religious Dimension of an African Civil War*, (New York: New York University Press, 2007) and Philip A. Z. Banks III, Minister of Justice, "Foreword," in *Ministry of Justice Strategic Plan 2009–2012*. See also Philip A. Z. Banks III, *Reforming Liberia's Legal and Judicial System: Towards Enhancing the Rule of Law, An Issues Paper*, Governance Reform Commission, Government of Liberia, 2006, 29–37; Deborah Isser, Stephen Lubkemann and Philip A.Z. Banks III, "Justice in a Vacuum: The Unintended Consequences of the Constraint of Customary Legal Practices in Post-Conflict Liberia," in Deborah Isser (ed), *Customary Justice in War-Torn Societies* (United States Institute for Peace, 2012).

2. See, for example, Stephen Lubkemann, Deborah Isser, and Peter Chapman, "Neither State nor Custom—Just Naked Power: The Consequences of Ideal-Based Rule of Law Policy-Making in Liberia," *Journal of Legal Pluralism*, 2012.

3. Robert W. Clower, et al., *Growth Without Development: An Economic Survey of Liberia*, (Evanston, IL: Northwestern University Press, 1966), 5.

4. Republic of Liberia, Truth and Reconciliation Commission, *Final Consolidated Report*, June 30, 2009 (arguing that "[p]ersistent deterioration in the rule of law over the years . . . frustrated those seeking true democratic change in Liberia, and led some to advocate the use of force to attain change").

5. International reform agendas at the time are indicative of this mainstream approach. For example, by 2009 UNDP articulated a policy which called for the re-establishment of the rule of law, beginning first with support to central institutions, arguing that "The initial approach needs to be on building the capacity of national institutions and stakeholders to prevent and bring an end to violations, insecurity and impunity through their own capacity and resilience." UNDP Bureau for Crisis Prevention and Recovery, *The Rule of Law in Fragile and Post-conflict Situations*, 2009, 1.

6. United Nations Security Council Resolution 1509 (2003) para. 3(p)–(q).

7. United Nations Security Council Resolution 1509 (2003) para. 3(p)–(q).

8. Liberia is marked by legal pluralism. Alongside the "formal" legal system modeled on that of the United States, there exists a parallel "hybrid" justice system that statutorily incorporates chiefs as members of an alternative legal system which largely serves indigenous Liberians. There are also a number of other dispute resolution actors present at the local level including chiefs not recognized by the state, other community or religious leaders, and secret societies. Empirical studies include: Deborah Isser, Stephen Lubkemann, and Saah N'Tow, *Looking for Justice: Liberian Experiences and Perceptions of Local Justice Options*; United States Institute for Peace, *Peaceworks* No. 63, 2009; Patrick Vinck, Phuong Pham, and Tino Kreutzer, "Talking Peace: A Population-Based Survey on Attitudes About Security, Dispute Resolution, and Post-Conflict Reconstruction in Liberia," UC Berkeley Human Rights Center, 2011; Justin Sandefur and Bilal Siddiqi, *Forum Shopping and Legal Pluralism*, paper presented at the 8th Midwest International Economic Development Conference, University of Madison Wisconsin (April 2011).

9. Sandefur and Siddiqi, *Forum Shopping and Legal Pluralism*.

10. Vinck, et al. "Talking Peace," 4.

11. Isser, et al. *Looking for Justice*.

12. Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999).

13. Frank Upham defines the rule of law orthodoxy as the belief that "the introduction of formalist rule of law—that is, regimes defined by their absolute adherence to established legal rules and completely free of the corrupting influences of politics . . . are essential to establishing stability and norms that encourage investment and sustainable

economic growth in the developing world.” Frank Upham, *Mythmaking in the Rule of Law Orthodoxy*, Carnegie Paper No. 30, September 2002. See also Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Carnegie Endowment for International Peace Rule of Law Series, No. 41, Democracy and Rule of Law 2003, 3.

14. See Thomas Carothers, “The Rule-of-Law Revival,” in Thomas Carothers (ed.), *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington, DC: Carnegie Endowment for International Peace 2006), 3–7.

15. While these two paradigms dominate rule of law discourse, the (re)establishment of the rule of law has been viewed as the cure for a whole host of ills facing fragile and conflict affected states—from promoting economic growth through governance, to establishing the foundations for democratic participation, to encouraging sustainable resource extraction, securing individual rights, and beyond. For more on the theoretical underpinnings of these paradigms see, for example, Carothers, *Promoting the Rule of Law Abroad*, 3–7; Erik Jensen, “The Rule of Law and Judicial Reform: The Political Economy of Diverse Institutional Patterns and Reformers’ Responses,” in Erik G. Jensen and Thomas C. Heller (eds.), *Beyond Common Knowledge: Empirical Approaches to the Rule of Law*, (Stanford: Stanford Law and Politics, 2003); or Deval Desai, Deborah Isser and Michael Woolock, *Rethinking Justice Reform in Fragile and Conflict-Affected States*, World Bank (2011), 245–46.

16. The United Nations Security Council Resolution establishing the United Nations Mission in Liberia and the first post-war government of Liberia both highlighted the importance of reestablishing the relevance of the state in dispute resolution and rule of law in Liberia. The Legal and Judicial Systems Support Division is responsible for developing “a strategy to consolidate governmental institutions . . . with the ultimate aim of re-establishing the supremacy of the rule of law.” <http://unmil.unmissions.org/Default.aspx?tabid=3955&language=en-US>.

17. Largely in a manifestation of what the recent Report of the United Nations Secretary General on Rule of Law calls the critical need to build “confidence in national justice and security institutions.” See *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary General*, UN Doc. S/2011/634 (2011), V.

18. From the founding of Liberia in 1847, the justice system has been marked by institutional plurality. *Rules and Regulations Governing the Hinterland of Liberia*, Republic of Liberia, 1949 (amended in 2001), clarified the nature of the dual justice system and established numerous levels of Chief’s Courts (Paramount, Clan, etc.) and clear lines of appeal up the executive branch.

19. *Rules and Regulations Governing the Hinterland of Liberia*, article 73.

20. *Liberia: Resurrecting the Justice System*, International Crisis Group: Africa Report 2006, 107.

21. Erica Harper, Ewa Wojkowska and Johanna Cunningham, “Enhancing Legal Empowerment through Engagement with Customary Justice Systems,” in *Working with Customary Justice Systems: Post-Conflict and Fragile States* 2001. Commission on Legal Empowerment of the Poor, *Making the Law Work for Everyone*, Vol. 2, (2003), 130.

22. NRC’s Information, Counseling & Legal Assistance (ICLA) program uses paralegals to promote equitable land dispute resolution. For more information see NRC’s website at <http://www.nrc.no/>.

23. Prison Fellowship Liberia’s Community and Detainee Reconciliation in Liberian Localities programs seeks to mitigate conflict by strengthening linkages between state and community-based approaches to dispute resolution. For more information see the East West Management Institute’s website at <http://www.ewmi.org/>.

24. See IDLO’s *Community Land Titling Initiative: International Report*, 2011.

25. Working to “tell the story of the law” to communities, from 2006 until mid-2011 eight locally based civil society groups delivered dramas and town hall meetings in what could be described as an African-equivalent to the story-driven “Crime Scene Investigation” or “Law and Order” legal education of the West. In 2009–2010, TCC-supported civil society organizations reached nearly 140,000 Liberians in 1,200 rural communities. Organizations included Bong Youth Association, Modia Drama Club, Liberian Crusaders for Peace, Intervisionary Artists Youth Group, Common Action, Traditional Women United for Peace, Southeastern Women Development Association, and the Inter-Religious Council of Liberia. The Catholic JPC was one of the original civil society organizations working with TCC.

26. The program model developed by the Sierra Leonean paralegal NGO, Timap for Justice influenced the CJA program.

27. With funding from USAID, Humanity United, and others, the program expanded into Montserrado County in early 2012.
28. The Carter Center, Liberia, internal data; data current as of December 31, 2011; case data analysis based on cases entered from 2008–2011.
29. “Numerous organizations...” e.g., *Strengthening the Rule of Law in Conflict- and Post-Conflict Situations: A Global UNDP Programme for Justice and Security, 2008-2011*, United Nations Development Program, at 7, available at http://www.undp.org/cpr/documents/jssr/rol_final_apro9.pdf accessed January 7, 2011 (calling for the need to “counter the rule of law vacuum through peaceful mechanisms”) or *World Development Report 2011: Conflict, Security and Development*, World Bank, 2011, 11 (suggesting there is a need to “restore confidence in collective action before embarking on wider institutional transformation”). *World Development Report 2011: Conflict, Security and Development*, World Bank, 2011, 10–12.
30. See for example *Liberia: Resurrecting the Justice System*, 107.
31. Vinck, et al., *Talking Peace*, 35. Furthermore, four out of five Liberians considered themselves a victim of the civil war, citing harms including displacement (77 percent), destruction of property (61 percent), and destruction of farm (60 percent). *Liberia: Resurrecting the Justice System*, 40.
32. Robert Blair, Christopher Blattman and Alexandra Hartman, *Patterns of Conflict and Cooperation in Liberia (Part 1): Results from a Longitudinal Study* (Innovations for Poverty Action and Yale University, 2011), ii.
33. Small Arms Survey, *Reading Between the Lines: Crime and Victimization in Liberia*, Issue Brief, September 2, 2011.
34. Small Arms Survey, *A Legacy of War*, Issue Brief September 1, 2011.
35. See *West Africa: Mercenaries Breach Liberia-Ivory Coast Border Controls*, All Africa, July 18, 2011, available at: <http://allafrica.com/stories/201107181360.html> accessed February 8, 2012.
36. Client names have been changed for confidentiality.
37. Actual case from JPC CJA case files.
38. Actual case from JPC CJA case files.
39. Bilal Siddiqi, Oxford University Centre for the Study of African Economies, preliminary end-line study, 2011.
40. An early proposal of the Governance and Economic Management Assistance Program (GEMAP), a partnership framework between the government and international community seeking to build accountability in economic governance, included a provision for the admission of foreign lawyers, which the legal fraternity resisted and got removed. *Liberia: Resurrecting the Justice System*, 2.
41. See World Bank Group, *Rising Global Interest in Farmland: Can It Yield Sustainable and Equitable Benefits?* World Bank 2011, available at http://siteresources.worldbank.org/INTARD/Resources/ESW_Sept7_final_final.pdf accessed February 12, 2012.
42. The Berkeley “Talking Peace” study found, for example, that only 36% of those surveyed trust the formal court system and only 31% trust judges.
43. Based on data entered up to December 31, 2011.
44. An Act to Govern the Devolution of Estates and Establish Rights of Inheritance for Spouses of Both Statutory and Customary Marriages, Republic of Liberia, 2003.
45. The Carter Center, Liberia case data, 2008–2011.
46. This community entry strategy highlights that CJAs, even though they may have grown up in the areas in which they work, are guests, working in partnership with, and as support to, existing structures. In local custom, courtesy suggests meeting with the local chief prior to talking with a community, especially if a guest will be addressing topics that might challenge local authority such as legal reform of inheritance or property rights of women.
47. The Carter Center, Liberia, 2012.

Within and Around the Law: Paralegals and Legal Empowerment in Indonesia¹

Ward Berenschot* and Taufik Rinaldi* draw on two years of data to illuminate the multiple roles that community paralegals perform in Indonesia and the challenges they face.

Introduction

Not long after the fall of the autocratic Suharto regime and the return to democracy in Indonesia in 1998, the village head of Margo Sari, a village of farmers in the province of Lampung, received a letter from the country's Forest Department. The villagers of Margo Sari were, the letter announced, to be resettled in a yet unknown new location. Their village stood on "tanah register" or "registered land"—a land status that the country's former Dutch colonial rulers invented to prevent people from settling in forest areas that were lucrative for logging.² Technically, the villagers were not supposed to cultivate this land—even though, 50 years prior, the Indonesian government itself had instructed these then-migrating farmers from Java to settle there and they had been farming there ever since.

The official letter caused a flurry of activity among the villagers. They distrusted the government's promises, and formed a committee to liaise with the government in hopes of bringing an end to the protracted struggle over their farmland. But as it turned out, their struggle was far from over. After five years without significant progress, in 2003 two frustrated villagers, pak Iman and pak Widayat,³ contacted an NGO providing legal aid in Lampung, and requested train-

ing in the workings of the law. They felt that "the community was not smart enough" and "we need to become aware." Pak Iman and pak Widayat became the village's paralegals, and together with other villagers formed the informal community group "Sertani," and started to fight for more secure control over their land.

Paralegals are non-lawyers who use their training in the law and legal proceedings to help others deal with formal (and, very often, informal/traditional) legal systems. This article discusses the functioning of paralegals such as Iman and Widayat, and their capacity to provide legal aid in the context of Indonesia's weak and distrusted legal system. For many Indonesians, including the residents of Margo Sari, the law is an alien, threatening force that outsiders use to disrupt their lives. The Dutch colonial rulers created a plural legal system, officially aiming to respect the customary laws of Indonesia's diverse communities, while using formal law to assert control over land and natural resources—creating contradictions that complicate land ownership to this day.

After independence, Indonesia's legal system became highly politicized and erratic, as ruling elites manipulated the courts and police. Under Suharto's authoritarian rule, state officials regularly invoked legal provisions to legitimize human rights violations, including the confiscation of land. The Suharto regime's propaganda, which emphasized social "harmony" and instilled an aversion to open clashes of interest, further

cultivated a distrust of the legal system.⁴ As a result of this manipulation of the law and emphasis on maintaining communal tranquility, villagers generally prefer informal local institutions—such as the village head, a customary (*adat*) council, or local religious courts—over the formal legal system for adjudicating disputes.

Indonesia's weak and widely distrusted legal system has spawned a vibrant and widespread legal aid movement that has succeeded in training many individuals like pak Iman and pak Widayat in the basic workings of the law. Since 1970, when the first legal aid institution, *Lembaga Bantuan Hukum* (LBH), successfully resisted the worst excesses of Suharto's regime, paralegals have become a key instrument of these organizations, bringing legal aid and knowledge to Indonesia's remote and often diverse communities.⁵ While some organizations use the term *pendampingan hukum rakyat* ("the people's legal assistant"),⁶ foreign donors who support and create legal aid programs have made the relatively alien word "paralegal" increasingly common—so much so that it appears in a legal aid bill Indonesia adopted in 2011 that for the first time acknowledged legal aid as a right, and pledged to dramatically increase the number of paralegals across Indonesia.⁷

This article uses material and observations from two paralegal programs to discuss and analyze how and under what circumstances paralegals affect the way villagers address local disputes and grievances.

Paralegals in Indonesia perform multiple roles. First and foremost, paralegals help their clients find a fair resolution to their justice problems. But they also find alternative ways of settling disputes and addressing grievances, and serve as a bridge

between the formal legal system and informal dispute resolution mechanisms.

Paralegals in Indonesia also face complex challenges and must adopt innovative approaches in order to deliver justice. As paralegals in effect compete for influence and clients with a range of other actors—including village heads, would-be "case brokers" (who may have or claim to have political connections), and coercive local "muscle men"—the success of legal empowerment programs depends to a large extent on whether potential clients perceive paralegals as more effective and fair problem-solvers than these alternatives.

This article stems from a research project on the functioning of paralegals in Indonesia who were trained and supported under two legal empowerment initiatives, the World Bank's Justice for the Poor program and the United Nations Development Programme's (UNDP) Legal Empowerment and Assistance for the Disadvantaged (LEAD) project. Both initiatives worked with community-based paralegals, which meant that they trained selected inhabitants of designated project-villages as paralegals, and these paralegals served people from (or around) their villages.⁸ Paralegals received no financial compensation.

The paralegal program of the World Bank (called "Revitalisation of Legal Aid," or RLA) generally worked with village-level teams of two men and two women based at a legal aid *posko* ("post," usually the house of one of paralegals). Functioning from 2007 to 2010, the RLA program worked with about 200 paralegals in three provinces (Lampung, Nusa Tenggara Barat, and West Java).⁹

UNDP's LEAD project also worked with community-based paralegals, training some

on specific issues (such as gender, land, or natural resources), and others to provide general assistance to fellow villagers.¹⁰ They came from project-villages in the provinces of North Maluku, Central Sulawesi, and Southeast Sulawesi. According to UNDP, the LEAD project trained 400 paralegals.¹¹ Both the World Bank and UNDP worked with local NGOs on the training and support of paralegals. Paid “field officers” (UNDP) and “posko facilitators” (World Bank) and community lawyers provided this support, giving paralegals both practical and legal advice for the more complex cases.

This article relies on data from the RLA project, including its database of 338 cases reported by paralegals using standardized forms designed by the project’s staff. In addition, we conducted a more ethnographic study on the nature of dispute handling. Through interviews and immersion in village life during fieldwork we studied 21 cases—related to a wide range of labor, land, and domestic disputes as well as theft and rape—reported to, and handled by, paralegals. We also studied ten similar cases in the same districts (but different villages), where paralegals were not involved. Through this fieldwork we sought to place these cases in the broader socioeconomic context of village life and to study the impact of the presence of paralegals on local dispute settlement.

Working with and Around the Police

Margo Sari’s residents initiated a small committee headed by Makmun, the village secretary, to oversee negotiations with state officials. Makmun devised an ingenious way to exploit this opportunity. While he quickly recognized that the government would not offer land compensation, Makmun forged

a partnership with local police officials, the *camat* (local district head), and local *preman* (i.e., individuals known for their capacity for violence). Together, they circulated through the village, announcing that the government required a down payment of 7 million rupiahs (approximately US\$700) from each family for a new tract of land. Anyone refusing to pay would lose their current farmland.

Misun, a villager, recounts: “Makmun came to me with a group of people while I was working in the field. He threatened that my land would be confiscated. My neighbor farmers paid to him, so I think I should. Though I paid in the last minute, I know that I cannot deal with him. This rice field is the only job I have. I am scared since some thugs stand up behind him and...I assume he must be backed up by a government office.” Scared to lose their land and lacking the necessary contacts and knowledge to verify Makmun’s claims, a considerable number of villagers such as Misun decided to pay.¹²

Experiences like these farmers’ suggest why Indonesians often distrust the formal legal system. In one survey, 50 percent of respondents felt that the formal justice system was biased toward the rich and the powerful, and only 28 percent of respondents were satisfied with its functioning—against 58 percent satisfied with the functioning of Indonesia’s informal justice system.¹³ Indonesians perceive the formal legal system as alien and distant, but also as a threatening instrument that powerful people employ against the interests of common Indonesians. Police officials generally need to pay considerable amounts of money to their superiors to get their jobs. This increases their impetus to cooperate with people like Makmun, to recoup that cost.

Other factors fuel distrust of the formal legal system. The police may exact a bribe to register a case, and corruption fuels uncertainty about the law's application. Various contradictory and vague legal provisions make Indonesia's legal system unpredictable. For example, the Basic Agrarian Law (1960) and the Forestry Act (1999)—both important laws related to land rights—contain contradictory provisions about the recognition of communal land rights and the legal status of farmland once classified as protected forest.

The Indonesian formal legal system has empowered intermediaries like Makmun to use their contacts and legal knowledge to exploit (or help) other villagers. In the context of a democratizing public sphere and a population that lacks experience in dealing with legal institutions, individuals who know how to raise media attention or how to report a case to the police have growing opportunities. In our different research locations we regularly encountered various legal intermediaries who use their legal and procedural knowledge to help clients deal with the police or the courts. But some of them, like Makmun, shamefully exploit the vulnerability of ill-informed, powerless villagers. Yet others provide genuine help in arranging paperwork, settling land disputes, and pressuring government officials—even as they charge for their help and earn a small livelihood in the process.

Paralegals compete with these legal intermediaries. While paralegals do not charge a fee, villagers may mistrust them or their capacity to provide more effective assistance. The villages included in the Justice for the Poor project reported widely disparate numbers of paralegal-assisted cases: while paralegals in some villages handled more than

20 cases in two years, most villages reported fewer than five cases. Overall, the project reported only 338 cases handled by over 200 paralegals working for close to two years, though it is likely that a significant number of smaller cases were never reported.

Attracting clients constitutes an important challenge for community-based paralegal programs, particularly those comprised of volunteers: a sizable number of the paralegals we studied never really developed the confidence and skills to interact with state officials, and for this reason their fellow villagers rarely approached them for help. The paralegals serving in Margo Sari, Iman and Widayat, exemplified this. When in 2009 the Forest Ministry declared the area to be a permanent forest zone, off-limits to farming, Makmun and his group again demanded money in order to prevent eviction. As the villagers still viewed this group as connected to the village head and *camat* (sub-district head), they disregarded Iman's and Widayat's advice not to pay money again.

The paralegals' difficulties reflected the fact that, as in any job or service, effectiveness and credibility grow over time. In the World Bank project, paralegals reported the highest number of cases in the later stages of the project. Because it can take a long time for paralegals to gain experience, build community trust, and achieve impact, a two-year time frame for a paralegal project is short; projects that invest in long-term paralegal development will be more effective.

The travails of the Margo Sari villagers illustrate why the work of paralegals in Indonesia often consists of *avoiding* rather than engaging the police or the courts. While clients state that paralegal support gives them confidence to deal with the legal

system, we found no indication that people take more cases to court with paralegals' assistance. Paralegals more often find alternative solutions to minimize the involvement of the police—even for the victims of criminal offenses. Of the 338 cases reported by paralegals working under the World Bank's Justice for the Poor program, paralegals helped their clients report the problem to the police or the judiciary only 14 percent of the time, and in more than a third of those cases paralegals noted informal mediation activity as well as involvement with formal justice institutions. In most cases (54 percent), paralegals preferred to facilitate mediation between conflicting parties. This included criminal offenses such as theft and violence, of which respectively 47 percent and 60 percent of reported cases were settled through mediation.¹⁴

In Margo Sari, Iman and Widayat did decide to involve the police to halt Makmun's practices. Ironically, they used the same forestry laws that made their community's land tenure so precarious. After collecting money from the villagers, Makmun had decided to further exploit his connections with state officials by cutting down and selling trees around Margo Sari—something which the law forbids in “registered land.” Iman and Widayat decided to report this to the police. After enduring much harassment by the police—police and forestry officials can earn bribery income by tolerating logging—the paralegals managed to get Makmun tried in court, convicted, and sentenced to a short jail term for logging. He was, however, never tried for his extortionate practices and the money he took was never retrieved.

Iman and Widayat successfully pressured the police to take action and process the case largely because their initiative and

their links to lawyers from legal aid associations posed a threat. While police officers can assume that uneducated villagers will not have the confidence, skills, or stamina to protest against bribe-taking or foot-dragging, paralegals cause officials to fear official complaints. This is an important asset that paralegals can offer to their fellow villagers: if a paralegal program allows community-based paralegals to invoke their connections with lawyers and legal aid organizations, they can help villagers deal on a more equal footing with state officials.

However, such positive paralegal interventions do not always involve pressuring the police to process a case. Often the contribution of paralegals lies in keeping the police *out* of local dispute resolution, as further discussed below.

Bargaining in the Shadow of the Law

Indonesia has a strong tradition of local dispute resolution through mediation. Indonesians generally prefer to settle conflicts through informal mediation instead of going to the courts.¹⁵ Various local institutions—such as the village head, an *adat* council or a local religious leader—perform a well-established role as mediators between disputing parties. A mixture of social norms, religious injunctions, and customary law shape village-level mediation processes, and power dynamics permeate them, as power differentials between disputants have a considerable impact on the final outcome of mediation processes.¹⁶ The stronger party in a dispute can use his greater status, wealth, or connections to impose his version of events, win supporters, or avoid enforcement of a judgment. Both the World Bank's and UNDP's paralegal programs

have aimed to address the impact of power differentials; both programs articulate the need to strengthen existing mechanisms to make local dispute resolution mechanisms more equitable, particularly for women and minorities. In practice local leaders—particularly village heads—generally dominate proceedings, which makes equality difficult to achieve. Less-experienced paralegals struggle to make their impact felt.

But when the paralegals whose work we studied had a degree of local authority and were capable of inserting legal considerations into the proceedings, they often did succeed in strengthening their clients' bargaining positions. Paralegals' capacity to convey the *threat* of involving the police or the court provided some of this power. We saw repeatedly as we studied disputes about land, working conditions, or theft, that the *threat* of reporting to the police or the court forced disputants to take possible legal consequences into account. In other words, given the central role of mediation in dispute settlement, the contribution of paralegals in Indonesia does not lie so much in facilitating the implementation of the law, but rather in extending the shadow of the law by inserting considerations about state law into mediation processes.¹⁷ Through this enlargement of the shadow of the law, paralegals can counter the way social inequalities shape the outcomes of informal dispute settlement, forcing stronger parties to consider the possible outcome of legal action.¹⁸

A paradox of paralegals' work in Indonesia, then, is that while they strive to increase the role of state law in mediation processes, they often play an active role to limit the involvement of formal legal institutions—particularly the police. Firstly, paralegals play a role in convincing police officials to

stop investigating a case after an informal agreement between perpetrator and victim has been reached. In cases involving, for example, sexual harassment, fighting, traffic accidents, and even theft, victims report a case to the police merely to improve their bargaining position in negotiations with the perpetrator. After both sides reach an agreement on financial compensation and sign an agreement letter (a *surat perdamaian*) they look to paralegals to end police investigation into the reported case.

Officially, though, regulations prohibit the police from dropping a reported case. As a result, stopping the investigation into a reported case (*mancabut kasus*) offers a lucrative opportunity for bribe-taking. Paralegals often play a role in convincing police to drop cases and sometimes in limiting the payment of bribes. These practices illustrate how efforts to strengthen access to justice relate to the need to clarify police procedures: the current official procedures create confusion (and, consequently, possibilities for extortion) about when and how police can drop a case.

A second example of paralegals' limiting the involvement of the formal legal system lies in their role in negotiating the boundaries of the jurisdiction of non-state, informal justice mechanisms. As the fall of the Suharto regime has led to a revival of traditional customary (*adat*) institutions, and as police officials have been instructed to take these institutions more seriously,¹⁹ local police officials have sought new ways to define the boundaries between their competency and the competency of the informal mechanisms. Furthermore, Indonesia's democratization process has given villagers more power (and more courage) to criticize police harassment and to limit police involvement

in dispute settlement. These developments have forced formal and informal legal systems to work out new compromises about their respective spheres of competency. Paralegals, due to their knowledge of the formal legal system, often play a role in working out such compromises. In the process they have to balance their own commitment to promoting access to the formal justice system with the interests of their clients who often have various reasons to avoid the police and the courts.²⁰

The World Bank's 2008 report on the interaction between formal and informal justice systems in Indonesia, *Forging the Middle Ground*, recommended that Indonesia's Supreme Court define the extent of the jurisdiction of non-state justice mechanisms.²¹ The lively debates between police officials, paralegals, and villagers that we encountered suggest that, in the absence of such guidelines from the Supreme Court, compromises between the formal and informal justice systems will be worked out from below: at present, village-level negotiations employ the available provisions in Indonesia's penal code (KUHP) to sort out a working relation (a form of legal "hybridity") between Indonesia's different legal systems. Paralegals are using the provisions within the KUHP to scrutinize whether available informal justice mechanisms could settle a case. Spreading such knowledge about when to involve the police and when to avoid doing so averts much trouble and bribe-paying.

The Politics of Campaigning

After reporting the village secretary Makmun to the police, pak Iman and pak Widayat devoted their attention to freeing the

farm land around Margo Sari by changing its status from "registered land" to *tanah warga* ("citizen land"). They also pursued avenues to receive new land as compensation, so that the villagers could finally cultivate and harvest their land without harassment. Their community group, "Sertani," succeeded in bringing the case to court, emphasizing that the Indonesian government had originally brought them to Margo Sari to cultivate the land. But as the case dragged on, the paralegals realized that they needed a complementary strategy. The legal aid organization Kantor Bantuan Hukum put them in touch with sympathetic law students. The students helped them to write a lengthy chronology of the case, organize a petition, and contact politicians in Lampung's parliament.

They also brought a large group of politicians—primarily from one political party, the Indonesian Democratic Party of Struggle—to Margo Sari, gathered villagers for a protest in front of Lampung's Forest Department, and organized a public hearing that attracted considerable media attention. During the hearing, the politicians promised to put pressure on the Forest Department to take positive action. As the department promised to look into the matter, Margo Sari's residents became hopeful that they would reach a solution. At the time this paper was written, the *Lampung Post* had reported that public authorities had finally promised publicly to take action against the extortionist practices of Makmun.²² But the precarious status of the villager's farmland—more than 13 years after the villagers received the threatening letter from the Forest Department—still has not changed.

While this kind of advocacy through political channels does not meet traditional

definitions of “legal aid” since it does not necessarily involve promoting access to legal systems, both clients and the paralegals themselves consider these activities more effective in addressing (mis)deeds by state institutions or companies than the formal justice system. This realization has led to calls to integrate programs on legal empowerment more fully with community organizing.²³

Advocacy of this sort, involving public campaigns, comprises an array of activities by which paralegals can significantly contribute to the pursuit of justice. While local communities may seek legal advice and mediation via alternative local mechanisms, they often lack the necessary skills and connections to engage in public campaigning.²⁴ Since cases involving state and corporate accountability, such as Margo Sari’s land struggle, often have a larger impact on a larger group of people than cases involving individual, interpersonal disputes, a focus on advocacy can make paralegal programs more influential.

Yet advocacy played a surprisingly peripheral role in the paralegal programs we studied. The number of cases involving state or corporate accountability was quite low—for example, less than seven percent of the reported cases involved corruption and the provision of public services. Furthermore, it seems that most paralegals lacked advocacy skills. Those we interviewed reported minimal training regarding political lobbying, organizing rallies, working with media, or other skills that could complement or substitute for legal skills. Furthermore, the design of the projects shape the number of advocacy cases paralegals receive: by choosing to train villagers to work as paralegals *within* their community, the programs di-

minish the chance of addressing problems involving state or corporate accountability. If legal empowerment programs selected areas known to be involved in supra-local disputes with companies or state agencies, or if they trained paralegals to circulate beyond their own communities and work in different villages, paralegals could become more regularly involved in advocacy campaigns against corporate or governmental malpractices.

As it turned out, some paralegals, and particularly the most capable ones, understood the benefits of complementing legal action with advocacy through the use of political contacts. In fact, in all our research locations, we encountered paralegals who had forged such links. Some had become members of the politicians’ local campaign teams (*tim sukses desa*); some made speeches during elections; and some boasted of their friendships with politicians. Some paralegals said they maintained these political links because it would make them more effective—they reasoned that after elections they could ask the winning candidate for favors, calling it a political investment (*investasi politik*). Others believe that by working as paralegals they could raise their public profiles and thus, in a later stage, become politicians themselves.

Paralegals’ use of political contacts has positive and negative aspects. On the one hand, Indonesia’s democratization and decentralization processes have created new channels to pressure disputing parties to reach a solution. Support from high-profile politicians is proving useful helping people hold state institutions or companies accountable. Where undue influence taints legal processes, political oversight and engagement can provide vital countervailing

pressure for government and legal officials to do their jobs. Political involvement can improve the operations of flawed institutions where less political and more technical approaches often fall short.

On the other hand, dispute settlement has come to rest in some situations on who has the ability to promise politicians votes or money, rather than considerations of law or justice.²⁵ An interest in votes and money probably prevented politicians (other than the Indonesian Democratic Party politicians) from involvement in Margo Sari's case; the solutions to these land conflicts are so tangled up with various political and commercial interests that local politicians would risk alienating important financial powers by advocating a more permanent solution to such intractable land conflicts.

This use of political channels as an alternative or complement for legal action suggests that the way local political economies develop influences the prospects of improving access to justice. This poses challenges for paralegal programs: while the employment of political contacts to settle issues can be very effective, it increases the power of individuals, rather than building the effectiveness of state institutions—to the potential detriment of the rule of law. The involvement of politicians reinforces the idea (and practice) that the law will bend in the favor of those who can pull the most strings.

Clearly, training programs for paralegals need to address both the opportunities and the risks involved with associating themselves with politicians.

Conclusion

In the context of an overburdened and distrusted formal legal system marked by am-

biguous legislation, the work of paralegals involves strengthening access to the police and the courts in some cases, but at other times helping clients find ways to work *around* the formal legal system by developing and strengthening alternative solutions. When paralegals facilitate mediation processes, convince the police to accept the outcome of these processes, or develop public campaigns through political channels as an alternative to legal action, they pursue pragmatic, productive, alternative strategies. Such activities do not boost the use of the formal system, but they do enlarge the shadow of the law as paralegals insert considerations about state law into mediation processes.

In such a complex environment, paralegal programs face numerous challenges. Since paralegals compete with other actors offering similar services, legal empowerment programs need to focus on strengthening the reality and perception of paralegals as effective problem-solvers. This involves not just investing in training and selection, but also strengthening the public image of paralegals through formal recognition and even symbolic paraphernalia like badges, certificates, and clothing.

Community paralegals' capacity to address grievances through what could be called non-legal and quasi-political advocacy and public campaigning also remains underdeveloped. We observed that paralegals can make an important contribution through such advocacy. This suggests that paralegals should have the capacity and opportunity to take up cases that affect entire villages and groups, rather than focusing solely on individual disputes—since this enables them to address issues where there is the greatest need and potential impact.

Relatively short-term in nature, the World Bank and UNDP projects necessarily focused more on initial, short-term training rather than long-term paralegal development. Paralegals who partner with local NGOs for a number of years might be in the best position to achieve increasing impact. Similarly, a longer time frame might allow such programs to identify effective paralegals and to replace ineffective ones. Thus, large international development agencies might be best advised to provide long term financial support, including core support for the NGOs and ongoing capacity development for the paralegals.

In October 2011, Indonesia's parliament adopted a landmark legal aid bill that includes the ambition to strengthen and enlarge the still relatively small number of paralegals in the country. The plight of the villagers of Margo Sari illustrates why this is such an important step. While Indonesia's democratization process has created a more

open public sphere, democratically elected politicians have so far made little headway in improving Indonesia's ambiguous legal framework related to land. As a result, numerous communities such as Margo Sari remain vulnerable to exploitation and harassment.

Margo Sari's example highlights both the potential and the difficulties that paralegals face in Indonesia: at the time this article was written, almost nine years after they became paralegals, Iman and Widayat have helped maintain the villagers' tenuous control over their land and even brought a limited degree of justice to bear in countering their exploitation. But they are still not much closer to winning more secure land tenure for themselves and their neighbors. This limited success argues for sustaining the support of paralegals like Iman and Widayat, deepening their sophistication, and expanding their reach.

Notes

* Ward Berenschot served as researcher and project manager at the Van Vollenhoven Institute and Taufik Rinaldi as program officer responsible for the development of legal aid programs at the World Bank during the course of the research presented here. The authors would like to thank the paralegals who made this research and article possible, particularly pak Iman, pak Widayat, and Syarif Abadi, the director of Lampung's legal aid association (Kantor Bantuan Hukum).

1. This article is based in part on an as-yet unpublished report that the authors prepared on the functioning of paralegals in Indonesia, *Paralegalism and Legal Aid in Indonesia: Enlarging the Shadow of the Law*.

2. Lampung has more than 40 such forest areas; Margo Sari lies in Way Waya or the 22nd area of registered forest.

3. *Pak* ("Sir") is an Indonesian honorific and commonly attached to the first name; Indonesians rarely use last names.

4. On the development of Indonesia's legal system see Daniel Lev, *Legal Evolution and Political Authority in Indonesia: Selected Essays* (The Hague: Kluwer Law International, 2000) and Tim Lindsey and Mas Achmed Santosa, "The trajectory of law reform in Indonesia: A short overview of legal systems and change in Indonesia," in Tim Lindsey (ed.), *Indonesia: Law and Society* (Sydney: The Federation Press, 2008). For an assessment of the challenges that Indonesia's legal system poses for legal empowerment see Ward Berenschot and Adriaan Bedner, "Akses terhadap keadilan: Sebuah pengantar tentang perjuangan Indonesia menjadikan hukum bekerja bagi semua orang" ["Access to Justice: An introduction to Indonesia's struggle to make the law work for everyone"] in Ward Berenschot, Adriaan Bedner, Eddie Riyadi Laggut-Terre and Dewi Novirianti (eds.), *Akses Terhadap Keadilan: Perjuangan masyarakat mi-*

skin dan kruang beruntung untuk menuntu hak di Indonesia (Jakarta: KITLV Press, 2011). For the unpublished English version, see http://www.kitlv.nl/pdf_documents/AKSES_TERHADAP_KEADILAN_FINAL_1.pdf.

5. On the development of Indonesia's legal aid movement, see Daniel Lev, "Legal Aid in Indonesia," in Daniel Lev, *Legal Evolution and Political Authority in Indonesia: Selected Essays* (The Hague: Kluwer Law International, 2000). See also Bayung Nasution, "The Legal Aid Movement in Indonesia: Towards the Implementation of the Structural Legal Aid Concept," in Harry M. Scoble and Laurie S. Wiseberg, (eds.), *Access to Justice: Human Rights Struggles in South East Asia* (London: Zed Books, 1985).

6. See Rikardo Simarmata, "Pendidikan Hukum," special issue of *Jentera*, No. IV (2003), Pusat Studi Hukum & Kebijakan Indonesia.

7. This is law No.16/2011 about Legal Aid (*Bantuan Hukum*).

8. See the project documents: "Baseline Survey; Pilot Program Revitalization of Legal Aid in Indonesia (RLA)," (World Bank 2006) and "Legal Empowerment and Assistance for the Disadvantaged (LEAD) Project," (Government of Indonesia and UNDP 2007). See also Carolyn Sage, Nick Menzies, and Michael Woolcock, "Taking the Rules of the Game Seriously: Mainstreaming Justice in Development: The World Bank's Justice for the Poor Program," in Stephen Golub (ed.), *Legal Empowerment: Practitioners' Perspectives* (Rome: International Development Law Organization, 2010).

9. This group consists of both "paralegals" and "mediators"—the RLA made this distinction in order to better prepare the second group for facilitating local dispute resolution. On the ground, however, we observed little difference in the functioning of the two types of paralegals. See <http://go.worldbank.org/DH16VCUFS0>.

10. See "Initiative on Legal Empowerment of the Poor," on the UNDP website, http://www.undp.org/legalempowerment/projects_indonesia.shtml, as well as United Nations Development Programme, "Access to Justice, Practice Note" (2004), http://europeandcis.undp.org/files/uploads/HR/mat%20PracticeNote_AccessToJustice.pdf (retrieved on July 25, 2010).

11. See the project's fact sheet, <http://www.undp.or.id/factsheets/2008/GOV%20Legal%20Empowerment%20and%20Assistance%20for%20the%20Disadvantaged.pdf>.

12. Margo Sari's villagers could have suffered worse. Recently, the sometimes violent struggle in the Lampungese village of Mesuji has attracted considerable attention, after paramilitaries in the pay of a palm oil plantation killed villagers over land disputes. Mesuji, like Margo Sari, stands on "registered land." See "In Occupied Mesuji, a Land Long Riven by Power and Politics," *Jakarta Globe*, December 22, 2011.

13. See United Nations Development Programme, *Justice for All?: An Assessment of Access to Justice in Five Provinces of Indonesia*. (Jakarta: United Nations Development Programme, 2007). For similar conclusions, see also Asia Foundation, *Citizens' Perception of the Indonesian Justice Sector* (Jakarta: Asia Foundation, 2001).

14. In this preference for mediation, paralegals in Indonesia are not unique—see the description of paralegals operating in Sierra Leone in Vivek Maru, "Between Law and Society: Paralegals and Provision of Justice Services in Sierra Leone and Worldwide" in *The Yale Journal of International Law*, No. 31 (2006), 427–76.

15. See United Nations Development Programme, *Justice for All?* and Asia Foundation, *Citizens' Perception of the Indonesian Justice Sector*. The UNDP report found that 12 percent of respondents had used the informal justice system, against 10 percent using the formal justice system.

16. This mixture differs between regions as the prominence of both religious and customary law varies. For detailed descriptions of the interaction of these legal systems, see John Bowen, *Islam, Law and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003) and Keebeth von Benda-Beckman, "Forum Shopping and Shopping Forums: Dispute Processing in a Minangkabau Village in West Sumatra," *Journal of Legal Pluralism*, No. 19 (1981), 117–60.

17. The term "shadow of the law" first appeared in an article about divorce settlements in the United States, Mnookin and Kornhauser, "Bargaining in the Shadow of the Law: The Case of Divorce," in *Yale Law Review*, No. 88(5) (1981), 950–97.

18. For a fuller elaboration of this argument, see our forthcoming article “Paralegalism in Indonesia: Balancing Relationships in the Shadow of the Law” in a planned publication on paralegals in different countries.
19. See Jamie S. Davidson and David Henley (eds.) *The Revival of Tradition in Indonesian Politics: The Deployment of Adat from Colonialism to Indigenism* (London: Routledge, 2007).
20. Cases involving rape, adultery, or violent disputes tend to give clients reason to avoid the courts, and both local informal justice systems and the formal state justice systems claim jurisdiction in such matters. While paralegals are trained to facilitate the use of the formal justice system, their clients often have numerous pragmatic arguments—shame, cost, protecting the husband, etc.—to prefer informal mediation. This puts paralegals in a difficult position.
21. World Bank, *Forging the Middle Ground: Engaging Non-State Justice in Indonesia* (World Bank Indonesia, Justice for the Poor Program, 2008).
22. See the public declaration of the head of the forestry department as reported in the local newspaper *Lampung Post*, <http://www.lampungpost.com/Ruwa-Jurai/register-22-penarikan-dana-hkm-oleh-gapoktan-ilegal.html> (retrieved June 4 2012).
23. See Vivek Maru, “Allies unknown: social accountability and legal empowerment” in Stephen Golub (ed.), *Legal Empowerment: Practitioners’ Perspectives* (Rome: IDLO, 2010).
24. See E. Fuller Collins, *Indonesia Betrayed: How Development Fails* (Honolulu: University of Hawaii Press, 2007) for numerous disputes over land and environmental degradation in, mainly, Sumatra, where community organizers and support from LBH played a crucial role in the (very few) victories achieved in disputes with the mining, palm oil, and paper industry.
25. For studies on the centrality of money in local elections, see the articles in Henk Schulte Nordholt and Gerry van Klinken, *Renegotiating Boundaries: Local Politics in Post-Suharto Indonesia* (Leiden: KITLV Press, 2007). See also Vedi Hadiz, *Localising Power in Post- Authoritarian Indonesia: A Southeast Asia Perspective* (Stanford: Stanford University Press, 2010).

Legal Empowerment for the Protection of Community Land Rights: Findings from the Community Land Titling Initiative, 2009–2011

Rachael Knight* describes an ambitious two-year program to document and measure the impact of legal aid support for land titling, and the effectiveness of paralegals in particular.

Introduction

In recent years, governments across Africa have been granting vast land concessions to foreign investors for agro-industrial enterprises and forest and mineral exploitation. In many cases, these land concessions dispossess rural communities and deprive them of access to natural resources vital to their livelihoods and economic survival.¹ Rural communities often have little power to contest such grants, particularly where they operate under customary law and have no formal legal title to their lands. Even when communities welcome private investment, agro-industry often leads to environmental degradation, human rights violations, loss of access to livelihoods, and inequity.

For rural villagers, land is not merely a property asset or a place to live; rather, it is the source and locus of livelihood and food security, community and family support networks, ancestral linkages, traditional medicines, and religious and spiritual practices. As such, the rural poor² need secure land rights to protect their livelihoods, cultural practices, and economic survival.³ Yet concession grants threaten to significantly

decrease the amount of land rural Africans hold. This will have adverse impacts on already impoverished rural communities, including displacement and dispossession, increased competition for remaining land, and an associated increase in land conflicts in regions characterized by resource scarcity, which may have more wide-ranging destabilizing effects.

Rural villagers often use customary legal systems as the primary means of enforcing community rules, adjudicating rights claims, and resolving land-related and other conflicts.⁴ While customary systems may provide a high degree of tenure security within a community, they cannot protect the poor's rights when more powerful, external actors who possess the wealth and knowledge needed to use the formal system to their advantage seek to violate them. Moreover, if the formal legal system does not recognize customary rules relating to land use and management, the poor may have little protection against land speculation by elites, investors, and corrupt state authorities.

In this context, the poor need strong legal protections for community lands and natural resources and the expedient implementation of clear, simple, and easy-to-follow legal processes for the documentation of customary land rights. In particular, efforts to protect common areas are critical, as elites and investors tend to try to seize

common properties and community lands first. Although under some legal frameworks—such as Uganda’s Land Act (1998) and Mozambique’s Lei de Terras (1997)—communities’ rights to their customary lands exist regardless of formal documentation, these rights are not always respected in practice. Wide-scale, proactive documentation of community land claims must be undertaken to create evidentiary proof of existing customary land claims.⁵ Thoughtful and effective documentation processes for community lands held according to custom may help to protect rural communities’ land claims, livelihoods, and way of life, reduce conflict and instability in the long term, and foster endogenously-driven community development.

While several countries in Africa have passed legislation facilitating community land documentation, in most cases communities have not been able to use these procedures.⁶ Various factors cause this limited implementation. Legislative and procedural requirements may be complex and difficult to navigate or require evidence that customary rights holders cannot provide. Also undermining implementation are corruption, rent-seeking, or political patronage; lack of state resources (funding as well as necessary technical equipment); low staff capacity (caused by understaffing and lack of training); and systemic failures (such as excessive centralization of administrative processes or overlapping jurisdiction shared by multiple ministries).

Lack of political will further blocks customary land documentation: government administrators frequently resist implementing community land documentation laws as such laws tend to transfer control over valuable land and natural resources from state

officials to rural villagers. Describing this phenomenon, H.M.G. Ouédraogo writes: “Nor should we overlook the lack of political will shown by the administrative authorities in implementing legislation favourable to local land rights. Either no practical steps are taken to implement the law or, worse still, the administrative—and even judicial—authorities...are sometimes persuaded to make decisions which fly in the face of the law.”⁷ Similarly, in Mozambique, José Negroa observed that employees in the title deeds offices obstructed successful implementation of the Lei de Terras 1997 because “they would no longer have the monopoly in the decision-making regarding land adjudications.”⁸

Community Empowerment to Protect Land Rights

Communities seeking to document and protect their land claims must affirmatively and proactively take steps to initiate community land documentation procedures. Yet rural communities frequently lack knowledge of their legal rights to their lands under national law. Where legal information dissemination does occur, public legal education efforts often focus on the *content* of the laws while failing to include information about how—or even where—to claim, defend, and enforce such rights. Yet communities must know their legal rights to their land and have the capacity to obtain formal documentation of their claims in order to complete the communal land documentation process. Financial, linguistic, communication, structural, and access barriers can block the process.⁹

To protect their customary land claims, rural villages may need to be legally em-

powered to pursue community land documentation procedures. The goal of legal empowerment is a citizenry, community, and/or individual able to take action to hold government institutions or private corporations accountable for upholding, complying with, or protecting their legal rights. Legal empowerment helps people: 1) learn about the substance of their legal rights; 2) understand how to pursue the tangible actualization of these rights; 3) attain the practical capacity and skills to successfully pursue these rights; 4) gain an understanding that they have power, a voice, and the right to demand that the state protect and enforce their legal rights; and 5) use legal knowledge and skills to take action to attain their objectives. Paul Mathieu defines “legal empowerment” in regard to land rights holistically, in a quotation worth citing at length:

Legal empowerment of the poor could be defined as encompassing the multiple processes and actions by which they become more skilled, more powerful and eventually more able to use legal institutions and procedures to assert, document and defend their land rights. When existing regulations and procedures are so complex that they are in fact not usable by the poor, legal empowerment can also include legal and institutional changes that make procedures simpler and less costly, and administrations in charge more accountable, “usable” and accessible. Some of the core elements of legal empowerment in practice to secure land rights [include:]... being informed of the law, understanding what it means and its concrete implications and “utility” for oneself, understanding how it works; being aware of one’s

rights, and particularly the right to use laws and legal institutions to assert and defend one’s land rights; knowing how to navigate through complex, regulated and sometimes rigid sequences of actions that are necessary to use legal procedures; knowing how (and being able in practice) to use the language and the meanings of complex words designating specific actions, things, rights and/or relationships; knowing how to interact with state institutions and the individuals who compose them... [and] daring and being able: feeling and being skilled and strong enough to assert rights in an effective way when facing competing claims or organizations who are not easy nor cheap to deal with, or spontaneously willing to deliver public services equally or cheaply to all the “public;” etc.¹⁰

Lorenzo Cotula, Paul Mathieu, Jeffrey Hatcher, Janine Ubink, and Ineke van de Meene, scholars in the field of land tenure security, have noted that, “Legal empowerment is more than ‘legal work’—it is about tackling power asymmetries between competing land claims and authorities.”¹¹ Efforts to ensure full implementation of community land documentation legislation must therefore: 1) advocate for the streamlining and simplification of administrative procedures so as to ensure that rural communities can complete them; 2) endeavor to understand how to support communities to learn and assert their legal rights over their lands; 3) provide the legal and technical support communities need to document and protect their customary lands; and 4) stand ready to take action to support communities to enforce or protect their documented land claims as necessary.

The Community Land Titling Initiative: Design and Methodology

In light of various nations' failures to fully implement community land documentation legislation, in 2009 the International Development Law Organization (IDLO) launched the Community Land Titling Initiative in Liberia, Uganda, and Mozambique. The initiative, a two-year randomized control trial, investigated how much and what kind of support rural communities need to document and protect their community lands under national law. The intervention's objectives were to:

- facilitate the documentation of customarily held community lands through legally established community land titling processes;
- determine how to support communities in protecting their lands through legally established land documentation processes;
- devise and pilot strategies to guard against intra-community injustice and discrimination during community land documentation efforts and protect the land interests of women and other vulnerable groups;
- identify procedural obstacles to fast, inexpensive, and streamlined community land documentation; and
- develop recommendations for the improvement of community documentation laws and regulations so as to improve fairness and make titling procedures easier for both communities and land administrators to follow.

To undertake these objectives, IDLO worked in partnership with three NGOs—the Sustainable Development Institute (SDI)

in Liberia, the Land and Equity Movement in Uganda (LEMU), and Centro Terra Viva (CTV) in Mozambique—to support 58 rural communities in completing the community land documentation processes set out in national law. In Mozambique, 20 communities followed the procedures outlined in Mozambique's Lei de Terras 1997 and its accompanying Technical Annex; in Uganda 18 communities worked to form Communal Land Associations and then seek a freehold title or Certificate of Customary Ownership (CCO) for their lands according to the procedures set out in the Land Act 1998 and accompanying Regulations; and in Liberia, due to the president's moratorium on public land sale and the suspension of all public land sale processes (as set out in the Public Lands Act 1972-1973), 20 study communities followed a skeletal process set out in a memorandum of understanding signed by IDLO, SDI, and the Land Commission of Liberia.

In each nation, the trial randomly assigned the communities into one of four treatment groups, each of which received a different level of legal support:

- “control communities,” which received only manuals and copies of relevant legislation;¹²
- “education-only communities,” which received monthly legal education;¹³
- “paralegal communities,” which received monthly legal education as well as the support of trained community-based “paralegals;”¹⁴ and
- “full service communities,” which received monthly legal education as well as legal and technical support from trained professionals.¹⁵

The trial tracked the communities' progress through the relevant community land

documentation procedures. While the three nations' legal and administrative procedures differed, the legal processes included some version of the following five steps:

1. creation and election of a coordinating or “interim” committee;
2. boundary harmonization with neighbors (to define the limits of the land being documented) and physical demarcation of those boundaries;
3. drafting and adoption of community rules/by-laws/constitutions to govern community land administration;⁶
4. drafting and adoption of community land and natural resources management/zoning plans; and
5. election of a “Governing Council” responsible for the administration and management of community land and natural resources.

Field teams from SDI, CTV, and LEMU assisted the communities to complete these steps (according to their level of legal support) and observed and recorded the communities' progress, noting: all obstacles confronted and their resolutions; all intra- and inter-community land conflicts and their resolutions; and all internal community debates and discussions. A pre- and post-service survey of over 2,225 individuals, coupled with over 250 structured focus group discussions, supplemented these observations.⁷

The Legal Empowerment Impacts of the Community Land Titling Initiative

The community land documentation process appears to have increased community members' sense of legal empowerment.

Focus groups in almost every community in all three nations noted that the process of documenting their community land improved both their knowledge of their rights to their communal lands and their understanding of how to protect their lands. Importantly, some focus groups explained that as a result of the community land documentation activities, they understood how—and felt more able—to navigate government processes in general. For example, one focus group of youth said the project “has changed the way our community deals with government rules and procedures: it has helped us to know the value of having evidence [of our land claims] in case of any eviction or land grabbing.” Similarly, a focus group of youths relayed that, “People are now together and we are now following the law... We now have confidence to interact with the government, especially on issues of land.”

These statements point to the purpose of legal empowerment: community members' pragmatic, competent, and proactive use of the law to ensure that the state upholds, enforces, and protects rights. However, the community land documentation process also appeared to have similarly important empowerment impacts *within* communities: the findings indicate that by undertaking the community land documentation process, community members were legally empowered to address intra-community injustice, take an active part in rule-making, and demand accountability of their local leaders—results no less critical for rural villages that rarely interact with formal government.

Three primary impacts of the Community Land Titling Initiative are detailed below.

Drafting Community By-Laws/Constitutions Shifted Perceptions about Where Rule-Making Power Should Reside

While the Community Land Titling Initiative unfortunately failed to produce results at the community level in Mozambique, the process of making changes to community rules in Liberia and Uganda produced significant results in increasing community governance and leaders' accountability to community members.¹⁸

First, the communities' process of drafting and discussing the rules that would govern their land and natural resources caused some transfer of decision-making authority from local customary and state leaders to community members themselves. The majority of post-service respondents reported that the community made rule changes together, rather than their leaders acting alone. In Liberia, respondents' answers indicate that the community made changes as a group 91 percent of the time in the education-only communities, 96 percent of the time in the paralegal group communities, and 84 percent of the time in the full-service communities. In Uganda, when changes were made to rules, respondents reported the community as a group made them 95 percent of the time in the education-only communities, 92 percent of the time in the paralegal communities, and 100 percent of the time in the full services communities.

These data indicate that the processes of drafting by-laws/constitutions were highly participatory. This finding exceeded expectations in that leaving the education-only and paralegal treatment communities to complete the activities on their own could have allowed a small group of elites and leaders to dominate the process, thus marginalizing women, youth, and other groups.

The survey data also illustrate a statistically significant shift in respondents' perceptions of community participation in rule making. For example, in Uganda, when asked, "Who has the right and responsibility of determining the rules governing land and natural resources?" an average of 63 percent of pre-service respondents reported that the community has the right to determine community rules for land and natural resources management; post-service, the average was 85 percent. Similarly, in Liberia, 29 percent of pre-service respondents stated the community had the right, and an average of 48 percent of post-service survey respondents said so.

To assess the validity of these observations, the survey asked post-service focus groups whether their communities made any changes to in decision making processes in the past year. In Liberia, respondents said that the community land documentation activities had brought the entire community together to discuss rules and make decisions after listening to everyone's opinions for the first time, rather than allowing a few leaders to make decisions. For example, one youth group explained: "In the past, elders made all the decisions—now we are all involved. Now elders don't just make decisions without consulting the whole community." In another community, a women's focus group described: "In the past elders and our 'big people' made all the decisions. Now we call meetings for everyone to take part."

Drafting Community By-Laws/Constitutions Opened a Space to Hold Leaders Accountable

Second, in communities with weak leadership, community members instituted new mechanisms to hold leaders accountable and improve leadership.

In Liberia and Northern Uganda, protracted recent warfare and violence destroyed social and political institutions and weakened both governance structures and the rule of law. Indeed, pre-service focus group discussions in Uganda revealed that respondents described corrupt leaders or a lack of good leadership as the main causes of disunity and lack of cooperation in their communities. As one respondent said, “The things that prevents our communities from working together are competition for leadership, abuse of office by leaders ... [and] electing weak leaders. This is a disease.”

In a positive finding the field teams observed communities taking action to improve local governance structures over the course of the project. The communities did this in four main ways:

- *Establishing term limits and formal elections for local leaders.* As a direct result of the constitution-drafting and approval process, the Ugandan and Liberian study communities instituted term limits and periodic elections for their leaders.
- *Establishing criteria for the suspension or impeachment of leaders not acting according to community interests.* The field teams observed a number of communities holding their interim committees/intermediary group members accountable for representing community interests. For example, focus groups in Liberia stated that: “People are now elected. If you do something wrong we will remove you.” Other focus group members noted that, “leaders are now held accountable because we are using democracy to put people in position.”
- *Directly or indirectly challenging corrupt leaders in public forums.* The field teams observed that the community land documentation processes created opportunities for community members to challenge their leaders to better represent community interests. In Uganda, LEMU observed that the constitution-drafting process made it possible for people to indirectly challenge the conduct of their current leaders; for example, the first draft of one community’s constitution mandated that “leaders should not be drunkards,” and should not “shout at community members.” Similarly, in Liberia, when the absence of the paramount chief, district commissioner, and the statutory superintendent delayed a public ceremony certifying a public compact, a community debate ensued, during which members resolved that, “We elected our leaders; they are responsible to us!” The community sent for their leaders, and demanded their presence. The community impressed upon their leaders the need to “act as community members first and political leaders second.” An elder pleaded, “[This] is a community thing. Let the community decide what to do, and you [leaders] can supervise and guide our decisions.”
- *Demanding and establishing mechanisms to ensure local transparency.* The field teams also noted that the community land documentation meetings helped communities address inequities that caused resentment but previously had no appropriate forum for discussion or resolution. For example, in one community meeting in Liberia, a youth leader challenged the local elders, asserting:

When guests come in our communities, the elders go into caucus and divide whatever gift [the guest has] left [for the community].... We always ask

the elders to keep some of [this] money for community development ... but as soon as a visitor comes, we are left out of the discussion. This time, we want to be part; we want transparency and a say in what happens to tokens given to our communities by our guests.

In sum, the law-drafting process helped to shift the relationship between the community and its leaders.

Vulnerable Groups Leveraged the Process to Strengthen their Rights and Increase their Participation

Analysis and observations indicate that by creating the space and time for communities to reflect on and discuss their existing rules, norms, and practices (and the underlying reasons for them), the process of drafting constitutions/by-laws provided an opportunity for women and other vulnerable groups in Liberia and Uganda to question and challenge discriminatory customs. Indeed, community members (particularly women, youth, and non-natives) reported that they could stand up and argue against arbitrary and discriminatory rules as well as advocate for rules that would promote their interests.

In most communities, the process led to the strengthening of women's land rights, as written in the third drafts of their by-laws and constitutions. Looking, by treatment group, at the constitutions/by-laws drawn up in Uganda and Liberia shows that:

- the control groups included an average of **0.8** provisions strengthening women's land rights;
- the legal education-only groups included an average of **4** provisions strengthening women's land rights;

- the paralegal groups included an average of **5.5** provisions strengthening women's land rights; and
- the full legal services groups included an average of **2.8** provisions strengthening women's land rights.

In Uganda, the provisions protecting women's land rights generally concerned extending the definition of a "native" of the community to include any wife or widow of a man born in the community (thereby granting them legal rights to community land); allocation of a position on the local land management body to a woman leader (as stipulated in the Land Act, 1998); and explicit protection of community members' right to continue to collect certain natural resources (traditionally gathered by women) freely and as needed, thus ensuring women permanent and open access to communal lands. In Liberia, the most prevalent new rule concerning women's rights forbade domestic violence against women and imposed fines on men who beat their wives. The inclusion of these provisions in almost every community's by-laws, as well as findings in women's focus groups, indicate that this issue may be at the forefront of women's minds. This is an important finding: it may indicate that legal empowerment advocates could replicate these results when specifically seeking to address gender-based violence.

Information solicited during pre-and post-service focus groups of women indicates that their participation in the community land documentation process had an empowering effect. For example, in Uganda, in the pre-service women-only focus groups, many women described feeling afraid to speak up for fear of being belit-

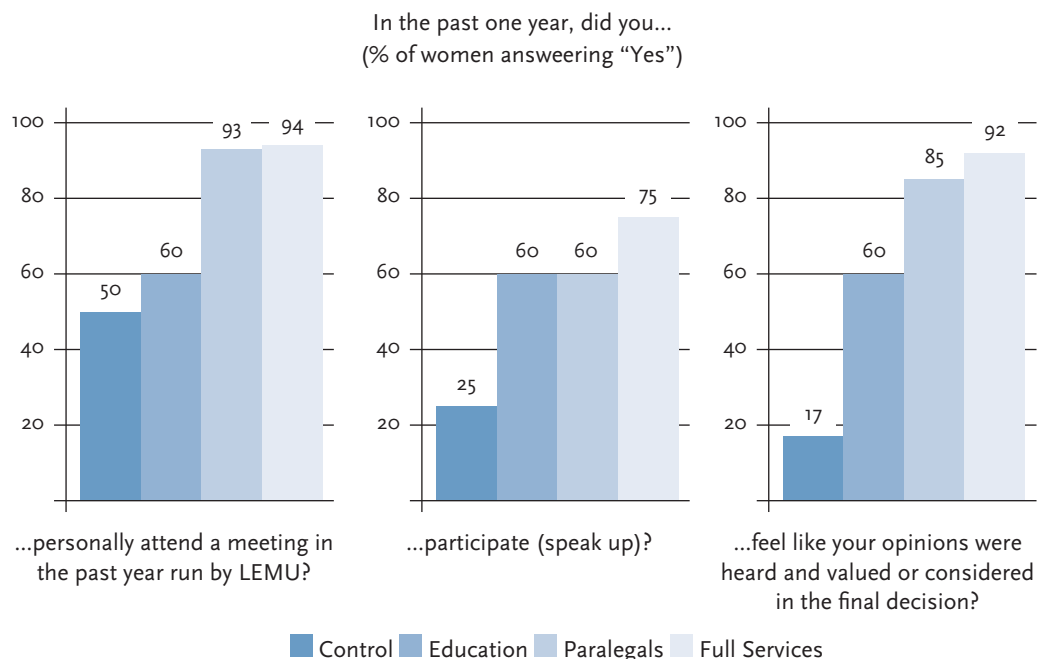
tled or mocked by men and other women, or because shyness or an internal sense of inferiority kept them from contributing their ideas. These women explained: “We fear that people will laugh at us,” and “We are considered inferior; [men think] that we have nothing useful to contribute.” Women in Liberia expressed similar sentiments.

In the Ugandan post-service focus groups, women almost unanimously expressed that they felt they could participate fully in community meetings, and that their community took their opinions and ideas seriously. In stark contrast to the pre-service focus groups, women explained that: “Our opinions were used to make final decisions”; “The written document represents our opinions, too”; and “Yes, we have the

opportunity to participate and our opinions are always taken.”

The survey data reinforce these sentiments: across the three treatment groups, but not in the control group, the majority of female survey respondents in Uganda reported both participating verbally in project-related meetings and feeling that the community had heard and considered their opinions and ideas. Of particular note is that the higher the level of legal and technical service provided, the higher the level of women’s participation and sense of being heard. These data underscore the importance of legal and technical professionals playing an active role in ensuring women’s participation.

Figure 1: Uganda: Women’s Reported Attendance and Participation Rates in Project Meetings



Women's participation in community land documentation activities was very low in Uganda until LEMU lawyers convened a series of workshops for women to teach them about their land rights under Uganda's Land Act 1998, impress on them that they must participate in the forthcoming constitution- and management plan-drafting process, and empower them to form women's groups in their own community to plan what they women would argue for during community discussions. These women's conferences proved a turning point in women's participation in project activities; LEMU observed that these efforts dramatically increased women's participation in community land documentation activities and served to increase women's confidence in speaking out and voicing their interests during community meetings.

In Liberia, the community land documentation activities also made some positive impact on women's right to participate in community land management discussions: both male and female post-service focus groups reported that women may now "take part in decision making" and "talk in land business." In one community, the men's group explained that the community now considered women "as part of the decision-making committee." Describing this trend, a female town chief explained, "Men look at things differently than before. First women were not allowed to talk in land business; now we are invited to all the meetings!" Furthermore, women's focus groups explained: "We talked, and they listened to us"; "Our opinions were respected"; and "Yes, we the women were talking about our rights!" SDI's field team observed that such changes occurred within the context of persistent demands from women and youth.

In sum, the three shifts described above point to a measure of legal empowerment women gained as a result of the project activities. However, it remains to be seen if such impacts will extend beyond the project activities; this was a brief, two-year study, and as such the findings should be considered preliminary. A new global legal empowerment NGO will undertake the next phase of research, described in this article's final section.

Findings Suggest the Advantages of Community-Based Paralegals

In answer to the central question "How much and what kind of support do rural communities need to successfully follow national laws to proactively document and protect their community lands?" the research found that cross-nationally, placing responsibility for completing community land documentation in the hands of the community while providing monthly legal education and paralegal support proved the most effective and empowering manner of service provision.

To measure the impact of the various legal services treatments, the study undertook a statistical analysis considering the relationship between the treatment provided and the degree of community progress through the land documentation processes. The resulting statistical analysis found that the communities receiving paralegal support completed more of the documentation process than the other treatment groups:

- the control group communities completed an average of **19%** of the process;
- the legal education-only communities completed an average of **50%** of the process;

- the paralegal support communities completed an average of **58%** of the process; and
- the full legal services communities completed an average of **34%** of the process.

These numbers do not fully reveal the impact of paralegal support because in Liberia, communities so desired documentation of their land rights that some control communities sent secret observers to meetings in the full legal services and paralegal communities, which allowed them to benefit from paralegal services. Both the field teams' observations and the statistical analyses indicate that paralegal support (supplemented by legal education and close supervision) was the most effective level of legal services provision. The defining factor appears to have been the paralegal communities' capacity to address and persevere through intra-community obstacles: cross-nationally, paralegal communities generally remained engaged throughout the project despite intra-community obstacles, while full-services groups tended to reject the work or drop out when confronted with internal tensions.

In fact, the statistical analyses show that in communities with obstacles or characteristics that would in theory impede the process, the paralegal and education-only treatments had more success in overcoming these problems than the full service group treatment.

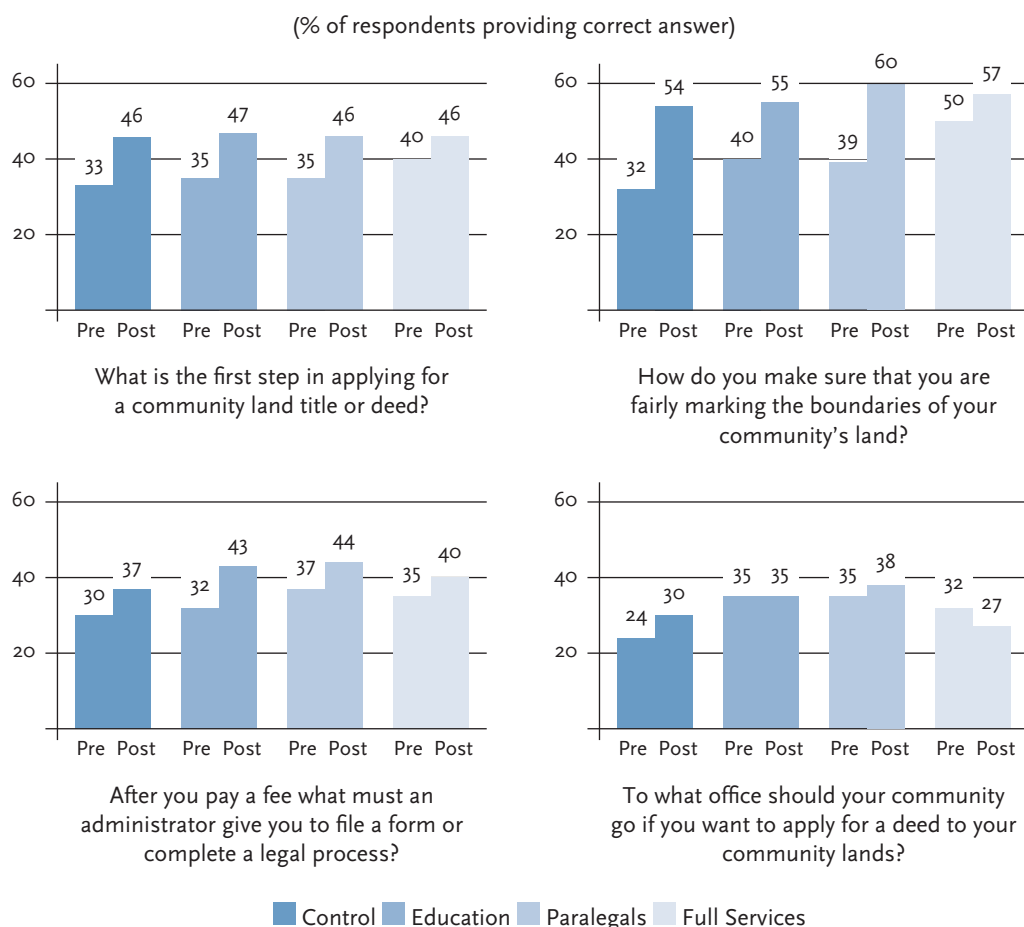
Quite surprisingly, the statistical analyses furthermore found that when faced with an obstacle or hurdle that impeded community progress, the full service communities' was not significantly different from the control group's process. These findings suggest that addressing intra-community obstacles through outside support may not

be productive and may intensify or provoke intra-community tensions.

Furthermore, the cross-national data indicate that despite receiving the same or more legal education as the other treatment groups, the full service groups' rate of improvement in the procedural knowledge questions was not as robust as the education-only and paralegal groups'. This may indicate that when an outside agency or team of legal and technical professionals complete all of the land documentation work on a community's behalf, community members may not absorb the legal knowledge as well as when they are responsible for completing the work on their own. Indeed, the full service respondents' rate of improvement between the baseline and post-service surveys was lower than even the control groups' rate of improvement, for all questions. (See Figure 2.)

The finding that the full-service treatment group communities performed worse than both the legal education-only and paralegal treatment group communities across a range of indicators may indicate that the responsibility of completing most project activities on their own motivated communities to take the work more seriously, integrate and internalize the legal education and capacity-building training more thoroughly, address intra-community obstacles more proactively, and claim greater ownership over the community land documentation process than when a legal and technical team does the work.

The field teams' observations support this hypothesis: in both Liberia and Uganda, the presence of the paralegals appeared to further their communities' feeling of empowerment by allowing the process to be more internally-driven and fostering

Figure 2: Cross-national: Correct Answers to Procedural Questions

the sense that the community performed the land documentation work on its own initiative. Conversely, some of the communities receiving full legal support appeared to adopt a more passive attitude towards the process. Similarly, in one full-service community in Uganda, a lively debate concerning the second draft of the community constitution was under way when a political rally providing free alcohol was scheduled to start. At this time, the community stopped the meeting and told LEMU's field team, "You just finish it for us!"

Even when community members consider the work compelling, engaging, and greatly needed, if an outside NGO leads the work, the community may see it as removed from village life, and feel that the final responsibility for the desired outcomes falls on the NGO. In contrast, giving a community the direct responsibility to complete land documentation work (with guidance from legal and technical professionals and under the leadership of trained community members) was a more empowering model of legal services provision.

The research indicates that paralegals have a significant, positive impact on communities' capacity to complete land documentation activities and may be the most effective and efficient method of supporting community land documentation efforts. Specifically, the data show that paralegals best support community efforts by:

- *Helping communities to address intra-community obstacles.* As described above, outside technicians or lawyers may not recognize these obstacles—or may be unable to resolve them.
- *Increasing community participation.* The data suggest that having trusted community members integrally involved in—and hired by—the project helped to galvanize community participation in land documentation efforts. Cross-nationally, the service provision teams observed that the paralegals were more adept than the field team at disseminating project-related information throughout their communities, motivating their community to complete project activities, and, according to some indicators, increasing community participation. The field teams also observed that the paralegals served as an important liaison between the community and the field teams.
- *Fostering empowerment and creating a sense of community ownership.* The field teams observed that the paralegals promoted greater community ownership over the documentation process and helped to improve the community's commitment to completing the necessary work. The paralegals also appeared to further their communities' feeling of empowerment through this sense of ownership and initiative.
- *Strengthening neighboring communities.* The field teams observed that the paralegals not only strengthened and improved the capacity in their communities, but in neighboring communities as well. Interestingly, CTV and SDI observed that neighboring education-only or control groups communities often asked paralegals for assistance; leaders in these communities knew of the paralegals' training, and often called on them for support. Moreover, unlike the field teams, the community paralegals were available daily for consultation concerning how to complete the land documentation activities.
- *Creating a local "expert" in the community who will remain even after land documentation efforts are complete.* A further advantage of involving paralegals in the community land documentation process is that once the documentation activities are complete and the community has its title, deed, or delimitation certificate, the community may continue to benefit from having two resident paralegals. These paralegals may help to increase community members' sense of empowerment during any future consultations with government agencies and/or potential investors and may serve as a link between their community and NGO or government assistance, should further technical support services be necessary.

Civil society or government agencies working concurrently with a manageable number of communities led by paralegals may present a low-cost strategy for wide-scale land documentation efforts. However, it is important to note that community-based paralegals often have very low initial capac-

ity and need frequent training, supervision, and support by a legal and technical support team.

Moreover, the field teams' observations and experiences illustrate that while motivated communities can perform much of this work on their own, they need targeted legal and technical assistance to complete community land documentation efforts.¹⁹ Indeed, the field team's experiences working with communities throughout the process indicate that legal and technical professionals must provide the following kinds of support throughout the community land documentation process:

1. introducing the land documentation process and providing periodic legal education and capacity-building training concerning the community's legal rights to their land, the legal process to formally document these rights, and how to successfully complete the necessary procedures;
2. providing mediation and conflict-resolution support during any significant, particularly contentious land conflicts/boundary disputes that communities cannot resolve on their own;
3. providing legal support and technical assistance during completion of the community's second and third drafts of their by-laws/constitutions;
4. implementing a women's empowerment/participation strategy to ensure women's legal knowledge and full participation in all community land documentation activities; and
5. providing assistance to communities to follow all of the administrative components of the community land documentation process.

The study furthermore found that a legal and technical team must closely supervise each community paralegal's efforts not only to ensure the quality of their work, but also to intervene when necessary and demonstrate to all stakeholders (government officials, investors, local elites) that the community's efforts are supported by a team of lawyers who have the capacity to take legal action when necessary.

In sum, the research suggests that the most legally empowering model of service provision may be to allocate to communities those components of the land documentation process that training and paralegal support allows them to complete on their own, with lawyers and other professionals stepping in to support communities, complete the more legally and technically challenging components of the documentation process, and provide legal support when powerful institutions and individuals threaten community interests or obstruct the community's land documentation efforts.

Further Research and Monitoring

Namati, a new global legal empowerment NGO, will implement Phase II of the community land documentation work. A central component of Phase II will be tracking the long-term impacts of community land documentation. In particular, a longitudinal study will investigate the following questions, among others:

1. Does community land documentation lead to increased land tenure security for rural communities?
2. Are community land documentation efforts—particularly the drafting of local by-laws/constitutions—leading to improved intra-community governance?

- Are leaders held accountable to community interests?
 - Are transparent elections held on schedule?
 - Are women's land rights protected?
 - Are the adopted rules followed and enforced?
 - Are communities amending their rules/constitutions/by-laws over time? What kinds of amendments are they making?
3. Does the community land documentation model improve sustainable land and natural resources management?
 4. Have local land conflicts declined or increased as a result of the community land documentation activities? Are the agreed intercommunity boundaries holding strong?
 5. Have the community land documentation efforts increased communities' bargaining and negotiation powers with private investors seeking community lands?
 - Are communities and investors making equitable contracts?
 - Are communities leveraging private development for community development and increased prosperity?
 6. Are the intra-community changes positively or negatively affecting community members' interactions with state administrative systems?
 7. Does the community land documentation model lead to increased local prosperity and local development?; and
 8. What additional kinds of support will ensure that rural communities can actualize improved intra-community governance shifts?

While there are many challenges to overcome, efforts to implement community land documentation legislation bring us closer to understanding both how to best support communities to document and protect their lands, as well as how governments should approach the development of sound legal and regulatory community land protection frameworks. These efforts intend to leverage legal procedures to protect community land held according to custom and to support the drafting and widespread implementation of land legislation that is easy for communities to follow and use, and which empowers community members to:

- improve community governance and promote the accountability of community leaders;
- strengthen intra-community protections for the land rights of women and other vulnerable groups;
- resolve long-standing land conflicts; and
- enhance conservation and the sustainable management of natural resources.

The data indicate that community land documentation efforts may create strong ripple effects that reach beyond technical improvements in legal knowledge or tenure security. The research further indicates that the process empowers communities to follow complex administrative procedures and more capably interact with state systems, hold their local leaders accountable for good governance, increase community members' participation in local rule-making, and empower women to take part in local land and natural resources administration and management. Once a community has successfully documented its land claims, it may then work hand-in-hand with government

agencies and local organizations to leverage its lands for locally driven development, and prosperity.

Notes

* Rachael Knight is the Director of Namati's Community Land Protection Program. She previously designed and directed the International Development Law Organization's (IDLO) Community Land Titling Initiative, which worked to document and protect the customary land rights of rural communities in Uganda, Liberia, and Mozambique. The author would like to thank and acknowledge the directors and staff of the organizations that implemented the community land protection work described herein: Silas Siakor, Ali Kaba, Rowena Geddeh, and Jacob Hilton of the Sustainable Development Institute in Liberia; Judy Adoko, Teresa Eilu, and Simon Levine of The Land and Equity Movement in Uganda; and Adla Salomao, Issufo Tankar, Dilaria Marenjo, Nelson Alfredo, and Antonio Consul of Centro Terra Viva in Mozambique. The author would also like to thank Erica Harper and Thomas McInerney of IDLO for their wholehearted support for this work

1. See, e.g., <http://www.oaklandinstitute.org/land-deal-brief-land-grabs-leave-africa-thirsty>, <http://www.oaklandinstitute.org/great-land-grab-rush-world%E2%80%99s-farmland-threatens-food-security-poor>, and <http://www.land-coalition.org/cpl/CPL-synthesis-report>, among many other reports.
2. This article uses “the poor” as shorthand for all individuals, peoples, communities, and groups that lack the power and capacity to fully and freely access and use formal legal systems to claim and defend their land rights.
3. Moreover, secure land rights provide incentives for rural villagers to maintain and conserve natural resources, plant long-term crops, and develop and invest in their communities. Over the long term, such investment can translate into improved health and living standards.
4. To a large degree, when the poor cannot access the formal legal system they may rely on customary systems not out of choice, but because of other barriers. In other contexts, customary bodies may be quicker, more culturally sensitive, and cheaper than formal systems. However, they are unregulated, may flout national laws, and may use discriminatory customs.
5. Liz Alden Wily makes the point that “While formal registration need not be a prerequisite to recognition of customary land ownership ... such certification helps to *double-lock* tenure security, and practical provision to enable this [should] occur at scale” (emphasis added); *Making Peace Impossible? Failure to Honour the Land Obligations of the Comprehensive Peace Agreement in Central Sudan, a Resource Paper 2* (CHR Michelsen Institute, 2010), <http://www.cmi.no/sudan/doc/?id=1305> (accessed September 20, 2011).
6. In Uganda, since the passage of the Land Act 1998, not one community has submitted a successful application to create a Community Land Association and seek joint title to common lands. In Liberia, no rural community has secured a deed to their lands under the Public Lands Law 1972–1973 since 1988. In Mozambique, although many communities have undergone the legally mandated land delimitation process and been granted the resulting formal “right of land use and benefit,” this has not provided sufficient protection against land appropriation by elite investors; local administrators and investors continue to pressure communities to agree to private ventures being built on their lands without equitable rent, partnership status, or profit shares.
7. H. M. G. Ouedraogo, “Legal Conditions for the Recognition of Local Land Rights and Local Land Tenure Practices,” in *Making Land Rights More Secure—International Workshop for Policy Makers* (Ouagadougou, Burkina Faso: IIED, 2002).
8. José Negrão, *Land in Africa—An Indispensable Element towards Increasing the Wealth of the Poor*, Oficina dos Centro de Estudos Sociais, No. 179 (2002), 19.
9. More specifically, these barriers often include separate fees associated with each step of the administrative process, costs of days of travel to courts or government offices, surveyors' fees, loss of income while traveling and pursuing claims, illiteracy, and not speaking the official national language.

10. Paul Mathieu, "Concept note for the work on legal empowerment to secure land rights in FAO," (unpublished, 2008). Part of this work was been summarized and published in Jeffrey Hatcher, Lucia Palombi & Paul Mathieu, "Securing the Land Rights of the Rural Poor: Experiences in Legal Empowerment," Stephen Golub (ed.), *Legal Empowerment: Practitioners' Perspectives* (Rome: IDLO, 2010), 235–250.
11. Lorenzo Cotula, Paul Mathieu, Jeffrey Hatcher, Janine Ubink and Ineke van de Meene, "Highlights of the Workshop Discussions," Lorenzo Cotula and Paul Mathieu (eds.), *Legal Empowerment In Practice: Using Legal Tools to Secure Land Rights in Africa* (London: IIED, 2008), 136.
12. These communities were not "pure" controls in the usual sense; rather, they benefited from one introductory project meeting, at which they received copies of the national land law and regulations, as well as detailed how-to guides written by the partner NGOs. The goal was to observe how much of the community land documentation process a community could accomplish on its own, if it had basic information. At the project introduction meeting, the field team encouraged these communities to follow the process on their own. To motivate them and to ensure differentiation of financial obstacles from procedural obstacles, the NGO covered the costs of the formal technical survey of their lands. Although they were not pure "controls," this paper will refer to them as such.
13. Training topics included women's land rights, national inheritance law, natural resource and conservation law, relevant sections of the national constitution, the existence of legal services and how to access them, the position of customary law within the statutory legal framework, the structure of the national court system, the practical skills required to title lands, conflict resolution tactics, boundary documentation and demarcation techniques, the location and role of all relevant government agencies, how to access and complete government forms, and how to access required documentary proof. Training methodologies included role-plays, dramatizations, practice exercises and question-and-answer sessions, and interim assignments such as completing land documentation activities.
14. The support of two community-based and community-elected paralegals supplemented monthly legal training for these communities. Although these community members did not receive board certification, they received rigorous training at the inception of their work and on a monthly basis, and close supervision by the field teams.
15. Field teams in each country assisted and supported these communities throughout the land documentation process, providing all relevant legal assistance requested. This assistance included mediation, boundary harmonization support, help drafting and revising the laws and resource management plans, and form and documentation support. These communities did not have "paralegal" supports.
16. Although this was not a required component of Mozambique's delimitation process, Mozambican communities supported by the project completed this process to ensure parity.
17. For more information and a full report of the study's findings, see <http://www.namati.org/work/community-land-protection-program/>.
18. Unfortunately, the community land delimitation process in Mozambique lacks a required process for discussion of community bylaws/rules for land and natural resources administration and management, and consequently communities failed to complete these exercises. Mozambican focus groups unanimously reported that over the course of the project, they had not made any changes to community leadership, governance, or decision-making processes.
19. For example, in Mozambique, communities needed assistance to liaise with relevant government agencies to schedule the GPS survey of their lands and compile the reports central to delimitation certificate applications; in Uganda, communities needed help contracting a licensed surveyor and completing all of the Communal Land Association incorporation and freehold title application forms.

Legal Empowerment and the Administrative State: A Map of the Landscape, and Three Emerging Insights

Vivek Maru* and Abigail Moy* emphasize the importance of empowering citizens to exercise their legal rights when interacting with the administrative state. They argue for simple, accessible statements of administrative laws and rules, a strong role for community paralegals as intermediaries between citizens and the state, and policy improvements that grow out of information about citizen grievances.

Efforts to improve the rule of law often focus on judicial systems: courts, prosecutors, bar associations.¹ But for many people around the world, law touches life most directly through the administrative state.

In 2009, for example, shantytown residents in Buenos Aires, Argentina, suspected a link between a surge of illnesses and contaminated ground water. They initiated administrative action to connect their homes to the municipal water system.² In 2013, farm workers in the Philippines applied for land ownership certificates from the Filipino Department of Agrarian Reform. Those certificates allowed them to fulfill what one farmworker called “our long cherished wish to own the lands we till.”³

In 2011 in Mpopemene, South Africa, the national social security agency terminated the disability benefits of an HIV-positive mother without explanation. Her daughter began skipping school to care for her. That led the girl’s teacher to contact a communi-

ty paralegal, who in turn advocated with the agency to reinstate the woman’s benefits.⁴

As these examples suggest, the administrative state is of central importance to the pursuit of legal empowerment. By legal empowerment, we refer to the ability of citizens to understand and use the law, often for the purpose of defending their rights and participating fully in society. In this essay, we offer a map of the administrative state, and illustrate how legal empowerment efforts can engage different kinds of administrative organizations. We then offer three key insights that emerge from the literature and from our practical experience. Specifically, we argue for: 1) simple, accessible statements of administrative rules; 2) a strong role for community paralegals as intermediaries between citizens and the administrative state; and 3) feedback channels for improving administrative policy based on information about citizen grievances.

Mapping the Spaces for Empowerment: Function and Organizational Type

The modern state is complex and, as Bruce Ackerman points out in “Goodbye, Montesquieu,” does not conform easily to classical taxonomy.⁵ We offer what we hope will be a useful conceptual map of public administration for the purpose of legal empowerment.

In Table 1, the rows represent basic functions of administrative bodies: rule-making, implementation, and handling of griev-

Table 1: Examples of Legal Empowerment Strategies in Public Administration

Types of Administrative Organization	Service Delivery Agencies*		Regulatory Agencies		Public/Private Enterprises	
	State/Service Provider Actions	Civil Society Actions	State Actions	Civil Society Actions	State Actions	Civil Society Actions
Rule-making i.e. developing procedures and regulations; setting standards; defining the nature, scope, and delivery method of public services	Soliciting input from target beneficiaries; integrating lessons from existing complaints and feedback	Advocating for services, procedures, and coverage adequate to enable the actual enjoyment of basic rights	Creating opportunities for public consultation and deliberation when drafting regulations	Facilitating community participation in public hearings; pressing for the incorporation of public input	Developing transparent procurement processes; forging terms of reference that hold concessionaries to service standards that satisfy the basic rights of beneficiaries	Facilitating public participation in the development of standards and agreements; ensuring legitimacy of procurement processes by leveraging RTI laws
Implementation i.e. enforcing policies and rules; delivering public services; issuing permits, clearances, and identity documents; raising public awareness of programs, benefits, and rights	Creating and disseminating public service characters; training service delivery personnel on the rights and special needs of vulnerable groups; establishing help desk and information hotlines; enforcing right to information laws	Helping beneficiaries to navigate administrative procedures; pursuing solutions to errors or complications in service delivery; dealing with discriminatory behavior by official personnel; educating people on rights	Stating rules and policies simply and clearly; incorporating data and observations from community monitoring efforts; inviting public participation in decisionmaking when issuing high-impact permits; deputizing community-based monitors/enforcers	Building communities' capacity to independently monitor and report compliance with regulations; helping communities to participate in high-impact administrative decisions; leveraging RTI laws to expose areas of law regulation	Accounting for community feedback when assessing concessionaries' compliance with terms of reference	Advocating for greater agency oversight of concessionaire conduct where appropriate

Types of Administrative Organization	Service Delivery Agencies**		Regulatory Agencies		Public/Private Enterprises	
	State/Service Provider Actions	Civil Society Actions	State Actions	Civil Society Actions	State Actions	Civil Society Actions
Quasi-adjudication i.e. adjudicating challenges to official actions and policies; remedying injuries caused by administrative action; processing and redressing grievances	Establishing effective and accessible grievance redress mechanisms to deal with the denial, delay, or quality of services; creating hotlines and locations where complaints can be lodged and addressed	Helping beneficiaries to file claims and lodge complaints; following through with relevant personnel to move cases forward and ensure execution of decisions	Establishing whistleblower acts; permitting paralegal (non-lawyer) representation of individuals before administrative tribunals	Helping communities to file suits before administrative tribunals or adjudicative boards that challenge the conduct of regulated entities or the action/inaction of agencies	Communicating simply and clearly which entity is responsible for resolving different types of complaints or problems; ensuring that grievance redress options at both entities are not contradictory or too complex	Directing affected person to the appropriate forum for grievance redress, either the contracted service provider or the overseeing/ coordinating agency; guiding people through simultaneous or consecutive procedures at various entities

** the strategies for service delivery agencies also apply to private sector concessionaires responsible for the management and delivery of public utilities, e.g. water and sanitation, electricity, mail, etc.

ances and disputes, or quasi-adjudication. While Montesquieu associates each of these with a separate branch of government, the executive branch in a modern state engages in all three. The columns represent three major types of administrative organization: service delivery agencies, regulatory agencies, and hybrid public-private entities.⁶ Service delivery agencies, often called line ministries, focus on the direct provision of essential public services, such as education and social welfare. Regulatory agencies enforce a “mandatory scheme of prohibitions or obligations.”⁷ Examples include an environmental protection agency or a telecommunications regulatory authority.

Hybrid public/private entities deploy private actors in the fulfillment of public responsibilities. The Argentine government’s concession of Buenos Aires’ water and sanitation services to a consortium of privately-held companies in the early 1990s is a well-known example.⁸ In practice, government bodies may involve a combination of these types. In countries with national health systems, for instance, the health ministry provides direct services while also regulating private healthcare providers.

In the table, we try to show that, for every function and every type of organization, there are ways of designing administrative institutions to make greater space for direct engagement by citizens. When Buenos Aires contracted private companies to provide water and sanitation services, for example, the city could choose to systematically incorporate citizen feedback into its review of the companies’ performance. Or an environmental agency could allow forest dwelling communities to take part in enforcing rules against illegal logging. The Philippines Department of Environment and Natural Re-

sources has made that kind of participation possible by authorizing community paralegals to serve as forest guards.

No doubt, each of these choices of institutional design poses tradeoffs. Modern states are too large and too complex to work like ancient Athenian democracies. There are limits on citizens’ time and expertise, and agencies cannot pass off their responsibilities to the general public. But many administrative institutions around the world inhabit the opposite end of the spectrum, where bureaucratic authority is wielded in a way that is inaccessible and unaccountable to the people whom that authority is meant to serve.⁹ In those cases, a legal empowerment perspective can be a useful source of critique.

For every kind of agency and every administrative function, there is the potential for interventions from civil society. Civil society groups can support citizens to exercise their rights and to participate in governance. Organizations like *Tanggol Kalikasan* in the Philippines train and support the community paralegals who serve as forest guards. Organizations like *Asociación Civil por la Igualdad y la Justicia* in Buenos Aires assist slum dwellers in filing complaints about problems with water and sanitation. Drawing on their grassroots experience, these organizations often advocate for the enabling reforms listed in the left half of the columns in the table.

Although legal empowerment relates to every cell in the grid, we do not suggest that advocates for legal empowerment try to systematically address every element at once. We favor instead the problem-solving approach adopted by many legal empowerment practitioners: start with the lived experience of citizens, assess the various

causes of a given injustice, and engage the institutions necessary to achieve a practical solution.

Nevertheless, this table may be a useful tool in the process of solving problems: it can help the user note where the existing efforts have focused to date and see the range of issues that a particular problem may involve.

The table—or conceptual map—also helps us to situate existing traditions of research and practice. The academic literature on administrative law tends to focus on the adjudicatory and rulemaking functions of both service delivery and regulatory agencies, and the relationship between those functions and the legislative and judicial branches of government.¹⁰ Administrative law scholars have not paid as much attention to the implementation function, though most citizens interact with the administrative state through that function: applying for a trade license or an identity document, for example, or accessing healthcare and education services.

Other scholars study implementation by the administrative state, of course—one of the growing fields in public health, for example, is “implementation science” related to the delivery of healthcare services. But it would be useful to have more research that shows how implementation interacts with the other two administrative functions, rule-making and adjudication. Much of the work on “social accountability”—including community scorecards and community oversight committees attached to schools or health clinics—seeks to improve the implementation function of service delivery agencies. Legal aid programs, meanwhile, often engage the quasi-adjudicatory function of service delivery agencies. Legal aid organi-

zations might assist citizens to challenge the denial of welfare or disability benefits, for example. One of us has argued that combining legal aid and social accountability efforts may yield greater improvements in the responsiveness and effectiveness of basic services.¹¹

Finally, many of the experiments in deliberative governance, including the deliberative polls piloted by James Fishkin, strengthen citizens’ capacity to participate in the rulemaking and implementation functions of regulatory bodies.¹²

Our conceptual map illustrates that these various traditions might grow to areas of the grid in which they are not customarily applied. We see a particular need, given the global trend towards privatization, for more legal empowerment work engaging hybrid public-private entities, for example.

Three Insights from Literature and Practice

We draw on academic literature and our practical experience to offer three insights about legal empowerment and the administrative state. These suggestions apply across the agency types and functions described above.

1. State the Law Simply and Disseminate It Widely

One fundamental step towards legal empowerment is making the law clear, easy to understand, and easy to use. Complexity confuses people, and often serves as a cover for malfeasance. Advocates for the right to information (RTI) have made impressive strides in ensuring greater government disclosure, and requiring that government information be available on demand. There

Excerpts from a Citizen's Charter that Fails to Empower: The Kerala State Police Department

Unclear procedures for inquiries or grievances: “[E]nquiries of petitions [sic] are not, in strict legal terms, the job of the police; if the police have been attending to such matters, it should be regarded as a consequence of historical compulsion. If one does not have faith in the system, he is at liberty to get his grievances redressed through the ‘prescribed channels’ etc. Therefore, those who affix their signatures in the petitions registers are not expected to question the integrity or motives of the police in arriving at a particular solution.”

Lack of time limits: Rules stipulate that police will undertake common duties such as informing a friend or relative of a person detained by the police for interrogation “as soon as practicable,” rather than within an objectively measurable period of time.

Refusal to be held accountable by the public: “[I]t would neither be possible, nor desirable to introduce a regular and direct social monitoring, unlike in the case of other service departments.... [There is] no question of any monitoring by any person or agency (including the society at large), which has not been authorized to do so by a specific law or statute.”

*Source: Public Affairs Centre,
Bangalore, India*

are now RTI acts in approximately 90 countries, though implementation is uneven.¹³ The more recent coalition around Open Government builds on the work of RTI advocates and stresses transparency regarding such things as budgets and government transactions.¹⁴

However, the RTI and Open Government movements have paid less attention to what we consider a first-order priority for transparent governance: simple statements of law and policy, with a focus on the rules governing direct interactions between citizens and the state.¹⁵

Consider Sierra Leone’s free healthcare policy for pregnant and breast-feeding women and children under five, launched in 2010. The policy is one of the present government’s signature initiatives. But three years later, the government has not yet produced a clear description of the precise scope of the policy, the specific rights afforded to patients, or the processes for redress if healthcare is withheld. Namati and the World Bank Justice for the Poor Program engaged senior officials in the Ministry of Health to try to clarify the policy, but the details of the policy remain hazy. The vast majority of citizens have no way of knowing which medications and treatment they are entitled to at local health facilities.

Issuing and widely disseminating public service charters, also known as citizen’s charters, can be a valuable step towards simplifying and demystifying the law. Charters summarize policies and procedures and commit to standards of quality and punctuality.¹⁶ Citizen’s charters vary widely in length and form, ranging from brief tabulated lists to lengthy narrative documents. They have been adopted in countries across all continents.¹⁷

In Malaysia, Sweden, and the Philippines, for example, all agencies are required to formulate charters that commit to delivering goods and services according to predetermined standards.

We glean four lessons from the international experience with charters and other efforts at legal simplification. First, these charters should include concrete details most relevant to citizens, such as the specific nature of government commitments, the amount of time required, office location and hours, and what to do in the event of a breach in policy.¹⁸

Second, it is important to not just publish but publicize. If possible, radio, television, and in-person outreach should complement written and web-based materials.

The Brazilian government conducts information campaigns to inform poor households of their rights and obligations under Bolsa Familia, its conditional cash transfer scheme. Social assistance workers conduct home visits, and send notifications in local dialects that describe how the program works and how to report irregularities. The administration also uses radio ads, newspaper articles, pamphlets, and posters to publicize the program. In part as a result of this extensive outreach effort, the program grew quickly. In the first year, 1.6 million families joined, and another 4.5 million joined in the second year.¹⁹

Civil society can also play a critical part in disseminating legal information. A user perception survey in India found public awareness of citizen's charters was highest in Tamil Nadu, as compared to other states. The survey authors hypothesized that Tamil Nadu's advantage was due at least in part to the work of a local NGO, Catalyst Trust. Catalyst set up 156 "Citizen Centres" across the

state to provide information about government; it also distributed a book that compiles citizen's charters from all departments in the state.²⁰

Third, simplified statements are most useful if government provides concrete remedies in the event of a breach. Several states in India have passed right-to-service laws that establish simple standards and timeframes for common public services, and establish procedures for enforcement if public servants fail to comply.²¹ Such clear standards and timeframes are in stark contrast to the charter of the Kerala State Police Department, excerpted here. That charter does not provide a clear explanation of how to file a grievance in the first place, much less a guarantee of action in response to a valid grievance.

Fourth, we suggest that charters and other simplified statements of the law should aim to reflect a robust and active conception of citizenship. Nicola Lacey and H. K. Wong, among others, argue that some public service charters treat people more like customers than citizens.²² A more participatory model would start with incorporating citizens' input in forming charters. Governments can seek input from the people for whom a given legal statement is most relevant, for example disabled people for a charter on disability benefits, or farmers for a charter about agrarian land rights.²³ A consultative process will lead to charters that are more legitimate and effective.

Charters and other legal compendiums can reflect a robust conception of citizenship by addressing not just rights but also responsibilities. In the case of Sierra Leone's health policy, a statement could elaborate the most important ways in which communities and families can take an active

Excerpts from an Empowering Citizen's Charter: Philippines Bureau of Immigration

Here, the Bureau of Immigration provides all relevant information in a simple table format and in straightforward language. It clearly specifies the relevant steps for reacquiring Philippine citizenship, the costs and time involved, who is responsible at various stages, and where to find them.

Fees

PARTICULARS		AMOUNT
PRINCIPAL	Application Fee	Php 2,500.00
	Express Lane Fee	500.00
	TOTAL	Php 3,00.00
DEPENDENTS	Application Fee	Php 1,250.00
	Express Lane Fee	500.00
	TOTAL	Php 1,750.00

How to avail of the service

STEP	APPLICANT ACTION	AGENCY ACTION	PERSON RESPONSIBLE	OFFICE LOCATION	DURATION
1	Secure checklist of requirements and Application Form	Provide assistance/information to applicant	PIAC Personnel	Public Information and Assistance Counter (PLAC), G/F Main Office	20 min
2	Submit application form and requirements	Check completeness of requirements and if application is properly filled-out	PIAC Personnel	Pre-Evaluation Desk PIAC, G/F Main Office	5 min
	Take Oath of Allegiance before an authorized BI Legal Officer	Administer Oath of Allegiance	Legal Officer	PIAC, G/F Main Office	3 min
		Evaluate and approve application for filing	LID Lawyer of the Day	Pre-Evaluation Desk PIAC, G/F Main Office	5 min
3	Proceed to Central Receiving Unit for filing of application	Raffle application and forward it to its respective assigned evaluating officer	Evaluating Officer	Office of the Chief STF, 4/F Main Office	5 min
4	Wait for approval of application	Evaluate and prepare order of approval	Evaluating Officer	Office of the Chief STF, 4/F Main Office	5 working days
		Review and print Certificate of Reacquisition or Retention of Philippine Citizenship	Reviewing Officer	Office of the Chief STF, 4/F Main Office	1 day
		Transmit Order/ Identification Certificate to the Office of the Commissioner (OCOM) for approval	Staff-in-charge	OCOM 2/F Main Office	
5	Claim Identification Certificate (IC)	Release IC and order of approval	Staff-in-charge	Office of the Chief STF, 4/F Main Office	20 min

End of Transaction

Source: Bureau of Immigration, Philippines

role in protecting health, such as prenatal care visits, completion of child vaccinations, exclusive use of toilets, handwashing, and use of bed nets. A statement could also explain the role of village health committees in overseeing the functioning of primary health clinics.

2. *The Role of Community Paralegals*

Even with clear statements of law, a massive gap may divide administrative institutions from citizens. Community paralegals and other civil society advocates have proven effective in bridging that gap. Paralegals can support citizens to engage the administrative state, and to hold it accountable.²⁴

Starting in 2010, we worked with partners in five countries to conduct a comparative study of community paralegals.²⁵ In South Africa, Jackie Dugard and Katherine Drage found that paralegals help clients to obtain social protection entitlements like social security, disability benefits, unemployment insurance, and child support.²⁶ From 2009–2011, a separate study on community land protection efforts in Liberia, Mozambique, and Uganda identified paralegals as an effective means of assisting communities in contacting government agencies, engaging professional land surveyors, compiling evidentiary proof of community land claims, and completing application forms.²⁷ Both studies indicate that paralegal support particularly helps those who are not literate in the government’s official language.

Community paralegals also help to manage complications that arise during interactions with an administrative agency. Citizens often have to navigate a host of unforeseen procedures and obstacles. Registering a child for schooling in Morocco, for instance, presents a minefield of challeng-

es for an unwed mother, who must pursue identity papers for herself and her child, and whose child’s existence puts her at risk of harassment and unwarranted criminal prosecutions for adultery or prostitution. Local legal empowerment groups linked to the international NGO Global Rights therefore accompany women through these processes. They serve as intermediaries between women and authorities, and provide protection from corruption, humiliation, and abuse by government officials.²⁸

If there is a breach in policy, people are often afraid to take action, either due to a fear of reprisal, an expectation of futility, or unfamiliarity with the system.²⁹ Trained paralegals help citizens to demand redress. In Buenos Aires, Argentina, for example, administrative agencies often ignore complaints from residents of shantytowns (or “villas”), because of the villas’ unrecognized status under formal law.³⁰ To address this problem, local NGO Asociación Civil por la Igualdad y la Justicia (ACIJ) trains and guides community leaders through the process of engaging public officials, filing complaints, and leveraging media exposure to secure the introduction of water, ambulance, and electricity services to their villas.³¹

In South Africa, Dugard and Drage found that paralegals seeking redress for withheld benefits engage a wide range of municipal, provincial, and national bodies. One South African paralegal organization, Community Law and Rural Development Center, recovered R3 million (US\$370,000) for clients in one year, most of which was unpaid state benefits.³² In the Philippines, paralegals from farmers’ associations represent association members in land disputes before an agrarian reform tribunal. These paralegals help fellow farmers resist dispossession of

their lands by seeking to enforce certificate of ownership awards issued under the reform. Trained paralegals also assist workers in labor disputes, under a provision of the Philippine labor code that allows non-lawyer representatives to file position papers and pleadings.³³ This recognition of paralegals in quasi-judicial agrarian and labor tribunals is worth considering elsewhere.

Paralegals aim to hold government accountable, but their relationship with the administrative state need not be completely adversarial. Dugard and Drage found that government officials in South Africa tended to welcome paralegals, even when their efforts led to reversals of official decisions, or payment of previously denied benefits. The officials saw the paralegals as playing a useful role in ensuring effective implementation of post-apartheid social programs. One paralegal organization reported that 38 percent of its cases were referred by state institutions.³⁴ Similarly, in Buenos Aires, ACIJ strives to maintain a constructive, collaborative relationship with the municipal administration.³⁵

There is a strong argument, then, that governments should support paralegal efforts as a way of making their administrative institutions more accessible and effective. It is important, however, to structure such support in a way that protects paralegals' independence, perhaps by linking them to an autonomous public legal aid board or to an ombudsman's office.³⁶

In practice, government investment in paralegals has been minimal to date. Many governments are disinclined to support programs that hold their own regimes accountable. And yet there is growing evidence that paralegals render development more equitable, and provide a crucial bridge to those

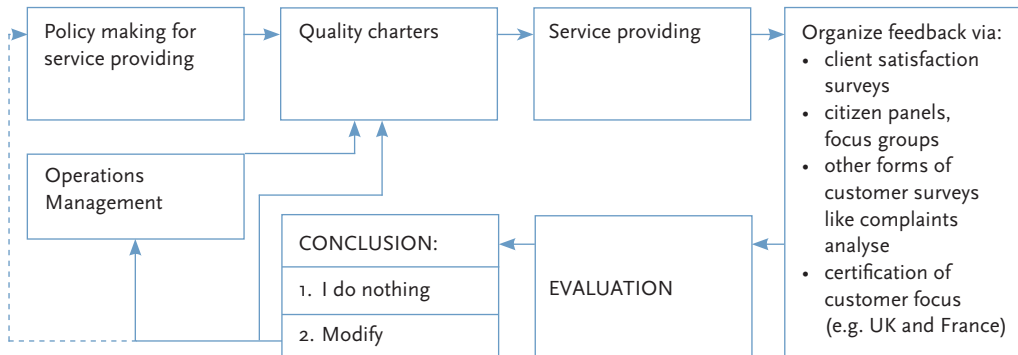
outside the protection of the law. For these reasons, we argue for international collaboration in the form of a multilateral financing mechanism.³⁷ For now, in most countries, and especially those with repressive or indifferent regimes, support for paralegals from international development agencies and/or foundations is crucial.

3. Learn from Grievances

Accountability for breaches in service delivery serves justice and also combats cynicism towards government. But emphasis on post-facto compliance should not overshadow the proactive project of building state capacity to deliver services effectively. To make an analogy, football fans would not want to embroil their coach so deeply in answering for last week's poor performance that he or she has no time to prepare the team for the upcoming game.

A feedback channel between the grievance-redress and implementation functions of administrative bodies, such that grievances lead to improvements in implementation, mitigates this risk. Football players use videos of their mistakes to get better. Many administrative organizations lack a mechanism to learn from their shortcomings.

To learn from grievances in a systematic way, administrative agencies need to collect and analyze data on the content of complaints. In Denmark, for example, the Danish Institute for Quality and Accreditation in Healthcare aggregates and analyzes data from its complaints-handling system, and reportedly uses that information to make systemic changes.³⁸ The Spanish government analyzes complaints about its service charter, and incorporates lessons from that data when it updates the charter every two or five years.³⁹

Figure 1: Example of Service Charter Feedback Loop

Source: *Seven Steps to a Citizen's Charter with Service Standards*, 2008⁴⁰

Figure 1 describes a feedback loop structure for citizen charters suggested by the European Public Administration Network.

Ombudsman offices may also have the capacity to translate lessons derived from grievances into proposals for improving policy and implementation.⁴¹ The Michigan Children's Ombudsman investigated 443 cases during its first 18 months of operation. The office developed recommendations for system-wide improvements based on those cases. For example, the ombudsman recommended consistent enforcement of the rule that parental rights should be terminated if a parent is incarcerated and fails to arrange for custodial care of his or her children within a year. Eighty-seven cases—20% of the docket—had involved failures to enforce that rule. The Child Protective Services department agreed to 32 out of a 42 recommendations; seven resulted in changes in department policies and procedures, and 13 became legislative proposals.⁴²

Like state bodies, paralegal programs have a great opportunity to aggregate information about the cases they receive and translate that information into advocacy

proposals for policy change. In Sierra Leone, Namati supports a network of paralegals based on the model of the NGO Timap for Justice, and is working to improve the network-wide data collection system, so that analysis and resulting policy proposals can be developed in real time.⁴³

Decentralization of both implementation and grievance redress functions can help facilitate greater learning from grievances. In principle, at a local level, officials can respond quickly to feedback and complaints from citizens.⁴⁴ Promisingly, a grievance redress bill under consideration by the Indian parliament proposes a decentralized model. "The Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill" requires every public authority to create a citizen's charter, and requires the designation of "grievance redress officers" at every level of government, right down to the most local: the municipality in towns and cities and the panchayat in villages.

But a decentralized approach faces at least two key challenges. First, there is the risk of elite capture at a local level—Bhimrao

Ramji Ambedkar, principal architect of the Indian Constitution, emphasized this worry in his debate with Mahatma Gandhi about the constitution.⁴⁵ Providing an appeals process to higher grievance-redress bodies can mitigate this risk. The body granting redress must have a degree of independence from the office or officer named in a complaint. The grievance redress bill in India proposes state and central Public Grievance Redressal Commissions for this purpose.

Second, a decentralized approach is not by itself conducive to achieving large scale improvements based on information about grievances. Government sets a great deal of policy at state, province, or national levels, and so it is useful, in the context of a decentralized system, to aggregate some basic information on grievances for the purpose of higher-level changes.

To truly advance the goal of legal empowerment, administrative bodies should go further than translating information about grievances into improvements in policy and implementation. They should convey the changes and what prompted them, in simple terms. A transparent, functioning feedback loop illustrates that citizens can do more than seek remedies to breaches of their own rights. They can influence the functioning of government itself.

Conclusion

The courts are not the only houses of law. Many people are more likely to interact with administrative agencies and officials than they are to deal with judges and magistrates. Those of us concerned with legal empowerment should seek to make the institutions of the administrative state work for citizens and communities.

Possibilities for advancing legal empowerment arise in all three functions of public administration—rulemaking, implementation, and grievance redress—and in relation to all three kinds of administrative bodies—service delivery agencies, regulatory bodies, and hybrid public-private entities.

Reviewing the evidence to date, three key insights stand out. First, governments should disseminate the law governing public administration widely and articulate it in simple terms. Second, community paralegals can provide valuable intermediation at every stage of citizen's interactions with the administrative state. And third, the lessons from grievances should be incorporated into administrative policy and implementation.

We are not arguing for the direct democracy of ancient Athens. The modern state is far more complex and, thankfully, far less unequal. On the other hand the practice of self-governance should not be limited to elections every few years. Citizens should have a role in shaping the crucial, everyday work of their governments. By taking part in that work, we can make our states less distant, more responsive, and more just.

Notes

* Vivek Maru and Abigail Moy work with Namati, an international organization dedicated to putting the law in people's hands.

1. See, for example, World Bank, "The World Bank: New Directions in Justice Reform: A Companion Piece to the Updated Strategy and Implementation Plan on Strengthening Governance, Tackling Corruption," (2012), 3-5; Stephen Golub, "Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative," *Rule of Law Series, Carnegie Endowment for International Peace*, No. 41 (2003), 8-9.

2. Asociación Civil por la Igualdad y la Justicia, Centro de Estudios Legales y Sociales, and Center on Housing Rights and Evictions, "El Acceso a agua segura en el Área Metropolitana de Buenos Aires: Una Obligación Imposter-gable," (2009), 20-21; Lorena Oliva, "Un problema que no es incoloro, inodoro ni insípido," *La Nación*, October 25, 2009.

3. Philippines News Agency, "Hacienda Luisita farm workers receive certificates of land ownership," *Philippine Times of Southern Nevada*, July 18, 2013; see also Philippines News Agency, "989 farmers receive land titles in Zambo Sibugay," *The Manila Times*, July 23, 2013.

4. Jackie Dugard and Katherine Drage, "To whom do people take their issues?: The contribution of community-based paralegals to access to justice in South Africa," *Justice & Development Working Paper Series*, The World Bank, No. 21 (2013), 27-28.

5. Bruce Ackerman, "Goodbye Montesquieu," in Susan Rose-Ackerman, Peter Lindseth (eds.) *Comparative Administrative Law* (Cheltenham: Edward Elgar Publishing, 2010), 129-31.

6. We adapted these categories from typical classifications in the literature on public administration and administrative law. See, e.g. Michael Asimov, Arthur Earl Bonfield, and Ronald M. Levin, *State and Federal Administrative Law* (St. Paul, Minn.: West Group, 1998), 1, distinguishing between benefactor and regulatory agencies. See also H. B. Jacobini, *Introduction to Comparative Administrative Law* (New York: Oceana Publications, 1991), 7, suggesting a category of agency intertwined with the private sector, as with agencies "set up to perform particular services normally thought to be the usual province of private enterprise," or "[h]ighly regulated activities [that] may be privately owned but of such permanent public interest as to be virtually state enterprises, as manifested by near comprehensive governmental control."

7. Asimov et al., *State and Federal Administrative Law*, 1.

8. Daniel Azpiazu and José Esteban Castro, "Aguas Públicas: Buenos Aires in Muddled Waters," in Martin Pigeon, David A. McDonald, Olivier Hoedeman, and Satoko Kishimoto (eds.), *Remunicipalisation: Putting Water Back into Public Hands*, (Amsterdam: Transnational Institute, 2012), 58-73. The government cancelled the concession in 2006 due to unsatisfactory results.

9. See, for example, James Scott, *Seeing Like a State* (New Haven: Yale University Press, 1998). Scott tells several stories of "high modernist" governance, in which state attempts at social transformation are elite-driven, and make little space for input or engagement by the citizens they affect. Scott argues that this form of governance often results in more harm than good. See also Max Weber, *From Max Weber: Essays in Sociology*, (New York: Oxford University Press, 1946). Weber observes that bureaucrats often keep the work of government opaque so as to preserve their own status. ("Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret," p. 233).

10. See, for example, Susan Rose-Ackerman and Peter Lindseth, eds., *Comparative Administrative Law*. The most prominent theme in the literature is the extent to which courts should defer to administrative decisions. None of the articles in that volume deals with the implementation function of administrative agencies.

11. See Vivek Maru, "Allies Unknown: Legal Empowerment and Social Accountability," *Journal of Health and Human Rights*, Vol. 10, No. 1, 2010.

12. See James Fishkin and Robert Luskin, "Experimenting with a Democratic Ideal: Deliberative Polling and Public Opinion," *Acta Politica*, Vol. 40, No. 3 (2005). See also Archong Fong, "Varieties of Participation in Complex Governance," *Public Administration Review*, December 2006, for a helpful typology of measures to enhance participation in governance.

13. Greg Michener, "FOI Laws Around the World," *Journal of Democracy*, Vol. 22, No. 2 (2011), 145–46; Roger Vleugels, "Overview of all FOI Laws," October 9, 2011.
14. See, for example, Daniel Lathrop and Laurel R.T. Ruma (eds.), *Open Government: Transparency, Collaboration, and Participation in Practice* (Sebastopol, CA: O'Reilly, 2010). The governments of Brazil, Indonesia, Mexico, Norway, the Philippines, South Africa, the United Kingdom, and the United States launched an "Open Government Partnership" in 2011. Forty-seven governments have joined since. The partnership aims to "promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance" <http://www.opengovpartnership.org/about>.
15. The government of Bangladesh notes that "[h]aving such an [RTI] Act, however, is one thing. Implementing the Act in a culture in which knowledge is power and therefore sometimes jealously guarded, is quite another. A Citizen's Charter, in which the central and local administration publicly announces the services citizens are entitled to, is a major element of the further implementation of the Act." See Ministry of Establishment, Civil Service Change Management Programme, "Towards Pro-people Service Delivery, Citizen's Charter: a Manual" (hereinafter Bangladesh Charter Manual), November 2010, 13.
16. See, for example, Frank Louis Kwaku Ohemeng, "The new Charter System in Ghana: the 'holy grail' of public service delivery?" 76 *International Review of Administrative Science* 115, 120 (2010).
17. For example, the United Kingdom, Belgium, France, Italy, Portugal, the Netherlands, Sweden, Argentina, Australia, Canada, Belgium, South Africa, Namibia, Costa Rica, Samoa, Malaysia, and Ghana. The underlying concept of the citizen's charter has existed in some form for ages, however. The Magna Carta provides the most famous example; the People's Charter of 1838 is another early example. See Simon James, Kristina Murphy, and Monika Reinhart, "The Citizen's Charter: How Such Initiatives Might be More Effective," *Public Policy and Administration*, Vol. 20, No. 2 (2005), 2.
18. See United Nations Development Programme, "Citizen's Charters: Selected Examples," (2002).
19. Dena Ringold, Alaka Holla, Margaret Koziol, and Santhos Srinivasan, *Citizens and Service Delivery: Assessing the Use of Social Accountability Approaches in Human Development Sectors* (Washington: World Bank, 2012), 42–43.
20. Public Affairs Centre, "India's Citizen's Charters: A Decade of Experience," (2007), 23, 42–43.
21. See, for example, Ashok Gehlot, "Rajasthan Guaranteed Delivery of Public Services Act implemented," *Times of India*, November 15, 2011; "Punjab clears Right to Services Act," *The Hindu*, June 8, 2011.
22. See Nicola Lacey, "Government as Manager, Citizen as Consumer: The Case of the Criminal Justice Act 1991," *Modern Law Review Limited* (1994), 534–35; H. K. Wong, "Consumerism and Quality Standards for Subverted Social Services: A Case Study of Hong Kong," *International Journal of Public Administration*, Vol. 30, No. 4 (2007), 443–44; Gavin Drewry, "Citizens as Customers—Charters and the Contractualisation of Quality in Public Services," *Public Management Review*, Vol. 7, No. 3, September 2005; Diane Plamping, "The citizen's charter and the NHS: True citizens do more than consume," *BMJ*, July 1991, 202. The "managerialist" model of the state or the "New Public Management" school that arose in the 1990s relates to this phenomenon.
23. See, for example, Bangladesh Charter Manual, 10. ("One of the biggest grievances was that the first generation of Citizen's Charters were formulated centrally, by individuals who had no idea about the real local needs and circumstances at the district and upazilla level"); James et al., "The Citizen's Charter," 12 (the U.K. Citizen's Charter was "drawn up by the governors and presented to the people"); Lourdes Torres, "Service Charters: Reshaping Trust in Government—the Case of Spain," *Public Administration Review*, Vol. 65, No. 6 (2005) (charters in Spain drawn up by senior managers and quality departments, without participation of staff and front-line employees); M. Shamsul Haque, "Limits of the Citizen's Charter in India: The Critical Impacts of Social Exclusion," *Public Management Review*, Vol. 7, No. 3 (2005), 398, 408 (arguing that charter task forces in India do not meaningfully incorporate views of the poor or socially excluded); Vijender Singh Beniwal, "Challenges and Prospects of Implementing Citizen's Charter: A Study of Panchkula (Haryana) Municipal Council in India," Spring 2005; Nicolas R. Fyfe, "Law and order policy and the spaces of citizenship in contemporary Britain," *Political Geography*, Vol. 14, No. 2 (1995), 183.
24. The term "community paralegal" as used in this paper refers to a non-lawyer trained in law and the workings of government. Community paralegals use advocacy, mediation, organizing, and education to assist citizens in finding

concrete solutions to instances of injustice. They are close to the communities in which they work and deploy a flexible set of tools. Community paralegals are typically supported by a smaller corps of public interest lawyers, who can resort to litigation and high-level advocacy if frontline methods fail. See, for example, Vivek Maru, “Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide,” *Yale Journal of International Law*, Vol. 31, No. 2, p. 427–76, 2006.

25. Maru and Gauri, forthcoming five-country study on paralegals initiated with partners in five countries under the auspices of the World Bank’s Justice for the Poor Program; being completed by Namati.

26. Dugard and Drage, “To whom do people take their issues?,” 25–51. See also David K. McQuoid-Mason, “The Delivery of Civil Legal Aid Services in South Africa,” 24 *Fordham International Law Journal*, 6 (2000) 130–36; Black Sash, “Social Assistance: A Reference Guide for Paralegals,” (2010).

27. Rachael Knight et al., “Protecting our Lands and Resources: Evidence from Liberia, Mozambique, and Uganda,” June 2012. Tellingly, the areas in which these communities required the most assistance involved navigating formal administrative procedures or the internal functioning of the state system.

28. Stephanie Willman Bordat and Saida Kouzzi, “Legal empowerment of unwed mothers: Experiences of Moroccan NGOs,” in Stephen Golub (ed.), *Legal Empowerment: Practitioners’ Perspectives* (Rome: International Development Law Organization, 2010), 179–201.

29. Ringold et al., *Citizens and Service Delivery*, 13, 73.

30. See ACIJ, “Políticas sin energía,” March 2009; ACIJ, “A la luz de las desigualdades,” August 2011; ACIJ, Centro por el Derecho a la Vivienda Contra Desalojos, “El IVC frente las villas de la Ciudad: poco derecho y mucha discrecionalidad.”

31. ACIJ, “Guía de Acceso a Derechos: Para conocerlos y exigirlos,” (2010). ACIJ, “Guía de Análisis Presupuestario con Enfoque de Derechos: Propuesta de Acción Comunitaria (CALC),” (2011).

32. Dugard and Drage, “To whom do people take their issues?,” 24.

33. Jennifer Franco, Hector Soliman, and Maria Roda Cisnero, “Contemporary Community Based Paralegalism in the Philippines: Opportunities and Challenges,” Philippines chapter of Maru and Gauri, forthcoming five-country study on paralegals. See also Terrence R. George, “Local Governance: People Power in the Provinces?” in G. Sidney Silliman and Lela Garner Noble (eds.), *Organizing for Democracy: NGOs, Civil Society, and the Philippine State* (Honolulu: University of Hawai‘i Press, 1998), 230–32.

34. Jackie Dugard and Katherine Drage, “To whom do people take their issues?,” n. 98.

35. See Luciana Bercovich, Mariel Acosta, Mauro Chellillo and Celina Giraud, “Desde el barrio hasta el juicio: Construcción comunitaria, incidencia institucional y litigio para la efectividad del derecho a la vivienda en la Ciudad de Buenos Aires,” in *El Derecho a la Vivienda en la Ciudad de Buenos Aires: Reflexiones sobre el rol del poder judicial y las políticas públicas* (Buenos Aires: Asesoría General Tutelar, 2010).

36. See, for example, the Kampala Declaration on Community Paralegals, which was adopted by over fifty organizations from more than twenty African countries. The declaration calls on governments to recognize and invest in paralegals, but also to respect paralegals’ independence. “Kampala Declaration on Community Paralegals,” July 26, 2012, available at: <http://www.namati.org/kampala-declaration>. (“We call on governments to respect the independence of community paralegals, so as not to hinder the crucial role paralegals play in holding the state accountable.”)

37. We spell out that argument in Vivek Maru, “Legal Power to the People,” *Project Syndicate*, November 9, 2011 and Margaux Hall and Vivek Maru, “From Bribery to Empowerment,” *Project Syndicate*, November 2, 2012.

38. Ringold et al., *Citizens and Service Delivery*, 76.

39. Torres, “Service Charters,” 691, 694–95.

40. European Public Administration Network, “Seven Steps to a Citizen’s Charter with Service Standards: Implementation Plan for Governmental Organizations,” (2008), 20.

41. See Ludo M. Veny, Ivo Carlens, Bengt Verbeeck, “Between a Rock and a Hard Place: The Ombudsman between Administrative and Judicial Appeal Procedures,” *Transylvanian Review of Administrative Sciences*, No. 28 E SI2009 (2009), 165. (“When an Ombudsman, dealing with a complaint, is of the opinion that legal or administrative provisions lead to more injustice, he can propose the involved administrative service a solution in order to regulate the complainer’s situation; either he can propose to the involved administrative service to take all necessary measures to regulate the complainer’s situation in an equitable way or propose to the competent authority to take all measures that are considered to rectify the situation and suggest changes that can seem necessary to adapt legislation.”)
42. Richard Bearup and Vincent Palusci, “Improving Child Welfare Through a Children’s Ombudsman,” *Child Abuse and Neglect*, Vol. 23, No. 5 (1999), 453–55.
43. See Legal Aid 2.0 <http://www.namati.org/work/legal-aid/>.
44. Ringold et al. argue that multi-tiered administrative grievance redress mechanisms in the education sector are unnecessary because most complaints are received and resolved at the school level. They conclude that at least in the education sector, increased decentralization and parent involvement appear to improve service delivery. *Citizens and Service Delivery*, 83–84.
45. In contrast to Gandhi’s embrace of village-level democracy, Ambedkar described villages as “a sink of localism, a den of ignorance, narrow-mindedness and communalism.” Niraja Gopal Jayal, *Citizenship and its Discontents: An Indian History* (Cambridge: Harvard University Press, 2013), 309.

The Legal Empowerment for Women and Disadvantaged Groups Program: Innovations in Project Design, Monitoring, and Evaluation

Debra Ladner* and Kim McQuay* detail the findings of the Asia Foundation's project in partnership with the Asian Development Bank to integrate legal empowerment programs with other existing development projects in Bangladesh, Indonesia, and Pakistan.

Introduction

Across the developing world, the poor, women, and other disadvantaged groups face a wide range of obstacles that affect their social, economic, and political status. A growing body of empirical evidence joins a wealth of anecdotal findings in demonstrating that legal empowerment can help citizens overcome the legal and governance-related constraints that undermine poverty reduction efforts. In recent years, legal empowerment has received heightened attention and support, and scholars frame it as a complement to large, conventional rule of law projects that focus on formal justice administration, which have tended to have limited demonstrable impact in improving the lives of women and vulnerable groups in concrete and meaningful ways.¹ Instead of focusing on building the capacity of legal professionals and institutions, the legal empowerment approach primarily focuses on helping disadvantaged groups develop new strategies for enforcing their rights and ac-

cessing the services, benefits, and opportunities to which they are legally entitled.

Many practitioners believe that legal empowerment work can play an important role in achieving the U.N.'s Millennium Development Goals, particularly in reducing poverty, improving governance, and making development more inclusive.² This nexus between legal empowerment and poverty alleviation reflects the fact that poverty tends to perpetuate when individuals lack the confidence and capacity to influence decisions that shape their lives.³ Increasing evidence suggests that legal empowerment strategies can contribute to these higher level outcomes, although understanding the causal connections in this complex, dynamic relationship requires more empirical research.

This paper will reflect on the potential for legal empowerment to contribute to poverty alleviation, gender equality, and good governance by improving the effectiveness and inclusiveness of sectoral development projects, particularly in areas such as health, infrastructure development, and natural resource management. We base our insights largely on the Asia Foundation's experience, working in collaboration with the Asian Development Bank (ADB) and local partner organizations, to integrate legal empowerment strategies into ADB socioeconomic development projects in Bangladesh, Pakistan, and Indonesia.⁴ This project built

on the findings of a multi-country study that the ADB engaged the Asia Foundation to undertake in 2001, which examined the potential for legal empowerment to advance good governance and reduce poverty.⁵ After discussing the potential for legal empowerment to enhance the effectiveness of development assistance projects, the paper will turn to the challenge of measuring results. Given competing demands for funds, legal empowerment should only receive donor funds if it is a sound investment. In grappling with this critical question, the paper will discuss the monitoring and evaluation (M&E) effort that the Asia Foundation undertook in conjunction with the legal empowerment pilot project, the challenges the project team faced in trying to measure results, and some of the key findings of the project.

Can Legal Empowerment Help Enhance Development Assistance?

Since the early 2000s, the international donor community has increasingly acknowledged the failures of foreign assistance in furthering economic and human development,⁶ and donor agencies have renewed their commitments to improve aid effectiveness.⁷

Many development projects fall short in achieving their objectives if their success relies on the active engagement of local stakeholders, including both citizens and local level officials.⁸ Project designs reflect implicit assumptions about the capacity of local communities to participate in the project. In addition to the time and expenses involved, accessing project benefits may require navigating complex legal, political, and/or administrative channels, which the

intended beneficiaries may not be equipped to do. Local level officials' personal and political incentives may not prompt them to fulfill their roles and responsibilities in implementing development projects. Both target beneficiaries and local officials may lack the motivation, knowledge, skills, confidence, and political savvy to participate in ways that project design documents envision, and this compromises project outcomes. Moreover, project managers, who are often specialists in particular sectoral areas of focus (e.g., infrastructure, water resources, health), may not fully appreciate the legal underpinnings of development assistance projects, and as a result, may fail to recognize that certain challenges that plague their projects come from failures or weaknesses of the justice system.

While legal empowerment cannot solve all the problems that undermine aid effectiveness, when integrated into larger socioeconomic development projects, legal empowerment strategies can play a role in promoting more effective development assistance. In certain cases, legal empowerment can help bridge the gap between the objectives of socioeconomic development projects and achievement of desired results by providing stakeholders with the information, training, assistance, networking opportunities, and confidence they need to enforce their legal rights and harness opportunities presented through development initiatives. Legal empowerment can also increase citizen scrutiny and, hopefully, the accountability of public officials responsible for administering development programs.⁹

Working in partnership with the ADB, the Asia Foundation had an opportunity to test this theory by integrating pilot legal empowerment initiatives into existing ADB so-

socioeconomic development projects in Bangladesh, Indonesia, and Pakistan. The team specifically designed the legal empowerment interventions to enhance the effectiveness of the host development projects, particularly in terms of their impact on the lives of women and other disadvantaged groups. Longer-term, this initiative aimed to develop a model that might catalyze positive development outcomes more broadly, beyond the context of an individual donor-funded project. However, unrealistic expectations of what this type of work can achieve, particularly in the short to medium term, would be problematic. At this stage, establishing an evidence base indicating that legal empowerment could have a concrete positive impact on the effectiveness and inclusiveness of a particular donor-funded project would be a major success.

The Asia Foundation implemented each of the pilot legal empowerment projects (described in more detail below) in the context of a larger ADB-funded socioeconomic development project, in partnership with a local NGO, which coordinated with relevant stakeholders, including local-level officials, community members, and ADB project staff. The sections below will provide an overview of the legal empowerment pilot initiatives, including the ADB host projects, implementing partner organizations, and legal empowerment activities.

ADB Host Projects

The first step in designing the pilot legal empowerment initiatives was to select ADB host projects. This involved reviewing ADB country project portfolios with an eye to assessing the potential for legal empowerment to enhance project performance. In identifying suitable host projects, the

project team asked: *Does the project aim to improve the lives of women or other disadvantaged groups? And, does accessing the project benefits require participating in formal processes or navigating complex legal or administrative procedures?* The team also assessed the host project staff's interest and buy-in after the team has presented background information on legal empowerment and its relevance to sectoral development outcomes. Based on an analysis of these issues and extensive consultations with ADB counterparts, the team selected host projects in Bangladesh, Indonesia, and Pakistan.¹⁰

The particular sectoral focus of the host projects differed across the three countries. Legal empowerment initiatives can have a positive impact on projects in diverse technical sectors, including projects in sectors where links to the law or legal institutions may not be obvious. In Bangladesh, for example, the ADB host project aimed to increase sustainable agriculture and fishery production.¹¹ In this context, the legal empowerment initiative focused specifically on developing stakeholder-driven, small-scale local management systems for water resources, paying special attention to vulnerable communities. The ADB host project selected in Pakistan aimed to help local governments improve the delivery of social services, particularly for women and other disadvantaged groups.¹² While the overall project covered a broad range of issues, the legal empowerment initiative focused specifically on the issue of basic health care, particularly strengthening the capacity of local committees to monitor state-provided health services. In Indonesia, the ADB host project aimed to provide affordable housing and land to the poor. An important component of this project was the forma-

tion of neighborhood committees to foster community planning and participation in channeling local demand for household and neighborhood infrastructure improvements.¹³

While the selected projects represented a range of technical areas (water management, health care, and neighborhood infrastructure), all three included a special focus on vulnerable communities, and relied on the participation of community members or their interlocutors. For example, all three host projects depended on local citizen committees to serve as a link between the project and the broader community of beneficiaries. In Pakistan, the ADB project loan document outlined a process under which local health monitoring committees would play a key role in observing the work of local health care providers, ensuring the availability of medical professionals and supplies, and responding to citizen complaints. The ADB host project in Indonesia established local neighborhood improvement committees (BKMs), which were intended to channel community input into project implementation. In Bangladesh, ADB established Water Management Cooperative Associations (WMCAs) with responsibility for managing the water infrastructure constructed by the host project and for serving as the point of contact between community members and the project, including resolving water-related disputes.

Implementing NGO Partners

In each country, the project team engaged a local NGO to design and implement the legal empowerment initiative. The three partner organizations also served as a link between the host ADB project staff, local community organizations, and relevant

government agencies. The NGO partners in Bangladesh, Indonesia, and Pakistan were Ain o Shalish Kendra (ASK), the Indonesian Women's Association for Justice (otherwise known by its Indonesian acronym, APIK), and the Aurat Foundation, respectively.

Legal Empowerment Activities

In all three countries, legal empowerment pilot initiatives included activities that specifically targeted members of the local level committees (described above), whose limitations placed a key constraint on the host projects' inclusiveness and success in meeting technical objectives. While the ABD host projects included some training or support for these local level committees, project goals required more, both to build locals' technical capacity and knowledge of the sector and to strengthen their ability to represent and channel community interests and demands.

For example, in some locations in Pakistan health monitoring committees essentially only existed on paper; they had not taken any proactive steps to improve the poor state of health care. In fact, many respondents interviewed for the baseline research were completely unaware of the health monitoring committees' existence. To help address this situation, the legal empowerment team took members of the health monitoring committee in the project site on an exposure visit to a neighboring district in which the health monitoring committee had achieved some success. The visit, which included meetings with their counterparts as well as local level officials, allowed committee members to share successful approaches and to develop connections.

In Indonesia, the team found that BKM members did not fully understand how to

navigate the host project's administrative requirements, and in some cases, lacked community trust. They provided training to BKM members, which included an overview and explanation of their roles and responsibilities within the context of the host project's regulations. Similarly, in Bangladesh, a baseline survey in the project site revealed that members of the WMCA had insufficient knowledge of their general rights as citizens and project beneficiaries as well as of their rights and responsibilities as WMCA members. The pilot initiative provided WMCA members with instruction on water management rules and regulations as well as leadership and management training.

Beyond training and support for members of local level committees responsible for host project implementation, the legal empowerment pilot initiatives employed a combination of other activities, including public outreach campaigns, coordination meetings, discussion forums and public-private dialogues, exposure visits, and social mapping exercises. Public outreach efforts aimed to raise community awareness on how to participate in the host project and access available benefits. These efforts ranged from training sessions to issue-based drama presentations to media campaigns. Generally, legal empowerment service providers tend to be quite good at identifying the most appropriate and effective methods for disseminating information in the local context. For example, APIK, the local implementing NGO in Indonesia, hosted a series of radio programs that provided important information to disadvantaged groups living in remote areas as well as illiterate individuals. APIK also printed leaflets for distribution after Friday prayers and in women's group meetings.

However, information dissemination strategies can only address knowledge gaps. Getting people to change their behavior presents additional challenges. Some of the legal empowerment activities aimed to address higher order constraints, such as complex power relations and corruption. For example, the Indonesia pilot included a group visit to the City of Makassar Land Agency Office (BPN). During the visit, participants raised a variety of concerns, including the lack of clarity regarding fees and problems with various BPN personnel, who acted irresponsibly in handling certificate applications. BPN showed the delegation the various stages involved in the certificate handling process and which client service windows to approach for collecting particular forms. The exercise aimed to provide participants with greater confidence when dealing with BPN; a better understanding of BPN's procedures, which may be intimidating for the uninitiated; and new strategies for dealing with problems. In Pakistan, the legal empowerment pilot included a public-private consultation process. This process created a platform on which citizens and government officials could work together to help make the local health department more transparent, accountable, and effective. As a result of this and the awareness raising efforts, local media became an active advocate for improving social service delivery. For example, a local cable television channel used its own funds to produce and broadcast a short film on the roles and responsibilities of the health monitoring committees.

Keys to Success: Partners and Politics

This initiative identified the importance of selecting the right partners and of paying

attention to politics as key findings. The success of legal empowerment depends in large part on selecting local partner organizations with the capacity, experience, and orientation to work effectively with government and donor counterparts. There is a risk that legal empowerment partner organizations, which are generally staffed by lawyers, will be overly legalistic and narrow in their thinking and approach. It is critical to work through local organizations that have a practical orientation, that are politically savvy and well connected, and that have a strong capacity to understand the technical dimensions of the sectoral area of focus.

For example, the achievements of the Indonesia pilot were largely due to APIK's efforts to establish a supportive, mutually beneficial relationship with the ADB host project, Neighborhood Upgrading and Shelter Sector Project (NUSSP) staff. APIK was very proactive in reaching out to the NUSSP local implementation office as well as local government officials. Through a series of stakeholder meetings, the APIK team gained detailed information on the implementation of the NUSSP and an understanding of the legal and gender related problems that could have an impact on NUSSP. They also developed all training materials in close collaboration with NUSSP, with NUSSP staff in attendance at all training sessions. These measures made the pilot initiative more than a generic legal empowerment program; the project focused on issues specific to making NUSSP more inclusive and effective.

Similarly, in Pakistan the Aurat Foundation understood that securing the cooperation of two important local government officials would be crucial for achieving the

project's objectives. At the outset of the project, the union council's chairperson and the executive district officer for health were reluctant to cooperate. They seemed uncertain about the project's motivations and concerned that it might disparage their role or work. However, Aurat's consistent engagement addressed these concerns, familiarized the local officials with the project, and secured their buy-in. On the other hand, the Bangladesh pilot faced difficulties in coordinating activities due to differences in the operating styles of the host project, a government agency, and the partner NGO.

A second and related point is that legal empowerment work always operates in a political environment, as existing power structures underlie both formal and informal justice systems. When effective, legal empowerment results in a redistribution of opportunities and resources. Those in positions of power who benefit from the status quo—such as local council members, or traditional leaders—often resist such changes. Legal empowerment tends to focus on transferring knowledge and increasing technical capacities, but may not pay sufficient attention to analyzing and navigating the local political economy dynamics at play.

Even when women and the poor know their legal rights and the procedures for accessing various justice mechanisms, they may find that powerful interests aligned against them make it impossible to push forward. Legal empowerment is most effective when the strategies that guide it encompass a deep and nuanced analysis of the pressure points that can help shift power dynamics in favor of women, the poor, and other marginalized groups. However, this approach poses more challenges than simply designing and delivering awareness

raising and training programs, and will benefit from ongoing investment and experimentation.

Measuring Results: What Did the Legal Empowerment Initiatives Actually Achieve?

A distinctive feature of the recent ADB-Asia Foundation initiative was that it included a serious focus on the question of impact. The project team wanted to understand what, if anything, the legal empowerment pilot projects achieved. Did women and other vulnerable groups actually have greater access to the resources available through the ADB projects due to the incorporation of complementary legal empowerment activities?

Legal empowerment service providers rarely conduct rigorous evaluations in conjunction with their work because donors rarely require them to and because, lacking in training research methods, they usually have limited capacity to design and implement sophisticated M&E protocols. An important contribution of this project was its inclusion of a tailored M&E methodology, which the initiative implemented in both project and control locations, to establish an empirical basis for understanding if and when legal empowerment leads to improved quality of life for women and other disadvantaged groups.

After explaining the project's definition of legal empowerment and providing a brief description of the M&E protocol, this section will discuss the challenges involved in measuring impact and key findings of the M&E effort.

Defining Legal Empowerment

One of the first challenges the project team faced in designing a methodology to mea-

sure legal empowerment outcomes was the lack of consistency, precision, and clarity in defining legal empowerment, even among providers of legal empowerment services. Despite an increased focus on legal empowerment in recent years, the international development community has not adopted a standard definition for the concept. The community generally agrees that legal empowerment is broader than legal aid; it goes beyond individual disputes to address issues at a community level. Legal empowerment often involves educating vulnerable groups about legal rights and processes for accessing legal and administrative remedies. At the same time, legal empowerment practitioners acknowledge that education alone is insufficient; legal empowerment should create opportunities for vulnerable groups to apply their newly acquired knowledge and skills to advance their interests and enforce their rights. Finally, the very term “legal empowerment” implies that it involves use of the law, but legal empowerment initiatives frequently include activities that are not inherently law-oriented, such as community organizing. While these descriptive features offer a rough sketch for understanding the concept of legal empowerment, they do not amount to a concrete definition. The phrase, “I know it when I see it,” famously penned by Justice Potter Stewart of the U.S. Supreme Court, may aptly describe the process of finding an appropriate definition for legal empowerment.

This project defined legal empowerment as “the ability of women and disadvantaged groups to use legal and administrative process and structures to access resources, services, and opportunities.”¹⁴ This definition reflects an instrumental view of legal empowerment, emphasizing

its potential to promote increased access to concrete outcomes. During consultation, some stakeholders expressed concern that the definition was too narrow and would not capture all legal empowerment-related issues. Indeed, we recognize legal empowerment that strains this definition, such as empowerment in the private sphere against domestic violence. However, the initiative developed the definition specifically to monitor and evaluate legal empowerment initiatives aimed at increasing the effectiveness of ADB socioeconomic development projects. It served a particular purpose for this project, providing a basis for measuring outcomes to evaluate whether pilot legal empowerment interventions can make development projects more effective and improve people's lives in concrete, measurable ways.

Measuring the Impact of Legal Empowerment

The project's definition of legal empowerment guided the design of the pilot interventions and provided the basis for developing a detailed M&E methodology. The project team designed a common research instrument that aimed to capture and track four mutually-reinforcing components of legal empowerment: confidence, knowledge, strategies employed, and outcomes. Specifically, the research instrument examined: whether respondents were aware of the resources, basic social services, and opportunities available under the ADB loan; whether respondents were able to navigate the system envisioned in the ADB loan; whether the pilot project led respondents to try new strategies; and whether respondents' efforts succeeded.

The M&E protocol included baseline and end-of-project data collections in both proj-

ect and comparable control sites. The intervention and control sites were both eligible to receive benefits under the larger ADB development initiative, but only the intervention sites received the complementary legal empowerment activities. This methodology enabled project staff to measure the impact of the legal empowerment interventions over the term of the pilot interventions and to assess the impact of various legal empowerment strategies.

Challenges

The M&E effort encountered a number of challenges, related to two major themes: the short timeframe for the legal empowerment initiatives and problems with the implementation of the host socioeconomic development projects. In discussing these challenges, we hope to situate and inform the findings and provide instructive information for future efforts to evaluate the impact of similar legal empowerment work.

The most fundamental challenge was the short (less than one year) timeframe for the pilot projects. The project team identified and discussed this concern early in the planning phase, noting that even under ideal conditions, legal empowerment is a long term process and that it would be very difficult to achieve measurable results in the four key areas of impact: confidence, knowledge, strategies, and outcomes. Given the short timeframe, the project team hoped to see a noticeable increase in confidence and, ideally, some boost in local levels of familiarity with specific legal provisions and administrative rights (i.e., knowledge). However, they knew not to expect to measure change in local dispute resolution strategies or outcomes, particularly in terms of local access to economic resources. The data articulated

these expectations. In the field of legal empowerment change takes time. While this is not a surprising discovery, it is an important one to emphasize. Donor funding cycles and modalities of support make this a common challenge. If donors are serious about supporting legal empowerment efforts, they will need to allow enough time for the process to take effect.

The M&E methodology's impetus to measure impact at the community level (through a random sample of community members) rather than only among direct project participants posed a related challenge. The methodology sought to measure a trickle-down effect in which legal empowerment reaches a wider circle of beneficiaries than those who the interventions specifically target or directly serve. However, demonstrating this proved to be overly ambitious, given the short timeframe. As a result, in some cases, the evaluation protocol revealed a very limited impact on the community level, while some specific members of the community experienced significant impact.

Evaluation could have only addressed impact for project participants, but if the evaluation protocol guides the project activities the project may fail to capture wider community level results. The best response to this challenge would be to allow as much time as possible for projects to unfold so that the increased confidence and knowledge of individual participants might spill over into the community as a whole. This trickle-down effect might in turn lead other members of the community to employ new strategies and to achieve new outcomes, even if they were not themselves participants in the project. If this type of transference occurs, the benefits of taking a random

sample to measure results could be availed to great effect.

Problems with implementation of the host socioeconomic projects posed other challenges. These challenges are specific to legal empowerment initiatives designed to enhance the effectiveness and inclusiveness of particular socioeconomic development projects. The project team found that the loan documents governing the host projects did not always reflect on-the-ground realities. In Bangladesh, for example, a lack of progress on certain features of the larger development project hindered empowerment efforts. The legal empowerment interventions sought to improve the management, maintenance, and operation of water-specific infrastructure, and the distribution of various user rights, including employment opportunities relating to the operation and repair of that infrastructure. Shortly after the project was launched, however, it came to light that the construction phase of the infrastructure projects had not been completed. As a result of these delays, the water management associations, which were established to facilitate the distribution and management of water resources at the community level, could not function in the ways envisioned in the loan documents. This reduced the relevance of certain questions (e.g., citizens' confidence to approach the water management associations to resolve water-related disputes), which the data reflects.

In other cases, institutions central to the implementation of the socioeconomic development projects were missing. In Pakistan, for example, ADB was supporting a major governance reform initiative designed to devolve responsibility for social service delivery to local communities. The

project paid special attention to the role of community based health monitoring committees, which were charged with providing administrative and financial oversight for physicians, pharmacists, hospitals, clinics, dispensaries and other facilities. Very early on in project implementation, the project team found that in some locations the institutional lynchpin of the devolution program, the health monitoring committees, existed only on paper. Even the most empowered citizens could not interface with important aspects of the terms outlined in the ADB loan document because the institutional interface mentioned in that document did not exist.

Key Findings

Notwithstanding these and other challenges, the M&E effort yielded some significant findings.¹⁵ The most fundamental improvement that the data revealed was a positive change in people's attitudes and confidence levels. This trend was particularly notable in Bangladesh and Indonesia, where respondents expressed increased confidence to approach local committees responsible for implementation of the respective socioeconomic development projects and to participate in their decision-making processes.¹⁶

The data also revealed increased knowledge regarding specific provisions of the larger socioeconomic projects among those living in areas that received the legal empowerment interventions. For example, in Bangladesh respondents in intervention areas demonstrated higher levels of knowledge regarding their eligibility to join the local water management association and regarding responsibility for maintaining local water infrastructure.

Along with increased confidence and knowledge, the data indicated an increased willingness to complain about local problems (related to water, health, and shelter), even if responses to later questions indicated a continued reluctance to adopt new strategies to address those problems. These findings led the project team to hypothesize that frustration may be an essential link between new levels of confidence and new forms of action. However, the timeframe for the pilots was not sufficient to test this hypothesis. Future legal empowerment projects may wish to investigate this issue.

An important finding in all three countries was a consistent pattern of heightened belief that both men and women should enjoy equal access to the local level committees and forums associated with the ADB loans. In Bangladesh and Indonesia, a similar trend emerged regarding views on whether poor and non-poor households could access relevant forums and committees, specifically the WMCAs in Bangladesh and the BKMs in Indonesia.¹⁷

The project team repeatedly found that those living in project intervention areas gained both confidence and knowledge. Despite this, many of the respondents did not develop new strategies to address their water, health, or shelter related problems by approaching relevant government offices directly for mandated services or dispute resolution, particularly when those offices were at a higher level of government. Instead, local communities tended to use their new knowledge and confidence to pressure local intermediaries to help them in new but also quite familiar ways. In Bangladesh, for example, respondents living in the intervention districts did not generally approach the Local Government Engineer-

ing Department directly to address their water problems. Instead, they tended to use their newfound confidence to pressure local members of the WMCA to approach the department on their behalf. Similarly, in Indonesia, those living in intervention districts tended to use their newly acquired knowledge to press their shelter-related demands with local headmen, rather than approaching the land registration office on their own. In both countries the project team found that legal empowerment interventions did not transform existing networks of community-based affinity and support. Instead, they simply enhanced these relationships—turning them ever so slightly in the direction of new forms of engagement.

Finally, the data showed no change in existing outcomes defined in terms of poverty reduction or tangible, practical expressions of gender equality. This lack of observable change in existing outcomes reflects the pilot projects' time frame constraints. It is simply too soon to tell whether increasing levels of confidence resulting in increasing levels of frustration might lead to new dispute resolution strategies that, in turn, produce new outcomes.

Conclusions

Legal empowerment has received increasing attention in development research and discourse in recent years, supported by increasing practical experience. While the issues encountered and insights drawn in implementing the pilot projects and applying a rigorous M&E methodology varied among the three focal countries, some common threads of experience and lessons learned emerged. Arguably, the most significant contributions of the project include

those drawn from the challenges faced in applying the purposive M&E methodology in three countries.

We encourage development partners and legal empowerment practitioners to focus energy and resources on further investment in pilot program activities and the design and testing of M&E methodologies that will assess the higher-order impacts of legal empowerment programs. The M&E strategy sought to move away from busy legal empowerment practitioners' conventional practice of counting basic outputs, to focus instead on the impact of legal empowerment in advancing governance reform and other goals of the host loan projects. Legal empowerment practitioners should treat work of this kind as a learning experience and report candidly on the positive results achieved and challenges faced in pioneering the integration of legal empowerment in sectoral development programs. This commitment to good faith exchange will ensure that others can benefit from individual efforts and that legal empowerment practitioners, government counterparts, legal and development scholars, and international agencies can collectively develop a common base of knowledge that can be shared, discussed, and enhanced as legal empowerment activities expand internationally.

Legal empowerment often encounters difficulty establishing positive working relationships with government counterparts and local elites. The very term “legal empowerment” can raise concerns among government counterparts and elites because it threatens to disrupt traditional power advantages that they hold over marginalized populations. Government counterparts and elites may be wary of legal pressures and criticism, or of having to relinquish privileg-

es that their inequitable power relationships with disadvantaged populations have afforded them. Their fears may be well founded. The challenge lies in building coalitions that can tip the scales in favor of disadvantaged groups while convincing hesitant government officials that they have other incentives such as benefiting their reputations by supporting legal empowerment initiatives.

Finally, it is important to appreciate that legal empowerment is a long-term process that achieves its best results over time. The ADB-Asia Foundation project team understood from the outset that the time and resources available for the pilot projects were quite modest and they kept expectations for measurable impact modest. Future resource allocations by development partners and other international agencies should

provide ample time to design, implement, monitor, and assess the impact of pilot legal empowerment projects, and ideally afford opportunities to implement pilot activities in a range of contexts in order to draw comparisons among activities implemented in a variety of circumstances. The experience affirmed the value of legal empowerment in advancing the rights and status of women, governance reform, and poverty reduction, and provided milestone evidence on the role legal empowerment can play in supporting the achievement of sectoral development goals. This holds tremendous potential as the next frontier of legal empowerment, and we hope development partners will invest in programs that will advance the integration of legal empowerment in larger socioeconomic development programs.

Note

* Debra Ladner is the Director for Program Strategy, Innovation and Learning at The Asia Foundation. Kim McQuay is The Asia Foundation's country representative to Thailand, where he manages programs that promote peaceful conflict resolution, more responsive and transparent systems of governance, and improved citizen access to justice. The authors wish to acknowledge the substantial contributions of a team of specialists engaged by The Asia Foundation in implementing the ADB's regional technical assistance project on Legal Empowerment for Women and Disadvantaged groups, which informed this paper.

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4. The Asia Foundation implemented the project under the overall direction and guidance of Francesco Tornieri, Social Development Specialist, ADP, with support from Roberta Thami, Senior Counsel, ADB. The authors would like to acknowledge the entire project team, which included Research Coordinator, Matthew Nelson of the University of London School of Oriental and African Studies, ably supported by Farouk Chowdhury, Najmul Hossain, Medelina Hendytio, and Farhat Ali Sheikh. Sumaiya Khair, Sulistyowati Irianto, and Farida Shaheed conducted country situation analyses in the three focal countries, with the assistance of Belquis Ahmadi. NGO legal service partners Ain O Shalish Kendra, Lembaga Bantuan Hukum Asosiasi Perempuan Indonesia Untuk Keadilan (LBH-APIK), and Aurat Foundation implemented pilot legal empowerment projects in Bangladesh, Indonesia, and Pakistan, respectively,

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14. The 2001 study defined legal empowerment as “the use of law to increase the control that disadvantaged populations exercise over their lives.” The project team decided this definition was not specific and concrete enough for the purpose of measuring outcomes.
15. The data tables are available in the project report. McQuay, Ladner, “Legal Empowerment for Women and Disadvantaged Groups.”
16. In some cases, measurable improvements were observed in both intervention and control areas. For example, in Bangladesh and Indonesia, respondents expressed a greater willingness to engage official procedures to deal with their water, health, shelter problems at the end of the pilot project period. However, these same results were observed in the control areas, making it impossible to attribute this improvement to the legal empowerment interventions undertaken in the context of the pilot projects alone.
17. In some cases, control areas had a similar trend in favor of increasing equal access. However, in every case, the project intervention areas showed a greater magnitude of this change.

Transparency International's Advocacy and Legal Advice Centres: Citizen Empowerment against Corruption

[Conrad F. Zellmann*](#) describes the approach to legal empowerment used by Transparency International and provides insights from on-the-ground efforts to fight corruption.

Introduction

This paper describes an approach to engaging and empowering citizens in the fight against corruption. Developed within Transparency International's (TI) global network of national chapters, the approach is known as ALAC, from its use by TI's Advocacy and Legal Advice Centres (ALACs) in more than 40 countries.

TI, a global civil society organization dedicated to fighting corruption, was founded in 1993. The TI movement today includes more than 100 locally established and organizationally independent national chapters. TI's International Secretariat, based in Berlin, Germany, supports the chapters and leads advocacy efforts at the regional and global levels. The movement's mission is to stop corruption and promote transparency, accountability, and integrity at all levels of government and across all sectors of society. TI is politically non-partisan and promotes a constructive, rather than confrontational, approach to fighting corruption.

Moving into its third decade, TI has adopted a new, movement-wide strategy to engage significantly greater numbers of people worldwide, empowering them to act against

corruption. Supporting whistleblowers, victims, and witnesses of corruption through the ALAC approach is a central element of the movement's work, and one which TI plans to scale up significantly in the coming years.

The following discussion highlights a number of lessons learned from the ALAC approach and also points to some questions for the future. As an employee of the TI Secretariat, the author was until recently charged with the promotion of learning and growth across the network of ALACs. This paper therefore reflects the perspective of an active and interested participant in the development (albeit not the on-the-ground implementation) of the ALAC approach.

Corruption and the Origins of the ALAC Approach

Corruption undermines people's trust in the political system, corrodes the rule of law, and facilitates the abuse of human rights. Corruption creates barriers for poor and marginalized groups seeking access to basic services such as education or health care. It is a cross-cutting problem which can retard all aspects of development and economic stability.

The last decade has brought major advances in establishing global, regional, and national legal frameworks to combat corruption. International conventions and national laws reflect a broad consensus that

corruption has to be addressed. Politicians regularly campaign on anti-corruption platforms.

Yet top-down or purely government-driven anti-corruption initiatives have proven to be of limited effectiveness and sustainability. Implementation and enforcement of anti-corruption norms remain a major challenge. When anti-corruption drives fail to produce meaningful change in the lives of people, they may perpetuate citizens' apathy—the very thing that allows corruption to flourish in the first place. For anti-corruption initiatives to be successful and sustainable, they must facilitate the empowerment of citizens and engage governments constructively to address people's concerns.

In 2003, TI's national chapters in Bosnia and Herzegovina, Romania, and Macedonia first started experimenting with the techniques of fighting corruption that would become the ALAC approach. At this initial stage, spontaneous innovation rather than a carefully planned strategy guided TI's team. ALACs began by advertising a toll-free telephone hotline to the general public that people could use to report corruption. This approach was driven in part by frustration with the lack of tangible results coming from the anti-corruption efforts in effect at that time. Over time, TI created a systematic approach of soliciting input from the general public, offering to assist people with any corruption-related grievances.

This approach brought forth a significant demand for the ALACs' services. During their initial two years of operation, the Bosnia and Herzegovina, Macedonia, and Romania centers received more than 5,000 complaints.¹ In response, the ALACs broadened the range of services offered and developed relationships with authorities

to address citizens' concerns. Notably, this included assembling teams of lawyers and paralegals within the national chapters to pursue corruption-related complaints.

To date, more than 50 chapters in the TI movement have adopted the ALAC approach, and over 100,000 people have contacted ALACs through their telephone hotlines, by email, or through drop-in visits. Increasingly, internet-based reporting and mapping platforms and community websites play an important role as outreach, complaints, and advice channels. This rapid growth—over a relatively short period of time and across very different contexts—illustrates both the effectiveness of ALACs and their adaptability to people's needs in various local contexts.

ALACs enjoy a great deal of operational flexibility, and TI explicitly encourages its chapters to tailor the approach to local needs. The TI Secretariat provides technical support to ALACs, but does not get involved in national-level case work or advocacy, which are considered the domain of TI chapters.

ALACs aim to contribute to an environment in which people assert their rights by resisting and reporting corruption. ALACs have two complementary objectives: (a) to empower victims and witnesses of corruption to address their grievances; and (b) to promote systemic changes in policies and practices of public and private actors. The overarching goal of this dual approach is to have a lasting impact in the fight against corruption.

To achieve this goal, ALACs deploy two main strategies. Firstly, they offer free legal advice and assistance to victims and witnesses of corruption. Through telephone hotlines, walk-in centers, websites, and

community outreach activities, ALACs educate and empower citizens, providing them with channels to pursue corruption-related complaints. Secondly, using the data that ALACs generate from these complaints, TI chapters engage in coalition building and advocacy to bring about systemic change in public policy and practice. ALACs observe strict client confidentiality and—in line with TI’s approach of constructive engagement—they build partnerships with public authorities, businesses, and civil society organizations to address citizen concerns.

ALACs seek to empower corruption victims to assert their rights. The diversity of cases and people who use the centers—from the most vulnerable and marginalized to entrepreneurs and well-positioned whistleblowers—reflect the pervasive nature of corruption. The experience of ALACs demonstrates that people will fight corruption when they have a simple, credible, and viable mechanism to do so.

Of course, no single intervention is a silver bullet, and corruption is deep-seated. The ALAC approach is still relatively new and has only been implemented on a relatively small scale. But initial evaluations, including three external ones, indicate that the approach is both effective and cost-effective.

How It Works

The ALAC approach seeks impact in two broad dimensions: the empowerment of citizens and communities to take action against corruption at a local level, and change at the systemic level with regard to the policies and practices that can either foster or deter corruption.

While all ALACs combine services and advocacy, the specific methodology of each

center is adjusted to the particular context of each country. It is more accurate to speak of a general ALAC *approach*, rather than a rigid scheme handed down from headquarters. Therefore, the four main activities described below represent a framework of operation, with precise implementation methods varying from country to country.

Legal Advice and Support for Victims of Corruption

ALACs assist people—through paralegal and legal advice and other forms of support—to address corruption-related grievances via existing complaints mechanisms and relevant authorities. Where cases do not fall within the mandate of an ALAC (for example, when they do not appear to be linked to corruption), complainants are referred to other civil society organizations or relevant government authorities. At times, ALACs also facilitate contact with investigative journalists and the media to help people pursue their cases. ALACs do not usually “represent” clients, but rather seek to empower people to act themselves. Assistance can take a variety of forms, including providing information, helping to prepare formal complaints, offering detailed legal assessments and advice, and in some cases, arranging legal representation. ALAC lawyers and paralegals are often supported by volunteers, including law students who man the hotlines and provide some client counseling, as well as senior legal experts who can advise on complex elements of case work. A number of ALACs have also secured the pro-bono collaboration of law firms.²

A significant part of the work of most ALAC lawyers is providing information and referral services to citizens. This might include explaining to a complainant which

government agency handles their type of concern, and how the process operates. Many ALACs have developed how-to guides for citizens to help them navigate government bureaucracy on matters that should be routine but often are not, such as obtaining a birth certificate.

A number of external and internal factors determine the scope of services each ALAC provides. These include the local regulatory environment, citizens' access to commercial legal services or other civil society support services, political constraints, and specific opportunities for impact. The team's capacity, strategic and risk considerations, and the financial resources of the TI chapter determine scope as well.

Finally, it is worth noting that the counseling ALACs provide, while rendered by trained lawyers, is not exclusively legal in nature. For example, ALACs seek to connect complainants to others who have experienced similar concerns or possess relevant thematic expertise. In the future, and in particular as TI's work to support whistleblowing grows, it might become necessary to cooperate closely with organizations and individuals who can provide financial and/or psychological support. Since the early days of the ALACs, it has been evident that "a significant part of the ALACs' value lies in merely listening to, empathizing with and providing encouragement and advice to people who have faced such widespread indifference from often repressive state authorities. In effect, ALAC has helped restore the dignity of a large proportion of its clients."³ Or, as a whistleblower recently expressed: "It was TI that gave me the term 'whistleblower reprisal' to describe what had happened to me. I had no language to describe it until Transparency reached out

to me. The support that Transparency provided was absolutely crucial and invaluable to my surviving this ordeal."

Campaigning and Advocacy

In addition to taking individual cases, an important component of ALACs' work is raising citizen awareness of the consequences of corruption. This often connects to other public advocacy and campaigning done by TI chapters. A key element of the chapters' outreach work is making ALAC known to a broad section of the population by publicizing the hotline number through radio, television, and the press; using social media, online platforms, and community outreach; and opening mobile ALAC satellite offices.

ALACs systematically gather and use the information gained from their casework to translate individual experiences into higher-level impact, aiming to change the systemic conditions that facilitate corruption. ALACs possess a trove of unique data on how corruption functions in practice and how it affects people in their daily lives. ALACs essentially collect two kinds of data: (a) qualitative, such as case studies and stories which point to particular corruption problems; and (b) quantitative, focusing on corruption hotspots identified through recurrent complaints. An independent evaluation by GHK Consulting found that the ALACs are "building a powerful evidence base which is mapping the dimensions of corruption."⁴

ALACs use a broad array of advocacy techniques, ranging from the dissemination of case statistics, press releases, and media appearances, to meetings with officials (both those accused of corruption and those seeking to fight it). In a number of countries, the centers monitor and publicize the

responsiveness of public authorities to clients' complaints. They also develop specific recommendations for changes in public policy and practice and advocate for their adoption in a firm but constructive way.

ALACs' citizen-driven data alters the incentives for public officials to address corruption. Officials may challenge a lone accusation of corruption, but it's more difficult to dismiss rigorous data documenting the concrete experiences of dozens of citizens. ALACs' data sets have also yielded significant insights about the mechanisms of corruption. This data has in turn informed TI's analyses and shaped TI chapters' advocacy efforts.

Building Coalitions against Corruption

The centers work against corruption by cooperating with government authorities and collaborating with other civil society organizations. ALACs, working in the TI multi-stakeholder tradition, aim to create dialogue and working partnerships with government institutions. They do not seek to replace government complaint mechanisms—which exist in most countries—but rather seek to complement, support, and where possible strengthen them. ALACs act as advisors to citizens rather than “investigators” of complaints. Operating one step below existing state complaint mechanisms, they seek to ensure that, when complaints do reach government, they are better-documented and articulated, making action by authorities more likely.

ALACs' relationship with government authorities is usually more constructive than adversarial, and focused on identifying solutions. Where the environment is conducive, TI explicitly desires that ALACs develop well-functioning relationships with

government institutions, including the judiciary. Most governments include a number of agencies, such as anti-corruption commissions, whose mandate includes receiving and acting on complaints, and ALACs typically seek to build relationships with such institutions. Where appropriate, memoranda of understanding often underpin these relationships. Some ALACs have supported capacity-building for government institutions that manage existing public complaint mechanisms.

A 2005 evaluation of the first three ALACs found evidence that engaging constructively with public authorities can be effective:

Rather than a pattern of increased antagonism from state authorities, as might be expected in light of frequent TI challenges to and criticisms of official policies and practices, the vast majority of government respondents indicated that the ALACs were playing an increasingly vital role in drawing attention to citizens' rights with respect to corruption. Time and again, there were indications that many government agencies had developed a higher degree of trust in TI than in their counterpart authorities in other state institutions. The mayor of Banja Luka (Bosnia and Herzegovina) bluntly stated, for instance, that he was more confident in dealing with TI's ALAC than with state-authorized investigative mechanisms. The head of the Republica Srpska tax administration department indicated that the Prosecutor's office gave “more attention” to cases raised by TI. The General Prosecutor from Romania's anti-corruption agency similarly acknowledged that he tended to give

priority to cases brought forward by the ALAC more so than to those coming through regular judicial channels.⁵

The ALACs also build and maintain partnerships with other civil society organizations to join forces for more effective advocacy initiatives, to facilitate referrals of non-corruption related cases, and to reach broader segments of the population, in particular vulnerable and marginalized groups.

One challenge that ALACs consistently face is meeting complainants' expectations. A particular complaint may not fall within the TI mandate, or the complainant may lack sufficient evidence. Of course, some governments and government officials are more resistant to the ALAC approach. And sheer demand can be a problem—it is difficult for some ALACs to keep up with the requests for their services.

Impact

That ALACs have been contacted by the public more than 100,000 times since the first centers opened in 2003 indicates the extent of demand for their services. The centers have dealt with complaints ranging from petty bribery to grand corruption involving hundreds of millions of Euros, on issues involving public procurement, misuse of public assets, privatization, environmental degradation, and corruption in government offices of every type.⁶

TI chapters have successfully advocated for the introduction of whistleblower protection and access to information laws, new administrative procedures for inspections and licenses, changes in court procedures, and re-tendering of large infrastructure projects, as well as resignations and pros-

ecutions in situations where impunity had been the norm.

In one case, a veteran from Baku, Azerbaijan, was denied permission by local authorities to open a flower shop to supplement his pension, because he refused to pay a US\$10,000 bribe. With the help of the local ALAC, he appealed the decision in court and finally secured permission to open the shop.⁷ In another case, market vendors in Armenia successfully resisted extortion demands from tax inspectors when TI Armenia filed a successful administrative appeal to the State Revenue Committee. The illegally collected funds were returned to the vendors and the inspectors were dismissed.⁸ In Croatia, the ALAC supported a client who had been waiting 11 years for a court hearing of his case of unfair dismissal. He got a hearing—and a favorable judgment—within a month of ALAC's involvement.⁹

In another case, a Rwandan community lost the ownership rights to a gold mine when their cooperative's president forged an ownership certificate and registered the mine in his own name. After unsuccessfully requesting an investigation by the public prosecutor, the community turned to the local ALAC, whose staff drafted an appeal for expedience and forwarded it to the prosecutor general. As a result, the case came to court, and the court sentenced the cooperative's president to ten years in jail, and fined him the equivalent of approximately US\$3,400. The community reclaimed ownership of the mine.¹⁰

While objective measures of legal empowerment at the individual or community level may be elusive, client feedback and external evaluations testify to ALACs' effectiveness: "A high proportion of the clients interviewed held the opinion that their

cases would not have progressed at all without ALAC assistance. This included those whose cases had not yet been resolved or were concluded without a successful resolution from the client's perspective. As one client stated, "Transparency International is the only organization brave enough to take on these sorts of cases. Without their help, my case would have reached a dead end a long time ago."¹¹

ALACs gather quantitative data as well as qualitative data. The mechanisms of corruption become apparent through the detailed work on cases, revealing problems with the application of existing norms, or the absence of necessary regulation. Data on complaints about specific sectors or institutions illuminate corruption hotspots. According to an internal survey of ALAC workers, the top five areas mentioned in citizen complaint data were the judicial system, property rights issues, the police, public procurement, and the education sector.¹²

The following examples shed some light on how citizen-reported information contributes to systemic changes that have positive effects beyond the individual case level.

In the Czech Republic, the TI chapter received information from the Driver's Association that, in various instances, roadside billboards had been constructed in possible violation of safety standards, resulting in a number of fatal accidents. The Association suspected that politicians had allowed poor construction in return for discounted advertising during election time. The case was pursued primarily through access to information requests seeking the full contract documentation, but those requests were denied. TI's Czech Republic chapter pursued the request all the way to the Supreme Administrative Court, which ruled that

members of the public must have access to government contracts. Here, TI Czech Republic achieved results for the client, and also broadened the application of access to information laws for all Czech citizens.

In another case, TI's Guatemalan Chapter, *Acción Ciudadana*, received around 25 phone calls from citizens living near the Mexican border who suspected that some truck drivers were smuggling cheap petrol into Guatemala from Mexico. The callers believed that the drivers had been paying bribes to border officials to avoid customs duties. At the same time, widespread media reports noted the appearance of makeshift filling stations selling cheap petrol. The owners of legitimate petrol stations claimed they were losing business to these illegal suppliers. *Acción Ciudadana* connected the dots and passed on the information to the National Customs Office, which convened a series of working groups to look into the matter. The Guatemalan tax authorities initiated an investigation into the alleged misconduct, and both the Guatemalan and Mexican authorities implemented stricter customs controls to monitor commercial vehicles crossing the border. In the wake of that case, there have been no further complaints about petrol smuggling, and stricter custom controls and monitoring are believed to have affected other forms of trafficking.¹³

In many cases, ALACs are able to collect and synthesize individual complaints and then press for a large-scale solution. In Georgia, for example, rising real estate values led to a spate of complaints related to property rights, land seizures, and illegal evictions. At the individual level, TI Georgia worked on dozens of property rights cases affecting hundreds of people. And

in cooperation with a prominent Georgian law firm, TI Georgia conducted a national advocacy campaign to broadly publicize the problem. The issue became a priority for the donor community in Georgia, and donors ultimately provided funds to defend the rights of those affected by the violations.

One way ALACs fight for systemic change is by testing laws and regulations in practice. ALACs encourage citizens to make use of the laws that exist on the books but not in practice, for example testing access to information laws by helping clients to request government-held information. In this approach, individual citizens learn about the laws and use them to help their cases; in addition, the increased volume of requests eventually strengthens the overall access to information regime. Where access to information laws are lacking, TI chapters have advocated with some success for the adoption of new legislation, which citizens then can use to resolve their complaints.¹⁴

A recent study by TI's Research and Knowledge Group found that 42 percent of ALACs test the freedom of information laws in their country and identify weaknesses directly through their work and 15 percent see this at least as a by-product of their work. Seventy-three percent of ALACs advocate for more effective implementation of freedom of information laws in their country, either through an advocacy campaign, or through their casework. Similarly, 73 percent of ALACs provide education to the public on access to information and issues related to it.¹⁵

These examples illuminate how the ALAC approach enables practitioners to combine individual case advocacy with policy advocacy. While different TI chapters have placed the emphasis more on one than

on the other at different times, both approaches are critical and feed off each other.

Empowerment through ALACs

The empowerment of individuals and communities to exert their rights in the face of corruption reflects a specific model of behavioral change used by TI.¹⁶ This model posits that there are four stages of behavioral change: stage one, “there is no problem;” stage two, “there is a problem, but there is nothing I can do about it;” stage three, “there is a problem and I want to learn what I can do about it;” and stage four, “I am ready for action.”

The goal of ALACs is to move people to stage four, where they can take action themselves, by providing free advice that responds to their needs and motivations. ALACs' outreach efforts are intended to reach those in stages one and two and are designed to raise awareness of corruption and encourage people to come forward. Most ALAC clients are at the second or third stages when they first contact the office. The legal advice and assistance work of the ALAC relates mainly to stages three and four: hearing people's concerns, counseling them on their options, and supporting them in taking action. Sometimes, especially in the case of whistleblowers, they are already “ready for action” and may indeed have taken action before turning to the ALAC. In the last stage, people will ideally take action on their own.

Conclusion: Potential Future Directions

TI makes no claim to the invention of non-profit legal advisory services, anti-corruption hotlines, or any of the other elements of the ALAC approach. Legal advice clinics were pioneered long before TI existed.

Rather, the distinctiveness of the ALAC approach lies in bringing together these elements with a focus on corruption. Going far beyond the provision of services, the approach also includes systematic gathering of the reported data and building constructive relationships with public authorities.

Ultimately, ALACs aim to empower people to make use of their rights, to resist and to report corruption. With regard to the judicial system and government, TI aims to strengthen the enforcement of laws, including the responsiveness and the effectiveness of redress mechanisms. As Boris Divjak, a former TI board member and one of the pioneers of the approach in Bosnia and Herzegovina put it: “The whole aim of the center is to go out of business. That is the vision. Because if the center can successfully shut down, it means that all these institutional gaps no longer exist and that the institutions are actually working towards finding solutions in a systemic way.”¹⁷

To date, most ALACs still operate with fairly limited resources, which reduces the

reach and the overall impact they can have. The next steps in their institutional development will show whether and how it is possible to significantly scale up the ALAC approach. Such growth will require continued investment in broader geographical reach and in reaching marginalized and underrepresented groups. Success will also require broadened collaboration with public authorities and with other civil society organizations.

In addition, technology will undoubtedly play an increased role in engaging and empowering more people. At the moment, the idea of encouraging citizen complaints is enjoying a fair amount of attention, notably with the rise of online reporting platforms such as *Ipaidabribe.com*. A growing number of ALACs are also experimenting with online mapping and reporting platforms, combining them with the existing offline expertise and relationships.¹⁸ These new digital tools have the potential to enhance the ALAC approach and further increase the power of citizens to fight corruption.

Notes

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1. Paul McCarthy, *Drivers of Change: An Evaluation of the Advocacy and Legal Advice Centers Project*, 2005.
2. The size of ALAC teams varies according to the resources at the disposal of the TI chapter. At minimum an ALAC has one full-time lawyer and a legal assistant. Teams can be significantly larger and almost all ALACs have a number of volunteers for support.
3. McCarthy, *Drivers of Change*.
4. *Mid-Term Evaluation of the Anti-Corruption: Delivering Change (AC:DC) Programme*, GHK Consulting, 2011.
5. McCarthy, *Drivers of Change*, 14.
6. A recent case involves an even larger sum, relating to a public contract for multiple billions of Euros.
7. ALAC case study: *Flowershop*, available from Transparency International Secretariat.

8. ALAC case study: A Market-Based Economy, available from Transparency International Secretariat.
9. ALAC case study: Justice Can't Wait, available from Transparency International Secretariat.
10. ALAC case study: Gold Mine, available from Transparency International Secretariat.
11. McCarthy, *Drivers of Change*, 14.
12. Internal ALAC Survey, Transparency International (April 2011). TI's newly developed common software for ALACs will allow for more detailed and more robust analysis of datasets across countries and globally. It will also allow TI to share more of its findings from citizen reported complaints with interested stakeholders.
13. ALAC case study: Running on Empty, available from Transparency International Secretariat.
14. TI chapters have also been active in the development, passing, and promotion of whistleblower protection laws in a number of countries.
15. Farzana Nawaz and Dieter Zinnbauer, *Transparency, citizen-reporting and the fight against coarruption: An empirical investigation of some major interlinkages through data from anti-corruption hotlines*. Paper prepared for the First Global Conference on Transparency Research, Rutgers University, May 19-20, 2011, available from Transparency International Secretariat at http://andromeda.rutgers.edu/~ncsds/spaa/images/stories/documents/Transparency_Research_Conference/Papers/Nawaz_Farzana.pdf.
16. The model is a variation of the Transtheoretical Model of Behaviour Change, originally developed in the health context by James O. Prochaska and Carlo C. DiClemente. See *The Transtheoretical Approach: Crossing Traditional Boundaries of Therapy*, (Homewood, IL: Dow Jones Irwin, 1984).
17. This is taken from an interview with Boris Divjak in the ALAC Documentary *Agents of Change*, available here: http://www.youtube.com/watch?v=mzERmOL_b1c&feature=relmfu.
18. ALACs are doing this in Macedonia (<http://www.transparency-watch.org>), Georgia (<http://chemikucha.ge/>) Russia (<http://karta.vibor33.ru/> and <http://www.askjournal.ru/>), Nicaragua (<http://www.vivaelvoto.com/>), Panama (<http://mipanamatransparente.com/>) and Guatemala (<http://www.miradorelectoralguatemala.org>).

Legal Aid Approaches in South Africa and their Impact on Poverty Reduction and Service Delivery

David McQuoid-Mason* provides a comprehensive exploration of the practice of legal empowerment in South Africa since democratization, describing the many ways that legal aid programs seek to reduce poverty and empower South Africa's poor.

Introduction: What Is Legal Aid?

Scholars and practitioners have defined legal aid in many different ways but it usually includes legal advice, assistance, and representation.¹ Simon Rice has said that traditionally legal aid means “state provision of legal representation in court,” particularly with respect to criminal trials.² The constitutions of many democratic countries make specific reference to a state obligation to provide legal aid when criminal accused cannot afford legal representation and such provision would be in the interests of justice.³ The International Covenant on Civil and Political Rights also calls for such provisions.⁴ The South African Constitution refers to situations in criminal cases where “a substantial injustice would otherwise result” from the state’s failure to provide legal representation to arrested, detained, or accused persons.⁵ There is less agreement on states’ provision of legal aid in civil matters, although the European Court on Human Rights has held that the state should provide legal aid where civil cases require “equality of arms.”⁶

Although “legal aid” in the narrow sense refers to state-funded legal and law-related services for poor people, in the broad sense a variety of non-state-funded actors such as public interest law firms, community service organizations, non-governmental organizations, and university law clinics provide legal aid as well. Thus, as Rice suggests, definitions of legal aid should go beyond mere legal representation at state expense, and legal aid can be regarded as “providing public access to law that is preventive and protective, that brings change and hope that relieves poverty and promotes prosperity.”⁷

Legal aid can also mean “providing public access to legal information, to legal advice and to legal education and knowledge.”⁸ This broader definition is implicit in the Malawi Legal Aid Act, which requires legal aid assistants employed by the Legal Aid Bureau to “advise and educate members of communities on legal issues.”⁹ The Kenya Draft Legal Aid Bill goes further and defines “legal aid” as including “legal advice and awareness creation,” legal representation, and “legal assistance” which includes “the provision of legal information and law-related education.”¹⁰ The South African Legal Aid Act does not define legal aid, but Legal Aid South Africa (LASA, the national legal aid body), has recognized that it should also “focus on a constitutional rights awareness and training programme for our communities as this is neglected.”¹¹ However, the

main function of legal aid is to provide poor people with legal advice, assistance, and representation; legal aid schemes cannot fulfill their mandate through legal education and training alone.

South Africa's Commission on Legal Empowerment of the Poor implied the wider definition when its 2008 report noted that "[t]he poor may be unable to access the justice system because they do not understand it or lack knowledge about it."¹² National legal aid schemes and their cooperation partners can overcome this by engaging in widespread legal awareness and legal literacy programs.

Although the obligation to provide legal aid lies primarily with the state, in most countries a variety of non-governmental actors provide legal aid. Furthermore, how legal aid is delivered will affect its ability to reduce poverty in any particular country.

Different Methods of Delivering Legal Aid to the Poor

Methods of delivering legal aid to the poor in South Africa include state funded schemes introduced by LASA and privately funded services provided by non-governmental actors.

State Funded Legal Aid Services

LASA provides all state-funded legal aid in South Africa and has established a network of justice centers and satellite offices that provide for a mixed system of delivery mechanisms.¹³ The justice centers and satellite offices use in-house qualified public defenders and candidate attorney public defenders; LASA's primary mandate is criminal defense. In addition, LASA uses judiciary, an approach that includes contracts

with private lawyers, cooperation agreements with non-state-funded organizations, and impact litigation.

Justice centers and satellite offices are fully fledged, state-funded law firms staffed by lawyers and administrative staff in the employ of LASA. The justice centers employ qualified public defenders and candidate attorney public defenders,¹⁴ in addition to professional assistants, supervising attorneys, paralegals, administrative assistants, and administrative clerks. At present LASA operates 64 justice centers and 64 satellite offices that act as one-stop shops for legal aid applicants.¹⁵

The justice centers and satellite offices provide a full range of legal and paralegal services to indigent clients in the larger cities and towns. Satellite offices, which may be staffed by a couple of paralegals, serve the smaller towns and villages. These paralegals conduct means tests of clients and do initial screening for the nature of the client's problem, give basic advice or refer clients to other agencies, enter client details in the office database, visit prisons, and conduct community outreach through legal literacy workshops. Satellite offices can call on the support of one or two public defenders and intern public defenders who operate out of a regular justice center in the nearest large town.

During 2009–2010, 75 percent of the new matters handled by the justice centers and satellite offices involved the district courts, 16 percent the regional courts, two percent the high courts, and six percent other courts.¹⁶

LASA also operates an **impact litigation unit** to complement its justice centers and satellite offices by dealing with limited specialist litigation. The unit only takes on cas-

es that will affect large numbers of people, with a special focus on: (a) child-headed households and AIDS orphans; (b) women; (c) the rural poor; (d) the landless and farm workers; and (e) socioeconomic rights of the poor. These cases specifically aim at reducing poverty and empowering the poor. The unit tends to farm out cases for external representation by cooperation agreement partners such as the Legal Resources Centre (LRC), a prominent NGO that provides legal aid and engages in related forms of legal advocacy.¹⁷

Cooperation agreement partners who have entered into agreements with LASA include a number of universities and NGOs, but these partners accounted for less than one percent of all new matters handled by LASA during 2009–2010.¹⁸ LASA hopes to increase this through “improved networking with NGOs, community-based organizations (CBOs) and community advice offices.”¹⁹ This plan reflects the recognition that civil and high impact cases are more likely to reduce poverty than criminal cases,²⁰ although acquittal of breadwinners in criminal cases may prevent an increase in poverty for the families of such accused persons.

LASA also uses a legal aid advice telephone line at its head office with a mandate to respond to the “gap in reaching the poor and specifically the rural poor, by allowing them access to primary legal advice on the phone without having to travel to a justice centre or satellite office.”²¹ Trained paralegals staff the advice line under the supervision of a qualified lawyer. All calls are monitored and logged into LASA’s electronic database.

Prior to the democratization of South Africa, the Legal Aid Board, which became LASA, delivered legal aid services mainly

through **judicare**—referrals to private lawyers. Since the advent of democracy and with the introduction of public defenders, judicare now accounts for very few cases. In 2009–2010 judicare referrals accounted for six percent of all cases LASA handled (24,672 out of 416,149 cases).²²

Privately Funded Legal Aid Initiatives

Privately funded legal aid initiatives include: (a) pro bono legal aid work by the profession; (b) public interest law firms; (c) university legal aid clinics; (d) legal literacy and awareness programs; and (e) paralegal advice offices. Civil society institutions manage many of these initiatives.

Pro bono work may supplement state-funded legal aid services, but it cannot substitute for legal aid schemes that pay for the services of lawyers.²³ In South Africa, lawyers have a tradition of doing some pro bono work. In addition, the law societies governing five out of the nine provinces have recently made it mandatory for lawyers to provide 24 hours a year of pro bono work.²⁴ LASA has been in discussions with the Law Society of South Africa (which governs the legal profession) and the General Council of the Bar (the advocates’ organization), about increasing the provision of pro bono legal aid services by attorneys and advocates.²⁵

Public interest law firms also play a valuable role in civil legal aid services for indigent people and in poverty reduction.²⁶ Most public interest law firms tend to handle cases affecting large numbers of people, rather than individual complaints.²⁷

LRC, which has a cooperation agreement with LASA, is a particularly good example of a highly effective public interest law firm that advanced the interests of the poor and oppressed during apartheid in a climate

hostile to human rights.²⁸ Since 1994 LRC has focused on constitutional rights, land, housing, and development, involving rural and urban restitution and redistribution of land, urban and rural land tenure security, housing, land law reform, urban and rural land development, and other issues.²⁹

LASA has entered into fewer cooperation agreements with public interest law firms as it has increased its number of justice centers and satellite offices, but they hope that agreements like the one with LRC may increase in the future.³⁰

LASA also has cooperation agreements with **university law clinics**, which developed during the early 1970s in South Africa, and have continued to grow.³¹ At present nearly all 19 university law faculties have clinics, and university law clinics have become an important adjunct to the national legal aid scheme.³² University law clinics in South Africa supply free legal advice and assistance to indigent persons under the supervision of qualified staff members who are legal practitioners. Most university law clinics either require law students to work in a university law clinic, or assign the students to an outside partnership organization where they can provide legal services under supervision.

The South African Ministry of Justice recently funded a program whereby unemployed law graduates may serve their required period of apprenticeship at university law clinics under the supervision of a qualified attorney.³³ The ministry pays the salaries of the clerks and of their supervising attorneys. In 2010, the 131 candidate attorneys in the program opened over 9,240 cases involving divorce, family law, motor accident claims, labor matters, debt relief, evictions, and a category of general practice, valued

at R19,417,804 (about US\$2,400,000), according to *judicare* tariffs.³⁴

Universities and outside donors fund the law clinics. The Attorneys Fidelity Fund provides a grant to accredited law clinics to help pay staff and operate the clinic.³⁵ In South Africa the Association of University Legal Aid Institutions has set up a trust with an endowment from the Ford Foundation to strengthen the funding of the clinics.³⁶ The trust has encouraged law faculties and law schools gradually to include the funding of the clinics in their university budgets.³⁷

LASA's cooperation agreements with some university law clinics compensate them for providing legal aid services for poor people that LASA itself cannot serve—particularly with civil cases. LASA has also contracted law clinics to provide back-up legal services to clusters of paralegal advice offices. Such contractual agreements not only help to make law clinics more financially viable, but also assist in reducing poverty in the communities the clinics serve.

Paralegal advice offices, also known as community advice offices, have also entered into cooperative agreements with LASA. These offices provide a valuable link between the communities they serve and the providers of legal aid services, and can act as catalysts for the alleviation of poverty. Some paralegal advice offices have built up expertise in particular areas, including pensions, unemployment insurance, and unfair dismissals. These offices regularly refer people who need more services than they can provide to LASA, its cooperative partner LRC, or a law clinic or sympathetic law firm. Paralegals have also worked in LASA's justice centers and satellite offices.

The National Association for the Development of Community Advice Offices

(NADCAO) has been established to assist member paralegal advice offices with training and fund-raising in all the provinces of the country. NADCAO works closely with the Association of University Legal Aid Institutions, and the latter provides community advice offices with training and support from its law clinic members at different universities.³⁸ LASA recently signed a cooperation agreement with NADCAO and hopes that this will expand LASA's networking with NGOs and with CBOs, which are local, sometimes informal associations comprising community residents, women, farmers, or other groups.³⁹

In addition to entering cooperative agreements with the types of organizations listed above, LASA encourages **legal literacy and awareness programs** as a component of legal aid. One such program, operating under the term "street law," teaches groups such as school children and prisoners how the legal system works, and how it can be used to safeguard the interests of people "on the street."⁴⁰ Law students in the street law program at the universities learn how to use interactive learning methods when teaching school children, prisoners, and others about the law. Other organizations that conduct legal literacy and awareness programs include ProBono.org, the Legal Resources Centre, the Black Sash, the Association for Rural Advancement, the Community Law and Rural Development Centre, and university law clinics.

Legal Aid and Poverty Reduction

Legal aid can assist with poverty reduction by compelling the state to provide poor and marginalized people with access to housing, water, health, and social services. Both

state-funded and non-state-funded legal aid organizations undertake this work.

Poverty Reduction through State-Funded Legal Aid Mechanisms

LASA's varying actors pursue poverty reduction. The justice centers and satellite offices help their clients to stay out of prison and to enforce their rights through civil actions, handling the bulk of LASA's criminal and civil cases. In the period 2009–2010 these entities dealt with 362,180 new criminal and 25,196 new civil cases.⁴¹ During the same period they gave legal advice to about 211,874 clients and assistance to children in 59,266 criminal and civil matters.⁴² In the same period, LASA dealt with 29,028 civil cases in all.⁴³ LASA is presently lobbying government to secure appropriate funding to expand civil legal aid.⁴⁴

LASA on average employs about 1,048 qualified lawyers and 615 candidate attorneys (who it employs on 12-month or 24-month contracts) at any one time. This makes it one of the biggest law firms in South Africa, where very few law firms have more than a couple of hundred employees.⁴⁵

During 2009–2010 LASA referred about six percent of its new criminal cases, (28,147 cases) and five percent of its new civil cases, (1,525) to judicare lawyers—out of a total of 387,121 criminal and 29,028 civil cases.⁴⁶

Poverty Reduction by Non-State-Funded Legal Aid Actors

Pro bono services in South Africa are a useful adjunct to the national legal aid scheme. ProBono.org, an NGO with a membership of about 8,000 lawyers, provides a number of services that help poor and marginalized people access legal services and al-

leviate their poverty, by conducting weekly legal clinics on HIV/AIDS, refugees' rights, housing, consumer law, and estate law, on a pro bono basis. The organization also addresses labor law matters for indigent workers, acts as clearing house for land matters, and provides support to local community advice offices.⁴⁷

Reduced legal fees are a form of pro bono service. During 2008–2009, LRC saved R1,218,000 (about US\$152,000) in advocates' fees due to discounted rates.⁴⁸ Furthermore, LRC received 11,000 hours of work donated by interns.⁴⁹

In an example of a pro bono victory, in *President of the Republic of South Africa v. Modderklip Boerdery (Pty) Ltd*, pro bono lawyers assisted an impoverished community to obtain security of land tenure in the Constitutional Court.⁵⁰ Further pro bono applications on their behalf enabled the community to access free municipal services from the local authorities.⁵¹

Public interest law firms may have wider scope than pro bono efforts. LASA cooperation partner LRC has an outstanding record of alleviating poverty, both during and after apartheid. The most common poverty-reduction cases in 2009–2010 involved social security access, land and rural development, and housing and local government. LRC's significant accomplishments include the *Treatment Action Campaign* (TAC) case which prevented thousands of newborn babies from contracting HIV.⁵² LRC's Cape Town office alone assisted 12,000 refugees during 2008–2009, when xenophobic attacks were prevalent in the country.⁵³

Many **university law clinics** in South Africa are general practice clinics and deal with individual complaints. Others have begun to focus on specific issues, some of which

involve social and economic rights, such as housing, health, water, and social services. These specialized clinics are likely to have the largest impact on poverty alleviation.

Successful housing cases enable poor people to obtain decent shelter.⁵⁴ Access to health care cases, like LRC's Treatment Action Campaign, reduce HIV infection among newborn babies⁵⁵ or help poor people secure ongoing treatment such as antiretroviral drugs to control HIV infection, or medication for tuberculosis.⁵⁶ Water cases enforce poor people's legally mandated allocation of water.⁵⁷ Social security cases secure vital pensions for the disabled, blind, orphaned, or elderly.⁵⁸ All these categories of cases assist in alleviating poverty.

Research has shown that rights awareness depends on public information campaigns, so **legal literacy and awareness programs** augment legal aid in a vital way.⁵⁹ A widespread legal awareness education campaign secured the impact of the TAC case in decreasing mother-to-child HIV transmission.⁶⁰ As discussed below, a key case related to housing had no such campaign, which limited the impact on the citizens it could have helped directly.⁶¹

Organizations providing legal awareness campaigns in South Africa include:

- Street Law South Africa, which has been providing law-related education to school children, prisoners, and communities since the mid-1980s. The organization trains law students at nine universities; during 2011, 95 Street Law students at the University of KwaZulu-Natal conducted 20 lessons each for school classes of about 30 learners, while at the Nelson Mandela Metropolitan University 150 Street Law students taught 10 lessons each to classes averaging about 30 learn-

ers. In total the Street Law students at the two universities taught about 102,000 school pupils in 2011.⁶²

- ProBono.org, which arranged a number of legal literacy workshops during 2011 regarding estates and wills for elderly members of the community and people in hospices. The organization has also conducted training for community leaders on various housing-related matters and HIV/AIDS issues.⁶³
- LRC, which has participated in community legal education since its inception. It also produces pamphlets and booklets on different aspects of the law, including violence against women.⁶⁴
- The Black Sash, a well-established paralegal advice NGO that worked closely with LRC on important public interest law cases such as the *Rikhoto* case⁶⁵ during the apartheid era and has an extensive law-related educational program, using workshops, radio programs, publications,⁶⁶ paralegal training guides, and newsletters.⁶⁷ The Black Sash still works with LRC and other human rights organizations and conducts rights education with a network of partners in the fields of labor, faith, human rights, community, politics, youth, and welfare. During 2009-2010 the Black Sash distributed 59,890 law-related educational materials; educated 4,069 people in workshops; and trained 3,103 leaders from trade unions, faith-based organizations, and the paralegal sector to assist their constituencies to access their rights.⁶⁸ The organization counts more than 86,100,000 people reached by its law-related education programs during 2008.⁶⁹
- The Association for Rural Advancement (AFRA), an NGO that engages in strategic impact litigation and lobbies for changes in government policies regarding rural land restitution and development.⁷⁰ In addition to strategic litigation and lobbying, AFRA conducts law-related education and training workshops for rural people.⁷¹ Paralegals educate communities about their legal rights under the constitution, including those related to land tenure. AFRA also conducts workshops for communities ruled by traditional leaders.⁷²
- The Community Law and Rural Development Centre (CLRDC), an NGO that has established a network of rural paralegal advice offices in KwaZulu-Natal, the most populous province in South Africa. During 2009, CLRDC paralegals conducted over 300 legal literacy workshops for 15,000 rural people. In 2010 the paralegals conducted 182 workshops for 22,620 participants.⁷³
- University law clinics, which often have community outreach programs that perform legal literacy training. Many law clinics receive funding from the Association of University Legal Aid Institutions Trust to conduct law-related education and training for paralegal advice offices.

Just as legal awareness programs perform a vital function, research has indicated that the advice and assistance offered by **paralegal advice offices** help people assert their rights inside and outside the legal environment.⁷⁴ The Black Sash and the CLRDC both provide paralegal advice offices.

The Black Sash's program dealt with 21,345 new cases and completed 21,046 cases involving private pensions, social assistance,

labor issues, insurance, and consumer issues during 2008–2011. During this period the Black Sash recovered R21,263,569 (about US\$2,660,000) for its clients.⁷⁵

Working in a similar mode, CLRDC has helped rural communities to establish paralegal committees to select community residents for training as paralegal advisers and educators. CLRDC also provides continuing legal education for paralegals. In the past, CLRDC managed clusters of paralegal advice offices with legal support by the university law clinics in partnership with LASA. A paralegal program, Timap for Justice, that has evolved into an independent NGO serving rural areas in Sierra Leone, used CLRDC as a model.⁷⁶ During 2009 CLRDC collected over R3 million (about US\$430,000) for clients from private and state pension funds, from the state unemployment insurance fund, and from third party insurers for personal injury motor collision claims.⁷⁷

Other organizations improve their impact by integrating advice offices with other services. TAC was founded primarily to seek a national governmental program to prevent mother-to-child transmission of HIV. During 1999–2001, TAC met with the relevant ministers of health; participated in demonstrations and rallies and the drafting of memoranda; presented a petition to the president; and conducted a campaign to persuade pharmaceutical companies to reduce the prices of essential antiretroviral medicines, particularly AZT.⁷⁸ TAC employs paralegals who assist in advising and educating people living with HIV and AIDS concerning their constitutional and other rights.

The activities of TAC coincided with the rise of AIDS denial by then-President

Thabo Mbeki, who drastically differed with the medical community on the cause and cure of the disease, and culminated in TAC's victory against the government's restrictive antiretroviral policies in the landmark *Treatment Action Campaign* case.⁷⁹

Recently, TAC has faced a funding crisis because it receives the bulk of its donor funding via the Department of Health instead of directly from funders. The department has held up payments because, it says, TAC has not submitted proper documentation for its claims.⁸⁰ TAC denies any error and says it may have to close down.⁸¹ As noted above, university law clinics faced similar prejudice and inefficiency when the Ministry of Justice failed to transfer funds promptly.

AFRA also uses an integrated strategy by employing lawyers and paralegals to give advice and assistance and to (a) empower communities to engage with land reform processes to meet their needs; (b) promote and protect the interests of women and the poorest of their clients in rural communities; and (c) network with other organizations to lobby for a just and effective land reform program for their clients within an integrated rural development framework.⁸² AFRA engages in strategic litigation in land tenure cases, but also conducts a number of training programs on non-legal capacity-building issues—such as nutrition, water harvesting techniques, and the use of trench beds for agricultural production—to alleviate poverty and its consequences in rural areas.⁸³ Thus AFRA combines the provision of legal advice and representation with development work to alleviate poverty in impoverished rural communities.

Using Legal Aid to Improve Service Delivery and Generate Other Benefits for the Poor

In South Africa, public interest law has been used to improve service delivery and reduce poverty, within the available resources of the state. Legal aid services have been critical to winning a series of precedent-setting cases regarding the right to housing, water, social security, and health care, all of which the constitution names specifically.

The Government of the Republic of South Africa v. Grootboom was the first case to successfully confront socioeconomic rights in South Africa.⁸⁴ An impoverished community had been forcibly evicted by the local municipality from land they occupied, without being offered alternative accommodation. Instead of granting a remedial order, the court issued a declaratory order that the government had breached their constitutional rights and ordered the state to devise and implement, within its available resources, a comprehensive and reasonable program to ensure the right of access to adequate housing.

Advocates Gilbert Marcus and Steven Budlender have suggested that the *Grootboom* case “significantly affected the government’s housing policy” and “played a major role in altering South African law on housing and evictions.” It also “impacted significantly on the government’s attitude towards socio-economic rights and socio-economic rights cases” and has “had an enormous impact on subsequent socio-economic rights litigation.”⁸⁵ Sadly, the case dealt with housing policy and had little impact on the speedy delivery of actual homes to desperate people. For example, Mrs. Grootboom herself, the lead plaintiff in the case, died eight years after the *Grootboom* judgment without receiving a house.⁸⁶

In *Mazibuko v. City of Johannesburg*, the applicants challenged Johannesburg’s free basic water allocation to poor households on the basis of their constitutional right of access to sufficient water.⁸⁷ The court ordered the city to continuously review its water policies, and to determine how it might meet the needs of the poorest inhabitants of the city and achieve the progressive realization of the right of access to sufficient water.⁸⁸

In *Khosa v. Minister of Social Development*, the Constitutional Court held that the provision of certain forms of state-administered welfare could not be limited to South African citizens only.⁸⁹ The ruling gave impoverished residents, refugees, and asylum seekers access to social security benefits.

The *Minister of Health v. Treatment Action Campaign (2)* concerned the provision of the drug Nevirapine to pregnant mothers and their babies to prevent mother-to-child transmission of HIV.⁹⁰ TAC brought the case at a time that the government only allowed 18 research and training sites—two in each province—to use Nevirapine, denying the drug to thousands of newborn babies who became infected. The Constitutional Court ordered the government “without delay,” to permit and facilitate the use of Nevirapine to reduce mother-to-child transmission of HIV, and to make it available at hospitals and clinics throughout the country.⁹¹ The court decision had a huge impact on the quality of life of thousands of newborn babies, particularly those born to impoverished parents, by ensuring that they did not contract HIV.⁹²

Conclusion

Legal aid can be effective on its own, but in its more ambitious form as public interest

law it often involves organizing, political mobilization, the use of community paralegals, and a host of other forces to truly reduce poverty and empower the poor.

South Africa's Legal Aid Law does not define legal aid or its parameters; in this absence, the country has developed a large, multifaceted, and diverse landscape of programs designed to empower citizens—especially the poor—and help them realize their rights.

Some legal aid programs are provided directly by the state, while others are privately funded, some use lawyers to take individual cases, while others deploy paralegals to pursue community education. But the specific

approach is arguably less important than the fact that these services reach hundreds of thousands of South Africans a year, and have a profound impact on South African society.

Legal Aid services have empowered communities to protect their land, kept the innocent out of jail, sheltered immigrants from xenophobic violence, made real the rights to housing and water, and saved tens of thousands of lives by making Nevirapine available to halt mother-to-child HIV transmission. It is virtually impossible to think of South Africa today without considering the impact of legal aid.

Notes

* David McQuoid-Mason is acting head of the Centre for Socio-Legal Studies, University of KwaZulu-Natal, Durban, South Africa and president of the Commonwealth Legal Education Association.

1. See definition in Section 2 of the Malawi Legal Aid Act: "Legal aid" means "services provided to persons under this Act by way of legal representation, legal advice or legal assistance." Section 2 of the Sierra Leone Draft Legal Aid Bill states: "Legal aid" means "the provision of legal advice, assistance or representation to indigent persons."
2. Simon Rice, "A Human Right to Legal Aid," in Paul Dalton and Hatla Thelle (eds.), *Legal Aid: International Experiences and Promising Practices for Legal Aid Providers* (Oslo: Norwegian Institute of Human Rights, 2010), 15.
3. See for instance, Section 3 of the South African Legal Aid Act No. 22 of 1969, which requires the Legal Aid Board (now LASA) to "render or make available legal aid to indigent persons and to provide legal representation at state expense as contemplated in the Constitution"—without defining legal aid but specifically referring to "legal representation."
4. Article 14 of the International Covenant on Civil and Political Rights, 1966.
5. Section 35(2)(c) and (d) of the Constitution of the Republic of South Africa, 1996.
6. *Airey v. Ireland* (1979) 2 EHRR 305.
7. Rice, "A Human Right to Legal Aid," 16.
8. *Ibid.*
9. Section 14(f) of the Legal Aid Act, 2010.
10. Section 2.
11. *Annual Report for 2009–2010* (Johannesburg: Legal Aid South Africa, 2010), 8.
12. *Making the Law Work for Everyone: Report of the Commission on Legal Empowerment of the Poor* Vol. 1 (New York: Commission on Legal Empowerment of the Poor and United Nations Development Programme, 2008), 32–33.
13. *Annual Report for 2009–2010*, 10.

14. South Africa has a divided legal profession like the United Kingdom which consists of advocates (barristers) and attorneys (solicitors). Before advocates can join a bar association they must undertake a one-year period of study, and aspiring attorneys must serve an apprenticeship as candidate attorneys with a qualified attorney for a period of one or two years (depending on whether they attended a six month practical training school or a five week practical training course) before being admitted to practice.

15. *Annual Report for 2009–2010*, 10.

16. *Ibid.*

17. *Annual Report for 2008–2009*, 33.

18. *Annual Report for 2009–2010*, 26.

19. *Annual Report for 2009–2010*, 10.

20. For example, the case of *Bhe v. Magistrate Khayalitsha*, 2005 (1) SA 580 (CC), declared that the traditional customary law practice of excluding African women from inheriting their husbands' or fathers' intestate estates was unconstitutional; the finding has enabled African women to now inherit property and alleviate their poverty by not having to depend on male heirs for support.

21. *Annual Report for 2009–2010*, 11.

22. *Annual Report for 2009–2010*, 26.

23. The American Convention on Human Rights Article 8.2.e, seems to contemplate legal aid services being provided pro bono, as it refers to “counsel provided by the state, paid or not.”

24. The five are the Western Cape, Gauteng, Mpumalanga, North West, and Limpopo provinces.

25. *Annual Report for 2009–2010*, 8. *Annual Report for 2008–2009*, 33. See footnote 14 regarding the division of the South African legal profession.

26. Helen Hershkoff and Aubrey McCutcheon “Public Interest Litigation” in *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World* (New York: Ford Foundation, 2000), 289–94.

27. See generally, *Public Interest Law Around the World* (Baltimore: National Association for the Advancement of Colored People and the Legal Defense Fund, 1992).

28. For example, during the apartheid era, in *Oos-Randse Administrasieraad v. Rikhoto* 1983 (3) SA 595 (AD), LRC affected the lives of thousands of black South Africans by persuading the Appeal Court that Africans who had worked continuously for an employer for 10 years in a “white” area such as Johannesburg, were entitled to permanent residence in that area—even though the government had passed a regulation which effectively limited employment contracts to a year at a time and argued that 10 one-year contracts did not constitute continuous employment. See Geoff Budlender, “The Public Interest Movement in South Africa,” in Ayesha Kadwani Dias and Gita Honwana Welch (eds.), *Justice for the Poor: Perspectives on Accelerating Access* (New Delhi: Oxford University Press, 2009), 188. The judgment granted 3,888,187 Africans residence rights in “white” areas December 31, 1983. *Race Relations Survey 1984* (Johannesburg: South African Institute of Race Relations, 1985), 348.

29. *Annual Report for 1998* (Johannesburg: Legal Resources Centre), 4; compare David McQuoid-Mason “The Delivery of Civil Legal Aid,” *Fordham International Law Journal (Symposium)* 24, (2000), S 128.

30. *Annual Report for 2009–2010*, 10.

31. Law students established the first university law clinic in South Africa at the University of Cape Town in 1972. See David McQuoid-Mason, *An Outline of Legal Aid in South Africa* (Durban: Butterworth and Co (Pty) Ltd (SA), 1981), 139–40. The first faculty-initiated law clinics were established at the Universities of the Witwatersrand and Natal in 1973. See *Ibid* 148 and 153.

32. David McQuoid-Mason, Ernest Ojukwu, and George Mukundi Wachira, “Clinical Legal Education in Africa: Clinical Legal Education and Community Service,” in Frank S. Bloch (ed.), *The Global Clinical Movement: Educating Lawyers for Social Justice*, (New York: Oxford University Press, 2011), 23–36.

33. See above footnote 14.

34. *Narrative and Statistics Report Period January–December 2010* (Pretoria: Department of Justice-Association of University Legal Aid Institutions (AULAI) National Youth Service Programme Intern Project, 2010), (unpublished), 2–5.

35. The Attorneys Fidelity Fund is similar to the IOLTA (Interest on Lawyers' Trust Accounts) program in place in Australia, Canada, New Zealand, and the United States. However, while IOLTA programs directly fund legal aid in those countries, the Fidelity Fund in South Africa only supports legal education and accredited university law clinics as it believes that legal aid should be funded by the state.

36. Stephen Golub, "Battling Apartheid, Building a New South Africa," in *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World* (New York: Ford Foundation, 2000), 38.

37. Nigeria has set up the Network of University Legal Aid Institutions (NULAI) which is closely modeled on AULAI, and Poland has set up a similar Polish Association of Law Clinics.

38. See generally David McQuoid-Mason, "The Delivery of Civil Legal Aid," *Fordham International Law Journal (Symposium)* 24, (2000), S 131–33.

39. *Annual Report for 2009–2010*, 10.

40. David McQuoid-Mason, "Reducing Violence in South Africa through Street Law Education of Citizens," in Gerd Ferdinand Kirchoff, Ester Kozovski and Hans Joachim Schneider, (eds.), *International Debates on Victimology* (Monchengladbach: WSV Publishing, 1994), 347–48.

41. Calculations by the writer based on the statistics in *Annual Report for 2009–2010*, 26.

42. *Annual Report for 2009–2010*, 10.

43. *Ibid.*

44. *Ibid.*, 8.

45. *Annual Report for 2008–2009*, 102.

46. *Annual Report for 2009–2010*, 26.

47. ProBono.org website (accessed on November 23, 2011).

48. *Annual Report for 2008–2009*, 10.

49. *Ibid.*

50. 2005 (5) SA 3 (CC); cf. Gilbert Marcus and Steven Budlender, *A Strategic Evaluation of Public Interest Litigation in South Africa* (Johannesburg: Atlantic Philanthropies, 2008), 126.

51. Gilbert Marcus and Steven Budlender, *A Strategic Evaluation of Public Interest Litigation in South Africa* (Johannesburg: Atlantic Philanthropies, 2008), 126.

52. *Minister of Health v. Treatment Action Campaign (2)* 2002 (5) SA 721 (CC). The mother to child transmission rate for HIV infection has dropped from nearly 40 percent prior to the implementation of antiretroviral treatment to 3.5 percent, according to a recent national survey conducted by the South African Medical Research Council. See <http://www.plusnews.or/report.aspx?reportid=92942> (accessed on January 10, 2012).

53. *Annual Report for 2008–2009*, 10. LRC assisted the refugees by securing access to safe accommodation, making complaints to the police and forcing the police to protect refugees, helping refugees to recover their property, persuading the authorities to implement a moratorium on the arrest of asylum seekers (particularly Zimbabwean refugees) awaiting documentation, persuading the authorities to keep open refugee camps until the xenophobia outbreaks ceased, and more. Personal communication, William Kerfoot: Director, Cape Town Legal Resources Centre, January 9, 2012.

54. Cf. *Government of the Republic of South Africa v Grootboom* 2001 (1) SA 46 (CC); *Port Elizabeth Municipality v. Various Occupiers* 2005 (1) SA 217 (CC); *Occupiers of 51 Olivia Road v. City of Johannesburg* 2008 (3) SA 208 (CC); *Residents of Joe Slovo Community, Western Cape v. Thubelisha Homes* 2010 (3) SA 454 (CC) paras 172 and 235.

55. *Minister of Health v. Treatment Action Campaign (2)* 2002 (5) SA 721 (CC).
56. Cf. *Van Biljon v. Minister of Correctional Services* 1997 (4) SA 441 (C); *EN v. Government of the Republic of South Africa (No 1)* 2006 (6) SA 543 (D) dealing with the rights of prisoners to access antiretroviral drugs.
57. Cf. *Mazibuko v. City of Johannesburg* 2010 (4) 1 (CC).
58. Cf. *Khosa v. Minister of Social Development* 2004 (6) SA 505 (CC).
59. Gilbert Marcus and Steven Budlender, *A Strategic Evaluation of Public Interest Litigation in South Africa* (Johannesburg: Atlantic Philanthropies, 2008), 94.
60. *Minister of Health v. Treatment Action Campaign (2)* 2002 (5) SA 721 (CC).
61. *Government of the Republic of South Africa v. Grootboom* 2001 (1) SA 46 (CC).
62. Personal email, Lindi Coetzee: National Street Law Coordinator, November 28, 2011. Personal email, Lloyd Lotz: KwaZulu-Natal Street Law Coordinator, November 29, 2011.
63. ProBono.org website (accessed on November 23, 2011).
64. Amanda Spies and Janet Love, *Paggeld: Time to Pay Maintenance* (Johannesburg: Legal Resources Centre, undated). Amanda Spies and Naseema Fakir *Violence Against Women: A South African Perspective* (Johannesburg: Legal Resources Centre, undated).
65. Stephen Golub “Batting Apartheid, Building a New South Africa” in Mary McClymont and Stephen Golub (eds.), *Many Roads to Justice: The Law-Related Work of Ford Foundation Grantees Around the World* (New York: Ford Foundation, 2000), 28. *Oos-Randse Administrasieraad v Rikhoto* 1983 (3) SA 595 (AD).
66. See Black Sash website at <http://www.blacksash.org.za/>.
67. *Report for 2008: An Overview of the Work of the Black Sash* (Cape Town: Black Sash, 2009), 8.
68. *Report for 2009–2010: An Overview of the Work of the Black Sash* (Cape Town: Black Sash, 2010), 12.
69. *Report for 2008: An Overview of the Work of the Black Sash* (Cape Town: Black Sash, 2009), 15–18.
70. See www.afra.org.za.
71. See www.afra.org.za.
72. See www.afra.org.za.
73. Personal email, Langa Mtshali, Executive Director: Community Law and Rural Development Centre, November 26, 2011.
74. Gilbert Marcus and Steven Budlender, *A Strategic Evaluation of Public Interest Litigation in South Africa* (Johannesburg: Atlantic Philanthropies, 2008), 94.
75. Personal email, Evashnee Naidu, Director: Black Sash Office, Durban, November 23, 2011.
76. For a description of how Timap for Justice has used paralegals to assert the legal rights of rural people in Sierra Leone, see generally Vivek Maru, “Between Law and Society: Paralegals and the Provision of Primary Justice Services in Sierra Leone and Worldwide,” *Yale Journal of International Law* 13 (2006), 427–76.
77. Personal communication, Langa Mtshali, Executive Director: Community Law and Rural Development Centre, January 9, 2012.
78. Gilbert Marcus and Steven Budlender, *A Strategic Evaluation of Public Interest Litigation in South Africa* (Johannesburg: Atlantic Philanthropies, 2008), 94.
79. 2002 (5) SA 721 (CC).
80. Zara Nicholson, “NGOs feeling funding pinch,” *The Mercury*, November 25, 2011.
81. Anso Thom, “TAC in urgent need of a lifeline,” *The Mercury*, November 24, 2011.

82. *Annual Report of the Association for Rural Advancement for 2010* (Pietermaritzburg: Association for Rural Advancement, 2011), 3.
83. *Ibid.*, 17. These programs have been so successful that AFRA has been asked to provide training in candle-making, homestead cropping, small-scale chicken farming and co-operative training and registering (*Ibid.*, 20).
84. 2001 (1) SA 46 (CC).
85. Gilbert Marcus and Steven Budlender, *A Strategic Evaluation of Public Interest Litigation in South Africa* (Johannesburg: Atlantic Philanthropies, 2008), 63–65.
86. Pierre De Vos, “Irene Grootboom died, homeless, forgotten, no C-class Mercedes in sight,” August 11, 2008, <http://constitutionallyspeaking.co.za/Irene-grootboom-died-homeless-forgotten-no-c-class-mercedes-in-sight/>, accessed January 10, 2011.
87. *Mazibuko v. City of Johannesburg* 2010 (4) 1 (CC).
88. *Ibid.*, para 71.
89. *Khosa v. Minister of Social Development* 2004 (6) SA 505 (CC). 46–47.
90. *Minister of Health v. Treatment Action Campaign (2)* 2002 (5) SA 721 (CC).
91. *Ibid.*
92. This case affected the lives of thousands of newborn children. Prior to the Constitutional Court decision about 70,000 newborns a year in South Africa were infected with HIV. By 2005 South Africa had the largest prevention of mother-to-child-transmission (PMTCT) program in the world. See “In depth: South Africa—The World’s Biggest ARV Programme?” September 14, 2006, <http://www.irinnews.org/Indepth/70984/40/PhotoDetail.aspx?ImageId=200681110>, accessed February 17, 2013.

Sustaining the Process of Legal Empowerment

Robin Nielsen* notes that legal empowerment is a long term process and identifies key elements that can make a legal empowerment program sustainable over time.

Introduction

A growing number of development initiatives in lower-income countries include legal empowerment objectives.¹ This trend recognizes law as a source of economic, social, and political power. Initiatives that help disadvantaged individuals and groups use the law and legal tools can help these individuals and groups increase their opportunities and make choices to advance their economic, social, and political development.

The achievement of such positive outcomes is, however, far from guaranteed. The same formal and informal legal institutions that can support change in people and systems can also resist change that threatens entrenched interests. In order to help disadvantaged individuals and groups achieve positive outcomes, initiatives must sustain the empowerment process for the period of time necessary to create and exercise new power—a time period likely to stretch into years and decades.

This article considers some of the factors that influence the sustainability of legal empowerment programs and processes. What principles, elements of program design, and funding models support the continuation of empowerment processes over time? To a large extent, the sustainability of the process

of empowerment stems from the effectiveness of empowerment initiatives and the sustainability of impact.² To what extent can individuals and groups maintain their new power and build on it? Though evidence of impact gradually accrues, fully answering that question awaits more systematic evaluation of the impact of legal empowerment programs. As legal empowerment outcomes become increasingly defined and reported, such valuable work must follow. In the interim, attention to the quality of sustainability provides a useful entry point into the larger topic and an organizing principle for evaluating the various components of dynamic and multilayered empowerment processes. In both cases, exploration of the topic must begin with definitions of the foundational terms: empowerment, legal empowerment, and sustainability.

Empowerment is the capacity of an individual or group to make effective choices and to use those choices to create desired outcomes.³ Empowerment can refer to both an outcome (a state of empowerment) and a process (a movement toward empowerment or greater empowerment). As such, empowerment may be a development objective or a means to achieve other development objectives.⁴ In either case, empowerment initiatives support the interaction of (1) assets (e.g., legal right, self-confidence, infrastructure); (2) agency or transformation (i.e., an individual or group's use of their assets to exercise choice); and (3) an opportunity structure (i.e., the formal and informal institutions that shape human interaction and

can promote or restrict the exercise of agency and achievement of desired outcomes).⁵ The process continuously loops back on itself as empowerment grows. For example, an initial goal of a legal empowerment initiative might be creation of new assets for a group of laborers—organizational skills, a right to bargain collectively with their employer, and the confidence to exercise their bargaining right. A subsequent stage of the initiative might support the workers' use of their new power to negotiate with their employer for additional assets, such as health and safety standards in the workplace.

Legal empowerment as a concept remains slippery, despite a growing body of literature focused on it.⁶ Multiple origins have naturally led to a protean concept. Legal empowerment emerged as a general term to cover a wide range of activities that use law to benefit the disadvantaged, as a reaction to perceived limitations in rule of law projects that target the reform of state institutions, and as a rights-oriented strategy for poverty alleviation.⁷

Sometimes “legal” describes the nature of the empowerment process, sometimes the nature of the power achieved. As John Bruce et al. note, most observers include both options within the definition of legal empowerment initiatives. Others (including Bruce et al.) use legal empowerment only to refer to a process that helps individuals or groups attain legal power.⁸ The empowerment process may include law-related activities and other activities. This definition distinguishes initiatives designed to result in general empowerment from those designed to help the disempowered use, protect, and exercise existing legal rights and pursue new rights.⁹ This chapter's discussion of

sustainability of the process of legal empowerment does not require choosing between the two definitions, although the discussion and examples reflect a preference for the latter definition, with “legal” describing the nature of the power achieved.¹⁰

Sustainability, the capacity to endure over time,¹¹ is a critical element of the process of legal empowerment. In a project context, sustainability is the long term availability of the means required to achieve long term goals.¹² Initiatives that support legal reforms or the creation of new rights can require years of engagement. Likewise, supporting the development of human and psychological assets necessary to exercise legal rights and make choices, such as skills in problem-solving and group governance, takes time.¹³ Strengthening or reforming formal and informal institutions in order to reduce barriers to the disadvantaged often involves challenging existing interests. The long-term nature of these endeavors, some of which may proceed simultaneously but many of which must proceed sequentially, require a sustained process.

The gender program of a Namibian NGO, the Legal Assistance Centre, is an example of a sustained legal empowerment process. In the mid-1990's, the Centre undertook a program to combat domestic violence, and over a period of six or seven years, the Centre helped draft and advocate for what became Namibia's Combating Domestic Violence Act of 2003.¹⁴ Throughout the decade following the law's enactment, the Centre has worked with individuals and communities to build awareness of the law, facilitate the exercise of rights under the law with user-friendly forms and legal assistance, train police officers and others charged with enforcement of the new law,

and conduct ongoing evaluations of the law's implementation and enforcement.¹⁵ The law established a new legal right, but empowerment of victims and prospective victims of domestic violence to use that right to make effective choices depended on the Centre's work reducing institutional barriers, building complementary assets, and helping victims exercise their rights. To date, the empowerment process has required two decades of engagement, and the work continues.¹⁶

Given the importance of time to the process of empowerment, short project cycles and limitations on funding that can truncate the process, or, more disastrously, dissuade program planners and practitioners from even taking up an initiative, pose a special threat to legal empowerment initiatives. Evaluation systems lifted from other types of initiatives and imposed on legal empowerment initiatives can also unintentionally inhibit the empowerment process. Indicators that focus on parts of the process (such as asset development or institutional reforms) rather than indications of changes in power relationships that may be harder to identify may encourage premature termination of a program.¹⁷

Anticipating these types of challenges is the best way to sustain the process of empowerment over the time necessary to achieve objectives. This article considers various elements of legal empowerment initiatives that influence the sustainability of the process. The next two sections look at how some of the general principles informing legal empowerment initiatives and approaches help encourage the continuation of the empowerment process. The following section considers the role played by funding models. The chapter concludes with some

recommendations for donors and further research.

Design Principles Supporting Sustainable Empowerment Processes

Several established principles of program design can help sustain the empowerment process. These include: (a) control by the intended beneficiaries, (b) responding to clients' changing needs and priorities over time, (c) a broad programmatic base, and (d) providing concrete benefits to clients.

These principles are, of course, far from novel, and, indeed, axiomatic in the context of legally-oriented initiatives. However, they deserve renewed attention because, while designers often invoke these principles in program design, they can be challenging to implement because they require significant local knowledge and engagement from the time of program design (often well before funding is certain) and throughout the life of the project. Early and ongoing engagement requires time, money, and attention at the grassroots level, resulting in dilution or abandonment of the principles. Renewed attention may help ensure that program designers anticipate these challenges such that the principles can, in fact, inform the initiative from conception through execution.

The first principle, that sustainability requires being **need-based and client-driven** comes from the fact that legal empowerment initiatives distinguish themselves from more traditional rule of law projects by their focus on marginalized populations and the active engagement of those populations in project design and implementation.¹⁸ That bottom-up, demand-driven approach is essential to the exercise of agency

and sustainability of empowerment processes.¹⁹ Comparative studies from multiple countries and legal environments repeatedly find that tailoring legal services programs to the identified needs of the clients and allowing clients to direct the provision of services gives them the greatest sustainability.²⁰ Experience from general empowerment programs echoes this conclusion.²¹

Nonetheless, despite such compelling findings, true client-driven programs are rare.²² Program planners find control exceedingly difficult to relinquish. Legal professionals dominate many interventions that have significant legal content, and it's tempting to identify an initiative's proposed legal services based on what the legal system and legal professionals can offer, which limits the potential for empowerment.²³ Yet where program planners resist that temptation and allow communities to shape program content, indications of empowerment begin to emerge.

Two examples illustrate this point. In Sierra Leone, the NGO Timap for Justice's paralegal program uses Community Oversight Boards to help identify local legal needs, ensure that the paralegals address local priorities, and hold the paralegals accountable for the delivery of appropriate services.²⁴ A World Bank study of the program describes positive legal empowerment outcomes: community members report that the paralegal services introduced them to methods of navigating legal procedures and community members gained the knowledge and confidence to pursue other legal rights and additional issues of importance to their families and communities in various forums.²⁵

In a related vein, the local communities in the Manda Wilderness project in Mozambique report similar benefits from a

program in which they controlled the community development funds. Community members set priorities for development projects and negotiated with the owners to establish business policies that supported those community priorities, such as sourcing lodge food locally. Ten years into the project, community members reported legal empowerment outcomes, including using their experience to negotiate and contract with the government and third parties for a role for in management of a new reserve.²⁶

The second principle, that **broad-based and integrated** programs have an advantage, refers to programs where the basis of power is political, economic, and social. Initiatives that recognize these separate spheres and support the development and application of skills and experience across them through the creation of complementary assets and support in different institutional environments expand opportunities for program participants and support the continuation of the empowerment process.²⁷ As an example, an HIV/AIDS health program in Kenya broadened the support for its patients (and the empowerment potential) with the addition of a legal clinic. The local, integrated legal services support helped individuals suffering from HIV/AIDS to assert their rights in the workplace, apply for public assistance benefits, and control their household assets through succession planning.²⁸

Larger projects may provide superior support to legal empowerment objectives.²⁹ Challenging existing power structures, by, for example, providing daughters with equal rights of inheritance, can be risky. Embedding empowerment processes within a larger programmatic structure, such as the healthcare program in Kenya, may

de-emphasize activities that challenge power bases and provide individuals and groups with ongoing support that encourages continuation of the empowerment process.

The third principle, that programs should provide **concrete benefits**, rejects the assumption that simply achieving legislative reforms or transmitting information about legal rights inherently empowers the disadvantaged. While certainly valuable, these kinds of institutional reform and asset-building activities by themselves tend not to change behavior or alter power relationships.³⁰ Legal literacy programs, for example, may build community awareness of a right to associate freely, but absent a trade union or other tangible experience of that freedom, this awareness may offer limited empowerment. In the Indian state of Karnataka, a local NGO, Samarasa, found that simply introducing the concept of marital property did little to assist married couples in appreciating the benefits of joint or individual ownership of certain assets. However, introducing the concept of titling in connection with new housing benefits gave couples a context for legal rights and the distinction between joint and individual ownership. Women used their control over titling of new housing to negotiate with their husbands for space for income-generating activities, to seek credit from a bank, and to plan for their children's inheritance.³¹

Approaches Supporting Sustainable Legal Empowerment Processes

The approaches used in implementing legal empowerment strategies often influence the sustainability of empowerment. Experience with empowerment initiatives suggests that two approaches in particular

help sustain the process: (a) those that build communities of interest and support collective action; and (b) those that develop and mobilize local knowledge and capacity.³²

Building **communities of interest and collective action** can help sustain the process of empowerment. When operating individually, remote communities or disadvantaged individuals may not have the capacity to overcome social and economic barriers restricting the exercise of their legal rights and choices. Whether a water user committee, a labor union, or a class of people a legal aid clinic identifies as having a common legal interest, groups can help provide individuals with critical psychological support. Groups also allow for pooling of resources, create forums for learning, and give individuals a space to have their voices heard.³³

Initiatives designed to **develop and mobilize local knowledge and capacity** continue the process of empowerment by their very structure. Law school clinical programs, legal internships and apprenticeships, and community-based paralegal programs can deliver legal and related services to disadvantaged individuals and communities while simultaneously building local capacity to serve these functions over the long term.³⁴ Community-based paralegal programs have this advantage. They can serve the needs of communities in a locally relevant manner while also increasing the capacity of communities to act on their own to assert, exercise, and defend their rights and interests over the long term.³⁵ Training community members in the law, legal processes and procedures, research methods, analytical reasoning, negotiation, and alternative dispute resolution techniques are programmatic methods of internalizing legal knowl-

edge and skills within the community and continuing the process of empowerment.³⁶

Supportive Financial Structures

A report by the World Bank describes the lack of consistent, predictable financial support as one of the greatest barriers to the development of legal empowerment initiatives.³⁷ In order to sustain the process of empowerment, initiatives require strategies that: support long-term, grassroots-level engagement; have the flexibility to take direction from the disadvantaged; permit course changes as the needs and priorities of the disadvantaged evolve; provide concrete benefits that allow recipients to transform rights into choices, operating independent of the government to the extent necessary; and deliver quality, locally-appropriate technical assistance. The development, implementation, and continuation of such strategies over the necessary years and decades require stable, reliable funding. This section identifies six funding models and briefly reviews the impact of each on the sustainability of the process of legal empowerment.

The most successful programs supporting the legal rights of the disadvantaged have **dedicated funding** with protected financial structures. Stable, secure, and predictable funding gives service providers a basis to design and execute the long-term, often politically controversial strategies legal empowerment requires.³⁸ In some countries, well-established legal services NGOs, such as Cambodia's Community Legal Education Center and Botswana's Centre for Human Rights, have donors that supply core operational funding on a long-term basis through trusts and endowments. Many university programs also operate on endow-

ments. That kind of financial security gives the organizations the freedom to focus on issues and outcomes as opposed to projects, to develop specific areas of expertise that respond to local conditions and priorities, and to remain engaged on an issue over the time necessary for the process of empowerment to achieve its objective. Without such stable support, a near constant struggle for funding distracts from and limits programmatic choices and may require premature abandonment of initiatives.³⁹

In countries such as South Africa, **pro bono and subsidized programs** by private practitioners and civil society organizations (CSOs)⁴⁰ have achieved some of the most effective legal reforms.⁴¹ The engagement of established private professionals can give legitimacy to the rights of the disadvantaged and can raise the profile of local groups in dealings with government agencies, courts, and third parties, such as investors and developers.⁴² However, pro bono efforts alone can rarely support the process of legal empowerment for large populations of disadvantaged people. Individual volunteer efforts are almost by definition limited in time. Volunteer programs are also often necessarily narrow in scope. Furthermore, even skilled and well-intentioned volunteers from outside a community often lack the cultural understanding and confidence necessary to understand local conditions and allow clients to identify priorities and control service strategy.⁴³

Large donor-financed programs often offer the secure funding bases essential to the process of legal empowerment. However, internal and external procedures can constrain large programs. Requirements such as a commitment to activities and work plans do not allow for the flexibility

necessary to support the process of legal empowerment over time. Rigid tools, such as logical frameworks not designed to recognize evolving community needs, progress achieved, and obstacles encountered, can frustrate attainment of the very achievements that donors, aid recipients, and partner populations seek.⁴⁴

A **basket fund**, a financial tool that allows donors to pool their resources in support of a particular sector or shared objective, can help donors avoid some of the constraints that restrict project-based funds. Basket funds can fund government programs, programs operated by CSOs, or both.⁴⁵ Basket funds allow donors to operate as grant makers: the fund can establish an objective and invite potential service providers to submit proposals and compete for support. In that manner, a basket fund can increase the accountability of service providers, reduce duplication of effort, raise performance levels, and help ensure efficient and cost-effective service.⁴⁶ Basket funds can also help donors obtain an overall snapshot of the sector. For example, underutilized funds may evidence a previously unrecognized gap in local capacity, and fund managers can respond by retooling their funding strategy to strengthen the capacity of existing providers or develop new ones.

In Uganda, several donors set up a legal aid basket fund that has proved to be a cost effective way of supporting a variety of activities and entities, including a paralegal advisory service, about two dozen grassroots legal services providers, and development of a legal framework.⁴⁷ Although further research on basket funds is needed,⁴⁸ the experience in Uganda suggests that the tool is well-suited to sustain empowerment processes.

Funding by NGOs and communities represents another form of funding support. Despite some evidence that projects designed to become financially sustainable often fail to serve the disadvantaged, development persistently seeks financial self-sufficiency.⁴⁹ Proponents of the financial sustainability of legal initiatives point to various mechanisms designed to increase access to justice for the poor that do not require external funding, such as contingency fees and class actions. However, while such mechanisms can be part of an overall national strategy supporting legal empowerment, they tend to be limited to supporting court-related processes; they offer no support for grassroots services such as building rights awareness, advocacy, legal counseling, informal dispute resolution, and the plethora of non-legal activities that support the process of legal empowerment.

Some limited financial strategies suggest ways to supplement NGO funding sources and provide a source of community income. For example, paralegals working for the NGO Deme So in the Kati region of Mali recover some of their costs by charging residents fees for their help in obtaining necessary court documents. Because residents would pay more to obtain these documents (including travel costs and lost wages), if they did not have the help of a paralegal, the program actually increased demand for services.⁵⁰

Linking legal empowerment objectives with payment for environmental services can also let NGOs recover costs and communities generate revenue. The potential for revenue generation gave local communities in the Makira Forest Protected Areas Project in Madagascar bargaining power to use to negotiate agreements for meaningful

local control of forest resources and more general civic engagement.⁵¹ Partnerships between communities and private investors are also potential sources of funding for programs with legal empowerment objectives, as with the Manda Wilderness Lodge project in Mozambique described above.

Government support for legal empowerment programs often elicit skepticism, but in favorable environments, governmental and quasi government entities dedicated to legal empowerment can use the authority of the state to sustain the process of empowerment. In South Africa, the state-funded body, Legal Aid South Africa, draws on a diverse network of justice centers and satellite offices, impact litigation units, cooperative agreements with non-governmental organizations such as NGOs and universities, and judicare referrals to provide legal services to the disadvantaged.⁵² Other countries have provided critical support to specific legal empowerment projects. In Indonesia, the government increased its funding of religious and circuit court programs for the disadvantaged, which made the courts accessible to women seeking registration of their marital status. The government's effort, in combination with donor-supported intervention by the civil society organization, PEKKA, allowed thousands of female heads of household to obtain the certification necessary to qualify for state welfare benefits for their families.⁵³ In India's West Bengal, a state program helped sharecroppers realize the benefits of a protective law by implementing a state-wide program recording their names and educating the local population regarding their rights. After the conclusion of the registration program, the local government body, the panchayat, continued the sharecroppers' rights. Twenty

years after the state initiated the program, a significant percentage of sharecroppers had achieved sufficient economic and social status and bargaining power to negotiate with landowners for purchase of a portion of the land they sharecropped.⁵⁴

To date, however, state-supported legal empowerment programs are the exception. In many low and middle income countries, state programs face multiple hurdles to support the process of empowerment over time. First, many legal empowerment initiatives are components of larger donor-supported development projects, which, as noted above, often cannot support the kind of need-based and client-driven principles that support the empowerment process. Second, insufficient political will may leave legal empowerment components of larger programs vulnerable to abandonment at the end of donor engagement. Third, even when the resources originate with aid agencies, if they are channeled through governments to implementing organizations, they can encounter political and bureaucratic obstacles that frustrate continuation of effective service delivery.⁵⁵ However, when programs are well designed, and perhaps especially when they include the engagement of and oversight by civil society, government support for legal empowerment initiatives can help sustain the empowerment process.

Conclusion and Recommendations

Legal empowerment is a long-term process requiring sustained investment of time and resources by communities, program planners, service providers, and donors. Programs with protected financial structures that support demand-driven services and use participatory approaches such as group

formation and community-based legal services are most likely to sustain processes of empowerment over time. The following are recommendations for donors and further research:

Recommendations for Donors

- 1. Fund national organizations and global networks committed to legal empowerment.** In many lower income countries, CSOs that have the capacity to provide ongoing support for the process of legal empowerment (such as national and local NGOs, regional poverty law programs) are in early stages of development. Supporting CSOs provides for sustainable processes of empowerment less vulnerable to short term project cycles or a wane of political will. Targeting CSOs for support cannot only help deliver empowerment activities, but can help build local capacity for independent oversight of government operations and extend opportunities to build effective regional and sector coalitions. The use of basket funds and grant-making systems can help increase accountability and cost-effective service. Global networks and organizations dedicated to legal empowerment, such as the Haki Network (www.hakinetwork.org) and the international NGO Namati (www.namati.org) and its affiliated Global Legal Empowerment Network provide sources of high quality technical assistance to support local efforts.
- 2. Fund research and dissemination of information.** As a cohesive development field, legal empowerment is still in its infancy. As the experience of program developers and local practitioners grows,

collecting the experience of legal empowerment initiatives (particularly evidence of impact), creating and refining tools, conducting evaluations, and disseminating learning will improve the delivery of services. Donors can support these needs by funding stand alone research and encouraging the inclusion of components in initiatives dedicated to the collection and use of relevant experience, monitoring and evaluation, and wide dissemination of results.

Recommendations for Research

As the number of legal empowerment projects expands and as experience broadens and matures, systematic research collecting information in the following areas will be increasingly valuable:

- 1. Extend and refine understanding of components of legal empowerment initiatives.** Researchers can assist the development of models for effective initiatives through the systematic collection and analysis of data on various elements of legal empowerment initiatives, including: sequencing of activities; methods for providing technical assistance (e.g., university programs); use of non-legal activities (e.g., group formation); and integration of legal empowerment activities into socio-economic and governance programs, such as those focused on health and decentralization.
- 2. Focus on impact.** As noted in the introduction to this article, reports of the impact of legal empowerment initiatives are increasing, but far more research is needed. In recent years, evaluation frameworks for empowerment programs have emerged, including identification of in-

dicators of empowerment and methods of measuring empowerment processes and impacts.⁵⁶ Legal empowerment initiatives will benefit from adaptation and refinement of these efforts to legal empowerment processes and impact.

3. **Collect and analyze experience with basket funds and other funding options.** Researchers can help donors interested in

funding legal empowerment initiatives by collecting the experience of donors, practitioners, grantees, and others with basket funds and other models; identifying success factors; and using the collected experience to work with donors and other stakeholders to build funding models designed to support legal empowerment initiatives.

Notes

* Robin Nielsen has 25 years of experience as a practicing lawyer and legal consultant supporting land and labor/employment rights for the disadvantaged. Her land tenure work in Asia, Africa, and the Middle East has focused on the legal empowerment of marginalized populations through the use of law and legal tools to strengthen land and natural resource rights, establish effective local governance systems, and support pro-poor land use and development.

1. See, for example, projects described in Lorenzo Cotulla and Paul Mathieu (eds.), *Legal Empowerment in Practice: Using Legal Tools to Secure Land Rights in Africa*. (London: IIED and FAO, 2008) and referenced in John W. Bruce, Omar Garcia-Bolivar, Tim Hanstad, et al., *Legal Empowerment of the Poor: From Concepts to Assessment* (Burlington VT: ARD, Inc, 2007).

2. As Golub notes, focusing on the sustainability of institutions and financing supporting legal empowerment distracts from the ultimate goal of impact and is, to some extent, misplaced. Assumptions regarding the sustainability of government institutions compared to NGOs contributed in part to the preference of many rule of law programs for projects narrowly focused on state institutions. Golub argues that state institutions aren't necessarily more sustainable, but that in any event, legal empowerment initiatives should not be designed with an expectation that the state or NGOs will at some future point assume primary responsibility for supporting access to legal services for the poor. This expectation requires institutions and organizations in lower-income countries to meet a standard not applied in industrialized countries. Stephen Golub, "Focusing on Legal Empowerment: The UNDP LEAD Project in Indonesia," in Ayesha Kadwani Dias and Gita Honwana Welch (eds.), *Justice for the Poor* (New York: Oxford University Press, 2009), 392–95.

3. Nicholas Stern, Jean-Jacques Dither, and F. Halsey Rogers, *Growth and Empowerment: Making Development Happen* (Cambridge, MA: MIT Press, 2005), 99.

4. Ruth Alsop, Mette Bertelsen, and Jeremy Holland, *Empowerment in Practice: From Analysis to Implementation* (Washington DC: The World Bank, 2006), 3.

5. *Ibid.*, 9–18; also see generally Aruna Sharma, *Women Empowerment in India: Processes and Inter-Linkages* (New Delhi: Om Publications, 2010); Deepa Narayan, ed. *Measuring Empowerment: Cross Disciplinary Perspectives* (Washington DC: The World Bank, 2005).

6. See, for example, Golub, "Focusing on Legal Empowerment," and Stephen Golub and Kim McQuay, 2001, "Legal Empowerment: Advancing Good Governance and Poverty Reduction," in *Law and Policy Reform at the Asian Development Bank* (Manila: Asian Development Bank, 2001); High Level Commission for Legal Empowerment of the Poor, Co-Chair's Outcome Document, January 20–21, 2006 (New York: HLCLEP).

7. Stephen Golub, "What Is Legal Empowerment," in Stephen Golub (ed.), *Legal Empowerment: Practitioners' Perspectives*, (Rome: IDLO), 9–17; Bruce et al., *Legal Empowerment of the Poor*, 2–3.

8. “Legal empowerment of the poor occurs when the poor, their supporters, or governments—employing legal and other means—create rights, capacities, and/or opportunities for the poor that give them new power to use the law and legal tools to escape poverty and marginalization.” Bruce et al., *Legal Empowerment of the Poor*, 29.
9. Ibid.
10. The preference does not discount the value of the more general empowerment outcomes. Rather, the preference reflects a belief that law and legal tools confer unique power to confront the social, economic, and political inequality and in the value of initiatives to seek such legal power.
11. W. Neil Adger and Andrew Jordan, *Governing Sustainability* (New York: Cambridge University Press, 2009), 3–31.
12. N. Ravichandran, *Sustainability of NGOs and Globalisation* (New Delhi: Rawat Publications, 2007), 26.
13. Pick and Sirkin, *Breaking the Poverty Cycle: The Human Basis for Sustainable Development*, 241–46.
14. Namibia Legal Assistance Centre, Domestic Violence, Gender Research and Advocacy Project. <http://www.lac.org.na/projects/grap/grapviolence.html>.
15. Ibid.
16. Namibia Legal Assistance Centre, Tackling Violence: A Timeline. <http://www.lac.org.na/projects/grap/graptacklingviolence.html>.
17. Alsop et al., *Empowerment in Practice*, 33–37.
18. Golub, “Focusing on Legal Empowerment,” 377–82.
19. Pick and Sirkin, 10–15; Erica Harper, *Customary Justice: From Program Design to Impact Evaluation* (Rome: IDLO, 2011), 47.
20. Frederick H. Zemans and Aneurin Thomas, “Can Community Clinics Survive?” in Francis Regan, Alan Pater-son, Tamara Goriely, and Don Fleming (eds.), *The Transformation of Legal Aid: Comparative and Historical Studies* (New York: Oxford University Press, 1999), 65–88.
21. Pick and Sirkin, *Breaking the Poverty Cycle: The Human Basis for Sustainable Development*, 65–88; Erica Har- per, “Conclusion: Enhancing Legal Empowerment through Engagement with Customary Justice Systems,” in Erica Harper (ed.) *Working with Customary Justice Systems: Post-Conflict and Fragile States*, (Rome: IDLO, 2011), 171–84, 174.
22. Ravichandran, *Sustainability of NGOs and Globalisation*, 169.
23. Earnard Blakenburg, “The Lawyers’ Lobby and the Welfare State,” in Regan, et al., *The Transformation of Legal Aid*, 113–32.
24. Pamela Dale, *Delivering Justice to Sierra Leone’s Poor: An Analysis of the Work of Timap for Justice* (Washington DC: The World Bank, 2009).
25. Ibid., 40–47.
26. Manda Wilderness Community Trust, 2011 www.mandawilderness.org; Manda Wilderness Project, 2009. Video: Manda Wilderness Project: Bets Practices and Lessons Learned. The IDLO customary law studies are also report- ing very interesting suggestions of legal empowerment outcomes. See, for example, Harper, *Working with Customary Justice Systems*, 146–84.
27. Alsop et al., *Empowerment in Practice*, 19–21; Sharma, *Women Empowerment in India*, 75–79.
28. Milkah Murugi Muriithi Cheptinga and Judge Patricia Riley, Human Rights and Healthcare Go Hand-in-Hand in Rural Kenya, n.d., http://www.lacekenya.com/images/Human_rights_and_healthcare_go_hand-in-hand_in_ru- ral_Kenya.pdf.
29. Golub, *Focusing on Legal Empowerment*, 392.
30. Pick and Sirkin, *Breaking the Poverty Cycle: The Human Basis for Sustainable Development*, 125.

31. International Center for Research on Women (ICRW) and Rural Development Institute. Increasing Women's Property Ownership through Rural Housing Programs in India (New Delhi: ICRW, 2006) http://www.rdi-india.org/media/ICRW_RDI.pdf.
32. Sharma, *Women Empowerment in India*, 75; Pick and Sirkin, *Breaking the Poverty Cycle: The Human Basis for Sustainable Development*, 207.
33. Zemans and Thomas, "Can Community Clinics Survive?" 65–71; Sharma, *Women Empowerment in India*, 86–96. One of the promising conclusions of the extensive research conducted by the International Development Law Organization (IDLO) into the operations of customary justice systems is that the disempowered can challenge societal power bases and powerful agents, especially when the disempowered act collectively. Harper, Conclusion, *Working with Customary Justice Systems*, 174; Harper, *Customary Justice*.
34. Aubrey McCutcheon, "University Legal Clinics: A Growing International Presence with Manifold Benefit," in Mary McClymont and Stephen Golub (eds.), *Many Roads to Justice: The Law-Related Work of the Ford Foundation Grantees Around the World*, (New York: Ford Foundation, 2000), 267–82; David McQuoid-Mason, "Delivery of Legal Aid Services in Developing Countries in Light of the South African Experience," in Dias and Welch, *Justice for the Poor*, 449–82; Golub, *Forging the Future: Engaging Law Students and Young Lawyers in Public Service, Human Rights, and Poverty Alleviation, An Open Society Justice Initiative* (OSJI) Issues Paper (New York: OSJI, 2004), 8–13.
35. Tiernan Mennen, "The Mystery of Legal Empowerment: Livelihoods and Community Justice in Bolivia," in Golub (ed.), *Legal Empowerment: Practitioners' Perspectives*, 63–80.
36. Ibid.; Harper, *Working with Customary Justice Systems*, 179. In fact, paralegals may be the best suited to accomplish empowerment goals. In projects using paralegals to assist communities with land delimitation, researchers found that paralegals engage community members in the project processes and decision-making better than lawyers; where projects included lawyers, community members tended to defer to them. Rachael Knight, "The Community Titling Initiative: An Investigation into Best Practices for the Protection of Customary Land Claims," in Erica Harper, ed., *Working with Customary Justice Systems* (Rome: IDLO, 2010), 145–70.
37. Ruth Alsop and Bryan Kurey, *Local Organizations in Decentralized Development* (Washington DC: The World Bank, 2005), 81–82; Ravichandran, *Sustainability of NGOs and Globalisation*, 25–84.
38. Zemans and Thomas, "Can Community Clinics Survive?" 84–86.
39. Ravichandran, *Sustainability of NGOs and Globalisation*, 71–72.
40. This article adopts the World Bank's definition of CSOs as the organizations and entities formed to advance common interests operating outside the private sphere, market, and government, including NGOs, universities, foundations, trade groups, faith-based organizations, and other associations of people. See "Defining Civil Society" <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20101499~menuPK:244752~pagePK:220503~piPK:220476~theSitePK:228717,00.html>.
41. McQuoid-Mason, "Delivery of Legal Aid Services in Developing Countries in Light of the South African Experience," 452–54.
42. See generally Dias and Welch, *Justice for the Poor*.
43. Tamara Goriely, "Making the Welfare State Work," in Regan et al., *The Transformation of Legal Aid*, 89–109.
44. The World Bank's Justice for the Poor program may be one exception, but its thematic and regional reach is still relatively limited. (See e.g., Cate Sumner and Matthew Zurstrassen, *Increasing Access to Justice for Women and Those Living in Remote Areas: An Indonesian Case Study, a Justice for the Poor Briefing Note*, Vol. 6, No. 2 (Washington, D.C.: The World Bank, 2011))
45. Steven Radelet and Ruth Levine, "Can We Build a Better Mousetrap?" in William Easterly (ed.), *Reinventing Foreign Aid*, (Cambridge, MA: MIT Press, 2008), 431–60.
46. Nancy Birdsall, "Seven Deadly Sins: Reflections on Donor Failings," in Easterly, *Reinventing Foreign Aid*, 515–51, 535–36.

47. Ministry of Foreign Affairs of Denmark, “Over 3.6 Million Ugandans Reached by Legal Aid Basket Fund,” 2011.
48. For example, various types of basket funds, albeit on a larger scale, have been used to support public health initiatives—experience that could help inform development of baskets for land and legal empowerment initiatives. See Radelet and Levine, “Can We Build a Better Mousetrap?,” 444–55.
49. Michael Kramer and Edward Miguel, “The Illusion of Sustainability,” in *Reinventing Foreign Aid*, 201–53. Golub notes that many providers of legal services for the disadvantaged in industrialized countries rely on donor funding. Golub, “Focusing on Legal Empowerment,” 395.
50. Maurits Barendrecht, *Models for Sustainable Legal Aid: Experiences from NGOs in Five Lower Income Countries*, Tisco Working Paper Series on Civil Law and Conflict Resolution Systems (The Hague: Tilburg University, 2011).
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Justice Initiatives

The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. We foster accountability for international crimes, combat racial discrimination and statelessness, support criminal justice reform, address abuses related to national security and counterterrorism, expand freedom of information and expression, and stem corruption linked to the exploitation of natural resources. Our staff are based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, The Hague, London, Mexico City, New York, Paris, and Washington, D.C.

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